

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

MARCH 2, 2022

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 10:13 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

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
BRANDICE ELLIOTT
STEPHEN MORDFIN
CRYSTAL MYERS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

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MARY NAGELHOUT, ESQ.
RYAN NICHOLAS, ESQ.

The transcript constitutes the minutes from
the Regular Public Hearing held on March 2, 2022.

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

10:13 a.m.

1
2
3 CHAIR HILL: All right, Mr. Moy, you can call our
4 first hearing case when you get a chance.

5 MR. MOY: We're at the first hearing case, and the
6 Board's public hearing session is Case Application No. 20410
7 Mamma Lucia of Chevy Chase, LLC. This application is as
8 amended for and is self-certified for special exception from
9 the matter-of-right uses of Subtitle U Section 510.1,
10 pursuant to Subtitle U Section 511.1(e) and Subtitle X
11 Section 901.2, which would permit a fast-food restaurant use
12 in an existing mixed-use building in the MU-3A Zone.
13 Property located at 5504 Connecticut Avenue, Northwest.

14 And the only other thing I have, Mr. Chairman, as
15 a reminder is that I believe the applicant along with the
16 request for a special exception also asks for a Waiver from
17 Condition No. 3, which states that the requirement regarding
18 the enclosure for any refuse dumpster used by the fast-food
19 use. That's it for me, Mr. Chairman.

20 CHAIR HILL: Okay, great. Is it Mr. Schulwolf?
21 Hello, Mr. Schulwolf?

22 MR. SCHULWOLF: Good morning. I don't know if you
23 can hear me but I've got poor reception. I'm trying to move
24 a little bit.

25 CHAIR HILL: No, that's all right.

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1 MR. SCHULWOLF: I apologize.

2 CHAIR HILL: No, that's all right. We don't need
3 the video, Mr. Schulwolf. If you can just introduce yourself
4 for the record, please, sir.

5 MR. SCHULWOLF: Yes, good morning. This is Andrew
6 Schulwolf from behalf of Mamma Lucia of Chevy Chase.

7 CHAIR HILL: Got it. So Mr. Schulwolf, I mean,
8 I don't think we're going to hear this case today if you
9 haven't figured that out or not yet. We don't have a report
10 from the Office of Planning. I've got nothing from the ANC,
11 and it looks like the Office of Planning wants some
12 additional information from you. Are you aware of all this?

13 MR. SCHULWOLF: I apologize. I'm missing. I
14 don't mean to interrupt. Chairman Hill, I don't mean to
15 interrupt, but I'm missing most of what you're saying because
16 of the reception.

17 CHAIR HILL: Sure.

18 MR. SCHULWOLF: Can you hear me okay?

19 CHAIR HILL: Yes. Why don't you turn off your
20 video. You might have better luck. Just turn it off.

21 MR. SCHULWOLF: I can hear you now okay --

22 CHAIR HILL: Okay.

23 MR. SCHULWOLF: -- now that I turned the video
24 off. I apologize.

25 CHAIR HILL: Yes. That's all right. So Mr.

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1 Schulwolf --

2 MR. SCHULWOLF: I can hear you fine now.

3 CHAIR HILL: Okay, great. What I said was we do
4 not have a report from the Office of Planning, nor do we have
5 one from the ANC. The Office of Planning is asking for some
6 additional information from you in order to give us a report.
7 Are you aware of the information that they're asking for?

8 MR. SCHULWOLF: I am aware, and we are in process
9 supplementing a request and providing the answers that the
10 Office of Planning has requested. And with regard, if I may
11 specifically address the trash issue, have spoken to Peter
12 Gosselin who is the ANC Commissioner. And he, Mamma Lucia's,
13 the landlord, and the other tenants of that shopping center
14 are apparently planning on getting together within a week to
15 resolve this trash issue.

16 I don't know if you've had the opportunity to
17 review what I addressed in the submission, but the trash is
18 not located on Mamma Lucia's premises. It's not owned by
19 Mamma Lucia. It's not controlled by Mamma Lucia's, and it's
20 in common use with virtually every other tenant that is
21 located in that strip center.

22 But Mr. Gosselin, the landlord and all the tenants
23 including Mamma Lucia's are in the process of trying to work
24 out a resolution that would hopefully satisfy the Office of
25 Planning on that particular aspect of our request.

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1 CHAIR HILL: Okay. Ms. Elliott, can you hear me?

2 MS. ELLIOTT: Yes, I can, Mr. Chairman.

3 CHAIR HILL: Could you introduce yourself for the
4 record, please?

5 MS. ELLIOTT: Sure. I am Brandice Elliott,
6 representing the Office of Planning for Case 20410 at 5504
7 Connecticut Avenue Northwest.

8 CHAIR HILL: Okay. And Ms. Elliott, you've been
9 in contact with Mr. Schulwolf?

10 MS. ELLIOTT: Yes. Yes, we've shared some
11 messages back and forth. Basically, at this point we just
12 don't have enough information to evaluate the special
13 exception. There is a list of criteria that has to be
14 addressed.

15 In particular, the trash is a big issue. It's one
16 of the criteria. And I can appreciate the coordination
17 between various tenants and the property owner may be
18 difficult with that, but the zoning regulations don't really
19 make an exception to that. They don't differentiate between
20 who owns what property. In this case, we just need to know
21 that the use is compatible with the surrounding uses and that
22 things like trash are taken care of.

23 So we appreciate that the applicant is trying to
24 resolve that particular issue. They have also requested a
25 waiver. Hopefully this is also resolved. There is not a

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1 waiver process for this special exception to waive the trash
2 requirements.

3 In speaking with Ms. Nagelhout, it seems like the
4 applicant would actually have to request a variance from that
5 particular provision of the special exception requirements.
6 So certainly, we encourage them to continue working with the
7 property owner and maybe avoid having to do that.

8 CHAIR HILL: Okay, Mr. Schulwolf, I'm going to let
9 you continue to work with the Office of Planning and we're
10 going to figure out when we can get you back before us. Do
11 you have any idea how long it will take for you to get all
12 this stuff resolved?

13 MR. SCHULWOLF: My initial thought was going to
14 be 30 days but I'm going to be at the mercy of other people.
15 And I think 60 days would be appropriate if that would not
16 cause you any angst.

17 CHAIR HILL: Mr. Moy, when is the next time we're
18 not completely slammed?

19 MR. MOY: All right, Mr. Chairman. I have two
20 dates. One date's sooner than the other one. And it was
21 helpful that the applicant was amenable for possibly two
22 months. We do have an opening that would accommodate your
23 docket, Mr. Chairman, which would be April the 27th. We have
24 seven cases and three expedited cases.

25 If we were going to go later than that, which we

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1 could do, it could be the following week for either May 11th
2 or May 18th. But I'm scheduling cases for May 11th now,
3 which I would want to continue that with. So my suggestion
4 would be May 18th. So once again, it would be --

5 MR. SCHULWOLF: Oh, that date's available for us.

6 MR. MOY: Oh --

7 CHAIR HILL: Mr. Schulwolf May 18th available for
8 you? Is that what you said?

9 MR. SCHULWOLF: May 18th is fine for my -- yes,
10 May 18th would be fine.

11 CHAIR HILL: Okay. Got it. All right, Mr. Moy.
12 Let's go ahead and put it on there, okay?

13 MR. MOY: Okay, perfect. Does the Board want to
14 set any deadlines for supplemental filings from the applicant
15 or is that something you want to leave open for the applicant
16 to submit perhaps two weeks before April, or rather two weeks
17 before May 18th?

18 CHAIR HILL: Yes. Go ahead and set some
19 deadlines, Mr. Moy, that you think would be appropriate for
20 May 18th, please.

21 MR. MOY: Okay. So that would be, okay, just a
22 second, May 18th. So if the applicant can make the
23 supplemental filings as has just been discussed by the Board
24 two weeks prior, so that would be May the 4th.

25 CHAIR HILL: May 4?

1 MR. SCHULWOLF: That'd be fine.

2 MR. MOY: Thank you, sir.

3 CHAIR HILL: Okay. So Mr. Schulwolf, just so you
4 know, I know your client is probably watching. I mean, you
5 guys were on with us god, September 29th is one that I even
6 see. And so this has gone a long time.

7 Like just so, you know, your client knows, like,
8 you know, work with the Office of Planning, figure out what
9 you need to get, then also get before the ANC, get, I mean,
10 I guess you're working with the ANC which is great, and then
11 figure out how you can get a report for us from the ANC and
12 then we'll see you back here on May 18th, okay?

13 MR. SCHULWOLF: Thank you very -- may I just raise
14 one other matter, if I could? If this is not the appropriate
15 time, please obviously let me know.

16 CHAIR HILL: Yes. No, I'll let you know.

17 MR. SCHULWOLF: I still question how we got here
18 with regard to the designation of Mamma Lucia's as a
19 fast-food use. I don't see how they qualify under the code
20 as a fast-food establishment. It's --

21 CHAIR HILL: I got you.

22 MR. SCHULWOLF: -- been something I've struggled
23 with from the beginning.

24 CHAIR HILL: I got you. That's all, Mr.
25 Schulwolf. I'm just going to interrupt you.

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1 MR. SCHULWOLF: I've had multiple discussions with
2 various people --

3 CHAIR HILL: I'm just going to interrupt you. Go
4 ahead and talk with the Office of Planning and work with the
5 Office of Planning and then see where you get, okay?

6 MR. SCHULWOLF: Okay. Thank you very much.

7 CHAIR HILL: All right. We're going to go ahead
8 and close this portion of the hearing. I guess we're going
9 to have a continued hearing, technically, on 5-18-22 and
10 we'll see you then, Mr. Schulwolf, okay? Okay, great. All
11 right. Everybody's gone. All right. Mr. Moy, you can call
12 our next one when you can.

13 MR. MOY: All right. So the next application
14 before the Board is Application No. 20598 of District
15 Properties.com, Inc. This is a special exception for relief
16 from the matter-of-right uses of Subtitle U Section 401,
17 pursuant to Subtitle U Section 421 and Subtitle X Section
18 901.2.

19 This would construct a detached, three-story with
20 cellar, eight-unit, apartment house in the RA-1 zone. The
21 property is located at 1821 Gainesville Street, Southeast,
22 Square 5835, Lot 45.

23 Other than that, Mr. Chairman, I believe there was
24 a filing for an Affidavit of Maintenance that was submitted
25 within our 24-hour block. And yeah.

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1 CHAIR HILL: Okay. Mr. Seck, can you hear us?

2 MR. SECK: Yes, Chairman Hill. Good morning.

3 CHAIR HILL: Good morning. Could you introduce
4 yourself for the record, please?

5 MR. SECK: Yes, you want me to put the video or

6 --

7 CHAIR HILL: If you can, that'd be great.

8 MR. SECK: Yes. Yes.

9 CHAIR HILL: All right, Mr. Seck.

10 MR. SECK: Okay.

11 CHAIR HILL: Could you introduce yourself for the
12 record, please?

13 MR. SECK: Yes. Good morning, Chairman Hill, good
14 morning, Vice Chair John, and good morning members of the
15 Board. My name is Oumar Seck representing District
16 Properties for Case No. 20598 at 1821 Gainesville Street,
17 Southeast.

18 CHAIR HILL: Okay. Great, Mr. Seck. Mr. Seck,
19 I guess we'll go through some of these issues as we hear your
20 presentation, but if you could go ahead and explain to us why
21 you believe you're meeting the criteria for us to grant the
22 relief requested. I'm going to put 15 minutes on the clock,
23 so I know where we are. And you can begin whenever you like.

24 MR. SECK: Okay. Thank you, Chairman Hill. We
25 are proposing an eight-unit apartment at 1821 Gainesville

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1 Street Southeast. The project is designed to have eight unit
2 of three bedroom, two bath in each unit with living room and
3 a dining space and kitchen.

4 Each floor will have -- there will be a laundry
5 mat on two floors in the entire building. The building sits
6 on a lot that is 8,550 square feet -- 850 -- 8,550 square
7 feet. Sorry for the hiccups. And the lodge is about 60 feet
8 wide so it's kind of shallow and deep, like 142 feet deep.

9 The entrance will be from the side of the
10 building, and we do have an easement with the neighboring
11 apartment building to the right to access through their
12 driveway to our parking. We're providing three parking,
13 which is an excess of what is required by zoning. We're
14 meeting the front yard, rear yard setbacks, and the building
15 sits in a community where it would not have any adverse
16 reaction to the planning of the area.

17 It will have brick and Hardie siding. It is
18 accessible. It sits at the dead-end street, one house from
19 the corner -- the end of the street. It sits in an area RA-1
20 zone, which is also surrounded by educational facilities,
21 high school, middle school, elementary school, and also rec
22 center. We feel that based on Subtitle U Chapter 421.1, the
23 special exception for new residential development is the
24 criteria that we meet here and would like to ask for support.

25 We did have the full support of the ANC, which due

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1 to their tight schedule, Chairman Kevin Coleman just
2 submitted it to us last night at 9:31 p.m. We did forward
3 it to Mr. Paul Young, if he can post it to the Board to see
4 it. They voted 4-0 with one absentee, if I recall. And I
5 will rest the case there for questions.

6 CHAIR HILL: They voted what, in support, Mr.
7 Seck?

8 MR. SECK: Yes, they voted in support.

9 CHAIR HILL: Mr. Young, if you could allow that
10 into the record, I'd like to see that, unless the Board has
11 any issues. And if so, please speak up, as well as I'm going
12 to go ahead and allow the Affidavit of Posting into the
13 record, because I'd also like to see that. I believe that's
14 what you said, Mr. Moy, was within the 24 hours. Is that
15 correct? Or was it Affidavit of Maintenance?

16 MR. SECK: I think it's Affidavit of Maintenance,
17 but I think the staff had already done that.

18 CHAIR HILL: Okay. No, I see those.

19 MR. SECK: Okay, thank you.

20 CHAIR HILL: Okay, great. All right. So unless
21 the Board has any issues, we'll allow those in the record
22 here. All right, let me turn to the Office of Planning, if
23 I could. Mr. Mordfin?

24 MR. MORDFIN: Yes. Good morning. I'm Stephen
25 Mordfin with the Office of Planning. And the Office of

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1 Planning does recommend approval of this application to some
2 conditions. One is that the provision of pedestrian walkway
3 from the main entrance of the building, actually exit towards
4 Gainesville Street, which is on the north side of the
5 property, and also to have a sidewalk on there for the
6 pedestrians to walk on rather than the travel aisle that the
7 cars would use for parking.

8 And the second condition that we included had to
9 do with the applicant indicated there is an easement there
10 to use the adjoining property, so they need to submit that
11 into the record to ensure that they can put their trash
12 dumpster there, they can do the access.

13 And then thirdly, after the filing of our report,
14 the DDOT filed their report and included something that was
15 missed in my report which has to do with -- they are required
16 by the zoning to provide three long-term parking spaces. So
17 they need to update their site plan to show where those three
18 parking -- I'm sorry, those three bicycle parking spaces are.
19 So with that, we recommend approval with those conditions,
20 and I'm available for questions. Thank you.

21 CHAIR HILL: Great, thank you. Mr. Seck, have you
22 spoken to the Office of Planning about all this? Are you
23 aware of all this?

24 MR. SECK: Not me directly, but I took note and
25 I will check with my staff. But to answer the last one for

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1 DDOT, as far as the bike, we do have a bike room in the
2 cellar unit in the common area. And also, the easement, yes,
3 we do have it on record. We will submit it to Office of
4 Planning and Board of Zoning for the access to both parking.
5 The sidewalk and the pedestrian walkway, we will also update
6 and provide that.

7 CHAIR HILL: All right. I'm looking to see where
8 the bike parking is. Do you have it on your plans? Oh, I
9 see it.

10 MR. SECK: Yes, at --

11 CHAIR HILL: Okay.

12 MR. SECK: It's adjacent to the staircase.

13 CHAIR HILL: Mr. Mordfin, I don't know if you can
14 see that. Can you?

15 MR. MORDFIN: Yes, I'm trying to open up that
16 right now.

17 CHAIR HILL: BZA-06 floor plans. I just, it seems
18 like --

19 MR. MORDFIN: Oh-6?

20 CHAIR HILL: -- it seems like, yeah, it seems like
21 that could be three long-term bike parking, but I want to ask
22 Commissioner May since he's the bicyclist whether three can
23 fit in there or not. I mean, it seems like they'd fit.

24 MR. MORDFIN: I just -- you know, there's no
25 dimensions on that.

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1 MR. SECK: Right, there isn't. But what we do is
2 we put bike racks on the wall to hang them so we can
3 accommodate three there. The wall that's right across from
4 the door to the bike room. But we will put the dimension
5 with that.

6 CHAIR HILL: Commissioner May, you had your hand
7 up for that one. He may have a bunch of questions also, I
8 don't know.

9 COMMISSIONER MAY: No, I don't have a lot of
10 questions. I was just having trouble pulling up the
11 information on the bike parking myself, so --

12 MR. SECK: It's BZA-06 sheet signed --

13 COMMISSIONER MAY: Yes. I have it now.

14 UNIDENTIFIED: Okay, thank you.

15 CHAIR HILL: So Mr. Seck.

16 MR. SECK: Yes.

17 CHAIR HILL: I would like to see the easement.
18 Okay?

19 MR. SECK: Okay.

20 CHAIR HILL: And I guess I don't know whether some
21 of these conditions might not be within the Board's purview,
22 but I would agree with them. You know, you're stating on the
23 record that you, Mr. Seck, are in the agreement with the
24 thoughts of the Office of Planning?

25 MR. SECK: Yes.

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1 CHAIR HILL: Okay. Okay, does my fellow Board
2 members have any questions for either the applicant or the
3 Office of Planning? Mr. Blake?

4 MEMBER BLAKE: Sure, I have one question for the
5 applicant. Could you please identify on the plans where the
6 IZ unit will be or at least in which one is the IZ unit?

7 MR. SECK: Yes, I need to pull up the plan again.
8 It would be Unit 102 on the first floor.

9 MEMBER BLAKE: Okay, very good. And is there any
10 type of screening that will be around the trash to shield it
11 from the sheet?

12 MR. SECK: Yes, if you look, there's a screening,
13 like a U-shape basically. One wall looking at the street and
14 the trash will be facing the parking lot.

15 MEMBER BLAKE: Okay, great. Thank you. I have
16 one question for Mr. Mordfin. Could you please, just for the
17 record, go through the general standards, regular, for me,
18 on this case?

19 MR. MORDFIN: Yes. So okay, those standard are
20 -- it's Section U 421. In terms of it's a new residential
21 development in the RA-1 so therefore it's applicable. This
22 is for an eight-unit apartment building. It is not a
23 one-family dwelling.

24 And then the next section has to do with
25 facilities that are available for the project. I did not get

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1 anything from the school system. However, online I could
2 pull up that of the schools that serve the subject property,
3 the elementary, the middle, and the high, it's only the
4 elementary school that's up to 50 percent usage.

5 The rest of them are lower than that. So
6 therefore, that would be completely -- so there should be
7 adequate room for any students that may live in an eight-unit
8 apartment with three-bedroom units.

9 As far as public streets, it's on a public street.
10 It has access to Gainesville and as long as the applicant
11 provides the easement that they can use the adjoining
12 property, and they do have adequate access to that, it's
13 nearby to several parks, Stanton Park, which is a lot of
14 facilities available to the community that would be living
15 in this building.

16 So the application was referred to other agencies.
17 We got back comments from DDOT. Also this building, it's
18 similar to other buildings that are in the area. To the
19 west, there are three-story garden apartment buildings. So
20 there's a lot of similarity between those two. To the west
21 is a one-family detached dwelling. However, all of the
22 access and the parking and the sidewalks are on the west side
23 of the building facing the other low-rise garden apartment
24 buildings. So that should minimize any impact that this
25 proposed building would have on that residence to the west.

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1 So any other filing that we've asked for, we've
2 just asked for the easement. I think everything, the
3 applicant has submitted. They submitted the site plans, the
4 grading plans, a listing and proposed, a landscaping plan.
5 We've just requested that they revise the entry so that it
6 faces the street not the back of the property to make it
7 obvious that this is the main entrance to the property. And
8 that's the basis of our recommendation for this application.

9 MEMBER BLAKE: I know, but could you go over the
10 general standards of 901, would you?

11 MR. MORDFIN: Oh, the general standards? Sure.
12 So this application, let me bring that up, shouldn't have an
13 adverse effect on the use of enjoyment of adjoining
14 properties partially because of the way it's designed with
15 the entrance facing west. It's going to face -- it's got a
16 setback. There is a parking lot away from those buildings.
17 To the north across the street are semi-detached buildings.
18 There are some detached and some row houses, so we don't see
19 that this is going to have any adverse effect on that.

20 To the south, there's the unbuilt alley and then
21 beyond that is a major roadway. So it shouldn't have any
22 adverse effects on the use of enjoyment of any of the
23 adjoining properties. And let's see. Wait a minute. I'm
24 not looking at the right space there. I just want to look
25 at the right wording.

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1 Okay, so in this case, because I realized we
2 didn't go through those general ones because they are
3 specific. There are ones that are specific to this case
4 which is why we did those instead of doing the others. One
5 second. I keep opening the wrong thing.

6 So an extraordinary exceptional -- oh that's for
7 a variance. This is not a variance. This is a special
8 exception. So, you know, the general purpose and intent of
9 the zoning regulations, I think they would be met, because
10 this is an RA zone. It is intended for apartment use, which
11 the applicant is proposing. They are apartments that are
12 similar to other ones on the street and so they need no
13 variances in order to construct this building.

14 So this is within the intent of the zoning
15 regulations and the zoning map and, as I said before, I don't
16 think it would adversely affect any of the neighboring
17 properties just because of the development that surrounds it,
18 existing three-story garden apartments to the west, the way
19 the building is oriented away from the one-family dwelling,
20 which is also zoned RA-1 to the east.

21 To the south is Suitland Parkway. It's not going
22 to have an adverse effect on that. And then lastly, across
23 the street to the north, which is across Gainesville Street,
24 is a variety of different housing types, primarily
25 semi-detached and row houses. So that's the reason why we

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1 don't see that this is not in conformance with the special
2 exception criteria for its approval.

3 MEMBER BLAKE: Okay. Thank you.

4 MR. MORDFIN: Sorry that took so long.

5 MEMBER BLAKE: Thank you. That's all, Mr. Chair.

6 CHAIR HILL: Okay. Thank you, Mr. Blake. All
7 right, what I propose is -- all right, first of all Mr.
8 Young, is there anyone here who wishes to speak?

9 MR. YOUNG: We do not.

10 CHAIR HILL: Okay. Mr. Seck, can you hear me?

11 MR. SECK: Yes, Chairman Hill.

12 CHAIR HILL: When can you get that information to
13 us?

14 MR. SECK: I just sent out some messages to try
15 to get it. I can reply back to Mr. Moy later today when I
16 can submit it.

17 MR. MOY: That's fine.

18 CHAIR HILL: The --

19 MR. SECK: The easement, yes.

20 CHAIR HILL: The easement? Okay. Is there
21 anything else anybody else wants to see? My Board members,
22 that is. And nobody's saying anything.

23 MEMBER BLAKE: One question.

24 CHAIR HILL: Sure.

25 MEMBER BLAKE: If he has the plans with the

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1 sidewalk in it, that should be in the record as well so that
2 we have the proper diagram.

3 CHAIR HILL: Do you have that, Mr. Seck?

4 MR. SECK: No, not just yet. But I will submit
5 that along with the easement.

6 CHAIR HILL: How long do you think it will take
7 you to get both of those into us?

8 MR. SECK: The plan will take me, let me see,
9 today's Wednesday. I can have let's say by Monday. But the
10 easement, though, I want to make sure that it had been
11 recorded. But I know we have the agreement of the owner of
12 the building next door. I checked in my file here. I don't
13 see it in here.

14 CHAIR HILL: So you might be able to submit both
15 to us by Monday.

16 MR. SECK: By Monday, the plan with the sidewalk,
17 but the easement, I would like to respond to Mr. Moy to
18 forward it to you whether it'll be ready Monday or not.

19 CHAIR HILL: All right. So then maybe by -- Mr.
20 Moy then, what dates would you want to propose if we -- how
21 many -- what do we have on the 16th of March?

22 MR. MOY: Just a second, Mr. Chairman.

23 CHAIR HILL: Yes.

24 MR. MOY: March. Okay, March 16th the Board's
25 docket consists of three applications, two expedited, two

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1 appeals. But the two appeals are on the same site so we'll
2 not get to anything further with that..

3 CHAIR HILL: And what about the 23rd?

4 MR. MOY: 23rd? We have nine case applications
5 and one appeal.

6 CHAIR HILL: No, Mr. Moy. Did you say we've got
7 nine case applications and an appeal?

8 MR. MOY: Yes. This is a really good Board. I
9 mean, you guys are on the --

10 CHAIR HILL: All right. Okay, okay. So Mr. Seck,
11 if we try to get back here for a decision on the 16h --

12 MR. SECK: Yes.

13 CHAIR HILL: -- Mr. Moy, when would you give dates
14 for Mr. Seck?

15 MR. MOY: Okay, for the 16th, okay, looking at my
16 calendar, if Mr. Seck returns for a continued hearing on
17 March 16. Oh, gee, today's March 2nd. Yes, Mr. Seck, can
18 you make a filing by well -- can you make it by, let's say,
19 Friday, March 11th --

20 MR. SECK: Friday, March -- okay. Okay.

21 MR. MOY: -- and with the Office of Planning has
22 a supplemental report, if at all.

23 MR. SECK: Okay.

24 MR. MOY: Because this is really tight. Let's say
25 by Monday, March 14th, Mr. Mordfin?

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1 MR. MORDFIN: Okay.

2 MR. SECK: Okay. March 11th. Okay.

3 CHAIR HILL: All right. So we'll come back for
4 a decision on 2-16.

5 MR. SECK: Okay.

6 CHAIR HILL: Okay.

7 MR. SECK: Yes, Chairman Hill. Thank you very
8 much. Thank you, Board members.

9 CHAIR HILL: All right, great. I'm going to clear
10 the hearing on the record except for the items that we've
11 requested, and we'll see you back here for a decision on
12 2-16.

13 MR. SECK: Thank you.

14 MR. MOY: 3-16. March 16.

15 CHAIR HILL: I'm sorry, 3-16. 3-16.

16 MR. MOY: Is this a decision session or a hearing
17 session, Mr. Chairman?

18 CHAIR HILL: Decision.

19 MR. MOY: Okay.

20 CHAIR HILL: Mr. Seck, can you hear me?

21 MR. SECK: Yes, Chairman Hill.

22 CHAIR HILL: All three of plans that Board Member
23 Blake had asked for.

24 MR. SECK: Yes. Yes, we'll have that all.

25 CHAIR HILL: Okay.

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1 MR. SECK: Thank you, everyone.

2 MR. MOY: And the date, the timeline I gave for
3 the Office of Planning with any responses, Mr. Chairman,
4 which is March 14. I would include the parties, so that
5 would be the ANC, if there's any at all, because there is no
6 -- I believe --

7 CHAIR HILL: We did get the report from the ANC.

8 MR. MOY: We did?

9 CHAIR HILL: Yes. Because it's different than the
10 record.

11 MR. MOY: Perfect. Okay.

12 CHAIR HILL: But yes. The ANC obviously will have
13 --

14 MR. MOY: If we have any -- you know, if they have
15 anything else --

16 CHAIR HILL: Okay. Do you all want to take a
17 quick break or what do you want to do? If you all are okay,
18 I mean, the next one will take a little while maybe. I'm
19 fine going. Okay.

20 COMMISSIONER MAY: Me too.

21 CHAIR HILL: I'm fine continuing.

22 COMMISSIONER MAY: Me too.

23 CHAIR HILL: Okay, great. All right. So for the
24 record, it seems that it's just us today, the three of us.
25 Because it seems like the technical difficulties that Ms.

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1 John were having has continued to where she will not be able
2 to join us. So Mr. Moy. Can you go ahead and call our next
3 case?

4 MR. MOY: Okay. Let's see. Okay. So the next
5 application for hearing for the Board is No. 20634 of 3200
6 Penn Avenue PJV, LLC. This is request for special exception
7 relief from the matter-of-right uses Subtitle U Section
8 510.1, pursuant to Subtitle U Section 511.1(e) and Subtitle
9 X Section 901.2, to permit a fast-food establishment in an
10 existing, detached, commercial building in the MU-3A zone.
11 Property located at 3200 Pennsylvania Avenue, Southeast,
12 Square 5539, Lots 838 and 839. I believe that's all I have.
13 Thank you.

14 CHAIR HILL: Okay, great. Mr. Cohen, can you hear
15 me? You're on mute, Mr. Cohen.

16 MR. COHEN: Can you guys hear me now?

17 CHAIR HILL: Yes. Can you hear me?

18 MR. Cohen: Yes. I think we're squared away.

19 CHAIR HILL: Got it. Can you introduce yourself
20 for the record please?

21 MR. COHEN: Sorry about that little happenstance.
22 My name is Christopher Cohen, for the record, with Holland
23 and Knight. Land use counsel for the applicant in this case.

24

25 CHAIR HILL: Got it. And then you asked Mr.

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1 Dettman for his expert witness. He's already in the book,
2 but I know you're doing it for the record. Mr. Dettman,
3 could you introduce yourself, please, for the record.

4 MR. DETTMAN: Good morning, Mr. Chairman and
5 members of the Board. Shane Dettman, Director of Planning
6 Services with Holland and Knight.

7 CHAIR HILL: Okay, great. And then Mr. Startt,
8 is that you? Can you introduce yourself for the record?

9 MR. STARTT: Good morning Mr. Chairman, members
10 of the Board. Anthony Startt from Jair Lynch Real Estate
11 Partners. I am the Director of Investments.

12 CHAIR HILL: Got it. I thought we were getting
13 Mr. Lynch today. Mr. Lynch doesn't want to come down to the
14 BZA today? It's just a camera. You don't actually have to
15 go anywhere? I mean, okay. All right. Okay, let's see.
16 Okay, Mr. Cohen, is that all that's with you? Mr. Startt,
17 if you could mute yourself. Thanks. Mr. Cohen, do we have
18 anybody else with you today or no?

19 MR. COHEN: No, sir. That's the team today.

20 CHAIR HILL: Okay, if you could go ahead and walk
21 us through your client's application and why you believe that
22 they meet the standard for us to grant the relief requested.
23 I'm going to put 15 minutes on the clock so I know where we
24 are, and you can begin whenever you like.

25 MR. COHEN: Sounds good. Thank you, Mr. Chair.

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1 Mr. Young, if you could pull up the applicant's PowerPoint
2 presentation, I think it was uploaded as Exhibit No. 29.
3 Great. Thank you so much.

4 Good morning again, Mr. Chairman and members of
5 the Board. Christopher Cohen on behalf of the applicant.
6 The applicant in this case is seeking special exception
7 relief for a fast-food establishment use, and as you can see
8 on this slide here, the retail center known as Shops at Penn
9 Branch. Next slide please.

10 For familiarity, the property is located at Lots
11 838 and 839 and Square 5539, which more generally speaking
12 is located at the northeast corner of the intersection of
13 Pennsylvania Avenue and Penn Branch Avenue in the southeast
14 quadrant of the district. The site is zoned MU-3A, which
15 permits low-density mix of uses including convenient and
16 retail options and other services. And as you can see here,
17 the property is improved with the Penn Branch retail center.
18 Next slide please.

19 So again, the applicant is requesting special
20 exception relief pursuant to Subtitle X Section 901.2, as
21 well as the specific criteria and the vehicle for the special
22 exception under Subtitle U Section 511.1(e). Going through
23 the case record, the Office of Planning were pleased to have
24 their support with no recommended conditions. DDOT also
25 expressed no objection.

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1 And, of course, the applicant is aware of the
2 ANC's opposition to the case. They took a vote in opposition
3 at their public meeting in February. We certainly respect
4 their issues, and we take note of it. However, hopefully as
5 we go through this presentation, we will demonstrate why this
6 application and why the applicant satisfies it burden for
7 special exception approval.

8 I'm going to turn it over to Mr. Startt who's
9 going to speak to the revitalization effort of the center
10 over the past few years and why this particular use fits in
11 holistically with the property. And we can turn to the slide
12 for him.

13 MR. STARTT: Good morning, members of the Board
14 of Zoning Adjustment. As I said, my name is Anthony Startt.
15 I'm the Director of Investments at Jair Lynch Real Estate
16 Partners. We are the owner of the Shops at Penn Branch.
17 Next slide please.

18 We purchased this property in the Fall of 2016 out
19 of a foreclosure sale. What had once been a pillar of the
20 Ward 7 neighborhood had fallen on hard times. The building
21 at that time was more than 75 percent vacant and in poor
22 physical condition. Commencing in 2017, we invested more
23 than \$15 million into Penn Branch. We completed at
24 top-to-bottom renovation of the building, including a new
25 elevator, lobbies, roof, all major MEP systems, and a fully

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1 renovated exterior.

2 That investment has borne fruit. We have opened
3 the first full-service commercial fitness center east of the
4 Anacostia River in Planet Fitness, which opened in December
5 2018. The office and retail space at the center is more than
6 90 percent leased combined. Next slide please.

7 We have two new sit-down restaurants that will be
8 opening later this year. Highlands Café, a full-service
9 restaurant with coffee bar is under construction and Ms.
10 Toya's Cajun kitchen, a new concept from a local chef, will
11 follow shortly thereafter, likely opening this fall. And
12 also Chipotle for which this Board has already granted a
13 special exception will also be opening later this year.

14 However, our stewardship of Penn Branch has not
15 been without challenges. We have long-sought to retain CVS
16 Pharmacy, a longstanding and crucial anchor for this
17 neighborhood, especially given the recent state of the world
18 with a long-term extension and a renovated store.
19 Unfortunately we were not able to come to terms with CVS who
20 has elected to build a new stand-alone store on a neighboring
21 parcel that is expected to open in the coming months. Next
22 slide please.

23 When programming a commercial center such as Penn
24 Branch is reviewed as crucial to create a balanced mix of
25 tenants, this includes both office and retail tenants. The

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1 office providing day-time traffic to help strike a balance
2 and support the retail. That include tenants both large and
3 small. Large like Planet Fitness up to 20,000 square feet
4 and a tailor as small as 1,000 square feet.

5 The mix needs to include both a balance of
6 national and local retailers, a mix of food and beverage
7 options with goods and services, and then also within the
8 food and beverage category, both a mix of sit-down
9 restaurants and fast, causal, and delivery options.

10 The balanced mix ensures stability and vibrancy
11 that can survive economic shifts and change in consumer
12 tastes. This mix also allows for higher rent-paying
13 stronger-credit tenants to provide stability, allowing us to
14 invest heavily in local businesses, as evidenced by more than
15 \$1.5 million in landlord investments to bring the first
16 sit-down restaurants to this site, Highlands Café and Ms.
17 Toya's. Next slide please. And next slide again.

18 Unfortunately, the loss of the CVS, who is
19 traditionally is a very high-rent paying and strong
20 credit-anchor tenant, hampered our efforts but also provided
21 us an opportunity to further diversify our tenant mix. As
22 discussed in our presentation last year for Chipotle, we
23 intend to break up the former CVS space to accommodate
24 smaller tenants.

25 We received a special exception from the Board

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1 last year for Chipotle to occupy the endcap of this space.
2 And a large portion of this space will be converted to office
3 space, taking advantage of strong demand in proximity to our
4 office lobby and also providing additional daytime traffic
5 to support our retailers onsite.

6 This left us with a small, just over 1,200 square
7 foot and somewhat awkwardly shaped retail space to lease,
8 which created a perfect opportunity for a quick service food
9 tenant to balance the upcoming sit-down restaurants. Pizza
10 Hut fits that bill well, and with your approval, this special
11 exception will allow us to continue our efforts, creating a
12 vibrant neighborhood-serving retail center at Penn Branch.

13 I will now hand off our presentation to our team
14 from Holland and Knight, but I'm happy to answer any
15 questions you may have.

16 MR. COHEN: Thank you, Mr. Startt. If we could
17 just go to the next slide, please. So just to go over the
18 applicable criteria to this application, of course the
19 vehicle here again is Subtitle U Section 511.1(e), and Mr.
20 Dettman will walk the Board through all that criteria. And
21 the other burden that the applicant has to satisfy by is its
22 demonstration applied to Subtitle X 901.2.

23 And while it's not listed on the slide, I just
24 wanted to raise the language of the case of Steward V. BZA
25 back in -- it was actually back in the '70s. But the

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1 language is critical here in that when there's a special
2 exception, the applicant's main burden is to satisfy the
3 criteria that are listed in the regulations. And ordinarily,
4 if the applicant shows such compliance, the Board should
5 grant that application.

6 Just wanted to point that out for the Board's
7 consideration. I'm going to turn it over now to Mr. Dettman
8 who will walk through the specific conditions to this use.

9 MR. DETTMAN: Thank you Chris, and again, good
10 morning, members of the Board. So the standard review for
11 the requested special exception, a fast-food establishment
12 located in MU-Use group D is permitted by special exception
13 pursuant to Subtitle U Section 511.1(e).

14 This intermittent review applicable to this case
15 is, of course, the general special criteria set forth in the
16 Act in 901.2 concerning whether or not the proposed fast-food
17 establishment is in harmony with the general purpose and
18 intent of the zoning regulations, that the use will not tend
19 to adversely affect neighboring property in accordance with
20 the zoning regulations and zoning maps. And of course, then
21 there's the special exception enumerated in Subtitle U
22 Section 511 that I'll step through quickly.

23 With respect to the general special exception
24 criteria and specifically the criteria talking about whether
25 the proposed use will be in harmony with the general purpose

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1 and intent of the regulations, the site is zoned MU-3A and
2 the purpose of the MU-3 zone is for mixed-use retail for the
3 day-to-day needs of a local neighborhood.

4 As Mr. Startt testified, on acquiring the
5 property, they had very high degree of vacancy. They brought
6 a wide range of uses to the shopping center, to the
7 neighborhood including national and local chains including
8 a wide range of eating and other neighborhood-serving retail
9 uses. And then in the food and beverage category, which this
10 use falls, a wide mix of food fast, casual as well as
11 forthcoming sit-down restaurants.

12 I think the proposed use fits in well with the use
13 mix that's in this shopping center. There is certainly need
14 for a wide range of uses in the neighborhood, and I believe
15 that the proposed use is consistent with the purpose and
16 intent of that. Next slide.

