

GOVERNMENT OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

DECEMBER 7, 2022

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via teleconference pursuant to notice at 9:30 a.m. EDT, Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

- FREDERICK HILL, Chairperson
- LORNA JOHN, Vice Chairperson
- CARL H. BLAKE, Commissioner
- CHRISHAUN SMITH, Commissioner
- ANTHONY HOOD, Zoning Commission Chairperson

BOARD OF ZONING ADJUSTMENT STAFF PRESENT:

- CLIFFORD MOY, Secretary
- KEARA MEHLERT, Data Specialist

BOARD OF ZONING ADJUSTMENT LEGAL COUNSEL:

- RYAN NICHOLAS, Esquire
- MARY NAGELHOUT, Esquire

The transcript constitutes the minutes from the Regular Public Hearing held on December 7, 2022.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

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

(9:30 a.m.)

CHAIRPERSON HILL: Good morning, ladies and gentlemen and the Board of Zoning Adjustment. Today's date is 12/07/2022. This public hearing will please come to order. My name is Fred Hill, Chairperson of the District of Columbia Board of Zoning Adjustment. Join me today is Vice Chair Lorna John and Board members Carl Blake and Chrishaun Smith, and Zoning Commissioner Anthony Hood. Today's meeting and hearing (indiscernible) are available on the Office of Zoning's website. Please be advised that this proceeding is being recorded by a court reporter and is also webcast live via Webex and YouTube Live. The video of the webcast will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who is listening on Webex or by telephone will be muted during the hearing. Also, please be advised we do not take any public testimony in our decision meeting sessions. If you're experiencing difficulty accessing Webex, please call our hotline number at 202-727-5471 to receive call-in instructions. Once again, 202-727-5471. It's also on the screen.

At the conclusion of each decision meeting session I shall, in consultation with the Office of Zoning, determine whether a full or summary order may be issued. A full order is required when the decision it contains is adverse to a party, including an affected ANC. A full order may also be needed if

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

5 In today's hearing session everyone who's listening on  
6 Webex or by telephone will be muted during the hearing, and only  
7 persons who have signed up to participate or testify will be  
8 unmuted at the appropriate time. Please state your name and home  
9 address before providing oral testimony or your presentation.  
10 Oral presentations should be limited to a summary of your most  
11 important points. When you're finished speaking, please mute  
12 your audio so that your microphone is no longer picking up sound  
13 or background noise.

14 Once again, if you're having -- experiencing difficulty  
15 logging in, please call our OZ hotline number at 202-727-5471.  
16 All persons planning to testify either in favor or in opposition  
17 should have signed up in advance. They'll be called by name to  
18 testify. If it is an appeal, only parties are allowed to testify.  
19 By signing up to testify all participants complete the oath or  
20 affirmation as required in Subtitle Y 408.7. Requests to enter  
21 evidence at the time in online virtual hearings such as written  
22 testimony or additional supporting documents, other than live  
23 video which may not be presented as part of the testimony, may  
24 be allowed pursuant to Subtitle Y 103.15 providing that the person  
25 making the request to enter an exhibit explain, A, how the

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1 (indiscernible) is relevant, B, the good cause that justifies why  
2 it was an exhibit in the record, including an explanation of why  
3 the requester did not provide the exhibit prior to the hearing  
4 pursuant to Y 206, and how the proposed exhibit would not  
5 unreasonably prejudice any parties.

6 The order of procedures for special exception and  
7 variances are pursuant to Y 409. At the conclusion of each case,  
8 an individual who was unable to testify because of a technical  
9 issue may file a request for leave to file a written version of  
10 the planned testimony to the record within 24 hours following the  
11 conclusion of public testimony in the hearing. If additional  
12 written testimony is accepted, then parties will be allowed a  
13 reasonable time to respond as determined by the Board. The Board  
14 will then make its decision at its next meeting session, but no  
15 earlier than 48 hours after the hearing.

16 Moreover, the Board may request additional specific  
17 information to complete the record. The Board and the staff will  
18 specify at the end of the hearing exactly what is expected, and  
19 the date when persons must submit the evidence to the Office of  
20 Zoning. No other information shall be accepted by the Board.

21 Finally, District of Columbia Administrators (sic)  
22 Procedures Act requires that the public hearing on each case be  
23 held in the open before the public congress pursuant to Section  
24 405(b) and 406 of that Act. The Board may, consistent with its  
25 rules of procedures and the Act, enter into a closed meeting on

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1 a case for purposes of seeking legal counsel on a case pursuant  
2 to D.C. official code Section 2-575(b)(4) and or deliberate on a  
3 case pursuant to D.C. official code Section 2-575(b)(13), but  
4 only after filing necessary public notice. In the case of an  
5 emergency closed meeting, (indiscernible) roll call vote.

6 Mr. Secretary, do we have preliminary matters today?

7 MR. MOY: Good morning, Mr. Chairman, members of the  
8 Board. I do have a quick announcement. First, with reference  
9 to today's docket, Case Application No. 20014-B of Addisleigh  
10 Park Washington Properties, LLC has been postponed and  
11 rescheduled to the public hearing of February the 1st, 2023, and  
12 case application Number 20818 of James Barrett and Michelle Wynam  
13 has been withdrawn by the applicant.

14 Other than that, Mr. Chairman, we do have preliminary  
15 matters, but for Board efficiency it would be best if I bring  
16 that to the Board's attention what I call the case. Other than  
17 that, there is a request for a party status to Case Application  
18 No. 20813 of 401K Street, LLC. And finally, our timer is on the  
19 fritz today, so I'm going to have to do the clock on my watch,  
20 sir.

21 CHAIRPERSON HILL: Okay. All right. Thanks, Mr. Moy.  
22 Why don't you go ahead and call the first party status or the  
23 preliminary matter, which is the party status issue first before  
24 us?

25 MR. MOY: Very good. So this would be Case Application

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1 No. 20813 of 401K Street, LLC. This is a self-certified  
2 application for special exception pursuant to Subtitle X Section  
3 901.2, Subtitle E, Section 206.4, or as captioned, area variance  
4 pursuant to Subtitle X Section 1002, and the upper four  
5 requirements of Subtitle E Section 206.1. Property's located in  
6 the RF-1 zone at 401 K Street, N.E., Square 807, Lot 48. As I  
7 said earlier, there's a party status request in opposition, and  
8 I believe both the representative for the party status request  
9 is in the Webex panel as well as the Applicant, sir.

10 CHAIRPERSON HILL: Okay. Great.

11 Mr. Sullivan, if you could hear me, if you could  
12 introduce yourself for the record please?

13 MR. SULLIVAN: Yes. Thank you, Mr. Chair. Marty  
14 Sullivan with Sullivan and Barros on behalf of the Applicant.

15 CHAIRPERSON HILL: Thanks, Mr. Sullivan.

16 Is it Ms. Themak? You're on mute, Ms. Themak, if you  
17 can hear me, if you want to unmute yourself and yourself for the  
18 record.

19 MS. THEMAK: Yes. Tracy Themak for Jane Chew.

20 CHAIRPERSON HILL: I'm sorry?

21 MS. THEMAK: Tracy Themak for Jane Chew, we're the  
22 adjoining property owner.

23 CHAIRPERSON HILL: Got it. It's Jane Chew?

24 MS. THEMAK: Yes.

25 CHAIRPERSON HILL: Okay. I don't know why I said was

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1 the difference. Okay. And, Ms. Themak, again a couple of things.  
2 One, like you're pretty late in terms of like the filing should  
3 come 14 days prior to hearing and I think you were 2 days prior  
4 to the hearing or something like this. If you could tell us why  
5 you think that -- or why you're late, and then also why your  
6 client's late? Are you -- you're the attorney for her; is that  
7 correct?

8 MS. THEMAK: Yes. Donohue, Themak, and Miller.

9 CHAIRPERSON HILL: Okay. Donohue, Themak, and Miller,  
10 oh, that's the name of the firm?

11 MS. THEMAK: Yes. Yes, sir.

12 CHAIRPERSON HILL: And then the lady's -- the arty  
13 status person again's name is?

14 MS. THEMAK: Jane Chew.

15 CHAIRPERSON HILL: Again, because I just have -- I only  
16 have the one screen right now. Okay. And then, yeah, if you  
17 can explain to us why you're late and then again why you believe  
18 you're meeting criteria for us to grant the party status?

19 MS. THEMAK: We're late. We were compiling the reasons  
20 that we wanted to object. We are the closest and most affected  
21 neighbor. She's the immediate rowhouse right next to 401 K Street  
22 at 403. We apologize for being late, but we do believe that it  
23 warrants her attention, given that she is the most impacted  
24 neighbor by the party --

25 CHAIRPERSON HILL: I don't disagree with the impact.

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1 And I mean, just because you were gathering up all your  
2 information, it doesn't necessarily mean that that's a great  
3 reason to be late.

4 MS. THEMAK: Understood.

5 CHAIRPERSON HOOD: I mean, that's what you'd be doing  
6 anyway. And so, you know, and I know that the Applicant in this  
7 case, you know, they will have less time to -- they're at a little  
8 bit of a disadvantage because they're only getting two days to  
9 prepare for this. And so they've already submitted something  
10 into the record that they object to this.

11 MS. THEMAK: We don't plan on calling any expert  
12 witnesses. We're not asking for a significant amount of time.  
13 So I don't believe it's --

14 CHAIRPERSON HOOD: Okay. Fine. That's fine.

15 MS. THEMAK: -- going to -- I mean, it's fairly -- the  
16 prejudice to the Applicant is fairly minimalized.

17 CHAIRPERSON HILL: That's okay, Ms. Themak. I  
18 appreciate it. That's what the Board's going to decide.

19 MS. THEMAK: Okay.

20 CHAIRPERSON HILL: Okay.

21 Mr. Sullivan, did you have anything you'd like to add?

22 MR. SULLIVAN: Yes, thank you, Mr. Chair, just a couple  
23 things. The party applicant is a landlord and property owner,  
24 so they're in the business of maintaining a property and renting  
25 a property. They did attend an ANC meeting two months ago, so

1 they've had knowledge of this. It will be extremely prejudicial  
2 to us. We can't afford to delay this case any longer because my  
3 client is suffering financial harm day-by-day as a result of  
4 this. So it would be one thing if we could ask for a postponement  
5 for a week or two to prepare against the party opponent and that  
6 late ANC letter at the same time, but I think all those factors  
7 -- and I haven't heard anything from the party applicant  
8 explaining any reason for -- I mean, their reasons could apply  
9 to any adjacent neighbor and that would make the deadline  
10 meaningless in this case. Thank you.

