

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

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WEDNESDAY

APRIL 20, 2022

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Video Teleconference, pursuant to notice at 9:48 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:

ANTHONY HOOD, Chairperson
ROBERT MILLER, Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Regular Public Hearing held on April 20, 2022.

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

(9:48 a.m.)

BZA CHAIR HILL: Alright. Let's see. Mr. Moy, you can call our first hearing case when you can.

Hi, Commissioner Miller, Good morning.

ZC VICE CHAIR MILLER: Sorry I was late.

BZA CHAIR HILL: That's alright, Commissioner. God, Commissioner, you just get so much good light in that room.

ZC VICE CHAIR MILLER: Well, I just had to close the shade because I couldn't see anything because of too much light.

BZA CHAIR HILL: Alright, Mr. Moy, you can call it.

MR. MOY: Alright. Thank you, sir. So, what we have before the Board is -- the first case in the Board's hearing session is Appeal No. 20654 of 4721 Sheriff Road, NE -- or, rather, NE, LLC.

This is an appeal from the decision made on September 15, 2021, by the Zoning Administrator, Department of Consumer and Regulatory Affairs. And this property is located at 4719 Sheriff Road, NE (Square 5151, Lot 144).

And, let's see. The only thing I think I would like to add was this was last heard by the Board at its public hearing on March 23rd, 2022.

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1 And this was carried to today, I suppose, as a
2 limited scope hearing on the issues raised by the Board back
3 in March 23rd. Thank you.

4 BZA CHAIR HILL: Great. Thank you, Mr. Moy.

5 Okay. I'm sure everybody remembers this as to
6 where we are. I'm going to go around and have people
7 introduce themselves, and then the Board will have an
8 opportunity to ask questions from our special guests as well.

9 Let's see. Mr. Kline, since I can see you, could
10 you introduce yourself for the record, please.

11 MR. KLINE: Yes. Thank you. Good morning.

12 Andrew Kline of the Veritas Law Firm here on
13 behalf of the Appellant.

14 BZA CHAIR HILL: Got it. Let's see.

15 Mr. Norbert, can you hear me?

16 MR. PICKETT: Yes, sir, Chairman Hill.

17 BZA CHAIR HILL: Could you introduce yourself for
18 the record, please, sir.

19 MR. PICKETT: Sure. My name is Norbert Pickett.
20 I'm the owner of Cannabliss. I'm also the owner of 4721
21 Sheriff Road, NE, LLC.

22 BZA CHAIR HILL: Great. Thank you, Mr. Norbert.

23 Mr. Moy, I don't see anybody else in here. I see
24 a Ms. Margolis.

25 MR. MOY: Yes. I'm checking with the staff to see

1 where we stand with the other party. So, I'll get back to
2 you in a second, sir.

3 BZA CHAIR HILL: Got it.

4 Ms. Margolis, can you hear me?

5 MS. MARGOLIS: Yes, I can hear you.

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

8 MS. MARGOLIS: Yes. My name is Anna Margolis.
9 I'm with the Veritas Law Firm on behalf of the Appellant.

10 BZA CHAIR HILL: Okay. Alright.

11 Alright, Mr. Moy. I guess I'm still looking for
12 ABRA as well as DCRA, okay?

13 MR. MOY: Alright. Mr. Chairman, the individual
14 from ABRA is logging in.

15 BZA CHAIR HILL: Okay.

16 MR. MOY: And as to the representatives from DCRA,
17 I don't know where they are, but let me pursue that as well.

18 BZA CHAIR HILL: Yeah. Yeah. That's fine.

19 Okay, everybody, just take a break. We're going
20 to need DCRA. When ABRA pops in, we'll go ahead and do that
21 as well.

22 I'll just keep looking after everybody. And, Mr.
23 Moy, if I miss them, just give me a yell.

24 MR. PICKETT: Also, just want to say "Happy 4/20,
25 everyone."

1 (Laughter.)

2 BZA CHAIR HILL: Gosh, Mr. Norbert. I hope it's
3 lucky for you, but that is pretty darn appropriate.

4 MR. PICKETT: Thank you.

5 BZA CHAIR HILL: Sure.

6 (Whereupon, the above-entitled matter went off the
7 record at 9:52 a.m. and resumed at 10:00 a.m.)

8 BZA CHAIR HILL: Okay. Ms. Brown, could you
9 introduce yourself for the record, please.

10 MS. BROWN: Yes. Good morning, Chairman Hill, and
11 members of the Board of Zoning Adjustment. My name is Andrea
12 C. Brown, Assistant General Counsel for the Department of
13 Consumer and Regulatory Affairs.

14 BZA CHAIR HILL: Okay. Mr. Gordy, can you hear
15 me?

16 MR. GORDY: I can.

17 BZA CHAIR HILL: Could you introduce yourself for
18 the record, please, sir.

19 MR. GORDY: Sure. My name is Sean Gordy and I am
20 the Licensing Division Manager at the Alcoholic Beverage
21 Regulation Administration.

22 BZA CHAIR HILL: Okay, Mr. Gordy. Welcome.

23 MR. GORDY: Thank you.

24 BZA CHAIR HILL: Ms. Brown, it's just Mr. LeGrant
25 we're waiting for, correct?

1 MS. BROWN: Yes, Chairman Hill.

2 BZA CHAIR HILL: Okay. Alright. Well, we'll wait
3 for him to arrive.

4 (Pause.)

5 BZA CHAIR HILL: Mr. LeGrant, can you hear me?

6 MR. LEGRANT: Yes.

7 BZA CHAIR HILL: Could you introduce yourself for
8 the record, please.

9 MR. LEGRANT: Yes. Matthew LeGrant, Zoning
10 Administrator, DCRA.

11 BZA CHAIR HILL: Okay. Great. Okay. So, I guess
12 we have everyone here. So, the Board had some questions,
13 right?

14 And I know the Board had some questions about ABRA
15 -- I'm sorry, for ABRA. Mr. Gordy, there are some questions
16 for you.

17 And I know that we asked the Appellant -- I'm
18 sorry -- yeah, the Appellant, how the operation would
19 function.

20 And I believe we got more detail on that with site
21 plans, you know, plans and a variety of information. And
22 thank you very much, Mr. Norbert. It was very helpful.

23 And I think that we are going to end up asking
24 you, Mr. Gordy, some questions. And I know that my board
25 members have a variety of questions for you.

1 Mr. Gordy, I guess if I could just kind of open
2 it up with a pretty generic statement, Mr. Gordy, you're
3 familiar with what is going on before us, correct?

4 MR. GORDY: Yeah. I've been made familiar, yes.

5 BZA CHAIR HILL: Can you explain to me why this
6 is not like growing hydroponic lettuce?

7 MR. GORDY: I can't answer that anymore than to
8 say ABRA and the ABC Board follows the guidance, if you will,
9 of the Zoning Administration when it comes to an applicant
10 applying for whatever type of licensure under the regulation
11 of the ABC Board.

12 BZA CHAIR HILL: Okay. Can you say that again,
13 Mr. Gordy?

14 MR. GORDY: You asked specifically about why isn't
15 this like growing lettuce, and my response is that the ABC
16 Board and ABRA license is an entity. Of course, there are
17 a set of criteria that's involved with the application
18 process.

19 And so, we simply follow that process which
20 includes the appropriate zoning and the Certificate of
21 Occupancy, for example, the corporation's division DCRA that
22 a corporation is in good standing. So, we follow what our
23 sister agencies provide for us within the context of the
24 application process.

25 So, if it's lettuce and that's something that we

1 regulate and do, then we license you for lettuce with the
2 appropriate credentials.

3 BZA CHAIR HILL: Okay. Alright. I'm going to
4 turn to my board members. Who would like to begin the
5 questions? And if so, please raise your hand.

6 Mr. Blake?

7 MEMBER BLAKE: Thank you, Mr. Chair.

8 Mr. Gordy, thank you for being here. I have a
9 question for you. Could you elaborate on the process and how
10 you use the Zoning Administrator Confirmation Letter in that
11 process for approving entities?

12 MR. GORDY: The Zoning Administrator's letter, in
13 this specific instance, is a medical cannabis cultivation
14 center.

15 The process for obtaining approval to operate a
16 medical cannabis cultivation center simply is an applicant
17 has to file a timely Letter of Intent, file an application
18 for a limited number of licenses that we have, and that their
19 application is reviewed by a sworn committee, ANC, to achieve
20 a high score to obtain the license.

21 And so, a Zoning Determination Letter is required
22 when a registration holder files either that type of
23 application or a transfer or, you know, the relevant
24 application according to 22-C of the DCMR, and file that
25 application and request approval for that zoning letter

1 before obtaining a Certificate of Occupancy.

2 So, that letter is important because that, in
3 conjunction with the appropriate distancing, based on the
4 regulations, from, you know, where kids are, we look at as
5 part of the application process.

6 And if the zoning is not appropriate and if the
7 distance requirements are not met, then that application
8 can't be entertained.

9 MEMBER BLAKE: You mentioned the zoning locations.
10 Can you talk a little bit about the structure of the medical
11 marijuana business and how the cultivation center, testing
12 and distribution, how they differ?

13 MR. GORDY: So, with regard to medical cannabis,
14 the cultivation center cultivates the -- be it flowers or
15 creates -- excuse me one second.

16 The cultivation center is responsible for
17 following the regulated process of cultivating the flower,
18 or the cannabis, and that includes a fairly straightforward,
19 fundamental process of growing medical cannabis.

20 Some also create and develop edibles, gummies,
21 chocolates, et cetera, but the cultivation centers cultivate
22 the product, ultimately sell to the approved and regulated
23 dispensaries, and before any product, of course, is -- at
24 least, according to law -- after being cultivated and being
25 sold for consumption, the testing facilities test the

1 products that come from cultivation centers.

2 MEMBER BLAKE: Is there any differentiation
3 between the opportunities that are afforded cultivation
4 centers and --

5 MR. GORDY: I'm sorry, can you repeat the
6 question?

7 MEMBER BLAKE: Sure. Is there any difference
8 between the opportunities afforded cultivation centers? That
9 is, do they have the same production mix, the same general
10 production, or is there some differentiation between them.

11 And those would be existing ones. How many are
12 there, I should ask as well.

13 MR. GORDY: Well, you have eight cultivation
14 centers and each, you know, in the course of cultivating
15 medical cannabis, or flower, if you will, and the growth
16 process, all are fundamentally the same.

17 The extent of how that's done is according to
18 resources, you know. One facility has more money than the
19 other. Then they can afford the Mercedes-Benz of cultivation
20 as opposed to the Toyota of cultivation.

21 And not to disparage Toyota, but, you know, your
22 resources are fairly different. It may be vast and pockets
23 may be deeper.

24 With regard to the strains or the products that
25 they offer, it's according to the horticulturalists or those

1 who are certified and work within that facility that, you
2 know, are responsible for growing various strains. And so,
3 one cultivation center may be able to offer a different
4 strain than the other.

5 It all depends on how they, you know, grow these
6 plants and marry these plants together and come up with the
7 various strains. At least that's my understanding.

8 MEMBER BLAKE: And of all the ones that exist
9 today, they would have gone through this process, including
10 the Zoning Administrator confirmation?

11 MR. GORDY: Correct. Before even -- ABRA will not
12 accept the application if they have not successfully
13 navigated that process.

14 MEMBER BLAKE: In terms of the Code, I looked at
15 the definition of a "cultivation center," and it said that
16 it was based on ABRA, but it also -- they had the ability to
17 cultivate, possess, manufacture and distribute medical
18 marijuana.

19 And when I looked at the definition of
20 "manufacture," it included such things as production,
21 preparation, propagation, compounding, conversion, processing
22 marijuana either directly, or indirectly, by extractions or
23 from substances of natural origin, or independently by means
24 of chemical synthesis, or by a combination of extraction and
25 chemical synthesis, and including packaging or repackaging

1 of the substance or labeling or relabeling of its container.

2 That's a fairly broad definition of, manufacture.
3 I'd be curious to know that in the context of the existing
4 cultivation centers, is there any business model that's
5 similar to that presented by the Appellant? I don't know if
6 you saw that in the supplemental statement.

7 MR. GORDY: You kind of asked a couple questions
8 there. I guess I can approach it this way that -- because
9 I heard you touch on the zoning categories or the use of
10 categories for the existing cultivation centers in D.C., and
11 the answer is no.

12 ABRA, the Agency, is not -- is obligated to accept
13 whatever position Zoning takes on a specific matter or
14 application under the law.

15 In terms of, you know, what they grow there and
16 how they grow there, we don't necessarily get involved with,
17 but, you know, we simply just take the stance that whatever
18 Zoning deems appropriate, and if it's within the context of
19 the law and our application process, then that's what we'll
20 accept.

21 MEMBER BLAKE: Okay. But to the extent of the
22 definition of "manufacture," do most of the cultivation
23 centers, or all of them, manufacture, based on that
24 definition, product?

25 MR. GORDY: Whose definition is that based on?

1 MEMBER BLAKE: That definition is in the D.C.
2 Official Code, 7-1671.01, No. 5 and 10.

3 MR. GORDY: Right. So, if that, again, is zoned
4 or deemed as manufacture or, you know, for example, we get
5 the commercial codes or mixed use, what have you, and if our
6 regulations comport with that particular aspect of the law,
7 then we'll accept that as manufacturing.

8 But, again, I can't go back and tell you what each
9 individual was zoned because, you know, of course they had
10 different letters as they came in and their certificate of
11 occupancies may be zoned under a certain code that was
12 acceptable at that time.

13 MEMBER BLAKE: Okay. I guess, a new topic. If
14 you were granted a cultivation license, would you be limited
15 in what you're able to offer or would you be able to do
16 everything as defined in that statute?

17 MR. GORDY: You would be able to -- if you were
18 approved for a medical cannabis license as a cultivation
19 center, then you would be permitted to do what those
20 regulations provide for you to do.

21 And, again, that's based on the application
22 process in which it was rigorously reviewed, and ultimately
23 approved, based on the documentation provided by our sister
24 agencies.

25 MEMBER BLAKE: Okay. And have you had the

1 opportunity to look at the supplemental statement provided
2 by the Appellant with regard to their operations?

3 MR. GORDY: Specifically what are you referring
4 to?

5 MEMBER BLAKE: There's an exhibit that the
6 Applicant submitted to us to define his process, and I wanted
7 to see if you had an opportunity to see that. I would just
8 be curious to get some insight from you on that.

9 Is that possible to pull up so he can see, if you
10 haven't seen it?

11 BZA CHAIR HILL: Mr. Young, can you hear me?

12 I think Board Member Blake is looking at Exhibit
13 34, page -- well, the first -- the end of the first and
14 second page; is that correct, Mr. Blake?

15 MEMBER BLAKE: Yes, it is. Thank you, Mr. Chair.

16 MR. GORDY: Is this about the information about
17 process and engagement with ABRA and the process -- well,
18 I'll let you --

19 MEMBER BLAKE: Well, if we can --

20 BZA CHAIR HILL: Yeah. Mr. Gordy, do you have
21 access to the case file, by any chance?

22 MR. GORDY: I don't think I do.

23 BZA CHAIR HILL: Well, let's pull this up first.

24 Let's let Mr. Young pull this up first anyway.

25 (Pause.)

1 BZA CHAIR HILL: Yeah, Mr. Young, go up a little
2 bit. And if you can zoom out, I guess that's good, too,
3 right? And then go to the bottom of page 1. Then, if you
4 can, scroll to both so that Mr. Gordy can see 1, 2 and then
5 3.

6 Mr. Gordy, can you kind of see that?

7 MR. GORDY: Yes.

8 BZA CHAIR HILL: Okay.

9 MEMBER BLAKE: In the context of that, Mr. Gordy,
10 if you can look at that, we went through, as he described the
11 process, propagation, early vegetation and so forth.

12 I just wanted to see if we could understand
13 better, from our perspective, at what point are we growing
14 and at what point are we manufacturing or processing?

15 I just want to -- if you just look at the process
16 here, could you help us just differentiate between that,
17 because that's something that I could not do.

18 MR. GORDY: Unfortunately, I can't. And, no, I
19 haven't seen this, but I will say that the application
20 process is very competitive. And, as an ABRA representative
21 thereof, I don't have a specific comment on the Applicant's
22 documents or his application.

23 And if we need to dive deeper than this, I can
24 discuss with our counsel, but I haven't seen it and I won't
25 be able to differentiate or at least give you further

1 guidance on that.

2 MEMBER BLAKE: Okay. Thank you very much.
3 Perhaps I could ask a generic question then. Obviously, if
4 you think about the growing process, growing a plant to a
5 certain point would certainly be very much agricultural.

6 In this case, you grow the marijuana plant from
7 seed form to harvest. To me, purely it is agricultural.

8 But as I go beyond the -- once I've grown it to
9 harvest, there are things that take place in terms of trim,
10 the drying of the plants, curing of the plants, packaging of
11 the plants. All this, to me, sound like something that is
12 inconsistent with the definition of, manufacture, in 1671.01.

13 Can you address that?

14 MR. GORDY: Unfortunately, not. I'm sorry, I
15 can't because it's almost as if, you know, we license alcohol
16 in establishments and some are distilleries and they also
17 brew beer.

18 And so, a process specific to that I won't be able
19 to, you know, provide expert testimony on that process
20 anymore than I could, you know, the distinction between an
21 agricultural process versus where it overlaps into
22 manufacturing.

23 MEMBER BLAKE: Okay. Thank you very much.

24 BZA CHAIR HILL: Mr. Young, could you drop that
25 slide deck for me?

1 (Pause.)

2 BZA CHAIR HILL: Mr. Blake, are you good or do you
3 want to -- we can jump around a little bit and come back to
4 you.

5 MEMBER BLAKE: Yeah, I think I'm good for now.
6 I'm going to jump around. I have something else to come back
7 to, but I'm good for now, thank you.

8 BZA CHAIR HILL: Okay. Mr. Smith, Commissioner
9 Miller, do you got any questions of ABRA?

10 MEMBER SMITH: Sure. I think I have one question
11 about that. I think Mr. Blake may have asked it, but I'll
12 ask it in a different way.

13 Mr. Blake spoke about a process beyond harvest.
14 So, the plant is grown and it's harvested, but there's
15 additional processes that may occur between when the plant
16 is harvested to the time that it is sold to a retail
17 business.

18 Could you speak -- I mean, per the way ABRA
19 regulates that portion, can you speak to what is permitted,
20 per ABRA's regulations, in a cannabis cultivation center?

21 What does that process look like typically in your
22 analysis of the already approved cultivation centers within
23 the District?

24 MR. GORDY: Precisely that that, you know, if they
25 were licensed to cultivate or distill, then inherent in that

1 licensure or approval are the regulations to do so.

2 And so, if the business model is to manufacture
3 it or distill or cultivate, then all the processes inherent
4 into that, according to the regulations, is what we follow
5 and how we review and ultimately issue licenses on.

6 But in terms of a specific applicant's documents
7 or application, I can't get into that because it's a
8 competitive process, again, as I mentioned.

9 And, you know, with regard to the various aspects
10 and the specifics of cultivation or manufacturing or
11 distilling, I'm not an expert on. So, I can't necessarily
12 address that.

13 MEMBER SMITH: Alright. Thank you. That's all
14 the questions I have.

15 BZA CHAIR HILL: Okay. Let's see. Commissioner
16 Miller, do you have anything for ABRA?

17 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman,
18 and thank you, Mr. Gordy, for being here.

19 Mr. Gordy, I think if you unmute while somebody
20 else is speaking, we won't hear the feedback. It's hard to
21 remember to mute and unmute, but we all do that.

22 So, good morning. Again, thank you for being
23 here. I don't have many questions. I guess my only question
24 is -- and I'm not sure how relevant it is to this
25 application, but -- or this appeal, but -- so, there are

1 eight cultivation centers that are currently -- I'll start
2 off with there are eight cultivation centers currently
3 licensed by ABRA -- or how many are there?

4 MR. GORDY: That's correct. Eight cultivation
5 centers.

6 ZC VICE CHAIR MILLER: And it's my understanding
7 that this is -- well, then this goes back to several years,
8 I guess, that ABRA has been licensing both dispensaries and
9 -- well, ABRA has recently gotten into it.

10 It was Department of Health, I guess, before that,
11 but these cultivation centers go back several years; is that
12 -- some of them go back several years; is that correct?

13 MR. GORDY: That is correct.

14 ZC VICE CHAIR MILLER: And are you aware of any
15 adverse effects of the operations of those cultivation
16 centers where they are currently located?

17 And it's my understanding that they're all
18 currently located in PDR, what used to be called "industrial
19 zoning," because that's where the Zoning Administrator has
20 said they should be located, but are you aware of any adverse
21 effects of the operations of the existing cultivation
22 centers, not that it necessarily reflects on how this
23 particular cultivation center, if it were successful, would
24 operate because -- but are you aware of any adverse effects
25 of the existing cultivation centers on the neighborhoods in

1 which they're located?

2 MR. GORDY: No, I'm not, Mr. Miller.

3 ZC VICE CHAIR MILLER: And is it an intensive --
4 is there an intensive amount of activity in and out of these
5 -- I assume there's intense activity, I guess, going on
6 inside, but is there a lot of traffic or delivery trucks or
7 pickup trucks picking up the products and -- is there a lot
8 of activity going on outside of them, the existing
9 cultivation centers?

10 MR. GORDY: I can't speak to the activity, but
11 with regard to the licensure aspect, the hours of operations
12 are such that they cannot operate between the hours of 9:00
13 p.m. and 7:00 a.m.

14 And they are -- most are licensed, or at least
15 have, by law, the ability to deliver products and work
16 closely with dispensaries; but in terms of traffic and day-
17 to-day activities and business, I'm not familiar with.

18 ZC VICE CHAIR MILLER: Okay. And my final
19 question is, in addition to whatever the -- all the
20 requirements that are in the law and in your own regulations
21 in terms of the operations of cultivation centers, when ABRA
22 considers a cultivation center or a dispensary, I guess, for
23 that matter, even though that's not what's involved here,
24 although there's one adjacent next door, so I guess it is
25 involved here a little bit, does ABRA place additional

1 conditions beyond what the law and regulations already
2 require in any specific cases to adapt to whatever particular
3 application might be before you in terms of the operations?

4 MR. GORDY: No, not that I'm aware of.

5 ZC VICE CHAIR MILLER: So, all the conditions are
6 in the regulations and law as they exist, okay.

7 MR. GORDY: That's correct.

8 ZC VICE CHAIR MILLER: Okay. Thank you very much.

9 MR. GORDY: You're welcome.

10 MEMBER BLAKE: Mr. Chair, I have a followup
11 question. I have a followup question. I'd like to just
12 follow up on what they said with regard to potential adverse
13 impact.

14 Given the manufacture process that takes place at
15 a cultivation center, is there the potential for an adverse
16 impact explosion, or anything of that nature, that could
17 cause harm to neighboring properties?

18 MR. GORDY: I wouldn't be able to answer that.

19 MEMBER BLAKE: Great. Thank you.

20 BZA CHAIR HILL: Mr. Gordy?

21 MR. GORDY: Yes, sir.

22 BZA CHAIR HILL: So, have you -- on all those
23 other applications for the cultivation center, have you guys
24 -- I mean, I'm just following up because I'm just kind of
25 curious, like, have you gotten complaints, or know of any

1 complaints, from the neighborhood about adverse impacts or
2 you're saying you've heard nothing?

3 MR. GORDY: I've heard nothing.

4 BZA CHAIR HILL: Okay. Okay.

5 MR. GORDY: Again, you know, the program
6 transitioned to ABRA in October of 2020 -- 2021. So -- but
7 since, in that time, I've heard nothing. ABRA has heard
8 nothing.

9 BZA CHAIR HILL: Okay. Okay. Let's see.

10 Ms. Brown, do you have any questions for ABRA?

11 MS. BROWN: Yes, Chairman Hill. Thank you for
12 allowing me to ask a couple of questions here.

13 Mr. Gordy, thank you for your time today. I want
14 to ask you a little bit about the fundamental growing process
15 for growing medical marijuana inside of a cultivation center.

16 Can you speak to any of the fundamentals in terms
17 of what is required to cultivate marijuana inside of a
18 center?

19 MR. GORDY: So, fundamentally each cultivation
20 center has to have an approved grow process. And that
21 includes grow rooms, the appropriate lighting and
22 ventilation, the irrigation aspects of the growth process.

23 And the growth process starts with -- and, again,
24 I'm not an expert -- but with the seeding, the growing of
25 plants, I guess whatever gestation periods are associated

1 with that.

2 And as that -- those flowers matriculate along the
3 spectrum towards maturity, then those plants are developed
4 accordingly.

5 And so, everything from the natural elements of
6 sunlight, or light is at least replicated or emulated within
7 a facility, and ultimately leading to at least the flowers
8 being prepared and matured and checked for viability, and
9 then ultimately for consumption and harvesting, I guess, and
10 then packaged and distributed to -- or sold to dispensaries.

11 MS. BROWN: Thank you, Mr. Gordy.

12 I want to ask you another question. It has been
13 suggested that medical marijuana could be consumed on the
14 premises or there could be a cultivation center and some kind
15 of consumption at the site in a way that other highly
16 regulated substances can be consumed and enjoyed onsite.

17 Is it legal for medical marijuana to be consumed
18 on the premises?

19 MR. GORDY: No, it's not.

20 MS. BROWN: Thank you.

21 That's all the questions that I have right now,
22 Chairman Hill. Thank you.

23 BZA CHAIR HILL: Okay. Thanks. Alright, you
24 guys. And I just realized, like, I didn't -- this is funny
25 -- I didn't understand how long this was actually going to

1 take, you know. I'm pointing out to the rest of my board
2 members that this is the first of, I think, ten cases today.
3 So, just kind of keeping that in mind.

4 Mr. Kline, do you have any questions of ABRA?

5 MR. KLINE: Yes, I do.

6 Good morning, Mr. Gordy. Thank you for being
7 here.

8 MR. GORDY: Good morning, Mr. Kline.

9 MR. KLINE: You describe the cultivation process
10 -- as the regulator, you generally have knowledge as to what
11 that process entails, correct?

12 MR. GORDY: As a regulator, yes, I generally have
13 some --

14 MR. KLINE: Okay.

15 MR. GORDY: -- general knowledge be it alcohol or
16 be it cannabis.

17 MR. KLINE: Got it. And you were asked about
18 possible adverse impacts of the manufacturing process.

19 Based on your knowledge, as the regulator, what
20 is the manufacturing process that takes place at a
21 cultivation center? Is there any?

22 MR. GORDY: What I just mentioned when I answered
23 Ms. Brown's question.

24 MR. KLINE: Alright. And based on your knowledge,
25 is the cultivation activities that you've described, with

1 respect to cannabis, any different than the cultivation of
2 any other vegetable, fruit or anything that would be part of
3 an agricultural process?

4 MR. GORDY: I'm not familiar with the cultivation
5 of fruits and vegetables or lettuce and, you know, at least
6 vaguely familiar with the process with regard to medical
7 cannabis. So, I wouldn't be able to comprehensively answer
8 that question.

9 MR. KLINE: Right. But, in your knowledge, is it
10 any different?

11 MR. GORDY: Of cultivating fruits and vegetables?

12 MR. KLINE: Yes.

13 MR. GORDY: I wouldn't know. I'm, you know -- I
14 mean, you know like I know. Fruits and vegetables are grown
15 on a farm and, you know, some cannabis is inside, some
16 cannabis is outside. So, I wouldn't know.

17 MR. KLINE: Alright. Now, at the outset, you --
18 it was pointed out that the growing of cannabis may or may
19 not be like the growing of hydroponic lettuce.

20 There are, are there not, an extensive set of
21 regulations governing the cultivation of cannabis, which your
22 agency is responsible for; is that correct?

23 MR. GORDY: Yes.

24 MR. KLINE: Alright. And in terms of your
25 process, part of the application process is a determination

1 of proper land use, correct?

2 MR. GORDY: With regard to the determinations as
3 made by the Office of Zoning.

4 MR. KLINE: Right. So, you rely on the Zoning
5 Administrator as to a determination, whether a subject site
6 is appropriate for a dispensary or cultivation plant,
7 correct?

8 MR. GORDY: Yes.

9 MR. KLINE: And from your agency's standpoint,
10 that's basically a check-the-box exercise, either the letter
11 is produced from the Zoning Administrator or it is not,
12 correct?

13 MR. GORDY: Correct.

14 MR. KLINE: Alright. Now, you were -- there was
15 also a reading of the statute in terms of what's allowed
16 under a cultivation letter.

17 And I think you were asked, in essence, as to
18 whether one awarded a license would be permitted to do what
19 the regulations permit you to do, and you agreed with that
20 statement, correct?

21 MR. GORDY: The regulations as applied for and
22 approved by the Board, that's what a licensee is permitted
23 to do.

24 MR. KLINE: Okay.

25 MR. GORDY: Per the regulation.

1 MR. KLINE: Alright. But if Zoning, from a land
2 use standpoint, in some way limited the activities, your
3 agency would not, in any way, impact that limitation; would
4 it?

5 MR. GORDY: I couldn't necessarily speak to that.
6 That would be a Board-level review and ultimately they would
7 be responsible for whatever limitations are imposed according
8 to the law, or if not, for a full operation.

9 MR. KLINE: Alright. How long have you been in
10 ABRA?

11 MR. GORDY: Since 2013.

12 MR. KLINE: Okay. So, eight years -- nine years,
13 but you are aware that ABRA or the ABC Board can't grant any
14 rights beyond what might be afforded by the Zoning
15 Administrator with respect to land use, correct?

16 MR. GORDY: That is correct.

17 MR. KLINE: Alright. So, moving to an area with
18 which you've got more experience because your agency has had
19 jurisdiction over it for a longer period of time, if Zoning
20 said there couldn't be outside seating at a particular
21 location, then the ABC Board would not allow outside seating
22 for an ABC-licensed establishment at a particular location,
23 correct?

24 MR. GORDY: Right. The same as if a Certificate
25 of Occupancy under Zoning said this was residential -- or a

1 location was residential or next to a school or what have you
2 and then -- that's correct. We would not accept an
3 application like that.

4 MR. KLINE: So, if with respect to a cultivation
5 application, if the Zoning Administrator said as part of the
6 Zoning Determination Letter that there were certain
7 activities that were not allowed, then, if ABRA awarded a
8 license, the permissions would only go as far as allowed by
9 the Zoning Administrator, correct?

10 MR. GORDY: I can't necessarily speak on that
11 because the applications or the licensings that we are
12 discussing were actually approved by Department of Health
13 that transitioned over to ABRA.

14 In terms of the current applications or licenses
15 that could possibly be issued -- applications approved and
16 then issued within the next year or so, again, that process
17 is a review process that I can't necessarily --

18 BZA CHAIR HILL: Let me --

19 (Simultaneous speaking.)

20 BZA CHAIR HILL: Mr. Kline, how many more
21 questions do you have?

22 MR. KLINE: I think two.

23 BZA CHAIR HILL: Okay.

24 MR. KLINE: Mr. Gordy, you testified that a
25 cultivation center cannot operate between the hours of 9:00

1 p.m. and 7:00 a.m., correct

2 MR. GORDY: Yes.

3 MR. KLINE: Are you aware, based on your
4 knowledge, of any similar restrictions on manufacturing
5 facilities?

6 MR. GORDY: What type of manufacturing? You mean
7 alcohol manufacturing?

8 MR. KLINE: Yes.

9 MR. GORDY: Well, you know, existing -- some
10 manufacturers, distilleries, breweries, and even with medical
11 cannabis facilities currently, they can, in terms of
12 processing, process 24 hours a day; but with regard to open
13 for operation and business, those are the restricted hours.

14 BZA CHAIR HILL: Okay. Mr. Kline, what's your
15 last question?

16 MR. KLINE: Mr. Gordy, are you aware of any
17 restrictions on other agricultural facilities which limit
18 their hours?

19 MR. GORDY: No, I'm not.

20 MR. KLINE: That's the last question I have.

21 BZA CHAIR HILL: Okay. Great. Alright.

22 Does the Board have -- I'm going to let Mr. Gordy
23 go. Like, I don't -- I mean, you know, this was -- the whole
24 point of this, this was a continued hearing.

25 We had a very long hearing the time before and I

1 honestly don't know where the Board may or may not be on
2 this, but I'm going to see if the Board -- this was simply
3 a continued hearing. We had rebuttal, we had conclusions,
4 we had a full hearing.

5 And so, I don't have anything that I need from the
6 Appellant or DCRA, I just -- this was -- this was to provide
7 an opportunity for the Board to continue to ask questions
8 that it might have had.

9 And so, now that being the case, I'm going to
10 conclude this supplement -- I'm sorry, continued hearing and
11 I'm going to ask my fellow board members if they have any
12 final questions of anyone who is here. And if so, please
13 raise your hand.

14 (Pause.)

15 BZA CHAIR HILL: Okay. Hold on a second.

16 Mr. Norbert, what question do you have?

17 MR. PICKETT: I don't have a question, but, for the
18 record, I just wanted to state D.C. Code 7-1671.06, which
19 states: Notwithstanding any other District law, a dispensary
20 may possess medical marijuana for the purpose of dispensing
21 the medical marijuana to a qualifying patient or caregiver,
22 and may manufacture, purchase, possess, distribute and use
23 paraphernalia in accordance with this chapter and the rules
24 issued pursuant to 7-1671.13.

25 And that basically states that as I have a medical

1 cannabis dispensary license, I'm allowed, in this commercial
2 zone, to manufacture paraphernalias, which means I can make
3 glass pipes, metal grinders, batteries for vape carts. All
4 that falls under my license.

5 So, I just want to be clear that I'm in a
6 commercial zone and I already have the right, based on my
7 dispensary license, to manufacture if we're going to call
8 this "manufacturing," which I strongly disagree with. I
9 believe it's agriculture.

10 And my other part of the building is right next
11 door. So, I feel like if I have the right to do that under
12 my dispensary license, under that code and under that law,
13 I feel like I have the right to do that with this cultivation
14 facility.

15 BZA CHAIR HILL: Okay. Alright. Thanks, Mr.
16 Norbert.

17 Alright. I'm going to let a pause because I don't
18 really know -- I'll let you know I don't know where I am.
19 So, I'm going to look to my board members and maybe we'll
20 keep doing this because I'm uncomfortable -- well, I
21 shouldn't say that. I'll wait until we start to deliberate.

22 Okay. does anybody have any further questions for
23 anyone? And if so, raise your hand.

24 (Pause.)

25 BZA CHAIR HILL: Okay. I got nothing from our

1 board members. Okay, everybody. Thanks for taking the time.
2 Hopefully we won't see you again. Hopefully we've gotten to
3 some decision, but we'll see what happens.

4 So, Mr. Norbert, good luck to you.

5 MR. KLINE: When might we expect a decision in
6 this case?

7 BZA CHAIR HILL: I don't know, Mr. Kline. It
8 might happen right now. It just depends on where everybody
9 is.

10 MR. KLINE: Alright.

11 BZA CHAIR HILL: Alright. Thanks, everybody.

12 MR. PICKETT: Thank you, everyone. Happy 4/20.

13 BZA CHAIR HILL: Yeah. Good luck.

14 (Pause.)

15 BZA CHAIR HILL: Okay. I don't know where I am.
16 I'm a little -- I'm looking to my fellow colleagues to help
17 with deliberation and discussion and I would welcome anybody
18 raising their hand to go first.

19 Does anybody want to raise their hand?

20 Mr. Blake just raised his hand.

21 MEMBER BLAKE: I know. I figured I would --
22 anyway, the -- this has been a very interesting and
23 challenging case, in part, because it really revolves around
24 the words and it also revolves around the process, which we
25 cannot -- we do not have expertise on and we cannot get close

1 enough to understand.

2 And I don't necessarily think that it would be the
3 responsible expectation that the Zoning Administrator would
4 be, in fact, that close to it.

5 Anyway, the appeal alleges that the Zoning
6 Administrator improperly denied the Appellant's proposed use
7 of a cannabis cultivation center in an MU-3 zone based on an
8 erroneous interpretation that cannabis constitutes
9 manufacturing rather than agriculture.

10 I mean, the opponent argument that the -- is we
11 have the Zoning Administrator's misclassified cannabis
12 cultivation as manufacturing and Zoning made a decision, is
13 arbitrary and inconsistent with the plain language of the
14 Zoning regulations.

15 The Appellant cites several statutes in the D.C.
16 Municipal Code including the use description and the
17 agriculture, large, the definition of "light manufacturing."

18 We also talked today again briefly about the D.C.
19 Code in Title 7, Chapter 16, which talks about the allowed
20 activities of dispensaries and cultivation centers.

21 And as Mr. Norbert actually pointed out,
22 paraphernalia is permitted at both cultivation centers --
23 manufacture of paraphernalia is permitted at both cultivation
24 centers and distribution and in dispensaries as per
25 1671.06(a) and (b).

1 Interesting to know is that the local
2 requirements, they also discuss that, as well, about the 300
3 feet from a public/private school or charter school or
4 college, university or recreation center. All those things
5 are within the responsibility of the -- all reflected in the
6 code.

7 The interesting about -- the ZA concluded that the
8 establishment of a marijuana cultivation center would be
9 light manufacturing, and that use is not permitted in MU-3A
10 zone.

11 What's interesting is that the manufacturing
12 process is a process and it is manufacturing. To the extent
13 that you were doing manufacturing, you would not be able to
14 manufacture at a certain magnitude in the MU-3 zone for
15 safety purposes primarily.

16 That said, the Appellant provides testimony
17 focusing on the definition of "Cannabis" as a flower or crop.
18 The Applicant argued that the cultivation of cannabis, at
19 least as he proposed it, was consistent with the use of
20 agriculture, large, as set forth in B200.2(a).

21 I'm not going to go into that one specifically and
22 read it, but it does talk about the cultivation of plants and
23 it includes, you know, produce, field crops, flowers. And
24 examples also included, you know, greenhouse and
25 horticultural nurseries.

1 He also talked about the cultivation of cannabis
2 not qualifying as light manufacturing defined by B100.2 as
3 a light production, distribution and repair use where all
4 processing, fabricating, assembly or disassembly of items
5 takes place wholly within the enclosed building.

6 Now, the cultivation of cannabis is an
7 agricultural activity, not manufacturing, is their argument.
8 And, therefore, the Zoning Administrator improperly denied
9 the Applicant's proposed cannabis cultivation center in MU-
10 3A.

11 I think that we can all agree that cannabis, in
12 its purest form, is a flower, and the growing of cannabis is
13 agricultural, but the question posted to Z was broader than
14 that and it carries greater consequence when it relates to
15 the -- what a cultivation center does or the scope of its
16 operation.

17 According to the ZA's prehearing statement, the
18 Applicant submitted little or no information to the ZA
19 regarding the scope of its proposed medical marijuana
20 cultivation center.

21 And I would note that the statement -- the ZA also
22 said that the Applicant's emphasis on natural, plant-like
23 features of cannabis failed to address the likelihood that
24 the cultivation center would be a commercial -- a full
25 commercial grow operation, the impact of which would be

1 analogous to a cultivation center with typical agricultural
2 product in a mixed use neighborhood.

3 I would note that the Applicant did provide more
4 detailed explanation of their proposed cultivation process
5 as well as information about the plans and so forth, but that
6 information wasn't available at the time that he spoke with
7 the Zoning Administrator.

8 So, I would not expect the Zoning Administrator,
9 given the vagueness of the description, to think anything
10 different from his cultivation center than any other
11 cultivation center that was licensed to produce medical
12 marijuana.

13 We talked a little bit today about the application
14 process for ABRA, which relied heavily on the Zoning
15 Administrator's determination.

16 I think that we did learn a fair amount that to
17 the extent that there was a restriction that said you
18 couldn't do X, Y and Z, that would, in fact, actually limit
19 what could be done in a particular zone, but that also would
20 limit the product.

21 We know that there -- licenses are granted to
22 dispensaries, cultivation centers, testing laboratories, and
23 the ZA has consistently determined that dispensary is retail,
24 cultivation center is light manufacturing, and a testing
25 laboratory is office use.

1 So, when I look at this again, and I mentioned it
2 earlier in here, I looked at the official code, Title 7,
3 Chapter 16, 7-1671.01(5) at the definition of a "cultivation
4 center," A specifically talked about cultivation, possession
5 and manufacturing.

6 And if you look at the definition of
7 "manufacture," which is in (10), it means production,
8 preparation, propagation, compound and conversion, processing
9 of marijuana, either directly or indirectly, by extraction
10 or from substances of natural origin or independently by
11 means of chemical synthesis, or by a combination of
12 extraction and chemical synthesis, and includes any packaging
13 or repackaging of the substance or labeling or relabeling of
14 its container.

15 That's a very broad definition of "manufacture"
16 and will fall within the definition of what might take place
17 given the fact that it's a fairly broad license.

18 So, I think given the broad authorization provided
19 by the cultivation center license, and the operation of the
20 existing cultivation centers, and the dearth of information
21 provided by the Appellant to the ZA at the time of the
22 inquiry, I think that it appropriate that the Zoning
23 Administrator, given its concerns that it likely would grow
24 into a full-grown grow center, that the decision to deny was,
25 in fact, based on past experience and what was likely to be

1 allowed by the cultivation center.

2 And the fact that there is no limitation
3 necessarily that says what it could be and the fact that all
4 the other existing ones have been essentially full-grown grow
5 centers, I believe that the Zoning Administrator did, in
6 fact, not make an error in his determination. He read the
7 letter of the law and comply with it based on experience and
8 exposure that he had to the medical marijuana cultivation
9 centers up to this point.

10 So, for those reasons, I'll be voting to deny the
11 appeal. That's what I think so far.

12 BZA CHAIR HILL: Okay. Thanks, Mr. Blake. That
13 was very well thought out and helpful.

14 Mr. Smith, do you have any thoughts?

15 MEMBER SMITH: My thoughts. So, the purpose of
16 this appeal said the Appellant argues that the Zoning
17 Administrator erred in denying the operation of the marijuana
18 cultivation center at this site, and it believes that it uses
19 an agricultural use instead of a light manufacturing use as
20 interpreted by the Zoning Administrator.

21 Based on what was presented as part of the record
22 and what we've heard through both of these hearings, I
23 largely agree with the Zoning Administrator's interpretation.

24 He has consistently considered these uses light
25 manufacturing because of the intensive growing and

1 preparation process from when this was initially set up when
2 medical marijuana became legal in the District.

3 I believe that the fact that it's highly regulated
4 by ABRA, which is a point raised by the Zoning Administrator,
5 to me, is, in particular, is more about the preparation and
6 manufacturing process.

7 Based on the evidence presented by the Appellant
8 in Exhibit 34, the exhibit that we, you know, brought up and
9 we looked at the bottom of page 1 through to page 2, I
10 believe that the cultivation process could be considered
11 light manufacturing as defined by the zoning regulations
12 based on the extensive process of growing and cultivating
13 plants.

14 And I, you know, just as Mr. Blake stated, I think
15 we can all agree that purely just growing marijuana is --
16 could be considered agricultural, but the scope of a license
17 for a marijuana cultivation center goes beyond just growing
18 a plant.

19 This sounds like, based on what we saw in Exhibit
20 34, it -- the nature of the business would be beyond just
21 growing the plant. It's not just growing the plant and just
22 selling it in its purest form.

23 There would be some refinement to this, so I do
24 believe that this process differs from hydroponic growing of
25 lettuce and other produce in that those particular process

1 do not include intensive harvest and a refining process of
2 the plant into a multitude of products to different rooms as
3 stated in the -- in Exhibit 34.

4 The intensive refinement process, I believe, sets
5 this type of agriculture process apart from others and can
6 be considered a light manufacturing use.

7 Therefore, I do agree with the Zoning
8 Administrator's interpretation and I would deny the appeal.

9 BZA CHAIR HILL: Okay. Commissioner Miller?

10 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman.

11 I guess I want -- I guess I respectfully disagree
12 with my two colleagues, Mr. Smith and Mr. Blake. I'm not
13 saying that the -- well, I go back to the law and the
14 regulations.

15 The Zoning regulations don't have medical cannabis
16 dispensaries or cultivation centers in the listed uses, which
17 may be something that needs some clarifying in the future to
18 say where and what -- where they can be located.