17 In terms of whether the proposed use will not tend
18 to adversely affect the use of neighboring property, as I've
19 already testified, it's going to expand the mixed uses of the
20 shopping center which will address a strong demand in the
21 neighborhood serving retail and restaurant uses in the Penn
22 Branch sub-area of the Pennsylvania Avenue small area plan,
23 which was adopted by the council some time ago.

24 And one of the recommendations in that small area
25 plan specifically identified this site as being the site with

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1 the highest potential to address the retail neighborhood
2 serving uses in Ward 7.

3 The use is also compatible with other uses within
4 the neighborhood commercial node at Pennsylvania Avenue and
5 Branch Avenue within the shopping center. It is
6 substantially separated and buffered from nearby residential
7 uses to the east and to the north of the shopping center.
8 The operations, the parking and the trans --

9 CHAIR HILL: Mr. Dettman?

10 MR. DETTMAN: Yes.

11 CHAIR HILL: I'm sorry. You kind of broke up
12 there a little bit. Can you maybe turn off your camera and
13 can everybody else mute their line? And then let's just see
14 how the audio goes, Mr. Dettman.

15 MR. DETTMAN: Is that better?

16 CHAIR HILL: Yes. Go ahead and give it a shot.

17 MR. DETTMAN: Okay. So just looking at the second
18 criteria of the general special exception criteria in terms
19 of impacts to the use of neighboring properties, I was noting
20 that it's going to favorably expand upon the mix of uses that
21 the applicant has brought to the shopping center and
22 continues to bring to the shopping center.

23 It's compatible with other uses within the
24 shopping and within the neighborhood commercial node that
25 exists at the intersection of Pennsylvania and Branch

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1 Avenues. The use is separated and buffered from nearby
2 residential uses to the east and to the north of the shopping
3 center.

4 The proposed fast-food establishment, the
5 operations, parking, the store entrance, signage, and the
6 trash facility that it will use are all oriented away from
7 the surrounding neighborhood and meet all applicable
8 screening criteria. And most of the customer orders will be
9 fulfilled via delivery service and so there's expected to be
10 a limited number of foot and vehicular traffic and trips that
11 will result from this use. Next slide.

12 Quickly looking at the specific use criteria that
13 are under Subtitle U Section 511.1(e), the establishment is
14 located within a multitenant building or shopping center.
15 There is a limit on fast-food establishments in these types
16 of shopping centers to 30 percent, including the recently
17 approved Chipotle, which is next door as Mr. Startt
18 mentioned. Overall, the shopping center will only have
19 approximately 7.5 percent of the gross floor area devoted to
20 fast-food establishments, so well-below the 30 percent that
21 is permitted.

22 The refuse dumpster will be located in a
23 three-side brick enclosure located in the existing rear yard
24 of the center. It's located more than 10 feet away from even
25 the nearest R1-B zone. And again, it's oriented away from

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1 the residential use and adequately screened. And then it
2 doesn't propose a drive thru use. Next slide.

3 The use will be operated in a manner that is
4 typical of a fast-food establishment. The hours of operation
5 will be consistent with other retailers within the shopping
6 center. And again, most of the orders will be provided via
7 a delivery service.

8 The shopping center provides 76 onsite spaces in
9 the service parking lot along Pennsylvania Avenue, which
10 meets the need for not only the use but also the entire
11 shopping center and current mix of users and tenants. The
12 existing parking provides adequate parking, and it's unlikely
13 that any kind of queuing or any kind of spillover will occur
14 into neighborhood streets including along Pennsylvania
15 Avenue. We have the support of the Department of
16 Transportation in Exhibit 26.

17 And finally, we don't believe that, because the
18 applicant has met the standard of review and the criteria
19 that I've stepped through, we don't believe that there's any
20 need for any kind of additional conditions in order to grant
21 the special exception. And that concludes my testimony. I'm
22 happy to answer any questions.

23 MR. COHEN: Thank you, Mr. Dettman. I'll just
24 wrap up really quickly. So as you can see or hopefully heard
25 from the testimony in this case and from our presentation,

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1 the applicant satisfies the criteria that are applicable to
2 this special exception request. Thank you very much for your
3 time this morning and we're happy to answer any questions.

4 CHAIR HILL: Okay, Mr. Cohen. I know you guys are
5 disappointed about the ANC not thinking that your panic2 is
6 a healthy option. However, could you please kind of tell us
7 a little bit more about how that meeting went and why you got
8 the vote that you got?

9 MR. COHEN: Sure. I'm going to actually turn to
10 Mr. Startt. I think he can speak to that better than I can.

11 MR. STARTT: Sure. So we've, on this project, met
12 with the ANC numerous times over the last several years and
13 presented this through them twice. Both last fall and then
14 again just a couple weeks ago. You know, we've gotten a lot
15 of feedback from both the ANC and a variety of neighborhood
16 stakeholders regarding the tenant mix and, just to be honest,
17 it's a fairly wide range of things that both want.

18 You know, we've heard both sit-down restaurants,
19 and then we've heard some folks that are not so happy about
20 sit-down restaurants. We've heard everything from we want
21 Chick-fil-a and Five Guys to we only want health stuff like
22 salads.

23 And so I think even at the ANC meeting, there were
24 some comments of, you know, sure we like pizza, but we want
25 better pizza. We want &Pizza or some other uses there. So

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1 I think the ANC was, I will say probably, very much focused
2 on just this use and this space rather than thinking about
3 the mix of retail in the center as a whole. And certainly,
4 on the face of it, just hearing the term fast-food can kind
5 of give some people nervousness, and I certainly understand
6 that.

7 But recall that this is just about 1,200 square
8 feet in a very large shopping center. And so I think the ANC
9 was receptive and felt positive about the work we had done
10 on the shopping center to date but was not particularly keen
11 on this particular tenant. And I think that was more so, as
12 I said, the tenant rather than the specific fast-food or even
13 the specific menu that the tenant offers.

14 CHAIR HILL: Okay. All right. Do my Board
15 members have any questions for the applicant? I'm going to
16 turn to the Office of Planning.

17 MS. MYERS: Good morning. Chrystal Myers with the
18 Office of Planning. The Office of Planning reviewed this
19 case and reviewed it strictly on the criteria for a fast-food
20 establishment in this zone. And it meets all the criteria,
21 so the Office of Planning is recommending approval of this
22 relief. And we can stand on the record of the staff report,
23 or we could go through it further if you would like.

24 CHAIR HILL: Okay, one second. Commissioner
25 Brown, can you hear me? I can see you nodding, Commissioner.

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1 I can't hear you.

2 COMMISSIONER BROWN: Can you hear me now?

3 CHAIR HILL: Yes. I can hear you.

4 COMMISSIONER BROWN: Okay, yes.

5 CHAIR HILL: All right, Commissioner. I just saw
6 your name popped up. Would you like to offer your testimony,
7 please?

8 COMMISSIONER BROWN: Sure. I'm sorry. I was in
9 and out because I am at work right now. Tiffany Brown, ANC
10 Commissioner 7B-02. I also chair ANC 7B. Do you need more
11 information before I speak, or is that it?

12 CHAIR HILL: No. That's good.

13 COMMISSIONER BROWN: Okay. So the ANC took the
14 position that there are some fast-food establishments already
15 there, and so we didn't need an additional one in the form
16 of a Pizza Hut. It wasn't so much that we don't want Pizza
17 Hut. It's like, we've already -- you know, we're at our fill
18 of fast-food restaurants there in the neighborhood.

19 We clearly would like healthier options. I think
20 Mr. Smartt mentioned about the CVS. Because of the state of
21 obesity in the Ward, we didn't want to add to it adding
22 another fast-food restaurant such as that that does not
23 necessarily have healthy options.

24 CHAIR HILL: Got it. I understand. What was I
25 going to say? Have you been a commissioner for a little

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1 while, Commissioner?

2 COMMISSIONER BROWN: I have. This is my fourth
3 term.

4 CHAIR HILL: Your fourth term?

5 COMMISSIONER BROWN: Yes.

6 CHAIR HILL: Okay. Well good luck with all the
7 terms that you've had. Let's see. This is my third term at
8 this, so I can relate to, I guess, public hearings is what
9 I'm trying to say.

10 You know the criteria that we're supposed to look
11 at for all of this stuff, right?

12 COMMISSIONER BROWN: Somewhat.

13 CHAIR HILL: Somewhat?

14 COMMISSIONER BROWN: So my SMD is where Skyland
15 is, so I'm clear on that. I'm definitely clear on that. But
16 I guess if given the opportunity to oppose this particular
17 -- an additional fast-food restaurant, the commission indeed
18 wanted to oppose it. We opposed it. With the Chipotle that
19 we approved, you know, Chipotle does have some healthy
20 options. So if you want to further explain the criteria.

21 CHAIR HILL: Got it. I mean, I would just refer
22 you guys to the Office of Planning's report and also Ms.
23 Myers, I'll let you kind of go over your criteria if you
24 would for the Commissioner. But before you do, Commissioner,
25 I guess I was just trying to say that the type of -- well,

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1 you know, healthy, not healthy isn't necessarily something
2 that falls within our criteria that we look. But I mean
3 definitely within the ANC, you all can, you know, give your
4 opinion and word on things, and we definitely take into
5 consideration here.

6 But again, what we're supposed to look at is
7 whatever these particular standards are, and I'm going to let
8 the Office of Planning give their analysis again a little bit
9 more specifically, because they'll do a better job than I
10 will right now. So Ms. Myers, if you can kind of go through
11 your analysis as to what you look at, please.

12 MS. MYERS: Sure. Sure. So, I'm going to just
13 start off with the specific criteria. So in the zoning
14 regulations, U 511.1 lays out the specific criteria for a
15 fast-food establishment. The first one is that the
16 establishment shall be located within a multitenant building
17 or shopping center.

18 It shall not be located in a single tenant
19 building. So no single detached fast-food establishment.
20 It has to be in a multitenant building. In this case, they
21 are proposing an establishment in a multitenant building, so
22 that is satisfied.

23 The next one is that there cannot be more than 30
24 percent of the total gross floor area of a multitenant
25 building or shopping center shall be occupied by a fast-food

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1 establishment. As discussed a little earlier as well, this
2 use along with the other fast-food establishments on the
3 property would only make up 7.5 percent of the fast-food use
4 gross floor area in this shopping center. So it was still
5 significantly under the 30 percent threshold, or maximum.

6 The next one is that any refuse dumpster used by
7 a fast-food use shall be housed in a three-sided brick
8 enclosure and height to the dumpster or of six feet high,
9 whichever is greater. And then the entrance to the enclosure
10 shall include an opaque gate. The entrance shall not be
11 within 10 feet of RF or RA zone.

12 In this case, there is a trash dumpster area that
13 was actually approved or reviewed in the previous case, which
14 was for the Chipotle. So there is, in a sense, an existing
15 trash enclosure area that complies with this requirement.
16 It will be three-sided brick enclosure with a minimum height
17 of six feet and it will have an opaque gate.

18 My understanding is that the trash area is under
19 construction. So when I say existing, I mean in the sense
20 that we've already reviewed it in the last case and deemed
21 it appropriate for fast-food establishment use. And in this
22 case, of course, it would still be appropriate for a
23 fast-food establishment use. It meets the height and the
24 screening requirements.

25 The next one is drive thru. The use cannot have

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1 drive thru. They're not proposing a drive thru in this case.
2 And then the use shall be designed and operated so as not to
3 become objectional to neighboring properties from the noise,
4 odors, lights, hours of operation, et cetera

5 The use would be over 100 feet away from
6 residential properties, so it should not have any impact in
7 any of those concerns. The hours of operation are very
8 similar to the other hours of operations in the shopping
9 centers. So that's 10:00 a.m. to 12:00 a.m. Sunday through
10 Thursday and 10:00 a.m. to 1:00 a.m. Saturday and Friday.
11 Again, very similar to the others, so that should not be
12 significantly an issue.

13 The parking criteria is that they are meeting
14 that. They have more than enough parking on the site.
15 They've got more parking than required. And so the use shall
16 be located and designed so as not to create a dangerous or
17 otherwise objectional traffic condition.

18 Again, significant parking on the site. And DDOT
19 has already reviewed this application and has no objections,
20 so they are satisfied with this, and we defer to DDOT on
21 those issues.

22 And Office of Planning has no additional
23 conditions to recommend on this case. When it comes to the
24 general special exception, when it comes to the impacts on
25 neighboring properties, we usually look at the specific

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1 criteria in order to make the determination that it does not
2 have any significant or adverse impact to the neighboring
3 properties because it does comply with all the special
4 exception specific criteria for fast-food establishment.

5 And the zone does allow for fast-food uses that
6 meet that criteria. Those criteria are to ensure, to reduce
7 impacts on neighboring properties. And again, the use is
8 over 100 feet away from residential uses and when the harmony
9 of the general purposes of the zoning regulations, the MU-3A
10 zone does allow for fast-food establishments in shopping
11 centers if they meet the criteria.

12 So it's not in contradiction to the regulations
13 or the intent of the regulations. So that is, I guess, the
14 whole summary of my report. But of course, if you guys have
15 any additional questions, I'm here.

16 CHAIR HILL: Ms. Myers, what is the Board or the
17 Office of Planning have in terms of, you know, choosing the
18 type of restaurant?

19 MS. MYERS: We are not able, you know, the Office
20 of Planning, the Board of Zoning Adjustment, we cannot decide
21 or choose the type of restaurant. The applicant, the owner
22 of the property has the right to choose any use that they
23 would like to choose that's allowed in the zone. And when
24 there are special exception uses, those uses have to comply
25 with the criteria.

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1 The Board is charged with ensuring that they are
2 meeting the criteria and Office of Planning is recommending
3 that they are meeting the criteria, but the Board makes the
4 decision on that. So it's more of a review of do they meet
5 this criteria or not for the special exception use. And we
6 recommend that they are meeting the criteria. We reviewed
7 it and we recommend that the Board approve it because we
8 believe that they are meeting the criteria.

9 CHAIR HILL: Okay. Commissioner Brown, do you
10 have any questions for anybody?

11 COMMISSIONER BROWN: Yes, I just have one
12 question. So you said no adverse effect in that there is not
13 housing 100 -- I believe there is housing within the 100
14 feet. There's housing on Carpenter Street. I believe that's
15 Carpenter. I guess, it's like a half a block there's an
16 apartment building and they are homes there.

17 MS. MYERS: It's more the zone that they're in and
18 so, let me check, and it's the use is over 100 feet away, not
19 the shopping building itself. And I believe there's also
20 quite a lot vegetation, trees, et cetera, but let me check
21 those.

22 COMMISSIONER BROWN: I'm thinking of off of
23 Pennsylvania Avenue. So where this Pizza Hut is proposing
24 to go is where the existing CVS is and to that, depending on
25 which direction you're in, to the right out there, there are

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1 apartments that I don't believe are -- that are more 100
2 feet.

3 CHAIR HILL: I'm sorry, Commissioner Brown. Could
4 you just repeat your question again?

5 COMMISSIONER BROWN: Ms. Myers was saying that
6 something be the effect on housing being not 100 feet away
7 from I guess where it would be used.

8 CHAIR HILL: Yes.

9 COMMISSIONER BROWN: Where it would be used, where
10 the establishment would be. And I'm stating that there's
11 existing housing less than 100 feet away from where she's
12 speaking, from where actually the Pizza Hut would operate.

13 MS. MYERS: Are you talking about on Carpenter and
14 Pennsylvania Avenue, at the corner there?

15 COMMISSIONER BROWN: Yes.

16 MS. MYERS: Okay. That's in a mixed used -- it's
17 in the same zone. It's in the MU-3A zone and that's an
18 apartment building over there. I have not measured exactly
19 what their distance is from this property. I rely on the
20 information provided by the applicant, but also this is not
21 in a residential zone.

22 It's in a mixed-use zone so the expectation is
23 that they would be closer to more commercial uses, because
24 they are in a mixed-use zone versus a residential zone. And
25 I believe the criteria even calls out that residential

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1 properties in the R zones are the ones that can't be within
2 a certain proximity to the trash dumpster, et cetera. I'm
3 looking for that particular criteria.

4 COMMISSIONER BROWN: Okay. Also --

5 MS. MYERS: They are in a RA zone, so that
6 apartment building, if I understand you correctly, that one
7 is in a mixed-use zone, so it doesn't have the standard when
8 it comes to how far the distance has to be.

9 COMMISSIONER BROWN: So you just mentioned
10 something about the trash dumpster, the RA zone with the
11 trash facility. So the trash -- and let's be clear, the ANC
12 did approve the last variant that was applied for with the
13 trash being there -- but it does appear that it would be
14 within 100 feet of the dumpster. Not that apartment
15 building, but there are other homes on Carpenter as you start
16 to go up the hill.

17 So across from the apartment building there, there
18 starts on the opposite of the street homes.

19 MS. MYERS: No, my understanding is that all of
20 those are at least 100 feet away. I don't know if there's
21 an error that was provided by the applicant, but my
22 understanding is that those are the use, not the -- the
23 fast-food use would be 100 feet away or approximately 100
24 feet away from those uses. They also would have the
25 separation of the office in the back, trees, etc., between

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1 the houses on, is it O Street?

2 CHAIR HILL: I'll get you Mr. Cohen. Give me one
3 second. Mr. Cohen. Okay Mr. Cohen, do you have a response?

4 MR. COHEN: Yes, I just wanted to clarify.
5 There's a lot of conversation right now about this distance
6 requirement. And the special exception criteria that are
7 applicable to this application, there's no 100-foot criteria
8 that the use needs to be -- that that needs to be the
9 distance requirement.

10 The distance requirement I think that we're all
11 thinking about is about the trash enclosure, which
12 Commissioner Brown correctly pointed out. But it's not 100
13 feet. It's 10 feet from any zone that RF or RA. And that
14 standard is in 511.1(e) Subparagraph 3.

15 So I understand the whole conversation about not
16 adversely affecting neighboring property, but as, you know,
17 we went through, this use is a significant distance away from
18 the nearby residences. Its activities are oriented towards
19 Pennsylvania Avenue, again away from the residential
20 properties. It's buffered to, I believe Ms. Myers' point,
21 it's buffered by the abutting office use and the abutting
22 Chipotle use.

23 So again, I want to be clear. There's no
24 requirement that the use needs to be over 100 feet away from
25 any residences. That's not for consideration.

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1 CHAIR HILL: Okay. Got it. Ms. Myers, you agree?

2 MS. MYERS: Yes, the criteria is actually 10 feet
3 but, in the information provided to us, there was discussion
4 about it being about 100 feet away. But I mean the real
5 threshold is 10 feet.

6 CHAIR HILL: Okay. All right. I mean,
7 Commissioner Brown, you guys unfortunately, really, are not
8 interested in the -- you want something different. You know,
9 and so I can't really give you anything different,
10 unfortunately. Do you have any other questions for the
11 Office of Planning?

12 COMMISSIONER BROWN: No. I do not. I just wanted
13 to kind of take that Ms. Myers, she was the one that said 100
14 feet, so that's why I went with that, no object nor housing
15 over 100 feet away. So that's what I wrote down and that's
16 why I questioned the 100 feet. It wasn't I was questioning
17 the statue. I was basing my next statement based upon that.

18 CHAIR HILL: Got it.

19 COMMISSIONER BROWN: But that is all.

20 CHAIR HILL: Okay. Ms. Brown, are you at a
21 school?

22 COMMISSIONER BROWN: I am.

23 CHAIR HILL: It looks like a nice school.

24 COMMISSIONER BROWN: Yes, it is.

25 CHAIR HILL: It looks fun. All right. Let's see.

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1 Okay, is there anybody here who wishes to speak, Mr. Young?

2 MR. YOUNG: No, we don't.

3 CHAIR HILL: Okay. Does my fellow Board members
4 have any more questions for the applicant?

5 COMMISSIONER MAY: No.

6 CHAIR HILL: Commissioner Brown, you have anything
7 you'd like to add at the end? Mr. Cohen, you have anything
8 you'd like to add at the end?

9 MR. COHEN: I just wanted added one, because you
10 raised a question about conditioning or granting the approval
11 tied to the use. And I have to say that's not really -- the
12 Board really can't do that consistent with case law. There's
13 no case law that says that in the case that they consider
14 that, that would be personal to the applicant.

15 And the special exception is tied to the property
16 so any indication or any decision that would tie an approval
17 to the tenant, that would be inconsistent with what's
18 permitted. And I think Ms. Myers did a nice job of
19 summarizing that as well, but I just want to present that for
20 the Board. So thank you.

21 CHAIR HILL: Okay, great. All right. I'm going
22 to go ahead and close the record of the hearing. Mr. Young,
23 if you could please excuse everyone.

24 Okay, are you guys already to deliberate? I am.
25 Okay. I can start. I mean, it's unfortunate that the ANC

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1 is not thrilled with the tenant that is going to be coming
2 into that location. However, it's not something that we're
3 able to analyze in terms of the regulations.

4 I believe within the regulations the applicant has
5 made the argument as to why they're meeting the criteria for
6 us to grant the special exception. And I also think that the
7 Office of Planning has made a good case for why they meet the
8 criteria as well.

9 So since we can't choose what goes in there, but
10 we have to choose whether or not they're meeting the special
11 exception criteria, I would agree that they are meeting the
12 special exception criteria, and I will be voting in favor of
13 the application of this appointment that the ANC is not in
14 favor of. But hopefully, it will be a good addition to the
15 neighborhood, and I'm going to be voting in favor.
16 Commissioner May?

17 COMMISSIONER MAY: Mr. Chairman, I think you
18 summed it up pretty well. It comes down to what the specific
19 criteria are that we have to base our decision on. And the
20 applicant very clearly meets those criteria. I'm certainly
21 sensitive to the admirable concerns of the ANC, but
22 unfortunately, it's just not something that we have to take
23 into consideration or really even can take into
24 consideration. So I will be voting in favor as well.

25 CHAIR HILL: Thank you. Mr. Blake?

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1 MEMBER BLAKE: Yes, thank you. I thought this was
2 a fairly straightforward application but for the ANC's
3 objection. Clearly, the scope of review is limited and if
4 the applicant meets the burden of proof, the Board must
5 ordinarily grant the application. I thought the Office of
6 Planning provided a very thorough explanation of the criteria
7 for approval and analysis of how the applicant was meeting
8 the special exemption conditions of U 511.1(e).

9 The criteria in this section largely addresses
10 most of the issues that might adversely affect the use of
11 neighboring properties. And meeting the standards of U
12 511.1(e), I believe the granting of release will be in
13 harmony with the general purpose and intent of the zoning
14 regulations. And any relief will not tend to adversely
15 affect the use of the neighboring properties.

16 I give great weight to the reports of the Office
17 of Planning ANC7B but note that DDOT has no objection. I can
18 appreciate ANC7B's desire for healthier options but recognize
19 that with this addition, fast-food only represent like 7.5
20 percent of the total gross floor area in the shopping center.
21 So there is room for additional services that might fit.

22 Still there are no specific issues of concern
23 voiced by the ANC that I believe we can address in this
24 venue. I think the applicant has adequately addressed issues
25 of noise, traffic, and trash and other business practices

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1 that might be objectional to neighboring properties. Having
2 said that, I would be prepared to support requested relief.

3 CHAIR HILL: Okay. Thank you very much, you guys.
4 I'm going to make a motion to approve application No. 20634
5 as captioned and read by the secretary and ask for a second.
6 Mr. Blake?

7 MEMBER BLAKE: Second.

8 CHAIR HILL: Motion made and seconded. Mr. Moy,
9 can you take a roll call?

10 MR. MOY: When I call each of your names, if you
11 would please respond with yes, no, or abstain to the motion
12 made by Chairman Hill to approve the application for the
13 relief requested. The motion to approve was second by Mr.
14 Blake. And so on to Mr. Peter May.

15 COMMISSIONER MAY: Yes.

16 MR. MOY: Mr. Blake?

17 MEMBER BLAKE: Yes.

18 MR. MOY: Chairman Hill?

19 CHAIR HILL: Yes.

20 MR. MOY: We have two Board members not present,
21 not participating. Staff would record vote as 3-0-2 and this
22 is on the motion to approve made by Chairman Hill, second by
23 Mr. Blake. Also, in support of the motion to approve is
24 Zoning Commissioner Peter May. Again, staff would record
25 voters 3-0-2. The motion carries.

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1 CHAIR HILL: Okay great. Okay, thanks you guys.
2 This is what I kind of propose. Let's go ahead and take a
3 quick break, like 10 minutes, and then we'll come back, hear
4 a case, and then we might take lunch. We can decide then
5 because I think that 20638 might take a little while, which
6 is the case after this next case. But you all can think
7 about it. Let's take 10 minutes and we'll come back, okay?

8 (Whereupon, the above-entitled matter went off the
9 record at 11:31 a.m. and resumed at 11:44 a.m.)

10 CHAIR HILL: All right, Mr. Moy, do you want to
11 call us back and call the next case, please?

12 MR. MOY: Yes, sir. BZA is back in its public
13 hearing session after a quick recess and the time is at or
14 about 11:44 in the morning.

15 The next case application before the Board is
16 Application No. 20635 of 414 Luray Place, L-U-R-A-Y Place,
17 NW, LLC. This application as amended for special exceptions
18 under the -- or rather from the minimum vehicle parking
19 requirements of Subtitle C Section 701.1, pursuant to
20 Subtitle C Section 703.2 and Subtitle X Section 901.2; the
21 minimum lot area requirements of Subtitle E Section 201.1,
22 pursuant to Subtitle Section 201.4, Subtitle Section 5206.2,
23 and Subtitle X Section 901.2; the rooftop and upper floor
24 requirements of Subtitle E Section 206.1, pursuant to
25 Subtitle E Section 206.4, Subtitle E Section 5207.1, and

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1 Subtitle X Section 901.2; and finally, the rear yard
2 requirements of Subtitle E Section 306.1, pursuant to
3 Subtitle E Section 5201 and Subtitle X Section 901.2.

4 This would subdivide the existing lot and create
5 two new lots, raze an existing accessory garage, and
6 construct a new, detached, three-story with cellar and roof
7 deck, apartment house including a Voluntary Inclusionary
8 Zoning unit, and to construct a third story with roof deck
9 and rear addition, to an existing semi-detached, two-story
10 with cellar, principal dwelling unit in the RF-1 zone. The
11 property is located at 414 Luray Place, NW, Square 3044, Lot
12 78.

13 And I believe, Mr. Chair, that's all I have for
14 now.

15 CHAIR HILL: Okay, great. Thank you. Mr.
16 Williams, can you hear me?

17 MR. WILLIAMS: I can, Chairman Hill.

18 CHAIR HILL: Could you introduce yourself for the
19 record, please, sir?

20 MR. WILLIAMS: Yes. My name is Zachary Williams.
21 I'm a land use attorney with the law firm of Venable
22 representing the applicant in this case.

23 CHAIR HILL: Okay. Mr. Williams, if you can go
24 ahead and walk us through your client's application and why
25 you believe they're meeting the standard for us to grant the

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1 relief in question. I am going to put 15 minutes on the
2 clock so I know where we are and you can begin whenever you
3 like.

4 MR. WILLIAMS: Thank you, Chairman Hill, and
5 members of the Board. With me today as well are the owner
6 and developer, Matt Medvene, as well as our architect, Ryan
7 Petyak.

8 Mr. Young, could you pull our -- the presentation
9 that we filed with the record? Thank you.

10 As I said, my name is Zach Williams. I'm
11 representing the applicant today and I'm with the law firm
12 of Venable LLP.

13 Next slide, please.

14 This project is proposed to be located at 414
15 Luray Place, NW in the Park View neighborhood of Washington,
16 D.C. This is a property that is a through lot with frontage
17 on Luray Place, NW, as well as Lamont Street, NW, and it's
18 in the RF-1 zone. As you can see from the zoning map here.

19 Next slide, please.

20 This is a copy of the survey that shows the
21 existing as a two-story existing row home on the Luray Place
22 side of this property and there's a one-story garage on the
23 Lamont side of the property. It's a 3100 square foot through
24 lot, as I said, zoned RF-1 and we have some photos to show
25 the existing conditions.

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1 Next slide, please.

2 That is the current home, row home, that light
3 blue home on Luray Place. It's a two-story row home with a
4 porch.

5 Next slide, please.

6 And this is the back of the property. This is the
7 Lamont Street side. The picture on the left is looking at
8 the garage from the back yard of the existing lot and then
9 the picture on the right is looking down Lamont Street. Our
10 garage for this project is the second garage from the end
11 here, at the right of the photo in the background of the
12 photo.

13 As you can see, there are a number of garages
14 located along Lamont Street. These properties are all
15 through lots here, the adjacent lots as well.

16 Next slide, please.

17 Here's some renderings of the proposed project.
18 The row home would be expanded, the row home on Luray Place
19 to add a third level. Otherwise, would be the facade and the
20 porch will be untouched. And then we are building a brand
21 new row home on the Lamont side in place of the existing
22 garage. The architectural rendering you can see there. It
23 is -- we'll get more into this, but it is obviously a
24 nontraditional rendering. This is not an historic
25 neighborhood and we did this on purpose, actually. As I

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1 showed in the prior picture, there are no homes adjacent to
2 this property, so there is no existing line of roof line or
3 anything else to try to match. And the architecture on his
4 side of Lamont is very varied. This is no sort of consistent
5 architecture on the street. So we thought well, this is a
6 good chance to do something a little bit different. This is
7 a good chance to bring some energy, some vitality to this
8 portion of the street which is right now just garages and
9 parked cars.

10 And so this is the concept that we came up with.
11 It would be a two dwelling flat, just like the home on the
12 Luray side.

13 Next slide, please.

14 So we are requesting four different items of
15 relief for this particular project and the first stems from
16 this lot. It cannot be subdivided by a right because there
17 are only 3100 square feet. We need 1800 in the RF-1 zone.
18 So what we are doing is we are using the IZ lot provision
19 which is part of the RF-1 zoning regulations that allows us
20 to subdivide a lot with 1500 square feet, as long as we have
21 an inclusionary unit, included in our development. And so
22 we are going to be asking for relief there to subdivide this
23 existing through lot into two lots, with a lot facing Luray
24 Place and a lot facing Lamont Street. Each lot would have
25 1550 square feet.

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1 The next special exception that we will be seeking
2 is rear yard relief. Because these lots are substandard
3 lots, we trigger other issues as well with the yards. And
4 so the way we've designed this is that the rear yard relief
5 will be required for the Luray side, but there will not be
6 rear yard relief required for the Lamont side where we are
7 building the new home. But we will need that relief because
8 the lot just isn't -- it's just not big enough to subdivide
9 and not require that relief as well. And we'll get into that
10 a little bit more as well.

11 Third, we are seeking a special exception to
12 modify the architectural roof line on the Luray Place side
13 and I will say this is the one that probably had the most
14 discussion when we met with the community and the ANC. And
15 we'll get into why we think we justified this, this request,
16 but it's not something that this developer who has done a
17 bunch of projects that the ZA has ever requested and it's
18 just something that is really required to make this project
19 work.

20 Lastly, we are asking for special exception relief
21 for parking reduction. There's a question of whether we
22 actually need this or not and I think OP noted in its report
23 we may not need this relief. And frankly, we asked the
24 Office of Zoning this question and we just didn't get a clear
25 enough answer so we're putting it -- we kept it in just to

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1 be safe. And given we've had OP support for this and the ANC
2 support for it, we've kept it in. And that way, there isn't
3 a question down the line about whether we may or may not need
4 it. So we kept it in our application.

5 Next slide, please.

6 So as I said, the first item of relief is a
7 special exception for the IZ lot subdivision. As you can see
8 here, by dividing this lot into two equal size lots, we will
9 be in a way bringing this lot into conformance with the way
10 most of the lots are presented in the neighborhood, with one
11 lot facing Luray and one lot facing Lamont.

12 We'd also be creating, as part of this IZ
13 subdivision a four bedroom IZ unit for sale at the 80 percent
14 MFI level and that would be in the new building where the
15 existing garage is on Lamont. So the new building will have
16 the IZ unit on the bottom two levels.

17 Next slide, please.

18 Getting into the mansard roof alteration, so we
19 have tried to sort of keep the existing character of that
20 roof line as best as we can and pull in the two windows which
21 is a style, an architectural style that you see throughout
22 the neighborhood for houses that have three levels. Now to
23 be candid, you don't see it on this particular block, but you
24 see it on other blocks literally a block away and so our idea
25 is let's pull something in that matches and is in conformance

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1 with the Park View neighborhood.

2 The reason that we need this is because again, of
3 the short length of the lot. We can't go back the way that
4 we would typically if you were doing just a standard
5 expansion or a third story on an existing row home. And we
6 already need that rear yard relief and we don't want to
7 aggravate that any further. So because of that, we're kind
8 of stuck with the footprint of the house we have and you just
9 can't get enough square footage on that third level without
10 modifying the roof line to have a true three bedroom unit on
11 that second and third level. We looked at it. We tried
12 everything that we could to make that work and it just wasn't
13 possible. And so this is the only option that works for the
14 project.

15 The other thing I'll say and the applicant might
16 speak to this further is the economics of the project because
17 one of the four units is an IZ unit really require that you
18 have a three bedroom unit as one of your two units on Luray.
19 And without it, you would have a much smaller unit and the
20 economics just don't work at that point. And so this is why
21 we've asked for this relief and we've tried to make it fit
22 within and be in conformance with the neighborhood. And
23 ultimately ANC agreed with this and voted to support the
24 relief sought and recognized that we were trying to do as
25 little damage as possible to that roof line while also adding

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1 an IZ unit to the neighborhood.

2 Next slide, please.

3 So this is a cross section of what the lot would
4 look like with the two new structures and this really
5 constitutes two thing. One, it illustrates why we need the
6 rear yard relief. There just isn't enough room between the
7 two structures to be able to do them without seeking some
8 rear yard relief. And that's why we need it.

9 The parking question here, assuming we need it,
10 there's no alley access here. So we don't have an alley to
11 provide parking even if we wanted to. So as you know from
12 the zoning regulations, that's one of the justifications for
13 not providing the required parking. Another justification
14 is are you providing IZ and Subtitle C, Section 73.2, and
15 here we are. So we believe that if we need the parking which
16 is still kind of up for debate, that we've met the
17 requirements to have that relief from providing a parking
18 spot since we'll two units in each of the new buildings.

19 Next slide, please.

20 Wrapping up, we did some shadow studies to show
21 how the new building expansion and the new building on Lamont
22 might impact the adjoining lots. As the OP stated in his
23 report, there are some shadowing impacts, but we think those
24 are minimal, mainly because a lot of those impacts are on
25 either other garages or on open yard rather than affecting

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1 other dwelling units. And that's just a function of the fact
2 that the adjacent lots don't have homes on the Lamont side
3 which is where the new structure is being built.

4 Next slide.

5 This is just another shadow study as well. So the
6 first was the summer solstice. This is the winter solstice.
7 And the new shadowing is the red shading there as well.

8 I think that's my last slide.

9 Last slide, ANC and community support. So we do
10 have ANC-1A support, supporting all aspects of this
11 application. We met with the ANC Planning and Zoning
12 Committee prior to filing the application and we made some
13 changes to address some feedback that we received to the
14 design. And we then met with that committee again, and then
15 we went before the full ANC and ultimately we got support for
16 the application.

17 The applicant has also canvassed all of the
18 neighbors on Luray, the 400 block of Luray Place and Lamont
19 Street to talk about the project. And those neighbors that
20 had an opinion about it, most frankly didn't, but most any
21 that did the only issues that really came up for discussion
22 were the design again of the roof line and there was a little
23 bit of discussion about the Lamont Street side, but I'd say
24 there was probably more excitement about that and interest
25 in it than there was any sort of negative reaction to it.

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1 And on the roof line on Luray, I think that we were able to
2 show convincingly that this is something we just have to do
3 to make this project work the lot. This is too small and we
4 can't go back. And so I think folks recognized that and
5 ultimately, we had support for the project in the community.

6 So that concludes my presentation. Also, we do
7 have OP in support as well. And we have the applicant here,
8 the developer, Mr. Medvene. We have the architect here as
9 well to answer any questions that the Board may have. Thank
10 you.

11 CHAIR HILL: All right, let me first turn to my
12 fellow board members. Do you have any questions for the
13 applicant? Okay.

14 I'm going to turn to the Office of Planning.

15 MS. BROWN-ROBERTS: Good morning, Mr. Chairman,
16 and members of the BZA. This is Maxine Brown-Roberts
17 representing the Office of Planning on BZA 20635.

18 Regarding the subdivision, the proposal to create
19 two new 1550 square feet lots for a voluntary IZ development
20 would meet the requirements of Subtitle X, Subsection 901 as
21 the regulations allow for reduced lot area by special
22 exception when the subject properties are in an inclusionary
23 development.

24 The proposed lot sizes and the building height and
25 bulk would be consistent with what is anticipated in that

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1 zone.

2 The proposed row dwellings and flats would not
3 have an undue adverse effect on the use of neighboring
4 properties in the RF-1 zone which allows for row dwellings
5 and are the predominant building type along both Luray Place
6 and Lamont Street.

7 The new lot sizes would not be out of character
8 with other lots on the block and the building form and use
9 is generally consistent with the surrounding development.

10 The regarding the special exception for the
11 reduction of the rear yard on the Luray Place lot, the
12 proposal would be within the existing footprint and -- well,
13 the addition would be within the existing footprint and
14 therefore would not extend beyond buildings to the west.

15 And as we mentioned in our shadow studies, there
16 are instances where the shadows would extend beyond the
17 existing circumstances, but they would mostly fall on the
18 rear yards or on garages and there's also the existence of
19 vegetation, so the impacts on the adjacent lots would not be
20 undue.

21 The combination of no openings on the western side
22 of the addition and the setbacks on the eastern side and the
23 proximity of the rear yards and the garages on adjacent
24 properties then would also limit direct views into the living
25 areas on adjacent units and therefore, the privacy of

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1 adjacent neighbors would not be unduly compromised.

2 A portion of the addition would be visible from
3 the street, however, the design and scale of the addition
4 would not be inconsistent with the character of houses along
5 Luray Place as the height of the building would not be out
6 of scale with the block. Therefore, it would not visibly
7 intrude upon the character, scale, and pattern of buildings
8 as viewed from the street.

9 Again, regarding Subtitle X, 901, the rear yard
10 requirements along with other development standards is
11 intended to provide adequate light, air, and privacy between
12 the units and would not be impaired with the reduction of the
13 rear yard. The proposal facilitates the development of flats
14 which is a building form that is anticipated in the zone,
15 including the inclusionary zoning units. The type of row
16 dwellings proposed would also support the general purpose of
17 the R-1 zoning regulations.