11 CHAIRPERSON HILL: Okay. Thanks, Mr. Sullivan.

12 All right. Does the Board have any questions of anybody  
13 before I explain what may or may not happen to Ms. Themak?

14 Go ahead, Mr. Hood -- Chairman Hood, sorry.

15 ZC CHAIRPERSON HOOD: No problem. This is an  
16 interesting I'm. And you say that they were a landlord. Help  
17 me understand what your point is.

18 MR. SULLIVAN: They're in the business of renting a  
19 property and maintaining a property. So they have some business  
20 experience and taking it here. It's not an innocent homeowner  
21 that isn't familiar with the business of running a property.  
22 That's just that's just one of the factors. But I mean, the  
23 biggest factor is that there has been no reason to excuse the  
24 deadline that.

25 ZC CHAIRPERSON HOOD: No problem. Good morning.

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1           Mr. Sullivan, just in following, you said that they  
2 were a landlord. Help me understand what your point is?

3           MR. SULLIVAN: They're in the business of renting a  
4 property and maintaining a property, so they have some business  
5 experience in taking care of -- it's not an innocent homeowner  
6 that isn't familiar with the business of running a property.  
7 That's just one of the factors. But I mean, the biggest factor  
8 is that there has been no reason to excuse the deadline.

9           ZC CHAIRPERSON HOOD: Right. I get that. So they're  
10 not the owner, maybe I missed that, they're not the owner, they're  
11 just a landlord.

12          MR. SULLIVAN: Oh, no, they're the owner of the property  
13 next to --

14          ZC CHAIRPERSON HOOD: Okay. So I just -- I really have  
15 a problem with distinguishing because they're a landlord -- okay.  
16 All right. Anyway.

17          MR. SULLIVAN: I'm just saying they're in the business  
18 of renting property as opposed to just a more, you know,  
19 particularly unknowledgeable homeowner.

20          ZC CHAIRPERSON HOOD: So in other words, they're  
21 landlords to properties all over the city, they're just  
22 landlords, and they own property. Okay. I get it now. Thank  
23 you.

24                 Thank you, Mr. Chairman.

25                 CHAIRPERSON HILL: Okay. Thanks, Chairman Hood.

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1           Okay.  Anyone else?

2           Okay.  Ms. Themak, so I don't know -- we're going to  
3 excuse you, and then we're going to deliberate as to whether or  
4 not we are going to admit you as party status.  If we do admit  
5 you as party status, have you presented before us before?  I  
6 can't recall.

7           MS. THEMAK:  Yes.

8           CHAIRPERSON HILL:  Oh, okay.  Well, welcome back.

9           MS. THEMAK:  Thank you.

10          CHAIRPERSON HILL:  And then you definitely know the  
11 process, which is that, you know, you'll have the same amount of  
12 time to give your presentation, you'll have an opportunity to ask  
13 questions, you'll have an opportunity -- they'll have an  
14 opportunity to ask questions of you, you'll get an opportunity  
15 to ask questions of the Office of Planning, et cetera.  And yeah.  
16 Do you have any questions for me?

17          MS. THEMAK:  No.  We should be efficient if we're  
18 granted the status and we appreciate your consideration.  If we  
19 aren't granted party status, then we still will participate just  
20 as a opposition.

21          CHAIRPERSON HILL:  Okay.  Great.  All right.  Thanks,  
22 Ms. Themak.

23          MS. THEMAK:  Thank you.

24          CHAIRPERSON HILL:  Okay.

25          Mr. Sullivan, anything else for you before I excuse you

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1 guys?

2 MR. SULLIVAN: No. Thank you, Mr. Chair.

3 CHAIRPERSON HILL: Okay. Thanks, Mr. Sullivan.

4 All right. If you could please excuse the client --  
5 both clients I guess.

6 Okay. I'm a little -- well, I guess I don't want to  
7 take a lot of time. I mean, I think Ms. John knows, I  
8 unfortunately am going to have to leave at the very end of the  
9 day and this case is going to end up being at the end of the day,  
10 so Ms. John might end up running this. So I will at least give  
11 my immediate opinion. But Vice Chair John will have the floor  
12 perhaps, and so like she might have more weight in this particular  
13 decision. But what I think is -- it is -- the whole point of  
14 the deadline -- well, there's a couple of points, I guess. One  
15 of them is that so the Board has time to look at the application  
16 as well as the person who is the applicant for the filing and  
17 have enough time to kind of prepare, and also what -- well, really  
18 I don't even know if it's so much of time for them to prepare as  
19 much as it is just us able to determine whether or not we think  
20 there's -- that they're meeting the criteria for party status.  
21 I wouldn't be in favor necessarily of waiving the deadline or at  
22 least having this deadline be this short if it wasn't for the  
23 fact that it's the immediate adjacent neighbor, so it is the  
24 immediate adjacent neighbor. And whether or not they're a  
25 landlord or not doesn't really have anything to do with my opinion

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1 on they own the property. So I guess I'd be voting in favor of  
2 party status until I hear from my Board members and hear what  
3 they have to say. Who would like to speak next?

4 Mr. Smith?

5 COMMISSIONER SMITH: I (audio interference) agree with  
6 your position on granting the party status to the neighbor. She  
7 is -- and while I recognize that she filed this finding, we've  
8 had other situations where adjacent property owners have filed  
9 party status requests untimely. And we have historically went  
10 ahead and gave them party status because they are the most  
11 directly impacted property to many of the folks that we see before  
12 us. We do have a letter in the record, I believe, from the renter  
13 of the property, so I would care to hear from the directly  
14 adjacent -- I believe that the adjacent property owner, even  
15 though it's untimely, we should give her the full weight of party  
16 status in this particular case. So I'll be inclined to support  
17 it.

18 CHAIRPERSON HILL: Okay.

19 Mr. Blake?

20 COMMISSIONER BLAKE: I would be opposed to offering  
21 party status, in part because of the untimeliness of the request,  
22 and also I do not believe that good cause was demonstrated in  
23 that they were compiling the information. The applicant was  
24 aware of it, has participated in the process, and had ample  
25 opportunity to file a party status within that required time

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1 frame. So I'd be opposed to granting party status.

2 CHAIRPERSON HILL: Okay.

3 Chairman Hood?

4 ZC CHAIRPERSON HOOD: I know this is going to sound  
5 real ridiculous, but I agree with both my colleagues. The problem  
6 is I believe that if Mr. Sullivan says he's not be prejudiced, I  
7 think he's prejudiced because he has -- I think he said he needed  
8 time to prepare because I would like to have him give party  
9 status, I think what he mentioned was delaying it two weeks. I  
10 think that takes all that off the table. But I think if we move  
11 forward -- I think she deserves party status, but I think if we  
12 move forward, we're prejudicing the Applicant, so hopefully that  
13 helps in this equation. Thank you, Mr. Chairman.

14 CHAIRPERSON HILL: Okay. I'll come back to Chairman  
15 Hood. I'm not really sure where he is exactly. Are you -- do  
16 you -- let's see what Ms. John has to say.

17 Vice CHair John, do you have an opinion? You're on  
18 mute, Vice Chair John.

19 VICE CHAIR JOHN: Thank you. So I agree with Mr. Blake.  
20 I am not in favor of party status at this stage. The application  
21 was filed very late, and there's a requirement to show good cause  
22 and there is no good cause that's been shown so far. I mean,  
23 the applicant is saying well, she needed time to prepare. Well,  
24 the notice has been out for a long time and the applicant went  
25 to the ANC hearing and had an opportunity to participate. So

1 first, I don't believe there is good cause. And I also feel that  
2 there is some prejudice to the Applicant because I believe there's  
3 a stop work order and even another delay I think would be harmful  
4 to the Applicant, so. I typically favor the adjacent neighbor  
5 for party status applications, but in this case we just really  
6 have nothing to go on except that the party status applicant  
7 needed more time to prepare. So in this case, I'm not in favor  
8 of granting party status.

9 CHAIRPERSON HILL: Okay. Well, that -- I think that  
10 both the arguments the Vice Chair John and Mr. Blake meant were  
11 -- made were very thought out. So I'd be able to change my mind  
12 and vote against party status.

13 Mr. Smith, are you still where you are?

14 COMMISSIONER SMITH: Yes.

15 CHAIRPERSON HILL: Chairman Hood, where would you be?

16 ZC CHAIRPERSON HOOD: So I would probably stick --  
17 proceed with caution and vote for a party status. But again, I  
18 think Mr. Mr. Sullivan laid out a plan for us that gets us out  
19 -- I don't think two weeks -- I hate to disagree with the Vice  
20 Chair, but I disagree with just a little bit, I don't think two  
21 weeks is going to make that big of a difference. But I do think  
22 that the Applicant is prejudiced. So if that helps, if we don't  
23 go in that format, I will still stick with my guns in vote in  
24 favor of party status.

25 CHAIRPERSON HILL: Okay. Then I'm going to agree with

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1 -- I appreciate very much so my colleagues and their thoughts.  
2 I also do think they're prejudiced. I mean, I think that in an  
3 abundance of caution situation again, we would have voted or I  
4 would have voted for party status. I guess as I'm listening to  
5 my fellow colleagues, they are bringing up good points in terms  
6 of that, A, the Applicant is prejudiced, B, this has gone on for  
7 a while, meaning it was -- the placard was up, the person who is  
8 applying or asking for party status went to the ANC meeting. So  
9 why didn't they apply for party status at that point so that  
10 there would be enough time so that the Applicant could prepare  
11 for someone who was going to have full party status. So I will  
12 agree with my other colleagues and lean towards denial of party  
13 status. I'm going to make a motion to deny the party status  
14 request in application 20813 and ask for a second, Ms. John.

15 VICE CHAIR JOHN: Second.

16 CHAIRPERSON HILL: The motion was made and second, Mr.  
17 Moy, if you'd take a roll call.

18 MR. MOY: Thank you, Mr. Chairman. When I call your  
19 name, if you would please respond to the motion made by Chairman  
20 Hill to deny the request for party status. The motion was second  
21 by Vice Chair John.

