

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

SEPTEMBER 29, 2021

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chairman
PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
ANNE FOTHERGILL
KAREN THOMAS

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

STEVE COCHRAN
JONATHAN KIRSCHENBAUM
ELISE VITALE
MATTHEW JESICK

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, Esquire
JACK RICE, Esquire

The transcript constitutes the minutes from the
Regular Public Hearing held on September 29, 2021.

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

Case No. 18472-B - Application of District of Columbia, Department of General Services (Rescheduled to 10/06/21) . . .	7
Case No. 20434 - Application of Kuumba Learning Center Inc. (Rescheduled to 12/22/2021)	8
Case No. 20410 - Application of Mamma Lucia of Chevy Chase, LLC (Rescheduled to 11/10/21)	8
Case No. 20538 - Application of TG Management LLC	8
Case No. 20442 - Application of Paul DeYoung	14
Appeal No. 20549 - Appeal of Advisory Neighborhood Commission 6B	17
Case No. 20517 - Application of the Government of the United Arab Emirates	49
Case No. 17984-A - Application of Tudor Place Foundation, Inc.	117
Case No. 20489 - Application of The Culinary District, Inc.	123
Case No. 20502 - Application of Michael and Cathryn Siemer.	145
Case No. 20504 - Application of Jerome and Kristina Sisul .	158
Case No. 20506 - Application of Adam Blau	168
Case No. 20510 - Application of Hazel Wood	178
Case No. 20514 - Application of Thomas and Melissa Sellevaag	186
Case No. 20400 - Application of Green Street Apartments . .	202
Case No. 20508 - Application of 9 New York Avenue, LLC . .	211
Case No. 20435 - Application of Jackson Street 2019, LLC .	247

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

2 (9:38 a.m.)

3 CHAIRPERSON HILL: Good morning, ladies and gentlemen to
4 the Board of Zoning Adjustment. Today is 9-29-2021. The public
5 hearing will please come to order.

6 My name is Fred Hill. I'm the Chairperson of the
7 District of Columbia Board of Adjustment. Joining me today is
8 Lorna John, Vice Chair; Board Members, Carl Blake and Chrishaun
9 Smith; Zoning Commissioner Peter May and Chairman Anthony Hood.
10 Also, with us is Marcel Acosta, Executive Director of the National
11 Capital Planning Commission.

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

18 Accordingly, everyone who is listening on Webex or by
19 telephone will be muted during the hearing. Also, please be
20 advised that we do not take any public testimony at our decision
21 meeting session.

22 If you're experiencing difficulty accessing WebEx or
23 with your call-in telephone, then please call our OZ hotline
24 number at 202-727-5471 to receive Webex calling or call-in
25 instructions.

1 At the conclusion of the decision meeting today, 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 the
6 Board's decision differs from the Office of Planning's
7 recommendation. Although the Board favors the use of summary
8 orders whenever possible, an applicant may not request the Board
9 to issue such an order.

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

19 Once again, if you're experiencing difficulty accessing
20 WebEx or with your telephone call-in or you've forgotten to sign
21 up 24 hours prior to the hearing, then please call our OZ hotline
22 number, which is on the screen, as well as 202-727-5471.

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

1 allowed to testify. By signing up to testify, all participants
2 completed the oath or affirmation as required by Subtitle Y 408.7.

3 Requests to enter evidence at the time of an online
4 virtual hearing, such as written testimony or additional
5 supporting documents other than live video, which may not be
6 presented as part of the testimony, may be allowed pursuant to
7 Subtitle Y 103.13, provided that the person making the request to
8 enter an exhibit explain how the proposed exhibit is relevant, the
9 good cause it justifies allowing the exhibit in the record,
10 including the explanation of why the requester did not file the
11 exhibit prior to the hearing pursuant to Subtitle Y 206, and how
12 that proposed exhibit would not unreasonably prejudice any party.

13 The order of procedures for special exception and
14 variances are pursuant to Y 409. If this is an appeal, it's
15 pursuant to Y 507.

16 At the conclusion of each case, an individual who is
17 unable to testify because of technical issues may file a request
18 for leave to file a written version of the planned testimony to
19 the record within 24 hours following the conclusion of public
20 testimony and the hearing. If additional written testimony is
21 accepted, then the parties will be allowed a reasonable time to
22 respond as determined by the Board. The Board will then make its
23 decision at its next meeting session, but no earlier than 48 hours
24 after the hearing. Moreover, the Board may request additional
25 specific information to be included in the record. The Board and

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

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

15 Mr. Secretary, do we have any preliminary matters today?

16 MR. MOY: Good morning, Mr. Chairman. I do have a brief
17 announcement on three case applications related to today's docket.

18 The first case is a modification of consequence in Case
19 Application No. 18472-B of the District of Columbia, Department of
20 General Services. That has been rescheduled to the Board's public
21 meeting session for October 6th, 2021, which is next week.

22 Second, Case Application No. 20434, this is the
23 application of Kuumba Learning Center, Inc. has been postponed,
24 rescheduled to December 22nd, 2021.

25 And finally, Case Application No. 20410 of Mamma Lucia

1 of Chevy Chase, LLC has been postponed. Rescheduled to November
2 10th, 2021.

3 Other than that, Mr. Chairman, there are other
4 preliminary matters, but what has been customary with the Board is
5 that it's more efficient for the Board to address those
6 preliminary matters when I call the case.

7 And that's it from me, Mr. Chairman.

8 CHAIRPERSON HILL: Okay. Great. Thanks, Mr. Moy. All
9 right. I guess, if we could go ahead, Mr. Moy, and you can call
10 our first meeting case or meeting issue, I should say.

11 MR. MOY: All right. I believe, Mr. Chairman, this is,
12 should be the case application number 20538 of TG Management, LLC.
13 This application is captioned and advertised as a special
14 exception relief from the matter-of-right uses of Subtitle U,
15 Section 202 and pursuant to Subtitle U, Section 203.1(e), Subtitle
16 X, Section 901.2. This would establish a community-based
17 institutional facility in a new, three-story with cellar, detached
18 residential building in the R-2 Zone. Property located at 1614
19 Olive Street, Northeast, Square 5167, Lot 9.

20 As the Board is aware, this was last heard on September
21 22nd for preliminary matters. And one matter that was deferred to
22 today's hearing is to take action on the party status from ANC 7C.

23 CHAIRPERSON HILL: Okay. Give me one minute, you guys.
24 Okay.

25 So, basically, the issue before us is party status for

1 ANC 7C, I believe it is. Right. And so, you know, what the
2 discussion was was that it was technically, if it was technically
3 an affected ANC, that would mean that wherever the property is
4 lies on the border between the two ANCs. Like, we've done this
5 before and had this discussion. Therefore, if it did lie on the
6 border, they would automatically be a party and there would be an
7 affected ANC, which means they would be just like the -- both ANCs
8 would have the same amount of great weight, right? So, whatever
9 report everybody gives us, we'd have to give great weight to it.

10 I don't think that -- I mean, clearly, they're not an
11 affected ANC, which is that the property is not on the border of
12 ANC 7C. So now, what that means is can they be a party status
13 person, right? Like anybody else who applies for party status.
14 And, you know, looking through the regulations, it doesn't appear
15 as there any -- there is anything that says that they can't be an
16 affected -- I'm sorry, not an affected. That they can't be a
17 party status person if they meet the criteria for it.

18 And so, they, the ANC has submitted something into the
19 record as to how they specifically meet the criteria to be
20 considered a party status and why they're more affected than other
21 people in the community. I mean, the problem I have with it is, I
22 guess, unfortunately, one of the ANC -- the other ANC, I can't --
23 well, you know, forget that.

24 I think that, I mean, we've granted community groups
25 party status support before that are even kind of like adjacent or

1 nearby. And this is an ANC. They're one block away from --
2 they're one block away from where this property is. Literally,
3 one block away. And so, even though it may be difficult to get to
4 it, it's only one block away.

5 So, in other words, I think that they are significantly
6 -- I think that they are more affected than the general public and
7 they're an ANC. So, I would be in favor of giving them party
8 status, but again, they're not getting great weight, which means
9 that the ANC that 7D, that the property actually is in, they will
10 get great weight, which means we're supposed to try and listen to
11 them and all of their concerns. Whereas party status, it's not
12 given great weight.

13 So, that's my opinion. So, I will go around the horn
14 and start with -- is Mr. Blake not on this case? I can't recall.
15 I guess he's not on this case?

16 BOARD MEMBER BLAKE: Yes, sir. I am on this case.

17 CHAIRPERSON HILL: Oh, you are. Okay. I just didn't
18 see your photograph. I'm sorry.

19 Mr. Smith, do you have an opinion?

20 BOARD MEMBER SMITH: No, Mr. Chair. I agree with your
21 analysis of this particular case. I agree with your opinion on
22 this one, and I will support it from that position.

23 CHAIRPERSON HILL: Vice-Chair John?

24 VICE-CHAIR JOHN: I'm also in agreement with your
25 analysis. And I believe ANC, the ANC should be allowed party

1 status.

2 CHAIRPERSON HILL: Okay. Okay. Mr. Blake?

3 BOARD MEMBER BLAKE: All right. Yeah. No, I don't have
4 anything to add. I feel comfortable with your assessment of the
5 situation. Thank you.

6 CHAIRPERSON HILL: Chairman Hood?

7 CHAIRMAN HOOD: I would believe all the parties, I think
8 Chairperson Holmes, in his discussion as to why we should grant
9 him party status, I think he met the requisite requirement under
10 the statute. And I think there was confusion about boundaries.
11 And I think you explained it very well. And again, Ms. Douglas'
12 ANC will get the great weight and we will move forward from this.
13 So I think he's met the test, as far as I'm concerned for that ANC
14 7D to get party status. Thank you, Mr. Chairman.

15 CHAIRPERSON HILL: Okay. So, I'm going to go ahead and
16 make a motion to allow ANC 7C party status in Case No. 20538 and
17 ask for a second, Ms. John?

18 VICE-CHAIR JOHN: Second.

19 CHAIRPERSON HILL: Mr. Moy, if you could take a roll
20 call, please?

21 MR. MOY: Thank you, sir. When I call each of your
22 names, if you would please respond with a yes, no, or abstain to
23 the motion made by Chairman Hill to grant party status to ANC 7C.

24 Zoning Commission Chair Anthony Hood?

25 CHAIRMAN HOOD: Yes.

1 MR. MOY: Mr. Smith?

2 MR SMITH: Yes.

3 MR. MOY: Mr. Blake?

4 BOARD MEMBER BLAKE: Yes.

5 MR. MOY: Vice-Chair John?

6 VICE-CHAIR JOHN: Yes.

7 MR. MOY: Chairman Hill?

8 CHAIRPERSON HILL: Yes.

9 MR. MOY: Staff would record the vote as 5-0-0, and
10 this is on the motion made by Chairman Hill to grant -- the motion
11 was seconded by Vice-Chair John. Also, in support of the motion
12 is Zoning Commission Chair Anthony Hood, Mr. Smith, Mr. Blake,
13 Vice-Chair John and, of course, Chairman Hill. Again, the motion
14 carries on a vote of 5-0-0.

15 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Moy.

16 CHAIRMAN HOOD: Mr. Chairman, could I just also say, do
17 we know when we're going to hear this? Mr. Moy has not scheduled
18 it?

19 CHAIRPERSON HILL: I think it's October 13th.

20 CHAIRMAN HOOD: Okay. October 13 --

21 CHAIRPERSON HILL: No, wait.

22 CHAIRMAN HOOD: I --

23 MR. MOY: That's correct.

24 CHAIRMAN HOOD: The 13th?

25 MR. MOY: That's correct, the 13th.

1 CHAIRMAN HOOD: Okay. I, too, want to commend the
2 parties for coming together as you have asked them to do. I just
3 wanted to put that on the record. Thank you, Mr. Chairman.

4 CHAIRPERSON HILL: Great. And Chairman Hood, you'll be
5 joining us for that, correct?

6 CHAIRMAN HOOD: The 13th, I will make arrangements.
7 We'll work it out in the schedule so I can make arrangements.

8 CHAIRPERSON HILL: Great. Thank you.

9 CHAIRMAN HOOD: If you all --

10 CHAIRPERSON HILL: I mean, I didn't mean to put you on
11 the spot. You've heard a lot of it, so.

12 CHAIRMAN HOOD: Okay.

13 CHAIRPERSON HILL: Okay. Anyway, thank you.

14 CHAIRMAN HOOD: Uh-huh.

15 CHAIRPERSON HILL: I don't know if -- oh, no. I think -
16 - so the next one, Mr. Moy, could you call it? I can't recall who
17 the Commissioner is that's on there.

18 MR. MOY: The Commissioner is Mr. Peter Shapiro.

19 CHAIRPERSON HILL: Oh, okay, great. So, he'll absentee
20 in, maybe?

21 MR. MOY: That's correct.

22 CHAIRPERSON HILL: Okay.

23 MR. MOY: Ready?

24 CHAIRPERSON HILL: Yep. Whenever you are.

25 MR. MOY: Okay. So, the next case application before

1 the Board for decision is No. 20442 of Paul DeYoung. This
2 application, as amended, is a request for special exception from
3 the lot occupancy requirements, Subtitle E, Section 304.1 and
4 pursuant to Subtitle E, Section 5201 and Subtitle X, Section
5 901.2. This would construct a rear deck to an existing, attached,
6 two-story flat in the RF-1 Zone. The property is located at 78 R
7 Street, Northwest. And this was last heard by the Board on
8 September the 15th. And participating, correct me if I'm wrong,
9 but participating is Chairman Hill, Vice-Chair John, Mr. Smith,
10 and Zoning Commissioner Peter Shapiro.

11 CHAIRPERSON HILL: Okay. Great. Okay. Wait. All
12 right. You guys, so this one, I thought we heard, wait now. But,
13 oh, we heard on the 15th of September. So, I didn't have a lot of
14 issues with this. I thought that the applicant did a good job of
15 understanding how they were meeting the criteria for us to grant
16 the relief requested. Again, the project is the deck attached to
17 a two-story flat in the RF-1 Zone. The ANC, we were looking for
18 something from them to get a clean record. There is now something
19 in the record from the ANC. And I believe now that they are also
20 in favor of it. It makes it more a full record. The Office of
21 Planning was also in support, and I would agree with their
22 assessment as to how they were meeting the criteria for us to
23 grant this application. And so I was, as well as DDOT had no
24 objection. And again, I was fine with the applicant's
25 justification on how they're meeting the standard. So, I'm going

1 to go to approve.

2 Let's see, Mr. Smith, are you there? Do you have
3 anything to add?

4 BOARD MEMBER SMITH: I don't have anything to add, Mr.
5 Chair. I do support your analysis and opinion and will support
6 the application.

7 CHAIRPERSON HILL: Okay. Ms. John?

8 VICE-CHAIR JOHN: I don't have anything to add, Mr.
9 Chairman. I thought that the revised application meets the
10 criteria for granting relief.

11 CHAIRPERSON HILL: Thank you. Mr. Blake?

12 MR. MOY: He's not participating in this case, Mr.
13 Chairman.

14 CHAIRPERSON HILL: Oh, sorry. Okay, no Mr. Blake.

15 Let's see, then do you have an absentee, Mr. Moy?

16 MR. MOY: I do indeed, sir.

17 CHAIRPERSON HILL: Could you read that and share that
18 with us, please?

19 MR. MOY: Zoning Commissioner Peter Shapiro's absentee
20 ballot vote is to approve the relief that's being requested on
21 this application.

22 CHAIRPERSON HILL: Okay. Oh, got you. I apologize. I
23 didn't make a motion yet. I'm going to make a motion to approve
24 Application Number 20442 as captioned and read by the Secretary
25 and ask for a second, Ms. John?

1 VICE-CHAIR JOHN: Second.

2 CHAIRPERSON HILL: Motion has been and seconded. Mr.
3 Moy, if you could take a roll call, please?

4 MR. MOY: Yes. Thank you, sir.

5 When I call your names, if you would please respond with
6 a yes, no, or abstain to the motion made by Chairman Hill to
7 approve the application for the amended relief requested.

8 Mr. Smith?

9 BOARD MEMBER SMITH: Yes.

10 MR. MOY: Vice-Chair John?

11 VICE-CHAIR JOHN: Yes.

12 MR. MOY: Chairman Hill?

13 CHAIRPERSON HILL: Yes.

14 MR. MOY: And as I just cited earlier, we do have an
15 absentee ballot vote from Zoning Commissioner Peter Shapiro. And
16 his absentee vote is to approve the application. That would give
17 a final vote of 4-0-1. And this is on the motion made by Chairman
18 Hill to approve. The motion was seconded by Vice-Chair John.
19 Supporting the motion to approve is Mr. Smith, Vice-Chair John,
20 Chairman Hill, and of course, Peter Shapiro. One Board member not
21 participating. The motion still carries on the vote of 4-0-1.

22 CHAIRPERSON HILL: Okay. All right. Thanks you guys.

23 All right. Mr. Moy, if you can call our next, please?

24 MR. MOY: The next application for action on the part of
25 the Board is to address a filing for a motion for stay of a

1 certificate of occupancy. This goes to appeal Case No. 20549 of
2 the Advisory Neighborhood Commission 6B. This is an appeal from
3 the decision made on May 5th, 2021, by the zoning administrator,
4 Department of Consumer and Regulatory Affairs to issue building
5 permit number B2103902, which would permit a renovation within an
6 existing structure in the PDR-1 Zone. And the property is located
7 at 1323 E Street, Southeast, Square 1043, Lot 166.

8 CHAIRPERSON HILL: Okay. Actually, I'm going to ask --
9 Ms. John, can you start this off for us?

10 VICE-CHAIR JOHN: Sure, Mr. Chairman.

11 Mr. Young, can you allow the parties in the meeting? We
12 should have Mr. -- Commissioner Holman, Mr. Green, and I believe
13 Kyrus Freeman. I don't see Commissioner Holman. Commissioner,
14 are you there?

15 COMMISSIONER HOLMAN: Yes, I'm here.

16 VICE-CHAIR JOHN: Okay. Thank you. Would the parties
17 introduce themselves for the record, please?

18 COMMISSIONER HOLMAN: Sure. Commissioner Corey Holman.
19 Commissioner for 6B06, an authorized representative of ANC 6B.

20 VICE-CHAIR JOHN: Thank you. Mr. Green?

21 MR. GREEN: Hi. Good morning, excuse me, members of the
22 Board and Chairman. Hugh Green, attorney from DCRA. Good
23 morning.

24 VICE-CHAIR JOHN: Good morning. And, Mr. Freeman, can
25 you introduce yourself, please?

1 MR. FREEMAN: Good morning. Kyrus Freeman, partner with
2 Holland and Knight on behalf of the lessee, in this case,
3 DashMart.

4 VICE-CHAIR JOHN: Thank you. So, there are two motions
5 that have been filed. The first is the ANC's motion to strike the
6 issuance of an AOC (sic). And the second is the motion to strike
7 the ANC's response to the lessee's response. So I will hear
8 briefly, Mr. Freeman, on the motion to strike.

9 MR. FREEMAN: Thank you, Madam Vice-Chair John. The
10 lessee did not file a motion to strike the ANC's response. So to
11 the extent that there is a motion to strike, perhaps Mr. Green
12 filed that. The ANC filed a motion to stay. We filed a response
13 to that. The ANC then filed a response to our response. And they
14 also filed a motion to amend the appeal to incorporate
15 subsequently issued building permits in the C of O. Again, so I'm
16 not aware of a motion to strike.

17 VICE-CHAIR JOHN: So thank you, Mr. Freeman.

18 MR. FREEMAN: I defer to the other parties.

19 VICE-CHAIR JOHN: I believe I saw a motion to strike in
20 the record.

21 Did you file a motion to strike, Mr. Green? Mr. Green?

22 MR. GREEN: No, ma'am. I'm trying to log into the BZA
23 system right now to see what's showing up. But no, we did not
24 file a motion to strike.

25 VICE-CHAIR JOHN: Okay. So it seems I have the wrong

1 case. Okay.

2 So Mr. Commissioner Holman, I'll go ahead and hear your
3 arguments for granting permission to stay.

4 COMMISSIONER HOLMAN: So I think before doing the motion
5 to stay, the C of O, I think there's a noncontroversial motion to
6 expand the appeal to incorporate a further permit revision and the
7 certificate of occupancy. Do you want to handle that one first
8 and then we can talk about the stay? But I could do it, whatever
9 you prefer.

10 VICE-CHAIR JOHN: It's fine. I'll hear from --

11 COMMISSIONER HOLMAN: Okay. So, the --

12 VICE-CHAIR JOHN: -- I'll hear from --

13 COMMISSIONER HOLMAN: Yeah.

14 VICE-CHAIR JOHN: -- Mr. Freeman and Mr. Green.

15 MR. GREEN: Actually, if I may say, this is Hugh Green
16 of DCRA. Our time to file a formal response has not expired. And
17 I -- DCRA intended on filing an actual formal written response to
18 it. I believe, you know, we're still within the time to file a
19 written opposition, so we would like that opportunity.

20 I understand the Chair, the Commissioner wants to hear
21 it here and now, but I would certainly like to reserve our right
22 to file a written response.

23 VICE-CHAIR JOHN: And, Mr. Freeman, do you have any
24 comments?

25 MR. FREEMAN: Well, we support DCRA's request for the

1 seven days to file a response to that motion.

2 VICE-CHAIR JOHN: Okay.

3 MR. GREEN: The only issue with that, to say it's an
4 issue, is that if it's not heard until next week, the ANC -- and
5 the motion is denied, the ANC would be time barred in filing --
6 the ANC would have to file another appeal in the intervening
7 beginning week, appealing those separately. We would, just, like,
8 for the sake of the Board's convenience, combining the first --
9 the original permit with the permit revision and the certificate
10 of occupancy built on that first permit doesn't seem a
11 controversial motion. And I'm not sure how, what response could
12 possibly be given in opposition to that. If that's the fact
13 pattern, ANC 6B is going to have file another appeal in the
14 intervening week appealing those, to ensure that those decisions
15 contained therein are not time barred. And that's fine, we can do
16 that. I just want to make sure the Board is aware of what's going
17 on.

18 VICE-CHAIR JOHN: So I don't think there's a reason to
19 continue this case to allow the -- well, I'd like to hear the
20 DCRA's response. But I don't believe that the best option is to
21 continue the case. And so, I'd like to hear from DCRA as to why
22 it opposes the motion. And I'd also like to hear from the --

23 MR. GREEN: Which motion?

24 VICE-CHAIR JOHN: I'm sorry.

25 MR. GREEN: The motion to amend?

1 VICE-CHAIR JOHN: The motion to amend. Yes.

2 MR. GREEN: Yeah, the motion to amend is clear in this
3 case. I wasn't prepared to speak to it today. But clearly, the
4 appellant is seeking to expand its appeal to add a separate zoning
5 determination to this appeal. So, clearly, the DCRA's position is
6 granted. The Commissioner thinks, well, they're all related.
7 Well, they are as separate as you were expanding it. It's
8 impermissible under the Rules. And DCRA would like the opportunity
9 to file a written opposition to that. I believe, you know, we're
10 entitled to that. But that's really the sum and substance of it,
11 the fact that it's somehow convenient for the Commissioner, the
12 ANC as understandable, maybe before, but we have a right to object
13 to an expansion to the appeal. So that really is the basis for
14 our opposition. Certainly, fleshed out, again, DCRA would like
15 the opportunity to formally put that before the Board in a written
16 fashion. But I believe today's hearing, had that been put in a
17 memo for today's hearing, it certainly would have a more (audio
18 interference).

19 VICE-CHAIR JOHN: So, Mr. Green, there seems to be a bit
20 of confusion. Has a certificate of occupancy been issued for the
21 property?

22 MR. GREEN: Yes.

23 VICE-CHAIR JOHN: Okay.

24 MR. GREEN: Yes.

25 VICE-CHAIR JOHN: And --

1 MR. GREEN: So we're prepared to talk -- and again, with
2 all due respect to the Board, obviously, your time is valuable.
3 We're -- I mean, the memo or direction today was to talk about the
4 motion to stay the issuance, so that's what we prepared today.

5 In the interim, they filed this motion, okay, we want to
6 amend it to add the C of O. Well, we would object to it. So,
7 we're prepared to talk about today, obviously, you've invited us
8 to give the opposition. The opposition is clear on making the
9 rules and expansion is increasable. I'm happy to flesh that out
10 further in a written submission and would like that opportunity.
11 I think we're entitled as an agency to give you that.

12 VICE-CHAIR JOHN: And I'll hear from you, Mr. Freeman.

13 Thank you, Mr. Green.

14 MR. FREEMAN: So we are fully prepared to proceed today
15 to argue the merits of the appellant's motion to stay. So we're
16 fully prepared to do that. If the Board is inclined to reschedule
17 this for next week in order to allow DCRA time to oppose the
18 appellant's request to amend on the appeal, we support that as
19 well. I think what our view is, we just want to make sure
20 everyone has the opportunity to present whatever arguments they're
21 entitled to present in a timely manner. Respectfully, the
22 appellant filed their motion, I believe, on Friday. So everybody
23 has seven days to - the Rules allow for seven days to respond to
24 motions. And then, as Mr. Green rightfully pointed out, that
25 seven-day period has not lapsed yet. So I do think to the extent

1 that we are -- and we are debating, kind of process. the process
2 allows seven days to respond to that motion.

3 VICE-CHAIR JOHN: I think I'll go around the room and
4 see what my fellow Board members think. I'm inclined to hear this
5 case today and with respect to the motion to stay. I am not sure
6 how that would change or how the arguments would change, even if
7 we allow the additional time for DCRA to respond. But I'd like to
8 hear from my fellow Board members. And I see that, perhaps,
9 Commissioner May might want to chime in?

10 COMMISSIONER MAY: Sure. I'm with you, Madam Vice-
11 Chair. I think that, you know, we can go ahead and hear the
12 merits of their request to stay and put aside the motion or the,
13 yeah, the motion to -- that was made by the ANC, at least for the
14 moment. I mean, what we decide on this day may have an effect on
15 what happens with the other motions. And it's clearly not as
16 uncontroversial as ANC has hoped. So I'm prepared to move ahead
17 and discuss the matter of the stay.

18 VICE-CHAIR JOHN: Thank you, Commissioner May.

19 Chairman Hill?

20 CHAIRPERSON HILL: Thanks, Vice-Chair. Vice-Chair John,
21 I didn't know this was going to be as extensive as it was when I
22 asked you to kind of lead it for me. So, I thank you for taking
23 over for me.

24 I don't know. I just feel, I guess I'm with
25 Commissioner May, just go ahead and let us deal with the motion to

1 stay today. And then we can leave the record open for the seven
2 days to talk about the ANC wanting to add the other things in the
3 record. And then, we can talk to Mr. Moy and see whether or not
4 we can talk about that next week or the week thereafter or
5 whatever it is. I don't know when the appeal was actually
6 appealed. I don't know when the original case was actually
7 supposed to be heard, so --

8 VICE-CHAIR JOHN: It's scheduled for October, so it's
9 not a long time.

10 CHAIRPERSON HILL: No, it's December 1st.

11 VICE-CHAIR JOHN: December 1st, I'm sorry.

12 MR. MOY: That's correct. December 1st, Mr. Chairman.

13 CHAIRPERSON HILL: Okay.

14 MR. MOY: That's correct, December 1st.

15 CHAIRPERSON HILL: So, we could give them the seven days
16 to respond and then we can come back here and deal with that, I
17 guess, next week.

18 VICE-CHAIR JOHN: Thank you. Can I hear from the other
19 Board members? Mr. Smith? Board member Smith?

20 BOARD MEMBER SMITH: Ms. John, I agree with what my
21 fellow Board members have stated so far. I'd rather proceed with
22 this request now for a motion to stay. And just as Chairman Hill
23 stated, we can leave the record open, and we can consider this
24 next request by the ANC at a later date, not next week.

25 VICE-CHAIR JOHN: Board member Blake?

1 BOARD MEMBER BLAKE: I would agree with that assessment
2 as well.

3 VICE-CHAIR JOHN: Okay. So I don't believe I have to
4 make a motion on this, right? We're just deferring the decision.
5 So we will hear arguments on the motion to stay, and then we will
6 revisit the issue of the amendment at another time.

7 So, Commissioner Holman, we don't know yet. At some
8 point, we will ask Mr. Moy to see if this can be heard next week.
9 If not, we will hear that. We will reserve decision on the
10 amendment until December 1st when the case is heard.

11 COMMISSIONER HOLMAN: Okay.

12 VICE-CHAIR JOHN: So, Commissioner Holman, could you go
13 ahead and tell us why the ANC meets the four criteria for granting
14 a stay. And --

15 COMMISSIONER HOLMAN: Sure. Yeah. The second motion is
16 to stay the C of O. I will sort of pass over this Board's
17 authority. I think you talked two weeks ago and sort of
18 understood the authority in which the Board has the ability to
19 stay a C of O. This sort of four-prong test to issue a stay, I
20 don't want to go through all the arguments in detail, but I'll
21 simply highlight those prongs.

22 The first sort of prong is a likelihood of a successful
23 appeal. ANC 6B's motion in response lays out that ANC 6B is
24 likely to succeed in one or more of the alleged areas in the
25 appeal. The alleged area number one occurs from the applicant in

1 DCRA's claims that a purpose-built garage door is somehow a
2 lawfully existing non-conforming loading berth. When this
3 building was built in 1960, a loading berth and platform were
4 provided on the eastern side of the building. At some point
5 between 1960 and 1983, a garage door at the western end of the
6 building was built. In 1983, permit B297697, which ANC just got
7 on Monday from the DC Archives was issued to remove the loading
8 berth noting that the western door was to be used for automobile
9 access to the interior of the building and that permit was further
10 stamped by the Code official. This permit does not authorize
11 crossing the sidewalk with trucks. It's a garage door. The
12 garage door meets none of the dimensional requirements of a
13 loading berth and does not provide a horizontal loading platform
14 as required. No loading berth has been provided on the site for
15 over 30 years. And thus, DCRA's and the appellant's, and -- or
16 the lessee's assertions that a nonconforming loading berth exists
17 simply can't be. It has not existed since at least 1983.

18 In the event that the Board determines that a purpose-
19 built garage door, which has never been purported to be a loading
20 berth but somehow classifies as a loading berth, the Regulations
21 are clear that the applicant's reliance on C 201.2 cannot excuse
22 the failure to comply with all provisions of the loading and
23 parking regulations with the now and nonconformity when it was
24 first permitted. The applicant's reliance on C 201.2 is misplaced
25 as nonconformities were extended in this application. While the

length of the loading berth may be an existing nonconformity, which the ANC is not conceding, but even conceding that, the nonconformities -- the further nonconformities were introduced by converting an undersized garage door without a loading platform, without meeting the width and height requirements to a loading berth. And then, on top of introducing noncompliant parking spots, which have never existed until this application, in the event that the Board determines the garage door is actually a loading berth and the nonconforming dimensional requirements were somehow lawfully existing, the property abandoned these nonconformities in 2013 when it received a certificate of occupancy to operate in 4,000 square feet of the property. C 204.4 states that the discontinuance for any reason of a nonconforming of a structure for a period of more than three years is *prima facie* evidence that -- of its abandonment of a nonconformity. The application for the C of O in 2014 signed by DCRA. The applicant then, who is the property owner now, plainly answered that the area occupied by the proposed use is 4,000 square feet and no off-street parking was being provided. The actual C of O says 4,000 square feet as being occupied and 4,000 square feet doesn't require off-street loading. The loading berth and nonconformities have been a -- the loading berth nonconformities have been abandoned, if they ever existed at all.

And even if the Board concludes that the nonconformities have been abandoned, the dimensional requirements are lawfully

1 existing nonconformities. The garage door classifies as a loading
2 berth. The applicant has expanded the occupied floor space from
3 4,000 to 5,790 square feet, which triggers that there's no loading
4 requirements.

5 C 901.6 states an expansion of use by over 25 percent
6 triggers a recalculation of the loading requirements since the
7 loading berth was provided -- since no loading berth was provided
8 before this loading berth, there must be a new loading berth that
9 must comply with all of the requirements of Subtitle C, Chapter 9
10 in terms of location, dimensions, loading platform, screening, et
11 cetera.

12 The DCRA and the applicant agree that the claim loading
13 berth does not meet these requirements. And even if the Board
14 makes -- concludes that those four things are -- the previous four
15 things are allowable, they are fundamental failures with the
16 providing parking. The lessee argues citing in C 705.1, citing
17 C 705.1 that the preceding use required nine parking spaces. And
18 the lessee's use does not trigger the application of the parking
19 requirements.

20 Again, the record shows that the prior use provided zero
21 parking spot. The applicant cannot use the shield of prior use
22 and DCRA and the ZA's failures to apply the parking regulations to
23 not provide two zoning compliant parking spaces now.

24 Regardless, C 705.1 simply governs the number of parking
25 spaces --

1 VICE-CHAIR JOHN: Mr. Holman --

2 COMMISSIONER HOLMAN: Yes. I'm almost, I'm getting
3 there.

4 VICE-CHAIR JOHN: I'm sorry to interrupt you. I just
5 wanted to mention that you stated that you only needed to meet one
6 of the four criteria, but --

7 COMMISSIONER HOLMAN: I'm going on. I'm hitting all
8 four.

9 VICE-CHAIR JOHN: -- all four. And so --

10 MR. HOLMAN. I'm wrapping up number one right now. I've
11 got one more sentence.

12 VICE-CHAIR JOHN: -- three.

13 COMMISSIONER HOLMAN: And then, I'm going on two, three,
14 and four. Yes.

15 VICE-CHAIR JOHN: Okay.

16 COMMISSIONER HOLMAN: Okay.

17 VICE-CHAIR JOHN: Can we get ten minutes? Can you put
18 ten minutes on the clock?

19 COMMISSIONER HOLMAN: I have three more minutes left.

20 VICE-CHAIR JOHN: Okay.

21 COMMISSIONER HOLMAN: Okay? The plan provided by the
22 opposition shows that the parking spaces do not comply with these
23 dimensional requirements. And it's for the jurisdiction of this
24 Board, not DCRA or the ZA, to approve exceptions to these
25 dimensional requirements. The appeal is likely to succeed on the

1 merits.

2 The second requirement is the stay is in the public
3 interest. As detailed above, order would be restored to the
4 zoning process related to this property allowing the Board through
5 the issues raised by so far five different sets of determinations
6 by the zoning administrator over the last five months.

7 The applicant through the course of the permit buildout
8 continues to endanger the health and safety of the community by
9 blocking crosswalks and double parking. Moreover, the lessee's
10 repeated material omissions and misrepresentations have already
11 led the ZA to issue one notice to revoke permits here. In these
12 misrepresentations, the lessee presented measurement false, that's
13 already rebutted by ANC 6B in its original statement before the
14 revised permit was even submitted. DCRA and ZA, the ZA then
15 approved these false measurements, which coincidentally, I'm sure,
16 just happened to give enough space to provide zoning-compliant
17 parking. The ZA has since walked back these decisions after ANC
18 6B raised these issues.

19 And finally, DCRA has apparently altered the C of O
20 under appeal some time between September 14th, when this motion
21 was filed and September 23rd when the response -- or between
22 September 14th, when the second revised permit was issued and
23 September 23rd, when they responded to this motion. The
24 supporting documents for the C of O still have not been provided
25 to ANC 6B and they're not in a -- have not been made available

1 through DCRA's normal process using E-records. Sorting out this
2 morass of determinations made by the zoning administrator is
3 clearly in the public interest.

4 The third requirement is the appellant will suffer
5 irreparable harm. In this case, harm will result to ANC 6B and
6 its constituents if the lessee is permitted to operate without
7 regard to the zoning regulations. Once operating, there's likely
8 little hood -- there's little likelihood that the DCRA, Department
9 of Public Works, and the Department of Transportation to enforce
10 their own rules and regulations because the decisions by the ZA
11 are directly at odds with the reasons those requirements exist.

12 As just one example, the perverse decision by the ZA
13 means that every time a car parks at this facility, they will be
14 committing a parking violation. Every time.

15 Fourth, there are no additional part -- there are no
16 harm to additional parties. There's no harm to DCRA by merely
17 requiring the applicants to do what they should've done in the
18 first place, to file for a special exception. Only through a
19 special exception can ANC 6B be protected from irreparable harm.

20 Moreover, the lessee at last check had a market
21 capitalization of over \$73 billion. It's simply not credible that
22 a couple months' delay and opening one storage and warehouse
23 location can irreparably harm the lease.

24 Briefly, ANC 6B wants to address DCRA's allegations of
25 mootness. While ANC 6B unfortunately used language in requesting

1 a stay of issuance in the C of O, and certainly, I would go back
2 and drop the word issuance. ANC 6B contends that the plain
3 reading of the motion and the alteration of the C of O in the
4 intervening period to change the use of the property from storage
5 and warehouse to retail makes this request not moot.

6 To conclude, we contend the Board should evaluate the
7 conflict of aspects presented here under the four factors laid
8 out; the five plus allegations of errors made by the zoning
9 administrator; the continued material misrepresentations by DCRA
10 and lessee, altering a C of O after it was issued, and so far,
11 five sets of determinations made by the zoning administrator make
12 clear that the DCRA and the lessee are flailing trying to backfill
13 reasons to approve this permit of C -- and C of O.

14 Finally, I just want to -- ANC 6B wants to reiterate
15 it's a long held public stance that we stand by, ready to work as
16 a good faith party, a special exception case. We have a long
17 history of working well with the lessee's firm and with this
18 Board. And I have no doubt we can find a set of conditions that
19 work for all parties. Thank you.

20 VICE-CHAIR JOHN: Thank you. Mr. Green?

21 MR. GREEN: Yes. I -- Vice-Chair John, with all due
22 respect, if I may, with your permission, I'd ask that Mr. Freeman
23 go. But obviously, you called on me. I was going to speak at the
24 end, if that's okay.

25 VICE-CHAIR JOHN: That's fine, Mr. Green. Would you

1 like to go ahead, Mr. Freeman?

2 MR. FREEMAN: Sure. Thank you.

3 VICE-CHAIR JOHN: And, Mr. Freeman, before you begin,
4 please -- just because in particular, whether or not there, the
5 ANC will suffer irreparable harm if this stays in (audio
6 interference).

7 MR. FREEMAN: Sure. So the quick answer to that is no.
8 What they say in their motion is that they'll suffer irreparable
9 harm because of purported violations of a public space
10 regulations. Well, the violation of the public space regulation
11 is a finable assist. So to the extent that a fine can be issued
12 for such violation by definition is not irreparable, right.
13 because a fine can be issued to remedy that offense.

14 But moving back, and that's further articulated in our
15 response to the ANCs stay. Just to get back to the top point,
16 though. The C of O has already been issued, has been properly
17 issued. The ANC's request was to stay, meaning stop DCRA from
18 issuing a certificate of occupancy. That certificate of occupancy
19 has been issued. Therefore, the request for a stay is moot.

20 So I heard the appellant just amend their motion orally
21 a second ago. But that's not what their motion said. Their
22 motion said stay the issuance of a certificate of occupancy. To
23 the extent that the Board decides no, it's not moot, let's move to
24 the merits, that's fine. We can move to the merits. But I do
25 think the mootness is an issue.

1 So if the appellant is now asking the BZA to stop
2 DashMart from using a legitimately issued certificate of occupancy
3 and the appellant just lay forth a lot of statements, I think the
4 opportunity to fully address those statements is in a public
5 hearing on December 1st. Respectfully, they make a lot of claims,
6 they misquote the zoning regulations, they cite a lot of
7 immaterial information. At one point, I think I heard the
8 appellant say there were no loading berths at the site. And I
9 also heard a statement that there are loading berths. I've heard
10 a conflation of a garage door with the loading berths. And that's
11 fine, they're entitled to make whatever argument they want to make
12 thus far. But the real issue here is what did the zoning
13 administrator look at in approving the permits at issue in this
14 case. And that, honestly, is a very simple textbook example of
15 the longstanding treatment of nonconforming conditions, typically,
16 known as grandfathered. We will be able to demonstrate this
17 clearly based on an analysis of the site's history and use
18 combined, again, with a clear reading of the zoning regulations
19 that the zoning administrator has absolutely 100 percent correctly
20 applied the regulations in approving the permits and C of O at
21 issue in this case.

22 Again, the appellant cited a lot of information, some of
23 which is true, some of which is part true, some of which is
24 completely incorrect. And that's why we need a hearing to get to
25 the bottom of this. Contrary to their assertions, there's

1 absolutely no irreparable injury to the public. I just mentioned
2 that. Nor does the public get injured by denying the stay
3 request, and instead allowing the parties to address the merits in
4 this case in due course at a public hearing. By asking for a
5 stay, the appellant is basically telling you BZA members that
6 based on what they just said, without having a full presentation,
7 without having an assessment of the facts, without having evidence
8 that DCRA was wrong. And they want you to decide right now that
9 DCRA was wrong. And that's just not what the appeal process is
10 for. The appeal process is to have a hearing in order to then
11 come to that conclusion. In their, I think their most recent
12 filing, they seem to be taking the position, I don't want to speak
13 for them, that certainly they're entitled to great weight, but
14 they seem to suggest that means the Board has to, therefore, agree
15 with them. That's not what great weight means at all, as I'm sure
16 the Board knows.

17 Finally, and I'd say most importantly, in an appeal, the
18 burden of proof is on the appellant to demonstrate that the
19 decision of the zoning administrator was clearly erroneous or
20 inconsistent with the regulations. I haven't heard anything that,
21 despite all of the permits, despite everything that the appellant
22 has cited, they haven't said how the zoning administrator is
23 clearly erroneous or inconsistent with the zoning regulations.
24 And again, I think we will be able to demonstrate at a public
25 hearing that the zoning administrator's determinations were 100

1 percent absolutely correct. And therefore, we think, again, one,
2 the stay is moot. But two, even if you decide that it's not, the
3 appellant cannot meet the burden, those four points that are
4 required that were for the Board to grant a stay. Thank you.

5 VICE-CHAIR JOHN: Thank you, Mr. Freeman.

6 Mr. Green, are you ready to proceed?

7 MR. GREEN: Yes. Vice-Chair, is there anything of
8 specific you wish for me to -- you mentioned irreparable injury.
9 Is there anything would want focused on? I will be brief; I just
10 didn't know if there was an emphasis --

11 VICE-CHAIR JOHN: Okay. I --

12 MR. GREEN: -- you wanted to draw attention to.

13 VICE-CHAIR JOHN: If you wanted to focus on the public
14 interest, that would be helpful to the Board.

15 MR. GREEN: Yes, thanks Vice-Chair John, and members of
16 the Board. I think it's fairly laid out in our opposition. Mr.
17 Freeman has touched on it. Clearly, it's evident, abundantly
18 evident the ANC is opposed to the project. I think we're talking
19 about, if I could just step back and say, about that we believe
20 the certificate of occupancy has again, been issued. And now,
21 there is a right or the, for the property owner, the lessee, to
22 occupy that. I just, I think it does harm the public good when
23 these, when at least, from a certificate of occupancy that's been
24 issued and DCRA stands behind, that now it potentially could be
25 stayed.

1 Again, I think there are two things that I think are of
2 growing concern and I might lose the Board's attention, but I
3 wanted to underscore it for your attention. One is, and I think
4 the Board already knows this, but really the risks that are borne
5 here really fall on the property owner. They risk, you know,
6 proceeding with construction when a property, when a building
7 permit, as you're well aware, goes on appeal, they're the ones
8 that would bear the risk if those get revoked. So, really,
9 that's certainly one point that really is, has been borne by the
10 lessee. Why is that significant? Because, you know, that
11 certainly is an interest that they would have if these, if the
12 certificate of occupancy were to be stayed.

13 The second issue is, and it's not articulated in the
14 brief. But I just, I have to reiterate, this is the second, I
15 guess, motion to stay certificate of occupancy in the past month.
16 The Board, of course, can, entertains motions and can hear it as
17 you are today. I think there are two things that I just, I think
18 are of concern. And that is the scope -- one is their frequency
19 that they seem to be having them. But I think the other issue is
20 what are we being asked to stay? In other words, the order, if
21 the Board is inclined to grant it, are you asking to stay
22 everything, just for a limited purpose? Is this essentially an
23 injunction, which really, it is, meaning you're asking the
24 property owner to enjoin the occupancy of the property which from,
25 which really is what the, is the ask. And so, it's a very, it's

1 certainly a very serious -- the burden of a TRO really is your
2 adversaries and must be compelling. And I don't think it's been
3 met here.

4 Why am I bringing this up? Because really, I think that
5 is something that I think the Board in its deliberation could
6 consider if in these kinds of cases, the gravity of it. And I
7 know you all appreciate it. But if you were look to another
8 jurisdiction, to the OAH, they don't have authority. The D.C.,
9 the superior court, I mean, the public court says you don't have
10 authority to issue an injunction. So, when someone comes before
11 them and says we don't want them, we don't want the permit to be
12 issued. They don't have the authority and the appellate court has
13 said so because it has to be very clear. Obviously, you have
14 authority over your own orders and determinations by the zoning
15 administrator to be reviewed.

16 My last bit that I'm winding up is that these kinds of
17 motions really are, I think, a furtive attempt to be TROs. And I
18 would just ask the Board in their deliberations, and as they
19 review all the material, which I know you do and have, that you
20 take great consideration of where that might lead the Board in the
21 future on other matters, on other C of Os, how the order is
22 actually carried out. Why? Because what do I mean by that?
23 Assume the following facts. You stay everything, right? The C of
24 O, we're going to stay it, so no one can occupy it. Assume the
25 lessee needs to go in there for some sort of emergency work for

1 whatever reasons. Well, now, they're potentially in violation of
2 that order by the Board. Potentially, the public could come to
3 DCRA and say they're violating this issue, do something. And it's
4 really the Board's order that they would be violating. And that's
5 a separate issue. Again, lining up, I think it's a significant
6 concern that I would just ask the Board to weigh heavily when
7 they're considering these kinds of motions to stay. And that's
8 it. Thanks. Thank you, Vice-Chair. And thank you for indulging
9 me of that time.