18 The reduction in the rear yard would not appear
19 to adversely impact the use of neighboring properties as the
20 rear yard would be adjacent to other rear yards of other
21 buildings and would not cause any negative impacts on their
22 light, air, and privacy. And there's also -- would also
23 provide adequate open space within the center of the block.

24 Regarding the rooftop and upper floor alterations,
25 the shadow studies also again show that the front facade

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1 addition would result in some additional shadows on the
2 properties to the east and west. However, they would
3 primarily be on their rear yards and roof top of adjacent
4 garages and it is not likely that a front facade would result
5 in significant additional impact on the light and air.

6 The third-story addition would not feature any
7 windows on the party walls and the dormer windows on the
8 front facade which look out on Luray Place will facilitate
9 some additional air and light into that unit, but would not
10 impact the privacy and use and enjoyment of the neighboring
11 properties.

12 The majority of the existing facade would be
13 retained except for the extension of the mansard roof and the
14 -- and I think the applicant was intentional in keeping the
15 slant of the existing mansard roof and the dormer which again
16 bring light into the building.

17 The majority of the buildings along Luray are
18 currently two stories and below the maximum 35 feet in height
19 and the third floor is permitted by right and is anticipated
20 by zoning and the design and scale of the proposed extended
21 mansard roof which requires relief would not be inconsistent
22 with the character of houses along Luray Place. The cornice
23 which generally matches back of the adjacent house would be
24 retained as would the front porch, the height of the mansard
25 would not be out of scale on the block. And regarding 901,

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1 X901, the intent of the regulations is to allow for additions
2 and to provide for roof fall which is characteristic of
3 houses along Luray Place.

4 The proposal would minimize -- wouldn't maintain
5 this intent, although the mansard would be extended higher.
6 The regulations allow for these changes if they meet the
7 requirements of Section 5207 and as demonstrated before, they
8 do and therefore would satisfy the intent of the R-1 zone.
9 The proposal to allow the extended mansard roof would not
10 appear to adversely impact the use of adjacent properties or
11 affect light, air, and privacy of the adjacent properties.

12 As stated in our report regarding the parking, the
13 Office of Planning is of the belief that the applicant meets
14 this requirement as outlined in Subtitle C Section 702.4
15 which states that the unit flat or another row dwelling does
16 not need to have a parking requirement if there is no alley
17 which is the case in this instance. However, the applicant
18 has asked for this relief and so in our report, we did review
19 it and think that they do meet the requirement and also the
20 requirements of Subtitle X901 as they are not able to provide
21 the space on the site which is physically impossible to do
22 that. In addition to that, the property is within six to
23 eight minutes of Georgia Avenue. There are parking spaces
24 along both Luray and Lamont Street and therefore, we think
25 that they do meet the requirement for this special exception

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1 that they requested.

2 Therefore, Mr. Chairman, the Office of Planning
3 recommends approval of the special exception. Thank you and
4 I'm available for questions.

5 CHAIR HILL: Okay. Does the Board have any
6 questions for the Office of Planning?

7 Mr. Williams, do you have any questions for the
8 Office of Planning?

9 MR. WILLIAMS: I do not.

10 CHAIR HILL: Mr. Young, is there anyone here
11 wishing to speak?

12 MR. YOUNG: We do not.

13 CHAIR HILL: All right. Does the Board have any
14 final questions?

15 Mr. Williams, do you have anything to add at the
16 end?

17 MR. WILLIAMS: I do not.

18 CHAIR HILL: Mr. Medvene, can you hear me? Can
19 you introduce yourself for the record?

20 MR. MEDVENE: Good afternoon. I'm Matt Medvene.
21 I am the applicant.

22 CHAIR HILL: Mr. Medvene, glad to see you on a
23 less controversial case.

24 MR. MEDVENE: No kidding.

25 CHAIR HILL: All right, Mr. Medvene. Let's see,

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1 I'm going to go ahead and close the hearing on the record.

2 Mr. Young, if you could please excuse everyone.

3 Fellow, board members, if you don't mind, I'm
4 tired of talking.

5 Commissioner May, if you would start us?

6 COMMISSIONER MAY: This is a really interesting
7 case, an unusual one, not something we normally see, but it
8 seems pretty clear to me that the applicant has met the
9 criteria for this particular approach to the property, to
10 subdivide it, and create -- what otherwise would be
11 substandard lots that are not the creation of the affordable
12 units. So given that the Office of Planning supports the
13 special exception relief, the ANC supports it, and there will
14 be four pretty substantially-sized units developed, including
15 the zoning unit, I think this is a worthy project and I would
16 support.

17 CHAIR HILL: Thank you. Mr. Blake.

18 MEMBER BLAKE: Yes, I think that the applicant is
19 -- the project has increased to really sizable IZ units which
20 I think is very useful and consistent with the purposes and
21 the intent of the regulations. The applicant has
22 demonstrated through the shadow study, the rear yard setback
23 and alteration of roof top architectural elements, wanting
24 to protect light and air available to neighboring properties,
25 as well as there won't be unduly compromised privacy of the

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1 neighbors as well and the design of the scale is pretty much
2 consistent with the neighborhood and not visually intrusive.

3 I think based on the record and the testimony
4 presented today, I believe the applicant has met the burden
5 of proof to be granted relief. I credit a very thorough
6 analysis by the Office of Planning on how the applicant has
7 met the specific conditions and general standards. I agree
8 with all of those statements and I would be prepared to
9 support the application.

10 CHAIR HILL: Thank you, Mr. Blake. I don't really
11 have anything to add. I agree with everything that my
12 colleagues have said. And I'm also prepared to support the
13 application. I'm going to make a motion to approve
14 Application No. 20635, as captioned and read by the Secretary
15 and ask for a second, Mr. Blake?

16 MEMBER BLAKE: Second.

17 CHAIR HILL: The motion has been made and
18 seconded.

19 Mr. Moy, can you take a roll call?

20 MR. MOY: When I call each of your names if you
21 would please respond with a yes, no, or abstain to the motion
22 made by Chairman Hill to approve the application for the
23 relief that's being requested. This motion was seconded by
24 Mr. Blake.

25 Zoning Commissioner Peter May?

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1 COMMISSIONER MAY: Yes.

2 MR. MOY: Mr. Blake?

3 MEMBER BLAKE: Yes.

4 MR. MOY: Chairman Hill?

5 CHAIR HILL: Yes.

6 MR. MOY: We have two members not present, not
7 participating. Staff would record the vote as three to zero
8 to two and this is on the motion made by Chairman Hill to
9 approve, seconded by Mr. Blake. Also in support of the
10 motion to approve is Zoning Commissioner Peter May. The
11 motion carries on a vote of three to zero to two.

12 CHAIR HILL: Okay, great. It's up to you guys.
13 I can actually do this next case if you want to and then take
14 lunch or I can take lunch.

15 COMMISSIONER MAY: Which case is next?

16 CHAIR HILL: Next case is 20638.

17 COMMISSIONER MAY: Yes, let's do lunch first.

18 CHAIR HILL: Okay. All right. All right, Mr.
19 Moy, we're going to take lunch and then we'll come back.
20 Okay? What time? Let's say 1 o'clock.

21 COMMISSIONER MAY: I can do 12:45, half an hour.

22 CHAIR HILL: All right, let's shoot for 12:45 and
23 see what happens. See what happens is always the part that
24 I find interesting. Thank you.

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

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1 record at 12:13 p.m. and resumed at 12:58 p.m.)

2 CHAIR HILL: All right. Okay. All right, Mr.
3 Moy, you can call us back and call our next case.

4 MR. MOY: All right. The Board is back in its
5 public hearing session after a relatively quick lunch recess,
6 and the time is at or about 12:58 p.m. The next case before
7 the Board is Application Number 20638 of Harrison Wisconsin
8 Owner, LLC. This is a self-certified application for special
9 exception relief from the zone boundary lines of Subtitle A
10 Section 206.1 pursuant to Subtitle A, Section 207.2, and
11 Subtitle X Section 901.2. This would construct a new six-
12 story, 210 residential unit with first floor retail, mixed
13 use building in the MU-4 and R-2 zones. The property is
14 located at 5151 Wisconsin Avenue, NW, Square 166, Lots 806
15 and 807.

16 There are two categories of preliminary matters,
17 Mr. Chairman. The first is the applicant is proffering
18 expert witness of Sarah Alexander in architecture, and Shane
19 Dettman. Of course, we know Shane Dettman has already been
20 approved by the Board. Secondly, there are untimely filings
21 for requests for party status from a Ms. Sonenberg, Mr.
22 Skibo, S-K-I-B-O, and Mr. Barth. And let me see, one more
23 thing. And because of the 24-hour block for submissions into
24 the case record, there is the applicant's PowerPoint.
25 There's a letter in support from the Coalition for Smarter

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1 Growth, and a letter in support from the Ward 3 Vision
2 Steering Committee. And that's it from me, Mr. Chairman.

3 CHAIR HILL: Okay, great. Let's see. Mr.
4 Glasgow, can you hear me? You're on mute, sir.

5 MR. GLASGOW: Okay. You can hear me now?

6 CHAIR HILL: Yes. Maybe your phone is also on or
7 you're having other audio at the same time, so mute one of
8 them.

9 MR. GLASGOW: Mute on the screen?

10 CHAIR HILL: Mute something.

11 MR. GLASGOW: Okay.

12 CHAIR HILL: No. We still got you now muted. I
13 don't know why there's feedback. Mr. Donohoe, can you hear
14 me?

15 COMMISSIONER MAY: Is Mr. Dettman in the room with
16 Mr. Glasgow? That could do it.

17 CHAIR HILL: I don't know. Oh, meaning there's
18 two people --

19 COMMISSIONER MAY: Yes.

20 CHAIR HILL: -- each other.

21 COMMISSIONER MAY: So Dettman needs to be muted,
22 I think, although maybe he is. Mr. Glasgow can unmute.

23 MR. GLASGOW: All right. I'll go ahead and mute
24 him.

25 CHAIR HILL: No.

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1 MR. GLASGOW: Is it working now?

2 (Audio interference.)

3 CHAIR HILL: It's all right. We'll figure it out,
4 Mr. Glasgow. Just keep trying. But Mr. Donohoe, I was
5 trying to work through these other things first. Let's see.
6 I see Ms. Sonenberg. Ms. Sonenberg, could you introduce
7 yourself for the record, please?

8 MS. SONENBERG: Yes. Good afternoon. My name is
9 Santha Sonenberg. I'm a resident of 42nd Street NW between
10 Harrison and Ingomar.

11 CHAIR HILL: Okay, great. Thank you. Mr. Barth,
12 can you hear me?

13 MR. BARTH: Yes, I can.

14 CHAIR HILL: Could you introduce yourself for the
15 record, please?

16 MR. BARTH: Sure. My name's Jordan Barth and I'm
17 a resident at 4201 Harrison Street, NW and the owner of that
18 residence.

19 CHAIR HILL: Okay, great. Thank you. All right.
20 Now I know you guys have both applied for party status, and
21 I guess -- I don't know whether you looked through the
22 regulation as to whether or not -- well, first of all -- and
23 I'm sure you guys know this -- you guys are untimely with
24 your filing for party status. And I did go back and look and
25 see whether or not you had received the notice, and it looks

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1 as though you had received the notice, or at least we didn't
2 get anything returned back from where we had mailed to you,
3 which seems to be your addresses. So I guess first of all,
4 Ms. Sonenberg, since I can see you, if you can please tell
5 me why you think you're more uniquely qualified to be someone
6 who would be given party status than the regular public; and
7 then also in terms of the untimely nature of your filing, if
8 you could speak to that as well?

9 MS. SONENBERG: Yes, I'm happy to. And if I might
10 take it in reverse order, we did not receive -- I understand
11 it may have been sent but we actually did not receive
12 notification. And indeed there were no signs posted on 42nd
13 -- on the 42nd Street side of the property advising us of the
14 hearing until, I believe it was, just yesterday that I saw
15 them or perhaps it was the day before but certainly, you
16 know, not before I filed. I was ultimately able to file
17 because someone in the neighborhood was -- has been vigilant
18 about this and, you know, alerted us to it.

19 With respect to the first question, I think that
20 I'm entitled to party status because I live within 200 feet
21 of the property. My petition includes a number of other
22 residents from the 5200 block of 42nd Street including Mary
23 Farrah who lives there with her two parents at 5219 42nd
24 Street; Bob Fabia and Cathy Aram who live at 5220 42nd
25 Street; my husband, John Ogolmic who lives with me at 5217

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1 42nd Street NW; Gnome Stalpeck who lives in the 4100 block
2 of Ingomar Street. So I think that those -- that is the
3 reason why we didn't file before we did. And I think that
4 I'm entitled to party status because I speak for consider --
5 I represent, I should say, not entirely speak for but
6 represent a considerable number of the residents in close
7 proximity to the property including Mr. Barth and his family.
8 But I know he filed a separate application, to his credit.

9 CHAIR HILL: Okay. So just to be clear, Ms.
10 Sonenberg, just because you're inside the 200 feet doesn't
11 mean you're entitled to party status. I'm just trying to
12 figure out where exactly you are in relationship to the
13 property.

14 MS. SONENBERG: The property -- I can maybe orient
15 a little bit. We are -- the property has a boundary at 42nd
16 Street and Harrison. That would be the northwest boundary
17 of the property, and we are sort of catty-cornered from that.
18 If you -- we - if you sort of cross diagonally to the
19 northeast -- I'm sorry -- yes, the -- right, to the northeast
20 corner of 42nd and Harrison and go one house in, that's our
21 house. The property -- the northwest boundary of the
22 property is on the south -- strike that. The northeast
23 boundary of the property is on the southwest corner of 42nd
24 and Harrison which is why I said we're diagonally sort of
25 diagonally --

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1 CHAIR HILL: I see. You're on the corner there.

2 MS. SONENBERG: Well, we're one house in from the
3 corner, but we're the first house with an entrance on 42nd
4 Street Northwest.

5 CHAIR HILL: You're not 4201?

6 MS. SONENBERG: No.

7 CHAIR HILL: Oh, no, that's Mr. Barth.

8 MS. SONENBERG: That's Mr. Barth.

9 CHAIR HILL: You're --

10 MS. SONENBERG: I'm 521-- yes.

11 CHAIR HILL: Say it again?

12 MS. SONENBERG: 5217 42nd Street.

13 CHAIR HILL: I'm just having a hard time finding
14 it, sorry.

15 MS. SONENBERG: There's a house on --

16 CHAIR HILL: Oh, got you -- got you -- got you.
17 I see it -- I see it. Okay. All right. So what -- okay,
18 give me one second. Let me see whether or not I got --

19 COMMISSIONER MAY: Can I jump in, Mr. Chairman?

20 CHAIR HILL: Sure. Go ahead, Mr. May --
21 Commissioner May.

22 COMMISSIONER MAY: I think that was -- well, we'll
23 have to address the timeliness of the application but aside
24 from that, if I can go on to the substance of it, Mr.
25 Chairman, the question I have is the criteria for party

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1 status is that you would be more uniquely affected by this
2 project than others in the neighborhood or in the city, and
3 the things that you cite as potential impacts seem to be very
4 general and broad and not immediately impactful to you where
5 you are. So maybe you want to elaborate on that and why you
6 --

7 MS. SONENBERG: Yes.

8 (Simultaneous speaking.)

9 COMMISSIONER MAY: -- it is uniquely affected.
10 And it's not just a matter of proximity, I think as the
11 Chairman noted, particularly since you are -- while you're
12 within 200 feet of a portion of the property, you're not
13 really within 200 feet of the building, or it doesn't seem
14 like it so.

15 MS. SONENBERG: Well, I think that -- you know,
16 I don't have the expertise in the environmental issues and
17 some of the drainage issues that both Mr. Offutt, Martin
18 Offutt and Mary Farrah, who are prepared to speak, have. I
19 don't have that substantive expertise, but I will say that
20 because of our proximity in a general way, which they can
21 address more specifically, we are adversely impacted by
22 flooding, blocked, light, parking that's going to be
23 adversely affected in the neighborhood, which is already
24 tight. And so I think that, you know, again, on behalf of
25 all of the group -- members of the group, we are all

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1 concerned about those issues.

2 COMMISSIONER MAY: All right. So you -- I mean
3 you applied as an individual though, so in your -- is your
4 individual property suffering from flooding right now from
5 that property?

6 MS. SONENBERG: I don't know from what our
7 individual property is now flooding. You know, again, I
8 defer to Ms. Farrah's expertise in these --

9 COMMISSIONER MAY: I mean -- but -- and this is
10 a question for you. Are you -- is your property getting
11 flooded right now?

12 MS. SONENBERG: Our road is getting flooded.

13 COMMISSIONER MAY: So the road is a common asset.
14 It's not an individual one to you. That's why I'm trying to
15 get at the uniquely affected aspect. That's the standard.

16 MS. SONENBERG: Well, I applied for party status
17 on behalf of all of the people who signed on my application.

18 COMMISSIONER MAY: Okay. I didn't catch that.
19 I thought it was just you. All right. And then --

20 MS. SONENBERG: There were a number of signatories
21 to the --

22 COMMISSIONER MAY: The other aspect of it is --

23 MS. SONENBERG: I'm sorry.

24 COMMISSIONER MAY: -- the other aspect of it is
25 light, blocked light which I mean I'll look again at the

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1 application, see if it has that potential to others but given
2 where your property is compared to where the Board is, it's
3 hard to believe that there's going to be any blockage of
4 light to your property in particular.

5 MS. SONENBERG: Okay. Well, I mean, you know, I
6 suppose one can parse out, you know, issue by issue or look
7 at, you know, the aggregate of the effect. I'm not able to
8 say that, you know, any given -- you know, and again, I'm not
9 -- my expertise is neither architecture nor the environmental
10 impact. But, you know, in aggregate, there are adverse
11 effects in a variety of domains to all of the people who
12 signed the petition, who live in the immediate vicinity of
13 this proposed development.

14 COMMISSIONER MAY: Okay. I mean it's -- it -- I
15 just have to say it's -- what -- the reason I am probing at
16 this is just because it's what you have provided in your
17 written submission doesn't really demonstrate that you are
18 uniquely affected, even your group that you are uniquely
19 affected.

20 MS. SONENBERG: Okay. Well, I apologize for --

21 COMMISSIONER MAY: It's not my decision alone and
22 I'm not asking for a response. It's not my decision alone.
23 This is just why I'm probing these questions. So, Mr.
24 Chairman, maybe you want to --

25 CHAIR HILL: Yes -- yes, that's okay. Thanks.

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1 We're going to stay for a little while, Ms. Sonenberg, and
2 try and figure some stuff out, so just give us a minute. The
3 list that I see that you've put on there, I think, is two
4 people from 4102 Garrison Street, Mr. Sonenberg -- or Ms.
5 Sonenberg, I guess, who has also applied for party status --

6 MS. SONENBERG: That's me.

7 CHAIR HILL: -- and then you have -- oh, I'm
8 sorry.

9 MS. SONENBERG: I'm --

10 CHAIR HILL: I'm sorry. I got you. I'm just
11 looking at your signature list. That's why I --

12 MS. SONENBERG: Okay -- okay, got it. Okay.

13 CHAIR HILL: And then your exhibit. And then you
14 got the Farrahs, one Farrah, Ronald Fabia, you got somebody
15 at 5220, 5219, and 4108, right? So those are the people that
16 have signed up with your -- or what you're saying have signed
17 up with your party status -- are you somehow claiming that
18 you're representing them?

19 MS. SONENBERG: Well, I mean we're speaking with
20 one voice. I'm not representing them in the sense that --
21 I mean I will say that, you know, it's Mr. Offutt and Ms.
22 Farrah who have the substantive expertise. And in addition,
23 Mr. Barth has applied separately. That was, you know -- it
24 was, frankly --

25 CHAIR HILL: I got it.

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1 MS. SONENBERG: --so, you know, we could have all
2 been on one but because --

3 CHAIR HILL: Yes. I got it -- I got it. So let
4 me see here. Okay. So that's one thing. So give me one
5 second, Ms. Sonenberg. If you don't mind just muting
6 yourself? Is Mr. Skibo with us?

7 MR. SKIBO: Yes. This is Jedd.

8 CHAIR HILL: Oh, great. Okay. Mr. Skibo, could
9 you introduce yourself for the record?

10 MR. SKIBO: Yes, absolutely. This is Jedd Skibo.
11 Our family owns and lives at 5113 42nd Street directly behind
12 this property.

13 CHAIR HILL: Okay, got you. I see where you are.
14 Okay. And then Mr. Barth, can you hear me?

15 MR. BARTH: Yes, I can.

16 CHAIR HILL: Okay. You're at 4201, is that
17 correct, Harrison?

18 MR. BARTH: Yes, that's correct.

19 CHAIR HILL: Okay. So Mr. Skibo, I guess kind of,
20 you know, same question to you, how you think you're more
21 uniquely qualified -- or not qualified -- why this project
22 affects you more uniquely than the general public?

23 MR. SKIBO: Absolutely, yes. The project is
24 directly in front of our house on the other side of 42nd
25 Street. Without precisely measuring the distance from the

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1 front of our property to where the proposed rear of the new
2 building would be, I speculate that we're within that 200-
3 foot range. My understanding of the proposal is that they're
4 seeking an adjustment to extend the full height of the
5 building beyond the allowed zone and further into the R --
6 I think it's R-2 zone of the neighborhood, which would bring
7 the height of that six-story closer to our property impacting
8 the density of that portion of the neighborhood, light, the
9 line of sight, and things of that nature.

10 CHAIR HILL: Okay. All right. So that's one
11 question I had for you. Then Mr. Barth, can you hear me?
12 Can you hear me, Mr. Barth?

13 MR. BARTH: Yes -- yes, I can.

14 CHAIR HILL: Same question to you.

15 MR. BARTH: Yes, okay. So my home is 4201
16 Harrison Street, which is directly across the street from the
17 proposed development. And similar to the concerns of my
18 other neighbors, we're concerned with the increase in lights
19 and the effect that will have; obviously, line of sight with
20 the exception that the developer is proposing. So I had put
21 the same concerns and I would say my proximity being about
22 50 feet from the actual lot itself and I think within 200
23 feet of where the end of -- the building is going to end, I
24 believe I'm uniquely affected.

25 CHAIR HILL: Okay. And I'm going to go back and

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1 ask why you're late, right, with our filing, and then I'm
2 going to ask Mr. Skibo -- am I -- anyway, I'll ask you to
3 pronounce your name in a second, Skibo. So Mr. Barth, why
4 do you -- why -- you know you're -- you guys are late in your
5 filing, correct?

6 MR. BARTH: Yes, that's correct. I can say we did
7 not receive the -- any notification and we have been at the
8 residence since -- the third week of November is when we
9 purchased the residence and moved in. So if the notice was
10 sent from the third week of November forward, we did not
11 receive it, and we've received all of our mail.

12 CHAIR HILL: Okay. Mr. Skibo, same question for
13 you.

14 MR. SKIBO: Absolutely, and I tried to give you
15 the head nod you're pronouncing the last name perfectly so
16 thank you. Likewise, I have not received anything. We've
17 been in our home for about a year-and-a-half. The only
18 notice I remember receiving regarding this was, I believe,
19 an email about a year-and-a-half ago for a Zoom call with
20 either this or the previous proposed developer. But in terms
21 of letters notifying the status of this zoning hearing, I
22 have not received anything. The first I heard of it was when
23 one of the neighbors reached out about it a day or two ago.

24 CHAIR HILL: Okay. Did you -- Mr. Skibo, did you
25 attend the ANC meeting?

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1 MR. SKIBO: No, I did not.

2 CHAIR HILL: Did you know about the ANC meeting?

3 MR. SKIBO: In terms of a specific date and
4 specific meeting, no. I'm aware that they occur but no, I
5 didn't attend.

6 CHAIR HILL: Okay, got you. Mr. Barth, did you
7 attend the ANC meeting?

8 MR. BARTH: No, I did not.

9 CHAIR HILL: Okay. Ms. Sonenberg, did you attend
10 the ANC meeting?

11 MS. SONENBERG: No.

12 CHAIR HILL: Okay. And then I guess -- and Mr.
13 Glasgow, I am going to ask you where the posting was and if
14 you can kind of respond to the posting question in terms of
15 the timing. But before, again, I -- I mean I'm looking at
16 my record here that the office has put together for me and
17 whether or not you received them in your hand or I don't
18 know, you know, it was sent to you and it wasn't returned
19 back to us, meaning that as far as we're concerned, you did
20 receive notice. Like nothing got sent back to us so -- and
21 I'm looking at the addresses and so you did get sent notice.
22 I'm just letting you all know.

23 So Mr. Glasgow, in terms of the posting, can you
24 confirm and tell us a little bit about where it's been posted
25 and it was posted appropriately?

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1 MR. GLASGOW: Yes, sir. Can you hear me --

2 CHAIR HILL: We can.

3 MR. GLASGOW: -- Mr. Chairman?

4 CHAIR HILL: Perfect.

5 MR. GLASGOW: Okay. Thank you, Shane. Okay.

6 With respect to the posting, there were four signs posted,
7 two on Harrison, one on Wisconsin Avenue, one on Garrison.
8 There was not a sign posted on 42nd Street, but we believe
9 under the regulations, since the -- there was the notice that
10 you talked about, there's *DC Register* notification, there was
11 the mailing to the 200 footers, and then also, the
12 regulations state as an additional as an additional method
13 of notification, you post the property 15 days in advance and
14 then the party status requirement is 14 days in advance. So
15 from reading those dates, the principal way that people get
16 notice is the mailing, *DC Register*, ANCs, that type of thing.
17 This is called an additional method of notice, and since
18 there were two signs on Harrison Street and one of the
19 persons lived on Harrison Street, they certainly received --
20 they saw the posting or should have seen the posting.

21 But there was no posting up at the intersection
22 of 42nd Street, and the regulations also provide for if there
23 is some type of minor defect with respect to notification,
24 the regulations provide that the Board can take a look at
25 that and determine to proceed.

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1 CHAIR HILL: Okay.

2 MR. GLASGOW: And I can give the citation for that
3 if you need it.

4 CHAIR HILL: No. I got it, Mr. Glasgow. And
5 could you introduce your self again for the record since we
6 didn't get that at the beginning?

7 MR. GLASGOW: Oh, I'm sorry. Yes. I probably
8 said it but it wasn't on the record. But for the record, my
9 name is Normal M. Glasgow, Jr. with the law firm of Holland
10 and Knight here on behalf of the applicant.

11 CHAIR HILL: Okay. All right. So let me see here
12 now. I'm looking to -- like I mean it's supposed to be --
13 party status is supposed to ask 14 says before the hearing.
14 It was 11 days late, right? So it's significantly late. But
15 -- and I'm looking at my fellow Board members, and I'm not
16 looking at any comments from the people at the hearing,
17 please.

18 In terms of being uniquely affected, I don't know,
19 I guess I would kind of understand Mr. Barth and Mr. Skibo
20 in -- actually, really maybe more Mr. Barth, I suppose, in
21 terms of his proximity and how this development might affect
22 him more uniquely than the general public.

23 In terms of the notice, I think that everybody did
24 get notice and if not, there was the ANC meeting. There was
25 the postings that have been on Harrison and Wisconsin. And

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1 so I'm a little -- and I'm -- well, I'm looking at my Board
2 members to get your thoughts, right, and then I'm also -- and
3 I'll let Mr. Glasgow first argue one way or the other. I
4 don't know whether or not there was anything in the file yet
5 since it was late in terms -- meaning the party status
6 questions, right, whether there's anything in the file that
7 shows opposition or not from the applicant. And so Mr.
8 Glasgow, I'll give you an opportunity to let us know what
9 your position is on the party status application, and then
10 let's do that first in a minute, Mr. Glasgow. And then I'll
11 turn to my Board members.

12 But my Board members, I'm kind of -- I'm either --
13 I'm a little torn on the -- I'm a -- if everybody can mute
14 themselves unless we ask you, that'd be helpful. Thank you.
15 I'm a little torn on the timing because it is pretty late.
16 However, also, these aren't land use council people. These
17 aren't, you know, building -- these aren't people that do
18 this on a regular basis, and so -- but it is pretty late.
19 And so I'm a little torn as to whether you -- so I'm asking
20 my Board members, after Mr. Glasgow's had a chance to
21 respond, I'm asking my Board members what your thought is on
22 the timeliness issue. And if we get past the timeliness
23 issue, I then still think that maybe I would only be in favor
24 of giving Mr. Barth party status, and then they could all
25 kind of have their discussion as one party. Like everybody

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1 would talk through Mr. Barth and/or we could also give Mr.
2 Skibo party status but then still everybody would talk
3 through one party for efficiency sake, because it seems like
4 the issues seem to be the same. And so I'll first ask Mr.
5 Glasgow his thoughts on the party status application.

6 MR. GLASGOW: Right. Mr. Chairman, I think that
7 because of the way that the party status applications,
8 they're essentially all identical so that on their face,
9 they're all raising the same issue. They live in different
10 areas. They have other people that are said are represented,
11 and so I don't think they meet the standard on that basis but
12 obviously, the decision is for the Board. But essentially,
13 all of them are saying the same thing, they're raising the
14 same issue.

15 CHAIR HILL: Yes. And Mr. Glasgow, I don't
16 necessarily think that that's so much a problem for me,
17 because they can all, you know, talk as one group. I'm
18 really more with the timeliness issue and wither or not we
19 think that they're meeting the criteria under 404.1(I).

20 MR. GLASGOW: Okay.

21 CHAIR HILL: And so --

22 MR. GLASGOW: All right. Do you want me to
23 address that?

24 CHAIR HILL: That's all right. I mean anyway,
25 you're in opposition. That's all I'm also finding out --

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1 MR. GLASGOW: Okay.

2 CHAIR HILL: -- on the record, Mr. Glasgow?

3 MR. GLASGOW: Yes, sir.

4 CHAIR HILL: Okay. So let me turn to my Board
5 members. Commissioner May, do you have an opinion?

6 COMMISSIONER MAY: Yes. So the notification
7 requirements for a case like this are multi-pronged for a
8 reason. There is -- you know, we do them -- the mailing to
9 the people within 200 feet. That's the most direct outreach.
10 There's also the posting of the property which allows -- you
11 know, gives people the opportunity to understand that
12 something is happening on that specific property, and if they
13 really are close enough to be affected by it, chances are
14 they would see something like that. The *Register* notice is
15 also there but I'm sure most people -- most normal humans
16 don't read the *Register* notices.

17 But it is -- you know, I'm always troubled when
18 people claim that there's -- they've not received notice,
19 particularly when they claim they did not receive something
20 in the mail. I -- you know, the fact that all were mailed --
21 I mean we mailed to all the 200 footers. I understand we
22 didn't get -- did we not get anything returned, Chairman
23 Hill? Does your report say that nothing was returned from
24 any of the --

25 CHAIR HILL: Nothing was returned from anybody.

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1 COMMISSIONER MAY: Yes. So it's -- I mean I
2 understand how easy it is to miss things that come in the
3 mail, but the mere fact that someone can claim that they
4 didn't receive it, I don't think is sufficient basis to say
5 that there was not proper notice and that we should waive
6 that requirement. So I'm inclined not to grant party status
7 on that basis alone.

8 In terms of the actual impacts, I think one of the
9 things that is quite telling is the fact that the
10 applications are all essentially the same and they site all
11 the same impacts, and all of those impacts affect everybody
12 in the neighborhood. I think the only thing that is arguable
13 might be that there is some impact of sunlight that could
14 affect Mr. Barth's property given the proximity to it and the
15 position of it and things like that. But even that is not
16 that unique. I mean there are other properties that are also
17 on that same block that are even closer than his, and so I
18 don't think -- I think it's -- you know, it's part of a
19 group.

20 So I'm just not inclined to grant party status,
21 to waive the rule and then to grant party status. But of
22 course, I would go along with the majority.

23 CHAIR HILL: So the timeliness issue is the one
24 that also you're having an issue with, correct?

25 COMMISSIONER MAY: I have an issue with

1 timeliness, yes.

2 CHAIR HILL: Okay. Mr. Blake, can I hear from
3 you?

4 MEMBER BLAKE: Sure, yes. I have an issue with
5 timeliness and it is clear to me that they should have
6 received notice or somehow been informed either through the
7 ANC meetings, and that process has been going on for quite
8 some time and also the postings that were on -- made
9 available. That said, there -- the information that they
10 have for us is in the record, and the -- I would like to hear
11 what their issues and concerns are. So to the extent that
12 we can grant them some opportunity to speak, I would be in
13 favor of that. But I do not think that they should be
14 granted party status, and largely because of timing.

15 CHAIR HILL: Okay. All right. Let's see. This
16 is what -- okay, this is what I would propose. So I got to
17 tell you, I'm really having more of an issue with the
18 timeliness nature of it all, cause like it's -- it puts the
19 applicant at a disadvantage that this is untimely. And then
20 there's the discussion as to whether or not they would still
21 qualify under the regulations. I mean I know what I would
22 have voted for, at least for Mr. Barth, had been to grant him
23 party status. But -- so now I guess -- Mr. Barth, can you
24 hear me?

25 MR. BARTH: Yes, I can.

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1 CHAIR HILL: Do you know Ms. Sonenberg and Mr.
2 Skibo?

3 MR. BARTH: Yes. I met them recently because we
4 moved into the neighborhoods just in November, and I did want
5 to point out that the owner registered to the address in the
6 -- in the developer's package that the notice was served to
7 is not us. So the wrong name was there, which could be why
8 we never received the notice. It was probably forwarded to
9 the previous owners.

10 CHAIR HILL: Okay. I mean I got -- I mean I guess
11 kind of the problem that we're having really is the time --
12 again, like you're -- this is not something that's new to us
13 in terms of the timeliness nature. Like you guys are all
14 pretty late. And the fact that three of you are saying that
15 you didn't get the notice, that makes it kind of difficult.
16 It's a shock that all three of you didn't get the notice.
17 But nonetheless, that's -- I'm going to propose something
18 here. And so what I'm going to propose is I'm trying to
19 figure out who was kind of the expert or lead among the three
20 of you, meaning Ms. Sonenberg, Mr. Barth, or Mr. Skibo. And
21 you guys kind of know each other. I mean do you know who's
22 best organized at this point between -- and I'm asking you,
23 MR. Barth just for your opinion - -between you, Ms.
24 Sonenberg, and Mr. Skibo?

25 MR. BARTH: I would say we're all prepared to do

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1 it so I don't get from our perspective of which one of us you
2 would like us to, you know, be the voice that things go for
3 -- go through. But one of our, I guess, members of our
4 group, Mr. Offutt, Martin, he's the one who's really helped
5 us understand the issue and has done a lot of the research,
6 so when given the opportunity to present, you know, our point
7 of view around the zoning exception, then we would be asking
8 him to enter that testimony for us as he's explained it to
9 us, he's done the research. He's an expert in this field.
10 We'd be relying on him to provide testimony.

11 CHAIR HILL: Okay. I don't know whether he's an
12 expert in this field or not because you guys didn't actually
13 -- not that you know necessarily -- but you didn't apply for
14 expert status. And again, we still take testimony and listen
15 to everybody's testimony so it doesn't necessarily harm you
16 that the person is not recognized as an expert by us. But
17 Mr. Offutt, can you hear me?

18 MR. OFFUTT: Yes, Mr. Chairman.

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

21 MR. OFFUTT: Martin Offutt, a resident of Garrison
22 Street and since around 1990.

23 CHAIR HILL: Got it.

24 MR. OFFUTT: Anything more?

25 CHAIR HILL: No -- no. I'm just trying to see.

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1 Where do you live, Mr. Offutt?

2 MR. OFFUTT: I am -- let's go back to compass
3 points. I am to the southeast of the property, so on the far
4 side of 42nd Street from the property and then head south.

5 CHAIR HILL: What's your address on Garrison?

6 MR. OFFUTT: 4102.

7 COMMISSIONER MAY: So that's very close to 41st
8 Street, I believe not within 200 feet. So I assume --

9 CHAIR HILL: Oh, I see where you are. Okay.

10 (Simultaneous speaking.)

11 CHAIR HILL: -- other side. I was over by -- I
12 was on the other side of Rodney. Okay, let's see. All
13 right. So -- and Mr. Offutt, what supposedly do you know
14 about (audio interference).

15 MR. OFFUTT: About buildings, campuses,
16 engineering needed to support buildings.

17 CHAIR HILL: Okay. And do you know what Ms.
18 Farrah is supposedly speaking about?

19 MR. OFFUTT: I do, Mr. Chairman. She is an expert
20 on plant species, permeable surfaces, soils, hydrologic
21 response.

22 CHAIR HILL: Okay. All right. So again, I don't
23 know if flooding is necessarily is something that is always
24 within our purview, but you guys are welcome to speak about
25 it. Ms. Farrah, can you introduce yourself for the record,

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1 please?

2 MS. FARRAH: Yes. Can you hear me?

3 CHAIR HILL: Yes.

4 MS. FARRAH: Okay. My name is Mary Farrah
5 [pronouncing FAIR-AH].

6 CHAIR HILL: Oh, Farrah [pronouncing FAIR-AH],
7 sorry.

8 MS. FARRAH: That's okay. Everyone always calls
9 it Farrah [pronouncing FA-RAH]. My name is Mary Farrah and
10 I live at 5219 42nd Street.

11 CHAIR HILL: Okay. And then is there somebody
12 else with your group? Is Mr. Quinn with you guys? No.
13 Okay. So that's everybody then, Farrah [pronouncing FA-RAH].

14 MS. FARRAH: Farrah [pronouncing FAIR-AH].

15 CHAIR HILL: Farrah [pronouncing FAIR-AH], sorry.

16 MS. FARRAH: That's all right.

17 CHAIR HILL: We've got Ms. Farrah, Offutt,
18 Sonenberg, Barth, and Skibo, right? I'm not missing anybody,
19 right? Okay. All right. So this is what I think. I think
20 that -- and I'm looking to my fellow Board -- well, it
21 doesn't look like my fellow Board members -- and I'm not
22 talking to any of the witnesses, okay. I'm talking to my
23 fellow Board members. It doesn't seem my fellow Board
24 members seem like waiving the time requirements for party
25 status. However, you guys are all able to give testimony

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1 during the public portion of the meeting, which is that you
2 would each get three minutes. However, Ms. Sonenberg kind
3 of sort of is representing a group of people which means she
4 would get five minutes which means together, you guys have
5 five, three, you know, like -- give me one second, Ms.
6 Sonenberg -- you would have like, you know, 20 minutes all
7 together. And so I'm kind of just trying to figure out if
8 there's a way to get everybody together in some fashion.
9 Like we might come back here and hear this at the end of the
10 day. They can all kind of talk amongst themselves, and then
11 they can, you know, somebody can be the point, and then we
12 can have -- and I'm going to ask even like counsel, legal
13 counsel if there's an issue with this. Otherwise, I just
14 have to have everybody give public testimony, that, you know,
15 somebody could go ahead and be kind of the lead and then
16 everybody can kind of have their -- everybody can give their
17 testimony and they'd basically have 20 minutes in
18 combination, or we would then stick with the regular process
19 which is that during public testimony, everybody give their
20 testimony. We would have an opportunity to ask questions of
21 everybody.

