

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

JUNE 8, 2022

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 9:30 a.m. EST, Lorna John, Vice Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER[S] PRESENT:

ROBERT MILLER, Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

CRYSTAL MYERS
STEPHEN MORDFIN
BRANDICE ELLIOTT
KAREN THOMAS
JONATHAN KIRSCHENBAUM
MATT JESICK
ELISA VITALE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.
SARAH BAJAJ

The transcript constitutes the minutes from
the Regular Public Hearing held on June 8, 2022.

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

2 9:35 A.M.

3 VICE CHAIR JOHN: Okay, I think we'll get started.
4 I believe we have everyone. Mr. Miller, I saw you just now
5 and Mr. Moy.

6 MR. MOY: I'm sorry, I was -- I'm still here.

7 VICE CHAIR JOHN: Okay.

8 MR. MOY: I just wanted to show you the pictures
9 of the four big board members.

10 VICE CHAIR JOHN: Okay, thank you.

11 So, we'll go ahead and get started.

12 Good morning, ladies and gentlemen. The Board of
13 Zoning Adjustments June 8th, 2022 Public Hearing will please
14 come to order.

15 My name is Lorna John. I'm the Vice Chairperson
16 of the District of Columbia Board of Zoning Adjustment.

17 Joining me today are Board Members Carl Blake and
18 Crishaun Smith and Zoning Commissioner Rob Miller.

19 Today's meeting and hearing agendas are available
20 on the Office of Zoning's website. Please be advised that
21 this proceeding is being recorded by a court reporter and is
22 also webcast live via WebEx and YouTube.

23 A video of the webcast will be available on the
24 Office of Zoning's website after today's hearing.
25 Accordingly, everyone who is listening on WebEx or by

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1 telephone will be muted during the hearing. Also, please be
2 advised that we do not take any public testimony at the
3 decision only session.

4 If you experience difficulty accessing WebEx or
5 with your telephone call in, then please call our OZ Hotline
6 number at 202-727-5471 to receive WebEx log in or call in
7 instructions.

8 At the conclusion of the decision meeting, I
9 shall, in consultation with the Office of Zoning, determine
10 whether a full or summary order may issue. A full order is
11 required when the decision it contains is adverse to a party,
12 including an affected ANC.

13 A full order may also be needed if the Board's
14 decision differs from the Office of Planning's
15 recommendation. Although the Board favors the use of summary
16 orders whenever possible, an Applicant may not request the
17 Board to issue such an order.

18 In today's hearing session, everyone who is
19 listening on WebEx or by telephone will be muted during the
20 hearing. And only the persons who have signed up to
21 participate or testify will be unmuted at the appropriate
22 time.

23 Please state your name and home address before
24 providing oral testimony or your presentation.

25 All presentations should be limited to a summary

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1 of your most important points and when you are finished
2 speaking, please mute your audio so that your microphone is
3 no longer picking up sound or background noise.

4 Once again, if you experience difficulty accessing
5 WebEx or with your telephone call in, or if you have
6 forgotten to sign up 24 hours prior to this hearing, then
7 please call out OZ Hotline number at 202-727-5471 to sign up
8 to testify and to receive WebEx log in or call in
9 instructions.

10 All persons planing to testify either in favor or
11 in opposition should have signed up in advance. They will
12 be called by name to testify. And, if this is an appeal,
13 only parties are allowed to testify.

14 By signing up to testify, all participants
15 completed their oath or affirmation as required by Subtitle
16 Y, Section 48.7.

17 Requests to enter in evidence at the time of an
18 online virtual hearing such as written testimony or
19 additional supporting documents other than live video which
20 may not be presented as part of the testimony may be allowed
21 pursuant to Subtitle Y, Section 103.13 provided that the
22 person making the request to enter an exhibit explains how
23 the proposed exhibit is relevant.

24 The good cause that justifies allowing the exhibit
25 into the record, including an explanation of why the request

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1 did not file the exhibit prior to the hearing pursuant to
2 Subtitle Y, Section 206 and how the proposed exhibit would
3 not unreasonably prejudice any party and how the proposed
4 exhibit would not unreasonably prejudice any party.

5 The order or receipt of special exceptions and
6 variances pursuant to Subtitle Y, Section 409 will be as
7 follows: preliminary and procedural matters, statement of
8 the Applicant and the Applicant's witnesses, report and
9 recommendation from the D.C. Office of Planning, reports and
10 recommendations from other public agencies, reports and
11 recommendations from the affected Advisory Neighborhood
12 Commission, and the ANC's witnesses, if any, for the area
13 within which the property is located, parties in support of
14 the Applications, individuals and organization
15 representatives in support of the Application, parties in
16 opposition to the Applications, individuals and organization
17 representatives in opposition to the Application, individuals
18 and organization representatives who are undeclared with
19 respect to the Application, rebuttal, and closing arguments
20 by the Applicant.

21 Pursuant to Subtitle Y, Sections 48.2 and 48.3,
22 the following time constraints shall be maintained: the
23 Application/Appellant and all parties except an affected ANC
24 in support, including witnesses, exclusive of cross
25 examination, maximum of 60 minutes collectively.

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1 The Appellee, persons and parties, except an
2 affected ANC in opposition, including witnesses, collectively
3 have an amount of time equal to that of the Application and
4 the parties in support but in no case more than 60 minutes
5 collectively.

6 Individuals maximum of three minutes,
7 organizational representatives maximum of five minutes.

8 The time constraints do not include cross
9 examination and or questions from the Board. Cross
10 examination of witnesses by the Applicant or parties,
11 including the ANC is permitted.

12 The ANC within which the property is located is
13 automatically a party in a special exception or variance
14 case. Nothing prohibits the Board from placing reasonable
15 restrictions of cross examination, including time limits and
16 limitations of the scope of cross examination pursuant to
17 Subtitle Y, Section 408.5.

18 At the conclusion of each case, an individual who
19 was unable to testify because of technical issues may file
20 a request of leave to file a written version of the planned
21 testimony to the record with 24 hours following the
22 conclusion of public testimony and the hearing.

23 If additional written testimony is accepted, then
24 parties will allowed a reasonable time to respond as
25 determined by the Board. The Board will then make its

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1 decision at its next meeting session but no earlier than 48
2 hours after the meeting.

3 Moreover, the Board may request additional
4 specific information to complete the record. The Board and
5 the staff will specify at the end of the hearing exactly what
6 is expected and the date when persons must submit the
7 evidence to the Office of Zoning. No other information shall
8 be accepted by the Board.

9 Once again, after the Board adjourns the hearing,
10 the Office of Zoning, in consultation with me will determine
11 whether a full or a summary order may issue. A full order
12 is required when the decision it contains is adverse to a
13 partying, including an affected ANC. A full order may also
14 be needed if the Board's decision differs from the Office of
15 Planning's recommendation.

16 Although the Board favors the use of summary
17 orders whenever possible, an Applicant may not request the
18 Board to issue such an order.

19 Finally, the District of Columbia Administrative
20 Procedure Act requires that the public hearing on each case
21 be held in the open before the public. However, pursuant to
22 Section 405(b) and 406 of that Act, the Board may, consistent
23 with its rules of procedure and the Act, enter into a closed
24 meeting on a case for purposes of seeking legal counsel on
25 a case pursuant to D.C. Office Code Section 2575(b)(4) and/or

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1 deliberating on a case pursuant to D.C. Office Code Section
2 2575(b)(1)(3), but only after providing the necessary public
3 notice. And, in the case of an emergency closed meeting
4 after taking a roll call.

5 Mr. Secretary, do you have any preliminary
6 matters? If not, let us proceed with today's agenda.

7 And, before we get started, Mr. Moy, I need a
8 minute. Thank you.

9 Okay, thank you, I apologize for that. My air
10 conditioner has other thoughts for today.

11 MR. MOY: All right, good morning, Madam Chair and
12 members of the Board. It's Wednesday.

13 I don't have anything other than -- to add than
14 where there is preliminary matter then I will bring that
15 before the Board when I call a case. Other than that, Madam
16 Chair, I'm ready to proceed to call the first case.

17 VICE CHAIR JOHN: Okay, thank you. Please go
18 ahead.

19 MR. MOY: This would be Application Number 20709
20 of Jemal's Big Chief, LLC. This is a self-certified special
21 exception pursuant to Subtitle J, Section 210.1 and Subtitle
22 X Section 901.2 from the rear yard requirements of Subtitle
23 J, Section 205.2. The property is located in the PDR-2 zone
24 at 2002 Fenwick Street, Northeast Square -- rather Lot PAR,
25 par, 01420029.

1 And, other than that, Madam Chair, there is in the
2 record a letter from ANC 5D under Exhibit 23 which was
3 submitted June 7, 2022 in support with conditions. And, I
4 believe very early this morning, the SMD also filed a letter
5 in support as well if the Board would allow that into the
6 record. And, I believe that gentleman has signed up to
7 speak.

8 VICE CHAIR JOHN: Thank you, Mr. Moy. Please go
9 ahead and let those documents in.

10 MR. MOY: Thank you.

11 VICE CHAIR JOHN: Thank you.

12 Good morning, Ms. Wilson.

13 MS. WILSON: Good morning.

14 VICE CHAIR JOHN: Will you please introduce
15 yourself and if you have anyone with you today, would you
16 like to introduce them now?

17 MS. WILSON: Sure, we also submitted a couple of
18 documents outside of the 24-hour window. I don't know if
19 those need to be let into the record as well. We provided
20 a solar analysis and we updated our PowerPoint presentation
21 to include that analysis.

22 MR. MOY: That's correct. I neglected to bring
23 that your attention, Madam Chair.

24 VICE CHAIR JOHN: Okay. Please go ahead and let
25 those two documents in. Is that -- that's not in the record

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1 yet, right?

2 MR. MOY: That's correct.

3 VICE CHAIR JOHN: Exhibit 22 is the old
4 presentation?

5 MS. WILSON: Correct, we just added a couple of
6 slides since we received the solar analysis last night.

7 VICE CHAIR JOHN: Okay.

8 MS. WILSON: So, we just wanted to update that.

9 VICE CHAIR JOHN: All right, thank you.

10 MS. WILSON: Great. Hi, I'm Alex Wilson from
11 Sullivan and Barros on behalf of the Applicant in this case.
12 I'm here with Nour Chaaban, the Project Manager, David
13 Rosenberg, Project Architect, as well as Nayef Issaf and
14 Mazen Zaatari, Ms. Zaatari from the restaurant development
15 team.

16 If Mr. Young could pull up our presentation, I'll
17 briefly walk through the zoning criteria and then I'll turn
18 it over to Mr. Chaaban to give a brief overview of the
19 development.

20 Thank you so much.

21 Next slide, please? Thank you.

22 In terms of relief, there is an existing one-story
23 building on the site. There are already roof structures at
24 the rear of the property. Those are shown in the hatched
25 gray areas.

1 The proposed plan is to enclose the remaining
2 rooftop area and create a second story. There is a rear yard
3 requirement in this zone and it's triggered once you get
4 above 20-feet in height. And so, that second story is
5 required to have a 12-foot setback from the lot line. Those
6 structures already exist in that setback, so the proposed
7 extensions are relatively limited in the rear.

8 On this property, there -- I'm sorry, in this plat
9 photo the rear is to the west or to the left side just for
10 reference of where I'm talking about.

11 So, OP is recommending approval. The ANC voted
12 to support and it was conditioned on a solar analysis which
13 we did and DDOT has no objection.

14 Next slide, please? Thank you.

15 The application is reviewed only under the general
16 special exception requirements. The PDR zone from its medium
17 density commercial use and the proposed use as a restaurant
18 is consistent with that use in the zone.

19 The proposed enclosure of the existing rooftop
20 space is still well below the height and FAR requirements for
21 the zone.

22 In terms of neighboring properties, there are no
23 residential properties in the area, only commercial
24 properties, many of which are vacant. As there are already
25 structures in the setback location, enclosing the remaining

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1 portion of that setback should not have any adverse impact
2 on the use of the commercial properties in the area.

3 The Applicant did conduct a solar analysis, I'll
4 get on to that in the following slides. But the by-right
5 height limit in this zone is 60-feet and we are well under
6 that at 34-feet. So, this is not as impactful as what could
7 be done by right, just for some context.

8 Next slide, please?

9 This just shows the location of the existing
10 structures and where they will be expanded. Again, there's
11 very limited expansion that would impact any neighboring
12 properties because there already are structures at the rear
13 there.

14 Next slide, please? Thank you.

15 So, the ANC requested that we provide information
16 or analysis to show the impact on the adjacent property's
17 solar panels. In this zone, there are no protections for
18 solar panels in the regulations. But, of course, we wanted
19 to work with ANC. So, if this were the R or RF zone, we
20 would need a -- to submit a formal analysis to the Zoning
21 Administrator. Those take months to coordinate. We have to
22 coordinate with the adjacent property owner and they cost
23 thousands of dollars.

24 So, when we went to the ANC, they provided us some
25 information. The Chair of the Zoning Committee actually sent

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1 us couple of names of companies and we found one that could
2 do an analysis that wasn't as formal as the ones that get
3 submitted to DCRA, but could show the impact and do a
4 predictive analysis.

5 And so, it showed very limited impact on the solar
6 panels to the west. And since, again, this is a PDR zone,
7 there are no protections for solar panels, but we were
8 pleased, as we expected, because of the height of the
9 building next door relative to the existing structures, it
10 was predicted to have less than a six percent impact, which
11 I believe is the threshold anyways in the R or RF zones. So,
12 we're happy to submit that last night.

13 And, we'll continue to work with the neighbor.
14 I believe it's currently a vacant building and a commercial
15 use there. But, again, that's -- what was in the ANC report
16 and we're obviously continuing to work with them.

17 So, with that, I'm going to turn it over to Mr.
18 Chaaban to give a brief overview of the plans, if Mr. Young
19 could move forward a couple of slides.

20 MR. CHAABAN: Sounds good, thank you, Alex.

21 This was just a render that the solar company
22 used. So, hello everybody, my name is Nour. First of all,
23 thank you for your time to meet with us today. I will take
24 a few minutes to just introduce our group and the concept
25 behind Vera and our new restaurant.

1 So, many of us on the team are either immigrants
2 or descendants of immigrants from the Eastern Mediterranean
3 and we came up with the idea of shedding light on our
4 cultures' culinary impact on Western cuisine.

5 More specifically, we learned that the early
6 Mediterranean immigrants to the Americas actually landed in
7 the Mexican city of Vera Cruz, hence the name Vera. And they
8 brought with them recipes and spices that influenced many of
9 the famous dishes we now know such as al pastor, taquitos de
10 papa, for example, and many more.

11 So, to tell the story, we have assembled a team
12 of six partners with a long history in the food and beverage
13 industry in the DMV area. We have them on the call here with
14 us, Nayef Issa is the lead and creator of this project. He
15 has a lot of successful ventures in this space.

16 Fadi is our very own CPA and bookkeeper who's also
17 very familiar with the industry.

18 Scott Parker is a tenant and experienced
19 entrepreneur who owns many restaurants in this city.

20 David Rosenberg, our architect, is also on the
21 call and has his name of a few notable projects in the city
22 as well.

23 Mazen Zaatari, our construction manager, who has
24 been essential in getting this off the ground is also with
25 us on the call.

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1 And, finally, myself, I'm the project manager and
2 coordinator.

3 And, finally, to compliment our backgrounds, we
4 are working with designers out of Mexico City to ensure an
5 authentic Mexican and Mediterranean cuisine with an authentic
6 design.

7 And, of course, we are partnering up with a chef
8 and a general manager of Latino descent who will be managing
9 our back and front of the house respectively also to ensure
10 the authenticity of the restaurant.

11 So, I'd like to point out on this slide here that
12 the floor plant of the first floor, our entrance is to the
13 right and then we have a host stand followed by a lounge area
14 and then the bar in the middle with the kitchen in the -- all
15 the way to the back on the left.

16 Next slide, please?

17 Second floor, the stairwell to the right will take
18 you all the way up to the lounge area on the right followed
19 by another dining area and a seating area next to the bar.

20 VICE CHAIR JOHN: Mr. Chaaban?

21 MR. CHAABAN: Yes?

22 VICE CHAIR JOHN: I hope I got your name right.

23 MR. CHAABAN: Yes.

24 VICE CHAIR JOHN: Do you think you could tell us
25 a little bit about how you tried to reach the neighbor in the

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1 vacant property?

2 MR. CHAABAN: Yes, of course. So, we actually
3 reached out to our landlord and then we -- first of all, we
4 actually went out to our neighbor and knocked on the door a
5 couple of times. There were not -- it was pretty obvious it
6 was vacant.

7 We reached out to our landlord. We did not -- we
8 were not able to, you know, identify who the owner was or the
9 landlord of the adjacent property.

10 And then, we reached out to a few people in that
11 neighborhood who could potentially have worked with that
12 property, but also we were unlucky there.

13 So, eventually, I think the ANC shared with us a
14 phone number of the solar panel company for the adjacent
15 building which we -- which I personally reached out to and
16 there was -- they told us they would not do any report at
17 that time.

18 So, we eventually reached out to a few more
19 companies to identify a potential company that was able to
20 do the solar study for us.

21 VICE CHAIR JOHN: Okay, thank you.

22 I think we understand the project because the
23 record is full and the Board has looked at the documents.
24 Did you have something else to present, Ms. Wilson?

25 MS. WILSON: No, thank you. I'm happy to drop the

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1 slide deck and answer questions.

2 VICE CHAIR JOHN: Thank you.

3 Does the Board have any questions for the
4 Applicant?

5 (NO AUDIBLE RESPONSE)

6 VICE CHAIR JOHN: Okay, if there are no questions,
7 I'll go to the Office of Planning. Oh, Mr. Blake?

8 MEMBER BLAKE: I just want to make sure I'm clear,
9 you're saying you were not ultimately able to contact the
10 neighbor of the adjacent building at all, correct?

11 MR. CHAABAN: Yes, that's correct.

12 MS. WILSON: It was only a Maryland address. So,
13 she has been notified of the hearing, obviously from the 200-
14 foot list. We do have the address, but we have not been able
15 to talk to her.

16 MEMBER BLAKE: Okay, thank you.

17 VICE CHAIR JOHN: Thank you.

18 Any other questions?

19 (NO AUDIBLE RESPONSE)

20 VICE CHAIR JOHN: Okay, I'll go to the Office of
21 Planning. Good morning, Ms. Thomas.

22 MS. THOMAS: Hi, good morning, Madam Chair. Karen
23 Thomas with the Office of Planning. And, we will be resting
24 on the record of our report in support of this Application.

25 We do believe the Applicant has made their case

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1 and, you know, the record is full, as you stated.

2 And, with that, I'll be happy to take any
3 questions. Thank you.

4 VICE CHAIR JOHN: Mr. Blake, is your hand up?

5 MEMBER BLAKE: Yes, a quick question, Ms. Thomas.

6 Have you reviewed the solar study that provided
7 by the Applicant?

8 MS. THOMAS: Well, it was submitted -- when I saw
9 it last night but I looked at it, I reviewed it but, yes,
10 just looking at it, it seems to say that there is hardly any
11 impact on that -- on the addition on the solar panels. So,
12 with that, I'll be satisfied with that.

13 MEMBER BLAKE: Okay, thank you.

14 VICE CHAIR JOHN: Mr. Smith? Mr. Miller?

15 (NO AUDIBLE RESPONSE)

16 VICE CHAIR JOHN: Okay, thank you.

17 Is there -- Mr. Young, is there anyone wishing to
18 testify? Is the ANC here?

19 MR. YOUNG: Yes, the ANC is here, that's Ms.
20 Rhodes.

21 VICE CHAIR JOHN: Okay.

22 MS. RHODES: Hello, good morning, everyone.

23 VICE CHAIR JOHN: Ms. Rhodes?

24 MS. RHODES: Yes?

25 VICE CHAIR JOHN: Okay, please, please identify

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1 yourself again.

