

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

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WEDNESDAY

JANUARY 12, 2022

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The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 10:42 a.m. EST, Lorna John, Vice Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LORNA JOHN, Vice Chairperson
CARL BLAKE, Board Member
CHRISHAUN SMITH, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ROB MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
MATT JESICK
BRANDICE ELLIOTT
CRYSTAL MYERS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from
the Regular Public Hearing held on January 12, 2022.

C-O-N-T-E-N-T-S

Application number 20593 of the Archdiocese 4
of Washington, on behalf of the Shrine of
the Most Blessed Sacrament.

Application No. 20600 of Frederick Scott 75
and Jillian Hall

Application No. 20601 of 924 Oat, LLC 99

Application No. 20551 of Justin Matthews 108

Application No. 20524 of Gregory Potts 131

Appeal No. 20552 of Brian Jordan 134

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

2 (10:42 a.m.)

3 MR. MOY: Okay. The Board is back in session
4 after a quick break, quick recess. And the time is at or
5 about 10:42 a.m.

6 The first case application to go before the Board
7 in this hearing session is Application number 20593 of the
8 Archdiocese of Washington, on behalf of the Shrine of the
9 Most Blessed Sacrament.

10 This is captioned and advertised for special
11 exception for the matter of right uses of Subtitle U, Section
12 201, pursuant to Subtitle U, Section 203.1M and Subtitle X,
13 Section 901.2.

14 This would continue the use of a recreational
15 playing field to serve an existing private school in the R1B
16 zone. Property located at 3637 Patterson Street N.W.,
17 Square 1863, Lots 824, 825, and 826.

18 And, Madame Vice Chair, there are a few
19 preliminary matters. First, the first grouping is from the
20 applicant, it's applicant's that were submitted within the
21 Board's 24 hour block prior to the hearing.

22 So, this is the applicant's updated PowerPoint,
23 their proposed revisions to the conditions, as well as
24 proposed updated site plan. And furthermore, there are two
25 letters in support that was also filed late. So, the Board

1 should act on those.

2 Finally, the last category of preliminary matters,
3 Madame Vice Chair, that I know you are aware of. The first
4 is, there is a request for party status in opposition.
5 There's a request for party status in support.

6 And finally, the applicant has proffered, or asks
7 for expert status to their landscape architect, who I believe
8 is Brian Stephenson. And that's it for me, Madame Vice
9 Chair.

10 VICE CHAIR JOHN: Thank you, Mr. Moy. Mr. Young,
11 are the parties in? I believe they are. Mr. Freeman, Are
12 you presenting today?

13 MR. FREEMAN: I am. Good morning, Madame Vice
14 Chair.

15 VICE CHAIR JOHN: Can you introduce yourself
16 again, and tell us who you have with you today?

17 MR. FREEMAN: Sure. Good morning. I'm Kyrus
18 Freeman with the Law Firm of Holland and Knight, here on
19 behalf of the applicant. Our main two witnesses today will
20 be Chris Kelley, who's the principal of the school. We also
21 have Mary Seidel, who will be our second witness.

22 We also have on Father Foley. I think the screen
23 it shows as W. Foley. He's a parish pastor of both the
24 school and the church who's here today, given the importance
25 of this application.

1 Also on our team, I don't know if he's on via
2 phone, Mr. Young. Chris Cohen with Holland and Knight has
3 been working on this case with me as well. So, if you could
4 admit him, that would be great. But that is the applicant's
5 team for today, Madame, I'll call you Madame Chair today.

6 VICE CHAIR JOHN: That's fine, Mr. Freeman. And
7 I see that the persons requesting party status are also here.
8 Mr. and Mrs. Wellborn. Let's see, are you there, Mr.
9 Wellborn, Ms. Wellborn? How about Mr. Orgren?

10 MR. ORGREN: Yes, I'm here.

11 VICE CHAIR JOHN: Okay. And Mr. Young, do you see
12 Mr. Wellborn or Ms. Wellborn?

13 MR. YOUNG: Call in user. I brought them in.
14 They should be able to speak.

15 VICE CHAIR JOHN: Okay. All right. So, go ahead.
16 Well, first you, Mr. Freeman. Can you tell us why you're
17 late in submitting those documents?

18 MR. FREEMAN: So, we are late, Madame Chair,
19 because we've been working to last minute to try to make sure
20 our package was responsive to some of the concerns we had.

21 So, what we filed is a revised PowerPoint. And
22 that provides PowerPoint now as additional slides to respond
23 to some of the concerns that Mr. Wellborn made. And our
24 updated site plan also is intended to show a proposed
25 revision to the site plan, again, directly in response to

1 some of the requests that Mr. Wellborn made.

2 And just, kind of given the passage of time and
3 things that are happening in the world we literally were
4 working through the night to get the documents submitted.
5 There are also some letters of support that we want to
6 submit.

7 And, you know, again, just the passage of time.
8 We've been working through today to make sure we were getting
9 as much support as possible. So, those are the other items,
10 letters of support from neighbors in the area. They're, Mr.
11 Moy said two. There actually might be more than two. But
12 we'll make sure you have them all. But those are what the
13 items are, Madame Chair.

14 VICE CHAIR JOHN: Okay. Thank you, Mr. Freeman.
15 We'll go ahead and admit those items into the record.
16 Because I would like to see them. And I expect that other
17 Board Members would like to see them as well.

18 MR. FREEMAN: Thank you.

19 VICE CHAIR JOHN: So, I believe I will then go to
20 the party status requests. And is Mr. or Ms. Wellborn on the
21 line? Mr. Young?

22 MR. YOUNG: They are in as panelists. I'm not
23 sure why they aren't speaking. I could have staff reach out
24 to them.

25 VICE CHAIR JOHN: Okay. Thank you. Because they

1 need to be present at the time the request is discussed.

2 MS. WELLBORN: We are present.

3 MR. WELLBORN: We are present.

4 VICE CHAIR JOHN: Okay. Excellent. All right.

5 So, I will not need to take testimony on your avocation.

6 However, the rules require you to be present at the time of

7 the decision. So, I have, can you state your name for me,

8 and your address?

9 MR. WELLBORN: We are Edna and Clay Wellborn. We
10 reside at 5829 Chevy Chase Parkway, N.W., Washington, DC
11 20015.

12 VICE CHAIR JOHN: Okay. Thank you very much. So,
13 I reviewed your application for party status in opposition.
14 And as an adjacent neighbor, I don't think you were listening
15 earlier, but we had a similar situation where we discussed
16 party status for an adjacent neighbor.

17 And so, under the regulations there's a
18 presumption that you would be more significantly,
19 distinctively, or uniquely affected in character or kind by
20 the proposed zoning action than that of other persons in the
21 general public.

22 And there's no objection from the applicant to
23 your admission as a party. And so, I'm inclined to grant you
24 party status, unless any Board Member objects.

25 MR. WELLBORN: Thank you, Madame Chairman.

1 VICE CHAIR JOHN: Okay. Thank you. So now that
2 you've been granted party status you will be allowed the same
3 amount of time as the applicant to provide your testimony.
4 And in addition, you will be able to cross examine other
5 parties and witnesses. Do you have any questions?

6 MR. WELLBORN: No, ma'am.

7 VICE CHAIR JOHN: Okay.

8 MR. WELLBORN: Not at this time.

9 VICE CHAIR JOHN: Okay. Thank you. So, you're
10 excused. Well, no you're not. Next is the party status
11 request for Mr. Orgren.

12 MR. ORGREN: Yes.

13 VICE CHAIR JOHN: Thank you. And I'm going to
14 repeat the same thing. Good morning. And your application
15 is also very straightforward.

16 And as an adjacent neighbor residing at 3610
17 Quesada Street, there's a presumption that you would be more
18 significantly, distinctively, or uniquely affected in
19 character of kind by the proposed zoning action than that of
20 other persons in the general public.

21 There's no objection from the applicant. And so,
22 I'm inclined to grant party status unless any Board Member
23 objects. Okay. So, you've been granted party status. And
24 in that capacity you will be allowed the same amount of time
25 as the applicant to provide your testimony. You'll also be

1 allowed to cross examine other parties and witnesses. Do you
2 have any questions?

3 MR. ORGREN: I do not. Thank you, Madame
4 Chairwoman.

5 VICE CHAIR JOHN: Thank you. So, the next thing
6 is the expert status request for Brian Stephenson. And this
7 is a request from the applicant. And, I'm sorry, did someone
8 say something?

9 So, this is a request for expert status for Brian
10 Stephenson. I've reviewed Mr. Stephenson's resume. He has
11 not been previously recognized as an expert by the Board.
12 Based on his resume I believe that Mr. Stephenson has an
13 extensive background in landscape architecture, and is
14 properly qualified to be an expert in this case.

15 Does any Board Member have any questions? And so,
16 since no one objects, I will admit Mr. Stephenson as an
17 expert in landscape architecture. Okay. Have I gotten all
18 the preliminary matters, Mr. Moy? I think so.

19 So, let's proceed then with the hearing. Mr. Moy,
20 Mr., I'm sorry, Mr. Freeman, are you ready to proceed?

21 MR. FREEMAN: Yes, Madame Chair. And I will be
22 referencing, I went off screen, I was checking the exhibit
23 record, the online version. And it looks like the Office of
24 Zoning uploaded those additional materials into the record.
25 So, I will make sure I'm referring to the proper exhibits as

1 I go through my presentation.

2 The PowerPoint that we will present, Mr. Young,
3 is Exhibit 39A. So, if you can pull that up that would be
4 great.

5 VICE CHAIR JOHN: And excuse me, Mr. Freeman.
6 Before you begin, Mr. Young, please put 15 minutes on the
7 board? Oh, it's there as a guide. Okay. Go ahead, Mr.
8 Freeman.

9 MR. FREEMAN: Thank you. So, again, Kyrus Freeman
10 on behalf of the applicant. We're here today to seek the
11 permanent approval of the, we call it the playing field for
12 the school.

13 The field has been in existence for over 13 years
14 at the site. It's of critical importance to the school. And
15 what I'd like to do is turn it over to Mr. Kelley to talk
16 about the importance of the field.

17 And then, after Mr. Kelley presents I'll go
18 through the standards, and how we meet those standards. So,
19 if you could allow Mr. Chris Kelley, who's a principal, to
20 speak that would, that's our next witness.

21 MR. KELLEY: Can you hear me?

22 VICE CHAIR JOHN: Yes, thank you. Can you state
23 your name and give your address for the record, please?

24 MR. KELLEY: My name is Christopher Kelley. My
25 school address is 5841 Chevy Chase Parkway, Washington, DC

1 N.W. I appreciate the opportunity to speak on behalf of the
2 school. This is my 12th year as principal of Blessed
3 Sacrament.

4 Blessed Sacrament has served the northwest D.C.
5 community for over 100 years. The school itself was built
6 in 1923. And we've consistently strived to provide the
7 children of the parish and the neighborhood with the
8 opportunity for an education as a whole child, including
9 appropriate physical development.

10 Over time we recognized the need for additional
11 space for physical activities for the students. We've always
12 had a blacktop as a recess yard. But that space has proven
13 to have its limitations.

14 In the 1960s we built a gym to allow for increased
15 availability of indoor space for physical education and
16 recreation. There were times in the '70s when we blocked off
17 Quesada Street to provide additional space at recess time.
18 And I know that, because in 7th and 8th grade that was my
19 recess yard.

20 We kept looking for ways to find additional places
21 for our students to be able exercise safely outside. And in
22 2000 that dream became a possibility with an initiative to
23 acquire the property that we now call the Field of Dreams.

24 In 2008 the dream became a reality. And for over
25 a decade our students and neighborhood children have been

1 able to run, and jump, and play, and learn in a large open
2 space that is suitable for a variety of activities, and safe,
3 and clean, and easily accessible for the children.

4 The addition and availability of this space means
5 that in a world where it is so important to get away from
6 screen time the school has more flexibility, and the children
7 have more opportunity for physical education classes, and
8 recess, and after school activities.

9 If the importance of the field wasn't already
10 evident enough from the joyful sounds of the active children
11 on a daily basis, this pandemic has made it even more vital.
12 Everyone was encouraged to cohort, and to get outside more.
13 This field allows the space for children to stay together in
14 their cohort, and go to a place with enough room to move
15 freely.

16 Schools are expected to provide a lot these days.
17 Blessed Sacrament has never strayed from the vision of
18 serving the whole child. One of the most important elements
19 of this mission is active play outside.

20 The Field of Dreams is an essential piece,
21 actually the most essential piece for us to continue to
22 provide this for our students. We need the field to continue
23 the vitality of the children, and to continue the vitality
24 of the school. It is essential to serving our students and
25 our families. Thank you for your time.

1 MR. FREEMAN: Thank you, Mr. Kelley. So, I will
2 go quickly through the slides, and indicate how we meet the
3 standards of relief. It's detailed, and more detailed in
4 writing in our statement, as well as the Office of Planning
5 report, which is Exhibit 27 on the record. But for the
6 purpose of the hearing I'd like to go through it quickly.
7 So, Mr. Young will work on the slides. So, next slide,
8 please.

9 I think we know what we're here for. Again, this
10 is a special exception to continue the use of the school, the
11 playing field, I'm sorry, for the school. The record
12 includes the support of the Office of Planning, the
13 Department of Transportation, the ANC. I believe the ANC
14 Commissioner for our site is on.

15 We have party in support. And we also have, at
16 this time there were five letters of support. But we now
17 have up to seven letters of support of the application. And
18 I would note that those support letters are the immediately
19 surrounding neighbors. Next slide, please.

20 So, I think you know where the site is. To the
21 far left the kind of more structure is the school. You see
22 the alley system. You see the identification of where the
23 playing field is. Next slide, please.

24 Again, this field was initially approved back in
25 2008 for a three year term. Everything worked okay, worked

1 well, worked great those three years. We came back in 2011,
2 and the Board approved it for a ten year term. And now we're
3 back again and asking the Board to permanently approve the
4 field. Next slide, please.

5 You heard Principal Kelley talk about the
6 importance of the field to the school. I've been working on
7 it since day one. And I can tell you it has always been of
8 critical importance and high priority to us and for the
9 school. Next slide, please.

10 Here's some pictures of it. What you can see
11 here, it's heavily landscaped around the fences. It is well
12 maintained. There's no trash. It's a great field. It's not
13 an eyesore. I know that's one of the standards for a special
14 exception approval. Next slide, please.

15 So, this is a revised site plan. There are two
16 important things that I want to point out on this revised
17 site plan. The first of which is that today there is a five
18 foot fence along the perimeter of the site.

19 If you, I don't want to speak for Mr. Wellborn,
20 but they requested that the applicant install a ten foot
21 fence. We're not inclined to install a ten foot fence. I
22 think if you read the support letters, all of the neighbors
23 who have indicated their support do not support a ten foot
24 fence.

25 But we have tried to kind of meet in the middle.

1 So, we are now proposing to increase the height to seven
2 feet. Seven feet is permitted as a matter of right under the
3 building code in residential zones. And we think that will
4 help to, it will likely be an ornamental fence similar to
5 what's there. But the goal is again to increase the size of
6 the fence in order to try to meet some of Mr. Wellborn's
7 concerns.

8 WE also agreed, and what you can hopefully see
9 along the left side of the screen, is to install some type
10 of noise abatement measure. One of the things that Mr.
11 Wellborn talks about is the noise associated with balls
12 hitting the fence.

13 So, we're going to try to work hard. We haven't
14 found the right solution yet. But we have committed that
15 within 12 months of this hopeful approval of the application
16 we will have some type of noise mechanism out there to stop
17 balls from hitting the fence, and to minimize the noise
18 associated with the fence that he identified as a concern for
19 him.

20 And of course, we will continue to maintain and
21 lock the gates at the north and south. So again, those are
22 the two main changes on here, the seven foot fence, and the
23 movable noise mitigation along the western property line.
24 Next slide, please.

25 I think this is intended to just describe a little

1 bit how the field is operated. It is operated 100 percent
2 in accordance with the conditions of the, I'm sorry, of the
3 BZA order. It's 9:00 a.m. to 6:30 p.m., generally not after
4 sunset. The school instructs the coaches, the teachers, and
5 everyone out there to get folks off the field by 6:30 p.m.

6 There are no amplifiers, generators, compressors,
7 or other loud devices. It's limited to 90 students. It's
8 not used for any major athletic sporting events. And as the
9 pictures show there's substantial landscape buffer. Next
10 slide, please.

11 Again, our statement goes through in detail how
12 we meet the standards. So, I will just highlight. Again,
13 the playing field has been in use for 13 years without any
14 major incident. It has been operated in a manner that is
15 consistent with the conditions of prior BZA orders. The
16 landscaping will continue to be there, will continue to be
17 well maintained. The school implements policies requiring
18 oversight of the planned field activities.

19 I will say, just for the purposed of the Board's
20 knowledge, for the non-school use time there are rules.
21 There are searches for folks using the field during non-
22 school hours. And we continue to require that moving
23 forward.

24 Though we're not proposing to add any activities,
25 we're proposing to keep essential same use. Next slide,

1 please.

2 Again, these are how we meet the standards. It's
3 much of what was on the previous slide. What I would like
4 to point out here is when I say that the school has been
5 operated generally with no incident, that's not me saying it.
6 That's what these letters of support say. So, I'll just lift
7 up a couple of quotes.

8 On Exhibit 33 our immediate neighbor to the east
9 says, I quote, the light engagement of the children is not
10 problematic for us, and does not impact our daily life. We
11 expected the sound of school and children. We could not
12 avoid the awareness of this, and we welcome this. It has not
13 impacted our lives in the five years that we've lived here.

14 We have a letter, Exhibit 35. I will lift up the
15 quote that says, during the school hours the children are
16 well behaved. And the bright sounds of children playing and
17 laughing are a welcome part of the neighborhood. Our family
18 and the families of our neighbors also make use of the field
19 after school and on weekends.

20 Exhibit number 40, which is a newer exhibit in the
21 record, from Ms. Allison Jenkins says, since 2017 when we
22 purchased our home on Quesada Street and became across the
23 street neighbors of the school and parish we've witnessed
24 only positive and healthy outcomes from use of the field by
25 the school's students and neighborhood.

1 So, when I say that it has not had an adverse
2 impact on the neighborhood that's not coming from me. That's
3 actually coming from people in the neighborhood. Next slide,
4 please.

5 So, Mr. Wellborn had some proposed conditions in
6 his submission. These are our responses to that. Before I
7 go through those responses I would like to ask that you make
8 sure Mary Seidel, Mary has been kind of the operator of the
9 school field, closely involved in the management and use of
10 the field.

11 So, I would like for her to generally talk about
12 operation of the field. And then I'll come back and wrap up
13 by going through these conditions. So, Mary, would you like
14 to --

15 MS. SEIDEL: Sure. Thank you. Thank you,
16 Chairman and Board Members.

17 VICE CHAIR JOHN: Thank you, Ms. Seidel. Would
18 you introduce your name --

19 (Simultaneous speaking)

20 VICE CHAIR JOHN: -- as well.

21 MS. SEIDEL: Mary Seidel. I work at the Blessed
22 Sacrament parish. My address is 8058 Glendale Road, Chevy
23 Chase, Maryland.

24 VICE CHAIR JOHN: Thank you.

25 MS. SEIDEL: As Kyrus indicated I've been employed

1 at the Blessed Sacrament parish for two years. And one of
2 my roles at the parish is to be the community neighborhood
3 liaison to the Field of Dreams, as well as monitor Blessed
4 Sacrament's ability to meet the parameters that the Board
5 asked us to ten years ago.

6 And that's what I wanted to start off with is the
7 Blessed Sacrament School and parish is very thankful for the
8 fact that we were able to get this ten years ago, or 13 years
9 ago, 2008. But that we were able to get this.

10 We do not take that lightly at all. We
11 understand, you know, the impact it had on the neighborhood.
12 We understand that the families had a house next to them.
13 We greatly appreciate the fact that we have this field, and
14 the importance it is to our school, and quite frankly to the
15 neighborhood community.

16 So, having said that, Blessed Sacrament over the
17 course of ten years have consistently looked at the
18 parameters of use, and made sure that Blessed Sacrament meets
19 the Board of Zoning's parameters, and that they're intact.

