

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

OCTOBER 6, 2021

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 9:41 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

BRANDICE ELLIOTT
MATTHEW JESICK
CRYSTAL MYERS

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JONATHAN KIRSCHENBAUM

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACK RICE, ESQUIRE
MARY NAGELHOUT, ESQUIRE

NATIONAL CAPITAL PLANNING COMMISSION MEMBER PRESENT:

MARCEL ACOSTA, Executive Director

The transcript constitutes the minutes from the
Regular Public Hearing held on October 6, 2021

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(9:41 a.m.)

CHAIRPERSON HILL: Good morning, ladies and gentlemen to the Board of Zoning Adjustment. Today's date is 10/6/2021. The public hearing will please come to order.

My name is Fred Hill. I'm the Chairperson of the District of Columbia Board of Zoning Adjustment. Joining me today is Lorna John, Vice Chair, and Board Members Carl Blake, Chrishaun Smith, the Zoning Commissioners Peter May and Anthony Hood, and joining us from the National Capital Planning Commission is Executive Director Marcel Acosta.

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

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

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

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

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

13 Oral presentation should be limited to a summary of the
14 most important points. When you're finished speaking, please mute
15 your audio, so that your microphone is no longer picking up sound
16 or background noise. Once again, if you're experiencing
17 difficulty, please call the OZ hotline number, which is listed on
18 the screen, and it is 202-727-5471.

19 All persons planning to testify in either favor or
20 opposition have signed up in advance. They'll be called by name
21 in to testify. If this is an appeal, only parties are allowed to
22 testify. By signing up to testify, all participants completed the
23 oath or affirmation, as required by Subtitle Y 408.7.

24 Requests to enter evidence at the time of online virtual
25 hearings, such as written testimony and additional supporting

1 documents, other than the live video, which may not be presented
2 as part of testimony, may be allowed, pursuant to Y 103.13,
3 provided that the persons making the request entering an exhibit
4 explaining how the proposed exhibit is relevant; the good cause
5 that justifies allowing the exhibit into the record, including
6 explanation of why the requester did not file the exhibit prior to
7 the hearing, pursuant to Y 206; and how the proposed exhibit would
8 not unreasonably prejudice any parties. The order of procedures
9 for special exceptions and variances will be pursuant to Y 409.
10 Let's see. The order of the appeals are pursuant to Y 507.

11 At the conclusion of each case, an individual who is
12 unable to testify because of technical issues may file a request
13 for leave to file a written version of the planned testimony to
14 the record within 24 hours following the conclusion of public
15 testimony in the hearing.

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

21 Moreover, the Board may request additional specific
22 information to complete the record. The Board or the staff will
23 specify at the end of the hearing exactly what's expected and when
24 persons must submit the evidence to the Office of Zoning, and no
25 other information shall be accepted by the Board.

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

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

12 MR. MOY: Good morning, Mr. Chairman, Members of the
13 Board.

14 We do. Because of the number of preliminary matters,
15 staff would suggest hearing -- the Board address those when I call
16 the case. Other than that, I'd like to announce three cases for
17 the record as to the status of cases that would not be heard on
18 today's docket.

19 The first of the three is this request for modification
20 of consequence in Application Number 18472B of the District of
21 Columbia Department of General Services. This will be heard at
22 its meeting session next week, which would be October the 13th.
23 Number 2, Application Number 20354 of Cambridge Holdings, LLC, has
24 been rescheduled to November the 3rd, 2021. And finally, Case
25 Application Number 20481 of Scott Anderson and Elizabeth Arkell

1 has been rescheduled to December 8th, 2021. And that's it for me,
2 Mr. Chairman.

3 CHAIRPERSON HILL: Okay, great. Thank you.

4 All right. Good morning, everyone.

5 Mr. Moy, if you want to go ahead and call our first
6 meeting case?

7 MR. MOY: Okay, better. All right. This would be Case
8 Application Number 20517, of the Government of the United Arab
9 Emirates. As the Board will recall, the Board last heard this --
10 or the Foreign Missions composition of the BZA last heard this on
11 September the 29th and, at that point, heard testimony and set it
12 for a decision today.

13 Other than that, I'll just read, for the transcript, the
14 case application. This would raze an existing building, and
15 construct a new three-story with basement, addition to an existing
16 attached three-story with basement embassy building, in the R-3
17 zone.

18 Let's see. The relief is for the the expansion of
19 existing chanceries from the matter of right use restrictions,
20 Subtitle U, Section 201. Property located at 2400 Massachusetts
21 Avenue Northwest, Square 2507, Lots 42 and 52.

22 And participating is yourself, the Chairman, Vice Chair
23 John -- let's see -- Mr. Blake, Mr. Peter May, under his hat of
24 the Department of the Interior, and Mr. Marcel Acosta, the
25 Executive Director at the National Capital Planning Commission.

1 CHAIRPERSON HILL: Okay. All right. I can go ahead and
2 kind of start these deliberations, and see where we get. And if
3 it's okay, with the way I plan, I'm going around the horn with
4 this, is Commissioner May, Mr. Acosta and Ms. Smith -- I'm sorry,
5 Ms. John, and then Mr. Blake.

6 So I guess, you know, we heard the case last week, I
7 believe it was. And I know that we were under, actually, a time
8 constraint, concerning getting this resolved one way or the other,
9 because of what the OZ counsel has let us know about, in terms of
10 the timeline. And so that is something that maybe in the future,
11 Mr. Moy, we can make sure we're not under that particular
12 situation again.

13 In terms of the criteria of the case, in terms of, you
14 know, whether or not they're meeting the standard for us to grant
15 this application, I think that the Office of Planning had provide
16 their -- had provided their analysis, and I would, for the most
17 part, agree with the Office of Planning, and then, also, the
18 argument that the applicant's attorney had put forward.

19 I guess the thing that -- the two items that were kind
20 of a sticking point was that kind of pullover for the car there,
21 and whether or not it was -- because DDOT had some issues about
22 cars parking there. I wasn't as concerned about it, because
23 originally, there was four cars there to begin with, or more, for
24 that other building.

25 But they did kind of shrink that little pullover area

1 down, so it's not as inviting to park a car there. Like, they
2 actually could do, you know, pull over and do what they're
3 claiming to do for the elevator access to the garage.

4 I guess the other concern of ours was that the main
5 building -- or, no, I'm sorry -- the new building really mimicked
6 the main building, so much so that you couldn't necessarily tell
7 that it was different. I guess you could, kind of. And we've
8 done this now for -- we've been going through these cases now for
9 a long time, and it's not necessarily -- I mean, I'm not an
10 architect, but the whole point is so it looks different, but
11 similar. Right? And in this particular case, it seems to look
12 more similar than different, if that makes a little bit of sense.

13 However, this being, you know -- and the State
14 Department weighed in, and they didn't have any issues -- or I
15 shouldn't say any issues. Their opinion was not to deny, and
16 primarily due to the fact that this is, you know, a foreign
17 government and the UAE, and that the State Department has
18 indicated that, you know, when we're going work in Dubai and Abu
19 Dhabi, that their government has been helpful with our government.

20 And so I would hope that, given that I'm going to vote
21 yes on this, even though it kind of might -- we might've been
22 asked to -- this might've lingered a little bit longer, had this
23 not been the UAE, or another foreign entity, I would hope that --
24 and appreciate that they would, then, help us, if we have issues
25 in the same way in their country. So I'm going to vote to

1 approve.

2 And I'm going to turn to Commissioner May next.

3 COMMISSIONER MAY: Sure. So I, you know, I'm prepared
4 to vote to not disapprove --

5 CHAIRPERSON HILL: Not to disapprove.

6 COMMISSIONER MAY: -- largely on the basis of the
7 reports that we have received. I will say that I am disappointed
8 by the response regarding the design of the building. I mean, I
9 think the response regarding the lay-by is okay. You know, they
10 could -- I think they can shrink it even more. But, you know, any
11 improvement, I think, any reduction in that lay-by sort of thing
12 is an improvement.

13 The design really is problematic for this building, and,
14 you know, the applicant argues that, as a matter of -- well, the
15 Secretary of the Interior standards don't apply. I didn't mean to
16 state or to give any -- mean to give anybody the impression that
17 they did apply.

18 The thing about the Secretary of the Interior standards
19 is that they are both a legal requirement and sort of a guidepost
20 in how we make reservation decisions. And it certainly factors
21 into local regulation, when it comes to preservation decisions.

22 And the concept that, when you are adding to an historic
23 building, that you don't merely mimic the details, and that the
24 new addition be distinguishable, is an important concept that I
25 think maybe starts with the Secretary's standards. But it echoes

1 throughout many regulations, including local regulations. And
2 it's important, and I think the building would be better, if they
3 paid attention to that.

4 That being said, the Office of Planning isn't making a
5 big stink about it, and the CFA, for reasons I completely do not
6 understand, seem to think that this design is fine. So I'm going
7 to -- you know, I'll shut up about it. But I think it's the wrong
8 approach for the design, but it's not enough to cause me to
9 disapprove the application.

10 CHAIRPERSON HILL: Thanks. And Commissioner May, you
11 know, this -- also is the fact that this is an embassy. Like,
12 we're trying to be, you know --

13 COMMISSIONER MAY: I understand that. Believe me. I've
14 been on many, many BZA cases. I've done BZA cases. I know.

15 CHAIRPERSON HILL: No, no. Right. My point is, that's
16 why you're also -- I want to stipulate to the applicant that --

17 COMMISSIONER MAY: Yeah. Right.

18 CHAIRPERSON HILL: I'm stipulating this to the
19 applicant, that they should be helpful to us, also, if this comes
20 up the other way, because this isn't normally what we do. That's
21 what I'm trying to stipulate.

22 COMMISSIONER MAY: Got it. Okay. Thank you. I'm sorry
23 to jump in on you. I apologize for my abruptness.

24 CHAIRPERSON HILL: No, just want to be clear. You're
25 voting yes because we're trying to be good global neighbors.

1 COMMISSIONER MAY: I am voting yes -- or, I'm sorry, I'm
2 voting not to disapprove, because it meets the standard for not
3 disapproving. And that's -- it's the whole picture. It's not
4 just because they are, you know -- they represent a country that
5 the United States has, and wants to continue to have, good
6 relations with. And I think that's very important. That's part
7 of the consideration. But it's the total picture.

8 CHAIRPERSON HILL: Okay.

9 COMMISSIONER MAY: Thanks.

10 CHAIRPERSON HILL: Mr. Acosta?

11 MR. ACOSTA: Yes. I'm also disappointed that the
12 applicant did not make an effort to address our design concerns.
13 They would've been relatively minor changes, in order to create
14 this differentiation.

15 But I also understand, and I agree with Mr. May and with
16 you, Mr. Chair, that, given all the other criteria that we have to
17 consider with reviewing these types of cases, including
18 reciprocity, that there's not much here to bear disapproval. So
19 I'll be voting to not disapprove this project.

20 CHAIRPERSON HILL: Ms. John?

21 VICE CHAIR JOHN: Thank you, Mr. Chairman. I will also
22 be voting to not disapprove the project. And OP recommended that
23 the FMBZA not disapprove the project.

24 After reviewing the applicable regulations, and
25 considering the municipal interest, one issue for me, when I heard

1 the case, was that the lot occupancy was 71 percent, and we
2 ordinarily would require a variance for such an increase.
3 However, OP clarified that it's within OP's discretion, in an
4 FMBZA case, to not apply the variance standard.

5 The BZA, as my fellow Board members have said, must also
6 determine whether the project meets the standard for historic
7 preservation. And the issue is whether or not the application is
8 in substantial compliance with the standards.

9 And I agree with Commissioner May, and Mr. Acosta and
10 Chairman Hill, that the design is too much of an exact replica.
11 The design of the new building is too much of an exact replica of
12 the existing building, and perhaps a more nuanced interpretation,
13 as recommended by HPRB, would be more appropriate in this case.

14 And as Chairman Hill said, in an ordinary situation, we
15 would've had more testimony and presentations to carefully go over
16 why there is such a disconnect, and review what the standards are
17 that should be applicable. I agree with Commissioner May that the
18 standards are not mandatory.

19 And I reviewed the HPRB report, not to say that this was
20 mandatory, but only that they would look to those standards. And
21 I looked at the standards myself, and read through them, and
22 basically, they just, you know, describe what are, I would say,
23 best practices. And one best practice is not to have a cookie-
24 cutter, exact replica on a new addition. So -- I believe I quoted
25 it right.

1 So having said all of that, I will vote to not
2 disapprove the application. Oh, I also incorporate everything
3 that's been said concerning DDOT and the ANC. Thank you, Mr.
4 Chairman.

5 CHAIRPERSON HILL: Thank you, Vice Chair John.

6 Mr. Blake?

7 BOARD MEMBER BLAKE: Yeah, I just want to -- I agree
8 with everything that has been said, but I'd like to add a couple
9 things to that.

10 I basically considered and balanced several factors.
11 The standards for review by FMBZA, the recommendations of D.C.
12 Historical Preservation and the U.S. Commission of Fine Arts, the
13 issues raised by DDOT, the modifications that were actually made
14 in response to those recommendations and concerns by the
15 applicant, and also the applicant's desire to maintain his design
16 ideals.

17 The comments determined -- also the comments and
18 determinations by the Department of State weighed very heavily,
19 which were all in favor, and to support. The Office of Planning
20 review and recommendations, which I rate -- give substantial
21 weight, as important.

22 I do think the lay-by is an improvement over the current
23 situation, as you pointed out, Chairman Hill. And I think while
24 the final design may not reach HPRB's standard, I believe the
25 design has reached a threshold of substantial compliance. So I'd

1 be comfortable voting to not disapprove the application -- the
2 applicant's request.

3 CHAIRPERSON HILL: Okay. All right. I guess, you know,
4 unless you guys have any issue, we can also leave this open to --
5 if the applicant wanted to work with the HPRB in any kind of --
6 you know, we'd offer some flexibility for the design, if, you
7 know, after this discussion, they thought about going back and
8 taking a look at the design of the new building. So I'll put some
9 flexibility into the order for the design. And I see people
10 nodding heads, so I don't think I'll have any issues with that.

11 All right. So I'm going to go ahead and make a motion
12 not to disapprove Application Number 20517, as captioned and read
13 by the secretary, including some flexibility of design, with
14 working with HPRB.

15 And if it's all right, Chairman -- I'm sorry, Vice Chair
16 John, I'll ask Mr. Acosta, since he's here with us today, if he
17 would second the motion?

18 MR. ACOSTA: Second the motion, Mr. Chair.

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

21 MR. MOY: When I call each of your names, if you would
22 please respond with a -- "to not disapprove" -- well, I don't know
23 what the second would be. Or "to abstain". I'll leave it at
24 that. And this goes to the motion made by Chairman Hill to not
25 disapprove, including the design flexibility, to coordinate

1 additional work with HPO, HPRB. The motion was seconded by Mr.
2 Marcel Acosta.

3 Mr. Peter May?

4 COMMISSIONER MAY: Yes, to not disapprove.

5 MR. MOY: Mr. Blake?

6 BOARD MEMBER BLAKE: Yes, to not disapprove.

7 MR. MOY: Vice Chair John?

8 VICE CHAIR JOHN: Yes, to not disapprove.

9 MR. MOY: Mr. Acosta?

10 MR. ACOSTA: Yes, to not disapprove.

11 MR. MOY: Chairman Hill?

12 CHAIRPERSON HILL: Yes, to not disapprove.

13 MR. MOY: Staff would record the vote as five to zero to
14 zero, and this is on the motion made by Chairman Hill, to not
15 disapprove. The motion was seconded by Mr. Marcel Acosta. Also
16 in support of the motion to not disapprove is Mr. Peter May, Mr.
17 Blake, Vice Chair John, and of course, Marcel Acosta and Chairman
18 Hill. Motion carries, sir, five to zero to zero.

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

20 Mr. Acosta, a pleasure to see you. I hope you have a
21 good day.

22 MR. ACOSTA: Thank you very much. Good to see all of
23 you.

24 CHAIRPERSON HILL: Bye.

25 COMMISSIONER MAY: I'm heading out, too.

1 CHAIRPERSON HILL: Oh.

2 COMMISSIONER MAY: I love you guys, but it's not my day.

3 CHAIRPERSON HILL: Commissioner May, always a pleasure
4 to speak with you. I still -- there are many live moments that I
5 will look fondly upon, and hopefully one day, we will be on the
6 dais together live, where these interactions can take place in a
7 more dynamic environment.

8 COMMISSIONER MAY: I look forward to that, too. Take
9 care. You guys have a great day.

10 CHAIRPERSON HILL: All right. Okay. Bye-bye.

11 COMMISSIONER MAY: Bye.

12 CHAIRPERSON HILL: All right. Let's see. All right.
13 Chairman Hood, we've got. And Mr. Smith.

14 CHAIRMAN HOOD: Good morning, everybody.

15 CHAIRPERSON HILL: Okay. All right. We're all wearing
16 jackets today. All right. Mr. Smith's got a little pocket square
17 working and everything. All right. Dang. I need to get my
18 little pocket square going. All right.

19 Okay. All right. Mr. Moy, you can call our next case,
20 please.

21 MR. MOY: Thank you, Mr. Chairman. This would be a
22 required Board action, which is to address the motion to amend the
23 appeal. And this is Appeal Number 20549 of the Advisory
24 Neighborhood Commission 6B.

25 The Board last heard this in a meeting session on

1 preliminary matters on September 29th, which was last week. And
2 for the record, for the transcript, the appeal is from the
3 decisions made on May 5th, 2021, by the Zoning Administrator,
4 Department of Consumer Regulatory Affairs, to issue Building
5 Permit Number B2103902. This would permit a renovation within an
6 existing structure in the PDR-1 zone. Property is located at 1323
7 E Street Southeast, Square 1043, Lot 166.

8 CHAIRPERSON HILL: Okay, great. Thank you.

9 I think, with the motion to stay, last week, and that
10 was denied, and so now we're here with a motion. It's a motion to
11 amend the application so the certificate of occupancy and the
12 revised permit be added to the appeal.

13 I'm inclined to just go ahead and do it. I don't think
14 that -- I know that, per the regulations, we are not allowed to --
15 an applicant is not allowed to expand the appeal. And I don't
16 necessarily think this is necessarily an expansion of the appeal.
17 I just think it's more efficient for the Board, meaning that the
18 ANC could go ahead and have another appeal now, of the C of O and
19 the revised permit. I just think it's better to just include it
20 all into one, so that we can go ahead and hear it ourselves now,
21 in that manner.

22 And I'm going to go around the horn and just see if
23 anybody's got anything to add, starting with you, Mr. Smith.

24 BOARD MEMBER SMITH: I don't have anything to add. I
25 agree with your assessment, Mr. Chair.

1 CHAIRPERSON HILL: Got it.

2 Vice Chair John?

3 VICE CHAIR JOHN: I have nothing to add, and I agree.

4 CHAIRPERSON HILL: Mr. Blake?

5 BOARD MEMBER BLAKE: Yes, in terms of efficiency, I
6 would agree, sir.

7 CHAIRPERSON HILL: Chairman Hood?

8 CHAIRMAN HOOD: Again, I would agree with everyone. For
9 efficiency's sake, I would agree with everyone. Thank you.

10 CHAIRPERSON HILL: Okay. I'll go ahead and make a
11 motion to amend the application and include the certificate of
12 occupancy and the revised permit, and ask for a second.

13 Ms. John?

14 VICE CHAIR JOHN: Second.

15 CHAIRPERSON HILL: Motion has been made and seconded.
16 Mr. Moy, if you want to take a roll call?

17 MR. MOY: When I call each of your names, if you would
18 please respond with a "yes", "no", or "abstain" to the motion made
19 by Chairman Hill to amend the appeal to include the C of O and the
20 revisions? Seconding the motion was Vice Chair John.

21 Zoning Commission Chair Anthony Hood?

22 CHAIRMAN HOOD: Yes, to the motion.

23 MR. MOY: Mr. Smith?

24 BOARD MEMBER SMITH: Yes.

25 MR. MOY: Mr. Blake?

1 BOARD MEMBER BLAKE: Yes.

2 MR. MOY: Vice Chair John?

3 VICE CHAIR JOHN: Yes.

4 MR. MOY: Chairman Hill?

5 CHAIRPERSON HILL: Yes.

6 MR. MOY: Staff would record the vote as five to zero to
7 zero. This is on the motion made by Chairman Hill to amend.
8 Motion was seconded by Vice Chair John. Also in support of the
9 motion to amend is Zoning Commission Chair Anthony Hood, Mr.
10 Smith, Mr. Blake, and of course, Vice Chair John and Chairman
11 Hill. Motion carries, sir, five to zero to zero.

12 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.

13 And I guess -- I don't know if the appellant is
14 listening or not, and/or the applicant, but if you guys can try to
15 work together before we get to the hearing? I mean, I know part
16 of the appeal situation, in that loading dock -- and so if you can
17 kind of see if you can work something out, that'd be great.

18 But otherwise, we're hearing it on 12/1. Correct, Mr.
19 Moy?

20 MR. MOY: Yes. Yes, yes, on that schedule date.

21 CHAIRPERSON HILL: Okay, great. All right. You can
22 call our next one when you get a chance, Mr. Moy.

23 MR. MOY: All right. The next case application for
24 decision-making is Application Number 20476 of District
25 Restoration Company, LLC. This application was caption advertised

1 as a request for special exception from the minimum lot area
2 requirements, Subtitle E, Section 2014, which would subdivide the
3 property into two record lots, retaining an existing single-family
4 rowhouse, and construct new detached three-story flat for two
5 families, with cellar, in the RF-1 zone. Property is located at
6 4107 New Hampshire Avenue Northwest, Square 3228, Lot 5.

7 As the Board will recall, this was last heard on
8 September 22nd, where the Board heard testimony and set its
9 decision for today.

10 CHAIRPERSON HILL: Okay. All right. I know that this
11 one seems to have had a lot of discussion. I think this is the
12 one. And I'm going to --

13 MR. MOY: Mr. Chairman?

14 CHAIRPERSON HILL: Yes.

15 MR. MOY: Sorry to interrupt your thought process,
16 there. I do want to mention that there were two documents that
17 were submitted within the 24-hour block. One is the affidavit of
18 posting and maintenance, as well as the affidavit regarding the
19 solar interference requirements.

20 CHAIRPERSON HILL: Yeah. That's great. I think that we
21 want to see both of those. So I'm going to go ahead and allow
22 them into the record. And I'm quickly going to take a look at the
23 record, if you guys want to give me one second.

24 Okay. All right. So I know that the Board has had some
25 -- they've struggled with this one. So I'm going to let everybody

1 kind of go around the horn and see where we are.

2 I mean, they've put in the new, you know, things that we
3 asked for, in terms of an ability to look at the building face-on.
4 And, you know, there was a lot of concerns from the neighbors and
5 the neighborhood about the change in -- the change in the
6 neighborhood, and whether or not it's going to be in harmony with
7 the general purpose and intent of the zoning regulations. And
8 again, I think, kind of basically, it's kind of how it's fitting
9 in the neighborhood is what I think most of the Board is
10 struggling with.

11 I'm going to just -- I mean, I'm going to go around the
12 horn. And, I don't know, Mr. Smith, if you wouldn't mind
13 beginning the discussion?

14 BOARD MEMBER SMITH: Sure. I'll begin the discussion.
15 So --

16 CHAIRPERSON HILL: I think a lot of people have a lot to
17 say, Mr. Smith. So I don't think you'll be -- you know, there's
18 going to be a lot of discussion. You know?

19 BOARD MEMBER SMITH: Okay.

20 CHAIRPERSON HILL: Yeah.

21 BOARD MEMBER SMITH: I'll, you know, I'll start it off.
22 So I appreciate the applicant providing us with this additional
23 information today, and at the last hearing.

24 So first off, I believe that we are tasked with
25 determining whether the property meets the special exception

1 standards, as you alluded to, Mr. Chairman, E 5206.2 and X 901.2,
2 which specifically state, A, that the development be in harmony
3 with the zoning regulations, B, will not tend to adversely affect
4 the use of neighboring property, and 3 (sic), will meet such
5 special conditions as specified.

6 So as I look at the lotting pattern in the neighborhood,
7 that was submitted, the majority of the lots within the square are
8 conforming to the RF-1 regulations. There are a number of lots
9 that are roughly 1,500 square feet in area, specifically at the
10 corners of the diagonal streets and alleys within the
11 neighborhood. Most of the buildings on these properties are
12 smaller in size and scale than the one proposed by the applicant.
13 Also, by the RF-1 zone -- does allow buildings up to a height of
14 35 feet.

15 The applicant is requesting a special exception, which
16 requires us to analyze whether the proposal requesting a special
17 exception does not have any adverse impact, and does not impact
18 the surrounding properties. Based on what was submitted by the
19 applicant, I do believe that, as designed, it does have some
20 impact, especially based on the size and scale of this particular
21 building.

22 You know, as of right now, I'm still on the fence of
23 whether I can, you know, support this application. But I will
24 welcome additional conversations with the applicant on ways that
25 they could potentially make changes, where they don't have as much

1 of an adverse impact on the surrounding properties, as far as
2 shadowing of some of these properties on New Hampshire Avenue,
3 which is proven, in the shadow study and by testimony from some of
4 the surrounding property owners, that it would have an effect.

5 So I think that, you know, I welcome additional dialogue
6 with the applicant, see if they can lower the height of this
7 building from three stories to, potentially, down to two stories.
8 That would not impact, you know, them having two dwelling units on
9 the property. It may impact the size, but I believe that they
10 could still hit the one market rate unit and the accessory
11 dwelling unit on this property.

12 I think they should just come back to the table and
13 change the scale of the property. But right now, I'm not at a
14 yes.

15 CHAIRPERSON HILL: Okay. Thank you, Mr. Smith.

16 Vice Chair John?

17 VICE CHAIR JOHN: I'm where Mr. Smith is, because I'm
18 looking at Exhibit 62 now -- and I thank the applicant for all of
19 the recent submissions -- and Exhibit 62 is an improvement on what
20 we received before, because in some of the photographs and
21 renderings that we had before, it looked as if the new building
22 was the same height as the existing two-story buildings on the
23 street. And at least now, we can see that it is a full floor
24 above the existing buildings.

25 What I did not see was any views of Taylor Street,

1 | because that's the issue. The issue is not New Hampshire Avenue.
2 | It's Taylor Street. And Taylor Street, as the neighbors have been
3 | saying, has sort of a uniform style, all along Taylor Street. And
4 | I don't see any photographs in the applicant's presentation. I
5 | believe there were some by the neighbors. But a Google search
6 | will show exactly what's happening on Taylor Street.

7 | So I believe that this design does not meet the
8 | character, scale, and pattern. It's not consistent or
9 | substantially consistent with the character, scale, and pattern of
10 | houses on the street. And I believe there is some light and air
11 | impact.

12 | And there's a very powerful presentation of one of the
13 | neighbors. There was, at the hearing. And the ANC commission has
14 | -- ANC commissioner has submitted a very lengthy explanation of
15 | why this project should not be allowed. I agree with Mr. Smith
16 | that perhaps a shorter building would be appropriate.

17 | And that subdivision is fine. It's just that what is
18 | being proposed on the small lot is just too dense, and it doesn't
19 | meet -- it does not fit in with -- fit in with the neighborhood.
20 | And I appreciate the effort to include an IZ unit, but on balance,
21 | I would like to see what the applicant can provide that's not as
22 | intrusive as this building.

23 | One more thing to say, but I'll just stop here and hear
24 | what others say. Thank you, Mr. Chairman.

25 | CHAIRPERSON HILL: Thank you, Vice Chair John.

1 Mr. Blake?

2 BOARD MEMBER BLAKE: Yeah. With regard to the issues
3 that we discussed, I look to do this very carefully, and I was
4 concerned with the adverse impacts of the project, particularly
5 with regard to two areas, the impact of light and air on the
6 neighboring properties, and the impact on the consistency and
7 character and scale and pattern in the neighborhood.

8 In looking at the light and air, it seemed to me that
9 the building had no windows, so -- on the west side, which
10 maintained some privacy for the properties who are on New
11 Hampshire, in their backyards. And I sort of can appreciate the
12 position of the property owners on New Hampshire, as the
13 development, as designed, certainly would have a significant
14 impact on the light and air to those residents.

15 The issue, though, is that when you're looking at it,
16 and I think this was pointed out in the ANC member's comment --
17 Commissioner's comment -- what we're looking at, though, in the
18 impact that the neighbors are experiencing, is basically seeing a
19 garage, which is less than ten feet tall, and a right -- an
20 accessory building with a right of 22 feet. That's 12 feet more.

21 That's tough to stomach. But the proposal adds 25 feet,
22 which I think is very challenging and hard to stomach for that
23 part of it, in terms of light and air. So the incremental
24 shadowing of the 22 to 35 feet is probably too much, but it is
25 certainly within the regulations. But going from ten to 35 is

1 certainly a very adverse impact.

2 But again, it's still within the regulations that we
3 have. So while the incremental shadowing of the issue -- of the
4 proposal may not be undue, relative to the matter of right, it is
5 significant in total.

6 When I look at the character and scale and pattern, this
7 building is clearly different. It's more contemporary, whereas
8 the other buildings along this block are more two-story Wardman-
9 style houses, with mansard roofs and things of that nature. Some
10 of the bump-outs that have taken place there have maintained the
11 mansard structure and still gone up three stories. But from the
12 streetscape, you don't get that sense, as pointed out by Board
13 Member John, in looking at the Google Maps.

14 Obviously, though, and this -- in my case, I have to
15 admit, I do pass this area quite frequently. I'm familiar with
16 the area. The reality, though, this proposal for this building
17 sits alone. It's separated from the alley on one side, and
18 really, in the rear yards of the New Hampshire properties to the
19 west.

20 So it isn't -- it isn't exactly in -- directly against
21 one of the other buildings on there. So it does sit a little bit
22 apart. So in that sense, its unique character is not totally
23 clashing, because there is some separation. That said, the
24 building height is noticeably higher.

25 And when I look at the intensity of use, it appears that

1 | there's a lot going on here. You've got a building that's 35
2 | feet, which is noticeably higher than the other buildings on
3 | Taylor. It's got a much different design. It's got 3,600 gross
4 | square feet of habitable space on a 1,500-square-foot lot. It's
5 | got, you know, eight bedrooms. Yeah. But six and a half baths.
6 | It's a sizeable structure on a smaller lot.

7 | Now, we saw -- recently admitted to evidence was the
8 | ZA's determination letter, in Exhibit 63. It shows that the
9 | applicant had actually talked about doing a 54 percent lot
10 | occupancy, which is -- it's only ten percent smaller, but it is a
11 | smaller building. So when I look at this situation, I think
12 | there's a lot going on there, probably a little bit more than
13 | probably fits the lot size itself.

14 | This is a matter of right, that they have basically gone
15 | as much on the lot occupancy and as much on height as possible,
16 | which is within the rights of the rules. But is it right for this
17 | lot and for this square? And in my opinion, it probably is a
18 | little bit much.

19 | So a shorter structure would certainly be more in
20 | keeping with the character and scale of buildings on the block,
21 | and partially mitigate the light and air concerns of the
22 | neighbors, although I will tell you, going to 22 feet will -- or
23 | slight -- is not going to be a whole lot different. It's a big
24 | change from ten.

25 | So rather than deny this application, I would be

1 amenable to reopening the case to see if the applicant could come
2 up with a design that is more in line with the character, scale,
3 and pattern of the houses on the block.

4 CHAIRPERSON HILL: Okay. All right. Thank you, Mr.
5 Blake.

6 Chairman Hood?

7 CHAIRMAN HOOD: Yeah. Thank you. I want to thank all
8 of my colleagues who have spoken thus far. I also want to thank
9 the applicant for trying to get -- and I'm saying trying to get --
10 where I wanted to be, so I can see the view of the neighborhood.
11 And the form-based code and all that.

12 But it really didn't get me to where I was trying to go.
13 I think that -- so I went back to the regulations, and I looked at
14 harmonious, "forming of a pleasing or consistent whole." As far
15 as I'm concerned, we're not there.

16 And I heard Board Member Blake's analysis. I think if
17 we were to deny what we have in front of us, I think everything he
18 spelled out would justify us, even if it was challenged. I really
19 appreciate his analysis, and I also appreciate my colleagues,
20 their analyses, on this case.

21 But for me, I'm going to sum it up. I think the ANC had
22 compelling cases, as Vice Chair John mentioned, but when I looked
23 at this, it's like me trying to get in a Size 50. And, I mean, me
24 trying to get into Size 46, and I need a Size 50. That's exactly
25 what I believe is going on here.

1 I think we need to reanalyze. And I would agree. Let's
2 not turn them down. Let's send it back and see if they can do
3 something a little more tasteful, that may be in there. Are there
4 going to be adverse impacts? Yes. But can we lessen them? Yes.

5 That's all I have, Mr. Chairman.

6 CHAIRPERSON HILL: Okay. Well, again, it seems as
7 though, you know, our concern with X 901.2(B) -- "will not tend to
8 affect adversely the use of neighboring property, in accordance
9 with the zoning regulations and zoning map" -- seems to be where
10 we're kind of focusing upon, in terms of the height, as well as, I
11 guess, the design.

12 I guess I'm trying to think what would be best for the
13 applicant. I suppose we'll go ahead and, rather than deny this,
14 reopen the hearing -- it sounds as though that's where the Board
15 kind of is -- and speak with the applicant, and see what they
16 might be interested in doing. Or, obviously, if they stay where
17 they are, it's just going to get denied.

18 So let's see. Mr. Moy, what is our docket looking like,
19 if we wanted to put this on a hearing?

20 MR. MOY: Mr. Chairman, are you and the Board thinking
21 about allowing the applicant to have at least two weeks to
22 formulate what their next move is going to be?

23 CHAIRPERSON HILL: Yeah, I mean, I don't know, Mr. Moy.
24 I'm trying to figure this out myself. I don't know what's the
25 most efficient thing. Like, you know, coming back with the

1 applicant and -- I mean, the applicant's hearing everything that's
2 going on right now.

3 So why don't we go ahead and do this? Why don't we set
4 this for another hearing date, in order to just have an
5 opportunity to, you know, talk with the applicant? And then it
6 might even get kicked to another date there, after then. You
7 know? But you can also reach out to the applicant and see if they
8 have any thoughts as to how they might be interested in
9 proceeding.

10 I mean, we, you know -- Chairman Hood, when are you --
11 well, I don't -- when are you back with us again? You don't know.
12 Or you --

13 CHAIRMAN HOOD: This situation, in the environment we're
14 in now, whenever you all need me back, I'll be back.

15 CHAIRPERSON HILL: All right. Okay. So Mr. Moy, when
16 could we maybe do this? I mean, again, we might just be meeting,
17 and then just talking, and then we're going to come back again.
18 You know? I mean, I don't think -- unless they, the applicant,
19 think that they understand where they might stand right now with
20 our concerns, and have something that they might want to present
21 or talk about with the Board.

22 I guess -- and I'm sorry, Mr. Moy, I'm kind of -- and
23 fellow Board members. You know, I'm just thinking through this.
24 I mean, they're going to have to go back to the ANC again, also.
25 Right? So, you know -- or they would want to, I would imagine.

1 And so I guess, you know, it might be worth having a
2 quick conversation, Mr. Moy, and then see where we get. So I
3 don't know where -- what do we have coming up in the next -- where
4 we might be able to squeeze this in for a short hearing?

5 MR. MOY: Yeah. Okay. All right, Mr. Chairman. So
6 we're -- I'm only talking about a difference of one case, give or
7 take, in terms of the case load for any -- for a hearing date.
8 But the -- so the lesser of that -- actually, I'm looking at
9 November 3rd or November 17th, because both of those two days have
10 the same amount, which is about one case less than the hearing
11 dates --

12 CHAIRPERSON HILL: Okay. Okay. Let's do November 3rd,
13 because that's the quickest we can get them here. And then if you
14 want to reach out to the applicant and see if the applicant -- I
15 mean, I think it's pretty clear that the Board -- you know, what
16 the Board's concerns are. And so, you know, if the applicant has
17 an idea as to how they'd like to move forward, they might have
18 some suggestions also. Okay?

19 MR. MOY: Okay. Very good. So continued hearing
20 November 3rd. Thank you, sir.

21 CHAIRPERSON HILL: Thank you. Okay. All right. The
22 next one we've got is 20436A, as in Apple.

23 MR. MOY: I'm sorry, sir, what was the case number that
24 you just read?

25 CHAIRPERSON HILL: I think -- is it 20436A, as in Apple?

1 MR. MOY: Yes, sir. That's what I have, too. I just
2 wanted to be sure. Certainly.

3 CHAIRPERSON HILL: Yeah.

4 MR. MOY: Okay. So before the Board for action is this
5 request for modification of consequence to Application Number
6 20436A, as in Alpha, Schmidt, S-C-H-M-I-D-T, Development, LLC.
7 Captioned and advertised as a -- well, the project is to construct
8 a third story with penthouse and rear inside additions, to
9 construct a six-residential-unit to an existing two-story detached
10 building in the RF-1 zone. Again, this is a modification of
11 consequence from BZA Order Number 20436. And the property is
12 located at 1300 I Street Northeast, Square 1026N, Lot 802.

13 CHAIRPERSON HILL: Okay. Just looking at a thing real
14 quick. I didn't really have a whole lot of concern after looking
15 through the record and understanding what the applicant was trying
16 to do, and how they're meeting the criteria for us to grant the
17 requested relief. The Office of Planning's analysis, I thought,
18 was very helpful, and as also was DDOT.

19 I didn't -- I guess I was a little confused by the ANC,
20 in that -- and this being a modification of consequence and a
21 meeting, not a hearing. I don't have an opportunity to really
22 clarify that with the ANC. I mean, they wanted the developer
23 changing the treatment on the penthouse structure to match and
24 flow with the rest of the building. Like, that's not something
25 that necessarily would fall within our purview. I mean, it can at

1 times, but it's not right now.

2 And since I don't have anybody to kind of ask questions
3 with and to, I don't see how we can add that as a condition, per
4 se. But I would imagine that that's something that the ANC and
5 the applicant would agree on their own to do. And in that way,
6 the ANC would still be in favor.

7 In other words, what I think the applicant should
8 understand is, the way the ANC order was -- well, not order --
9 vote was written was that, you know, they have to do this in order
10 for them to be in favor. So I'm a little confused in that I
11 didn't see anything in the record that said that the applicant was
12 in favor of that.

13 But I suppose, you know, I'm comfortable with the
14 application, and if the ANC wants to pull their approval -- right?
15 We could leave the record open for that. Or we can leave the
16 record open for something from the applicant that states that
17 they're in agreement with the developer changing the treatment on
18 the penthouse structure to match and flow with the rest of the
19 building, so that we would at least know where the ANC stands.

20 Otherwise, it's a full order, as the applicant knows and
21 as the Board knows. So in terms of the analysis, I'm comfortable
22 with the request. And so I've kind of said a bunch of stuff, and
23 I'm going to go around the table, and start with you, Mr. Smith.

24 BOARD MEMBER SMITH: So I agree with your analysis, Mr.
25 Chairman, with this particular -- for this particular case. And,

1 | you know, just looking at the report that was submitted, you know,
2 | it seems fairly straightforward. And I do believe it has met the
3 | analysis -- it has met the burden of proof, as provided with OP's
4 | report.

5 | Like you, I was concerned about, you know, the ANC's
6 | position, and I don't believe that, based on what was submitted,
7 | the request before us, from the ANC, that we'll be able to
8 | condition it. So that I agree with your analysis on this, Mr.
9 | Chairman.

10 | CHAIRPERSON HILL: Vice Chair John?

11 | VICE CHAIR JOHN: Thank you, Mr. Chairman. I don't have
12 | a lot to add. I, too, did not understand what the ANC meant. And
13 | so I don't know if they mean that they would be in opposition if
14 | the Board does not include this condition. But the Board doesn't
15 | know what it means, so I don't see how we can include the
16 | condition.

17 | One other option is to continue the case, and see if we
18 | can have clarification from the ANC. And that would be another
19 | suggestion. But I don't have any objection to deciding it now.

20 | CHAIRPERSON HILL: Okay. Well, Vice Chair John, I guess
21 | staff has let me know that the applicant has agreed to what the
22 | ANC has proposed. I guess we can leave something open in the
23 | record -- I'm sorry. We can leave the record open to get
24 | something from the applicant that states that. So that's another
25 | alternative.

1 Let's see. Mr. Blake?

2 BOARD MEMBER BLAKE: Yeah, hearing that comment and that
3 information, I feel perfectly comfortable with this. The proposed
4 penthouse meets the requirements of Chapter 15. It's as
5 permitted, right of use -- matter of right for this zone, and it's
6 consistent with 304.11, to allow for a modification of
7 consequence. So I feel comfortable supporting this, based on the
8 information we've just received.

9 CHAIRPERSON HILL: Thank you.

10 Chairman Hood?

11 CHAIRMAN HOOD: Yes, Mr. Chairman, I don't have much to
12 add, but I will say I appreciate the ANC's thought pattern and
13 design. And the addition, I think, is very beneficial. I'm glad
14 to hear from you that the applicant has agreed to it, because I
15 thought it was very tasteful, in their ask. So I'm glad that we
16 got that taken care of, and I think this does meet our approval
17 for the modification of consequence. Thank you.

