

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

MARCH 16, 2022

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Video Teleconference, pursuant to notice at 9:58 a.m. EST, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

- ROBERT MILLER, Vice Chairperson Appointee
- PETER G. MAY, National Park Service Designee
- JOSEPH S. IMAMURA, Ph.D., Architect of the Capitol Designee Appointee

OFFICE OF ZONING STAFF PRESENT:

- CLIFFORD MOY, Secretary
- KEARA MEHLERT, Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

- CRYSTAL MYERS
- STEPHEN COCHRAN
- MATT JESICK

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

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

A-G-E-N-D-A

PAGE

Application No. 20492 of 5116 PSRV, LLC 4

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Application No. 20663 of Nancy and Vimesh Patel 30
Application No. 20658 of 1650 Harvard St NW 67
Washington DC, LLC

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

(9:58 a.m.)

1
2
3 MR. MOY: Okay. So before the Board, this is a
4 -- we're scheduled as a limited scope hearing for Application
5 Number 20492 of 5116 PSRV, LLC. This application was caption
6 advertised for a special exception under the new residential
7 development permissions of Subtitle U, Section 421.1,
8 pursuant to Subtitle X, Section 901.2 and area variance from
9 their side yard requirements, Subtitle F, Section 306.1,
10 pursuant to Subtitle X, Chapter 10.

11 This would raze, R-A-Z-E, the existing building
12 and to construct a new detached three-story, 16-unit
13 residential building with cellar and penthouse in the RA-1
14 Zone, property located at 2405 Alabama Avenue, SE, Parcel
15 02210066.

16 As the Board will recall, this was last heard by
17 the Board on March the 2nd, 2022, of course. Participating
18 on this limited scope hearing is Zoning Commissioner Peter
19 May, Chairman Hill, Mr. Blake, and I believe, Mr. Chairman,
20 Vice Chair John and Mr. Smith who have read into the record.

21 CHAIRPERSON HILL: Okay, great. Thank you. Vice
22 Chair John and Mr. Smith, you guys have both read into the
23 record, correct?

24 VICE CHAIR JOHN: Yes, Mr. Chairman.

25 MEMBER SMITH: Correct.

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1 VICE CHAIR JOHN: And just a quick question before
2 we proceed. Was there a decision in 20526?

3 CHAIRPERSON HILL: No, that's next, Ms. John.

4 VICE CHAIR JOHN: Okay, thank you.

5 CHAIRPERSON HILL: Thank you. All right, let's
6 see, and I apologize if that got out of whack. I thought
7 that, I don't know what I thought. I thought maybe it was
8 -- anyway, so let's see. Ms. Wilson, could you introduce
9 yourself for the record please?

10 MS. WILSON: Hi, Alex Wilson from Sullivan and
11 Barros on behalf of the Applicant in this case.

12 CHAIRPERSON HILL: Okay, great. Thank you. All
13 right, so Ms. Wilson, can you tell us what happened since the
14 last time you were here?

15 MS. WILSON: Yes. So at the end of the hearing
16 the Board requested we submit documents showing the location
17 of the easement since that was part of our variance argument.
18 We are also asked to confirm that the proposed driveway could
19 be located where it was shown. Because originally there was
20 a tree shown in the middle of the driveway.

21 We submitted the easement agreement showing the
22 location of the easement, and it's also on the updated plan,
23 site plan and plat. We submitted those as well. And then
24 we also submitted the tree survey and photos of the trees.
25 And there's actually not one large tree in that driveway.

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1 It's three small trees which can be removed.

2 So we've removed the trees from the plan as well,
3 so the parking area can be developed as proposed on the
4 plans. And that was, again, part of our variance argument,
5 because the building cannot be located any further back due
6 to the restriction with the easement.

7 CHAIRPERSON HILL: Okay. And I see that the
8 easement, and the revised architectural plans, the plat, the
9 tree survey -- okay, all right, let's see, I don't see, okay,
10 all right. I know there was some question about some of this
11 in terms of the, particularly with the area variance. I want
12 to give my Board members an opportunity, particularly those
13 who have read in, if they have any questions.

14 But first thing, I'll start with Commissioner May,
15 because I know he had some questions concerning the area
16 variance, I believe. And I don't know, Commissioner May, if
17 the additional information has given you more questions or
18 what have you. May I ask if you have anything to add?

19 COMMISSIONER MAY: I think the only question I
20 have is based on the tree survey. It doesn't look like there
21 are any trees that must be protected or that are driving the
22 need for relief. Is that correct?

23 MS. WILSON: I'm not sure if the architects are
24 on here, but yes, correct. There are no trees that need to
25 be protected --

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1 (Simultaneous speaking.)

2 COMMISSIONER MAY: Okay. No. I think you know,
3 they submitted the information that we needed to be able to
4 evaluate this.

5 CHAIRPERSON HILL: Okay. Do my fellow Board
6 members, other than, well, I'll start with you, Mr. Blake,
7 because you're with us. Do you have any other questions?

8 MEMBER BLAKE: I do not.

9 CHAIRPERSON HILL: Okay. Mr. Smith, do you have
10 any questions?

11 MEMBER SMITH: I may have a question. I did read
12 into it but, you know, the proposed area that would be within
13 the setback, it looks like it's on different levels. It's
14 a portion of the second bedroom on certain levels and then
15 a portion of the kitchen on other levels.

16 Was there, you know, an economic reason or
17 justification for the reason why you couldn't cut it back or
18 the Applicant couldn't cut it back eight feet to meet the
19 setback requirement? Was there an economic reason?

20 MS. WILSON: We did not present an economic
21 reason. It has to do with the building layout, and it's just
22 a more efficient building layout to have the additional 85
23 square feet there.

24 MEMBER SMITH: Okay. All right, thank you.

25 CHAIRPERSON HILL: Okay. OP's not here, correct,

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1 Mr. Moy? Oh, I see Ms. Myers. Ms. Myers, could you
2 introduce yourself for the record?

3 MS. MYERS: Hi, Crystal Myers with the Office of
4 Planning. I believe we gave testimony at the last time, so
5 you know that we are recommending support.

6 CHAIRPERSON HILL: So I just want to see if my
7 fellow Board members have any questions with the Office of
8 Planning.

9 MEMBER SMITH: So, I do. So can you run through
10 your justification for supporting it again? Was there some
11 conversations with the Applicant about how they could
12 potentially reduce it before OP got to a decision to support,
13 you ran through different scenarios?

14 MS. MYERS: We did. I mean, we were ultimately
15 satisfied with the argument of the efficiency of allowing the
16 additional, I believe, 85 square feet. And we took into
17 account the amount of space or square footage that would be
18 needed. So we justified it or we understood the
19 justification as the existing property shape and narrowness
20 being exceptional for this block and square and the
21 narrowness severely limiting the building being located, how
22 it can be feasibly located on the block.

23 And as you guys know, the property's width is 55
24 feet, and it goes narrower as you get towards the middle of
25 the property and then goes down to zero in the rear. And

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1 approximately half of the property does not have sufficient
2 width to reasonably accommodate an apartment building which
3 is a use that is allowed in this zone. So we took that as
4 being an extraordinary situation.

5 And again, we did look into this as being the
6 amount of square footage that they're requesting being
7 relatively a small amount. It being a reasonable argument
8 for allowing for the efficiency of the building and the
9 layout of the units, this argument could be a sufficient
10 argument.

11 And when it comes to the public good aspect, oh,
12 I'm sorry, the practical difficulties, if the proposed
13 building is designed to provide -- be required a side yard
14 on side, and the required side yard for much of the other
15 side, their requested side yard relief is for a small portion
16 of the building near the widest portion of the property. The
17 building layout is designed to take advantage of the widest
18 portion of the property. So this portion of the building is
19 necessary for adequate living space, increased lighting, and
20 the air to the unit's functional layout, and efficient
21 building design.

22 So we were satisfied that, you know, it would be
23 a, like I said, a more efficient, better layout, allow for
24 lighting to units. And we thought that was a satisfactory
25 argument in light of the fact that, you know, the amount of

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1 square footage they're asking for and the shape and size of
2 this property.

3 And as for the public good part of this, granting
4 a variance for side yard relief did not result in a detriment
5 to the public good. The relief would not result in the
6 building's bulk or form being inconsistent with an apartment
7 building area, and the separation between the buildings would
8 be maintained.

9 The side yard relief requested is from the
10 eastern property line. And they have that easement area
11 which effectively serves as a side yard in a sense. So we
12 were satisfied that the adjacent property would have
13 sufficient space between their buildings and this building
14 which would serve as sort of a side yard experience.

15 And as for the no substantial impairment to the
16 intent of the regulations, most of the building would provide
17 the required side yard. On the other side, they are
18 providing their eight-foot requirement, so it's the eastern
19 side that's the issue.

20 A small portion of the building requiring the side
21 yard relief would be separated from the neighboring property
22 by 16 feet because of the easement area. And we thought that
23 effectively, you know, the zoning regulations, the intent of
24 the regulations in that respect to the side yard is still
25 being maintained. So that was generally our viewpoint on

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1 the variance relief. But again, you know, I'm here if you
2 have questions further on it.

3 CHAIRPERSON HILL: Okay. Does anybody have any
4 questions of the Office of Planning?

5 All right. Mr. Mehlert, is there anybody here
6 wishing to testify? I don't think so.

7 MS. MEHLERT: No, there's not.

8 CHAIRPERSON HILL: Okay. All right. Ms. Wilson,
9 do you have anything to add at the end?

10 MS. WILSON: No, thank you.

11 CHAIRPERSON HILL: Okay. I'm going to go ahead
12 and close the hearing on the record.

13 Ms. Mehlert, if you could excuse everyone.

14 (Pause.)

15 CHAIRPERSON HILL: Okay. It really was
16 thankfully, not thankfully, it was my colleagues that had
17 requested the additional information. And I thought the
18 additional information was helpful in determining how they're
19 meeting the area variance requirements.

20 I think that that easement, it being, as the
21 Office of Planning had just mentioned, actually somewhat of
22 a side yard, also makes me more comfortable with the argument
23 that the Applicant has given. So I'm glad we got to see the
24 easement and the revised architectural plans as well as the
25 tree survey.

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1 I would agree with the Applicant's arguments as
2 to how they're meeting the relief, I'm sorry, the standards
3 with which we're supposed to evaluate this relief as well as
4 the argument that the Office of Planning has put together in
5 support. And I would be agreeing with both the Applicant and
6 the Office of Planning in relation to this application and
7 voting to approve.

8 Commissioner May?

9 COMMISSIONER MAY: Thank you, Mr. Chairman. So
10 I agree. The information that was provided is helpful to
11 understand the situation. And I do agree that the Applicant
12 has met some of the prongs of the variance test.

13 However, I don't believe that applying the zoning
14 regulations would create a practical difficulty. I believe
15 the building could have been designed in such a way that they
16 would get roughly the same square footage and modify the rear
17 parking lot so that perhaps it would only handle four spaces
18 or reduced by one from whatever it is now -- I forget the
19 number, it's four or five -- that it was still possible to
20 do something that was zoning compliant in terms of the
21 parking spaces and have roughly the same building.

22 The fact that the easement ends at a certain point
23 I think means that you just have to shave off part of one of
24 the parking spaces in order to get access to the rest of the
25 spaces. I also believe that it's possible to design the

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1 building in such a form that it either reduced the square
2 footage and still had reasonably sized units or reconfigured
3 them in a similarly efficient manner.

4 So I just am not convinced that there's no other
5 way to do this than to grant variance relief. So I would
6 support the relief for having an apartment building in the
7 RA-1 Zone but not the variance relief.

8 CHAIRPERSON HILL: Okay. Well the design would
9 change then if you were to deny the area variance. So --

10 COMMISSIONER MAY: Right.

11 CHAIRPERSON HILL: -- they couldn't even build
12 that thing anyway with the special exception of the new
13 residential zone anyway.

14 COMMISSIONER MAY: Right. If the majority of the
15 Board agreed with me, then I think they would have to submit
16 a revised design to get the relief for the RA-1 decision.

17 CHAIRPERSON HILL: Got you. I appreciate your
18 thoughts, Commissioner May, and I guess we'll see where we
19 are. Once again, you know, we're voting in favor currently.

20 COMMISSIONER MAY: I could also add, I mean, I
21 appreciate the fact that the Applicant was trying to navigate
22 various competing interests. And I think they told us that
23 there was a strong interest in the part of the neighbors in
24 ANC to maximize the parking on the site. And so I understand
25 how they steered into this place. However, you know, the

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1 difference of one parking space, I think, was not compelling
2 enough from my perspective. But I appreciate their efforts
3 to try to navigate all of this. I just don't think that it's
4 enough to grant the variance.

5 CHAIRPERSON HILL: Right. They were trying to
6 work with the ANC and the community in order to --

7 COMMISSIONER MAY: Exactly.

8 CHAIRPERSON HILL: -- to have something work for
9 them.

10 COMMISSIONER MAY: Right.

11 CHAIRPERSON HILL: So all right, let's see, I'm
12 going to go with Mr. Blake.

13 MEMBER BLAKE: Sure. I found the Applicant's
14 supplemental filings, which included the easement and the
15 revised site plan and tree survey, very helpful and
16 persuasive. I believe the Applicant has met the burden of
17 proof with regard to area variance.

18 The exceptional condition being the shape of the
19 lot along with the dimensional conditions of the easement
20 with the property to the east creates a practical difficulty
21 in that it creates, that its strict adherence to the zoning
22 regulations creates what would be an awkward, less efficient,
23 and less functional floor plan leading to loss of bedrooms
24 and living room space and decreased light and air to the
25 units.

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1 When I think about that, we could have potentially
2 come up with another configuration. But the difficult issue
3 here is of practical difficulty. And I did think that this
4 rose to the standard of a practical difficulty.

5 I found the dimension restrictions, conditions of
6 the existing easement, a critical factor in the assessment
7 as it makes the reconfiguration very challenging when you
8 factor in the parking and loading.

9 As I believe the Applicant has demonstrated the
10 exceptional condition of the property leading to a practical
11 difficulty, I believe the granting of relief isn't harming
12 with the regulations. However, I also find that the 16-foot
13 easement is a critical factor in assessing the impact on the
14 public good, and the harmony -- the zoning relief and the
15 intent and purpose of harmony.

16 I'll say why. Because the 16-foot easement, as
17 the Office of Planning pointed out, is a critical factor in
18 assessing the impact. The purpose of the setbacks was to
19 ensure that one building doesn't infringe upon the others
20 light, right to light, sunlight, ventilation, greenery, and
21 vehicle access.

22 Based on the current development standards of RA-
23 1, there should be eight feet on either side of the property
24 line for a total of 16 feet between the two buildings which
25 is exactly what the easement provides. So I believe the area

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1 should provide adequate space between the two buildings such
2 that the granting of relief would not adversely affect the
3 public good nor conflict with the intent and purposes of the
4 zoning regulation.

5 Turning to the special exceptions, for the reasons
6 discussed in the final property area variance, I believe that
7 the project will be harming the general purpose of intent of
8 the zoning regulations and will not tend to affect adversely
9 the use of neighboring property.

10 I acknowledge the concerns raised by the adjacent
11 neighbor to the west regarding parking, the location of trash
12 receptacles. I believe that the Applicant has taken
13 sufficient measures to mitigate the impact on neighboring
14 property. The trash will be enclosed in the rear to the east
15 of the property nearest the driveway. And while I understand
16 the neighbor's concern to the west about parking, I would
17 note that the Applicant is providing five spaces while only
18 three are required.