20 And we are intact. We've had, I just wanted real
21 quickly to update you. We take it very seriously related to
22 the neighborhood use. The Board of Zoning specifically says
23 only close by neighbors.

24 Therefore, we have access and indemnity agreements
25 that only can be signed by close by neighbors. They are the

1 only ones that are allowed to use this field. This is not
2 a public park. Pursuant to the Zoning Board only neighboring
3 communities were not required, but we may allow. And we
4 believe it's important to allow them.

5 But we monitor it. We have two access and
6 indemnity agreements. Secondly, they have a code. Blessed
7 Sacramento invested in a new gate with a lock, because it
8 wasn't being used properly. So, it was a significant
9 expense.

10 But we recognize as part of the zoning permit we
11 need to have, ensure that the gate is locked at 6:30 p.m.,
12 and there's no access to it. And we take that seriously.
13 Therefore, we have invested in a new gate and lock.

14 Landscape buffering, critical. If you look at the
15 hearing report from 13 years ago, ten years ago, that's so
16 important to the neighborhood. Blessed Sacramento has looked
17 at that. And when there's been opportunities to improve the
18 landscaping we've done that.

19 Along Mr. Wellborn's side some trees had died.
20 We replanted them. Unfortunately they died again. It took
21 us awhile to get some new trees due to the shortage on
22 supply. We have four new holly trees. We invested in an
23 irrigation company to water those four new trees and make
24 sure they're successfully there to buffer the area.

25 Additionally, we noticed there are some risk

1 factors related to the field where there are shrubs that are
2 overgrown. We tore that out and invested in new artificial
3 turf there to create a much better, greener space.

4 As I had indicated, the date we, is improved. I
5 would say that during COVID we did notice that there was more
6 activity on the field, and the gate, we were waiting for a
7 new gate. So, Blessed Sacrament invested in a security guard
8 just to make sure that while we wait for the new gate and
9 lock that no one would use the field after 6:30 p.m.

10 That security guard, I receive texts from him
11 whenever there's been a violation. Since May I've probably
12 received three texts from him. And I ask him to take
13 pictures of those violators. And it's generally been someone
14 that did not understand that the field is closed.

15 It's important to note that there has not been on
16 our field any police activity. There's been no crime. I've
17 engaged with the local police just to make sure they're aware
18 that it's closed at 6:30 p.m. Now, they have other
19 priorities. But they're aware of that. There's not been any
20 issues.

21 So, we want to continue to meet the parameters
22 that the Board has set out. And we believe that we've worked
23 very hard to do so.

24 MR. FREEMAN: Thank you, Mary. And the only thing
25 I would add is, without kind of getting overly, folks in the

1 neighborhood know to contact Mary in the event that there's
2 ever been an issue. And Mary's done an excellent job of
3 communicating with neighbors, keeping neighbors up to date
4 on the field. And in the event that there's ever a question,
5 people know to contact her.

6 To that end our conditional letter we've agreed
7 to include a condition that there is a designated point of
8 contact. But that, it was easy for us to agree to that,
9 because we already do that.

10 So, what I'll do now is I'll quickly go through,
11 I may be over the 15 minutes, Madame Chair. But I only have
12 three more slides here.

13 Mr. Wellborn proposed kind of some conditions.
14 So, I'll go through each of those. His first condition, and
15 I'm just going to paraphrase. His first condition is that
16 we comply with the terms of a separate agreement that was
17 reached with him, and the conditions that he ordered.

18 We agree to comply with those, as well as the
19 conditions of the order as modified herein. And we filed for
20 the record kind of a track-changes version of the conditions.
21 Happy to pull that up if we need to.

22 Number 2, this is where he asked us to install a
23 ten foot chain link fence. Again, we don't agree to that.
24 We don't think, and I think the neighbors, you'll read the
25 letters from neighbors that they think that's not the most

1 aesthetically pleasing type of fence for that neighborhood.

2 But again, what we have agreed to do is within 12
3 months of approval of the application, just to make sure that
4 there's sufficient time to replace the existing five foot
5 fence with a seven foot fence. Again, haven't identified it.
6 But will likely be ornamental, see through, very similar to
7 what's there now. But we're trying to help, meet him
8 halfway. Next slide, please.

9 Number 3, keep the field locked at all times
10 except when it's not in use. We absolutely agree to that.
11 That's already a condition. We will continue that condition.

12 Number 4, ensure that the field is closed and
13 locked by 6:30 p.m. Again, absolutely agree to that
14 condition. We'll do that.

15 Number 5, arrange for regular ordering of any new
16 trees or shrubs. Absolutely. When we install new trees we
17 will water them to make sure that they grow and are
18 flourishable and able to survive. Next slide, please.

19 Name a permanent coordinator of the field. We
20 agreed to that, right. We're not going to say it's Mary
21 Seidel. We will identify that person. I think, I don't know
22 that Mary wants to do this forever. But we will identify
23 that person and make sure the community knows who that person
24 is, and has that person's contact information. So,
25 absolutely no problem. That's condition 11 of our new

1 exhibit.

2 Number 7, I think what Mr. Wellborn, don't want
3 to speak for him, Mary just mentioned the fact that we had
4 a security guard while we were having issues with the gate.
5 And that security guard was to ensure that folks aren't using
6 it, using the field inappropriately while we were having
7 issues with the lock.

8 We do not intend to continue having a security
9 guard in perpetuity. That is a substantial expense. We have
10 found, I think Mary said, only two to three instances where
11 folks were there when they should not have been there.

12 I think you'll see a letter from a neighbor who
13 understands that there was a temporary need for a security
14 guard, but doesn't necessarily want a permanent security
15 guard there.

16 And again, we think with the changes that we're
17 making, with the installation of the new fence, presumably
18 there would be a new lock, which will be a more advanced lock
19 than what's there now. So, we just don't think there is need
20 for that. Next slide, please.

21 I think this is, you know, Mr. Wellborn identified
22 that concern about noise hitting the fence on his side. So,
23 we will install some type of noise mitigation measure,
24 whether it's a pad, whether it's a net. We'll find the right
25 solution for that. Or we'll install some type of either

1 permanent of movable noise abatement measures to help
2 mitigate or prevent the sound of balls hitting the fence
3 along the western property line. Absolutely no problem doing
4 that.

5 Number 9, Mr. Wellborn proposes that the field not
6 be available to neighbors on weekends. We obviously do not
7 support that condition. I think, and you'll see from the
8 letters of support, you'll hear from some of the neighbors
9 who have signed up to testify today, weekend use of the field
10 is important to neighbors.

11 Some view that as an amenity. Some view that as
12 a basis of them purchasing their home. You have a beautiful
13 letter from Mr. DeSantis (phonetic) at Exhibit 33, who's a
14 neighbor to the immediate east of our site, who supports use
15 of the field, including all weekend use. Not only for the
16 kids, but almost as a neighborhood amenity.

17 One thing we have done is we specify what squares
18 folks have to live in. There are four squares that we're
19 specifying. Previously it just said neighborhood. The
20 purpose of specifying those squares is to indicate it's not
21 a public park, it's a neighborhood, it's a playing field that
22 is available to immediately available neighbors.

23 So, we've indicated four squares that we think are
24 the appropriate squares. And those are the squares I think
25 all of the folks on this call are in. Next slide, please.

1 Last but not least, I think we have demonstrated
2 over the past 13 years that there have been absolutely no
3 incidents of any concern as it relates to use of the field.
4 So, in our view, it's been there for 13 years, I think we are
5 at the point where we should not need a ten year term.

6 I will see you hopefully every other weeks for the
7 next ten years. So I, but I don't know that the school needs
8 to come back in ten years from now. Again, we've
9 demonstrated our full compliance with the conditions. We
10 have agreed to institute a point of contact as a condition.

11 And I think the school has said and has
12 demonstrated that they are great neighbors. Otherwise we
13 wouldn't have all of this support here today. So, we don't
14 think we need to come back in ten years.

15 So, that is our last slide. Mr. Young, next
16 slide. I'm pretty sure this is our last slide. So, that
17 concludes our direct presentation, Madame Chair and Members
18 of the Board.

19 Again, we think we fully meet all of the standards
20 for approval. And we're happy to answer any questions at
21 this point. Thank you. Sorry. I know I took a little
22 longer than 15 minutes. But wanted to make sure the record
23 was fully complete.

24 VICE CHAIR JOHN: Okay. Thank you, Mr. Freeman.
25 Mr. Young, would you please drop the presentation, please?

1 Does the Board have any questions for the applicant? Mr.
2 Blake.

3 MEMBER BLAKE: Two questions for Ms. Seidel. How
4 is, how long has the coded gate been, coded lock been
5 installed?

6 MS. SEIDEL: The new one that we invested in? It
7 was installed in I think August, mid-August of 2020.

8 MEMBER BLAKE: Okay. And does that turn on and
9 off access? Or does it matter if you have the code? Is it
10 timed? Is it an electronic thing or just a mechanical
11 mechanism?

12 MS. SEIDEL: Yes. So, it's mechanical. What we
13 had before was a padlock. So, the kids or whoever used it
14 would actually have to take it, lower it to the ground, and
15 put it back up.

16 MEMBER BLAKE: Okay. And Mr. Freeman indicated,
17 I think you did in your presentation that you might upgrade
18 that to something that's built for --

19 MS. SEIDEL: Yes. So, what we have now is we
20 wanted it automatically shuts, but then you have to just turn
21 it. But you don't have to put a padlock back on. To your
22 point our enduring scenario would be one of those gates where
23 it just automatically shuts, and you don't even have to turn
24 it.

25 Right now it automatically shuts. We have to turn

1 it to close it. And at the time when we met with the
2 experts, which we met with many, there was an issue of
3 electricity in terms of getting one without a high expense.

4 MEMBER BLAKE: Okay. And the electricity is cost
5 prohibitive? Or is it reasonable to do something like that?

6 MS. SEIDEL: We didn't get the cost. But this is
7 so critical to our school and our community. We would
8 certainly look into electronic. I think that would be
9 something that we had envisioned, quite frankly.

10 MEMBER BLAKE: Okay. The other question I had was
11 with regard to use. You mentioned there is a limitation on
12 the access and timing. What limitation do you have on the
13 actual uses of the field? And if so, how would you, how are
14 you going to enforce that?

15 MS. SEIDEL: So, during the school day, I mean,
16 it's used for the school, recess and gym class. From 3:30
17 p.m. to 6:30 p.m. it's used for Catholic Youth Organization
18 sports program, when the program is running. And it closes
19 at 6:30 p.m.

20 And they actually, we let, we don't use that for
21 6:30. We actually rent fields because we need more time.
22 But we, it's closed at 6:30 p.m. In terms of enforcement we
23 haven't had any issues related to school use or the after
24 school use.

25 MEMBER BLAKE: I was actually thinking more about

1 the weekend use, the --

2 MS. SEIDEL: Yes. So, the weekend use you have
3 to have a code to get in. And we have obviously trespassing
4 signs. It specifically states on there that you have to use,
5 have an authorized use letter to be able to use this field,
6 which we have from the neighbors that live nearby. And
7 there's plenty of signage related to that. And they have a
8 code that they are able to get into. And we trust our
9 neighbors.

10 And for the course of the last 13 years we have
11 not had major issues. I will say that, you know, during
12 COVID there seemed to be more people. And that's when we,
13 you know, decided to invest in a new lock and gate. But the
14 enforcement quite frankly is, you know, no trespassing if you
15 don't abide by the rules that we've stated on the fence.

16 MEMBER BLAKE: Okay. No problem. The question
17 I had was in regard to use. Is there a type of use, a
18 limited --

19 MS. SEIDEL: We're not allowed to use, the school
20 in itself is not allowed to use the property on weekends for
21 any sporting events. No soccer practices. No cross country
22 practices. No flag football practices. Zero use by the
23 school and the parish on the weekends, period. The use is
24 for neighborhood use only.

25 Our parish, when we have a great spring event we

1 use the blacktop. We've had parishioners ask us, well can't
2 we use the field? No, we can't. We are not using this on
3 weekends.

4 So, our use as a school and parish, weekends are
5 off the table. We don't use it. The weekend use is simply
6 related to accommodations for the neighbors who live nearby,
7 who would like to use it for just fun and play.

8 (Simultaneous speaking)

9 MEMBER BLAKE: When you say a vast, would somebody
10 be out there potentially playing soccer in an organized
11 fashion on the field on the weekend?

12 MS. SEIDEL: No. We're not allowed to do that.
13 No.

14 MEMBER BLAKE: Thank you.

15 VICE CHAIR JOHN: Does any other Board Member have
16 questions? Okay. So, I'll go to the Office of Planning.
17 Just a minute. Mr. Lear, do you have any questions? I'm
18 sorry. Mr. Wellborn, do you have any questions? No. Mr.
19 Orgren, do you have any questions? Okay. To end --

20 MR. WELLBORN: May I interject something?

21 VICE CHAIR JOHN: Who is speaking, please?

22 MR. WELLBORN: This is Clay Wellborn.

23 VICE CHAIR JOHN: Okay. Mr. Wellborn this is time
24 for questions. And you'll have an opportunity to make your
25 statement later. So, do you have a questions now for the

1 Office --

2 MR. WELLBORN: No. I do not, Madame Chairman.

3 VICE CHAIR JOHN: Okay. All right. Thank you.

4 So, if there are no questions I will go to the Office of
5 Planning. Ms. Elliott.

6 MS. ELLIOTT: Good morning, Madame Chair and
7 Members of the Board. I'm Brandice Elliott, representing the
8 Office of Planning. The Office of Planning is recommending
9 approval of BZA Case 20593.

10 The special exception criteria is pretty general
11 for this type of use. It basically requires that the use not
12 become objectionable to adjacent neighbors or adjacent
13 properties.

14 The applicant has proposed several conditions that
15 are intended to mitigate the impacts of the playing field on
16 those neighbors, and they've been in place for a number of
17 years now.

18 It includes limiting the number of students
19 allowed on the field at one time, the number of hours of
20 operation, the landscaping, buffering, even how that field
21 is accessed by students during the day. And then more
22 importantly some of the noise mitigations require that there
23 not be any athletic events on the field. And then, there's
24 no use of generators.

25 Another thing that was briefly discussed was how

1 that field is used. There are no permanent structures
2 allowed on that field, including, you know, soccer goals or
3 basketball hoops, or anything like that.

4 The other special exception criteria for this use
5 is actually related to parking. And it doesn't really apply
6 to this particular situation. The school does provide
7 parking for faculty and visitors. And there's no need for
8 additional parking for the playing field. So, we felt that
9 it met that condition as well.

10 In regards to the ten year limitation, OP does
11 support the removal of the requirement that the special
12 exception be renewed every ten years. We do think that the
13 applicant has made an effort to work with the neighbors, and
14 to resolve some of the outstanding issues with neighbors, you
15 know, related to the fence height and, you know, balls
16 bounding off the fence, and some of those other noises.

17 And in addition to landscaping we did hear that
18 some of the dead landscape had been replaced. And, you know,
19 now there's a drip system in place to help it stay alive.
20 So, overall, you know, we do think that it's met the
21 conditions for the special exception. And we do recommend
22 approval. And I'm happy to answer any questions that you
23 have.

24 VICE CHAIR JOHN: Thank you, Ms. Elliott. Does
25 the Board have any questions? Does the applicant have any

1 questions? Oh, Mr. Blake.

2 MEMBER BLAKE: One question, Ms. Elliott. With
3 regard to the potential uses of the field by matter of right,
4 I'm just curious, you know, from a level of intensity used,
5 and so forth. What potential uses, matter of right uses
6 could there be on that lot? Say for example public park or
7 recreation facility, or something like that, that that spot
8 could be used for. Do you have any comments on that, please?

9 MS. ELLIOTT: Sure. Well, it is a residentially
10 zoned lot. And so, obviously it would be, it would allow
11 for, you know, development of residences, single family
12 homes. Institutional uses are permitted. I would have to
13 verify the heights that are permitted. Because I don't know
14 off hand. But that's essentially the extent of what's
15 permitted in the zone.

16 MEMBER BLAKE: Could a public park be in that
17 location?

18 MS. ELLIOTT: Sure. It could be.

19 MEMBER BLAKE: A public park could actually be in
20 that exact same location without any issue, matter of rights?

21 MS. ELLIOTT: Again, I'd have to double check.
22 But I believe a public park would be permitted in a
23 residential zone. I mean, I can think of several examples
24 where that's the case throughout the District.

25 MEMBER BLAKE: Thank you very much. My question

1 was really getting more to the issue of reasonableness and
2 expectations for the location. Thank you.

3 MS. ELLIOTT: Sure.

4 VICE CHAIR JOHN: Thank you. Does the applicant
5 have any questions?

6 MR. FREEMAN: No, Madame Chair.

7 VICE CHAIR JOHN: Okay. Mr. Wellborn, do you have
8 any questions to the Office of Planning? Mr. Orgren, do you
9 have any questions to the Office of Planning?

10 MR. ORGREN: No, Chair.

11 VICE CHAIR JOHN: Okay. Is the ANC here? So,
12 I'll hear from the parties in opposition now. Mr. Wellborn,
13 would you like to make your statement?

14 MR. YOUNG: The ANC is here.

15 VICE CHAIR JOHN: Oh, the ANC is here? Okay.

16 MR. WELLBORN: Yes, I would.

17 VICE CHAIR JOHN: Good morning. Could you state
18 your name for the record, please, and provide your address?

19 MR. WELLBORN: My name is Clay H. Wellborn. I'm
20 testifying on my own behalf and that of Edna P. Wellborn.
21 We reside at 5829 Chevy Chase Parkway, N.W., Washington, DC
22 20015.

23 VICE CHAIR JOHN: Okay. Can you provide your
24 statement, please?

25 MR. WELLBORN: Yes. Our house is on the north

1 side of the street between Blessed Sacrament School on the
2 west, and the playground in question on the east. We
3 oriented our house toward what is now the playground in
4 question, because of the noise from Blesses Sacrament side
5 of the house.

6 Subsequently the parish bought what used to be a
7 residence. And we're faced with the problem of noise after
8 hours from the east. However, we understood that the parish
9 school needed a large field for research and physical
10 exercise.

11 Accordingly, we withdrew our objection to the
12 creation of a playground, in the belief that the earlier
13 decision by the BZA, dated September 13, 2011, and the
14 private agreement between Monsignor John Enzler, pastor of
15 the Shrine of the Most Blessed Sacrament, and us would be in
16 effect, and protect us from the noise from the east. We
17 understood that both the BZA decision dated September 13,
18 2011 and the private agreement will continue in force.

19 We are again faced with problems of noise after
20 regular school hours. We suffer from noise not only from
21 children, but from coaches and parents who were never present
22 until after the trial period specified in the agreement with
23 the parish.

24 We are unable to use our back yard because of the
25 noise. We are unable to open the windows on the east side

1 of the house, or use the porch until well after 6:30 p.m.
2 And during the last two years we have had no cross
3 ventilation in the house, an unhealthy situation thanks to
4 the COVED 19 pandemic.

5 We have become prisoners in our own house for more
6 than ten years due to our good will toward the parish back
7 in 2011.

8 Neighborhood children often climb over the fence
9 that surrounds the playground. And sometimes the gates to
10 the playground are left unlocked. We anticipate that this
11 will continue even with seven foot fences.

12 To make matters worse, the parish often ignores
13 our complaints about after hours noises from the playground.
14 For example, the parish, the pastor of the parish responded
15 with irritation when I called him one night around 9:00 p.m.
16 about noisy people on the playground. He said in a voice
17 full of resentment, well, what do you expect me to do about
18 it?

19 The parish has also ignored our complaints largely
20 about such things as repeatedly dying trees in the buffer
21 between our two properties, because the parish failed to
22 water them properly.

23 The parish has recently identified Mary Seidel as
24 coordinator of the playground. She has been very helpful.
25 During her term as coordinator she's been instrumental in

1 getting dead trees replaced, and arranging water to water the
2 new trees, and employing a man to ensure that the playground
3 is shut down by 6:30 p.m.

4 She has also visited our house so as better to
5 understand the problems we face. Despite her efforts however
6 the parish has regarded the 6:30 p.m. end to disturbing noise
7 from the east side of our house with elasticity.