22 Mr. Blake?

23 COMMISSIONER BLAKE: Yes to deny party status.

24 MR. MOY: Vice Chair John?

25 VICE CHAIR JOHN: Yes.

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1 MR. MOY: Yes to deny?

2 VICE CHAIR JOHN: Yes to deny.

3 MR. MOY: Chairman Hill?

4 CHAIRPERSON HILL: Yes to deny party status.

5 MR. MOY: Mr. Smith.

6 COMMISSIONER SMITH: No.

7 MR. MOY: Zoning Commission Chair Anthony Hood?

8 ZC CHAIRPERSON HOOD: Opposed to the motion made.

9 MR. MOY: Staff would record the vote as three to two  
10 to zero. And this is on the motion made by Chairman Hill to deny  
11 the request for party status. A motion to deny was second by  
12 Vice Chair John, who is also in support of the motion. Others  
13 in support of the motion to deny is Mr. Blake and of course Vice  
14 Chair John and Chairman Hill. Opposed to the motion to deny is  
15 Mr. Smith and Zoning Commission Chair Anthony Hood.

16 Mr. Chairman, the motion carries on a vote of three to  
17 two to zero.

18 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.

19 All right. You can call our first case, Mr. Moy, or  
20 our first -- or I guess the public meeting case.

21 MR. MOY: All right. Mr. Chairman, this would be Case  
22 Application, 17702B as in bravo of District Properties, LLC.  
23 This request is a modification -- this is a request for a  
24 modification of consequence to BZA Order No. 17702A, pursuant to  
25 Subtitle Y, Section 703 to eliminate two conditions of approval.

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1 The property is located in the RA-1 zone at 2836 Robinson Place,  
2 S.E., Square 5875, Lot 43. And I believe that's all I have for  
3 the Board. Thank you, sir.

4 CHAIRPERSON HILL: Okay. Great. Thank you.

5 All right. So this is before us as a modification of  
6 consequence, and it is one that we could vote on today unless we  
7 think that there are issues that we'd like to hear from from the  
8 Applicant. I haven't had a chance to really -- well, I should  
9 say, I don't know where the Board is with this one, so I'm going  
10 to ask what -- where you guys kind of sit and what you would like  
11 to do. I think that, you know, there are some questions about  
12 the width of the curb cut. There's some questions about trying  
13 to actually see a load management plan. I can go either way if  
14 somebody really wants to kind of try to hammer through this now  
15 or we can set this for a public hearing and ask for information  
16 that we might want to hear from from the Applicant based upon  
17 the filings. May I see who has an opinion?

18 And I'll start with Mr. Smith.

19 COMMISSIONER SMITH: I would like to hear  
20 (indiscernible) of my colleagues first.

21 CHAIRPERSON HILL: Okay.

22 Mr. Blake?

23 COMMISSIONER BLAKE: Sure. In this case, I think it's  
24 important that we evaluate the situation. In this case, we did  
25 not have a load management plan before us. And when I think

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1 about the trash location, where it is, it is a little bit awkward  
2 to have a front load dumpster going down that distance of 100  
3 feet to the dumpster. I would like to see a load management  
4 plan. I'd like to have -- also see some recent photos of the  
5 site, the driveway, the ADA driveway, the transformer, the entire  
6 site, some physical pictures of the site to understand exactly  
7 how things are laid out there currently and how the current  
8 driveway is being used. That said -- and I do want a detailed  
9 loading and trash collection plan. So that said, I would like  
10 to see the determination of significance and allow the Board to  
11 schedule a full public hearing for this.

12 CHAIRPERSON HILL: Okay. I mean, anybody can pull this  
13 off of the record at any time. And so I'm going to go around  
14 the table anyway, but meaning anyone can pull it off of the  
15 hearing -- the meeting agenda at any time. And so it sounds like  
16 Mr. Blake does want some information, but I'm going to keep going  
17 to see if there's anything additional that the Applicant might  
18 need to provide.

19 Mr. -- well, Chairman Hood, I don't know if you'll be  
20 back on this or are you on this -- Chairman Hood, do you have  
21 anything you'd like to add or see or?

22 ZC CHAIRPERSON HOOD: I did review this thus far. I  
23 will probably come back for this one. I do think that -- I'm  
24 particularly interested in comments that Mr. Sandra Seegers  
25 (phonetic) has mentioned. It looks like a few things have been

1 left out. And I would agree with Board Member Blake, I think  
2 it's -- to flesh out from a hearing and also examine some of the  
3 things that she mentioned which need to be corrected. So I would  
4 be in favor of a hearing as well.

5 CHAIRPERSON HILL: Okay.

6 Vice Chair John?

7 VICE CHAIR JOHN: I'm also interested in receiving  
8 clarification on the load management plan because I'm not sure  
9 how -- I mean, I think I remember this case and I believe DDOT  
10 had been working with the Applicant. But it appears that that  
11 isn't what happened. And the Applicant is now saying that the  
12 conditions cannot be met. So I would like to hear additional  
13 information on how the Applicant expects to manage this  
14 turnaround on private property, how the trash will be collected.  
15 It's not clear in my mind. So I would suggest -- I would also  
16 agree with the limited hearing on these two issues.

17 CHAIRPERSON HILL: Okay. Thank you.

18 Mr. Smith?

19 COMMISSIONER SMITH: Given everything that I've heard  
20 from my colleague, (audio interference) by large degree with the  
21 suggestion that Mr. Blake raised, I do want to hear more about  
22 the load management plan, given that we are, you know, being  
23 requested to remove the provision of the Hammerhead turnaround  
24 at the end and given the length of that driveway it may be  
25 difficult to be able to turn around a trash truck down this long

1 narrow (audio interference) in the public space. So I would, you  
2 know, welcome additional details from the Applicant on that. So  
3 I am in favor of changing this to a modification of significance  
4 and having this as a public hearing.

5 CHAIRPERSON HILL: Okay. Okay. If we -- so the  
6 modification of significance we did that, Mr. Moy, if you can let  
7 us know when we can come back. And then also we want to hear  
8 more about -- and Mr. Blake, you seem to be the most specific,  
9 but can you give them a little bit more specificity, again it's  
10 the load management plan, I heard Mr. Smith speak of the  
11 Hammerhead turnaround, and then what else would you like to hear,  
12 Mr. Blake, and or anyone? You're on mute, Mr. Blake.

13 COMMISSIONER BLAKE: I would like to have some recent  
14 photos of the site itself, specifically with regard to the curb  
15 cut area, the trash collection area. And when we talk about  
16 loading for move ins, move outs, et cetera, I'd like to see kind  
17 of where that would take place and how that takes place.

18 CHAIRPERSON HILL: Okay. Anyone else have anything  
19 they'd like to ask of the Applicant?

20 ZC CHAIRPERSON HOOD: I would just ask it be examined  
21 again, Ms. Sandra Seegers submission. I want to make sure I  
22 understand it, if I continue this case, which I think I will.

23 CHAIRPERSON HILL: Ms. -- Vice Chair John?

24 VICE CHAIR JOHN: So for me -- I mean, as I look at  
25 these two conditions, again, I don't understand how the Applicant

1 will collect the trash with an eight foot driveway and using this  
2 front loading truck. I guess that's what they're asking us to  
3 weigh, right. I just need -- and I think I'd probably like to  
4 hear from DDOT as well. I mean, I don't know what we're looking  
5 at. It doesn't seem possible to me that that this truck can get  
6 down to the back of the property to collect the trash with an  
7 eight-foot driveway, eight-foot curb cut. So I just -- the whole  
8 thing is confusing to me.

9 CHAIRPERSON HILL: Okay.

10 So Mr. Moy, maybe if we can hear more from DDOT.

11 MR. MOY: Yes, sir. I believe the Board can do that  
12 as the --

13 VICE CHAIR JOHN: Yeah. Specifically, what is the  
14 solution for a situation like this? There is no parking  
15 requirement because that was waived. And so the only issue we  
16 have is trash collection. How will the trash be collected  
17 consistent with DDOT's requirements for an eight-foot curb cut?  
18 Does it mean they have to move the drive -- move the trash area  
19 to the front or wheel the trash out to the curb? I don't know.  
20 It just doesn't make sense to me. And typically, this is worked  
21 out ahead of time before the Board -- the Applicant comes to the  
22 Board, but I guess it was an oversight here. And so that's sort  
23 of what I'm looking for.

24 CHAIRPERSON HILL: Okay. I'm sure that the Applicant  
25 will watch this if they're not watching now. And I just want

1 them to get as much information as possible before they come back  
2 before us. Anyone else wanting to ask anything before we move  
3 on? Okay.

4 Mr. Moy, when can we do this?

5 MR. MOY: Mr. Chairman, this is going to sound an  
6 inordinate amount of time, but as Board's aware there have been  
7 changes to -- that would also includes a new ANC as well as a  
8 new ANC SMD, single member district, because of the boundary  
9 changes. And the OZ is allowing the 51 days for the ANCs to  
10 review applications. In this case for this case, because of the  
11 location, there is a change. So to meet our public notice  
12 requirements, my suggestion would be to schedule this for a public  
13 hearing on March the 1st, and then I can work from there backwards  
14 in terms of submission dates from the Applicant and the response  
15 date.

16 CHAIRPERSON HILL: Okay.

17 MR. MOY: Okay. So in terms that the Board agrees to  
18 the March 1st reschedule date, the Applicant to make the filings  
19 as just discussed by the Board by February the 15th and any  
20 responses by February the 22nd, which I suspect will include the  
21 ANC, which would be the new ANC, new SMD, and DDOT, I suppose,  
22 and the staff will reach out to ensure that DDOT representative  
23 attends the hearing on March 1st. Am I missing anything else,  
24 sir?

25 CHAIRPERSON HILL: I don't think so. Okay.

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1 All right, Mr. Moy, let's close this portion of this  
2 hearing and let's move to our next one.

3 MR. MOY: The first case in the Board's public hearing  
4 session is Case Application No. 20809 of Building Bridges Across  
5 the River. This is a self-certified application pursuant to  
6 Subtitle X Section 901.2 for a special exception under Subtitle  
7 C, Section 710.3 from the vehicle parking location restriction  
8 of Subtitle C Section 710.2(c)(2), property located in the MU-1  
9 zone at 1865 Mississippi Avenue, S.E., Square 5905, Lot 806. And  
10 I believe that's all I have for the Board.