2 MS. RHODES: Yes, I'm Sabrena Rhodes, ANC
3 Commissioner for SMB5B01.

4 VICE CHAIR JOHN: Thank you.

5 Did you wish to testify?

6 MS. RHODES: Well, the Commission is support of
7 the development and addition to Jemal's Big Chief's. The
8 only thing that we asked, which they supplied, was the solar
9 study or the shade study. And, we understand that it only
10 impacts six percent of the neighboring solar panels. We're
11 okay with that.

12 We just asked that the owners try hard -- try
13 harder to communicate with the neighbor, the neighboring
14 business and that building. You all said you couldn't reach
15 out to them. Somebody -- I'm going to try to reach out to
16 them myself but somebody needs to talk to them and let them
17 know what you're doing.

18 VICE CHAIR JOHN: Okay.

19 MS. RHODES: As far as the addition.

20 VICE CHAIR JOHN: Okay, thank you.

21 MS. RHODES: You're welcome.

22 VICE CHAIR JOHN: Does the Board Member have any
23 questions for the Commissioner?

24 (NO AUDIBLE RESPONSE)

25 VICE CHAIR JOHN: Okay, if there are no questions,

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1 thank you, Ms. Rhodes.

2 MS. RHODES: Thank you, thanks for having me.

3 VICE CHAIR JOHN: You're welcome.

4 Is there anyone else wishing to testify, Mr.
5 Young?

6 MR. YOUNG: We do not.

7 VICE CHAIR JOHN: Okay.

8 Ms. Wilson, do you have any closing comments?

9 MS. WILSON: No, thank you.

10 VICE CHAIR JOHN: Okay, thank you.

11 Mr. Young, would you please excuse everyone?

12 Okay, are we ready to deliberate and, fair
13 warning, today I'm going to go around the room and ask people
14 to volunteer. So, Mr. Smith, would you volunteer to start
15 the discussion?

16 MEMBER SMITH: So, I believe it's fairly
17 straightforward on the Application. I believe that the
18 Applicant met the burden of proof as far as dealing with the
19 special exception for the immediate onset for the PDR-2 zone.

20 You know, looking at --

21 VICE CHAIR JOHN: Excuse me, excuse me, Board
22 Member Smith, can you turn up your volume a little?

23 MEMBER SMITH: Can you hear me better now?

24 VICE CHAIR JOHN: Just a wee bit better, maybe I
25 should go to Mr. Blake while you try to get that done.

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1 Mr. Blake?

2 MEMBER BLAKE: Sure, Madam Vice Chair.

3 I will be voting in favor in the Application. I
4 do believe the Applicant has met the burden of proof to be
5 granted the relief to the regular requirements of J205.2, the
6 special exception of the rear yard requirements pursuant to
7 J10 or 210.1 and Subtitle 901.2.

8 This has existed in its current state. There's
9 no rear yard in the property. It's a 100 percent developed
10 block occupancy. The roof deck and structures already exist.
11 Obviously, this is triggered by the fact that they're going
12 above 22-feet. This is permitted in this zone. So, I think
13 this is consistent with the intent, general purpose and
14 intent of the zoning regulations.

15 I think that the fact that I read off the planning
16 report that this actually enclosed structure will be actually
17 going to favor in terms of noise control. And, I think the
18 relief for the rear yard requirement will not have an adverse
19 impact on the abutting properties as based on the solar
20 study.

21 And, I would encourage the Applicant to try to
22 reach out to the adjacent neighbor. But I do believe they
23 have made a reasonable attempt to do so.

24 Having said all that, I would be in support of the
25 Application.

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1 VICE CHAIR JOHN: Thank you, Board Member Blake.
2 Mr. Smith, are you --

3 MEMBER SMITH: Can you hear me better now?

4 VICE CHAIR JOHN: Yes, a lot better.

5 MEMBER SMITH: Okay. So, you know, in hearing
6 what Board Member Blake stated, I won't reiterate some of
7 those same points. I do largely agree, complete agree, with
8 what he stated.

9 I would just add that this is in an area of the
10 city with a mixture of industrial, mixed use, commercial
11 usage. So, I do believe that the proposal, it is largely in
12 character with what we see in that particular area. It's far
13 enough distance away from the home developments within the
14 area, probably the closest residential is the Heck Warehouse
15 just an apartment building I think -- I don't even think the
16 windows are vibrational there.

17 So, and I do completely agree with him that the
18 fact they are enclosing the second floor would mitigate any
19 noise or even, I think, even light to a certain degree within
20 the area. So, I do largely agree with OP's assessment of
21 this particular special exception request and will vote to
22 support.

23 VICE CHAIR JOHN: Okay, thank you.

24 Commissioner Miller?

25 COMMISSIONER MILLER: Thank you, Madam Vice Chair.

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1 Yes, I agree with everything my fellow Board
2 Members have said and support of this Application. The
3 Office of Planning recommends approval as does the ANC. And,
4 I think it will be a positive addition to that neighborhood
5 both with the cultural cuisine and just the aesthetics that
6 have been presented here. So, I'm ready to support this,
7 Madam Vice Chair. Thank you.

8 VICE CHAIR JOHN: Thank you.

9 And so, I'm also in support of the Application.
10 I'm going to give great weight to the Office of Planning's
11 analysis as to how the Application meets the requirement.
12 And, to note, again, that the relief is only required because
13 of the addition of the second floor and that they're
14 enclosing the floor -- the second floor.

15 And so, based on potential adverse impacts, I
16 agree that there should not be any potential adverse impacts
17 with respect to light and air and privacy or noise. And, I
18 agree, also that enclosing that section would be better in
19 terms of noise reduction because I believe there's also
20 paneling that would also reduce any adverse impact on -- from
21 noise.

22 So, I'm going to make a motion then to approve
23 Application Number 20709 as captioned and read by the
24 Secretary and ask for a second, Mr. Blake.

25 MEMBER BLAKE: Second.

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

3 MR. MOY: Madam Chair, when I call your name if
4 you would please respond with a yes, no, or abstain to the
5 motion made by Vice Chair John to approve the Application for
6 the relief requested. This motion to approve was seconded
7 by Mr. Blake.

8 Joint Commission Rob Miller?

9 COMMISSIONER MILLER: Yes.

10 MR. MOY: Mr. Smith?

11 MEMBER SMITH: Yes.

12 MR. MOY: Mr. Blake?

13 MEMBER BLAKE: Yes.

14 MR. MOY: Vice Chair John?

15 VICE CHAIR JOHN: Yes.

16 MR. MOY: And, we have a Board Member not present
17 today, staff would record the vote as four to zero to one.
18 And, this is on the motion made by Vice Chair John to approve
19 the motion to approve was seconded by Mr. Blake. Also in
20 support of the motion is Zoning Commissioner Rob Miller, Mr.
21 Smith, of course Mr. Blake and Vice Chair John. The motion
22 carries on a vote of four to zero to one.

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

24 When you have a minute, please call the next case.

25 MR. MOY: Next, the next case is Application

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1 Number 20724 fo Tamim, T-A-M-I-M, Bayoumi, B-A-Y-O-U-M-I, and
2 Susan Bernhardt with a T. This is a self-certified
3 application for a special exception pursuant to Subtitle X,
4 Section 901.2 which would permit and accessory apartment
5 pursuant to Subtitle U, Section 253.4, property located in
6 the R-20 zone at 2908 N Street, Northwest, Square 1211, Lot
7 19. I believe that's all I have for you. Thank you.

8 VICE CHAIR JOHN: Okay, thank you, Mr. Moy.

9 Mr. Young, would you let the Applicant and the
10 parties in, please?

11 MS. THEMAK: Good morning.

12 VICE CHAIR JOHN: Good morning, Ms. Themak?

13 MS. THEMAK: Yes.

14 VICE CHAIR JOHN: Okay.

15 MS. THEMAK: I'm here on behalf of Tamim Bayoumi
16 and Susan Bernhardt presenting this Application today. Thank
17 you for your time.

18 VICE CHAIR JOHN: Thank you.

19 MS. THEMAK: I don't have a formal presentation.
20 We've included everything for this Application in the
21 exhibits. As you know, a brief summary of the reason that
22 we're here is the Applicants purchased the property at 2908
23 with the existing basement apartment as part of that
24 purchase.

25 They were living elsewhere and renovated just the

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1 interior of the apartment and then moved on to renovating the
2 main house so that they could move in there.

3 They got the initial -- they got the permits and
4 the renovations done for the apartment and the permits for
5 the main building. It became evident during the renovation
6 process that certain modifications needed to be made to the
7 permit for the main structure. And, it was at that time that
8 it was discovered that the basement apartment had never
9 received special exception permission.

10 So, permits were stopped on the renovations that
11 were ongoing to the main building until we filed the special
12 exception application to allow the basement apartment use.

13 Once that Application was filed, the building
14 permits were released and renovations continued on the main
15 house. So now, everything is complete and we are before you
16 today.

17 I think as part of the exhibits you've seen the
18 photographs of the interior. There is an existing easement
19 over Lot 18. The easement documents also submitted as an
20 exhibit show that this easement has been in place for quite
21 some time to allow access to the basement apartment. Nothing
22 about that has changed.

23 And, really, we're here so that we can get your
24 approval. We took this to the ANC and have their support.
25 They have -- they had asked us to commit to not renting the

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1 apartment as a short-term rental. And so, we have agreed
2 with them that this will have a minimum rental period of one-
3 year. And, have discussed with staff, or at least I emailed
4 staff and said that whatever the Board feels is the
5 appropriate way to memorialize that commitment, we're, of
6 course, amenable to. So, whether it's part of the order and
7 then we record that with the land records so that this will
8 run with the property and use so as not to impact the
9 neighbors for short-term rentals and the effects that go
10 along with that.

11 We have staff support and that's basically all I
12 have. I want to keep this as brief as possible, but I'm
13 happy to answer any questions you all have.

14 VICE CHAIR JOHN: So, can you tell us how the
15 Application meets the requirement for approval under the
16 appropriate regulations for accessory dwellings?

17 MS. THEMAK: Sure. We think that it will not have
18 an impact on the public health, the safety, morals,
19 convenience, general welfare pursuant to 11A, Section 101.1.

20 It's been in existence and will not tend to
21 adversely affect the use of the neighboring properties. It
22 has been utilized -- it's been there with access so it has
23 no impact with respect to noise or access to light and air
24 for neighboring properties.

25 In compliance with Subtitle U, Section 353, it is

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1 -- the main section of the house will be owner occupied for
2 the duration of the accessory apartment use. Of course, the
3 accessory apartment shall not be resided in by an excess of
4 three people.

5 And this is -- it meets the minimum gross floor
6 area requirements. I'm trying to think of what else here we
7 have.

8 The property itself has a gross floor area of 3800
9 square feet and the existing accessory apartment occupies
10 less than 35 percent of that. And, the entrance is located
11 on a wall that does not face the street.

12 I believe there is a stairway that faces N Street
13 and you can see that in the -- I believe it's Exhibit 30, the
14 easement documents. So that the door is down a stairway to
15 access from N Street.

16 VICE CHAIR JOHN: Okay, thank you.

17 Does the Board have any questions?

18 Mr. Blake?

19 MEMBER BLAKE: Yes, two questions. One, could you
20 tell us a little bit about the dialogue you had with the ANC
21 and what the nature and issue was that created the condition
22 that they requested of you?

23 And also, my second question is, what is the
24 condition of the apartment to date? Does it meet all the
25 code requirements?

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1 MS. THEMAK: Yes, to answer your first question,
2 Commissioner Lohse reached out to me and asked whether we
3 would be amenable to or open to a limit, a minimum on the
4 rental period. We said, yes. We worked out some language.

5 Originally, it was intended to be a covenant, but
6 we didn't -- the ANC didn't want to have it be a covenant
7 between the ANC and the owners. So, we determined that the
8 best way to do it would be to have language in the actual
9 order. So, that it was just -- and then, we could record
10 that.

11 So, it started out as conversations with
12 Commissioner Lohse and then she took the language to her ANC.
13 We were there to answer any questions and they were all in
14 support of the manner and the content of that commitment.

15 In terms of code, yes, now that the basement
16 apartment meets all the codes, it had been -- it went through
17 the inspection and permitting process. The only thing that
18 wasn't flagged was the accessory use.

19 I know there was a letter submitted into the
20 record but there are actually three windows in the basement
21 apartment. There are two in the bedroom, one in the living
22 room. And, the front door to access the basement apartment
23 is actually glass. So, there's plenty of light and air. I
24 mean, it is a basement apartment, but it -- there are windows
25 located in there.

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1 VICE CHAIR JOHN: Okay, thank you, Ms. Themak.
2 Are there any other questions from the Board?

3 (NO AUDIBLE RESPONSE)

4 VICE CHAIR JOHN: Thank you.

5 Ms. Vitale, may I go to you next?

6 MS. VITALE: Vice Chair, Members of the Board,
7 Elisa Vitale with the Office of Planning for BZA Case 20724.
8 The Office of Planning is recommending approval of the
9 requested special exception relief to formalize the existing
10 accessory apartment. And, OP will rest on the record of its
11 staff report. I am happy to answer any questions that the
12 Board might have at this time.

13 Thank you.

14 VICE CHAIR JOHN: Thank you.

15 Can you just address the general special exception
16 criteria?

17 MS. VITALE: Certainly. For an accessory
18 apartment use, there are specific criteria for the accessory
19 apartment use. As you heard the attorney for the Applicant
20 state, the Application would meet those special exception
21 criteria.

22 The principle dwelling would be owner occupied.
23 The total occupancy would not exceed six. The property meets
24 the minimum gross floor area requirements. And, the proposed
25 accessory -- or existing accessory apartment would not exceed

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1 the 35 percent GFA limit.

2 The Applicant's not proposing to create an
3 additional entrance, as you heard. There is an easement
4 providing access to the entrance to the property.

5 The accessory apartment would be in the principle
6 building, not in an accessory building. I think the
7 remaining specific criteria were not applicable to this
8 particular situation.

9 With respect to the general special exception
10 criteria, the R20 zone contemplates accessory apartments.
11 They are permitted via special exception provided the
12 conditions that I just elaborated are met. The Applicant has
13 demonstrated conformance with the relevant conditions. So,
14 we believe that the requested relief would be in harmony with
15 the general purpose and intent of the zoning regulations and
16 zoning map.

17 And, the proposal would not appear to affect
18 adverse use of the neighboring property. The accessory
19 apartment is located within an existing house on the basement
20 level and it satisfies the special exception criteria.

21 I think you've heard discussion today about a
22 condition related to short-term rental use. OP would not be
23 opposed to the Board including such a condition in its order.
24 We did not recommend it in our report, but we would not be
25 opposed to the inclusion of such a condition.

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1 VICE CHAIR JOHN: Thank you, Ms. Vitale.

2 Does the Board have any -- does the Applicant have
3 any questions for the Office of Planning?

4 MS. THEMAK: I don't. I would like to note, there
5 is a -- the entrance to the basement apartment does,
6 technically, there's an error in the statement, the pre-
7 hearing statement. There is a door to the basement apartment
8 that does technically face N Street. I just want to be clear
9 because you'll see where that easement area is.

10 However, it's below the main level of the house
11 and I believe, and Ms. Bayoumi and Ms. Bernhardt are here as
12 well and they can attest to this. There is actually a brick
13 wall in front of that with a gate. So, not only is the
14 entrance to the basement apartment down a set of stairs and
15 set back from the street, there is a brick wall and a gate
16 in front of that. So, the visibility of a front door to this
17 basement apartment is minimalized.

18 But I wanted to make sure you all are aware that
19 there was just an error and that the entrance to the basement
20 apartment does face N Street, so that's an error in the pre-
21 hearing statement, but it is not visually impactful effect
22 because it is set back behind the wall and the gate and down
23 a set of stairs. And it is below the main level of the
24 house.

25 VICE CHAIR JOHN: Okay, thank you, Ms. Themak.

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1 MS. THEMAK: I'm sorry for that.

2 VICE CHAIR JOHN: It's okay.

3 Does the Board have any questions for the Office
4 of Planning or the Applicant?

5 (NO AUDIBLE RESPONSE)

6 VICE CHAIR JOHN: Thank you.

7 Mr. Young, is there anyone wishing to testify?

8 MR. YOUNG: We do not.

9 VICE CHAIR JOHN: And, the ANC is not here. Okay,
10 so I'll go ahead and close the record in the hearing. And,
11 I thank you all for your testimony.

12 MS. THEMAK: Thank you.

13 VICE CHAIR JOHN: Okay, so are we ready to
14 deliberate?

15 So, I'll start. Just a couple comments, I think
16 this is fairly straightforward. I don't have any questions
17 about whether or not the Application meets the criteria that
18 the Office of Planning in its analysis and testimony this
19 morning showed clearly how the accessory apartment meets the
20 criteria for relief.

21 And, I will discuss the recommended condition
22 after we've agreed on whether or not we would like to approve
23 this application. So, can we go around the room starting
24 with you, Mr. Smith, and hear what your thoughts are?

25 MEMBER SMITH: Sure. I largely agree with the

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1 assessment of this and the Office of Planning's assessment
2 of this. I do believe that it's a fairly straightforward
3 Application. It meets all of the special exception standards
4 under X 101.

5 But I do believe that the -- it would be in
6 harmony with the general purpose and intent of the zoning
7 regulations and the zoning maps for the exact same reasons
8 that Ms. Vitale stated, the zoning regulations do allow for
9 accessory dwelling units as long as they meet the special
10 exception standards that's outlined under 8283.4, the 253.9
11 which of the -- I was going to reiterate exactly what's being
12 stated.

13 Looking at the record, they meet all of those
14 standards. I do not believe that the accessory dwelling unit
15 would have any adverse impact over the neighborhood. There
16 are other accessory dwellings within this neighborhood. And,
17 as previously stated, this accessory dwelling unit, while it
18 was illegal, has existed in some form over the past couple
19 of years within this property. And, I'll also note again
20 that this accessory dwelling would be interior to the present
21 property. So, the -- right, the primary building as opposed
22 to it being in a separate accessory dwelling unit to the
23 degree of the property.

24 So, this proposal would be in character with what
25 we see in that block. It wouldn't be any additional separate

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1 unit on -- separate from the primary building. So, I do
2 believe it meets X 901.2(b). So, I am in support of granting
3 special exception. So, I'll wait until, you know, mainly
4 that I said that we have guidelines about whether we should
5 include that condition or not, so I'll hold off on that.

6 VICE CHAIR JOHN: Mr. Blake?

7 MEMBER BLAKE: I would agree with the observations
8 made by Mr. Smith and yourself and I would be prepared to
9 support the Application.

10 VICE CHAIR JOHN: Thank you.

11 Commissioner Miller?

12 COMMISSIONER MILLER: -- with all the comments
13 that each of you have made, thank you.

14 VICE CHAIR JOHN: Thank you.

15 So, what is your position on the condition? Let's
16 start with you, Commissioner Miller.

17 COMMISSIONER MILLER: I'm not sure.

18 VICE CHAIR JOHN: Okay. We can go around the room
19 if you like and how -- help you decide.

20 COMMISSIONER MILLER: Okay, thank you.

21 VICE CHAIR JOHN: Okay, all right, I'll just say,
22 I'm not in favor of the condition proposed by the ANC. And,
23 the Board is required to give great weight to the legal
24 relevant issues and concerns of the ANC. But the ANC has not
25 stated what potential adverse impact it is trying to prevent.

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1 And, as Mr. Blake said, Mr. Smith said, and Mr.
2 Blake agreed, this accessory apartment has been there for
3 some time. And so, any potential adverse impact would have
4 been known to them and there is no allegation that there is
5 any adverse impact from the operation of that basement
6 apartment.

7 So, but, for me, the more important reason is that
8 the Board has no jurisdiction to regulate the term of a
9 lease. That's something for another body. And so, I would
10 not recommend that we include anything relating to the term
11 of the lease or short-term rental because there are other
12 regulations, again, that cover those issues. And, I will not
13 recommend, again, including that condition.