19 I'm disappointed that the ANC did not provide a
20 written report, ANC 8B, to accord great weight. That said,
21 based on the record, and giving great weight to the
22 recommendation of the Office of Planning which recommends
23 approval, and noting no objection from DDOT, I believe the
24 Applicant has met the burden of proof and should be granted
25 special exception relief to allow for the residential zoning.

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1 And I'll prepared to vote in favor of the application.

2 CHAIRPERSON HILL: Thank you, Mr. Blake. Mr.
3 Smith?

4 MEMBER SMITH: So to reiterate again what I stated
5 at the beginning of this conversation about this case, that
6 while I was not at the hearing when this was first held, I
7 have read into the record and I am prepared to make a
8 decision on this in my capacity.

9 Also, I'll start with the special exception. I
10 believe that the Applicant has met the burden of proof for
11 us to be able to grant this special exception. So again, in
12 listening to the record from the second, yes, the second,
13 I thank the Applicant for coming back to revise the
14 application with additional architectural plans, and the tree
15 survey, and the easement agreement, and the location to
16 assuage us and the concerns raised by members of the public
17 that they came down to speak, as well as the Board members
18 who were participating, their concerns about the impact the
19 trees in association with this development. So I would be
20 in support of the special exception.

21 Now moving to the area variance, I believe that
22 the Applicant has met -- I agree with Mr. May, I believe that
23 the Applicant has met two of the prongs, but I am failing to
24 see how they met the practical difficulty prong. I do
25 believe that this, and that was the reason for my questions

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1 to the Applicant and to OP.

2 It seems to me it should have been a much stronger
3 analysis on the part of OP on how this building could not
4 meet the setback requirements. And we've had plenty of
5 apartment buildings of this particular size and number of
6 units that were on smaller lots than what we have before us.

7 Yes, the property narrows, but was there an
8 attempt to meet the setback requirements. And again, what
9 I saw within that setback is, you know, a kitchen space and
10 larger bedrooms. And to me, that gets more into
11 comfortability purposes, and less so a practical difficulty
12 in them being able to develop an apartment building with the
13 same number of units.

14 So based on the information within the record, I
15 am failing to see how they meet that practical difficulty
16 prong. And I would not be in support of the variance being
17 granted in this case and would recommend that the Applicant,
18 you know, we'll see how things fall, meet that setback
19 requirement.

20 While I understand the argument about the
21 easement, the zoning regulations are the zoning regulations.
22 And I wouldn't take into account an easement. An easement
23 can go away, you know, if the parties agree for their
24 easement to go away. And then we're in the situation where
25 there's a restriction of light and air to the adjacent

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1 property owners due to this encroachment.

2 And I don't buy the argument that it's a fairly
3 small encroachment. By that argument, then we should allow
4 all encroachments with a variance. So again, I don't believe
5 that there was a very strong argument on the part of the
6 Applicant and OP in their staff report for us to grant this
7 variance. So with that, I will not support the variance.

8 CHAIRPERSON HILL: Okay. We've got the two zoning
9 people, whatever. I know we've got Ms. John. Ms. John, what
10 are your thoughts, Ms. John?

11 VICE CHAIR JOHN: So I really didn't feel, well,
12 it was not the strongest request for an area variance. But
13 I thought, in terms of the practical difficulty, but I do
14 appreciate the Applicant's argument, and so I'm leaning
15 towards support.

16 I think it's an irregularly shaped lot, I mean,
17 triangular shape with a rare narrowing. I think that the
18 Applicant did a good job of trying to place the building in
19 the largest part of the lot. And I'm not an architect, and
20 it seemed reasonable to me that the Applicant would have made
21 those tradeoffs in terms of, you know, the layout and the
22 size of the units. So I'm leaning towards support, and I
23 agree with how the Office of Planning looked at the
24 application.

25 I appreciate that the easement would mitigate the

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1 effects of not having the side yard in that small portion.
2 And the Applicant is not seeking side yard relief for the
3 entire length of the side yard. So I think that, you know,
4 in this case, because the lot is so irregularly shaped, and
5 even without greater architectural analysis, which I'm not
6 qualified to perform, I think the Applicant did a good job
7 of balancing the competing interests.

8 And even after doing all of that, the ANC did not
9 submit any supplemental report, you know, suggesting that ANC
10 now supports the application. So in this case, I am prepared
11 to say that the application meets the request for area
12 variance.

13 And I note that with the last submission, the
14 Applicant has addressed the issues raised by one neighbor in
15 terms of parking, and trash, and recycling. And so, based
16 on all of that, I will give great weight to OP's analysis.

17 And I respect and understand the position of Mr.
18 May and Mr. Smith, but in this case I think the easement,
19 which I believe I understand to be in perpetuity, and I think
20 I should, since Mr. Smith has raised it, I believe that's
21 what I read when I looked at that easement. So with that
22 I'll support the application.

23 CHAIRPERSON HILL: Okay. Thank you. Thank you,
24 Ms. John. I guess, you know, Ms. John, you're mentioning the
25 plans, and I also don't know, you know, whether or not we

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1 went back to ask the Applicant to change the plans so that
2 the area variance was not necessary if it were, again, what
3 the community was looking for with the additional parking,
4 or working with the design to manipulate it so that the area
5 variance wasn't necessary.

6 I do still, and I appreciate all my colleagues
7 thoughts, believe that they've met the criteria for us to
8 grant this relief. So I'm going to go ahead and make a
9 motion to approve Application Number 20492 as captioned and
10 read by the Secretary and ask for a second. Ms. John?

11 VICE CHAIR JOHN: Second.

12 CHAIRPERSON HILL: Mr. Moy, if you can take a roll
13 call, please?

14 MR. MOY: Thank you, Mr. Chairman. When I call
15 each of your names, if you would please respond with a yes,
16 no, abstain to the motion made by Chairman Hill to approve
17 the application for the relief requested. The motion was
18 seconded by Vice Chair John.

19 Zoning Commissioner Peter May?

20 COMMISSIONER MAY: No.

21 MR. MOY: Mr. Smith?

22 MEMBER SMITH: No.

23 MR. MOY: Mr. Blake?

24 MEMBER BLAKE: Yes.

25 MR. MOY: Vice Chair John?

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1 VICE CHAIR JOHN: Yes.

2 MR. MOY: Chairman Hill?

3 CHAIRPERSON HILL: Yes.

4 MR. MOY: Staff will record the vote as three to
5 two to zero. And this is on the motion made by Chairman Hill
6 to approve the application for the relief requested. The
7 motion of approve was seconded by Vice Chair John. Also in
8 support of the motion to approve is Mr. Blake.

9 Opposed to the motion, voting no, is Zoning
10 Commissioner Peter May and Mr. Smith.

11 The motion carries on a vote of three, to two, to
12 one.

13 CHAIRPERSON HILL: Okay, great. And Commissioner
14 May, thank you for bifurcating the vote there. But I guess
15 that, you know, it just kind of happened.

16 COMMISSIONER MAY: I understand. And it's, you
17 know, in this, I can count the votes. So it doesn't really
18 make a difference in the end. I mean, it certainly was clear
19 on the record that I was willing to support the special
20 exception relief but not the variance. So it is what it is.
21 They have their case approved.

22 CHAIRPERSON HILL: Okay. All right,
23 Commissioners, that's the end of you today?

24 (Laughter.)

25 COMMISSIONER MAY: It's the end of my time with

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1 BZA today, yes.

2 CHAIRPERSON HILL: Okay, great. Well I'm glad,
3 Commissioner May, it's not the end of you today.

4 COMMISSIONER MAY: Yes. And I appreciate your
5 getting it all in so that I could move on to something else
6 at 10:30. So thank you very much.

7 CHAIRPERSON HILL: Thank you, Commissioner.

8 COMMISSIONER MAY: And have a good day.

9 CHAIRPERSON HILL: Ms. John, as you know, I am
10 not on the next one. So I'm going to tune out until you guys
11 come back. Thank you.

12 VICE CHAIR JOHN: Thank you. Mr. Moy, would you
13 call the next case, please?

14 (Whereupon, the above-entitled matter went off the
15 record at 10:27 a.m. and resumed at 10:38 a.m.)

16 CHAIRPERSON HILL: All right, Mr. Moy, you want
17 to go ahead and call our next case when you can?

18 MR. MOY: Yes, sir, this is the next application
19 in the Board's Public Hearing session. And it is Application
20 Number 20663 of Nancy and Vimesh Patel.

21 This application is captured and advertised for
22 special exceptions in area variance, special exceptions from
23 the rear yard requirements, Subtitle E, Section 306.1,
24 pursuant to Subtitle E, Section 5201 and Subtitle X, Section
25 901.2, accessory building, rear yard requirements, Subtitle

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1 E, Section 500441, pursuant to Subtitle E, Section 5201 and
2 Subtitle X, Section 901.2, and of course the area variance
3 from the lot occupancy requirements, Subtitle E, Section
4 304.1, pursuant to Subtitle X, Section 1002.

5 This would construct a rear addition to an
6 existing, attached, two-story with basement. Principal
7 dwelling unit in the RF-1 Zone, property located at 1656
8 Hobart Street, NW, Square 2591, Lot 778.

9 And that's it for me, Mr. Chairman.

10 CHAIRPERSON HILL: Thanks. All right, let's see.
11 Mr. Clancy, can you introduce yourself for the record?

12 MR. CLANCY: Yes, sir, good morning. My name is
13 Jeremy Clancy. I'm with Applied and Improved Permits. My
14 home address, I think I heard that at the beginning of the
15 day, is 748 Chessie Crossing Way in Woodbine, Maryland 21797.

16 CHAIRPERSON HILL: Okay, great. Let's see. All
17 right, Mr. Clancy, do you want to go ahead and just walk us
18 through your -- I see your PowerPoint presentation. If you
19 want to walk us through your Applicant's, I'm sorry, your
20 Client's application and why you believe they're meeting the
21 standard for us to grant the relief requested. And in about
22 15, well, I'm going to time you at 15 minutes, and you can
23 begin whenever you like.

24 MR. CLANCY: So when I start I really probably
25 only need five, but I believe Mr. and Mrs. Patel are here.

1 And I believe they wanted to say something first.

2 CHAIRPERSON HILL: Okay.

3 MR. CLANCY: Is that okay?

4 CHAIRPERSON HILL: Sure. Mr. and Mrs. Patel, are
5 you here? I see one Patel.

6 MR. PATEL: Hi there, good morning. We are here.

7 CHAIRPERSON HILL: Okay, great. Do you want to
8 introduce yourselves for the record?

9 MR. PATEL: Yes. I'm Vimesh Patel, I live at
10 1656 Hobart Street, NW, in Washington, D.C.

11 MS. PATEL: And I'm Nancy Patel, I also live at
12 1656 Hobart Street, NW, in Washington, D.C.

13 CHAIRPERSON HILL: Okay. Do you guys want to give
14 us your statement?

15 MR. PATEL: Thank you, Mr. Chair. Is it possible
16 to have the presentation brought up? We wanted to walk
17 through that.

18 CHAIRPERSON HILL: Sure. Ms. Mehlert, can you do
19 that?

20 MR. PATEL: Thank you. Next slide, please. We
21 both really appreciate your time today to present our case.
22 What you see on the left is a picture of the front of our
23 house in Mount Pleasant in DC. And on the right you'll see
24 why we're here today. What you'll notice is that retaining
25 wall and fence is at the basement level of our house, not the

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1 first floor, the basement level. So to get to the alley, you
2 have to proceed to the basement and then an additional floor
3 below from the basement to get to our alley.

4 You know, we bought this house in January of 2020.
5 The pandemic happened in March, and I think everyone realized
6 that outdoor space is really important. Because of this
7 configuration, we don't really have a lot of outdoor space.
8 We have three small children and, you know, it's been tough
9 to have to have to figure out ways to get them outside when
10 what we really would like to have is kind of a back yard,
11 really, so that we can ask them to, you know, they can go out
12 and play.

13 And if you go to the next slide, so our project,
14 oh, sorry, and we just wanted to show you pictures of both
15 up and down the alley. There are many structures, garages
16 with decks and fences on top on both sides of the alley. So
17 this is a common thing, you know, on this Hobart/Harvard
18 alley.

19 The next slide, please. So what our proposal is
20 is to basically extend our, you know, basement level with a
21 deck effectively making a back yard for our family to play.
22 It was kind of the simplest thing that we thought of so that,
23 you know, we actually have a reasonable, safe and secure area
24 for our family and our small children to go out and play.
25 So the right side is basically what we are proposing. The

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1 left side is the way that it is today.

2 The next slide. And this shows --

3 CHAIRPERSON HILL: Can you hold on just one
4 moment? I don't know if you've taken the oath. Mr.
5 Secretary, could you administer the oath to the Patels,
6 please.

7 MR. MOY: Yes. Mr. and Mrs. Patel, do you
8 solemnly swear or affirm that the testimony you're about to
9 present or have presented in this hearing is the truth, the
10 whole truth, and nothing but the truth?

11 MR. PATEL: I do.

12 MS. PATEL: I do.

13 MR. MOY: All right, thank you.

14 CHAIRPERSON HILL: All right, thank you. Please
15 continue.

16 MR. PATEL: Thank you. So this is kind of a look
17 from the top. And, you know, what we wanted to show you is
18 we're really trying to have a rear yard where the kids can
19 play. We intended to have some artificial turf. However,
20 we did listen to a few hearings in preparation for this and
21 the Gray School discussion on the dangers of artificial turf
22 has given us a little pause. But our intent is to have, you
23 know, a back yard and some outdoor space. And so that's what
24 we're trying to do.

25 The next slide, please. The extraordinary

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1 situation, as OP has noted, is that from the front to our
2 basement, you know, there's a full level between our basement
3 level into the alley and parking area. So the back yard that
4 we currently have is really, really small. We don't change,
5 in particular, the nature or character of the alley as you
6 have seen by the pictures of it. And, you know, we
7 understand from talking to OP that the lot occupancy
8 regulations are in place to promote outdoor space. And
9 that's really what we're attempting to do for our family with
10 the variance.

11 The next slide please. The two special
12 exceptions, one is for the rear yard. Well, we don't have
13 a rear yard, and we're trying to make one. So that's kind
14 of what we're asking for. And we understand that, you know,
15 it is classified as a building, what we're trying to build.
16 And so we do need a special exception for that, and then
17 also, you know, to have that building located in the rear
18 yard. But again, effectively what we are trying to do is
19 make a rear yard for ourselves.

20 And the last slide, just to kind of show you what
21 we've done, we started this project almost a year ago. So
22 it's been quite a long time to get through the permitting
23 approval process, but we did present to HPRB and received
24 their approval. In advance of that the ANC passed a
25 resolution. In our file are letters of support from our

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1 immediate surrounding neighbors. And then you also can see
2 the OP staff report, and an ANC resolution for this
3 particular request, and noted no objections from DDOT.

4 That's all I have. But I'd like Mr. Clancy to
5 chime in as well.

6 MR. CLANCY: Mr. Chairman, I'm prepared to now.
7 Do I need to take an oath as well?

8 CHAIRPERSON HILL: Hi, Mr. Clancy. Oh, I think
9 Mr. Clancy, I guess when you -- there might have been a
10 glitch with the Patels, Mr. Clancy. When you signed up I
11 believe you did take the oath.

12 MR. CLANCY: Okay.

13 CHAIRPERSON HILL: You could go ahead.

14 MR. CLANCY: Okay, great. So good morning again.
15 Again, my name is Jeremy Clancy. Just I want to, I
16 appreciate you guys hearing this request and affording us the
17 opportunity to speak with you regarding the application.

