

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

JULY 6, 2022

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Video-teleconference, pursuant to notice, at 9:35 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LORNA JOHN, Vice Chairperson
CARL BLAKE, Board Member

ZONING COMMISSION MEMBER[S] PRESENT:

PETER G. MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

MARK HAMALA, Zoning Specialist
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
MATT JESICK
JONATHAN KIRSCHENBAUM
STEPHEN MORDFIN
KAREN THOMAS
ELISA VITALE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

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MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the
Regular Public Hearing held on July 6, 2022.

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

(9:35 a.m.)

1
2
3 CHAIRPERSON HILL: Good morning, ladies and
4 gentlemen. The Board of Zoning Adjustment, today's date is
5 7/6/2022, public hearing please come to order. My name is
6 Fred Hill, Chairperson District of Columbia Board of Zoning
7 Adjustment.

8 Joining me today is Lorna John, Vice-Chair, Board
9 Members Cara Blake, and Zoning Commissioner Peter May.
10 Today's meeting and hearing agenda are available on the
11 Office of Zoning website. Please be advised that this
12 proceeding is being recorded by a court reporter and is also
13 webcast live via Webex and YouTube Live.

14 The video of the webcast will be available on the
15 Office of Zoning website after today's hearing. Accordingly,
16 everyone who is listening on Webex of the telephone will be
17 muted until the appropriate time. Please be advised that we
18 don't take any public testimony during the decision meeting
19 session.

20 At the conclusion of each decision meeting
21 session, I shall, in consultation with the Office of Zoning
22 determine whether a fuller summary order may be issued. A
23 full order may be required when the decision it contains is
24 adverse to a party, including an effect to the ANC.

25 A full order may also be needed if the Board's

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1 decision differs from the Office of Planning's
2 recommendation. Although the Board favors the use of summary
3 orders whenever possible, an applicant may not request the
4 Board to issue such an order.

5 In today's hearing session, everyone who is
6 listing on Webex or by telephone will be muted during the
7 hearing. Only persons who have signed up to participate or
8 to testify will be muted at the -- will be unmuted at the
9 appropriate time.

10 Please state your name and home address before
11 providing oral testimony on your presentation. Oral
12 presentations should be limited to a summary of your most
13 important points. When you're finished speaking, please mute
14 your audio so that your microphone is no longer picking up
15 sound or background noise.

16 All persons planning to testify either in favor
17 or in opposition should have signed up in advance. They'll
18 be called by name to testify. If this is an appeal, only
19 parties are allowed to testify. By signing up to testify,
20 all participants completed the oath or affirmation as
21 required by Subtitle Y, 408.7.

22 Requests to enter evidence at the time of an
23 online virtual at the time of an line virtual hearing such
24 as written testimony or additional supporting documents,
25 other than live video, which may not be presented as part of

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1 the testimony, may be allowed pursuant to Subtitle Y 103.13,
2 providing that the person making the request to enter an
3 exhibit explains A, how the proposed exhibit is relevant, B,
4 the good cause that justifies allowing the exhibit into the
5 record, including an explanation of why the requestor did not
6 file the exhibit prior to the hearing, pursuant to Subtitle
7 Y 206, and how the proposed exhibit would not unreasonably
8 prednisone any parties.

9 The order of procedures for special exceptions and
10 variances are included in Y 409. At the conclusion of each
11 case, an individual who was unable to testify because of
12 technical issues may file a request for a leave to file a
13 written version of the planned testimony to the record,
14 within 24 hours following the conclusion of public testimony
15 in the hearing.

16 If additional written testimony is accepted, then
17 the parties will be allowed a reasonable time to respond as
18 determined by the Board. The Board will then make its
19 decision at its next meeting session, but no earlier than 48
20 hours after the hearing. Moreover, the Board may request
21 additional and specific information to complete the record.
22 The Board and the staff will specify the end of the hearing
23 exactly what is expected, and the date when a person must
24 submit the evidence to the Office of Zoning. No other
25 information shall be accepted by the Board.

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1 Finally, the District of Columbia Administrative
2 Procedures Act requires that a public hearing on each case
3 be held in the open before the public. However, pursuant to
4 Section 405(b) and 406 of the Act, the Board may consistent
5 with its rules and procedures and the Act, enter into a case
6 -- enter into a closed meeting on a case for purposes of
7 seeking legal counsel on a case, pursuant to D.C. Official
8 Code Section 2-575(b)(4), and/or deliberated on a case
9 pursuant to D.C. Official Code Section 2-575(b)(13), but only
10 after providing the necessary public notice in the case of
11 an emergency closed meeting after taking roll call.

12 Mr. Hamala, do you -- we have any preliminary
13 matters?

14 MR. HAMALA: Good morning, Chairman and Board.
15 We do have a couple of preliminary matters today related to
16 postponements. And they are Application No. 20703 of Mast
17 Holding I, LLC. This case has been proposed -- postponed to
18 October 5th, 2022.

19 And second Application No. 20755 of 1224 30th
20 Street NW, LLC, has been postponed to November 2nd, 2022.
21 There are other preliminary matters, but those can be handled
22 when we call the cases.

23 CHAIRPERSON HILL: Okay. Great. Thank you. All
24 right, good morning everybody. Mr. Blake, when you do get
25 video, please do join us as such. However, you can hear us,

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1 correct?

2 MEMBER BLAKE: Yes, I can.

3 CHAIRPERSON HILL: Okay. Great. All right, then
4 Mr. Hamala, you can call our first expedited review, for
5 instance you wouldn't mind. Mr. Hamala, if you can please
6 go ahead and call our next case, please.

7 MR. HAMALA: The next case is Application No 20740
8 of Erick and Jessica Alves De Sa. This is a self-certified
9 application for a special exception, pursuant to Subtitle E,
10 Section 205.4, Subtitle E 5201, and Subtitle X 901.2, from
11 the rear addition requirements of Subtitle E 205.4. This
12 property is located in the RF-1 Zone and is a proposed second
13 story addition above an existing first floor rear addition
14 and attached to a two-story principal dwelling.

15 The property is located at 534 Taylor Street, NW,
16 Square 3231, Lot 85, and there are a few preliminary matters
17 before the Board.

18 The first --

19 CHAIRPERSON HILL: Go ahead. Sorry, Mr. Hamala,
20 go ahead.

21 MR. HAMALA: Let's see, those -- there is the
22 parties request for party status and opposition from Diana
23 Waters, and there is also a motion to strike exhibits filed
24 anonymously from Beth Davis, representative of the applicant.
25 And there are some filings that were submitted within the 24

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1 hour period that would require a waiver, and those were
2 submitted by Ms. Waters.

3 CHAIRPERSON HILL: Okay. All right. I think the
4 24 hour period waiver, well, all right. Let's do some
5 introductions first.

6 MR. HAMALA: Okay.

7 CHAIRPERSON HILL: Mr. or Ms. De Sava (phonetic).

8 MR. ALVES DE SA: We're here. My name is Eric
9 Alves De Sa, and this is Jessica Alves De Sa. And we're the
10 homeowners.

11 MS. ALVES DE SA: Hi.

12 CHAIRPERSON HILL: Okay. Great. Hello. Who with
13 you guys here today?

14 MS. ALVES DE SA: We have with us Richard Freeman,
15 who is our architect, and Beth Davis, who has been helping
16 us through the permit process.

17 CHAIRPERSON HILL: Okay. Ms. Davis, could you
18 introduce yourself please? I can't hear you, Ms. Davis,
19 sorry.

20 MS. DAVIS: Can you hear me better now?

21 CHAIRPERSON HILL: Yes.

22 MS. BARDOL: Perfect. My name is Beth Davis and
23 I work as a permit consultant in conjunction with Aggregate
24 Architecture for Mr. and Ms. Alves De Sa.

25 CHAIRPERSON HILL: Okay. Great. Okay. As far

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1 as your request to remove the exhibit from the record,
2 unfortunately, it's kind of in the record, meaning it was
3 there, and so -- and it was done anonymously, meaning they
4 didn't have -- if I'm reading this correctly, and I'm not
5 actually talking to you right now, I'm talking to my Board
6 members.

7 And so what I would do, my Board -- what I would
8 suggest to my fellow Board members, is just like you know,
9 since they're already there and we've already kind of looked
10 at or seen them, we'll just go ahead and, you know, leave
11 them there.

12 But since they don't follow the correct
13 regulations per Y 206 to have the name as to who they are so
14 that we can even give it any kind of weight, we just won't
15 really give it any of the weight that we -- we won't really
16 acknowledge it is what I'm saying.

17 And so I'm looking at my fellow Board members, and
18 if they have any issues with that, speak up. Okay. So
19 hearing none, so we're going to go ahead and deny if it's a
20 motion, Mr. Hamala, to remove those from the record, because
21 they're already there.

22 The next one is party status and opposition. Ms.
23 Waters, can you hear me? Can you hear me?

24 MS. WATERS: Yes. Good morning.

25 CHAIRPERSON HILL: Good morning. Ms. Waters, you

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1 might be -- are you on the telephone and on the computer at
2 the same time?

3 MS. WATERS: I'm sorry. I am.

4 CHAIRPERSON HILL: It's okay. There's an echo.
5 Can you turn on your camera perhaps?

6 MS. WATERS: Okay. Camera's on.

7 CHAIRPERSON HILL: Okay. Well I don't see you on
8 the camera. Oh, wait. Maybe it is coming on.

9 MS. WATERS: Yes. It's slow. It is slow.

10 CHAIRPERSON HILL: Okay. No, still don't see you.

11 MS. WATERS: No.

12 CHAIRPERSON HILL: It's okay. Can you hear me?

13 MS. WATERS: Yes. I can hear you.

14 CHAIRPERSON HILL: Okay. Now I can hear you.
15 Could you introduce yourself for the record, please?

16 MS. WATERS: Sure. My name is Dianna Waters. My
17 address is 536 Taylor Street, NW, Washington, D.C.

18 CHAIRPERSON HILL: Okay. And Ms. Waters, so
19 you're the adjacent neighbor. Correct?

20 MS. WATERS: Yes.

21 CHAIRPERSON HILL: Okay. And so you have applied
22 for party status.

23 MS. WATERS: Yes.

24 CHAIRPERSON HILL: And what I was planning on
25 doing, and I'm looking for my -- I'm going to turn to my

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1 fellow Board members, what I've done is I've asked you all
2 to come first at the beginning of the day like this, so that
3 we can go ahead and talk through the party status issue.

4 Since you guys are the adjacent -- you are the
5 adjacent property, normally, we grant party status to that
6 because we usually think that meets the criteria for us to
7 grant party status. And so what that would mean, if my Board
8 members were to agree with party status.

9 And actually, let me go ahead and figure that out
10 first. Mr. Blake, what are your thoughts on party status for
11 Ms. Waters?

12 MEMBER BLAKE: Yes, I would be in support of
13 granting her part status, as she is the adjacent neighbor.

14 CHAIRPERSON HILL: Okay.

15 MEMBER BLAKE: And most affected, I believe, by
16 this activity.

17 CHAIRPERSON HILL: All right.

18 (Simultaneous speaking.)

19 MEMBER BLAKE: -- affected by this development.

20 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
21 Blake. Commissioner May?

22 COMMISSIONER MAY: I would be in favor of granting
23 party status as well.

24 CHAIRPERSON HILL: Okay. Ms. John?

25 VICE-CHAIRPERSON JOHN: I'm in favor of granting

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1 party status as the adjacent neighbor, as a presumption that
2 the neighbor is more distinctly and uniquely affected by the
3 project.

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

6 MS. WATERS: Yes, I can.

7 CHAIRPERSON HILL: Okay. So what I want -- oh,
8 okay, ma'am. I can see you.

9 MS. WEISS: Yes.

10 CHAIRPERSON HILL: Oh, great, perfect. Wonderful.

11 MS. WATERS: Yes.

12 CHAIRPERSON HILL: So what we're going to do is
13 we're going to grant you party status. And I want to kind
14 of explain what that means. And then what we're going to do
15 is bring you guys back at the end of the day. Okay?

16 Because what I'm going to do is I'm going to go
17 ahead and kind of explain how party status works, and then
18 possibly give you guys an opportunity even, you know, I don't
19 know if you have each other's information, if there's a way
20 you can talk during this day, and then we'll come back.

21 But Ms. Waters, what that means, and Mr. and Ms.
22 Alves De Sa -- okay. Thanks. That's close enough, I guess.
23 You guys, the way this works is you -- and I guess Ms. Davis
24 is going to be presenting, I'm not really sure. Ms. Davis,
25 are you going to be presenting?

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1 MS. FREEMAN: Ms. Freeman, the architect.

2 CHAIRPERSON HILL: Okay. Great. So what's going
3 to happen, Ms. Waters and Ms. Freeman, as you guys -- Ms.
4 Freeman, I can't remember if you've been before us or not.
5 Have you?

6 You have. Okay. So as Ms. Freeman knows, and
7 that's why I was going to tell you, they'll go ahead and
8 they'll give their presentation as to why they believe
9 they're meeting the standard, meaning the actual zoning
10 criteria for us to grant the relief requested.

11 And so they'll be speaking again to the
12 regulations, the project, and what's going on with their
13 request. Okay? And then you, Ms. Waters, will also have an
14 opportunity to give your testimony. Right?

15 MS. WATERS: Yes.

16 CHAIRPERSON HILL: As to why you believe they're
17 not meeting the criteria, and/or, in your case, since nobody
18 -- you're not a zoning attorney, you know, you're going to
19 be telling us about, you know, your concerns about the
20 project. Right?

21 MS. WATERS: Yes.

22 CHAIRPERSON HILL: And so, however, they will have
23 to be how it kind of applies to zoning issues. You know,
24 kind of the criteria that we're supposed to be looking at.
25 But we'll work with you through that. Okay? But you'll just

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1 give us your testimony. Okay? You as a party person --
2 party status, will have an opportunity to ask questions of
3 the applicant.

4 You'll have an opportunity to ask questions of the
5 Office of Planning. And you'll have an opportunity to ask
6 questions of anybody who has given testimony. Okay? And
7 then we, the Board, will have an opportunity to ask questions
8 of you. Okay?

9 MS. WATERS: Yes.

10 CHAIRPERSON HILL: And we'll just see how this all
11 works out. And at the end of the hearing, we'll see if we
12 need any further information or where exactly we are. Okay?

13 MS. WATERS: Okay.

14 CHAIRPERSON HILL: So that's -- let's see. So
15 that's the way the format will run. And then I guess, Ms.
16 Waters, do you have anybody's contact information?

17 MS. WATERS: I have Erick and Jessica's contact
18 information.

19 CHAIRPERSON HILL: Okay. So if you -- and I've
20 kind of, you know, read over the record and what some of your
21 concerns are. Now, I guess I don't know if you have had much
22 of an opportunity to meet or talk with the applicant, but
23 what I would do is I would go ahead and see if during this
24 day, if you guys can, you know, meet via email, meet on the
25 phone, whatever, just see if there's anything at all you guys

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1 might be able to do to get to a point where any type of
2 concerns Ms. Waters might have, might be addressed.

3 I know you guys probably have already talked, but
4 it is -- you know, since we're now here today, this is kind
5 of an opportunity to kind of work this through. So I'm going
6 to see if anybody has any questions. First, I'm going to
7 start with Ms. Waters. Do you have any questions?

8 MS. WATERS: No. I don't.

9 CHAIRPERSON HILL: Okay.

10 MS. WATERS: I'm sorry.

11 CHAIRPERSON HILL: Okay, sure.

12 MS. WATERS: Mr. Hill, the time, you said the end
13 of the day. Do you have an estimate time or will someone let
14 us know what time?

15 CHAIRPERSON HILL: Sure. Somebody will call you,
16 maybe about, I don't know, maybe 20 minutes before we think
17 -- I mean, we don't know exactly. I know they can call you
18 before we're going to get to the last -- you know, before
19 we'll get to the case.

20 MS. WATERS: Okay.

21 CHAIRPERSON HILL: I have no idea exactly. It's
22 10 o'clock now. I really couldn't say. I might say 1
23 o'clock, you know, something like that.

24 MS. WATERS: Okay.

25 CHAIRPERSON HILL: So that's at least my opinion.

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1 Okay. Ms. -- Mr. and Ms. Alves De Sa, do you have any
2 questions?

3 MS. ALVES DE SA: No, thank you.

4 CHAIRPERSON HILL: Okay. Ms. Freeman, do you got
5 any questions?

6 Okay. I just heard -- I saw you shake your head
7 no. So we're all good. Okay. Then I'm going to ahead and
8 close this portion of the hearing.

9 MS. DAVIS: Mr. Hill, may I ask a question.

10 CHAIRPERSON HILL: Sure, go ahead.

11 MS. DAVIS: I apologize. My question is if Diana
12 is prepared to move forward now, if you would be willing to
13 take up the case this morning.

14 CHAIRPERSON HILL: No.

15 MS. DAVIS: Okay.

16 CHAIRPERSON HILL: We're going to go --

17 (Simultaneous speaking.)

18 MS. DAVIS: -- curious how the procedure works.

19 CHAIRPERSON HILL: Sure, I understand. I'm trying
20 to just give everybody enough time. Because what happens is
21 with party status, and I'm sorry, Ms. Davis, I haven't --
22 I've only finished half of my Danish.

23 MS. DAVIS: That's okay.

24 CHAIRPERSON HILL: So the way this sometimes goes
25 is that party status sometimes gets recognized, and then we

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1 kick it to another day. Right? And so what I'm trying to
2 do is make it so that the person who's given party status has
3 at least the opportunity to kind of figure out anything they
4 might have to figure out before we get to this.

5 And so that way, this is a -- this is as efficient
6 as possible.

7 MS. DAVIS: Understood. Thank you. I really
8 appreciate the explanation.

9 CHAIRPERSON HILL: Sure. No problem. Sorry, I
10 was kind of short. All right. So then we'll see you guys
11 at the end of the day. Okay?

12 MS. ALVES DE SA: Thank you.

13 CHAIRPERSON HILL: Sure. Go ahead, Mr. Hamala.

14 MR. HAMALA: Apologies. Just two questions. Did
15 you want to take the party status vote by consensus or roll
16 call?

17 CHAIRPERSON HILL: Sorry. Let's go ahead and I'm
18 going to make a motion to approve party status for Ms. Dianne
19 Waters, and ask for a second, Ms. John?

20 VICE-CHAIRPERSON JOHN: Second.

21 CHAIRPERSON HILL: Ms. John has seconded the
22 motion, Mr. Hamala, you can take a roll call, please.

23 MR. HAMALA: When I call your name, please respond
24 with a yes, no, or abstain. Chairman Hill?

25 CHAIRPERSON HILL: Yes.

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1 MR. HAMALA: Vice-Chair John?

2 VICE-CHAIRPERSON JOHN: Yes.

3 MR. HAMALA: Mr. Blake?

4 Mr. May?

5 COMMISSIONER MAY: Yes.

6 MR. HAMALA: Then we have one Board member not
7 present, not participating. Would staff record the vote as
8 4-0-1 in support of granting party status to Dianna Waters,
9 support by Mr. Blake and Mr. May.

10 And then one other issue, Mr. Chair, is do you
11 want to address the late filings that were submitted?

12 CHAIRPERSON HILL: I had to let all the late
13 filings in. Okay? I think they're already in there.
14 Correct, Mr. Hamala?

15 MR. HAMALA: We did have some filings later in the
16 evening. One was a rebuttal to the motion to strike and then
17 there were a few filings in opposition, including a letter
18 from the deputy zoning administrator, Kathleen Beeton,
19 concerning documentation for the 2008 building permit.

20 A response to Exhibit 52, a photo of the rear of
21 the property, and some more information on -- information
22 related to --

23 CHAIRPERSON HILL: Okay.

24 MR. HAMALA: -- to the 2008 --

25 CHAIRPERSON HILL: I got you. I got you. All

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1 right. I don't know what is getting added here at this last
2 minute, but let's go ahead and let everything in, Mr. Hamala.
3 Then everybody will have a chance to look at everything.
4 We're not going to let anything in, just so everybody knows,
5 I'm not letting anything in anymore.

6 And so, you know, we're going to go ahead and
7 everybody can have a chance to look at everything, and then
8 we can discuss what's going to go on at the end of the day
9 today.

10 I will make one note, if I could, as I'm kind of
11 reading through this. I mean, I've been doing this now for
12 seven years, and so let's try to like keep it very cordial,
13 and straightforward and not have any -- I know myself, I'm
14 not going to be interested in anything that's of a personal
15 nature.

16 So let's make sure that we keep it very much
17 towards the issues that are before us. Okay? And I'll be
18 sure to point that out as we kind of get through it if people
19 are crossing the line.

20 So all right, that's it, and we'll see you guys
21 at the end of the day. Okay?

22 MS. ALVES DE SA: Okay. Thank you.

23 CHAIRPERSON HILL: Thank you. All right. Good
24 luck to you guys.

25 All right, Mr. Hamala, when you can, you can call

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1 our next case.

2 MR. HAMALA: Next case is Application No. 20715
3 of Mark Rivetti. And this is a self-certified application
4 for a special exception pursuant to Subtitle E Section 206.4,
5 and Subtitle E 5207, as well as Subtitle X 901.2, relief from
6 the rooftop and upper floor requirements of Subtitle E 206.1.
7 And the project is for an addition of metal railings on a
8 roof of a front porch at an existing three story attached
9 principal dwelling unit.

10 And the property is located in the RF-1 Zone and
11 its address is 1121 Abbey Place, NE, Square 773, Lot 184.

12 CHAIRPERSON HILL: Okay. Great. Mr. Rivetti, can
13 you hear me?

14 MR. RIVETTI: Yes, I can.

15 CHAIRPERSON HILL: Are you able to turn on your
16 camera, sir?

17 MR. RIVETTI: Let me see. Is that showing up for
18 you?

19 CHAIRPERSON HILL: No.

20 MR. RIVETTI: Oh, hold on. Start video, here it
21 is at the bottom. Okay.

22 CHAIRPERSON HILL: Okay, great.

23 MR. RIVETTI: Is that good?

24 CHAIRPERSON HILL: Yes.

25 MR. RIVETTI: Okay.

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1 CHAIRPERSON HILL: Could you introduce yourself
2 for the record, please?

3 MR. RIVETTI: Yes. My name is Mark Rivetti. I'm
4 the homeowner at 1121 Abbey Place, NE, D.C.

5 CHAIRPERSON HILL: All right, Mr. Rivetti. Are
6 you going to be presenting to us?

7 MR. RIVETTI: Yes. I believe so.

8 CHAIRPERSON HILL: Okay.

9 MR. RIVETTI: Yes.

10 CHAIRPERSON HILL: Mr. Rivetti, if you can go
11 ahead and walk us through your application, and why you
12 believe you're meeting the criteria for us to grant the
13 relief requested. I'm going to put 15 minutes on the clock,
14 just so I know where we are, and then you can begin whenever
15 you like.

16 MR. RIVETTI: Okay. So I am seeking relief for
17 a front porch rooftop railing. So it's a standard front
18 porch and previously, it was falling apart and crumbling.
19 The railings were rusted away completely and so we decided
20 to repair the roof -- or, I'm sorry, repair the porch.

21 And at the time, we had added a railing to the
22 second level of the porch. We had seen a number of these
23 railings around you know, around the neighborhood on the
24 second level, and you know, it seemed to be kind of a regular
25 occurrence. And later we received a call from the Zoning

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1 Department saying that this was a zoning issue and that the
2 DCRA permits were not adequate for -- to have the railing
3 built.

4 So it's a very small project. I guess I have
5 support from the neighbors on both sides of me, including --
6 as well as other neighbors on the block. Many of them --
7 most people, or everyone I talked to says it looks great.
8 It's a huge improvement to the block.

9 So that shows that it does not affect the
10 neighbor's personal enjoyment of the space. It's just a
11 railing, so it's not affecting any of the light getting into
12 a neighbor's property. It's a metal, horizontal railing,
13 which matches the railing on the front porch.

14 So there's -- it doesn't affect solar panels or
15 anything like that. The porch stayed the same size as it was
16 previously before the repair, and it's -- the structural
17 members are the same. So it's just the railing that is being
18 looked at.

19 So in terms of privacy, it doesn't offer any new
20 views into neighboring properties that wouldn't have been
21 there previously, and in terms of the visual character of the
22 street, I've included a number of photos of different porches
23 along Abbey Place. Abbey Place, if you're not familiar, is
24 a -- it's a one-block street. It's a one-way, you know, tiny
25 street, so there's not that many houses on it. And there are

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1 several different houses with different varieties of porches.
2 Some are -- have been completely removed.

3 Some are just awnings, some are dilapidated and
4 so I feel that this doesn't affect the character of the
5 street and the neighborhood. I've also included several
6 photos of other similar railings throughout the neighborhood.
7 There's probably 40 or 50 within a ten minute walk of the
8 house, or a 15 minute walk.

9 And I believe that covers all of the requirements
10 of Subtitle E 5207. Do you guys have any questions on the
11 project?

12 CHAIRPERSON HILL: Yes, no, that's fine, Mr.
13 Rivetti, I'm just kind of looking through the record a little
14 bit.

15 MR. RIVETTI: Sure.

16 CHAIRPERSON HILL: Does the Board have any
17 questions of Mr. Rivetti?

18 Commissioner May?

19 COMMISSIONER MAY: At this point, I was a little
20 confused about how this came to pass, that you built it, and
21 then you were told that you needed zoning relief. So have
22 you submitted plans that included the rails, and then it got
23 approved, and then they realized later? Or what happened?

24 MR. RIVETTI: Yes. So we -- when we repaired the
25 porch, we did it about two years ago, or two and a half, and

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1 then we had a stop work order later for something else. The
2 contractor was working on a Sunday. And we were flagged by
3 DCRA for the front porch.

4 And so I retroactively got the permits from DCRA,
5 had an inspector come out and approve it, and then a day or
6 two later, got a call from the Department of Zoning about the
7 issue.

8 So the work had already been done for a couple --
9 about a year before learning that it was, you know, not
10 approved by zoning. So I'm retroactively asking for special
11 exception for the railing. If that makes sense.

12 COMMISSIONER MAY: Okay. Yes, so somebody was
13 repairing the porch and then that work got stopped, and
14 that's when you went back for the permits.

15 MR. RIVETTI: The porch had been actually
16 completed for about a year. So the work that was flagged on
17 a Sunday, the stop work order, I think that, when DCRA came
18 out, they saw the porch and said oh, this doesn't look the
19 same as the previous photo we have of the property.

20 COMMISSIONER MAY: Okay.

21 MR. RIVETTI: So that's when I retroactively got
22 permits for the repair and the railing addition on the porch.

23 COMMISSIONER MAY: Okay. Okay. That's the only
24 question I had. I was just trying to understand how it was
25 that we would up in this situation where you're seeking

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1 zoning relief for something that is already built.

2 MR. RIVETTI: Yes.

3 COMMISSIONER MAY: Okay. Thank you.

4 CHAIRPERSON HILL: Okay. Great.

5 Mr. Blake? You're on mute, Mr. Blake. No, no.

6 MEMBER BLAKE: Can you hear me now?

7 CHAIRPERSON HILL: Yes.

8 MEMBER BLAKE: Okay. The question I have for Mr.
9 Rivetti is could you please just tell me from -- I saw three
10 or four different plans for your façade in your front. Can
11 you just tell me which one was actually approved? Which
12 exhibit has the approved plan by the DCRA? Which one has the
13 resubmitted plans to DCRA? Because they all seem -- there
14 are three different iterations. I just want to make sure I
15 get the right one.

16 MR. RIVETTI: So there was a BZA application for
17 the house, I think in 2018, which was a third floor addition,
18 and rear addition.

19 MEMBER BLAKE: Yes.

20 MR. RIVETTI: And that was approved in 2018 and
21 completed in 2019. So the plans -- let me look at what I
22 have here. The plans should just show the front porch and
23 the railing on top of it. I can find this here. I think it
24 was called front porch drawings.

25 Yes. So the -- it's Exhibit 5 shows the -- it

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1 says super -- sorry, superseded, see Exhibit No. 17, and it
2 says front porch drawings. And that's just showing first and
3 second level of the porch. It shows the site plan showing
4 that nothing has changed on the site plan.

5 And then it has a front porch demo and a front
6 porch proposed with the railing on the second level.

7 MEMBER BLAKE: Okay. What is Exhibit No. 2?

8 MR. RIVETTI: Let me view full log here, one
9 second. Exhibit No. 2 -- can I view that from my -- the log
10 on IZIS?

11 MEMBER BLAKE: Mr. Chairman, he'd be able to --

12 CHAIRPERSON HILL: Mr. Young, can you pull up
13 Exhibit No. 2? I'm sorry, that's what Mr. Blake just said.

14 MR. RIVETTI: Yes. Sorry, I'm not seeing it in
15 the log so I'm unsure.

16 CHAIRPERSON HILL: Mr. Young? Oh, thanks. I
17 didn't know if you could hear me. Sorry.

18 MR. RIVETTI: Okay. Those are the plans that I
19 sent to DCRA, the original approved plan that I sent to DCRA
20 for the porch and railing. I think the other plans that I
21 show, I just went into more detail for my BZA application to
22 document the -- what was happening, what was being removed,
23 you know, what was being added.

24 So I just wanted to provide you with more detail.

25 But --

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1 MEMBER BLAKE: Okay. Thank you.

2 MR. RIVETTI: But it's the same. It's the same
3 plan.

4 MEMBER BLAKE: I see it now. And could that be
5 number five. And number 17 is what exactly?

6 MR. RIVETTI: I believe that's the one I just
7 mentioned with -- it has -- it's just more detailed. Is it
8 something different? That has --

9 (Simultaneous speaking.)

10 MR. RIVETTI: Sorry?

11 MEMBER BLAKE: There's a door on this exhibit.

12 MR. RIVETTI: Oh, okay. Yes. The door, I think
13 the door just wasn't, it wasn't shown on the existing
14 application, so it's one thing I updated on the -- for the
15 BZA hearing.

16 (Simultaneous speaking.)

17 MEMBER BLAKE: So did the DCRA approved plans have
18 the door? Or did it have a window?

19 MR. RIVETTI: That I believe the initial had a
20 door, yes.

21 MEMBER BLAKE: Okay.

22 MR. RIVETTI: Oh, I'm sorry. The initial had a
23 window but there was a door in the location. It wasn't -
24 that was basically existing from the previous BZA application
25 four years ago. That elevation had a window. It was later

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1 changed -- it was changed to a door and the application
2 showed a window in DCRA.

3 MEMBER BLAKE: You had a window and you put a
4 door.

5 MR. RIVETTI: Yes.

6 MEMBER BLAKE: Okay. Thank you.

7 MR. RIVETTI: Yes.

8 MEMBER BLAKE: Because on the original, there
9 wouldn't be a door going out to --

10 MR. RIVETTI: Right.

11 (Simultaneous speaking.)

12 MEMBER BLAKE: Thank you. Thank you, that's all,
13 Mr. Chair. Thank you.

14 CHAIRPERSON HILL: All right. Okay. Anyone else
15 from the Board?

16 VICE-CHAIRPERSON JOHN: I'm a little confused.
17 So did you get a permit for the door and the porch without
18 the railing?

19 MR. RIVETTI: Sorry. Did I get a permit for the
20 door?

21 VICE-CHAIRPERSON JOHN: Right. You changed the
22 door --

23 MR. RIVETTI: No, no, no. I got the permit, the
24 permit was for just the porch. The --

25 VICE-CHAIRPERSON JOHN: Without the rail?

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1 MR. RIVETTI: Yes, with the railing. The permit
2 was for the porch with railing. But it wasn't showing the
3 door, because I didn't think it was the scope of work that
4 I was seeking from DCRA, so I didn't include the door at the
5 time.

6 But the permit was approved for the porch and
7 railing. I left it out because of the scope of work that I
8 was presenting to DCRA, if that makes sense. It wasn't in
9 the scope of work that was part of the porch railing that I
10 was seeking.

11 VICE-CHAIRPERSON JOHN: Okay. I still don't
12 understand. But maybe that's me. Let's just move on.

13 CHAIRPERSON HILL: That's all right. Mr. Rivetti
14 --

15 MR. RIVETTI: Yes.

16 CHAIRPERSON HILL: You were there for the
17 originally application four years ago?

18 MR. RIVETTI: Correct.

19 CHAIRPERSON HILL: Okay. And so did you have --
20 so four years ago, was there a deck on that second story?

21 MR. RIVETTI: It was a flat roof porch. So you
22 could walk out on it and you know, I would, I would go out
23 there put plants on the porch roof. It was essentially a
24 deck.

25 The roofing material was asphalt at the time and

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1 when we did the repair, we put a very thin membrane,
2 rubberized, I believe, roof in replace of the asphalt. So
3 something that is -- can be walked on, essentially.

4 So you know, you could call that a deck, the
5 structure didn't change from previous --

6 CHAIRPERSON HILL: Yes, I know, because I'm
7 looking at the originally -- I can't remember. Again, I was
8 there four years ago.

9 MR. RIVETTI: Yes.

10 CHAIRPERSON HILL: But -- and I kind of remember
11 this case a little bit. But I don't see a railing or a door
12 in --

13 MR. RIVETTI: That's correct. Yes. At the time
14 of the previous application, money was tight and the porch
15 was left as is, kind of falling apart. So I didn't have the
16 money at the time to replace the porch. So I didn't show it
17 in the previous application.

18 So that wasn't a part of the scope of work in the
19 2018 --

20 CHAIRPERSON HILL: Right. What I'm saying is what
21 got approved is -- so let me try to get the record. On the
22 second story, there is no door, and there is no railing on
23 the second story.

24 MR. RIVETTI: Correct. Yes.

25 (Simultaneous speaking.)

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1 MR. RIVETTI: -- existing, there was not.

2 CHAIRPERSON HILL: Correct. Well, I'm sorry, what
3 we did approve through the BZA four years ago, is what I'm
4 saying.

5 MR. RIVETTI: Yes, correct.

6 CHAIRPERSON HILL: There was no door, nor was
7 there a railing on that deck. And that's okay if you didn't
8 know you weren't supposed to do it. But at some point, then,
9 you went ahead and put a door in there and a railing, and
10 DCRA approved it?

11 MR. RIVETTI: Yes. Well, so after we got a stop
12 work order and a violation, I retroactively applied for the
13 permits from DCRA, in which the approved and we had an
14 inspector come out to look at it.

15 So it was a retroactive approval after a violation
16 from DCRA.

17 CHAIRPERSON HILL: Right. So you went ahead, this
18 is all I'm just trying to understand.

19 MR. RIVETTI: Yes, yes. It's confusing.

20 CHAIRPERSON HILL: Four years ago, we approved a
21 design. Okay?

22 MR. RIVETTI: Yes.

23 CHAIRPERSON HILL: And you were there. Right?

24 MR. RIVETTI: Yes.

25 CHAIRPERSON HILL: Four years ago, we approved a

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1 design, and on the second floor, there was no door and there
2 was no deck on top of your porch. Correct?

3 MR. RIVETTI: Correct.

4 CHAIRPERSON HILL: Right. And so at some point
5 you're like, hey, let's go ahead, because maybe you got more
6 money, whatever, hey, let's go ahead and put in a door and
7 we're going to put -- now we can go out on top of that porch
8 and we're going to put a railing. Correct?

9 MR. RIVETTI: That's correct.

10 CHAIRPERSON HILL: And you did this, and then
11 somebody said hey, you're in violations of the regulations,
12 and then you went back to DCRA and they approved the plan.
13 Right?

14 MR. RIVETTI: CORRECT.

15 CHAIRPERSON HILL: And then now you're back before
16 us again because you realized that DCRA wasn't supposed to
17 be able to approve that plan.

18 MR. RIVETTI: That is 100 percent correct, yes.

19 CHAIRPERSON HILL: So was it just your contractor
20 at some time, that was like hey, let's go ahead and put in
21 a door and a railing, and let's do this?

22 MR. RIVETTI: Well, when we were repairing the
23 porch, we didn't have the permits for it, and we -- yes, we
24 added the second level railing and door at that time during
25 the repair of the existing porch.

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1 CHAIRPERSON HILL: Right. And so -- and then now,
2 and I'm just trying to get the whole story here because I'm
3 a little confused also. Is that you then went back to the
4 ANC, right. And the ANC said hey, we would have never
5 approved that railing on that porch. Correct?

6 MR. RIVETTI: So we --

7 CHAIRPERSON HILL: We would never have voted. I
8 shouldn't use the word approved. We wouldn't have --

9 (Simultaneous speaking.)

10 MR. RIVETTI: So --

11 CHAIRPERSON HILL: -- voted in favor.

12 MR. RIVETTI: Yes. In the initial, from the 2018
13 BZA application, perhaps had that railing been shown on the
14 porch, they would have voted against the --

15 (Simultaneous speaking.)

16 CHAIRPERSON HILL: -- and Mr. Rivetti, that's what
17 I'm trying to say. The porch wasn't there.

18 MR. RIVETTI: No, the porch --

19 (Simultaneous speaking.)

20 CHAIRPERSON HILL: When I say porch, I'm sorry.

21 MR. RIVETTI: The railing, yes.

22 CHAIRPERSON HILL: The second floor deck. Right.
23 The second floor deck. The porch was there. Okay?

24 MR. RIVETTI: Yes.

25 CHAIRPERSON HILL: The second floor deck was not

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1 there on the plans that we approved four years ago.

2 MR. RIVETTI: That is correct.

3 CHAIRPERSON HILL: Okay.

4 MR. RIVETTI: It was, you know, just a flat roofed
5 porch.

6 CHAIRPERSON HILL: And then however from the plans
7 that we approved four years ago, the roof deck, with the
8 railing, is that the same way that we approved it four years
9 ago?

10 MR. RIVETTI: Yes. You mean the upper level of
11 the --

12 CHAIRPERSON HILL: Yes.

13 MR. RIVETTI: That is how it was approved, and I
14 saw that we had a notice from ANC, a memo or something
15 yesterday, discussing that railing and from my understanding,
16 that railing wasn't an issue at the time. I remember we
17 discussed a glass railing on the upper roof deck, but not on
18 the third floor terrace.

19 And so I'm not sure if that railing is part of
20 today's case. But that railing was approved as is existing
21 now on the upper level.

22 CHAIRPERSON HILL: Okay.

23 MR. RIVETTI: I'm sorry. It's -- I'm not sure if
24 that --

25 CHAIRPERSON HILL: That's all right.

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1 MR. RIVETTI: Yes.

2 CHAIRPERSON HILL: I'm just trying to follow along

3 --

4 MR. RIVETTI: Yes.

5 CHAIRPERSON HILL: -- from the four years ago
6 plans.

7 MR. RIVETTI: Sure. Sure.

8 CHAIRPERSON HILL: Okay. All right. Does anybody
9 got any questions still before I get to the Office of
10 Planning?

11 All right. Office of Planning, can you please
12 introduce yourself?

13 MR. JESICK: Yes, good morning, Mr. Chair and
14 members of the board. My name is Matt Jesick. The Office
15 of Planning reviewed this application. It meets the criteria
16 of section 5207, and we felt that the addition of the rooftop
17 railing clearly met the review criteria in that section.

18 I can go through those in more detail if the Board
19 would like, and I'm open to any questions, and OP's happy to
20 recommend approval. Thank you.

21 CHAIRPERSON HILL: Yes, Mr. Jesick, again, yes,
22 go ahead, if you don't mind going through the report.

23 MR. JESICK: Sure thing. Well, first, we believe
24 our section asks will the proposed construction have a
25 substantially adverse impact on the user enjoyment of any

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1 abutting or adjacent dwelling.