18 CHAIRPERSON HILL: All right. Okay. I'll make a motion
19 to approve Application Number 20436A, as in Apple, as captioned
20 and read by the secretary, and leave the record open for something
21 from the applicant, stating that they are in agreement with the
22 ANC's condition, and ask for a second.

23 Ms. John?

24 VICE CHAIR JOHN: Happy to, Mr. Chairman, but I wanted
25 to find out if the Chair also wants revised design, described --

1 or revised design describing the changes that were made, in
2 addition to the agreement.

3 CHAIRPERSON HILL: I mean, and Ms. John, if that would
4 make you feel comfortable, that's fine, as well. That's fine. So
5 I'll go ahead and -- is that what you would like to do, Ms. John?

6 VICE CHAIR JOHN: Yes, because we don't know what the
7 ANC's asking for. The applicant has agreed to whatever it is, but
8 we don't know what that is.

9 CHAIRPERSON HILL: Okay. All right. So I'll go ahead
10 and then make the motion as I made it -- leave the record open for
11 something from the applicant that states that they are in
12 agreement with what the ANC has requested, and show us what the
13 design is -- and ask for a second.

14 Ms. John?

15 VICE CHAIR JOHN: Second.

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

18 MR. MOY: When I call each of your names, if you would
19 please reply with a "yes", "no", or "abstain" to the motion made
20 by Chairman Hill to approve the application for the request for
21 modification of consequence? Seconding the motion is Vice Chair
22 John.

23 Zoning Commission Chair Anthony Hood?

24 CHAIRMAN HOOD: Yes.

25 MR. MOY: Mr. Smith?

1 BOARD MEMBER SMITH: Yes.

2 MR. MOY: Mr. Blake?

3 BOARD MEMBER BLAKE: Yes.

4 MR. MOY: Vice Chair John?

5 VICE CHAIR JOHN: Yes.

6 MR. MOY: Chairman Hill?

7 CHAIRPERSON HILL: Yes.

8 MR. MOY: Staff would record the vote as five to zero to
9 zero. And this is on the motion made by Chairman Hill to approve.
10 Motion was seconded by Vice Chair John. In support -- also in
11 support, Zoning Commission Chair Anthony Hood, Mr. Smith, Mr.
12 Blake, and of course, Vice Chair John and Chairman Hill. Motion
13 carries on a vote of five to zero to zero.

14 CHAIRPERSON HILL: Thank you, Mr. Moy. All right.
15 We've got -- oh. Okay. We've got one more in our decision thing
16 here. And Mr. Moy, you can call it whenever you like.

17 MR. MOY: Thank you, Mr. Chairman. So this would be
18 Case Application Number 20540 of April Leonard and Regina Leonard
19 Danielson. This is the applicants' request for expedited review
20 calendar case. This is their request for a special exception, of
21 course, from the rear addition restrictions, Subtitle D, Section
22 306.3, which would construct a two-story rear addition to an
23 existing semidetached principal dwelling unit in the R-2 zone.
24 The property is located at 5412 Blaine Street Northwest, Square
25 5252, Lot 75.

1 And I believe, Mr. Chairman, looking at my sheet, there
2 is, in the record -- I think it was in the 24-hour block, but I
3 think it is in the record -- letter in opposition from the
4 adjacent neighbor, under Exhibit 37. As well, we do have an
5 affidavit of maintenance under 30A. And I believe, although I
6 didn't check the record today, there was no ANC letter.

7 CHAIRPERSON HILL: Okay. All right. So anyway, you
8 guys, this is on the meeting docket. It's expedited review. I
9 mean, I was already uncomfortable with it, because it's going back
10 beyond the ten feet, and it's going back to a -- it's going a lot
11 back past the ten feet. So I was wanting to take a look at it and
12 talk with them and really understand what they're trying to do, so
13 I actually have a presentation to begin with.

14 In addition to that, now, there's a letter of opposition
15 that kind of, I guess, details out a lot of different things that
16 that person in opposition has. And I think they're the -- I think
17 they're the adjoining neighbor. Like, they share the wall.

18 And so I would go ahead and be in favor of just pulling
19 this off of the meeting and have a hearing with it, and then ask
20 the applicant -- they're going to have to do a presentation now,
21 as to how they believe they're meeting the criteria for us to
22 approve this.

23 And then also, we didn't get anything from the ANC. So
24 we really need to hear from the ANC. And we really need to hear
25 what, you know, they have to say about why their meeting -- you

1 know, they've already stated their case, but they're going to have
2 to do so now at a full hearing before the public. And also, then,
3 speak to the questions of the party in opposition, that actually
4 is the adjoining neighbor.

5 So I would think that they should go ahead and, you
6 know, try to do that, sooner rather than later, and see where we
7 get. And I would, since we know some of the -- our docket
8 currently, I guess I would suggest the 17th of November, and since
9 we already did this once with somebody else. And I'll go ahead
10 and go around the table and see where we go.

11 Ms. John, do you have any thoughts?

12 VICE CHAIR JOHN: I'm fine with your approach, Mr.
13 Chairman. I don't really have anything to add.

14 CHAIRPERSON HILL: Mr. Smith?

15 BOARD MEMBER SMITH: I don't have anything to add.

16 CHAIRPERSON HILL: Mr. Blake?

17 I got a thumbs up from Mr. Blake.

18 Chairman Hood?

19 Got a thumbs up from Chairman Hood, for the record. All
20 right.

21 Okay, then. Mr. Moy, let's go ahead and put this on
22 November 17th.

23 MR. MOY: Yes, sir. Pulling it off the meeting and
24 setting it for a public hearing on November 17th.

25 CHAIRPERSON HILL: Now, Mr. Moy, you didn't tell me the

1 actual number of cases that we had on the 3rd and/or the 17th.
2 But now I'm curious. So what do we have on the 3rd? We now added
3 a case for the 3rd, and we're now adding a case for the 17th.
4 Correct?

5 MR. MOY: Yes, we have. So on November 3rd, now you'll
6 have nine. And for November 17th, if I add in this, you'll have
7 nine or ten.

8 CHAIRPERSON HILL: Okay. All right. And that's the one
9 just before Thanksgiving. Right?

10 MR. MOY: Yes.

11 CHAIRPERSON HILL: Okay. Do we have a hearing on the
12 24th?

13 MR. MOY: On the 24th? No, sir. Do you want one?

14 CHAIRPERSON HILL: No. I was just making sure, because
15 sometimes you sneak one in there. So all right.

16 MR. MOY: I would do that. Okay.

17 CHAIRPERSON HILL: I'm fighting for the Board, just to
18 let you know. I mean --

19 MR. MOY: Oh, yeah. I understand. I know. It's me
20 against the world.

21 CHAIRPERSON HILL: All right. Okay. Do we all want to
22 take a break before we do our hearings?

23 Okay. All right. Let's take a quick break, and we'll
24 be back. Thank you.

25 (Whereupon, the above-entitled matter went off the

1 record and then resumed at 10:54 a.m.)

2 CHAIRPERSON HILL: Waiting on one more. You guys want
3 to leave your cameras on, so then we know -- oh, there we go.
4 Excellent.

5 All right, Mr. Moy, you can call our first hearing case.

6 MR. MOY: Thank you, Mr. Chairman. The Board is back in
7 session after a quick break, after its meeting session, and the
8 time is at or about 10:54.

9 The next -- or rather, the case application before the
10 Board is Application Number 20507 of 93 Hawaii Ventures, LLC, 98
11 Webster Ventures, LLC, and Solid Brick Ventures LLC. This is a
12 request for special exceptions from the RA new residential
13 development requirement, Subtitle U, Section 421.1; side yard
14 requirements, Subtitle F, Section 306.2; minimum court
15 requirements, Subtitle F, Section 202.1.

16 This would increase the number of residential units in
17 11 separate detached residential apartment buildings in the RA-1
18 zone. The property is located at 66 -- rather, 65 through 97
19 Hawaii Avenue Northeast, 66 Webster Street Northeast, 98 Webster
20 Street Northeast, Square 3674, Lots 2, 3, 4, 5, 6, 7, 8, 9, 10,
21 11, and 19. And Mr. Blake is not participating on this
22 application.

23 And I should share with you, Mr. Chairman, that we had
24 scheduled a Spanish interpreter for witnesses who wanted to give
25 oral testimony, but the interpreter had to cancel at the last

1 minute for a conflict -- for their conflict of time. Yeah. So
2 they would not be able to testify.

3 CHAIRPERSON HILL: Okay. Yeah, Mr. Moy, you told me
4 that this was kind of going on. So I'll think about that and what
5 we're going to do about that. But we definitely want to hear and
6 take the testimony. And just -- Mr. Moy, if you could remind me
7 about that at the end of this hearing? And I'll figure out what
8 we do. Okay?

9 MR. MOY: Yes, sir.

10 CHAIRPERSON HILL: Thank you.

11 Mr. Sullivan, can you hear me?

12 MR. SULLIVAN: Yes, I can, Mr. Chairman.

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

15 MR. SULLIVAN: Marty Sullivan with Sullivan & Barros, on
16 behalf of the applicant.

17 CHAIRPERSON HILL: Got it. And who's here with you, Mr.
18 Sullivan?

19 MR. SULLIVAN: The property owner, Mark Mlakar, and
20 architects Michael Cross and Lizzie Stuart.

21 CHAIRPERSON HILL: Okay.

22 Mr. Mlakar, could you introduce yourself for the record,
23 please?

24 MR. MLAKAR: This is Mark here. I'm the property owner
25 of all of those properties, 11 buildings total.

1 CHAIRPERSON HILL: Okay. Well, Mr. Mlakar, welcome
2 back.

3 MR. MLAKAR: Thank you. Good to see you again.

4 CHAIRPERSON HILL: Mr. Cross, can you hear me?

5 MR. CROSS: I can.

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

8 MR. CROSS: Sure. My name's Michael Cross. I'm the
9 architect on this project. I'm joined today by Lizzie Stuart, who
10 is the project designer, and who will be doing the majority of the
11 architectural presentation here.

12 CHAIRPERSON HILL: Got you. Ms. Stuart, can you hear
13 me?

14 MS. STUART: Yes, I can.

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

17 MS. STUART: Of course. My name is Lizzie Stuart. I'm
18 here for R. Michael Cross Design Group. I'm the project designer
19 on this project.

20 CHAIRPERSON HILL: Great. Thank you. All right.

21 Mr. Sullivan, in some ways, it's relatively
22 straightforward. There's just a lot of stuff going on. So if you
23 could make sure you just kind of walk us through it all in a way
24 that is as easy as we can? Right? And then also, knowing that
25 there is the potential that someone could be watching that is non-

1 native-speaking -- so just kind of keep that in mind.

2 But -- Mr. Moy?

3 MR. MOY: Yeah, before you go any further, Mr. Chairman,
4 I neglected to mention that the applicant filed a waiver of time
5 to submit updated plans. So that's on your plate, as well.

6 CHAIRPERSON HILL: Oh, okay. Great. All right. Well,
7 then, unless the Board has any issues, I would like to see the
8 updated plans. Does anyone have an issue? Please raise your
9 hand.

10 No. All right. Then, Mr. Moy, could you load that into
11 the record for us?

12 And I'm now going to see if -- Mr. Sullivan, your
13 PowerPoint hasn't changed from 10/5. Has it?

14 MR. SULLIVAN: No, we just submitted one PowerPoint.

15 CHAIRPERSON HILL: Okay. So then, all right, then I'm
16 going to pull that one up. And I guess, Mr. Young, you can pull
17 that one up, as well. And then I'll wait for the plans -- the
18 updated plans, and you can begin whenever you'd like.

19 MR. MOY: Before he begins, Mr. Chairman, I just learned
20 from staff that a Donna Kelly filed testimony within the 24-hour
21 block, as well. So that must be something that just occurred.

22 CHAIRPERSON HILL: Okay. All right. I want to get all
23 the testimony that we have, and so, like, you know -- and we'll go
24 ahead and let that into the record, unless the Board has an issue.
25 And if so, please raise your hand.

1 I don't see anyone raising their hand. So go ahead and
2 put that into the record as well, Mr. Moy.

3 MR. MOY: All right. Thank you, sir.

4 CHAIRPERSON HILL: And then, Mr. Sullivan, again, you
5 can go ahead and begin whenever you like.

6 MR. SULLIVAN: Thank you, Mr. Chair, members of the
7 Board. Marty Sullivan with Sullivan and Barros. If we could have
8 the PowerPoint loaded, please?

9 I have a lot of words here in the overview on Page 2,
10 but I think it -- they don't mean a lot until you see the -- until
11 you go through the pictures and the plans. So I won't read all
12 this. Just a quick overview -- this is relief for special
13 exception under the RA-1 for additions to existing purpose-built
14 apartment buildings. In total, it's 46 new units, 55 new parking
15 spaces, and 16 inclusionary zoning units will be included in the
16 development. And I will -- next slide, please.

17 Also, asking for some special exception side yard and
18 court relief for some of the additions. Next slide, please.

19 And I will turn it over to Lizzie to go through the
20 plans, and to give you the overview on this project. Thank you.

21 MS. STUART: Good morning again. This is Lizzie Stuart,
22 the project designer. I think here, Mr. Sullivan has just called
23 out the 11 properties. If we could go ahead to the next slide?

24 Here's an aerial view of the properties. Again, in
25 future slides, we'll call out the exact buildings. So next slide,

1 please. These are just some pictures down the street, calling out
2 the buildings. They are almost identical, as they go down the
3 block. And we'll see in future slides how we propose to expand
4 upon them. Next slide.

5 Again, here's more of the existing buildings down the
6 block. Next slide, please. Again, more photos of existing. Next
7 slide, please. And we can keep going to the next slide.

8 These are more existing. And this comes around towards
9 the bottom of the block. Next slide, please. And this is the
10 bottom of the block on Hawaii. Next slide, please.

11 This is around the corner, showing you the rear of the
12 properties existing and the alley behind them. Next slide,
13 please. And this is the 98 Webster in the rear. Next slide,
14 please.

15 Here's 98 Webster in the front. Next slide, please.
16 And 66 Webster, which is at the top of the block. Next slide,
17 please. And here you can see the back of the Hawaii. Again, this
18 is all existing photographs. Next slide, please. And 66 Webster
19 again. Next slide, please.

20 Okay. As Mr. Sullivan outlined, we're here to discuss
21 the expansion of 11 residential apartment buildings in the RA-1
22 zone. He also mentioned that we do have relief from side yard and
23 court requirements. The relief for those items are simply because
24 of the existing building locations on the lot. And we're adding
25 the third story. Therefore, we are not adding further court or

1 side yard issues. We're just expanding what is existing. Next
2 slide, please.

3 The proposed relief is for the expansion of each
4 building to create six nine-unit buildings and five 16-unit
5 buildings. The plan shown here is our typical nine-unit building.
6 We're proposing two-bedroom, two-bathroom units. There'll be
7 seven two-bedroom, two-bathroom units, and two one-bedroom, one-
8 bathroom units, on the first floor.

9 Each building will include five parking spaces in the
10 rear and a bicycle storage room within the building. There's also
11 going to be one IZ unit per each of these typical nine-unit
12 buildings. Next slide, please.

13 The 16-unit building consists of 16 one-bedroom, one-
14 bathroom units. There, again, is bicycle storage within the
15 building, and parking in the rear, five spaces. And in each
16 building, there will be two inclusionary zoning units included.
17 Next slide, please.

18 The proposed volumes down the block will be almost
19 identical, to maintain that consistent look that is currently
20 shown in those photos that we saw. Each building will be adding a
21 third story, and will be of similar height down the block. The
22 facade is proposed to be brick on the first three stories, and
23 there'll be a Hardie siding only used on the penthouse level
24 setback from the front. Next slide, please.

25 Here's some views around the block of some of the other

1 materiality and structures that would be near our proposed
2 structures. Again, we see a lot of brick being used, so the hope
3 is that our maintaining of brick and continuation of brick will
4 stay in kind with the neighborhood. Next slide, please.

5 On this aerial view, I have called out in red the
6 buildings that we proposed to be the 16-unit developments, and in
7 blue, the buildings that will be the nine-unit developments. Next
8 slide, please.

9 Finally, this is our landscaping plan. We have been
10 working extensively with a civil engineer to design the
11 landscaping around the entire block. Elements of this design
12 includes pervious paving in the rear of all of the structures for
13 the parking areas, new plantings around each building, and several
14 bioretention areas to collect any runoff. We are also proposing
15 screened-in trash areas in the rear of each property, that will be
16 dedicated to each building. Next slide, please.

17 I think with that, that concludes the architectural
18 portion, and I'll hand it back to Mr. Sullivan.

19 MR. SULLIVAN: Thank you.

20 I'll take the Board through the general special
21 exception criteria. The applicant is proposing no new apartment
22 buildings, just additions to existing purpose-built apartment
23 buildings in an area which has many apartment buildings around it,
24 as well, and creating 46 additional units, including IZ units
25 where they don't currently exist.

1 Applicant's reconfiguring building footprints to
2 increase the rear yards and decrease the lot occupancy for a
3 number of the buildings. GFA will be relocated to a third story,
4 creating more efficient building footprints and increasing rear
5 yard space and parking, adding 55 parking spaces where none
6 currently exist.

7 And other than the special exception relief requested
8 for extension of the existing side yards and courts, the project
9 is otherwise conforming with all development standards of the RA-1
10 zone. For these reasons, the project is in harmony with the
11 general purpose and intent of the RA-1 zone, and will not tend to
12 affect adversely the use of neighboring property. Next slide,
13 please?

14 Regarding the specific special exception requirements
15 for 421, they relate to schools. We've listed the public schools
16 and two streets. And -- next slide please.

17 And Office of Planning comments on these issues, and we
18 included the specific comments from the Office of Planning
19 regarding the 421.3, which relates to the Office of Planning's
20 review of that. And I would just refer the Board to the report
21 that -- we wanted to highlight some of the comments, which we
22 think show why this project is in compliance with the specific
23 criteria in 421. Next slide, please.

24 Special exceptions specific criteria for court and side
25 yard relief relate to the light and air, privacy test. And the

1 proposals construct a third-story addition on top of the existing
2 footprint. The nonconforming court is on the east side of the
3 building, abutting 1st Street. It's not near an adjacent building
4 or property.

5 So accordingly, the light and air available to
6 neighboring properties will not be impacted at all by the increase
7 to the nonconforming court or the lack of a side yard on that
8 side. Likewise, privacy of use and enjoyment of neighboring
9 properties shall not be unduly compromised by the increase, as
10 there are no adjacent neighboring buildings on the east side.

11 And the proposal to increase the nonconforming court and
12 side yard, as well, does not substantially visually intrude upon
13 the character, scale, and pattern of houses along the street.
14 Just proposing an extension of the existing building footprints,
15 which are currently only two stories. Next slide, please.

16 I think that's it. So if the Board has any questions
17 for any of us? Thank you.

18 CHAIRPERSON HILL: Okay, Mr. Young -- oh, thanks, Mr.
19 Young.

20 All right. I'm looking to my fellow Board members. I
21 do have some questions, but actually, can I hear from the Office
22 of Planning first? And then we'll go ahead and have all of our
23 questions.

24 Ms. Elliott?

25 MS. ELLIOTT: Oh. I'm not used to this setup. I

1 apologize.

2 CHAIRPERSON HILL: It's all right. We can see you. Or
3 you can turn it off. Whatever you want to do.

4 MS. ELLIOTT: All right. I lowered the seat, and I
5 wasn't prepared for that. Good morning, Mr. Chairman, members of
6 the Board. I'm Brandice Elliot, representing the Office of
7 Planning. Got a little higher.

8 Office of Planning did provide a fairly lengthy report
9 into the record at Exhibit 54, examining the relief that has been
10 requested by the applicant. The first area of relief is for
11 Subtitle U, Section 421, which allows for the increased density in
12 the RA-1 zone. It requires an analysis of a number of components,
13 and I'll try to summarize those now.

14 So first, there was an analysis of the site plan,
15 arrangement of buildings and structures. This proposal would add
16 three stories -- would add a third story to 11 existing apartment
17 houses, resulting in a total of 46 new residential units and 16 IZ
18 units. A total of 54 parking spaces would be added to the site,
19 along the public alley. And this is parking -- it would provide
20 parking where there currently is no parking.

21 The buildings were constructed in the 1940s, so the site
22 layout has already been established, and that includes the
23 arrangement of buildings, structures, and locations of right-of-
24 ways. And the buildings would have a height ranging between 35
25 and 39 feet, where 40 feet is the maximum permitted in this zone.

1 The buildings generally comply with the development
2 regulations, with the exception of the two buildings along 1st
3 Street, for which the side yard and court relief have been
4 requested.

5 So in regards to public streets, the street and alley
6 network is existing and sufficient to meet the needs of the
7 increased density. The site is accessible by public
8 transportation, including Fort Totten Metro Station, which is 0.8
9 miles from the site. It's also bus accessible.

10 DDOT has filed a record -- I'm sorry. It has filed a
11 report to the record, indicating that it is not opposed to the
12 development, provided that the applicant establish a TDM plan that
13 manages -- that, among other things, manages the proposed parking
14 along the alley. And of course, OP supports that condition.

15 In regards to providing light and air to surrounding
16 properties, there's about 20 feet between the buildings on
17 interior lots, because they're providing compliant side yards.
18 Those side yards are required, I believe, to be eight or ten feet.
19 So we have that.

20 And then also, Hawaii Avenue, 1st Street and Webster
21 Street also provide separation between the site and adjacent
22 buildings, because as you saw, this is generally a block. And so
23 the only separation, really, is the public right-of-way. In
24 addition, the site also has generous front yards, and sometimes,
25 with building restriction lines or, also, wide public right-of-

1 ways that provide additional separation.

2 We also analyzed the parking. A total of 54 parking
3 spaces would be created to accommodate the increased density, all
4 of which would be accessed from the existing alley. This is more
5 parking than is required by the zoning regulations, and we
6 provided in our report that that should reduce some of the demand
7 for on-street parking.

8 The site is accessible to various areas for recreation
9 and open space. It has access to Fort Totten Park, which is 0.2
10 miles from the site. Turkey Thicket Recreation Center is about
11 one mile from the site. North Michigan Park Recreation Center is
12 about two miles away. And it also has access to some of the open
13 space and playing fields at Catholic University.

14 The applicant did provide a landscape plan. It shows
15 the location of existing trees and the addition of several
16 bioretention areas that would be created with the development.
17 Parking pads would be constructed of a pervious material, and the
18 site is also required to comply with stormwater requirements. A
19 grading plan was not created, and it -- I'm sorry, has been
20 provided, and it shows that the grading would not change on this
21 site, except to accommodate parking at the rear of the lot.

22 And as indicated by the applicant, in terms of schools,
23 all students who are eligible for K through 12 have a guaranteed
24 right to enroll in their in-boundary school, and there are -- in
25 this case, there's an assigned elementary, middle, and high school

1 for the area.

2 So the applicant has also requested side yard relief and
3 court relief. The side yard relief requested for the corner lots
4 are -- requested for the corner lots are located along 1st Street.
5 That includes 97 Hawaii Avenue and 98 Webster Street.

6 And I do apologize. As I was reviewing OP's report this
7 morning, I noticed an error. In the table for 66 Webster Street,
8 we indicate that side yard relief has been requested, and that is
9 not the case. 66th Street does -- I'm sorry, 66 Webster Street
10 does not require side yard relief.

11 A generous green space of about 30 or 35 feet has been
12 provided along 1st Street. It's part of the public right-of-way.
13 So it won't be developed now; it can't be developed in the future.
14 This green space has the same effect that a side yard would,
15 because it allows for sufficient distance between adjacent
16 buildings, and it also provides open space. And because the green
17 space is substantial, it would not -- we would not expect it to
18 have an undue impact on light, air, or privacy.

19 The neighborhood -- I'm sorry, the neighborhood
20 character should not be impacted, due to the reduced side yards.
21 The building footprints and patterns would not be changing from
22 the current condition. And while the scale is being increased,
23 due to the third-story additions, it's consistent with what is
24 anticipated in the RA-1 zones, and there are other apartment
25 houses located to the north and south of the site that also have

1 third-story additions, or they are three-story buildings.

2 And finally, the character of the alley would change,
3 because of the addition of parking spaces. But this is an
4 intended use of alleys, and is consistent with what we would
5 expect of the general character of alleys.

6 So with that, OP is recommending approval of all of the
7 relief that has been requested. But I'm happy to answer any
8 questions that you have.

9 CHAIRPERSON HILL: Okay. Thanks, Ms. Elliott.

10 Mr. Sullivan, can you hear me?

11 MR. SULLIVAN: Yes.

12 CHAIRPERSON HILL: So you guys are all in agreement with
13 DDOT's TDM plan conditions; is that correct?

14 MR. SULLIVAN: Yes. Correct.

15 CHAIRPERSON HILL: And then also, can you clarify the
16 whole triggering of C 707.3?

17 MR. SULLIVAN: If I can have one second to look that up.

18 CHAIRPERSON HILL: Yeah. It's the last bullet point in
19 DDOT's -- "prior to BZA approval, the applicant will confirm
20 whether the TDM mitigations of Subtitle C 707.3 are triggered by
21 the increase of vehicle parking spaces, either cumulatively, or as
22 an entire site, or on an individual building basis. If so, the
23 applicant should coordinate with DDOT on any of those potential
24 zoning-required measures to be installed in public space." I'll
25 let you think about that one.

1 MR. SULLIVAN: Okay.

2 CHAIRPERSON HILL: Let's see. Mr. Mlakar? Can you hear
3 me?

4 MR. MLAKAR: Yes. Yes.

5 CHAIRPERSON HILL: How do you say your name, sir?

6 MR. MLAKAR: You got it. Mah-LAH-kar.

7 CHAIRPERSON HILL: Mlakar. Okay. Mr. Mlakar, this
8 one's a little bit more ambitious than the last one I recall, that
9 you came -- I can't remember. I can't remember exactly the one
10 that you came before us for, but I -- but you know, this is -- I
11 don't know what to say. It's a bigger thing than, I think, you
12 did before.

13 Let's see. That's to say that I have some questions
14 about the, you know, how the -- I'm curious how this thing works
15 with the tenants and all that stuff, just because I'm curious, and
16 just to let you know.

17 And so I'm going to ask my fellow Board members if they
18 have any questions for anybody before I come back to ask my
19 questions. I'll start with you, Mr. Smith, if that's okay.

20 BOARD MEMBER SMITH: The only question was the same
21 question that you had. How does this work with the tenants?

22 CHAIRPERSON HILL: Okay. So Mr. Mlakar, or -- I mean,
23 basically, I mean, it's a big project. You've got 11 buildings.
24 I'm just going to -- I want to know all about the details now.
25 Right? We've got -- it looks like you've got a ton of people that

1 are in opposition. And Mr. Sullivan, I'll put this to you first.
2 And then you can direct who you need to, and Mr. Mlakar can also
3 respond.

4 I mean, there was supposed to be a ton of people, it
5 looks like -- when I say a ton, meaning 1, 2, 3, 4, 5, 6, 7, 8, 9,
6 10, 11, 12, 13, 14, 15 people that have signed up in opposition,
7 all of whom or some of whom need a Spanish interpreter. So I'm
8 going to have to come back to hear from them at some point with
9 the interpreter. The ANC -- I got a little confused as to, like -
10 - I didn't see a lot from the ANC, so I'd like to know about that.

11 And then Mr. Mlakar can tell us, or you can tell us, you
12 know, how does this work? Right? Like, where does everybody go?
13 What happens when they're all gone? How do they get -- because I
14 just -- I want to know how the thing works. Right? So Mr.
15 Mlakar, you can start with that, if you want. Or whoever you
16 think, Mr. Sullivan, should answer those questions.

17 MR. MLAKAR: Sure. I'm happy to address that. So I can
18 give you a little bit of background. I purchased the 11 buildings
19 last year. I took ownership of it in October. And we started
20 doing an assessment of the building, what was going on there, what
21 the issues were.

22 As far as my background, I have 15 years in property
23 management experience. I've been a property manager for most of
24 my career. So managing a project of this size is something that
25 I'm very capable with -- to do, with my entire team.

1 When we acquired the property, we noticed that we had a
2 lot of -- a lot of the units have been neglected for probably the
3 last 20, 25 years. These buildings are 80 years old. Each of the
4 units is identical. They're all very small one-bedrooms. They're
5 barely -- they barely qualify to be a one-bedroom. They're just
6 under 350 square feet each, with -- the D.C. occupancy
7 requirements for those units are two per bedroom, plus one, which
8 is three total.

9 And we discovered that we had a large squatter issue,
10 meaning that the people that are on the lease are not the people
11 living there. And the people living there are significantly
12 exceeding the occupancy, sometimes five, six, even seven people
13 per unit.

14 And so we started going through -- we started making
15 repairs. We started working on the units. We've had a lot of
16 issues with tenants, because tenants might have issues with their
17 units, but they don't want to come and talk to us, because they
18 know that they're exceeding the occupancy requirements, so they
19 don't want to alert us to that. So then they don't talk to us
20 directly, and they report things to DCRA.

21 So that's some of the background with the tenant issues
22 that we have. Anybody that contacts us, we address any repairs
23 immediately. The units are in -- are not in the best shape, and
24 so that's why we came up with a plan to renovate the entire
25 complex. Some of the buildings are empty. Some of them have

1 tenants. The intention is to start renovating the buildings that
2 are empty, and then, as those buildings deliver, the tenants have
3 several options.

4 I am under rent control for all of these units, so if
5 somebody wants to move into a brand-new unit, they can, at the
6 same rent that they have. If they don't want to move into the
7 unit, because -- if they have six people in a unit, and, you know,
8 they can't move into a one-bedroom, because they're exceeding the
9 occupancy, we offer relocation assistance, moveouts, we offer
10 payments, cash for keys. We also have a -- we're working with a
11 nonprofit to educate tenants on home ownership, so in case they
12 wanted to purchase a unit, they have that option. And we can work
13 with them on down payment assistance.

14 But nobody is being kicked out. Nobody has to leave.
15 If individuals do not want to leave, if they do not want to move
16 into a brand-new, renovated unit, they can stay, and we just will
17 not renovate their building. We'll just -- we'll keep it as-is.
18 We won't do the third story addition and, you know, we'll continue
19 to provide the same care and maintenance that we do, but we won't
20 do the development.

21 CHAIRPERSON HILL: Who's the nonprofit that you're
22 working with, Mr. Mlakar?

23 MR. MLAKAR: It's called DC PATH.

24 CHAIRPERSON HILL: Okay. And then, when you say
25 purchase -- I thought these were all going to be rentals.

1 MR. MLAKAR: No, they're -- so some are going to be
2 condominiums. Some are going to be apartments. It's a mix.

3 CHAIRPERSON HILL: Got it. And then can you explain,
4 what do you mean, if they don't want to move out, you're not going
5 to do that whole building, if one person doesn't want to move out?

6 MR. MLAKAR: Well, yeah. I can't develop a building --
7 in D.C. if a tenant wants to stay in their building, and they keep
8 paying their rent. We're subject to rent control. We can't
9 increase their rent. They can stay -- they can stay indefinitely.
10 And so that building will continue as-is. It will not be
11 developed.

12 CHAIRPERSON HILL: I understand. I just didn't
13 understand how you couldn't work around them, if possible.

14 MR. MLAKAR: I mean, yeah, there's workarounds. I mean,
15 if a tenant is completely noncooperative, and, you know, they
16 don't want to relocate temporarily, they don't want to take a
17 buyout, they don't want to -- if they just don't want to work with
18 us, then we have no choice but to just leave that building as-is.

19 We try to provide as many options and opportunities that
20 we can. We've worked with a number of families that have been
21 exceeding the occupancy requirements.

22 CHAIRPERSON HILL: I've got you. Mr. Mlakar, that's
23 great. And most of -- I always get a little confused. Most of
24 this is just through TOPA?

25 MR. MLAKAR: Well, TOPA is -- when you actually are

1 doing the purchase of the building, the tenants have the first
2 right of refusal. The tenant opportunity purchase. The tenants
3 elected not to purchase the building, so I purchased the building.

4 CHAIRPERSON HILL: Okay. Got you. I just --

5 MR. MLAKAR: Now, we just -- we have the tenants.

6 CHAIRPERSON HILL: I got you. I got you. Okay, great.
7 Thank you. All right. Thank you. That was very helpful.

8 Mr. Smith, did that answer all your questions? Or do
9 you have more questions?

10 BOARD MEMBER SMITH: That answered my questions.

11 CHAIRPERSON HILL: Okay. Ms. John?

12 VICE CHAIR JOHN: I just wanted to follow up on that
13 question. So are you also considering perhaps moving the tenants
14 who don't want to move into a refurbished building? In other
15 words, if there's a vacant building that you could fix some of the
16 code violations and so on, and there are some tenants who
17 absolutely will not move, will not cooperate, do you think perhaps
18 you could leave one building that is not completely renovated with
19 the addition of the third floor?

20 MR. MLAKAR: Yes. That's exactly what the intention is.
21 However, we can't -- we cannot force -- if we have two tenants
22 left, and they're each in different buildings, we can't force
23 anybody to move into another building, if they don't want to.

24 VICE CHAIR JOHN: Sure.

25 MR. MLAKAR: So I would have to -- I would have to just

1 leave two tenants. And then, you know, they have the right to
2 stay there in perpetuity. And I would change plans and keep those
3 buildings as two-story buildings. We would renovate any vacant
4 units, and then just keep that as a long-term apartment building.

5 VICE CHAIR JOHN: Okay. All right. Thank you. Oh, one
6 more question. What is the percentage of occupancy existing now?

7 MR. MLAKAR: We're at about, I would say -- the latest
8 numbers I had, of a couple weeks ago, we were at 68 percent.

9 VICE CHAIR JOHN: Okay. Thank you.

10 CHAIRPERSON HILL: Chairman Hood?

11 CHAIRMAN HOOD: Yes. Thank you, Mr. Mlakar. I will
12 tell you that, when I first looked at this, this is one of the
13 cases where -- Mr. Sullivan, you'll be happy to know I don't have
14 any issues in the RA zone, because it basically, it's all by
15 itself. I'm very familiar with the area.

16 But I do have a concern. I know on the Commission, we
17 usually have a plan that you kind of outline to the chairman,
18 about the return plan. And I think what you're doing is helping
19 to increase -- and give people a newer standard of living, and
20 update their living arrangements and, I think, increase their
21 quality of -- I always like to see that.

22 But I also understand the concern of predictability.
23 And I'm not sure -- and I'm sure our counsel will let me know if
24 I'm asking the stuff that I asked for on the Zoning Commission
25 that I can't ask for in the BZA. Sometimes it's hard to go back

1 and forth.

2 But some of the things you outlined to the Chairman
3 about returning, predictability, giving residents a confidence
4 level -- because I think at the end of the day, from what you
5 described -- and I know the TOPA laws, and I know all that comes
6 into play.

7 But what you described will help increase the quality of
8 living for the residents over there on Hawaii Avenue, up in that
9 area. But I think it's very important that they have some
10 predictability. And if it's in here somewhere, your return plan
11 or as the Vice Chair just mentioned, if you have a place where you
12 can -- where they can stay until everything's renovated, you know,
13 all those things normally are worked out. And I didn't really see
14 it.

15 Mr. Sullivan, I don't know if you can direct me to the
16 exhibit. I didn't see the plan spelled out exactly how Mr. Mlakar
17 just spoke about it.

18 MR. MLAKAR: We don't have a plan in writing, because
19 everything is on an individual basis. It's a matter of -- every
20 tenant has multiple options on how they wish to proceed. And of
21 course, the law, the landlord-tenant law protects them, and
22 everything is under rent control, so rents cannot be increased,
23 except for the CPI allowable increase.

24 I don't know what each tenant will select, and I don't
25 know how it will play out, and how many people will be interested

1 in purchasing, how many people will be interested in staying, how
2 many people will want to upgrade their units. We have -- for the
3 people that are over occupancy, we are building two-bedrooms, so
4 that'll give them an opportunity to move into a two-bedroom, where
5 they will fit, as opposed to violating occupancy in a one-bedroom.

6 It's hard to put a plan together when we haven't had a
7 chance to go through and talk to every tenant and work out an
8 agreement, in terms of what they would like to do. And it's hard
9 to do that before we know if we can even proceed with this plan,
10 if it will be approved by the Zoning Commission.

11 CHAIRMAN HOOD: So I would strongly suggest -- and I
12 know you have a lot of challenges, but when people feel confident,
13 and know that they have some predictability, and know some
14 insurance is there -- I know other areas have done it. This is
15 not -- this is not my first rodeo on returning back to a project.
16 So I've done many of them over the years.

17 But I think, if they don't agree, I think, to some
18 degree, it'll be a missed opportunity to enhance their housing,
19 from what I'm hearing. I may be totally wrong. And we haven't
20 had a chance to hear from those who have some concerns. I did
21 read one of the letters. I see you have support of ANC 5A. But I
22 just think that so much can be gained here, and I always try to
23 use this platform to try to -- I would ask you to try to
24 coordinate with all of them.

25 And I don't know what your time is. I don't know if you

1 do like we normally do. We do some other projects here in the
2 city, and working with the residents and giving some confidence
3 level, giving some assurances, let them know that they will be
4 able to return, or they will be able to come back, the standard --
5 I think it's a little more, from what I'm hearing -- and something
6 in black and white, memorialized, I think, also helps with that.

7 And I'm just really offering some suggestions, because I
8 think that people say that they're going to stay where they are.
9 And I think you mentioned they're 40 years old, I believe. The
10 units are 40 years old?

11 MR. MLAKAR: The units are 80 years old.

12 CHAIRMAN HOOD: Okay. So double that. So double what I
13 said.

14 MR. MLAKAR: They've been neglected for 20 years,
15 unfortunately.

16 CHAIRMAN HOOD: Well, I do know -- excuse me. I do know
17 that they have kind of been neglected. I do know that. For
18 years.

19 MR. MLAKAR: Yes.

20 CHAIRMAN HOOD: You said 20. I might say 30. But I
21 will just say that I just hate to see a missed opportunity. I
22 know there are a lot of regulations, but I just think if the
23 residents have a comfort level, and they know that they will be
24 able to return and that things will work out to their good, I
25 think we can do that.

1 I would like to see that memorialized, if you go that
2 far. I know Mr. Sullivan may say, well, it's not required in this
3 type of case, but I know, Mr. Sullivan, as you know, in cases the
4 commission has has, that has been very instrumental and helpful.
5 While we still have some uncertainty and problems, I think this
6 will really help this case move forward.

7 Mr. Chairman, I'm looking forward to hearing from the
8 residents, especially those who may need an interpreter, and kind
9 of have a conversation with them. So thank you. Thank you, Mr.
10 Chairman.

11 And thank you, Mr. Mlakar.

12 MR. MLAKAR: You're welcome.

13 CHAIRPERSON HILL: Thank you, Chairman Hood. All right.
14 Let's see.

15 So Mr. Sullivan, did you get an answer for that DDOT
16 question?

17 MR. SULLIVAN: Yes, I did. So the requirement is 707.3,
18 which states, "For any site for which the parking requirement is
19 20 parking spaces or greater, any accessed parking spaces is
20 greater than two times the minimum parking requires a TDM." So
21 our requirement is only five spaces, so it's not triggered. And
22 we've had some -- we've had confirmation from Aaron Zimmerman at
23 DDOT on that, in an email on September 30th, acknowledging our
24 analysis on that. So we think it's pretty clear that we will not
25 trigger 707.3.

1 CHAIRPERSON HILL: Okay. And again, you're comfortable
2 with all the other conditions and comments DDOT has made.
3 Correct?

4 MR. SULLIVAN: Yes.

5 CHAIRPERSON HILL: Okay. Let's see. Do you have any --
6 well, Mr. Sullivan, again -- well, first of all, Mr. Young, is
7 there anyone here that wishes to speak?

8 MR. YOUNG: We do.

9 CHAIRPERSON HILL: Pardon me?

10 MR. YOUNG: We do.

11 CHAIRPERSON HILL: Oh. Okay. Great. Okay. Before I
12 get to that, Mr. -- well, I'll come back. Mr. Sullivan, I mean,
13 you can chew on what Mr. Hood, Chairman Hood had spoken about.
14 And we can come back to you.

15 Mr. Young, you want to go ahead and bring in our
16 witnesses?

17 VICE CHAIR JOHN: Mr. Chairman, is the ANC here?

18 CHAIRPERSON HILL: I don't know.

19 Mr. Young, is the ANC here?

20 MR. YOUNG: They are not.

21 VICE CHAIR JOHN: Thank you.

22 MR. YOUNG: So Ms. Ballantyne has, I think, like, four
23 people on the list with her, so I don't know if you want to just
24 start with this group, and then I can bring whoever's left on
25 after?