11 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.

12 If the Applicant could hear me, if they could please  
13 introduce themselves for the record?

14 MR. TUMMONDS: Good morning. This is Paul Tummonds,  
15 the zoning consult for Building Bridges Across the River. I am  
16 with Goulston & Storrs.

17 CHAIRPERSON HILL: Okay. Great. Mr. Tummonds, are you  
18 going to use your camera?

19 MR. TUMMONDS: Yeah, trying to figure this out here.  
20 I apologize, while I'm doing that I will introduce --

21 CHAIRPERSON HILL: That's okay.

22 MR. TUMMONDS: -- our two witnesses, Mr. Bernard, you  
23 want to start?

24 MR. BERNARD: Sure. Good morning and thank you for  
25 having us. My name is Rahsaan Bernard and I'm the president of

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1 Building Bridges Across the River, the Ward 8 nonprofit that's  
2 responsible for the town hall education, arts, and recreation  
3 campus known as THEARC.

4 CHAIRPERSON HILL: Sorry, no, I didn't mean to  
5 interrupt you, Mr. Bernard, please continue.

6 MR. TUMMONDS: Then I'm sorry, but (indiscernible), our  
7 second witness is Mr. Palmer.

8 MR. PALMER: Good morning.

9 MR. TUMMONDS: Perfect.

10 CHAIRPERSON HILL: Mr. Palmer, you want to introduce  
11 yourself for the record please?

12 Mr. PALMER: My name is Jim Palmer. I am the architect  
13 for this building and all the buildings on the THEARC campus.

14 CHAIRPERSON HILL: Okay. Great. Thank you.

15 All right. Mr. Tummonds, yeah, if you could please go  
16 ahead and walk us through your Applicant's application and why  
17 you believe they're meeting the criteria for us to grant the  
18 relief requested. I have my own 15-minute timer here, just so I  
19 know where we are, and you can begin whenever you like.

20 MR. TUMMONDS: Great. Thank you very much. As I  
21 mentioned, I'm Paul Tummonds of Goulston & Storrs. We are  
22 requesting special exception relief from Board Zoning and  
23 Adjustment to locate the parking spaces in the front yard of the  
24 new Washington School for Girls building adjacent to the  
25 Mississippi Avenue S.E. entrance to the ARC campus. On November

1 16th, 2022, we submitted a supplemental statement that addressed  
2 our satisfaction of the special exception requirements for the  
3 requested relief. The Office of Planning has submitted a report  
4 which recommends approval of the application with a condition  
5 that an additional row of screening be installed and maintained  
6 on the Mississippi Avenue facing side of the lot. The DDOT report  
7 included a similar request. In our presentation this morning,  
8 we will present an updated site plan that shows the additional  
9 landscape screen that will be provided. And our project  
10 architect, Jim Palmer of Sanchez Palmer Architects will address  
11 the concerns raised by DDOT in their report.

12 Real briefly, just to remind everyone, this is a  
13 special exception request, not a variance request. We believe  
14 that we have shown that it is not practical to locate the spaces  
15 in accordance with the requirements, as the proposed location of  
16 the parking spaces resulted in more efficient use of the land and  
17 better design. Mr. Palmer will address that.

18 Second, we believe that the parking spaces as located  
19 on the property furnish reasonable and convenient parking  
20 facilities for the Washington School for Girls students, faculty,  
21 staff, guests, and visitors to the property.

22 And finally, we note that the BZA may impose conditions  
23 as it relates to screening of the property, and we're going to  
24 do that in concordance with the conditions requested by both the  
25 Office of Planning and the Department of Transportation. We also

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1 believe that this application satisfies the general special  
2 exception criteria, which is we're proposing an additional use  
3 -- we're proposing a use on this property, Washington School for  
4 Girls, which is a permitted use in the zone that already exists  
5 on the property. We are maintaining the look and feel of this  
6 important campus in the area, and we believe that there are no  
7 impacts to the -- and I say no negative impacts to the  
8 streetscape, to the appearance of the project, and we're excited  
9 to move this forward.

10           With that, I will now ask Mr. Bernard to present his  
11 testimony.

12           MR. BERNARD: Yes. Mr. Tummonds, thank you very much,  
13 and thanks again for having me. Just a brief overview. I think  
14 many of you know the THEARC campus located here on Mississippi  
15 Avenue serves as an anchor institution here in Washington at 16  
16 and a half acres and 203,000 square feet of programing space that  
17 houses currently 14 nonprofits in five sectors: health,  
18 education, arts, recreation, and workforce development. The  
19 campus has become a boon for this community. At our size and  
20 scale we are the largest social service, multi-sector, nonprofit  
21 community collaboration in the country, and we are looking to do  
22 what we've always done over these last 17 years, which is respond  
23 to community need.

24           The Washington School for Girls is an original partner  
25 at our campus when we were built in 2005. They seek a one-campus

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1 solution for two schools located in different areas of Ward 8.  
2 One is located here for a middle school, the other is located at  
3 Our Lady of Perpetual Help across the Suitland Parkway. Bringing  
4 both the third through fifth grades here on campus will provide  
5 those courageous young girls the opportunity to get access to  
6 what I believe is a humanitarian model of services for the most  
7 needed girls in our community. We look forward to the opportunity  
8 to expand the campus here, provide a wonderful oasis of  
9 opportunity for our girls, and continue to support the community  
10 with what we believe is an anchor institution in Washington.  
11 Thank you very much.

12 MR. TUMMONDS: Thank you very much, Mr. Bernard.

13 Now, I'd ask OZ staff if we could pull up the PowerPoint  
14 presentation we submitted?

15 MS. MEHLERT: We're having some technical issues with  
16 the with the PowerPoint. Just give me one second.

17 MR. TUMMONDS: No problem.

18 (Pause.)

19 MR. TUMMONDS: Great, thank you.

20 MR. PALMER: Okay. Thank you very much. Again, my  
21 name is Jim Palmer, and I'm -- Sanchez Palmer is the architect  
22 for this phase four building on the THEARC campus. And as I  
23 mentioned before, I have been the architect on all three of the  
24 previous phases and really since this was first an idea. What  
25 I'd like to do first is introduce the idea that we are a site

1 -- the whole campus is in Parkland and originally the intent was  
2 to make a building that reflected the fact that we were in a  
3 park, but we were also forced to push the buildings forward  
4 towards Mississippi Avenue because of the floodplain. So we had  
5 a dual purpose of building an urban campus, addressing the street  
6 and the building in the park. And in order to solve the original  
7 problems, one of the key park keys was to put the entrances to  
8 the new buildings on the sides, not on Mississippi Avenue, and  
9 draw people in so that there would be view corridors or view  
10 sheds to the park and that Mississippi Avenue would always be  
11 connected to the woods and everything to the south.

12           So when we -- when phase four was conceived, one of the  
13 primary goals was to protect and keep what was existing and have  
14 the new building have as minimal an impact on the existing campus  
15 as possible. This first illustration shows you view sheds from  
16 the sidewalk. And then if we could click to the next slide  
17 please?

18           And let's see if we can get the four smaller pictures  
19 larger maybe. This is -- we went out and took this recently with  
20 the leaves off the trees so you can get an idea of what can be  
21 seen both from the sidewalks and the public streets, but also if  
22 I can call attention to photograph number four, it is -- which  
23 is in the bottom right -- it is equally important that the  
24 buildings on the second floor have large windows that visually  
25 connect the students that are in the buildings and in particular,

1 you see the tower or the turret, that is the ballet studio that  
2 is a landmark for the entire neighborhood, an architectural  
3 landmark. And next slide please?

4 And this is just a close-up view of the phase two or  
5 THEARC East building, and you can see the landmark. From our  
6 perspective, maintaining open views from the public spaces to  
7 this particular component of the campus is absolutely critical  
8 for the urban design. Next slide please?

9 In the next slide are four images of the front area in  
10 question that shows the landscaping that exists now. And the  
11 goal is that basically this will remain the same; it's unchanged.  
12 The first row of parking south of the fence will remain exactly  
13 as it is. We're protecting all of the existing trees that are  
14 there. And again, this was part of the original conception to  
15 put this out front, make it as green as possible, and connect it  
16 in into the park on the south side. Next slide please?

17 And then this is another image just made in black and  
18 white just diagraming out where the new hedge would be. And  
19 that, we think, fits perfectly well into the existing landscape  
20 scheme that already is there. Next slide please?

21 And in this slide you can see the site plan in a little  
22 more detail. One other thing I'd like to mention that's very  
23 important to locating the building to the south and keeping the  
24 parking as it exists to the north is the fact that the new  
25 building will be able to connect directly into the parkland in

1 the floodplain. The THEARC farm, there is in the bottom right,  
2 there is an outdoor classroom that already exists that we will  
3 maintain so that keeping that connection between all of the open  
4 land in the south to the building and to the students on campus  
5 is absolutely critical, we think, to this design. Next slide  
6 please?

7           And in addition to the -- just the relationship to the  
8 people, the second piece that's happening here is that we have  
9 the vehicular circulation that comes through the campus is also  
10 set to work with this configuration because there are schools in  
11 all three of these buildings, the drop off, the coming and going  
12 of students is very important. For those of you who've been out  
13 there, besides just the students, there's food delivery that  
14 happens in in the parking lot, a farmer's market happens there,  
15 and a whole host of other activities. And again, the concept is  
16 is to keep that forward and to have as little vehicular  
17 penetration into the site as possible so that we can keep the  
18 connection to the woodland to the south. Next slide please?

19           Or is that the last one?

20           MR. TUMMONDS: I think that's our last one.

21           MR. PALMER: Okay. All right.

22           MR. TUMMONDS: Thank you, Mr. Palmer.

23           That completes our presentation, and we're available  
24 to answer any questions that you may have.

25           CHAIRPERSON HILL: Okay. Thanks, Mr. Tummonds.

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1           Let me wait for this to get dropped. Okay. Does the  
2 Board have questions of the Applicant?

3           Sure. Go ahead, Mr. Blake.

4           COMMISSIONER BLAKE: I have one question. I didn't see  
5 any reports from the ANC in this presentation. Could you please  
6 give us an indication of the interaction you had there and where  
7 that stands?