22 I'm looking at my fellow Board members first, and
23 I'm asking counsel in a second, legal counsel, as to whether
24 what I'm proposing is acceptable.

25 And first, I'm going to look to my fellow Board

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1 members if -- what I'm proposing is that we're going to put
2 this at the end of the day, let them all talk amongst
3 themselves, and then come back and have their testimony
4 during the public hearing section of the hearing. That's
5 what kind of I'm proposing.

6 Or everything gets denied which it's going to get
7 denied I think anyway at this point, and it's just the public
8 testimony portion. And I'm going to start with Commissioner
9 May, cause he's been around a long time, as to whether he
10 understands my options and whether he has any thoughts.

11 COMMISSIONER MAY: So essentially, what you're
12 talking about is not granting them party status but allowing
13 them to sort of group their testimony and strategize about
14 who talks about what and --

15 CHAIR HILL: Yes.

16 COMMISSIONER MAY: -- arguing a coherent joint
17 case?

18 CHAIR HILL: Yes.

19 COMMISSIONER MAY: Okay. Yes. I don't have any
20 problem with that. I mean I think, you know, we're always
21 a little bit flexible on the -- how many minutes people get
22 so -- and I think, you know, giving these folks the
23 opportunity to coordinate their testimony would be good. And
24 I don't know that there is -- I mean I think, as I said
25 before, I don't really support giving them party status at

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1 this stage given the timeliness issue. So I think that
2 sounds fine to me. I don't know -- you know, I have to say
3 I cannot point to a clear memory of a past case where
4 something like this was done to know whether in fact there's
5 any sort of legal issues with it. So we'll have to rely on
6 Ms. Nagelhout for --

7 CHAIR HILL: Yes. I'll turn to Ms. Nagelhout.
8 I mean the problem that I'm having is when it's a Zoom
9 environment -- like if we were all here live again, I would
10 be easier for me to coordinate in this manner.

11 COMMISSIONER MAY: Correct.

12 CHAIR HILL: So that's why I'm kind of talking
13 this through. Mr. Blake, do you have any thoughts?

14 MEMBER BLAKE: Yes, Chairman Hill. I -- as I said
15 before, I want to hear what they have to say, and it would
16 be helpful to have what they say in a coherent manner that
17 we can digest it. So for that reason, I would like idea of
18 what you have if it provides them with enough time to
19 organize and present.

20 CHAIR HILL: Okay. So Ms. Nagelhout, this is
21 what's on the table. I'm going to bring them back at the end
22 of the day. They're going to all talk and then we're going
23 to take -- you know, everybody would have had three minutes
24 anyone so basically during the public hearing portion of
25 their testimony, we'll hear from everyone. And I'm just

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1 going to ask somebody to be kind of the lead. Does that
2 sound acceptable to you, Ms. Nagelhout?

3 MR. NICHOLAS: Mr. Chairman, this is Ryan
4 Nicholas, Office of Legal Counsel. Ms. Nagelhout is
5 currently muted but she states there's no legal issue and
6 that it's okay to go forward.

7 CHAIR HILL: Okay. So Ms. Sonenberg, I got you
8 on the camera and you were about to say something anyway but
9 --

10 MS. SONENBERG: I just wanted to ask if I could
11 cede my time to the others. I don't need to use my time.
12 I will give it to the group as a whole if that would be
13 acceptable.

14 CHAIR HILL: I got you. Mr. Skibo, I can now see
15 you. Do you have everybody's phone number, at least some
16 people's phone number? You're on mute, Mr. Skibo.

17 MR. SKIBO: Sorry about that. There's a group
18 that's connected by phone and email so yes, we can
19 communicate and coordinate as you're suggesting.

20 CHAIR HILL: Okay. So Mr. Skibo, can I make you
21 the point person?

22 MR. SKIBO: Happy to take the point and we can get
23 back to you. It'll likely be perhaps Martin that will be the
24 spokesperson for the collective group.

25 CHAIR HILL: Okay. All right. I'm kind of --

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1 well, all right. We'll see how that goes. Let's see. Mr.
2 -- oh, Mr. Offutt, is that you? Can you hear me? Oh, got
3 you. Okay. So Mr. Offutt, what I'm trying to do is just
4 coordinate. You guys are going to get denied party status
5 because -- not you, the people that applied for party status
6 because of the untimely nature; right? So what happens is
7 there's going to be a public testimony portion of the hearing
8 and we, as the Board, want to hear what it is that you have
9 to say. We see what's in the record and we read what's in
10 the record, so if you could coordinate with your people and
11 see how you might like to use your -- you would have each
12 gotten three minutes each, right? So rather than just kind
13 of repeat longline the stuff, I'm just going to kind of
14 combine the time a way in which you can get people to give
15 their testimony. It sounds like you have testimony from Mr.
16 Barth, Mr. Skibo, and then Ms. Farrah. And so you can go
17 ahead and coordinate with them. Mr. Glasgow, can you hear
18 me?

19 MR. GLASGOW: Yes, sir.

20 CHAIR HILL: So we got two cases, Mr. Glasgow.
21 I don't think -- I don't know how long it's going to take for
22 those two cases, and then we'll bring you guys back so --

23 MR. GLASGOW: Yes, sir.

24 CHAIR HILL: -- we're planning on -- so Mr.
25 Offutt, I'd say -- it's 1:45. I'd say we'll come back here

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1 at 2:45, okay?

2 MR. OFFUTT: Thank you, Mr. Chairman. Okay.

3 CHAIR HILL: And that's if we get through those
4 other two things. Okay. So to be clear, and I'm about to
5 do this, we're going to deny you guys party status, but we're
6 going to bring you in during the public testimony portion of
7 the hearing so that we can hear everything about your
8 concerns and also your testimony; okay?

9 MR. OFFUTT: Okay.

10 CHAIR HILL: Okay.

11 MR. OFFUTT: Mary Farrah could also give comments,
12 that would be --

13 CHAIR HILL: Yes. No. You can -- I mean again,
14 what would have happened, and this is why I'm just trying
15 to make it efficient, all of you all would have gotten three
16 minutes to give public testimony; right? So rather than you
17 guys just repeating all the stuff, right, you know, go ahead
18 and give your testimony, call on the people that you need to
19 call on for their testimony, and then we'll go with that;
20 okay?

21 MR. OFFUTT: Very good.

22 CHAIR HILL: All right. So for the record -- and
23 now I'm looking at my Board members -- I'm going to deny the
24 party status request of Jordan Barth, Jed Skibo, and Santha
25 Sonenberg and ask for a second, Mr. Blake.

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1 MEMBER BLAKE: Second.

2 CHAIR HILL: Motion made and seconded. Mr. Moy,
3 could you make a roll call?

4 MR. MOY: Yes, sir. Board members, when I call
5 each of your names, if you would respond with a yes, no, or
6 abstain to the motion made by Chairman Hill to deny the
7 request for party status of the three individuals, Ms.
8 Sonenberg, Mr. Skibo, and Mr. Barth. It's a motion to deny
9 party status, seconded by Mr. Blake. Starting Commissioner
10 Peter May.

11 COMMISSIONER MAY: Yes to deny party status.

12 MR. MOY: Mr. Blake?

13 MEMBER BLAKE: Yes to deny.

14 MR. MOY: Chairman Hill?

15 CHAIR HILL: Yes to deny.

16 MR. MOY: We have two Board members not present,
17 not participating. Staff would record the vote as 3 to 0 to
18 2, and this is on the motion made by Chairman Hill to deny,
19 seconded by Mr. Blake, also in support of the motion to deny
20 party status is Zoning Commissioner Peter May, so the motion
21 carries on a vote of 3 to 0 to 2.

22 CHAIR HILL: Okay. Mr. Offutt, can you hear me?

23 MR. OFFUTT: Yes, I can.

24 CHAIR HILL: So the way it goes is we take
25 testimony from the applicant. Then we have questions of the

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1 applicant. Then we take testimony from the Office of
2 Planning. Then we have questions of the Office of Planning.
3 You can listen to the testimony of the applicant, the Office
4 of Planning, and then we come to the public which is when
5 we'd get to you. Okay. So just so you know the process.

6 MR. OFFUTT: Okay. So the public is all at the
7 end of the day after all the cases have been called; is that
8 correct?

9 CHAIR HILL: No. The public is at the --the
10 public at that time of the hearing that I just specified
11 which is that the applicant speaks first, the Office of
12 Planning --

13 MR. OFFUTT: Okay.

14 CHAIR HILL: -- speaks, and then the public
15 speaks.

16 MR. OFFUTT: Very good, okay.

17 CHAIR HILL: So I'm pointing that out so you know
18 the order and so that you can listen to the testimony of both
19 the applicant and the Office of Planning. Okay. So we'll
20 see you back here at 2:45.

21 MR. OFFUTT: Okay. Thank you.

22 CHAIR HILL: Okay. Mr. Glasgow, do you
23 understand?

24 MR. GLASGOW: At 2:45 to present our case?

25 CHAIR HILL: Yes.

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1 MR. GLASGOW: Did you hear me? Yes.

2 CHAIR HILL: Yes. Okay. So I'm going to go ahead
3 and adjourn this portion of the hearing. We'll come back at
4 2:45. And again, Mr. Young, hello. Don't leave just yet.
5 I'm sorry. Mr. Offutt, just so you know again how this
6 works, Mr. Young can you hear me?

7 MR. YOUNG: Yes, I can.

8 CHAIR HILL: During the hearing, Mr. Offutt, you
9 guys aren't in the hearing room until the public portion of
10 the testimony. Okay. So you'll be able to watch the
11 hearing. You guys are going to come in during the public
12 testimony portion.

13 MR. OFFUTT: Okay.

14 CHAIR HILL: Do you understand? I just want to
15 let you know. You seem confused.

16 MR. OFFUTT: Well, it just seems that the others
17 were open as well to the public.

18 CHAIR HILL: No. They're all --

19 MR. OFFUTT: I thought the earlier cases were
20 open. That's why I was looking the way --

21 CHAIR HILL: That's right.

22 MR. OFFUTT: -- I looked.

23 CHAIR HILL: They are open to the public meaning
24 you'll get to watch, but you'll be brought into the hearing
25 room during the portion of the testimony from the public.

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1 That's what I mean.

2 MR. OFFUTT: Okay. Understood.

3 CHAIR HILL: You --

4 MR. OFFUTT: That's a Zoom era thing.

5 CHAIR HILL: Yes, it's separate. You won't be in
6 here right now the way this is. That's what I'm trying to
7 clarify. You all will come in during the public hearing
8 portion.

9 MR. OFFUTT: Okay.

10 CHAIR HILL: Okay? Okay. All right. Mr. Young,
11 you can let everybody go. Okay. So now Mr. Moy, you can
12 call our next case.

13 MR. MOY: Thank you, Mr. Chairman. So this would
14 be Case Application Number 20492 of 5116 PSRV, LLC. This is,
15 as amended and self-certified for special exception relief
16 under the new residential development provisions of Subtitle
17 U Section 421.1, pursuant to Subtitle X Section 901.2, and
18 the area variance from the side yard requirements, Subtitle
19 F Section 306.1 pursuant to Subtitle X, Chapter 10. This
20 would raze, R-A-Z-E, the existing building, and to construct
21 a new, detached, three-story, 16-unit residential building
22 with cellar and penthouse in the RA-1 zone. Property located
23 at 2405 Alabama Avenue, SE, Parcel 02210066.

24 And the only other preliminary I have, Mr.
25 Chairman, is I believe the applicant asked for a waiver of

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1 the 21 days filing. But I would ask the -- I would ask Ms.
2 Wilson to confirm that for me. Thank you.

3 CHAIR HILL: All right, great. Thank you. Ms.
4 Wilson, can you hear me?

5 MS. WILSON: I can, yes.

6 CHAIR HILL: Could you introduce yourself for the
7 record, please?

8 MS. WILSON: I am Alex Wilson form Sullivan and
9 Barrows on behalf of the applicant in this case.

10 CHAIR HILL: Okay. And who's here with you today,
11 Ms. Wilson?

12 MS. WILSON: I'm here with Adam Crain and Jim
13 Foster who are the project architects and Sean Brewer who is
14 the representative of the owner.

15 CHAIR HILL: Okay, great. All right. Ms. Wilson,
16 if you can go ahead and give us your presentation and explain
17 why you believe your client is meeting the standard for us
18 to grant the relief requested? I'm going to put 15 minute
19 on the clock just so I know where we are, and you can begin
20 whenever you like.

21 MS. WILSON: Great. Thank you. And I'll address
22 the waiver for the 21-day filing requirement, too. Mr. Moy
23 brought that up and we just wanted to submit the landscape
24 plans, so that was the request for that waiver --

25 CHAIR HILL: Okay.

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1 MS. WILSON: -- cause we submitted that last
2 night, I think, or was it Monday night.

3 CHAIR HILL: Okay. Why is it late?

4 MS. WILSON: So we submitted this application
5 almost a year ago I think, but we were waiting to get an
6 updated agreement from the neighbors to the east for use of
7 an existing easement or what we thought was an existing
8 easement. It turns out there was nothing ever recorded. It
9 was sort of just used by the property owner on the subject
10 property for many, many years. So we finally got the
11 easement agreement signed from the neighbor, and we can still
12 continue to use that driveway. But while we were waiting for
13 that, we didn't move forward with any re-design for the plans
14 in case that didn't work out. So we were just a little bit
15 late to updating the landscape plans because of the easement
16 agreement and the time of that.

17 CHAIR HILL: And is your landscaping plans part
18 of your PowerPoint?

19 MS. WILSON: They should be in the PowerPoint,
20 yes.

21 CHAIR HILL: Okay. Unless the Board has any
22 issues, I'd like to go ahead and include the landscaping
23 plans into the record to allow them. I don't see anyone
24 raises their hand that they have any issues. Mr. Moy, if you
25 could go ahead and put those into the record, please? And

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1 then Ms. Wilson, you can begin your presentation whenever you
2 like.

3 MS. WILSON: Great. Thank you. Mr. Young, could
4 you please pull up our presentation? Thank you. Could you
5 go to the net slide, please? Thank you. The property is
6 located in the RA-1 zone. The proposal is to raze the
7 existing building and construct a new building with 16
8 residential units. Accordingly, the applicant is seeking
9 approval under U-421 for new residential development in the
10 RA-1 zone. Additionally, there is a small portion of the
11 proposed building encroaching into the otherwise compliant
12 eastern side yard, so they're also seeking an area variance
13 for that encroachment, although the majority of the side yard
14 meets the setback requirement. And that's highlighted a
15 little later in the presentation. Next slide, please.

16 This is an overview of the area. It's made up of
17 a mix of larger apartment complexes, some single-family homes
18 across the street, and there is an elementary school down the
19 block. Next slide, please.

20 This is an aerial view of the subject property and
21 surrounding buildings. Next slide, please.

22 This just shows the massing of the other buildings
23 on that side of Alexander Avenue as well as the elementary
24 school. And with that, I'm going to turn it over to project
25 architect, Adam Crain, to walk through the plans.

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1 MR. CRAIN: Hi, everyone. Adam Crain, Project
2 Architect with 2Plys. If we could, let's go to the next
3 slide. I think that should be the exterior elevations. So
4 these are some renderings showing the front on the left-hand
5 side with bay windows that'll be submitted for approval with
6 DDOT and Public Space. On the bottom right-hand side, the
7 east perspective, that's showing that white massing that
8 we're asking for relief for from the side yard. And along
9 the front of that east perspective is the entranceway that's
10 going to be going through the easement. Go to the next
11 slide.

12 This is a site plan overview. As you can see,
13 we've got a triangular-shaped lot, really skinny at the back
14 and kind of fat at the front. Along the top side, you'll see
15 that easement that was -- took a little while for the owners
16 to get put together that's providing the drive aisle to
17 parking access that's at the back. We've got five parking
18 spaces planned for the back along with a trash area. Up
19 towards the front of the property, you'll see we've got, as
20 I mentioned, bay windows that'll be subject to Public Space
21 approval, and this yellow highlighted area, the 85-square-
22 foot, I guess we can call that a side bay even though it's
23 on the property, but that's part of the relief for the side
24 yard.

25 You know, fitting with a lot that isn't

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1 rectangular or square-shaped, it's a little hard to fit
2 things. Buildings and parking both are rectilinear and don't
3 fill well in small triangles so that kind of gives us a
4 little push from the back, and that's where this kind of
5 ended up asking for relief here on the side. Next slide,
6 please.

7 So full plan overview; 16 units. As Alex
8 mentioned, very simply, it's four per floor. Starting from
9 the cellar working our way up, you'll see Unit 4 and 3.
10 We've got ADA accessible units as required as required. On
11 the very bottom right of the cellar, you'll see we've got
12 exterior access that'll go down to a bike room for long-term
13 bike storage at the cellar level.

14 Going up to the first floor, again four units,
15 some one-bedrooms, mix of twos as well. We've got ADA
16 accessibility with a lift shown there. We try and provide
17 as many direct entry or front door to units in these
18 multifamily projects as we can to give everyone more of a
19 sense of individuals coming home to their own front door
20 rather than through a shared foyer, so we try and maximize
21 at the cellar and first floor as we can. Obviously, when we
22 get up to the second floor, we've got some separate entries.

23 So on the first floor here, you'll see two stair
24 entries going up to the second floor. We've got another four
25 units there. Again, these are all four-bedroom -- or I'm

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1 sorry -- all two-bedroom units and you'll see stairs going
2 up to the third floor for another four units. Those are all
3 two-bedrooms as well. As there's no habitable space allowed
4 in this zone, the penthouse, really just use them for roof
5 deck access for units 13 through 16. Next slide.

6 Here are some of the exterior elevations. I guess
7 the highlights here are really our efforts to enhance the
8 livability of all these. So we try and provide even a
9 minimal of exterior space for all the units. So, you know,
10 we get above grade above the first floor, we've got balconies
11 and some walkout sliding doors for all the units to bring
12 light in, bring fresh air in, and give them a place to step
13 outside. Next slide.

14 That's just the other elevations. The one on the
15 left here with the white mass, that's that projection over
16 the required side yard we're asking for relief for. Next
17 slide, please.

18 It's just a section. We typically use these to
19 highlight the color-coded unit differentials, show how it's
20 cut up and also the penthouse setbacks for the roof actions
21 that were shown. Next slide, please. It's just another view
22 of the different section cuts showing you the differentials.
23 Next slide.

24 This is our conceptual landscaping plan. If
25 everyone's aware, in this zone, in most multifamily zones,

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1 you need a green area ratio score. That's under review with
2 DOEE as part of the permit package. So this is going to
3 achieve that with a mixture of green roofs, permeable pavers
4 in the parking area, and then plantings towards the rear of
5 the property.

6 And I think that's the last drawing. You can turn
7 it back over to Alex.

8 MS. WILSON: Thank you, Adam. In terms of the
9 general special exception criteria, granting relief is in
10 harmony with the purpose and intent of the zoning regulations
11 and maps that the RA-1 zone provides for predominantly low
12 to moderate density buildings, and the proposal for a new
13 multifamily building. Also, the area is made up of a mix of
14 larger residential developments like the one to the east and
15 some other institutional uses such as a school down the
16 block. Next slide, please.

17 Regarding these specific criteria, the application
18 was referred to the Office of the State Superintendent of
19 Education. While comments were not received, the nature of
20 the project is such that the area schools can accommodate the
21 number of students expected to reside in the project, and
22 there are adequate public streets, recreation, and other
23 surfaces to accommodate the expected residents. The subject
24 property is within walking distance of a YMCA, Garfield
25 Elementary School, a fire station, a police station, Douglass

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1 Recreation Center, and Douglass Outdoor Pool. Next slide,
2 please.

3 Additionally, the applicant accepted
4 recommendations of the OP's Design Division and has submitted
5 all relevant materials as required by the section for
6 approval. Next slide, please.

7 The other request is for area variance relief from
8 the side yard requirement. We are proposing two compliance
9 side yards. There's one on the left which is shown at the
10 bottom in the picture. It is a fully compliant 8-foot side
11 yard with no encroachment. The highlighted yellow portion
12 is the area encroaching into the proposed eastern side yard,
13 so we are seeking relief for that 85 square foot portion
14 highlighted in yellow, and there is still significant
15 separation from the apartment building on the lot to the east
16 because there is that easement. Next slide, please.

17 In terms of the test for the variance, the
18 property is unique for this block and square because of its
19 odd shape and how it's sharply narrow towards the rear. No
20 other property faced this condition. The lot is widest at
21 the front and about halfway towards the rear, it shrinks
22 about only 30 feet, and then it narrows to a point so that
23 there is no real lot line. No other lot in the area faces
24 this condition. Even the lot next to the subject property
25 maintains a more consistent width as it moves towards the

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1 rear, and it does have a rear lot line. And as Adam noted,
2 this impacts the design of the building as the bulk must be
3 towards the front. And the back half of the lot is not wide
4 enough for parking and an efficient building layout.

5 In summary, the shape of the lot creates
6 challenges which requires the bulk of the building to be
7 located on the front half of the lot driving the need early
8 to have a very small encroachment into an otherwise compliant
9 side yard. Next slide, please.

10 This is just showing the lot compared to the lot
11 next door, which is more rectangular shape and again, no
12 other lot really faces the exact challenge and unique
13 condition as the subject property. Next slide, please.

14 This is in our statement so as noted here, just
15 another yard variance case where OP and the Board found that
16 because of the exceptional condition with the lot shape, it
17 was more difficult to develop a portion of the lot since it
18 was so narrow. And the massing in that case had to be pushed
19 towards the rear impacting the rear yard and lot occupancy
20 require relief. And similarly here because of the shape of
21 the lot, a very small portion of the massing is being pushed
22 towards the side on the widest portion of the lot. If you
23 could skip two slides, please? Thank you.

24 Without the relief, the applicant will face a
25 practical difficulty because it would have to work within a

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1 narrow building footprint resulting in more awkward floorplan
2 layouts and a loss of bedrooms and living space. The
3 applicant would be unable to utilize the widest part of the
4 lot, provide living space. If granted the relief, it allows
5 or a layout which is more conducive to functional unit
6 layouts, provides a more proportional attractive building,
7 and makes the best use of the unique conditions on the lot.
8 Moving the 85 square feet to the rear would not solve the
9 layout issue as that would not increase the width of the
10 building, only the length, which is not an issue for the
11 layout as there is plenty of available length but not enough
12 width. The relief is de minimis. The court has held that
13 the BZA has flexibility to consider a number of factors
14 including but not limited to the weight of the burden of
15 strict compliance, and in this case, the severity of the
16 variance requested. And again, in this case, we are
17 providing two fully compliant side yards and it's for only
18 85 square feet into a required side yard. Next slide,
19 please.

20 The last prong of the proposal includes 16 new
21 quality housing units with at least two inclusionary zoning
22 units. The intent of the side yard regulations is to provide
23 separation between buildings, and that intent is still met
24 as only 85 square feet of building would encroach into the
25 required side yard. The rest of the side yard and easement

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1 area would provide adequate space between the two buildings,
2 so the neighbors' light and air should not be significantly
3 impacted. And as the building would provide the required
4 side yard on the other lot line, that building will not be
5 impacted and the relief would not be inconsistent in building
6 both or form for an apartment building in this area. And
7 I'll also note we have a recommendation of approval for both
8 the special exception and the variance from the Office of
9 Planning. Next slide, please.

10 That's all I have for our presentation but we're
11 happy to answer any questions.

12 CHAIR HILL: Okay. Thank you, Ms. Wilson. Does
13 the Board have any questions of the applicant?

14 COMMISSIONER MAY: Yes, I do.

15 CHAIR HILL: Sure. Commissioner May?

16 COMMISSIONER MAY: Yes. So I'm really struggling
17 with the variance relief here. I'll be frank about this.
18 This -- looking at the complexity of the building that you've
19 designed and sort of all of the ins and outs and everything
20 else, I'm having a hard time understanding why you could not
21 have reconfigured the units in such a way as to extend the
22 length of the building just a little bit to be able to get
23 units of appropriate size. And, you know, you're providing
24 five parking spaces but the parking spaces shouldn't drive
25 this, because you're only required to have two. Those could

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1 easily shift further back and give you a little bit more
2 room. So I need a more compelling explanation of why this
3 design is essential because, you know, this is about having
4 a -- and it doesn't have to be absolutely essential, right.
5 The standard is practical difficulty. What is really
6 practically difficult about reconfiguring these units, maybe
7 having, you know, a smaller unit toward the front and having,
8 you know, less depth to it so it doesn't project into that
9 side yard and then pushing some of this back? You know, tell
10 me what you looked at? Tell me why it has to be this way or
11 this is the most sensible way to do it? Again, you've got
12 a very complicated building with lots of jigs and jogs in it
13 so, you know, I'm not seeing a very efficient building to
14 begin with so please tell me.

15 MR. CRAIN: Sure. I'd actually sum it up
16 community politeness and to expand upon that, you know, with
17 all these BZA cases, as we go before the ANC, the number one
18 response concerned and trigger point for the ANCs is cars in
19 the street and cars -- getting cars off the street. So
20 you're correct, we've got -- we're kind of -- we're subject
21 to two opposing forces. You know, we could push this
22 building towards the back, provide the zoning minimum
23 required parking sports but, you know, the neighborhood's got
24 to -- we've got 16 new residences coming to this neighborhood
25 and, you know, that's going to put more cars in the street.

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1 You know, every time we go to an ANC and present a project
2 that's going to the BZA, that's the first thing we hear about
3 is it's, you know, people frustrated with the amount of cars
4 in the street.

5 So, you know, I guess we're trying to be polite
6 to the community, provide several spaces in excess of what
7 zoning requires. It's a battle, right? So our solution here
8 is, you know, to add a couple extra spaces in the back,
9 comply with what, you know, the ANC typically requests and
10 I believe did request on this exact project, and that's kind
11 of what gives the weight of pushing the building forward from
12 the back.

13 COMMISSIONER MAY: So did the neighborhood -- the
14 neighbors who were concerned about parking, did they
15 explicitly say that you need to have five parking spaces?
16 I mean could they have gotten by with four, cause you could
17 have pushed it -- you could have pushed the building back
18 probably 10 feet and gotten four spaces in.

19 MR. CRAIN: I don't recall them saying --
20 specifying a number. Typically -- well, I know that in some
21 cases, they ask for one -- at least one per unit which, you
22 know, obviously is -- makes lots pretty much unbuildable, or
23 the project wouldn't be feasible. So it's more of an as many
24 as possible scenario. So what we're presenting here is a
25 balance of the as many as possible while still having a

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1 building that, you know, pencils out.

2 COMMISSIONER MAY: Okay. And did you look at the
3 possibility of just reconfiguring units and having smaller --
4 slightly smaller units so that you could avoid eating into
5 the side yard?

6 MR. CRAIN: That's, I mean, definitely a
7 possibility. The building would shrink. We -- you know, we
8 wouldn't -- zoning-wise, we wouldn't be maximizing the FAR
9 and that'd be taking several two-bedroom units down to studio
10 or one-bedroom units, cause that's going to affect -- a total
11 of eight, half the project would more or less lose a bedroom.
12 So, you know, I think it becomes less desirable.

13 COMMISSIONER MAY: Okay. I have to admit I'm
14 still struggling with --

15 MR. FOSTER: If I could speak up? This is Jim
16 Foster as part of the team.

17 COMMISSIONER MAY: Sure.

18 MR. FOSTER: And I wanted to point out that --

19 CHAIR HILL: Mr. Foster, could you just introduce
20 yourself for the record?

21 MR. FOSTER: Yes. Jim Foster from Arcadia Design.
22 I'm part of the development team.

23 CHAIR HILL: Okay. Thank you. Mr. Crain, I
24 forgot -- sorry, Mr. Foster. Mr. Crain, I forget to get you
25 to introduce yourself for the record.

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1 MR. CRAIN: I did but I'll do it again. Adam
2 Crain, Project Architect with 2Plys.

3 CHAIR HILL: Oh, sorry. Sorry if I didn't hear
4 that. Okay. Mr. Foster, go ahead.

5 MR. FOSTER: I just wanted to point out one minor
6 thing and that is that the easement on the side of the
7 property only goes back so far. We have pushed the parking
8 to the point where the easement enters at the furthest
9 distance back it can possibly enter the parking area. If we
10 push the building back any further, we would be limited in
11 how we could enter the parking area from the easement. The
12 easement doesn't extend the entire length of the property.
13 It only goes back a certain distance. Our current entrance
14 into our parking area is the -- literally the furthest back
15 that the easement extents, which allows us to enter into the
16 parking turnaround area. If we push the building any deeper,
17 we probably couldn't get access to the parking from the
18 easement driveway.

19 COMMISSIONER MAY: Okay. That's helpful for now.
20 So let's talk about the site plan then. And I'm looking at
21 the one that was in the PowerPoint as opposed to the more
22 recent exhibit. Maybe I should be -- should I be looking at
23 the more recent exhibit, or is it the same?

24 MR. CRAIN: What's the exhibit number that you're
25 looking at -- oh, in the PowerPoint?

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1 COMMISSIONER MAY: The PowerPoint, yes.

2 MR. CRAIN: Yes. That should be the most recent
3 one.

4 COMMISSIONER MAY: Okay. So I'm having trouble
5 understanding what the extent of the easement is because I
6 see a property line or -- no, I'm sorry -- I see a
7 demarcation of the easement 16 feet wide that parallels your
8 property, right. It's marked there for the front of the
9 property, and then it seems to extend the entire length. So
10 is that not an accurate depiction?

11 MR. CRAIN: Jim, do you want to answer that? I
12 don't think I've seen this drawing --

13 MR. FOSTER: I don't have that drawing in front
14 of me. If there's any way that someone could put that
15 drawing back up.

16 CHAIR HILL: Is it slide 17, Commissioner May, Ms.
17 Wilson?

18 COMMISSIONER MAY: It's slide 7 on the PowerPoint
19 is what I was looking at.

20 CHAIR HILL: Okay. Mr. Young, could you put up
21 slide 7 of the PowerPoint, please? And then if you can zoom
22 in just a little bit Mr. Young? Thank you.

23 COMMISSIONER MAY: Soon the upper left, it does
24 indicate the dimension of the easement and then there's a
25 property line drawn at the outside of the easement that goes,

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1 I guess, full depth.

2 MR. FOSTER: Yes. The -- what I -- all I can tell
3 you is that this doesn't indicate the actual easement
4 language, and the site plan that came with the easement
5 reflects where that driveway turns and enters onto our lot
6 was the back edge of the easement. It does not extend the
7 way it's shown there with that dash line. It -- the easement
8 terminates at about that tree that's there.

9 COMMISSIONER MAY: Okay. And I -- is the tree
10 going to be really within the driveway?

11 MR. FOSTER: That I can't answer. That might be
12 up to Mr. Crain.

13 MR. CRAIN: I think with -- we're having a
14 arborist looking at that to do a tree removal permit.

15 COMMISSIONER MAY: Okay. It's not a heritage tree
16 I hope.

17 MR. CRAIN: I don't know the size of it.

18 COMMISSIONER MAY: Okay. All right. Yes. You're
19 going to have to confirm that for us. And it would be
20 helpful to have an accurate drawing of what the easement is
21 so that we can understand what the constraint is, cause I
22 think that if in fact the driveway can't go any further to
23 the right on this drawing -- I guess that's -- well, anyway,
24 to the right, if it can't go any further to the right, then
25 that is a constraint for the parking spaces and eliminating

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1 parking spaces unless you went all the way down to two,
2 wouldn't get you a deeper building. So that I can sort of
3 understand. I mean there's -- I still have challenges with
4 the overall layout of the building, and I have to believe
5 there's a way that you could have designed it without
6 impinging on the side yard but --

7 MR. FOSTER: Only other thing that I would add to
8 that comment as a response is that one of the reasons we
9 designed the building the way we did was to have what is
10 essentially four adjacent row houses that face to the top of
11 the page or north, and then each has mostly separate
12 entrances so that people had their own front door in the
13 units as opposed to a central hallway. And in order to try
14 to get four equal-sized units, it was to -- we felt it was
15 to our benefit to condense the building a little tighter on
16 the lot and leave more room in the back. The longer and more
17 linear the building becomes, the harder it is to lay it out
18 as a townhouse type style and then, therefore, adds more
19 circulation and less efficiency for the floorplan which is,
20 of course, you know, that is -- you know, it is what it is
21 I suppose. However, it made the units nicer to be squarer
22 and more normal shaped rather than longer and more linear.
23 We felt that the projecting bay into the side yard was
24 relatively minor compared to the overall volume of the
25 building, and it faces the back of the building to the north

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1 and, of course, it is adjacent to an already existing
2 driveway easement.

3 Finally, I would add that the projecting bay is
4 significantly smaller in scale than the rest of the massing
5 building. The building is, I think, 40 feet tall to the top
6 for the main volume but the roof of that projecting bay is,
7 I think it's about 10 feet, at least 8 feet lower.

8 So for all of those reasons, to be able to provide
9 a more square building than -- and I know it looks like it's
10 articulated excessively but in fact, if you go back and look
11 at the floor plans, they're fairly typical size units with
12 sort of bay windows everywhere. It allows -- it allowed us
13 to make condensed circulation and separate entrances into
14 units to make this a more desirable building to live in and
15 what we thought was a relatively minor projection alongside
16 an already existing side yard easement that's on part of our
17 use of the property and that the bay is relatively smaller
18 in scale to the rest of the building --

19 (Simultaneous speaking.)

20 MR. FOSTER: -- and allowed us to have parking.

21 COMMISSIONER MAY: Stop, please. I don't need you
22 to tell me over and over again that it's relatively minor and
23 that it's pretty small and --

24 MR. FOSTER: Sorry.

25 COMMISSIONER MAY: I understand your design

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1 philosophy now. I do appreciate that aspect of the
2 explanation. You know, again, this is -- I mean the zoning
3 regulation isn't always about making the best possible
4 building, right? It's more about controlling the volume and
5 the mass and making sure that there are not undue impacts on
6 neighboring properties. And I mean this circumstance,
7 because you have this easement on the side, which I assume
8 is a perpetual easement and that you will always be able to
9 drive your vehicles back there, which means that there isn't
10 going to be another building over there. Is that a correct
11 assumption? Speak, please.

12 MS. WILSON: That is correct, yes.

13 COMMISSIONER MAY: Okay. So I think that's a
14 mitigating factor that you haven't mentioned but again, you
15 know, I mean I appreciate the aspirations, and I think it's
16 a pretty attractive building for what it is. The issue is
17 just that it doesn't comply with the zoning regulations when
18 maybe it could have. And so it's -- I'm just having a little
19 trouble getting through the practical difficulty prong of
20 burdens so. I'll stop taking up the Board's time now. Thank
21 you very much and back to you, Mr. Chairman or Mr. Blake.

22 CHAIR HILL: Yes. Okay. Thanks, Commissioner.
23 Commissioner, I got to kill until 2:45 anyways so you'd have
24 plenty of time.

25 COMMISSIONER MAY: I thought we have another case.

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1 CHAIR HILL: Yes, we do. We won't have as much
2 time then on the next case.

3 COMMISSIONER MAY: Okay. So Mr. Blake, you got
4 any questions?

5 MEMBER BLAKE: I do not.

6 CHAIR HILL: Okay. Let's turn to the Office of
7 Planning and see if the Office of Planning can provide any
8 clarity.

9 MS. MYERS: Good afternoon. Crystal Myers for the
10 Office of Planning. The Office of Planning is recommending
11 approval on this case. It sounds like you would like me to
12 kind of touch upon our analysis. When it comes to the
13 special exception itself, the specific criteria for it, as
14 the applicant has explained, it meets the school's aspect,
15 the different services and resources in the area are there
16 and it meets those part of the criteria. When it comes to
17 the arrangement on the site, we were satisfied that it is
18 meeting that requirement. The building layout is not unduly
19 impacting the neighboring properties. The side yard eight
20 feet on the west side meets that requirement, so it should
21 not have a significant impact on that neighbor. On the east
22 side, you have the easement area which effectively serves as
23 a side yard on the eastern side. And the landscaping, the
24 rest of the development standards we felt were adequate.

25 We can just go straight over to the variance side

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1 of this. Office of Planning was satisfied with the
2 applicant's argument that the property is narrow and that
3 that does constrain development on the site. And we thought
4 that it was reasonable to allow for the 85 square feet --
5 additional square feet on the east side so, therefore,
6 effectively the side yard -- not meeting the side yard
7 requirement. And as I mentioned, we felt that the easement
8 area effectively serves as a side yard, which would mitigate
9 potential impacts to that neighbor.

10 And coming to the general criteria for a special
11 exception, this is the RA-1 zone which affords multifamily
12 or multiple dwelling unit buildings of low to moderate size
13 buildings, and this is that type of use as long as it
14 conforms to the criteria. And we felt that they are
15 conforming to the criteria for the special exception, and the
16 variance, they met the criteria for the variance relief.

17 When it comes to impacts on neighboring
18 properties, we felt that by meeting the different criteria,
19 it will not significantly impact the adjacent neighbor. So
20 we felt that this was -- does meet the criteria for approval
21 for the special exception and for the variance relief but,
22 of course, here for questions if you have any additional
23 questions about it.

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

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1 COMMISSIONER MAY: No. Thank you.

2 CHAIR HILL: Mr. Blake?

3 MEMBER BLAKE: I have a question actually for the
4 -- Mr. Crain or Mr. Foster. I apologize. If you did simply
5 remove that 85 square foot issue, exactly how many -- how
6 much square footage would you actually lose and how many
7 bedrooms would actually be destroyed? I mean, you know, you
8 talked about it would be -- it would have to be less
9 optimally designed. But I'd like to get a better sense of
10 how many you would actually lose, how much space would you
11 actually lose?