1 CHAIRPERSON HILL: Okay. Let me talk to Ms. Ballantyne.

2 MS. BALLANTYNE: Hi.

3 CHAIRPERSON HILL: Hi, Ms. Ballantyne. Can you
4 introduce yourself for the record, please?

5 MS. BALLANTYNE: Sure. I'm Anita Ballantyne, I work at
6 Housing Counseling Services.

7 CHAIRPERSON HILL: Can you say that again, Ms.
8 Ballantyne? You broke up.

9 MS. BALLANTYNE: I am Anita Ballantyne, and I work at
10 Housing Counseling Services.

11 CHAIRPERSON HILL: I'm sorry. You kind of broke up
12 again. I heard "Counseling Services", but that's all I heard.

13 MS. BALLANTYNE: Housing Counseling Services.

14 CHAIRPERSON HILL: Okay. All right. Are you here
15 testifying on yourself, or on behalf of people?

16 MS. BALLANTYNE: I'm testifying on behalf of my
17 organization. We have several tenants here who would like to
18 testify themselves, and some who have written testimony. Are you
19 having a hard time hearing me?

20 CHAIRPERSON HILL: Yeah. Why don't you -- I wonder if
21 you can call in.

22 MS. BALLANTYNE: Let me try this. Hold on.

23 CHAIRMAN HOOD: Mr. Chairman, can I just -- if she turns
24 her -- if she turns her video off, this is what we've done in the
25 past -- if she turns her video off and just speaks, sometimes it

1 works. Not saying it will, but sometimes it works.

2 CHAIRPERSON HILL: Yeah, no, I appreciate that,
3 Chairman. We started with no video. That's why I'm a little
4 confused.

5 Ms. Ballantyne, can you hear me?

6 MS. BALLANTYNE: Hear me now?

7 CHAIRPERSON HILL: No, you're still kind of broken up.
8 Ms. Ballantyne, let me do this. Why don't you call -- can you
9 hear me?

10 MS. BALLANTYNE: Yes.

11 CHAIRPERSON HILL: Call 202-727-5471. Once again, 202-
12 727-5471. It's right there on the screen. And they'll figure out
13 how to get you in. Okay?

14 MS. BALLANTYNE: Okay.

15 CHAIRPERSON HILL: Okay. Thanks.

16 Mr. Young, who else is with us?

17 MR. YOUNG: I have Theodore Proctor, who's calling in
18 from the phone, who I can unmute.

19 CHAIRPERSON HILL: Okay. How many -- who else you got?

20 MR. YOUNG: I have three or four other people.

21 CHAIRPERSON HILL: Okay. So it's going to be a while.
22 Okay. All right.

23 Mr. Proctor, can you hear me?

24 MR. PROCTOR: Yes, sir. I can hear you.

25 CHAIRPERSON HILL: Okay. Mr. Proctor, you'll have three

1 minutes to give your testimony. Could you please introduce
2 yourself for the record?

3 MR. PROCTOR: Yes. My name is Mr. Theodore Proctor.
4 I've been a resident here in Building 81 on Hawaii Avenue for nine
5 and a half years. And I'm --

6 CHAIRPERSON HILL: Okay.

7 MR. PROCTOR: And I'm totally against the construction
8 that is supposed to transpire on this property.

9 CHAIRPERSON HILL: Okay. Mr. Proctor, you want to give
10 us your testimony?

11 MR. PROCTOR: Yes. I do. Whenever you're ready, I'm --

12 CHAIRPERSON HILL: Okay. Go ahead. Can you see the
13 clock on the screen, by any chance?

14 MR. PROCTOR: Sir, I don't have that type of telephone.

15 CHAIRPERSON HILL: Got it. It's okay.

16 MR. PROCTOR: It's just a telephone. I've got
17 everything in order to give my sworn deposition.

18 CHAIRPERSON HILL: I've got you. I'll tell you when you
19 get kind of close to three minutes. Okay?

20 MR. PROCTOR: Okay.

21 CHAIRPERSON HILL: Okay. Go ahead.

22 MR. PROCTOR: Yes. Like I said, my name is Mr. Theodore
23 Proctor. I've been in Building 81 on Hawaii Avenue, Apartment
24 103, for nine and a half years, since April the 3rd, 2012.

25 And I'm totally against the construction that is

1 supposed to transpire on this property. M Squared Management,
2 they denied every resident renting on this property reasonable
3 enjoyment, ever since they took over, on October the 28th of last
4 year.

5 They've been half-cutting the grass, allowing rat
6 infestation on the property. Not mice. Rats. And since I've
7 been here, I've never seen no rats, until they took over. Also
8 allowing hallways and stairways to remain dirty, purposefully, as
9 they haven't had an active, on-duty maintenance person in four to
10 five months. Okay? They have allowed unsanitary conditions
11 constantly. Okay?

12 M Squared have been about the business of discouraging
13 the residents to move out. They even had a lady named Ms. Carmen
14 Hunt call me and tell me that I had to move out, without even
15 having permission from the city first. Okay? Far as I'm
16 concerned, they've been nothing but disrespectful and negligent
17 since they've taken over the property.

18 And you know, we've had to address this or conjure up
19 and get all these different organizations involved, just to get
20 them to answer basic maintenance requests. I mean, they've really
21 been a disappointment. And they're very disrespectful.

22 And I heard Mark Mlakar. But see, what he didn't tell
23 you was that I had a two-and-a-half-hour-long conversation with
24 him when he first took over the property. And after that, he had
25 this woman to call me. And then after that, when that didn't go

1 well with the DCAJ, he sent me a letter of an offer to move.

2 After I got some lawyers involved from Neighborhood
3 Counseling Services, and other agencies involved, DCRA and things
4 of that nature, his whole attitude changed towards me. He stopped
5 answering my calls. He stopped answering my texts.

6 And I mean, I'm almost 50 years old. And, you know, all
7 he's ever did, him and his company, has been a big disappointment,
8 sir. I'm serious. It doesn't make any sense. I mean, what he
9 told -- I heard everything he said. And some of that stuff sounds
10 real good. But I'm going to tell you right now, from the heart,
11 as God is my witness, none of that stuff has been talked to with
12 me, personally.

13 And I let him know what he was getting involved with
14 when he first bought this property. They have rentals here --
15 there are people here in these apartments he don't even know
16 that's in these apartments. They don't even have a rental lease.
17 There are foreigners in these apartments that have moved out,
18 gave the keys to somebody else, and he thinks that they're still
19 here. He has not a clue what's going on.

20 CHAIRPERSON HILL: Mr. Proctor? Mr. Proctor, I've got
21 you. You're over your three minutes. Just to let you know.

22 MR. PROCTOR: Okay. Okay. I'm finished.

23 CHAIRPERSON HILL: Okay.

24 All right. Let's see. Does anybody have any questions
25 for Mr. Proctor? If so, raise your hand.

1 Chairman Hood?

2 CHAIRMAN HOOD: Mr. Proctor, good morning. This is
3 Anthony Hood. Let me ask you a question, Mr. Proctor. And I
4 heard your testimony, which is always disturbing, when I hear that
5 kind of testimony.

6 I don't know if you heard my exchange with Mr. Mlakar,
7 but if have you had an opportunity -- well, you obviously have
8 spoken to him previously. But some of the things that I'm talking
9 about -- if they had come in, and there was a trust factor given,
10 and you knew you had some predictability and were able to return,
11 and there was something -- I mean, I'm talking about -- forget
12 about what happened. I'm not going to forget, but don't -- forget
13 about, right now, for this discussion, of what you just mentioned.

14 Would you -- implying, then, if they were up to par in
15 company, would you be inclined, then, to go with the development?

16 MR. PROCTOR: Well, I would say that all options are on
17 the table with me. But the way that I've been -- me and myself
18 have been disrespected, ever since they took over. Okay? We need
19 to understand that.

20 I had a personal talk with Mark Mlakar. Two and a half
21 hours.

22 CHAIRMAN HOOD: Right.

23 MR. PROCTOR: Okay? Back in November, when he first
24 took over the company. And I asked him, I clearly asked him, I
25 said, Mr. Mlakar, please tell me now, are we going to have to

1 move? Or are there going to be any type of other adjustments, as
2 well?

3 No, Mr. Proctor. Everything is going to remain the
4 same. You won't have to move. We're just going to pick up where
5 the old landlord picked -- we just want to pick up where the old
6 landlord left off -- like, left off.

7 CHAIRMAN HOOD: Okay.

8 MR. PROCTOR: And I said, are you sure, Mr. Mlakar?

9 CHAIRMAN HOOD: All right. Thank you. Thank you, Mr.
10 Proctor.

11 MR. PROCTOR: I've been deceived. Okay?

12 CHAIRMAN HOOD: Mr. Proctor, I got it. Trust me. I've
13 been doing this a while. I've got it. Thank you.

14 MR. PROCTOR: Okay.

15 CHAIRMAN HOOD: Thank you.

16 CHAIRPERSON HILL: Okay. Anybody else for Mr. Proctor?
17 Okay.

18 All right, Mr. Proctor. Thank you so much for your
19 testimony.

20 MR. PROCTOR: Yes, sir.

21 CHAIRPERSON HILL: Mr. Young, who's next?

22 MR. YOUNG: Cynthia Williams, who I just brought on the
23 screen.

24 CHAIRPERSON HILL: Okay. Ms. Williams, can you hear me?
25 (No response.)

1 CHAIRPERSON HILL: Ms. Williams?

2 MS. WILLIAMS: Okay. Here I am. Can you hear me?

3 CHAIRPERSON HILL: Yes.

4 MS. WILLIAMS: Okay.

5 CHAIRPERSON HILL: And if you could introduce yourself
6 for the record, please?

7 MS. WILLIAMS: Yes, sir. Cynthia Williams.

8 CHAIRPERSON HILL: Okay. And Ms. Williams, do you live
9 there at the property?

10 MS. WILLIAMS: Yes.

11 CHAIRPERSON HILL: Okay. You want to go ahead and give
12 your testimony? You'll have three minutes.

13 MS. WILLIAMS: Yes, sir. My name is Cynthia Williams.
14 I live at 77 Hawaii Avenue Northeast, Apartment 104. I, as well
15 as other tenants, have been a part of this community since 1997
16 and before.

17 I am here to testify at this hearing in opposition about
18 this application to construct more units on our buildings. The
19 hearing took place without our knowledge. We were informed by
20 Housing Counseling Service and Legal Aid when we met on September
21 the 23rd.

22 Since M Squared Management has taken over this past
23 year, there has been continuous issues from the tenants about the
24 properties on Hawaii Avenue Northeast, where bare minimum is being
25 done in terms of repairs and maintenance. There is an ongoing

1 | mess from the remnants of kitchens, where our health and wellbeing
2 | could be at stake, because repairs are not being done.

3 | We are persons with disabilities, seniors, and working-
4 | class. We pay our rent. We take pride in our neighborhood,
5 | support local businesses. We look out for each other, and feel
6 | safe. Tenants are concerned that construction -- tenants are
7 | concerned that construction will mean finding somewhere else to
8 | live, which I and other residents cannot afford, to move. We
9 | continue to impact the community in a good way, where we cannot
10 | imagine living anywhere else.

11 | In closing, I'm making every effort for my neighbors who
12 | cannot speak today, to close changes and/or reconstruction on
13 | Hawaii Avenue apartments. And please let the tenants know when
14 | the next ANC meeting will be held. Thank you for allowing me to
15 | speak.

16 | CHAIRPERSON HILL: Okay. Thanks, Ms. Williams.

17 | MS. WILLIAMS: Yes.

18 | CHAIRPERSON HILL: Thank you, Ms. Williams.

19 | MS. WILLIAMS: You're welcome.

20 | CHAIRPERSON HILL: Yeah, I can find out when -- Mr. Moy,
21 | can you tell us when the next ANC meeting is?

22 | CHAIRMAN HOOD: It's the fourth Wednesday of every
23 | month.

24 | MS. WILLIAMS: Okay.

25 | CHAIRMAN HOOD: I think it's the fourth Wednesday of

1 every month.

2 CHAIRPERSON HILL: Okay. Thanks, Chairman Hood.

3 MS. WILLIAM: Thank you.

4 CHAIRPERSON HILL: Ms. Williams, yeah, I'm sorry. From
5 what they seem to be saying is that they're trying to improve --
6 and we'll see what's happening here with us, but I'm just saying,
7 it seems like they're trying to improve the living conditions and
8 the situation.

9 MS. WILLIAMS: Yes.

10 CHAIRPERSON HILL: It seems as though there needs to be
11 some communication that may or may not happen in the future. But
12 we'll see.

13 Does anybody have any questions for Ms. Williams?

14 (No response.)

15 CHAIRPERSON HILL: Okay. Ms. Williams, thank you for
16 your testimony.

17 MS. WILLIAMS: Thank you, sir.

18 CHAIRPERSON HILL: Take care.

19 MS. WILLIAMS: All righty.

20 CHAIRPERSON HILL: Bye-bye.

21 MS. WILLIAMS: Bye.

22 CHAIRPERSON HILL: Mr. Young, can you give me the next
23 person, next witness, please?

24 MR. YOUNG: The next is just the group with Ms.
25 Ballantyne.

1 CHAIRPERSON HILL: Oh, okay.

2 Ms. Ballantyne, can you hear me?

3 MS. BALLANTYNE: Yes, I can hear you. Can you hear me
4 now?

5 CHAIRPERSON HILL: Yeah, yeah, yeah. Can you introduce
6 yourself now, again, for the record?

7 MS. BALLANTYNE: Sure. I'm Anita Ballantyne. I work at
8 Housing Counseling Services.

9 CHAIRPERSON HILL: Okay. Great. And so where are you
10 right now?

11 MS. BALLANTYNE: I am at the property.

12 CHAIRPERSON HILL: Okay. Great. And so, who is with
13 you here today?

14 MS. BALLANTYNE: Several tenants.

15 CHAIRPERSON HILL: Okay. I see four people. Is that
16 correct?

17 MS. BALLANTYNE: No. Hold on. I have -- do you want
18 all their names, or you want a number?

19 CHAIRPERSON HILL: A couple of things. First, do you
20 know if they've all been sworn in, number one?

21 MS. BALLANTYNE: Everyone signed up online.

22 CHAIRPERSON HILL: Okay, then that's perfect. Are you,
23 Ms. Ballantyne, are you the person who requested the translator?

24 MS. BALLANTYNE: Yes. Well, we have my coworker Julian,
25 who's here with me. We have several Spanish-speaking tenants.

1 They have written testimony. We do have the testimony written in
2 both Spanish and English. So, if need be, we could read it in --
3 their testimony in English, if you don't have an interpreter.
4 They could read it into -- or we could read it in Spanish. You
5 know, there are options.

6 CHAIRPERSON HILL: Yeah.

7 MS. BALLANTYNE: We also have, you know, Spanish-
8 speaking staff, who could help, as well.

9 CHAIRPERSON HILL: Yeah. Okay, Ms. Ballantyne. I've
10 got you. So they've all signed up. They've all been sworn in.

11 MS. BALLANTYNE: Uh-huh.

12 CHAIRPERSON HILL: Because they signed up. Do we have
13 that testimony in the record yet? You do not know?

14 MS. BALLANTYNE: Some of them are in the record. Some
15 are not.

16 CHAIRPERSON HILL: Okay. Can you make sure they all get
17 put into the record, please? Okay?

18 MS. BALLANTYNE: Yes.

19 CHAIRPERSON HILL: Because I've read one of them, I
20 know, and maybe another one, that did have both English and
21 Spanish. So I guess, if you want to, whoever you think it would
22 be better to hear from -- well, in English -- I mean, or read from
23 the -- read from the testimony, that would probably be the best
24 for the Board. Right? And I guess you're not testifying.
25 Correct, Ms. Ballantyne?

1 MS. BALLANTYNE: I am also testifying. I signed,
2 separately, myself up through -- to testify as the agency.

3 CHAIRPERSON HILL: Okay. All right. So why don't you
4 give your testimony first, and then we'll go through each person
5 and see how we can best hear from them. So please go ahead and
6 give your name and give your testimony.

7 MS. BALLANTYNE: Sure. Thank you. And thank you. Good
8 morning, Mr. Chairman. My name is Anita Ballantyne, and I work at
9 Housing Counseling Services. We are a nonprofit housing
10 counseling agency founded in 1972. We provide education,
11 training, and counseling to tenants, homeowners, and homebuyers in
12 D.C.

13 I'm here today to urge you to reject the special
14 exception request by the applicant. As you will hear today, this
15 has been -- from tenants, this has been a flawed process. And if
16 approved, it could lead to the displacement of nearly 80 tenants,
17 as well as the loss of 88 rent-controlled, affordable housing
18 units. This process has completely disregarded those who would be
19 most impacted by this development -- the current tenants who call
20 the properties at Hawaii and Webster home.

21 We understand that the applicant would like to add 46
22 units to the existing structure, and somehow convert an occupied,
23 rent-controlled property into condominiums. We would like you to
24 know that tenants only learned of this plan and its details after
25 seeing the BZA announcement taped to their buildings around

1 September 13th, less than a month ago. Many tenants expressed
2 confusion about the BZA announcement.

3 At no point during this process have tenants been
4 consulted or brought into the decision-making for this
5 redevelopment. There have been no meetings, letters, or
6 invitations to talk with the community, their ANC, or the
7 applicant, about the future of their homes.

8 It is my understanding that the BZA process and
9 procedure is rooted in this kind of public disclosure. And yet
10 tenants have been repeatedly left in the dark, the last to know
11 what is being planned for their homes. Again, tenants only
12 learned about this planned redevelopment for their homes about
13 three weeks ago, by seeing notices posted on their doors.

14 According to minutes of the ANC 5A meeting held in June,
15 we have learned that the applicant claims that the conversion from
16 a rent-controlled rental property to condominiums will not
17 displace any tenants. Apart from defying logic, this statement
18 defies the reality tenants are already experiencing every day.
19 Tenants are being pressured to move, and have been so for months.

20 HCS has been working closely with tenants since early
21 August, when the Office of the Tenant Advocate informed us that
22 tenants were being told repairs would no longer be made to the
23 property, and a relocation specialist was hired to move them out.

24 Rather than repair and maintain the existing properties
25 that they purchased in October last year, the owners of the

1 property have in fact hired the relocation specialist to tell
2 tenants, quote, "they have to move, due to comprehensive
3 renovations to fix failing systems."

4 Unfortunately, by the time we got involved, many tenants
5 had already moved out, and all of them are now paying much higher
6 rents. One of the buildings at 93 Hawaii is already entirely
7 vacant. Tenants were simply told they had to go.

8 Along with the relocation specialist, Commissioner
9 Holloway has also told tenants that they will have to move out of
10 their homes. On August 12th, the Commissioner attended a meeting
11 that our agency called with tenants, and he told tenants, quote,
12 he "didn't want them to think they could stay." He repeated these
13 statements to both HCS staff and to the tenant leaders again in
14 late September.

15 Tenants, in fact, do have the right to stay in their
16 homes, and they do not have to move. The misinformation and
17 pressure campaign taking place is deeply concerning to us and to
18 the tenants.

19 We have also learned that on September 22nd, another ANC
20 meeting was held, where a vote took place to approve the
21 application to the BZA. Once again, tenants report no direct
22 outreach or intent to inform them of this meeting. Tenants were
23 completely unaware that this vote was taking place.

24 Finally, the proposal before you does not address how
25 the applicant plans on physically adding third stories to the

1 existing structures without displacing current tenants or
2 rendering their housing unlivable in the process. How can this be
3 done legally and safely?

4 In D.C., unless already vacant, a rental property can
5 only convert to condos by an affirmative vote of the tenants. We
6 believe that ultimately vacating the property of the existing
7 tenants is the applicant's plan. We believe that this has been
8 the plan since he secured their TOPA rights. We believe the
9 tenants when they tell us the developer and his associates made
10 promises that they would be able to stay after the sale, and these
11 were promises they never intended to keep.

12 Today, you have heard, or will hear, that when tenants
13 ask for repairs, they receive notices back from management asking
14 them if they might prefer to move out instead. Tenants have
15 reported -- tenants have reported a drastic decrease in repairs
16 and maintenance since the applicant purchased the property in
17 October of 2020.

18 In 50 years of work in D.C., our agency has learned to
19 recognize this as just another tactic employed by landlords who
20 wish to empty a building. Let conditions deteriorate, then tell
21 tenants they have to leave because the conditions are so poor.

22 This is not responsible development. This is not
23 equitable development. This is more of the same -- long-term low-
24 income tenants being forced to move, to make way for higher-income
25 residents, the loss affordable housing -- the loss of affordable

1 housing units to make way for condominiums.

2 None of you should be in favor of this, and we again
3 urge you to reject this petition. Thank you so much.

4 CHAIRPERSON HILL: Okay. Thank you, Ms. Ballantyne.
5 Ms. Ballantyne, you didn't go to the ANC meeting. Is that
6 correct?

7 MS. BALLANTYNE: No. I was not aware of the ANC
8 meeting.

9 CHAIRPERSON HILL: Okay. All right. Okay. I mean, I'm
10 a little surprised that nobody -- so nobody knew, or went to the
11 ANC meeting. All right. Let's see.

12 Okay. Who do you want to speak -- I mean, how do you
13 think you -- is best to go through this? Do you want to just take
14 turns there, at your camera?

15 MS. BALLANTYNE: Yeah. We could do that.

16 CHAIRPERSON HILL: Okay.

17 MS. BALLANTYNE: Do you want to go? Do you? Okay. You
18 go. (Indiscernible.)

19 CHAIRPERSON HILL: Okay. If you can give your name and
20 address, please?

21 MS. QUANDER: Yes. My name is Florence Quander. Can
22 you hear me?

23 CHAIRPERSON HILL: Yes. Thank you.

24 MS. QUANDER: Okay. My name is Florence Quander. I
25 reside at 69 Hawaii Avenue Northeast, Apartment 203. I have lived

1 at this apartment for 25-plus years.

2 I realize that things change in life. But I strongly
3 feel the tenants should have been afforded the opportunity to know
4 what plans had been made, sooner, regarding the residents here.
5 The apartments were sold, and if anyone was interested in
6 purchasing a new apartment, also, you all changed the zoning in
7 the building, and was not -- and this was not told to the tenants.
8 Adding another floor, again, we didn't know anything.

9 So my thing is, we are tenants. We have to pay our
10 rent. We try to keep the apartment clean, the halls and stuff,
11 because we no longer have a resident manager. They refuse to do
12 any further work. If you call in and say you have trash out in
13 the back -- which it was last week, it was full -- rats are
14 running everywhere, and two days ago, I looked -- there were two
15 rats in the kitchen, up underneath my stove. I never had this
16 before.

17 So I understand that things change. But there is a way
18 to go about it, and you treat -- and treating one another with
19 dignity and respect.

20 And then, when I called to tell the lady in the office
21 about what had happened with the trash out back -- it was
22 overflowing everywhere, trash all on the grass and everything -- I
23 had already paid my rent, around the 2nd or 3rd of the month. And
24 she just got indignant. And I wasn't -- I didn't disrespect her
25 or anything. I was just telling her what had happened.

1 Okay. Hung up the phone. So I called back the next
2 day, repeated it, and she said, who is this? And I gave her my
3 name. Hung the phone up.

4 So, I mean, there's a way -- I just know that it's a way
5 about doing things to people. I don't live here free. I've been
6 here all those years. They've never had a problem with me paying
7 my rent. And I think I should be treated fairly. You know, don't
8 disrespect me. If you want to sell the building, there's a way to
9 go about doing that. Thank you.

10 CHAIRPERSON HILL: Thank you very much. Anyone have any
11 questions for the witness?

12 Okay. I'm going to go through all of this group, and
13 then I can come back and ask the Board members if they have any
14 questions. All right?

15 Ms. Ballantyne, can you give us the next witness,
16 please? And if you think, Ms. Ballantyne, that it's better that
17 they introduce themselves, and just read their testimony in
18 English, just do that. Okay?

19 MS. BALLANTYNE: Okay. Yeah. We have some that are
20 translated into English, but some that are not. So we're trying
21 to figure out -- we're trying to figure out how to manage that.

22 CHAIRPERSON HILL: Sure.

23 MS. BALLANTYNE: But we'll get the English speakers
24 first.

25 CHAIRPERSON HILL: Good morning.

1 MS. LEWIS: I'm Jamella Lewis (ph). I live at 85 Hawaii
2 Avenue.

3 CHAIRPERSON HILL: Hi, Ms. Lewis.

4 MS. LEWIS: Hi.

5 CHAIRPERSON HILL: Okay, Ms. Lewis. You can go ahead
6 and begin whenever you like.

7 MS. LEWIS: Okay. So I'm going to read from my paper,
8 but I'm going to also just put stuff in.

9 So I feel really bad about this situation, because I'm
10 the one -- me and another young lady was the ones that helped --
11 Ms. Jameka knocked on my door and asked me to get signatures for
12 her for a new company to come in. So I helped her out, thinking a
13 new company was going to, you know, be like BARAC. I mean,
14 because they were a good company. You know?

15 But it didn't happen that way. This started going
16 downhill as soon as they got in office. I've been calling several
17 times to ask to get stuff fixed. My toilet was broke. It was on
18 the floor. They wanted me to send a picture. I sent a picture.
19 Nobody came to fix it. I had to buy my own toilet seat.

20 Also, me and the people on 85, we clean up our own
21 building, because the resident manager passed away earlier this
22 year from coronavirus. So we didn't have -- we haven't had the
23 building cleaned since they've been in, also.

24 So I just don't understand this process. Like, I mean,
25 when Jameka -- she said we wasn't going to have to move. So now

1 it's all of a sudden, we've got to move?

2 Nobody's cleaning. Trash is outside. I have -- it's
3 residents out there cleaning the trash up, because the mice is
4 everywhere, roaches everywhere. When you send a ticket in, they
5 want a picture also. You send the ticket and picture. They still
6 don't come.

7 So I'm just confused of -- why did they come in just to
8 put us out? I'm just confused. I don't understand.

9 CHAIRPERSON HILL: Okay, Ms. Lewis. Okay. All right.
10 We'll help figure it out.

11 MS. LEWIS: Okay. Thank you. Have a great day.

12 CHAIRPERSON HILL: Thank you. You, too, now, Ms. Lewis.
13 Who's next, Ms. Ballantyne?

14 MS. BALLANTYNE: Do you guys -- do you want us to
15 translate as he's speaking? Because he doesn't have his in
16 English.

17 CHAIRPERSON HILL: Do you want -- is there a note in his
18 -- he does not have his testimony in English. Is that what you're
19 saying, Ms. Ballantyne?

20 MS. BALLANTYNE: No. We don't have his translated yet.

21 CHAIRPERSON HILL: Can you translate? Can you
22 translate?

23 MS. BALLANTYNE: Yes, we can translate as he goes along.

24 CHAIRPERSON HILL: Okay, let's try to do that. Mi
25 Espanol es mas o menos. Okay? Buenos Dias.

1 MR. MASTIN: Buenos Dias.

2 MS. BALLANTYNE: So his name is Oscar Mastin, and he
3 lives at 85 Hawaii Avenue, in Apartment 102, and he's lived there
4 for ten years.

5 MR. MASTIN: Si. Si, gracias.

6 MS. BALLANTYNE: And he lives there with his wife,
7 Cecilia Machado (ph).

8 CHAIRPERSON HILL: Okay.

9 MS. BALLANTYNE: So he is not in favor of this
10 application, because they have not repaired anything here in the
11 apartments. And he has water coming into his apartment, and he's
12 been sleeping in the living room for four months, and they haven't
13 repaired it. He's been telling the person in charge of repairs,
14 and they don't come to fix it.

15 He says he's worried about where he will go if they try
16 to build on this property, because his rent is very affordable.

17 MR. MASTIN: When I send a message asking for repairs,
18 their response is always, "Do you want -- do you want to move out
19 instead?"

20 MS. BALLANTYNE: And he says, "No, I would like you to
21 make the repair in my apartment." Instead of making the repairs,
22 they keep asking him if he would rather move out instead. Please
23 take this into consideration when you make your decisions. Thank
24 you.

25 CHAIRPERSON HILL: Gracias. Gracias, Senor.

1 MR. MASTIN: Yeah.

2 MS. BALLANTYNE: Do we have -- do we have some people on
3 the phone?

4 CHAIRPERSON HILL: Are you talking to me, Ms.
5 Ballantyne?

6 MS. BALLANTYNE: No. I think there might be people who
7 have called in.

8 CHAIRPERSON HILL: Mr. Young, do you got anybody else on
9 the phone? Mr. Young?

10 MR. YOUNG: I'm checking right now.

11 CHAIRPERSON HILL: Okay. Ms. Ballantyne, do you have
12 anyone else there live?

13 MS. BALLANTYNE: Yeah, we do. We do. We're just trying
14 to get -- can someone sit down here? (Indiscernible.) Okay.
15 Here we go.

16 MS. BLANCO: Okay. Good morning. My name is Veronica
17 Blanco. I have lived at Hawaii Avenue -- 89 Hawaii Avenue since
18 2019. And my 13-year-old daughter lives here with me, and she
19 goes to MacFarland Middle School. And she feels -- she lives with
20 us, and we feel safe and happy in this community.

21 I'm against the construction of new units in this
22 building, because I do not want -- I do not want to move. My
23 daughter and I do not want to have to leave our homes. I do not
24 want -- I do not want to be told from one minute to the next that
25 I have to leave. The rent here is reasonable, and if I have to

1 move, the rent is a lot more expensive elsewhere. I'm a single
2 mother, and I don't have the ability to pay a higher rent
3 somewhere else.

4 I live across the street from the one of the buildings
5 that is already vacant, and I knew a lady who lived there, and
6 they told her -- they sent her a notice telling her that she had
7 to move, because the building had been sold. I don't think that
8 is reasonable, for someone to have to leave, just because it has
9 changed ownership. I'm worried that the change in ownership has
10 led to people being asked to leave. What is going to happen if
11 construction starts? What are the plans for us? What will happen
12 to the tenants who live here now?

13 They are not maintaining the property, and they are not
14 even cleaning the property. Last year, they -- we formed a
15 tenants' association to help communicate with the owner, and to
16 maintain -- and to get help maintaining the property in good
17 condition. Up until today, no one has come around to fix the
18 properties. There is no maintenance person. And the buildings
19 are dirty.

20 I want to stay here. I want to be here with my
21 daughter. And I don't want to have to move elsewhere. I haven't
22 seen any plan for us -- any plan that takes into consideration the
23 tenants, and what will happen to us here if you approve this
24 application, and if the construction goes through. Please
25 consider us in your opinion -- please consider us tenants in your

1 opinion, as we are the ones who live in these buildings. Thank
2 you for your time.

3 CHAIRPERSON HILL: Gracias.

4 MS. BLANCO: Okay.

5 MS. BALLANTYNE: I think we have someone who is -- I
6 have more people here who want to speak in person, but I believe
7 there's someone who's logged in. Donna Kelly, who has -- a
8 tenant, who has to leave. So I don't know if you can -- if she
9 could speak before we move forward?

10 CHAIRPERSON HILL: Yeah, Ms. Ballantyne. I got you.

11 Mr. Young, is Ms. Kelly around?

12 MR. YOUNG: I don't see her.

13 CHAIRPERSON HILL: Okay. Ms. Ballantyne, we'll see what
14 happens. We might end up having more testimony at another time
15 anyway. So just keep that person in mind. All right, Ms.
16 Ballantyne?

17 MS. BALLANTYNE: Okay. We'll try to see if she can log
18 back in.

19 CHAIRPERSON HILL: Who's the next person? And how many
20 do you have, just so I can kind of get a manage on this?

21 MS. BALLANTYNE: So Donna Kelly's on the phone.

22 CHAIRPERSON HILL: Oh.

23 MS. BALLANTYNE: I don't know if you can see her, on the
24 phone.

25 CHAIRPERSON HILL: Mr. Young's trying to look for her, I

1 guess, even on the phone.

2 MS. BALLANTYNE: Okay. We have how many more? Two
3 more? Two more.

4 CHAIRPERSON HILL: Okay. Thank you.

5 MS. BALLANTYNE: Okay.

6 CHAIRPERSON HILL: Mr. Young, if you find Ms. Kelly, let
7 me know. Otherwise, I'm going to keep moving forward. All right?

8 Ms. Ballantyne, who's our next witness, please?

9 MS. BALLANTYNE: I have Ms. Andrade's testimony already
10 translated into English, so I'm going to read it in English.

11 CHAIRPERSON HILL: Okay. Ms. Ballantyne, give me one
12 second.

13 MS. BALLANTYNE: Okay.

14 CHAIRPERSON HILL: Mr. Chairman Hood, you had a
15 question?

16 CHAIRMAN HOOD: You know, Mr. Chairman, I was going to
17 ask my question now, but I think I'll wait, as you asked us to,
18 until the end. So I'm sorry to interrupt.

19 CHAIRPERSON HILL: No problem, Chairman Hood.

20 All right. Ms. Ballantyne, can you go ahead and have
21 the person introduce themselves, please?

22 MS. BALLANTYNE: Her name is Liduvina Mejia Andrade
23 (ph).

24 CHAIRPERSON HILL: And where does she live?

25 MS. BALLANTYNE: She lives at 65 Hawaii Avenue,

1 Apartment 103.

2 CHAIRPERSON HILL: Si. Gracias. Mucho gusto. Go ahead
3 and you're just going to read her testimony?

4 MS. BALLANTYNE: Yeah.

5 CHAIRPERSON HILL: Okay.

6 MS. ANDRADE: I am Liduvina Mejia Andrade, and I have
7 lived at Hawaii Avenue for 13 years. My dad, Jose Hic (ph) Mejia,
8 and my mom, Julia Andrade (ph), have lived on the floor above my
9 apartment for the last 17 years. And my sister, Milagro Mejia,
10 lives at 65 Hawaii. My four-year-old son goes to Bridges Public
11 Charter School. My mom, my dad, and my son and I go to St.
12 Gabriel Church every Sunday, which is 15 minutes away, walking.

13 I am against the application for construction. I think
14 that if they approve it, the owner is going to kick out the people
15 who live here without the right to return. He hasn't had a single
16 meeting, nor has he asked for our opinions. I do not see any
17 plans for what will happen to us. I am scared that we are going
18 to be in the street, because we cannot pay the high price for rent
19 in this city.

20 The owner does not want to fix anything in our
21 apartment, because he wants to do construction. It isn't fair
22 that he leaves us without repairs because he wants to make more
23 apartments, we will pay rent -- while we pay rent every month.

24 I think that he wants to do the construction to rent the
25 apartments for more money. And we are not going to be able to pay

1 that rent. I don't want my family nor my neighbors to have to go
2 somewhere else. These apartments are our home. Please take into
3 account our opinion. Thank you. Okay?

4 CHAIRPERSON HILL: Gracias. Gracias.

5 MS. ANDRADE: Thank you.

6 MS. BALLANTYNE: Uh-huh.

7 Senora Lopez?

8 CHAIRPERSON HILL: Buenos Dias.

9 MS. BALLANTYNE: Okay. Her name is Maria Lopez, and she
10 lives at 81 Hawaii Avenue. She's in Apartment 203, and she's
11 lived here for 16 years. Okay. Sorry. Okay.

12 MS. LOPEZ: Good morning. My name is Maria Saville
13 Lopez (ph), and I have lived at 81 Hawaii Avenue for 16 years. I
14 live here with my son and my husband.

15 About the construction, if it is to harm the tenants,
16 then I think they shouldn't do it. I don't think that we are
17 going to pay the same amount if they make something new. I think
18 that it is so that we may pay more money, and we cannot pay more
19 rent -- more money for rent.

20 Also, with all the problems that are here in the
21 apartments, they never come to repair anything. In the 16 years
22 that I have lived here, I have never seen a company not answer
23 when one calls to get something repaired. They can't not repair
24 things, because it's not fair. And they don't fix things if one
25 pays rent.

1 We all have the same complaints. If they do
2 construction, they're going to want to kick us out of here. I
3 have lived here for so long that it isn't easy for me. I am used
4 to living here, and I feel as though it is my home. The
5 construction is going to harm us, and only benefit the owner. You
6 all have to think about if it will harm the people. Thank you for
7 listening to my opinion. Have a good day.

8 CHAIRPERSON HILL: Gracias.

9 Ms. Ballantyne, is that everyone?

10 MS. BALLANTYNE: Everyone who's in the room with us,
11 yes.

12 CHAIRPERSON HILL: Okay. And you said there was one
13 other -- what was the person's name again?

14 MS. BALLANTYNE: Donna Kelly is on the phone.

15 CHAIRPERSON HILL: Okay.

16 Mr. Young, did you find Donna Kelly? No?

17 MR. YOUNG: I did.

18 CHAIRPERSON HILL: Oh, great.

19 Ms. Kelly, can you hear me?

20 MS. KELLY: Hi, yes. Can you hear me?

21 CHAIRPERSON HILL: Yes.

22 MS. KELLY: Hi. My name is Donna Kelly. I've been a
23 tenant at 97 Hawaii Avenue, Apartment 203, since about nine years.
24 I enjoy the neighborhood. It's very convenient, with the bus stop
25 and Metro close by, which make it easy for us to go to work.

1 Also, a very peaceful neighborhood, and an area -- working
2 families, which always feels like a safe environment.

3 I would like to testify today in opposition to M -- I'm
4 sorry -- M Squared's application for special permission to develop
5 the new property, because there is no current -- currently no
6 proposed plan to include the tenants and ensure that any
7 development will not result in our displacement.

8 Additionally, M Squared has not shown themselves to be
9 responsibly -- I'm sorry, responsible, trustworthy developers,
10 since taking over ownership of our property since last year.

11 Since M Squared acquired the property last year, we have
12 experienced many issues with general lack of upkeep and regular
13 maintenance of the property. There has been no regular cleaning
14 or mopping in the buildings. The trash piled up outside the trash
15 bins. There's no -- I'm sorry -- trash pickup. The grass is
16 extremely high and not regularly kept up or cut.

17 We had never seen anything like this before on this
18 property. My friend who lives with me often cleans the building
19 up, because he's not used to living like that. He's not that type
20 of person.

21 M Squared has also been truthful -- has not been
22 truthful or straightforward in their dealings with the tenants
23 since even before they acquired the building. Last year, in the
24 first month of the public health emergency, someone called Jameka
25 Miller came to the apartment and told us that she was buying the

1 property, worked with us and assigned -- I'm sorry. Wait a
2 minute. Said she was buying the property. She suggested that
3 certain tenants could be on the board and many tenants of the
4 property worked with her and assigned our TOPA rights.

5 And then she disappeared. Stopped seeing her. We
6 didn't know -- we didn't know she was working with Mark until this
7 year, after the building was sold, it unfolded.

8 Since M Squared purchased the building, I've been told
9 by many different representatives at the company that we have to
10 move. First, when I went to pay my rent at the rental office, I
11 was told by the property manager, Natasha Dorsey, that the
12 buildings was going to be condos, and that everyone would have to
13 move.

14 Several months later, I received a phone call from a
15 relocation specialist named Carmen Hunt, telling me that she was
16 hired to move the tenants out of the property. Then I received a
17 follow-up email from her, around July 2nd, 2021, which stated the
18 following. "After review of the property, it was found that most
19 major systems in the building are failing," and they have to do a
20 renovation. "Must take place and could not be undertaken while
21 the units are being occupied. I will be assisting all the tenants
22 with relocation needs."

23 Then I have since spoken personally with three families.
24 They moved off the property because of the false assertions that
25 they had to move. None of them wanted to leave and live

1 elsewhere, but they were told that they had to go.

2 Finally, I received a call from the ANC commissioner,
3 Derrick Holloway, on September the 27th, this year, around 1:00.
4 He started the conversation by telling me that sometimes a change
5 is good, and the tenants of our building should find other places
6 to live.

7 I explained to him that these properties are affordable
8 to tenants to live in them, and asked if, as part of the proposed
9 renovation, tenants could receive subsidies to maintain affordable
10 -- since we are working families, and many can't afford to live
11 elsewhere. I also mentioned that I like living where I do, and
12 find this comfortable and affordable.

13 His response was that no subsidy could be given out, and
14 the condition of the building was so bad, he did not want -- he
15 wouldn't even want to step foot inside. Then he proposed to say
16 that everyone has to be out the buildings around January or
17 February, and people will hate to come home and find their stuff
18 on the sidewalk, which I took it as an empty threat of eviction.

19 CHAIRPERSON HILL: Can I just interrupt you a second?
20 You're kind of running a little bit over your time. You might
21 want to wrap it up just a little.

22 MS. KELLY: Sure. That's fine.

23 CHAIRPERSON HILL: Okay.

24 MS. KELLY: I'm finished.

25 CHAIRPERSON HILL: Okay. Thank you. Thank you.

1 Before this person leaves the phone, does anybody have
2 any questions for -- have any questions for the witness on the
3 phone? And then I'm going to go back to Ms. Ballantyne again.

4 Ms. John?

5 VICE CHAIR JOHN: Mr. Chairman, I know she's a little
6 over, but I'd like to hear the rest of her testimony, if she
7 wasn't finished.

8 CHAIRPERSON HILL: Sure. Of course.

9 MS. KELLY: Okay. Thank you. Personally, I wish to
10 continue to live on the property and have the necessary repairs
11 provided as they should. If it's necessary to fix up the
12 building, it could be done with tenants remaining on the property.

13 If their intention is to keep people on the property,
14 why don't they start with the vacant building and move us back --
15 move us there and back? If they were really planning for the
16 tenants to remain, would that make sense? But clearly, it's not
17 their intention.

18 I don't believe this application should be approved as
19 it is, based on the lack of plans for tenants and the ways in
20 which applicants has shown that they're not being trustworthy or
21 responsible since acquiring the property. Most important, there's
22 a high risk of displacement to the tenants, and based on actions
23 of the applicant.