8           MR. TUMMONDS: Sure. I can start and then maybe I can  
9 let Mr. Bernard weigh in as appropriate. So we presented to the  
10 ANC on October 8th. At that meeting, they started with a quorum  
11 of five, but then one of the commissioners fell off. They, during  
12 the discussion of this case, truly became deadlocked at two to  
13 two. So they were not able to come to any sort of resolution on  
14 a -- on their view of this case. I might add the two commissioners  
15 that voiced concerns about this application, realistically were  
16 not voicing concerns about the relief we requested. There were  
17 discussions that truly were more related to a PUD type community  
18 benefits package. We noted that in fact, this is just a special  
19 exception application, and probably most importantly THEARC is  
20 the community benefits package. The Washington School for Girls  
21 is a community benefits package.

22           And maybe, Mr. Bernard, if you have -- you've had much  
23 more discussions with -- and I might add one more thing to my  
24 -- the single member district commission slot for this property  
25 is vacant, so most of the discussions that occurred were with the

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1 chair.

2 Mr. Bernard, anything to add to that?

3 MR. BERNARD: Thank you. Thank you very much. And  
4 well, that's a point I was going to make. The chair -- the seat  
5 was vacant and we've been in communication with the chair, we  
6 have a really good relationship with the chair and a very  
7 supportive one. The seat has now been filled and actually Duane  
8 Moody (phonetic) is the new ANC commissioner for our single member  
9 district. He is also a fan of THEARC and a supporter of our work  
10 and would -- what I would say would give us a full thumbs up if  
11 he was here on this call today. So I just want to close the loop  
12 on that.

13 CHAIRPERSON HILL: Okay. Mr. Bernard. I mean,  
14 obviously, we don't know what he would think, but that's nice of  
15 you to give us your opinion. Let's see. Okay.

16 Mr. -- Chairman Hood?

17 ZC CHAIRPERSON HOOD: If right quick, thank you.

18 Mr. Bernard, I'm just curious, how do we get to this  
19 point where we want to do -- I mean, I know the girls school was  
20 a factor, but I also know that's probably been a problem for a  
21 while. And let me just say this, I appreciate all the work that  
22 THARC has done for (indiscernible) in the city. But I'm just  
23 curious, how do we get to this decision to try to ask for this  
24 relief? Or maybe Mr. Tummonds, whoever, I'm just curious.

25 MR. TUMMONDS: Well, I think it goes to the idea of

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1 what is interesting/intriguing about this is there's an existing  
2 parking lot, as we noted in the plans, that exists there now.  
3 We're not looking to change that parking lot at all. Those  
4 parking spaces were able to be in that location because before  
5 they were in the side yard of those two buildings that they are  
6 adjacent to. When we decided to put this new building, a building  
7 that's necessary to meet the needs of the Washington School for  
8 Girls, somewhat miraculously, or not miraculously, those existing  
9 parking spaces, they say oh, now you need relief to have those  
10 exact same parking spaces that have always been there in order  
11 to have this building. And I think then so when we looked at  
12 okay would we move this building around to move the building  
13 forward and the parking spaces at the rear, we came up with the  
14 issue that Mr. Palmer said, which is we have this wonderful  
15 entrance to the building that has the glass turret we saw and  
16 the big windows for the Washington Ballet, does it make sense to  
17 block those views by having a building just so we can put the  
18 parking in back. We said no, probably not.

19           Similarly, we said the existing parking spaces in the  
20 flow of traffic for pick up and drop off work really well  
21 utilizing what's there now. So that was another factor to say  
22 you know what, let's go get the relief and, you know, so that  
23 the idea would be the real issue then probably is okay, are we  
24 negatively impacting the public realm. We believe we are not.  
25 And we think that's what really the issue is here. We know that

1 DDDOT's had some questions about its impact on the public realm.  
2 We believe in showing the images that we submitted yesterday and  
3 Mr. Palmer talked today. We are not negatively impacting the  
4 public realm. Those spaces are just as they were before. We  
5 think that it looked and it feels nice. It looks nice, and we  
6 are going to enhance that by adding those additional rows of  
7 evergreen hedges, as we noted, in the one black and white and  
8 color picture.

9 ZC CHAIRPERSON HOOD: Thank you, Mr. Tummonds, that was  
10 a very thorough explanation to me, but thank you, I'm good. Thank  
11 you.

12 CHAIRPERSON HILL: Anyone else?

13 Okay. Mr. Tummonds, what is it that DDOT was talking  
14 about like a hedge or something that might block it, and then  
15 also Office of Planning was talking about fencing, what is it  
16 that you all were proposing for those concerns?

17 MR. TUMMONDS: Yeah. So maybe, Ms. Mehlert, if you  
18 could pull that image back up, I'm sorry, our PowerPoint? So if  
19 you'd go up two? There you go.

20 So right there, yeah, so if you look at right now  
21 picture number three, a little up, right, sorry. Picture number  
22 three, that's existing. Right? So we see there is the --

23 CHAIRPERSON HILL: Yeah, yep.

24 MR. TUMMONDS: -- the sidewalk, then we go down a little  
25 bit, Ms. Mehlert, and then the only part of color that's in that

1 thing, those green bushes, hedges we've shown in color there,  
2 that's the additional landscape screening we're proposing in  
3 response to OP's request and DDOT's request.

4 CHAIRPERSON HILL: How high is that? How high is that?

5 MR. TUMMONDS: I think realistically at installation,  
6 what are those, three and a half, four feet, something like that.  
7 Jim, is that right?

8 CHAIRPERSON HILL: So you would still get a nice view.  
9 You're just blocking the cars.

10 MR. TUMMONDS: Yeah, 100 percent.

11 CHAIRPERSON HILL: Okay. Okay.

12 All right. Does anybody have another question while  
13 the slide deck is up? Okay. You can pull it down, Ms. Mehlert.

14 Okay. I'm going to turn to the Office of Planning.

15 MS. MYERS: Good morning. Crystal Myers with the Office  
16 of Planning. The Office of Planning's recommending approval of  
17 this case with the condition to require additional screening,  
18 which the Applicant has discussed. The only thing I would like  
19 to note about this is that typically the Office of Planning would  
20 prefer to see parking in the rear of a building. But in this  
21 particular case, because of the existing layout of the site and  
22 the impact of the entrances and their connection with the parking  
23 lot, we came to the conclusion that it would be more efficient  
24 in meeting the special exception criteria to allow for the  
25 existing parking lot to be used for the parking, which is in the

1 front of the building or would be in front of the new building.  
2 And so with that consideration of the layout, with the  
3 consideration of the existing parking lot, we are in support with  
4 the condition that we are proposing. And with that, I will stay  
5 on the record of the staff report, but of course I'm here for  
6 questions.

7 CHAIRPERSON HILL: Okay. Great. Thank you.

8 Does anyone have any questions for the Office of  
9 Planning?

10 Mr. Blake?

11 COMMISSIONER BLAKE: Sure.

12 Do you think, Ms. Myers, that the proposed hedges in  
13 this diagram are consistent with what the Office of Planning was  
14 in -- it was proposing in its condition?

15 MS. MYERS: It looks like it, but I would want it to  
16 comply with the screening requirements. And I just don't have  
17 off the top of my head what the height requirement is for hedges,  
18 but I'd want it to meet that requirement.

19 MR. TUMMONDS: I believe the requirement's 42, which  
20 is the three and a half feet, so. And maybe to answer -- I'm  
21 sorry, I jumped in, we would absolutely meet the screening  
22 requirements of the zoning regulation.

23 COMMISSIONER BLAKE: Thank you.

24 CHAIRPERSON HILL: Okay. Anyone else?

25 Okay. Ms. Mehlert, is there anyone here wishing to

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1 speak?

2 MS. MEHLERT: We do not.

3 CHAIRPERSON HILL: Okay.

4 Mr. Tummonds, do you have anything you'd like to add  
5 at the end?

6 MR. TUMMONDS: No.

7 CHAIRPERSON HILL: Okay.

8 Mr. Bernard, I'd also like to echo Chairman Hood's  
9 comments about THEARC and how -- what a wonderful facility it is  
10 there. And I also had an opportunity to attend events there,  
11 and it's really just a lovely facility. So congratulations on  
12 that.

13 MR. BERNARD: Thank you. Look forward to seeing you  
14 back again soon.

15 CHAIRPERSON HILL: As well apparently the architect,  
16 Mr. Palmer, you've been involved from the beginning there. So  
17 you know, good job with you as well.

18 Okay. Anyone else at the end?

19 All right. I'm going to go ahead and close the hearing  
20 on the record. Thank you, everyone.

21 Okay. After hearing the case, I believe that for me,  
22 I believe the Applicant meets the criteria for us to grant the  
23 relief requested, I mean, from a practicality standpoint. You  
24 know, they've also spoken to the lot is there, the traffic flow  
25 is happening now. I don't understand -- I understand what the

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1 regulation is meant to do, but I think in this situation they're  
2 meeting the criteria for us to grant this special exemption. I  
3 will also agree with DDOT's condition in terms of the hedge and  
4 that they're meeting the requirements for the hedge for the  
5 parking lot. I guess I found it a little interesting that DDOT  
6 objected to the application, although they did mention that if  
7 they did that they would be interested in the hedging or, you  
8 know, the visual intrusion issue that OP had brought up. I guess  
9 what I'm -- the only reason why I'm commenting on it is I'm not  
10 really sure what DDOT's solution would have been, and that's  
11 where I'm not clear on completely. But nonetheless, I'm going  
12 to be voting in favor.