19 It has the agricultural and manufacturing uses,
20 which is what my colleagues have focused on and what the
21 Zoning Administrator focused on.

22 And I think it could have -- it was a reasonable
23 interpretation, I think, that the ZA made that this was light
24 manufacturing, but I think it also is a reasonable
25 interpretation that it's agricultural use when -- and so when

1 there's -- I've often seen this in other BZA cases.

2 When there's two reasonable interpretations, I
3 look to other laws and regulations and policies and I go back
4 to the original law, which D.C. Official Code 7-1671.06,
5 Dispensaries and Cultivation Centers, subparagraph (g), is
6 the only place -- (g) may be -- yeah, (g) is the only place
7 where it talks about location of dispensaries and cultivation
8 centers and it says: A dispensary, cultivation center, or
9 testing laboratory shall not locate within any residential
10 district or within 300 feet of a preschool, primary or
11 secondary school, or recreation center.

12 It also goes on to say that a cultivation center
13 shall not be located within a Retail Priority Area. I think
14 that was a more recent amendment than the original law -- or
15 it may not have been, I don't know, but -- so, the Council
16 and the Mayor, when they signed this law, I mean, they said
17 where it can't be located.

18 They said it couldn't be located in certain retail
19 areas that are defined as "priority areas." It didn't say
20 it couldn't be located in any retail area. It could have
21 said -- it could have said that. It could have said, any
22 residential -- it could have said, this shall only be located
23 in industrial zones, if that was what the intent was, but it
24 didn't say that.

25 It says where it couldn't be located -- could not

1 be located and this isn't in a residential district. It's
2 not within 300 feet of preschool, primary, secondary school,
3 recreation center, according to the ZA's testimony. It is
4 in a mixed use zone, which includes commercial uses.

5 And the brew pubs are located in retail zones all
6 throughout the city and I don't -- I just don't see the whole
7 -- I think the whole thrust of the District's overarching
8 policy in this area has been to facilitate medical marijuana
9 dispensaries and cultivation centers.

10 And I don't see -- I think it could have been a
11 reasonable interpretation by the ZA that this would be
12 permitted right next door to a dispensary, which has a lot
13 more activity going in and out than this cultivation center
14 does -- will have -- would have.

15 So, I just don't see -- it just doesn't seem to
16 make logical sense that the city would be permitting
17 dispensaries, but not cultivation centers, in a similar
18 location especially since there's a synergy there, a
19 facilitation there and a helpfulness and maybe a less adverse
20 impact from having to deliver from somewhere else across the
21 city and less environmental impact having to travel.
22 Although, it will be delivering products, apparently, to
23 other than just the dispensary.

24 So, I just think it could have been and should
25 have been a reasonable interpretation of the Zoning

1 Administrator that it's an agricultural use.

2 It wasn't clearly prohibited in this -- in mixed
3 use and commercial zones by either the Council and the Mayor
4 when they signed the law. The Zoning Commission hasn't taken
5 it up.

6 I'm not aware of any complaints about these
7 facilities. I just think that, you know, it may be something
8 that needs to be clarified by the Zoning Commission in the
9 future, but I think I would grant the appeal in this case to
10 permit the location in a mixed use zone because I just don't
11 think it makes logical sense to prohibit it.

12 I don't think that's the thrust of the District's
13 policy to facilitate medical cannabis facilities, both
14 dispensaries and cultivation centers.

15 So, because I think it would have been a
16 reasonable interpretation that it was agricultural use under
17 the vague -- somewhat vague regulations that we have, I think
18 that I would grant the appeal in this case to permit the
19 location although we clearly would not have three votes for
20 that position here today.

21 So, that's where I am, Mr. Chairman.

22 BZA CHAIR HILL: Okay. You guys hang on a second,
23 okay? I'll be right back.

24 (Whereupon, the above-entitled matter went off the
25 record at 11:03 a.m. and resumed at 11:04 a.m.)

1 BZA CHAIR HILL: Sorry, you guys. Okay. Okay.
2 I'll tell you what. Let's just take a quick five-minute
3 break, okay? Because I need to just take a break real quick
4 and then we'll come back, okay?

5 ZC VICE CHAIR MILLER: Thank you.

6 BZA CHAIR HILL: Thank you.

7 (Whereupon, the above-entitled matter went off the
8 record at 11:04 am. and resumed at 11:10 a.m.)

9 BZA CHAIR HILL: Okay. For the record, I'm
10 calling us back in, after a short break, to continue our
11 deliberations on Appeal No. 20654. The time is now 11:10
12 a.m.

13 Okay. So -- alright. This is where I am. I
14 think that, again, the Zoning Administrator is charged with
15 making a reasonable interpretation of the Zoning regulations
16 and that's what he is charged to do, right?

17 And in the past and what he's been doing thus far
18 for those eight other cultivation centers, is he made the
19 determination as to where those cultivation centers were to
20 be located, and that they were considered light
21 manufacturing, and that it would not be allowed in this
22 particular zone.

23 I do think that the regulations aren't
24 particularly well written in terms of exactly what the
25 Council may or may not have wanted overall, and I think that

1 this is something that will probably need to be revisited
2 also by the Zoning Commissioner Vice Chair -- I'm sorry, the
3 Zoning Commission Vice Chair Miller as well as, you know, if
4 marijuana ever becomes legalized in terms of recreational
5 marijuana; but in terms of a medical marijuana center, I do
6 think that -- I do think this is light manufacturing.

7 I mean, I don't think that it is, you know, again,
8 just growing the flowers and then selling them, you know.
9 There is a process to this.

10 They are, you know, they're trimmed, they're, you
11 know, manufactured in some capacity, they're packaged. And
12 so, I do believe that it is manufacturing.

13 And so, I think, you know, just by the definition
14 that is in 7-1671.01(10) in terms of manufacturing where,
15 again, conversion or processing of marijuana by extraction
16 from substances of natural origin, right? So, you know,
17 directly or indirectly. So, they are substances of natural
18 origin and that I do believe it is manufacturing.

19 I do not think that the Zoning Administrator has
20 made any kind of an erroneous decision in this. This is the
21 same decision that he has been making for all those other
22 eight cultivation centers.

23 And in addition to that just on -- from, as a
24 board member, I would be uncomfortable kind of, you know --
25 or I shouldn't say "uncomfortable."

1 The determination of the Zoning Administrator has
2 been consistent and I don't think that it is erroneous in
3 this way.

4 That's not to say that the Zoning Administrator
5 can't make a mistake and that that is what the Board is
6 charged with doing. In this particular case given the way
7 the regulations are written, I don't think he's making a
8 mistake.

9 Now, that, again, charges the Zoning Commission
10 with perhaps refining the regulations or changing the
11 regulations so that they could be different.

12 And in that case, then, also the community would
13 get another opportunity to weigh in on what they think
14 possibly is best for that. I mean, just giving, again, the
15 community an opportunity to weigh in.

16 In this particular case, again, the ANC voted in
17 opposition to support this appeal. So, the ANC there, they
18 were actually asking for further information, but they were
19 voting in opposition.

20 So, that being the case, I'm going to side with
21 my other two colleagues in that the Zoning Administrator did
22 not make an error, for the reasons I stated, in terms of why
23 I believe this is light manufacturing and that light
24 manufacturing is not allowed in this zone. And so, I will
25 be denying the appeal.

1 I'm going to go ahead and make a motion to deny
2 Appeal No. 20654, for the reasons we all have stated, and ask
3 for a second, Mr. Blake.

4 MEMBER BLAKE: Second.

5 BZA CHAIR HILL: The motion is made and seconded.

6 Mr. Moy, if you can take a roll call.

7 MR. MOY: Okay. When I call your name, if you
8 would please respond with a "yes," "no," or "abstain" to the
9 motion made by Chairman Hill to deny Appeal No. 20654. The
10 motion to deny was second by Mr. Blake.

11 Mr. Smith?

12 MEMBER SMITH: Yes to the motion.

13 MR. MOY: Mr. Blake?

14 MEMBER BLAKE: Yes to deny.

15 MR. MOY: Chairman Hill?

16 BZA CHAIR HILL: Yes to deny.

17 MR. MOY: Zoning Commissioner Rob Miller?

18 ZC VICE CHAIR MILLER: No to deny. I would grant
19 the appeal. Thank you.

20 MR. MOY: We have a board member not
21 participating, Mr. Chairman. This would give a vote staff
22 to record as 3 to 1 to 1. This is on the motion made by
23 Chairman Hill to deny the appeal and it was second by Mr.
24 Blake to deny.

25 Mr. Smith voted to deny the appeal, as well as Mr.

1 Blake, Chairman Hill, and Zoning Commissioner Rob Miller
2 voted to grant the appeal.

3 And, as I just said, we have a board member not
4 participating. So, the motion carries on a vote of 3 to 1
5 to 1.

6 BZA CHAIR HILL: Thanks, Mr. Moy.

7 And for Mr. Pickett, you know, I do wish you the
8 best and I, you know, I know that the Board wishes the best
9 of all businesses in the D.C. area here and hopefully this
10 is something that can get clarified further as time moves on
11 with this highly sensitive product.

12 Okay. Commissioner Miller, are you here with us
13 for the next two cases as well?

14 ZC VICE CHAIR MILLER: I believe so.

15 BZA CHAIR HILL: Okay. Alright.

16 Then, Mr. Moy, if you would go ahead and call our
17 next one, I think it's 20655, when you get an opportunity?

18 (Pause.)

19 MR. MOY: Thank you, Mr. Chairman.

20 So, this would be Case Application No. 20655 of
21 20th and Channing NE, LLC. This is a self-certified
22 application for special exception under Subtitle U section
23 421, and Subtitle X section 901.2, to allow a new residential
24 development.

25 This is located in an RA-1 zone. The property is

1 located at 2425 20th Street, NE (Square 4110, Lot 17) and --
2 let's see. I think that's all I have for the Board. Thank
3 you.

4 BZA CHAIR HILL: Thank you.

5 Ms. Ferreira, can you introduce yourself for the
6 record, please.

7 (Pause.)

8 BZA CHAIR HILL: I can't hear you, Ms. Ferreira.
9 Sorry.

10 MS. FERREIRA: Good morning. Sorry, I was on
11 mute. Sorry about that. Catarina Ferreira on behalf of 20th
12 and Channing Development, LLC.

13 BZA CHAIR HILL: Okay. Ms. Ferreira, is someone
14 with you here today?

15 MS. FERREIRA: I don't believe there's anyone who
16 intends to testify.

17 BZA CHAIR HILL: Okay. Great.

18 Ms. Rogers, are you there?

19 MS. ROGERS: I'm here.

20 BZA CHAIR HILL: Could you introduce yourself for
21 the record, please.

22 MS. ROGERS: Hello. I'm Lauren Rogers. I'm an
23 ANC commissioner, 5C02.

24 BZA CHAIR HILL: Oh, great, Commissioner.
25 Alright. Welcome.

1 Alright. Ms. Ferreira, I'm going to go ahead and
2 let you walk us through your client's application and why you
3 believe your client is meeting the standard for us to grant
4 the relief requested.

5 I'm going to put 15 minutes on the clock so I know
6 where we are, whether or not that's on the clock or not, I'll
7 time you and you can begin whenever you like.

8 MS. FERREIRA: Thank you, Mr. Chairman.

9 My client is seeking special exception relief from
10 the matter-of-right uses of Subtitle U section 401, as
11 required per Subtitle U section 421, to construct a 24-unit
12 three-story, plus penthouse, apartment house in the RA-1
13 zoning district.

14 The project is located -- and perhaps I can share
15 my screen.

16 BZA CHAIR HILL: You aren't able to share your
17 screen, Ms. Ferreira. Sorry.

18 MS. FERREIRA: Okay. No problem.

19 BZA CHAIR HILL: But that's okay. We have your
20 plans up.

21 MS. FERREIRA: Okay. So, I will just walk you --

22 BZA CHAIR HILL: Yeah, why don't you just walk us
23 through. And then if we have any questions for you, I can
24 go ahead and get an answer.

25 MS. FERREIRA: No problem.

1 The project is located in a triangular-shaped lot
2 at the intersection of 20th, Channing and Lafayette Streets,
3 NE, and it is a freestanding building surrounded by what
4 looks like parkland, primarily public space.

5 As mentioned previously, the proposed project is
6 a three-story building with 24 rental apartments. There are
7 no abutting properties.

8 As far as meeting the burden of proof for special
9 exception relief, we believe that we have met the standards
10 that the property will be in harmony with the general intent
11 and purpose of the zoning regulations and maps and will not
12 adversely affect the use of neighboring properties and will
13 meet any special conditions, which there are none in this
14 case.

15 There will be no substantial effect on the
16 enjoyment of any abutting or adjacent dwelling or property,
17 as there are none. So, certainly impacts to light and air
18 are not a factor in this case.

19 The RA-1 zone provides for areas of low to
20 moderate density development, which is what we're proposing
21 and we believe that the project will be in harmony,
22 therefore, with the general purpose and intent of the
23 regulations.

24 Surrounding area is primarily single-family homes
25 as well as some multi-unit apartment buildings and we will

1 be consistent with what is currently in the area.

2 We have provided evidence, as requested by the
3 Office of Planning, that we meet the requirements in terms
4 of documentation typically required for a special exception
5 of this sort and there are reports in the record from DDOT
6 expressing no objection.

7 We also have the support of the ANC and I believe
8 there is one letter of opposition. And that concludes my
9 summary. I'll be happy to answer any questions.

10 BZA CHAIR HILL: Okay. I'm going to turn to the
11 Office of Planning first and then let my colleagues ask
12 questions -- oh, I'm sorry, Commissioner Rogers --

13 MS. ROGERS: Yes.

14 BZA CHAIR HILL: -- would you like to go ahead
15 with your testimony, please.

16 MS. ROGERS: Sure.

17 Today, the development has presented a plan to
18 develop the triangular plot of land at 20th and Channing
19 Street, NE. That plan was presented at a duly noticed ANC
20 Commission meeting in January 2022.

21 At that time, neighbors expressed some
22 reservations regarding the lack of onsite parking, concerns
23 about drainage and runoff, and concerns about the management
24 of the rental property once it's constructed. They also had
25 concerns over the parking of construction equipment during

1 construction.

2 Noting that the developer's BZA hearing was
3 scheduled for March 30th, I suggested that we meet again with
4 nearby neighbors before the hearing.

5 They presented a modified plan at the 5C02 single
6 member district meeting held on Monday, March 14th, 2022.
7 They had met with UPO and was able to expand onsite parking
8 to nine spaces, confirmed that the construction equipment
9 will be parked on the site for the duration of its use,
10 reassured the community that they will maintain ownership of
11 the property and intend to be a neighborhood partner.

12 After a thorough discussion of the drainage and
13 runoff concerns, a conclusion was reached that those concerns
14 were mostly driven by conditions in nearby public space.

15 Neighbors asked that the infrastructure evaluation
16 and improvements be recommended to the BZA for referral to
17 UPO, DOEE and DC Water.

18 The neighbors were clear in their statements.
19 They do not oppose this project. The ANC voted to support
20 the project 5-0-0.

21 I support the project. I think it will be a great
22 addition to the neighborhood.

23 BZA CHAIR HILL: Thank you, Commissioner.

24 Alright. Could I turn to the Office of Planning?

25 MR. KIRSCHENBAUM: Good morning, Chair Hill, and

1 members of the Board of Zoning Adjustment.

2 I'm Jonathan Kirschenbaum with the Office of
3 Planning. I'm filling in for my colleague Matt Jesick for
4 this case. He was the reviewer and the report writer for
5 this application.

6 We recommend approval of the special exception to
7 permit a new 24-unit apartment house in the RA-1 zone. We
8 have indicated, in our report, that we are concerned that the
9 project was slightly overpermitted lot occupancy, but the
10 Applicant has clarified that it's not and that it complies
11 with the maximum lot occupancy requirement and has submitted
12 that information to the record.

13 And we rest on our staff report. Please let me
14 now if you have any further questions. Thank you.

15 BZA CHAIR HILL: Thank you, Mr. Kirschenbaum.

16 Does the Board have any questions for the
17 Applicant, the Commissioner or the Office of Planning?

18 (Pause.)

19 BZA CHAIR HILL: Alright. Mr. Young, is anyone
20 here wishing to speak?

21 (Pause.)

22 BZA CHAIR HILL: Okay. Let's see. Ms. Ferreira,
23 do you have anything you'd like to add at the end?

24 MS. FERREIRA: No, Mr. Chair.

25 BZA CHAIR HILL: Okay. Alright. I'm going to

1 close the hearing and the record. Ms. Young, if you would
2 please excuse everyone.

3 (Pause.)

4 BZA CHAIR HILL: Alright. Again, this is for
5 special exception under U 421 and Subtitle X 901.2 for a new
6 residential development, the 24-unit apartment house. I do
7 think that they're meeting the standard of the criteria for
8 which we can grant the requested relief.

9 There was some concerns or issues with DDOT, which
10 I do believe the Applicant has addressed more questions, I
11 guess, from DDOT. And I would also agree with the analysis
12 that the Office of Planning has provided as well as that of
13 the support of the ANC.

14 Thank you to the Commissioner for showing up for
15 the hearing because that's always helpful to hear from the
16 Commissioner directly. I didn't have any issues or concerns
17 for this project and I'm going to be voting in favor.

18 Mr. Smith, do you have anything you'd like to add?

19 MEMBER SMITH: Sure. I believe that the proposal
20 meets the standards as outlined in U 421 and X 901.2 for us
21 to be able to grant special exception. I will specifically
22 reference Exhibit X 901.2.

23 The request before us is largely on par with
24 general purpose and intent. The zoning regulations, as set
25 forth, state the lot occupancy is over by one percent.

1 Applicant must reduce the footprint to be in compliance with
2 that maximum amount.

3 The property in question is a triangular parcel
4 (audio interference) with two streets and is surrounded by
5 mostly 2 to 2-1/2-story single-family dwellings of various
6 heights.

7 The design of the building was well thought out
8 and I believe that the size and scale of this three-story
9 apartment building is in character with the surrounding
10 neighborhood.

11 Therefore, I believe the proposal would not
12 adversely affect the use of the neighboring property in
13 accordance with zoning regulations and I will be supporting
14 the application and give great weight to OP staff and the
15 ANC's support.

16 BZA CHAIR HILL: Thank you, Mr. Smith.

17 Mr. Blake?

18 MEMBER BLAKE: Mr. Chairman, I will be in support
19 of the application as well. I have no additional comments
20 to add. I completely agree with the statements made by Mr.
21 Smith.

22 BZA CHAIR HILL: Thank you, Mr. Blake.

23 Commissioner Miller?

24 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman.
25 I concur with my colleagues.

1 BZA CHAIR HILL: Thank you.

2 Vice Chair John?

3 BZA VICE CHAIR JOHN: Thank you, Mr. Chairman.

4 I concur and I give great weight to OP's analysis
5 especially noting that the lot occupancy must comply with the
6 40 percent maximum.

7 BZA CHAIR HILL: Alright. Thank you. Alright.
8 I'm going to go ahead, then, and make a motion to approve
9 Application No. 20655 as captioned and read by the secretary
10 and ask for a second.

11 Ms. John?

12 BZA VICE CHAIR JOHN: Second.

13 BZA CHAIR HILL: The motion made and second.

14 Mr. Moy, will you take a roll call?

15 MR. MOY: When I call your name, if you would
16 please respond with a "yes," "no" or "abstain" to the motion
17 made by Chairman Hill to approve the application for the
18 special exception that's requested. The motion to approve
19 was second by Vice Chair John.

20 Zoning Commissioner Rob Miller?

21 ZC VICE CHAIR MILLER: Yes.

22 MR. MOY: Mr. Smith?

23 MEMBER SMITH: Yes.

24 MR. MOY: Mr. Blake?

25 MEMBER BLAKE: Yes.

1 MR. MOY: Vice Chair John?

2 BZA VICE CHAIR JOHN: Yes.

3 MR. MOY: Chairman Hill?

4 BZA CHAIR HILL: Yes.

5 MR. MOY: Staff would record the vote as 5 to 0
6 to 0 and this is on the motion by Chairman Hill to approve.
7 The motion to approve was second by Vice Chair John.

8 And also in support of the motion to approve,
9 Zoning Commissioner Rob Miller, Mr. Smith, Mr. Blake and of
10 course Vice Chair John and Chairman Hill.

11 Motion carries on a vote of 5 to 0 to 0.

12 BZA CHAIR HILL: Okay. Thanks, Mr. Moy.

13 Alright. Vice Chair, John, I believe I'm not on
14 the next case.

15 BZA VICE CHAIR JOHN: That's correct.

16 BZA CHAIR HILL: And then I guess did you guys --
17 we kind of took a quick break. Do you want to take a break
18 after this case?

19 And the reason why I'm asking is that, Ms. John,
20 if you can let me know when you're back?

21 BZA VICE CHAIR JOHN: Okay. I will.

22 BZA CHAIR HILL: If that sounds good for
23 everybody, okay. Then you guys are going to take a break
24 after this case.

25 So, Ms. John, just let me know when you're back.

1 Thank you all very much.

2 BZA VICE CHAIR JOHN: Okay. Thank you.

3 Mr. Moy, can you call the next case?

4 MR. MOY: Yes. This would be Application No.
5 20543 of Crystal and Jeffrey Cargill. This is, as amended,
6 a self-certified application for special exception and area
7 variance.

8 The special exception relief, pursuant to Subtitle
9 X section 901.2, would allow the conversion of the existing
10 residential building to an apartment house under Subtitle U
11 section 320.2, where two units are permitted, three units is
12 being proposed in this application.

13 The area variance relief is pursuant to Subtitle
14 X section 1002 from the density requirements needed for
15 approval of a special exception under Subtitle U section
16 320.2(c). I'm going to leave that there.

17 As to the project, property is improved with an
18 attached principal dwelling configured as a flat and a two-
19 story accessory structure reportedly converted to a dwelling
20 by prior owner where applicant seeks relief to allow three
21 dwelling units on the property. The property address is 316
22 2nd Street, SE (Square 0763, Lot 21) and the zone is RF-3.

23 We have preliminary matters here, Madam Vice
24 Chair. The first is the party in opposition made a filing
25 to continue to a future hearing date under Exhibit 67. And

1 the Applicant provided a response to that motion in the
2 record under Exhibit 61 where the Applicant is opposed to the
3 motion.

4 And I believe that's it other than I believe it
5 was the Applicant filed a late PowerPoint presentation.

6 BZA VICE CHAIR JOHN: Okay. Thank you, Mr. Moy.

7 Good morning, everyone. Can you introduce
8 yourself for the record, please, Mr. Sullivan, and let us
9 know who you have with you today.

10 MR. SULLIVAN: Thank you, Madam Chair. Marty
11 Sullivan, with Sullivan and Barros, on behalf of the
12 Applicant. And with me today are the Applicants, Crystal and
13 Jeff Cargill.

14 BZA VICE CHAIR JOHN: Thank you, Mr. Sullivan.

15 And I believe we have the party in opposition
16 present as well. Can you introduce yourself, please.

17 MR. HALL: Attorney David Hall for Carol Howell
18 and, Madam Chair, I'm looking to see how to get my video to
19 come on right now.

20 Also, for my client -- my client Carol Howell is
21 here. And an architect who will be giving testimony is here,
22 Don Lipscomb. And also an engineer, Robert Eitel, is here
23 to testify today.

24 BZA VICE CHAIR JOHN: Okay. Thank you.

25 So, on the two preliminary matters, I'll go ahead

1 and allow that late filing into the record, Mr. Moy. And as
2 to the request to postpone, I'd like to hear from Mr. Hall
3 on the motion and then from Mr. Sullivan.

4 MR. HALL: Yes, Your Honor -- I'm sorry, yes,
5 Madam Chair.

6 Can you give me some assistance on what I click
7 to get my -- is it "Start Video" so that you can see me; do
8 you know?

9 BZA VICE CHAIR JOHN: Mr. Young, can you help?

10 MR. YOUNG: Yeah, you should click "Start Video."

11 MR. HALL: Okay. There I am.

12 Madam Chair, and the board members, we did not get
13 service on the documents that were filed. For some reason,
14 they weren't sent to us and we filed late submissions as a
15 result of that.

16 There's also an email in the file from the head
17 of Zoning, Mr. LeGrant, upon which the Office of Planning
18 relied when it made their recommendations.

19 And it's my understanding that that email, in
20 fact, had exhibits and attachments to it when Mr. LeGrant
21 reviewed it, which we have never been privy to.

22 Opposing counsel in this who represents the
23 Cargills, have said that he has no objection to having that
24 email struck from the record; however, since having heard
25 that, I've looked at the email and the Office of Planning,

1 in fact, relied on it.

2 So, I think it affects the Office of Planning
3 recommendation and we have significant concerns about that
4 having not seen the attachments to the email although they
5 have been requested.

6 BZA VICE CHAIR JOHN: Thank you, Mr. Hall.

7 I'll hear from Mr. Sullivan.

8 MR. SULLIVAN: Thank you, Madam Chair.

9 Regarding the email, it's an email with the Zoning
10 Administrator granting minor deviation for the matter-of-
11 right aspect of this project.

12 This project or -- well, this application involves
13 a request to basically legitimize the use of a third
14 principal dwelling unit.

15 It's an existing unit and an existing accessory
16 building. There is an incidental addition taking place that
17 is not part of the application.

18 I know this hearing was postponed the first time
19 because the Office of Planning did want to understand the
20 context of that work being done to the principal building,
21 but it's not directly implicated at all in the special
22 exception criteria and any decision on a minor deviation is
23 not before the Board.

24 The opponent is essentially trying to turn this
25 into an appeal of a matter-of-right project and questioning

1 the minor deviation, which is not before the Board.

2 Regarding the late service, that was a staff
3 oversight and Mr. Hall alerted me to that, I believe, the day
4 after we filed, or two days, and we corrected that and made
5 sure we followed up beyond that, but his initial request for
6 postponement was based merely on this email attachment, which
7 was part of an email thread from a previous contractor.

8 And we were not able to locate the exact
9 attachment, but it would have just been the same plans that
10 are in the case file because the Zoning Administrator makes
11 a minor deviation determination based on a site plan, an
12 elevation and a plat, and that stuff is -- that information
13 is all in the file already.

14 Furthermore, the Applicant is under a stop work
15 order. When they undertook the renovations in addition to
16 the principal building, because there was this third unit
17 without formal approval, a stop work order was issued and
18 there were some other reasons regarding public space permit
19 why a stop work order was issued.

20 Until this case is resolved, that stop work order
21 may remain and that causes some potential damaging
22 maintenance issues for the Applicant.

23 So, they really don't -- a postponement could be
24 very damaging to their property, and even to the neighbor's
25 property, as they resolve these maintenance situations.

1 And the Applicant can give more information on
2 that if you need it, but I didn't want to go into too much
3 detail.

4 BZA VICE CHAIR JOHN: Thank you.

5 MR. HALL: Could I respond to that, Madam Chair?

6 BZA VICE CHAIR JOHN: Yes, but first I just have
7 a question for you.

8 Do you realize that this application is only with
9 respect to the accessory structure, not any other addition
10 to the property, which would be a matter of right?

11 MR. HALL: I do not realize that. I think that
12 there is a major addition that's going onto this property and
13 it's not an incidental addition.

14 And the regulations under 320.2 of the Zoning
15 regulations set a standard where this addition cannot impede
16 or impose on my client's use and enjoyment of her property
17 and her access to light and air and privacy and this addition
18 does, in fact, do just that.

19 So, to say that the addition is just an incidental
20 matter, I think, is incorrect, Madam Chair, and I think it
21 needs to be addressed in this hearing.

22 At the last hearing, the Board actually set off
23 in the record that they wanted to know what this addition
24 would be and what the ramifications of it would be, and that
25 was one of the reasons why the applicants had the matter

1 continued last time because they wanted to get full plans and
2 scopes in front of this board to review.

3 BZA VICE CHAIR JOHN: Okay. Thank you, Mr. Hall.
4 Was your hand up, Mr. Sullivan?

5 MR. SULLIVAN: Yes, if I may briefly. Thank you,
6 Madam Chair.

7 The citation that Mr. Hall makes, the 320.2(i),
8 is no longer in existence. That was written out in Zoning
9 Commission Case 19-21. And so, he's using old regulations.

10 MR. HALL: Well, if I can respond to that, there,
11 in fact, are regulations that apply to this and it's not only
12 320.2, which was actually referred to in documents by this
13 board. The other regulations, if you'll give me one second,
14 I'll give you a cite to them.

15 (Pause.)

16 MR. HALL: Under Special Exception Review
17 Standards, which is Subtitle X, Chapter 901, it clearly
18 states in 901.3, the Applicant for a special exception shall
19 have the full burden to prove no undue adverse impact and
20 shall demonstrate such through evidence in the public record.

21 And it goes on to state under Section 11, that any
22 kind of addition will not be incompatible with the present
23 purpose and development of the neighborhood. And also, that
24 it will not impact in any substantial way on an abutting or
25 adjoining property.

1 My client lives in 314, which is the abutting and
2 adjoining property, and shares a party wall. And this
3 addition will have a -- as the testimony will show, will have
4 direct impact and adverse conditions for my client, as the
5 architect will show and also as the engineer will testify to.

6 And there are further exceptions that are needed
7 for the Zoning Board to actually view this matter
8 appropriately and the Applicant has not applied for those
9 exceptions.

10 BZA VICE CHAIR JOHN: Okay. Thank you, Mr. Hall.

11 So, I'm going to go ahead and deny the request to
12 continue the case and, unless my board members have any
13 objection to that, I'll go ahead.

14 And the reason is that, as I was trying to explain
15 to Mr. Hall, the addition is not part of this application.
16 It's a matter of right. And so, the Applicant must meet any
17 development standards that are applicable to that addition.

18 So, the email, then, is not relevant to the
19 subject of the application -- subject matter of the
20 application.

21 All we're deciding today is whether or not that
22 accessory dwelling unit in the accessory building is
23 permitted under the regulations and the email does not relate
24 to that. So, I'm going to deny the request to postpone.

25 Does anyone have any -- anyone from the Board have

1 any comments or questions?

2 (Pause.)

3 BZA VICE CHAIR JOHN: Okay, no. So, we'll go
4 ahead and begin the hearing and, Mr. Sullivan, if you would
5 please tell us what the case is about and show us how the
6 application meets the criteria for relief.

7 And, Mr. Young, let's put 15 minutes on the board.

8 MR. SULLIVAN: Thank you, Madam Chair.

9 If we could have the PowerPoint, please. So, this
10 is 316 2nd Street, SE, and you see a rendering of the
11 property here.

12 And if we can go to Slide 2, please? The property
13 is located in the RF-3 zone. It's currently improved with
14 a three-story, two-family flat and the accessory building
15 which contains a third principal dwelling unit.

16 And that principal dwelling unit has existed for
17 many years. It's not entirely clear when it was created.
18 We have some photos and there's evidence in the record that
19 it has been a significant amount of time and it was prior to
20 the Applicant's purchase of the property.

21 So, the Applicant now wishes to have the existence
22 and lawful use of this third unit clarified or legitimized
23 by the grant of the special exception for a third dwelling
24 unit in the RF zone property and -- which also requires
25 variance relief -- area variance relief from the 900-foot

1 rule requirement.

2 Next slide, please. Yeah, so Planning is now
3 recommending approval, the Architect of the Capitol has no
4 objections and ANC 6B is in support. It has also been
5 approved by CFA and DDOT has no objection.

6 Next slide, please. So, here's a photo of the
7 accessory building. You can see it's a contributing building
8 in the historic district. So, there can't be parking down
9 below. So, there's no way to modify the building to have a
10 parking space.

11 And you can see, from the doors and the windows,
12 that it has existed as livable space maybe since the
13 beginning, but -- next slide, please.

14 Here's some additional pictures showing the area
15 and then the building is -- that's the principal building on
16 the right there.

17 Next slide, please. These are interior photos
18 from the accessory building. Next slide, please.

19 You can see the existence of the kitchen there.
20 It has obviously been there for some time as well.

21 Next slide, please. So, we have plans. We've
22 included plans because the Office of Planning did ask for
23 that.

24 And I wasn't working on this case at the initial
25 hearing, but I understand there was some question about what

1 the extent of the addition was to the principal building.

2 So, we have these here in the PowerPoint if the
3 Board has any questions. I will just -- if we could go
4 through the next slide, please, I think it's slide 0003.
5 Next slide. Next slide. Next slide.

6 So, this is -- I just want to explain to the board
7 what the extent of the addition is to the principal building.
8 And the first floor's lot occupancy is 77.6 percent. That
9 is unchanged. Nothing is being added to the first floor.

10 The second floor goes from 61.2 percent to 62
11 percent. So, you -- there's a sliver on this elevation on
12 the second floor.

13 And then the third floor goes from 26 percent lot
14 occupancy to 43.8 percent lot occupancy. So, that's the bulk
15 of the addition is that addition on the third floor.

16 Next slide, please. Next slide, please. And next
17 slide, please. That's just the rear elevation. So, the
18 request is in harmony with the general purpose and intent of
19 the Zoning regulations, the Applicant is not proposing any
20 expansion of the accessory building, and the principal
21 building addition is all matter of right.

22 The three principal dwelling units have existed
23 on the property for reportedly decades and this proposal will
24 not change that situation.

25 So, the proposed additional unit or the

1 legalization of that unit will be in harmony with the general
2 purpose and intent of the zoning regulations and zoning maps
3 and will not adversely affect the use of any neighboring
4 property because this basically amounts to a status quo of
5 what's going on at least the last seven years, as we've shown
6 in evidence in the record, but it appears to be longer and
7 it doesn't change the existing situation.

8 Next slide, please. So, the criteria under 320.2
9 are that the building exists. The building is in existence.
10 That a fourth dwelling unit would be inclusionary zoning --
11 there's no fourth dwelling unit here -- and that 900-foot
12 rule which we are asking for area variance relief from.

13 Next slide, please. Another criteria for the RF-3
14 zone for special exception is that in addition to the typical
15 special exception criteria, it should also be considered as
16 to whether the development is compatible with the present and
17 proposed development of the neighborhood, whether it's
18 consistent with the goals and mandates of the Congress in
19 Title V of the Legislative Branch Appropriation Act 1976, and
20 in accordance with the plan promulgated under the act.

21 And I would defer to the Office of Planning's
22 report principally on that, but the property has functioned
23 as three separate dwelling units for many years. And, as
24 three units, it's not incompatible with the present and
25 proposed development.

1 We do have a letter from the Architect of the
2 Capitol to that effect, and the renovations in addition to
3 the principal building have been permitted and approved by
4 the CFA as well.

5 Next slide, please. Regarding the area variance,
6 the property is unique because of the existing condition of
7 having three existing units on the property, including the
8 separate dwelling unit and the accessory building.

9 This is a situation, while rare, has occasionally
10 been approved by the BZA for area variance relief. The
11 Applicant purchased the property in 2018 believing that they
12 were purchasing a legal three-unit property.

13 Next slide, please. The relief requested is an
14 area variance, not a use variance. Originally there was a
15 zoning memorandum stating use variance, but this relief has
16 always been area variance. There's court of appeals law on
17 that as well as many board decisions to that effect.

18 So, if the zoning regulations were strictly
19 applied, the Applicant would have to undertake substantial
20 renovations to either remove the kitchen from the accessory
21 building or combine two units in the principal building.

22 Either one of those options would be unnecessarily
23 burdensome for the Applicant to comply with entailing
24 significant renovation costs and the loss of value.

25 The only other use possible in the accessory

1 building then would be a use incidental to the principal
2 voting use. And of course parking cannot be provided in
3 there because of its contributing building status.

4 Next slide, please. There's no substantial
5 detriment to the public good, nor substantial impairment to
6 the intent, purpose and integrity of the Zone Plan.

7 Relieve can be granted without substantial
8 detriment. The alley is fully accessible. We have D Street
9 and C Street and the use has existed. So, it's essentially
10 status quo. And the accessory building is currently
11 configured as a dwelling unit and has been for a number of
12 years.

13 Under purpose and intent and integrity of the Zone
14 Plan, the relief can be granted without impairing that
15 because the existing situation is sufficiently unique to
16 protect the integrity of the zoning regulations and the Zone
17 Plan.

18 Next slide, please. So, if the Board has any
19 questions for myself -- also, the Applicant is here. I was
20 going to have them give some testimony, but I'm not sure that
21 it's necessary.

22 So, if you have any questions for Crystal or Jeff,
23 they're available.

24 BZA VICE CHAIR JOHN: Thank you, Mr. Sullivan.

25 Does the Board have any questions?

1 (Pause.)

2 BZA VICE CHAIR JOHN: I don't see any hands.

3 Mr. Blake?

4 MEMBER BLAKE: Mr. Sullivan, would you spend
5 another minute -- as I go through the criteria for relief
6 under the area variance, I have a little bit of concern with
7 the practical difficulty and I was wondering if you could
8 just help me a little bit to get a better understanding of
9 some of the challenges that would be associated with
10 converting the accessory building to -- I get parking -- to
11 storage or the ancillary space because it seems like they
12 just removed the kitchen and we'd have ancillary space. So,
13 just curious.

14 MR. SULLIVAN: Well, it involves both the fact
15 that the Applicant purchased the property with that knowledge
16 and that it existed for that amount of time.

17 So, they bought it as three units and then also
18 it's not just the removal of the kitchen, but it's also
19 having so much additional incidental space that's detached
20 from the principal building as well.

21 While having small incidental -- and this is why
22 I brought up parking -- having small incidental space on top
23 of a parking space would be one thing. To have to fill two
24 floors of an existing building that can't be reduced is --
25 adds to the practical difficulty.

1 So, it's not just the cost of removing the
2 kitchen, but it's also the use of the space and having idle
3 space.

4 MEMBER BLAKE: And just remind me. The total
5 square footage of the building itself, footprint, and then
6 total square footage?

7 MR. SULLIVAN: Let me turn to Jeffrey. Our
8 architect woke up sick today. So, I'm not -- I can -- I'll
9 get that information for you.

10 MEMBER BLAKE: Okay. Thank you.

11 BZA VICE CHAIR JOHN: Are there any other
12 questions from the Board?

13 Mr. Smith?

14 MEMBER SMITH: Mr. Sullivan, I also struggle with
15 the -- actually about whether this is (audio interference)
16 And one of the reasons that you stated was that the space
17 would be idle.

18 So, you are saying, and the client is saying, that
19 if it's not an accessory dwelling unit, it would be idle
20 space.

21 What we commonly see is the people use these
22 spaces for, you know, art studios or accessory rooms that
23 they could use for their own personal enjoyment as a
24 recreational space.

25 So, could you expand on what you mean by, idle?

1 MR. SULLIVAN: Sure. And this -- I want to
2 emphasize, too, that it's an area variance and not a use
3 variance.

4 And typically in the use variance, we undergo that
5 analysis where what other uses could this be, because the
6 analysis in that case is that it's impossible to use it for
7 a particular use.

8 And so, we don't need to show that it's impossible
9 to use it for those other uses. It could be used for the
10 other uses. The question is, is it unnecessarily burdensome
11 to do that?

12 And based on the other cases that the Board has
13 approved in this situation, which typically are three units
14 in a principal building, which we have always termed it an
15 estoppel-type decision on the area variance, is the fact that
16 you have an owner that had the three units and could lose the
17 value of having those three units.

18 And this is likely a unit that existed from the
19 beginning before 1958. It's just never had a CofO, for
20 whatever reason.

21 And so, the unnecessarily burdensome aspect of it
22 is -- has several aspects. It's the cost. It's the idle
23 space and the difficulty in using that space for the two
24 principal units, but it's -- in addition to that, it's the
25 loss of value to an owner who essentially had this unit and

1 purchased it under a situation where everybody believed --
2 the realtors, the previous owner, everyone believed that it
3 was three legal units, and then facing the prospect of losing
4 that unit.

5 MEMBER SMITH: Thank you.

6 BZA VICE CHAIR JOHN: Are there any other
7 questions from the Board? No? Thank you.

8 Mr. Hall, do you have any questions for the
9 Applicant with respect to the accessory dwelling unit?

10 MR. HALL: You're limiting that to the accessory
11 dwelling unit?

12 BZA VICE CHAIR JOHN: That's the only thing that's
13 before the Board, Mr. Hall.

14 MR. HALL: Okay. Yes, I do have some questions
15 and I also have some testimony to put on with respect to the
16 accessory dwelling unit from the engineer.

17 I'd like to put that testimony on first.

18 BZA VICE CHAIR JOHN: Oh, please go ahead, Mr.
19 Hall. You have 15 minutes.

20 MR. HALL: Thank you.

21 I would like to call Mr. Robert Eitel.

22 MR. EITEL: Good morning. Can you hear me?

23 MR. HALL: Yes.

24 BZA VICE CHAIR JOHN: Yes.

25 MR. EITEL: Alright. Robert Eitel. I'm a

1 professional engineer with Landesign.

2 MR. HALL: Mr. Eitel, I apologize for
3 mispronouncing your name.

4 MR. SULLIVAN: Ms. John -- I'm sorry, or Chairman
5 John, I just -- I wanted to clarify Mr. Eitel is being
6 offered as an expert?

7 BZA VICE CHAIR JOHN: Oh.

8 MR. HALL: He was qualified as an expert -- excuse
9 me -- he was qualified as an expert at the prior hearing as
10 was the architect that we intend to offer. They were
11 qualified as experts then.

12 BZA VICE CHAIR JOHN: Thank you. Let me --

13 MR. SULLIVAN: Okay.

14 BZA VICE CHAIR JOHN: I believe that's correct.
15 Let me check my notes.

16 Mr. Moy, can you take a look at our notes for that
17 day? I do believe that's correct.

18 MR. SULLIVAN: Was it a Zoning expert or
19 engineering expert?

20 MR. HALL: Both.

21 MR. SULLIVAN: Alright.

22 MR. HALL: He's testifying both as to zoning and
23 engineering.

24 MR. MOY: Madam Vice Chair, if you want to
25 proceed, I'll check up on this as you proceed with your

1 hearing and I'll get back with you.

2 BZA VICE CHAIR JOHN: Alright. I'm thinking that
3 he might have been qualified as an engineer, but let's
4 continue with his testimony.

5 You know, the Board is able to evaluate the
6 testimony whether or not he's qualified as an expert. So,
7 please go ahead.

8 And he's signed up to testify; is that correct?

9 MR. HALL: Yes.

10 You are prepared and you can hear us, Robert?

11 MR. EITEL: Yes. I signed up this past Monday.
12 I'm ready.

13 BZA VICE CHAIR JOHN: Alright. Please introduce
14 yourself again for the record.

15 MR. EITEL: Alright. My name is Robert Eitel.
16 I'm with Landesign, Inc., located in Bowie, Maryland. I have
17 a bachelor of civil engineering from the Johns Hopkins
18 University, 40 years-plus experience in site design, zoning,
19 land surveys.

20 Since 2008, I've been licensed as a professional
21 engineer, civil, in the District, and I am professionally
22 licensed in 12 other jurisdictions as a professional
23 engineer.

24 I'm also credentialed as a board certified
25 diplomate in forensic engineering through the National

1 Academy.

2 BZA VICE CHAIR JOHN: Okay. Thank you very much.

3 MR. HALL: Now, have you had an opportunity to
4 review any documents in this case?

5 MR. EITEL: I have. I reviewed many of the case
6 exhibits. I reviewed drawings, the application, Applicant's
7 presentation and PowerPoint, renderings, memos, letters and
8 DCSO documents.

9 MR. HALL: And have you formed any professional
10 opinions based on your review of these documents?

11 MR. EITEL: I have, yes. I had four areas and we
12 can have discussion on which is -- which are allowed in this
13 hearing.

14 MR. HALL: Okay. Well, let's start with the
15 carriage house. And if we could pull up -- if Mr. Young
16 could pull up the exhibits that we've identified for this
17 witness?

18 MR. EITEL: If we could pull up 77B?

19 (Pause.)

20 MR. HALL: Okay. Can you identify 77B and tell
21 us a little about that exhibit and what your opinions are?

22 MR. EITEL: Yes. 77B is based on a location
23 survey for the subject property and it shows the area of the
24 existing primary building in gray, the larger gray area with
25 a white border, and it shows the area of the accessory

1 building, which has also been referred to as the "carriage
2 house," closer to the top of the page. It shows the property
3 outlined in a bold red line.