12 MR. CRAIN: It would be 85 square feet over cellar
13 through third floor, so that's 340 square feet roughly and
14 ballpark, it looks like one bedroom over eight units, so
15 about eight bedrooms. Whether that's actual eight bedrooms
16 or the size of it, I'm not sure without doing a redesign
17 plot.

18 MEMBER BLAKE: You could do eight bedrooms 340
19 square feet? I'm sorry.

20 MR. CRAIN: Three hundred and forty square feet
21 total over all four levels, and if it's one -- it affects
22 eight different units, two units per floor so one bedroom is
23 lost to each so roughly eight bedrooms.

24 COMMISSIONER MAY: Yes. That math ain't working
25 so well cause you're effectively -- if you split it down the

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1 middle, it's 40 square feet loss per unit, 42 square feet per
2 unit. I don't think you have any 40 square foot bedrooms.
3 But it's easy enough to see that you'd lose like one bedroom
4 per floor and then you'd lose a chunk of the living space in
5 the other units, right?

6 MR. CRAIN: Yes. And that's why it's not as easy
7 to say because we don't have a design where it's all bedrooms
8 stacked there, but if you have that line going through, the
9 side setback, it goes through the units. Like for instance,
10 on the second floor, we have two bedrooms that it would go
11 right through, and it's mostly living and kitchen areas on
12 the other ones. So again, those would have to be redesigned
13 but that's general ballpark.

14 MEMBER BLAKE: All right. Thank you.

15 CHAIR HILL: Okay. Does the applicant have any
16 questions for the Office of Planning?

17 MS. WILSON: No. Thank you.

18 CHAIR HILL: Mr. Young, is there anyone here
19 wishing to speak?

20 MR. YOUNG: We did have one person signed up but
21 he has not been on Webex. We had staff reach out and they
22 haven't responded.

23 CHAIR HILL: Okay. So that would be a no at this
24 point. Let's see. So Mr. -- Commissioner May, do you -- you
25 had mentioned something about confirmation of the heritage

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1 tree, and then I don't know whether you wanted documentation
2 of the easement or some detailed --

3 COMMISSIONER MAY: Yes. I think if they're going
4 to argue that the easement, instead of the easement as a
5 constraint where the parking spaces could be -- that's part
6 of what they said -- I think that we need to have a drawing
7 that shows that. And I -- you know, we had a case earlier
8 today when the Office of Planning and DDOT insisted on seeing
9 the easement on a similar case for a shared driveway use.
10 You know, it seems to me that we ought to hold to that same
11 standard that the easement ought to be part of the record
12 here.

13 CHAIR HILL: Okay. I think it was us actually
14 that asked for the proof of the easement but maybe not. I
15 don't know.

16 COMMISSIONER MAY: On the last case, it was
17 recommended by DDOT and OP.

18 CHAIR HILL: Yes -- no. I mean I know -- anyway,
19 I just don't want -- I don't want OP to have any power over
20 us.

21 COMMISSIONER MAY: I know.

22 CHAIR HILL: I think we -- no -- no -- no. I'm
23 saying like I think OP, they were like, you know, maybe we
24 should see it, but we actually wanted to see it. But so the
25 reason why I'm asking you Commissioner is it's more -- it

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1 helps with their variance argument and it seems to be kind
2 of where your struggling a little bit.

3 COMMISSIONER MAY: Correct.

4 CHAIR HILL: So that's why I'm trying to find out
5 whether you need it in order to provide a better analysis of
6 this. And it sounds as though you would like to see
7 something.

8 COMMISSIONER MAY: Well, yeah.

9 CHAIR HILL: Mr. Crain, do you understand what
10 Commissioner May is asking for?

11 MR. CRAIN: I do.

12 CHAIR HILL: Okay. And then --

13 MEMBER BLAKE: Mr. Chairman, those drawings --

14 CHAIR HILL: Yes.

15 MEMBER BLAKE: -- are -- the drawing also should
16 be drawn to the specs that match the easement so that we can
17 see how that -- not just the wording of the easement but
18 actually drawing that diagram we just saw so that it matches
19 the easement, because the ability not to -- to not create
20 space because of the parking is critical in terms of
21 potentially redesigning the space. So I'd like to see that.

22 CHAIR HILL: Okay. Mr. Crain, do you understand?
23 You're nodding yes for the record.

24 MR. CRAIN: Yes. We can do that.

25 CHAIR HILL: Okay. And then the confirmation

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1 about the heritage tree?

2 COMMISSIONER MAY: Yes. So if I can just
3 interject here. Right now they're showing a tree in the
4 driveway and so if it's a heritage tree and it's healthy,
5 they're not going to be able to take it down legally.

6 And that was in the news just today that there's
7 new legislation related to heritage trees that everybody
8 should be paying attention to. But I mean it's -- we should
9 have a drawing that shows a usable driveway, not one with a
10 tree in it. And that could affect the configuration of the
11 driveway in the long run. So I don't really care whether or
12 not it's a heritage tree. I just want to have a plan that
13 shows that it's -- you have a functioning driveway.

14 MR. CRAIN: Understood.

15 CHAIR HILL: Okay. So that sounds like it can be
16 the same drawing then, Mr. Crain, correct?

17 MR. CRAIN: It would be the same drawing. We'd
18 just update it once we get the drawing of the easement to
19 apply and then check with the arborist on the tree.

20 CHAIR HILL: Right, to take out the tree?

21 MR. CRAIN: Yes.

22 CHAIR HILL: Got it, okay. How long do you think
23 it would take for you guys to get that to us?

24 MR. CRAIN: Depends on if we have the drawings
25 ready. If they're ready, it could be a week but I've got to

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1 see if we've got an easement drawing in hand.

2 CHAIR HILL: Okay. So if they're ready, it could
3 be a week. Okay. Ms. Wilson, you sound -- you look like
4 you're trying to say something?

5 MS. WILSON: Yes. I'd prefer just a couple weeks
6 to make sure we, you know, cross our t's and dot our i's.

7 COMMISSIONER MAY: Two weeks would be better. The
8 one case that we had earlier that required additional
9 documentation is aiming for two weeks, the 16th. And it
10 would be best for me if we did that cause I'm not going to
11 be here that day. I would be -- normally, I would have to
12 come in or do an absentee ballot so 16th would be best.

13 CHAIR HILL: Right. That's when you were coming
14 back for that decision?

15 COMMISSIONER MAY: Either coming back or doing an
16 absentee ballot so we have a decision, yes.

17 CHAIR HILL: Okay. Do you think that you'll need
18 to talk to anybody or you'll have enough information just off
19 of that drawing?

20 COMMISSIONER MAY: I don't think that there's more
21 talking necessary myself.

22 CHAIR HILL: Okay.

23 COMMISSIONER MAY: I think -- I would suggest that
24 we might want to have one or more of our colleagues read up
25 on this case as well.

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1 CHAIR HILL: Oh, Commissioner, come on. All
2 right. So then --

3 COMMISSIONER MAY: Well, you don't want to -- if
4 I can't get to the --

5 CHAIR HILL: I know -- I know -- I know.

6 COMMISSIONER MAY: You know, as Ron said, you
7 don't want a two to one decision cause that's not a --

8 CHAIR HILL: I understand.

9 COMMISSIONER MAY: -- but at three --

10 CHAIR HILL: Let me think where I am with this
11 then. Okay. Ms. Wilson, when can you get this stuff to us?

12 MS. WILSON: Would it be okay to do it the Friday
13 before the 16th; is that okay, enough time?

14 CHAIR HILL: Mr. Moy?

15 MR. MOY: Yes, sir. I'm here.

16 CHAIR HILL: Yes. So then the filings -- we're
17 trying to come back for a decision on the 16th, and so then
18 we're trying to get filings from the applicant by the 11th.

19 MR. MOY: Do you need any responses from any of
20 the parties or from OP?

21 CHAIR HILL: I mean you can keep the record for
22 the ANC. I mean -- oh, did I miss that? Ms. Wilson, tell
23 me again what happened at the ANC?

24 MS. WILSON: So we have been to the ANC three
25 times and they -- I don't want to speak for the ANC but I'll

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1 just explain what happened in terms of voting. Someone asked
2 their fellow commissioners whether they would support it.
3 I'm not sure if a formal resolution is actually present. And
4 so three did not want to support it, and two people were okay
5 supporting it, and it was -- I'm not sure if they are
6 planning to submit anything to the record. We've reached out
7 to get the minutes on it. We haven't heard back so it's been
8 -- there's been some communication issues.

9 CHAIR HILL: So currently, they would be not
10 supporting the application as far as you know?

11 MS. WILSON: Yes. That was their consensus.

12 CHAIR HILL: So Mr. Moy, leave the record open for
13 the ANC if they want to submit anything. Okay. And then
14 let's go ahead and have the applicant's submission by the
15 11th. Let's go ahead and have a decision meeting on the
16 16th, right, and if, Mr. Moy, you could ask Vice Chair John
17 and Mr. Smith to read into the record for this case, and if
18 they need us to reopen, we can do so. You're on mute, Mr.
19 Moy, and I think Mr. Blake had a question which I'll get to
20 in a second.

21 MR. MOY: Yes, thanks. I'm sorry. I forgot what
22 I was going to say. Okay. So the applicant would make their
23 filing, their supplemental by Friday, March 11th, and the
24 record will be kept open from -- for other parties or more
25 specifically, from ANC and Office of Planning by -- this will

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1 be even less than a week, because I was going to say Monday,
2 March 14th or do you just want to take that all the way up
3 to Tuesday, March 15th?

4 CHAIR HILL: You can leave it open until Tuesday,
5 March 15th.

6 MR. MOY: Okay. That could be bad for the
7 applicant. That's the idea of March. Okay.

8 CHAIR HILL: Unless your name is Caesar.

9 MR. MOY: Okay. That's it for me, sir.

10 CHAIR HILL: Okay. Mr. Blake.

11 MEMBER BLAKE: Mr. Chair, I was thinking -- I was
12 asking -- I wonder if it would be possible to have a limited
13 scope hearing as opposed to a decision meeting for that day?

14 CHAIR HILL: That's fine.

15 CHAIR HILL: That's fine.

16 MEMBER BLAKE: Okay.

17 CHAIR HILL: All right. So Mr. Moy, we're going
18 to have a limited scope hearing on the 16th and the limited
19 scope will be about the material that is going to be
20 submitted by the applicant.

21 MR. MOY: All right, that works. And to
22 accommodate Commissioner May, maybe we could tee this case
23 up the first case or --

24 CHAIR HILL: Yes. And there's a --

25 MR. MOY: -- first two cases in the morning.

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1 CHAIR HILL: -- similar case. And now I forgot
2 to ask -- I forgot to ask, like how many -- is there an
3 appeal that day, too?

4 MR. MOY: Yes. Well, yes, we have two but these
5 two, those are on the same site which is similar to what we
6 had a couple weeks ago.

7 CHAIR HILL: Right. Still how many cases plus the
8 two appeals?

9 MR. MOY: It would be three, four cases and an
10 expedited --

11 CHAIR HILL: Four, one decision, one expedited,
12 and how we're adding this so that's five.

13 MR. MOY: Yes. We have a decision case that you
14 just put on.

15 CHAIR HILL: That's fine. All right. I guess
16 whatever. I'll blame it on Mr. Blake if this ends up being,
17 you know, whatever. So limited scope and we'll do this
18 first, okay?

19 MR. MOY: Yes.

20 CHAIR HILL: And this will give an opportunity for
21 -- if Vice Chair John or Mr. Smith has questions.
22 Commissioner May, you're going to say something?

23 COMMISSIONER MAY: Yes. I really need to be -- if
24 we do it first, I'll need to do it within 9:30 and 10:30.
25 Sorry to be a problem but hopefully, we just -- we might have

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1 to take this one up very first.

2 CHAIR HILL: No, that's fine.

3 COMMISSIONER MAY: If it's the decision case after
4 that cause I could always -- that one is my --

5 CHAIR HILL: I see. You're saying you might
6 absentee vote on the decision case?

7 COMMISSIONER MAY: Exactly, yes.

8 CHAIR HILL: Okay.

9 COMMISSIONER MAY: That one we're just waiting for
10 documentation before we --

11 CHAIR HILL: I got you. I understand. Well, if
12 this thing takes an hour, then it's really going to throw my
13 whole world anyway so -- but -- because that appeal --
14 anyway, okay. Okay. Anyway, all right, Mr. Moy, we'll do
15 this first, limited scope hearing. Then we'll do the
16 decision. Then we'll see what happens, and then you all got
17 your marching orders with the dates. I'm going to go ahead
18 and close -- does any Board member have anything else to say
19 before I close the hearing and the record?

20 COMMISSIONER MAY: No.

21 CHAIR HILL: Okay. So I'm going to go ahead and
22 close the hearing and the record except for the information
23 requested, and we'll see you guys for a limited scope hearing
24 on 3/16. All right, Ms. Wilson?

25 MS. WILSON: Great. Thank you, guys.

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1 CHAIR HILL: Okay, great. All right. Thank you,
2 all. Let's take a quick, really, five-minute break, just a
3 quick five-minute break and we'll come back, okay?

4 (Whereupon, the above-entitled matter went off the
5 record at 2:34 p.m. and resumed at 2:42 p.m.)

6 CHAIR HILL: All right, Mr. Moy, you can, wait a
7 minute. Yes, you can call our next case.

8 MR. MOY: Okay, the Board is back in its public
9 hearing session at, and the time is at or about 2:42 p.m.
10 The next application before the Board is No. 20630, of the
11 New Macedonia Baptist Church.

12 This is a requested relief from the use variance,
13 or the way I should say, it's a request for a use variance
14 from the matter-of-right uses, subtitle U, section 201.1,
15 pursuant to subtitle X, section 1002, area variance from the
16 lot, occupancy requirement subtitle D, section 304.1,
17 pursuant to subtitle X, section 1002.

18 This would convert an existing detached two-story
19 plus cellar church, into a 10-unit residential building in
20 the R-1B zone.

21 The property located at 3200 22nd Street
22 Northeast, Square 4220, Lot 803.

23 And, very quickly, there is the applicant's
24 PowerPoint, which was submitted within the 24-hour block, for
25 you to address.

1 And, that's all I have.

2 CHAIR HILL: Okay, great. Ms. Wilson, could you
3 introduce yourself for the record, please?

4 MS. WILSON: Hi, Alex Wilson, from Sullivan &
5 Barros, on behalf of the applicant.

6 CHAIR HILL: Okay. You guys are late for the
7 PowerPoint, why?

8 MS. WILSON: We didn't have time to get together
9 as a team until Tuesday, and we wanted to wait until then to
10 submit the PowerPoint. Make sure everyone had a chance to
11 go over it.

12 CHAIR HILL: Got it. Okay.

13 Unless the Board has an issue, I'd like to allow
14 it into the record. So, please go ahead and allow it into
15 the record.

16 And, then, I'll open this up real quick. All
17 right, well, that's all right. I'll keep clicking back into
18 it.

19 All right, Ms. Wilson, who is here with you today?

20 MS. WILSON: I'm here with Emilie Rottman, from
21 Square 134 Architects, and she is the architect. I'm also
22 here with Ian Ruel, who is the prospective purchaser, and
23 with Pastor Patrick Walker, who is representing the owner,
24 which is the New Macedonia Baptist Church.

25 CHAIR HILL: Okay. We'll see who we get to if we

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1 need them.

2 If you want to go ahead and give your
3 presentation, and let us know why you believe your client is
4 meeting the standard for us to grant the relief requested.

5 I'm going to go ahead and put 15 minutes on the
6 clock just so I know where we are, and you can begin whenever
7 you like.

8 MS. WILSON: Great, thank you.

9 Mr. Young, could you please pull up the
10 presentation?

11 Thank you so much. You can go to the next slide,
12 please. Thank you.

13 The applicant is proposing an adaptive reuse of
14 the church into 10 residential dwelling units, one of which
15 will be an IZ unit.

16 Accordingly, we are requesting variance relief
17 from the use requirements of the U-201, as multi-family use
18 is not permitted in the R-1B zone.

19 The Zoning Administrator has confirmed that once
20 the building is converted to residential use, the existing
21 lot occupancy, which is currently 63.4, will be deemed
22 non-conforming, as the limitation for lot occupancy for
23 residential uses is only 40 percent.

24 So, we are also seeking an area variance relief
25 from lot occupancy, in order to simply maintain the existing

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1 building footprint. We are not proposing to alter the
2 existing building footprint in any way.

3 ANC5C is in support of the application. DDOT has
4 no objection, and OP is recommending approval.

5 We have a petition in support, and two individual
6 letters of support. Mr. Ruel, who would be the end purchaser
7 and housing provider, has also done extensive community
8 outreach.

9 I know you mentioned that we might not want to
10 take testimony at this time, and you might have questions
11 from, I apologize, that's my dog in the background, if you
12 can hear that.

13 CHAIR HILL: It's okay.

14 MS. WILSON: Ian, do you want to comment on your
15 community outreach before we turn it over to Emilie?

16 MR. RUEL: Can you guys hear me?

17 CHAIR HILL: Yes, can you introduce yourself for
18 the record, please?

19 MR. RUEL: My name is Ian Ruel, and I'm the
20 contract purchaser of 3200 22nd Street.

21 CHAIR HILL: Okay, great, thank you.

22 MR. RUEL: Yes, and I'll make this quick.

23 We've done a lot of outreach. I think we've gone
24 above and beyond whether it's sending out mailers to
25 neighbors in the immediate vicinity of the property, door

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1 knocking, phone conversations, sitting down in coffee shops
2 and living rooms, and front stoops, and what not.

3 So, we've really tried to be cognizant of the
4 neighbors, and making sure that we're doing something
5 positive with this building.

6 It's a obviously great building. It's got some
7 great features and characteristics, designed by a very famous
8 architect.

9 So, we try to be cognizant of that, and I think
10 we've done a good job of talking to a ton of people over the
11 last few months.

12 So, I feel good about the neighborhood sentiment
13 about the project has been pretty non-controversial for the
14 most part. And, to Alex's point, I think that's why we were
15 able to get, you know, unanimous support of the ANC, OP
16 support, et cetera.

17 So, thank you, Alex.

18 MS. WILSON: Thank you.

19 Emilie, do you want to go through and briefly
20 highlight the proposed interior renovations, and changes?

21 MS. ROTTMAN: Sure. Emilie Rottman, Square 134
22 Architects. If we could go to the next slide, and I'll begin
23 working on the presentation.

24 So, the property is located just north of Rhode
25 Island Avenue, as seen in this diagram.

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1 Next slide.

2 And, as you can see, it's in relatively close
3 proximity to many nearby local businesses along Rhode Island
4 Avenue.

5 And, is sort of at the, I guess a key point
6 between the adjacent single-family residences, and the more
7 busy retail area of Rhode Island Avenue.

8 Next slide.

9 And, you can see from here, this is the front
10 facade of the project. The main entrance is located on 22nd
11 Street Northeast.

12 Next slide.

13 And, the property also faces an alleyway to the
14 north.

15 You can kind of see this here, but there's a nice
16 rhythm of masonry piers, along the facade, even though the
17 window penetrations are not uniform to that masonry rhythm.

18 Next slide.

19 And, this is just a view from the rear facade.
20 I just want to point out that the, there are already windows
21 facing along the alley and rear facade, in addition to the
22 front facade.

23 Next slide.

24 And, so our goal is to re-purpose the existing
25 church into a multi-family residence. And, specifically,

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1 enhance the building's features by emulating the key existing
2 design elements, that the architect had put into the building
3 design.

4 Next slide.

5 And, this is just a brief recap on where the
6 property is located.

7 Next slide.

8 So, as Ian had mentioned, the property was built
9 by George Santmyers, who is a notable architect of the D.C.
10 area.

11 The property was completed in 1923, and the
12 architect is considered one of the city's most prolific and
13 important architects of the 20th century.

14 He designed over 440 apartment buildings across,
15 over the course of his career. And, most of his buildings
16 were notable for being symmetrical in composition. And, many
17 of these featured a central doorway.

18 Excuse me for a second, just got dust in my
19 throat.

20 Along with a symmetrical pattern.

21 Throughout his career, he transitioned more into

22 --

23 (Simultaneous speaking.)

24 CHAIR HILL: You want to get some water? Just get
25 some water.

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1 MS. ROTTMAN: Thank you.

2 (Pause.)

3 MS. ROTTMAN: My apologies about that.

4 CHAIR HILL: That's all right.

5 MS. ROTTMAN: Anyway, throughout his career, he
6 transitioned into more of a modern aesthetic, where it's a
7 more simplified composition and ornament, which you can see
8 here in this building.

9 Next slide. There we go.

10 And, in addition to, you know, creating these
11 rhythm and elements that we're looking to put into the
12 design, we are also looking to find ways of bringing light
13 into the cellar level that we're proposing to add.

14 So, these are some just example precedent images,
15 of ways we're considering bringing that outdoor space down
16 towards that cellar level.

17 Next slide.

18 This is just a brief summary of the zoning
19 analysis. And, Ms. Wilson will go into more detail about the
20 area variance later.

21 But this is just to point out that the massing
22 will remain as is. We are adding a cellar level, and
23 proposing to add rooftop access.

24 In addition to that, all the, you know, lot
25 occupancy and setbacks will remain as is. And, as Ms. Wilson

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1 noted earlier, we are proposing to provide 10 units, one of
2 which will be an IZ unit.

3 Next slide.

4 CHAIR HILL: Ms. Wilson? I'm sorry, Ms. Rottman.
5 Ms. Wilson, can you hear me?

6 MS. WILSON: I can, yes.

7 CHAIR HILL: Yes, like I appreciate that last slide
8 that Ms. Rottman just showed, and I'm kind of flipping
9 through your slide deck.

10 Maybe what you can do is kind of go back to your
11 arguments for the Regs, and then we can come back to the
12 architect if the Board has any questions.

13 Because we've got another case coming up, as you
14 know. And, so I want to hear more about the argument first.
15 And, then I mean, I'm all the way on slide 30. If you want
16 to.

17 MS. WILSON: Where it says area variance?

18 CHAIR HILL: Yes.

19 MS. WILSON: Just start with that one?

20 CHAIR HILL: Yes.

21 MS. WILSON: That sounds great.

22 Mr. Young, could you go to that slide, please?

23 CHAIR HILL: And, then we can go back if the Board
24 has any questions of the architect.

25 MS. WILSON: I think that makes sense. Thank you.

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1 So, in terms of relief, we are seeking the two
2 variances. The area variance, and the use variance.

3 The area variance is for lot occupancy to maintain
4 the existing footprint. So, it is directly related to the
5 existing improvements on the property, as the building is
6 already well over the lot occupancy limit, and was
7 constructed nearly 100 years ago.

8 If the relief were not granted, any change of use,
9 even to a single-family residential dwelling, which is
10 permitted by right use, would still require this relief.

11 And, would require the applicant to demolish 23.4
12 percent of its building, which is a clear, practical
13 difficulty.

14 In this case, relief can be granted without
15 substantial detriment to the public good, and without
16 impairing the intent, purpose, and integrity of the zone
17 plan.

18 As the lot occupancy relief simply allows us to
19 maintain the existing building footprint, and would be less
20 disruptive to the community, as opposed to a partial
21 demolition.

22 And, the applicant again, is requesting relief
23 based on the existing conditions on the property, in order
24 to maintain the footprint.

25 Next slide, please.

1 The other area of relief is a use variance to
2 convert the existing church building to multi-family use.
3 That's not permitted by right in the R-1B zone.

4 And, the test for the use variance is whether the
5 unique conditions on the property, result in an undue
6 hardship on the property owner.

7 And, to evaluate that undue hardship, the Court
8 of Appeals has asked whether the property in question can be
9 reasonably adapted to any conforming use, with a reasonable
10 return arising out of the ownership thereof.

11 Next slide, please.

12 Emilie touched on this, but it was the building
13 was designed by George Santmyers. It was purposely
14 constructed for religious use, and since then, a number of
15 churches have populated the immediately surrounding area.

16 There are at least five churches within a five
17 minute walk of the subject property, and 29 churches within
18 one mile.

19 And, the increase in surrounding churches,
20 combined with the inability to maintain such a large
21 building, the lack of in-person church attendance due to
22 Covid, has resulted in a sharp decline in attendance,
23 prompting the church to sell the property.

24 Next slide, please.

25 These slides just have some photos of the church

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1 conditions. The building is 8,000 square feet, and the
2 owners are having trouble maintaining the building, as you
3 can see.

4 And, there has been some additional damage from
5 flooding in the cellar level.

6 Next slide, please.

7 These are just some additional photos. And, these
8 are also in the record.

9 Next slide, please.

10 While there are a number of other churches in the
11 area, the property faces a confluence of factors that make
12 it unique, even compared to other nearby churches. And,
13 certainly in relation to all other properties.

14 As mentioned before, the building itself is quite
15 large for the area with a total of about 8,000 square feet.
16 Just also something to note, there is a property directly to
17 the south which is about the same size as the subject
18 property. It's unimproved.

19 That property is eligible for being zoned to a
20 mixed-use zone, but this particular property is not, which
21 makes it unique compared to the property to the south.

22 Next slide, please.

23 In addition to its distinct design, the subject
24 church is distinct from the next five closest churches in the
25 area.

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1 They fall into two categories. There are three
2 converted buildings, and two purpose-built church buildings.
3 And, of those five churches, two are in the MU-4 zone, and
4 two are in the R-1B zone, and one is split zoned.

5 And, the subject property is distinguishable from
6 those churches due to its size, and the fact that it's been
7 purpose built, not converted, and is in the R-1B zone. But
8 is not affiliated with a major denomination.

9 Next slide, please.

10 I mentioned that there are two churches that have
11 been converted, or that could be used commercially. So,
12 these are the two churches nearby in the MU-4 zone. And,
13 these buildings could be converted to multi-family, or most
14 commercial uses-by-right, unlike the subject property.

15 Next slide, please.

16 This is another nearby church. It's an interior
17 lot in the middle of a single-family neighborhood, and it was
18 not purpose built as a church, and would not be feasible as
19 a multi-family building.

20 Next slide, please.

21 These are the other two purpose-built churches in
22 the area. And, these are affiliated with larger
23 denominations, such as the Catholic church, and one is also
24 a Methodist church.

25 Next slide, please.

1 I mentioned this, but the Court of Appeals in
2 Palmer, has noted that an owner has an undue hardship, if
3 their property cannot be put to any zoning compliance use,
4 for which it can be reasonably adapted.

5 So, our analysis looked at all of the
6 matter-of-right, and even special exception possible uses for
7 this property, in arguing why we have an undue hardship.

8 Next slide, please.

9 So, we do have Pastor Walker here, and if you have
10 questions for him, he is available. But, the existing
11 building is not suitable for a larger denomination despite
12 having a, because of the lack of nearby parking options.

13 And, there are a number of small to medium
14 evangelical, and non-denominational churches with various
15 religious organizations, located nearby.

16 That's one of the reasons why it's been difficult
17 to continue to lease this, to lease this building as a
18 church.

19 Any smaller, medium-sized churches interesting in
20 renting out or buying a new building, would likely not be
21 interested in the subject property. They would be competing
22 with these already established small to medium sized
23 churches.

24 In terms of other religious uses, there are a
25 number of established synagogues in the area, and mosques

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1 within a, less than half of a mile.

2 The subject property is the largest purpose built
3 church in the area without any inter-denomination. The
4 building is in need of many repairs, that must rely on church
5 members since this does not get any funding from the Diocese.

6 And, as noted earlier, church attendance has
7 dwindled due to Covid, and the church can no longer use this
8 building for purposes, for its purposes.

9 It is looking to possibly move out of the District
10 to locations where there is more parking available.

11 And, we have two broker letters submitted to the
12 record, noting that churches are moving out of the District.
13 And, finding a church tenant or purchaser for this space, is
14 not feasible given the required rent, and levels of repair
15 at this time.

16 Next slide, please.

17 So, the church use is not viable. We've explored
18 the other matter-of-right options for this property, as part
19 of the analysis. The main one being a single-family
20 dwelling.

21 There would be two options in using the property
22 as a single-family dwelling. The first would be to maintain
23 the building, and convert it to a single-family dwelling.
24 But that is not feasible given the size, and configuration.

25 And, there is no market for a 8,000 square foot

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1 single-family dwelling in this area.

2 The subject property's proximity to retail shops
3 directly across the street, may further detract from the
4 marketability of the space as a single-family home, compared
5 to other houses in the immediate area, which would be more
6 in the middle of the R-1B zone.

7 And, the cost to demolish the interior, and
8 convert this property to one 8,000 square foot single-family
9 dwelling, would far exceed the potential sales price for such
10 a house.

11 So, at this point, converting the building to a
12 single-family dwelling, and finding a buyer willing to pay
13 as much as the renovation, in order to break even, would be
14 impossible for the owner.

15 As the renovation alone would cost about \$1.5
16 million, and the average housing price in this area is
17 approximately \$750,000.00.

18 Next slide, please.

19 So, the other option for single-family use is to
20 knock down this existing building, and construct a
21 single-family dwelling.

22 This building has existed since the early 1920s
23 for nearly 100 years. And, while it's not officially
24 historic, the community does have an interest in maintaining
25 the building, as Commissioner Montague may address later.

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1 But in terms of the legal test, and the question
2 as to whether the property can be reasonably adapted for use
3 that would have a fair and reasonable return, this property
4 cannot be reasonably developed for a single-family dwelling,
5 because the cost to demolish the building and construct a new
6 home, would be greater than what the new home could be sold
7 for, even at the higher end of the comps for this
8 neighborhood.

9 The average sales price in the area, is
10 approximately \$750,000.00. We submitted an Excel sheet
11 showing the sales prices of homes in the last two years, and
12 then we went further because there are some changes in the
13 housing market recently.

14 And, the houses in the immediate area in the last
15 six months, have sold for an average of about \$780,000.00.

16 And, so to demolish and construct a new building
17 would cost more than it could sell, as the average price to
18 build a home in D.C. is about \$700,000.00, and that doesn't
19 even include the demolition cost.

20 So, accordingly, this option is not feasible.

21 Next slide, please.

22 We also contemplated other matter-of-right uses
23 in this zone. Some matter-of-right uses do not make sense
24 given the nature of the lot. For example, a community solar
25 facility, or agricultural use.

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1 And, then other matter-of-right uses that could
2 contemplate the need for an 8,000 square foot building, are
3 also not feasible, because the cost of renovating the
4 building for each of those matter-of-right uses, is too high
5 to market the property, and the building for those particular
6 uses.

7 This is because to convert the single, or the
8 subject property to those uses, such as an emergency shelter,
9 or a health care facility, would cost the same to demolish
10 the interior, as it would in a multi-family scenario.

11 But of course, those uses do not immediately make
12 the cost back, and it's been impossible to find an end-user
13 for those types of spaces.

14 So, in that scenario, the cost would have to be
15 covered by either the church, or the new buyer. And, the
16 church does not have the funds for such a renovation. So,
17 in this scenario, the end-user would have to cover those
18 costs.

19 And, no end-user is willing to purchase a building
20 that needs a full gut renovation that they would have to pay
21 for, and wait to inhabit, when there are other office
22 buildings or potential commercial spaces available without
23 a wait.

24 Especially when the MU-4 zone is across the
25 street, and there are move-in ready options without a wait.

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1 For those types of smaller uses such as an emergency shelter,
2 or a health care facility, which is different from
3 multi-family.

4 And, so consequently, the applicant is unable to
5 find a buyer or a tenant willing to wait, and it cannot
6 gamble on an interior renovation, one which it can't afford
7 without having first identified a potential end-user.

8 Next slide, please.

9 So, we also looked through special exception
10 options. And, so the special exception uses would have the
11 same issues as the matter-of-right, except it would be even
12 more difficult, because the applicant would have to find an
13 end-user willing to go through the BZA process, on top of
14 undergoing a costly and lengthy renovation.

15 We were asked to look at a child development
16 center, for example, by the Office of Planning, as it is
17 permitted by special exception.

18 But here, it would require a full renovation, as
19 the building is currently set up for church use. And, the
20 property is located directly across from the MU-4 zone, where
21 a child development center can be located by right.

22 And, there are many adjacent, single-family
23 dwellings that could also be adopted for a child development
24 center use, with very few updates. It's a common request to
25 convert a single-family home to child development center.

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1 And, so in this case, because of the existing
2 improvements on the site, those types of options are not
3 feasible.

4 And, maintaining an 8,000 square foot building
5 is a relatively large endeavor for a number of small
6 businesses, who would likely not be willing to take this on,
7 as it would not make financial sense.

8 And, the same argument can be made for all of
9 those other special exception uses, that would even be
10 interested in a building of this size, possibly.

11 Next slide, please.

12 Regarding the third prong of the variance test,
13 granting of relief will not result in a substantial detriment
14 to the public good, nor is it unplanned.

15 The applicant is not proposing to construct a new
16 multi-family building, but instead, adaptively reuse the
17 existing structure, which is over 8,000 square feet, and
18 located across from the MU-4 zone.

19 The building and property is uniquely suited
20 relative to other churches in the area, to be converted to
21 multi-family use, and the applicant has sufficiently
22 demonstrated that the church or property, cannot be
23 reasonably adapted for any other use.

24 And, the proposed option with 10-units is a
25 feasible development that allows the church to find a buyer,

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1 maintains the existing building, and provides high-quality,
2 new housing with family-sized units, one of which will be an
3 IZ unit.

4 Next slide, please.

5 So, that's it for the presentation for the zoning
6 relief. We do have the pastor here, and Mr. Ruel, and then
7 of course, we have the architect, if you have any questions
8 about the proposed design.

9 CHAIR HILL: Okay, great. Thank you, Ms. Wilson;
10 thank you for your presentation.

11 Does the Board have any questions of the
12 applicant?

13 No? Oh, we got one from Commissioner May.

14 COMMISSIONER MAY: Just one quick one.

15 You're planning on adding area ways and such that
16 you can make use of the cellar. I assume that's an existing
17 full cellar, or are you going to actually excavate, and
18 underpin, and all that?

19 MS. ROTTMAN: We will be, it's a partial cellar at
20 the moment, and I think it's about a quarter of the way in,
21 and we would be extending the cellar the rest of the way.

22 COMMISSIONER MAY: Oh, so you're underpinning most
23 of that structure in order to get that cellar?

24 MS. ROTTMAN: We would need to do underpinning,
25 yes.

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1 COMMISSIONER MAY: Wow, that's a lot of work.
2 Okay, thank you.

3 CHAIR HILL: Okay, I'm going to turn to the Office
4 of Planning.

5 MS. MYERS: Hello, Crystal Myers, for the Office
6 of Planning. The Office of Planning is recommending approval
7 of this case.

8 And, we can stand on the record of the staff
9 report, unless you'd like me to go further into it.

10 CHAIR HILL: Does the Board have any questions for
11 the Office of Planning?

12 All right, Mr. Young, is there anybody here
13 wishing to testify?

14 MR. YOUNG: Just the ANC Commissioner.

15 CHAIR HILL: Oh. Commissioner Montague, I didn't
16 see you there. Could you introduce yourself for the record,
17 please, if you can hear me?

18 (Audio interference.)

19 CHAIR HILL: Yes, a little bit, Commissioner.
20 You're kind of, you've got some feedback there maybe.

21 COMMISSIONER MONTAGUE: (Audio interference.)

22 CHAIR HILL: Yes-ish.

23 COMMISSIONER MONTAGUE: Is that better?

24 CHAIR HILL: A little bit. Maybe go ahead and give
25 your testimony and we'll --

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1 COMMISSIONER MONTAGUE: Okay, for some ready --
2 hold on, please. (Audio interference.)

3 CHAIR HILL: Yes, no, Commissioner Montague, I
4 can't hear you.

5 COMMISSIONER MONTAGUE: Can you hear me now?

6 CHAIR HILL: A little bit better. Go ahead and try
7 again.

8 COMMISSIONER MONTAGUE: I'm trying, trying as best
9 I can.

10 So (audio interference.)

11 But okay, is that better?

12 CHAIR HILL: Yes.

13 COMMISSIONER MONTAGUE: Ah, so now I know which
14 microphone is working.

15 The ANC5C heard the reasons, well, the Single
16 Member District had several meetings to hear the applicant's
17 preserve either proposal.

18 The full Commission heard the applicants, and the
19 applicant had revised their plan to include the IZ unit,
20 which they are not required to do.

21 The community, one of the concerns was about the
22 parking, which you heard in earlier cases today. But this
23 is, it's just not possible to put it in this project.

24 So, one of the arguments is that well, you're
25 adding nine parking spaces, but if this was used like a

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1 church, there would be 45 or more people who would be taking
2 up parking spaces although it wouldn't be every day. So,
3 that's not a reason for not having the project move forward.

4 So, the main goal is to preserve the building.
5 And, the applicant has agreed to preserve the building, not
6 increase the height, and make some minor window treatment
7 changes on the north and south side of the building,
8 basically preserving the majority of the architecture's
9 original, architect's original intent.

10 And, this would be similar to they did the
11 Manhattan Laundry Building, over on Florida Avenue, several
12 years ago.

13 This would be an important memorial to a noted
14 architect that came from the Woodridge Community. So, that's
15 why in general, the Commission, the full Commission voted
16 for, to support the project without objection.

17 CHAIR HILL: Okay, Commissioner, can you introduce
18 yourself for the record? I don't think you did at the
19 beginning.

20 COMMISSIONER MONTAGUE: My name is Jeremiah
21 Montague, Jr., Commissioner ANC5C.

22 CHAIR HILL: Okay, great, thank you.

23 Does the Board have any questions for the
24 Commissioner?

25 Mr. Blake?

1 MEMBER BLAKE: Yes, Commissioner I'm happy to see
2 you so supportive of the project.

3 The question I have for you is, you mentioned in
4 your statement that the residents of this building would not
5 be eligible for residential parking permits. Could you
6 explain that to me, please? I believe that, I don't think
7 that's the case.

8 COMMISSIONER MONTAGUE: In general, multi-unit
9 buildings are not eligible for, I'm sorry, can you hear me?

10 COMMISSIONER MONTAGUE: Okay, in general,
11 multi-unit buildings are not eligible for, or have not been
12 eligible for, residential parking permits.

13 So, in the past, in the immediate area for my
14 Single Member District Commission, that has been a
15 restriction that DDOT has put on it.

16 And so, because this is first, also first to the
17 commercial zone of Rhode Island Avenue, they would be
18 excluded from parking here.