24 Thank you for listening to my testimony.

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

1 Does anyone have any questions?

2 Mr. Chairman Hood?

3 CHAIRMAN HOOD: I don't necessarily have any questions,
4 Mr. Chairman, for the young lady who just spoke. Are you talking
5 -- is that what you were --

6 CHAIRPERSON HILL: Yeah, no, no, just questions for the
7 woman who was just speaking.

8 CHAIRMAN HOOD: Yeah. I -- oh, no. No, no.

9 CHAIRPERSON HILL: If not, I'm going to go -- I'm going
10 to go back to -- okay. Mr. Young?

11 Thank you very much for your testimony, ma'am.

12 Mr. Young, if you could please excuse the witness from
13 the hearing room? But if you could bring back -- and I didn't
14 mean for -- oh, there we go.

15 Ms. Ballantyne. Okay.

16 MS. BALLANTYNE: Sorry, I actually -- we do have two --
17 one person who's on the -- another individual who's on the phone,
18 who -- we could translate on her behalf, as well. She's Spanish-
19 speaking and she called in. And then we have another individual
20 here who would like to testify, as well. Just popped in.

21 CHAIRPERSON HILL: Okay. Okay. Did the individual who
22 is there sign up and already complete the oath?

23 MS. BALLANTYNE: Not -- no. The one who just -- I
24 think. Not yet. No. She has not.

25 CHAIRPERSON HILL: Okay. I'll have that -- would you

1 ask that person to come forward, please? They'll have to take the
2 oath, and Mr. Moy can administer that oath.

3 MS. BALLANTYNE: Sure.

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

5 MR. MOY: Yes, sir.

6 CHAIRPERSON HILL: Ms. Ballantyne, could you ask this
7 person to introduce themselves first, please?

8 MS. PALACIOS: My name is Sonia Palacios, sir. Good
9 morning.

10 CHAIRPERSON HILL: Oh, good morning. Could you say your
11 last name for me again?

12 MS. PALACIOS: Palacios, P-A-L-A-C-I-O-S.

13 CHAIRPERSON HILL: Palacios. Okay, Ms. Palacios.

14 Mr. Moy, could you administer the oath, please?

15 MR. MOY: Yes, sir. Ms. Palacios, do you solemnly swear
16 or affirm that the testimony you are about to present is the
17 truth, whole truth and nothing but the truth?

18 MS. PALACIOS: I solemnly swear that the testimony I am
19 about to give is the truth and nothing but the truth.

20 MR. MOY: Thank you.

21 MS. PALACIOS: Thank you.

22 CHAIRPERSON HILL: Okay, Ms. Palacios. All right, Ms.
23 Palacios. You can go ahead and give your testimony.

24 MS. PALACIOS: Good morning, everybody. My name is
25 Sonia Palacios. I am here on behalf of my parents, Jose Mejia.

1 They live in 69 Hawaii Avenue, Apartment 204. And also you just
2 talked to -- just said, Liduvina. She's my sister. And we have
3 another sister across this building. Her name is Milagro Mejia.
4 It's pretty much the whole family. We've been living here for
5 several years ago, sir. And I'm here on behalf of my father,
6 because he doesn't speak English, and I know he would like to
7 talk. But there is so many reasons.

8 I think everybody is not happy about what's going on
9 right now. I live, like, five minutes away from here. I live
10 here a lot of years, and we have never seen something like this
11 before. There is trash. There's rats. It is horrible, how my
12 dad, my mom -- my dad is 71 years old. My mom is 72. And they're
13 older people, who really needs that attention.

14 So comes and figure out what's going on. Nobody wants
15 to help. Nobody's replying to us. I can walk by here and see the
16 rats, trash. I'm telling you, I feel like we are in the middle of
17 New York. It's horrible. It's very horrible. There are kids in
18 this building, talking about less than two years. Just to put
19 that way. You know, rats. So many infestations.

20 Nobody's replying to us. My dad and my mom, 71 years
21 old, already retired, paying their rent every single month, and
22 it's not fair that they're -- we're not treated like humans.
23 Everybody in here, we all are humans. And we deserve respect. We
24 are very honest. We try our best. And we are not getting any
25 answers from anybody.

1 Now, I heard -- I've been here in this -- I didn't know
2 the meeting was going on today. My sister sent me a message, and
3 she said that you guys was going on live. And I said, I have to
4 go. I have to talk for my family. And it's not fair that they
5 are just going to kick them out, like nothing.

6 Just -- these people is afraid. They don't know what to
7 do. They're leaving. We don't know where. They're not leaving
8 because they have another option. They're making another option.
9 Everybody is working. They're trying to get the money.

10 Now, I am begging you on behalf of my father, my parents
11 and sisters, my friends, my neighbors, and Ms. Quander, that I
12 know, and she's like a mother to me. She also speaks to you. We
13 need answers ahead of time, because we don't have the money just
14 to leave like that. You know? Maybe some of us do.

15 Another thing -- we're so many Hispanics in here. They
16 don't speak English. They're afraid. They don't know how to
17 talk. And I might not know the best English, but if I am going to
18 say something, I'm going to try for you to understand what I'm
19 saying. All I ask is just to tell us what we need to do. Is this
20 thing is going to keep going on? We have not agreed to it. But
21 we need an answer.

22 And time is flying, because right now, they're -- they
23 start signing papers. They're just going to kick us out. And
24 they will be like, oh, they didn't do anything. They didn't talk.
25 We're here, and we're standing up for everybody in here. That is

1 not fair, to just kick us out like that. That will be it, sir.

2 CHAIRPERSON HILL: Okay. Thank you, Ms. Palacio. Thank
3 you so much for your testimony. I'm sorry. This is all very
4 traumatic. But thank you for your testimony.

5 Ms. Ballantyne, can you hear me?

6 MS. PALACIOS: Thank you for your time, sir. And
7 everybody else. You guys have a wonderful day.

8 CHAIRPERSON HILL: Thank you. You, as well, Ms.
9 Palacios.

10 MS. PALACIOS: Thank you, sir.

11 CHAIRPERSON HILL: All right. Let's see. Ms.
12 Ballantyne, can you hear me?

13 MS. BALLANTYNE: Yes.

14 CHAIRPERSON HILL: Okay. Before we get to questions,
15 let's see. I know that --

16 MS. BALLANTYNE: There was one other -- sorry to
17 interrupt. There was one other person who was on the phone.

18 CHAIRPERSON HILL: Oh, yeah. Yeah, you mentioned.
19 What's the person's name?

20 MS. BALLANTYNE: Elizabeth Lopez.

21 CHAIRPERSON HILL: Okay. Ms. Lopez, can you hear me?

22 MS. BALLANTYNE: The phone number is 202 --

23 CHAIRPERSON HILL: Don't say the phone number. Don't
24 say the phone number, just because it's live.

25 Ms. Lopez, can you hear me?

1 MS. LOPEZ: Yes. Yes. Someone hear me?

2 CHAIRPERSON HILL: Okay. Si, si.

3 MS. LOPEZ: Si? Oh.

4 CHAIRPERSON HILL: Ms. Ballantyne, can you go ahead and
5 translate for me, and have her introduce herself for the record?

6 MS. BALLANTYNE: So she's going to introduce herself,
7 and then my coworker Julia is going to read her -- because she has
8 her written testimony in Spanish, and she's going to --

9 CHAIRPERSON HILL: Oh, in English?

10 MS. BALLANTYNE: -- translate on the fly, in English.

11 CHAIRPERSON HILL: Okay. Got it. Can she introduce
12 herself?

13 MS. LOPEZ: Hi, my name is Elizabeth Lopez, and I live
14 in 97 Hawaii, Apartment 103.

15 CHAIRPERSON HILL: Okay. Go ahead and read the
16 testimony.

17 MS. LOPEZ: Yes. Hello, good afternoon. My name is
18 Elizabeth Lopez. I live here in Washington, D.C., now on Michigan
19 Avenue.

20 I would like to share a little bit of my story with you
21 all. Before, I used to live on 97 Hawaii Avenue for nine years.
22 We always paid our rent on time. My family was never overdue.
23 But M Squared didn't send anyone from maintenance to our building,
24 which is not fair.

25 On top of all of that, a woman named Carmen arrived to

1 kick us out of there with a bunch of lies. She worked for
2 M Squared and told us that we had to leave. And if we didn't,
3 after November, they were not going to accept our rent anymore.
4 She told us that we were going to be invaders on private property.

5 We were scared, because we are immigrants, and we
6 thought that we didn't have the right to stay there. They moved
7 me, my husband, and my three children to a house on Victor Street,
8 where the rent was \$2,600 per month. My rent at Hawaii Avenue
9 used to be \$880.

10 When we arrived at the house on Victor Street, the
11 fridge was broken, the outlets in the kitchen didn't work, and the
12 house was so dirty that I had to clean it myself. After a week of
13 being there, the plumbing started to leak. All the water came out
14 in the basement and the shower, because the plumbing was broken.
15 We had to move to a different house, because it was not safe for
16 us to live there.

17 We never wanted to move from Hawaii Avenue, but we did
18 it because we were scared. I don't want that to happen to another
19 family. And for that reason, I'm against the application for
20 construction on Hawaii Avenue.

21 Thank you, and have a good day.

22 CHAIRPERSON HILL: Okay. Thank you. Gracias, Senora
23 Lopez.

24 MS. LOPEZ: Gracias ustedes. Thank you.

25 CHAIRPERSON HILL: Okay. Mr. Young, if you could --

1 does anybody have any questions for Senora Lopez?

2 No? Okay.

3 Mr. Young, if you can excuse Senora Lopez, please?

4 Ms. Ballantyne, can you hear me?

5 MS. BALLANTYNE: Yes, sir, I can hear you.

6 CHAIRPERSON HILL: Okay. Ms. Ballantyne, have you ever
7 met the applicant?

8 MS. BALLANTYNE: Not personally, no. I have not met
9 him. Though others who I work with in my agency have.

10 CHAIRPERSON HILL: Okay. Oh, I got you. Are you
11 familiar with the nonprofit that he was working with?

12 MS. BALLANTYNE: No.

13 CHAIRPERSON HILL: Okay. All right. So we'll have a
14 bunch of questions, I think, Ms. Ballantyne. I'm going to keep
15 you on the line here a second.

16 Mr. Young, everyone else is gone. Correct?

17 MR. YOUNG: That's correct.

18 CHAIRPERSON HILL: Okay.

19 Before we get started, Mr. Mlakar, can you hear me?

20 MR. MLAKAR: Yes.

21 CHAIRPERSON HILL: I got to tell you, Mr. Mlakar, first
22 of all, I mean, as I mentioned earlier, I said it was kind of a
23 bigger property, and we're going to have, I think, a lot of things
24 to kind of talk about. I do want to say something. I appreciate
25 that you kept your camera on this whole time. I really do. Like,

1 I don't know whether you intended to do it or not, but I
2 appreciate --

3 MR. MLAKAR: No, I --

4 CHAIRPERSON HILL: I appreciate you had your camera on
5 the whole time.

6 So that being the case, Chairman Hood, do you have any
7 questions for anybody?

8 CHAIRMAN HOOD: Just let me say, me llamo Senor Hood. I
9 just wanted the Chairman to know that I can speak a little bit,
10 too. So --

11 CHAIRPERSON HILL: Okay.

12 CHAIRMAN HOOD: Let me first of all say to those who
13 testified that this is very disheartening. It's always hard to
14 hear these type of horror stories.

15 But I will say this, Ms. Ballantyne. I'm not sure -- I
16 think I heard someone mention it. In the city, we have a -- what
17 is called a tenant advocate, the Office of the Tenant Advocate.
18 Are you familiar with that, Ms. Ballantyne?

19 MS. BALLANTYNE: Yes, sir. We know each other well.

20 CHAIRMAN HOOD: Okay. Okay. Well, continue to keep
21 working with that office.

22 What I would like to do, Mr. Chairman -- the city
23 council and the mayor, through their wisdom -- in the Zoning
24 Commission, we have a broad authority, and I think you all do,
25 too. I'm sure our counsel will tell us. But due to the mayor and

1 the city council's wisdom, we have now what's called a racial
2 equity lens. And I've done this last night. I mean, this week.
3 That was our first time reaching out to that.

4 And I can tell you, it's spectacular. The help that we
5 could get to deal with these issues, I think, is something that we
6 need to capitalize on, like Ms. Elliott and others. And I don't
7 know if Ms. Steingasser is listening, but I think that this is one
8 of those prime cases.

9 The testimony I heard was very disheartening. And I
10 also want to look at the special exception clause. And I probably
11 have looked at this over the years. I don't know -- does it run
12 to people? You know, those are some of the things I'm thinking
13 about.

14 But I can tell you this, Mr. Mlakar. I understand what
15 you were doing. That's what I was -- my first statements were.
16 This is not my first time dealing with a case like this. So I
17 would have thought that some of the things that I heard -- they
18 actually came right back.

19 And here's my thing. My thought, and I took a few notes
20 for me to deal with later, but I can tell you, everybody can't be
21 wrong. And I'm not saying this person, that person. But it
22 starts off with trust. And I think Mr. Proctor, who started
23 earlier, he started off, there's no trust. There's no trust.

24 I talk about predictability. Even before I heard him, I
25 knew from some of the things that's in the record -- and I do see

1 the ANCs and I am familiar with Commissioner Holloway. I do see
2 that he -- the ANC voted in support of what was before them. But
3 I don't know all that they -- if they've heard all these horror
4 stories. But I can just tell you that for me, it starts off with
5 the trust.

6 And as far as I'm concerned, unless I'm told legally I
7 can't, I'm going to use that broad authority the courts have given
8 me, as a Commissioner in the city. So that's all I have. I can
9 tell you, Mr. Chairman, there's much work to be done, especially
10 on the applicant's part.

11 You're working with those residents. I think it's a
12 shame, the way they have been treated, and the way they've been
13 done. In this city, the elected officials and the people of this
14 city don't tolerate stuff like that. So I'll just leave it like
15 that.

16 Thank you, Mr. Chairman.

17 CHAIRPERSON HILL: Okay. So we're going to get around
18 to kind of going through comments and asking some questions and
19 things. And I've got some -- I kind of want to kind of put
20 Ms. Ballantyne in touch with counsel, and then also Mr. Mlakar.
21 But does anybody have any questions of Ms. Ballantyne or her
22 group?

23 Mr. Smith?

24 BOARD MEMBER SMITH: No, I don't have any questions at
25 this time.

1 CHAIRPERSON HILL: Ms. John?

2 VICE CHAIR JOHN: Mr. Chairman, I don't know where to
3 start. I am really discouraged and dismayed by what I heard from
4 the tenants. And in a prior life, I did landlord-tenant work.
5 And so I have a deep appreciation for the uphill climb of these
6 tenants. And so our jurisdiction is limited, so I would like to
7 mull over what I've heard for now.

8 But, I mean, the notion that the apartments would not be
9 cleaned, and people would be living in those conditions, is just
10 heartbreaking. I don't know what else to say. And I agree with
11 Chairman Hood, that so many people could not be wrong. But very,
12 very discouraging. So I think I'd just like to mull on this for a
13 while, and see where we go from here.

14 CHAIRPERSON HILL: Okay. All right. I'll give you some
15 of my thoughts, and then maybe we can see how we move forward.

16 I guess -- oh, Mr. Mlakar, when did you buy the property
17 again?

18 MR. MLAKAR: It was late October 2020. So about a year
19 ago.

20 CHAIRPERSON HILL: About a year ago. So not that long
21 ago. I guess my kind of thoughts, really, I guess, are kind of
22 leaning more towards whatever Chairman Hood first said, in terms
23 of kind of a written plan, and kind of education as to what is
24 going on.

25 I mean, I don't know. Ms. Ballantyne seems to work for

1 an organization that maybe could help present information to the
2 tenants. And then, also, might be able to be a way that presents
3 information -- you know, in Spanish, obviously, because they're
4 non-English-speakers.

5 I mean, you know, you weren't there -- you just got
6 there a year ago. Right? So, you know, the way the property was
7 before you, that's the way the property was before you. So from
8 the testimony -- and I mean, we're going to go, and Mr. Sullivan
9 knows this, like, we're going to go and look at the regulations
10 and what we're tasked to look at.

11 However, you know, people are going to vote the way
12 their conscience makes them feel like voting, also, as well.
13 Right? Or, I shouldn't say it that way. We're going to look at
14 the regulations. Right? What I meant to say is that, to make me
15 feel better about understanding the situation, it would be nice to
16 have something in black and white that says, this is how many
17 units are going to be rentals.

18 This is how people get to stay in their -- Mr. Chairman
19 Hood, what was it that you mentioned at the very beginning, you
20 called it?

21 CHAIRMAN HOOD: We call it a return plan or, if it's
22 going to be a phased plan. It's really an outline, exactly
23 memorializing what some of the concerns we heard had -- the
24 mentions and stuff -- I'm sure, if he's going to rebuild, that,
25 hopefully, would go away, the rat problem, which I think is just

1 totally devastating.

2 But it's called a return plan. I think Mr. Sullivan
3 knows exactly what I -- I think he's experienced. I believe he
4 has. But anyway --

5 CHAIRPERSON HILL: Okay. No, I appreciate it.

6 And Mr. Sullivan, I know that, you know, we don't often
7 get this at the BZA. Right? I mean, these are 13 buildings.
8 Right? Which -- I don't know how many units. Let me see -- 11
9 buildings, which -- I don't know how many units we're talking
10 about.

11 So, you know, I would like to see, you know, something,
12 a return plan, whatever you want to say, that helps the Board
13 understand what's going to happen to all these people. Right?
14 And then, you know, the -- you know, how many apartments there
15 are, what's going to happen to the condos.

16 I just want to know what's -- I just want to know what
17 I'm voting on. Right? You know? I understand the regulations
18 stuff that we're looking at, but I also want to know what's going
19 to happen to all these people. Right?

20 And Mr. Mlakar, and I gave him credit for it, as I said,
21 and I didn't mean to say that y'all turned off your cameras. But,
22 like, the fact that he stayed there, and he listened to the
23 testimony, and if we were in the hearing room -- right? Mr.
24 Mlakar would be able to walk over and talk to these people.

25 And, you know, he, Mr. Mlakar, is not trying to be, you

1 know, I would assume, an awful individual or anything like that.
2 He just has a property that has been in disarray for a number of
3 years and is trying to figure out how to make it better.

4 And so Ms. Ballantyne, I know that, you know, the hope
5 is, this is a better situation for everyone. Right? Also, within
6 what is allowed by the law, as to how many people are allowed to
7 live there. Right? So that's another thing.

8 But I guess what I wanted to do, Ms. Ballantyne, is put
9 you in touch with Mr. Mlakar and Mr. Sullivan, so that you can
10 kind of work through this a little bit. I'm a little surprised
11 you guys didn't get to the ANC meeting at all. Or have you
12 reached out to -- do you know who the SMD is there? Ms.
13 Ballantyne?

14 MS. BALLANTYNE: No direct outreach was made to tenants
15 or anybody else about the ANC, about the ANC meeting.

16 CHAIRPERSON HILL: Ms. Ballantyne, I got it. I mean,
17 half the people don't even know that there's an ANC.

18 MS. BALLANTYNE: Right.

19 CHAIRPERSON HILL: All right? And so, like, but
20 everybody did get notified, and the ANC system is there, meaning
21 whatever there's -- whatever everybody's supposed to do, they did,
22 in terms of notification. However, I understand that things did
23 get missed. Like, have you --

24 MS. BALLANTYNE: I'm sorry, who was notified by the ANC?
25 How were tenants notified by the ANC?

1 CHAIRPERSON HILL: Chairman Hood?

2 CHAIRMAN HOOD: The law states, it is usually the
3 property owner. The property owner is usually the one who's
4 notified. And it's also nice if the property owner would share
5 with the tenants. But it's also incumbent upon residents to reach
6 out.

7 ANC 5A was one of the most -- is one of the most
8 strongest ANCs in this city. And I'm just saying, I've worked
9 with them for over 30 years. But I can just tell you this, that I
10 think it's important for tenants -- and I know sometimes you don't
11 understand the process. But ANC 5A is one of the better ANCs.
12 That's why I'm a little concerned to hear about Derrick's,
13 Commissioner Holloway's, response. I can tell you, that concerns
14 me, as well, in this case.

15 But I'll just leave it. I can go on and on, but I'll
16 leave it at that, Mr. Chairman.

17 CHAIRPERSON HILL: Okay. So Ms. Ballantyne --

18 MS. BALLANTYNE: So I don't know if you heard, in my
19 testimony, but none of the tenants were notified of the meeting in
20 September, the ANC meeting, where the vote took place. None of
21 them have a record of that. They also do not have a record of
22 having received any notice about this meeting today, this BZA --
23 apart from the notices on their doors that were posted.

24 CHAIRPERSON HILL: Right. Ms. Ballantyne --

25 MS. BALLANTYNE: So I don't know --

1 CHAIRPERSON HILL: Ms. Ballantyne, I'm just trying to
2 help out. So you know who the subject -- do you know who the SMD
3 is for that area? The single-member district representative?

4 MS. BALLANTYNE: Is it Mr. Edwards? Commissioner
5 Edwards?

6 CHAIRPERSON HILL: I don't know. Mr. Mlakar --

7 CHAIRMAN HOOD: Commissioner Derrick Holloway.

8 CHAIRPERSON HILL: Well, Mr. Mlakar's nodding his head
9 that it's Commissioner Edwards.

10 MS. BALLANTYNE: Oh.

11 MR. MLAKAR: Commissioner Edwards, he's in charge of the
12 -- he's the chairperson of the ANC, and the actual single-member
13 district is Derrick Holloway.

14 CHAIRPERSON HILL: Okay. Ms. Ballantyne, nothing's
15 happening today. And we're trying to just work some things out.
16 Okay?

17 MS. BALLANTYNE: Right. Right.

18 CHAIRPERSON HILL: I'm trying to get you in touch with
19 the people that I think you need to get in touch with, so that
20 your -- the people -- and thank you for helping these people.
21 Right? The people that you're helping -- the people you're trying
22 to help, you get more information from. Okay?

23 MS. BALLANTYNE: Yes. Commissioner Holloway has
24 contacted our staff, and I just testified about that. In my
25 testimony, I mentioned that he did call our staff. He also showed

1 up at one of the tenant meetings that we were holding, and both
2 occasions, told us and the tenants that they had to move.

3 CHAIRPERSON HILL: Okay. Well, that's interesting. All
4 right. So anyway -- all right. Well, I'll have to get back with
5 Mr. Mlakar, then, and Mr. Sullivan.

6 Mr. Sullivan, can you reach out to Ms. Ballantyne? Or
7 Ms. -- I mean, Mr. Sullivan, I don't know how you want to do this
8 with your client, or how your client wants to do this. I mean,
9 before we get to a decision, I'd like to see more of this -- what
10 Chairman Hood just mentioned, which is a relocation plan. Or, you
11 know, I just want to know what's going on. Right? And I think
12 that probably Mr. Mlakar understands.

13 Mr. Mlakar, I know the last one you did was a tricky
14 one, too. Because I remember looking at you the last time, and
15 I'm sure it was -- I know it was tricky. You only seem to come
16 with tricky ones. Right? And so one that are, like, you know --
17 but anyway, so, meaning -- when I say tricky, meaning there's a
18 lot of things going on.

19 And so Mr. Sullivan, do you know what maybe you can give
20 us?

21 MR. SULLIVAN: I'm not a landlord-tenant lawyer, so --
22 but I think I have an understanding of what's being requested.
23 Almost all the concerns, I know, are things that are -- there are
24 other D.C. agencies equipped to address those concerns.

25 And with all due respect -- and I understand the

1 | passions raised here today, and the concerns, and the desire to
2 | get to a resolution. And I also think Mr. Mlakar's going to have
3 | quite a bit to say in response to the comments made today.

4 | But I would just suggest that this application be heard
5 | under the zoning regulations and under the requirements of the
6 | special exception. But I know that everybody -- the Board members
7 | wants to see this stuff, and we'll do our best to get it together
8 | --

9 | CHAIRPERSON HILL: Okay.

10 | MR. SULLIVAN: -- and to provide what you need.

11 | CHAIRPERSON HILL: Hold on, Chairman Hood. Give me a
12 | second, Chairman Hood. Give me a second, Chairman Hood. So then
13 | the -- Mr. Sullivan. Right. Okay. So -- all right, Chairman
14 | Hood. Go ahead.

15 | CHAIRMAN HOOD: I appreciate Mr. Sullivan's comments.
16 | But Mr. Sullivan, you haven't had the judges and the courts send
17 | you stuff back. I sit on the Commission where they send me stuff
18 | back, because I did not do exactly what you said. It's not within
19 | the jurisdiction.

20 | And I know there's a wide difference between the BZA and
21 | the Zoning Commission, but I'm here on the role as a zoning
22 | commissioner. If you look under the law, the only way -- I'm here
23 | as the Zoning Commission member, protecting the regulations. The
24 | courts have already made a ruling. They have put it back to the
25 | Zoning Commission on many occasions, of looking at justification

1 and displacement. So they've made the ruling, and that's what I'm
2 following.

3 Thank you, Mr. Chairman.

4 CHAIRPERSON HILL: Okay, Chairman Hood. All right.
5 Okay.

6 Ms. Ballantyne, so do you have -- whose information do
7 you have? Do you have Mr. Mlakar or Mr. Sullivan's information?

8 MS. BALLANTYNE: Yes.

9 CHAIRPERSON HILL: Okay. Great. So go ahead and reach
10 out to them, and you can listen to the rest of this. But I'm
11 going to excuse you in a minute. Okay? And so do you have any
12 questions for me before we excuse you?

13 MS. BALLANTYNE: No. But I guess I -- it seems like
14 there's an assumption that -- and you said that there was an
15 assumption, that everyone has been notified about all of the
16 relevant meetings and hearings. And I just wanted to go onto the
17 record again that, with all the tenants we've spoken to, none have
18 mentioned receiving any information about any of these hearings or
19 the ANC meeting.

20 CHAIRPERSON HILL: I understand. And Ms. Ballantyne,
21 maybe you can help this, also. And this is where sometimes I get
22 lost in the minutia myself. I know that we've done everything we
23 were supposed to do. Right? And everybody's been notified. When
24 I say everybody, meaning, everybody we're supposed to notify has
25 been notified. You are here at this hearing, therefore somehow,

1 | you were notified. Even if it was last-minute, whatever. Right?
2 | You're here.

3 | MS. BALLANTYNE: The postings on the door.

4 | CHAIRPERSON HILL: Got you. So there, something
5 | happened. Right?

6 | MS. BALLANTYNE: Yes.

7 | CHAIRPERSON HILL: That's not what I'm terribly
8 | concerned about right now. I'm trying to figure out how the
9 | Board's going to find out more information about what might happen
10 | to everybody who's there. Right?

11 | And also, just to let you know, and what Mr. Sullivan is
12 | pointing out, is that, you know, we're tasked with looking at the
13 | regulations and the standards with which, if they meet them, we're
14 | supposed to vote yes. Right? If we believe we meet that. Right?
15 | So if you go look at the Office of Planning's report -- have you
16 | looked at the Office of Planning's report?

17 | MS. BALLANTYNE: Briefly.

18 | CHAIRPERSON HILL: Okay. I'm just saying, the Office of
19 | Planning goes into great detail as to how they believe they're
20 | meeting the regulation. Right? So that might be helpful, to go
21 | just take a look at it, and you can understand a little bit more
22 | about the regulations and the standards.

23 | The other thing I'm going to just point out, laugh or
24 | smile about, is, like, we still have to vote yes or no. So even
25 | if those regulations tell me I have to vote yes, I don't know

1 whether I'm going to vote yes. Or, I shouldn't say it that way.
2 We can look at the regulations -- oh, never mind. Forget it.
3 Okay.

4 All right. Ms. Ballantyne, do you have any questions?

5 MS. BALLANTYNE: No, sir.

6 CHAIRPERSON HILL: Okay. All right.

7 Mr. Young, if you could please let Ms. Ballantyne go?

8 Okay. Mr. Mlakar? It seems as though Mr. Sullivan
9 thinks that you have a bunch of stuff -- and you would like to
10 respond to everything. I mean, the he-said-she-said stuff, I
11 don't think you have to go through that stuff. But if you'd like
12 to give us your comments on anything, you're welcome to.

13 MR. MLAKAR: Absolutely. Thanks for the opportunity.

14 While I have the ear of the tenants -- and it is very
15 difficult for me to make contact with the tenants. A lot of them
16 don't want to talk to me, again, because there are a lot of
17 occupancy issues.

18 I, myself, am an immigrant. I came to this country as a
19 refugee, escaping ethnic cleansing in the former Yugoslavia. I
20 was homeless at one point. I lived in the same conditions at
21 Hawaii-Webster. I am tremendously empathetic. I understand what
22 they're going through.

23 I am here trying to make a difference and improve these
24 properties. I'm not trying to kick anybody out. I cannot believe
25 that Ms. Ballantyne is allowing for so much misinformation to

1 | scare and terrify the tenants, when she knows what the laws are.
2 | She knows that nobody is going to be kicked out.

3 | Anybody that has left has been paid. They've had
4 | counsel. They've signed contracts. They were -- everybody has a
5 | vacate agreement, where they were paid substantial consideration.
6 | We follow the law. There's no ill-will. There's no trickery.
7 | You know, I mean, I can go over into -- I'm familiar with every
8 | single resident there, and their issues.

9 | One of the major problems that we had was, an eviction
10 | moratorium that happened during corona, which made it so that
11 | every negative element, every squatter -- and, you know, Mr.
12 | Theodore Proctor was my -- you know, we did have that two-hour
13 | conversation, and he was my informant that told me everything that
14 | was going on in the building.

15 | And he told me about all the squatters. He told me
16 | about the presence of MS-13. He told me about all of the issues
17 | that I would have to deal with. And I told him, there's nothing
18 | that I can do about it, because I don't have the ability to
19 | enforce landlord-tenant laws at this point.

20 | And yes, this year has been incredibly difficult in
21 | order to get anything done, because we have squatters there that
22 | aren't supposed to be there. We have people who are violent. We
23 | have people that are dumping trash. I am moving construction
24 | debris that everybody is dumping there, every three, four days, at
25 | a tremendous expense.

1 We are doing everything we can, but in order for us to
2 stabilize these buildings, we're going to need the cooperation of
3 tenants. Unfortunately, a lot of tenants are living there
4 illegally, and they're not on the lease. They have six people,
5 and that building can only handle three people per unit. If you
6 have too many people, everybody's taking a shower at the same
7 time, you're going to start creating mold issues, you're going to
8 start creating different issues, where the building is breaking
9 down from overuse.

10 There's a lot of people -- you know, there's some great
11 tenants there, and I've gotten to know them. But there's a lot of
12 people that shouldn't be there. I am here trying to fix the
13 problem and trying to come up with a solution.

14 You know, we could've very easily just gone -- you know,
15 had this application be on a building-by-building basis, where we
16 just -- we take, you know, we have a vacant building, we would
17 take that building, we would just develop that as a silo, and
18 then, you know, work on the other buildings.

19 I'm trying to come up with a comprehensive plan so that
20 we know what is possible to build, and once we know what's
21 possible to build, I can present that to the tenants, and I can
22 show them, this is now what your new home could be like. Would
23 you like to take part in this?

24 If you don't want to take part in this, we have other
25 options. You can keep your building as-is. If you're not happy

1 with that, and the condition of it, we can do a cash-for-keys. We
2 have so many options. But that's why we're going about it this
3 way.

4 I know there's a ton of problems. I know there's a ton
5 of issues. I'm extremely empathetic to that. And I want to work
6 with everybody. I mean, I would love to work with -- if it was
7 possible to organize all the tenants and just have one point of
8 contact, that would be incredibly helpful for me to work with,
9 just to come up with a comprehensive plan for everybody.

10 CHAIRPERSON HILL: Okay. Who's the nonprofit again, Mr.
11 Mlakar?

12 MR. MLAKAR: DC PATH. They're a -- it's the path from
13 renter to homeownership, and they promote --

14 CHAIRPERSON HILL: So I don't know if -- I don't know
15 if, you know, you want to get, you know, your representative at DC
16 PATH also involved with Ms. Ballantyne.

17 I mean, I just wanted -- it seems as though we're
18 hearing everything for -- I don't disbelieve what you're saying.
19 I mean, I don't think you're trying -- you know, I think you're
20 trying to do what you're trying to do.

21 And so what I want to see, the next time, is just
22 something from Mr. Sullivan that shows us everything that you've
23 done, in terms of due diligence, with all the people that are
24 there now, to make us have any -- and I'll let all my fellow Board
25 members speak. Like, that's the thing that I want to know about.

1 And I'm going to go back and look at the regulations and
2 figure out what it is I'm supposed to do, based upon the
3 regulations. Right? But I do want to know what's going to happen
4 to all these people. Right? And so, you know, that seems fair to
5 me. And so I'll ask Mr. Sullivan to give us something into the
6 record that explains it all, and if the Board's not satisfied,
7 then we'll come back again and ask more questions. So, you know,
8 more is better than less, probably.

9 I'm going to -- I'm going to leave Chairman Hood for
10 last, and see if there's anybody else, anything else anybody has,
11 for the applicant, starting with Mr. Smith.

12 BOARD MEMBER SMITH: So I just have one question. Given
13 the testimony that you provided -- and I understand the process,
14 and Chairman Hill illuminated what that process is through the ANC
15 -- given the number of residents in your property, did you attempt
16 to set up a meeting on your own accord with the property owners to
17 notify them of these potential changes?

18 MR. MLAKAR: With the property owners? I'm sorry?

19 BOARD MEMBER SMITH: No, with your -- with the tenants.
20 Did you attempt to set up a tenant meeting?

21 MR. MLAKAR: Yes. The problem is -- so we have talked
22 to a number of tenants, just in the course of doing general
23 maintenance, we talk to the tenants. Unfortunately, it's very
24 difficult to have a conversation, because there's an adversarial
25 relationship for some reason, and it's very difficult to get

1 through to them.

2 And so I think it's best if -- that situation exists,
3 because there's such misinformation out there. Everybody is
4 demonizing me, and coming to me, as I'm some sort of devil that's
5 trying to kick them out.

6 And I think we need to set up something where they have
7 their own counsel or they have their own representative that can
8 speak for them, that can give them the truth, as opposed to
9 demonizing me, because that has cut off communication between us.

10 BOARD MEMBER SMITH: Okay. And I would just say that,
11 in not attempting to have that meeting, you're only furthering to
12 further this divide that you're speaking of. So I understand, you
13 know, based on this testimony -- we heard a lot of testimony
14 about, you know, the management of these properties after you
15 bought the properties.

16 And I think it would be -- it would behoove you, it
17 would be beneficial to you if you had set up this particular
18 meeting, regardless of the adversarial relationship. It starts
19 with better communication, better dialogue. And I think you would
20 serve your -- you would serve yourself better by setting up some
21 form of a meeting with the tenants.

22 So it would be great if you can attempt to do better
23 outreach with the tenants, you know, going forward, because I
24 don't think a decision will be made today.

25 MR. MLAKAR: I understand.

1 BOARD MEMBER SMITH: Okay?

2 Thanks, Mr. Chairman.

3 MR. MLAKAR: I appreciate the advice.

4 CHAIRPERSON HILL: Okay. Thanks, Mr. Smith.

5 Vice Chair John?

6 VICE CHAIR JOHN: So to try and be constructive, I hear
7 what Mr. Sullivan is saying, and I'm well aware of the limits of
8 the BZA's jurisdiction. However, there are times when the BZA
9 needs to pause to try to see what can be achieved through the ANC,
10 and to further tenant needs. So I agree with Mr. Smith's
11 suggestion.

12 I also think -- and I'm not up to date on which D.C.
13 agencies would step in in a situation like this. I'm aware of
14 TOPA and the D.C. Office of the Tenant Advocate. But I agree that
15 some sort of centralized process might be useful. And if there's
16 a lack of trust, maybe a mediator of some sort. I don't know.
17 But one has to start somewhere.

18 I think I agree -- well, I accept the explanation from
19 the owner. But I think a first step should just be cleaning up
20 the building. I think next week, as soon as possible, there
21 should be a crew out there, just cleaning the place, the parts.

22 So many tenants can't be wrong, and it's possible that
23 the people that you've hired are not doing what you've asked them
24 to do. I don't know. But we should start there. That would help
25 to help with the trust issue. And starting immediately to get rid

1 of the rats and clean the trash up.

2 And so those would be my thoughts. I don't really know
3 what the solution is. Landlord-tenant issues are complicated. So
4 I think it's a good thing, to try to, you know, renovate these
5 buildings. But at the same time, we have to be mindful of the
6 needs of the tenants who are there now. So I would -- I agree we
7 shouldn't make any decision today. We should probably continue
8 this for another time.

9 CHAIRPERSON HILL: Okay.

10 Chairman Hood?

11 CHAIRMAN HOOD: Yeah, Mr. Chairman. I think, for me,
12 though, cross-examination would've been a little helpful. But I
13 don't know if you got into the -- that would've been really
14 helpful, cross on the issues. Then I could have been able to
15 decipher.

16 But I will say that, as my colleagues have already
17 mentioned, I think a centralized meeting, if you can pull that
18 together -- and you may have to call in some other agencies to
19 help.

20 Because again, I just want to -- I'm saying this to my
21 colleagues now. The mayor and the city council have put a law in
22 place that we are supposed to look at now, on the Zoning
23 Commission. I believe it applies to the BZA, too, and I stand to
24 be corrected. The racial equity lens. That's the law now. So to
25 say that we just have to look -- no, you have to look at the

1 racial equity lens.

2 So that's something that I'm going to ask counsel -- I
3 know they're listening -- to see that it applies to the BZA, as
4 well, because I think it does. And if it doesn't, then I stand to
5 be corrected. And we need to see how we can make it apply,
6 because it should.

7 But I will tell you, Mr. Mlakar, it might not sound like
8 I believe that this could work to the community's benefit, and I
9 say that from the very beginning. Some of those issues about
10 trust, I think -- a young lady spoke about her toilet needing
11 fixed, and I understand the chairman said you've been there for
12 one year. I think her toilet needing fixing was in that one year.

13 So and I do understand, during COVID, because I've heard
14 this from many developers across the city, about evictions were
15 held -- I get that. I understand that. But some of those
16 fixtures -- to what you could've done, financially, you could've
17 made some of those fixtures, and that would've built the trust,
18 and they wouldn't have lined up today with all that mistrust.

19 Because that's what it's about. It's a lot of mistrust.
20 And they don't believe. They think -- and I don't know. you
21 know, he said, she said, like the chairman said, I agree not to
22 get into that. But I've heard it quite a bit. And everybody --
23 not just at this location. I've heard it across the city, and how
24 they have hired offices to go in and do certain things to
25 residents.

1 All the people -- everybody's not making this up. Some
2 of this is true. It's got to be. But some of the stuff that
3 they're saying, I believe it could've been mitigated. If the
4 toilet would've got fixed, if, you know, you honor your word. And
5 I know Mr. Sullivan's doing what he can for his client. Stick to
6 the zoning regulations.

7 But Mr. Sullivan, the courts have told, and given
8 direction, to zoning in this city, and we're going to abide by it,
9 as long as I'm around.

10 So I think that -- I think, in the long run, Mr. Mlakar,
11 I think that this will benefit. It will benefit the community. I
12 mean, 80-year housing? Come on. I think this is a win-win. But
13 we've got to take care of some of those other steps, get to those
14 steps first. We've got to work on trust.

15 And I will look at this, as the Chairman has mentioned,
16 at the regulations. I want to see how that -- far as the special
17 exception goes, and some things. Not that I'm trying to find a
18 way to deny it. I'm just trying to find a way to make it work,
19 and also, we have to do the racial equity lens, which is law,
20 which is law.

21 And I would like for those -- and Mr. Chairman, this is
22 another request, because I don't want this to fall on deaf ears.
23 I would like the Office of Planning -- to also look at -- to take
24 this case, especially what we heard here today, to the office of -
25 - through the racial equity lens. So that's all I have, and

1 looking forward to seeing how we proceed. Thank you.

2 CHAIRPERSON HILL: Okay.

3 Mr. Sullivan, I'm going to turn back to you, and also
4 Mr. Mlakar, because I'm trying to figure out how to best and most
5 efficiently do this. I think, Mr. Sullivan, you kind of heard
6 from the Board and know what maybe we might want to see. Do you
7 have an idea as to how long that might take you?

8 MR. SULLIVAN: I don't. And I just -- I would like to -
9 - we will be happy to provide the Board whatever they ask for, of
10 course. And I just -- I want to clarify my comments about
11 jurisdiction. And I'm not sure if I used that word. But that's
12 just one of the factors here. It's more practical than that.

13 These are really complicated issues. There are, I'm
14 sure -- and I don't even know, because it's not my area of
15 expertise, hundreds if not thousands of specific regulations and
16 rules and laws that define the relationship between Mr. Mlakar and
17 his tenants, and how that relationship needs to work in the
18 District, how that involves maintenance of the building.

19 I mean, he made -- I bet you there's a requirement to
20 notify tenants for rat control, or something like that, that can't
21 get connected. But I don't even know, because it's not my area of
22 expertise. There are, no doubt, agencies that the council set up
23 that have the expertise and the experience to handle these issues.