2 And then specifically, in terms of light and air,
3 we found that the nature of the structural members of the
4 railing would not have a --

5 CHAIRPERSON HILL: Mr. Jesick?

6 MR. JESICK: Yes.

7 CHAIRPERSON HILL: Just so I'm clear, and I'm
8 sorry, maybe I'm just -- we're just talking about the railing
9 that's on top of the porch on the second floor. Correct?

10 MR. JESICK: Correct.

11 CHAIRPERSON HILL: Not talking about anything on
12 the third floor or the roof deck.

13 MR. JESICK: Not talking about anything on the
14 third floor. Not talking about the door. Just the railing.
15 That's the only thing that requires zoning relief.

16 CHAIRPERSON HILL: Right. Okay. All right, go
17 ahead, please, Mr. Jesick.

18 MR. JESICK: Okay. And I can refer the Board to
19 Exhibit 8, Exhibit No. 8 which is a photo, or two photos
20 actually of the porch railing. And this can be seen in those
21 photos. There'd be little to no impact to light or air to
22 adjacent properties.

23 We also found there would be no undue impact to
24 privacy to adjacent properties. And in fact, as the
25 applicant mentioned, both adjacent neighbors have submitted

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1 letters in support of the application.

2 In terms of character, would the change in
3 character have a substantially adverse effect on the user
4 enjoyment of abutting properties? We found that, no, the
5 slight change in character would not have an adverse effect
6 on the user enjoyment of neighboring properties.

7 So does it meet criteria of Section 5207, we felt
8 that the application met those criteria and again, we
9 recommend approval.

10 CHAIRPERSON HILL: Okay. Okay. Yes, Mr. Jesick,
11 all I'm just trying to remember is like we did -- I remember
12 there was something like this project a long time ago, but
13 there was a lot of discussion about this railing on, on this
14 particular kind of set up. Right? On the second floor.

15 And we ended up like -- and it was, again, it was
16 because of -- not because of, it was because the neighbors,
17 the ANC and the people around, were concerned about, you
18 know, the character, and scale, and the pattern of the block.
19 And they thought that like the railing was too obtrusive, and
20 they ended up like, you know, putting it -- I think the bars
21 got -- there was less bars.

22 I forget what we ended up talking about and you
23 can't probably know what I'm talking -- I remember having a
24 long discussion about this particular type of architectural
25 thing, whatever, right.

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1 And so the Office of Planning is satisfied that
2 meets the criteria I understand that. Do you recall this --
3 do you recall something like this previously?

4 MR. JESICK: I think there have been any number
5 of cases where folks have wanted to add a railing above their
6 front porch, and you know, in circumstances like this where,
7 you know, we certainly thought that the design that has been
8 constructed, blends in nicely with the house. It matches the
9 railing on the third floor.

10 As I note in my report, it seems to recede, given
11 the dark color of the railings. And you know, in terms of
12 character, this is not a historic district. The buildings
13 do not need to be identical. That is not the test.

14 The test is would there be an adverse impact based
15 on the change of character, and we found that no, there would
16 not be.

17 CHAIRPERSON HILL: Okay. I mean, I see what
18 you're saying about it matching the railing and the dark
19 color. Okay. All right. Let's see, does anybody have any
20 questions for the Office of Planning?

21 VICE-CHAIRPERSON JOHN: One question, Mr.
22 Chairman. So is the railing on the first floor porch the
23 same as the railing on the third floor -- or second floor
24 porch? Is it the same consistency -- is that the right word?
25 Same size?

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1 MR. JESICK: Yes, it is.

2 VICE-CHAIRPERSON JOHN: Okay.

3 MR. RIVETTI: It matches, correct.

4 VICE-CHAIRPERSON JOHN: That's Mr. Rivetti
5 responding.

6 MR. RIVETTI: Sorry.

7 VICE-CHAIRPERSON JOHN: Okay. So if the third
8 floor is a two inch rail, the second floor is also a two inch
9 rail?

10 MR. RIVETTI: Correct.

11 VICE-CHAIRPERSON JOHN: Okay. All right. Thank
12 you.

13 CHAIRPERSON HILL: Okay. Yes, sure, I'm sorry,
14 Mr. Blake, I didn't see you.

15 MEMBER BLAKE: And when I go -- at the base of the
16 final order that the BZA did, what was -- there was some talk
17 about a railing. What was that regarding, exactly?

18 MR. RIVETTI: For the initial BZA application?

19 MEMBER BLAKE: Yes.

20 MR. RIVETTI: Four years ago.

21 MEMBER BLAKE: Yes.

22 MR. RIVETTI: I believe we discussed that the
23 upper -- there's a roof deck on the top level, so it would
24 be above the new third floor addition. They had said if you
25 want to add a railing to that part, you would need to -- we

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1 would want it to be table rail, glass rail, something a
2 little bit nicer, I think, than your standard, I guess a
3 standard metal railing.

4 So that's -- that would be for the upper, upper,
5 roof, which was you know, was in -- I think that's what you
6 were referring to in the 2018 --

7 MEMBER BLAKE: Now that's not visible from the
8 street though, I believe. Correct?

9 MR. RIVETTI: The upper roof? I mean, you can see
10 it across the street a little bit but the upper level was set
11 back per the ANC's requirements. We had it set back at three
12 feet and we kept moving it back. Eventually settled, I
13 believe on nine foot six back from the roofline, just to --
14 so you couldn't see it.

15 They wanted to hide it as much as possible from
16 the street level.

17 MEMBER BLAKE: And the railing you used up there
18 was what?

19 MR. RIVETTI: On the third floor is metal rail.

20 MEMBER BLAKE: So it's not the glass rail or the
21 cable.

22 MR. RIVETTI: Oh, I -- what I was talking about
23 a second ago was the upper roof deck.

24 MEMBER BLAKE: Okay. And what do you have up
25 there?

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1 MR. RIVETTI: That we had -- so as -- yes, there's
2 no railing. As was approved by BZA then. So at the back of
3 the house, there's a parapet wall that goes around three
4 sides. So it's far enough back that it's not visible from
5 the street, essentially, which was what the plans had shown.

6 And then as you -- on the, basically, the front
7 side, the front side is about 25 feet back from the front of
8 the house, so it's not visible. And that's a wood railing
9 as we had discussed, because it's so far back.

10 CHAIRPERSON HILL: So did you -- and this is where
11 I can't -- I'm going back again. So did you build -- so did
12 we take the ANC's recommendations for the glass railing and
13 the cable railing? And did you agree to that at that time,
14 and then build it as such? Or you changed your mind and
15 built it differently? Can you explain to me?

16 MR. RIVETTI: So to explain that, once again, it
17 came down to a money issue. So it was approved having the
18 roof deck -- upper roof deck set back very, very far from the
19 front of the house so it's not visible. So that was approved
20 without having to have a glass railing.

21 One of the plans --

22 CHAIRPERSON HILL: And you say it was approved
23 without having to have a glass railing, what do you mean it
24 was approved? We approved it without having to have a glass
25 railing?

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1 MR. RIVETTI: Yes. So the -- I'm trying to
2 explain this the best way. I think one of the plans I had
3 initially sent the -- or I had initially shown you guys and
4 the ANC, had a railing on the upper roof deck coming all the
5 way out to the front of the house, like right at the front
6 wall.

7 And they said that's okay, you can have that
8 railing come all the way out to that point, but that railing
9 has to be glass. If you don't have it come all the way to
10 the front, if you keep it back and not visible from the
11 street, it doesn't have to be glass.

12 So I'm trying to think of the best way to explain
13 it. Just, I think if they -- if the railing was going to be
14 visible from the street, it has to be glass or cable. And
15 so the plans changed and we set the roof deck back.

16 CHAIRPERSON HILL: I understand.

17 MR. RIVETTI: Okay.

18 (Simultaneous speaking.)

19 CHAIRPERSON HILL: -- change, did the plans change
20 from what the BZA had approved?

21 MR. RIVETTI: I think the plans had already -- you
22 guys had seen the far set back of the roof, just knowing that
23 I couldn't afford to put a glass railing in there at the
24 time, those had been -- that had been pushed back

25 CHAIRPERSON HILL: Okay. All right.

1 MR. RIVETTI: Yes.

2 CHAIRPERSON HILL: Yes. Go ahead, Mr. Blake.

3 MEMBER BLAKE: Yes. Now there's the same railing
4 that's above this. Does that match? I think it's like a
5 mezzanine level, the third level of something like that?
6 What exactly does that railing -- how was that discussed in
7 the proceedings, because that's a very prominent railing and
8 it looks very much similar to this. How was that discussed
9 and what was decided there?

10 MR. RIVETTI: I believe from my recollection, that
11 railing was not really an issue at the time. It was the
12 upper roof deck that they wanted the glass on. That was my
13 understanding for that third floor railing. And that -- it
14 matches what is on the lower level, on the porch.

15 And yes, I thought at the time that that railing
16 was not in question in terms of material.

17 CHAIRPERSON HILL: All right, now I'm lost, Mr.
18 Rivetti.

19 (Simultaneous speaking.)

20 CHAIRPERSON HILL: That's okay. So there's
21 something above that floor? The railing?

22 MR. RIVETTI: That's a roof. That's a roof deck
23 on the upper level.

24 CHAIRPERSON HILL: Yes.

25 MR. RIVETTI: It's set back.

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1 CHAIRPERSON HILL: Right. It's on -- the roof
2 deck is set back.

3 MR. RIVETTI: Yes.

4 CHAIRPERSON HILL: And so at one point, the BZA
5 approved a glass railing or a cable railing if that was --
6 if there was something that was all the way up to the front.

7 MR. RIVETTI: Correct.

8 CHAIRPERSON HILL: And instead now, there is this
9 iron railing. Is that correct?

10 MR. RIVETTI: No. I think you're looking at the
11 third floor terrace where you're seeing the iron railing.

12 CHAIRPERSON HILL: There's something above that.

13 MR. RIVETTI: There's a roof -- the roof above the
14 third floor is --

15 CHAIRPERSON HILL: Oh, dear goodness. I got my
16 Commissioner pointing at -- Commissioner Eckenwiler, do you
17 -- okay, hold on a second, Mr. Rivetti. Keep on going. So
18 there's something above that.

19 MR. RIVETTI: Yes. There's an upper -- a roof on
20 top of the third floor.

21 CHAIRPERSON HILL: Right.

22 MR. RIVETTI: Which from my understanding, if that
23 was set back far enough, that the glass --

24 CHAIRPERSON HILL: Yes, yes, I got it.

25 MR. RIVETTI: I didn't --

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1 (Simultaneous speaking.)

2 CHAIRPERSON HILL: -- back so far I can't even see
3 it. That's okay.

4 MR. RIVETTI: Yes. From my understanding of the
5 previous BZA hearing was that the third floor railing was
6 okay to be a metal railing. That was my --

7 CHAIRPERSON HILL: That's all right, Mr. Rivetti.
8 Okay. Here's the thing. Does anybody have any more
9 questions for Mr. Rivetti before I admit the Commissioner
10 here?

11 Okay. So Commissioner Eckenwiler, are you going
12 to introduce yourself for the record?

13 COMMISSIONER ECKENWILER: Sure, Mr. Chairman.
14 Mark Eckenwiler, Vice-Chair ANC 6C on behalf of the ANC. I
15 do know, Mr. Chairman, I had not intended to testify, so I
16 haven't been sworn. Happy to do that now if you need it.

17 CHAIRPERSON HILL: Okay. Great. Mr. Hamala, do
18 you know how to give the oath? Go ahead, do you want to give
19 it to Commissioner Eckenwiler?

20 MR. HAMALA: Commissioner Eckenwiler, do you
21 solemnly swear or affirm that the testimony you will give in
22 this case to be the truth, the whole truth, and nothing but
23 the truth?

24 COMMISSIONER ECKENWILER: I do.

25 MR. HAMALA: All right. Thank you, sir. The

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1 Commissioner is sworn in.

2 CHAIRPERSON HILL: Okay, Commissioner Eckenwiler.
3 Would you -- I'm sure you've been listening, I guess. Do you
4 want to --

5 COMMISSIONER ECKENWILER: I have.

6 CHAIRPERSON HILL: -- give some testimony, if you
7 could?

8 COMMISSIONER ECKENWILER: Sure, Mr. Chairman. So
9 yesterday, the ANC filed its report on this. The bottom line
10 is we are in emphatic opposition to this application because
11 this is a successive application on top of the 2018
12 application, where -- I'm just not going to sugarcoat it.

13 We had to beat back Mr. Rivetti several times as
14 cited in our report filed yesterday to the sequence of plans
15 that were revised in that case. That was BZA 19622. In our
16 final letter, which expressed support for that as revised
17 multiple times, we nevertheless continued to express concern,
18 and this is where Mr. Rivetti has missed a calling.

19 We expressed concern about that upper floor
20 railing. So there was a new third story constructed, and
21 there was a railing to be put in front of that because it was
22 set back. And the point is that that railing was still of
23 concern to us because it was going to be highly visible.

24 We expressed the view that it should be metal
25 cable or glass. The Board agreed that that was a legitimate

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1 concern, those would be appropriate materials. And Mr.
2 Rivetti agreed on the record in that case to use those
3 materials, which he did not, in fact, do, as shown by the
4 current photographs of the project.

5 CHAIRPERSON HILL: Commissioner, Commissioner?
6 So that -- you're talking about that third floor that has the
7 railing on it?

8 COMMISSIONER ECKENWILER: I am. So the key
9 takeaway here, Mr. Chairman, is that this applicant's already
10 came to you once and asked for a fairly extensive series of
11 changes. We had specific concerns about character, scale,
12 and pattern.

13 We got that project scaled back. We had an
14 additional ask on that, which the Board agreed to, and which
15 the applicant has not adhered to, so he's in violation of
16 that BZA order.

17 So that is the context in which this applicant now
18 comes to you for further relief on top of that. So you know,
19 the OP analysis suggests oh, this is just a, you know, a
20 request in the vacuum, and this railing isn't very much. But
21 in fact, you can't just keep coming back to the Board, can
22 you?

23 Again, and again, and again, having --

24 CHAIRPERSON HILL: I appreciate --

25 (Simultaneous speaking.)

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1 COMMISSIONER ECKENWILER: -- more this, and more
2 this.

3 CHAIRPERSON HILL: Commissioner, I got you. I got
4 you. Hold on. We had -- we're trying to -- anyway,
5 Commissioner, you've been here a lot and so you know that we
6 have to like -- you know what we do and how we do it. So I
7 know that -- anyway, you know that we're paying attention.
8 So just give me a second. All right.

9 So Mr. Blake had a question. He had his hand up.

10 MEMBER BLAKE: Did you just say there was a
11 railing that's on the front level? Is that the railing that
12 you guys were talking about? Or is it the one above it? Do
13 you recall? I'm not really clear.

14 COMMISSIONER ECKENWILER: So let me talk about
15 them as the third floor railing and the porch railing. The
16 porch railing did not exist until, as Mr. Rivetti admits,
17 well after the previous BZA applications.

18 In fact, I included in the report yesterday a
19 drawing, these final approved drawings from that project
20 showing that there was no railing atop that porch. That's
21 something he did later, and as he has admitted today, he did
22 that with no permit.

23 He then went and got a permit, which DCRA granted,
24 and then promptly retracted. So that porch railing was not
25 part of the previous application, and DCRA only briefly said

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1 after the fact, that was okay, and then they realized it was
2 not, in fact, okay, because the porch is an E-206
3 architectural element.

4 The roof railing up top, so there was approved to
5 be such a railing, but it had to be a specific material. The
6 Board's order required that very explicitly on page 2 of the
7 order in BZA 19622. I've recorded the language in a footnote
8 in the report filed yesterday.

9 And it is not metal bar railing, and yet, that is
10 what the applicant has constructed. So he's already built --

11 MEMBER BLAKE: Mr. Eckenwiler, which railing are
12 we talking about? The applicant --

13 COMMISSIONER ECKENWILER: Okay.

14 MEMBER BLAKE: -- a railing on a deck that we
15 can't see. And then there's a railing --I see a railing
16 right in front of me, right on top of the roof. Is that
17 railing -- what was the -- is that the one you're talking
18 about? Or are you talking about one we can't see?

19 COMMISSIONER ECKENWILER: So the 2018 railing was
20 the one that's up top on the third floor, which is, in fact,
21 visible from public space, from the street. This application
22 is now for the additional railing that he built atop the
23 porch. So that's the porch above the entryway.

24 And so that's the successive application, that's
25 the extra that he now wants to do on top of what was approved

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1 back in 2018.

2 (Simultaneous speaking.)

3 MEMBER BLAKE: Mr. Eckenwiler, I just want to make
4 sure I'm clear on this because I'm missing this for some
5 reason. I'm looking at the picture of the correct -- the
6 structure as it was before and as it is kind of today.

7 CHAIRPERSON HILL: Mr. Blake, it's helpful to me,
8 which -- are you looking at the photo in exhibit -- whatever
9 exhibit it is? And Mr. Young can pull it up, because I also
10 --

11 (Simultaneous speaking.)

12 MEMBER BLAKE: Yes. Could you -- I'm looking at
13 my notes, but whatever the --

14 VICE-CHAIRPERSON JOHN: Mr. Blake, if I can help
15 you. Let's pull up Exhibit 9, which is the color photograph
16 of the old. So as I look at this, there's the porch railing,
17 the new one. There's the first floor, which is not an issue.
18 There's the porch railing, which is what the applicant is
19 here for.

20 It doesn't matter if he had had approvals of other
21 porch railings before. He's here for this porch railing.
22 And then there's the porch railing above that at the old roof
23 of the house. And then there's another railing far back,
24 maybe ten, 15 feet, that you can hardly see. You can't see
25 it from the front. You can see it from the side.

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1 So -- and that's the one I believe the applicant
2 is saying that that's wood. So the metal railings, as I see
3 it looking at Exhibit 9, are the ones at the top of the roof,
4 before the addition, and the new porch railing, and we're not
5 talking about the first floor.

6 From my understanding, the applicant said that the
7 second floor, the new porch railing, matches the one at the
8 top of the roof. My understanding is that Mr. Eckenwiler is
9 saying that the one at the top of the roof is not really what
10 they would have approved that they had concerns about.

11 My issue is did the BZA condition its approval of
12 that top floor roof, on it being of a certain metal. And I
13 don't see any --

14 CHAIRPERSON HILL: Give me a second, Mr. Rivetti,
15 I'll get to you.

16 VICE-CHAIRPERSON JOHN: So that's my understanding
17 of where we are, and it's 10:45, Mr. Chairman.

18 CHAIRPERSON HILL: Yes, I know. And the only
19 reason why -- I shouldn't -- okay, anyway. All right. Well,
20 we all can figure it out too as well. I mean, I got nowhere
21 to go.

22 The -- right. So if you look, because I don't
23 know what to do about this one now, because I actually really
24 want to know where we are. You all can vote whatever you
25 want to vote also, obviously. Right?

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1 In that right hand corner, right. There's a
2 little tiny railing there. Right? That's up in the rooftop.
3 And I'm going to ask Mr. Eckenwiler, and then I'm going to
4 ask Mr. Rivetti. Commissioner Eckenwiler, you're saying that
5 the BZA in the previous case, that very top little corner
6 thing, that was supposed to be glass or cable? I'm asking
7 you the question, Commissioner Eckenwiler.

8 COMMISSIONER ECKENWILER: So Mr. Chairman, just
9 tell me which exhibit you're looking at.

10 CHAIRPERSON HILL: Sure.

11 COMMISSIONER ECKENWILER: So that I understand.

12 CHAIRPERSON HILL: You can see the screen -- can
13 you see the screen in front of you?

14 COMMISSIONER ECKENWILER: Oh, hold on. I'm sorry.
15 I'm in the exhibits. Yes. Okay. So that's Exhibit 9.

16 CHAIRPERSON HILL: Right.

17 COMMISSIONER ECKENWILER: No, sir. The railing
18 in question, so you can see that there's that tent roof.
19 It's sort of a -- it's a dihedral, that angled roof at the
20 front above the windows. There's a railing directly in front
21 of that. That's what we expressed concern about back in
22 2018.

23 That's what the Board agreed was a concern. And
24 that's what the applicant agreed to use --

25 (Simultaneous speaking.)

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1 CHAIRPERSON HILL: Commissioner, give me a second.
2 So that rooftop thing, we're not talking about the roof now.
3 Correct?

4 COMMISSIONER ECKENWILER: Correct.

5 CHAIRPERSON HILL: Okay. We're just talking about
6 that -- from the previous case, and I know why we're here,
7 but I want to know because I was here four years ago. From
8 the previous case, right, that railing is the one that you're
9 saying we talked about and it was going to be cable or glass.
10 Correct, Commissioner?

11 COMMISSIONER ECKENWILER: The one that is the same
12 plane as the façade of the building.

13 CHAIRPERSON HILL: Yes.

14 COMMISSIONER ECKENWILER: Not the one that's way
15 at the back of the house.

16 CHAIRPERSON HILL: Yes.

17 COMMISSIONER ECKENWILER: That's not the one that
18 was ever at issue.

19 CHAIRPERSON HILL: Fine. Yes. So that's what
20 you're saying. Okay. Mr. Rivetti, go ahead.

21 MR. RIVETTI: Okay. So I -- that could be
22 correct. I think there was some, maybe some confusion from
23 the 2018 meeting about what is called the roof and in the
24 meeting, I remember having the uppermost roof, where you see
25 the little sliver in plans, having the railing come all the

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1 way to the front of the house.

2 And from my understanding in that meeting, I
3 thought --

4 VICE-CHAIRPERSON JOHN: Mr. Rivetti?

5 MR. RIVETTI: Yes?

6 VICE-CHAIRPERSON JOHN: Let's not talk about the
7 roof deck.

8 MR. RIVETTI: Okay, okay.

9 (Simultaneous speaking.)

10 MR. RIVETTI: So essentially --

11 VICE-CHAIRPERSON JOHN: Talk about the one in the
12 front.

13 MR. RIVETTI: I apologize if that -- the third
14 floor railing was -- is not glass or cable because from my
15 understanding, I thought we were talking about the upper
16 railing and not that third floor railing. Because I remember
17 discussing roof decks.

18 So I didn't realize at the time that that railing
19 was in discussion. I can look back at my notes from those
20 meetings. Because I even pulled up an email where I talked
21 to the architect saying you know, mentioning the upper roof
22 and not the third floor terrace.

23 VICE-CHAIRPERSON JOHN: Okay. So Mr. Rivetti, one
24 quick question.

25 MR. RIVETTI: Yes.

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1 VICE-CHAIRPERSON JOHN: So after the BZA issued
2 its order, then did you go back to DCRA and get a permit
3 based on that order?

4 MR. RIVETTI: From the previous --

5 VICE-CHAIRPERSON JOHN: Yes.

6 MR. RIVETTI: I think the plans, yes, were
7 resubmitted and sent to DCRA. I think --

8 VICE-CHAIRPERSON JOHN: Okay.

9 MR. RIVETTI: That would be the process, correct?

10 VICE-CHAIRPERSON JOHN: Yes.

11 MR. RIVETTI: After --

12 VICE-CHAIRPERSON JOHN: That would be the process.

13 MR. RIVETTI: Yes. I believe, yes, they were
14 resubmitted and permits were received for those plans, yes.

15 VICE-CHAIRPERSON JOHN: All right. Mr. Chairman,
16 I'm good. Thanks.

17 CHAIRPERSON HILL: Do we need this photo anymore?
18 And if so, just speak up because I can't see everybody.
19 Okay. Mr. Young, can you drop that photo? I got to let you
20 know -- never mind.

21 I know -- okay. I still at least kind of
22 understand to the point where I'm a little confused, also
23 with Mr. Rivetti beating, I can also understand his point,
24 which is to say if he thought we were just talking about that
25 roof deck with the glass, I don't know.

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1 And I know we're talking about a previous case
2 now, but the reason why I care is because I'm spending so
3 much time on earlier cases, and things are being done
4 differently than what I thought we actually were doing. So
5 that's why I actually care. Okay?

6 And so, all right, does anybody have any more
7 questions -- well, first of all, Mr. Young, is there anyone
8 here who wishes to speak?

9 MR. YOUNG: We do not.

10 CHAIRPERSON HILL: Okay. Go ahead, Mr. Blake.

11 MEMBER BLAKE: Is there anything that can be done
12 to modify this that would make it palatable to the ANC in
13 your opinion?

14 COMMISSIONER ECKENWILER: No, Mr. Blake. I think
15 the bottom line here is the applicant asked for what he
16 wanted back in the 2018 case. We negotiated to a point of
17 mutual agreement. And now he wants to do something on top
18 of that. And I find it fundamentally objectionable and the
19 ANC finds it fundamentally objectionable that this applicant
20 didn't indicate back then that he was going to do anything
21 here with a railing on this porch.

22 One, had did it with no permits, and is now back
23 here seeking permission. You can't just keep nibbling away,
24 and nibbling away, and nibbling away. We drew a line for
25 what we were willing to support back in 2018, and we

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1 supported that. But that's where the line was.

2 And just because, you know, the next change is
3 only incremental doesn't make it okay. I think you need to
4 look at these applications in this totality. And that's why
5 --

6 MEMBER BLAKE: In the context of what we have --
7 (Simultaneous speaking.)

8 MEMBER BLAKE: Mr. Eckenwiler, in the context of
9 what we have today, is there a modification to this
10 particular structure that would make it less visually
11 intrusive in your opinion, and more acceptable?

12 COMMISSIONER ECKENWILER: Nothing short of removal
13 of the railing. And I do want to point out that the drawings
14 don't actually reflect the bulk of those supports, where the
15 drawings make them look quite narrow. But in fact, the
16 photographs, I think, very clearly depict that they're quite
17 large. They're quite visible.

18 It doesn't really matter what color they're
19 painted. I think that's kind of a red herring. So no, it
20 should never have been constructed.

21 MEMBER BLAKE: Okay.

22 COMMISSIONER ECKENWILER: They would not have
23 supported --

24 MEMBER BLAKE: Okay.

25 (Simultaneous speaking.)

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1 MEMBER BLAKE: Okay.

2 CHAIRPERSON HILL: All right. Right. Okay. So
3 does anybody got any more questions?

4 Okay. Go ahead, Commissioner May. I'm not going
5 to vote on this today, by the way. You all can vote if you
6 want. I'm going to have to look at some stuff. I want to
7 know what happened the time before, and I know exactly why
8 we're here, and we're here for exactly what the Office of
9 Planning is saying we're here for.

10 And Commissioner Eckenwiler, you know you've been
11 here long enough that I know exactly what I'm supposed to do,
12 and I'm supposed to do what the Office of Planning is looking
13 at and what the person is here asking for relief for.

14 But I also want to know what happened. Okay. So
15 that's why I'm -- that's just my point. Okay. So go ahead,
16 Commissioner May.

17 COMMISSIONER MAY: So I agree with the Chairman
18 that we have a real issue, and we should have an issue when
19 the Board makes a decision based on a hearing like this, and
20 then a project gets broke in some manner that is
21 substantively different from what's been approved.

22 Now, I was not part of that case before, I don't
23 know exactly what happened. But I do know that when
24 Commissioner Eckenwiler comes and testifies before us, he
25 usually has a crystal clear recollection of what may have

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1 happened in the past, and has a -- delivers a crystal clear
2 depiction based upon the facts of those cases.

3 I mean, he always researches these things very
4 well. In fact, this goes back to well before he was a
5 commissioner. Right? He's been involved in zoning cases
6 for, oh, decades, I would guess.

7 Anyway, you know, it is disconcerting to hear
8 that, you know, something that was theoretically, you know,
9 approved a certain way was not built. It's also
10 disconcerting that this porch addition was built without
11 permits, particularly knowing that there were -- particularly
12 with the concerns that had been raised with the previous
13 project to the extent of public interaction that was
14 necessary for that.

15 So I just have, I guess, a question for Mr.
16 Rivetti, which is that do you believe that the rail that --
17 that what you built, not with this porch that's before us
18 today, but what you previously built, is completely
19 consistent with the Board's previous decision in terms of the
20 approval of this project?

21 MR. RIVETTI: Of course, and I can send you email
22 records --

23 (Simultaneous speaking.)

24 COMMISSIONER MAY: It was sort of a yes or no
25 question.

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1 MR. RIVETTI: 100 percent, yes.

2 COMMISSIONER MAY: Okay. And I believe,
3 Commissioner Eckenwiler, you believe that it is not
4 consistent with what the Board had previously approved.
5 Correct?

6 COMMISSIONER ECKENWILER: Correct.

7 COMMISSIONER MAY: Okay. So I do think we are
8 going to have to put off making any sort of decision in this
9 case, so that we can understand this a little bit better.
10 Certainly, we understand already that the ANC is opposition
11 to what has been built. Right?

12 And so you know, we're going to have to grapple
13 with this question of whether in fact there is -- what you're
14 proposing is consistent with the form and pattern component
15 of how we examine a special exception like this.

16 But I think that part of what we're grappling with
17 is the fact that you have an allegation that what we
18 previously approved was not actually built on this same
19 property. And so that does not bode well for, you know, for
20 making a favorable decision, I'd have to say.

21 So that's all I really have to say. I mean, I'm
22 -- that was -- I really only had two questions in there and
23 a lot of speech, so I apologize for taking up so much time
24 with that, Mr. Chairman.

25 (Simultaneous speaking.)

1 CHAIRPERSON HILL: Ms. John had her hand up?

2 VICE-CHAIRPERSON JOHN: No, I can wait until the
3 discussion. The only thing that I'm concerned about is that
4 we do not have an order, as far as I know, that says the
5 railings must be built with certain materials.

6 I believe it might have been a discussion that got
7 lost, I don't know. But I don't believe the order says that.
8 Does the order say that? That would be my question.

9 So since I don't have the order in front of me,
10 you know, I probably should wait to see the order.

11 CHAIRPERSON HILL: Okay. So I'm going to let Mr.
12 Rivetti give us a little bit of a conclusion. Okay? And
13 then, Mr. Rivetti, I think what's probably going to happen
14 is we're going to -- we might even continue this. I don't
15 know. I'm going to let my Board decide what we're going to
16 do because what I am uncomfortable with is that I know why
17 the applicant is here, and I know what the applicant is
18 requesting.

19 The applicant is requesting relief concerning that
20 railing that's above the porch. Okay? And we have the
21 Office of Planning's recommendation, and we have the
22 regulations for which we are supposed to be looking through.

23 The part that I'm uncomfortable about, again, is
24 that we spend a lot of time doing all this, and we spend a
25 lot of time reviewing things, and looking at things, and

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1 taking testimony, and then if things are built not the way
2 they're supposed to be built, as we have determined, it's
3 basically a waste of our time.

4 And so I just want to know whether or not we're
5 wasting our time. And so that's what I want to understand
6 before I'm able to go ahead and make a -- I just want to
7 understand what is going on with this application.

8 And so that's where I am. So Mr. -- does anything
9 want to say anything before Mr. Rivetti gives his conclusion?
10 And then we are going to determine whether we need to do a --
11 and I had no idea this was going to take this long. You are
12 correct, Ms. Chair.

13 That whether we are going to continue hearing or
14 that we do, you know, a decision meeting. Does anybody have
15 anything they want to say before Mr. Rivetti does his
16 conclusion? And then we can kind of talk about things.
17 Hands. No.

18 Mr. Rivetti, would you like to give us a
19 conclusion?

20 MR. RIVETTI: I never intended to not build what
21 you had recommended because from my understanding when we
22 discussed the railing on the roof, to me, that meant the
23 roof, the -- on top of the third floor. And so maybe there
24 was misunderstanding about that railing on the third floor
25 terrace being the cable, glass railing.

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1 Because I thought we were discussing the roof, and
2 that to me, is not the roof. That was the third floor
3 terrace. So I did not build it in that way on purpose, had
4 I understood that the ruling on the glass was for the third
5 floor.

6 I would have -- or cable. I would have done it
7 that way. So it was not a purposeful decision to disobey.
8 And I can, you know, show you email records or other records
9 to prove that what I thought we were talking about was the
10 roof, the uppermost roof of the house.

11 So I did not intend to, you know, skirt the BZA's
12 recommendations, if that makes sense. And --

13 CHAIRPERSON HILL: I got you.

14 MR. RIVETTI: Yes, so --

15 CHAIRPERSON HILL: All right, Mr. Rivetti.

16 MR. RIVETTI: It was a misunderstanding.

17 CHAIRPERSON HILL: I'd like to see whenever -- I'd
18 like you to put whatever in the record is that you think is
19 going to bolster the discussion.

20 MR. RIVETTI: Sure.

21 CHAIRPERSON HILL: And again, this doesn't
22 necessarily apply to the regulations. I just want to know
23 what's going on. Right?

24 MR. RIVETTI: Yes.

25 CHAIRPERSON HILL: And so you know, and Ms.

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1 Nagelhout can tell me if I'm asking for information --
2 anyway, I would like to know what happened. Go ahead and put
3 whatever you want into the record in terms of that third
4 floor railing. So you know, whatever that railing is.

5 MR. RIVETTI: Yes.

6 CHAIRPERSON HILL: That's right up against the
7 mansard roof. Right? I understand your point, which is to
8 say you didn't think that was ever in discussion. You were
9 just talking about the railing that was on your roof deck,
10 and the fact that you pushed the roof deck railing all the
11 way back to where you can't see it, means you didn't think
12 it mattered.

13 So you know, but I'm still a little confused as
14 to what the BZA approved, because the BZA would, I think,
15 have specified that that railing needs to be glass and cable,
16 that's on the third floor, that's up against the mansard
17 roof.

18 And so that's where I'm a little confused myself.
19 And so I'm going to go back and take a look at the order.

20 MR. RIVETTI: Yes.

21 CHAIRPERSON HILL: So does anybody have anything
22 they'd like to get from Mr. Rivetti, Commissioner May?

23 COMMISSIONER MAY: Yes, actually, based on Mr.
24 Rivetti's closing, I had one further question for him, which
25 is that, you know, you're now saying that you thought that

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1 the condition having to do with the railing being glass or
2 cable applied to the uppermost roof, that sort of penthouse
3 one.

4 MR. RIVETTI: Yes.

5 COMMISSIONER MAY: Way up top. So was that what
6 you built?

7 MR. RIVETTI: From my recollection, I think the
8 initial plans I showed the ANC --

9 (Simultaneous speaking.)

10 COMMISSIONER MAY: This is sort of a yes or no.

11 MR. RIVETTI: Ultimately, no. What was built had
12 parapet on three sides, and a wood railing across because I
13 thought we had agreed that if it -- if I didn't bring the
14 railing to the front of the house, then it didn't need to be
15 the glass, because it was no longer visible. That was my
16 understanding from that hearing.

17 COMMISSIONER MAY: All right. Well, I think you
18 have a lot to try to demonstrate if you're going to convince
19 us of that, because you know, on one hand you're saying that
20 you didn't think it applied to that -- the front roof at the
21 front of the house, where it was a problem. Right?

22 I mean, you thought it applied to the very
23 uppermost roof and that was set back. I mean, it's -- you're
24 kind of talking all sides of this. So I don't know how you
25 can demonstrate that you've you know, made a good faith

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1 effort to follow the decision of the Board that was made two
2 years ago.

3 But you know, certainly, we're going to give you
4 the opportunity to do that.

5 MR. RIVETTI: I'll try to dig up whatever I have.

6 VICE-CHAIRPERSON JOHN: So if I may, I think this
7 might help. So I pulled up the summary order and this is
8 what it says. Commissioner Eckenwiler indicated that the ANC
9 remains supportive of their architectural plans and site line
10 study in Exhibits 46 and 47. It was submitted to the record
11 after the ANC's meeting and vote.

12 Commissioner Eckenwiler also spoke to the ANC's
13 continued request that the roof deck be constructed with less
14 visually intrusive materials, such as glass panels or metal
15 cable. So this was the roof deck, which is the part we can't
16 see in the back.

17 And that's what the applicant is saying, that it
18 was moved back. So now we would have to see what was in
19 Exhibits 47 -- I mean 46 and 47. So we approved drawings
20 with the roof deck moved back.

21 So that's --

22 COMMISSIONER MAY: I would only add that I think
23 we need to see the referenced exhibits as well.

24 VICE-CHAIRPERSON JOHN: Yes.

25 COMMISSIONER MAY: And see how things are labeled

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1 to indicate what is actually the roof deck. Right? And so
2 -- and I don't want to get ahead of any of that stuff. Let's
3 get that information into the record so we can evaluate it.

4 VICE-CHAIRPERSON JOHN: Right.

5 COMMISSIONER MAY: Because it should be very
6 clear, I think, from the order and the documents that it's
7 based upon, where there should have been a cable rail or a
8 glass rail.

9 CHAIRPERSON HILL: All right. I don't know what
10 we need to get this thing moving now, again. So I'm going
11 to look to my Board members. What is it, Commissioner May,
12 that you think you might like -- so are we doing a continued
13 hearing on this? I can't believe this is going to take this
14 long, but I guess we're going to do a continued hearing,
15 because we're going to have to have some discussion.
16 Correct?

17 COMMISSIONER MAY: I think so too. Yes.

18 CHAIRPERSON HILL: Okay. Fine. So we're going
19 to have a continued hearing. So I guess what I'm confused
20 by and I love it, I could even -- we can even do a, oh God,
21 I kind of want to do, and I guess we should -- I want to do
22 an emergency meeting right now with legal, just to kind of
23 talk about what it is that we might be actually trying to
24 focus upon and I got one nod.

25 I hate to do it because I thought we were going

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1 to get out of here. But I got two nods. Okay. I'm going
2 to read the thing -- I'm going to find the thing and we're
3 going to read the thing, because since this is going to be
4 whatever this is going to be.

5 Okay. Where -- okay, here we go. All right. As
6 Chairperson of the Board of Zoning Adjustment, District of
7 Columbia, in accordance with 407 of the District of Columbia
8 Administrative Procedures Act, I move that the Board of
9 Zoning Adjustment hold an emergency closed meeting on July
10 6th, 2022, for the purposes of seeking Legal Counsel on Case
11 Number 20715, and/or deliberate upon, but not vote on Case
12 20715.

13 Is there a second, Ms. John?

14 VICE-CHAIRPERSON JOHN: Second.

15 CHAIRPERSON HILL: Motion made and seconded. Mr.
16 -- I'm sorry, I forgot your name. Hamala, would you please
17 take a roll call?

18 MR. HAMALA: Yes, sir. When I call your name,
19 please respond with a yes or no. Chairman Hill?

20 CHAIRPERSON HILL: Yes.

21 MR. HAMALA: Vice-Chair John?

22 VICE-CHAIRPERSON JOHN: Yes.

23 MR. HAMALA: Mr. Blake?

24 MEMBER BLAKE: Yes.

25 MR. HAMALA: Mr. May?

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1 Very good. The motion passes, and there's one
2 member not present, not participating. Staff would record
3 the vote to have an emergent -- emergency meeting with Legal
4 Counsel as 4/0/1 with motion made by Mr. Hill, seconded by
5 Vice-Chair John, and support with Mr. Blake and Mr. May.

6 CHAIRPERSON HILL: Got it. And it appears as
7 though -- I'm sorry. As it appears, this is passed. The
8 Board of Zoning will recess this proceeding on 7/6/2022 at
9 11:08 to hold an emergency meeting. A written copy of this
10 notice will be posted in the Jerrily R. Kress Memorial
11 Hearing Room at this time.

12 Okay, guys, Mr. Young has sent us a new link. I'm
13 going to leave this link. I'll see you at the new link. Mr.
14 Rivetti, we'll come back in a minute, so you can just kind
15 of hang out there.

16 (Whereupon, the above-entitled matter went off the
17 record at 11:08 a.m. and resumed at 11:38 a.m.)

18 MR. HAMALA: The Board is back in session after
19 a brief meeting with legal counsel at or around 11:38 a.m.

20 CHAIRPERSON HILL: Okay. Mr. Rivetti, are you
21 there?

22 MR. RIVETTI: I'm here, yes.

23 CHAIRPERSON HILL: Okay, can you turn the camera
24 for a second? Commissioner Eckenwiler, are you there?

25 If not, that's okay. Speak up if you do hear me

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1 and you get on. Okay.

