

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

FEBRUARY 16, 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 9:30 a.m. EST, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

- ROBERT MILLER, Zoning Commissioner
- JOSEPH IMAMURA, Architect of the Capitol Designee

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- PAUL YOUNG, Audio Visual Specialist

## OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS  
STEPHEN COCHRAN  
BRANDICE ELLIOTT  
ANNE FOTHERGILL  
MATT JESICK  
JONATHAN KIRSCHENBAUM  
STEPHEN MORDFIN  
KAREN THOMAS  
ELISA VITALE

## D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from  
the Regular Public Hearing held on February 16, 2022.

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

2 9:34 a.m.

3 MR. MOY: The first case in the Board's hearing  
4 session is Case Application No. 20547, 1005 Rhode Island  
5 Avenue, N.E. Partner, LLC.

6 This application is -- was captured and advertised  
7 as a self-certified application and requested relief, special  
8 exception relief from the matter of right uses under Subtitle  
9 U, Section 401, pursuant to Subtitle U, Section 421, and  
10 Subtitle X, Section 901.2, maximum permitted for area ratio,  
11 and Subtitle F, Section 302 pursuant Subtitle F, Section  
12 302.3; Subtitle F, Section 5206.1 and Subtitle F, Section  
13 901.2.

14 The penthouse setback requirements, Subtitle C,  
15 Section 1504.1(c)(1), pursuant to Subtitle C, Section 1506.1  
16 and Subtitle X, Section 901.2. This would raze an existing  
17 two-story principle dwelling unit and to construct a new  
18 detached three-story wood penthouse and cellar, eight unit  
19 apartment house in the RA-1 zone. The property is located  
20 1005 Rhode Island Avenue, N.E., Square 3870, Lot 48, and as  
21 to preliminary matters, the Applicant is approval of an  
22 expert witness in architecture under Exhibit 13.

23 Finally Mr. Chairman, there's a request for a  
24 postponement from ANC Commissioner Darlene Oliver under  
25 Exhibit 55.

1 CHAIRPERSON HILL: Okay, thanks Mr. Moy. Mr.  
2 Freeman, could you introduce yourself for the record.

3 MR. FREEMAN: Good morning, Mr. Chairman. Kyrus  
4 Freeman with the law firm of Holland and Knight on behalf of  
5 the Applicant.

6 CHAIRPERSON HILL: All right, Mr. Freeman. Are  
7 you going to be presenting or is Mr. Cohen?

8 MR. FREEMAN: I'm going to be presenting, but I  
9 would like if possible for Mr. Young to allow Mr. Cohen,  
10 Gozde, who's our architect and Walter Bowman, who's our  
11 client. Those are the three people --

12 CHAIRPERSON HILL: I see Walter Bowman, I see Mr.  
13 Cohen, and then who is the third one you're asking about?

14 MR. FREEMAN: Our architect, Gozde.

15 CHAIRPERSON HILL: Gozde.

16 MR. FREEMAN: Yep.

17 CHAIRPERSON HILL: All right. I'll ask, or Mr.  
18 Young can hear -- oh, I see Gozde. Okay, all right. First  
19 of all, the expert witness that you're trying to, is that Mr.  
20 Gozde?

21 MR. FREEMAN: Miss Gozde, yes. A Miss Gozde.

22 CHAIRPERSON HILL: Okay. Ms. Gozde, can you hear  
23 me?

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

25 CHAIRPERSON HILL: Could you introduce yourself

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1 for the record please?

2 MS. TANYERI: Yes. This is Gozde Tanyeri,  
3 architect with ADG&G Architects, representing Walter Bowman,  
4 1001 Rhode Island Avenue, N.E. Project.

5 CHAIRPERSON HILL: Got it, okay. Mr. Freeman, do  
6 you know which exhibit Ms. Gozde's resume is in?

7 MR. FREEMAN: I believe it's 13. Let me just go  
8 back to double-check. Yes, it's 13.

9 CHAIRPERSON HILL: Okay, all right. I don't have  
10 any issue with Ms. Gozde being an expert in architecture.  
11 Is that what you're asking for Mr. Freeman?

12 MR. FREEMAN: Yes sir.

13 CHAIRPERSON HILL: Does the Board have any issue  
14 with that, and if so, please raise your hand? Seeing no one  
15 raise their hand, Mr. Blake, are you not on this one with us  
16 or Mr. Miller?

17 MR. SMITH: Yeah, I'm on. My video just popped  
18 up. Sorry.

19 CHAIRPERSON HILL: Oh okay. Mr. Miller or  
20 Commissioner Miller, you're with us as well? Okay. He's on  
21 mute, but I -- regardless --

22 COMMISSIONER MILLER: I'm here.

23 CHAIRPERSON HILL: --does anyone have an issue  
24 here? If anyone has an issue with the expert witness status,  
25 please raise your hand. Seeing none, we'll go ahead and let

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1 Ms. Gozde, and Ms. Gozde, is that your first name, Gozde, or  
2 is it your last name?

3 MS. TANYERI: My last name is Tanyeri but --

4 CHAIRPERSON HILL: Okay, Tanyeri. Well I'll call  
5 you Ms. Tanyeri then. So let's see, okay. So that's one.  
6 The next is, is the Commissioner here Mr. Young?

7 MS. OLIVER: Yes.

8 CHAIRPERSON HILL: Is that Ms. Oliver?

9 MS. OLIVER: Yes, I'm here.

10 CHAIRPERSON HILL: Hi Commissioner, good morning.  
11 Could you introduce yourself for the record please?

12 MS. OLIVER: Yes. I'm Darlene Oliver, ANC  
13 Commissioner 5C05.

14 CHAIRPERSON HILL: Okay. So Ms. Oliver, you guys  
15 were asking for a postponement, so that you all could hear  
16 the case I guess; is that correct?

17 MS. OLIVER: Yes sir.

18 CHAIRPERSON HILL: So they haven't presented to  
19 you yet, the full ANC; is that correct?

20 MS. OLIVER: Correct.

21 CHAIRPERSON HILL: And when would you guys be  
22 doing that?

23 MS. OLIVER: We at the next meeting, which will  
24 be next month because -- yes sir.

25 CHAIRPERSON HILL: Okay. And when's next month

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1 Ms. Oliver, Commissioner?

2 MS. OLIVER: The 16th of next month.

3 CHAIRPERSON HILL: The 16th of next month. All  
4 right. Let's see. Well Commissioner, and I'm looking to my  
5 fellow Board members first and then Commissioner, I'll let  
6 you respond to what I'm proposing.

7 Since everyone is here, and I'm looking at my  
8 fellow Board members, I would say we go ahead and have the  
9 hearing, and then what we would do is we would have a  
10 continued hearing. We'd leave the record open for the ANC,  
11 and then -- and I guess we can kind of talk about it.

12 I can talk with -- well I can talk right now with  
13 my fellow Board members, as to whether or not you want to  
14 have a continued hearing or whether or not we can just leave  
15 the record open for the ANC and then do a decision after  
16 they've had a chance to hear the case, and before I get my  
17 fellow Board members' opinion on that question, I want to ask  
18 Mr. Freeman.

19 Mr. Freeman, did you guys -- so did you present  
20 to the executive committee yet?

21 MR. FREEMAN: So I don't know if you had a chance  
22 to look at our Exhibit 58, which is our opposition to the  
23 request to postpone. What's actually interesting is we've  
24 actually had a number of meetings with various community --  
25 well, let me backtrack. So as you know, this hearing was

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1 initially scheduled for November.

2           We postponed it to March in order to have a series  
3 of community meetings. We have had those community meetings  
4 on October 28th, November 10th, November 30th, and  
5 Commissioner Oliver was at all of those meetings. What  
6 you'll see in our materials are at least 11 requests to be  
7 placed on the ANC's agenda to present, seven between August  
8 and September and then an additional four over the past  
9 couple of months.

10           So you know, I think the record clearly  
11 demonstrates our efforts to present to the community as well  
12 as to the full ANC, but we have gotten no response to the  
13 -- other than this motion that was filed to postpone. We've  
14 gotten no response from the ANC about putting this on their  
15 agenda. So in our view, we are prepared to have a hearing  
16 today, a full hearing.

17           You know, it's the Board's decision but we would  
18 not -- we don't see a need for a continued hearing. I hope  
19 the record will clearly indicate how we meet special  
20 exception standards here. We're not talking about variances,  
21 so again, we're prepared today. We would like to move  
22 forward today.

23           CHAIRPERSON HILL: Gotcha. Now I gotcha Mr.  
24 Freeman. Thank you so much. Commissioner Oliver, can you  
25 hear me?

1 MS. OLIVER: Yes sir.

2 CHAIRPERSON HILL: Did you see their Exhibit 31?

3 MS. OLIVER: Yes.

4 CHAIRPERSON HILL: So they list a whole bunch of  
5 things as to how they've been trying to reach out to you  
6 guys' ANC. Do you know why they've had such a hard time  
7 getting in touch with you?

8 MS. OLIVER: Sir, we've had several -- okay.  
9 We've had several meetings with the developer, with the  
10 community and developer and at each meeting there's been  
11 major disagreements as to the construction of the building,  
12 the landscape of the building. They've had, we've had major  
13 problems with him not being able to agree to downsize to fit  
14 into the landscape of the building, of the community.

15 We've asked many times for him to reconstruct just  
16 slightly what he wanted to do. The penthouse, we asked him  
17 please don't do the penthouse because it looms over several  
18 of the residents' homes, and we didn't want the noise and the  
19 partying up there. And we also -- I also have a former  
20 Commissioner block captain on the call. He can testify to  
21 how many meetings we've had and all the disagreements as far  
22 as the construction of the property.

23 CHAIRPERSON HILL: Okay.

24 MR. FREEMAN: And I was going to say I think --

25 CHAIRPERSON HILL: Mr. Freeman, Mr. Freeman, give

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1 me one second. So okay, Mr. Freeman. Go ahead.

2 MR. FREEMAN: I was going to say what she just  
3 said is 100 percent accurate. So it's not that -- it's not  
4 that there needs to be postponement for consideration; there  
5 was a postponement because they essentially don't support the  
6 project, which I think you just heard Commissioner Oliver  
7 describe. We're prepared to discuss --

8 CHAIRPERSON HILL: Hey Mr. Freeman, hey Mr.  
9 Freeman, Mr. Freeman, I got you. I don't know if you missed  
10 the beginning. I'm going to go ahead and have the hearing,  
11 right? I'm trying to see what would be next after that, and  
12 there seems to be a little bit of a discrepancy as between  
13 what you made it sound like, was that there was no  
14 Commission, no communication with the ANC, or at least it  
15 seemed as though you're saying there wasn't one, and there  
16 actually has been a lot of communication. I see you shaking  
17 your head, so you can clarify that in a minute.

18 So what I would go ahead and propose, Commissioner  
19 if you can hear me, I mean the way that it normally works  
20 again is that the Applicant can go ahead and present their  
21 case as to why they believe they're meeting the standard for  
22 us to grant the relief requested, and then the ANC can go  
23 ahead and present their case as to, you know, what they  
24 believe the issues to be.

25 I guess I'll ask our attorney, Ms. Nagelhout, you

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1 don't have to give me an answer right now. Is Commissioner  
2 Oliver able to speak on behalf of the ANC at this point?

3 MS. OLIVER: If you're talking to me sir, yes.

4 CHAIRPERSON HILL: No, Commissioner Oliver. I'm  
5 talking to our legal counsel. I want to just see if there's  
6 something in the record.

7 MS. OLIVER: Okay.

8 CHAIRPERSON HILL: Or Commissioner Oliver, if you  
9 see something in the record that says that you can speak on  
10 behalf of your ANC.

11 MS. OLIVER: Yes sir. Are you waiting for me?

12 CHAIRPERSON HILL: Was that the request for  
13 postponement maybe? No. All right. Well let me do this.  
14 I'll let, I'll let our counsel take a look at the record if  
15 there's anything I need. Mr. Freeman, can you hear me?

16 MR. FREEMAN: I can.

17 CHAIRPERSON HILL: Okay. Why don't you go ahead  
18 and present your case, okay.

19 MR. FREEMAN: Okay.

20 CHAIRPERSON HILL: I have 15 minutes on the clock  
21 just so I know where we are.

22 MR. FREEMAN: Okay.

23 CHAIRPERSON HILL: You can begin whenever you  
24 like, and then Commissioner Oliver, you'll have an  
25 opportunity to ask questions of the Applicant, as well as

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1 present your opinion on the case, all right?

2 MS. OLIVER: Yes sir, thank you.

3 CHAIRPERSON HILL: And Commissioner, you don't  
4 have to use your camera. I just want to make sure you're  
5 choosing not to.

6 MS. OLIVER: No, I don't know how to -- I tried  
7 to open the camera it just does not work. I don't know --

8 CHAIRPERSON HILL: Got it. There's a button at  
9 the bottom usually, like if you tap the screen.

10 MS. OLIVER: Oh, I see.

11 CHAIRPERSON HILL: Where it says "start video/stop  
12 video."

13 MS. OLIVER: I tried that.

14 CHAIRPERSON HILL: Yes, that's all right. As long  
15 as you can hear and see everything. You can see everything;  
16 correct?

17 MS. OLIVER: Yes sir.

18 CHAIRPERSON HILL: Oh, there we go. Oh great.  
19 Hi Commissioner. Okay, wonderful. All right, and who did  
20 you say, Commissioner, was also on the line that wanted to  
21 testify?

22 MS. OLIVER: The former commissioner who lives in  
23 the neighborhood, in that particular neighborhood and he's  
24 also the block captain.

25 CHAIRPERSON HILL: What's his name? Commissioner

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1 Oliver, I'm sorry. You got on mute there for a second or  
2 something happened. Okay, Ms. Young. If you'd look for Mr.  
3 Chandler when we get to the testimony part? Okay. Mr.  
4 Freeman, go ahead and begin whenever you'd like.

5 MR. FREEMAN: Thank you, Mr. Chairman. I'd say  
6 I think I can do this in less than 15 minutes. Mr. Young,  
7 so what I'll do is I'll go through our presentation slides  
8 quickly in terms of how we meet the standards for approval  
9 of our application, describe it in detail. There's an OP  
10 report in detail that describes it as well.

11 But this is our presentation slides, and of course  
12 if there are any questions about the plans, our architect and  
13 our client are all available to answer any questions. But  
14 given the time and the busy schedule, I think we want to keep  
15 it moving quickly.

16 So next slide, please. So as the Board knows our  
17 site is on Rhode Island and it's kind of mid-block. It's the  
18 area shown in green there. It's zoned RA-1. The RA-1 is a  
19 zone that specifically allows for low-rise apartments  
20 pursuant to the special exception process.

21 Interestingly, when we talk about the character  
22 of this neighborhood, what we listed here are one, two,  
23 three, six BZA applications that have approved very similar  
24 relief very recently, including as recent as two months ago.  
25 So the relief we're asking for is very similar to the relief

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1 that the Board has approved multiple times.

2           Next slide, please. So this is a picture of the  
3 existing conditions from Rhode Island Avenue and some at the  
4 rear.

5           Next slide please. So what is our relief? We're  
6 asking for three things. One, a special exception to allow  
7 a new residential development in the RA-1 zone. Two, a  
8 special exception. We call this the opt-in IZ. You've got  
9 a -- we're not subject to IZ because there are only eight  
10 units here, but we can opt into IZ pursuant to the special  
11 exception process.

12           The third is a special exception from the  
13 penthouse setback requirements along the east side of the  
14 property. It's not relief to have a penthouse; it's relief  
15 because we don't meet the setback along the east side of the  
16 property, which you'll see momentarily. We have full support  
17 from the Office of Planning for those conditions, full  
18 support from DDOT. Their only conditional is to make sure  
19 we're providing the three long-term bike parking spaces,  
20 which we are in fact doing.

21           Next slide, please. These are just some images  
22 of the building, again from the Rhode Island side. They're  
23 slightly different from what we -- what was initially filed  
24 because the architect has made a couple of revisions to try  
25 to reduce the mass, reduce the visibility for example by

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1 making the top portion as well as the penthouse darker. But  
2 if there are any questions about that, I can let our  
3 architect talk more to that.

4           Next slide, please. So what are we doing? We're  
5 asking for approval to have an eight unit project. Of those  
6 eight units, one is affordable in order to meet the IZ  
7 requirements.

8           Next slide, please. So cellar, 1st, 2nd, 3rd  
9 floor. An important point I think oftentimes, just a little  
10 something I heard Ms. Oliver say, Commissioner Oliver say.

11 This penthouse only serves the unit directly below. So if  
12 you live in Unit 301 or 302, you can access the roof. It is  
13 not the penthouse for the entire building. It is limited the  
14 occupants in those two units. What the middle image shows  
15 is that the penthouse, which is actually a fairly small,  
16 small penthouse, is set back from the north, east (sic) and  
17 south at least 1 to 1, and the only area that generates the  
18 required setback relief is from the east side.

19           That penthouse is ten feet. The setback is 5 feet  
20 11 inches. I think Commissioner Miller, this is a newer  
21 requirement because the regulations have recently been  
22 updated. But that is the area we're talking about, that five  
23 foot 11 inch dimension on the east side of the property. I  
24 would note that that abuts a side yard that's at least eight  
25 feet as well.



1           Next slide, please.   More images.   These are  
2 images essentially from the back of the building.   I think  
3 the bottom right image three view of 1014 Bryant Street, the  
4 darker gray.   There was a resident that expressed some  
5 concern, but I don't want to speak for that resident.   But  
6 this image shows the location of that resident in the darker  
7 gray outlined structure.   But again, this is intended to say  
8 the building doesn't loom over any neighbors.   In fact, the  
9 building is less than what the regulations permit.   The  
10 building is -- we'll get a slide of that.

11           Next slide, please.   These are the special  
12 exception standards.   I think what I want to focus on is the  
13 second part, 901.2, will not tend to adversely affect the use  
14 of neighboring property.   So there's nothing that we're doing  
15 that would adversely the use of the neighboring property, and  
16 we meet all of the special exception standards.

17           Next slide, please.   Again, the RA-1 standard is  
18 essentially that it has to be reviewed by a variety of  
19 agencies, OP, DDOT, DPS.

20           Next slide, please.   We have a chart here that on  
21 the left indicates the standard, on the right indicates how  
22 we comply.   (1), right, there's got to be adequate schools,  
23 public facilities.   This site is certainly well-served by a  
24 number of schools.   DDOT has filed a report indicating no  
25 objection as it relates to public transportation issues.

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1 It's got to be referred to OP. You will hear from OP that  
2 they believe we meet the standards of approval. 421.4  
3 indicates all of the information that's required to be  
4 submitted. We have submitted that information.

5 Next slide, please. The standards for the special  
6 exception to opt-in to the IZ are essentially fairly  
7 straightforward. You have to provide an IZ unit. We are  
8 providing the IZ unit. Our bonus FAR, 0.18, is approximately  
9 891 square feet, and in exchange for that, we are -- we are  
10 providing that to the IZ.

11 Next slide, please. So this is relief from the  
12 setback, right. Again, the penthouse on the east side, which  
13 is only 10 feet, that penthouse is 10 feet, although it's  
14 permitted to be 12. That could be setback at a distance  
15 equal to its height, so 1 to 1 from the side. Again, that  
16 requirement before adoption of the new regulations used to  
17 be half to half.

18 Next slide, please. So this is the setback.  
19 Again, it's at the east side of the building. We exceed 1  
20 to 1 on the north, south and west. We go through in detail  
21 that this building is actually much smaller than it's  
22 permitted to be. I mentioned our height here at 35 feet  
23 instead of the 40 that's permitted, so the building again  
24 height-wise is smaller.

25 The penthouse is about 10 feet, again less than

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1 the 12 feet permitted. So it's a compact building envelope.  
2 We have shadow studies which clearly demonstrate that this  
3 penthouse is not casting any additional shadow on the  
4 property to the east, which is where we are asking for the  
5 relief. The exterior has been designed -- the exterior of  
6 the penthouse has been designed to match and be compatible  
7 with the top of the building, again intended to make it  
8 hopefully less digitally intrusive.

9           Why do we need the relief? We need the relief  
10 because of the location of the stair tower, and if we shifted  
11 the stair tower further west, we would compromise the layout  
12 of the units, right. So the goal is to provide -- these are  
13 larger units. They're all two bedroom units. There used to  
14 be a three bedroom but that's gone. These are all two  
15 bedroom units that are averaging of over 800 square feet.

16           So our goal is to create right-sized units to  
17 help, help establish, meet the District needs for new  
18 housing, including affordable housing.

19           Next slide, please. This is again just a little  
20 bit more on how and why we meet the penthouse relief. The  
21 building is narrow. It's only 27 feet. So you wouldn't  
22 really be able to have a penthouse that meets the setback  
23 requirements because a 12 foot penthouse would require  
24 setbacks of 24 feet. So it's one of those typical  
25 situations. Given the footprint of the roof, it's hard to

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1 meet the requirements here.

2           And again, the sight lines are not adversely  
3 affected. The building is set back nine feet from each side  
4 lot line. I think the OP report notes that side yards  
5 typically aren't even required, but we're pulling back in  
6 order to create some additional light/air ventilation on the  
7 side, and would have -- we have a substantial rear yard as  
8 well.

9           Next slide, please. Again, these are general  
10 special exception standards. I think I've gone through how  
11 we are consistent with the surface of the R, of the  
12 residential zone RA-1 zone. Low-rise apartment. Again, I  
13 show that the BZA approved, show the relief essentially this  
14 entire block space of Rhode Island Avenue. Substantial open  
15 space, substantial distances from the lower-rise residential  
16 homes.

17           Next slide, please. That concludes our  
18 presentation. I'm happy to answer any questions. Myself,  
19 again our client, the architect, Mr. Cohen, are all available  
20 to answer any questions that the Board has, or Commissioned  
21 Oliver has.

22           CHAIRPERSON HILL: Okay. Give me one second  
23 everyone. All right. Let me look at my fellow Board  
24 members. Mr. Blake has his hand up. Mr. Blake, do you have  
25 any questions?

1 MR. BLAKE: Yes, one question for Mr. Freeman.  
2 Could you just point out which unit is the IZ unit? I  
3 understand it's a two bedroom as well as the others, so it's  
4 about the same size. I just want to make sure we know which  
5 one it is.

6 MR. FREEMAN: Sure. Unit 102. It's two bedroom,  
7 two bath. It's 848 square feet. It's on the first level of  
8 the building.

9 MR. BLAKE: All right, thank you.

10 MR. FREEMAN: You're welcome.

11 CHAIRPERSON HILL: Anyone else? Commissioner  
12 Miller.

13 VICE CHAIR JOHN: Yes, go ahead.

14 COMMISSIONER MILLER: I'll defer to Vice Chair  
15 John.

16 VICE CHAIR JOHN: I was going to defer to you,  
17 Commissioner Miller.

18 COMMISSIONER MILLER: A lot of deference here.

19 VICE CHAIR JOHN: Yes, but if you insist, I'll go  
20 ahead. So Mr. Freeman, do you have a slide that shows, since  
21 you discussed it, the proposed new buildings on that street?  
22 Because I'm interested in looking at the massing of this  
23 building compared to the others on the street.

24 MR. FREEMAN: So I get it. So the last time I was  
25 there, you were Chair John. You have heard me refer to Your

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1 Honor. But Vice Chair John, I'd say the best or closest  
2 image we have, Mr. Young, is if you can pull up our slide  
3 deck again. The short answer is no, I don't have an image  
4 that shows the mass of every building along Rhode Island, but  
5 our cover image is showing, if you can go maybe to this  
6 image.

7 This image shows to the left, the one in white is  
8 the existing and one on the right, the red brick building,  
9 is actually showing the massing of an approved project. That  
10 is not the massing that's there today. I just want to be  
11 clear on that. That is the massing of an approved building  
12 that got essentially the same zoning relief.

13 If you go to the next slide please Mr. Young, we  
14 weren't able to put together an image that shows all of the  
15 other BZA approvals, but this shows where they are as you can  
16 see. My understanding is there's been another relief has  
17 been filed. But almost every lot on Rhode Island Avenue has  
18 recently received the same exact approval. So again, ours  
19 is the one in green, the two lots to the left, that's the red  
20 brick building, if you will, had the same approval. The one  
21 to the immediate right, that's the one on the right that had  
22 the same relief approved.

23 I will say it hasn't been built, so I'm not trying  
24 to be deceptive there. But they got the same exact relief,  
25 and then again, as you continue east along Rhode Island

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1 Avenue, 20539 has gotten the same relief. I'm pretty sure,  
2 if you look across the street, 20456, they got the same  
3 relief. So no, we haven't been able to put together an image  
4 that shows all of those approved buildings in the concept of  
5 ours, which is why we at least tried to prepare this to show  
6 where they are in relationship to our building.

7 VICE CHAIR JOHN: Thank you, and across the  
8 street, are those mostly single family dwellings apart from  
9 the ones that's in the white background? I can't see it.  
10 It's too small.

11 MR. FREEMAN: Across the street on Rhode Island,  
12 behind 20856, yeah, where there's that R-2, that's a single  
13 family dwelling.

14 VICE CHAIR JOHN: Okay. Oh, so it's R-2 across  
15 the street and RA-1 on this side?

16 MR. FREEMAN: So when you're saying "across the  
17 street," you mean to the north of Rhode Island?

18 VICE CHAIR JOHN: To the north, to the north,  
19 where the white background comes --

20 MR. FREEMAN: Yes, yes, yes. That's RA-2. I  
21 haven't looked at the zoning of that entire area, but just  
22 looking at the map, I can see that that's RA-2.

23 VICE CHAIR JOHN: Okay. All right, thank you.

24 CHAIRPERSON HILL: All right thanks, Commissioner  
25 Young. Let me see. Commissioner Miller, you had a question?

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1           COMMISSIONER MILLER: Just a quick question for  
2 Mr. Freeman. Thank you Mr. Freeman for presenting this case  
3 today, and the others who are here to participate. On the  
4 IZ unit that the Applicant is voluntarily opting into in  
5 order to obtain the conditional FAR, which is the whole  
6 point, purpose, intent of that voluntary IZ opt-in provision,  
7 it's creating incentive for IZ units when -- even when it  
8 doesn't require in this case because it's under ten units,  
9 eight units. So that IZ unit, what do the regulations  
10 require? Remind me or remind everybody.

11           MR. FREEMAN: So I don't know that we've  
12 determined yet whether it's going to be condo or rental, but  
13 it will either be 80, if condo 80 percent; if rental, 60  
14 percent.

15           COMMISSIONER MILLER: The maximum median family  
16 income is what you're referring to?

17           MR. FREEMAN: Correct, correct.

18           COMMISSIONER MILLER: Okay, thank you. Nothing  
19 else, Mr. Chairman, just a comment that I appreciate the mix  
20 of two and three bedroom units, the six two bedroom units and  
21 the two three bedroom units, family size units. It's  
22 certainly something the City wants to encourage.