8 Sometimes children, coaches, and others continue
9 to make noise well after 6:30 p.m. Thus denying us peaceful
10 use of our, of the, on the eastern, of our porch on the
11 eastern side of our house.

12 So, we are opposed to the application of Blessed
13 Sacrament unless Blessed Sacrament agrees to the following.
14 One, all provisions established earlier in BZA decision dated
15 September 13th, 2011, and the private agreement between
16 Monsignor John Enzler, pastor on behalf of the Shrine of the
17 Most Blessed Sacrament, and Clay H. Wellborn, and Edna P.
18 Wellborn are to remain in effect.

19 Because, Number 2, because the playground has
20 become attractive to climbers, replace the current fence
21 which can easily be climbed over, with a ten foot chain link
22 fence around the entire site, including the gates, which are
23 unlikely to be climbed over by neighborhood children when no
24 guardian is present. This has already been done on the east
25 side of the playground, and in examples of other playgrounds.

1 Number 3, keep the field locked at all times
2 except when it is in use by legitimate Blessed Sacrament
3 School activities. Number 4, ensure that the field is closed
4 and locked by 6:30 p.m. or sunset, whichever is earlier.

5 Number 5, arrange for regular watering of any new
6 trees or shrubs in the border between our two properties.
7 Number 6, name a permanent coordinator of the field, and
8 identifying that person as the one we should contact in case
9 of need. Provide us and the BZA with a position description
10 for this person.

11 Number 7, make the guardian who ensures that the
12 6:30 p.m. closure is observed permanent. Require him or her
13 to be present between 6:20 p.m. and 10:00 p.m., and instruct
14 the guardian to require all those who, those on the field to
15 clear the area promptly by 6:30 p.m. or sunset, whichever is
16 earlier. Provide us and the BZA with the position
17 description of this person.

18 Number 8, because the noise of balls hitting the
19 existing fence are like water torture, which happens many
20 times during the day, provide a method to silence such
21 occurrences. For example, by providing a net to catch the
22 balls before they hit the metal. An example is the
23 playground between 41st Street, Livingston Street, and
24 Wisconsin Avenue.

25 Number 9, provide a respite from the constant

1 noise for the use of the playground by closing the playground
2 on weekends. The playground at the Presbyterian Church
3 across Chevy Chase Parkway from Blesses Sacrament School
4 closes on weekends, for example.

5 Number 10, to see whether Blessed Sacrament can
6 effectively manage the playground, require them to return to
7 the BZA after ten more years. Thank you very much.

8 VICE CHAIR JOHN: Thank you, Mr. Wellborn. Does
9 the Board have any questions? Applicant have any questions?

10 MR. FREEMAN: No questions, Madame Chair.

11 VICE CHAIR JOHN: Okay. Does Mr. Orgren have any
12 questions?

13 MR. ORGREN: No, Madame Chair.

14 VICE CHAIR JOHN: Ms. Chang, are you representing
15 the ANC today? Do you have any questions? Oh please
16 introduce yourself for the record. Ms. Chang, can you hear
17 me?

18 MS. CHANG: Can you hear me?

19 VICE CHAIR JOHN: I can hear you now. Would you
20 mind introducing yourself for the record, please?

21 MS. CHANG: My name is Connie Chang. I am the
22 ANC34G District 5 Commissioner. I live on 5440 Nevada
23 Avenue, N.W.

24 VICE CHAIR JOHN: Thank you.

25 MS. CHANG: Washington, DC.

1 VICE CHAIR JOHN: Thank you. Do you have any
2 questions?

3 MS. CHANG: No, I do not.

4 VICE CHAIR JOHN: Okay. Thank you. So, I'll go
5 to Mr. Orgren. Could you introduce yourself again? And you
6 may provide your statement.

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

8 MR. ORGREN: Thank you, Madam Chair. My name is
9 Thomas Orgren. I'm a resident of 3610 Quesada Street, NW.
10 That's property Number 818 in the map in Exhibit 19. We are
11 directly behind the field. I live here with my wife and two-
12 year-old daughter. My office window looks out over the
13 field. It's right here to the right. My bedroom window
14 looks out over the field.

15 I spend, whenever the weather permits, between 55
16 degrees and 95 degrees, I work out on my back screen porch
17 which is in full view of the field with much less vegetative
18 buffer than exists on the east and west side of the field
19 toward the north side. So the field is very much nearly an
20 extension of my back yard.

21 So I'm here today to testify to the benefits that
22 my family and other neighbors receive from having this field
23 in our neighborhood and to oppose any changes to the field
24 that are out of proportion to the harms that it causes. And
25 I want to make clear that when we talk about harms here,

1 we're talking about the noise of children playing. We're not
2 talking about drug dealers or jackhammers. These are
3 children playing.

4 So the benefits of the field that we experience
5 include it's a safe place for my children to play during the
6 hours in which they're permitted, free from dangers from
7 cars, scrapes and bruises, because it's a nice soft field.
8 And in the pandemic, certainly the importance of having a
9 quality outdoor space for our children just became that much
10 more clear.

11 The field gives us privacy at night, because now
12 there's not house behind ours. We've got a nice open view
13 of the field instead of a neighbor's fence or a neighbor's
14 house. And if we felt like we needed more privacy from the
15 field, we would construct a taller fence on our own property.

16 It's a place of community. This field has brought
17 together our neighborhood. I've certainly met more of my
18 neighbors out on the field through interactions while our
19 children while our children than any other way. These are
20 interactions that just -- they probably wouldn't have
21 happened otherwise.

22 So all this together adds up to a credit to the
23 property values of the neighbors around us. You'll see in
24 Exhibit 33 from Charles DeSantis as well that many of us
25 chose to live here because of this field. This field is a

1 huge credit to our neighborhood.

2 To the extent that there are down sides, we find
3 that the impact of noise during the day is minimal. I find
4 that the children and teachers on the field during the day
5 have better things to do than pay attention to me. And I've
6 got better things to do than pay attention to them. So we
7 just go about our days in view of each other but not
8 disturbing one another at all.

9 So I'm strongly opposed to some of the proposals
10 of the opposing party to mitigate the perceived harm. We're
11 especially opposed to cutting weekend access to neighboring
12 households, because de facto the school use the field for
13 most of the open hours during weekdays. Weekends are the
14 only time that a working parent like myself and, in fact, the
15 majority of the block are working parents, we want to get out
16 on the field with our kids too. And the weekends are the
17 only times that we're allowed to do that with the field being
18 restricted to closing at 6:30 p.m.

19 So the impact of cutting away the weekend hours
20 would not impact Blessed Sacrament at all, but it would be
21 a huge disservice to the neighbors who do take advantage of
22 that amenity.

23 I'm also strongly opposed to additional fencing
24 around the property. I think that the current fencing is
25 quite sufficient. I don't think that the difference between

1 a five-foot tall fence and a seven-foot tall fence will do
2 anything to keep out children. These are children who will
3 climb over the fence. And if you make that fence taller,
4 you're just going to create more of a risk for injury of when
5 they do eventually climb over that fence.

6 We're also opposed to having a security guard
7 present, especially after 6:30. We haven't seen any major
8 issues with use of the field after hours ourselves. In times
9 that it has happened, we simply go out and, really I don't
10 even have to talk to people, usually I just let my dog out.
11 And my presence is known, and they go away. If they don't
12 know the rules, I go talk to them. And in all cases where
13 I've done that, people have responded positively and left
14 when I've asked.

15 So you'll also see this echoed in Exhibit 35, the
16 letter from Chris Purdy. But those of us along the north
17 side of the field found the security guard to actually be a
18 pretty big imposition on the privacy of our homes. Because
19 we don't have the same vegetative buffer, I think, that's on
20 the east and west side.

21 This is a security guard out on the field with
22 nothing to do. There is really nothing for a security guard
23 to do out at 6:30. So he can just be sitting there looking
24 into our back windows or something, and especially at night
25 when it's light inside and dark outside. It's very easy to

1 see into these very large windows that I've got along the
2 back of my house, that I'm able to have along the back of my
3 house because we've got the privacy of the field behind us.

4 So we don't feel that the opposed parties'
5 proposal represents anywhere close to a neighborhood
6 consensus, and it would force additional externalities on us
7 neighbors that we're not asking for at all. And it would
8 deprive us of nearly all the benefits that we currently
9 receive from the field.

10 So for these reasons, we support the re-
11 authorization of Blessed Sacrament's athletic field under
12 similar arrangements that exist now including no changes to
13 the design of the fence, at least on the north side. And I
14 thank you for your time.

15 VICE CHAIR JOHN: Thank you, Mr. Orgren. Does the
16 Board have any questions? Does the Applicant have any
17 questions?

18 Thank you.

19 Mr. Wellborn, do you have any questions?

20 MR. WELLBORN: Yes, I do. The application of the
21 Applicant is so recent that we have not had a chance to
22 examine it. So I'm asking that the Board grant us an
23 additional time to consider the application of the Applicant
24 for an additional period of time where we could examine it.

25 VICE CHAIR JOHN: Mr. Wellborn, this was the time

1 for you to ask questions of Mr. Orgren. Do you have any
2 questions for him?

3 MR. WELLBORN: No, I do not.

4 VICE CHAIR JOHN: Okay. Thank you very much. The
5 Board will consider your statement later, but for now, we
6 need to get through the testimony from all of the parties.

7 MR. WELLBORN: Okay.

8 VICE CHAIR JOHN: Thank you. So Ms. Chang, would
9 you like to make a statement?

10 MS. CHANG: No, I do not. Our resolution is in
11 the file.

12 VICE CHAIR JOHN: Okay.

13 PARTICIPANT: That building is a public park.

14 VICE CHAIR JOHN: Thank you.

15 (Simultaneous speaking.)

16 VICE CHAIR JOHN: Your microphone is still on.
17 Are there any witnesses willing to testify, wishing to
18 testify?

19 MR. YOUNG: Three witnesses.

20 VICE CHAIR JOHN: Okay. Could you let them in,
21 please?

22 Okay. Is that Mr. Komives?

23 MR. KOMIVES: Yes, hello. My name is Peter
24 Komives.

25 VICE CHAIR JOHN: Komives, sorry. Would you --

1 MR. KOMIVES: There we go.

2 VICE CHAIR JOHN: -- please --

3 MR. KOMIVES: Just a second here.

4 VICE CHAIR JOHN: Okay. I'm sorry, would you
5 please state your address? And you will have three minutes
6 to testify.

7 MR. KOMIVES: Yes. My address is 3621 Patterson
8 Street. I am two doors down from the field. I am next to
9 the DeSantis residence.

10 VICE CHAIR JOHN: Thank you.

11 MR. KOMIVES: So while I do not immediately abut
12 the field, I'm right next door. And I'm here in support of
13 Blessed Sacrament's application for a zoning variance or the
14 continued use of the field after school and on weekends when
15 it's not in use by the Blessed Sacrament School.

16 I am here because my family has benefitted greatly
17 from being allowed to use the field after school, and during
18 weekends, and particularly during holidays. In addition, we
19 support the inclusion of Square 1862 being allowed access to
20 the field. In fact, we support Blessed Sacrament being
21 allowed to invite anyone in the neighborhood to use the field
22 under those conditions that would apply to anyone who seeks
23 to be a good guest in someone else's back yard. The
24 neighborhood is filled with terrific people and families.

25 When Blessed Sacrament converted the 3637 property

1 into a turf field, and I've been here for ten years now, it
2 could have instead built a big residence for its own use, or
3 it could have sold the property to a developer. Instead, it
4 created a big, open, wonderful space that benefits the
5 school, first and foremost, but also the surrounding area.

6 My family has used the field on a routine basis,
7 like I said, for almost a decade. The field is a place where
8 my children have learned and practiced the skills involved
9 in playing baseball, soccer, football, running. Much like
10 going to school, the field is the place where they've learned
11 to interact with their friends, settle disputes, and play on.
12 And that hard work pays off.

13 The field gave my older son a convenient place to
14 build his baseball skills so that he is able to play at a
15 very elite level in high school. It's now giving my younger
16 son a place to build his skills. He likes to play soccer and
17 baseball as well.

18 In addition, we've used it to fly kites, and
19 drones, chaotically, and to go sledding and build snowmen
20 when it snows, like last week, and to look at the stars and
21 the planets and, during his Star Wars phase, my younger son
22 to have running light saber battles.

23 When the pandemic first started, as Tom alluded
24 to, in early 2020, and as Principal Kelly alluded to, the
25 field became an informal community commons. In these early

1 days, when everyone was very vulnerable to the virus, the
2 field served as a safe place where the neighbors of Patterson
3 and Quesada Streets could safely interact with each other,
4 share experiences, and where our kids could enjoy each
5 other's company.

6 And by providing a safe and convenient space for
7 me and my wife to take the kids, getting them out of doors
8 and away from video games and into the fresh air, it's given
9 the other parents a chance for some moments of solitude, as
10 I'm sure anyone with kids will appreciate.

11 We keep at the top of our minds that the field
12 belongs to Blessed Sacrament, and we are their guests. We
13 very much know how important the field is to the school. We
14 are very grateful to Father Foley and Principal Kelly for
15 giving us permission to have use of the field, to have these
16 wonderful experiences, and to have created all these great
17 memories.

18 While we respect the restrictions the school has
19 placed on use of the field, we do wish that, especially in
20 the summer when the sun is up until 9:00 p.m., that we could
21 use it after dinner. We also appreciate that being a big
22 open space it's a quiet and peaceful space. I'm not aware
23 of there ever having been a security problem or groups of
24 people creating burdensome nuisances for anyone.

25 In fact, the opposite is true. With Blessed

1 Sacramento as our neighbor, those of us who live near the
2 field don't have to worry about the property being occupied
3 by people who might be throwing backyard parties, creating
4 music, and loud talking and chattering. Simply, it's an open
5 common place, common space for all the neighbors to enjoy.

6 When Father John first had the idea to buy the
7 3637 property, he called it the field of dreams. And for the
8 school, it's been that. It's been a field of dreams for many
9 of the children in the neighborhood as well. It's been that
10 for us, and it's also been ---

11 (Simultaneous speaking.)

12 MR. KOMIVES: Am I out of time?

13 VICE CHAIR JOHN: Yes, way over, I believe.

14 MR. KOMIVES: Well, I've got one statement left
15 if you want to grant me another 30 seconds.

16 VICE CHAIR JOHN: Yes, go ahead, please.

17 MR. KOMIVES: Well, to finish what I wanted to
18 say, is that while Father John called it a field of dreams,
19 it's really been a field of imagination for the kids in the
20 neighborhood. It's the place where people can come up to bat
21 in the bottom of the ninth inning on a Saturday afternoon.
22 It's the place where on a Sunday afternoon in the fall, a kid
23 can run a winning 99-yard touchdown.

24 If you take away the opportunity for the
25 neighborhood kids to use the field, you're just asking them

1 to stay inside and use other people's imagination, those that
2 created video games. So thank you very much for your time,
3 Madam Chairman.

4 VICE CHAIR JOHN: Thank you.

5 MR. KOMIVES: I'd be happy to answer any questions
6 anyone might have.

7 VICE CHAIR JOHN: Thank you. Are there any
8 questions from the Board? Any questions from the Applicant?
9 Any questions from Mr. Wellborn?

10 Who is your next Witness, Mr. Young?

11 MR. YOUNG: I believe Ms. Ross and then Mr. Purdy.

12 VICE CHAIR JOHN: Okay. So let's let in Ms. Ross.

13 MS. ROSS: Thank you. My name is Carol Ross. I
14 live at 3612 Quesada Street. My backyard, carport, breakfast
15 room, kitchen, and upstairs bedrooms overlook the entrance,
16 the north entrance to the playground. So I am very much
17 impacted by whatever goes on at the playground. And I also
18 can see, without trees, or bushes, or whatever, what goes on
19 or doesn't go on on the playground.

20 And I have been here ever since the opening of the
21 playground. And frankly, I just have to reiterate what
22 several other people have already said, that I have never,
23 either during the week, or weekends, or evenings, seen any
24 illegal, excessively loud, disruptive, destructive, or
25 obnoxious behavior of any kind going on in the field, nor is

1 there any trash that accumulates.

2 And so I would support the application of the
3 school to make permanent the use that they have, I think,
4 handling their playing field in relations with the
5 surrounding community extremely well and sensitively. Thank
6 you.

7 VICE CHAIR JOHN: Thank you. Are there any
8 questions from the Board? Any questions from the Applicant?

9 MR. FREEMAN: No, Madam Chair.

10 VICE CHAIR JOHN: Any questions for the Witness,
11 Mr. Wellborn? Do you have any questions, Mr. Orgren?

12 MR. ORGREN: No.

13 VICE CHAIR JOHN: Okay. Thank you. Mr. Young,
14 do we have another witness?

15 Thank you, Ms. Ross.

16 MR. YOUNG: Yes, Mr. Purdy.

17 VICE CHAIR JOHN: Is it Mr. Purdy or Ms. Purdy?

18 MR. PURDY: Yes, hi, Chris Purdy. Good morning.

19 And --

20 VICE CHAIR JOHN: And please state your address
21 for the record.

22 MR. PURDY: Yes, good morning. My name is Chris
23 Purdy. I reside at 3614 Quesada Street, so I'm right next
24 to Carol and Tom. And like them, the back of my house looks
25 directly over the field. The porch does, my bedroom, my

1 personal sleeping bedroom overlooks the field. My kitchen
2 does. I have a very large glass window, so I can see the
3 field very clearly. There's no obstruction between the field
4 and my home.

5 I think Peter and Tom did a great job of talking
6 about how great the field is as a community resource and the
7 kids who are on there. So I won't sort of echo -- I won't
8 say anything other than to just echo what they've said. I
9 think it's all true.

10 I do want to respond pretty forcefully to some of
11 the proposals with all due respect to my neighbor, Mr.
12 Wellborn. Some of the ideas that he's proposed I really
13 strongly oppose, including increasing the size of the fence
14 which I think would be a real eye sore for all of us who look
15 over that field. The last thing I want to do is look out my
16 window and look at a giant fence.

17 And the second thing is, the idea of having a
18 permanent security guard there, I think, is really ludicrous,
19 quite frankly. I mean, I'm here, especially during COVID,
20 I'm here almost every single day and every single night.
21 There's no reason for us to have a guard on that field after
22 6:30. There's rarely anybody on their breaking that rule.
23 And having a guard there, quite frankly, is just someone
24 who's peering into my private residence at nighttime. And
25 I would rather not have that.

1 And third, just the noise levels, again, I think,
2 you know, Carol and I are arguably, and perhaps Tom too, are
3 arguably the neighbors for whom there is the greatest
4 possibility of noise to come into our houses, because we have
5 no barriers, no trees, no bamboo between us and the field.
6 And it's just not that much noise. So, you know, and the
7 noise that's there, the so-called noise that's there is the
8 sounds of children playing and having fun.

9 So we obviously find it to be a major benefit for
10 our family, for our neighbors. We certainly support the idea
11 of being able to access the field during the weekends. It's
12 one of the major benefits for us personally and for all of
13 our neighbors as a gathering point to play badminton, and to
14 run around, and to get some fresh air.

15 So I'm here to voice my support, my family's
16 support, and what I know is most of my neighbors' support
17 who couldn't be on this call today, because they're working
18 to support the application of this field on Blessed
19 Sacrament. So thank you for your time in listening to me.

20 VICE CHAIR JOHN: Thank you. So are there any
21 questions from the Board for Mr. Purdy, any questions from
22 the Applicant?

23 MR. FREEMAN: No, Madam Chair.

24 VICE CHAIR JOHN: Mr. Wellborn, do you have any
25 questions for Mr. Purdy?

1 MS. WELLBORN: No, ma'am.

2 VICE CHAIR JOHN: Mr. Orgren? Thank you. Mr.
3 Orgren, do you have any questions for Mr. -- does the ANC
4 have any questions for Mr. Purdy?

5 Thank you.

6 So at this time, I'm going to allow Mr. Wellborn
7 and Mr. Orgren to make closing statements for a couple of
8 minutes. The rules don't really allow, well, specify that
9 we get a closing argument. But I like to give an opportunity
10 to wrap up in two seconds.

11 Mr. Young, please put 2 minutes on the board for
12 me. This is something I like to do. It's not specifically
13 required. So, Mr. Wellborn, do you want to go ahead?