10 VICE-CHAIR JOHN: Yes.

11 MR. GREEN: I know it's --

12 VICE-CHAIR JOHN: It's fine, Mr. Green.

13 MR. GREEN: -- a process.

14 VICE-CHAIR JOHN: So, I wanted to thank the parties for
15 their responses. And ask Mr. Young to excuse them from the
16 hearing, from the meeting. And then, I'll go with the --

17 MR. FREEMAN: Thank you.

18 VICE-CHAIR JOHN: And then, I'll go to the Board members
19 to deliberate. I'll start. The reason I asked for Mr. Freeman to
20 focus on the issue of irreparable harm -- I'm sorry, yes, of
21 irreparable harm is that it was not clear to me that the remedy
22 would not be something other than as Mr. Green describes, there's
23 an injunction, or the extreme measure of stopping the lessee from
24 operating under the certificate of occupancy that's already been
25 issued. That's my interpretation of the appellant's request. And

1 I think the Board has the jurisdiction or discretion to interpret
2 the motion as a motion to stay the application of an already
3 issued C of O. So, I don't believe that the appellant has shown
4 irreparable harm. I also don't believe that the appellant has
5 shown that is a likelihood of success on the merits because even
6 from the appellant's own presentation, it would not be possible
7 for me, or I suspect other members of the Board to decide on the
8 issue without a full evidentiary hearing. And I agree with Mr.
9 Freeman that a lot of the presentation required additional
10 testimony and further clarification of the rules. And it's not
11 clear to me how the ZA erred in issuing this certificate of
12 occupancy. And I know I said an OAC or something earlier, but I
13 meant certificate of occupancy.

14 So, I would like to go to the rest of the Board to hear
15 your thoughts. I'll start with Chairman Hill.

16 CHAIRPERSON HILL: Okay. Great. Thanks, Ms. John. I
17 don't know. I mean, I thought I was, kind of, I went through the
18 four criteria. I mean, it's really hard to, kind of, like, get A.
19 I mean, the part you see in the stay will be likely to fail on the
20 merits of the appeal. I mean, you can't really know that until
21 you hear the appeal. And so, it's, kind of, I think that one's
22 actually not a great criterion that we happen to go through.

23 Irreparable injury will result if the stay is denied. I
24 don't think that necessarily irreparable injury will result in the
25 stay is denied. Opposing parties will not be harmed by a stay. I

1 think opposing parties might actually be harmed by the stay. The
2 public interest favors the granting of the stay. I mean, maybe
3 the public interest favors the granting of the stay. I mean, to
4 me, I guess it can be argued both ways that this is going to be
5 heard on December 1st, right? Pretty quickly, right? I think
6 that -- I don't even know if it's necessarily, you know, this
7 large corporation, DoorDash, as much as it also might be a smaller
8 company. I don't know, right? That's involved in this. So, I
9 think that I would be opposed to granting the stay, and for the
10 reasons that I don't think they necessarily meet A, but I think,
11 again, that's kind of a hard one to meet. I think that, so that's
12 where I am, kind of, with that.

13 The fact that we're going to be back here, maybe, again
14 next week to add to, add the C of O to this appeal, I suppose
15 we'll hear from the parties before next week. And I'll be
16 interested to hear what OAG has to say about whether or not that
17 is expanding the appeal or not. So, that all -- I'll be, kind of,
18 curious to that. But I guess, there was something else I was going
19 to mention. But I guess I would be -- oh. That I was a little
20 confused by the testimony of the Commissioner. And I do
21 appreciate the Commissioner. He has been before us before, and I
22 know how involved he and the other ANCs have been, but in
23 particular, he is with the community. So, I appreciate the effort
24 that he does for his constituents. That it sounded as though that
25 they had come before us for a special exception in some capacity,

1 which I haven't read deeply into the appeal yet, that maybe the
2 ANC would have somehow gotten on board or that there were some
3 conditions. I mean, I would encourage some kind of discussion
4 between the appellant and the ANC if there was something like
5 that. I got a little confused by that comment. But a long story
6 short, Ms. John, once again, thank you for running this for me.
7 And I'm not in favor of the stay at this point.

8 VICE-CHAIR JOHN: Thank you, Chairman Hill.

9 Mr. Smith?

10 BOARD MEMBER SMITH: Board Member John, I do agree with
11 Chairman Hill's assessment on this particular case with the four
12 criteria for us to be able to grant the stay. So, I do agree with
13 him with A, it's hard to make a determination of whether the party
14 seeking the stay is likely to prevail on the merits of the appeal
15 without getting a full scope of the information that would be
16 presented at the appeal. So, that is a very difficult criteria for
17 me to be able to judge to be able to grant the stay. But based on
18 the information that I have; I don't believe they've met A.

19 B, irreparable injury would result if the stay is
20 denied. Based on the ANC's presentation, I feel in my opinion
21 that they have not sufficiently demonstrated that the ANC will be
22 irreparably harmed if we don't issue the stay. We will hear the
23 appeal at the beginning of December, a fairly short period of
24 time. So, I do believe that we'll be able to flesh out whether
25 that approval was appropriate or not at that particular time and

1 reverse the C of O if it comes to that at that particular time.

2 Opposing parties will not be harmed by a stay. I do
3 believe that the opposing parties would be harmed by a stay in
4 this particular situation. And D, there may, just as Chairman
5 Hill stated, the public interest may favor granting the stay, but
6 they would -- in order for us to grant the stay, they would need
7 to meet all four of those criteria. So, I wouldn't be in favor of
8 the stay based on what was risen today.

9 VICE-CHAIR JOHN: Thank you. Thank you, Mr. Smith.

10 Commissioner May?

11 COMMISSIONER MAY: Yeah. Sure. So, like my fellow
12 Board members, I'm not in favor of granting this stay. I do have
13 a slightly different perspective on some aspects of it. But I'll
14 walk through all the points.

15 Whether the ANC is likely to prevail, I do think that
16 the basic problem we have is that there's not enough information
17 without going through the full hearing to be able to make that
18 determination. Certainly, there are grounds for questions about
19 what has been accepted as an existing nonconformity that could be
20 passed on, you know, to the new use.

21 You know, I am very familiar with the property, living
22 not far away from it and having shopped at Frager's when they were
23 there for a long period of time. And, frankly, seeing fairly
24 chaotic operations within public space that resulted from that,
25 simply because it was a high-volume site, high traffic of members

1 of the public. It's not a good situation parking vehicles in the
2 way that they are, the parking is laid out with people backing out
3 from that spot across the sidewalk with, you know, sort of,
4 blinders on different sides because of cars or buildings.

5 And certainly, there was loading that was happening
6 through that door during much of the period that Frager's was in
7 operation. That same garage door was being used for loading,
8 whether it was part of the permit or the original C of O or not,
9 it operated that way. And we see in the evidence that was
10 presented by the ANC that there's a problem with that. I mean,
11 having those 20-foot straight trucks backed up to the building
12 diagonally across the sidewalk or directly across the sidewalk and
13 impinging on the bike lane, that's not a good situation. And, you
14 know, even if this is something that is completely appropriately
15 permitted, there's nothing that's appropriate about that kind of
16 loading activity and that kind of obstruction of the sidewalk.
17 And so, the lessee needs to get their act together on how to
18 operate here on a matter that's safe from the public. So, that's
19 sort of a moral case, if you will, that the ANC may be able to
20 prevail on this, but it's not really a factual one. You know, so
21 that's why we have to go through the hearing process.

22 As far as the other characteristics. I mean, yeah,
23 there's a certain amount of inertia that sets in if we allow this
24 use to persist without having heard the appeal and decided upon
25 it. But I think that, you know, that's the nature of zoning

1 appeals to begin with, right? There's, you know, there's a right
2 that has been granted, whether it's correctly or incorrectly, it's
3 been granted, and people go ahead and continuing building their
4 buildings at some risk. And so, you know, it makes it harder for
5 some people to say oh, no, you've got to tear it down or undo
6 things. That's always typical. But that's not really a
7 sufficient basis to say that irreparable injury will result if
8 this stay is denied. Because if it were, then that would be,
9 basically, every time there's an appeal filed that we should be
10 granting a stay and stopping everything, because of that inertia
11 that sets in, or that accumulating development that leads to, I
12 don't know, sympathy for the, you know, the property owner or the
13 lessee and having operated on good faith to advance their project.
14 I just don't see how that's a sufficient argument.

15 Opposing parties will not be harmed by the stay. I
16 don't believe that the intervenor, the lessee is going to really
17 be harmed if there were a stay for a few months. But I also, I
18 don't think that that's -- that's clearly in evidence one way or
19 the other.

20 And then, finally, the public interest favors granting
21 the stay. You know, the public interest favors the lessee
22 resolving their operations in a manner that is acceptable to the
23 public and is acceptable to the ANC. So, this goes to Chairman
24 Hill's comment that it really would be good if the ANC and the
25 lessee got together to try to resolve these issues rather than

1 waiting for December 1st or just whenever that is, the December
2 hearing. So, yeah. There's enough weakness in those four points
3 that I am not in favor of granting the stay.

4 VICE-CHAIR JOHN: Thank you, Commissioner May.

5 Mr. Blake?

6 BOARD MEMBER BLAKE: Yes. Clearly, from the forgoing
7 discussion, almost everything has really been covered. What I saw
8 in this is that there clearly is an issue that needs to be
9 resolved, and as Commissioner May and Chairman Hill suggested,
10 that could be done through a dialogue. But there is, obviously,
11 an issue.

12 As it relates to the four points, obviously, at least
13 one was not met in this case. I was torn by the irreparable harm
14 element. On the first prong, I certainly looked at it and said
15 there's a lot here that should be heard, right or wrong, but I
16 wasn't clear on it, and it went so fast when the ANC presented it,
17 I couldn't quite catch it all. But that just showed how much it
18 was. So, I do think there's something that should be heard. It
19 will be on December 1st. So, I would not be in favor of a stay.

20 VICE-CHAIR JOHN: Thank you, Mr. Blake.

21 So, just to sum up. The appellant has to prevail on all
22 four criteria. And if the appellant fails in only one criterion,
23 then the stay cannot be granted. And for all of the reasons that
24 everyone has stated, I don't believe that the stay should be
25 granted. And so, I'm going to make a motion to deny the motion

1 for a stay and ask for a second. Chairman Hill?

2 CHAIRPERSON HILL: Second.

3 VICE-CHAIR JOHN: Mr. Moy, can you call the roll? Mr.
4 Moy?

5 MR. MOY: I'm here, Madam Vice-Chair. So, when I call
6 each of your names, if you would please respond with a yes, no, or
7 abstain to the motion made by Vice-Chair John to deny the motion
8 for stay of the certificate of occupancy. The motion was seconded
9 by Chairman Hill.

10 Zoning Commissioner Peter May?

11 COMMISSIONER MAY: I vote to deny the motion.

12 MR. MOY: Mr. Smith?

13 BOARD MEMBER SMITH: Yes, to deny.

14 MR. MOY: Mr. Blake?

15 BOARD MEMBER BLAKE: Yes, to deny.

16 MR. MOY: Chairman Hill?

17 CHAIRPERSON HILL: Yes, to deny.

18 MR. MOY: Vice-Chair John?

19 VICE-CHAIR JOHN: Yes, to deny.

20 MR. MOY: Staff would record the vote as 5-0-0 on the
21 motion made by Vice-Chair John to deny the motion for stay of the
22 C of O. The motion was seconded by Chairman Hill. Also, in
23 support of the motion to deny is Zoning Commissioner Peter May,
24 Mr. Smith, Mr. Blake, Chairman Hill, and of course, Vice-Chair
25 John. The motion carries on the vote of 5-0-0.

1 VICE-CHAIR JOHN: Thank you, Mr. Moy. We still have the
2 outstanding issue of the motion to amend the appeal. And so, we
3 will continue that for a decision on -- do you have a date for us?

4 MR. MOY: Yeah. We can do that. There's an opening
5 where the Board can address that on October the 6th.

6 VICE-CHAIR JOHN: Okay.

7 MR. MOY: Madam Vice-Chair, if that's what you want to
8 select?

9 VICE-CHAIR JOHN: So, I can hear from my Board members.
10 But I'm thinking that the Board should be able to decide the
11 appeal just on the submissions. And I'll just see if anybody has
12 any comments. Does anybody disagree? Raise your hand.

13 Okay. So, Mr. Moy, we will decide. We put that down
14 for a meeting agenda with no additional oral presentations by the
15 parties, but we will decide on the pleadings on the submissions.
16 Okay?

17 MR. MOY: Yes, ma'am.

18 VICE-CHAIR JOHN: Thank you. And Chairman Hill, are you
19 ready to resume your hearing? And thank you --

20 CHAIRPERSON HILL: Yes.

21 VICE-CHAIR JOHN: -- for this really very quick case
22 that you asked me to lead.

23 CHAIRPERSON HILL: Yes. Sorry, I didn't know it was
24 going to go like that. Okay. So, okay, great. Thank you.

25 Let's see. I think that we have the FMBZA case is we

1 need to maybe do that next because there are some people that are
2 going to have to leave. And then, we'll come back for the issue
3 about 17984-A as in apple.

4 So, Mr. Moy, we're going to take a break real quick, if
5 we could. I'm sorry. If we could just take, like, a quick five
6 to ten-minute break. But if you, when we come back, let's go
7 ahead and do 20517. All right, Mr. Moy?

8 MR. MOY: Yes, sir.

9 CHAIRPERSON HILL: Okay. We'll take a quick five-minute
10 break, okay? Thank you.

11 (Whereupon, the matter recessed and then resumed.)

12 CHAIRPERSON HILL: Okay. Mr. Moy, are you there?

13 MR. MOY: I'm ready, Mr. Chairman.

14 CHAIRPERSON HILL: Okay. You want to call our next
15 case?

16 MR. MOY: Yes, thank you, sir. The Board is back in
17 session. The time is at or about 10:58. Before the Board is Case
18 Application No. 20517 of the Government of the United Arab
19 Emirates. This application is captioned as relief from the
20 expansion of the existing chanceries from the matter-of-right use
21 restrictions, Subtitle U, Section 201. This would raze an
22 existing building and construct a new three-story with basement,
23 addition to an existing attached three-story with basement,
24 embassy building in the R-3 Zone. The property is located at 2400
25 Massachusetts Avenue, Northwest, Square 2507, Lots 42 and 52.

1 And on the Board, Mr. Chairman, is Peter Acosta, the
2 executive director from the National Capital Planning Commission.
3 Of course, Peter May is on his other half.

4 CHAIRPERSON HILL: Great. Thank you.

5 Hello, Mr. Acosta, how are you?

6 MR. ACOSTA: Good to see all of you.

7 CHAIRPERSON HILL: You as well. You as well. All
8 right.

9 Ms. Brown, are you there?

10 MS. BROWN: Yes, good morning, Chairman Hill.

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

13 MS. BROWN: Yes, please.

14 Good morning, members of the Board. I'm Carolyn Brown
15 with the Brown Law Firm on behalf of the United Arab Emirates.

16 CHAIRPERSON HILL: Okay. And who do you have with us
17 today, Ms. Brown?

18 MS. BROWN: With me today is Ms. Anne Adams of A. Adams
19 and Company, Architectural Historian; Mr. Addison Nottingham of
20 CSG Architects; and Mr. Erwin Andres of Gorove Slade
21 Transportation Consultant. And we would ask that all be admitted
22 as experts in their fields.

23 CHAIRPERSON HILL: Mr. Andres is. I don't know, Mr.
24 Moy, do you know who isn't?

25 MS. BROWN: I believe Mr. Nottingham is not, but Ms.

1 Adams has appeared many times before the BZA, Zoning Commission,
2 and FMBZA in the past.

3 MR. MOY: Yes.

4 CHAIRPERSON HILL: Okay.

5 MR. MOY: Ms. Brown is correct.

6 CHAIRPERSON HILL: Okay. Mr. Nottingham, I didn't see
7 the submission. Could you just tell us about yourself, please?

8 MR. NOTTINGHAM: Can you hear me?

9 CHAIRPERSON HILL: Yes.

10 MR. NOTTINGHAM: Okay. Yes, sir. I'm an architect. I
11 studied architecture at Virginia Polytechnic Institute and State
12 University. I graduated in 1996. I've worked at ACG Architects a
13 majority of those years and we're located in the McLean. We
14 previously submitted before the Board the renovation where the
15 chancery project abutting this at 2400 Massachusetts Avenue. I'm
16 licensed in the District of Columbia and the state of Virginia.

17 CHAIRPERSON HILL: Okay. Mr. Nottingham, I'm going to
18 interrupt you. I don't have any issues with Mr. Nottingham being
19 accepted as an expert. Does the Board? And if so, please raise
20 your hand.

21 Okay. Mr. Nottingham, we'll go ahead and do that.

22 Ms. Brown, if you want to go ahead and give us your
23 presentation? For some reason -- can everybody pull theirs up?
24 I'm having a hard time with IZIS. Can you all get it?

25 MS. BROWN: Chairman Hill, there are two housekeeping

1 items that I needed to --

2 CHAIRPERSON HILL: Okay.

3 MS. BROWN: -- bring to your attention. And one is that
4 we -- first, is that we need a waiver of the Board's regulations
5 to allow us to submit our PowerPoint presentation to the record.
6 It was sent via email to Mr. Young, so he should have it, but it's
7 just allowing it to a part of the record.

8 CHAIRPERSON HILL: Yep.

9 MS. BROWN: And certainly, we also need a waiver from
10 the late filing of the affidavit of maintenance. I can attest to
11 you personally that I have maintained this filing that's there.
12 But those are the two items that we need to --

13 CHAIRPERSON HILL: All right.

14 MS. BROWN: -- have a waiver in order to admit them into
15 the record.

16 CHAIRPERSON HILL: Okay. Thank you, Ms. Brown. I don't
17 have an issue with either one of those, unless the Board does.
18 And if so, please raise your hand.

19 Okay. Mr. Moy, can you allow those into the record?
20 And if you could pop that in there so we could take a look when
21 they get a chance, okay?

22 All right. Ms. Brown, why don't you go ahead? And, Mr.
23 Young, if you could pull up the presentation? And, Ms. Brown, you
24 can begin whenever you'd like.

25 MS. BROWN: Thank you.

1 CHAIRPERSON HILL: Okay.

2 MS. BROWN: On behalf of the Embassy of the United Arab
3 Emirates, I extend greetings from the UAE to the members of the
4 FMBZA and thank you for the opportunity to present this project,
5 which is so very important to the Embassy.

6 The proposed expansion of the Chancery building at 2400
7 to 2406 Massachusetts Avenue Northwest will allow the Embassy to
8 expand its educational programs to Emirati citizens studying in
9 the United States and allow it to locate its consular services in
10 the new wing of the building.

11 As set forth in our submission to the record, we believe
12 our application meets the standards for favorable action by the
13 FMBZA, and those standards are on the next slide.

14 We are pleased to have the support of the State
15 Department, Advisory Neighborhood Commission 2-D, the Office of
16 Planning, and the U.S. Commission of Fine Arts. The Historic
17 Preservation Review Board is also supportive of the general height
18 and massing of the design.

19 As a result of these positive recommendations, we will
20 focus our presentation today on two elements of the review
21 criteria, historic preservation and transportation. If I could
22 get the next slide, please?

23 First, while both CFA and HPRB agreed on the overall
24 height and massing of the building, there is a fundamental
25 difference in how the details on the new wing should be

1 articulated. The Commission of Fine Arts endorsed the approach
2 that the UAE has taken, which uses many of the architectural
3 details from the adjacent building at 2406 Massachusetts Avenue in
4 order to convey a unified design with the addition. However, the
5 addition is still differentiated in size and massing and is
6 connected to the historic building at 2406 Mass Avenue with a
7 modern glass hyphen. In contrast, the Historic Preservation
8 Review Board recommended that the precise replication of the
9 features and details of 2406 Mass Avenue on the addition was not
10 substantially in compliance with the federal or local preservation
11 guidelines. We strongly believe that the CFA approach is the
12 correct one. And we ask the FMBZA to adopt that recommendation.

13 Our second area of focus will address DDOT's objection
14 to the configuration of the driveway area in front of the new
15 building. The Embassy believes this configuration is necessary
16 for the successful maneuverability of vehicles at the site and
17 wishes to proceed with the plan as presented. However, we will
18 defer to your decision on that matter once you hear the case.

19 Unless you have any questions, we can proceed with our
20 first witness, Anne Adams. And Ms. Adams, if you would introduce
21 yourself? And we can have the next slide, please.

22 Andi, are you there? It looks like we're having
23 technical difficulties with our witness. Perhaps, we should skip
24 --

25 MS. ADAMS: Can you hear me now?

1 MS. BROWN: Yes.

2 MS. ADAMS: Okay. Sorry. My apologies. Good morning,
3 I'm Anne Adams, I'm the architectural historian with A. Adams and
4 Company. I'm here today with a project that replaces an
5 undistinguished and altered building at 2400 Massachusetts Avenue
6 with an addition to the UAE's existing building at 2406. It will
7 be linked to the existing building with a contemporary hyphen and,
8 ultimately, create a unified complex for the UAE, which is a
9 primary goal of this project and extremely important to the
10 applicant.

11 The traditional design approach and details were
12 discussed at length by the Commission of Fine Arts, which I
13 suspect you know is comprised of a mix of traditional and
14 modernist architects. The CFA members noted that, quote,
15 additions with differences and additions that are the same are
16 both entirely legitimate approaches to expanding a building,
17 unquote. And that, in this case, the hyphen is, quote, a good
18 element to set the new and old apart.

19 The Commission voted unanimously to approve the concept
20 that you will see. And, if I could have the next slide, please.

21 CHAIRPERSON HILL: Hey, Ms. Brown?

22 MS. ADAMS: There.

23 CHAIRPERSON HILL: Ms. Brown?

24 MS. BROWN: Yes, sir?

25 CHAIRPERSON HILL: I'm sorry, do you have 31 slides in

1 | your presentation deck?

2 | MS. BROWN: Which we will go through quickly.

3 | CHAIRPERSON HILL: Okay. No, I'm just saying, like, I
4 | appreciate that, so.

5 | MS. BROWN: And I'll --

6 | CHAIRPERSON HILL: Just to --

7 | MS. ADAMS: I will try and talk quickly, too.

8 | CHAIRPERSON HILL: Yeah. Just to let you know, that's a
9 | lot. So, please chug along here.

10 | MS. ADAMS: Okay.

11 | MS. BROWN: Yes.

12 | MS. ADAMS: This is to orient you to the site. The red
13 | arrow here points to the building at 2400 Massachusetts Avenue.
14 | Massachusetts Avenue is the front, obviously. 2406, the existing
15 | UAE Embassy building is to the right and Rock Creek Park behind.

16 | Next. These photographs actually show the building at
17 | 2406 Massachusetts Avenue in about 1915. It was designed by N.C.
18 | Wyeth in the high style, high federal revival style. And it has
19 | remained, essentially, unchanged other than from being painted.
20 | The vacant space that you see on the upper, to the right of the
21 | image on the upper left is the future site of 2400.

22 | Next. Our two buildings here, 2400 -- well, actually,
23 | on the far left is 2374 Massachusetts Avenue, then 2400, the
24 | building that we want to demolish, and then 2406. 2400 was
25 | designed in 1921 or built in 1921 by W.C. and A.N. Miller. It was

1 designed, likely, by Gordon MacNeil, who was their house
2 architect. It is an undistinguished building that has been
3 altered and does not stand up to the architectural quality and
4 standards of other buildings in the historic district.

5 Massachusetts Avenue -- actually, next slide, please.
6 You can see here on the left, the Flemish Revival rowhouse. And
7 you can start to get a sense of the architectural richness of this
8 historic district. Massachusetts Avenue was developed generally
9 between 1880 or so and 1940 with substantial rowhouses,
10 freestanding mansions, diplomatic buildings in the Beaux-Arts and
11 Revival styles of the period, designed by permanent local and
12 nationally prominent architects. It's an incredibly varied and
13 architecturally exceptional collection of buildings. On the
14 bottom, you can see the adjacent building to the West at 2408.

15 Next, please. Again, just to show you the richness and
16 the quality of the buildings in this district. The Flemish
17 Revival rowhouse at 2344 Massachusetts on the upper left or
18 rather, sort of, Jacobean art of rowhouse on the upper right and
19 the John Russell Pope freestanding mansion at 3000 Massachusetts
20 Avenue on the bottom farther up the street.

21 Next, please. There are collections of buildings and
22 additions in this historic district that are diplomatic in use.
23 You see 2516 Massachusetts Avenue on the upper left. This is the
24 Embassy of Japan designed by Delano and Aldrich. It is the center
25 of a U-shaped complex that comes out to the street, and it

1 consists of various component parts.

2 On the upper right, the Embassy of Turkey at 2525
3 Massachusetts Avenue. This is a building that was approved by the
4 FMBZA. It consists of two related pavilions linked by a hyphen in
5 a similar manner of what we're proposing to do for the United Arab
6 Emirates.

7 The two bottom slides show Beaux-Arts mansions, some in
8 diplomatic use, that are visually linked, but not necessarily
9 physically linked by connectors, designed in very traditional
10 styles.

11 Next, please. Okay. We're back to our site. The
12 permit application for 2400 Massachusetts called for the
13 construction of a three-story single-family house. At some point,
14 likely prior to 1980, the building was converted to a four-story
15 building, probably by excavating and lowering the basement,
16 removing the entrance down to, you can see a very tiny door there
17 in the lower left, and adding a garage. The effect of the
18 building is -- or the affect, I guess, is very flat. It looks
19 like the details are applied. And I wouldn't be at all surprised
20 if the building had been refaced. Unfortunately, we can't get to
21 the records, documents to explain all this. But the building is
22 ordinary and altered and quite contrasted to the really elegantly
23 designed building at 2406.

24 CHAIRPERSON HILL: Ms. Adams?

25 MS. ADAMS: Yes?

1 CHAIRPERSON HILL: I'm just going to, kind of, chug
2 along here with you. Like, I can scroll through all these. I
3 mean, I don't --

4 MS. ADAMS: Okay.

5 CHAIRPERSON HILL: I don't think --

6 MS. ADAMS: I'll keep going, then.

7 CHAIRPERSON HILL: -- we have to see too much of those.

8 MS. ADAMS: All right.

9 CHAIRPERSON HILL: Like, really, if you wanted to just
10 get back, even all the way to, kind of, like, the parking? I'm
11 trying to look at where you are with the --

12 MS. ADAMS: All right.

13 CHAIRPERSON HILL: Yeah.

14 MS. ADAMS: Well, that, the parking is not my thing
15 here.

16 CHAIRPERSON HILL: Okay.

17 MS. ADAMS: But what I --

18 CHAIRPERSON HILL: Because I mean, we might have some
19 questions for you, but we can scroll through these ourselves.

20 MS. ADAMS: I welcome you to do that.

21 CHAIRPERSON HILL: Though, I wish, I really wish we had
22 more time because I love hearing about all the embassies and
23 everything that's going on. We've just got a full day.

24 MS. ADAMS: Please, go to wherever it is you want to go,
25 and I will wait for questions. How's that?

1 CHAIRPERSON HILL: That sounds good. Ms. Brown, I'm
2 going all the way down to -- well, first, let me see if any of my
3 Board members have any questions for you as the architect.

4 Does any Board members have any questions for the
5 architect, based on where we are right now with the slide deck?
6 And if so, raise your hand because I can now see people.

7 COMMISSIONER MAY: I do have one.

8 CHAIRPERSON HILL: Go ahead, Commissioner.

9 COMMISSIONER MAY: Yeah. I've read through the reports
10 from HPRB, and CFA and I mean, is there further review that's
11 necessary in this process for either of those, either HPRB or CFA?

12 MS. BROWN: Mr. May, Carolyn Brown speaking. No, this
13 is all now in the hands of the FMBZA. We've gotten their
14 recommendations and under the Foreign Missions Act, it's now in
15 your hands to reconcile the differences between them. And we
16 will, obviously, have to go back in for building permits that will
17 trigger the building code reviews and to ensure safety measures,
18 but as far as the concept design, it's now in your hands.

19 COMMISSIONER MAY: So, weren't there requests that
20 there'd be some flexibility to work further with HPO staff and,
21 possibly CFA staff on the details of this as it's finalized?

22 MS. BROWN: There was a request from HPRB to that
23 effect. But I think it's up to, I did not see that request from
24 the Commission of Fine Arts. They are expecting it to return for
25 the permit review. I don't know that that is legally correct

1 because the FMBZA is the final arbiter of the historic
2 preservation question. Nevertheless, assuming that the Board
3 adopts the direction that the CFA has taken, that would lock any
4 tweaking of details with HPO staff to that CFA direction. So,
5 we're happy to work with Mr. Callcott. But it would be with the
6 understanding that if you chose the CFA direction, that that's
7 what he would be working with.

8 COMMISSIONER MAY: Assuming we agree with CFA as opposed
9 to HPO?

10 MS. BROWN: Correct.

11 COMMISSIONER MAY: Okay. All right. And you don't have
12 to --

13 MS. BROWN: And --

14 COMMISSIONER MAY: -- of that, right?

15 MS. BROWN: That -- it's entirely in your hands.

16 COMMISSIONER MAY: Yeah.

17 MS. BROWN: We, obviously, prefer the CFA direction.

18 COMMISSIONER MAY: Right. Well, we'll get into that
19 when we get to that point.

20 MS. BROWN: Yep.

21 COMMISSIONER MAY: Thank you.

22 CHAIRPERSON HILL: Okay. Anyone else? Okay.

23 Ms. Brown, you can keep going.

24 MS. BROWN: Thank you. If you're interested in jumping
25 ahead to the DDOT issue, we can -- or if you want, we can switch

1 now to Mr. Nottingham's presentation. He can just quickly show
2 you what the design is like to make sure that we can advocate for
3 our CFA position. But otherwise, we can go to the DDOT issue.

4 CHAIRPERSON HILL: Can you repeat that again, Ms. Brown?
5 I'm sorry. I, kind of, like --

6 MS. BROWN: Yes.

7 CHAIRPERSON HILL: -- got distracted for one second.

8 MS. BROWN: Yes. What we would like -- I'm not sure how much
9 more Ms. Adams has at this point, but we can go now to Mr.
10 Nottingham. He can run through the architectural design for you
11 quickly so you can see what CFA approved and how we responded to
12 their comments, and then we can focus on the DDOT issue.

13 CHAIRPERSON HILL: Yep. That sounds good.

14 MS. BROWN: Okay.

15 CHAIRPERSON HILL: So, Mr. Nottingham, which slide do
16 you need?

17 MR. NOTTINGHAM: Advance forward, please. I don't know
18 how far. You can go to the next. Does anyone need to see or hear
19 about the back of the existing building?

20 CHAIRPERSON HILL: Does anyone need to hear about any of
21 those slides about that building? And if so, please raise your
22 hand.

23 MS. BROWN: I might suggest --

24 CHAIRPERSON HILL: Commissioner May --

25 MS. BROWN: -- with the --

1 CHAIRPERSON HILL: Commissioner May, you've got your
2 hand up.

3 MS. BROWN: Oops.

4 COMMISSIONER MAY: Yeah, I just want to, I want to focus
5 on the design of the façade. All the rest of this stuff is, you
6 know, is a given.

7 MR. NOTTINGHAM: Okay. Then, we can --

8 CHAIRPERSON HILL: Got you.

9 MR. NOTTINGHAM: We can advance quite a few slides.
10 Advance. Advance. Advance. Another. This is a good slide to
11 illustrate the challenges between the two properties. On the
12 right is 2406 Massachusetts Avenue, the UAE's current annex. To
13 the left is the 2400 building, and we've highlighted in red the
14 differential between the floor elevations between the two. At the
15 first floor, they start pretty similar. Then, they get off about
16 three feet. And then, by the time they're at the next floor,
17 they're three -- you know, six feet off, which would not then work
18 to make the buildings work together as one whole facility.

19 Next. We can go past this one. This is the proposed
20 elevation on the top and the existing conditions elevation below.
21 Kind of, a large scale that shows the general context of
22 Massachusetts Avenue. We're kind of illustrating the new façade
23 and the main element that we're architecturally harmonizing with
24 the existing façade of 2406 and taking a lot of the alignment.

25 One thing that you can notice on this, which was brought

1 up during a Commission of Fine Arts, we previously had a, on the
2 left, the 2400 portion, the proposed design was matching a slate
3 (indiscernible) screen, similar to the building at 2406 that
4 actually has a mansard roof and an occupied attic. Their comment
5 was that that looked rather odd, and we needed to look at
6 reworking that.

7 We've gone -- since, gone back and eliminated that as we
8 don't really need, for screening purposes, that forced mansard-
9 type screen up there. And it cleans up the façade quite a bit.
10 One thing that you'll also notice when we look at the renderings
11 from the street, you really can't see that mansard roof anyway, so
12 it's not much of an impact on the façade itself, just on
13 elevation.

14 Next. This is the proposed and the new alignment. So
15 we would be adding a basement and then aligning all the other
16 floors.

17 Next. This is the blow-up of that elevation showing the
18 alignments of the elements between the two. The cornice, the
19 beltline, the windows, the entry portico, as well as the parapet.
20 And then, in the back, in the recess above the driveway between
21 the two properties that accesses our delivery parking, we have the
22 glass, glazed façade that would kind of accentuate the difference
23 between the two different scale of windows in massing.

24 Next. This is the proposed rear elevation. We're
25 proposing to extend the elevation, the design that we currently

1 have at 2406 that's faces the park. It's set back about
2 approximately 20 feet from the park in the rear. The façade is
3 primarily blue, blue glass ribbon windows and a sunshade.

4 Next. This is the existing site plan. It is defined on
5 the front by Mass Avenue. On the back, Rock Creek Park. And the
6 two other sides, by two other embassies. Behind is the -- behind
7 the existing building is a terrace with a wood fence, kind of,
8 looking into a large thicket of bamboo in the park.

9 Next.

10 CHAIRPERSON HILL: Hey, Ms. Brown? Can you also talk
11 about the DDOT stuff when you get to it? Because it's, like,
12 around here a little bit, to clarify. And then I guess, if
13 Commissioner May, if he has any questions about the CFA stuff, if
14 he wants to ask that and, or Commissioner May, if you, kind of
15 have -- first of all, Commissioner May, are you kind of getting
16 what you want? You don't know yet. Okay.

17 Then, Commissioner --

18 COMMISSIONER MAY: We're getting more than I was looking
19 for, right?

20 CHAIRPERSON HILL: Yeah.

21 COMMISSIONER MAY: I'm mostly interested in the façade
22 details and then, of course, the DDOT issue.

23 CHAIRPERSON HILL: Got it. So, then, Mr. Nottingham,
24 the thing that I am unclear on. What is CFA requesting
25 flexibility on?

1 MR. NOTTINGHAM: CFA requested a number of items. We go
2 back and look on the design, particularly refinements to the
3 design.

4 CHAIRPERSON HILL: Okay. Do you guys have any problems
5 with --

6 MR. NOTTINGHAM: And we've done it. I think in general,
7 we have addressed or looked at addressing the CFA comments. One
8 comment that we have not really kind of initiated a change was to
9 the security gates, which were previously approved under FMBZA.
10 They suggested we get an artist from UAE to potentially look at
11 doing security gates for us. It is not something that really has
12 been pushed to the forefront to, kind of, get that out-of-team
13 artist working on new gate design. But that's something I believe
14 the Embassy would be willing to entertain in addition to the other
15 comments, which we'll --

16 CHAIRPERSON HILL: Okay. I will let you finish your
17 presentation. Then, Ms. Brown, I can see you. But we'll let you
18 --

19 MR. NOTTINGHAM: Okay.

20 CHAIRPERSON HILL: -- finish your presentation and then
21 I'll be able to see everybody on the screen. But go ahead and
22 talk about the DDOT issue.

23 MR. NOTTINGHAM: Okay. If you want to go back one
24 slide? The existing -- as you can see, between the two buildings,
25 they have the combined curb cut. It's incredibly broad, it's over

1 24 feet wide. And in addition, in front of the building, there's
2 at least four parking spaces in front of 2400.

3 If you go to the next slide. In compliance with DDOT's
4 request, we're reducing the width of that curb cut and where the
5 driveway will cross the sidewalk is the required, I believe it's
6 12 feet. So we're meeting that requirement. The one issue they
7 had was we kept it, a little area of paving that was in addition
8 for, I guess, maneuverability on the site. And --

9 CHAIRPERSON HILL: Okay. And that's what DDOT --

10 MR. NOTTINGHAM: -- for --

11 CHAIRPERSON HILL: -- has an issue with?

12 MR. NOTTINGHAM: That's correct.

13 CHAIRPERSON HILL: Okay.

14 MR. NOTTINGHAM: Just for reference, we have increased
15 the amount of green space or reduced the amount of paving in front
16 of this particular property by approximately 30, 35 percent. So
17 we've taken a big step to cleaning that up and not being a big
18 parking, a sea of parking and paving.

19 CHAIRPERSON HILL: I got you. So, this is what is now
20 before us, correct?

21 MR. NOTTINGHAM: Correct.

22 CHAIRPERSON HILL: Okay.

23 MR. NOTTINGHAM: Being proposed.

24 CHAIRPERSON HILL: All right. Does anybody have any
25 questions for the applicant about DDOT's issues right now?

1 Commissioner May?

2 COMMISSIONER MAY: So, what is, I mean, what is the
3 maneuverability issue? I mean, what is it that you're trying to
4 do here that -- I mean, do you have -- are there turning diagrams
5 or things like that that demonstrate why having that additional,
6 what is, looks like a parking space in the front yard. Is there
7 something that demonstrates why that's necessary?

8 MR. ANDRES: So Commissioner May, for the record, this
9 is Erwin Andres with Gorove Slade Associates. So, it's actually a
10 couple issues. The Chancery itself has unique characteristics.
11 So, with respect to its being a land use. You know, it's part
12 office, it's part being a chancery, you know, there are times
13 where they are hosting events. Things of that nature. So, that
14 area that Mr. Nottingham has identified allows for the ability for
15 vehicles going into and out of the carport. If you notice, the
16 carport is relatively narrow. So, as vehicles are pulling out,
17 you -- it's impossible for two vehicles to pull in and out at the
18 same time.

19 So, in this case, that notch that's been identified
20 allows for, in some cases, some vehicles to pull over as other
21 vehicles are pulling in. In addition to that, as Mr. Nottingham
22 has identified, you know, we've removed four parking spaces in
23 front of the 2400 Mass building, and the Embassy is looking to use
24 that or potentially have the opportunity for flexibility to
25 accommodate in some cases vehicles that would not block either the

1 carport or the front drive.

2 The condition on Massachusetts Avenue as such is very
3 limited. The exit of this circular driveway actually aligns with
4 24th Street, which comes in at an angle. It comes in roughly at a
5 45-degree angle. And there's a traffic signal at that location.
6 So the exiting driveway is actually in the middle of the
7 intersection. So in that respect, we're trying to balance,
8 removing onsite pervious areas, but still providing some area for
9 flexibility to accommodate vehicles for those types of situations.

10 COMMISSIONER MAY: Okay. So the answer is no, you don't
11 have diagrams that show this, right?

12 MR. ANDRES: No, we don't. We don't --

13 COMMISSIONER MAY: Okay.

14 MR. ANDRES: -- have diagrams. But, you know, that --

15 COMMISSIONER MAY: It's a yes or no question. So, if I
16 understand it, though, if somebody is coming and going into that
17 entry point, into the garage, they'll --

18 MR. ANDRES: Yeah.

19 COMMISSIONER MAY: -- be coming in from the upper
20 entrance, as we are looking at this drawing, right?

21 MR. ANDRES: Yes.

22 COMMISSIONER MAY: They'd be coming in, and then they're
23 going to make a right turn into it.

24 MR. ANDRES: Yes, that's correct.

25 COMMISSIONER MAY: And if somebody is coming out,

1 they're going to come straight out and go straight out that exit?

2 MR. ANDRES: Yes. Unless, you know, they're -- the
3 situation is such where any loading activity associated with the
4 facility is taking place in that front drive, that front drive
5 portion in front of the front door. So, for example, there's a
6 catering truck or, you know, some sort of vehicle that's occupying
7 that space, vehicles coming in would probably, would likely come
8 in the second entrance. And in that situation, we're providing
9 opportunity for vehicles to jockey in front of the carport.

10 MR. NOTTINGHAM: It should be noted also that, because
11 this is an elevator, sometimes there actually might be a car
12 exiting through the elevator while somebody's actually already
13 past the gate. They would then have to reverse out to make
14 clearance for the other vehicle to pass.

15 COMMISSIONER MAY: I don't understand what you said at
16 all. Can you explain that again?

17 MR. NOTTINGHAM: The exit to the garage is through an
18 elevator, so --

19 COMMISSIONER MAY: I understand that part. It's the --

20 MR. NOTTINGHAM: -- somebody could be in the elevator
21 exiting the building in a car while somebody's simultaneously
22 already in the driveway. There's not, like, an interlock or
23 something there. So, somebody could be starting to enter, they'd
24 then have to maneuver backwards to let the other vehicle out.

25 COMMISSIONER MAY: Okay. I don't understand how the

1 extra space helps you with that. This, I mean, the -- what looks
2 like, sort of, a lay-by of sorts on the bottom there seems to be
3 basically just a parking space. So, is it, I mean, is it really
4 for maneuverability or is it for parking?

5 MR. ANDRES: Well, it's for maneuverability in the event
6 there's a situation where there's a vehicle in that front portion
7 of the driveway, of that --

8 COMMISSIONER MAY: Right. Right.

9 MR. ANDRES: -- circular drive. And vehicles come in
10 through sort of the southern portion.

11 COMMISSIONER MAY: Right.

12 MR. ANDRES: So, in that respect, yes. That provides an
13 opportunity for vehicles to pull over while the other vehicle
14 passes.

15 COMMISSIONER MAY: Can it be minimized in dimension?
16 So, in other words, instead of it being what looks to be six to
17 eight feet of width or vehicle, could it be reduced to something
18 like four so that it's not really a good parking space?

19 MR. ANDRES: Yeah. You know, if the Board believes that
20 that that is appropriate for this location, then I'm looking at
21 Addison, so --

22 COMMISSIONER MAY: Well, I'm asking -- I'm not asking
23 what we think, right? I'm asking what you think in terms of
24 maneuverability. Would you achieve the maneuverability if you
25 only have like four feet instead of having what looks like a full-

1 depth parking space or a full-width parking space?

2 MR. ANDRES: So, the width of the carport and, Addison,
3 can you help me? I can't see the dimension there. The width of
4 the carport is --

5 MR. NOTTINGHAM: The drive is about 10-foot clear from
6 bumping --

7 MR. ANDRES: Ten --

8 MR. NOTTINGHAM: -- curbs.

9 MR. ANDRES: Ten-foot clear. So, you know, to, for two
10 vehicles to pass each other, you'd want to have at least 15 to 16
11 feet. So, instead of, I guess, that eight-foot width that you're
12 talking about, Mr. May --

13 COMMISSIONER MAY: Yeah.

14 MR. ANDRES: If that were reduced to, you know, five or
15 six feet, yes, it would be able to achieve what you're talking
16 about.

17 COMMISSIONER MAY: Okay. Thank you. That's it.

18 CHAIRPERSON HILL: Okay. All right. Ms. Brown?

19 MS. BROWN: Addison, do you have any other additional
20 slides that you'd want to show the, perhaps, the renderings?

21 MR. NOTTINGHAM: Sure. Actually, would you like to
22 advance? Just for reference, this is a cross-site section, in
23 case anyone was interested. This is showing kind of the 75-foot
24 difference between Rock Creek Park and Mass Avenue. In the back,
25 the site lines are pretty much obscured by the park. In the

1 front, you can see the parapet line. We're going to obscure any
2 appurtenances or overruns we have. So, we have on this one in
3 particular, we removed that (indiscernible) screen, so.

4 Next. Next. Next slide. Okay, this is --

5 CHAIRPERSON HILL: Okay. Hold on, Mr. Nottingham?

6 MR. NOTTINGHAM: Yes?

7 CHAIRPERSON HILL: I'm going to interrupt you. We can
8 come back around. Like, this is helpful here because we can see
9 where that little parking space thing is. And so, I'm more
10 interested in just talking about the parking space stuff. And
11 so, let me see what else, if anybody -- anybody from the Board
12 here has any more questions for you. And let me, I can't figure
13 out how to advance this thing. Oh, there we go.

14 Does anybody have any questions for the architect? And
15 if so, raise your hand.

16 Ms. John? Can't hear you, Ms. John. I think you're on
17 mute.

18 VICE-CHAIR JOHN: Oh, yeah. Sorry. Can you go back to
19 the slide that shows the parking/driveway at the southern end of
20 the driveway, which is what DDOT objected to. And so, DDOT objects
21 to the approval of the application until the applicant revises the
22 plans to remove the state parking space on the southern side. So
23 do the changes that you were discussing just now address DDOT's
24 objection?

25 MR. NOTTINGHAM: No. They want -- as in their report,

1 which is identified, I believe it's Exhibit 39.

2 VICE-CHAIR JOHN: Yeah.

3 MR. NOTTINGHAM: They want that entire area restored to
4 landscaping. The changes that Mr. May kind of suggested reduces
5 that by, you know, call it 40 percent, but not completely
6 eliminates it.

7 VICE-CHAIR JOHN: Okay. Thank you.

8 MR. NOTTINGHAM: But --

9 CHAIRPERSON HILL: I'm sorry, Vice-Chair John, was that
10 it?

11 VICE-CHAIR JOHN: Yes. That was it.

12 CHAIRPERSON HILL: Okay. Who just started to talk?

13 MR. NOTTINGHAM: I was asking if you wanted me to pick
14 up at the 3D elevation.

15 CHAIRPERSON HILL: Who's talking, Mr. Nottingham?

16 MR. NOTTINGHAM: Mr. Nottingham, sorry.

17 CHAIRPERSON HILL: Okay. That's all right.

18 Commissioner May, you had a question?

19 COMMISSIONER MAY: I would just like to know if there
20 are more of those 3D versions of the drawings? So, if we can go
21 back to that and see the rest of them, that would be great.