2 COMMISSIONER ECKENWILER: Can you hear me?

3 CHAIRPERSON HILL: Yes. Great. Thanks,
4 Commissioner. Commissioner Eckenwiler, I just had a quick
5 question. It's just a quick question. Do you know if, like,
6 on that block, is anybody -- oh, I can see it.

7 On that block, has anybody else done the porch on
8 -- I'm sorry, the little deck on top of their porch yet?

9 COMMISSIONER ECKENWILER: In all honesty, Mr.
10 Chairman, I don't know for that block. And I assume you just
11 mean this one block face but --

12 CHAIRPERSON HILL: No, either side.

13 MR. ECKENWILER: -- I can tell you --

14 CHAIRPERSON HILL: I'm just curious if anybody's
15 done it yet. You don't know?

16 MR. ECKENWILER: I -- our filing yesterday
17 provided the most recent Google street view photos from July
18 2019 showing that there are none for several houses on either
19 side.

20 I haven't been over there, personally been out,
21 in the last week to --

22 CHAIRPERSON HILL: Is this a --

23 (Simultaneous speaking.)

24 MR. ECKENWILER: -- take a look. So I can't tell
25 you definitively, no.

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1 CHAIRPERSON HILL: Is this your SMD?

2 MR. ECKENWILER: It is not. This is 6206,
3 Commissioner Courtney's.

4 CHAIRPERSON HILL: Got you. Okay. All right, I
5 guess -- okay, we'll see what everybody wants.

6 What I'd like to see from your, Mr. Rivetti, I
7 guess, is -- so just so you know where I am, I am a little
8 concerned about the character, scale, and pattern that this
9 railing on this porch is -- I'm sorry, on top of this porch,
10 is now creating for the block, okay?

11 So that is my concern. In addition to that, I'm
12 also, and now it ties into it, is I'm concerned how it plays
13 out throughout the whole design of the building, right?
14 Therefore, I'm curious as to what happened in the previous
15 case, as to how you got to where we are now, right?

16 So if you'd like to supply anything into the
17 record that shows why you believe you've built this third
18 railing, the railing that is up against the mansard roof, how
19 you built that according to what the BZA had proposed in the
20 previous filing, I'm giving you that opportunity.

21 Because that is how I'm also thinking about the
22 character and scale and pattern of the neighborhood with
23 regard to your railing on the, on top of the porch. Okay?

24 MR. RIVETTI: Understood, yes.

25 CHAIRPERSON HILL: And what I find a little bit

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1 confusing is that again, if I were, and I was here four years
2 ago, if we had a long discussion, I can go back and watch the
3 tape. If we had a long discussion about that rooftop
4 railing, we probably had a similar discussion about the third
5 floor railing.

6 And so that's why I don't necessarily know if I'm
7 following along with your story line which is that that third
8 floor had nothing to do, it was only the rooftop that we were
9 talking about, okay?

10 So I'll give you an opportunity to put anything
11 into the record that you'd like to do so to clarify how that
12 third floor railing was put.

13 I think some other things that I'd like to see,
14 also, is that if you want to ask an architect or something,
15 or hand draw it, whatever you want, I'm curious as to, like,
16 what we had originally started to talk about as a Board was
17 that it was going to be glass or cable on that roof.

18 Therefore, I think it would've been glass or cable
19 on the third floor, and then now, it would be glass or cable
20 on your current application, okay?

21 So I'd like to see what glass and cable looks like
22 on your current application, as well as what glass and cable
23 looks like on the third floor that's up on the mansard roof.
24 You don't have to do it, I'm just telling you that's what I'm
25 curious in seeing, okay?

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1 MR. RIVETTI: So you want to see drawings of the

2 --

3 CHAIRPERSON HILL: Yes --

4 MR. RIVETTI: -- glass?

5 CHAIRPERSON HILL: -- drawings.

6 MR. RIVETTI: Okay, I have -- I pulled up the most
7 recent plans from the previous --

8 CHAIRPERSON HILL: I understand, that's okay --

9 MR. RIVETTI: Okay.

10 CHAIRPERSON HILL: -- you can draw up whatever you
11 want into the record because we're going to come back.

12 MR. RIVETTI: Okay.

13 CHAIRPERSON HILL: Okay?

14 MR. RIVETTI: Got it.

15 CHAIRPERSON HILL: At least if I get out -- unless
16 I get outvoted if anybody wants to vote today, which is
17 totally fine with me, and we can vote today.

18 MR. RIVETTI: Okay

19 CHAIRPERSON HILL: So does anybody want to vote
20 today? And if so, raise their hand. Commissioner May?

21 COMMISSIONER MAY: Well, I could say that I'm
22 prepared to vote today, but I certainly appreciate that
23 others are not prepared to vote today, so --

24 CHAIRPERSON HILL: If everybody's prepared to vote
25 today besides me, I'm happy to listen, I'm just letting you

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1 know, I'm happy to listen to the deliberation and see where
2 we get. So --

3 COMMISSIONER MAY: Yes, I don't -- I get the sense
4 that others are as willing to vote as I am, and I'm certainly
5 fine with putting it off.

6 CHAIRPERSON HILL: Okay. Mr. Blake, where are you
7 on voting today versus putting it off?

8 MEMBER BLAKE: I would like to see the additional
9 information that you requested. And it wasn't glass and, it
10 was glass or. It was the two of those options, not one.

11 CHAIRPERSON HILL: Okay, so you're on the wait
12 side. Ms. John?

13 You're on mute, Vice-Chair John, sorry.

14 VICE-CHAIRPERSON JOHN: -- to wait, Mr. Chairman.

15 CHAIRPERSON HILL: Okay, all right. So then,
16 we're going to put it off and we're going to ask for this
17 material. We're going to let the ANC then have an
18 opportunity to respond to the material that you present, Mr.
19 Rivetti.

20 We're going to come back here after our break,
21 which is in September, and we're going to see when -- Mr.
22 Hamala, can you hear me?

23 I don't know whether Mr. Moy is better at this,
24 or you are, in terms of, like, when we need to get things --
25 I think Commissioner May is back with us, you said, on the

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1 7th I think, Commissioner.

2 COMMISSIONER MAY: Correct.

3 CHAIRPERSON HILL: Okay. Mr. Hamala, do you know
4 how much stuff we have on the 7th of September?
5 Unfortunately, I think it's a lot.

6 MR. HAMALA: Let's see. I'm checking my notes
7 here, and you said September 7th, correct?

8 CHAIRPERSON HILL: Yes.

9 MR. HAMALA: I don't believe that we have a
10 meeting date that day. Let me check our internal calendar.
11 Maybe I'm incorrect.

12 MR. HAMALA: I'm looking at the publicly posted
13 calendar and that is a non-meeting or hearing day for the
14 Board.

15 CHAIRPERSON HILL: Okay, then Commissioner May,
16 maybe you're kind of -- you don't know when your next --

17 COMMISSIONER MAY: The Secretary of the Zoning
18 Commission assigned me that day, so I guess --

19 CHAIRPERSON HILL: So --

20 COMMISSIONER MAY: -- if they're --

21 CHAIRPERSON HILL: -- there's confusion. I think
22 they're correct in that because I think Labor Day is the 5th,
23 and I don't think we come back on the 7th. So our first one
24 would be on the 14th and --

25 MEMBER BLAKE: Sorry, sir. Mr. May is next

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1 scheduled to come back October 19th. At least that's what's
2 on the schedule as of now.

3 CHAIRPERSON HILL: October 19th, okay.

4 COMMISSIONER MAY: I could, I may be able to come
5 back just for this case on another day if you want to do it
6 sooner than that, if there's an opening in your schedule.

7 CHAIRPERSON HILL: I mean, I guess -- hold on, Mr.
8 Rivetti. Hold one second. I don't know -- okay, Mr.
9 Rivetti, you had your hand up?

10 MR. RIVETTI: Yes, I will not be in the country
11 on September the 17th.

12 CHAIRPERSON HILL: Okay, so --

13 MR. RIVETTI: So in October would be preferable.

14 CHAIRPERSON HILL: Okay.

15 MR. RIVETTI: If possible, yes.

16 CHAIRPERSON HILL: That's fine. So let's actually
17 do October 19th, because all it means is that Mr. Rivetti
18 currently has his porch. And if he has to tear it down
19 later, then he has to tear it down later.

20 And so you know, he can enjoy his porch until
21 October 19th to find out whether he -- I wouldn't do anything
22 different, Mr. Rivetti. I'd enjoy it until October 19th and
23 see whether it stays.

24 So let's see. Okay, then if that's the case,
25 October 19th, we're going to meet again, then that means that

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1 -- when would you, Mr. Hamala -- I don't know, I guess we can
2 get filings -- I mean, Mr. Rivetti, you could get -- when do
3 you leave -- sorry, go ahead, Mr. Blake.

4 MEMBER BLAKE: We also need to get photographs of
5 the neighborhood, a clear picture of the neighborhood.

6 CHAIRPERSON HILL: Okay.

7 MR. RIVETTI: I can tell you now, there are no
8 other front porch railings.

9 MEMBER BLAKE: You'd still need to get the picture
10 or the name of that --

11 MR. RIVETTI: I just -- okay, sure.

12 CHAIRPERSON HILL: Okay.

13 MR. RIVETTI: Just the block, just the street?
14 Or just Abbey Place, you mean?

15 MEMBER BLAKE: Okay, it's a -- you said the short
16 blocks. So I want the side of the building it's -- that your
17 property's on, a very clear photo of that. And I would like
18 to see the other side of it as well, okay?

19 MR. RIVETTI: Okay.

20 MEMBER BLAKE: Your side and I'd like to see the
21 other side as well.

22 MR. RIVETTI: Sure, okay.

23 CHAIRPERSON HILL: Okay, great. So there you go,
24 Mr. Rivetti. You'll take pictures on either side, okay, of
25 your house, and then on either side of the block, okay?

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1 And then you'll give us anything you would like
2 to give us in terms of why you believe you built this
3 according to what the BZA had proposed originally, right?

4 And then you're going to provide us with some kind
5 of a drawing that shows glass or cable on that -- the deck
6 that's currently above the porch, including the deck that's
7 on -- including the -- what's above the mansard roof.

8 MR. RIVETTI: Okay, the third floor terrace,
9 there. Okay.

10 CHAIRPERSON HILL: The third floor terrace
11 matching each other with glass or cable.

12 MR. RIVETTI: Okay, so glass or cable on -- what
13 about the ground floor of the porch where it is -- the first
14 floor of the porch, the railing on the first doesn't matter?
15 That can be metal still?

16 CHAIRPERSON HILL: I can't see. I mean I -- you
17 want to -- oh, I see what you've got, there. Mr. --
18 Commissioner May, I saw you had an opinion there.

19 COMMISSIONER MAY: No, I didn't. I mean it's --
20 that would be atypical to do a cable or glass rail on that
21 level. So if you wanted to do that for consistency, you
22 know, you could --

23 MR. RIVETTI: Okay.

24 COMMISSIONER MAY: -- probably put that out, too.
25 I don't know.

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1 CHAIRPERSON HILL: You're trying to set -- Mr.
2 Rivetti, you're trying to convince us that what we're going
3 to approve is not inconsistent with the character, scale, and
4 pattern of the neighborhood. So whatever you think you might
5 want to do, this is your shot to do it.

6 MR. RIVETTI: Got it.

7 CHAIRPERSON HILL: Because probably, you're going
8 to get a decision on October 19th. And I really don't know
9 where you're going to land right now, to be quite honest.
10 So I would do your best, right?

11 MR. RIVETTI: Okay.

12 CHAIRPERSON HILL: So okay, sorry. Ms. John?

13 VICE-CHAIRPERSON JOHN: Commissioner May, could
14 I ask you to clarify what you just said? What would be
15 atypical?

16 COMMISSIONER MAY: Typically, porch front row
17 houses don't have glass guardrails or cable guardrails.
18 That's atypical for the porch, you know, where you walk in
19 the front door.

20 VICE-CHAIRPERSON JOHN: Okay.

21 COMMISSIONER MAY: So --

22 VICE-CHAIRPERSON JOHN: Thanks.

23 MR. RIVETTI: Excuse me, would this -- I would
24 just document these documents to IZIS? Is that -- under the
25 hearing? Okay, just confirming. Thank you.

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1 CHAIRPERSON HILL: Yes. Okay, and then, so if you
2 -- yeah, sure, Commissioner. Give me one second, but sure,
3 of course. Give me one second, Commissioner. The -- when
4 do you come back Mr. Rivetti?

5 MR. RIVETTI: The 24th of September.

6 CHAIRPERSON HILL: Okay. Commissioner Eckenwiler,
7 what was your question?

8 MR. ECKENWILER: It wasn't clear to me, Mr.
9 Chairman, whether or not you or other members of the Board
10 have asked for clearer pictures of the existing railings that
11 were built on that addition that was approved back in 2018.

12 And, you know, to the extent that the Board is
13 still interested in seeing what was done there, whether or
14 not it was, in fact, in compliance with the order, I think
15 that would be an additional appropriate submission from Mr.
16 Rivetti.

17 CHAIRPERSON HILL: Okay. I'll tell you what,
18 Commissioner, why don't you submit whatever you think you are
19 speaking about, because I'm a little unclear. Do you have
20 what you're speaking about, Commissioner?

21 MR. ECKENWILER: Well, I'm talking about those
22 upper story railings. So there's the one that's in the front
23 façade plane, and then there's the one which everyone seems
24 to be calling the roof deck. So the uppermost railing.

25 And since this is Mr. Rivetti's property, he has

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1 the best access to close-up photographs of, you know, what
2 those materials are. I mean, I can take photos from street
3 level, but --

4 CHAIRPERSON HILL: Are you talking about --

5 MR. ECKENWILER: -- to the extent that --

6 CHAIRPERSON HILL: -- you're talking about the
7 third -- you're talking about, now, the roof deck railing,
8 correct?

9 MR. ECKENWILER: All of those things that were
10 constructed as railings that precede the railing that's over
11 the porch. So those other railings that were built in
12 connection with the 2018 application, and then the subsequent
13 implementation of that project.

14 CHAIRPERSON HILL: Okay. Mr. Rivetti, I would
15 submit any pictures or drawings that you think will convey
16 to the Board what is currently there and what you think
17 you're trying to propose so that you are meeting the
18 regulations.

19 Meaning that the character, scale, and pattern of
20 the neighborhood is going to not be affected, okay? And so
21 if you want to take pictures of it.

22 Because I am -- I mean, even though you, I guess,
23 can't see it, I can see a little tiny corner of it from the
24 road, right?

25 You know, you could go ahead and take a picture

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1 of that rooftop railing, okay? And then -- I can see what's
2 there now, and I can see what's there now above your porch,
3 right? I would like to see some consistency, right, to make
4 me feel better about what we may or may not be approving,
5 right?

6 I mean, again, I can see from what we approved
7 four years ago, that third floor -- I'm sorry. That railing
8 on -- above the porch was not there, and that door was not
9 there. And now it's there, right?

10 So I am uncomfortable. And so you know, but
11 whether or not -- I'm only one vote, so you know. But
12 anyway, so do you understand everything we're asking of you
13 --

14 MR. RIVETTI: Yes, I do.

15 CHAIRPERSON HILL: -- Mr. Rivetti? Okay, fine.
16 So can you give that to use by -- if you're coming back on
17 the 24th, can you give it to us by the 28th of September?

18 MR. RIVETTI: Yes.

19 CHAIRPERSON HILL: Okay.

20 MR. RIVETTI: Definitely, yes.

21 CHAIRPERSON HILL: So let's say the 28th of
22 September, Mr. Hamala, we'll get anything from -- I'm sorry.
23 Yes, we'll get anything from Mr. Rivetti. We'll then get
24 anything back from the ANC by -- Commissioner, is two weeks
25 okay? So October 12th -- I'm sorry.

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1 Is one week okay? Because I can back up Mr.
2 Rivetti's time. If you could give us something by the 5th
3 in response to if you'd want to or not.

4 MR. HAMALA: I expect we will file a response, but
5 sure, two weeks seems fine.

6 CHAIRPERSON HILL: Okay, well if I'm going to get
7 the --

8 MR. HAMALA: Or even one week.

9 CHAIRPERSON HILL: Yes, if you need --

10 MR. HAMALA: I'm sorry, one week is fine.

11 CHAIRPERSON HILL: -- go ahead.

12 MR. HAMALA: Okay, so the 28th, we'll get whatever
13 we're going to get from Mr. Rivetti. On the 5th, we're going
14 to get whatever we're going to get from the ANC, and if Mr.
15 Rivetti wants to submit something new, fine, okay?

16 Then we'll go ahead and come back for a continued
17 hearing on the 19th, okay? Does anybody have any questions?

18 MR. RIVETTI: October 19th, yes?

19 CHAIRPERSON HILL: Yes.

20 MR. RIVETTI: Okay, got it.

21 CHAIRPERSON HILL: Okay. 10-19, continued
22 hearing.

23 MR. RIVETTI: Okay.

24 CHAIRPERSON HILL: Okay. Mr. Hamala, you've got
25 it?

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1 I can't hear you, Mr. Hamala. Sorry.

2 MR. HAMALA: I want to confirm what the Board
3 requests are from the applicant. I have one, photographs on
4 both sides of Abbey Place, up and down the street, to see the
5 other porches and railings.

6 And then two, drawings of glass or cable and how
7 that would appear on the railing above the first floor porch,
8 and how it would appear on the third floor railing.

9 And then third, any documentation from the
10 applicant clarifying, that's to say, as why the current
11 railing is in, I guess, compliance with what the Board
12 approved on the order 19622.

13 CHAIRPERSON HILL: Did you say glass and/or cable
14 on the third -- a drawing with glass or cable on the third
15 floor as well as the railing above the current porch?

16 MR. HAMALA: Yes, sir.

17 CHAIRPERSON HILL: Okay, right. Okay. Does
18 anybody else have anything else? Okay, all right. We're
19 good to go ahead and close the hearing and the record. See
20 everybody back on 10-19. Thank you, bye-bye.

21 CHAIRPERSON HILL: Okay, you guys, it's noon. Do
22 you want to try to get as many as we can in before our lunch?
23 Let's do one. Can we get one, or do you want to have lunch?

24 MR. HAMALA: Whatever you'd like, Mr. Chairman.

25 CHAIRPERSON HILL: I want to get one done just

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1 because I feel like we'll get more moving, okay? Let's get
2 one done. Although, I know my colleague here is yelling at
3 me, also, to have lunch, so -- but okay. Yeah, let's go
4 ahead, Mr. Hamala. Let's do one more and then we'll take
5 lunch.

6 MR. HAMALA: Let's see. The next application is
7 number 20731 of 1447 Maryland Avenue, LLC, and this a self-
8 certified application for a special exception pursuant to
9 Subtitle C, Section 703.2; and Subtitle X, Section 901.2.

10 And this is relief from the minimum parking
11 requirements of Subtitle C, 701. And the project is for nine
12 dwelling units in an attached, mixed-use building. And it
13 was formally two dwelling units above ground floor retail.

14 The property is in the NC-14 Zone and is located
15 at 1447 Maryland Avenue NE, Square 1050, Lot 22.

16 CHAIRPERSON HILL: Okay, can the applicant
17 introduce themselves, please?

18 MR. CRAIN: Sure. My name is Adam Crain. I'm the
19 architect with 2Plys.

20 CHAIRPERSON HILL: Oh, Mr. Crain. Okay, I've got
21 you. Great. Okay, Mr. Crain, if you want to go ahead and
22 walk us through your client's application as to why you
23 believe they meet the criteria for us to grant the relief
24 requested.

25 I'm going to put 15 minutes on the clock. I

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1 reviewed the record. I don't have a tremendous amount of
2 questions, but go ahead and walk us through your application.

3 MR. CRAIN: Will do. I'll try and be quick after
4 the last hearing. Simply put, the previous owner obtained,
5 with our help, a permit. We have approved lands for a
6 conversion to six unit plus retail.

7 So the building volume is permitted. The building
8 volume is existing. What we're here today for is a special
9 exception for parking relief, to take it from six residential
10 units to nine. Those three residential units will be in the
11 cellar level.

12 Right now, on the existing approved unit, that's
13 currently storage space. DDOT report had no objection. The
14 residents are eligible for a Zone 6 parking permit. There
15 are four long-term bike parking spaces provided on the
16 inside.

17 OP report suggested approval. The ANC 6A report
18 supports it. We also have a letter of neighbor support from
19 the directly adjacent property owner who shares a party wall.

20 So again, in summary, we're going from six units
21 that's approved right now to nine, three additional units.
22 The lot does not have alley access. There's a five foot
23 walking alley at the back.

24 There is an existing curb cut, which as part of
25 the DDOT submission, it needs to be closed and greened over.

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1 So there's no vehicle access possible to the lot. I'm happy
2 to answer any questions.

3 CHAIRPERSON HILL: All right, does the Board have
4 any questions? Go on, Mr. Blake. I'm sorry.

5 MEMBER BLAKE: Have you looked for parking within
6 600 feet?

7 MR. CRAIN: I believe the owner has. I'm not sure
8 that it's been successful. And I believe he should be on
9 here, or I saw his name. Adam, are you there? He might've
10 gotten cut off.

11 But I know that there was an effort made, I'm not
12 sure. I don't have any details on it.

13 MEMBER BLAKE: Thank you.

14 CHAIRPERSON HILL: All right, let me turn to the
15 Office of Planning.

16 MR. HAMALA: Mr. Chair, if I may?

17 CHAIRPERSON HILL: Sure.

18 MR. HAMALA: I apologize, I missed -- there was
19 a late submittal into the record from CHRS.

20 CHAIRPERSON HILL: Okay, it's not in there yet?

21 MR. HAMALA: No, sir, it is not in the record.

22 CHAIRPERSON HILL: Okay. Mr. Hamala, do you want
23 to go ahead and drop it into the record, okay? And see if
24 we can take a look at it. Hopefully, we can take a look at
25 it before we have to break, so we can take a look at it.

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1 And if staff could please put it in there, that'd
2 be great. Can I turn to the Office of Planning?

3 MR. MORDFIN: Good afternoon, I'm Stephen Mordfin
4 with the Office of Planning, and the Office of Planning is
5 in support of this application, as it meets the criteria for
6 the granting of the special exception. And I'm available for
7 any questions. Thank you.

8 CHAIRPERSON HILL: Okay, does anybody have any
9 questions of the Office of Planning? Mr. Young, is there
10 anyone here who wishes to speak?

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

12 CHAIRPERSON HILL: Mr. Hamala, can you -- here,
13 I've got. All right.

14 MR. HAMALA: Are you talking about the --

15 CHAIRPERSON HILL: I got confused --

16 MR. HAMALA: It's in the record.

17 CHAIRPERSON HILL: Okay, I'm reading the letter,
18 you guys.

19 MR. CRAIN: Just to chime in, I'm looking at it,
20 also. Regarding the trash, we are going to provide an
21 interior trash room at the rear. So it won't be stored
22 outside of the building.

23 CHAIRPERSON HILL: Can you repeat that again, sir?

24 MR. CRAIN: Yes, sir. We plan to provide an
25 interior trash room for the residence and the retail space

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1 at the rear of the building, so it won't be stored outside.

2 CHAIRPERSON HILL: Okay, can you speak to your
3 outreach at the ANC again?

4 MR. CRAIN: Our outreach? I mean -- I'm sorry.

5 CHAIRPERSON HILL: Did you present to the ANC?

6 MR. CRAIN: I did.

7 CHAIRPERSON HILL: And how did it go, Mr. Crain?

8 MR. CRAIN: We received support. That would be
9 Exhibit 24.

10 CHAIRPERSON HILL: I see the support. I'm saying
11 they didn't have any issues; it went fairly smoothly.

12 MR. CRAIN: It did.

13 CHAIRPERSON HILL: Okay. All right, does anybody
14 have any further questions? Sure, go ahead, Ms. John.

15 VICE-CHAIRPERSON JOHN: Yes, is the trash room
16 noted on the plans, and can you tell us where that would be?

17 MR. CRAIN: Sure, let me pull up the latest set,
18 here. I don't have it updated on the plans. I'm happy to
19 make that edit. But where we're going to put it is on --
20 hang on, I was looking at the wrong set there. Exhibit 13.

21 So we'll be putting it -- on the first floor,
22 there's -- at the rear, which is the bottom of the page,
23 there's an area called a shared entry, which is really the
24 walking access to the five foot walking alley at the back.

25 We're going to take a portion of the retail space

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1 there and provide a trash room. It's not reflected on these
2 plans, but we will provide that.

3 VICE-CHAIRPERSON JOHN: Thank you. I'm wondering
4 if we can approve this without knowing -- having drawings
5 that show where the trash room will be. I'd like to hear
6 what others say.

7 CHAIRPERSON HILL: Whatever you all think. In
8 this particular case, I'm comfortable with it. Ms.
9 Nagelhout, is that something we can just note if we got
10 something in the report?

11 MS. NAGELHOUT: What, that the applicant says that
12 the trash enclosure will be provided inside the building?

13 CHAIRPERSON HILL: Yes.

14 MS. NAGELHOUT: Yes, so it's an application for
15 parking relief.

16 CHAIRPERSON HILL: Okay. All right. Okay, I've
17 got you. All right, so okay. Ms. John, are you good with
18 that?

19 MR. YOUNG: I'm fine, thank you.

20 CHAIRPERSON HILL: Okay. All right. Anyone else?
21 Okay. Mr. Crain, do you want anything to add at the end?

22 MR. CRAIN: We'll be team players with the trash
23 room. So we'll put it in there anyway.

24 CHAIRPERSON HILL: Okay, great. All right. Okay,
25 I'm going to go and close the hearing and the record. Mr.

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1 Young, if you'd please excuse everybody.

2 Commissioner May, do you need some coffee? Are
3 you ready to deliberate? Yes, will you talk?

4 COMMISSIONER MAY: I'll talk. No, I think this
5 is all very straightforward. He walked through the details
6 of it. It is an exception for parking relief.

7 This is one of those circumstances where it's not
8 practical to try to provide parking, given the way the
9 property is landmarked.

10 So I -- it makes perfect sense to me, and I'm glad
11 that the Office of Planning and the AMC support it. So I am
12 ready to vote in favor.

13 CHAIRPERSON HILL: Thank you. Mr. Blake?

14 MEMBER BLAKE: I'm in support of the application.
15 I think that the applicant has demonstrated that the
16 requirement has been met. Obviously, they listed not one,
17 but four reasons why the parking permitted -- the parking is
18 not really permittable or they can't provide it.

19 So I would agree with that, and I believe the --
20 you know, agree with the Office of Planning's analysis and
21 would be in support of the application.

22 CHAIRPERSON HILL: Thank you. Vice-Chair John?

23 VICE-CHAIRPERSON JOHN: Thank you, Mr. Chairman.
24 I'm in support of the application and I will give great
25 weight to OP's analysis of how the application meets the

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1 criteria for parking relief.

2 And as Board Member Blake said, the applicant has
3 described several reasons it is unable to meet the criteria.
4 So I would approve the application.

5 CHAIRPERSON HILL: Okay, thank you. Thank you all
6 very much. Thank you for your deliberation, and I will agree
7 with everything said by my colleagues and make a motion to
8 approve application number 20731 as captioned and read by the
9 secretary, and ask for a second, Ms. John.

10 VICE-CHAIRPERSON JOHN: Second.

11 CHAIRPERSON HILL: The motion at hand is seconded.
12 Mr. Hamala, if you could please take a roll call.

13 MR. HAMALA: Please respond with a yes, no or
14 abstain. Chairman Hill.

15 CHAIRPERSON HILL: Yes.

16 MR. HAMALA: Vice-Chair John.

17 VICE-CHAIRPERSON JOHN: Yes.

18 MR. HAMALA: Mr. Blake.

19 Mr. May.

20 COMMISSIONER MAY: Yes.

21 MR. HAMALA: And then one member is not present
22 and not participating. Staff, we would record the vote as
23 4/0/1, to approve the motion.

24 Move to approve the application with the motion
25 by Chairman Hill, seconded by Vice-Chair John, with Mr. Blake

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1 and Mr. May in support of the motion.

2 CHAIRPERSON HILL: Okay, great. Thank you guys.
3 All right, so it's 12:08. 12:40, yes. Let's see what
4 happens. Okay, back at 12:40. Thank you. Bye-bye.

5 (Whereupon, the above-entitled matter went off the
6 record at 12:08 p.m. and resumed at 12:49 p.m.)

7 MR. HAMALA: The Board is back in session after
8 a quick recess at or about 12:49 p.m., and the next case on
9 the agenda is Application No. 20736 of RUPSHA 2011, LLC. The
10 case is as amended a self-certified application pursuant to
11 Subtitle X 901.2 for Special Exceptions under Subtitle U
12 421.1 to now allow a new residential development and under
13 Subtitle F, Section 5206.1 to allow a 1.08 floor area ratio
14 in a voluntary inclusionary development.

15 The project is a new apartment house and a three-
16 story detached building on a vacant lot, and the property is
17 in an RA-1 zone located at 2611 12th Place Southeast, Square
18 5875, Lot 45, and there is one preliminary matter, one note
19 to address.

20 Those are late filings to allow the applicant to
21 submit -- to allow a new agent to represent them, Ms. Bailey-
22 Green, before the Board, and that was submitted to the record
23 yesterday evening, and then of note, the ANC has also
24 submitted their report, and it is in the record as Exhibit
25 Number 35, and the report does not meet the requirements of

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1 Subtitle 18, Section 406.2.

2 CHAIRPERSON HILL: Okay. And in terms of allowing
3 it into the record for the representation of Ms. Bailey-
4 Green, first of all, Ms. Bailey-Green, can you hear me and
5 can you introduce yourself for the record?

6 MS. BAILEY-GREEN: Yes. Good afternoon, Chairman
7 Hill and members of the Board. My name is Synfoni Bailey-
8 Green, and I am the architect for the project.

9 CHAIRPERSON HILL: Mr. Hamala, is the request in
10 the record?

11 Mr. HAMALA: The request was not in the record.
12 It did not make the 24-hour filing deadline.

13 CHAIRPERSON HILL: Okay. Please go ahead and add
14 that into the record, and we'll take a look at it while we
15 allow -- Ms. Bailey-Green, why is it that you're representing
16 -- you're the representative of this client, correct, as the
17 architect of record?

18 MS. BAILEY-GREEN: Yes.

19 CHAIRPERSON HILL: Okay. That's fine. Okay. Ms.
20 Bailey-Green, if you could just go ahead and walk us through
21 the application and why you believe you're meeting the
22 criteria for us to grant the relief requested, and I'll put
23 15 minutes on the clock so I know where we are, and you can
24 begin whenever you like. Is there something you'd like us
25 to pull up to walk through or no?

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1 MS. BAILEY-GREEN: Yes, please. There was a
2 presentation sent to Mr. Young, I believe, on Friday.

3 CHAIRPERSON HILL: And that's what --
4 (Simultaneous speaking.)

5 MS. BAILEY-GREEN: Yes. There is -- he's got a
6 grievance to correct.

7 CHAIRPERSON HILL: Okay. I think I got that.

8 MS. BAILEY-GREEN: Yes.

9 CHAIRPERSON HILL: All right. Go ahead.

10 MS. BAILEY-GREEN: Okay. So we are proposing an
11 eight-unit apartment building at 2611 12th Place Southeast.
12 The building will consist of three floors and a cellar. Each
13 floor will have two units on it. Each unit will be a three-
14 bedroom, two-bath unit. There will be laundry -- shared
15 laundry on two of the floors, the first floor and the third
16 floor. Mr. Young can go to the next slide.

17 It is currently a vacant property you see there.
18 Next slide, please. Next slide, please.

19 We are proposing two parking spaces to the north
20 as you'll see kind of at the top of the page coming into the
21 building and then we will have a sidewalk area that leads up
22 to the building along 12th Place, along the face of the
23 building.

24 The first level will be an accessible level.
25 It'll have accessible type B units. Next slide, please.

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1 As you can see, we know we are matching kind of
2 the face of the building with the neighbor down the road
3 there. We are within all of the setbacks of the property.
4 Looks like these -- and this will just kind of give you some
5 heights. (Audio interference) heights here.

6 Next slide, please. Go in here and you'll see an
7 overall landscaping plan and we'll be adding some trees, a
8 rear access from the exit stair to the parking as well as
9 having the front access to the parking along 12th Street.
10 Next slide, please.

11 So these again are the floor plans you'll see, the
12 area shaded in blue is the IZ unit and that's to address OP's
13 comment, and the area shaded in brown is the bike storage.
14 Again, that was a comment from OP. They wanted us to
15 identify where those were located. Next slide, please.

16 And we are proposing for materials a combination
17 of brick and Hardie siding, which is in alignment with other
18 buildings in the neighborhood, other apartment buildings as
19 well as homes in the neighborhood. Next slide, please.

20 Again, the relations and next slide, please. We
21 do have support as noted from the ANC. Yes, that letter did
22 come in today; however, it did note the comment about the
23 report that we will get that addressed. And that's all, I
24 believe at this moment, we have to say.

25 CHAIRPERSON HILL: All right. Before I turn to

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1 questions from the Board, can I turn to the Office of
2 Planning? Ms. Brown-Roberts?

3 MS. BROWN-ROBERTS: Yes, Mr. Chairman. I'm trying
4 to get my video up, but I'm hearing you.

5 CHAIRPERSON HILL: We can see you. We can see and
6 hear you.

7 MS. BROWN-ROBERTS: Oh, okay. Good. Are you
8 ready for my --

9 (Simultaneous speaking.)

10 CHAIRPERSON HILL: Yes, please. Please, Ms.
11 Brown-Roberts.

12 MS. BROWN-ROBERTS: Oh, okay. Okay. Sorry.

13 CHAIRPERSON HILL: It's all right.

14 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman
15 and members of the BZA, I'm Ms. Brown-Roberts from the Office
16 of Planning. On BZA 20736 to construct an eight-unit
17 apartment at 2611 12th Place Southeast in the Area 1 zone.
18 In our review of the proposal, OP recommended some changes
19 to improve the information on the plans and to the building.

20 The applicant has made those recommended changes
21 and -- which OP has reviewed it, and we are satisfied. The
22 proposal meets all the department standards of the R-A1 1
23 zone and requested Special Exception would be for the new
24 residential building under Subtitle U 421.

25 Pursuant to Subtitle X 901, the applicant was also

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1 requested to op into IZ to use the IZ FAR for the building,
2 and they have provided one unit, which is on the first floor,
3 and its location is highlighted on the site plan.

4 The students from the development will be served
5 by area schools, and the property is very -- is being served
6 by roadways, public transportation and neighborhood
7 commercial spaces. Additionally, the property is in the
8 vicinity of various recreational facilities.

9 The site plan for the location of the building and
10 it's set back from adjacent buildings that should not affect
11 the light and air to adjacent buildings. The materials and
12 design of the building will be similar to other multi-family
13 buildings in the neighborhood, and landscaping and a grading
14 plan demonstrates that regrading would be minimal and
15 retaining (audio interference) cross street would be
16 retained.

17 The required vehicle and parking and trash storage
18 will be provided on site, and there are also included in the
19 site plan. The applicant has submitted all the required
20 plans.

21 The proposal meets the general Special Exception
22 standards as apartments are permitted in the RA-1 zone, and
23 the standards are met as demonstrated in our report, and
24 therefore is in harmony with the general purpose and intent
25 of the zoning regulation and zoning map. They also

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1 demonstrated their proposal would not appear to adversely
2 affect the use of neighboring properties.

3 The Office of Planning, therefore, recommends
4 approval of the requested Special Exception. Thank you, Mr.
5 Chairman, and I'm available for questions.

6 CHAIRPERSON HILL: All right. Thank you, Ms.
7 Brown-Roberts. Does the Board have any questions for Ms.
8 Brown-Roberts or the Office of Planning or the applicant?
9 Okay. Now, Mr. Blake?

10 MEMBER BLAKE: I have a question for the
11 applicant. What is the square footage, approximate square
12 footage of the IZ units?

13 MS. BAILEY-GREEN: That is, let me go into my plan
14 here on another screen. That is roughly 969 square feet.

15 MEMBER BLAKE: Oh, perfect. And second, have you
16 been in touch with DDOT regarding the removal of the trees?

17 MS. BAILEY-GREEN: Yes. I believe that has been
18 brought up, and I will confirm it with my client. If it
19 hasn't, I'll recommended it to them that they start that
20 process.

21 MEMBER BLAKE: Thank you.

22 CHAIRPERSON HILL: Okay. Anyone else? Mr. Young,
23 is there anyone in here who wishes you speak? All right.
24 Ms. Brown-Roberts, just to be clear. The Office of Planning
25 is good with, like 52016 and the increased FAR due to the IZ

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1 unit, correct?

2 MS. BROWN-ROBERTS: That's correct, Mr. Chairman.

3 CHAIRPERSON HILL: Okay. All right. I'm going
4 to go ahead and close the hearing in the record. Mr. Young,
5 if you would please excuse them.

6 Okay. I would agree with the argument that the
7 applicant has put forth as to why they're meeting the
8 criteria for us to grant the relief requested. I would also
9 agree with the analysis the Office of Planning has provided
10 with regard to the relief.

11 I do think that even though the ANC report is not
12 something we can give great weight to, I do at least
13 acknowledge and understand that they were in favor of this
14 application, which is good to see that at least there was
15 some community outreach done and that they were in support
16 of this project.

17 I am comfortable moving forward and will be voting
18 in support. Mr. Blake, would you like to add anything?

19 MEMBER BLAKE: Sure. I agree with the analysis
20 by the Office of Planning and yours as well, that the
21 applicant has met the burden of proof for relief under U 421
22 and the applicant obviously has reported and incorporated all
23 the comments made from the Office of Planning.

24 Clearly, the IZ unit does see bonuses in harmony
25 with the general purpose and intent of any regulations. It

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1 looks like the FAR was actually increased just directly
2 enough to accommodate the IZ, the increased IZ, to then 1.105
3 and just over 1,000 square feet, and they're adding about 969
4 square feet of the IZ unit, so it's completely directly
5 correlated with that. So that's consistent with the
6 requirement there.

7 I do agree with the Office of Planning
8 recommendation with no objection but of course, we have to
9 make sure they are able to get that curb cut in place, or
10 they may actually have to come back.

11 That said, I will be voting in favor of the
12 application.

13 CHAIRPERSON HILL: Thank you, Mr. Blake.
14 Commissioner May?

15 COMMISSIONER MAY: I agree with the Member Blake,
16 and I also support the application. I cannot resist an
17 architectural comment, which is just that -- I won't go too
18 deeply into it -- but there is a very odd thing about this
19 design where there are two projecting bays flanking the
20 entrance, and you'd expect there to be windows in those
21 projecting bays, but there are not windows because those are
22 closet spaces and a laundry and things like that.

23 So I just want to make the observation for the
24 benefit of the architectural work on this, that pay a little
25 bit more attention to detail, a little bit more thought about

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1 window placement. It would be a more attractive building and
2 not that that's necessary for any of the relief that's
3 granted, but I cannot resist the attempt to -- resist the
4 temptation to comment on the design so, thank you.

5 CHAIRPERSON HILL: Okay. I'm comfortable if the
6 Board is, allowing the applicant to have the flexibility to
7 make changes to those windows if they see fit, Commissioner
8 May, if that's something that you would be amenable to.

9 COMMISSIONER MAY: I'm certainly amenable to that,
10 and I don't see any reason to complicate any approvals, you
11 know.