23           MR. FREEMAN: I did want to clarify, because I saw  
24 that error. They're all two bedroom units. We initially had  
25 three bedroom units, but the third bedroom would have been

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1 in the penthouse, and in order to change the penthouse  
2 regulations the penthouse is now smaller. So we had to take  
3 that third bedroom out of the upper-most level.

4 So they're all two bedroom units now, as there was  
5 always the change to the regulations. The penthouse is now  
6 smaller than what it was when we initially filed the  
7 application. So we wanted to -- I noticed that last night  
8 in preparation. I wanted to make sure I clarified that. But  
9 they're all two bedroom and they're all --

10 CHAIRPERSON HILL: Mr. Bowman, I see you. Give  
11 me a second.

12 MR. FREEMAN: They're all the 800 plus square  
13 footage.

14 COMMISSIONER MILLER: I appreciate you clarifying  
15 that they're all two bedrooms and they don't include the  
16 three bedrooms that would have been permitted by the  
17 penthouse regulation that I think I voted for. But anyway,  
18 that's water under the bridge or under the penthouse. Thank  
19 you Mr. Chairman.

20 CHAIRPERSON HILL: Thanks, Commissioner Miller.  
21 All right. Anyone else have questions? Mr. Bowman, you had  
22 your hand up?

23 MR. BOWMAN: Yes. Thank you, Chair. I wanted to  
24 say to Mr. Miller that was our intent to have more three unit  
25 penthouses and that the City's in favor of that. That was

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1 our original position. But after meeting with the ANC  
2 community over the course of five different meetings, you  
3 know, we wanted to try to find a happy medium so that we can  
4 get support of the ANC.

5 That was also another reason, in addition to the  
6 new regulation, that we went from three units being -- excuse  
7 me, two units being three bedrooms to all the units now being  
8 two bedrooms. But if the City isn't in support of that, we  
9 would love to be able to provide that for the City. Thank  
10 you.

11 COMMISSIONER MILLER: Thank you. Thank you for  
12 your answer, your information there Mr. Bowman, and your  
13 responses to trying to meet the ANC's concerns.

14 CHAIRPERSON HILL: Thank you. Ms. Nagelhout, have  
15 you gotten a chance? I'd love to be able to have the  
16 Commissioner participate as a -- and maybe you could help us  
17 in terms of having a discussion with the Board about  
18 participating as a full member of the ANC. I mean what I see  
19 is there's the exhibit that asks for the postponement and  
20 then, you know, that's coming from the Secretary,  
21 Commissioner Brevard and then, you know, Commissioner Oliver  
22 is here. Can I treat the Commissioner as representing the  
23 ANC Ms. Nagelhout?

24 MS. NAGELHOUT: I believe you can. The way the  
25 representative is typically designated is the ANC adopts a

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1 report, and states who the -- states in writing who the  
2 representative is. I understand that you don't have that  
3 now, but you could ask and then the Board can decide to  
4 accept the witness as the representative of the ANC.

5 CHAIRPERSON HILL: Okay. Commissioner Oliver?

6 MS. OLIVER: Yes.

7 CHAIRPERSON HILL: You're the representative of  
8 the ANC for this case; is that correct?

9 MS. OLIVER: Yes.

10 CHAIRPERSON HILL: Okay, all right. So if the  
11 Board has any issues, I'm going to treat the Commissioned as  
12 the representative from the ANC. So Commissioner Oliver, do  
13 you have -- are you guys meeting tonight?

14 MS. OLIVER: Yes sir.

15 CHAIRPERSON HILL: Okay. Are they on the agenda  
16 tonight?

17 MS. OLIVER: No, no they're not.

18 CHAIRPERSON HILL: Okay. Why aren't they on the  
19 agenda tonight?

20 MS. OLIVER: Because they have not presented --  
21 we have nothing. They have not presented to us so we could  
22 make a decision to review, just review what they -- have  
23 proposed to do, and also listen to the impacted residents.

24 CHAIRPERSON HILL: Got it. Well Commissioner  
25 Oliver, I'm not trying to -- I'm just trying to work through

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1 this, so you've got to bear with me. As you know, you've  
2 been a commissioner for a little while I guess?

3 MS. OLIVER: Yes sir.

4 CHAIRPERSON HILL: Okay, so you know, you know how  
5 these hearings go. So I'm just trying to figure out how to  
6 get through this, right, and what the Applicant is stated --  
7 and if you go look at that Exhibit 31 when you get a chance,  
8 they kind of go over -- is it 31? No. What exhibit is this?

9 MEMBER BLAKE: 58.

10 CHAIRPERSON HILL: 58, thanks. If you go look and  
11 write it down here, to go back at look at 58 when you get a  
12 chance Commissioner, they go through how much they've reached  
13 out to you guys trying to get on your agenda. I guess they  
14 have talked to you in different -- so this is what I'm just  
15 trying to understand. They have met with your executive  
16 committee; is that correct?

17 MS. OLIVER: No, they have not.

18 CHAIRPERSON HILL: Okay. So then all of the  
19 communication that has gone back and forth, who has that been  
20 with?

21 MS. OLIVER: It's been with myself and the  
22 community.

23 CHAIRPERSON HILL: Okay, just you?

24 MS. OLIVER: Yes.

25 CHAIRPERSON HILL: The SMD?

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1 MS. OLIVER: Yes.

2 CHAIRPERSON HILL: Okay. So you're stating that  
3 they haven't presented to your full ANC yet, and the reason  
4 why they haven't -- and the reason why they're not on the  
5 agenda tonight is why?

6 MS. OLIVER: Because their hearing is this morning  
7 and our meeting is tonight. We have not had a chance to talk  
8 to the -- review what the impacted residents, because we  
9 understand that they are in high disagreement with what he  
10 wants to present or develop in the community, and also they  
11 -- that's one of the main reasons, is they are disagreeing  
12 with what he wants to do.

13 CHAIRPERSON HILL: Okay, that's all right. So  
14 I've got -- you guys are then back on again on the 16th is  
15 what you're saying?

16 MS. OLIVER: Yes sir.

17 CHAIRPERSON HILL: And so you're saying they're  
18 going to be on the agenda on the 16th?

19 MS. OLIVER: Oh yes.

20 CHAIRPERSON HILL: Okay. Well, okay. It would  
21 have been great if they were on the agenda for tonight. So  
22 because there's not going to be anything different than  
23 happens tonight, when it happens next month. They're going  
24 to have people, you guys are still going to be talking -- but  
25 nonetheless, they're not on the agenda tonight, and they

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1 can't get on the agenda tonight; is that correct?

2 MS. OLIVER: Yes.

3 CHAIRPERSON HILL: Okay. All right. So let me  
4 see. So Ms. Oliver, I mean strike, Commissioner Oliver, what  
5 I would propose is I'm going to go ahead and hear from the  
6 Office of Planning, and then if you have any questions for  
7 the Office of Planning and/or the Applicant, I'll go ahead  
8 and let you ask questions of them, as well as you can just  
9 present, you know, you can tell us everything that you know  
10 at this point, right?

11 And again the Office of Planning, now what they're  
12 going to do is they're going to review their report as to how  
13 the application is meeting the criteria, the standard that  
14 we're supposed to look at, as to whether or not the Applicant  
15 meets the -- their burden of proof. And so you can kind of  
16 like listen to that first, and then I'll come back around to  
17 you for questions and then anything else you'd might like to  
18 add. So can I turn to the Office of Planning?

19 MR. JESICK: Thank you Mr. Chairman and members  
20 of the Board. My name is Matt Jesick, and I will be  
21 presenting OP's testimony in this case. OP is recommending  
22 approval of the application. The Applicant is requesting  
23 three areas of relief, and I can go briefly through my  
24 analysis and then if there are any other questions I'd be  
25 happy to take those.

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1 CHAIRPERSON HILL: Please, Mr. Jesick.

2 MR. JESICK: The first area of relief is a special  
3 exception for any new multi-family development in the RA-1,  
4 and Subtitle U, Section 421 asks the Office of Planning to  
5 review items such as the state plan, the arrangement of  
6 buildings and structures on the lot, the provisions of light  
7 and air, et cetera. We did find that this building design  
8 would be compatible with the surrounding neighborhood along  
9 Rhode Island Avenue.

10 The building is providing two side yards where  
11 only one is required. That would allow extra light and air  
12 around the building. The height and massing of the building  
13 is within matter-of-right limits, and the overall appearance  
14 of the building is residential in nature. The Applicant did  
15 respond to Office of Planning feedback by making the side  
16 entrance more prominent and visible from the street. We  
17 appreciate those changes.

18 The second area of relief is keep opt-in to IZ and  
19 to utilize the bonus FAR, and we agree with Commissioner  
20 Miller that that is the intent of the regulations, to  
21 incentivize the provision of an IZ unit. So we felt that  
22 they met the eight standards of Subtitle X, Chapter 9, the  
23 general special exception criteria.

24 The third area of relief is the penthouse setback,  
25 and an applicant can seek special exception relief from

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1 penthouse side setback if it demonstrates that meeting the  
2 1 to 1 setback would result in construction that unduly  
3 restrictive, prohibitively costly or unreasonable or is  
4 inconsistent with building codes.

5           We did find that the provision of a full 1 to 1  
6 setback in this particular case would be unduly restrictive  
7 and unreasonable. A 1 to 1 setback, given the narrow width  
8 of the building, would impact the layout of the units on  
9 floors below, with the stairwell going through the building  
10 that could result in the loss of a bedroom in some of the  
11 units.

12           The other thing to consider is that only one side  
13 yard is required for this building, and the Applicant is  
14 providing two. If they had built to the side property line  
15 as is permitted, the penthouse setback would not even be  
16 required. So they are providing some setback and they're  
17 reducing setback by about four feet, and we found that that  
18 reduction would not result in any undue impacts to adjacent  
19 properties.

20           That concludes my testimony, but again I'd be  
21 happy to take any questions. Thank you.

22           CHAIRPERSON HILL: Okay. Let me start with my  
23 fellow Board members. Does anybody have any questions for  
24 the Office of Planning? All right, okay, nobody. Mr.  
25 Freeman, do you have any questions for the Office of

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1 Planning?

2 MR. FREEMAN: No, Mr. Chairman.

3 CHAIRPERSON HILL: Okay, all right. Commissioner,  
4 do you have any questions for the Office of Planning?

5 MS. OLIVER: For the Office of Planning, no, no  
6 I don't.

7 CHAIRPERSON HILL: Okay, all right. Thanks,  
8 Commissioner. All right, Commissioner. Why don't you go  
9 ahead and give us your testimony on the case please?

10 MS. OLIVER: Okay. We've had several meetings,  
11 I think it's four or five with Mr. Bowman and each meeting  
12 the residents have strongly asked him to lower -- he has  
13 requested for eight units I believe, and we asked him to  
14 lower -- they asked him to lower it to six units so it would  
15 fit in with the landscape of the community, because they're  
16 being overwhelmed right now by developers and developments.

17 Each meeting, he has just flatly refused. No, I  
18 don't have to do that. This is what I'm going to do. I  
19 don't have to confer with the residents of the community, and  
20 yet understand these residents are mostly seniors. They're  
21 going to live in their homes the rest of their lives. This  
22 neighborhood has been really overwhelmed.

23 We have asked him -- they have asked him to fit  
24 into the landscape of the community. That was the main  
25 request, and he has just refused to do it. The penthouse has

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1 been a big major issue because the next door neighbor, her  
2 house is right next door to his. I don't know why her house  
3 was not in the picture, in the pictures that he showed you,  
4 and you can see the difference in how it looms over her  
5 house. She's very unhappy with that.

6           Also sir the main reason is I think that the  
7 community input should be one of the main considerations into  
8 this decision. Also, they have not come before the full  
9 Commission, so that they can get our approval or disapproval.  
10 That's just where we stand right now.

11           CHAIRPERSON HILL: Okay. Thanks, Commissioner.  
12 Does the Board have any questions for the Commissioner?  
13 Okay, I don't see anybody. Mr. Freeman, do you have any  
14 questions for the Commissioner?

15           MR. FREEMAN: I do have one question. I did want  
16 to clarify something. Commissioned Oliver, you said the next  
17 door neighbor who opposes the project, her house is not in  
18 the picture, we're not showing her house. Which neighbor is  
19 that? I just want to make sure we're not --

20           MS. OLIVER: I don't have -- I don't have my notes  
21 in front of me. I don't have her name. But her house is  
22 very close to that building, and the -- we have asked, she  
23 has asked repeatedly at the meetings to Mr. Chandler, the  
24 block captain, to have the -- not have the penthouse.

25           MR. FREEMAN: Right, okay. But you said next

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1 door, so I just wanted to make sure. You said the next door  
2 neighbor.

3 MS. OLIVER: Okay.

4 MR. FREEMAN: Okay, got it. Thank you.

5 CHAIRPERSON HILL: Okay, Commissioner. Give me  
6 one second. Mr. Bowman, give me one second. All right, Mr.  
7 Bowman. You had your hand up for some reason.

8 MR. BOWMAN: Yes. Thanks, Commissioner. I don't  
9 want to speak to you. Your neighbor you're talking about is  
10 Ms. Page, and I actually met with Ms. Page at her residence,  
11 who is sitting directly behind me, and Attorney Freeman --

12 MR. FREEMAN: We'll deal with this on rebuttal.

13 MR. BOWMAN: Okay, no problem. But I just wanted  
14 to clarify that I met with that neighbor at 6:00 a.m. to hear  
15 her concerns and her vantage point that she expressed, so I  
16 think Ms. Page is the neighbor that you're talking about, and  
17 that's indicated in my communication, my communication with  
18 --

19 MS. OLIVER: 6:00 a.m. when, today?

20 MR. BOWMAN: No, no. 6:00 a.m. I think that was  
21 December or November, but it's notated in the surveys of  
22 different point of contacts that we've made with the  
23 community.

24 MS. OLIVER: Okay. I would like the Board to talk  
25 to the block captain. He's on, he's on the line right now.

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1 He's the former commissioner, and I'd like him to have a say  
2 in this please.

3 CHAIRPERSON HILL: All right, give me a second  
4 Commissioner Oliver. Okay. Before I do that, so Mr. Young,  
5 do you have that person on the line?

6 MR. YOUNG: I do.

7 CHAIRPERSON HILL: Before I bring that person in,  
8 is there anyone else who is here to testify?

9 MR. YOUNG: No.

10 CHAIRPERSON HILL: No, okay, all right. Why don't  
11 you go ahead and bring that person in? Mr. Chandler, can you  
12 hear me?

13 MR. CHANDLER: Yes, can you hear me?

14 CHAIRPERSON HILL: Oh, it's Miss Chandler. Is it  
15 Miss Chandler?

16 MR. CHANDLER: It's mister, it's mister.

17 CHAIRPERSON HILL: All right, Mr. Chandler. So  
18 can you go ahead and --

19 MR. CHANDLER: Is my camera on?

20 CHAIRPERSON HILL: Not yet. Oh, there we go. Oh  
21 good, good. Oh, how you doing sir?

22 MR. CHANDLER: Fine, thank you. How are you?

23 CHAIRPERSON HILL: Good, thank you. Let's see.  
24 So I'm going to treat this more as a witness, Commissioned  
25 Oliver. So what is it that you'd like to ask of Mr.

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1 Chandler.

2 MS. OLIVER: Mr. Chandler, could you just go  
3 through the process we've been having with Mr. Bowman please?  
4 Just go through --

5 MR. CHANDLER: Sure. Would you like me to state  
6 my full name and my everything before for the record?

7 CHAIRPERSON HILL: Sure Mr. Chandler, that would  
8 be great.

9 MR. CHANDLER: Sure. Raymond Chandler, former ANC  
10 Commissioner 5B03, Block Captain for 1013, Block Captain for  
11 10th and Bryant Street, N.E., community activist and a  
12 lifelong resident, and I've lived in this particular area for  
13 over 50 years.

14 CHAIRPERSON HILL: Hi Mr. Chandler. That's  
15 wonderful. Go ahead, please.

16 MR. CHANDLER: I basically would like to speak to  
17 -- this is clearly far beyond what this is being seen as.  
18 This is a quality of life issue that's impacting the  
19 community, well beyond just what they're seeking approval  
20 for. I understand that developers when they buy property,  
21 that they are going to build. We're not against that as per  
22 se.

23 What we're against is we're talking about within  
24 a three block radius ten single family homes being removed  
25 and all being replaced by condos, either upcoming or now in

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1 the process. The point of matter is our community cannot  
2 sustain what is being thrown at us. We live on a one-way  
3 street, a dead end street right next door.

4           Rhode Island Avenue is a main thoroughfare, where  
5 there's no parking only for certain amount of hours  
6 throughout the day. We have set on several projects all  
7 along the Rhode Island, upcoming or now in progress. They  
8 had full community support along with the ANC as a whole  
9 community. But the problem it seems to be that all of the  
10 ones mentioned prior, that were mentioned in the  
11 presentation, they had full community support because they  
12 sat and had several meetings along with this particular  
13 project.

14           The community is opposed to it. The ANC  
15 Commissioner is opposed to it. They haven't come before the  
16 ANC board. According to law, they're supposed to come before  
17 the ANC board as a whole and the ANC commissioner that is  
18 responsible for the single member district, and the impacted  
19 residents. Talking to the neighbor and speaking to Ms. Page,  
20 she is against the project. She's against it because it sits  
21 right behind her home, directly behind her home where she can  
22 see right into all of the proposed condos along with the  
23 penthouse.

24           When she asked Mr. Bowman to come over at that  
25 particular moment to look at and see what she was seeing, she

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1 asked could it be removed, which it wasn't. We've had a  
2 series of project, I mean series of meetings with this  
3 particular developer and it seems that it's no input, no real  
4 give or take. Every proposed project that has been put  
5 before the BZA, along with those upcoming, have had full  
6 community support of the impacted residents and community as  
7 a whole along with the City ANC Commissioned and the ANC  
8 Commissioned. This particular project has not.

9           So I'm very concerned, and I'm sure when the ANC  
10 Commissioned Darlene Oliver asked me to come on, she asked  
11 me to speak to several issues at hand, and I'm speaking to  
12 several issues at hand asking that this be put off that --  
13 and allowing them to have full due process to come before the  
14 ANC board as a whole and meet with the, because that process  
15 seems to be overlooked if this is being pushed through, and  
16 thank you.

17           CHAIRPERSON HILL: Okay. Thanks Mr. Chandler, and  
18 thanks for your long service to the City. So okay, does  
19 anybody have any questions for Mr. Chandler? Ms. John.

20           VICE CHAIR JOHN: Thank you. Good morning, Mr.  
21 Chandler?

22           MR. CHANDLER: Good morning, how are you?

23           VICE CHAIR JOHN: Fine. So are you objecting --  
24 are the neighbors objecting to the penthouse specifically?  
25 Is that the main issue?

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1           MR. CHANDLER: That's one of the issues. The  
2 issue -- the issue that we put before the developer was to  
3 reduce the number of units. We said in several meetings, and  
4 let me give you a history. When this first came before --  
5 that's why this has been pushed back so many times, because  
6 when they came before the ANC asking for approval, they had  
7 already submitted to BZA that this project was going forth  
8 with no community input.

9           There was no community input, no letter sent. All  
10 of the impacted residents, we had no idea. So the meeting,  
11 the first series of meetings was asked to push the meeting  
12 back. Then when we came before the ANC again, we asked that  
13 you push it back because we have -- clearly it was one series  
14 of meetings, one meeting being held after we asked that it  
15 be pushed back. We asked that it be pushed back again so we  
16 could flesh out the project, so we could stress to him that  
17 as you can see, we are being bombarded by single family  
18 member homes being uprooted and large condo projects being  
19 put in place, where the number of units are so many that it's  
20 just overwhelming.

21           We asked that in each project. We went through  
22 with all of the developers. We said if you'd like to build,  
23 we want you to build. Make it look more like it's inviting  
24 to the community. Make it look like it's a part of the  
25 community, existing homes that you have replaced. If you're

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1 going to give us 20 units that you're proposing to build, at  
2 least put in 16. We're willing to support.

3           If you're going to put in ten, give us eight. If  
4 you're going to put in eight, give us ten. We're talking  
5 about issues of parking, we're talking about issues of crime,  
6 we're talking about issues of how the development is put in  
7 place before, after and during. We're talking about parking  
8 issues that if you're talking about one-way street, 12th  
9 Street is a one-way street that comes right off of Rhode  
10 Island Avenue.

11           Rhode Island Avenue, they can't put any of their  
12 staging on Rhode Island Avenue because of the parking  
13 restrictions. They cannot, because you can only park between  
14 a certain amount of hours, which is like five hours during  
15 the day. What they're talking about, and it's in the middle  
16 of the day. Not the beginning of the day, because you can't  
17 park early in the morning. You have to park after a certain  
18 time in the morning.

19           So we're talking about parking concerns, we're  
20 talking about trash concerns, rodent concerns. We're talking  
21 about the effects of the dust that flies throughout the  
22 certain day, noise levels, noise concerns. So we addressed  
23 all of those concerns. None of them were fully met with the  
24 community. With the other developers, we flushed out the  
25 problems. We flushed out and we went through and we

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1 stressed, we stressed to Dr. Bowman.

2           We're not saying that we didn't want you to build,  
3 but now it seems that it's a slap in the face that none of  
4 our concerns were addressed, not one. So now we are totally  
5 against the project, and we want to go on record that the  
6 community is against this project because there is no  
7 community input at all.

8           VICE CHAIR JOHN: Thank you, Mr. Chandler. I just  
9 want to clarify one more question. So some of the other  
10 apartment buildings are more than the eight units that's  
11 being proposed now, right?

12           MR. CHANDLER: The two that have come up.

13           VICE CHAIR JOHN: Right.

14           MR. CHANDLER: The condos that came up. One had  
15 no community input at all. Several letters of opposition  
16 were placed, as I was at that particular time when we're  
17 talking about, you know, 1007 Bryant Street, that was placed  
18 there with no sitting ANC commissioner. So I was built  
19 without any community involvement. The one at 1001 and 1003  
20 Bryant Street was put and it still was in opposition of  
21 community. It was a big pushback.

22           But the number that was proposed was 20. We got  
23 it down to I think 14. The other one was 16. We got it down  
24 to the two units, the two buildings down to 12, six in one  
25 and six in the other. So at least there was some level work

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1 with us, work with us.

2 VICE CHAIR JOHN: Okay. Thank you, Mr. Chandler.  
3 Thank you Mr. Hill, Chairman Hill.

4 CHAIRPERSON HILL: Okay, thank you.

5 VICE CHAIR JOHN: Thank you.

6 CHAIRPERSON HILL: Anyone else? Anyone else for  
7 Mr. Chandler? Mr. Freeman, do you have any questions for Mr.  
8 Chandler?

9 MR. FREEMAN: No questions, but we'll have some  
10 rebuttal.

11 CHAIRPERSON HILL: Okay, all right. Okay. So,  
12 all right thank you Mr. Chandler. All right, let's see. Ms.  
13 Oliver, you know, I'm sorry Commissioner Oliver, so now  
14 what's going to happen is Mr. Freeman is going to have some  
15 rebuttal about all of the issues that were just brought up,  
16 and then you will have an opportunity to ask questions just  
17 of his rebuttal if you have any, right?

18 And then Mr. Freeman will get a little bit of a  
19 conclusion, and then along with my fellow Board members,  
20 we'll see kind of where we go. Before I get to Mr. Freeman's  
21 rebuttal, Commissioner I'm not being accusatory; I'm just  
22 trying to understand. You all have had some discussions,  
23 right? That's what I'm just trying to understand like, and  
24 it's been going on now for a few months; is that correct?

25 MS. OLIVER: Yes sir.

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1 CHAIRPERSON HILL: And that's just been with you?

2 MS. OLIVER: No, no, no. It's been with the  
3 community and myself.

4 CHAIRPERSON HILL: Okay, and when you say the  
5 community how, in what form has it been with the community?  
6 Like how has it been with the community? You had a meeting  
7 and everybody came together?

8 MS. OLIVER: Well we either had a virtual -- we  
9 had virtual meetings.

10 CHAIRPERSON HILL: Okay.

11 MS. OLIVER: The first one, the first one was in  
12 person and the rest of them were virtual.

13 CHAIRPERSON HILL: And when you say community,  
14 like that was advertised in some capacity?

15 MS. OLIVER: I'm sorry, the entire community  
16 living on the block.

17 CHAIRPERSON HILL: So you just reached out to  
18 those people and asked if they were interested in a hearing?

19 MS. OLIVER: Yes sir.

20 CHAIRPERSON HILL: Okay, all right. Okay. Mr.  
21 Freeman, can you hear me?

22 MR. FREEMAN: Yes, Mr. Chairman.

23 CHAIRPERSON HILL: You can go ahead and give your  
24 rebuttal.

25 MR. FREEMAN: Sure. Mr. Young, if you could pull

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1 up our Exhibit 59 again, that would be helpful. Now I did  
2 want to clarify a point. We, if I'm missing it, we've met  
3 at least four times. We asked to be placed on the ANC's  
4 agenda at least four times, and Commissioner Oliver and those  
5 email requests are in our submission. So I keep hearing oh,  
6 well we haven't presented to the ANC? We have asked multiple  
7 times to be placed on the ANC's agenda.

8 CHAIRPERSON HILL: I'm sorry to interrupt you, Mr.  
9 Freeman. Mr. Young, he's trying to bring up --

10 MR. FREEMAN: No, no, no. This is what I was --

11 CHAIRPERSON HILL: Oh sorry, sorry.

12 MR. FREEMAN: But I did want to clarify, because  
13 I think there's -- to the extent that there's confusion. We  
14 have been asking since December to be placed on an ANC  
15 agenda. So I don't want to have the impression that we're  
16 just trying to avoid that process. We've asked multiple  
17 times to go to the ANC to present our application, and yet  
18 we get no response to those requests.

19 A couple of things. So and then the second thing  
20 was like we just completely disregarded all of the comments.  
21 What we said is when looking a BZA special exception, we look  
22 at the standards for relief and how those requests relate to  
23 what we're actually asking for. So the comment about going  
24 from eight to six units to fit in the landscape of the  
25 community.

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1           We didn't understand how a six unit versus an  
2 eight unit building fits into the community if the fault is  
3 essentially the fit, right? Like with less than the  
4 permitted height, we have more side yards than are required.  
5 We have a 30 plus foot rear yard setback, and the entirety  
6 of the properties along Rhode Island Avenue in the context  
7 of where our building are, are approved for multi-family  
8 buildings.

9           So okay. We heard that comment. We didn't  
10 disregard it. We just have a different view of what that  
11 means. Commissioner Oliver and I still call you Commissioner  
12 Chandler, so I will continue to call you Commissioner  
13 Chandler, have rightfully indicated -- if you can go to the  
14 next slide please; I think it's the -- well we could -- next  
15 slide. Next slide, next slide. Next slide, sorry. Next  
16 slide. This one.

17           So Commissioner Chandler and Oliver had indicated  
18 -- I don't want to speak for anyone, but you've heard that  
19 we haven't responded to the concern of the neighbors. Ms.  
20 Oliver called that neighbor the next door, but this neighbor  
21 is actually behind us. Her house fronts on Bryant Street.  
22 It's this house in the Image 3, that dark gray house. That  
23 house, our building is set back about 30 feet, and then  
24 there's an alley.