22 CHAIRPERSON HILL: I mean, the slide I think is in the
23 record now, also, Commissioner.

24 COMMISSIONER MAY: I understand that. Can we look at
25 the next one? Is there another one?

1 MR. NOTTINGHAM: Yes, there's --

2 CHAIRPERSON HILL: Go ahead, Mr. Nottingham.

3 MR. NOTTINGHAM: Yes, there's one without it. So --

4 COMMISSIONER MAY: I'm not asking -- just flip through
5 the images. Is that it? Just two?

6 MS. BROWN: Two, two more.

7 COMMISSIONER MAY: Okay. All right. That's it for me,
8 thank you.

9 CHAIRPERSON HILL: Okay. Mr. Nottingham, since those
10 images --

11 MR. NOTTINGHAM: Yes?

12 CHAIRPERSON HILL: -- what is it, just to clarify for
13 the Board, what is it that CFA, again, so for my knowledge, is
14 interested in talking to you still about?

15 MR. NOTTINGHAM: Could you go backwards? And I think to
16 the greatest extent, we've addressed those comments. It's back on
17 this slide. Particularly the entry portico, they asked for a
18 refinement on the alignment between that portico of the proposed
19 and the belt course, which we've gone back and actually corrected
20 alignment. They asked for the opening above that entry portico,
21 which used to be on 2406 was, obviously, a balcony when that was a
22 residence. They asked that we increase the glazing area to give
23 the appearance that that was a door on that one as well, which
24 we've removed the panel below it and done that.

25 They asked us to look at the roof, that roof screen,

1 which we previously looked at in the elevation. It's not apparent
2 on this because from the street view, you just can't see it. It's
3 too far back. And then, at the corner of the building, just right
4 in the corner of the driveway, we did not have kind of a detailed
5 façade there. They asked we go back and look at adding some
6 embellishment to strengthen that corner as an architectural
7 element and introduce the blind window detail there to kind of
8 give it more detail and not be as austere or plain.

9 CHAIRPERSON HILL: Okay.

10 MR. NOTTINGHAM: And the gate issue, which we previously
11 mentioned.

12 CHAIRPERSON HILL: But the gate issue has been resolved?

13 MR. NOTTINGHAM: The gate issue we have not. We'd be
14 willing -- I believe the Embassy would be willing to entertain
15 getting an artist from the UAE involved in redesigning the gate,
16 but we haven't done that yet.

17 CHAIRPERSON HILL: Got it. Okay.

18 MS. BROWN: Mr. Chair --

19 MR. NOTTINGHAM: And may I --

20 MS. BROWN: If I could just clarify that point. The
21 gate is not part of this proposal. It's existing. And I think
22 the CFA confused it as a new element.

23 CHAIRPERSON HILL: Oh.

24 MS. BROWN: So, it is not part of this permit or process
25 that we have before you. But as Mr. Nottingham said, that in the

1 future, they will certainly look at that because I thought it was
2 a great idea.

3 CHAIRPERSON HILL: Okay. All right. Okay. Is Mr.
4 Andres up?

5 MR. ACOSTA: Mr. Chair? I have a question.

6 CHAIRPERSON HILL: Oh, sure.

7 MR. ACOSTA: I know we talked about the CFA comments,
8 but I also want to go back to the HPO comments too because part of
9 our obligation is to look at the historic preservation issues.

10 I just wanted to know, I think their concerns were
11 basically covering the issue about duplicating things for
12 materials and detailing. I know the massing and the scale, like,
13 issues, I think, are fine. But I wanted to get a sense of your
14 reaction to their comments about detailing and replication. Where
15 you, kind of -- where you can see it in this rendering. But I
16 just want to get a reaction from you and try to get a reasoning
17 for not necessarily addressing those issues?

18 MS. BROWN: If I -- I think it's best if Mr. Nottingham
19 and Ms. Adams respond to that. But I just want to set up the
20 legal context. As you know, under the Historic Preservation Act,
21 all applications within this historic district have to go to the
22 Commission of Fine Arts. And then, it's -- and then, HPRB has
23 secondary jurisdiction, but CFA has primary jurisdiction over the
24 design of this. That's why we are deferring to their
25 recommendations on this.

1 And then, secondly, I think you'll hear from both Ms.
2 Adams and Mr. Nottingham that there are distinctions, they're just
3 not to the -- there is some replication, but not to the degree
4 that it compromises the overall integrity of the historic
5 district, which is the test. So I don't know if Mr. Nottingham
6 wants to start or Ms. Adams?

7 MR. NOTTINGHAM: Well --

8 CHAIRPERSON HILL: Mr. Nottingham?

9 MR. NOTTINGHAM: I would -- yes, sir. I would like to
10 point out at the onset, it was very important to the ambassador of
11 UAE, Ambassador Al Otaiba, that this project stands next to the
12 other building and kind of convey that real sense that this was,
13 this is their, this is the UAE's kind of presence on Massachusetts
14 Avenue. It's kind of a unified design between the two, and it is
15 very important that we take the quality and the detail and the
16 scaling of the two properties, it's very important for that image.
17 They've kind of invested so much into renovating and restoring the
18 other property that that was kind of a prime motivator.

19 We, you know, we have the two minds as the Commission,
20 kind of grappled with and ultimately came to decide in their
21 decision and agree with our view here that, or our design path was
22 that borrowing those elements and redesigning into a new façade
23 and taking the scale and elements and alignment is a valid design
24 solution. And I think that's the path we've taken here with this
25 application.

1 MS. BROWN: And, Ms. Adams, perhaps you could explain
2 that while some of the details are replicated, the differences
3 between the two buildings in design?

4 MS. ADAMS: Sorry. Obviously, there are, the addition,
5 the new building is compatible in all of the fundamental ways that
6 are necessary to build a new building in a historic district, the
7 size, the height, the scale, the proportions, the pattern of the
8 fenestration, which are very much similar to all of the buildings
9 in the historic district, not just 2406. But this is clearly a
10 different building, yet related, which as we've said was really
11 important to the UAE. And it was interesting that the Chairman of
12 the Commission of Fine Arts, who is clearly a modernist architect,
13 said, you know, at some point, what the client asks you to do is
14 important. And perhaps, especially, in a situation like this,
15 before FMBZA.

16 The differences, you have a three-story building versus
17 a four-story building. You have an entrance, which will continue
18 to function as an entrance, and that's an improvement over the
19 existing conditions, that is much more subordinate to the addition
20 than the entrance, two-story entrance feature at 2406. The whole
21 aspect of this building is, obviously, smaller, but simpler and
22 secondary to 2406. But again, this is about creating a unified
23 complex of different parts, for sure, with the contemporary hyphen
24 in between. But this will read as its own distinct part of this
25 complex, I believe. Did that answer anybody's questions?

1 CHAIRPERSON HILL: Ms. John?

2 VICE-CHAIR JOHN: Thank you, Mr. Chairman. So can we go
3 back to the HPRB? I understand that HPO, that provided concept of
4 approval, and it appears that the applicant worked with the HPO to
5 make some design changes. Can you say what those were?

6 MS. BROWN: I'm not sure -- Ms. John, this is Carolyn
7 Brown. I'm not sure where -- I think that might not be correct.
8 What we did was we responded to the Commission of Fine Arts. I
9 think in the Office of Planning report, they may have transposed
10 the CFA with HPRB, but we responded to the CFA comments.

11 VICE-CHAIR JOHN: Okay. Thank you. That clarifies it.

12 MS. BROWN: Okay.

13 VICE-CHAIR JOHN: And I'm still not clear as to what the
14 difference is between the two recommendations. I understand the
15 design that you're proposing, and I'm not quite sure how it
16 differs from what HPO is recommending.

17 MS. BROWN: Perhaps, Addison, you can take this. But
18 Ms. John, if you look at the detailing above the windows, you will
19 see that they resemble and match what is on the 2406 building.
20 You will also see that the window matches what is on the 2406
21 building. So those are the details that HPO recommended not be
22 duplicated and what CFA said we think it looks fine. We actually
23 think it's a very good composition and it's -- they actually
24 focused more on ensuring that the high quality of the restoration
25 for 2406 could be replicated on the new addition. But you will

1 also notice the significant difference in how the entrances of the
2 two buildings are presented. The two-story height of the 2406,
3 the swelled base. It's very, very different. It's a larger
4 building. The smaller one complements it, but there's some, you
5 know, distinctions on how those facades read on the street and in
6 the historic district.

7 VICE-CHAIR JOHN: So what did HPO recommend that was
8 different from what you've ended up with?

9 MS. BROWN: They didn't make any direct recommendations,
10 other than to say don't copy what's on the lintels for the windows
11 or the form of the windows. And perhaps, Ann Adams can elaborate
12 on it, but it was -- they generally don't tell you how to fix it,
13 they just tell you they don't like it.

14 MS. ADAMS: I think what they are looking for is
15 something that is simple, architecturally simpler on the addition
16 than the extent of detail on 2406. And again, they did not have
17 specific direction.

18 VICE-CHAIR JOHN: Okay. Thank you.

19 CHAIRPERSON HILL: Okay. Mr. Andres?

20 MR. ANDRES: Yes, Chairman Hill?

21 CHAIRPERSON HILL: I've got -- there's two more slides
22 for you.

23 MR. ANDRES: So the only other -- I think we've
24 discussed the DDOT issue with Mr. May and his suggestion. I think
25 the only thing I wanted to add as part of the FMBZA review

1 criteria, the third one talks about the adequacy of off-street
2 parking. In our transportation statement, we identified that the
3 new addition doesn't trigger additional parking. We are removing
4 those four parking spaces in front of the existing 2400 building
5 because they're parked essentially, what is now their front lawn,
6 and so we're removing those spaces. But in lieu of that, we are
7 increasing the parking supply within the underground garage from
8 ten spaces to fourteen spaces.

9 CHAIRPERSON HILL: Okay.

10 MR. ANDRES: So that confirms that we not only meet the
11 regulations in terms of parking adequacy, but also the demand.
12 So, with that, I'm available for questions. Thank you.

13 CHAIRPERSON HILL: Okay. And you guys are closing that
14 curb cut in front of the new, the old building?

15 MR. ANDRES: Yes. That's correct. That's based on our
16 coordination with DDOT.

17 CHAIRPERSON HILL: Right. Okay. Does anybody need the
18 slide deck anymore? And if so, raise your hand. Because
19 otherwise, I'm going to drop it. The slide deck.

20 Commissioner May, you seem to be talking?

21 COMMISSIONER MAY: I'm sorry, I didn't hear what you
22 said.

23 CHAIRPERSON HILL: Do you need -- I was going to drop
24 the slide deck so I can see --

25 COMMISSIONER MAY: Oh, yeah.

1 CHAIRPERSON HILL: -- everyone.

2 COMMISSIONER MAY: Yeah. Yeah. That's fine.

3 CHAIRPERSON HILL: Okay. Mr. Young, can you drop the
4 slide deck? Okay.

5 Oddly enough, DDOT is here. And so, that's some -- we
6 might hear from DDOT. Then, the other is the State Department is
7 here. Mr. Moy?

8 MR. MOY: Yes, sir. The State Department is in the
9 waiting room. The DDOT rep just left, so I'll have to call him.

10 CHAIRPERSON HILL: Okay.

11 MR. MOY: Do you need him?

12 CHAIRPERSON HILL: Can we hear from the State
13 Department? Can we get the State Department in? And if you can
14 get DDOT back, that'd be great. But if not. And if everybody can
15 mute their line unless they're talking? Somebody's phone is going
16 off.

17 MR. LOWELL: All right. Good morning.

18 CHAIRPERSON HILL: Is this the State Department?

19 MR. LOWELL: If you can confirm, yes. This is Michael
20 Lowell with the Department of State representing the Office of
21 Foreign Missions.

22 CHAIRPERSON HILL: Okay. Mr. Lowell, is that you with
23 something in the background?

24 MR. LOWELL: Yeah. I apologize. Between the firewall,
25 I can't activate the video, and we've got a lot of protesters

1 outside the building today, so.

2 CHAIRPERSON HILL: Oh, got it. Okay, good. There you
3 go. I thought it was, like, some song for a phone number. Okay.
4 All right. Okay.

5 What was your name again, sir? I'm sorry.

6 MR. LOWELL: Michael, Michael Lowell.

7 CHAIRPERSON HILL: Okay. Mr. Lowell, could you give the
8 testimony of the State Department, please?

9 MR. LOWELL: Sure. Read the letter or would you just
10 prefer the summary version?

11 CHAIRPERSON HILL: You can go ahead and summarize.

12 MR. LOWELL: Yeah. To summarize, the Department of
13 State supports this. The Government of the UAE has been
14 supportive of our efforts to find property, suitable property in
15 Abu Dhabi and Dubai, and that cooperation has been essential for
16 achieving the Federal Government's mission. So, we are supportive
17 of this action in Washington.

18 CHAIRPERSON HILL: So, they've helped us in Dubai, is
19 that correct?

20 MR. LOWELL: They've helped us in Dubai and Abu Dhabi.

21 CHAIRPERSON HILL: Okay. Does anybody have any
22 questions for the State Department? All right, sir. Enjoy your
23 protest.

24 MR. LOWELL: Thank you.

25 CHAIRPERSON HILL: Bye. All right. Let's see. I'm

1 going to turn to the Office of Planning.

2 MS. THOMAS: Yes. Good morning, Mr. Chair, members of
3 the Foreign Missions Board. Karen Thomas with the Office of
4 Planning on the application of UAE's request for an addition to an
5 existing annex at 2406 Mass Avenue.

6 Mr. Chair, the Office of Planning is recommending that
7 the Foreign Missions Board not disapprove the application to
8 permit the expansion of the existing chancery annex. And to
9 increase the lot occupancy under subtitle D from -- to the
10 proposed 71 percent. And we believe this is consistent with the
11 intent of Chapter 2, Section 206 of the Foreign Missions Act.

12 With respect to -- I'll just briefly go through our
13 report. With the respect to the municipal interest, we looked at
14 -- we agree that the mixed-use area for this zone as submitted by
15 the applicant in Exhibit 12 supports the expansion of the chancery
16 within this low-density zone. Since we have over 140,000 square
17 feet as utilized for non-residential purposes, which amounts to 64
18 percent, and that exceeds the 50 percent threshold that is
19 supplied in this formula.

20 With respect to the lot occupancy, we do not anticipate
21 an adverse impact to intent of the regulations because the
22 building would be replaced as an existing building there for the
23 past, like, 100 years or 99 years thus far, and a replacement
24 building should not have a substantial impact beyond what
25 currently exists. So we would support the requested relief.

1 Also, while a transportation was not submitted in this
2 application, the approval and the Order 18136 included conditions
3 that would regulate vehicular movement to and from the site and on
4 the site. I would anticipate DDOT would speak to the little bump
5 out on the proposed plans that is in discussion at this time. I
6 would just state for the record that OP would not support parking
7 in that location, but if it is moved -- going to be used for
8 maneuverability, we could have a discussion that decide, that
9 location provides signage should have no parking on that location
10 because it is in the front of the building. And we don't
11 typically support that type of parking in front of the building,
12 in front of buildings.

13 With respect to HPRB and CFA's report, and their
14 discussion of the façade of the proposed building, one thing
15 that's common to both reports is that they would like the ability
16 to have further review of the final refinements to the design as
17 part of the permit submission, and they would leave that up to the
18 Board. And at this point, I'll say thank you. And I'd be happy
19 to answer any questions.

20 CHAIRPERSON HILL: Okay. Ms. Thomas, thank you for your
21 report. I've had a chance to review it and everything. The only
22 question I have, again, as far as the DDOT parking thing, I mean,
23 they're getting rid of four spots now and the curb cut, right?
24 And so, you're saying the Office of Planning would be comfortable
25 with that maneuverability area if there was a sign that says no

1 parking. Is that what you're --

2 MS. THOMAS: I would support that because the entrance -
3 - as explained by Mr. Andres, if a car is coming out, you would
4 have a tendency to have too back up into public space, if you have
5 two -- if you have vehicular conflicts in that narrow area, where
6 a car is entering or exiting the --

7 CHAIRPERSON HILL: Okay. I'm sorry to interrupt. I
8 mean, the sign is a sign that the Embassy would put up that says
9 no parking, correct?

10 MS. THOMAS: Yes. And, you know, it could be on a
11 surface and say no parking or stripes, you know, but.

12 CHAIRPERSON HILL: Okay. All right. We got DDOT with
13 us anyway. Does anybody, does the applicant have any questions
14 for the Office of Planning? Then, I'm going to ask my colleagues.

15 Ms. Brown?

16 MS. BROWN: No, we have no questions.

17 CHAIRPERSON HILL: Okay. Do my colleagues have any
18 questions for the Office of Planning?

19 Commissioner May?

20 COMMISSIONER MAY: Sorry. Ms. Thomas, the applicant is,
21 may -- played out, sort of, the difference between CFA and HPO and
22 their attitudes toward the detailing of the building as if there's
23 a significant conflict, whereas your report makes it sound like
24 there really isn't that much of a conflict. I would have, you
25 know, I would have expected that if, in fact, there really was

1 this major difference, that your report would be requesting
2 greater flexibility to work through the details with the Historic
3 Preservation Office to further apply what the Secretary of
4 Interior standards and D.C. standards for new additions to
5 existing historic buildings.

6 MS. THOMAS: Yeah.

7 COMMISSIONER MAY: So I'm hoping maybe you can help me
8 understand that a little better.

9 MS. THOMAS: Oh, I apologize with respect to not being
10 clearer about --

11 COMMISSIONER MAY: It's okay.

12 MS. THOMAS: It was really conflicting for HP, this
13 application with respect to the -- their main concern, as
14 expressed to me was the façade treatment. They just didn't want
15 it to be as precise. And so, they really expressed that they
16 would like to continue to be able to work with the applicant upon
17 submission. I think they would have a little bit more force at
18 that point to work with the applicant because they've been working
19 for quite some time with them, both CFA and HP. And I apologize
20 if the report didn't bring that out. I just didn't want to,
21 perhaps, bring out too much conflict in our report.

22 COMMISSIONER MAY: Well, yeah. I mean, the applicant,
23 sort of highlighted that as a major source of difference. And
24 they're looking for us to endorse the CFA's somewhat more
25 enthusiastic approval of the existing design than what the

1 Historic Preservation Office was recommending. And that's, I
2 mean, it is problematic for me particularly, since it's, you know,
3 the Park Service being part of the Department of the Interior and
4 wanting to uphold the Secretary of the Interior's standards and
5 also knowing that the Commission of Fine Arts is not famous for
6 its historic preservation expertise. It sort of varies from time
7 to time, but that's not really, you know, where they shine. So
8 it's problematic from my perspective that there hasn't been more
9 attention to the Historic Preservation office attitudes about it.
10 So it was just a little bit surprising that we have this
11 difference of treatment on these issues. Now, I can see how the
12 Historic Preservation office comments and the CFA's letter align
13 more than I think the applicant has stated. I mean, you know, the
14 reference to becoming architectural pastiche, in the CFA's letter.
15 I mean, that's code for don't overdo it on the detailing, right?
16 And I mean, I get a lot of CFA letters, so I know how to read the
17 entirety of the text. And they're, you know, the intention, the
18 concern they have about how these things are detailed and that
19 they, you know, those sorts of things for me are code words for,
20 basically, don't overdo it. So, I mean, I -- that's where I was
21 thinking your report was probably more accurate than what I was
22 hearing from the applicant initially. But we'll get into this
23 discussion later on. But I appreciate your clarifications. Thank
24 you.

25 MS. THOMAS: Thank you.

1 CHAIRPERSON HILL: Okay. Let's see. Anyone else?

2 Ms. John?

3 VICE-CHAIR JOHN: Mr. Chairman, yes. So, I've got a
4 question about the 71 percent about occupancy. And can you talk
5 about how you addressed that issue? Ordinarily, the limit would
6 be 70 percent for a special exception, and we would analyze the
7 request as a variance. I haven't done enough of these cases and
8 addressed this particular issue to understand whether the Board in
9 its jurisdiction, the FMSB -- did I say that right -- has the
10 jurisdiction to ignore the distinction between a variance and a
11 special exception.

12 MS. THOMAS: Yes, Madam Chair. The Board has in the
13 past examined these requests under the FMBZA in excess of what is
14 normally permitted, let's say, through the special exception
15 process at 70 percent, say in the low-density zones or even in the
16 higher-density zones, we have in the past, looked at these
17 requests through this process and not as a variance and that has
18 been traditionally done.

19 VICE-CHAIR JOHN: Okay. Thank you.

20 MS. THOMAS: Thanks.

21 VICE-CHAIR JOHN: That's it, Mr. Chair.

22 CHAIRPERSON HILL: Okay. Let's see, anyone else for the
23 Office of Planning? Okay.

24 I think DDOT is here. Mr. Zimmerman, are you there?

25 MR. ZIMMERMAN: Yes, I am. Good afternoon, D.C.

1 Members. I'm Aaron Zimmerman with the District Department of
2 Transportation.

3 CHAIRPERSON HILL: Hi, Mr. Zimmerman. We get you two
4 weeks in a row. This is amazing. And I think we've got you for
5 something else, right? That was the whole reason you're here?

6 MR. ZIMMERMAN: And later today.

7 CHAIRPERSON HILL: Oh, you're right. Okay. Great. So,
8 just real quick. My question to you, I've seen your report, is
9 that, you know, they are -- I mean, they're eliminating four
10 parking spots. They're eliminating that curb cut. If they had --
11 and I don't know if you heard the earlier testimony, but it's, you
12 know, I mean, it -- that little area that you all want them to
13 fill in, they're going to maybe use it as a, you know, kind of,
14 work around cars while, like, cars are coming in and out of there.
15 I mean, I understand that, I'm sorry, like I've been up and down
16 Massachusetts Avenue. The embassies park wherever the embassies
17 park, right? And so, you know, they'll put their little sign up
18 there and that's great, okay? But other than that, like, you
19 know, do you have an -- are you standing -- are you opposed to
20 that little cut out?

21 MR. ZIMMERMAN: Well, you know, we're just basing it off
22 of our design and engineering manual where we really don't want to
23 see, you know, parking in the public parking zone. And also, you
24 know, more pavement in the public parking zone. We'd rather see
25 the landscaping be restored. I mean, you know they are

1 undoubtedly improving the situation here. We totally understand
2 them and appreciate that and give them tremendous kudos for that.
3 But just, you know, this one last design feature is, you know,
4 important to DDOT to ensure there's not just cars, you know,
5 parked, you know, in that public parking zone that's intended to
6 be as a green space.

7 CHAIRPERSON HILL: Okay. And, Mr. Zimmerman, I mean
8 this all with due respect. I mean, I think, you know, we'll have
9 an opportunity to have this discussion among the Board as to
10 whether or not we think they're meeting the criteria, right? And
11 so, to my fellow Board members, I'm just saying, like, there was
12 four -- there was four cars parked in public space before they
13 opposed this, correct? Not a public space, you know, but, like,
14 right in front of that building.

15 COMMISSIONER MAY: That's public space.

16 CHAIRPERSON HILL: Oh, okay. Well, there you go. The
17 answer is yes, I guess, correct, Mr. Zimmerman?

18 MR. ZIMMERMAN: Yes.

19 CHAIRPERSON HILL: Okay. Great. Okay. Does anybody
20 have any questions for the Office -- for Mr. Zimmerman?

21 Ms. John?

22 VICE-CHAIR JOHN: Yes, Mr. Chairman. There was an issue
23 about the intersection, the signalized intersection and the
24 location of the circular driveway which is an existing issue. Did
25 you have a comment on that, Mr. Zimmerman?

1 MR. ZIMMERMAN: Yeah. It's not a bad comment. We
2 wanted to -- just to highlight that that is still an issue and if
3 we were designing a building brand new, we wouldn't do that. But
4 we believe they've made the situation better with their design at
5 this intersection. They've narrowed the curb cuts and, otherwise,
6 you know, improved those driveway entrances. So, we don't have
7 any outstanding issue with the design as it pertains to the
8 intersection. But we just wanted to call it out that it
9 technically would not be how we would design it if we were
10 designing it brand-new today.

11 VICE-CHAIR JOHN: Okay. Thank you.

12 CHAIRPERSON HILL: Commissioner May?

13 COMMISSIONER MAY: Yes. Mr. Zimmerman, I think one of
14 the concerns that I have about the, you know, this little bit of
15 additional pavement for maneuverability purposes is that the way
16 it has been shown in the drawings makes it look just like a
17 parking space. And I feel like, you know, having a no parking
18 sign certainly, you know, isn't going to hurt. But, you know, I
19 was suggesting that it be narrowed so that it gives them the
20 maneuverability, flexibility that they seem to need while not
21 creating an attractive place to just leave a car all the time or a
22 truck or whatever. Do you have thoughts on whether it makes, you
23 know, would you be more in favor if they were to cut that, you
24 know, the width of that from, I don't know, six or eight feet down
25 to four or five feet?

1 MR. ZIMMERMAN: Yeah, I think that's perfectly
2 reasonable. If they can, you know, narrow that a little bit, add
3 a little bit more green space back in and show that, you know,
4 that two cars, I guess, can kind of be side-by-side there so that
5 one car could pull over. But if they can do that and minimize,
6 you know, even trim a couple feet off of it, I think that would be
7 helpful and that would be beneficial from DDOT's perspective.
8 And, like, I've heard from others on the call, you know, including
9 parking signs. That's also something you could look at as well
10 and that would be helpful.

11 COMMISSIONER MAY: All right. Thank you.

12 CHAIRPERSON HILL: Okay. Anyone else for Mr. Zimmerman?
13 All right. Mr. Zimmerman, do you know which one we have with you
14 again next? Is it, it's 20400, right?

15 MR. ZIMMERMAN: It's 20508, it's 7 New York Avenue.

16 CHAIRPERSON HILL: 20508. Okay. Well, we'll try to get
17 to you sooner rather than later, okay?

18 MR. ZIMMERMAN: Okay.

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

20 All right. Mr. Young, is there anyone here wishing to
21 testify? Do we take public testimony? I always forget.

22 COMMISSIONER MAY: We do not.

23 CHAIRPERSON HILL: Oh, all right. Well, there you go.
24 Mr. Ritting, can you hear me?

25 MR. RITTING: Yes.

1 CHAIRPERSON HILL: I forget, do we take public testimony
2 at FMBZA? I know, probably, Ms. Brown can tell me. Or Ms. --

3 MR. RITTING: I --

4 CHAIRPERSON HILL: We do take? Okay.

5 MR. YOUNG: Sorry, we actually do have one person signed
6 up.

7 CHAIRPERSON HILL: Oh, okay. Could you please allow
8 them in?

9 Hello, can you hear me? Is it -- why? Hello?

10 MR. RANDRIANARIOVNY: Hello, can you hear me?

11 CHAIRPERSON HILL: Yes. Can you hear me?

12 MR. RANDRIANARIOVNY: Yes, sir. I hear you.

13 CHAIRPERSON HILL: Could you please introduce yourself
14 for the record?

15 MR. RANDRIANARIOVNY: Yes. My name is Faniiry
16 Randrianariovny, and I'm speaking on behalf of the Embassy of
17 Madagascar. I work with Denise (phonetic) located at 2374
18 Massachusetts Avenue. It's attached to the building and their
19 construction.

20 CHAIRPERSON HILL: Okay. Please, give your testimony.

21 MR. RANDRIANARIOVNY: The Embassy of Madagascar is
22 supportive of the project. The architecture, the design, the
23 (indiscernible) on parking, and the intended to embellish the
24 historic district, our historic district to conserve the
25 architecture of the area. We have a concern, however, about the

1 construction because our building is very old. And we want that
2 the Embassy -- the Government of UAE to take into account our
3 building, the structure. And we want construction, we want the
4 construction to be conducted safely. That's the concern. But we
5 are supportive of the project.

6 CHAIRPERSON HILL: Okay, great. Thank you, sir.

7 MR. RANDRIANARIOVNY: Okay.

8 CHAIRPERSON HILL: And this is again, the Embassy that's
9 adjacent to the property being torn down, correct?

10 MR. RANDRIANARIOVNY: Yes, sir.

11 CHAIRPERSON HILL: Yes. And so, I -- the construction
12 will be held in accordance with the regulations of DCRA, so
13 therefore, it will be safely done.

14 However, Mr. Nottingham, is there anything you'd like to
15 pass along since we're right here?

16 MR. NOTTINGHAM: I do know the Embassy, the UAE was
17 preparing, if they have not already, sent a letter back to the
18 Embassy of Madagascar to convey that they're taking this matter in
19 their highest regards and full assurance that the proper
20 procedures and safety will be ensured there along that shared
21 property line between the properties.

22 CHAIRPERSON HILL: Okay. Great. All right. Thank you.
23 Does anybody have any questions for the witness? All right.
24 Thank you.

25 Sir, thank you so much for your testimony.

1 MR. RANDRIANARIOVNY: Thank you.

2 CHAIRPERSON HILL: Bye.

3 MR. RANDRIANARIOVNY: Bye.

4 CHAIRPERSON HILL: Okay. Let's see. I don't know if
5 we're at an impasse or not, meaning, do we need to hear or see
6 anything from the applicant? And I'm just, kind of going to talk
7 to my fellow -- well, hold on. Let me do this.

8 Ms. Brown, do you have anything you'd like to add here,
9 at the end?

10 MS. BROWN: Yes. Just three brief points. That for Ms.
11 John's question about whether variance or special exception, I
12 agree with the Office of Planning assessment that the sole
13 criteria is that under the FMBZA regulations so that the special
14 exception and variance criteria do not apply to the lot occupancy
15 question.

16 I think, with respect to the pull-off area, we would,
17 the embassy would be perfectly fine with signage, and we would be
18 willing to study narrowing that area to increase the green area,
19 but it still allows some area to pull away. But not having
20 studied that, we can't make a commitment right now, but we
21 certainly would like to look at that.

22 And then, third, with respect to the differences between
23 the Historic Preservation and the Commission of Fine Arts, I think
24 when you look at the design at the building, it's almost a
25 distinction without difference because what you have is a really

1 beautifully designed building that complements the original. But
2 what was so important to the Embassy was that those details would
3 be picked up and that the hyphen clearly distinguished,
4 distinguishes the two parts, and it's a very modern hyphen. So
5 that, I actually don't know that -- I think it was more the staff
6 of the Commission of Fine Arts that felt very strongly about it as
7 opposed to some of the other Commissioners. In fact, I know that
8 one of the Commission of Fine Arts members strongly disagreed with
9 the staff and said so on the record. So, I think overall, when
10 you balance all those interests that, with CFA having primary
11 jurisdiction over the design elements under the preservation law
12 that the tie kind of goes to the Commission of Fine Arts in the
13 interest of the Embassy. So, with that, I will conclude my
14 remarks.

15 CHAIRPERSON HILL: Okay. Great. Thank you. All right.
16 I'm not letting everybody go yet because I'm trying to figure out
17 what, if anything, we need, right? I guess, we can deliberate and
18 come back. Or, because I'm, kind of, torn, right? In turn -- I'm
19 just stuck with the little pull-over thing, right? Like, they're
20 -- and I'm looking at my Board members now, we're still in the
21 hearing. I'm doing this because we're in Zoom and not live. And
22 so, you know, it's, kind of, like, you know, do we want to see
23 what -- and this is where I am, kind of, with this. Do we want to
24 see them kind of make that thing smaller? And also, I'm just
25 curious what the UAE has to say about it because they've been

1 helpful to us, again, in their country. And so, you know, I don't
2 know what -- because the thing for me is they got, like, if that
3 thing's gone, they're still going to park in the circular
4 driveway. Like, everybody parks everywhere, okay? And so, I
5 just don't believe -- I mean, to me, I just don't understand. A
6 little bit, DDOT's thing where it, they're getting rid of the curb
7 cut. There was four cars there and now -- so, I'm just a little
8 unsure. I'm going to go around the table and see what people
9 think they may or may not need to see. And I'm going to start
10 with Commissioner May because you've had a lot of experience with
11 this.

12 COMMISSIONER MAY: So I have sort of a legal question on
13 this in terms of how definitive our decision should be. I mean,
14 is this the sort of thing where our decision has to be based
15 explicitly on the drawings that are in the record? Or can we, you
16 know, approve, for example, the façade design more generally but
17 request that the applicant continue to work with the Historic
18 Preservation Office to resolve their concerns about how
19 inconsistent it is with federal and local historic preservation
20 standards? Can we actually give that sort of flexibility, or do
21 we need to see -- do we need to have new drawings submitted to the
22 record? So, maybe Mr. Ritting, can you opine on that? I don't
23 remember this coming up before.

24 MR. RITTING: Well, the relevant regulation for the
25 FMBZA is 11 X 2309. Here's what it says. It says that your

1 determination shall not be subject to administrative proceedings
2 of any other district agency. So the risk is that if you sort of,
3 impose a condition or suggest that the applicant needs to go to
4 HPO for further consultation that, in fact, you're making your
5 decision subject to the approval of HPO, which you can't do.

6 COMMISSIONER MAY: Right. Okay.

7 MR. RITTING: Now, there's some, a little bit of wiggle
8 room there because it says administrative proceedings, and when
9 you say consult with, that suggests something somewhat less than
10 that. But I don't think you have much latitude to --

11 COMMISSIONER MAY: Okay.

12 MR. RITTING: -- impose a condition because of that.

13 COMMISSIONER MAY: Right. Okay. And so, that would be
14 similar to the issue with DDOT as well.

15 So, Ms. Brown, I have a question about the urgency of
16 this. I mean, is there some compelling reason why we need to make
17 a decision on this today or can it be done in a few weeks?

18 MS. BROWN: Mr. May, the FMBZA or the Foreign Missions
19 Act requires a decision within six months of when the application
20 was filed, and I believe that expires on October 17th. I don't
21 know if Mr. Ritting has the exact date. And what I am unclear
22 about is whether that is your oral decision on this or whether
23 it's the written decision?

24 MR. RITTING: I can respond to that, I think. You've
25 got the date correct. And the rule says it's the written

1 decision.

2 CHAIRPERSON HILL: You have to get an order out by the
3 17th?

4 MR. RITTING: Yeah. I've got my document fired up
5 already.

6 CHAIRPERSON HILL: Okay. Okay. Well, then --

7 COMMISSIONER MAY: Well, that puts us between a rock and
8 a hard place, right? I mean, that, it doesn't give us any
9 flexibility to see anything further from the applicant. Unless we
10 saw it, you know, like next week, right? I mean, two weeks from
11 today would be, like, two days before --

12 CHAIRPERSON HILL: Right.

13 COMMISSIONER MAY: -- you have to issue the written
14 order.

15 CHAIRPERSON HILL: I mean, yes. And so, right, the
16 17th. So, before we get to that, also, in my -- and I'll just
17 respond since we're here, Commissioner May. Right. The 17th is -
18 - right. You'd have the 6th and then you have the 13th, right?

19 COMMISSIONER MAY: Right.

20 CHAIRPERSON HILL: For a decision. And then, Mr.
21 Ritting seems like he's somehow going to flip this thing around
22 immediately. And so, the 13th. So, that means if we got back
23 something to look at -- no. We'd have to come back and look at
24 something on the 6th, which is next week, in order to somehow get
25 something done. And then, Ms. Brown -- I mean, me, personally,

1 like, I'm a little uncomfortable with the whole like HPO thing. I
2 guess, meaning, I don't want to kick it back to HPO. Like, I
3 don't know, I want to approve what we're going to approve, and,
4 like, you know, like, the whole thing that the client and the
5 ambassador wants what they're doing. And then, the HPO's report,
6 it basically has one line, which is really, pretty, you know, it
7 says, "continue to work with HPO on final refinements to the
8 design." I mean, that's a pretty open-ended, right? So, I'm a
9 little, I'm just saying I'm a little uncomfortable with the open-
10 ended nature of that statement.

11 COMMISSIONER MAY: Right. Especially, giving what Mr.
12 Ritting just said about, you know, our decisions not being subject
13 to any other agency's actions. So, yeah, I mean, it's very
14 frustrating to get to this point and find out, well, basically,
15 our only choice is to more or less decide this today. I mean,
16 yeah, we could drag it on for one more week, but --

17 CHAIRPERSON HILL: Well, we could still --

18 COMMISSIONER MAY: -- they're not going to have time.

19 CHAIRPERSON HILL: They could still go back to HPO. I
20 mean, Ms. Brown could go back to HPO, I suppose, and see if
21 there's any different things that, like, what that means, if
22 there's something that the Board wants. I just, I'm not saying
23 anything yet, Ms. Brown.

24 COMMISSIONER MAY: Sure.

25 CHAIRPERSON HILL: That's, kind of, like, them asking

1 them to shave that pull-over just a little bit more, whether that
2 actually does anything for us, right? If we want to see -- my big
3 thing was the pull-over, right? Whether or not anybody wants to
4 see what that thing looks like a little bit shaved down. And if
5 so, we'd wait a week, right? That's where I, kind of, am. And
6 I'm going to go kick it back -- well, Mr. May, I'll come back to
7 you at the end, all right?

8 COMMISSIONER MAY: Yes, sir.

9 CHAIRPERSON HILL: Now, let's see what everybody else
10 has to think. Oh, Mr. Acosta?

11 MR. ACOSTA: I'm not used to Webex. Hello?

12 CHAIRPERSON HILL: Yeah, I hear you.

13 MR. ACOSTA: Okay. You got me. So, I share your
14 concerns regarding what's a pull over and kind of the lack of some
15 clarity regarding the HPO's suggestions for the changes to the
16 façade. I guess at the end of the day, I would be willing to
17 consider taking this back one week, just to see what could be done
18 in terms of the pull-over. But also, getting a little more
19 specificity in terms of what HPO would like to see changed and
20 whether the applicant is willing to consider it, you know? One of
21 our primary obligations in terms of criteria is we are, in fact,
22 the final determiners of to be, whether the project meets the
23 preservation requirements. And I still feel a little
24 uncomfortable just looking at the renderings and this notion, you
25 know, is it too -- does it replicate too much? That's what I'm

1 still struggling with, frankly. But I understand we don't have
2 much time to deliberate on this, and we have to make a decision
3 soon. But, if at all possible, I would like to kind of wait and
4 kind of hear what the other agencies have to say.

5 CHAIRPERSON HILL: Okay. That's one.

6 Ms. John?

7 VICE-CHAIR JOHN: Mr. Chairman, I don't feel strongly
8 about the design. The only interest I have was how the district
9 would decide what its municipal interest was, in terms of how the
10 application meets the developmental standards. And so, I
11 understand from the Office of Planning and looking at the lot
12 occupancy and how that meets the municipal interests, we do not
13 apply the variance test. So, I am fine with that. I'm fine with
14 deciding today. I don't feel strongly about the design.

15 CHAIRPERSON HILL: Okay.

16 VICE-CHAIR JOHN: Okay.

17 CHAIRPERSON HILL: Mr. Blake?

18 BOARD MEMBER BLAKE: I would like to see what they could
19 do. Ms. Brown said they would consider moving something with
20 regard to the pull-through, and I would like to see a version of
21 that, if that could be put together within the next several days
22 for next week. As well, I would like to get HPO to comment on the
23 design that the CFA did. The reason being that we, the -- HPO
24 didn't actually comment on those design changes and how they might
25 feel about that, so I'd like to have that input. I would

1 recommend that for a meeting session. And I wouldn't -- and just
2 with the record open, I think we could make a decision just based
3 on those two pieces of input.

4 CHAIRPERSON HILL: Okay. All right. Let's see. Where
5 are we? Okay.

6 Ms. Brown, are you there? So, again, I don't have -- I
7 don't know -- how should I say this? We have, you're up against a
8 timeline, right, for the six months. I don't have, I'm also on
9 board with Ms. John in terms of the municipal interests and what
10 she has kind of spoken through with the regulations. I don't have
11 an issue with the design, but that's not my expertise, but I still
12 don't have an issue with the design. I understand what HPO's
13 saying in that, and I also understand the clients and what CFA was
14 speaking to, that they wanted to appear and understand it as one
15 building, you know, that this is their Embassy, right? Which I
16 can completely appreciate. So, in other words, I'm fine with the
17 design, right? But if you could get some clarification from HPO
18 as to what it is they're trying to figure out, if anything,
19 because that, it's a little too vague for me, right? I'd just
20 like some clarification. It doesn't necessarily mean we're going
21 to vote their way or not, right? But that might be helpful,
22 right? And then, do you know what your client's thoughts are on
23 making that pull-through a little bit tighter?

24 MS. BROWN: So, if I could respond to the Historic
25 Preservation Office question first. And that is, I'm not sure

1 | that we can get any guidance from staff because it would need to
2 | be endorsed by the Historic Preservation Review Board. Staff
3 | can't act independently. I mean, you could get guidance from
4 | them, but it's simply --

5 | COMMISSIONER MAY: They can provide advice to us, right?
6 | We're the arbiters right now. If we ask them for advice, they can
7 | give us advice, can they not? That's what we get --

8 | CHAIRPERSON HILL: Mr. Moy, that's a question for you.

9 | MR. MOY: Actually, I was going to defer that legal
10 | question to Mr. Ritting. I'm sorry to pass the ball around.

11 | CHAIRPERSON HILL: Okay. Mr. Ritting?

12 | MR. RITTING: I don't have an answer, to be honest with
13 | you --

14 | CHAIRPERSON HILL: Okay.

15 | MR. RITTING: -- on that question. I --

16 | CHAIRPERSON HILL: Mr. May -- I'm interrupting you, Mr.
17 | Ritting. I'm sorry. Commissioner May?

18 | COMMISSIONER MAY: Well, let me just try to help then.
19 | I don't really care as much about whether you talk to the Historic
20 | Preservation Office staff. I think that there is some guidance in
21 | their report. The general principal here is Secretary of Interior
22 | standards, which is that new construction should be
23 | distinguishable from the old. And what you have presented us with
24 | is a design that copies details from the original building onto
25 | the new building. That is not consistent with D.C. or federal

1 standards for historic preservation. So, some simplification of
2 the design. I mean, the size of windows, the general placement of
3 things. Nothing about the configuration really needs to change
4 very much. It's really about the detail. And so, some
5 simplification of the detailing so that it is sympathetic, but
6 does not copy. It's a pretty simple idea, most architects are
7 able to do that. And based on that kind of advice that comes
8 straight out of the Secretary's standards. So, I don't think that
9 the applicant needs to have extensive conversation with the
10 Historic Preservation Office. Certainly, that would be helpful if
11 we had time for them to be able to provide that, but if we don't,
12 this is what I think the marching orders should be. Really, what
13 they're showing us, I don't really care about what CFA says at
14 this point because what they've said in a meeting means nothing to
15 us because it's not in the letter. And what's in the letter are
16 concerns about detailing and concerns about pastiche. And what
17 I'm seeing here is pastiche. We need to be, you need to be
18 focusing on simplifying the details in order to make it a truly
19 successful historic -- or addition to a historic building.
20 Hopefully, that's helpful to you, but that's what I think we need.
21 And I guess, I'll just leave it at that.

22 CHAIRPERSON HILL: Okay. Now, I'm a little confused, I
23 guess, in so far as -- Mr. Acosta? Can you hear me? Are you in
24 agreement with Commissioner May's comments?

25 MR. ACOSTA: Given the criteria that we use to make this

1 determination, I would have to agree with him. I mean, if you
2 read it, it's basically historic preservation is determined by the
3 BZA and carrying out its section to ensure compatibility of its
4 landmarks and successful (audio interference) with the District of
5 Columbia Federal Regulations governing historic preservations
6 shall be required. (Audio interference) say the Secretary of
7 Interior standards in a way. We have reviewed projects similar to
8 that, at least in my Commission, I think.

9 CHAIRPERSON HILL: No, I was -- I'm sorry to interrupt
10 you, Mr. Acosta. So, Mr. Blake, are you in agreement with the
11 comments of Commissioner May?

12 BOARD MEMBER BLAKE: I would be in agreement with those
13 comments. It would be nice if we get some input from HPO on it
14 into the record just for our edification. That said, I would be
15 perfectly comfortable if we have to make a decision today, to go
16 in that direction.

17 CHAIRPERSON HILL: Okay. Well, then I'm confused, Mr.
18 Blake. So, okay.

19 Ms. Brown, what do you think you would go back to your
20 client with? And or, what do you think you might come back to us
21 with, if we were to set you free?

22 MS. BROWN: Well, a couple things. One, I understand
23 Mr. May's point and Mr. Acosta's point. I believe that we also --
24 while there are the standards for additions to historic buildings,
25 there are guidelines, and that it's not fixed. And I think there

1 is some flexibility, particularly in light of this being a Foreign
2 Mission and reciprocity issue.

3 The second issue is just a reminder that the Board's
4 role is to not disapprove. So, you are not necessarily approving
5 the design, you're just not disapproving it. So it's a distinction
6 that has a bit of a lower threshold for you.

7 And third, you know, we can take it back to the Embassy
8 and I think the architect has been trying to coordinate with them
9 now as we're conducting this hearing to see what flexibility. And
10 I think that what I'm seeing is that it's still, five feet would
11 be too narrow for them, but I don't have a full resolution of that
12 issue because it's ongoing right now. So --

13 CHAIRPERSON HILL: Ms. Brown, I got it. So, let's do
14 this, okay? So, I've got a long day ahead of me, okay? Mr.
15 Acosta, I don't know what your schedule is like. But why don't we
16 do this, we'll go ahead and let you work with your client for the
17 day and see what you think you might be able to come up with, with
18 the driveway and the little, you know, the little shaving of
19 whatever and any kind of clarity on the HPO issue. I'm okay. I
20 just want to kind of see the driveway thing. Otherwise, I'm, kind
21 of, okay, right? In the interest, also, of what is before us with
22 reciprocity, and the State Department has also given their
23 recommendation that the government has been helpful for us. I
24 don't want to get in the way of being helpful for them, meaning,
25 at least they can get an answer, right? So, we can at least have

1 a vote one way or the other, okay? And so, we can see what
2 happens at the end of the day. So, why don't you go ahead and
3 take a look at, again, any kind of clarity that you may be able to
4 help with the HPO questions. Even though you got two okays with
5 the design right now, whatever that means, right? And then, just,
6 kind of looking into that pull-over thing, right? And so, then,
7 does that sound good? Unless some of the Board members have got
8 an issue with that process, raise your hand.