12 CHAIRPERSON HILL: Okay.

13 COMMISSIONER MAY: Or, yeah, I'm fine with that.

14 CHAIRPERSON HILL: Okay. Vice Chair John?

15 VICE-CHAIRPERSON JOHN: I believe the application
16 meets the criteria for relief as everyone has discussed and
17 so I would approve the application.

18 CHAIRPERSON HILL: Okay. Great. I going to make
19 a motion to approve Application No. 20736 as captured and
20 read by the Secretary, including design flexibility to allow
21 for windows to be placed in the bay projections that are
22 outside the left and the right of the main front door and ask
23 -- and Commissioner May, is that clear enough?

24 COMMISSIONER MAY: That's good.

25 CHAIRPERSON HILL: Okay. Thank you. I got my

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1 architecture degree from a box of popcorn. And as for a
2 second, Ms. John?

3 VICE-CHAIRPERSON JOHN: Second.

4 CHAIRPERSON HILL: The motion made and seconded.
5 Mr. Hamala, if you can take a roll call, please?

6 MR. HAMALA: When I call your name, please respond
7 with a yes, no, or abstain. Chairman Hill?

8 CHAIRPERSON HILL: Yes.

9 MR. HAMALA: Vice-Chair John?

10 VICE-CHAIR JOHN: Yes.

11 MR. HAMALA: Mr. Blake?

12 Mr. May?

13 And we have member not present and not
14 participating. Staff would record the vote as 4/1/0 to
15 approve the application with the motion made by Mr. Hill,
16 seconded by Ms. John, with Mr. Blake and Mr. May in support
17 of the motion.

18 CHAIRPERSON HILL: Great. Thank you. You may
19 call our next case when you get a chance, Mr. Hamala.

20 MR. HAMALA: The next application is number 20748
21 of Steven Chuslo. This is a self-certified application for
22 an Area Variance pursuant to Subtitle X 1002, and it is from
23 the lot occupant requirements of Subtitle E, Section 304.1,
24 and this will be a second-story rear addition to an existing
25 three-story attached principal dwelling unit in the RF-1

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1 zone, and the property address is 274 Kentucky Avenue SE,
2 Square 1039, Lot 81.

3 CHAIRPERSON HILL: Great. Could the applicant
4 please introduce themselves? Is it Mr. Chuslo?

5 MR. CHUSLO: Steven Chuslo.

6 CHAIRPERSON HILL: Is it Chuslo.

7 MR. CHUSLO: Hello everyone.

8 CHAIRPERSON HILL: Okay. Mr. Chuslo. I'm sorry.
9 I didn't -- could you introduce yourself for the record? I
10 didn't hear you. Sorry.

11 MR. CHUSLO: Yes. Thank you. I'm Steven Chuslo.
12 I'm the owner of the lot that -- the location 274 Kentucky
13 Avenue. I'm a ten-year resident in DC, and today my
14 colleague and I, Bill Morris who I am waiting to come online,
15 will give you folks an overview of what we're requesting.

16 CHAIRPERSON HILL: Okay. Mr. Chuslo, why don't
17 you go ahead whenever you're ready and begin. We can pull up
18 your PowerPoint if you like and, yes. If you want to go
19 ahead and, again, I see -- and actually, I've gone through
20 your PowerPoint because it was in the record before.

21 MR. CHUSLO: Okay.

22 CHAIRPERSON HILL: Again, what you're going to
23 want to do is speak to the -- what you're trying to do and,
24 again, the standard with which we are supposed to review the
25 application, and if you could be -- I mean, it's a pretty

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1 interesting design. I do see that CHRS is opposed and
2 however, if you could, walk us through as efficiently as
3 possible, your presentation.

4 And Mr. Young, if you could pull that up, please.
5 Oh, I'm sorry. Before you do that, Mr. Young. Mr. Morris,
6 could you introduce yourself for the record?

7 MR. MORRIS: Yes. Hello. Hello.

8 MR. CHUSLO: Your phone may be on, Bill.

9 MR. MORRIS: Let's kill it. Okay. Is that
10 better?

11 CHAIRPERSON HILL: No. Are you going to be
12 presenting, Mr. Morris, or just Mr. Chuslo?

13 MR. CHUSLO: Yes, he is.

14 CHAIRPERSON HILL: All right. Okay.

15 MR. MORRIS: Is that better?

16 CHAIRPERSON HILL: No.

17 MR. CHUSLO: It's still echoing, Bill. It could
18 be the microphone. Do you have more than one microphone on?
19 Or turn down the volume on your microphone? Now we can't
20 hear you.

21 MR. CHUSLO: Would you say something? We can't
22 hear you. You're on mute, or you've turned your microphone
23 too far down.

24 CHAIRPERSON HILL: That's good, Mr. Chuslo. I
25 didn't have to say anything. You're going to fix it for me.

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1 That's all right.

2 MR. CHUSLO: These webcasts and Zoom calls
3 nowadays, so yes.

4 CHAIRPERSON HILL: Mr. Morris, perhaps can you try
5 again? You were on mute. Unmute yourself. Nope?

6 MR. CHUSLO: You're still on mute.

7 CHAIRPERSON HILL: If you click the screen, then
8 there might be a mute button at the bottom of it. Just click
9 anywhere on the screen and then the bottom says mute. And
10 click the mute button. And if not, go ahead and call that
11 202 number or were you still by a phone, the 202-737-5471.
12 202-737-5471.

13 Mr. Young, can you hear me? I forget. Does the
14 phone number go to you?

15 MR. YOUNG: No, it doesn't.

16 CHAIRPERSON HILL: Okay. Why don't we do this?
17 Let's jump off of this. We'll do the next one. We'll let
18 Mr. Morris get hooked up and then we'll come back. Okay?
19 So Mr. Chuslo, Mr. Morris, do you want to unmute your line
20 again real quick, just see if that worked? Look on the
21 computer.

22 MR. CHUSLO: Space bar, Bill, and it should open
23 you up.

24 CHAIRPERSON HILL: Yes. Sometimes it doesn't
25 work. Can you push the space bar, Mr. Morris, and perhaps?

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1 That's okay. Oh, there you are. Say something. No, that's
2 all right.

3 We'll get through this. Okay. I'm going to close
4 this portion of the hearing. We're going to come back. Mr.
5 Hamala, if you could call --

6 MR. CHUSLO: He's, he's unmuted now.

7 CHAIRPERSON HILL: Oh. Try?

8 MR. MORRIS: Okay. Can you hear me?

9 CHAIRPERSON HILL: Say something, Mr. Morris?

10 MR. MORRIS: Hello. This is Bill.

11 CHAIRPERSON HILL: Yeah. No. So go ahead, Mr.
12 Morris. Mute your line. Call in on the phone, and we'll see
13 what happens because at least we can see you and then we'll
14 call it on the phone. And you'll be able to see your screen
15 and still give the presentation.

16 So I'm going to close this out. We'll see you
17 guys next. Mr. Hamala, if you could call our next case,
18 please? And Mr. Young, if you could take these people out,
19 and we'll come back once they're online. Okay?

20 MR. HAMALA: All right. Our next case on the
21 agenda is Application Number 20758 of Rebecca Moudry and
22 Oscar Maccio. This is as amended a self-certified
23 application for Special Exceptions pursuant to Subtitle E
24 5201 and Subtitle X 901.2. They are from the lot occupancy
25 requirements of Subtitle E, Section 304.1 and as listed, the

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1 rear yard requirements of Subtitle E 306.1, and this project
2 is for a one-story accessory structure, a garage with a roof
3 deck in the rear yard of an existing two-story attached
4 principal dwelling in the RF-1 zone. And the property is
5 located at 1893 Ingleside Terrace Place Northwest, Square
6 2617, Lot 127.

7 And there is one preliminary matter, Mr. Chair,
8 and that is to allow an updated self-certification form and
9 an updated burden of proof moved into the record. It did not
10 come in before that 24-hour deadline.

11 CHAIRPERSON HILL: Okay. Let's see. Go ahead and
12 drop those into the record, Mr. Hamala. Mr. Heisey, can you
13 hear me? You have to unmute. Sorry.

14 MR. HEISEY: Thank you. Yes. I can hear you.
15 You're fine.

16 CHAIRPERSON HILL: Yep. Could you introduce
17 yourself for the record, please?

18 MR. HEISEY: Hi. I'm Joel Heisey, 1516 12th
19 Street, D.C. I'm the representative designer for the owners,
20 Rebecca Moudry and Oscar Maccio.

21 CHAIRPERSON HILL: Mr. Heisey, what's the update,
22 again? It's the self-cert and the burden of proof is to
23 update us on what again?

24 MR. HEISEY: It is just a change of the sections.
25 The previous self-cert had the rear yard exemption where

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1 looking at it, and speaking with Mr. Hamala yesterday, it
2 really should have been the accessory structure intruding
3 into the rear yard. So it was just that change of the
4 section in the self-certification and then just for
5 consistency in the justification, the burden of proof I
6 changed the item in there as well to be that section.

7 CHAIRPERSON HILL: Yes. Okay. That's good.

8 MR. HEISEY: Otherwise, there's no design changes.
9 There's no justification changes, everything else remained
10 exactly the same.

11 CHAIRPERSON HILL: Okay. All right. So that
12 being the case, again, if you want to go ahead and walk us
13 through your application and why you believe you're meeting
14 the request being -- and why you believe you're meeting the
15 standard with which we're supposed to look at the request of
16 the relief requested, and I'll put 15 minutes on the clock,
17 and you can begin whenever you like.

18 MR. HEISEY: I'll be very brief. I didn't make
19 a separate presentation. I think this is a fairly
20 straightforward case. There's no objections that we're aware
21 of.

22 It's a garage with a deck with a railing, but the
23 neighbors and ANC agrees with this railing so we won't have
24 that discussion so. It is a very steeply sloped site, and
25 this would be a garage down at the bottom at the rear of the

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1 property at the alley. If you look at the pictures, one of
2 the neighbors describes it as a ski slope.

3 There is a existing deck off the first floor
4 level, which is probably 30 to 40 feet above the grade of the
5 alley below. If you're looking at the drawings and the
6 sections, you'll see the garage deck.

7 By the time you get back to the rear wall, you're
8 about at grade level so you will enter the roof deck from
9 grade on the yard. It's very straightforward. We have
10 letters of support from both of the neighbors. The ANC has
11 unanimously supported this. The Office of Planning is in
12 support.

13 I believe that explains the basics of it. If the
14 Board has any questions, I'd be more than happy to address
15 them. The owners are also online here as well, if you have
16 any questions for them.

17 CHAIRPERSON HILL: Got it. Can you all just hold
18 on one moment? I have to just get --

19 MR. HEISY: The downsides of virtual meetings.

20 CHAIRPERSON HILL: Sorry. I'm all alone here at
21 the office. Okay. I'm sorry, Mr. Heisey. If you can go
22 ahead and begin. Oh, I see. You did, you did.

23 MR. HEISY: I'm just summarizing the points for
24 the record. If the Board has any questions, I'd be happy to
25 address them.

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1 CHAIRPERSON HILL: I got it. Sorry, I'm just
2 pulling up this --

3 MR. HEISEY: That's fine. I keep seeing the blue
4 and red lights flashing in the background so I'm not sure
5 what's going on around your place, but.

6 CHAIRPERSON HILL: Oh, really? Is -- okay. I
7 approved that before. I didn't realize that happens. Oh.
8 Okay. All right. Does the Board have any questions of the
9 applicant? Okay. I'm turning to the Office of Planning.

10 MR. KIRSCHENBAUM: Good afternoon, Chair Hill,
11 members of the Board of Zoning Adjustment. I'm Jonathan
12 Kirschenbaum with the Office of Planning and recommend
13 approval of the two Special Exceptions. Please let me know
14 if you have any questions. Thank you.

15 CHAIRPERSON HILL: Okay. Does the Board have any
16 questions for the Office of Planning? All right. Mr. Young,
17 is there anyone here who wishes to testify?

18 MR. YOUNG: We do not.

19 CHAIRPERSON HILL: Okay. Mr. Heisey, is there
20 anything you'd like to add at the end?

21 MR. HEISEY: No. I believe we meet all the
22 criteria to receive the Special Exceptions and look forward
23 to your approval. Thank you.

24 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
25 Heisey. All right. I'm going to close the record in the

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1 hearing. Please excuse everyone, Mr. Young.

2 Okay. I didn't have any issues with this
3 application. I thought it was actually kind of a unique
4 design and a unique situation, actually. But I would agree
5 with the applicant and the Office of Planning as to their
6 justification for the relief requested.

7 I will also agree with the analysis -- I'm sorry,
8 the support of the ANC and vote in support. Mr. Blake?

9 MR. BLAKE: Per the submitted garage application
10 request for relief, the applicant has met the burden of
11 proof. The structure meets the development standards with
12 regards to height, number of stories and size. It will have
13 no windows and will not be used for living or sleeping
14 purposes and because of that rear alley and away from the
15 street, it should have minimal impact on the light and air
16 and should not unduly compromise the privacy or use of
17 adjoining neighbor properties.

18 As there are a number of such structure along the
19 alley, its presence as designed with screw or rails should
20 not be visually intrusive. I would also add that an outdoor
21 recreation space has been added and a parking space that will
22 be accessible from the abutting alley.

23 I believe the requested relief is in harmony with
24 the zoning regulation. I agree with the OP's recommendation
25 of approval. I note DDOT has no objections, and the ANC 1D

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1 recommends approval with no issues of concern, and we have
2 the support of two adjacent neighbors. I will be voting in
3 favor.

4 CHAIRPERSON HILL: Thank you, Mr. Blake.
5 Commissioner May?

6 COMMISSIONER MAY: After that excellent recap,
7 there really isn't much more to say. I agree with Board
8 Member Blake.

9 CHAIRPERSON HILL: Vice-Chair John?

10 VICE-CHAIRPERSON JOHN: Thank you, Mr. Chairman.
11 I agree with Commissioner May that after that excellent
12 discussion, there's not much to say. I thank you, Mr. Blake,
13 and I'm in support of the application.

14 CHAIRPERSON HILL: Thank you. I thank Mr. Blake
15 as well. We're going to start with Mr. Blake more often.
16 Okay.

17 So I'm going to go ahead and make a motion to
18 approve Application No. 20758 as captioned and read by the
19 Secretary and now it's for a second, Ms. John?

20 VICE-CHAIRPERSON JOHN: Second.

21 CHAIRPERSON HILL: The vote -- I'm sorry. The
22 motion is made and seconded. Mr. Hamala, if you could take
23 the roll call?

24 MR. HAMALA: Please respond with a yes, no, or
25 abstain. Chairman Hill?

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1 CHAIRPERSON HILL: Yes.

2 MR. HAMALA: Vice-Chair John?

3 VICE-CHAIRPERSON JOHN: Yes.

4 MR. HAMALA: Mr. Blake?

5 Mr. May?

6 COMMISSIONER MAY: Yes.

7 MR. HAMALA: And we have one member not present
8 and not participating. Staff would record the vote as 4/0/1
9 to approve the application as amended with a motion by Chair
10 Hill, seconded by Vice-Chair John and with Mr. Blake and Mr.
11 May in support of the motion.

12 CHAIRPERSON HILL: Thank you, Mr. Hamala. Mr.
13 Young, can you hear me?

14 MR. YOUNG: Yes, I can.

15 CHAIRPERSON HILL: Were you able to get Mr. Morris
16 on the phone?

17 MR. YOUNG: Yeah. He's called in.

18 CHAIRPERSON HILL: Okay. Mr. Hamala, if you could
19 call back 20748, please?

20 MR. YOUNG: Should I read off the entire caption
21 or just the --

22 CHAIRPERSON HILL: No. That's okay. You can just
23 call us back in.

24 MR. YOUNG: All right. The Board is now reopened
25 for Application Number 20748 as Steven Chuslo.

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1 CHAIRPERSON HILL: Okay. Great. Let's see, I
2 want to let them in again. Mr. Chuslo, can you hear me? Can
3 you reintroduce yourself for the record, please?

4 MR. CHUSLO: Yes, sir. My name is Steven Chuslo.
5 I reside at 274 Kentucky Avenue and am the person making the
6 application for this variance.

7 CHAIRPERSON HILL: Okay. Mr. Morris, can you hear
8 me? Mr. Morris, can you hear me? I think you have to unmute
9 your line in some way, but I don't know how. Mr. Young, I
10 don't know if you can tell him how.

11 MR. MORRIS: Let me know.

12 CHAIRPERSON HILL: Yes. Could you introduce --

13 MR. MORRIS: Wow.

14 CHAIRPERSON HILL: Could you introduce yourself
15 for the record, Mr. Morris?

16 MR. MORRIS: Yes. Thank you. Gladly. Chairman
17 Hill, my name is Frank William Morris. I am an architect
18 with Morris Architects representing this case. You may have
19 seen, we're a husband-and-wife team. My wife, Paula Seymour,
20 is the architect of record, and I'll be presenting today on
21 behalf of our firm.

22 CHAIRPERSON HILL: Got it. Mr. Young, if you
23 could pull up the slide deck, please? Mr. Morris, you can
24 go ahead and walk us through.

25 MR. MORRIS: Yes. And I will be brief. Some of

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1 these slides, I will just skip over, I think, gladly.

2 The first one as you see the red dot in the middle
3 of the screen, that is the location of the site. This site
4 is on a southwest corner of Square 1039. The property is a
5 corner lot at the intersection of Kentucky Avenue and C
6 Streets Southeast. And so next slide, please.

7 Just for context, this is a photo of the front of
8 the house just to give an idea where it is and the block that
9 surrounds it. Next, please.

10 This is taken actually from the Office of
11 Planning's report. This is page 2 of the OP's report, but
12 it shows, I think, rather nicely the actual, the entire
13 square as you see the light blue block that's outlined. It's
14 a corner at that same intersection I mentioned.

15 The site is a very, it's a relatively small
16 trapezoidal sort of towards the back, a pie-shaped lot that
17 is closed in by the contiguous lots. The center of the
18 square is privately owned. It's part of the Kentucky Courts
19 condominiums, and the center part of the block is actually
20 a common parking area and trash pickup areas for the
21 residents. Next slide, please.

22 This is the actual surveyor's plat that was
23 submitted, and we'll go over this a bit later. Next slide,
24 please.

25 This shows the existing first floor plan. As you

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1 see, the sort of L-shaped building is at the corner towards
2 the back. The pie-shaped area is if you're seeing their
3 yard. Please note the two air conditioning units at the rear
4 just next to the existing houses. Next, please.

5 This is the second floor plan and just briefly,
6 this is where the common living areas are in the unit. This
7 is the kitchen/living/dining area, and then the more as you
8 get to the rear yard and the parking lot beyond, one must go
9 down through the stairs, across the first floor, through two
10 bedrooms or into a laundry closet and then the garage and
11 then out. So there's a fairly circuitous route to the
12 outside to the rear that exists. Next, please.

13 This is the existing units with bedrooms. Next,
14 please.

15 These are the existing front elevations. Next,
16 please.

17 This are the existing rear elevations of the
18 subject property, and you see the turret that you can
19 identify the photographs with when you're looking for this
20 unit. Next, please.

21 Okay. So this is showing -- this is a site plan
22 we called it, which shows basically the second floor level
23 which is the proposed screened porch addition and the open
24 deck and stairs to grade in the back. As you see, the
25 existing rear yard is rather small and tapers down to a point

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1 at the very back, and part of this rear yard is surrounded
2 by a six-and-a-half-foot high fence and so you see it's
3 bounded by the three-story house, two party walls with no
4 windows, and then the six-and-a-half-foot-high fence, kind
5 of just encircling and closing in the existing property.

6 Next, please.

7 This is the first-floor plan proposed. You will
8 see the steps here leading up to the porch and deck above.

9 Next, please.

10 CHAIRPERSON HILL: Hello? Okay. Hello? Can you
11 hear me? Hello. Can you hear me, Mr. Morris?

12 MR. MORRIS: We can hear you fine.

13 CHAIRPERSON HILL: Okay. Great.

14 MR. MORRIS: The phone company butted in there for
15 a second. Okay. So again, this is, you see the screened
16 porch. It's about 150 square feet and then the open deck to
17 the right of it, and then stairs down to grade at the rear.

18 Next, please.

19 This is at the first-floor level of the existing
20 house, but it does show the proposed glazed roofing on the
21 left over the proposed porch. Next, please.

22 So this is, this is towards the rear yard from the
23 common parking area. Again that -- the turret that you see
24 in the background is in the outside corner so that identifies
25 where the unit is within the condominium unit, and you'll see

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1 in a minute, there's a slot in the built form face here which
2 is the slot, the 15-foot-wide slot that leads to the back
3 yard of the subject property. Next, please.

4 So now you're getting closer to the house and
5 again you see right in the middle of the street, it's a 15-
6 foot-wide gap which gives you the access into the rear yard
7 of this property. Next, please.

8 And then standing right at the apex of the site,
9 you're looking through the gate into the rear yard. And so
10 this is really the only place, really in the entire complex
11 where you can actually see into the rear yard of this unit
12 through the 15-foot wide gap, and nowhere else, you can't
13 really see into this existing rear yard. Next, please.

14 This is looking from the inside towards the
15 parking lot and showing the closed gate so this is really
16 indicating part of why this is so closed in. And so the
17 existing rear yard is closed in by the house, the two party
18 walls and this high fence. Next, please.

19 This is showing the air conditioning units that
20 are existing up against the wall that you see in the
21 background. Next, please.

22 This is existing wall of the existing property
23 where the second story addition will be. Next, please.

24 This is looking towards the north. This is one
25 side of the rear yard. You see there are no windows. This

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1 is a party wall with adjacent unit to the north, which shows
2 just kind of how bleak the existing environment is back there
3 plus there's no really direct impact visually on the
4 adjoining neighbor to the north. Next, please.

5 And to the south. This is the party wall of the
6 adjacent unit on the south side and, again, you see this is
7 -- this would have no impact on the adjacent neighbors.
8 There's privacy. There is a blank wall that encloses this,
9 but also these 35-foot -- 32-foot high walls really close in
10 the space from daylight views out from the unit and
11 ventilation from wind coming into the rear yard. It's rather
12 like a canyon back there. Next, please.

13 These are the proposed elevations, just very
14 briefly. That is that full screen to have as much
15 transparency as possible with a light metal railing inside
16 with screen to increase transparency and then underneath the
17 proposed deck and porch is open so that will be the existing
18 first floor. So this is built on stilts over the ground.
19 Next, please.

20 And so this is the last slide, but this shows that
21 the -- better just the overall scheme where the platting will
22 be consist with the existing fencing material with composite
23 material with the trim and it really is just screened and
24 open.

25 And so let me, want to say is because of the

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1 condition the property is actually relatively short,
2 trapezoidal shaped, pie shaped site, it does represent -- it
3 seems a extraordinary, exceptional condition of property with
4 the inability to get from the living area on the second floor
5 out to the back.

6 And then secondly, just quickly on the points of
7 the variance burden, the existing rear yard not only is hard
8 to get to, but once you're there, it's a rather lifeless
9 space with limiting wind, daylight, and so forth, but also
10 the air conditioning units that are there are on the ground
11 and echo off the walls.

12 And because of the condominium association's
13 bylaws, they can't put these units on the roofs so they're
14 kind of stuck with that in the sense that closes it in. So
15 it's really not a very usable space and the practical
16 difficulty going through the level, rooms, and laundry
17 closets are very hard to get to. Also to get to the common
18 areas for parking and trash, also is important for the
19 owners.

20 So really those are the first two problems, and
21 the last one, I think, is obvious to me, I think, but there's
22 no substantial detriment to the plan, that you can't even
23 really see it. Most the residents didn't know that this unit
24 was there, and so it's really hidden away from view and from
25 anybody being able to look in. It's not facing any public

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1 way of any sort, and also in terms of detrimental -- I'm
2 sorry.

3 There's no really impairment to the zoning
4 regulations because it's really asking for an area variance,
5 nothing in height, nothing in side yards, nothing in views
6 so it's really just a matter of taking up more of their yard
7 than is already occupied.

8 I'll leave it there. Open to questions and then
9 to Mr. Chuslo, the owner.

10 CHAIRPERSON HILL: All right. Great. Does the
11 Board have any questions of the architect? Commissioner May?

12 COMMISSIONER MAY: Yes. Mr. Morris, did you look
13 at a solution that would only require Special Exception
14 relief as opposed to variance relief, whether there was --

15 MR. MORRIS: Yes.

16 COMMISSIONER MAY: -- to 70 percent?

17 MR. MORRIS: That's right. Yes. We did. During
18 the development of the project, a question was asked, but
19 what if you only did steps to grade and the landing to solve
20 the access issue? And so we did.

21 So in order to get that under 70 percent, you
22 could have a three by three landing at the top and a straight
23 stairs down to grade in the middle of the lot. It actually
24 was possible to get it just at 70 percent, but to get any
25 other size landing to get to the stairs where it would be

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1 preferable, in other words, you should put the stairs in the
2 middle of the lot, it really further impairs the use of the
3 rear yard for recreation use by the owner.

4 So technically, yes, you can but it really almost
5 making -- there'd be no space available for recreation. So
6 again, having the stairs straight down, that with a longer
7 landing to get over to the stairs, say along one of the party
8 walls, would be like 72 percent, something like that. So
9 that's not really -- to get at 70 or below would be very,
10 very, I think, difficult to do and then enjoy the yard,
11 simply for access.

12 COMMISSIONER MAY: Yes. I'm very confused by that
13 because my recollection of the zoning regulations are that
14 a stairway from a deck does not count toward your lot
15 occupancy and if you're talking about, I mean, you're adding
16 something that's 100, what 100, 300 square feet almost of
17 area including the stairs. I mean, it seems to me, you could
18 do like a ten by ten or a ten by fifteen deck and then have
19 a stairway down in a reasonable location and not, not go over
20 70 percent.

21 MR. MORRIS: We would -- also, in the regulation
22 that you cited, I believe that's from the entrance of the
23 residence deck with exception for the coverage and setback
24 issues on the yards. But the first-floor entrance is the
25 main entrance to the dwelling and then you're going from an

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1 upper level.

2 I may be mistaken, but I don't know that that can
3 be taken from the lot occupancy requirements. But then you
4 also have, as you mentioned, a possible deck. It gets really
5 tight to get anything under the 70 percent.

6 COMMISSIONER MAY: I'm sorry. I'm not buying
7 that. I mean, we deal with these things all, all the time
8 and a stairway down from a deck or a stairway from a landing
9 outside of a door like this is typically not counted.

10 Now maybe the landing counts, but the stairway
11 itself doesn't count, and the total area of what you're
12 building is, you know, I don't know, what is it? Is it 300
13 square feet? I mean, it looks very big.

14 MR. MORRIS: Yes. It's a, 300 square feet, right.

15 COMMISSIONER MAY: Yes. So, I mean, if you, so
16 you're going from 60 percent lot occupancy to 80 percent lot
17 occupancy with your 300 square foot addition. If you were
18 to, so that means that basically 10 percent of the lot
19 occupancy would be about 150 feet. So we have about 150
20 square feet to play with. You could do a 10 by 15 deck with
21 a stairway down from that that does not count, and you'd be
22 within the 70 percent.

23 The reason I'm pressing this issue is that, you
24 know, you're making a good case for the uniqueness of the
25 property and the lack of impact from this development;

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1 however, I'm having a hard time accepting that this, that the
2 unique situation creates a practical difficulty because if
3 you can do it at 70 percent, the threshold is not a variance.

4 You don't have to demonstrate the practical
5 difficulty. You basically are just in the area of no
6 substantive impact and so the Special Exception test, I think
7 in this case, is easily met but the variance test, I think,
8 is not easily met and so I, you know, I think you have to
9 prove to us that a 70 percent solution absolutely does not
10 work and I'm not hearing that in what you're testifying to.

11 MR. MORRIS: I think also the, it's about 70
12 square feet we have to play with because it's actually 62
13 percent existing and, not to pick the small details, but it
14 does get really down to it and, but I also, I'd have to --
15 the requirement for the exception, including a small deck.
16 I mean, it's basically around the stairs down a grade, which
17 is the exception in the regulation, because we've used it
18 many times, but I believe it's from the main entrance level
19 of the house.

20 COMMISSIONER MAY: The main entrance? The main
21 entrance, though, of the house is on the second floor.

22 MR. MORRIS: It's actually at the first floor.

23 COMMISSIONER MAY: No. It's not. I know these,
24 I know this development. I, I've watched it be built. I
25 live in the neighborhood.

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1 MR. CHUSLO: He's correct though. The main
2 entrance to the house is on the second floor in the front.

3 MR. MORRIS: Okay.

4 MR. CHUSLO: But, Commissioner May, if I may.
5 This is Steve Chuslo speaking. Our calculation was that we
6 knew that there would be a sensitivity about getting over 70
7 percent when we already had 63 percent taken, and we did work
8 on designs and very hard to try to come up with reasonable
9 ways that we could fall within that 70 percent, and while I
10 do not take issue with your analysis, I think I would like
11 the opportunity to basically show that we did take those
12 things into consideration and came up with designs that were
13 intended to be nominal but that everything that we did just
14 basically made the back yard, you know, that much less usable
15 and so if we were going to break and found that any other
16 design would take us over 70, then we decided to basically
17 build it in such a way that would make it, you know, fully
18 functional as you see the design.

19 So once it went over 70, we felt that it was
20 better to then take full use of the property in a meaningful
21 way that would really give us full use of the back yard
22 downstairs as well as obviously a screened-in deck coming off
23 that rear door. That wing would then be opened up to a new
24 door and become the ingress and egress from the kitchen.

25 COMMISSIONER MAY: Okay. Now I'm following the

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1 logic. You're making the point that I was trying to make,
2 which is that if you want to go above 70, you have to prove
3 that 70 wouldn't work. Right? Then you could not -- that's
4 where the practical difficulty comes from.

5 MR. CHUSLO: You tell me, we couldn't show that
6 70 would work, is my point. And so once we got over --

7 COMMISSIONER MAY: No. I tell you that -- let me
8 finish my point then.

9 MR. CHUSLO: Sure. I'm sorry.

10 COMMISSIONER MAY: You, in order to demonstrate
11 that you have -- that the exceptional circumstance creates
12 a practical difficulty, you have to show us your 70 percent
13 solution and explain why it does not work.

14 MR. CHUSLO: Okay.

15 COMMISSIONER MAY: So it's, I mean, that's just
16 me. I'm only one person on this Board. We'll see what
17 everybody else has to say. Mr. Chairman, I'm done with my
18 questions. Maybe others have questions.

19 CHAIRPERSON HILL: Does anyone else have a
20 question for the architect or applicant before I turn to the
21 Office of Planning?

22 VICE-CHAIRPERSON JOHN: So Mr. Chairman, my
23 questions were similar. It's, it's a beautiful design but
24 I don't understand why there couldn't be some sort of a
25 landing over a very narrow balcony that would make use of the

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1 space below. I'm not convinced that the fact that there are
2 air conditioning condensers under what could be the patio
3 area could not be used for living purposes and that's the
4 part I don't fully understand.

5 MR. MORRIS: Okay. Is that --

6 VICE-CHAIRPERSON JOHN: That's the question. If
7 --

8 CHAIRPERSON HILL: To the architect?

9 VICE-CHAIRPERSON JOHN: -- yes, to the architect.
10 Why wouldn't that be a workable solution within the 70
11 percent?

12 MR. MORRIS: Are you saying to relocate the air
13 conditioning units? I'm not quite sure I understand.

14 VICE-CHAIRPERSON JOHN: Let me ask the question
15 again.

16 MR. MORRIS: Sure.

17 VICE-CHAIRPERSON JOHN: These air conditioning
18 units take up the entire space in the back yard?

19 MR. MORRIS: No. They don't. The issue was more
20 noise from them than space.

21 VICE-CHAIRPERSON JOHN: Well, everybody has, a lot
22 of people have those units in their rear yard.

23 MR. MORRIS: That's true, but they don't have the
24 30-foot high walls that echoes the noise and the heat as
25 you're sitting adjacent to it and so that was part of the

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1 issue that the owner had was that it wasn't that great a
2 place to be when you're sitting next to them emitting heat
3 but then echoing off the basic three walls of the rear yard.

4 VICE-CHAIRPERSON JOHN: Okay. So how wide is the,
5 what's the size of that space?

6 MR. MORRIS: Well, it's triangular. So the
7 average width of the triangle is about 20 feet as it tapers
8 down to nothing and so it's about, from the house to the
9 fence, it's about 30 feet or so plus or minus because it
10 varies.

11 VICE-CHAIRPERSON JOHN: I'm just trying to get a
12 feeling for how much square feet, how many square feet of
13 living space would be in the yard?

14 MR. MORRIS: It's about 20 by 30 average because
15 it's not a square and that's a --

16 VICE-CHAIRPERSON JOHN: Right.

17 MR. MORRIS: -- it's a trapezoidal.

18 VICE-CHAIRPERSON JOHN: Yes.

19 MR. MORRIS: To give you an idea.

20 VICE-CHAIRPERSON JOHN: And so considering that
21 the average tiny townhouse is like 25 feet by 16, 17,
22 wouldn't you say that that is a lot of room?

23 MR. MORRIS: If there's room for it, it's more the
24 nature of the room that's there, that's closed in by almost
25 four sides.

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1 VICE-CHAIRPERSON JOHN: Okay. All right. Thank
2 you.

3 MR. MORRIS: Sure.

4 CHAIRPERSON HILL: Now I will turn to the Office
5 of Planning. Can the Office of Planning hear me? Mr.
6 Mordfin? Hello? Can you all hear me?

7 MR. CHUSLO: Yes.

8 CHAIRPERSON HILL: Okay. Office of Planning? Mr.
9 Mordfin? Hello, can you hear me? Do we have Mr. Mordfin?

10 MR. YOUNG: He's on. He's showing not muted.

11 CHAIRPERSON HILL: Oh. I don't, okay. Mr.
12 Mordfin, maybe you're muted? Mr. Mordfin? Okay. All right.
13 I'm going to -- Mr. Young, is there anyone here who is
14 wishing to testify?

15 MR. YOUNG: We do not.

16 CHAIRPERSON HILL: I mean, I see the Office of
17 Planning's report and I'm, you know, reading through it. I
18 guess it's like where we are with this. Let's see.

19 Okay. I mean, I guess, Mr. Commissioner May, you
20 have had some questions for the Office of Planning, correct?

21 COMMISSIONER MAY: I would be interested in their
22 perspective on the practical difficulty question, but
23 regardless, I think, you know, I'll want to see photo
24 information from the applicant about the 70 percent solutions
25 that they looked at.

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1 CHAIRPERSON HILL: Okay. Ms. John, where are you?
2 Are you with Commissioner May?

3 VICE CHAIRPERSON JOHN: Mr. Chairman, I was
4 looking at the Office of Planning's report again and looking
5 at the shape of the property. And thinking that the other
6 issue that I don't think was stressed a lot in the Office of
7 Planning's report is that the apex of the triangle being
8 landlocked for all -- Well, first of all, there doesn't
9 appear to be an alley there. And there's not much light and
10 air getting into the property because of the shape. And so
11 maybe elevating the living space would allow light and air
12 and make a nice solution to place all of the recreational
13 space, you know, in the yard might not be such a good idea
14 because there's no air getting into the property, just sort
15 of looking at it. So I would like to hear from the Office
16 of Planning, I guess. So I don't know where I am.

17 CHAIRPERSON HILL: Okay. I thought I had somebody
18 there for a second.

19 MR. MORRIS: Mr. Chairman?

20 CHAIRPERSON HILL: Yes.

21 MR. MORRIS: This is Mr. Morris. I can offer to
22 read that paragraph from OPs report if you wish.

23 CHAIRPERSON HILL: That's okay. That's okay. I
24 appreciate that, Mr. Morris.

25 MR. MORRIS: Okay.

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1 CHAIRPERSON HILL: We actually had some specific
2 questions of the Office of Planning.

3 MR. MORRIS: Yes. Yes.

4 CHAIRPERSON HILL: Let me do this -- Yeah, let me
5 do this. All right. I'll tell you what, Mr. Young, can you
6 hear me? See if you can get Mr. Mordfin on the line. I'd
7 rather just -- rather than just keep trying -- you guys seem
8 to be having bad luck. So let's go ahead and we're going to
9 close this portion of the hearing in the record. Sorry, you
10 guys. Cause I know at least you've got a better shot if we
11 can talk to the Office of Planning now. I mean I'm kind of
12 comfortable with the application. So I've got to say that
13 for whatever that's worth. And so -- But I know that my
14 colleagues want to have more discussion with the Office of
15 Planning. So let me go ahead and let Mr. Young try to find
16 the Office of Planning. And you guys, we'll just keep
17 popping back and forth. We'll see what happens the next
18 time. Mr. Morris, stay on the line. Okay? Mr. Chuslo, you
19 as well. Okay?

20 MR. CHUSLO: Yes, sir.

21 CHAIRPERSON HILL: All right. Mr. Hamala, if you
22 would go ahead and call our next -- Well this is my plan, you
23 guys. We'll do the next case. We'll take a break and then
24 we'll come back. Okay? So Mr. Hamala, if you'd call our
25 next case please.

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1 MR. HAMALA: Our next case is Application No.
2 20761 of Gail Reed. And this is an application for a special
3 exception pursuant to Subtitle D, Section 206.4, Subtitle D
4 5201, and Subtitle X901.2 from the rear addition requirements
5 of Subtitle D306.3. This application is from the Zoning
6 Administrator and is a project for a one-story rear addition
7 to an existing two-story, semi-detached principal dwelling
8 unit in the R2 Zone. And the property is located at 2205 S
9 Street Southeast, Square 5627, Lot 80.

10 CHAIRPERSON HILL: Okay. Let's see. Is it Ms.
11 Scudder?

12 MS. SCUDDER: Not that fancy, just Scudder.

13 CHAIRPERSON HILL: Scudder. Okay, Ms. Scudder.
14 Let's see. Okay. If you could please introduce yourself for
15 the record please.

16 MS. SCUDDER: Sure. My name is Traci Scudder.
17 I'm with Scudder Legal. I'm speaking on behalf of the
18 Applicant today. I have offices at 137 National Plaza, Suite
19 220 at the National Harbor.

20 CHAIRPERSON HILL: Okay, great. Okay. Ms.
21 Scudder, if you can go ahead and walk us through your
22 client's application. And I'm going to give you 15 minutes
23 on the clock there. And you can begin whenever you like.

24 MS. SCUDDER: Sure. Good afternoon to the Chair
25 and members of the BZA. Again, my name is Traci Scudder and

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1 I'm representing Ms. Gail Reed this afternoon. The subject
2 property is located at 2205 S Street Southeast. The property
3 is zoned R2. And the lot is improved by a two-story brick
4 semi-detached single family dwelling. The lot has an area
5 of 2,500 square feet.

6 I think this case is pretty straight forward. The
7 Applicant is requesting a special exception pursuant to
8 Subtitle 10, Chapter 9 to permit the construction of a two-
9 story rear addition at the rear of an existing two-story
10 brick row house, extending more than 10 feet beyond the
11 farthest rear wall of the adjoining principal residential
12 buildings on the properties adjacent in the R2 zone.

13 So this addition would be built on the east side
14 property line and it's going to extend 14 feet past the rear
15 wall of the adjoining neighboring building to the east. This
16 is 4 feet beyond, as you all know, the 10 foot maximum
17 requirement. So the Applicant is requesting just a
18 difference of 4 feet here, which will allow the proposed rear
19 addition to extend that additional 4 feet. Right now the
20 residence contain 612 square feet. But once the addition is
21 built, the proposed two-story addition will be 756 square
22 feet and that's for both levels. So the house after the
23 addition will be a total of 1,368 square feet. The proposed
24 rear addition will not result in a lot occupancy that exceeds
25 the 40 percent maximum.