25           So our building is 40 plus feet away from her

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1 home. So our building does not tower over her home number  
2 one; number two, I don't, you know, there's this statement  
3 that folks are going to be on the roof of our building  
4 partying and looking over her home. Again, our building is  
5 40 plus feet away. The penthouse is nowhere near her  
6 building.

7           The only area for which we are seeking penthouse  
8 relief is on the east side. The east side of the penthouse  
9 is not adjacent to her home. The east side of the penthouse  
10 is adjacent to the building on the right, that white  
11 building, and no one from that building has attended any of  
12 these meetings in opposition.

13           So the -- at least that I am aware of I should  
14 say. The person who has indicated the concern, my  
15 understanding is the person who lives in that dark gray  
16 building. And again, we are not asking for any relief as it  
17 relates to the portion of the penthouse that is 40-50 feet  
18 away from that home. Again, the comment about not coming to  
19 the ANC. I think we are -- our materials clearly indicate  
20 repeated requests to come to the ANC. All of the --

21           There have been a variety of concerns about  
22 construction, et cetera. Those are all legitimate concerns.  
23 Those are all things we said we would work with the community  
24 on. As the Board has said repeatedly, construction concerns  
25 are a part of the BZA process, right. The Board doesn't get

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1 into construction issues, because those are not zoning  
2 issues.

3           But we said we are completely happy to work with  
4 the neighbors to make sure we're mitigating and managing  
5 construction. Noise, dust, rodents, all of those things are  
6 things we'd be completely happy to work with the community  
7 on. Parking. There was a concern about parking. We are,  
8 and parking's one of those things if you have more parking,  
9 more cars come; if you have less parking, you're not having  
10 enough.

11           So we have more parking than the regulations  
12 require in order to alleviate, minimize folks parking on  
13 neighbors' streets, right? So two are required; we have  
14 four. So we have been responsive to that. The suggestion  
15 again that we're not, we're not doing anything. The  
16 penthouse now is different than the penthouse when we filed  
17 the application, as Dr. Bowman noted. It's part of the  
18 regulations, but the coloration and the design have been  
19 updated in order to address some of those specific concerns  
20 that we heard.

21           So I don't know that I -- I tried to take notes  
22 to make sure I heard everything, and I do -- I respect  
23 Commissioner Chandler's comment about quality of life and the  
24 nature of the community and the amount of construction.  
25 Those are real concerns. But the Board has to look at the

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1 merits of this particular case, and whether this particular  
2 case meets the standards for approval.

3           Mr. Young, if you could go back to Slide 4. Wait,  
4 sorry. If you can go back to Slide 9. Again, the burden of  
5 proof. If we meet the special exception standard, the Board  
6 must ordinarily grant the application unless there's been  
7 evidence how our building would adversely the use of  
8 neighboring properties. I haven't heard anything today about  
9 how this building adversely affects the use of neighboring  
10 properties.

11           I get it, their concerns, but I haven't heard  
12 anything that suggests we have not met our special exception  
13 standards. So we're happy to go to the ANC. We've been  
14 asking to go to the ANC. We will continue to be good  
15 neighbors but, you know, to say you haven't come to the ANC  
16 but not put us on the ANC's agenda is kind of unfair.

17           I think I covered everything. We again think we  
18 fully meet all of the standards for approval. We're happy  
19 to come back for a decision if that's the Board's desire, and  
20 we're happy to answer any questions and provide any  
21 additional information that the Board deems necessary.

22           CHAIRPERSON HILL: Okay. Thanks, Mr. Freeman.  
23 Give me one second everybody. I see your hand, Commissioner  
24 Chandler. Commissioner Oliver, can you hear me?

25           MS. OLIVER: Yes.

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1 CHAIRPERSON HILL: Do you have any questions? Now  
2 these are just questions based on the rebuttal that Mr.  
3 Freeman just gave.

4 MS. OLIVER: Okay. My question would be, you  
5 know, I don't know if he raised it in some of his, what he  
6 just said, but did you go to the BZA before you visited the  
7 or talked to the impacted residents in the beginning of this  
8 project, because that all happened before we had a chance to  
9 talk to you, or for you to give us your development and tell  
10 us what you want to do?

11 And you know, I'm very surprised to hear that  
12 you're happy to work with the -- happy to work with the  
13 residents. That word "happy" is interesting, because at our  
14 meetings we've had no -- they've been slightly hostile, you  
15 know, as far as trying to come to a consensus of how the  
16 impacted residents would like to see the construction of the  
17 building. You know again we've had several buildings in the  
18 community, and we've been able to talk to the other  
19 developers and come up with a happy medium as far as to how  
20 these buildings would blend into the community.

21 CHAIRPERSON HILL: Commissioner Oliver, I'm sorry.  
22 I'm just trying to clarify your question. Your question was  
23 what? What was your question again?

24 MS. OLIVER: You know --

25 CHAIRPERSON HILL: Oh yeah, yeah, yeah. Did they

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1 go to the BZA first? That was the question, did they go to  
2 the BZA first. So Mr. Freeman, did you go to the BZA first  
3 before you went to meet with them?

4 MR. FREEMAN: So we filed our application on June  
5 22nd, and here's what -- here's what I want to be careful of,  
6 because I respect Commissioner Oliver. I respect  
7 Commissioner Chandler, but I mean Commissioner Oliver, we  
8 have been reaching out to you since August with no response,  
9 so and that's usually our first step. Our first step --

10 MS. OLIVER: We've had multiple meetings --

11 CHAIRPERSON HILL: Let me interrupt you guys, and  
12 I'm sorry. Like I've just got a really long day. Like I  
13 have ten cases, and so I already kind of know what's going  
14 to happen, meaning we're going to -- you're going to go --  
15 you're going to have your ANC meeting Commissioned, so all  
16 this is going to get thrown about at your ANC meeting.

17 And so I saw, even though it's out of order since  
18 we're not in a live hearing room, I'm going to go ahead and  
19 allow Commissioner Chandler -- I'm going to call you  
20 commissioner also Mr. Chandler -- Commissioner Chandler to  
21 go ahead and ask a question. You had a question. Could you  
22 please ask your question? You are on mute, sir.

23 MR. CHANDLER: Okay. Can you hear me?

24 CHAIRPERSON HILL: Yes.

25 MR. CHANDLER: I was just more or less a

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1 statement.

2 CHAIRPERSON HILL: Okay, if you want to make your  
3 statement.

4 MR. CHANDLER: If I may. Clearly quality of life  
5 should always outweigh anything. Quality of life of  
6 citizens, residents, voters, should always outweigh, should  
7 be the biggest concern of how a project that will be put in  
8 a community will stay and affect the quality of life. It is  
9 adversely affecting the quality of life of the residents,  
10 however big or however small the developer sees it, but those  
11 impacted residents have to deal with it for the rest of their  
12 life.

13 When this was first put before BZA, it was  
14 submitted in July, meaning the property was bought prior.  
15 They decided what they wanted to build without any community  
16 input and they submitted it to BZA. Then they reached out  
17 in August to the single member district ANC representation,  
18 which is Darlene Oliver. Everyone prior to the developer had  
19 always sensed that there was a problem of concerns when  
20 building a project that's going to affect or impact  
21 residents. So before you submitted to BZA, wouldn't you like  
22 to have a series of meetings with the impacted residents?

23 So as a former commissioner and understanding the  
24 process of elected officials, that the process is put in  
25 place to represent and protect the citizens and the

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1 residents, and that's what elected officials do. That's why  
2 they like hold a series of meetings with the single member  
3 district representative ANC commissioner first for the  
4 impacted residents, and then we ask the developer to come  
5 before the Board as a whole when they're seeking approval.

6 CHAIRPERSON HILL: Okay. Commissioner,  
7 Commissioner, I have to interrupt for a second. And again,  
8 I'm just trying to run my hearing now, and like you're  
9 supposed to ask questions on the rebuttal, not just make new  
10 testimony or give me --

11 MR. CHANDLER: I understand, but in the beginning  
12 I was making a statement.

13 CHAIRPERSON HILL: And Commissioner, I'm going to  
14 let you -- I gotcha, I gotcha. But I'm just letting you  
15 know, you're going to have a whole other meeting to make your  
16 statement, right, and so I mean the ANC. So I don't see any  
17 other questions from the ANC on the rebuttal, and so I'm  
18 going to --

19 MS. OLIVER: If I ask -- okay, if I ask a  
20 question, could this be the question?

21 CHAIRPERSON HILL: All right, go ahead.

22 MS. OLIVER: This the sitting ANC commissioner be  
23 respected in her right to represent the community, asking  
24 that this be pushed back, allowing the developer due process  
25 to come before the Board as a whole, before you guys vote.

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1           CHAIRPERSON HILL:    At the very beginning, we  
2 already figured that out, right, that that's not -- we're not  
3 going to take a vote today, right?  So that's number one,  
4 right?  So I'm trying to get questions of the rebuttal.  So  
5 Mr. Freeman, I didn't hear a question in that.  It was more  
6 directed a question to us, which was like are we going to  
7 actually -- are you guys going to present to the ANC, and I  
8 think we've already established you're going to present to  
9 the ANC.

10                   And so but I agree, and I'll have my fellow Board  
11 members chime in if they like that, you know, Commissioner  
12 Oliver if you look at Exhibit 31, it seems like they've been  
13 trying to reach out to you for some time.  And so it's too  
14 bad that they're not on this meeting today that you guys are  
15 having, because that is sticking them out another month again  
16 before you'll get a chance to kind of meet with them.

17                   But regardless, they're on your agenda one month  
18 from now, so that's good, right?  So let's see.  So Mr.  
19 Freeman, do you have anything you'd like to add at the  
20 conclusion of this hearing, and then what we're probably  
21 going to do is I'm going to talk to my ANC -- I'm sorry, I'm  
22 going to talk to my Board members, and we're going to  
23 determine whether or not we're going to have a continued, a  
24 limited scope hearing or whether we're going to vote, and so  
25 after hearing from the ANC.  So that's what I'm going to find

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1 out from my fellow Board members. So Mr. Freeman, would you  
2 like to give a conclusion?

3 MR. FREEMAN: Yeah. Thank you Mr. Chairman. I  
4 don't have anything to add. I would just conclude that  
5 again, I respect the comments from Commissioner Oliver and  
6 Commissioner Chandler, but the record clearly demonstrates  
7 that we meet the standard for approval.

8 So we're happy to have a limited scope hearing.  
9 We're happy to move to decision whenever the Board is ready  
10 to do so. We're happy to submit any additional information  
11 that the Board deems necessary, but we -- I don't have  
12 anything else to add. Thank you.

13 CHAIRPERSON HILL: Okay. All right, great. So  
14 I'm looking at my fellow Board members. So again, what we're  
15 now going to be doing, and again just for my fellow Board  
16 members again, we're charged with looking at the standard of  
17 review for this special exception that's being requested,  
18 right?

19 So there is information, I believe, for us to take  
20 a look at the record, and also I believe now that we've heard  
21 testimony from everyone, as to either (a) a continued hearing  
22 based upon the limited scope of the ANC, meaning after we  
23 hear from the ANC, or (b) getting a report from the ANC and  
24 taking a vote, and I'm sorry taking a vote, deliberate and  
25 decide where we stand on the application.

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1 I'm kind of leaning towards the limited scope  
2 hearing, meaning go ahead, have them present to the ANC, and  
3 then we'd just be back here in front of whatever happened at  
4 the ANC. So that's kind of where I stand, but I'm going to  
5 ask other Board members what they think and I'm going to go  
6 around the table and start with Mr. Smith.

7 MR. SMITH: I am in support of having a limited  
8 scope hearing for the next time we hear this, so I should  
9 think that I'm open to a limited scope hearing.

10 CHAIRPERSON HILL: Okay. Commissioner Miller.

11 COMMISSIONER MILLER: Thank you, Mr. Chairman.  
12 Yeah, I would like to have in the record, if we can get it,  
13 any -- an ANC position, written position which articulates  
14 with specificity any concerns that they have and how they  
15 should be addressed.

16 CHAIRPERSON HILL: Okay. Mr. Blake?

17 MR. BLAKE: Yes, I would agree. I would like to  
18 have the limited scope hearing.

19 CHAIRPERSON HILL: Vice Chair John?

20 VICE CHAIR JOHN: I would like to have a limited  
21 scope hearing, but I have a couple of questions and  
22 clarifications after this discussion.

23 CHAIRPERSON HILL: Got it. Okay. So then, and  
24 I'll let you, Vice Chair John, have your comments or question  
25 -- actually, you want to go ahead and do it now?

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1           VICE CHAIR JOHN: Yes. I have a question for  
2 Commissioner Oliver. Ms. Oliver, can you explain what the  
3 process is now for getting to the ANC hearing? Is there  
4 first a meeting with the executive committee and then the  
5 full hearing, or can the SMD just go ahead and, you know,  
6 schedule this for the full hearing? I need a clarification  
7 of what the process is from now on.

8           MS. OLIVER: First, there's a meeting with the  
9 Committee of the Whole that this -- that whatever's going to  
10 be presented, and then the decision is made at the full  
11 Commission hearing. Thereafter the -- whoever it is presents  
12 again, presents to the full Commission.

13          VICE CHAIR JOHN: Thank you. So there are two  
14 more meetings?

15          MS. OLIVER: Yes.

16          VICE CHAIR JOHN: One, one before the Committee  
17 of the Whole and then one before the full Commission? Yeah,  
18 okay, all right. Thank you. And then Mr. Freeman, is it  
19 possible for you to have a proposal for like a construction  
20 agreement, and you are correct, that the Board does not  
21 normally include construction agreements in the order. But  
22 we sometimes ask that the parties work towards getting one,  
23 and have something that's in draft form or reasonably close,  
24 that the Board can reference in its order.

25                 The Board does not include them in the order, but

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1 we sometimes reference that there is a construction  
2 agreement, especially where the parties have difficulty  
3 communicating. So is that possible Mr. Freeman?

4 MR. FREEMAN: Yes. Well, just to be clear, we  
5 will -- we will prepare and submit for the record a  
6 construction management plan. They're typically plans that  
7 indicate how we'll manage construction of the project. So  
8 we're absolutely happy to submit a construction management  
9 plan for the record in this case.

10 VICE CHAIR JOHN: Okay, thank you. We don't  
11 normally include them in the order, but we'd like to know  
12 that they're done. Thank you.

13 CHAIRPERSON HILL: Okay. So Mr. Freeman, what I  
14 guess we're going to do now is we're going to close the  
15 hearing on the record, except we're going to leave the record  
16 open for your construction management plan, and then also  
17 whatever the ANC submits to us. So Commissioner, you guys  
18 are meeting on the 15th. I assume you're going to take a  
19 vote on the 16th. When do you think you might be able to  
20 give us your report? That's the 16th of March.

21 MS. OLIVER: You want a report from me before  
22 that?

23 CHAIRPERSON HILL: No. After -- I'd like to hear  
24 -- we'd like something in the record from the ANC whether you  
25 guys are voting in favor, whether you're voting against and

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1 what your stance is, right?

2 MS. OLIVER: Okay. We can give you that as soon,  
3 that week.

4 CHAIRPERSON HILL: Okay. So I'm going to put you  
5 on the agenda. Mr. Moy, what's -- can you can help me out  
6 with the dates now of what we need. What's our, what's our  
7 docket looking like on the 23rd of March?

8 MR. MOY: On the 23rd of March Mr. Chairman, we  
9 have one appeal and eight application cases.

10 CHAIRPERSON HILL: No?

11 MR. MOY: Well, this is a limited scope hearing.  
12 If that doesn't work for you, although I know it would work  
13 for Commissioner Rob Miller. If that doesn't work for you,  
14 then the next date after March 23rd would be March 30th,  
15 where we have six cases and two expedite calendar cases.

16 CHAIRPERSON HILL: Okay. Mr. Freeman, I'm going  
17 to ask you, right? I mean I know you're -- there's -- you  
18 see where this is going right now, right, and I'm asking you  
19 whether or not the 30th or the 23rd makes much of a  
20 difference to your client's finances?

21 MR. FREEMAN: I have to -- if I could ask a  
22 question before I, before I answer that?

23 CHAIRPERSON HILL: You can have a question. Mr.  
24 Bowman, you're shaking your head. I'm letting you know Mr.  
25 Bowman, there's a chance you get bumped anyway, because I

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1 have eight cases and an appeal on the 23rd, and so you might  
2 not make it anyway. So that's why I'm kind of getting to  
3 you. Mr. Freeman, go ahead, ask your question?

4 MR. FREEMAN: So submit construction management  
5 plan, ANC resolution. There hasn't been a date for that.  
6 My question is do we get an opportunity -- typically, we have  
7 the opportunity to respond to the ANC. Can we have a written  
8 response to the ANC's resolution?

9 CHAIRPERSON HILL: I got it. So if that's the  
10 case, again that pushes it to the 30th anyway. So then, you  
11 know, go ahead Mr. Moy, if you want to work through the dates  
12 to get them back here on the 30th of March, so that they have  
13 time to meet with the ANC, have the ANC respond with their  
14 report, have the Applicant have an opportunity back to the  
15 ANC report, and then again the ANC would have an opportunity  
16 to respond to that.

17 But we would be here for a continued hearing  
18 anyway on the 30th, limited scope, based on the ANC meeting.  
19 And I'm sorry Mr. Moy, if you just want to give dates for  
20 everything?

21 MR. MOY: Yes. So let me take a stab at this and  
22 queue this up on your plate. So the limited scope hearing  
23 would be set for Wednesday, March 30th. Responses would be  
24 due Friday, just a second. Friday, March 25th. The ANC  
25 letter would be due to the record by Friday, March 18th, and

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1 as to the Applicant, I believe he proffered that he would  
2 submit for the record a proposed construction management  
3 plan. I suspect that would have to be in the record prior  
4 to the ANC meeting, which is March 16th.

5 So if that's the assumption, then I would think  
6 that the Applicant should submit that proposed construction  
7 management plan let's say a week prior to March 16th, which  
8 would be March 9th.

9 CHAIRPERSON HILL: All right, Mr. Freeman. You  
10 got those dates?

11 MR. FREEMAN: Yes. Yes, Mr. Chairman.

12 CHAIRPERSON HILL: Commissioner Oliver, you  
13 understand the dates?

14 MS. OLIVER: Yes, I think I've got them straight.  
15 Okay. Now I just wanted to be clear on what you expect from  
16 me. You want a letter from me just stating our position  
17 concerning this matter, is that it? On the 18th.

18 CHAIRPERSON HILL: Yeah. I mean it's a formal --  
19 what's the form Mr. Moy?

20 MR. MOY: Well, it could be a form, but in most  
21 instances the ANC's usually have their own resolution  
22 letters, which those templates vary from ANC to ANC. But the  
23 Commissioner, if she wants a sample, we could always send her  
24 one that's been submitted by other ANCs.

25 MS. OLIVER: All right, thank you.

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1 MR. FREEMAN: I did have one more question, Mr.  
2 Chairman.

3 CHAIRPERSON HILL: One second, Mr. Freeman. Mr.  
4 Moy, when was Commissioned Oliver supposed to submit their  
5 information?

6 MR. MOY: By March the 18th, which is three days  
7 after their ANC meeting.

8 CHAIRPERSON HILL: Got it. Mr. Freeman, what's  
9 your question?

10 MR. FREEMAN: My question was for Commissioned  
11 Oliver. Can you confirm now that we will be on your March  
12 16th agenda?

13 MS. OLIVER: I'm sorry. I didn't hear you. What  
14 did you say?

15 CHAIRPERSON HILL: He just wants -- Commissioner  
16 Oliver, he just wants confirmation that they're going to be  
17 on the agenda for March 16th.

18 MS. OLIVER: Yes.

19 CHAIRPERSON HILL: Okay, great.

20 MR. FREEMAN: You mentioned the Committee of the  
21 Whole. Can you -- I don't know the date of that, but you  
22 confirm one, the date and two that we'll be on that agenda?

23 MS. OLIVER: I can send -- I can send you an email  
24 to confirm that date, because I don't have that in front of  
25 me.

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1 MR. FREEMAN: Okay. But we will be on that agenda  
2 whatever date?

3 MS. OLIVER: Yes, yes, yes sir.

4 MR. FREEMAN: Okay, thank you.

5 CHAIRPERSON HILL: Okay. Commissioned Oliver, I'm  
6 just letting you know. We're going to vote on this. We're  
7 going to deliberate on this, you know, on the 23rd, I'm  
8 sorry, on the 30th of March. So you guys have to get us  
9 information one way or the other, okay?

10 MS. OLIVER: Yes sir.

11 CHAIRPERSON HILL: Okay, all right. Let's see.  
12 Mr. Freeman, before I leave, I got a little confused. It  
13 seemed as though you thought that there was some negotiation  
14 -- not negotiation. I mean you guys had -- you had three  
15 bedroom units at one point but you dialed it down because  
16 why?

17 MR. FREEMAN: Two things. There were two things  
18 that were happening. One, the zoning regulations had changed  
19 between the time we filed the application and the date of our  
20 hearing. As a result of those changes, we had to reduce the  
21 size of the penthouse, and that third bedroom was in the  
22 penthouse. So there was no space for it.

23 CHAIRPERSON HILL: And there was only one -- there  
24 was only one three bedroom unit?

25 MR. FREEMAN: There were two three bedroom.

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1           CHAIRPERSON HILL: Two three bedroom, and neither  
2 one of those were IZ? Those were the ones that were on the  
3 top floor?

4           MR. FREEMAN: Correct.

5           CHAIRPERSON HILL: Okay, all right.

6           MR. FREEMAN: And then the second thing that  
7 happened around the same time was the commentary from the ANC  
8 about, about reducing the size of the penthouse. So we  
9 decided okay, well since the regulations had changed, and in  
10 order to try to reduce the size of the penthouse, we would  
11 do both of those, instead of asking for relief for that,  
12 because we could have also just asked for relief that had  
13 been -- as we initially showed. But those are the two  
14 factors, reduction in order to try to deal with some of the  
15 community comments --

16           (Simultaneous speaking.)

17           CHAIRPERSON HILL: Okay, right. Does anybody have  
18 any final questions for anybody before I close this portion  
19 of the hearing? Meaning my Board members. Okay, nobody's  
20 got any questions. All right, okay. So Mr. Freeman, we will  
21 see you. Commissioner Oliver, we will see you on the 30th  
22 of March, and hopefully we get -- and again Commissioners,  
23 you know what we're supposed to do, is we just have to meet  
24 the responsibility to look at the regulations and how they  
25 fit in with what we're allowed to approve, and so that's what

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1 we're charged with.

2           Okay, all right. Then I will see that it's all  
3 on the 30th and we're closing the hearing, except for as I  
4 mentioned the information that was requested by the Applicant  
5 for the construction management agreement or plan if you  
6 will, and then whatever we get from the ANC on the 18th, and  
7 then a response from the Applicant on the dates that have  
8 been proposed by the Secretary, Mr. Moy, and we'll see you  
9 on the 30th. So thank you all very much, bye-bye.

10           MR. FREEMAN: Thank you, everybody.

11           MS. OLIVER: Thank you.

12           MR. BOWMAN: Thank you.

13           CHAIRPERSON HILL: Okay. This went longer than  
14 I thought. What I suggest is we take a quick break, come  
15 back, do as many cases as we can before we start to really  
16 get hungry, and then take lunch. Does that sound fair?  
17 Okay. I'll see you in like ten minutes. Thank you.

18           (Whereupon at 11:38 a.m., the above-entitled  
19 matter went off the record and resumed at 11:52 a.m.)

20           MR. MOY: Thank you, Mr. Chairman. The Board is  
21 back in its public hearing session after a quick ten minute  
22 break, and the time is now at or about 11:52 a.m. The next  
23 case application before the Board is Application No. 20631  
24 of 723 Morton LLC. This is an amended self-certified  
25 application, and it is captioned and advertised as requesting

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1 relief from the special exceptions from minimum block  
2 dimension requirements, Subtitle E, Section 201.1(p),  
3 pursuant to Subtitle E, Section 201.4, Subtitle E, Section  
4 5206.2 and Subtitle X, Section 901.2; rear addition  
5 requirements, Subtitle E, Section 205.4(d), pursuant to  
6 Subtitle E, Section 205.5, Subtitle E, Section 5206.6 and  
7 Subtitle X, Section 902.1; area variance from the minimum lot  
8 dimension requirements, Subtitle E, Section 201.1(a),  
9 pursuant to Subtitle X, Section 1002.

10 Now this would construct two new attached three-  
11 story with cellar and roof deck flats in the RF-1 zone. The  
12 property is located at 723 Morton Street, N.W., Square 2894,  
13 Lot 91. There's two preliminary matters, Mr. Chairman.  
14 There is a motion from the Applicant to waive the 40 day  
15 notice requirements under Exhibit 23. I believe it is to  
16 allow a change in the relief to include the variance relief,  
17 and subsequent to that, of course, there would be a motion  
18 to waive the filing requirements to provide supplemental  
19 information to address the variance argument, and that is  
20 under Exhibit 26.

21 Other than that Mr. Chairman, I will ask the  
22 Applicant if I framed the preliminary matters correctly, and  
23 if not then if you would correct me. That's it, Mr.  
24 Chairman.

25 CHAIRPERSON HILL: Okay, thank you Mr. Moy. Ms.

1 Wilson, can you hear me?

2 MS. WILSON: Yes, can you hear me?

3 CHAIRPERSON HILL: Yes. Can you introduce  
4 yourself for the record please?

5 MS. WILSON: Yes. Alex Wilson from Sullivan and  
6 Barros on behalf of the Applicant.

7 CHAIRPERSON HILL: Okay. Ms. Wilson, can you  
8 clarify what Mr. Moy just said about what you guys are trying  
9 to do with your preliminary matters?

10 MS. WILSON: Sure. So we, I'll go into this more  
11 in the presentation, but we had to add a variance, an area  
12 variance for lot width for one of the lots, and as a part of  
13 that we asked for a waiver from the 40 day notice  
14 requirement, specifically to the Board and we would have to  
15 send a notice in the D.C. Register, and since the relief is  
16 now going to be more intense from a special exception to the  
17 variance, we are requesting to waive that. I can go into the  
18 good cause.

19 CHAIRPERSON HILL: Got it, okay. Why don't you  
20 go into the good cause please?

21 MS. WILSON: Sure. So the project itself isn't  
22 really changing from special exception to variance in that  
23 the additional variance really is to reduce one of the lot  
24 width and then one of the buildings by only five inches. It  
25 was presented to the ANC at its most recent meeting, it was

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1 on the consent agenda actually, and received unanimous  
2 support, so the community is aware of the request for the  
3 variance relief.

4 CHAIRPERSON HILL: Okay, and I see the  
5 Commissioner nodding his head. But I -- what I'm a little  
6 confused by about this when we reviewed the record and the  
7 file, was I thought that maybe you guys needed two lots. You  
8 needed the lots first before we would be able to hear this  
9 case. Are you aware of that, Ms. Wilson?