24 And so it's not jurisdiction. I just think there are a
25 bunch of questions that we're not equipped to get a handle on, way

1 outside the zoning area, and I think it would behoove us all to
2 stick within zoning and let those agencies who are competent to
3 handle that -- not that people on the Board aren't individually
4 competent to handle it. I'm speaking, as a Board, competent and
5 with the authority to handle that.

6 If there are gray lines there, obviously, I mean, we'll
7 provide the Board everything they ask for.

8 CHAIRPERSON HILL: Okay. So Mr. Sullivan, you can hang
9 on for a second. I mean, I'm looking at the special exception
10 subtitle, X 901.2. Right? And I know it pretty well by now. And
11 I know the things that I'm allowed to look at and what I'm, you
12 know, not allowed to look at, and I'm going to take a look at
13 those. Right?

14 I'm just giving you and the applicant an opportunity to
15 present something to the Board that makes us feel a little bit
16 more comfortable with the situation that is before us, given all
17 the testimony that we've had. Because at the end of the day,
18 we're all people that live here in the city, and we all have to
19 say yes or no. Right?

20 And I don't know about you -- nonetheless, you have an
21 opportunity. Okay? And so -- and again, Mr. Mlakar, I'm not, you
22 know, painting you as the devil, by any means. Right? I mean,
23 you're doing a project. I think the project is a good project.
24 You know, that thing was there 19, 30 years before you. Chairman
25 Hood knows the building. We all kind of know the area.

1 And so Mr. Sullivan, what do you think you might -- do
2 you have kind of a thought process as to how you might give
3 something to the Board that we might be able to digest?

4 MR. SULLIVAN: I think I'd like to consult with Mr.
5 Mlakar. If there's an opportunity --

6 CHAIRPERSON HILL: Why don't you talk to Mr. Mlakar?
7 Right? And then -- I mean, I can't even think -- I mean, if you
8 want to come back, maybe at the end of the day, I wouldn't even
9 close the hearing, and you can tell us what -- because I want to
10 look at the calendar, I want people to know, that are listening,
11 what kind of the plan is, if you have a plan.

12 Or do you just want to come back -- I mean, I'm just
13 trying to make this work as efficiently as possible. Right? You
14 have to -- why don't you talk to Mr. Mlakar, you all come up with
15 kind of a plan. Let's come back at the end of the day and hear
16 your plan. Right?

17 MR. SULLIVAN: My only concern about the end of the day
18 is, I have a bunch of ANC meetings tonight, and so I'm a little
19 concerned about running late. So if there was any way we -- I
20 think we only need five minutes or so.

21 CHAIRPERSON HILL: Okay.

22 MR. SULLIVAN: Because I think you're mainly looking for
23 a time. Right? How long it's going to take.

24 CHAIRPERSON HILL: We're going to take -- I just want to
25 hear a plan. I want to hear a plan. Right? And then I want to

1 figure out how to schedule you again for a continued hearing.
2 We're going to have a continued hearing. Right? We want to hear
3 about all this stuff. Right? And so I want to get you back as
4 soon as possible, because I'm trying to also help. Right?

5 So you all talk. We're going to take a lunch break. We
6 can come back after lunch. Okay?

7 MR. SULLIVAN: Great.

8 CHAIRPERSON HILL: I won't even close the hearing.
9 Well, I won't even close the hearing. All right. I am going to
10 excuse you guys. So I'm going to excuse you guys, we're going to
11 take an hour lunch, and I'm going to try to get back at 2:00.
12 Right? Like 2:00, 2:10. Okay? Okay. Bye-bye, you guys.

13 Mr. Young, please excuse everybody.

14 And then Ms. John had her hand up.

15 VICE CHAIR JOHN: I didn't mean to do that.

16 CHAIRPERSON HILL: Oh, okay, great. All right. So
17 we'll go have lunch.

18 Oh, Chairman Hood?

19 CHAIRMAN HOOD: Mr. Chairman, I don't want to second-
20 guess your timing. 2:00, 2:10, that's a big deal. I mean, either
21 2:00 or 2:10. Which one? Because I, you know --

22 CHAIRPERSON HILL: Let's go 2:10. Let's go 2:10.

23 CHAIRMAN HOOD: 2:10? Okay. Thank you.

24 CHAIRPERSON HILL: Okay. All right. Okay? See you all
25 at 2:10. Bye-bye.

1 (Whereupon, the above-entitled matter went off the
2 record and then resumed at 2:22 p.m.)

3 CHAIRPERSON HILL: Can you call us back in, and bring
4 back in the previous case? Mr. Blake is still not with us.

5 MR. MOY: Okay. Okay. All right. So with that, then,
6 all right. The Board of Zoning Adjustment is back in session
7 after a lunch recess. And the time is at or about 2:22 p.m.

8 And this is Case Application Number 20507 of 93 Hawaii
9 Ventures, LLC; 98 Webster Ventures, LLC; and Solid Brick Ventures,
10 LLC.

11 CHAIRPERSON HILL: Okay, great.

12 Mr. Sullivan, are you there?

13 MR. SULLIVAN: Yes, I am.

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

16 MR. SULLIVAN: Sure. Marty Sullivan of Sullivan and
17 Barros, on behalf of the applicant.

18 CHAIRPERSON HILL: Thank you. Did you have a chance to
19 talk to your client? And did you come up with an idea?

20 MR. SULLIVAN: We did. Well, we have an idea. The plan
21 would be to submit some type of return plan, and to otherwise be
22 responsive to the comments that we heard today. Also, Mr. Mlakar
23 intends to reach out to the tenants and the tenant organization,
24 Ms. Ballantyne, and engage further with them, and also to
25 undertake an investigation and an evaluation of some of the

1 | complaints and concerns, and see if there's additional solutions.

2 | And we would ask -- we think November 17th would be the
3 | earliest date that would allow us to make some progress in that
4 | regard. So that date or the -- or when it's convenient for the
5 | Board after that date.

6 | CHAIRPERSON HILL: Okay. No, that's great. I mean, I
7 | don't know whether you were listening earlier, or even if you were
8 | on one of those. But I think we will do our best to accommodate
9 | you on November 17th, because we want to move this forward in some
10 | capacity, so at least get to whatever the next thing is.

11 | So Mr. Moy, I think you were saying that we already have
12 | nine on that day?

13 | MR. MOY: Yes, we do. And if it helps you any, the
14 | following date after that would be December the 8th, and we would
15 | have the same number of cases. We'd have nine, as well. So those
16 | two dates also would accommodate Chairman Hood's schedule, as
17 | well.

18 | CHAIRPERSON HILL: Okay. Let's go ahead and continue
19 | this to 11/17, and we'll do a limited scope, based upon community
20 | input.

21 | So Mr. Sullivan, I guess, if you could submit something
22 | to us? You're saying that maybe you can get us something by
23 | November 10th? Is that fair?

24 | MR. SULLIVAN: Yes. That sounds good. Yeah.

25 | CHAIRPERSON HILL: Okay. And then we'll have a week to

1 take a look at that.

2 MR. SULLIVAN: Okay.

3 CHAIRPERSON HILL: Okay. All right, then we'll see you
4 guys on 11/17, and we wish you the best of luck.

5 MR. SULLIVAN: Thank you.

6 CHAIRPERSON HILL: Thank you. All right. I'm going to
7 close the hearing and the record, except for the continued items
8 that we mentioned to carry on to 11/17. And Mr. Moy, you can call
9 our next one.

10 MR. MOY: The next item for Board action is to the
11 Application Number 17984A, of Tudor Place Foundation, Inc. As the
12 Board will recall, this is a modification of significance. The
13 Board heard and discussed preliminary matters back -- well,
14 actually, last week, September 29th -- and scheduled for today's
15 hearing to address the motion for continuance, as well as -- which
16 also includes the applicant's motion to strike.

17 CHAIRPERSON HILL: Okay. Thank you.

18 Mr. Kadlecek, are you there?

19 MR. KADLECEK: Hi, good afternoon, members of the Board.
20 Yes, Cary Kadlecek from Goulston & Storrs, on behalf of the
21 applicant.

22 CHAIRPERSON HILL: Great. Thank you. Mr. Brown, can
23 you hear me?

24 MR. D. BROWN: Good afternoon, Mr. Chairman and members
25 of the Board. David Brown, Knopf & Brown, for the 32nd Street

1 party.

2 CHAIRPERSON HILL: Got it. All right. So I remember
3 what is before us, and I don't know why we -- oh, yeah. We did
4 grant you guys party status and all that. The motion to strike
5 was also now that they weren't yet a party, and so -- I think
6 that's right, Mr. Kadlecek. You can help me out in a second.

7 And so now I don't necessarily think the motion to
8 strike is necessary, because now they're a party. And what is
9 before us is whether or not we believe that a continuance is
10 necessary. I believe that's where we are. Mr. Kadlecek, is that
11 what you understand?

12 MR. KADLECEK: Mostly my understanding is slightly
13 different. The motion to strike was based on 407.4, Y, so 407.4,
14 which doesn't, in fact, explicitly allow someone filing a motion
15 to file a reply to a response. And so they sort of filed this
16 without the rules allowing it.

17 I guess the best analogy is, in court, the rules are
18 actually very clear about who can reply to what. And I think that
19 the absence of it in the regulations indicates that that's not
20 allowed. So the basis of the motion is really that it's sort of
21 outside what the rules permit, and they shouldn't be rewarded for
22 allowing to submit something outside of the rules.

23 CHAIRPERSON HILL: What is it that they're trying to
24 submit again, just to clarify for me?

25 MR. KADLECEK: A response -- or, sorry, a reply to our

1 response to their motion to continue the hearing.

2 CHAIRPERSON HILL: Right.

3 Mr. Rice, can you hear me?

4 MR. RICE: Yes sir.

5 CHAIRPERSON HILL: Is that what our counsel also
6 believes to be the case?

7 MR. RICE: Yes, sir.

8 CHAIRPERSON HILL: Okay. All right, then I'm going to
9 be in agreement with the motion to strike, I guess, in terms of
10 striking that from the record. However, once we're going to be
11 hearing from everybody anyway, during the actual hearing, I think
12 we'll be open to hearing whatever it is that the opposition has to
13 say.

14 So unless the Board has any issues with approving the
15 motion to strike, I'll go ahead and approve the motion to strike,
16 and ask for a second.

17 Ms. John?

18 MR. D. BROWN: Am I allowed to be heard on this?

19 CHAIRPERSON HILL: I'm sorry, Mr. Brown. I forgot. Go
20 ahead, Mr. Brown.

21 MR. D. BROWN: The Board ruled 407.4 does not say
22 explicitly whether a reply is allowed or disallowed. So whether
23 to allow or disallow a reply ought to be up to the discretion of
24 the Board, as justice may require.

25 In this case, the reply only responds to arguments made

1 for the first time in the opposition to the continuance motion.
2 That's what a reply is for. If time permits, it's better for the
3 Board to have a chance to read and consider the response in
4 advance of the argument on the motion, rather than hear the
5 response for the first time in the argument.

6 The reply is not only not prejudicial to Tudor Place, it
7 actually benefits it, because just like the Board, Tudor Place can
8 see in advance the oral argument on the continuance, our responses
9 to their opposition.

10 CHAIRPERSON HILL: Okay. All right, Mr. Brown. So I'll
11 go ahead, and we can have deliberations -- I mean, I shouldn't
12 deliberate in front of you guys, anyway. So we'll go ahead, and
13 I'll let my Board members speak on this issue after we're done
14 talking about this.

15 The other issue, I guess, is the continuance. And, see,
16 I don't remember why -- and you'll forgive me -- I can't remember
17 why we didn't deal with this the last time. Like, what's -- I
18 don't know what's happened since we were last in front of you
19 guys.

20 I mean, you guys were last in front of us. Right? And
21 I will ask you, I guess. I mean, Mr. Kadlecek, has anything
22 happened since the last time you were with us?

23 MR. KADLECEK: No. It was just the Board's decision
24 last week that a hearing needed to be held on this motion. But
25 nothing substantive.

1 CHAIRPERSON HILL: I thought for some reason this was
2 going to be in a meeting, but maybe that was my mistake, in
3 thinking that way. Mr. Brown, do you have anything to add as to
4 what has happened since the last time you were with us?

5 MR. D. BROWN: No, I just am prepared to argue the
6 motion.

7 CHAIRPERSON HILL: I mean, I think you argued the motion
8 last time.

9 MR. D. BROWN: No, we did not.

10 CHAIRPERSON HILL: Oh, you didn't? Okay. All right.
11 Well, okay. I thought you did. But you can go ahead and argue
12 the motion, Mr. Brown.

13 MR. D. BROWN: All right. The 32nd street parties are
14 not seeking to delay this case. They'd be perfectly happy to
15 proceed on schedule, if the critical information that may or may
16 not be in the Board's records, information that they've been
17 seeking for months through staff, could promptly be made
18 available. So far, there's been no progress.

19 So the motion is intended to put the Board itself
20 directly on notice of the importance of our need to examine its
21 record of past action or inaction on the building in question, the
22 garage at Tudor Place, in order to properly prepare for the
23 hearing.

24 This is not a fishing expedition for a smoking gun. As
25 best we can tell from the available records, the garage is an

1 | illegal structure, not a lawful, nonconforming structure, a
2 | condition that appears to have been overlooked when the garage was
3 | expanded in 1967, and overlooked again when the garage was
4 | included in the conversion of the property from residential to a
5 | museum by special exception in 1988.

6 | Now, when this conversion took place, there was no
7 | structural change to any of the buildings, and there's been no
8 | such changes ever since. So it is the 1967 and the 1988 Board
9 | records that will have significant implications for whether and
10 | how the Board may authorize its expansion, and thus on how the
11 | 32nd Street parties must prepare for the hearing.

12 | Maybe we are wrong about the legality of the garage.
13 | But if the applicant has copies of Board actions favorable to the
14 | garage from the time of the expansion, or the time of the
15 | conversion from residential to museum in '88, its lawfulness --
16 | about its lawfulness, they have not produced those records, nor
17 | have they said one way or the other whether they even have such
18 | records.

19 | In a jury trial in superior court, in a situation such
20 | as this, the judge would instruct the jury that, when one side
21 | fails to produce relevant evidence, particularly available to that
22 | side, and doesn't explain that failure, the jury may infer that
23 | the evidence would be unfavorable to that party.

24 | Now, this is not a courtroom or a jury trial, and we
25 | hope we will not need to rely on any inferences. Instead, we just

1 want to know exactly what the facts are, what did or did not
2 happen at the Board in 1967 and in 1988.

3 We are hopeful that a Board order of some sort, directed
4 at the safekeepers of the Board's records, can quickly break this
5 logjam so that the hearing can promptly go forward. We're not
6 seeking an indefinite continuance. We're just seeking prompt
7 action.

8 Indeed, since Tudor Place has the burden of proof on all
9 special exception issues, including compliance with the zoning
10 regulations, if it doesn't have the information we seek, as a
11 matter of due diligence, it should've itself sought to examine
12 those records before even filing for the special exception, and it
13 ought to be even more anxious to examine those records than my
14 clients.

15 So we look -- we hope that the -- maybe the Board can
16 confer with Mr. Moy about the progress, if any, on the reaching of
17 these records, if they are in fact in the archives. But I just
18 want to stress again how important it is to our proper case
19 preparation to figure out from the records what they disclose
20 about the status of the garage as of today.

21 CHAIRPERSON HILL: Okay. All right. Thanks, Mr. Brown.
22 I'm going to hear from Mr. Kadlecek, and then I'll ask the Board
23 if they have any questions.

24 Mr. Kadlecek?

25 MR. KADLECEK: Yes, thank you, Mr. Chair. Our

1 opposition to the motion is laid out in our submission that we
2 filed into the record. But I'll just give a brief summary of why
3 we believe this motion should be denied, and that the hearing
4 should continue as scheduled on October 27th.

5 The first is that, despite the parties' statements about
6 the hearing not being indefinite, there's no indication from
7 anyone, including them, that these records may become available at
8 any point. So even though there is a 30-day time after which the
9 hearing would occur, there's no way to know when the records may
10 be found, if ever. And everything that the party has produced
11 indicates there's no idea of when that will happen.

12 Indeed, the records, as far as we understand, from the
13 parties themselves, is that they're with the federal archives,
14 which is something over which this Board or any of us have any
15 control, for them to release those records, if they in fact can be
16 found.

17 And secondly, as we outlined in our opposition to the
18 motion, a lengthy and indefinite delay jeopardizes the collection
19 and preservation of Tudor Place, and the renovations, as well as a
20 grant that they've received, which must be used for its stated
21 purposes by April 2023. This generally puts the feasibility of
22 this project in jeopardy if we have no way of knowing when the
23 continued hearing might occur.

24 Our second basis of opposition is that there's no --
25 that the party opponents have provided no concrete or substantive

1 basis for why these records are necessary. As I said before,
2 there's no indication that the sought records will ever be
3 located. They may exist, but that doesn't mean they'll ever be
4 found.

5 I will say that Tudor Place -- that the institution that
6 operates the museum, they acquired this property after 1967. They
7 don't have records of whether this 1967 addition about which the
8 party opponents are so interested was or was not legally
9 constructed. They don't have those records. It was before they
10 owned the property; it was constructed before they owned the
11 property; they don't have those records.

12 That doesn't mean it was or wasn't constructed one way
13 or the other. They just don't have those records. They do have
14 their initial application statement and exhibits from the 1988 BZA
15 proceeding. We're happy to share those with the party opponents.
16 They don't have the full case record, but they do have that
17 information. I believe they won't find anything in there that
18 would be particularly helpful.

19 But one thing that I think that's really important is
20 that there's no basis for why they need these records. You heard
21 Mr. Brown keep saying, it's important for the preparation of their
22 case. I have not yet heard why.

23 As the Board is well aware, this is a modification of
24 significance. The rules state quite clearly that the Board is not
25 supposed to revisit prior decisions in a modification of

1 significance, and the application before you is for this modest
2 addition to the garage building. The application doesn't concern
3 anything else.

4 The garage in its current state has been that way for 54
5 years. Each of the five prior BZA proceedings about the use of a
6 museum at the property has considered the garage and use of it and
7 its impact in its current state. So it has been well-known the
8 neighborhood and any of the impacts have been evaluated by the
9 Board in five prior BZA proceedings -- have been aware of the
10 current state of the garage building, regardless of how it was
11 constructed.

12 Similarly, the case before you, as I mentioned, is to
13 analyze the addition itself, not relitigate a case from 1988,
14 which was the first BZA case dealing with converting this property
15 from residential to museum. Any impacts from this addition will
16 be analyzed and assessed as part of this hearing process.

17 So I think that's the summary of why we oppose this
18 motion, and we ask that the Board allow the hearing to continue as
19 scheduled on October 27th.

20 CHAIRPERSON HILL: Okay.

21 MR. D. BROWN: May I briefly respond, Mr. Chairman?

22 CHAIRPERSON HILL: You know, actually, Mr. Brown, I'm
23 going to try to find this out.

24 Mr. Rice? Can you hear me?

25 MR. RICE: Yes, sir.

1 CHAIRPERSON HILL: So I want to -- I'm not sure of the
2 procedure of this. Like, how long do I go back and forth with
3 everybody? Like, how does this work? Like, I think we have
4 enough information -- or I can ask questions of the people
5 submitting the motion and the response to the motion. So now if
6 -- and I'm just asking. So now, if Mr. Brown has something to
7 say, does that mean Mr. Kadlecek has something to say? Like, how
8 does this work?

9 MR. RICE: So traditionally, you would hear argument
10 from the maker of the motion, and then the response, which in this
11 case would be Mr. Brown, and then the last word would be with the
12 maker of the motion again, which would be Mr. Kadlecek.

13 CHAIRPERSON HILL: No, Mr. Brown's made the motion.

14 MR. RICE: I'm sorry. I misspoke. But yes, sir.

15 CHAIRPERSON HILL: Right. So Mr. Brown gets the last
16 word.

17 MR. RICE: Yes, sir.

18 CHAIRPERSON HILL: Okay.

19 All right, Mr. Brown. Go ahead.

20 MR. D. BROWN: Very quickly, we are not seeking an
21 indefinite extension. We are asking the Board to impose some kind
22 of a deadline for retrieving these records from archives, and then
23 after which, if the records are not available, let's go forward
24 with the hearing.

25 Secondly, we have explained exactly why, in our papers,

1 we believe that the garage was illegal when expanded in 1967. The
2 specifics are laid out in our motion. The building was at an
3 excessive height for the R1-D zone while this was residential
4 property.

5 And we are not challenging the existing garage. And we
6 are not relitigating the validity of the existing -- of the
7 ability of the existing garage to stand and continue to be
8 utilized. That's not an issue in this case.

9 What is an issue in this case is whether or not such a
10 building, if it is illegal, can lawfully be expanded? And we
11 don't know yet whether or not it is or is not illegal. And we
12 need to know that information, one way or the other, from the
13 Board records. Nothing more than a summary of all of the Board
14 actions taken in 1967 would reveal whether or not the applicant
15 applied for the variance it needed to excuse the height violation.

16 We don't know whether such a variance was applied for in
17 1967, but surely the Board, somewhere, has a record of all of the
18 -- doesn't necessarily need to have all of the underlying
19 documentation, but either the owner of the property did or did not
20 apply for a variance, and it was or was not obtained. It's a very
21 simple question. And we --

22 CHAIRPERSON HILL: Okay.

23 MR. D. BROWN: That's what we want to know about.
24 That's what we need to know about in order to properly prepare for
25 the hearing. And we're asking the Board to somehow use its power

1 and authority to tell the people who hold its records, we want to
2 see them.

3 CHAIRPERSON HILL: Got it, Mr. Brown. Okay. All right.

4 MR. KADLECEK: Can I add something, Mr. Hill?

5 CHAIRPERSON HILL: Mr. Rice, how does this go on?

6 MR. RICE: Like I said earlier, sir, typically the maker
7 of the motion would have the last word.

8 CHAIRPERSON HILL: Okay.

9 Mr. Kadlecek, what is it you want to say? And then Mr.
10 Brown's going to say something to that.

11 MR. KADLECEK: Okay. I just wanted to add two -- I
12 wanted to correct two things. One is, the current garage building
13 and the -- with the proposed addition will conform to the current
14 R19 zoning standards. So it is not a nonconforming condition.

15 Secondly, I think this is all satisfied by Subtitle C,
16 Section 202.2, which says that additions can be made to
17 nonconforming buildings -- not that it is, but even if it were --
18 as long as the addition itself conforms. So I still am failing to
19 understand --

20 CHAIRPERSON HILL: Okay. I got you. Thank you. I
21 mean, all of this is probably going to come out in the hearing,
22 because that's the point. We're not even at the hearing yet. I
23 appreciate that.

24 Mr. Brown, do you have a response?

25 MR. D. BROWN: None of this has -- none of this changes

1 the possibility that this building is illegal, and our research
2 suggests that it would be a very strange and odd circumstance when
3 an illegal building is allowed to be expanded for any reason. And
4 we know of no authority in the District that would allow such an
5 action.

6 But we don't want to provide the Board with a detailed
7 analysis of that sort, unless we know for certain that the
8 structure is illegal, which we will not know unless we -- for
9 certain, unless we know what happened in 1967 and whether
10 something was done in 1988 to obviate that problem. That's --

11 CHAIRPERSON HILL: Okay.

12 MR. D. BROWN: We don't know.

13 CHAIRPERSON HILL: Okay, Mr. Brown. All right.

14 Does anybody have any questions for anybody before we
15 stop and deliberate?

16 Ms. John?

17 VICE CHAIR JOHN: I'm trying to understand Mr. Brown's
18 argument. And is there some authority that you would point to, to
19 support your position? And then I'd like to hear from Mr.
20 Kadlecsek afterwards, on the same issue.

21 CHAIRPERSON HILL: Mr. Brown?

22 MR. D. BROWN: I don't really understand the question.
23 We are asking -- we are simply asking to see the Board's records
24 on this very property.

25 CHAIRPERSON HILL: Mr. Brown, give me one second.

1 Ms. John, do you know how to clarify the question for
2 Mr. Brown?

3 VICE CHAIR JOHN: Yes. Your premise is that the Board
4 is not able to allow the expansion of an illegal building, bearing
5 in mind that this building existed before ZR16. So is there some
6 authority that you would want to point to that the Board lacks any
7 authority to allow an expansion to this building?

8 I mean, we have people come before us all the time for
9 special exceptions or variances, because of an illegally
10 constructed building, and we give relief if the building meets the
11 criteria. I'm kind of not sure where you're headed with this.

12 MR. D. BROWN: Well, the statute says that an
13 enlargement must conform to the use and structure requirements,
14 and neither increase nor extend any existing nonconforming aspect
15 of the structure.

16 I am not prepared to give you an authoritative analysis
17 of that question today. I am merely asking for the information
18 that will allow us to present our legal position in a more fulsome
19 manner. To date, I have not been able to find any authority that
20 allows the Board to expand an illegal structure.

21 The Board has ample authority, under the zoning
22 regulations, to deal with an expansion of a lawful nonconforming
23 structure. But we believe that this structure does not achieve
24 that beneficial status. And therefore, does not come within the
25 authority of the Board to authorize an expansion.

1 That is an issue that we will be prepared to debate in
2 full at the hearing, but we are not ready to do so at this time,
3 because we simply do not know whether the predicate claim of
4 illegality is borne out by the Board records.

5 VICE CHAIR JOHN: So Mr. Brown, let us assume that
6 you're correct. What is the authority that you cite that would
7 prohibit the Board from even entertaining any request for relief?

8 MR. D. BROWN: The authority is the lack of any -- is
9 the lack of any express authority to do so in the zoning
10 regulations. The zoning regulations authorize dealing with
11 expansions of lawful nonconforming structures, but those -- that
12 authority does not extend to illegal structures.

13 And I would point the Board to, specifically, to D.C.
14 Code Section 6-641.06(a), which defines nonconforming structure.
15 It is a structure that was effective and lawful prior to the
16 effective date of more restrictive zoning regulations. In 1967,
17 the structure was lawful before it was -- before it was expanded,
18 because it was -- because it was lawful prior to the effective
19 date of any zoning in the city, having been built in 1913.

20 But in 1967, the expansion was subject to the 1958
21 zoning regulations for the R1-B zone, which limited the height to
22 a height -- the height of the expansion to a height below the
23 expansion that was actually made. That is why we are claiming
24 that the project -- that the garage, as expanded, is an illegal
25 structure. And as far as we can tell, the Board has no authority

1 to act favorably with regard to the expansion of an illegal
2 structure.

3 VICE CHAIR JOHN: Okay. Thank you.

4 Mr. Kadlecek, could you respond to the same question?

5 MR. KADLECEK: Yes. I would say, first, I don't think
6 that there's been any authority on Mr. Brown's position cited to
7 support his position. I think the language in Subtitle C 202.2 is
8 quite clear. It does not make a distinction between illegal and
9 legal, notwithstanding the fact that we don't know whether this
10 was illegal.

11 But 202.2 does not make a distinction. It says,
12 "Enlargements or additions may be made to the structure." Illegal
13 or legal is not stated. As long as the structure -- the condition
14 conforms to the development standards, et cetera.

15 I return to my previous point, which is, the structure
16 now conforms to the current zoning. So when the ZR16 was adopted,
17 it conformed. And it may have conformed before that. I don't
18 know. But I do know that under the current ZR16, R-19 development
19 standards, the garage building now, and as proposed with the
20 addition, conforms to those standards.

21 So the history of whether it was constructed, to me, is
22 irrelevant, given that it conforms to the current zoning
23 standards, plus the authority allowed to the -- just by that
24 matter of right under 202.2, that an addition can be made.

25 And Vice Chair John, as you mentioned earlier, it is

1 very commonplace for the Board to hear cases where people are
2 seeking changes to buildings where the history of them is unknown,
3 where the history of changes is unknown, and you're presented with
4 the building as it is in its current state, and the relief sought
5 by the applicant in the current state.

6 That is very commonplace. The Board does it all the
7 time. This is no different. I don't believe that there's any
8 issue here for the opponents to need this extensive amount of
9 time.

10 VICE CHAIR JOHN: Thank you.

11 I have nothing further, Mr. Chairman.

12 CHAIRPERSON HILL: Okay. Does anybody have any more
13 questions for the people that are here before us?

14 Okay. Okay. All right, I guess that's it, then. All
15 right, thanks, gentlemen.

16 Mr. Young, if you could please excuse the people, except
17 for us?

18 Oh, shoot. I did want to ask a question. Oh, well.

19 Okay. Okay. All right. Does somebody -- I mean, as
20 far as the motion to strike, again, I'm still going with the -- I
21 mean, I'll even look at some information here.

22 Like, you know, I guess there was talk about courtrooms
23 and prohibiting replies to replies. And to keep a concise record
24 and avoid unending kind of back-and-forth, I guess -- and the BZA
25 has traditionally followed kind of a similar approach -- the regs

1 state that the BZA traditionally, I guess -- Y 404.9 provides
2 replies to any opposition by the person requesting party status
3 will not be accepted into the record. So we've already done that,
4 meaning now they're party-status people.

5 404.4 -- "All parties opposing the motion shall have
6 seven days from the service of the motion to file and serve
7 response," and describes no time for subsequent responses. So, I
8 mean, I'm back to kind of agreeing with Counsel that came forth to
9 give us their opinion on this, and just deny the motion to strike.
10 I'm sorry, uphold the motion to strike.

11 And so I would ask my fellow Board members what they
12 think. And I'll start with you, Mr. Smith.

13 BOARD MEMBER SMITH: I agree with your statement
14 wholeheartedly. I do agree with Counsel's position to uphold the
15 motion to strike for this particular action. So are we just
16 talking about that? This particular -- okay. All right. That's
17 all I have, Mr. Chairman.

18 CHAIRPERSON HILL: Ms. John?

19 VICE CHAIR JOHN: I agree with that recommendation. I
20 would grant the motion to strike, based on everything you said.

21 CHAIRPERSON HILL: Mr. Blake?

22 BOARD MEMBER BLAKE: Yes, I, too, agree.

23 CHAIRPERSON HILL: Chairman Hood?

24 CHAIRMAN HOOD: I, too, agree. Let me turn my mic up.
25 I agree, as well.

1 CHAIRPERSON HILL: Okay. I'm going to make a motion to
2 approve the motion to strike, and ask for a second.

3 Ms. John?

4 VICE CHAIR JOHN: Seconded.

5 CHAIRPERSON HILL: Motion made and seconded. Mr. Moy,
6 if you could please take a roll call?

7 MR. MOY: When I call each of your names, if you would
8 please respond with a "yes", "no", or "abstain" to the motion made
9 by Chairman Hill to grant the motion to strike? The motion to
10 strike was seconded by Vice Chair John.

11 Zoning Commission Chair Anthony Hood?

12 CHAIRMAN HOOD: Yes.

13 MR. MOY: Mr. Smith?

14 BOARD MEMBER SMITH: Yes.

15 MR. MOY: Mr. Blake?

16 BOARD MEMBER BLAKE: Yes, to the motion.

17 e MR. MOY: Vice Chair John?

18 VICE CHAIR JOHN: Yes.

19 MR. MOY: Chairman Hill?

20 CHAIRPERSON HILL: Yes.

21 MR. MOY: Staff would record the vote as five to zero to
22 zero. This is on the motion made by Chairman Hill to grant the
23 motion to strike. The motion to strike was seconded by Vice Chair
24 John. Also in support of the motion is Zoning Commission Chair
25 Anthony Hood, Mr. Smith, Mr. Blake, and of course Vice Chair John

1 and Chairman Hill. The motion carries on a vote of five to zero
2 to zero.

3 CHAIRPERSON HILL: Okay. The next motion before us is
4 for a continuance. I've talked to staff, and they've been trying
5 to get these records. Like, they're not kind of not-trying to get
6 these records. Like, I guess the National Archives is still
7 closed, because of maybe the pandemic. And so they're trying --
8 staff is trying very hard to get these records. But they can't.
9 It's an indefinite situation right now.

10 And so I just don't know when, you know, when the
11 pandemic's going to go, when the Archives is going to -- these
12 things. And I don't even know if -- I think that -- I don't know
13 yet how these records are 100 percent helpful, because I haven't
14 heard the case yet. Right?

15 Like, if we are talking about -- and just from the
16 discussion thus far, talking about, you know, something that
17 might've been illegal, that's no longer illegal, and now an
18 expansion of something that is no longer illegal, or an expansion
19 of something that's, you know, illegal, given what the regulations
20 state, that seems like something we would be able to flesh out
21 during the hearing.

22 So given that I don't know when we'd be able to have
23 these records out, I don't think it's fair to the applicant to
24 keep this in this limbo right now. I'd rather have the case and
25 hear the case.

1 The motion was for 30 days. And I guess -- I had wanted
2 to ask the applicant kind of what, you know, two more weeks would
3 or wouldn't do for their situation. It seemed as though they had
4 to get it done by April. And so I don't think two weeks would
5 necessarily be a problem, but for us, I guess we can give it
6 another couple of weeks, if there was a possibility in getting
7 these records.

8 But my quandary with that is, I don't know -- you know,
9 we're really jamming up our caseload. The 27th would take us,
10 then, to the 10th. And Mr. Moy, I can't remember. What is on
11 November 10th for us? I think we have an appeal, maybe, and a
12 bunch of cases.

13 MR. MOY: Right. November 10th, Mr. Chairman, we have
14 nine or ten cases. I think we put something on November 10th, as
15 well, so we could be at about ten cases now. So --

16 CHAIRPERSON HILL: But there's no appeal? I mean, this
17 is going to take a --

18 MR. MOY: No, no, no. No, no appeal. No appeal.

19 CHAIRPERSON HILL: They have party status. So I mean,
20 my suggestion to the Board would be either hold this when it is,
21 or give an extra two weeks, and just try to have it on November
22 10th, and see where we get.

23 I will pick everybody's brain, and I'll start with Mr.
24 Smith.

25 BOARD MEMBER SMITH: I agree with your position, Mr.

1 Chair. You know, I understand the quandary we're in with this. I
2 do think it would be beneficial to have the cases. And I
3 understand that, you know, that's kind of out of our hands,
4 because it's with the National Archives, and they may be closed.
5 So I agree with that.

6 I don't agree with Mr. Brown's position to continue it
7 indefinitely, because just as Mr. Kadlec stated, there may be a
8 situation where we find this information between now and the 27th.
9 And if we don't, then we can administratively continue this into a
10 later date, you know, pending that additional information.

11 And also, Mr. Brown's argument about Section 202.2 --
12 thank you, Ms. John for asking that question to Mr. Brown. I do
13 not see anything in 202.2 that specifically splits the hair
14 between legal nonconforming and illegally nonconforming. Other
15 jurisdictions in this region do that, but not the DC zoning
16 regulations. So I don't find his argument fairly persuasive in
17 that regard.

18 So I'm where you're at, Chairman Hill. I think we
19 should, you know, keep it where it is now, at the end of this
20 month. And if need be, we can administratively move it to a later
21 date, two weeks out. So --

22 CHAIRPERSON HILL: Okay.

23 BOARD MEMBER SMITH: -- I'm in favor of a continuance.

24 CHAIRPERSON HILL: Okay. Well, that's smarter than what
25 I had suggested. Like, he's given an actual, like, you know, on

1 the 27th we'd have the hearing, and then if we thought it was
2 necessary to continue, we would. That's what's currently on the
3 table. Or give it -- or give it another two weeks. So those are
4 the two options that are on the table.

5 I'll go to Vice Chair John for her thoughts.

6 VICE CHAIR JOHN: I agree with Mr. Smith's
7 recommendation, because I'm not convinced, based on the questions
8 and the answers that I received, that the records are necessary to
9 determine whether to approve the modification.

10 So I would go ahead with the hearing as scheduled, and
11 if we determine that that information is needed, then we could
12 continue the case. And by then, we should've researched fully the
13 legal arguments that Mr. Brown proposed, concerning the Board's
14 inability to rule on a, you know, a structure that may or may not
15 have been illegal.

16 I don't believe there's any such limitation on the
17 Board, but I am willing to give it a shot before the hearing comes
18 up, to see, you know, just to confirm my thoughts.

19 CHAIRPERSON HILL: Okay.

20 And Mr. Rice, can you hear me?

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

22 CHAIRPERSON HILL: Can you make sure that all these
23 issues are researched for us?

24 MR. RICE: Yes, sir.

25 CHAIRPERSON HILL: Okay.

1 Mr. Blake?

2 BOARD MEMBER BLAKE: I would support Board Member John's
3 position on that. I have nothing else to add.

4 CHAIRPERSON HILL: Chairman Hood?

5 CHAIRMAN HOOD: I will agree with what I've heard, but I
6 don't -- just want to caution us, because we don't have the
7 legislative history of what the Commission or the zoning regs may
8 have been. Mr. Brown did infer that, I think -- and I don't want
9 to speak for him, but he implied that if we don't necessarily get
10 this right, it'll prejudice his party, and then it may go further.

11 So I want to make sure we do all our legal
12 justifications and requirements to make sure that what he's
13 telling us is not -- and when you all have the hearing, because
14 this will be passed to one of my colleagues, I believe, when you
15 do have the hearing, then if you find that you need that material,
16 then I would suggest that you wait until you're able to ascertain
17 it. So that's my thought on that. Thank you, Mr. Chairman.

18 CHAIRPERSON HILL: Okay. Then I'll follow along with
19 the Board, and we'll go ahead and have the hearing when we have
20 the hearing. And if we need further time, we can always get
21 further time. So as I mentioned, at this point, the Board seems
22 comfortable moving forward. I'm going to go ahead and make a
23 motion to deny the motion for a continuance, and ask for a second.

24 Chairman Hood?

25 CHAIRMAN HOOD: I haven't seconded anything in years.

1 Second.

2 CHAIRPERSON HILL: Okay. Great. Well, I'm going to let
3 you second all the things that -- Ms. John's screen went blank for
4 a second, so I didn't know.

5 Mr. Moy, if you can go ahead and take a roll call?

6 MR. MOY: When I call your name, if you could please
7 respond with a "yes", "no", or "abstain" to the motion made by
8 Chairman Hill to deny the motion to continue -- for a continuance?
9 The motion was seconded by Zoning Commission Chair Anthony Hood.
10 Mr. Smith?

11 BOARD MEMBER SMITH: Yes.

12 MR. MOY: Mr. Blake?

13 BOARD MEMBER BLAKE: Yes.

14 MR. MOY: Vice Chair John?

15 VICE CHAIR JOHN: Yes.

16 MR. MOY: Zoning Commission Chair Anthony Hood?

17 CHAIRMAN HOOD: Yes.

18 MR. MOY: Chairman Hill?

19 CHAIRPERSON HILL: Yes, to the motion.

20 MR. MOY: Staff would record the vote as five to zero to
21 zero. This is on the motion made by Chairman Hill to deny. The
22 motion was seconded by Zoning Commission Chair Anthony Hood. Also
23 in support of the motion is Mr. Smith, Mr. Blake, Vice Chair John,
24 Zoning Commission Chair Anthony Hood, and Chairman Hill. Five to
25 zero to zero, the motion carries.

1 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy. You can
2 call our next one when you get a chance, Mr. Moy.

3 MR. MOY: This is Case Application Number 20380 of
4 Polygon Holdings, LLC. This is an application for special
5 exceptions under the new residential development requirements of
6 Subtitle U, Section 421; and from the side yard requirements in
7 Subtitle F, Section 306.2(A). This would construct a three-story
8 addition to an eight-unit residential apartment house in the RA-1
9 zone.

10 The Board last heard this at its hearing on July 14th,
11 2021. In the record, Mr. Chairman, there is the applicant's
12 motion to request to postpone. It was submitted during the
13 24-hour block, so it's currently not in the record.

14 CHAIRPERSON HILL: Okay. All right. Unless the Board
15 has an issue, I'd like to go ahead and allow the motion to
16 postpone to be added into the record, because I'd like to hear the
17 motion.

18 And so I don't see anybody raising their hands in
19 objection, so Mr. Sullivan, was it your motion to postpone? And
20 if -- well, first of all, Mr. Sullivan, could you introduce
21 yourself for the record, please?

22 MR. SULLIVAN: Yes. Thank you. Marty Sullivan with
23 Sullivan & Barros on behalf of the applicant.

24 CHAIRPERSON HILL: Great.

25 Mr. Brown, can you hear me?

1 MR. P. BROWN: Yes, I can.

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

4 MR. P. BROWN: Certainly. Patrick Brown from Greenstein
5 DeLorme & Luchs on behalf of the party opponent, Foxhall Terrace.

6 CHAIRPERSON HILL: Okay.

7 Dr. Lea, can you hear me? Dr. Lea, can you hear me?

8 DR. LEA: Yes. Can you hear me?

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

11 DR. LEA: Dawn Lea, owner, 4459 MacArthur Boulevard
12 Northwest, representing myself.

13 CHAIRPERSON HILL: Okay. All right.

14 Mr. Sullivan, is it your motion for a postponement?

15 MR. SULLIVAN: Correct.

16 CHAIRPERSON HILL: Why do you need a postponement,
17 please?

18 MR. SULLIVAN: So the applicant's been involved in
19 discussions with Dr. Lea, which have led to what appears to be a
20 resolution, but it's not -- I'm not sure if it's 100 percent
21 finalized. And if it is, which we hope for and expect, it would
22 lead to possibly a withdrawal and refiling later, or even -- or
23 just a substantial change to the application.

