

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

SEPTEMBER 28, 2022

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 10:07 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

JOE IMAMURA, Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS  
STEPHEN COCHRAN  
JONATHAN KIRSCHENBAUM  
KAREN THOMAS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from  
the Regular Public Hearing held on September 28, 2022.

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

2 10:07 a.m.

3 BZA CHAIR HILL: We can call our first hearing  
4 case, Mr. Moy, when you get an opportunity. This is the  
5 postponed request one, yes.

6 MR. MOY: So, this is Case Application 20542 of  
7 Hossein Barekatain and Fardin Foroujan.

8 This application was as amended self-certified  
9 application for a use variance from the maximum number of  
10 dwelling unit requirements, Subtitle U, Section 201.1, real  
11 homes with accessory apartment permitted, residential flats  
12 proposed.

13 Area variances from the lot, desperately  
14 requirements, Subtitle D, Section 302.1, pursuant to Subtitle  
15 X Section 1002 and the penthouse maximum area restriction,  
16 Subtitle C, Section 1500.3B, pursuant to Subtitle X Section  
17 1002.

18 This property is in the R3 zone at 2405 37th  
19 Street NW Square 1500 Lots 330 and 329. As you just said,  
20 Mr. Chairman, the preliminary matter here is that the  
21 Applicant is requesting a postponement under I believe it was  
22 Exhibit 37.

23 That's it.

24 BZA CHAIR HILL: Mr. DuPont, could you introduce  
25 yourself for the record, please?

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1 MR. DUPONT: Good morning, my name is Stephen  
2 DuPont, I'm the architect for the project.

3 BZA CHAIR HILL: There seems to be a lot of things  
4 you guys are trying to work out with this. Do you know how  
5 long you think you're trying to get in terms of a delay?

6 MR. DUPONT: It has taken me a while to stew over  
7 this, I have been talking to the neighbors and having slept  
8 on this for many days, I still find that I believe that  
9 original case had a lot of validity to it. I'd like to put  
10 it together with the neighbor again and then go to OP.

11 So, I would not be looking for the newest  
12 available date, no, but some time this fall.

13 BZA CHAIR HILL: We'll see what happens. Mr. Moy,  
14 you can take a look at our agenda and, Mr. DuPont, just so  
15 everybody knows what we're trying to do is get everything as  
16 squared away as possible with all of our applications, so if  
17 people do ask for a rescheduling they are going to get kicked  
18 to the back of the line.

19 But they're not going to have necessarily repost  
20 or anything. So, this is something new the Office of Zoning  
21 is trying to help in order to make things more efficient.  
22 Mr. Moy, what's the back of the line for us now?

23 MR. MOY: The back of the line is February 1,  
24 2023.

25 BZA CHAIR HILL: Mr. DuPont, I know you don't know

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1 exactly what you have.

2           Would that give you enough time?

3           MR. DUPONT: Yes.

4           BZA CHAIR HILL: Mr. Moy, let's go ahead and do  
5 that and then we'll see what happens with Mr. DuPont's case.  
6 He and his client obviously have a lot of work to do. Can  
7 you tell me what you said again?

8           You said February 1st?

9           MR. MOY: Yes, it would be February 1, 2023.

10          BZA CHAIR HILL: Go ahead, Mr. Moy.

11          MR. MOY: I just want to correct what I said  
12 earlier that this request for a postponement was an exhibit  
13 number, it's actually Exhibit 78. I just want to say that  
14 for the record.

15          BZA CHAIR HILL: Mr. DuPont, best of luck.

16          MR. DUPONT: Thank you, I appreciate your help.

17          BZA CHAIR HILL: Are we all still good? Mr. Moy,  
18 you can call our next one.

19          MR. MOY: So, the next application is 20759 of  
20 Core Investments LLC. This is a self-certified application  
21 for a special exception, pursuant to Subtitle X Section 901.2  
22 under Subtitle U Section 421 to allow a new residential  
23 development.

24                 The property is located in the RA1 zone at 2401  
25 12th Street NE, Square 39, Lot 30. This was previously heard

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1 by the Board at its hearing on July 13th.

2 BZA CHAIR HILL: Let's see now. Mr. Cross, can  
3 you hear me, and if so could you introduce yourself for the  
4 record?

5 MR. CROSS: Good morning, my name is R. Michael  
6 Cross, I am the architect responsible for this project. I  
7 am joined here today by Garima Gupta as well as Lizzie  
8 Stewart. We're project designers in the same office.

9 BZA CHAIR HILL: We actually did not have the  
10 hearing for this so we're going to go ahead and let you go  
11 ahead and give your full presentation and see where we get.  
12 And you can begin whenever you'd like.

13 MR. CROSS: Very good, if I could have Mr. Young  
14 pull up the latest plans? While that is happening, we are  
15 here today presenting on behalf of the property owner of 2401  
16 12th Street N.E. We're seeking a special exception for a new  
17 residential development in the RA1 Zone pursuant to Subtitle  
18 U Section 421.1.

19 Next slide, please.

20 The project is located on the corner of Bryant and  
21 12th Street and has very limited frontage. The client is  
22 proposing to raise the existing single-family structure and  
23 build a new structure with nine dwelling units.

24 It's important to note that number has been  
25 reduced from the original 12 proposed after meeting with the

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1 community. All the units will be two-bedroom, two-bathroom  
2 units averaging about 800 square feet a piece.

3           The total land area here is roughly 6322 square  
4 feet and we're proposing to only occupy 36 percent of that  
5 lot out of the allowable 40, with the remaining 64 percent  
6 being used for green space, pavers, window wells.

7           Next slide, please.

8           The project is well connected to public transport  
9 and has sometimes multifamily structures in the neighborhood.  
10 As part of our GAR compliance green area ratio, we are  
11 proposing over 2000 square feet of pervious surface, which  
12 is anticipated to have a positive impact on the stormwater  
13 runoff in this area.

14           There is going to be a dedicated trash bin space  
15 at the rear of the property in the screened enclosure. That  
16 trash will be collected by a private trash service at  
17 intervals set to meet the building demand.

18           Next slide, please.

19           This is the cellar floor. Here we have three two-  
20 bedroom units. Each of those units has separate independent  
21 entries from the exterior. Again, each of these is roughly  
22 800 square feet and on this level you can also see we are  
23 proposing three long-term bike storage spaces just off of  
24 that exterior areaway.

25           Next slide, please.

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1           This is the first floor. This plan is typical for  
2 the next several floors. It features two two-bedroom units  
3 and since the structure is fully detached, it will allow for  
4 units with improved quality of life as all units will be  
5 afforded natural light through large loft-style windows.

6           Next slide, please.

7           Again, second floor, we have two two-bedroom  
8 units. There's more openings and Juliette balconies on this  
9 level, which is typical for the first and second floors.  
10 Next slide, please.

11           On the third floor, it's similar to the first and  
12 second floors but this floor features multistory units which  
13 has internal staircases that lead up to private roof decks  
14 on the level above. Next slide.

15           Here you see the two private roof decks which  
16 serve the third-floor units below. Next slide, please. The  
17 exteriors propose to be compatible with have existing  
18 multifamily building in the area.

19           We have worked with the Office of Planning's  
20 design division and have made the following accommodations  
21 to address their concerns. We're proposing a panelized  
22 siting system to accentuate the corner which faces the  
23 primary street frontage.

24           We are proposing larger loft-size windows and  
25 Juliette balconies for greater texture and visual interest.

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1 We've added a trellis to better articulate the primary entry  
2 on the side of the building. We've met with the community  
3 twice since our last meeting in July and the SMD Commissioner  
4 was present at both of those meetings.

5 In our discussion with them we have reduced the  
6 number of units from 12 down to 9 and we have also discussed  
7 the community's concerns regarding the flooding that occurs  
8 currently in the public space, construction staging, the  
9 limited street access, and the construction timeline.

10 Our client has offered a draft construction  
11 agreement regarding those other concerns, which was well  
12 received but has yet to be executed by either party.

13 Unfortunately, after countless emails and calls  
14 requesting to be put on the ANC agenda, we were never put on  
15 the meeting agenda for September 21st, as the Board requested  
16 in their meeting on July 13th and the SMD subsequently  
17 committed to on that day.

18 We attended meetings with the community as  
19 suggested before and did attend the ANC meeting on the 21st  
20 in hopes of getting on that meeting and were not heard. It's  
21 our position that the ANC is duly aware of the project and  
22 has had ample opportunity to provide their opposition if they  
23 felt so inclined.

24 Subsequently, we would appreciate if the Board  
25 could vote for approval today. Thank you.

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1 BZA CHAIR HILL: Who has any questions? I have  
2 a couple, but who has any questions?

3 MEMBER SMITH: I think I have one.

4 BZA CHAIR HILL: Go ahead, Mr. Smith.

5 MEMBER SMITH: It just takes asking for the record  
6 to provide some additional information about the parking.  
7 I do recognize that per the zoning, they require you to have  
8 two parking spaces but you're indicating that you have  
9 parking credit.

10 Can you explain on this parking credit a little  
11 bit more and why you're effectively not providing any parking  
12 spaces?

13 MR. CROSS: It's a good observation. We are not  
14 seeking relief for the parking. There is a parking credit  
15 on the existing site.

16 That said, we are actually seeking offsite off-  
17 street parking spaces to not only satisfy the credit and  
18 satisfy the requirement, but also to provide some parking  
19 opportunity for our addresses.

20 MEMBER SMITH: Have you already contracted for  
21 those two offsite parking spaces?

22 MR. CROSS: We have not contracted for the  
23 required parking at this time but we'll do so prior to permit  
24 issuance of DCRA.

25 MEMBER SMITH: One last question, can you expand

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1 on the history of this parking permit, just for my own  
2 education? There's one there now for the single family houses  
3 there now.

4 MR. CROSS: I made that distinction because since  
5 the time of filing, we have learned that parking credit,  
6 while it has been agreed to by the Zoning Administrator, it  
7 may not transfer due to the raise. And that's why we're  
8 seeking the offsite parking compliance to ensure that we are  
9 conforming in these cases.

10 But as mentioned, we're not seeking relief in this  
11 self-certified application here today.

12 MEMBER SMITH: It sounds like if that goes away  
13 then you may be back to us for some type of parking relief?

14 MR. CROSS: There is potential for that, yes, if  
15 it were to all fall off.

16 MEMBER SMITH: Thank you.

17 BZA CHAIR HILL: Anyone else? Mr. Cross, I have  
18 a question. You guys went from 12 units to 9 units in  
19 discussions with the ANC?

20 MR. CROSS: That's correct.

21 BZA CHAIR HILL: What is it that they wanted to  
22 see and how did you accommodate going from 12 to 9?

23 MR. CROSS: I can pull up my notes on that but I  
24 think in summary my recollection is the community is  
25 concerned about the added density just in general.

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1 BZA CHAIR HILL: But you were able to make the  
2 project work, obviously, you're still before us with that  
3 drop in the number of units?

4 MR. CROSS: That's right, the client was willing  
5 to reduce the number of units and that reduction made the  
6 units slightly larger, which was appealing I think for all.

7 BZA CHAIR HILL: Interesting. Mr. Moy, you said  
8 maybe the ANC Commissioner was here?

9 MR. MOY: She had signed up to testify and Staff  
10 has been continually trying to call her this morning, there's  
11 been no response.

12 BZA CHAIR HILL: Dr. Imamura, did you raise your  
13 hand there?

14 COMMISSIONER IMAMURA: I have a question for Mr.  
15 Cross.

16 Could you go into a little more detail about your  
17 conversations with the ANC? I understand it's been a  
18 struggle to come before them but just elaborate a little bit  
19 more on some of their concerns and how you made resolutions?  
20 Flooding was one of them.

21 MR. CROSS: Certainly. We initially were able to  
22 have a meeting with them it looks like on August 22nd. That  
23 meeting was coordinated by Mr. Chandler, who was a previous  
24 Commissioner and current block captain.

25 At that meeting the conversation revolved around

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1 a wide variety of topics but the list of concerns were boiled  
2 down to five: the number of units -- in that meeting  
3 specifically, they were suggesting that they were trying to  
4 get us to eight.

5 In a further email they changed that to ten. They  
6 were concerned about the roof decks and who has access, noise  
7 concerns, again, they're private roof decks. They're  
8 concerned about flooding. We actually had a fair amount of  
9 discussion and research to understand better.

10 There is a flooding problem here. Our client  
11 actually has spent time at this location and understands the  
12 flooding problem himself. And unfortunately, what we've  
13 determined is it is the result of a stormwater inlet that is  
14 not performing properly, and the flooding is occurring in and  
15 from public space.

16 So, we're as motivated as the rest of the  
17 community, potentially more, to get that resolved to better  
18 our project. And as mentioned, we are going to be taking  
19 some measures on our own site to try to reduce any runoff  
20 that might contribute to that currently and in the future.

21 There are concerns about dust and soot and signage  
22 for construction, and those two items got into some of the  
23 areas that we decided we would work with our client and offer  
24 a voluntary construction agreement to address some of their  
25 ongoing concerns with construction in the area.

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1 This area has been heavily impacted by development  
2 and we're looking to try to provide them a construction  
3 agreement as a way to mitigate some of those concerns.

4 COMMISSIONER IMAMURA: Thank you, Mr. Cross. If  
5 I could follow up on two things, what your measures are for  
6 stormwater runoff, to reduce that, which you commented on,  
7 and then anticipated timeframe for when the parties will  
8 agree to your altered construction agreement and sign off on  
9 it?

10 MR. CROSS: Unfortunately, I don't know if I'll  
11 be able to provide you a timeline for the construction  
12 agreement. We've had very good interaction with the  
13 community in general through Mr. Chandler and those meetings.  
14 However, the interaction with the Commissioners, the elected  
15 parties, has not been as good.

16 And so I don't know who is going to be responsible  
17 for accepting that agreement on their behalf and so I can't  
18 give you a timeline of when it will be agreed to.

19 Regarding the stormwater runoff, I think what we  
20 can qualify is that fortunately, the regulations require us  
21 to address stormwater, not specifically through the  
22 stormwater management program, because our activities are  
23 going to affect less than 5000 square feet.

24 But we will be complying with the green area  
25 ration requirements, which do require us to implement things

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1 like pervious pavement, green roof, et cetera, which should  
2 reduce the impact of this development.

3 COMMISSIONER IMAMURA: Thank you, Mr. Cross. So,  
4 as I understand it, nothing more than what's required but  
5 meeting the requirements as is hopefully will minimize the  
6 impact. I certainly appreciate that.

7 Mr. Chairman, I don't have any other further  
8 questions. Thank you, Mr. Cross.

9 BZA CHAIR HILL: Thank you. Vice Chair John?

10 VICE CHAIR JOHN: What is the parking requirement  
11 for nine units?

12 MR. CROSS: Actually, it's our understanding that  
13 the parking requirement is only space. This zone is a one  
14 to three ratio, one space for every three units after the  
15 fourth, which typically would get you eight units.

16 But we are within a half mile of the Rhode Island  
17 Avenue metro station, which gets us a 50 percent reduction  
18 in the number of spaces required. So, I guess the easiest  
19 way to say it is because eight for single is not satisfied,  
20 we would have two.

21 A 50 percent reduction would bring us to 1.

22 VICE CHAIR JOHN: In that case, shouldn't you have  
23 to show the one space on the plans?

24 MR. CROSS: There's a section, I believe Subtitle  
25 C Section 701, I apologize, I probably shouldn't cite that

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1 off the top of my head. In the parking regulations, there  
2 is a provision that allows for offsite parking to satisfy  
3 your off-street parking requirement subject to a couple  
4 conditions.

5 The two most relevant in this case is it must be  
6 within 600 feet of the subject property and it cannot be in  
7 an R or RF zone. Obviously, we have to have a lease  
8 agreement on file with the Zoning Administrator prior to  
9 issuance.

10 VICE CHAIR JOHN: In the cases in my recollection,  
11 there has to be a waiver by the Board to invoke that offsite  
12 parking requirement. So, in other words, the plans have to  
13 show the parking unless the Board grants a waiver for the  
14 parking requirement.

15 MR. CROSS: I might defer to OP on that. It's my  
16 understanding that the off-street parking solution is a  
17 matter of right provision.

18 VICE CHAIR JOHN: Let's hear from the Office of  
19 Planning when we get there. I've never seen it done this  
20 way, I've typically seen a request for the waiver of the  
21 parking requirement on the condition that the Applicant can  
22 provide the off-street parking.

23 We sometimes ask if there's a contract in place  
24 and we sometimes include a condition that that parking will  
25 be maintained for the life of the project. That's what my

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1 recollection is. So, I can defer to the Office of Planning,  
2 I can wait to hear from the Office of Planning on that.

3 BZA CHAIR HILL: Thank you, Vice Chair John. For  
4 the record, again, there was a request for the untimely  
5 filing of the architectural plans. Unless the Board has any  
6 issues, I'm going to go ahead and allow that into the record.  
7 Seeing the Board not raising their hands, I assume it's okay.

8 I'm going to go ahead and turn to the Office of  
9 Planning.

10 MS. BROWN-ROBERTS: Thank you, Chairman, and  
11 Members of the BZA. I am Maxine Brown Roberts representing  
12 the Office of Planning on 20759 to case study a new three-  
13 story apartment house in the RA1 Zone. OP notes the number  
14 of units have been reduced to nine since our report.

15 Our report and recommendation remains the same  
16 except the nine units does not have an IZ requirement. The  
17 standards were met for the existing schools in the area that  
18 have capacity to accommodate the children from this  
19 development.

20 The development would be half of a mile or a ten-  
21 minute walk to the Rhode Island Brentwood metro station and  
22 is also served by several metro bus lines. The development  
23 would have access to the Brentwood Recreational Center, the  
24 Edgewood Recreational Center, Noise Recreational Center, and  
25 also the Metropolitan Branch trail.

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1 Neighborhood-serving retailers are located near  
2 the Rhode Island Avenue Brentwood metro station, including  
3 restaurants, grocery stores, home improvement stores, and  
4 banks. And there is also additional retail uses along Rhode  
5 Island Avenue.

6 The Applicant provided the required site plan,  
7 grading plan, landscape and floor plans, and elevations and  
8 as we discussed the parking, no parking will be provided  
9 onsite. The development would comply with all other  
10 development standards in the RA1 zone and would not impact  
11 the light and air of adjacent buildings.

12 Regarding the parking, as the Applicant says, they  
13 have worked out or they're in the process of working out  
14 something to have a parking space that would be located  
15 somewhere offsite, one parking space.

16 The requirement is that if the parking is provided  
17 within 600 feet of the location and they have an agreement  
18 with whoever is providing the space, then they don't need  
19 relief. The Applicant has not found that. And that is also  
20 as a matter of right. I do not see where there has to be a  
21 waiver.

22 But I think that if that doesn't happen, the  
23 Applicant will have to come back to get a relief for that one  
24 parking space.

25 As demonstrated in our report, the development

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1 meets the requirements of the RA1 zone and would therefore  
2 be in harmony with the general purpose and intent of the  
3 zoning regulations and the zoning map, and should not  
4 adversely affect the use of neighboring properties.