9 And, Mr. Acosta, you're around for the day?

10 Okay. Hold on, Commissioner, one second.

11 Mr. Acosta, you're around for the day?

12 MR. ACOSTA: For today or for next --

13 CHAIRPERSON HILL: Today. Today.

14 MR. ACOSTA: Yes, I'm around.

15 CHAIRPERSON HILL: Okay. All right. Commissioner May,
16 you had a thought?

17 COMMISSIONER MAY: Yeah. I mean, I'm not sure what can
18 be accomplished on the design question between now and the end of
19 the day. I would rather just put the whole thing off until next
20 week, if we could do it, and then just see what they can come back
21 with by then. Would that work for you, Mr. Acosta?

22 MR. ACOSTA: It does. I'm here next Wednesday.

23 CHAIRPERSON HILL: Okay. All right. I guess we can do
24 that too. Ms. Brown, did you have a thought on that?

25 MS. BROWN: Yeah. I just want to make sure I get some

1 clarity on what we're going back to HPO for is to get design
2 guidance on how to sort of dilute the design detail? Because I
3 think Mr. May, you're absolutely right, that Mr. Nottingham knows
4 how to do that. I think it was just whether the client, the
5 Embassy who felt very strongly about not doing that and relying on
6 the Commission of Fine Arts' recommendation. That's why I'm not
7 clear. I mean, so, we can certainly talk to HPO. They can tell us
8 that the elements need to be diluted a bit. I think Mr.
9 Nottingham knows how to do that. I think it's just a question of
10 whether it gets done.

11 And then, secondly, we're happy to talk to them about
12 the, see if we can get more clarity on sort of the lay-by area.
13 And --

14 COMMISSIONER MAY: Okay. So, Mr. Chairman, you mind if
15 I go ahead?

16 CHAIRPERSON HILL: Go ahead.

17 COMMISSIONER MAY: First of all, I would never use the
18 word "dilute." Right? Dilute is a negative connotation, right?
19 Simplify, refine, right? Those are the words. I am perfectly
20 happy to have Mr. Nottingham take that charge on by himself in
21 consultation with the Embassy and whatever they're willing to do.
22 Whether or not you go back to the Historic Preservation Office I
23 think is kind of up to you because if, you know, if Mr. Nottingham
24 feels like that would be beneficial, then yeah, I mean, I think
25 that would be fine. For me, it's less critical that he goes back

1 to HPO than he makes an attempt to refine it. Now, if you come
2 back to us next week and say, you know, we tried and the Embassy
3 wouldn't agree with any of the changes, then we would vote based
4 on what you present next week. I hope that's not going to be the
5 case because I do think that the design can be improved and be
6 more consistent with the Secretary's standards, but we'll see.

7 MS. BROWN: That helps. Thank you, Mr. May.

8 COMMISSIONER MAY: Okay.

9 CHAIRPERSON HILL: Okay. All right. So then, we'll get
10 whatever we get from you, Ms. Brown, by when?

11 MS. BROWN: I guess, it's sort of up to -- when's the
12 last that we could submit something?

13 CHAIRPERSON HILL: I don't know. Mr. Moy, when's the
14 last thing they could submit something?

15 MR. MOY: I would think October 5th, which is the day
16 before your scheduled decision.

17 CHAIRPERSON HILL: Okay. If you can get it to us, I
18 mean, 3:00 on the 5th so we've got a couple hours to take a look
19 at it?

20 MS. BROWN: And if we can get it in sooner, we will. I
21 just wanted to see what our parameters were.

22 CHAIRPERSON HILL: Okay. Has anybody got anything else?
23 I do have to ask, who puts the cars in the parking spots in the
24 diagrams, if you can raise your hand? Who chooses the cars in the
25 architectural drawings? Is it the architect? Nobody knows?

1 MR. ANDRES: Commissioner -- they're Mr. Nottingham's
2 drawings.

3 CHAIRPERSON HILL: Mr. Nottingham, do you pick --

4 MR. NOTTINGHAM: Someone --

5 CHAIRPERSON HILL: -- the cars --

6 MR. NOTTINGHAM: -- here --

7 CHAIRPERSON HILL: -- that go in these drawings?

8 MR. NOTTINGHAM: Someone here did.

9 CHAIRPERSON HILL: Someone here did. Okay. Somebody
10 put a Ferrari 328 GTS in the elevator. Okay. All right.

11 MR. NOTTINGHAM: Very well could be.

12 CHAIRPERSON HILL: I just had to say. Because the UAE
13 had to say it. Okay. All right. Okay. All right. Well, good
14 luck. I don't know. All right. So, there you go.

15 Ms. Brown, anything else?

16 MS. BROWN: No, sir. Thank you for your time today.

17 CHAIRPERSON HILL: Okay. Thank you, all. You all are
18 excused. We'll see what happens.

19 Okay. So, Mr. Moy and Board members, I guess it's
20 12:40. I'd really love to get through this Tudor Place thing. I
21 don't know if we can try to. The problem is I kind of wanted to
22 talk to the attorney. And so, meaning, have an emergency closed
23 meeting, right? Unless you all think you're okay without talking
24 to the attorney. Okay. You all know what I'm talking about? I'm
25 talking about 17984-A as in apple, right? So, my question is,

1 does anybody need to talk to the attorney?

2 Commissioner May?

3 COMMISSIONER MAY: I do not need to talk to the
4 attorney. I will not be participating in this case.

5 CHAIRPERSON HILL: Who's on this case, Mr. May?

6 COMMISSIONER MAY: Not, no other Zoning Commissioner is
7 on it.

8 CHAIRPERSON HILL: Oh.

9 COMMISSIONER MAY: This is just a party status
10 consideration.

11 CHAIRPERSON HILL: Oh, yeah, yeah, yeah. That --

12 COMMISSIONER MAY: So, there will not --

13 CHAIRPERSON HILL: -- and also, another couple of
14 motions.

15 COMMISSIONER MAY: Right. In any case, I'm not
16 participating.

17 CHAIRPERSON HILL: Okay. So then, Ms. John, Mr. Smith,
18 Mr. Blake, does anybody want to talk to the attorneys?

19 VICE-CHAIR JOHN: Mr. Chairman, it would help to clarify
20 a couple issues.

21 CHAIRPERSON HILL: Okay. That's all I needed. I just
22 needed one other. So then, we'll just try to push through and --
23 why don't -- do I need to read the emergency motion thing first?
24 And then, while we're switching over, we can all go to the
25 restroom if we wanted to, okay?

1 Mr. Moy, you don't have to call the case first, do you?
2 MR. MOY: No, you do not. I do not have to call the
3 case.

4 CHAIRPERSON HILL: Okay. Great. As Chairperson of the
5 Board of Adjustment of the District of Columbia and in accordance
6 with Section 407 of the District of Columbia Administrative
7 Procedure Act, I move that the Board of Adjustment hold a closed
8 emergency meeting on 9/29/2021 for the purposes of seeking legal
9 advice, but not making any decisions on case 17984-A as in apple;
10 deliberate upon, but not vote on case 17984-A as in apple for
11 reasons cited in D.C. Official Code Section 2-575(b)13.

12 Is there a second, Ms. John?

13 VICE-CHAIR JOHN: Second.

14 CHAIRPERSON HILL: Okay. Mr. Moy, if you could take a
15 roll call, please?

16 MR. MOY: When I call each of your names, if you would
17 please respond with a yes, or no, or abstain to the motion made by
18 Chairman Hill to call an emergency closed meeting. And, yes.

19 Mr. Smith?

20 BOARD MEMBER SMITH: Yes.

21 MR. MOY: Mr. Blake?

22 BOARD MEMBER BLAKE: Yes.

23 MR. MOY: Vice-Chair John?

24 VICE-CHAIR JOHN: Yes.

25 MR. MOY: Chairman Hill?

1 CHAIRPERSON HILL: Yes.

2 MR. MOY: Staff would record the vote as 4-0-1. This is
3 on the motion made by Chairman Hill to call an emergency closed
4 meeting to meet with the Board's counselors. And the motion was
5 seconded by Vice Chair John. Also in support of the motion is Mr.
6 Smith and Mr. Blake and, of course, Vice-Chair John and Chairman
7 Hill. No others participated on the vote. The motion carries on
8 a vote of 4-0-1-.

9 CHAIRPERSON HILL: Okay. Great. Thank you. It appears
10 the motion has passed. I hereby give notice of the Board's Zoning
11 Adjustment recess is proceeding at 12:44 on 9/29/2021 to hold a
12 closed emergency meeting pursuant to District of Columbia
13 Administrative Procedures Act. A written copy of this notice will
14 be posted in the Jerrily R. Kress Memorial Hearing Room at this
15 time.

16 Okay. You guys, there will be another link that will be
17 sent to you. I'm going to leave this link. I'll meet you over
18 there in the other room. Thank you.

19 (Whereupon, the matter recessed for an emergency closed
20 meeting.)

21 CHAIRPERSON HILL: All right. Mr. Moy, can you hear me?

22 MR. MOY: Yes, I can.

23 CHAIRPERSON HILL: Can you call this next thing in? And
24 I guess, is Mr. Brown around? Or the applicant's attorney -- I
25 mean, sorry. The party status people's attorney?

1 MR. MOY: He should be. Mr. Young?

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

3 CHAIRPERSON HILL: Oh, great. Thanks, Mr. Brown.

4 Mr. Moy, you want to call the case first?

5 MR. MOY: Yes, sir. The Board is back in session. The
6 time is that about, is at or about 1:11 p.m. Before the Board is,
7 in a meeting session, is the request for advanced party status
8 from Outerbridge Horsey, who's being represented by his attorney.
9 This goes to the case, which is a modification of significance in
10 under Application No. 17984-A of Tudor Place Foundation, Inc. And
11 for the record, I'll cite for the transcript that this
12 modification of significance is from the Board of Zoning
13 Adjustment Order Number 17984, effective date November 20th, 2009,
14 to construct a new two-story with basement addition to an existing
15 detached three-story with basement accessory garage in the R-19
16 Zone. And this is special exception relief under the use
17 provisions of Subtitle U, Section 203.1(o) as in Oscar. The
18 property is located at 1644 31st Street, Northwest and 1605 32nd
19 Street, Northwest, Square 1281, Lots, Lot 835.

20 CHAIRPERSON HILL: Okay, great. Mr. Brown, can you
21 introduce yourself for the record, please?

22 MR. BROWN: It's David Brown of the Law Firm of Knopf
23 and Brown representing Outerbridge Horsey and 13 other homeowners
24 on 32nd street, whose names are in the application.

25 CHAIRPERSON HILL: Got you. Mr. Kadlecik, could you

1 introduce yourself for the record, please?

2 MR. KADLECEK: Hi. Good afternoon. Cary Kadlecak from
3 the Law Firm of Goulston and Storrs. I represent the applicant,
4 Tudor Place.

5 CHAIRPERSON HILL: Okay, great. Thank you. All right.
6 Mr. Brown, we've all read your filing in terms of how you believe
7 your client is meeting the criteria for us to grant party status.
8 I don't particularly have any questions to you. Does the Board
9 have any questions for Mr. Brown about his clients' meeting the
10 standard for party status? Okay.

11 Mr. Kadlecak, do you have any questions?

12 MR. KADLECEK: No questions, thank you.

13 CHAIRPERSON HILL: Okay. So, Mr. Brown, I think we're
14 going to go ahead and award you and your clients' party status.
15 Okay? And so, that's something that I needed to do first.

16 Now, in terms of the motion for, I guess, the
17 continuance, it's my understanding that we have to put that onto a
18 hearing so that, you know, people can have an opportunity to,
19 meaning, Mr. Kadlecak can have an opportunity to ask questions
20 about the motion and all that. And there is everything that's in
21 the filings about the motion. And so, we're probably going to do
22 that next week. Mr. Moy can go ahead and let you know after this
23 is over. There's nothing we need from you -- at least, there's
24 nothing I need from you right now. There's everything that's in
25 the record right now that you guys have already responded to. Mr.

1 Kadlecek has already also responded to everything. And I will
2 give you an, both an opportunity to ask questions of me in a
3 moment. But is the Board -- does the Board have any questions for
4 either Mr. Brown or Mr. Kadlecek? Okay. Neither one does.

5 Before you speak, Mr. Brown, just, kind of -- so what,
6 again, the attorneys have told me is that what we have done in the
7 past as well, and I know we have, is we've determined -- like,
8 you're asking for advanced party status, which is great. We've
9 also done, like, the day of the hearing, we've awarded party
10 status or not. We've also, the day of the hearing, determined
11 whether or not to grant motions for a continuance or anything like
12 that as well. So, I'm trying to get this out of, you know, I'm
13 trying to give you the opportunity to know whether or not there
14 will or won't be a continuance next week as opposed to actually
15 the day of the hearing. So that's kind of my thought process
16 through this. So, I will let you ask the questions if you have
17 any, Mr. Brown?

18 MR. BROWN: The motion for continuance is based upon the
19 fact that we have thus far been unable to obtain the ability to
20 inspect Board records in this case at an earlier time that
21 apparently are not immediately available in the Board's office or
22 online. And we've been somewhat frustrated because we feel that
23 inspecting these records is necessary to case preparation, which
24 is why I, kind of, went out of school and made the motion, even
25 before being granted party status, so everyone would understand

1 that we regard this of -- the lack of access to these records as a
2 serious problem that we need to have rectified before the hearing
3 takes place. We're certainly not looking to prolong the process.
4 That's why I sought advanced party status and wanted to bring this
5 issue to the attention of the Board as soon as it was, as it was
6 clear to me that we weren't making any progress.

7 CHAIRPERSON HILL: I got you. So, Mr. Brown, we did
8 read, I did read your motion, and I did read the response to the
9 motion. And so, you know, two comments. One is that, you know,
10 what is before us is the modification. Like, we're not going to
11 revisit what was the original decision of the Board, right? We're
12 here for the modification. So, I'm just making a point. And
13 that, so I heard you, you've been heard. And we'll have an
14 opportunity to discuss this next week. Okay?

15 MR. BROWN: Thank you.

16 CHAIRPERSON HILL: Mr. Kadlecak? Do you have a comment
17 or question?

18 MR. KADLECEK: I don't. Thank you, Mr. Chair. I think
19 we laid out our opposition in our written pleadings and it sounds
20 like the Board has read that. You know, we're happy to discuss it
21 next week. But I will say that our prehearing submission would be
22 due next week, which is three weeks before the scheduled hearing
23 date. So, we would want to know by then if there's going to be a
24 continuance or not. Just in terms of --

25 CHAIRPERSON HILL: Your prehearing statement would be

1 due the end of the day?

2 MR. KADLECEK: Yeah, end of the day.

3 CHAIRPERSON HILL: End of the day. Okay. Well, we'll
4 put you all first.

5 MR. KADLECEK: Yeah, we would appreciate that.

6 CHAIRPERSON HILL: Okay. Mr. Moy, if we could make sure
7 we do this first? Okay.

8 MR. MOY: Yes, sir. I'll set that up for you, sir.

9 CHAIRPERSON HILL: Okay, great. Okay, you guys. We'll
10 talk to you next week.

11 VICE-CHAIR JOHN: Mr. Chairman?

12 CHAIRPERSON HILL: Yes, Vice-Chair?

13 VICE-CHAIR JOHN: Are we putting this on the hearing
14 calendar or on the decision calendar?

15 CHAIRPERSON HILL: This is going to go under the hearing
16 calendar.

17 VICE-CHAIR JOHN: Okay.

18 CHAIRPERSON HILL: We do have to hear from the parties.

19 VICE-CHAIR JOHN: Okay. Thank you.

20 CHAIRPERSON HILL: Okay.

21 VICE-CHAIR JOHN: Thank you.

22 CHAIRPERSON HILL: All right. Thank you. Thank you,
23 all. Bye-bye.

24 Mr. Brown -- hold on. Hold on. Mr. -- I lost Mr.
25 Kadlecek. Mr. Brown, were you trying to say something? But now

1 I've lost Mr. Kadlecuk. Let me see if I can get Mr. Kadlecuk
2 back. Mr. Brown, what are you trying to say? Yeah, I still can't
3 hear you, Mr. Brown. You're on mute.

4 MR. BROWN: The question is whether or not the
5 information provided to the Board in my response to the opposition
6 to our motion is going to be considered part of the record or do I
7 have -- would I have an opportunity to resubmit it on the grounds
8 that -- if Mr. Kadlecuk is correct, that it was improper to file
9 it? Or is that something that will be argued next week as well?

10 CHAIRPERSON HILL: Mr. Rice, can you hear me? Is it Mr.
11 Rice that's on with us? We've lost Mr. Kadlecuk.

12 MR. RICE: Yes, sir. I can.

13 CHAIRPERSON HILL: Is that something that can be argued
14 next week?

15 MR. RICE: Given the fact that, you know, Mr. Kadlecuk
16 isn't present, and the strike and reply haven't been determined, I
17 think it would be procedurally something that would be considered
18 next week.

19 CHAIRPERSON HILL: Okay. All right. Mr. Brown, we'll
20 talk about it next week.

21 MR. BROWN: Thank you very much.

22 CHAIRPERSON HILL: Thank you. Bye-bye.

23 All right. You guys, so it's 1:20. We want to say
24 2:00? Okay. All right. Great. Thank you. Bye-bye.

25 Oh, Ms. John? Oh, you're just saying bye-bye? Oh.

1 VICE-CHAIR JOHN: Saying goodbye.

2 (Whereupon, the matter recessed for lunch at 1:20 p.m.
3 and reconvened at 2:16 p.m.)

4 CHAIRPERSON HILL: You can call us back in, Mr. Moy.

5 MR. MOY: We're at -- the Board is -- the Board has
6 returned to its hearing session after a brief lunch recess. And
7 the time is at or about 2:16 p.m.

8 CHAIRPERSON HILL: Okay. So, the next one I got is
9 20489. Is that correct?

10 MR. MOY: That's what I have also, Mr. Chairman.

11 CHAIRPERSON HILL: Okay. Let's go ahead and do that.

12 MR. MOY: Very well. So, with that, the next case
13 application before the Board is 20489 of the Culinary District
14 Inc., as amended for use variance from the nonconforming use
15 requirement of Subtitle C, Section 204.1. This would expand a
16 restaurant use to the second story in an existing attached two-
17 story with basement restaurant in the RF-1 Zone. The property is
18 located at 1914 9th Street, Northwest, Square 0361, Lots 123. And
19 just a second. And we do have a letter of opposition that was
20 filed late, probably in the 24-hour block. So, that currently is
21 not in the record. It's a letter in opposition from a neighbor at
22 209 T Street, Northwest.

23 CHAIRPERSON HILL: Okay. Let's see. Let me go through
24 this first.

25 Mr. Brown, are you there?

1 MR. BROWN: I am, Chairman Hill.

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

4 MR. BROWN: Certainly. Patrick Brown from Greenstein
5 DeLorme and Luchs on behalf of the applicant, Culinary District.
6 I don't -- yes. My client, Mr. Mostofa is on.

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

9 MR. MOSTOFA: Hello, can you guys hear me?

10 CHAIRPERSON HILL: Yeah. Can you go ahead and introduce
11 yourself for the record?

12 MR. MOSTOFA: Yeah, I'm Sohan Mostofa. I'm one of the
13 owners over at the Culinary District at 1914 9th Street,
14 Northwest.

15 CHAIRPERSON HILL: Got it. Mr. Mostofa, could you turn
16 on your camera for us, unless there's an issue?

17 MR. MOSTOFA: I don't know what's wrong with my camera
18 currently. I'm trying to get it to work. But --

19 CHAIRPERSON HILL: Okay.

20 MR. MOSTOFA: Sorry about that.

21 CHAIRPERSON HILL: That's all right. Just try if you
22 can. All right. Let's see. And then, that's it. Okay.

23 Mr. Brown, let's see. I'm going to let you go ahead and
24 walk us through your presentation. We'll see where we get as to,
25 you know, whether we need additional information concerning this

1 whole equitable estoppel allegation. And so, let's go with that.

2 I'm just aware, Mr. Brown, there's so many Browns. I
3 see them in applications all the time. There's two Mr. Browns,
4 there's one Ms. Brown, so it's confusing. I remembered how many
5 Browns there are. All right.

6 Mr. Brown, you may begin whenever you'd like.

7 MR. BROWN: Yes. Chairman Hill, if I could ask, the
8 letter of opposition, I haven't seen --

9 CHAIRPERSON HILL: Right.

10 MR. BROWN: -- because it's not in the record.

11 CHAIRPERSON HILL: Yeah. Yeah. Mr. Brown, hold on a
12 second. I forgot. Thank you for clarifying that.

13 Unless the Board members have an issue, I'd like to see
14 the letter of opposition. So, we'll go ahead and allow that into
15 the record.

16 And then, Mr. Brown, know it'll just kind of refresh,
17 right? And so, I'll let you know when it's in there, okay?

18 MR. BROWN: All right. Very good. And I could, I --
19 Mr. Young, I have a PowerPoint that was --

20 CHAIRPERSON HILL: Perfect.

21 MR. BROWN: If we could go to page two?

22 CHAIRPERSON HILL: Can you -- Mr. Young, can you throw
23 up 15 minutes on the clock just so I know where we are? And I
24 forget, Mr. Young, that clock doesn't then count backwards, right?
25 Once you get to zero, it gets to zero, right?

1 MR. YOUNG: That's correct.

2 CHAIRPERSON HILL: Okay.

3 MR. YOUNG: I could get a timer going, if you want.

4 CHAIRPERSON HILL: Yeah. Let's go forward. Let's go
5 forward then, okay?

6 MR. BROWN: Chairman Hill, I hope not to take 15
7 minutes.

8 CHAIRPERSON HILL: That's all right. Just thank you
9 very much. It's more for me to figure out how it works anyways.
10 But thank you, Mr. Brown.

11 MR. BROWN: If I could, just to make sure we're properly
12 focused. We're here today only for the use variance for the
13 continued use of the second floor. We withdrew the special
14 exception for the rooftop deck. And I would point out, I'm sure
15 the Board is aware, the Office of Planning, approval without
16 conditions; ANC-1B, unanimous support; DDOT, no objections to
17 approval. And until this letter arrived, no person or party in
18 opposition. Just real quickly, a --

19 CHAIRPERSON HILL: Sure.

20 MR. BROWN: -- background.

21 CHAIRPERSON HILL: Go ahead, Mr. Brown. Sorry.

22 MR. BROWN: And I'll go through -- if you could go to
23 page four, lay this out. This is a 1900s era row building, two-
24 story with basement, single entrance and internal staircase. This
25 property was zoned in 1990 -- rezoned from CM-1, which is an

1 industrial zone. It did not prevent -- did not permit
2 residential. It was rezoned to RF-1. In one of the complicating
3 factors of this case, DCRA continued to identify the property and
4 its processing of C of O's and other matters as CM-1 for about the
5 next 17 years until 2007. We documented through a chart, which I
6 won't go through, commercial uses of the entire building since at
7 least 1986 and restaurant use of the entire building since 2000.
8 From 2000 to 2014, the entire building was used by the Portico
9 Restaurant and then, from 2014 to 2019, the entire building was
10 used for Dino's Grotto, another restaurant.

11 And if we could go to page five, this is page five and
12 six are photos of the second-floor restaurant space when Culinary
13 District assumed the lease for the property. You'll see it had
14 been configured as a restaurant. In page six, the photograph
15 there, it was water damage that required the removal of the
16 drywall. But you can see that it was configured as a restaurant.
17 And we have provided other photos in the record showing the
18 restaurant use prior to that.

19 If I could skip along to slide ten? And you'll see the
20 chart, and I don't want to go through it, of the C of O history,
21 but you'll see the absence of any residential uses in the
22 available permit records going back to 1986. In December 2019
23 Culinary District leased the entire building. Culinary District
24 is a first-time restaurant operator in the District of Columbia.
25 They obtained permits. One permit for interior renovation of the

1 basement and first floor, and a second permit, interior renovation
2 of the second floor. All the permitted work under both permits
3 was completed, inspected, and a certificate of occupancy was
4 issued for the basement and second floor. And when Culinary
5 District went to -- in the normal course, which should've been and
6 what was expected to be routine, they were denied the certificate
7 of occupancy to coincide with the building permit that was issued
8 for the second floor. And that's what occasioned this use
9 variance application.

10 If you see page 11, this is the completed -- permitted,
11 completed, and inspected second floor of the restaurant. Culinary
12 District is ready to open. And as you can see from the before and
13 after photos, made a substantial, approximately \$300,000
14 investment based on the permits to finish the second floor.

15 Going through quickly, and I think my colleague or Steve
16 Cochran at the Office of Planning did a complete job of analyzing
17 the use variance test. But the entire building is, again, dating
18 to 1900 is configured as a single unit. There's a well-documented
19 long-term history of a restaurant use of the building. No
20 residential use historically. And Culinary District made very
21 substantial approved and completed improvements to the second
22 floor.

23 As far as the undue hardship test, the investments made
24 already largely would be lost in attempting to convert this to a
25 residential use. The third floor, this third floor, the second

1 floor of the building is an integral part of Culinary District's
2 business plan and its financial viability. Particularly, in these
3 days of spaced-out seating, additional space is extremely
4 valuable. What's -- the building, as it exists now, can't easily
5 be converted to a separate residential unit on the second floor.
6 Our estimates are about \$300,000, that's conservatively, to
7 convert the second-floor restaurant space to a one or maybe two
8 residential units. And at the end of the day, this is not going
9 to be very desirable residential space above a two-story
10 restaurant.

11 And then, the final test, no substantial detriment to
12 the public good or impairment of the regulations. This is a very
13 limited variance, only to the second floor. No residential, no
14 existing, or even potential or historical residential use will be
15 lost. It brings the entire building into conformance with the
16 existing restaurant use. Based on -- as documented by the ANC,
17 very minimal additional impact to the adjoining properties. This
18 is, and both in the OP report and my prehearing statement, we
19 provided zoning maps to show that, while this particular property
20 is RF-1, it's in really mix-used area, ARTS-2, ARTS-3, MU-4, and
21 even the uses in some of the RF-1 properties are non-residential.

22 And lastly, Mr. Mostofa can testify to this, that his
23 restaurant draws heavily from the local neighborhood and is an
24 asset to the neighborhood, not a detriment.

25 I've included in my prehearing statement and my

1 presentation here the estoppel argument. I felt duty-bound to
2 make that argument. I think it fits into the classic estoppel
3 case. But I think this case can also be resolved more readily
4 through the use variance, which I think we've made the four-
5 corners test for that. I've laid out the estoppel elements in
6 both my prehearing statements and here. And I don't want to --
7 unless the Board would like me to, I don't want to delve into that
8 too deeply, at least at this preliminary stage, given the pending
9 use variance.

10 CHAIRPERSON HILL: All right. Mr. Brown, is that it, or
11 no?

12 MR. BROWN: Yeah, unless you want me to walk through the
13 estoppel test. I'm willing --

14 CHAIRPERSON HILL: Well, you have the use variance.

15 MR. BROWN: Yeah. And I think this case, an estoppel
16 argument is a strictly legal argument. And I think given the
17 strength of the use of --

18 CHAIRPERSON HILL: I was going to say, why don't you
19 walk us -- you've got in 12, 13, and 14, right? The next three
20 slides.

21 MR. BROWN: Well, I've only got one slide for estoppel.

22 CHAIRPERSON HILL: Forget about the estoppel.

23 MR. BROWN: In 14 --

24 CHAIRPERSON HILL: You didn't go through --

25 MR. BROWN: Pardon?

1 CHAIRPERSON HILL: The next two slides, the next three
2 slides, right?

3 MR. BROWN: The only slide having to do with estoppel is
4 15.

5 CHAIRPERSON HILL: No, I'm not talking about 15. I was
6 saying, you could walk us through these slides. But you don't
7 have to if you don't want to.

8 MR. BROWN: Well, I already did.

9 CHAIRPERSON HILL: Oh, I'm sorry, I got lost.

10 MR. BROWN: I was just --

11 CHAIRPERSON HILL: You went back?

12 MR. BROWN: I was speaking rather than reading the --

13 CHAIRPERSON HILL: Got it. Okay. In that slide on 11,
14 so where did that, where do those stairs go up to right now?

15 MR. BROWN: Mr. Mostofa can confirm, but I believe they
16 go to the roof.

17 CHAIRPERSON HILL: Got it. And you guys pulled the
18 request for the roof deck, currently --

19 MR. BROWN: Yes.

20 CHAIRPERSON HILL: -- correct? Okay. All right.

21 MR. BROWN: And patrons --

22 CHAIRPERSON HILL: I'm going --

23 MR. BROWN: -- are not authorized to go up there.

24 CHAIRPERSON HILL: Got it. You want to drop the
25 presentation, Mr. Young? Thank you.

1 Does anyone have any questions for the applicant? And
2 if so, raise your hand. We can hear from the Office of Planning.
3 I can see that my Board members are thinking.

4 Mr. Cochran, can you hear me?

5 MR. COCHRAN: Yes. Can you hear me, sir?

6 CHAIRPERSON HILL: Yes, please. Could you please go
7 through your report for us, if you wouldn't mind?

8 MR. COCHRAN: Sure. Okay. I'm Steve Cochran, I'm
9 representing the Office of Planning in this case. And OP, as you
10 know, has recommended that the Board approve the use variance from
11 U 204.1 to permit the second floor of the building to be used as a
12 restaurant. The first floor and the basement already is used as a
13 restaurant and has a C of O for restaurant use.

14 What the applicant is proposing would expand the
15 restaurant use to the second floor, a floor that hasn't been used
16 residentially for at least 30 years, and that seems to have been
17 used for restaurant use from 2000 to 2019. The need for a
18 variance arose after the applicant was given a building permit to
19 renovate the second floor for restaurant use, and it completed
20 that work, but then didn't get a C of O for that use because the
21 permitted status of that floor's previous use as a restaurant was
22 unclear. It meets the use variance tests for exceptional
23 conditions. There is a previous use as a restaurant at least for
24 the basement and first floor and possibly for the second floor.
25 They've completed, the work that was approved by the building

1 permit for the second floor, and there's an infeasibility in
2 converting it to a residential use, which I could get into a
3 little bit later.

4 For the undue hardship, the work is already complete at
5 significant expense. If they didn't get the variance, they would
6 lose 26 seats for the larger restaurant, which would impact its
7 viability as the applicant has documented. The restaurant use
8 here has turned over several times in the last 20 years.

9 And then, there'd be the difficulty and the expense
10 converting that second floor to a residential use.

11 No substantial detriment to the public good. There's no
12 loss of an existing residential unit. We know that at least for
13 the last 30 years, there hasn't been any residential use in the
14 building. So there wouldn't be an introduction to the new use
15 either. It's mostly a neighborhood restaurant. It's a block and
16 a half from Metro. It has a walk score of 99, so it doesn't seem
17 like it would impact the public good any more than what is now
18 existing in the building now and that's permitted and has a C of
19 O.

20 No substantial detriment to the purpose of the zoning
21 regs. It's basically the retention of the neighborhood character
22 which is one purpose of the zoning regulations. So it has long
23 been substantially a neighborhood with a substantial mix of uses,
24 sometimes within the same block and sometimes within the same
25 building. This would be a mix of uses within the same block, a

1 block that is substantially commercial on both sides of the
2 street, although the east side of the street is a different zone
3 that does permit commercial use by right. It wouldn't impair the
4 regulations to retain the restaurant use in a building with no
5 residential use in the last 30 years or -- and we don't have a
6 record of the use before that that I'm aware of. And there's no
7 vacant space that could be converted to residential use, so
8 without at least substantial changes to the building. The
9 applicant estimates that it would cost about \$300,000 if they did
10 the noise and sound insulation, the change of the staircases, et
11 cetera. I don't know whether that's a correct figure or not.
12 It's what the applicant said.

13 But OP's position might be different if the space hadn't
14 been used residentially in recent past or was now vacant. And if
15 it had a second entrance as well as the case with another
16 application near Lincoln Park that the Board recently denied.
17 This is a different case than that one. So, we do recommend that
18 you approve the use variance.

19 CHAIRPERSON HILL: Okay. Thanks, Mr. Cochran. Does
20 anybody have any questions for the Office of Planning?

21 Mr. Smith?

22 BOARD MEMBER SMITH: Sure. I'm just trying to get at
23 the estoppel case here that the applicant was trying to build. I
24 mean, yeah, the applicant was trying to build.

25 Mr. Cochran, to your knowledge -- there are

1 architectural plans within the record, but they aren't stamped by
2 DCRA.

3 MR. COCHRAN: Right.

4 BOARD MEMBER SMITH: Is there a copy, or to your
5 knowledge, have you seen a copy of the stamped building plans from
6 DCRA that shows that DCRA did approve that upper floor space
7 knowing that it looks like there was a restaurant space apparently
8 on the second floor with seats and a bar?

9 MR. COCHRAN: No, I've seen only what's in the record.

10 BOARD MEMBER SMITH: Okay. Another question, then. The
11 applicant stated and you also stated that the space was used as a
12 restaurant, Dino's Grotto since 2000, the year 2000 all the way
13 through 2019. Have you seen building permits that may date from
14 2000 when that restaurant space was open --

15 MR. COCHRAN: No. I haven't seen building permits. I
16 do know it looked like there was a second-floor use when I was
17 eating on the first floor at Dino's restaurant years ago.

18 BOARD MEMBER SMITH: Okay.

19 MR. COCHRAN: But I have not seen building permits.

20 BOARD MEMBER SMITH: Okay. Those are the only questions
21 that I had for Mr. Cochran. Is the zoning administrator here?

22 CHAIRPERSON HILL: Mr. Moy? I don't think so, right?

23 MR. MOY: I'm sorry, Mr. Chairman. Is there a question?

24 CHAIRPERSON HILL: The question was whether or not the
25 ZA was here by any chance.

1 MR. MOY: No, he is not. He will not be here today.
2 CHAIRPERSON HILL: Okay.
3 BOARD MEMBER SMITH: Okay.
4 CHAIRPERSON HILL: Mr. Smith.
5 BOARD MEMBER SMITH: Thank you.
6 CHAIRPERSON HILL: All right. Anyone else for the
7 Office of Planning?
8 Mr. Brown, do you have any questions for the Office of
9 Planning?
10 MR. BROWN: No, I do not.
11 CHAIRPERSON HILL: Mr. Young, is there anyone here
12 wishing to testify?
13 MR. YOUNG: We do not.
14 CHAIRPERSON HILL: Okay. All right. Well, there is
15 something in the record again in this letter of opposition. I
16 don't know, Mr. Brown, if you've had a chance to take a look at it
17 yet?
18 MR. BROWN: I have briefly. And we had no contact with
19 this gentleman. He's not an immediate neighbor and, in fact, his
20 property faces on T Street and is separated by several properties.
21 I don't think -- the things that he raised are either not relevant
22 or not correct. I mean, I think one of the points he makes is
23 that somehow, this would create a new situation. And the fact is
24 that since at least 2000, this space has been used as a
25 restaurant, the basement, first, and second floor. And the

1 expectation -- reasonable expectation is that continued use of the
2 third floor will not change what has always been the situation.

3 CHAIRPERSON HILL: All right, Mr. Brown. That's okay.
4 Okay. I appreciate that. All right. Let's see. Does anyone
5 have any more questions?

6 Ms. John?

7 VICE-CHAIR JOHN: Mr. Brown, I don't recall if there was
8 a copy of the application for the certificate of occupancy -- I'm
9 sorry, for the building permit in the record?

10 MR. BROWN: I do not believe so. I provided the actual
11 building permits, but not the applications.

12 VICE-CHAIR JOHN: And did you also provide, I think you
13 did, copies of the applications for the C of O's for prior years?

14 MR. BROWN: I didn't -- I don't believe I provided them
15 in the BZA record. Mr. Cochran had requested them, and I provided
16 them to him.

17 VICE-CHAIR JOHN: So, I thought, and I could be wrong,
18 that in your records, I saw some applications. And on -- I know
19 it said basement and first floor, but that's fine. I can take
20 another look.

21 That's all, Mr. Chairman.

22 CHAIRPERSON HILL: All right.

23 MR. BROWN: Thank you.

24 CHAIRPERSON HILL: Thank you, Ms. John. Anyone else?

25 Mr. -- I'm sorry, Commissioner May?

1 COMMISSIONER MAY: Yeah. A couple quick questions for
2 the applicant. The party in opposition included a photograph of
3 the rear of the property that shows some sort of a shelter and
4 other equipment and such. I'm not really so concerned about the
5 equipment, but does that shelter indicate that there's some sort
6 of seating in the rear for patrons?

7 MR. BROWN: Mr. Mostofa, can you answer that?

8 CHAIRPERSON HILL: I do not see Mr. Mostofa. Oh, there
9 we go.

10 MR. BROWN: Oh, there he is.

11 COMMISSIONER MAY: There he is, yeah.

12 MR. MOSTOFA: All right. Can you guys hear me now? I
13 was --

14 COMMISSIONER MAY: Yes.

15 MR. MOSTOFA: -- muted for a long time. There's no
16 seating in the rear at all. There is a shelter, but that's just,
17 you know, storage for stuff. There's no seating at all in the
18 rear.

19 COMMISSIONER MAY: Okay. And then, the next question I
20 have is the party also -- or the person in opposition also made
21 statements of, you know, points out the fact that the property is
22 landlocked. So the restaurant has got to function, basically,
23 with everything going in and out the front of the building, right?

24 MR. MOSTOFA: Well, there's a front and there's also a
25 basement entrance.

1 CHAIRPERSON HILL: Oh.

2 COMMISSIONER MAY: Right. But that's also in the front,
3 right?

4 MR. MOSTOFA: Correct.

5 COMMISSIONER MAY: Yeah. And you have operated that way
6 in the past?

7 MR. MOSTOFA: Since we've signed the lease, we've
8 brought things in through the front. Yep.

9 COMMISSIONER MAY: Okay. And the trash and everything
10 is managed and goes out the same way?

11 MR. MOSTOFA: Correct.

12 COMMISSIONER MAY: Yeah. Okay. All right. Thank you.

13 CHAIRPERSON HILL: Okay. Anyone else?

14 Okay. Mr. Brown, do you have anything to add at the
15 end?

16 MR. BROWN: No. If there are no other questions, I
17 think the record is complete.

18 CHAIRPERSON HILL: Okay. All right. I'm going to go
19 ahead and close the hearing and the record and excuse everyone,
20 Mr. Young. All right.

21 Although it might've been somewhat complicated, I didn't
22 find it complicated. I do think that -- I don't need to get too
23 much into the estoppel area. I mean, I think there's even
24 argument for that as well. But I do think that they've met their
25 argument considering the use variance. I mean, I do think that

1 was a -- it's been a restaurant for a very long time. That floor
2 has been a restaurant. I would be a little concerned about that
3 roof deck. I hope they don't try to use the roof deck now, you
4 know, without having to come back before us. But I do think
5 they're making the argument for the use variance. I would agree
6 with the applicant as well as that of the Office of Planning in
7 their analysis as well as that of the ANC and be voting to
8 approve.

9 Mr. Smith?

10 BOARD MEMBER SMITH: So regarding the issue of estoppel,
11 I don't think the applicant sufficiently proved their case for us
12 to be able to support estoppel. You know, based on the line of --
13 some of the questions that I asked, and I think Ms. John even
14 asked to clarify what exactly did DCRA approve? I don't think,
15 from my -- to my standpoint, I didn't get a sufficient answer from
16 them that DCRA did approve a set of building plans, the second
17 floor to show a restaurant. You know, I understand that they
18 submitted a series of floor plans into the record. But as far as
19 I'm concerned, from my history of being stamped, it doesn't mean
20 anything. So, I don't believe that they've proven their case.
21 But on the other hand, I do believe that this particular case
22 warrants a variant, a use variance in this particular instance. I
23 do believe that whether it was -- I do believe in the staff
24 support that was presented by OP staff, I do believe that they
25 have presented their case, that they would be irreparably harmed

1 if they are required to convert a second-floor space into some
2 type of residential unit in this particular neighborhood given
3 what currently exists along that block is entirely commercial with
4 restaurants and entertainment establishments. So, I do believe
5 that there wouldn't be irreparable harm to the zoning regulations.
6 So with that, I would support the variance. I would state,
7 though, that it would have been great to have the zoning
8 administrator here at this hearing being that they were appealing
9 an approval while asking for estoppel relief from an approval that
10 his office granted. It seems like there is some kind of practice
11 that the zoning administrator doesn't appear unless OP requests
12 for him to appear. I think that tradition needs to be trashed.
13 But that's my opinion. But I'll get off my soap box. I will
14 support the use variance.

15 CHAIRPERSON HILL: Okay. Thanks. Commissioner May?

16 COMMISSIONER MAY: Yeah. Just to be clear, we -- you
17 called for witnesses, and we don't have any other public witnesses
18 testifying?

19 CHAIRPERSON HILL: Yes.

20 COMMISSIONER MAY: Because I missed that. All right.
21 Yeah. I'm normally not too inclined to grant relief of this sort.
22 A use variance is a difficult variance to achieve. And in this
23 circumstance, I do think that they have met the threshold. I
24 don't, I -- you know, there is a little bit having to do with the
25 reliance on what DCRA has done in the past in terms of permitting

1 or in terms of the uses that have been allowed and all that. I
2 don't really -- that's not really what I find persuasive, nor do I
3 find it necessary for that to be persuasive. For me, it's just
4 that the way the building is configured and the way it has been
5 used historically does not lend itself to a retail use on the
6 first floor and basement and then an apartment use or something on
7 the second floor. I just think it would be too hard to try to
8 affect that kind of improvement on this building at this time.
9 So, I'm in favor of granting the variance.

10 CHAIRPERSON HILL: Ms. John?

11 VICE-CHAIR JOHN: Thank you, Mr. Chairman. I'm looking
12 at Exhibit 35 in the record, page 9. And there is a building
13 permit dated January 10th, 2020, with an expiration date of
14 January 10, 2021, for renovation of two floors for a two-story
15 building. And that would be restaurant use. And it was issued to
16 the contractor. So, I believe that, you know, there is some
17 ambiguity there as to whether or not the two floors refer to the
18 basement and the first floor or just the basement -- just the
19 first floor and the second floor. So unless there's something to
20 contradict that, I would interpret this as referring what we
21 normally call a two-story building and so, this would be two
22 stories. Anyway, that said, I think that -- I agree with the
23 Office of Planning that there is undue hardship and that is
24 because of the detrimental reliance on the applicant in relying on
25 the permit for renovating the space for a restaurant. There's

1 also an application for, this is Exhibit 9 -- I mean, page 9 again
2 of Exhibit 35. There is an -- it's an application for a permit.
3 Let's be clear. No. this is an application for a certificate of
4 occupancy dated April 14th, 2014, based on an ownership change for
5 the two floors, plus a basement. So there is a record of
6 restaurant use on both floors and the basement. So I will credit
7 the testimony of the Office of Planning in terms of the length of
8 time when there has been no restaurant use, no residential use in
9 the building, and so, there will not be any harm to the zoning
10 maps if this use variance is granted. So based on the record and
11 the testimony of the Office of Planning, I'm fine with granting
12 the use variance.

13 CHAIRPERSON HILL: Thank you. Mr. Blake?

14 BOARD MEMBER BLAKE: Yes. I would echo Vice-Chair
15 John's comments. The one area that concerned me was the third-
16 floor staircase, though, in terms of use creep. And I thought
17 that it would be attractive from a design standpoint if they could
18 somehow make that less accessible as it just invites the
19 participation on the rooftop deck. And also, citing the comments
20 made by the opposition, the comments there about using and
21 expanding. The other thing too I would note, though, is the
22 support of the ANC in this and most of the surrounding neighbors.
23 So I would be prepared to support as well.

24 CHAIRPERSON HILL: Okay. Yeah, I mean, as far as the
25 staircase thing, I mean, that's going to be a -- not compliance.

1 VICE-CHAIR JOHN: Enforcement.

2 CHAIRPERSON HILL: An enforcement. Thank you. Thinking
3 about the place. Enforcement use or enforcement issue. But so,
4 yeah. I don't know what they're going to do, you know, somebody's
5 going to -- if people are upstairs, then I guess, they'll call
6 DCRA.

7 So, I'm going to go ahead and make a motion to approve
8 application number 20489 as captioned and read by the secretary
9 and ask for a second, Ms. John?

10 VICE-CHAIR JOHN: Second.

11 CHAIRPERSON HILL: Motion made and seconded.

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

13 MR. MOY: When I call each of your names, if you would
14 please respond with a yes, no, or abstain to the motion made by
15 Chairman Hill to approve the application for the amended relief.
16 The motion was seconded by Vice-Chair John.

17 Zoning Commissioner Peter May?

18 COMMISSIONER MAY: Approve -- sorry. Yes.

19 MR. MOY: Mr. Smith?

20 BOARD MEMBER SMITH: Yes.

21 MR. MOY: Mr. Blake?

22 BOARD MEMBER BLAKE: Yes.

23 MR. MOY: Vice-Chair John?

24 VICE-CHAIR JOHN: Yes.

25 MR. MOY: Chairman Hill?

1 CHAIRPERSON HILL: Yes.

2 MR. MOY: Staff would record the vote as 5-0-0. And
3 this is on the motion of Chairman Hill to approve, seconded by
4 Vice-Chair John. Also, in support of the motion to approve is
5 Zoning Commissioner Peter May, Mr. Smith, Mr. Blake, of course,
6 Vice-Chair John, and Chairman Hill. The motion carries on a vote
7 of 5-0-0.