19 That good?

20 CHAIR HILL: Okay, anyone else for the
21 Commissioner?

22 All right, thank you, Commissioner Montague.

23 COMMISSIONER MONTAGUE: Thank you, sir.

24 CHAIR HILL: Let's see, yes, and Commissioner, for
25 future reference, your sound's all kinds of I don't know.

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1 You might want to try to fix that somehow.

2 COMMISSIONER MONTAGUE: I'm going to. I'm in a
3 different location than I would normally be, so I'm going to,
4 there'll be a change over the next time you see me.

5 CHAIR HILL: Okay. All right, let's see.

6 Okay, does anybody have any more questions for
7 anyone? I'm looking at my Board members.

8 Ms. Wilson, you have anything to add at the end?

9 MS. WILSON: No, thank you.

10 CHAIR HILL: Okay. All right, I'm going to go
11 ahead and close the hearing and the record.

12 (Pause.)

13 CHAIR HILL: Would somebody else do me a favor and
14 start? I'm getting tired of talking, and I'm going to start
15 with Commissioner May.

16 Or, we can start with Commissioner, you want to
17 go first, Mr. Blake?

18 COMMISSIONER MAY: Yes, let him go.

19 CHAIR HILL: Mr. Blake?

20 MEMBER BLAKE: Great, that sounded really it's like
21 a.

22 CHAIR HILL: I thought you raised your hand there.

23 MEMBER BLAKE: Yes, no. This is to allow a new
24 apartment house, a ten-unit conversion on the existing
25 detached building of two-stories with a cellar, formerly used

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1 as a church, with no enlargement to the building as proposed.

2 Obviously, there are two variances required here.
3 One is use variance for the matter-of-right uses; and, the
4 other is area variance for the lot, the occupancy
5 requirements as the, the existing is 63.4 percent existing,
6 and the proposed, and the allowed is only 40 percent.

7 In reviewing this application, I thought this was
8 actually a very straightforward application. I think that
9 the applicant and the Office of Planning, gave a very strong
10 presentation as to why it met the variance standards for the
11 use variance, as well as the area variance.

12 As I am always very particular about, you know,
13 the proof that it is, in fact, they've tried everything, I
14 think that they have exhausted this process, and examined all
15 of the in and outs and options available to it.

16 As they constructed building that looks like an
17 apartment building, which was the intended design of the
18 architect. They have maintained that, which is an important
19 factor to the community.

20 I do think that providing residential space in a
21 residential community, will make sense. It's fairly close
22 to the, MU-4 zone along Rhode Island Avenue. So, it's going
23 to have some of the benefits of that.

24 So, at the end of the day, I think that this meets
25 the criteria for the use variance completely, as well as the

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1 criteria for the area variance based on the lot occupancy.

2 The confluence of factors definitely contributes
3 to it. The lot size, the shape, the frontage, the building
4 size. The undue hardship is pretty clear in terms of the,
5 you can't find, we don't need church space like this.

6 Importantly, the interesting thing about it, it's
7 in such disrepair, it's almost impossible to do most anything
8 with, even for its existing and proposed use.

9 And, I think that the conversion to a
10 single-family house is it makes no sense, given the ability
11 to do things in that area at that price point.

12 And, I think the evidence in the record certainly
13 supports it, and I think that this, I would be very
14 comfortable in supporting this application.

15 CHAIR HILL: Commissioner May?

16 COMMISSIONER MAY: I don't think I have anything
17 to add. Thank you very much, Board Member Blake. That was
18 an excellent recap.

19 CHAIR HILL: Thank you. I also would agree with
20 Board Member Blake, and everything he had said.

21 I'm going to make a motion to approve Application
22 No. 20630, as captioned and read by the Secretary, and ask
23 for a second.

24 Mr. Blake?

25 MEMBER BLAKE: Second.

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1 CHAIR HILL: Motion having been made and seconded,
2 Mr. Moy, if you would take a roll call, please.

3 MR. MOY: When I call your name, if you would
4 please respond with a yes, no, or abstain to the motion made
5 by Chairman Hill, to approve the application for the relief
6 requested. The motion was second by Mr. Blake.

7 Zoning Commissioner Peter May?

8 COMMISSIONER MAY: Yes.

9 MR. MOY: Mr. Blake?

10 MEMBER BLAKE: Yes.

11 MR. MOY: Chairman Hill?

12 CHAIR HILL: Yes.

13 MR. MOY: We have two board members not present,
14 not participating. Staff would record the vote as 3-0-2, and
15 this is on the motion made by Chairman Hill to approve,
16 second by Mr. Blake.

17 Also in support of the motion to approve is Zoning
18 Commissioner Peter May.

19 Again, the motion carries on a vote of 3-0-2.

20 CHAIR HILL: Okay, great.

21 You guys, I'm sorry, let's take another quick
22 three minute break, and then we'll come back.

23 Just a quick break.

24 (Whereupon, the above-entitled matter went off the
25 record at 3:20 p.m. and resumed at 3:24 p.m.)

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1 CHAIR HILL: Okay, you want to go ahead and call
2 us back in, and then our, and recall that case, please?

3 MR. MOY: Yes, sir.

4 The Board is back in its public hearing session
5 again after a very brief break, and the time is at or about
6 3:24 p.m. at this point.

7 The Board is recalling back into the hearing
8 session, the Case Application No. 20638, of Harrison
9 Wisconsin Owner, LLC.

10 And, if I may, Mr. Chairman, maybe I should
11 restate the caption.

12 This application is a request for special
13 exception relief from the film boundary lines of subtitle A,
14 Section 206.1, pursuant to subtitle A, section 207.2, and
15 subtitle X, section 901.2.

16 This would construct a new six-story 210
17 residential unit, with first floor retail mixed-use building
18 in the MU-4 and R2 zones.

19 Property located at 5151 Wisconsin Avenue
20 Northwest, Square 1666, Lots 806 and 807.

21 And, again, the Board is recalling this case to
22 complete the, complete the testimony.

23 CHAIR HILL: Mr. Glasgow, are you there?

24 MR. GLASGOW: Yes, I am. Can you hear me, Mr.
25 Chairman?

1 CHAIR HILL: Yes. Could you introduce yourself for
2 the record, please?

3 MR. GLASGOW: Yes, sir. For the record, my name
4 is Norman M. Glasgow, Jr., of the Law Firm of Holland and
5 Knight, appearing on behalf of the applicant.

6 CHAIR HILL: Okay. Mr. Glasgow, are you going to
7 use your camera? It's okay if you aren't; I just want to
8 know.

9 MR. GLASGOW: No, no. They're helping me again.

10 CHAIR HILL: Okay.

11 MR. GLASGOW: Okay, I've got it.

12 CHAIR HILL: And, Mr. Glasgow, who's here with you
13 today?

14 MR. GLASGOW: Here with me today are Mr. Jad
15 Donohue, representing the applicant, Harrison Wisconsin
16 Owner, LLC, Sarah Alexander, of the architectural firm of
17 Torti Gallas Associates. She's going to be offered as an
18 expert witness. Shane Dettman, Director of Planning
19 Services, also with Holland and Knight, expert witnesses.

20 And, we also have here with us, because of some
21 of the documents that have been filed in the case in the last
22 few days, Mr. Kyle Oliver. He's a principle with VIKA
23 Capital professional engineering firm.

24 He's previously been accepted as an expert witness
25 by both the Zoning Commission, and BZA, in civil engineering.

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1 CHAIR HILL: Okay, I don't see Mr. Oliver. I see
2 a Mr. Quinn. Is that, is he with you?

3 MR. GLASGOW: No, no. We're going to get Kyle on
4 one of the computers that we have set up.

5 CHAIR HILL: Okay.

6 MR. GLASGOW: Oh, and Sarah Alexander, is she on?

7 MS. ALEXANDER: I'm on, but I'm not a panelist.

8 MR. GLASGOW: Oh, she's not a panelist right now.
9 Sarah Alexander is on, but hasn't been admitted as a
10 panelist.

11 CHAIR HILL: Okay, but I do hear her. Ms.
12 Alexander, can you hear me?

13 MS. ALEXANDER: Yes, because we're all on the same
14 phone line.

15 CHAIR HILL: Oh.

16 MS. ALEXANDER: But my video screen is not
17 panelist.

18 CHAIR HILL: You guys are all on a speaker phone?

19 MS. ALEXANDER: Correct.

20 CHAIR HILL: Oh. Maybe that's why you're getting
21 kind of feedback.

22 Okay, so you guys are all going to turn on your
23 cameras, but mute yourselves and go through the speaker
24 phone?

25 MALE: Correct.

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1 MR. GLASGOW: Yes, yes, that's been working. When
2 we had the issue earlier, evidently we weren't, the line that
3 we were using had not been opened up down at your office.

4 CHAIR HILL: Okay.

5 MR. GLASGOW: And, Shane was working that with your
6 staff --

7 (Simultaneous speaking.)

8 CHAIR HILL: Okay, Mr. Dettman, then whoever's
9 going to turn on their camera, are you guys just going to
10 rotate, or are you going to turn on your cameras?

11 MR. GLASGOW: I think generally what we're going
12 to do, when somebody's speaking, Mr. Chairman, they'll turn
13 on their camera then.

14 CHAIR HILL: Okay.

15 MR. GLASGOW: But we can do it any way you'd like.

16 CHAIR HILL: I got you, I'm sorry.

17 So, well, now that I've got, okay, I see a Mr.
18 Quinn. I'm trying to figure out who that is.

19 MR. GLASGOW: The ANC Commissioner, I believe.

20 CHAIR HILL: Oh, Commissioner Quinn, can you hear
21 me?

22 Commissioner Quinn, can you hear me?

23 All right, maybe we'll come back to you,
24 Commissioner Quinn.

25 All right, okay, all right, Mr. Glasgow then, if

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1 you would go ahead and give your presentation for your
2 client, as to why you think you're meeting the standard for
3 us to grant the relief requested.

4 I'm going to put 15 minutes on the clock just so
5 I know where we are, and you can begin whenever you like.

6 MR. GLASGOW: All right, then we will be calling
7 witnesses very rapidly here with the 15 minutes.

8 We believe that we do meet the burden of proof
9 obviously. We have exhibits in the file with our statements,
10 and pre-hearing statement, that go through that.

11 There's also the report of the Office of Planning,
12 which is Exhibit 30, which also states how the burden of
13 proof is met.

14 And, then we have our agreement with the, and
15 support of the Advisory Neighborhood Commission. And, we
16 have the DDOT report that we have agreed with all the
17 conditions in the DDOT report, in support of the application.

18 So, with that, I think that we're going to get,
19 move forward with our witnesses to establish the witnesses
20 of the burden of proof.

21 And, since we have 15 minutes, we can have Mr.
22 Donohue go first, and we can go to the expert witnesses with
23 respect to that.

24 CHAIR HILL: Now whatever, Mr. Glasgow, whatever
25 you want to do. I mean, this is something that, you know,

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1 you know that there's a little contention to this.

2 And, there was going to be a bunch of people that
3 are going to speak. So, please go ahead. I know I put 15
4 minutes there just so I know where we are, but go ahead and
5 give, you know, your argument as to how you're meeting the
6 burden of proof.

7 And, then I suppose if somebody even wants to talk
8 to some of the opposition, that might be helpful. If not,
9 we can ask questions of you after we hear from the
10 opposition.

11 So, whatever you'd like to do, please go ahead and
12 proceed.

13 MR. GLASGOW: All right, well then I'd like to
14 have, call Mr. Donohue first, give a brief statement, and
15 then we'll turn it over to the architect, and to Mr. Dettman.

16 And, Mr. Dettman will be going in detail, with
17 respect to the burden of proof, how it's met, and our
18 responses to the documents that have been filed in
19 opposition.

20 CHAIR HILL: Okay.

21 MR. GLASGOW: Both by some of the surrounding
22 neighborhoods, and by the Committee of 100.

23 We thoroughly reviewed all those documents and are
24 ready to respond, but I want to have it done through
25 witnesses that have been sworn for the record.

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1 CHAIR HILL: That's fine. So, Mr. Donohue, if you
2 could introduce yourself and begin.

3 MR. DONOHUE: Yes, thank you folks. Jad Donohue
4 with --

5 (Simultaneous speaking.)

6 MR. GLASGOW: I'm sorry, Jad --

7 MR. DONOHUE: -- the Donohue Companies on behalf
8 of the applicant.

9 MR. GLASGOW: Sorry, one minute.

10 We want to make sure that our slide deck is
11 entered into the record. Mr. Young has that. It's comprised
12 of information, all of which is already in the record.

13 But we have prepared a slide deck to go through
14 how it is that we meet the burden of proof.

15 CHAIR HILL: Okay. If the staff could allow that
16 into the record, please. Mr. Young, if you could drop that
17 into the record, and unless the Board has any issues with it,
18 I'd like to take a look at the slide deck while they're going
19 through it.

20 And, Mr. Young, if you want to bring that up,
21 then.

22 MR. DONOHUE: Thank you, Mr. Young.

23 As I was saying before, Jad Donohue, with Donohue
24 Companies, which for the applicant.

25 You can skip to the second slide, Mr. Young.

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1 And, here you see the area of the site for the BZA
2 lot, bounded in red there. This is part of the commercial
3 core of Friendship Heights.

4 Friendship Heights is an area that we're all
5 familiar with, but has seen no major investments in more than
6 a decade. There's more than a million square feet currently
7 vacant within in the area, and no new housing in more than
8 10 years.

9 You can see the site there, and we're
10 approximately 740 feet from the Metro elevators, the bank of
11 four high speed elevators that are just at the top of the
12 screen where you can also see the Metro buses.

13 The site is zoned MU-4 along Wisconsin, with R2
14 behind it. There are new District policies in effect that
15 would support greater height and density on the site, but
16 we're proposing to utilize the BZA process, and position this
17 to be the first new building in Friendship Heights in what
18 will by then, be 15 years, and to bring the area's first new
19 housing, first affordable housing, and new retail.

20 CHAIR HILL: Mr. Donohue?

21 MR. DONOHUE: Yes, sir?

22 CHAIR HILL: Can you hear what I'm saying?

23 Just for my fellow Board members and anyone who
24 is listening, it's Exhibit 43 is your PowerPoint. And, just
25 so everyone knows, if you go through the PowerPoint, it

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1 outlines how you're meeting the standard for the relief.

2 And, go ahead and continue, please, Mr. Donohue.

3 MR. DONOHUE: Sure. Mr. Young, if you can just go
4 on to the next slide.

5 And, here, this just introduces the existing
6 conditions around the site. A five-story building, no
7 retail, a lack of windows and the like along this first
8 floor.

9 Four curb cuts, a television broadcast tower, and
10 a large asphalt surface parking lot, surrounded by a six to
11 eight foot brick wall between ourselves and the neighborhood
12 behind.

13 The block has a range of different uses around it,
14 ranging from single-family to semi-detached, to multi-family,
15 commercial, institutional, and mixed use, all confronting the
16 block.

17 We have met with the ANC, most recently in their,
18 met with and presented to them, in their December, and
19 January, and February meetings. Presented in all those
20 occasions and answered questions of, of those who attended.

21 We have received --

22 (Simultaneous speaking.)

23 CHAIR HILL: Mr. Donohue, Mr. Donohue?

24 MR. DONOHUE: Yes, sir?

25 CHAIR HILL: Hold on one second, just remember what

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1 you're about to say.

2 My fellow Board members, there was some other
3 letters of support that I want to take a look at, that came
4 in inside the 24 hours.

5 If the staff could put that into the record as
6 well, unless my Board members have any issues with that, and
7 if so, please let me know.

8 Okay, all right, Mr. Donohue, please continue.

9 MR. DONOHUE: Yes, thank you.

10 And, we did receive the support of the ANC, the
11 Single Member District Commissioner, Mr. Quinn is here, and
12 he will perhaps speak to that.

13 But we committed to a number of different issues
14 within an MOU, including building to LEED Gold, providing
15 solar atop green roofs, inclusion of retail space, electric
16 vehicle charging.

17 Commitments on construction management issues, an
18 increase in the inclusionary zoning above what is otherwise
19 required, to an 11 percent threshold, and the provision of,
20 of five of those IZ units as fully accessible with roll-in
21 showers, and the like.

22 And, with later, eventual removal of the asphalt
23 surface parking lot that is adjacent to the site.

24 With that, I'll turn it over to Sarah Alexander,
25 architect at Torti Gallas. And, Mr. Young, if you could

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1 toggle to the next slide.

2 MS. ALEXANDER: Good afternoon. My name is Sarah
3 Alexander, with Torti Gallas Urban, and I'm excited to be
4 here sharing this with you today.

5 I'll go through quickly, a few of these stats.
6 We have about 210 units, we're 50 feet as measured from 42nd
7 Street. With a penthouse above that.

8 We are at 2.66 FAR, which is below the 3.0 we
9 would be allowed in the MU-4 portion of the site, and our lot
10 occupancy is also below the 75 percent the ANC permitted, at
11 51 percent. And, the rest of the things also are all
12 compliant.

13 Next, please.

14 Ground floor, after meeting with the commissioners
15 in the fall, we did add a café space to the corner, to bring
16 further activation to the site.

17 And, also so that you see in red on the corner
18 here, additionally we have our lobby-midway on Wisconsin,
19 with the adjacent amenities to bring more activation along
20 that street frontage.

21 The remainder of the site is residential. Loading
22 and garage are both accessed off of the eastern portion of
23 the sites. And, all loading is internal, all trash is
24 internal. Generator is now going to be brought internal.
25 All these things improving over the existing conditions.

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1 Next, please.

2 It is a U-shaped building, residential building
3 with the 15-foot building restriction line on the northern
4 side.

5 You see a series of four bays that we have
6 purposely put on the northern facade, to help break down the
7 frontage on that, that space, and be more sympathetic to the
8 adjacent neighbors.

9 Next, please.

10 And, then the penthouse. But that can all be
11 frontages adjacent to the street.

12 Next, please.

13 So, from the very beginning, we wanted to make a
14 building that fit into the context. And, it was very
15 important to us that it did so in a quiet way, so that it
16 didn't shout and scream, and call too much attention to say
17 there are portions of the building, when it fit really nicely
18 and quietly in the community, and be a good urban fabric
19 building, which is what this, this site was asking for.

20 So, you'll see here, it is a nice facade composed
21 of these vertically oriented bays, again breaking down scale
22 and massing of the building.

23 We've highlighted two areas, the acute corner with
24 the café anchoring it at the corner, with the dark gray panel
25 coming down at that portion, and then also the lobby entry,

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1 you'll see the dark gray panel on that location going
2 vertically. Calling attention again, to the lobby entrance.

3 And, general for the rest of it has the balconies,
4 the bays, the vertically oriented windows, all composed in
5 a materiality and scale, and proportion that's fitting to the
6 residential character of the adjacent area.

7 But most importantly, and as opposed to the
8 existing building, we have the activated street space. And,
9 that is a large and important enhancement of this project
10 with the café and the lobby, and the adjacent porosity of the
11 building at large, helping it to feel much more in keeping
12 with the rest of the community.

13 And, that was everything I had. Thanks.

14 MR. DETTMAN: Good afternoon. Mr. Young, could you
15 proceed to the next slide?

16 Stepping through the standard of review for the
17 requested relief under subtitle A, section --

18 (Simultaneous speaking.)

19 CHAIR HILL: Mr. Dettman, is that you?

20 MR. DETTMAN: Yes.

21 CHAIR HILL: Could you introduce yourself for the
22 record? I don't know if you did. I'm sorry.

23 MR. DETTMAN: Certainly. Shane Dettman, Director
24 of Planning Services, with Holland and Knight.

25 CHAIR HILL: Thanks.

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1 MR. DETTMAN: My testimony will focus on the
2 standard of review, and how the applicant meets the standard
3 of review that's applicable in this case.

4 The relief being requested is pursuant to subtitle
5 A, 207.2 of the Zoning Regulations, as well as the, and those
6 criteria listed under that section, as well as the general
7 special exception criteria, under subtitle X, chapter 9.

8 Next slide.

9 Here you'll see the, our general site plan of the
10 project, with the project lot, and you can see there the blue
11 dotted line on the left-hand side is the existing zone
12 boundary line between the MU-4 zone on the left, and the R2
13 portion of the lot on the right.

14 And, you can see the extent of the 35-foot
15 boundary extension that's shown there on this, on this image.

16 Next slide.

17 Touching upon the general special exception
18 criteria under subtitle X, 901.2, the requested special
19 exception will be in harmony with the general purpose and
20 intent of the Zoning Regulations.

21 The relief is consistent with the stated purposes
22 of the MU-4 zone. We're proposing a moderate density
23 project, mixed-use development containing residential and
24 neighborhood serving retail. It's also along a major, a main
25 roadway, and in close proximity to transit.

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1 We're not proposing to over concentrate population
2 or overcrowd the land, such as what's of interest under the
3 purposes of the Zoning Regulations, and the Zoning Act.

4 What we're proposing is a very efficient use of
5 available land, along an important commercial corridor. It's
6 only a modest amount of additional density that we're
7 gaining. Where it's going to be put to residential use.

8 And, the use, including the ground floor retail
9 is supported. In District policies, it's in a walkable
10 location, transit accessible, and will be providing
11 neighborhood serving amenities.

12 The project also creates conditions that are
13 favorable to say, transportation. As I mentioned, it's a
14 transit-oriented development. We've committed to TDM
15 strategies in the DDOT report.

16 Protection of property. Only a small portion of
17 the building is actually within the 35-foot zone boundary
18 extension area. And, there's significant separation between
19 our proposed building, and the residential to the north and
20 to the east.

21 In terms of creating conditions that are favorable
22 to education, residents, particularly those living in IZ
23 units will have now, have access to the upper northwest high
24 performing schools. The high-quality parks and open spaces
25 in this neighborhood.

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1 Obviously, housing is a major component that's
2 going to be favorable, a favorable contribution to this area,
3 and particularly the affordable housing that will be
4 provided.

5 And lastly, the environment. Under the MOU with
6 the ANC, the applicant has committed to a LEED Gold project,
7 with solar panels over green roof, and will be providing
8 substantially more sustainable improved storm water
9 management on this site, compared to existing conditions.

10 Next slide.

11 The project will also not tend to affect
12 adversely, the use of neighboring properties in accordance
13 with the Zoning Regulations. I've already mentioned the
14 substantial separation between our proposed building, and the
15 residential uses.

16 The proposed building is approximately 85 to 90
17 feet separated from the homes along Harrison Street. It's
18 approximately 220 feet from the homes along the east side of
19 42nd. And, also a substantial separation on the other side
20 of Wisconsin Avenue, as well.

21 We have the support of the adjacent neighbor to
22 immediate south, the owner of that commercial office
23 building.

24 And, Sarah mentioned some of the design gestures
25 that have been incorporated into the project to reduce the

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1 massing, particularly along Harrison Street.

2 And, some of the other reasons why the project
3 will not adversely affect neighboring properties, are listed
4 there before you. But in the interest of time, I'll move on
5 to the actual special conditions under subtitle A.

6 Next slide.

7 Under the criteria for the zone boundary extension
8 under subtitle A, we are limited to 35 feet, and that's
9 exactly what we're proposing. To move the zone boundary line
10 35 feet into the R2 portion on the east side of the site.

11 207.2b is not applicable, and this was, the
12 applicability of this particular provision actually was
13 raised in a very similar case in Application 20095, where the
14 Board had inquired of the Office of Planning, whether that
15 actually applied to a project like this.

16 After confirmation from the zoning administrator
17 that it was not, the Board recognized that determination.
18 So, that criteria is not applicable in this case.

19 Next slide.

20 I've already touched upon a little bit already.
21 The extension will not have an adverse effect on the present
22 character, and future development of the neighborhood.

23 I believe, in fact, it's actually going to
24 substantially benefit the character and future development
25 of the neighborhood, by replacing an outdated, unengaging

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1 building with a new, appropriately scaled, transit-oriented
2 housing, of which 11 percent will be devoted to inclusionary
3 zoning. As well as which the neighborhood serving retail on
4 the ground floor.

5 With respect to the massing, Sarah already
6 mentioned how that the project has been, sort of its scale
7 has been broken down through the use of balconies and bays,
8 and a variety of materials.

9 So, it sort of fits in quietly with respect to its
10 relation to the surrounding neighborhood.

11 It's also going to have a benefit on the present
12 character and future development, because the project is
13 consistent with District housing goals, for the upper
14 northwest planning area, as set forth in the 2019 Housing
15 Equity Report.

16 It's also consistent with District policies
17 regarding promotion and increased density and housing near
18 Metro stations, and along major corridors.

19 The last criteria I don't believe that given the
20 MOU, and the commitments in the MOU with the ANC, and the
21 conditions that we've agreed to in the DDOT report, we don't
22 believe that there is any need for additional requirements
23 to be imposed by the Board.

24 Next slide.

25 I wanted to just touch upon very quickly, the

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1 comments that have been submitted by the Committee of 100,
2 at Exhibit 65, and these are my last two slides, Mr.
3 Chairman.

4 Those comments related to the applicability of the
5 Inclusionary Zoning Plus Program, this was the recent set of
6 amendments made to the IZ regulations that are applicable to
7 zoning map amendments.

8 The comment submitted by the Committee of 100,
9 refer to the requested special exception as a de facto
10 re-zoning, and that's not what we're dealing with here.

11 Only the Zoning Commission has the authority under
12 the Zoning Act, to actually re-zone property, not the Board.
13 And, IZ plus only applies to what's called an IZ plus
14 inclusionary development. And, that is a defined term in the
15 Zoning Regulations.

16 It's defined as a development located on property,
17 that was the subject of a map amendment at increased
18 allowable FAR, pursuant to subtitle X, section 502.

19 The special exception here is being requested
20 pursuant to subtitle A, section 207.2. So, we're clearly not
21 applicable, IZ plus is clearly not applicable to this
22 project.

23 Next slide.

24 And, then finally with respect to the comments
25 related to questions around the building height measuring

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1 point. I've included on this slide the two provisions that
2 are cited to by the Committee of 100.

3 We are measuring our proposed building fully in
4 accordance with the rules of measurement, for building height
5 under subtitle B.

6 And, subtitle B 307.1 states that the building
7 height measuring point, shall be established at the level of
8 the curb opposite the middle of the front of the building.

9 The Committee of 100 suggests that the front needs
10 to have an entrance, or has to be identified as the front of
11 the building where, you know, people walk in and out.

12 Longstanding interpretation of this provision,
13 which has been addressed countless times, consistently state
14 that the front, for purposes of zoning, does not need to be,
15 have an entrance.

16 It is a front, any front of the building may be
17 considered the front, that actually fronts on a public
18 street.

19 There's no requirement for an entrance, and
20 there's no restriction or limitation, on the distance between
21 the building and the public street, where the building height
22 measuring point is located.

23 Where you have an instance like this one, where
24 the building has frontage on more than one street, the Zoning
25 Regulations under B, 307.5, clearly state, and again, in

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1 accordance with consistent, longstanding interpretation, that
2 when you have multiple street frontages, you get to pick
3 whichever street is going to be considered your front, and
4 that's where you can locate your building height measuring
5 point.

6 And, you can use another street for purposes of
7 measuring the width of the street, and what's going to
8 dictate how high you can build.

9 And, just earlier this morning, the Board ruled
10 upon an appeal, that included a challenge to the location of
11 building height measuring point and all that. So, there's
12 precedent there, as well.

13 We did, in advance of filing the application, we
14 did seek a ruling from the zoning administrator, to confirm
15 that our location of the building height measuring point on
16 42nd Street, was done in accordance, and was compliant with
17 the rules of measurement under subtitle B.

18 And, the zoning administrator did rule that
19 everything was sort of squared away with respect to how we
20 were measuring that building.

21 Next slide.

22 And, so in conclusion, just getting back to the
23 standard of review, I believe that based on the filings in
24 the record and my testimony this morning, this afternoon,
25 that the project does meet the general special exception of

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1 criteria of subtitle X, section 901.2.

2 It's consistent with the purposes of the Zoning
3 Regulations, and will not adversely affect the use of
4 neighboring properties in accordance with the Zoning
5 Regulations.

6 Finally, I believe as I testified this afternoon,
7 that it also satisfies the specific zone boundary extension
8 criteria under subtitle A, section 207.2.

9 And, with that, that concludes my testimony, Mr.
10 Chairman.

11 MR. GLASGOW: Mr. Chairman, just a couple more
12 brief points, and then that will conclude our direct. We
13 will have Mr. Oliver available as a pro bono witness
14 depending upon what all is brought up with respect to
15 stormwater management, to the extent that the Board thinks
16 that it is applicable to this case, given building code
17 requirements and everything else. But we are prepared to
18 address that.

19 With respect to some of the slides that we have
20 there, as was pointed out, there's only a very small portion
21 of this building that's actually being constructed within the
22 35-foot extension area. And can we get that slide back up
23 there? Do we know what the slide number is? Mr. Young,
24 could you bring up the slide, please? Maybe just go back to
25 the slide, the first one that says -- yeah, that works. That

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1 one works. Okay.

2 If you take a look at the line there, there is the
3 35-foot extension, labeled at the top of Harrison Street.
4 And you will notice that there is only a very small part of
5 the building that is actually in the 35-foot extension area.

6 And you can see the very substantial setback from
7 42nd Street of all of the building that is the subject of
8 this application. So, we wanted to make sure that that was
9 pointed out to the Board members.

10 And then also, in that same slide you notice where
11 it's highlighted under B307.5, any front may be used -- it's
12 underlined there where it says B307.5 -- any front may be
13 used to determine the maximum height of the building.

14 And we're using the front that determines the
15 maximum height of the building in this case, completely
16 consistent with the zoning regulations.

17 And if there are no questions at this point in
18 time, that concludes --

19 CHAIR HILL: Yeah, don't drop that yet, Mr. Young.
20 I have a question for you, Mr. Glasgow. Sorry. Or Maybe
21 Mr. Devin. That's the shape of your lot, correct? The red
22 line?

23 MR. GLASGOW: Correct.

24 CHAIR HILL: So, I was always curious. So,
25 there's a parking lot there. I'm just curious. So, there's

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1 a parking lot there for your neighbor's building. And then,
2 there's another lot there to the west of your lot? Is that
3 correct? In that kind of odd shape?

4 MR. GLASGOW: Yes. Yes, Mr. Chairman.

5 CHAIR HILL: Okay. So, what's going on with that
6 parking lot there that's your neighbor's parking lot?

7 MR. GLASGOW: I'll ask Mr. Donohoe to address that
8 question, as the owner of the property.

9 MR. DONOHOE: Thank you, Mr. Glasgow. And with
10 this, the same slide is still real useful for this.

11 You can see there that basically to the southwest
12 of the BZA lot is the building 5101 Wisconsin. And the light
13 gray part up against the BZA lot line is that party's surface
14 parking area. They also have below-grade parking.

15 And then, within the BZA lot is this property's
16 surface parking, including, again within the delineated red
17 shape on the south side there, you can see that that gray
18 shape going through it, and that is the easement to allow
19 5101, the neighboring property on it to access the rear of
20 his property.

21 Also in that area is that broadcast television
22 tower that I mentioned at the beginning.

23 CHAIR HILL: Okay. All right, thanks,
24 Mr. Donohoe. That's helpful. Does the Board have any
25 questions of the slide deck? And I'll let -- Mr. Blake has

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1 his hand up. Mr. Blake?

2 MEMBER BLAKE: Yeah, quick question along those
3 lines. As I understand it, there are three tax lots on this
4 site at this point. And the tax number -- 805 is it -- is
5 being reconfigured in order to do that stretch-down to that
6 point. Could you tell me a little bit about what the current
7 matter-of-right, MOUs, square footage is in the 5151 lot and
8 the percentage of that, the amount that is in the R2 zone of
9 that? So, just currently as a matter of right. And then,
10 how much does the addition of the 35-foot add to the density,
11 as we talked about?

12 And you describe that as a small portion of the
13 property. I think in the documents you said it's about
14 12,500 gross square footage. How much is the actual
15 footprint that's in that 35-foot zone?

16 MS. ALEXANDER: 12,500 foot.

17 MEMBER BLAKE: Okay.

18 MR. DETTMAN: Mr. Blake, the footprints within the
19 35-foot zone boundary extension, so between those two dotted
20 lines, the footprint of that portion of the building is
21 12,000 square feet.

22 (Simultaneous speaking.)

23 MS. ALEXANDER: My video is not on for some
24 reason. The 2,500 square feet was the footprint of our
25 portion of the building --

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1 CHAIR HILL: Who's speaking? Who's speaking?
2 Who's speaking?

3 MS. ALEXANDER: Sarah Alexander, Torti Gallas.

4 CHAIR HILL: I'd like you to introduce yourself,
5 please, for the record?

6 MS. ALEXANDER: Okay. I didn't know I had to do
7 that again. Apologies. Yeah, Sarah Alexander, Torti
8 Gallas --

9 (Simultaneous speaking.)

10 CHAIR HILL: I'm sorry. You don't have to do it
11 each time. It's been a little confusing trying to follow.
12 So, I just -- okay, so please go ahead.

13 MS. ALEXANDER: Sure. No problem. So, the
14 portion of the project that is over the 35-foot extension for
15 a portion, the footprint of that is 2,500 square feet.

16 And if you do that on the five levels that are
17 above it, it adds up to 12,500 square feet approximately, a
18 small amount removed for the loading dock, which is double
19 height.

20 CHAIR HILL: Mm-hmm.

21 MS. ALEXANDER: So, if you take that -- do you
22 want to have the math over the entire MU-4 portion of that
23 12,500?

24 MEMBER BLAKE: No. What I'd like to know is the
25 amount of the matter-of-right MU-4 in the existing MU-4 zone

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1 without the extension. And then, what is the impact that it
2 has on the overall square footage in the MU-4 zone and the
3 impact on the density?

4 MS. ALEXANDER: So, we calculated it a different
5 way earlier. So, give us one minute. We did calculate that
6 the portion that's in the 35-foot extension is at
7 approximately 1.0 as they are.

8 So, more of the density has been pushed onto the
9 main part of the building, not into the 35-foot extension
10 portion.

11 MEMBER BLAKE: I understand that. And if you took
12 the matter-of-right density right now with the current square
13 footage in the MU-4, what would that be from a footprint
14 standpoint and a gross square footage standpoint? That's
15 what I was trying to say.

16 MS. ALEXANDER: And can you give us a minute to
17 do that math?

18 MEMBER BLAKE: Okay, that's not a problem. So --
19 and I'll let other people come back and you just come back
20 to this. And also with that, in the existing lot, what
21 working of that is the square footage represented by the
22 entire 35-foot zone?

23 I recognize you got that 2,500 square feet. I
24 mean, the zone goes from one edge to the far end of it. So,
25 you pick up, I guess, around 10,000, 11,000 square feet. So,

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1 I want to kind of understand that. And then, what the
2 implications were of that, the overall density of the
3 building. That's all.

4 MS. ALEXANDER: All right. So, we do have that
5 answer. So, that 35-foot extension portion is getting us
6 34,500 square feet of density, of which, in that portion,
7 we're only using the 12,000 square feet.

8 MEMBER BLAKE: In that section? Okay, thank you.

9 MS. ALEXANDER: Yeah.

10 MEMBER BLAKE: Okay. And what would be the
11 remaining portion of the -- because you're reconfiguring the
12 other tax lot as well. Will we have a change in the overall
13 amount in that other lot overall, or is it about the same?

14 MS. ALEXANDER: The other lot is in the portion
15 that's outside of the red zone.

16 MEMBER BLAKE: In order to do the dogleg that goes
17 down to 42nd Street, there is another lot, the 804, that's
18 reconfigured. Do you still have the same amount of square
19 footage in the split zone lot that you had before?

20 MS. ALEXANDER: We're not using any of the density
21 from that portion of the site that's not in the MU-4 portion.
22 We haven't.

23 MR. GLASGOW: Okay, there's no density, Board
24 members, that's coming from the area that's going out toward
25 42nd Street. We made sure to leave that alone. So, we're

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1 not taking any FAR from that into the building fronting on
2 Wisconsin Avenue.

3 MEMBER BLAKE: Okay, thank you.

4 CHAIR HILL: Okay. Mr. Young, you can drop the
5 slide deck if you want. No, no, no, no. Oh, no, never mind.
6 I can't see anybody. All right, Commissioner May?

7 COMMISSIONER MAY: Yeah. So, I'm thinking ahead
8 to the testimony that we made here, and of course thinking
9 about the Committee 100's letter. And I just want to dwell
10 for a minute on the building height measuring point.

11 I understand what you explained. But if you could
12 just explain a little bit further on B307.5, and particularly
13 the second part, which is, the basis of the height shall be
14 determined by the width of the street selected as the front
15 of the building.

16 So, I mean, it sounds like you're arguing that the
17 backside, the side opposite Wisconsin Avenue, is the front
18 of the building, for building height measuring purposes. So,
19 why would that not mean that your building height comes off
20 of 42nd Street and Wisconsin?

21 MR. GLASGOW: Okay. Well, what that has been
22 interpreted as in the past is, you can use any street
23 frontage that gives you the maximum height of your building.
24 And that's precisely what we're doing here.

25 And they say, but the basis for the height of the

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1 building shall be determined. Well, if we did the same thing
2 there, sometimes there could be issues with respect to 1910
3 Height Act.

4 And, Commissioner, as you are aware, you've always
5 been able to use the widest street for 1910 Height Act
6 purposes.

7 But with respect to this building, it's irrelevant
8 because 42nd Street, as I recall, is about an 85- or 90-foot
9 right-of-way. So, that's not going to have any impact on us,
10 in any event.

11 COMMISSIONER MAY: Okay.

12 MR. GLASGOW: Okay?

13 COMMISSIONER MAY: Good. I appreciate that
14 explanation, because this is one of those areas where the
15 zoning regulation seems very convoluted, and even though we
16 have a case earlier in the day where these sorts of issues
17 were discussed, every case has its own record. And it helps
18 to get that aired out in this circumstance.

19 In this case, the front of the building that is
20 facing the building height measuring point, or the street
21 where the building height measuring point is taken, it really
22 is sort of the backside of the building, and very little of
23 it actually faces that portion of the property that reaches
24 out and touches 42nd Street. Am I understanding that
25 correctly?

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1 MR. GLASGOW: Yes, Commissioner. There is about
2 nine feet of the building between building itself and the
3 projections that are there, those emulations in the facade.

4 And when we met with the zoning administrator, it
5 was made very clear that there had to be a part of the
6 building that when you drew that southern line parallel to,
7 it had to hit a piece of building.