18 Just as a quick recap, this project proposes to
19 construct a 16 by 19 open deck on the rear of the Patel's
20 property which will be beyond a small existing deck in the
21 rear yard. I'm going to echo a lot of what you already
22 heard, but I'm going to expand on the three requests
23 themselves just a little bit. And I'll be brief.

24 A full story under this deck is the existing
25 parking pad which will remain in its current condition which

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1 is flush with the existing alley. As noted, the Patels were
2 directed by the Office of the Zoning Administrator that they
3 would need three different types of relief. One was an area
4 variance for the lot coverage. One was a special exception
5 for an accessory garage in the rear or in the required rear
6 yard. And the final one was a special exception for not
7 meeting rear setback.

8 If I may, please allow me to briefly paraphrase
9 from our burden of proof and address each. The first type
10 of relief sought is an area variance required due to
11 exceeding the maximum allowable lot coverage. As the notes
12 and computations sheet provided show, the existing conditions
13 reflect that the lot coverage already slightly exceeds the
14 maximum as it exists today.

15 The proposed 16 by 19 open deck would add 304
16 square feet. Besides the shallowness of the lot creating a
17 very small rear yard, the exceptional attribute is actually
18 its topography. The subject dwelling main level is an entire
19 floor above the level on the rear alley.

20 And in other words, the basement area is
21 completely above ground in the rear. It's actually
22 technically two. In fact, the houses directly across the
23 alley continue to descend in elevation. And their uppermost
24 floor is approximately level with the main floor or middle
25 floor of the subject property.

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1 In their statement of support, the Office of
2 Planning offered that there is a 17 percent drop from the
3 front of the lot to the rear. This elevation change renders
4 over half of the small rear yard useless as it drops down to
5 the alley level. Furthermore, as you can see in the supplied
6 photographs, the entire 16 by 19 area the deck is proposed
7 to occupy above is above the 16 by 19 existing parking pad.
8 One could argue that this area of paving is already lot
9 occupancy as this is where the vehicle is occupied, though
10 we understand in zoning regulations that's not the case.

11 The proposed open deck is going above this area
12 in order to enjoy this majority area of the rear yard that
13 is currently unusable. The houses directly across the alley
14 do not have this issue, due to that drop in topography.
15 Denying this relief request would create both a practical
16 difficulty and undue hardship on this subject property that
17 the neighbors across the alley do not have.

18 Photographs also show that the vast majority of
19 neighboring houses in the same row as the subject property
20 have occupied the same or more of their lot as most of these
21 houses have detached, enclosed garages in the same location.
22 From the alley, the neighbor to the left of the subject
23 property has an enclosed garage that goes right up to the
24 alley. And the one on the right also extends well beyond
25 what the current conditions reflect on the subject property.

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1 During the Historic Preservation Board hearing,
2 it was noted in their approval that the Patel's are actually
3 the outlier in the area, not having improvements closer to
4 the alley. The proposed construction area is already
5 occupied by the parking pad, and the proposed open deck will
6 simply occupy the elevated area above allowing the use of the
7 entire rear yard instead of a mere fraction.

8 The second relief was to Section 5004.1, according
9 to the referral memorandum, which states that the proposed
10 accessory garage would be constructed in the rear yard. We
11 just wanted to make clear the Applicant is not proposing an
12 accessory garage in any way. The proposed project is an open
13 deck over the existing parking pad. While it is true that
14 vehicles will continue to be able to park underneath of the
15 proposed deck, in my opinion this does not create a garage.
16 There will be no wall or garage doors on the front.

17 The neighbor to the left when standing in the
18 alley does have an existing enclosed garage that extends all
19 the way to the alley. But the wall of their garage is
20 entirely on their property. The neighbor to the right shares
21 a stairwell with the Patels which will remain the very stairs
22 needed due to the elevation change. And again, no enclosure
23 is planned here.

24 However, we understand why the relief is needed,
25 and we just want to make clear that the parking area is in

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1 no way being altered. The parking area is currently in the
2 rear yard and proposed to stay in the rear yard. The only
3 proposed construction is the open deck occupying the space
4 above.

5 Since this relief is to allow an accessory garage
6 in the rear yard, it should be clear that granting a special
7 exception for an open deck to go over an existing open
8 parking pad easily meets the test of not having substantially
9 adverse effect on the use or enjoyment of any abutting or
10 adjacent dwelling or property. If anything, not granting
11 this relief request again relegates the subject property as
12 being the outlier in the row of houses to not have this
13 portion of their lot occupied.

14 More specifically, granting this open deck over
15 an existing parking pad and not an accessory garage will not
16 affect the light and air available to neighboring properties.
17 Leaving the parking area open actually demonstrates this.
18 Further, the neighboring properties in large part have more
19 obtrusive enclosed garages even beyond. The privacy of use
20 and enjoyment of neighboring properties will not unduly be
21 compromised.

22 The houses across the alley are an entire level
23 lower and will still see the open parking pad as they do
24 today. The accessory structure, together with the original
25 building as viewed from the alley will not substantially

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1 visually intrude upon the character, scale, and pattern of
2 houses along the frontage.

3 Again, this lot is a standout, as it does not
4 extend to the alley at the other houses do. The current
5 patio area on the subject property has an existing privacy
6 panel that will be removed and reinstalled at the end of the
7 open deck. The visual appearance will be nearly identical
8 to what it is today and much more in harmony with the
9 surrounding property.

10 And the final relief requested, according to the
11 referral memorandum to Section 306.1, requires a rear yard
12 of 20 feet. The proposed open deck would extend to
13 approximately 1.5 or one and half feet from the property
14 line, but the notes and computation sheets supplied by the
15 reviewer states that the proposed work would have an eight
16 and a half foot setback, presumably to the center line of the
17 alley which is 15 feet wide.

18 In the preceding relief description, the
19 memorandum clearly considers the proposed deck project an
20 accessory building because of an implied garage. The facts
21 in the matter in support for relief remains unchanged. As
22 stated earlier, the rear yard is small already. A hardship
23 on the Applicant is exacerbated by the significant topography
24 rendering the majority of the rear yard unusable. The subject
25 property stands out in the alley as the lot that does not

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1 utilize their entire lot.

2 Denying this request will convey special treatment
3 to nearly every other house while creating practical
4 difficulty and undue hardship here. As shown in the
5 photographs, nearly every house on this alley does not meet
6 the 20-foot rear setback. The adjoining neighbor has an
7 enclosed garage that goes completely to the property line.

8 And so as to not repeat myself, I would echo the
9 identical points made earlier regarding no effect to the
10 light and air of the neighboring properties, no compromise
11 to the privacy of use and enjoyment of neighboring
12 properties, and not visual intrusion upon the character,
13 scale, and pattern of houses along the subject street
14 frontage. If anything, your approval here would render this
15 property more harmonious with their surrounding counterparts.

16 So in closing, this challenging topography has
17 created the hardship. The Patels have spent countless months
18 designing, meeting, redesigning, obtaining neighbor approval,
19 securing their ANC approval, being heard and approved at the
20 Historic Preservation Board, and gaining the written support
21 from the Office of Planning as well as the District
22 Department of Transportation, all for a 16 by 19 deck
23 extension, a 304 square foot area giving them the use of a
24 rear hard that all of their neighbors enjoy.

25 This many months in, we exhaustively and

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1 respectfully ask for your approval in this final request and
2 appreciate your time in hearing it today. And thank you.

3 CHAIRPERSON HILL: Okay, thank you. Ms. Mehlert,
4 can you drop the slide deck, please? Thank you.

5 All right. Does my Board have any -- do my fellow
6 Board members have any questions? Mr. Blake?

7 MEMBER BLAKE: Yes, one question. What's the
8 dimensions of the existing deck?

9 MR. PATEL: It's not a deck, it's a retaining
10 wall, and then there's dirt, and then a stone patio. And
11 it's approximately eight and half feet from the house.

12 CHAIRPERSON HILL: Isn't there a deck there on
13 that floor?

14 MR. PATEL: Well, if you look at the picture, that
15 retaining wall, and then behind that retaining wall is
16 basically dirt, and then on top of the dirt is, like, a
17 stone, you know, it's stone. It's not a deck currently.

18 MEMBER BLAKE: So in that case, it's going to be
19 basically eight and half feet by 19, is what that space will
20 be like, the rough dimension?

21 MR. PATEL: Yes. More or less except, you know,
22 some of that's taken up by stairs coming down from the first
23 floor.

24 MEMBER BLAKE: Okay, thank you.

25 CHAIRPERSON HILL: Mr. Smith?

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1 MEMBER SMITH: I have a question. And I recognize
2 that your adjacent property owners, the adjacent properties
3 around you, they have garages that go all the way up to the
4 rear yard.

5 In light of the zoning regulations, the zoning
6 regulations state that, regarding the lot occupancy, the
7 maximum would be 70 percent by special exception. Was there
8 some consideration to having a smaller projecting deck that
9 went up to the maximum allowed by special exception?

10 MR. PATEL: Yes, Mr. Smith. We did consider that,
11 I think, for what we were trying to do which is make a yard
12 for our family. It would end up being too small. You know,
13 our kids want to be able to go out and play kick ball. They
14 have a dream to put a slide out there. And we feel that it
15 would be, you know, too small of a rear yard for our family
16 to enjoy.

17 MEMBER SMITH: Okay. What was the size of that
18 decking structure if it did need a special exception? Did
19 you figure out that evaluation.

20 MR. PATEL: Yes. I believe instead of 16 by 19
21 it would be like nine or ten by 19.

22 MEMBER SMITH: Ten by 19, okay. Thank you. And
23 I'll reserve that question also for Mr. Jesick as he does his
24 presentation. So thank you, Mr. Patel.

25 CHAIRPERSON HILL: Vice Chair John, do you have

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1 any questions?

2 VICE CHAIR JOHN: Just one clarification. So the
3 parking pad is at the cellar level, right. So the roof of
4 the garage would be the same level as the roof of the cellar?

5 MR. PATEL: No, Vice Chair, the roof of the garage
6 would be at the basement level of the cellar, at the floor
7 of the cellar.

8 VICE CHAIR JOHN: Okay. So I'm looking at your
9 existing and proposed diagram. Could you pull that up for
10 me, Ms. Mehlert?

11 So there are four levels? Mr. Patel, are there
12 four levels or three levels?

13 MR. PATEL: Well, so the alley level is the first,
14 the lowest level. And then at the top of the stairs that you
15 see that's the floor of our basement. And then the other set
16 of stairs that you see sort of inside the property, those
17 steps go up to our first floor, our main level. And then our
18 bedrooms are above that.

19 VICE CHAIR JOHN: Okay.

20 MR. CLANCY: And if it helps at all, I think what
21 the confusion, and this used to trip me up too, but that wall
22 that you're staring at from the alley level, there's no house
23 beyond that. That's the alley level. The basement is
24 actually above that at the top of the lowest flight of
25 stairs.

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1 VICE CHAIR JOHN: Yes. I'm just establishing that
2 there are four levels. Thank you. That's it for me, Mr.
3 Chairman.

4 CHAIRPERSON HILL: Thank you, Vice Chair John.
5 Could I turn to the Office of Planning, please?

6 MR. JESICK: Thank you, Mr. Chairman and members
7 of the Board. The Office of Planning reviewed this
8 application for a rear deck and found they met the
9 requirements for approval.

10 In terms of the variance, we found there was an
11 exceptional situation leading to a practical difficulty.
12 There is an extreme grade change from the front of the site
13 to the back, and that creates presently a small and unusable
14 rear yard. And the proposal would create a larger yard, in
15 effect, and it's only because of the exceptional situation
16 that creating a usable outdoor living space generates the
17 need for relief.

18 We found the variance would not result in an
19 impact to the public good. There would be little to no
20 impact to light and air. Privacy would be similar to a
21 normal rear yard that we would see throughout the city. And
22 we also felt that this variance would not impair the intent
23 of the zoning regulations as it would not effectively add to
24 the mass of buildings on the site, and it would also create
25 open space on the lot.

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1 Similarly for the special exceptions, we found
2 there would be no undue impact to light, air, or privacy.
3 And in terms of the character, as shown in the photos in the
4 Applicant's presentation, there are many such structures
5 along this alley, either full garages or similar decks which
6 extend to the alley line. So this would be in keeping with
7 the character of the alley as noted by the HPRB.

8 That concludes my presentation. But I'd be happy
9 to take any questions. Thank you.

10 CHAIRPERSON HILL: All right. Does my Board have
11 any -- do my fellow Board members have any questions for the
12 Office of Planning?

13 MEMBER SMITH: Yes. So the same question I had
14 to Mr. Patel. Mr. Jesick, could you elaborate on -- and I
15 get the topographic argument. That's the reason why he's
16 here. I'm still, you know, concerned about whether it meets
17 that practical difficulty test or not.

18 And I really respect what the Patels are
19 attempting to do here by creating a larger lot, I mean, a
20 larger open space in the rear for their children to be able
21 to play. But was any analysis done of the size of a deck
22 that would meet the lot occupancy requirement at less than
23 70 percent?

24 MR. JESICK: We did not do an analysis of that.
25 We just reviewed the application as it was presented.

1 MEMBER SMITH: Okay. Thank you. That's it.

2 CHAIRPERSON HILL: All right, Mr. Smith. This is
3 either for the Patels or Mr. Clancy. I don't know who went
4 to the ANC. Can you just tell me about the ANC meeting and
5 how that went?

6 MR. PATEL: We met with our Commissioner and
7 walked her through what we were trying to do even before we
8 went to HPRB. She was extremely supportive, and they were
9 able to pass those two resolutions. And there were no real
10 issues.

11 CHAIRPERSON HILL: Okay. They didn't do a lot of
12 analysis, but actually I was just curious how the meeting
13 went. All right. Mr., I'm sorry, Ms. Mehlert, is there
14 anybody here wishing to speak?

15 MS. MEHLERT: There is one person. I can let them
16 in right now.

17 CHAIRPERSON HILL: Okay, thank you. Is it Ms.
18 Jayne? Ms. Jayne, can you hear me? Oh, is it Payne, or
19 Jayne, Jayne? Patricia? Patricia, can you hear me?

20 Ms. Mehlert, do you know if she's on mute or --

21 MS. MEHLERT: She's unmuted.

22 CHAIRPERSON HILL: Okay. Patricia? Oh, here we
23 go. There's the camera. Patricia? Can you just hear me?
24 I mean, we can't hear you. You might want to call in. Do
25 you want to call in? You can nod. I can give you the phone

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1 number. The phone number to call in, well, I just got rid
2 of it. The phone number, Ms. Jayne, if you can hear me is --
3 can you hear me? Or just raise your hand if you can hear me.
4 Can you hear me? Okay, you can hear me. So if you want to
5 write this down, 202-727-5471, once again, 202-727-5471, if
6 you want to call that number. Just raise your hand if you
7 heard me.

8 Patricia, did you -- oh, okay, you're dialing.
9 So you heard the phone number. That's all right. As long
10 as you heard the phone number. That's okay.

11 MS. JAYNE: Can you hear me now?

12 CHAIRPERSON HILL: Yeah, I can hear you wonderful.

13 MS. JAYNE: Okay. Hold on a second. I need to
14 turn to the volume down on my laptop.

15 CHAIRPERSON HILL: Or if you just want to step out
16 of that room, that's also fine. You don't need the screen.

17 MS. JAYNE: Okay. I just -- Are you hearing the
18 echo?

19 CHAIRPERSON HILL: A little bit, but not that bad.
20 Why don't you just step into another room --

21 MS. JAYNE: Okay.

22 CHAIRPERSON HILL: -- with your phone.

23 MS. JAYNE: Yeah, okay. Yeah, maybe that would
24 be easiest. The joys of technology. My name is Patricia
25 Jayne and I live at 1653 Harvard Street. I live behind the

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1 Applicant and basically one house over.