14 And so, I am -- I've considered the ANC's issue,
15 but I do not agree with the ANC's recommendation.

16 So, with that, I'll try Mr. Blake.

17 MEMBER BLAKE: Yes, I agree with your observation
18 that it doesn't quite fit and it's difficult to enforce. I
19 also note that the ANC didn't want to make an agreement with
20 this and felt -- sign an agreement to do this as well. It's
21 a tough one because 30 days -- a 30-day continuous lease is
22 sufficient for the residential requirement.

23 So, in this case, I would agree with you that I
24 would not feel comfortable adding this specific limitation
25 on that in the order.

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1 VICE CHAIR JOHN: Thank you, Mr. Blake.

2 Mr. Smith?

3 MEMBER SMITH: I agree with everything that you
4 and Board Member Blake just stated. I do understand the
5 ANC's concern with limits but the way the regulations work
6 in the District as far as I'm aware, short-term rentals are
7 allowed in most homes as long as you get some form of
8 license.

9 And, to me, I agree with your assessment, Ms.
10 John, I don't think regulating the length of the rental term
11 is something that is in the purview of this Board. And, a
12 short-term rental, based on regulations, should be
13 residential in nature. So, regardless of the term of the
14 lease of this residential unit, it should be maintained in
15 a residential manner.

16 And, if there's any concerns that the ANC has in
17 the future with if it is a short-term rental, there are
18 avenues that the ANC or the residents of the ANC can pursue
19 to potentially if the owners meet that short-term rental
20 license revoked, there are others way to remedy this and I
21 don't think that putting in a condition is the correct route
22 that we can't -- we don't typically regulate the terms of a
23 lease.

24 VICE CHAIR JOHN: Okay --

25 MEMBER SMITH: And I would highly recommend that

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1 the ANC reconsider their condition, I mean, their stance on
2 the covenant. It seems to me that would be the more
3 appropriate avenue. So, I'm not in favor of doing this.

4 VICE CHAIR JOHN: Thank you, Board Member Smith.
5 Commissioner Miller?

6 COMMISSIONER MILLER: Yes, well I'm glad I waited
7 because each of you were very persuasive in your analysis of
8 the condition which I agree, short-term rentals are generally
9 permitted in resident zones. And, under the short-term
10 rental regulations which are -- which require the owner to
11 get a business license for that purpose and other
12 requirements. And so, and then there's other entities, non-
13 zoning entities which regulate that operation -- that
14 regulate that use. So, that's not really a zoning issue.

15 I would, though, encourage the Applicant to take
16 heed of what the ANC said as a good neighbor and try to find
17 a -- find longer term rentals for the property since that is
18 a position that they took. And so, I'll just leave it at
19 that, thank you.

20 VICE CHAIR JOHN: Thank you.

21 So, just to clarify, the Board is not requiring
22 the condition. So, I'll go ahead then and make a motion to
23 approve Application Number 20724 as captured -- as captioned
24 and read by the Secretary and ask for a second, Mr. Blake.

25 MEMBER BLAKE: Second.

1 VICE CHAIR JOHN: Mr. Moy, could you take the roll
2 call please?

3 MR. MOY: When I call your name, if you would
4 please respond with a yes, no, or abstain to the motion made
5 by Vice Chair John to approve the Application for the relief
6 requested. The motion was seconded by I believe Mr. Blake.

7 Zoning Commissioner Rob Miller?

8 COMMISSIONER MILLER: Yes.

9 MR. MOY: Mr. Smith?

10 (NO AUDIBLE RESPONSE)

11 MR. MOY: Mr. Blake?

12 (NO AUDIBLE RESPONSE)

13 MR. MOY: Vice Chair John?

14 VICE CHAIR JOHN: Yes.

15 MR. MOY: We have a Board Member not present.
16 Staff would record the vote as four to zero to one. And this
17 is on the motion made by Vice Chair John to approve. The
18 motion to approve was seconded by Mr. Blake, also in support
19 of the motion to approve Zoning Commissioner Rob Miller and
20 Mr. Smith, Mr. Blake and Vice Chair John. The motion carries
21 on a vote of four to zero to one.

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

23 So, I'd like to take a quick break. What would
24 you like, five to ten minutes? Five minutes? Five minutes?
25 Okay, a five minute break.

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1 (Whereupon, the above-entitled matter went off the
2 record at 10:33 a.m. and resumed at 10:42 a.m.)

3 VICE CHAIR JOHN: The Board is back in session.
4 Mr. Moy, can you call us back in?

5 MR. MOY: Thank you, Madam Vice Chair.

6 After a quick recess, the Board is indeed back in
7 its public hearing session. And the time is at or about
8 10:42 a.m.

9 The next case before the Board is Application
10 Number 20726 of Pablo Ortiz, Jr. This is an Application for
11 a special exception pursuant to Subtitle U, Section 254.14
12 and Subtitle, Section 901.2 from the corder store
13 requirements. Subtitle U, Section 254.13(e) and, let's see,
14 the property's located in the RF-1 zone at 500 Irving Street,
15 Northwest, Square 3051, Lot 119. And, that's it for me,
16 Madam Vice Chair.

17 VICE CHAIR JOHN: Good morning. Can you hear me,
18 Mr. Ortiz?

19 MR. ORTIZ: Yes, ma'am.

20 VICE CHAIR JOHN: Okay. Please introduce yourself
21 for the record and give your home address.

22 MR. ORTIZ: Good morning, everyone. My name is
23 Pablo Ortiz, Jr. I'm the owner of the property located at
24 500 Irving Street, Northwest, Washington, D.C. 20010 as well
25 as the business owner at Aurora Market.

1 VICE CHAIR JOHN: Okay. Can you tell us why
2 you're here and how your application meets the criteria for
3 relief?

4 MR. ORTIZ: Yes, Madam Chair.

5 So, our market is currently operating as a corner
6 store. And, we request a special exception under the U 2513
7 and to allow us to sell alcoholic beverages.

8 In collaboration with DCRA, we have laid out our
9 store plan to adhere to all the requirements that are
10 identified in 254.5 through 254.12, ma'am.

11 VICE CHAIR JOHN: Okay. And, so what are your
12 hours of operation? What are you proposing?

13 MR. ORTIZ: Yes, so I was proposing and in
14 communication with our ANC, Commissioner Brown as well as the
15 feedback we received from the local community, our proposed
16 hours of operation would be 7:00 a.m. to 10:00 p.m. Sunday
17 through Thursday and then 7:00 a.m. to 12:00 p.m. on Friday
18 and Saturday.

19 VICE CHAIR JOHN: And, on Friday and Saturday, it
20 would be?

21 MR. ORTIZ: Seven a.m. to 12:00 p.m., ma'am. Or
22 12:00 a.m., excuse me.

23 VICE CHAIR JOHN: That'll be it.

24 MR. ORTIZ: Yes, sorry about that.

25 VICE CHAIR JOHN: Okay. Does the Board have any

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1 questions?

2 (NO AUDIBLE RESPONSE)

3 VICE CHAIR JOHN: No questions from the Board.
4 I'll go to the Office of Planning then. Ms.
5 Myers?

6 MS. MYERS: Crystal Myers for the Office of
7 Planning.

8 The Office of Planning is recommending approval
9 of this case. But I would like to just put, I guess, make
10 some modifications to our report.

11 So, we were talking about the report saying that
12 this is relief from 254.13(e), but since the Applicant is
13 expanding his hours as well as doing the alcohol -- selling
14 alcohol on site, this is actually a special exception corner
15 store. So, it's no longer from 254.13(e), this is just a
16 straight special exception corner store case because he is
17 proposing to do something that is not allowed in the matter
18 of right action. So, I just wanted to clarify that.

19 And then, I also wanted to note a staff report
20 correction. Friday and Saturday, we put down that it was
21 7:00 a.m. to 12:00 p.m. and I understand it's 7:00 a.m. to
22 12:00 a.m. which we are comfortable with.

23 The Office of Planning report did review this for
24 the hours of operation as well as for the alcohol sales and
25 we can recommend approval of this case and will stand on the

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1 record of the staff report.

2 VICE CHAIR JOHN: Thank you.

3 And I do see, Ms. Myers, that you reviewed the
4 Application under the corner store special exception. So,
5 maybe you can step through that section to clarify how the
6 Application meets the requirement.

7 MS. MYERS: Sure. So, with the general special
8 exception criteria about it being within the harmony and
9 general purpose and intent per regulations, this zone does
10 allow for corner stores. And, the owner currently has a
11 corner store and is just doing the additional hours as well
12 as the sale of the alcohol which would not be out of harmony
13 or a problem with the purpose and intent of the regulations
14 because of the discussion of the corner store special
15 exception criteria.

16 And, as far as adversely impacting the
17 neighborhood, neighboring properties, again, it's a special
18 exception which takes into account the impacts to the
19 surrounding neighborhood. And, our report, we are saying
20 that they comply with the criteria of the special exception,
21 so therefore, should not have an impact on there -- or not
22 a significant impact on the surrounding neighborhood.

23 In the special exception, specific criteria, it
24 talks about corner stores shall be located so that as not
25 likely to become objectionable neighborhood property due to

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1 noise, traffic, deliveries, and any other objectionable
2 conditions.

3 As we've stated earlier, this is an existing
4 corner store so when it comes to the location, this is a
5 location that -- actually, this property has a long history
6 of being a retail corner store space. So, it's an
7 appropriate location to continue being that and the
8 additional alcohol sales as well as the expanded hours should
9 not cause a problem in this respect.

10 And, again, further into the criteria, it kind of
11 addresses even further when it comes to the goods and
12 services on site, selling -- they already are selling food
13 and non-alcoholic drinks, so those aren't objectionable.

14 The store selling wine and beer and they're
15 keeping it to that 15 percent of the area of the space. That
16 should not be an objectionable -- that should not be a
17 problem. It's a modest amount of space for those types of
18 uses.

19 And, the proposed size and location, again, this
20 is an existing long-standing retail space. So, the location
21 should not be an issue.

22 The proposed number of employees, they are
23 proposing six employees with no more than three on site at
24 a time. So, that should not be problematic.

25 And, their hours of operation are a weak, though

1 would not be a problem in this neighborhood. It would --
2 7:00 a.m. to 10:00 p.m. Sunday through Thursday, and then,
3 7:00 a.m. to 12:00 a.m. Friday and Saturday.

4 The proposed signage, they already have a sign on
5 the property and they were recently approved for an out store
6 sign, I think they have an indoor -- I'm sorry, I know they
7 have an indoor sign but they were recently approved for an
8 outdoor sign, so the signage should not be objectionable.

9 And, there's no amplified music or sound being
10 proposed so noise should not be an issue in this case.

11 Outdoor seating, there is no outdoor seating being
12 proposed.

13 There has never been parking at this site so that
14 should not be an issue. They're not doing anything that
15 would generate significantly, like an issue with parking.
16 They have public transit in the area, so -- or buses in the
17 area so that should not be an issue.

18 And, when it comes to trash and storage, trash is
19 stored in a storage room in the building and the owner has
20 a contract with a waste management company so that should be
21 managed correctly. So, trash should not be an issue for the
22 neighborhood.

23 And then, again, when it comes to the alcohol
24 sales and the gross floor area, they are keeping it within
25 15 percent of the gross floor area and they've provided a

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1 floor plan that shows that as well. So, it should not be a
2 problem in that respect.

3 So, I don't think there would be a significant
4 issue with the neighborhood. And, I understand that,
5 actually, the neighborhood is asking for the hours to be
6 expanded because they feel that it would, you know, not be
7 objectionable, that should be a benefit.

8 So, again, Office of Planning is recommending
9 approval.

10 VICE CHAIR JOHN: Okay, thank you, Ms. Myers.

11 Does the Board have any questions?

12 (NO AUDIBLE RESPONSE)

13 VICE CHAIR JOHN: Does the Applicant have any
14 questions for Ms. Myers?

15 MR. ORTIZ: No, ma'am.

16 VICE CHAIR JOHN: Okay. Mr. Young, is there
17 anyone wishing to testify?

18 MR. YOUNG: We do not.

19 VICE CHAIR JOHN: Okay, Mr. Miller?

20 COMMISSIONER MILLER: Yes, I just want to clarify,
21 I'm going to ask a question of Mr. Ortiz and maybe Ms. Myers,
22 but the existing store, what are the hours of the existing
23 store and do you sell alcohol currently at the existing
24 store?

25 MR. ORTIZ: The current hours of operation of the

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1 store is from 9:00 a.m. to 7:00 p.m. We're a family owned
2 and operated, so it's myself, my wife, and my brother-in-law
3 that work there. And, the community has been asking for us
4 to actually open earlier and stay later but, you know, we're
5 only so much we can do as a three-person operation.

6 We do not currently sell beer and wine or any
7 alcohol at this time. We just set up our store in line with
8 the guidance of 254.13.

9 COMMISSIONER MILLER: Thank you.

10 And, the -- you intend to just have offsite
11 consumption or do I -- is that correct?

12 MR. ORTIZ: Yes, sir.

13 COMMISSIONER MILLER: Okay. And, I've heard the
14 statements made by both you and Ms. Myers that the
15 neighborhood is asking for expanded hours. Do we have
16 anything in the record that really -- I didn't see that in
17 the ANC's report except they support the Application which
18 includes the proposed hours of operation. But they -- I
19 don't think they made specific reference to it, but correct
20 me if I'm wrong if anyone -- do we have anything in the
21 record that evidences that the neighborhood did want expanded
22 hours?

23 MR. ORTIZ: I have not provided any evidence to
24 support that. I was working with Commissioner Brown and the
25 ANC and this is the feedback that she has received herself

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1 as well as many customers that come in and shop in our
2 market.

3 COMMISSIONER MILLER: So, you've -- they've
4 expressed that desire to you?

5 MR. ORTIZ: Yes, sir.

6 COMMISSIONER MILLER: And, that's where those
7 statements come from? Okay. Thank you very much.

8 VICE CHAIR JOHN: Thank you, Mr. Miller.

9 I'm looking at the ANC report and I don't see that
10 special request, but they do reference the sale of alcohol
11 for off premises consumption.

12 And, I would just note -- no, that's it.

13 So, are there any other questions?

14 (NO AUDIBLE RESPONSE)

15 VICE CHAIR JOHN: Do you have any closing
16 statements, Mr. Ortiz?

17 MR. ORTIZ: I'd just like to thank everyone for
18 their time and their assistance. Everyone's been a great
19 help to our small business and we look forward to meeting the
20 requests of the community. Thank you.

21 VICE CHAIR JOHN: Thank you.

22 Mr. Young, would you please excuse the witnesses
23 and thank you for your testimony, again, Mr. Ortiz.

24 So, are we ready to deliberate? So, I think,
25 first off, we do need to amend the caption to reflect more

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1 clearly what is being requested. And so, my suggestion is
2 to change the caption to Application for a Special Exception
3 Pursuant to Subtitle U, 254.14 and Subtitle X 901.2 because
4 254.13 is not applicable and it would be for the sale of
5 alcohol.

6 So, it would read Application for a Special
7 Exception Pursuant to Subtitle U, Section 254.14 and Subtitle
8 X, Section 901.2 to allow the sale of alcohol for offsite
9 consumption permitted only by special exception with a
10 maximum of 15 percent of gross floor area.

11 So, I'll just start the discussion. I thought
12 that the Application meets the criteria for relief under
13 Subtitle U, 254.14. It has operated as a corner store for
14 some time and the sale of alcohol for offsite consumption is
15 permitted in this zone.

16 And, in terms of the hours of operation, the
17 Applicant has been operating successfully at this location
18 for some time and the expanded -- it does not appear from the
19 record that there's any adverse -- potential adverse impact
20 from expanding the hours as stated in the Application from
21 7:00 to 10:00 p.m. on Sunday to Thursday and Friday and
22 Saturday from 7:00 to 12:00 a.m.

23 And, I would agree with the OP's analysis as
24 amended and give great weight to OP's analysis as well as the
25 recommendation or the issues and concerns, and there were no

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1 concerns from the ANC.

2 And, with that, I'll go around the room, starting
3 first with Mr. Blake.

4 MEMBER BLAKE: Sure, yes, I would agree with your
5 analysis of this situation and it is appropriate under that.
6 I believe that does include the proposed hour change, as you
7 stated, although it's not in the caption, I do believe it
8 includes that because under the special exception
9 requirement. I don't whether we have to state that or not,
10 but I'm totally in support of it. I believe it meets the
11 criteria, I think it's value-added service to the community.
12 And, it does -- I'm prepared to support it.

13 VICE CHAIR JOHN: Thank you.

14 Mr. Smith?

15 MEMBER SMITH: I agree with the analysis presented
16 by both you and Board Member Blake. And I will support the
17 Application.

18 VICE CHAIR JOHN: Commissioner Miller?

19 COMMISSIONER MILLER: Thank you, Madam Chair. I
20 concur with your analysis and that of Mr. Blake and Mr.
21 Smith.

22 I also just would note the obvious that the sale
23 of alcohol is regulated specifically by another agency of the
24 District Government, ABRA, the Alcohol Beverage Regulation
25 Administration, and another board, ABC Board, will be having

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1 to have a hearing on this proposal. So, any issues that the
2 neighborhood has, they'll have another opportunity to discuss
3 that with the Application for this project.

4 So, I'm supportive of it going forward. Corner
5 stores was a provision in the Zoning Regulation '16 revision
6 that we wanted to try to encourage with the appropriate
7 parameters and I think the parameters are appropriate here
8 in this case. So, thank you.

9 VICE CHAIR JOHN: Thank you, and thank you for
10 adding the information on ABRA because there are several
11 hoops that the Application still has to go through. But for
12 zoning, we would look at our regulations which affect the
13 time and the hours of operation.

14 And, the one that -- the matter of right option
15 would have been operation from 9:00 to 7:00 and that's not
16 what the Applicant is trying to do. The Applicant is trying
17 to expand the hours which puts the Applicant over into the
18 following -- 254.14 which has -- gives the Board the
19 jurisdiction to approve the hours of operation.

20 So, of course, as modified by ABRA within their
21 jurisdiction, but at least in terms of zoning, it can be
22 located in this section, in this address in this zone and
23 operate under those hours.

24 So, with that, I will go ahead and make a motion
25 to approve Application -- did I already do this -- to close

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1 the record and approve Application 20726 with the following
2 caption, Application for Special Exception Pursuant to
3 Subtitle U, 254.14 and Subtitle X, Section 901.2 to operate
4 a corner store and including the sale of alcohol for offsite
5 consumption committed only by special exception with a
6 maximum of 15 percent of gross floor area.

7 Did you get that, Mr. Moy?

8 MR. MOY: Yes, ma'am, every word.

9 VICE CHAIR JOHN: Okay, so, I'll ask for a second,
10 Mr. Blake.

11 (NO AUDIBLE RESPONSE)

12 VICE CHAIR JOHN: Would you take a roll call, Mr.
13 Moy?

14 MR. MOY: When I call your name, if you would
15 please respond with a yes, no, or abstain to the motion made
16 by Vice Chair John to approve the amended request for zoning
17 relief as she has cited in her motion. This motion was
18 seconded by Mr. Blake.

19 Zoning Commissioner Rob Miller?

20 COMMISSIONER MILLER: Yes.

21 MR. MOY: Mr. Smith?

22 MEMBER SMITH: Yes.

23 MR. MOY: Mr. Blake?

24 MEMBER BLAKE: Yes.

25 MR. MOY: Vice Chair John?

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1 (NO AUDIBLE RESPONSE)

2 MR. MOY: And, we have a Board Member not present
3 nor participating. The staff will record the vote as four
4 to zero to one and this is on the motion made by Vice Chair
5 John to approve the amended relief. The motion to approve
6 was seconded by Mr. Blake, also in support of the motion
7 Zoning Commissioner Rob Miller and Mr. Smith. And, of
8 course, Mr. Blake, Vice Chair John, motion carries on a vote
9 of four to zero to one.