14 MS. WELLBORN: Yes, ma'am.

15 VICE CHAIR JOHN: You have two minutes to just
16 (audio interference).

17 MR. WELLBORN: Well, the Board must decide the
18 appropriate balance among the rights of various property
19 owners, expectations of property owners when they moved into
20 the neighborhood, the history of the neighborhood, equity,
21 the well-being of neighbors, the freedom of neighbors from
22 disturbances after 6:30 p.m.

23 So I would urge the Board to consider each of
24 these things. Thank you, ma'am.

25 MS. WELLBORN: Ma'am, if I am allowed, I am Edna

1 Wellborn, and we moved into the neighborhood 50 years ago.
2 We love the residential neighborhood it was. We love the way
3 it is, and we do have public parks within two blocks which
4 my children -- I met lots of my friends there.

5 And I never knew that I am sandwiched between a
6 school and a school. I am in a unique position, and I don't
7 know how the variant was created, but it was created. And
8 we have to leave -- we have to leave. We have been here for
9 50 years and would like to have some right to our own privacy
10 and a little bit of quietness.

11 And weekends, holidays, Christmas, I find that I
12 have people over doing what they feel is needed in their
13 lives. There are a lot of parks within two blocks. That's
14 all I have to say. And they are equally part of the
15 neighborhood. Thank you very much.

16 VICE CHAIR JOHN: Thank you. Mr. Orgren, two
17 minutes.

18 MR. ORGREN: Thank you, Madam Chair. I would just
19 like to reiterate that this field is a huge benefit to the
20 neighborhood. You've heard from plenty of neighbors, you've
21 seen more in the written record.

22 We are opposed to cutting weekend access to nearby
23 households, frankly, on holidays and weekends. I get way
24 more disturbance from my next door neighbor doing activities
25 by right in his own backyard. And there is no problem with

1 that. I certainly have no problem with use from the field.

2 We are opposed to additional fencing around the
3 property, particularly on the north side. We're opposed to
4 requiring a security guard to be present after 6:30 p.m., but
5 we hope you will endorse, otherwise, this application. Thank
6 you.

7 VICE CHAIR JOHN: Thank you very much. Mr.
8 Freeman, please go ahead and make your closing statement.

9 MR. FREEMAN: Thank you, Madam Chair. I don't
10 know, I have closing and then I did want to respond on a
11 couple of things.

12 VICE CHAIR JOHN: Oh, okay. You can do rebuttal
13 and then closing.

14 MR. FREEMAN: Fair enough, okay. So I might need
15 Mr. Young to help me.

16 Mr. Young, if you could pull up our presentation
17 again, it's Exhibit 39A, and go to Slide 6 of 39A, please.
18 That might take two minutes. So I wanted to know if were
19 stopping the clock in this. I can't tell whether it's up.

20 VICE CHAIR JOHN: It's not up.

21 MR. FREEMAN: Got it. What I want to do and --
22 Mr. Young, I don't know if you can, well, why don't I say
23 this. Maybe I did not do a good job of this. If so, I want
24 to make sure it's clear to the Board now. If you look at the
25 bottom row, the two pictures to the left, that is the

1 landscaping along our western property line. That is the
2 landscaping that abuts Mr. Wellborn's property.

3 So when you hear some neighbors talk about views
4 and landscaping, that is Mr. Wellborn's view. And that is
5 the landscaping along the western property line. So I just
6 wanted to make sure the Board understood what that looked
7 like in the event that you did not.

8 Number two, and that's all I wanted to share from
9 that, Mr. Young. Number two, Mr. Blake asked a great
10 question. Mr. Blake asked, well, what uses could go here.
11 But you asked as a matter of right, but I will add, as a
12 matter right, review a special exception, right? Because a
13 special exception use is deemed appropriate so long as you
14 comply with the zoning requirements.

15 So what are some special exceptions uses, i.e.,
16 uses deemed appropriate for this site. A chancery, a
17 community center, a pool, a park, a playground, a swimming
18 pool, a community based institutional facility, a community
19 solar facility, a continued care retirement community, a
20 daycare, and emergency shelter for five to 15 persons, a
21 healthcare facility for nine to 300 people, a parking lot.

22 So those are the types of uses that are permitted
23 via special exception. And again, what we're, I think, Mr.
24 Orgren described the property, what we're talking about is
25 a playing field for kids. That's what we're here for. And

1 that field, I think, as Principal Kelly described, is of
2 critical importance to the school.

3 Next point, you heard from the neighbors a variety
4 of views. We, the school, care about our neighbors, or the
5 school cares about their neighbors. So they have taken an
6 approach which is intended to, one, of course, prioritize the
7 needs of the school, but two, balance the views which are
8 clearly kind of, there are a number of views, balance the
9 views of the neighbors.

10 And I would submit that our proposed conditions,
11 which are what we're asking the Board to approve, Exhibit
12 39B, I don't know if Mr. Young can bring that up, but that
13 Exhibit 39B, our proposed conditions are, in our view,
14 balanced, and equitable, and balance the needs of everyone.
15 So that is what we would ask the Board to approve, the
16 application, as condition per Exhibit 39B, which is
17 essentially what I've described throughout this hearing
18 tonight.

19 I know Mr. Wellborn, it might have been lead-in
20 comment where he asked for additional time because the
21 application has been amended. The application has not been
22 amended. The application does say, to the extent that there
23 have been changes, though the only two changes are things
24 that he asked for.

25 One, increase the height of the fence, we try to

1 meet him in the middle, go from five to seven, and two,
2 install some type of sound mitigation measure along the
3 western property line in order to catch balls, that he asked
4 us to do. So we don't think there's a need to delay the
5 application in order to incorporate those features that are
6 attempting to address his concerns.

7 Quite the opposite, we think the record
8 demonstrates that we fully meet -- and now I'm in my closing,
9 Ms. John -- fully meet all of the applicable school standards
10 for approval, OP support, VDOT support, ANC support, letters
11 of support from multiple neighbors. You've heard testimony
12 from multiple neighbors.

13 So we would ask that the Board, as expeditiously
14 as possible, approve our application without an additional
15 ten-year term. Do that concludes our presentation. Thank
16 you for your time this morning, happy to answer any final
17 questions.

18 VICE CHAIR JOHN: Thank you, Mr. Freeman. I don't
19 have any questions, and I don't see any -- Commissioner
20 Miller?

21 COMMISSIONER MILLER: Thank you, Madam Chair. And
22 I just had one question, just in response to, I think, a
23 couple of the neighbors comments, or maybe it was the party
24 in support. The 6:30, it said 6:30 or sunset, whichever is
25 earlier. I'm just curious as to why it's just not sunset.

1 8:30, quarter to 9:00, 9 o'clock in the summer, that's an
2 incredible asset for the neighborhood and the school maybe.
3 I don't understand the 6:30 or sunset, whichever is earlier.

4 MR. FREEMAN: Yes. Well, because in some
5 situations, so that's what we agreed to in the beginning when
6 we first started this process. That's what we agreed to.
7 So we would like to keep it that way.

8 COMMISSIONER MILLER: Okay. Thank you.

9 VICE CHAIR JOHN: Thank you, Commissioner Miller.
10 Are there any other questions from the Board?

11 Okay, then I'll close the record and excuse the
12 parties, and the witnesses. And I want to thank you for your
13 testimony today.

14 MR. FREEMAN: Thank you.

15 VICE CHAIR JOHN: You're welcome.

16 So turning to the Board, I think I should address
17 first the question of what I interpret to be a request for
18 continuance from one of the parties, Mr. Wellborn. And I'd
19 like to hear from the Board on that. I'm not inclined to
20 continue the case further, because I agree with the Applicant
21 that the amendments to the application were really made to
22 facilitate Mr. Wellborn's issues and concerns. So I'd like
23 to hear from the Board.

24 Commissioner Miller, do you have some thoughts?

25 COMMISSIONER MILLER: Not really. I think that

1 the application really hasn't --- you're asking about the
2 extension request?

3 VICE CHAIR JOHN: Yes.

4 COMMISSIONER MILLER: I don't think there's a need
5 to give more time. I think the application, as Mr. Freeman
6 indicated, the only changes that have been recently made were
7 in response to the party in opposition to try to meet them
8 to address some of their concerns. So I don't see a need to
9 provide additional time.

10 VICE CHAIR JOHN: Thank you. Board Member Smith?

11 MEMBER SMITH: I agree with both of you. Aside
12 from this, I think, you know, what was presented by the
13 Applicant was a series of provisions and a new set of
14 conditions that mitigate some of the concerns raised.

15 Mr. Wellborn's wife, and I'm not going to
16 reiterate them, I heard about --- I was taking note of a
17 couple of his requests for conditions and stuff. We have
18 been --- the Applicant was particularly committed to these
19 changed conditions and also on the site that shows the new
20 landscaping and the fence height. So I'm not inclined
21 either.

22 VICE CHAIR JOHN: Okay, thank you. Board Member
23 Blake?

24 MEMBER BLAKE: I agree with the comments that you
25 all have made to this point. I would also agree with the

1 fact that the goal here is to identify the adverse impacts
2 that have taken place and to try to find the least intrusive
3 method to address those issues.

4 And I think that the applicant has taken a number
5 of steps to address many of the issues on the list that was
6 provided, and we can discuss those iterations, but I think
7 that, from my point of view, we have assessed the adverse
8 impacts, which are noise. And I think the Applicant has
9 taken a number of steps to address that.

10 Whether the person in opposition agrees or
11 disagrees with that, if we feel that -- if the Board decides
12 that we've reached a standard to address those mitigating
13 factors, then it should be done with or without his approval.
14 So in that case, I believe that it's not necessary to do
15 that.

16 VICE CHAIR JOHN: Thank you. So Mr. Moy, this is
17 sort of different. I believe that the Board can agree by
18 consensus without having to make a formal motion and polling
19 the Board. Do you have any thoughts?

20 MR. MOY: I'm fine with that. And certainly the
21 Board's Counselor can weigh in if you wish, but I'm
22 certainly fine with it. But I would defer to our legal
23 Counsel.

24 VICE CHAIR JOHN: Counsel, I'm fine with going
25 ahead. Why don't I just make it easy on everyone. So

1 because this was technically a motion, I will then make a
2 motion to deny the request of the party in opposition, Mr.
3 Wellborn, to continue this hearing for an additional period
4 of time to allow him to consider information submitted in the
5 record, and ask for a second.

6 MEMBER SMITH: Second.

7 VICE CHAIR JOHN: Mr. Moy, would you please take
8 the roll call?

9 MR. MOY: Yes. When I call each of your names,
10 if you would please respond with a yes, no, or abstain to the
11 motion made by Vice Chair John to deny the motion to
12 continue. Motion was seconded by Mr. Blake.

13 So Commissioner Rob Miller.

14 COMMISSIONER MILLER: Yes, to deny the request for
15 a continuance.

16 MR. MOY: Mr. Smith?

17 MEMBER SMITH: Yes to deny.

18 MR. MOY: Mr. Blake?

19 MEMBER BLAKE: Yes to deny.

20 MR. MOY: Vice Chair John?

21 VICE CHAIR JOHN: Aye.

22 MR. MOY: We have a Board member not present.
23 Staff would record the vote as four to zero to one. And this
24 is on the motion made by Vice Chair John to deny, second by
25 Mr. Blake. Also in support of the motion to deny is Zoning

1 Commissioner Rob Miller, Mr. Smith, and of course Mr. Blake,
2 Vice Chair John, no other Board members present. Motion
3 carries on a vote of four to zero to one to deny.

4 VICE CHAIR JOHN: Thank you, Mr. Moy. And I want
5 to reiterate again that the record is closed. And the
6 hearing and the record is closed. So are we ready to
7 deliberate? And would someone like to start?

8 I don't mind, you know, making a few thoughts,
9 providing a few thoughts, but if someone wants to get us
10 started, I'm fine. But I don't see any hands raised, so I'll
11 make a couple of comments.

12 So this is a very full record. And this case took
13 way longer than I anticipated. But I believe the Applicants
14 have made a very good case for why the use of the field
15 should be extended for additional period of time.

16 I believe that the Applicants have been using the
17 field since 2008, so it is clear, based on the testimony, how
18 the field has been used and what the potential adverse
19 impacts are. We have heard extensive testimony on issues
20 related to noise in particular.

21 So I'm inclined to grant the request with the
22 conditions as modified by the Applicant. And I, at some
23 point, we should probably ask, well, we should ask Mr. Young
24 to pull up that slide to refresh ourselves if necessary. I
25 haven't been able to pull them up myself.

1 So as was discussed in the hearing, private
2 schools and their accessory uses, such as a playing field,
3 are permitted as a special exception subject to conditions
4 that affect things like noise, traffic, and any other
5 conditions that could be objectionable. And the Applicant
6 is also seeking to remove the ten-year term which the party
7 in opposition is opposed.

8 I thought OP provided a good analysis and
9 recommendation. And I agree with OP's analysis in terms of
10 the impact on -- in terms of the general special exception
11 criteria, particularly in respect to the noise.

12 It appears that the neighbors who are in the
13 immediate vicinity regard this playing field as an asset and
14 that it is clear that the school has taken efforts to limit
15 its use by the general public. And this impacts the noise,
16 the potential noise and disturbance from the playing field.
17 And so I believe that, if we grant the application, that the
18 Applicant's proposed conditions will mitigate any potential
19 adverse impact.

20 I am sensitive to the issues and concerns raised
21 by party in opposition, Mr. and Mrs. Wellborn. However, as
22 Mr. Wellborn said, we have to balance the competing interests
23 in evaluating the potential adverse impact. And here it
24 seems that the immediate residents who were allowed to use
25 the playing field view the field as an asset and are willing

1 to put up with the noise from the children playing to allow
2 them to enjoy this beautiful park-like setting. So it's, you
3 know, it's a trade-off within my view on balance.

4 I think that the proposed conditions would
5 mitigate the impact of that noise, especially with respect
6 to the buffering, that landscape buffering that's been
7 proposed, and that the school continues to try to make sure
8 that it remains vibrant.

9 And I believe that the seven-foot fence in
10 particular is a way to meet -- partially mitigate the party
11 in opposition's concern about people climbing the fence.
12 And, of course, the sound mitigation barrier, I think, is a
13 very good idea. I also thought that including a well-
14 functioning lock is appropriate.

15 But with respect to the ten-year limitation, I am
16 inclined to support removing that ten-year limitation.
17 Because this school has operated the playing field since
18 2008. And from the record, it appears that the playing field
19 has not been, I would say, a nuisance.

20 But whatever potential adverse impacts there are
21 have been managed by the school, and the school will continue
22 to make that effort in the future, particularly with the
23 revised conditions. And so I don't believe it is
24 appropriate, under these circumstances, to ask the Applicant
25 to return in another ten years. Because I believe their

1 track record is very good. So those are my thoughts to start
2 the discussion going. And I'd like to hear from everybody
3 else.

4 MR. MOY: Madam Vice Chair, sorry to interrupt,
5 I just want to make clear on the record that the conditions
6 as you were speaking to are the revised conditions made by
7 the Applicant which is in the case record under Exhibit 39B.
8 Am I correct?

9 VICE CHAIR JOHN: Thank you.

10 MR. MOY: Okay.

11 VICE CHAIR JOHN: I'll just pull up the conditions
12 at Exhibit 39 if the Board would like to go through them.
13 Does anyone want to see them? I've read them. So let's hear
14 discussion before we decide if the Board agrees to all of the
15 conditions. So Commissioner Miller, I see you shaking your
16 head. Would you like to continue?

17 COMMISSIONER MILLER: I just was agreeing with
18 everything you said. I do feel you're very comprehensive in
19 your analysis, which is, I think, why we all deferred to you,
20 Madam Chair, to start us off with the discussion. Because
21 you covered everything.

22 So, you know, we all bring, even though we just
23 consider the record that's before us in every case, but we
24 all bring our experiences and personal perspectives to cases
25 living in the city.

1 I happen to live in a single-family residential
2 zone adjacent to a DC public, a DC Park and Recreation
3 facility. My entire backyard is adjacent to the little
4 league baseball field. I hear the crack of the bats. They
5 have the backstop or whatever you call that, right, adjacent
6 to our yard. We get the balls over sometimes. I hear the
7 coaches and, I don't think they're coaches, I think they're
8 just parents, yelling, screaming, excitement, and the kids
9 running around bases.

10 There's a basketball court just off to the side.
11 We can see all of this. We have our own landscaping
12 buffering on our side. But the topography is such we can see
13 the whole thing. And then there's the children's playground,
14 there are two different children's playgrounds, and the
15 recreational building further down.

16 It is an asset for a residential neighborhood to
17 have that kind of facility there. It's open space, we're
18 lucky to have the open space, the green space and, as a new
19 grandparent, to have the children's playground that I can go
20 to with my two-year-old grandson.

21 You know, and people park on our street that come
22 from outside, I think, from outside the neighborhood, right,
23 to our park. I don't mind that. That's what a city is kind
24 of all about.

25 Anyway, I don't think they're adverse. In fact,

1 I think to the extent that they are, I think that -- I
2 applaud Blessed Sacrament for all of the conditions that
3 they've instituted over the years and the new ones that
4 they've proposed in the application to try to meet the
5 concerns of one neighbor, the party in opposition. I think
6 they've done everything that they could possibly do to try
7 to mitigate any concerns. So I'm very supportive of this
8 application going forward today. Thank you.

9 VICE CHAIR JOHN: Thank you, Commissioner Miller.
10 Board Member Smith?

11 MEMBER SMITH: You know, just to say it like
12 Commissioner Miller said, we were very confident of your
13 analysis of this particular case. And again, this is a very
14 full record. And I would say that, you know, we're tasked
15 with here is X, is it X 901.2, special exception standards.
16 So what we're tasked with is figuring out if the request
17 before us is in harmony with the general purpose and intent
18 of the zoning regulations, and the request will not adversely
19 affect the surrounding properties.

20 When this special exception came before this Board
21 in 2008, there were some concerns, I was seeing it from the
22 ANC neighborhood, about how this field would operate going
23 forward. And there was a three-year sunset imposed at that
24 particular time for the residents there to ascertain how, you
25 know, their quality of life would be affected or if there

1 would be any major adverse impacts.

2 Well then, that sunset lapsed. We saw the special
3 exception get --- there were some requirements of conditions.
4 And there was a ten-year sunset based on that particular
5 time. And given that this is back to us now, and we haven't
6 heard any major concerns from the ANC, and the majority of
7 the property owners that have spoken today have spoken in
8 support of this field, have spoken in support of Blessed
9 Sacrament being a good neighbor and of value to the
10 surrounding properties. I am inclined to, you know, not to
11 impose a sunset on this.

12 And I'll also state that Blessed Sacrament has
13 gone above and beyond to address the adverse impacts on the
14 neighbors that the party in opposition, in the revised
15 conditions that were presented. So I'll go through some of
16 the issues that were raised by Mr. Orgren.

17 To ensure that the field is closed and locked by
18 6:30, the Applicant has stated that they have bought another
19 lock and will construct a taller fence that is in keeping
20 with the zoning regulations. The residential zones within
21 the District of Columbia, you cannot have a fence taller than
22 seven feet. If you're attempting to build a fence taller
23 than seven feet, they have to come ask this board for a
24 variance.

25 And I do not believe that a ten-foot, a request

1 for a ten-foot fence within a residential zone, even though
2 this is around a park, would met the -- you know, it would
3 be very hard for it to meet the criteria for us to be able
4 to even grant it.

5 So I do believe that the Applicant is attempting
6 to meet the party in opposition's concerns about people
7 climbing the fence in the context of their residence and not
8 raising the height of the fence to what is allowable by right
9 within the zoning.

10 Properly water all vegetation between the field
11 and their house, there is a condition within the revised
12 conditions that seeks to address those concerns.

13 About a method to silence the balls in some way,
14 shape, or form which is difficult to do, you know, in any
15 situation, to silence balls hitting metal, but I do believe
16 that the Applicant is going above, you know, going above and
17 trying to mitigate some of the concerns of their neighbor by
18 putting in some sound abatement vegetation to address those
19 concerns.

20 So I do believe that the Applicant has, you know,
21 attempted to address all the major adverse impact concerns
22 of the party in opposition for us to be able to support this
23 special exception. So with that, you know, I agree with
24 everything that Commissioner Miller stated, and Vice Chair
25 John has stated regarding this request. So I will be

1 supportive of the revised conditions and not including the
2 sunset.