2 The first thing I'd like to say is that this is --

3 CHAIRPERSON HILL: Just one second, Ms. Jayne.

4 Hold on a second. How do you say your last name?

5 MS. JAYNE: Jayne, J-A-Y-N-E.

6 CHAIRPERSON HILL: Okay. Did you -- did you

7 complete the oath? I think you did.

8 MS. JAYNE: Yes, I did.

9 CHAIRPERSON HILL: Okay, great. And then Ms.
10 Jayne, you'll have three minutes to give your testimony and
11 you can -- I'm going to time you. I'll let you know. It's
12 not an exact. But go ahead and begin whenever you'd like.

13 MS. JAYNE: Okay, thank you. Yes, I reside across
14 the alley and basically one house over from the Applicant.
15 The topography of the Applicant's lot is no different and it
16 is certainly not an extraordinary. The fact that they have
17 no backyard was a choice that was made when the house was
18 renovated. They chose parking spaces over a backyard. The
19 houses -- the two houses immediately west of me, those that
20 are behind the Patel's, the Applicants on Harvard Street have
21 no backyard. They have parking. This is a choice that
22 people have made in this alley. It's not extraordinary at
23 all.

24 What this would do is give them the best of both
25 worlds. It would give them parking and a backyard at the

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1 expense of moving their living space 16 feet closer to the
2 second floor bedrooms of my house because their ground level
3 is at the second floor level of my house. They're asking to
4 put in a deck and extend their living area closer to my
5 living area. That has an impact on privacy and noise. And
6 while it is lovely that they desire backyard space and play
7 space -- I had children I raised in this house, I realize
8 that -- There are many children who don't enjoy that. And
9 as I've said, the houses behind on Harvard, many of them have
10 no backyards. They've chosen parking.

11 This also creates this non-garage, garage, which
12 creates a negative space, which is very unsafe in the alley.
13 During 2021, a woman was attacked in a space like this close
14 to Mt. Pleasant Street. This is a great concern for those
15 of us who use the alley all the time. The Applicants have
16 a backyard. It's small, but when you choose to live in a
17 townhouse, you don't get the space that you would in a single
18 family house on a much larger lot. These are what they are.
19 When you live in these townhouses, that's what we have.
20 Thank you. That's my statement.

21 CHAIRPERSON HILL: Okay. Thanks, Ms. Jayne. Ms.
22 Jayne, did you go to the ANC meeting?

23 MS. JAYNE: That's sort of a yes and no question.
24 The ANC decides everything by -- on a Google group. And the
25 resolution was agreed upon by the Commissioner before the

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1 meeting. In general, I've learned that it's not worth --
2 once they've made a decision, they are not in the least bit
3 interested in any kind of input from neighbors whatsoever.

4 CHAIRPERSON HILL: Okay. I mean I got you. So
5 you didn't -- you just didn't think it was necessary. If you
6 did it again (audio interference).

7 MS. JAYNE: It's sort of a waste of time and
8 effort.

9 CHAIRPERSON HILL: Got it, okay. Let's see. All
10 right. Do my fellow board members have any questions for the
11 witness? No, okay. And then let's see, Mr. Clancy, do you
12 have any questions for the witness?

13 MR. CLANCY: No, sir. I would add, I think Ms.
14 Jayne was there at the Historic Preservation board meeting
15 as well.

16 CHAIRPERSON HILL: Okay. Okay. All right Ms.
17 Jayne, if you want to stay on the line, because I believe
18 you're on the next case as well.

19 MS. JAYNE: Yes.

20 CHAIRPERSON HILL: Okay. Why don't you just go
21 ahead and stay on the line. Okay? And then -- Or actually,
22 you know, Ms. Mehlert, if you can -- is it possible to remove
23 Ms. Jayne from the room or that's not possible -- or mute
24 her?

25 MS. MEHLERT: I can mute her, I believe.

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1 CHAIRPERSON HILL: Okay, great. All right, thank
2 you. All right, let's see. All right, I'm looking at the
3 OP report here real quick. Mr. Jesick, can you hear me?

4 MR. JESICK: Yes, Mr. Chairman.

5 CHAIRPERSON HILL: Can you go over the prongs of
6 the variance test just real quick for me again?

7 MR. JESICK: Sure thing. Okay, the first is, is
8 there an exceptional situation leading to a practical
9 difficulty? In this case, we have quite a drop in grade from
10 the front of the house to the rear of the house. So the
11 Patel's live in a two-story, plus cellar house. The grade
12 of the alley is a full story below the cellar level. So
13 we're talking about quite a grade drop here across the depth
14 of the lot. Why is that a practical difficulty? There's a
15 -- There's a small rear yard today; however, it's not very
16 usable. If this were a flat lot, the back part of the lot
17 would be usable. It's only because of the exceptional
18 situation that, that rear part of the lot is not useable.
19 So what they're trying to do is build a deck to increase the
20 living space. And that creates the need for really -- it's
21 technically a building, even though it's at what we would
22 normally consider the ground plain at the rear of the house.
23 So that's the first prong.

24 Then the variance test asks is there a substantial
25 detriment to the public good? Well, we look at things like

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1 air and light and privacy. This is at the same level as
2 adjacent decks or rear yards. So there's not going to be an
3 impact to air. There might be a slight increase in shadow
4 due to the fence, but that's just a typical addition we see
5 across the city where a fence creates a slight amount of
6 shadow.

7 In terms of privacy, you know, there would be
8 potentially some additional views into neighboring houses on
9 Hobart Street. Again, that's typical of a rear yard addition
10 that you would see anywhere. They would have a six foot
11 privacy fence around the entire perimeter of that rear deck.
12 So you know, views into adjacent properties including, you
13 know, other properties on Harvard Street would be minimized.

14 And then in terms of the intent and purpose of the
15 regulations, you know --

16 CHAIRPERSON HILL: Okay. That's all right, Mr.
17 Jesick. We've got it.

18 MR. JESICK: Okay.

19 CHAIRPERSON HILL: I was kind of just wanting to
20 hear a little bit more about the discussion of the first
21 prong. All right. Okay. All right, I've got nothing else.
22 Do my fellow board members have anything? And if so, raise
23 your hand. All right. Mr. Clancy, do you have anything --
24 Oh, I'm sorry. Ms. John -- Vice Chair John?

25 VICE CHAIR JOHN: Thank you. Mr. Jesick, did you

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1 hear the testimony of the neighbor across the street just
2 now? And did you have a comment?

3 MR. JESICK: I did hear the testimony. You know,
4 I think, just relying on the Office of Planning's Analysis,
5 which is the Applicant has met the variance test and the
6 special exception test. The one issue that came up seemed
7 to be privacy. We concluded that there would be no undue
8 impact on privacy, specifically regarding Harvard Street.
9 There would be a six foot high privacy fence completing
10 surrounding the Applicant's deck, so you know, when looking
11 to the south, you know, when using the deck, you would be
12 looking up at the sky, not at, you know, other people's homes
13 across the alley.

14 VICE CHAIR JOHN: Okay. And Mr. Jesick, please
15 remind me of the width of that alley. Is it 15 feet?

16 MR. JESICK: Yes, 15 feet.

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

18 CHAIRPERSON HILL: Okay. Anyone else? All right.
19 Mr. Clancy, do you have anything you'd like to add at the
20 end?

21 MR. CLANCY: No, sir. Just as a point of order,
22 I just wanted to clarify by Ms. Jayne's testimony that it's
23 an open space. It's not living space that's going any
24 further towards the alley, just the open space. Other than
25 that, I'm all good. Thank you.

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1 CHAIRPERSON HILL: Okay. I'm going to go ahead --

2 MS. PATEL: May I -- could I just add, I just
3 wanted to let the Board know that I did reach out to Ms.
4 Jayne to try to get her input prior to this meeting given
5 that she had concerns at HPRB as well. And unfortunately
6 didn't receive a response, but do respect the fact that she
7 was able to share her opinions today.

8 CHAIRPERSON HILL: Okay, thank you. Mr. Smith?

9 MEMBER SMITH: Yeah, I'm sorry. I actually had
10 a question for Mr. Jesick -- one last question for Mr.
11 Jesick. What is necessitating -- you may know or you may not
12 know because it's a termination by the Zoning Administrator
13 -- what is necessitating the special exception for the
14 accessory building? That the area underneath the deck is
15 considered a garage?

16 MR. JESICK: Yes. It's a little unfortunate but
17 the -- you know, the structure that is being proposed would
18 qualify as a building. And it would be technically located
19 within the required rear yard. And an accessory building
20 per, I think it's Section 5004 cannot be located within a
21 required rear yard. So that's where that special exception's
22 coming from.

23 MEMBER SMITH: Okay. Do you know the reason why
24 the Zoning Administrator interpreted this as a building?

25 MR. JESICK: Well, you have to look at the

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1 definition of a building. It says something to the effect
2 of, you know, is supported from the ground with columns and
3 has a roof. And that's about it. So you know, this would
4 per the regulation, be considered a building.

5 MEMBER SMITH: Okay. Regardless of its size,
6 okay. That's what you're saying?

7 MR. JESICK: Yes.

8 MEMBER SMITH: It's just because the structure is
9 supported on posts, okay.

10 MR. JESICK: And it has a roof technically.

11 MEMBER SMITH: Okay. All right, that was the only
12 question that I had. Thank you.

13 CHAIRPERSON HILL: All right, thank you. Okay,
14 I'm going to go ahead and close the hearing on the record if
15 you could excuse everyone, Ms. Mehlert.

16 (Pause)

17 CHAIRPERSON HILL: Okay, I mean I thought that the
18 Applicant did a good job explaining how they're meeting the
19 criteria for us to grant the relief requested. I was kind
20 of struggling with the area variance issue. And upon further
21 discussion with the Office of Planning, I understand how they
22 are getting to the exceptional -- the first prong of the
23 task. I kind of, somewhat disagree a little bit with it, but
24 I will agree with their analysis in the end. As well as that
25 of the ANC and DDOT in terms of their analysis, as well as

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1 HPRB. I don't know whether this would mean that other homes
2 in that area would qualify. That's the part that I kind of
3 struggle with. But at the end of the day, I'm going to agree
4 with the Office of Planning and their analysis and vote to
5 approve.

6 I'm going to go around the table. Dr. Imamura?

7 DR. IMAMURA: Thank you, Mr. Chair. I see this
8 as a pretty straight forward case actually. I certainly
9 understand Ms. Jayne's comment that when you search for a
10 home, it's a choice and you accept all the elements of the
11 home that you purchase. And that said, I also understand the
12 Applicant's exhaustive request given the time and money they
13 put into this and the outreach effort to make improvements.
14 And they noted that at the HPRB that they are the exception
15 up and down the alley without an improvement like this. And
16 I think as we note, a picture speaks a thousand words, right
17 -- or is worth more than a 1,000 words. So the
18 Hobart/Harvard alley, the photographs up and down show that
19 they are in fact an exception.

20 There are garage structures that extend to the
21 edge of a lot. I think that there is a danger to what my
22 neighbors to the right and left do. And I want to do the
23 same. However, I think they meet the three prong test, you
24 know, for the area variance. There is intentional difficult
25 due to the extreme grade change. No doubt. Right? There's

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1 really no impact to light and air or really, the view with
2 the alley back there.

3 And you know, our zoning regulations are good, but
4 they are also imperfect and that's why we have the BZA. It's
5 not a one size fits all. And so there are these sort of
6 special cases. And I certainly think that what they're
7 asking for is reasonable. And I think it goes well beyond
8 really additional area to play for their children. You know,
9 it's really about the use of the property after the Patel's
10 decide to (audio interference). And so what they're asking
11 for and what they're trying to do, I think meets the special
12 exception relief and the area variance. And it does in fact
13 promote open space on the lot. And I certainly give great
14 weight to OPs report. HPRB has weighed in on this and also
15 agrees. So I am prepared to support the Applicant.

16 CHAIRPERSON HILL: All right. Thank you, Dr.
17 Imamura. Mr. Smith?

18 MEMBER SMITH: I do mostly agree with the
19 statements that my colleagues have stated. I do believe it's
20 fairly straight forward for the special exception criteria --
21 I mean the special exception before us. But in looking at
22 the variance -- if you go through the variance prongs -- the
23 three different prongs. I start off with no substantial
24 detriment to the public good. I do agree with not being a
25 substantial detriment to the public good. They are posing

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1 an open deck to the rear of their property, open to the sky.
2 And largely in line with the adjacent property owners, they
3 all have garages to the rear of their properties. And I
4 would note that probably the majority of these garages are
5 nonconforming to the current zoning regulations. And they
6 wouldn't be able to be built in their current manner, today
7 by right because they're all in the required rear yard. And
8 they all have the topographic issues that this same property
9 owner has.

10 No substantial impairment to the purpose and
11 integrity of the zoning regulations. I do agree that it
12 would not have a substantial detriment to the zoning
13 regulations. So I agree with the Office of Planning and
14 their analysis of that. But where I do depart is the first
15 prong, the question about practical difficulty. The basis
16 of the argument that OP and the Applicant is stating is based
17 off of topography. And I fully respect that and understand
18 that, that there's a major topographic slope that would
19 necessitate the construction of this type of decking system
20 in order for them to have an open space that is at the level
21 of their -- probably the primary building level of their
22 home.

23 Where it differs is the practical difficulty
24 because I do believe that the Applicant does have the ability
25 -- in other cases we've seen this where the lot is

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1 essentially small. The dwelling unit is essentially large
2 for the lot. They do have space to play with and so far,
3 they haven't exhausted their ability to construct up to the
4 special exception criteria. The way that I see it, it should
5 be, you know, looking at -- looking at the hardship, whether
6 the -- what we should be looking at from my standpoint is,
7 is there an exception to hardship for them to be able to use
8 the property or construct something reasonable on this
9 property? And I do believe that they have enough percentage
10 of available lot occupancy available for them to construct
11 a reasonable -- reasonable size deck to the rear of this
12 property in accordance with the zoning regulations that does
13 not trigger an analysis of -- a variance analysis or trigger
14 a variance.

15 And the question about the adjacent property
16 owners -- the entire block is probably -- it looks to be
17 nonconforming just me looking at a visual analysis of that.
18 And that's more of an argument of my neighbors get all the
19 way to the rear, I should too. But that's not the basis of
20 analyzing a variance. Just because your adjacent property
21 owners have that, does not necessitate you being able for us
22 to grant variances. You know, us granting a variance is
23 based off of the situation at hand for that property owner
24 alone. And I don't -- I'm failing to see how they meet that
25 first prong. So with that, I will not support the variance.

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1 CHAIRPERSON HILL: Okay. Let's see. Let's go
2 with Mr. Blake.

3 MEMBER BLAKE: Well, this is a little bit more
4 difficult than I thought initially because it makes a lot of
5 sense to have this work. I do agree with the special
6 exception that the criteria's been met, so the focus will be
7 on the variance analysis. I do agree with Mr. Smith, it's
8 a stretch on the first prong because of the topography being
9 a common topography along the alley -- those several houses
10 along the alley.