5           The Office of Planning therefore recommends  
6 approval of the requested special exception. Thank you, Mr.  
7 Chairman.

8           BZA CHAIR HILL: Thank you. Does the Board have  
9 any questions for the Office of Planning?

10           VICE CHAIR JOHN: Mr. Chairman, I'm still not  
11 convinced that there has to be no request for a waiver if  
12 there's no parking shown on the property. But I would need  
13 to look at that regulation a little more so that I can  
14 understand what's happening.

15           We can continue but I would need to look at the  
16 regulation.

17           BZA CHAIR HILL: Okay, Vice Chair John, maybe we  
18 can talk about that with the Office of Zoning at another  
19 time.

20           VICE CHAIR JOHN: Thank you.

21           BZA CHAIR HILL: Ms. Brown-Roberts, I sometimes  
22 get confused and forget. The temp unit, that's the IZ unit?

23           MDR: They need an IZ unit, yes, for ten units.

24           BZA CHAIR HILL: So, the 10th unit kicks you into  
25 IZ, right, and so that 10th unit is the IZ unit?

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1 MDR: Yes.

2 BZA CHAIR HILL: 10 or more, whatever, you have  
3 12, 13, 15, whatever. But if you want to go to 10, that 10th  
4 unit kicks you into the IZ unit?

5 MDR: That's exactly it. One of the units has to  
6 be an IZ unit.

7 BZA CHAIR HILL: Mr. Cross, I'm just curious, it  
8 is what it is, did that go into the math in terms of being  
9 able to drop from 12 to 9, that you didn't have to do an IZ  
10 unit on the 10th? I love that I don't know what answer I'm  
11 going to get, Mr. Cross, but I'm just curious.

12 MR. CROSS: I guess I was just conferring with the  
13 team here. It does not seem like we're taking an IZ bonus  
14 in the proposed project so I don't think it impacted us as  
15 much by reducing it. I'm sure there was some math by the  
16 client but that was not part of our discussion.

17 BZA CHAIR HILL: Okay, I was just talking about  
18 it. You're not getting any bonus because you're not doing  
19 the 10th unit, right?

20 MR. CROSS: That's correct.

21 BZA CHAIR HILL: Anyone else? Go ahead, Dr.  
22 Imamura?

23 COMMISSIONER IMAMURA: Thank you, Mr. Chairman.  
24 I just wanted to confirm, and I might not have this right,  
25 this is for Mr. Cross, that the side yard is sufficient, the

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1 AP to the side yard is sufficient.

2           This is I think in the OP report but it appears  
3 the height of the building would require a side yard of four  
4 feet.

5           MR. CROSS: I'm pulling some stuff up but could  
6 you clarify the nature of your question? Are you suggesting  
7 you believe it is insufficient with the code as written,  
8 could you clarify?

9           COMMISSIONER IMAMURA: It sounds as if there's  
10 probably some arithmetic here and so I just wanted to confirm  
11 with you in terms of the side yard that it is eight feet, is  
12 that right?

13           MR. CROSS: Let me check the plans to confirm what  
14 we're showing.

15           COMMISSIONER IMAMURA: I got a head nod from Ms.  
16 Gupta I think.

17           MR. CROSS: Garima, if you have the plans up and  
18 can confirm that we're showing eight feet, I believe that is  
19 the minimum required but I don't know what we're showing.

20           MS. GUPTA: That's correct, we are showing eight  
21 feet side yard. I'm just seeing if we have an advanced --  
22 I just want to confirm that yes, we are showing eight feet  
23 side yard.

24           COMMISSIONER IMAMURA: Ms. Brown-Roberts, are you  
25 able to confirm that's the requirement there, that they've

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1 met that, they satisfy that?

2 MS. BROWN-ROBERTS: Yes, at the time when we  
3 looked at it, we were not sure and it was confirmed following  
4 that.

5 COMMISSIONER IMAMURA: Mr. Cross, Ms. Gupta, I  
6 didn't mean to cause you any sort of heartburn or panic  
7 there, just wanted to confirm. It sounds like you're in good  
8 shape. No further questions, Mr. Chairman.

9 BZA CHAIR HILL: Thanks. Mr. Young, is there  
10 anyone here wishing to speak? Mr. Cross, do you want to add  
11 anything at the end?

12 MR. CROSS: -- time on this case, I know it's  
13 stretched out for many months.

14 BZA CHAIR HILL: I'm going to go ahead and close  
15 the hearing and the case. I've been talking forever. Dr.  
16 Imamura, would you like start, would anyone else like to  
17 start?

18 COMMISSIONER IMAMURA: Thank you, Mr. Chairman,  
19 I'll defer to either Vice Chair John or Board Members.

20 BZA CHAIR HILL: Does anybody else want to start  
21 then?

22 VICE CHAIR JOHN: I'll start. I'm still trying  
23 to work through the issue of the parking but in the final  
24 analysis the Applicant has not requested a waiver so the  
25 Applicant would have to meet whatever requirement exists at

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1 permitting.

2           Otherwise, I really don't have any objections to the  
3 application. I thought the Applicant did a good job with  
4 explaining how the application meets the criteria for relief.  
5 And I also thought the Office of Planning did a good job in  
6 analyzing how the application meets the requirement as well.

7           And I agree with that analysis.

8           It's unfortunate that we don't have anything from  
9 the ANC but I'm also satisfied from the Applicant's  
10 representation that the Applicant reached out to the ANC and  
11 tried to make modifications in the project that would be more  
12 consistent with the recommendations of the SMD.

13           And so I would be in support of the application  
14 and note there's been no request for parking relief. Thank  
15 you, Mr. Chairman.

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

17           MEMBER SMITH: Based on the information within the  
18 record and the testimony provided by the Applicant, I'm  
19 fairly comfortable with the information that was provided  
20 showing the Applicant has met the burden of proof for us to  
21 be able to grant the special exception in accordance with  
22 Subtitle U421 to allow a new residential development.

23           They're rocking and rolling in this particular  
24 neighborhood, we've seen a fair amount of new development  
25 occurring here and it would have been great to get some

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1 additional information from the ANC.

2           But it seems that there may be some internal  
3 that's going on within the ANC regarding contacting some of  
4 these different Applicants for developments within these  
5 boundaries.

6           But it seems the Applicant has done his due  
7 diligence in trying to reach out to the ANC and attempting  
8 to address some of their concerns we've heard periodically  
9 regarding increased density within the area. So, they've  
10 reduced the number of units from 11 to 9.

11           I do share some of the Vice Chair's concerns about  
12 parking. We get a statement from the Applicant that they  
13 have a parking credit and within the Staff report it doesn't  
14 seem like OP really did any additional analysis on that.  
15 They just took the Applicant at their word for that.

16           Which sounds like, based on what we heard from the  
17 Applicant, they may have some form of a parking credit. It  
18 sounds like it may be a situation where the Applicant may be  
19 back here for some type of special exception for us to,  
20 quote, unquote, waive or reduce their parking requirement.

21           If it is deemed that parking credit doesn't exist  
22 or they can't find parking within 600 feet of this property,  
23 that would make it so that it's by right.

24           I'll also note that because this property doesn't  
25 have an alley, DDOT probably wouldn't approve a curb-cut off

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1 of 12th Street NE. So, they may be in a position anyway that  
2 they would have to come back to us to waive it, thereby  
3 that's probably one of the reasons why they're not showing  
4 it on their site plan.

5           Because it would be a situation where DDOT  
6 probably wouldn't approve a curb-cut for those two parking  
7 spaces even if they wanted provide them. So, other than  
8 that, I do believe the Applicant has met the burden of proof.  
9 DDOT has no objection to this proposal and I will support the  
10 Applicant.

11           BZA CHAIR HILL: Thanks. Dr. Imamura?

12           COMMISSIONER IMAMURA: Thank you, I'll be brief.  
13 In agreement with Vice Chair John's summary, I also want to  
14 acknowledge and appreciate Board Member Smith raising I think  
15 two important points. One, just in general about the  
16 parking, that has become a topic of conversation for this  
17 particular case.

18           And then two, I think he also raised a very good  
19 point that the Applicant has done their due diligence, made  
20 an effort to reach out to the community, the ANC. It's  
21 regrettable that the ANC didn't submit a report, that is an  
22 opportunity for their voice for us to give great weight.

23           So, I regret they weren't able to make a  
24 submission, but all that said, I am prepared to vote in  
25 favor.

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1 BZA CHAIR HILL: Thanks.

2 I'll agree with everything that was said. I guess  
3 it's interesting, because of U421, we get all new  
4 developments, under that Subtitle I should say. And I think  
5 the Office of Planning working with the Applicant did come  
6 up with a better design, which is the little changes, or not  
7 little changes, the changes they had made.

8 I think it's very helpful the Office of Planning  
9 has this opportunity to work with the Applicant and I think  
10 that is helpful, that process. It sounds as though the ANC  
11 has been reached out to, has been spoken with, and even so  
12 far as the Commissioner was hopefully going to join us.

13 But again, it's tough to join during the work day  
14 when it's not really your job necessarily. But I do think  
15 the Applicant has made an effort to reach out to the ANC and  
16 work with the ANC, as also the communication, just dropping  
17 it from 12 to 9, which I just think is a very interesting  
18 discussion.

19 Dr. Imamura, you're on the Zoning Commission and  
20 so it's interesting, again, what pushes things, what drives  
21 things to get to nine rather than ten?

22 I always forget that 10th unit is the IZ unit,  
23 meaning that, again, if you're going to for 13, 14 that makes  
24 sense. It's interesting, I just forgot that 10 is the IZ  
25 unit and so that I find is just interesting.

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1           One of the units has to be the IZ unit so it's 11,  
2 12, 9, whatever, at some point it triggers. And so I thought  
3 that was interesting and I forget whether these guys do a lot  
4 of stuff with us or not, this development team, I guess  
5 they're out of Boston but they're doing stuff in D.C. now.

6           I'm going to agree with my colleagues, I'm going  
7 to vote to approve. Does anybody have anything to add before  
8 I make a motion? I'm going to make a motion to approve  
9 application number 20759 as captioned and read by the  
10 Secretary and ask for a second.

11           Ms. John?

12           VICE CHAIR JOHN: Mr. Chairman, before I make a  
13 second, is it appropriate in this case to say that the  
14 application is approved subject to the Applicant meeting the  
15 parking requirement?

16           BZA CHAIR HILL: I think that's fine.

17           VICE CHAIR JOHN: In that case I will second.

18           BZA CHAIR HILL: The motion has been made and  
19 seconded. Mr. Moy, if you could take a roll call?

20           MR. MOY: When I call your name, if you'll please  
21 respond to the motion made by Chairman Hill to approve the  
22 application for the relief that's being requested. The  
23 motion to approve was seconded by Vice Chair John.

24           Zoning Commissioner Dr. Imamura?

25           COMMISSIONER IMAMURA: Yes to the motion and yes

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1 to the friendly amendment made by Vice Chair John.

2 MR. MOY: Mr. Smith?

3 MEMBER SMITH: Friendly amendment.

4 MR. MOY: Vice Chair John?

5 VICE CHAIR JOHN: Yes to the motion and the  
6 amendment.

7 MR. MOY: Chairman Hill?

8 BZA CHAIR HILL: Yes to the motion and the  
9 amendment.

10 MR. MOY: No other Board Members are  
11 participating, Staff would record the vote as 4 to 0 to 1 and  
12 this is on the motion made by Chairman Hill, the motion to  
13 grant was seconded by Vice Chair John.

14 Also in support of the motion to grant is Zoning  
15 Commissioner Dr. Imamura, Mr. Smith, and of course Vice Chair  
16 John and Chairman Hill.

17 The motion carries in a vote of 4 to 0 to 1.

18 BZA CHAIR HILL: We've been going for about an  
19 hour and a half. Do you want to take a quick break? We'll  
20 come back, see you in a little bit.

21 (Whereupon, the above-entitled matter went off  
22 the record at 10:53 a.m. and resumed at 11:08  
23 a.m.)

24 BZA CHAIR HILL: Mr. Moy, you want to call us back  
25 and call our next case, please?

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1 MR. MOY: The Board is back in session after a  
2 very brief recess and the time is now at or about 11:08 a.m.  
3 The next case before the Board in its public hearing session  
4 is application number 20374. This is of Matthew and Alicia  
5 Amling.

6 This is a self-certified application for a special  
7 exception pursuant to Subtitle D, Section 5201.3, and  
8 Subtitle X, Section 901.2 from the front yard setback  
9 requirements, Subtitle D Section 1205.2. The property is  
10 located in the R20 Zone at 3617 T Street NW, Square 1296, Lot  
11 338.

12 That's it, I'll leave it at that.

13 BZA CHAIR HILL: Mr. Sullivan, could you introduce  
14 yourself for the record?

15 MR. SULLIVAN: Marty Sullivan with Sullivan &  
16 Barrows on behalf of the Applicant. Can you hear me okay?

17 BZA CHAIR HILL: Yes, can you hear us?

18 MR. SULLIVAN: Yes.

19 BZA CHAIR HILL: Either it's the headset or the  
20 camera angle, maybe it's the headset, it makes you look  
21 younger, Mr. Sullivan, which is never a bad thing I guess.

22 Let's see, you know the history to this case and  
23 I guess you're going to present to us that and the  
24 discussions that we're going to have with the Office of  
25 Planning trying to see how this is not a variance from a

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1 special exception.

2           And I think there's going to be some discussion  
3 with the Board, as you know, Mr. Sullivan, because I'm sure  
4 you went back and looked at the previous discussion when Mr.  
5 Turnbull was on it.

6           So, with all that, I'll go ahead and turn it over  
7 to you and you can begin whenever you'd like.

8           MR. SULLIVAN: Thank you, Mr. Chairman and Members  
9 of the Board, I appreciate the Board's indulgence on this.  
10 I know you've considered this issue, the reason why I think  
11 it's justified to open the discussion again is because, one,  
12 I didn't represent the client at the time and I wasn't  
13 involved.

14           And they actually had no legal counsel and as a  
15 result of that and as a result of OAG not providing any  
16 additional advice, I don't think the Board had the  
17 information necessary and critical to make an informed  
18 decision on whether or not it's a special exception or  
19 variance.

20           And so I wanted the opportunity to present that  
21 information, and that's principally what I provided in my  
22 pre-hearing statement but I also have some additional  
23 information that I've discovered since then. So, I  
24 appreciate the Board hearing this argument and considering  
25 the pre-hearing statement.

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1           If we could pull up the slide presentation,  
2 please, it would help as a guide for this argument. Next  
3 slide, please. I did mention that we were subsequently,  
4 there was no legal counsel prior to this and the decision was  
5 based on a claim from a non-party person that lives about  
6 1000 feet away from the subject property.

7           Based on the fact that because 1205 states the  
8 phrase current setback and it's not entitled special  
9 exception relief because 5201 just uses the word yards and  
10 presumably because it doesn't use the word front setback.

11           Up to this point, the term yard logically, as  
12 we'll see in the rest of my argument, has been used to  
13 describe the front setback repeatedly by the Board, by the  
14 Zoning Administrator, by the Office of Planning, these  
15 agencies, and OAG as counselor of the Board previously  
16 considered, and in fact definitively decided, this issue,  
17 finding that special exception relief is appropriate and the  
18 only other case where 1205.2 relief was considered in that  
19 case was in 2018.

20           And it was a house six doors down and it was also  
21 a vestibule. So, since none of this information was  
22 provided, I think it's fair to ask the Board to reconsider  
23 their discussion from I think it was April of 2021.

24           Next slide, please.

25           As noted in this case, 19633A, the BZA, OAG, the

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1 Zoning Administrator, the Office of Planning all isolated and  
2 specifically considered this exact issue, whether or not  
3 1205.2 was entitled to special exception relief. And they  
4 decided yes, it was.

5           It was in the OP report for Case 19633A, stated  
6 that the Office of Planning consulted with BZA, consulted  
7 with OAG, and then the Board agreed and memorialized that  
8 decision in a full order. Administratively case law from the  
9 Court of Appeals provides it wants a precedent such as this  
10 as established.

11           It should not be casually changed. And in terms  
12 of front yard and setback, front setback have repeatedly been  
13 used interchangeably. In fact, Form 135 says front yard on  
14 it.

15           So, all precedents and zoning regulation  
16 definitions align with its position that treating front  
17 setbacks and front yard setbacks as the same thing and  
18 support special exception relief for front setback relief.

19           Next slide, please.

20           I want to make it clear that I'm not just arguing  
21 that because it was decided in another case that it has to  
22 be decided that way again or can never be changed. The  
23 information I'm going to present today in addition to this  
24 PowerPoint I think provides clearly that the original  
25 decision was justified and there's no justification in

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1 reversing that decision.

2 Case 19633A was six doors down, it was also in the  
3 R20 zone. The R20 zone is a small zone, as you know it's  
4 very specific and each zone has its own front setback  
5 requirements. And so relief under 1205.2 was only heard and  
6 granted once or heard and considered once, and it was granted  
7 as a special exception.

8 So, this case, as noted, it's not important just  
9 because it was the same decision that we're asking for or the  
10 same relief, it's important because that issue was  
11 specifically pulled out for discussion and decided.

12 It wasn't this is an incidental precedent, it's  
13 actually on this exact issue, basically on whether or not the  
14 front setback requirement is entitled to special exception  
15 relief. Next slide, please.

16 Here are some comments from the order. Finding  
17 of Fact 13 provides the Applicant is permitted to request  
18 special exception relief for yards, pursuant to Subtitle D  
19 5201.

20 And again, the same requirement, 1205.2, which  
21 doesn't mention the word yards even though, as I'll explain  
22 later, the front setback requirement applies to front yards.  
23 And that's why it was originally decided this way.

24 And you can see Finding of Fact 14 and then the  
25 significant discussion was documented, as I noted, in the OP

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1 report and there's the quote, OP consulted with the Zoning  
2 Administrator and Office of the Attorney General and both  
3 concurred that special exception relief was appropriate for  
4 the front setback.

5           The non-party objector claims this was merely a  
6 view that the Board briefly expressed. I disagree on that,  
7 he's trying to make light of what was decided there but  
8 rarely do you see a decision like this on a small issue so  
9 intentionally considered, decided, and noted in the OP report  
10 and in the PCA order.

11           Next slide, please.

12           I've provided case law that states once a  
13 precedent is established it should not or cannot be casually  
14 changed without good reason. I'm not going to spend too much  
15 time on this argument because I'm also going to talk about  
16 the fact that I think the precedent in the legal standard was  
17 absolutely correct and justified.

18           And I would hope the Board would agree with me on  
19 that as well. Obviously, if the Board thought something was  
20 compellingly wrong with the original decision, they can  
21 change it and should change it.

22           In this case, I think it's the opposite of that,  
23 I think the weight of the evidence shows clearly that it was  
24 intended that front setback requirements are entitled to  
25 special exception relief. Next slide, please.