10 MS. WILSON: I'm not sure what you -- are you  
11 saying for the ten foot rule relief we would need the C lot  
12 first?

13 CHAIRPERSON HILL: I don't know. Let me, let me,  
14 I'm going to ask the attorneys to help me with this one in  
15 one second, and then I'm going to go with Mr. Mordfin. I'm  
16 going to jump around here a little bit. Mr. Mordfin, you  
17 didn't give us -- could you introduce yourself Mr. Mordfin  
18 first?

19 MR. MORDFIN: Good morning. I'm Stephen Mordfin  
20 with the Office of Planning.

21 CHAIRPERSON HILL: Okay. Mr. Mordfin, we didn't  
22 get a report from you guys, right?

23 MR. MORDFIN: Oh yes, you did. You did get a  
24 report. It's dated February 4th and it's Exhibit No. 25 in  
25 the record.

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1 CHAIRPERSON HILL: Right. So do they need -- do  
2 we -- do they need to have two lots first before we could  
3 hear this? I'm a little confused maybe on some of the where  
4 I thought we were with this.

5 MR. MORDFIN: I would like to defer this to the  
6 Legal Division of OAG as to specifically just what relief  
7 they do and don't need, and how that's interpreted.

8 CHAIRPERSON HILL: Okay. I'm going to first go  
9 with Ms. Bajaj. Can you hear me? Or Ms. Nagelhout, can you  
10 hear me?

11 SB Ms. Nagelhout will handle this one.

12 CHAIRPERSON HILL: Okay, Ms. Nagelhout. Can you  
13 give us your thoughts?

14 MS. NAGELHOUT: Yes. It seems to me that what the  
15 Applicant is asking for is a subdivision to create two record  
16 lots, because right now they have one record lot. They asked  
17 for an area variance from the lot width requirement of E-  
18 201, but the preliminary step is to get the subdivision under  
19 C-302. The subdivision requires compliance with both the  
20 items listed in C-302, which includes minimum lot width,  
21 which I think is 18 feet.

22 They're asking to create two lots with less than  
23 18 feet in lot width. They ask for relief under E-201, but  
24 that's -- 201 is the section that states the minimum lot  
25 width. It does not allow you to create new record lots that

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1 width.

2           So I, I think as a preliminary matter, they need  
3 to ask for -- or as a threshold issue, they need to ask for  
4 relief from the subdivision requirements that would allow a  
5 subdivision to create the two record lots, and then pursue  
6 the relief they need to use those new lots in the manner that  
7 they're proposing.

8           You can do it all as one proceeding, but the  
9 Applicant may need some time to address the subdivision  
10 requirements.

11           CHAIRPERSON HILL: Okay. Ms. Wilson, I'll get to  
12 you. So are you prepared argued C-302?

13           MS. WILSON: Typically what we've always done if  
14 we're creating a new record lot that doesn't meet the minimum  
15 lot width requirement is simply request variance relief from  
16 the lot width requirements, which we did in this case. Is  
17 Ms. Nagelhout suggesting we change the section of relief?  
18 I mean we can look into that and possibly submit something  
19 after? It doesn't make a difference in terms of what we're  
20 asking for. We're asking for one lot to be 16 feet and we're  
21 asking for the other new record lot to be 15 feet and I think  
22 five or six inches.

23           And so we've properly asked for this special  
24 exception relief to allow for the lot to be 16 feet, and then  
25 within that we're asking for a variance, and that's always

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1 how the Zoning Administrator has allowed us to do it. So in  
2 this case, I'm prepared to move forward with the variance  
3 argument for either way, because it's the same variance.  
4 It's just to have a lot width that's 15 feet and inches  
5 instead of 16.

6 MS. NAGELHOUT: Mr. Chair, I agree that -- well  
7 first of all, I acknowledge has been inconsistent in the  
8 past. They tend to go with whatever the Applicant asks for.  
9 I do not believe that you can create a lot at 16 feet by  
10 special exception. If you want to -- I personally want to  
11 call it a subdivision --

12 MS. WILSON: You can.

13 CHAIRPERSON HILL: One second Ms. Wilson.

14 MS. NAGELHOUT: No, you can't. You need a  
15 subdivision to create two new record lots. That subdivision  
16 is C-302. And then after the lot is created by special  
17 exception, you can use it for IZ if the Board grants that  
18 relief. I do think the burden of proof to prove the  
19 subdivision variance is probably very, very similar to the  
20 relief they're already -- the arguments you're already  
21 making, to ask for a variance from E-201.

22 I just want the Board to be aware that it's really  
23 two separate inquiries here. One is the one to approve a  
24 subdivision that would create two record lots, neither one  
25 meeting the 18 feet minimum width requirement, and then do

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1 you want to grant the additional relief to allow this  
2 particular proposal to move forward.

3 CHAIRPERSON HILL: Okay. So I'm just still  
4 getting little confused as to whether or not we can hear this  
5 right now and whether or not everything that is being  
6 requested is being requested. And so I'm clear as to what  
7 I was supposed to do. Ms. Nagelhout, do you have a  
8 suggestion?

9 MS. NAGELHOUT: Well, I do think the Board should  
10 ask for a subdivision variance, a variance from C-302 to  
11 create the two new record lots. OP has not made a  
12 recommendation yet basically on the subdivision issue, so  
13 you do have that hanging out there too. That's not much of  
14 a recommendation but --

15 CHAIRPERSON HILL: No, that's okay. I understand,  
16 and I'm going to look at my fellow Board members now because,  
17 you know, I only have one brain. And so Ms. John, do you  
18 have a thought?

19 VICE CHAIR JOHN: I have a thought. So I agree  
20 with our legal counsel that there is a two-part analysis in  
21 terms of the subdivision and then the IZ issue, and it's  
22 possible to conflate the two because we could end up at the  
23 same place. But the analysis is different, and it's slightly  
24 different. My suggestion on this case is to continue the  
25 hearing with opinion and analysis from OP on the subdivision

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1 issue, with an opportunity for the Applicant to respond.

2 I believe the Applicant has submitted information  
3 in the record, but I don't believe it breaks down into this,  
4 into the way I'm suggesting, and I would suggest that we all  
5 take a look at these cases, to see if we are -- if we have  
6 deviated from what is the -- what is the required approach  
7 under the regulations. We get these cases from time to time,  
8 where Applicants want to offer a IZ unit to meet the -- to  
9 meet the development standard, and depending on the  
10 situation, we've approved them by variance or by special  
11 exception.

12 I just think that we need a little more clarity  
13 in the area, and so I would recommend that we continue this  
14 for a bit to allow OP to take a good look at this particular  
15 issue and provide an analysis in this case, and that would  
16 be my recommendation.

17 CHAIRPERSON HILL: Okay. I'm going to keep going  
18 around the table. Mr. Smith, what are your thoughts?

19 MR. SMITH: You know, I wholeheartedly agree with  
20 Ms. John's analysis on this particular case. I think it's  
21 a two-part question, and we haven't really gotten analysis  
22 on the first part, the subdivision from the Office of  
23 Planning. It seems to me that that's needed, the first step.  
24 So I support the continuation of this case, to support us  
25 getting the analysis from the Office of Planning.

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1           CHAIRPERSON HILL: Okay, Ms. Wilson I'll give you  
2 a chance. I'll give you a chance, but you know, I kind of  
3 see where this is going a little bit. So I'm trying to get  
4 you as cleaned up as I can so we can get you back here as  
5 quickly as possible. Commissioner Miller.

6           COMMISSIONER MILLER: Thank you, Mr. Chairman.  
7 I have -- well, I'll be interested to hear what Ms. Wilson  
8 has to say further, but I think they can make the case, as  
9 she stated, using some of the same arguments for having a  
10 subdivision there, and it might be useful to -- if we're  
11 going to continue the case to hear more analysis of the  
12 subdivision request of the 3-0, what is that, 302?

13           It might be useful to have, if it's useful. If  
14 it's useful, it might be useful to have the information about  
15 the history. I understand there might have been two record  
16 plots on this property prior, and I think that would be a  
17 relevant factor for us to consider in terms of the standards  
18 of review, the exceptional condition and all that for the  
19 variance, whether it's for the variance, for the  
20 subdivisional variance, for the lot width.

21           So the other -- so that's that. I would like to  
22 see that analysis. I think it can be made and the ANC is  
23 supportive of this project going forward, although I'd be  
24 interested in hearing what they have to say about the  
25 subdivision aspects as well. When we come back with analysis

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1 either in dialogue today or whenever we have dialogue, I  
2 personally would -- I understand this to have a voluntary IZ  
3 opt-in for one of the --

4           A voluntary IZ for the 16 foot lot, but it doesn't  
5 appear that there's an IZ unit being offered for the 15.75  
6 foot lot, width lot, wide lot that is the subject of our  
7 discussion about the need for the subdivision. I personally  
8 would be favorably inclined to -- towards this application  
9 if IZ was being proposed on both lots, and so two different  
10 developments. I think they're two different -- well,  
11 subdivision, the two record lots to each being developed.

12           I guess I would like to have more information just  
13 on the IZ unit and the number of units on each lot in  
14 general. Thank you.

15           CHAIRPERSON HILL: Mr. Blake, and then I'll come  
16 to you Ms. Wilson.

17           MR. BLAKE: Well, I don't have anything to add.

18           CHAIRPERSON HILL: Okay. Ms. Wilson, you've heard  
19 -- I'm a little -- well first of all, I thought your area  
20 variance was already in there, because I saw it in the  
21 application I thought. And so you're just trying to add that  
22 -- first of all, you're trying to add the area variance;  
23 correct?

24           MS. WILSON: Yes. Yeah, we requested the area  
25 variance I want to say two or three weeks ago.

1           CHAIRPERSON HILL: Okay, okay, and then so that's  
2 one question. We'll come back to it, and then what do you  
3 have to say about everything that's been discussed thus far?

4           MS. WILSON: I'll just add that we've offered this  
5 type of special exception with a variance. Before I can  
6 submit some cases to the record, I'll ask someone from my  
7 team to get some case numbers. So we, in our opinion we're  
8 asking for the correct relief. We've prepared for this  
9 hearing. We have the ANC commissioners here and we're going  
10 to make some more arguments.

11           It appears that there is a debate about the  
12 section of relief. It's still a variance to do one of the  
13 lots and the special exception for the other. So I think  
14 we're prepared to move forward. Mr. Sullivan is here and can  
15 add. I think he just turned on his camera.

16           CHAIRPERSON HILL: Yeah. Give me one second, and  
17 I'll get to you, Ms. John. I mean the issue that I'm still  
18 trying to deal with is the two record lots first, right, and  
19 then we can hear the arguments.

20           MS. WILSON: But that's, but that's what we're  
21 asking for. We're asking to create two new record lots.  
22 That's what the purpose of the relief is.

23           CHAIRPERSON HILL: All right.

24           MS. WILSON: Because E-204.1 or 1.4 allows for 16  
25 foot lot widths if you're doing a voluntary IZ development,

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1 and these are being developed together. So together they are  
2 voluntary IZ developments, and then beyond that we are asking  
3 for a variance within that for Lot A, because it's just shy  
4 of that 16 foot lot width. It's been done before, and we can  
5 find some case numbers for that.

6 CHAIRPERSON HILL: Ms. John, you had your hand up.  
7 Well actually let me hear from Mr. Sullivan first. Ms. John,  
8 you want to --

9 VICE CHAIR JOHN: Can I just say one thing? I  
10 mean we've been routinely denying applications where the  
11 Applicant has a useable record lot which can provide a  
12 meaningful return. It doesn't have to be the best, but it  
13 can be developed. So the only issue for me now is how does  
14 the IZ unit take the Applicant out of that equation?

15 Right now, the tax lots have gone away. So to me,  
16 they're no longer relevant. They've been extinguished. And  
17 so what we have now is a record lot, and that can be used in  
18 different ways. So I need to understand and I've read Mr.  
19 Sullivan's supplemental information, and it still doesn't get  
20 me where I need to go. I need to understand how the IZ unit  
21 makes this subdivision appropriate, when we've already been  
22 telling folks they can't get, they can't get a subdivision  
23 if they don't meet the requirement based on the regulation.

24 I'm not saying it can't happen; I need to  
25 understand that, and I would like to understand what are the

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1 cases specifically that he's referring to, where we have  
2 given the variance from the 16 foot requirement to provide,  
3 you know, an IC unit. I agree with Commissioner Miller, if  
4 we're doing two, why isn't there an IZ unit on this second  
5 lot, assuming that the Board should go that way.

6 So if we can -- I think, I think we can have some  
7 discussion now, but I would also like to have something from  
8 OP. So with that, thank you for indulging me Mr. Chairman.

9 CHAIRPERSON HILL: Okay. Mr. Sullivan, could you  
10 introduce yourself for the record please?

11 MR. SULLIVAN: Thank you Mr. Chairman. Marty  
12 Sullivan with Sullivan and Barros on behalf of the Applicant,  
13 and I understand we may, you know, not be going forward  
14 today, but I just -- I wanted to make sure that we were very  
15 clear on what the Board needed to do.

16 We have applied for and received special exception  
17 relief to have 16 foot wide lots several times, and that's  
18 what we've asked for in this case. There's no other way to  
19 get separate record lots unless and until we get that relief.  
20 What we were asking for is a variance within that special  
21 exception of six inches, because we can't get to the 32 feet.

22 Right now we have 31-1/2 feet. Their neighbor  
23 has, ironically has the space available for us because his  
24 building didn't go to the property line, but it hasn't worked  
25 out that we could acquire that property. So there's a very

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1 unique condition that makes it a practical difficulty to get  
2 to the 16.

3           So it is an IZ project for the four units, and  
4 it's an IZ -- and that just gets us to the special  
5 exception. For the variance, we need to make the variance  
6 argument, I understand. I'm not talking to the substance,  
7 because we haven't gotten into that.

8           But I don't know what other relief we would ask  
9 for. We've asked for the special exception and we're asking  
10 for the variance. If the counsel is saying it's impossible  
11 to do that, that's another story. We've done that in other  
12 cases. I don't know if anybody has received relief with a  
13 variance inside the 16 foot wide special exception. We  
14 applied for it once, and in the course of that application  
15 the next door lot came up for sale, and it all got squared  
16 away.

17           But in other cases, for instance, the 900 foot  
18 rule, that's a variance within a special exception. So it's  
19 conditions within the special exception. The condition here  
20 is the other 16 foot wide lot, and we're just asking for a  
21 variance within that condition. So I don't think this is  
22 that unusual of a -- and I think there's analogies for how  
23 this is done. Typically, we definitely have to make a  
24 special exception argument, and we have to make a variance  
25 argument within that if we're going to get to the -- if the

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1 one lot is going to be less than 16.

2 CHAIRPERSON HILL: Okay, all right. The only  
3 other thing I can think of, you guys, is we'll just have an  
4 emergency meeting to talk to counsel, to try to figure this  
5 out a little bit more. I don't know if you guys have any  
6 interest in that or if you've got some suggestions on how to  
7 move forward, Ms. John.

8 VICE CHAIR JOHN: So could I -- I have a question  
9 of Mr. Sullivan. So Mr. Sullivan, in the past cases that you  
10 refer to, are these -- some of these cases where the Board  
11 has approved a subdivision of a record lot for two IZ units,  
12 or right? The two lots not meeting the requirements with the  
13 condition that the IZ units are provided?

14 MR. SULLIVAN: Yes, that's correct.

15 VICE CHAIR JOHN: Okay. So I would be interested  
16 in seeing those cases, because sometimes just a slight change  
17 in the situation changes the whole equation.

18 MR. SULLIVAN: Yeah. We've done three of those  
19 where we've gotten 16, and this ANC as well has done at least  
20 one or two, and the IZ unit provided it in four units. This,  
21 the only difference in this case is that one of the lots  
22 doesn't get to 16 because of this six inch anomaly that we  
23 have yet to make an argument about.

24 VICE CHAIR JOHN: So I would be interested in  
25 seeing the ones that we have a record lot and we approved the

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1 subdivision based solely on the IZ, opting into IZ.

2 MR. SULLIVAN: Well, it's not solely on the IZ.  
3 It's the special exception. It's written into 201.4 and 5,  
4 50, 5026.2. That's why I'm a little confused that that's  
5 being challenged. That's right there in the regs. So if  
6 counsel, I mean if counsel's not aware of that, we'll make  
7 another argument about that I guess.

8 VICE CHAIR JOHN: Mr. Sullivan, it's not a  
9 question of challenging. It's a question of clarification.  
10 If you have those cases, I would like to see them. I have  
11 looked at some and they did not exactly mirror this  
12 situation, and so if you have them, please provide them.

13 MR. SULLIVAN: I don't have one with a variance  
14 within it, if that's the --

15 VICE CHAIR JOHN: No, I'm not interested in the  
16 variance within it. I'm interested in a record lot. I'm not  
17 interested underlying the tax lot, which has gone away. Now  
18 we have a record lot which can be developed, okay, and where  
19 it's been subdivided, okay, based on the IZ -- based on the  
20 IZ opt-in. That's all I'm looking for.

21 MR. SULLIVAN: We're not asking -- I mean whether  
22 it's a record lot or a tax lot or a parcel is not relevant.  
23 What we're asking for is what it will be in the future.

24 VICE CHAIR JOHN: Mr. Sullivan, I thought I was  
25 clear.

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1 CHAIRPERSON HILL: Okay. Just let me know, one  
2 second again. So Mr. Mordfin, I mean you guys are in denial  
3 of the area variance and so -- and then can you explain your  
4 report and if you can provide any clarity to this discussion?

5 MR. MORDFIN: Well, my understanding with the  
6 application is so they want this two lots. One of them is  
7 less than 16 feet wide, and if that gets approved the other  
8 one is 16 feet. But that is less than the minimum of 18  
9 feet. So that's kind of like it's backing into creating the  
10 16 foot wide lots.

11 So therefore they need two variances or a variance  
12 for each of the lots in order to create the two widths, and  
13 after that point, the special exception is necessary to  
14 create 16 foot wide lots assuming that the Board grants the  
15 lot widths, 16 feet and 15 point whatever it is. So that is  
16 our understanding of it, that you can't create a 16 foot wide  
17 lot by making the other portion of that lot some other width  
18 that is not conforming. It kind of backs into it.

19 And then if they want to provide an IZ unit they  
20 could. They don't need to provide an IZ unit for each lot.  
21 It's only when you get up to ten units then the rules change.  
22 So if they were opting into IZ with the two units, with the  
23 two lots rather, they would only have to provide one unit to  
24 conform to the special exception requirements, because  
25 there's only a total of four units that are proposed.

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1 CHAIRPERSON HILL: Okay, all right. I'm going to  
2 do an emergency meeting and talk to Legal, okay? So -- yeah  
3 go ahead, Mr. Sullivan.

4 MR. SULLIVAN: This might be in the province of  
5 the Zoning Administrator, and we could go to him and ask for  
6 clarification, if he'll write a memorandum directing us for  
7 a particular relief. I mean typically that's the way it  
8 would go, so we could do that if that would be helpful.

9 CHAIRPERSON HILL: Okay. Mr. Mordfin, you had  
10 your hand up?

11 MR. MORDFIN: I did ask the Zoning Administrator  
12 about this case, in terms of you know, what the variance does  
13 in order to create these two widths. He said that two  
14 variances would be required, one for each lot, to create the  
15 two widths as were -- as proposed.

16 CHAIRPERSON HILL: Okay. Ms. Nagelhout, do you  
17 need any questions from anybody before I do the emergency  
18 meeting and talk to you?

19 MS. NAGELHOUT: No thanks.

20 CHAIRPERSON HILL: Okay. Commissioner Wray, can  
21 you introduce yourself please?

22 MR. WRAY: Good morning everyone, afternoon now.  
23 Michael Wray, ANC1A.

24 CHAIRPERSON HILL: Okay. I don't mean to keep you  
25 around. Do you want to stick around or do you want to go?

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1 MR. WRAY: I'm only free until one o'clock, so  
2 I'll be around. But you know, I'll stick around as long as  
3 I can.

4 CHAIRPERSON HILL: All right, okay. Let's see  
5 what happens again. All right. As Chairperson of the Board  
6 of Adjustment of the District of Columbia, in accordance with  
7 407 of the District of Columbia Administrative Procedures  
8 Act, I move that the Board of Zoning Adjustment hold a closed  
9 meeting on February, oh I'm sorry, yeah, okay, February 16th,  
10 2022 for the purpose of seeking legal counsel on Case No.  
11 0631, but not deliberate upon it. Is there a second, Ms.  
12 John?

13 VICE CHAIR JOHN: Second.

14 CHAIRPERSON HILL: Motion was made and seconded.  
15 Mr. Moy, will you take a roll call? Ms. Wilson, I saw your  
16 hand up. I'll get to you in a second.

17 MR. MOY: When I call the names of the Board  
18 members, if you would please respond with a yes, no or  
19 abstain to the motion made by Chairman Hill to calling for  
20 an emergency meeting, an emergency closed meeting. The  
21 motion was made by the Chairman and it was second by the Vice  
22 -- by Vice Chair John. Zoning Commissioner Rob Miller?

23 COMMISSIONER MILLER: Yes.

24 MR. MOY: Mr. Smith?

25 MR. SMITH: Yes.

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1 MR. MOY: Mr. Blake?

2 MR. BLAKE: Yes.

3 MR. MOY: Vice Chair John?

4 VICE CHAIR JOHN: Yes.

5 MR. MOY: Chairman Hill?

6 CHAIRPERSON HILL: Yes.

7 MR. MOY: The motion carries on a vote of 5 to 0  
8 to 0.

9 CHAIRPERSON HILL: Okay, Ms. Wilson. You had a  
10 question.

11 MS. WILSON: Just a comment. After all this, you  
12 know, we are willing to postpone just to get some position  
13 on clarity from the Zoning Administrator, and I apologize for  
14 not jumping in earlier before you voted. But I know you have  
15 a long day, and so we are happy to postpone.

16 CHAIRPERSON HILL: Okay. All right, then I  
17 retract it. Oh forget it, I already made the motion. All  
18 right, so and I got the link. So we'll go fast, okay? So  
19 you guys leave me here. Let's leave here, let's go see  
20 counsel and then we'll come back, okay.

21 (Whereupon at 12:24 p.m., the above-entitled  
22 matter went off the record and resumed at 12:45 p.m.)

23 MR. MOY: The Board is back in its hearing session  
24 after a quick emergency closed meeting. The time now is at  
25 or about 12:45 p.m.

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1 CHAIRPERSON HILL: Okay, Ms. Wilson can you hear  
2 me?

3 MS. WILSON: Yes, I can.

4 CHAIRPERSON HILL: Okay. This is what I propose.  
5 You guys go talk with the Zoning Administrator, right? We  
6 think that you still are going to need relief from C-302 in  
7 order to get us back here, and but go ahead and talk to the  
8 Zoning Administrator, and then you can talk to the Office of  
9 Planning. Mr. Mordfin, are you there?

10 MR. MORDFIN: Yes, I am here.

11 CHAIRPERSON HILL: Got it. So if you can do this.  
12 This is what I'm proposing. We're going to come back here  
13 for a continued hearing on the 30th of March, okay, and then  
14 we're going to get you to submit whatever you need to submit  
15 to us, Ms. Wilson, by the 30th -- I'm sorry, by the 21st of  
16 March. And then OP if you can give us your report by the  
17 24th of March.

18 And then if the ANC -- I don't think Commissioner.  
19 Unfortunately, the relief -- you need a self-cert, and so the  
20 relief may change. So I don't think the project's going to  
21 change at all Commissioner, but if you can submit something  
22 into the record and you're comfortable with what is currently  
23 happening, that would be helpful for the Board.

24 MR. MORDFIN: Understood.

25 CHAIRPERSON HILL: Okay. So the dates again,

1 we're going to bring you back Ms. Wilson on the 30th. You're  
2 going to talk to the ZA. You're going to get us whatever we  
3 need as cleaned up as we can after figuring it all out on the  
4 21st of March, and then OP is going to give us a report on  
5 the 24th of March. Is that correct Mr. Moy?

6 MR. MOY: Yes sir.

7 CHAIRPERSON HILL: Okay. Ms. Wilson, have you got  
8 any questions?

9 MR. MOY: And really during -- and it's optional  
10 for the ANC, any time that they would want to submit before  
11 March 30th I'm assuming.

12 CHAIRPERSON HILL: Exactly.

13 MR. MOY: Thank you, sir.

14 CHAIRPERSON HILL: Okay. Okay, Ms. Wilson?

15 MS. WILSON: Yes, that's fine.

16 CHAIRPERSON HILL: Okay, great. All right. Then  
17 I'm going to close the hearing except for we're coming back  
18 on the 30th and excuse everyone. Thank you, bye. Okay. I  
19 definitely want to go have lunch, as I think you all do as  
20 well, and then Mr. Moy, if you can try -- and I've got to let  
21 everybody know. Apparently there's a lot of conflict at six  
22 o'clock that's happening with the Board.

23 So we may not get to all our cases today, and so  
24 those people that are listening, we're going to -- there's  
25 -- we're going to go here 20629 after lunch, and so Mr. Moy

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1 if you can reach out to the Applicant and let them know and  
2 all the parties involved, and then after that we're just  
3 going to go with the order that we have, okay?

4 All right. It is 12:50. Can we try to say 1:30?  
5 Is that fair? Okay. Let's actually give it a shot. Does  
6 anybody have any questions? Okay. See you at 1:30, bye-bye.

7 (Whereupon at 12:48 p.m., the above-entitled  
8 matter went off the record and resumed at 1:38 p.m.)

9 MR. MOY: All right. The Board is back in its  
10 public hearing session after a lunch recess, and the time is  
11 at or about 1:39 p.m. The next case application before the  
12 Board is Application No. 20629 of Jennifer May. This  
13 application is captured and advertised as relief requested  
14 from the special exceptions from the lot occupancy  
15 requirements, Subtitle E, Section 304.1, pursuant to Subtitle  
16 E, Section 5201 and Subtitle X, Section 902.1; rear yard  
17 requirements, Subtitle E, Section 5004.1(a), pursuant to  
18 Subtitle E, Section 5201 and Subtitle X, Section 902.1.

19 This would construct a two-story accessory garage  
20 with roof deck to an existing attached three-story with  
21 cellar principal dwelling unit in the RF-1 zone. The  
22 property is located at 745 10th Street, S.E., Square 950, Lot  
23 75. There's two preliminary matters. There is a request for  
24 party status by Robert and Margaret McCullough, as well as  
25 the Applicants have requested to waive the filing deadline

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1 to allow into the record a shadow study, and I think that's  
2 all for me, unless there's anything else the Applicant may  
3 wish to add for preliminary matters.

4 CHAIRPERSON HILL: Okay, thanks Mr. Moy. Mr.  
5 Sullivan, can you hear me?

6 MR. SULLIVAN: Yes, hi. Thank you, Mr. Chair.  
7 Marty Sullivan with Sullivan and Barros on behalf of the  
8 Applicant.