11 Where I differ a little bit though is I do think
12 that the fact that there is a yard of some sort that exists
13 that's very small, 8.5 x 19 to talk about, that's not really
14 useful space. And the ability to increase your space by 1.5
15 linear feet, which represents less than 30 square feet
16 doesn't create a useful space as well for a rear yard. And
17 granted that was a choice that was made at some point by
18 another, the fact that it was self-created is not a detriment
19 to a -- it would not work against the case for practical
20 difficulty in an area variance.

21 So I do think that in this case, the combination
22 of the fact that, that retaining wall doesn't really give you
23 a useable space. And I wouldn't -- for a balcony, you know,
24 yeah, I get it. But for an actual rear yard, I think it's
25 inconsistent with the fact that other people do have their

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1 rear yards even though they were created in a nonconforming
2 way at a different point in time presumably. So in that
3 case, I do think it's consistent with the public good. And
4 I do think the privacy issue is protected by the 15 foot
5 alley, as well as the 6 foot fence for protection on the rear
6 side. And not impacting privacy that way necessarily on the
7 rear neighbor across the alley. So overall, I think I would
8 be in support of this variance relief, as well as the special
9 exception.

10 CHAIRPERSON HILL: All right. Ms. John?

11 VICE CHAIR JOHN: Thank you, Mr. Chairman. I
12 think I'm going to support this application. The area
13 variance doesn't require a standard of undue hardship in
14 terms of the inability to comply with the regulation. And
15 I think that based on the record, the Applicant has met the
16 practical difficulty standard because basically the rear of
17 the property is not usable in terms of the significant drop
18 from the first floor to the second floor. There are two
19 floors, which is what I wanted to be clear. I understood
20 that we were looking at a drop of two floors. And so that
21 space is really not usable.

22 And what the Applicant is trying to do is to
23 create outdoor space -- usable outdoor space. And so in that
24 context, I think the Applicant has met the requirements. And
25 I agree with Dr. Imamura that sometimes the regulations do

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1 not fit perfectly the way we would like them to. And in this
2 case, I believe that it's reasonable to conclude that there
3 is practical difficulty. And so I'm going to give great
4 weight to the Office of Planning's analysis and I will
5 support the application.

6 CHAIRPERSON HILL: All right. Thank you, Ms.
7 John. All right. Thank you all for all of your thoughts.
8 I'm going to go ahead and make a motion to approve
9 application No. 20663 as captioned and read by the Secretary
10 and ask for a second, Ms. John?

11 VICE CHAIR JOHN: Second.

12 CHAIRPERSON HILL: Mr. Moy, if you could take a
13 roll call.

14 MR. MOY: Yes. Thank you, Mr. Chairman. When I
15 call each of your names, if you would please respond with a
16 yes, no, or abstain to the motion made by Chairman Hill to
17 approve the application for the relief that's being
18 requested. The motion to approve was seconded by Vice Chair
19 John. Zoning Commissioner, Dr. Imamura?

20 DR. IMAMURA: Yes.

21 MR. MOY: Mr. Blake?

22 MEMBER BLAKE: Yes.

23 MR. MOY: Mr. Smith?

24 MEMBER SMITH: No.

25 MR. MOY: Vice Chair John?

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1 VICE CHAIR JOHN: Yes.

2 MR. MOY: Chairman Hill?

3 CHAIRPERSON HILL: Yes.

4 MR. MOY: Staff would record the vote as 4-1-0 and
5 this is on the motion made by Chairman Hill to approve,
6 seconded by Vice Chair John to approve. Also in support of
7 the motion to approve is Mr. Blake, Dr. Imamura, and of
8 course Vice Chair John and Chairman Hill. Opposed to the
9 motion, voting no is Mr. Smith. The motion carries on a vote
10 of 4-1-0.

11 CHAIRPERSON HILL: Okay, great. Thank you. Mr.
12 Smith, that must be your "No" blazer that you're wearing.

13 MEMBER SMITH: I guess. There's been a lot of
14 "yes's" on this thing too.

15 CHAIRPERSON HILL: All right. Let's go ahead and
16 take a break. Okay? Let's come back in like ten minutes.
17 Okay? Thank you.

18 (Whereupon, the above-entitled matter went off the
19 record at 11:37 a.m. and resumed at 11:49 a.m.)

20 MR. MOY: All right. The Board has returned to
21 its public hearing session after a quick break. And the time
22 is at or about 11:49 a.m. in the morning.

23 The next case application is No. 20658 of 1650
24 Harvard Street NW Washington DC, LLC, captured and advertised
25 for special exception relief from the penthouse setback

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1 requirements, Subtitle C, Section 1504.1, pursuant to
2 Subtitle C, Section 1506.1, and Subtitle X, Section 901.2.
3 This would expand the existing penthouse of a detached seven
4 story multi-unit residential building, RA-2 Zone. Property
5 located at 1650 Harvard Street, NW, Square 2589, Lot 847.
6 And the only thing I have for you, Mr. Chairman, is that the
7 Applicant submitted their PowerPoint deck within the 24-hour
8 block.

9 CHAIRPERSON HILL: Okay. Unless the Board has any
10 issues, I'm going to go ahead and put that into the record.
11 Mr. Moy, if you could have the staff just add that into the
12 record for us, so we can take a look at it while we're going
13 through this.

14 Mr. Utz, could you introduce yourself for the
15 record please?

16 MR. UTZ: Sure, thank you. I'm Jeff Utz with
17 Goulston and Storrs, here on behalf of the Applicant.

18 CHAIRPERSON HILL: Okay. Mr. Utz, if you want to
19 go ahead and us walk us through your client's application and
20 why you believe that we should grant the relief requested.
21 And I'm going to put 15 minutes on my own clock just so I
22 know where we are. And you can begin whenever you like.

23 MR. UTZ: Great. Thank you so much. Could we
24 please pull up the presentation? And thank you for bringing
25 that into the record. We apologize for missing the 9:30

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1 deadline on that yesterday, but we were resolving a condition
2 with DDOT that we'll show you in a few minutes, we believe
3 we have successfully done. So I think it is for the good of
4 the application.

5 But as I said, I'm Jeff Utz with Goulston. I'm
6 here on behalf of the Applicant. With me today is Art Linde,
7 the Applicant, Joe Ijjas of Soto Architecture, the project
8 architect. And we really appreciate getting on the schedule
9 today and you all taking the time with us.

10 The property as mentioned is 1650 Harvard Street
11 NW. It's Zoned RA-2 and it's located on a 38,000 square foot
12 lot. It is currently improved with a seven-story residential
13 building that was constructed in 1928, but it requires
14 significant updating. And as our team can detail, the
15 existing building comes with a host of design challenges as
16 part of that updating that are associated with the building's
17 older conditions; the configuration and structural support
18 system.

19 So the project will maintain the existing
20 exterior, while modernizing and renovating the interior of
21 the building. It also includes the addition of a habitable
22 roof structure, which is what brings us here today for the
23 need for relief. The total unit count after the project will
24 be approximately 182 units. And the project will generate
25 a housing production trust fund contribution of approximately

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1 \$309,000 as a result of that habitable roof structure.

2 As we described in the application materials, the
3 project has involved a great deal of planning and
4 coordination between the Applicant and the Harvard Hall
5 Tenant Association. This coordination has spanned several
6 years and Art can detail it much more than I. But the
7 initial concept and the Tenant Association involvement began
8 in the Summer of 2018 and has progressed steadily over that
9 time. Ultimately kind of running into loggerheads with the
10 update to the text that updated the restructure regulations
11 in December of last year.

12 So with that, can we go to the next slide please?
13 Thank you. The project has been designed to be compliant with
14 the roof -- with the zoning regulations governing roof
15 structures that were in effect prior to that amendment, which
16 was noted as Zoning Commission Order No. 14-13E.
17 Specifically, the project's restructure is set back from
18 exterior walls less than one to one, but at least one-half
19 to one from Quarry Road and Harvard Street NW, which we can
20 show you exactly how that falls on the site and where that
21 is in the roof structure. This setback is one-half to one
22 or greater. Setback from those to exterior walls would have
23 actually complied with the roof structure regulations that
24 preceded the December text amendment that updated the
25 restructure regulations.

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1 However, the project was not able to obtain all
2 its approvals prior to the effectuation date. So that brings
3 us here before you today to request one area of relief,
4 specifically special exception relief for the one to one
5 setback for the exterior walls along Quarry Street and
6 Harvard Street because they are not able to comply with the
7 one to one setback under new section 1504.1(c)(2) in Subtitle
8 C. So we believe that the relief that we're requesting meets
9 the standards of approval set forth in Subtitle C, Section
10 1506.1 that sets forth the special exception standards and
11 we can detail those for you today.

12 Next slide please. One more. Thank you. So the
13 team has been in consistent communication with the community,
14 the Office of Planning, and DDOT. We have presented the
15 project to ANC 1C. Actually went there on December 5th of
16 2021 and then on January 5th of 2022. And the ANC voted to
17 support the relief that ANC letters in the record as Exhibit
18 19. Also as noted on the slide, the Office of Planning has
19 submitted a report that recommends approval as Exhibit 24.
20 DDOT filed a Report of No Objection. That's also in the
21 record as Exhibit 25.

22 DDOT requested that a condition be included that
23 had several elements that revolved the transportation
24 management plan for the project. And that was the one that
25 I was mentioning at the beginning of my introduction. And

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1 then posted here, which I know it's a lot of dense text, but
2 one that we wanted to call your attention is the first one
3 that has the bolded text in it. We worked with DDOT staff
4 to come to a resolution on that first bullet in a manner that
5 they were satisfied with. So ultimately we are happy to
6 agree to this condition regarding TDM measures as part of
7 their condition for no objection.

8 CHAIRPERSON HILL: Give me a second, Mr. Utz. I
9 saw the one that DDOT had originally proposed with you guys.
10 So you've tweaked the first one?

11 MR. UTZ: We tweaked the -- Yes, sir. We tweaked
12 the first sub-bullet. And so the edits that are shown -- the
13 new language is bolded. And then the language that DDOT had
14 -- that we struck is crossed out. So this is based on the
15 DDOT condition from their report, Exhibit 25.

16 CHAIRPERSON HILL: And all the other ones are made
17 the same?

18 MR. UTZ: Correct.

19 CHAIRPERSON HILL: Okay.

20 MR. UTZ: And so just so you know what this
21 relates to is it relates to setting a floor for parking
22 pricing -- for the amount that these parking spaces are
23 leased out for. So there's a concept here where we have
24 returning tenants and they already have leases and they have
25 parking spaces. So those are carved out by the first bolded

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1 portion of the language here. And as Art can explain, this
2 project is something that's kind of hand and glove between
3 the owner and an existing tenant. And the key part of this
4 project is those tenants coming back. So we can't unwind or
5 in some way alter their parking spaces, so what's why they're
6 carved out in the first bolded language piece. And then the
7 second piece just updates the formula that DDOT wanted to set
8 out, so that the spaces aren't offered so cheaply that it
9 encourages parking is the --

10 (Simultaneous speaking.)

11 CHAIRPERSON HILL: Okay. I'm just trying to --
12 I'm just trying to compare the DDOT order. And it seems like
13 all the other ones -- This is Slide No. 4 on Exhibit 39, it
14 looks like what I'm looking at now, which is I think what
15 you're showing us. Okay, you can go ahead and continue, Mr.
16 Utz.

17 MR. UTZ: Great, thank you. We have been in touch
18 with DDOT about this. DDOT indicated that they are in
19 support of the update -- the condition as represented on this
20 screen, which would allow for there to not be any outstanding
21 issues or conditions in the record from the ANC or the
22 agencies or any person or party at all.

23 CHAIRPERSON HILL: Right. So that's your
24 testimony, Mr. Utz. Correct?

25 MR. UTZ: Essentially, yes. We do have more. We

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1 do have the slides boiled down in a little bit more
2 streamlined manner if you would like us to walk through and
3 show you some of the specifics of the relief.

4 CHAIRPERSON HILL: Let's hear it again, Mr. Utz.
5 I'm just trying to understand a couple -- Anyway, for the
6 record, I'm getting your testimony, which is DDOT has agreed
7 to your tweaking of that first line. Correct?

8 MR. UTZ: Correct.

9 CHAIRPERSON HILL: Okay. All right, please
10 continue.

11 MR. UTZ: So that brings me to the end of my
12 piece. I would like to turn it over to Mr. Linde to speak
13 about the Applicant, the Tenant Association, and some other
14 components of the project.

15 CHAIRPERSON HILL: All right, Mr. Linde. Mr.
16 Linde, if you could introduce yourself when you start to
17 speak please.

18 MR. LINDE: Yeah, thank you. My name is Arthur
19 Linde -- Art Linde. I am a Senior Project Manager with
20 Akelius Real Estate Development. We're an international real
21 estate development firm that specializes in rehabilitating
22 in-town urban multi-family properties.

23 This property is currently 156 units. It was
24 built in 1929. I think the important thing to note in the
25 design portion is that all of the systems; MEP, Fire and Life

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1 Safety, access control and elevators are in complete shambles
2 and have to be fully replaced. Our proposed project was done
3 as a true partnership with the Harvard Hall Tenants
4 Association. The engagement began with them in November of
5 2018. And detailed discussions continued over the course of
6 several years. Slow moving, but always progressing in a
7 positive direction. As a result, we have developed a program
8 to maintain the original exterior architecture, while
9 creating a modern Class A apartment building with brand new,
10 fully code compliant state of the art energy efficient
11 systems. Truly a collaboration between the developer and the
12 building's existing tenants and possibly and hopefully a
13 model for other projects in the District.

14 Each and every remaining tenant has spent
15 countless hours with our design team to tailor their new home
16 to their needs and desires. We're not speaking of paint
17 colors and tile selections, we have customized floor plans,
18 customized bathroom locations, closet sizes, appliances, and
19 much more for all of our returning tenants. In order to
20 provide this level of customization for our tenants, there
21 is no floor plan and no vertical tier, which is identical
22 from floor to floor or unit to unit. It was not until we
23 established the location of the stairs and the elevators that
24 we could begin the process of working with the individual
25 tenants to design their new homes.

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1 The process was iterative and complex. With each
2 change in one unit, having a ripple effect on its neighboring
3 units. And every change in the broader floor plan, changing
4 the vertical system. And I'm speaking of the plumbing
5 risers, the MEP shafts, the electrical feeds, et cetera. And
6 it wasn't until we completed the work with every tenant that
7 we could begin to design the vertical systems. So it was a
8 very long and very complex process. Ultimately we were able
9 to produce 182 units, an increase of 26 units, nine of which
10 are in this new penthouse addition. It is the increase in
11 unit count and the design of the penthouse units, which
12 provides the engine that allows for this collaborative
13 partnership with the existing tenants to proceed.

14 In the end, we have a memorandum of understanding
15 with all of the returning tenants. I really want to
16 emphasize that this project was designed with the tenants
17 and under the current zoning regulations as they existed up
18 until we filed for our building permit. In fact, the zoning
19 regulations existed several months after we filed for our
20 building permit.

21 On the previously allowable restructure setbacks,
22 we were able to locate the egress stair that deposits the
23 evacuates directly onto the street as is required by the
24 construction code. And we could locate the elevator banks
25 within the existing structural systems. Without the

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1 requested relief, we would have to, if even possible redesign
2 and relocate the new stair tower and the new elevator banks,
3 which would in turn necessitate starting over with every
4 tenant in the redesign of their custom homes. This process
5 would take at least nine to twelve months, what it took the
6 last time around.