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1           These are other examples of cases in which front  
2 setback relief was a special exception. These aren't direct  
3 precedents because they're not 1205.2 but there are other  
4 situations in which it was considered and it's a similar  
5 analysis.

6           And I'd also note in all these cases and a handful  
7 of others, the idea that a front setback and a front yard  
8 setback are two different things such that you can't get  
9 special exception relief for it or such that 5201, the word  
10 yards in 5201 doesn't apply to a front yard setback, even  
11 though the word yard is not listed within the phrase front  
12 setback, has never been raised.

13           Nobody ever even thought of this until Mr. McDuffy  
14 raised the issue. Next slide, please.

15           These are examples of where it's used  
16 interchangeably. It's used in orders, in ZA memos, in OP  
17 reports, the terms are used interchangeably. The word yard  
18 is consistently used when talking about the front setback  
19 requirement.

20           Next slide, please.

21           They're not distinguishable terms. There is the  
22 zoning self-cert form, Form 135, that says front yards. On  
23 this point I have more to say but if we could go to the next  
24 slide? Another reason they're not distinguishable is because  
25 they lead to the same thing.

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1           The front yard is from the front of the building  
2 to the property line or from the property line back to the  
3 front of the building.

4           Last night I found some legislative history in an  
5 OP report dated November 6, 2015, Exhibit 1097 in Case 08-  
6 06A, the re-write, the 2016 re-write, where OP discussed the  
7 concept of why they would use the term setback instead of  
8 yards.

9           And as it turns out, what they stated was that a  
10 setback, when you use the word setback, that implies that  
11 it's measured from the property line in instead of from the  
12 building out. So, the term setback implies the direction of  
13 the measurement, it doesn't change the fact that you're still  
14 measuring the front yard setback.

15           And that's a distinction that doesn't matter with  
16 front yards. It may matter some day. It matters with rear  
17 yards, the distinction, only because as far as I recall  
18 accessory buildings have requirements on whether or not  
19 they're placed in a required rear yard.

20           And so the direction of the measurement is  
21 critical there. Is your required rear yard the first 20 feet  
22 from building back or is it from the property line in? And  
23 so the Office of Planning in that OP report stated their  
24 understanding that when you use the term setbacks, that  
25 implies a different measurement and they wanted it measured

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1 from the property line in instead of from the building out.

2 But both points of measurement are the same for  
3 the definition of front setback and the definition of front  
4 yard. So, I'm a little off when I say they're exactly the  
5 same, when I said that originally.

6 There's a reason why there's two definitions and  
7 the reason is because one is measured, as you can see from  
8 the front setback, measured from the street lot line inward  
9 to the lot. The definition of front yard doesn't say how  
10 it's measured because nowhere in the regulations does it say  
11 how rear yard and side yard are measured.

12 But we know for rear yards that it has been  
13 interpreted over the years and it's in case law that's it's  
14 measured from the rear line back.

15 Whereas the front yard applies to a space around  
16 the building, in front of the building, and the term yards,  
17 the definition of yards in general, applies to all open space  
18 around the building and it's not distinguished from the sides  
19 and the rear.

20 The front setback requirement is merely a  
21 requirement that applies to the front yard. Next slide,  
22 please. This is a special exception. If we can go back a  
23 slide, please?

24 I'll just say I have more things to say on this.  
25 As noted, I'm not saying it was decided therefore you can't

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1 reconsider. What I'm saying is it was decided for good  
2 reason and the reason is that the term yards in 5201 applies  
3 to development standards that relate to yards.

4 And the front setback requirement is a development  
5 standard that relates to the front yard. The non-party  
6 objector, his claim is that every single word should be  
7 considered in a vacuum in the zoning regulations, and because  
8 the word yard is not in 1205.2 in the phrase front setback,  
9 therefore, it can't possibly get special exception relief.

10 But by that rationale, because all it says is  
11 yards, it doesn't say side yard setback requirement, it  
12 doesn't say rear yard setback requirement, so how do I know  
13 what that means? How do I know what that means when it says  
14 yards? It says you can get relief for development standards  
15 including yards.

16 There's no requirement that just says yards, you  
17 have to have a yard, there's more to it. So, we all know  
18 what it means, people that are familiar with the zoning  
19 regulations. In plain knowledge, I don't think Mr. McDuffy  
20 is an expert in the zoning regulations.

21 But when it applies to yards, we know that means  
22 development standards that relate to yards. It doesn't have  
23 to say side yard requirement. One might say, gee, if you  
24 want to make it really clear, what relief can you get for a  
25 special exception?

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1           You can get relief from a side yard requirement  
2 or a side yard setback requirement or rear yard setback  
3 requirement. No, it just says yards. And so we know it's  
4 considered in the context of the regulation to apply to  
5 development standards that relate to yards, which the front  
6 setback does.

7           The term yards is a yard that communicates that  
8 special exception relief is available for yard setback  
9 requirements, even though that's not exactly what it says.  
10 It doesn't say that, it just says yards.

11           You might ask, and we've talked to the Office of  
12 Planning about this, why can't the Zoning Commissioner or the  
13 Office of Planning just make it more clear if there's any  
14 confusion here?

15           And I would respond to that and say I don't think  
16 there has been any confusion on this point for six years,  
17 until Mr. McDuffy raised it.

18           But knowing what the Office of Planning considers  
19 to be the reason why they used the word setback as a  
20 direction of measurement term, it would frustrate that  
21 purpose if they tried to clarify this.

22           Because they could clarify it by changing front  
23 setback to front yard and by OP's thinking, according to the  
24 OP report from the rewrite, that would mean you measure from  
25 the building out. And for whatever reason, they don't want

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1 to, they want to measure from the property line in.

2           It changes the method of measurement, it doesn't  
3 change the fact that it's a front yard setback. So, this is  
4 why I'm arguing so strenuously that I think the original  
5 decision was correct and was well considered.

6           I think it's supported by the zoning regulations  
7 as a whole in context. Words in the zoning regulations are  
8 not considered in a vacuum and it wouldn't make any sense to  
9 consider that word in a vacuum in this case.

10           So, I think this exact issue was decided by the  
11 Board in 19633A, it wasn't casually or incidentally decided.  
12 And to be clear, I'm not arguing that you can't ever reverse  
13 it, I'm just saying that it's not justified in this case to  
14 reverse it.

15           One last point in response to something that's Mr.  
16 McDuffy found, the Zoning Administrator over these last few  
17 months has not rejected my argument, he's just not considered  
18 it. I spoke with him after I filed the pre-hearing statement  
19 and he stated that he doesn't feel it's appropriate for him  
20 to reconsider this decision prior to the Board making a  
21 statement.

22           He said if the Board had the opinion that it  
23 should come back to me for reconsideration he'd be happy to  
24 do it but he wasn't going to look at it without the Board  
25 weighing in first.

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1 BZA CHAIR HILL: You said the Zoning  
2 Administrator, Mr. Sullivan?

3 MR. SULLIVAN: I'm sorry?

4 BZA CHAIR HILL: Did you say the Zoning  
5 Administrator?

6 MR. SULLIVAN: Yes, the Zoning Administrator.

7 BZA CHAIR HILL: That's okay, I just didn't hear  
8 what you said.

9 MR. SULLIVAN: And so that's what we have on that  
10 point. If this is to be a variance, I know we're prepared  
11 to argue a variance argument. I know this case has dragged  
12 on.

13 BZA CHAIR HILL: That's all right, Mr. Sullivan,  
14 I see your slide deck, Number 10, 11, 12, and so what I think  
15 again is there's all this threshold issue as to whether or  
16 not you're going to make the argument as a special exception  
17 or a variance.

18 And what I think, unless the Board has a better  
19 idea, we might as well go through and hear that argument and  
20 then -- this has taken enough time that I think I might want  
21 to do an emergency closed meeting with Legal just to be able  
22 to clarify what maybe our next steps are.

23 I think we need to get through this issue first  
24 and then hear the case one way or the other, and so that to  
25 me, I think we should hear from everybody about this one

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1 particular issue, then do an emergency closed session.  
2 Thankfully, we don't have a particularly long day today, it's  
3 not going to be a short as I thought it was going to be but  
4 we can go ahead and at least maybe settle this.

5           Mr. Young, could you drop the slide deck for a  
6 second just so I can see everybody? I'm looking at my Board  
7 Members. I don't know if you all think that seems like a  
8 relatively good plan. I'm going to go around the table as  
9 I always do.

10           Actually, I'm going to start with Vice Chair John  
11 first because you're my partner, what do you think? Does  
12 that sound good or what do you think?

13           VICE CHAIR JOHN: I appreciate all of the work  
14 that's gone into this and I read Mr. Sullivan's submission  
15 and I thought about it a lot. And I can't get around the  
16 regulation that defines the front setback and D1205.1 and 2,  
17 that are specific regulations for Zones R19 and R20.

18           And so I appreciate Mr. Sullivan saying that he's  
19 not saying the Board can't re-look at something or change its  
20 mind, and if there's been confusion in the terms, then that's  
21 unfortunate but that doesn't mean the Board needs to  
22 perpetuate the confusion.

23           So, I think this is an opportunity for the Board,  
24 since the Board is charged with interpreting the regulations,  
25 to make a decision on how the Board interprets D1205 with

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1 respect to the front setback. The regulations are really  
2 very clear, there's no confusion in the regulations.

3 There might have been some confusion from  
4 different people inserting the term yard before setback but  
5 in terms of the regulations there really is no confusion in  
6 my view. So, I would like to hear the variance argument if  
7 there is one.

8 I really appreciate all the work that's gone into  
9 it. I don't think 19633A is a hard precedent, I looked at  
10 the photographs again and I didn't have a chance to read the  
11 transcript but that case was slightly different.

12 The facade was different and my understanding is  
13 that all the Applicant was trying to do was enclose that  
14 section, there was a little roof or something, an overhang,  
15 and the Applicant was enclosing it.

16 But sometimes cases slip by on incorrect analysis  
17 and the Board handles numerous cases a year, sometimes 9, 10,  
18 and 11 in a day, and sometimes there can be some confusion.  
19 So, that's my thought, I'm sorry to go on so long but asked  
20 me.

21 BZA CHAIR HILL: That's okay, Ms. John, I'm trying  
22 to figure out the best way to do this and I only have  
23 my...I'm still trying to figure out what I want to do. Mr.  
24 Sullivan, give me a second.

25 Mr. Smith, if you all had scheduled the day

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1 anyway, I want to talk to Legal.

2           Because I just want to figure out what we're going  
3 to do next. Mr. Smith, do you have an opinion?

4           MEMBER SMITH: I do believe we can talk to Legal.  
5 I think Legal will probably say that this is a preliminary  
6 matter that must be decided by the Board before we can move  
7 on to the merits of the case, wherever we land on this.

8           But in regard to where I am on this, I appreciate  
9 the additional analysis that has been provided by Mr.  
10 Sullivan, this has been pushing almost two years discussing  
11 this case.

12           But like Ms. John, I believe the regulations are  
13 fairly clear on this matter and I understand there may have  
14 been difference of interpretations over time but it is the  
15 purview of the Board to make this final determination, just  
16 as Mr. Sullivan stated the Zoning Administrator doesn't want  
17 to weigh in on this until after the Board has made a decision  
18 that is a preliminary matter on whether this is entitled to  
19 a special exception.

20           To me it is fairly clear that it is not mutually  
21 exclusive. The front setback forms the front yard and I do  
22 believe they are two different, separate regulations, just  
23 as I've stated on February 24 of 2021.

24           I do believe that a front setback as opposed to  
25 a side and rear yard setback, because it deals with the

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1 front, it can substantially change the front facades and the  
2 front yards of people's properties, which we are attempting  
3 to protect across the zoning regulations in multiple forms.

4 I do believe that the higher hurdle of a variance  
5 based on my interpretation of the regulations is the more  
6 appropriate avenue. We can talk to OZ, Legal, I've heard the  
7 arguments of Mr. Sullivan but I would rather just hear the  
8 variance argument going forward with this.

9 That's just where I am on it right now. I don't  
10 really have anything else more to say on it.

11 BZA CHAIR HILL: I'm going to go fast. If you all  
12 will bear with me, I just want to talk to Legal for a few  
13 minutes. I'm pretty sure I've got to read all this stuff in  
14 order to do it and I'll let Mr. Sullivan have just a brief  
15 statement.

16 VICE CHAIR JOHN: Mr. Chairman, if I could, I  
17 don't know if Dr. Imamura wants to speak to Legal?

18 BZA CHAIR HILL: I was going to ask Dr. Imamura.  
19 You guys don't want me to speak to Legal?

20 VICE CHAIR JOHN: No, I'd like to hear from Dr.  
21 Imamura before we speak to Legal.

22 BZA CHAIR HILL: I'm sorry, I was going to ask Dr.  
23 Imamura. Dr. Imamura?

24 COMMISSIONER IMAMURA: Thank you, Mr. Chairman,  
25 thank you, Vice Chair John.

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1 I read the record, this has certainly been long  
2 overdue to resolve this matter. Mr. Chairman, I support your  
3 approach to talk to Legal. It's unfortunate, I think we're  
4 all here because the project was built not according to the  
5 BZA-approved plan.

6 It's my understanding in the record that Mr. Cross  
7 has another project with a similar issue, so this is not a  
8 matter to be taken lightly.

9 Vice Chair John is right in that if these terms  
10 have been used interchangeably and Mr. Sullivan has provided  
11 a handful of examples there, certainly the Board should not  
12 perpetuate that and we should make it very clear moving  
13 forward to differentiate the terms.

14 I'm conflicted on this issue and I think speaking  
15 to Legal would certainly be helpful. So, it looks like, Mr.  
16 Chairman, I think you're ready to move forward. That's all  
17 that I have to say.

18 BZA CHAIR HILL: That's all right, I was just  
19 resting. Mr. Sullivan, please just make a small statement?

20 MR. SULLIVAN: I'll clarify a couple points to  
21 make sure nothing is misunderstood, that 3629T, the only  
22 other case of 1205.2 being decided is identical, it's a  
23 vestibule. There was nothing different in the character of  
24 the relief being requested but that's not even the important  
25 point.

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1           Whether or not it was the exact same thing isn't  
2 as important a fact as this exact same issue. It was  
3 considered, I wasn't missed, it was drawn out, questioned by  
4 everybody and then considered and then memorialized in a full  
5 order.

6           It wasn't incidental, it wasn't, hey, this just  
7 happened so now I'm going to rely on this all the time. The  
8 issue was discussed and there has never been any confusion  
9 on that. The only confusion came from Mr. McDuffy.

10           Up until then, nobody ever thought that it was  
11 even possible that the front setback didn't apply to front  
12 yard. I think I just heard Board Member Smith say front  
13 setback sets the front yard requirement. So, it's the same  
14 thing, the word yards is used.

15           I think it's very clear that yards is used in 5201  
16 as a general term to describe area development standards that  
17 relate to yards. One of the reasons for the delay was the  
18 Office of Planning initially told you they were going to try  
19 to clarify and they said it might take eight months or so.

20           And the Zoning Administrator was comfortable with  
21 us delaying enforcement and to be clear, too, while the  
22 project was built not in accordance with those BZA-approved  
23 plans as it relates to the vestibule, the project did have  
24 a permit. And we have testimony on that.

25           But there was a permit issued from DCRA.

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1           BZA CHAIR HILL: As far as detriments or reliance,  
2 Mr. Sullivan, and all that, it did get built, they did built  
3 it. Dr. Imamura, do you have a response? And then I'm going  
4 to turn to the Office of Planning and then we're going to  
5 have had our emergency meeting.

6           COMMISSIONER IMAMURA: Thank you, Mr. Chairman.  
7 Yes, the fact is that it should have been built to the BZA-  
8 approved plan. Even though a permit was issued that doesn't  
9 relieve the Applicant from the order that was issued by the  
10 BZA.

11           MR. SULLIVAN: Right, it also shouldn't affect  
12 this, whether or not it's a special exception or variance in  
13 this case.

14           BZA CHAIR HILL: Thanks, Mr. Sullivan. Vice Chair  
15 John?

16           VICE CHAIR JOHN: Mr. Sullivan, here's the issue.  
17           The Commission recently made an amendment with the  
18 alley center line setback and at that time, the Commission  
19 could have changed the front setback provision if the  
20 Commission intended to treat the same setback the same as an  
21 alley center line setback.

22           The point is that there are many cases where the  
23 Board has treated the front setback provision as a variance.  
24 And even one of the cases that you cited was in fact a  
25 variance. I have the number here, B20778, which was a

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1 theoretical lot issue.

2           And the Board granted the provision for the front  
3 setback. So, that's the only thing I want to add and I  
4 appreciate again all of the work that has gone into it. I  
5 think I agree with the Chairman that we should probably pause  
6 and speak to Legal at this point.

7           BZA CHAIR HILL: It's okay, Mr. Sullivan, just  
8 give me one second. I'm going to let you respond and then  
9 I understand you've been here a long time, the Board is  
10 trying to figure out what the Board is doing. And so go  
11 ahead and make your comment.

12           I don't even know what's going to happen, Mr.  
13 Sullivan, but going back and forth and back and forth with  
14 each person isn't necessarily going to make it work. But go  
15 ahead, Mr. Sullivan.

16           MR. SULLIVAN: I think a lot of these points are  
17 very important and it was a good comment by Commissioner  
18 John.

19           They changed and added alley center line setback  
20 but they also didn't fix yards to say rear yard setback  
21 requirement or side yard setback requirement, because yards  
22 applies to yards and an alley center line setback is not a  
23 yard at all, it's a setback from the alley center line which  
24 is in public space.

25           So, I think that is distinguished.

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1           BZA CHAIR HILL: Ms. John, you've got respond and  
2 then I'm going to the emergency thing.

3           VICE CHAIR JOHN: We're not going to get anywhere  
4 with this, Mr. Sullivan with all due respect because the yard  
5 not just includes the setback, it includes the distance from  
6 lot line to lot line. So, the front yard is a broader thing  
7 and it includes the setback.

8           So, I don't see how we can use them  
9 interchangeably. You've been here way longer than me and I  
10 can't get around what the regulation says, again. But we can  
11 talk to OLZ, Legal, and I truly appreciate all of the work  
12 that's gone into this.

13           But I agree with Board Member Smith. This is not  
14 just clarifying the issue for this particular case but where  
15 do we draw the line, how do we apply this rule to everything  
16 that's going to come before the Board from now on?

17           Are we going to be allowing front porches to be  
18 setback further to the front lot line, what are we doing?  
19 So, I think this is a policy decision that ought to be  
20 decided by the Commission.

21           Anyway, I'd like to pause here and, Mr. Sullivan,  
22 I don't really want to respond to anymore comment because  
23 this could go on all day.

24           BZA CHAIR HILL: I'm going to read this thing.  
25 Is Ms. Amling the client? Ms. Amling, you don't have to say

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1 anything, I just want to let us know I don't think anybody  
2 has any problem with the area's dog lane, it looks very  
3 lovely, like a nice vestibule.