24 And so in light of that -- and we didn't -- and that was
25 the reason for the late filing. This is a late-breaking --

1 CHAIRPERSON HILL: Okay. Okay. Mr. Sullivan, how much
2 time do you need?

3 MR. SULLIVAN: I think at this point, not that much
4 time, because frankly, I think maybe the most efficient way to do
5 it would be if it's just postponed for a couple weeks, and then we
6 know that all our questions are resolved, at that point, we will
7 either withdraw or ask for a much longer postponement, in order to
8 amend plans.

9 CHAIRPERSON HILL: Mr. -- I mean, Mr. Moy, what, again,
10 is 10/20 looking like?

11 MR. MOY: On 10/20, Mr. Chairman, you currently have
12 seven applications and one appeal.

13 CHAIRPERSON HILL: And then, right, then 10/27, that's
14 where there's nine. Right?

15 MR. MOY: 10/27, we have ten.

16 CHAIRPERSON HILL: And then November 3rd?

17 MR. MOY: We have nine. Nine or ten. I'm losing count.

18 CHAIRPERSON HILL: Okay.

19 MR. MOY: Let's say nine.

20 CHAIRPERSON HILL: All right. Let's go ahead and take
21 you to November 3rd, Mr. Sullivan.

22 MR. SULLIVAN: Thank you.

23 CHAIRPERSON HILL: Because then you'll know what's going
24 on, and then we can do this. So let's do this.

25 Mr. Brown, do you have any objection to this?

1 MR. P. BROWN: No, I don't. On November 3rd, what is --
2 is that going to be a hearing? Or is it just a --

3 CHAIRPERSON HILL: Continued hearing. Continued
4 hearing.

5 MR. P. BROWN: Very well. That's fine.

6 CHAIRPERSON HILL: Okay.

7 Dr. Lea, do you have any -- do you understand what's
8 happening?

9 DR. LEA: Yes, I do. Thank you.

10 CHAIRPERSON HILL: Okay. All right. We'll see you --

11 DR. LEA: I have no problem.

12 CHAIRPERSON HILL: Thank you. We'll see you guys on
13 November 3rd.

14 MR. SULLIVAN: Thank you.

15 CHAIRPERSON HILL: All right. Thank you.

16 DR. LEA: Okay. Goodbye.

17 CHAIRPERSON HILL: All right, Mr. Moy, you can get our
18 next one.

19 MR. MOY: The next case application is Number 20389 of
20 Samuel Medeiros and Jessica Ellis. This is an application for
21 area variances from the side yard requirements, Subtitle D,
22 Section 206.2; minimum lot dimension requirements, Subtitle D,
23 Section 302.1. This would subdivide the property into two lots
24 and construct a new detached principal dwelling unit with a
25 detached two-story accessory garage at a new lot in the R1-B zone.

1 Property located at 1915 Shepherd Street Northeast, Square 4194,
2 Lot 841.

3 As the Board is aware, you last heard this on July 28th,
4 2021. The preliminary matter here, Mr. Chairman, is that the
5 applicant filed a motion to continue the application to a future
6 date.

7 CHAIRPERSON HILL: Okay.

8 Mr. Bello, can you hear me?

9 MR. BELLO: Yes, Mr. Chairman. Good afternoon.

10 CHAIRPERSON HILL: Hi. Could you introduce yourself for
11 the record, Mr. Bello?

12 MR. BELLO: Toye Bello, representing the applicant.

13 CHAIRPERSON HILL: All right, Mr. Bello. You're asking
14 for a postponement. Correct?

15 MR. BELLO: That's correct, sir.

16 CHAIRPERSON HILL: How much time are you trying to get?

17 MR. BELLO: We actually worked out a November 3rd date
18 with Mr. Moy.

19 CHAIRPERSON HILL: Okay. Mr. Moy, is there -- is that
20 correct? Were you going to try to get him back on November 3rd?

21 MR. MOY: Yeah, if the Board agrees, we could do that.
22 I mean, we've, today, have added some, so I would suggest either
23 November 3rd or November 10th.

24 CHAIRPERSON HILL: Right. We've got all kinds of stuff
25 that we're adding.

1 Mr. Bello --

2 MR. MOY: I know.

3 CHAIRPERSON HILL: -- can I ask you a question, Mr.
4 Bello?

5 MR. BELLO: Yes, sir.

6 CHAIRPERSON HILL: How about -- I briefly looked at the
7 record, and, you know, the Office of Planning's opposed, the ANC's
8 opposed, DDOT has no objection. I didn't even bother reading
9 through it too much because there wasn't anything from the Office
10 of Planning. Do you think you're going to be ready on November
11 3rd?

12 MR. BELLO: Yes, sir. We'll be ready.

13 CHAIRPERSON HILL: And so you will have gone to the ANC
14 and gotten a letter from them?

15 MR. BELLO: Well, we actually talked to the ANC and the
16 ANC's position is that, since there's no material change to the
17 application, there's no need for us to come back to them, and they
18 will stand on their opposition.

19 CHAIRPERSON HILL: So they're going to be opposed.

20 MR. BELLO: That's correct.

21 CHAIRPERSON HILL: Okay. How many have we got right now
22 on November 3rd, Mr. Moy?

23 MR. MOY: Yeah, I just want to double-check where the
24 Board set a date for the Polygon case.

25 CHAIRPERSON HILL: That one now is the 10th. Or, no,

1 the 17th.

2 MR. MOY: So, okay, so in that case, this potentially
3 could be the ninth case for the --

4 CHAIRPERSON HILL: All right. Let's put it on the 3rd.
5 Let's put it on the 3rd.

6 Mr. Bello, please try your best, Mr. Bello.

7 MR. BELLO: Yes, sir.

8 CHAIRPERSON HILL: And be as clean as possible, because
9 this is now getting -- I mean, and I got another request for
10 postponement after you, and so now it's just getting -- like, I
11 mean, I think people are going to get kicked into next year at
12 this rate. So -- all right. Okay. Let your client know we're
13 trying to help. Okay.

14 MR. BELLO: Okay. Thank you.

15 CHAIRPERSON HILL: And I'm trying to help. Just, like,
16 this is a little bit -- okay. All right. We're going to postpone
17 until November 3rd. going to close the hearing until then. See
18 you then. Bye-bye.

19 MR. BELLO: Thank you.

20 CHAIRPERSON HILL: Mr. Moy, you can call our next one.

21 MR. MOY: This is Case Application Number 20505 for the
22 Michael Farquhar. This is the applicant's amended special
23 exception from the matter of right accessory uses, Subtitle U,
24 Section 250. This would construct a detached two-story accessory
25 apartment in the rear of a detached two-story principal dwelling

1 unit, R-20 zone. Property located at 1963 39th Street Northwest,
2 Square 1310, Lot 808.

3 As the Board is aware, here, as well, there is the
4 applicant's request to postpone, which is under Exhibit 82. And
5 there are, already in the record, letters in opposition and
6 letters in support. And I believe there was also a party status
7 request from a Mr. Richard Hall.

8 CHAIRPERSON HILL: Okay. All right. Let's see if the
9 attorneys are here, Mr. Young.

10 MR. YOUNG: I don't see her on. We're having staff
11 contact her now.

12 CHAIRPERSON HILL: Okay. All right. Well, let's wait a
13 minute. I see this is -- all right. I'll tell you what.

14 Mr. Hall, can you hear me?

15 MR. HALL: Yes.

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

18 MR. HALL: My name is Richard Hall. I live at 1959 39th
19 Street Northwest.

20 CHAIRPERSON HILL: Okay. And where are you in proximity
21 to the project?

22 MR. HALL: I'm right next door. These are townhouses
23 attached, so there is no distance.

24 CHAIRPERSON HILL: Right. You're sharing the wall.

25 MR. HALL: Correct.

1 CHAIRPERSON HILL: Okay.

2 MR. HALL: And --

3 CHAIRPERSON HILL: I got you. Let's see.

4 Ms. Nagelhout, can you hear me?

5 MS. NAGELHOUT: I can.

6 CHAIRPERSON HILL: Do I need the applicant, in order to
7 decide these motions?

8 MS. NAGELHOUT: I think the request for party status,
9 you could go ahead with.

10 CHAIRPERSON HILL: Okay. And then the motions to
11 strike, we would wait until the hearing?

12 MS. NAGELHOUT: Yes. I would wait until the hearing for
13 that one.

14 CHAIRPERSON HILL: Okay. Thank you. And now there's a
15 -- but there's a request for postponement.

16 Mr. Hall, I'm just trying to make the best use of your
17 time right now, also.

18 MR. HALL: Thank you.

19 CHAIRPERSON HILL: Let me just look at this one thing
20 here. Okay. I guess I just don't have a date from the -- Mr.
21 Moy, do you know when ANC 2E meets, by any chance? Oh, wait, hold
22 on. I see the attorney.

23 Hi, Ms. Moldenhauer. Can you introduce yourself for the
24 record, please?

25 MS. MOLDENHAUER: Good afternoon. Meridith Moldenhauer

1 from the law firm of Cozen O'Connor, here on behalf of the
2 applicant.

3 CHAIRPERSON HILL: Okay. Ms. Moldenhauer, we just spoke
4 to Mr. Hall, who is, again, the adjacent property owner, and I'm
5 looking at your postponement. Do you know when you were hopeful
6 to come back?

7 MS. MOLDENHAUER: We were asked by the ANC to come back
8 after December 1st. They have their meeting the last week of
9 November, and the Chair was not going to be at their October ANC
10 meeting. So we informed them that we would be okay with coming
11 back either December 1st or thereafter.

12 CHAIRPERSON HILL: Okay. So if you come back December
13 1st, Mr. Moy, when could they -- we're off probably until, what,
14 like, the 15th? Do you know when our first -- have we determined
15 when our first hearing back is yet?

16 MR. MOY: After the holidays?

17 CHAIRPERSON HILL: Yes.

18 MR. MOY: We will be back with the Board's first hearing
19 on January the -- should be January 12th. I'm looking. Yes.
20 January 12th.

21 CHAIRPERSON HILL: I'm sorry, I'm confused. I'm looking
22 at December as though we're getting off. Okay. So I'm just
23 dreaming. So December 8th -- okay. So December 8th. So December
24 15th, what does that day look like, Mr. Moy?

25 MR. MOY: We have five cases and, as you'll recall, we

1 have those two appeals that are on the same subject property.

2 CHAIRPERSON HILL: On the 15th?

3 MR. MOY: Yes.

4 CHAIRPERSON HILL: What about on the 8th?

5 MR. MOY: December 8th?

6 CHAIRPERSON HILL: Yeah.

7 MR. MOY: We have eight cases, possibly nine. So this
8 would be the tenth case.

9 CHAIRPERSON HILL: Okay. Let's go ahead and put it on
10 the 8th. Let's put it on the 8th.

11 MR. MOY: Okay.

12 CHAIRPERSON HILL: I would be in favor of granting Mr.
13 Hall party status, based upon how I believe he's uniquely affected
14 to the project. And then I guess there also is a motion to strike
15 the expert witnesses.

16 But I don't recall -- I remember, Ms. Nagelhout, I was -
17 - is the motion to strike something that we should take on now, or
18 take on at that point?

19 MS. NAGELHOUT: Given that the case is going to be
20 postponed, there were many -- there were several aspects to that
21 motion. I would not take that up now, and deal with it closer to
22 the time of the hearing.

23 CHAIRPERSON HILL: Closer to the time of the hearing.

24 MS. NAGELHOUT: I mean, at the -- like, the day of the
25 hearing.

1 CHAIRPERSON HILL: Got you.

2 MS. NAGELHOUT: Things might change between now and
3 then.

4 CHAIRPERSON HILL: Give me a second. Okay. I'll do
5 first things first.

6 So Ms. Moldenhauer, you don't have any issues with the
7 party status, do you?

8 MS. MOLDENHAUER: No, Chairman Hill, we do not oppose
9 the party status.

10 CHAIRPERSON HILL: Okay. So I'm going to make a motion
11 to grant Mr. Hall party status, and ask for a second.

12 Ms. John?

13 VICE CHAIR JOHN: Second.

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

16 MR. MOY: When I call your name, if you would please
17 respond with a "yes", "no", or "abstain" to the motion made by
18 Chairman Hill to grant party status to Richard Hall? Zoning
19 Commission Chair Anthony Hood?

20 CHAIRMAN HOOD: Yes.

21 MR. MOY: Mr. Blake?

22 BOARD MEMBER BLAKE: Yes.

23 MR. MOY: Mr. Smith?

24 BOARD MEMBER SMITH: Yes.

25 MR. MOY: Vice Chair John?

1 VICE CHAIR JOHN: Yes.

2 MR. MOY: Chairman Hill?

3 CHAIRPERSON HILL: Yes.

4 MR. MOY: Staff would record the vote as five to zero to
5 zero, to grant party status to Mr. Richard Hall. The motion was
6 seconded by Vice Chair John. Also in support of the motion is
7 Zoning Commission Chair Anthony Hood, Mr. Blake, Mr. Smith, Vice
8 Chair John, Chairman Hill. Motion carries, five to zero to zero.

9 CHAIRPERSON HILL: Okay. Yeah? Mr. Hall?

10 MR. HALL: May I make one point about the description of
11 the project? In the second line of that description, "To
12 construct a detached two-story accessory apartment in the rear of
13 a detached two-story principal dwelling" -- that dwelling is not
14 detached. It is the last of the townhouses in the row on 39th
15 Street. It would be perhaps semi-detached, but it's not detached.
16 It's just a, you know, correction of the description.

17 CHAIRPERSON HILL: Got it. Mr. Moy is -- the secretary
18 is reading the caption.

19 And so Mr. Moy, I guess we can take a look at that, if
20 there needs to be any clarification prior to December 8th. And we
21 can go ahead and do that. Otherwise, you can just let me know.
22 Okay, Mr. Moy?

23 MR. MOY: Very good, indeed. Thank you, sir.

24 CHAIRPERSON HILL: Okay. All right. Thank you, Mr.
25 Hall.

1 I guess the Board -- and we can deliberate on this after
2 the witnesses have presented their -- I kind of, even though I
3 appreciate the advice of counsel, I kind of want to get this
4 motion to strike out of the way and see whether or not, you know,
5 these -- I don't know what you guys think. Like, the expert
6 witnesses and -- or if we need more time.

7 It is your motion to strike. Correct, Ms. Moldenhauer?

8 MS. MOLDENHAUER: So my motion to strike is in two
9 parts.

10 One, there were many issues that have been entered into
11 the record by Mr. Hall and others, regarding issues that are just
12 outside the scope of the case and of the standard. References
13 regarding a covenant, references regarding soil. And so that
14 aspect was just simply to have the Board, you know -- and this
15 could be addressed at the hearing time, to just kind of narrow the
16 testimony, so that we're not, you know, trying to have to respond
17 to issues that are not necessary.

18 And then the second part was a question as to the expert
19 witness, most likely needing some level of, you know, voir dire as
20 to what she's actually being qualified as. Based on her resume,
21 it seems like what her resume is identifying is not consistent
22 with the elements that her -- she's being proffered for.

23 CHAIRPERSON HILL: Okay. I guess my thought -- and I'm
24 speaking to my Board members now, and then, Mr. Hall, you'll have
25 an opportunity to respond.

1 My thought, again, is that we, the Board, can kind of
2 get through this when the hearing is going on, as to whether or
3 not we think arguments that are being put forward are inside or
4 outside of our purview. I'm looking at the Board. So I don't
5 know if we want to even take that up.

6 And then the others, I guess we could hear a little bit
7 about this expert testimony or expert witness, so that we at least
8 know where we stand on those issues. And I guess Mr. Hall could
9 give us a little bit more clarity on that. But I am curious what
10 my Board members have to say on these two issues.

11 And I will start with you, Mr. Smith.

12 BOARD MEMBER SMITH: Chairman Hill, I agree with your
13 assessment on both of these items. You know, I do welcome some
14 additional information from Mr. Hall on the expert witnesses.

15 CHAIRPERSON HILL: Okay.

16 Mr. Hall, can you tell us about your expert witnesses?

17 MR. HALL: Yes. I wrote and filed an opposition to the
18 motion to strike on October 1st. And I sent in a resume,
19 extensive resume, of this expert witness, Lenore Rubino, who is an
20 experienced Realtor of ten years, and who has sold property in the
21 area of the relief, and in fact right on this very street, 39th
22 Street. She has expertise in the history and the factors --

23 CHAIRPERSON HILL: Got it. Mr. Hall? I got you. I got
24 you. I'm looking at your exhibit right now. So Ms. Rubino is
25 one. Who's the other one, again?

1 MR. HALL: I was asking for -- to hold a spot for a real
2 estate attorney, whom I have not identified, and -- have not yet
3 identified. So I don't have any details.

4 CHAIRPERSON HILL: Got it. Okay.

5 Ms. Nagelhout, do you remember when people need to let
6 us know who their witnesses are going to be?

7 MS. NAGELHOUT: No, I'll have to look it up.

8 CHAIRPERSON HILL: Okay. All right. Okay. Does
9 anybody have any -- we can deliberate on this after everyone's
10 gone.

11 Does anybody have any questions for the -- well, first
12 of all, Ms. Moldenhauer, do you have anything you'd like to add at
13 the end?

14 MS. MOLDENHAUER: Well, so if she's being entered in as
15 an expert in real estate, as a Realtor, as -- that is one thing.
16 But my understanding was that she was being entered in as an
17 appraiser, and someone that could provide value as to -- and she's
18 not an appraiser. So I think that, again, that was my question,
19 as to, you know, what exactly is she being entered into evidence
20 as?

21 If she does get qualified, we would then, obviously want
22 the ability to bring in our own expert for rebuttal, and -- sorry,
23 a collateral or side question is, the submission for party status
24 identified that Mr. Hall is being represented by counsel, by Ms.
25 Oxford, yet she's not here, so I'm not sure who I should be

1 serving, or whether Mr. Hall is actually being represented by
2 counsel or not.

3 CHAIRPERSON HILL: Okay. So you said a couple of things
4 there. But -- okay. I can process all that. But, like, did you
5 have anything to add about your motion to strike?

6 MS. MOLDENHAUER: So I have two things. One, in regards
7 to the expert, I believe that she is a real estate agent, and not
8 a qualified expert in appraisals.

9 And two, the thing I didn't mention earlier, and I
10 apologize, she also lives on this square, and has issued a letter
11 of opposition herself. She lives a couple of doors down from Mr.
12 Hall, and I believe that she'd be a biased individual and could
13 not provide third-party testimony as an expert witness.

14 CHAIRPERSON HILL: Okay. Does anybody got -- okay.
15 Does anybody got any more questions for anybody before we talk
16 about this?

17 Okay. All right, Mr. Hall, we will -- oh, wait. It was
18 a postpone. Right. So we'll see you guys on December 8th.

19 Mr. Moy, what did I say?

20 MR. MOY: Yeah, you said December 8th.

21 CHAIRPERSON HILL: Okay. All right.

22 Mr. Hall, can you hear me?

23 MR. HALL: Yes.

24 CHAIRPERSON HILL: So just go ahead and watch, if you
25 want, about the motion to strike issues. And, you know, I would

1 refer you, again, as you're kind of going through this, if you do
2 get counsel, for Ms. Ferster or whomever, that, you know, you make
3 sure that everyone is being served properly, including the
4 applicant and the applicant's attorneys.

5 And then also, I would refer you -- also I would refer
6 you and your counsel to the Office of Planning's report, in order
7 to clarify what we are actually looking at, so that you're not
8 bothering -- wasting your time in areas that are not germane to
9 our issues. Okay?

10 MR. HALL: Yes.

11 CHAIRPERSON HILL: Okay. Great. All right. All right,
12 I'm going to let you guys go, then. Thank you very much for
13 coming. See you. Bye-bye.

14 MS. MOLDENHAUER: Thank you. Bye.

15 CHAIRPERSON HILL: Okay. I'm going to let somebody else
16 talk, because I'm getting tired. So I'll let Vice Chair John talk
17 a little.

18 So Vice Chair John, what do you think about the expert
19 status -- or, I'm sorry, the motion -- we've already postponed.
20 So now the motion to strike about the expert testimony, and the
21 attorney.

22 VICE CHAIR JOHN: Mr. Chairman, I would defer those
23 decisions until the hearing, because typically, the Board can
24 decide whether the testimony is relevant or not. Those would be
25 my two cents.

1 CHAIRPERSON HILL: Okay. All right. Does everybody
2 else want to do that? And if so, I'll go ahead and just go -- I
3 see everybody nodding their head yes.

4 Chairman Hood, you aren't even going to be around, so --
5 you know. Right? You can just pass this off to a colleague.

6 All right. So we're going to wait and see. I guess I'm
7 going to give my impression, just so at least the people that are
8 listening to kind of know where I stand. The expert witness stuff
9 that we do tends to be pretty, like, open. Right. We don't get
10 -- we've been pretty good about being able to, as a Board,
11 understand what is expert testimony and how those people are
12 giving expert testimony.

13 So therefore, what I'm saying is that if there's a
14 Realtor, if the Realtor starts to talk about something that we
15 don't think is accurate, then obviously, the applicant could
16 cross-examine that person, and then we could determine on our own
17 what we think. Right? So that's my thought about that.

18 The attorneys, I mean, they have the opportunity to hire
19 an attorney. And so I do think they, the applicant, needs to know
20 who that is. And then the germane issues, again, I referred the
21 person to the Office of Planning's report, in hopes to clarify
22 what we actually are going to be looking at when the testimony
23 takes place.

24 So that all being the case, I guess we can determine --
25 and I'm looking to, again, Ms. Nagelhout, just to remind me that

1 the motion to strike is still on the table, and we'll leave all
2 that for when we come back on December 8th.

3 All in agreement, say "aye," nod, thumbs-up.

4 Okay. All right. I think we should just do thumbs-up.
5 That's what we should -- we used to be able to say "aye." All
6 opposed? "Nay." Done. Okay. All right. So that's that.

7 So Mr. Moy, we're back to 12/8. So now actually, I am
8 not on the next one. So do you all want to take a break before
9 you do the next one? Or --

10 VICE CHAIR JOHN: Yes.

11 CHAIRPERSON HILL: Okay. You all are nodding. Okay.
12 So you all take a break. Ms. John, how long do you need?

13 VICE CHAIR JOHN: Five minutes or thereabouts.

14 CHAIRPERSON HILL: Okay. All right. I'll see you guys
15 when you're done.

16 VICE CHAIR JOHN: Thank you.

17 CHAIRPERSON HILL: Thank you. Bye-bye.

18 (Whereupon, the above-entitled matter went off the
19 record and then resumed at 3:42 p.m.)

20 MR. MOY: The Board is back in session after a very
21 brief -- after a very brief recess. The time is now at or about
22 3:42 p.m.

23 And the next case before the Board is Application Number
24 20449 of PD 236 Properties, LLC. This application is amended for
25 special exceptions from the rear yard requirements, Subtitle E,

1 Section 306.1; lot occupancy requirements, Subtitle E, Section
2 304.1; and there's area variance from the lot occupancy
3 requirements, so Subtitle E, Section 304.1. This goes to the rear
4 deck addition only.

5 This would partially raze the existing attached
6 principal dwelling unit to -- and to construct a third-story
7 addition with both roof deck and rear deck additions, as well as a
8 cellar, carport below the rear deck addition, in the RF-1 zone,
9 property located at 1173 3rd Street Northeast, Square 773, Lot
10 274. This is continued from the Board's hearing from July 28th,
11 2021. And I believe -- yeah, that's it from me, Madam Vice Chair.

12 VICE CHAIR JOHN: Thank you, Mr. Moy. Mr. Young, can
13 you let the parties in? I see Mr. DeBear, Mr. Eckenwiler. Is the
14 ANC here?

15 (No response.)

16 VICE CHAIR JOHN: So Mr. DeBear, would you go ahead and
17 introduce yourself for the record, please?

18 MR. DEBEAR: Thank you, Vice Chair John. My name's Eric
19 DeBear, land use counsel from Cozen O'Connor, on behalf of the
20 applicant, PD 236 Properties.

21 VICE CHAIR JOHN: Thank you. I see that you have some
22 new filings in the record. Can you tell us what you're seeking?

23 MR. DEBEAR: Yes. So we do have a PowerPoint, as well,
24 Chair John, and I do want to make sure I introduce my client, the
25 property owner and applicant, as well as the architect -- the two

1 project architects, one of which we'll be asking for expert
2 status.

3 If Mr. Young could pull up our PowerPoint? We do have a
4 PowerPoint we'd like to walk through, because there were issues
5 the Board asked about last time, and there's been some updates.

6 VICE CHAIR JOHN: Okay. Thank you. Before we get to
7 the PowerPoint, Mr. Young, please go ahead and load the
8 PowerPoint, because I think we all would like to see what's in it.
9 So I looked at the resume of the experts. It seems you're seeking
10 two expert witnesses. A Ms. Trigo -- forgive me if the
11 pronunciation is wrong -- and Ms. Crespo?

12 MR. DEBEAR: So we did submit resumes for both Ms. Trigo
13 and Ms. Crespo. However, Ms. Trigo is a licensed architect. Ms.
14 Crespo, while on the design and architecture team, is not licensed
15 yet. So we are only moving for Ms. Trigo to be an expert in
16 architecture in this case. Ms. Crespo, if need be, can testify as
17 a fact witness, as someone who's worked extensively on the project
18 design.

19 VICE CHAIR JOHN: Okay. And they've both signed up to
20 testify?

21 MR. DEBEAR: Correct. I mean, I saw both of their names
22 in there. Everyone's on camera, it looks like, as well as Mr.
23 Nguyen, who can say hello to the Board. He's the applicant.

24 VICE CHAIR JOHN: Okay. I'm not seeing everyone. Let
25 me see if I can do better.

1 MR. DEBEAR: I see everyone.

2 VICE CHAIR JOHN: Okay. So for some reason I'm not
3 seeing everyone, but I'll take your word for it.

4 MR. DEBEAR: Okay.

5 VICE CHAIR JOHN: So I looked at Ms. Trigo's resume, and
6 I have no objection to admitting her as an expert witness. Unless
7 any of my Board members have an issue, I'll go ahead -- raise your
8 hand -- and I'll go ahead and accept her.

9 Okay. So we would allow Ms. Trigo in as an expert. So
10 let's go ahead and --

11 MR. DEBEAR: Thank you.

12 VICE CHAIR JOHN: -- and hear about what changed since
13 you were last here.

14 MR. DEBEAR: Yes. And if Mr. Young could just load the
15 PowerPoints? Thank you. Mr. Young, you can flip through to the
16 third slide, since we already went through the preliminary matter
17 of the expert witness.

18 Just to provide the Board a brief summary and an update
19 before turning it over to Mr. Nguyen, this is a proposed single-
20 family home on a small lot in the NoMa Union Market neighborhood
21 on 3rd Street Northeast, between L and M.

22 The applicant is seeking special exception relief for
23 lot occupancy and rear yard, as well as bifurcated request for
24 variance relief for a deck for the home. The Office of Planning
25 has submitted a report in support of the application, and the ANC

1 is currently in opposition. Next slide, please.

2 Since the Board saw this case on July 28th, there have
3 been rather significant updates. In particular, and something
4 that Ms. Trigo will walk through, is the applicant has added a
5 5-foot setback on the third story of this attached rowhome. In
6 addition, the applicant has also reduced the rear deck by almost
7 50 percent.

8 Other matters that the Board asked for, that we will be
9 walking through today, include renderings of the project from 3rd
10 Street, to establish the character, scale, and pattern and the
11 consistency with that; and then expanded shadow studies. Shadow
12 studies that were previously submitted, but these will be
13 expanded, as the Board had requested.

14 Additionally, I did want to highlight that there are 11
15 new letters of support in the case record, for a total of 16, and
16 there are no letters in opposition from individuals. There is a
17 letter in opposition from months ago from Capitol Restoration
18 Society, but no individuals, especially on this block, have
19 opposed this project in the record.

20 We did go to the ANC with the revised design at the end
21 of August, and then the full ANC in September, and unfortunately,
22 they did not change their opinion on the project. We still
23 believe, as we'll walk through today, that we've met the standard,
24 but I did want to let the Board know that we feel as though we've
25 made a rather significant compromise, and the applicant can speak

1 a little about that. But unfortunately, the ANC is still opposed,
2 despite no individuals on the block being in opposition. Next
3 slide.

4 And now I'll turn it over to the applicant, Mr. Nguyen,
5 to introduce himself and talk to the Board a little about this
6 case.

7 VICE CHAIR JOHN: Okay. Go ahead, Mr. Nguyen.

8 MR. NGUYEN: Sorry about that. I was trying to unmute
9 myself.

10 Hello, Board members. I'm going to read a statement. I
11 would like to introduce myself. My name is Phi Nguyen. I am the
12 owner of PD 236 Properties, LLC. I'm a local real estate
13 developer, and I buy properties at foreclosure auctions under LLCs
14 for a multitude of business reasons.

15 However, I am making 1173 3rd Street Northeast my
16 private residence, and kept the LLC as owner for tax and legal
17 benefits. I see a lot of properties, but I really love the
18 location of this one, and decided that I would build my dream home
19 here.

20 I understand that I am asking this Board for relief, but
21 given the extremely small and narrow lot, I believe that I met --
22 sorry, that I meet the burden of relief standards, due to
23 practical difficulties it imposes on homeowners in our modern
24 times.

25 The focus on the Board's discussion at the last hearing

1 has almost shifted entirely to character, scale and pattern of the
2 design. I personally love the modern design, and I don't think
3 the aesthetic should be under attack when, by right, I could build
4 the same design if I did not seek relief for lot occupancy.

5 The ANC's main focus on the design has caused great
6 stress to me, as I have tried to compromise the design to meet
7 their comments of initial opposition. The 5-foot setback on the
8 third story is very significant, because losing 5 by 14 feet of
9 livable space creates design challenges for an already small and
10 narrow home. It means a much smaller master bedroom, where
11 there's only space for the bed, and not much else.

12 Also, the drastic reduction of the deck comes at great
13 sadness for me, as I am an avid cook, and need outdoor space to
14 grill and smoke meats. The deck is critical to me, because it's
15 located right by the kitchen, and you can imagine the difficulty
16 of transferring food up two stories and then a roof access.

17 The design changes I agree to are not trivial, as they
18 affect how I plan to live in my own home. With that, despite the
19 compromise, the ANC still opposes the project, on the main
20 justification of character, scale, and pattern.

21 I would like to explain the extent of my community
22 outreach. As you can see on the slide, I have spoken or attempted
23 to speak with every household on my block of 3rd Street. Overall,
24 I got 15 letters of support -- or 16 letters of support and one
25 additional -- and one additional support letter from a house on

1 Abbey Place.

2 I spoke with an additional 12 households that either
3 declined to participate or otherwise had no objection to my plans.
4 For my direct neighbors, I have made numerous attempts to reach
5 out to the neighbor to the north, but she is a single working
6 mother, and unfortunately, I have not been able to reach her. I
7 have personally spoken with the neighbor to the south, but they
8 told me that they wish to remain neutral and not participate in
9 any way. While I do not have official support from them, they
10 have not opposed the project, which -- I showed them the plans.

11 Numerous neighbors with whom I spoke -- sorry. Numerous
12 neighbors with whom I spoke with commented on the freshness of the
13 modern design being a great addition to the block, and injecting
14 much-needed variety from the drabness of the old, plain facade.
15 They had also commented on the creative and efficient use of
16 space, both indoors and especially outdoors, for our tiny lot.
17 Overall, this process has afforded me the opportunity to meet my
18 neighbors and share my plans with them. Mr. Young, can you --
19 next slide, please?

20 I would also like to walk through some photographs I
21 took of the neighborhood to provide the Board with more context of
22 our lot. As you can see, the neighbor right outside my front
23 porch is drastically changing, and multiple construction projects
24 of very modern designs are near completion, just four houses down
25 from me. Across from my front steps is the modernly designed

1 Uline Arena.

2 So I am very confused as to what defines character,
3 scale, and pattern. I am developing my own personal home for the
4 present and future, with clear respect to the past homes and
5 scale. But I don't believe the ANC reflects the community and
6 block.

7 Lastly, I plan on having a family in the near future,
8 and have left the third floor open to accommodate two bedrooms.
9 If we adhere to the zoning regulations, I would only have 485
10 square feet to build two bedrooms, and a full bath, and only
11 outdoor space available would be the rooftop.

12 The limited lot size compared to a normal RF-1, which is
13 1,800 square feet, precludes by right -- oh, sorry -- precludes by
14 right project. But I believe I have met the burden and have spent
15 the time and resources to present a very thoughtful and innovative
16 design that meets the modern standard of our time for a family
17 dwelling.

18 Thank you for your time and consideration.

19 MR. DEBEAR: Thank you, Mr. Nguyen. Mr. Young, if you
20 can just flip to the next slide? I just -- this was meant to be
21 going as Mr. Nguyen spoke. But I just wanted to provide the Board
22 kind of a supplement to what Mr. Nguyen was saying, and then I'll
23 turn it over to Ms. Trigo.

24 As you can see, these photos are taken from the front
25 yard of Mr. Nguyen's home, and we just wanted to make the context

1 clear. These, you know, new buildings are within, you know, feet
2 of Mr. Nguyen's property. Next slide, please. And this is the
3 Uline Arena he referenced across the street. Next slide, please.

4 And this is just some alley context. So on the lefthand
5 side, you'll see two three-story additions right across the alley,
6 and then on the righthand side, you'll just see the rear of Mr.
7 Nguyen's property in the middle, the light pink siding. Next
8 slide, please.

9 And now I'll turn it over to Ms. Trigo.

10 MS. TRIGO: Good afternoon, everyone. My name is Sara
11 Trigo. I'm from CT Studio. I'm the project architect. And
12 joining me is Zahira Crespo, who is the architectural designer and
13 who is (audio interference) with me in the design.

14 So I'll give you a little bit of a background of the
15 project, and what we've done to satisfy ANC's and the BZA's
16 design. This project consists of the demolition of a non-historic
17 two-story single-family home, and the construction of a single-
18 family home with three stories and a cellar level. Many of the --

19 BOARD MEMBER SMITH: Ms. Trigo?

20 MS. TRIGO: Yes.

21 BOARD MEMBER SMITH: Can I interrupt you really quick?
22 You're kind of muffled. Could you readjust your microphone?

23 MS. TRIGO: Okay. Is this better?

24 BOARD MEMBER SMITH: Yes, that's better.

25 MS. TRIGO: I'm so sorry about that. So I was saying

1 that -- and please stop me if I -- if it breaks up or something.

2 I was just talking about the challenge of meeting the
3 basic programmatic needs for a modern-day family home in such a
4 small lot. And the challenge has been due to the size and
5 occupancy restrictions of the lot. We believe that our design now
6 successfully incorporates the programmatic needs while providing
7 an overall design that is compatible with the character, scale,
8 and pattern of the neighborhood.

9 In this slide, we are presenting the revised site plan
10 with an overall reduced lot occupancy. The proposed main building
11 occupancy is 69.9 percent. The deck is 6.7 percent, which gives a
12 total proposed occupancy of 76.6 percent. The main building has a
13 very small footprint of 556 square feet, which is an area seen in
14 studio apartments or a junior one-bedroom.

15 I want to highlight some design decisions that have been
16 made to harmonize our design with the neighboring properties.
17 Front and back facades.

18 The front facade, first and second floor, are set back
19 by one foot from the property line. This condition is in the
20 original proposal, but I wanted to know that it creates an
21 alignment with the neighboring facades, whereas a few homes on
22 this block with gable roofs are not set back. Maintaining the
23 overall continuity of the facade frontage (indiscernible) is a
24 characteristic that is expressed in most homes between L and M
25 Streets.

1 For such a small lot, losing a foot is of significance.
2 But our intent is to balance the programmatic needs while creating
3 a harmonious contextual architectural design. The third floor has
4 been revised to introduce a 5-foot setback, which strengthens the
5 two-story reading within the block, while also creating a gesture
6 that is consistent with the other third-floor additions in the
7 neighborhood property. We made these changes in response to the
8 Board and ANC comments, to better capture the character, scale,
9 and pattern of the neighborhood.

10 Losing 73 square feet of occupiable master bedroom space
11 has been a significant compromise. But we believe it supports a
12 stronger contextual relationship by aligning the proposed third
13 floor with the southern neighbor's addition. We will be showing
14 some illustrations to show this in more detail.

15 In the rear yard, they intended to create harmony by
16 aligning the new facade wall with that of the existing neighbor's
17 facade to the north. Also, I want to point out that we have
18 significantly reduced the original proposed deck area -- this is
19 at the rear of the lot -- the deck area, by almost half, to
20 basically, reduce the lot occupancy and the extent of the variance
21 asked.

22 The small deck is very important for our client. The
23 first floor has room for a compact living room, kitchen, and a
24 small breakfast table. The building's footprint didn't have
25 enough room for us to accommodate a formal dining area. This

1 proposed deck would at least provide a small additional other
2 sitting area adjacent to the kitchen. Having this deck would
3 significantly improve the quality of life of our client, and for
4 that reason, we respectfully ask that it be considered. Next
5 slide, please.

6 As previously discussed, here on the left, we can see
7 how the third-floor massing has been updated with the setback, to
8 strengthen the two-story reading of the first two floors.
9 Additionally, the setback allows for an alignment between the
10 proposed third floor and that of the neighboring property. Next
11 slide, please.

12 Here on the left are the changes to the third-floor
13 front facade and the rear deck, shown in sections, namely the 50
14 percent reduction in deck area and the five-foot setback of the
15 front third floor. Notice the significant change of the deck. So
16 the new proposed one almost looks as small as a landing to the
17 stair, even though that's not its main purpose. But it's really,
18 really small. Next slide, please.

19 In this rendering, you can see the proposed design in
20 its immediate context. Our design makes a strong reference to the
21 architectural vocabularies already present in this neighborhood,
22 both new and old. And it is not introducing any new element that
23 adversely affects or detracts from the community.

24 The proposed facade makes a direct reference to the new
25 modern residential and commercial development in the immediate

1 vicinity, at the corner, and directly in front, while following
2 the scale and pattern of the residential rowhouse language.

3 The facade breaks down the primary plane into a series
4 of proportioned frames infilled with glazing, that allows for
5 ample natural light to permeate the narrow interior space. This
6 glass plane has been articulated and broken thoughtfully and
7 intentionally in a way that establishes continuity with the datums
8 and geometric references already present in the street's combined
9 facade frontage.

10 The existing building has siding. So we have proposed
11 the third-floor material, siding panels, to make a direct
12 reference to the existing building's materiality, as well as the
13 neighbor's third-story addition. This maintains a sense of scale
14 that is consistent in the block. The proposed front windows at
15 the third floor are about the same size and proportion to those of
16 the neighboring rowhouses. Next slide.

17 On this slide, we provided key architectural elements to
18 illustrate how the proposed design is in harmony with the
19 character, scale, and pattern of 3rd Street. The wide red lines
20 shows the roof element that is characteristic in the two-story
21 rowhomes. Notice how the proposed second-floor roof elements
22 aligns with the neighboring properties' roofs, and maintains
23 continuity of the strong two-story reading.

24 The blue lines highlight the third-floor addition on the
25 neighboring structure, as well as the proposed design, which are

1 various heights, but have similar scale.

2 The yellow line illustrates the front -- the horizontal
3 facade articulation created by the windowsill rollup brick
4 coursing on the adjacent rowhouses, which serve as a linear datum.
5 Our design recognizes and respects these elements by having a
6 horizontal mullion at this location, which keeps the geometric
7 reference and pattern-defining elements of the block.

8 The white vertical line that you see at the bottom shows
9 a repeating pattern of lot width, which is not being offered by
10 the proposed design. Projects that break repetitive patterns on
11 party walls do affect the scale and pattern of neighborhoods. But
12 that is not the case for our proposed design.

13 The proposed building height is within the allowed
14 height for zoning, and has a scale that is similar to the
15 immediate context. There is something -- there is something that
16 I would like to correct, and to be included in the record. The
17 35-foot height reference line that's the red dashed line on the
18 top actually, like, shifted up when we had, like, the slide in.
19 So I just want to apologize for that mistake and say that the
20 correct reference line for that would be about two or three -- two
21 feet lower, within the parapet height. So again, I apologize for
22 that mistake. Next slide, please.

23 So here, the small green rectangles show how the
24 proposed third-floor front windows are similar in size and
25 proportion to those of the adjacent property. This design

1 component speaks to the block's scale and pattern. The first- and
2 second-floor glazing has a subframe element that breaks down the
3 facade. The proportion of the subframe has been intentionally
4 made in a way that is consistent with the proportion of the
5 smaller front windows, as illustrated in green. Next slide,
6 please.

7 Here we see the proposed design in perspective. To
8 summarize, the proposed design vocabulary balances the immediate
9 context of the property, where the modern design intermingles with
10 the original urban fabric of the neighborhood. The tone and
11 character of the proposed structure is in line with the community
12 zeitgeist, or spirit of the time. The structure is modern in its
13 modest approach to the surrounding context, and takes direct clues
14 from it. The proposed design has been done in a thoughtful way,
15 and is respectful and harmonious with the neighborhood's
16 character, scale, and pattern. Next.