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1 This special exception is in conjunction with a
2 building permit -- building permit No. B2106236. And it was
3 during that building permit process that the Applicant, Ms.
4 Reed figured out that she needed a special exception. It was
5 one of the comments that she got back on her building permit.
6 So that's what brings us here today. Ms. Reed, she bought
7 her house in 1980. And over the years, she has made various
8 improvements to the property in order to increase the comfort
9 and livability of the property with the goal in mind of aging
10 in place within the District of Columbia.

11 So initially the application that we submitted was
12 for a one-story rear addition, but subsequently and prior to
13 this hearing today, Ms. Reed found herself in a position
14 where she could afford to make the addition actually two
15 levels. So we recently submitted a revised burden of proof
16 and other documents to update the application. And Ms. Reed
17 originally met with her ANC on Tuesday, June 1st to present
18 her plans to the members, which they approved. And I believe
19 there is a letter in the record to that effect. She did
20 attend a second meeting here recently just to apprise the ANC
21 of her new plans to build two stories with her addition. And
22 that meeting was held on Tuesday -- just this past Tuesday,
23 July 5th. And the ANC did vote to approve her revised plans.

24 I don't know if the ANC, Mrs. White has -- I
25 believe she was going -- I think she reached out to staff to

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1 let you all know that the ANC had voted to approved her
2 revised plans -- Ms. Reed's revised plans. And she was going
3 to submit an updated letter. And Ms. Reed has also provided
4 five letters of support from her neighbors, including the
5 neighbors on each side of her home.

6 So with that, I don't really have anything else
7 to say. I'm happy to answer any questions that any of the
8 board members may have. I just noted that we did submit into
9 the record a burden of proof, which demonstrates that we are
10 meeting the requirements for a special exception. So with
11 that being said, we respectfully request approval of this
12 application.

13 CHAIRPERSON HILL: Okay, great. Thank you, Ms.
14 Scudder. Let's see. Does the Board have any questions for
15 the Applicant? Okay. I'm going to turn to the Office of
16 Planning.

17 MS. THOMAS: Good afternoon, Mr. Chair and members
18 of the Board. Karen Thomas with the Office of Planning. The
19 Office of Planning will stand on the record of approval of
20 this application even though there was a change from one-
21 story to two stories. We did not see any -- at least I did
22 not see any adverse impact that would change our
23 recommendation of approval. And with that, I'll rest on the
24 record of our report. Thank you.

25 CHAIRPERSON HILL: Thanks, Ms. Thomas. Okay,

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1 let's see. Anybody have any questions for the Office of
2 Planning? Mr. Young, is there anyone here wishing to speak?
3 All right. Ms. Scudder, is there anything you'd like to add
4 at the end?

5 MS. SCUDDER: No. I would just check my client,
6 Ms. Reed. Ms. Reed, is there anything that you would like
7 to add?

8 MS. REED: No, thank you.

9 MS. SCUDDER: Okay.

10 CHAIRPERSON HILL: Okay, good. All right. I'm
11 going to go ahead and close the hearing in the record. Mr.
12 Young, if you could please excuse everyone.

13 Okay. These 10 foot extension things, I think are
14 kind of interesting. And I guess since Commissioner May is
15 still on the commission, I wonder if they're ever going to
16 change this thing a little bit. I don't know. Like, you
17 know, the 10 feet, beyond the 10 feet. But you know, we get
18 these a lot. I'm glad to see that -- I mean I'm comfortable
19 approving this. I believe they're meeting the criteria for
20 us to approve this. I'm glad to see that the neighbors,
21 they're the ones that I'm usually most concerned about when
22 it goes beyond the 10 feet because they're the ones that are
23 most immediately affected. I did not see any issues
24 concerning this particular application. So I will be voting
25 in favor. Even though we don't have an updated ANC report,

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1 I can -- I would take the testimony that was provided by the
2 Applicant's representative in terms of the additional second
3 story being approved by the ANC.

4 Mr. Blake, do you have anything you'd like to add?

5 MEMBER BLAKE: No. I agree with you. I
6 definitely think this is a great addition to the house. It
7 will really make a big difference in terms of the use of
8 space. I will be in voting in favor of the application. The
9 burden of proof has been met, I believe. You've got a
10 relatively large lot size and a large related rear yard even
11 after this addition of 29 feet. You've got good side yard
12 setbacks. And the height of the addition even with the
13 second story is still below, you know, less than the 40 foot
14 maximum. The fenestration design are good and they also do
15 provide the privacy for the adjacent properties. And I don't
16 think that this would be out of character with the -- with
17 the alley properties as there are also similar additions
18 along the block and the square.

19 So I believe it's in line with the zoning
20 regulations and I would be voting in favor. Again, great
21 weight to the Office of Planning, DDOT, no objections. And
22 again, as you pointed out with the ANC being on board -- I
23 will not be able to give that great weight, I guess with the
24 revised version. But I will be in support of the
25 application. And again, noting the neighbors support.

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1 CHAIRPERSON HILL: Thank you, Mr. Blake.
2 Commissioner May?

3 COMMISSIONER MAY: Once again, I have nothing to
4 add. Thank you very much for both of your comments. I
5 agree.

6 CHAIRPERSON HILL: Thank you, Commissioner. Vice
7 Chair John?

8 VICE CHAIRPERSON JOHN: Thank you, Mr. Chairman.
9 I'm in agreement. I would just add or emphasize that this
10 application is for an additional 4 feet beyond what's
11 required by -- allowed. And I don't think that the 4 feet
12 would provide any additional -- cause any additional adverse
13 impact on light and air or privacy beyond the fire --
14 addition. So I would support the application and endorse
15 everything that's been said so far.

16 CHAIRPERSON HILL: Thank you. I'm going to make
17 a motion to approve Application No. 20761 as captioned and
18 read by the Secretary. And ask for a second, Ms. John?

19 VICE CHAIRPERSON JOHN: Second.

20 CHAIRPERSON HILL: The motion made and seconded.
21 Mr. Hamala, if you could please take a roll call.

22 MR. HAMALA: Please respond with a yes, no, or
23 abstain. Chairman Hill?

24 CHAIRPERSON HILL: Yes.

25 MR. HAMALA: Vice Chair John?

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1 VICE CHAIRPERSON JOHN: Yes.

2 MR. HAMALA: Mr. Blake?

3 MEMBER BLAKE: Yes.

4 MR. HAMALA: Mr. May? And with one member not
5 present and not participating, staff would record the vote
6 as 4-1-0 to approve the application with the motion made by
7 Chairman Hill, seconded by Ms. John. And with Mr. Blake and
8 Mr. May in support of the motion.

9 CHAIRPERSON HILL: Okay, great. Let's see. All
10 right. Okay. Let's go ahead and take a quick break. Does
11 that sound fair? And then we'll come back in a few minutes.
12 Thank you.

13 (Whereupon, the above-entitled matter went off the
14 record at 2:05 p.m. and resumed at 2:14 p.m.)

15 MR. HAMALA: Yes, sir. And I want to make one
16 correction for the record for previous case. I read the vote
17 off as 4-1-0. There was no member voting in opposition. It
18 was 4-0-1. And with that, the Board has now recalled Case
19 20758, application of Steven Chuslo.

20 CHAIRPERSON HILL: Okay. Mr. Chuslo, can you hear
21 us?

22 MR. CHUSLO: Yes, sir. Loud and clear.

23 CHAIRPERSON HILL: Thank you. Mr. Morris, can you
24 hear us? Mr. Morris? Mr. Morris? Mr. Mordfin, can you hear
25 us? Wow. Mr. Chuslo, you've just got a bad luck case. Mr.

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1 Mordfin, can you hear us? Mr. Mordfin, I can see you. Mr.
2 Mordfin is no longer muted, so he should be able to -- Mr.
3 Mordfin, can you hear us? Mr. Morris -- Can you text Mr.
4 Morris, Mr. Chuslo and see if --

5 MR. CHUSLO: Yes, sir.

6 CHAIRPERSON HILL: -- he's around? Okay. Mr.
7 Mordfin, no luck, huh? Nope, still can't hear you.

8 MR. YOUNG: You might need to go to your audio and
9 video settings and make sure that you're using the correct
10 microphone with that headset.

11 CHAIRPERSON HILL: Mr. May, if you're trying to
12 say something, I can't hear you. You're also on mute.

13 COMMISSIONER MAY: Mr. Mordfin should dial in as
14 well.

15 CHAIRPERSON HILL: I know. I'm about to go to
16 that one too. Mr. Mordfin, go ahead and give a shot dialing
17 in at the 202-727-5471 number. And we'll just wait it all
18 out. Mr. Chuslo, did you find Mr. Morris?

19 MR. CHUSLO: Yes. He actually was seeing the
20 video and was wondering why he wasn't being heard on his
21 telephone. He said he would call back in again.

22 CHAIRPERSON HILL: Okay, all right. We'll keep
23 trying.

24 MR. CHUSLO: I don't see him listed as a panelist.

25 CHAIRPERSON HILL: Yeah, they'll find him.

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1 MR. CHUSLO: Okay.

2 MEMBER YOMI-AJAYI: He is on as a panelist. He's
3 the call-in user.

4 CHAIRPERSON HILL: Yes, I see him. Thank you.

5 MEMBER YOMI-AJAYI: He just needs to unmute from
6 his phone. I think it's *6.

7 CHAIRPERSON HILL: *6, Mr. Morris. *6, Mr.
8 Morris.

9 MR. MORDFIN: Yes. Yes.

10 CHAIRPERSON HILL: Mr. Mordfin, wonderful. Can
11 you introduce yourself for the record please?

12 MR. MORDFIN: Yes. Good afternoon. I'm Stephen
13 Mordfin with the Office of Planning.

14 CHAIRPERSON HILL: Great. So Mr. Mordfin, it
15 seems as though, I don't know if you had an opportunity to
16 hear some of the questions that it seems like some of my
17 board members had, in particular, Commissioner May.
18 Commissioner May, is there a question specifically for Mr.
19 Mordfin?

20 COMMISSIONER MAY: If you didn't hear the entire
21 debate before, the key question is whether -- is how the
22 uniqueness of this site actually make for a practical
23 difficulty. Because it does seem that there's a solution
24 that 100+ square feet of, you know, development that could
25 happen with a deck or an enclosed porch or something like

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1 that with a stairwell down to the lower level, that would all
2 be within the 70 percent. What I'm having trouble with is
3 meeting the practical difficulty part of the variance test.

4 MR. MORRIS: Right. And the way OP had looked at
5 this is it has to do with also the internal layout of the
6 house or the row house in terms of getting into the kitchen.
7 And through this design, it just facilitates the use of that
8 area outside much better than if you had to design around
9 that. And that is the reason that we felt that there is
10 something peculiar or exceptional practical difficulty that
11 results in this. And so therefore, we found that it does
12 meet that specific criteria.

13 COMMISSIONER MAY: But again, what I have trouble
14 with is that the -- if we look at the plan, the enclosed
15 porch is 12 feet by probably, I don't know 18 or 20 feet.
16 I mean granted you couldn't have as large of space, but you
17 could have a 10 by 10 deck right off of the kitchen. It
18 could be an enclosed porch and then you could have, you know,
19 a landing or a stairwell coming down from that without
20 interfering with the use of the space below, just along the
21 wall on the north side. It seems to me that, that -- you
22 know, that would be easy to approve as a special exception.
23 What I don't understand is how the uniqueness of the site
24 demands that they built 300 square feet of porch and deck.

25 MR. MORRIS: Well I mean granted, they could build

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1 something smaller. But in terms of something that's
2 accessible and off the kitchen and providing access to the
3 ground, in our opinion, we saw that their solution to the
4 design of this deck was acceptable and met that criteria.

5 (Simultaneous speaking.)

6 MR. MORRIS: -- it is on the second floor.

7 COMMISSIONER MAY: Yeah. But you could -- I mean
8 you could have a deck off the kitchen and still be under 70
9 percent. I guess we should just move on to my other
10 question, which is if -- you know, if they build a porch.
11 Say they built, you know, some smaller porch and then they
12 had a landing and stair coming off of that, going to the
13 ground floor. The landing and stair don't contribute to the
14 lot occupancy. Correct?

15 MR. MORRIS: Right. That's my understanding.
16 Although to confirm, just, you know, that would have to go
17 to the Zoning Administrator because I can't speak for him.

18 COMMISSIONER MAY: Sure. Okay. That's it for my
19 questions. Thank you.

20 CHAIRPERSON HILL: Okay. Anyone else for the
21 Office of Planning? Okay. Is there anyone wishing to speak,
22 Mr. Young? Okay. Does anybody -- There's been a lot of
23 problems technically with this. Does anybody have any
24 questions for anyone? I'm looking at fellow board members.
25 Okay. All right. I'm going to go ahead and close the

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1 hearing in the record. Mr. Hamala, if you could please --
2 and Mr. Young, excuse everyone. Oh, sorry. Don't excuse
3 everybody. Ms. John?

4 VICE CHAIRPERSON JOHN: Am I on mute? Am I on
5 mute? No, I am on mute. I was just wondering because so
6 much has happened, have we asked the Applicant if they had
7 any final comments?

8 CHAIRPERSON HILL: Yeah, sure. I don't mind. Mr.
9 Morris, can you hear me? Mr. Chuslo? No. Mr. Morris --
10 Well, Mr. Chuslo, you can't -- I mean I don't know where we
11 are with this. Like I mean I think there was -- and I guess
12 I can go around more. I mean Commissioner May had been
13 interested in seeing something else. And I don't know
14 whether or not he still is or what's going on. But now he
15 just raised his finger. So Commissioner May?

16 COMMISSIONER MAY: Well, I would not be able to
17 support the variance application without the Applicant
18 demonstrating that their 70 percent solution would not -- you
19 know, would not be workable. Right? The 70 percent -- going
20 to 70 percent is not a problem. Going above that, again, I
21 don't see the practical difficulty. But if they could prove
22 that practical difficulty by demonstrating that they looked
23 at a 70 percent solution and it doesn't work, then maybe I
24 could be persuaded. Now that's where I stand. If the other
25 three of you are ready to support this, then I'll just vote

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1 against it. And then -- you know, then we finish the case.

2 CHAIRPERSON HILL: No, I got you. So I don't know
3 where everybody is. So Mr. Blake?

4 MEMBER BLAKE: Yeah. Commissioner May, when you
5 said workable, what does that mean?

6 COMMISSIONER MAY: Well, I think it's perfectly
7 reasonable that they would have to have some sort of living
8 space off of the living floor where the living room is, where
9 the kitchen is. And you know, having a -- you know, 10 by
10 10 deck with a stairway down to the ground floor, I think
11 would be adequate to provide that living space. And I think
12 that's -- that's what I would mean by workable. Something
13 that, you know, that's adequate to give them, you know, a
14 space to sit, a space to have a barbecue grill or whatever,
15 but not necessarily a 12 by 20 enclosed porch and then
16 another 8 by 10 upper deck. I think that's -- that's a lot
17 of space. And it's not -- you know, the -- I don't see why
18 that is the necessarily solution.

19 MEMBER BLAKE: I have a question for Mr. Chuslo.
20 Would that definition of workable be consistent with your
21 definition of workable? And to the extent that it is, is a
22 smaller deck feasible?

23 MR. CHUSLO: Thank you for asking, sir. We did
24 take a look and were aware that this was going to be one of
25 the key issues of this discussion. Another architect who's

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1 working with me basically is the one who put that beautiful
2 design together that we submitted for the pictures. He has
3 also taken a look to see how it realistically could be done
4 to try to be inside the additional 7 percent that we have to
5 work with since we're already at 63 and quite frankly,
6 workable and obviously is they eye of the beholder. But a
7 small deck with a staircase off to the side and basically
8 just giving us really access down to the ground as opposed
9 to functionality right off the door, we didn't view as
10 workable. Why not just put, you know, an emergency staircase
11 out the back if we need to just get downstairs and had to go
12 straight down. I mean that's -- that is -- It's kind of one
13 or the other.

14 And it seemed to us that workable wasn't one in
15 which doing something much smaller with a staircase off to
16 the side was workable. And I will tell you that we didn't,
17 you know, bend. As a result, give a beautiful to something
18 that's taking full advantage of that yard, its uniqueness,
19 the fact that it's tucked away. This affects no one else.
20 But we always knew that this was a threshold that we needed
21 to discuss. And I believe that this functionality now is one
22 that will definitely make this back yard functional and
23 workable and one that I will use and my family will. Right
24 now, it is just a causeway for trash and ingress and egress
25 from the parking lot. That's all it's really good for.

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1 CHAIRPERSON HILL: Ms. Johns, again I don't need
2 anything else. I completely understand Commissioner May --
3 it's so weird in this virtual world. I completely understand
4 Commissioner May's discussion. I'm happy to get more
5 information for Commissioner May to see if this might work
6 out -- I'm sorry -- to see whether we might be able to garner
7 his support. I'm able to vote on this. And I'm happy to put
8 it off as well either way. Mr. Blake, are you ready to vote
9 on this today or would you like to get more information? And
10 Mr. Chuslo, if you could put yourself on mute or whoever's --
11 maybe Mr. Morris, if you can mute yourself. Mr. Blake, are
12 you able to vote today or would you like more information?

13 MEMBER BLAKE: No, I can vote today.

14 CHAIRPERSON HILL: Vice Chair John?

15 VICE CHAIRPERSON JOHN: I'm struggling because I'm
16 not -- I'm trying to see what would provide workable living
17 space on the -- on the second floor, something smaller. I
18 don't like the suggestion of 10 by 10 cause I don't believe
19 that, that's practical. So I'm struggling. Yeah. I don't
20 think it needs to be just -- I mean I think a walkway's
21 pretty functional. But if the idea is to provide living
22 space, then I could support something larger, which might be
23 closer to the 70 percent. But I could vote today.

24 (Simultaneous speaking.)

25 VICE CHAIRPERSON JOHN: -- if you and Mr. Blake

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1 could vote, then I can see where I am. Tell me where you
2 are. I could go either way, just so you know.

3 CHAIRPERSON HILL: I think you've got 2 in favors
4 right now and you've got 1 no. And you're the deciding
5 factor at this particular --

6 VICE CHAIRPERSON JOHN: Is Mr. Blake in favor?
7 I didn't hear Mr. Blake say he was in favor.

8 MEMBER BLAKE: This is for Commissioner May. I
9 have a question for you. This is for Commissioner May. If
10 this were -- It's a variance, it's a variance, it's a
11 variance. So the logic behind this was they would be -- if
12 you're going to go for the variance, go all the way. If it's
13 still a variance and it's not all the way, is it more
14 palatable or is it just -- It just doesn't make the case?
15 Because there's some balance in-between that could make it
16 work.

17 COMMISSIONER MAY: No, I understand that. I agree
18 a variance is a variance. Right? And so if you can't make
19 it work at 70 percent, then I think what they are proposing,
20 you know, could be quite reasonable. Certainly, you know,
21 given the overall size of the yard, it's not -- it's not
22 extreme and it doesn't have any impacts on the neighbors.
23 And so you know, what they're proposing could be fine. The
24 problem is that, you know, the -- I believe -- and you know,
25 I'm cursed with being an architect myself -- that you could

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1 design a deck that's up to -- I mean based on the
2 calculations they provided -- up to 120 square feet of actual
3 occupiable space. And you know, so I said 10 by 10. It
4 could be 10 by 12. But any case, that's pretty sizable. And
5 you know, that's the size of many, many a porch or enclosed,
6 you know, outdoor space or deck. And is possible to have a
7 table and chairs and it is possible to have a barbecue grill
8 and things like that, that you would normally expect to have
9 outside there. Yeah, it doesn't given you space for lounge
10 chairs as well, though I don't know why anybody would be
11 lounging out there. And you know, don't forget, there is
12 another balcony space off the other side of the living space.
13 It's, you know, closer to the street, but that's more like
14 a front porch. I'm just not convinced that going over 70
15 percent is necessary or in this case, justified. Now if it
16 were -- if all you could get was like a 6 by 8 or something
17 like that, yeah, I would say that's not practical. But we're
18 talking about 10 by 12. I think that's perfectly --

19 VICE CHAIRPERSON JOHN: So I wanted to ask the
20 architect. Is 8 by 12 feasible? I'm concerned about the
21 length. Do we need --

22 CHAIRPERSON HILL: I know Mr. Morris is there.
23 Mr. Morris, are you there?

24 VICE CHAIRPERSON JOHN: No this is -- this is Mr.
25 -- I'm sorry -- Mr. May -- Commissioner May.

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1 CHAIRPERSON HILL: Oh.

2 VICE CHAIRPERSON JOHN: They're saying 10 by 12.
3 Okay.

4 COMMISSIONER MAY: Yeah, I said 10 by 12. Maybe
5 you can -- If you go down anymore, it's hard to have a place
6 to sit.

7 VICE CHAIRPERSON JOHN: But with an 8 foot wide --

8 COMMISSIONER MAY: Yeah. Eight foot of width,
9 it's hard to have a seated table. You can do it. It would
10 have to be small. The table would have to be narrow. You
11 might want to put built-in benches around it so it's more
12 like a -- like a breakfast nook kind of thing. I mean I have
13 a breakfast nook in my house, which is perfectly reasonable
14 seating and the space is only 7 feet wide. So yeah, you
15 could do something like with a built-in. But it's not really
16 a great thing to have it built in like that. It's better to
17 have a deck with free-standing table and chairs. And so 10
18 feet of width is good.

19 VICE CHAIRPERSON JOHN: All right. So I was just
20 going to add one thing. Okay. So the only reason I'm
21 considering maybe approving this is because of the
22 claustrophobia of the three walls ending in an apex. If this
23 were a typical lot, I wouldn't even consider it. But I'm a
24 little persuaded that given the space they're working with,
25 it might not be practical. I could be persuaded there just

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1 because of the fact that this lot is so oddly shaped. So
2 that's sort of where I am. Yes, Mr. Chairman.

3 CHAIRPERSON HILL: Well I was just going to say,
4 why don't we just go ahead and deliberate and then let's see
5 what we get. And if need to come back and open this up
6 again, we can come back and open this up again and/or we can
7 like, you know, have Mr. Smith comment. Right?

8 VICE CHAIRPERSON JOHN: Okay.

9 CHAIRPERSON HILL: So let's see. All right. Mr.
10 Chuslo, I guess you heard everything. And Mr. Morris, are
11 you there? All right. So Mr. Chuslo, do you have anything
12 you'd like to add at the end?

13 MR. CHUSLO: No. I very much appreciate this
14 deliberation and all of these good comments. And I really
15 hope that you all can see it my way that this is a reasonable
16 request. And I will be taking very seriously, all of the
17 problems and components necessary for approvals. And I
18 believe and hope that we've met the test.

19 CHAIRPERSON HILL: Okay, thank you. I'm going to
20 go ahead and close the hearing on the record. If you can
21 please excuse everyone, Mr. Young.

22 PARTICIPANT: Oh, Jesus Christ.

23 (Laughter.)

24 CHAIRPERSON HILL: Oh, I love that we know who
25 that was. That's great. Okay. The transcriptionist will

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1 even know who to put that down for. That's wonderful. Okay.

2 So to begin with, I couldn't even -- the phone
3 call thing, the audio thing, whatever. Like I know where we
4 usually always are with this. We always seem to talk about
5 again, this is an area variance, not a use variance. Okay?
6 So there's practical difficulty also where we can kind of
7 like take into consideration. It is -- is a weird little
8 courtyard. Right? You've got walls. You're completely
9 surrounded by stuff. Right? I agree maybe it could be a
10 little bit smaller and what have you.

11 But I do think that they are needing -- you know
12 and I think that the Applicant actually -- it sounds like
13 they didn't actually pay attention to the criteria. Right?
14 They knew that there were three prongs. They tried to make
15 the argument of the three prongs. You know, and since they
16 did get an architect from the Commission today, which is
17 Commissioner May, it's the luck of the draw. Right? If we
18 got a different person who wasn't an architect, you wouldn't
19 have -- we wouldn't have -- we wouldn't have as much of a
20 resource. Which is not to say that, that's not true. This
21 is a resource. Right? And Commissioner May is a resource
22 that we have on the Board today.

23 However, I as a lay person -- I think they're
24 meeting the criteria. I think it is a weird freakin' thing
25 to be even trying to live back there. And you know, there's

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1 no light. There's nothing, right, that can make it
2 worthwhile to make it back there. As Commissioner May said,
3 why would you even want to be back there? Yeah. Why would
4 you even want to be back there?

5 So, you know, I'm perfectly comfortable with what
6 the Office of Planning's analysis is in this particular case.
7 I think again, it's a area variance, not a use variance. So
8 I'm going to be voting in favor for the reason that I think
9 they meet the criteria for us to grant the application. And
10 again, I know that we normally take -- and we do. We really
11 do look at the criteria. And if this were like, you know,
12 beautiful sky all around and they wanted a little bit more
13 deck space, we'd be like no. Okay? So that's my vote.

14 I'm going to turn to Commissioner -- I'm sorry,
15 not Commissioner -- to Mr. Blake to hear your thoughts.

16 MEMBER BLAKE: Thank you very much. That's a
17 really good analysis of it. You know, in looking at the
18 prongs of the test, this is a very challenging analysis in
19 terms of the practical difficulty. It's an odd-shaped lot,
20 but it's a big deck. And you probably could get something
21 in there. But the way I look at it, this is a situation
22 where you have somewhat of a lemon in the way this is
23 designed. And this does turn it into lemonade. It makes the
24 very best of a situation that's suboptimal. It is an odd
25 little space with those walls on either side. It's not as

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1 though you've created a great view by doing the deck, but you
2 did create a better flow. And it's a much more attractive
3 and comfortable property.

4 The addition -- if you added a smaller deck could
5 be good. And I think it probably could provide some offset.
6 But I think this is a reasonable design and very attractive.
7 And again, it turns lemon into lemonade. Therefore, I would
8 agree with you that it meets the standard of practical
9 difficulty. And I will be voting in favor.

10 CHAIRPERSON HILL: Okay. Commissioner May.

11 COMMISSIONER MAY: Sure. So I'll try not to be
12 too repetitive. But I do believe that there is a way to
13 solve this that meets the special exception criteria. And
14 it's -- I mean I think that, that is easily approvable as a
15 special exception. But when you get above 70 percent, you
16 have to prove that there is a practical difficulty. That
17 there is some inherent flaw in the property that makes it not
18 necessarily impossible, but much more difficult to make full
19 use of their property. I don't think that they have made that
20 case. And I think that they might be able to if they were
21 to present some of the designs that they had looked at that
22 would meet the 70 percent threshold so that we could
23 understand why those solutions do not work, but you know,
24 they have not presented that information. So that's why I
25 was seeking more information. If they were able to present

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1 something that made the case that there really was some
2 practical difficulty with having only a 10 by 12 deck with
3 a landing and a stair, you know, then maybe they could --
4 maybe they could convince me. But they have not given me the
5 information to convince me that it makes sense.

6 I would also add that, you know, when you have
7 this very oddly shaped yard with the very odd enclosing walls
8 like that, it's not an automatic that, you know, building out
9 that second floor is going to make, you know, the entire new
10 yard space unbalanced, a better place. Right? They're
11 basically putting a roof over a third of the yard back there.
12 I'm not sure that's necessarily a good thing either. I think
13 that there are lots of things that could be done with
14 landscaping, including things that would help address the
15 challenge of having the air compressors in the back -- the
16 condensers. So anyway, I think I've said my piece. They
17 might be able to convince me that there's a practical
18 difficulty associated with this, but so far, they have not.

19 CHAIRPERSON HILL: Vice Chair John?

20 VICE CHAIRPERSON JOHN: So I'm still stuck on this
21 very odd lot and that it creates such a feeling of a canyon
22 back there that sort of makes the yard not very usable. And
23 I heard the Applicant say it would basically be a pass-
24 through to putting out that trash. And you know, I take that
25 seriously because -- Okay, so back to whether or there could

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1 be a smaller deck. And as the Chairman said, this is not a
2 use variance, it's a practical difficulty. And so in terms
3 of functionality given the space of the deck -- I'm sorry --
4 given the configuration of the -- of the property as OP
5 testified, I can see where a functional -- a more functional
6 deck would be more appropriate in this case. It's not the
7 best variance request I've ever reviewed. But frankly, I do
8 not like the shape of this property. It's so odd that it --
9 to me, it would be a waste of space -- usable space not to
10 provide a decent living area on that second floor.

11 So I hear Commissioner May and I hear the
12 architect speaking, but as a home owner always looking for
13 space that has light and air, I would think that the deck
14 that's been proposed is functional. So I would -- I would
15 go ahead and support this application.

16 CHAIRPERSON HILL: Okay. I'm going to make a
17 motion to approve Application No. 20748 as captioned and read
18 by the Secretary and ask for a second, Ms. John?

19 VICE CHAIRPERSON JOHN: Second.

20 CHAIRPERSON HILL: Motion made and seconded. Mr.
21 Hamala, if you could take the roll call please.

22 MR. HAMALA: All right. Yes, Mr. Chair. When I
23 call your name, please respond with a yes, no, or abstain.
24 Chairman Hill?

25 CHAIRPERSON HILL: Yes.

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1 MR. HAMALA: Vice Chair John?

2 VICE CHAIRPERSON JOHN: Yes.

3 MR. HAMALA: Mr. Blake? Mr. May?

4 COMMISSIONER MAY: No.

5 MR. HAMALA: And we have one member not present
6 and not participating. The staff would record the vote as
7 3-1-1 to approve the application. With a motion by Chair
8 Hill, seconded by Vice Chair John. And with Mr. Blake in
9 support of the motion.

10 CHAIRPERSON HILL: Okay, thank you. All right,
11 let's do this. Let's do this, the next case. Then we're
12 going to take a little mini break again because the last case
13 is going to take a little bit of time. Okay? So Mr. -- Does
14 that sound good? I guess. Nobody's saying anything wrong
15 to me. Okay. Mr. Hamala, can you call the next one, which
16 I think is 20762?

17 MR. HAMALA: Yes. Let's see here. The next
18 application is No. 20762 of Shahrzad Jalinous and Farhad
19 Jalinous. This is a self-certified application for a special
20 exception pursuant to Subtitle D 5201 and Subtitle X 901.2
21 from the rear yard requirements of Subtitle D 306.1. This
22 is a pergola addition in the rear yard of an existing two-
23 story attached principle dwelling in the R-1-B Zone. And the
24 property is located at 2804 34th Place Northwest, Square
25 1941, Lot 46.

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1 CHAIRPERSON HILL: Great, thank you. Ms. Wilson,
2 can you hear me? And if so, introduce yourself for the
3 record.

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

6 CHAIRPERSON HILL: Okay. Thanks, Ms. Wilson. Ms.
7 Wilson, I don't have anything particular for you when you
8 start this presentation. If you can again, highlight the
9 criteria for us to grant the relief requested and also the
10 project which your applicant is trying to put forward and
11 we'll see what questions the Board has for us. I see that
12 you have your slide deck. If Mr. Young, could pull that up.
13 And again, if you could be efficient, that would be helpful.
14 Thank you.

15 MS. WILSON: Certainly. It will be as brief as
16 possible. Thank you. If we could go to the next slide
17 please, Mr. Young. Great. So the property is located in the
18 R-1-B Zone District. The Applicant is proposing to construct
19 a pergola in the rear yard adjacent to the existing garage
20 structure. The rear yard requirement in this zone is 25 feet
21 and the pergola will be about 17 feet from the rear lot lying
22 to the west. So the Applicant is requesting a special
23 exception from the rear yard setback requirements of this
24 zone. Next slide please.

25 The neighbors had no objections. OP is

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1 recommending approval, DDOT has no objections, and ANC 3C
2 voted to support the application. Next slide please. This
3 just shows the property location. It's a relatively large
4 property. The current structures only occupy about 25
5 percent of the lot. Next slide please. This just shows the
6 existing structures. Next slide please.

7 This is a view of the rear yard facing north that
8 faces the rear yard and side yard. As you can see, the yard
9 is surrounded by a fence and landscaping. Next slide please.
10 And this is a view to the west and this is where the location
11 of the post pergola will be. It will not be visible from any
12 public ways, nor impact light and air and privacy due to its
13 location. Next slide please.

14 So this is the plat -- I do want to highlight the
15 yellow portion is the only portion we are requesting relief
16 for. The plat has a mistake where it says proposed garage
17 additions. That is already existing. So if the Board would
18 like and if it's possible, we would like to leave the record
19 open to submit an updated plat just removing the error that
20 says proposed garage and addition as that already exists.
21 The only portion we are requesting relief for now is the
22 yellow highlighted pergola. And as you can see, it's about
23 17 feet from the public alley to the west. And that is why
24 we're requesting rear yard relief. Next slide please.

25 This just shows the pergola. Next slide please.

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1 Next slide please. Next slide please. With respect to the
2 general special exception requirements, the proposal meets
3 it as the pergola is effectively a porch roof over a patio
4 in an internal location of the property, sheltered from view
5 by any other properties or from the alley. Next slide
6 please. And again, I already mentioned this. But to
7 reiterate, due to its internal location and the nature of the
8 pergola, the relief will not impact the light and air, nor
9 privacy of neighboring properties. And it will have no
10 impact on any scale, character, and pattern as it will not
11 be visible from the alley or street. Next slide please.

12 Oh, okay. That is the end of the presentation.
13 I'm happy to answer any questions.

14 CHAIRPERSON HILL: All right. Does the Board have
15 questions for the Applicant? Sure. Commissioner May.

16 COMMISSIONER MAY: You know, the site plan is very
17 confusing. And I appreciate you clarifying that the proposed
18 garage addition is not a proposed garage addition. But
19 already, there is an existing building -- the existing home
20 with attached garage is not informing. Right? Because it
21 doesn't have that rear yard.

22 MS. WILSON: Correct. There's, I think it's 4.5
23 -- about 4.5 feet of rear yard now.

24 COMMISSIONER MAY: Yeah. So it seems -- it seems
25 strange. It's already -- already there's not enough rear

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1 yard -- part of it, now we're decreasing some of the -- It
2 just seems a little strange. I'm not sure how -- how do you
3 -- you know, where you already have a property that it's
4 noncompliant for a rear yard because of the main house. And
5 it's -- I mean that garage is not exceptionally special
6 because it's attached to the main house. Right?

7 MS. WILSON: Yeah. It's all one building.

8 COMMISSIONER MAY: Yeah. Anyway, it just seems --
9 it seems rather odd. But I don't know whether I had much of
10 a question. It's a strange circumstance. It's also strange
11 that it faces on two sides. And this is almost like a front
12 yard. Right?

13 MS. WILSON: Mm-hmm. Exactly.

14 COMMISSIONER MAY: Yeah.

15 MS. WILSON: It has a strange location of the
16 house. And you know, it's only occupying, I think, even with
17 the pergola, 28 percent. So it's already nonconforming, so,
18 yeah, it's an interesting situation.

19 COMMISSIONER MAY: Yeah. And it has a big
20 building restriction language, which reduces the usability
21 of part of the property. So anyway, I don't have any
22 comments or any real questions. Thank you.

23 CHAIRPERSON HILL: Okay. Mr. Blake?

24 MEMBER BLAKE: The decision to use this particular
25 material and style of pergola has also contributed to this.

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1 Can you talk about why that was selected versus say _ moving
2 with the 24-inch spacing?

3 MS. WILSON: I am not 100 percent sure. My
4 assumption would be it offers more protection in the 24-inch
5 spacing. I don't think we would need relief if it was faced
6 that way. I think that's where the threshold is, yeah.

7 MEMBER BLAKE: That's what I'm saying. If we
8 didn't do this no -- this steel construction to do this, it
9 could be accomplished -- a pergola could be built very well
10 there. Is there a reason why this particular structure was
11 chosen? Did I say that wrong?

12 MS. WILSON: No, I'm not sure. I'd have to ask
13 the owners and they're not here. I'm not in touch with them
14 at the moment.

15 CHAIRPERSON HILL: Okay. I'll come back to Mr.
16 Blake if that didn't satisfy his question. Ms. John?

17 VICE CHAIRPERSON JOHN: So I have a question about
18 the relief. Is this an accessory structure in required rear
19 yard, which should answer, I believe, Commissioner May's
20 question. I was looking through my notes to see if I could
21 find that section. And I think it's 54.01.

22 MS. WILSON: Give me one minute here.

23 VICE CHAIRPERSON JOHN: I believe Mr. May, they're
24 saying that the rear yard is already 17 feet.

25 MS. WILSON: So the rear yard because of the

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1 existing house is 4.43 feet or something to that effect.
2 It's more obvious on the flat. But we're extending to this
3 side, so it's essentially increasing the nonconforming or
4 still extending -- And it is a rear yard, not an accessory
5 building request.

6 VICE CHAIRPERSON JOHN: Well, because DCRA says
7 it's a building, therefore it needs relief. Right? If it
8 were 24 inch slats, it would not need relief. So now it's
9 an accessory structure. So is it in the required rear yard?

10 MS. WILSON: Give me one second. I apologize.
11 I'm standing in for Mr. Sullivan. Give me one minute here.

12 VICE CHAIRPERSON JOHN: Okay.

13 COMMISSIONER MAY: Ms. John, if I could try to
14 answer.

15 VICE CHAIRPERSON JOHN: Yes.

16 COMMISSIONER MAY: I don't think it would be
17 considered an accessory structure is because it's attached
18 to the main building.

19 VICE CHAIRPERSON JOHN: Okay. It is attached,
20 yeah.

21 COMMISSIONER MAY: Yes.

22 MS. WILSON: Yes. Thank you.

23 VICE CHAIRPERSON JOHN: Thank you. So it would
24 be under the 52.01 --

25 (Simultaneous speaking.)

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1 MS. WILSON: Right. Which is -- yeah, we're
2 asking for -- yeah, relief from the 306.

3 VICE CHAIRPERSON JOHN: That answers it. Thank
4 you.

5 CHAIRPERSON HILL: Okay. I'm going to turn to the
6 Office of Planning.

7 MS. THOMAS: Good afternoon, Mr. Chair. Karen
8 Thomas for the Office of Planning. The Office of Planning
9 is recommending approval of this pergola. It's located on
10 a large property, albeit it's sited, you know, with the house
11 and in an odd space. But it should have no adverse impact
12 on any neighbor. So with that, we rest on the record of our
13 report.

14 CHAIRPERSON HILL: Okay, great. Anybody got any
15 questions for the Office of Planning? Mr. Young, is there
16 anyone here wishing to speak? Ms. Wilson, is there anything
17 you'd like to add at the end? Okay. Mr. Young, Mr. Hamala,
18 I'm going to close the record in the hearing. Please excuse
19 everyone. Thank you. Oh, wait. Oh, never mind. Go ahead.
20 Go ahead.

21 Okay. I didn't have any problem with this. I
22 thought that they're meeting criteria for us to grant the
23 relief requested. I understand the discussions that my
24 colleagues are having. I think the relief here is -- I think
25 the correct relief is before us. And I will be voting in

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1 favor. I would agree with the analysis that the Office of
2 Planning has provided, as well as DDOTs no objection, as well
3 as the support of the ANC and will vote in favor.

4 Mr. Blake?

5 MEMBER BLAKE: I believe the Applicant has met the
6 burden of proof to be granted the requested relief. The
7 pergola is essentially a porch with a roof over it. It's
8 nothing but a cozy, private space. Therefore, it really
9 won't have any impact on light, air, privacy, or providing
10 visual obtrusion to the neighboring properties. So for that
11 reason, I believe it's met the standards for 52.01. And as
12 far as it again is in harmony with the regulations. And I
13 don't think it will impact any of the neighbors. OP has
14 recommended approval, DDOT has no objection, and ANC 3C is
15 also in support. So with that, I would be in support of the
16 application as well.