4 We're struggling with what we're struggling with,  
5 I think you understand that. You're nodding yes, I'm just  
6 saying the picture with the dog, by the way, was very nice.  
7 And that was Mr. Cross's previous attempt. I'm going to read  
8 this thing.

9 As Chairperson of the Board of Zoning with  
10 District of Columbia in accordance with 407 of the District  
11 of Columbia Administrative Proceedings Act, I move the Board  
12 of Zoning Adjustment hold a closed meeting on 9/28/2022 for  
13 the purposes of seeking legal counsel on Case Number 20374,  
14 deliberated upon and voted on, Case Number 20734.

15 Is there a second, Ms. John?

16 VICE CHAIR JOHN: Second.

17 BZA CHAIR HILL: Motion made and seconded. I'll  
18 jump on the other thing, we'll try to do this as quickly as  
19 possible. Thank you all and we'll see you in a little bit.

20 (Whereupon, the above-entitled matter went off  
21 the record at 11:36 a.m. and resumed at 12:11  
22 p.m.)

23 BZA CHAIR HILL: Mr. Moy, you want to call us  
24 back?

25 MR. MOY: After conducting an emergency closed

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1 meeting with OZ Legal, the Board has returned to its public  
2 hearing session and the time is now at or about 12:12 p.m.

3 BZA CHAIR HILL: Thanks. Mr. Sullivan, you want  
4 to introduce yourself for the record?

5 MR. SULLIVAN: Thank you, Mr. Chairman, Mr.  
6 Sullivan with Sullivan & Barrows on behalf of the Applicant.

7 BZA CHAIR HILL: Okay, great, thanks. Okay, so  
8 I'm just having a deliberation now with my fellow Board  
9 members. This is not something I want to talk about  
10 afterwards with the applicant. So, please just try to think  
11 about what your next steps are after we discuss this.

12 I just want to deal with the preliminary issue as  
13 to whether or not this should be argued as a special  
14 exception or a variance.

15 After talking with Legal, as well as hearing  
16 everything whoever has to say, I don't think it's as  
17 complicated as I originally thought it was.

18 I think that this is something that should be  
19 argued as a variance. And the reason why is that the yard  
20 and setback, the front thing, is not interchangeable, because  
21 the front setback was more or less to be used to line up the  
22 fronts of the building.

23 If the Zoning Commission wants to change that, or  
24 sua sponte this, they're more than welcome to, to clarify  
25 that issue.

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1           And so, I would like to hear this as a variance,  
2 and I'm going to go around the table and hear what others  
3 have to say. And I'm going to start with you, Mr. Smith, if  
4 I could.

5           MEMBER SMITH: Analysis of Chairman Hill, under  
6 my interpretation, it is a development standard that in  
7 essence form, after applying the development standard, would  
8 create in essence a front yard.

9           So, I do not believe that this is interchangeable  
10 as a front yard, and believe that, based on the regulations  
11 at hand, it must be decided as a variance and not as a  
12 special exception.

13           So, I agree with your interpretation and would  
14 support an analysis of this from a variance standpoint.

15           BZA CHAIR HILL: Thank you. Dr. Imamura?

16           COMMISSIONER IMAMURA: Thank you, Mr. Chairman.  
17 As I mentioned before, I was conflicted about this case.  
18 Certainly, I think there's some strongly held positions for  
19 the variance. And I certainly wanted to see and explore what  
20 it would take to view this as a special exception, trying to  
21 be fair and balanced.

22           But I think I'm in agreement with you,  
23 Mr. Chairman, I'm in agreement with the Board members that  
24 this probably ought to be heard as a variance case.

25           BZA CHAIR HILL: Okay. Vice Chair John?

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1           VICE CHAIR JOHN:       I also agree that the case  
2 needs to be heard as a variance, and I agree with Board  
3 member Smith that if the Commission thinks that we're not  
4 interpreting the regulation correctly, then the Commission  
5 can clarify the regulation, as it did for alley centerline  
6 setback.

7           I believe that the setback is there for a reason,  
8 which says where the building can be placed on the lot. I  
9 think the term, front yard, means not just the length from  
10 the front to the building, but also the width of the area  
11 from lot land to lot land. So, I don't see the two terms as  
12 meaning the same thing.

13          I think that in order for the Board to treat  
14 something as a special exception, it needs to be in the  
15 regulation. The Board has discretion in granting relief as  
16 a special exception only because the statute and the  
17 regulations allow the Board to do that.

18          And I don't think the Board ought to be creating  
19 special exceptions where the regulation is otherwise quite  
20 clear, in my view. So, based on that, I think it should be  
21 a variance. And I don't think that's inconsistent with how  
22 entirely inconsistent with how we have looked at this. How  
23 the Board has looked at this.

24          As I said before, sometimes cases slip through,  
25 and I believe that case that Mr. Sullivan cites, 196 -- I

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1 forget the number -- but might have been one of those.

2 But in any event, the latest case that we reviewed  
3 that involved this issue, was number 20674, were Mr. Cross  
4 was the architect.

5 It involved a special exception for the front  
6 setback. And after discussion with the Office of Planning,  
7 I'm not quite sure what happened there, but the request for  
8 the special exceptions for the front vestibule was withdrawn  
9 and the application was approved without it.

10 So, I think the Board is headed in a certain  
11 direction based on the recent cases, and so I believe this  
12 should be a variance.

13 ZC CHAIR HOOD: Okay. I'm having some issues with  
14 my audio. So, Mr. Smith, when we come back, we're going to  
15 hear this argument as a variance. I'm going to go ahead and  
16 jump off and come back. Okay? Thank you all.

17 BZA CHAIR HILL: Mr. Moore, can you all hear me?  
18 Okay, there's no delay. Okay, great. Okay, well, the client  
19 is fortunate that there is legal counsel, and that legal  
20 counsel has been before us many, many times, and knows how  
21 to make a variance argument, and was worth the money I'm  
22 sure.

23 Mr. Sullivan, if you have the time, if you're  
24 still there.

25 MR. SULLIVAN: Still here.

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1           BZA CHAIR HILL:   Cool.   Great.   All right,  
2 Mr. Sullivan, you can go ahead and make your variance  
3 argument and you can begin whenever you'd like.

4           MR. SULLIVAN:   Thank you, Mr. Chair and members  
5 of the Board.   And I appreciate the Board taking the time to  
6 reconsider my preliminary argument.

7           Regarding the variance argument, we are charged  
8 with showing that there's an exceptional condition that leads  
9 to a practical difficulty in complying strictly with the  
10 regulations in this point, and that granting relief will not  
11 be a substantial detriment to the public good, or to the  
12 integrity of the zoning regulations.   And I believe -- is  
13 Michael Cross here as a witness.   I just didn't see him on  
14 the panel.

15          BZA CHAIR HILL:   Yeah, Mr. Cross is here.   And  
16 actually, before, Mr. Sullivan, you go on, can the Office of  
17 Planning just introduce themselves real quick?

18          MR, KIRSCHENBAUM:   Good afternoon, Chair Hill and  
19 members of the Board of Zoning Adjustment.   I am Jonathan  
20 Kirschenbaum with the Office of Planning.

21          BZA CHAIR HILL:   Thanks, Mr. Kirschenbaum.   Just  
22 as an FYI, we're going to ask you for your opinion on the  
23 variance.   Okay?

24          MR, KIRSCHENBAUM:   I probably won't be able to  
25 give you anything in either way, as it will be the first time

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1 we're hearing this and we will need time to analyze it and  
2 provide a report.

3 BZA CHAIR HILL: Oh, come on, Mr. Kirschenbaum.  
4 You will be able to figure that out on the fly, I'm sure.  
5 But that's okay, we'll give you your time that you deem  
6 necessary for your supplemental.

7 But there you go. So, I'm not going to get an  
8 answer from you today. That's all I just want to kind of  
9 figure out. So, Mr. Sullivan, you can go ahead. And then,  
10 I'll get a supplemental from the Office of Planning.

11 MR. SULLIVAN: Thank you, Mr. Chairman. So,  
12 regarding exceptional condition, the Board has considered  
13 several times that an exceptional condition can be the  
14 permitting history of a property, in particular, when the  
15 elements of estoppel are somewhat present in the situation.

16 Here, we have a case where a permit was issued for  
17 the front vestibule. That permit was executed as it was  
18 issued according to those plans, and was built. And after  
19 it was substantially built, DCRA came back and said we  
20 shouldn't have given you that permit, and you have to take  
21 that down or ask for -- at the time, they said special  
22 exception relief.

23 In addition to that, I would add also that part  
24 of that exceptional condition can be the fact that an  
25 interpretation which was duly made regarding a property six

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1 doors down and the only other case under 1205.2, was also a  
2 special exception.

3 That is an exceptional condition in this case,  
4 that the Board is changing that policy established to be a  
5 variance. And so, that presents an exceptional condition as  
6 well, as part of the permitting and zoning history behind  
7 this particular property.

8 And so, the second element, of course, of variance  
9 relief is practical difficulty, so I'll have Mr. Cross  
10 testify on that. But at first, I'd like to start with  
11 testimony from the applicant.

12 BZA CHAIR HILL: Mr. Sullivan, I got you. Can you  
13 tell me the house number again that had the special exception  
14 vestibule?

15 MR. SULLIVAN: 3629 T.

16 ZC CHAIR HOOD: Okay, great. Thank you. All  
17 right, go ahead, Ms. Amling. You want to introduce yourself  
18 and provide your testimony?

19 MS. AMLING: My name is Alicia Amling. You've all  
20 seen me now for the last two years. Thanks for your  
21 patience.

22 My husband Matt and I live at 3617 T with our  
23 nine-month old son and the dog, who you always see in our  
24 front door.

25 And we'd like to share our perspective on this

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1 case and ask for your consideration of us as homeowners. I  
2 know this issue is bigger than us, but I appreciate you  
3 recognizing us as people who have throughout this process  
4 tried to seek compliance of all the zoning rules and  
5 regulations throughout the building of our home. We tried  
6 to do the right thing all along.

7           Before we even applied to you all for a permit to  
8 put our plans together, we talked to our neighbors about the  
9 facade of our home, because we wanted to honor the  
10 neighborhood and make sure that our neighbors are comfortable  
11 with a big project that was in keeping with the neighborhood,  
12 and if they looked across the street they were happy.

13           I shared three different facades Michael put  
14 together with our direct neighbors, and just chatted about  
15 them. So, we really tried to be good neighbors and rule  
16 followers from the beginning.

17           We did, though, try to do this completely on our  
18 own. We only relied on our architect for his guidance and  
19 expertise.

20           I know we have one person, Mr. McDuffy, who's  
21 suggesting that we intentionally deceived everyone with the  
22 construction of this vestibule, and it makes me so frustrated  
23 because it's just so false.

24           I wish we could be so diabolical. I wish we had  
25 such a good understanding of the rules that have slotted this

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1 and timed it that way.

2           Alas, it seems like no one had a perfect  
3 understanding of the rules. And so, we followed the rules  
4 as we understood them and we built our house as it was  
5 permitted. And we built it as approved by DCRA.

6           We had that permit set in front of us, and I  
7 thought that was our ticket to move forward. Our concrete  
8 guy Dee poured the concrete according to that set that was  
9 stamped approved, and our framer Angel built -- everything  
10 was based on that set that had a stamp and said, go forth and  
11 build your house.

12           It was based on what we thought was an approved --  
13 it was based on an approved set of plans. We, as homeowners,  
14 had no knowledge or understanding that a vestibule would  
15 require special exception relief.

16           When we asked our architect Michael to include it,  
17 we did it because there are a lot around the neighborhood  
18 that we think look nice and they have practical applications,  
19 and there's a vestibule two doors away, and the one then for  
20 a block, 3629, and we asked Michael to include it in our  
21 drawings.

22           We didn't realize that our architects had  
23 submitted and then withdrew a plan for the vestibule in the  
24 first BZA case. I know why people may think that's  
25 impossible to believe, but it's true.

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1           We were embarking on -- as all of you can  
2 appreciate because you've seen homeowners every couple of  
3 weeks going through this process, you understand how  
4 overwhelming this process can be. And you're doing it all  
5 amidst your regular life. You're trying to work your full-  
6 time jobs, you're trying to start a family.

7           Life happens. So, we just didn't pour over every  
8 drawing in detail.

9           BZA CHAIR HILL: Ms. Amling, I got you. I'm going  
10 to interrupt you just because I get the gist of your  
11 testimony. And we're going to have questions, maybe. This  
12 has gone on for a pretty long time.

13           I mean, I'm pretty clear as to what your argument  
14 is, what Mr. Sullivan just said, right? And so, I got it.  
15 But I do appreciate your testimony in that you didn't try to  
16 do this, and how you got to this --

17           MS. AMLING: Can I make one more point?

18           BZA CHAIR HILL: Yeah, sure. Sure.

19           MS. AMLING: One point is that it's not fair --  
20 I know the passage that it's hard to be a layperson building  
21 a house in DC, and I would actually correct myself.

22           The Office of Zoning and Office of Planning, we've  
23 met wonderful people who have been so helpful trying to  
24 explain to us the rules and regulations, and helping us out.  
25 Like our wall permit. There were a million questions, and

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1 there are great people who have made this process more  
2 navigable.

3 But we can't be a layperson with Michael McDuffy  
4 living three blocks down. And it feels as if we have been  
5 under attack from a changing set, moving goal posts, and this  
6 neighbor is the reason the threshold --

7 (Simultaneous speaking.)

8 BZA CHAIR HILL: Ms. Amling, I got you. Like, I  
9 got you. I just want to let you know, like it's -- I  
10 appreciate it. All I'm trying to interrupt is that we've  
11 been here now for an hour and fifteen minutes, or what have  
12 you.

13 And I just don't want to get into the -- in other  
14 words, we don't need to mention names. Right? So, let's  
15 just go ahead and keep moving forward. Does Mr. Sullivan --  
16 who's your next person you want us to talk to, or before I  
17 ask the Board of questions from all your witnesses?

18 MR. SULLIVAN: So, I'm going to have Michael Cross  
19 talk about practical difficulty. I want to add one point  
20 about the good-faith aspect of following up, or building  
21 according to the permit that was, in fact, issued.

22 The front setback vestibule issue isn't always so  
23 clear. In fact, you'll notice 3629 T Street is an A order.  
24 It was a modification. It was a modification because I  
25 missed it, OP missed it, BZA missed it, and then the zoning

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1 administrator caught it after it was approved, or in the  
2 permit process, not when it was built. And so, we came back  
3 for it.

4 BZA CHAIR HILL: Say that again? You said 3629?

5 MR. SULLIVAN: Yeah, 3629 T, the other case, the  
6 precedent case.

7 BZA CHAIR HILL: Yeah, yeah.

8 MR. SULLIVAN: It was a modification, even though  
9 the vestibule was on the original plans. Because we all  
10 missed it.

11 BZA CHAIR HILL: Okay.

12 MR. SULLIVAN: I'm just pointing out that a lot  
13 of this stuff's not always obvious.

14 BZA CHAIR HILL: Okay.

15 MR. SULLIVAN: And so, I'd like -- Mr. Cross, if  
16 you could just give us some testimony and talk about the  
17 practical difficulty and what's involved cost-wise, and in  
18 dismantling the vestibule, which would be required to  
19 strictly comply with the zoning regulations in this case.

20 MR. CROSS: Certainly. As mentioned, we should  
21 endeavor to permit these in good faith. We actually had  
22 applications in to BZA and DCRA simultaneously, both tracking  
23 separately. Right? And so, that's how this error came about  
24 --

25 BZA CHAIR HILL: Mr. Cross, you're fading out.

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1 I don't know why. And, Mr. Sullivan, just so you know, after  
2 this all is over, I'd like a summary of the three prongs.  
3 Okay? And I don't --

4 MR. CROSS: Are you ready for me? Can you hear  
5 me now?

6 BZA CHAIR HILL: Yeah, you just were fading out.

7 MR. CROSS: Yeah, I think it's the auto-adjust.  
8 So, as mentioned before, we had two simultaneous  
9 applications, BZA and DCRA, both tracking separately. That's  
10 how this error came about, in that we removed it from one  
11 application, and failed to get the drawings updated on the  
12 other application.

13 That said, the other application was reviewed and  
14 approved by DCRA without any question of the vestibule. And  
15 that's how our client came to have an approved set showing  
16 the vestibule as a matter-of-right.

17 The portico that is there, the vestibule,  
18 unfortunately is integral to the structural framing of the  
19 house. You'll see in the drawings filed under B1905428, that  
20 the structure of the second floor actually extends out and  
21 forms the roof of the portico. So, it is not just a --

22 BZA CHAIR HILL: Can you show me again where that  
23 is? Tell me again?

24 MR. CROSS: Yes, I'm referring to the building  
25 permit number and the plans filed under that number.

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1 BZA CHAIR HILL: Do we have that exhibit in the  
2 record?

3 MR. CROSS: I'm not sure.

4 BZA CHAIR HILL: I just want to be able to look  
5 at something what you're saying, why it's structurally to  
6 whatever. Just tell me the exhibit.

7 I love the architects on here. Structurally  
8 whatever, that's a technical term.

9 MR. CROSS: You have an architect on your Board,  
10 so it is a scientific term, structural --

11 (Simultaneous speaking.)

12 BZA CHAIR HILL: I know. That's why Dr. Imamura,  
13 he smiles. So, that's why you got that comment from me.

14 MR. SULLIVAN: So, maybe Exhibit 10 of the  
15 architectural plans, or the previous PowerPoint, Michael.

16 MR. CROSS: I can flip through those real quick.  
17 I think really the drawing that I would point you to is the  
18 structural framing sheet, which I don't believe is included  
19 in this BZA --

20 BZA CHAIR HILL: Okay, you can submit that,  
21 Mr. Cross, okay? We're going to still need a supplemental  
22 from the Office of Planning. So, go ahead and put that in,  
23 okay?

24 MR. CROSS: Okay.

25 BZA CHAIR HILL: Something that shows how this

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1 thing is structured, how it just can't be taken off.

2 MR. CROSS: Certainly.

3 BZA CHAIR HILL: Okay. Go on. Keep talking,  
4 Mr. Cross, please.

5 MR. CROSS: And so, the roof choice in the portico  
6 are continuous and they extend deep into the second floor of  
7 the home in a cantilevered type of configuration.

8 Furthermore, there's a structural column located  
9 in the walls of the portico, which supports the front edge  
10 of the adjacent second floor, which is also cantilevered in  
11 a style consistent with the other buildings in that area.  
12 They were built with a cantilever on the second floor.

13 And so, in terms of practical difficulty,  
14 obviously the removal and subsequent structural remediation  
15 is relatively intensive.

16 We estimate that bringing this into compliance  
17 with the notice of violation stating that the permit was  
18 issued in error, could cost between \$15,000 and \$30,000 in  
19 construction costs, and likely another \$3,000 to \$5,000 in  
20 design engineering and permit costs.