7 It's important for you all to know that the
8 existing tenants have already been relocated. They relocated
9 before the zoning changed. And these tenants have deep
10 relationships with us and with the building and they are
11 obviously anxious to return to their homes. In the end,
12 we're complying with all of the changes to the code and all
13 of the codes that existed. We have complied with storm water
14 management, we complied with green area ratio, which is no
15 small feat in a building built in 1929 to occupy 100 percent
16 of lot. We've revised and responded to the new 2020 energy
17 code. And finally, the building will have a 70-watt plus
18 solar system on the penthouse roof. We're not going to be
19 just solar ready, we're going to be solar installed. It's
20 a great project and I thank you very much for your time and
21 consideration in our request.

22 MR. UTZ: I think if we could show you a few pages
23 that are particular relevant for the relief, Joe is cued up
24 to speak to those a bit if we could go to some of the
25 subsequent slides please.

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1 MR. IJJAS: Good morning, everybody. My name is
2 Joe Ijjas. I'm an architect with Soto Architecture and Urban
3 Design and the project architect for this project. As Art
4 mentioned, you know, he covered a lot of the broad
5 principles, but I'm going to take a quick step back on just
6 location and context for the project.

7 So this project is located at the intersection of
8 Harvard Street and Lanier Place. Harvard Street is to the
9 north, Lanier Place is to the east, and then Quarry Road is
10 to the south. Quarry Road is actually a dead end road that
11 does not intersect with Lanier Place due to the significant
12 grade changes. The project is dominantly consistent of older
13 existing residential apartment buildings around the area with
14 attached and semi-detached row homes on the north side of
15 Harvard Street. Due to the grade change, these homes are
16 well elevated by Harvard Street with retaining walls that are
17 roughly equivalent to our fourth and sixth floors, depending
18 on the location on Harvard Street. Our existing building is
19 approximately seven stories. As Harvard Street leads down
20 to Rock Creek Care, a significant grade change results in a
21 building that's perceived as five, six, or even seven stories
22 of grade, depending on the street you're on.

23 If you'd go to the next slide please. Harvard
24 Street is dominated by mature trees currently as well. And
25 the building itself is well set back from Harvard Street with

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1 a significant public space in front of the building. The top
2 left image is the intersection of Lanier Place and Harvard
3 Street. You can see the elevation of the building. And the
4 next one is Harvard Street straight from the front. And then
5 on the back side, the view from Quarry Road, the interior
6 courtyard of Lanier Place will provide different elevational
7 changes of how the building is perceived.

8 Next slide please. The aerials we have here just
9 give you another idea of the surrounding context and the
10 scale of the buildings. And then the bottom picture is the
11 view from the current roof structure. And I do see a pretty
12 clear view towards the Cathedral and Rock Creek Park. And
13 the surrounding buildings are of equal or greater height on
14 either side.

15 Next slide please. So the building is roughly C-
16 shaped, the central interior closed courtyard of one level
17 parking and one-half level is basement. Parking access is
18 from Quarry Road as Art mentioned and originally built in
19 '29. The intent of the project is to bring this once
20 permanent building back up to modern standards while working
21 with existing building residents to maintain their residence
22 in the building and community. There's several challenges
23 associated with working in the constraints of the changing
24 regulations in the existing building.

25 Critical design decisions were made in early in

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1 the process and many, many decisions followed upon those and
2 built upon those decisions. Changes to these at this point
3 in the project would be detrimental to the timelines and
4 feasibility of completion. While we understand there are
5 often changes in our profession, it's important that there's
6 proper resting periods and adoption periods. And while we're
7 aware of the potential changes in zoning and the impact on
8 the building, there was not an ability for us to invest into
9 the existing zoning with not getting our permits done and
10 completed at the time.

11 Go to the next slide please. So this is one of
12 our primary exhibits here. And I'm guessing a lot of
13 questions are going to derive from this, so I'm going to try
14 and walk through it all. But if you have any questions that
15 you'd like to specifically discuss as I go through them,
16 please just let me know.

17 The primary zoning change affecting this project
18 is the change required of how sides set back from one to one-
19 half to one to one. So the relief that we're requesting is
20 the 3 foot 6 setback required on the railings. We are
21 currently providing 2 foot 11. However, the penthouse on the
22 Harvard and Quarry roadside has various set of setbacks right
23 now, but the minimum would be 6 for the old regulations. The
24 new would be 12 feet and that is highlighted by the orange
25 areas that are attached. Then the elevator override which

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1 is to the northwest corner of the building -- it's circled
2 in the red oval -- is required to have a 15 feet setback.
3 We are currently providing 11 foot 11 setback.

4 So as you can see from this floor plan and
5 layout, there are several units -- nine total up on the
6 rooftop, as well as a resident amenities space and outdoor
7 resident and maybe deck spaces. The railings and both the
8 building walls on both Harvard Street to the north and Quarry
9 side to the south are within those one to one setbacks
10 currently, although they were originally designed to comply
11 with the one to one-half setback.

12 Two critical areas that are mentioned of an issue
13 are circled in red. And those are our vertical circulation
14 elements. So to the north we have the elevator override.
15 And then to the south, we have the new stair egress that
16 spans from all the way down to the basement up until the
17 penthouse level. One of the first tasks discussed in the
18 evaluation of the building was to determine the use of light
19 for the existing vertical circulation with the building. And
20 it was pretty evident very early on that both the existing
21 elevator cores and the stairs would not meet per code
22 regulations and needed to be upgraded.

23 As Art mentioned, we are required to egress
24 directly to the exterior in order to meet current stair
25 design guidelines and code regulations. In order to do that,

1 we have to place the exterior stairs along the outer most
2 portion of the floor plate. Continuity of fire ratings often
3 limit and ability and setback of CMU walls from the exterior
4 as penthouse regulations would require.

5 Lastly, stair separation requirements and dead end
6 corridor requirements dictated where within the floor plate
7 we could locate the stairs. An existing structural concrete
8 beams and floor structures defined the final available
9 locations for the stair tower. Essentially we are very
10 limited to providing a new stair only on the exterior facade
11 at the Quarry Road side. And in order to make it
12 structurally feasible, the stair had to be located in a
13 north-south type orientation to the existing structure. By
14 doing that, we were able to create a stair tower that would
15 fit within the one to one-half setback. But due to head
16 clearances and structural -- new structural implementations
17 of beams at the penthouse level, we would not be able to
18 comply with that under the one to one setback requirement.

19 In terms of elevators, the existing elevators were
20 deemed insufficient for building codes in terms of occupants.
21 And did not provide compliance with current accessibility
22 standards either. Loads, capacity, speeds, and size all
23 require upgrades. Our initial hope was that we could reuse
24 the existing shafts and provide modern elevators with the
25 same location. Unfortunately the shafts were not adequate

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1 clearance and the existing structural beams and columns
2 surrounding them will not allow us to expand the shafts.

3 We had to go find new locations in order to
4 provide elevator cores within the building. So we examined
5 and surveyed the building and located a couple of potential
6 locations for new shafts. And they were compliant with the
7 existing zoning regulations setbacks at the time. One of the
8 shafts was able to be shifted slightly west in compliance
9 with the current regulations. And then the one that we're
10 discussing today was only able to comply -- or basically be
11 located in its current location. It would not comply with
12 the one to one setback in its current form.

13 Additionally, unit design was critical to the
14 layout of the penthouse. The unit layouts of the penthouse
15 are configured to the line with both the structure and the
16 surface chases below. In order to comply with the new one
17 to one setback, it puts the available area for units below
18 the threshold for efficient double loaded corridor layouts.
19 By configuring the layout in the manner that we have, we're
20 able to place our penthouse load bearing walls above the
21 structural beams below to be structurally efficient and
22 reduce the number of structural interventions required in the
23 existing building.

24 Additionally, the surface chases; primarily HVAC
25 and plumbing coordinate with the units below creating the

1 most efficient construction beams possible. Revising the
2 unit layouts would restrict our ability to provide the number
3 of units in the penthouse and reduce the efficiency.

4 We can go to the next slide real quick. This is
5 a view of the actual penthouse roof as well. As Art
6 mentioned, sustainability was a high level goal for this
7 project from the very beginning. So in addition to all the
8 high efficiency equipment within the building, compliance
9 with GAR, stormwater management, the new District's energy
10 code regulations led us down the pathway of a fully covered
11 green roof and solar paneled penthouse.

12 The reduction in the setbacks would approximately
13 reduce our panel load by about one-third and approximately
14 2,000 square feet of green roof area would be removed from
15 the site. The trick as Art mentioned with this project is
16 that it's almost 100 percent fully occupied site. We are
17 already using every available means at grade and within the
18 courtyard to be able to contribute to GAR and stormwater
19 management. The removal of these two elements would have a
20 detrimental impact on us meeting all of those codes.

21 I have several sections that go through the
22 penthouse setbacks that we can talk about in more detail if
23 you'd like. Otherwise --

24 (Simultaneous speaking.)

25 CHAIRPERSON HILL: No. Just go ahead and just

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1 move on with Mr. Utz now.

2 MR. UTZ: Thank you, Joe. And thank you, Art.
3 All right, so that brings our detailing of the setbacks, kind
4 of where they are, how they exist, and kind of why they
5 exist, to the floor. One of the kind of key components that
6 I just want to draw attention to in the prior slide, if you
7 could page back one, is the yellow walls that exist. And
8 basically, the structural sub-work components, that we're
9 depending on as part of building the roof structure on the
10 plane at the top of the building, really limit the ability
11 to lay out and configure the roof structure that we're trying
12 to build now. So that is highly constraining to what we can
13 do on the roof in a way that necessitates this relief.

14 So with that, I would close our initial
15 presentation. We're happy to answer any questions and
16 certainly happy to dive into any of these pages or any
17 details that you might want us to.

18 CHAIRPERSON HILL: Okay. Can you drop the slide
19 there for me, Ms. Mehlert? Okay. Mr. Utz, if you could just
20 go back and look. I think I'm correct. It's exhibit 39,
21 slide number 4 that has the new tweet the language from DDOT
22 and all the other TDM measures. If you could just take a
23 look at that while I go around with my Board members. Does
24 the Board have any questions for the Applicant?

25 DR. IMAMURA: Yes.

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1 CHAIRPERSON HILL: Dr. Imamura?

2 DR. IMAMURA: I have lots.

3 CHAIRPERSON HILL: Okay.

4 DR. IMAMURA: So I'll try to keep it in a logical
5 sequence, my questions. A lot of them (audio interference).

6 CHAIRPERSON HILL: Do you want us to pull up
7 anything?

8 DR. IMAMURA: Yeah, actually. That would be
9 great, Mr. Chairman. The last slide, if you could ask Ms.
10 Mehlert to pull that up. So a couple things I just want to
11 make note of. Certainly appreciate the 70 kilowatts of
12 photovoltaics that you all are attempting to put on there,
13 green roofs, adding to the housing trust fund. The District
14 definitely needs more residential units. So I see the effort
15 here.

16 Comments that have been made that the building was
17 in such disrepair, which was driving a lot of these changes.
18 Highly unusual for tenets to be able to weigh in, so I
19 certainly compliment the team and the Applicant for their
20 outreach effort with the tenets. Group design makes
21 everything harder. And it certainly can handcuff your design
22 solution to meet regulations and requirements sometimes. So
23 while customization of the floor plans are great, I think
24 that's where it's now led to the difficulties that you've had
25 with your risers and layouts.

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1 For the last point, I think, that Mr. Utz made,
2 about the structural elements there, here highlighted below,
3 is really dictating your solution. What it seems to me as
4 if, you made a comment, Mr. Ijjas, about a double-loaded
5 corridor. Certainly get that, trying to squeeze in
6 additional units. In fact, I think there's over 20 new units
7 that you all are adding to this building. So a couple things
8 there. One, why does it have to be a double-loaded corridor?
9 I think, certainly, the structure here, you could get by with
10 a single-loaded corridor and still meet the setback
11 requirements.

12 I went back into the record. I'm a little bit
13 confused about the timing of all of this. So, at least from
14 some of the notes that I gathered, you all were in DVs,
15 right, while the zoning regulations here were dictating the
16 setback requirements. So there's that I'm trying to kind of
17 work through. And then, in addition to that, why or if there
18 was a requirement, at least I thought, it would be prudent
19 to at least include in sort of your negotiations that all
20 these units are dependent on needing zoning regulations here.

21 So it sounds as if these promises have been made
22 to these units, we knew that setback requirements were in
23 play during DVs. And so, as you know, building height is a
24 sensitive issue in the District. So there's a lot of layered
25 questions here. And I'm putting all that out there for Mr.

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1 Utz, to see if he has some things to say.

2 MR. UTZ: So I can start to respond to that.
3 Thank you, Dr. Imamura. If there is a complicated situation,
4 it's highly unusual as well. One of the really interesting,
5 and I think, great parts about this project is just how long
6 the process that the tenet association has gone on, that I
7 haven't really seen this before. And it has been so
8 iterative and so kind of complicated that the phase of the
9 project where much of the kind of elements of agreement were
10 worked out actually started happening long before the
11 regulations were even about to change. So that's kind of
12 point one is that this is a really longtail process, the
13 likes of which, I think, are unusual.

14 On the text amendment itself, that also kind of
15 took a while. It wasn't clear to observers which way it was
16 going to go. Ultimately, that received its final actions in
17 October 14th of last year. And then it just went final and
18 effective on, December 24th was when it was in the register.
19 So while there was knowledge that that text amendment was out
20 there, it wasn't possible for the team to integrate that
21 without knowing that would be final. And, frankly, I think
22 they thought that they could have gotten through the process
23 faster than they, ultimately, were able to on their own,
24 preparing and submitting for a building permit. I don't
25 think that they saw the two overlapping as much as they ended

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1 up doing.

2 But while they did finish those DV phases that the
3 regulations were not yet final. And it wasn't clear that
4 they definitively would be. And I think it's such an
5 intricately balanced project that to do that, to kind of step
6 back from the areas that are showing on the page now that are
7 in color, would have changed it and would still change it in
8 such a manner that it would dramatically alter the ability
9 to do it.

10 There are nine units on the roof, as proposed here
11 and then, as you mentioned, there are some elsewhere. First
12 some reconfiguration of some floors that ultimately allow the
13 planner to add units. But, yeah. It's a delicately-balanced
14 enough project to where the loss of these habitable
15 components that we see before us would threaten the ability
16 to do it. I don't think that we would be able to do the roof
17 addition without these units that are shown in orange, as
18 impacted by the orange.

19 Art, did you have any other, or Joe, did you have
20 any other --

21 DR. IMAMURA: If I could just interject here, Mr.
22 Utz, real quickly. So I know you said it wasn't clear which
23 direction it was going to go, but the gamble was made, right,
24 with this end goal, here, that you'd have to, ultimately, if
25 it didn't go in your direction, then you'd end up at the BZA

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1 today. And that you said, well, the nine units probably
2 wouldn't have been possible, right, with this sort of
3 configuration. So I'm curious if, what solutions did you
4 look at, right? Playing the conservative card, okay? If it
5 goes the other way, right, what is that impact to the design
6 solution here? How many unit are lost on the habitable
7 penthouse here? And what would that solution look like?

8 So, surely, you sketched that out, and you looked
9 at what solution is. And maybe, at least at first glance for
10 me, I thought, all right. Well, maybe you lose three or four
11 units based off the layout of at least some of your fire
12 exits, staircase, maybe. You mentioned, too, about the
13 location of your vertical circulation, right? And that you
14 weren't able to reutilize the existing shaft. But all that,
15 to me, tells me is that you had a freer canvas here.

16 So I'm curious. I understand the points that
17 you've made. I'm curious. What were the alternate solutions
18 that you, at least quickly, sketched out? And how did that
19 impact this? And how many units were lost?