17 CHAIRPERSON HILL: Thank you. Commissioner May?

18 COMMISSIONER MAY: Yeah. I'm generally
19 comfortable with what's happening here and the threshold for
20 relief is such that Applicant can easily meet it. But it is
21 -- it is sort of an odd property to interpret from a zoning
22 point of view. So I appreciate getting a little bit more
23 clarification on that.

24 CHAIRPERSON HILL: Vice Chair John?

25 VICE CHAIRPERSON JOHN: Thank you. I support the

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1 application. I believe it's fairly straight forward as
2 presented. And so I have no -- nothing to add.

3 CHAIRPERSON HILL: Okay. I'm going to make a
4 motion to approve the application No. 20762 as captioned and
5 read by the Secretary and ask for a second, Ms. John?

6 VICE CHAIRPERSON JOHN: Second.

7 CHAIRPERSON HILL: Motion made and seconded. Mr.
8 Hamala, if you'd take a roll call please.

9 MR. HAMALA: Please respond with a yes, no, or
10 abstain. Chairman Hill?

11 CHAIRPERSON HILL: Yes.

12 MR. HAMALA: Vice Chair John?

13 VICE CHAIRPERSON JOHN: Yes.

14 MR. HAMALA: Mr. Blake?

15 MEMBER BLAKE: Yes.

16 MR. HAMALA: Mr. May? And with one member not
17 present and not participating, staff would record the vote
18 as 4-0-1 with a motion by Chair Hill, seconded by Ms. John,
19 with Mr. Blake and Mr. May in support of the motion.

20 CHAIRPERSON HILL: Thank you. All right.
21 Everybody, let's take a quick five minutes and then we'll
22 come back for our last case of the day. I think everyone
23 should have, if not, the staff can please contact all the
24 participants for 20740. And I'll see you all in a few
25 minutes. Thank you.

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1 (Whereupon, the above-entitled matter went off the
2 record at 3:02 p.m. and resumed at 3:10 p.m.)

3 MR. HAMALA: Our next and final case of the day
4 is Application No. 20740 of Erick and Jessica Alves De Sa.

5 CHAIRPERSON HILL: Okay. All right. Let's see.
6 Who do we got here? Ms. Davis, can you hear me?

7 MS. DAVIS: Hi, can you hear me?

8 CHAIRPERSON HILL: Yes. Ms. Waters, can you hear
9 me? Ms. Waters?

10 MS. WATERS: Hello?

11 CHAIRPERSON HILL: Yes.

12 (Simultaneous speaking.)

13 CHAIRPERSON HILL: Can you hear me?

14 MS. WATERS: Yes.

15 CHAIRPERSON HILL: Can you turn your camera, Ms.
16 Waters?

17 MS. WATERS: It's on.

18 CHAIRPERSON HILL: I can't see you. It was
19 working before.

20 MS. WATERS: Yes, it was. Let me see. Let me
21 turn it off again and turn it back on.

22 CHAIRPERSON HILL: Oh, good. Okay, yeah, great,
23 perfect. Thanks, Ms. Waters. Okay. Let's get everybody to
24 introduce themselves again for the record starting with you,
25 the applicant, please.

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1 MR. ALVES DE SA: Go ahead.

2 MS. ALVES DE SA: Hi, I'm Jessica Alves De Sa.

3 MR. ALVES DE SA: And Erick Alves De Sa.

4 CHAIRPERSON HILL: Okay, great. Welcome back.

5 Ms. Davis, can you introduce yourself for the record?

6 MS. DAVIS: I am the permit consultant.

7 CHAIRPERSON HILL: Great. Ms. Freeman, can you
8 introduce yourself for the record? You're on mute, Ms.
9 Freeman.

10 MS. FREEMAN: Thank you. Sorry. I'm Lucia
11 Freeman. I'm from Aggregate Architecture. I'm the Architect
12 of Record for the project at 534 Taylor.

13 CHAIRPERSON HILL: Great. Ms. Waters, could you
14 introduce yourself for the record?

15 MS. WATERS: Dianna Waters. I live at 536 Taylor
16 Street, Northwest, Washington, D.C.

17 CHAIRPERSON HILL: Okay. So Ms. Freeman, if you
18 would go ahead and walk us through your client's application
19 and why you believe they're meeting the criteria for us to
20 grant the relief requested. I'm going to put 15 minutes on
21 the clock just so I know where I am. I might have a stop at
22 4:45. We'll see where we get. And so I will let you begin
23 whenever you like, Ms. Freeman.

24 MS. FREEMAN: Okay. Thank you. Thank you, Mr.
25 Chairman and members of the Board. I'm Lucia Freeman. I am

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1 co-owner and architect of Aggregate Architecture in D.C. I
2 am the Architect of Record for this project. And I
3 appreciate you allowing me to present on the owner's behalf
4 for the relief of Subtitle E, 204.5, also known as the ten-
5 foot rule. Can I ask that Exhibit 44 be pulled up, please?

6 CHAIRPERSON HILL: Forty-four?

7 MS. FREEMAN: Yes.

8 CHAIRPERSON HILL: That was a letter in
9 opposition?

10 MS. FREEMAN: So when I look at the exhibits list
11 on the left-hand side, it is the clarification of affected
12 area. I apologize. It's 43. I'm sorry.

13 CHAIRPERSON HILL: Sure.

14 MS. FREEMAN: Thank you.

15 CHAIRPERSON HILL: Gosh darn it. Okay. I'm just
16 chiming in. Mr. Hamala, can you hear me? On that previous
17 case, the attorneys figured out how to clean it up. I had
18 neglected -- I had wanted to leave the record open for the
19 clarification on the plat. Okay? So you all can think about
20 that. All right. Okay. Go ahead, Mr. Young, if you can
21 pull up that exhibit, please. Go ahead, Ms. Freeman.

22 MS. FREEMAN: So this sheet shows two drawings of
23 the west elevation of 534 Taylor and its relationship to the
24 two abutting properties, 536 and 532 Taylor Street. The top
25 elevation -- and I don't know if it would be helpful to zoom

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1 in or not how large you can -- how well you can see that.

2 CHAIRPERSON HILL: We can pull it up on our
3 desktop.

4 MS. FREEMAN: Okay. So it shows -- the top
5 elevation shows the portion of the rear addition as it has
6 been approved for the building permit to 200312. And then
7 the lower drawing demonstrates what we have submitted as the
8 west elevation as part of the BZA application. And the area
9 that's shaded is the area that we are requesting relief for.

10 CHAIRPERSON HILL: So can you clarify that again?
11 You already have a permit for everything that's in the upper
12 drawing?

13 MS. FREEMAN: Yes, sir.

14 CHAIRPERSON HILL: Okay.

15 MS. FREEMAN: So when we originally submitted for
16 this permit, we submitted with that portion that we need
17 relief from and that was in October. And through the
18 approvals with different -- excuse me, with the different
19 reviewers. And then finally zoning and Mr. Washington said
20 we needed to ask for relief for the second floor.

21 Although we're replacing an existing conforming
22 structure, it was only a one story structure. And it's my
23 understanding that the interpretation of the ten-foot rule
24 has now been changed to be by floor instead of the footprint.
25 So we didn't think we needed any relief when we submitted for

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1 the original permit in October.

2 After some back and forth with Mr. Washington and
3 a couple of calls with Mr. LeGrant, he said that we needed
4 relief for that portion and that the main floor addition and
5 the portion within ten feet of the neighbor's rear wall did
6 not need relief. That was all by right. So the portion that
7 we are looking at is just the shaded portions in that lower
8 drawing.

9 We believe that the -- excuse me, the drawings --
10 excuse me. I'm sorry. We believe that we are meeting the
11 harmony and purpose and intent of the regulations for the
12 zone per Section 901.2, Subtitle X as the use will remain an
13 attached rowhouse with no more than two dwellings.

14 The proposed relief does not increase the overall
15 height of the structure nor the lot occupancy. And the
16 pervious surface amounts as shown on the approved drawings
17 remain the same. The footprint remains the same, so there's
18 no change to the amount of green space or pervious surface
19 in the yard.

20 We believe that we meet the requirements of the
21 special exception as outlined in Subtitle E, 5201.4 and that
22 the light and air of adjacent buildings will not be adversely
23 affected by the small portion of the second floor being
24 extended to meet the rear wall of the first floor. This area
25 is an additional 145 square feet, and it will house a third

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1 bedroom for the property owners in their main dwelling which
2 they will be residing in the first and second floor of the
3 home. And the basement will be -- or the cellar will be
4 converted into a two bedroom rental unit. If I can see
5 Exhibit 71, please.

6 CHAIRPERSON HILL: Seventy-one?

7 MS. FREEMAN: Yeah.

8 CHAIRPERSON HILL: I don't see a 71. I see 70 is
9 the last one on the record. What's it titled?

10 MS. FREEMAN: It's the by right versus --

11 CHAIRPERSON HILL: Did that just get put in the
12 record?

13 MS. FREEMAN: No, I'm sorry. It says -- when I --
14 the file calls it Exhibit 71, but it is listed under --

15 CHAIRPERSON HILL: What are you looking for?

16 MS. FREEMAN: That's correct. By right versus
17 special exception sun study.

18 CHAIRPERSON HILL: Okay.

19 MS. FREEMAN: And there are a few pages to this.
20 There's a June 21st and December 21st versions from 9:00 a.m.
21 to I believe 2:00 p.m. On this first page, I do have to
22 point out that the 10:00 a.m. drawings, the left and right,
23 were actually reversed accidentally. So on the left-hand
24 side is actually what we're asking an exception for, and on
25 the right is the by right.

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1 However, if you look at 9:00 a.m. and the two
2 compared to each other, there's a small portion of the
3 backyard that's receiving light in the left-hand corner. And
4 in the relief request, that small portion is not receiving
5 the light. It's shadowed. As we move through the day, this
6 impacts less --

7 CHAIRPERSON HILL: Give me a second. What you say
8 again was the -- there was something that was wrong? What?

9 MS. FREEMAN: The two images on the bottom of this
10 page are reversed, meaning the one on the left should be the
11 one on the right and vice versa.

12 CHAIRPERSON HILL: I see. I got you. But the one
13 on top, the by right is on the left, the special exception
14 is on the right, and below they're flip flopped?

15 MS. FREEMAN: Yes.

16 CHAIRPERSON HILL: Got it.

17 MS. FREEMAN: My apologies for that.

18 CHAIRPERSON HILL: That's all right. But the
19 shadow study is accurate on both sides?

20 MS. FREEMAN: Correct, correct. So --

21 CHAIRPERSON HILL: If you ever go back before us
22 again, Ms. Freeman, it's kind of helpful if you just outline
23 in red the differences between the by right and the special
24 exception.

25 MS. FREEMAN: Okay. Thank you.

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1 CHAIRPERSON HILL: I'm just having a hard time
2 kind of finding it.

3 MS. FREEMAN: I understand. So these are the
4 summer images. And if we scroll down to the following pages,
5 the winter, here's the winter images as well where the
6 shadows are a little bit longer and the sun comes up a little
7 bit later.

8 But you can see that the impact after about 9:00
9 o'clock is pretty minimal. This elevation faces south. So
10 in the wintertime, it gets a little bit more direct light and
11 the shadows are not quite as severe.

12 And if we scroll down one more page, you can see
13 the winter. I'm not sure you can see that. I'm not seeing
14 that.

15 CHAIRPERSON HILL: I've got December 21st is the
16 last one. Is that what you're trying to get to?

17 MS. FREEMAN: Correct. I just can't see it.
18 There we go. Just so you can see the by right versus the
19 exception in December where I believe in the morning the
20 larger structure of 532 Taylor actually throws more shadows
21 than our requested relief would.

22 So we think that this demonstrates that this is
23 not going to have an unduly effect on the light and air of
24 the surrounding structures. I don't believe there are any
25 privacy concerns because the wall that faces 532 -- I'm

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1 sorry, 536 is a brand new firewall with a three-foot parapet
2 above. There's no new penetrations in that way that would
3 give the owners the opportunity to look into the yard of
4 their neighbors, and the same goes for 532.

5 532 has a three-story wall with no openings in it
6 that faces the Alves De Sa's property. So there are no
7 concerns there about disrupting the privacy to either
8 neighbor. I think that -- and honestly, I think that's all
9 I have.

10 CHAIRPERSON HILL: Okay, okay. That's fine.
11 We'll start to work through this. Just before you -- well,
12 you dropped it already. What's there now?

13 MS. FREEMAN: Can we bring up some photos of the
14 existing?

15 CHAIRPERSON HILL: Do you have an exhibit for me?

16 MS. FREEMAN: Yeah, let me just find the right
17 number.

18 (Simultaneous speaking.)

19 MS. FREEMAN: Exhibit 4.

20 CHAIRPERSON HILL: I see 4. Okay, 4.

21 VICE-CHAIRPERSON JOHN: I believe it's Exhibit 5,
22 architectural plans and elevations.

23 MS. FREEMAN: And Exhibit 4, the color photos
24 also, I think --

25 CHAIRPERSON HILL: Right. It's the pink and the

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1 blue in the back?

2 MS. FREEMAN: Correct. So the pink is actually
3 the property at 534, the second story of it where it exists
4 now. And then it has the extension of what we're calling the
5 sun room because it was permitted as. It was a sun room.
6 It was sort of a -- it was a prefab structure that was added
7 in the 2008 permit records. 536 is the purple portion --
8 purplish blue portion and the red brick that continues to the
9 left.

10 CHAIRPERSON HILL: Got it. Okay. All right.
11 Okay. Does the applicant -- I'm sorry. Does the Board have
12 questions for the applicant? Sure, Commissioner May.

13 COMMISSIONER MAY: Yeah, so in the sun study and
14 in the plans, it looks like there is, like, a screened in
15 porch extending off the back of this going further, right?

16 (Simultaneous speaking.)

17 MS. FREEMAN: Correct.

18 COMMISSIONER MAY: And that's not an existing
19 structure, right? That's something that you plan to build?

20 MS. FREEMAN: Yes, that's something that we plan
21 to build. And per discussions with Mr. LeGrant that because
22 it is not an enclosed or conditioned space, it's not a part
23 of the -- it's not required to meet the ten-foot rule
24 requirements.

25 (Simultaneous speaking.)

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1 COMMISSIONER MAY: Yeah, I thought anything under
2 roof would need to meet the ten-foot rule. But I'll let him
3 decide that. I mean, it thought it might not need to meet
4 the ten-foot rule because it was set back from both property
5 lines.

6 MS. FREEMAN: My understanding that it doesn't
7 matter if you're setback from the line. It's the extension
8 away from the rear yard as far as the ten-foot rule goes.
9 But we did have a call with Mr. LeGrant, and he and Ms.
10 Vitale from Office of Planning and I discussed it as well.
11 And I believe that that's what she agreed, that since it is
12 not a conditioned interior space that it doesn't -- it's not
13 required to meet those requirements.

14 COMMISSIONER MAY: Yeah, it doesn't sound quite
15 right to me. But it's not on the table for relief, it's --
16 you know.

17 MS. FREEMAN: Okay.

18 COMMISSIONER MAY: I'm not going to make it an
19 issue. But I am curious. How big is that space?

20 MS. FREEMAN: The screened porch?

21 COMMISSIONER MAY: Yeah.

22 MS. FREEMAN: It is about 9 by 14.

23 COMMISSIONER MAY: Okay, 9 by 14. Oh, 126 feet.
24 Okay, thanks. Is it usable --

25 (Simultaneous speaking.)

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1 MS. FREEMAN: Yes.

2 COMMISSIONER MAY: Oh, that's interesting.

3 MS. FREEMAN: I believe you're referring -- I
4 believe you're referring to the previous case maybe.

5 COMMISSIONER MAY: I'm pointing this out to my
6 colleagues. Anyway, thank you very much. Those were my
7 questions.

8 CHAIRPERSON HILL: Excuse me. Ms. Freeman?

9 MS. FREEMAN: Yes, sir?

10 CHAIRPERSON HILL: Is there a wall that's up
11 against the screen porch of any kind that kind of, like,
12 blocks out that light there? I'm just answering my own
13 question. That's all right.

14 MS. FREEMAN: I apologize.

15 CHAIRPERSON HILL: You're on mute, Commissioner
16 May.

17 COMMISSIONER MAY: What about next door at 532?
18 There's a big wall there. Maybe it goes past that.

19 CHAIRPERSON HILL: I'm going to move on. All
20 right. Let's see. Okay. Does anybody have any further
21 questions?

22 VICE-CHAIRPERSON JOHN: I just need some
23 clarification. So I'm just looking at the photographs in
24 Exhibit 3. And so the gray building that's been extended is
25 532, and 534 is the next one to it -- beside it. And that

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1 beige building or structure just that's marked 534, is that
2 a first floor which has already been extended?

3 MS. FREEMAN: Correct, that's the -- so that is
4 the existing addition to the house. It was there when the
5 owners purchased it. And as part of our moving through the
6 permitting process and the discussions with zoning, it was
7 permitted in 2008.

8 And it looks like the drawings finally surfaced,
9 and they were added to the record today. There's not a lot
10 of detail to them. But that's neither here nor there.

11 It was an existing structure. And we are not
12 increasing the nonconformity. It was not required to meet
13 the ten-foot rule because it was built in 2008 before the
14 ten-foot rule existed.

15 And our next structure, we actually intended to
16 keep as much of that foundation as we could. But after our
17 foundation evaluation, there's not much to the foundation
18 there. So we are tearing down and rebuilding and we are
19 decreasing the length by about 18 inches.

20 VICE-CHAIRPERSON JOHN: Okay. So what's the
21 measurement of that wall now, and what are you proposing?

22 MS. FREEMAN: So the current measurement from the
23 rear brick of --

24 (Simultaneous speaking.)

25 MS. FREEMAN: Well, it is 534. So the current

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1 measurement of that existing addition from the rear brick
2 wall of 536 which would be the furthest neighbor.

3 VICE-CHAIRPERSON JOHN: But let's start -- let me
4 get the dimensions of 534 first. What's the length of that
5 addition that you might have to tear down and replace?

6 MS. FREEMAN: Sixteen feet --

7 VICE-CHAIRPERSON JOHN: Okay.

8 MS. FREEMAN: -- from the original structure. But
9 the original --

10 (Simultaneous speaking.)

11 VICE-CHAIRPERSON JOHN: Right, from original
12 structure. Okay. And then you are going to tell us what is
13 the distance -- what is -- okay. Compare it to 536.

14 MS. FREEMAN: Correct. So the existing addition
15 currently projects 21 feet 8 and a quarter inches beyond the
16 second floor rear wall, not from the porch. The porch is
17 another 6 feet beyond. So from the same point that we are
18 asking for relief from. So if we can go back to Exhibit 43.

19 VICE-CHAIRPERSON JOHN: Well, let's just --

20 MS. FREEMAN: So you can see the dimensions and
21 the relationships on there.

22 (Simultaneous speaking.)

23 VICE-CHAIRPERSON JOHN: Okay. All right. That's
24 fine. This is helpful to me looking at this photograph. So
25 536 is the brick building. And so the addition and the

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1 second floor porch which is not conditioned because what you
2 have there now, that's what I'm trying to establish.

3 MS. FREEMAN: The second floor --

4 VICE-CHAIRPERSON JOHN: No, no. Let's not get to
5 the second floor. What I'm trying to figure what is the
6 dimension from the rear wall of 536 to the end of the
7 addition on 534. One's 15 feet, and how many feet is 536?

8 MS. FREEMAN: I'm sorry. I'm not understanding --
9 (Simultaneous speaking.)

10 VICE-CHAIRPERSON JOHN: Wait a second. I'm trying
11 to calculate the length of the addition as proposed from the
12 rear wall of 536 to the rear wall of the existing structure
13 which is 15 feet. The brick part of it, the brick -- looking
14 at this color photograph, I'm looking at the brick wall of
15 536.

16 MS. FREEMAN: Okay.

17 VICE-CHAIRPERSON JOHN: What's the length of that
18 wall?

19 MS. FREEMAN: Of the proposed?

20 VICE-CHAIRPERSON JOHN: Existing.

21 MS. FREEMAN: Of the existing? The existing is
22 21 foot 8 and a quarter inches.

23 VICE-CHAIRPERSON JOHN: Okay. So 21 foot 8 and
24 15 would be the total length of your addition. Did I get
25 that wrong?

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1 MS. FREEMAN: You mean -- you're saying with the
2 screened porch?

3 VICE-CHAIRPERSON JOHN: Yes, that porch on 536 is
4 not conditioned. It's just an open space, right?

5 MS. FREEMAN: Correct.

6 VICE-CHAIRPERSON JOHN: Okay. So the neighbor at
7 536 is going to have an enclosed space right there once you
8 get --

9 MS. FREEMAN: Correct, but that's already enclosed
10 by the existing addition.

11 VICE-CHAIRPERSON JOHN: Okay. That's correct.
12 That's correct. Okay.

13 MS. FREEMAN: Right. So the existing addition is
14 already -- there's one story with a cellar. And again, I
15 think that Exhibit 43, I have the dash -- dashed the outline
16 of what the existing addition is.

17 VICE-CHAIRPERSON JOHN: Okay. All right. Thank
18 you. Okay. So go to Exhibit 43. That's it, Mr. Chairman.

19 CHAIRPERSON HILL: Okay. All right. Thank you.
20 All right. Ms. Waters?

21 MS. WATERS: Yes?

22 CHAIRPERSON HILL: Do you have -- would you like
23 to go ahead -- why don't you go ahead and -- well, do you
24 have any questions for the architect?

25 MS. WATERS: Yes. On the spacing -- well, first

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1 of all, I'd like to read my statement.

2 CHAIRPERSON HILL: Okay. Then why don't you --

3 MS. WATERS: Okay?

4 CHAIRPERSON HILL: Yeah, why don't you go ahead
5 and -- okay. So you're going to give your presentation first
6 and then we'll ask questions?

7 MS. WATERS: Yes.

8 CHAIRPERSON HILL: Okay. Go ahead.

9 MS. WATERS: And then I want to flip back because
10 there's some exhibits that I need to get to. But I need to
11 flip back, and we might go out, okay, because I'm not
12 proficient at this flipping back from the Webex to my
13 exhibits.

14 CHAIRPERSON HILL: I got you. We can pull up
15 whatever exhibit you want.

16 MS. WATERS: Oh, cool.

17 CHAIRPERSON HILL: And we can put it on the screen
18 and you can look at it.

19 MS. WATERS: Okay, cool. Okay. All right. Once
20 again, good afternoon. My name is Dianna Waters, property
21 owner of 536 Taylor Street, Northwest, next door neighbor to
22 applicant and 534 Taylor Street, Northwest. I am in
23 opposition to the special exception for the rear addition
24 requirement of Subtitle E, 205.4 pursuant to Subtitle E,
25 205.5 and 5201 and Subtitle X, 901.2.

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1 I will be directly impacted by the request in Case
2 20740 where the applicant seek to construct a two-story with
3 cellar addition to an existing attached one-story with
4 cellar, nonconforming principal dwelling in the RF-1 zone.
5 I have had this home for 24 years. I raised my daughter,
6 Ramona, on this short and quaint Wardman-style, inspired
7 block.

8 It is indeed my forever home where I plan to age
9 in place and leave to my daughter for her family. This
10 neighborhood means a great deal to me. As I mentioned above,
11 I raised my family here and enjoy the character of the block
12 and the modern density that Petworth once offered.

13 In addition, I have spent my time on Taylor Street
14 making longtime friends, fighting crime and drugs to keep
15 this established block safe. My dispute -- for the record,
16 I wanted to dispute that DCRA have not proven the legality
17 previous work done in 2008 such as sun roof basement and side
18 deck. I have attempted to rectify the infringement on my
19 property line from the previous owners and now current
20 neighbors.

21 There has been no correction of that infringement
22 by going over the party line. The inspectors will be out
23 tomorrow, July 7th, to go over this. Okay? There has been
24 no correction, as I said, on this infringement by going over
25 the party line.

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1 Any add-on will continue to infringe on my
2 property. The existing addition was not property permitted
3 for current use. The mass and scale of the addition will
4 obstruct my natural light and air and eliminate all of these
5 from the rear facing east of my home.

6 The addition will block out light to the rear of
7 my home which includes my backyard which I enjoy -- my back
8 bedroom which I enjoy the morning sun and the dining room as
9 well as the back porch. The massive addition will also
10 create a serious visual safety hazard because the addition
11 will obstruct views along the alley. I recently was able to
12 witness and report a woman being assaulted.

13 Okay. With this addition, I will not be able to
14 view during nightlight. The proposed height of the addition
15 will obstruct sunlight adversely affecting future solar
16 panels for my roof. In addition to the scale of the project,
17 the extensive excavation of the basement cellar may cause
18 flooding which I do not have and structural deterioration to
19 my home because the land is lower than 534.

20 The extensive demolition and new construction will
21 generate traffic, dust, noise, soil and air pollution which
22 I am experiencing now from removal of earth causing air
23 pollution as we speak. These conditions are acerbating my
24 current health. I've been out for long COVID for six months
25 from work. I shall be returning next week.

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1 So my thing here is on June 13th, I've been going
2 back and forth with Mr. LeGrant and Ms. Beaton in reference
3 to the legality of this property. On June 13th, I finally
4 got a meeting with Mr. LeGrant and Assistant Deputy Attorney
5 James White. And Mr. LeGrant is going to get back to me on
6 questions that I've been asking for quite some time.

7 And so an inspector, like I said, is coming out.
8 And we'll inspect it, we'll just inspect it. Okay. A little
9 history of next door. A little history of next door.

10 The previous owners had an adult -- I guess it was
11 adult daycare there. And they were told that the gentlemen
12 could not sleep on the same floor as the -- there's about
13 five, four to five, I can't really recall, residents there.
14 So when they started -- I was told that when they started
15 building, they had an electronic awning. Okay.

16 They started building out. I called DCRA and
17 reported it. Okay. They came up. They did a stop work
18 order. Okay. When I called -- I may be bouncing around.

19 When I called Mr. Keith Slade in reference to this
20 construction because it wasn't clear in scale, he said that
21 it was -- the permit was for an electric awning. And I know
22 that it was electric awning and that she used the electric
23 awning as, like, a sun over the residence. Okay.

24 They continued to build out, and I just went on
25 DCRA's -- I would say on their word that they would do the

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1 right thing. Okay. No one notified me as it is in the
2 record, okay, that this structure, this addition with the
3 basement digging out and no one -- as you can see in the
4 record, it was 532 that was notified. Okay. I kept asking
5 for plans, and I forced Mr. LeGrant -- I won't say forced,
6 but I continued between him and Mr. Keith Slade.

7 Mr. Slade said that the plans were in I think it
8 was Rhode Island, Rhode Island, and in archives because they
9 had no plans or pictures of the structure. So he had myself
10 and Erick and Jess send in pictures of what was there. And
11 so after that, Mr. Grant, that's when we had the meeting,
12 said that he would go further and some way plans appeared
13 that he said the applicant came up with some plans whereas
14 Mr. Slade told me that they were coming from archives. And
15 I would still like to see those plans coming from DCRA's
16 official files.

17 This has caused a lot of distress. And with this
18 building, it's infringing on my property. And no one came
19 out to inspect. If someone had come out and inspected, they
20 would have seen the illegal work done on the deck and on this
21 -- excuse me, basement apartment.

22 Okay. So that's where I am. I'm waiting for Mr.
23 LeGrant. And also tomorrow when the inspectors come out, we
24 probably will have -- do a survey.

25 And I had a great deal of communication between

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1 the architect, the plans for -- and clarity to the plans in
2 the permit. Okay. And Mr. LeGrant had told me -- mentioned
3 to me on Teams that he had to go back and forth because they
4 weren't clear. And I'm not an architect. I'm a homeowner.
5 Okay? A longtime homeowner trying to protect my home.

6 And with the ANC when I mentioned it to Clara, the
7 ANC 4C08, about it, she had already made up her mind because
8 she had been working with Erick. And I told her it's a
9 conflict -- Erick and Jess, I'm sorry -- a conflict of
10 interest because she had them doing her work. Had her type
11 up the letters, distribute the letters. Okay?

12 And when Clara first -- when we had this
13 conversation first, she says, well, Dianna, she says, well,
14 they want to have a family. So if they can't get this done,
15 they're going to move. I said, okay, this is what they're
16 telling the community.

17 We never had this bullying in the community. I
18 tried, as you said, to speak with Jess and Erick. Jessica
19 called during the break. And we spoke, okay, neighbor to
20 neighbor.

21 And I said, nothing has changed with me. When we
22 spoke about the plans, Erick always knew from when he first
23 went in that we talked about how the structure was illegal.
24 And we had dinner, my daughter, Ramona.

25 And she's out of town. She may be able --

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1 hopefully, she's able to get on. But she's traveling back
2 from New York to D.C. So hopefully she'll be able to get on
3 with me to view.

4 And so what I was saying -- during my meeting, I'm
5 sorry, I said, nothing has really changed what we talked
6 about. And he told me I would lose some light. And I said,
7 Erick, I don't want to lose light. I don't -- I've already
8 lost some sun from when they put up that addition.

9 Nothing grows in that spot when they put it up
10 that conditioned -- addition, I'm sorry, back in 2008 or '09.
11 He agreed. I signed a notice of intent by good, neighborly
12 face value.

13 And then when I find out he wants to go up and
14 it's abutting, I said no. My thing is which was always is
15 to follow DCRA rules and regulations which he agreed and we
16 go back ten feet. I am for if needs to tear it down, then
17 go back to ten-foot rule. That's what I -- even if he went
18 in at the top five feet like he's going to go -- like the sun
19 room.

20 But my addition is -- and what was confusing at
21 the very beginning, a lot of things have changed, is the back
22 wall which Mr. LeGrant had to explain it to me because I
23 wasn't getting clarity. Okay. My porch is seven feet. This
24 addition as it sits now is 15.83, and then the screened porch
25 is about, what, 15. I think that's what Lucia, 15 from when

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1 I looked at the plan.

2 So you've got a total of 36.8. And I think that
3 is along with the neighbors excessive. I asked what are they
4 willing to give to lessen the burden and to lesson some type
5 of the impact. And they said they have their plans and
6 they're going to stay with their plans.

7 And it was brought up that I have a side yard.
8 My side yard, number one, has nothing to do with this
9 structure, okay, abutting my property. My side yard, I don't
10 know what they're speaking for -- referencing it to because
11 I have, like, five, six feet little pathway. And then
12 there's an area that doesn't even grow grass because the sun,
13 it's mostly shaded in that area.

14 And for my health, I need my little sun that I am
15 getting. Okay. For my bedroom when I look out, I would be
16 looking into this big white structure. I go out on my porch
17 as it is, and I'm looking into this structure.

18 And I've been trying to deal with DCRA about this
19 structure for quite some time, this infringement for quite
20 some time. So hopefully tomorrow we're going to get to some
21 type of root of it. And Mr. LeGrant, he's on vacation, and
22 he promised to get back with the -- hopefully, the records
23 come in that they have from archive.

24 Now the material that was sent in from -- and I
25 posted it. Yes, I can't think of what exhibit it was because

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1 I can't -- but I have this -- let's see. What exhibit was
2 that? Let me see. Yeah, I have up until 68 and then there
3 were some added.

4 Also, my home faces -- my backyard, it faces the
5 residence on New Hampshire Avenue. So with this structure,
6 I have a fence on the side from my -- because my yard butts
7 up to my neighbor's fences. With this massive -- if they
8 wanted to -- if my neighbors on my west side -- no, let me
9 see. I'm facing the front door. New Hampshire Avenue, if
10 they wanted to extend it out, I would be like a television.
11 And I oppose this.

12 CHAIRPERSON HILL: Okay, Ms. Waters. I'm sorry.
13 I'm just trying to pull up all these different exhibits and
14 make sure I got them all here.

15 MS. WATERS: And if you could see the picture that
16 I sent in, one Erick did. And you can see the full one of
17 the other that's been misleading. That's why there's
18 confusion in the community because he was going back from the
19 fifth from the addition to the rear which is 15. But it's
20 not so.

21 You go back seven foot which was -- excuse me, is
22 my rear brick wall. So the seven-plus -- so they went -- we
23 had shared -- the porches are the same. So they went into --
24 that deck was -- the porch was an extension of the deck. And
25 that -- excuse me, the measurements are incorrect anyway in

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1 DCRA. It's not a 10 by 16 because that porch was part of the
2 deck.

3 CHAIRPERSON HILL: Okay. Okay, Ms. Waters. Okay.
4 Let me pull up some things here and make sure I understand
5 some stuff. Okay. Are you finished, Ms. Waters.

6 MS. WATERS: For now.

7 CHAIRPERSON HILL: Okay. All right. Can you pull
8 up, Mr. Young, Exhibit 70? Thanks. Can you zoom in? Thank
9 you. On the left, Ms. Waters, that beige wall or that beige
10 building, what's that?

11 MS. WATERS: That is the addition. That was the
12 deck. That is the addition.

13 CHAIRPERSON HILL: Okay. That's 534, correct?

14 MS. WATERS: I'm sorry, yes.

15 CHAIRPERSON HILL: Okay, great. And then, Mr.
16 Young, if you can pull up Exhibit 4, please. I think it's
17 Exhibit 4. As I'm talking about this -- bless you. Ms.
18 Waters, you're the light blue and brick home, correct?

19 MS. WATERS: Yes.

20 CHAIRPERSON HILL: There you go.

21 MS. WATERS: Yes.

22 CHAIRPERSON HILL: So the pink house is 534,
23 correct?

24 MS. WATERS: Yes, yes.

25 CHAIRPERSON HILL: Okay. Because it's a little

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1 bit hard to see from Exhibit 70 where the pink part is, like,
2 where your house is and where their house -- I see. The pink
3 part, I got you.

4 (Simultaneous speaking.)

5 MS. WATERS: Yeah, it's kind of flush.

6 CHAIRPERSON HILL: I think I kind of see it.
7 Okay. And then the last one, if you could pull up, Mr.
8 Young, Exhibit 47 please for me, the shadow study. And then
9 I'm going to ask Ms. Freeman.

10 So Ms. Freeman, I know it's in the record. But
11 just so I can clarify, from Ms. Waters's wall to the end of
12 your structure, how far is it again? I can't hear you, Ms.
13 Freeman. You're on mute.

14 MS. FREEMAN: To the end of the overall structure,
15 or to the end of the structure where we are requesting relief
16 for?

17 CHAIRPERSON HILL: To the end of the overall
18 structure. Not including the screen porch.

19 MS. FREEMAN: It is 20 feet -- 20.4 feet.

20 CHAIRPERSON HILL: Twenty feet four inches. Is
21 that correct?

22 MS. FREEMAN: Yeah, 20.4. So it's like three and
23 some change, but yes.

24 CHAIRPERSON HILL: Twenty feet four inches. Is
25 that what you're saying?

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1 MS. FREEMAN: Yeah, sure.

2 CHAIRPERSON HILL: Okay, fine. So ten additional
3 feet past the ten-foot rule?

4 MS. FREEMAN: Correct.

5 CHAIRPERSON HILL: Okay. And then you're carrying
6 that straight up?

7 MS. FREEMAN: Correct.

8 CHAIRPERSON HILL: Okay. And then you have the
9 screen porch, right? And I understand the screen porch
10 doesn't count. How far back does the screen porch go past
11 the 20.4 feet?

12 MS. FREEMAN: Fourteen feet.

13 CHAIRPERSON HILL: Fourteen feet? Okay, okay.
14 All right. I know where we are now. Okay. So all right.
15 You can drop everything unless does anybody want anything
16 while I'm up?

17 Okay. You can drop everything.

18 VICE-CHAIRPERSON JOHN: It got a little confusing
19 to me and forgive me. When I measure from the first floor
20 of 534 to the end of the addition on the first floor, it's
21 22 feet, right? Seven foot unenclosed porch and a 20 foot
22 addition or a 15 foot addition?

23 MS. FREEMAN: Again, are you speaking about --
24 (Simultaneous speaking.)

25 MS. FREEMAN: -- the existing?

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1 VICE-CHAIRPERSON JOHN: The measurement is for the
2 addition from the rear wall of the adjacent building.
3 Because it's an unenclosed porch, the rear wall, it goes to
4 the back of 536.

5 MS. FREEMAN: Correct.

6 VICE-CHAIRPERSON JOHN: What's the distance from
7 the rear of 536 to the end of the addition?

8 MS. FREEMAN: Twenty feet, five and a quarter
9 inches.

10 VICE-CHAIRPERSON JOHN: Okay, okay. So we don't
11 add an additional seven feet for the porch. Okay.

12 MS. FREEMAN: No, ma'am.

13 VICE-CHAIRPERSON JOHN: Okay, 20 feet. Is that
14 your understanding, Mr. Chairman?

15 CHAIRPERSON HILL: I think so. And I'm sorry.
16 I'm just like -- I mean, really, it's a long day now. Mr.
17 Young, if you want to zoom in. And Mr. May is going to laugh
18 because, like, he's actually an architect. But if you can
19 zoom in, just keep zooming in until you get to that first
20 picture on the left because I'm just looking at this. Keep
21 zooming in. Keep zooming in. Right. And just center that.

22 So what I see again is -- and maybe this is where
23 -- and Mr. May can say also that on the left is Ms. Waters'
24 house. And from that wall on the left -- now I'm going to
25 ask Ms. Freeman. Are those two walls flush on Ms. Waters'

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1 property?

2 MS. FREEMAN: No, sir.

3 CHAIRPERSON HILL: Okay. So that's what I'm
4 guessing --

5 MS. FREEMAN: So the area over the porch is an
6 enclosed -- there's an enclosed space and then the porch sits
7 in front of it. There's, like, a bay. So if we were to jump
8 back to the photos quickly. They're flush. They're flush.

9 CHAIRPERSON HILL: Right. I'm looking at the bay
10 now. It's okay. I kind of understand what you're saying.
11 So that wall, when you're measuring the 20.4 inches, you're
12 measuring it from that wall -- the immediate adjacent wall
13 that's to the left, correct?

14 MS. FREEMAN: Correct.

15 CHAIRPERSON HILL: Okay. All right.

16 MS. FREEMAN: The purplish blue wall.

17 CHAIRPERSON HILL: Yeah, and then the brick that's
18 underneath that?

19 MS. FREEMAN: Correct.

20 CHAIRPERSON HILL: Got you. Okay. Ms. John, do
21 you kind of -- do you got it?

22 VICE-CHAIRPERSON JOHN: Well, in one of the
23 pictures, it seemed to me -- let's keep this here. In one
24 of the pictures, it seemed to me that the 536 had an
25 unenclosed porch area on the first floor.

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1 MS. FREEMAN: Yes, but that projects out further
2 than the wall that's in the rear.

3 MS. ALVES DE SA: Could we interject quickly?

4 VICE-CHAIRPERSON JOHN: Anyone who can clarify.

5 MS. ALVES DE SA: Yeah, could we open Exhibit 43,
6 please?

7 MR. ALVES DE SA: All the dimensions that are
8 being asked I think are explicitly shown on the clarification
9 --

10 VICE-CHAIRPERSON JOHN: Okay.

11 MR. ALVES DE SA: -- area.

12 (Simultaneous speaking.)

13 MR. ALVES DE SA: And also to maybe show a
14 vertical view, you could pull up the plat. That'll size a
15 lot of these dimensions. I definitely acknowledge that the
16 depth perception and the asymmetry of the sun study is
17 difficult to look at.

18 MS. FREEMAN: Yeah, 43 is -- okay. I guess 43 is
19 helpful. If you want to zoom in, Mr. Young. Right. That
20 21'8" -- it says 21'8".

21 MS. FREEMAN: That's the existing beige addition
22 that you see now.

23 VICE-CHAIRPERSON JOHN: Which we are measuring
24 from the rear wall which is what the regulations say.

25 MS. FREEMAN: Correct.

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1 VICE-CHAIRPERSON JOHN: Rear wall of the adjacent
2 building, just 21. And then at the top, it would be, yeah,
3 20 and 5.