9 CHAIRPERSON HILL: Okay, great. Unless the Board  
10 has any issues, I would like to allow the shadow study into  
11 the record, because I would like to have a look at it. If  
12 anybody has an issue raise your hand.

13 Okay. If the staff would go ahead and put that  
14 into the record, that would be helpful. It looks like it  
15 might already be there, 35A as in apple. If it's different  
16 from that, if the staff could let me know. Otherwise, I'll  
17 assume that that's it. Ms. McCullough, can you hear me?

18 MS. McCULLOUGH: Yes, I can.

19 CHAIRPERSON HILL: Could you introduce yourself  
20 for the record please?

21 MS. McCULLOUGH: Margaret McCullough. My brother,  
22 Robert McCullough and I own the building adjacent to 745 10th  
23 Street. Our building is 747 10th Street, S.E.

24 CHAIRPERSON HILL: Right. Are you choosing to use  
25 your camera or not? I just want to know.

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1 MS. McCULLOUGH: Oh, I'm sorry.

2 CHAIRPERSON HILL: That's all right.

3 MS. McCULLOUGH: Here I am.

4 CHAIRPERSON HILL: Okay, great. Mr. McCullough,  
5 can you hear me?

6 MR. McCULLOUGH: Yes, I can.

7 CHAIRPERSON HILL: Would you introduce yourself  
8 for the record please?

9 MR. McCULLOUGH: I'm Robert McCullough, and my  
10 sister and I own the adjacent building at 747 10th Street.

11 CHAIRPERSON HILL: Okay. Are you choosing not to  
12 use your camera as well?

13 MR. McCULLOUGH: Yes. My sister is going to be  
14 speaking for us today for the most part.

15 CHAIRPERSON HILL: Okay, all right, okay. Let's  
16 see, all right. Umm, okay. Well let's see now. Mr.  
17 Sullivan, who is here with you? Is anybody here with you?

18 MR. SULLIVAN: So the architect is here, Mr.  
19 Santos, and Jennifer May, she'll be on. I think she's  
20 expecting to be on. She's the Applicant homeowner. I'll --  
21 oh, there she goes.

22 CHAIRPERSON HILL: Okay, great. All right. Well  
23 we'll see who we get to when we get to them, Mr. Sullivan.  
24 In terms of the party status, I saw the request to allow  
25 party status and their being the adjacent neighbor, I think

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1 that they meet the criteria in order for us to grant party  
2 status. So I'm going to go ahead and grant party status  
3 unless my fellow Board members have any issues with that.  
4 If so, if you could raise your hand?

5 All right. Mr. Sullivan, you don't have any issue  
6 with that, do you? You're shaking no for the record, okay.  
7 All right. So Ms. McCullough, we're going to go ahead and  
8 give you party status, and what that means is Mr. Sullivan  
9 will go -- I'm sorry, yeah. Mr. Sullivan will go ahead and  
10 present his case for his client as to why he believes they're  
11 meeting the standards with which we're supposed to analyze  
12 what's being requested.

13 You'll then have an opportunity to ask questions  
14 of Mr. Sullivan, and also then you'll have the same amount  
15 of time to present whatever your case is, and then Mr.  
16 Sullivan will have an opportunity to answer, ask questions  
17 of you. Then the Office of Planning will go ahead and give  
18 their report. Everyone will have a chance to ask questions  
19 of the Office of Planning.

20 Then we'll take any testimony from the public.  
21 Then you'll have an opportunity to ask questions of  
22 everybody, and then at the end, we'll have a small summary  
23 with you. It's not in the regulations, but I'd like everyone  
24 to have a little bit of the conclusion. Actually I'm sorry.  
25 Prior to that, Mr. Sullivan will have an opportunity to rebut

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1 anything that has been said.

2           You'll have an opportunity to ask any questions  
3 purely on those statements that were made in rebuttal, not  
4 rehashing your case. Just kind of like asking questions of  
5 the rebuttal, and then you'll give a little bit of a  
6 conclusion, Mr. Sullivan will get a conclusion and then we'll  
7 see where we get.

8           And so that's where we are right now. And by the  
9 way, we jumped you guys up because we're probably going to  
10 leave at six o'clock. Since there was more discussion for  
11 this case, I wanted to make sure that you guys got heard  
12 today. So that's why you guys got moved up. Mr. Sullivan,  
13 I'm going to put 15 minutes on the clock so I know where we  
14 are, and you can begin whenever you like.

15           Do you know if those shadow studies that are in  
16 35A are the ones that you're talking about, Mr. Sullivan?

17           MR. SULLIVAN: Yes, they are.

18           CHAIRPERSON HILL: You're nodding yes for the  
19 record. Okay, great.

20           MR. SULLIVAN: Yes.

21           CHAIRPERSON HILL: All right. So you can begin  
22 whenever you like.

23           MR. SULLIVAN: Thank you Mr. Chair, members of the  
24 Board. Marty Sullivan with Sullivan and Barros on behalf of  
25 the Applicant, Jennifer May. If we could have the PowerPoint

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1 ready please. So the relief being requested is to allow for  
2 the construction of an accessory building on a lot that has  
3 a principal dwelling.

4 Right now this is -- next slide, please. The  
5 property is located in the RF-1 zone. It's currently  
6 improved with a three-story one family row dwelling. The  
7 Applicant's proposing to construct an accessory building for  
8 incidental use. It's not a separate unit. An accessory  
9 building is proposed to be located within a portion of the  
10 required rear yard, and that's why we need the relief. The  
11 principal building has and will continue to have a lot  
12 occupancy of 48 percent.

13 The accessory building would take the total lot  
14 occupancy up to 70 percent. So we're asking for relief from  
15 the overall lot occupancy and asking for the relief from the  
16 requirement or restriction against having an accessory  
17 building in a required rear yard because it's going to be two  
18 feet, one inch into that required rear yard.

19 Next slide, please. We do enjoy the support of  
20 ANC6B as well as the Office of Planning. There are two  
21 letters of support, including the homeowner immediately to  
22 the north of the property and no objection from DDOT.

23 Next slide, please. I'll turn it over to Mr.  
24 Santos to get through the photos and the plans.

25 MR. SANTOS: Can everyone hear me?

1 CHAIRPERSON HILL: Yeah. Could you introduce  
2 yourself for the record, Mr. Santos?

3 MR. SANTOS: Sure. My name is Stephen Santos and  
4 I'm with GTM Architects, and I'm the architect for 745 10th  
5 Street, S.E.

6 CHAIRPERSON HILL: Okay, thank you.

7 MR. SANTOS: So the aerial is just showing the  
8 subject property, 745 10th Street. To the left is the large  
9 multi-family building of 747 10th Street and 743 10th Street.  
10 To the right is a single family attached row home.

11 Next slide. Next slide, please. These are just  
12 existing conditions of the rear of the property. So the left  
13 photo is of our client Jennifer May's property. To the left  
14 you can see an existing one-story detached structure and to  
15 the right is the 747 nine unit apartment building. To the  
16 right is an image of the alley and you can see a variety of  
17 different one and two-story detached accessory structures.

18 Next slide. This is a proposed rendering of the  
19 two-story detached accessory structure for 745 10th Street.

20 Next slide. This is the existing site plan. So  
21 as you can see, we have about 40 feet from the alley to the  
22 edge of the existing rear deck.

23 Next slide. And the proposed site plan would  
24 allow for about 17 foot 11 from the rear of the detached,  
25 proposed detached accessory structure to the edge of the

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1 existing rear deck, so for a total of 2'1 of the required  
2 rear yard relief, as well as ten percent additional lot  
3 coverage relief from the allowable 50 percent in the RF-1  
4 zone.

5           Next slide, next slide. These are just floor  
6 plans of the proposed structure. As you can see, it is not  
7 proposed as a separate unit which is purely for accessory use  
8 to their principal dwelling.

9           Next slide. Proposed front elevation of the two-  
10 story proposed detached structure facing to the alley.

11           Next slide. This is the right side elevation  
12 facing the nine unit apartment building at 747, which is  
13 south.

14           Next slide. Proposed rear elevation towards our  
15 client's property.

16           Next slide. And the left side elevation adjacent  
17 to the existing one-story detached garage at 743 10th Street.

18           Next slide. These are shadow studies of what  
19 would be allowed today as a matter of right.

20           Next slide. And these are shadow studies of the  
21 proposed relief. As you can see, we called out where the  
22 added shadow would be added, which is affecting 743 10th  
23 Street basically over their existing one-story structure, and  
24 we do have support from this neighbor. As you can see 747,  
25 the proposed structure doesn't affect them in any in terms

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1 of shadow. It just speaks to the orientation of the  
2 property.

3 Next slide. This is shadow studies aerial view  
4 from if you were looking from our client's property towards  
5 the rear of the proposed structure. As you can see, this  
6 would be as a matter of right the 747 building has shadow  
7 basically on towards the adjacent three lots. So when you  
8 add the proposed relief that we're requesting, which is in  
9 the next slide please, you can see that the shadow, the  
10 shadow of the proposed structure for the relief doesn't  
11 affect the shadow of any of these properties' rear yards,  
12 other than a little bit of the cover of the one-story  
13 detached structure that's already existing at 743, which we  
14 have called out on this, on this page.

15 Next slide. These are just blow-ups of the same  
16 shadow studies that you saw with the diagrams on the previous  
17 pages.

18 Next slide. Again another shadow study looking  
19 towards the right side elevation facing 747. You can see the  
20 orientation of the sun does not affect 747 in any way, affect  
21 743 over their existing one-story garage.

22 Next slide. And this is a shadow study of again  
23 showing the proposed relief and the existing conditions in  
24 the site, with the much larger building of 747, showing how  
25 it already casts a lot of shadow on the neighboring

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1 properties. That's it for our presentation.

2 MR. SULLIVAN: And if you could go to the next  
3 slide please, go through the special exception criteria. The  
4 general criteria we meet. This will be in harmony with the  
5 general purpose and intent of the zoning regulations and  
6 zoning maps, and will not tend to affect adversely the use  
7 of neighboring property. The property is in the RF-1 zone,  
8 which is intended for areas predominantly developed with row  
9 houses on small lots, which is what this is, and the zoning  
10 regulations specifically permit this special exception relief  
11 from the maximum lot occupancy and minimum rear yard  
12 requirements up to 70 percent.

13 The parking garage use is also permitted as a  
14 matter of right and is common on this block, as are accessory  
15 buildings on this block.

16 Next slide, please. The specific criteria, light  
17 and air, the accessory building is in an area consisting of  
18 significant shading already from taller trees, but mostly  
19 from the building to the south. The 747 building is a four  
20 story building that's significantly higher and in fact  
21 shadows most of the Applicant's rear yard most of the time  
22 as well, and so that's one of the reasons why she's proposing  
23 this space, specifically the outdoor rooftop space, to have  
24 some space that has some sunlight.

25 The adjacent property to the north has a one-story

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1 accessory building. Again, that neighbor is in support.  
2 Because this building is north of 747, there's no shadow  
3 impact on the 747 building of the McCullough's. And privacy,  
4 there will be no windows facing there, and I know that the  
5 neighbors at 747 have raised concerns about the roof deck  
6 because their tenants use their decks.

7           But that's, I mean that -- in that case privacy  
8 is rather reciprocal. They have a lot of people out on their  
9 decks, and those decks are in that location because that  
10 building is about 75 percent lot occupancy, and that's why  
11 they're so far back there. The alternative to this accessory  
12 building and extra space here would be to do an addition to  
13 the building, which I would think that 747 would have a much  
14 bigger issue with, because they have a court, an at risk  
15 court facing that direction, much like they did on the other  
16 side if you remember the case from last week, which could be  
17 blocked completely as a matter of right even without relief.

18           And so this is a better proposal for them we  
19 believe in all regards because the space is at the back of  
20 a lot, rather than blocking their four stories of windows.  
21 The accessory structure, together with the original building,  
22 viewed from the street or alley, does not visually intrude  
23 upon the character, scale and pattern. We showed some photos  
24 of some other two-story accessory buildings in the back  
25 alley.

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1           This does still have to go through HPRB. We don't  
2 have a staff report on that yet. But we will be going  
3 through HPRB review as well. And I believe that's it, yes.  
4 That's it for our presentation, so if there's any questions.

5           CHAIRPERSON HILL: Okay, thank you Mr. Sullivan.  
6 Does the Board have any questions of the Applicant? Mr.  
7 Blake.

8           BB Yeah, I had one question. I just wanted to  
9 clarify the dimensions of the accessory structure. To the  
10 extent that I see this picture, which is very different from  
11 the original renditions in the plans, the architectural  
12 plans, it shows the building and it actually says 22 feet in  
13 length, but the spiral staircase and everything is all coming  
14 in beyond the face of that building, the adjacent building.

15           Could you -- is that spiral staircase included in  
16 your 22 foot calc, and to the extent does that -- and just  
17 to be clear, these buildings do align with the building to  
18 the north and come inside of the 747. So let me be clear on  
19 that.

20           MR. SANTOS: Marty, do you want me to answer?

21           MR. SULLIVAN: Please.

22           MR. SANTOS: Okay. So the 22 foot 2 dimension  
23 does not include the spiral stair. The spiral stair itself  
24 is about an additional five feet, and I'm sorry what was your  
25 other question regarding if it aligned with the neighboring

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1 property?

2 MR. BLAKE: Yeah. I want to be clear if it did  
3 align with the neighboring property. Does the additional  
4 spiral staircase, does that impact your rear yard?

5 MR. SULLIVAN: No, that's actually calculated not  
6 in rear yard or lot occupancy.

7 MR. SANTOS: That's correct. When you say "align,"  
8 you're referring to 743 10th Street?

9 MR. BLAKE: 743, that's correct yes.

10 MR. SANTOS: So it does extend past that building.

11 MR. BLAKE: It extends past that -- I mean the  
12 staircase or the actually building?

13 MR. SANTOS: With the stairs, it does, it does  
14 protrude past the building at 743. Without it, it does not.

15 MR. BLAKE: Okay, thank you.

16 MR. SANTOS: Sure.

17 CHAIRPERSON HILL: All right. Does anyone else  
18 have any questions? Don't see anybody. Ms. McCullough, do  
19 you have any questions of the Applicant?

20 MS. McCULLOUGH: This is more of a use question  
21 for Mr. Sullivan. This isn't much applicable at this moment,  
22 but I just want to know, the Applicant indicated that she  
23 might use the accessory building to house her father when he  
24 visits, as well as sort of as an office. But I was just  
25 curious if there's anything that would be stopping the

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1 Applicant from using the space as an air B&B rental. Is this  
2 the time to talk about that or not?

3 MR. SULLIVAN: That would be really separate  
4 rules. I assume under -- I don't know, I don't know. I mean  
5 are there air B&B rules? If she could rent a room in her  
6 house, this would be treated the same way. Essentially it's  
7 just as use that's incidental to the use of the house, so  
8 it's like doing an addition to the house, except it's in the  
9 accessory building.

10 CHAIRPERSON HILL: I think the answer's probably  
11 yes Ms. McCullough.

12 MS. McCULLOUGH: Okay.

13 CHAIRPERSON HILL: And I, we don't know.

14 MS. McCULLOUGH: Yeah, okay.

15 CHAIRPERSON HILL: Any other questions?

16 MS. McCULLOUGH: Not right now, no.

17 CHAIRPERSON HILL: Okay, all right. Do want --  
18 do you want to do your -- I guess why don't you go ahead and  
19 give your presentation, Ms. McCullough?

20 MS. McCULLOUGH: Okay, sure. As mentioned  
21 previously, my brother and I are the owners of the nine unit  
22 multi-family building next door and 747 10th Street. Our  
23 family has rented below market, rent controlled apartments  
24 at 747 for the last 50 years, ever since our father purchased  
25 the building in 1971. I myself lived in one of the units for

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1 ten years.

2           We oppose the proposed project, 747 10th, because  
3 it will forever compromise the quality of housing available  
4 at our historic apartment building. The proposed new  
5 accessory building with roof deck will substantially visually  
6 intrude upon the character, scale and pattern of houses along  
7 the alley frontage, and the effect of the proposed project  
8 will unduly compromise our tenants' privacy and their use and  
9 enjoyment of their rear decks and the communal back yard.

10           The Applicant's proposal does not satisfy the  
11 requirements for special exceptions for the following  
12 reasons. First, I'll paraphrase from 5201.4, "The proposed  
13 accessory structure shall not substantially visually intrude  
14 upon the character, scale and pattern of houses along the  
15 alley frontage."

16           The accessory structure is visible from a public  
17 alley, because there is no accessory building to the south  
18 and a one-story accessory building to the north, the  
19 Applicant's proposed 22 foot high and 22 foot and 2 inch long  
20 accessory building will be visible from multiple angles. The  
21 Applicant also plan to put a massive 236 square foot deck on  
22 top. This too will be visible from multiple angles.

23           Of the dozens of garages and roof up garage doors  
24 in the alley, there are but five that are two-story. All the  
25 rest are one story. Not a single one has a roof deck. If

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1 Mr. Young can pull up an exhibit for me with an image? It's  
2 either 21 from the list or 23 from the file name. I'm not  
3 sure which one. It's the one that our party status request  
4 on page six.

5 CHAIRPERSON HILL: Mr. Young, I think it's 21.

6 MS. McCULLOUGH: Let's go to page six. Now this  
7 is an image of the alleyway. At the very bottom of it, it  
8 got cut off there, is the location of 745's yard. The brick  
9 one-story building you can see is 743's one-story accessory  
10 building. Just so you can see, it's a long block, the 700  
11 block of 10th Street, and right here you can see that it's  
12 just a sea of one-story garages. Those are houses fronting  
13 9th Street, G Street and 10th Street, and no decks there  
14 whatsoever.

15 So then the second reason, again I want to  
16 paraphrase from 5201.4, "The proposed accessory structure  
17 shall not have a substantially adverse effect on the use or  
18 enjoyment of any abutting or adjacent dwelling or property,  
19 specifically the privacy of use and enjoyment of neighboring  
20 properties shall not be unduly compromised."

21 The Applicant is proposing a 22 foot high wall  
22 along the entirety of our rear yard house to back. They also  
23 plan to put a massive 236 square foot roof deck on top. The  
24 roof deck and its spiral staircase would awkwardly abut our  
25 rear porches, and it would provide unobstructed views of all

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1 of our rear porches, our entire rear yard and straight into  
2 west-facing kitchen and bedroom windows.

3           There are six rear porches and a communal rear  
4 yard below. It is not clear how any of our tenants could  
5 feel comfortable enjoying their rear porches or the rear yard  
6 if there are people standing on an elevated roof deck right  
7 next door. Again, there are numerous garage accessory  
8 buildings in the alley. The vast majority are one story.  
9 Not a single one has a roof deck.

10           The Applicant actually just built a brand new deck  
11 in their backyard, so we don't see the need for a second new  
12 deck that dramatically affects the privacy of our building.  
13 Our tenants regularly enjoy meals, drink coffee, work on  
14 laptops and socialize on their rear decks. They also grow  
15 plants, herbs and vegetables and pots on their porches and  
16 in the rear yard below.

17           The rear yard has patio furniture, a fire pit,  
18 multiple planters and communal barbeques. These outdoor  
19 living spaces make our building an attractive place for  
20 people to live, especially these times when many people work  
21 from home and when a lot of public spaces have been off  
22 limits. Nine homes share this space, and their privacy and  
23 their use of enjoyment would, beyond a doubt, be unduly  
24 compromised by the proposed project.

25           If Mr. Young could go back to that same exhibit,



1 there are a few more images on pages 7 to 13, just to get a  
2 little visual of some of these common spaces. I think the  
3 next page just gives a quick image of all of the rear deck.  
4 So that's just the rear of the building. You can see there's  
5 six rear decks there for six different units on those three  
6 levels, and then you go to the next page.

7           That's the rear yard. People sit there, lots of  
8 space to hang out and socialize with friends, which we  
9 haven't been able to do indoors for a couple of years now.

10           The next page. That's just one of the rear decks  
11 facing towards the Applicant's property. That's the second  
12 floor rear deck. The Applicant's proposed accessory building  
13 would -- the height of it would reach somewhere between those  
14 two -- that's the second floor. So in between -- above the  
15 railing and the next level, halfway in there is sort of where  
16 the top of their parapet wall would hit.

17           Go on to the next page. This sort of focuses a  
18 little more on the first floor sitting area, looking up at  
19 the second floor, and you can see a kitchen window. That  
20 would be, you know, they'd see straight on in there.

21           Next one. That's a first floor sitting area. You  
22 can see the 743 one level accessory building in the  
23 background.

24           Now the next one. That would be the sitting area  
25 on the second floor. Again, sort of that post you see

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1 between the railing and the ceiling of that level, the  
2 parapet walls would hit about there. So people standing on  
3 it, their heads would be visible, would be visible to you  
4 right there.

5           The next one. I think the next is just -- yeah.  
6 That's just one more image of the deck. So going back to my  
7 testimony, the residents of the nine units of our apartment  
8 building have the same rights to privacy, use and enjoyment  
9 as all community members, and their status as tenants should  
10 not make them second class citizens of the neighborhood.

11           It's important to note that the Applicant did not  
12 share plans with us before filing with BZA. In fact, we only  
13 found out about them by chance four days before the party  
14 status filing deadline, because I stumbled upon the case in  
15 an ANC email update. I don't know why, but we did not  
16 receive our notice from the BZA.

17           The neighbor has since shown no willingness to  
18 discuss ways in which they could modify their plans to lessen  
19 the adverse effect on our property and this residence.  
20 There's been no interest in compromise on their part.  
21 There's only been an outward display of disdain for our  
22 building and its residents.

23           In that regard, I wanted to address and correct  
24 a few notions put forward by the Applicant. First, the  
25 Applicant keeps pointing out that our multi-family building

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1 occupies about 75 percent of its lot. This might be so, but  
2 it's occupied this lot in this manner for the last 110 years.  
3 It is certainly not a condition that has changed since the  
4 Applicant purchased her home less than three years ago.

5           Our building also contains nine units housing  
6 between 13 and 16 people. The Applicant seeks to build out  
7 to a full 70 percent for a single family consisting of two  
8 people. In a city that values and seeks to promote density,  
9 it makes little sense to punish or drive away the residents  
10 of multi-family homes in order to reward or appease the  
11 owners of single family homes.

12           Second, the Applicant has described our building  
13 as towering over theirs, while both buildings are in fact  
14 three stories tall. Our building just sits a few feet higher  
15 because it has a basement level, and again it contains nine  
16 homes, not one. Third, the Applicant has complained she  
17 currently has zero privacy, yet is trying to impose a  
18 solution that gives our residents zero privacy.

19           The argument that the privacy of both parties is  
20 equally compromised with the proposed roof deck is absurd,  
21 because there is no privacy issue if they do not build it.  
22 The Board has the power to stop this nonsense.

23           Third, the Applicant purports to have provided  
24 plans, photographs, elevations and section drawings  
25 sufficient to represent the relationship between the proposed

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1 accessory building to adjacent buildings. Yes, all of their  
2 elevations and 3D renderings depict our building as  
3 significantly larger than it is. It's unclear if this was  
4 intentional or just sloppy work. Regardless, it shows how  
5 little time or effort was spent looking at how the project  
6 might affect our building.

7           Lastly, Mr. Sullivan has asserted that the roof  
8 deck on the proposed project is a permitted use that is  
9 matter of right, and that he thought the Board will not touch  
10 it. However, the law states that the proposed accessory  
11 building shall not have substantially adverse effects on any  
12 abutting or adjacent dwelling or property. The accessory  
13 shelter as proposed would have a substantially adverse effect  
14 on our building, and all design elements of the proposed  
15 structure should indeed be considered in this case.

16           For Section 5201.5, the Board of Zoning Adjustment  
17 may require special treatment in the way of design,  
18 screening, exterior or interior lighting, building materials  
19 or other features for the protection of adjacent and nearby  
20 properties. We ask that the Board require that the design  
21 not include roof deck for the protection of the adjacent  
22 property.

23           Furthermore, it should be noted that an accessory  
24 building that houses apartments may not have a roof deck.  
25 The Applicant's plans and statement indicates that the

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1 accessory building will consist of living space considered  
2 to be incidental to the single family use in the principal  
3 dwelling. However, the proposed accessory building features  
4 a full bathroom, a refrigerator and a sink and a grill on the  
5 deck. Thus, all the elements of a studio apartment exist  
6 except for a stove.

7           The Applicant could easily add a stove or a hot  
8 plate and a microwave and have all the elements of a dwelling  
9 unit, which would prohibit the use of a roof deck or roof  
10 deck use. At the very least, should the Board approve this  
11 project, a condition should be added to the Board's order  
12 that the owner shall not convert the use to a dwelling unit  
13 unless the roof deck is removed. Also, no use or conversion  
14 to a dwelling unit shall be allowed for at least five years,  
15 and then only permitted by special exception at that time.

16           All that said, because the proposed accessory  
17 building with roof deck will substantially visually intrude  
18 upon the character, scale and pattern of houses along alley  
19 frontage, and because it would have a substantially adverse  
20 effect on our tenants' privacy and use and enjoyment of their  
21 outdoor spaces, we ask that the Board oppose the project.

22           Eight adjacent neighbors have submitted letters  
23 in opposition. The Applicant has only two letters in  
24 support. The ANC was evenly split. Only four supported  
25 while two opposed and two abstained. CHRS said that its

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1 support would be contingent upon support from adjacent  
2 neighbors, which they do not have. Please vote to oppose  
3 this project in its current iteration. It would make our  
4 tenants who are members of the community and shall equal  
5 rights under the law miserable. Thank you.

6 CHAIRPERSON HILL: Okay. Just real quick for the  
7 record, I'd also like -- we looked back at your notice  
8 requirements Ms. McCullough -- thanks for your presentation  
9 by the way, and I guess this was listed in the *D.C. Register*.  
10 The sign was posted on the building, and then I don't know  
11 why you didn't get it, but we looked and saw that you did --  
12 it was mailed to you.

13 MS. McCULLOUGH: Yeah, I looked up -- I saw that  
14 went through. I just whatever reason, it did not come  
15 through so --

16 CHAIRPERSON HILL: Okay, all right. So I mean I'm  
17 just stating for the record there's three ways that you're  
18 supposed to know and so, you know, at least thankfully you  
19 did somehow find a way to be here with us today. So I'm glad  
20 that that's the case. I'm going to turn to my fellow Board  
21 members if you have any questions. A couple of questions  
22 that I have, but one of them is that on the back of your  
23 building, the ones that you read, there are two units per  
24 floor; correct?

25 MS. McCULLOUGH: Yes, there are -- basically

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1 there's six above ground units, two per floor, and then three  
2 basement units that you can't really see there.

3 CHAIRPERSON HILL: So your tenants, the two --  
4 when they come out of their back door, they share that deck,  
5 right? Two tenants share that deck?