20 MR. LINDE: Well, let me answer that question, if
21 I could. I think designing to a new zoning code that has
22 got, in some areas, that would have been more allowable to
23 us, location of railings, if we had taken advantage of the
24 opportunities of the new zoning code and designed to the new
25 zoning code, which is more restrictive, in some areas, and

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1 the zoning code had not passed, we would have had a
2 nonconforming building in the other way.

3 The layout of the units, based on the stair
4 locations and elevators, is what drove the unique designs for
5 the returning tenets. So this was all decided almost a year
6 ago, the layouts with the tenets. And then we have to design
7 the vertical systems. We filed our permit application in
8 September. We have final DCRA approvals from all agencies
9 prior to the implementation of the new zoning code.

10 So we never, for a second, designed alternative
11 solutions because it would have been so incredibly
12 speculative because it's driven by our arrangements with the
13 tenets. And these are tenets that have been living in this
14 building for 40, 50, Mrs. Holis has been there 60 years. And
15 the amount of time it took to work with each of the tenets,
16 we would have started a train wreck. We even have zoning
17 approval on the project right now, issued, I suspect, in
18 error because it was issued several weeks before the zoning
19 code changed. So we could have had a permit without -- DC
20 Water or DDLE or DDOT being more timely in their response,
21 we would have had a permit. So I'm not sure how we could have
22 designed to a zoning code that didn't exist.

23 DR. IMAMURA: Mr. Linde, thank you. It's a series
24 of events here, right? A series of calamities that kind of
25 have put us at this point --

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1 MR. LINDE: Right.

2 DR. IMAMURA: -- is what it is, right? So I
3 understand where you're at. I understand the fact that you
4 have all have spent a lot of time with each tenet to
5 specialize and configure their units. Certainly appreciate
6 the level of effort that you're trying to do on the rooftop,
7 right? So I understand that as well. So you can understand,
8 at least from my seat, looking at these series of events.
9 And I think, from the outset, in terms of the way your
10 approach has kind of led to this issue. It just was one of
11 the contributing factors to this.

12 With that, I don't want to take up any more of the
13 Board's time. So with that, Mr. Chair, I will yield back.

14 CHAIRPERSON HILL: All right. Thank you, Dr.
15 Imamura. Does anyone else have some questions for the
16 Applicant? Ms. John?

17 VICE CHAIR JOHN: So, Dr. Imamura asked the
18 question that I had. I still don't understand why the relief
19 is needed. If the Applicant were to remove those penthouse
20 units, there would be no need for the relief, right?

21 MR. LINDE: No. We would have to remove the
22 elevators. We'd have to relocate the stairs. We would have
23 to then, with relocated elevators and stairs, start
24 redesigning the units which would be impacted by that, the
25 existing tenets' units. We would have to meet with them,

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1 restart the design process, and then each of those designs
2 would impact the neighboring tenets. And then once all of
3 the redesigned units with the tenets was complete, we would
4 have to begin the process of redesigning the plumbing,
5 electrical stacks and the HDAC shafts.

6 But it's also a question of basic fairness. We
7 designed and took a tremendous amount of time and effort to
8 design to the current zoning code. The zoning code changed
9 after we had filed for the permit without a sunset provision.
10 If they had said, anybody file for a permit before the change
11 in the zoning code is exempt, then we would not be sitting
12 here. But the Zoning Commission decided, despite our
13 requests to have some basic humanity -- I mean, honestly, we
14 have so many people involved in this process.

15 CHAIRPERSON HILL: I've got you, Mr. Linde. I'm
16 just laughing at your choices of words. I mean, basic
17 humanity.

18 MR. LINDE: Yeah, I mean, these are people.
19 They've made decisions --

20 CHAIRPERSON HILL: It's fine. It's all right, Mr.
21 Linde. I've got you. I'm just trying to get through the
22 questions here.

23 MR. LINDE: Yeah.

24 CHAIRPERSON HILL: Vice Chair John --

25 VICE CHAIR JOHN: I did have a follow-up question.

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1 I did have. We see a lot of these. This is not like a one-
2 off for us. Now, I understand the elevator shaft, and I
3 understand all of that. But I don't understand why, I think,
4 the northern piece, I don't understand why there's a need for
5 that relief if you remove those apartments. And I don't
6 understand how the floor plan for the lower floors affect
7 whether or not you have penthouse units.

8 I think the choice is, with the change in zoning,
9 is that, well, we have to decide whether or not we have
10 penthouse units because we can't meet the one-to-one setback.
11 I mean, that's the kind of analysis I would like to have
12 heard. But I will stop for now and see if any other Board
13 members have comments.

14 CHAIRPERSON HILL: All right. Thanks, Vice Chair
15 John. All right. Does anyone else have some questions? I
16 need you to raise your hand. Okay, Dr. Imamura.

17 DR. IMAMURA: Thank you, Mr. Chair. I just want
18 to confirm with the Applicant that all nine units have
19 already been promised.

20 CHAIRPERSON HILL: Say it again, Dr. Imamura.

21 MR. LINDE: I didn't hear him. I'm sorry.

22 DR. IMAMURA: Have all nine units already been
23 promised or have been --

24 MR. LINDE: No.

25 DR. IMAMURA: So, I guess, the three units that

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1 Vice Chair John spoke about on the north elevation, will
2 those be occupied by current tenets? Or have those been
3 promised to any tenets?

4 MR. LINDE: They have not.

5 MR. UTZ: I'll add -- sorry. I can give more
6 detail on kind of how it all fits together, if you'd like.
7 It is a complicated project where these units are the reason
8 that the project can happen. It's not a one-for-one
9 replacement with these units. But these units allow for
10 there to be a project.

11 We didn't really answer the piece of your question
12 before. We have considered the loss of these units, and kind
13 of the back of the thumbnail fault is that this roof plan
14 would not be built out without those units. I think it is
15 probably four units. It's the three that we're looking at
16 on the top of the roof plan, and then it's also a unit at the
17 bottom that's kind of squeezed between the two ends of the
18 barbell. Those four units would not be built. And then, at
19 that point, it doesn't make enough economic sense to go
20 forward with the rest of it, was our discussion internally.

21 The other aspect of it is, there is no other place
22 for us to put the mechanical components. The elevator
23 override and the stairway have to be in these locations for
24 a variety of reasons, but in large part because that's where
25 the core -- cores are. And then also in the case of the

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1 stairs, it has to be closer to the exterior walls so that it
2 can egress for code clearance. So there would already be a
3 need for those components. Even if the four habitable units
4 were removed, we would still be constrained to have a
5 component of the relief.

6 DR. IMAMURA: So I certainly get that, Mr. Utz.
7 And I understand that, the constraints for the stairwell and
8 the elevator shaft. Your comment about it wouldn't be
9 economically viable for this rooftop, I guess, are you saying
10 that the penthouse wouldn't be economically viable or is it
11 that the entire project is hinging on this rooftop?

12 MR. UTZ: I would defer to Art and Joe on that
13 question. But I understood it to be an integrated
14 consideration. This is the driver of the ability to do it,
15 in part.

16 DR. IMAMURA: So it's come down to four units.

17 MR. LINDE: It's come down to four units, the
18 location of the stairwell, the location of the elevator. I
19 mean, the tenets moved out of this building before the zoning
20 code changed. So the economics of redesign, when we did
21 everything, we designed to the code that existed. Even if
22 there was speculation that it might change, we didn't know
23 when it would change. Nobody, in September and October knew
24 when it would change. So the economics are definitely driven
25 by the increased units in the penthouse. They're far more

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1 valuable, plus the location of the elevators, plus the time
2 it takes to respond to the change.

3 DR. IMAMURA: So with Vice Chair John's comment
4 about those three units at the north, so the real drivers
5 here are the stairwell and the elevator shaft. I totally get
6 that. But then the question is, well, then we're just going
7 to get a special exception for those three units for the
8 entire norther elevation there, right? So it's one thing to
9 say, all right. We'll grant you a special exception for the
10 elevator shaft, given the sort of issues that are around that
11 stairwell. But now it's the three units that, to the north
12 there, it's like, well, we might as well go ahead with these
13 three units for the entire length of the north elevation.

14 CHAIRPERSON HILL: Can I ask -- give me a second
15 here. I'm trying get whatever questions we're trying to get
16 answered. Let me do this also. I'm going to come back
17 around. I'll ask my Board members just hang on a second
18 while I turn to the Office of Planning, okay? And then we
19 can come back, all right? Ms. Melhert, can you drop the
20 slide deck? Great. Okay. I'm going to turn to the Office
21 of Planning, if I could. And Mr. Cochran.

22 MR. COCHRAN: Thank you, Mr. Chair. I'm Steve
23 Cochran, for the record, representing OP in case 20658. For
24 the most part, OP would stand on the record. But given the
25 questions so far, there are a couple of things I think we

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1 should mention. Design regulations, as all of you know,
2 aren't perfect. Would these regulations regarding setbacks
3 have been more perfect if there had been a delayed cutoff
4 date for when they applied? Maybe. But they don't include
5 that.

6 Now, a special exception is one way that the code
7 deals with zoning regulations that are less than perfect,
8 assumed that a certain thing is permissible under special
9 exception, as long as it meets the criteria. The Office of
10 Planning report goes into some detail on why OP feels that
11 the Applicant does meet the Subtitle X Chapter 9 criteria,
12 as well as those under 1506.1. Given that, OP continues to
13 recommend that you approve the setbacks. And, by the way,
14 the conditions that the Applicant and DDOT worked out doesn't
15 change the OP recommendation. I'd be happy to answer any
16 questions.

17 CHAIRPERSON HILL: Okay. Does anybody have any
18 questions for the Office of Planning?

19 VICE CHAIR JOHN: Yes, Mr. Chairman. Can you
20 discuss C-1506.1(c). The strict application of the
21 requirements of this chapter would result in construction
22 that is unduly restrictive, prohibitively costly, or
23 unreasonable or is inconsistent with the building codes.
24 Now, I understand that that's true with respect to the
25 building shaft, elevator shaft, and the stairs. All of that

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1 makes sense to me. What doesn't make sense is the three
2 penthouse units on the north elevation. And I don't really
3 have a strong feeling with the one on the south side. But
4 I think the same reasoning would apply.

5 I'm not taking issue with the fact that the units
6 below were all customized. I think that's wonderful. But
7 I've never seen a case where an Applicant says, I had to
8 customize the units and the rest of the building. Therefore,
9 I need three or four penthouse units that don't comply with
10 the regulations, because that's what I understand you to be
11 saying. And I'm perfectly happy -- may I just finish? I'm
12 perfectly happy with the change for the elevator shaft and
13 the stairs. But I cannot, at this point, understand the rest
14 of the relief.

15 MR. COCHRAN: Let me try to answer your question.
16 It does not strike OP that the Applicant, I'm trying to
17 remember your exact phrase here, but that the Applicant just
18 decided that it would choose to not meet the one-to-one
19 setback regulations, or that it would choose to put the
20 penthouse units there on the north side, regardless of what
21 was percolating within the Zoning Commission.

22 OP was working on the assumption, based on some
23 conversations with the Applicant, that this project would be
24 fairly expensive to renovate an old building and that some
25 of the revenue, that would enable the rehabilitation, would

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1 come from the above-market rate units that would undoubtedly
2 exist in the penthouse space. That ties in with the timing
3 that the Applicant has encountered because it started the
4 project and negotiations with the tenets before the OP had
5 even, at the request of the Zoning Commission, started
6 crafting the draft of the new one-to-one setback regulations.

7 So the Applicant was working with certain
8 financial assumptions. Those would change, presumably, if
9 you have to get rid of three or four of the high-priced
10 units. And I can't answer what impact that would have on the
11 bottom line and whether the Applicant would have to go and
12 renegotiate everything with the tenets. But that is what the
13 Applicant had been arguing, and OP accepted that argument.

14 The other consideration is, of course, would the
15 granting the relief be contrary to the intent of the zoning
16 regulations? This would help increase, as you all have
17 noted, the number of residential units available, it would
18 make a substantial contribution to the Housing Production
19 Trust Fund, all of which are consistent with the zoning
20 regulations. And it would bring into play a building that
21 has a fairly high sustainability number, given the solar
22 units that are on top of the building.

23 The design is clearly distinct from the rest of
24 the building. It's not like they didn't set the penthouse
25 back. It is set back at a one-to-one ratio, facing streets

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1 that are relatively wide, especially Harvard Street. And the
2 materials are different. The color is different. It's fully
3 designed, yes. But it's clearly distinct from the rest of
4 the building.

5 It's my understanding that one of the points of
6 the setback regulations is to make sure that penthouses don't
7 look like you're adding another floor to a building. There
8 is no way that this looks like it's adding another floor to
9 the building. I'm happy to answer any other questions.

10 CHAIRPERSON HILL: Yeah, I'm just looking for
11 hands. Does anybody got anything more for OP? Dr. Imamura.

12 DR. IMAMURA: Thank you, Mr. Chair. I just want
13 to make a comment that I appreciate Mr. Cochran's explanation
14 in some of the points (audio interference). So, thank you,
15 Mr. Cochran.

16 CHAIRPERSON HILL: Okay. Ms. Melhert, is there
17 anybody here wishing to speak?

18 MS. MEHLERT: Yes. Ms. Jayne is still on the
19 line.

20 CHAIRPERSON HILL: Oh. Gotcha. Okay. Can you
21 allow Ms. Jayne in, please? Hi, Ms. Jayne. Can you hear me?

22 MS. JAYNE: I can hear you. Can you hear me?

23 CHAIRPERSON HILL: Yes. Can you go ahead and
24 introduce yourself for the record again, please, Ms. Jayne?

25 MS. JAYNE: Certainly. My name is Patricia Jayne.

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1 And I live at 1653 Harvard Street, directly across the street
2 from 1650 Harvard Street --

3 (Simultaneous speaking.)

4 MS. JAYNE: -- way.

5 CHAIRPERSON HILL: Okay.

6 MS. JAYNE: Part of 1650.

7 CHAIRPERSON HILL: Ms. Jayne, you're having a busy
8 day today. You want to go ahead and give us your testimony,
9 please?

10 MS. JAYNE: Yes. While it's quite admirable that
11 the attention paid by the Applicant to the tenets, I would
12 like to point out that there was absolutely no contact and
13 there is nothing in this about concern about the surrounding
14 properties, especially those of us who live directly across
15 the street. Harvard Street, on the north side, where I live,
16 is a hill. We have a very steep hill in front of our house
17 leading down to the street. My house is roughly about the
18 fourth or fifth floor of the building, of the Applicant's
19 building. So the addition of this floor to the building has
20 a visual and a noise impact on us. Yes, this is a city.
21 Yes, that big building was there when I bought the house.
22 And there's a lot of noise that comes from it.

23 My concern is that there was no consideration
24 given to how the balconies and these additional units would
25 have impact the houses. I would request that the Commission

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1 give no weight that the ANCs -- ANC 1D, which is my side of
2 Harvard Street, received the materials in November and did
3 not do any outreach to residents, such as myself. We did not
4 receive a notice from the BZA until just before Christmas.
5 1D punted to 1C, since the other side of Harvard Street,
6 where the building's located, is a different ANC.

7 I attended the January ANC 1C meeting, at which
8 the Applicants presented their materials, and I requested
9 that the ANC delay deliberation because we had just got
10 notice. And for a non-lawyer, architect, I'm not a zoning
11 lawyer. This is all new to me. And the ANC 1C said, you
12 missed our transportation and zoning meeting in December.
13 You had your chance. I said, we didn't have the notice then
14 because there was a delay for some reason in mailing it out
15 by the Office of Zoning.