8 CHAIRPERSON HILL: All right. Thanks, Mr. Moy. You can
9 call our next one when you get a chance.

10 MR. MOY: All right. This would be Case Application No.
11 20502 of Michael and Kathryn Siemer, S-i-e-m-e-r. This is a
12 request for special exception relief from the lot of occupancy
13 requirement of Subtitle E, Section 304.1, which would construct a
14 two-story rear addition to the existing semi-detached two-story
15 principal dwelling unit. RF-1 Zone. The property is located at
16 921 G Street, Southeast, Square 950, Lot 873.

17 And I believe, Mr. Chairman, that there is no affidavit
18 of maintenance, unless there was one that was attempting to be
19 filed today.

20 CHAIRPERSON HILL: Okay. Great. Thank you.

21 Mr. Dougherty, can you hear me?

22 MR. DOUGHERTY: Yeah, I can.

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

25 MR. DOUGHERTY: Yeah. I'm Matthew Dougherty. I'm with

1 KUBE Architecture. We're representing Michael and Cathryn Siemer
2 --

3 CHAIRPERSON HILL: Got it.

4 MR. DOUGHERTY: -- in this case.

5 CHAIRPERSON HILL: Okay, Mr. Dougherty. Mr. Dougherty,
6 can you speak to your affidavit of maintenance?

7 MR. DOUGHERTY: So, I wasn't aware of this. I got the
8 email -- or I saw the email yesterday to submit that. And just
9 didn't -- wasn't able to get it in in time. We did put up the
10 affidavit of posting a few days ago that showed the picture of the
11 sign and it's been maintained. We can -- I could upload that to
12 the record today, if that's possible, the affidavit of
13 maintenance.

14 CHAIRPERSON HILL: If you want to upload the affidavit
15 of maintenance --

16 MR. DOUGHERTY: Okay.

17 CHAIRPERSON HILL: -- that, that'd be -- we'll leave it
18 open for that.

19 MR. DOUGHERTY: Okay.

20 CHAIRPERSON HILL: And then, also, I guess, the shadow
21 studies came in late. However, I -- you are requesting for a
22 waiver then, so we can see those shadow studies, correct?

23 MR. DOUGHERTY: Correct.

24 CHAIRPERSON HILL: Okay. Unless the Board has an issue,
25 I'd like to see the shadow studies. So I'll go ahead and allow

1 | that into the record.

2 | Mr. Dougherty, I guess, if you could go ahead and walk
3 | us through why you believe you're meeting the criteria and
4 | standard for us to grant your application of relief, and you can
5 | begin whenever you'd like.

6 | MR. DOUGHERTY: Would it be possible to share my screen
7 | or share any of the materials that had been uploaded into the
8 | record? Or --

9 | CHAIRPERSON HILL: Which one in the record? You can
10 | share things that are in the record.

11 | MR. DOUGHERTY: Yeah, that --

12 | CHAIRPERSON HILL: But you --

13 | MR. DOUGHERTY: That's all that we would need to share.
14 | So --

15 | CHAIRPERSON HILL: Which exhibit?

16 | MR. DOUGHERTY: If we could share the architectural
17 | plans and the shadow study just to run through of --

18 | CHAIRPERSON HILL: Can you give me --

19 | MR. DOUGHERTY: -- kind of --

20 | CHAIRPERSON HILL: -- a number of the architectural
21 | plans?

22 | MR. DOUGHERTY: The exhibit number?

23 | CHAIRPERSON HILL: Yeah. I mean, I see the shadow --
24 | there's two. There's shadow study compressed, shadow study
25 | summary.

1 MR. DOUGHERTY: The -- let's see.

2 VICE-CHAIR JOHN: Twelve.

3 CHAIRPERSON HILL: Twelve are the architectural -- Mr.
4 Young, could you throw up 12 first?

5 MR. DOUGHERTY: Yeah. Twelve and thirty-four I think
6 we'd like to look at. Okay. If you could just go to the next
7 slide. So this is our location here at the corner of N Street and
8 G Street Southeast.

9 Next slide. So, our property on, you'll see there that
10 we are showing the -- we're proposing, it's the proposal for
11 special exception for lot occupancy. And we're filling in the
12 existing dogleg space. And that's shown on the next plan, if you
13 could go. Oh, these are the photographs of the front façade. We
14 won't be adjusting the front façade at all.

15 Next slide. This is the existing rear elevation. So
16 you can see the dogleg area on the top left photo. That's the
17 space that's going to be captured for interior space. And then,
18 we're going to also be expanding five feet into the rear yard.

19 Next slide. Okay. So, this is the basically what we're
20 doing here. So, this is the top plan is showing the demo plan of
21 the existing kitchen area that we will be taking out those two
22 walls and expanding five feet into the rear. That's from marker C
23 to D on the bottom plan and taking the dogleg space for interior
24 use. And we're doing that on the first and second floor. So it's
25 not a third-story addition, we're just going to be doing the rear

1 addition on the first and second floor. And it brings our lot
2 occupancy to -- let me get that number here, 66.9. So we are
3 within the allowed lot occupancy of 60 percent, so we'll be 6.9
4 percent over that, but we're under the 70 percent that is
5 sometimes allowed for special exception relief for RF-1 Zones.
6 And we did show the shadow study is what we presented to show that
7 the light and the air available to the neighboring properties
8 shouldn't be unduly affected, and that the privacy and enjoyment
9 of neighboring properties should also not be unduly compromised.

10 So, if we could go to the shadow studies just because
11 that's where we're talking about that. So basically, we showed it
12 -- we did a rendering showing existing on the left side of the
13 screen and new on the right side of the screen and how the shadows
14 are affected in each instance. So I think there are four pages
15 here and it's March, September, December -- or March, June,
16 September, and December to show all seasons. So you see on the
17 left side, the property with the blue boxes on the massing, those
18 are to represent the existing windows on the neighboring property
19 of 919 G Street. So this would be the main -- this adjoining
20 house would be the only one that's really affected by our
21 addition. So we wanted to show how the shadows are impacting
22 their light. So you can see that from in the morning is the only
23 time during the day where our addition that you can see on the
24 right side that's kind of shown as the box coming forward, coming
25 towards the screen on 921 G Street is adding a little bit of

1 additional shadows over the windows of the neighboring property.
2 But we found that by noon of most days and basically of all the
3 different seasons, with a little bit of variance in the size of
4 the shadows, the sun is already at a point where it won't be
5 casting any shadow from our addition onto any neighboring
6 property.

7 CHAIRPERSON HILL: Mr. Dougherty?

8 MR. DOUGHERTY: Yeah.

9 CHAIRPERSON HILL: Was there something from that
10 neighbor? I can't see in the record.

11 MR. DOUGHERTY: Oh, yeah. So there were letters of
12 support from both adjoining neighbors, from 919 and from 923 G
13 Street.

14 CHAIRPERSON HILL: From 923, okay, great. Okay. Thank
15 you.

16 MR. DOUGHERTY: Okay. Yes, so we -- if you want to, you
17 can flip through these slides just to show the differences in
18 each. So here's the June study, the September. And you'll see
19 there's a little bit of differences in each one. But in each
20 instance and in each time of the year, we didn't think that the
21 shadows would be unduly affecting the neighbors in any way. I
22 think there's, you know, almost not a noticeable amount and for a
23 very short period of time during the day that we thought that
24 that, along with the letter of support from the neighbors will
25 show that they are not affected in, you know, much of a way.

1 And then the third standard for the special exception
2 that was -- right. The view from the street, alley, or public
3 way. So this was -- since it's only a two-story addition -- sorry
4 to make you go back, but could you go back to the architectural
5 plans? Because we have elevations on there that show the street
6 view.

7 Next slide. Let's see if we can find it on here. Next.
8 Next. Okay. This is a -- we did a mockup of -- oh, that's an old
9 -- that's showing a third story. Okay. You can go to the next
10 slide. So, this would be the view from the front elevation.
11 Obviously, nothing is seen from here because we're not adding any
12 height. We initially wanted to, but we got stopped by the HPRB
13 because it was too visible from 10th Street.

14 Next slide. These are rear elevation changes. The
15 bottom of the screen is showing the proposed elevation. So we're
16 using Hardie panel on the first floor and we're using wood siding
17 on the top floor to match the kind of size and consistency of the
18 buildings next to it. You can go to the next slide.

19 Okay. So, this is showing the view from 10th Street.
20 It's hard to tell here, but on the left, that's the existing
21 photo. And on the right would be a photo with a -- showing our
22 addition. And you can kind of see it poking out from behind the
23 tree right below where that arrow is pointing. And it looks kind
24 of like another part of massing of a building that's pushed back a
25 little bit, but it's not really noticeable and it doesn't stick

1 out higher from any of the neighboring buildings from this angle
2 or from anywhere on 10th Street. This angle kind of from behind
3 the buildings on 10th Street looking towards the back of all of
4 them, would be the only place you would really see it and only
5 really when there's no leaves on any of those trees. So we wanted
6 to show this rendering. And we think it does a pretty good job of
7 blending in and remaining consistent with all of the neighboring
8 buildings.

9 So, yeah. Those are basically the three main criteria,
10 I guess, that are required for a special exception relief. We
11 have also gotten approval from the HPRB, the CHRS, Capitol Hill
12 Restoration Society, and we were -- we got a letter of
13 recommendation from the Office of Planning. And the ANC 6B also
14 voted to support the project.

15 CHAIRPERSON HILL: Okay. Mr. Dougherty, you -- are you
16 done?

17 MR. DOUGHERTY: Yeah. I am.

18 CHAIRPERSON HILL: Okay. You can go ahead and drop
19 that, Mr. Young.

20 Mr. Dougherty, I don't see the ANC report. Am I missing
21 it? When you say they voted in favor, when did they vote in
22 favor?

23 MR. DOUGHERTY: It was just a few, it was two weeks ago.

24 CHAIRPERSON HILL: ANC 6B?

25 MR. DOUGHERTY: Yeah.

1 CHAIRPERSON HILL: Did you go?

2 MR. DOUGHERTY: Yeah. We were there at the meeting.

3 CHAIRPERSON HILL: Okay. So, you witnessed the vote?

4 MR. DOUGHERTY: Yeah.

5 CHAIRPERSON HILL: And it was in favor unanimously?

6 MR. DOUGHERTY: Yeah.

7 CHAIRPERSON HILL: Okay. All right. Let me -- before I
8 ask questions of you, Mr. Dougherty, can I just turn to the Office
9 of Planning real quick?

10 MR. DOUGHERTY: Yeah.

11 CHAIRPERSON HILL: Ms. Brown-Roberts?

12 MS. BROWN-ROBERTS: Yeah. Hello, Mr. Chairman. There
13 we go. Maxine Brown-Roberts from the Office of Planning.

14 CHAIRPERSON HILL: Hi, Ms. Brown-Roberts. Could you
15 tell us a little bit about your -- well, could you just kind of
16 speak to the general special exception criteria?

17 MS. BROWN-ROBERTS: Okay.

18 CHAIRPERSON HILL: Because I wasn't -- I didn't see --

19 MS. BROWN-ROBERTS: That's the only portion you want me
20 to address?

21 CHAIRPERSON HILL: No, no. Go ahead and speak to your
22 entire report.

23 MS. BROWN-ROBERTS: Okay. All right. So, good
24 afternoon, Mr. Chairman, and members of the Commission. I'm
25 Maxine Brown-Roberts from the Office of Planning on Case 20502

1 with a special -- for a special exception request from the lot
2 occupancy requirement to permit a two-story rear and side addition
3 with a lot occupancy of 66.9 percent pursuant to Subtitle E,
4 Section 5201 and Subtitle X, Chapter 9.

5 The addition would be to a principal residential
6 building that is not on an alley with a lot occupancy again of
7 66.9 percent. The addition would extend beyond the existing house
8 three to five feet and would cast limited additional shadows on
9 the rear yard of the, off to the east. The property to the west
10 has a window and a door on the side of that building. However,
11 light and air availability should not be unduly impacted. The
12 addition also should not affect the light and air to the property
13 to the south.

14 The windows and doors on the addition would face into
15 the applicant's rear yard and only oblique views onto their rear
16 yards. Although the addition would bring the rear wall closer to
17 the building to the south of the property, the impact on privacy
18 would be minimized by meeting the minimum rear yard requirement as
19 well as a provision of a wall along the rear property line.
20 Therefore, the privacy of use and enjoyment of the neighboring
21 properties should not be unduly compromised.

22 The proposed addition would not be highly visible from G
23 Street and only somewhat visible from 10th Street, which is three
24 houses away. The addition would be of similar materials to the
25 adjacent and other houses on the block and would be similar in

1 character, scale, and pattern of houses along the street.

2 The Office of Planning makes no recommendation for any
3 special treatment and the house will continue to be used as a
4 single-family residence, a conforming use. The proposal meets the
5 minimum height and -- I'm sorry, the maximum height and the number
6 of stories, and the lot occupancy of 66.9 percent is within the 70
7 percent allowed by the Section.

8 Regarding the general special exception requirement of
9 Subtitle X, Chapter 9, the lot occupancy is intended to ensure
10 adequate light and air and privacy to adjacent neighbors. As
11 discussed before, the proposal would not significantly affect
12 these intents. The proposed addition should not adversely affect
13 the light and air and privacy to adjacent residents and,
14 therefore, the use of the property, of the neighboring property,
15 should not be impaired. The proposal is supported by each of the
16 adjacent neighbors. The property is within the Capitol Hill
17 Historic District and was reviewed by HPRB, who supports the two-
18 story addition. The Office of Planning therefore recommends
19 approval of the requested special exception.

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

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

23 Does the Board have any questions for the Office of
24 Planning? Does the applicant have any questions for the Office of
25 Planning?

1 (No audible response.)

2 Mr. Young, is there anyone who wishes to speak?

3 MR. YOUNG: We do not.

4 CHAIRPERSON HILL: All right. Great. Mr. Dougherty, is
5 there anything you'd like to add at the end?

6 MR. DOUGHERTY: No. I do think the ANC usually releases
7 the report of their meeting through email, and I don't know if
8 we've received that yet. So I can ask them about where that is.
9 I thought that was sent to the BZA, I guess not. I guess that
10 needs to be uploaded by us.

11 CHAIRPERSON HILL: Okay.

12 MR. DOUGHERTY: I didn't receive a --

13 CHAIRPERSON HILL: Nope. Nope. That's all right. I'm
14 going to -- let's see.

15 Mr. Moy, I'm going to leave the record open for the
16 report. Can you hear me, Mr. Moy?

17 MR. MOY: Yes, I can hear you.

18 CHAIRPERSON HILL: Okay. And then, maybe you could
19 reach out to the ANC and say we haven't gotten the report, okay?
20 All right.

21 I'm going to close the hearing and the record. Mr.
22 Young, if you'd please excuse everybody. Except for the one item
23 of the ANC. We'll leave it open for the ANC.

24 Okay. I didn't really have any issues with this case.
25 I thought the applicant made their argument and that it is their

1 testimony is that the ANC was in favor. I would also agree with
2 the analysis provided by the Office of Planning as well as the
3 input that we've gotten from CHRS as well as the adjacent
4 neighbors. And I'll be voting to support.

5 Mr. Smith, do you have anything you'd like to add?

6 BOARD MEMBER SMITH: I don't have anything else to add.
7 I will be in support of the application.

8 CHAIRPERSON HILL: Commissioner May, do you have
9 anything you'd like to add?

10 COMMISSIONER MAY: Nothing to add.

11 CHAIRPERSON HILL: Ms. John, do you have anything you'd
12 like to add?

13 VICE-CHAIR JOHN: Nothing to add, Mr. Chair.

14 CHAIRPERSON HILL: Mr. Blake, do you have anything you'd
15 like to add?

16 BOARD MEMBER BLAKE: No, sir.

17 CHAIRPERSON HILL: I'm going to make a motion to approve
18 Application No. 20502 as captioned and read by the secretary and
19 ask for a second, Ms. John?

20 VICE-CHAIR JOHN: Second.

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

23 MR. MOY: When I call each of your names, if you would
24 please respond with a yes, no, or abstain to the motion made by
25 Chairman Hill to approve the application for the relief requested.

1 The motion was seconded by Vice-Chair John.

2 Zoning Commissioner Peter May?

3 COMMISSIONER MAY: Yes.

4 MR. MOY: Mr. Smith?

5 BOARD MEMBER SMITH: Yes.

6 MR. MOY: Mr. Blake?

7 BOARD MEMBER BLAKE: Yes.

8 MR. MOY: Vice-Chair John?

9 VICE-CHAIR JOHN: Yes.

10 MR. MOY: Chairman Hill?

11 CHAIRPERSON HILL: Yes.

12 MR. MOY: Staff would record the vote as 5-0-0, and this
13 is on the motion made by Chairman Hill to approve. The motion was
14 seconded by Vice-Chair John to approve. Also, in support of the
15 motion to approve is Zoning Commissioner Peter May, Mr. Smith, Mr.
16 Blake, and of course, Vice-Chair John, and Chairman Hill. The
17 motion carries on a vote of 5-0-0.

18 CHAIRPERSON HILL: Okay. Mr. Moy, you can call our next
19 one if you get a chance.

20 MR. MOY: The next case before the Board is Application
21 No. 20504 of Jerome and Kristina Sisul, S-i-s-u-l. This
22 application is captioned and advertise for a special exception
23 from the side yard requirements, Subtitle D, Sections 206.3,
24 206.6. This would construct a rear addition to an existing, semi-
25 detached, two-story with cellar, principal dwelling unit in the R-

1 2 Zone. The property is located at 4303 12th Street Northeast,
2 Square 3919, Lot 100.

3 CHAIRPERSON HILL: Okay. Mr. Sisul, can you hear me?

4 MR. SISUL: Yes, I can.

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

7 MR. SISUL: Yes. Good afternoon, Mr. Chairman, and
8 members of the Board. Yes, my name is Jerome Sisul, with my wife,
9 we are the homeowners of 4303 12th Street Northeast.

10 CHAIRPERSON HILL: Mr. Sisul, are you going to be
11 presenting or is someone else?

12 MR. SISUL: William Putnam will be presenting, our
13 architect.

14 CHAIRPERSON HILL: Got it. Mr. Putnam, can you hear me?

15 MR. PUTNAM: Yes, I can.

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

18 MR. PUTNAM: Bill Putnam from Putnam Architects.

19 CHAIRPERSON HILL: All right. Mr. Putnam, why don't you
20 go ahead and tell us about your project? I've read through the
21 record here. But why don't you, please, go ahead and tell us
22 about your project and why you believe you're meeting the -- your
23 client is meeting the criteria for us to grant the relief
24 requested?

25 MR. PUTNAM: Sure. The Sisuls are asking for a special

1 exception to the side yard setback. They're proposing a one-story
2 screen porch to the rear of their house. And adding stairs to the
3 side of the house, or I should say to the north of the house,
4 would encroach into the front yard. And given that this is a
5 semi-detached house and the house to the north is also semi-
6 detached, there's an over 16-foot side yard when combined over
7 those two properties between them. So this addition wouldn't
8 adversely affect either the light and the air or the privacy of
9 their neighbor to the North. And the neighbor to the south, it
10 should not affect them as no shadows are (audio interference).

11 CHAIRPERSON HILL: Mr. Putnam, can you hear me? Mr.
12 Putnam, can you hear me? All right. Mr. Sisul, I hear Mr. Putnam
13 might be coming back on the line.

14 MR. SISUL: Good.

15 CHAIRPERSON HILL: Mr. Putnam, can you hear me?

16 MR. PUTNAM: Yes, I can hear you now.

17 CHAIRPERSON HILL: Okay. You, kind of, broke up there
18 in the middle. Are you still there?

19 MR. PUTNAM: I apologize. Let me see if I can move. I
20 apologize for that.

21 CHAIRPERSON HILL: That's all right. You're better now.

22 MR. PUTNAM: Is that better?

23 CHAIRPERSON HILL: Yeah. Why don't you turn off your
24 video and maybe the sound just, the sound is fine? Yeah. If you
25 turn off the video, maybe.

1 MR. PUTNAM: Can you hear me now?

2 CHAIRPERSON HILL: Yep.

3 MR. PUTNAM: Hello?

4 CHAIRPERSON HILL: Yep, I can hear you.

5 MR. PUTNAM: Okay. So, did you catch any of my --

6 CHAIRPERSON HILL: Yep.

7 MR. PUTNAM: -- (audio interference)?

8 CHAIRPERSON HILL: Pretty much caught most of it.

9 MR. PUTNAM: Okay.

10 CHAIRPERSON HILL: Okay. All right. I'm going to go
11 ahead and turn to the Office of Planning, please.

12 MR. KIRSCHENBAUM: Good afternoon, Chairman Hill and
13 members of the Board on the adjustment. I'm Jonathan Kirschenbaum
14 with the Office of Planning. And we recommend approval of the
15 special exception to reduce the existing nine-foot-eight-inch side
16 yard to five feet to permit a new one-story screen porch in the
17 rear of an existing semi-detached single-household dwelling.
18 Please, let me know if you have any further questions. Thank you.

19 CHAIRPERSON HILL: Mr. Kirschenbaum, can you speak to X,
20 901 a little bit?

21 MR. KIRSCHENBAUM: A screen porch is permitted by the
22 zoning regulations, so it meets the intent and purpose of the
23 zoning. And it should not adversely affect the neighboring
24 properties given that it's one story. There's 16 feet of
25 separation from the porch and the house to the north. And then,

1 of course, the house to the south, because it's located to the
2 south, should not have any shadow impacts.

3 CHAIRPERSON HILL: Okay. Thank you, Mr. Kirschenbaum.
4 Can I look at my fellow Board members? Am I breaking up? Can
5 you all hear me okay? Just give me --

6 COMMISSIONER MAY: I hear you.

7 CHAIRPERSON HILL: -- a thumbs up. Okay. Did Mr.
8 Kirschenbaum, kind of, break up a little bit there also a little
9 bit, kind of? No, maybe? All right. Okay. I heard him, but,
10 like, you know, I was just curious if it was my feed or not. All
11 right.

12 Does anybody have any questions for either Mr.
13 Kirschenbaum or the applicant?

14 Mr. May?

15 COMMISSIONER MAY: Yeah, I have a question for the
16 architect. The thing I sort of struggled with is why is this
17 relief truly necessary? Because there's, you know, it's a fairly
18 wide property and there's almost eight feet of space to the south
19 of the screened porch. I mean, there's a landing that you're
20 adding that butts into it, but then you put this projecting roof
21 over the top of that landing, which isn't really necessary either.
22 So I mean I'm just curious as to why is it important to do it
23 exactly this way since you very clearly have the space to do a
24 screened porch of that size, a landing of that size, the stairs,
25 and all those sorts of things without impinging on the side yard.

1 MR. PUTNAM: Well, we wanted to project off of the rear
2 addition, the existing rear addition of the house. And in talking
3 to Zoning technicians, they informed me that the side yard -- that
4 the eight-foot setback to the south was considered a side yard.
5 And so, that's why we did not encroach into that space. If we
6 were to have a three-foot wide stair off -- it would, that stair
7 would still encroach into the north side yard. And given that
8 this is a family of five, a --

9 COMMISSIONER MAY: No, no, no. I don't care about that.
10 This has nothing to do with the number of people in the house. It
11 just has to do with why -- what you're doing architecturally is
12 necessary. So let's go back to your first point, which is the
13 side yard or the -- if you went further to the south with this,
14 you would be impinging on that side yard, right?

15 MR. PUTNAM: Correct.

16 COMMISSIONER MAY: That's what you were told?

17 MR. PUTNAM: Correct.

18 COMMISSIONER MAY: But there would be no impact
19 associated with that in terms of light and air because it's --
20 you'd be building closer to the south property line.

21 MR. PUTNAM: There's also access to the basement that
22 occurs under that, or from that -- I shouldn't say -- on that
23 south side yard. And --

24 COMMISSIONER MAY: Right.

25 MR. PUTNAM: And going over -- extending the deck, the

1 porch to the south would start to compromise that access because
2 there's not, it's not high enough off grade to be able to walk
3 under it.

4 COMMISSIONER MAY: So, how high off grade is it?

5 MR. PUTNAM: It's, I think, about 5'6" to the under, to
6 the bottom of the floor joist.

7 COMMISSIONER MAY: Okay. And why is the, I mean, the
8 most -- the thing that casts shadows here really is that
9 cantilevered roof that goes over the landing, right? And that's
10 necessary, why?

11 MR. PUTNAM: The owners wanted a space where they could,
12 you know, sit outside of the screened porch, that if they wanted
13 to set up a BBQ there that they could still be covered and not
14 have to worry about, you know, holding an umbrella and being able
15 to enjoy that space in a different way than you would inside the
16 screened porch.

17 COMMISSIONER MAY: Okay. And then, the last question I
18 have is what about the neighbor to the north? I didn't see
19 anything in the records from them. Have you --

20 MR. PUTNAM: They --

21 COMMISSIONER MAY: Have there been conversations with
22 them?

23 MR. PUTNAM: Yes. There has been. They do support the
24 project, and I believe the ANC received letters of support from
25 them.

1 COMMISSIONER MAY: Okay. Well, that's all fine and
2 good. It would be best if we got that letter and not just the
3 ANC. And is that something that you have, and you submitted to
4 the record?

5 MR. PUTNAM: I don't think it's been submitted to the
6 record. If it's not in the record, then it's not something that I
7 have. We can get it and submit it.

8 COMMISSIONER MAY: Okay. Well, I'm not going to hold up
9 decision-making on this. But for your future reference, it's very
10 important when you're going to be, you know, having some sort of
11 impact on a neighbor like that and you have a letter of support,
12 put it in the record. Right? It saves us a lot of concern, so.

13 All right. That's it for my questions, Mr. Chairman.

14 CHAIRPERSON HILL: Okay. Anyone else?

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

16 MR. YOUNG: We do not.

17 CHAIRPERSON HILL: Okay. All right. I'm going to go
18 ahead and close the hearing and the record. I'm going to excuse
19 everyone. Thank you. Okay.

20 Commissioner May, why don't you start? Let somebody
21 else talk for a little while.

22 COMMISSIONER MAY: Okay.

23 CHAIRPERSON HILL: Even though, Commissioner May, you
24 have been talking today.

25 COMMISSIONER MAY: Yeah.

1 CHAIRPERSON HILL: So, I --

2 COMMISSIONER MAY: Well, you know, I don't have any
3 problem with granting this relief. It's somewhat reassuring to
4 have somebody testify to the fact that the neighbors to the north
5 are in support of it. It is something where, you know, a little
6 bit better design approach would have avoided the need. And we
7 wouldn't have even had to have the hearing, I think, if they had
8 handled it differently. But, you know, I'm not going to fuss
9 about that at this point. I mean, clearly, the impacts are not
10 really big. I just don't, you know, there's a reason why it's an
11 eight-foot yard, and the fact that there's an eight-foot yard on
12 the north side on the neighboring property is not something that
13 you can rely in this individual property, right? There's a reason
14 why we have the eight-foot side yard. If we thought that, you
15 know, it should be less than that, then you know, we would reduce
16 it to five feet everywhere. But that's not what we've done, you
17 know, it's eight feet. Again, not really a huge impact. Could've
18 been done better. I can complain about the architecture, but I'll
19 go along with it and vote in favor of it.

20 CHAIRPERSON HILL: Thank you, Commissioner.

21 Mr. Smith?

22 BOARD MEMBER SMITH: Based on what was presented today,
23 I do not -- I do believe that the applicant has met the burden of
24 proof for us to be able to grant the special exception from
25 D 5201.4(c) and the general exception standards. I believe the

1 proposed addition by the applicant is fairly reasonable in nature
2 and wouldn't have a major impact on the adjacent properties or
3 have an adverse impact on adjacent properties. So with that, I
4 will support the application.

5 CHAIRPERSON HILL: Thank you, Mr. Smith.

6 Vice-Chair John?

7 VICE-CHAIR JOHN: I don't have anything to add. I
8 support the application, and I agree with all of the comments that
9 have been made so far. I think the applicant has shown why he
10 meets the criteria for granting the reduced side yards. Thank
11 you, Mr. Chairman.

12 CHAIRPERSON HILL: Thank you.

13 Mr. Blake?

14 BOARD MEMBER BLAKE: All right. Yes. I, too, would
15 support the relief giving substantial weight to the Office of
16 Planning's report, analysis, and testimony.

17 CHAIRPERSON HILL: Okay. Thanks, everyone. I don't
18 have anything to add. I'm going to make a motion to approve
19 Application No. 20504 as captioned and read by the secretary and
20 ask for a second, Ms. John?

21 VICE-CHAIR JOHN: Second.

22 CHAIRPERSON HILL: The motion has been made and
23 seconded. Mr. Moy, if you could take a roll call?

24 MR. MOY: When I call each of your names, if you would
25 please respond with a yes, no, or abstain to the motion made by

1 Chairman Hill to approve the application for the relief being
2 requested. The motion was seconded by Vice-Chair John.

3 Zoning Commissioner Peter May?

4 COMMISSIONER MAY: Yes.

5 MR. MOY: Mr. Smith?

6 BOARD MEMBER SMITH: Yes.

7 MR. MOY: Mr. Blake?

8 BOARD MEMBER BLAKE: Yes.

9 MR. MOY: Vice-Chair John?

10 VICE-CHAIR JOHN: Yes.

11 MR. MOY: Chairman Hill?

12 CHAIRPERSON HILL: Yes.

13 MR. MOY: Staff would record the vote as 5-0-0, and this
14 is on the motion made by Chairman Hill to approve. The motion was
15 seconded by Vice-Chair John. Also, in support of the motion to
16 approve is Zoning Commissioner Peter May, Mr. Smith, Mr. Blake,
17 and of course, Vice-Chair John, and Chairman Hill. Again, the
18 motion carries on a vote of 5-0-0.

19 CHAIRPERSON HILL: Okay. Thanks, Mr. Moy.

20 MR. MOY: Okay.

21 CHAIRPERSON HILL: You can call our next one when you
22 get a chance.

23 MR. MOY: The next case before the Board is Application
24 No. 20506 of Adam Blau, B-l-a-u. This is an application amended
25 for special exception from the lot occupancy requirements of

1 Subtitle E, Section 304.1, pursuant to Subtitle E, Section 5201
2 and Subtitle X, Section 901.2. This would construct a two-story
3 addition to an existing two-story with basement attached principal
4 dwelling unit in the RF-1 Zone. The property is located at 119 V
5 Street Northwest, Square 3119, Lot 38.

6 Mr. Chairman, I believe that there, the applicant
7 attempted to file an affidavit of maintenance, but it was
8 submitted late and it's currently not in the record.

9 CHAIRPERSON HILL: Okay. Is it Mr. Minton?

10 MR. MINTON: Yes, it is.

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

13 MR. MINTON: Yes. Hello. My name is Michael Minton.
14 I'm the architect hired by the Blaus to design their addition.
15 I'm a licensed architect here in the District of Columbia,
16 Maryland, and Virginia.

17 CHAIRPERSON HILL: Okay, Mr. Minton. So there was a
18 couple of things. You had submitted some revised site plans,
19 correct?

20 MR. MINTON: That's true.

21 CHAIRPERSON HILL: Okay. And they're a little late, so
22 you're requesting a waiver to get them into the record, correct?

23 MR. MINTON: No, sir. The request was to allow the
24 affidavit for maintenance to be added to the record. We were late
25 in uploading that the day before yesterday. And so, we're just

1 asking for the affidavit of maintenance to be added to the record.

2 CHAIRPERSON HILL: Okay. But the site plans were added
3 correctly on time?

4 MR. MINTON: Yes. They were added on time.

5 CHAIRPERSON HILL: Okay. Hold on. Now, I'm looking
6 here in the record. Let's see.

7 MR. MINTON: There were some earlier submissions.

8 CHAIRPERSON HILL: Okay. All right. So I don't have a
9 problem with adding the affidavit of maintenance to the record,
10 unless someone else does; please raise your hand.

11 I was a little unclear as to the revised site plans. If
12 they are late, I'd still like to see them in the record. So the
13 applicant says they're not late. If they are late, I'd still like
14 them in the record. So I want to include them into the record.
15 I'm looking it all up right now.

16 Mr. Minton, you can go ahead and tell us about your
17 project and why you believe that your client is meeting the
18 standard for us to grant the requested relief. And you can begin
19 whenever you'd like.

20 MR. MINTON: Okay. Thank you. The proposed
21 modification to the residence is to push the back of the house,
22 which faces north, out into what is an existing balcony, first and
23 second floor. We're proposing a two-story addition that would
24 pretty much take the balcony areas of the first and second floor
25 out 3.5 feet. In doing so, we've reached our occupancy to just at

1 70 percent. And that's our request, was to stay within the 70
2 percent in the special exception. We don't have any setback
3 issues --

4 CHAIRPERSON HILL: Wait just one second. So this is
5 why, now I remember what I was asking about. Your revised plans,
6 are those the plans that you've submitted and shown to the ANC?

7 MR. MINTON: Yes, sir. Yes.

8 CHAIRPERSON HILL: Okay. And I don't see anything --
9 did you go to the ANC meeting?

10 MR. MINTON: You know, we went to the Bloomingdale Civic
11 Association twice. And I -- no, I don't think we went to the ANC.
12 I'm certain.

13 CHAIRPERSON HILL: Mr. Minton, so you're telling me you
14 didn't present to the ANC?

15 MR. MINTON: That is true.

16 CHAIRPERSON HILL: Okay.

17 MR. MINTON: I didn't.

18 CHAIRPERSON HILL: All right. Well, I mean, when you
19 say you didn't, who else would have?

20 MR. MINTON: Well, it could've been the owners. But if
21 I didn't, I don't know if they would have.

22 CHAIRPERSON HILL: Okay. All right. Continue with your
23 presentation, please, Mr. Minton?

24 MR. MINTON: So, well that's it. It's a two-story
25 addition, first floor, second floor. And it extends out 3.5 feet

1 into the area which is currently the balconies of the house. The
2 addition does not impact any access to light because it doesn't
3 push out beyond the face of the rear of the existing residence
4 adjoining.

5 CHAIRPERSON HILL: Okay. Let's see. Let me turn to the
6 Office of Planning.

7 MS. FOTHERGILL: Good afternoon, Chairman Hill and
8 members of the Board. I'm Anne Fothergill with the Office of
9 Planning for BZA Case 20506. Initially, this application was for
10 a much larger addition to the house that involved a garage or
11 covered carport, which would have required an area variance, and
12 so the applicant revised the plans to need only a special
13 exception. And so, the Office of Planning could support it as
14 meeting the criteria for special exception, Subtitle E, 5201 and
15 Subtitle X, Section 901. And I'll rest on the record and support
16 the application.

17 CHAIRPERSON HILL: Yeah. Okay. All right. Does the
18 Board have questions for the Office of Planning?

19 VICE-CHAIR JOHN: No.

20 CHAIRPERSON HILL: Okay. All right. Does the applicant
21 have questions for the Office of Planning?

22 MR. MINTON: No.

23 CHAIRPERSON HILL: Okay. Mr. Young, is there anybody
24 here wishing to participate?

25 MR. YOUNG: We do not.

1 CHAIRPERSON HILL: Okay. All right. Does the Board
2 have anything they'd like to add at the end? Meaning, does the
3 Board have any questions that they'd like to add at the end before
4 I close the hearing? Mr. May?

5 COMMISSIONER MAY: Yeah. Just a quick question.
6 There's reference in the plans to the parking space in the back as
7 a, quote, carport. Is that simply a typo? Or are you planning on
8 building a, quote, carport?

9 MR. MINTON: It's an open surface-mounted driveway.

10 COMMISSIONER MAY: So, it's just --

11 MR. MINTON: No intention.

12 COMMISSIONER MAY: It's just a parking space.

13 MR. MINTON: Right.

14 COMMISSIONER MAY: It's not a carport.

15 MR. MINTON: That's right.

16 COMMISSIONER MAY: There's no roof over it or anything?

17 MR. MINTON: No.

18 COMMISSIONER MAY: Okay. And tell me again, you did not
19 even bother going to the ANC?

20 MR. MINTON: We submitted multiple requests to the ANC
21 to get on their calendar.

22 COMMISSIONER MAY: Got it.

23 MR. MINTON: The ANC is obviously informed of this
24 project with all of the attempts that have been made. We did go
25 in front of the Bloomingdale Civic Association twice, as I

1 indicated earlier. And I just don't know why we weren't on their
2 calendar. And I'm sorry, my client, Mr. Blau, I don't believe is
3 on this call, and he could indicate if they did meet with the ANC,
4 but I was not presented to the ANC.

5 COMMISSIONER MAY: All right. Thank you.

6 CHAIRPERSON HILL: Okay.

7 MR. YOUNG: I do have him on here. He's calling in, if
8 you want me to unmute him.

9 CHAIRPERSON HILL: Oh, great. Go ahead, Mr. Young. Mr.
10 Blau, can you hear me?

11 MR. BLAU: Yes, I can hear you. Can you hear me?

12 CHAIRPERSON HILL: Yes. Mr. Blau, did you --

13 MR. BLAU: Hi.

14 CHAIRPERSON HILL: Yeah, hi. Mr. Young -- I mean, Mr.
15 Moy, did Mr. Blau take the oath?

16 MR. MOY: If he had signed into the access to the Webex,
17 that oath would have been administered by default. It's --

18 CHAIRPERSON HILL: Mr. Blau, did you sign up through
19 Webex?

20 MR. BLAU: I did originally yesterday, in the timeline,
21 and I did take the oath.

22 CHAIRPERSON HILL: Okay. Great. All right. Perfect.
23 That's all I need to know.

24 MR. BLAU: Yeah.

25 CHAIRPERSON HILL: Mr. Blau, can you tell us what

1 happened with the ANC?

2 MR. BLAU: Sure. So, as Mr. Minton mentioned, he
3 informed me he had reached out several times to our ANC to get on
4 their calendar and was not, did not receive any response. And I
5 saw the email from him. So, I spoke to someone who is very active
6 in our community about how to get on it, and they suggested going
7 to the Bloomingdale Civic Association, which we did twice, which
8 is -- we had -- we did the initial presentation. And based on
9 their feedback, we changed it. And on that meeting, I did see, or
10 I believe there were ANC members on the Bloomingdale Civic
11 Association. We saw the presentation, and it was approved by the
12 members of the Bloomingdale Association. I realize that it's not
13 the ANC, but they are aware of what we're doing and perhaps after
14 the Bloomingdale Association approved it, then we'd be on their
15 calendar. We would love to present to them. Let's put it that
16 way.

17 CHAIRPERSON HILL: Okay. Okay, Mr. Blau. All right.
18 Does anybody have any questions for Mr. Blau? All right. I'm
19 going to go ahead and close the hearing and the record.

20 Mr. Blau, thank you for attending.

21 MR. BLAU: Thank you.

22 CHAIRPERSON HILL: As well as everyone else. Okay.
23 Bye-bye. Thank you, Mr. Young. All right.

24 I am not as concerned about the ANC due to the testimony
25 that was given to us from Mr. Blau in terms of that they have been

1 notified and they presented to the Bloomingdale Civic Association
2 twice. It is disappointing that we didn't get anything from the
3 ANC because I don't know why this ANC didn't give us something.
4 However, I do think that it is pretty straightforward, and I don't
5 have a lot of issues with the case, given the information that is
6 in the record currently, as well as how they have curtailed this
7 design from what they originally had tried to achieve. And then,
8 I also agree with the analysis the Office of Planning has provided
9 and would agree with that analysis. I will be voting to approve.

10 Mr. Smith, do you have anything else to add?

11 BOARD MEMBER SMITH: No. Nothing more to add. I would
12 support the application given the scale they -- well, the way
13 they've scaled this back from the original application.

14 CHAIRPERSON HILL: Commissioner May?

15 COMMISSIONER MAY: I don't have any issues. I mean, the
16 one concern was the ANC -- the lack of ANC presentation, but
17 apparently, that's not the fault of the applicant, so I'm okay.

18 CHAIRPERSON HILL: Okay. Ms. John?

19 VICE-CHAIR JOHN: Yes. I'm in support of the
20 application. It's fairly straightforward. I'm disappointed
21 there's nothing from the ANC, but I will go ahead and support the
22 application.

23 CHAIRPERSON HILL: Mr. Blake?

24 BOARD MEMBER BLAKE: Yes. I, too, will be comfortable
25 supporting the application. I do think it should have gone

1 through the ANC, but I believe it has to go through HPRB, so it
2 will have the opportunity to see ANC at some point before
3 committing, so I'm comfortable with that.

4 CHAIRPERSON HILL: All right. I'm going to go ahead and
5 make a motion to approve Application Number 20506 as captioned and
6 read by the secretary and ask for a second.

7 Ms. John?

8 VICE-CHAIR JOHN: Second.

9 CHAIRPERSON HILL: The motion has made and seconded.
10

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

12 MR. MOY: When I call each of your names, if you would
13 please respond with a yes, no, or abstain to the motion made by
14 Chairman Hill to approve the application as amended for a special
15 exception. The motion was seconded by Vice-Chair John to approve.

16 Zoning Commissioner Peter May?

17 COMMISSIONER MAY: 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 on the motion made by Chairman Hill to approve. The motion to
3 approve was seconded by Vice-Chair John. Also in support of the
4 motion to approve is Zoning Commissioner Peter May, Mr. Smith, Mr.
5 Blake, and of course, Vice-Chair John, and Chairman Hill. The
6 motion carries on a vote of 5-0-0.

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

8 Okay. You can go ahead and call our next one, if you
9 get a chance. Or when you get a chance.

10 MR. MOY: All right. This would be Case Application No.
11 20510 of Hazel Wood. This is a case that was advertised and
12 captioned for special exception relief from the lot occupancy
13 requirements, Subtitle D, Section 304.1. This would construct a
14 two-story with basement, rear addition to an existing detached
15 two-story with basement principal dwelling unit in the R-2 Zone.
16 The property is located at 4126 14th Street Northeast, Square
17 3970, Lot 57.

18 CHAIRPERSON HILL: Okay, great. Thank you, Mr. Moy.
19 Mr. Wood, are you there? Or Ms. Wood?

20 MS. WOOD: Hello? This is Hazel Wood. Good afternoon.

21 CHAIRPERSON HILL: Good afternoon. Can you hear me?

22 MS. WOOD: Yes, I can.

23 CHAIRPERSON HILL: Great. Are you presenting to us, Ms.
24 Wood, or is someone else?

25 MS. WOOD: Well, I'm not sure. I've had my architect

1 and contractor standing by since 9:30 and I just texted them and
2 told them that we were up. But if they don't join, I think I'll
3 be able to answer the questions.

4 CHAIRPERSON HILL: Okay. Do you have -- can you speak
5 to your posting and whether or not the building has been posted
6 correctly?

7 MS. WOOD: Yes. It's been posted, and we posted it
8 about the second week of September. I took pictures and submitted
9 those through the system.

10 CHAIRPERSON HILL: Okay. I guess, we didn't get your
11 affidavit of posting yet. Are you aware of this?

12 MS. WOOD: I sent that again yesterday. I put it in
13 your portal that you asked for on September the 21st. I also sent
14 it by email as of yesterday because from Mr. Reese's (phonetic)
15 office, I think someone came in and said we have not received your
16 affidavit. And I did send it again via email.

17 CHAIRPERSON HILL: Okay. All right. Okay, Ms. Wood.

18 VICE-CHAIR JOHN: Mr. Chairman, for the record --

19 CHAIRPERSON HILL: Pardon me, Ms. John?

20 VICE-CHAIR JOHN: It's in the record at Exhibit 30. The
21 affidavit of posting.

22 CHAIRPERSON HILL: Okay. I wonder why --

23 MS. WOOD: I didn't hear the question.

24 CHAIRPERSON HILL: No, Ms. Wood. We were just talking.
25 My colleague is speaking to me.

1 MS. WOOD: Okay. Tell me, when did you post it?
2 Because I was in California. Was it the first week of September?
3 I think it was posted a couple --
4 CHAIRPERSON HILL: Ms. Wood --
5 MS. WOOD: -- days after --
6 CHAIRPERSON HILL: Ms. Wood --
7 MS. WOOD: -- Labor Day.
8 CHAIRPERSON HILL: Ms. Wood, we have it, I guess.
9 MS. WOOD: Okay. Thank you.
10 CHAIRPERSON HILL: I just misunderstood.
11 MS. WOOD: Okay.
12 CHAIRPERSON HILL: Ms. Wood, can you -- there's someone
13 named Russell that's on the call?
14 MS. WOOD: Yes. That's my architect.
15 CHAIRPERSON HILL: Oh, okay. Mr. Russell, can you hear
16 me?
17 MR. RAMIREZ: Yes, I can hear you.
18 CHAIRPERSON HILL: Could you introduce yourself for the
19 record, please?
20 MR. RAMIREZ: Yeah. My name is Russell Ramirez, and I'm
21 the designer for this addition of the rear of 14th Street
22 Northeast --
23 CHAIRPERSON HILL: Okay.
24 MR. RAMIREZ: 4126.
25 CHAIRPERSON HILL: Okay. Ms. Wood, was Mr. Russell

1 going to tell us about the project, or were you?

2 MS. WOOD: I could -- was he what?

3 CHAIRPERSON HILL: Was he going to tell us about the
4 project or were you --

5 MS. WOOD: Yes, he can tell you about the project
6 because --

7 CHAIRPERSON HILL: Okay.

8 MS. WOOD: -- the contractor, I believe, Mr. Hernandez,
9 he may not be on the phone.

10 MR. RAMIREZ: Yes.

11 CHAIRPERSON HILL: Okay.

12 MR. RAMIREZ: Basically, before there was an extension
13 going over the setbacks. I believe there were 20 or 25 setbacks.
14 No. It was 20 at the rear. So, we called zoning, well, actually,
15 Ms. Wood called zoning and they said that we had to push it back
16 in order to meet the 20 feet setback. And that was for the rear.
17 But then, for the sides, we have to leave five feet away from the
18 corner of the house and for the interior lot. For the other side
19 of the street, we have to leave, like, two feet. Those were our
20 dimensions that we received from the zoning department regarding
21 about the setbacks. And after we meet that, we had to modify the
22 plans. Actually, I got these plans for somebody else. But I'm
23 just helping Mr. Hernandez in order to go through these changes.
24 And we did the modifications, and basically, we are at the limits
25 of all the setbacks based on what we received. And we sent an

1 update of the plat in order to reflect the addition at the rear
2 for basement, first, and second floor.