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

11 And, when you have a minute, please call the next
12 case.

13 MR. MOY: The next case before the Board is
14 Application Number 20728 of Dr. Kelsi Bracmort, B-R-A-C-M-O-
15 R-T. This is an Application for a special exception pursuant
16 to Subtitle F, Section 5201 and Subtitle X, Section 901.2 and
17 from the lot occupancy requirements of Subtitle F, Section
18 304.1. The property is located in the RA-1 zone at 3615 6th
19 Place, Southeast, Square 5671, Lot 55. And, that's it.

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

21 Mr. Young, would you let the Applicant in, please?

22 DR. BRACMORT: Hello, good morning. Can you hear
23 me?

24 VICE CHAIR JOHN: Yes, good morning. Is this Ms.
25 Bracmort?

1 DR. BRACMORT: Yes, speaking.

2 VICE CHAIR JOHN: Okay, are you choosing not to
3 use your video?

4 DR. BRACMORT: My camera should show. I don't
5 have it blocked, is it not -- oh, start video, I apologize.

6 VICE CHAIR JOHN: Okay, thank you.

7 DR. BRACMORT: Okay.

8 VICE CHAIR JOHN: Okay. And, is the ANC
9 Commissioner here?

10 COMMISSIONER BROWN: -- to the Board.

11 VICE CHAIR JOHN: Good morning, are you choosing
12 not to use your camera?

13 COMMISSIONER BROWN: Camera should be coming on
14 very shortly.

15 VICE CHAIR JOHN: Okay, Mr. Brown, we'll go ahead
16 and get started and we'll ask you to introduce yourself at
17 the appropriate time.

18 So, Dr. Bracmort, can you tell us why you're here
19 and how your Application meets the criteria for relief?

20 DR. BRACMORT: Sure. Good morning, thank you for
21 your time today. My name is Kelsi Bracmort. I am a D.C.
22 homeowner. I live at 3615 36th Place, Southeast, Washington,
23 D.C.

24 And, I am here today because I am requesting a
25 special exception from the lot occupancy requirements so that

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1 I can build two rear decks at two different elevations at the
2 rear of my property. And, I'm requesting the special
3 exception because the proposed construction would exceed the
4 maximum lot occupancy requirements.

5 I'm asking for these two rear decks because they
6 will help me to have more usable space with my yard and the
7 accessory rear deck is going to help me tremendously with the
8 yard maintenance and upkeep.

9 I am happy to see my ANC Commissioner is here.
10 I've got their support. DDOT has not objected to, I guess,
11 the approval of my Application. The Office of Planning has
12 recommended approval of my Application. And, several of my
13 neighbors have submitted letters of support for my project.

14 So, I'm here -- I can tell you more about my lot,
15 what makes it unique, more about my house if that is of use
16 to you or I can stop right here.

17 VICE CHAIR JOHN: Well, I'll go to the Board.
18 Does the Board have any questions of the Applicant?

19 COMMISSIONER MILLER: I have no questions, Madam
20 Vice Chair, I just wanted to thank the Applicant for your
21 outreach to your neighbors and the community for this
22 Application.

23 VICE CHAIR JOHN: Okay, thank you.

24 And so, we'll go to the Office of Planning next.

25 MS. THOMAS: Yes, good morning, Madam Chair,

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1 Members of the Board, Karen Thomas for the Office of Planning
2 and we will rest on the record of our report in support of
3 this Application. Thank you.

4 VICE CHAIR JOHN: Thank you, Ms. Thomas.

5 Just briefly, can you just talk about how the
6 application meets the criteria for relief? The lot
7 occupancy, in terms of the general special exception
8 criteria?

9 MS. THOMAS: Sure, the proposed decks would meet
10 the intent of the regulations. We think that the purpose and
11 intent of the RA-1 zone, it would allow for lot occupancy
12 relief for special exception for the project and it would not
13 result in a use or building uniform inconsistent with that
14 zone. And, it should not have an undue adverse effect on the
15 use of neighboring properties. Neither would it obstruct
16 light and air to adjacent properties.

17 Due to the shape of the topography of the lot, the
18 Applicant's rear yard is somewhat a bit unusable as it drops
19 and is steep in the back. And so, the deck is -- the height
20 of the deck adds to lot occupancy above a particular grade.
21 And so, the Applicant would need relief for that.

22 Otherwise, we are in support of this because we
23 don't see any adverse impact to neighboring properties.

24 Thank you.

25 VICE CHAIR JOHN: Thank you, Ms. Thomas.

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1 Does the Board have any questions?

2 (NO AUDIBLE RESPONSE)

3 VICE CHAIR JOHN: Thank you.

4 I'll go to the ANC Commissioner. Mr. Brown, would
5 you please introduce yourself?

6 COMMISSIONER BROWN: Okay, can -- is my --

7 VICE CHAIR JOHN: We can hear you and we can see
8 you.

9 COMMISSIONER BROWN: Okay, perfect, perfect. Tech
10 is working for me today.

11 Good morning to the Board and good morning to my
12 neighbor, Dr. Bracmort. I'm excited to be here to offer my
13 support as the Commissioner for advisory of the commission
14 7(b)06 and also as a representative of ANC 7B full
15 commission.

16 Dr. Bracmort, I would say, has been a stalwart of
17 a neighbor. Before she began her process, she did the
18 appropriate outreach and communication with all of her
19 neighbors. I would say even greater than the 200-feet that's
20 required by statute as well as reaching out to her ANC
21 Commissioner to get thoughts and opinions about the proposed
22 design and renovation to her property.

23 As the Office of Planning stated, the topography
24 that's behind Dr. Bracmort's house is very irregular in shape
25 which, apparently, does not allow for peace and enjoyment of

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1 her property as many neighbors would enjoy in our
2 neighborhood. And so, I am in complete support of this
3 Application to move forward as stated in the architectural
4 documents that were submitted as well as in the arguments
5 that Dr. Bracmort has provided for this Board.

6 VICE CHAIR JOHN: Thank you.

7 Does the Board have any questions for the
8 Commissioner?

9 (NO AUDIBLE RESPONSE)

10 VICE CHAIR JOHN: Does the Applicant have any
11 questions for the Commissioner?

12 (NO AUDIBLE RESPONSE)

13 VICE CHAIR JOHN: Thank you.

14 DR. BRACMORT: -- for showing today, I appreciate
15 your presence.

16 COMMISSIONER BROWN: Absolutely.

17 VICE CHAIR JOHN: Thank you.

18 Mr. Moy, is there anyone wishing to testify?

19 MR. YOUNG: We do not.

20 VICE CHAIR JOHN: I'm sorry, I meant Mr. Young.

21 Dr. Bracmort, do you have any closing statements?

22 DR. BRACMORT: Is that for me, Dr. Bracmort?

23 VICE CHAIR JOHN: Bracmort.

24 DR. BRACMORT: Okay, yes, sure, no problem.

25 VICE CHAIR JOHN: Sorry.

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1 DR. BRACMORT: I'd only say quickly if Mr. Young
2 can bring up the PowerPoint slides I had. I know that you
3 all have several pictures there but there were two slides I
4 added just to show the vegetation, like what's out there
5 right now currently. I don't know if you bring that slide
6 up, just to show you, again, the steepness and the vegetation
7 that grows and how unruly it gets very quickly. And so, that
8 -- it's quite a bit to walk up and down such a steep slope
9 and maintain it, so I'm really looking forward to this
10 renovation project which will help me with that.

11 And then, if he just goes to the next slide you
12 will see, again, that, you know, my neighbors have been
13 absolutely wonderful and I just appreciate all of the support
14 that they've given me and, you know, just the kind words that
15 they've said to me as, you know, we've discussed this project
16 and, yes, just happy to hopefully be one step closer to
17 having this project done.

18 Thank you.

19 VICE CHAIR JOHN: Thank you.

20 So, does anyone from the Board have any questions
21 before I close the record?

22 (NO AUDIBLE RESPONSE)

23 VICE CHAIR JOHN: Thank you, Ms. Bracmort and
24 thank you, Commissioner. And, we're going to excuse you at
25 this time while the Board deliberates.

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1 COMMISSIONER BROWN: -- all, have a great --

2 DR. BRACMORT: Thank you.

3 VICE CHAIR JOHN: You're welcome.

4 So, I'm going to close the record in the -- I'm
5 going to close the record in this case and ask if we're ready
6 to deliberate?

7 And, can I ask you to start, Board Member Smith?

8 MEMBER SMITH: Sure. I think this is another
9 fairly straightforward request. And, based on the
10 information within the record, I do believe that the
11 Applicant has met the burden of proof for us to be able to
12 grant the special exception from 5201 and pursuant to S5201
13 and X 901.2 by the requirements. I rest on the OP staff's
14 report on this particular case.

15 Let's see, based on X 901, I do believe that the
16 proposed decking system that she would have -- would meet the
17 general purpose and intent of the zoning regulations. She
18 has met all of the criteria for us to be able grant special
19 exception in 5201, so I do believe it meets Subtitle A.

20 I do not believe that the decking system would
21 adversely affect the neighboring properties. As a matter of
22 fact, within the record we have submissions from all of the
23 surrounding property owners on the southeast and her
24 neighbors to the left and right of her that are in support
25 of this proposed deck and they would be the ones that would

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1 be more adversely affected by any reduction in light and air.
2 So, they're fairly comfortable and I don't believe that they
3 -- she would need any special conditions imposed upon --
4 included within the order for this fairly modest request, as
5 far as I'm concerned.

6 There are a number of other properties in the area
7 that have next here and I do believe that this would help her
8 maintain the rear of her property given the scale of slope
9 to the rear of her property.

10 So, with that, I give the OP staff report great
11 weight, recognizing that the ANC is also in support and the
12 adjacent property owners and DDOT had no objections and I'm
13 in support of the Application.

14 VICE CHAIR JOHN: Thank you, Board Member Smith.
15 And, Board Member Blake?

16 MEMBER BLAKE: -- with Board Member Smith's
17 analysis. It covered pretty much everything that I would
18 say. I am in support.

19 VICE CHAIR JOHN: Okay, thank you.

20 Commissioner Miller?

21 COMMISSIONER MILLER: Ditto, yes.

22 VICE CHAIR JOHN: Thank you.

23 COMMISSIONER MILLER: I concur.

24 VICE CHAIR JOHN: Thank you.

25 I am going to agree with the comments so far. The

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1 only thing I would add is that this is an unpaved paper alley
2 at the back of the residence so there is no potential adverse
3 impact from the rear view. And, I believe someone mentioned
4 that the deck will also be screened for the neighbors on both
5 sides.

6 And, I would just add that the Applicant is
7 requesting to go to a 60 percent lot occupancy with that
8 special exception. The Applicant could go up to 70 percent
9 with the required amount of justification. So, I'm in
10 support of the Application.

11 And, I will, therefore, make a motion to approve
12 Application Number 20728 as captioned and read by the
13 Secretary and ask for a second, Mr. Smith?

14 MEMBER SMITH: Second.

15 VICE CHAIR JOHN: Mr. Moy, would you please take
16 the 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 Vice Chair John to approve the Application for the relief
20 that's being requested. The motion to approve was seconded
21 by Mr. Smith.

22 Zoning Commissioner Rob Miller?

23 COMMISSIONER MILLER: Yes.

24 MR. MOY: Mr. Blake?

25 (NO AUDIBLE RESPONSE)

1 MR. MOY: Mr. Smith?

2 MEMBER SMITH: Yes.

3 MR. MOY: Vice Chair John?

4 VICE CHAIR JOHN: Yes.

5 MR. MOY: We have a Board Member not present.
6 Staff would record the vote as four to zero to one and this
7 is on the motion made by Vice Chair John to approve. The
8 motion to approved was seconded by Mr. Smith. Also in
9 support of the motion to approve Zoning Commissioner Rob
10 Miller, Mr. Blake, Mr. Smith, and Vice Chair John. The
11 motion carries on a vote of, again, on a vote of four to zero
12 to one.

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

14 When you have a moment, please call the next case.

15 MR. MOY: The next case before the Board is
16 Application Number 20729 of The American Institute of
17 Architects. This is an amended self-certified application
18 for special exception pursuant to Subtitle C, Section 1506.1
19 and Subtitle X, Section 901.2 from the penthouse wall
20 enclosure height requirements, Subtitle C, Section 1503.4©,
21 property located in the D-2 zone at 1735 New York Avenue,
22 Northwest, Square 170, Lot 39.

23 The preliminary matter here, Madam Vice Chair, is
24 that the Applicant is asking for expert status for two of
25 their architects. Their CVs are under Exhibit 21. And,

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1 that's all I have for you, Madam Vice Chair.

2 VICE CHAIR JOHN: Okay, let me take a look at
3 that.

4 MR. FERRIS: We can whittle it down just to Mr.
5 Dunn will be presenting.

6 VICE CHAIR JOHN: All right, he'll be presenting?
7 Okay.

8 Mr. Ferris, would you introduce yourself for the
9 record, please?

10 MR. FERRIS: Yes, thank you.

11 Lawrence Ferris with the law firm of Goulson and
12 Storrs, land use counsel for the Applicant.

13 VICE CHAIR JOHN: Okay, thank you.

14 Please go ahead and give your testimony or, I'm
15 sorry, state how your Application meets the criteria for
16 relief.

17 MR. FERRIS: Absolutely.

18 Thank you, again, and good morning, again, Chair
19 Hill and Members of the Board, excuse me, Chair John today.

20 For the record, again, Lawrence Ferris with the
21 law firm of Goulson and Storrs. We are here today for the
22 property located at 1725 New York Avenue, Northwest. This
23 is the headquarters building for the American Institute of
24 Architects.

25 This lot is located in Foggy Bottom near the

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1 corner of New York Avenue and 18th Street which is one block
2 west of the White House grounds and the old executive office
3 building.

4 And, actually, as I start, Mr. Young, if we can
5 have our presentation pulled up? I'll keep going while it's
6 being pulled up.

7 But this property is zoned D-2 and is located
8 immediately adjacent to the Octagon House located directly
9 at the street corner and we can probably scan to the next
10 slide just to orient ourselves. Thank you.

11 So, the Octagon House is a historic landmark and
12 also owned by the AIA. The AIA headquarters building that's
13 the subject of the Application we have before you today is
14 a seven-story office building constructed in the 1970s. It's
15 not part of the historic site for the Octagon House, but it
16 is subject to review by the Commission of Fine Arts under the
17 Shipstead-Luce Act.

18 So, as Mr. Dunn will be discussing shortly, the
19 AIA is proposing to renovate the existing building, the
20 headquarters building, and bring the site up to date
21 including substantial updates to the headquarters building's
22 mechanical systems. So, that's the project before you today.

23 Our Application requests special exception
24 approval pursuant to Subtitle C, Section 1506.1 for relief
25 from the house uniform height requirements. This is for the

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1 screening that's proposed for the new high-efficiency heat
2 pumps that are going to be located on the south side of the
3 roof along New York Avenue.

4 As discussed in our written submissions, the
5 relief is needed to allow the new heat pump screen to be
6 shorter than the existing 15-foot central roof screening that
7 is around the existing cooling towers. So, we'll show you
8 that in more detail in a moment.

9 As noted in our pre-hearing submission, we are no
10 longer requesting setback penthouse relief which had been
11 included in our initial filing. We've been able to adjust
12 the roof layout to eliminate the need for that relief.

13 However, there is one update to the plans since
14 our pre-hearing filing that I wanted to flag. Based on a
15 recent study of the existing roof, there is actually an
16 additional layer in that existing roof system and that needed
17 to be factored into the proposed height for the new screen
18 for the heat pumps so that dimension has increased just
19 slightly. The screening was previously showing in at 9-feet
20 in height, and now, the most recent plans we've filed and
21 have before you today are at 10-feet. So, just that minor
22 tweak.

23 The corresponding setback from Park Avenue has
24 also been increased to ten feet to account for that
25 adjustment. So, we still don't need setback relief.

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1 So, should the Board choose to approve the
2 Application, we would ask that the most recent plans that is
3 at Exhibit 26 in the record be referenced as the approved
4 plans in the final order in order to capture that update.

5 There was also a very minor adjustment to the
6 final parking count and with zoning data, they just reduced
7 the proposed parking by two spaces from 79 to 77 spaces.
8 We're still well above the minimum 37 spaces required by the
9 zoning regulations, so that was also picked up in the latest
10 plans filed for the hearing today.

11 Again, with me today is Conor Dunn. He is from
12 Ehdd Architecture on the West Coast, actually, in the San
13 Francisco so it's a little earlier there than it is here.
14 We're happy to have him.

15 Conor, Mr. Dunn, will be walking us through the
16 proposed project and the roof layout. That's an issue before
17 the Board.

18 Before we dive into our presentation, I would note
19 that we have reports in support from the Office of Planning.
20 That's at Exhibit 23 and from DDOT at Exhibit 24.

21 We also presented the project to ANC 2A at its
22 regular public meeting in April. The ANC voted unanimously
23 to support the project and the requested relief. The ANC's
24 letter of support is at Exhibit 20.

25 So, with that introduction, I will hand it over

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1 to Mr. Dunn to walk us through the project and the plans.

2 VICE CHAIR JOHN: Thank you.

3 Mr. Dunn, could you state your name and home
4 address for the record, please?

5 MR. DUNN: Yes, my name is Conor Dunn. I'm an
6 architect and project manager with Ehdd Architects in San
7 Francisco. And, I live at 501 Delancey Street in San
8 Francisco, California.

9 VICE CHAIR JOHN: Thank you. So, Mr. Dunn, I have
10 reviewed your resume at Exhibit 21(b) and I believe that you
11 are qualified to testify as an expert in architecture and so,
12 I will admit you for that purpose today, unless the Board has
13 any objections. I can't see anyone. Does the Board have any
14 objection?

15 (NO AUDIBLE RESPONSE)

16 VICE CHAIR JOHN: Hearing none, you are admitted
17 as an expert today. So, please go ahead and walk us through
18 the Application.

19 MR. DUNN: Okay, thank you to the Board and thank
20 you, Counselor Ferris.

21 So, here in this site plan, we just wanted to show
22 you a few of the high level site goals to open up the plaza
23 to make a lot of accessibility improvements and to engage
24 more with the public here at the corner of New York Avenue
25 and 18th Street.

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1 We've been in counsel with the Commission of Fine
2 Arts as well, several consultations and design reviews to
3 inform this site plan.

4 The other main goal of the project is to really
5 serve as a model for sustainability as far as renovations
6 goes both in D.C. and for the world. So, that's one of the
7 key systems that Counselor Ferris mentioned, the air source
8 heat pumps which are up on the roof, but we'll begin at the
9 ground and we'll get up to the roof shortly.

10 VICE CHAIR JOHN: Mr. Dunn, it's a full record and
11 the Board has looked at the record. So, if you wouldn't
12 mind, just focusing on why you need relief for the screening,
13 so focus on the heat pumps and how --

14 MR. DUNN: Yes.

15 VICE CHAIR JOHN: Okay, thank you.

16 MR. DUNN: Absolutely. So, we can cycle through
17 these quickly just to get you grounded on New York Avenue and
18 18th Street and then get to the roof plan.

19 VICE CHAIR JOHN: Great, thank you.

20 MR. DUNN: That's the Octagon view and the
21 existing courtyard. Next?

22 And this is the existing roof. I just want to
23 note the area of the existing penthouse to the left is fully
24 enclosed and the cooling tower enclosure is uncovered and
25 open air to the right with a lot of space available and we

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1 seek to take as much of that as possible for photovoltaics
2 and as well as the enclosure for the new air source heat
3 pumps. Next?

4 So, you can see, we have six new heat pumps in
5 this new enclosure that's to the southeast. We've made --
6 we've managed to maintain the appropriate setback to the
7 south along New York Avenue and through engineering
8 coordination, we've determined the height of that enclosure
9 should be ten feet.