4 I use this exhibit to explore two areas of
5 requirements. One, being density Subtitle U subsection
6 320.2(b).

7 That requires 900 square feet of land area per
8 dwelling. The application proposes three dwellings, which
9 requires 2700 square feet of land area. The total lot area
10 is 1,813.5 square feet.

11 It's my understanding the variance has been
12 requested and I'd like to point out that only 67 percent of
13 required land area is being required, so it's not a minor
14 variance. It's actually 33 percent of the standard is
15 requested as to relief.

16 This same exhibit, 77B, is also used for lot
17 occupancy and there are two things I'd like to point to.
18 This is 11B subsection 312, which, for residential flats,
19 requires 60 percent maximum lot occupancy. And as I read the
20 code, it's not 60 percent plus some waivable percentage, it's
21 simply 60 percent maximum.

22 At the ground level, my calculation is consistent
23 with the Office of Planning memo that the lot occupancy is
24 77.6 percent.

25 So, the request -- well, actually no request was

1 made for relief, but the project at the first-floor level,
2 at ground level, is 17.6 percent deviation from the standard.

3 At the second floor, Planning calculates 61.2
4 percent, again, which is above the 60 percent, and there was
5 no relief requested and there's no explanation of why the
6 addition couldn't have simply been designed to meet the
7 standard without any relief being required.

8 And that's all I have on this exhibit. If you'd
9 like, we can move on to 77A.

10 MR. HALL: Yes, please.

11 MR. EITEL: So, 77A is a drawing that my firm
12 prepared. On the left side of the page it lists 2nd Street.
13 You see immediately to the right of the word "2nd Street,"
14 a labeling "316 2nd Street." That's the subject property.

15 Existing three-story, that's the dwelling. You'll
16 see an existing two-story in what I'll call a light brown
17 area. And then an existing one-story in a tan or peach-
18 colored area.

19 You'll also see dimension lines for a proposed
20 second story and proposed -- I'm sorry, proposed third story
21 and, to the right of that, a proposed second-story deck.

22 This exhibit was prepared to show the relationship
23 of the carriage house and the principal structure with the
24 most relief sought for a third unit.

25 To the right in the public alley I've shown, in

1 gray boxes, parking spaces. And the first one adjacent and
2 just to the right in this drawing of the carriage house, I
3 label one existing parking space. And I say that because
4 I've seen vehicles parked there as I visited the property.

5 The other three gray boxes to the right are
6 additional spaces that may be required, which would block the
7 alley.

8 This is significant in that emergency vehicles,
9 police, fire, ambulance, bus, residents and those visiting
10 other properties, would need free movement through the public
11 alley.

12 The code in 11C, there's a Table C, subsection
13 701.5, requires one space per two units and this is not met.
14 If there are three units, standard practice is you need one
15 space for the first two units.

16 If you have an additional unit beyond that, you
17 would actually round up from a half a space. You can't
18 provide half of a parking space. So, two spaces are required
19 and that actually extends into the public alley.

20 My surveyors measured the width in the field
21 between the building on the far right of the drawing and any
22 other lot lines or obstructions.

23 This exhibit might be used for a second purpose.
24 It's a safety issue and I'm obligated to point these things
25 out.

1 Should there be some reason that the single exit
2 at the front of the unit on 2nd Street could not be used,
3 whether it's fire, collapse, whatever reason, residents
4 would, you know, if they could reach the rear yard, there's
5 very limited space between the existing residence and the
6 existing carriage house and that area is what would be
7 thought of as an area of refuge; however, it's what someone
8 called "indefensible space," which makes it dangerous.

9 There's a brick wall six to eight feet high on
10 both sides. So, if the carriage house is used as a
11 residence, those residents aren't home, they're asleep,
12 they're away, the doors are locked, residents of the
13 principal structure have no way to leave the property.

14 Emergency workers have no way to come through the
15 carriage house and to rescue or combat fire, whatever is
16 happening. So, a safety issue concern. And that's all I
17 have for 77A.

18 MR. HALL: Now, let's look at 77, if you would.
19 Now, is that a summary of the opinions you've given today and
20 have you added anything to that in your testimony?

21 MR. EITEL: That's a summary of my anticipated
22 expert testimony and it does include my professional opinion
23 near the end of the second page, which is that it's my
24 professional opinion that the application doesn't meet the
25 requirements for approval, has not met the burden of proof,

1 is unsafe and should be denied.

2 MR. HALL: Okay. And you have submitted a résumé,
3 too, which the Zoning Board has looked at; is that correct?

4 MR. EITEL: I submitted that through your office.

5 MR. HALL: Yeah. Was it the first hearing and --

6 MR. EITEL: Yeah, at the first hearing.

7 MR. HALL: And that résumé sets forth all of your
8 qualifications not only in engineering, but in zoning,
9 correct?

10 MR. EITEL: It does. I've previously been
11 admitted in Circuit Court as an expert in zoning and civil
12 engineering, stormwater runoff/stormwater management and
13 construction cost estimating.

14 MR. HALL: Okay. Are there any other opinions
15 that you want to express to the Board today?

16 MR. EITEL: Not at this time.

17 MR. HALL: Okay. I would like to reserve Mr.
18 Eitel in case we need him in some rebuttal testimony or any
19 testimony later, but that's all the questions I have for him
20 right now.

21 BZA VICE CHAIR JOHN: Thank you, Mr. Hall.

22 Does the Board have any questions for Mr. Eitel?

23 (Pause.)

24 BZA VICE CHAIR JOHN: I'm not seeing any hands --
25 ah, Mr. Moy, thank you. You have a response on the

1 qualifications issue?

2 MR. MOY: Yes. This would be a good point for me
3 to interject, Madam Vice Chair.

4 So, I've confirmed for you, Madam Vice Chair, that
5 the Board has granted expert status to Robert Eitel as an
6 expert in civil engineering, as well as Donald Lipscomb as
7 an expert in architecture and the Board granted status at the
8 Board's hearing on December 1st, 2021.

9 BZA VICE CHAIR JOHN: Thank you. So, we did not
10 qualify him as an expert in zoning.

11 MR. HALL: Well, based on his testimony today that
12 he has 40 years' experience, is knowledgeable in zoning
13 issues and has testified in zoning cases before as an expert,
14 I would respectfully request that the Board accept his
15 qualifications.

16 And if they would like to hear more about them,
17 he's here and can express them.

18 BZA VICE CHAIR JOHN: Well, I can just ask, Mr.
19 Eitel, have you testified on zoning matters before this board
20 before?

21 MR. EITEL: Not before this board, Madam Chair.

22 BZA VICE CHAIR JOHN: Alright. How about the
23 Court of Appeals on zoning matters? Have you been involved
24 in any cases involving zoning before the D.C. Court of
25 Appeals --

1 MR. EITEL: Not in the District.

2 (Simultaneous speaking.)

3 BZA VICE CHAIR JOHN: -- or anything?

4 MR. EITEL: Not in the District. In surrounding
5 circuit courts in Maryland --

6 BZA VICE CHAIR JOHN: Okay.

7 MR. EITEL: -- I've been admitted as an expert in
8 zoning.

9 BZA VICE CHAIR JOHN: Alright. Thank you.

10 MR. EITEL: It is part and parcel to what I do as
11 a site engineer or land development engineer. Our projects
12 have to meet the zoning regulations.

13 BZA VICE CHAIR JOHN: Okay. Thank you.

14 I'll hear from Mr. Sullivan on Mr. Eitel's
15 qualifications as an expert in zoning.

16 MR. SULLIVAN: I thought maybe it would be a good
17 idea I could just cross examine him. And then if you want
18 to decide then because I think that might expose --

19 BZA VICE CHAIR JOHN: Okay. Thank you. So, the --

20 MR. HALL: Is that a proffer that he's being
21 qualified as a zoning expert?

22 BZA VICE CHAIR JOHN: I don't think so. Not at
23 this point.

24 So, where was I? The Board has no questions and
25 I'll go to Mr. Sullivan.

1 MR. SULLIVAN: Thank you.

2 Mr. Eitel, you stated that the Applicant needs
3 relief for lot occupancy because of the existing lot
4 occupancy on the first floor of 77.6 percent; is that
5 correct?

6 MR. EITEL: Yes, that's correct.

7 MR. SULLIVAN: And so, if we asked for and weren't
8 granted that relief, would we be required to demolish that
9 portion of the first floor back to 60 percent?

10 MR. EITEL: There are several options. One, would
11 be to have two units, which would require 1800 square feet.
12 The property area --

13 MR. SULLIVAN: I'm just asking about the lot
14 occupancy, not about the minimum lot area.

15 MR. EITEL: Oh, I'm sorry. Excuse me.

16 Options for the lot occupancy would be to remove
17 or to simply request and make your case for a variance.

18 MR. SULLIVAN: And if we didn't get that variance
19 relief, we would have to remove that building back to 60
20 percent?

21 MR. EITEL: If you want to continue with this
22 application, yes.

23 MR. SULLIVAN: Okay. So, are you familiar with
24 Subtitle C202 regarding nonconforming structures?

25 MR. EITEL: No.

1 MR. SULLIVAN: Okay. Thank you.

2 And you say there's a two-space parking
3 requirement?

4 MR. EITEL: There's a requirement for one parking
5 space for each two units, which, as I calculate, would be two
6 parking spaces required.

7 MR. SULLIVAN: Okay. And you're aware of the fact
8 that no building built prior to 1958 is required to have
9 parking spaces if they don't have existing parking spaces?

10 MR. EITEL: Not aware and I don't think the date
11 of the carriage house has been established.

12 MR. SULLIVAN: So, are you aware that additions
13 and/or changes in use to contributing structures in the
14 historic district are not required to provide additional
15 parking?

16 MR. EITEL: I don't believe that applies here.
17 It's simply the number of units is the standard.

18 MR. SULLIVAN: The alley width into the property
19 is 15 feet wide; is that correct?

20 MR. EITEL: It's 15 or 17. I don't recall the
21 exact distance.

22 MR. SULLIVAN: Alright. And that opens up to a
23 much larger area internally, correct?

24 MR. EITEL: It does.

25 MR. SULLIVAN: Okay. I have no further questions.

1 Thank you.

2 MR. HALL: Just one followup question.

3 Isn't it a fact that there is one existing parking
4 space now behind the -- what we're calling the "carriage
5 house" or the "accessory building"?

6 MR. EITEL: When I've been in the neighborhood,
7 I've seen, on two occasions, a vehicle parked in the alley
8 immediately behind the carriage house. So, I've seen that
9 and that's why I labeled it "one existing parking space."

10 MR. HALL: Okay. No further questions and I would
11 proffer Mr. Eitel as an expert. I think he's met the
12 qualifications as a zoning expert and as an engineering
13 expert.

14 BZA VICE CHAIR JOHN: Does the Board have any
15 questions concerning the cross examination of Mr. Eitel?

16 I mean, I'll tell you where I am. I do not
17 believe that, based on the cross examination as well as my
18 prior evaluation of Mr. Eitel's qualifications and background
19 would qualify him as an expert in zoning, particularly zoning
20 -- well, zoning generally and, in particular, D.C. zoning.

21 And so, I am not inclined to grant him
22 qualifications as -- I am not inclined to qualify him as an
23 expert in zoning.

24 Does anyone object to that from the Board?

25 (Pause.)

1 BZA VICE CHAIR JOHN: Okay. So, Mr. --

2 MR. HALL: Madam Chair, I would like to have his
3 curriculum vitae which was supplied in the party opponent's
4 submission for an application for party opponent. I think
5 that's Exhibit 35 or 36.

6 I want to make sure that that curriculum vitae
7 comes into the record, which was supplied previously.

8 BZA VICE CHAIR JOHN: Thank you, Mr. Hall.

9 Okay. So, we were at the point where -- was that
10 the extent of your cross examination or your questioning, Mr.
11 Hall, as to the testimony of the party in opposition -- I'm
12 sorry, Mr. Sullivan, did you have anything else?

13 MR. SULLIVAN: No. Thank you.

14 BZA VICE CHAIR JOHN: Okay. So, I will go to the
15 Office of Planning -- I'm sorry, before we do that, is the
16 ANC here? Mr. Holman?

17 MR. HOLMAN: Yeah, hi. I'm here.

18 BZA VICE CHAIR JOHN: Hi. Good morning. Can you
19 introduce yourself, please.

20 MR. HOLMAN: Hi. Corey Holman representing ANC
21 6B.

22 BZA VICE CHAIR JOHN: So, do you have any
23 questions so far?

24 MR. HOLMAN: No, we don't. We just wanted to be
25 here in case the Board had any questions about our report.

1 BZA VICE CHAIR JOHN: Okay. Well, you'll have an
2 opportunity to provide a statement later on. I just wanted
3 to know if you had any questions of either the Applicant or
4 the party in opposition.

5 MR. HOLMAN: No, we don't right now. Thank you.

6 BZA VICE CHAIR JOHN: Okay. So, I'll go to the
7 Office of Planning.

8 MS. VITALE: Good morning, Madam Chair, and
9 members of the Board. Elisa Vitale with the Office of
10 Planning, and the Office of Planning is recommending approval
11 of the requested relief to include an area variance from the
12 minimum lot area per dwelling unit, as well as the special
13 exception relief to permit the conversion of the existing
14 residential building to an apartment house.

15 With respect to the variance relief, the Office
16 of Planning found that there was an exceptional situation
17 resulting in a practical difficulty.

18 When the Applicants purchased the property in
19 2018, it was configured and marketed as a three-unit
20 apartment house with a flat or two units existing in the
21 principal dwelling and the third unit existing in the
22 accessory building.

23 You know, as noted, the property does not have the
24 required 900 square foot of land area per unit. The
25 Applicant is trying to obtain a Certificate of Occupancy to,

1 you know, validate the existing condition of the three units
2 on the property.

3 We found that converting the principal dwelling
4 to a single unit would result in a practical difficulty to
5 the Applicant since it is currently configured as two units
6 and has existed as a flat for some time, including at the
7 time of the purchase of the property.

8 And with respect to the accessory building, as the
9 Applicant stated, this is not a use variance. They don't
10 need to demonstrate that it couldn't be used for another
11 purpose.

12 So, again, we found that the configuration and
13 finishes of the accessory building, including, as you saw,
14 you know, hardwood floors, a kitchen, a full bathroom on the
15 second level, that it would again be a practical difficulty
16 for the Applicant to, you know, convert that accessory
17 building to another use.

18 Therefore, we felt that the first prong of the
19 variance test was met with respect to practical difficulty
20 given the existing configuration and kind of ongoing
21 configuration of the property as three units for an extended
22 period of time.

23 With respect to the second prong, substantial
24 detriment to the public good, again, the building has
25 consisted of multiple dwelling units for a number of years.

1 This is the existing configuration. The Applicant
2 was able to provide photos in the record demonstrating the
3 configuration, plans.

4 They also recently filed affidavits from
5 individuals that have resided either in the principal
6 building or adjoining properties that spoke to the use of the
7 accessory building as a third unit on the property
8 historically.

9 So, we do not believe that granting the requested
10 relief would result in substantial detriment to the public
11 good.

12 And then finally with respect to the third prong,
13 substantial harm to the zoning regulations, again, the RF-3
14 zone does permit the conversion to an apartment house by
15 special exception. I'll go through those criteria in a
16 moment.

17 Again, this property doesn't meet the 900 square
18 foot, but we did find that the two prior prongs of the
19 variance test had been met.

20 This would allow kind of the validation. The
21 Applicant would be able to acquire the Certificate of
22 Occupancy, you know.

23 We believe obviously kind of making these units
24 legal is important and we appreciate, you know, the Applicant
25 coming through this process to accomplish that.

1 I think I'll stop there with respect to the
2 variance. I'm certainly happy to answer questions now or I
3 can move on to the special exception.

4 BZA VICE CHAIR JOHN: Does the Board have any
5 questions?

6 (Pause.)

7 BZA VICE CHAIR JOHN: Please go ahead and finish,
8 Ms. Holman.

9 MS. VITALE: Okay. Certainly.

10 There are a number of criteria for the special
11 exception conversion. Again; A, the building to be converted
12 or expanded has to be in existence. The principal building
13 and the accessory building are both existing on the lot.

14 According to HistoryQuest, it looks like the
15 principal building was constructed approximately in 1874.
16 So, it certainly has been on the property for some time,
17 predates zoning.

18 And the accessory building, again, you know,
19 appears to have been in existence for a number of years and
20 configured for residential use for a number of years.

21 Criteria B has to do with a conversion to more
22 than four units and the applicability of IZ. That's not
23 relevant here in this case.

24 Criteria C is the 900 square foot and, again,
25 we've gone through the variance relief for that. Based on

1 our calculations from information provided by the Applicant,
2 it appears approximately 605 square feet of land area would
3 be provided per dwelling unit where 900 (audio interference).

4 The next, you know, piece is really kind of the
5 general special exception criteria, you know. RF-3
6 contemplates rowhouses on small lots with no more than two
7 dwelling units.

8 Again, apartment conversions are permitted by
9 special exception and we do not feel that this would, you
10 know, be in conflict with the general purpose and intent of
11 the zoning regulations or zoning maps.

12 With respect to adversely affecting the use of
13 neighboring properties, the Applicant is, as has been
14 discussed at length today, proposing a matter-of-right
15 addition to the principal building and they're not proposing
16 any exterior modifications to the accessory building. So,
17 we believe that granting the relief would not tend to
18 adversely affect the use of neighboring property.

19 The accessory building meets all of the
20 development standards with respect to maximum building area,
21 height, setbacks and the additions to the principal building
22 are, you know, within the matter-of-right provisions for the
23 RF-3 zone.

24 The Applicant did -- one of the items that was
25 kind of outstanding at the initial discussion of the case was

1 a discussion of the Capitol interest zone, the RF-3 criteria.
2 The Applicant did provide that in their supplemental filings.

3 The proposed renovations actually went to the
4 Commission of Fine Arts. They were reviewed by the CFA and
5 they have been, you know, the proposed renovations were
6 approved by the CFA.

7 Through its review process, this square is
8 actually, you know, has a number of different uses and
9 building types. There are a few multiunit apartment
10 buildings in the square, a gym, a school, office space, the
11 American Legion Post on the corner.

12 I don't believe a three-unit apartment conversion
13 of this property would be out of, you know, character. I
14 believe it would be compatible with the present and proposed
15 development of the neighborhood. So, that's 5202.1(a),
16 subtitle E. These are the Capital interest zone criteria.

17 Criteria B speaks to consistency with the master
18 plan for the future development of the capitol grounds and
19 related areas.

20 Again, the application was referred to the
21 Architect of the Capitol. I don't believe we did receive a
22 letter from the Architect of the Capitol in the record. I'm
23 not sure if the -- I think the Applicant indicated that they
24 had signed off, but, you know, again, it -- the property has
25 historically functioned as a three-unit apartment house with

1 a flat in the principal building and a dwelling unit in the
2 accessory building.

3 Residential use of the property is consistent with
4 the surrounding neighborhood and we do believe that it would
5 be consistent with the master plan for the future development
6 of the capitol grounds and related areas.

7 And I think the final, you know, again, 5202.2 is
8 Architect of the Capitol. 5202.3 speaks to special treatment
9 or other conditions and the Office of Planning is not
10 recommending that the Board impose any requirements with
11 respect to special treatment or conditions.

12 I will stop there. Sorry for the lengthy
13 testimony. I am available to answer any questions that the
14 Board might have at this time. Thank you.

15 BZA VICE CHAIR JOHN: Thank you.

16 Does the Board have any questions for the Office
17 of Planning?

18 (Pause.)

19 BZA VICE CHAIR JOHN: Does the Applicant have any
20 questions for the Office of Planning?

21 MR. SULLIVAN: No. Thank you.

22 BZA VICE CHAIR JOHN: Does the party in opposition
23 have any questions for the Office of Planning?

24 MR. HALL: Yes.

25 BZA VICE CHAIR JOHN: Okay. Please go ahead.

1 MR. HALL: I want to refer you to the Office of
2 Planning Supplemental Memorandum. And if we could pull that
3 up as an exhibit, Mr. Young?

4 (Pause.)

5 MR. HALL: Do you have it in front of you? Does
6 the witness have it in front of her in a paper form?

7 MS. VITALE: Yes, I do.

8 MR. HALL: Okay. Perhaps we can look at it while
9 Mr. Young is looking for it.

10 MS. VITALE: Sure. What page are you --

11 MR. HALL: Page 3.

12 MS. VITALE: Okay.

13 MR. HALL: In the Office of Planning analysis, it
14 actually states in paragraph 2 of that, no changes to the
15 layout of the three units are proposed beyond interior
16 renovations of each unit.

17 Isn't that what your Office of Planning analysis
18 revealed?

19 MS. VITALE: The report states that, yes. That
20 was based on the issued building permits and the review of
21 the CFA memo.

22 MR. HALL: So, have you actually looked at the
23 architectural plans which are presented before this board?

24 MS. VITALE: Is there a particular exhibit in IZIS
25 that you're --

1 MR. HALL: Yeah. There's the PowerPoint of the
2 Applicant and the -- have you looked at the PowerPoint? Have
3 you looked at the architectural plans? I think your
4 testimony was you did.

5 MS. VITALE: The PowerPoint that was just
6 submitted and presented today, I have not studied that in
7 detail.

8 I did certainly review the files in the record
9 prior to, you know, my report was based on everything that
10 was in the record at the time the OP report was filed. And
11 that was on April 1st.

12 MR. HALL: April 1st.

13 MS. VITALE: I think the PowerPoint was filed after
14 that.

15 MR. HALL: So, what you reviewed in the record had
16 architectural plans that show no proposed addition. It was
17 simply a layout of the three units are proposed and nothing
18 beyond interior renovations of each unit, correct?

19 MS. VITALE: No, the plans did include --

20 BZA VICE CHAIR JOHN: Mr. Hall --

21 MS. VITALE: -- an addition to the principal
22 building.

23 BZA VICE CHAIR JOHN: Okay. So we can expedite
24 this --

25 MR. HALL: Yes, Madam Chair.

1 BZA VICE CHAIR JOHN: -- we're talking about the
2 ADU.

3 So, were there any changes to that structure in
4 the rear?

5 MS. VITALE: Is that question for OP?

6 BZA VICE CHAIR JOHN: Yes, that's for OP.

7 MS. VITALE: Oh, sorry. I'm so sorry.

8 No, the Applicant was not proposing any exterior
9 renovations to the accessory building. They were proposing
10 an addition to the principal building.

11 MR. HALL: Okay.

12 BZA VICE CHAIR JOHN: Thank you. Mr. Hall, can
13 I ask you to show us what slide you're referring to in the
14 PowerPoint, just for my information?

15 MR. HALL: Well, I'm referring to the supplemental
16 memorandum of the Office of Planning and the architectural
17 plans that were filed with this zoning commission that show
18 extensive renovation to the rear of the house. Now, let me
19 look at the PowerPoint here.

20 MS. VITALE: I think I understand what the
21 individual is getting at here. Our statement has to do with
22 the fact that they were maintaining a flat in the principal
23 building, which was two principal dwelling units, and a third
24 unit in the accessory building.

25 They were not suddenly saying that we're going to

1 put three units in the principal building and no units in the
2 accessory building, or saying we're going to convert the
3 principal building to one unit and put two units in the
4 accessory building. I understand your question as it relates
5 to the statement in the OP report.

6 The statement with respect to no changes to the
7 layout was really speaking to the overall functionality of
8 the principal building versus the accessory building, and the
9 Applicant certainly was making improvements and renovations
10 to the principal building. They were doing an exterior
11 addition to the principal building.

12 As we've discussed at length today, that was part
13 of a building permit application. The Applicant has asserted
14 that that is a matter-of-right addition.

15 The Zoning Administrator is using his ability to
16 grant flexibility and that is not part of -- the Applicant
17 is not requesting relief for that addition and that's not
18 part of what's being reviewed here today.

19 I think we do certainly look at the property as
20 a whole and I think that's why OP couldn't make a
21 recommendation initially and asked for some additional
22 information to be filed in the case.

23 But, no, the statement with respect to changes of
24 layout was two units in the principal building, one unit in
25 the accessory building, and we do acknowledge that the

1 property does have other improvements proposed, including in
2 addition to the principal building that, you know, is -- will
3 go through permitting through DCRA.

4 If it, for some reason, fails to meet the zoning
5 regulations and needs relief, the Applicant would have to
6 come back before this board to request that relief and obtain
7 that relief.

8 MR. HALL: Are you aware of the fact that the --
9 well, when OP asked for additional documents, part of what
10 they asked for was architectural plans; isn't that correct?

11 MS. VITALE: That is correct because we wanted to
12 make sure that the property met the -- fully met the zoning
13 regulations.

14 MR. HALL: And are you aware of the fact, after
15 looking at those plans, that the addition is exceeding lot
16 capacity?

17 MS. VITALE: Well, like I said, the Applicant is
18 proposing an addition. It would be on the second and third
19 floor. The first floor is an existing nonconforming
20 situation. It exceeds the maximum permitted lot occupancy.

21 The second floor addition, as I just stated, we
22 understand that the Zoning Administrator is exercising his
23 flexibility and that that would be a permitted addition.

24 And then the proposed addition at the third floor
25 would be below the, you know, the maximum permitted lot

1 occupancy available as a matter of right in the RF-3 zone.

2 Should, for any reason, those plans change and the
3 property not meet the zoning regulations, the Applicant would
4 have to seek, you know, either modify the plans to meet the
5 regs or seek relief.

6 MR. HALL: Well, let's talk about the plans how
7 they are right now. You keep referring to the zoning
8 director's memo.

9 The zoning director's memo, which you actually
10 referred to -- or your office actually referred to, and I'll
11 direct you to your supplemental memorandum that you have in
12 front of you, it asks for minimum flexibility.

13 And, in fact, the plans that -- the zoning
14 administrator email regarding flexibility, Exhibit 59C, dated
15 March 25th, '22, can we pull that up? Because that's what
16 you're referring to in your OP report.

17 (Pause.)

18 MR. HALL: Mr. Young, can we pull that exhibit up?

19 (Pause.)

20 MR. SULLIVAN: Madam Chair, in the meantime, I
21 would just object on relevance.

22 BZA VICE CHAIR JOHN: I'll allow it, Mr. Sullivan.

23 Is this the two percent -- okay. So, I'm looking
24 at it here and I believe the board members can pull it up,
25 and the Applicant is requesting the two percent flexibility.

1 And so, I believe the ZA allowed that.

2 So, what is your question, MR. Hall?

3 MR. HALL: My question, based on the records and
4 based on the testimony of the expert, this is not a two
5 percent flexibility issue.

6 The Office of Planning has cited that memorandum
7 and basically kind of rubber-stamping the addition because
8 they're requesting two percent flexibility, but the addition
9 is far exceeding that two percent flexibility and actually
10 requires zoning approval, and the impact of that addition
11 will -- that that addition will have on the
12 adjoining/abutting property of my client has to be taken into
13 consideration by this board.

14 The Office of Planning has cited the memo. It's
15 right there and --

16 BZA VICE CHAIR JOHN: Mr. Hall, please. We have
17 a very full day.

18 MR. HALL: I understand.

19 BZA VICE CHAIR JOHN: The addition is not before
20 the Board. If you'd like to question the Office of Planning
21 on anything relating to the ADU, that's fine, but the
22 addition is not before the Board.

23 And the Zoning Administrator has the authority,
24 which he has apparently exercised, to grant a two percent
25 area variation. And so, if you'd like to move on, that would

1 be good.

2 MR. HALL: Okay. And I will do that, but just,
3 for the record, what I would like to express is that email
4 from the Zoning Administrator which grants a two percent
5 variance is based on architectural plans submitted that my
6 client has not had an opportunity to even see, let alone
7 review.

8 And what I'm suggesting to the Board is that the
9 variance is required for that addition because it far exceeds
10 the two percent and it impacts on the light, air and privacy
11 of my client's property, and we're entitled to get into that.

12 BZA VICE CHAIR JOHN: And once again, Mr. Hall,
13 you are not. The addition is not before the Board. It is
14 a self-certified application.

15 If the application does not meet the criteria, the
16 Zoning Administrator will send the Applicant back to the
17 Board for relief and that's how it works.

18 Okay. So, please move on.

19 MR. HALL: Okay. Let me ask the witness, you had
20 an opportunity eventually to review the U.S. Capitol's report
21 in this matter, correct?

22 MS. VITALE: I did.

23 MR. HALL: Okay.

24 MS. VITALE: Not the Architect of the Capitol, the
25 Commission of Fine Arts.

1 MR. HALL: I'm talking about the Architect of the
2 Capitol.

3 BZA VICE CHAIR JOHN: What is that exhibit, Mr.
4 Hall?

5 MR. HALL: Bear with me and I'll tell you. AOC --

6 SPEAKER: I think it's 66.

7 MR. HALL: It is Exhibit 66.

8 BZA VICE CHAIR JOHN: Thank you.

9 MR. HALL: If we could have that put on the screen
10 -- is Mr. Young still with us?

11 BZA VICE CHAIR JOHN: Mr. Young, could you pull
12 up Exhibit 66, please.

13 (Pause.)

14 BZA VICE CHAIR JOHN: Go ahead, Mr. Hall. While
15 we wait, what is your question?

16 MR. HALL: Do you have the AOC report in front of
17 you, Madam?

18 BZA VICE CHAIR JOHN: I have it in front of me,
19 Mr. Hall.

20 MR. HALL: Let me ask that of the witness.

21 Do you have the report in front of you?

22 MS. VITALE: I have pulled up the exhibit.

23 MR. HALL: Okay.

24 MS. VITALE: It was filed in the record after OP
25 submitted its report.

1 MR. HALL: Right.

2 MS. VITALE: I've reviewed it and have indicated
3 that they believe that it is not inconsistent and --

4 MR. HALL: Okay. Let me direct your attention to
5 the red indicated on that exhibit.

6 Can you please read what's on the report in red?
7 Read it out loud, please.

8 MS. VITALE: The Applicant, however, is still
9 responsible for meeting the burden of proof associated with
10 the relief requested and consistency with general intent of
11 the zoning regulations and should provide the Board with
12 adequate testimony that the addition has little or no impact
13 on the adjacent neighbors.

14 MR. HALL: And do you agree with that?

15 MS. VITALE: It --

16 MR. HALL: It's just a yes or no --

17 MS. VITALE: The Applicant is not requesting
18 relief for the addition. So, the requirement for them to
19 provide testimony -- I can't speak for the Architect of the
20 Capitol. I am providing testimony on behalf of the Office
21 of Planning.

22 I am reviewing the Applicant's self-certified
23 application for relief and providing an analysis of that
24 request against the zoning regulations.

25 MR. HALL: Okay.

1 MS. VITALE: I cannot speak for the Architect of
2 the Capitol or the Architect of the Capitol's comments in
3 this case.

4 MR. HALL: Okay. Can you just take a minute and
5 explain to us self-certification?

6 MS. VITALE: I mean, I would certainly refer to
7 the Office of Zoning's legal division to speak to self-
8 certification, but normally a self-certification is an
9 application that is submitted and attested to by an architect
10 or an attorney.

11 And the Applicant is certifying that they believe
12 they have requested the relief that's necessary. And if that
13 relief is not sufficient, that they would have to come back
14 to the Board to request any additional relief.

15 MR. HALL: Okay. So, if, in fact, an application
16 or plans predating that application were submitted to Mr.
17 LeGrant in Zoning and those submissions of plans and
18 attachments are not before this board today, the attachments
19 on which he granted his minor variance, don't you think that
20 would have a major impact on this board's ability to move
21 forward with granting this relief and with my client's
22 ability to --

23 BZA VICE CHAIR JOHN: Mr. Hall --

24 MR. HALL: -- be able to challenge what's
25 happening?

1 BZA VICE CHAIR JOHN: Please don't answer that
2 question. Mr. Hall, we're going to move on.

3 MR. HALL: Yes, Madam Chair.

4 BZA VICE CHAIR JOHN: This is the report of the
5 Architect of the Capitol. The Office of Planning cannot
6 comment on it because the Office of Planning did not write
7 it.

8 And the Office of Planning has clearly expressed
9 what is a self-certified application, which is what we have
10 here.

11 Let me refresh your memory. This is a request for
12 relief under Subtitle U 320.2(d), okay, which is the 900
13 square foot rule.

14 And then there's a generic special exception
15 conversion to an apartment house, which is from two units to
16 three units. That's all that's before the Board. There is
17 no change to the accessory building. None whatsoever.

18 So, what is your last question?

19 MEMBER SMITH: Can I also expand on this before
20 Mr. Hall speaks? Just to expand on what the Chair has
21 stated, we can deny all this right now and that addition can
22 still be built.

23 It is a matter-of-right addition with an
24 interpretation from the Zoning Administrator for a two
25 percent mediation.

1 So, two units within that principal dwelling unit
2 can exist, by right, with that addition. So, that's the
3 point that we're trying to, you know, convey to you, Mr.
4 Hall, that what's before us is not that addition.

5 MR. HALL: I respectfully disagree. I understand
6 what you're saying, but I think there is a lot of issues with
7 what's been presented to the Board, but I understand what
8 you're saying.

9 I don't have any further questions of this
10 witness.

11 BZA VICE CHAIR JOHN: Thank you, Mr. Hall.

12 Does the ANC have any questions?

13 MR. HOLMAN: We do not.

14 BZA VICE CHAIR JOHN: And would you like to make
15 a statement at this point, Mr. Holman?

16 MR. HOLMAN: Briefly. We would just stand on the
17 record. We just wanted to be here to answer any questions.
18 There were some comments in one of the filings about
19 questioning the ANC report, but that didn't come up in the
20 hearing. We just wanted to respond to them if they did, but
21 we stand on the record. Thank you.

22 BZA VICE CHAIR JOHN: Thank you.

23 Mr. Young, do we have anyone wishing to testify?

24 MR. YOUNG: We do not.

25 BZA VICE CHAIR JOHN: Okay. Thank you. So, I will

1 close the record and excuse -- oh, I'm sorry, Mr. Blake, do
2 you have a question?

3 MEMBER BLAKE: Yes. I have one quick followup
4 question for Mr. Sullivan.

5 Mr. Sullivan, what is the lost rent potential from
6 that unit, roughly? Just an approximation.

7 MR. SULLIVAN: So, I think I'll let Mr. Cargill
8 speak to that and also I was going to provide really, really
9 brief rebuttal testimony that I think would be helpful to the
10 Board not related to the plans.

11 I won't talk about the zoning development
12 standards, but, Jeff, if you could answer Board Member
13 Blake's question and then anything else you wanted to respond
14 to regarding the practical difficulty.

15 MR. CARGILL: Thank you for the time. As to the
16 specific question --

17 BZA VICE CHAIR JOHN: Mr. Cargill, please
18 introduce yourself for --

19 MR. CARGILL: Yes. My name is Jeffrey Cargill.
20 I'm a resident of 316 2nd Street, SE.

21 BZA VICE CHAIR JOHN: Okay.

22 MR. CARGILL: As to the question as to the rent
23 that would be foregone by not being able to rent out the
24 carriage house as a dwelling unit, I would just approximate
25 in consideration of the location in the city, I would

1 estimate that that unit would probably -- we're talking about
2 at least \$2,000 a month. That would be just a ballpark
3 estimate.

4 My apologies. I didn't have -- I didn't come in
5 here with an expected approximation and that is just what I'd
6 have for you right here and right now.

7 I would just like to add, just to the record, that
8 my wife and I, we moved in in 2018. At the time that we
9 moved into the location, we were excited to hear from
10 realtors, to see on realtor listings, to see that this
11 carriage house was a rental unit for the location.

12 When the house -- as the house was put to market,
13 the completed carriage house apartment was an attraction to
14 many possible buyers. Rental sites listed the carriage house
15 publicly as a location available to rent.

16 After moving into 316 2nd Street, SE, we continued
17 to receive mail addressed to numerous past residents of the
18 carriage house.

19 Our local ANC, neighbors in the area, as well as
20 our party opponent in this case, all, without exception,
21 informed us that the carriage house was used as a rental unit
22 for quite some time without any legal obstacles or
23 opposition.

24 We would just like to note for the BZA that we
25 have continuing costs associated with an HVAC system, a

1 shower, a laundry, heating, electric, all costing money to
2 maintain upkeep in this location and which we're not able to
3 make use of at this time.

4 If we're not able to make use of it in the
5 intended manner, it would be a tremendous hardship and it
6 would be out a considerable bit, and that's even before what
7 we would have to then do going forward should we not be given
8 our requested relief from the BZA.

9 I'm happy to answer any other questions. I don't
10 want to take up anyone's time. I just want to thank everyone
11 for their consideration and just note the hardship that we
12 would be in should we not get the requested relief.

13 BZA VICE CHAIR JOHN: Thank you, Mr. Cargill.

14 MR. HALL: I would have some questions for Mr.
15 Cargill.

16 BZA VICE CHAIR JOHN: Go ahead.

17 MR. HALL: Mr. Cargill, the carriage house, as it
18 currently exists, you've submitted a memorandum about
19 standard for review of this.

20 Do you consider that carriage house as a unique
21 unit that meets the qualifications of a variance?

22 MR. CARGILL: I defer to my attorney and to
23 responding to that question. I personally --

24 MR. HALL: Do you want him to testify as a
25 witness?

1 MR. CARGILL: I'm happy -- I would have to take
2 time to investigate that issue to give an informed answer to
3 that to you right now and right here.

4 In my consideration, it would certainly be a
5 unique situation.

6 MR. HALL: Do you have any factual evidence to
7 support that?

8 BZA VICE CHAIR JOHN: Okay. Mr. Hall, what's your
9 next question?

10 MR. HALL: That will be all if Mr. Cargill has no
11 factual evidence to support that.

12 BZA VICE CHAIR JOHN: Okay. Thank you.

13 So, did you have any other questions, Mr. Hall?
14 No? Okay.

15 MR. HALL: No, not at this time.

16 BZA VICE CHAIR JOHN: Mr. Sullivan, I'm moving too
17 quickly. I forgot your rebuttal. We've been on this case
18 for quite some time. So, I thought we were at the end. I
19 hoped we were at the end, so please go ahead and give your
20 rebuttal.

21 MR. SULLIVAN: Sorry. Thank you. Well, that was
22 the rebuttal. I should do a brief closing if the -- I don't
23 know if the Board wanted to let Mr. Hall do a closing first
24 and --

25 BZA VICE CHAIR JOHN: I had planned to ask Mr.

1 Hall to do a quick closing. Not to reargue the case, just
2 to summarize. We're not going to talk about the addition to
3 the main structure, which is not before the Board.

4 MR. HALL: Okay. So, some housekeeping stuff.
5 I've got an architect here prepared to testify. I'm not
6 prepared to do a closing yet, plus I have my client here
7 prepared to testify. She would like to -- the architect had
8 intended to testify on light use and privacy issues.

9 Are you telling me, Madam Chair, that that
10 testimony is not going to be allowed --

11 BZA VICE CHAIR JOHN: Well, Mr. Hall --

12 MR. HALL: -- with respect to --

13 BZA VICE CHAIR JOHN: -- you had 15 minutes to
14 present your case including your witnesses and there was
15 nobody else signed up to testify. So, we're at the end of
16 the case and now you're saying that you have witnesses.

17 MR. HALL: No. No. My architect has been
18 waiting, it's my understanding, to testify as has my client.
19 They're both signed up to testify.

20 And this is not my case right now, Your Honor.
21 This is the Applicant's case right now.

22 BZA VICE CHAIR JOHN: No. Your case as the party
23 in opposition.

24 MR. HALL: Yes.

25 BZA VICE CHAIR JOHN: And so, we have been through

1 the entire hearing and now you're saying you have additional
2 witnesses. I'm going to allow each one three minutes.

3 MR. HALL: Okay.

4 BZA VICE CHAIR JOHN: And the testimony must be
5 limited to the accessory structure.

6 MR. HALL: Okay.

7 BZA VICE CHAIR JOHN: Out of an abundance of
8 caution, I don't think you're entitled to it, but let's go
9 ahead. Three minutes for each one.

10 MR. HALL: Alright. I would call my next witness,
11 which is Don Lipscomb, an architect, who has been
12 prequalified as an architect.

13 BZA VICE CHAIR JOHN: Thank you. And he's signed
14 up to testify, you said?

15 BZA VICE CHAIR JOHN: That's my understanding.

16 MR. HALL: Thank you.

17 BZA VICE CHAIR JOHN: Please go ahead and
18 introduce yourself for the record.

19 MR. LIPSCOMB: Yes. I'm Don Lipscomb, principal
20 architect at Del Studio Architects. Been a principal since
21 1988. Been a licensed architect since 1981.

22 BZA VICE CHAIR JOHN: Okay. What is your address
23 for the record, please.

24 MR. LIPSCOMB: 750 Maryland Route 3 South, Suite
25 7, Gambrills, Maryland 21504.

1 BZA VICE CHAIR JOHN: Please go ahead and give
2 your -- oh, Mr. Hall, please present your witness.

3 MR. HALL: Thank you.

4 Mr. Lipscomb -- well, before presenting him, very
5 briefly, as I understand it, you are accepting no testimony
6 on the addition to the property, the main house, correct?

7 BZA VICE CHAIR JOHN: That's correct.

8 MR. HALL: Alright. So, Mr. Lipscomb, let's just
9 talk very briefly about your testimony regarding the carriage
10 house and safety issues.

11 Do you have any opinions on the occupancy of the
12 carriage house, the variance being granted and safety issues?

13 MR. LIPSCOMB: Yes, I do. I'll just piggyback
14 onto Mr. Eitel's testimony about safety whereby the carriage
15 house fills the back of the lot completely.

16 So, it's very difficult for somebody who cannot
17 get out the front on 2nd Street to be able to exit through
18 the back since there is a brick wall adjoining the property
19 between 314 and 316, and the carriage house fully blocks the
20 rear.

21 So, unless you can get through the carriage house
22 somehow, there is no opportunity for two means of egress.

23 MR. HALL: Do you have any opinions on parking?

24 MR. LIPSCOMB: No.

25 MR. HALL: Okay. Is that your full opinions with

1 regards to the carriage house?

2 MR. LIPSCOMB: Yes, sir.

3 MR. HALL: Did you come prepared today, and I
4 understand there's no testimony being accepted on it, but did
5 you come prepared today to testify regarding the addition and
6 the detrimental effect that it would have on 214?

7 MR. LIPSCOMB: Sure did.

8 MR. HALL: Okay. No further questions.

9 BZA VICE CHAIR JOHN: Thank you. Please call your
10 next witness.

11 MR. HALL: Okay. I would call Carol Howell, the
12 owner and occupant of 314.

13 MS. HOWELL: Yes?

14 BZA VICE CHAIR JOHN: Please state your name and
15 address for the record, Ms. Howell.

16 MS. HOWELL: Carol Howell, 314 2nd Street
17 Southeast. I am the adjoining house.

18 BZA VICE CHAIR JOHN: Okay. Go ahead, Mr. Hall.

19 MR. HALL: Okay. Mr. Young, could you publish
20 could you publish the -- I'm getting some feedback here.
21 Just hang on one second. Let me get an exhibit for Ms.
22 Howell. This won't take long. I'm sorry to delay the
23 Board's time. Mr. Young, could you please publish Exhibit
24 73(e) for Ms. Howell?

25 Okay. We're going to have to move on from that.

1 Ms. Young, were you prepared to -- I'm sorry. Ms. Howell,
2 were you prepared to testify regarding this exhibit, with
3 respect to the impact that the addition would have on your
4 property?

5 MS. HOWELL: Yes, I was, and yes, I am.

6 MR. HALL: Okay. We'll have to pass that. Let's
7 go to 73(f). And the same question, with regard to 73(f).
8 Did you have testimony to offer, regarding the addition and
9 the impact on your adjoining property?

10 MS. HOWELL: Yes, I do.

11 MR. HALL: Okay. Let's go to 73(h). Now, can you
12 tell us what this exhibit is, Ms. Howell?

13 MS. HOWELL: Yes. This was the -- it was
14 requested that I check the number of carriage houses in the
15 vicinity of the southeast sector of Capitol Hill -- that the
16 carriage house at 316 is not unique. There are 50 in the
17 lists that are here, and according to some of the records
18 I've read, there are 200 or 300 carriage houses on Capitol
19 Hill. So the carriage house at 316 is not unique, including,
20 but not limited to, the fact that there's one right on 306
21 2nd Street Southeast, which is on the same block, that they
22 were not aware of.