13 Mr. Smith?

14 COMMISSIONER SMITH: Just to expand on what you just  
15 said, I do find it interesting that DDOT did oppose this  
16 particular project, given that the situation already exists now,  
17 there's already a parking facility there along the frontage of  
18 Mississippi, it was just that the Applicant is redesign and  
19 reorienting the parking lot to increase the parking there. So I  
20 did find it interesting. But you know, to pivot to the question  
21 at hand, I do believe that the Applicant does meet the burden of  
22 proof for us to grant the special exception. You know, as you  
23 stated, the property is what it is. They're fairly constrained  
24 in where they can locate buildings on this lot, given that  
25 directly to the south is a major (indiscernible) drop off and

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1 it's a stream that runs there. They can't really touch any of  
2 the land down in that ravine. And (indiscernible). So they're  
3 fairly limited in what they can do. And I think they've done a  
4 good job of attempting to, as Mr. Palmer stated, place a fairly  
5 decent sized building within a parking lot that according to the  
6 zoning regulations they're over parked (phonetic) to be  
7 completely honest, so they can take away some of that parking.  
8 And I do believe that what the Applicant is attempting to do is  
9 redesign the facility to -- the parking facility -- to maximize  
10 the amount of parking that exists in the remaining parking  
11 facilities within that square of buildings. So with that, I do  
12 believe they've met the burden of proving the criteria for us to  
13 grant the special exception. And I am in support of DDOT's  
14 condition to at least screen that redesigned parking facility  
15 from Mississippi Avenue to meet the intent -- or to come more  
16 closely into compliance with the provisions of (indiscernible)  
17 parking close to a public way. So I will be in support of the  
18 special exception.

19 CHAIRPERSON HILL: Thank you, Mr. Smith.

20 Mr. Blake?

21 COMMISSIONER BLAKE: Yeah. I largely agree with the  
22 comments made by you, Mr. Chairman and Mr. Smith. The two areas  
23 I'd add is, one, I would like to make sure that the condition is  
24 added that the screening be that consistent with the zoning  
25 requirement and that it be consistent with Exhibit 27, Slide 5

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1 from a styling standpoint, just to make sure it's clear that that  
2 is the type of screening that would be conditioned upon and that  
3 it would be of a height that meets the zoning requirements.

4 CHAIRPERSON HILL: Mr. Blake, can you mention that  
5 thing -- the slide again you just said?

6 COMMISSIONER BLAKE: It's Exhibit 27, Slide 5.

7 CHAIRPERSON HILL: Okay.

8 COMMISSIONER BLAKE: The other thing I would mention  
9 here is that I am disappointed that the Office -- that the ANCs  
10 weren't able to participate in this process, although I believe  
11 that the Applicant has made -- has represented they made an effort  
12 to reach out to the community, they've had the discussions with  
13 the Advisory Neighborhood Commission and the -- and I think that  
14 generally would/could potentially be in support. However, there  
15 is no report to give great weight to in this situation, however.  
16 But I do feel comfortable that that have done sufficient community  
17 outreach. I give great weight to the recommendation of the Office  
18 of Planning. I do note DDOT's objection, but I do believe we've  
19 addressed that in our condition and I would be voting in favor  
20 of the application.

21 CHAIRPERSON HILL: Thank you.

22 Chairman Hood?

23 ZC CHAIRPERSON HOOD: Yes, Mr. Chairman. I think the  
24 relief in question desires at least my approval. I will be voting  
25 in favor of it. I emphatically disagree with DDOT. This is two

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1 out of the last three cases that I've dealt with with DDOT. I  
2 think Mr. Tummonds and Mr. Bernard have made absolutely fact  
3 finding results of why we should move in this fashion. Again, I  
4 think the relief requested has been mitigated and the burden has  
5 been met. Thank you.

6 CHAIRPERSON HILL: Vice-Chair John?

7 VICE CHAIR JOHN: Thank you, Mr. Chairman. I am also  
8 in support of the application and I agree with the comments of  
9 my fellow Board members so far. I think the screening condition  
10 removes any potential adverse impact on the public environment.  
11 And as Chairman Hood said, I also am a little baffled by the DDOT  
12 statement because I think the screening will take care of any  
13 potential adverse conditions. And this is a parking lot that  
14 exists now. And so the only change is that there's a building  
15 that's going to be behind it, which changes how it complies with  
16 the regulation. But the visual impact is the same as it would  
17 be without the building in the rear. So I think that the  
18 application meets the requirement and I'm satisfied with the  
19 screening proposal as described in the exhibit that that Board  
20 Member Blake cited, which was the -- I think the fourth slide  
21 that showed the degree and the screening in the presentation, so.

22 CHAIRPERSON HILL: He said, I think he said Exhibit 27,  
23 Slide 5.

24 VICE CHAIR JOHN: Yes.

25 CHAIRPERSON HILL: Okay.

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1 VICE CHAIR JOHN: Which the Applicant said would meet  
2 the regulatory requirement, which he thought was 42 inches high.  
3 So whatever that is, the Applicant will meet the requirement in  
4 the regulation for height.

5 CHAIRPERSON HILL: Okay. Great. And thank you. Thank  
6 you, everyone. Thank you, Vice Chair John. I'm going to go  
7 ahead and make a motion to approve Application No. 20809 as  
8 captioned read by the secretary, including a condition that the  
9 Applicant put screening of hedges that are similar to Exhibit 27,  
10 Slide 5, and that meet the zoning requirements, which we believe  
11 might be around 42 inches high, and asked for a second, Ms. John?

12 VICE CHAIR JOHN: Second.

13 CHAIRPERSON HILL: Motion is made and second.

14 Mr. Moy, if you'd take the roll call?

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

16 When I call your name, if you'll please respond to the  
17 motion made by Chairman Hill to approve the application for the  
18 relief requested, along with the condition, as the Chairman has  
19 described in his motion. Just now the motion to approve was  
20 second by Vice Chair.

21 Zoning Commissioner Chair Anthony Hood?

22 ZC CHAIRPERSON HOOD: Yes to the motion.

23 MR. MOY: Mr. Smith?

24 COMMISSIONER SMITH: Yes.

25 MR. MOY: Mr. Blake?

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1 COMMISSIONER BLAKE: Yes.

2 MR. MOY: Vice Chair John?

3 VICE CHAIR JOHN: Yes.

4 MR. MOY: Chairman Hill.

5 CHAIRPERSON HILL: Yes.

6 MR. MOY: Staff would record the vote as five to zero  
7 to zero. And this is on the motion made by Chairman Hill to  
8 approve the application, along with one condition as he cited in  
9 his motion regarding the screen hedges. The motion, let's see,  
10 was second by Vice Chair John, who is in support of the motion,  
11 as well as support to -- in favor of the motion by Zoning  
12 Commission Chair Anthony Hood, Mr. Smith, Mr. Blake, and of  
13 course, Vice Chair John and Chairman Hill. Motion carries, sir,  
14 on a vote of five to zero to zero.

15 CHAIRPERSON HILL: Okay. Great.

16 You guys want to try to do one more and then we'll take  
17 a break?

18 Okay. Mr. Moy, if you want to call our next one?

19 MR. MOY: Okay. What I'd like to do the next few  
20 seconds, Mr. Chairman, is to step back a few cases. And this  
21 would be back to Case No. 17702B of District Properties.com, LLC.  
22 As you'll recall, the Board made a decision that this application  
23 was not a modification of consequence, that it's now a  
24 modification of significance. The timeline I gave earlier, I'm  
25 a little bit short on my number of days to meet the public notice

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1 time requirements, so I'm off by about two weeks and a couple of  
2 days. So if I may, Mr. Chairman, I'd like to revise those  
3 timelines for the record. So the rescheduled hearing date should  
4 be March 22nd instead of March 1st, responses on March 15 instead  
5 of February 22nd. And the Applicant to make his submission by  
6 March 8th instead of February 15. So once again, the scheduled  
7 public hearing is March 22nd. Responses March 15th, Applicant's  
8 filing by March 8th. So there's no difficulty with that. That's  
9 how I would like to -- that's my suggested timeline and I'll  
10 submit an OZ memo into that case record, Mr. Chairman.

11 CHAIRPERSON HILL: Okay. Thank you.

12 MR. MOY: Sorry for my lack of skill in my math  
13 abilities.

14 CHAIRPERSON HILL: Yeah. I think your math abilities  
15 and skill are both very high -- I can't come up with a word.

16 All right. Mr. Moy, you want to call our next one?

17 You're on mute, Mr. Moy, I think.

18 MR. MOY: Okay. Here we go. Okay. So before the  
19 Board is Case Application No. 20811 of 2500 41st First Group,  
20 LLC. This is a self-certified application pursuant to Subtitle  
21 X, Section 901.24, for a special exception under subtotal U,  
22 Section 421. Property is located in the RA-1 zone at 2500 41st  
23 Street, N.W., Square 1708, Lot 6 and 809. And that's all I have  
24 for you for the moment, sir.

25 CHAIRPERSON HILL: Okay. Thank you. If the Applicant

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1 could hear me, if they could introduce themselves for the record  
2 please?

3 MR. WILLIAMS: Yes. Zachary Williams, I'm an attorney  
4 with Venable, representing the Applicant in this matter.

5 CHAIRPERSON HILL: Hi, Mr. Williams, welcome back.  
6 Let's see. Mr. Williams, I don't have anything -- no, let's see.  
7 I don't have anything specific. I guess if you want to go ahead  
8 and walk us through your application and why you believe your  
9 client is meeting the requirements for us to grant the relief  
10 requested. I'm going to put 15 minutes on the clock just so I  
11 know where we are. And then the one thing, I guess if you could  
12 speak to OP's concerns about the trash collection, my question,  
13 I guess, would be is how does it work now? And you can begin  
14 whenever you like.

15 MR. WILLIAMS: Yes. And one preliminary matter, we had  
16 filed a motion for some late filed plans that were submitted in  
17 response to some questions from OP, and I don't know if that's  
18 been acted on yet. I just want to make sure that that has  
19 resolved before we move forward.

20 CHAIRPERSON HILL: Okay. I don't know -- I don't have  
21 any issues with the late filings because I'd like to think the  
22 Board would like to see what it is that the Applicant has come  
23 up with with regard to response to the Office of Planning. So  
24 I'm going to let those into the record unless the Board has  
25 anything to say. And if so, please speak up now.

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1           Okay. If the staff could drop that into the record and  
2 let us know when it's there so that we can find it. And then,  
3 Mr. Williams, you can continue.

4           MR. WILLIAMS: Great. Thank you. If we could pull up  
5 the PowerPoint presentation please?

6           Thank you. As I mentioned, my name Zach Williams, I'm  
7 a land agent attorney with Venable representing the Applicant in  
8 this matter. Next slide please?