3 CHAIRPERSON HILL: Okay. All right. Give me a second.
4 Okay. All right. I'm going to just turn to the Office of
5 Planning. Mr. Jesick, can you hear me?

6 MR. JESICK: Yes. Good afternoon, Mr. Chairman, and
7 members of the Board. My name is Matt Jesick, and I'll be
8 presenting OP's testimony in this case.

9 The proposed design meets all requirements for yards,
10 the side yards and rear yard. The design is conforming for
11 height. Where they need relief is for the lot occupancy. In this
12 zone, you can go to 50 percent by special exception. They are at
13 46 percent, which requires special exception relief. They meet
14 the standards of 5201. Therefore, the Office of Planning can
15 recommend approval of the application. That concludes my
16 testimony, but I'd be happy to take any questions. Thank you.

17 CHAIRPERSON HILL: Mr. Jesick, can you speak to the
18 general criteria in X, 901 as to why you believe they're meeting
19 that?

20 MR. JESICK: Certainly. This proposal would not harm
21 the intent of the zoning regulations or impact nearby neighbors.
22 In terms of the intent, this is a zone which permits a single-
23 family dwelling. The proposed addition would help facilitate the
24 continuation of that use. In terms of impact to the neighbors,
25 the addition is relatively small in size, and we don't anticipate

1 that there would be much, if any, additional shadow. If there
2 were to be additional shadow, it would mostly fall on the
3 applicant's property or potentially on the adjacent street.
4 Likewise, with privacy because of the very short depth of the
5 addition, there would likely be no change in views on to
6 neighboring properties relative to the existing condition. So we
7 felt that the application met all the relevant criteria.

8 CHAIRPERSON HILL: All right, Mr. Jesick. Okay.

9 Does the Board have any questions for the Office of
10 Planning? Okay.

11 (No audible response.)

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

13 MR. YOUNG: We do not.

14 CHAIRPERSON HILL: Ms. Wood, do you have any questions
15 for the Office of Planning?

16 MS. WOOD: No, I do not. But I did follow all the
17 guidelines and the ANC also submitted her recommendation. We
18 attended meetings, a couple of meetings with the ANC. The
19 neighbors had also sent in individual letters that live next door
20 and in the rear of my house, and they were all in favor of my
21 project.

22 CHAIRPERSON HILL: Okay, Ms. Wood. Thank you.

23 MS. WOOD: You're welcome.

24 CHAIRPERSON HILL: All right. Does anyone have anymore
25 questions for anybody before I close the hearing? No one's

1 raising their hand. All right. I'm going to close the hearing
2 and the record.

3 Mr. Young, could you please excuse everyone?

4 Okay. I don't have any issues with this, I guess. I
5 mean, I'm going to agree with the analysis that was supplied by
6 the Office of Planning and also that of the ANC. There was a
7 letter in opposition. I didn't necessarily have any concerns with
8 the items that were being brought up by the party in opposition.
9 I think that it is, I would agree with, you know, OP in that it's
10 a small addition that doesn't seem to have any shadowing impacts
11 and, if so, it would be primarily on the applicant's property.
12 I'm going to be voting in favor.

13 Commissioner May, do you have anything you'd like to
14 add?

15 COMMISSIONER MAY: No, I think it's a pretty modest
16 addition. I don't have any issues with it, and it's
17 architecturally appropriate, so I think it's fine.

18 CHAIRPERSON HILL: Okay. Let's see. Mr. Smith?

19 BOARD MEMBER SMITH: I have nothing to add. It's a six-
20 foot bump out from an existing single-family home, and I believe
21 the request is reasonable. So, I stand on OP's staff report and
22 the ANC's recommendation to approve, so I would support it.

23 CHAIRPERSON HILL: Thank you. Vice-Chair John?

24 VICE-CHAIR JOHN: I agree with everything that my fellow
25 Board members have said, and I support the application. It's

1 fairly straightforward.

2 CHAIRPERSON HILL: Thank you.

3 Mr. Blake?

4 BOARD MEMBER BLAKE: Yes. I would be prepared to
5 support it as well, and I agree with the comments made today.
6 Thank you.

7 CHAIRPERSON HILL: All right. Thank you. I'm going to
8 go ahead and make a motion then to approve Application No. 20510
9 as captioned and read by the secretary, and ask for a second. Ms.
10 John?

11 VICE-CHAIR JOHN: Second.

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

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

18 Zoning Commissioner Peter May?

19 COMMISSIONER MAY: Yes.

20 MR. MOY: Mr. Smith?

21 BOARD MEMBER SMITH: Yes.

22 MR. MOY: Mr. Blake?

23 BOARD MEMBER BLAKE: Yes.

24 MR. MOY: Vice-Chair John?

25 VICE-CHAIR JOHN: Yes.

1 MR. MOY: Chairman Hill?

2 CHAIRPERSON HILL: Yes.

3 MR. MOY: Staff would record the vote as 5-0-0, and this
4 is on the motion of Chairman Hill to approve, seconded by Vice-
5 Chair John. Also in support of the motion to approve is Zoning
6 Commissioner Peter May, Mr. Smith, Mr. Blake, and of course, Vice-
7 Chair John, and Chairman Hill. The motion carries on a vote of
8 5-0-0.

9 CHAIRPERSON HILL: Okay. Let's see. So there are two
10 left that we have with Commissioner May. The second to last one
11 might take a little while. I mean, do you want to try and do one
12 more and then take a break, or do you all want to take a break?
13 One more and take a break. Okay. All right. There you go.

14 Mr. Moy, you want to go ahead and call the next one,
15 please?

16 MR. MOY: This would be Case Application No. 20514 of
17 Thomas and Melissa Sellevaag, that's S-e-l-l-e-v-a-a-g. This is a
18 request for special exception relief from the lot occupancy
19 requirements of Subtitle E, Section 304.1 pursuant to Subtitle E,
20 Section 5201 and Subtitle X, Section 901.2; the minimum rear yard
21 requirements, Subtitle E, Section 306.1, this is pursuant to
22 Subtitle E, section 5201, and Subtitle X, Section 901.2; and the
23 rear addition requirements of Subtitle E, Section 205.4 pursuant
24 to Subtitle E, Section 205.5, Subtitle E, section 5201, and
25 Subtitle X, Section 901.2. This would raze an existing rear

1 addition and construct a new two-story rear addition to an
2 existing attached two-story principal dwelling unit in the RF-1
3 Zone. The property is located at 1226 Duncan Place, Northeast,
4 Square 1008, Lot 82. Finally, Mr. Chairman, I believe there is a
5 waiver request for the applicant to submit revised plans, revised
6 plat, revised burden of proof, revised self-certification. And
7 that's the bulk of what I have to say, Mr. Chairman.

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

10 MS. BRITTINGHAM: Sure. Hello, Mr. Chairman, and
11 members of the Board. My name is Lacy Brittingham. I am the
12 architect for the project, agent for the homeowner, and I am the
13 principal of Brittingham Architecture.

14 CHAIRPERSON HILL: Okay. Great. Ms. Brittingham, so I
15 guess there's -- who's here with you, is that Ms. --

16 MS. BRITTINGHAM: Sellevaag.

17 CHAIRPERSON HILL: -- Sellevaag?

18 MS. BRITTINGHAM: Uh-huh.

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

21 MS. SELLEVAAG: Sure. My name's Melissa Sellevaag, and
22 I'm the owner of the property.

23 CHAIRPERSON HILL: Okay. Great, Ms. Sellevaag.
24 Welcome.

25 Ms. Brittingham, so you're trying to submit a bunch of

1 stuff; is that correct?

2 MS. BRITTINGHAM: Correct. But I did it on the 13th of
3 September, so it was just a few days after the 21-day deadline.

4 CHAIRPERSON HILL: Got it. But it's not in the record
5 now.

6 MS. BRITTINGHAM: It is. It should be.

7 CHAIRPERSON HILL: What the -- okay. All right. Give
8 me a second. Oh, I've got those. Okay. Unless the Board has an
9 issue, I'd like to allow everything into the record because,
10 obviously, we want the right stuff to look at. I don't see
11 anybody raising their hand as a problem to that. Okay. We're
12 going to go ahead and put that in the record then, or allow it
13 the record.

14 Ms. Brittingham, if you want to go ahead and present
15 your case as to why your client is meeting the requirements for us
16 to grant the relief requested. And you can begin whenever you'd
17 like.

18 MS. BRITTINGHAM: Sure. Thank you. Can Mr. Young bring
19 up the architectural drawings?

20 CHAIRPERSON HILL: Is that 38A by any chance?

21 MS. BRITTINGHAM: Yes.

22 CHAIRPERSON HILL: Okay. Great. Thanks.

23 MS. BRITTINGHAM: Okay. All right. So the property at
24 1226 Duncan Place, Northeast is located on a one-block street and
25 lots on this street are on the small side, even for rowhouse

1 zones. For this project, we are requesting 70 percent lot
2 occupancy. And because we chose to retain the historic massing of
3 the dogleg at both levels of the house, we are also seeking relief
4 from the rear yard requirement as well as to go slightly more than
5 ten feet beyond the rear wall of the adjacent house at 1224 Duncan
6 Place. We are only proposing to go 1.58 feet beyond the ten feet
7 allowed as a matter of rights. We have signed letters of support
8 from both adjacent neighbors and also from five other neighbors on
9 Duncan Place or across the alley. Okay. So, if you could go to
10 the next slide, please?

11 This is just looking at the, you know, like I said, the
12 one block of Duncan Place. And you can see there's not very many
13 structures at the interior of the block, so it's fairly open in
14 the center. Like I said, the lots are quite small, and the houses
15 take up a lot of the lot coverage.

16 Next slide, please. This is the front of the house. No
17 changes will be visible from the front.

18 Next slide, please. Okay. So, this slide is looking at
19 the existing condition. The photograph on the left shows the
20 existing single-story rear addition. It is constructed, actually,
21 over the property line. The side wall of it is in line with the
22 face of the party wall on the 1224 side, which is -- 1224 is the
23 house that's sort of peach color on the right-hand side of the
24 existing house. And then, on the left-hand side, that's 1224.
25 That is the house that we are, the new extended length of the

1 house will be 4.58 feet beyond the rear wall at the house on the
2 left. So the photograph on the right there shows you're looking
3 at that house at 1224. Sorry, I said that backwards, 1228.

4 Next slide, please. And then, this photograph just shows
5 the context of the alley. Lots of changes have been made to the
6 rear of these existing historic houses. We have some rear two-
7 story additions, some single-story additions, one house that has
8 the original back, and then the single-story addition at 1226 that
9 is existing. And then, a couple doors down, it's sort of a blue-
10 gray triangle you can see on the left is a house that had a third
11 floor added a number of years ago.

12 Next slide, please. This lot coverage diagram
13 illustrates how little we are actually expanding the footprint of
14 the existing house. So, we are going 3.58 feet beyond what is
15 there now. And the addition itself is 11.58 feet by 12.2, so
16 rather small, and the resulting rear yard is the 14.295. It's
17 important to note that this house does not have a basement, so we
18 really wanted to have a second family room space for them as their
19 children get older. And that became the primary reason why we
20 chose to go, you know, take the full extent of the 70 percent lot
21 coverage by going back instead of filling in the dogleg. If we
22 filled in the dogleg, we'd just basically get a larger kitchen.
23 So that's sort of the thought behind why we're going the
24 additional 1.58 feet beyond the 10 feet that is matter of right,
25 and then also the desire to get sort of three proper sized legal

1 bedrooms for them and their two children.

2 Next slide, please. This just runs through the existing
3 and proposed plans. You can see the removals here of the first
4 floor.

5 Next slide. The proposed first floor.

6 Next slide. Existing second-floor plan, the levels
7 there.

8 Next slide. Proposed second-floor plan three bedrooms,
9 two bathrooms, and a laundry/storage since, again, they have no
10 basement.

11 Next slide. Roof plan.

12 Next slide. And then, the existing and proposed side
13 elevation of the addition.

14 And the next slide I think is the last one. And there's
15 the existing and proposed rear elevation.

16 If I can, I can just run quickly through the criteria
17 for a special exception. The light and air available to the
18 neighboring properties will not be unduly affected because the
19 shadow cast by the house falls primarily in its own yard. Since
20 the back of the house faces north and, additionally, because we
21 are choosing to retain the dogleg at both levels, which assures
22 separation of the structures, and that light and air is available
23 to the adjacent properties.

24 Second, the privacy of use and enjoyment of the
25 neighbors will not be unduly compromised because the house at 1228

1 has no windows along the property line. And the house at 1228
2 will only be 4.58 shorter than the proposed new house length at
3 1226. There are no windows proposed on the property line shared
4 with the other neighbor. And finally, because the existing wood
5 fence is separating the yards, will remain. And last, the
6 proposed addition will not visually intrude upon the character,
7 scale, and pattern of the houses of the alley since the style of
8 the proposed addition is in keeping with other rear additions in
9 the neighborhood.

10 To recap, we have letters of support from lots of
11 neighbors, including the two adjacent neighbors. The ANC visited
12 with them, and they submitted their letter of support. And we
13 have the recommendation of approval by the Office of Planning.
14 That's all for my presentation. And I'd be happy to answer
15 questions.

16 CHAIRPERSON HILL: Thank you, Ms. Brittingham. Do you
17 know, kind of, what the square footage is of that building before
18 and after? I'm just kind of curious.

19 MS. BRITTINGHAM: I don't know off the top of my head.
20 I could look, if you really want me to.

21 CHAIRPERSON HILL: I was just kind of curious. That's
22 all right. You can look while somebody else asks somebody else,
23 something else. I'm sorry.

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

1 Commissioner May?

2 COMMISSIONER MAY: Yeah. Just a quick question for Ms.
3 Brittingham. You know, you're probably aware there was a letter
4 in the record from the Restoration Society in opposition and they
5 take a pretty hard stand against if the expansion is more than ten
6 feet. And I'm wondering if you could just give us a couple words
7 on why that extra foot-and-a-half is necessary for this addition.

8 MS. BRITTINGHAM: That's really what I tried to address
9 by saying, you know, if we -- it's a small lot, so we really
10 wanted to go to the 70 percent. And we chose to create sort of a
11 longer design so we could get that small rear T.V. space instead
12 of filling in the dogleg. Typically, they prefer to have the
13 historic shape of the doglegs, the historic massing of these
14 houses. So we felt we were making a good choice by choosing to
15 retain that dogleg. And then, but that also kind of necessitated
16 going back as much as we possibly could to fill out that 70
17 percent.

18 COMMISSIONER MAY: And what does that little T.V. room
19 wind up being in terms of the dimensions? It looks like it's
20 pretty narrow.

21 MS. BRITTINGHAM: It is.

22 COMMISSIONER MAY: Seven or eight feet, something like
23 that?

24 MS. BRITTINGHAM: Yeah. It's, like, eight feet or seven
25 feet. Which, you know, I think the intent of the ten-foot allowed

1 by right is that you can sort of put one of those little rooms at
2 the back of an existing kitchen. And so, certainly, we are within
3 that footprint for --

4 COMMISSIONER MAY: Sure.

5 MS. BRITTINGHAM: -- what we are proposing.

6 COMMISSIONER MAY: Okay. All right. Thanks. I think
7 that's helpful.

8 CHAIRPERSON HILL: Okay. Anyone else? All right. Can
9 I turn to the Office of Planning, please?

10 MS. FOTHERGILL: This is Anne Fothergill for the Office
11 of Planning. I was inadvertently put into this case, but I'm not
12 actually the OP staff person. If Mr. Young can call in Elisa
13 Vitale?

14 CHAIRPERSON HILL: Thank you, Ms. Fothergill.

15 Ms. Vitale, can you hear me?

16 MS. VITALE: Good afternoon. Can you hear me?

17 CHAIRPERSON HILL: Yep.

18 MS. VITALE: Great. Good afternoon, Mr. Chair, and
19 members of the Board. Elisa Vitale with the Office of Planning.
20 This is for BZA Case 20514. The Office of Planning is
21 recommending approval of the requested special exception relief
22 from the rear yard, the rear yard ten-foot rule and the lot
23 occupancy regulations. As noted by the applicant, the application
24 was revised subsequent to OP filing its report; however, the
25 modification reduced the size of the addition. It didn't change

1 the provisions of the regulations that relief was needed from, but
2 it did, in fact, reduce the relief requested. So OP can, you
3 know, didn't modify its report, but continues to recommend
4 approval.

5 With respect to the 5201 and 901.2 criteria, OP found
6 that the proposed addition met the criteria and found that the
7 two-story addition was generally consistent with the RF-1 Zone,
8 would not unduly affect the light and air available to neighboring
9 properties, nor should it unduly compromise the privacy of use and
10 enjoyment of the neighboring properties. I will keep this short
11 and conclude there. I know it's a long day. Please, let me know
12 if you have any questions. Thank you.

13 CHAIRPERSON HILL: Okay. Thanks, Ms. Vitale. Does the
14 Board have any questions for the Office of Planning?

15 (No audible response.)

16 Does the applicant have any questions for the Office of
17 Planning?

18 MS. BRITTINGHAM: No.

19 CHAIRPERSON HILL: Ms. Brittingham, I am curious, how
20 come you guys didn't fill in the dogleg? Just because?

21 MS. BRITTINGHAM: Well, we'd rather have that room off
22 the back, off the end of the kitchen, so we have a little T.V.
23 room. It would've shortened the length of the house to fill in
24 this, the dogleg.

25 CHAIRPERSON HILL: Okay.

1 MS. BRITTINGHAM: So do you want me to tell you? The
2 existing square footage is 1,380.

3 CHAIRPERSON HILL: Right.

4 MS. BRITTINGHAM: And the proposed is 1,562. So we're
5 only adding 182 square feet. It's a very small change.

6 CHAIRPERSON HILL: 1,380.

7 MS. BRITTINGHAM: But the, I mean, the change in the
8 function of this house is, it's drastic, I think.

9 CHAIRPERSON HILL: Sure.

10 MS. BRITTINGHAM: For the family.

11 CHAIRPERSON HILL: Okay. Great. All right. Is there
12 anyone here wishing to speak, Mr. Young?

13 MR. YOUNG: We do not.

14 CHAIRPERSON HILL: Okay. Does anybody have anything
15 else at the end? All right. I am going to go ahead and excuse
16 everyone and close the hearing and the record. Okay. I'll let
17 other people go. Like, that's small. Like, that is a small
18 house, right?

19 Not -- I know, Commissioner, you guys -- there's, like,
20 plenty of small houses. But a small house, and I bet it wasn't a
21 cheap small house. All right. Okay. All right. So, let's see.
22 Okay. I can start. I mean, it's a small house. Like, I don't
23 really have any problem with the addition they're trying to get.
24 I mean, the additional one-foot-whatever past the ten-foot rule
25 that they're doing there. I think that keeping the dogleg, I

1 guess, is kind of helpful. And so, I don't think that I have any
2 issues in terms of the standard that we're supposed to check this
3 against. I think that they meet the criteria. I would also agree
4 with the Office of Planning's recommendation and the report that I
5 received from the ANC. I'm sorry the CHRS, and I understand, is
6 against it. And I guess, they're just against anything past the
7 ten feet, necessarily. But I didn't think it, again, rose to the
8 level of which we should deny this application. So, I'm going to
9 be voting in favor of this application. And I will look to
10 Commissioner May to go next, if he doesn't mind.

11 COMMISSIONER MAY: Sure. So I support the application
12 as well. I mean, I think there are many reasons to go with this
13 kind of a strategy. Keeping the dogleg very often, you know, what
14 we will hear from some folks is that, you know it's better to add
15 more off the back than it is to fill in the dogleg. The -- when
16 the -- the thing that Ms. Brittingham did not mention and it may
17 not have been a factor here, but it often is, is that the dogleg
18 gives you light to the middle of the house. So it allows you to
19 have a window on your second, that middle bedroom and allows you
20 to have a window directly into the dining space. It allows you to
21 have a window into the kitchen, you know, by the kitchen sink or
22 by the bathroom above. It's so there, you know, the dogleg is a
23 light well. It gives you light into the depth of the house. So
24 it's a good thing. And there's a trade-off. If you want to get
25 more space, you've got to go a little bit further out. I think

1 the addition is very modest, as you say, it's a very small house
2 and it's not getting that much bigger. It's, you know, it's
3 unfortunate that CHRS didn't think that all the way through or
4 didn't agree with that assessment. But you know, the abutting
5 neighbors on both sides were supportive of it, you know, so I
6 don't see any issues with this.

7 CHAIRPERSON HILL: Okay. Thank you. Let's see.

8 Mr. Smith?

9 BOARD MEMBER SMITH: Because we have a long day, I won't
10 belabor the point. I agree with everything that both you and
11 Commissioner May have stated on this particular case. It is a
12 fairly small house. I do believe that the addition is a
13 reasonable request from the applicant given the opposition from
14 CHRS. It seems to me, looking at the design of the building, it
15 is largely in keeping with the designs of other additions within
16 the neighborhood. So I think you're correct. I think they're
17 opposed to it because it's beyond the ten-foot rule. But I think
18 the style is keeping in what we see typically within that
19 neighborhood. So with that, given the support of the adjacent
20 property owners, and the ANC, and I'll stand on OP's staff report,
21 giving great weight to their staff report, and I would support the
22 application.

23 CHAIRPERSON HILL: Okay. Thank you.

24 Vice-Chair John?

25 VICE-CHAIR JOHN: Thank you, Mr. Chairman. I have

1 nothing to add. I agree with all of the comments so far. I think
2 maintaining the dogleg as Commissioner May said is a great idea
3 and does add light into the property. So, I'm in full support.

4 CHAIRPERSON HILL: Mr. Blake?

5 BOARD MEMBER BLAKE: I won't add too much to that. I
6 appreciate and support the request.

7 CHAIRPERSON HILL: All right. I'll make a motion to
8 approve Application No. 20514 as captioned and read by the
9 secretary and ask for a second, Ms. John?

10 VICE-CHAIR JOHN: Second.

11 CHAIRPERSON HILL: Motion made and seconded.

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

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

17 Zoning Commissioner Peter May?

18 COMMISSIONER MAY: Yes.

19 MR. MOY: Mr. Smith?

20 BOARD MEMBER SMITH: Yes.

21 MR. MOY: Mr. Blake?

22 BOARD MEMBER BLAKE: Yes.

23 MR. MOY: Vice-Chair John?

24 VICE-CHAIR JOHN: Yes.

25 MR. MOY: Chairman Hill?

1 CHAIRPERSON HILL: Yes.

2 MR. MOY: Staff would record the vote as 5-0-0 and this
3 is on the motion made by Chairman Hill to approve. The motion was
4 seconded by Vice-Chair John to approve. Also, in support of the
5 motion to approve is Zoning Commissioner Peter May, Mr. Smith, Mr.
6 Blake, and of course, Vice-Chair John, and Chairman Hill. Motion
7 carries on a vote of 5-0-0.

8 CHAIRPERSON HILL: Okay. Great. So, you guys, we got
9 one more with Commissioner May. And then, I think we Chairman
10 Hood for the last two. I don't know how this next one's going to
11 go. Do we want to take a quick break? Well, I will take a quick
12 break if you all don't mind.

13 VICE-CHAIR JOHN: What is the next one, Mr. Chairman?
14 Is that the Jackson Street?

15 CHAIRPERSON HILL: Yes.

16 VICE-CHAIR JOHN: Is that the next one with --

17 CHAIRPERSON HILL: Yes.

18 VICE-CHAIR JOHN: -- Commissioner May?

19 CHAIRPERSON HILL: Yes.

20 VICE-CHAIR JOHN: Okay.

21 COMMISSIONER MAY: Do you want to continue with me or
22 are you going to go to Commissioner Hood?

23 CHAIRPERSON HILL: No.

24 COMMISSIONER MAY: Because I need to be out at 4:30 for
25 a few minutes.

1 CHAIRPERSON HILL: Oh, yeah. I forgot. Okay. Let's
2 try this. We might stop in the -- well, I don't know what to do
3 here.

4 COMMISSIONER MAY: Take a break and then, start again at
5 4:30 with Commissioner Hood. And then, I'll come back and --

6 CHAIRPERSON HILL: Yeah, yeah, yeah. Let's do that.
7 Let's do that. Let's do that. Thank you, Chairman May. Okay.
8 All right. Okay. Let's do that. All right. Let's take a break
9 until 4:30. We'll come back with Chairman Hood. And then, we'll
10 see what happens with this last one when Chairman -- I mean,
11 sorry, when Commissioner May is back with us. Okay?

12 Thank you.

13 COMMISSIONER MAY: Thank you.

14 CHAIRPERSON HILL: Bye-bye. Bye-bye.

15 (Whereupon, the matter recessed and then reconvened.)

16 CHAIRPERSON HILL: Mr. Moy, are you there? Okay.
17 Great. Do you want to call -- Mr. Blake, are you there?

18 BOARD MEMBER BLAKE: I am.

19 CHAIRPERSON HILL: Are you not on 20400?

20 BOARD MEMBER BLAKE: I believe I'm not.

21 CHAIRPERSON HILL: Okay. All right. I don't know how
22 long it's going to go, so if you wouldn't mind just bearing with
23 us?

24 BOARD MEMBER BLAKE: Will do.

25 CHAIRPERSON HILL: Thank you. All right.

1 Mr. Moy, you want to call 20400?

2 MR. MOY: The Board is back in session and the time is
3 at or about 4:38 p.m. The matter before the Board is a limited
4 scope continued hearing to Application No. 20400 of Green Street
5 Apartments, LLC. This application was amended for special
6 exception under the new residential development requirements,
7 Subtitle U, Section 421.1 pursuant to Subtitle X, Section 902.1.
8 This would construct a new detached three-story with cellar and
9 penthouse, a ten-unit apartment house in the RA-1 Zone. The
10 property is located at 2326 through 2328 Green Street Southeast.
11 The Board last heard this at its hearing on September 22nd.

12 CHAIRPERSON HILL: Okay. Mr. Rice, can you hear me?

13 MR. RICE: Yes, sir.

14 CHAIRPERSON HILL: Okay. This was the one where there
15 was some discrepancy between the members of the ANC; is that
16 correct?

17 MR. RICE: That's correct, sir.

18 CHAIRPERSON HILL: Okay. Mr. Young, are the ANC members
19 here?

20 MR. YOUNG: I have Commissioner Moore, who's calling in.
21 I can unmute her now.

22 CHAIRPERSON HILL: Okay. One moment. Okay. Go ahead
23 and unmute her.

24 Mr. Sullivan, can you hear me?

25 MR. SULLIVAN: Yes, I can, Mr. Chairman.

1 MS. MOORE: Hello?

2 CHAIRPERSON HILL: Sure. Commissioner Moore, can you
3 give me one moment, please?

4 MS. MOORE: Yes, sir.

5 CHAIRPERSON HILL: Thank you. Mr. Sullivan --

6 MS. MOORE: You're welcome.

7 CHAIRPERSON HILL: -- could you introduce yourself for
8 the record?

9 MR. SULLIVAN: Yes. Marty Sullivan with Sullivan and
10 Barros on behalf of the applicant.

11 CHAIRPERSON HILL: Commissioner Moore, could you
12 introduce yourself for the record, please?

13 COMMISSIONER MOORE: Hi, I'm ANC 8A Commissioner Moore
14 for 8A04. CHAIRPERSON HILL: Okay. Thank you,
15 Commissioner. Before we get to --

16 COMMISSIONER MOORE: You're welcome.

17 CHAIRPERSON HILL: Before we get to you, Commissioner,
18 Mr. Sullivan, you wanted a postponement; is that correct?

19 MR. SULLIVAN: Yes, Mr. Chair. And I can go into the
20 reasons for that, if you'd like.

21 CHAIRPERSON HILL: Yes. Could you please do that first?

22 MR. SULLIVAN: Sure. It's two main reasons. One, last
23 week, the Board asked for some clarification on the parking -- or
24 on the driveway easement to get to our parking spaces. Now,
25 originally, I just assumed that we would -- because we were

1 withdrawing the parking relief, providing those parking spaces
2 would be an inherent condition of ever doing the project, so we
3 would have to get the driveway easement. But if the Board would
4 like more clarification of that, we need a couple weeks to ink
5 that deal. Basically, it was just a verbal agreement or oral
6 agreement between the two property owners. And now, they've got
7 their engineers together because they want to make sure where it's
8 going exactly. So they're actually -- so I think we're going to
9 have an agreement in the next week or two. And if that cleans
10 things up with that, we'd like to do that.

11 The other thing is we have a habitable penthouse on this
12 space. As of today, that's not permitted as a matter of right.
13 And we're not asking for relief to keep it. There's been a, as
14 you know, there's been a change in the permissibility of habitable
15 penthouses in RA-1 over the last six months. And so, we've
16 actually had several applications that went through with
17 penthouses that end up -- couldn't build a penthouse even though
18 they got approved. And we left some on, even after that was
19 known, with that understanding that if the zoning administrator
20 doesn't permit this, we just have to take it off. And the Board's
21 not approving any relief for that, of course.

22 Next week, the Zoning Commission is taking up an
23 amendment to the zoning regulations related to penthouses. And at
24 this point, what's been proposed may make habitable penthouses in
25 RA-1 permissible. So we'd like to wait until after that hearing,

1 if next --

2 CHAIRPERSON HILL: Okay.

3 MR. SULLIVAN: At next week's Zoning Commission hearing,
4 it becomes apparent that it's not going to be permitted, then we
5 can take it off the plans and that makes that cleaner. If it
6 becomes apparent that it will be permissible again, we'll then --
7 we'd like to keep the penthouse on. And then, I understand OAG
8 might have a position on this if we were going to do that. I
9 don't know if we'd have to ask for a postponement until after that
10 would become effective or if it can get approved pending that
11 becoming effective.

12 CHAIRPERSON HILL: Okay.

13 MR. SULLIVAN: If that makes sense.

14 CHAIRPERSON HILL: Okay. Let me deal with that in one
15 moment.

16 Commissioner Moore, can you hear me?

17 COMMISSIONER MOORE: Yes, sir. I can.

18 CHAIRPERSON HILL: Sure. So Commissioner Moore, I don't
19 think it's necessary for you to go into the details of kind of the
20 back and forth as to what you believe should be in the record.
21 I'm kind of asking you what you think your ANC has approved and/or
22 what you think -- yeah, what you think your ANC has approved or
23 not approved and what is actually in the record that we should be
24 looking at. Do you know if you can clarify that for us?

25 COMMISSIONER MOORE: I'd say I need a little bit more

1 specifics, please.

2 CHAIRPERSON HILL: Okay. All right. Mr. Rice, are you
3 there?

4 MR. RICE: Yes, sir.

5 CHAIRPERSON HILL: I think what might be helpful is I
6 think we're going to postpone this so that we can get the easement
7 in the record in terms of what has actually been agreed to by the
8 parties so that the Board is comfortable with the parking actually
9 being not included in the application. And then, perhaps Mr.
10 Rice, you can reach out to the Commissioner and clarify some of
11 the discrepancies that we're having and what we might want to get
12 from the ANC that clarifies what is in the record for us to take a
13 look at. Would that be a prudent way to go about it, Mr. Rice?

14 MR. RICE: Yes, sir.

15 CHAIRPERSON HILL: Okay. Commissioner Moore, can you
16 hear me?

17 COMMISSIONER MOORE: Yes, sir.

18 CHAIRPERSON HILL: I'm sorry that you had to wait this
19 long to get to this. And it's not because of me, it's just the
20 way the hearings go. As you know, as an ANC Commissioner, it
21 never works out exactly as you hope for in terms of the docket.
22 So I'm going to have the Office of the Attorney General reach out
23 to you to help us understand what we're looking at from the ANC.
24 And perhaps, we can get something from you, your ANC in the record
25 that helps clarify that. Would that be appropriate on your side?

1 COMMISSIONER MOORE: Yes. But I just want to know what
2 you need clarified, Chairman Hill.

3 CHAIRPERSON HILL: No, I got it. And I appreciate that,
4 Commissioner.

5 COMMISSIONER MOORE: Yes, sir.

6 CHAIRPERSON HILL: And rather than go through that on
7 the record here and take up time, I'd rather OAG just reach out to
8 you to clarify --

9 COMMISSIONER MOORE: Okay.

10 CHAIRPERSON HILL: -- and answer any questions that you
11 have.

12 COMMISSIONER MOORE: Yes, sir.

13 CHAIRPERSON HILL: Okay.

14 COMMISSIONER MOORE: That'll be fine.

15 CHAIRPERSON HILL: Okay.

16 COMMISSIONER MOORE: Yes, sir.

17 CHAIRPERSON HILL: All right. Perfect.

18 COMMISSIONER MOORE: And I apologize.

19 CHAIRPERSON HILL: Okay. Oh, Commissioner, you don't
20 have to apologize. I'm sorry you had to wait around this long.

21 COMMISSIONER MOORE: It's okay.

22 CHAIRPERSON HILL: So, go ahead, Mr. Rice. You'll --
23 and stay on the line, Commissioner, for a moment. Mr. Rice, go
24 ahead --

25 COMMISSIONER MOORE: Okay.

1 CHAIRPERSON HILL: -- and reach out to Commissioner.

2 Clarify what we're looking for, all right, Mr. Rice?

3 MR. RICE: Yes, sir.

4 CHAIRPERSON HILL: Okay. And then, Mr. Sullivan, you're
5 saying that it's going to take a couple of weeks to get the deal
6 "inked" as you, the wording that you used. And then, also,
7 perhaps, you might at that time know more about where the Zoning
8 Commission might land with your penthouse relief; is that correct?

9 MR. SULLIVAN: Yes. That's correct. And I think we
10 asked for October 20 or whatever date the Board would like after
11 that.

12 CHAIRPERSON HILL: I don't think -- Commissioner, when's
13 the next time you guys meet, your ANC?

14 COMMISSIONER MOORE: October the 5th.

15 CHAIRPERSON HILL: Okay. So, that's soon.

16 COMMISSIONER MOORE: Yes.

17 CHAIRPERSON HILL: Mr. Rice, do you think you could
18 reach out to the Commissioner, you know, tomorrow?

19 MR. RICE: Yes, sir.

20 CHAIRPERSON HILL: Okay.

21 MR. RICE: Of course.

22 CHAIRPERSON HILL: And then, Commissioner, perhaps this
23 is -- after speaking with the Office of the Attorney General,
24 perhaps it's something that you can bring up with your ANC on
25 October 5th, okay?

1 COMMISSIONER MOORE: Yes, sir.

2 CHAIRPERSON HILL: Okay. And if not, just talk to --

3 COMMISSIONER MOORE: Okay.

4 CHAIRPERSON HILL: -- just talk to the Office of the
5 Attorney General, Mr. Rice, and then, we'll see if we need to --
6 if it seems more complicated than you had thought and you need
7 more time than October 5th, you can let Mr. Rice know that, okay?
8 But at this point, we'll assume that you might be able to clean
9 this up for us so that we're able to bring this back before your
10 ANC meeting in November, okay?

11 COMMISSIONER MOORE: Yes, sir. Okay. I understand.

12 CHAIRPERSON HILL: Okay. Then, Mr. Sullivan, the 13th
13 isn't going to work for us. I don't know if you were asking about
14 the 13th. Mr. Moy, what's the 20th looking like?

15 MR. MOY: Mr. Chairman, on the 20th, we have five cases
16 and one appeal. The week after that, on October 27th, we have ten
17 cases.

18 CHAIRPERSON HILL: Okay. Okay. You got an appeal and
19 five cases. Okay. So what do you think, Mr. Moy? You think it's
20 the appeal day or the 20th day?

21 MR. MOY: I would go for the appeal day.

22 CHAIRPERSON HILL: All right. Okay. So then why don't
23 we go ahead and shoot for the appeal day, meaning the 13th, Mr.
24 Sullivan, and see if it's tidied up by then.

25 MR. SULLIVAN: The 20th?

1 CHAIRPERSON HILL: No, no, the 13th. Oh, I'm sorry.
2 Wait a minute. Yeah, the 20th, 20th. I'm sorry.
3 MR. SULLIVAN: Yeah. That would be great, thank you.
4 CHAIRPERSON HILL: Okay. Commissioner Moore, do you
5 hear me and understand?
6 COMMISSIONER MOORE: Yes, I do. I just have a question.
7 Does Mr. Rice have all of my contact information?
8 CHAIRPERSON HILL: Mr. Rice?
9 MR. RICE: I don't have it, but I can probably get it
10 from the Office of Zoning or from the ANC's website.
11 CHAIRPERSON HILL: Okay. All right. Commissioner
12 Moore, Mr. Rice will be in touch with you shortly.
13 COMMISSIONER MOORE: Thank you very much.
14 CHAIRPERSON HILL: Thank you, Commissioner. And again,
15 thank you for your patience.
16 COMMISSIONER MOORE: You're welcome. You guys have a
17 good day.
18 CHAIRPERSON HILL: Thank you. You as well.
19 COMMISSIONER MOORE: Thank you. Bye-bye.
20 CHAIRPERSON HILL: Mr. Sullivan, we're going to let you
21 go as well, okay?
22 MR. SULLIVAN: Okay.
23 CHAIRPERSON HILL: All right. We'll see you guys on
24 10/20.
25 MR. SULLIVAN: Thank you.

1 CHAIRPERSON HILL: All right. So, that's it with that.
2 I think we're okay to go ahead with Commissioner -- I mean,
3 Chairman Hood, because I think we're still all right with
4 Commissioner May's timeline. So go ahead. And, Mr. Moy, if you
5 could call 20508? And is DDOT still with us?

6 MR. MOY: I would have to --

7 MR. YOUNG: Yes, they are.

8 CHAIRPERSON HILL: Okay. We've got Mr. Zimmerman?
9 Okay. If you can bring everybody in? And call the case, Mr. Moy.

10 MR. MOY: All right. This would be Case Application No.
11 20505 -- or I'm sorry, 20508 of 9 New York Avenue, LLC. This
12 application is amended for special exception from the minimum
13 loading berth requirements of Subtitle C, Section 901.1. This
14 would raze the existing three-story building and to construct a
15 14-story with penthouse, 116-unit apartment building in the D-5
16 Zone. The property is located at 7 New York Avenue Northeast,
17 Square 671, Lot 14. And this was last heard by the Board on
18 September the 22nd.

19 CHAIRPERSON HILL: Okay. All right. Let me see who I
20 got here. Ms. Roddy, can you hear me?

21 MS. RODDY: Yes.

22 CHAIRPERSON HILL: Okay. Can you introduce yourself for
23 the record, please?

24 MS. RODDY: Christine Roddy, Goulston and Storrs,
25 counsel for the applicant.

1 CHAIRPERSON HILL: Thank you. Commissioner Eckewiler,
2 can you hear me?

3 MR. ECKENWILER: I can, Mr. Chairman. Mark Eckewiler,
4 Vice-Chair ANC 6C for the ANC.

5 CHAIRPERSON HILL: Commissioner Eckewiler, thank you so
6 much. You made me smile at this late time seeing the change in
7 the background of you again. You know, I really appreciate it.

8 Let me see now, Mr. Andres, can you introduce yourself
9 for the record, please?

10 MR. ANDRES: Yes. Good afternoon, Chairman Hill. For
11 the record, my name is Erwin Andres. I'm the principal with
12 Gorove Slade Associates.

13 CHAIRPERSON HILL: Okay. Mr. Zimmerman, can you hear
14 me?

15 MR. ZIMMERMAN: Yes, I can.

16 CHAIRPERSON HILL: Can you --

17 MR. ZIMMERMAN: For the record, my name is -- sorry.

18 CHAIRPERSON HILL: Go.

19 MR. ZIMMERMAN: My name is Aaron Zimmerman, site
20 development program manager at DDOT.

21 CHAIRPERSON HILL: Okay. And Ms. Roddy, is, I forget,
22 Mr. Lallement, is he the property owner or representative of the
23 property owner?

24 MS. RODDY: No, he was the project architect.

25 CHAIRPERSON HILL: Okay. All right. Mr. Lallement, can

1 you introduce yourself for the record, please?

2 MR. LALLEMENT: Yes. For the record, I'm J.B.
3 Lallement, I'm the project architect at Eric Colbert and
4 Associates.

5 CHAIRPERSON HILL: Okay. All right. I'm going to go --
6 I mean, I know where we were from, I think, was it last week? I
7 think it was last week. And I appreciate everybody's time,
8 including Mr. Zimmerman to kind of get together with everybody. I
9 see what happened in the record and where everybody kind of
10 stands. But I guess, we're going to go ahead and go around and
11 see what happened. So maybe I'll start with Ms. Roddy. I'll go
12 to -- I don't know who to start with. Maybe I'll start with
13 Mr. Zimmerman. Mr. Zimmerman -- no, no. I'll start with Ms.
14 Roddy. I'll go to Commissioner Eckenwiler. I'll end with Mr.
15 Zimmerman. So, Ms. Roddy, can you tell us what's happened since
16 the last time you were with us?

17 MS. RODDY: Sure. And I think it was reflected in the
18 record, so I don't want to repeat it too much. But we -- all the
19 parties met as was requested by the Board after our hearing last
20 week to discuss the loading for 7 New York. If you recall, the
21 ANC preferred back-in loading whereas DDOT preferred the curbside
22 loading. So we met and had a discussion about those options. We
23 left the meeting largely in the same position with the ANC
24 strongly preferring back-in maneuvers from N Street and DDOT
25 preferring curbside. We had a further discussion. The applicant

1 had a further discussion with DDOT about the curbside loading to
2 see if there were additional changes that could be made to try to
3 address the ANC's concerns about congestion on N Street. If you
4 recall that there was a single curbside space being dedicated for
5 loading for the building. And DDOT spoke internally. And they are
6 amenable to dedicating that 110-foot space to -- 50 feet would be
7 dedicated to loading and 65 feet would be dedicated to drop-off,
8 pick-ups. So, I'm happy to have Mr. Andres speak a little bit
9 more in depth about it. But we did come up with those changes as
10 well as additional changes to the loading management plan that we
11 believe addressed the congestion concerns, given that there is a
12 significant amount of area being dedicated to loading for this
13 building. Again, it would not be exclusive to the building, but
14 it would be more than enough to address the needs, the loading
15 needs for the building.

16 CHAIRPERSON HILL: Can you refer me to the exhibit
17 again? I mean, they're -- I can't recall if there are conditions
18 or not. Could you refer me to the exhibit, do you know?

19 MS. RODDY: I'm sure I can find it.

20 MR. ANDRES: So our supplemental report is, I believe,
21 Exhibit 43A. DDOT's report, I guess, in response to our report is
22 Exhibit 42. And the ANC's report is Exhibit 44.

23 CHAIRPERSON HILL: Got it.

24 MR. ANDRES: Okay.

25 CHAIRPERSON HILL: 43A has the supposed conditions that

1 you think, and I don't know what, you know, obviously, the ANC
2 does not agree, and they will have an opportunity to reflect.
3 That's where those conditions are after your discussion, correct?

4 MS. RODDY: Yes.

5 MR. ANDRES: That is correct.

6 MS. RODDY: Yeah.

7 MR. ANDRES: And for ease of reference, we redlined it
8 so you can see what the changes were applied against our previous
9 submission.

10 CHAIRPERSON HILL: I don't see the redline version. I
11 see 42. Maybe it -- 42 is the one that, I think, has everything
12 in it.

13 MR. ANDRES: Yes. 42 is DDOT's official report. 43A is
14 our submittal after our meeting.

15 CHAIRPERSON HILL: Got you. Okay. All right. Let's
16 see. Okay. All right.

17 Commissioner Eckenwiler?

18 CHAIRMAN HOOD: Mr. Chairman, before we move on, I'm
19 still trying to catch up with the redline. Mr. Andres, could you
20 tell me where the redline is? Is it in 43A?

21 MS. RODDY: I have to apologize. I think my assistant
22 is on top of it, and she assumed that the redline needed to be
23 accepted and submitted it as a non-redline document. So we had
24 every intention of trying to make it easy for you. To clarify, we
25 adopted what DDOT had suggested in their report as an additional

1 loading management plan contribution.

2 CHAIRMAN HOOD: Okay. So, we don't have --

3 CHAIRPERSON HILL: But --

4 CHAIRMAN HOOD: Okay. So, that's all I need to know.

5 Thank you. We don't have it.

6 CHAIRPERSON HILL: Right. So, 43A is what you guys
7 submitted, correct, Ms. Roddy?

8 MS. RODDY: That's correct.

9 CHAIRPERSON HILL: And that has all of DDOT's new
10 conditions in them.

11 MS. RODDY: Yes.

12 CHAIRPERSON HILL: Okay. I see it. I see. All right.
13 Okay. Commissioner Eckewiler, can you hear me?

14 MR. ECKENWILER: I can. Can you hear me as well, Mr.
15 Chairman?

16 CHAIRPERSON HILL: Yeah, I can. Thank you,
17 Commissioner. All right. Commissioner, unfortunately, I read
18 your report also, but do you want to go ahead and tell us about
19 your conversation with DDOT and the applicant?

20 MR. ECKENWILER: I know you've had a long day, Mr.
21 Chairman, so if it would be more beneficial just to kind of tell
22 you where we are? I don't disagree with anything that Ms. Roddy
23 said. So, where we are right now is pretty much, at least where
24 the ANC is, is where we were before. And really the only
25 additional thing that I put into the record is the letter pointing

1 out that DDOT explicitly approved in writing back-in loading for
2 the property next to this. So that's the Hyatt Place, the address
3 is 33 New York Ave. But the back-in loading is indicated in our
4 supplemental letter, which has a link to the DDOT report from, I
5 think it's 18344. That's back-in loading off of N Street. And,
6 frankly, there are two back-in loading spaces there. If you take
7 a look at the applicant's photos and their PowerPoint presentation
8 from last week, it depicts that pretty clearly.