8 And we've had that type of situation on several
9 occasions, where the zoning administrator says, that part you
10 have to have building front on that street.

11 COMMISSIONER MAY: Yes, some face of the building
12 facing that portion of the street. Okay. That's also very
13 helpful as well. So, the building height is being taken from
14 the curb. But it's being taken from the curb on the side of
15 the building that is residentially zoned, as opposed to the
16 part that is commercially zoned.

17 So, in residential zoning the building height
18 measuring point is different from a commercial building. So,
19 you're playing kind of both sides of it. And I'm not
20 disagreeing with this, but I'm trying to get some of this
21 stuff into the record so people will understand, so that
22 people like me can probably understand, what the strategy is.

23 But there is no issue with the fact that the
24 residentially zoned portion of the lot is being used for the
25 type of building height measurement that is typically applied

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1 in a mixed-use zone.

2 MR. GLASGOW: I think I understand the comment.
3 And the zoning administrator, we made sure to tell him that
4 we were going to the Board of Zoning Adjustment, we're going
5 to a 35-foot extension of the zoning line.

6 And he determined that with respect to that, that
7 we were appropriately measuring this building.

8 COMMISSIONER MAY: Right.

9 MR. GLASGOW: With respect to that.

10 COMMISSIONER MAY: Your building is not actually
11 in the R-zone. Is that right? Is that part of it?

12 MS. ALEXANDER: Correct.

13 COMMISSIONER MAY: I'm standing fact, but was that
14 part of their logic?

15 MR. GLASGOW: Yes. Because you take the
16 portion -- okay.

17 (Simultaneous speaking.)

18 MR. GLASGOW: Yeah, it says, the height of
19 buildings not included in the penthouse and residential zones
20 get measured in a certain way.

21 This building is in the commercial zone, the
22 entirety of it, with the special exception.

23 COMMISSIONER MAY: Right.

24 MR. GLASGOW: And this special exception provision
25 with the 35-foot, Commissioner May, has been in the

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1 regulations since the 1958 regulations.

2 COMMISSIONER MAY: Yeah, I remember that. I
3 remember it's not something that's been -- well, I remember
4 all the way back to 1958. It was slightly before I was born.
5 But it was not something that was changed in ZR-16, for
6 example, and there are no cases in my time in the Zoning
7 Commission, where that particular provision was altered in
8 any way.

9 Certainly, we messed around with the building
10 height measuring point to try to clarify that. And even
11 after all that computation, it's not always that clear.

12 All right, well, I appreciate that further
13 explanation. I think I can understand why some folks
14 wouldn't necessary understand or see the logic of that. But
15 I think because the building itself is entirely within the
16 commercial zone, the fact that it fronts onto a street that's
17 in the residential zone, doesn't change how you would measure
18 the building height. The building height would still be
19 measured in the way that -- I said commercial building. A
20 mixed-use zone method.

21 So, I don't really understand what's going on with
22 the rest of this lot. Not that it's totally relevant, but
23 I'm very curious. What will happen to the remainder of that
24 property that's not part of this application? The eastern
25 side of it?

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1 MR. GLASGOW: So, we covered that in the MOU with
2 the Advisory Neighborhood Commission.

3 MR. DONOHOE: That's correct. Chad Donohoe again
4 for the applicant. Yeah, the Memorandum of Understanding
5 with the ANC covers that we will remove the asphalt from that
6 parking lot at such time as if we do not move forward with
7 some use of that rear parking lot, post-construction of this
8 proposed building.

9 And then also, we would utilize in the meantime,
10 that area for construction lay-down and some construction
11 parking, so as to minimize impacts on the surrounding
12 community.

13 COMMISSIONER MAY: Okay, but you still haven't
14 told me what's happening. I mean, I don't know what's
15 happening in the short run. But in the long run, what's
16 going to happen with that property? Is it just going to
17 be -- it's not going to be asphalt? It's going to be what?

18 MR. GLASGOW: In the long run Commissioner, we
19 would look to redevelop that property. We don't know in what
20 form or fashion we'd look to do that, but we are not counting
21 on it as a surface parking lot in the future going forward,
22 and our calculations for parking for this building don't
23 require its use.

24 COMMISSIONER MAY: So, you're talking about
25 planted green space for the time being, once the construction

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1 is done? And then at some point in the future, you may
2 develop it theoretically, and in a manner consistent with the
3 existing zoning, right? Existing residential zoning?

4 MR. GLASGOW: You're correct, Commissioner. After
5 we achieve CFO of this proposed building, we would then
6 either be moving forward with redevelopment of that rear
7 piece in some form or fashion, or we would be tearing it up
8 so as not to have it remain as an asphalt lot for the long
9 term.

10 COMMISSIONER MAY: Got it. Okay. All right, I
11 guess that makes sense. And then, I don't want to go at this
12 too long, but one of the concerns that was raised by the
13 parties when we were talking about -- or the folks who
14 applied for party status but were denied -- where impacts on
15 light. So, can anybody speak to what the shadow impacts
16 would be this building?

17 MR. GLASGOW: Yes. We looked at that.
18 Ms. Alexander will address that.

19 COMMISSIONER MAY: Okay.

20 MS. ALEXANDER: So, we did take the measurement
21 from the one person's house at the corner. It was 165 feet
22 from the closest point of our building to the closest point
23 of that home, and it's about ten feet taller.

24 So, based upon that distance and the higher
25 elevation, that the shadow impacts would be very minimal.

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1 That is our --

2 COMMISSIONER MAY: Are there people speaking in
3 the background there, Ms. Alexander? Because I can hear a
4 lot of voices.

5 MS. ALEXANDER: Sorry. Yes.

6 COMMISSIONER MAY: It's hard to keep the voices
7 quiet, I know --

8 MS. ALEXANDER: Could you hear me?

9 COMMISSIONER MAY: -- I understand that. Do you
10 mind repeating that?

11 MS. ALEXANDER: Sure. We took the dimensions from
12 the house on the corner of Harrison and 42nd, the closest
13 point of that home to the closest point of our building.
14 That was 165 feet away.

15 COMMISSIONER MAY: Yes.

16 MS. ALEXANDER: And about ten feet higher in
17 elevation. So, we do believe that any shadow or light
18 impacts would be very minimal, given the distance and grading
19 elevation.

20 COMMISSIONER MAY: Okay. And so the same would
21 be true for the property? I mean, you're talking about the
22 one at the corner of 42nd and Harrison? What about the
23 property of other persons, for instance across 42nd Street?

24 MS. ALEXANDER: So, as you get closer along
25 42nd Street to our property, there would be slightly more

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1 impact. But again, at that point I did not take the
2 dimensions. It's still in excess of 140 feet.

3 COMMISSIONER MAY: Right. Okay.

4 MS. ALEXANDER: Oh, the ones on the east side of
5 42nd? Is that what you're speaking about? Oh, those --

6 (Simultaneous speaking.)

7 COMMISSIONER MAY: On South 42nd.

8 MS. ALEXANDER: -- there would not be any second
9 until 5:00 p.m. or so in the winter.

10 COMMISSIONER MAY: Right. Okay, thank you. I
11 figured those would be the answers, but I just wanted to hear
12 that out now, rather than wait to hear it later. Okay. I
13 think that's it for my questions. Thank you.

14 MEMBER BLAKE: I just have a quick followup. With
15 regard to that white space again, that's kind of what I was
16 asking about earlier. You said that that would be used
17 potentially for further development in the future. That
18 still would result in R-2, fully R-2. And could you tell me
19 what the approximate size of that space is?

20 MR. GLASGOW: Mr. Blake, that would still be R-2
21 zone property. You would have to file something with the
22 Zoning Commission to change that zoning. And we're looking
23 up the calculation of that block area right now.

24 MEMBER BLAKE: Okay.

25 MR. GLASGOW: And then I wanted to make sure to

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1 clarify one thing. When I talked about the right-of-way of
2 Harrison Street, that included the building restriction
3 lines, Commissioner May. And of course, as you know, when
4 you have a building restriction line that goes the full
5 length of the block, you use that as part of your building
6 height for 1910 Height Act purposes.

7 MEMBER BLAKE: Okay.

8 MS. ALEXANDER: Just did a calculation of the size
9 of that space remaining. The white portion is approximately
10 27,000 square feet.

11 MEMBER BLAKE: Okay, thank you. Thank you.

12 CHAIR HILL: And that's where I got a little
13 confused. Like, you guys own that property also? Is that
14 what you're saying? Or your client?

15 MR. GLASGOW: Yes. Correct.

16 MR. DONOHOE: That's correct.

17 CHAIR HILL: Okay. All right, anyone else while
18 the slide deck is up? If so, raise your hand. All right,
19 Mr. Young, if you could drop the slide deck. Okay, could I
20 turn to the Office of Planning?

21 MS. ELLIOTT: Hi there. Good afternoon,
22 Mr. Chairman and members of the Board. I'm Brandice Elliott,
23 representing the Office of Planning for BZA Case 20638 at
24 5151 Wisconsin Avenue, N.W.

25 The Office of Planning is recommending approval

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1 of the special exception that's been requested for zone
2 boundary line crossing a lot. That's a mouthful to say. It
3 basically allows MU-4 to expand over the R-2 zone portion of
4 the lot.

5 I can briefly run through our analysis, and then
6 I'm happy to answer any questions that you have related to
7 that. There are some special criteria for the special
8 exception, so I'll run through those.

9 The first is that the extension is limited to
10 35 feet. That is the case. The applicant has already
11 demonstrated that. The MU-4 would expand 35 feet over the
12 R-2 portion of the lot.

13 The second requirement is compliance with
14 Subtitle A, Section 207.1(d). As explained by the applicant,
15 the zoning administrator made a determination in a previous
16 case that that does not apply when a less restrictive zone,
17 which is the MU-4 in this case, is extended over a more
18 restrictive zone, which is the R-2 zone in this case. And
19 so, that doesn't apply in this instance. So, we're good with
20 that particular requirement.

21 The next requirement is that the extension should
22 have no adverse effect upon the present character and future
23 development of the neighborhood.

24 In terms of the present character, this is a
25 property located on Wisconsin Avenue. A lot of the

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1 properties are zoned in MU-4. It appears that a lot of the
2 adjacent developments are taking advantage of the FAR and the
3 height that is permitted by the MU-4.

4 For example, to the north of this site there is
5 a multifamily building that appears to be fairly comparable
6 in height. The same is true for an office building on the
7 west side of Wisconsin Avenue. And then to the south there
8 is the commercial building that is attached to the current
9 building on the site. So, they're all fairly similar heights
10 and massing.

11 One of the things that we do tend to discuss in
12 terms of character, which was just questioned of the
13 applicant, is issues relating to light and air. And we did
14 not receive a shadow study with this case.

15 But from what we can tell, it appears that most
16 of the shadowing impact would occur to the north, and there
17 is a buffer between the proposed project and the multifamily
18 building to the north -- that's Harrison Street -- which
19 certainly helps minimize the impact to that building.

20 The morning sun would cast some shadows towards
21 Wisconsin, and we don't think that that would have an undue
22 impact to Wisconsin or the properties across the street.

23 And then, we would expect some evening shadows
24 towards the east, towards the low-density residential
25 neighborhood. But we would not expect them to create an

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1 undue impact.

2 There is a substantial distance of 220 feet
3 between the proposed building and that neighborhood, which
4 does sort of mitigate what impact the shadowing would have
5 to those properties.

6 And because this section also refers to impact to
7 future development, I'll go ahead and take this opportunity
8 to mention the comprehensive plan, which is a little unusual
9 for BZA. But the recent amendments to the comprehensive plan
10 included some land use designation changes along Wisconsin
11 Avenue, changes that would potentially allow for zones with
12 higher density and height allowances than the current MU-4
13 zone.

14 And so, in the future, we could expect to see some
15 developments with higher heights and density than what is
16 currently allowed along that corridor.

17 So, we would expect that the current proposal
18 would be consistent with current development, but also future
19 development, because that future development could be a
20 little more dense than what we see there now.

21 This proposal also complies with the general
22 special exception review standards. And just to touch on
23 those quickly, the first requirement is that it be in harmony
24 with the general purpose and intent of the zoning regulations
25 and zoning maps.

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1 This zone boundary special exception is permitted
2 by the zoning regulations. The building would comply with
3 the development standards of the zone, and that includes FAR,
4 height, lot occupancy, parking and the yards.

5 And so, the proposal is in harmony with the
6 general purpose and intent of the zoning regulations and
7 maps.

8 And then, the second requirement, the general
9 requirement for special exceptions, is that it would not tend
10 to affect adversely the use of neighboring property. And I
11 think I've already touched on that.

12 But I'll leave our analysis there, but I'm happy
13 to answer any questions that you have.

14 CHAIR HILL: Okay. Thank you, Ms. Elliott. Thank
15 you for your report. Does the Board have any questions of
16 the Office of Planning? Okay, does the applicant have any
17 questions of the Office of Planning?

18 MR. GLASGOW: No, sir.

19 CHAIR HILL: Okay. All right, Mr. Young, can you
20 bring in the witnesses, please? Mr. Offutt, can you hear me?

21 MR. OFFUTT: Yes, I can. Can you hear me as well?

22 CHAIR HILL: Yeah. Commissioner May had a
23 question.

24 COMMISSIONER MAY: Yeah, we haven't heard from
25 ANC.

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1 CHAIR HILL: Oh, I didn't know the ANC was here,
2 but that's very kind of you, Commissioner. Mr. Young, is the
3 Commissioner here?

4 MR. YOUNG: Yeah, Mr. Quinn.

5 CHAIR HILL: Oh, I'm sorry. All right,
6 Commissioner. Thanks, Commissioner. Sorry. Commissioner,
7 I got so confused. Let's see. Commissioner, so you also,
8 as a party, have the opportunity to present any testimony
9 you'd like to give and/or ask questions. So, perhaps you
10 could go ahead and first give your testimony, and then if you
11 have any questions, please ask them.

12 MR. QUINN: Great. Thank you, Mr. Hill. Good
13 afternoon members of the Board of Zoning Adjustment. My name
14 is Tom Quinn and I'm the Advisory Neighbor Commissioner
15 representing Single-Member District 3E-04, which runs along
16 the east side of Wisconsin Avenue from Tenleytown to Western
17 Avenue, and includes the site of this proposed building.

18 I'm here today to testify on behalf of ANC3E in
19 support of the proposal from Donohoe Development to replace
20 the Fox5 Building at 5151 Wisconsin Avenue with a new mixed-
21 use building with approximately 210 units.

22 ANC3E has previously submitted to the record in
23 this case a copy of our resolution, as well as an MOU signed
24 by the ANC3E and Donohoe Development. And I will also be
25 submitting this testimony to the record.

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1 ANC first became aware of a potential project by
2 Donohoe to redevelop about three-quarters of the block down
3 by Wisconsin Avenue, 42nd Street, Harrison and Garrison
4 Streets, N.W., in the spring of 2018, with a mixed-use
5 project with approximately 280 units in ground-level retail
6 on Wisconsin Avenue.

7 Subsequently in the summer of 2020 until the
8 summer of 2021, about our development, a number of public ANC
9 meetings, where they presented plans to redevelop the
10 footprint of just the Fox5 Building and a strip of additional
11 land behind the building, to approximately 177 units and,
12 again, ground-floor retail on Wisconsin Avenue, until we were
13 advised that this developer was no longer pursuing the deal.

14 Then, in the fall of 2021, Donohoe Development
15 again engaged with ANC3E about a new proposal to redevelop
16 only the Fox Building, along with the strip of land behind
17 it, into a mixed-use building with approximately 214 units.

18 Donohoe, along with their design team from Torti
19 Gallas, appeared at ANC3E meetings on December 9, 2021,
20 January 13, 2022, and February 9, 2022.

21 At these meetings, ANC3E heard questions and
22 concerns about the proposal from both the community and ANC
23 commissioners, including concern about the nature of the
24 zoning relief sought and the measuring point for the
25 building's height, as well as the utilized density, the

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1 number of parking spaces in total, and the number of spaces
2 allocated to retail uses, plans for the remainder of the lot,
3 questions about the mix of units and the number of
4 inclusionary zoning units, questions and concerns about
5 school overcrowding, questions about plans for the television
6 tower on the lot, the retaining wall on the surface parking
7 lot, on the remainder of the lot.

8 Simultaneously to the timeline I just outlined,
9 R-ANC, over several meetings in 2019 and 2020, hosted
10 discussions about the D.C. Office of Planning's rewrite of
11 the comprehensive plan and the future land-use map.

12 At ANC3E's February 13, 2020 meeting, R-ANC
13 unanimously supported changes in the FLUM for lot 2430, which
14 is the lot we're discussing, to be changed from low-density
15 to even density along the Wisconsin Avenue frontage. It's
16 a moderate density along the 42nd Street frontage, which
17 abuts single-family homes.

18 ECOP only proposed rezoning the lots of moderate
19 density, which is the proposal that was eventually adopted
20 into law by the D.C. Council in the fall of 2021.

21 At a properly noticed meeting on February 9, 2022,
22 ANC3E voted unanimously to support the proposal that is
23 before the BZA today.

24 I provide all this background to make it clear
25 that while ANC3E supports this project, we nonetheless

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1 believe that this proposal, in net, is a lesser proposal than
2 the developer can and should be building utilizing the
3 changes to the FLUM we supported, which Donohoe could utilize
4 by pursuing a planning and development for this site.

5 Among the benefits a larger project, this critical
6 site, two blocks from the Friendship Heights Metro, might
7 include, would be additional market and inclusionary zoning
8 units, additional tax revenue for the District, customers for
9 local businesses and transit users, the opportunity to remove
10 the television tower surface parking lot and wall surrounding
11 the entire property, and one planning process for the
12 development of the entire lot, and one construction project
13 rather than two.

14 Having said all that, ANC3E strongly believes this
15 project is a significant net improvement, and supports the
16 special exception Donohoe is pursuing to restripe 35 feet of
17 their lot from R-2 to MU-4.

18 Among the benefits of this redevelopment are
19 replacing an aged building of poor connectivity to the street
20 with a new building that must adhere to the D.C. stormwater
21 retention and green air ratio requirements.

22 ANC3E believes this project will be a measurable
23 net environmental improvement over the current building,
24 creating approximately 210 housing units in an affluent
25 neighborhood with housing prices that are increasingly out

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1 of reach for many Washingtonians, and housing two blocks from
2 the Friendship Heights Metrorail Station and Bus Station,
3 which is served by 34 separate bus routes.

4 R-ANC further believes that as a result of our
5 negotiations with Donohoe, we have secured additional
6 benefits. Among them, commitment to construct this building
7 to LEED Gold Standards and seek such certification.

8 Among this building's green features is both a
9 green roof and a rooftop solar system. We have a retail
10 agreement that prohibits certain types of retail that ANC
11 considers suboptimal for this location.

12 We have a commitment for 11 percent of the gross
13 floor area to be IZ units, which ANC3E believes is greater
14 than the ten percent required by law, a commitment for five
15 fully-accessible units among the IZ units, an unprecedented
16 agreement for ANC3E negotiations, which ensures turnkey-ready
17 housing for our neighbors living with disabilities and
18 mobility limitations.

19 There's a construction management plan that
20 exceeds the D.C. area requirements, and there's a commitment
21 to remove the surface parking lot behind the project -- those
22 plans have not been finalized -- for the redevelopment of the
23 remainder of the lot when Donohoe seeks their Certificate of
24 Occupancy for this project.

25 ANC3E respectfully requests that the BZA

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1 incorporates all of the conditions of our MOU into any
2 written orders you issue associated with this case.

3 While R-ANC believes this is not an optimal plan
4 for use of this lot, we do believe that this is a good
5 project. And for that reason, we support this proposal and
6 urge the BZA to do the same.

7 Thank you for the opportunity to testify before
8 you today, and I'm glad to answer any questions.

9 CHAIR HILL: Okay, thanks. Commissioner Quinn,
10 can you stick around for a little while?

11 MR. QUINN: I'll be here.

12 CHAIR HILL: Okay. Then I might have some
13 questions for you later. Does the Board have any questions
14 for the Commissioner at this point? Okay.

15 Commissioner, did you have any questions for
16 either the applicant or the Office of Planning?

17 MR. QUINN: I did not. Thank you.

18 CHAIR HILL: Okay. All right, now I'm going to
19 go back to Mr. Offutt. Can you hear me?

20 MR. OFFUTT: Yes, I can, Mr. Chairman.

21 CHAIR HILL: Okay, great. So, Mr. Offutt, as I
22 recall, there was Ms. Sonenberg, Mr. Barth, Ms. Farrah and
23 Mr. Sicker?

24 MR. SKIBO: Skibo?

25 CHAIR HILL: Skibo. Thanks, Mr. Skibo. You don't

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1 get your last name on your Zoom thing, so it's hard to
2 remember.

3 And then, I think that was it from your group.
4 Correct, Mr. Offutt?

5 MR. OFFUTT: Yeah, that's right.

6 CHAIR HILL: Okay. I'm sorry, go ahead.

7 MR. OFFUTT: Well, I may be anticipating your next
8 question, but I will talk, and then Mary Farrah will talk,
9 and the other three, they agreed that we would talk for them.

10 CHAIR HILL: Okay, great. So, I was just going
11 to say that normally everybody gets three minutes. I was
12 even going to say, Ms. Sonenberg, we were going to give her
13 five minutes because she's representing more of a group.
14 That gave you to like 17.

15 So, we'll go ahead and round up to 20. And go
16 ahead and give your testimony, please. And I'm going to time
17 you over here.

18 MR. OFFUTT: Okay. All right, so Mary and I will
19 keep it to within 20. I see no problem there.

20 Okay, thank you, Mr. Chairman, thank you members
21 of the Board, members of the Commission.

22 I'm Martin Offutt. I've lived on Garrison Street
23 since the 1990s. I study and advise on energy and
24 infrastructure. I study campuses, including NIH in Bethesda.
25 I'm also on a school board. We have 17 acres and numerous

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1 buildings. So, I have seen this from the owner's side as
2 well.

3 And I've written environmental regulations and a
4 few permits, and have a lot of experience with public
5 processes.

6 But today, as we noted, I'm speaking on behalf of
7 a group of neighbors, and so will Mary Farrah after me. And
8 we'd like to underscore several points about the proposed
9 extension. And we'll refer to this as the extension
10 throughout my testimony, the additional 35-foot, please.

11 And one thing quickly I wanted to note by way of
12 information. There are 43 exhibits in the hearing record.
13 We saw a reference to Exhibit 65. It's difficult to follow
14 some of these things, so that might be something you want to
15 note in the record.

16 We also found in four of the exhibits a number of
17 letters that were returned undelivered. There were 16 such
18 letters.

19 With that note out of the way, I will go through
20 the evaluation criteria one at a time, there being three.

21 First, the questions. Will the extension be in
22 harmony with the general purpose and intent of the zoning
23 regulations?

24 The extension would allow a taller building they
25 argue is zoned part of the neighborhood. We are concerned

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1 about the impact on light and air, especially for residents
2 across the street from the project on 42nd Street and on
3 Harrison Street.

4 If we can pull up my Exhibit 43 at some point, I
5 can make reference to a figure there, but illustrates this.
6 So, thank you, Mr. Young. Yeah, there we go.

7 So, for everyone's benefit, that is Harrison
8 Street that we're looking at. And so, there are --

9 CHAIR HILL: Mr. Offutt, which exhibit number is
10 this?

11 MR. OFFUTT: Forty-three, sir.

12 CHAIR HILL: Forty-three.

13 MR. OFFUTT: From my side of the interface, it's
14 number 43.

15 CHAIR HILL: No. Mr. Young, do you know which
16 exhibit it is?

17 MR. YOUNG: It's Exhibit 42.

18 CHAIR HILL: Okay, great. Thank you.

19 MR. OFFUTT: My mistake.

20 CHAIR HILL: Yep, no problem.

21 MR. OFFUTT: Okay. All right, so that blue
22 triangle -- maybe the corner should be rounded -- but that
23 approximates the contemplated boost 35 feet and what it would
24 do for the building. And this is just to show that there is
25 something directly across the street, detached houses there.

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1 So, with that visual, I'll keep going. Current
2 zoning calls for side yards and lower building heights that
3 will allow direct sunlight to pass above and between
4 buildings.

5 Again, where the extension will be granted, the
6 height restriction lifted will just pass between the 78-foot-
7 tall building, extended into the R-2 zone, the area versus
8 the detached houses.

9 I also wanted to note that Tenley Hill, which is
10 at 4750 41st Street, does have this dual character, where the
11 part that fronts Wisconsin Avenue is an apartment block, and
12 the part that fronts 41st Street on the neighborhood side
13 does have a semi-detached character, with permeable surfaces,
14 on the ground. And so, I would commend that to the Board to
15 look at the Tenley Hill footprint and development.

16 So, I guess the next thing is that R-2 zoning has
17 a stated purpose to protect these areas from invasion by
18 denser types of residential development.

19 Next is the second criterion, will the extension
20 clear and effect adversely the use of neighboring property
21 in accordance with the zoning regulations?

22 We believe it would have an adverse effect. The
23 variance would, for one, foreclose possibility of permeable
24 surfaces, and Mary Farrah will address that point in a few
25 moments.

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1 The extension would also affect adversely the use
2 of neighboring property in another way. It would worsen on-
3 street parking. In the past ten years, residents have found
4 themselves unable to park on-street at the end of a workday,
5 which mostly coincides with when the Harrison was delivered,
6 I think in 2010.

7 If the extension is granted, there will be
8 additional apartment units. This will mean more cars seeking
9 neighborhood spots than if the current R-2 zoning were
10 upheld.

11 Now, let's go to the third review criterion. Will
12 the extension have an adverse effect upon the present
13 character and future development of the neighborhood?

14 The property will have rooftop machinery that
15 makes noise. This is sometimes called a mechanical
16 penthouse. If the extension is granted, the roof will extend
17 35 feet further into the R-2-zoned area.

18 The rooftop machinery will be that much closer to
19 the detached and some of the attached houses in the
20 neighborhood, and it will be that much larger because it will
21 be servicing a greater number of apartment units.

22 For those of you who haven't had the pleasure of
23 going through an MET penthouse, these tillers and so forth
24 have motors that run constantly, they have a distinctive
25 sound of steel-on-steel, in certain seasons they run

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1 continuously, 24 hours a day.

2 Obviously, the character of the neighborhood would
3 be changed and have this whirring sound all night long, even
4 louder.

5 And also, by boosting 35 feet back there would be
6 less favorable mitigation of the noise, as would occur by
7 diffusion or by scattering off of the troop canopy.

8 So, to recap my points, we are concerned about
9 flooding -- Mary Farrah will address that -- we're concerned
10 about the sound nuisance, the noise nuisance. We are
11 concerned about the parking, and we are concerned about
12 preserving the character of the neighborhood. Thank you,
13 Mr. Chairman.

14 CHAIR HILL: Thank you, Mr. Offutt. Ms. Farrah?

15 MS. FARRAH: Hello. It's me, Mary Farrah. Are
16 you ready for me to start?

17 CHAIR HILL: Yep. Go ahead.

18 MS. FARRAH: Okay. Just let me preface this.
19 This is my first testimony. So, excuse me if I'm a little,
20 how I'm going to --

21 CHAIR HILL: Yeah, no problem.

22 MS. FARRAH: All right. Good afternoon everyone.
23 My name is Mary Farrah. Thank you for allowing me to speak
24 at this hearing.

25 I live at 5219 42nd Street, which is one block

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1 diagonally across from the former Channel 5 property which
2 we're talking about today.

3 I live with my parents in the house where I grew
4 up and I'm their full-time caregiver, and I also work full-
5 time for the City of Alexandria, the Parks Department, as a
6 natural lands manager.

7 I have a bachelor's of science in environmental
8 science and I have a master's in water resources management.

9 I was initially involved with the ANC meetings in
10 2019 and 2020, when it was the other developer -- I'm
11 blanking on the name. I want to say Vanguard, but I don't
12 think that's right. But they abandoned the plans and I was
13 not aware this was back on the agenda.

14 So, I'm a native Washingtonian. I'm the fifth --
15 actually, now there's six generations that are living in D.C.
16 And I've seen the city completely transform over the last
17 43 years. And I want to have an input in what happens in my
18 neighborhood, because I'm going to be living here long after
19 the developer is gone.

20 I do support increased density around
21 transportation hubs and subway stations. And I do support
22 the Donohoe redevelopment of the Channel 5 property, and I
23 applaud that they're going for the LEED Gold status.

24 But I do not support the request for rezoning of
25 the 35-foot section of the property that is currently zoned

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1 as R-2 for low-density housing.

2 One of D.C.'s critical needs is affordable and
3 low-income housing. The ten percent of affordable housing
4 mandated for new developments accommodates a handful of
5 median-income families. But in the meanwhile, the waiting
6 list for low-income housing is so long that D.C. families
7 have been waiting for years.

8 Every other development in the area, that I'm
9 aware of, has complied with the current zoning. But the
10 11 percent affordable housing will not address the low-income
11 housing crisis in our city, or the growing wealth disparity.

12 I don't agree with granting a variance for a
13 building that will be 89 percent luxury apartments if it
14 means negatively impacting the quality of life and the
15 character of the surrounding community, without addressing
16 seriously D.C.'s critical needs.

17 The added 35-foot of a 75-foot tall building will
18 literally cast a shadow on the residential section of the
19 community, blocking the southern and light in the afternoon.

20 The additional 35 foot of apartment house will
21 also add parking pressure to a neighborhood where, pre-
22 pandemic, you were not guaranteed a parking space on your
23 block.

24 We already deal with the influx of traffic from
25 Wisconsin Avenue in a neighborhood that is literally brimming

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1 with children. And this will add further pressure.

2 The reality is that people still drive, and a
3 210-unit apartment house without sufficient parking space is
4 going to add stress and pressure to the community.

5 Additionally, granting a zoning variance will add
6 nuisance noise to the community. As it stands, I can already
7 hear the machinery from the buildings facing Wisconsin Avenue
8 from my front porch.

9 Granting this variance will bring the nuisance
10 noise 35 feet closer to the residential part of this
11 community, and it's still zoned as low-density residential.

12 Our community sewer infrastructure is already
13 inundated by stormwater runoff. Garrison Street is directly
14 impacted by the property in question. It's directly
15 downhill.

16 Our properties over on 42nd Street on the northern
17 side of the property flood as well, but not from this
18 development, because we're on the other side of the apex of
19 that hill.

20 The variance will result in a net loss of
21 permeable surfaces where the R-2 section low-density houses
22 will be sacrificed for a luxury apartment building, and would
23 otherwise be a vegetative yard space and can be designed to
24 promote groundwater infiltration, rather than stormwater
25 runoff.

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1 Though the plan proposes to mitigate this effect
2 by installing a green roof and likely some pervious pavement,
3 the question is, will green roof plants survive in the
4 desert-like micro-climate of a roof, or, alternately, the
5 summer deluge that we receive, without frequent human
6 intervention and regular maintenance.

7 Likewise, porous concretes, including asphalt and
8 Flexi-Pave-type pavements, require regular vacuuming their
9 pores, or they fill with sediment and they become an
10 impervious surface, which is something we deal with all the
11 time in the park installations that I work with.

12 The reality is the maintenance of LID
13 installations are not being addressed following build out,
14 and both green roof and pervious pavements require regular
15 maintenance over their lives to function as designed in
16 outlying years.

17 Though I am pro this Donohoe development on this
18 site, and I am fully in support of moderate- to high-density
19 pockets around the subway station and transportation
20 infrastructure, I respectfully request the variance be
21 denied. That's it.

22 CHAIR HILL: Okay. Thank you, Ms. Farrah. And
23 good for you for taking care of your parents. I do the same
24 and it's a challenge. Hang in there.

25 Let's see. And I mean that. Okay. Oh yeah, so

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1 does anybody have any questions for the witnesses? And I'm
2 looking to my fellow Board members. Sure, Mr. Blake.

3 MEMBER BLAKE: Is there residential permit parking
4 on your street?

5 MS. FARRAH: No, we don't. And that's one of the
6 things that if this goes forward we would try to get.
7 There's no residential parking. It used to be after 10:00,
8 11:00 o'clock you could then find parking, but until then you
9 were just out of luck.

10 I, and I commute to and from Alexandria every day.
11 We're essential, so we, we've been going to work this whole
12 time.

13 Luckily, it's eased up during the pandemic. But
14 I have no idea what it's going to be like, if it's going to
15 resume what it was like previously. So, that's a big
16 unknown.

17 MEMBER BLAKE: Well, that would make a big
18 difference to preserve parking spaces in the neighborhood.

19 MS. FARRAH: Except for the 210 new residents that
20 wouldn't have parking. I mean, I understand the ANC3E and
21 the push for the traffic diet and to have -- not have a
22 minimum of parking spaces for buildings. But the reality is,
23 especially if you have, you know, several people in a family,
24 the family members a lot of them have cars. It's not just
25 one person. There's several cars. And so, there is still

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1 a need for parking.

2 It's just a reality. And people are still
3 driving. Not everyplace is subway-accessible. Not all of
4 us have the privilege of living within walking, biking, or
5 Metroing distance from where we work.

6 MEMBER BLAKE: Well, the parking passes provide
7 some restrictions where you might want to talk to the ANC to
8 kind of coordinate with that. But I do believe that that
9 would provide some relief for you. Thank you.

10 MS. FARRAH: Okay. Thank you.

11 CHAIR HILL: Okay. And just for the record,
12 they're here for special exceptions, not variances. You guys
13 kept mentioning variances.

14 MS. FARRAH: Sorry. Wrong terminology. I don't
15 do this. This is the first time I've ever done this.

16 CHAIR HILL: Okay.

17 MS. FARRAH: So, bear in mind that, please.

18 CHAIR HILL: And I'm sorry you guys had to wait all
19 the way until the end of the day. But we're here every
20 Wednesday if you all want to come back.

21 That's what the priest says when you come to,
22 like, church on Easter or something -- and I'm not Catholic
23 -- but I mean, you go there and they go, "We're here every
24 Sunday."

25 You can tell it's getting late in the day.

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1 All right. So, Mr. Chair, I mean, Commissioner
2 May you're going to add your comedic relief?

3 COMMISSIONER MAY: Yeah. I like the comparison of
4 the BZA to church. That's kind of fun.

5 So, Mr. Offutt, two questions. I mean, what, what
6 sort of mechanical equipment were you describing? Were you
7 describing cooling towers or rooftop, you know, individual
8 units?

9 MR. OFFUTT: I'll admit it's something of a place
10 holder, these varying complexities. I don't believe this
11 project has gone through engineering yet.

12 COMMISSIONER MAY: That's not what I'm asking you.
13 I'm asking you --

14 MR. OFFUTT: I'm getting --

15 COMMISSIONER MAY: -- your assertion that the
16 mechanical equipment is very loud. Were you asserting that
17 mechanical, I mean, you know, regular rooftop heat pump
18 units, or condensers, or whatever, they're very loud? Or are
19 you, or are you asserting that cooling towers are very loud?

20 MR. OFFUTT: I'm asserting that chillers would be
21 loud, pumps would be loud.

22 COMMISSIONER MAY: Right.

23 MR. OFFUTT: Yes.

24 COMMISSIONER MAY: Okay. And so --

25 MR. OFFUTT: So, when I said mechanical, I was

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1 referring to that.

2 COMMISSIONER MAY: Right. Okay. But you don't
3 know anything in particular about the mechanical equipment
4 that's being proposed here?

5 MR. OFFUTT: No. Nor have I heard anything, other
6 than the diagrams include a mechanical penthouse. I can
7 clarify that.

8 COMMISSIONER MAY: Yeah. It's a 4-foot high
9 enclosure. And we can go back to the applicant and ask them
10 to explain that. But I expect that that means that it's just
11 individual units that are on the rooftop, so it's like a
12 condenser farm, something like that.

13 I could be wrong. It could be something
14 different, but we'll ask them.

15 So, can you, do you know anything about what the,
16 you know, what the distance of 35 feet might mean in terms
17 of sound propagation, and how much, you know, is there a
18 decibel reduction that's noticeable with 35 feet of distance
19 with no buffering, no trees, no berms, things like that?

20 MR. OFFUTT: So, just like in free space? Yes, I
21 mean it's, it goes by the square of the distance. And so it
22 would be certainly incremental difference, yes. The sound
23 pressure would be lower if you get 35 feet more on the
24 radius.

25 COMMISSIONER MAY: Yeah. But you don't know what

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1 that means in terms of decibels, anything like that?

2 MR. OFFUTT: Yes. I, I do. I mean, if you took
3 a base rate and then I could calculate that out.

4 But we're talking about a situation where we don't
5 have it parameterized yet.

6 COMMISSIONER MAY: Uh-huh. Yeah. I mean, we've
7 seen a lot of cases in the Zoning Commission where these
8 things come up. And a safe break of 35 feet doesn't mean a
9 whole lot when it comes to sound reduction.

10 MR. OFFUTT: Yeah.

11 COMMISSIONER MAY: Where it means a lot is having
12 substantial buffers or substantial distance. So, you have
13 to be up in the hundreds of feet to really make a difference
14 in terms of sound propagation.

15 But I think we'll hear from the applicant about
16 what their sound equipment -- I mean, what their mechanical
17 equipment really is and whether it's actually going to be
18 loud.

19 So, and I guess this is for Ian, are you familiar
20 with the city's stormwater regulations and what the
21 requirements would be for the management of stormwater on the
22 site?

23 MS. FARRAH: No. I work for City of Alexandria,
24 so I'm more familiar with that. And, again, I work in
25 natural lands management, not with building, and zoning, and

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1 construction.

2 COMMISSIONER MAY: Right.

3 Mr. Offutt?

4 MR. OFFUTT: Yes. We --- this has been an ongoing
5 discussion with D.C. Water and Office of Energy Environment.
6 They have walked us through their requirements and the size
7 of the various conduits and so forth. So, we're not familiar
8 yet.

9 COMMISSIONER MAY: Yeah, okay.

10 So, and do you think that stormwater conditions
11 will get worse as a result of this building?

12 MR. OFFUTT: I think if we're talking about, yes,
13 the incremental difference between if that 35 feet is boosted
14 out, then I think we do leave some coning of the surface and
15 I think we get less retention of the runoff.

16 COMMISSIONER MAY: Right. Okay.

17 Well, I have to say my experience has been since
18 for more than 20 years in dealing with D.C. stormwater
19 regulations is that soon as you start touching the ground you
20 have to manage every drop of water up to a certain measurable
21 storm. And the storm rates are different than where you are
22 with the use might be.