21 BZA CHAIR HILL: Okay. All right, next,  
22 Mr. Sullivan.

23 MR. SULLIVAN: Thank you, Mr. Chair. So, as  
24 requested, I want to go over this.

25 BZA CHAIR HILL: I'm sorry, Mr. Sullivan. I'll

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1 give you that at the end. I'm going to turn to the Office  
2 of Planning in a second, although they're not going to tell  
3 me much. No offense, Mr. Kirschenbaum. Does the Board have  
4 any questions?

5 MEMBER SMITH: Mr. Cross, can you restate your  
6 practical hardship argument? You're saying that it would  
7 cost \$30,000 in engineering? Or, did you say engineering  
8 costs, to remove the existing vestibule? Is the vestibule  
9 part of the structural integrity of the building? That's  
10 what you're saying?

11 MR. CROSS: Yes, that's what I'm saying. It was  
12 not built like some other porches that might be tacked onto  
13 the front facade, but instead the roof numbers are  
14 cantilevered out from the building.

15 Those roof choice are one and the same with the  
16 second floor floor joists, and therefore would need to be cut  
17 back in order to remove this. In doing so, we would remove  
18 the structural support for the adjacent cantilever, and that  
19 would have to be remediated.

20 MEMBER SMITH: So, the floor joists between the  
21 first and second floor of the existing --

22 MR. CROSS: That is correct.

23 MEMBER SMITH: -- row home. So, those floor  
24 joists -- the existing floor joists that were there prior to  
25 the construction of the vestibule were removed in some way,

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1 shape or form, where the floor joists now are integral to the  
2 roof of the vestibule?

3 MR. CROSS: That's right. The ones that are there  
4 now are integral to the roof of the vestibule.

5 MEMBER SMITH: Okay, so -- I'm just trying to get  
6 clarification. So, when this portico was put in, it seems  
7 to be that for it to be integral, it meant that the floor  
8 joists between the first and second floor, the existing ones  
9 that were there prior were removed. So, the second floor of  
10 the row home was removed when you put in this vestibule?

11 MR. CROSS: This was a complete renovation of the  
12 entire house. They added a story and it went back in the  
13 rear.

14 The existing homes in that area are framed with  
15 a cantilevered second floor already. And so, yes, the floor  
16 joists were removed and replaced in that section with longer  
17 cantilevered floor joists to accommodate the portico in the  
18 section where the portico exists.

19 MEMBER SMITH: And to a depth of what, going into  
20 the building?

21 MR. CROSS: To a depth of roughly fourteen-and-a-  
22 half feet from the interior face of the portico to the beam  
23 which supports them.

24 MEMBER SMITH: Okay. So, what you're saying is  
25 that the floor joists were removed inside of the row home

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1 from the front wall of that building, fourteen feet going  
2 into the house. Am I correct in that interpretation?

3 MS. AMLING: Yeah, the second floor floor joists  
4 are new.

5 MEMBER SMITH: Okay.

6 MR. CROSS: Yeah, they're new.

7 MEMBER SMITH: Okay. Okay.

8 MR. CROSS: The new joists do exactly what you're  
9 saying. I can't testify to how much was removed. The new  
10 floor joist is fourteen-and-a-half feet back from the base  
11 of the portico.

12 MEMBER SMITH: Okay. I just wanted clarification  
13 on the structural integrity argument that you are making.  
14 So, thank you. Mr. Imamura is shaking his -- looks like he  
15 may have questions.

16 BZA CHAIR HILL: Okay. Who's got another  
17 question? Okay, Mr. Imamura? Dr. Imamura?

18 COMMISSIONER IMAMURA: Lots of questions. But I'm  
19 a little skeptical. I'm interested in seeing the structural  
20 plans, structural sheets, that Mr. Cross will provide into  
21 the record for this.

22 So, you mentioned that there's a column in the  
23 vestibule? So, I guess either I didn't see that in the  
24 drawings, or maybe you could point me in the direction there.  
25 Because it does also look like there's two windows that are

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1 resets, right? Underneath the second floor.

2           So, I presume there's a beam if that's the load-  
3 bearing wall or beam that's running through that. So, I  
4 understand and appreciate your point that this an attached  
5 vestibule but integrated into parts of the structure, but the  
6 ability to remove it I don't think is as severe.

7           But I'm interested to see and hear, you said  
8 there's a column in the vestibule? Just from the  
9 photographs, it kind of difficult to see where that might be.

10           MR. CROSS: Yeah, I don't think you would be able  
11 to see it in the photographs. It's a structural post that's  
12 in the wall. The structural drawings call it out as a three-  
13 and-a-half by five-and-a-half LSL.

14           And it's picking up the LVL that runs across the  
15 face of the adjacent cantilevered second floor.

16           COMMISSIONER IMAMURA: Okay, that makes sense to  
17 me. So, I get that. And I simply want to say I appreciate,  
18 Ms. Amling, your comment that this wasn't done nefariously.  
19 We can appreciate that.

20           And certainly, the long view here that it's less  
21 about this particular case but really more broadly, where  
22 somebody may nefariously want to do this and submit plans,  
23 build something that's not approved by the BZA, and then come  
24 back and, in your case here, ask for a special exception or  
25 a variance. Right?

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1           And so, we can see where this might replicate over  
2 and over. So, you just seem to be caught in kind of a  
3 precarious position here with your case, and I certainly  
4 understand that there's -- going down the street on the  
5 corner there.

6           So, zoning is imperfect but we do try to apply it  
7 fairly and equitably. All right, I think as long as,  
8 Mr. Chairman, we can have some additional drawings submitted  
9 into the record, I would personally like to see and verify --  
10 I would certainly appreciate that.

11           BZA CHAIR HILL: Okay, anybody else have any  
12 questions for Mr. Cross before I ask? Okay, go ahead,  
13 Ms. John.

14           VICE CHAIR JOHN: So, Mr. Cross, I'm not an  
15 architect and I'm sitting here, and I just do not understand  
16 how, if constructing that vestibule requires such extensive  
17 work, how no one caught it when during construction, that the  
18 plans approved by the BZA did not involve all of that work?  
19 This is just a comment.

20           Because at some point somebody needs to say, what  
21 did the BZA approve? So, I'm just having a hard time. And  
22 this is not something you have to answer, because the Board  
23 is supposed to review the application as it is presented to  
24 us now, as if the vestibule was not there. That's my  
25 understanding of what we do now.

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1 MR. CROSS: You're right, I can't answer your  
2 specific question, but I can provide a little bit of insight  
3 on why it wasn't caught. And that's because it wasn't caught  
4 by zoning. It was approved as matter-of-right in the DCRA  
5 process, and therefore the applicant built it per the  
6 approved plans.

7 And we're only here because they received a notice  
8 of violation saying that that permit was issued in error, and  
9 they need to then subsequently bring it into compliance or  
10 seek a special exception.

11 VICE CHAIR JOHN: I see. I must have missed the  
12 part where it was a matter-of-right project. Initially,  
13 right?

14 MR. CROSS: The vestibule was shown in the  
15 approved permit drawings. The approved permit drawings  
16 actually also were approved by DCRA without any BZA  
17 modification form. Seems like the reviewer did not catch  
18 that it required relief of any sort.

19 But specific to the vestibule, there was no  
20 discussion and it was approved in the originally submit.

21 VICE CHAIR JOHN: So, let me understand. The  
22 project was approved as a matter-of-right, and then the  
23 applicant came to the BZA. Is that the order?

24 MR. CROSS: No. We had -- go ahead. Go ahead.

25 MR. SULLIVAN: Sorry. I think what it was, it's

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1 kind of a hybrid. As often is the case, an applicant will  
2 file for the permit while the BZA case is going on. And I  
3 think that's, unless Michael corrects me, that's what  
4 happened in this case.

5 So, it was filed with a vestibule and with the  
6 ten-foot rule relief needed addition in the back. And then,  
7 the ten-foot rule relief was granted. And then, the permit  
8 was issued based on the BZA order.

9 But what the reviewer missed was that the plans  
10 now before them didn't exactly match the BZA plans. And if  
11 the zoning reviewer misses it, nobody else would catch it,  
12 because they're the only ones that compare BZA and permit  
13 application plans.

14 Once the permit application plans are approved,  
15 then all the contractors and everybody else after that and  
16 all the other reviewers, will assume that the permit-approved  
17 plans match the BZA and they won't refer to both of them.  
18 So, it only had one chance to be caught. Michael disagrees  
19 with that.

20 VICE CHAIR JOHN: No, I can't accept that. Who  
21 bears the responsibility to build to the plans approved by  
22 the BZA? That's the part I can't -- you're saying it's the  
23 zoning reviewer.

24 But at some point the applicant or the architect,  
25 or somebody else, should know these are the BZA-approved

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1 plans that we must build to. And whose responsibility is it  
2 to close that loop with DCRA? That's where I think something  
3 fell through.

4 And if this is such extensive -- I shouldn't  
5 belabor it. Let's just start where we are. I don't need an  
6 explanation. Because mistakes were made. Let's look at the  
7 application as it is now.

8 BZA CHAIR HILL: All right, Mr. Sullivan, I'm  
9 going to give you the end. Okay? So, you'll have a rebuttal  
10 or whatever you want to do at the end there. Okay? All  
11 right, anybody else got -- Dr. Imamura?

12 COMMISSIONER IMAMURA: I agree with Vice Chair  
13 John not to belabor this. But, Mr. Cross, I mean, it does  
14 boil down to the owner's rep. And you had two drawing sets  
15 that were tracking, one with the BZA, one with DCRA. So, I  
16 get that.

17 But if the drawing set, if your CDs with the BZA  
18 were modified, what happened? I mean, because the vestibule  
19 is such an important component here, I guess with the drawing  
20 set with the BZA didn't have the vestibule. You removed the  
21 vestibule? Is that right?

22 So, if that's a significant design element, how  
23 was it that we didn't update the drawing set with DCRA?  
24 Like, what happened? That's sort of a quality control,  
25 quality assurance QA kind of issue.

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1 MR. CROSS: Yes, I would agree that it's left-hand  
2 not talking to the right, because we had multiple  
3 applications going. But I would also take a step back and  
4 say that the vestibule was never part of the original BZA  
5 application or discussion.

6 It was shown in the plans, assumed to be matter-  
7 of-right, it was in the plans when the ANC reviewed and  
8 approved the project, it was in the plans that were supported  
9 by both adjacent neighbors, and it was removed from the plans  
10 before we ever got to BZA or got an OP report, to say, one  
11 way or the other, on the vestibule, because we saw neighbor  
12 opposition to it.

13 We weren't sure how to navigate it, and the client  
14 wanted to keep the project moving. So, we pulled it out of  
15 our BZA set because it wasn't relief that we were requesting  
16 in the BZA set and we didn't want it to be part of the case.

17 So, in hindsight, we've been talking about this  
18 for two years, so obviously it's a glaring piece. But at the  
19 time, it actually wasn't. It really wasn't a big part of the  
20 discussion, because we had not had this discussion with  
21 anybody at the BZA, OP or DCRA, saying it was not allowed.

22 So, yes, there is some error in the coordination  
23 of the two, but I would also point out that it was approved  
24 by Zoning without a BZA modification form.

25 The review comments for this application never

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1 questioned the vestibule, and never actually questioned more  
2 than the ten-foot rear yard setback. So, actually, we came  
3 to this Board knowing that we needed the relief we knew we  
4 need, even though DCRA didn't catch that part.

5 So, yes, errors made across the board, but we  
6 actually did our due diligence to try our best to get this  
7 project the relief we thought was required.

8 COMMISSIONER IMAMURA: So, I can certainly  
9 appreciate the painful process here that Ms. Amling and her  
10 husband are going through. I also understand and appreciate,  
11 Mr. Cross, this is a very painful lesson learned. And  
12 hopefully the public, other architects and owners reps  
13 recognize this, that when you have two drawing sets that are  
14 tracking, to double-check and verify that you've got a  
15 consistent set moving forward in both directions.

16 But I certainly think and agree with Vice Chair  
17 John that, again, this really lands on for the owner's rep  
18 to make sure you have an accurate set tracking on both  
19 tracks. So, thank you, Mr. Chairman.

20 BZA CHAIR HILL: Okay, who's next? Okay, can I  
21 turn to the Office of Planning?

22 MR, KIRSCHENBAUM: Jonathan Kirschenbaum with the  
23 OP.

24 BZA CHAIR HILL: Okay, Mr. Kirschenbaum, so you're  
25 just going to do a supplemental, is that right? You have no

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1 comment right now, correct?

2 MR, KIRSCHENBAUM: We cannot make a recommendation  
3 yet and we would like to see an updated burden of proof  
4 addressing the variance criteria, along with the supporting  
5 documentation, which could be the structural plans that were  
6 used in making the arguments today.

7 And we also respectfully request that the Board  
8 give us at least three weeks to review whatever the applicant  
9 submits into the record, so we can have about three weeks to  
10 review and write a BZA report.

11 BZA CHAIR HILL: Okay. Mr. Moy, can you try to  
12 back up whatever we get to in terms of what we're asking for?  
13 Mr. Sullivan, do you have any questions of what the Office  
14 of Planning is requesting?

15 MR. SULLIVAN: No, I don't.

16 BZA CHAIR HILL: Okay. All right, Mr. Young, is  
17 there anyone here wishing to speak? Okay. All right, then  
18 I guess -- well, I mean, Mr. Sullivan, you can do a little  
19 brief one if you want to.

20 But I guess if you're going to do an updated  
21 burden of proof, then that's where, like, you're going to  
22 make the three-point argument anyway. And so, you might as  
23 well just do it then. Right? Unless there's anything you'd  
24 like to do in summation.

25 And then, we will probably -- I don't know, I

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1 guess we'll set it for decision, unless the Board has an  
2 issue. And then, we'll come back for a continued hearing,  
3 or I'm looking at my Board members as to whether or not they  
4 want a continued hearing.

5 I'll let you all think about that while I let  
6 Mr. Sullivan add or summarize whatever he'd like to. But  
7 he's going to have to do it anyway, in writing. So, I don't  
8 know if the client needs to spend any more of your time,  
9 Mr. Sullivan.

10 But if you want to go ahead and give us what you  
11 want to give us.

12 MR. SULLIVAN: And one of the reasons why we  
13 didn't fully flush it out in writing is because we're trying  
14 to manage costs here as well. And hoping for the preliminary  
15 argument there.

16 So, the only thing I will mention is that we're  
17 basing it -- what I'm going to write and what you'll see in  
18 the argument, it's an estoppel argument of sorts. And this  
19 Board has recognized that estoppel elements can be considered  
20 an extraordinary condition.

21 And then, separate from that is the practical  
22 difficulty -- not hardship, but difficulty -- of removing the  
23 vestibule.

24 BZA CHAIR HILL: Okay.

25 MR. SULLIVAN: All estoppel cases inherently have

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1 to involve mistakes. Otherwise, they wouldn't have ever been  
2 an estoppel case. And the seminal case on that in the  
3 District, it was lot occupancy, 65 percent. The architect  
4 did something 65 percent, it means it's a basic requirement.  
5 He made a huge mistake. But the court said, well, DCRA bears  
6 some responsibility too. So, I think it's a matter of  
7 degree.

8           What we're mostly arguing is, it wasn't an  
9 intentional -- it didn't happen intentionally. It was  
10 definitely a mistake. And so, I will talk about that more,  
11 of course, in the written argument. Thank you.

12           BZA CHAIR HILL: All right.

13           MR. SULLIVAN: And thank you for the Board for  
14 taking so much time and entertaining the initial argument as  
15 well. I appreciate that.

16           BZA CHAIR HILL: Sure. That's our job, I guess.  
17 Mr. Cross, how much square footage are we actually talking  
18 about covering? Like, three feet? Four feet?

19           MR. CROSS: The square footage, the projection,  
20 I think, is two-and-a-half feet.

21           BZA CHAIR HILL: Okay. Okay. All right. Okay,  
22 does anybody got anything else? Because we're going to go.

23           MEMBER SMITH: I do.

24           BZA CHAIR HILL: I'm looking at my Board members.  
25 Mr. Smith?

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1           MEMBER SMITH: Sure. I would prefer -- and this  
2 is to your question. I would prefer to just keep this as a  
3 continued hearing, as opposed to closing the record.

4           BZA CHAIR HILL: Okay.

5           MEMBER SMITH: That way -- and I'll be honest with  
6 you, Mr. Sullivan, you've done -- and Mr. Cross, you all have  
7 done a fairly good job of attempting to argue the points of  
8 the variance, given, I guess from you all's standpoint, and  
9 probably Ms. Amling's standpoint, of the curve ball of us  
10 making the decision that this was a variance.

11           But for the benefit of the applicant, I would  
12 rather keep it open for them to make this same estoppel  
13 argument. And also because, Mr. Sullivan, you've already  
14 shown your hand with making the estoppel argument.

15           Can we make sure that those architectural plans  
16 that are submitted are the ones that were approved instead  
17 by DCRA that are in the record? Okay. Because that doesn't  
18 happen all the time. So, I just wanted to put that on the  
19 record. Thank you.

20           BZA CHAIR HILL: Okay, great. Mr. Moy, can you  
21 work me back to how we get back here again?

22           MR. MOY: Considering the request from the Office  
23 of Planning, Mr. Chairman, working backwards I would suggest  
24 that the Board revisit this application. And you let me know  
25 whether it's for decision-making or a continued hearing.

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1 (Simultaneous speaking.)

2 BZA CHAIR HILL: Continued hearing, Mr. Moy.

3 MR. MOY: All right, so I would suggest that the  
4 Board take this matter up at its November 2nd hearing, and  
5 the Office of Planning respond by October 31st, which is a  
6 Monday, and that the applicant file their submission, which  
7 I believe is them revisiting their burden of proof for the  
8 variance, by October 5th.

9 So, once again, the applicant, October 5th, Office  
10 of Planning and other parties by October 31st, and the Board  
11 revisit at its hearing on November 2nd. Does that work for  
12 you, sir?

13 BZA CHAIR HILL: Works for me. Mr. Sullivan, is  
14 that okay?

15 MR. SULLIVAN: It's tight. In light of the fact  
16 that everybody supported this, both neighbors and others,  
17 there's nobody actually pining for this go away and it's been  
18 there so long, I think -- I mean, October 5th I think was the  
19 date, right? That's a week away.

20 BZA CHAIR HILL: No, no. He said November  
21 something.

22 MR. SULLIVAN: No, I thought he said October 5th  
23 for our submission.

24 BZA CHAIR HILL: Oh, sorry. Okay, keep talking,  
25 Mr. Sullivan. Sorry.

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1 MR. SULLIVAN: So, I mean, there's no hurry, I'm  
2 saying, on our point. It's been so long and the immediate  
3 neighbors, or anybody that lives on this block, is not  
4 concerned about it.

5 So, if we could have more time, at least another  
6 week or two, to pull the rest of the information together.  
7 Because I think at this point it was just -- if I heard  
8 correctly, it's just a week.

9 MR. MOY: Yes, it would have been a week. Would  
10 you prefer Monday, October 10th? Or do you need more time  
11 than that?