9 I would just add one additional point, and this is
10 something I raised in the discussions with them. Much weight has
11 been put on the idea of there being a loading manager at the site.
12 And the point that I've made, and I'll make to the Board now is if
13 that's really going to be a thing and it's unclear what, you know,
14 what redress there is if that loading manager never exists or
15 ceases to exist at some point. But let's say that person exists.
16 DDOT's chief concern with back-in loading appears to be, and Mr.
17 Zimmerman can obviously speak to this, but it seems to be
18 pedestrian safety. And I made the point, well, if you're really
19 going to have this loading manager, that is precisely the person
20 who can go out and ensure pedestrian safety at times when trucks
21 are backing in or ensure that someone else is available to assist
22 the driver while the driver is executing the turn and back-in
23 maneuver. And I don't think I have much more to add at this
24 point, Mr. Chairman, so I'll stop there.

25 CHAIRPERSON HILL: Okay. Thanks, Commissioner.

1 Mr. Zimmerman, I know you've been through this again.
2 Like, you stated for the record last time why the Hyatt got back-
3 in loading and why you, DDOT, does not feel that it is appropriate
4 for this project. Could you A, clarify that and B, respond to the
5 Commissioner's comments about using the manager to provide safety
6 to the public as there's back-in for this project that's before
7 us?

8 MR. ZIMMERMAN: Good evening, Chairman Hill, members of
9 the BZA. Thank you for having me back. So regarding the hotel
10 next door, the reason that it was more appropriate to go with
11 back-in loading on that one as opposed to this one is because that
12 site is much bigger and can fit the loading berth and has greater
13 demands put on the loading. With this particular project, you
14 know, the size of the site is small. The triangular shape makes
15 it so you can only have it in one location. And from what we
16 understand from the applicant, they can't even fit the loading
17 berth in there. So, I would say those are the main differences
18 between these two projects. And so, when we met with the
19 applicant and they demonstrated this challenge to us that they
20 couldn't get a loading berth to work, you know, we worked with
21 them on this plan that we feel is superior anyways to, you know,
22 if they were able to provide the loading berth. We feel like this
23 is a really good plan. And I noted in our report, you know, that
24 there were a couple, you know, added benefits, street safety,
25 pedestrian safety, all that good stuff.

1 Now, in terms of, like, the loading manager, can you
2 just refresh that question for me? Would they be able to, like,
3 flag in and wave in trucks and, I guess, add that level of
4 pedestrian, that level of safety for pedestrian crossing while a
5 truck is trying to back across? If that's the question, I mean,
6 that is a tool in the toolbox that we'll use sometimes in these
7 loading management plans. But in this particular case, because
8 there's no loading berth, that was not a strategy that we looked
9 at. But that's something that, you know, if there was back-in
10 loading, you know, in the rare situations where that occurs, you
11 know, that would be something we could look at.

12 CHAIRPERSON HILL: Okay. So yeah, Mr. Zimmerman, I
13 guess you kind of brought in another question. I'll let
14 everybody, kind of, ask questions. I mean, you all have already
15 met, and everybody's already gone round and round on this. And
16 I'll let my fellow Board members ask their questions.

17 Just, Mr. Zimmerman, whether or not that loading dock is
18 possible or not, it's DDOT's opinion that even if it were
19 possible, this is a better solution; is that what you're stating?

20 MR. ZIMMERMAN: Yeah. That's what I'm stating. You
21 know, because ultimately, this is going to go to the Public Space
22 Committee to approve the back-in loading the way that you guys
23 are, you know, approving, would be approving the loading relief.
24 And so, what the Public Space Committee would say to us, you know,
25 in these cases where we've done similar projects like this, they

1 would say come up with the best solution, the best option. You
2 know, it doesn't necessarily have to be back-in loading. It could
3 be curbside or in some cases, you know, we could look at other
4 different opinions. So, you know, the Public Space Committee, we
5 would be going through this if it were a by right case or no
6 loading berth was even required, we would be going through this
7 exercise and encouraging them to, you know, do a scheme like this
8 that, you know, we'd develop with them.

9 CHAIRPERSON HILL: Okay. All right. I'm going to first
10 go to my fellow Board members. Do my fellow Board members have
11 questions for anyone? And if so, please raise your hand.

12 Commissioner Hood? I mean, Chairman Hood?

13 CHAIRMAN HOOD: Okay. Thank you. Let me just say good
14 afternoon to everyone. I'm trying to understand about the
15 manager, loading manager as well as, kind of, find out -- trying
16 to decipher what DDOT's position is more or less and, also, figure
17 out the ANC, pretty much. Trying to know where everybody is. I
18 don't have a lot -- I've never had a lot of confidence in curbside
19 loading. And I've (indiscernible) all over the city. I think,
20 basically, we are potentially exacerbating the problem. But Mr.
21 Zimmerman, I know that DDOT is an award-winning organization and
22 part of the government. So I definitely don't want to treat that
23 as though it doesn't happen because I know that other cities do
24 look at DDOT. I know you all are well respected, and I respect
25 you as well. But, Mr. Zimmerman, when I heard you say that the

1 applicant told you they couldn't do something, did DDOT prepare
2 expertise and go out and maybe look and see whether or not it's
3 doable or not? Because I think it's still doable. Did you just
4 take the applicant's word, or did you all do a little more
5 investigatory work?

6 MR. ZIMMERMAN: Well, the applicant presented us the
7 same different alternative designs that they presented to you guys
8 last week. I mean, they presented that to us, you know, probably
9 a month or two ago showing that they don't feel they can get a
10 loading berth into the building or that it would eliminate
11 elevators or all kinds of different things. So based on that, we
12 moved on to working with them on a new loading scheme so that the
13 impacts would not occur to their building from what they
14 demonstrated to us. So that's sort of the origination of where
15 this curbside loading discussion started.

16 CHAIRMAN HOOD: Okay. So what they presented -- did
17 DDOT make any, your engineers, did you all make any changes? Or
18 did you change anything what they presented you? I guess, that's
19 my question. Well, that is my question.

20 MR. ZIMMERMAN: No, we --

21 CHAIRMAN HOOD: Or did we just take whatever they gave
22 us and say oh, this is it, this is the best we can do?

23 MR. ZIMMERMAN: Well, we looked at the graphics they
24 presented to you, we looked at their returning diagrams and things
25 like that. To the best we can tell, it's not the building

1 engineers. Best we could tell, that was a sufficient challenge.
2 That's kind of where that came from.

3 CHAIRMAN HOOD: And more further looking at this, and I
4 think we've exhausted -- would you say that we have exhausted all
5 options we have on this site? Is that your testimony?

6 MR. ZIMMERMAN: Yeah, that's my testimony.

7 CHAIRMAN HOOD: And my last question to you is does DDOT
8 really encourage curbside loading?

9 MR. ZIMMERMAN: Generally, we don't encourage it. It
10 is, like you said, it's a tool in the toolbox when needed. You
11 know, we always remind applicants that providing on-site loading
12 is the best way to guarantee that it's always open, you know, if
13 your site can physically provide it and if it's not going to
14 impact the design of your project too significantly. But yeah,
15 that's, I would say that I would agree with that.

16 CHAIRMAN HOOD: I would tell you, Mr. Zimmerman, my
17 concern is there's another property this Board heard, I'm not sure
18 if all the members were here at that time, but it exactly is just
19 horrifying. We've allowed curbside loading in one area and then,
20 it looks like some years later, it was allowed somewhere else.
21 And now, when you go up there, it's just terrible. So, I mean, I
22 hope if this is approved, we don't get to that point. So let me
23 go to Commissioner Eckenwiler.

24 Commissioner Eckenwiler, you obviously, the ANC
25 obviously still has some concerns, but you -- the testimony from

1 Mr. Zimmerman, the award-winning DDOT, and I'm not saying that
2 being sarcastic, because I've been told many times they've won
3 awards and other people across this nation have called on them.
4 What would you -- I know what the ANC would like to see. But if
5 the constraints are there -- and I noticed in your statement, I
6 wanted to use the word exactly what you mentioned about some of
7 the developments, and I wanted to know if you could explain that
8 further? You said, what's the word you used? Let me see if I can
9 find it right quick. It was, like, fashionable or flourishable or
10 something. But you wrote it, so I'll probably find it after --

11 MR. ECKENWILER: You're talking about the letter
12 submitted yesterday?

13 CHAIRMAN HOOD: Yes.

14 MR. ECKENWILER: I made a comment of something to the
15 effect of we've got some additional minor flourishes, but the
16 curbside --

17 CHAIRMAN HOOD: Yes.

18 MR. ECKENWILER: -- loading proposal is the same.
19 Again, Mr. Zimmerman can correct me, but my recollection is that
20 the two main additions to DDOT's report are saying, well, you
21 know, now the loading manager can go out and put out cones. I
22 addressed that in ANC's letter. I don't want to, you know, beat
23 that horse. And then, there were some comments about and, also,
24 you know, they can call 3-1-1 and request ticketing. And I
25 thought it was, you know, significant to say and perhaps towing.

1 Our initial filing, I think, addressed that in detail, why that's
2 really not adequate.

3 CHAIRMAN HOOD: Yeah, I would agree with the ANC about
4 the 3-1-1 calling for towing. But let me ask, to your experience,
5 Mr. Eckewiler, the manager, the loading dock manager. How does
6 that work? I know there's probably been some other cases. I
7 really, honestly, I've never really followed the track record.
8 And I'm not even sure, it sounds good in front of the Board and in
9 front of the Commission. But I'm not really sure what really
10 happens afterwards. Does it really work or is it just something
11 to present to the Board to get through?

12 MR. ECKENWILER: I would say it's the latter, yeah.
13 They -- and this is one of the hard lessons one learns, you know,
14 dealing with this. And it's probably true for anyone whether you
15 are a lawyer for applicants, whether you sit on the Board or the
16 Commission. So, you're an ANC commissioner, you learn from your
17 mistakes. And I think one of the mistakes that we have made is to
18 be too trusting. I said this I think at the outset of this
19 hearing that it's unclear what the real enforcement mechanism is
20 if that loading manager never exists or if, you know, he or she
21 exists one day and then stops existing. Honestly, I don't know
22 how we even know whether that person exists, you know? We don't
23 have a lot of visibility into building operations. So one would
24 be taking it on faith that there is, in fact, a loading manager.
25 I believe, and I meant to look this up earlier, but I didn't have

1 time. I believe we had at least one previous case where there was
2 a promise to have a loading manager and it's just, kind of, the
3 Wild West. So, we are, certainly, our general sense these days is
4 that that's just not, it's not a meaningful promise because if
5 that's not fulfilled, it's kind of unclear what you do to
6 readdress that.

7 CHAIRMAN HOOD: I would say I don't have a lot of
8 confidence in the loading manager or even in the discussion.
9 That's something I think I will proceed in trying to see how it's
10 enforced. I do agree, it sounds good in front of us, but I'm
11 concerned and I'm thinking about this other case I was on where, I
12 know probably everybody who came down there when they were doing
13 all the curbside loading, all of them probably had a loading
14 manager and there was nobody managing anything. So I know I have
15 to deal with this this case. I would like to hear from my other
16 colleagues. But I am, I'm 50/50. I usually don't walk the fence,
17 but I also am trying not to make a mistake. It sounds very
18 contradictory. But anyway. Okay. Thank you, Mr. Chairman.

19 CHAIRPERSON HILL: Thank you, Chairman Hood. I'm just
20 going to go around the table. Mr. Smith, you got any questions?

21 BOARD MEMBER SMITH: I do, you know, have a question.
22 I'm just like Mr. Hood, I'm torn. I hear the concerns of the ANC,
23 and I recognize the issues with on-street loading within the
24 District. And I would like to hear more from the applicant. And
25 I know you kind of discussed the last time we heard this. Could

1 you expound again on the reasons why you cannot accommodate that
2 loading space? I understand it was because of the elevator, that
3 was one of the concerns, the placement of the elevator. Could
4 that elevator be moved further? If I'm looking at the diagrams,
5 further to the left over the west in the property to be able to
6 accommodate a loading space in there? Can you expound on that a
7 little bit more?

8 MS. RODDY: Sure. And I would ask Mr. Lallement to
9 weigh in on what the design challenges are. But before he does, I
10 would say the biggest challenge would be getting the curb cut with
11 back-in loading approved at the Public Space Committee. So, even
12 despite the design challenges, there is -- we're being told that
13 the back-in loading curb cut wouldn't necessarily be supported
14 when we went to the Public Space Committee. But I will let Mr.
15 Lallement respond.

16 MR. LALLEMENT: Yes. Regarding the location of the
17 elevators, no, we cannot move. And I don't know which diagram
18 you're looking at, but the elevator is shown on all the diagrams,
19 it cannot move to the left.

20 BOARD MEMBER SMITH: 30A?

21 MR. LALLEMENT: Correct. Elevator overrun needs to fit
22 into the penthouse. If we move the elevator to the left, the
23 elevator won't fit into the penthouse, and we are going to not
24 meet setback requirement at the penthouse level.

25 BOARD MEMBER SMITH: Where in -- when you were, I'm

1 assuming you were attempting to meet the ANC's request. Did you
2 go through different diagrams that show where you wouldn't meet
3 that setback requirement?

4 MR. LALLEMENT: Pretty much, if you look at this diagram
5 we are providing, the yellow triangle you see in the middle of the
6 site is pretty much the only location the elevators can be
7 located. So, you can see, and because of the size and the work
8 actually. We went through many elevator manufacturers to try to,
9 as you can see, one elevator is rotated all the way in order to
10 minimize and be able to move the elevator car to the left as much
11 as we could.

12 BOARD MEMBER SMITH: So you will be hitting the setback
13 requirements on what side of the property?

14 MR. LALLEMENT: Pretty much, if this elevator car is to
15 be as you see on the floor plans, outside of this yellow triangle
16 box, I don't know which of the documents you're looking at right
17 now, but --

18 BOARD MEMBER SMITH: So, which one are you looking at?

19 MR. LALLEMENT: I'm on page 13 right now. But you see
20 also, this triangle along page 12.

21 BOARD MEMBER SMITH: Okay. I got you.

22 MR. LALLEMENT: So you can see this yellow triangle. If
23 the elevator is outside of this boundary or just a little bit
24 outside of this boundary, we won't meet the setback requirement.

25 BOARD MEMBER SMITH: So you're right at the edge. All

1 right. Thank you. Thank you. That was the only question I had.

2 MS. RODDY: And I'd just like to also reiterate, we're
3 at our Height Act height, so it is impossible to seek the relief.
4 Thank you.

5 CHAIRPERSON HILL: I'll get to you, Commissioner. Just
6 one second.

7 BOARD MEMBER SMITH: Thank you. Thank you for that. I
8 do remember you saying that at the last hearing.

9 CHAIRPERSON HILL: Okay. Commissioner Eckenwiler, let
10 me get through everybody on the Board and then I'll come over to
11 you.

12 Vice-Chair John?

13 VICE-CHAIR JOHN: Thank you, Mr. Chairman. So this is
14 for the architect. I don't remember if this is a habitable
15 penthouse or if it's just for mechanical equipment?

16 MR. LALLEMENT: We have some habitable space at the
17 penthouse level. Yes, partial (indiscernible), which we have 500
18 square feet, which would be habitable. Pretty much, kind of, a
19 small room to give you access to a rooftop.

20 VICE-CHAIR JOHN: Okay. And is it -- where is it in
21 connection to the elevator? Because I'm wondering, if you
22 eliminated that space, since it's not absolutely necessary, you
23 could reorient the elevator, I think you said that --

24 MR. LALLEMENT: No.

25 VICE-CHAIR JOHN: -- the --

1 MR. LALLEMENT: It's a very good question. But
2 actually, no. So --

3 VICE-CHAIR JOHN: Pardon?

4 MR. LALLEMENT: It's a very good question. But it
5 doesn't -- the fact that it's habitable space, not just floor
6 space, it doesn't have any relationship to this issue. Mostly,
7 this is diagram pretty much to be able, you can see this dotted
8 line is 20 feet from the edge of the building, 20 feet is the
9 maximum penthouse height. So it's pretty much where it will need
10 to be. And it doesn't have, actually, any relationship to the
11 habitable part of the penthouse.

12 VICE-CHAIR JOHN: I thought you said something about
13 impinging on the setback, and --

14 MR. LALLEMENT: Correct, so --

15 VICE-CHAIR JOHN: -- relationship to the elevator. And
16 I'm just wondering if it's not possible to move some things around
17 and lose the habitable --

18 MR. LALLEMENT: We've tried. No. It's not possible.

19 VICE-CHAIR JOHN: Okay.

20 MR. LALLEMENT: As a footprint of the penthouse really
21 depends on the boundary of the building below. So it's not
22 related to the habitable space of the penthouse.

23 VICE-CHAIR JOHN: Okay. So your testimony is that you
24 tried to move things around and away from that crucial space that
25 allows for the turning radius and that didn't work to achieve the

1 design. And that the penthouse, the habitable space, which you
2 said is 500 square feet, that wouldn't make a difference?

3 MR. LALLEMENT: Correct.

4 VICE-CHAIR JOHN: Okay. Thank you.

5 CHAIRPERSON HILL: Mr. Blake?

6 BOARD MEMBER BLAKE: I don't have any questions.

7 CHAIRPERSON HILL: Okay. Commissioner Eckenwiler, you
8 had a question?

9 MR. ECKENWILER: I just wanted to offer a couple quick
10 comments, Mr. Chairman. Going back to the colloquy with Board
11 Member Smith, Mr. Lallement and Ms. Roddy made a couple comments,
12 and I want to sharpen, certainly express my understanding.
13 Because the word, you know, not possible or impossible, something
14 to that effect was used. If -- you can build things outside of
15 that small triangle, so within the setback, if you get zoning
16 relief. Now, there's an additional layer on this, and this is the
17 point Ms. Roddy was making, and that is that they also have Height
18 Act concerns. And her view, which I believe she expressed at the
19 last hearing was that you can't get relief because of the Height
20 Act, so that's why all of this is a no-go. But there's a false
21 premise embedded in this, and that is that the owner acquired this
22 property, a highly constrained, very unusually shaped property and
23 is now proposing to go up to the absolute maximum of the Height
24 Act. So they're creating their own condition there. You could
25 propose instead of a 14-story building, a 13-story building, and

1 that would not be subject to the Height Act restrictions. And it
2 would be possible, based on my understanding, for the applicant to
3 seek relief from the setback requirement. So, it is in fact
4 possible with relief from this Board for those elevators to be
5 relocated. So I think to say that it's not possible kind of
6 camouflages with that's really going on. Now, I'm happy to have
7 Ms. Roddy educate me on, you know, if I'm misunderstanding that.
8 I did try and probe this a little bit in our conversations last
9 week. There was not a lot of appetite to, you know, go down that
10 road in the discussion because DDOT was very insistent on not
11 doing the back-in loading, which of course, would trigger all
12 this. But the point is, you can get there. You can have on-site
13 loading. You can have relocated elevators. And you can do that
14 consistent with the Height Act, granted with relief, but we're
15 already here in front of the Board. The applicant already needs
16 zoning relief. So you know that's not an insuperable ask. And,
17 you know, to me, that's part of why the Board should not look at
18 this as well, you know, there's just this, you know, this
19 inflexible rule of the universe that's, you know, law of nature
20 that you somehow can't move the elevator, and I don't believe that
21 that's really so.

22 CHAIRPERSON HILL: Okay.

23 MR. COLBERT: This is Eric Colbert. Could I say a word
24 for a minute?

25 CHAIRPERSON HILL: Who's Eric Colbert?

1 MR. COLBERT: I'm the architect, I own the architecture
2 firm that's --

3 CHAIRPERSON HILL: Yeah, give me a second, Mr. Colbert,
4 and I'll let you --

5 MR. COLBERT: Okay.

6 CHAIRPERSON HILL: -- introduce yourself. I mean, we
7 can go around, and we can have this discussion. I mean, where I
8 am kind of at, and everyone will have an opportunity to speak and
9 Ms. Roddy will have an opportunity to speak and Mr. Colbert, after
10 you get introduced, you'll have an opportunity to speak. My issue
11 right now that's taking place Commissioner is DDOT, right? I
12 mean, even if we did get the loading berth, right, it's the back-
13 in that's the problem. And the pull-through wouldn't be approved
14 either, right? And so, that's where I'm kind of stuck, right?
15 Even if there is a way to drive through the thing, right? You're
16 not going to get the curb-cut out on New York Avenue. And so, I'm
17 just making a point. I don't actually need to hear back. But
18 that's where I kind of was. So we kick them back to redesign this
19 whole building. You know, really what we're here to kind of talk
20 about is whether or not we, the Board, think this loading berth
21 relief is going to work. And we hear the ANC does not think it's
22 going to work. And I see my fellow Board member raising their
23 hand, and I'll get around a little bit.

24 Now, first of all, Mr. Colbert, you interjected. What's
25 your name again? Could you introduce yourself for the record?

1 MR. COLBERT: Eric Colbert with Eric Colbert and
2 Associates Architects.

3 CHAIRPERSON HILL: Okay. Did you get sworn in or did
4 you check in so that you're sworn --

5 MR. COLBERT: Yes.

6 CHAIRPERSON HILL: -- in?

7 MR. COLBERT: Yes.

8 CHAIRPERSON HILL: All right. What did you have to say,
9 Mr. Colbert?

10 MR. COLBERT: So, our company over the last 20 years has
11 designed more apartment buildings in Washington than any other
12 architect. And J.B. is the head of our design situation for the
13 whole company. And I can tell you that this is probably the most
14 challenging site that we've ever had to design a building for.

15 The owner, you know, obviously, when people look at
16 doing a development, the price of land gets set based on the
17 square footage that can potentially be developed. So, sure, we
18 could take a floor off and do a lot of other things, but it would
19 mean, you know, the project would not be any longer viable if we
20 did that. Now, one thing that is important to say is that for
21 over a decade, we continually get this feedback from DDOT saying
22 don't even think about backing over a sidewalk because it's an
23 extreme hazard and it's been proven to be. So we don't even go
24 there, you know, if there's any -- I can't say it's been never
25 done, but it's really something that is extremely unusual. And --

1 CHAIRPERSON HILL: Okay, Mr. Colbert. I got you. I got
2 you. Just give me a second. I got one more case after this.

3 MR. COLBERT: Okay.

4 CHAIRPERSON HILL: I don't know how long that's going to
5 go. So Ms. Roddy, did you have something that you wanted to add?

6 MS. RODDY: Yeah, I did have a couple of items that I
7 did want to add. I'll try to be quick. But going back to the
8 loading manager, and it sounds like there is some skepticism on
9 the effectiveness. And I would just come on to say that the
10 loading manager would be very important if this were a back-in
11 loading scheme. Per Commissioner Eckewiler's proposal, the
12 manager would be the person coming out to make sure pedestrians
13 stop. So there has to be in either scheme if we're skeptical, the
14 loading manager's purpose and effectiveness. It seems again that
15 the back-in loading wouldn't be a great option in this situation.
16 I would agree with Chairperson Hill that we're in a position that,
17 even if we redesign the building, did everything -- this is a
18 special exception standard, so I'm not suggesting that we redesign
19 the building for this, but there's no guarantee that the Public
20 Space Committee would approve that back-in loading. And when you
21 have DDOT who writes the recommendations for the Public Space
22 Committee and telling us that they wouldn't support it, then
23 that's, I mean, we're in the exact same position before the Public
24 Space Committee as we are before the Board now. So, again, I
25 would just like to say, it is a special exception standard. We

1 did work with DDOT in trying to come up with additional loading
2 management plan, conditions that would mitigate any impacts from
3 the curbside loading, and we think that we have gotten to a
4 position where we have been able to mitigate those, any potential
5 adverse impacts.

6 CHAIRPERSON HILL: Okay. Let me -- you're the
7 applicant, okay? So, does anybody have any final questions for
8 anybody?

9 Mr. Blake?

10 BOARD MEMBER BLAKE: One quick question for Commissioner
11 Eckenwiler. Is there any adjustments that can be made to the
12 curbside loading scheme that would, in your opinion, enhance this
13 and make it acceptable to you? Is there anything that can be
14 done?

15 MR. ECKENWILER: I'll save us a lot of time, and say, at
16 this stage, no.

17 CHAIRPERSON HILL: Okay. All right. So I'm looking at
18 my Board members. And I'm not, I -- again, we're in Zoom, so
19 we're not in the hearing room, otherwise this could be done in a
20 different way. So I'm just looking at my Board members, okay?

21 I don't know if, you know, we -- I'm not advocating for
22 this I'm just kind of floating this out a little bit. Like, you
23 know, we've done time requirements before where people have come
24 back and stuff. But the problem with the coming back at this
25 point is that the building would've been designed, the building

1 would've been built, right? So the only thing that comes back is
2 that we're back before the Board again, is that the loading
3 management plan is not working, and we have to somehow clarify the
4 loading management plan. So I don't know how that necessarily
5 would work. I'm just kind of throwing that out for my fellow
6 Board members, but I don't necessarily think it would necessarily
7 work. I don't see, yeah. Because then, they'd come back and be -
8 - yeah. I don't see -- we -- and that would even be, I mean --
9 okay. To OAG, I would have a question for that. So I don't have
10 anything else to say with anybody here. And I'm asking if my
11 Board members have anything else to say with everybody here before
12 I excuse everyone? And if you do, raise your hand.

13 Ms. John?

14 VICE-CHAIR JOHN: And this question is for DDOT. So I
15 keep hearing that DDOT will not allow a curb cut under different
16 conditions. And here, if the drive-through option is feasible,
17 why wouldn't DDOT recommend a curb cut in this situation on
18 Pennsylvania Avenue? Is it Pennsylvania?

19 CHAIRPERSON HILL: New York Avenue.

20 VICE-CHAIR JOHN: New York Avenue. Thank you.

21 MR. ZIMMERMAN: So when it comes to access for
22 buildings, we prefer all of the, like, loading and the vehicle
23 parking access. In this case, there is no vehicle parking. But
24 we prefer all the access off the lowest volume street. And so, in
25 this case, it would be N Street, which is, you know, why we were

1 looking at the possibility of loading there. But in terms of on
2 New York Avenue, you know, we don't like to have direct access to
3 individual properties to, you know, a road of that size, that
4 traffic volume and roadway classification. And so, that, you
5 know, we try to minimize all the curb cuts. Doing that scheme,
6 would have two curb cuts. One, you know, and we're trying to get
7 to zero. You know, there'd be one on that end and one on New York
8 Avenue. So it would absolutely be denied by the Public Space
9 Committee. In terms of the one on N Street for back-in loading, I
10 will confirm the applicant's experiences on that. You know, we
11 deal with dozens and dozens and dozens of these buildings every
12 year that don't come to the BZA, so we have to have some of these
13 types of discussions and detailed redesigns and all kinds of
14 different alternatives to deal with loading. And so, They would
15 face the same challenges and the same questions from the Public
16 Space Committee. And the Public Space Committee would say, you
17 know, you shouldn't be providing a loading berth here since it is
18 a small site. There's 116 units in the building; I believe that's
19 the count right now. That is above the threshold for a loading
20 berth. But the demand could be handled in a non-street loading
21 position. And given those tradeoffs, because remember, even
22 with back-in loading, that's not an ideal solution for DDOT
23 either. You know, we prefer that vehicles pull head-in, turn
24 around and will head out. So whether we're talking about curbside
25 or whether we're talking about back-in loading, you know, either

1 way, it's a compromise to make it all work. And in this case,
2 looking at both options, we felt just the best looking at the
3 whole picture here was to do the curbside loading, just given the
4 types of demand for a building like this. And the big thing we're
5 interested in is the streetscape and preventing an opportunity for
6 backing across a sidewalk. That was a long answer, but hopefully
7 I answered your question.

8 VICE-CHAIR JOHN: Oh, you did. Thank you very much.

9 CHAIRPERSON HILL: Okay. Does any Board members have
10 anything else? All right. This was a limited scope hearing.

11 Ms. Roddy, do you have anything in conclusion?

12 MS. RODDY: No. We appreciate your time today and just,
13 again, we have worked with both of the parties, and we think that
14 we can come up with an acceptable plan that would address
15 congestion concerns and potential adverse impacts from the
16 proposed request for relief. And we --

17 CHAIRPERSON HILL: Okay.

18 MS. RODDY: -- would ask that the Board approve it.

19 CHAIRPERSON HILL: Okay. All right. Well, thanks,
20 Commissioner, for being here late. Thanks everyone for being here
21 late. We will be here later. And everybody, have a nice evening.
22 Goodbye.

23 MR. ECKENWILER: Thank you.

24 CHAIRPERSON HILL: Okay. All right. Okay. I'll start.
25 I mean, I'm tired, meaning I think we've gone through this a lot.

1 I think that we've done the best we can as a Board in terms of
2 going through this to try to figure out whether or not they're
3 meeting the criteria for us to grant this relief. I think that I
4 agree with the applicant in that they've tried to do what they
5 could do, even if again, they lost a floor, and then we'd be
6 talking about whether or not it's economically viable and then,
7 there's, I mean, it just kicks it all into a completely different
8 scenario again. I'm still left with DDOT not approving the curb
9 cut or not thinking the public space is going to work. So it
10 doesn't seem like -- I do not get to where this is not going to be
11 whether or not we, the Board, think that this relief should be
12 granted as a special exception. Again, it's not a variance, it's
13 special exception. The Office of Planning has given their
14 analysis, and I've reread it while we were going through this.
15 And I'm going to agree again with the analysis of the Office of
16 Planning, and that the building owner has tried to work with the
17 ANC to come up with some kind of a solution. I am, I guess,
18 disappointed in that the ANC's not in favor. And I do worry about
19 that N Street. I mean, I'm familiar with the area also, we all
20 are familiar with that area. And that the congestion that I'm
21 sure is there on N Street. It is the smaller street, I guess, the
22 back street as opposed to, you know, New York Avenue, but I can't
23 see how they get around this. I mean, I guess the -- you know, I
24 would be including the loading management plan that has been
25 tweaked, if you will, from in 43A. And the only other thing I

1 could come up with was kind of a time limit that I don't
2 necessarily think does much because it would be kind of like I'd
3 have to ask OAG what they would be back before the next Board for.
4 Chairman Hood might be here, but you know? So if we did like
5 that, you know, they can't change the building. And so, it would
6 just be kind of like you know, did they fire the loading
7 management person and hire another one? So I'm going to let
8 Chairman Hood go last. And I'm going to go with Mr. Smith,
9 because you don't live in the city, so nobody can throw rocks at
10 you.

11 BOARD MEMBER SMITH: No, they can throw rocks at me
12 because I don't live in the city.

13 CHAIRPERSON HILL: But they can't find you. They don't
14 know where you are, right?

15 BOARD MEMBER SMITH: Well, that part. If they want to
16 find out, they can find out.

17 So to Commissioner Eckenwiler, I think I've been up here
18 for a year now. You are very much an advocate for your ANC. And,
19 you know, I applaud you for coming down to bring even more
20 information for us to digest as a Board when it comes down to this
21 project, when it comes down to deliberating for this, delivering
22 this project. So, as I stated before, you know, I was torn. I
23 thought there would be a more equitable solution to this situation
24 after we continued it from last week. But given the testimony
25 that I've heard today, the discussions that the applicant and the

1 ANC have had with DDOT, you know, I -- this -- the way that this
2 has been designed with a larger loading zone, it seems to be the
3 best avenue for us, for this particular project. When it comes
4 down to a loading zone, driving out onto New York Avenue, I knew
5 that was a no-go anyway, given the size of the road. And also,
6 given its location close to a very high-volume intersection on
7 North Capitol Street. So, I don't think the transportation plan
8 has spoke to that, but I'm sure that weighed into considerations
9 of whether they would even be open to some form of a curb cut
10 along New York Avenue. I thought the only way to really solve
11 this issue was to slide over the elevators, but given the site
12 constraints, given the setback requirements that the applicant has
13 to adhere to, the location of the elevator is essentially where
14 it's at, unless they redesign the building or remove a floor. o,
15 as you spoke to Chairman Hill, then we're getting into is it,
16 would it be economically viable? I believe at the last hearing we
17 discussed this project, the applicant stated it wouldn't be
18 economically viable to remove that extra floor. So, you know,
19 given the scenarios that we have, I think this is probably the
20 strongest scenario. So I think we could entertain your question
21 about the loading or, you know, putting a sunset on the loading
22 management claim, but I don't think that gets us really anywhere
23 other than bringing it back and maybe tweaking the number of
24 people that would be required to be loading managers at any given
25 time, but I don't think it would really, measurably impact

1 anything, so. I think this particular scenario is the strongest
2 scenario for this project to move forward, and I will support the
3 application.

4 CHAIRPERSON HILL: Vice-Chair John?

5 VICE-CHAIR JOHN: Thank you, Mr. Chairman. I just
6 wanted to reiterate something that you said, that the applicant is
7 here for a special exception and not a variance. And so, you
8 know, the very high standard of a variance should not apply. And
9 I think we all recognize how challenging the site is. And so,
10 after everything I've heard today, I agree with you, and I agree
11 with Board Member Smith that the curbside option is the least bad
12 solution, and that's how I'm going to phrase it. And DDOT is
13 pretty clear that there would be no curb cut allowed for the back-
14 in option, and it is really quite unsafe. So, faced with those
15 choices, I think we're left with the curbside option. And I agree
16 that the applicant has worked with DDOT and has shown a good faith
17 effort to try to come up with a solution that's acceptable to the
18 ANC, but I don't see that there's any other solution that makes
19 sense. And I recognize that sometimes, a sunset provision is
20 good, but I don't think in this case it is warranted. I think we
21 are left with some sort of enforcement action if people are
22 parking where they shouldn't be parking. So, I'm inclined to
23 approve the application.

24 CHAIRPERSON HILL: Okay. And thanks, Ms. John. Right.
25 Exactly, you know, the enforcement issue, unfortunately, gets

1 kicked to somebody else now. But there is an avenue for the ANC
2 if this actually doesn't get enforced, right?

3 Chairman Hood?

4 CHAIRMAN HOOD: Yeah, thank you, Mr. Chairman. I don't
5 drink all the Kool-Aid that has been poured out for me to drink
6 today, especially -- this applicant chose to move in this fashion.
7 While I understand -- I really don't like either one. I don't
8 like what DDOT has presented. I'm not all the way there with the
9 ANC either because at the end of the day, it's adverse impacts and
10 we're charged for protecting the safety and the health of the
11 residents of the District of Columbia. And all this about the
12 curb cut on New York Avenue, for those who remember, when the
13 carwash was there, the curb cut, you came out on New York Avenue.
14 So I don't drink all the Kool-Aid. But I do believe that the ANC
15 brought up some very valuable points. And Ms. Roddy is exactly
16 correct. I'm very concerned about the loading manager. I don't
17 know -- Mr. Rice and others, and Board members, if we can put
18 something in perpetuity for the life of that project, that that
19 loading manager be there. And I don't believe we need to have a
20 sunset clause. I think that's just totally out the question.
21 That's more obscure than anything I've heard in this one. But I
22 think that what is proposed is probably the best. But I do, all
23 this, what I can do and what I can't do, I believe there could be
24 something done differently. And I heard Mr. Colbert, I heard Mr.
25 Colbert loud and clear, but this is what we choose. We make

1 choices. We chose to do this. The applicant chose to do this,
2 and the applicant wants to do this. So that's why we're here now
3 having this discussion. And yes, there are adverse impacts. And
4 I'm sure that if we had chosen to do something different, we would
5 have had a different outcome. So, but this is what the applicant
6 chose, and this is what we're faced with. So without me keep
7 going back and forth because I'm going back and forth because
8 that's where I am, back and forth. But I think -- I'm looking
9 forward to hearing Board Member Blake. I think I'm going to
10 support this application with reservations. Thank you, Mr.
11 Chairman.

12 CHAIRPERSON HILL: Okay. I think Board member Blake
13 went. You went already, Mr. Blake.

14 CHAIRMAN HOOD: You already went?

15 BOARD MEMBER BLAKE: I actually didn't. But I just want
16 to say there's not much else to be said about this.

17 CHAIRMAN HOOD: Okay.

18 BOARD MEMBER BLAKE: I do think it's --

19 CHAIRPERSON HILL: Mr. Blake?

20 BOARD MEMBER BLAKE: -- a --

21 CHAIRPERSON HILL: Mr. Blake, I apologize. I've done
22 that --

23 BOARD MEMBER BLAKE: That's all right. That's all
24 right. I just want to say the bottom line is --

25 CHAIRPERSON HILL: I apologize, you know, I'm telling

1 you. I apologize. So, please go ahead.

2 CHAIRMAN HOOD: I didn't think you went. I know I'm
3 crazy, but.

4 CHAIRPERSON HILL: I know, Board Member Blake is going
5 to make another joke later off the record about this. But please,
6 go ahead, Mr. Blake.

7 BOARD MEMBER BLAKE: All right. As I said, I think that
8 everything has been said. And I do think that this is the best
9 plan available based on DDOT's beliefs. They say it's a superior
10 plan that would likely be chosen, given all the alternatives
11 available to it. I'm disappointed that it does not meet the
12 criteria of the ANC, because I know the ANC understands what's on
13 the ground. But it is, you know, pretty much as everyone said,
14 the right and the best of the alternatives we have in front of us.
15 So, I'm prepared to support.

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

18 I'm going to make a motion to approve Application No.
19 20508 as captioned and read by the secretary including the loading
20 management plan in 43A. And, Mr. Rice, that would be in
21 perpetuity, right? It runs with the order, correct?

22 MR. RICE: That's correct, sir.

23 CHAIRPERSON HILL: Okay. So, I'm asking for a second,
24 Ms. John?

25 VICE-CHAIR JOHN: Second.

1 CHAIRPERSON HILL: The motion has been made and
2 seconded.

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

4 MR. MOY: Thank you, Mr. Chairman. When I call each of
5 your names, if you would please respond with a yes, no, or abstain
6 to the motion made by Chairman Hill to approve the amended
7 application for the relief. The motion was seconded by Vice-Chair
8 John. Of course, the motion also includes the acceptance of the
9 loading management plan.

10 Zoning Commissioner Chair Anthony Hood?

11 CHAIRMAN HOOD: Yes, to the motion.

12 MR. MOY: Mr. Smith?

13 BOARD MEMBER SMITH: Yes, to the motion.

14 MR. MOY: Mr. Blake?

15 BOARD MEMBER BLAKE: Yes.

16 MR. MOY: Vice-Chair John?

17 VICE-CHAIR JOHN: Yes.

18 MR. MOY: Chairman Hill?

19 CHAIRPERSON HILL: Yes.

20 MR. MOY: Staff would record the vote as 5-0-0, and this
21 is on the motion of the Chairman to approve. The motion to
22 approve was seconded by Vice-Chair John. Also, in support of the
23 motion to approve is Zoning Commission Chair Anthony Hood, Mr.
24 Smith, Mr. Blake, and of course, Vice-Chair John, and Chairman
25 Hill. The motion carries on a vote of 5-0-0.

1 CHAIRPERSON HILL: Okay. Thanks, Mr. Moy. All right.
2 Chairman Hood, is that it for you?

3 CHAIRMAN HOOD: I think that's it for me. I enjoyed the
4 day with everybody.

5 CHAIRPERSON HILL: Thank you for sticking around with
6 us.

7 VICE-CHAIR JOHN: Bye, Chairman Hood.

8 CHAIRPERSON HILL: Commissioner May is back with us, I
9 believe?

10 COMMISSIONER MAY: Yes, sir.

11 CHAIRPERSON HILL: Okay. Mr. Moy, you want to call our
12 last one?

13 MR. MOY: All right. This would be Case Application No.
14 20435 of 2015 Jackson Street 2019, LLC, as amended for a special
15 exception from the rear yard requirements of Subtitle G, Section
16 405.2. This would raze the existing principal dwelling unit and
17 construct a new five-story with cellar, detached ten-unit
18 residential building in the MU-4 Zone. The property is located at
19 2015 Jackson Street Northeast. And I believe that's all I have to
20 say. But if I forgot something, I'll come back.

21 CHAIRPERSON HILL: Okay, great. All right.

22 MR. MOY: There is a request to waive filing deadline
23 for the revised parking plan.

24 CHAIRPERSON HILL: Okay. Mr. Sullivan, could you
25 introduce yourself for the record, please?

1 MR. SULLIVAN: Yes. Thank you, Mr. Chair. Marty
2 Sullivan with Sullivan and Barros on behalf of the applicant.

3 CHAIRPERSON HILL: Okay. And who's here with you, Mr.
4 Sullivan?

5 MR. SULLIVAN: We have Mr. Sam Forman as the project
6 architect and Vinny Saxena is the property owner.

7 CHAIRPERSON HILL: Okay. Before I introduce, or get to
8 introduce them, let's see where we get. Commissioner Montague,
9 are you there? Commissioner Montague?

10 COMMISSIONER MONTAGUE: Hello?

11 CHAIRPERSON HILL: Yes, can you --

12 COMMISSIONER MONTAGUE: I'm here.

13 CHAIRPERSON HILL: -- hear me?

14 COMMISSIONER MONTAGUE: Yes, sir. It's been a long day.

15 CHAIRPERSON HILL: It has. Could you introduce yourself
16 for the record, Commissioner?

17 COMMISSIONER MONTAGUE: Commissioner Jeremiah Montague
18 Jr., ANC 5C.

19 CHAIRPERSON HILL: Okay. Great, Commissioner. Thank
20 you for being with us.

21 COMMISSIONER MONTAGUE: All right.

22 CHAIRPERSON HILL: Mr. Sullivan, so, okay. So, Mr.
23 Sullivan, you're going to argue this case; is that correct?

24 MR. SULLIVAN: Correct.

25 CHAIRPERSON HILL: Okay. So, the ANC is still opposed,

1 and OP is still opposed, correct?

2 MR. SULLIVAN: Yes.

3 CHAIRPERSON HILL: So, I've been here five years, right?
4 Right? You've only won one of these, okay?

5 MR. SULLIVAN: Yeah.

6 CHAIRPERSON HILL: Okay. Okay. All right.

7 Mr. Sullivan, I see you want to waive the filing
8 deadlines for your PowerPoint?

9 MR. SULLIVAN: I didn't think so. I thought we actually
10 got this one in on time.

11 CHAIRPERSON HILL: Oh, okay. Somebody said something
12 about --

13 MR. SULLIVAN: What we had we had was, we had a
14 conference call with the Office of Planning on Monday, and we made
15 some changes subsequent to that. So that we just filed yesterday.

16 We didn't file within the 24 hours, but we just filed it
17 yesterday morning. And so, that's not within the three-week
18 period, but it's not in the 24-hour.

19 CHAIRPERSON HILL: Have you entered the exhibit yet?
20 It's not there yet.

21 MR. SULLIVAN: No, those --

22 VICE-CHAIR JOHN: It's the --

23 MR. SULLIVAN: -- they're in as --

24 VICE-CHAIR JOHN: 58A, Mr. Chairman.

25 CHAIRPERSON HILL: 58A?

1 VICE-CHAIR JOHN: Revised plans.

2 CHAIRPERSON HILL: Okay. Got you. All right.

3 MR. SULLIVAN: Yeah.

4 CHAIRPERSON HILL: Well, I would like to allow them into
5 the record if there is a time constraint with that, because we'd
6 like to see what we're looking at. And --

7 MR. SULLIVAN: Well, we --

8 CHAIRPERSON HILL: -- I see the PowerPoint. I do have -
9 -

10 MR. SULLIVAN: I --

11 CHAIRPERSON HILL: Sorry?

12 MR. SULLIVAN: Oh, I'm sorry. Just one other, there
13 were two submissions. One was on Friday, I believe. We had to
14 revise the parking plan when I discovered that the new regulations
15 that were just adopted in August provide when we're on an alley 15
16 feet wide or less, our parking space needs to be full length. And
17 so we had to add two feet to our parking space.

18 CHAIRPERSON HILL: Okay.

19 MR. SULLIVAN: That was the --

20 CHAIRPERSON HILL: Okay. But you had a conversation
21 with the Office of Planning and nothing new has been submitted
22 into the record; is that correct, Mr. Sullivan?

23 MR. SULLIVAN: Yes. After the conversation with the
24 Office of Planning, we submitted new plans yesterday. And the
25 principal change in that was to eliminate every window on the

1 south and east elevation.

2 CHAIRPERSON HILL: Okay. And so, the Office of Planning
3 does not have a new supplemental, however, correct?

4 MR. SULLIVAN: No, my understanding is that that's,
5 they're not going to have a --

6 CHAIRPERSON HILL: The OP has not --

7 MR. SULLIVAN: -- drastic change in opinion. Yes.

8 CHAIRPERSON HILL: Okay. All right. Okay.

9 MR. SULLIVAN: Correct.

10 CHAIRPERSON HILL: All right. Mr. Sullivan, there is a
11 hard stop, apparently, at 6:20 for one of our members. And so, if
12 that person has to watch, maybe, that might happen. Otherwise,
13 let's see what happens.

14 So go ahead Mr. Young and pull up Mr. Sullivan's
15 PowerPoint.

16 And, Mr. Sullivan, you know, you can begin whenever
17 you'd like.

18 MR. SULLIVAN: Thank you, Mr. Chair. And I will try to
19 be concise and not repeat myself, but the Office of Planning
20 report had a lot of information in here, and I definitely need to
21 address those points.

22 This is 2015 Jackson Street Northeast.

23 Next slide, please. So, the request is for rear yard
24 relief. The property is in the MU-4 zone; all the abutting
25 properties are in the MU-4 zone. Every other property on this

1 block runs on Rhode Island Avenue. This is the only property
2 that's not either a through lot or just abutting road.

3 Actually, if we could go to the next slide, and I'll
4 come back to this slide.

5 Next slide, please. So, there's the subject property.
6 And you can see where the commercial properties are. And this is
7 the only property that's not a through lot, it's cut off there.
8 And there's a building restriction line on Jackson Street as well.
9 So, where that current house is there now, that front line needs
10 to remain there, and we need to have that open space, so we're
11 asking for the rear yard relief. The lot occupancy will still be
12 a few percentage points under the maximum permitted lot occupancy,
13 even with the rear yard relief.