6 MS. McCULLOUGH: Yeah. It's a long thin one, so  
7 it's, you know, kind of assumed, but yeah.

8 CHAIRPERSON HILL: Right. But I'm saying they  
9 share that. They get one half and the other gets the other  
10 half.

11 MS. McCULLOUGH: Yeah, it's continuous in between.

12 CHAIRPERSON HILL: Okay, okay, great. Let's see.  
13 Oh good, and then you talked about the spiral stair. The  
14 spiral stair looks like it won't actually look into your  
15 property at all; correct?

16 MS. McCULLOUGH: That's not correct, because  
17 they're -- all the elevations they provided in the 3D  
18 drawings, our building's not of a correct scale. We --

19 CHAIRPERSON HILL: I can ask the architect,  
20 because I'm looking at the drawings, and it looks as though  
21 the spiral stair comes to the point, part of your building  
22 that has no windows, and so that's what I'm looking at. But  
23 I'm going to ask the architect --

24 MS. McCULLOUGH: Do you want me to clarify for one  
25 second, because (audio interference) information.

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1 CHAIRPERSON HILL: Okay. You can clarify what you  
2 think and then I guess he can tell me what he thinks.

3 MS. McCULLOUGH: Okay. The brick part of our  
4 building sits 30 feet past -- from the alley, approximately  
5 30 feet, and then we have a deck of eight to eight and a half  
6 feet-ish on that. So we're -- the deck edge is roughly  
7 around 22 feet from, from the alley. So if their accessory  
8 building is 22 feet and change, it should be stopping right  
9 around where our --

10 CHAIRPERSON HILL: Let me just stop you, Ms.  
11 McCullough. I need to ask Mr. Young to pull up this slide  
12 deck, and go to Slide 22.

13 I mean Mr. Santos can you hear me? And I know Mr.  
14 Young is pulling it up, but can you hear Mr. Santos?

15 MR. SANTOS: Yes.

16 CHAIRPERSON HILL: If you go to your slide deck  
17 and you go to Slide 22, is that not an accurate depiction of  
18 what you're proposing?

19 MR. SANTOS: Well, I mean we believe that the  
20 whole right side of our proposed structure will abut their  
21 existing decks, and the spiral stair will be behind their  
22 building.

23 CHAIRPERSON HILL: Got it, okay. So --

24 MR. SANTOS: As you can see in the depiction.

25 CHAIRPERSON HILL: Ms. McCullough, that's what I

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1 understand the design to be and you're saying you think it's  
2 different than that?

3 MS. McCULLOUGH: No I know. I mean yeah, if  
4 you're looking here. So do you see if you ignore the, our  
5 rear deck for a second, the edge of the wall there is 30 feet  
6 from the alley, the brick wall, our east -- or west-facing  
7 wall. So west-facing wall is 30 feet from the alley. So if  
8 their building is 22 feet and 2 inches, it's you know, around  
9 eight feet from our wall. Does that make sense?

10 CHAIRPERSON HILL: No. I'm trying to figure out  
11 whether or not that -- oh that's okay. I'll let, I'll let  
12 Mr. Santos explain to me, and I'm going to pull it up on a  
13 different drawing. So Mr. Santos -- if you can draw up that  
14 slide deck, Mr. Young? Okay. I'm going to start looking  
15 through the record on my own. That's okay. So Ms.  
16 McCullough -- oh sorry. Does the Board have any questions  
17 of Ms. McCullough? Mr. Blake?

18 MR. BLAKE: Yeah, Chair. You did talk about,  
19 speak to most of the questions that I had. The one thing I'd  
20 like to ask Ms. McCullough is what is the dimensions of your  
21 rear yard exactly?

22 MS. McCULLOUGH: It should be -- yeah, the rear  
23 yard should be, I mean approximately -- I know approximately  
24 22 feet deep and as wide as our building is, as wide as our  
25 lot is, which I don't know that number.

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1 MR. BLAKE: Does that, would that include your --  
2 the decks as well?

3 MS. McCULLOUGH: Yeah. The deck is about eight  
4 feet. So the brick building is 30 feet from the alley.

5 MR. BLAKE: Uh-huh.

6 MS. McCULLOUGH: So it's yeah. So I'm not sure --  
7 so without, the area without deck and without building is  
8 approximately 22 feet.

9 MR. BLAKE: Okay, 20, 22 feet. Okay, thank you.

10 CHAIRPERSON HILL: Okay. Now I can't find -- if  
11 somebody else on the Board can help me point it out. I mean  
12 Mr. Santos, I'm just trying to understand, and not that it  
13 necessarily matters a whole lot for my analysis, but I just  
14 want to make sure I understand, and maybe Mr. Sullivan you  
15 can clarify for me as well. Like it seems to me as those  
16 spiral stairs face a brick wall. Is that correct Mr. Santos?

17 MR. SANTOS: I believe that's correct, because if  
18 the Board looks at the photo that Ms. McCullough showed,  
19 you'll see that the rear face of their building aligns with  
20 743's existing one-story garage. If that's the case, then  
21 she's claiming that the one-story garage is 32 feet, and that  
22 is not the case, because our structure is longer than the  
23 existing structure at 743 and we're asking for a 22 foot 2  
24 inch deep building. So that's where we stand with that.

25 CHAIRPERSON HILL: Give me a second.

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1 MR. SANTOS: The other thing, other thing is if  
2 the building was indeed 30 feet from the alley, then it would  
3 meet the required rear yard of 20 feet and it doesn't,  
4 because it's at 75 percent lot occupancy.

5 CHAIRPERSON HILL: All right. I'm just going to  
6 keep searching.

7 VICE CHAIR JOHN: Mr. Chairman, if I could just  
8 say something. By my calculation, and I'm calculating -- if  
9 I'm the next person, then we need to really look at our  
10 expertise. But I'm calculating that if you factor in the  
11 deck, then the rear yard would be 22 feet not 30 feet,  
12 because you said the building was 30 feet from the alley, not  
13 including the deck. So if you count the deck, it's 38 feet.

14 CHAIRPERSON HILL: Sure Mr. Smith.

15 MR. SMITH: So just to give me some clarification  
16 of where I think the spiral staircase is hitting, I think  
17 it is definitely hitting that brick wall, and if you look at  
18 Exhibit 18 on page eight, it gives a perspective of the  
19 building, and you see that the --

20 CHAIRPERSON HILL: Which exhibit? I'm sorry,  
21 you're talking about 17A?

22 MR. SMITH: 18.

23 CHAIRPERSON HILL: 18's a letter.

24 MR. SMITH: Oh well sorry. I'm looking at the  
25 numbering here. 17A, sorry.

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1 CHAIRPERSON HILL: Okay, great. Thank you.  
2 Right, I got you. That's what I thought.

3 MR. SMITH: Yeah, so the staircase is beyond that  
4 brick wall. So as you can see --

5 CHAIRPERSON HILL: Ms. McCullough, I don't know  
6 why you're shaking your head. You can pull up the diagram  
7 if you want, you know.

8 MS. McCULLOUGH: The diagram is wrong.

9 CHAIRPERSON HILL: The plans are what the plans  
10 are.

11 MS. McCULLOUGH: Their elevations are incorrect.  
12 Our rear yard, not including decks is about 22 feet, meaning  
13 the edge of their accessory building, it stops at the corner  
14 of our yard.

15 CHAIRPERSON HILL: I just want to clarity. Mr.  
16 Young, can you pull up 17A as in apple? And I think this is  
17 really -- I don't even, you know, whether this is germane.

18 VICE CHAIR JOHN: Germane.

19 CHAIRPERSON HILL: But I just want to -- I just  
20 want to know I'm looking at the right thing. And if you go  
21 to Slide 6, I'm sorry, go to Slide 8.

22 VICE CHAIR JOHN: Actually Mr. Chairman, 9 is also  
23 a good slide that shows the relationship.

24 CHAIRPERSON HILL: Yep, yep, that's good. Mr.  
25 Santos, can you hear me?

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1 MR. SANTOS: Yes.

2 CHAIRPERSON HILL: So you believe this is the --  
3 this depiction is correct?

4 MR. SANTOS: That's correct.

5 CHAIRPERSON HILL: Okay, and if you go, Mr. Young,  
6 if you wouldn't mind going to Slide 6, thank you. Ms.  
7 McCullough this is what I believe is what's being proposed.  
8 Now how is that different from what you think is being  
9 proposed?

10 MS. McCULLOUGH: If you go two further, two slides  
11 further.

12 CHAIRPERSON HILL: Two slides further.

13 MR. SMITH: Slide 8?

14 CHAIRPERSON HILL: Slide 8?

15 MS. McCULLOUGH: Yeah. Okay. Basically where  
16 this brick portion ends here, that's actually -- where that  
17 ends on your left side, that's actually where our porch  
18 begins. So they've got our building like ten feet bigger  
19 than it is for --

20 CHAIRPERSON HILL: You're saying that that spiral  
21 staircase is now lining up with your decks?

22 MS. McCULLOUGH: Correct.

23 CHAIRPERSON HILL: All right, Mr. Santos. That's  
24 a big -- that's a big discrepancy, and so I don't know you  
25 know, who can point me out. Maybe the Office of Planning can

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1 help me out.

2 MR. SMITH: So just a question. You're basing  
3 that off of your own personal drawings?

4 MS. McCULLOUGH: No. I went with a tape measure  
5 from the alley to our brick, the brick wall they're building,  
6 which you see here. They've got looks like it's about two  
7 feet overlapping. Our brick building is 30 feet from where,  
8 you know, their building starts on the alley. So I started  
9 measuring from there to where our building starts, it's 30  
10 feet.

11 MR. SMITH: Did you find a pin?

12 MS. McCULLOUGH: I'm sorry?

13 MR. SMITH: Did you find a pin to measure from  
14 when --

15 MS. McCULLOUGH: The alleyway is kind of where all  
16 the garage spaces start.

17 MR. SMITH: That doesn't necessarily mean it's  
18 your property line.

19 MS. McCULLOUGH: Well, I mean I wasn't doing it  
20 to the like millimeter.

21 MR. SMITH: Okay. That was my only question. So  
22 this is an inexact science that you're, that you're --

23 MS. McCULLOUGH: Right. So I'm just saying this  
24 is like ten feet different, which is very substantial.

25 MR. SMITH: Okay.

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1 MS. McCULLOUGH: And again, it may not that  
2 germane to what we're talking about honestly, but it's just  
3 -- I don't know. It's disturbing --

4 CHAIRPERSON HILL: Well the reason why it matters  
5 to me Ms. McCullough, and this is what I'm trying to get at,  
6 is if you go, you know, there's a difference between if you  
7 look at, and I don't know who can help me clarify this, but  
8 what is it? Mr. Young if you go to Slide 6 again please?  
9 I don't see how -- like right now, all of your tenants are  
10 looking at a brick wall, right, as opposed to -- I understand  
11 there's a roof deck there, as opposed to a spiral stair, and  
12 I think there's a big difference, and so that's why I'm  
13 confused.

14 MS. McCULLOUGH: No, I believe it will be the  
15 spiral stair. I'm pretty confident. I am confident.

16 CHAIRPERSON HILL: I don't see how that's  
17 possible. The architect right here is telling me that it's  
18 not, and so --

19 MS. MAY: This is the homeowner. Is there -- I  
20 have one of the slides that I have, and I don't know what  
21 page it might be, maybe one or two, maybe closer to two.  
22 There's like the layout of my lot, which shows that the back  
23 of my house is 40 feet from the alley. Is that in the slides  
24 that you have?

25 CHAIRPERSON HILL: Yeah, I see. It's a 40 foot,

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1 one and a quarter?

2 MS. MAY: Right. So I don't think that the 30  
3 feet is accurate, because their building definitely goes more  
4 than ten feet past my back, the back of my wall.

5 CHAIRPERSON HILL: All right. Mr. Santos, you're  
6 the architect, and so you're telling me that this Slide No.  
7 6 is accurate; correct Mr. Santos?

8 MR. SANTOS: Well, it's accurate based on what we  
9 currently are using with plat and everything. Unfortunately  
10 I did not access 747 to, you know, accurately dimension how  
11 deep their decks are. But you know, we're going off of the  
12 surveyor's plat. So that's all we have right now at this  
13 time.

14 CHAIRPERSON HILL: Okay, gotcha. All right, okay  
15 thanks. Mr. Young, you can drop the slides. Ms. McCullough,  
16 give me a second. You'll get a chance to ask your question.  
17 Okay, so let's see. Any other questions for Ms. McCullough  
18 from the Board?

19 MR. SMITH: No questions.

20 CHAIRPERSON HILL: All right. Mr. Sullivan, do  
21 you have any questions of Ms. McCullough?

22 MR. SULLIVAN: Yeah I do, thank you. Ms.  
23 McCullough, you mentioned that the primary concern for you  
24 is that your tenants will be enjoying their outdoor space on  
25 their multiple decks and how important that outdoor space is,

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1 but the objection is that they'll have to see a neighbor  
2 doing the same thing, enjoying outdoor space at the same  
3 time?

4 MS. McCULLOUGH: That they'll just lose privacy.  
5 If people are staying on that roof deck, they can look at --  
6 yeah, they'll lose their privacy.

7 MR. SULLIVAN: So a neighbor that's outside  
8 shouldn't be able to look at and see your tenants enjoying  
9 their outdoor space? That's a problem for your nine tenants,  
10 that a neighbor could also have outdoor space?

11 MS. McCULLOUGH: The fact that this proposed  
12 building was, unduly affects our privacy, it would unduly  
13 affect our privacy.

14 MR. SULLIVAN: Okay. You mentioned that there  
15 were opposition letters from eight adjacent neighbors? Where  
16 do those neighbors live?

17 MS. McCULLOUGH: 747 10th Street, S.E.

18 MR. SULLIVAN: Okay, so they're all your tenants?

19 MS. McCULLOUGH: Yeah.

20 MR. SULLIVAN: And you showed photos of the alley  
21 going north, pointing out that there were no two-story  
22 accessory buildings. Did you happen to have any photos to  
23 the south?

24 MS. McCULLOUGH: I mean I said that there were  
25 five, there were five dozen that are two-story.

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1 MR. SULLIVAN: Okay, so there's five. Okay. No  
2 further questions, thank you.

3 CHAIRPERSON HILL: Okay. Thanks, Mr. Sullivan.  
4 I'm going to turn to the Office of Planning.

5 MS. THOMAS: Yes. Good afternoon Mr. Chair,  
6 members of the Board, Karen Thomas with the Office of  
7 Planning. Coming straight in, we all know what this project  
8 is about, the direct light and air available to neighboring  
9 properties. The light to the abutting row house neighbor at  
10 No. 743 should not be unduly impacted, since that property  
11 has one-story garage structure and shadowing of the proposed  
12 garage should fall primarily on the roof of that structure.

13 Due to the orientation of the square and property,  
14 light and air to the apartment building to the south should  
15 not be duly impacted. Since the impacted rear yards of  
16 neighbors fronting 9th Street across the alley should be  
17 undue since there's a 30 foot wide alley separation, and  
18 existing rear brick garages between properties fronting 9th  
19 and 10th Street.

20 With respect to the privacy of use and enjoyment  
21 of neighboring properties, we also concluded that that should  
22 not be unduly compromised as the two-story accessory  
23 structure would be primarily used for storage and office use,  
24 accessory use for the resident of the main building, and it's  
25 for private recreation purposes.

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1           The deck above the roof will be for the most part  
2 enclosed with a 4 feet, with a 3 foot 10 inch brick parapet.  
3 There are no windows facing the abutting properties, and the  
4 proposed windows facing the alley would not provide immediate  
5 view of the homes fronting on 9th Street, S.E. The proposed  
6 accessory structure would not be visible from the front of  
7 the home, but would be visible along the 30 foot wide alley.  
8 Many of the other lots also have accessory buildings,  
9 including some with two stories.

10           The design and the materials of the proposed  
11 building would be similar to other accessory structures along  
12 the alley. With that, the accessory structure would  
13 accommodate uses anticipated in the residential zone, and its  
14 addition to the property does not exceed the bulk and use  
15 requirement. As such, granting the relief would be in  
16 harmony with the intent of the regulations, and I will  
17 conclude here.

18           CHAIRPERSON HILL: Okay, thank you Ms. Thomas.  
19 Does the Board have any questions of the Office of Planning?  
20 No? Mr. Sullivan, do you have any questions of the Office  
21 of Planning?

22           MR. SULLIVAN: No, thank you.

23           CHAIRPERSON HILL: Ms. McCullough, do you have any  
24 questions of the Office of Planning?

25           MS. McCULLOUGH: No.

1 CHAIRPERSON HILL: All right. Let's see. Mr.  
2 Young, is there anyone here who wishes to testify?

3 MR. YOUNG: They do not.

4 CHAIRPERSON HILL: Okay. Mr. Sullivan, is there  
5 anything you want to do in rebuttal?

6 MR. SULLIVAN: No, thank you.

7 CHAIRPERSON HILL: Okay. Ms. McCullough, you want  
8 to give a little bit of a conclusion?

9 MS. McCULLOUGH: Yeah. I guess we left things --  
10 I do want to -- the spiral staircase will be alongside our,  
11 visible from our porches. If you did look back at -- I don't  
12 want to go back into all this, but if you did look at their  
13 original Exhibit 7, this is why I went there with a tape  
14 measure. You can see that the structure they have it was two  
15 feet shorter, is well on the other side of our building and  
16 they made it two feet bigger and suddenly it moved ten feet.

17 So that was why I went there with a tape measure  
18 in the first place, and --

19 CHAIRPERSON HILL: Which exhibit were you talking  
20 about, Ms. McCullough?

21 MS. McCULLOUGH: Exhibit 7.

22 CHAIRPERSON HILL: All right. Exhibit 7 are  
23 letters.

24 MS. McCULLOUGH: Oh well, it's whatever the first  
25 plan was.

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1 VICE CHAIR JOHN: It might have been 17A, Slide  
2 7 or something.

3 MR. SMITH: She was saying 8.

4 VICE CHAIR JOHN: 8.

5 MR. SMITH: The plan that was superseded.

6 CHAIRPERSON HILL: Right. So there's the new  
7 plan. So that might, and I guess I see what you're saying,  
8 Ms. McCullough now, in terms of Slide 3, how that's different  
9 and --

10 MS. McCULLOUGH: Right, because I knew that -- the  
11 reason I went out with a tape measure is because I saw that  
12 the new one was two feet bigger, but suddenly it jumped ten  
13 feet on other drawings. So --

14 CHAIRPERSON HILL: Ms. Thomas --

15 MS. McCULLOUGH: Something about the scale of the  
16 first makes more sense than the scale of the second.

17 CHAIRPERSON HILL: Ms. Thomas, I don't know if you  
18 can help me with this at all. Do you know if that spiral  
19 stair is actually up against the brick wall?

20 MS. THOMAS: From our review, the spiral staircase  
21 is up against the brick wall.

22 CHAIRPERSON HILL: Okay, great.

23 MS. THOMAS: I can only state that (audio  
24 interference) apparently so. Yes, it's against the brick  
25 wall.

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1 CHAIRPERSON HILL: Okay, great. Thank you. All  
2 right, okay. Ms. McCullough, do you want to add -- I'm  
3 sorry, do you want to give a conclusion?

4 MS. McCULLOUGH: Just again that they -- the  
5 Applicant has not satisfied the requirements for the special  
6 exception for the reasons I stated.

7 CHAIRPERSON HILL: Okay.

8 MS. McCULLOUGH: It unduly compromises our privacy  
9 with the roof deck.

10 CHAIRPERSON HILL: Mr. Sullivan, do you have a  
11 conclusion?

12 MR. SULLIVAN: Yes. Thank you Mr. Chair and  
13 members of the Board. Regarding the special exception  
14 criteria, the application does meet that criteria. Of  
15 course, with light and air, this building is to the north.  
16 So there's no impact on the shadow and light and air.  
17 Regarding privacy, it seems to me like the argument is  
18 because that building was already there and because those  
19 decks happen to be in that location at the very back of the  
20 yard, that any outdoor use by Ms. May would infringe on their  
21 privacy.

22 These are row house districts. It just seems odd  
23 to say that we use this space, we love this space, it's so  
24 important during the pandemic, and therefore my neighbor  
25 shouldn't be able to use that space, my single family home

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1 neighbor, one person. Regarding the stair, there's obviously  
2 some confusion there. I would offer to clarify that for the  
3 Board if they wanted.

4 I don't think it's material to the issue of  
5 privacy or light and air. It's a stairway where a person  
6 would go up and down the stairway and it wouldn't change  
7 anything about that. It also doesn't have anything to do  
8 with the size of the building, which is what the relief is  
9 for. And so there's nothing about the size of the building.  
10 If the building was smaller, the privacy issue wouldn't be  
11 any different either. There would still be somebody on the  
12 roof deck, and so it doesn't really relate to the relief  
13 either.

14 As far as character, scale and pattern, as Ms.  
15 McCullough mentioned, there's five other buildings not  
16 necessarily that has to be other buildings in order for it  
17 to be compatible. We think it would be compatible anyway,  
18 but two-story buildings were within the height, and these  
19 kind of buildings are approved regularly in the Capitol Hill  
20 area.

21 And I think that's, that's all I have. The only  
22 neighbor that could possibly be impacted by a little bit of  
23 shadow that's cast is to the north, and they're in support.  
24 Thank you, Mr. Chair.

25 CHAIRPERSON HILL: Okay, all right. I'm going to

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1 go ahead and close the hearing and the record. Thank you all  
2 very much for your testimony. Okay. Are you all ready to  
3 talk about this? Okay. I can start. It's again  
4 disappointing that this is something that's affecting the  
5 same property that was here last week again, and again you  
6 know, we're having this discussion.

7 I mean you know, I think that the Applicant has  
8 made their case. I think that the -- in terms of the light  
9 and air, I think that again the shadowing is to 743 that the  
10 Office of Planning has proposed, and then what you've got to  
11 get into is I suppose more of a privacy issue, wherein I  
12 think the fact that -- again as I said, there's a wall there  
13 with no windows creates, you know, there's not a privacy  
14 issue or privacy effect.

15 The roof deck, in terms of that, there is a  
16 parapet wall that when people are sitting down, they're not  
17 going to see -- you're not going to really be intruding on  
18 that deck. And then also the deck itself, the people in  
19 opposition's deck they share that deck. Like they're already  
20 sharing that deck with another neighbor.

21 So it's basically like, you know, you have another  
22 neighbor there that you're sharing the sight lines with, and  
23 as we know, there's nothing in the regulations that a view  
24 is something which you're not entitled to. You're not  
25 entitled to a view, right. So that's something that we've

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1 had to kind of come to terms with.

2           In terms of, you know, the regulations, again I  
3 just think that they meet the criteria, and I'm going to  
4 agree with what has been put forth from the Office of  
5 Planning if I'm looking at their report, and then also that  
6 of the ANC, and that they did vote in favor, although it was  
7 I guess a split. They did vote in favor of his application.

8           And I guess, you know, we keep talking about the  
9 building. It's a unique building because it was there  
10 before, you know, you would never be able to again build  
11 something like that right now at this time, right? And I  
12 think that the fact that I think that the light and air and  
13 privacy is not being unduly compromised or affected by this  
14 project, I would be able to vote in support.

15           Again I guess even, you know, what this now is  
16 precluding, you know, I don't know whether the Applicant had  
17 actually thought about it, but had they built out their  
18 existing building far back to block that light well, that is  
19 the other light well that's on the other side of the  
20 building, that might be something that would be more  
21 detrimental to that apartment building.

22           That apartment building, now that this is being  
23 built, they won't be able to ever block that light well  
24 unless they tear this down or something else happens, I don't  
25 know. But so I do think they're meeting the criteria. I do

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1 think they've met their burden of proof, and I'm going to be  
2 voting in support. I'm going to go around the table and ask  
3 for further elaboration if anyone has some. Mr. Smith?

4 MR. SMITH: I don't have too much to add, Chairman  
5 Hill. I agree with your analysis. I do believe that the  
6 Applicant has met the burden of proof for us to be able to  
7 grant the special exception, and you know, just looking at  
8 the OP staff report, which I give great weight to, all of the  
9 criteria for us to analyze this from a special exception  
10 standpoint they have met.

11 It seems to me that, you know, I agree with you.  
12 It is, it is difficult that this apartment building is the  
13 party in opposition, they affected it twice. They were  
14 affected last week, they're affected this week. In this  
15 particular case, I don't see the level of impact that was  
16 occurring last time, by this last case last week, which was  
17 a much bigger addition.

18 Again, the opposition is saying this is more about  
19 an issue of privacy and you've already touched on nobody's  
20 entitled to it. This is a large property. The property to  
21 the south is a large apartment building that probably  
22 wouldn't be built under these current regulations, and they  
23 have large rear decks. This is -- in this area of the city,  
24 it's very dense and, you know, everybody's looking now,  
25 especially in this time of COVID, for some form of outdoor

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1 passive recreational space.

2           And I believe that this passive recreational space  
3 would be no different than the decks on the property owner  
4 to the south. You know, you can make a case that even those  
5 decks may affect the privacy of the surrounding properties  
6 because it is the largest deck and highest set of decks  
7 within the square. So I don't think that this is outside of  
8 the norm of what could potentially happen in this area of the  
9 City.

10           So I do believe that what is proposed is within  
11 character, and I will support the application.

12           CHAIRPERSON HILL: Thank you Mr. Smith.  
13 Commissioner Miller.

14           COMMISSIONER MILLER: Thank you, Mr. Chairman.  
15 I support the comments of my colleagues who have spoken thus  
16 far in support of this project, and concur with the analysis  
17 of the Office of Planning and the ANC in support of this  
18 project. So I'm prepared to move forward, Mr. Chairman.

19           CHAIRPERSON HILL: Thank you, Commissioned. Vice  
20 Chair John.

21           VICE CHAIR JOHN: Thank you Chairman Hill. I am  
22 in support of the application. I agree with all of the  
23 comments so far, and I will give great weight to the analysis  
24 and the recommendations of the Office of Planning, and so I'm  
25 in support.

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1 CHAIRPERSON HILL: Thank you. Mr. Blake.

2 MR. BLAKE: Yeah. I too am in support of the  
3 application. The one thing I'm concerned about is the  
4 discrepancy of measurements, because that -- to the extent  
5 there is some privacy intrusion, the ability to mitigate that  
6 is difficult to figure out based on the lack of consistency.  
7 That said, the private wall will provide some type of, you  
8 know, separation and I'm going to leave it at that. I will  
9 be prepared to support.

10 CHAIRPERSON HILL: Okay, thank you. I'm going to  
11 make a motion to approve Application No. 20629 as captioned  
12 and read by the Secretary and ask for a second Ms. John?

13 VICE CHAIR JOHN: Second.

14 CHAIRPERSON HILL: Motion made and seconded. Mr.  
15 Moy, could you take a roll call?

16 MR. MOY: When I call your names, if you would  
17 each respond with a yes, no or abstain to the motion made by  
18 Chairman Hill to approve the application for the relief  
19 requested. The motion to approve was second by Vice Chair  
20 John. Zoning Commissioner Rob Miller?