3 VICE CHAIR JOHN: Thank you, Board Member Smith.
4 Board Member Blake?

5 MEMBER BLAKE: No remarks. But I've heard
6 everything, and I think it's a pretty full record and a full
7 deliberation, having covered almost every point. I agree
8 whole heartedly with the assessment of it being a balancing
9 act between equity use, benefit, and harm, along with the
10 mitigating factors that were proposed by the Applicant. And
11 I'm not going to go anywhere to say that I agree that the
12 specific conditions of U 203.1 have been met.

13 I also agree with Board Member Smith's and the
14 Office of Planning's assessment of the general standards
15 having been met and give great weight to the Office of
16 Planning's recommendation noting DDOT has no objection, and
17 the ANC support, and no issues disclosed. So for that
18 reason, I too would be very comfortable supporting this.

19 VICE CHAIR JOHN: Okay. Thank you, Board Member
20 Blake. So I will then make a motion to approve the
21 Application 20593 as captioned and read by the Secretary with
22 the conditions described in Exhibit 39, and to include the
23 removal of the term limits, and ask for a second. Mr. Smith?

24 MEMBER SMITH: Second.

25 VICE CHAIR JOHN: I'm sorry, Board Member Blake,

1 did you have a question, sir?

2 MEMBER BLAKE: No.

3 VICE CHAIR JOHN: Okay. Board Member Smith?

4 MEMBER SMITH: Second.

5 VICE CHAIR JOHN: Thank you.

6 Mr. Moy, could you please take the roll call?

7 MR. MOY: Yes, with pleasure. When I call each
8 of your names, if you would please respond with a yes, no,
9 or abstain to the motion made by Vice Chair John to approve
10 or grant the Application for the relief being requested along
11 with the revised conditions as shown under Exhibit 39 in the
12 case record. This motion was seconded by Mr. Smith, I
13 believe.

14 Zoning Commissioner Rob Miller?

15 COMMISSIONER MILLER: Yes.

16 MR. MOY: Mr. Blake?

17 MEMBER BLAKE: Yes.

18 MR. MOY: Mr. Smith?

19 MEMBER SMITH: Yes.

20 MR. MOY: Vice Chair John?

21 VICE CHAIR JOHN: Yes.

22 MR. MOY: We have a Board member not present, not
23 participating. Staff will record the vote as four to zero
24 to one, and this is on the motion made by Vice Chair John to
25 approve with conditions, revised conditions, as stated. The

1 motion was seconded by Mr. Smith in support of that motion.
2 Of course, others in support of the motion are Mr. Blake, and
3 Zoning Commissioner Rob Miller. Staff will record, again,
4 the vote as four to zero to one. Motion carries.

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

6 So I'm going to suggest that we break for lunch.
7 And, Mr. Moy, I just wanted to do a quick check of how many
8 cases we have left. I believe one is the request for
9 continuance in one. So there is one, two, three, four, five
10 cases left, and one with a potential request for continuance?

11 MR. MOY: Yes, that's correct, as well as the
12 preliminary matter in the appeal case.

13 VICE CHAIR JOHN: Okay. So we will, I would
14 think, it's 12:36, maybe a 30 minute break which would take
15 us to, say, 12:00, no, a little more, 12:20. Is that okay?
16 I'm sorry, 1:20. Is that okay?

17 All right. Thank you. Let's return at 1:20.

18 (Whereupon, the above-entitled matter went off the
19 record at 12:37 p.m. and resumed at 1:32 p.m.)

20 MR. MOY: The Board is back in its public hearing
21 session, and the time is at or about 1:32 p.m. Should I go
22 along with the next application?

23 VICE CHAIR JOHN: Please call the next
24 application.

25 MR. MOY: So this would be Application No. 20600

1 of Frederick Scott and Jillian Hall. This is a application
2 with request for relief from the use variance from the matter
3 of right uses, Subtitle U, Section 201.1, pursuant to
4 Subtitle X, Section 1002.

5 This would construct an additional dwelling unit
6 in an existing semidetached two-story with basement four-unit
7 apartment house in the R2 zone, property located at 433
8 Atlantic Street, SE, Square 6166, Lot 803.

9 I don't have anything else to add to this
10 application other than as of this morning, there was no
11 letter from ANC 8E.

12 VICE CHAIR JOHN: Okay, thank you, Mr. Moy. Mr.
13 Young, can you please let the parties in.

14 MS. HALL: Hello, good afternoon.

15 VICE CHAIR JOHN: Afternoon, I'm trying to find
16 my witness list. Bear with me for a minute. So let's see
17 who we have. I don't have the right list. Are you the
18 Applicant?

19 MS. HALL: We are, yes.

20 VICE CHAIR JOHN: Would you please state your name
21 and address for the record, please.

22 MR. SCOTT: Frederick Scott.

23 MS. HALL: And Jillian Hall, both of 433 Atlantic
24 Street, SE.

25 VICE CHAIR JOHN: Okay, thank you. So you will

1 have 15 minutes to present your statements, and then I'll ask
2 Mr. Moy to put 15 minutes on the board.

3 So whenever you're ready, please go ahead and
4 begin. Tell us why you're here and what relief you're
5 seeking. And why the Board should grant the application.

6 MS. HALL: Yes, we are the owners of the property,
7 and we are respectfully requesting that the Board of Zoning
8 Adjustment approve the application for variance relief
9 pursuant to 11 DCMR Code Subtitle X1000.1 and Subtitle
10 U200.1, to add one residential dwelling unit to an existing
11 nonconforming apartment house in the R2 zone.

12 Like many people this past year during the COVID-
13 19 pandemic has caused some financial stresses for us due to
14 an increased expenses and lost income of obtaining the
15 property. Allowing this proposed fifth unit to be added
16 would help ease the financial burden of us and help us keep
17 the property amongst rising taxes and future work in finance
18 uncertainties.

19 Without this use variance, the strict application
20 of zoning regulation would cause financial hardship for us
21 to keep the property. The lower level would remain
22 underutilized as dead space, and rental income that could be
23 generated from renting it out as a residential unit could
24 cause financial hardship.

25 The property currently consists of four two-

1 bedroom, two-bathroom units that are fully occupied. Three
2 of the four occupants are on the DC Voucher Program. And the
3 other one has not been able to pay us at all due to COVID-19
4 loss of income.

5 The basement has a separate entrance and it is
6 just a large space that would make a perfect one-bedroom unit
7 that we could rent out. And it would cause minimum
8 construction. It's already kind of laid out as could make
9 a unit. And it wouldn't affect any of the other tenants in
10 the building.

11 This plan will require minimum changes to the
12 existing physical conditions of the neighborhood and will not
13 cause substantial detriment, if any, to the public good or
14 zoning regulations and maps.

15 For these reasons, the request -- we believe the
16 request for relief meets the applicable standards of variance
17 relief and respectfully request the Board to grant the
18 application.

19 VICE CHAIR JOHN: Thank you. Does the Board have
20 any questions? Go ahead, Commissioner.

21 COMMISSIONER MILLER: You said it's already laid
22 out and equipped to be a one-bedroom unit, is that -- is that
23 correct? It has a -- it has bathroom and kitchen, or what
24 does it have?

25 MR. SCOTT: Bathroom, kitchen, a room with a

1 window. It's on the -- of course door to exit and enter.
2 And of course lights and everything else.

3 COMMISSIONER MILLER: Okay. And how long have you
4 had this property?

5 MR. SCOTT: One year February 2.

6 COMMISSIONER MILLER: And it had -- were the --
7 were the other four units occupied when you bought the
8 property?

9 MR. SCOTT: Yes.

10 COMMISSIONER MILLER: Okay, thank you.

11 VICE CHAIR JOHN: Mr. Smith, you had a question?

12 MEMBER SMITH: Just to follow up on Commissioner
13 Miller's question, and I'm looking at your architectural
14 plans, and it sounded like you stated that the basement was
15 already, you know, renovated for -- it already has a kitchen
16 and a bathroom, you were saying?

17 (Simultaneous speaking.)

18 MR. SCOTT: I apologize, I didn't mean to
19 interrupt. So it's not -- it's not finished, it's a outline
20 for this stuff where we have purchased the equipment. We
21 have not put anything in there yet to finish the renovation,
22 we just have it basically in storage until this is approved.

23 MEMBER SMITH: Okay, so just for clarification
24 purposes, you haven't -- the space is still an existing
25 storage unit.

1 MR. SCOTT: Correct.

2 MEMBER SMITH: And you haven't gotten the permits
3 to outfit the space in any way, shape, or form or put in
4 walls or bathroom or a bedroom. You just bought the
5 equipment.

6 MR. SCOTT: Correct.

7 MEMBER SMITH: Okay, all right. I just wanted a
8 clarification, thank you.

9 VICE CHAIR JOHN: Any other questions? So let's
10 go to the Office Planning. Will you introduce yourself, Mr.
11 Mordfin.

12 MR. MORDFIN: Good afternoon, I'm Stephen Mordfin
13 with the Office of Planning. And the Office of Planning does
14 not support this application. I can go --. Oh, hold on.

15 So as a use variance, which is the most difficult
16 variance to obtain, there's three -- there are three
17 standards that the applicant has to meet in order for the
18 variance to be approved. The first one is that there's an
19 extraordinary or exceptional situation that results in a
20 peculiar or exceptional practical difficulty to the property
21 owners.

22 In this case, the subject property is a four-unit
23 apartment house. It includes a portion of the building in
24 the basement that was devoted to storage space, accessory to
25 the residential uses above. So that is a permitted use

1 within the space that is permitted within such a use as the
2 apartment house. It's not an unusual amenity in an apartment
3 house.

4 However, the applicant's not made the case that
5 it's an extraordinary or exceptional situation that results
6 in a practical difficulty, that the Applicant can't use it
7 for any type of use that would otherwise be permitted by
8 right or by special exception per the zoning regs.

9 As for the substantial detriment to the public
10 good, anything that they do change to the building would take
11 place within the structure only. Therefore, it would not
12 have a significant impact on light and air and privacy of the
13 neighborhood.

14 It would increase the density. But OP does not
15 see that if you add an extra dwelling unit that it would
16 result in a substantial detriment to the public good.

17 But the last one, the substantial impairment to
18 the intent, purpose, and integrity of the zoning regulations.
19 This building is located in an area that was rezoned from
20 RA1, what is now known as RA1, which is an apartment zone,
21 to R2, which is a zone that does not permit apartments.

22 That was done in 2008, and per the Zoning
23 Commission, it was rezoned to the R2 zone to make the
24 effective properties more consistent with the prevailing
25 neighborhood character, which is, excuse me, one- and two-

1 family dwellings predominantly.

2 The subject property is legally existing as a
3 four-unit apartment house. The Applicant did submit the
4 certificate of occupancy, so therefore it can continue that
5 way unless abandoned for a period of three years or more.

6 However, the expansion of the use, which is
7 something different in this case, even by one unit, would
8 then create a five-unit apartment house, which is going in
9 the opposite direction of what the intent of the rezoning of
10 the property was, which is to bring the property eventually
11 into conformance. And this is going in the opposite
12 direction.

13 So therefore, OP concludes that the addition of
14 a fifth residential unit in the building would result in a
15 substantial impairment to the zoning regulations. For those
16 reasons, the Office of Planning does not conclude that the
17 Applicant has met the three prongs to grant a variance, and
18 therefore recommends denial of the application.

19 Thank you, and I'm available for any questions.

20 VICE CHAIR JOHN: Thank you, Mr. Mordfin. Does
21 the Board have any questions? Commissioner Miller?

22 COMMISSIONER MILLER: Thank you for your part, Mr.
23 Mordfin. And I think you laid out some cogent arguments as
24 to why the application might not meet the high standard
25 required for a -- high threshold required for a use variance.

1 And I know that the Office of Planning does really
2 like to get into arguments about financial hardship because
3 it's a difficult area to be assessing and evaluating. But
4 that is -- that is part of the standard for that first couple
5 prongs.

6 In terms of the character of the -- and I
7 understand what you're saying about the intent of the R2
8 district versus RA1. And when did the Zoning Commission do
9 that rezoning?

10 MR. MORDFIN: 2008.

11 COMMISSIONER MILLER: 2008, before my time. But
12 anyway, and I think that was -- there was a lot of that type
13 of rezoning at that time for a large area -- large areas.
14 Is -- are there currently -- you said it's predominantly
15 single family and flats, I think. Single family is what R2
16 is. It's predominantly single family. Are there
17 preexisting, though, four and five and more unit apartment
18 buildings in the immediate vicinity?

19 MR. MORDFIN: In the immediate vicinity, yes.
20 This is a semi-detached apartment building, so the building
21 on the other side is also an apartment building, although I
22 don't know how many units are in there. And then next to
23 that, there is a, on a large lot, what appears to be a garden
24 apartment building.

25 But just behind it there are semi-detached

1 structures, semi-detached one -- what appear to be one-family
2 dwellings. So most of the units are not apartments, but
3 there are apartment buildings scattered throughout.

4 It's not solely one-family building, but this an
5 anomaly within the general area there are -- it's a mixture.
6 There are some other uses.

7 COMMISSIONER MILLER: And the comp plan land use
8 designation, is it low density residential?

9 MR. MORDFIN: Yes.

10 COMMISSIONER MILLER: Okay.

11 MR. MORDFIN: So the zoning on the property is
12 consistent with the comp plan.

13 COMMISSIONER MILLER: As with the RA1 previous
14 might have been also consistent with -- or no. What do you
15 think?

16 MR. MORDFIN: Well, the RA1, that's not low
17 density, that's an apartment zone. It's the first one, but
18 in the RA1 you have to get a special exception rule for the
19 design of your building as opposed to going to RA2, where you
20 don't require that. But the RA1 is not consistent is not
21 consistent with the zoning regulations.

22 COMMISSIONER MILLER: And I know you --

23 MR. MORDFIN: With the comp plan, with the comp
24 plan.

25 COMMISSIONER MILLER: Yeah, and I know the Office

1 of Planning is looking at the RA1 zones generally because
2 many of them are in neighborhoods which are not -- which
3 include a lot of single family or row house. Anyway, I know
4 you're looking at that whole issue of RA1 zones to see if
5 they need to be changed. Anyway, thank you very much.

6 VICE CHAIR JOHN: Are there -- are there any other
7 questions? So I had one question, Mr. Mordfin. Did you look
8 at Atlantic Street itself? Because when I did my research
9 on Google Maps, I saw a lot of similar buildings.

10 I did see the garden style apartment. But
11 Atlantic Street seems to be to me a bunch of buildings just
12 like this one, more apartment style, small apartment style
13 buildings. So I don't know if you gave any consideration to
14 that.

15 MR. MORDFIN: Well, on the north side of the
16 street, there are -- there are a whole lot of --- or there
17 are --- it's developed with two-story apartment buildings.
18 It's also, the north side of Atlantic Street is also zoned
19 differently. It's zoned RA1. So those apartment buildings
20 then conforming to the zoning regs.

21 And then also and then RA1, there aren't any one-
22 family dwellings, at least within the immediate vicinity of
23 the subject property on the north side. So therefore it
24 makes sense for that side to be zoned RA1 because they're all
25 apartments, generally.

1 On the south side, it's different. There you get
2 a mixture, with one-family dwellings and semi-detached
3 dwellings and some small apartment buildings, such as this
4 one. But it is not the majority of the properties on the
5 south side of the street, at least not on this -- within this
6 general area.

7 Also, when you look to the east of 6th Street --
8 is it 6th Street or 5th? Fifth Street, I'm sorry. You see
9 the lots are all divided up into small lots, which would be
10 -- they look like row house lots.

11 VICE CHAIR JOHN: And there's a gas station on the
12 corner. Is that at 6th Street side or 4th Street side?

13 MR. MORDFIN: I don't remember where the gas
14 station is, I'm sorry.

15 VICE CHAIR JOHN: That's okay. Are there any
16 other questions from the Board? Does the Applicant have any
17 questions for the Office of Planning?

18 MR. SCOTT: Currently, no.

19 VICE CHAIR JOHN: Oh, I'm sorry. Board member
20 Smith?

21 MEMBER SMITH: And it may be a very technical
22 question, and it's about the Zoning Commission's order,
23 0812A. What was the -- you know, my question is what was the
24 extent of that rezoning from RA1 to RA2 in that area, and was
25 it explicitly for along that block where they rezoned to --

1 from RA -- RA5A to RA2? Or to R2 in that particular order?

2 MR. MORDFIN: I don't remember the extent to which
3 the rezoning was done. The rezoning at that time was done
4 at the request of those communities there because they felt
5 like being able to put apartment buildings amidst their
6 single family houses or their row houses was -- or
7 semidetached -- was not in conformance with the character of
8 the neighborhood.

9 And so the purpose of that rezoning was to try and
10 preserve those neighborhoods as what they are, more low
11 density, acknowledging that there are apartment buildings
12 there. And of course they can stay as long as they don't
13 abandon the use.

14 So that was the purpose of the rezoning, was to
15 try and maintain the character of the neighborhood and not
16 change it by allowing for more intensive uses, in this case
17 more dense residential buildings.

18 MEMBER SMITH: Okay, thank you. And you actually
19 answered my question, so thank you for that, for expanding --
20 expanding on your argument.

21 VICE CHAIR JOHN: Thank you. Is there -- Mr.
22 Blake, Board Member Blake?

23 MEMBER BLAKE: Question for Mr. Mordfin. Mr.
24 Mordfin, obviously the -- we understood that financial
25 reasons alone aren't sufficient to -- that has been proven

1 to justify a use variance necessarily.

2 Are there some other factors here that may be
3 applicable, such as the size of the lot or something like
4 that that would be an unusual, extraordinary item that
5 pertains to the property?

6 MR. MORDFIN: The lot size -- well, the -- well,
7 the argument is supposed to go towards the property. And the
8 financial argument doesn't go towards the property because
9 the property itself doesn't have -- it doesn't have -- that's
10 the owner, that goes to the people that own the property.

11 But the size of the lot is 5500 square feet, which
12 is not an unusual lot size for a one-family dwelling in zones
13 such as R1. So it is not an unusually large lot that you
14 would not find one family detached dwellings on a lot of that
15 size.

16 MEMBER BLAKE: Are there any other factors,
17 though, that might be relevant in terms of that topography
18 or something that makes it unusual? Is there anything there
19 that doesn't --

20 MR. MORDFIN: I'm not aware of anything.

21 MEMBER BLAKE: Thank you.

22 VICE CHAIR JOHN: So Mr. Mordfin, I don't -- if
23 this property was in a zone where conversion is allowed, it
24 would meet the 900 square foot requirement for five units,
25 assuming that was the situation, right? It's with the --

1 (Simultaneous speaking.)

2 MR. MORDFIN: If the property is 5500 square feet,
3 so yes.

4 VICE CHAIR JOHN: Yeah, it would -- it would meet
5 the 900, okay. So if there are no questions -- did I exhaust
6 all of the questions? Mr. Young, is there anyone wishing to
7 testify? Oh, before I go to that, is the ANC here? No. Is
8 there anyone waiting to testify, Mr. Young?

9 MR. YOUNG: There is not.

10 VICE CHAIR JOHN: Okay. So I want to turn back
11 to the Applicant. Do you have any questions or a closing
12 statement?

13 MS. HALL: Our cat does. Just want to thank you
14 for your time and consideration.

15 VICE CHAIR JOHN: Thank you.

16 MS. HALL: Appreciate.

17 VICE CHAIR JOHN: So I'm going to excuse the
18 Applicant and close the hearing and the record. Thank you.

19 Okay, and now I'm going to turn to the Board
20 members. Are we ready to deliberate?

21 So on this one I would like to go last because I
22 don't know where I am, and it's a difficult case for me. And
23 so I don't know if anyone wants to start. I don't want to
24 call on anyone, but I will. Okay, Board Member Smith. Oh,
25 Board Member -- Board, you have to -- Blake, you have to put

1 your hand out like that.

2 MEMBER BLAKE: No, go ahead, Mr. Smith.

3 VICE CHAIR JOHN: He was doing this and I was
4 never quite sure if he was just resting his arm. Would you
5 like to go first, Mr. -- Board Member Blake? Please go
6 ahead.