10 Where we're requesting the variance relief is just
11 in the variations of height between that existing open air
12 cooling tower enclosure and this lower roof screen for the
13 heat pump enclosure.

14 The reason being that the air source heat pumps
15 want to have their screen as low as possible. If it were
16 higher, we risk something called air re-entrainment and,
17 based on how this new technology operates, that would not be
18 optimal. So, due to our sustainability goals and objectives,
19 as I mentioned earlier, we're requesting the relief to have
20 that screen height set up a bit lower.

21 So, in the next slide you'll see that variation
22 and elevation between the 15-foot existing cooling tower
23 screen and now the 10-foot high heat pumps enclosure screen.

24 Next?

25 And, finally, just to note that this screen with

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1 meeting the setback requirement through our coordination is
2 really barely visible from New York Avenue. I think if you
3 squint and zoom in, you can just see that line just above the
4 rows of glazing up there. That would be the top of the roof
5 screen from the sidewalk view.

6 But we did want to keep it short and sweet, to
7 your point. So, thank you, that's our presentation.

8 VICE CHAIR JOHN: Thank you.

9 Mr. Young, would you drop the screen, please?

10 Does the Board have any questions?

11 (NO AUDIBLE RESPONSE)

12 VICE CHAIR JOHN: Okay, so I'll go to the Office
13 of Planning.

14 MS. ELLIOTT: -- Chair and Members of the Board,
15 OP supports the requested relief that would allow the
16 penthouse enclosing walls of different heights. The
17 Applicant has noted that the height of the wall has been
18 increased by one-foot from nine feet to ten feet and OP has
19 no issue with this. And, we continue to support the relief.

20 The additional foot of height does not change the
21 outcome of our analysis. This particular special exception
22 provides a list of criteria and the Applicant really only
23 needs to demonstrate that one of them applies. To a degree,
24 they all apply but, generally, a reduced height of the new
25 enclosure walls would result in less visibility of the

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1 structure. It would result in a better design as it would
2 allow the walls to taper down to the building's edge.

3 And, it also allows increased efficiency on the
4 roof so the solar panels can be oriented in a way to maximize
5 their potential.

6 And then, the Applicant also provided some helpful
7 information regarding the functioning of the heat pumps and
8 the need for the lower wall to increase their efficiency as
9 well.

10 The intent of rooftop enclosures is to conceal
11 rooftop mechanical equipment from view. So, the proposal
12 would meet the intent of the zoning regulations. And, the
13 reduced height of the enclosure should not adversely affect
14 the use of neighboring properties because it would be
15 screened and less visible from public view.

16 The building happens to be located among several
17 office buildings of a similar height and is pretty far
18 removed from public space.

19 So, this concludes OP's report and I'm happy to
20 answer any questions.

21 VICE CHAIR JOHN: Thank you.

22 Does the Board have any questions for the Office
23 of Planning?

24 (NO AUDIBLE RESPONSE)

25 VICE CHAIR JOHN: Does the Applicant have any

1 questions for the Office of Planning?

2 MR. FERRIS: No questions.

3 VICE CHAIR JOHN: Thank you.

4 Is the ANC Commissioner here, Mr. Young?

5 (NO AUDIBLE RESPONSE)

6 VICE CHAIR JOHN: And, is there anyone here
7 wishing to testify?

8 MR. YOUNG: We do not.

9 VICE CHAIR JOHN: Thank you.

10 So, Mr. Ferris, do you have any closing comments?

11 MR. FERRIS: We don't, we would just ask that the
12 Board consider our Application for approval and I would just
13 flag one more time, if the Board does approve the
14 Application, that the final order reference Exhibit 26 as the
15 project plans to make sure we capture the most recent
16 updates.

17 With that, thank you for your time.

18 VICE CHAIR JOHN: Thank you.

19 The only thing I would add to that, Mr. Ferris,
20 is that you're not seeking relief for parking, so for the
21 purposes of this hearing, you would have to show that you
22 meet the parking requirement when you apply for your permit.
23 So, I know you mentioned that, but we're -- we won't mention
24 that in the order.

25 MR. RERRIS: Absolutely.

1 VICE CHAIR JOHN: This wouldn't apply in a self-
2 certified.

3 So, with that, I would like to thank you for your
4 testimony this morning and ask Mr. Young to excuse you all.
5 So, thank you, again.

6 MR. FERRIS: Thank you.

7 VICE CHAIR JOHN: Thank you.

8 Okay, I'm going to close the record and the
9 hearing and ask if we're ready to deliberate?

10 Okay, does anyone want to start? Well, thank you,
11 Mr. Blake.

12 MEMBER BLAKE: Sure, I will be voting in favor of
13 the requested relief based on the record and the testimony
14 today including the analysis provided by the Office of
15 Planning, which I believe was very thorough.

16 I believe the Applicant has met the burden of
17 proof pursuant to Subtitle C 1506.1 and Subtitle X, Chapter
18 9 to be granted the request for relief.

19 I believe the Applicant has demonstrated that full
20 compliance with the zoning regulations as it relates to the
21 height of the mechanical equipment enclosure will be
22 restrictive, unreasonable, and result in less building
23 efficiency, important for the efficient operations of the
24 equipment.

25 Further, I believe the ten-foot screen will be

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1 less visually intrusive than the continuation of a 15-foot
2 screen used to screen the existing equipment. The Applicant
3 has been in consultation with the Commission of Fine Arts,
4 and having met the specific conditions of the special
5 exception relief, I believe the Applicant -- that granting
6 the requested relief would be in harmony with the general
7 purpose and intent of the regulations and the granting of
8 relief will not adversely impact the use of neighboring
9 properties which was, I think, was amply demonstrated.

10 I believe, again, I believe the Office of Planning
11 provided a very thorough analysis of the requested relief.
12 I give great weight to the recommendation of the Office of
13 Planning for approval. DDOT has no objection and ANC 2-A
14 recommends approval.

15 So, with that, I would be in support of the
16 Application.

17 VICE CHAIR JOHN: Thank you, Mr. Blake. I'm
18 sorry, Mr. Smith? Board Member Smith.

19 MEMBER SMITH: I agree with all of the analysis
20 provided by Mr. Blake. And, I won't reiterate -- won't
21 reiterate it. I completely agree and I will vote in support
22 of the Application.

23 VICE CHAIR JOHN: Thank you.

24 Commissioner Miller?

25 COMMISSIONER MILLER: Thank you.

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1 Yes, I --think Board Member Blake was very
2 thorough in his analysis and I agree with everything that he
3 said and would emphasize one of the things he said which is
4 that these different heights of the screening wall -- the
5 lower height is actually visually less intrusive from the
6 street. And so, that's a very -- that's one of the criteria.
7 They only have to meet one of the criteria, I think they've
8 met all of the criteria. So, I will be in support of this
9 Application.

10 VICE CHAIR JOHN: Thank you.

11 And, I'm also in support of the Application. And,
12 I believe both the Applicant and the Office of Planning did
13 a good job in explaining why the lower screening height is
14 a better design. And so, I am -- I will be voting to approve
15 the Application.

16 I have one question for Mr. Moy before I make the
17 motion and, that is in reference to the caption. And so, or
18 the Office of OZ legal division. So, the corrected relief
19 should be as amended in Exhibit 26. This is a self-certified
20 Application, that's how I'm proposing and if I don't hear
21 anyone screaming, that's what I'll do. So, okay?

22 I'll make a motion to approve Application 20729
23 as amended in Exhibit 26 as a self-certified Application for
24 special exception as read and captioned -- oh, that's
25 terrible. Let me read this again.

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1 I'll make a motion to approve Application 20729
2 as amended in Exhibit 26 and as further read and captioned.
3 And so, I will -- oh dear, I need to take a break. This is
4 not hard.

5 Okay, so, I'm going to make a motion to approve
6 Application 20729 as amended in Exhibit 26 and noting that
7 the new screening will be at 10-feet and I hope that the
8 Office of -- that OC legal will be able to write the correct
9 relief in the order. And, ask for a second, Mr. Blake?

10 MEMBER BLAKE: Second.

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

13 MR. MOY: Thank you, Vice Chair.

14 When I call your name, if you'll respond -- well,
15 when you respond, actually, Zoning Commissioner Rob Miller?
16 Oh, wait, wait, wait, yes.

17 Commissioner Rob Miller?

18 COMMISSIONER MILLER: Yes.

19 MR. MOY: Mr. Smith?

20 MEMBER SMITH: Yes.

21 MR. MOY: Mr. Blake?

22 (NO AUDIBLE RESPONSE)

23 MR. MOY: Vice Chair John?

24 VICE CHAIR JOHN: Yes.

25 MR. MOY: Staff would record -- and we have a

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1 Board Member not present. Staff would record the vote as
2 four to zero to one and this is on the motion made by Vice
3 Chair John and the motion to approve was seconded by Mr.
4 Blake. Also in support of the motion to approve, Zoning
5 Commissioner Rob Miller, Mr. Smith, Mr. Blake, and of course,
6 Vice Chair John. We have a Board Member not present. Staff
7 would record the vote as four to zero to one and the motion
8 carries, ma'am.

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

10 So, I think we can take one more case before
11 breaking for a quick lunch. Is that okay with everyone?

12 (NO AUDIBLE RESPONSE)

13 VICE CHAIR JOHN: All right, so let's go to the
14 next case, Mr. Moy, which would be 20730.

15 MR. MOY: All right, this would be Application
16 Number 20730 of Sharon Harrelson, H-A-R-R-E-L-S-O-N. This
17 is a self-certified Application for special exception
18 pursuant to Subtitle E, Section 5201 and Subtitle X, Section
19 901.2 from the lot occupancy requirement, Subtitle E, Section
20 304.1. The property is located in the RF-1 zone at 1208 D
21 Street, Southeast, Square 1017, Lot 801.

22 And, what else can I say? There, as you'll
23 recall, there is an ANC 6B report under Exhibit 32 which was
24 submitted into the record on June the 3rd in support. And,
25 I believe that's all I have.

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1 VICE CHAIR JOHN: Okay, just a minute.

2 Okay, thank you, Mr. Moy.

3 Mr. Young, I see you've let the Applicant in.
4 Would you please introduce yourself for the record, Ms.
5 Brittingham?

6 MS. BRITTINGHAM: Hi, good morning, everyone. My
7 name is Lacy Brittingham, Brittingham Architecture. I am the
8 architect for the project and agent for the owner.

9 VICE CHAIR JOHN: Okay, thank you.

10 Can you tell us how your Application meets the
11 criteria for relief?

12 MS. BRITTINGHAM: Absolutely. If Mr. Young can
13 bring up the presentation? Great, thank you.

14 Yes, so, we have an existing single-story historic
15 garage, carriage house, at the rear of this property at 1208
16 D Street, Southeast. We are -- the site is oriented north
17 to south, north being at the alley side of the garage.

18 We are proposing to add a second story to the
19 existing structure. We have limited the size of it to fit
20 under the limit for a special exception. So, we are
21 proposing 69.4 percent lot coverage for the second floor.
22 The existing floor is -- will not change, of course, the
23 first floor.

24 And, as far as the criteria for the special
25 exception, the light and air will not be unduly affected for

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1 the neighbors and neighboring properties as this is a large
2 block with a very large alley, sort of -- oh, actually, if
3 Mr. Young can go to the next slide, please?

4 This is sort of the T end of the alley in the
5 center of this block. And, the T part that we abut is 30-
6 feet wide, so this is sort of a large block with wide alleys.
7 We have alley dwellings in the center of this block. And so,
8 we have quite a lot of air and light able to reach the
9 interior of this block.

10 Since we are oriented north to south for our
11 property, the shadows that fall, that are cast by the
12 additional story would be cast into the alley. So, we feel
13 that this is not an undue affect to the neighbors to the east
14 and west.

15 We have large yards. A lot of these properties
16 are quite wide, particularly at our end of this block. And,
17 if we can go on to the privacy and use of enjoyment will not
18 be unduly compromised. We are not proposing windows that
19 look into the neighboring yards. The windows are only into
20 our back yard and then into the alley itself.

21 The existing fences will remain to separate the
22 existing rear yards from the neighboring properties.

23 And then, the addition will not substantially or
24 visually intrude upon the character, scale, and pattern along
25 the street frontage.

1 If we could look at the next slide, please, Mr.
2 Young?

3 Great. So, this is just sort of some of the
4 context slides that we put together showing the other
5 structures in the alley. There are various single-story
6 garages of different material and design. And, our existing
7 garage is, of course, brick, sort of up at the top right side
8 of this image. And, the majority of the alley facade is
9 broken up into the panel above the garage door and then a
10 very large, very wide garage door itself.

11 If you can go to the next slide, please?

12 This is an image of some of the alley dwellings
13 which are primarily brick. So, in keeping with what we felt
14 are the other two-story or substantial structures in the
15 alley, we are proposing that our garage is also the second
16 floor addition is also brick.

17 Next slide, please?

18 Just looking very quickly at the existing two
19 facades of the alley facade and the left and then from the
20 rear yard of this existing structure. And, you can go one
21 more.

22 And then, I did have to upload new drawings into
23 the record before the deadline, but just to change the swing
24 of the door, the pedestrian door into the vestibule and sort
25 of just an error on my part. But, otherwise, the drawings

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1 did not change from the original drawing package.

2 And, I'm happy to run through a few more slides
3 or if you've reviewed them, I, obviously, touched on the
4 criteria for approval and would be happy to answer any
5 additional questions.

6 I will say that we did have significant neighbor
7 outreach and a number of neighbors submitted letters of
8 support and we reached out to even more and -- by certified
9 mail and also through email and had a great sort of just
10 positive feedback from the people who we engaged with.

11 And then, of course, the ANC submitted their
12 letter of support and Capitol Hill Restoration Society
13 submitted their approval or support. And, the -- and I guess
14 that's it. So, happy to answer any questions.

15 VICE CHAIR JOHN: So, I had a question. Mr.
16 Young, could you please drop the screen?

17 So, I had a question about the updated plans. Are
18 they at Exhibit 28? I did not see a PowerPoint from you.
19 So, Exhibit 28 in the record is the last updated
20 architectural plans that we have. Is there something else?

21 MS. BRITTINGHAM: No, that's it. All I did for
22 this presentation was just switch some of the context photos,
23 moved them to earlier in the PDF.

24 VICE CHAIR JOHN: Okay.

25 MS. BRITTINGHAM: It's the same exhibit -- it's

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1 37 on my end.

2 VICE CHAIR JOHN: Mr. Young, can you help here?
3 Can you pull up Exhibit 28 and go to slide -- it's the slide
4 with the first floor of the basement. Can you pull up
5 Exhibit 28, Mr. Young, updated architectural plans? I just
6 want to be sure that what we're approving is what you're
7 asking us to approve.

8 Mr. Young? Okay, thank you.

9 So, I believe it's the slide immediately -- maybe
10 the third slide in? Proposed garage floor plan? That's the
11 one. So, is this what you're asking us to approve, Ms.
12 Brittingham?

13 MS. BRITTINGHAM: Correct.

14 VICE CHAIR JOHN: Okay, all right, thank you.

15 Mr. Young, you can drop the slide.

16 Does the Board have any questions?

17 Mr. Miller? Commissioner Miller?

18 COMMISSIONER MILLER: Thank you, Madam Vice Chair.

19 No, I didn't have any questions, I just wanted to
20 -- well, I see that the Applicant, Sharon Harrelson, is here.
21 Did she have any quick comments she wanted to make? Ms.
22 Brittingham, I think, did a fine job of presenting the
23 Application, but I just wanted to make sure that since I see
24 you if you wanted to say anything?

25 MS. HARRELSON: I think Lacy covered everything

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1 just (inaudible).

2 COMMISSIONER MILLER: Okay, and I just wanted to
3 -- not sure I heard all that because I think I didn't mute
4 myself in time. I apologize for that.

5 But thank you for the presentation and thank you
6 for your community -- your outreach to your neighbors and to
7 the ANC. We believe you've garnered support for this
8 project. Thank you.

9 VICE CHAIR JOHN: Thank you.

10 Does any other Board Member have any questions?

11 (NO AUDIBLE RESPONSE)

12 VICE CHAIR JOHN: Okay, I'll go to the Office of
13 Planning, Mr. Kirschenbaum?

14 MR. KIRSCHENBAUM: -- Chair John and Members of
15 the Board of Zoning Adjustment, I'm Jonathan Kirschenbaum
16 with the Office of Planning and we recommend approval of the
17 special exception to increase the lot occupancy to 69.4
18 percent and we rest on the record of our staff report.
19 Please let me know if you have any questions. Thank you.

20 VICE CHAIR JOHN: Thank you, Mr. Kirschenbaum.

21 Just touch briefly on the special exception
22 criteria for the second floor.

23 MR. KIRSCHENBAUM: The proposed addition will not
24 have an undue adverse impact on light and air. It's located
25 at the end of a very wide, public alley that's to the north

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1 of it. It's 30 feet in width.

2 The height and number of stories would be
3 conforming and the increase in shadowing would be minimal and
4 most of the shadows would be cast on the public alley. We
5 don't anticipate any increase in shadowing of the undue on
6 the adjacent property.

7 The owners, they've also submitted letters of
8 support.

9 And, the accessory building would not have an
10 undue impact on privacy and use of enjoyment. It would be
11 separated by at least 12 feet from neighboring buildings and
12 there would be no windows that would be along these yard side
13 property lines.

14 And then, the second floor is designed to be in
15 keeping with the general character of the neighborhood.

16 VICE CHAIR JOHN: Okay, thank you.

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

19 (NO AUDIBLE RESPONSE)

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

22 (NO AUDIBLE RESPONSE)

23 VICE CHAIR JOHN: Okay, thank you.

24 Thank you, Mr. Kirschenbaum.

25 Mr. Young, is there anyone wishing to testify?

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1 Is the ANC here?

2 (NO AUDIBLE RESPONSE)

3 VICE CHAIR JOHN: Okay. So, I'll ask the
4 Applicant, do you have any closing statements?

5 MS. BRITTINGHAM: No, I don't, thank you.

6 VICE CHAIR JOHN: Okay. Well, thank you for your
7 presentation. And, Mr. Young, will you please exclude the
8 witnesses at this time -- release the witnesses at this time?

9 Thank you.

10 So, I'm going to close the record in the hearing
11 and ask if we're ready to testify? And, I'm going to see who
12 is willing to start.

13 I'll just start briefly and then go to Mr. Blake.
14 I think the -- this is really a very straightforward
15 Application. And, the -- both the Office of Planning and the
16 Applicant did a good job of stepping through how the
17 accessory apartment meets the criteria for relief.

18 And, I note especially that the Applicant is
19 staying well within the massing required. And, as the Office
20 of Planning stated, there is no adverse impact in terms of
21 light and air, privacy, and shadowing, if any, it's mostly
22 in the alley.

23 Also, there are other alley dwellings in that
24 location. And so, this accessory apartment would be
25 consistent with what exists in the alley.

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1 And, I'll go to Mr. Blake.

2 MEMBER BLAKE: Thank you, Madam Vice Chair.

3 I'll be voting in favor of the request for relief
4 for lot occupancy, Subtitle E 304.1.

5 Based on the record, I believe the Applicant has
6 met the burden of proof pursuant to the criteria for E 5201
7 and X 901.2.

8 The request for relief is anticipated by the
9 zoning regulations and the Applicant certainly demonstrated
10 that the addition will not have substantially adverse impact
11 on the dwelling or any abutting or adjacent properties with
12 regard to light, air, privacy, or visual intrusion.

13 I give great weight to the Office of Planning's
14 recommendation for approval. DDOT has no objection. I
15 believe the ANC 6B is in support. We also had the conceptual
16 proof from the Historic Preservation Review Board. We have
17 strong support from the community, persons including two
18 adjacent neighbors and, of course, the Capitol Hill
19 Restoration Society is in support.