21 COMMISSIONER MILLER: Yes.

22 MR. MOY: Mr. Smith?

23 MR. SMITH: Yes.

24 MR. MOY: Mr. Blake?

25 MR. BLAKE: Yes.

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1 MR. MOY: Vice Chair John?

2 VICE CHAIR JOHN: Yes.

3 MR. MOY: And Chairman Hill?

4 CHAIRPERSON HILL: Yes.

5 MR. MOY: The staff would record the vote as 5 to  
6 0 to 0 and this is on the motion made by Chairman Hill to  
7 approve. The motion to approve was second by Vice Chair  
8 John. Also in support of the motion to approve Zoning  
9 Commissioner Rob Miller, Mr. Smith, Mr. Blake and of course  
10 Vice Chair John and Chairman Hill. The motion carries on a  
11 vote of 5 to 0 to 0.

12 CHAIRPERSON HILL: All right. Thanks, Mr. Moy.  
13 Commissioner Miller, are we losing you?

14 COMMISSIONER MILLER: Unfortunately -- well, not  
15 unfortunately, but yes, you are losing me, I'm sorry.

16 CHAIRPERSON HILL: Okay. Bye Commissioner. Thank  
17 you for your time today.

18 COMMISSIONER MILLER: Okay, thank you. Good luck.

19 CHAIRPERSON HILL: Thank you. Mr. Moy, you can  
20 call our next one when you get a chance.

21 MR. MOY: This would be Case Application No. 18-  
22 404A, as in Alpha of Cheney Enterprises, PC and Monumental  
23 Concrete, LLC. This was captioned and advertised as a  
24 modification of significance to allow a special exception  
25 from the matter of right uses of Subtitle U, Section 801,

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1 Subtitle U, Section 802.1(f).

2           This would modify Condition No. 1 of the Board of  
3 Zoning Adjustment Order No. 18404 that was effective, that  
4 has an effective date of October 12th, 2012, to extend for  
5 a period of ten years the approval to allow a concrete  
6 manufacturing facility in the PDR-3 zone. The property is  
7 located at 3 D.C. Village Lane, S.W., Square 6264 and it's  
8 been confirmed that the lot number is 802.

9           And I believe -- I believe the only preliminary  
10 matter here, Mr. Chairman, is the -- I believe the Applicant  
11 is requesting a expert status witness to one Mr. Maiden for  
12 architecture, and Ms. McCullum for expert in the concrete  
13 industry profession let's say.

14           CHAIRPERSON HILL: All right, Mr. Rachal, are you  
15 there? Mr. Young, do you have the other people?

16           MR. RACHAL: Mr. Chairman?

17           CHAIRPERSON HILL: Yes.

18           MR. RACHAL: With me is Vice President Rebecca  
19 McCullum, and Mr. Bill Maiden.

20           CHAIRPERSON HILL: Okay, Mr. Rachal, can you  
21 introduce yourself for the record, because I can't see you.  
22 I can hear you, which is fine.

23           MR. RACHAL: Let's see.

24           CHAIRPERSON HILL: That's all right, Mr. Rachal.  
25 Go ahead and introduce yourself for the record.

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1 MR. RACHAL: For the record I'm Anthony Rachal,  
2 counsel for the co-applicants Cheney Enterprises, PC and  
3 Monumental Concrete, LLC.

4 CHAIRPERSON HILL: Okay. Mr. Rachal, we have a  
5 pretty long day still ahead of us. I'm trying to get through  
6 as many cases as possible. I don't have a lot of questions  
7 for you per se. I do have one question, which is what is  
8 going on with the ANC? I see there was communication but not  
9 a letter.

10 MR. RACHAL: There was the transmittal of the  
11 application to the ANC. Mr. Jones, the president of  
12 Monumental Concrete, had a conversation with the  
13 representative for the ANC. Previously Mr. Chairman, the ANC  
14 had voted in favor of the original application under BZA  
15 Order 18404. Given that there are no changes with regard to  
16 what's proposed under the modification of significance, it's  
17 likely that they saw no need to comment on an application  
18 that was not changing the circumstances or conditions, other  
19 than the renewal or extension for a ten year period.

20 CHAIRPERSON HILL: Okay. So you're trying to get  
21 a ten year term; is that correct?

22 MR. RACHAL: Yes, Mr. Chairman. We received a  
23 lease extension from the District of Columbia Government for  
24 the additional period of time under a third amendment, and  
25 this would run to the end of that lease.

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1 CHAIRPERSON HILL: It would run to the end of that  
2 lease?

3 MR. RACHAL: Yes, correct.

4 CHAIRPERSON HILL: Okay, okay. I'm going to turn  
5 to the Office of Planning. Mr. Jesick.

6 MR. JESICK: Good afternoon Mr. Chairman and  
7 members of the Board. This case is actually Mr.  
8 Kirschenbaum. If Mr. Young could admit Mr. Kirschenbaum as  
9 a panelist. Thank you.

10 MR. KIRSCHENBAUM: Yes, good afternoon. I'm  
11 Jonathan Kirschenbaum with the Office of Planning. We  
12 recommend approval and we rest on our staff report. Please  
13 let me know if you have any questions. Thank you.

14 CHAIRPERSON HILL: Okay. Does the Board have any  
15 questions for either the Applicant or the Office of Planning,  
16 and if so raise your hand? Mr. Young, is there anywhere here  
17 who wishes to speak?

18 MR. YOUNG: They do not.

19 CHAIRPERSON HILL: Okay. Mr. Archa, oh Rachal,  
20 Rachal. MR. RACHAL: Yes.

21 CHAIRPERSON HILL: Do you have anything to add at  
22 the end?

23 MR. RACHAL: Just briefly, Mr. Chairman.  
24 Monumental Concrete has done a number of things that have  
25 improved the site for the benefit of the District of

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1 Columbia. Mrs. McCullum is here to testify to that. It  
2 would be very brief, to discuss one, the amount of monetary  
3 investment they've made to improve the site, both in terms  
4 of its actual physical condition as well as the environmental  
5 condition.

6 CHAIRPERSON HILL: Okay, go ahead, go ahead.

7 MS. McCULLUM: Okay, good afternoon. I really  
8 just wanted to let you guys know that with regard to site  
9 improvements, we've spent over half a million dollars in the  
10 last year on a new water system that would allow us to  
11 recycle water runoff from the site, and just from various  
12 uses. But anyway, it's a new water system that takes the  
13 solids out.

14 Now we're able to recycle that and put it back  
15 into the concrete, which has cut our City water usage by a  
16 third. We did multiple just site improvements, the parking  
17 lot and various areas around the plant. The other thing I  
18 just wanted to mention is we have, over the ten years that  
19 we've been in business, we have employed 34 D.C. residents,  
20 and again we're a small company. We don't typically have  
21 more than 32 employees at a time, but we do big work.

22 So we were the supplier for or are currently the  
23 supplier for the new Frederick Douglass Memorial Bridge,  
24 which did just recently win the ACI Award for slag and for  
25 structure project of the year. Slag is a byproduct of steel,

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1 and we were able to incorporate that into the mixes for that  
2 major infrastructure project in D.C., and that project will  
3 win project of the year or the Project of the Year award for  
4 that.

5           We recruit locally, we run ads in the *Washington*  
6 *Informer*. We participate with Job Corps, which happens to  
7 be right down the street from where we are, and we also  
8 support the Fire Department when they need concrete for their  
9 breaching drills. So basically they have to teach their  
10 cadets over there, their trainees how to breach concrete in  
11 the event of a collapse or something of that nature.

12           So anyway, I really just wanted to, you know, show  
13 appreciation for being able to be there at D.C. Village Lane,  
14 and let you guys know what we are contributing back to the  
15 community there in Ward 8.

16           CHAIRPERSON HILL: Thank you. I'm sorry, could  
17 you introduce yourself for the record again?

18           MS. McCULLUM: I apologize. Rebecca McCullum,  
19 Executive Vice President of Monumental Concrete.

20           CHAIRPERSON HILL: Okay, Ms. McCullum. I mean I  
21 -- thank you for your testimony, and really I'm glad that we  
22 had an opportunity to kind of hear from you. We're trying  
23 to get as many things as we can get done today, and this is  
24 -- your is a relatively straightforward I believe case. But  
25 it is wonderful all the things you're doing for the City, and

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1 I congratulate you on all those and wish you the best moving  
2 forward.

3 MS. McCULLUM: Great, thank you.

4 MR. RACHAL: Thank you, Chairman Hill. We would  
5 rest on our submissions, and the previous grant with regard  
6 to the special exception, and that we satisfy all the  
7 requirements and are providing benefits to the City as a  
8 result.

9 CHAIRPERSON HILL: Okay, great. Thank you, Mr.  
10 Rachal. All right. I'm going to go ahead and close the  
11 hearing and the record. If you can please excuse everyone,  
12 Mr. Young.

13 I really don't have any issue with the  
14 application. I mean the ten years is justified. I think  
15 that all the improvements that they've made already to the  
16 property, as well as the fact that the District's contract  
17 is running the length of this extension makes sense to me in  
18 terms of the time get up at the same manner. The ANC,  
19 previous ANC had been in support of this and have been  
20 notified, so I assume that's why they're not submitting  
21 anything from us or from them. I would agree with the  
22 analysis that the Office of Planning has given us in terms  
23 of this application.

24 So I'm going to be voting in favor. May I go  
25 ahead and have you give me any other feedback, Mr. Smith?

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1 MR. SMITH: No feedback. I agree with you and the  
2 Office of Planning in support.

3 CHAIRPERSON HILL: Thank you. Vice Chair John?

4 VICE CHAIR JOHN: I have nothing to add, Chairman  
5 Hill.

6 CHAIRPERSON HILL: Mr. Smith? I'm sorry, Mr.  
7 Blake?

8 MR. BLAKE: No sir, I have nothing to add. I'm  
9 good with the modification request.

10 CHAIRPERSON HILL: Okay. I'm going to make a  
11 motion to approve Application No. 18404A as in apple as  
12 captioned and read by the Secretary and ask for a second Ms.  
13 John.

14 VICE CHAIR JOHN: Second.

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

17 MR. MOY: When I call your name, if you would  
18 please respond with a yes, no or abstain to the motion made  
19 by Chairman Hill to approve the application for the relief  
20 requested. The motion to approve was second by Vice Chair  
21 John. Mr. Smith?

22 MR. SMITH: Yes.

23 MR. MOY: Mr. Blake?

24 MR. BLAKE: Yes.

25 MR. MOY: Vice Chair John?

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1 VICE CHAIR JOHN: Yes.

2 MR. MOY: Chairman Hill?

3 CHAIRPERSON HILL: Yes.

4 MR. MOY: We have no one else participating.

5 Staff would record the vote as 4 to 0 to 1, and this is on  
6 the vote -- this is on the motion made by Chairman Hill to  
7 approve, second by Vice Chair John. Also in support of the  
8 motion to approve, Mr. Smith, Mr. Blake and of course Vice  
9 Chair John and Chairman Hill. No others participated.  
10 Motion carries on a vote of 4 to 0 to 1.

11 CHAIRPERSON HILL: Thanks Mr. Moy. You can call  
12 our next one when you get a chance.

13 MR. MOY: This would be Application No. 20617,  
14 20617, of William McAfee, and Patricia Bush, captioned and  
15 advertised for special exceptions from the lot occupancy  
16 requirements of Subtitle D, Section 304.1, pursuant to  
17 Subtitle D, Section 5201, Subtitle X, Section 902.1, and the  
18 rear yard requirements of Subtitle D, Section 306.2, pursuant  
19 to Subtitle D, Section 5201, Subtitle X, Section 902.1.

20 This would construct a second story rear deck  
21 addition to an existing attached two-story with cellar  
22 principal dwelling unit in the R-3 zone. The property is  
23 located at 238 Madison Street, N.W., Square 3334, Lot 29, and  
24 I think that's it for me. Thank you Mr. Chairman.

25 CHAIRPERSON HILL: Okay. Mr. McAfee, can you hear

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1 me?

2 MR. McAFEE: Absolutely. Can you hear me?

3 CHAIRPERSON HILL: Yes. Can you introduce  
4 yourself for the record please?

5 MR. McAFEE: Yes. My name is Bill McAfee and  
6 sitting next to me is my wife, Patricia Bush, and we are the  
7 occupants of 238 Madison Street, N.W.

8 CHAIRPERSON HILL: I'm sorry, go ahead.

9 MR. McAFEE: And what I was going to do was just  
10 read the burden of proof as is. Other than that, I offer no  
11 additional testimony outside of the memorandum from the  
12 District of Columbia Board of Zoning Adjustment, the  
13 development review specialist, and the resolution from the  
14 Advisory Neighborhood Commission.

15 CHAIRPERSON HILL: Thanks Mr. McAfee. How do you  
16 say your last name? I'm sorry.

17 MR. McAFEE: McAfee.

18 CHAIRPERSON HILL: McAfee, McAfee.

19 MR. McAFEE: Like the software.

20 CHAIRPERSON HILL: Like the software, is McAfee?  
21 Anyway, so let's see. No, that's all right. You don't have  
22 to re-read your burden of proof. Let's see. I'm going to  
23 turn to the Office of Planning. Ms. Fothergill.

24 MS. FOTHERGILL: Good afternoon Chairman Hill and  
25 members of the Board. I'm Anne Fothergill from the Office

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1 of Planning, and the Office of Planning has recommended  
2 approval of this application and found that it met the review  
3 criteria of Section 5201, Subtitle D, Section 5201 and  
4 Subtitle X, Chapter 9, and we'll rest on the record and I'm  
5 happy to take your questions.

6 CHAIRPERSON HILL: Does anybody have any questions  
7 for the Applicant or the Office of Planning? If so, raise  
8 your hand. Everybody's shaking their head no. Mr. Young,  
9 is there anyone here who wishes to speak?

10 MR. YOUNG: They do not.

11 CHAIRPERSON HILL: All right. Mr. McAfee, do you  
12 have anything you'd like to add in conclusion?

13 MR. McAFEE: No.

14 CHAIRPERSON HILL: Okay. All right. I'm going  
15 to close the hearing on the record. I'm going to excuse  
16 everyone.

17 Can somebody else talk for a little while? Mr.  
18 Smith, would you mind talking for a little while?

19 MR. SMITH: Sure. This application is a request  
20 for special exception from lot occupancy requirements and  
21 rear yard setback requirements, in order for the Applicant  
22 to construct a rear deck addition to an existing two-story  
23 attached principal dwelling. Based on the information within  
24 the record the discussion provided by the Office of Planning  
25 as well as the Applicant, I do believe that the Applicant has

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1 met the burden of proof for us to able to grant special  
2 exception, both the special exceptions.

3 I do believe that the Applicant -- Applicant's  
4 proposed deck will be in harmony with the general purpose and  
5 intent of the zoning regulations and zoning maps. The deck  
6 is comparable to other decks that we see within the  
7 neighborhood that's shown within the record in the color  
8 photographs, and I do not believe that the proposed deck  
9 would tend to affect adversely the neighboring properties or,  
10 and would also be in accordance with the zoning regulations  
11 and zoning maps.

12 So with that, I give OP's report great weight, and  
13 I will also note that DDOT didn't have any objections and  
14 ANC4B was in -- they didn't take a position, but they weren't  
15 opposed to the application. So with that, I will support the  
16 application and state to our Chairman, you know, that McAfee  
17 is a computer virus protection software.

18 CHAIRPERSON HILL: Okay, thanks, all right, all  
19 right. Learned something new today. All right. Vice Chair  
20 John?

21 VICE CHAIR JOHN: Nothing to add to that excellent  
22 summary, Mr. Chairman, including the information on McAfee.

23 CHAIRPERSON HILL: Thank you. Mr. Smith, or Mr.  
24 Blake?

25 MR. BLAKE: Yes, I have nothing to add. I too

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1 would be prepared to support.

2 CHAIRPERSON HILL: Okay. I'm going to make a  
3 motion to approve Application No. 20617 as captioned and read  
4 by the Secretary and ask for a second. Ms. John?

5 VICE CHAIR JOHN: Second.

6 CHAIRPERSON HILL: Motion has been made and  
7 seconded. Mr. Moy, take the roll call please.

8 MR. MOY: When I call your name, if you would  
9 please respond with a yes, no or abstain to the motion made  
10 by Chairman Hill to approve the application for the relief  
11 requested. The motion to approve was second by Vice Chair  
12 John. Mr. Smith?

13 MR. SMITH: Yes.

14 MR. MOY: Mr. Blake?

15 MR. BLAKE: Yes.

16 MR. MOY: Vice Chair John?

17 VICE CHAIR JOHN: Yes.

18 MR. MOY: Chairman Hill?

19 CHAIRPERSON HILL: Yes.

20 MR. MOY: We have no other members participating.  
21 Staff would record the vote as 4 to 0 to 1, and this is on  
22 the motion made by Chairman Hill to approve, second by Vice  
23 Chair John to approve. Also in support Mr. Smith and Mr.  
24 Blake. Motion carries on a vote of 4 to 0 to 1.

25 CHAIRPERSON HILL: Okay, thanks Mr. Moy. When you

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1 get a chance Mr. Moy, you can call our next one.

2 MR. MOY: The next application before the Board  
3 is Case No. 20620 of Russell Page and Alan Rotz, R-O-T-Z.  
4 This is captioned and advertised with special exception from  
5 the lot occupancy requirements, Subtitle E, Section 404.1,  
6 pursuant to Subtitle E, Section 5201, Subtitle X, Section  
7 901.2; the building area requirements of Subtitle E, Section  
8 5003.1, pursuant to Subtitle E, Section 5201 and Subtitle X,  
9 Section 902.1.

10 This would construct a new detached one-story  
11 accessory building to an existing attached three-story with  
12 cellar principal dwelling unit in the RF-2 zone. The  
13 property is located at 1430 S Street, N.W., Square 207, Lot  
14 52, and I believe that's all I have for you. Thank you, Mr.  
15 Chairman.

16 CHAIRPERSON HILL: Thank you. Mr. Sullivan, can  
17 you introduce yourself for the record please.

18 MR. SULLIVAN: Yes, thank you Mr. Chairman. Marty  
19 Sullivan with Sullivan and Barros on behalf of the Applicant.

20 CHAIRPERSON HILL: Hi, Mr. Sullivan. You can go  
21 ahead and walk us through the application.

22 MR. SULLIVAN: Okay, thank you. With me is the  
23 architect Richard Lyew and the homeowners are here if you  
24 have any questions for them. So if we could have the  
25 PowerPoint presentation please. This is the RF-2 zone. It's

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1 two areas of relief for the construction of an accessory  
2 building. It's just a one-story accessory building. The  
3 first area of relief is from the maximum building area for  
4 the building itself.

5           The maximum building area is 450 square feet, and  
6 we're requesting 490, and then at that point the total lot  
7 occupancy for the lot will be at 67.4 percent, so we're also  
8 asking for lot occupancy relief, both special exceptions  
9 under the same type of requirements.

10           Next slide please. And next slide please. Again,  
11 it's just one story so it doesn't affect any other lots. We  
12 have six letters of support. ANC2F is in unanimous support  
13 and the Office of Planning is recommending approval. So I'll  
14 have Mr. Lyew go through the plans quickly. Richard.

15           MR. LYEW: Yeah, I'm here.

16           MR. SULLIVAN: Next slide, please.

17           MR. LYEW: Next slide.

18           CHAIRPERSON HILL: Could you introduce yourself  
19 for the record please Mr. Lyew?

20           MR. LYEW: Yes. This is Richard Lyew of Studio  
21 Lyew, the architect working on this project.

22           CHAIRPERSON HILL: Okay. Go ahead Mr. Lyew.

23           MR. LYEW: Okay. So on this slide you can see  
24 where the property is located on the block, 1430. Next  
25 slide. Next slide. This is the view from the main street

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1 with the subject property 1430 in the middle. Next slide.  
2 These are some views of the courtyard in the back on the  
3 left, looking towards the existing metal shed, on the right  
4 looking toward the townhouse.

5 Next slide. This is the existing metal shed that  
6 we will be razing to put up a new two-car garage. Next  
7 slide. This is a view down the alley looking west. Next  
8 slide, and then this is a view looking towards the garage  
9 with the neighboring properties to each side. Next slide.  
10 This is our zoning analysis showing the existing property.  
11 On the right side of the page, the existing metal shed that  
12 we're removing, and on the left you'll see the garage that  
13 takes up the full width of the property, 490 square feet as  
14 we said before, and you'll see it's 12 feet tall.

15 Next slide. This is the existing property with  
16 the metal shed that we're removing in the lower portion of  
17 the screen. Next slide, and then this is just existing and  
18 proposed sight lines. On the left, you'll see the proposed  
19 sight line with the shed offset from the alley two feet as  
20 required. Next slide, and then these are the floor plans and  
21 the elevations, two car garage. As you can see, it's a  
22 modest size and, you know, fits two cars and then the  
23 elevations showing party siting. We'll have a flat roof as  
24 you can see, and there's a small roof overhanging the front,  
25 and I believe that's the last slide.

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1 MR. SULLIVAN: So real briefly, we meet the  
2 general criteria. Just a couple of important factors. The  
3 neighboring houses are not that close to this. We actually  
4 have 31 feet of rear yard space between the accessory  
5 building the principal building, and so because it's also  
6 because it's one story and it's in back, there's no impact  
7 on light and air.

8 Next slide, please. Or privacy, for that matter.  
9 So I won't go through all of these unless the Board has  
10 questions, but it meets the specific special exception  
11 criteria, and I think that's it. So if the Board has any  
12 questions.

13 CHAIRPERSON HILL: All right, thank you. Before  
14 I get to the Board members, I'm just going to turn to the  
15 Office of Planning.

16 EV Good afternoon Mr. Chair and members of the  
17 Board. Elisa Vitale with the Office of Planning. The Office  
18 of Planning is recommending approval of the requested special  
19 exception relief from the maximum building area provisions  
20 for the accessory building as well as the overall lot  
21 occupancy provisions. I'm happy to go through the criteria  
22 or also equally happy to rest on the record and available to  
23 answer any questions that the Board may have. I know you've  
24 got a long agenda ahead of you. Thank you.

25 CHAIRPERSON HILL: Okay. Thanks, Ms. Vitale. All

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1 right. Does the Board have any questions of either the  
2 Applicant or the Office of Planning? If so, please raise  
3 your hand. All right. Mr. Young, is there anyone here  
4 wishing to speak?

5 MR. YOUNG: No.

6 CHAIRPERSON HILL: Okay. Mr. Sullivan, is there  
7 anything you want to add at the end?

8 MR. SULLIVAN: No, thank you.

9 CHAIRPERSON HILL: All right. I'm going to go  
10 ahead and close the hearing and the record. Ms. Sher, yeah.  
11 Okay, close the hearing and the record. Thank you so much.  
12 Okay. I didn't have a whole lot about this one. I thought  
13 it was pretty straightforward. I thought that, you know, the  
14 analysis that the Applicant has just provided I would agree  
15 with in terms of meeting the burden of proof for the  
16 different standards that we're trying to analyze. I would  
17 also agree with the analysis provided by the Office of  
18 Planning that, you know, the rules and regulations under E-  
19 100 and E-400 and E-404, E-5201.

20 Okay. Does anybody have anything that they'd like  
21 to add? Mr. Smith?

22 MR. SMITH: I have nothing to add.

23 CHAIRPERSON HILL: Mr. Blake?

24 MR. BLAKE: Well, based upon the record before the  
25 Board, I'm giving great weight to the Office of Planning

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1 report recommendation for approval, ANC2F support which was  
2 in support of the relief, and the identification of no issues  
3 or concern.

4 I believe the Applicant has met the burden of  
5 proof pursuant to E-5201 and X-901.2, to be granted special  
6 relief for the lot occupancy requirements of E-404.1 and the  
7 special exception relief from the accessory building  
8 requirements of E-5003.1, and I'm prepared to vote in favor  
9 of the application.

10 CHAIRPERSON HILL: Okay. Vice Chair John.

11 VICE CHAIR JOHN: Thank you, Chairman. I agree  
12 with all of the comments so far, and I have nothing to add.

13 CHAIRPERSON HILL: All right. I'm going to make  
14 a motion to approve Application No. 20620 as captioned and  
15 read by the Secretary and ask for a second. Ms. John.

16 VICE CHAIR JOHN: Second.

17 CHAIRPERSON HILL: Motion made and seconded. Mr.  
18 Moy, if you'd take a roll call please.

19 MR. MOY: When I call each of your names, if you  
20 would please respond with a yes, no or abstain to the motion  
21 made by Chairman Hill to approve the application for the  
22 relief requested. The motion to approve was second by Vice  
23 Chair John. Mr. Smith?

24 MR. SMITH: Yes.

25 MR. MOY: Mr. Blake?

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1 MR. BLAKE: Yes.

2 MR. MOY: Vice Chair John?

3 VICE CHAIR JOHN: Yes.

4 MR. MOY: Chairman Hill?

5 CHAIRPERSON HILL: Yes.

6 MR. MOY: We have no other members participating.

7 Staff would record the vote as 4 to 0 to 1, and this is on  
8 the motion made by Chairman Hill to approve, second by Vice  
9 Chair John. Also in support of the motion to approve, Mr.  
10 Smith and Mr. Blake. The motion carries on a vote of 4 to  
11 0 to 1.

12 CHAIRPERSON HILL: Okay, thank you Mr. Moy. Mr.  
13 Moy, you can call our next one when you get a chance.

14 MR. MOY: The next case before the Board is  
15 application No. 20624 of Michael and Amy Drader, D-R-A-D-E-R.  
16 This is captioned and advertised for a special exception from  
17 the side yard requirements of Subtitle D, Section 2 --  
18 Subtitle D, Section 206.7, pursuant to Subtitle D, Section  
19 5201, Subtitle X, Section 901.2.

20 This would construct two one-story rear additions  
21 to an existing attached two-story with basement principal  
22 dwelling unit, RF-1 zone, property located at 4430 19th  
23 Place, N.E., Square 4186, Lot 26. And I believe Mr.  
24 Chairman, I don't have anything else to add. Thank you.

25 CHAIRPERSON HILL: Thank you, Mr. Moy. Mr.

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1 Putnam, can you hear me? You're on mute, Mr. Putnam.

2 MR. PUTNAM: Sorry, there we go. Thank you Mr.  
3 Chairman.

4 CHAIRPERSON HILL: Can you introduce yourself for  
5 the record?

6 MR. PUTNAM: Yes, I can. Bill Putnam from Putnam  
7 Architects, representing the Draders.

8 CHAIRPERSON HILL: All right. Mr. Putnam, if you  
9 can tell us about your clients' project and why you believe  
10 they're meeting the criteria for us to grant the relief  
11 requested, and you can begin whenever you like.

12 MR. PUTNAM: Yeah, okay. The Draders are planning  
13 two one-story additions, one -- there are two wings, one on  
14 the north of the building, one to the south. The wing on the  
15 north extends the north building line, which already sits  
16 within the five foot side yard setback and is proposing to  
17 extend that line to the west, and that's -- we're seeking  
18 relief of the side yard setback.