17 So here we have an additional upgraded rendering with
18 some linear datum references. Next, please. So here, we see
19 another perspective from 3rd Street down to where the Uline Arena
20 entrance would be. Next, please.

21 Finally, I want to briefly summarize the findings of our
22 updated shadow study, which are in case records at Exhibit 71C.
23 As requested by the Board at the last hearing, we have provided
24 more detailed shadow studies that shows the existing conditions
25 compared to what is permitted matter of right, and the applicant's

1 -- sorry -- proposal.

2 We have indicated in red where the proposal would exceed
3 the shadow cast by matter of right structure, and those increases
4 are very minimal throughout the year and in different times of the
5 day. Most of the new shadows would fall on nearby public space.

6 We believe the updated shadow study reiterates the
7 limited impact of the proposal in the light and air for the
8 neighboring properties. If the Board needs me to further walk
9 through the studies, I'm happy to do so. Next slide, please.

10 MR. DEBEAR: Thank you, Sara.

11 MS. TRIGO: Thank you all.

12 MR. DEBEAR: So for the Board, I will just briefly
13 summarize the case again, and the narrow issues that the Board had
14 questions on. Again, we're seeking special exception relief for
15 lot occupancy, which is 69.9 percent for the main home; and the
16 rear yard, it would be 15 and a half feet from the main home, or
17 ten and a half feet with the deck. Next slide, please.

18 As stated by both Mr. Nguyen and Ms. Trigo, we believe
19 that this proposal of a three-story residential home would not be
20 out of line with the character, scale, and pattern on this street

21 The reasons, in summary, are that they are maintaining
22 the two-story residential rowhome form, as Ms. Trigo spoke about.
23 The 5-foot setback that has now been introduced as a compromise is
24 in harmony with third-story additions on abutting properties on
25 the street, including one that we spoke about in the original

1 hearing, that the Board approved, which I believe is four lots
2 down at 1165 3rd Street. We've seen Ms. Trigo walk through, in
3 her expert testimony, the visual fluidity and many of the factors
4 that make this proposal consistent with the character, scale, and
5 pattern.

6 Again, I would like to reiterate that there are 15
7 letters of support on this block, a 16th right across the alley on
8 Abbey Place, and there are no letters or opposition from neighbors
9 living on this block of 3rd Street. So this is a project that
10 overwhelmingly has been supported by neighbors on this block who
11 are more than entitled to have an opinion on the character, scale,
12 and pattern, and what they're seeing being proposed for Mr.
13 Nguyen's lot.

14 And finally, I did just want to reiterate, while we
15 believe we've designed a project that is consistent with the
16 rowhomes, we do also, again, urge the Board to consider the
17 slightly broader context, which is still on 3rd Street. And I
18 think that the contextual images we've included have shown that
19 the new structures, the new large mixed-use structures are part of
20 the fabric of 3rd Street. Next slide, please.

21 So this dispels with the notion that these are not
22 really part of this context. What you see on the lefthand side
23 and the bottom righthand side is images that are taken from the
24 sidewalk in front of Mr. Nguyen's house, which is actually the
25 fourth lot in, although the third home you can see from the left.

1 With the new mixed-use building being constructed, that
2 absolutely reads as part of the character, scale, and pattern of
3 this neighborhood. And that's not to say this ultimately changes
4 the whole, you know, the whole row of rowhomes. What it means is
5 that this design has been implemented to not only call back to the
6 rowhomes, but also to incorporate the new and modern designs that
7 are across the street and directly next to this home. Next slide,
8 please.

9 These are just more contextual images. Again, just
10 across, catty-corner from the corner of 3rd and M Street is
11 another new development that's going up, and again, very much a
12 part of, as you are walking down 3rd Street and seeing the
13 frontage of this home, very much a part of the fabric and the
14 character, scale, and pattern of this neighborhood. Next slide,
15 please.

16 And finally, I did just want to touch on the legal
17 standard for the variance relief for the rear deck. As the Board
18 knows, we are seeking a bifurcated application for the main home
19 and the rear deck. The rear deck has been significantly reduced
20 since the Board last saw this, really, to a deck that is about a
21 small a useable space as you can have. Currently, the deck's only
22 54 square feet.

23 So while the ask is 6.7 percent over the special
24 exception standard for lot occupancy, the relative size of the
25 deck is very, very small. Again, the small lot is what creates

1 this disproportionate need for the relief that Mr. Nguyen
2 testified about already. Again, this is an 809-square-foot lot
3 that really creates difficulties in establishing a modern home
4 that is livable.

5 And Mr. Nguyen has already had to make concessions on
6 the interior design, in terms of being able to have useable space
7 for his living purposes. So this is a very modest deck, and the
8 difficulties of meeting the lot occupancy directly result from
9 that very small lot that you just don't see for rowhome lots much
10 around the city.

11 Finally, I did want to point out something that Mr.
12 Nguyen alluded to, which is really the practical difficulty
13 associated with the one required parking space. As you can see
14 from this section image, which is taken from an image Ms. Trigo
15 presented, to get the parking space and the proper clearance for
16 the parking space, the deck has to be a little bit above where the
17 landing is for the stairs and access the main home.

18 So if not for the parking space and the required parking
19 space, at least some portion of that deck would be incorporated as
20 a landing, which would then be excluded under the zoning
21 regulations from lot occupancy calculations. So we do believe
22 these factors contribute to a difficulty in meeting the lot
23 occupancy standard, and we'd ask the Board to consider the relief
24 in this reduced request. Next slide, please.

25 Well, that concludes our presentation. I think Mr.

1 Young -- I'm not sure if he can move to the final slide. It's
2 just -- oh. We've lost our presentation. But anyway, that
3 concludes our presentation, and we're happy to answer any Board
4 questions.

5 VICE CHAIR JOHN: Thank you, Mr. DeBear.

6 Mr. Young, can you put back up Slide 16?

7 And while he's doing that, Mr. DeBear, do you have any
8 photographs of the rest of 3rd Street that you can show to the
9 Board? You know, if you look at Google, and you, you know, point
10 your arrow all long 3rd Street, there's a long row of houses on
11 that same side, if I'm not mistaken. Do you have any photographs
12 of those houses?

13 You're only showing four immediate houses in your
14 context. But the context is the street, because the language of
15 the regulation says -- let me see if I can find it. "The project
16 does not visually intrude on the character, scale, and pattern of
17 houses along the street and alley."

18 You've been talking -- and your architect has also been
19 -- has also been talking about the neighborhood. And the context
20 you've provided is limited to five houses. So it's very difficult
21 for me, at any rate, to appreciate the context.

22 MR. DEBEAR: I mean, I think that the image in front of
23 you, Chair John, certainly shows the context on just this row of
24 rowhomes on 3rd Street. I don't know if I'm able to share my
25 screen. I don't know that we have additional images in the

1 record. But again, the street includes what can be seen in front
2 of the house, and so the new buildings on 3rd Street also count.

3 Now, we're happy to show additional images of this row
4 of rowhomes. Let me see -- I don't know if Mr. Young can access
5 the case record. The Board had just requested renderings along
6 3rd Street, which we provided, I believe, in response to Mr.
7 Blake's comments from the last hearing. So I'm trying to look in
8 the record right now to see if we have images anywhere else.
9 Unfortunately, we don't.

10 I'm not sure -- you know, I think we've met what the
11 Board has requested, Chair John, if I'm not mistaken. I think the
12 pattern along this block kind of repeats itself. There are other
13 third-floor additions that Mr. Nguyen and Ms. Trigo can talk
14 about. I don't have images of those, but I know that they can
15 testify from both a fact-witness perspective and an expert-witness
16 perspective. So I don't know if that would be sufficient, for
17 them to talk about that.

18 VICE CHAIR JOHN: Sure. That would be fine, because, as
19 far as I understand, this pattern that's represented by the red
20 house and the green house is repeated all along 3rd Street. I
21 understand what you're saying about the front -- the other side of
22 the street. But then, the street really is the entire 3rd Street.

23 MR. DEBEAR: And we did show images -- if you look at
24 Slide -- again, just to be clear, Slide, say, 22 and 23 are of 3rd
25 Street.

1 VICE CHAIR JOHN: Is it the same side of 3rd Street?

2 MR. DEBEAR: Yes.

3 VICE CHAIR JOHN: Okay. Maybe --

4 MR. DEBEAR: If you go to Slide 22, Mr. Young?

5 This is a picture taken in front of Mr. Nguyen's house.

6 So Mr. Nguyen's house is, from the left, the -- you see the three
7 rowhomes on the left. He's the third one in. So this large
8 development is 150 feet on 3rd Street from his house.

9 So you can see a zoomed-out image. So looking across
10 3rd Street at Mr. Nguyen's house, what you're looking at in the
11 bottom righthand corner -- this development is just hovering over,
12 really, his home on 3rd Street. So it's on the same side of the
13 street, on the same street.

14 VICE CHAIR JOHN: Mr. DeBear, I think we're talking past
15 each other, so I'm going to try one more time, and maybe I'll go
16 to the rest of the Board. You walk to the right -- the picture
17 facing me, you walk to the right, or to my right, as I face this
18 picture. Are there other rowhouse along -- rowhouses along 3rd
19 Street?

20 MR. DEBEAR: Correct.

21 Ms. Trigo, do you want to just testify on that from an
22 architectural perspective?

23 MS. TRIGO: Yes. Absolutely. So definitely, this is a
24 -- 3rd Street is pretty long between L and M Streets. And it's
25 mostly composed of the two-story rowhomes, of which some of them

1 have the third-floor addition already. It happened sporadically,
2 through that extent of the street. I can't say right now how
3 often these third-floor additions have been done, or, you know,
4 what will happen in the future. But it is something that is part
5 of the experience, once you go to that street.

6 I also wanted to say something that's really important.
7 When you walk this street virtually, the Google Earth, it's pretty
8 deceiving in the sense that some time has passed by, and what you
9 see in Google Earth is not the same conditions. So this is a
10 rapidly changing neighborhood. And so for that reason, it's kind
11 of deceiving.

12 I do have some photos in my phone that -- I don't mind
13 putting my phone against the screen, if that's okay. Sorry,
14 against the camera.

15 VICE CHAIR JOHN: No, it wouldn't be in the record. You
16 can --

17 MS. TRIGO: Oh, okay.

18 VICE CHAIR JOHN: -- have someone upload them for you.
19 But I'll go the Board now. But I'm assuming, before I go to the
20 Board, that you've walked the street, in making that decision, and
21 the standard is not the neighborhood. It is the street. And you
22 spent a lot of time talking about the buildings, you know, on the
23 other side of the street, but no time spent talking about the
24 houses on the very same side of the street, which have a
25 distinctive pattern. So if there's something you want to put in

1 the record to show that, that's great.

2 So I will go to the -- did you want to respond? Or can
3 I just go to the Board directly?

4 MR. DEBEAR: I just want to -- I think Ms. Trigo's
5 testimony, which was ten minutes long, really went to the -- how
6 this is consistent with that character, scale, and pattern of the
7 rowhomes. But in addition, we wanted to highlight for the Board
8 that this is not a static rowhome neighborhood in a historic
9 district, it is a rapidly changing neighborhood; that, on this
10 street, there are different building typologies and massing.

11 VICE CHAIR JOHN: Okay. But that's not in the record.

12 So I'll go to the Board. Does anyone from the Board
13 have any questions?

14 BOARD MEMBER SMITH: I'll piggyback on some of the
15 questions that you had, Ms. John. Yes, so -- yes, I heard Ms.
16 Trigo's presentation, and yes, it was about ten minutes.

17 But you know, to speak to what Ms. John is saying, that
18 the examples in the record are for, you know, a mixed-use building
19 that's on the other side of M Street, which is zoned completely
20 differently from the properties that we're looking at within these
21 two blocks. So it would be great to have some additional, you
22 know, context of what 3rd Street looks like.

23 So I understand that this is a rapidly changing block.
24 But in, you know, the rapid change, or additional third-floor
25 additions put on these buildings, I think it is important to

1 recognize the character along the street of some of these
2 rowhomes, where you don't want to see such a drastic change.

3 So my question to you is, what is the ceiling height of
4 that third floor of the building in -- that you're presenting?
5 What is the ceiling height?

6 MR. DEBEAR: Ms. Trigo?

7 MS. TRIGO: The total building height is 33'4". So it's
8 under the allowable height. The maximum for the RF-1 is 35 feet.
9 I believe the ceiling height would be 8 to 8'6". Right now, this
10 is within the interior of the space, if that's what you're asking.

11 BOARD MEMBER SMITH: Okay. It looks like it's -- yeah,
12 eight -- a little bit -- close to nine feet. Considering what we,
13 you know, just talked about, regarding the pattern of buildings
14 along the block and height, was there any consideration to
15 lowering the ceiling height in the third floor, so that the total
16 height of this building would be a little bit more in keeping with
17 the character that we see along that block?

18 MS. TRIGO: Yes. So we've given significant thought to
19 that. It might be that we will have to do the internal structure
20 with steel, and the steel members will take some depth of the, you
21 know, of the roof, so the ceilings might have to be actually
22 lowered to the steel and the infrastructure within the plans.

23 So we have set forth our, you know, the -- something
24 that we think is realistic, but it's, like, the worst case. If we
25 do have the opportunity to lower it, and still accommodate the

1 basic infrastructure for the air, for, you know, the roof drains
2 and everything, we can do so in a future phase.

3 MR. DEBEAR: So can I just answer a couple of Board
4 Member Smith's comments? On the height, I mean, I think it's
5 important to the Board to look at the fact that, yes, we have
6 placed ourself under the special exception standard.

7 But the special exception request is for lot occupancy,
8 which -- you know, again, as Mr. Nguyen testified, he could build
9 a by-right structure with the same facade and actually not do a
10 setback. And again, I understand that we are where we are. We
11 have requested relief, and we have to meet the standard. But the
12 relief itself really has no connection to the front facade.

13 So I just wanted to clarify that, and the height, as
14 well. And that's why we see several rowhomes on this row, between
15 L and M, that have third-story additions, including the one
16 directly next to us.

17 The other just minor point I wanted to make -- you know,
18 Chair John has had questions about, oh, what is our standard? Our
19 standard is to look at 3rd Street. Well, the standard doesn't say
20 we can't look at properties in other zones. That's not what the
21 standard says.

22 The standard says, the character, scale, and pattern as
23 viewed from the street. And we have provided images in the record
24 that, as viewed from the street, we see not only a line of
25 rowhomes, which we have acknowledged and said how this design is

1 consistent with that character, scale, and pattern, but also the
2 new mixed-use development in this rapidly changing neighborhood
3 that, again, can be viewed from the street.

4 VICE CHAIR JOHN: Mr. DeBear, I'm not going to argue
5 that point with you. I was reading from the regulations when I
6 read it to you. It says, "Character, scale, and pattern of houses
7 along the street and alley."

8 But there was a question of whether -- I know I'm going
9 back, but it's something I meant to ask you initially. Do you
10 need to amend your self-cert? There was a note in my records. I
11 don't know if the changes you made required a changed --

12 MR. DEBEAR: I don't --

13 VICE CHAIR JOHN: -- cert.

14 MR. DEBEAR: I don't believe so. I mean, the relief has
15 not changed.

16 VICE CHAIR JOHN: Okay. Just to confirm.

17 MR. DEBEAR: Yes. Special exception relief for lot
18 occupancy and rear yard, and variance relief for lot occupancy.

19 VICE CHAIR JOHN: Okay. Does any other Board member
20 have questions?

21 Chairman Hood? Commissioner Hood?

22 CHAIRMAN HOOD: Yeah, thank you, Vice Chair. I want to
23 associate myself with your comments, and I keep hearing about this
24 rapidly changing neighborhood. This neighborhood's been changing
25 for 40 years. It's not rapidly changing. Yeah, it's a different

1 change now from roller derby to trash transfer stations over to
2 what we have now. So let's kind of dispel this "rapidly-
3 changing." And yeah, it's changed from those days, but it was
4 changing then, too.

5 So -- but I do align myself with the Vice Chair and
6 Board Member Smith. I think I would like to see a perspective.
7 And I understand what you're saying, too, Mr. DeBear. I would
8 like to see a perspective that encompasses that whole street.

9 I think for me, and even the Zoning Commission, when we
10 start looking at these things, it's about design, too. You know,
11 it has to be tasteful, the front part, looking at -- I need to see
12 all those views. Because to me, as I think Board Member Smith
13 mentioned, just because the envelope is there, you have the right
14 to do it, but sometimes design has a lot to do with it. So I
15 would hope you all would revisit it, and I want to align myself,
16 again, like I said, with Vice Chair John.

17 The other thing is, I believe that -- I hear about the
18 matter of right. You're right, Mr. DeBear. But you're here. So
19 you're here. So you now have opened up the door for all of us to
20 give input. If it was a matter of right, then you wouldn't be
21 here. There's something else you're trying to achieve.

22 Now, I know Mr. Nguyen has probably done a lot of
23 things. I've heard the changes. But I look at the slope of your
24 front -- some of those things can be done a little more
25 tastefully, that might get the ANCs consider -- they might -- even

1 some of the lift that we want, that I think I have. I'm not sure
2 about my other colleagues, but I do have a -- I think it's a heavy
3 lift.

4 Again, matter of right, what you're saying -- and like
5 you said, I mean, you know, and I'm telling you, you're here. So
6 you're here and now you're getting our input. And you've already
7 gotten the input from the ANC.

8 Madam Vice Chair, I really would like to hear, when we
9 get to there, I really want to see where the ANC -- I read the
10 letter, but I want to make sure I fully understand. Those are my
11 comments. Thank you, Vice Chair.

12 VICE CHAIR JOHN: Thank you.

13 Mr. Blake, do you have any questions?

14 BOARD MEMBER BLAKE: Vice Chair, I do, but I could
15 possibly wait until after we hear, if there are any, additional
16 comments that we would hear.

17 I will say this. I look at this context that they show
18 us, and I do remember the struggle that we had on 20333, as it was
19 a situation that was done and some illegal construction, et
20 cetera. And this is almost a way to kind of -- how do you fix
21 that to kind of get it back in line? And when you adapt some of
22 the lines that come off of that building to this one, it almost
23 suggests how you could transform a neighborhood with one slight
24 error.

25 So in that context, and the ANC does talk about this, if

1 | you look at the 34 rowhomes, is what they talked about, was the
2 | natural scape of that side of the street, that would be the
3 | natural context. And I would be curious to see how some of the
4 | other buildings look, as you go down that full 30 -- that full
5 | street on that side. Not the side with Uline, but the side that
6 | we're talking about.

7 | VICE CHAIR JOHN: So if there are no more questions, let
8 | me see if the ANC is here. And I don't see the ANC here. So Mr.
9 | --

10 | CHAIRMAN HOOD: Madam Vice Chair, I think they are. I
11 | don't know if they brought them up, but I think they are.

12 | VICE CHAIR JOHN: Mr. Young, is the ANC here? I was
13 | looking at the participants. Is the --

14 | CHAIRMAN HOOD: They might not be here.

15 | VICE CHAIR JOHN: Mr. Young?

16 | MR. YOUNG: Yes.

17 | VICE CHAIR JOHN: Yes. Is the ANC here?

18 | MR. YOUNG: I do not have anyone from ANC.

19 | CHAIRMAN HOOD: Mr. Young, I see Mr. Eckenwiler. Maybe
20 | he's gone, but he was -- I did see him, and I think he's one of
21 | the Commissioners. You know, I'll stand to be corrected, though.

22 | VICE CHAIR JOHN: So we discussed the special exception,
23 | and apart from the issues that I mentioned, I didn't have any
24 | questions. But Mr. DeBear, could you explain again why these --

25 | MR. DEBEAR: Sure.

1 VICE CHAIR JOHN: -- are exceptional conditions? And
2 before you answer, there are several rowhouses just like that one.
3 And so why do you think this particular rowhouse is exceptional?

4 BOARD MEMBER SMITH: Ms. John, really quickly, I see Mr.
5 Eckenwiler is on the line now.

6 VICE CHAIR JOHN: Oh, he's there? Okay. I'll go to Mr.
7 Eckenwiler after Mr. DeBear answers that last question, because I
8 didn't quite understand what the exceptional condition was,
9 because all the other rowhouses in that little area are the same
10 size.

11 MR. DEBEAR: Okay. I mean, Chair John, we've put forth
12 what our basis is. Again, we believe that this lot is uniquely
13 small for a rowhome lot in the District. This is not just about
14 the neighborhood. It's about, you know, how you build on, for
15 modern times -- I mean, this is a home that even with the extra
16 lot occupancy, is 546 square feet per level, and that's, again, as
17 Ms. Trigo testified, that the size of a studio apartment or a one-
18 bedroom.

19 So, you know, we do feel as though that is the
20 exceptional condition that results in a practical difficulty of
21 providing a very modest deck of, you know, slightly more than
22 50 square feet.

23 VICE CHAIR JOHN: Okay. Thanks.

24 So I'll go to Mr. Eckenwiler. Mr. Eckenwiler, can you
25 hear me? Hello? Mr. Eckenwiler?

1 COMMISSIONER ECKENWILER: Madam Chair, can you hear me?

2 VICE CHAIR JOHN: Yes, I can hear you now.

3 COMMISSIONER ECKENWILER: All right. Thank you.

4 VICE CHAIR JOHN: I don't know if you've been listening
5 in, but if you'd like to ask questions or make your presentation,
6 you may do either one.

7 COMMISSIONER ECKENWILER: I have no questions, and
8 honestly, Madam Chair, I had not intended to testify at all. So
9 let me make this very, very brief.

10 I've heard several questions from the Board members
11 about what the context is along the east side of 3rd Street. And
12 I would refer you to ANC 6E's original filing. That's Exhibit 33.
13 If you will look on Pages 2, 3, and 4 of that exhibit, there is a
14 series of Google Street View photographs showing that entire row
15 of 34 houses.

16 There are also some details for some of the, you know,
17 the recurring architectural, you know, features, you know,
18 vocabulary, elements in that exhibit. And so just to, you know
19 address that to, you know, what the Board was looking for in terms
20 of this common row of rowhouses built under a single permit.

21 Beyond that, I don't really have anything to say that's
22 not already in our supplemental letter in the record, which is
23 that the changes that have been offered by the applicant simply do
24 not go far enough.

25 And this suggestion that the floors are aligned is

1 actually not true. You know, there are some extracts in our
2 latest filing showing extracts from the architectural drawings,
3 depicting that.

4 And the variance relief is still completely unjustified.
5 I hear Mr. DeBear talking about how this is unique. We already
6 pointed out, in Exhibit 33, every single one of the lots in this
7 row has the same square footage. So the word "unique" just does
8 not enter into this conversation.

9 Is this a small lot? Yes. Frankly, this entire square
10 is typified by fairly small lots. Some of them are not as small
11 as 809 square feet, but every single one in this row has the same
12 lot area. And that alone should be fatal for, you know, the
13 variance request.

14 There is simply nothing unusual or exceptional in the
15 context about the lot area. The applicant bought a small house on
16 a small lot, and those are kind of immutable characteristics.
17 That's just the way it is. And you can't say that that's
18 different from any of the other 33.

19 I really have nothing more to add, and I'm happy to
20 answer any questions, if the Board has some.

21 VICE CHAIR JOHN: Thank you.

22 Does the Board have questions for Commissioner
23 Eckenwiler?

24 CHAIRMAN HOOD: I don't have a question, but I want to
25 thank Mr. Eckenwiler for taking us back to the exhibit which the

1 ANC submitted previously. I think this is very helpful, and I
2 think we've discussed a number of this previously. So I don't
3 have any questions, but I want to thank him for refreshing our
4 memory. Thank you, Madam Chair.

5 VICE CHAIR JOHN: Thank you.

6 CHAIRMAN HOOD: And thank you, Mr. Eckenwiler.

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

9 MR. DEBEAR: I do not. I would just point out that I
10 think the -- Ms. Trigo has said, I don't doubt the accuracy of the
11 photographs, I just think that there have been updates. I have
12 not pulled it up yet. I was not -- I was just trying to. But I
13 do think there have been additional or new third-story additions
14 since those photographs were taken.

15 VICE CHAIR JOHN: Mr. Eckenwiler, do you know when these
16 photographs were taken?

17 COMMISSIONER ECKENWILER: I don't have the date on it.
18 When that exhibit was submitted, those were the current Google
19 Street Views.

20 VICE CHAIR JOHN: Okay. Thank you. I forgot to go to
21 the Office of Planning. Is the Office of Planning here?

22 MR. JESICK: Thank you, Madam Vice Chair and members of
23 the Board. My name is Matt Jesick, and I'll be presenting OP's
24 testimony again in this case.

25 We don't have too much to add to our previous testimony

1 from the last hearing. We recommended approval at that time, and
2 we appreciate the changes that the applicant has made to the
3 design, and continue to recommend approval.

4 We also found the presentation today, the new
5 information that was contained in the PowerPoint to be very
6 informative and we appreciated that the proposed design reflects
7 some of those character-defining features of the adjacent
8 rowhomes, such as windowsill heights or cornice heights. So we
9 found today's presentation very helpful for linking this property
10 with the adjacent properties on that row of 3rd Street.

11 Just to emphasize one key point that Office of Planning
12 found helpful in this case, you know, the key section of the
13 special exception criteria is 5201.4, and one subset of that is
14 the -- states that the project shall not substantially visually
15 intrude upon the character, scale, and pattern of houses.

16 But the important thing to keep in mind for us, as we
17 look back at 5201.4, that the heading of that section states that
18 the new building shall not have a substantially adverse effect on
19 the use or enjoyment of any abutting or adjacent property. So we
20 were not able to find that the design of this building would have
21 a substantially adverse impact on the use or enjoyment of an
22 abutting property. So that was one thing that factored into our
23 analysis.

24 That will conclude my supplemental testimony. I'd be
25 happy to take any questions. Thank you.

1 VICE CHAIR JOHN: Thank you.

2 Does the Board have any questions? Did I --

3 CHAIRMAN HOOD: I don't necessarily have any questions,
4 but I appreciate you always, Mr. Jesick, for explaining that. I'm
5 not there with you, and it's probably not the first time, but I
6 appreciate the way you analyzed it. But I guess that's why
7 there's a number of us that sit on the Board, and a number of us
8 that do the different work. We all have different opinions. But
9 I just wanted you to know, I don't fundamentally agree with your
10 analysis, but I appreciate you explaining to us how you got there.
11 So thank you.

12 VICE CHAIR JOHN: Does anybody else have a question?
13 Mr. Blake?

14 BOARD MEMBER BLAKE: Mr. Jesick, could you again explain
15 how, relative to the longer block, you think it is relevant? And
16 did you -- are you aware of any additional three-level additions
17 that have been put on the houses further down the block?

18 MR. JESICK: There are a couple as you go down the
19 block. There are the ones right in the immediate vicinity of the
20 subject property that I think were shown on the images today. And
21 there are a couple, I think, further down, as well. So it's, you
22 know, it's not an historic district where you would see those
23 third-story additions set back out of view. It is, again, not
24 subject to historic preservation guidelines. So they can be
25 pulled forward.

1 I think, you know, where this application -- well, this
2 is a new building, but other applications would, say, be subject
3 to the rooftop addition rules, where you cannot alter a character-
4 defining feature of the roof. And the zoning administrator would
5 say that you can't touch those front mansards. You have to be set
6 back from them at least three feet. That's the zoning
7 administrator's rule of thumb. So I think that's been something
8 that's been shown on these more recent additions on the third
9 floor in this row.

10 VICE CHAIR JOHN: Thank you, Mr. Jesick.

11 BOARD MEMBER BLAKE: One question, Mr. Jesick. We have
12 not looked at the rear yard in this same perspective, because you
13 did talk a little bit about the alley-scape. Is there any -- do
14 you have any look at that in with your assessment there?

15 MR. JESICK: Sure. The building itself lines up with
16 the building to the north, as well as, I believe, I couple a
17 houses, a few doors down, so that the form of the house itself is,
18 at least in terms of depth, is the same as those other buildings.
19 The deck would reduce the rear yard, but that has been, you know,
20 noted as being substantially reduced in size. So that lessens the
21 degree of relief.

22 VICE CHAIR JOHN: I have one more question for you, Mr.
23 Jesick. Does the regulation require parking for this project?

24 MR. JESICK: Yes. A single-family dwelling would
25 typically require one parking space, and there is one existing.

1 VICE CHAIR JOHN: Okay.

2 MR. JESICK: So they would need to maintain that.

3 VICE CHAIR JOHN: Okay. Thank you.

4 Mr. DeBear, do you have any questions for Mr. Jesick?

5 MR. DEBEAR: I do not.

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

8 COMMISSIONER ECKENWILER: Yes, Madam Vice Chair. I just
9 have one question for Mr. Jesick.

10 Mr. Jesick, you just suggested a reading of Section
11 5201.4, going back to the prefatory language that talks about, you
12 know, the addition or new structure, quote, "shall not have a
13 substantially adverse effect on the use or enjoyment of any
14 abutting or adjacent dwelling." And you've suggested that that
15 wouldn't be the case here.

16 Can you tell me a case in which the change in the
17 character, scale, and pattern would ever affect use or enjoyment?
18 And if you can't, then aren't you really arguing for a reading of
19 this provision that completely reads out of existence the
20 character, scale, and pattern test?

21 MR. JESICK: Well, you know, examining the facts of this
22 case, I think that's the conclusion I could arrive at. You know,
23 I couldn't address any hypothetical scenarios without, you know,
24 seeing actual plans and context and, you know, what those adjacent
25 properties, you know -- how the block lays out and what the urban

1 design of that neighborhood is. So, you know, I couldn't come to
2 a definitive conclusion about any hypothetical case at this time.

3 COMMISSIONER ECKENWILER: Okay. So just let me ask the
4 question a different way. Do you think Subsection 5201.4(c),
5 which refers to the character, scale, and pattern of the street
6 frontage, that that test actually matters, and that that's
7 something that that Board should take into consideration?

8 MR. JESICK: Well, yes, the Board should definitely take
9 that into consideration.

10 COMMISSIONER ECKENWILER: Okay. Thank you. No other
11 questions.

12 VICE CHAIR JOHN: Okay. Thank you.

13 Mr. Young, is anyone signed up to testify?

14 MR. YOUNG: Yeah, we have one who is calling in on the
15 phone who I will unmute now.

16 VICE CHAIR JOHN: Okay. Go ahead.

17 MR. GOHN: Yes, hello. This is Shad Gohn calling. I'm
18 the owner across the alley of 1162 Abbey Place. My property is
19 about 20 feet away.

20 VICE CHAIR JOHN: Okay. What did you say your name was,
21 again?

22 MR. GOHN: First name is Shad. It's S-H-A-D. Last name
23 is Gohn, G-O-H-N. And my address is 1162 Abbey Place Northeast.

24 VICE CHAIR JOHN: Okay. Can you go ahead and give your
25 testimony? You'll have three minutes.

1 MR. GOHN: Sure. Thank you. So I submitted some
2 comments yesterday morning, Exhibit 79, and just briefly wanted to
3 recap what I said in those.

4 My comments are in support. I join my other neighbors
5 who are on 3rd Street, who expressed support for this project, and
6 I just wanted to reiterate why. I think that this -- you know,
7 initially I was apprehensive about this project, but as I spoke to
8 the applicant a bit more, and I think, as he submitted some
9 revised plans, it addressed some of the questions that we had.

10 The point, the central point, that I have made -- and
11 forgive me, I haven't -- I didn't hear the entire presentation a
12 few moments ago. But the concern I have is that the size of the
13 rear addition is what is dictating this discussion about the front
14 facade of the house.

15 And if you look at my comments on the second page, I
16 mean, it would be very easy for any of the houses on that block to
17 change the front facade to include the addition of a third floor,
18 exactly as the applicant proposes. Just, if they don't build that
19 rear addition, or if they build a rear addition that is less than
20 six feet, that doesn't trigger the special exception.

21 So the point is that I think, you know, change to these
22 houses on 3rd Street could happen, and it probably will happen,
23 and it could happen in such a way that the character, scale, and
24 pattern will be dramatically altered, perhaps in the same way that
25 the applicant is wanting to pursue with their property. So

1 broadly, my concern is that we're starting down this road of
2 applying what is effectively historic preservation criteria to
3 this block, when that doesn't actually exist there.

4 The other point I'll make is that, with regard to the
5 deck, I initially expressed some reservations about it, as well.
6 I think that by reducing the size of the deck, that is a good
7 thing, and I think it addresses some of those concerns which were
8 -- in my mind, should be primarily focused on the privacy of the
9 adjacent neighbors.

10 That leads to my final point, which is that a number of
11 neighbors have chimed in on this. A number of neighbors have
12 supported this application. I know that the adjacent neighbors
13 have not registered their support or their opposition. They
14 haven't registered anything at all.

15 You know, I think it's very likely -- and forgive me, I
16 didn't hear the entire presentation, but based on my observations
17 around the neighborhood, I've seen the applicant engaging with
18 neighbors on that street. My personal opinion is, in talking with
19 some of the adjacent neighbors, is that they're just choosing not
20 to participate in this.

21 So with that, I'll just wrap up. And thank you for your
22 time.

23 VICE CHAIR JOHN: Thank you. Thank you.

24 I'll just remind everyone, Mr. Gohn -- and you, Mr.
25 Gohn, that you can only testify as to your personal knowledge.

1 You can't testify on behalf of anyone else. But I thank you for -
2 -

3 MR. GOHN: I understand. Thank you.

4 VICE CHAIR JOHN: -- taking the time to call in, and I
5 appreciate your testimony.

6 MR. GOHN: Thank you.

7 VICE CHAIR JOHN: Thank you.

8 So is that it, Mr. Young?

9 MR. YOUNG: Yes.

10 VICE CHAIR JOHN: So do you have any closing comments,
11 Mr. DeBear?

12 MR. DEBEAR: I did have a closing, Vice Chair John, but
13 I, you know, it seems like, at this juncture, the Board is not
14 ready to certainly support this application. I think that's
15 become clear to me.

16 We certainly believe we've submitted, you know, copious
17 amounts of evidence and testimony as to the character, scale, and
18 pattern of these rowhomes and how this proposal calls back to
19 those. But that being said, at the Board's indulgence, we'd be
20 happy to go back to the drawing board, so to speak, and try to
21 find something again.

22 You know, we have all the individuals in the
23 neighborhood who are supportive. There are no people in
24 objection. We obviously have the ANC, and we're considerate of
25 their concerns. You know, go back to the drawing board, and try

1 to find something that, I suppose, everyone can be happy with,
2 including the applicant.

3 So, you know, with the Board's indulgence, I know this
4 case has gone on quite some time now, but I do -- you know, this
5 is important to my client. It's going to be his home, his dream
6 home, as he said. And so we want to see this succeed. So we'd be
7 happy to address what the Board has asked for, and see if we can
8 find something that the Board is more comfortable with.

9 VICE CHAIR JOHN: Okay. Mr. DeBear, I think, just
10 listening, from the comments, that you may have read the Board
11 correctly. I mean, I'm certainly not there with you yet. I
12 appreciate the applicant's care and attention to the project, but
13 I am still concerned.

14 And before I go to the rest of the Board, let's talk
15 about the variance first. And I cannot get there with you on the
16 variance, because, as you heard Commissioner Eckenwiler state --
17 and we have looked at the diagrams themselves -- that lot is the
18 same as all of the other lots in that little area of the square.

19 So as you know, based on the regulations, to grant that
20 variance, in this case, would be, in effect, changing the
21 regulation, and changing the maps, and Commissioner Hood can tell
22 you that that's the prerogative of the Commission, to make such a
23 drastic change. There's nothing unique about that property, and I
24 really appreciate that the tenant needs -- that the owner needs
25 more space. But as you know, Mr. DeBear, the Board could not make

1 that decision.

2 So if you come back to the -- or let me go around and
3 hear what my other Board members think. So I'll go to you first,
4 Mr. Smith.

5 BOARD MEMBER SMITH: So --

6 VICE CHAIR JOHN: I haven't closed the record. I
7 haven't closed the record. So we're just talking about the
8 variance. You don't have to vote or anything. Just maybe give
9 your thoughts.

10 BOARD MEMBER SMITH: Okay. We're just talking about the
11 variance. I agree with Ms. John. Regardless of where we go with
12 this special exception, you don't have me with the variance, for
13 the exact same reasons that she stated.

14 And I'll also say, you know, from a practical
15 difficulty, undue hardship, from that particular problem, a deck
16 very rarely rises to the level of an undue hardship. So just on
17 that prong alone, and I can go over, you know, I think it doesn't
18 meet three of the -- three of the prongs -- I don't think an open
19 deck will pass muster for me for a variance. So that, to me,
20 that's probably dead in the water. And anywhere we go with this,
21 you need to remove your variance request.

22 VICE CHAIR JOHN: Mr. Blake?

23 BOARD MEMBER BLAKE: I'll just echo those comments.

24 VICE CHAIR JOHN: Chairman Hood?

25 CHAIRMAN HOOD: I don't have anything to add. I support

1 the discussion.

2 VICE CHAIR JOHN: Okay. So Mr. DeBear, we're going to
3 leave the record open, and my recommendation, listening to
4 everyone, is that perhaps you should remove the variance request.
5 But it's up to you. We can't tell you what to do.

6 So Mr. Young, are you listening?

7 MR. YOUNG: Yes.

8 VICE CHAIR JOHN: I'm sorry, not Mr. Young. Mr. Moy.

9 Mr. Moy, are you still with us, Mr. Moy?

10 (No response.)

11 VIC CHAIR JOHN: Mr. Moy?

12 MR. MOY: Yes, yes, I'm always here. I'm listening.

13 VICE CHAIR JOHN: We're at that time. Is there a date
14 that we can come back?

15 And while you're looking, let me ask Mr. DeBear when he
16 thinks he should be able to come back with the revised design.
17 And I assume you're going to talk to the ANC, as well.

18 MR. DEBEAR: We will talk to the ANC. I believe the ANC
19 -- there are zoning subcommittee meetings at the beginning of each
20 month. I don't know if Mr. Eckenwiler's still on. And then the
21 full ANC meets toward the middle of the month. So it would
22 probably have to be, you know -- I don't know if Chair Eckenwiler
23 could speak up, if he's still on. We want to make sure we're on
24 the agenda, if we do revise.

25 COMMISSIONER ECKENWILER: Sure. I'm still here. Can

1 | you hear me?

2 | MR. DEBEAR: Yes.

3 | COMMISSIONER ECKENWILER: Okay. Madam Vice Chair, just
4 | for information, our November meeting cycle, which I think would
5 | be the next time that we could consider this, since October's
6 | already upon us -- the zoning committee meets on Wednesday,
7 | November 3rd, and the full ANC meets on the evening of November
8 | 10th. So the absolute earliest hearing date that would
9 | accommodate that would be Wednesday, November 17th.

10 | VICE CHAIR JOHN: Mr. Moy, what does your calendar look
11 | like?

12 | MR. MOY: Madam Chair, I thank Commissioner Eckenwiler
13 | for that timeline. It's very helpful.

14 | The Board does have a scheduled hearing on the 17th, so
15 | that means the next hearing after November 17th actually would be
16 | after the Thanksgiving holiday, which would be December the 1st.
17 | So the Board can return with a continued hearing, which is what I
18 | think sounds like -- with December 1st or December 8th. Either
19 | one of those two dates, I think, is doable, Madam Chair.

20 | VICE CHAIR JOHN: Okay. Thank you, Mr. Moy.

21 | And thank you, Mr. Eckenwiler.

22 | So Mr. DeBear, would December 1st work for you?

23 | MR. DEBEAR: Absolutely. And thank you.

24 | VICE CHAIR JOHN: Okay. Okay, so if there's nothing
25 | more, I'll --

1 MR. MOY: Madam Vice Chair? Do you want to set a
2 deadline for the applicant to make his filing, and whether or not
3 you would wish for any responses to the applicant's filing? Or do
4 you just want to --

5 VICE CHAIR JOHN: Yes. Thank you, Mr. Moy. Perhaps you
6 can work back and let's see how it shakes out.

7 MR. MOY: Okay, let me suggest this for you. So if the
8 Board will return in a continued hearing on December 1st? All
9 right? Then if the parties can respond to the applicant's filing
10 by, let's say, a week earlier, which would be November 24th?
11 That's the day before Thanksgiving. And if the applicant can make
12 their submission, let's say, November 13th, which is a Monday?

13 VICE CHAIR JOHN: Okay.

14 Does that work for you, Mr. DeBear?

15 MR. DEBEAR: Absolutely. And I know where Commissioner
16 Eckenwiler's about to go. If we do revise and seek the ANC's, you
17 know, to be on their agenda, we would be filing this in the record
18 before their subcommittee meeting on November 3rd.