23 MR. HALL: Okay. Let's move on to Exhibit 74,
24 because I know we're short on time.

25 MS. HOWELL: Oh, this was the square that we live

1 in, and this is the people to whom the Cargills sent notices
2 about -- would there be any impact with the addition or
3 anything else, I guess, on the property at 316? One can note
4 that most of them are -- two of them on 306 and 207 are
5 landlocked, and their buildings attached are landlocked by
6 other buildings. 227 C Street is not even close. And the
7 316 and 314 and 312 also withdrew their agreement about going
8 forward. When they --

9 MR. HALL: When you say agreement about going
10 forward, you mean their consent or acceptance --

11 MS. HOWELL: Their consent of acceptance. And 314
12 is myself. 316 is the one that was the issue of the
13 building. And 318, after many years, can only -- finally was
14 able to get -- follow the small footprint that everybody else
15 had been asked to conform to, in all the years for their
16 construction.

17 And she has nothing but issues to take care of,
18 and she's only building in the footprint allowed. And then
19 208 and -- there are two people, and they don't look at the
20 addition, and they are not anywhere as affected by it.
21 That's what this picture is for.

22 MR. HALL: Okay. And let's move on to the next
23 exhibit that I've listed, Mr. Young.

24 MS. HOWELL: I need Page 4 of this listing.

25 MR. HALL: Can you pedal down to Page 4?

1 MS. HOWELL: Yes. This shows the new addition

2 MR. HALL: Okay, hold on one second. And I just
3 want the record to reflect, you're prepared to testify about
4 the addition and the obstruction to your property. Is that
5 correct?

6 MS. HOWELL: That is correct.

7 MR. HALL: Okay. Let's move on to the next
8 exhibit, because the Board is not allowing that. Exhibit 75,
9 Mr. Young? Okay. Let's jump past that, because that solar
10 panel is not on your property. Correct?

11 MS. HOWELL: That is correct.

12 MR. HALL: And it's not on an adjoining property?

13 MS. HOWELL: Adjoining to myself, but not
14 adjoining to the 316.

15 MR. HALL: Yes, but not to the subject property.

16 MS. HOWELL: Yes.

17 MR. HALL: Let's go to Exhibit 76.

18 MS. HOWELL: 76.

19 MR. HALL: Okay. Can you tell the Board, just
20 really quickly, what that is?

21 MS. HOWELL: That is 318's response, that she was
22 withdrawing her consent regarding the addition.

23 MR. HALL: Okay. And let's look at Exhibit
24 59(d)(2). Last one. You'll be able to see it. All right.
25 Is that (d)(2)?

1 MS. HOWELL: Yeah. Yes. We've already -- yes,
2 I was prepared to --

3 MR. HALL: All right.

4 MS. HOWELL: -- talk about this one.

5 MR. HALL: Okay. I don't need any other exhibits
6 at this time.

7 MS. HOWELL: Thank you. Okay.

8 MR. HALL: That is the limited testimony I have
9 of Ms. Howell, given the fact that she's not being allowed
10 to testify to the impact that the addition will have on her
11 property.

12 BZA VICE CHAIR JOHN: Thank you. Does the Board
13 have any questions for the witness?

14 Does Mr. Sullivan have any questions for the
15 witness?

16 BZ VICE CHAIR JOHN: I have one question. How
17 long have you lived in that property?

18 MS. HOWELL: I have lived there from 1985.

19 BZA VICE CHAIR JOHN: Okay. And since 1985, did
20 you happen to notice that there were any tenants in that
21 property, in the carriage house?

22 MS. HOWELL: On and off, there were tenants. It
23 was listed. Mr. Stark evidently could not get the
24 certificate of occupancy. And the public record -- at the
25 time it was built in '85, '86, and '87, when I looked it up,

1 it was a photo studio. And that was what its use was
2 supposed to be. But on and off, there were tenants.

3 BZA VICE CHAIR JOHN: Have you seen people living
4 in it?

5 MS. HOWELL: Yes.

6 BZA VICE CHAIR JOHN: Okay. Okay. So -- thank
7 you. Did you have anyone else? thank you so much for your
8 testimony.

9 MS. HOWELL: Yes.

10 MR. HALL: I have no other witnesses.

11 BZA VICE CHAIR JOHN: Okay. Thank you. And the
12 applicant has no questions, and the Board has no questions.
13 Okay. Mr. Sullivan, did you have rebuttal?

14 MR. SULLIVAN: No, just a brief closing, when
15 appropriate.

16 BZA VICE CHAIR JOHN: Okay. Mr. Hall, can you
17 give us a brief closing? A few minutes?

18 MR. HALL: Sure. Sure. My client has been
19 limited to her testimony in this case. My expert witnesses
20 have been limited, and there's been no testimony with respect
21 to the adverse impact that the addition itself would have on
22 her property, which she was prepared to testify about, the
23 architect was prepared to testify about, and the engineer,
24 the zoning expert, was prepared to testify about.

25 Now, having put that to bed, with respect to a

1 certificate of occupancy, I would -- with respect to a zoning
2 variance being issued for the third unit, the carriage house,
3 it would be my client's position that this Board should not
4 issue any kind of zoning variance for that, because the
5 record, I think, is fraught with some misinformation, not the
6 least of which is the memorandum from Mr. LeGrant.

7 But also, if the Zoning Board's authority is to
8 basically take an illegality and make it legal, I don't think
9 there's any regulation -- or at least there's none that I've
10 seen -- that gives the Zoning Board authority to do that.
11 This is an illegal unit, and it shouldn't be made legal.

12 And the burden and the standard is that it has to
13 be a unique unit. There has to be very dire, difficult
14 circumstances that the owner cannot meet, in terms of its
15 current use. And it's a high standard for granting the
16 variance. I don't think that the owner, Mr. Cargill and, I
17 believe, his wife have met that particular standard. This
18 is not a unique property. There's carriage houses all over
19 the Hill. It's not the purpose and intent of the zoning
20 regulations to correct an illegality.

21 We don't know what's inside that carriage house,
22 in terms of safety. Number one, we don't know about the
23 wiring in the carriage house. We don't know if there's
24 proper plugging. We don't know if that spiral staircase
25 that's shown is to code. And the big thing is, which hasn't

1 been allowed into testimony, is there's safety issues. You
2 can't exit the main property to the rear.

3 So let's say you have a fire in the main property.
4 It's in the front. And you have to get out. The carriage
5 house has a C of O. Somebody else is living in it. They're
6 not home. There's no way to get out. All you can do is
7 smolder in the extremely tiny courtyard that will exist
8 between the main structure and the carriage house when this
9 addition is allowed. You cannot get access to the alley to
10 leave a burning structure. You can't do it. And that's a
11 real safety concern.

12 The other issue is, there has to be parking for
13 two cars. I mean, the expert has testified to that. And
14 there isn't parking back there for two cars, and if there was
15 parking for two cars, it would interfere with emergency
16 vehicles coming in and out.

17 My client lives right next door. If a firetruck
18 has to come down the alley to the rear to get to her
19 property, and it has to come in past this carriage house, and
20 there's two cars parked out there, that ain't going to
21 happen. Same with an ambulance. Now, yeah, they could back
22 out or try to get turned around and go to the other end of
23 the alley and come in the other way. It could be a
24 life-or-death situation, a burning building, and you've only
25 got one exit out the front.

1 We strongly urge this Board not to grant the
2 variance requested to make this carriage house into a unit.
3 I don't think the Board has the authority -- or let me put
4 it this way. Not the authority, but it's not the purpose and
5 intent of the zoning regulations to take an illegality and
6 make it legal. It's just not. And that's what you're going
7 to be doing if you grant this. Thank you.

8 BZA VICE CHAIR JOHN: Thank you, Mr. Hall. Mr.
9 Sullivan?

10 MR. SULLIVAN: Thank you, Madam Chair and Board
11 Members. Just in response to Mr. Hall's comment about making
12 something illegal legal, this is a situation where the Board
13 looks at a unique condition -- and the unique condition is
14 not the fact that there's a carriage house.

15 The unique condition is that there is a carriage
16 house, with a principal dwelling unit, which has been there
17 for many years, which is well-evidenced in the record, and
18 which does not have a certificate of occupancy, and which
19 does not have parking inside it, and the ability to have
20 parking to take up half of that. So there's considerable
21 elements to the uniqueness here.

22 And this Board has found, on several occasions,
23 that that type of situation -- call it an estoppel or call
24 it a laches type decision, where there is a unit that has
25 existed for a long time, and the city has not enforced that,

1 and people have relief on that, and a purchaser and a
2 homeowner has relied on that.

3 But that's part of an exceptional condition, which
4 is entitled to variance relief, if the practical difficulty
5 standard is met. And we believe the practical difficulty
6 standard is also met here, because of the cost that would be
7 entailed in removing the shower facilities, the kitchen, the
8 laundry, the electric, the utilities, and the loss in
9 property value to the applicants, as well.

10 Regarding safety, of course, that's a DCRA issue,
11 and that's covered in permitting. There is a door to the
12 alley. It's quite a large alley, as well. It's a huge space
13 back there. I think the Board's clear on the lot occupancy
14 issue. The first floor is an existing nonconforming
15 condition. It's not being expanded. It's not being
16 extended. So it complies. And regarding substantial
17 detriment to the public good, it's an existing condition that
18 did not invite complaints up until now. And so there's no
19 change in that.

20 And just to clear up, since Mr. Hall is
21 continually repeating it -- I assume, for some purpose, that
22 the addition's not part of this -- his argument is included
23 on Page 7, 320.2(i), which is gone. And that's the provision
24 that brought in the addition prior to 2019, in conversion
25 cases.

1 And the Zoning Commission struck that, because
2 when reviewing the addition, the Board always decided that
3 a matter-of-right addition was, by definition, not undue
4 impact. And so the Office of Planning and the Zoning
5 Commission altered that language, because it was duplicative.
6 And that's all I have. So if the Board has any questions?
7 Thank you very much.

8 MR. HALL: That's not the only basis, Madam Chair.

9 BZA VICE CHAIR JOHN: Excuse me, Mr. Hall. This
10 is closing. This is closing.

11 MR. HALL: Yeah. I would like to simply rebut
12 something that's said that's inaccurate, Madam Chair.

13 BZA VICE CHAIR JOHN: Okay. So this is not --
14 there's no rebuttal. So do you have a question?

15 MR. HALL: No, I want to cite a zoning regulation
16 that --

17 BZA VICE CHAIR JOHN: Mr. Hall, unless you're
18 going to tell me that there's another regulation at issue,
19 then, you know, we're out of time. In the caption --

20 MR. HALL: That's what I wanted to tell you, Madam
21 Chair.

22 BZA VICE CHAIR JOHN: In the caption, the
23 applicant has requested relief under 320.2(d). Okay? And
24 320.2(c). If the applicant needs other relief, the applicant
25 must return to the Board. So I think the record is clear.

1 I think we've spent a lot of time on this case, and I think
2 the Board is clear what the Board has to decide.

3 MR. HALL: There are special exception review
4 standards. I simply wanted to cite to those, Your Honor.
5 That's all. I mean, Madam Chair.

6 BZA VICE CHAIR JOHN: What is the citation?

7 MR. HALL: It's Chapter 9, Special Exceptions,
8 901.3.

9 BZA VICE CHAIR JOHN: Okay.

10 MR. HALL: The applicant of a special exception
11 shall have the full burden to prove no undue adverse impact,
12 and shall demonstrate such through the evidence in the public
13 record.

14 BZA VICE CHAIR JOHN: Thank you. Okay. So I'm
15 going to close the record in the hearing. And I thank you
16 for your presentation, Mr. Hall. We have a very long day.
17 We have another eight or so cases.

18 MR. HALL: I understand.

19 BZA VICE CHAIR JOHN: So I'm sorry to rush you,
20 but that's where we are. So thank you all, and I'm going to
21 excuse everyone at this time, and talk to the Board. Okay,
22 so hopefully, we're ready to deliberate, and there's someone
23 who wants to volunteer to start, so that I don't have to call
24 on anyone. But I will, starting with Mr. Smith.

25 MEMBER SMITH: So, starting with the special

1 exception, we believe the applicant's met the burden of proof
2 for us to be able to grant special exception, in accordance
3 with 3201. Let me back up and address the party in
4 opposition. And I understand the concerns of the party in
5 opposition, regarding the addition and how it may affect
6 light and air.

7 And let me reiterate, because this is a major
8 focus of the discussion, in the RF-3 zone, a flat is -- a
9 flat permits two units within a principal dwelling unit.
10 What was before us was the accessory dwelling unit, special
11 exception to convert property to -- from a flat, which allows
12 two or three on the property.

13 This is about the accessory dwelling unit and the
14 accessory building, and a variance from the standards to
15 allow that accessory dwelling unit within an accessory
16 building -- to allow three units on the property, where all
17 three of those units would, in effect, wouldn't be 900 square
18 foot. It would be 600 square feet and some change. So it's
19 not about this addition.

20 Again, and I stated before, and I'm going to say
21 it again to the party in opposition's counsel, and to the
22 party in opposition, we could have denied this. And it would
23 have continued as a flat. And I'm not saying -- I'm not
24 saying where this will go.

25 If this wasn't before us -- this property can be

1 developed as a flat with two units, with the addition of the
2 rear. And it would be a matter-of-right administrative
3 process. And the zoning administrator would review that
4 building permit, there would be an administrative process,
5 and grant two percent deviation.

6 And it's all an administrative process. You may
7 be notified then that it was a building permit -- but again,
8 it's an administrative process. It's not a question about
9 that addition to the principal building. So I just wanted
10 to state that, just on the record, for clarification. And
11 saying that, I do believe that the applicant met the burden
12 of proof for us to grant the special exception.

13 When it comes down to the variances, I do believe
14 that the applicant has met the three prongs of the variances.
15 I will go down how I believe they meet those three prongs.
16 When it comes down to the property's unique aspect and
17 condition, the property was bought by the applicant in its
18 current configuration, with three units. We talk about
19 estoppel, that the building, this particular property, has
20 -- well, at the time, had three units. I do believe that
21 having those three units has presented that unique condition
22 here for the property.

23 And from the standpoint of practical difficulties
24 and undue hardship, I believe that the applicant's met the
25 practical difficulty and hardship in that, because the space

1 in the accessory building is already configured as a dwelling
2 unit. It would pose a peculiar, extraordinary situation to
3 convert that accessory building, that space within the
4 accessory building, back into -- from being an accessory
5 apartment into something that would be permitted as a
6 matter-of-right.

7 When it comes down to no substantial detriment to
8 the public good, I do not believe that the request would be
9 a substantial detriment to the public good, and that it's
10 been used from an accessory building for some time now.

11 The accessory building does meet the zoning
12 regulations of the zone, when it comes down to the height and
13 scale and size of the building. And I do believe that it is
14 in character with the surrounding property. Carriage houses
15 are fairly common within this area. Accessory dwelling units
16 are common in this area. There may be two on the property,
17 but a detached accessory building is fairly common. It's not
18 out of character with the Capitol Hill neighborhood.

19 No substantial impairment in the zone plan. Given
20 that this type of use is permitted within the zoning
21 district, granting this area requirement, I do not think it
22 would substantially impair the zone plan to grant the
23 variance.

24 So with that, I do believe that it meets all of
25 the prongs for us to be able to grant the variance and the

1 special exception criteria. I give great weight to OP's
2 staff report, and I also note that we have letters in support
3 from adjacent property owners for this application, as well
4 as Corey Holman here, our representative ANC, who is also in
5 support of the application. I would grant the variance
6 request and the special exception request.

7 BZA VICE CHAIR JOHN: Thank you, Board Member
8 Smith. Commissioner Miller, may I go to you next?

9 ZC VICE CHAIR MILLER: Thank you, Madam Chair.
10 I concur with Board Member Smith's analysis, and also give
11 great weight to the Office of Planning and ANC reports, which
12 support both the variance requested to the 900-square-foot
13 land area per dwelling unit rule, as well as the special
14 exception request for conversion of an existing residential
15 building to an apartment house, and agree that it is within
16 the Board's authority to grant these, to make an evaluation
17 of whether the standards for relief have been met in this
18 particular case.

19 And even though you apologized, Madam Vice Chair,
20 for rushing the party in opposition, you hardly did that.
21 We have been here on this one case for a long time. And
22 there is a lot of testimony in the record. And even though
23 that was offered today, about the addition to the principal
24 structure, even though -- that is not before us. If the
25 party in opposition wants to appeal the issuance of the

1 building permits for that matter-of-right structure, there
2 are avenues for that to be done.

3 And it'll end up before this Board if there is
4 some issue there, if it's timely -- if there's an appeal of
5 an -- if there's a timely appeal of an issuance of the
6 building permit by DCRA for that addition, which is not
7 before us today. So with that, I'm prepared to support the
8 application that's before us. Thank you, Madam Vice Chair.

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

11 MEMBER BLAKE: Yes, thank you, Vice Chair. A lot
12 has been said, and the record is full. I don't want to spend
13 a lot more time on my comments. But I will say, I did
14 struggle a little bit with the practical difficulty standard.
15 But I was persuaded by the applicant's argument about the
16 inability to convert 600 square feet to reasonable ancillary
17 space.

18 And I also felt that there's high detriment, to
19 lose \$2,000 a month in monthly rental income. So for that
20 reason, I do believe that the applicant has met the criteria,
21 all three prongs, of the variance test, as well as the
22 special exception criteria, and I, too, would be in support
23 of the application.

24 BZA VICE CHAIR JOHN: Thank you. And I'm in
25 support of the application. The record is quite full. And

1 as I noted during the hearing, the addition is not before the
2 Board, and the only issue is the accessory dwelling unit.

3 And I'm satisfied that the criteria -- that the
4 application meets the criteria for relief under Subtitle U
5 320.2(d) and Subtitle 320.2, which is the 900-square-foot
6 rule and the conversion from a flat to an apartment. And so
7 with that, I'll ask, Mr. Moy, will you take the roll call
8 please?

9 MR. MOY: The question is --

10 BZA VICE CHAIR JOHN: Oh, so, yes --

11 MR. MOY: Is there a second?

12 BZA VICE CHAIR JOHN: I said it, but not properly.
13 So I'd like to make a motion to approve Application Number
14 20543, as captioned and read by the secretary, and ask for
15 a second, please. Mr. --

16 MEMBER BLAKE: Second.

17 BZA VICE CHAIR JOHN: Thank you. Mr. Moy, would
18 you take a roll call?

19 MR. MOY: Thank you. With pleasure. When I call
20 your name, if you would please respond with a yes, no, or
21 abstain, to the motion made by Vice Chair John to approve the
22 application for the relief requested? The motion to approve
23 was second by Mr. Blake. Zoning Commissioner Rob Miller?

24 Mr. Smith?

25 MEMBER SMITH: Yes.

1 MR. MOY: Mr. Blake?

2 Vice Chair John?

3 BZA VICE CHAIR JOHN: Yes.

4 MR. MOY: We have a Board Member not
5 participating. Staff would record the vote as four -- one,
6 two, three, four -- four to zero to one. And this is on the
7 motion made by Vice Chair John to approve. The motion to
8 approve was second by Mr. Blake.

9 In support of the motion -- also in support of the
10 motion, Zoning Commissioner Rob Miller, Mr. Smith, and of
11 course, Mr. Blake and Vice Chair John. Board Member not
12 participating. Staff records the vote at four to zero to
13 one. Motion carries.

14 BZA VICE CHAIR JOHN: Thank you, Mr. Moy. And
15 Chairman Hill will be back with us in a minute.

16 ZC VICE CHAIR MILLER: With you, at least. I
17 think Chairman Hood will be joining, I think, as the Zoning
18 Commission representative. But so I'll say farewell.

19 BZA VICE CHAIR JOHN: Thank you, Commissioner
20 Miller.

21 ZC VICE CHAIR MILLER: Thanks.

22 MR. MOY: Bye, Commissioner Miller.

23 BZA CHAIR HILL: Okay, you guys. I don't know
24 what you guys -- I actually am here. Was able to learn while
25 you guys were working through that. You want to do lunch

1 now, I guess? It's 1:30. So we'll come back at 2:00. Is
2 that good?

3 Okay. See you guys at 2:00. Bye.

4 (Whereupon, the above-entitled matter went off the
5 record at 1:30 p.m. and resumed at 2:07 p.m.)

6 BZA CHAIR HILL: All right, Mr. Moy. Good
7 morning, Chairman Hood. All right.

8 ZC CHAIR HOOD: I will say -- it is morning. Good
9 morning. So I'll say good morning back to you, because
10 that's what --

11 BZA CHAIR HILL: Good morning, Chairman Hood.
12 Good morning. All right. Go ahead, Mr. Moy. Call us in.
13 Okay, call our next case.

14 MR. MOY: Thank you, Mr. Chairman. The Board has
15 returned to its public hearing session after a brief lunch
16 recess, and the time is at or about 2:07 p.m. And I believe
17 the next case before the Board is Application Number 20687,
18 of Lloyd and Margaret Belcher.

19 This is a self-certified application for special
20 exceptions. There are three areas of requested relief,
21 pursuant to Subtitle E, Section 7201 and Subtitle X, Section
22 901.2. The first is the lot occupancy requirements of
23 Subtitle E, Section 304.1. The second is the accessory
24 building area requirements of Subtitle E, Section 5003.1.
25 And finally, the matter-of-right uses of Subtitle U, Section

1 301, pursuant to Subtitle U, Section 301.1(e).

2 This is for a new two-story accessory structure
3 with a dwelling unit on the second floor, garage on the
4 ground floor, in the rear yard of an existing two-story
5 attached principal dwelling. The property's located at 1127
6 G Street Northeast, Square 983, Lot 57. And the property is
7 in the RF-1 zone. And I believe that's all I have.

8 BZA CHAIR HILL: Great. Thank you, Mr. Moy. Ms.
9 Fowler, could you introduce yourself for the record, please?

10 You're on mute, Ms. Fowler.

11 MS. FOWLER: Hi, everybody. I'm Jennifer Fowler,
12 with Fowler Architects, and I'm representing the homeowner.
13 Also, I believe that Mr. Belcher is -- he signed up to
14 testify. He doesn't necessarily need to speak, but if we
15 have any questions for him, he is -- I don't see him as a
16 panelist, but --

17 BZA CHAIR HILL: He's the property owner?

18 MS. FOWLER: Yes, the property owner.

19 BZA CHAIR HILL: That's all right. If we get
20 backed -- if we need him, we'll pull him in.

21 MS. FOWLER: Okay. Okay. All right. Great.

22 BZA CHAIR HILL: Ms. Fowler, go ahead and tell us
23 a little bit about your application. I don't have a lot of
24 questions. Just summarize it, if you wouldn't mind.

25 MS. FOWLER: Sure. So, yes, the owners would like

1 to -- currently, they have an empty parking pad at the back
2 of the house, and they would like to build a two-story
3 garage, with parking on the lower level and an accessory
4 dwelling unit on the second floor. And the plan is to rent
5 it out, and have an entrance from the alley.

6 We are requesting relief from the use -- 301.1,
7 which is to allow an accessory dwelling in the accessory
8 building. We also are asking for relief for the general
9 occupancy, which we're going from -- currently, it's 42.5
10 percent, and we're going up to 64.7 with this proposal. So
11 it's only 103.2 square foot, you know, over the allowed.
12 We're also kind of extending beyond the 450 square feet
13 allowed for an accessory structure, at 488 square feet. So
14 it's about 30.3 square feet additional, over that
15 requirement.

16 So we are sticking to the matter-of-right height.
17 It's 20'6" from the alley side, 22 from the yard. And all
18 other -- and the setbacks and everything else complies with
19 the zoning regulation. So we have provided a sun study
20 that's in the record, that shows that there is some impact
21 to the adjacent neighbors, but it is limited to the rear
22 yards, and in kind of the spring and summer months.

23 Those two adjacent neighbors have signed a letter
24 of support. They're in the record, as well. We have some
25 additional letters of support. And the homeowners have done

1 a very good job of outreach, trying to reach out to as many
2 people on the block as possible. We have the support of the
3 ANC 6A, as well as Capitol Hill Restoration Society. So
4 overall, it's been very well-received, and I will leave it
5 at that, and leave it for questions. Thank you.

6 BZA CHAIR HILL: Great. Thanks, Ms. Fowler.
7 Let's see. Okay. Let me turn first to the Office of
8 Planning.

9 MR. COCHRAN: Thanks, Mr. Chair. OP, as you know,
10 is in support of all three special exception requests. I
11 wanted to correct the record, because of a typo in the
12 report. We are supporting relief from U 301.1(e), not E
13 301.1(e). Other than that, I think we can stand on the
14 record and answer any questions you might have.

15 BZA CHAIR HILL: Okay, thanks, Mr. Cochran. Does
16 the Board have any questions for the applicant or the Office
17 of Planning? Mr. Young, is there anyone here wishing to
18 present?

19 All right. Ms. Fowler, you got anything at the
20 end?

21 MS. FOWLER: No. Thank you.

22 THE COURT: Okay. Ms. Fowler, it looks like a
23 really fun design. The colors look cool and everything. And
24 so hopefully it passes. All right. Going to go ahead and
25 close the hearing and the record. Okay.

1 I didn't have any issues with this application.
2 I thought that it was pretty straightforward, and I thought
3 that I would agree with the analysis the Office of Planning
4 had provided, as well as that of the ANC, DDOT, and then also
5 CHRS. It looks like they're in support, as well. As I said,
6 I do think it's pretty straightforward. So I'm going to be
7 voting in support. Mr. Smith, do you have anything you'd
8 like to add?

9 MEMBER SMITH: I agree with your analysis, and
10 will support that application. Can you hear me?

11 BZA CHAIR HILL: Yeah, you're kind of breaking up
12 a little bit, but I heard most of -- I heard what you said,
13 just so you know.

14 MEMBER SMITH: Okay.

15 BZA CHAIR HILL: Mr. Blake, you got anything to
16 add?

17 MEMBER BLAKE: Yeah. I will be voting in favor
18 of the application. I believe the applicant has met the
19 burden of proof. The applicant has provided a detailed
20 analysis of the impact of light, air, and flow and the
21 privacy of adjacent and abutting properties, which included
22 a shadow study, an analysis of fenestration, as well as
23 photographs, elevation of the project and surrounding area.
24 Through this, the applicant has demonstrated that the
25 proposed accessory structure should not have a substantially

1 adverse effect on the use or enjoyment of any neighboring
2 properties.

3 As the requested relief is anticipated by the
4 regulations, I believe that granting of relief will be in
5 harmony with the zoning regulations. This assessment is
6 consistent with the Office of Planning's analysis, with which
7 I agree. I would also give great weight to the Office of
8 Planning report, the DDOT report, with no objections. ANC
9 6A is in support with no concerns. And I'd also note, the
10 adjacent property owners are in support, as well as CHRS.
11 I will be voting in favor.

12 BZA CHAIR HILL: Great. Thank you. Chairman
13 Hood?

14 ZC CHAIR HOOD: I'll be voting in favor. I think
15 the relief requested has been either mitigated or satisfied
16 completely from the merits of the case, and it looks like it
17 has overwhelming support in this application, so I will be
18 voting in favor, as well. Thank you, Mr. Chairman.

19 BZA CHAIR HILL: Thank you. Vice Chair John?

20 BZA VICE CHAIR JOHN: Thank you, Mr. Chairman.
21 I'm in support of the application. I believe it meets the
22 criteria, as other Board Members have stated. And I'm, as
23 I said, I'm going to vote in support.

24 BZA CHAIR HILL: Okay. I'm going to make a motion
25 to approve Application Number 20687, as captioned and read

1 by the secretary, and ask for a second. Ms. John?

2 BZA VICE CHAIR JOHN: Second.

3 BZA CHAIR HILL: Motion made and seconded. Mr.
4 Moy, you can take a roll call.

5 MR. MOY: If you would please respond with a yes,
6 no, or abstain, to the motion made by Chairman Hill to
7 approve the application for the special exception reliefs
8 being requested? The motion to approve was seconded by Vice
9 Chair John. Zoning Commission Chair Anthony Hood?

10 ZC CHAIR HOOD: Yes.

11 MR. MOY: Mr. Smith?

12 Mr. Blake?

13 MEMBER BLAKE: Yes.

14 MR. MOY: Vice Chair John?

15 Chairman Hill?

16 BZA CHAIR HILL: Yes.

17 MR. MOY: Then staff would record the vote as five
18 to zero to zero, and this is on the motion made by Chairman
19 Hill to approve. The motion to approve was second by Vice
20 Chair John. Also in support of the motion to approve, Zoning
21 Commission Chair Anthony Hood, Mr. Smith, Mr. Blake, and of
22 course, Vice Chair John and Chairman Hill. Motion carries
23 on a vote of five to zero to zero.

24 BZA CHAIR HILL: All right. Thanks, Mr. Moy. You
25 can call our next, when you get a chance.

1 MR. MOY: Okay. So this would be -- sorry about
2 that. I got ahead of myself. Okay. So this would be Case
3 Application Number 20524, of Gregory Potts. And this is the
4 applicant's request for special exception relief from the
5 rooftop and upper floor alteration restrictions of Subtitle
6 E, Section 206.1(a), pursuant to Subtitle E, Section 206.4,
7 Subtitle E, Section 5207, and Subtitle X, Section 901.2.

8 This would construct a new detached two-story
9 accessory -- or rather, this would construct a third-story
10 addition and convert to a flat an existing attached two-story
11 with cellar principal dwelling unit in the RF-1 zone,
12 property located at 521 Florida Avenue Northeast, Square 828,
13 Lot 48. And let's see. I think I have -- Gregory Potts.
14 No, I think that's -- I don't have any preliminary matters.
15 But that's where we are for the moment.

16 BZA CHAIR HILL: Great. Mr. Bello, you want to
17 introduce yourself for the record, please?

18 MR. BELLO: Yes, sir. Good afternoon, Mr. Chair
19 and Board Members. Olutoye Bello, representing the owner and
20 the applicant.

21 BZA CHAIR HILL: Thank you. Who is what you, Mr.
22 Bello?

23 MR. BELLO: I have the general contractor, Dr.
24 Bowman here. I have the architect, Will Teass. And I
25 believe the applicant should be online also.

1 BZA CHAIR HILL: Okay, great. I see the
2 commissioner also. Mr. Bowman, could you introduce yourself
3 for the record, please?

4 MR. BOWMAN: Afternoon, Mr. Chair and the
5 distinguished, esteemed panel of the BZA. My name is Dr.
6 Walter Bowman, Sr., general contractor for the project, 521
7 Florida Avenue, located in Northeast Washington, D.C.

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

10 MR. TEASS: My name is Will Teass. I'm an
11 architect and principal at Teass/Warren Architects, here on
12 behalf of the applicant.

13 BZA CHAIR HILL: Oh, yeah, Mr. Teass. I forgot.
14 Sorry. I shouldn't say forgot. Sorry I mispronounced your
15 name. Mr. Teass, have you been before us during the pandemic
16 yet?

17 MR. TEASS: This is my first case before the
18 virtual Board of Zoning Adjustment.

19 BZA CHAIR HILL: Well, welcome back, Mr. Teass.
20 Let's see. Okay. Commissioner Eckenwiler, how are you
21 doing? Could you introduce yourself for the record, please?

22 MR. ECKENWILER: Thank you, Mr. Chairman. Mark
23 Eckenwiler, Vice Chair ANC 6C, here on behalf of the ANC.

24 BZA CHAIR HILL: Okay. Mr. Bello, were you
25 watching earlier today?

1 You're on mute, Mr. Bello.

2 MR. BELLO: Yes, Mr. Chair.

3 BZA CHAIR HILL: Mr. Bello, my day was humming
4 along for one case, and so now it's -- now we've gotten to
5 you again, Mr. Bello, and now I've got Commissioner
6 Eckenwiler, and so we're going to have a big discussion today
7 now, I can see, which is fine. All right.

8 Mr. Bello, why don't you go ahead and walk us
9 through your application and why you believe your client is
10 meeting the standard for us to grant the relief requested?
11 We're going to also hear, obviously, now from the ANC. And
12 Mr. Bello, I'm going to put 15 minutes on the clock, just
13 because I've got eight more cases, and hopefully this kind
14 of is efficient. And we'll see where we get. Okay?

15 MR. BELLO: Thank you. I think the quickest route
16 to that is to have the PowerPoint that was submitted pulled
17 up --

18 BZA CHAIR HILL: Yeah. Is it 61? Yeah. Got it.

19 MR. BELLO: Thank you. So this application is for
20 521 Florida Avenue Northeast. Next slide, please. The
21 relief sought is a special exception from the provisions of
22 206.4. And the conditions for -- outside of the general
23 criteria, the conditions for granting this relief are set
24 forth under Subtitle E 5207.1(a)(1), (2), (3), and (b). Next
25 page, please.

1 This is a project background that sort of puts
2 this application in context. So Applicant applied for and
3 was issued a building permit on April 17, 2019, authorizing
4 construction of a new three-story building, including a
5 cellar floor, containing two dwelling units, therefore a
6 flat. And that is on Exhibit 55. The building permit was
7 issued in conjunction and consistent with the permit set
8 drawings, and DC Builder's Plat submitted and approved by
9 DCRA. Those are in Exhibit 53 and 34, respectively.

10 Applicant obtained all supplemental permits to the
11 issued building permit in June 2019. While awaiting the
12 issuance of a raze permit, Applicant obtained the building
13 postcard permit to embark on interior demolition of the
14 existing structure. See Exhibit 59. Hence, for all intents
15 and purposes, Applicant commenced construction activity in
16 June 2019, on good faith reliance on the building permit
17 issued in April 2019. Next slide, please.

18 DCRA issued a stop-work order on April 2, 2020,
19 nearly one year from the date of the issuance of the building
20 permit, and nine months from the commencement of construction
21 in June 2019. The basis of the stop-work order was the
22 purported or alleged unauthorized removal of a mansard roof.

23 Applicant's GC will testify as fact witness that
24 the project was under roof, and had passed all closing
25 inspections, and was at drywall phase at the time of the

1 issuance of the stop-work order, as photographic evidence
2 attests, Exhibit 8.

3 The general contractor will testify that all
4 required and relevant inspections up to the issuance of the
5 stop-work order were performed by DCRA, and that at no point
6 prior to the issuance of the stop-work order was the project
7 advised of being in any violation of either construction
8 codes or the zoning regulations.

9 Applicant contends that the stop-work order is
10 incongruent with the issued building permit and approved
11 plans for new construction, since the provision from which
12 relief is sought is inapplicable to the new construction.
13 Applicant also contends that there is a conflict -- that a
14 conflict exists between what the construction code deems a
15 razed building, and what may be deemed a raze in the
16 legitimate interest of the Zoning Administrator in
17 administering the provisions set forth under Subtitle E
18 206.1. Next slide, please.

19 In support of the last bullet point in the last
20 slide, these records -- they seem not very clear, but these
21 are evidence of the raze inspections performed by DCRA, and
22 approved, as of September of 2020. So for all intents and
23 purposes, the Construction Codes Division deems this building
24 to have been razed, notwithstanding that a small portion of
25 the front facade was left standing. Next slide, please.

1 Evidence of the permits that were issued. The
2 exhibits in the record. Next slide, please. Further
3 evidence of other supplemental permits in support of the
4 building permits. Next slide, please. Further evidence.
5 Also the postcard permit that was issued and used in
6 anticipation of the full raze permit that would be issued
7 much later. Next slide, please.

8 This is photographic evidence of the condition of
9 the construction at the time of the stop-work order. I
10 brought the front elevation, which is the relevant portion
11 of this application, and also the rear, just to indicate how
12 far gone construction had progressed. Next slide, please.
13 Further evidence of the removal of the approved building
14 permit and the dormer. Next slide, please.

15 Notwithstanding the project background, and the
16 zoning history, Applicant contends that the proposed project
17 complies with the general criteria set forth under Subtitle
18 X 901.2, and the conditions for the granting of the requested
19 relief under E 5207.1. I could go through the general
20 criteria, but since the ANC does not disagree that the
21 project complies with those general criteria, and their
22 opposition is based on Section 5207, if the Board pleases,
23 I can jump to those standards.

24 BZA CHAIR HILL: Go ahead, Mr. Bello.

25 MR. BELLO: Next slide, please. Thank you. Next

1 slide, please. Next slide, please. Now, this criteria is
2 what's in the conditions for E -- the provisions under
3 2057.1. The proposed construction shall not substantially
4 adversely affect -- shall not have substantial adverse
5 effects on the use or enjoyment of any abutting or adjacent
6 property.

7 In particular, the proposed construction would not
8 have substantially adverse impact on the use or enjoyment of
9 abutting or adjacent dwelling or property, because it is a
10 low structure, as are other adjoining properties, and has no
11 openings or fenestration on lot lines -- on the side lot
12 lines. Therefore, the privacy or use and enjoyment of
13 adjacent properties are not infringed upon.

14 Further, other than the relief pertaining to the
15 removal or alteration of the rooftop architectural element
16 original to the existing structure, the project is in
17 compliance with other development standards applicable by
18 achievable by adjoining properties in similar circumstances
19 in the underlying zone district as a matter of right. The
20 light and air available to the neighborhood properties shall
21 not be unduly affected. Next slide, please.

22 The subject property is located in the RF-1 zone
23 district. Applicant submits that the development standards,
24 as listed, affecting the light and the air available to the
25 neighboring properties are those affecting bulk and setbacks

1 from adjoining property lines, which the project complies
2 with in entirety.

3 The subject property is an interior loading zone
4 district that does not prescribe side yard setbacks for row
5 structures, and lot-line walls are not permitted to have
6 openings, under the construction codes. And none of the
7 adjoining walls feature or contemplate any openings. The
8 openings for all properties are thus possible only at the
9 front and the rear building facade.

10 All the proposed construction would comply with
11 the maximum percentage of lot occupancy and the maximum
12 height and number of stories prescribed for the underlying
13 zone district, to which adjoining neighboring properties can
14 eventually construct, as a matter of right, without need for
15 BZA relief. Next slide, please.

16 The privacy of use and enjoyment of neighboring
17 properties shall not be unduly compromised. The only
18 openings on the proposed construction are located at the
19 front and the rear facades of the structure. The one-story
20 or floor addition will -- the one-story or -floor difference
21 between the proposed construction and adjacent or neighboring
22 properties overlooks the roofs of the adjacent properties,
23 neither of which feature a roof deck.

24 The adjoining properties can build to the same
25 bulk and height, as a matter of right, hence to the extent

1 -- to the extent that the privacy of use -- privacy of use
2 or enjoyment of neighboring properties may be compromised,
3 which the applicant contends is to the contrary, any
4 compromise, if at all, is temporary. Next slide, please.

5 The proposed construction, as viewed from the
6 street, alley, or other public way, shall not substantially
7 visually intrude upon the character, scale, and pattern of
8 houses along the street. The proposed construction would not
9 substantially visually intrude upon the character, scale, and
10 pattern of houses along the street or alley. Applicant's
11 design team incorporated the prevailing architectural
12 character of the set of row dwellings which share similarity
13 of character and scale.

14 The standard cannot be -- this standard cannot be
15 interpreted to preclude or foreclose the establishment of
16 height or number of stories permitted as a matter of right
17 in an underlying zone district, insofar as the proposed
18 construction is architecturally compatible to the prevailing
19 architectural character of the neighboring properties.

20 At least three -- and the ANC disputes this -- at
21 least three of the mansard roofs have been removed along the
22 block of existence. The ANC contends that at least two of
23 those buildings have never had mansard roofs. Applicant
24 contends that the removal of the mansard roof was authorized
25 by the issuance of the building permit for new construction,

1 and the raze permit issued posthumously. Next page, please.

2 In demonstrating the compliance with Paragraph A
3 -- the applicant shall use graphical representation, such as
4 plans, photographs, elevation, and section drawings -- the
5 applicant has submitted the project drawings, and submits
6 photographs which depict the current state of construction
7 at subject property, sufficient for the Board's evaluation
8 and assessment. Next page, please.

9 The Board of Zoning Adjustment may require special
10 treatment in the way of design, screening, exterior or
11 interior lighting. Applicant is not averse to any special
12 treatment the Board deems fit. Applicant incorporates by
13 reference Office of Planning's recommendation of approval,
14 and the substance thereof. Next slide, please.

15 The applicant submits that the instant application
16 complies with all conditions for the granting of the
17 requested special exception, set forth under 901.2, by virtue
18 of the representation set forth under Statement of Compliance
19 with the Burden of Proof.

20 Proposed use is deemed a conforming use, and the
21 proposed structure complies with all other applicable
22 development standard provisions in its underlying zone
23 district of location, save that for which the applicant is
24 compelled to seek relief for, in circumstance.

25 Applicant notes the zoning or permitted history

1 of the subject property, and the inherent conflict in the
2 administration and interpretation of what constitutes a raze
3 under the construction code, and the ZA's legitimate
4 obligation to administer, interpret, and enforce the
5 provisions set forth under Subsection 206.1, which is the
6 applicant's -- genesis of the applicant's quandary.

7 Applicant has in its possession the building
8 permits which authorize the construction of the new building,
9 which is consistent with the project drawings approved in
10 conjunction with the building permit. Applicant also has
11 been issued a raze permit, because the Code Official
12 concludes that, in accordance with the definition provided
13 in the construction codes, the existing building that was
14 demolished substantially enough to constitute a razed
15 building. And again, Applicant refers back to Exhibit 5,
16 where DCRA has inspected and approved raze inspections for
17 the property. Next slide, please.

18 Applicant's project is substantially completed,
19 at 90 percent completion, and the cost of demolishing the
20 constructed structure is prohibitive enough that it is not
21 unreasonable to conclude that DCRA may be estopped from
22 revoking the building permit, and embarking on enforcement
23 action, which unduly financially burdens the owner of a
24 property. And this is really more germane if we were in an
25 appeal posture, but we are not. But I think it's a point

1 worth bringing up.

2 The Board has the discretion to consider in its
3 deliberation the practical outcome of the denial of the
4 instant application within the context of the facts of the
5 project background the applicant narrated earlier in this
6 statement, to wit, the intent of the applicant from
7 inception, as attested by the simultaneous application for
8 both the raze permit and submission of permit set drawings
9 for new construction, the fact that the applicant has in its
10 possession the approved building permit for new construction,
11 including associated approved plans, that construction
12 inspections were performed by DCRA, and in nine months of
13 inspections, DCRA failed to cite the violation, suggesting
14 that the project was not constructed in accordance with the
15 approved plans, that absent the approval of the requested
16 relief, the remedy available to the applicant is
17 unreasonable, impractical, and cost-prohibitive, that the
18 remedy is to demolish the constructed front facade in order
19 to reconstruct to in-kind condition. There simply will be
20 no difference in look if the applicant were made to go
21 through this hoop. Next page, please.

22 BZA CHAIR HILL: Okay. Mr. Bello? Mr. Bello?

23 MR. BELLO: That's it. Yes, sir?

24 BZA CHAIR HILL: Mr. Bello, before you -- go back
25 one slide, Mr. Young. Where are you referencing again in the

1 regulations, the Board has the discretion to consider its
2 deliberation?

3 MR. BELLO: Well --

4 BZA CHAIR HILL: Where are you -- where are you
5 pulling that from?

6 MR. BELLO: Well, I'm not --

7 BZA CHAIR HILL: Or are you just making a
8 statement?

9 MR. BELLO: Well, the special exception actually
10 has a whole lot to do with the judgment of the Board. Right?
11 So if there are any --

12 BZA CHAIR HILL: That's okay. That's okay, Mr.
13 Bello. You're saying that. That's all I'm just asking.

14 MR. BELLO: Correct.

15 BZA CHAIR HILL: Okay, yeah. You're not pulling
16 it from the regulations. I understand what you're saying.
17 I just -- okay. All right. Your last slide, there, I got
18 it. Approved front elevation as compared to as-built -- go
19 ahead, Mr. Young. Go to that last one. Approved front
20 elevation in comparison to as-built condition.