12 MR. SULLIVAN: No, sure. We could do that. Thank  
13 you. Appreciate that.

14 BZA CHAIR HILL: So then, that puts us at what  
15 date, Mr. Moy, for coming back?

16 MR. MOY: I would still keep the other dates.

17 BZA CHAIR HILL: For the applicant again? I'm  
18 sorry?

19 MR. MOY: All right, so the applicant would file  
20 by Monday, October 10th, Office of Planning with their filing  
21 by October 31st still, if that's still workable with  
22 Mr. Kirschenbaum, and then the Board again revisit on  
23 November 2nd.

24 BZA CHAIR HILL: Okay. And you'll let the ANC  
25 know, right?

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1 MR. MOY: Yes, sir.

2 BZA CHAIR HILL: All right, we're coming back here  
3 on November 2nd. Okay. All right, see you all later. Oh,  
4 sorry, Mr. Moy, I mean, Mr. Sullivan?

5 MR. SULLIVAN: Sorry. I realize the ANC2E meets  
6 on October 3rd. We're probably too late to get on that  
7 agenda. So, I guess we would still make -- what's the  
8 hearing date again? November --

9 BZA CHAIR HILL: Second. The second. You won't  
10 make it. So, it should be the 9th.

11 MR. SULLIVAN: So, we won't make it for the ANC.  
12 And since we're changing the relief from -- because they  
13 supported special exception. They haven't been on the record  
14 supporting variance. Sorry, I forgot to ask you this. I  
15 meant to check earlier. But that we would miss the ANC. So,  
16 if it's any way possible --

17 BZA CHAIR HILL: You guys have worked with them.  
18 You think that you can get something that quickly, to get  
19 back to us on the 9th?

20 MR. SULLIVAN: Yeah, I don't see why not, as long  
21 as the meeting their November meeting --

22 BZA CHAIR HILL: Again, now that I think about  
23 this, Mr. Moy, when do we go away for Thanksgiving? My last  
24 hearing's the 16th.

25 MR. MOY: Well, that's correct. The Board's last

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1 hearing before the Thanksgiving break is November 16th.

2 BZA CHAIR HILL: How many do we have on the 16th?

3 MR. MOY: We have three cases and one appeal.

4 BZA CHAIR HILL: Oh dear. Okay. All right.

5 Okay. All right, we'll try to put him on the 9th. How many  
6 we got on the 9th?

7 MR. MOY: On the 9th we have one, two, three,  
8 four, five cases. I'm hoping that one will disappear.

9 BZA CHAIR HILL: Okay, Mr. Sullivan, see if you  
10 can get something from the ANC for us for the 9th.

11 MR. SULLIVAN: Okay.

12 BZA CHAIR HILL: I mean, the reason why I'm even  
13 talking about this, again, this has been there for two years.  
14 Right? Like, we can come back after Thanksgiving.

15 MR. SULLIVAN: That's fine with us too. I mean,  
16 it's --

17 BZA CHAIR HILL: I mean, it's not like -- Mr. Moy,  
18 when are we not pressed? Like, if they have the ANC on the  
19 3rd, I don't need to press the ANC before Thanksgiving.  
20 When's our first hearing back after Thanksgiving, and what's  
21 that month starting to look like for us?

22 MR. MOY: All right, the hearing after the  
23 Thanksgiving break, sir, is November 30th. We have quite a  
24 few cases that day. Three, four, five, six, seven, eight,  
25 nine cases --

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1           BZA CHAIR HILL: All right, I'm sorry, I'm sorry,  
2 I'm sorry. I'm sorry to jump around. I know December always  
3 is very difficult for us. Let's see if we can do the 9th.  
4 Okay? Let's just go ahead and see if we can do this.  
5 Mr. Sullivan, see if the ANC is able to hear you on whatever  
6 day -- the 3rd -- and then see if you can get something back  
7 from them.

8           It might be fairly for them actually, now that I  
9 think about it. And then, we'll come back and hear from you  
10 on 11/9. Okay?

11           MR. SULLIVAN: Thank you.

12           BZA CHAIR HILL: Okay, I see Vice Chair John with  
13 her hand up.

14           VICE CHAIR JOHN: Just a quick request to  
15 Mr. Sullivan, that in your burden of proof could you  
16 address -- so let me back up. When the Board reviews  
17 applications like these, we typically review the application  
18 as if, for example, the vestibule wasn't there. I believe  
19 that's the standard.

20           So, could you address how detrimental reliance,  
21 which you said you were going to argue, would factor into  
22 that calculation?

23           MR. SULLIVAN: Sure, we can do that. There's  
24 several precedents where things were built and the Board  
25 considered this kind of situation an extraordinary condition.

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1 VICE CHAIR JOHN: Okay.

2 MR. SULLIVAN: Or an exceptional condition.

3 VICE CHAIR JOHN: And in terms of the practical  
4 difficulty as well. Thank you.

5 MR. SULLIVAN: Thank you.

6 BZA CHAIR HILL: Okay, anyone else?

7 COMMISSIONER IMAMURA: Just to say, Mr. Chairman,  
8 I'm in favor of wrapping this up as expeditiously as  
9 possible, even though it's been sitting out there for two  
10 years. I think for the Board's benefit, the community, and  
11 for the applicant, I think we need to wrap this sucker up.

12 BZA CHAIR HILL: Yep, that's great. Okay. All  
13 right, I'm going to close the hearing and the record, except  
14 for that that was requested by the Board for the dates  
15 submitted by Mr. Moy, and we'll see you guys back on 11/19.  
16 Thank you all very much. Bye-bye. I guess it's one  
17 o'clock --

18 MR. MOY: Mr. Chairman, I thought you said  
19 November 19th. Actually, it's November 9th.

20 BZA CHAIR HILL: I'm sorry, November 9th. You're  
21 right, that's what you -- you said November 9th, Mr. Moy.

22 MR. MOY: Yeah, I just want to double-check. I  
23 thought maybe you changed your mind.

24 BZA CHAIR HILL: Nope.

25 (Simultaneous speaking.)

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1 MR. MOY: I'm good.

2 BZA CHAIR HILL: All right. So, let's go ahead  
3 and take lunch. It's one o'clock, you want to shoot for  
4 1:30, just see if it happens? Okay? All right, thank you  
5 all. Bye.

6 (Whereupon, the above-entitled matter went off  
7 the record at 1:04 p.m. and resumed at 1:40 p.m.)

8 BZA CHAIR HILL: All right. Mr. Moy, can you hear  
9 me?

10 MR. MOY: Yes, sir.

11 BZA CHAIR HILL: Could you please call us back and  
12 our next case?

13 MR. MOY: With pleasure. The Board has returned  
14 from its lunch recess. We're back in the public hearing  
15 session for the afternoon. And the time is at or about 1:41  
16 p.m.

17 The next case application before the Board is  
18 20234 of Kuumba Learning Center, Inc. This is a self-  
19 certified application for special exceptions pursuant to  
20 Subtitle U, Section 320.1(a), and Subtitle X, Section 901.2,  
21 from the daytime care use of Subtitle U, Section 203.1(h),  
22 private school use of Subtitle U, Section 203.1(m). The  
23 property is located in the RF-1 zone at 3328, 3330, and 3332  
24 Martin Luther King Avenue, SE, Square 5978, Lots 1036, 1037,  
25 and 884.

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1 And I believe that's all I have, Mr. Chairman.

2 BZA CHAIR HILL: Okay. Great. There is a request  
3 to include information that was untimely filed. Unless the  
4 Board has any issues, I want to go ahead and put that into  
5 the record, because I want to see all of those exhibits.

6 Ms. Akinsan, can you hear me? And if so, could  
7 you introduce yourself for the record?

8 MS. AKINSAN: Yes. Good afternoon, members of the  
9 Board. My name is Olivia Akinsan with D+O, Inc., Designs by  
10 Olivia. I am the designer and agent for this project.

11 BZA CHAIR HILL: Okay. Ms. Akinsan, you've been  
12 before us before, correct?

13 MS. AKINSAN: I have, yes.

14 BZA CHAIR HILL: Okay. Great. Welcome back. If  
15 you could, please just go ahead and tell us about your  
16 application. I have put 15 minutes on the clock just so I  
17 know where we are. And you can begin whenever you'd like.

18 MS. AKINSAN: Sure. This project is Kuumba  
19 Learning Center and Kuumba Preparatory School of the Arts.  
20 It's situated at 3328, 3330, and 3332 Martin Luther King Jr.  
21 Avenue, SE. The school is located in the RF-1 zone. It has  
22 been in existence since 1982.

23 My client, Mrs. Rashid, is the director of the  
24 school. It is a true compilation of many of her life goals  
25 in relation to education and care of the children in this

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1 community. Thus, she's preparing for the next phase. Her  
2 intent is to develop Kuumba Learning Center and thereby  
3 create more opportunities for its present and future  
4 students.

5 All three buildings are currently comprised of two  
6 stories and a basement. The proposal is to add a third floor  
7 to all three buildings, as well as a right side addition to  
8 the building located on the corner, which is number 3332.

9 I would like to show pictures of this or rather  
10 plans. But no relief is really needed for the development  
11 of this property.

12 BZA CHAIR HILL: That's okay, Ms. Akinsan. Just  
13 go ahead and continue talking --

14 MS. AKINSAN: Okay. All right. Okay. So, due  
15 to the future development, Mrs. Rashid is seeking relief to  
16 accommodate more children and staff. All three buildings  
17 currently inhabit 60 students and 12 members of staff evenly  
18 dispersed. And Mrs. Rashid would like to increase this  
19 occupancy from 60 students to 140 students, as well as  
20 increase the number of staff from 12 teachers to 14.

21 We'd like to note that all members of staff are  
22 staggered during the school day, an accomplishment Mrs.  
23 Rashid will further elaborate on. Adequate parking has been  
24 provided. And several members in the community are in  
25 support of this application.

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1 Adequate measures have also been taken as far as  
2 transportation. The school itself owns its own van. But  
3 most people carpool or walk to the site. And we do have  
4 support from the ANC, DDOT, and Office of Planning.

5 BZA CHAIR HILL: Okay. Great. Thank you, Ms.  
6 Akinsan. I'm going to quickly run through this and then let  
7 the Board ask its questions. Can I turn to the Office of  
8 Planning?

9 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman.  
10 Maxine Brown-Roberts from the Office of Planning.

11 BZA CHAIR HILL: Could you tell us what you think,  
12 Ms. Brown-Roberts?

13 MS. BROWN-ROBERTS: Oh, I'm sorry. I didn't  
14 realize you were asking me that.

15 Okay. Again, I'm Maxine Brown-Roberts from the  
16 Office of Planning on BZA Case 20234 for the Kuumba Learning  
17 Center and Prep School. They are asking for a special  
18 exception to permit the expansion of the school to 92  
19 students and the daytime care to 48 students with a total of  
20 14 teachers.

21 As outlined in our report, we also recommended  
22 that the Applicant request a special exception for a school  
23 plan. And we did an analysis on that in our report also.

24 Regarding the impacts, we think that noise will  
25 be generated to the site, mainly during pickup and drop-off

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1 times and the outdoor play time. However, the play areas are  
2 located so that they are not immediately adjacent to any of  
3 the residences. And the time and use of the play areas are  
4 staggered. And so that would mitigate any impact on the  
5 nearby residences.

6           There is also, regarding traffic, there are two  
7 areas, two pickup areas, one along MLK Avenue and the second  
8 to the side of the southernmost building. Again, with the  
9 staggered arrivals, you don't have all the children being  
10 dropped off at the same time.

11           The Applicant has also stated that at least 50  
12 percent, up to 50 percent of the students would use public  
13 transportation or a carpool. And so this should help to  
14 minimize the impact. Again, the drop-off areas are not  
15 adjacent to any of the residential uses.

16           Regarding the parking, they are required to have  
17 nine parking spaces. They are providing eight on site and  
18 they are also requesting two parking spaces to be provided  
19 on an adjacent property.

20           That is analyzed in our report under Subtitle C,  
21 701.8(b). And again, this is as a matter of right. They  
22 meet all the requirements of that section, specifically they  
23 are, you know, within the 600 feet. They also have a letter  
24 from the property owner giving them the permission to use  
25 parking.

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1           The nearby National Children's Center building  
2 also houses a daytime care for children with disabilities.  
3 Those children arrive to the center in busses. And their  
4 drop-off and pickup areas is on their property. And it's  
5 away from the drop-off and pickup area of this facility. So  
6 there shouldn't be any conflicts or any impact on traffic.

7           The private schools and daytime care uses are  
8 deemed compatible within the RF-1 zone. And with the special  
9 exception requirements that are met, they should, therefore,  
10 be in harmony with the regulations and should not unduly or  
11 adversely affect neighboring properties.

12           The Office of Planning, therefore, recommends  
13 approval of the requested special exception. And we had two  
14 conditions outlined in our report. Thank you, Mr. Chairman.

15           BZA CHAIR HILL: Thank you. Ms. Brown-Roberts,  
16 can you remind me what the conditions were?

17           MS. BROWN-ROBERTS: One was regarding the number  
18 of students and teachers for the daytime care and the school.  
19 And then I think the other was related to the drop-off times.

20           BZA CHAIR HILL: Okay. And, Ms. Akinsan, your  
21 client is in agreement with those conditions?

22           MS. AKINSAN: Yes, she is.

23           BZA CHAIR HILL: Okay. Great. All right. Does  
24 the Board have any questions of the Office of Planning? Go  
25 ahead, Mr. Smith.

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1 MEMBER SMITH: I have a question about the pickup  
2 and drop-off that you analyzed. You said that they would,  
3 you know, have pickup and drop-off along MLK and also to the  
4 south of the southernmost building. Where does that place  
5 it? Does it place it in the drive of the National Children's  
6 Center?

7 MS. AKINSAN: It technically does, yes.

8 MEMBER SMITH: Okay. Do you -- I didn't see  
9 anything in the record that spoke to you having the  
10 permission. So was it -- have you gotten written permission  
11 from them for --

12 MS. AKINSAN: Well, we have a -- there's a  
13 document that's called transportation and pickup and drop-off  
14 plan that we have. And there is a mutual agreement as well  
15 as a written agreement, an insurance between both Kuumba  
16 Learning Center and NCC. We do have documentation of that.

17 MEMBER SMITH: Okay. Sorry. I must have  
18 overlooked it because it was embedded into that document.

19 I think that's the only question that I -- oh,  
20 well, Ms. Brown-Roberts, your conditions, the third condition  
21 was any conditions recommended by DDOT. Did you take a look  
22 to see if there were any conditions recommended by DDOT? And  
23 could you list them out now?

24 MS. BROWN-ROBERTS: I didn't.

25 MEMBER SMITH: Okay, okay. I'll probably return

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1 to that, and I'll take a look. Thank you, Ms. --

2 MS. BROWN-ROBERTS: Okay.

3 BZA CHAIR HILL: Okay. Anyone else for Office of  
4 Planning? Mr. Young, is there anyone here wishing to speak?  
5 All right. Ms. Akinsan, do you have any final items or --  
6 oh, I'm sorry. Does anybody have any questions for the  
7 Applicant? Okay. Ms. Akinsan, do you have any questions for  
8 the Office of Planning?

9 MS. AKINSAN: No, I do not.

10 BZA CHAIR HILL: Okay. All right. I don't have  
11 any further questions. Ms. Akinsan, do you have anything  
12 you'd like to add at the end?

13 MS. AKINSAN: Well, since DDOT was brought up, I  
14 would like to express that we did speak to DDOT extensively.  
15 Initially, this application was for a larger amount of  
16 students, I believe 160. And we did reduce the amount to 140  
17 to create less of an impact of any kind for traffic and  
18 possible extra noise, even with the staggering of teachers  
19 and students. So I just want to bring that up as well.

20 BZA CHAIR HILL: Okay. Since your client did wait  
21 around, is there anything your client would like to say?

22 MS. RASHID: I would also say that in terms of the  
23 usage of the space, that it would give us a greater  
24 opportunity to manipulate the children we currently have and  
25 those coming in to use those classrooms for specialty

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1 classrooms with a lot of space.

2           And I just wanted to also let you know that I do  
3 have a concern about the cap on the C of O. Will that be  
4 something that I would have to have concerns about moving  
5 forward? And it's like for ten years. So I wanted to know  
6 is that something that we need to be concerned about going  
7 forward.

8           BZA CHAIR HILL: I apologize. Ms. Brown-Roberts,  
9 I saw your face look like you recognized something. I'm  
10 confused.

11           MS. BROWN-ROBERTS: No, I'm sorry. I was just  
12 trying to listen to what she said. I wasn't hearing her  
13 clearly.

14           BZA CHAIR HILL: Oh.

15           MS. BROWN-ROBERTS: So --

16           BZA CHAIR HILL: What was your question again,  
17 about the C of O?

18           MS. AKINSAN: I'll elaborate on that. The  
19 previous C of Os have had a cap of ten years. And she's  
20 wondering if she could perhaps not have that ten-year cap on  
21 the next. We don't know why it's been that, there's been  
22 that provision stated on each C of O.

23           BZA CHAIR HILL: On each previous order from the  
24 BZA?

25           MS. AKINSAN: It seems that way.

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1 MS. BROWN-ROBERTS: That's correct, Mr. Chairman.  
2 It has been on the two previous orders.

3 BZA CHAIR HILL: And does the Office of Planning  
4 recommend that, or how did we get to the ten-year cap the  
5 first time? Do you remember?

6 MS. BROWN-ROBERTS: I don't remember.

7 (Simultaneous speaking.)

8 MS. BROWN-ROBERTS: I did read it. But --

9 MS. RASHID: We were so happy to get the C of O  
10 we didn't even argue anything, being frank with you.

11 But moving forward and designing for the future,  
12 you know, I'm going through this process. And I would hate  
13 for anybody following in my footsteps to have to go through  
14 this again.

15 And then we plan to stay in the community. I want  
16 this school to go on even when I'm not here. You know, I  
17 would like to see the longevity of designing for the future  
18 for this school and maintain it without having to go through  
19 every ten years trying to figure out why that was put on in  
20 the first place and how can we eliminate it.

21 BZA CHAIR HILL: Okay. And, Ms. Akinsan, do you  
22 know -- and I'll get to you, Mr. Smith. I apologize. Do you  
23 know -- the ANC, I didn't see anything in their letter about  
24 a cap or anything in terms of time limits. They say strongly  
25 support. I don't know what, you know -- you didn't have an

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1 issue at the ANC level, correct?

2 MS. AKINSAN: We did not. In fact, initially,  
3 they supported the 160. And then we then decreased to 140.  
4 So they strongly supported the 160 students.

5 And I would like to also add that Mrs. Rashid does  
6 not plan to do any further development or add or ask for  
7 relief for any more students after this, if that's in any way  
8 to get this cap removed. She would like to say that as well.

9 BZA CHAIR HILL: Okay. Mr. Smith, you had your  
10 hand up.

11 MEMBER SMITH: You know, that last part was the  
12 nature of my question, because my assumption is probably that  
13 cap was put there as she increased the number of students.