9           This project's located at 2500 41st Street, N.W. This  
10 is directly across 41st Street from the Stoddard Elementary  
11 School. And the top location actually pertains to this property  
12 as well as the little triangle that you can see just below it.  
13 Those two lots will be consolidated ultimately as part of this  
14 project. Next slide please?

15           This is a survey of the two lots that I mentioned.  
16 This is zoned to the RA-1 zone, and the consolidated lot area  
17 would be just under 6,000 square feet of land area. There's an  
18 existing two-story semi-detached apartment house currently on  
19 this lot that has five units. Next slide please?

20           Here's some photographs of the current conditions of  
21 the property. The photograph on the left is looking straight on  
22 the front of the property from 41st Street. The photograph on  
23 the right is looking at the property from just south of the  
24 property line. And you can see there the rear of the property.  
25 And you can also get a sense for the grade changes there that

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1 allow additional FAR units to be placed on this lot. Next slide  
2 please?

3 This is the proposed project proposed site plan and  
4 what will ultimately be built here is a rear addition and a  
5 renovation to the existing cellar to allow two additional units.  
6 So the total unit count would go from five to seven. Everything  
7 about this project is by right in the RA-1 zone. However, because  
8 we are adding units that it's requires special exception. There's  
9 no other area of relief that's needed or requested in this  
10 application. As you can see on the left here, that is a  
11 illustration elevation of the proposed addition. That'll be a  
12 new unit at the rear of the property, won't be visible from the  
13 street. And then on the right, it shows the existing footprint  
14 of the structure that will not be changing. And you can see  
15 where that addition would be located at the rear of the site  
16 there. Next slide please?

17 As I mentioned, the relief requested is for a special  
18 exception to add more additional units in the RA-1 zone. This  
19 would go from five to a seven-unit apartment house. All of the  
20 work is by right. Next slide?

21 Turning to the special exception standards applicable  
22 here, Subtitle U, Section 421.1 and the general special exception  
23 standard in Subtitle X, Section 901.2. The application must be  
24 in harmony. And the general purpose and intent of the zoning  
25 regulations here, as I mentioned, we're in the RA-1 zone, this

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1 is an apartment zone for low density -- moderate density  
2 development, I should say. All of the adjacent homes structured  
3 along 41st Street are apartment houses and/or condominiums. In  
4 fact, this apartment house would have some of the fewest units  
5 of some of the surrounding buildings. The -- and as I mentioned,  
6 the project meets all other requirements in the RA-1 one zone,  
7 so we believe it's in harmony and generally in harmony with the  
8 general purpose and requirements of the RA-1 zone. Next slide  
9 please?

10           The next standard for special exception is that it will  
11 not adversely affect neighboring properties. Generally, as the  
12 Board knows, we think about light, air, and privacy. It's  
13 important factors here. As I mentioned, the footprint of the  
14 main building will stay the same. It will not be changing.  
15 There'll be no additions, so no additional height that's built  
16 here. The only addition will be a small rear addition of just  
17 over 600 square feet that won't be visible from the road. And  
18 the adjacent properties here again are all apartment houses.  
19 This is a typical use, a typical structure in the vicinity. In  
20 fact, just a few months ago, the adjacent property, adjacent  
21 building just to the north was approved by the BZA for a special  
22 exception for nine units. So for additional units then we would  
23 be seeking here again in comparison we're only seeking in total  
24 of seven units on our lot. Next slide please?

25           We did go before ANC 3B, we received unanimous support

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1 for our application, the letter's in the record. We also had  
2 outreach with our neighbors and we received support as well from  
3 our immediate neighbors. OP did ask a question about trash and  
4 how the trash area would be accessed. It's going to be accessed  
5 the same way that it is today. The trash area is at the rear of  
6 the property and you have to go down a couple of stairs to get  
7 to the grade of the private alley behind the site. This will be  
8 handled by a third-party trash company just as it is today. That  
9 won't be changing and hopefully that addresses staff's comments.  
10 And with that, that concludes my presentation.

11 CHAIRPERSON HILL: All right. Ms. Mehlert, if you  
12 could just drop that slide deck. Thank you.

13 Okay. Does the Board have any questions of the  
14 Applicant.

15 Mr. Blake?

16 COMMISSIONER BLAKE: Yeah, quick question. You said  
17 it's a private alley. That alley is owned by who, is it this  
18 property, is it some other combination of the properties there,  
19 or is there an easement involved or something?

20 MR. WILLIAMS: I believe it's an easement back there,  
21 but we have the architect on as well, Ryan Petyak. Ryan, correct  
22 me if I'm wrong, but I believe that's an easement back there.

23 MR. PETYAK: Yes, I believe it's an easement. All the  
24 properties along that run of apartment buildings use that to  
25 collect trash. It's a dead-end alley.

1 CHAIRPERSON HILL: Okay. Anyone else?

2 Oh, sorry, Mr. Blake, is that good?

3 COMMISSIONER BLAKE: Essentially. Do we have -- is  
4 there -- who owns the alley though, whose property is it?

5 MR. PETYAK: It comes over our into our property, the  
6 portion of our alley that has access into the back there. It's  
7 not outside of our existing property line.

8 COMMISSIONER BLAKE: Okay. Okay. Thank you.

9 CHAIRPERSON HILL: Okay. Anyone else?

10 All right. I'm going to turn to the Office of Planning.

11 MR. JESICK: Thank you, Mr. Chairman, and members of  
12 the board. My name is Matt Jesick and I'm presenting OP's  
13 testimony in this case. I can mainly rest on the record. We  
14 appreciate the Applicant working with us on our one outstanding  
15 concern, which was the location of the trash bins. An earlier  
16 version of the plan showed the trash bins near front of the  
17 property. But trash is collected from the rear alley, so we  
18 prefer it if the design showed a trash enclosure at the rear.  
19 And the most recent plans, Exhibit 26, they do show the trash  
20 enclosure at the rear of the property. So we appreciate that  
21 change. And with that, the Office of Planning can recommend  
22 approval of the case. And I'd be happy to take any questions.  
23 Thank you.

24 CHAIRPERSON HILL: Thank you, Mr. Jesick.

25 Does the Board have any questions of the Office of

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1 Planning?

2 Does the Applicant have any questions of the Office of  
3 Planning?

4 MR. WILLIAMS: We do not.

5 CHAIRPERSON HILL: Ms. Mehlert, is there anyone here  
6 wishing to speak?

7 MS. MEHLERT: There's not.

8 CHAIRPERSON HILL: Okay. Does anyone have anything  
9 before I close the hearing?

10 Mr. Williams, any final words?

11 MR. WILLIAMS: No, thank you.

12 CHAIRPERSON HILL: Okay. All right. I'm going to go  
13 ahead and close the hearing on the record. Ms. Mehlert, if you  
14 can please excuse everyone. Thank you for your participation.

15 Okay. I didn't particularly have any issues with this.  
16 I thought that it was relatively straightforward in terms of them  
17 meeting the regulations. I think it's a -- you know, the  
18 envelope's not changing to the building. And the ANC also didn't  
19 have any issues with it concerning the project and the criteria  
20 for us to grant the relief requested. And so I'm going to be  
21 voting in favor of the application.

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

23 COMMISSIONER SMITH: I don't have anything to add. I  
24 agree with your -- I agree with your assessment of this case,  
25 and I would support the application.

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1 CHAIRPERSON HILL: Thank you.

2 Mr. Blake?

3 COMMISSIONER BLAKE: I agree with the analysis that you  
4 presented. I credit the Office of Plannint's analysis on the  
5 relevant criteria for the new residential development under U  
6 421, which concluded that the addition should have no to little  
7 impact on the light available and air available to neighboring  
8 properties, and that the privacy of nearby lots should not be  
9 compromised. The only question that arose was trash and it was  
10 resolved. I agree with your conclusion that the proposed addition  
11 will not affect neighboring properties, and I believe the  
12 proposed addition is in harmony with the zoning regulations and  
13 maps. I give great weight to the Office of Planning's  
14 recommendation and for approval. Note DDOT has no objection.  
15 And also give great weight to the report of ANC 3B which  
16 recommends approval and states no issues or concerns. I'll be  
17 voting in favor of the application.

18 CHAIRPERSON HILL: Thank you.

19 Chairman Hood?

20 ZC CHAIRPERSON HOOD: So far after the way you three  
21 have wrapped it up, I definitely have nothing to add.

22 CHAIRPERSON HILL: Thank you.

23 Vice Chair John?

24 VICE CHAIR JOHN: So I agree with everything that's  
25 been said so far. There's no change in the footprint, so there's

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1 no potential adverse impact on lighting, air, and privacy other  
2 than what's already there. And so I'm in support of the  
3 application. Oh, I should also add that there's no additional  
4 increase in density, so I'm in support of the application.

5 CHAIRPERSON HILL: Okay. Thank you. Thank you.

6 All right. I'll go ahead and make a motion to approve  
7 Application No. 20811 as captioned read by the secretary and ask  
8 for a second, Ms. John.

9 VICE CHAIR JOHN: Second.

10 CHAIRPERSON HILL: The motion is made and second. Mr.  
11 Moy, if you'd take a roll call please?

12 MR. MOY: Thank you, sir. When I call your name, if  
13 you'll please respond to the motion made by Chairman Hill to  
14 approve the application for the special exception relief  
15 requested. The motion to approve was second by Vice Chair John,  
16 who is also in support of the motion.

17 Zoning Commission Chair Anthony Hood?

18 ZC CHAIRPERSON HOOD: Yes.

19 MR. MOY: Mr. Smith?

20 COMMISSIONER SMITH: Yes.

21 MR. MOY: Mr. Blake?

22 COMMISSIONER BLAKE: Yes.

23 MR. MOY: Vice Chair John?

24 VICE CHAIR JOHN: Yes.

25 MR. MOY: Chairman Hill?

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1 CHAIRPERSON HILL: Yes.

2 MR. MOY: Staff would record the vote as five to zero  
3 to zero, and this is on the motion made by Chairman Hill to  
4 approve, the motion to approve was second by Vice Chair John in  
5 support as well as support to approve from Zoning Commission  
6 Chair Anthony Hood, Mr. Smith, Mr. Blake, and of course Vice  
7 Chair John, Chairman Hill. Motion carries, sir, on a vote of  
8 five to zero to zero.