20 So, with all that, I would be in support as well.

21 VICE CHAIR JOHN: Thank you, Mr. Blake.

22 Mr. Smith?

23 MEMBER SMITH: I agree with your assessment and
24 the Board Member Blake's assessment of the case. And, I do
25 believe that OP has sufficiently been stated and I would be

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1 in support of this application, I do believe that, based on
2 the information at hand that they -- it does meet the burden
3 of proof for us to grant these special exceptions.

4 And, I do not believe that it would have a
5 substantial adverse impact on the surrounding properties.
6 Many of the surrounding properties have accessory buildings
7 that are comparable in size to what the Applicant is
8 proposing. So, I do believe it's largely in character with
9 what currently occurs along that alley.

10 And, as noted by Board Member Blake, the ANC 6B
11 is in support and I will be supporting it as well.

12 VICE CHAIR JOHN: Thank you, Board Member Smith.
13 And, Commissioner Miller?

14 COMMISSIONER MILLER: I concur with everything,
15 thanks.

16 VICE CHAIR JOHN: Thank you.

17 And, I'm also in support of the Application and
18 so, I'll make a motion to approve Application Number 20730
19 as captioned and read by the Secretary and ask for a second,
20 Mr. Blake?

21 MEMBER BLAKE: Second.

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

24 MR. MOY: When I call your name, if you will
25 please respond with a yes, no, or abstain to the motion made

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1 by Vice Chair John to approve the Application for the relief
2 requested. The motion to approve was seconded by Mr. Blake.

3 Zoning Commissioner Rob Miller?

4 COMMISSIONER MILLER: Yes.

5 MR. MOY: Mr. Smith?

6 (NO AUDIBLE RESPONSE)

7 MR. MOY: Mr. Blake?

8 MEMBER BLAKE: Yes.

9 MR. MOY: Vice Chair John?

10 VICE CHAIR JOHN: Yes.

11 MR. MOY: We have a Board Member not present.

12 Staff would record the vote as four to zero to one. And,
13 this is on the motion made by Vice Chair John to approve.
14 The motion to approve was seconded and in support by Mr.
15 Blake as well as support from Zoning Commissioner Rob Miller,
16 Mr. Smith, Mr. Blake, and Vice Chair John. Motion carries
17 on a vote of four to zero to one.

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

19 So, it's 11:57 and my suggestion is we take a 30
20 minute break. Is everyone okay with that recommendation?

21 (NO AUDIBLE RESPONSE)

22 VICE CHAIR JOHN: Okay, and we have, I believe
23 we'll have two hearings, two cases after lunch. So, we
24 should be having an early day today. So, I'll see you all
25 at 12:30. Thank you.

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1 (Whereupon, the above-entitled matter went off the
2 record at 11:58 a.m. and resumed at 12:40 p.m.)

3 VICE CHAIR JOHN: Good afternoon, everyone. I
4 think we're all here.

5 Okay, so, Mr. Moy, when you're ready.

6 MR. MOY: Thank you.

7 After the Board's lunch recess, the Board has
8 returned to its public hearing session and the time is at
9 or about 12:40 p.m.

10 The next case before the Board is Application
11 Number 20725 of Raymond Brown. This is a amended self-
12 certified Application for special exceptions pursuant to
13 Subtitle E, Section 5201 and 5202 and Subtitle X, Section
14 901.2 from three areas of relief.

15 First is the rear yard requirements to Subtitle
16 E, Section 506.1, alley centerline setback requirement,
17 Subtitle E, Section 5004.1(b) and the accessory building rear
18 yard requirement, Subtitle E, Section 5004.1, an area
19 variance pursuant to Subtitle X, Section 1002 from the lot
20 occupancy requirements, Subtitle E, Section 504.1.

21 The property is located in the RF-1 zone at 420
22 4th Street, Northeast, Square 780, Lot 64. And, I believe
23 that's all I have for the moment.

24 Thank you, Madam Vice Chair.

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

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1 Mr. Young, could you let the parties in? I see
2 Commissioner Eckenwiler and I'm looking for Mr. Burns. Okay,
3 great.

4 Mr. Burns, would you introduce your record --
5 yourself for the record, please?

6 MR. BURNS: Yes, good afternoon, Board Members.
7 My name is Michael Burns, licensed architect in Washington,
8 D.C. I'm the architect of record for this project and the
9 agent for the owner, Raymond Brown, who is in attendance here
10 as well.

11 VICE CHAIR JOHN: Thank you. And, Mr. Eckenwiler,
12 would you introduce yourself?

13 COMMISSIONER ECKENWILER: Good afternoon, Madam
14 Chair, Member of the Board. Mark Eckenwiler, Vice Chair, ANC
15 6C on behalf of the ANC.

16 VICE CHAIR JOHN: Okay, thank you.

17 And so, Mr. Burns, would you tell us about your
18 Application and how it meets the criteria for relief?

19 MR. BURNS: Yes, thank you.

20 I don't know if you have access to the drawing
21 set.

22 VICE CHAIR JOHN: Yes, we can have Mr. Young pull
23 that up for you. Mr. Young, let's see, what exhibit would
24 that be? Let me take a look. Do you know?

25 MR. BURNS: I don't know offhand the exhibit, I

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1 apologize.

2 VICE CHAIR JOHN: That's okay, we'll pull it up.

3 COMMISSIONER ECKENWILER: Madam Chair, I believe
4 it's Exhibit 11.

5 VICE CHAIR JOHN: Okay, yes. Mr. Young, Exhibit
6 11. Thank you, Mr. Eckenwiler.

7 Okay, what -- Mr. Burns, what slide would you like
8 to begin with?

9 MR. BURNS: Let's begin with, I believe it will
10 be slide 6, it should be sheet A05.

11 VICE CHAIR JOHN: Okay, that's number two, three,
12 okay. Do you have that, Mr. Young? It's about the sixth
13 slide down.

14 (NO AUDIBLE RESPONSE)

15 MR. BURNS: Yes, that's it. Thank you.

16 VICE CHAIR JOHN: Okay. Please go ahead.

17 MR. BURNS: So, if the Board is willing, I would
18 pass over our arguments for the special exceptions because
19 the critical issue here is really the area variance and,
20 without that, the special exceptions are moot.

21 So, the lot that you see highlighted, Lot 64, is
22 the subject property. This lot was originally extending back
23 to the end of Lot 62, but is now one of the four interior
24 lots owned by The Heritage Foundation and permitted by a BZA
25 action to be used as surface parking.

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1 This Lot 64 along with the adjacent lots on 4th
2 Street are then formed out of a subdivision to create Lot 62
3 and then the residential lots.

4 So, originally, this was much, much larger and our
5 argument is essentially that via that action, we are asking
6 for relief due to exceptional shallowness of the lot. And,
7 that shallowness creates the small lot size which doesn't
8 otherwise allow us to put the garage on the site.

9 The request for the garage, just for a brief
10 background before I get into the three prongs, is really a
11 forward looking request from the owner. This is a two-unit
12 property which, in our mind, contributes to a little bit of
13 the difficulty of creating the spaces that we want separated
14 for each unit, and the difficulties with the particularly
15 shallow lot.

16 The owner requested of me to provide some sort of
17 mechanism to explore mechanisms for him to remain in place,
18 stage in place and provide a revenue stream utilizing the
19 existing two-unit C of O. So, we will, by right, renovate
20 the existing basement unit.

21 And then, the question is, what sort of spaces go
22 along with that? So, if possible, we were looking to provide
23 separated exterior spaces and secured parking on site.
24 That's really the genesis of the garage plan is that we'll
25 have an occupyable roof deck similar to the immediately

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1 adjacent property at 418 and a handful of other properties
2 on the block, along with primarily a front outdoor space for
3 the lower unit with a little bit of outdoor space and garage
4 space for the lower unit as well.

5 With regard to the prongs, for an extraordinary
6 exception situation, it is our argument that, per Chapter 10
7 of Subtitle X that we have an exceptionally shallow lot that
8 is the result of the lot subdivision. That's the exceptional
9 situation.

10 And, of course, from that, follows the practical
11 difficulty of not being able to construct within the
12 parameters of the zoning code the garage because of the
13 shallowness of the lot and the resultant compressed area.

14 The second prong is relief that can be granted
15 without substantial detriment to the public good. We believe
16 we meet that. There are other structures like this on the
17 lot. We're not proposing to maximize the height of an
18 accessory structure. We're really not substantially
19 increasing the height of the fencing or the gates. And, in
20 fact, the adjacent neighbors both are in support of the
21 project.

22 Moreover, even though the Office of Planning
23 doesn't support our argument regarding exception situation,
24 they do note that they agree that there is no substantial
25 detriment to the public good.

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1 And, the third piece is no impairment to the
2 intent, purpose, and integrity of the zone plan. And, our
3 argument is setting aside the relief, an accessory structure
4 and accessory garage is otherwise permitted in the
5 regulations. And, therefore, we're not asking for something
6 which is outside the purview of the regulations and
7 substantially impairing the intent and purpose of the zone
8 plan.

9 And, that is a summary of our argument.

10 VICE CHAIR JOHN: Okay, thank you very much.

11 Does the Board have any questions for the
12 Applicant?

13 (NO AUDIBLE RESPONSE)

14 VICE CHAIR JOHN: Okay, does the ANC have any
15 questions for the Applicant?

16 COMMISSIONER ECKENWILER: No questions, Madam
17 Chair.

18 VICE CHAIR JOHN: Thank you.

19 I'll go to the Office of Planning.

20 MR. JESICK: Madam Chair and Members of the Board,
21 my name is Matt Jesick and I'll be presenting OP's testimony
22 in this case.

23 And, the Office of Planning is recommending denial
24 of the variance request. We felt that the property in
25 question did not exhibit any exceptional conditions and,

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1 therefore, there would be no practical difficulty arising
2 from any exceptional condition.

3 As the Applicant noted, we felt the relief could
4 be granted without detriment to the public good. But we do
5 feel that granting relief would be an impairment to the
6 intent of the zoning regulations.

7 So, that's how we arrived at our conclusion to
8 recommend denial of the variance.

9 That concludes my testimony but I'm happy to take
10 any questions. Thank you.

11 VICE CHAIR JOHN: Just one quick question, Mr.
12 Jesick. Why did you feel there was no exceptional condition?

13 MR. JESICK: Sure, I will refer to my report on
14 page three. The one thing, the size of the lot is identical
15 to nearby lots and the lot is somewhat smaller than the
16 minimum lot width and lot area required by the zone. It
17 would still be significantly larger than some other lots on
18 this square and nearby squares. So, we didn't find the lot
19 to be exceptionally small.

20 And, as the Applicant noted, the original lot was
21 much larger but that dates back to the very founding of the
22 city and we felt that change from the original condition 225-
23 plus years ago was not relevant to establishing an
24 exceptional condition in the present.

25 So, therefore, we felt that there was no

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1 exceptional condition for this property.

2 VICE CHAIR JOHN: Thank you, Mr. Jesick.

3 Does the Board have any questions for the Office
4 of Planning?

5 (NO AUDIBLE RESPONSE)

6 VICE CHAIR JOHN: Does the Applicant have any
7 questions for the Office of Planning?

8 MEMBER SMITH: Well --

9 VICE CHAIR JOHN: Oh, I'm sorry, I'm sorry, Board
10 Member Smith?

11 MEMBER SMITH: Yes, for clarification of the
12 special exception which you did recommend approval for, is
13 the special exception is predicated on the variance?

14 MR. JESICK: Yes, if the variance is not granted,
15 then, as the Applicant noted, the special exceptions would
16 be moot. We did go through the special exception analysis
17 in our report and we have no issue with the special
18 exceptions, you know, as they stand. But if the Board does
19 not grant the variance, then, again, the special exceptions
20 would not be -- would be moot.

21 MEMBER SMITH: Okay, thank you.

22 VICE CHAIR JOHN: Thank you.

23 And, I wanted to just continue with the discussion
24 of the variance because I believe there's agreement that
25 unless the variance is granted then the special exception

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1 request would be moot. So, perhaps we can address this and,
2 if necessary, go back to the special exception.

3 Okay, so there were no questions from the
4 Applicant for the Office of Planning? Okay, go ahead,
5 please, Mr. Burns.

6 MR. BURNS: Yes, Madam Chair, thank you. I did
7 have one question and that is, Mr. Jesick, and I appreciate
8 your time here, thank you. The language for the Board of
9 Zoning Adjustment says, whereby reason of exception
10 shallowness, and that is the crux of our argument. It
11 doesn't indicate in any fashion how the shallowness occurs,
12 why it occurs, even though we gave a little bit of history.
13 It simply says that if there is exceptional shallowness, that
14 is a consideration. And, that is our argument.

15 So, if you could, can you please just explain a
16 little further why the Office of Planning does not consider
17 this shallow lot, which is the essence of why we cannot
18 otherwise provide a by-right accessory structure, can you
19 please just comment a little further on why you don't believe
20 that that phraseology applies to this particular case?

21 VICE CHAIR JOHN: Thank you, Mr. Burns.

22 In the interest of time, Mr. Young, can you pull
23 up that last slide which is A05 of Exhibit 11? And, maybe
24 we can all look at that while Mr. Jesick testifies.

25 MR. JESICK: Yes, thank you for the question.

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1 Yes, we look, first of all, the immediately
2 surrounding lots and, as can be seen here, this lot is, you
3 know, identical in depth to its immediately adjacent
4 neighbors.

5 What can be seen on this slide, it is so much
6 shorter than some other lots on the same street, on 4th
7 Street and also on the cross streets.

8 But a larger view would show that there are a
9 number of other very small lots in the surrounding -- in this
10 square and in surrounding squares.

11 So, we felt that given the general context of this
12 area, that the subject property was not exceptionally small.
13 Even when related to the overall RF-3 or RF-1 zones, the size
14 of the lot, again, while it is somewhat smaller than the
15 regulations would require for a new property, it is not what
16 we would typically consider to be exceptionally small. So,
17 that's how we arrived at our conclusion.

18 MR. BURNS: And, if I may, just with a very quick
19 follow up, I'm not sure where the cutoff point would be to
20 determine what an exceptionally shallow lot is, but clearly,
21 you know, if the lot becomes too small, it would render
22 impossible to construction of a garage anyway. Right?

23 So, you know, at some point, you know, flawed is
24 an argument, either it's too small to construct anything with
25 any reason, or it's simply exceptionally shallow such that

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1 it doesn't meet the zoning criteria, but it's still
2 sufficiently large such that you could construct the
3 accessory structure in the first place.

4 VICE CHAIR JOHN: To that question?

5 MR. BURNS: Yes, just a follow up, is -- was that
6 part of the analysis or is that part of the Office of
7 Planning's analysis when you look at a lot, you know, how do
8 you determine where the shallowness is? Because at a certain
9 point, obviously, you can't construct at all. Whereas, we
10 could actually construct something here.

11 MR. JESICK: Yes, I mean, I think to some extent
12 we look at what can be built on the lot. You know, here you
13 do have a functional, flat with the possibility for parking
14 at the back of the lot.

15 You know, an accessory structure is not a right,
16 so to speak. It's not guaranteed that every house can have
17 a garage. Another option can be, you know, a roll down door
18 and we see that, of course, throughout the city. That's a
19 very common option that people pursue.

20 So, you know, we do sometimes look to what can be
21 built on the lot. But I think our analysis is mostly focused
22 on what I've already explained and is written in our written
23 report.

24 MR. BURNS: And, if the Board will tolerate one
25 more question, it will be my final question for you. Was any

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1 consideration given to the fact that it's a two-unit?
2 Because if this was a single unit, we probably wouldn't even
3 have petitioned. We would have gone with a roll up and it
4 would be a little different project.

5 So, the project is designed this way to create the
6 separation of uses between the two units and did the Office
7 of Planning consider that factor?

8 MR. JESICK: We did not feel the fact that it was
9 the two-unit building, we did not feel that that was relevant
10 to the variance being sought.

11 MR. BURNS: Okay, thank you.

12 VICE CHAIR JOHN: Thank you.

13 Does any other Board Member have any questions?

14 (NO AUDIBLE RESPONSE)

15 VICE CHAIR JOHN: I'll go to the ANC, Mr.
16 Eckenwiler, do you have any questions of the Office of
17 Planning?

18 (NO AUDIBLE RESPONSE)

19 VICE CHAIR JOHN: Okay, thank you.

20 Mr. Eckenwiler, you filed a report, so are you
21 prepared to give your testimony at this time?

22 COMMISSIONER ECKENWILER: I am, Madam Chair, and
23 I will attempt to be brief. I'm not going to read you the
24 entire letter. Let me just hit some high points.

25 As --

1 VICE CHAIR JOHN: Mr. Eckenwiler, before you --
2 please focus on the variance request.

3 COMMISSIONER ECKENWILER: Yes, that is precisely
4 where I'm going, Madam Chair.

5 VICE CHAIR JOHN: Okay.

6 COMMISSIONER ECKENWILER: The key issue here is,
7 of course, the variance. If the variance is denied, then the
8 rest of the Application falls away.

9 As the Office of Planning has pointed out, this
10 property suffers from no unusual conditions within the
11 meaning of Subtitle X, Section 1001.

12 This is a perfectly rectangular lot. It has
13 minimal grade variation. The lot area is smaller than the
14 minimum that would be required for a newly subdivided lot.
15 But this is going on the exceptional, this lot sits in a row
16 of six identically sized lots. They have been that same size
17 since at least 1909. As you can see in the base Atlas
18 extract on page two of our letter, that's Exhibit 37.

19 And, there are numerous other lots, even if we
20 restrict our examination to this square, if you look across
21 the alley at the lots that front on that 3rd Street, there
22 are 13 lots there and everyone of them has a lot area in the
23 range from 1,182 to 1,350.

24 And, of note here, the Board has previously denied
25 an almost identical Application from the owner of one of

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1 those lots, that was at BZA 17188. And, I've quoted from
2 that at length in our letter.

3 The key is, the Board found the property is
4 regularly shaped, level, rectangular, has no distinguishing
5 topographic features. And, the Board also noted there that
6 because this was a fairly garden variety flat, rectangular
7 lot, that if you started granting a variance under those
8 circumstances, then other property owners would feel some
9 reasonable entitlement to a variance in their situation as
10 well, and that's not how the variance process is supposed to
11 work.

12 The rationale of that case, BZA 17188, applies
13 with even greater force here because the relief sought is
14 even more extreme. The Applicant here is looking to go to
15 almost 96 percent lot occupancy versus the 89 percent sought
16 in that earlier case.

17 Now, I think it's useful, briefly, to address the
18 justifications that the Applicant has brought forward in
19 support of this Application.

20 So, as to the history of the subdivision, as I
21 said, this lot and its companions have been the same size
22 since 1909 and, according to the Quarter of Deeds Records,
23 you know, the Applicant purchased this property in 1995. So,
24 the Applicant knew what he was getting. It's likely he paid
25 a discount for getting a smaller lot.

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1 And, the fact of what happened in 1909 or 1899 or
2 1880 are really completely irrelevant because this owner is
3 in no way disadvantaged by having acquired what he paid for.
4 There have not been changed circumstances. So, I really
5 think that's not a compelling argument.

6 Second, the Applicant does mention at various
7 points in the versions of the burden of proof statement, a
8 desire to age in place and possible mobility issues. There's
9 an interesting question as to whether or not those kind of
10 factors as opposed to the characteristics of the property
11 itself would be a relevant consideration for the Board.

12 Fortunately, the Board doesn't need to reach that
13 in this case because the truth is, if you look at these
14 designs, what the plan here does not make the basement unit,
15 which the Applicant says he would inhabit, does not make it
16 accessible. In fact, it is now an accessible unit with a
17 front entrance at grade and a rear exit to the rear yard that
18 has only a couple steps in it. It would excavate the
19 basement and it would create -- the drawings are not in
20 dimension, but it looks like it's somewhere between a one-
21 to two-foot drop at the front and increase the number of
22 stairs at the back. And, I've illustrated that, it's on page
23 four of our letter, showing the sections from the Applicant's
24 drawings.