7 MEMBER BLAKE: I hadn't, but that's fine. For a
8 use variance, an applicant must demonstrate that some
9 physical attribute or extraordinary accession condition that
10 is not self-created uniquely affects the property and that
11 an undue hardship arises from the strict enforcement of the
12 zoning regulations.

13 The applicant must also make the case that relief
14 can be granted without substantial detriment to the public
15 good and without substantially impairing the intent, purpose,
16 and integrity of the zone plan.

17 In the case before us today, the subject property,
18 a nonconforming four-unit building, has a large unutilized
19 storage area in the basement, which the Applicant identified
20 as an extraordinary condition. Further, the Applicant has
21 stated that the inability to convert this accessory space to
22 a dwelling unit would result in a financial hardship.

23 As an underutilized accessory space in the
24 basement is fairly common, a financial hardship by itself --
25 a financial hardship in itself does not arise to the standard

1 of an undue hardship. I do not believe the Applicant has met
2 the relatively high standard for a use variance.

3 In addition, I believe that the action would be
4 inconsistent with the purpose and intent of the zone plan as
5 the provisions of the R zone regulations and the R zone
6 itself in particular are designed to discourage multiple
7 dwelling unit development.

8 It is unfortunate that the building sits on the
9 cusp between the R1 as you look at that across the street.
10 But in fact, this is the beginning of the R2 zone, which is
11 a much more restrictive zone.

12 So I consider also the Office of Planning's
13 recommendation for denial, which I gave great weight. And
14 I do note that ANC 8E has not filed a report and no community
15 comments were received. So in this case, I would be not in
16 a position to support.

17 VICE CHAIR JOHN: Thank you, Board Member Blake.
18 Board Member Smith.

19 MEMBER SMITH: I'll apply the comprehensiveness
20 ground to Mr. Blake on this particular case. I think he, you
21 know, thoroughly surmised my opinions on this particular
22 case.

23 So you know, as you stated, the application for
24 a use variance, the applicant has the burden of showing first
25 that the property is unique because of some physical aspect

1 or some extraordinary or exceptional situation or condition
2 to the property.

3 And I know nothing within the record or what was
4 stated by the Applicant speaks to an extraordinary condition
5 or the property is an extraordinary -- that it's more -- it's
6 a financial hardship on the property owner.

7 As Mr. Blake stated, storage spaces in an
8 apartment building, or any residential structure within the
9 District of Columbia, it's fairly -- fairly common situation.
10 There was -- I don't think there was anything within the
11 record that's shown that it rises to a level of extraordinary
12 hardship for them to be able to use the property.

13 So I do not believe that it meets the first prong
14 of the variance test. Nor do I believe it meets the second
15 prong -- I mean the third prong of the variance test, no
16 impairment of the intent, purpose, and integrity of the zone
17 regulations.

18 This property is zone onto the intent of the zone
19 is to have semidetached houses on these sized lots. This is
20 a moderately sized lot. As Mr. Mordfin stated, this is not
21 an uncommon size lot for a single family dwelling unit or
22 semidetached dwelling unit.

23 So this particular property, as Mr. Mordfin
24 stated, was particularly down zoned out of concern amongst
25 the ANC or the civic groups or residents within that area of

1 Southeast to bring the density more into compliance with the
2 historic character of that area.

3 So I believe that if we were to grant this
4 variance, it would be contrary to the intent of the way it
5 was zoned. These zoning of R2 and the intent of the R2, R2
6 zone.

7 And you know, just broadly speaking, you know, I
8 think it would just be -- it would open up a can of worms for
9 us to grant these types of variance requests if they're
10 contrary to the intent of the zone plan.

11 So with that, I agree with Mr. Blake and I do not
12 support the variance.

13 VICE CHAIR JOHN: Thank you, Board Member Smith.
14 Commissioner Miller.

15 COMMISSIONER MILLER: Thank you, Madam Chair. I
16 don't have anything to add. I would concur with all of the
17 comments that Mr. Blake and Mr. Smith have made.

18 VICE CHAIR JOHN: Okay, so I suppose I must say
19 something.

20 COMMISSIONER MILLER: Well, but I could be
21 persuaded if you have something.

22 VICE CHAIR JOHN: I would love to persuade you,
23 Commissioner Miller, as well as Board Members Blake and
24 Smith. But you know, unfortunately, this situation requires
25 a use variance. And we have had similar situations before.

1 And in my view, in a city that's screaming for housing during
2 a housing crisis, it's very difficult to deny this
3 application.

4 Because here's what it has going for it, in my
5 opinion. There's no extension of the building, it's a large
6 lot. It's enough to accommodate another unit. It can be
7 changed to accommodate the one-bedroom meeting the code
8 requirements quite easily. That's not something to sneeze
9 at in the District.

10 Many of these basement apartments require
11 extensive renovations to make them habitable and to meet code
12 -- the code requirements. So I think that, and I would
13 implore you, Commissioner, as well as the Office of Planning,
14 to take another look at these cases.

15 Because here's why. As people start renovating
16 these buildings, moving the large units out of basements and
17 putting them on roofs and making the buildings energy
18 sufficient or more, you know, more right, more energy
19 sufficient, I think we're going to keep seeing these cases.
20 And in this case, there's not a lot of added density, we're
21 just looking at one more unit.

22 And so I, I don't know what else to say. I'm
23 going to vote to deny it, the application, not because it's
24 something that I want to do, but the regulations leave no
25 other option. But I really think, and I cannot ask more

1 strongly, for the Commission and OP to look at these cases
2 again. I just think it's going to get worse as we go along.

3 So okay, go ahead. Whose hand was up first?
4 Who's on first? Is it you, Mr. --

5 MEMBER SMITH: That was more -- that was more of
6 a gesture, because I completely agree with you. And I think,
7 you know, it's -- in these particular cases it's, you know,
8 it's arguable the head versus the heart, in a sense. Because
9 the zoning regulations are for all intents and purposes
10 unfortunately it's a blunt instrument.

11 And I believe that, you know, some of these
12 variance standards are a blunt instrument, and you know, our
13 hands are tied to, you know, the criteria for this blunt
14 instrument. But I do completely agree with, you know, with
15 your assessment, Ms. John. We've seen a large amount of
16 these requests to convert storage spaces into apartments.

17 Some we have supported, I think the vast majority
18 of them we haven't supported because of the blunt instrument
19 of the variance standards. Because many of these, you know,
20 down rise to the occasion when you're interpreting the
21 regulations being right there.

22 So I'll completely agree with you. You know, I
23 think to start with the Office of Planning, the Office of
24 Planning is tied to the regulations, and I do think that the
25 Zoning Commission should probably look at rescinding of some

1 of these regulations to allow these basement conversions in
2 more zones within the District in some way, shape, or form,
3 by special exception or administratively, I don't know.

4 That needs to be looked at, given the dire need,
5 within not just the District of Columbia but within the
6 region for additional housing, additional affordable and
7 workforce housing for the region. So I think you're onto
8 something, so I was just agreeing with you.

9 VICE CHAIR JOHN: Thank you, Board Member Smith.
10 Board Member Blake?

11 MEMBER BLAKE: Yeah, I would just say in wanted
12 to just encourage the Applicant to make sure they have taken
13 advantage of all the opportunities, such as Stay DC, to take
14 -- to recoup some of their lost revenue.

15 And also to consider the matter of right uses that
16 are available to them in that zone. Because if you
17 creatively look at that, you may find ways they could
18 generate income or use of that fallow space.

19 VICE CHAIR JOHN: Commissioner Miller, you're on
20 the spot.

21 COMMISSIONER MILLER: I don't -- I concur. I
22 don't feel on the spot because I concur, I cannot disagree
23 with anything that you, Madam Chair, or my colleagues have
24 said.

25 I think -- I know the Office of Planning is

1 looking at RA1 zones generally -- this isn't an RA1 zone --
2 for almost the opposite reason for of the -- of the -- what
3 appears to be a row house neighborhood.

4 And you have these apartment buildings that come
5 to the BZA for special exceptions to make sure they're
6 compatible, they don't adversely impact the neighborhood, the
7 character of the neighborhood.

8 But I think it needs to be -- you're right, it
9 needs to be looked at the other way too, given the housing
10 prices and the emphasis on that crisis and the need to
11 mitigate it, preserve existing affordable housing.

12 This is affordable housing that's being provided
13 here with the vouchers, with the nonpayment of rent by one
14 of the tenants. So that, I mean, the financial hardship --
15 and you made a good case about how the existing envelope, you
16 don't have to do anything to -- it needs to be -- it does
17 need to be looked at.

18 I know the Office of Planning is looking at all
19 these issues, and I would -- I would join you in encouraging
20 them to, OP to review this type of case and see if there can
21 be some kind of carve-out in the lower density residential
22 zones where there really isn't going to be an adverse impact.
23 Maybe somehow if it -- if -- it may need to be a special
24 exception or something if it's one unit being added or
25 something.

1 Yeah, so I can't disagree with you and my
2 colleagues. Some of them might disagree. Because there is
3 an intent, there was, as you -- as Mr. Smith pointed out, I
4 mean, there was an intent, even though it was before my time,
5 to down zone and try to get back to what was supposed to be
6 a lower density residential neighborhood and not increase
7 density in any way.

8 But it's hard to see how putting the plumbing into
9 the basement or whatever is going to create a problem on this
10 particular street, which is zoned. So --

11 VICE CHAIR JOHN: That's the thing, I looked at
12 the confluence of factors issue, and it still seemed to be
13 a heavy lift. Anyway, I won't drag this out anymore. So,
14 I thank you all for your comments and I agree with them.

15 And so I will make a motion to deny Application
16 20600 as captioned and read by the Secretary and ask for a
17 second. Mr. Blake.

18 MEMBER BLAKE: Second.

19 VICE CHAIR JOHN: Mr. Moy, would you please call
20 the roll.

21 MR. MOY: As I call each of your names, if you
22 would please respond with a yes, no, or abstain to the motion
23 made by Vice Chair John to deny the application for the
24 relief being requested. The motion to deny was second by Mr.
25 Blake.

1 Zoning Commissioner Rob Miller.

2 (No audible response.)

3 MR. MOY: Mr. Smith.

4 MEMBER SMITH: Yes.

5 MR. MOY: Mr. Blake.

6 (No audible response.)

7 MR. MOY: Vice Chair John.

8 VICE CHAIR JOHN: Yes to deny.

9 MR. MOY: We have a Board member not present, not
10 participating. Staff would record the vote as 4-0-1, and
11 this is on the motion made by Vice Chair John to deny the
12 application for the relief being requested.

13 The motion was second by Mr. Blake. Also in
14 support of the motion to deny is Mr. Smith and Zoning
15 Commissioner Rob Miller. Motion carries on a vote of 4-0-1.

16 VICE CHAIR JOHN: Thank you, Mr. Moy. And when
17 you're ready, please go ahead and call our next case.

18 MR. MOY: Okay, this next application before the
19 Board is Application No. 20601 of 924 Oat, O-A-T LLC.

20 This is an application requesting special
21 exception from the new alley record lot requirements,
22 Subtitle C, Section 306.3 -- 306.3, pursuant to Subtitle C,
23 Section 306.4 and Subtitle X, Section 901.2, which would
24 convert -- which would convert an existing detached two-story
25 storage building to an artist's studio in the RA1 zone.

1 The property is located at 924 O St., NW, Square
2 367, Lot 852.

3 As you're aware, Madam Vice Chair, originally
4 there was a filing for party status request, but I believe
5 that was withdrawn by the requester on Monday, January 10.

6 VICE CHAIR JOHN: Thank you, Mr. Moy. Mr. Young,
7 would you let the witnesses in, please.

8 So turning to the Applicant, can you introduce
9 yourself for the record, please.

10 MS. WILSON: Alexandra Wilson from Sullivan &
11 Barros on behalf of the Applicant, and I'm here with Russell
12 Katz, who's the property owner, as well as Eric Gronning, who
13 is the project architect.

14 VICE CHAIR JOHN: Thank you, Ms. Wilson. Would
15 you like to have them introduce themselves now, or wait until
16 you need to have them testify?

17 MS. WILSON: We can wait until we need testimony
18 if we need any testimony. I think the case is relatively
19 straightforward. We have a very brief presentation.

20 VICE CHAIR JOHN: Okay, so please start. You have
21 15 minutes.

22 MS. WILSON: Great, thank you so much. Mr. Young,
23 would you pull up the presentation when you have a chance.
24 Thank you. Would you go to the second page, please. Thank
25 you so much.

1 So a quick overview. The property is an alley tax
2 lot. It's in the RF1 zone and it's currently improved with
3 a two-story building, which is used as storage space. The
4 Applicant, Mr. Katz, intends to use it as his artist's
5 studio. He's a painter. He is not proposing to construct
6 any addition or expand the existing footprint or lot -- lot
7 dimensions in any way.

8 However, as he is changing the use from storage
9 to artist's studio, he requires a record lot subdivision per
10 Subtitle A 31.3, which requires that a building permit shall
11 not be issued for any proposed conversion of a principal
12 structure unless there is a record lot.

13 In this case, the change from the storage use to
14 an artist's studio is considered a conversion, even though
15 the artist's studio use is a matter of right use in this
16 zone. Nothing about the use itself requires relief, it's
17 just that change from one compliant use to another that
18 triggers the need for a record lot.

19 So accordingly, the Applicant is requesting
20 special exception relief in order to convert this tax lot to
21 a record lot pursuant to C 306.4. We went to the ANC and the
22 ANC 2F unanimously supported the application. OP is
23 recommending approval.

24 We reached out to other DC agencies, DDOT, DPW,
25 and FEMS have no objection to this use in the conversion to

1 a record lot. And HPO has approved the subdivision plot
2 because it is in a historic district. We also have support
3 from 922 O Street and two other neighbors.

4 And as Mr. Moy mentioned, we've worked with the
5 neighbor at 926 O Street, who originally requested party
6 status in opposition. She's since withdrawn that party
7 status. Next slide, please.

8 This is a recent exhibit by Mr. Katz. This is on
9 -- at a gallery on 14th Street. As I mentioned he is a
10 painter and plans to use this property as his painting
11 studio. Next slide, please.

12 These are some photos of the property. We do have
13 plans in the next five -- but I think at this point I'll skip
14 to how we meet the zoning criteria. If after we go through
15 that you have questions, Mr. Gronning is here and he can
16 answer those.

17 So Mr. Young, could you please skip to slide, I
18 think it's 14. Thank you.

19 The general special exception criteria are met as
20 the proposed use is permitted as a matter of right and the
21 Applicant is not proposing to alter the existing building's
22 footprint in any way. The boundaries of the lot are not
23 changing.

24 There are a number of residential uses in the
25 immediately surrounding area, as well as an office building

1 directly across the street from the subject property. And
2 the proposed use as an artist studio will not impact the use
3 of those properties. Next slide, please.

4 There are only two requirements for C306.4, and
5 those are safely met as the subject property connects to a
6 system of alleys ranging between 15 and 30 feet. And we have
7 comments of no objection from various DC agencies.

8 There are a number of dwelling units in the alley
9 already, as well as an office, a DC office. So this
10 indicates the adequate public safety and infrastructure
11 availability.

12 And that is the end of my zoning presentation.
13 Again, if you have any questions about the proposed interior
14 renovation, we have Mr. Gronning here.

15 VICE CHAIR JOHN: Thank you, Ms. Wilson. Mr.
16 Young, would you please drop the presentation.

17 So does the Board have any questions? Okay. I'll
18 go to the Office of Planning then.

19 MR. JESICK: Thank you, Madam Vice Chair and
20 members of the Board. My name is Matt Jesick, and the Office
21 of Planning is happy to rest on the record in support of the
22 application, and our report can be found at Exhibit 21 of the
23 record. I'd be happy to take any questions. Thank you.

24 VICE CHAIR JOHN: Mr. Jesick, would you mind
25 spending just a minute talking about how the application

1 meets the criteria for relief?

2 MR. JESICK: Certainly. The Applicant is seeking
3 relief under Subtitle C, Section 306.4, and that is for tax
4 lots, alley tax lots created prior to 2016. And this lot was
5 created prior to 2016.

6 And it asks if the alley tax lot connects to a
7 public street through an alley that provides adequate public
8 safety and infrastructure availability.

9 The lot is already served by infrastructure, both
10 water and electric. And FEMS has weighed in that they have
11 no objection to the conversion from a tax lot to a record
12 lot, though the alley system provides adequate public safety
13 access.

14 The Section -- Subsection asks the Office of
15 Zoning asks the Office of Zoning to refer the application to
16 a number of District agencies. And as the Applicant
17 mentioned, a number of those agencies responded with no
18 objection to the proposed relief.

19 We also examined the general special exception
20 criteria of Subtitle X, and the use of this area of relief
21 is consistent with the intent of the regulations, which was
22 to allow existing tax lots to be put to an active use in our
23 alley systems. So the requested relief would be in harmony
24 with the intent of the regulations.

25 And then the conversion from a tax lot to a record

1 lot would not negatively impact other nearby properties. The
2 owner would be able to use the property for any matter of
3 right use, and those uses are deemed compatible with the
4 existing neighborhood.

5 So that summarizes our analysis, and I'd be happy
6 to take any more questions.

7 VICE CHAIR JOHN: Thank you, Mr. Jesick. Does the
8 Applicant have any -- I'm sorry, does the Board have any
9 questions for the Office of Planning?

10 Does the Applicant have any questions for the
11 Office of Planning?

12 MS. WILSON: No, thank you.

13 VICE CHAIR JOHN: Okay, I don't believe the ANC
14 is here. So Mr. Young, is there anyone signed up to testify?
15 Okay, thank you.

16 Ms. Wilson, do you want to make closing arguments?
17 There's no rebuttal.

18 MS. WILSON: Nope, we'll rest on the record.
19 Thank you all so much.

20 VICE CHAIR JOHN: Okay, thank you. So I will
21 thank you for your testimony and excuse all of your
22 witnesses. Thank you, have a good day.

23 So are we ready to deliberate? Does anyone want
24 to volunteer? If not, I'll make a few comments.

25 So this is really very straightforward. Because

1 the request for party status was withdrawn, then there
2 weren't any very significant issues to be decided. I thought
3 the Office of Planning did a good job in analyzing how the
4 application meets the criteria for relief, and I will -- I'm
5 in support of the application.

6 I'll also note that DDOT, DPW, FEMS, and the ANC
7 are all in support.

8 Does anyone wish to add anything?

9 MEMBER SMITH: I don't wish to add anything, Madam
10 Chair, and I agree with your analysis of this case. I'm also
11 in support.

12 VICE CHAIR JOHN: Thank you, Board Member Smith,
13 anyone else? Commissioner Miller?

14 COMMISSIONER MILLER: I would concur with both of
15 your comments and just add that the benefit of activating the
16 alley space is a -- with a matter right use, is a public
17 benefit.

18 VICE CHAIR JOHN: Thank you. It's also a great
19 location for an artist's studio. Board Member Blake?

20 MEMBER BLAKE: Madam Vice Chair, I have nothing
21 to add, and I'd be in support.

22 VICE CHAIR JOHN: Okay, thank you. So in that
23 case, I'll make a motion to approve Application 20601, as
24 captioned and read by the Secretary, and ask for a second.
25 Mr. Smith?

1 MEMBER SMITH: Second. Second.

2 VICE CHAIR JOHN: Second. Mr. Moy.

3 MR. MOY: Madam Vice Chair. When I call each of
4 your names, if you would please respond with a yes, no,
5 abstain to the motion made by Vice Chair John to approve the
6 application for the relief -- for the relief requested. The
7 motion to approve was second by Mr. Smith.

8 Zoning Commissioner Rob Miller.

9 COMMISSIONER MILLER: Yes.

10 MR. MOY: Mr. Blake.

11 (No audible response.)

12 MR. MOY: Mr. Smith.

13 MEMBER SMITH: Yes.

14 MR. MOY: Vice Chair John.

15 VICE CHAIR JOHN: Yes.

16 MR. MOY: There are no other Board members
17 participating. If the staff would record the vote as 4-0-1,
18 and this is on the motion made by Vice Chair John to approve,
19 second by Mr. Smith. Also in support of the motion to
20 approve is Mr. Blake and Zoning Commissioner Rob Miller. The
21 motion carries on a vote of 4-0-1.