16 So they based their decision on a meeting I didn't
17 even know existed for a problem I didn't even know existed.
18 So I've been on my own in terms of fighting this, as the ANCs
19 have been of zero interest and use in terms of understanding
20 this. I can't speak to the correctness of whether the
21 addition of the floor and the addition of the height is
22 applicable. I do know that setting back the balconies is
23 essential to have as much of a setback as possible. The
24 noise that we are getting now from the demolition alone is
25 so incredible that it's a big issue for those of us here who

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1 live across the street from this building.

2 So I would request that you keep the setback as
3 large as possible and deny this additional, I'm not sure how
4 many feet it is, but to keep it as few feet away from us as
5 possible. Thank you.

6 MR. COCHRAN: Mr. Chairman, you're on --

7 CHAIRPERSON HILL: Oh, I'm sorry. I was trying
8 to say something earlier anyway. Does anybody have any
9 questions for the witness and, if so, please raise your hand.
10 Okay. All right. Okay. Thanks, Ms. Jayne, for your
11 testimony. Bye-bye. Okay. Let's see. There's that. All
12 right. Okay. Does my fellow Board members have any more
13 questions for the Applicant? Okay. Mr. Utz, do you have
14 anything you would like to add at the end?

15 MR. UTZ: I would like to say a few closing words,
16 if that is okay.

17 CHAIRPERSON HILL: Sure. Go ahead, Mr. Utz.

18 MR. UTZ: Okay. Thank you so much. I did just
19 want to circle back around to the standards themselves. And
20 Mr. Cochran described these and, I think, described them
21 well. I wanted to reiterate how it can relate to kind of some
22 of the specifics that we were just talking about.

23 When it comes to a special exception, it is a
24 component of the regulations that is set up to allow for
25 approval if those conditions are met. And, if so, it is

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1 different than a variance, and the considerations are,
2 basically, set up for the concept that triggers the special
3 exception to be permitted if those conditions are met. In
4 this case, we think we do meet the conditions for all the
5 components of our restructure relief.

6 The very first piece of the consideration is
7 whether there is an adverse impact on the zone plan and any
8 impact on surrounding areas, on surrounding neighbors. And
9 we think that is very clearly the case here, that this does
10 not have an adverse impact on neighbors. It's a de minimis
11 request. There is already a one-half-to-one or greater
12 setback that was incorporated initially kind of in good faith
13 over the course of years that, at one time, was compliant,
14 very recently.

15 So the incursion that we're talking about is not
16 great, but it is great enough to completely alter the
17 direction of the roof structure and, therefore, the direction
18 of the project. We know it will not, if permitted in its
19 currently proposed envelope, this restructure will not
20 adversely impact any view sheds. It won't impact light and
21 air. And, as Mr. Cochran mentioned, the design of the roof
22 structure itself is meant to be complementary to the building
23 but also secondary to it. So it won't be visually intrusive.
24 And, frankly, I doubt folks even see this. It's also
25 shrouded in trees. There's a really strong, fantastic tree

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1 canopy, particularly along Harvard Street that will, frankly,
2 hide the ability to see this atop the building.

3 The second part of the consideration for relief
4 is that reasonable effort has been made for the housing
5 mechanical equipment, stairway, and penthouses to be in
6 compliance with the required setbacks. And that is something
7 that Mr. Diaz detailed, that that was an area of significant
8 study, and the building is highly constrained as to where
9 those mechanical components can be located. Basically, we
10 inherit the core and the stairways that we have, vertically,
11 and there isn't much we can do once we get to the roof plane
12 to alter those conditions.

13 The third grouping of relief considerations is the
14 one that I think we talked about the most, which is where
15 it's, C-1506.1(c), where there are four subcomponents within
16 that portion of the relief consideration and standards. And
17 the Applicant is to meet any one of those four considerations
18 to allow for the approval of the special exception. In this
19 case, we think we meet at least two, and the two relate to
20 much of what we were just talking about. It's the first and
21 the last one, 1506.1(c)(1) and 1506.1(c)(4).

22 There is some overlapping language in those two
23 components that speak to strict compliance being unduly
24 restrictive, prohibitively costly, or unreasonable or
25 inconsistent with the building codes in item 1. In item 4,

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1 it speaks in similar language about operating difficulties
2 or conditions relating to the building or surrounding area,
3 making full compliance unduly restrictively, prohibitively
4 costly, or unreasonable.

5 Those pieces relate to all the components of the
6 restructure that we're asking you to approve today, both the
7 mechanical space, the elevator override in the stairway, but
8 also the habitable space that we fairly desperately need to
9 power the rest of the project. It will be unduly costly and
10 prohibitive if that space isn't allowed to be integrated
11 within the project itself.

12 So we would ask the Board to consider kind of
13 holistically this request, in light of the special exception
14 standard itself and the kind of path forward that it gives
15 us. In light of those considerations I just laid out, but
16 also uniqueness of the time here, that this started so long
17 ago, literally four years ago, with the tenets in this fairly
18 fantastic model that we can deal with tenet associations and
19 keep folks in place, that create a unique need for this look
20 at a special exception mechanism that is fairly permissive
21 under the regulations.

22 So with that, I'm happy to answer any other
23 questions. And I really appreciate your time and your
24 questions and focus on our request. Thank you so much.

25 CHAIRPERSON HILL: Thank you, Mr. Utz. I was

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1 looking at your slide deck. Okay. Does anybody have any
2 questions for Mr. Utz and, if so, raise your hand. All
3 right. I'm going to go ahead and close the hearing and the
4 record. If you would excuse everybody, Ms. Mehlert.

5 (Pause)

6 CHAIRPERSON HILL: Okay. I appreciate everything
7 the Board -- this had more questions to it than I had
8 originally thought. However, I appreciate all of the
9 comments that the Board has given us. The Applicant also
10 kind of -- some of it, the argument seemed to go in a little
11 bit of a circle. However, I do think that, I'm kind of going
12 to tie back to this again, a special exception. I think that
13 the one-to-one setbacks are something that we do take very
14 seriously. And it is something that we do take a look at.
15 I, in this particular case, am satisfied with the setback
16 relief that's being requested.

17 I do think, not even going into, necessarily, the
18 project itself, but I can a little bit in terms of the
19 additional housing, the fact that the Applicant has worked
20 with the existing tenets as long as they have to try to get
21 to some kind of an understanding, the fact that the Applicant
22 has worked with the ANC for as long as they have, the fact
23 that the Applicant has found themselves in this kind of
24 situation where the regulations were one thing, and then they
25 kind of changed a little bit on them.

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1 However, for me, this did come down to a special
2 exception. And I would agree with the analysis that the
3 Office of Planning has provided for the criteria with which
4 the special exception is or isn't supposed to be approved.
5 So I am going to agree with the Office of Planning's
6 recommendation on those special exception criteria, as well
7 as, the ANC, again, whether or not they necessarily
8 understand all the specifics of the zoning regulation depends
9 on the ANC. Some do, some don't. However, we are to give
10 great weight to the ANC. So I am going to give great weight
11 to the ANC.

12 I know that there are definitely things that my
13 fellow Board members have an issue with this project. Some
14 of it, again, I will also say that the elevator shaft is
15 something that we see a lot more often, and things that are
16 the stairwells and things that aren't able to be manipulated
17 as easily, do fall into that special exception. Whether I
18 have issue with the additional four units that are on that
19 northern side, I am going to vote in favor of the
20 application.

21 So with that all being said, I'm going to go
22 through what I don't know is going to be controversial in our
23 discussion. And I'm going to start with Mr. Blake because
24 I don't know where he is.

25 MEMBER BLAKE: Thank you, Mr. Chair. I'm going

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1 to say, first of all, I do appreciate the efforts going into
2 this process, from the Applicant's perspective, as well as
3 the ANC and others. And, I have to say, I agree with the
4 Office of Planning's analysis on how the criteria's met. I
5 also agree with the way it was presented by the Applicant as
6 why the criteria was being met. I also appreciate the
7 explanation that Mr. Cochran gave as to the how the
8 application of the special exception should be applied and
9 how it fits into this whole scheme of things. I recognize
10 the integrated element of the project, the economic value of
11 it.

12 That said, again, I think that it meets the
13 criteria of C1506.1(a) through (c), and I give great weight
14 to the ANC's recommendation report, as well as the Office of
15 Planning. Note, DDOT has no objection, and the concerns that
16 were expressed from the community from Ms. Jayne were
17 realistic concerns. But I do think that the Applicant has
18 done everything they can to address those concerns. The
19 setback is what it is at this point, and it probably is back
20 as far as it can be from her street. So I believe the
21 Applicant has met the burden of proof, and I'm going to be
22 in support of the application as well.

23 CHAIRPERSON HILL: All right. Thank you, Mr.
24 Blake. Mr. Smith?

25 MEMBER SMITH: Are you sure you want to go to me?

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1 I'm wearing this blue blazer, you know.

2 CHAIRPERSON HILL: I don't know. I don't know
3 what's going to happen. I still don't know what's going to
4 happen.

5 MEMBER SMITH: Okay. Well, you know, I'll be even
6 (phonetic). I do fall back on this being a special
7 exception. So a special exception has a lower, I wouldn't
8 say lower, a different standard for us to evaluate versus a
9 variance. In a special exception, the preponderance is that,
10 to me, that certain exceptions from the zoning ordinance are
11 appropriate if properly mitigated.

12 So when I read subtitle C-1506, or just a question
13 on a special exception, it's not from the penthouse
14 regulations. And it's not exclusive of whether it's
15 appropriate just for mechanical spaces versus occupied
16 spaces. Yes, it's all intertwined the way that they've
17 designed the space. But the regulations speak to relief from
18 the penthouse requirements.

19 So I'm fairly comfortable with Mr. Cochran's
20 analysis of this particular request in how it does meet the
21 criteria for us to be able to grant this special exception,
22 pursuant to subtitle C-1501.1 and the general special
23 exception standard because I do believe that the proposed
24 penthouse does meet all of the general special exception
25 standard. I believe it would be in harmony with the general

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1 purpose and intent of the zoning regulations and zoning maps
2 if we find that the special exception is appropriate.

3 And I do not believe that it would not tend to
4 affect adversely the neighboring property within the zoning
5 regulations. In accordance with the zoning regulations, the
6 penthouse is still set back. While it wouldn't necessarily
7 meet the bottom right setback, it is set back on top of this
8 apartment building. And I don't think it would visually
9 intrude on the townhouses across the street, along Arbor, and
10 to the south as well.

11 In looking at the criteria for C-1506, I do,
12 again, the general special exception criteria are standards
13 for us to weigh. And I do believe that they have met B for
14 the mechanical equipment. C, just as Mr. Cochran stated,
15 they really only had to comply with one. And I do believe
16 that they have complied with the two that Mr. Cochran
17 analyzed. So with that, I give OP's staff report great
18 weight and will support the special exception. Threw you for
19 a curve ball, huh?

20 CHAIRPERSON HILL: I'm going to go with Dr.
21 Imamura next.

22 DR. IMAMURA: Thank you, Mr. Chairman. First, I
23 feel that my comment in the previous case about imperfect
24 regulations comes back in this case because, as Mr. Cochran
25 pointed out, that's why we have special exceptions. That's

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1 why we have to do these. I'm mindful that people that are
2 watching watch for facial expressions and cues, body
3 language, that sort of thing. So as I've, jumping out of my
4 seat here, my consternation about this. There are a couple
5 things. It does boil down to the special exception. There
6 are plenty of added benefits of the trust funds,
7 sustainability, (audio interference) and so on and so forth.

8 I think they put themselves in a precarious
9 position. Certainly don't want anybody else that's watching
10 this or that is in a similar situation, that they're
11 midstream and think that they can come deplore the BZA and
12 have a favorable outcome. Also don't want people to think
13 that I'm wearing a blazer that indicates which way I'll lean.

14 But I certainly think that Mr. Cochran, the
15 Applicant, I understand, explained the special exceptions and
16 the conditions are met. The real key here is that there was
17 not a cut-off date that was included. So I can certainly
18 appreciate that aspect of it, and that there is sort of this
19 de minimis use, or difference, really, between the current
20 and past setbacks. So with that, I think my reservation and
21 consternation for this project is probably duly noted on the
22 record. Vote in favor.

23 CHAIRPERSON HILL: Okay. Vice Chair John.

24 VICE CHAIR JOHN: Thank you, Mr. Chairman. So I
25 agree that the application only needs to demonstrate one of

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1 the criteria in 1506.1(c). And, as I mentioned, there is no
2 doubt as to the elevator shaft and the stairwell and the
3 mechanical equipment. And so on balance, I am going to
4 support the application. And I agree with Mr. Cochran that
5 the regulations are not perfect. I think other people, Dr.
6 Imamura and, maybe, my other Board members have also
7 mentioned that. And, because this is a special exception,
8 it means that the relief is allowed, subject to meeting the
9 criteria.

10 So I am going to support the application based on
11 the fact that at least one criteria in 1506.1(c) has been
12 met. I have difficulty deciding which of those because I have
13 reservations with the penthouse units, even though I'm very
14 sympathetic to the economic arguments that have been made.
15 So I'm in support of the application. Just don't pin me down
16 to which one the application meets, with respect to the
17 penthouse apartments.

18 CHAIRPERSON HILL: Okay. All right. I thank you
19 all very much for your input. I'm going to make a motion to
20 approve Application No. 20658, as captured and read by the
21 secretary and ask for a second, Ms. John.

22 VICE CHAIR JOHN: Second.

23 CHAIRPERSON HILL: Motion made and seconded. Mr.
24 Moy, can you give a roll call, please.

25 MR. MOY: Yes. Thank you, Mr. Chairman. When I

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1 call each of your names, if you would please respond with a
2 yes, no, ixnay to the motion made by Chairman Hill to approve
3 the application for the relief requested. The motion was
4 second by Vice Chair John. Mr. Smith.

5 MEMBER SMITH: Yes.

6 MR. MOY: Vice Chair John.

7 VICE CHAIR JOHN: Yes.

8 MR. MOY: Chairman Hill.

9 CHAIRPERSON HILL: Yes.

10 MR. MOY: Mr. Blake.

11 MEMBER BLAKE: Yes.

12 MR. MOY: Zoning Commissioner Dr. Imamura.

13 DR. IMAMURA: Yes.

14 MR. MOY: Then staff would record the vote as five
15 to zero to zero. And this is on the motion made by Chairman
16 Hill to approve. The motion was second by Vice Chair John
17 to approve. Also in support of the motion, Mr. Smith, Mr.
18 Blake, Zoning Commissioner Dr. Imamura, and, of course, Vice
19 Chair John and Chairman Hill. The motion carries on a vote
20 of five to zero to zero.

21 CHAIRPERSON HILL: Okay. Mr. Moy, is that it for
22 us today?

23 MR. MOY: Yes, sir. There's nothing else from the
24 staff.

25 CHAIRPERSON HILL: Okay. There was a lot of

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1 discussion about zoning being imperfect. I think that I'm
2 perfect. And so I'm going to go with that. At least, my
3 wife thinks that I think that I'm perfect. But I don't,
4 really don't think that. And I'm sure that you all don't
5 think that you're perfect. All right. With that, I'm going
6 to let everybody go. You all have a nice day. And we stand
7 adjourned. See you next week. Bye-bye.

8 (Whereupon, the above-entitled matter went off the
9 record at 1:12 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: 03-16-22

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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