21 MR. BELLO: Exactly. So --

22 BZA CHAIR HILL: Okay. Right. Right. It's
23 already that way. I see what you're saying. Okay. Okay,
24 Mr. Young, you can drop the slide deck. Mr. Bello, I'm
25 trying to remember. Did your client have this project from

1 the beginning? Or did they buy it at some point?

2 MR. BELLO: No, they had it from the beginning.

3 BZA CHAIR HILL: Okay. So they've had this --
4 they've done this from the beginning. Okay.

5 MR. BELLO: That's correct.

6 BZA CHAIR HILL: Who does have any questions for
7 Mr. Bello from my Board members? Yeah, Chairman Hood?

8 ZC CHAIR HOOD: Okay. Thank you, Mr. Bello, and
9 everybody. Good afternoon. So the photographs you have, and
10 I believe -- and I think you've stated this already. This
11 is the way it exists now, before the stop-work order. So
12 this has already been done.

13 MR. BELLO: That's correct.

14 ZC CHAIR HOOD: So we got all the way to this
15 point and this -- this almost feels like an appeal. But
16 anyway, okay. All right. Thank you. Thank you, Mr.
17 Chairman.

18 BZA CHAIR HILL: Okay. All right. Commissioner
19 Eckenwiler, do you want to present first and then ask
20 questions? Or do you want to ask the questions?

21 MR. ECKENWILER: I don't have any questions of Mr.
22 Bello.

23 BZA CHAIR HILL: Okay.

24 MR. BELLO: Mr. Chair, did you want to hear from
25 the general contractor? Or --

1 BZA CHAIR HILL: I mean, I don't -- nobody has any
2 questions for him. You all haven't got any -- I mean, I see
3 -- it seems pretty clear, Mr. Bello, what you're arguing.
4 I mean, I guess, like, you know, we'll just have to -- the
5 Board will have questions.

6 And thankfully, I can look at all the PowerPoints
7 and see what everybody's argument is, and I see Commissioner
8 Eckenwiler's slide deck, as well. So I think it's pretty
9 clear what everybody's arguing. We're just going to have to
10 see where the Board, I guess, lands, is what I think is going
11 to happen. So Vice Chair John, you had a question?

12 We can't hear you, Vice Chair John. You're on
13 mute.

14 BZA VICE CHAIR JOHN: For Mr. Bello, where is the
15 record of inspections in the record? What's the exhibit
16 number?

17 MR. BELLO: Exhibit Number 5. And those will be
18 the raze permit inspections.

19 BZA VICE CHAIR JOHN: Okay. I believe you also
20 said that there were several inspections of the building.

21 MR. BELLO: And that's what the general contractor
22 can testify to, because -- if you would hear from him for
23 just a minute on that question?

24 BZA CHAIR HILL: What's the question, Mr. Bello,
25 that you're trying to get your GC to answer?

1 MR. BELLO: That all licensed inspections were
2 performed to this phase of construction, which was pretty
3 much under roof and drywall-stage.

4 BZA CHAIR HILL: Okay. Is that your question,
5 Vice Chair John?

6 BZA VICE CHAIR JOHN: I thought Mr. Bello had
7 shown an exhibit showing all the DCRA inspections. But he's
8 saying that they were pertaining to the raze permit, not the
9 inspections?

10 MR. BELLO: Yes. That's correct. Exhibit 5 is
11 the public records of the raze permit inspection performed
12 by DCRA, and also approved. And the point of the applicant
13 is that, while we're before the Board, because the Zoning
14 Administrator interprets the fact that the entirety of the
15 front facade was not brought down, that this constitutes an
16 alteration or repair, an addition -- well, the construction
17 division has performed inspections, because they believe that
18 the building was substantially demolished, to constitute the
19 raze, under their own interpretation.

20 BZA VICE CHAIR JOHN: Okay, so just to follow up,
21 what was left? Only the front of the building?

22 MR. BELLO: Only the front wall of the building
23 and the front porch.

24 BZA VICE CHAIR JOHN: Okay. All right. Thank
25 you.

1 BZA CHAIR HILL: Okay. Did somebody have their
2 hand up? I thought -- no? Okay. Commissioner Eckenwiler
3 -- I don't know. Hold on. The GC has his hand up for a
4 second. I don't know. Mr. Bowman, what do -- Dr. Bowman,
5 what --

6 MR. BOWMAN: Thank you, Chair. Just for a point
7 of clarity, we had in fact passed all trade inspections from
8 rough-in, mechanical, electrical, plumbing, to framing, to
9 insulation. We had passed all inspections, no failed
10 inspections.

11 And when Mr. Bello went to pull the record,
12 because we'd been, you know, unfortunately, due to COVID,
13 waiting to get before BZA for two years, that record had
14 vanished from the system. So the system doesn't show that
15 we passed all inspections, but the system doesn't show that
16 we failed any inspections.

17 But, you know, speaking on record, we had passed
18 all inspections, and the building was 90 percent complete.
19 The last thing left for us to do was to actually install
20 kitchen cabinets and appliances, and the building would've
21 been completed.

22 BZA VICE CHAIR JOHN: Thank you.

23 MR. BOWMAN: Thank you, ma'am.

24 BZA CHAIR HILL: Okay. All right. Commissioner
25 Eckenwiler, you want to give us your presentation?

1 MR. ECKENWILER: Chairman, if Mr. Young can pull
2 that up, please? Okay. Next slide, please. So Mr.
3 Chairman, Members of the Board, as an overview for this case,
4 you've already heard that the applicant is seeking
5 after-the-fact relief.

6 There are two specific features that were either
7 completely removed, in the case of the existing mansard roof
8 -- there was also an alteration to the front porch, as Mr.
9 Bello has described. The application fails to satisfy the
10 development criteria under the zoning regulations -- I'll go
11 into that in more detail -- and therefore, this application
12 should be denied. Next slide, please.

13 So the factual background here is really key, and
14 I want to focus on some specific points. Yes, the applicant
15 obtained a permit. So this work was not done without a
16 permit. But the permit was to build a new rowhouse. That
17 means, demolish the existing building.

18 You can see here, I've extracted a bit of that
19 original permit. It says, new three-story plus cellar. So
20 there is no ambiguity that what this permit called for was,
21 build a brand-new building in its entirety. Next slide,
22 please.

23 The applicant did not comply with the terms of
24 that permit. The applicant did not build an entirely new
25 structure, instead only demolishing a portion of that

1 existing building, including the total removal of the
2 mansard. The Zoning Administrator has already determined,
3 this was not a raze. That's why we're here. This is an
4 alteration. That is what, in turn, triggered the provisions
5 of Section E 206, which prohibits the alteration or removal
6 that occurred here.

7 And I just want to say, as an aside, there's been
8 some comment about how this is sort of like an appeal. This
9 is not an appeal. If the applicant disagreed with the Zoning
10 Administrator's determination that this is an alteration, and
11 that no raze occurred, the applicant could've taken an appeal
12 from that.

13 That is not the posture of this case. The posture
14 of this case is that this is an alteration, and the applicant
15 is seeking relief from the provisions that govern
16 alterations. So all this talk about, you know, whether it
17 was a raze or not, that is not before the Board. The
18 applicant has waived that argument. This is an alteration
19 case. Next slide, please.

20 So as you've heard, Section E 5207 governs relief
21 from Section E 5206. And the key point here -- not the only
22 one, but the key point is that the applicant bears the burden
23 in this application to show the proposed construction, as
24 viewed from the street, shall not substantially visually
25 intrude on the character, scale and pattern. And character,

1 scale and pattern is the essence of this case. Next slide,
2 please.

3 So in order to understand character, scale and
4 pattern, we need to look at what's going on on this block.
5 We have 12 houses. They were all built in two different
6 phases, but by one pair of developers working together. So
7 they did the middle six houses, and then they did the outer
8 six houses. All 12 houses share a common scale,
9 architectural style. There's a distinctive street front.
10 If we go to the next image -- next slide, please. Thank you.

11 So I know this is a little difficult to see, but
12 we'll get a closer view in a moment. So this is the entire
13 block. 6th Street is to your left, so it is on the south
14 side of Florida Avenue. 5th Street is to the right. And you
15 see before you all 12 rowhouses that were constructed by this
16 one team of developers. This is a view from July 2019,
17 before any of the alterations from this project. And I
18 should note, the subject property is the third one on the
19 left. Next slide, please.

20 So in closeup, basically dividing that street view
21 into two halves, at the top, we see the eastern half, which
22 includes the subject property. Again, third from the left.
23 And you'll note that to the right, in that first photo, that
24 the building with red brick does not have a mansard.

25 Similarly, in the bottom half -- this is the

1 western half of the block -- the other building in the center
2 -- so these are the two in the center -- lacks a mansard.
3 Instead, those are constructed differently, with a cornice
4 atop a parapet wall.

5 And you can see from this, these two halves of the
6 block have perfect mirror-image symmetry. You look at the
7 placement of the porches, you notice the end units -- so the
8 one at 6th Street and the one at 5th Street -- doesn't have
9 a front porch. The other ten all have front porches.

10 Their design of the windows, three windows, with
11 keystone caps on them, all the way across. This was built
12 to a uniform architectural style. And so we can see
13 character, scale and pattern in abundance here. Next slide,
14 please.

15 This is a view from May 1963. We're looking from
16 5th Street, roughly east, across the front of all of these
17 buildings. Again, note the center two. There is no mansard.
18 That's because there never were mansards on those two. And
19 again, this contributes to the overall construction of the
20 mirror symmetry on this block. So it's not that they were
21 removed. They never existed. Next slide, please.

22 So understanding that this is the layout, we have
23 12 rowhouses. They are mirror-symmetrical around that center
24 line. The alterations that have been performed here by the
25 applicant visually intrude upon that character, scale and

1 pattern by disrupting that symmetry. The applicant has
2 constructed a -- basically extending the facade above.

3 And I want to note, before this work was done --
4 and we'll come to it. There was one other illegal alteration
5 on this block that's still a matter of administrative
6 enforcement. All of the key features that contribute to the
7 character, scale and pattern on this block were intact.
8 That's what you saw in that 2019 photo.

9 I do want to note, on this slide, since Mr. Bello
10 raised it -- he said there's no privacy impact. I want you
11 to note here, moving, you know, away from the mansard for a
12 moment, to that railing and deck that's been constructed on
13 the front porch. You see the photo of that below.

14 What this means is, if an occupant of this
15 building walks out onto that deck, they will be able to see
16 directly into that second-floor window, presumably a bedroom
17 window, of the building next door. That's 519 Florida
18 Avenue. So in addition to character, scale and pattern, and
19 I think that's the chief objection here, there is in fact an
20 adverse privacy impact, contrary to what Mr. Bello said.
21 Next slide, please.

22 So the applicant has put forward a number of
23 justifications. They simply don't hold water. So let's
24 start with -- the applicant claims to have acted in good
25 faith and reliance on DCRA's approvals. As I already said,

1 that's not true.

2 The applicant received a permit to do one thing
3 -- build a brand-new building. And that was an
4 appropriately-issued permit. You can, as a matter of right,
5 tear down a building in an RF zone and build a new building
6 without regard to the rooftop elements.

7 It is not true -- you know, Mr. Bello
8 characterized this as saying, you know, the permit gave his
9 client permission to remove the mansard. That's false. The
10 permit gave his client permission to remove the entire
11 building. But if you don't do that, then you're subject to
12 E 206. So the applicant did not, in fact, act in good faith.
13 The applicant deviated from the plans.

14 And I also want to note, those plans, you have
15 them in the record. You can also see, as I think it's
16 Attachment A to our written statement, the architect, Mr.
17 Teass, has said explicitly, there were no demo plans included
18 in all of those drawings, because the whole thing was
19 supposed to come down. It was going to be removed. There
20 was no need to show how much of the facade was going to
21 remain or be removed, because it was all going to go. So
22 there was no good-faith reliance here on that permit.

23 Second -- and Mr. Bello repeated this in his oral
24 presentation -- he claims that three mansards in this row
25 have already been removed. So first off, the two center

1 buildings never has mansards. And Mr. Bello has shown no
2 evidence that there ever were mansards, or that they were
3 removed. So two out of three, forget about. It's just not
4 true.

5 The third one, it is true that in early 2020, the
6 mansard on the 6th Street corner building, which has a 6th
7 Street address, 1212 6th Street, that was removed illegally
8 by the owner. That property immediately had a stop-work
9 order imposed on it. That stop-work order is still in
10 effect.

11 You can see -- I believe it's Attachment B to the
12 ANC's written statement -- I have an email from the Zoning
13 Administrator agreeing that that was an illegal removal, and
14 that that owner will have to either restore that mansard, or
15 come to the Board for relief. And so far as I'm aware, that
16 owner has never done so. So right now, he's going to have
17 to rebuild that mansard.

18 So yes, it was removed. It's going to have to be
19 put back. So of the three supposedly-missing mansards, two
20 were never there, one is going to have to be put back. And
21 that is why, looking at the conditions on this block, the
22 Board should understand that the symmetry has been preserved,
23 but for the illegal work that was engaged in by this
24 applicant. Next slide.

25 Now, I know you haven't heard yet orally from OP,

1 but you have their filing. And since, you know, I get just
2 one presentation, let me run through it here quickly. So OP
3 has admitted in its report that it would not typically
4 support the removal of an original mansard roof that -- an
5 original mansard roof. That's a direct quote. But then they
6 say, well, for reasons, we're not going to follow that here.
7 The problem is, those reasons are simply invalid. Next
8 slide, please.

9 So, you know, the chief justification here from
10 OP is, you know, alleged history of, quote, erroneously
11 issued building permits. OP doesn't identify any such
12 permits. Mr. Bello has not identified any permits that were
13 issued in error. And that's because no permits were in fact
14 issued in error. So there's no reliant interest here,
15 contrary to what OP has said.

16 Second, OP -- and again, quoting directly from
17 their report -- the applicant states they built according to
18 the approved plans, unquote. Well, we've already covered
19 that. They didn't do that. I mean, they say that, but they
20 didn't. It's just not true.

21 And that is the key to this case, that all of the
22 problems -- the reason we're here is -- the problems are the
23 applicant's own creation. They didn't do what they were
24 supposed to do. They got a permit to do one thing. They,
25 for whatever reason -- and I won't speculate why -- they

1 didn't do that. They brought this on themselves.

2 And that doesn't -- I'm not saying that makes them
3 bad people and you should deny the application. But OP has
4 made the argument that they deserve special leniency, they
5 need to be treated different from all other applicants who
6 come before you for after-the-fact relief. And the truth is,
7 they're not special.

8 They brought this on themselves. This came about
9 through their own actions. This is not because of a
10 bureaucratic state, because of big, bad DCRA doing things to
11 them that they shouldn't have foreseen. They should've
12 foreseen this. They got a permit to do one thing, and they
13 didn't follow it. Next slide.

14 And so in conclusion, the applicant's failed to
15 carry its burden. The requested relief does not satisfy the
16 requirements of E 5207. And that's chiefly the substantial
17 adverse impacts upon the character, scale and pattern of this
18 extraordinarily distinctive and symmetrical block. I do also
19 want to note, there is that privacy impact on the owner of
20 519, from the construction of that deck and railing atop the
21 front porch.

22 There is no basis for treating this applicant
23 specially because they've been done wrong somehow. Again,
24 they did this to themselves. And finally, I'll just note,
25 there is no support at all in the record from any of the

1 owners of the abutting properties. And for all of those
2 reasons, the Board should deny this application. That
3 concludes my presentation. I'm happy to answer any questions
4 the Board would have.

5 BZA CHAIR HILL: Okay. Thanks, Commissioner. All
6 right. Yeah. Sure, Vice Chair John?

7 BZA VICE CHAIR JOHN: Just a quick question for
8 Mr. Eckenwiler. So let's say that the applicant had gotten
9 a raze permit, based on the ZA's definition of what a raze
10 is. And the applicant could've built that same structure.
11 Right? As a new building, exactly as it appears today.

12 MR. ECKENWILER: That is correct.

13 BZA VICE CHAIR JOHN: Okay. That's what I wanted
14 to know.

15 MR. ECKENWILER: But if I can elaborate, the
16 applicant got a permit, based on certain drawings and certain
17 plans, and that's not in fact what the applicant built. They
18 didn't take it all the way down and then build what was shown
19 in those drawings. They altered something, and made
20 something different from what was shown in those drawings.

21 BZA VICE CHAIR JOHN: That's what I don't get,
22 because the -- okay. Let's just continue with the hearing,
23 Mr. Chairman, and I might -- it might become clearer to me
24 later.

25 BZA CHAIR HILL: Okay.

1 BZA VICE CHAIR JOHN: Thank you. Thank you, Mr.
2 Eckenwiler.

3 BZA CHAIR HILL: Let's see. Anybody have anything
4 else for the commissioner? Sure, Vice -- I mean, Chairman
5 Hood?

6 ZC CHAIR HOOD: Thank you, Commissioner
7 Eckenwiler. I always get stuck in these cases or situations
8 like this. You mentioned after-the-fact. I haven't heard
9 that in a while. After-the-fact relief. And that's why, for
10 some reason, I get stuck there. So I see what the stop-work
11 order said. And I've always had problems with people coming
12 down after the fact, and you obviously noted that in your
13 presentation.

14 So let me ask -- okay, we are where we are now.
15 You disagree with my -- it feels like appeal, but you
16 disagree with that assertion, because you're saying, what we
17 are here for -- and I agree with that. I do not disagree.
18 What I'm saying -- what I'm trying to figure out -- help me
19 understand, how do I -- no, actually, that would -- help me
20 try to understand, how do I deal with the after-the-fact,
21 from a zoning perspective? How do we deal -- what would you
22 -- what are your suggestions?

23 And I see what you're saying. I hear what you're
24 saying. I see what the stop-work order says. Correct it or
25 go to the compliance officers and the -- so how do we -- how

1 would you -- if they had met exactly what you're saying, how
2 would we deal with it from that point on?

3 MR. ECKENWILER: Thank you for the question,
4 Chairman Hood. I'm just going to channel Chairman Hill,
5 who's said this any number of times in any number of cases,
6 that these after-the-fact cases get analyzed as if they were
7 before-the-fact, that you treat it exactly as if the
8 applicant had not yet done the work.

9 And you assess under the same criteria -- so, you
10 know, just as if someone came in before and said I'd like to
11 remove this mansard, and, you know, here are the criteria
12 under E 5207. So I think the short answer to your question,
13 because I don't want to argue against the Board's
14 long-established practice, is -- you look at this no
15 different from a before-the-fact application, with respect
16 to the standards that are applied.

17 ZC CHAIR HOOD: Don't necessarily agree with my
18 good friend the Chairman, but thank you. I've always had a
19 problem, for years, with after-the-fact. So after -- I mean,
20 even before Chairman Hill got on the Board, I was having
21 problems with after-the-fact. Okay. So I would agree with
22 the Vice Chair. Let me see how we're going forward with
23 this. So thank you, Commissioner Eckenwiler.

24 BZA CHAIR HILL: Okay. I'm here in front of y'all
25 right now. It's not like I'm not in the room. You all are

1 talking about me like I'm not here. Okay? Right? And I'm
2 not even commenting on whatever supposedly has been said, not
3 been said. Okay. So -- all right. Anybody else, questions
4 for the commissioner? Wait, I'm not at you guys yet. Just
5 give me one second. I'm still with my Board Members.

6 Okay, no. Okay, Mr. Bello, it looks like your
7 clients have questions. Do you have any questions, first,
8 Mr. Bello?

9 MR. BELLO: Yes, I do.

10 BZA CHAIR HILL: Okay.

11 MR. BELLO: Commissioner, let's just concede to
12 your testimony where there are two of those buildings in the
13 row that don't have mansard roofs. Would you agree that
14 those two could construct the same addition that the subject
15 property has, as a matter of right, since there isn't a
16 mansard roof?

17 MR. ECKENWILER: No. I would --

18 BZA CHAIR HILL: Can you just -- can you ask --
19 can you ask that question again, Mr. Bello? I'm sorry.

20 MR. BELLO: All right, so Mr. Hill, the
21 commissioner's testimony, in terms of talking about the
22 architectural symmetry in the row, his testimony is that
23 there are two of those townhouses that never had mansard
24 roofs.

25 BZA CHAIR HILL: What was your -- I didn't hear

1 what your question was. I'm sorry. Just kind of -- I just
2 phased out for a second. What was your question?

3 MR. BELLO: Okay. So I'm going by the
4 commissioner's testimony that two of these buildings in the
5 row never had mansard roofs.

6 BZA CHAIR HILL: Yes.

7 MR. BELLO: Okay. So my question to him is that
8 -- would he agree that those two could actually conceivably
9 construct a third floor, in this zone that allows three
10 stories, much like the subject property has?

11 MR. ECKENWILER: So Mr. Bello, your original
12 question was, could they change from their current
13 configuration to a mansard, and you used the phrase, as a
14 matter of right.

15 MR. BELLO: Correct.

16 MR. ECKENWILER: And the answer -- so I just want
17 to make sure that I'm understanding the question. You're not
18 talking about them knocking down either of those buildings.
19 You're talking about them making an alteration to either or
20 both of those buildings. Is that correct?

21 MR. BELLO: A third-floor addition, since they
22 don't have a mansard roof or an architectural element.

23 MR. ECKENWILER: Okay. So an alteration. So if
24 there were -- so as you know, the Zoning Administrator has
25 adopted an interpretation where, if there is a three-foot

1 setback from a protected rooftop element -- I think that's
2 ZA 007 -- that may be constructed. That does not run afoul
3 of E 206.

4 But that's not what your -- your question was,
5 could they get rid of the parapet wall and cornice and
6 replace that with a mansard. And the answer is no, because
7 they would be removing an original architectural element, in
8 violation of E 206. They'd have to come to the BZA for
9 relief, just as you are.

10 MR. BELLO: No, no, no.

11 BZA CHAIR HILL: Okay, Mr. Bello's -- I got a long
12 day. You're asking a lot of hypotheticals. What's your next
13 question of the commissioner?

14 MR. BELLO: Okay. Well, he turned my question
15 upside down on its head, but that's okay. The two end row
16 dwellings that you cite as not having front porches, would
17 that be because that was the side wall, facing Florida
18 Avenue, because those two structures have porches on the
19 streets that they face?

20 MR. ECKENWILER: They absolutely do. Those end
21 units are symmetrical. They are bookend units. And they
22 have porches on 5th Street and 6th Street respectively, and
23 those are not the only features that are mirror images, of
24 those bookend units. So what I said really was shorthand
25 for, they don't have front porches on Florida Avenue. But

1 yes, the symmetry is preserved. It just happens, the front
2 porches there, on those two units, are located on the side
3 streets.

4 BZA CHAIR HILL: Okay. All right. Mr. Bello,
5 your client's -- I've got to tell you, I think it's really
6 straightforward, what's before the Board, and we have to
7 figure it out. Right? So, you know, all these different
8 questions about, you know, so -- and I've got two different
9 hands there.

10 I'm going to go -- normally, again, if you were
11 in a hearing, we were live, you'd be going through one
12 person, which is your attorney. But you're not here in a
13 hearing, so I've got to do the Zoom thing. Dr. Bowman, what
14 do you want to ask?

15 You're on mute, Dr. Bowman.

16 MR. BOWMAN: I don't know if I can make some
17 bulleted statements to give clarity to comments that
18 Commissioner Eckenwiler's made?

19 BZA CHAIR HILL: Yeah, I guess we'll give you
20 rebuttal at the end, where you can kind of do that. I want
21 to get to the Office of Planning in a minute here. And so
22 I don't know -- give me one second, though.

23 MR. BOWMAN: Okay.

24 MR. ECKENWILER: Mr. Chairman? Mr. Chairman?

25 BZA CHAIR HILL: Yeah? Yeah?

1 MR. ECKENWILER: If someone is going to testify,
2 then that's fine, obviously, but I should have the option

3 BZA CHAIR HILL: Commissioner Eckenwiler?
4 Commissioner Eckenwiler? I got you. That's fine. He can
5 talk now if you want. I'm just trying to get through my day.
6 Dr. Bowman, go ahead. What would you like to say?

7 MR. BOWMAN: Thank you, Chair. I wanted to say,
8 for the record, we followed all DCRA guidelines in getting
9 the building permit and a raze permit, which we were issued.
10 And we literally had no problems for this entire
11 construction, until we got a complaint that the mansard,
12 which were -- the mansard --

13 BZA CHAIR HILL: Okay, Dr. Bowman. I'm going to
14 cut you off. Why didn't you raze the building?

15 MR. BOWMAN: Well, we razed it with the exception
16 of two parts. The rest -- we razed 98 percent of the
17 building. We did a mathematical calculation on this. We
18 even had DCRA come out, and they cut holes in drywall through
19 the entire building to confirm that it was --

20 BZA CHAIR HILL: Okay, hold up. Hold up. I'll
21 figure it out later, then. You're saying you razed the
22 building?

23 MR. BOWMAN: No, we technically didn't, because
24 we kept the front brick.

25 BZA CHAIR HILL: Right. So you technically didn't

1 raze the building. That's the whole discussion that's going
2 on. Okay? So you didn't raze the building. All right?

3 MR. BOWMAN: Well, I -- so here's the thing. I
4 offered to raze the building by removing the brick, putting
5 brand-new brick on the front facade, and removing the step.
6 If we do that, the entire building would be classified as a
7 razed building. Everything else was removed. The back was
8 removed, because we --

9 BZA CHAIR HILL: I understand. I understand.

10 MR. BOWMAN: Right.

11 BZA CHAIR HILL: We've dealt with this stuff a lot
12 before, in terms of razed, not-razed. I understand. But
13 technically, you didn't raze the building. And that's what
14 --

15 MR. BOWMAN: No, sir. We made adaptive use of the
16 front porch.

17 BZA CHAIR HILL: And unfortunately, that's the
18 discussion we're having right now, Dr. Bowman. Right?

19 MR. BOWMAN: Right.

20 BZA CHAIR HILL: So -- okay, Mr. Potts, what it
21 is you had a comment on?

22 You're on mute, Mr. Potts. You're still on mute,
23 Mr. Potts. Yeah.

24 MR. POTTS: I just want to make a statement.
25 That's all. And --

1 BZA CHAIR HILL: Okay.

2 MR. POTTS: My statement is very clear and simple.
3 I paid \$515,000 for that property, when I originally
4 purchased it. And I have incurred, up to this point, until
5 the stop-work order, over that amount, in terms of the work
6 done on the building. So my only point of it is that there
7 was nothing in the terms of an alteration done on that
8 building. That is a complete reconstruction, as originally
9 allowed per the building permits. Thank you very much.

10 BZA CHAIR HILL: Okay. All right. Does anybody
11 have any questions of anybody, from my Board Members? I'm
12 turning to the Office of Planning. We're going to be talking
13 about this for a little while longer. Go ahead, Mr. Blake.

14 MEMBER BLAKE: Yeah, I'd just be curious to know
15 why you did change the facade and not raze the building and
16 reserve the facade. Is there some reason for that?

17 MR. BELLO: Is that for Dr. Bowman?

18 BZA CHAIR HILL: I think it's for anybody that
19 wants to answer.

20 MR. BELLO: Dr. Bowman, I think you're probably
21 better placed to speak to that.

22 MR. BOWMAN: We decided not to take that front
23 brick facade off and the base of the porch, because it was
24 the exact same dimension and measurement, and it was in great
25 tack. Only those two elements, which is less than two

1 percent of the building. Everything else, because we had to
2 underpin, completely remove the back, completely remove the
3 roof, is 100 percent brand-new.

4 And I have offered that, if, you know, it is that
5 big of a deal, those things can not compromise the structure
6 of the building, be completely removed, be completely
7 rebuilt, which are the same exact dimensions, the same exact
8 measurements, the same exact material, that are in the
9 building plans. And that's why we decided to use them,
10 because of their adaptive use and the great condition that
11 they were in.

12 MEMBER BLAKE: Okay. Thank you.

13 BZA CHAIR HILL: Okay. Commissioner Eckenwiler,
14 you've got you -- hold on. Before you ask your question, Mr.
15 -- okay. Go ahead. Commissioner Eckenwiler, what did you
16 have? He had his -- a question?

17 MR. ECKENWILER: I just want to offer one comment,
18 and that is, had the applicant filed in their permit
19 application with DCRA plans describing what they actually did
20 -- we're going to leave this much of the building -- it would
21 never have gotten a permit. They would've been told, you
22 need zoning relief for that, that's an E 206 problem, come
23 see the Board.

24 BZA CHAIR HILL: Okay. All right. So anyway,
25 Commissioner Eckenwiler, we are before the Board right now.

1 So we'll figure out what happens. Okay. All right. I don't
2 know. Vice Chair John, you were about to say something?
3 Okay. I think Vice Chair John was going to say, we are here
4 at the Board. All right. So, okay, is the Office of
5 Planning here, because they have to be?

6 MR. KIRSCHENBAUM: Good afternoon, Chair Hill, and
7 Members of the Board of Zoning Adjustment. I am Jonathan
8 Kirschenbaum from the Office of Planning, who -- excuse me
9 -- recommend approval of the special exception relief to
10 alter that original porch roof and to remove the full mansard
11 roof. In interests of time, I'm going to rest on the record
12 and let the Board ask their questions as necessary. Thank
13 you.

14 BZA CHAIR HILL: Okay. Does anybody have any
15 questions for the Office of Planning?

16 I've got a question for the Office of Planning.
17 All right. And Mr. Kirschenbaum, I don't know whether you're
18 going to be able to answer this, or I'm going to get the
19 Office of Planning answer, which is that -- anyway, whatever.
20 I read the report. If this were before you -- right? As not
21 already had being -- as not already had being done -- I know
22 that's just an awful sentence -- would the Office of Planning
23 have approved this? You don't know.

24 MR. KIRSCHENBAUM: It's hard to know, because we
25 don't have anything else before us. You know, and as we

1 said, just given the permit history, we were a little more
2 inclined to support this, because as far as we understand
3 from the stop-work order, this was approved legally, and
4 built, and then the stop-work order was put in place for
5 this. And we did review this against the criteria.

6 BZA CHAIR HILL: Right. You did -- yeah. You are
7 saying you did review it against the criteria.

8 MR. KIRSCHENBAUM: Correct.

9 BZA CHAIR HILL: The answer is yes, you reviewed
10 against criteria. Right. And you can't tell me whether or
11 not, if this had been before you without already being done,
12 whether there would have been a different answer. And your
13 answer is, you don't know.

14 MR. KIRSCHENBAUM: It's hard to know at this
15 point.

16 BZA CHAIR HILL: Okay. All right. Does anybody
17 have any questions for the Office of Planning? Any of my
18 Board Members? And I'll get you, Commissioner, and Mr.
19 Bello's. Chairman Hood?

20 ZC CHAIR HOOD: Mr. Chairman, I was not talking
21 about you. I was saying that in terms so you would know that
22 I -- where I was with that issue that Commissioner Eckenwiler
23 and I were -- I'm still having a problem with after-the-fact.

24 Mr. Kirschenbaum, I think, as you mentioned -- and
25 it's hard to -- and I think the commissioner brings up a very

1 important, really -- it's a lot -- every so often, the
2 Commission and the Board is faced with after-the-fact. And
3 you grapple with it, and I just need help on how to deal with
4 it.

5 You know, I'm leaning towards something -- it's
6 already done, for the most part. And that after-the-fact,
7 it's kind of rough. You know? So do you have any guidance,
8 Mr. Kirschenbaum, other than your report? Or you're going
9 to just stand with your report and not expound any more?

10 MR. KIRSCHENBAUM: No, I don't have too much more
11 guidance. We did review this against the criteria, and found
12 that it did meet -- you know, did satisfy the criteria. In
13 addition, that it was built, as far as we understand, from
14 the stop-work order that is in the record, from DCRA, that
15 it was built with legally obtained permits.

16 So, you know, after-the-fact's a little different
17 here. This wasn't something that was totally built illegally
18 without any permits. As far as we understand, there were
19 permits that were issued, and this was built to the permits.

20 ZC CHAIR HOOD: Okay. All right. Thank you.
21 Thank you, Mr. Chairman.

22 BZA CHAIR HILL: Tell me, if they had razed this,
23 could they have built this by right?

24 MR. KIRSCHENBAUM: Right, I mean, as far as I
25 understand, if they had demolished that front brick wall,

1 then this would have all just been matter-of-right, and not
2 before the Board.

3 BZA CHAIR HILL: Exactly the way it is.

4 MR. KIRSCHENBAUM: Right. I mean, yes. I mean,
5 with that third floor and that new cornice.

6 BZA CHAIR HILL: What about the -- what about the
7 porch on the second floor?

8 MR. KIRSCHENBAUM: Yes. I mean, there's nothing
9 in zoning that prohibits a porch from being on a second floor
10 of a building.

11 BZA CHAIR HILL: On that -- for some reason, I
12 thought there was. There's not about -- that porch on the
13 second floor, that's over the entryway?

14 MR. KIRSCHENBAUM: Right. There's nothing in
15 zoning that prohibits a porch on the front of the building,
16 or a balcony on the front of a building. That porch is
17 before you because of the guardrails, not because it's a
18 porch.

19 BZA CHAIR HILL: Okay. Okay. All right.
20 Commissioner Eckenwiler, you have any questions for the
21 Office of Planning?

22 MR. ECKENWILER: Mr. Kirschenbaum, your report
23 refers, a couple different places, to erroneously issued
24 building permits -- that's on Page 1 -- and building permits
25 issued in error, on Page 3. But it doesn't identify any

1 particular permits that were issued in error. Can you tell
2 us what you're referring to there?

3 MR. KIRSCHENBAUM: Yes. The stop work order,
4 that's part of our report on Page 6. It's Building Permit
5 10 -- sorry, 1808248, issued April 17th, 2019. This is from
6 DCRA. Showed the removal of the mansard roof element at the
7 subject property. The property is located in an R-1 zone,
8 which is already -- allowed the removal of this element.

9 And it says, therefore, the building permit was
10 issued in error, for noncompliance with Zoning Regulation
11 Subtitle E 206.1(a). And then it goes on to say, although
12 this violation is caused by a permit that was issued in
13 error, DCRA cannot allow construction on a property that
14 violates District regulations to continue until the property
15 is in compliance.

16 MR. ECKENWILER: Well, Mr. Kirschenbaum, that's
17 not really what happened here. Is it? They got, as you've
18 described it, a legally issued permit. And then they didn't
19 work in compliance with that permit. So whether those notes
20 say, that doesn't actually reflect the reality of the events
21 here. Does it?

22 MR. KIRSCHENBAUM: You know, I can't comment on
23 the reality. I don't work at DCRA. And I am not sure. All
24 I can go on is what the stop-work order says.

25 MR. ECKENWILER: Okay. That's all I have, Mr.

1 Chairman.

2 BZA CHAIR HILL: Okay. All right, Mr. Bello, do
3 you have any questions for the Office of Planning?

4 MR. BELLO: No, Mr. Chair.

5 BZA CHAIR HILL: Okay. Mr. Young, is there anyone
6 here wishing to speak? Okay. Okay. I'm mildly interested
7 in talking to Legal. I don't know if anybody on the Board
8 wants to talk to Legal or not, or you all are fine. Ms.
9 John?

10 BZA VICE CHAIR JOHN: I wanted to hear from the
11 architect. I see Mr. Teass is there. And I have a question
12 about the adaptive reuse of a porch and of the front, in
13 terms of why an architect would want to retain that front
14 porch.

15 Because normally, this comes to us a different
16 way, where folks want to do an addition, because there are
17 zoning benefits to doing an addition, as opposed to a whole
18 new structure. This is the reverse. And to me, it's not a
19 -- it's not a -- well, this is deliberation. I don't know
20 if Mr. Teass wanted to comment on that adaptive reuse issue.

21 MR. TEASS: The original design intent was to raze
22 the building in its entirety and replace it with a new
23 three-story building. But we wanted to match the character
24 of the street by simulating the porch dimensions, simulating
25 the areaway, simulating the opening, so that the reading of

1 the building from the street was very much in kind with its
2 neighbors. Where you deviate is where you go above that, and
3 the third floor's been added.

4 We were not aware that the front was intended --
5 was planned to be retained. But, you know, our design intent
6 was to match the character of the street, with regard to the
7 areaway condition, the front step condition, and the porch
8 condition. I don't know if that answers the question or not,
9 but --

10 BZA VICE CHAIR JOHN: Well, it does. Is there a
11 substantial financial benefit to retaining that portion of
12 the front? Because the applicant said they would have been
13 happy to, you know, to use all-new building materials.

14 MR. TEASS: I'm not aware of that, and I wasn't
15 sort of part of that decision-making process, unfortunately.

16 MR. BELLO: Guys, can I speak to that a little?

17 BZA CHAIR HILL: Yeah, go on.

18 MR. BELLO: Yeah, so in terms of project
19 contingencies and financing -- and if you note that the raze
20 permit was issued long after the building permit, where in
21 order to commence construction, the owner obtained the
22 postcard permit to embark on that much demolition that they
23 could, while they waited for the raze permit.

24 Traditionally, the raze permit takes a longer time
25 to issue, because it has to go through 13 agencies and

1 utility companies. So it isn't unusual that the raze permit
2 would be issued long after a building permit. And if
3 everybody constructing a project in this city were to wait
4 for a raze permit, the project would be bankrupt.

5 So at the end of the -- by the time it got to that
6 stage, where the front wall was retained, it was very clear
7 that an adaptive use of that front wall could be made to
8 result in exactly the same elevation that was approved as new
9 construction.

10 BZA VICE CHAIR JOHN: Thank you. Sorry, Mr.
11 Chairman.

12 BZA CHAIR HILL: That's all right. All right, I
13 do want to talk to Legal. I hate to do it. I'm going to do
14 it. Yeah, one second. Go ahead, Commissioner Eckenwiler.

15 MR. ECKENWILER: I'd like to ask Mr. Teass a
16 question.

17 BZA CHAIR HILL: Sure. Go on.

18 MR. ECKENWILER: Thank you. Mr. Teass, if the
19 application that your -- excuse me. If your client had
20 applied for a permit to do what they actually did here -- so
21 not demolish the entire building, but rather retain a portion
22 of it, but make the other alterations, including putting the
23 railing on the front porch and removing the mansard -- would
24 that permit have been issued as a matter-of-right?

25 MR. TEASS: No, I believe that if we were to

1 maintain the entirety of the front facade and add the porch
2 railing and remove the mansard, that would require BZA
3 relief.

4 MR. ECKENWILER: Okay. No further questions.

5 BZA CHAIR HILL: No, that's great. So that's kind
6 of what I'm trying to get at, also. So, like, so what BZA
7 relief, Mr. Teass, do you think would require it get?

8 MR. TEASS: I don't have the citation in front of
9 me, but the section that discusses rooftop alterations

10 BZA CHAIR HILL: Right.

11 MR. TEASS: -- which is the case that I think is
12 before us today. Right?

13 BZA CHAIR HILL: Right. And that's what I was
14 trying to get from Office of Planning. Anyway, okay.

15 BZA VICE CHAIR JOHN: So now --

16 BZA CHAIR HILL: Sorry. Go ahead, Vice Chair
17 John.

18 BZA VICE CHAIR JOHN: Now, I need to follow up.
19 So the permit, I don't know if you've had a chance to review
20 the permit, Mr. Teass. So the permit allowed the removal of
21 the rooftop architectural structure, without going to the
22 BZA. Right?

23 MR. TEASS: Well, the original design intent for
24 the building permit presumed that there was actually no
25 building to begin with. We'd gone through the raze process.

1 And so you're constructing a new matter-of-right building.

2 BZA VICE CHAIR JOHN: Okay. That also answers
3 another question. Okay. Thank you.

4 BZA CHAIR HILL: Okay. I'm going to do this
5 really fast, because I just want to talk to Legal. Okay?
6 So I, as Chairperson of the Board of Zoning Adjustment of the
7 District of Columbia, in accordance with Section 407 of the
8 District of Columbia Procedures Act, I move that the Board
9 of Zoning Adjustment hold a closed emergency meeting on April
10 20th, 2022, for the purposes of seeking legal counsel on Case
11 20524, but not deliberate on vote on Case 20524. Is there
12 a second, Ms. John?

13 BZA VICE CHAIR JOHN: Second.

14 BZA CHAIR HILL: Motion's been made and second.
15 Mr. Secretary, could you take a roll call?

16 MR. MOY: When I call the Board Member's name, if
17 you would please respond with a yes or no the motion made by
18 Chairman Hill for an emergency -- for a closed emergency
19 meeting? Zoning Commission Chair Anthony Hood?

20 ZC CHAIR HOOD: Yes, but I may have additional
21 questions.

22 MR. MOY: Mr. Smith?

23 Mr. Blake?

24 MEMBER BLAKE: Yes.

25 MR. MOY: Vice Chair John?

1 Chairman Hill?

2 BZA CHAIR HILL: Yes.

3 MR. MOY: The motion carries on a vote of five to
4 zero to zero. The motion passes, sir.

5 BZA CHAIR HILL: Okay, thanks. You guys, I'll try
6 to make this as fast as possible, meaning the other people
7 in the audience, and we'll be back. Thank you.

8 (Whereupon, the above-entitled matter went off the
9 record at 3:26 p.m. and resumed at 3:48 p.m.)

10 BZA CHAIR HILL: Okay, so I don't know if I'm
11 going to get myself lost in these questions, but we'll see
12 how everybody has questions from the board and then I'm going
13 to let Commissioner Eckenwiler give a summary and then also
14 Mr. Bello, because I think probably the board is not going
15 to decide today. We're going to take time to think about it.

16 So now we're going to have questions from the
17 board so that they, the board, can think about it however
18 long we think we need to think about it. My question to you,
19 Mr. Kirschenbaum, from the Office of Planning, I just can't
20 get my head around it right now because I'm a little tired
21 already. But, again, if this were before us, as if it wasn't
22 there, okay, right, and they would be able to do something
23 like this matter-of-rights, I'm asking the Office of
24 Planning, except for I thought there was something about the
25 railing maybe on that second story roof deck. The second

1 story roof deck railing can be the way it is --

2 MR. KIRSCHENBAUM: If this was a full raise --

3 BZA CHAIR HILL: Yes.

4 MR. KIRSCHENBAUM: If the whole building was just
5 totally obliterated and not there anymore --

6 BZA CHAIR HILL: Yes.

7 MR. KIRSCHENBAUM: And all new, they could do all
8 of what you see built as a matter-of-right.

9 BZA CHAIR HILL: Even the railing on the second
10 floor? I don't know why I think that's a problem.

11 (Simultaneous speaking.)

12 BZA CHAIR HILL: I'm looking on the second story
13 deck.

14 MR. KIRSCHENBAUM: It may need a set back relief.
15 I think if it's -- I forget off hand if it's less than 10
16 feet in depth, I don't think it does.

17 BZA CHAIR HILL: Okay.

18 MR. KIRSCHENBAUM: This is only administrator
19 interpretation.

20 BZA CHAIR HILL: Okay, that's fine. So that's
21 your position at this moment? That this could all be done
22 matter-of-right if the building were razed?

23 MR. KIRSCHENBAUM: Right.

24 BZA CHAIR HILL: If it had been razed?

25 MR. KIRSCHENBAUM: Right.

1 BZA CHAIR HILL: Okay, so that's one question that
2 I had for you. So then, Mr. Bello, to your -- whoever you
3 think I should address this question to, Mr. Bello. I'm
4 starting with you, right? You can give me a yes or no or
5 explain if I'm not thinking this through correctly. Your
6 client had a permit to raze the building, okay? And at some
7 point, they determined that it would be better and we can go
8 with what the architect said, which is keep the character of
9 the block as best as possible, right? And because of that
10 they determined to save as much of the building as they
11 could, that's why they didn't raze the building. Is that
12 your testimony?

13 MR. BELLO: Well, there is a bit of a nuance to
14 that. So the raze permit was issued way after the building
15 permit. I think the raze permit was just issued in October
16 of 2020. That's more than one year after the building permit
17 was issued.

18 The owner, the GC, started construction by getting
19 a postcard construction permit, which is permitted, to remove
20 partial portions of the building and started construction of
21 the building from the back towards the front, in the hopes
22 that by the time they got to the front that the raze permit
23 would have been issued. But by the time they got to that
24 front facade, it became very apparent because of what the
25 architect testified to, that the front facade and the porch's

1 location and dimensions were exactly the same as was designed
2 for the new construction. They made adaptive use of what was
3 left of that front work, including the porch.