4 MS. FREEMAN: Correct, because the existing sun
5 room structure is longer than what we're proposing.

6 (Simultaneous speaking.)

7 MS. FREEMAN: Oh, sorry, Chairman.

8 MS. WATERS: Okay. Can you go back to the
9 measurements -- okay, from my rear wall, our porches are
10 seven. Okay? And then the measurements that were done
11 professionally was 15.83. This addition that sits out here,
12 the beige addition, 15.83. Okay. If you want to say 16,
13 whatever.

14 MS. FREEMAN: From the porch, correct.

15 MS. WATERS: From the porch, from my rear wall,
16 okay, to the end of the structure, I got 23 unless my math
17 is wrong, 15.83 plus 7. And that's from my rear wall, from
18 the rear brick.

19 CHAIRPERSON HILL: Okay. I mean --

20 MS. WATERS: And if you would look I think in the
21 -- what is this, 71 exhibit? Was it 71?

22 CHAIRPERSON HILL: Give me one second, Ms. Waters,
23 before we move off of this one.

24 MS. WATERS: Sure.

25 CHAIRPERSON HILL: I mean, I can zoom in on my

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1 screen here. So I can see the numbers and that's all I was
2 trying to clarify. And then I got on that first floor, you
3 got 21'8" and a half. I don't know what it says, right?
4 Twenty-one feet, correct? Architect, Ms. Freeman?

5 MS. FREEMAN: Correct, existing addition. That
6 is the existing thing.

7 CHAIRPERSON HILL: Okay, okay. That's fine.

8 MS. FREEMAN: So there's a dashed line that
9 represents what the existing -- the beige sun room that the
10 previous owners built.

11 CHAIRPERSON HILL: Oh, you're making that smaller?

12 MS. FREEMAN: That's what the dashed line
13 represents, and that is the current nonconforming structure.

14 CHAIRPERSON HILL: Okay. So you're pulling that
15 back?

16 MS. FREEMAN: Correct.

17 CHAIRPERSON HILL: And then you're getting to the
18 20 --

19 MS. FREEMAN: Twenty foot five, correct.

20 CHAIRPERSON HILL: And a quarter?

21 MS. FREEMAN: Mm-hmm.

22 CHAIRPERSON HILL: Okay. So then that first floor
23 as proposed now would be 25 and a quarter?

24 MS. FREEMAN: Correct.

25 CHAIRPERSON HILL: I love Mr. -- thank God

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1 Commissioner May is here with us in a minute. Okay. Before
2 I get rid of this --

3 MS. ALVES DE SA: Sir?

4 CHAIRPERSON HILL: Yeah?

5 MS. ALVES DE SA: Could I just clarify that it's
6 -- you said 25 and a quarter, 20 feet 5 inches and a quarter.

7 CHAIRPERSON HILL: Yes. Well, I'm confused by the
8 20 feet 4 inches. But nonetheless, I can at least look at
9 this, 20 feet --

10 MS. FREEMAN: 0.4 is five and a quarter.

11 CHAIRPERSON HILL: Okay.

12 MS. FREEMAN: On a plat, we do it in decimals.
13 And typically, on the architecture drawings, we do it feet-
14 inches.

15 CHAIRPERSON HILL: America never went to the
16 metric system. Okay. All right. Let see. Okay. Can I
17 drop this, or does anybody still need this one?

18 Okay. Go ahead and drop it then, Mr. Young,
19 please. Okay. I know Commissioner May is laughing. Okay.
20 Or maybe not. I don't know. He's, like, well, at least
21 their struggling. All right. So okay. All right. Ms.
22 Waters, do you have any questions for the applicant before
23 I turn to the Office of Planning?

24 MS. WATERS: Yes. I haven't received a soil
25 report. And I'm concerned because of the construction

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1 previously and they're digging more. You're digging down
2 further. So I would like to know where is that.

3 MS. FREEMAN: The soil report is available in the
4 supporting documents for existing permit. I believe these
5 were shared with you at some point. But if not, I can send
6 them again.

7 MS. WATERS: No, they were not. They were not
8 shared.

9 CHAIRPERSON HILL: Okay. That's fine. So that's
10 a question. Ms. Waters --

11 MS. FREEMAN: And I would be happy to share that.
12 And we have special inspections that are happening during the
13 underpinning. And all of the structural underpinning has
14 already been approved as part of the original permit. We're
15 not extending the foundation with the special exception.
16 It's to be built on top of the already existing foundation,
17 so it's not really relevant to the design.

18 MS. WATERS: Well, when I looked at it with
19 another architect friend, they weren't clear.

20 (Simultaneous speaking.)

21 MS. FREEMAN: Okay. Well, I've asked -- Ms.
22 Waters, I've offered my time and my contact information.

23 (Simultaneous speaking.)

24 MS. WATERS: Excuse me.

25 CHAIRPERSON HILL: Hold on. Hold on. Hold on.

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1 Hold on. Hold on. Hold on. So I'm just asking. I'm just
2 trying to get some questions answered. Okay?

3 MS. WATERS: Thank you.

4 CHAIRPERSON HILL: And so --

5 MS. WATERS: Thank you.

6 CHAIRPERSON HILL: -- let me just -- let's all
7 slow down. So Ms. Waters was interested -- Ms. Waters, I'm
8 trying to also get -- we're going to have a lot of questions
9 with the Office of Planning because they're next. And so you
10 wanted a soil report. So we'll make sure we get that for
11 you. But in terms of the questions of what they presented
12 thus far, because we're going to have a lot of questions
13 still, Ms. Waters, with the Office of Planning. Did you have
14 any questions about what the applicant has said that they're
15 proposing?

16 MS. WATERS: Any questions?

17 CHAIRPERSON HILL: I mean, I think you understand
18 what they're proposing, right? You don't have any questions
19 about what they're proposing.

20 MS. WATERS: Yes, I do have a question because if
21 you're going to do -- if they're going to do the sun porch,
22 okay, I mean, they out-of-scope tore down the garage. My
23 concerns are being straightforward and truthful. Okay?
24 That's what -- this is my house that I have invested in. And
25 I need to be -- everything to be on board and up front and

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1 truthfully.

2 CHAIRPERSON HILL: Yeah, that's okay. So what was
3 your question, though, Ms. Waters?

4 MS. WATERS: My question is for them to be
5 truthful, straightforward on their plans and not going
6 outside of scope. If they're going outside of scope, get the
7 proper permit and be notified.

8 CHAIRPERSON HILL: Okay, okay. All right. So
9 okay. I'm going to turn to the Office of Planning. Where
10 is the Office of Planning? Great. There's the Office of
11 Planning. Okay. Ms. Vitale.

12 MS. VITALE: Yes. Good afternoon, Mr. Chair,
13 members of the Board. Elisa Vitale with the Office of
14 Planning for BZA Case 20740. The Office of Planning
15 recommends approval of the requested special exception relief
16 pursuant to Subtitle E, Section 205.5 and 5201 and pursuant
17 to Subtitle X, 901.

18 The applicant is requesting relief from the rear
19 yard requirements. This would be to permit a rear wall to
20 extend beyond the ten feet permitted. As discussed, it is
21 our understanding based on the plans in the record that the
22 proposed addition would extend 20 feet 5 and one-quarter
23 inches beyond the rear wall of 536 Taylor Street.

24 The proposed addition would be conforming with
25 respect to the rear yard at 532 Taylor Street. So relief is

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1 only required for the extension with respect to 536. I'm
2 going to run through the special exception criteria.

3 This is relief under 5201. It's for an addition
4 to an existing building. The applicant -- there is some
5 history here. As we've heard, the applicant received permit
6 approval to do the addition based on the existing --
7 essentially replacing that existing one-story addition at the
8 rear of the property.

9 The zoning administrator did make a determination
10 that in reviewing the ten-foot rule that that would be done
11 on a floor-by-floor basis essentially. And therefore,
12 because there is not an existing second floor rear extension
13 that extends beyond ten feet, beyond the rear wall at 536
14 that relief was necessary for the applicants to do the two-
15 story addition rather than just replace that one-story that
16 already extends beyond. That's why we're here.

17 So the two story addition wouldn't result in an
18 overall increase. This is a two-story row building. It's
19 permitted to go up to 35 feet in height and three stories.
20 Right now, it's at 30.5 feet and two stories. That height
21 would remain. The proposed addition would not further
22 increase the height.

23 The property would continue to provide a 71-foot
24 deep rear yard. These are deep lots. I think they're
25 approximately 142 and a half feet in depth. So the applicant

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1 would continue to provide a conforming rear yard. Twenty-
2 foot rear yard is required.

3 The applicant is proposing to maintain essentially
4 a dogleg. There would be open deck along the shared property
5 line to the east at 532. 536 to the west is an end of row.
6 So in addition to the deep rear yards, this is -- 536 has
7 open space to the west.

8 We didn't believe that the proposed addition would
9 result in undo shadows beyond the matter of right proposal.
10 Again, the deep rear yards, the separation from the property
11 line at 5332, the fact that 536 is an end of row. We believe
12 that sufficient light and air would be available to the
13 adjoining properties. So we do not believe that light and
14 air would be unduly affected if the relief was granted.

15 With respect to privacy of use and enjoyment,
16 again, the applicant is not proposing windows along the
17 shared property line with 536, nor are they proposing any
18 doors along that elevation. So this wouldn't create new
19 views into the rear yard at 536 Taylor. To the south,
20 there's alley that provides separation from the properties
21 to the south that face Shepherd Street, Northwest.

22 And then as you move around to the east, the
23 dogleg at the east provides separation from the subject
24 property to the adjoining property at 532. So therefore, we
25 didn't believe that the privacy of use and enjoyment of the

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1 neighboring properties would be unduly compromised. The
2 proposed addition would not be visible from Taylor Street but
3 would certainly be visible from the alley at the rear of the
4 property.

5 However, we note that the row buildings in this
6 square included a variety of treatments at the rear. Other
7 properties have enclosed sleeping porches. They've
8 constructed additions, porches, decks, other improvements.

9 The applicant is proposing to clad the addition
10 with panels and siding. Based on the proposal and existing
11 conditions in the square, we did not believe that it would
12 substantially alter character, scale, or pattern of houses
13 along the alley. With respect to Criteria D, the record has
14 certainly been supplemented with additional information.

15 But the applicant did provide plans and elevations
16 in Exhibit 5 as well as photos in Exhibit 4. The Office of
17 Planning is not recommending any special treatment at this
18 time. The applicant is not proposing a lot occupancy that
19 would exceed the maximum permitted in the RF-1 zone nor is
20 the applicant proposing a height that would be beyond that
21 which is permitted in the RF-1 zone.

22 With respect to the general special exception
23 criteria in Subtitle X, Chapter 901, the property is zoned
24 RF-1. It permits residential use. The applicant is
25 proposing to convert the existing property.

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1 It's currently a single household residential use,
2 and I believe they're proposing a flat -- a two-family flat
3 that is a matter of right permitted use in the RF-1 zone.
4 So the proposed addition would provide, I think, additional
5 living space for the property owners. They're anticipating
6 residing on the first and second floors of the property with
7 the new second unit below.

8 But the use would be consistent with the purpose
9 and intent of the zoning regulations and zoning maps. With
10 respect to adverse impacts, we don't believe the proposed
11 addition would affect adversely the use of neighboring
12 property. We believe the criteria have been met.

13 The applicant did submit an affidavit indicating
14 that there were not existing solar systems on neighboring
15 properties. So they've met the requirement for the solar
16 affidavit from Subtitle E, 206. That concludes my summary
17 of the OP staff report. I'm happy to answer any questions.
18 Thank you very much.

19 CHAIRPERSON HILL: Okay. Before I get to -- so
20 everyone -- just so everyone knows, they'll have an
21 opportunity to ask questions of the Office of Planning. I
22 realize that the commissioner is here from the ANC.

23 ANC commissioner, can you hear me? Could you
24 introduce yourself for the record, please?

25 MS. BOTSTEIN: Hi. I'm Clara Botstein. I'm the

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1 ANC Commissioner for 4C08.

2 CHAIRPERSON HILL: Great. I don't think you've
3 been sworn in yet, correct?

4 MS. BOTSTEIN: That's correct.

5 CHAIRPERSON HILL: Okay. Mr. Hamala, can you
6 please swear in the commissioner?

7 MR. HAMALA: Yes, sir. Let's see. Commissioner,
8 do you solemnly swear or affirm that the testimony you will
9 give in this case will be the truth, the whole truth and
10 nothing but the truth?

11 MS. BOTSTEIN: Yes.

12 MR. HAMALA: Great. Very good.

13 CHAIRPERSON HILL: Commissioner, can you give us
14 the testimony of the ANC and what happened at the hearing?

15 MS. BOTSTEIN: Sure. So I sent the letter via
16 email as well. But basically, we held a couple community
17 meetings on this project. And then at the meeting, which
18 took place in May, there was unanimous approval for approving
19 this project.

20 So I can drop that letter in the chat. We did
21 note the concerns around sort of the process in general and
22 with this case specifically. But we did agree with the
23 Office of Planning's assessment and voted in support of the
24 project. So I can send that to whoever is -- if you want to
25 --

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1 CHAIRPERSON HILL: We got it. We have your letter
2 and the exhibit.

3 MS. BOTSTEIN: Okay. Great.

4 CHAIRPERSON HILL: Okay. All right. Let me jump
5 around a little bit. Okay. Do my Board members first have
6 any questions of the Office of Planning? Okay. Ms. Waters,
7 do you have any questions of the Office of Planning?

8 MS. WATERS: First, which keeps coming up, and I
9 think the Office of Planning is the one who initiated it, I
10 would like to know what does the side yard have to do with
11 abutting of this addition? What does it have to do with the
12 relief?

13 MS. VITALE: The impact would be different if you
14 were not in end of row, and you had another row building
15 directly adjacent to you, you know, also with the potential
16 to add on. It could create more of an impact with respect,
17 you know, to light and air.

18 So it just -- you have windows on that side of
19 your house. You have a small side yard there. So in our
20 analysis in looking at the impacts to your light and air, if
21 you were a row building with no side yard with another row
22 structure directly adjacent to you, it would be a different
23 analysis.

24 MS. WATERS: Me as a senior, okay, I enjoy coming
25 out on my porch and getting the air and light that I have

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1 now. Okay? It's already infringed upon. This side yard,
2 I would never do to my neighbors on New Hampshire Avenue, if
3 I were to extend it out, or if they were to extend it out,
4 like I said previously, it would be like tunnel vision.

5 CHAIRPERSON HILL: Ms. Waters?

6 MS. WATERS: Yes.

7 CHAIRPERSON HILL: I'm sorry. I'm looking at my
8 fellow Board members. Do you have another question for the
9 Office of Planning?

10 MS. WATERS: No. But I wanted to -- that needed
11 to be clarified because it's being used by the applicants.
12 So that needed to be clarified why.

13 CHAIRPERSON HILL: Okay. I understand your
14 disappointment -- not disappointment.

15 MS. WATERS: Yes.

16 CHAIRPERSON HILL: Disagreement with their
17 analysis.

18 MS. WATERS: Mm-hmm.

19 CHAIRPERSON HILL: Do you have another question
20 for them?

21 MS. WATERS: Not right now. For Planning, not
22 right now.

23 CHAIRPERSON HILL: Okay. Thanks, Ms. Waters. All
24 right. Does anybody have any questions for the ANC
25 commissioner, meaning my Board members first? Okay. Nobody

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1 has there. Ms. Waters, do you have any questions for the ANC
2 commissioner?

3 MS. WATERS: I already spoke to Clara about it so
4 she knows how I feel about it.

5 CHAIRPERSON HILL: Okay. I have a couple of
6 things at the end that I have some questions. Does the
7 applicant, Ms. Freeman, do you have any questions for the
8 Office of Planning or the ANC commissioner?

9 MS. FREEMAN: No, sir.

10 CHAIRPERSON HILL: Okay. So the one question I
11 have for the Office of Planning, again, that existing
12 whatever, first floor, right, that's 21 feet whatever, right,
13 past that wall, right? And so they are basically just
14 replacing that?

15 MS. VITALE: That is my understanding.

16 CHAIRPERSON HILL: That section, that's the
17 understanding, right?

18 MS. VITALE: Yes.

19 CHAIRPERSON HILL: As far as like the Zoning
20 Commissioner is concerned, as far as like, you know, the
21 light and air, right? Then, and even us, whatever.

22 Then the second floor, they are now going 20 feet
23 where they can go 10 feet by right. So that additional 10
24 feet supposedly is what we're talking about, which it's
25 interesting because now, I guess, we had a case, and I know

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1 that Mr. Blake was on it and Vice-Chair John, where, like,
2 there was this discussion about whether the 10 foot went to
3 just the first floor, the second floor or what have you,
4 right? And now I guess it is going to be looked at per
5 floor, correct, Miss?

6 MS. VITALE: That is my understanding. We would
7 certainly defer to the Zoning Administrator on -- the Zoning
8 Administrator interprets the zoning regulations. It is the
9 Zoning Administrator and his staff at building permit who
10 would review any building permit application against the
11 zoning regulations and determine compliance.

12 It is my understanding that the Zoning
13 Administrator is now reviewing that 10 foot rear yard
14 requirement on a floor-by-floor basis. It's also my
15 understanding that that measurement now is made based on
16 enclosed space that could be conditioned.

17 So if you have a screened porch, you couldn't run
18 central air or heating so that would not count. If you had
19 an enclosed space that you could essentially condition, you
20 know, heat or cool, that the Zoning Administrator would then
21 consider that to --

22 CHAIRPERSON HILL: Got it, got it, got it.

23 MS. VITALE: -- be relevant for purposes of
24 calculating the 10 foot rule.

25 CHAIRPERSON HILL: Okay. Okay. And then, right.

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1 But we are here for that additional 10 feet on the second
2 floor at this time.

3 MS. VITALE: We are.

4 CHAIRPERSON HILL: And, okay. Ms. Waters?

5 MS. WATERS: Yes?

6 CHAIRPERSON HILL: Do you kind of -- and, I mean,
7 I know. Believe me I know that this is very upsetting and
8 you're trying to work this, and you've already been through
9 the ANC and all of these different things that are going on.
10 And I'm going to make sure that as we kind of talk through
11 this we at least understand any kind of, you know,
12 communication that has been going on and is going on between
13 anyone that is doing any construction next to your house is
14 something that would continue to happen.

15 But you do understand that we're here for that
16 little 10 foot square that's on the second floor, correct?

17 MS. WATERS: Yes. Okay. Let me go back. They
18 want to tear it down, tear down this addition, build it back,
19 same size, with the same size on the second floor.

20 CHAIRPERSON HILL: Right.

21 MS. WATERS: Right.

22 CHAIRPERSON HILL: But I'm just saying like as far
23 as like -- and I'm not trying to be rude. I'm trying to like
24 just make sure that --

25 MS. WATERS: I understand. I understand.

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1 CHAIRPERSON HILL: -- you and I understand. That
2 I'm on the same page, which is that first floor, they're just
3 replacing that first floor. The second floor, they're
4 allowed to go 10 feet. And now they're trying to go 20 feet.
5 So it's that additional little 10 foot square that we're
6 looking at.

7 And that's not to say that we're not looking at
8 the shadows that, you know, all of the shadows. But I'm just
9 pointing out that 10 feet that's on the second story. You're
10 aware of that, correct?

11 MS. WATERS: Okay. Let me back up so I can
12 explain this. I was told by Mr. LeGrant, right, DCRA, if a
13 structure was torn down, they have to go by the 10 foot
14 ruling from the basement, first floor and second floor
15 addition. And that is what was approved Mr. LeGrant said.
16 The 10 foot -- what are you -- you're going to tear down the,
17 what, 20 some feet?

18 CHAIRPERSON HILL: What I understand from the --

19 MS. WATERS: And put it back the same?

20 CHAIRPERSON HILL: What I understand from the --

21 MS. WATERS: Help me understand.

22 CHAIRPERSON HILL: I understand. What I
23 understand from the Office of Planning, and I'm asking you,
24 Ms. Vitale, if this is something I'm interpreting this
25 correct, right, that they are replacing that first floor as

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1 a matter of right, correct?

2 MS. VITALE: They haven't requested relief for
3 that. I have not had any conversations with the Zoning
4 Administrator, you know, specific to this case. It's a self-
5 certified application. The applicant's architect indicated
6 that --

7 CHAIRPERSON HILL: Okay. That's fine. That's all
8 I needed to know.

9 MS. VITALE: Yeah.

10 CHAIRPERSON HILL: So that's what we understand,
11 Ms. Waters, at this time. Okay. So let me see, all right.
12 Oh, then, all right, the ANC Commissioner. Okay. Does
13 anybody have any questions of anybody? I'm looking at my
14 Board members, first.

15 VICE-CHAIRPERSON JOHN: You understand that the
16 applicant by right could build a 10 foot addition on the
17 second floor?

18 MS. WATERS: Yes.

19 VICE-CHAIRPERSON JOHN: Okay. And that 10 foot
20 could go all the way down. Assuming the --

21 MS. WATERS: Exactly.

22 VICE CHAIRPERSON JOHN: Okay.

23 MS. WATERS: And I'm in agreeance, like I said,
24 from the Office of Zoning, who I've been communicating with
25 several. Okay? Once a structure is torn down, it has to go

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1 by the 10 foot rule today. There is no grandfathered in.
2 If the structure comes down, it has to go by the 10 foot
3 rule.

4 CHAIRPERSON HILL: Well, then I'm a little --
5 well, Mr. May apparently knows something. Commissioner --

6 COMMISSIONER MAY: I don't know that I know
7 anything. I do want to ask the architect this question
8 because, you know, in the old days, if you tore it down, you
9 couldn't build it up the way it was if it was non-conforming.

10 However, in more recent days, we've seen, I think,
11 multiple examples of non-conforming structures essentially
12 being rebuilt onto the same footprint. So I guess what I
13 would ask of the applicant or their architect, Ms. Freeman,
14 is there -- have you had a pre-development review with zoning
15 or with DCRA and have they confirmed that you can tear down
16 what is there and essentially rebuild in that same footprint?

17 MS. FREEMAN: Correct. And we are actually
18 decreasing the non-conformity. And the rule reads, I believe
19 I'm not going to be able to find it very quickly. But it
20 says as long as you're not extending the non-conformity, it
21 may be rebuilt. So a non-conforming structure can be rebuilt
22 as long as you aren't extending or worsening the non-
23 conformity.

24 COMMISSIONER MAY: Right. Okay.

25 (Simultaneous speaking.)

1 MS. DAVIS: I'm sorry. I was going to make a
2 point to what Ms. Waters was looking at previously. In her
3 exhibits, she points to the razing of an accessory structure
4 as not being grandfathered once the accessory structure is
5 razed and that's not what we're doing here.

6 COMMISSIONER MAY: Well, but she's also quoting
7 Mr. LeGrant. And we don't have anything from Mr. LeGrant.
8 So this is what I'm trying to find out what you have been
9 told. Certainly, you don't want to go through this process,
10 get the approval and then find out that you are not, in fact,
11 grandfathered in this way.

12 MS. DAVIS: Certainly. We did have a meeting with
13 Mr. LeGrant on March 8 where he said that demolishing the
14 existing structure would be allowed and rebuilding as long
15 as we --

16 COMMISSIONER MAY: And rebuilding it with a
17 slightly smaller footprint.

18 MS. DAVIS: Correct. As long as we did not
19 increase the non-conformity.

20 COMMISSIONER MAY: Right, right. And, Ms.
21 Freeman, when you were quoting something, what were you
22 reading from or what were you trying to read from? Is it --

23 (Simultaneous speaking.)

24 MS. FREEMAN: I was trying to read from the -- and
25 I'm not going to be able to find it, but the non-conforming

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1 structures portion of the --

2 COMMISSIONER MAY: Zoning regulations.

3 MS. FREEMAN: Zoning regulations. And I believe
4 it's in my -- I think it's in my burden of proof statement
5 or I would have to pull it up to give you the exact quote.

6 (Simultaneous speaking.)

7 MS. FREEMAN: I do just want to add really
8 quickly. So we did discuss this in detail and look at the
9 photos of the existing with Mr. LeGrant on a call that the
10 owners and Beth and I were all present for. And he said if
11 we were to revise our original proposed drawings, which
12 included this portion that we now need a special exception
13 for, to remove that additional -- anything that was beyond
14 the 10 feet, they would approve it as it was as long as we
15 did that, which we have done and we do have an approved
16 permit for it.

17 And it was agreed that the first floor and cellar
18 were existing. We are not extending the non-conformity of
19 the existing. We don't have a lot occupancy issue or any
20 other zoning issues. So we have been approved to build
21 everything that's on those drawings except for that small
22 portion.

23 MS. WATERS: Excuse me, Mr. Hill.

24 COMMISSIONER MAY: Ms. Waters, I don't want to
25 encourage debate. I'm just asking questions of the applicant

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1 at this moment. Okay?

2 MS. WATERS: Okay.

3 COMMISSIONER MAY: So I guess the bottom line, I
4 mean, I appreciate everything you've told me. We don't have
5 evidence of any of that in the record other than what you
6 have told us. And I think the bottom line is that this is
7 a self-certified application.

8 So if you subsequently find that any part of this
9 is wrong, you may wind up having to come back for other
10 relief. I am not doubting what you have been told. Again,
11 I've heard it interpreted that way that if you demolish
12 something and it's non-conforming you can reconstruct it as
13 long as you don't increase the non-conformity. That's the
14 current rule.

15 It wasn't the rule when I put an addition on the
16 back of my house, or when I fixed an addition on the back of
17 my house, but it is now.

18 So, anyway, I guess the bottom line is it really
19 comes down to just that additional portion. That's really
20 the only thing that we have to discuss today because that's
21 the only thing that you're asking relief for. Everything
22 else is not actually relevant to the question we are
23 deciding.

24 MS. FREEMAN: Correct. And it's also already been
25 approved by zoning.

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1 COMMISSIONER MAY: You have mentioned that.

2 CHAIRPERSON HILL: Right. Well, the only thing
3 that has been approved by zoning is that first floor.

4 MS. FREEMAN: No. The second floor that does not
5 extend beyond the 10 feet has also been approved.

6 CHAIRPERSON HILL: That's cool. So you have
7 drawings then that are that way?

8 MS. FREEMAN: Yes.

9 CHAIRPERSON HILL: And so -- Ms. Freeman the
10 reason why I'm asking is that -- anyway, you don't know why
11 I'm asking. So you have drawings that are everything but
12 that 10 feet, that additional 10 feet, right, is what you
13 just said yes to that you have approval for, right?

14 MS. FREEMAN: Correct.

15 CHAIRPERSON HILL: So then what brought you to
16 come back to ask for the additional 10 feet?

17 MS. FREEMAN: Because our original design included
18 this 10 feet. And we were told during the permitting process
19 after every other --

20 CHAIRPERSON HILL: So what design do you have
21 approval for? Now I'm confused.

22 MS. FREEMAN: If you look at that same Exhibit 71,
23 what you see -- I'm sorry, not 71, 53, 43? They're all
24 different numbers in my tabs than they are in the meeting so.

25 CHAIRPERSON HILL: 53. You got approval for the

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1 thing --

2 MS. FREEMAN: At the top.

3 CHAIRPERSON HILL: The top left.

4 MS. FREEMAN: Correct.

5 CHAIRPERSON HILL: Right. So --

6 MS. FREEMAN: So putting the screened porch on the
7 rear, all of this is already approved.

8 CHAIRPERSON HILL: I understand. So what I'm
9 saying is at some point you went back to -- I'm again now --
10 I'm just trying to understand the story. But you got
11 approval for everything but the 10 feet on the second story,
12 correct?

13 MS. FREEMAN: Mm-hmm.

14 CHAIRPERSON HILL: And you have a design that's
15 like that, correct?

16 MS. FREEMAN: Yes.

17 CHAIRPERSON HILL: And at some point then, you
18 went and said, oh, wait, we should probably try -- it's okay.
19 I'm using a different word or whatever. That you were like,
20 oh, let's go ahead and fill it out, the additional 10 feet
21 on the second story? No?

22 MS. FREEMAN: No. So we started with that because
23 up until this project, the 10 foot rule and non-conforming
24 structures in every other incidence that I've been involved
25 with, we were allowed to rebuild the footprint, and it did

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1 not weigh on the support.

2 CHAIRPERSON HILL: You redid the plans. You have
3 two sets of plans.

4 MS. FREEMAN: Correct. The first set of plans
5 included what we were asking for. That was what was
6 submitted originally in October --

7 CHAIRPERSON HILL: Yes.

8 MS. FREEMAN: -- through the process. And --

9 CHAIRPERSON HILL: And the second set of plans has
10 the second story with only 10 feet.

11 MS. FREEMAN: Correct.

12 CHAIRPERSON HILL: Correct. Okay. Great. All
13 right. Let's see. All right. Does anybody have anything
14 else?

15 MS. WATERS: Yes, I do. I have a question. Beth
16 --

17 CHAIRPERSON HILL: Oh, yes, oh, Ms. Waters. Oh,
18 I'm sorry. I didn't see you, Ms. Waters.

19 MS. WATERS: Yes.

20 CHAIRPERSON HILL: Who did you have a question
21 for?

22 MS. WATERS: I have a question for Beth. She said
23 that there was --

24 CHAIRPERSON HILL: Who is Beth? Who is Beth?

25 MS. WATERS: Beth Davis.

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1 CHAIRPERSON HILL: Oh, Ms. Davis, Ms. Davis.

2 MS. WATERS: Yes.

3 CHAIRPERSON HILL: Okay.

4 MS. WATERS: Okay. I would like to see -- you
5 mentioned earlier about a -- I would like to see the ruling
6 that you mentioned about this 10 feet with existing. You
7 mentioned something about the rights, prior rights.

8 CHAIRPERSON HILL: So what they're saying, Ms.
9 Waters, is that that first floor, and what they are here,
10 they are self-certified, which what that means is they are
11 taking the risk that what they are saying they can do, they
12 can do, right?

13 MS. WATERS: I hear you. I understand.

14 CHAIRPERSON HILL: And so after this, they would
15 have to go to DCRA, if we were to approve this, and they
16 would have to get their permits, right?

17 MS. WATERS: Mm-hmm.

18 CHAIRPERSON HILL: And during the evaluation, if
19 it turns out they can't actually do what they say, they would
20 have to come back to us again. So they don't have anything
21 in the record right now. This is what we've just been
22 talking about.

23 MS. WATERS: Mm-hmm. Mm-hmm.

24 CHAIRPERSON HILL: They don't have anything in the
25 record right now that they have from the Zoning Administrator

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1 that's in the record that says that they can do what they
2 say. And it doesn't matter because it is self-certified,
3 meaning if they don't get it after this, they would be back
4 before us. They would have to do all of this again.

5 MS. WATERS: Okay. I understand.

6 CHAIRPERSON HILL: Okay.

7 MS. DAVIS: Our permit gives us permission to do
8 it. Everything that was done previously.

9 CHAIRPERSON HILL: Okay. So --

10 MS. DAVIS: Yeah. We have a permit in place for
11 the drawings that are. And they have been approved by the --

12 CHAIRPERSON HILL: Does anybody have any more
13 questions?

14 MS. WATERS: Mr. Hill, I have a question.

15 CHAIRPERSON HILL: Sure.

16 MS. WATERS: Okay. How is something self-
17 certified? But how can you build on something that was
18 constructed without a permit?

19 CHAIRPERSON HILL: As far as I understand, Ms.
20 Waters, from the testimony here, again, the Zoning
21 Administrator is saying that non-conforming structure, if
22 they rebuild it to less the size -- even if it's a foot less,
23 if they rebuild it to less the size than it was, they can do
24 that.

25 And there is nothing -- you know, I guess if my

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1 fellow Board members want something in the record that states
2 that we can. But that will end up having clarification
3 during the permitting process. But, however, Ms. Davis is
4 saying, they already have permits that allows them to do
5 that. So therefore it means that it is allowed. So that is
6 something that is beyond our purview right now.

7 The argument that we're here for -- and I'll get
8 you Ms. Freeman -- the argument that we're here for right now
9 is the second story additional 10 feet. That's not to say
10 they're going to get it. I'm just saying that's what we're
11 here for.

12 MS. DAVIS: The section is 202.2.

13 CHAIRPERSON HILL: About what?

14 MS. DAVIS: Enlargements or additions may be made
15 to the structure providing -- and this is under the non-
16 conforming structures. Enlargements or additions may be made
17 to the structure provided that the addition or enlargement
18 itself shall A, conform to the use and development standards
19 and B, neither increase nor extend any existing non-
20 conforming aspect of the structure nor create any new non-
21 conformity.

22 CHAIRPERSON HILL: Okay.

23 MS. DAVIS: So that's in the Zoning Code.

24 CHAIRPERSON HILL: Okay.

25 MS. DAVIS: Sorry.

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1 CHAIRPERSON HILL: That's all right. Okay. So
2 did anybody have any final questions? Ms. John?

3 VICE-CHAIRPERSON JOHN: So if you're adding to the
4 second floor, this might be for OZ legal, are you not
5 extending the non-conformity if you're adding to the second
6 floor?

7 MS. DAVIS: That's BZA relief. Yeah, that's why
8 we're here because we can't do that by right.

9 VICE-CHAIRPERSON JOHN: And you're also here for
10 the 10 foot.

11 MS. FREEMAN: That's the same --

12 MS. DAVIS: That would be our non-conforming.

13 VICE-CHAIRPERSON JOHN: That would be two
14 different rules. The 10 foot addition would have us look at
15 the adverse impact to the neighbor, the adjacent neighbor.
16 So they are two separate rules.

17 CHAIRPERSON HILL: What happened to -- I'm going
18 to -- I'm sorry. I didn't mean to cut you off, Ms. John.

19 VICE-CHAIRPERSON JOHN: No, that's fine.

20 CHAIRPERSON HILL: Okay. Just to the Office of
21 Planning, I'm curious, that other thing, the thing that is
22 to the left of their house, that happened before the whole
23 regulation changed?

24 MS. VITALE: Mm-hmm.

25 CHAIRPERSON HILL: Again, sorry. Everybody is

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1 saying yes. Okay. All right.

2 MS. VITALE: You're talking about 532?

3 CHAIRPERSON HILL: Yeah.

4 COMMISSIONER MAY: That is one of the reasons why
5 the regulation was changed.

6 CHAIRPERSON HILL: Okay. Did I lose the
7 commissioner? Oh, no, there's the commissioner. So
8 commissioner just out of curiosity -- well, I'll get you Ms.
9 Waters.

10 MS. WATERS: Okay. Thank you.

11 CHAIRPERSON HILL: Oh, sure. Commissioner, again,
12 the discussion that was had with your community about this,
13 the community didn't have -- like, originally, I mean, I know
14 the community, before when I first started this, everybody
15 was going wild about these whole pop ups and pop backs and
16 this large thing that happened, right?

17 So now, I guess, since this has already happened,
18 that's why there is less of a discussion about what this
19 application is? Question.

20 MS. BOTSTEIN: A few things. One, this is not --
21 this block has actually experienced a lot of pop ups. This
22 building would not be -- this is, I would say, a
23 comparatively minor project because, again, they're just
24 building out on an existing structure.

25 I would be remiss if I didn't note that I think

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1 that block in particular is very frustrated by the approval
2 of all of these projects. So I don't want to say that that's
3 not a sentiment.

4 I think that when we were looking at this, it was
5 really what the Office of Planning talked about in terms of
6 the impact on the property. And I think, you know, I got
7 letters in support. You know, I've talked at length with Ms.
8 Waters and understand her concerns.

9 But, really, this is -- we're talking about a
10 relatively minor project in my view. Obviously, for a
11 neighboring property it feels different. But especially in
12 the grand scheme of this block, it's certainly not going to
13 be a noticeable relatively speaking structure, again, because
14 they're rebuilding and just adding.

15 And this did seem to be a case where, you know,
16 it could have been interpreted that they didn't need to
17 actually get a special exception although obviously we're
18 here. But just there was a lot of history behind this case,
19 too, that I think made it a little bit more -- you know, made
20 it more challenging so.

21 CHAIRPERSON HILL: Go ahead. Go ahead.

22 MS. BOTSTEIN: But to answer your question, yes,
23 there has been frustration, I think, in the block and in the
24 community around the process and the approvals. But specific
25 to this case, I think most of what Ms. Waters shared is what

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1 we heard in the community conversations and also a lot of
2 neighbors in support who wrote separately. So, yeah, and the
3 ANC Commission felt pretty unanimous in the back of the grand
4 scheme of projects that come before the commission, this was
5 a pretty minor one.

6 CHAIRPERSON HILL: Okay. Have you guys -- I'm
7 speaking to Ms. Freeman. Have you all come up with any kind
8 of, like, outline that Ms. Waters might be able to understand
9 in terms of construction management or how this might
10 progress if this were to progress and how her -- some of the
11 different concerns might have been alleviated in terms of
12 like soil or, you know, I know that you mentioned -- and by
13 the way, we do this a lot, right?

14 And so when people are talking about underpinning
15 and things like this, just because you guys say it so easily
16 doesn't mean that people get, you know, they are suddenly,
17 like, oh, wow, that sounds wonderful. I can't wait for
18 underpinning to happen. So, you know, have you kind of like
19 tried to have anything to give forward to Ms. Waters in terms
20 of construction management or something that you might be
21 able to offer her? Question, Ms. Freeman.

22 MS. FREEMAN: Thank you. Yes. So, yes, on a
23 couple different levels. Ms. Waters had an architect who had
24 joined our community meetings in the beginning who I reached
25 out to separately to discuss to try and have a professional

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1 discourse about the drawings and what issues there may be.
2 And I wasn't met with much interest, I guess. And through
3 this process in all of these community meetings, I have
4 offered to sit down or --

5 CHAIRPERSON HILL: That's fine. I got you. I got
6 you, Ms. -- hold on, hold on. Hold on, everybody. Just give
7 me a second. I'm going to work through this as quickly as
8 I can so believe me. Okay? Because I've got to go
9 somewhere.

10 So, right. So you don't have anything necessarily
11 outlined that might be some kind of a construction management
12 agreement or anything in terms of like questions that Ms.
13 Waters might have? At this point, I'm just saying you do
14 not, correct?

15 MS. FREEMAN: No. But we've also asked about
16 questions. We've reached out multiple times about getting --

17 CHAIRPERSON HILL: I got you. I'm saying right
18 now you do not. Right now you do not.

19 MS. FREEMAN: No, sir.

20 CHAIRPERSON HILL: Okay. Got you. Ms. Waters,
21 you had a comment first and then I have a question for you.

22 MS. WATERS: Okay. Two things. Number one, there
23 is great support from the community, okay, in reference to
24 what Clara was talking about.

25 Number two, on the 532 Taylor Street, you asked

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1 if that really was before the 1516. No, this was recently
2 done within a couple years, 532 Taylor. Is that what you
3 were speaking about, Mr. Hill?

4 CHAIRPERSON HILL: Yeah, but that's okay. I mean,
5 I was just curious.

6 MS. WATERS: I just wanted to correct the record.
7 And with the gentleman, and I'm not going to get into tit for
8 tat that --

9 CHAIRPERSON HILL: Please don't.

10 MS. WATERS: -- she reached out, that Lucia
11 reached out to, he said she came on as very aggressive. But
12 I went back to the drawings and looking at the drawings, I
13 had asked, and this is one thing that I have asked the Board
14 that I have put in is the drawings are 10 x 17 I think they
15 have to give. And I asked for the 24 x 36, which I got. But
16 it still said for the demolition. But there's nothing
17 written there on the plans about the demolition and keeping
18 it clean, blah, blah, blah.