14 And there was probably, just based off of just  
15 history with some of these child daycare centers in general,  
16 it may have just been some concerns probably, probably not  
17 from the ANC but probably from within the District government  
18 of how impactful that would be, considering the number of  
19 students that she was going to have and pickup and drop-off  
20 and whatnot, just the noise and the traffic that was coming  
21 to the site.

22 So, you know, I think she answered the question  
23 I was going to ask, was would there be a time in the, you  
24 know, in the future that she may want to increase the number  
25 of students. And in that case, we probably would want to

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1 keep the cap. But, I mean, that was the reason why I raised  
2 my hand. But I don't really have a position on the cap. But  
3 because it wasn't our recommendation to remove it, I don't,  
4 I hesitate to remove it.

5 BZA CHAIR HILL: Yeah, I don't -- I mean, the cap  
6 now is a bit of a discussion point. I don't have any issues  
7 removing the cap I guess at this point, only because it  
8 really didn't come up in our deliberation or discussions  
9 during this analysis.

10 But, you know, and that as in previous  
11 applications that we've had, there's a lot of investment that  
12 goes into this type of work. And the cap makes it or can --  
13 if there is a lot of concern from the community, that's how  
14 I usually get to a cap. Since there hasn't been, I'm in  
15 favor of not having a cap. But I'll also let that -- I'm  
16 glad that got brought up so that there can be some  
17 clarification from the Board.

18 Does anyone have anything else they would like to  
19 add? Okay. Ms. John.

20 VICE CHAIR JOHN: I'm also in favor of removing  
21 the cap because of the length of time the Applicant has been  
22 operating.

23 But I wanted to go back to the Office of Planning  
24 and ask about that recommendation for, where is it, for a  
25 private school plan under X, 104. I don't have that

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1 regulation in front of me. So can you help me understand  
2 what you're referring to?

3 MS. BROWN-ROBERTS: Just a second. Let me just  
4 bring up my report here.

5 VICE CHAIR JOHN: Okay. Here it is. Yeah. I  
6 mean, you analyzed it on page 6 of your report. But I was  
7 wondering if there was something the Applicant needed to do  
8 --

9 MS. BROWN-ROBERTS: Right --

10 VICE CHAIR JOHN: -- because the Applicant applied  
11 for private school use under U, 203.1(m). So what is it the  
12 Applicant should do?

13 MS. BROWN-ROBERTS: There is another section of  
14 the code that talks about whenever you have a private school  
15 you have to provide a private school plan. And it outlines  
16 -- as I showed in my report, it's just something that talks  
17 about the building itself, how it meets the development  
18 requirements of the zone. So that was -- you know, she had,  
19 she did provide a site plan. So that was fine. But that  
20 section talks about having a school plan.

21 VICE CHAIR JOHN: Okay. So is this something that  
22 needs to be clarified in the record, or is your analysis good  
23 enough?

24 MS. BROWN-ROBERTS: I think my analysis is good  
25 enough. I would say that, you know, the Applicant can on the

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1 record say yes, you know, they agree with this, because it's  
2 a special exception. So I think that could -- I did tell her  
3 about it. So it's not something that's new. So, if she  
4 could confirm, I think that would be great.

5 MS. AKINSAN: May I confirm or --

6 BZA CHAIR HILL: Yes, please, go ahead.

7 MS. AKINSAN: Yes, I did provide an additional  
8 site plan that was -- I read the code. And it states that  
9 it had to provide utilities that were existing on the site,  
10 setbacks, parking, drop-off and pickup areas, trees. And I  
11 felt I satisfied that requirement. But I did provide a  
12 school plan, to my knowledge. And so I thought I had met  
13 that requirement, yes.

14 MS. BROWN-ROBERTS: Okay. Thank you.

15 BZA CHAIR HILL: Okay. I just got a question.  
16 So it's not a cap for a number of years. It's a cap for a  
17 number of people.

18 MS. AKINSAN: No, it would be for years.

19 MS. RASHID: It's for years.

20 MS. AKINSAN: Because every C of O has been for  
21 ten years. And essentially she's had to renew it every ten  
22 years. And she would like to not have to do that anymore.  
23 But she's also stating that she will not be applying for any  
24 additional students or teachers again is what she's saying.

25 BZA CHAIR HILL: Okay, okay. All right. Okay.

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1 Does anybody have any questions? All right. Okay. But the,  
2 but we are putting in a ceiling for the number of students  
3 by the condition that the Office of Planning has put forward.  
4 And, Ms. Akinsan, your client understands that. Right.  
5 Okay.

6 MS. AKINSAN: Yes, she does. She does.

7 BZA CHAIR HILL: Okay. All right. Okay. Anyone  
8 else? Okay. All right. Ms. Akinsan, do you have anything  
9 you'd like to add?

10 MS. AKINSAN: I believe that's it, right?

11 MS. RASHID: Yes.

12 BZA CHAIR HILL: Okay. All right. I'm going to  
13 go ahead and close the hearing and the record. Thank you all  
14 very much.

15 MS. AKINSAN: Thank you.

16 MS. RASHID: Excuse me. I have a very unusual  
17 request. I would like for you to meet some of my students.  
18 And they would like to share with you a song that they wrote.  
19 Would that be okay?

20 BZA CHAIR HILL: Sure.

21 MS. RASHID: Okay. Give me a second.

22 MS. AKINSAN: They've been waiting all day.

23 STUDENT: Today we are going to be performing a  
24 song written by Kuumba students and a Kuumba song writing  
25 class. And also this song is about what we think, I mean,

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1 what Kuumba means to us.

2 (Video played.)

3 MS. AKINSAN: Thank you for indulging us.

4 BZA CHAIR HILL: That was wonderful. Thank you.  
5 Thank you so much. I mean, it really was wonderful.

6 MEMBER SMITH: I'm voting against the ten years.

7 (Laughter.)

8 BZA CHAIR HILL: All right. Does anybody have  
9 anything they'd like to say to our fellow friends?

10 VICE CHAIR JOHN: I thought it was a lovely  
11 performance by the kids. Thank you. Thank you.

12 MS. RASHID: Thank you so much.

13 MEMBER SMITH: I also thought it was a lovely  
14 performance. So I will, you know, make a recommendation not  
15 to put the ten years on.

16 But, you know, just as an aside, there were three  
17 conditions in your previous special exception. And, you  
18 know, one was the ten-year, which, you know, that was part  
19 of the discussion. The second one was the maximum amount of  
20 students.

21 And the other one was dealing with this pickup and  
22 drop off. And within that condition, it said that you have  
23 a shuttle van that would transport children between this  
24 facility and a property on Good Hope Road. Is that still  
25 occurring?

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1 MS. RASHID: No. We found out that we didn't need  
2 that. But it is available if we feel like there is a need  
3 for it.

4 MEMBER SMITH: Okay. Yeah, so the reason why I  
5 bring that up, I don't -- I mean, this is a question probably  
6 to Mary. Because this particular BZA order expired after ten  
7 years, we probably want to carry that last part of that  
8 condition forward.

9 MS. RASHID: I appreciate that, appreciate that.

10 MEMBER SMITH: So just putting it out there. I'll  
11 probably have that question for you, Mary.

12 But thank you. You know, that was probably the  
13 most unique ending to many of our special exception  
14 deliberations. So thank you for that.

15 MS. RASHID: Thank you for allowing me to do it.  
16 If we are here, especially after we do our expansion, we  
17 would love to come and invite you, because I don't know how  
18 many chances you get when you have folks that say they're  
19 going to do certain things, they really come out and see how  
20 we're appreciated and having usage of the building, you know,  
21 in our favor. So I really want to thank you so much.

22 BZA CHAIR HILL: Thank you. Dr. Imamura.

23 COMMISSIONER IMAMURA: Thank you, Mr. Chairman.  
24 I want to thank Board Member Smith to bringing us back to  
25 business. But just to say, please let your students know

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1 they did an awesome job.

2 MS. RASHID: Oh, thank you. Thank you. I will  
3 relay that to them.

4 BZA CHAIR HILL: Yeah, they can watch it later.  
5 It's now taped. The signal was a little choppy at times, but  
6 it was really lovely. Thank you very much.

7 MS. RASHID: Thank you.

8 BZA CHAIR HILL: All right. So the cap, just to  
9 make -- go over the conditions, there's the cap that is in  
10 the Office of Planning's report, right, that the applicant  
11 has agreed to, and then we're not talking about the ten year  
12 limit anymore, and then I'm just clarifying, are you, Mr.  
13 Smith -- and this is -- I'm just lost here myself -- the --  
14 I don't -- we don't have any other conditions as a board, do  
15 we?

16 MEMBER SMITH: You know, the reason why I bring  
17 this up is that the previous approval that she was under, the  
18 third condition spoke to pick-up and drop-off, which we'll  
19 be amending with this. But I think another part of that  
20 condition had to do with a shuttle van that she's saying they  
21 don't do anymore, but in theory there was a condition that  
22 required it. That would go away. So, that's the reason why  
23 I asked that question.

24 MS. RASHID: Is it possible for me to keep that  
25 because we just found out? I mean, there is a building on

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1 Good Hope Road. I am affiliated with Bread for the City, so  
2 you know, the location on Good Hope Road may have changed,  
3 but we will need it for that as well if we, you know, need  
4 it in the future.

5 So I really don't want to take out anything if I  
6 don't have to because I know I don't want to have to come  
7 back. So if that's possible that can stay in, I would  
8 appreciate it.

9 BZA CHAIR HILL: It's not that it needs to stay  
10 in. I mean, you can do whatever you want to do.

11 MEMBER SMITH: Right.

12 MS. RASHID: Okay.

13 BZA CHAIR HILL: It's that you don't have to do  
14 it. It's not a condition.

15 MS. RASHID: Okay. Okay.

16 BZA CHAIR HILL: And so the Board's trying to  
17 figure out what it thinks is necessary, and so, you know,  
18 whatever you need to do to continue the good work that you're  
19 doing, please continue to adjust, but this is now what things  
20 would actually be put forth in the order as a condition,  
21 which is now, as far as I'm comfortable with, are the items  
22 that the Office of Planning has recommended in their two  
23 conditions. I'm going to look them up here real quick. And  
24 then, you know, so that's it. That's all I got.

25 MS. RASHID: Okay.

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1 BZA CHAIR HILL: Okay. All right, anyone else?

2 (No audible response.)

3 BZA CHAIR HILL: Okay. All right, well thank you  
4 all very much, and again it was a wonderful experience for  
5 me, and so thank you very much.

6 MS. RASHID: Thank you.

7 MS. AKINSAN: Thank you. Thank you, members of  
8 the Board.

9 MS. RASHID: Thank you.

10 MEMBER SMITH: Take care.

11 BZA CHAIR HILL: Okay. I'm just clarifying the  
12 Office of Planning's report. I don't have any issue with the  
13 application. I thought that the record is -- I'm comfortable  
14 with the record in how they're meeting the criteria for us  
15 to grant the relief requested.

16 I'd also agree with the Office of Planning's  
17 analysis and the two conditions that they are set forth, and  
18 we will now be removing the ten year cap, but -- I'm sorry,  
19 the ten year time term, time limit on term, but there will  
20 be a cap of students remaining as per the recommendation of  
21 the Office of Planning.

22 Does anyone have anything they'd like to add? Mr.  
23 Smith?

24 MEMBER SMITH: I don't have anything to add. You  
25 know, she's saying that it's not something that she does

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1 regularly but she would prefer to keep it. She -- like you  
2 were stating, she can continue to provide a shuttle van, but  
3 it doesn't sound like we have to memorialize it or a  
4 condition that she keeps it.

5 So, I'm just in favor of keeping the conditions  
6 as recommended by OP, as well as removing that ten year cap.

7 BZA CHAIR HILL: Okay, great. Dr. Imamura?

8 COMMISSIONER IMAMURA: No, I'm comfortable with  
9 everything that's been stated, Mr. Chairman. Thank you.

10 BZA CHAIR HILL: Vice Chair John? I'm sorry, Dr.  
11 Imamura.

12 COMMISSIONER IMAMURA: No, thanks.

13 VICE CHAIR JOHN: I agree with that suggestion,  
14 Mr. Chairman. I didn't see anything that would require the  
15 applicant to keep that shuttle bus.

16 And I was looking again at their pick-up and drop-  
17 off plan as summarized by the Office of Planning, and I think  
18 it's a reasonable plan. And so, I'm not sure if we would  
19 want to continue that condition.

20 BZA CHAIR HILL: I don't think it sounds like we  
21 had been, Vice Chair John.

22 VICE CHAIR JOHN: Okay. Thank you.

23 BZA CHAIR HILL: All right. I'm going to make a  
24 motion to approve Application Number 20234, as captured and  
25 read by the secretary, including the conditions that were

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1 outlined in the Office of Planning's report, and ask for a  
2 second. Ms. John?

3 VICE CHAIR JOHN: Does that include removal -- Mr.  
4 Chairman, does that include removal of --

5 BZA CHAIR HILL: It does, I'm sorry. And the only  
6 conditions would be those that are recommended in the Office  
7 of Planning's report, and that does not include a time limit,  
8 so there would be the removal of all the previous conditions  
9 adding the new conditions from the Office of Planning, which  
10 does not request a ten year term.

11 VICE CHAIR JOHN: Okay.

12 BZA CHAIR HILL: And as for -- I mean, I got --  
13 I'm being very clear, I'm -- the Office of Planning's report,  
14 I get a little -- I want to be very clear that I'm -- yeah,  
15 go ahead, Mr. Moy.

16 MR. MOY: Before you finalize your motion, could  
17 you provide some clarity for me about -- there was discussion  
18 earlier about -- to OP about Subtitle X, Section 104, the  
19 private school plan. Is that necessary for you to consider  
20 in your motion, or not?

21 VICE CHAIR JOHN: No.

22 BZA CHAIR HILL: I don't think we need it, Mr.  
23 Moy.

24 MR. MOY: Good. I just wanted to be certain.

25 BZA CHAIR HILL: Yep. Right. So, OP has the

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1 number of children at the three buildings shall be a maximum  
2 of 92 for the private school and 48 for the daytime care, and  
3 shall not exceed seven staff assigned to the private school  
4 and seven staff assigned to the child development center.

5 Two, the hours of operation for the private school  
6 and the daytime care shall be between 7:00 a.m. to 12:00  
7 midnight Monday to Sunday, and then any conditions  
8 recommended by DDOT.

9 There wasn't any conditions recommended by DDOT.  
10 DDOT was taking a look at their TDM plan, which I believe the  
11 applicant is going to be implementing.

12 So there are those two conditions, and those are  
13 the only two conditions that I thought the Office of Planning  
14 was recommending, and that -- those are the ones that I'm  
15 putting forth in my motion.

16 And does anybody have any issues with that?  
17 Please raise your hand. Just for clarification, if you want  
18 to raise your hand. Otherwise I'm going to ask for Ms. John  
19 to second.

20 Okay. Ms. John, you want to second?

21 VICE CHAIR JOHN: Second.

22 BZA CHAIR HILL: Okay. Motion made and seconded.

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

24 MR. MOY: When I call your name, if you would  
25 please respond to the motion made by Chairman Hill to grant

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1 the relief requested by the applicant, along with the  
2 conditions that stated in the U 421's motion. Zoning  
3 Commissioner Dr. Imamura?

4 COMMISSIONER IMAMURA: Yes.

5 MR. MOY: Mr. Smith?

6 (No audible response.)

7 MR. MOY: Vice Chair John?

8 VICE CHAIR JOHN: Yes.

9 MR. MOY: Chairman Hill?

10 BZA CHAIR HILL: Yes.

11 MR. MOY: We have a board member not participating  
12 today. Staff would record the vote as 4 to 0 to 1. And this  
13 is on the motion made by Chairman Hill to approve the  
14 applications with the cited conditions.

15 Motion to approve seconded by Vice Chair John.  
16 Also in support of the motion to approve, Zoning Commissioner  
17 Dr. Imamura, Mr. Smith, and of course Vice Chair John and  
18 Chairman Hill. Motion carries, sir, in the vote of 4 to 0  
19 to 1.

20 BZA CHAIR HILL: Thank you, Mr. Moy.

21 VICE CHAIR JOHN: Mr. Chairman, I --

22 BZA CHAIR HILL: Yeah?

23 VICE CHAIR JOHN: I just want to clarify  
24 something. So we were talking about two conditions, DDOT,  
25 that OP recommended, 1 and 2. DDOT had no conditions, so

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1 we're only talking about 1 and 2. Was that your intent?

2 BZA CHAIR HILL: Yes.

3 VICE CHAIR JOHN: Thank you.

4 BZA CHAIR HILL: Thank you. Okay. All right,  
5 well that one made me a little teary-eyed. All right, let's  
6 go with our next one.

7 MR. MOY: Before the board -- the next case before  
8 the board is Application Number 20784 of Circle, L.L.C. This  
9 application is amended, a self cert -- a self-certified  
10 application for a special exception pursuant to Subtitle X,  
11 Section 901.2, Subtitle F, Section 5201.1, and from the lot  
12 occupancy requirement Subtitle F, Section 604.1. The  
13 property's located in the RA-8 Zone at 1837 19th Street  
14 Northwest, Square 132, Lot 112.

15 In terms of filings, Mr. Chairman, there is the  
16 applicant's affidavit of posting is three days late, and the  
17 affidavit of maintenance is not in the record yet because it  
18 was entered late within that 24 hour block.

19 BZA CHAIR HILL: Okay, let me get an introduction  
20 first. Ms. Moldenhauer, can you introduce yourself for the  
21 record if you can hear me?

22 MS. MOLDENHAUER: Good afternoon Chairman Hill,  
23 members of the board. Meredith Moldenhauer, zoning counsel  
24 for Circle, L.L.C.

25 BZA CHAIR HILL: Okay, great. Are you trying to

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1 put that into the record, Ms. Moldenhauer? Did you already  
2 submit it?

3 MS. MOLDENHAUER: It was submitted. Yes, it was  
4 submitted. It's showing up I guess as temporary exit --  
5 there's affidavit opposing is Exhibit 38 and I guess the  
6 affidavit of maintenance was submitted yesterday, but as Mr.  
7 Moy indicated, needs to be accepted by the board.

8 BZA CHAIR HILL: Got it. So the affidavit of  
9 maintenance the staff has? Okay. So unless the board has  
10 any issues, I'd like to go ahead and see everything in the  
11 record, so please allow that into the record.

12 (Whereupon, the above-referred to document was  
13 marked for identification and received into  
14 evidence as Exhibit No. 38)

15 BZA CHAIR HILL: After that, Ms. Moldenhauer, if  
16 you want to go ahead and give us your argument for your  
17 client as to why you believe you're meeting the criteria for  
18 us to grant the relief requested? I'm going to put 15  
19 minutes on the clock there, and you can begin whenever you  
20 like.

21 MS. MOLDENHAUER: In addition to that, I know you  
22 said that you'd be accepting everything in the record. The  
23 ANC -- ANC 2B also late filed there. ANC resolution in  
24 support of the application, it's showing up right now as  
25 Exhibit 39, but I also believe that that would just

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1 preliminarily have to be entered into the record.