4 To your former question, if this was completely
5 removed and there wasn't any discussion of a portion of the
6 front facade being left behind, they would have been able to
7 do everything that you see here as a matter-of-right.

8 BZA CHAIR HILL: Yes, Mr. Bello, what I'm just
9 trying to understand is why you guys are here at all, right?
10 Because none of you guys would want to be here if you did
11 this the way you were able to do it without having to be in
12 front of us, so that's what I'm trying to understand.

13 MR. BELLO: Okay. I can answer that. We're here
14 because zoning administrator has determined that the only way
15 to mitigate the situation is to seek relief under this
16 provision. Now, considerably now that the Applicant has a
17 raze permit, the Applicant could go back and remove the front
18 facade or that portion of the front facade that was left
19 remaining and then reconstruct what you're looking at right
20 now today. That's just a technicality.

21 BZA CHAIR HILL: Yes, okay, that's fine. I mean
22 I don't know whatever get -- you know, you are here before --
23 I don't write the regulations either, right? You are here
24 before us because of the fact that we need to grant this
25 special exception, right?

1 MR. BELLO: Correct.

2 BZA CHAIR HILL: So, anyway, okay, does anybody
3 have any questions of anyone before we let Commissioner
4 Eckenwiler have a couple of words and then Mr. Bello have a
5 couple of words and then we're probably just going to take
6 our own time to decide this. Mr. Blake?

7 MEMBER BLAKE: Yes, just could you clarify the
8 timing for that raze permit and the building permit? When
9 were they filed? At what point was one filed and received?
10 The other filed and received? I just want to make sure I get
11 the time on that clear.

12 MR. BELLO: So those two permits were filed
13 simultaneously. Obviously, the owner of the project
14 contracted the architect to design a new structure for him,
15 all right? And the facts of the simultaneous application of
16 those two permits is indicative of the intent of the
17 applicant. Now we can talk about, and we've talked about
18 contingencies to the gutters here, but the building permit
19 was issued in April of 2019. The raze permit did not come
20 out until October of 2020.

21 MEMBER BLAKE: Okay, thank you. Thank you.

22 BZA CHAIR HILL: Sure. Vice Chair John?

23 VICE CHAIRPERSON JOHN: So my question is what is
24 involved in removing the part that was retained? So for it
25 to constitute a raze for the DCRA, you would have to remove

1 the front portion that was retained including the porch and
2 the steps and rebuild them. Is that correct? I don't know
3 if you want your architect to answer that.

4 MR. TEASS: Certainly, so in a hypothetical
5 situation where the two percent that Dr. Bowman had alluded
6 to is removed, the existing steps are in public space, but
7 the porch would be removed and probably brick at the ground
8 floor and the second floor, that's the sole remaining fabric.

9 VICE CHAIRPERSON JOHN: So the porch -- so would
10 that mean, is that just brick or is it, you know, the joists
11 and everything? What would have to be removed exactly?

12 MR. TEASS: It's a double width brick wall so
13 there would be two courses of brick. The windows were
14 replaced, I believe, so the windows would be, you know,
15 theoretically removed and put aside and then the brick
16 removed. The porch columns removed. The porch roof removed
17 and the railings again removed and set aside for future
18 reuse.

19 VICE CHAIRPERSON JOHN: Okay, so they could remove
20 all of that and reuse the same materials rather than throw
21 them out?

22 MR. TEASS: I wouldn't use the same material
23 because those materials would be compromised because we have
24 to deconstruct them.

25 VICE CHAIRPERSON JOHN: Okay.

1 MR. TEASS: Being that they're brand new so it
2 sounds good in theory, but that wouldn't be our practice
3 because you're going to get some cracking, you going to get
4 some breaking, but as the architect said, just a point of
5 clarity, the piece that would constitute a complete raze
6 would be the slab of the front porch and the front brick, but
7 the columns are new. The roof is new. The railing is new.
8 The front facade, all of the roof decking is new, but all of
9 that would be ripped out to then have it replaced with more
10 new material. The only old thing that is in excellent shape
11 and great tack as far as the rebar is concerned, no signs of
12 stress or cracks, that was retained at two percent as the
13 front slab of the porch and only the front brick facade of
14 the first level. But to remove just those two things that
15 constitutes literally two percent, 1.98 to be exact, that
16 would also involve removing brand new installed stuff that
17 is currently there.

18 And then having to replace that at a cost that is
19 more now because we built this before COVID and materials in
20 some cases, like timber, have at some quadrupled. You could
21 buy a 2 x 4 for two dollars and 33 cents, it had jumped up
22 all the way to eight dollars and 54 cents. So, again, that
23 cost savings that we had then, we're going to pay a premium
24 for to reinstall new material because that would be the right
25 way to do it, once we deconstruct it, just to remove that

1 1.98 percent of the building that was remaining.

2 VICE CHAIRPERSON JOHN: And is it less expensive
3 to remove that portion compared with replacing the mansard
4 roof?

5 MR. TEASS: Much, much less expensive, yes, ma'am,
6 Vice Chair.

7 VICE CHAIRPERSON JOHN: Okay, all right. Thank
8 you.

9 BZA CHAIR HILL: Commissioner Eckenwiler, can you
10 hear me?

11 MR. ECKENWILER: Yes, Chairman.

12 BZA CHAIR HILL: You want to go ahead and give us
13 a conclusion?

14 MR. ECKENWILER: Sure. So, first, Mr. Chairman,
15 I think it needs to be made very clear that what's in the
16 record, Mr. Bowman's own written statement at Exhibit 14 says
17 at page four and I noted this in the ANC's written statement.
18 It says that they kept roughly 1/10th, nine percent of the
19 original building, so I don't know where this two percent
20 number is coming from. That's not what was put into the
21 written record earlier.

22 So, one, I think the board needs to be aware that
23 by the Applicant's own admission, there was a whole lot more
24 left than two percent, but the big picture here is all these
25 hypos about what they could do, what they could tear out, I

1 mean if they could get rid of that nine percent and build
2 something new, that's not the board's concern. If they could
3 do that and that would work as a matter-of-right then they
4 wouldn't need any relief. ANC 6C urges the board to decide
5 this case on the basis of the regulations. Certain things
6 happened, we discussed what happened. They got a permit to
7 do one thing, build a brand new building after knocking down
8 the existing building. They didn't do that. They did not
9 comply with the permit and therefore they did not rely, in
10 good faith, on that permit. Instead, they did something else
11 and that triggers E 206 and as you've said, Mr. Chairman,
12 that's why we are here today.

13 That's why when you apply the standards under E
14 5207, you look at character, scale and pattern and honestly
15 it is remarkable to me, neither the Applicant nor OP has said
16 anything about the overall character, scale and pattern.
17 Neither of them has said here's what this block looks like.
18 Here's what the houses look like in either direction. Here's
19 how symmetrical they are in terms of the windows in terms of
20 the pattern of the roof, in terms of the pattern of the
21 porch. It's all onesies and twosies, like oh, there's some
22 other buildings that have cornices so this would be fine.
23 That's not what E 5207 calls for. E 5207 calls for an
24 examination of the character, scale and pattern of the street
25 frontage and when you look at this block what you see is an

1 intact block with all those historical features that is
2 marred by this illegal construction of the new third story
3 and the removal of the mansard.

4 So, if they want to go back and get a permit to
5 do an additional story with a set back, that's fine, they
6 don't need to come to the board for that, but the case that
7 has been made to the board today does not support relief
8 under E 5207. Just to reiterate, the other considerations
9 of how much money it costs, you know, that's now before the
10 board, that's not a relevant consideration under the
11 regulations. It is not true that this Applicant was somehow
12 wronged by the system and did things in good faith reliance
13 and should be given a pass here, it's just not so. They did
14 this to themselves. They brought this on themselves and the
15 consequences are they need to be measured like any other
16 Applicants.

17 (Simultaneous speaking.)

18 BZA CHAIR HILL: Okay, okay, Commissioner
19 Eckenwiler, I've got to say one thing. I just want to say
20 one thing. I know and we've been here a lot, I know what
21 we're supposed to do, meaning the board. The board takes it
22 very seriously, right? And we are going to look at 5207 and
23 that to quote what you were trying to quote me earlier, is
24 we look at this as if it's not there, right? We have to
25 determine whether or not we would have approved this, okay.

1 So I'm back to my original thing which is that's what we're
2 supposed to look at, right? I'm letting you know that's what
3 the board is going to end up looking at.

4 Go ahead, Mr. Blake.

5 MEMBER BLAKE: I just want to clarify something,
6 what do you think your ANC would like to see there. I'm just
7 curious to know what. Because I mean you're saying just stop
8 it, but what would you support? I'd just be curious to know
9 that.

10 MR. ECKENWILER: That's a great question, Board
11 Member Blake. I think there are two parts to that answer.
12 One is first and foremost, we always want to see the
13 regulations enforced consistently and fairly. So, you know,
14 nobody gets treated worse, nobody gets treated better.
15 Second, the proper result here is for this Applicant to
16 restore the mansard, to restore that character, scale and
17 pattern on this block.

18 This application would not have been granted,
19 certainly the ANC would not have supported it if they had
20 come to you before the fact. I don't think you should be
21 granting it after the fact. What that means is put it back
22 the way it was, just as the owner down on the corner at Sixth
23 Street, who illegally removed the mansard there, is
24 eventually going to have to put that back or, you know, come
25 to the board and attempt these same arguments.

1 BZA CHAIR HILL: That was helpful and I'm sorry,
2 Commissioner Eckenwiler, when you use the word marred that's
3 where it kind of like, it got a reaction from me.

4 (Simultaneous speaking.)

5 BZA CHAIR HILL: Again, right, what you think that
6 your ANC that's what I wanted to ask, your ANC would not have
7 been in support of this application had it -- well, you can't
8 speak for the ANC. You don't think you would have been in
9 support of this application had it been before us the way it
10 is, correct?

11 MR. ECKENWILER: The criteria were the same back
12 then, back in 2019 as they are now, you know, obviously the
13 regs have moved around a little bit, but the basic standards
14 are the same. Yes, we wouldn't have supported it back then
15 because we don't support it now because --

16 (Simultaneous speaking.)

17 MR. ECKENWILER: -- the alteration to character,
18 scale and pattern would be the same.

19 BZA CHAIR HILL: I got you. So you wouldn't have
20 supported it. You would have had discussions with the
21 Applicant to keep the mansard roof and set back the third
22 floor perhaps?

23 MR. ECKENWILER: Well, if they set back the third
24 floor three feet, they wouldn't have to come to us. They'd
25 go get a permit as a matter-of-right, right? They wouldn't

1 be --

2 (Simultaneous speaking.)

3 MR. BOWMAN: May I ask one question, Mr. Chairman?

4 BZA CHAIR HILL: That's right. Hold on a second,
5 Dr. Bowman. My vice chair had a question.

6 (Simultaneous speaking.)

7 BZA CHAIR HILL: I don't know.

8 VICE CHAIRPERSON JOHN: I just want to ask, Mr.
9 Eckenwiler, so they did not comply with their raze permit,
10 but if DCRA said this is what you should have done to comply
11 with your raze permit and you can do it now. Would that not
12 be an acceptable way to come into compliance?

13 MR. ECKENWILER: Well, yes, but that's not this
14 board's concern.

15 VICE CHAIRPERSON JOHN: Exactly.

16 (Simultaneous speaking.)

17 MR. ECKENWILER: There's a matter-of-right, I'm
18 sorry, go ahead please.

19 VICE CHAIRPERSON JOHN: Mr. Eckenwiler, this board
20 is not punitive. We don't enforce the regulations. We are
21 the Board of Zoning Adjustment. So there are all kinds of
22 considerations that are within the regulations that we can
23 look at and we often give applicants a chance to come into
24 compliance. So, that was the basis of my question. What is
25 it this Applicant must do to come in compliance with the

1 regulations? Applicant could knock off the third floor and
2 replace the mansard roof or could comply with the permit
3 which was for a new building. What is it the Applicant must
4 do to make it a new building? That was my only question.
5 Somebody else had another question, Mr. Chairman.

6 BZA CHAIR HILL: No, it was Dr. Bowman. I'm going
7 to wrap this thing up because the board, I think, has had
8 plenty of information and they already know what we -- I
9 haven't heard from Mr. Smith at all, which is great. I guess
10 Mr. Smith knows exactly where he is. Dr. Bowman, you had a
11 comment is that right and then I heard a lot of stuff --

12 (Simultaneous speaking.)

13 MR. BOWMAN: Yes, sir, Mr. Chairman Hill.

14 BZA CHAIR HILL: One second, one second and then
15 Commissioner Eckenwiler, I'm going to let you have a couple
16 of words to close and then same for Mr. Bello.

17 (Simultaneous speaking.)

18 BZA CHAIR HILL: Dr. Bowman, go ahead.

19 MR. BOWMAN: Thank you, Mr. Chairman Hill. Mr.
20 Commissioner Eckenwiler, just one question out of curiosity,
21 we have a raze permit, would it suffice the ANC to just tear
22 the complete building down and just build back what we had,
23 is that like the gist of this?

24 MR. ECKENWILER: That's a question for the zoning
25 administrator to be honest.

1 MR. BOWMAN: Well, I was asking would that get ANC
2 support? If we went back and we tore the whole building down
3 and rebuilt the exact same building that we had, would we get
4 ANC support based on that?

5 MR. ECKENWILER: You wouldn't come to us. If you
6 do a project as a matter-of-right you never come to the ANC.

7 BZA CHAIR HILL: You wouldn't need them, Dr.
8 Bowman. You'd be able to do it.

9 (Simultaneous speaking.)

10 MR. BOWMAN: Even now, so we could tear the
11 building completely down and then rebuild the same building?

12 BZA CHAIR HILL: That's what apparently this whole
13 discussion is about, Dr. Bowman, or some of it is, right?
14 And so that's why I don't exactly know wherever you all
15 decided not to do what the raze permit -- whatever happened
16 at some point in time, I don't know exactly why it did, but
17 I'm sure you all wish that you hadn't done it that way at
18 this point.

19 MR. BOWMAN: And, Chairman Hill, my last question
20 --

21 (Simultaneous speaking.)

22 BZA CHAIR HILL: Yes, sure go ahead.

23 MR. BOWMAN: Just the last thing.

24 BZA CHAIR HILL: Yes.

25 MR. BOWMAN: The record will show that DCRA, we

1 did not use a third party inspector. We used DCRA and we
2 passed every single inspection with no problem and what he's
3 quoting, I said 90 percent of the building was complete,
4 which I stated in this hearing, which it is, 90 percent of
5 the building is complete. Someone called in a complaint that
6 the mansard was removed and that's when DCRA got involved.
7 After passing all of our inspections with the last inspection
8 for the building to be the final building inspection.

9 BZA CHAIR HILL: Yes, no problem. I shouldn't say
10 no problem. I understand.

11 MR. BOWMAN: Thank you.

12 BZA CHAIR HILL: I think we all understand why
13 we're here.

14 MR. BOWMAN: Thank you.

15 BZA CHAIR HILL: Okay, Commissioner Eckenwiler,
16 go ahead, I'll give a couple of words to close and then I --

17 (Simultaneous speaking.)

18 BZA CHAIR HILL: -- it's not even a joke. We're
19 here now until 9 p.m., so this isn't fair to us. So go ahead
20 and finish your statement, Commissioner Eckenwiler.

21 MR. ECKENWILER: I just want to add, I think I've
22 made all the arguments I need to make, but I want to come
23 back to something that Dr. Bowman just said. I want to read
24 to you one line from page four of his submission, I believe
25 that's Exhibit 14. Ninety-one percent of the building was

1 completely razed. I'm reading verbatim, that's from the
2 middle of page four of Exhibit 14.

3 BZA CHAIR HILL: Okay. Commissioner --

4 (Simultaneous speaking.)

5 BZA CHAIR HILL: -- Eckenwiler, what I think he
6 said was that ninety percent of the building was done when
7 they found out that --

8 (Simultaneous speaking.)

9 MR. ECKENWILER: He says both.

10 BZA CHAIR HILL: Okay.

11 MR. ECKENWILER: Mr. Chairman, his statement says
12 both and he's --

13 BZA CHAIR HILL: Okay.

14 MR. ECKENWILER: Saying he didn't say the second
15 thing. He did say the second thing.

16 BZA CHAIR HILL: Okay.

17 MR. ECKENWILER: And I need the board to
18 understand that.

19 MR. BOWMAN: I apologize.

20 BZA CHAIR HILL: You need the board to understand
21 what, Commissioner?

22 MR. ECKENWILER: That all this talk about, well,
23 we only left two percent of the building is not true
24 according to --

25 (Simultaneous speaking.)

1 BZA CHAIR HILL: Right, you're saying --

2 (Simultaneous speaking.)

3 MR. ECKENWILER: Mr. Bowman's own written
4 statement --

5 (Simultaneous speaking.)

6 BZA CHAIR HILL: You're saying maybe there was
7 nine percent of the building left or 10 percent of the
8 building left, that's what you're arguing, that's what you're
9 trying to clarify?

10 MR. ECKENWILER: That's what Mr. Bowman himself
11 put into the record in Exhibit 14, yes.

12 BZA CHAIR HILL: Okay. Regardless of whether it's
13 nine percent, 10 percent, two percent, it doesn't matter.
14 The building wasn't razed. So, okay, Commissioner
15 Eckenwiler, you want to go ahead and give us a summary, if
16 you have any, and then Mr. Bello?

17 MR. CONNORS: Mr. Chairman, I know it's been a
18 long day. I feel like we've been over this a lot. If the
19 board is in any doubt, you can just look through the written
20 statement, my slides and I think that captures everything.

21 BZA CHAIR HILL: Okay, thanks, Commission. Mr.
22 Bello?

23 MR. BELLO: Oh, I think I'm just going to rest on
24 the record, Mr. Chair, but just a couple more points. Just
25 to echo what Vice Chair John said, the BZA is not a punitive

1 entity. The Applicant has paid a dear penalty in carrying
2 costs since 2019 on this project having expended a million
3 dollars. He does have a raze permit at this point, so it
4 could effectively just take down the two or the nine percent
5 of the building that was left and then the facade would
6 actually ironically be losing some of the architectural
7 elements that were retained that's consistent with the other
8 facade down the road. That's all the comments I have to add.
9 Thank you very much.

10 BZA CHAIR HILL: Okay. All right, does anybody
11 have any more comments they'd like to make? Okay, I'm going
12 to speak -- I'm going to close the hearing, but not yet, I
13 just want to speak to my fellow board members.

14 When we start to deliberate this, we're not going
15 to do it today. But if you need further questions from the
16 Office of Planning, again the Office of Planning has given
17 their analysis to approve this application and so that's
18 another thing that I'm going to be looking at, as to how and
19 what the analysis was from the Office of Planning and also,
20 yes that's kind of it. Okay, does anybody have anything
21 they'd like to add before I close the record? If so, raise
22 your hand. All right, closing the hearing and the record.
23 Thank you everyone. Thank you everyone. Thank you
24 Commissioner.

25 MR. BELLO: Thank you.

1 BZA CHAIR HILL: Okay, I don't know when we get --
2 I'm not ready obviously to deliberate this. I think we're
3 going to have think about it. Is a week enough time for
4 everybody? Mr. Smith, you didn't say anything all hearing.
5 Is a week enough time for you?

6 MEMBER SMITH: Yes, a week is enough time for me.

7 BZA CHAIR HILL: Okay, there you go.

8 (Simultaneous speaking.)

9 BZA CHAIR HILL: All I need is somebody to tell
10 me that they only need a week. All right, so we'll come back
11 with the decision, Mr. Moy, on this next week, okay?

12 MR. MOY: Decision meeting, correct --

13 BZA CHAIR HILL: Yep.

14 MR. MOY: Mr. Chairman?

15 BZA CHAIR HILL: And the meeting is, oh my gosh,
16 I can't believe how much we still have left to do.

17 MR. MOY: So this would be next week, April 27?

18 BZA CHAIR HILL: Okay. Okay, let's take a break.
19 Is that good? How much time -- does everybody have kind of
20 like -- let me take a poll, like we're going to be here late
21 tonight. I don't know how late, but everybody's kind of with
22 me, right? Nobody has to go anywhere? Okay. Then, in that
23 case, can we do like 4:35? Can we take a 20-minute? Is that
24 cool?

25 (Whereupon, the above-entitled matter went off

1 the record at 4:14 p.m. and resumed at 4:42 p.m.)

2 BZA CHAIR HILL: Mr. Moy, do you want to call our
3 next case?

4 MR. MOY: Thank you, Mr. Chairman. After a brief
5 recess the board is back in its hearing session and the time
6 is at or about 4:43 p.m.

7 The next case before the board is Application
8 Number 20666 of 1644 North Capitol, LLC. This application
9 is an amended self-certified application for special
10 exception relief under Subtitle C, Section 1501.1(d), which
11 is pursuant to Subtitle X, Section 901.2. This would allow
12 an eating and drinking establishment within a penthouse
13 habitable space.

14 The project itself would permit a restaurant use
15 within the penthouse of a four-story 97-room hotel with a
16 ground level restaurant use currently under construction. The
17 site is in an MU-4 zone located at 1634 North Capitol Street,
18 N.W. (Square 3101, Lot 118). The preliminary matter, Mr.
19 Chairman, although I do have an exhibit number, which is
20 Exhibit 24, is the Applicant's late filing for an Affidavit
21 of Posting. Other than that, for your note, Mr. Chairman,
22 we do have a DDOT representative in the room, should you need
23 their participation.

24 BZA CHAIR HILL: Great. Okay. Okay, great. Mr.
25 DeBear, can you introduce yourself for the record, please?

1 MR. DeBEAR: Good afternoon, members of the
2 board. My name is Eric DeBear, land use counsel, from Cozen
3 O'Connor, on behalf of the Applicant.

4 BZA CHAIR HILL: Okay, great. Is it Ms. Lewis?

5 MR. DeBEAR: That is an ANC Commissioner.

6 BZA CHAIR HILL: Oh. Commissioner Lewis, can you
7 hear me?

8 MS. LEWIS: I can hear you.

9 BZA CHAIR HILL: Can you introduce yourself for
10 the record, please?

11 MS. LEWIS: Yes, my name is Karla Lewis. I'm the
12 Advisory Neighborhood Commissioner for ANC 5E06 and this case
13 falls within my single member district.

14 BZA CHAIR HILL: Okay, great. Is it Ms. Bridges?

15 MS. BRIDGES: Hello.

16 BZA CHAIR HILL: Ms. Bridges?

17 MS. BRIDGES: Can you hear me?

18 BZA CHAIR HILL: Yes.

19 MS. BRIDGES: Okay.

20 BZA CHAIR HILL: Are you with DDOT?

21 MS. BRIDGES: I am.

22 BZA CHAIR HILL: Okay. Could you introduce
23 yourself for the record, please?

24 MS. BRIDGES: Yes, Kelsey Bridges DDOT, in the
25 Planning and Sustainability Division.

1 BZA CHAIR HILL: Okay, great. Well thanks for
2 joining us. Thanks for sticking around. You can share with
3 Director Lott just how long we work here --

4 (Simultaneous speaking.)

5 BZA CHAIR HILL: Okay.

6 MS. BRIDGES: I've been impressed so far.

7 (Laughter.)

8 BZA CHAIR HILL: All right, you let Director Lott
9 know, okay. All right. Let's see, Mr. DeBear, you want to
10 go ahead and do us a favor and walk us through your
11 application, why you believe your client is reaching or
12 meeting the standard for us to grant the relief requested.
13 I see your PowerPoint presentation, I guess that's where
14 you're going to begin and you can start whenever you like.

15 MR. DeBEAR: Thank you. If Mr. Young could bring
16 up the PowerPoint, I'll try to keep this efficient in being
17 mindful of the board's time. It's, I know, already been a
18 long day and you have several cases after this, so --

19 BZA CHAIR HILL: God, Mr. DeBear, if you could
20 speak again just to the ANC's concern about the noise
21 amplification when you're going through that, okay?

22 MR. DeBEAR: I will do that.

23 BZA CHAIR HILL: Thank you, Mr. DeBear.

24 MR. DeBEAR: So this is an application request
25 for special exception relief to have a restaurant in a

1 penthouse of a by-right hotel development. Next slide.

2 As Chairman Hill alluded to, we do have a motion
3 to late file the Affidavit of Posting. The posting was
4 posted in time, 15 days prior to the hearing, we simply late
5 filed the affidavit itself. It was filed on Monday, which
6 was two days before the hearing instead of the required five
7 days. So the Affidavit of Maintenance has also been filed
8 that was filed timely, so we would request that the board
9 grant the motion to late file the Affidavit of Posting.

10 BZA CHAIR HILL: Thanks, Mr. DeBear. I neglected
11 at the beginning, I don't have an issue with late posting,
12 unless the board does, please speak up. And the other is
13 that the ANC filed something that's in the record just to let
14 everybody know, an Exhibit 26. Mr. DeBear, please continue.

15 MR. DeBEAR: Thank you. Next slide, please. The
16 property is located in the MU-4 zone. As you can see, it's
17 on the corner of Quincy Place and North Capitol Street in the
18 Bloomingdale neighborhood. Next slide, please.

19 These are just photographs of the existing
20 conditions as I'll get to in a moment. The hotel project is
21 permitted under construction currently. Next slide, please.

22 In terms of community outreach, we do have the
23 support of both ANC 5E and the Bloomingdale Civic
24 Association. The Applicant and myself presented several
25 times to the ANC including single member district meeting,

1 zoning subcommittee meeting and presentations to the ANC
2 twice and the Bloomingdale Civic Association. The Office of
3 Planning is recommending approval and DDOT has submitted a
4 report requesting certain conditions. Next slide, please.

5 The project itself, as I said, is a by-right hotel
6 development. The Applicant obtained a building permit last
7 June actually, so the hotel is well under construction at
8 this point. The penthouse itself is by-right and has a 632
9 square foot restaurant space. Under the MU-4 Use Condition,
10 the restaurant is permitted, but only to serve hotel patrons.
11 So the special exception is only needed to open up that same
12 restaurant space to the general public and that's why we are
13 here today. Next slide, please.

14 So this is just a general site plan. I've
15 highlighted the restaurant portion of the penthouse in red
16 here. You can see that the site consists of the historic
17 fire building at the bottom of the page there where the
18 penthouse will not be located. Again, the penthouse itself
19 is relatively small and certainly the restaurant space being
20 only 632 square feet is not large in terms of restaurants.
21 Next slide, please.

22 Here's a floor plan, so just to provide further
23 detail on where exactly the restaurant is, the restaurant is
24 at the bottom part of the page, so the bottom half of the
25 penthouse is really the restaurant. The middle portion you

1 see is the elevator core and stairwell access and the top
2 portion of the penthouse, referring to the page you're
3 looking at, is actually two hotel rooms. The relief is not
4 needed, just to clarify for the elevator core, the stairwell
5 and the hotel rooms, only for the restaurant space itself,
6 so only about half of the penthouse is subject to this
7 application. Next slide, please.

8 And here's just a quick elevation, again, of the
9 by-right building that's being constructed with the penthouse
10 on top. Next slide, please. Next slide, please.

11 So in terms of the special exception standard, the
12 first prong being that the relief itself is harmonious with
13 the purpose and intent of the zoning regulations. An eating
14 and drinking use is permitted in the MU-4 zone which is the
15 zone that's intended for. Moderate density, mixed use
16 development so to include restaurants. The penthouse again
17 is by-right and the structure has the proper height and set
18 backs. The Applicant believes the opening of the restaurant
19 to the public will provide a community amenity in a location
20 on North Capitol that's just a couple of blocks to the north
21 of Florida Avenue that has excellent access to
22 transportation, both Metrorail and Metrobus. And, finally,
23 as I mentioned, the ANC and the Office of Planning are both
24 supportive, albeit, I know that the ANC has late filed or
25 requested a condition about noise that I'll get to in a

1 moment. Next slide, please.

2 In terms of the adverse impact, there is no change
3 in the actual use and occupant load of the penthouse as a
4 result of this request. The penthouse itself, as permitted
5 under the permit, is staying the same size and so this is
6 simply again to open it up to the public. There are buffers
7 on all four sides of the penthouse based on the property
8 siting and the design of the hotel. To the west, where
9 there's an RF-1 zone, you have a 12.2 foot alley, an odd
10 width for an alley, but an alley nonetheless. The 15-foot
11 rear yard for the hotel and then the 12-foot penthouse. So
12 in terms of the rowhomes along Quincy Place to the west, you
13 have almost a 40-foot set back from where the penthouse will
14 be located. You have the restaurant itself separated from
15 the homes fronting on R Street by the elevator and stair and
16 the by-right hotel rooms. So there should be no impact to
17 the north. To the east, you have the property being located
18 with frontage on North Capitol Street, which is a major
19 arterial and a very wide avenue of 130 feet, which is
20 appropriate for a restaurant use. To the south, due to
21 historic preservation requirements, the penthouse will not
22 be located above the fire station which is really the
23 southern third of the property and so that buffer plus Quincy
24 Place provides additional space between other rowhomes on the
25 southern side of Quincy Place.

1 I would also note, and I think this goes really
2 to the issue of noise, the rowhomes, again the only truly
3 abutting residences are the rowhomes along Quincy Place and
4 those are in the RF-1 zone, so they are substantially shorter
5 than what the penthouse will be. I would also note that as
6 with a lot of issues of noise, this project, once there is
7 a tenant in place, will go through the ABRA process, which
8 as OP stated in its report has authority and generally does
9 look at issues of noise. So, the Applicant certainly intends
10 to abide by any noise regulations with respect to the
11 penthouse restaurant.

12 I would also note that there is no difference in
13 the level of noise in terms of sound amplification that would
14 be provided by, again, the relief that's being requested,
15 which is to simply open up the restaurant to the public as
16 opposed to only hotel patrons. So we don't believe that the
17 relief itself will cause any adverse impact and it is
18 important to note that is the standard that you look at it
19 in the special exception.

20 Finally, I'll get to, on the next page, OP has
21 requested a condition regarding lighting which the Applicant
22 has agreed to. That's on the next sheet. Next slide,
23 please. Thank you.

24 So, the condition is that all exterior lighting
25 on the penthouse is to be shielded and pointed downward,

1 which would mitigate the impact of the proposal by ensuring
2 that light is not directed towards neighboring residential
3 properties. Decorative outdoor lighting, such as string
4 lights, is excluded from this condition. So, the Applicant
5 has agreed to that in an effort certainly to mitigate any
6 concerns with light pollution, although again there is a
7 substantial height differential between the neighboring
8 rowhomes to the west and the restaurant. Again, on the other
9 sides of the penthouse restaurant, there really are no
10 abutting neighbors, so the impacts already are limited, but
11 this goes toward limiting them even further.

12 That concludes our presentation in chief. We are
13 certainly happy to answer any questions the board might have.
14 I can also discuss the DDOT report if need be. Although it
15 looks like DDOT does have a representative here as well.
16 Thank you.

17 BZA CHAIR HILL: Okay, Mr. DeBear, I'll get to
18 you, Mr. Moy. Mr. DeBear, you got the condition from OP
19 concerning the light pollution and that's in Exhibit 20 and
20 your client is in agreement to that, correct?

21 MR. DeBEAR: Correct.

22 BZA CHAIR HILL: Okay. With terms to the -- I
23 didn't really quite understand, I know you were speaking of
24 the ABRA will -- the community will have an opportunity to
25 also go before ABRA when the application is put forward for

1 the liquor license; however, does your client have any
2 thought as to how to, and I'll let the commissioner speak,
3 how to allay any community concerns about noise pollution?

4 MR. DeBEAR: I'll say a few things, Chair Hill,
5 so first of all, we did meet with the community several
6 times. While I did hear general concerns about noise from
7 the hotel, I didn't hear anything directly related to the
8 relief that is being sought, which is simply to open this up
9 to the public. Now with that being said, I think if the
10 board certainly requires it, my client is happy to work with
11 the ANC. I think there are compromises out there. I know
12 my client would like to have some level of sound
13 amplification on the roof. Again, there are noise laws
14 specifically to protect neighboring property owners that
15 would be complied with, but again that is a conversation that
16 we are happy to have, although it was kind of in terms of
17 being put into the record and hearing from the community,
18 that was put into the record yesterday. So, we already had
19 the ANC resolution and support without any request for a
20 condition. Again, we're happy to work with them, but I will
21 say that without a tenant in place yet for this restaurant,
22 my client certainly would like to keep their options open as
23 to how the tenant will want to operate being mindful of what
24 the community needs in terms of sound mitigation. It's a
25 conversation that could be had, if needed.

1 BZA CHAIR HILL: No, I got it and that's right.
2 I mean I understand how the hotel might want to have music
3 of some kind for their guests, but, you know, if there was
4 like outdoor bands or things like that or I don't know what
5 the discussion may be and we'll get an opportunity to speak
6 to the commissioner about that. Mr. Blake, you had a
7 question?

8 MEMBER BLAKE: Mr. DeBear, I'd like to just kind
9 of clarify the size of the restaurant and I say size, I'm
10 talking about capacity. It's 632 feet, it seems like a very
11 small space, but it looks like there may be some outside
12 seating or something available that may expand the actual
13 space of it. Can you talk about that and also how much
14 traffic do you anticipate having at this bar/restaurant?
15 Again, it seems like a very small place. I'm trying to get
16 a sense of how much traffic or how many people could
17 potentially be in here. I know it's not really refined yet,
18 but just give me a sense of what this 632 feet translates to.

19 MR. DeBEAR: Right, so I don't know if Mr. Young
20 can pull up the floor plan again. I can tell you, Board
21 Member Blake, that there will be no seating, or at least
22 fixed seating outside. I think like any other building there
23 is an ability for someone who went to the restaurant to walk
24 outside onto the roof. So, there's a roof deck, but there
25 is no seating out there. So, if Mr. Young wants to pull up

1 the slide show, just so we can look at the site plan really
2 quick.

3 In terms of occupant load, while he's pulling that
4 up, I really do not know that's kind of a building code
5 question. Again, you're right that 632 square feet is quite
6 small. You can see that there are seated tables on the side
7 of the building facing North Capitol, so you see what is
8 that? Eight seated tables, so you know 45, 50 people there.
9 There's a very small bar and then there's a little lounge
10 seating area there in the center of the screen. So, you
11 know, it's not going to be a massive restaurant. I would
12 guess most restaurants are, again, with no expertise on
13 restaurant occupant load, looking at more like 2,000 to 3,000
14 square feet or even a smaller restaurant in the city,
15 probably bigger elsewhere, but I can tell you to answer
16 definitively there's no fixed seating on the roof, but I do
17 think the Applicant envisions folks and visitors of the
18 restaurant to be able to walk out onto the roof just like any
19 other penthouse roof throughout the city.

20 MEMBER BLAKE: All right, thank you. Thank you.

21 BZA CHAIR HILL: All right, anyone else have any
22 questions for the Applicant? Mr. Young, if you could drop
23 that. Oh, sure, Vice Chair John?

24 VICE CHAIRPERSON JOHN: So, what's the size of the
25 roof deck? Can you tell us that?

1 MR. DeBEAR: In terms of the square footage of
2 the whole roof deck? I don't know that, Board Member John.
3 We could provide that to the board if need be. The penthouse
4 in total is 1,300 square feet, give or take. I don't know
5 how big the roof deck itself is.

6 VICE CHAIRPERSON JOHN: But from your slide, it
7 might be say 50 percent of that space. I'm trying to figure
8 out how many people could stand there with drinks because I
9 think that's what we're really looking at.

10 MR. DeBEAR: Right.

11 VICE CHAIRPERSON JOHN: And I think the board has
12 to look at usage of that space. We can't just -- I mean if
13 you're opening it up to the public then the use will be more
14 intense, so we would have to look at noise and that would be
15 based on the number of people you anticipate will be using
16 the roof deck, so we can't really, in my view, outsource that
17 to the ANC. So it would be good to have an idea of how many
18 people will be using that roof deck and what the noise
19 quality will be like.

20 MR. DeBEAR: Right, so I'd imagine, and again,
21 obviously I'm not a building code expert, but I'd imagine
22 there are occupant load limitations based on the size of the
23 building, size of the roof. I just don't have that
24 information. So, we could certainly supplement if that's an
25 issue that the board is looking at.

1 VICE CHAIRPERSON JOHN: Sure, fair enough. That
2 affects the noise quality. Thank you.

3 BZA CHAIR HILL: Anyone else? Thank you, Vice
4 Chair John. Anyone else for the applicant? Okay,
5 Commissioner Lewis, can you hear me?

6 MS. LEWIS: Yes.

7 BZA CHAIR HILL: Would you like to give us your
8 testimony, Commissioner?

9 MS. LEWIS: Sure. I just wanted to say that we
10 do support this application. As Mr. DeBear has stated, we
11 have had several meetings with the Applicant and he even
12 missed one of the meetings that we had. We had one recently
13 as recent as last week and at every one of my single member
14 district meetings, people always raised a concern about noise
15 and I would expect that it's because prior to this particular
16 project, the Firehouse Restaurant told us that they weren't
17 going to have any DJs and things of that nature, but of
18 course, they built a DJ booth and next thing you know, they
19 were having ticketed events and there was noise. Okay? So
20 this is the concern. This is a concern for the neighbors and
21 we're talking about the same building here, just next door
22 and three more buildings that have been added to it.

23 So, residents just want to see the hotel
24 developed. We want it to be a thriving business, but they
25 also want peace, quiet and order and parking. Parking will

1 be an issue if we're talking about adding a 100-room hotel
2 here. I believe DDOT attested to the fact that Quincy Place
3 is a very quaint little street. It's a very small street.
4 There will be an issue with having all of the occupants or
5 patrons from the hotel.

6 Residents are working from home so they want some
7 type of assurance that, you know, while they're working from
8 home, it will be peaceful work. Right now, I receive letters
9 almost on a daily basis from another business establishment
10 from another resident because of another business
11 establishment where noise is being emanated on a daily basis.
12 We don't want that concern there.

13 The other issue is about with regard to the
14 Firehouse that DDOT had stated that they do not support the
15 application and they want to see the driveway placed on the
16 pickup and drop off area on the Quincy Place side as opposed
17 to North Capitol Street side in which there is an existing
18 driveway in the Firehouse. I mean it used to be a firehouse
19 so engines used to come in and out of the building. There's
20 an existing driveway there and residents would like to see
21 the driveway that's existing be put in use as opposed to
22 being on the Quincy Place side. So that's another issue and
23 concern that the residents have.

24 Other than that, we do support this application.
25 I support this application. We just want to know that in

1 terms of noise, we're not going to be like the residents
2 around Florida Avenue with the rooftop restaurants that they
3 have over there where you can hear the noise for blocks,
4 blocks away. We want to make sure that we are not in that
5 predicament.

6 BZA CHAIR HILL: Hey, Commissioner Lewis, how you
7 doing? I haven't seen you in a long time. You doing well?

8 MS. LEWIS: Long time no see.

9 BZA CHAIR HILL: I know. It's been a while. I'm
10 glad to see you smiling today.

11 MS. LEWIS: Thank you.

12 BZA CHAIR HILL: Let's see, okay, does anybody
13 have any questions for the Commissioner from my board
14 members? Okay. I'm going to work through this.
15 Commissioner, we'll be back with you again in a second
16 talking about noise.

17 Ms. Bridges, can you hear me?

18 MS. BRIDGES: Yes.

19 BZA CHAIR HILL: Would you like to give us the
20 testimony of DDOT? I mean thank you for attending. We don't
21 normally have DDOT. I don't know whether the board has any
22 questions or not, but would you like to clarify your
23 position?

24 MS. BRIDGES: Yes, that would be wonderful. Good
25 afternoon, Chairman Hill and members of the BZA. For the

1 record, my name is Kelsey Bridges. I'm a transportation
2 planner with the District Department of Transportation. DDOT
3 is not yet supportive of the Applicant's request for
4 penthouse relief to allow for a restaurant with customers
5 from outside the hotel.

6 As noted in our April 8, 2022 report, the
7 Applicant has not developed a pickup and drop off plan for
8 either the hotel or restaurant uses as requested by DDOT.
9 Accordingly, DDOT cannot support the addition of pickup/drop
10 off activity at this site along North Capitol Street, N.W.
11 from outside restaurant customers until the curb side
12 situation has been resolved and a solution agreed to by DDOT.

13 This is a unique situation because DCRA already
14 issued a building permit for the project without the
15 Applicant being first issued a public space permit, which is
16 highly atypical. Usually DCRA only issues building permits
17 after all the permits have been issued by DDOT. Once issued
18 a building permit, the Applicant has subsequently allowed
19 their public space permit to go dormant since last year.
20 This public space application was where discussions were
21 occurring in 2020 and 2021 about how to best handle pickup
22 and drop offs for the site.

23 DDOT's preference would be for the BZA to hold off
24 on approving the relief until the Applicant has re-engaged
25 with DDOT on a pickup and drop off issue; however, if the BZA

1 moves forward with approving the relief, DDOT requests a
2 condition that prior to issuance of Cofo for the restaurant,
3 the Applicant will complete their public space permit
4 application and come to agreement with DDOT on how to handle
5 the pickup/drop off.

6 DDOT also requests condition that the Applicant
7 implement a TDM, transportation demand management, plan to
8 help reduce vehicle travel demand and manage conflicts
9 between vehicles and pedestrians generated by both uses at
10 the site. DDOT requests a TDM plan of all BZA cases where
11 the request for relief is directly related to the
12 introduction of a new land use and increase in density or a
13 resultant increase in vehicle activity. In this case, the
14 site is introducing a restaurant use that is intended to
15 attract outside customers and will result in additional
16 pickup and drop off activity. Thank you and I'll be happy
17 to answer any questions.

18 BZA CHAIR HILL: Thank you.

19 MS. LEWIS: Hi, may --

20 (Simultaneous speaking.)

21 MS. LEWIS: Sorry, Chairman Hill.

22 BZA CHAIR HILL: Sure.

23 MS. LEWIS: I neglected to mention something.

24 BZA CHAIR HILL: Sure, go ahead, Commissioner.

25 MS. LEWIS: I'm sorry. With regards to the

1 verbiage on the restriction of the amplification, that was
2 actually cited from one of your previous cases. I think it
3 was BZA Case Number 20520.

4 BZA CHAIR HILL: Okay, you don't remember the
5 condition, right?

6 MS. LEWIS: I do not.

7 BZA CHAIR HILL: That's all right. You got help
8 from --

9 (Simultaneous speaking.)

10 BZA CHAIR HILL: -- somebody at OAG helped you?

11 MS. LEWIS: Yes.

12 BZA CHAIR HILL: Okay.

13 MS. LEWIS: Okay, here's the story.

14 BZA CHAIR HILL: That's all right, that's okay.

15 MS. LEWIS: No, it's just a short version of it.

16 BZA CHAIR HILL: Okay --

17 (Simultaneous speaking.)

18 BZA CHAIR HILL: -- all right, go on.

19 (Simultaneous speaking.)

20 MS. LEWIS: I know you've had a long day.

21 BZA CHAIR HILL: Okay, okay, go on, go on.

22 MS. LEWIS: I went to them for help with regards
23 to the community benefits package that was being offered and
24 they said this is not a PUD, so I don't think that the BZA
25 would be able to really do anything about making sure that

1 this community benefits package is. So, they said, but
2 instead what the BZA could do is look at these following
3 orders here and these are for rooftop restaurants and these
4 are things that the BZA would be able to enforce.

5 BZA CHAIR HILL: There was something -- there was
6 a community benefits package at some point?

7 MS. LEWIS: Yes.

8 BZA CHAIR HILL: That's from Mr. DeBear's client?

9 MS. LEWIS: Yes.

10 BZA CHAIR HILL: Okay, that's all right. We're
11 jumping around some, anyway it's okay, but thanks --

12 MS. LEWIS: Yes, it's written on the Form 129.

13 BZA CHAIR HILL: Okay. All right. So, let me
14 see, yep, I got you. Mr. Blake, go ahead.

15 MEMBER BLAKE: Do you have any assumptions behind
16 your rooftop restaurant usage? You said it would increase
17 the volume of traffic. Do you have any assumptions that you
18 used at this point specifically?