25 And then, third, the last argument that's brought

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1 forward by the Applicant is the desire for outdoor space.
2 But this already exists and you can see that in the
3 Applicant's own photographs. There's a full rear yard that
4 is extremely accessible to the basement unit. It's also
5 accessible from the next story up, which is the upper two-
6 level unit. And, that upper unit has two outdoor decks. So,
7 there's already more than adequate outdoor space.

8 And, in fact, if we look at the drawings, and this
9 is depicted on page five of the ANC's letter, the amount of
10 outdoor space available to the basement unit would become
11 essentially negligible. There would be a five-foot gap
12 between the rear of the house and the garage. That would be
13 completely covered by a deck. So, this so-called patio is
14 really just an unpleasant box.

15 There would be an unroofed dogleg to the side.
16 But the amount of outdoor space available to the basement
17 unit would be negligible and that's putting aside the
18 accessibility issues.

19 So, that, too, you know, proves to be an
20 unpersuasive argument.

21 And, as we said earlier, you know, if the variance
22 is denied, then the Board need not reach the special
23 exceptions. We do affirmatively oppose all of those special
24 exceptions precisely because they only become relevant if a
25 structure were to be constructed. And, to construct that

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1 structure, you would need a variance, and the variance is not
2 justified here which is why ANC seeks the recommends denial
3 of the Application.

4 That concludes my presentation. I am happy to
5 answer any questions.

6 VICE CHAIR JOHN: Thank you, Mr. Eckenwiler.

7 Does the Board have any questions for the ANC?

8 (NO AUDIBLE RESPONSE)

9 VICE CHAIR JOHN: Does the Applicant have any
10 questions for the ANC?

11 MR. BURNS: I have no questions for the ANC.

12 VICE CHAIR JOHN: Thank you.

13 So, in order to have a complete record, we will
14 now discuss the special exceptions, even though there's some
15 general agreement that, without the variance, the special
16 exceptions might not be needed. But we need to have a
17 complete record.

18 So, Mr. Burns, if you'd like to go ahead and talk
19 about why you think the Application meets the special
20 exception criteria? And, you've amended your Application now
21 to seek rear yard relief to place the accessory structure
22 within the required rear yard and within 7.5 feet from the
23 center line, from the alley center line. So, do you want to
24 talk about that now?

25 Previously, the Application requested special

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1 exception relief from -- let me get the correct section, I
2 believe it was E 5000.4 which is not the appropriate section.
3 The correct section is Subtitle E 5000.41 which says that an
4 accessory building may not be located in a required rear
5 yard.

6 And, in this case, the proposal is to include the
7 accessory building within the required rear yard because the
8 rear yard is measured from the building to the end of the
9 property line which shows it was 20 feet in your plans.

10 MR. BURNS: Correct.

11 VICE CHAIR JOHN: Okay.

12 MR. BURNS: Yes, I can go through the special
13 exceptions.

14 You know, as you noted, we're requesting an
15 exception from the rear yard, the alley setback rear yard
16 occupancy. I'll have to find it in OP's report. They
17 thought that one of those, and I believe it was the placement
18 of the garage within the rear yard area did not require
19 relief. But I need to find that section.

20 VICE CHAIR JOHN: Okay.

21 MR. BURNS: Yes, 506, the rear yard, it is OP's
22 opinion that this relief is not required. So, I have no
23 argument with their assessment there.

24 With regard to the special exception criteria,
25 first of all, with regard to light and air available to the

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1 neighboring properties, we do not believe that it would be
2 unduly affected. As we note, the structure at 418, the
3 immediately adjacent to the south, already has a structure
4 exactly what we're proposing. That is a garage with an
5 occupiable roof deck. And, they have a fence of somewhere
6 between six and eight feet from the top of that roof deck.
7 Their light would certainly not be affected by our project
8 to the north.

9 To the north is 422 4th Street. What we are
10 proposing rises about three inches above -- I'm sorry, three
11 feet above the fence height right now. Because that rear
12 yard faces to the west, the light impact is minimal and, as
13 with 418, the owner of 422 is in support of the project.

14 With regard to privacy of use and enjoyment of
15 neighboring properties, that should not be unduly
16 compromised. We believe that the same arguments for light
17 and air apply here. Obviously, 418 is already elevated,
18 already has a fence, already has privacy.

19 We are proposed an occupiable deck, obviously
20 elevated from grade. But, again, the owner of 422 is in
21 support of the project and we would provide a partial height
22 screen between the two properties.

23 And, with regard to the addition or accessory
24 structure, not substantially visually intruding upon the
25 character, scale, and pattern of houses, not street in this

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1 case, but the alley frontage.

2 If you move back to slides A02 and A04, you'll see
3 that this entire row has either occupyable garage roofs or
4 doors on the rear of their yard. So, it isn't fundamentally
5 changing the character of the alley frontage at all. And,
6 in fact, part of our proposal is to restore rear of the
7 subject property to its original condition so the extent to
8 which you might be able to see the rear facade over the
9 garage door or, in our case, the parapet on top of the
10 garage, what you would see would be a restored character and
11 not the current adjusted character of the rear yard.

12 Thank you.

13 VICE CHAIR JOHN: Thank you.

14 Does the Board have any questions for Mr. Burns?

15 (NO AUDIBLE RESPONSE)

16 VICE CHAIR JOHN: Does Mr. Eckenwiler have any
17 questions for Mr. Burns?

18 COMMISSIONER ECKENWILER: No questions.

19 VICE CHAIR JOHN: And, I would just note one
20 thing, I believe the portion of the Application that the
21 Office of Planning said was not required was the rear yard
22 relief from the 20-foot requirement because, as noted
23 earlier, the rear yard is measured from the wall of the
24 building, or the deck in this case, it's 20 feet.

25 So, Mr. Jesick, may I go to you again to discuss

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1 the special exception criteria?

2 MR. JESICK: Yes, thank you, Madam Vice Chair and
3 Members of the Board.

4 The special exception relief is subject to the
5 criteria of Section 5201. And, as the Board knows, the
6 relief should not result in any undue impacts to the light,
7 air, or privacy. And, the Office of Planning found that the
8 special exception relief would not result in those impacts.

9 We also felt that relief would not impair the
10 character of the alley scape. As the Applicant noted, there
11 are a number of roll up doors and a few garages along this
12 stretch of the alley and the proposal would result in a
13 similar appearance for the subject property.

14 So, we felt that the Application met the criteria
15 of Section 5201 and that's why we recommend approval of the
16 special exceptions.

17 VICE CHAIR JOHN: Okay, thank you very much.

18 Does the Board have any questions for the Office
19 of Planning?

20 (NO AUDIBLE RESPONSE)

21 VICE CHAIR JOHN: Does the Applicant have any
22 questions for the Office of Planning?

23 MR. BURNS: We do not.

24 VICE CHAIR JOHN: Does the ANC have any questions
25 for the Office of Planning?

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1 COMMISSIONER ECKENWILER: We do not.

2 VICE CHAIR JOHN: And, Mr. Young, is there anyone
3 wishing to testify?

4 MR. YOUNG: We have one witness who is calling in
5 by phone.

6 VICE CHAIR JOHN: Okay.

7 MR. YOUNG: And, that is Ms. Levinson.

8 VICE CHAIR JOHN: Ms. Levinson? Please let her
9 in.

10 Ms. Levinson, can you hear me?

11 (NO AUDIBLE RESPONSE)

12 VICE CHAIR JOHN: Ms. Levinson?

13 MS. LEVINSON: Hi, this is Ellen Levinson.

14 VICE CHAIR JOHN: Good afternoon. Can you state
15 your name and address for the record, please?

16 MS. LEVINSON: My name is Ellen Levinson. My
17 address is 418 4th Street, Northeast, Washington, D.C. 20002.

18 VICE CHAIR JOHN: Okay, so, please go ahead and
19 give your testimony and you have three minutes.

20 MS. LEVINSON: Okay. I'm the neighbor of Raymond
21 and he has talked to me about these plans over the years and
22 it sounds very good to me and I think it'll look much more
23 appealing, especially since we already have in our little,
24 you know, like you said, the adjoining properties in this
25 block, in this little section.

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1 We all have something, you know, like a door or
2 something or some kind of structure in the back. I think it
3 would be very consistent and I think it would actually add
4 value and be very positive for the neighborhood.

5 So, I am supportive and I just, I don't know what
6 other questions you have, but I'm, you know, I've been
7 supportive throughout.

8 VICE CHAIR JOHN: Okay, thank you.

9 Does the Board have any questions for the witness?

10 (NO AUDIBLE RESPONSE)

11 VICE CHAIR JOHN: Does the Applicant have any
12 questions for Ms. Levinson?

13 MR. BURNS: No, I don't think we do.

14 VICE CHAIR JOHN: Does the ANC have any questions
15 for Ms. Levinson?

16 (NO AUDIBLE RESPONSE)

17 VICE CHAIR JOHN: Okay. Well, Ms. Levinson, thank
18 you for your testimony and we're going to go ahead and excuse
19 you for today.

20 MS. LEVINSON: Okay, thank you.

21 VICE CHAIR JOHN: You're welcome.

22 So, Mr. Young, there's nobody else wishing to
23 testify?

24 MR. YOUNG: That's correct.

25 VICE CHAIR JOHN: Mr. Burns, would you like to

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1 give a closing statement?

2 MR. BURNS: Yes, just a brief statement.

3 First of all, thank you, Board, for your time.
4 I know you volunteer for this anyway, but I still appreciate
5 your time and attention.

6 We understand that this is a little bit difficult
7 case. It's not the obviously inventions on properties that
8 lead to a variance. We do think that the language for the
9 variance regarding shallowness was simple and clear and was
10 left as simple as it was for a particular reason.

11 Obviously, everything else falls from that, so
12 your vote regarding the area variance will be the key.

13 There are a couple of things that were said that
14 we would just like to remark.

15 There was a comment made that the owner, when he
16 bought the property in 1995 knew what he was getting. I
17 don't know in any real estate transaction if people fully
18 understand the impact of zoning restrictions on the property,
19 nor in 1995 do I think that he was anticipating improvements
20 to the property, aging in place, or anything else that might
21 befall him in life. So, as to what he knew, I don't know but
22 that's not really the crux of our argument.

23 With regard to the design for mobility, it's not
24 finished. What we showed was sort of a maximum dig out. But
25 the reality is that -- nor do we claim, in fact, it'd be

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1 wheelchair bound or different levels of mobility impairment.
2 We are not proposing a full ADA compliant unit, but we are
3 proposing a unit that would be effective for some level of
4 mobility impairment. And, we can certainly reduce and have
5 discussed reducing the dig out to the extent that we would
6 be able to provide shallow ramping to the unit so that you
7 could wheel in.

8 And, finally, you know, the remarks on outdoor
9 space, I don't know -- it drove the design and the
10 consideration of the Application. It is, again, not the crux
11 of our argument. But, you know, there are options for the
12 outdoor construction. We've talked about not having the
13 fourth wall on the garage. We've talked about a shed
14 structure such that the space between the garage and the
15 lower unit is not as deep.

16 It is the front yard the we consider to be the
17 primary outdoor space for the lower unit. But these were all
18 design considerations that will get refined as move into the
19 permit and construction documents.

20 What we really want the Board to consider is, as
21 people evolve and as people wish to stay in their homes in
22 the city, which is a difficult thing to do increasingly, what
23 are the real allowances in the zoning code?

24 We thought the allowance for shallowness and
25 strictly that word gave us a reasonable petition before the

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1 Board and we hope that you see that that was a reasonable
2 petition on our behalf.

3 And, I thank you, in closing, for all of your time
4 and your consideration.

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

6 And, I believe that the owner is with us and wants
7 to say something. Please introduce yourself for the record
8 and give your address.

9 MR. BROWN: Hi, my name is Raymond Brown. I live
10 at 420 4th Street, Northeast, Washington, D.C. 20002.

11 I wanted to speak a little bit about aging in
12 place beyond the use of someone's legs. When I was 18, I
13 joined the Navy. I was a coreman at the naval hospital. My
14 first assignment was a neurosurgical floor.

15 In just a few millimeters of injury to the brain
16 can cause really devastating effects. I moved to D.C. in '91
17 to do a residency in psychiatry and I worked in public
18 psychiatry my whole career. Much of that was crisis
19 emergency at CPAP, doing mobile outreach and homeless
20 outreach. And, I worked with individuals and families
21 through slow declines or through brain illness.

22 And, I am much more concerned about the impact of
23 that as, if we're honest with ourselves, most people are.

24 Half my family is long-lived. There's dementia
25 in the family. And, what I found over years that, not only

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1 do you need to sort of accommodate the individual, but
2 caregivers.

3 And so, the concepts that have gone into this and
4 I'm 63 now, towards the, you know, approaching the end of my
5 career, is I love the scale of this neighborhood. I'd like
6 to stay here but I worry that I'll have a gradual decline and
7 to accommodate people to come in to assist me if I would need
8 it, covered parking helps with that.

9 So, I didn't think of it necessarily when I first
10 bought the house. But several years ago, I was with the
11 homeless director, the homeless outreach team, and during a
12 very cold winter night, there was a call for a concern over
13 a person that had essentially in park bench in Franklin
14 Square, was frozen to a bench. And, we had to kind of chip
15 him out of that bench.

16 And, I told them that I was a psychiatrist. I was
17 making an application that he go be evaluated, go to the
18 hospital even if he didn't want to go. And, he said,
19 psychiatrist? I need a neurologist, I don't need a
20 psychiatrist.

21 And, it turns out that this guy had retired from
22 working as a psychiatrist about 15 years and had eloped from
23 his house.

24 And so, some of the structure is making it easy
25 for someone who might be declining with dementia so they

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1 don't elope. And, this was in the consideration, didn't want
2 to, you know, harm anyone in doing this, but in terms of
3 sheltering in place, it's not just a question of your legs,
4 it's a question of brain.

5 And so, this was in the thinking of what I might
6 need in the future. In fact, I hope it goes into more
7 planning as the city goes forward in considers these type of
8 issues.

9 The ANC didn't even recognize me to speak to them
10 until after they had voted against it. And, I thank you for
11 your time and I'll answer any questions if you have any.

12 VICE CHAIR JOHN: Thank you.

13 I don't have any questions. Does the Board have
14 any questions?

15 (NO AUDIBLE RESPONSE)

16 VICE CHAIR JOHN: Does the ANC have any questions?

17 COMMISSIONER ECKENWILER: No questions, Madam
18 Chair.

19 VICE CHAIR JOHN: Okay, but I do have question for
20 Mr. Burns. So, I gather that Mr. Brown has been exploring
21 other options. And, sometimes that the Board, I don't even
22 know if there's any point in mentioning this, Applicants
23 withdraw their Application to see if there are other
24 solutions.

25 Because what we approve now is what DCRA will

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1 expect you to build. Not that I'm saying we're going to
2 approve anything, but you mentioned something like a pergola
3 or something like that.

4 So, I guess the question to you, Mr. Burns, is we
5 can decide to table or you can -- have you discussed other
6 options with the Office of Planning that might work for your
7 client?

8 MR. BURNS: Thank you for asking. No, that's not
9 -- the exterior rear structure is not really what we've
10 explored. We've explored really the depth of excavation.
11 You know, the current space is seven-foot, four. We'd like
12 to get that to at least eight-foot.

13 We know we could accommodate a sloped walkway to
14 an eight-foot ceiling or minimal stepage down which has to
15 go with steps as opposed to ramping.

16 That's really been the exploration. It's not been
17 the outdoor space because, really, there's not really any
18 solutions that meet both the demand for covered parking and
19 the inquiry into separation of space between the two units.

20 So, I think that if the Board through that our
21 Application did not meet the criteria and it rejected the
22 Application then we'd proceed with -- we'd just proceed with
23 outdoor space, wouldn't build the garage.

24 VICE CHAIR JOHN: Thank you.

25 Well, the renovations to the basement are not

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1 before the Board. So, whether or not you dig down or you
2 have steps, that's not before the Board.

3 MR. BURNS: Correct.

4 VICE CHAIR JOHN: We're only concerned with the
5 lot occupancy which is the garage.

6 Okay, so, hearing that, then, I'm going to thank
7 you for your testimony and ask Mr. Young to exclude the
8 witnesses.

9 MR. BURNS: All right, thank you very much, Board.

10 VICE CHAIR JOHN: Thank you all.

11 So, I'm going to close the record on the hearing
12 and ask if you're ready to deliberate.

13 So, I decided to go ahead and hear the arguments
14 on the special exception in order to complete the record,
15 which we have done.

16 So, now, I'd really like to hear from everyone on
17 what they think. I think I'll just say a couple things. I
18 think it's pretty clear from that exhibit that showed the
19 size of the lot that it is not an exceptionally shallow lot
20 and the variance request hinges on that. So, unless that lot
21 is exceptionally shallow, then there's no exceptional
22 condition.

23 And so, the variance test falls at that -- fails
24 at that point. I thought that that diagram, to me, was
25 pretty clear as well as Mr. Jesick's testimony and his

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1 description of the lots nearby and his explanation of how the
2 Office of Planning evaluates whether a lot is -- has an
3 exceptional condition.

4 With respect to the testimony of the ANC, I
5 appreciate the ANC's concerns with particular emphasis on the
6 explanation of the exceptional condition respecting the size
7 of the lot.

8 I thought the ADA issues were not relevant and
9 whether or not the Applicant was digging down and how many
10 steps there were, I don't believe that that was relevant to
11 our understanding of how the Application meets the criteria
12 for the variance.

13 I thought that the special exception relief was
14 fairly straightforward. And, I'm mindful that, if the
15 Applicant can't build this garage, then I think the special
16 exception goes away. But in any case, we have a clear
17 record.

18 So, with that, I'm going to ask Mr. Blake if he
19 would like to add anything.

20 MEMBER BLAKE: Thank you, Vice chair.

21 I struggled with the first part of the variance
22 test in looking at this Application. It's an interesting
23 structure because this is something that, if it were a
24 special exception would be acceptable.

25 And, I think when I compare it to the fact that

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1 others in the neighborhood have similar constructs and this
2 is not something unusual, unfortunately, because of the
3 standard itself which requires this be an exceptional
4 situation, this does not meet that criteria.

5 So, and so, along with you, I'd agree that the
6 first prong of the test is not met. I do think that the
7 logic behind it, the desire, it all makes sense.
8 Unfortunately, I do think with this particular standard,
9 makes it particularly impossible to actually meet the
10 standard for this test.

11 So, with that, I would be in -- I would not be in
12 support of the variance request.

13 VICE CHAIR JOHN: Thank you.

14 Mr. -- Board Member Smith?

15 MEMBER SMITH: Sure, in analyzing the three
16 prongs, I did relate to what you and Board Member Blake, I
17 struggled with that first section on there, shallowness of
18 shape of the property. And, based on the Applicant's own
19 presentation, the diagram that he showed, the plat that we
20 saw of the square, all the lots are in similar -- are all of
21 a similar size. They were all platted in the early -- at
22 least they've been in this current configuration since the
23 early 1900s.

24 So, I do not believe, based on what we're seeing
25 and explaining that there is an exceptional situation based

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1 on the size of the lot. So, I don't believe that it meets
2 the first prong variance test.

3 On the second prong of the variance test, which
4 one is that, the substantially detriment to the public good,
5 I can understand the Office of Planning's position and that
6 it wouldn't be a detriment to the public good, that a garage
7 is fairly common along this block, along this square. So,
8 and based on the size of it, it wouldn't have a major impact
9 to the light and air of the property.

10 But, again, there are three prongs to this text
11 and the third one was the nature and intent, purpose, and
12 integrity of the zoning regulations. I agree with OP's
13 analysis of this zoning ordinance of the place the lot
14 occupancy requirements. It's not hard to see the
15 requirements is for a reason to protect against an
16 extraordinary amount of lot occupancy.