22 VICE CHAIR JOHN: Thank you, Mr. Moy. And I'm
23 going to take a two-minute break. I just need to turn off
24 my video for a moment. Thank you.

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

1 record at 2:24 p.m. and resumed at 2:28 p.m.)

2 MR. MOY: So, the next case before the Board is
3 application number 20551 of Justin Matthews, and this is a
4 request for a use variance from the matter-of-right uses
5 under Subtitle U, Section 201, pursuant to Subtitle X,
6 Section 1002.

7 This would permit a flat use of an existing, semi-
8 detached, two-story with basement, principal dwelling unit
9 in the R-2 zone. The property is located at 4215 Dix, D-I-X,
10 Street, NE, Square 5088, Lot 103.

11 Let's see, I believe, Madam Vice Chair, this was
12 submitted late, so it's not in the record yet, so this is
13 before you. I believe the applicant had filed building
14 permits at 4215 Dix Street, which is the subject site. Other
15 than that, there was a filing today from ANC 7C of their
16 report, and I believe it's under Exhibit 46 in support.

17 VICE CHAIR JOHN: Okay, let me see if I can pull
18 that up. Good morning. Is that Mr. Daniels?

19 MR. DANIELS: Yes, this is Mr. Daniels on behalf
20 of Mr. Matthews.

21 VICE CHAIR JOHN: Okay, please give your address
22 for the record?

23 MR. DANIELS: Yes, my office is at 1250
24 Connecticut Avenue, NW, Suite 700, Washington, D.C. 20036.

25 VICE CHAIR JOHN: Thank you, and who do you have

1 with you today?

2 MR. DANIELS: Yes, I represent Mr. Matthews, who
3 is on the screen. He is the owner and occupier of 4215 Dix
4 Street, NE.

5 VICE CHAIR JOHN: Thank you. Would you like to
6 have Mr. Matthews introduce himself now or wait until he's
7 called to testify, if he is?

8 MR. DANIELS: I'd prefer Mr. Matthews introduce
9 himself now if that's fine with you.

10 VICE CHAIR JOHN: Thank you. Please go ahead, Mr.
11 Matthews.

12 MR. MATTHEWS: Hi, good afternoon, everyone. My
13 name is Justin Matthews. As Mr. Daniels mentioned, I am the
14 owner of 4215 Dix Street, NE, Washington, D.C. excuse me.
15 Mr. Daniels will be representing me on this hearing, and will
16 be very excited to be here and get this process going, so
17 thank you for having me.

18 VICE CHAIR JOHN: Thank you, Mr. Matthews. Mr.
19 Daniels, you'll have 15 minutes to provide your statement.

20 MR. DANIELS: Thank you. I will, although I don't
21 think it will last 15 minutes, I will reserve three or four
22 minutes for Mr. Matthews if that's needed.

23 VICE CHAIR JOHN: I'm sorry, Mr. Daniels. I
24 forgot to ask you to tell us why you were late in submitting
25 those documents that are not in the record yet?

1 MR. DANIELS: Yes, that was totally my office's
2 fault. I was away out of the country for a few weeks over
3 the holidays, and I actually had some issues with technology,
4 given the weather the last couple of weeks, in getting that
5 back up and running at my home office.

6 So, I tried to get it to the Board as soon as I
7 could. It just so happened that it happened last night. I
8 ask the Board to please make a decision on whether or not you
9 will accept the admission of that exhibit as it will go to
10 a portion of my testimony.

11 VICE CHAIR JOHN: Thank you, Mr. Daniels. Mr.
12 Moy, I would like to admit those documents into the record
13 because I would like to see them and I think the Board would
14 like to see them too.

15 MR. MOY: Yes, ma'am, it will be uploaded
16 momentarily.

17 VICE CHAIR JOHN: Thank you. So, please go ahead,
18 Mr. Daniels.

19 MR. DANIELS: Yes, thank you very much. I'll
20 start by being very specific. We're asking the Board to
21 approve a use variance for 4215 Dix Street, NE on behalf of
22 Mr. Matthews.

23 We understand the burden of proof in this case and
24 we ask that the Board not apply the strict application of the
25 zoning regulations given that there is an exception on undue

1 hardship on Mr. Matthews in this case.

2 I'll start by examining why we believe there is
3 an exceptional situation here, and a lot of that kind of
4 comes around to dealing with what the property is as a whole
5 and the history of the property.

6 While the property was under contract and Mr.
7 Matthews was the potential buyer and there was another
8 gentleman who was the seller at that time, it was revealed
9 only at that point that there was a person living in this
10 particular property, not the owner, but another person living
11 in the property, and that person was deemed to be somewhat
12 of a tenant of this particular property.

13 Now, in order to, I guess, not do away with the
14 sale as a whole, the seller at the time offered to sign an
15 addendum that he would help Mr. Matthews obtain a certificate
16 of occupancy for this particular property.

17 The seller, I mean, he made extremely half-hearted
18 attempts at actually doing so, and actually made one attempt
19 to get a certificate of occupancy once the property was
20 actually signed and sold, and then after that, he kind of
21 stopped replying to Mr. Matthews or doing anything to assist
22 in the process given that his application was denied.

23 We understand that this property is situated in
24 an R-2 zone for single-family dwellings, but I'll tell you
25 that if you look at Exhibit 1 -- and I guess the Board can

1 tell me if my screen needs to be shared or if everyone has
2 it in front of them?

3 VICE CHAIR JOHN: So, I will ask Mr. Moy, Mr.
4 Young to pull up Exhibit 1. Go ahead, Mr. Daniels.

5 MR. DANIELS: Yes, thank you. I would like the
6 Board just to kind of take note of the fact this is a
7 building permit and this is shortly before the property was
8 sold to Mr. Matthews and was actually shown to him by the
9 previous owner. You can see here the issue date of this
10 particular permit was in 2020 January. Mr. Matthews applied
11 for the property in March of the same year.

12 And the point of this particular exhibit is that
13 for all intents and purposes, Mr. Matthews had always had an
14 understanding that this particular property was in compliance
15 with all the proper zoning laws and it was actually dealt
16 with by an entity of the District of Columbia, DCRA, as a
17 two-family flat. This is what he assumed he was purchasing
18 at the time.

19 I think if you go down maybe halfway through the
20 page under the existing use and proposed use portions, you
21 can see that DCRA dealt with this property or at least
22 assigned it as a two-family flat in an R-3 zone. Now,
23 whether or not that was actually true remains to be seen, or
24 what they believed to be true at the time remains to be seen.

25 So, the point is at all times -- and you can

1 actually take the exhibit off if you want. The point is the
2 DCRA, they dealt with this property as a property that was
3 already a two-family flat, and that's essentially all that
4 Mr. Matthews is asking for today.

5 He's asking to have this property be in compliance
6 with all of the zoning regulations, obviously with the use
7 variance, but also so that he can obtain a certificate of
8 occupancy in this matter so that he can deal with the
9 property as well as the tenant in the way that he should be
10 able to under D.C. law.

11 Just a little bit about the property, it's 1,190
12 square feet. It's already a two-story structure with a
13 separate entrance for each level. It has separate living
14 quarters, separate storage, and separate utilities.

15 It's already separately metered for gas and
16 electric, and quite frankly, this was all done potentially
17 not in compliance with D.C. law, but it was before Mr.
18 Matthews had acquired the property, and we believe it was
19 probably done sometime in 2006, although we can't be sure,
20 just given the information we have from the prior owner.

21 So, when we talk about exceptional hardship,
22 right, and I know that financial hardships don't rule the
23 day, but when you look at a situation where it's already been
24 converted to what can accommodate two separate families, two
25 separate entities, if Mr. Matthews chooses to change it back

1 or do any of those things necessary to get permits to
2 renovate it to where he has full use and enjoyment of the
3 entire property, he goes on to have to pay thousands of
4 dollars in order to have that renovation done.

5 You're looking at probably \$150,000 to \$200,000
6 in order to make that happen, and that's non-inclusive of the
7 permits that he would have to have in order to do the
8 renovations.

9 The value is lessened in value as well. If Mr.
10 Matthews wants to go on to sell the property at any point,
11 it's essentially a two-family flat that's being only
12 recognized as a single-family dwelling, which kind of lessens
13 the value of what that property is and how it can be sold and
14 dealt with.

15 I will make note that there is a tenant in the
16 property, and if that tenant is forced to be removed, not
17 only does that not serve the purpose or the spirit of any of
18 the District of Columbia laws, especially in a
19 landlord/tenant sense, Mr. Matthews, he cannot also deal with
20 any potentially new tenants.

21 If, for instance, the current tenant moves out,
22 we're looking at a situation where he may not be able to
23 accept individuals with vouchers, and he'd have to have some
24 kind of explanation with DCHA as to why, and I don't even
25 think they would be able to consider this particular property

1 as one in which a voucher could be used in because it's not
2 in compliance with the zoning laws, and he doesn't have the
3 certificate of occupancy which is essentially what he's
4 asking for and what he needs, and is the reason that he needs
5 the use variance.

6 I will also say that the surrounding neighborhood
7 and the homes next to it, for instance, there's an apartment
8 building, I think maybe a three or four-level apartment
9 building directly next door to this particular property. I
10 don't think that allowing Mr. Matthews the relief that he's
11 requesting is not in harmony or has any adverse impact on
12 this particular neighborhood, this particular block.

13 There are homes in this particular area that are
14 somewhat used as mixed use properties as well, and not even
15 adding a person because there's already a person there. It's
16 just asking to change the makeup of the property so that Mr.
17 Matthews, as the owner, can deal with it in a way that kind
18 of is competent, right.

19 I will tell the Board that we've had extensive
20 conversations with the ANC. The ANC has actually held a
21 public meeting. I believe it was back on November 14. I was
22 physically present as well as Mr. Matthews. There were a
23 couple of neighbors who are in the area who attending the
24 public meeting as well.

25 Everyone in that area is in support. They're well

1 aware of Mr. Matthews and what he's trying to do obviously.
2 They were well aware months ago before there was any
3 requirement to post the public signs, the orange signs if the
4 Board needs a reference.

5 I believe they submitted a letter in support. We
6 actually went -- not went, I'm sorry. We actually attended
7 a virtual meeting with the ANC committee last night. They
8 are still in support after having a brief conversation with
9 myself and Mr. Matthews. We're asking that this Board give
10 its permission and grant the use variance to Mr. Matthews.

11 VICE CHAIR JOHN: Okay, thank you, Mr. Daniels.
12 Does the Board have any questions? Okay, so I'll go to the
13 Office of Planning?

14 MS. MYERS: Good afternoon, Crystal Myers for the
15 Office of Planning. The Office of Planning is recommending
16 denial in this case. We feel that a use variance for this
17 case has not, the argument has not been proven that a use
18 variance is appropriate, and we are actually recommending
19 that the applicant consider reapplying for an accessory
20 apartment.

21 We've had discussions about this with the
22 applicant. The accessory apartment option could perhaps be
23 done as matter of right or it could be done as a special
24 exception, but we believe that that would be a more
25 appropriate route to take, but I can go over the report or

1 what we discussed over how they're, we feel, not meeting the
2 test for variance relief.

3 As the applicant has discussed, the conversation
4 of the property into two units was done illegally by the
5 previous owner, but there was nothing wrong with the property
6 itself, and so the issue is more of an issue between the
7 previous owner and the current owner.

8 Though OP is sympathetic to the difficult position
9 that the applicant is in and we do support the retention of
10 a second unit on this property, the applicant has not
11 sufficiently met the test for the use variance. In addition,
12 a use variance is unnecessary, as I mentioned, to preserve
13 the second unit.

14 The R-2 zone allows for accessory apartments as
15 a matter of right or special exception, and it appears that
16 the second unit in this case could be retained as a special
17 exception relief. Because of the size of the unit, it may
18 require special exception relief.

19 The applicant should discuss this with the Zoning
20 Administrator and to see whether or not this is a route that
21 makes sense for them, but since the owner does live on the
22 property, the second unit could be appropriately done as an
23 accessory apartment.

24 As for hardship to the owner, the applicant argues
25 that evicting the existing tenant and converting the building

1 back into a one-dwelling unit house would be a hardship, but
2 as I've discussed, we don't believe that the second unit
3 would have to be abandoned, and we don't believe that the
4 tenant would have to be evicted and the building would have
5 to be turned into a single-family house. We believe it could
6 all be retained if the applicant would pursue this as an
7 accessory building or accessory unit.

8 As for substantial detriment to the public good,
9 this unit has been in existence since 2006, so it does not
10 appear to be a hardship or, I'm sorry, a substantial
11 detriment to the public good, to the surrounding
12 neighborhood. It doesn't seem to be an issue in that
13 respect.

14 And, of course, losing housing units would be a
15 problem to the public, so we would like to see for the unit
16 to be retained. We just don't think this is the appropriate
17 route to take.

18 And as for substantial impairment to the zoning
19 regulations, we do think that granting a use variance in this
20 case would be an impairment to the regulations. Illegal
21 conversions of a property is not a compelling argument for
22 a use variance.

23 And we feel that when there is another option in
24 the regulations to pursue that would be allowed in the
25 regulations, such as, in this case, with an accessory

1 apartment, that would be the appropriate route to take rather
2 than going the route that would be against what the
3 regulations are trying to do.

4 So, again, the Office of Planning is recommending
5 denial in this case and we strongly encourage the applicant
6 to pursue this as an accessory apartment case, and I'm here
7 for questions if anyone has any questions for OP.

8 VICE CHAIR JOHN: Thank you, Ms. Myers. Does the
9 Board have any questions? Does the applicant have any
10 questions for the Office of Planning?

11 Okay, I have a question, Ms. Myers. So, I just
12 saw the permit today, and if it was issued in 2000 by DCRA,
13 would that make a difference in your evaluation in terms of
14 the exceptional condition?

15 MS. MYERS: No, I mean, I took a look at it as
16 well now. I believe they're discussing about something --
17 it's not about use. It's about fencing or some kind of other
18 work being done on the property, but it's for a CFO, but a --
19 it's not kind of a use and occupancy permit.

20 And, I mean, unless there's more of a discussion
21 from the applicant if they have a persuasive argument when
22 it comes to being, but DCRA made a mistake, but I don't --
23 I'm not catching this as -- it doesn't appear to me to be a
24 substantial mistake. It looks like the permit wasn't related
25 to the use, but I could be mistaken.

1 So, it could just be a matter of the applicant has
2 to provide more information to explain that argument, but as
3 I mentioned, you know, it doesn't even seem that a use
4 variance is even necessary for what they're trying to do on
5 the property.

6 VICE CHAIR JOHN: I think I had another question
7 and I've forgotten what it was. Were there any other
8 questions? Commissioner Miller?

9 COMMISSIONER MILLER: Thank you, Ms. Myers, for
10 your report. I am inclined to agree that there is an easier
11 process to get to the same outcome of allowing the second
12 unit, an easier lawful process.

13 In terms of it being lawful as an accessory
14 apartment, did you yet have any discussion with the Zoning
15 Administrator about that or that's just off of Planning's
16 analysis of the record that's before us?

17 MS. MYERS: I did not talk with the Zoning
18 Administrator. It's up to the applicant to decide if they
19 want to pursue that option.

20 I did talk extensively with the applicant, or with
21 the applicant's representative, to explain that this looks
22 like it would be a good candidate for an accessory apartment
23 and I mentioned to them that, you know, the Zoning
24 Administrator would be the next person to talk to about it
25 in more detail, and my understanding was that they were going

1 to do that or at least look into it further, so I hadn't
2 heard back from them on that, which is why, you know, I
3 provided the report I did provide, but I did talk with the
4 applicant.

5 COMMISSIONER MILLER: Okay, thank you.

6 VICE CHAIR JOHN: Okay, are there any other
7 questions? Okay, so now I will go then to Mr. Young. Mr.
8 Young, is there anyone wishing to testify?

9 MR. YOUNG: We do not.

10 VICE CHAIR JOHN: Okay, Mr. Daniels, without
11 discussing where we are in terms of the Board's potential
12 decision, so you've heard the discussion from the Office of
13 Planning, and so you and your client have a couple of
14 options, have one option actually, no, it's two.

15 We could decide today or we could continue the
16 case to give you an opportunity to explore some of the
17 suggestions from the Office of Planning and talk with the
18 Zoning Administrator, and so I'll give you a minute or two
19 to talk to your client.

20 MR. DANIELS: Ms. John, with all due respect, we
21 don't need it. We've discussed it extensively. We're asking
22 the Board to make a decision today. I'm asking for a few,
23 I guess, moments of the Board's time to give rebuttal if
24 you'll hear it.

25 VICE CHAIR JOHN: Oh, okay, so you would like us

1 to decide today? That's what you're saying?

2 MR. DANIELS: Yes.

3 VICE CHAIR JOHN: Okay, all right, so you can have
4 rebuttal and closing right now.

5 MR. DANIELS: Thank you.

6 VICE CHAIR JOHN: Thank you.

7 MR. DANIELS: We've looked at the recommendation
8 of the Office of Planning, and quite frankly, it's my
9 opinion, and I won't impute this to Mr. Matthews at all, but
10 it's my opinion that it constrains the property owner much
11 more so than actually potentially to get the use variance.

12 Because if you look at a situation where -- first
13 of all, he would need to get the special exception because
14 the property, I think it's too big in order to get it as a
15 matter of right, so he would need to apply and get it as a
16 special exception.

17 And then you also look at the rules as an
18 accessory dwelling and it requires Mr. Matthews to continue
19 to live on the property, and I think he intends to do that,
20 but the problem is if at any point he decides not to live on
21 the property, this property is still not in compliance
22 because then there's no principal owner still living in the
23 property, so now it's still in a state of flux similar to the
24 way it is now.

25 The certificate of occupancy through a use

1 variance just makes more sense so that he can still retain
2 the tenant that's there, but also deal with it in a way that
3 any other normal owner of property would deal with it.

4 Because if he has it as an accessory dwelling,
5 again, it's still in a state of flux because if he ever
6 chooses not to ever live there or there are other
7 circumstances that come up to where he has to go somewhere
8 else, or he gets married, or anything of that nature, now
9 we're looking at a situation where the property is still in
10 flux because the person who owns it is not in the dwelling
11 anymore.

12 So, it puts the property still in a state of
13 confusion, whereas the use variance, although the burden is
14 high, is relatively an easy fix here.

15 And as far as the exhibit, the only purpose of the
16 exhibit was to establish that an entity of D.C. government
17 had already recognized this property as a two-family flat.
18 Now, it could have been a mistake. I won't say that it
19 wasn't.

20 And the permit, while it doesn't have anything to
21 do with the use, and I will acknowledge that it didn't, it
22 was actually trying to build a rear patio, the issue is the
23 confusion that it causes.

24 Because if a potential buyer goes to buy a
25 property or look at a property and look at the filings with

1 the government for something that was filed in 2020, and it
2 recognizes this unit as a two-family flat, I think that
3 provides a little bit of confusion and it goes towards the
4 argument of it being an exceptional circumstance in this
5 case.

6 VICE CHAIR JOHN: Okay, all right, thank you.
7 Before I excuse you, I want to turn to Ms. Myers for a
8 follow-up question. Ms. Myers?

9 MS. MYERS: Yes?

10 VICE CHAIR JOHN: If the owner wanted to pursue
11 the accessory apartment option, would the owner have to come
12 back to the BZA for approval? Do you know offhand?

13 MS. MYERS: Yes, for a special exception, they
14 would. We did not review this for a special exception. I
15 don't have all of the information I would need to make that
16 analysis. So, if they -- well, actually, they will need it
17 as a special exception, so they would have to come back.

18 VICE CHAIR JOHN: Okay, all right, so this is
19 where you are now, Mr. Daniels. Oh, Commissioner Miller?

20 COMMISSIONER MILLER: Following up on that, and
21 maybe you were going to say this as well, that you wouldn't
22 have to come back if we didn't deny it today and continued
23 the case, and you amended the application to be a special
24 exception for an accessory apartment.