2           BZA CHAIR HILL: Thank you, that's very -- thank  
3 you for mentioning that. I see it in the record. Mr. Moy,  
4 if that hasn't been officially allowed, obviously, please do  
5 so, and then Mr. Moldenhauer, please begin whenever you like.

6           (Whereupon, the above-referred to document was  
7 marked for identification and received into  
8 evidence as Exhibit No. 39.)

9           MS. MOLDENHAUER: Sure. I would like to introduce  
10 my client, Erin Mullan, who is here on behalf of Circle,  
11 L.L.C. Erin, would you like to introduce yourself?

12           (No audible response.)

13           MS. MOLDENHAUER: If you're having technical  
14 difficulties, you can try to unmute. If not, we can move  
15 forward. We have a PowerPoint presentation in the record at  
16 Exhibit 37. If Mr. Young wanted to pull that up, I can walk  
17 through that fairly quickly, but I can kind of just start  
18 walking through. Okay great, thank you. Next slide.

19           The property's located, as you can see, on the  
20 corner. It's a corner lot between 19th and T Street, and  
21 also then has an alley, so there's really only one abutting  
22 property, which is -- the individual, Peter Winslow, who's --  
23 has a letter in the record. Next slide.

24           The proposal here is to provide a new residential  
25 redevelopment of the site to -- there has been a redesign of

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1 the project. The property initially was asking for a  
2 variance request. That has been substantially reduced from  
3 originally a two-story structure to now a one-story with a  
4 small minor second-story addition. And this is a proposal  
5 for a three-unit apartment. Next slide.

6 As indicated earlier, we now have the letter of  
7 support from the ANC 2B. That's in the record at Exhibit 39.  
8 We presented to the ANC on September 14 and obtained their  
9 full unanimous support. The Office of Planning has indicated  
10 their support. DDOT has had no objection.

11 This application did go through concept review at  
12 HPRB and received approval of this revised design with the  
13 reduced rear addition from HPRB, and as indicated, our one  
14 specific abutting property owner, Peter Winslow, had  
15 withdrawn his party status in opposition and has indicated  
16 his support for the revised design and project. Next slide.

17 This is an aerial image showing the context of the  
18 site. Next slide.

19 Here you can see the existing structure, which is  
20 a two-story project or -- and then we are proposing an  
21 addition. You can see the addition has a one five foot  
22 setback within a larger 16 foot, four inch addition on the  
23 first floor with a bay window following along T Street and  
24 a stair access closer to our abutting property owner,  
25 providing setback. Next slide.

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1           At the top of the image you can see the first  
2 floor plan for the second floor plan, which shows the smaller  
3 addition on that upper level. The first floor ground plan,  
4 which has been reduced, and then a cellar level unit. The  
5 next slide.

6           As indicated, the application originally was for  
7 a variance but now has been reduced to 69.8 percent for a lot  
8 occupancy, special exception relief. We believe the release  
9 -- relief is in harmony with the purpose and intent of the  
10 regulations as it has been approved by HPRB conceptually and  
11 to be in harmony with the Historic District, and is in  
12 harmony with the RA-8 Zone as an apartment building.

13           There'd be no adverse effect on the use of  
14 neighboring properties. Relief would not adversely impact  
15 the use of neighboring properties. Additionally, the reduced  
16 plan is primarily only one story, and the second story lines  
17 up and touches the abutting property, so those facades are  
18 actually the same distance. Next slide.

19           In regards to the special conditions under  
20 Subtitle F 5201.4, we believe that the application meets all  
21 of these factors as it will not have any adverse impact on  
22 the light and air available to the neighboring properties.  
23 As pointed out, the property's on a corner and it is  
24 substantially shorter than all of the other properties on the  
25 block.

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1           In addition to that, the new revised second story  
2 addition is only five feet in depth on the second floor,  
3 which matches the southern adjacent structure.

4           We also believe that this will not have any impact  
5 on privacy or use and enjoyment of a neighboring property  
6 given the fact that this is in a corner lot, and also  
7 abutting a public alley that is quite large, and that there  
8 will be no windows that would obviously be facing, or very  
9 limited windows facing only T Street.

10           Finally, the neighboring property owner did  
11 withdraw their opposition and is supportive of the redesign,  
12 and HPRB also supported the conceptual as being consistent  
13 with the character and the scale and pattern of the Historic  
14 District. Next slide.

15           Based on that, we submit the application for the  
16 board to consider and are available for any questions.

17           BZA CHAIR HILL: Thank you, Ms. Moldenhauer. Does  
18 the board have any questions of the applicant?

19           (No audible response.)

20           BZA CHAIR HILL: Okay, I'm going to turn it to the  
21 Office of Planning.

22           MR. COCHRAN: Thank you, Mr. Chair. The applicant  
23 has been very responsive to comments from various District  
24 agencies and from nearby neighbors. OP is recommending that  
25 you support the requested special exception. And just for

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1 the record, I'm Steve Cochran representing the Office of  
2 Planning in this case.

3 BZA CHAIR HILL: Great, thanks Mr. Cochran.  
4 Welcome, I haven't seen you in a while. Let's see. Okay.  
5 Does the board have any questions for the Office of Planning?

6 (No audible response.)

7 BZA CHAIR HILL: All right, Mr. Young, is there  
8 anyone here wishing to testify?

9 MR. YOUNG: We do not.

10 BZA CHAIR HILL: Okay. I'm going to ask Ms.  
11 Moldenhauer if she has anything she'd like to do, like sing  
12 for the board or anything like that?

13 MS. MOLDENHAUER: No one on the board wants to  
14 hear me sing, but the children were lovely. But thank you,  
15 we rest and thank you for having the time to hear our case.

16 BZA CHAIR HILL: Great, thank you. All right, I'm  
17 going to go ahead and close the hearing and the record.  
18 Please excuse everyone, Mr. Young, thank you.

19 I would agree with the applicant as to how they  
20 are meeting the criteria for us to grant the relief of  
21 question. I didn't really have any concerns, particularly  
22 where the location was of the property. They're on that  
23 corner. It's nice that there was a little bit of opposition,  
24 and that opposition has gone away.

25 Also the Office of -- I'm sorry, also the ANC has

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1 heard this and did not have any concerns, which is also  
2 something we are supposed to give great weight towards, and  
3 I will do so. And I will be voting in favor of this  
4 application. Mr. Smith, may I ask your opinion?

5 MEMBER SMITH: Well Chairman Hill, I believe that  
6 your analysis has sufficiently, or, you know, succinctly  
7 summarized this particular case. I give OP's staff report  
8 great weight and note that the ANC is in support of the  
9 application, and DDOT has no objection to it and will support  
10 the application.

11 BZA CHAIR HILL: Thank you. Dr. Imamura?

12 COMMISSIONER IMAMURA: Thank you, Mr. Chairman.  
13 I'm in agreement with everything that's been said and have  
14 nothing further then to add I support this.

15 BZA CHAIR HILL: Thank you. Vice Chair John?

16 VICE CHAIR JOHN: So with the changes to the  
17 project I think the application is now streamlined and much  
18 more straightforward, and I commend the applicant for working  
19 with the community and with the Office of Planning to make  
20 sure this is such a straightforward application. So I'm in  
21 support.

22 BZA CHAIR HILL: Thank you, Vice Chair John. All  
23 right, I'm going to make a motion to approve Application  
24 Number 20784, as captured and read by the secretary, and ask  
25 for a second. Ms. John?

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1 VICE CHAIR JOHN: Second.

2 BZA CHAIR HILL: The motion has been made and  
3 seconded. Mr. Moy, if you can take a roll call, please?

4 MR. MOY: Thank you, sir. When I call your name,  
5 if you would please respond to the motion made by Chairman  
6 Hill to approve the relief that's being requested. The  
7 motion to approve was seconded by Vice Chair John. Zoning  
8 Commissioner Dr. Imamura?

9 COMMISSIONER IMAMURA: Yes.

10 MR. MOY: Mr. Smith?

11 (No audible response.)

12 MR. MOY: Vice Chair John?

13 (No audible response.)

14 MR. MOY: Chairman Hill?

15 BZA CHAIR HILL: Yes.

16 MR. MOY: We have a board member not participating  
17 today. Staff would record the vote as 4 to 0 to 1, and this  
18 is on Chairman's motion to approve, seconded by Vice Chair  
19 John. Also in support of the motion to approve, Zoning  
20 Commissioner Dr. Imamura, Mr. Smith, and of course Vice Chair  
21 John and Chairman Hill. The motion carries, sir.

22 BZA CHAIR HILL: Thank you, Mr. Moy. Are we all  
23 good to do our last one or do you need a break? We're good?  
24 Everybody's nodding yes. Okay. Mr. Moy, you can give our  
25 last case a call, please.

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1 MR. MOY: This case would be Application Number  
2 20786 of 1372 Bryant Street NE, LLC. This is a self-  
3 certified application for special exception pursuant to  
4 Subtitle Y, Section 421, and Subtitle X, Section 901.2, which  
5 would allow a new residential development, a six-unit  
6 apartment house. The property is located in the RA-1 Zone  
7 at 1372 Bryant Street Northwest -- or rather, Northeast,  
8 Square 3953, Lot 5.

9 BZA CHAIR HILL: Thank you, Mr. Moy. Mr.  
10 Sullivan, if you can hear me, if you could introduce yourself  
11 for the record?

12 MR. SULLIVAN: Thank you, chair and members. This  
13 is Marty Sullivan with Sullivan and Barros on behalf of the  
14 applicant.

15 BZA CHAIR HILL: Okay, you kind of were breaking  
16 up there, Mr. Sullivan. I don't know if you want to try the  
17 headset or not, but I mean, it might work. It might work,  
18 I don't know.

19 Now I can't hear you. You were kind of -- you  
20 could kind of hear you before. Sorry.

21 MR. SULLIVAN: Sorry about that.

22 BZA CHAIR HILL: That's okay.

23 MR. SULLIVAN: A little bit of issues.

24 BZA CHAIR HILL: That's okay. Okay. Mr.  
25 Sullivan, if you want to go ahead and walk us through your

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1 application and how you believe you're meeting the criteria  
2 for us to grant the relief requested?

3 I've pulled up your PowerPoint, it seems  
4 relatively extensive. You know, you might want to hit again  
5 what you think you need to go through in order for the board  
6 to understand your argument. And you can begin whenever you  
7 like.

8 MR. SULLIVAN: Thank you, Mr. Chair and members  
9 of the board. Yeah, it is a bit much and I won't go through  
10 it in detail. The property owner's here with me, I just want  
11 to say that, Mr. Ghanbari, and maybe the architect's here,  
12 but I don't think it would matter because it's just two units  
13 in the basement. So if we could start with the next slide?

14 It's an RA-1 U 421 case. All we're doing is  
15 putting two new units in the basement, no addition up or  
16 back. But this now requires relief under a U 421, so here  
17 we are requesting that. Next slide, please.

18 I wanted -- again, as we usually do with this ANC,  
19 the extensive outreach that we've had, this one was -- we did  
20 manage to make it to an SMD meeting a couple weeks ago, but  
21 after that we couldn't get on the full agenda for the ANC.  
22 Next slide, please.

23 You see this building is in the middle of other  
24 multi-family? It's not in the single-family zone like most  
25 RA-1s. Next slide, please. You see a front, that's the

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1 front of the building.

2           And then the next slide goes into the general  
3 requirements. I won't spend any time -- if you have any  
4 questions about this. The general requirements are clearly  
5 in line with the general requirements of the special  
6 exception case. Next slide, please.

7           Four twenty one also safely meet those  
8 requirements because it's such a benign project of sorts.  
9 Next slide, please.

10           And then we have -- the plans are attached at the  
11 end so if we go, next slide past the questions slide -- and  
12 of course you're seeing the exterior, nothing's changing  
13 there, there's nothing being extended in the envelope. Next  
14 slide.

15           We have floor plans. Next slide. Probably --  
16 yeah, this slide shows the cellar units. And that's really  
17 the only change. Next slide. Next slide. Here's the  
18 section showing the basement, and that's it. So if the board  
19 has any questions for myself or for the applicant?

20           BZA CHAIR HILL: Okay, does the board have any  
21 questions of the applicant? Ms. John?

22           VICE CHAIR JOHN: So Mr. Sullivan, the Office of  
23 Planning had a comment for the trash bins. Do you see that?

24           MR. SULLIVAN: Yeah, my understanding, we did file  
25 a response to that, and we did file an updated -- Exhibit

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1 28A.

2 VICE CHAIR JOHN: Okay, thank you.

3 MR. SULLIVAN: I think, as that.

4 BZA CHAIR HILL: Okay. Anyone else?

5 (No audible response.)

6 BZA CHAIR HILL: All right, I'm going to turn to  
7 the Office of Planning.

8 MS. THOMAS: Yes, good afternoon Mr. Chair,  
9 members of the board, Karen Thomas with the Office of  
10 Planning.

11 This special exception would facilitate the  
12 addition of two units in the cellar of the multi-dwelling  
13 building. We have no issues with this project as nothing in  
14 the structure would be altered, no additions and -- to the  
15 building, or changes to the facade.

16 And with that, we will rest on the record of  
17 approval of this application. And the applicant did ask what  
18 we ask of them with respect to the trash cans, and they  
19 placed it in a suitable location away from the window wells.  
20 Thank you.

21 BZA CHAIR HILL: Okay. So the Office of Planning  
22 is comfortable with that. Does anybody have any questions  
23 for the Office of Planning?

24 (No audible response.)

25 BZA CHAIR HILL: All right. Mr. Sullivan, do you

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1 have any questions for the Office of Planning?

2 MR. SULLIVAN: No, thank you.

3 BZA CHAIR HILL: Mr. Young, is there anyone here  
4 willing to testify?

5 (No audible response.)

6 BZA CHAIR HILL: All right. Let's see. Okay.  
7 All right, I'm going to go ahead and close the hearing on the  
8 record. Thank you. Mr. Sullivan?

9 MR. SULLIVAN: Thank you.

10 BZA CHAIR HILL: All right. It being our last  
11 case, would someone else start?

12 VICE CHAIR JOHN: So I thought this was really  
13 very straightforward. The applicant is only trying to  
14 convert space in the basement to -- in the cellar to two new  
15 units, and because there is no change in the foot print, they  
16 -- there is really no need to have a revised grading plan,  
17 there's no change to the grade or anything like that.

18 The Office of Planning is in support, and the  
19 applicant has shown that the applicant has tried to reach out  
20 to the ANC. So, even though there is no report from the ANC,  
21 at least the applicant has made a good effort to try to get  
22 them to weigh in.

23 So it's very straightforward, and I believe the  
24 applicant has shown how the application meets the criteria  
25 for relief, and I will support the application.

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1 BZA CHAIR HILL: Thank you, Vice Chair John. Mr.  
2 Smith?

3 MEMBER SMITH: Ms. John stated, and to the credit  
4 of the Office of Zoning and Office of Planning, this is a  
5 fairly straightforward application.

6 As she stated, the applicant is only proposing to  
7 add some additional units in the basement, and in adding  
8 those additional units to the basement they are proposing to  
9 construct four parking spots to the rear of this building to  
10 be accessed via the alley.

11 This addresses some of the concerns that was  
12 raised by, you know, this -- you know, ongoing concerns  
13 raised by this particular ANC about additional density and  
14 concerns about parking and traffic.

15 So, the applicant is going above and beyond by  
16 providing that additional parking when only one parking space  
17 is required. And again, they're providing four.

18 Other than that, you know, it would have been  
19 great to hear from the ANC but, you know, as John stated, we  
20 stated a number of times today and as stated by the ANC  
21 representative I think at the last hearing, that there are  
22 some internal issues that's occurring with that ANC, and  
23 hopefully they can get their ducks in a row and we can --  
24 we'll be able to hear back from them in the not too distant  
25 future.

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1           But other than that, the applicants met the burden  
2 of proof for us to grant the special exception, and I give  
3 great weight to OP's staff report, and will support the  
4 application.

5           BZA CHAIR HILL: Thank you. Dr. Imamura?

6           COMMISSIONER IMAMURA: Thank you, Mr. Chairman.  
7 Nothing further to add. I think I'm in agreement with the  
8 Board Member Smith and Vice Chair John. The applicant has  
9 met the burden of proof. This is pretty straightforward and  
10 I'm prepared to vote in support of this.

11           BZA CHAIR HILL: Thank you. I have nothing to  
12 add. I will agree with the analysis of my colleagues and  
13 thank them for their feedback. I'll make a motion to approve  
14 Application Number 20786, as captured and read by the  
15 secretary, and ask for a second. Ms. John?

16           VICE CHAIR JOHN: Second.

17           BZA CHAIR HILL: The motion's been made and  
18 seconded. Mr. Moy, if you can take a roll call?

19           MR. MOY: When I call your name, if you would  
20 please respond to the motion made by Chairman Hill to approve  
21 the application for the relief that's being requested? The  
22 motion to approve was seconded by Vice Chair John. Zoning  
23 Commissioner Dr. Imamura?

24           COMMISSIONER IMAMURA: Yes.

25           MR. MOY: Mr. Smith?

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1 (No audible response.)

2 MR. MOY: Vice Chair John?

3 VICE CHAIR JOHN: Yes.

4 MR. MOY: Chairman Hill?

5 BZA CHAIR HILL: Yes.

6 MR. MOY: And we have a board member not present  
7 today. Staff would record the vote as 4 to 0 to 1 and this  
8 is on the motion made by Chairman Hill to approve the  
9 application. The motion seconded by Vice Chair John, also  
10 in support of the motion to approve, Dr. -- rather, Zoning  
11 Commissioner Dr. Imamura, Mr. Smith, and of course Vice Chair  
12 John and Chairman Hill. The motion carries, sir, on the vote  
13 of 4 to 0 to 1.

14 BZA CHAIR HILL: Okay, thanks Mr. Moy. Okay  
15 everybody, I just want to say one more time again -- what is  
16 it -- I don't know if I necessarily deserve to have children  
17 sung to me in that fashion but it was so nice. It was  
18 really, really nice. It makes me feel like this is something  
19 that again continues to be a blessing to be able to do, and  
20 I thank the ability to work with you guys. Thank you very  
21 much.

22 Does anybody have anything they'd like to add  
23 before we end for the day?

24 VICE CHAIR JOHN: No, Mr. Chairman. Thank you for  
25 helping us get out of here before 3:00.

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1           BZA CHAIR HILL:   Okay, great.   All right, well  
2 that being the case I'll see you guys next week.   Have a nice  
3 day.

4           VICE CHAIR JOHN:   Thank you.

5           BZA CHAIR HILL:   All right, we're adjourned, bye-  
6 bye.

7           VICE CHAIR JOHN:   Have a great week, everybody.

8           BZA CHAIR HILL:   Bye-bye.

9           VICE CHAIR JOHN:   Bye.

10           (Whereupon, the above-entitled matter went off the  
11 record at 2:44 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Hearing

Before: BZA

Date: 09-28-22

Place: Videoconference

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

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