19 MS. BRIDGES: No, did not, but this is, I think,
20 relief states is for the introduction of those that are
21 specifically going to the hotel or using the hotel, but for
22 the rooftop use, so there's just an assumption that there
23 will be increased vehicle usage, but --

24 (Simultaneous speaking.)

25 MS. BRIDGES: -- we didn't do any analysis.

1 MEMBER BLAKE: Okay, thank you.

2 BZA CHAIR HILL: Yep, Ms. John?

3 VICE CHAIRPERSON JOHN: The Applicant is only here
4 for relief for the restaurant, so did you make an independent
5 calculation of what the additional traffic would be if the
6 restaurant is open to the public? Because the board is not
7 considering the hotel, which the Applicant says is a by-right
8 project, we're only looking at the restaurant use.

9 MS. BRIDGES: Correct.

10 VICE CHAIRPERSON JOHN: So, how much more traffic
11 do you think the restaurant use would generate?

12 MS. BRIDGES: I mean it also kind of depends on
13 what type of restaurant, you know, like what exactly they're
14 going to be -- they presented sit down tables, etc. I don't
15 have an estimate of the exact number, but I think I heard it
16 could have at least 50 chairs or seats essentially up there
17 and folks will be also going to the area without necessarily
18 having a reservation or not. So, that would be kind of what
19 we're looking at.

20 VICE CHAIRPERSON JOHN: Okay, thank you.

21 MR. DeBEAR: Can I just ask one question of DDOT?

22 BZA CHAIR HILL: Sure, go ahead, Mr. DeBear.

23 MR. DeBEAR: Ms. Bridges, did DDOT consider the
24 proximity to public transportation and the specific location
25 of the hotel in making its assessment?

1 MS. BRIDGES: Yes and noting too that it is on
2 a major vehicular corridor, a lot of folks are going to --
3 the restaurant is on North Capitol so it's definitely likely
4 that folks will be arriving by vehicle, although it is
5 recognized that not everyone that will be visiting would be
6 arriving by vehicle.

7 MR. DeBEAR: But DDOT didn't do a specific mode
8 split or any of that kind of intense analysis that we usually
9 see with parking relief?

10 MS. BRIDGES: Correct.

11 MR. DeBEAR: Thank you.

12 BZA CHAIR HILL: Mr. DeBear, does your client have
13 an issue with these conditions from DDOT?

14 MR. DeBEAR: I mean other than we feel as though,
15 my client feels as though it's not -- DDOT's conditions can
16 be handled during the public space process, which my client
17 certainly recognizes that in order to have authority for a
18 curb cut, he would have to go through. I don't necessarily
19 see nexus between the relief that's before the board and what
20 DDOT's saying. With that all being said, there is no major
21 problem with those conditions as DDOT has proposed.

22 BZA CHAIR HILL: So you would, and I don't
23 necessarily know whether the board would adopt these as being
24 within our purview or not, but I would like to know from you
25 for the record, are you opposed to and would agree with a TDM

1 plan if this were to move forward?

2 MR. DeBEAR: Correct.

3 BZA CHAIR HILL: Okay, so you're agreement with
4 the TDM plan that you would provide to DDOT and then also you
5 are in agreement to prior to issuance of a Certificate of
6 Occupancy to the restaurant, Applicant will complete public
7 space permit application over 358686 and develop a
8 pickup/drop off plan for both the hotel and restaurant
9 subject to DDOT's approval. Your client does not have an
10 issue with that and agrees to it, correct?

11 MR. DeBEAR: Correct. I would just say, and
12 again the sticky part of this is, I think what Commissioner
13 Lewis and the ANC put into the record, which is the community
14 doesn't want what DDOT is proposing, again separately and
15 public space during the permitting process and DDOT obviously
16 has stated they don't want the circular driveway. So again,
17 these are issues that I think are more appropriate to be
18 worked out through the public space process, but that is a
19 long-winded way of saying there is no problem with that
20 condition, just that it is maybe not appropriate for this
21 board proceeding.

22 BZA CHAIR HILL: It will still be worked out
23 between -- give me a second, Commissioner Lewis -- it will
24 be worked out between you and DDOT and the community is what
25 you're trying to say. Correct, Mr. DeBear?

1 MR. DeBEAR: Correct.

2 BZA CHAIR HILL: Got it. Okay. All right.
3 Commissioner Lewis, you were about to say something?

4 MS. LEWIS: I just wanted to say that the
5 community wanted to be involved again in this pickup/drop off
6 plan that's being discussed between the Applicant and DDOT.

7 BZA CHAIR HILL: Yes, I think that's great
8 Commissioner. All right, let's see, why am I having a hard
9 time finding Quincy Place? Where's Quincy?

10 MS. LEWIS: Right off --

11 MR. DeBEAR: It's about two blocks north of
12 Florida. It's off North Capitol.

13 MS. LEWIS: It's a very tiny little block.

14 VICE CHAIRPERSON JOHN: It's near a certain
15 restaurant that we had a --

16 (Simultaneous speaking.)

17 BZA CHAIR HILL: Oh.

18 VICE CHAIRPERSON JOHN: Yes.

19 BZA CHAIR HILL: Okay, it's here at Dom Jon Dam
20 Jon?

21 MS. LEWIS: Oh, Jam Doung.

22 BZA CHAIR HILL: Jam Doung, Jam Doung, okay --
23 (Simultaneous speaking.)

24 VICE CHAIRPERSON JOHN: That's on the North
25 Capitol and R, I believe.

1 BZA CHAIR HILL: It is delicious. All right. Mr.
2 Blake?

3 MEMBER BLAKE: Yes, what's the expectation for the
4 housing production trust fund contribution?

5 MR. DeBEAR: You know, my OPE requested that,
6 Board Member Blake. I don't have a specific answer other
7 than my client has contributed as required under the
8 regulations.

9 MEMBER BLAKE: Okay.

10 MR. DeBEAR: If the board requires that
11 information to supplement, I'm happy to get the specific
12 numbers, I just know that he has.

13 ZC CHAIR HOOD: Mr. Chairman?

14 BZA CHAIR HILL: Yep, go ahead, Chairman Hood.

15 ZC CHAIR HOOD: I would appreciate it, I would
16 just be curious and I think it would be good for the record
17 if it was complete, about that contribution even though --
18 I just think it would be good for the record. I would like
19 to know that as well.

20 BZA CHAIR HILL: Okay. Mr. DeBear, you can
21 supplement the record with that, correct?

22 MR. DeBEAR: Correct.

23 BZA CHAIR HILL: Okay, all right. Let's see, I'm
24 going to turn to the Office of Planning. Does anybody have
25 any more questions for DDOT? Okay. I'm going to do the

1 Office of Planning.

2 (Simultaneous speaking.)

3 MS. LEWIS: May I?

4 BZA CHAIR HILL: Sure, go ahead. Yep,
5 Commissioner Lewis.

6 MS. LEWIS: Yes, I didn't hear anything from the
7 Office of Planning, but the curb cut from the HPO was a
8 concern, I think initially. They did not want the original
9 driveway because it is in an historic district so they did
10 not want the original driveway to be disturbed and I didn't
11 see anything on that. I heard that they, you know, OP
12 supports it, but what about the driveway?

13 BZA CHAIR HILL: Yes, Commissioner Lewis, the
14 whole curb cut thing is just another discussion that's going
15 to be had at another time. It's not with us.

16 MS. LEWIS: Okay.

17 BZA CHAIR HILL: Okay? So, let's see and actually
18 now that I'm curious, DDOT, how does the public get involved
19 with curb cuts? Now that you're here.

20 MS. BRIDGES: Yes, so during the public space
21 permitting, the ANC should be notified for any curb cut as
22 that would be something that would be flagged to go to the
23 public space committee.

24 BZA CHAIR HILL: Interesting. Okay, all right.
25 I'm going to turn to DDOT, please, Ms. Elliott.

1 MS. ELLIOTT: OP?

2 BZA CHAIR HILL: I'm sorry, OP, sorry. Office of
3 Planning please.

4 MS. ELLIOTT: Good afternoon, Mr. Chair and
5 members of the board. I'm Brandice Elliott representing the
6 Office of Planning for BZA Case 20666. The Office of
7 Planning is recommending approval of the special exception
8 relief that's been requested.

9 There's already been some discussion regarding the
10 condition that we have included in our report, so I won't
11 spend a whole lot of time going over that as it relates to
12 the lighting. We did have some discussions with the
13 Applicant regarding other mitigations, such as hours of
14 operation and the noise. Because of some of the flexibility
15 that the Applicant wanted regarding tenants, we decided to
16 defer that to ABRA because that is within their purview.
17 It's written into the regulations and it is something that
18 they do review. However, having the ANC present, I'm very
19 pleased that Commissioner Lewis is here to discuss this. We
20 certainly have no issues including that as a condition of
21 approval and we would support that. In addition, we also
22 support DDOT's conditions and continued efforts between DDOT,
23 the ANC, the neighborhood and the Applicant to resolve those
24 public space issues. I'm happy to answer any questions that
25 you have.

1 BZA CHAIR HILL: Okay, does anybody have any
2 questions for the Office of Planning, Commissioner Blake?

3 MEMBER BLAKE: Ms. Elliott, would the applicant
4 need relief if the restaurant were only being used by the
5 restaurant by the hotel guests, and not the public?

6 MS. ELLIOTT: My understanding is that it only
7 requires special exception relief because they're opening it
8 up to the public. That if it was just an amenity for hotel
9 guests, it would not require that relief.

10 I'm certainly happy to look into that further, and
11 provide more information to you if you'd like.

12 MEMBER BLAKE: Okay, thank you.

13 Thank you Mr. DeBear, maybe you had a?

14 MR. DeBEAR: Yes, I mean this is something we
15 actually discussed with the zoning administrator when we
16 assisted the client in getting the zoning due diligence,
17 prior to getting the building permit.

18 And, the zoning administrator did confirm and
19 there's actually I believe, a determination letter out there
20 that the restaurant could be by-right if it was only for
21 hotel patrons.

22 So again, you were spot on Board Member Blake,
23 that it's only, this relief is only to open it up to the
24 public.

25 MEMBER BLAKE: Thank you again.

1 BZA CHAIR HILL: And, why you're here. Like it is,
2 it's not just an amenity to the hotel. It is you're going
3 to get more, you know, supposedly you're going to have more
4 people because it's opened up to the public, right?

5 And also, the Commissioner might it's a nice place
6 to go up there and have a drink if you drink. And, so, you
7 know, or just sit up there and enjoy the view.

8 So, the community can take, enjoy that and not
9 just be, you know, for the hotel.

10 But I don't know Mr. DeBear, if you have any kind
11 of, or if your client has any kind of thought about, I
12 understand what you're saying that the ANC will have their
13 opportunity as will the public, during the ABRA process to
14 discuss the noise discussion, right.

15 I also know I'm familiar with the neighborhood.
16 I also know how high your proposed project is, where the
17 restaurant would be, and in position to how low the townhomes
18 are, or whatever, from where that rooftop amenity would be.

19 However, do you know if there's something that
20 your, if, if the Board was concerned about noise, is there
21 something that you know your client has thought about, in
22 terms of a condition that they might be able to live with?

23 MR. DeBEAR: Well, so I think there absolutely is
24 something that he could live with. I don't know specifics.
25 I mean what I'm basing this conversation on, is what

1 Commissioner Lewis has put into the record, which is no
2 amplification of sounds.

3 If that's the condition, we would certainly
4 request that perhaps the amplification only be restricted on
5 the side of the roof facing Quincy Place. So, the western
6 facing side of the penthouse.

7 Other than that, I don't have any kind of specific
8 condition language, sorry, I'm getting a text from my client,
9 specific condition language that we're talking about. So --

10 (Simultaneous speaking.)

11 BZA CHAIR HILL: Yes, and I've got to let you know,
12 Mr. DeBear, and I'm looking to the, like I don't, I'm not
13 talking about, you know, a, I'm trying to also remember what
14 the Board has done in the past.

15 I mean, you know there being music up there so
16 that, you know, just regular ambient music, I don't see that
17 necessarily being a, an issue with adverse impact.

18 However, like right like live music or anything
19 like that, you know, that could be potentially different.
20 Or, you know, it's too small really, for like a DJ type
21 situation I think. But --

22 (Simultaneous speaking.)

23 MR. DeBEAR: Yes, I mean I'm sorry again.

24 BZA CHAIR HILL: -- give me a second,
25 Commissioner. Give me a second, Commissioner.

1 MR. DeBEAR: In this virtual world I'm getting
2 texts here. So, I mean, if something we could agree to is
3 potentially no sound amplification after 10:00 p.m., I think
4 that no live music would potentially be a condition that he
5 could agree to, although I don't have that official yet.

6 And again, I think only speakers on the side of
7 North Capitol, or the southern facing side, which would again
8 be kind of projecting out over the top of the fire station
9 historic building.

10 So, again we feel like there's a ample buffer
11 there, where, whereas when you talk about the western facing
12 side, that's closer to the, to the homes.

13 BZA CHAIR HILL: Okay, all right, give me a second.

14 The, okay. Does anybody have anymore, I'm going
15 to see. Is there anybody here wishing to speak from the
16 public?

17 I got you, Commissioner.

18 MS. LEWIS: Okay.

19 Is anybody here wishing to speak from the public?

20 MALE SPEAKER: We do not.

21 BZA CHAIR HILL: Okay.

22 Yes, Mr. DeBear, what it is is it's not so much
23 it's whether or not the Board is concerned, right. And, so
24 that's what I'm just trying to think, or whether I get one
25 vote, so I'm thinking whether I'm concerned.

1 Commissioner Lewis, what is it that you had your
2 finger up for?

3 MS. LEWIS: Okay, he said that it would only be the
4 western side, but that is not true. It would be not only the
5 west side, because north, south, we have houses in the back
6 of the restaurant, where, along the alley there are rows of
7 houses. Right along --

8 (Simultaneous speaking.)

9 MR. DeBEAR: The western side, Commissioner Lewis.

10 MS. LEWIS: Excuse me?

11 MR. DeBEAR: That's the western side. That's what
12 I was referring to. That's the western facing side of the
13 building.

14 MS. LEWIS: So, then there are also houses on the
15 south side, and there are also houses on the north side.

16 MR. DeBEAR: Well, the north side is again, kind
17 of buffered by the rest of the penthouse, which isn't subject
18 to this application.

19 At least that was on my response.

20 MS. LEWIS: Actually, the north side of 6 R Street,
21 4 R Street, are probably the closest residence. They are
22 close to --

23 (Simultaneous speaking.)

24 MR. DeBEAR: That's hotel rooms there, so I guess
25 we could agree to that.

1 (Simultaneous speaking.)

2 BZA CHAIR HILL: No, no, no. Give me a second,
3 give me a second, give me a second. I'm going to look.

4 It doesn't, again, this is either something that,
5 and I've got to turn to Office of Planning to help me out on
6 this one. I forget.

7 When ABRA, when they go through the ABRA process,
8 that's where there is, there's not discussion about
9 amplification of, of music at that point, is there, Ms.
10 Elliott?

11 MS. ELLIOTT: There is. It's actually a
12 consideration in their regulations. They are permitted to
13 address things like hours of operation, and sound
14 amplification in their approvals.

15 BZA CHAIR HILL: Right.

16 MS. ELLIOTT: In fact, a lot of times what's
17 happened with these types of cases is they have actually gone
18 to ABRA before they come to the BZA.

19 So, some of them have already come with those
20 conditions. And, so they've gone through the BZA without
21 getting additional conditions. And, I think that's why we
22 know that that's in their purview.

23 BZA CHAIR HILL: Okay, okay. So, Commissioner
24 Lewis again, and I'm going to let everybody give their
25 comments.

1 Commissioner Lewis again, this is something that
2 also can be addressed at the ABRA level, but we'll see what
3 my fellow Board Members have to say.

4 MS. LEWIS: Okay, and I do want --

5 (Simultaneous speaking.)

6 BZA CHAIR HILL: Ms. John, you had your hand up?

7 MS. LEWIS: -- to say one other thing, which is
8 that, you know, residents have asked a number of times how
9 many occupants, how many people would be in this particular
10 restaurant. We weren't given that information.

11 And, also the type of venue that it's going to be.
12 We weren't given any information. They don't know, you know,
13 particularly what type of venue it's going to be.

14 So, that's where they have concerns because we
15 don't know who's going to come in and occupy this space, and
16 what type of events they're going to be having.

17 BZA CHAIR HILL: Okay. I don't know whether that's
18 necessarily within, you know, I mean just as a good
19 neighborly policy, I guess, that since Chairman Hood is here.

20 Like Mr. DeBear, you might be able to provide some
21 information to the ANC as to what you think your clients,
22 what I guess you're asking how many people. It's not really
23 a big space and that --

24 (Simultaneous speaking.)

25 MR. DeBEAR: Yes, and I would just say, I mean it

1 is going to be an eating and drinking establishment use. So,
2 it has to be within that use category.

3 And, then I totally understand what Commissioner
4 Lewis is saying. Again, just at this juncture of the
5 development, my client just doesn't have a tenant so it's
6 impossible to say right now, other than it will be within
7 that eating and drinking establishment use category.

8 BZA CHAIR HILL: Right, it's not a night club
9 upstairs.

10 MR. DeBEAR: Exactly.

11 MS. LEWIS: We don't want it to be. That's what
12 we're trying to prevent it from becoming.

13 BZA CHAIR HILL: Right.

14 MS. LEWIS: A night club.

15 BZA CHAIR HILL: Got it. Commissioner what I'm
16 saying is it can't be, right.

17 And, Commissioner, I live across the street from
18 a night club, it's not that bad. There's a lot of night
19 clubs right across from my bedroom window.

20 You put a little sound machine on and, you know,
21 you'd be surprised what it does.

22 All right, it doesn't matter. You're not going
23 to get one anyway, so okay.

24 All right, anybody else?

25 Yes, Vice Chair John?

1 BZA VICE CHAIR JOHN: Just to decide on sound
2 mitigation, because the client might not get a license from
3 ABRA. So, we can't put this off for some other entity to
4 decide.

5 BZA CHAIR HILL: That's fine.

6 BZA VICE CHAIR JOHN: And, I would like to see from
7 the applicant, what are their options for sound mitigation.
8 Because they're here before us now.

9 BZA CHAIR HILL: Excuse me one moment, I apologize.
10 Go ahead if you can answer that question, Mr.
11 DeBear.

12 MR. DeBEAR: I think Miss, Board Member John's
13 point is well taken. Again, I think again receiving
14 communication from my client, he could agree to no
15 amplification on both the northern and the western side,
16 although the northern it wasn't envisioned anyway to be part
17 of the restaurant use.

18 But the northern and western side of the building.
19 And, again if the Board requires it, no sound amplification
20 after 10:00 p.m.

21 If that's something that is, you know, the ANC is
22 comfortable with, then I know that my client has said he
23 would agree to that.

24 BZA CHAIR HILL: Agree to what again, Mr. DeBear?

25 (Simultaneous speaking.)

1 MR. DeBEAR: No amplification devices facing the
2 west or the north, and no amplification outside whatsoever,
3 after 10:00 p.m.

4 BZA CHAIR HILL: So, Ms. John, can you hear me?

5 BZA VICE CHAIR JOHN: Yes.

6 BZA CHAIR HILL: Yes, like that's also Mr. DeBear,
7 what we're trying to figure out. I mean I don't know how
8 long I want to go into this like, directional stuff.

9 But like, you know, I don't have an issue with
10 like, you know, I know where the penthouse is, and
11 Commissioner, I think you do as well.

12 Like, you know, there being, you know
13 amplification is very broad term also. Like I mean, you
14 know, a little bit of ambient music while people are eating,
15 I don't think that that's an issue, right.

16 MS. LEWIS: No.

17 BZA CHAIR HILL: Amplification being like, you
18 know, loud music. I don't know how to define that --

19 (Simultaneous speaking.)

20 MS. LEWIS: Right.

21 BZA CHAIR HILL: -- term.

22 MR. DeBEAR: There are decibel limits as well,
23 although that's getting a technical expertise way beyond what
24 I could accommodate right now, but.

25 BZA CHAIR HILL: Yes. Ms. John, do you have any

1 thoughts?

2 BZA VICE CHAIR JOHN: Any thoughts. I think that
3 no sound amplification after 10:00 p.m. is fine. Looking at
4 where Quincy Place is and R Street, I don't know.

5 I think what Mr. DeBear is saying that the sound
6 would not carry across the guest rooms on the, in the
7 penthouse. But I don't know that, you know?

8 So I can't address that. So, I would --

9 (Simultaneous speaking.)

10 BZA CHAIR HILL: And, I think 10:00 o'clock's fine.
11 I think 10:00 o'clock's fine. And again, hold on
12 Commissioner. Give me a second, Commissioner.

13 Okay, go on. Anyway, so all right, apparently the
14 Commissioner doesn't think 10:00 o'clock's fine. That's too,
15 I mean I don't want to get into the minutiae of this, and so
16 that's where we're kind of are right now.

17 I am concerned. I don't know exactly how to
18 mitigate this concern.

19 Ms. John seems to have an idea and I trust her.
20 So, Ms. John, do you have anymore ideas?

21 BZA VICE CHAIR JOHN: What I would like instead of
22 trying to do it off the cuff like this, is for the applicant
23 to go back and talk with the ANC, and come up with something
24 the neighbors can live with.

25 Because I don't know, I mean I know these places

1 generate a lot of noise, from experience. And, you know, a
2 few kids standing on a roof deck create a lot of noise,
3 especially after a couple drinks.

4 Even if there's no noise. So, perhaps, perhaps
5 this is something, you know, the ANC can work with the
6 applicant to come up with a workable solution.

7 I can't sit here and tell you. I know what we've
8 done before. We have certainly had the, actually we've
9 prohibited any kind of music, I remember in one particular
10 restaurant.

11 And, then we also had something about sound
12 barriers on certain sides, you know. And, I think we looked
13 at, you know, plans and things like that, that would mitigate
14 the sound.

15 So, I think that this requires some thought given
16 that the ANC is in support of the project. So, I'm sure they
17 could work something out that's reasonable before they get
18 to ABRA. Because we can't outsource it.

19 It might be that ABRA might want something more
20 restrictive than what we have, and that's certainly up to
21 them.

22 BZA CHAIR HILL: Yes, no, I don't want to kick the
23 can to ABRA either. I actually just don't want to like go
24 through and try to wait until, when's your next ANC meeting,
25 Commissioner?

1 MS. LEWIS: We just met yesterday, so it will be
2 the third Tuesday of May.

3 BZA CHAIR HILL: Give me a second, Mr. DeBear.
4 I'll give you, I'm --

5 (Simultaneous speaking.)

6 MR. DeBEAR: Okay.

7 BZA CHAIR HILL: -- Mr. DeBear, you're not having
8 a problem here, we just --

9 (Simultaneous speaking.)

10 MR. DeBEAR: -- the ANC.

11 BZA CHAIR HILL: What?

12 MR. DeBEAR: Just an idea that maybe we could have
13 just a meeting with Commissioner Lewis, who is very well
14 versed in this project.

15 I don't know if the Board would require us to
16 actually present and discuss with the ANC, or if she could
17 have the authority to just work out a condition, which I
18 think we, we are very close on obviously.

19 And, we don't want to get into the minutiae, then
20 maybe so we don't have to wait another month to potentially
21 come back to the Board.

22 BZA CHAIR HILL: Okay.

23 BZA VICE CHAIR JOHN: But the only problem that,
24 Mr. DeBear, it's efficient but I don't know if Ms. Lewis has
25 that delegation to commit the ANC. This has to be a decision

1 of the ANC.

2 So, I don't know --

3 (Simultaneous speaking.)

4 MS. LEWIS: Well, my single member district, the
5 Chairman basically he, Chairman Thomas, he leaves it for us
6 to work out situations in, within our single member district.

7 So, that would be okay.

8 But to answer your question, our next meeting
9 would be on May 17.

10 BZA CHAIR HILL: I don't want to wait until that
11 long. I'm very respectful of, I'm just trying to, sorry to
12 talk so quickly.

13 My other Board members haven't spoken up at all
14 yet. But this is my suggestion. Okay, you know, it's our
15 responsibility, the Board's responsibility, to figure out
16 adverse impact and what we're comfortable with.

17 It's also not the responsibility of the ANC. We
18 get feedback from the ANC, and give them great weight.

19 If, we're going to be here a very long time today,
20 if Mr. DeBear could call the Commissioner and just see if
21 there are some suggestions that might happen over the next
22 hour, okay, right, and then we'll call you back after a
23 couple cases, Mr. DeBear, okay.

24 Because this is a very minor tweak, I think we
25 have right now, in terms of the Board Members, and I see the

1 Commission, sorry, the Chairman.

2 And, me at least, I think this is a minor, a minor
3 tweak. Like I could vote on this as is right now. I don't
4 know whether the votes are there for everybody else, but I
5 could vote on this right now, and you would have ABRA deal
6 with it, okay.

7 But I would prefer to have something, but this is
8 my suggestion to let the applicant speak with the SMD, and
9 the SMD I also think is well-versed in the situation.

10 And, that the Chairman of the ANC has given
11 confidence in the SMD to provide some kind of guidance that
12 the Board could then take under consideration, and determine
13 whether the Board thinks it's appropriate, meaning any
14 adverse impact.

15 Chairman Hood, you had your hand up?

16 ZC CHAIR HOOD: I concur with Vice Chair, or Board
17 Member John. While I understand, I appreciate the single
18 member district, Ms. Lewis, but I'm sure that if they're
19 going to do that, I would feel comfortable with Ms. Lewis,
20 Commissioner Lewis, would reach out to Chairman Bradley
21 Thomas.

22 Because I think we're talking about, I think we're
23 talking about making sure that the chairman is aware. He may
24 have said you can go on this issue, but we're talking about
25 something totally different.

1 And, I think she's versed on it. I've been
2 hearing the conversation. But we run ourselves down some
3 sticky lines and we don't want to cause her any problems if
4 not just her other commissioners disagree with what comes
5 back, but I just think the Chairman should be onboard with
6 whatever we decide within the hour.

7 So, that's just my opinion, and that's a cautious
8 move, I think. I've been around a while; I've seen it.

9 BZA CHAIR HILL: Yes, and I got two more members
10 now. I got two one way, I got two more to find out what they
11 want to do, right.

12 And, I'll ask Mr. DeBear where his client is in
13 terms of the longer-term things and stuff. And, I just will
14 make one comment again.

15 It's not the ANC, it's the Board's responsibility
16 to figure out adverse impact, right. So, that's where,
17 that's why I'm not, that's why I don't have too much
18 difficulty trying to figure this out.

19 I'm just giving my opinion right now in terms of
20 like --

21 (Simultaneous speaking.)

22 ZC CHAIR HOOD: Giving your opinion and not let us
23 respond. So, let me just respond.

24 BZA CHAIR HILL: I'm going to let you respond.

25 ZC CHAIR HOOD: No, but I hear what you're saying.

1 You can't have the last word either, just like I can't. But
2 what I'm saying to you is, while you're saying we know what
3 our responsibility is, but you all have kicked a mitigation
4 method to the ANC and the applicant to work with.

5 So, at the end of the day, all that has to come
6 back to us. That's all I'm saying.

7 BZA CHAIR HILL: Okay, I got two over on that side.
8 Mr. Smith, what do you want to do, or Mr. Blake, what do you
9 want to do?

10 MEMBER SMITH: I'll go next. I agree with Vice
11 Chair John. I think we need to submit a dialogue between Ms.
12 Lewis, or you know ANC. I'd welcome what Chairman Hood was
13 saying that we want buy-in from Ms. Taylor.

14 I would like to see a condition that's a little
15 bit more not necessarily dealing with size, I think we're
16 splitting hairs there.

17 I think Mr. DeBear threw out no amplification on
18 the north side, and if I'm wrong, on the north side is some
19 guest rooms.

20 So, it's a paper line anyway. So, I think that
21 the better condition is we need to make a decision, or the
22 ANC and Mr. DeBear need to make a decision about where the
23 amplified sound, what that cut off time is.

24 When it comes down to noisy 20-somethings on the
25 deck, there are administrative processes to reconcile noise

1 levels that exceed a certain decibel level at the certain
2 point in time.

3 So, I'm fairly comfortable with just, you know,
4 a condition that talks about the amplifying of sound, and
5 when that would be cut off.

6 10:00, 9:00, I mean throwing out 10:00 seems
7 fairly arbitrary from my standpoint right now. So, it will
8 be great to have that dialogue between the ANC and Mr.
9 DeBear.

10 BZA CHAIR HILL: Mr. DeBear, before I figure out
11 where everybody is, which it seems like I'm losing this
12 conversation, where is it with your client in terms of
13 waiting a month before you get another vote on this?

14 MR. DeBEAR: I mean I think my client would greatly
15 appreciate the opportunity. It sounds like we are at the one
16 yard line, as they say.

17 Again, I don't want to make any assumptions but
18 just reading what everyone's saying, and my client's happy
19 to work on a condition on noise.

20 I would appreciate the opportunity to again,
21 forego the full ANC. I think Commissioner Lewis has done a
22 very commendable job throughout this project, and that goes
23 back to an HPRB case two years ago.

24 So, she's well-versed in it and you know, we've
25 had discussions about a community benefits package, et

1 cetera. I think she's, she's comfortable, and can negotiate
2 a condition about noise without having to go back to the full
3 ANC.

4 So, that would allow us to obviously come back to
5 the Board within two to three weeks, hopefully.

6 BZA CHAIR HILL: Okay, so back to, back to the
7 thing. Okay.

8 Again, what does it, well let me specify the
9 question a little bit more. What does it actually do to you
10 in terms of your timeline anyway?

11 Like have you guys built it out yet? Is it built?
12 I mean you're not going to be up there yet. Like a month
13 isn't necessarily going to do anything to you, is it?

14 MR. DeBEAR: It's being built. I can't say what
15 the factors are. I mean the client would like this to be
16 approved, if possible, you know, soon.

17 BZA CHAIR HILL: Right.

18 MR. DeBEAR: Now the ANC --

19 (Simultaneous speaking.)

20 BZA CHAIR HILL: Now that --

21 MR. DeBEAR: giving support, OP's in support. You
22 know, why belabor it?

23 BZA CHAIR HILL: That's okay. Man, this has turned
24 out to be a longer day. I apologize.

25 BZA VICE CHAIR JOHN: Mr. DeBear, you guys should

1 have worked out the noise situation before you came here.
2 Because you know that the Board is going to look at the noise
3 issue.

4 MR. DeBEAR: It was raised in the record yesterday,
5 Board Member John. I understand. Just in terms of the
6 condition, we have nothing to base it on.

7 BZA VICE CHAIR JOHN: Mr. DeBear, lets, I'm not
8 going to get into the jurisdiction of the ANC's ability to
9 delegate something to one SMD member. I'm not going to get
10 into that.

11 We look at the recommendation of the ANC, and
12 there are certain restrictions and how that is done.

13 So, I think it's good if the community could make
14 recommendations to the Board, because that's what we're
15 asking for. We're not necessarily going to defer to whatever
16 comes back to us because ultimately, the Board makes a
17 decision.

18 It's a lot easier for us to know where the
19 community is. I could sit here and impose my own conditions,
20 but I don't think that's fair to anybody.

21 MR. DeBEAR: Understood.

22 BZA VICE CHAIR JOHN: Okay, thank you.

23 BZA CHAIR HILL: Okay, all right.

24 So, it seems like we're going to put this off,
25 okay.

1 So, I'm going to go ahead and Commissioner Lewis,
2 when are you, when's your next meeting?

3 MS. LEWIS: May 17.

4 BZA CHAIR HILL: May 17. So, could you actually,
5 okay, so May 17. Then we could come back here for a decision
6 on May 25.

7 And, so if you could get us something,
8 Commissioner, concerning your ANC's concerns about amplified
9 noise in the penthouse, due to the fact that this is being
10 changed from just the people that can use the hotel, people
11 that could use the hotel, and also now that it being in the
12 public, okay.

13 And, work with the applicant to come up with a
14 condition on that. I'll leave the record open for that.
15 We'll also leave the record open for what Chairman Hood had
16 asked about, and I think another. I can't remember, about
17 how much is being put into the fund, the housing --

18 (Simultaneous speaking.)

19 MR. DeBEAR: I actually have that figure now, Chair
20 Hill. So far, \$13,445.67.

21 BZA CHAIR HILL: Okay. So, go ahead and put that
22 in the record somehow.

23 MR. DeBEAR: Okay.

24 BZA CHAIR HILL: Okay, and then we'll make this set
25 for decision on the 25th of May.

1 Mr. Moy, if we do this for decision on the 25th
2 of May, when do you need stuff from the applicants?

3 And you're on mute, Mr. Moy, if you are trying to
4 talk.

5 MR. MOY: Okay, let's work backwards here. So this
6 is for decision-making on May 25?

7 BZA CHAIR HILL: Yes.

8 MR. MOY: The ANC is having their meeting on May
9 17, so if the ANC can provide their submission by, okay let's
10 hold that thought.

11 And, you're also asking for supplemental
12 information from the applicant? Was there something else,
13 additional material from the Office of Planning?

14 BZA CHAIR HILL: No.

15 MR. MOY: No? Okay, are you going to be requiring
16 any responses from the parties?

17 BZA CHAIR HILL: No, I mean it's just going to be
18 those are going to be the parties.

19 MR. MOY: Okay. So, I'm guessing, correct me if
20 I'm wrong, then the applicant should provide their submission
21 prior to the ANC's meeting on May 17.

22 So, if that's the assumption, then let's go with
23 the applicant making their filing as soon as possible. So,
24 if and I'm asking the applicant at this point.

25 Today's the 20th, is it possible for the applicant

1 to provide your supplemental by, in a week's time, let's say
2 April 27?

3 Okay, April 27. And then ANC.

4 BZA CHAIR HILL: I don't understand that part, Mr.
5 DeBear.

6 Like you have to talk with the ANC, figure out
7 what's going on. We don't need a big rush on it. Like if
8 you give it to, the ANC would then have a chance. Their
9 meeting on the 17th.

10 If you give us something, whatever it is by the
11 11th of May, okay, I'm sorry, Mr. Moy, I'm hijacking your
12 schedule.

13 MR. MOY: No, no, it's your schedule. Help
14 yourself.

15 BZA CHAIR HILL: Then that's plenty of time, Mr.
16 DeBear, for you to talk to the ANC, isn't that correct?

17 MR. DeBEAR: Again, I was just assuming you didn't
18 want to hear from us after the ANC meets, which is when the
19 vote will occur on the actual condition.

20 BZA CHAIR HILL: I would assume that you're going
21 to figure it out by the 11th, okay.

22 MR. DeBEAR: I would love that.

23 BZA CHAIR HILL: You submit whatever it is. The
24 ANC votes on the 17th, okay. And, then you, Commissioner,
25 if you can make sure we get something by the 20th, as to your

1 vote, okay?

2 And, then we'll make a decision on the 25th.

3 MS. LEWIS: Okay.

4 MR. DeBEAR: Sounds good.

5 BZA CHAIR HILL: Okay. Does everybody know what's
6 going on?

7 All right, do my fellow Board Members need
8 anything before I close the hearing, except for what was just
9 asked for?

10 Okay, Ms. Bridges, are you there?

11 MS. BRIDGES: Yes.

12 BZA CHAIR HILL: All we get from DDOT usually, is
13 an objection/no objection. You guys are welcome anytime.
14 We're here every Wednesday.

15 MS. BRIDGES: Okay, thank you.

16 BZA CHAIR HILL: Okay. All right, thank you.

17 MR. DeBEAR: Thank you to the Board.

18 BZA CHAIR HILL: Thank you.

19 Closing the record and the hearing. Excusing
20 everybody.

21 MR. MOY: All right. Case Application Number
22 20674. This is for Daniel and Elizabeth Figoni. I'm not
23 sure I pronounced that correctly. F-I-G-O-N-I. And this is
24 a self-certified application requesting special exception
25 pursuant to Subtitle X § 901.2 and two areas of relief under

1 Subtitle D § 5201 from the front setback requirements of
2 Subtitle D § 1205.2 that says a front setback must be
3 consistent with at least one of the immediate adjacent
4 properties on either side of the property; and, finally, to
5 allow an accessory apartment in a principal dwelling pursuant
6 to Subtitle U § 253.4.

7 This project would construct a front porch, third-
8 story with roof deck and rear addition, and an accessory
9 apartment in the cellar of an attached two-story with cellar
10 principal dwelling. This is in the R-20 zone. Property
11 subject site is at 3724 T Street, N.W. (Square 1308, Lot 72).
12 And I believe, Mr. Chairman, there is a letter of support
13 that was submitted within 24-hour block.

14 BZA CHAIR HILL: All right, Mr. Moy. Unless the
15 Board has any issues, I'd like to go ahead and see the
16 letter. If, Mr. Moy, if you could go ahead and ask staff to
17 submit that into the record, please.

18 Mr. Cross, could you introduce yourself for the
19 record?

20 MR. CROSS: Afternoon. Michael Cross, project
21 architect. I'm joined here by project designer Tori Gundrum.

22 BZA CHAIR HILL: Okay. Give me one second. So --
23 one second again. Okay. Mr. Cross, have you been in
24 discussions with OP?

25 MR. CROSS: Excuse me. We have. Sorry. We have.

1 We were expecting to have an updated response from the zoning
2 administrator at this point. We had been told we would a
3 couple of times, as late as this morning by close of business
4 today. But I still don't have that.

5 I can present a pretty consolidated argument for
6 why we're here again with this as a special exception, but
7 we understand OP's position at this given time.

8 BZA CHAIR HILL: Okay. So we might put you off
9 is what you're saying.

10 MR. CROSS: I do anticipate that there's a
11 continuance here. What I'm hoping we can do is get a
12 continuance to get an updated report from OP that would at
13 least speak to that front porch, should it be considered a
14 special exception, so that we could have a decision at the
15 next hearing.

16 BZA CHAIR HILL: Hear the argument you mean. And
17 we're waiting for the zoning administrator?

18 MR. CROSS: I am.

19 BZA CHAIR HILL: You are. When do you think you
20 might hear from the zoning administrator?

21 MR. CROSS: I don't know. I really thought that
22 close of business today was going to be --

23 BZA CHAIR HILL: Okay, okay. Mr. Young, is there
24 people that are here wishing to testify?

25 MR. YOUNG: No, we do not.

1 BZA CHAIR HILL: Okay, all right. What I would
2 suggest then, Mr. Cross, is let's go ahead and wait until we
3 have something from the Office of Planning that's a little
4 bit more, that gives us a little bit more information on
5 whether it's variance relief or special exception, and we can
6 wait until that has an opportunity to be cleared up through
7 the zoning administrator, I guess, first. If you are -- I
8 just don't know when to come back, I don't know when to put
9 you back here is what I'm trying to figure out; and I don't
10 know, Ms. Fothergill, if you could introduce yourself for the
11 record, if you have any suggestion as to when we could
12 possibly get back here.

13 MS. FOTHERGILL: Good afternoon, Chair Hill, and
14 members of the Board. I'm Anne Fothergill for the Office of
15 Planning for BZA Case 20674.

16 At this point, there's no supplemental report for
17 the Office of Planning to provide because we have been told
18 that this requires a variance and the applicant hasn't filed
19 an application for a variance. So I'm not sure, unless
20 something to the contrary comes in from the zoning
21 administrator, there's a similar case that determination was
22 made that front setbacks do not qualify for a special
23 exception. So I'm not sure.

24 BZA CHAIR HILL: Okay, I got you. Thanks, Ms.
25 Fothergill. So, Mr. Cross, what would you like to do?

1 MR. CROSS: At the end of the day, we need OP to
2 review the vestibule for our argument to make any sense,
3 right? So it seems like, in the interest of time for all of
4 us, I would understand your position if you'd like to
5 continue this without hearing it today, and I think that we
6 could, you know, reconvene potentially in a month, if that
7 gives OP enough time for them to potentially turn around a
8 report, should we be able to provide an updated response
9 suggesting that this is something that can be reviewed as a
10 special exception, as it has been in other cases and --

11 BZA CHAIR HILL: Or if you make the variance
12 argument, something for them --

13 MR. CROSS: We probably won't be making a variance
14 argument --

15 BZA CHAIR HILL: Okay. Well, you do whatever
16 you're going to do is what you're saying. So you do whatever
17 you're going to do.

18 Mr. Moy, when is Memorial Day? When do we --
19 Memorial Day is the 6th? Are we here on the 1st? When is
20 Memorial Day?

21 MR. MOY: The last day of May, May 30th.

22 BZA CHAIR HILL: Right. So we're not here on the
23 1st.

24 MR. MOY: June 1st? No.

25 BZA CHAIR HILL: Right.

1 MR. MOY: Unless you want to be.

2 BZA CHAIR HILL: No, thank you. So the 25th, how
3 many cases do we got on the 25th?

4 MR. MOY: The 25th of May or June?

5 BZA CHAIR HILL: May.

6 MR. MOY: We have 11 cases and three expedited
7 cases.

8 BZA CHAIR HILL: Okay. What about the 8th of
9 June?

10 MR. MOY: We have nine cases.

11 BZA CHAIR HILL: Okay. Mr. Cross, I don't know,
12 I'm going to put you on the 9th of June, I'm sorry, the 8th
13 of June, okay? And then, by then, hopefully, you've figured
14 out what exactly you're going to be arguing before us.

15 MR. CROSS: I do appreciate that, and I appreciate
16 OP's time to date and patience as we await some additional
17 details.

18 BZA CHAIR HILL: Okay, all right. So we're
19 continued to June 8, okay? Okay, all right, thank you.

20 Oh, I'm sorry, Vice Chair John had a question.

21 BZA VICE CHAIR JOHN: Thank you. I'm just trying
22 to find out what Ms. Fothergill is expected to submit. Are
23 you still with us, Ms. Fothergill?

24 MS. FOTHERGILL: I am. My understanding is that
25 by before this time, the applicant will get clarification

1 from the zoning administrator either that they need to change
2 their application for variance and we would analyze that
3 request or if they get a different interpretation from the
4 zoning administrator than we've had, that it does qualify
5 under 5201 for a special exception, then their application
6 would be analyzed for that.

7 BZA VICE CHAIR JOHN: Okay. So if Mr. Cross is
8 not submitting a variance request and it is considered to be
9 not subject to a special exception, so, Mr. Cross, were you
10 planning to withdraw the application at that point?

11 MR. CROSS: I would only be withdrawing that
12 portion of this application. We are still seeking relief for
13 the accessory dwelling unit in the cellar, which is in unique
14 condition. Well, actually, both of these reliefs are, at the
15 end of the day, unique to the R-20 zone.

16 BZA VICE CHAIR JOHN: Okay, thank you. Sorry, Mr.
17 Chairman. That helps.

18 BZA CHAIR HILL: No, that's okay. Does anybody
19 else have any comment? Okay, all right. Thank you. Going
20 to close the hearing and continue the hearing on 6/8.

21 Okay. We got four left. Can we take a five-
22 minute break? Ten-minute break? Ten-minute break.

23 (Whereupon, the above-entitled matter went off the
24 record at 6:01 p.m. and resumed at 6:15 p.m.)

25 BZA CHAIR HILL: All right, Mr. Moy. You can call

1 our next case when you get the chance.

2 MR. MOY: The Board has returned to its public
3 hearing session, and the time is 6:15 p.m.

4 The next case before the Board is Application
5 Number 20676 of Miguelina, M-I-G-U-E-L-I-N-A, Zapata. This
6 is a self-certified application for a special exception
7 relief under Subtitle U § 203.1(h), pursuant to Subtitle X
8 § 901.2. This would allow a child development center. This
9 is for 40 children and 10 staff in an existing two-story road
10 dwelling.

11 The subject site is located in the R-3 zone,
12 address 4500 New Hampshire Avenue (Square 3248, Lot 77).

13 BZA CHAIR HILL: Okay. Ms. Williams, can you hear
14 me? I'm sorry. Ms. Wilson, can you hear me? Yes, could you
15 introduce yourself for the record, please?