17 Then the current property -- the property in its
18 current configuration is already over, substantially over the
19 maximum allowed by both by right, it's not right, and also
20 by special exception. So, to, you know, add additional bulk
21 in that I think would be contrary to the intent and purpose
22 and integrity of the zoning regulations.

23 And, just as we've stated in previous cases like
24 this, well, I'll say this because Mr. Jesick spoke on this,
25 a garage is not a right. It's not a necessity for the

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1 operation of a dwelling. So, I don't think this particular
2 case, for something that I don't think is a necessity to the
3 full operation or the development of the property for a
4 reasonable size dwelling or use of the property as described
5 the zoning ordinance meets the variance criteria.

6 So, with that, I don't support the variance.

7 VICE CHAIR JOHN: Thank you, Board Member Smith.
8 Commissioner Miller?

9 COMMISSIONER MILLER: Thank you, Madam Vice Chair.

10 I agree with your analysis and the analysis of
11 Board Members Blake and Smith, that the variance test which
12 was a very high bar, the three part variance test has not
13 been met in this particular case by the Applicant which is
14 what the position is of the Office of Planning and the ANC
15 6C, to each of which we're required to give great weight to
16 their concerns. And, they are concerned as was the Capitol
17 Hill Restoration Society.

18 The Applicant did have the support of the adjacent
19 neighbor who pointed out that there are similar structures
20 in these -- in the rear yards of other lots, on her lot and
21 other lots in the square I guess. I don't know how they got
22 there, that's not our issue.

23 So, in this case, in this Application, the first
24 prong of an exceptional condition leading to practical
25 difficult just has not been met.

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1 And, it does result in a -- the proposal does
2 result in almost a 100 percent lot occupancy in an RF-3 zone
3 on Capitol Hill which is -- has a much -- and as was pointed
4 out by the ANC and I think others, a similar case that had --
5 that didn't increase the lot occupancy to the extent that
6 this Application does was denied by the Board several years
7 ago.

8 So, I am not in support of the variance in this
9 case which would make the special exceptions, as you stated,
10 as others have stated, moot.

11 Thank you.

12 VICE CHAIR JOHN: Thank you, Commissioner Miller.

13 And, just to add to what you said, the existing
14 lot occupancy right now is above the 70 percent that we could
15 grant by special exception. It's at 73.3 percent and the
16 Applicant, as you said, is trying to go to 95.6 percent which
17 is almost a 100 percent lot occupancy.

18 Okay, so, with that, I am going to make a motion,
19 based on what everyone has said, to deny Application 20725
20 as captioned and read by the Secretary for variance relief
21 for lot occupancy and grant the request for special exception
22 for rear yard relief under Subtitle E 504.1(a) and (b) and
23 Section 901.2 and ask for a second, Mr. Blake.

24 MEMBER BLAKE: Second.

25 VICE CHAIR JOHN: Mr. Moy, will you please take

1 the roll call?

2 MR. MOY: When I call your name, if you would
3 please respond with a yes, no, or abstain to the motion made
4 by Vice Chair John to deny the request for a variance relief
5 and grant the request for the special exception related to
6 the rear yard requirement.

7 VICE CHAIR JOHN: Thank you -- all right.

8 MR. MOY: I'm sorry, did I make an error in your
9 motion?

10 VICE CHAIR JOHN: Commissioner Miller?

11 COMMISSIONER MILLER: I just had a question, Madam
12 Vice Chair, on the motion. I just wanted to get -- I assume
13 they would have spoken up if there was a concern, but I just
14 wanted to make -- get confirmation and we'll take silence as
15 confirmation from our legal counsel that the -- even that we
16 should be considering the special exceptions at all if it's
17 moot if we deny the variance.

18 I just want to make sure, confirm that the motion
19 to deny the variance and approve the special exceptions is
20 the right approach for -- or a right approach for us to be
21 taking. So, I just wanted to get confirmation and give our
22 legal counsel a chance to affirm that. They can do that by
23 their silence which they've done.

24 MS. NAGELHOUT: No, I haven't. No, I haven't, I
25 was waiting for you --

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1 COMMISSIONER MILLER: Okay.

2 MS. NAGELHOUT: -- to stop talking.

3 COMMISSIONER MILLER: Okay.

4 MS. NAGELHOUT: No, the rules of Subtitle Y give
5 the Board the authority to dismiss an Application for failure
6 to comply with procedural rules which is not what's happening
7 here. You've expressed an intent to deny the variance which
8 is fine, you can deliberate on the special exceptions
9 separately or just deny the Application and we'll deal with
10 it in the order. But I don't think the special exceptions
11 are moot.

12 COMMISSIONER MILLER: So, if the special
13 exceptions aren't moot, then the motion is in order, you're
14 saying?

15 MS. NAGELHOUT: If that's what the Board wants to
16 do, yes, it was in order.

17 COMMISSIONER MILLER: Okay, okay, thank you.

18 VICE CHAIR JOHN: Thank you, Commissioner Miller.
19 Thank you, OZ legal division, Ms. Nagelhout.

20 So, where were we? I believe I had closed the
21 record. I just want to be clear about that.

22 Commissioner Miller, you had another thought?

23 COMMISSIONER MILLER: No, no, I was just saying
24 I'm sorry to have interrupted. You had made a motion and it
25 was seconded and I just wanted to make sure it was in order.

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1 And, it -- I think it is. So, I'm ready to vote.

2 VICE CHAIR JOHN: And, your question is in order,
3 Commissioner Miller. This is all hands on deck. So, we're
4 ready to vote, Mr. Moy.

5 MR. MOY: Yes, for my edification and for clarity
6 in the transcript, Madam Vice Chair, would you please repeat
7 your motion for the record?

8 VICE CHAIR JOHN: I thought you would do that.
9 Fortunately, I wrote it down.

10 This is a motion to deny Application 20725 as
11 captioned and read for variance relief for lot occupancy and
12 grant the special exception request for rear yard relief
13 under Subtitle E, Section 504.1(a) and (b) and Subtitle X
14 901.2.

15 MR. MOY: Very good, thank you, Madam Vice Chair.

16 So, with that, when I call your name, if you would
17 please respond to the motion.

18 Zoning Commissioner Rob Miller?

19 COMMISSIONER MILLER: Yes.

20 MR. MOY: Mr. Smith?

21 COMMISSIONER MILLER: Yes, to deny the variance
22 and to approve the special exceptions.

23 MR. MOY: All right, that's Zoning Commissioner
24 Rob Miller.

25 Mr. Smith?

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1 MEMBER SMITH: -- variance, and yes, to approve
2 the special exception.

3 MR. MOY: Mr. Blake?

4 (NO AUDIBLE RESPONSE)

5 MR. MOY: Vice Chair John?

6 VICE CHAIR JOHN: Yes to deny the variance and to
7 grant the special exception relief.

8 MR. MOY: All right, we have a Board Member not
9 present. Staff would records the vote as four to zero to one
10 and this is on the motion made by Vice Chair John. And, I'm
11 not going to repeat that motion, and that motion was seconded
12 by Mr. Blake. Also in support of the motion is Zoning
13 Commissioner Rob Miller, Mr. Smith, Mr. Blake, and Vice Chair
14 John. Motion carries, Madam Vice Chair on a vote of four to
15 zero to one.

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

17 And, before we take our last case, let's take a
18 two minute break, stretch our legs and be more alert.

19 (Whereupon, the above-entitled matter went off the
20 record at 1:43 p.m. and resumed at 1:52 p.m.)

21 VICE CHAIR JOHN: We're back, Mr. Moy, can you
22 call us back in session?

23 MR. MOY: Yes, thank you.

24 After a quick break, the Board has returned to its
25 public hearing session and the time is about -- at or about

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1 1:53 p.m.

2 The next and last case on today's docket is
3 Application Number 20674 of Daniel and Elizabeth Figoni, F-I-
4 G-O-N-I. This is an amended self-certified Application for
5 special exceptions pursuant to Subtitle U, Section 253.4 and
6 Subtitle X, Section 901.2 to allow an accessory apartment in
7 a principle dwelling.

8 The property is located in the R-20 zone at 3724
9 T Street, Northwest, Square 1308, Lot 72. The Board last
10 heard this case when it was called at the Board's hearing in
11 -- on April 20, 2022 and that was when the Board addressed
12 preliminary matters and then continued the Application to a
13 public hearing to today, June 8th, in order to allow the
14 Applicant additional time to reconsider his Application.

15 The merits of the case, quite naturally, have not
16 been heard yet. And, that's all I have, Madam Vice Chair.

17 VICE CHAIR JOHN: Thank you, Mr. Moy, and thank
18 you for that reminder. I was searching my memory to see if
19 we had heard the merits, but I don't believe we did.

20 So, good afternoon, Mr. Cross, can you introduce
21 yourself for the record, please, and tell us who you have
22 with you today?

23 MR. CROSS: Yes, good afternoon, Robert Michael
24 Cross, architect of record --

25 VICE CHAIR JOHN: You're breaking up, Mr. Cross.

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1 Mr. Cross? Mr. Cross, can you hear me?

2 MR. CROSS: Is this audio any better?

3 VICE CHAIR JOHN: We can hear that, but we didn't
4 hear anything after your name.

5 MR. CROSS: My apologies. I'll start over.

6 My name is Robert Michael Cross, I'm the architect
7 of record and here on behalf of the property owner at 3724
8 T Street, Northwest.

9 I believe the owners of the property are both here
10 as well as the project designer, Victoria Gundrum.

11 VICE CHAIR JOHN: Thank you. Are you presenting?

12 MR. CROSS: I am. Well, Mr. Moy didn't mention
13 it, but there may be a preliminary matter for late filing,
14 otherwise, we'd like to pull up Exhibit 37-B, as in beta.

15 VICE CHAIR JOHN: I see there is a motion to
16 accept an untimely filing, so I'll go ahead and allow that
17 information in the record.

18 MR. CROSS: Thank you.

19 So, if Mr. Young could pull up Exhibit 37-beta
20 when he gets a chance. Much appreciated.

21 Again, we're here on behalf of the property owners
22 at 3724 T Street, Northwest. It's located in an R-20 zone.
23 The property is located mid-block on the south side of T
24 Street, Northwest between 37th and 38th Street.

25 As mentioned in the prelude, we have amended this

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1 Application since it was originally called on 4/20 earlier
2 this year. The modification is that we have removed one of
3 the areas of relief which was a controversial and we have
4 decided not to pursue that at this time.

5 Subsequently, we are only seeking relief from one
6 section today in this case, that is Section U 253.4 to allow
7 an accessory apartment in the cellar level in an R-20 zone.

8 All other elements of this Application are a
9 matter of right. It is conforming with the height
10 regulations which allow a three-story, 35-foot structure.
11 We're proposing a three-story, roughly 33-foot structure.

12 It's conforming with the rear addition and rear
13 yard setback requirements. Most notably, we are extending
14 only 10 feet past the property at 3726 which is only six feet
15 past the other property at 3722.

16 The project is also conforming with lot occupancy
17 regulations with a lot occupancy proposed to be 50 percent
18 out of an allowable 60. And, as mentioned previously, a
19 vestibule at the front entry has been removed since the time
20 of the original Application.

21 Next slide, please?

22 Here you can see the existing structure located
23 mid-block on T Street, Northwest between 37th and 38th
24 Street.

25 Next slide, please?

1 So, as noted, we're seeking relief for an
2 accessory apartment which is located in the cellar
3 highlighted here in red. The accessory apartment is a one-
4 bed, one-bath unit with a small kitchen. It has a square
5 footage of roughly 1,100 square feet. And, it'll have
6 exterior access from the rear yard and rear parking area.

7 It's currently proposed to be connected to the
8 primary unit above and used as an in-law suite, et cetera.

9 It does meet the requirements for an accessory
10 apartment as it's -- as one of the units will be owner
11 occupied. It's located within a principle building. The
12 principle building first floor area exceeds that which is
13 required to have an accessory apartment.

14 And, the ADU, or the accessory apartment itself
15 does not exceed 35 percent of the principle building.

16 The access to the accessory apartment is not
17 street facing. As mentioned, it's not in an accessory
18 building.

19 This Application is being submitted by the current
20 occupants of the home who intend to live in the expanded
21 house with their kids after construction is complete.

22 We've received the support of the ANC for this
23 project. We've also received OP support for this area of
24 relief requested today.

25 And, our clients have received the support of

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1 several of their neighbors, including the adjacent neighbor
2 at 3722, neighbors at 3713, and 3724 also provided letters
3 of support. And, we have a chimney extension agreement with
4 the other adjacent neighbor at 3726.

5 With that, we appreciate your time and glad to
6 answer any questions that you might have.

7 VICE CHAIR JOHN: Thank you, Mr. Cross.

8 Does the Board have any questions?

9 And, Mr. Young, could you please drop the slide
10 deck?

11 (NO AUDIBLE RESPONSE)

12 VICE CHAIR JOHN: So, does the Board have any
13 questions?

14 (NO AUDIBLE RESPONSE)

15 VICE CHAIR JOHN: Is the ANC here, Mr. Young?

16 (NO AUDIBLE RESPONSE)

17 VICE CHAIR JOHN: Okay, I'll go to the Office of
18 Planning, then. Ms. Fothergill?

19 MR. MORDFIN: Good afternoon, I'm Stephen Mordfin
20 with the Office of Planning and I'll be presenting this
21 Application before the Board today in place of Ms.
22 Fothergill.

23 The Office of Planning has reviewed this
24 Application and it initially requested two areas of relief.
25 One had to do with the second unit for which the Office of

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1 Planning found that this Application was in conformance with
2 all of the criteria.

3 And, the only issue was the variance that was
4 required at the entry. As proposed, the Applicant has
5 withdrawn that request. So, therefore, there's no longer an
6 issue with that.

7 And so, OP does find that the Application is in
8 conformance with their requirements for a special exception
9 pursuant to U 253.4 for an accessory apartment and is in
10 support of the Application. And, I'm available for any
11 questions.

12 VICE CHAIR JOHN: Thank you, Mr. Mordfin.

13 Does the Board have any questions for the Office
14 of Planning?

15 (NO AUDIBLE RESPONSE)

16 VICE CHAIR JOHN: Does the Applicant have any
17 questions for the Office of Planning?

18 MR. CROSS: We do not, thank you.

19 VICE CHAIR JOHN: Is the ANC here?

20 (NO AUDIBLE RESPONSE)

21 VICE CHAIR JOHN: Mr. Young, is there anyone
22 wishing to testify?

23 MR. YOUNG: We do not.

24 VICE CHAIR JOHN: Okay, Mr. Cross, do you have any
25 closing arguments?

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1 MR. CROSS: I do not. I appreciate OP and the
2 Board's time in considering this case.

3 VICE CHAIR JOHN: Okay, thank you.

4 So, Mr. Young, I'm going to close the record and
5 the hearing and thank the witnesses for their testimony today
6 and excuse them from the hearing.

7 Okay, so, I'm not sure if I closed the record, but
8 if I didn't, I am closing the record and are we ready to
9 deliberate? Does anyone want to start? Okay, Mr. Blake, I
10 thought you were going to say something.

11 MEMBER BLAKE: Because I was -- I will start.
12 I'll be voting in favor of the Application. I think the
13 Applicants met the condition specified for an accessory unit
14 under U 253.4.

15 In addition to that, if you look at the general
16 conditions, the general standards, the proposal is definitely
17 in harmony with the general purpose and intent of the
18 regulations as the RF plan don't permit accessory apartments
19 located in the principle dwelling.

20 And, also, it certainly does not tend to -- should
21 not adversely affect the use of neighboring properties. It's
22 located in the cellar level of the dwelling and the access
23 to the apartment will be from the rear public alley. The
24 windows in the accessory apartment are located on the front
25 and rear facades, facing the rear street and back yard. So,

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1 I think that while this is non-conforming lot in terms of lot
2 width, but the project meets the development standards of the
3 zone including building height, rear yard, and lot occupancy.

4 We saw a lot of concerns that came up in this
5 project. A lot of them had to do with the initial relief
6 which was for the entry area for the front yard setback which
7 the portico was removed from the case. And, as we can see
8 from the altered plans, that has now been reduced to just a
9 -- the door entryway.

10 This part of the Application does seem to be
11 fairly clean. The objections that we saw really did relate
12 mostly to that. There were some concerns, obviously, about
13 the pop up and, as I said, those things all fit within the
14 context of the matter of right and all the rest of the
15 development standards.

16 So, I will give great weight to the Office of
17 Planning report and recommended approval. DDOT has no
18 objections and ANC 2E did adopt a resolution in support.

19 VICE CHAIR JOHN: Thank you, Mr. Blake. Mr. --
20 yes, Mr. Blake.

21 Mr. Smith?

22 MEMBER SMITH: I think Mr. Blake summarized this
23 case very well and I also share the same position of this
24 particular case. And, I do believe they have met the metrics
25 for us to be able to grant the special exception based on

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1 Subtitle X 901.2.

2 And, has just been stated, most of the community's
3 concerns was about that portico that they have removed, so
4 that's not before us today. And, kudos to the Applicant for
5 recognizing or working with the neighborhood and recognizing
6 some of their concerns. And, I understand they may have
7 still wanted that portico, but in spirit of being a good
8 neighbor, I'm guessing they -- is why they went through this
9 Application.

10 So, with that, I do agree with both these analyses
11 on this case and support the Application.

12 VICE CHAIR JOHN: Thank you, Board Member Smith.
13 And, Commissioner Miller?

14 COMMISSIONER MILLER: I concur with the comments
15 by my fellow Board Members Blake and Smith and regarding the
16 Office of Planning recommendation of approval as well as ANC
17 recommendation of approval. So, I'm prepared to support the
18 modified Application. Thank you.

19 VICE CHAIR JOHN: Thank you, thank you,
20 Commissioner Miller.

21 So, I'm also in support of the Application. I
22 believe as amended it is now very straightforward. So, the
23 additional factor I looked at was that there is this chimney
24 extension agreement with the adjacent neighbor and that both
25 adjacent neighbors are in support.

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1 And, with that, I'm going to give great weight to
2 the Office of Planning's report and the ANC's report which
3 was in support with no issues or concerns addressed.

4 And, based on that, the sense that everyone is in
5 support, I'm going to make a motion to approve BZA
6 Application Number 20674 as captioned -- wait, let me say
7 that again.

8 I'm going to make a motion to approve BZA
9 Application Number 20674 as amended and as captioned and read
10 by the Secretary and ask for a second, Mr. Blake?

11 MEMBER BLAKE: Second.

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

14 MR. MOY: When I call your name, if you will
15 please respond, this is to the motion made by Vice Chair John
16 to approve and the motion was seconded by Mr. Blake.

17 Zoning Commissioner Rob Miller?

18 COMMISSIONER MILLER: Yes.

19 MR. MOY: Mr. Smith?

20 (NO AUDIBLE RESPONSE)

21 MR. MOY: Mr. Blake?

22 MEMBER BLAKE: Yes.

23 MR. MOY: Vice Chair John?

24 VICE CHAIR JOHN: Yes.

25 MR. MOY: And, we have a Board Member not present.

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1 Staff would record the vote as four to zero to one and this
2 is to the motion made by Vice Chair John to approve. The
3 motion to approve was seconded by Mr. Blake. Also in support
4 to the motion to approve, Zoning Commissioner Rob Miller, Mr.
5 Smith, Mr. Blake, Vice Chair John. Motion carries on a vote
6 of four to zero to one.

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

8 Is there anything else before the Board today, Mr.
9 Moy?

10 MR. MOY: There's nothing from the staff.

11 VICE CHAIR JOHN: Okay, so thank you.

12 And, with that, I want to thank everyone for their
13 support and their participation today. And, that concludes
14 the Office of Zoning Legal Division and all of those who
15 worked on this day's hearing. Thank you. And, I'll see you
16 next time.

17 (Whereupon, the above-entitled matter went off the
18 record at 2:11 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 06-08-22

Place: teleconference

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



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