19 CHAIRPERSON HILL: Okay. I got you. Okay. So,
20 Ms. Waters, I got a question for you, right?

21 MS. WATERS: Yes.

22 CHAIRPERSON HILL: Is there anything that you
23 would like -- is there anything that might make this more,
24 I don't want to use the word appetizing. That's not the
25 right word. Is there anything you might be able to think of

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1 in terms of, like, because, again, I don't know what is going
2 to happen. And by the way, I really don't know what is going
3 happen. But they are here for that extra 10 feet on the
4 second floor, right?

5 And the reason why they are here is because they
6 have to be here for that extra 10 feet on the second floor.
7 So my question to you is other than removing that extra 10
8 feet on the second floor, right, which is something that they
9 might not get, is there, like, something that you would like
10 to see from the neighbors in terms of construction management
11 agreement or anything like this?

12 MS. WATERS: Of course, of course.

13 CHAIRPERSON HILL: Okay.

14 MS. WATERS: The maintenance of the property, how
15 it is going to be maintained, how it is going to be -- like
16 when they did over at 532 Taylor, they fenced it in. They
17 fenced in the area for debris. And they're going to be
18 digging in the front, okay, digging in the back so there has
19 to be --

20 CHAIRPERSON HILL: Okay. Okay.

21 MS. WATERS: -- set in place.

22 CHAIRPERSON HILL: I got you. I got you. Okay.
23 So, all right. I like to see something -- well, we'll see
24 what my other colleagues have to do. I would like to see
25 something from the applicant in terms of some -- Ms. Freeman,

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1 you know of all kinds of construction management agreements.
2 And it's not something that, you know, we necessarily do
3 because it's within our purview.

4 It's just something that, like, you know, the good
5 neighbor policy, like Chairman Hood likes to always, as to
6 how these projects might move forward and how you might be
7 able to bring some comfort to the immediate neighbors, right?
8 So I'd like to see some kind of construction management
9 agreement, okay, whatever that may be, okay? And, yeah.

10 MS. FREEMAN: May I ask a question?

11 CHAIRPERSON HILL: Sure.

12 MS. FREEMAN: So since the homeowners have moved
13 out and construction has started, the general contractor has
14 reached out multiple times and attempted to contact Ms.
15 Waters with no response. And she doesn't answer the door
16 when they're there in an effort to try and communicate with
17 her and create -- give her the proper contact if there is
18 something that goes wrong.

19 We also have gotten documentation of all of the
20 neighboring properties at 532 and photographs of the interior
21 of their homes so that if there are changes, if there is
22 movement, we know who is responsible, and it can be
23 maintained or corrected. Ms. Waters has refused to let us
24 on to her property or provide her own photos. So we have
25 done what we typically do --

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1 CHAIRPERSON HILL: I got you. I got you.

2 MS. WATERS: I want to respond.

3 CHAIRPERSON HILL: Hold it. Hold it, Ms. Waters.
4 Hold on. I understand we probably wanted to get to this
5 point first. Okay? And so we're now at this point. Okay,
6 right? So before -- what I'm trying to do Ms. Waters is, as
7 I said, I don't know what's about to happen in terms of what
8 my fellow Board members are trying to do.

9 I'm trying to do something -- I'm trying to
10 provide some kind of a conduit or mechanism where you might
11 find a little more if -- I mean, some kind of construction
12 is going on apparently, right? And they have at least their
13 matter of right permit, which is they get to build what
14 they're going to build except for that little 10 feet on the
15 second story.

16 And so I would like you to at least have an
17 opportunity to work with the applicant so that you can come
18 up with some kind of an understanding in terms of a
19 construction management agreement. Would that be something
20 you would be willing to have a conversation about, Ms.
21 Waters?

22 MS. WATERS: Okay. I have -- this has been
23 elevated to DCRA for the clarity of, and this is what Mr.
24 LeGrant has mentioned to me. We have talked about it on
25 Teams, okay, this and the 10 foot. So when I have clarity

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1 on exactly, because Mr. LeGrant told me, okay, that if the
2 structure comes down, if the existing structure comes down,
3 they have to go by the 10 feet by rights. He did the 10 feet
4 at the top and to go to the BZA for relief for the other.

5 Now this is quite confusing, and I will feel more
6 comfortable once that is clear because there are different
7 folks at DCRA that I have reached out to and spoke to who
8 have told me about this 10 foot ruling. Once a structure
9 comes down, back 10 feet. And I always, I will go for the
10 10 feet ruling. So I need to know what I'm dealing with.

11 CHAIRPERSON HILL: I got you. I don't know how
12 to answer a lot of that. I just know where we are right now
13 with this hearing that I at least have some understanding of
14 --

15 MS. WATERS: Mm-hmm.

16 CHAIRPERSON HILL: -- which is that they have
17 permits for the first floor and 10 feet on the second floor.
18 They're building what they have permits for, right? And so
19 that's what I know they're going to do. What I'd like to do
20 is see if there's some kind of a construction management
21 agreement or something that maybe you and the applicant can
22 agree on as to how that construction will move forward.

23 And so my first question, Ms. Waters, is would you
24 -- well, anyway, you understand I don't have an answer for
25 the thing you're asking about.

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1 MS. WATERS: Okay. I want to clarify something
2 that Lucia Freeman mentioned about the photos. I have my
3 photos. And the photos have been notarized. Okay? During
4 this, like I said, I've been out, okay, with long COVID. And
5 for those reasons, no one, I don't know them. They're not
6 coming in my house. Okay? And I explained that to Erick.
7 I explained to him. I have what I need to protect my home.
8 I have my photos, and they have been notarized.

9 She wanted me to upload the photos and put them
10 in some public docking or app. No. I don't do that. And
11 I don't have to.

12 CHAIRPERSON HILL: Okay.

13 MS. WATERS: Okay. So I have what protects me.
14 And just to bring it to light, the mayor just introduced
15 yesterday for the -- and I'll read it. Mayor Bower
16 introduced legislation to help protect District homeowners
17 from construction related property damage. And Erick and I
18 -- I had mentioned that to Erick. So I think that's
19 irrelevant --

20 CHAIRPERSON HILL: Okay. Okay. Okay.

21 MS. WATERS: -- for Ms. Freeman.

22 CHAIRPERSON HILL: All right. Okay. This is what
23 I'm just trying to do. I'm trying to do something. So, Ms.
24 Waters -- all right. First of all, I'm going to finish all
25 of this discussion. And then I'm going to give some

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1 suggestions to my Board. So is everybody done? Okay.

2 VICE-CHAIRPERSON JOHN: Commissioner May had his
3 fingers up.

4 COMMISSIONER MAY: I was just going to suggest
5 that we should go ahead and move into deliberation and figure
6 out how we would want to move forward.

7 CHAIRPERSON HILL: Right. So this is where I was
8 trying to do something. But I meant if anybody of the
9 applicant -- I meant, anybody but my fellow Board members,
10 does anybody have anything? And please raise your hand
11 because I'm going to give the last word to the applicant
12 because that's what the applicant is supposed to have. So
13 does anybody got any questions?

14 MR. YOUNG: Chairman Hill?

15 CHAIRPERSON HILL: Who is raising --

16 MR. YOUNG: It's Mr. Young.

17 CHAIRPERSON HILL: Oh, yeah. Go ahead, Mr. Young.

18 MR. YOUNG: You still have a couple people from
19 the public who want to testify.

20 CHAIRPERSON HILL: Thank you. Sorry, I completely
21 -- I got so wrapped up in my own world. Okay. Could you
22 please bring in -- Ms. Waters?

23 MS. WATERS: Yes?

24 CHAIRPERSON HILL: If you could try to help me out
25 here, because I think the Board seems to be wanting to vote.

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1 And so I'm trying to see if you can kind of come up with some
2 kind of a construction management agreement or something that
3 might work out with the applicant so that you get a little
4 bit more information and at least some kind of a pathway to
5 get information. So you can think about that while I take
6 public testimony. Okay? Okay. Because what I'm trying to
7 say, Ms. Waters, is once these guys vote, they vote, right?

8 MS. WATERS: I understand. Yeah, I'm aware of the
9 process.

10 CHAIRPERSON HILL: Okay. Got you. So let's see,
11 where are we? Oh, yeah. Mr. Young, can you bring in the
12 public, please and give me the names when you bring them in?

13 MR. YOUNG: Yeah. You have Jared Miller and
14 Ramona Yun.

15 CHAIRPERSON HILL: Okay. Great. Mr. Miller, can
16 you hear me? Mr. Miller, can you hear me? Oh, goodness.
17 Ms. Yun, can you hear me? Oh, Mr. Miller, I can see you.
18 Can you hear me? No, you're on mute. Can you unmute
19 yourself? Could you introduce yourself for the record,
20 please, sir?

21 MR. MILLER: Jared Miller.

22 CHAIRPERSON HILL: And where do you live, Mr.
23 Miller?

24 MR. MILLER: I'm at 730 Rock Creek Church Road,
25 Northwest.

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1 CHAIRPERSON HILL: Okay. Mr. Miller, you'll have
2 three minutes to give your testimony. You can begin whenever
3 you like.

4 MR. MILLER: Okay. Well, let me get to it. I
5 know you guys have been here for a while. So let me get
6 started.

7 Dear Members of the Board of Zoning Adjustment,
8 I am writing in support of Dianna Waters of 536 Taylor Street
9 Northwest. In her opposition to the proposed addition noted
10 above, which is the document that was submitted, to the size
11 and scale and the parking burden on homeowners.

12 As a neighbor and native Washingtonian, I have
13 witnessed I have witnessed many oversized additions and pop
14 ups and pop backs in the Petworth neighborhood that
15 aesthetically destroyed the classic architecture that this
16 community, that it gives the distinctive look of the
17 community.

18 This addition is too large and too tall and will
19 block natural light and air to the adjacent homes, which
20 include Ms. Dianna Waters' home and the rear of the homes on
21 the 4000 Block of New Hampshire Avenue that use their yards
22 as outdoor living spaces to entertain and relax.

23 I understand that every homeowner has a right to
24 do home improvements and modifications to their homes but
25 within reason.

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1 The proposed addition is too large and will dwarf
2 the neighboring homes. It is my understanding that the
3 current regulations require that the addition can only be
4 built out as far as 10 feet from the principal structure.
5 And any structure that is raised is no longer grandfathered
6 in and taken into consideration.

7 In my exhibit, or my statement, I have the actual
8 email that I was sent from DCRA in late May. It says, below
9 is the body of an email that was sent from DCRA to me in a
10 recent email in a response to a garage alteration and repair
11 that I am currently amid.

12 DCRA said they circled back with their internal
13 technical team and indicated that if any existing accessory
14 building is being demolished, all right, and replaced with
15 a new structure, then any grandfathering or non-conforming
16 structure rights are no longer applicable. And that's
17 Subtitle E, 5201.2 and Subtitle C, Non-Conformities. All
18 right?

19 In addition to the proposed addition, the block
20 is experiencing a massive increase in parking. And it has
21 become difficult for homeowners to find on street parking.
22 Parking must be a consideration when building and creating
23 a multi-unit dwelling out of a single family home on a very
24 short residential block.

25 With the Georgia Avenue Petworth Metro Station

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1 within walking distance, parking is at a premium because the
2 surrounding blocks are used as a parking lot for people who
3 catch the subway to and from work.

4 I'm an artist for over 20 years. And, you know,
5 I draw and paint portraits. I actually draw architectural
6 drawings. And I don't know if you guys are aware, but these
7 drawings are skewed. They give the illusion that the yards
8 are humongous, and they've got these small buildings.

9 I've been to Ms. Waters' home. I've helped her
10 measure out things. And her home on the west face, the side,
11 is so close to her neighbors on the 4000 Block of New
12 Hampshire Avenue, she could open up her window and fall into
13 their porch.

14 CHAIRPERSON HILL: Mr. Miller? Can I ask -- you
15 have run over time. But if you could just kind of wrap-up?

16 MR. MILLER: Sure, sure, sure, sure, sure. I
17 mean, that's pretty much all I, you know, wanted to say. I
18 just know that for a fact that I've been told by DCRA that
19 any non-conforming structure that has been demolished is
20 going to be torn down so. If there was an original deck
21 there that they've built rooms on top of, that is going to
22 be torn down because I can't imagine that anybody would build
23 a structure on top of a deck.

24 CHAIRPERSON HILL: I got it, Mr. Miller. Yeah,
25 that one unfortunately, we've gone around and around on this

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1 one.

2 MR. MILLER: Yeah, yeah. Oh, for sure. I just
3 wanted to mention that because that's what I had written in,
4 you know, my statement.

5 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
6 Miller.

7 MR. MILLER: Thank you.

8 CHAIRPERSON HILL: All right. Thank you, sir.
9 Thanks for waiting around, too. Ms. Yun, can you hear me?

10 MS. YUN: Yes, I do hear you.

11 MS. YUN: Yes, I do hear you.

12 CHAIRPERSON HILL: Oh, could you introduce
13 yourself for the record, please?

14 MS. YUN: Yes. My name is Ramona Yun. I am a
15 resident at 536 Taylor Street. I apologize. I am currently
16 on the bus so.

17 CHAIRPERSON HILL: That's okay. That's okay. Go
18 ahead and you will get three minutes to give your testimony,
19 and you can begin whenever you like.

20 MS. YUN: I just wanted to state my opposition to
21 the 534 Taylor Street.

22 I have a few concerns, mainly, obstructing natural
23 air and light. Another concern is that the plan has not
24 included the demolition of the back garage. And so there had
25 to be a soft border placed already. And this is just the

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1 beginning of construction and demolition. So that concerns
2 the transparency of the project.

3 And I have another concern is when we first
4 reviewed the plans, we sat down with Erick, my mom and I, and
5 we were only shown the portion that would pertain to us. He
6 spoke that they would abide by the DCRA's 10 foot building.
7 That he didn't have any plans to extend it further up from
8 that.

9 So overall since going over this in December, my
10 mom has been ill with long-term COVID. The constant hassle
11 to, you know, talk with people over this project while my mom
12 was ill was very irritating. We were almost on a daily basis
13 contacted to go over the plans. And it is just a little
14 unsettling that the plans were not presented to us in detail
15 fully. So those are my main concerns.

16 CHAIRPERSON HILL: Okay. Great. Ms. Yun, did you
17 say you are Ms. Waters' daughter?

18 MS. YUN: Yes, I am.

19 CHAIRPERSON HILL: Oh, great. Good for you.
20 Wonderful. That's nice that you're in the area?

21 MS. YUN: Yes. We've lived there since I was
22 three years old. My mom bought our house in '98, and we have
23 been there ever since.

24 CHAIRPERSON HILL: Oh, well, that's nice. Well,
25 apparently, you're getting it later.

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1 Okay. So, okay. Let's see. All right. Does
2 anybody have any questions for the witnesses? Okay. Thank
3 you. All right. Mr. Young, if you could please excuse
4 everybody. Thank you, Ms. Yun. Thank you, Mr. Miller.

5 Okay. All right. Okay. Ms. Freeman, you got
6 anything to add at the end?

7 MS. FREEMAN: I only have to add just a couple
8 clarifications. And I'm confused on the last exhibit that
9 was submitted with the permit drawings that are associated
10 with that sunroom.

11 CHAIRPERSON HILL: Actually, Ms. Freeman, I
12 forgot. You have an opportunity for rebuttal. I don't know
13 if you -- I mean, you can do whatever you want, meaning,
14 there's like -- if you're ready for a conclusion, give me
15 your conclusion. But you do have rebuttal rights, which is
16 that we can go through all of this again and then we have to
17 go through all of this again asking about rebuttal unless you
18 want to give a conclusion.

19 MS. FREEMAN: I am happy to give my conclusion.

20 CHAIRPERSON HILL: Okay.

21 MS. FREEMAN: I just want to say there are a few
22 things that were added to the record today, like, the permit
23 drawings for the sunroom, which have been in question. I
24 think it's 69C, which Ms. Waters in her letter says that Mr.
25 Alves De Sa provided, which we don't know where those

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1 drawings came from. We've never seen them until today.

2 So I'm not sure -- she said that she is waiting
3 on clarification from Ms. Bichon (phonetic) and Mr. LeGrant
4 on that permit. However, the drawings that she has added to
5 the record show the sunroom that was there. They may not be
6 every detail that she would like to see, but, you know, that
7 is how the records work around here sometimes.

8 And that I think that we've shown our burden of
9 proof. I think we have presented all that we can for this
10 special exception. I think that we keep being asked about
11 greater construction matters that aren't actually related to
12 what is in question right now.

13 And to respond to Ms. Waters' and Ms. Yun's stop
14 work order regarding the garage, we actually demoed a portion
15 of the garage structure, and no, it was not originally in our
16 scope. But the construction process is messy. And we did
17 so in order to keep the dumpster off from in front of the
18 houses and in the backyard so as not to put all of the debris
19 at the sidewalk and on the public road.

20 So we did have our hearts in the right place when
21 it came to that and that was the goal. We have remediated
22 the stop work order. And we do have a permit for the
23 demolition of the garage.

24 I do take offense to it being said that I'm not
25 being transparent. We can't anticipate every single thing

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1 until construction starts. So we do our best. We try to
2 document everything that we possibly can. And I don't see
3 a reason why we shouldn't grant this Mr. and Mrs. Alves De
4 Sa.

5 CHAIRPERSON HILL: Okay. Great. All right. Yup,
6 Mr. May. You're on mute.

7 COMMISSIONER MAY: One last question for Ms.
8 Freeman. So how -- or maybe actually, Ms. Davis. How is
9 that this project got under construction with something less
10 than the full project? Because you're really taking a gamble
11 you might not get a decision in time to be able to get a
12 permit to complete that extra part. And, you know, that has
13 implications for the overall construction. How did you wind
14 up in this spot?

15 MS. DAVIS: Certainly. So, I personally began the
16 process -- we aggregated it in early 2021 when we reached out
17 to DCRA's Office of the Zoning Administrator. And we were
18 told that it was being done by footprint.

19 So initially in October when we submitted permit
20 drawings, it was what we have presented to you today. And
21 it was not until the very end of the permitting process that
22 we were told that we would need relief for the second floor.
23 That now the 10 foot rule is being done by floor.

24 And so it is my understanding that it is the main
25 master bedroom that is going into that space in that 10 foot

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1 area. So the goal is to keep it. However, construction --
2 we understand that it is a gamble. And we understood that
3 it was, you know, not guaranteed. But we felt that we had
4 all of the documentation and all of the paperwork. And it
5 being a new interpretation of the 10 foot rule, we are
6 hopeful that we will get this done in time. And construction
7 did just begin, I believe.

8 COMMISSIONER MAY: Okay. Well, it does feel
9 pretty risky because --

10 CHAIRPERSON HILL: No, no, you guys, we're all
11 done. We're not talking about anything anymore. Somebody
12 is asking some questions. We're all done.

13 COMMISSIONER MAY: Right. It does feel pretty
14 risky. That's all. I just, you know, you're taking a chance
15 with that. And if you -- well, hopefully, when we -- I mean,
16 if the relief is denied, your path will be clear, and, you
17 know, you'll have to deal with it the way you deal with it.

18 But if we grant it, I don't know how the timing
19 is going to work out for you. That's the real risk. But,
20 all right. Well, that's it for my question. Thank you.

21 MS. DAVIS: Thank you.

22 CHAIRPERSON HILL: Okay. So I'm looking at my --
23 so we've had our full hearing. Everybody has had their
24 opportunity. I'm looking at my fellow Board members. Okay?
25 Now, I -- you all don't -- I'm a little concerned still with

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1 the light and air issues of that second floor and the
2 additional 10 feet.

3 I'm actually a little bit, not surprised per se,
4 but I mean, I know that, and this comes to that whole porch
5 thing on the previous case that we're talking about, that
6 that porch doesn't count towards anything. But I know how
7 we've done this before, and I know it doesn't count towards
8 anything.

9 So for me, if I saw something just in terms of
10 like how -- since the light and air issues are really most
11 affecting the immediate next door neighbor who has party
12 status, I would be interested in at least seeing some kind
13 of, you know, list of, I don't want to say construction
14 management issues again. And, Ms. Freeman, I'm looking at
15 you like it's not something necessarily I have to get
16 agreement from. Because it's not something -- you're just
17 trying to convince me now, right, that I'm comfortable with
18 what is going on, right?

19 So I would like to understand about the
20 construction issues that are going on, how you plan on
21 managing, you know, trash and debris and, you know, just the
22 normal construction management things that we kind of see.

23 And if I could go -- if I'm not voting with my
24 Board members, it's totally fine then I'm not voting with
25 my Board members. If I can see that, then I can go ahead and

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1 make a decision. Because even as I'm looking at this, right,
2 that second story, the additional 10 feet, it's basically
3 right up next to the building that's next door to their
4 house, right? I mean, in other words, there is a wall right
5 there. There's a big giant wall that is there on the second
6 story anyway, right? I don't know if I talked myself into
7 a circle.

8 Anyway, I'm interested in some kind of like list
9 of something that you might put forward, Ms. Freeman, that
10 helps Ms. Waters understand what is going to happen during
11 construction. Do you have an idea of what you might be able
12 to put forward, Ms. Freeman?

13 MS. FREEMAN: I mean, I'm happy to put together
14 something. I would prefer to sit down with the general
15 contractor who is in charge of the site on a daily basis and
16 discuss protections.

17 One of the things we've discussed is putting up
18 a full plywood fence in the front to mitigate dust crossing
19 over into your property line. You know, we've gotten a full
20 survey. We have all of our corners marked. We know that the
21 existing addition was built over onto her property --

22 CHAIRPERSON HILL: Again, whatever -- if you want
23 to put something in the record, right, this is what you hoped
24 to try to do, right?

25 MS. FREEMAN: Mm-hmm.

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1 CHAIRPERSON HILL: And if Ms. Waters does not want
2 to participate, then that's fine. You can put that in the
3 record that Ms. Waters doesn't want to participate. Okay?
4 But at least I will know that you have tried to do something.
5 Okay?

6 MS. FREEMAN: Okay.

7 CHAIRPERSON HILL: Okay. Great. So it's up to
8 you all as Board members, my Board members, if I see that,
9 then I can vote, right? But if you all -- then I just need
10 to see something, like if you can get it in the record, Ms.
11 Freeman, by -- how long would it take you?

12 MS. FREEMAN: I don't know, 20 minutes, 30
13 minutes. I don't know how detailed you want this to be.

14 CHAIRPERSON HILL: I'll tell you what, why don't
15 you -- if you get something into the record -- and try to
16 reach out to Ms. Waters, right, and see if there is something
17 that you all can talk about to make Ms. Waters feel more
18 comfortable with any kind of construction that is going on
19 next door. And if you put something into the record by the
20 13th, which is a week from today, okay?

21 MS. FREEMAN: Okay.

22 CHAIRPERSON HILL: Then we can have a vote on the
23 20th if that is all right with Commissioner May and my fellow
24 Board members because Commissioner May would have to come
25 back for the 20th for the deliberation, very early in the

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1 morning, Commissioner, whatever works out for you. Question?

2 COMMISSIONER MAY: I feel like this is déjà vu all
3 over again, and the roles are being reversed. You want more
4 information in order to be convinced that this is approvable.
5 I believe that we have sufficient information in the record
6 to make a decision now.

7 CHAIRPERSON HILL: It's déjà vu in that I had two
8 other people that said yes to me. So if you got --

9 COMMISSIONER MAY: I haven't heard from the two
10 other people.

11 CHAIRPERSON HILL: Exactly. And if you had two
12 other people that say yes to you, then I lose, right?

13 COMMISSIONER MAY: That's okay.

14 CHAIRPERSON HILL: Yeah.

15 COMMISSIONER MAY: It's not about who wins and
16 loses.

17 CHAIRPERSON HILL: Well, no, it's late in the day.
18 I don't really mean wins and loses.

19 COMMISSIONER MAY: I get it. I get it.

20 CHAIRPERSON HILL: So what's on the table is that
21 I would like to see something in terms of some kind of --

22 COMMISSIONER MAY: I think we know what you want.

23 CHAIRPERSON HILL: Cool. All right. So, Ms.
24 Chairman, would you be interested in seeing that or do you
25 want to decide today?

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1 VICE-CHAIRPERSON JOHN: I'm having difficulty.
2 I don't know where I am. I have an applicant who is going
3 to have a 20 foot wall beside her bedroom window. And I'm
4 still trying to decide where I am with that.

5 CHAIRPERSON HILL: There you go.

6 VICE-CHAIRPERSON JOHN: I've been listening to the
7 testimony. And I mean, not an applicant, a neighbor. And
8 I'm just having a little difficulty with it. Maybe you all
9 can convince me where I should be.

10 CHAIRPERSON HILL: So you need more time to think
11 anyway.

12 COMMISSIONER MAY: Well, it's déjà vu all over
13 again.

14 CHAIRPERSON HILL: Ah.

15 COMMISSIONER MAY: I was uncertain last time as
16 well.

17 CHAIRPERSON HILL: Mr. May, if we could go back,
18 I would go back if I knew that this was that much a thing
19 for, you know.

20 VICE-CHAIRPERSON JOHN: I don't really need any
21 information. I'm just having difficulty seeing the whole
22 thing, you know. So the matter of right is quite clear.
23 They can go ahead and build what they want to build. But at
24 the same time, you know, there is a neighbor who is now going
25 to have a 20 something wall right beside her bedroom window.

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1 So that's where I am. And I haven't made a decision. I'm
2 just trying to figure it all out.

3 CHAIRPERSON HILL: Okay. So you need more time.
4 So then you need more time. So if you need more time, then
5 I get my list.

6 VICE-CHAIRPERSON JOHN: Maybe you all could
7 convince me.

8 CHAIRPERSON HILL: No, no, no, no, no.

9 VICE-CHAIRPERSON JOHN: Maybe, you know?

10 CHAIRPERSON HILL: Not today.

11 COMMISSIONER MAY: I would like to hear from Mr.
12 Blake, first.

13 CHAIRPERSON HILL: Mr. Blake?

14 COMMISSIONER MAY: She does not need more
15 information. She just needs to think about this, right?

16 VICE-CHAIRPERSON JOHN: I need to think about it.

17 COMMISSIONER MAY: Right. So I'd like to hear
18 from Mr. Blake before you call the decision here.

19 CHAIRPERSON HILL: Mr. Blake?

20 MEMBER BLAKE: Yeah. Well, I agree that this is
21 a very challenging situation. We know what the matter of
22 right opportunity is, and we know that this incremental
23 addition is what it is. I say that only because it's not
24 necessary to say more.

25 I would like to see some type of communication

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1 between these two neighbors because clearly that has broken
2 down. And that is inconsistent with our objective to have
3 good neighbor policies. And most of our cases lately we keep
4 hearing about how everybody is at each other's throats and
5 how these are contentious issues. And it would be nice to
6 see them work out some type of situation that would allow
7 this to be favorably resolved so that there would not be so
8 much contention.

9 For example, having a construction management
10 agreement would very much give Ms. Waters a lot of
11 information about some of the things that she's concerned
12 about. It will address her concerns.

13 You know, structurally, you know, like I said, I
14 think I understand that. But the issue is I do think we
15 should be able to communicate between these two neighbors.
16 Ms. Freeman can put together a construction management
17 agreement with her contractor to do something that makes Ms.
18 Waters a lot more comfortable.

19 We know that in general this is a good project.
20 The ANC is on board. So that's where I am. All right. So
21 I would not mind having a few minutes for people to have some
22 time and consider things.

23 VICE-CHAIRPERSON JOHN: Mr. Chairman, let me just
24 add something. And we're not deliberating. I'm just saying.
25 If this project came with no addition, illegal or otherwise,

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1 I would be looking at a 20 foot addition next to the adjacent
2 neighbor. And I'm not so sure I would approve a 20 foot
3 addition.

4 So we have an illegal construction that gives them
5 a potentially illegal construction, which is the
6 responsibility of DCRA, which gives them 20 feet on the first
7 floor. So that's just how I'm trying to work through this.
8 And I'm not looking for an answer, Ms. Freeman.

9 CHAIRPERSON HILL: Listen, by the way, I would
10 have let everybody go. So I'm just leaving it -- I don't
11 like this virtual world just to let the applicants know. If
12 we were actually live, you all would be gone, right? So
13 you're here because I can't call you back so quickly. That's
14 why you're still here, right?

15 So it seems as though we're going to put this --
16 it seems that we are going to put off the decision if,
17 Commissioner May, you're willing to come back to decide on
18 the 20th.

19 COMMISSIONER MAY: So unfortunately, I am not able
20 to come back on the 20th or the 27th. But Ms. Freeman
21 indicated that she could produce something very quickly. So
22 I'm wondering if that could be done by Monday then we could
23 decide it next week when I could participate at some point
24 during the day.

25 CHAIRPERSON HILL: Okay. Ms. Freeman?

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1 MS. FREEMAN: I will try my best to meet whatever
2 deadline you give me. But may I ask that since this is
3 construction related and not zoning related, we continue this
4 in good faith, and you still vote on the zoning issue that's
5 at hand.

6 CHAIRPERSON HILL: I understand. I guess the
7 zoning portion of this, Ms. Freeman, that we're still
8 struggling with is the light and air on the second floor.
9 Those are the zoning issues that we're talking about.

10 What would make me feel a little bit more
11 comfortable, I guess, with the light and air issue to the
12 adjacent neighbor is if there were some kind of -- if I just
13 understood the communication that was going on, right?

14 It seems as though, and you can disagree with what
15 is happening, right? But if you've already listened to the
16 other Board member, there is another Board member right now
17 that doesn't know whether they think this second floor is
18 something that they are going to get on board with. I'm
19 trying to help you. Okay?

20 MS. FREEMAN: I understand.

21 CHAIRPERSON HILL: So I don't know if you
22 understand. Okay? So, again, I'm going to start again.
23 Okay?

24 So if you can submit something, right, by Monday
25 the 11th, okay? That is something that is construction

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1 management oriented, some kind of communication, some
2 document that says how you plan on communicating with the
3 neighbor then I think we will have a deliberation as to the
4 light and air zoning issues and all the other zoning issues
5 that the Office of Planning has put forward on the 13th.
6 Just put something in the record, Ms. Freeman. If it doesn't
7 seem to fix anybody's questions, then that's the way that is,
8 and we'll deliberate on the 13th. Okay?

9 MS. FREEMAN: Okay. Can we look at what exhibits
10 are already in there that have communication with the
11 neighbor of these projects and the communications that are
12 in the record from --

13 CHAIRPERSON HILL: Mr. May is trying to say
14 something.

15 COMMISSIONER MAY: Now, Ms. Freeman, if you want
16 to point to exhibits that make your case, you're certainly
17 welcome to do that. That can be part of what you submit.
18 But what we are looking for -- well, I'm not looking for it.

19 CHAIRPERSON HILL: Mr. May is -- and I appreciate
20 Commissioner May helping me because he actually is trying to
21 help me. I just want a list. Okay? I just want a list of
22 how you plan on communicating with the neighbor. That's it,
23 okay, with construction issues or whatever. Whatever you put
24 forward, I'm going to look at and hopefully I will feel more
25 comfortable about voting yes on this. Okay? Right? So --

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1 MS. FREEMAN: A question. Just for my own -- I'm
2 just curious about something. So we submit to the record and
3 then is there additional testimony or you just deliberate
4 after that? I'm just curious.

5 CHAIRPERSON HILL: I think the way this usually
6 works, and unfortunately this is how this works now. I think
7 Mr. Hamala can actually help me, which is a problem, is that
8 you submit to the -- or maybe Ms. Nagelhout can help me --
9 you submit to the record on the 11th. And then I can leave
10 the record open for any responses from the ANC and the
11 parties, which would include Ms. Waters, by the 12th and
12 still vote on the 13th. Is that okay, Ms. Nagelhout/Mr.
13 Hamala?

14 MS. NAGELHOUT: I think it is. I would have to
15 double-check Subtitle Y. But I think the deadlines there are
16 waivable by the presiding officer. So the important thing
17 is the other parties have to have an opportunity to respond
18 to any post-hearing submission.

19 CHAIRPERSON HILL: Okay.

20 MS. FREEMAN: Would we be responsible for
21 notifying Ms. Waters when we submit or would you all be
22 responsible for that? I just want to make sure that we do
23 everything we are supposed to do.

24 CHAIRPERSON HILL: No problem. I mean, I don't
25 know whether Ms. Waters is going to, you know. Ms. Waters,

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1 you're there. If you can go ahead and communicate -- you can
2 decide what you want to do. But I would communicate with Ms.
3 Freeman and just see if you can get something that might be
4 something that you might be able to -- that you might find
5 helpful. That you might find helpful, right?

6 And so talk with Ms. Freeman. See if there is a
7 list of concerns that you might have around construction or
8 anything that Ms. Freeman might be able to offer to make you
9 feel more comfortable. And then Ms. Freeman is going to tell
10 us what she has done by the 11th. Okay?

11 And if by the 11th, she says she has tried to do
12 these things, and you weren't terribly interested in them,
13 then that's fine as well. And then you will have an
14 opportunity to respond to her filings by the 12th. And then
15 we're going to make a decision on the 13th. Ms. Waters, do
16 you understand?

17 MS. WATERS: So I will receive this information?

18 CHAIRPERSON HILL: I guess they will send it to
19 you.

20 MS. FREEMAN: Can I just say that Ms. Waters
21 refused to speak to me as part of the call today when we
22 reached out to her, and she stated in her letter that she
23 won't -- she doesn't speak to me basically. So I feel as
24 though this is not something that should be taken one-on-one
25 with just Ms. Waters and I.

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1 MS. WATERS: Yes. Okay. Ms. Freeman, Mr. Hill,
2 I'm sorry. May I interject? I asked Erick and Jessica to
3 talk neighbor-to-neighbor before we put Lucia on the phone.
4 Okay? As neighbor-to-neighbor, to talk as we usually have
5 been talking. And Ms. Lucia has been aggressive, just like
6 she is now. So I don't know, Jessica, if you and Erick
7 explained --

8 CHAIRPERSON HILL: Let me just -- Ms. Waters, I --

9 MS. WATERS: I need to -- I have to get out what
10 I'm saying. Okay? It's part of my health condition or else
11 I'm going to forget. But I don't know if Erick and Jessica
12 explained that to Lucia because by them staying on their
13 stance that what they want is what they wanted, then there
14 was no reason to talk to Ms. Lucia. Right, Jessica and Erick?

15 MS. ALVES DE SA: I'm not sure I follow. We did
16 talk to Dianna today. We agreed that we could not find a
17 compromise on the design and that it was best to leave that
18 decision to the BZA. That is true. We did discuss that
19 today.

20 MS. WATERS: Yes.

21 MS. ALVES DE SA: That's the extent of our
22 conversation.

23 CHAIRPERSON HILL: Right.

24 MS. ALVES DE SA: We have --

25 CHAIRPERSON HILL: Okay. I'm going to -- and by

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1 the way, I'm trying to do my best. And I'm sorry if it does
2 seem frustrating to everyone. And I know that everyone here
3 is actually trying to get through this process.

4 And so, Ms. Freeman, I understand that Ms. Waters
5 is not communicating with you, okay, and so or hasn't. And
6 so you can also put that in the record on the 11th. Okay?

7 Again, it's not that you need to communicate with
8 Ms. Waters. I would like to see something that makes me feel
9 more comfortable about moving forward, right? And whether
10 or not Ms. Waters wants to participate, that's up to her.
11 Okay?

12 In other words, if you say this is the phone you
13 are going to provide for your construction management person.
14 This is how you intend on mitigating dust. This is how you
15 intend on dealing with, you know, things that Ms. Waters does
16 not have to participate in, then just put that into the
17 record on the 11th. Okay?

18 MS. FREEMAN: Okay.

19 CHAIRPERSON HILL: Okay. Thank you. Oh, got you.
20 I got Mr. Hamala now.

21 MR. HAMALA: Regarding the decision date, we have
22 nine cases currently scheduled on the 13th. They are all
23 hearing cases. We could proceed with that or we could go to
24 July 20 where there is nine hearing cases, but there are four
25 open postponement requests.

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1 CHAIRPERSON HILL: I appreciate it. Commissioner
2 May can't do it. We're going to do this fast. Okay? I just
3 want to know that there has been some kind of communication.
4 If not, it doesn't matter. I can also determine -- I've done
5 this long enough. I know what the zoning issues are. I'm
6 able to look at the zoning issues. Okay. Right?

7 Now so do my fellow Board members. Just to let
8 everybody know here including Ms. Freeman and Ms. Davis, I
9 don't know where the vote is right now just to let you know
10 if you haven't figured that out, right? So go ahead. So
11 that's it. Done.

12 Go ahead on the 11th. You are going to submit
13 whatever you are going to submit on the 11th. Ms. Waters,
14 you are going to have an opportunity to respond to whatever
15 is submitted by the 12th. And we're going to deliberate on
16 the 13th and see what happens. Okay? Does anybody have any
17 final questions? Okay. Wonderful. All right. Ms. Freeman,
18 do you understand what we're asking in terms of submittal,
19 timing?

20 MS. FREEMAN: Yes.

21 CHAIRPERSON HILL: Great. We'll see something on
22 the 11th. Ms. Waters and the ANC will have an opportunity
23 to respond by the 12th. And the BZA will make a decision or
24 continue the case or who knows what will happen on the 13th.
25 Okay? All right. Thank you all very much. Anybody got

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1 anything? Okay. Okay. Go ahead, Mr. -- I don't know your
2 last name because I can't --

3 MR. ALVES DE SA: It's De Sa. I know it's been
4 a very long day for you. It's been a long day for us on this
5 one. Simply I just want to thank you, Chairman, and the
6 Board for your time.

7 It's commendable. This is a long process. This
8 is an important process. I just do want to state that we
9 have been proactively communicating with Dianna. In the two
10 years since we bought the place, we have --

11 CHAIRPERSON HILL: I got you. I got you. Let's
12 go with Ms. Waters --

13 MR. ALVES DE SA: We really respect Dianna as a
14 neighbor, and I completely echo your support for a
15 construction agreement. I would love to have that in place,
16 and you will see it soon.

17 CHAIRPERSON HILL: Great. Perfect. Okay. Mr.
18 Hamala, you had your hand up?

19 MR. HAMALA: I wanted to clarify. As Ms. Waters
20 has been provided party status, the applicants will need to
21 provide her the certificate of service when they submit their
22 submittals on July 11 as they would with any other party so
23 Ms. Waters will receive that.

24 MS. FREEMAN: We could do that through email,
25 correct?

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1 MR. HAMALA: Yes. That can be done through email
2 or our Form 150 is preferred. And I can send that to you.

3 MS. FREEMAN: Not a problem. I have it. Thank you.

4 CHAIRPERSON HILL: Okay. Great. Perfect. Okay,
5 everybody. Well, you all have a nice evening. And we'll see
6 what happens on the 13th.

7 MS. WATERS: Thank you, Mr. Hill and
8 Commissioners.

9 CHAIRPERSON HILL: Thank you, Ms. Waters. You
10 have a nice evening.

11 MS. WATERS: You, too.

12 CHAIRPERSON HILL: And I'm going to leave -- are
13 my fellow Board members here for one second? Okay. Okay.
14 All right. Oh, never mind. I'm good. I'm just -- no.
15 You've heard about poking the bear? I was going to poke the
16 bear. And I didn't do it. I'm not going to do it.

17 COMMISSIONER MAY: That's okay.

18 CHAIRPERSON HILL: Does anybody got anything that
19 -- no? Okay. Bye-bye.

20 COMMISSIONER MAY: No. Thank you, Mr. Chairman.

21 VICE-CHAIRPERSON JOHN: Thank you, Mr. Chairman.

22 CHAIRPERSON HILL: Thank you. It's a pleasure.
23 Take care.

24 (Whereupon, the above-entitled matter went off the
25 record at 5:27 p.m.)

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In the matter of: Public Hearing

Before: DC BZA

Date: 07-06-22

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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