19 We don't think that the addition will impact the  
20 light and air of any neighboring properties. The neighbor  
21 to the north across Webster Street is some -- it's over 16  
22 feet to the curb, and then the street and another at least  
23 10 feet to the neighboring house. The neighbor to the west,  
24 there's a reduction of the rear yard, which will decrease to  
25 28 feet and then we have a 16 foot alley, and then their rear

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1 yard.

2           So there's very little impact on the light, air  
3 or privacy that this addition would have on any adjacent  
4 neighbors. And for that reason, we believe that the project  
5 meets all the needs for a special exception.

6           CHAIRPERSON HILL: All right. Thank you, Mr.  
7 Putnam. I'll hear from the Office of Planning.

8           MS. ELLIOTT: Good afternoon Mr. Chairman, members  
9 of the Board. I'm Brandice Elliott. I'm representing the  
10 Office of Planning. The Office of Planning is recommending  
11 approval for the special exception relief that's been  
12 requested for the side yard. I'll go ahead and rest on the  
13 record of our report, but I'm happy to answer any questions  
14 you have.

15           CHAIRPERSON HILL: Okay. Does anybody have any  
16 questions of the Office of Planning? I'm looking at my  
17 fellow Board members. I don't see anyone raising their hand.  
18 Mr. Putnam, do you have any questions of the Office of  
19 Planning?

20           MR. PUTNAM: No, I don't.

21           CHAIRPERSON HILL: All right. Mr. Young, is there  
22 anyone here wishing to testify?

23           MR. YOUNG: They do not.

24           CHAIRPERSON HILL: Mr. Putnam, do you have  
25 anything you'd like to add at the end?

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1 MR. PUTNAM: No I do not, Mr. Chairman.

2 CHAIRPERSON HILL: Is it Drader? Can you guys  
3 hear me?

4 MR. DRADER: Yes, we can.

5 CHAIRPERSON HILL: You want to introduce  
6 yourselves for the record?

7 MR. DRADER: Yep. Michael Drader. I go by the  
8 name Michael Drader.

9 MRS. DRADER: Amy Drader.

10 MR. DRADER: And we're the homeowners at 4430 19th  
11 Place, N.E.

12 CHAIRPERSON HILL: You guys have been waiting  
13 around a little bit, right?

14 MR. DRADER: Yes. But it's totally fine and we'll  
15 be brief too if you --

16 CHAIRPERSON HILL: No, no, no. I just wanted to  
17 give you a chance to introduce yourselves. You've been  
18 waiting around so long. All right. All right, okay.  
19 Anybody have any questions of anybody? If so, raise your  
20 hand. All right. I'm going to go ahead and close the  
21 hearing and the record. If you'd excuse everyone. Thanks,  
22 Mr. Young.

23 I again thought that this was pretty  
24 straightforward in their application. I didn't have any  
25 concerns with it. I believe that they have met their burden

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1 of proof in order for us to grant the relief requested. I  
2 would also agree with the analysis that has been provided by  
3 the Office of Planning, that also of the ANC as well as DDOT  
4 being in support, as well as their letters that have been in  
5 support of the project.

6 I didn't have any issues or concerns with them  
7 meeting the standard and the criteria. Mr. Smith, do you  
8 have anything you'd like to add?

9 MR. SMITH: No. No, I don't have anything to add.

10 CHAIRPERSON HILL: Vice Chair John?

11 VICE CHAIR JOHN: I don't have anything to add.  
12 It's fairly straightforward.

13 CHAIRPERSON HILL: Mr. Blake?

14 MR. BLAKE: No sir, I don't have anything to add.  
15 I believe the Applicant has met the burden of proof and in  
16 favor of the application.

17 CHAIRPERSON HILL: Okay, great. Thank you all.  
18 I'm going to make a motion to approve Application No. 20624  
19 as captioned and read by the Secretary and ask for a second.  
20 Ms. John.

21 VICE CHAIR JOHN: Second.

22 CHAIRPERSON HILL: Motion made and seconded. Mr.  
23 Moy, if you'd take a roll call.

24 MR. MOY: When I call your name, if you would  
25 please respond with a yes, no or abstain to the motion made

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1 by Chairman Hill to approve. The motion to approve was  
2 second by Vice Chair John. Mr. Smith?

3 MR. SMITH: Yes.

4 MR. MOY: Mr. Blake?

5 MR. BLAKE: Yes.

6 MR. MOY: Vice Chair John?

7 VICE CHAIR JOHN: Yes.

8 MR. MOY: Chairman Hill?

9 CHAIRPERSON HILL: Yes.

10 MR. MOY: And we have no other participating.  
11 Staff would record the vote as 4 to 0 to 1, and this is on  
12 the motion made by Chairman Hill to approve, second by Vice  
13 Chair John. Also in support of the motion to approve Mr.  
14 Smith and Mr. Blake. Staff again would record the vote as  
15 4 to 0 to 1. The motion carries.

16 CHAIRPERSON HILL: All right, thank you. Y'all  
17 think we can do one more and then we'll take a break, okay?  
18 Mr. Moy, if you can call our next case please? You're on mute  
19 I think Mr. Moy. I'm not sure.

20 MR. MOY: No, I'm here. I'm a little bit ahead  
21 of the game. I jumped a case. You all are just moving too  
22 fast for me. Okay. So the next application before the Board  
23 is Application No. 20627 of Raymond and Julia Bucheger. I  
24 hope I've pronounced that correctly, B-U-C-H-E-G-E-R. This  
25 is captioned and advertised for a special exception from the

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1 lot occupancy requirements, Subtitle E, Section 304.1,  
2 pursuant to Subtitle E, Section 5201 and Subtitle X, Section  
3 901.2.

4 This would construct a two-story detached  
5 accessory garage to an existing attached two-story with  
6 cellar principal dwelling unit in the RF-1 zone. Property  
7 located at 632 5th Street, N.E., Square 810, Lot 58, and  
8 that's all I have. Thank you, Mr. Chairman.

9 CHAIRPERSON HILL: All right, thank you Mr. Moy.  
10 Ms. Fowler, can you hear me?

11 MS. FOWLER: Yes, I can. Hello.

12 CHAIRPERSON HILL: Hello. Could you please  
13 introduce yourself for the record?

14 MS. FOWLER: Hi everybody. I'm Jennifer Fowler  
15 with Fowler Architects. I'm here representing the  
16 homeowners.

17 CHAIRPERSON HILL: Okay. Ms. Fowler, if you can  
18 go ahead and walk us through the application of your client  
19 and how you believe you're meeting the standard for us to  
20 grant the relief requested. I've got 15 minutes on the clock  
21 there, and you can begin whenever you'd like.

22 MS. FOWLER: Okay, sure. So this is a proposal  
23 for a two-story carriage at the back of 632 5th Street, N.E.  
24 Currently there's a rear deck that's at the first floor level  
25 that is bringing the lot occupancy of 52 percent, 52.7

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1 percent. The proposal is to remove the deck, replace it with  
2 a landing and then utilize some of that square footage for  
3 this carriage house.

4           The original application was for 67.3 percent.  
5 When we went through the ANC process, we did amend our  
6 application because they had some feedback in terms of what  
7 was counting as a landing for square footage versus what  
8 doesn't count. So we ended up adding some additional square  
9 footage for occupancy, but the plans remain unchanged. So  
10 we're currently at 69.8 percent.

11           So we also have submitted a sun study in the  
12 record to explain the impact and we find that there is not  
13 any undue impact on any adjacent neighbor. We also have  
14 letters of support from those adjacent neighbors, as well as  
15 one neighbor from across the alley. ANC did support our  
16 project, as well as the CHRS. So overall, it's been very  
17 well received and with that, we'll leave it open to  
18 questions. Thank you.

19           CHAIRPERSON HILL: All right, thank you Ms.  
20 Fowler. Does the Board have any questions of the Applicant?  
21 All right. I'm going to turn to the Office of Planning.

22           MR. JESICK: Thank you Mr. Chairman and members  
23 of the Board. My name is Matt Jesick and I'll be presenting  
24 you with this testimony. OP found that this Applicant's met  
25 the criteria of Section 5201 and we're therefore recommending

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1 approval. For the rest of my testimony, I'll rest on the  
2 record, but be happy to take any questions. Thank you.

3 CHAIRPERSON HILL: All right, thank you. Does the  
4 Board have any questions of the Office of Planning? Mr.  
5 Young, is there anyone here wishing testimony.

6 MR. YOUNG: They do not.

7 CHAIRPERSON HILL: All right, Ms. Fowler. I  
8 appreciate the application and how concise it is. I  
9 appreciate the sun studies, and we're kind of moving along  
10 here a little bit at a quicker pace, but I just appreciate.  
11 I want your client to know that the fact that the application  
12 is put together so well has made it easier for us to kind of  
13 like provide the analysis. So I just wanted to kind of point  
14 that out. Ms. Fowler, do you have anything that you'd like  
15 to add at the end?

16 MS. FOWLER: No. Thank you for your time.

17 CHAIRPERSON HILL: Okay. I'm going to go ahead  
18 and close the hearing and the record, so excuse everyone.

19 Mr. Smith, I don't mean to pick on you, but I'm  
20 tired. Would you mind talking?

21 MR. SMITH: Sure. The request before us is relief  
22 from -- a special exception for relief from the lot  
23 occupancy requirements of Subtitle E, Section 304.1, in order  
24 to construct a two-story accessory garage structure in the  
25 rear yard in the existing two-story attached principal

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1 dwelling. Based on the record and also OP's staff report,  
2 I do believe that the Applicant's met the burden of proof for  
3 us to be able to grant special exception from just in  
4 reviewing the special standards of X-901.2.

5 I believe that the proposed -- the proposal will  
6 be in harmony with the general purpose and intent of the  
7 zoning regulations, and would not greatly affect the adjacent  
8 property owners and would be in keeping with the zoning  
9 regulations as shown by -- as demonstrated by the sun study  
10 that was presented by the Applicant. So I do not believe  
11 that it would be a major impact or a detriment to the light  
12 and air of adjacent property owners.

13 I will note that ANC6C is in support of the  
14 application, and DDOT has no objection to the application,  
15 and with that, I would support.

16 CHAIRPERSON HILL: All right great, thank you.  
17 Mr. Blake.

18 MR. BLAKE: I would agree with Mr. Smith's  
19 analysis, and I believe the Applicant has met the burden of  
20 proof, and I'm prepared to vote in favor of the application.

21 CHAIRPERSON HILL: Vice Chair John.

22 VICE CHAIR JOHN: Thank you, Mr. Chair. I believe  
23 the Applicant meets the criteria for relief, and I'm going  
24 to give great weight to the recommendations of the Office of  
25 Planning as to how the application meets the criteria for the

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1 lot occupancy. I too thought that the sun study was helpful,  
2 and that the Applicant is fairly straight -- application is  
3 fairly straightforward. So with that, I'll support the  
4 application.

5 CHAIRPERSON HILL: Thank you, Vice Chair John.  
6 I also have nothing to add, but I would like that. I do  
7 think the design is a nice design, and I appreciate the  
8 privacy testing that they have put forward in their  
9 application. I'm going to go ahead to make a motion to  
10 approve Application No. 20627 as captioned and read by the  
11 Secretary and ask for a second. Ms. John?

12 VICE CHAIR JOHN: Second.

13 CHAIRPERSON HILL: The motion made and seconded.  
14 Mr. Moy, could you take the roll call?

15 MR. MOY: When I call your names, if you would  
16 please respond with a yes, no or abstain to the motion made  
17 by Chairman Hill to approve the application for the relief  
18 requested. The motion to approve was second by Vice Chair  
19 John. Mr. Smith?

20 MR. SMITH: Yes.

21 MR. MOY: Mr. Blake?

22 MR. BLAKE: Yes.

23 MR. MOY: Vice Chair John?

24 VICE CHAIR JOHN: Yes.

25 MR. MOY: Chairman Hill?

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1 CHAIRPERSON HILL: Yes.

2 MR. MOY: We have no other persons participating.  
3 Staff would record the vote as 4 to 0 to 1, and this is on  
4 the motion made by Chairman Hill to approve, second by Vice  
5 Chair John to approve. Also in support of the motion to  
6 approve Mr. Smith and Mr. Blake. The motion carries on a  
7 vote of 4 to 0 to 1.

8 CHAIRPERSON HILL: All right, thank you Mr. Moy.  
9 Okay guys. Let's go ahead and take a quick ten minute break,  
10 and we'll come back if that sounds good with you guys? All  
11 right, everybody's giving a thumbs up and I'll see y'all in  
12 a little bit. Bye-bye.

13 (Whereupon, the above-entitled matter went off the  
14 record at 3:30 p.m. and resumed at 3:47 p.m.)

15 CHAIRPERSON HILL: All right, Mr. Moy. You can  
16 call our next case when you get a chance.

17 MR. MOY: Thank you, Mr. Chairman. The Board is  
18 back in its public hearing session after a very brief recess,  
19 and time is now at or about 3:47 p.m. The next case  
20 application is No. 20632 of Rebecca Phillips. This is  
21 captioned and advertised as a special exception for the lot  
22 occupancy requirements, Subtitle E, Section 304.1, pursuant  
23 to Subtitle E, Section 5201 and Subtitle X, Section 901.2,  
24 and the rear yard requirements of Subtitle E, Section 306.1,  
25 pursuant to Subtitle E, Section 5201 and Subtitle X, Section

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1 902.1.

2           This would construct a rear deck addition to the  
3 existing attached two-story with cellar principal dwelling  
4 unit in the RF-1 zone. The property is located at 66  
5 Randolph Place, N.W., Square 3102, Lot 105, and that's all  
6 I have. Thank you, Mr. Chairman.

7           CHAIRPERSON HILL: All right, thanks Mr. Moy. Ms.  
8 Fowler, can you hear me?

9           MS. FOWLER: Yes, hi everybody.

10          CHAIRPERSON HILL: Hi. Could you introduce  
11 yourself for the record please?

12          MS. FOWLER: Hi. I'm Jennifer Fowler, Fowler  
13 Architects, and I'm representing the homeowner on this  
14 project, and Rebecca Phillips is also on, but in case she  
15 wants to --

16          MS. PHILLIPS: Hello, good afternoon.

17          CHAIRPERSON HILL: Hi. You want to introduce  
18 yourself for the record please Ms. Phillips?

19          MS. PHILLIPS: Sure. My name is Rebecca Phillips,  
20 and I'm the homeowner at 66 Randolph Place, N.W.

21          CHAIRPERSON HILL: Okay, great, thank you. Ms.  
22 Fowler, if you want to go ahead and walk us through your  
23 client's application as to why you believe you meet the  
24 requirements, I'm sorry, the standards for us to grant the  
25 relief requested, and you can begin whenever you like.

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1 MS. FOWLER: Okay, great. Thank you very much.  
2 This is a rear deck that we're proposing. We're actually in  
3 our minds it's a great improvement to the current situation.  
4 Right now they have a carport that's at the back of the  
5 property that is currently approximately nine to ten feet  
6 tall, you could probably see in the photograph.

7 The plan is to remove the carport and replace it  
8 with a deck that is 8 feet 8 inches above the yard. So we're  
9 going to be dropping it down a couple of feet. It's still  
10 high enough to be able to park underneath, but it will be  
11 kind of brought down and closer to the house and will  
12 actually be hopefully less impactful to the neighbors. So  
13 we're asking for the rear yard relief and also for lot  
14 occupancy for this.

15 We have support from the two adjacent neighbors  
16 and we've been to the ANC and they've supported it, as well  
17 as the BCA, which is the Bloomingdale Civic Association.  
18 They were comfortable with the plan, and we also had HPRB  
19 kind of review at the staff level and they're comfortable  
20 with the proposal. Currently, the carport's 180 square feet.  
21 It's 18 by 10, and we're going down to 176 square feet decks.

22 So we're actually reducing our occupancy. While  
23 it's still at 70 percent currently, it's just over 70 and  
24 70.2. So I will -- I'll leave it open for questions. Thank  
25 you.

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1 CHAIRPERSON HILL: Thank you. Does the Board have  
2 any questions of the Applicant? All right. I'm going to  
3 turn to the Office of Planning.

4 MR. COCHRAN: Thank you, Mr. Chair. I'm Steve  
5 Cochran, representing OP on this case. OP is in -- well,  
6 recommending that you approve the special exception relief  
7 from E-304.1 for lot occupancy and E-306.1, rear yard. Other  
8 than that, we're happy to stand on the record and answer any  
9 questions you might have.

10 CHAIRPERSON HILL: Okay, thanks Mr. Cochran. Does  
11 anybody have any questions for the Office of Planning? Does  
12 the Applicant have any questions for the Office of Planning?

13 MS. FOWLER: No thank you.

14 CHAIRPERSON HILL: Mr. Young, is there anyone here  
15 wishing to testify?

16 MR. YOUNG: They do not.

17 CHAIRPERSON HILL: Ms. Fowler, is there anything  
18 you'd like to add at the end?

19 MS. FOWLER: No thank you.

20 CHAIRPERSON HILL: Okay. I'm going to close the  
21 hearing and the record. Thank you and excuse you all.

22 MS. PHILLIPS: Thank you.

23 CHAIRPERSON HILL: You're welcome. Thank you, Ms.  
24 Phillips.

25 Okay. I don't have any issues with this. I

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1 thought it was pretty straightforward. I thought that, you  
2 know, it's as far as the deck goes, it's meeting all the  
3 requirements for the regulations that we're supposed to  
4 review, and I also would note that the ANC report is in  
5 support as well as the Bloomingdale Civic Association and  
6 also DDOT. So I'm going to be voting to approve. Mr. Blake,  
7 is there anything you'd like to add?

8 MR. BLAKE: I too agree with your assessment, Mr.  
9 Chair. I think the Applicant does meet the burden of proof  
10 pursuant to 5201 and X-901.2. I have no issues with this at  
11 all. I'll speak to approve.

12 CHAIRPERSON HILL: Thank you. Mr. Smith?

13 MR. SMITH: I give OP's staff report great weight,  
14 and agree with the positions of both you and Mr. Blake, and  
15 I'll support the application.

16 CHAIRPERSON HILL: Thank you. Vice Chair John.

17 VICE CHAIR JOHN: Thank you, Chairman Hill. I  
18 agree with your comments and that of the all of the other  
19 Board members, and I will also give great weight to the  
20 recommendation of the Office of Planning.

21 CHAIRPERSON HILL: Great, thank you. All right.  
22 I'm going to make a motion to bring up Application No. 20632  
23 as captioned and read by the Secretary, and ask for a second.  
24 Ms. John?

25 VICE CHAIR JOHN: Second.

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1 CHAIRPERSON HILL: The motion made and seconded.  
2 Mr. Moy, if you'd take a roll call please?

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

8 MR. SMITH: Yes.

9 MR. MOY: Mr. Blake?

10 MR. BLAKE: Yes.

11 MR. MOY: Vice Chair John?

12 VICE CHAIR JOHN: Yes.

13 MR. MOY: Chairman Hill?

14 CHAIRPERSON HILL: Yes.

15 MR. MOY: We have no others participating. Staff  
16 would record the vote as 4 to 0 to 1, and this is on the  
17 motion made by Chairman Hill to approve, second by Vice Chair  
18 John to approve. Also in support to approve, Mr. Smith and  
19 Mr. Blake. The motion carries on a vote of 4 to 0 to 1.

20 CHAIRPERSON HILL: Thank you Mr. Moy. All right,  
21 Mr. Moy, you can call our last case when you get a chance.

22 MR. MOY: This case would be Application No. 20633  
23 of Julia Smith and Michael Thompson. This is captioned and  
24 advertised for a special exception from the -- special  
25 exception relief from the rear yard requirements of Subtitle

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1 D, Section 5004.1(a), pursuant to Subtitle D, Section 5201,  
2 Subtitle X, Section 901.2.

3 This would construct a one-story accessory garage  
4 to an existing detached two-story principal dwelling unit in  
5 the R-1B zone. Property located at 4334 Alton Place, N.W.,  
6 Washington, D.C., Square 1645, Lot 22. The only matter I  
7 have before you Mr. Chairman, I believe that the Applicant's  
8 affidavit of maintenance was submitted late, so it's  
9 currently not in the record. So that's before you, Mr.  
10 Chairman.

11 CHAIRPERSON HILL: All right, thank you. Is it  
12 Ms. Healey? Can you hear me? Ms. Healey, Ms. Healey. Ms.  
13 Healey, you're on mute perhaps. Ms. Smith, can you hear me?  
14 Where are you?

15 MS. HEALEY: Hi, I'm here.

16 CHAIRPERSON HILL: Sorry. Could you introduce  
17 yourself for the record please, Ms. Healey?

18 MS. HEALEY: Hi. My name is Colleen Healey. I  
19 am owner of Colleen Healey Architecture. I'm the architect  
20 for this property. I'm working with the homeowners Julia  
21 Smith and Mike Thompson, and I took one phone call and I've  
22 been on this all day, and now -- so I'm headed back down to  
23 my office.

24 CHAIRPERSON HILL: No problem, no problem. I'll  
25 let you get settled if you like.

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1 MS. HEALEY: No, I'm just going back down.

2 CHAIRPERSON HILL: Ms. Healey, if you want to go  
3 ahead and walk us through your client's application, and what  
4 you believe we should grant or why you believe that your  
5 client is meeting the standard for us to grant the relief  
6 requested, and you can begin whenever you'd like.

7 MS. HEALEY: Okay. So this project has -- we are  
8 proposing a single story garage on the back of a single  
9 family home. We are only asking for relief of the rear yard  
10 setback. We are meeting all other requirements including lot  
11 occupancy, side yard setbacks, etcetera. We have support of  
12 all of the adjacent neighbors. We have Office of Planning  
13 support and support from the local ANC.

14 So we are -- we are proposing that instead of a  
15 25 foot setback, the single story garage which satisfies our  
16 required single parking space on this lot would instead be  
17 16 feet, 3.5 inches. The size of the garage in width, I just  
18 have to look at it, is 15, 15.0 and three quarters, and so  
19 for the remainder of the lot width, we would have the  
20 required rear yard setback. In fact, we would have much more  
21 than the required rear yard setback.

22 We do not think that we are blocking the light and  
23 air to any of the neighboring properties. The garage itself,  
24 where the car pool's in faces south, and so the only sort of  
25 sun blockage is to our own property. Do you have our -- do

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1 you have our, any of our documents to pull up?

2 CHAIRPERSON HILL: Yeah, we have all the  
3 documents. That's all right, Ms. Healey. Let me just see  
4 if -- I mean I see everything that's in the record here.  
5 Does the Board have any questions of Ms. Healey? All right.  
6 I'm going to turn to the Office of Planning. Ms. Brown-  
7 Roberts, you're on mute.

8 MS. BROWN-ROBERTS: Okay.

9 CHAIRPERSON HILL: There you go, I think.

10 MS. BROWN-ROBERTS: Great. Good afternoon Mr.  
11 Chairman and members of the BZA. For the record this is  
12 Maxine Brown-Roberts, on BZA Case No. 20633, for a proposed  
13 garage within the required rear yard. As outlined in the  
14 report, the proposal meets the requirements of Subtitle D,  
15 5201 and Subtitle X, 901.2. We therefore stand on the record  
16 and the Office of Planning recommends approval of the  
17 requested special exception. Thank you Mr. Chairman, and I'm  
18 available for questions.

19 CHAIRPERSON HILL: Okay. Does the Board have any  
20 questions for the Office of Planning? Does the Applicant  
21 have any questions for the Office of Planning?

22 MS. HEALEY: No.

23 CHAIRPERSON HILL: Mr. Young, is there anyone here  
24 who wishes to speak?

25 MR. YOUNG: They do not.

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1 CHAIRPERSON HILL: Okay. Ms. Healey, is there  
2 anything you'd like to add at the end?

3 MS. HEALEY: No.

4 CHAIRPERSON HILL: Okay, all right. I'm going to  
5 go ahead --

6 MS. HEALEY: Thank you for your consideration.

7 CHAIRPERSON HILL: Thank you, Ms. Healey. I'm  
8 going to close the hearing and the record. Please excuse  
9 everyone Mr. Young.

10 Okay. With regard to the regulations of 5201.3,  
11 I don't have any issues with the light and air, the privacy  
12 or the proposed additional structure. I believe that it is  
13 meeting all the standards for us to grant the relief  
14 requested, as well as that the ANC has reviewed and also  
15 agreed that they're meeting the criteria for us to grant the  
16 relief requested. DDOT did not have any issue with it, and  
17 I am comfortable with the application and the design.

18 And so I'm going to be voting to approve. Mr.  
19 Smith, is there anything you'd like to add?

20 MR. SMITH: Nothing to add. I agree with your  
21 analysis.

22 CHAIRPERSON HILL: Mr. Blake, is there anything  
23 you'd like to add?

24 MR. BLAKE: No sir. I agree with your analysis  
25 and will be prepared to support as well.

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1 CHAIRPERSON HILL: Vice Chair John.

2 VICE CHAIR JOHN: I don't have anything to add,  
3 Mr. Chairman.

4 CHAIRPERSON HILL: All right. I'm going to go  
5 ahead and make a motion then to approve Application No. 20633  
6 as captioned and read by the Secretary, and ask for a second.  
7 Ms. John?

8 VICE CHAIR JOHN: Second.

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

11 MR. MOY: When I call your names, if you would  
12 please respond with a yes, no or abstain to the motion made  
13 by Chairman Hill to approve the application for the relief  
14 requested. The motion was second by Vice Chair John. Mr.  
15 Smith?

16 MR. SMITH: Yes.

17 MR. MOY: Mr. Blake?

18 MR. BLAKE: Yes.

19 MR. MOY: Vice Chair John?

20 VICE CHAIR JOHN: Yes.

21 MR. MOY: Chairman Hill?

22 CHAIRPERSON HILL: Yes.

23 MR. MOY: We have no others participating. Staff  
24 would record the vote as 4 to 0 to 1, and this is on the  
25 motion made by Chairman Hill to approve, second by Vice Chair

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1 John to approve. Also in support of the motion to approve,  
2 Mr. Smith and Mr. Blake. The motion carries on a vote of 4  
3 to 0 to 1.

4 CHAIRPERSON HILL: Okay, great. Thank you Mr.  
5 Moy. Mr. Moy, before we leave, we have a special hearing  
6 next Wednesday on the 23rd; correct?

7 MR. MOY: That's correct, sir.

8 CHAIRPERSON HILL: Meaning that's the one for just  
9 the two appeals; correct?

10 MR. MOY: Two appeals and one case for decision-  
11 making I believe.

12 CHAIRPERSON HILL: Okay.

13 MR. MOY: Yes.

14 CHAIRPERSON HILL: Okay, great. All right. W  
15 ell, I appreciate everyone's help today, and all of the work  
16 that we've done for the City, and I wish you all a happy  
17 evening, and see you next Wednesday. This hearing adjourned,  
18 bye-bye.

19 VICE CHAIR JOHN: Thank you Mr. Chairman. Have  
20 a good day.

21 CHAIRPERSON HILL: Thank you.

22 (Whereupon, the above-entitled matter went off the  
23 record at 4:03 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: 02-16-22

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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