19 VICE CHAIR JOHN: Okay. That sounds --

20 COMMISSIONER ECKENWILER: Thank you. You read my mind.

21 VICE CHAIR JOHN: Okay. That sounds good.

22 So have I forgotten anything else, Mr. Moy?

23 MR. MOY: No, that's it.

24 VICE CHAIR JOHN: Okay. Well, I'll excuse everyone, and
25 Thank you all for your participation.

1 MR. DEBEAR: Thank you.

2 COMMISSIONER ECKENWILER: Thank you.

3 VICE CHAIR JOHN: Bye.

4 Mr. Young, please excuse everyone.

5 Now, Chairman Hill, are you back? Chairman Hill?

6 CHAIRPERSON HILL: Can you hear me?

7 VICE CHAIR JOHN: Yes. Now I can hear you.

8 CHAIRPERSON HILL: Okay, great. Thank you. Okay. Mr.

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

10 MR. MOY: All right. This would be Case Application
11 Number 20519 of Colonial Parking, Inc.; and LO Levy 3053 M Street
12 Partnership, AKA Belle, B-E-L-L-E, Belle Goldin Revocable Trust.
13 Captioned and advertised for special exception relief from the use
14 permissions of Subtitle U, Section 203.1(K). This would permit
15 the continued use of an existing commercial parking lot in the MU-
16 4/R-20 zone. The property located at 30 -- or 3052 M Street
17 Northwest, Square 1209, Lot 910.

18 And I think the applicant has a PowerPoint submission,
19 Mr. Chairman, that is not in the record, because it was submitted
20 late.

21 CHAIRPERSON HILL: All right. Thanks.

22 Mr. Dettman, can you hear me?

23 MR. DETTMAN: Hi, Mr. Chairman. How are you? Yes, I
24 can hear you just fine through my video on here.

25 CHAIRPERSON HILL: Thank you. Could you introduce

1 | yourself for the record, Mr. Dettman?

2 | MR. DETTMAN: Sure.

3 | And I believe, Mr. Young, we are also waiting to be
4 | joined by Kyrus Freeman, if he can be added to the panel.

5 | CHAIRPERSON HILL: Okay.

6 | MR. YOUNG: Yeah, I have him on here. I can only
7 | unmute, though. I can't make him a panelist. But he can speak
8 | now.

9 | CHAIRPERSON HILL: Mr. Freeman, can you hear us?

10 | MR. FREEMAN: I can. Can you hear me?

11 | CHAIRPERSON HILL: Yes.

12 | MR. FREEMAN: I'm going to have to get with Mr. Young
13 | and figure out how to resolve this issue. We've had it a couple
14 | times. So unfortunately, you're not able to see my Philadelphia
15 | Eagles lanyard around my neck, so -- I put it on especially for
16 | this panel, so --

17 | CHAIRMAN HOOD: Well, I can tell you this, he's starting
18 | off wrong, Mr. Chairman. Wrong way.

19 | MR. FREEMAN: Really need to solve that issue, so that
20 | you can see my paraphernalia.

21 | CHAIRPERSON HILL: Oh, gosh. Philly style. Philly
22 | style is a whole new thing. All right. I got some stories about
23 | Philly style one day. All right. As I'm sure we all do.

24 | Nonetheless, okay, I want to go ahead and allow the
25 | PowerPoint into the record, because I would like to see it. And

1 | if -- Mr. Young, you can bring that -- so Mr. Freeman, is it Mr.
2 | Byrd?

3 | MR. BYRD: Yes, sir.

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

6 | MR. BYRD: Yes, sir. Hi, my name is Kevin Byrd, and I
7 | am the general counsel for the -- for Colonial Parking, Inc.

8 | CHAIRPERSON HILL: Okay, great. Thank you, Mr. Byrd.

9 | All right. Mr. Freeman, are you going to be doing the
10 | presentation?

11 | MR. FREEMAN: Mr. Chairman, I am excited to say I think
12 | this is probably the easiest case that has been on your docket
13 | today. We have ANC support at Exhibit 37. We have DDOT support
14 | at Exhibit 47. We have OP support at Exhibit 48. Happy to make a
15 | presentation. Also, very happy to rest on the record. We think
16 | it's a full and complete record. I think there was -- there is
17 | one question about whether or not there should be a term
18 | application.

19 | CHAIRPERSON HILL: Right.

20 | MR. FREEMAN: Request that we not have a term.

21 | CHAIRPERSON HILL: I got you. Mr. Freeman, I appreciate
22 | that. And I do see, and we have reviewed, everything that's in
23 | there. But if you could just go ahead and go over, kind of, like,
24 | the highlights, and some of the reasoning as to, again, why you
25 | think your client should be granted this relief. And then also

1 speak to the ten years, because, right, the Office of Planning is
2 interested in another term limit. And we can kind of go from
3 there.

4 MR. FREEMAN: Sure. Well, I'd ask Mr. Young to pull up
5 the slides.

6 But as he does that, by quick way of background, this is
7 an existing parking lot. This parking lot is in Georgetown. It's
8 been there since prior to the adoption of the 1958 Regulations, so
9 it's been there for over 62 years at this point. It provides
10 important parking for the businesses that's in Georgetown.

11 We've been in front of the Board every ten years to get
12 this reapproved. Every ten years, you've reapproved it, because
13 this parking lot serves an important need in this area, that we
14 meet the special exception standards. I'll let Mr. Dettman go
15 through our slides quickly. We only have two or three slides. So
16 I'll let him walk you through that now.

17 MR. DETTMAN: Sure. Thanks, Kyrus, and again, good
18 afternoon, members of the Board.

19 Mr. Young, if we could just flip through? I'll assume
20 that the Board members are all familiar with the site, so if we
21 could just flip through to where you start the criteria that need
22 to be satisfied for the requested special exception? Keep going.
23 There.

24 So members of the Board, the standard of review here is
25 that in order for the existing parking lot to continue as is --

1 and again, there are no physical changes being proposed, no
2 operational changes being proposed. Simply just trying to
3 continue the use that's been there, as Mr. Freeman said, for over
4 -- it actually predates the 1958 Regulations.

5 So the standard of review is the general special
6 exception criteria, where it needs to be shown that the requested
7 special exception is in harmony with the purpose and intent of the
8 zoning regulations, and that there's no adverse effect to
9 neighboring properties, in accordance with the -- use of
10 neighboring properties, in accordance with the regulations. I
11 think this is set forth in our pleadings.

12 This criterion is met, of course. Everyone knows about
13 the parking constraints in Georgetown, and this lot, especially
14 given its situation within the interior of a lot, within the
15 square, that the parking provided by the lot and the continued
16 existence of the lot will actually benefit the surrounding area,
17 and surrounding neighbors, in that it provides parking for,
18 mainly, patrons of the M Street commercial corridor. Next slide.

19 So under Subtitle U, there are specific conditions that
20 need to be met in order for a parking lot as a principal use to
21 remain in existence. And these are just set forth here. Again,
22 they're also in our pleadings, so I'll go through them very
23 quickly.

24 So parking as a principal use -- need to be located in
25 an open parking area. As you can see in the record, it is an open

1 parking area. All of the parking spaces in the parking lot will
2 meet all of the requirements of Subtitle C, Chapter 7, as they
3 apply to the regulations.

4 I think we submitted a zoning administrator ruling into
5 the record that addresses those aspects of the zoning regulations
6 that don't apply to the proposed parking lot, because it's been in
7 existence since prior to '58. And so there are a couple of
8 grandfathered conditions that make the lot allowed -- that make
9 the lot not subject to certain criteria under the regulations.
10 Next slide.

11 One of those is the 80 percent pervious surface
12 pavement. That particular requirement is new to ZR16. It's not
13 applicable to this particular parking lot, again, because it's
14 grandfathered, per the zoning administrator ruling, which is in
15 Exhibit 46.

16 The parking spaces are not accessories to any other
17 principal parking use. And the parking is reasonably necessary
18 and convenient to other uses in the vicinity. Again, it's been
19 there for 60 years, no physical or operational changes, and the
20 continued operation will benefit the neighborhood. Next slide.

21 It meets the locational criteria with respect to its
22 proximity to an MU zone, its proximity to the MU-4 zone, which is
23 actually also part of the property. And all parking will serve
24 the short-term needs of the retail and service uses along M Street
25 and in the Georgetown vicinity. Next slide.

1 We don't believe any special requirements are necessary
2 to be imposed by the Board. Another grandfathered condition is
3 the fact this is new to ZR16, that in the R-20 zone, no commercial
4 parking lots shall be permitted. This has existed as a commercial
5 parking lot since prior to 1958, and so that is a grandfathered
6 condition that the applicant has a right to.

7 And then finally, the application has been referred to
8 DDOT. So that concludes my presentation, and I'm happy to answer
9 any questions for the Board.

10 CHAIRPERSON HILL: Okay, great. Thanks, Mr. Dettman.

11 Does the Board have any questions for Mr. Dettman?

12 All right. Going to turn to the Office of Planning.

13 MS. MYERS: Office of Planning. Can you hear? Yes.

14 CHAIRPERSON HILL: Hi, Ms. Myers. Can you hear me?

15 MS. MYERS: I'm here. Hi. I hear you, Chair. Crystal
16 Myers of the Office of Planning. I'm standing in for Steve
17 Mordfin, who is the -- who was the case reviewer from the Office
18 of Planning on this case. Can you hear me, Chair?

19 CHAIRPERSON HILL: Yeah, I can hear you. Go ahead.

20 MS. MYERS: All right. Well, just wanted to say, the
21 Office of Planning is recommending approval of this case. And I
22 know that the only point of question was about the conditions. We
23 are recommending that the ten-year period remain as one of the
24 conditions. We're recommending it because we think that within
25 ten years, the Board may want to just reevaluate, taking into

1 account the parking needs of the time.

2 We just suggest or recommend that the Board still
3 maintain that opportunity to take a look at this, just because,
4 you know, parking needs change, and even though it is
5 grandfathered in, or it is an older parking lot, today, we think
6 that it's -- what it's doing now is suitable enough. But in ten
7 years, we may -- you know, it may be that the Board would like to
8 reconsider that, just from what the parking needs are at the time.

9 So that's the only difference. Otherwise, I think the
10 applicant agreed with all the other conditions. So I'll rest on
11 the record, and I'm here for questions.

12 CHAIRPERSON HILL: Okay. Thank you.

13 Mr. Freeman, can you hear me?

14 MR. FREEMAN: Yes. Yes, sir.

15 CHAIRPERSON HILL: So your client is all fine with the
16 other two conditions, in terms of the bumper stops being
17 maintained, and the hours of operations that are listed in the
18 Office of Planning's report; is that correct?

19 MR. FREEMAN: Absolutely. Yes, sir.

20 CHAIRPERSON HILL: Okay. So before I turn to the --
21 well, actually, never mind. I'll come back to you, Mr. Freeman.

22 Ms. Myers, in terms of the ten-year time, I mean, I'm a
23 little confused -- well, not confused. The Office of Planning is
24 trying to keep that open for a while. Like, I mean, it's a weird
25 interior lot that's been that way for forever. Well, not forever.

1 For a long time. Like, why is it that the Office of Planning
2 really thinks that it would be appropriate to have this revisited
3 again in ten years?

4 MS. MYERS: It's more of a suggestion from us. I mean,
5 we're just looking at, you know, in ten years from now, what are
6 the -- what are the -- what's the environment like, when it comes
7 to parking? You know, just looking at the future. And since this
8 is an older lot, this would be an opportunity, in ten years, to
9 still take a look at it.

10 Today, we think that the parking situation of today, and
11 the standards of today, what they're doing on the site now is
12 still adequate. But that doesn't necessarily mean that's the case
13 in ten years. Just kind of futuristically talking a little bit --
14 you know, autonomous cars a part of the conversation in the
15 future. Just stuff like that. You know, biking, et cetera.

16 So we're just -- we were just saying that the Board may
17 want to reserve the opportunity to take a look again and see if
18 this parking lot still meets what would -- you know, generally, in
19 the ballpark of the standards of ten years from now. But again,
20 this is suggestion. If the Board does not agree, then, you know.

21 CHAIRPERSON HILL: No, I appreciate it is a suggestion.
22 And I appreciate the discussion that we're having. I am also
23 taking it currently kind of as a suggestion. I mean, I think, if
24 it was autonomous cars or whatever, you know, teleportation device
25 -- won't be happening in ten years -- you know, there still might

1 be a need for it to be there, and the market would probably
2 dictate whether or not, you know, there is a need for that.

3 But in any case, Mr. Freeman, your client's (audio
4 interference) they have to come back again in ten years? Like,
5 why are they opposed to it?

6 MR. FREEMAN: So let me start by saying that if the
7 Board is inclined to impose a ten-year term, so be it. We want to
8 get our parking lot reapproved and get it reapproved as
9 expeditiously as possible. So if the Board says come back in ten
10 years, I'll see you in ten years. I'll see Chairman Hood in ten
11 years. I'll see whoever's here in ten years. So we don't, you
12 know, we don't -- we're not going to fall on our sword on it.

13 I just think that it's been there for 60-plus years. If
14 in ten years from now, there is no need -- one, it's been there
15 for 60-plus years. Two, we specifically discussed this issue with
16 the ANC, and the ANC did not see a need for a term. And if in ten
17 years, the market suggests we don't need parking, then we close
18 the parking lot and do something else with it. But again, if the
19 Board is inclined to go with a ten-year term, we're happy to take
20 that, if that's what it takes to get --

21 CHAIRPERSON HILL: Okay. Okay, we can discuss it all on
22 a -- and it's so funny. For the record -- well, not for the
23 record -- like, I was looking through this thing, and I've been
24 here a long time. I completely didn't know that that thing was
25 there. Like, it's a hidden parking lot. Like, that thing, next

1 to that stone house, like, I was like, really? There's been
2 parking there this whole time? I didn't know about it.

3 MR. FREEMAN: Well, now you know. Now you can find a
4 place to park next to that.

5 CHAIRPERSON HILL: I live in the city now. I've got
6 scooters and all that little thing. You know.

7 So Mr. Chairman Hood?

8 CHAIRMAN HOOD: Yeah, thank you, Mr. Chairman.

9 I was curious, with the way I read this record, and I'm
10 just asking, Mr. Freeman, and I'm sure there probably some legal
11 reason why. Why was this not put on the expedited calendar? Or
12 maybe I should -- now, I do agree with Ms. Myers's assessment.
13 But I'm just curious, why didn't you file this as an expedite?
14 And I'm sure it's probably some legal reason.

15 MR. FREEMAN: So, you know, I see a lot of people asking
16 for things to be expedited, and for this, we're happy to go
17 through the normal time frame and the normal process. Now, I know
18 the Board's got, like, ten cases a day nowadays, so we were just
19 happy to wait our turn for the Board to decide the case.

20 CHAIRMAN HOOD: Okay. That wasn't the answer I was
21 expecting. But anyway, thank you. Thank you, Mr. Freeman.

22 Thank you, Mr. Chair.

23 CHAIRPERSON HILL: All right. Thank you, Chairman Hood.

24 Does anybody have any questions for either the Office of
25 Planning or the applicant? And if so, please raise your hand.

1 All right. Mr. Young, is there anyone here who wishes
2 to speak?

3 MR. YOUNG: We do not.

4 CHAIRPERSON HILL: Mr. Freeman, you have anything you'd
5 like to add at the end?

6 MR. FREEMAN: No, sir. Thank you.

7 CHAIRPERSON HILL: Okay. Mr. Freeman, do you ever go to
8 Boyd's to shop in Philadelphia?

9 MR. FREEMAN: Can't afford it.

10 CHAIRPERSON HILL: I somehow doubt that, Mr. Freeman.

11 All right. Okay. We're going to close the record and
12 the hearing. Excuse everyone, please. Thank you.

13 All right. Okay. Yeah. I mean, I didn't really have
14 any problem with this application. I think they're meeting the
15 criteria, per which we should approve it.

16 I actually don't have any problem with -- I don't need
17 the ten years, personally. If y'all want the ten years, you can
18 have the ten years. I would agree with the other conditions that
19 are from the previous ones, in terms of the bumper stops and the
20 hours of operation. But, you know, if the ANC didn't need to see
21 them in ten years again, then I'm sure -- well, whatever. That's
22 my opinion. I'll go ahead and see what others have to say.

23 I'll start with you, Mr. Smith.

24 BOARD MEMBER SMITH: It seems fairly straightforward to
25 me. So I'm comfortable with Conditions 2 and 3, and I agree with

1 | you, if the ANC didn't have any issues with, you know, having to
2 | see this in 2031, I don't see a reason to impose these continued
3 | -- to keep imposing this condition on the applicant. And I'm not
4 | really hearing strong reasoning from the Office of Planning on a
5 | reason why to continue that condition.

6 | And besides, I do believe that the market will dictate
7 | the future of this property quicker than this ten-year sunset
8 | would. So I'm fine with removing that first condition.

9 | CHAIRPERSON HILL: Okay. Thank you.

10 | Vice Chair John?

11 | VICE CHAIR JOHN: Well, I support everything Mr. Smith
12 | has said. I don't really hear the Office of Planning with a very
13 | strong reason for maintaining the ten-year limit. And if the
14 | parking lot has been there for over 60 years, then I'm fine with
15 | not having the time limit.

16 | CHAIRPERSON HILL: Okay. Thank you.

17 | Mr. Blake?

18 | BOARD MEMBER BLAKE: I'm fine with it, and would be
19 | prepared to support, based on the same reasons we've heard.

20 | CHAIRPERSON HILL: Thank you.

21 | Chairman Hood?

22 | CHAIRMAN HOOD: I don't have anything to add.

23 | CHAIRPERSON HILL: Okay. All right. I'm going to go
24 | ahead, then, and make a motion to approve Application Number
25 | 20519, as captioned read by the secretary, including the

1 Conditions Number 2 and Number 3 from the Office of Planning's
2 report, and ask for a second.

3 Ms. John?

4 VICE CHAIR JOHN: Second.

5 CHAIRPERSON HILL: The motion has been made and
6 seconded. Mr. Moy, if you could roll call?

7 MR. MOY: When I call each of your names, if you would
8 please respond with a "yes", "no", or "abstain" to the motion made
9 by Chairman Hill to grant the requested relief, along with the
10 conditions, as the Chairman has cited in his motion. This motion
11 was seconded by Vice Chair John.

12 Zoning Commission Chair Anthony Hood?

13 CHAIRMAN HOOD: Yes.

14 MR. MOY: Mr. Smith?

15 BOARD MEMBER SMITH: Yes.

16 MR. MOY: Mr. Blake?

17 BOARD MEMBER BLAKE: Yes.

18 MR. MOY: Vice Chair John?

19 VICE CHAIR JOHN: Yes.

20 MR. MOY: Chairman Hill?

21 CHAIRPERSON HILL: Yes.

22 MR. MOY: Staff would record the vote as five to zero to
23 zero, and this is on the motion made by Chairman Hill to grant.
24 The motion was seconded by Vice Chair John. Also in support of
25 the motion is Zoning Commission Chair Anthony Hood, Mr. Smith,

1 Mr. Blake, and of course, Vice Chair John, Chairman Hill. Motion
2 carries, five to zero to zero.

3 CHAIRPERSON HILL: Okay. Thanks, Mr. Moy. Okay. Mr.
4 Moy, you can go ahead and call our last case when you get a
5 chance.

6 MR. MOY: Okay. This would be Case Application Number
7 20520 of JBG Smith, LLC; 55 New York Avenue, LLC; 75 New York
8 Avenue, LLC; and 1300 1st Street, LLC. Captioned and advertised
9 for special exception from the use of Subtitle I, Section
10 303.1(a); penthouse requirements, Subtitle C, Section 1500.3.

11 This would permit an animal boarding use on the ground
12 floor, and a nightclub, bar, cocktail lounge, and/or restaurant
13 use within a penthouse of a new mixed-use building in the D-5
14 zone. And the property is located at New York Avenue Northeast,
15 1300 1st Street Northeast, Square 671, Lots 3, 4, 5, 6, 7, 29, 30
16 and 804. And that's it for me, Mr. Chairman.

17 CHAIRPERSON HILL: Okay, great. Okay. All right.

18 Ms. Shiker, are you there?

19 MS. SHIKER: I am here. Good afternoon.

20 CHAIRPERSON HILL: Hi, could you introduce yourself for
21 the record, please?

22 MS. SHIKER: Yes. Good afternoon, Chairman Hill,
23 members of the Board. My name is Christine Shiker. I'm with the
24 law firm of Holland & Knight, representing the applicant.

25 CHAIRPERSON HILL: Hi, Ms. Shiker. I don't think we've

1 | seen you since the break. Have we?

2 | MS. SHIKER: No, we've been here a couple times. A few
3 | times.

4 | CHAIRPERSON HILL: Since the summer break?

5 | MS. SHIKER: Oh, no, no, no. Sorry. I was thinking --

6 | CHAIRPERSON HILL: That's okay. Just welcome back.

7 | MS. SHIKER: Yeah, no, thank you. Happy to be here.
8 | Thank you.

9 | CHAIRPERSON HILL: Who else is -- who else is here with
10 | you?

11 | MS. SHIKER: So I have Chris Cohen from Holland &
12 | Knight. He is here. I have two representatives from the
13 | applicant. Faizan Qureshi, and Bailey Edelson. And then we have
14 | Brandon Robinson, who is the architect and is an already-accepted
15 | expert from the Zoning Commission. So he is in the book.

16 | CHAIRPERSON HILL: Okay. I don't see the second --
17 | Edelson? I don't see the Edelson.

18 | MS. SHIKER: Maybe Bailey has not joined because Faizan
19 | is here. But we were concerned about losing --

20 | CHAIRPERSON HILL: Got it. Okay.

21 | MS. SHIKER: -- time constraints.

22 | CHAIRPERSON HILL: Okay. Yeah. Yeah. Okay. Well,
23 | let's just see what happens.

24 | Commissioner Eckenwiler, can you hear me?

25 | COMMISSIONER ECKENWILER: I can, Mr. Chairman. Good

1 afternoon to you and members of the Board. Mark Eckenwiler for
2 ANC 6C.

3 And Mr. Chairman, I just wanted to flag something. I
4 may have had a long day. I wanted to mention that at about 6:00,
5 I'm turning into a pumpkin, because I have a committee meeting to
6 run this evening. So if I disappear mysteriously in 30 minutes,
7 you'll know why.

8 CHAIRPERSON HILL: Okay, no, I appreciate it. We'll get
9 your testimony, then, beforehand. Actually, I'll try to even do
10 that now. Why don't -- Commissioner, can you tell us a little bit
11 about -- we see your letter, and then the condition about the
12 noise and the -- or the ANC's concerns about the disruptive -- can
13 you please tell us about your recommendation?

14 COMMISSIONER ECKENWILER: So our recommendation is that
15 the Board approve the application, but on the condition that there
16 be no amplification devices on the outdoor terrace or projecting
17 sound onto it, say, from, you know, inside. And it's really every
18 bit as simple as that, as set forth in our letter at Exhibit 44.

19 The only elaboration I would add to that is, it's
20 indicated in the letter we'd asked for that condition in a number
21 of previous cases, and this project is near either current or
22 some, you know, soon-to-come residential properties. I believe
23 there's one directly across New York Avenue from this location
24 that may even have a pending application. And thus the concern
25 for the peace and quiet of the central properties.

1 CHAIRPERSON HILL: Okay. Thanks, Commissioner.

2 Ms. Shiker, you know about this condition. Correct?

3 MS. SHIKER: Yes, and in our prehearing submission, we
4 agreed to the condition before the ANC report was even there. We
5 had agreed to it at the ANC meeting, so we have no issue agreeing
6 to that.

7 CHAIRPERSON HILL: Okay. All right. Great.
8 Commissioner, in case I lose you, do you have any questions for
9 anybody?

10 COMMISSIONER ECKENWILER: I have none, and frankly, I
11 don't know that you need me anymore at this point, because we are,
12 as Ms. Shiker just said, you know, four-square in agreement with
13 the applicant on all points.

14 CHAIRPERSON HILL: Okay, Commissioner. Well, then, I'll
15 excuse you, or you can go whenever you'd like. And good luck with
16 your hearing.

17 COMMISSIONER ECKENWILER: Thank you.

18 CHAIRPERSON HILL: Bye-bye.

19 All right, Ms. Shiker. You want to go ahead and walk us
20 through your presentation?

21 MS. SHIKER: Yes. We have a PowerPoint that's at
22 Exhibit 43. If Mr. Young could please bring that up? Thank you.
23 If you could go to the next slide, please? Wonderful.

24 So good evening, Board. We are here to present a
25 project that is located in the heart of NoMa. As you can see it

1 outlined in red on your slide, New York Avenue is to the north.
2 That's the ATF building to the east. 1st Street, again, on the
3 east. And N Street on the south. It is zoned D-5 and again, it
4 is located in the heart of NoMa. Next slide, please.

5 Our application is requesting two special exceptions.
6 The first special exception is for bar and restaurant use in the
7 penthouse, and the second special exception is for ground-floor
8 animal boarding, like a doggie daycare, as one of our ground-floor
9 non-residential uses.

10 We've worked closely with the District agencies and the
11 ANC, as you just heard. The Office of Planning issued a report in
12 support, with no conditions. DDOT issued a report with no
13 objection to the application, subject to two conditions.

14 The first is their standard TDM that they have been
15 requesting any time that there's a restaurant or bar in a
16 penthouse habitable space, and as we indicated in the filing at
17 Exhibit 41, we are in agreement with that condition, and we don't
18 have any issues with that TDM.

19 Their second question was regarding whether or not
20 showers and lockers were required for retail and service use.
21 Showers and lockers are required when you're above 25,000 square
22 feet of gross floor area. As proposed, the project would be above
23 that 25,000-square-foot number. So we are proposing to provide
24 showers and lockers.

25 I think they were shown on the ground floor plan, and

1 then actually, we put a blowup of that in that submission, just so
2 that you could see where those were located. I think just the
3 text was small, so DDOT did not see it. So to respond to that,
4 yes, we are providing them, as, you know, as they're required
5 above 25,000 square feet, and they are located on the ground floor
6 near one of the bike rooms.

7 Finally, ANC -- we've just talked about that. We would
8 agree to the condition, and we have included that in our
9 prehearing submission. And so, you know, we're happy to do that.

10 I will note that, because this is a large site and there
11 is penthouse habitable space, filled with the restaurant use and
12 with residential units, this project will result in a greater-
13 than-\$600,000 contribution to the Housing Production Trust Fund,
14 so that is, you know, that's always great in penthouse regulations
15 working. Next slide, please.

16 At this point, I'm going to ask Brandon, Mr. Robinson,
17 our architect, to give you a very brief summary of the project.
18 And then I'll conclude by summarizing how we meet the standard of
19 relief. Thank you.

20 MR. ROBINSON: Good afternoon, everyone. My name is
21 Brandon Robinson. As Christy just mentioned, I am an architect
22 with Hord Coplan Macht, the architecture firm for this project.
23 And so I'll be really quick and brief.

24 I think everyone here knows this site. Today, there's
25 the existing McDonald's on it. This is adjacent to the Wendy's

1 circle. And as this slide shows, at the intersection of 1st
2 Street and New York Avenue, we have that existing McDonald's, and
3 just a little bit further, on our proposed lot, is an existing
4 office building. Next slide, please.

5 These are just a couple more views of that same area.
6 On the left, again, you see the existing office building. On the
7 right, you see some of the empty -- well, not so empty, but
8 parking areas supporting the McDonald's, as well as empty parking
9 lots between us and the new condo development just to our west.
10 Next slide, please.

11 So this is what we're proposing. This is a view from
12 New York Avenue. Basically, we're proposing this just over
13 700,000-square-foot total GFA building. You know, just shy of 760
14 units. It does have a habitable penthouse, as Christy mentioned.
15 It also has a fully-mixed-use ground floor with just over 25,000
16 square feet of retail across the two phases of this project. It
17 is within the height limit of 130 feet.

18 And as Christine has mentioned, we basically have these
19 two exceptions we're seeking in Phase A, which is the southern
20 portion of the building, which you'll see a little bit on the next
21 slide or two. We're asking for the penthouse and restaurant bar.
22 And on the north portion of the site, which is this glassier
23 building that you're seeing here at the corner of 1st Street and
24 New York Avenue, we're asking for an animal boarding use on the
25 retail frontage facing New York Avenue. Next slide, please.

1 These are just a couple more shots of the building, to
2 give you an idea of the size of the project and its architectural
3 character. On the left, you can see again the distinct difference
4 in architectural styles between the Phase 1 and the Phase 2.
5 Phase 1 being the red brick, the balconies, Phase 2 being glass
6 and projecting bays.

7 And the image on the right is the view of the Phase 1
8 building as it front on N Street, which is the, you know, access
9 to the Metro station and pedestrian access to the building. And
10 you can see the habitable penthouse sort of popping up in all of
11 these views. But next slide, please.

12 So specifically talking about the penthouse restaurant
13 bar, again, looking at the plan here on the right, the Phase A
14 portion of the site is pretty much the entire southern half of the
15 site, and then there's a dogleg that extends up on the western
16 portion of the site to meet New York Avenue.

17 The restaurant and bar is proposed to be in the
18 southeast corner. The outdoor terrace space to support that bar
19 use, restaurant use, is on the eastern side of the building, off
20 of 1st Street. Again, trying to locate it on the more commercial
21 avenue -- or streets, not avenue -- and keep it as far away from
22 some of the residential uses that Mark Eckenwiler had mentioned,
23 which is on the south side of the site and the north side of the
24 site.

25 And it is a habitable penthouse with units. You can see

1 the yellow units. So we are concerned about separation between
2 the residential uses and commercial uses, just within the
3 building. And we're only asking for, you know, just shy of 6,000
4 square feet to be programmed for this use on this penthouse. We
5 are asking that it be accessible to the public. And that's pretty
6 much it. The slide is pretty self-explanatory. We can go to the
7 next one.

8 So this slide is talking about the other special
9 exception we're looking for, which is the animal boarding use.
10 This is our mixed-use ground floor level, where the two phases --
11 the animal boarding use is in Phase 2, which is the existing
12 McDonald's site at the intersection of 1st and New York Avenue.
13 You can see the yellow star there, which denotes the rough tenant
14 location that we're proposing.

15 It's currently set aside roughly 25, 26 -- or, I'm
16 sorry, 35 or 3,600 square feet for this use. And in just about
17 every way, we're complying with the GFA requirements for the
18 ground floor uses. We can go to the next slide.

19 This slide, very quickly, is just giving you an example
20 test fit of our proposed space, and how it could accommodate the
21 animal boarding use.

22 It's also worth noting that, to the bottom left of this
23 page, there's a room that's also a lighter gray, that's labeled
24 "Animal Waste." We do have a dedicated animal waste space in the
25 building that will be ventilated, again, all in the interest of

1 minimizing the impact of the animal boarding use on residents and
2 other tenants of the building, whether commercial or residential.

3 There are a number of requirements that we need to meet
4 in order to have this use in the building, and we will be meeting
5 all of them. We can go to the next slide.

6 MS. SHIKER: And I think that will turn it over to me.

7 So for a penthouse restaurant and bar, it applies the
8 general special exception category -- criteria, excuse me. So
9 will it be in harmony with the general purpose and intent of the
10 zoning regulations. It will be -- this site is zoned D-5, which
11 is intended to promote high-density development of commercial and
12 mixed uses.

13 It will also not tend to adversely affect the use of
14 neighboring properties. As you saw in the plans, the restaurant
15 is primarily located within an enclosed space, with a limited
16 terrace. And that terrace has been situated to front onto the
17 office building across the street. It is removed from all
18 residential uses by other uses. And we also have committed not to
19 have any amplified music or amplified music projecting out of the
20 enclosed space, as requested by ANC. Next slide, please.

21 So that is the criteria for the penthouse bar and
22 restaurant, and again, you can always apply other special
23 conditions, and we have agreed to the ANC condition. For the
24 animal boarding, in the downtown zone, animal care and boarding
25 uses are permitted as a special exception, subject to kind of

1 three general criteria.

2 One is the general special exception criteria. Again,
3 you know, in harmony with the zoning regulations, D-5, mixed use
4 zone, intended to have many different land uses in a denser area.
5 Whether it would tend to adversely impact neighboring properties.

6 Again, it's located in a mixed-use community, and that
7 is going to serve this mixed-use community. As we all know,
8 during the pandemic there have been many people who've gotten
9 dogs, and as the world returns slowly back to normal, we believe
10 that this will be a great amenity for people in our building, and
11 for residents elsewhere in NoMa.

12 And the use has been located in such a way as not to
13 adversely impact any of the users in the building or outside. As
14 you can see, it was put kind of between the retail uses. It was
15 put right next to the service and has direct access into that
16 service. And so as a result, it does not tend to adversely impact
17 any of the neighboring property.

18 The second kind of basket of criteria are these two
19 criteria that are listed in the downtown zone. One is that it
20 must be located on or below the ground floor of the building, and
21 we are at the ground floor; and that it's not allowed to be -- the
22 animal boarding, it can't be in a pet grooming establishment. And
23 it's because pet grooming is permitted in a different way. So
24 this is a traditional doggie daycare and animal boarding use.
25 Next slide, please.

1 The third criteria is that the downtown zone says that
2 you have to meet all the conditions in Subtitle U, Section 513.1.
3 They're listed here for you, and I'll briefly say -- you know,
4 must be fully enclosed within the building, which we are.

5 The building needs to be designed to mitigate noise, to
6 limit adverse impact. As you saw on the plans, it's been
7 outfitted with acoustic ceiling and dividing walls, in order to
8 reduce the negative impact of sound. It also has proposed
9 flooring that's designed to absorb sound and mitigate noise
10 levels. And again, it's located right next to retail uses, right
11 next to the service use.

12 Number 3, the windows and door of the space shall be
13 kept closed, and in this case, they're inoperable in that
14 storefront glass. In addition, in this project, there are no
15 doors facing residential units, so that criteria is not
16 applicable.

17 Four, we are not going to be putting any animals in
18 external yards. The courtyards are above the first level, and
19 they are for residents only. So we've satisfied that criteria.
20 As Mr. Robinson showed you, there is a special location for animal
21 waste, in its own trash area. So that criteria is satisfied, and
22 it will be collected at least weekly.

23 For odor control, the applicant intends to use a
24 filtration system to neutralize odors. And in fact the
25 prototypical flooring, or similar type product that they use, will

1 actually help withstand lingering odors. There are floorings that
2 are made for these type uses.

3 Seven, the floor material, as I just mentioned, it will
4 be a Protect-All floor or similar type product, and it will come
5 in a number of modular floor tiles that are specifically designed
6 for these types of uses. And it will be washable and impervious
7 up to the 48 inches.

8 Number 8, again, I noted about the external yards. We
9 don't have any external facilities. And finally, the BZA can
10 impose additional criteria or requirements that they may believe
11 is required. We believe that compliance with all of these
12 different elements leads us to think there is no additional
13 requirements or conditions that would be needed to make sure we
14 protected the neighboring properties.

15 And with that, we would conclude our presentation, and
16 will be happy to answer any questions that you may have.

17 CHAIRPERSON HILL: Okay. Thank you, Ms. Shiker. Ms.
18 Shiker, I am curious. Let me -- so you guys already have an
19 animal boarding tenant?

20 MS. SHIKER: We do not. But as we're designing and
21 marketing the building, we wanted to have the special exception
22 approval we knew that we were coming for, for the penthouse bar.
23 So we wanted to make sure that we could have that, we could plan
24 the ground floor, and then go out to market as we're starting to
25 construct the building.

1 CHAIRPERSON HILL: Got it.

2 Mr. Faizan, can you hear me?

3 MR. QURESHI: Yes, I can hear you, Commissioner.

4 CHAIRPERSON HILL: If we were to pass this, when would
5 you guys deliver?

6 MR. QURESHI: So we're aiming to get building permit,
7 you know, in the first half of next year. And then we would, you
8 know, start construction thereafter.

9 CHAIRPERSON HILL: Got it. Okay. All right.

10 Does anybody have any questions for the applicant before
11 I go to the Office of Planning?

12 No? Okay, I turn to the Office of Planning.

13 MR. KIRSCHENBAUM: Good evening, Chair Hill, and members
14 of the Board of Zoning Adjustment. I'm Jonathan Kirschenbaum with
15 the Office of Planning. We recommend approval for these two
16 special exceptions, to allow a penthouse eating and drinking
17 establishment, and an animal boarding facility. And we rest on
18 our staff report. Please let me know if you have any further
19 questions. Thank you.

20 CHAIRPERSON HILL: Okay.

21 Does anybody have any questions for the Office of
22 Planning? Hold on. Something's happening with my screen. Okay.
23 There we go.

24 All right. Does the applicant have any questions for
25 the Office of Planning?

1 MS. SHIKER: We do not. Thank you.

2 MR. ROBINSON: No, sir.

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

5 MR. YOUNG: We do not.

6 CHAIRPERSON HILL: Okay. I'm sorry. My screen just got
7 a little weird.

8 Does the Board have any questions for anybody?

9 (No response.)

10 CHAIRPERSON HILL: Okay. Ms. Shiker, do you have
11 anything you'd like to add at the end?

12 MS. SHIKER: No, we would just ask that the Board take
13 action on this, as we feel the record is full, that we have
14 satisfied the burden of proof, and we appreciate your time.

15 CHAIRPERSON HILL: Okay, great. Thank you.

16 All right, I'm going to go ahead and close the hearing
17 and the record. Mr. Young, if you could please excuse everyone?

18 Okay. I know that Chairman Hood probably is not a -- I
19 can't believe the McDonald's site is actually going to get, like,
20 dealt with. That is crazy. That McDonald's site just -- you
21 know. That's way beyond -- that's way before me. Chairman Hood,
22 this -- that's, like, way before -- that's, like --

23 CHAIRMAN HOOD: That is way before.

24 CHAIRPERSON HILL: That's way before you --

25 CHAIRMAN HOOD: McDonald's, the Wendy's, I don't know

1 | what I'm eating down in there.

2 | CHAIRPERSON HILL: That's way -- like, I'm just like,
3 | really? Wow.

4 | All right. I didn't have any issues with it. I thought
5 | that they, you know, they have gone through and argued how they're
6 | meeting the criteria in order for us to approve this. I would
7 | agree with the applicant's argument. I would agree with the
8 | analysis of the Office of Planning. I would agree with the ANC's
9 | analysis.

10 | And they were even talking about, you know, the sound
11 | mitigation for amplified music on that penthouse. It is nice to
12 | know about the \$600,000K that gets thrown into that housing trust
13 | fund. And I would also agree with the TDM measures that DDOT has
14 | put forward, and the clarification that showers are going to be
15 | provided above 25,000 square feet, and they are going to be
16 | provided, as per the applicant's testimony.

17 | So I'm going to be voting in favor. And I will look to
18 | Mr. Smith, if he has anything else to add.

19 | BOARD MEMBER SMITH: I have nothing to add. You have
20 | summed this up perfectly.

21 | CHAIRPERSON HILL: All right.

22 | Vice Chair John?

23 | VICE CHAIR JOHN: I have nothing to add. This is fairly
24 | straightforward.

25 | CHAIRPERSON HILL: Mr. Blake?

1 BOARD MEMBER BLAKE: I have nothing to add, sir.

2 CHAIRPERSON HILL: Chairman Hood?

3 CHAIRMAN HOOD: The only thing I would say is that ANC
4 5E did not submit anything. Obviously, I'm sure that they'd feel
5 that they need to be aware, but I wanted to put that out there for
6 the record. Other than that, I think the record is complete in
7 this case, and it warrants our approval.

8 CHAIRPERSON HILL: Thank you, Chairman Hood.

9 All right, I'm going to make a motion to approve
10 application Number 20520, as captioned and read by the secretary,
11 including the condition that the ANC has put forward, concerning
12 no amplified music on the penthouse, and then also the
13 implementation of TDM plan, per DDOT, and their clarification that
14 showers are going to be provided, and ask for a second.

15 Ms. John?

16 VICE CHAIR JOHN: Second.

17 CHAIRPERSON HILL: Motion has been made and seconded.
18 Mr. Moy, could you take a roll call, please?

19 MR. MOY: Thank you, Mr. Chairman. When I call each of
20 your names, if you would please respond with a "yes", "no", or
21 "abstain" to the motion made by Chairman Hill to approve the
22 application for the relief requested, along with the conditions
23 that has -- as he has cited, that's contained in the ANC 6C
24 letter, and the TDM plan that's proffered by -- in the DDOT
25 report. Seconded the motion -- seconding the motion is Vice Chair

1 John.

2 Zoning Commission Chair Anthony Hood?

3 CHAIRMAN HOOD: 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 five to zero to
13 zero. And this is on the motion made by Chairman Hill to grant,
14 seconded by Vice Chair John. Also in support of the motion to
15 grant is Zoning Commission Chair Anthony Hood, Mr. Smith,
16 Mr. Blake, and of course, Vice Chair John, Chairman Hill. Motion
17 carries, sir, five to zero to zero.

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

19 Does anybody got anything they need before we leave?

20 (No response.)

21 CHAIRPERSON HILL: Okay. Well, that's all. It was just
22 lovely to see your little picture in the little box. So we'll see
23 you guys in a little box next week.

24 Except for you, Chairman Hood. We'll see you another
25 day.

1 CHAIRMAN HOOD: Mr. Chairman, I think you'll see me next
2 week. You've made it now so I can come every week, so I really
3 appreciate all that.

4 CHAIRPERSON HILL: All right. There we go. All right.
5 Like it. Okay.

6 All right, we stand adjourned. Bye-bye.

7 CHAIRMAN HOOD: Bye-bye.

8 VICE CHAIR JOHN: Bye, everybody.

9 (Whereupon, the above-entitled matter went off the
10 record at 5:45 p.m.)
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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 10-6-21

Place: Teleconference

was duly recorded and accurately transcribed under my
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