14 So if we can go back to slide two, please? I talked
15 about the through-lots. And there's three properties that are
16 adjacent to this. And I'll go over them when we get to the next
17 slide again. But the only property that abuts the rear property
18 line -- well, there's two that abut the rear property line. One
19 building is over 40 feet away from our proposed building. And the
20 other building is 2026, 2028 Rhode Island; we have a letter of
21 support in the file from that property owner. And then, also,
22 the current open space, one of the comments that the Office of
23 Planning made is that space is really restricted here. One of the
24 purposes of the MU-4 zone is to have infill development compatible
25 with the surrounding neighborhood.

1 And if you go to the next slide, please, I want to point
2 out that this lot and the three adjacent lots have more space,
3 have more open space right now, and will continue to have more
4 open space because we'll be under lot occupancy, than every other
5 commercial property except one down at the end there on Rhode
6 Island. They're almost all 100 percent lot occupancy other than
7 ours, except for the BRL for the Jackson Street properties.

8 Next slide, please. The plan is to raze the existing
9 dilapidated single-family house that's been long-neglected and
10 construct a multi-family building with tens units, one of which
11 will be an IZ unit. The building restriction line causes us --
12 and the narrow nature of the lot causes us to ask for this relief
13 and push the building back towards the commercial zone and away
14 from the residential zone. And as I mentioned the recently
15 revised plans removed all the south-facing windows. I wasn't
16 clear on this, but I believe we did not meet the special exception
17 specific criteria with those windows facing south, so they're
18 gone, along with the one window that was facing east because they,
19 those windows were within 40 feet of another building.

20 The other change, next slide, please, which the
21 architect can take you through is, it's a minor change, but we
22 moved another foot back from the top left as you view this, which
23 would be the southeast corner, which is the closest point to the
24 building, which the Office of Planning claims we adversely affect
25 the use of. Their conclusion, from the report mentioned the fact

1 that we were doing no rear yard was important. They mention
2 potential future redevelopment changing things here, and they
3 mention maintenance of the rear wall as being a concern. And I
4 point out the summary because I'm going to go through the
5 specifics of this. The Office of Planning has, and the BZA has
6 heard about 18 cases for this relief since 2016, they've all been
7 approved, and the Office of Planning supported all of them. And
8 that doesn't, I'm not saying that that automatically means we get
9 approved, and that OP should support us. What I do want to say is
10 those three things were never mentioned at any of those 18
11 reports. And in fact, 14 of those were full rear yard relief,
12 zero rear yard. Never was maintenance of a wall mentioned in any
13 of those cases or any concern about a planning principal that no
14 rear yard is bad. Fourteen out of eighteen.

15 Next slide, please. And some of the specific comments,
16 again, I talked about no rear yard at all. The lack of a rear
17 yard results in the crowding of the buildings and restricts the
18 ability to perform maintenance on the rear wall. Because we would
19 provide no rear yard, it would eliminate the immediately adjacent
20 to the rear lot line and rear yard area of the commercial
21 properties that front on Rhode Island. So the special exception
22 criteria does not prohibit seeking complete rear yard relief. And
23 then, actually, nothing in the zoning regulations expresses any
24 concern about having no rear yard. In the MU-4 zone, of course,
25 there's 100 percent lot occupancy and there's this rear yard

1 relief, which I don't think is a typically tough special exception
2 criteria to meet. As mentioned, the ability to perform
3 maintenance on a rear wall or any property line abutting wall is
4 not a requirement of the special exception relief. And that's my
5 main point. It's not that the Office of Planning's report has
6 seemed to diverge significantly from all their past reports on
7 this relief, it's that these specific concerns are not part of
8 either the general or the specific special exception criteria.

9 Next slide, please. I'll go over this because I'm going
10 to talk about this again later. I just want to say that the Board
11 approved, and the office claim supported a zero rear yard special
12 exception in the MU-4 just last week, where we actually closed an
13 at-risk window, and we abutted a property owner on two sides and a
14 property owner that was in opposition to that request. So this is
15 not an unusual request.

16 Next slide, please. OP stated that -- and this is the,
17 I think this, from what I understand from the Office of Planning
18 report, is the principal point or maybe the only point of the
19 Office of Planning claiming that we adversely affect the use of
20 neighboring properties, which is prong two of that general special
21 exception criteria. I want to point out, like I said, we have
22 three properties that we abut. They're all commercial properties
23 fronting on Rhode Island. The property to the left, or the
24 southwest, is 40 feet away from our building. It has a very large
25 rear yard. The property to the right, we abut their side yard.

1 We don't abut their rear yard. And our building, yes, will come
2 close to the side of their balcony. And I'll go into more detail
3 about that. The property in the middle is, like I said, has filed
4 a letter in support of this relief.

5 Next slide, please. So, I'm going to go a little bit
6 more into the balconies, and I'm going to spend a little bit of
7 time on this because this was the claim of adversely affecting the
8 use. As I've stated, it's adjacent to the side yard and not the
9 rear yard, so I don't think there should be any expectation. And
10 that's a through lot, so that's in the middle of their side yard.
11 It's not even near the back of their property. They have a large
12 rear yard at 2062 Rhode Island, and they shouldn't have an
13 expectation that something wouldn't be built up against their
14 balcony. And it's not different than an at-risk window. It's
15 actually, I mean, it's less egregious than an at-risk window. You
16 can call it an at-risk deck. But it's only on the side, it's not
17 on the back. We've done projects where they'll -- people will
18 build at-risk decks facing a side property line and will risk and
19 end up being covered by a building because there's open space at
20 risk built on that property. This is just the side of the
21 balcony. I'll show you in the next picture that the view from the
22 balcony goes straight out to Jackson Street. And this isn't any
23 different, I think, from a rowhouse situation, when we ask for a
24 ten-foot-rule relief, or even if you don't. You build a ten-foot
25 addition often right up against a deck or a balcony. And then,

1 It's just a wall that borders the neighboring property.

2 One thing I don't know that I included in the
3 PowerPoint, next slide, please. 2026 is completely south of the
4 subject property. So there's definitely no impact on light and
5 air as a result of moving the building back close to them. It's
6 just on the view from their deck.

7 Next slide, please. 2062 Rhode Island is a church.
8 It's not a residence. I don't know if it's in use. The applicant
9 and Mr. Saxena can talk about this if the Board has questions,
10 made numerous attempts to get in touch with them. Knocked on the
11 door. Went there at times that they said they were having
12 services. He never saw them. He's not sure if it's in use at all
13 and apparently those balconies don't look to be in use.

14 Next slide, please. So those are the balconies that the
15 Office of Planning is claiming that we would be adversely
16 affecting. This single-family house, you can see how dilapidated
17 it is. This retaining wall on the driveway is falling down. This
18 property, obviously, needs to go. It needs to be replaced and
19 this is, again, this is the commercial MU-4 zone. So, what we're
20 proposing here is not out of line with the massing and density of
21 that zone. So right now, that wall is a few feet off the side and
22 nine feet from the rear property line. So essentially our
23 building will be back closer to the side of those decks, but if
24 you walk out on those decks, you will still have this full view
25 all the way out. So we're not encroaching on the decks, we're not

1 touching the decks. It's just the building coming a little closer
2 to it.

3 Next slide, please. The Office of Planning stated that
4 future residents of this proposed multi-family building would
5 benefit from some rear yard to provide light, air, and space
6 between their use, any adjoining commercial uses. Without any
7 rear yard, the new units would have no open space at the rear of
8 the property. I want to note that we are under lot occupancy. We
9 have space at the front of the property as a result of the DRL.
10 And that this particular concern, the concern of our future
11 residents is not part of the special exception criteria. And
12 again, is something that we found was not ever a concern in the 18
13 previous cases and the previous OP reports.

14 Next slide, please. I want to talk about a couple
15 precedents. I know every case is decided on its own merits, but I
16 think these cases are very helpful in explaining or illustrating
17 why I think we safely meet the special exception criteria, if
18 they're consistently applied across these cases.

19 Next slide, please. 100 K Street, the small lot on the
20 left side there shows the subject lot. Special exception rear
21 yard relief was requested. The rear yard requirement in that case
22 was 26 feet, and it was requested to go to zero and it was
23 approved.

24 Next slide, please. The effect of that relief was to
25 block those 30 windows and the Board approved that because those

1 windows were at-risk windows, and they weren't necessarily
2 protected. Essentially, the fact that somebody puts at-risk
3 windows on a property line does not take away or should not
4 diminish the right of an adjacent owner to ask for the special
5 exception relief. And that's how the Board decided that. And
6 that BZA order went into some detail about that principal. But I
7 want to compare this, 30 windows, to us just coming close to the
8 side of a rear deck, two rear decks that appear not to be used
9 very often.

10 Next slide, please. I think I've explained all this.

11 Next slide, please. Speed it up. This is the next
12 precedent, 71 Kennedy Street. The frontage is Kennedy Street.
13 The rear yard relief was granted for the north side. It was
14 granted for zero rear yard for a large apartment building and the
15 building to the north is another residential building. There was
16 no concern in the Office of Planning or the BZA approval about
17 maintenance of this wall or crowding of the residential building
18 to the north or any impact on that building, or any impact on the
19 future residents in this building at 71 Kennedy.

20 Next slide, please. This is the wall that would be on
21 that property line. So just to show you the size and massing of
22 that wall on the property line not being a concern, and rightly
23 so, I think, because I don't think that's the consideration that
24 was, is expressed in the zoning regulations or in the special
25 exception criteria.

1 Next slide, please. Next slide, please. And I would
2 just mention, on 71 Kennedy Street, the Office of Planning did no
3 analysis on the general special exception criteria. I'm not sure
4 why we've merited two full pages on ours. It wasn't even
5 mentioned.

6 Next slide, please. The Office of Planning also talked
7 about the potential for future development, making it a tighter
8 space. Future development would also need relief. I don't see
9 anything in the regulations that would say that the special
10 exception criteria needs to consider the possibility that in the
11 future, somebody else might get special exception for rear yard
12 relief to make it closer. The Board can address that at that
13 time.

14 Next slide, please. And I've talked about this, I just
15 wanted to highlight again that the amount of open space around
16 this particular property is more open space than on the entire
17 square or the MU-4 portion of the square.

18 Next slide, please. Next slide, please. I'm trying not
19 to repeat myself. One last precedent at 5320 Georgia Avenue, the
20 rear yard relief was granted for that line abutting the
21 residential zone, the R-3 Zone. So, it was abutting a single-
22 family house, rowhouse lot. Again, from the BZA and OP, no
23 concern at all about wall maintenance and, actually, no concern
24 about the impact. Now, this was only two-stories, so it's a
25 little lower in height. But no concern about the impact to the

1 single-family row building that it would be adjacent to and then,
2 proceeding up their property line from what looks like 30 or 40
3 feet.

4 Next slide, please. There's been other cases, as I
5 mentioned, there's 18 of them. Fourteen of them, no rear yard at
6 all. Not all of those are abutting a property line, granted.
7 Some of those are abutting an alley. But the ones I talked about,
8 at least, abutted property lines with other buildings and uses
9 next door.

10 Next slide, please. So, again, I'm not presenting all
11 this information just to say because this is the way it was
12 interpreted in those particular cases that it must be, that must
13 be the result we get, but I think that if you looked at those
14 cases that I went through in detail and particularly, if you look
15 at the regulations, those items that are apparently of a concern
16 to the Office of Planning here, maintenance to the wall, no rear
17 yard at all, future residents, and adversely affecting the side of
18 an unused balcony, a two-story balcony on a commercial property
19 are not any concerns that I've ever seen in a previous case. And
20 I think it's important that this be consistent.

21 Next slide, please. I mean, it's not just important.
22 It's the definition of arbitrary, to not have consistent
23 standards. Housing providers rely on this. When a housing
24 provider looks at this and says, can I get rear yard relief, we
25 look at the other cases and we see what the concerns were. And

1 then we advise them on what we think is possible. In this case,
2 we think the Office of Planning has introduced several novel ideas
3 that were never, we never would have thought would be an issue.
4 And I think that makes it very difficult for an investor, a
5 housing provider to rely on the zoning regulations and the BZA
6 decisions.

7 Next slide, please. Quickly, about the ANC,
8 Commissioner Montague is here, he can talk for them. I think
9 their concerns were mostly, as expressed in the submission and at
10 our multiple hearings, were about the size of the building or the
11 number of units and its impact on parking. And that's the reason
12 why we originally requested parking relief. Granted there's only
13 one space, but we did want to remove that relief.

14 Next slide, please. So, I can turn it over to Sam and
15 he'll quickly go through the plans.

16 Sam?

17 MR. FORMAN: Yep. So, we've seen this site here. And
18 as you can see, the yellow indicators are showing the single-
19 family residences, across the street and across the alley, and we
20 have the commercial properties adjacent to the rear.

21 Next slide, please. This is the property as you can see
22 it from an aerial view, showing you the rear of those buildings
23 and the proximity to the commercial properties as well as the
24 alley, which is page right.

25 Next slide, please. Here, you can see the condition of

1 the property as it is today, and what we're proposing is to
2 maintain the face of the building and the location that it is. We
3 will be razing the building, but we will be maintaining the
4 building restriction line to the adjacent property, 2009, which is
5 to your right.

6 Next slide, please. This is the condition of it as it
7 is today. And next slide, please. This is a view showing you the
8 side yard. You can see the chamfer and the building adjacent at
9 2066 Rhode Island, which will be the southeast corner of our
10 structure. This is showing, you know, the side yard in the way
11 that they have built their deck up to the sideline on the side.
12 And then, 2062, which is in support of the project that is there
13 at the rear of their building adjacent to your right.

14 Next slide, please. This is the view of the rear of the
15 adjacent buildings as you go towards the corner of Rhode Island,
16 showing you the rear setbacks. The rear of those buildings also
17 align with our building restriction line on Jackson itself. d

18 Next slide, please. This is a view of, a roof plan, a
19 site plan of the property. What you can see on the top left,
20 which is the southeast corner, will become more clear as we move
21 into the first-floor plan. But you are seeing the roofs down onto
22 the property and as we move forward, I'll discuss what we have
23 done on that southeast corner.

24 Next slide, please. The property does feature one
25 cellar unit down the stairs. This property will be in the middle

1 of --

2 CHAIRPERSON HILL: Mr. Forman?

3 MR. FORMAN: Yeah?

4 CHAIRPERSON HILL: Mr. Forman?

5 MR. FORMAN: Yep?

6 CHAIRPERSON HILL: Let me just, I'm flipping through
7 your stuff. I mean, Mr. Sullivan, like I said, I'm going to lose
8 somebody kind of soon. I think if you want to get, we -- unless
9 you tell me different, like, we can come back to these plans. I
10 found everything very helpful up until -- and even the plans are
11 very helpful, but I see there's no windows and all that. Do you
12 want to go to your last summary of things, and we'll go to
13 questions and come back for the plans if we need to? Or you think
14 it's best to --

15 MR. SULLIVAN: Yeah, that --

16 CHAIRPERSON HILL: -- do the plans?

17 MR. SULLIVAN: No, that would be great. Because I want
18 to go through the criteria real quick --

19 CHAIRPERSON HILL: So, go to 35?

20 MR. SULLIVAN: -- even though -- yeah.

21 CHAIRPERSON HILL: Let's do that, Mr. Young, go to slide
22 35.

23 MR. SULLIVAN: Our numbers may be messed -- yeah. There
24 we go. Okay. So the general requirements. Of course, I know I
25 talked a lot about this sort of as part of my response to the

1 Office of Planning comments. But these, it's supposed to be in
2 harmony with the general purpose and intent of the MU-4 zone. And
3 that purpose and intent doesn't talk about maintenance of walls.
4 It doesn't talk about residents that live in the back not having a
5 rear yard for recreation. It does talk about infill development
6 being compatible with the surrounding area. And it does provide
7 for this amount of density. And in every other OP report, this
8 section merited a sentence. And we got a, like I mentioned, we
9 got a page or page and a half. And I'm not sure why there was any
10 reason this particular project merited that sort of new thinking
11 on these specific criteria.

12 Next slide, please. Also, we do not intend to affect
13 the adverse use of the neighboring properties. And this is
14 important. This is specific language. It doesn't intend to
15 affect adversely the use of neighboring properties. There's three
16 properties abutting. One is a building that's quite far away.
17 The other one's in support and, as you can see, they don't have
18 any windows. They just have a blank wall at the back of their
19 building. They do have space for trash collection back there in a
20 paved area. And 2062 is a building, which seems virtually
21 uninhabited. It's a commercial space, two stories and has those
22 two balconies on the back.

23 Next slide, please. Which again, it won't be blocked.
24 If you just go and look at the side of the balcony, you'll see our
25 building. And we did move it back another foot after we talked to

1 the Office of Planning for what that's worth. And they still have
2 their view all the way out to the street. Of course, again, and
3 they're south. They're south of that building, so no impact on
4 their sunlight.

5 Next slide, please. Specific criteria, no windows.
6 Basically, that's it for the specific criteria. There's no
7 windows that face the building within 40 feet in the area of the
8 rear yard relief. So none in the rear. None in the east. I
9 think we could have had some on the east, as long as they are not
10 within 15 feet of the rear property line, then they were in the
11 area of relief. But those windows are gone, they weren't
12 necessary either. So I believe we meet the specific criteria now.

13 Next slide, please. And that might be it. So that's
14 it. You know, there's one, if you want to see the elevation, the
15 rear elevation shows the no windows. I guess you have that, so
16 you can look at that. I want to move it along, too. But that's
17 all we have if you have any questions.

18 CHAIRPERSON HILL: Okay. Mr. Young, can you drop that,
19 quickly? Commissioner May, do you want me to do the -- I mean,
20 you're the one that has the -- I'm just letting everybody know,
21 you've got a timing issue. Do you want me to go to Office of
22 Planning and anything the Commissioner has to say first and then,
23 ask some questions? Or do you want to ask your questions first?

24 COMMISSIONER MAY: You can go ahead to the Office of
25 Planning's report and then, we'll just ask questions of both, I

1 think.

2 CHAIRPERSON HILL: Okay. And I'll get to the
3 Commissioner as well.

4 Could I get the Office of Planning, Ms. Fothergill?

5 MS. FOTHERGILL: Good evening, Chairman Hill, and
6 members of the Board. I'm Anne Fothergill for the Office of
7 Planning for BZA Case 20435.

8 As you know, this is a proposal to raise the single-
9 family dwelling and construct a multi-unit residential building at
10 2015 Jackson Street, Northeast.

11 The initial application did not include parking and was
12 requesting parking relief, and we encouraged the applicant to
13 comply with the parking regulations since the building is, the
14 site is located off an alley. And so, they did provide the one
15 required parking space. So that relief request has been
16 withdrawn.

17 Overall, OP is generally supportive of infill
18 development with, in the intent of the zone, in this case, the
19 MU-4 Zone. And our concern is that the provision of no rear yard
20 would result in undue impact on other existing properties. And I
21 will discuss that in more detail. We have stated in the report
22 and to the applicant that we understand that this is a shallow
23 site and that some rear yard relief might be appropriate depending
24 on the project (indiscernible). But this project with zero rear
25 yard raised concerns about impacts and whether or not it was

1 appropriate for zoning relief in terms of the criteria that have
2 to be reviewed. The applicant is proposing a five-story, plus
3 cellar, ten-unit building. There would be one IZ unit, unit two
4 on the first floor. There is, as I mentioned, one parking space,
5 a bike storage room, a trash storage area. Three of the units
6 would have a roof deck. The initial plans showed balconies for
7 six units, but based on discussion about building projection code
8 issues, those balconies were removed, and OP always encourages
9 balconies on residential buildings of this size and would
10 encourage if there was some sort of redesign that those possibly
11 be reintroduced.

12 In terms of the review criteria, the applicant has
13 removed the windows, so it appears that perhaps the specific
14 criteria under G 1201.1 for rear yard relief in the MU-4 Zone,
15 that those are no longer sort of relevant to this discussion
16 because there are no windows. But that in turn then sort of
17 complicates the other units with fewer windows, which again, may
18 not be the best plan for a building. But in terms of the rear
19 yard relief, and of course, that's driven by the rear yard relief,
20 there's no windows, so it's all combined. The MU zones are
21 intended to permit the orderly development of land with
22 appropriately scaled mix-used residential buildings and the
23 proposal needs to be in harmony with the purpose and intent of the
24 zoning regulations and not have an adverse impact on, undue
25 adverse impact on properties. And our concern is with this

1 shallow lot and a zero-rear yard with the abutting properties
2 angled along Rhode Island Avenue, there could be undue impact and
3 adverse impact. We did not find that the applicant made a case
4 that there would not be. The lot is shallow and there may need to
5 be some level of flexibility. But currently, the project shows a
6 crowding of buildings that could be avoided with a rear yard. The
7 applicant needs rear yard relief. This is not an existing
8 condition. This is something proposed. And the building, there
9 is no rear alley, which might provide additional space between
10 buildings. And there's no alley. And the abutting properties to
11 the rear don't necessarily have compliant rear yards themselves
12 and they are existing conditions, they're not asking for relief.
13 But we don't necessarily want to make this condition worse. And
14 we are concerned about this site, this specific proposal, this
15 building on this site. If more of a rear yard was provided -- I
16 guess the applicant is now proposing a one-foot rear yard in the
17 new plan -- there would be more space between the buildings. And
18 the buildings along Rhode Island Avenue, again, I mentioned,
19 they're on angled streets with angled lots, and they could be
20 redeveloped. They are currently sort of underutilized as
21 (indiscernible) mentioned. Some of them are sort of underutilized
22 commercial buildings. One is a church. But they have potential
23 to be redeveloped in that MU-4 Zone to a much greater extent. And
24 in the anticipation of that, providing space between the
25 properties, especially the ones that don't have a full rear yard

1 would be in keeping with the intent of the zoning, which, you
2 know, allows for orderly development, control of bulk and massing.
3 It requires rear yards to provide space. And so, that is where we
4 have some concerns. You know, there were a few exhibits in the
5 record that weren't shown today. But Exhibit 54 is the window
6 proximity exhibit. I realize they are no longer, the windows are
7 no longer there, but it shows the close proximity and that was
8 concerning. I may be ready to wrap up. The overall, if I'm
9 wrapping up, the intent of the zoning regulations is to sort of
10 control bulk massing site building location, and so we don't find
11 this zero rear yard relief would be in keeping with that. And we
12 also don't find that a case was made that there would be no undue
13 impacts. And I will rest on the record. And I'm happy to take
14 any questions.

15 COMMISSIONER MONTAGUE: Mr. Hill, you're muted.

16 CHAIRPERSON HILL: Thanks. I'm muted. I was like,
17 Commissioner Montague, you're muted. Commissioner Montague, can
18 you hear me?

19 COMMISSIONER MONTAGUE: Yes, sir.

20 CHAIRPERSON HILL: Okay. I don't know if you're -- just
21 to let you know, we can't take any video testimony. If you're
22 going to --

23 COMMISSIONER MONTAGUE: No, no.

24 CHAIRPERSON HILL: -- like, show us something. Oh,
25 okay.

1 COMMISSIONER MONTAGUE: No, sir. What happened was
2 because of the marathon, BZA day, I had another meeting that I had
3 to attend with --

4 CHAIRPERSON HILL: Okay. Got you. Got you.

5 COMMISSIONER MONTAGUE: -- APD.

6 CHAIRPERSON HILL: Got you. Commissioner --

7 COMMISSIONER MONTAGUE: So --

8 CHAIRPERSON HILL: Commissioner, I appreciate that.
9 Commissioner, can you give us your testimony? Because I want
10 Commissioner May to hear it before he asks his questions.

11 COMMISSIONER MONTAGUE: Very quickly, I realize that
12 some new drawings were added to the record today. And so, the
13 first view I got of them was late yesterday and early this
14 morning. I've seen the revisions, but I have not given them a
15 full analysis. I have listened to Ms. Fothergill. I don't
16 disagree with OP's analysis of the impacts and the consequences of
17 allowing this to go forward. For my community, the ANC has
18 submitted its formal, 129 is our record in the report. But the
19 community's concerns have always been -- in this discussion, it
20 was always in terms of the adverse impacts of the commercial
21 buildings, which are along Rhode Island Avenue. But the adverse
22 impacts of this particular development, replacing a single-family
23 residence, spills onto the neighbors across the alleyway and along
24 Jackson Street. Jackson Street is a very congested roadway. And
25 so, because -- and representing my constituents, their concern is

1 | that they don't have enough parking space as it is, now you're
2 | going to add 12 to 14 units. Although you did put one unit, one
3 | parking space on property, it doesn't substantially mitigate the
4 | adverse impact on the quality of life of the neighbors who are
5 | already stressed out about the introduction of this. This
6 | development and the development application benefits from being in
7 | an MU-4, which is exceptional in this particular area because just
8 | across the alley and across the street are all R1-B. So I
9 | understand that the rules change. And so, I'm saying as a
10 | community and as a Commission, we are still not in favor of this
11 | particular project.

12 | CHAIRPERSON HILL: Okay. All right, Commissioner
13 | Montague. Commissioner Montague, are you the SMD for this?

14 | COMMISSIONER MONTAGUE: Yes.

15 | CHAIRPERSON HILL: Okay.

16 | COMMISSIONER MONTAGUE: I get the double kick.

17 | CHAIRPERSON HILL: Okay.

18 | Commissioner May, you had some questions before you got
19 | to go? And then, we'll see what happens.

20 | COMMISSIONER MAY: So one small thing. In the
21 | presentation, let me see if I can find it. There is an elevation
22 | drawing that, yeah, slide number 41, which shows the four
23 | elevations. And it looks like level three is missing a set of
24 | windows. Is that just a mistake or did you delete those windows?

25 | MR. FORMAN: I believe that is a mistake. Let me just

1 pull up the same slide so I'm speaking to the elevation you're
2 looking at.

3 COMMISSIONER MAY: Okay.

4 MR. FORMAN: And that was on the third floor. Which
5 elevation did you say, which direction?

6 COMMISSIONER MAY: Lower right. The front elevation.

7 MR. FORMAN: Correct. Yep. That is just a drafting
8 error.

9 COMMISSIONER MAY: Okay. So the building has been
10 manipulated in such a way that there are, I mean, there are no
11 windows along the South wall in order to avoid the zoning issues
12 there. But you wind up with a bunch of rooms with just tiny
13 windows. And I'm just, and there's also the prospect that, well,
14 since you've gotten full relief or you would be getting full
15 relief from the rear yard requirement that maybe, you know, the
16 abutting neighbors to the south might get the same thing in the
17 future. So you could wind up with a tiny little light shaft
18 serving a hand full of bedrooms. I mean, is that really, I mean,
19 are you really creating desirable units here? I mean, is this
20 something that's going to sell?

21 MR. FORMAN: I think the main intent of those windows,
22 as you said, are both within bedrooms themselves. There is a
23 large living space with the windows all facing out to Jackson
24 within those units. And the design of that is to satisfy the
25 egress requirement. And also, maintain something that, if built

1 up against, it will be a light well, similar to some of the niche
2 courts that we have in D.C. on other properties. So those are
3 bedroom windows in that unit, and we feel comfortable that the
4 units themselves with the large living space and the large windows
5 would be something that our owner could successfully sell.

6 COMMISSIONER MAY: Okay. And so, I mean, it seems to me
7 this, I mean, this is an oddly constrained site, right? Because
8 it's shallow, because of the building restriction line. I guess,
9 what I have to question is what's driving this density and this
10 configuration of the building? Because it seems to me that, you
11 know, with some modification, and understandably, some reduction
12 of the overall square footage, you'd wind up with better units and
13 probably Office of Planning support. Have you looked at
14 alternatives? Is it, do you -- or do you, you've got to get this
15 number of units with this much square feet in order to make the
16 project work financially? I mean, what's driving this? Because
17 it seems to me that the building that's resulting from all of
18 these constraints is, frankly, not a very good building.

19 MR. SULLIVAN: If I -- and maybe Mr. Saxena or Sam might
20 want to answer that, but I just want to point out we had
21 discussions with the Office of Planning because I wanted to try to
22 determine what we could do as a compromise. Because the things I
23 read in the report, I had no idea what to make of because I don't
24 think they're relevant. But, yes, the design of the building. But
25 when I asked, -- when OP said this proximity of the building next

1 to 2062 Rhode Island is going to adversely affect the use of that
2 property somehow, which I still do not understand, I said how --

3 COMMISSIONER MAY: Mr. Sullivan, you're not answering my
4 question.

5 MR. SULLIVAN: Well, I asked how far back do we have to
6 go, and they said 15 feet. So, I wanted -- because we would have
7 postponed --

8 COMMISSIONER MAY: Mr. Sullivan, you're still not
9 answering my question.

10 MR. SULLIVAN: Okay.

11 COMMISSIONER MAY: Maybe you need to turn it --

12 MR. SULLIVAN: I should turn it over to Sam or Vinny.
13 Sorry.

14 COMMISSIONER MAY: That's all right.

15 MR. FORMAN: Yeah. To answer your question, we've been
16 working closely with Mr. Saxena, our owner's real estate advisors,
17 and the square footage of the units that we are trying to get is
18 in the 825 square foot range with two bedrooms. That is the
19 viable financial spot for our owner. And that is what's driving
20 the square footages of the units, which is the driving the design
21 itself.

22 MR. SAXENA: Okay. Good evening, everyone. If I may?

23 COMMISSIONER MAY: Please.

24 MR. SAXENA: Yes. So we have significantly made changes
25 to this. We started off at doing 12 units. We've come down to 10

1 units and one of those units is an IZ unit. And just being that
2 the lot is shallow, we want to provide a great product for our
3 future customers, and we want to provide a great building for
4 future residents. I don't think -- if we went any smaller than
5 this or if we reduced the number of units, I don't think the
6 project would be viable, to answer your question, just on a high
7 level.

8 COMMISSIONER MAY: Okay. All right. By the way, I
9 mean, again, this may be an issue of incomplete drawings, but
10 looking at slide 36, several of the bedrooms do not have windows
11 at all. And maybe that's intentional. I know you don't
12 absolutely have to, if you meet the other egress simulation
13 requirements. Maybe there are just some windows that are missing?
14 I don't know.

15 MR. SAXENA: So, I think --

16 COMMISSIONER MAY: So --

17 MR. SAXENA: -- we've been updating these plans quite a
18 bit, so I'm not sure if you have plans that are missing windows.
19 But because of sort of the push back that we got from the Office
20 of Planning. We've been trying to work with them as much as
21 possible --

22 COMMISSIONER MAY: Okay.

23 MR. SAXENA: -- and make it work.

24 COMMISSIONER MAY: Okay.

25 MR. SAXENA: Seeing --

1 COMMISSIONER MAY: I've moved on from that. I'm just
2 pointing out that you may have further glitches in the drawings
3 that you'll need to correct.

4 MR. SAXENA: I was just asking him if he --

5 MR. FORMAN: Yeah. We will have windows in all of the
6 bedrooms. That likely is an error of omission on part of
7 revisions.

8 COMMISSIONER MAY: Got it. Okay. Well, that's it for
9 my questions, Mr. Chairman.

10 CHAIRPERSON HILL: Okay.

11 MR. SAXENA: And I believe there are still windows on
12 the south, just to address that. There are still windows on the
13 rear south end, I believe. Right, Sam?

14 MR. SULLIVAN: Yeah, they just don't face south; is
15 that correct, Sam?

16 MR. FORMAN: Yep. It's actually just the north and west
17 are the facing windows. On the south, they are, they've created
18 an interior window egress court.

19 MR. SAXENA: Right. With light coming in.

20 MR. FORMAN: Correct.

21 CHAIRPERSON HILL: All right. Okay. I have a question
22 for the Office of Planning, then. Regarding that egress court or
23 light well, whatever you want to call it. I mean, is there any
24 aspect of this revised project that now requires court relief?

25 MS. FOTHERGILL: I don't have an answer to that. We

1 just received this, and I don't know.

2 CHAIRPERSON HILL: Okay. All right.

3 MR. SULLIVAN: Thank you, Commissioner. That was a
4 concern of mine, and I need to look into that, and maybe it can be
5 fixed with trellis and eliminate the court and still allow the
6 light or maybe it's a court niche. But I --

7 COMMISSIONER MAY: Okay.

8 MR. SULLIVAN: -- can get you some clarification on
9 that.

10 COMMISSIONER MAY: Some revision to the drawings and the
11 submission would be necessary, clearly. Okay. That's it.

12 CHAIRPERSON HILL: Okay. All right. Let me see, now.
13 So, let's see how we're going to do this.

14 Mr. May, I'm going to lose you, right?

15 COMMISSIONER MAY: Yeah. In a little less than ten
16 minutes.

17 CHAIRPERSON HILL: Okay. So, we're going to continue
18 this, okay?

19 COMMISSIONER MAY: Yep.

20 CHAIRPERSON HILL: And I'm going to just go ahead and
21 let -- unless my fellow Board members have an issue with this,
22 I'll see. I'm going to first see if the Commissioner, since he's
23 here, has -- Commissioner Montague, do you have any questions of
24 anybody?

25 COMMISSIONER MONTAGUE: No, I think Commissioner May's

1 questions were pertinent. I think the Office of Planning did
2 justice considering that we just received revisions. So are you -
3 - are you talking -- when you say continue, are you talking about
4 pushing on through the hour? Or --

5 CHAIRPERSON HILL: No. I'm just trying to get you
6 first. And it sounds like you're okay for now. We're going to
7 come back to this case again because I'm going to lose
8 Commissioner May, right?

9 COMMISSIONER MONTAGUE: Okay.

10 CHAIRPERSON HILL: So I'm looking at my fellow Board
11 members. I mean, we can start asking questions. I guess, what
12 was it? What I would think is that, you know, I'd like the
13 applicant to go back to the Office of Planning or -- I'm sorry.
14 I'd like the Office of Planning to look at the revised plans and
15 see if there's any kind of supplemental report that you have to
16 give about the court relief or any other things that might be
17 pertinent because of the revised plans. I suppose then, the
18 applicant will also then work with the Office of Planning about
19 the revised plans, and we might have something else in front of us
20 the next time. And so, that's what I'm trying to also figure out.
21 And then -- I mean, I understand the issues that the ANC is
22 putting forth with the increased density and parking issues. And
23 I mean, they are fulfilling the parking requirement. But still,
24 that is another discussion that we may have in the future.
25 However, if the applicant can continue to work with the Office of

1 Planning and see where, I don't know, this may get to a different
2 place or not, that might be worthwhile. I mean, so what I'm
3 trying to say is, since we're losing Commissioner May, if you all
4 want to start asking questions, you can. Or we can go back to the
5 Office of Planning. I didn't realize that this was going to go
6 this way, actually. Go back to the Office of Planning, get a
7 supplemental, have the applicant work with the Office of Planning,
8 and see where we are the next time we're back here. Or do you all
9 want to ask questions?

10 Vice-Chair John?

11 VICE-CHAIR JOHN: I don't have a question, Mr. Chairman.
12 I would have a suggestion for the applicant. To take a look at
13 Exhibit 51C, which has been superseded by a later design and look
14 at the light in there that's available to the property where the
15 balcony is to my left here. And then, maybe show us something
16 that would show how the design in -- two slides down that just
17 shows the floor plan, how that design would not impact the light
18 and air that's clearly visible or shown in the slides before that.
19 And I would like some explanation of that. That's Exhibit 51C.
20 And I realize that what we're seeing now, I don't know what slide
21 it is, but that the rear yard has been pulled back a foot. So
22 there is some improvement there. But I keep flipping between the
23 diagram and the photograph of the building to the left; I believe
24 that's 2062 Rhode Island. And I would think just looking at this
25 photograph and the diagram that that rear yard that goes right up

1 to the property with very little side yard as far as I can tell,
2 maybe I'm wrong, but I have a hard time seeing how that would not
3 create some adverse impact. So just some clarification of that.

4 CHAIRPERSON HILL: Okay. Thank you, Ms. John.

5 Mr. Smith?

6 BOARD MEMBER SMITH: I think it would be better to take
7 questions after OP has thoroughly looked at the redesign plans,
8 given, you know, Mr. May's questions. And Mr. Sullivan, you also
9 were even trying to figure out if you need relief from the court,
10 if you need court relief. So I will reserve any questions that I
11 have until after OP has already completed their supplemental
12 analysis.

13 CHAIRPERSON HILL: Mr. Blake?

14 BOARD MEMBER BLAKE: I would agree with that. I would
15 appreciate the opportunity to review all the new information in
16 detail and get that additional insight from OP.

17 CHAIRPERSON HILL: Okay. And then it would give
18 Commissioner Montague an opportunity to also look at this as well.
19 Let's see. Let's see, Mr. Saxena, how do you pronounce your name
20 again? I'm sorry.

21 MR. SAXENA: Saxena.

22 CHAIRPERSON HILL: Saxena. Okay. All right. So, Mr.
23 Saxena, I mean, I understand what is before us. You understand
24 what is before us. And you've talked to Mr. Sullivan about the
25 argument that he is putting forth. And we'll see, I guess, or get

1 it. I guess, Mr. Saxena, you know, I mean, we're very
2 appreciative of everything people are trying to do to bring
3 product to the city so that we can house people and those type of
4 things. I guess I'm saying, Mr. Saxena, if you do get denied,
5 something's going to happen with this property, right? Like,
6 you're going to have to do something with it. So just to let you
7 know that something has to happen with it, right?

8 MR. SAXENA: I mean, is that a question?

9 CHAIRPERSON HILL: No. Just making a comment that
10 something has to happen, you know, and so, you're going to do
11 something with it. And so, I'm just making a point that if it
12 gets denied, it gets denied.

13 MR. SAXENA: Right. I hope you understand that all this
14 has a cost associated with it and that keeps adding to the cost of
15 the development, right? So, at some point --

16 CHAIRPERSON HILL: Mr. Saxena, that's why I'm actually
17 even making that point to you right now, right?

18 MR. SAXENA: Right.

19 CHAIRPERSON HILL: So, you know, okay. Because right
20 now, you've got a no with OP, you've got a no with the ANC, and
21 now, you've got an uphill climb with the BZA. It's not saying it
22 can't happen.

23 MR. SAXENA: Sure.

24 CHAIRMAN HILL: I'm not saying it can't happen. I'm
25 just saying that's where you are.

1 MR. SAXENA: Right. And I would just like to point out,
2 I'm more than happy to go back to Office of Planning. I've talked
3 to the ANC multiple times, I've talked to Commissioner Jeremiah a
4 couple times as well, I've talked to all the neighbors as well.
5 We have the property that's directly behind us, we have their
6 support.

7 CHAIRPERSON HILL: No, I got it. And I'm not saying --
8 and I'm not -- I'm just pointing out. I'm not saying it's a bad
9 argument. And Mr. Sullivan's right there just, you know, on the
10 little screen as well, right? I mean, I see the MU-4. I see all
11 the commercial thing. I see the balcony that's an at-risk
12 balcony. I mean, I'm not saying it's a bad argument. I'm just,
13 kind of, you know, I don't know what I'm telling you. I'm saying
14 we're coming back, right? So now, it's another hearing, okay?

15 So Mr. Sullivan, when do you think -- or I should say,
16 Ms. Fothergill, I mean, I don't know when we get to come back
17 again. Ms. Fothergill, you're going to take a look.

18 Mr. Sullivan, you're not going to submit anything else,
19 right? You've got to take a look at the court relief and figure
20 that out?

21 MR. SULLIVAN: Yes. And I mean, I think there were
22 some, talked about some typos or corrections or clarifications
23 needed in the plans as well.

24 MR. FORMAN: Yeah, with the plans, I think Ms. John
25 asked for something.

1 CHAIRPERSON HILL: Yeah.

2 MR. FORMAN: We could add that.

3 CHAIRPERSON HILL: Yep. Go look at the things that Ms.
4 John asked for and then, Commissioner May, being an architect, he
5 is also now taking a look at the plans there. So you should
6 probably make sure that what is in front of us is, in front of us.
7 Right?

8 Mr. Sullivan, you got anything else before we let you
9 go? And I'm going to try to figure out a date.

10 MR. SULLIVAN: No. Thank you.

11 CHAIRPERSON HILL: Okay. Mr. Moy, when is a good time
12 to come back?

13 MR. MOY: Mr. Chairman, I would suggest October 20th
14 will be a good day to come back. I know we just put another case
15 on it, but I know it would accommodate Peter May.

16 CHAIRPERSON HILL: Okay. That's the one with five, you
17 just added six cases and an appeal, right?

18 MR. MOY: Yeah, it'll be six plus one. But this one,
19 you're almost done, right?

20 CHAIRPERSON HILL: So it's seven cases plus an appeal,
21 correct?

22 MR. MOY: Okay. Sure.

23 CHAIRPERSON HILL: No, I'm asking.

24 MR. MOY: Yes.

25 CHAIRPERSON HILL: Mr. Sullivan's --

1 MR. MOY: Yes.

2 CHAIRPERSON HILL: -- appeal? No. He's shaking his
3 head no. All right. What's going on on the 27th?

4 MR. MOY: We have ten cases on the 27th.

5 CHAIRPERSON HILL: And the 20th was the seventh case
6 plus the appeal. Seventh case plus the appeal.

7 MR. MOY: Yes.

8 CHAIRPERSON HILL: All right. Oh, and Mr. May, there's
9 some kind of, is Mr. May with us again on the --

10 MR. MOY: On the 20th.

11 COMMISSIONER MAY: Yes.

12 CHAIRPERSON HILL: Oh, all right. Okay. Then, that
13 makes sense. All right. We'll go ahead and come back on the
14 20th.

15 COMMISSIONER MONTAGUE: Is it appropriate to ask a quick
16 question?

17 CHAIRPERSON HILL: Sure, Commissioner.

18 COMMISSIONER MONTAGUE: Is it possible, because we
19 expect this to be dispensed with rapidly, but we made several
20 assumptions about that earlier today, and you know where we are.
21 I have a full Commission meeting at 6:00 p.m. that evening.

22 CHAIRPERSON HILL: On the 20th?

23 COMMISSIONER MONTAGUE: Will we be finished by that
24 time?

25 CHAIRPERSON HILL: Yeah.

1 COMMISSIONER MONTAGUE: Are we going to be finished by
2 that time?

3 CHAIRPERSON HILL: Yeah. Yeah. The appeal comes last.
4 We'll do all the cases --

5 COMMISSIONER MONTAGUE: Okay.

6 CHAIRPERSON HILL: -- and then, we'll do the appeal.
7 And so --

8 COMMISSIONER MONTAGUE: All right.

9 CHAIRPERSON HILL: -- the appeal has to start at least
10 by, like, 2:00 or 3:00.

11 COMMISSIONER MONTAGUE: Excellent.

12 CHAIRPERSON HILL: Okay?

13 MR. MOY: Mr. Chairman?

14 COMMISSIONER MONTAGUE: Thank you.

15 MR. MOY: Mr. Chairman?

16 CHAIRPERSON HILL: Bye now. Yes. Hold on, hold on,
17 Commissioner May is waving goodbye.

18 COMMISSIONER MAY: Good-bye.

19 CHAIRPERSON HILL: Okay. Good-bye.

20 Mr. Moy, wait a minute. Mr. Moy, what were you going to
21 say?

22 MR. MOY: Oh, I wanted to ask the Board if you wanted to
23 set a deadline for the applicant to make their filing as well as a
24 deadline for the Office of Planning for their supplemental report?

25 CHAIRPERSON HILL: Yep. All right.

1 MR. MOY: If you do --

2 CHAIRPERSON HILL: Why don't you do that for me?

3 MR. MOY: If you do -- I'll set this up. You can change
4 it. The applicant files by October 6th. OP submits their
5 supplemental filing by October 13th. Did I say that right? Yes.
6 So you can change that if you'd like.

7 CHAIRPERSON HILL: No, fine with me. So what did you
8 say? Say it out loud again.

9 MR. MOY: The applicant would make their final changes
10 in their filing by October 6th. And the Office of Planning
11 supplemental report by October 13th. And then, we're back on
12 October 20th.

13 CHAIRPERSON HILL: Okay. Does that work for everybody?

14 MR. MOY: And you can still use your --

15 MR. SULLIVAN: Mr. Chair, I just want to make sure that
16 we have enough time, if we're going to be working with OP and
17 because everybody has hearings likely next week as well. Even one
18 more day would be helpful, even the 7th, October 7th. If that's
19 okay with Ms. Fothergill, it would --

20 CHAIRPERSON HILL: That's --

21 MR. SULLIVAN: Just, I think maybe --

22 CHAIRPERSON HILL: Ms. Fothergill gave me the thumbs up.
23 That's fine.

24 MR. SULLIVAN: Thank you.

25 CHAIRPERSON HILL: Mr. Sullivan, you get me back here a

1 little cleaner, you can have as much time as you want, okay?
2 Right? Okay?

3 MR. SULLIVAN: Yes.

4 CHAIRPERSON HILL: All right. So the 7th, Mr. Moy, for
5 filings?

6 MR. MOY: Yes, sir.

7 CHAIRPERSON HILL: And then, the 13th for the OP
8 supplemental?

9 MR. MOY: Yes, sir.

10 CHAIRPERSON HILL: Commissioner Montague, did you hear
11 that?

12 COMMISSIONER MONTAGUE: Good to go.

13 CHAIRPERSON HILL: Okay. All right. Okay, everybody.
14 Thank you. Good-bye. We'll see you on 10/20/21. No, I didn't --
15 did I lose somebody? Oh, Ms. John hung up. Ms. John got kicked
16 out? Okay. All right. Okay.

17 Mr. Moy, is there anything else before the Board today?

18 MR. MOY: Nothing from the staff, sir. Unless Mr.
19 Ritting wants to add something.

20 CHAIRPERSON HILL: No? Okay. Great. Okay, everybody,
21 have a nice evening. Bye-bye.

22 (Whereupon, the above-entitled matter went off the
23 record at 6:30 p.m.)

24

25

C E R T I F I C A T E

This is to certify that the foregoing transcript:

in the matter of: Public Meeting

Before: DCBZA

Date: 09-29-21

Place: Teleconference

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

GARY EUELL

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