16 MS. WILSON: Yes. Alex Wilson from Sullivan &
17 Barros on behalf of the applicant in this case.

18 BZA CHAIR HILL: Great. Ms. Wilson, if you could
19 go ahead and walk us through your application as to why you
20 believe you're meeting the standard for us to grant the
21 relief requested. I'm going to put a little time on the
22 clock there, and you can begin whenever you like.

23 MS. WILSON: Great. Thank you so much. We have
24 a very brief presentation, if Mr. Young could please pull
25 that up. And I am here today with the applicants, Miguelina

1 Zapata and Carolina Muscoso, if you do have questions for
2 them at the end of our presentation.

3 Next slide, please, Mr. Young. The applicants are
4 proposing to convert the existing single-family dwelling into
5 a bilingual Montessori school. It is intended to serve the
6 residents in Ward 4 and the local community. I believe that
7 they've already had some interested applicants just in their
8 neighbor outreach, which is great for all parties.

9 The owners are highly-qualified childcare
10 professionals. They have extensive Montessori experience,
11 and noted this in our pre-hearing statement in Exhibit 23-A.
12 A child development center is permitted via special exception
13 in the R-3 zone pursuant to U § 203.1(h), which is the relief
14 we are seeking here today.

15 The applicant has received seven signatures on a
16 petition in a support letter --

17 BZA CHAIR HILL: Ms. Wilson, Ms. Wilson, you're
18 breaking up a lot. Oh, okay. Or you can turn off your
19 camera maybe; I don't know.

20 MS. WILSON: Can you hear me now?

21 BZA CHAIR HILL: Yes.

22 MS. WILSON: Apologies. I'm just reading the
23 information on this slide. I didn't say anything extra so --

24 BZA CHAIR HILL: We heard most of it. We got it
25 all. Just go ahead.

1 MS. WILSON: Great. So, again, we do have support
2 from the one adjoining neighbor who shares a wall with this
3 building, and they did propose some conditions and we've
4 agreed to all conditions. The Office of Planning is
5 recommending approval and has incorporated some of those
6 conditions into the recommendation of approval. DDOT has no
7 objection, and ANC 4-C submitted a resolution in support with
8 conditions identical to those neighbor conditions.

9 Next slide, please. This just lists the neighbor
10 conditions and the ANC conditions, and we have agreed to all
11 of these. The first one is that we limit the number of
12 students in attendance to 40 and staff to 10. Originally,
13 we were proposing 60 students and 15 staff. So we did reduce
14 that in talks with the ANC and the neighbor. That was their
15 preference to limit it.

16 We're limiting the operational hours from 7:30
17 a.m. to 6:30 p.m. Monday through Friday. Soundproofing the
18 shared wall, guaranteeing the front yard will not be
19 converted into a permanent play area, and that pick-up and
20 drop-off procedures don't block the alleyway of the garage
21 of the next-door neighbor.

22 Next slide, please. This is just showing the
23 location of the property at the intersection of New Hampshire
24 Avenue and Allison Street, N.W.

25 Next slide, please. This is showing photographs

1 of the property. 4502 New Hampshire is the adjacent property
2 that I've been talking about.

3 Next slide, please. And this shows the view from
4 Allison Street. That's the side of the property.

5 Next slide, please. Regarding the general special
6 exception requirements, the applicant has worked with
7 neighbors and the ANC to develop appropriate conditions since
8 the initial filing. Again, I mentioned we reduced the number
9 of students that we originally proposed.

10 Next slide, please. In terms of the specific
11 requirements of U § 203.1(h), DDOT has reviewed the pick-up
12 and drop-off plan, which is detailed in the pre-hearing
13 statement, and has no objection. In terms of an off-site
14 play area, the children will be walked there. It is
15 approximately a tenth of a mile away, or a two-minute walk;
16 and there are adults assigned and there will be a specific
17 assigned time for each group to go out and play.

18 We have agreed to all the neighbor conditions.
19 And, of course, the Board can incorporate as many of those
20 as it wants in the order. We are okay with all of those
21 conditions.

22 And for the last one, based on a review of the
23 area and publicly-available information, there's not another
24 child development center within 1,000 square feet of the
25 property.

1 Next slide, please. That concludes our
2 presentation, and we are happy to answer any questions.

3 BZA CHAIR HILL: Okay. Does anyone have any
4 questions for the applicant? Okay. I'm going to turn to the
5 Office of Planning.

6 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman
7 and members of the Commission. Maxine Brown-Roberts on Case
8 20676 for a daytime care with 40 children and 10 staff
9 members at 4500 New Hampshire Avenue, pursuant to the
10 requirements of Subtitle U § 203.1(h) and Subtitle X § 901.

11 In the interest of brevity, I think the applicant
12 has presented an analysis that reflects what is in the Office
13 of Planning report, and we will stand on the record and
14 recommend approval of the proposed child development center
15 with the conditions that were outlined in our report or any
16 additional ones that the Board may see fit.

17 Therefore, again, we recommend approval, and I'm
18 available for questions. Thank you.

19 BZA CHAIR HILL: Thank you, Ms. Brown-Roberts.
20 Does the Board have any questions for the Office of Planning?
21 Does the applicant -- oh, sorry, Mr. Blake.

22 MEMBER BLAKE: Ms. Brown-Roberts, there are two
23 conditions that you are not including in your recommendations
24 that were included in the applicant and the ANC, specifically
25 those with regard to the, I think it's the alley and with

1 regard to soundproofing. Can you address those? Did you
2 just not see them or they came later?

3 MS. BROWN-ROBERTS: No. I reviewed them, and,
4 number one, regarding the soundproofing, I don't know that
5 that is something that is, you know, in the purview of the
6 BZA to do. I think that's just an agreement between two
7 neighbors. And also regarding the alley, because I think
8 that DDOT was going to opine on that, so that was a little
9 outside of our purview. So that was the two reasons why I
10 didn't include those two in there.

11 MEMBER BLAKE: Okay, thank you.

12 BZA CHAIR HILL: All right. Mr. Young, is there
13 anyone here wishing to testify?

14 MR. YOUNG: We do not.

15 BZA CHAIR HILL: All right. Sorry. Mr. Smith.

16 MEMBER SMITH: Just for clarification on one of
17 the conditions that you read, the full condition says the
18 front yard with nothing converted for permanent play. Do you
19 mean a play structure? Is that specifically what you mean?

20 MS. BROWN-ROBERTS: I mean, sometimes, they
21 convert it into a sandbox or anything like that, so we would
22 try to preclude both, yes.

23 MEMBER SMITH: Okay. I just want --

24 MS. BROWN-ROBERTS: We're not saying that children
25 can't run around in the grass, you know. What we're saying,

1 we don't want it to be designated as the play area.

2 MEMBER SMITH: Okay, all right. I think I get
3 what you mean. When we put that in the record, we might want
4 to change that language out because I could see how that
5 could be misconstrued.

6 MS. BROWN-ROBERTS: No problem.

7 MEMBER SMITH: Thank you.

8 BZA CHAIR HILL: Which parts misconstrued, Mr.
9 Smith?

10 MEMBER SMITH: The front yard will not be
11 converted for permanent play. I'm assuming that means, like,
12 some type of play structure, just based off what they're
13 stating: a sandbox, a playground --

14 BZA CHAIR HILL: Right, right, right. So I'm just
15 trying to understand how we would change that condition if
16 we wanted to tweak it.

17 MEMBER SMITH: I think we should just reference
18 the structure.

19 BZA CHAIR HILL: Okay.

20 MEMBER SMITH: Like, the front yard or play
21 structure shall be prohibited within the front yard,
22 something of that nature.

23 BZA CHAIR HILL: Okay. A permanent play
24 structure. Okay, okay, all right. Anyone else?

25 All right. Ms. Wilson, do you have anything

1 before we leave?

2 MS. WILSON: I'll see you at the end of the night
3 at the last hearing, too.

4 BZA CHAIR HILL: Okay, great. All right. I'm
5 going to close the hearing on the record. Excuse everyone,
6 please.

7 Okay. I don't have any particular issues with
8 this application. I thought that the burden of proof that
9 the applicant has presented meets the standard for us to
10 grant the relief requested. I'd also agree with the analysis
11 that the Office of Planning had provided. I would agree with
12 their conditions that are in Exhibit 24 and also tweaking one
13 so that it is the front yard will not be converted for
14 permanent play equipment or facility is how I would kind of
15 word that condition, and I'll see if Mr. Smith has something
16 other than that.

17 And I also would agree with the analysis that the
18 ANC has provided. Their conditions, I think that there is
19 a lot of overlap with the Office of Planning, but I would
20 stick with the Office of Planning and note in the record that
21 they have agreed to conditions that the ANC has put forward
22 because some of those are outside of our purview, as well as
23 even the ones that are outside of our purview with the
24 soundproofing for the neighbor's home. Although, actually,
25 I could even argue that might be within our purview, but I'm

1 just going to leave it the way it is based upon the argument
2 that the Office of Planning has put forward. And I will be
3 voting to approve.

4 May get any other responses from Mr. Smith?

5 MEMBER SMITH: My recommendation is to change that
6 condition to permanent play structures shall be prohibited
7 within the front yard.

8 BZA CHAIR HILL: Okay. Mr. Blake.

9 MEMBER BLAKE: I'll be voting in favor of the
10 application, incorporating conditions as you specified. I
11 believe the applicant met the burden of proof pursuant to U
12 § 203.1(h), as well as the general standards of 901.2. I'll
13 reference the Office of Planning's analysis, which I agree
14 with as written as to how the applicant has met the
15 requirements of U § 203.1(h) and the general standard.

16 I give great weight to the Office of Planning's
17 recommendation for approval. ANC 4-C voted in support of the
18 application with the conditions, as we referenced. Adjacent
19 neighbor has provided conditional support, and also there's
20 a petition signed in support by numerous signatures by
21 neighbors.

22 I'll be voting in favor.

23 BZA CHAIR HILL: Thank you. Chairman Hood.

24 ZC CHAIR HOOD: I, too, will be voting in favor.

25 I just can't believe, though, that Board Member Smith

1 wouldn't take me to the playground. No, I'm just playing.
2 But I would agree with his assessment of the structures in
3 the front. I would agree with Board Member Smith, I would
4 agree with Board Member Blake.

5 And what I liked about this case the most is the
6 way the ANC worked together, even though some of the
7 conditions were not within our purview and some of it mirrors
8 what the Office of Planning had, I believe, that the
9 community worked well together on this. And this looks like
10 this is a win/win, and I think the record speaks for itself
11 and the merits of this case require relief, as Board Member
12 Blake has mentioned in U § 203.1(h) and now 1.2.

13 I think the relief requested warrants our
14 approval. Thank you, Mr. Chairman.

15 BZA CHAIR HILL: Thank you, Chairman Hood. Vice
16 Chair John.

17 BZA VICE CHAIR JOHN: I agree with everything
18 that's been said, especially with respect to the conditions.
19 I would just note that the Board considered the ANC's
20 legally-relevant issues and concerns and agree that the
21 matters of soundproofing especially is not within the Board's
22 jurisdiction, but the applicant agreed to it.

23 BZA CHAIR HILL: Thank you, Vice Chair John. All
24 right. I'm going to make a motion to approve Application
25 Number 20676, as captioned read by the Secretary, including

1 the conditions that are in the Office of Planning's report
2 in Exhibit 4. However, tweaking the last condition to be
3 permanent play structures shall not be prohibited, shall be
4 prohibited from the front yard, and ask for a second. Ms.
5 John.

6 BZA VICE CHAIR JOHN: Second.

7 BZA CHAIR HILL: The motion has been made and
8 seconded. Mr. Moy, if you'd take a roll call.

9 MR. MOY: When I call your name, if you would
10 please respond with a yes, no, or abstain to the motion made
11 by Chairman Hill to approve the application for the relief
12 requested, along with the conditions as stated in the Office
13 of Planning report, as well as the modification to the
14 language under the last condition, as the Chairman just
15 cited. The motion was seconded by Vice Chair John.

16 Zoning Commission Chair Anthony Hood.

17 ZC CHAIR HOOD: Yes.

18 MR. MOY: Mr. Smith.

19 Mr. Blake.

20 Vice Chair John.

21 BZA VICE CHAIR JOHN: Yes.

22 MR. MOY: Chairman Hill.

23 BZA CHAIR HILL: Yes.

24 MR. MOY: Staff would record the vote to 5 to zero
25 to zero, and this is on the motion made by Chairman Hill to

1 approve with the conditions, as shown in the Office of
2 Planning report. The motion was second by Vice Chair John.
3 Also in support of the motion, Zoning Chair Anthony Hood, Mr.
4 Smith, Mr. Blake, and, of course, Vice Chair John and
5 Chairman Hill. The motion carries on a vote of 5 to zero to
6 zero.

7 BZA CHAIR HILL: Great. Thank you, Mr. Moy. When
8 you get a chance, if you can call our next one.

9 MR. MOY: The next case is Application Number
10 20677 of Selma M. Levine School of Music d/b/a Levine Music.
11 This is a self-certified application for special exception
12 under Subtitle U § 203.1(m), pursuant to Subtitle X § 901.2.
13 This would allow a private school use.

14 This is located at 2801 Upton Street, N.W.(Square
15 2049, Lot 809). The property is located in the R-8 zone.

16 BZA CHAIR HILL: Okay. Ms. Roddy, can you
17 introduce yourself for the record, please?

18 MS. RODDY: Christine Roddy with Goulston &
19 Storrs, land use counsel for the applicant, Levine Music.

20 BZA CHAIR HILL: Okay, great. Thank you. Ms.
21 Roddy, if you can go ahead and walk us through your
22 application as to why you believe your client is meeting the
23 standard for us to grant the relief requested. I'm going to
24 put 15 minutes on the clock there, so I just know where we
25 are. And you can begin whenever you'd like.

1 MS. RODDY: Sure. Thank you. As I said, I'm the
2 land use counsel. And as Mr. Moy said in his opening, the
3 application pertains to the use of 2801 Upton Street, N.W.,
4 which is located in the R-8 zone, for use as a private school
5 and that private school use is allowed in the R-8 zone as a
6 special exception under U § 203.1(m).

7 And we do have a PowerPoint, and it's helpful to
8 just show the context of the school, where it's located. And
9 I think that's the second slide.

10 You can see the school is surrounded by some
11 institutional uses, and there are residential uses, as well.
12 The school was before the Board in 1994 originally to seek
13 this special exception relief for use as a private school.
14 The campus has formerly been used by the Carnegie Institute,
15 and the school had purchased it from the Carnegie Institute.
16 The Board obviously granted the special exception at that
17 time to allow the private school use, as well as approval to
18 build a performance auditorium addition to the campus.

19 The approval that the Board gave was subject to
20 a series of conditions, and those are listed in Order 15984,
21 and that is Exhibit 12 of this record. One of the conditions
22 was a 25-year term on the approval, and that 25-year term is
23 set to expire on June 12th. So it has not yet expired, but
24 we are coming up against that deadline. So we are here to
25 extend Levine's use of the campus as a private school. We

1 are also simultaneously proposing to remove the conditions
2 that pertained to the performance auditorium since it was
3 never built, and we are also proposing to make some modest
4 modifications to other conditions. And those other
5 conditions would include extending Saturday hours, as well
6 as eliminating the Saturday cap on students; increasing
7 Sunday usage from 12 to 36 Sundays, which is in line with the
8 school year. It would allow for the continued use of the
9 campus by Levine without a term; and, finally, it would allow
10 introduction of outdoor performances, so long as those
11 performances are not amplified and would end by 7 p.m.

12 And the proposed language of those conditions, a
13 redline actually against the original conditions, is included
14 at Exhibit 16, and that's our statement. It's also included
15 as part of OP's report. And we did not hear any concerns
16 from the community, from the Office of Planning, or from DDOT
17 about these changes.

18 So this application meets the special exception
19 standard, and Levine has demonstrated this over the course
20 of its operation there for the past 25 years. They have a
21 good relationship with their neighbors, and I think that
22 their track record speaks for itself.

23 I think the record is complete with information
24 demonstrating that the school won't be objectionable to
25 neighbors because of noise, traffic, or the number of

1 students. I'm happy to walk through their operations to show
2 how that's consistent, as well as talk about the topography
3 of the site. But I think that the record is complete with
4 that.

5 We are happy to be here with the support of the
6 Office of Planning, with DDOT, as well as the ANC. They had
7 their meeting last night, and they voted in support. And our
8 single member district representative was on earlier today
9 but, unfortunately, couldn't stay on to speak in support of
10 the application. But she did submit a letter not only the
11 resolution of the ANC but a letter from herself in support
12 of the application.

13 To back up to DDOT's support of the application,
14 they did condition their support on the incorporation of a
15 condition to comply with the TDM plan at Exhibit 21, and we
16 had no objections to doing that. And so we would incorporate
17 that, as well.

18 We do have two witnesses who are available to
19 testify on behalf of the school. We have Mr. Jeffrey Tribble
20 who is president and CEO of the school, as well as Daniel
21 Solomon, a transportation engineer with Gorove Slade; and
22 they are both prepared to walk through the presentation.
23 However, we are also comfortable resting on the record in the
24 interest of time and making them both available to answer
25 questions, given how long your day has been so far.

1 BZA CHAIR HILL: Okay. Thanks, Ms. Roddy. So
2 just to be clear, in the Office of Planning's report, the
3 conditions 1 through 11, those are all the ones that are
4 incorporated from the old order, as well as the tweaks that
5 you're making?

6 MS. RODDY: That's correct.

7 BZA CHAIR HILL: Okay, okay. And for the record,
8 these are the conditions that you had presented before the
9 ANC?

10 MS. RODDY: That is correct.

11 BZA CHAIR HILL: Okay, all right. Does anybody
12 have any questions for the applicant? Sure. Chairman Hood.

13 ZC CHAIR HOOD: Sometimes, I get off scope for a
14 minute, but the Levine School, I had a colleague that really
15 pushed the Levine School. And if he was here, this would be
16 a slam dunk. Anyway, his name is Jim Hanahan, and he always
17 talked about the Levine School. He's now passed, but he was
18 on the Zoning Commission with me some years back.

19 So I just wanted to say that. Thank you.

20 BZA CHAIR HILL: Thank you, Chairman Hood. Anyone
21 else have any questions?

22 BZA VICE CHAIR JOHN: Yes.

23 BZA CHAIR HILL: Sure, Ms. John.

24 BZA VICE CHAIR JOHN: Can you provide
25 clarification on when the order will expire if it was issued

1 in November of 1995?

2 MS. RODDY: Sure. So that order was appealed to
3 the Court of Appeals, and the Court of Appeals issued its
4 order June 12th, 1997. So it will expire on June 12th of
5 this year.

6 BZA VICE CHAIR JOHN: Okay. Thank you.

7 BZA CHAIR HILL: Let's see. Anyone else? All
8 right. Going to turn to the -- oh, sorry, Mr. Blake.

9 MEMBER BLAKE: Yes. I want to just clarify the
10 parking spaces you had on-site. I know there's not a parking
11 requirement per se, but there is expectation that there will
12 be parking, particularly given the fact that you will start
13 to expand a little bit in some of the programs. Could you
14 talk -- in one document, I saw there was 82, I saw 75, I saw
15 69. What is the right number on parking?

16 MS. RODDY: So there is, as you said, there is no
17 requirement. It is a historic resource that was built before
18 the zoning regulations, and there have been no additions that
19 would trigger additional parking.

20 That said, when we went through the zoning process
21 in 1994, the Board noted a requirement of 69 spaces. And I
22 will let Mr. Solomon confirm, but we have, I believe it's 72.
23 We are beyond the 69 spaces on-site now, but he can give the
24 precise number.

25 MR. SOLOMON: That's what we found out there. So

1 very close, but yes.

2 MEMBER BLAKE: And as far as bicycle parking, I
3 think you said you had four spaces, four short-term parking
4 right now.

5 MR. SOLOMON: There are four existing bicycle
6 parking spaces there.

7 MEMBER BLAKE: All right. And that will be
8 maintained?

9 MR. SOLOMON: Correct.

10 MEMBER BLAKE: Okay. I know it's not -- I think
11 it required two or maybe something like that, right?

12 MS. RODDY: There's actually no requirement, again
13 because we aren't proposing any new construction in
14 connection in connection with this application.

15 MEMBER BLAKE: Okay. That's all I have for now.

16 BZA CHAIR HILL: Okay, thanks. I forgot to
17 mention to my fellow Board members, my nephews take lessons
18 at this place. So that's not going to stop me from being
19 able to speak whatever because I'm not taking lessons there,
20 but they do.

21 Okay, all right. So can I turn to the Office of
22 Planning -- oh, Mr. Moy.

23 MR. MOY: Mr. Solomon spoke, I believe Ms. Roddy
24 had asked for expert status on transportation for Daniel
25 Solomon. He's currently not in our witness book.

1 BZA CHAIR HILL: Got it. That's fine. Let's go
2 ahead and take care of that just in case we ever have to do
3 this again.

4 Let me ask Mr. Blake, you have a question, Mr.
5 Blake?

6 MEMBER BLAKE: Yes, I have one more question. And
7 I apologize; my computer went off for a second. There was
8 one modification that came out of the existing one, which I
9 had a question about and a little bit of a concern. That
10 modification was you had established before -- what do you
11 call it -- a liaison committee that worked with the ANC, the
12 other, Howard Law School, to kind of just monitor and report
13 regularly about things that happened, you know, traffic
14 issues and so forth. That function is going to be eliminated
15 by the new terms. I was wondering why you would eliminate
16 it. Was there an issue functionally, and do you have another
17 structure that will maintain that interaction? I also
18 realize you will be doing more outdoor events with the
19 community, so that might be relevant; so I'd be curious to
20 know how that's being managed.

21 MS. RODDY: Sure. So that condition had come out
22 of, again, that performance auditorium that had been approved
23 in '94 but was never constructed. So there was a lot of
24 concern about the operations and the traffic that would be
25 associated with that. And so the liaison committee really

1 fell away when it was no longer needed because the auditorium
2 never came to be.

3 We are working with Van Ness Main Street with
4 respect to the outdoor concerts, as well as the ANC has
5 established a school and university committee that we will
6 be in touch with, as well, with respect to coordinating the
7 outdoor efforts, outdoor concert efforts.

8 MEMBER BLAKE: Thank you.

9 BZA CHAIR HILL: Okay. Thank you, Mr. Blake. I
10 reviewed Mr. Solomon's resume. I don't have any issues with
11 him being submitted as an expert witness in transportation.
12 Does anyone have any issues and, if so, raise your hand?
13 Okay. Mr. Solomon, Tel Aviv is a beautiful place. I've had
14 an opportunity to visit and nice place to stay.

15 All right. Let's see. Okay. Can I turn to the
16 Office of Planning, please?

17 MS. VITALE: Good afternoon, Mr. Chair, members
18 of the Board. Elisa Vitale with the Office of Planning for
19 BZA Case 20677. The Office of Planning is recommending
20 approval of the requested special exception relief for the
21 private school use.

22 I would like to correct my report on the record.
23 We did note in our report that the order had expired. And
24 as clarified by Ms. Roddy, with the appeal, the date for the
25 order expiration is, in fact, not until June of this year.

1 So I did want to correct that on the record, but we are
2 recommending approval of the special exception relief subject
3 to the conditions that are outlined in our report. I think
4 we do have the TDM exhibit number. That would be Exhibit 21,
5 so I just wanted to add that, as well, for the record.

6 I will conclude my report there, but I'm available
7 to answer any questions. Thank you.

8 BZA CHAIR HILL: Okay. Does anybody have any
9 questions for the Office of Planning? Ms. Roddy, do you have
10 any questions for the Office of Planning?

11 MS. RODDY: No.

12 BZA CHAIR HILL: Ms. Roddy, I'm curious. This was
13 appealed, meaning there was a group of people that protested
14 it?

15 MS. RODDY: Yes. And it was, like I said, largely
16 because of the auditorium that was being proposed, the new
17 construction, at that time. And I think just also not
18 understanding the operations. But over the course of 25
19 years, the school has proven that it's a good neighbor and
20 that its operations actually are a benefit to the community
21 as they offer free concerts that people are available to
22 attend.

23 BZA CHAIR HILL: Yes, I know. I just think it's
24 interesting that it was fought in the beginning to the point
25 it went to the, you know, somebody took them to court. And

1 it's interesting how, and I'm just making a 30-second comment
2 that it's interesting how sometimes things do change. Like
3 people think that maybe they don't want it, and then, later
4 on, they're like, oh, wow, this wasn't such a bad idea after
5 all, you know. So I don't know; I just thought it was
6 interesting. Thank you for indulging me.

7 Let's see. Okay. Mr. Young, is there anyone here
8 who wished to speak? Okay. Mr. Roddy, is there anything
9 you'd like to add at the end?

10 MS. RODDY: No. We appreciate your time, and we
11 are looking forward to continued operations in this
12 neighborhood.

13 BZA CHAIR HILL: Okay, great. I'm going to go
14 ahead and close the hearing on the record. Mr. Young, if you
15 could please excuse everyone.

16 Okay. I thought that the applicant did a good job
17 of supplying us with information concerning the burden of
18 proof and how this application should be confirmed, approved,
19 and that they obviously have been working with the community
20 for a long time to get to this point, as well, as this school
21 has been there for a long time and has a proven track record.

22 I would agree with the tweaked conditions that
23 have been put forward in the Office of Planning's report in
24 Exhibit 24. I would also agree with the TDM plan that is in
25 Exhibit 21 from DDOT. I would further agree with the

1 analysis that the Office of Planning has provided, as well
2 as that from the ANC. I think that, you know, it is
3 something that has been around for a long time now and it's
4 proven to be an asset to the community; and I do think that
5 they're meeting the criteria for us to grant the relief
6 requested.

7 I'm going to be voting in approval. Mr. Smith,
8 do you have anything to add?

9 MEMBER SMITH: I don't have anything to add. I
10 agree with your analysis on this particular case. I'm glad
11 the ANC has written a letter in support of this request and
12 also the recommended changes for the conditions, so it seems
13 that, you know, things have changed from the first time we
14 heard this case to the better.

15 So with that, I would support the application for
16 the special exception.

17 BZA CHAIR HILL: Okay, great. Thank you. Mr.
18 Blake.

19 MEMBER BLAKE: I, too, have nothing really to add
20 to the comments. I agree with what you've said and what Mr.
21 Smith added. I would be in support of the application.

22 BZA CHAIR HILL: Thank you. Chairman Hood.

23 ZC CHAIR HOOD: Mr. Chairman, I think the record
24 is complete. What's being asked for, I think, has been
25 mitigated and also presented in a form or fashion which I

1 think it warrants our approval, at least my approval and I'm
2 sure out approval. So that's all I have. Thank you.

3 BZA CHAIR HILL: Thank you, Chairman Hood. Vice
4 Chair John.

5 BZA VICE CHAIR JOHN: So I support the
6 application, and the school has a long track record in the
7 community and I think that the conditions, as revised, are
8 reasonable. Thank you.

9 BZA CHAIR HILL: Thank you. All right. With
10 that, I'm going to go ahead and make a motion to approve
11 Application Number 20677, including the conditions that are
12 in the Office of Planning's report in Exhibit 24 and the DDOT
13 TDM plan in Exhibit 21 and ask for a second. Ms. John.

14 BZA VICE CHAIR JOHN: Second.

15 BZA CHAIR HILL: The motion has been made and
16 seconded. Mr. Moy, if you'd take a roll call.

17 MR. MOY: When I call your name, if you would
18 please respond with a yes, no, or abstain to the motion made
19 by Chairman Hill to approve the application for the relief
20 requested, along with the conditions as cited in the Office
21 of Planning and DDOT reports.

22 The motion to approve was seconded by Vice Chair
23 John. Also, okay, Zoning Commission Chair Anthony Hood.

24 ZC CHAIR HOOD: Yes.

25 MR. MOY: Mr. Smith.

1 Mr. Blake.

2 Vice Chair John.

3 BZA VICE CHAIR JOHN: Yes.

4 MR. MOY: Chairman Hill.

5 Staff would record the vote as 5 to zero to zero,
6 and this is on the motion made by Chairman Hill to approve
7 with conditions as I've just cited. The motion to approve
8 was seconded by Vice Chair John in support. Also in support
9 of the motion is Zoning Commission Chair Anthony Hood, Mr.
10 Smith, Mr. Blake, and, of course, Vice Chair John and
11 Chairman Hill. The motion carries five to zero to zero.

12 BZA CHAIR HILL: Thank you, Mr. Moy. Did I make
13 a mistake? Do we only have one case left, Mr. Moy? Okay.
14 We have two left, right?

15 MR. MOY: Two.

16 BZA CHAIR HILL: That's what I thought. It seemed
17 to be that somehow -- okay. Well, call the next one when you
18 get a chance.

19 MR. MOY: Okay. This would be Application Number
20 20681 of Seth and Laura Malaguerra, M-A-L-A-G-U-E-R-R-A.
21 This is a self-certified application for special exception
22 relief pursuant to Subtitle D § 5201 and Subtitle X § 901.2
23 from the side yard requirements of Subtitle D § 206.2.

24 And this is an expansion of an existing two-story
25 detached principal dwelling unit with a two-story rear

1 addition and rear deck addition replacing an existing rear
2 addition and extending a non-conforming side yard. The
3 property is in the R-2 zone located at 1020 Newton Street,
4 N.E. (Square 3882, Lot 6).

5 BZA CHAIR HILL: Okay. I'm sorry. Is it Ms.
6 Malaguerra?

7 MS. MALAGUERRA: Malaguerra.

8 BZA CHAIR HILL: How do you say it?

9 MS. MALAGUERRA: Malaguerra.

10 BZA CHAIR HILL: Malaguerra?

11 MS. MALAGUERRA: Yes.

12 BZA CHAIR HILL: Ms. Malaguerra, are you
13 representing yourself?

14 MS. MALAGUERRA: Yes.

15 BZA CHAIR HILL: Okay. Because I see a Lynnette
16 Brunson.

17 MS. MALAGUERRA: Yes, she's the architect.

18 BZA CHAIR HILL: Is she with you or no?

19 MS. MALAGUERRA: No, she was unable to stay.

20 BZA CHAIR HILL: Okay. Ms. Malaguerra, I mean,
21 you're not a zoning attorney or anything like that, so if you
22 could just kind of tell us about your project briefly, what
23 you're trying to accomplish, and we'll go through the record
24 here and, again, understand how you're meeting the
25 regulations.

1 MS. MALAGUERRA: Sure. So we have an existing
2 back extension that is in poor shape, so we'd like to redo
3 it. And we'd like to rebuild it a little bit bigger and are
4 requesting the side yard exception so that it can match the
5 existing footprint of the house. So instead of going in, the
6 existing border is about 3 and a half feet from the fence
7 line, so we'd like to extend it straight back that way. And
8 we have received approval from our adjacent neighbor that
9 would be impacted by the lower side yard, as well as all the
10 other adjacent neighbors.

11 We've also received approval from the ANC, and you
12 can see all of our other case documents with approval from
13 the Office of Planning and DDOT, as well.

14 BZA CHAIR HILL: Okay, thank you. All right. I'm
15 going to actually just turn to the Office of Planning.

16 MS. MYERS: Good evening, Commissioners. Crystal
17 Myers with the Office of Planning. The Office of Planning
18 is recommending approval in this case, and we can stand on
19 the record with the staff report. Thank you.

20 BZA CHAIR HILL: All right. Does anybody have any
21 questions for the Office of Planning or the applicant? Mr.
22 Young, is there anyone here wishing to speak?

23 Okay, all right. Ms. Malaguerra -- how do you say
24 it again?

25 MS. MALAGUERRA: Malaguerra.

1 BZA CHAIR HILL: Malaguerra. Ms. Malaguerra, thank
2 you for coming. I'm going to close the hearing on the record.

3 Okay. I do think that, after reading through the
4 record, which I did do before this, which seems like an eon
5 ago now, that I believe the applicant's burden of proof is
6 meeting the standard for us to grant the relief requested.
7 I think and I do thank Ms. Malaguerra for working with their
8 neighbors to let them understand what the project is. I'm
9 glad to see that they are in support. Also, that the ANC has
10 provided their input and is in support. Also, I would agree
11 with the analysis that has been provided by the Office of
12 Planning, as well as that of DDOT, this being a self-
13 certified application, as well.

14 But I would be in support of this application and
15 will be voting to approve. Mr. Smith, do you have anything
16 to add?

17 MEMBER SMITH: I support your analysis on this
18 particular case. I will state that she, I know I'll murder
19 her last name. So I'm glad that reached out to the neighbors
20 to the west because this is a sizable addition that you're
21 proposing. You're doubling the size of the house, and you're
22 stating that not performing well along their shared property
23 line, so it's great that you have buy-in from them where they
24 would support, they will support this sizable addition that
25 close to their home.

1 So with that, I give OP staff report great weight
2 and support the application.

3 BZA CHAIR HILL: Great, thank you. Mr. Blake.

4 MEMBER BLAKE: Sure. I'll be voting in favor of
5 the application. I read through the record and believe the
6 applicant has met the burden of proof. The applicant has
7 demonstrated that the proposed exception should not have a
8 substantial adverse effect on the use of neighboring
9 properties, as measured by the impact on light, air flow,
10 privacy, and magnitude of visual intrusion. This is
11 supported by the Office of Planning's report and the
12 resolution in support stated no issues or concerns from ANC.

13 So I will be in favor of support and will be
14 voting in favor.

15 BZA CHAIR HILL: Thank you. Chairman Hood.

16 ZC CHAIR HOOD: I, too, believe that the relief
17 requested has been mitigated through the case and the way
18 this record has been presented. And it's something that got
19 a lot of support. But what I found most important is our
20 process is because I saw Ms. Malaguerra with her baby and
21 being able to still testify in support. So kudos to us
22 again. I want to acknowledge that point because I think
23 that's very important that people are able to participate.
24 So I have to seize the moment.

25 Thank you, Mr. Chairman.

1 BZA CHAIR HILL: Thank you, Chairman Hood. Vice
2 Chair John.

3 BZA VICE CHAIR JOHN: I support the application.
4 It is for side yard relief, which would just extend the
5 existing side yard of 3.3 feet for the addition. So I have
6 no objection, and I'm supporting the application.

7 BZA CHAIR HILL: Thank you. I'm going to make a
8 motion to approve Application Number 20681, as captioned and
9 read by the Secretary, and ask for a second, Ms. John.

10 BZA VICE CHAIR JOHN: Second.

11 BZA CHAIR HILL: Motion made and seconded. Mr.
12 Moy, if you could take a roll call.

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

18 Zoning Commission Chair Anthony Hood.

19 ZC CHAIR HOOD: Yes.

20 MR. MOY: Mr. Smith.

21 MEMBER SMITH: Yes.

22 MR. MOY: Mr. Blake.

23 MEMBER BLAKE: Yes.

24 MR. MOY: Vice Chair John.

25 BZA VICE CHAIR JOHN: Yes.

1 MR. MOY: Chairman Hill.

2 Staff would record the vote as 5 to zero to zero,
3 and this is on the motion made by Chairman Hill to approve.
4 The motion to approve was seconded by Vice Chair John. Also,
5 in support of the motion to approve Zoning Commission Chair
6 Anthony Hood, Mr. Smith, Mr. Blake, and, of course, Vice
7 Chair John and Chairman Hill.

8 The motion carries on a vote of 5 to zero to zero.

9 BZA CHAIR HILL: Thank you, Mr. Moy. When you
10 can, you can call our last one.

11 MR. MOY: Before the Board, this is case
12 Application Number 20683 of 2217 40th, LLC. This is a self-
13 certified application for special exception relief under
14 Subtitle U § 421 pursuant to Subtitle X § 901.2. This would
15 allow a new residential development. This is for a six-unit
16 apartment house that's being proposed. The property is
17 located in the RA-1 zone at 2217 40th Place, NW (Square 1317,
18 Lot 6).

19 BZA CHAIR HILL: Thank you. Ms. Wilson, can you
20 introduce yourself for the record, please?

21 MS. WILSON: Hi. Alex Wilson from Sullivan &
22 Barros on behalf of the applicant in this case.

23 BZA CHAIR HILL: Thank you. Ms. Wilson, if you
24 can go ahead and walk us through your application where I
25 believe your client is meeting the requested relief, I'm

1 sorry, the standard for us to grant the relief requested, and
2 you can begin whenever you'd like.

3 MS. WILSON: Great. Thank you so much. Mr.
4 Young, could you pull up the presentation? And I did want
5 to clarify it's an existing four-unit apartment building, and
6 we are proposing to add two units. I think the description
7 on IZIS was that it was a new apartment building, and it's
8 an existing. I just wanted to clarify.

9 BZA CHAIR HILL: Okay, thank you.

10 MS. WILSON: Could you go to the next slide,
11 please? Thank you. So the property is located in the RA-1
12 zone. The applicant is proposing to demolish rear portions
13 of the existing building footprint and construct a new third-
14 story and rear additions. As I mentioned, the building
15 currently has four residential units. The proposal is just
16 to add two additional residential units for a total of six.

17 We attended the ANC, and ANC 3-B supports the
18 application. The Office of Planning is recommending
19 approval. DDOT has no objection to the approval of
20 application, and we do have two letters in support, one from
21 the adjoining building owner and then from the neighbor to
22 the rear across the alley.

23 Next slide, please. This is just showing the
24 location. There are larger apartment buildings across the
25 street, and this is a row of apartment buildings that the

1 property is located on.

2 Next slide, please. This is just for some context
3 with the additional --

4 BZA CHAIR HILL: Ms. Wilson, can I get you to jump
5 to slide seven?

6 MS. WILSON: Absolutely, yes.

7 BZA CHAIR HILL: And run us through seven, eight,
8 and nine.

9 MS. WILSON: Sure, great. So for the general
10 special exception requirements, the area is made up of a mix
11 of multi-family residential developments. Adding two
12 dwelling units to an existing multi-family building will not
13 tend to affect adversely these neighboring properties.

14 Next slide, please. For the specific
15 requirements, it is expected the Office of State
16 Superintendent will not have an issue with the increase in
17 residents from two additional units. There are adequate
18 public streets, recreation, and other services that can
19 accommodate the residents that are expected to reside in the
20 project.

21 Next slide, please. The applicant has provided
22 sufficient information for the Office of Planning to comment,
23 and they have made a recommendation of approval. And all
24 required plans have been filed.

25 We have the architect here if you have any

1 questions. That concludes the main portion of our
2 presentation.

3 BZA CHAIR HILL: All right. Thanks. Mr. Young,
4 if you can drop that. Thanks. I'll see if my fellow Board
5 members have any additional questions to go back to the
6 presentation.

7 But Mr. Smith has a question, I believe. Do you
8 need the slide deck, Mr. Smith?

9 MEMBER SMITH: No, I don't need the slide deck.
10 Ms. Wilson, about your trash enclosure, do you propose to,
11 I mean where you put the trash can, is that in an enclosure?

12 MS. WILSON: I'll defer to the architect. John,
13 is the trash enclosed?

14 MR. LINAM: I would propose that it's enclosed
15 within the privacy fence area.

16 MEMBER SMITH: Okay. That's the only question
17 that I had. It's not really shown on the plan, unless I'm
18 missing something.

19 BZA CHAIR HILL: Is it in the plan, sir?

20 MR. LINAM: Sorry. Give me just one second to go
21 through.

22 BZA CHAIR HILL: If you go through the slide deck,
23 we have it pulled up, so it's easy to tell which slide it's
24 on.

25 MR. LINAM: Okay. Give me one second.

1 BZA CHAIR HILL: While you're doing that, I'm going
2 to turn to the Office of Planning. We'll come back to you,
3 sir.

4 MS. THOMAS: Yes. Good evening, Mr. Chair,
5 members of the Board. Karen Thomas for the Office of
6 Planning on Case Number, Application Number 20683. We
7 believe that the applicant has made a full presentation with
8 respect to the third-story addition, and we will rest on the
9 record of our report.

10 Thank you. I'll be available for any questions.

11 BZA CHAIR HILL: Thank you. Does the Board have
12 any questions for the Office of Planning? Okay. Ms. Wilson,
13 your architect there, what's his name?

14 MR. LINAM: I'm sorry. This is John. Yes --

15 BZA CHAIR HILL: John, could you introduce
16 yourself for the record also, though?

17 MR. LINAM: Sure. John Linam, project architect.
18 I'm sorry that I did not have the slide deck on my screen
19 because it was on your screen. I had just our PDF set. But
20 if you go to the site plan page, the proposed site plan,
21 you'll see that the trash and recycling are located within
22 the area that is fenced in at the rear of the property
23 adjacent to the parking. I'm sorry that I don't know what
24 slide that is.

25 BZA CHAIR HILL: I can see it. I think it's

1 number 11 on the applicant's slide deck, for my fellow
2 colleagues. So that's fenced in.

3 MR. LINAM: Correct.

4 BZA CHAIR HILL: Mr. Smith, are you good?

5 MEMBER SMITH: Yes, I see it. That was the only
6 question that I had.

7 BZA CHAIR HILL: Okay, all right. Mr. Young, is
8 there anyone here wishing to speak? Okay. Ms. Wilson, is
9 there anything you'd like to add at the end?

10 MS. WILSON: No, thank you.

11 BZA CHAIR HILL: Okay. I'm going to close the
12 hearing on the record.

13 I mean, I don't necessarily think this was a big
14 project, but it is something that I was taking a little bit
15 more of a closer look at. I do, however, think that they are
16 meeting their burden of proof, as well as the standard for
17 us to grant the relief requested. I would agree with the
18 analysis that the Office of Planning has provided, as well
19 as that of the ANC and DDOT.

20 I do appreciate the questions that my fellow
21 colleague, Mr. Smith, has asked about the trash enclosure,
22 and I am comfortable voting in favor of this application.

23 Mr. Smith, do you have anything to add?

24 MEMBER SMITH: I agree with your analysis on this.

25 (Audio interference.)

1 BZA CHAIR HILL: Thank you. Mr. Blake.

2 MEMBER BLAKE: Yes. I'll be voting in favor of
3 the application. I give great weight to the Office of
4 Planning's recommendation for approval and note also the
5 persons in support, including both the adjacent and abutting
6 property owners.

7 BZA CHAIR HILL: Thank you. Chairman Hood.

8 ZC CHAIR HOOD: I'll be voting in favor of this
9 project.

10 BZA CHAIR HILL: Thank you. Vice Chair John.

11 BZA VICE CHAIR JOHN: Chairman, I agree with all
12 of the comments so far. I thought that this was fairly
13 straightforward. The project meets all of the development
14 standards and only needs relief under U § 421. I thought the
15 Office of Planning and the applicant did a good job
16 explaining how the application meets the requirement, and so
17 I'm in support.

18 BZA CHAIR HILL: Thank you. I'm going to make a
19 motion to approve Application Number 20683, as captioned and
20 read by the Secretary, and ask for a second, Ms. John.

21 BZA VICE CHAIR JOHN: Second.

22 BZA CHAIR HILL: The motion has been made and
23 seconded. Mr. Moy, if you could take a roll call, please.

24 MR. MOY: If you would please respond with a yes,
25 no, or abstain to the motion made by Chairman Hill to approve

1 the application for the relief that's requested. The motion
2 to approve was seconded by Vice Chair John. Zoning
3 Commission Chair Anthony Hood.

4 Mr. Smith.

5 MEMBER SMITH: Yes.

6 MR. MOY: Mr. Blake.

7 Vice Chair John.

8 BZA VICE CHAIR JOHN: Yes.

9 MR. MOY: Chairman Hill.

10 Staff would record the vote as five to zero to
11 zero, and this is on the motion made by Chairman Hill to
12 approve. Motion to approve was seconded by Vice Chair John.
13 Also, in support of the motion to approve, Zoning Commission
14 Chair Anthony Hood, Mr. Smith, Mr. Blake, Vice Chair John,
15 and Chairman Hill.

16 The motion carries 5 to zero to zero.

17 BZA CHAIR HILL: Okay, thank you. Well, I thank
18 all the staff, I thank everybody at the Office of Zoning, I
19 thank everybody. We did a wonderful job for the city today,
20 and I thank all of you for your time. And is there anything
21 anyone would like to add before we adjourn?

22 All right, okay. Everybody have a nice evening.
23 We're adjourned. Bye-bye.

24 (Whereupon, the above-entitled matter went off the
25 record at 7:10 p.m.)

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: 04-20-22

Place: teleconference

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