25 We could continue -- the ANC already supports the

1 use. OP has no problem with the outcome. I don't think we
2 have a problem. We support the outcome as well. I really
3 would strongly --

4 This case could continue if you choose to amend
5 without even having to file something new except a new
6 exhibit that just amends it to be a special exception for an
7 accessory apartment, and we can consider that fairly
8 expeditiously, but if you force us to have to consider a use
9 variance today, that is a very high threshold that sets --

10 Even though we consider cases individually, it
11 sets a precedent for the types of cases that can get a use
12 variance, and there's an alternative here that is at your
13 disposal, although if it's so strongly --

14 And if he wants to move out in the future and come
15 forward as the reason why -- if we did the special exception
16 for an accessory apartment and the owner wants to move out,
17 he can come and try to make an argument at that point for a
18 use variance or something if he wants it to be something
19 different at that point.

20 You have an option right now for what you want to
21 do. I would strongly encourage you to not force this Board
22 to make a decision today on the use variance. I think you'll
23 get to the outcome you want now, now or sooner.

24 VICE CHAIR JOHN: Board Member Blake?

25 MEMBER BLAKE: Yes, I have a question for the

1 Office of Planning. What would be the time frame for
2 bringing a case with a different, for asking a special
3 exception versus trying to request a variance? I think it's
4 a year for the variance, but it would be a shorter threshold
5 for the special exception?

6 MS. MYERS: I don't know. I mean, I think it also
7 depends on, you know, how quickly can the applicant put in
8 the information, but when it comes to our review time at the
9 Office of Planning, it wouldn't be long, I mean, I think a
10 couple of weeks is what we would just need, especially since
11 we're already familiar with the case, but what happens before
12 it comes to the Office of Planning, I just don't know their
13 timeline.

14 VICE CHAIR JOHN: Okay, thank you, Ms. Myers. Are
15 there any other questions? And so, Mr. Daniels and Mister,
16 I'm sorry, Mr. Nicholas -- no, I've got it wrong. I'm so
17 sorry.

18 MR. MATTHEWS: Matthews.

19 VICE CHAIR JOHN: Here's where we are because I'm
20 a straight shooter. You can have half a loaf or probably
21 nothing. The case you have is very difficult because there
22 is no exceptional condition. There is no extraordinary
23 condition, so that's the first step. You can't get through
24 that hoop because the permit itself is not enough. We don't
25 know why that permit exists. It helps, but it's not enough.

1 So, again, if you let us decide today, you're
2 probably -- I mean, just listening to my Board members and
3 the Office of Planning, to go against the Office of Planning
4 is a heavy burden for the Board. We have to say why the
5 Office of Planning's analysis is incorrect because the
6 regulations require us to give great weight to the Office of
7 Planning's analysis and recommendation.

8 That doesn't mean that the Board agrees with
9 everything the Office of Planning does, absolutely not, but
10 in this case, I don't know if you were listening all day, but
11 this use variance is very, very hard to achieve, deliberately
12 so, and what we're saying to you is you can get a special
13 exception.

14 You don't meet the requirements exactly. You
15 might need a waiver of the size of the square footage. You
16 have 1,190, so 1,200, and the owner would have to live in the
17 building. That could be a temporary situation, but that's
18 where we are.

19 If we deny this case today, then you'll have to
20 come back and pay another fee, okay? So, I'm speaking to
21 your attorney as well. So, we have a long day. Do you want
22 us to continue the case for the two of you to talk together
23 or we can move forward?

24 MR. DANIELS: If the Board is will to allow just
25 60 seconds for me to talk to Mr. Matthews?

1 VICE CHAIR JOHN: Okay, so we'll take the next
2 case and then we'll call this case later after the next case.

3 MR. DANIELS: Can we take just 60 seconds? I
4 don't want to call the other case if we can have a decision
5 in like the next two seconds.

6 VICE CHAIR JOHN: Okay, 60 seconds.

7 MR. DANIELS: Thank you.

8 (Whereupon, the above-entitled matter went off the
9 record at 2:58 p.m. and resumed at 3:00 p.m.)

10 VICE CHAIR JOHN: The Board is back in session.
11 Mr. Daniels, have you had an opportunity to talk with your
12 client?

13 MR. DANIELS: Yes, we will take the continuance
14 to further consider the recommendations by the Office of
15 Planning.

16 VICE CHAIR JOHN: Okay, thank you. Mr. Moy? Mr.
17 Moy? Thank you. So, we're going to try to continue this
18 case. Do you have a recommended date?

19 MR. MOY: Okay, well, okay, I think if the premise
20 is to return sooner rather than later, then I think given the
21 docket load, the earliest would be, even though it's going
22 to add to your case load, the earliest could be February 2,
23 which this would give you your 11th case, or after that date
24 would be March 16 where we have two appeals, and there's an
25 appeal with the following date as well.

1 So, I think of the three that I just mentioned,
2 the least hardship for the Board probably would be February
3 2 if the applicant would be ready with whatever changes might
4 be in their application.

5 MR. DANIELS: February 2 is not a good date for
6 me. I apologize. One of the options was March 16 and I
7 didn't hear the third one.

8 VICE CHAIR JOHN: Do we have reviews on the 3rd,
9 Mr. Moy, March 3?

10 MR. MOY: March 2, I'm adding more cases to that
11 date, but I could add another one to this as well, so this
12 could possibly give the Board, you know, nine or ten cases,
13 so, yeah, March 2 could be.

14 MR. DANIELS: Is March 9 available? I have
15 nothing scheduled that day.

16 MR. MOY: Give me just a second. That's going to
17 be difficult for the Board because I think the Board's going
18 to be here all night on March 9, although I didn't want to
19 tell the Board that, but you pushed me into that. It would
20 have to be either March 16 or March 23 where we already have
21 appeal cases, yeah, March 16 or March 23.

22 VICE CHAIR JOHN: We have appeal cases on those
23 two days?

24 MR. MOY: Yes, ma'am.

25 VICE CHAIR JOHN: So, we're looking at April or

1 March 2 or 3, whatever that date was.

2 MR. MOY: Yes.

3 MR. DANIELS: I'll make March 2 work.

4 MR. MOY: Let me double check. Okay, March 2.

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

6 COMMISSIONER MILLER: And Madam Chair, I just
7 wanted to encourage Mr. Daniels and Mr. Matthews to work with
8 the Office of Planning and to get the Zoning Administrator's,
9 or work directly with the Zoning Administrator, but use the
10 resources that the District government has, the Office of
11 Planning, Ms. Myers in this case is on your case, to get an
12 opinion from the Zoning Administrator that allows you to
13 amend the application for a special exception if that's
14 what's necessary.

15 They thought it might even be a matter of right,
16 but it looks likely that it's more of a special exception.
17 So, the case is being continued and it can continue as a
18 special exception, but you need that Zoning Administrator
19 advice as well.

20 So, and when you come back, just so you know, we
21 appreciate your attire here today, but we are in COVID casual
22 home office mode as you alluded to yourself, so you don't
23 have to, but whatever you want to do, but if you want to be
24 more casual than you were today -- you look great. Both of
25 you look great.

1 VICE CHAIR JOHN: Thank you, Commissioner Miller,
2 except that, you know, I am not in home office casual sadly.

3 COMMISSIONER MILLER: My fellow commissioners look
4 like they're at the hearing room. That's the real virtual.

5 VICE CHAIR JOHN: Okay, thank you, gentlemen. So,
6 we'll see you again on March 3, okay?

7 MR. DANIELS: Thank you.

8 VICE CHAIR JOHN: Okay, have a good day. Mr. Moy,
9 would you call the next case?

10 MR. MOY: Yes, ma'am, this would be case
11 application number 20524 or Gregory Potts. This is an
12 application for special exceptions as advertised from the
13 rooftop and upper floor alteration restrictions, Subtitle E,
14 Section 206.1(a), pursuant to Subtitle E, Section 206.4,
15 Subtitle E, Section 5207, and Subtitle X, Section 901.2.

16 This would construct a third story addition and
17 convert to a flat, an existing, attached, two-story with
18 cellar principal dwelling unit in the RF-1 Zone. The
19 property is located at 521 Florida Avenue, NE, Square 828,
20 Lot 48.

21 Let me see, yeah, this application was originally
22 postponed from the Board's public hearing of October 20,
23 2021. To give a little brief on the status of this
24 application, Madam Vice Chair, there is a filing in the
25 record for a continuance from the applicant which was filed

1 Monday, January 10.

2 And I know from staff today, the staff has
3 continued to contact the applicant's agent as well as any of
4 his associates in his office and there have been no
5 responses, so all I can report to you is that the only thing
6 we have is the letter requesting a continuance which is in
7 the record.

8 VICE CHAIR JOHN: Thank you, Mr. Moy. Mr. Young,
9 is there someone signed up on behalf of the applicant? Is
10 that you, Mr. Nicholas?

11 MR. YOUNG: No, we had Mr. Bellows signed up, but
12 he is not here.

13 VICE CHAIR JOHN: Mr. Nicholas?

14 MR. NICHOLAS: Yes, I'm with the OZ legal staff.

15 VICE CHAIR JOHN: Oh.

16 MR. NICHOLAS: So, no, I'm not with the applicant.

17 VICE CHAIR JOHN: Okay, it's time for coffee. I
18 can't read. I looked at my witness list and I'm so sorry.
19 I said oh, we have to Nicholas's. Okay, so I have to -- then
20 I need to ask you, Mr. Nicholas, we have a request for a
21 continuance. Does the applicant have to be here or is the
22 letter sufficient?

23 MR. NICHOLAS: The letter is sufficient for the
24 Board to make a ruling on the continuance request.

25 VICE CHAIR JOHN: All right, thank you. So, in

1 that case, I'm turning to my fellow Board members. Do you
2 have any objections to continuing the case?

3 MR. ECKENWILER: Madam Chair, Mark Eckenwiler from
4 ANC 6C. I am here.

5 VICE CHAIR JOHN: Yes, thank you, Mr. Eckenwiler.
6 Would you like to comment?

7 MR. ECKENWILER: Yes, I do just want to put two
8 items on the record for the Board. First, the applicant knew
9 well before Monday afternoon that a continuance would be
10 necessary, and I have to say I think it's not considerate of
11 my time or of the Board's time to be filing last-minute
12 requests for continuances. This is the second one in this
13 particular case.

14 That said, ANC 6C will not object to the request,
15 but I do want to reiterate, since we have not filed a letter
16 in response to this one, the point made in our previous
17 consent letter, the one back in October, that's Exhibit 42,
18 that we do fully expect the applicant to file the prehearing
19 statement the requisite 21 days in advance. I do not want
20 to see that come again three or four days before the hearing.

21 VICE CHAIR JOHN: Thank you, Commissioner
22 Eckenwiler. I'm sure you know that the Board is very lenient
23 with late submissions, so the Board has to be very careful
24 of hard and fast rules for particular applications, and I
25 would just throw that out, but I heard what you said and I

1 will take that into consideration, or the Chairman, when he's
2 back, will take that into consideration.

3 So, do we have a date to continue this case? Did
4 the Board agree to continue the case? Okay, I see heads
5 nodding, so we're continuing this case by consensus, and do
6 we have a date, Mr. Moy?

7 MR. MOY: I'd suggest for the Board to consider
8 a rescheduled date of April 20 at the earliest.

9 VICE CHAIR JOHN: Okay, does that work for you,
10 Mr. Eckenwiler?

11 MR. ECKENWILER: Right now, I believe I'm
12 available April 20.

13 VICE CHAIR JOHN: Okay, all right, well, thank you
14 for your time. I'm sorry we're continuing the case again.
15 So, we'll see you again on April 20 for this case. I'm sure
16 you'll be back before then.

17 MR. ECKENWILER: No doubt, Madam Chair. Thank
18 you.

19 VICE CHAIR JOHN: Thank you. Okay, I think we're
20 at the last case now, Mr. Moy, and none too soon?

21 MR. MOY: Yes.

22 VICE CHAIR JOHN: Okay.

23 MR. MOY: And this would be appeal number 20552
24 of Brian Jordan. This is, reading into the record, this is
25 the appeal pursuant to Subtitle X, Section 1100 from the

1 decisions made on May 4, 2021 by the Zoning Administrator,
2 Department of Consumer and Regulatory Affairs to issue
3 building permit number B2012129 to permit new construction
4 of a flat in the RF-1 zone, the property located at 3430
5 Oakwood Terrace, NW, Square 2621, Lot 1003.

6 The preliminary matter here, Madam Vice Chair, is
7 that there is a motion to dismiss the appeal as moot, and
8 this was filed by DCRA under Exhibit 23, and I believe the
9 appellant's response is under Exhibit 24.

10 VICE CHAIR JOHN: Okay, thank you. Mr. Green, are
11 you there?

12 MR. GREEN: Hi, Vice Chair, yes, Hugh Green for
13 DCRA is here.

14 VICE CHAIR JOHN: Thank you. Are you choosing not
15 to use your video?

16 MR. GREEN: I'm having trouble. I'm on my phone,
17 so I apologize.

18 VICE CHAIR JOHN: Okay, and the appellant's agent
19 is Mr. Ferguson?

20 MR. FERGUSON: Ferguson for the appellant, Brian
21 Jordan.

22 VICE CHAIR JOHN: Okay, and are you also choosing
23 not to use your video?

24 MR. FERGUSON: Sorry, yeah, I'm also having
25 trouble with my -- I'm not familiar with Webex. I'm having

1 trouble with my video, excuse me.

2 VICE CHAIR JOHN: Okay, so Mr. Green, I will hear
3 your motion now.

4 MR. GREEN: Sure, good afternoon, Vice Chair and
5 members of the Board. The DCRA filed a motion to dismiss for
6 two reasons. One is that the applicant, the permit holder,
7 who was the owner at the time the appeal was filed, has since
8 sold the property and has surrendered the building permit.

9 At this point, DCRA has accepted that and the
10 permit has now been surrendered, so therefore, the matter is
11 moot. We'd ask that the case be dismissed.

12 VICE CHAIR JOHN: Okay, and Mr. Ferguson?

13 MR. FERGUSON: We join in the motion. We agree
14 that the underlying matter is moot and that therefore, the
15 case, the controversy underlying the appeal is also moot.

16 VICE CHAIR JOHN: Okay, and does the Board have
17 any comments? Okay, so I'm then going to make a motion. So,
18 I agree that the issue is moot, so I will make a motion to
19 dismiss application 20552 on the basis that the application
20 is moot and ask for a second.

21 MEMBER BLAKE: Second.

22 VICE CHAIR JOHN: Mr. Moy, will you take the roll?

23 MR. MOY: Yes, when I call each of your names, if
24 you would please respond with a yes, no, or abstain to the
25 motion made by Vice Chair John to grant the motion to

1 dismiss. The motion was seconded by Mr. Blake. Zoning
2 Commissioner Rob Miller?

3 COMMISSIONER MILLER: Yes on the motion to grant
4 to dismiss.

5 MR. MOY: Mr. Smith?

6 MEMBER SMITH: Yes.

7 MR. MOY: Mr. Blake?

8 MEMBER BLAKE: Yes.

9 MR. MOY: Vice Chair John?

10 VICE CHAIR JOHN: Thank you, Commissioner Miller.
11 On the motion to grant the motion to dismiss, yes, thank you.

12 MR. MOY: And we do not have another Board member
13 present to participate. Staff would record the vote as four
14 to zero to one, and this is on the motion made by Vice Chair
15 John, seconded by Mr. Blake, also in support of the motion,
16 Zoning Commissioner Rob Miller, Mr. Smith, Mr. Blake, and,
17 of course, Vice Chair John. The motion carries on a vote of
18 four to zero to one.

19 VICE CHAIR JOHN: Thank you, Mr. Moy. Do we have
20 any other business, Mr. Moy?

21 MR. MOY: Yes, we do, in fact. Thanks for asking.
22 We have an administrative matter before the Board, Madam Vice
23 Chair, and it requires a Board vote of a schedule of closed
24 meetings with your legal counselors basically from February
25 for the next six months, and I believe you have that list in

1 your hands.

2 VICE CHAIR JOHN: Thank you, Mr. Moy, but my
3 imaginary dog has been eating my documents all day. I do
4 have the document and I'm going to try to retrieve it. If
5 not, I will have to pull it up on my laptop.

6 MR. MOY: Okay.

7 VICE CHAIR JOHN: So, let's see where we are.

8 MR. MOY: If it helps, I can resend it to you.

9 VICE CHAIR JOHN: Well, I have it.

10 (Pause.)

11 VICE CHAIR JOHN: Okay, I'll pull it up on my
12 phone and let's see how well we do.

13 (Pause.)

14 VICE CHAIR JOHN: As Vice Chairperson of the Board
15 of Zoning Adjustment for the District of Columbia, and in
16 accordance with Section 405(c) of the Open Meetings Act, I
17 move that the Board of Zoning Adjustment hold closed meetings
18 by video conference at 2:00 p.m. on the following dates,
19 Monday, January 31, 2022 at 2:00 p.m.; Monday, February 7,
20 2022 at 2:00 p.m.; Monday, February 14, 2022 at 2:00 p.m.;
21 Tuesday, February 22 at 2:00 p.m., 2022 at 2:00 p.m.; Monday,
22 February 28, 2022 at 2:00 p.m.; Monday, March 7, 2022 at 2:00
23 p.m.; Monday, March 14, 2022 at 2:00 p.m.; Monday, March 21,
24 2022 at 2:00 p.m.; Monday, March 28, 2022 at 2:00 p.m.;
25 Monday, April 4, 2022 at 2:00 p.m.; Monday, April 11, 2022

1 at 2:00 p.m.; Monday, April 18, 2022 at 2:00 p.m.; Monday,
2 April 25, 2022 at 2:00 p.m.; Monday, May 2, 2022 at 2:00
3 p.m.; Monday, May 9, 2022 at 2:00 p.m.; Monday, May 16, 2022
4 at 2:00 p.m.; Monday, May 23, 2022 at 2:00 p.m.; Tuesday, May
5 31, 2022 at 2:00 p.m.; Monday, June 6, 2022 at 2:00 p.m.;
6 Monday, June 13, 2022 at 2:00 p.m.; Monday, June 20, 2022 at
7 2:00 p.m.; Monday, June 27, 2022 at 2:00 p.m.; Tuesday, July
8 5, 2022 at 2:00 p.m.; Monday, July 11, 2022 at 2:00 p.m.;
9 Monday, July 18, 2022 at 2:00 p.m.; Monday, July 25, 2022 at
10 2:00 p.m.

11 The purpose of the closed meetings will be to
12 receive legal advice from the Board's counsel and to
13 deliberate, but not vote, on the contested cases for Sections
14 405(b)(4) and 13 of the Act, D.C. Official Code Sections
15 2575(b)(4) and 13, scheduled for the Board's public meeting
16 and/or hearing the following Wednesday.

17 Pursuant to D.C. Official Code Section 1207.42(a),
18 no resolution, rule, act, regulation, or other official
19 action shall take place except at an open meeting. The
20 closed meeting will be electronically recorded pursuant to
21 D.C. Official Code Section 2578(a). Is there a second?

22 MEMBER BLAKE: Second.

23 VICE CHAIR JOHN: Will the Secretary please take
24 a roll call vote on the motion before us now that it has been
25 seconded?

1 MR. MOY: When I call your names, if you would
2 please respond with a yes, no, or abstain to the motion made
3 by Vice Chair John and seconded by Mr. Blake? Zoning
4 Commissioner Rob Miller?

5 COMMISSIONER MILLER: Yes.

6 MR. MOY: Mr. Smith?

7 MEMBER SMITH: Yes.

8 MR. MOY: Mr. Blake?

9 MEMBER BLAKE: Yes.

10 MR. MOY: Vice Chair John?

11 VICE CHAIR JOHN: Yes.

12 MR. MOY: We have no other Board members present.
13 Staff would record the vote as four to zero to one. The
14 motion carries, Madam Vice Chair.

15 VICE CHAIR JOHN: Thank you. As it appears that
16 the motion has passed, I request that the Office of Zoning
17 provide notice of these closed meetings in accordance with
18 the Act.

19 Thank you, Mr. Moy. Thank you, Board members.
20 Thank you all for your help, and I'll see you in, I think,
21 two weeks. We are off next week. Enjoy the holiday. Bye.

22 (Whereupon, the above-entitled matter went off the
23 record at 3:23 p.m.)

24

25

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 01-12-22

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Court Reporter

NEAL R. GROSS

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