23 And generally speaking, I mean, my, my rule of
24 thumb has always been that if you're going, if you're going
25 to build anything, you're basically going to have to manage

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1 the stormwater as if the site were completely unbuilt.

2 So, chances are it's actually going to get better.
3 I just have to say that's my experience, what my experience
4 has been. It's an unusual thing where DOE would allow a
5 development to occur where this stormwater runoff from any
6 site would get worse.

7 They want you to -- even if that means building
8 structures beneath, beneath the building to be able to manage
9 it. So, it's not just a matter of having permeable green
10 surfaces, or permeable paving or things like that. But they
11 can build, you know, underwater stormwater retention
12 facilities and things like that to be able to manage it.

13 So, but I think the applicant will want to speak
14 to that a little bit as well.

15 MR. OFFUTT: Yeah, sure. Yeah, my experience with
16 the large campuses is that this does, and small campuses is
17 that the stormwater runoff is always a problem, and the
18 intensity of rains we're getting lately are worse. And the
19 sound I think is similar. That's, that's -- there aren't as
20 many mitigation strategies in this situation, understanding
21 that you have a great deal of experience. I think that I'd
22 be interested to tap into that sometime as we're facing the
23 same thing with the schools at the school district level in
24 another district.

25 MS. FARRAH: May I, may I speak up a moment about

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1 the sound reduction of 35 feet? Because we did just, I did
2 just hear from Jedd Skibo saying that sound reduction over
3 35 foot -- feet takes 80 decibels to 50 decibels, the
4 difference being a freight train versus an urban residence.

5 Now, I don't know where he's getting this
6 information. But if we're speaking for him, I wanted to put
7 that out there.

8 Also, I mean -- Well, I'll just leave it at that.

9 COMMISSIONER MAY: Yeah, okay. Take that with a
10 grain of salt because that's not consistent with anything
11 that I -- I mean, 50 decibels to 80 decibels, it's a
12 logarithmic scale, so that would be an incredible reduction
13 of sound.

14 So, anyway, I won't -- I'm not going to pretend
15 I'm a sound expert either. It's been a very long time since
16 I've studied it. We occasionally have to read those reports
17 at the Zoning Commission. And I can tell you, they're even
18 more fun than traffic studies, I have to say.

19 Anyway, that's it for my questions. And I look
20 forward to having the applicant answer some of the issues
21 that have been raised here.

22 CHAIR HILL: Okay, thank you, Commissioner May.

23 Let's see. Any more questions for the witnesses?

24 Okay. All right, you guys, thanks so much for
25 participating. And we'll excuse you now and you can continue

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1 to listen to the rest of the hearing.

2 MR. YOUNG: Mr. Chairman.

3 MS. FARRAH: Thank you.

4 CHAIR HILL: Sure. Did somebody just talk?

5 MR. YOUNG: Yeah. That was me.

6 CHAIR HILL: Sure. Go ahead, Mr. Young.

7 MR. YOUNG: There are two other witnesses that have
8 signed up.

9 CHAIR HILL: Oh, perfect. Okay, great. Thank you
10 for letting me know.

11 If you could remove all the other witnesses and
12 then bring the other two witnesses in, please.

13 (Pause.)

14 CHAIR HILL: Is it Ms. Cort? Is that one?

15 MR. YOUNG: Yeah. Ms. Cort and Mr. Repp.

16 CHAIR HILL: Okay, great.

17 Ms. Cort, can you hear me?

18 MS. CORT: Yes.

19 CHAIR HILL: Could you please introduce yourself
20 for the record.

21 MS. CORT: Yes. Thank you, Chairman.

22 My name is Cheryl Cort. I am here on behalf of
23 both Ward 3 Vision and the Coalition for Smarter Growth.

24 CHAIR HILL: Okay. Ms. Cort, I believe you, but
25 do you have anything in the record that says that?

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1 MS. CORT: Oh, like that Ward 3 Vision said that
2 I'm speaking on --

3 CHAIR HILL: Yeah.

4 MS. CORT: -- their behalf?

5 CHAIR HILL: Yeah.

6 MS. CORT: Well, they did submit their testimony
7 last night and it did get into the record. So, that's good.
8 I did get an email from the chairman, the chair
9 of Ward 3 Vision saying that he authorized me to submit the
10 written testimony. But can I submit that?

11 CHAIR HILL: No, no, that's fine. You already
12 submitted the written testimony for Ward 3 Vision.

13 MS. CORT: Okay.

14 CHAIR HILL: Correct?

15 MS. CORT: Yeah. And, well, they did. Yeah, and
16 I submitted my testimony.

17 CHAIR HILL: What's the other group, Smarter
18 Growth? What did you say?

19 MS. CORT: Coalition for Smarter Growth. I'm the
20 policy director for Coalition for Smarter Growth.

21 CHAIR HILL: Do we have something in the record to
22 that effect?

23 MS. CORT: Yes. Yes, we do.

24 CHAIR HILL: Okay, meaning?

25 MS. CORT: Thank you for accepting it.

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1 CHAIR HILL: Okay. Okay, Ms. Cort, I'm going to
2 go ahead and, I mean you can go ahead and state who you're
3 speaking for. And but I'll still keep you -- we're not --
4 the only way I'm hesitating is that I don't have anything in
5 the record saying you're speaking for them.

6 And if you are speaking for a group you get five
7 minutes versus three minutes. Right? So --

8 MS. CORT: Well, I'm speaking for a group. So,
9 I'll just take five minutes.

10 CHAIR HILL: No, that's okay. What I'm saying is
11 I don't have anything in the record that says you're speaking
12 for the group.

13 MS. CORT: Okay.

14 CHAIR HILL: So, but that's okay. I'm just going
15 to go ahead and let you give your testimony.

16 MS. CORT: Okay.

17 CHAIR HILL: So, please go ahead and introduce
18 yourself again and give your testimony.

19 MS. CORT: Okay. So, I'm Cheryl Cort. I'm policy
20 director for the Coalition for Smarter Growth. I'm speaking
21 on behalf of my organization.

22 I'm also speaking on behalf of Ward 3 Vision. And
23 I'll have them -- you will notice the similarity between our
24 testimonies that are submitted to the record.

25 So, Ward 3 Vision is a group of residents

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1 advocating for planning and development that makes Ward 3 an
2 inclusive and vibrant place. And notes that Ward 3 is a
3 great place to live and a high opportunity community that
4 they want to make better.

5 Coalition for Smarter Growth is the leading non-
6 profit organization in the D.C. region advocating for
7 walkable, bikeable, inclusive, transit orange communities as
8 the best way to create sustainable and equitable places,
9 equitable region, and to allow our region to grow and provide
10 opportunities for all.

11 So, we are here to express our support for this,
12 this application. We are, however, disappointed that the
13 applicant in this case has not chosen to take advantage of
14 increased density provided through the future land use map
15 by applying for a planned unit development, or perhaps even
16 a zoning map amendment.

17 However, we are pleased to see the former
18 commercial office use that had no retail at the ground floor,
19 enliven the street -- to enliven the street, will now be
20 transformed into about 210 residential units with
21 approximately 11 percent of those units reserved as
22 affordable at 60 percent median family income through the
23 Inclusionary Zoning Program.

24 Five of these units, as was noted, will also be
25 fully accessible, which we commend.

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1 The applicant has also agreed to provide 1,500
2 square feet of retail at the ground level, and to revise the
3 original design to include pedestrian compatibility on the
4 Wisconsin Avenue frontage.

5 This proposal is a significant contribution to new
6 housing and, more importantly, affordable housing in a very
7 desirable location, fulfilling key goals of the comprehensive
8 plan. The 20-plus IZ units will offer 20-plus low income
9 D.C. households an opportunity that they would not otherwise
10 have to live in a walkable neighborhood close to stores,
11 jobs, schools, and transit.

12 This project makes Friendship Heights more
13 inclusive, and contributes to meeting the District's housing
14 equity goals. Adding more than 200 new housing opportunities
15 here also helps address our climate crisis by enabling more
16 people to live in walkable, transit-rich, a walkable transit-
17 rich environment, allowing them to drive less and use
18 sustainable travel modes for more of their trips.

19 The issue in this case is quite narrow. And we
20 will -- the applicant seeks the lowest level of zoning relief
21 through a special exception.

22 So, I just wanted to conclude that Ward 3 Vision,
23 you'll see in their testimony, has voted at their Steering
24 Committee meeting on the 28th to support this application.
25 And the Coalition for Smarter Growth also supports it as an

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1 important contribution for housing and affordable housing.

2 So, we urge the Board to grant the applicant's
3 request. Thank you.

4 CHAIR HILL: Thank you, Ms. Cort.

5 And thanks for all the work that you guys do
6 because, you know, you're usually on the other side of the
7 argument tablet.

8 Let's see, does anybody have any questions for the
9 witness?

10 Okay. Mr. Young, who did you say the other person
11 was?

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

13 CHAIR HILL: Okay. Mr. Repp. Okay, great.

14 MR. REPP: Thank you.

15 CHAIR HILL: Mr. Repp, could you introduce yourself
16 for the record, please?

17 MR. REPP: Yes. My name's Shelly Repp. I'm
18 speaking on behalf of the Committee of 100 on the Federal
19 City where I'm vice chair.

20 CHAIR HILL: Okay. Mr. Repp, I got you. Same
21 thing, you don't have anything in the record that says you're
22 speaking for the Committee of 100, do you?

23 MR. REPP: No.

24 CHAIR HILL: That's all right.

25 MR. REPP: We have, we have the letter from the

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1 Committee of 100, which is Exhibit 34, so.

2 CHAIR HILL: Yeah. No, no, we've seen the letter.
3 We've kind of gone through a lot of it.

4 But go ahead, Mr. Repp, and give your testimony.
5 I was just trying to see if there was anything in the record.
6 But please go ahead.

7 MR. REPP: Yes. Well, my name is on the
8 letterhead. But, whatever.

9 Okay, whatever. The applicant here requests
10 special exception to proposing to shift the boundary of an
11 MU-4 zone into an R-2 zone. We question, the Committee of
12 100 questions whether or not this criteria for a special
13 exception are satisfied.

14 The result of the -- for two reason, for two
15 reasons.

16 First of all, as a result of switching the
17 boundary 35 feet into the R-2 zone, this const -- we believe
18 this constitutes, in effect, a de facto rezoning. Mr. --
19 Holland and Knight said, well, it's not, it's not effective
20 rezoning because we're before the Board of Zoning Adjustment.
21 Well, as a matter of fact, if there were, we would argue that
22 this is as a matter of fact should go to the Zoning
23 Commission rather than the BZA. This is a jurisdictional
24 question between the Board of Zoning Adjustment and the
25 Zoning Commission.

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1 And as a matter of fact, we did reach out to Ms.
2 Bardin at the Office of Zoning to ask for a ruling on this,
3 this specific question, which she declined to give, saying
4 we should bring this issue up before the, today before the
5 BZA.

6 But, you know, why, why isn't -- why should this
7 be handled as a rezoning?

8 And the answer, one of the reasons why it should
9 be is that if it were a rezoning, that the inclusionary
10 zoning plus would apply. We believe that, as shown in our
11 testimony, in our written document, that there would be
12 around 8,000 square feet more of affordable housing provided
13 if this, if this development were subject to inclusionary
14 zoning plus, rather than the standard, regular IZ where the
15 amount of IZ provided is just marginally more than the bare
16 minimum at 10 percent, 11 percent. Just a little bit higher.

17 And as a matter of fact, the amount of -- the
18 income levels being provided here are the highest that are
19 permitted under inclusionary zoning.

20 So, and that's one reason why we believe, we
21 believe that. And inclusionary zoning, as I think you all
22 know, you know it is the, it's the, you know, it's required.
23 And, as a matter of fact, under the comprehensive plan Ms.
24 Elliott said, well, you know, she referred to the
25 comprehensive plan amendments in her testimony. And we would

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1 argue that those -- and she said, well, it won't apply.
2 Well, as a matter of fact, we believe that they should apply
3 and that those provisions, which actually the mayor supports
4 more inclusionary zoning. And, basically inclusionary zoning
5 is being given short shrift in this case.

6 The second reason why we believe this development
7 fails under the special exception requirements is this, is
8 this flag lot, this 150 foot -- at least 150 foot, maybe I
9 heard more today, that it's even longer -- extension, this
10 flagpole that's actually about 20 feet wide that runs down
11 to 42nd Street to take advantage of the higher, the higher
12 height down there.

13 We question whether the proposed base height
14 measuring point at 42nd Street meets the regulatory standard
15 of being at the level of the curb in the middle of the front
16 of the building. In our view it is irrational to hold that
17 a 5-foot strip of the building -- and that's how much of the
18 corner of the building that we're talking about here --
19 without an entrance, you know, qualifies as the front of the
20 building. As a matter of fact, that whole side of the back
21 side of the building there runs a lot more than 5 feet. So,
22 they're saying the front of the building actually is 5 feet
23 out of a much wider building.

24 So, you know, the, you know, the -- you know,
25 that's our, those are our reasons why we don't think this,

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1 this development complies with the special exception rules.

2 One other point is, I mean, I heard you say that
3 you accept that these late submissions by a couple of parties
4 that were filed last night was untimely submissions. But I'd
5 point out that the requests for party status, which were also
6 untimely, were not accepted.

7 As a result of the using the base height measuring
8 point on 42nd Street, the result of that is that the building
9 is one floor higher than would have otherwise been in an MU-4
10 zone.

11 So, if you have any questions, I'm happy to
12 answer.

13 CHAIR HILL: Okay. Thanks, Mr. Repp.

14 Yeah, Mr. Repp, we accepted the untimely filings.
15 But we also did discuss as to whether or not we thought they
16 were going to meet the criteria for the party status. So,
17 it's not that, it's not we were trying to pick and choose.
18 We actually had a discussion about whether or not we thought
19 that they were, you know, we were going to -- whether they
20 were too untimely, I suppose, is what it really is saying.

21 So, but nonetheless.

22 Does the Board have any questions for Mr. Repp?

23 COMMISSIONER MAY: Sure.

24 CHAIR HILL: Commissioner May.

25 COMMISSIONER MAY: Yeah. Mr. Repp, so, I'm a

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1 little puzzled as to why you really think this requires
2 Zoning Commission action. Because the Zoning Commission in
3 its regulations, and as Mr. Glasgow pointed out, this dates
4 back to 1958. I'm going to trust him on that. But I know
5 it's very long, it's been there a very long time. That there
6 was 35 feet basically of flexibility between two zones in a
7 circumstance like this. And that it is okay as a special
8 exception, which means that it is a permissible thing under
9 the zoning regulations if certain conditions are met.

10 So, it seems to me that you could argue that the
11 conditions may not have been met, but it seems like you're
12 arguing the principle of this, that that, the 35 foot rule
13 shouldn't apply, and that any time this comes up there should
14 be a rezoning.

15 Am I missing?

16 MR. REPP: Yeah, that's a fair question. Thank you
17 for framing it that way.

18 I mean, the special exception requirements require
19 that the, that the special exception be in harmony with the
20 purpose and intent of the zoning regulations. And you can
21 argue two things.

22 First of all, the adverse -- and one of the
23 criteria is that they can't adversely affect the neighbors.
24 And we heard testimony from the neighbors here as to how they
25 would be adversely affected.

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1 Second of all, you know, we argue, we argue that
2 the request for special exception relief here is inconsistent
3 and at variance with the requirements to provide more
4 affordable housing because it is, you know, providing that
5 the circumvents the inclusionary plus rules and provides for
6 less affordable housing than would otherwise dictate.

7 So, it's not in harmony with the public policies
8 of the District of Columbia to provide for more affordable
9 housing.

10 So, thank you for --

11 COMMISSIONER MAY: Yeah. I mean, I'd say it's a
12 hard argument to buy. And then there are other things that
13 the applicant is not doing either. I mean, certainly the
14 applicant could be seeking -- I mean, we heard from the ANC
15 that they would have liked to see the applicant actually go
16 through a PUD process which, in theory, might have resulted
17 in greater inclusionary zoning as well.

18 But there's no, there's no tool that we have to
19 force people to go that route to absolutely maximize the
20 potential inclusionary zoning.

21 I think that I will let the applicant in its
22 rebuttal talk about the, talk about the building height
23 measuring point issue.

24 But I do want to point something out, which is on
25 the one hand you're arguing that this should be subject to

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1 IZ plus, which would increase the density, which would
2 increase the inclusionary zoning.

3 And on the other hand you are arguing that a
4 commonly-practiced method of setting building height
5 management -- I mean building height measurement is
6 artificially raising the height of the building, which is
7 increasing its density, which is yielding more inclusionary
8 units.

9 So, on the one hand you're saying they should do
10 more. On the other hand, they're doing too much.

11 So, I would just point out that contradiction.
12 I'm not really looking for a response. I would ask that the
13 applicant address the issue.

14 MR. REPP: I don't think they're incompatible
15 approaches. And you could, you could have both, so, both
16 more affordable housing and compliance with what I believe
17 is the correct building height measuring point.

18 COMMISSIONER MAY: Well, if you have a real issue
19 with the way building height measuring points are made, then
20 I think maybe you need to take that up with the Zoning
21 Commission. And, certainly, anyone can petition the Zoning
22 Commission for a change to the regulations if you think that
23 it is being, the current regulations are being misapplied in
24 some way.

25 But I think there's ample, ample evidence that

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1 this is something that has been consistently applied by the
2 zoning administrator.

3 So, anyway, I'll leave it at that and turn it back
4 to the chairman. Thank you.

5 CHAIR HILL: Okay, thank you.

6 All right. And thank you, Mr. Repp, and, you
7 know, and all the work you guys do also at the Committee of
8 100.

9 Okay. Let's see. Mr. Young, if you could please
10 excuse the witnesses.

11 (Pause.)

12 CHAIR HILL: Mr. Glasgow, can you hear me?

13 MR. GLASGOW: Yes, sir. I can hear you.

14 CHAIR HILL: Okay. Do you have any, I don't want
15 to use the word rebuttal because it's not like -- we don't
16 really have a party in opposition in this case -- but would
17 you like to please make some comments on what you have heard?

18 MR. GLASGOW: Yes. We're going to make a number
19 of comments on what we have heard to address questions raised
20 by the Board and some of the people who've had some
21 testimony.

22 I' going to turn that over to Mr. Dettman to do
23 part of that. And then we will touch base as to how much you
24 want to hear about stormwater management and how that is
25 being handled. Because the D.C. regulations were referenced,

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1 and we'll, we can play that by ear after Mr. Dettman
2 addresses a number of those issues that have been raised by
3 the Board.

4 CHAIR HILL: Okay. Let's see how it goes.

5 Go ahead, Mr. Dettman.

6 MR. DETTMAN: Thank you, Mr. Chairman.

7 I'll touch upon just probably five, five points
8 that were raised across the testimony provided today.

9 I think, Mr. Chairman, you clarified that there
10 was reference to this as a variance. And you correctly
11 clarified in the record this is a special exception. And I
12 think that terminology is really important in this case. And
13 Mr. May mentioned this.

14 A special exception is presumed appropriate. And
15 in adopting the clip zone regulations back in 1958, and they
16 have been subsequently modified since then. The Zoning
17 Commission found that this type of relief is appropriate as
18 a special exception. But not only that is that they felt
19 that it was appropriate that jurisdiction over granting that
20 kind of relief, it appropriately rests with the Board.

21 So, they determine the jurisdictional question
22 that Mr. Repp referred to and that it's the Board of Zoning
23 Adjustment that's the right venue for this type of special
24 exception relief.

25 There was discussion by Mr. Offutt about the

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1 purpose and intent of the regulation. And, specifically, Mr.
2 Offutt referenced two of the homes, or three of the homes on
3 Harrison Street. He showed that diagram that he had created
4 that's in the record.

5 I think it's worth noting that all three of those
6 homes there received 200 foot letters. They're within 200
7 feet. They received the letters. Those letters were not
8 returned to the Office of Zoning. And none of those
9 homeowners are here participating in opposition to the case
10 today.

11 With respect to noise, Mr. Donohue mentioned this
12 at the outset of our presentation, currently the sort of aged
13 office building that's there has a central system, mechanical
14 system on the roof that is decades old. But more importantly
15 than that, there is a massive generator that's located in the
16 public right-of-way along Harrison Street that is sized in
17 order to support a newsroom. It's the old Fox Five building.

18 As a result of this project, the generator goes
19 away. The generator will be brought onsite. Because we've
20 made the commitment to lead bold, the mechanical system that
21 will be used for this project, which will be on the roof, is
22 a VR op system, so it's much more quiet than its traditional
23 central or split, leaving splits on the roof.

24 But, also, it's really important to point out that
25 if you look at the plans, there is no mechanical equipment

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1 located on the roof within the extended MU-4 area.
2 Everything is within the zone that's already zoned MU-4.

3 This next set of comments goes to Mr. Blake's
4 questions about, you know, the area of the MU-4, extended
5 area, and how much of this. These are some really
6 interesting numbers. And I'm going to keep them really
7 simple.

8 The current MU zoned portion of the site, at 3.0
9 FAR, which is the max permitted under IZ, yields about
10 135,600 square feet of density. With the 35-foot zone
11 boundary we pick up, that yields about 170,400 square feet
12 of density.

13 So, through the 35-foot zone boundary change we're
14 picking up about 34,746 square feet of density. We're not
15 using all that density. We're actually only using 30,146
16 square feet of that additional density.

17 Now, where is that density located on the site?
18 Of that 30,146 square feet of additional density that we're
19 using or that we'd be able to use through this special
20 exception, only 12,500 of it is located within the 35-foot
21 boundary extension area. The other 17,600 is located, it's
22 oriented towards Wisconsin Avenue in the portion of the site
23 that's already zoned MU-4.

24 If you calculate the FAR of that little corner of
25 the building, that 12,500 square feet of entry that's located

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1 in the 35-foot area, if you calculate the density just within
2 the zone boundary extension area it's a FAR of 1.08.

3 Now, the R-2 zone is not regulated by dens -- by
4 FAR. But you can by using the lot occupancy, the minimum lot
5 area, and the number of stories, you can figure out how much
6 density is permitted on a lot in the R-2. If you do that
7 exercise, the density in R-2 zone per lot is 1.2. We're
8 actually providing less density within the R-2 portion of the
9 site than would otherwise be required if you developed it as
10 a matter-of-right under the R-2 zone.

11 There was discussion about affordable housing, and
12 income level, and whatnot. And this court talked about that
13 this project is going to advance the District housing equity
14 goals. We couldn't agree more.

15 But with respect to the MFI level, this is going
16 to be a rental building. And so, a rental building under the
17 IZ regulations is required to devote the IZ households, the
18 IZ household, and this is what the regulation says, earning
19 no more than 60 percent MFI.

20 And so, to Mr. Repp's comment about we're
21 providing the highest income levels, that's just not the
22 case. The regulations say up to no more than 60 percent MFI.

23 Now, we're going to have an IZ setaside that's
24 generated through the blown units that are in the penthouse.
25 That setaside generated by the penthouse area devoted units

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1 is actually at 50 percent MFI. 60 percent MFI according to
2 the HUD regulations, which is what our IZ regulations are
3 based upon, 60 percent MFI is considered low income.

4 Fifty percent MFI is considered very low income.

5 So, I think that, I mean, again, we just couldn't
6 agree more with Ms. Cort's testimony that this is going to
7 advance the housing equity goals of the District and, in
8 particular, in this tiny area of upper Northwest.

9 The last comment I wanted to make had to do with
10 the Committee of 100's comments.

11 At the outset of his testimony, Mr. Repp mentioned
12 that the committee did not think that the application met the
13 special exception criteria. But then went on to discuss two
14 areas: IZ plus and building height measuring point. Neither
15 of those two issues have anything to do with the special
16 exception criteria.

17 So, I think that's all the comments I have. I
18 mean, I know that we have Mr. Oliver here that can speak to
19 the flooding issues to the extent that the Board is inclined
20 to hear that testimony.

21 CHAIR HILL: Does the board have questions
22 concerning the water issues?

23 Commissioner May?

24 COMMISSIONER MAY: I just think it would be
25 worthwhile for somebody on the applicant team to reiterate

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1 the kind of standards that you have to meet for your
2 construction like this, just to reassure people. Because I'm
3 sure this situation is going to be better for the future.

4 MR. GLASGOW: Yes, sir. We call Mr. Oliver to do
5 that, who was accepted as an expert witness previously by
6 both the Board and Commissioner -- Commission in civil
7 engineering. He is with VIKA.

8 CHAIR HILL: Mr. Oliver, could you please introduce
9 yourself for the record.

10 MR. OLIVER: Sure. My name is Kyle Oliver. I am
11 a professional engineer with the firm VIKA Capitol, LLC,
12 located here in the District. And I've worked in the
13 District for over 30 years now and have done numerous
14 stormwater management projects on numerous buildings in the
15 District.

16 So, I'd like to just state that the existing
17 condition of the site is probably about 95 percent
18 impervious. There's building and parking on there. There's
19 a little strip of grass along Harrison, and that's about it.
20 So, the majority of the site is currently impervious.

21 And there doesn't appear to be any stormwater
22 management facilities on the existing site.

23 The site is within the Everett storm drain area
24 of the District, commonly known as the MS-4. And then in
25 this MS-4 area, DOEE required that the proposed runoff from

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1 a 2-year storm event be reduced to a good meadow condition.
2 So, Commissioner May, you were really close on your
3 assessment, on your statement. That means that the runoff
4 from the site that's created from a grass area, basically.

5 So, DOEE does this by looking at a runoff curve
6 number. The 2-year storm event for the current impervious
7 condition has a runoff curve number of 94.

8 The curve number for a good meadow condition for
9 the 2-year storm event is 70.

10 So, the final stormwater management design for the
11 proposed building will be required to reduce the 2-year storm
12 event to less than or equal to the runoff amount for a good
13 meadow condition.

14 Hopefully, that answers your questions, but I'm
15 here if you have others.

16 CHAIR HILL: Does anyone have, does the Board have
17 any questions for the witness?

18 COMMISSIONER MAY: No. But thank you for giving
19 me the term "good meadow condition." I know there had to be
20 some sort of term for it. And I've been hearing this for
21 decades now. But it's good to have the right term.

22 CHAIR HILL: "Good meadow condition." That's going
23 to go in the vocabulary, I guess.

24 Social walk, there was something, what's the
25 social thing, like social path? Is it social path?

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1 Social path is when, like, you keep walking down
2 the trail and then you create a path.

3 COMMISSIONER MAY: Yeah, there are lots of terms
4 for that. Well, a social path, that's the, yeah, it's there
5 are social trails, goat paths, those are all terms for the
6 same thing.

7 CHAIR HILL: Okay, great. There you go.

8 All right. Anyone else for the witnesses?

9 No. Mr. Dettman or Mr. Glasgow, have you got
10 anything you want to add at the end?

11 MR. GLASGOW: Mr. Chairman, I believe that we have
12 met the burden of proof in the case.

13 I've been told by -- did you want closing or what
14 did you want to do?

15 CHAIR HILL: Yeah. No, no, no. I forgot I have
16 something else.

17 So, you guys, the TBM plan that DDOT had
18 requested, you all are going to do that and are fine with
19 that?

20 MR. GLASGOW: Yes, sir.

21 CHAIR HILL: Okay. And then I know, Commissioner,
22 you all have a whole bunch of -- not a whole bunch. Exhibit
23 32 there are some conditions that you put forward. And I'm
24 asking Mr. Dettman -- I mean, I'm sorry, Mr. Glasgow on the
25 record, you are in agreement with all of those conditions

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1 that are listed in Exhibit 32 from the ANC?

2 MR. GLASGOW: Yes, sir.

3 CHAIR HILL: Okay. So, Commissioner Quinn -- and
4 by the way, I think you guys are really doing, you know, I
5 mean congratulations on all the work you're doing there. And
6 it sounds as though you're really taking a long process in
7 all this and even, you know, working with the fluve and the
8 new comp plan that, you know, you're actually trying to get
9 density and push people to do a PUD. It's not what I
10 normally hear here.

11 So, congratulations on that. And I will let you
12 respond. But congratulations on that.

13 In terms of the conditions, a lot of those are
14 things that actually don't come under the purview of the
15 Board. So, you all have kind of done that with the applicant
16 on your own. However, we can in our order refer to these
17 conditions when we write up the order so that there is a
18 record of it and the applicant has on the record agreed to
19 that.

20 So, you can comment on anything I just said,
21 Commissioner Quinn.

22 MR. QUINN: No, I appreciate that. We, you know,
23 sometimes not all the conditions can be incorporated. So,
24 if you guys can reference it, that's the best way for you to
25 incorporate into your order, we appreciate that.

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1 And thank you for the kind words. We, our
2 neighborhood has a long history of fighting housing, hasn't
3 borne its share of the housing that the District needs. So,
4 we're hoping to get more market rating in affordable housing,
5 hopefully some deeply affordable units up here as well.

6 So, thank you for the kind words.

7 CHAIR HILL: Sure. And I love Rodman's. Rodman's
8 is just great, just tons of fun.

9 MR. QUINN: It is.

10 CHAIR HILL: All right. Okay, let's see.

11 Okay, so, Mr. -- Oh, sorry. Mr. Blake?

12 MEMBER BLAKE: Yeah. I would also request some
13 defined design flexibility. Is that still required?

14 CHAIR HILL: I didn't see any design. Is design
15 flexibility, Mr. Glasgow?

16 MR. GLASGOW: Right. We're not asking for any
17 flexibility with respect to the design of the bay anymore.

18 Yeah, we, we had something that was possibly going
19 to require some relief from DCRA on that, and we withdrew it.
20 Yeah, Exhibit 28.

21 CHAIR HILL: Okay, you withdrew it. Okay. All
22 right. Thank you, Mr. Blake.

23 All right. Mr. Glasgow, do you have anything you
24 want to add at the end?

25 MR. GLASGOW: Just that we believe that we have

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1 moved forward and met the burden of proof in this case. We
2 would like to have action as expeditiously as possible by the
3 Board. This case has been out in the community and this
4 project out in the community for literally years now. And
5 we're now finally at a point where we believe we can move
6 this forward and get rid of that existing building now on the
7 site, move forward with a positive development for the
8 District of Columbia with its 210 new units and the 11
9 percent affordable housing.

10 CHAIR HILL: Okay. Okay. All right. Okay, I'm
11 going to go ahead and close the record and the hearing.

12 Mr. Young, if you could please excuse everyone.

13 (Pause.)

14 CHAIR HILL: Okay. Even though it doesn't seem to
15 make any sense, it seems a little bit more tiring when
16 there's only three of us. You know, there's like -- it
17 doesn't seem to make any more difference to me, but to some
18 reason it's a little bit more tiring when there's three of
19 us.

20 Maybe it's just, like, you know, John lightens up
21 the mood a little bit, or Mr. Smith, or I don't know what it
22 is, you know.

23 COMMISSIONER MAY: I think it's just because I'm
24 here. When I'm here you're more tired.

25 CHAIR HILL: Well, Commissioner, we won't really

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1 comment on that.

2 So, all right. I am ready to deliberate. I think
3 that, you know, we heard from a lot of different people on
4 this issue. I think that, I do think that they're in the
5 right place. Like, they're here for a special exception.
6 They're here so they can get 35 feet to a, you know, the
7 portion of the lot that's located in the lesser restrictive
8 zone.

9 And we, under X901.2 are able to look at this.
10 And I believe they've met the criteria for us to grant the
11 relief requested.

12 I think that, you know, I know we've had a lot of
13 cases before us where, even recently, you know, the applicant
14 in the regulations, which is now it is what the regulations
15 are, they can choose the front of the building if it's on a
16 corner. And they can choose any street for the -- they can
17 choose any point for the BHMP.

18 And so they are choosing that portion, even if it
19 is a little bit of a flag lot there, for the BHMP height.
20 And the zoning administrator has pointed out there is a
21 portion of the building that is facing that side of the
22 street that they're using as the BHMP. They're within their
23 right to do so.

24 I believe that the analysis that the Office of
25 Planning has put forward is also -- I'm giving great weight

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1 to and credit towards, as well as the analysis that the ANC
2 has put forward. I mean, they, as I mentioned before, have
3 worked with the applicant for some time now. And it seems
4 as though they've been working in the community on this
5 project for a very long time and have been trying to get
6 something done. And they have a bunch of conditions here
7 that the applicant has agreed to but I don't think are
8 necessarily within the Board's purview

9 So, rather than pick out what may or may not be
10 within the Board's purview, I would just go ahead and ask
11 legal when they're writing up an order, if this does pass --
12 I'm going to vote in favor -- if this does pass, that they
13 reference the conditions that are in Exhibit 32 that were put
14 forward by the ANC.

15 I do think that the parties in opposition, it is
16 disappointing that, you know, again, I think that they're
17 going to have a quieter building because it's now going to
18 be a brand new building. Right? And they're going to have,
19 they're going to have, there's going to be better water
20 runoff conditions with the new building than there is with
21 the old building.

22 You know, the additional height that they're
23 getting is not something that I think is going to create more
24 shadowing than -- or necessarily any undue shadowing that
25 would have been at a lower height building.

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1 So, I really didn't have any -- I didn't think --
2 well, first of all, I think that they, again, the applicant
3 has met the criteria for us to grant the relief requested.
4 And I didn't think that the opposition's arguments carried
5 weight.

6 So, for those reasons, and that also DDOT has
7 provided their analysis that we were able to take a look at,
8 and that they, the applicant has agreed to the PDM plan, I
9 would be in favor of the application.

10 I'm going to ask Commissioner May for his opinion.

11 COMMISSIONER MAY: Mr. Chairman, I agree with you
12 100 percent. I don't think I really have anything to add.
13 I think you summed up the issues well. I think that this is
14 -- I'm prepared to vote in favor of it.

15 I appreciate the fact that some nearby neighbors
16 have concerns about it. But I think that in the bigger
17 picture, this is a really good project. And the impacts on
18 the community are going to be a net positive. And I think
19 that even the concerns, the impacts these closer neighbors
20 are concerned about will not be as substantial as they feel
21 they would be.

22 So, I'm ready to vote in favor and move forward.

23 CHAIR HILL: Yeah. I mean, I hadn't even thought
24 about it. I mean, it will be, there is always inconvenience
25 of construction. But property values are going to go up when

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1 this is already completed and done, most likely.

2 COMMISSIONER MAY: Yes.

3 CHAIR HILL: And some retail there that is going
4 to be of benefit. And so, but, in any case --

5 COMMISSIONER MAY: Well, everybody across the city
6 is dealing with construction impacts, you know, the house
7 next door, the, you know, the building down the street. I
8 mean, there's just so much construction that's been happening
9 in this city over the last few years, I don't know anybody
10 who's not impacted by construction.

11 CHAIR HILL: But then it's increasing the value.

12 COMMISSIONER MAY: Yes.

13 CHAIR HILL: And also the walkability. You know,
14 just the different things that one can do with the increases
15 of retail.

16 COMMISSIONER MAY: Well, it's also increased our
17 property taxes. But, you know, we don't need to go into
18 that.

19 CHAIR HILL: All right. Mr. Blake?

20 MEMBER BLAKE: Sure. I have no doubt that the
21 concerns expressed by the nearby residents are valid. I
22 think there are also a number of tangible benefits that arise
23 from this project, which I think were very well articulated
24 by Commissioner Quinn.

25 Could more be done possibly? It appears that a

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1 lot of work has gone into this, and it is a good outcome.
2 This is a very effective use of the 35-foot rule. And the
3 building height measuring point, I'd add, increases the
4 efficiency tremendously.

5 The building occupies only 2,500 square feet of
6 the 85 foot zone, but they gain more than 30,000 square foot
7 of space. And that adds at least maybe three, maybe four IZ
8 units.

9 I believe that the case record is complete. The
10 demonstration of the applicant satisfied the burden of proof
11 for the requested special exemption to shift the boundary
12 zone.

13 I believe that through the documentation in the
14 record and testimony today, the applicant meets the specific
15 standards of A207.2, and the extension should not have an
16 adverse effect on the present character and future
17 development of the neighborhood.

18 The development fits the development and future
19 character of the MU-4 zone. And the separation between the
20 building and nearby residential properties in the R-2 zone
21 should protect the current character of the R-2 zone. And
22 the fact that 27,500 square foot of land will continued to
23 be governed by the development standards of R-2, will also
24 preserve the future character of the R-2 zone.

25 So, that said, I believe it meets the criteria,

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1 and I will, too, be prepared to support it.

2 CHAIR HILL: Okay, great. Thank you, Mr. Blake.
3 Thank you, Commissioner May.

4 I'm going to make a motion to approve Application
5 No. 20638 as captioned and read by the secretary.

6 And ask for a second, Mr. Blake.

7 MEMBER BLAKE: Second.

8 CHAIR HILL: The motion is made and seconded.

9 Mr. Moy, could you take a roll call?

10 MR. MOY: Thank you, sir.

11 When I call your names, could you please respond
12 with a yes, no, or abstain to the motion made by Chairman
13 Hill to approve the application for the relief requested.

14 The motion was seconded by Mr. Blake.

15 Zoning Commissioner Peter May?

16 COMMISSIONER MAY: Yes.

17 MR. MOY: Mr. Blake?

18 MEMBER BLAKE: Yes.

19 MR. MOY: Chairman Hill.

20 CHAIR HILL: Yes.

21 MR. MOY: We have two members not present, not
22 participating. Staff would record the vote as 3 to 0 to 2.
23 And this is on the motion made by Chairman Hill to approve,
24 seconded by Mr. Blake.

25 Also in support of the motion to approve, Zoning

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1 Commissioner Peter May.

2 The motion carries on a vote of 3 to 0 to 2.

3 CHAIR HILL: Thank you, Mr. Moy.

4 Yeah, there was a period there when there was only
5 three of us, or there was only two of us. There was myself
6 and Carlton Hart for like, I don't know, like, for a while.
7 And so three people, yes.

8 And maybe, Commissioner May, well, you bring a
9 certain gravitas to the deck. And so, sometimes maybe that's
10 it. I don't know. But I definitely appreciate all the
11 efforts today from you.

12 COMMISSIONER MAY: Well, thank you for that. I
13 know I -- gravitas or just, you know, extra weight, dead
14 weight, I don't know. Something.

15 CHAIR HILL: All right. Well, unless anybody has
16 anything to add, I guess we're done.

17 Okay? All right. We are adjourned. See you guys
18 next time. Bye-bye.

19 (Whereupon, the above-entitled matter went off the
20 record at 5:35 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 03-02-22

Place: teleconference

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