9 CHAIRPERSON HILL: Okay great.

10 You guys want to take like just ten minutes and is that  
11 enough time?

12 And Chairman Hood, what that means is that we're going  
13 to try for ten minutes and if we end up squeaking into like 15,  
14 that's no penalty.

15 ZC CHAIRPERSON HOOD: I've been schooled on just come  
16 back in ten and just wait until they all come back.

17 CHAIRPERSON HILL: That's how it works, right?

18 ZC CHAIRPERSON HOOD: Commissioner May has schooled me,  
19 so. Okay.

20 CHAIRPERSON HILL: I don't even want to know  
21 Commissioner May's -- okay, thank you. See you in a little bit.

22 (Whereupon, there was a brief recess.)

23 CHAIRPERSON HILL: Okay, Mr. Moy, you can go ahead and  
24 call our next one if you like.

25 MR. MOY: All right. Thank you, sir.

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1           The board has returned to its public hearing session  
2 after a quick break. And the time is at or about 11:14 a.m. The  
3 next case before the Board is Application No. 20812 of Dilek  
4 Barlas. This is a self-certified application pursuant to  
5 Subtitle X, Section 901,2 for special exceptions under Subtitle  
6 F, Section 5201 from the court with requirements Subtitle F,  
7 Section 202.1, lot occupancy requirements Subtitle F, Section  
8 304.1, and the side yard requirements Subtitle F, Section 306.6.  
9 The property is located in the RA-2 zone at 3421 Wisconsin Avenue,  
10 N.W., Square 1914, Lot 44. And that's all I have for you, sir.  
11 I think you're on mute, sir.

12           CHAIRPERSON HILL: Thanks.

13           Ms. Wilson, if you could hear me, if you could introduce  
14 yourself for the record?.

15           MS. WILSON: Hi. Alex Wilson from Sullivan and Barros,  
16 I'm the land use counsel for the Applicant in this case.

17           CHAIRPERSON HILL: Okay. Ms. Wilson, I don't have a  
18 lot of particular questions for you on this one, unless my Board  
19 also does. I guess if you want to go ahead and just walk us  
20 through your client's application and why you believe they're  
21 meeting the criteria for us to grant the relief requested. I'm  
22 going to keep a 15-minute timer over here just so I know where  
23 we are, and you can begin whenever you like.

24           MS. WILSON: Great. Thank you so much.

25           Ms. Mehlert, could you please pull up the presentation?

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1 The case is relatively straightforward. Could you go to the next  
2 slide please? Thank you.

3 The property is located in the RA-2 zone and in the  
4 Cleveland Park Historic District, and the Applicant is proposing  
5 an addition to the existing building. The existing building  
6 currently has five units and no units are being added, just square  
7 footage. And the addition requires lot occupancy court and side  
8 yard special exception relief. In terms of agency approvals, the  
9 Office of Planning is recommending approval. DDOT has no  
10 objection. This has been approved by HPRB already and the ANC  
11 voted to support the project for both the HPRB portion and for  
12 the zoning portion. With that, I'll turn it over to John Edwards,  
13 the project architect, and then I'll briefly address the  
14 standards for approval.

15 MR. EDWARDS: Okay. If we could have the next slide?

16 CHAIRPERSON HILL: Mr. Edwards, if you could just  
17 introduce yourself for the record also please?

18 MR. EDWARDS: Yes. Yes, my name is John Edwards. I'm  
19 a partner with Bonster Haresign Architects, which is the  
20 architectural firm for the project.

21 CHAIRPERSON HILL: Thank you.

22 MR. EDWARDS: And this slide is just showing the  
23 building in the middle of the view with -- it is the end of a  
24 long line of like buildings. It is, as Ms. Wilson said, a five-  
25 unit building. The building immediately to the south, which is

1 to the right in this picture, is also used as an apartment house.  
2 If we have the next slide?

3 This is showing around the corner on Norton Place,  
4 again this is the end property of the block, and it has that  
5 property line of Norton Place that cuts back. So if we could  
6 have the next slide?

7 That will highlight the areas of relief that we were  
8 looking at. So this plan highlights the areas of special  
9 exception relief being sought, including the open court width  
10 which is highlighted to the south, the bottom of this plan, and  
11 the pinch points of the side yard where it hits the property line  
12 along Norton Place to the north. The dashed line that you see  
13 through the building indicates the extent of the current  
14 structure, with the addition shown extending north towards Norton  
15 Place and east towards the rear alley. And this brings the lot  
16 coverage out to 69 percent, which is about 213 square feet above  
17 the 60 percent matter of right lot occupancy. We would note,  
18 however, that our property extended considerably further east  
19 than the adjoining properties to the south along the same alley  
20 and the conform -- a conforming rear yard setback from the alley  
21 is being maintained. The addition faces into the rear yard  
22 parking pad, the property to our south. And as our property is  
23 to the north, it also does not create any significant shadow on  
24 the property to the south. The rear addition creates a small  
25 dogleg more to the south. And the next slide please?

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1           Shows that on the right-hand side you can see the  
2 proposed rear elevation and that dogleg court is on the left-  
3 hand side of that along the property line. So the dogleg court  
4 provides light nearer to the addition while not affecting the  
5 use, light, or air of the property to the south where it faces a  
6 paved rear yard parking pad and actually creates more light and  
7 air than if the addition was built to the property line. So next  
8 slide please?

9           Because the building massing, both existing and  
10 proposed, is perpendicular to Wisconsin Avenue, which is on the  
11 right-hand side of this perspective, and Norton Place cuts back  
12 at an acute angle, there is a nonconforming side yard facing  
13 Norton Place where the building massing successively steps back  
14 and the points of the building extend toward the existing  
15 retaining wall along the Norton Place property line as shown in  
16 that previous plan and in this perspective view from Norton Place.  
17 And next slide please?

18           Shows also the view from Norton Place from a little bit  
19 further down that shows those pinch points that jut out towards  
20 the existing retaining wall. We would note that this does not  
21 affect the use, light, or air any of the existing property as it  
22 faces the public open space of the Norton Place right of way.  
23 Next slide?

24           And this -- finally these views from Norton Place  
25 demonstrate that the rear of the property extends toward the rear

1 alley and faces open parking at the rear of the adjacent property  
2 to the south. This was also found by the Historic Preservation  
3 Review Board to be appropriate to the character and scale of the  
4 surrounding properties in the historic district. And as noted  
5 by the Cleveland Park Historical Society, who also reviewed this,  
6 it actually improves the view into the block by masking the rear  
7 parking pads that are currently visible from Norton Place, as  
8 shown in the photos on this slide. And with that, I will turn  
9 it back over to Ms. Wilson for a synopsis of the relief being  
10 sought and our meeting of the requirements for this special  
11 exception.

12 MS. WILSON: Great. Thank you so much.

13 If you could please go to the next slide.

14 In terms of the general special exception requirements,  
15 the project will be in harmony with the zoning maps and  
16 regulations and will not adversely affect the use of neighboring  
17 properties as the density is not increasing and the court and  
18 side yard are not required open spaces and the increase in lot  
19 occupancy is relatively minor. Next slide please?

20 With respect to the requirements of F 50 201, the  
21 additional 9 percent lot occupancy is beyond the matter of right,  
22 and it is relatively minor, and therefore the light and air  
23 available to the neighboring properties will not be unduly  
24 compromised, as Mr. Edwards explained in the previous slides.  
25 And then in terms of privacy, there are only four south facing

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1 windows and they face into the parking pad of the property to  
2 the south, not the building itself. And finally, in terms of  
3 character, the project has been approved by HPRB. That concludes  
4 our presentation and we're happy to answer any questions.

5 CHAIRPERSON HILL: Okay, Ms. Mehlert, if you could just  
6 drop the slide deck when you get a chance? Thank you.

7 All right. Does anyone have any questions for the  
8 Applicant? Ms. John?

9 VICE CHAIR JOHN: Yes.

10 So can you address character, scale, and pattern of the  
11 houses aside from what HPRB may or may not have said? I didn't  
12 see anything in the record from HPRB.

13 MR. EDWARDS: The building is one of a string of what  
14 were originally rowhouses, so porch front rowhouses that extend  
15 down Wisconsin Avenue. At one point, at some point in the past,  
16 a small addition was also put on this building on the end, which  
17 is existing and is being retained that extends towards Norton  
18 Place. But there are no other changes being anticipated for the  
19 building as it faces Wisconsin Avenue. We worked very hard with  
20 the Historic Preservation Office and with the Cleveland Park  
21 Historical Society to maintain the character in the front of this  
22 building so that the roofline is not being changed or altered,  
23 none of the front of the building is being altered. The existing  
24 mansard roofing that you see on the buildings throughout the  
25 block is being continued around the corner and is actually being

1 extended now out to the back of the building where it was not  
2 there before. So for all of those reasons, both the Cleveland  
3 Park Historical Society, the HPO, and ultimately the Historic  
4 Preservation Review Board found that it was in character to the  
5 other properties on the block and in character with the historic  
6 district that this sits in.

7 VICE CHAIR JOHN: Thank you.

8 CHAIRPERSON HILL: And who went to the ANC or how did  
9 the ANC go? I don't know, Ms. Wilson?

10 MR. EDWARDS: Well, this did go to the ANC twice, once  
11 for the Historic Preservation Review application, and then once  
12 again last month for the zoning relief. And Ms. Wilson, correct  
13 me if I'm wrong, I believe the ANC resolution is in the record.

14 MS. WILSON: It is in the record, yes.

15 CHAIRPERSON HILL: Okay, great, thank you.

16 All right. I'm going to turn to the Office of Planning.

17 MS. THOMAS: Good morning, Mr. Chair, members of the  
18 Board, Karen Thomas with the Office of Planning. And the Office  
19 of Planning is going to rest on the record in support of this  
20 application. We found it to be compatible with the character of  
21 the Cleveland Park Historic District, as stated in the HPO's  
22 report, and also that the addition is mostly focused to Norton  
23 Place and should not have an adverse impact on the abutting --  
24 the only abutting neighbor. And with that, I'll be happy to take  
25 any questions. Thank you.

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1 CHAIRPERSON HILL: Okay, Ms. Thomas, thank you.

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

4 Does the Applicant have any questions for the Office  
5 of Planning?

6 MS. WILSON: No, thank you.

7 MR. EDWARDS: No.

8 CHAIRPERSON HILL: So, Ms. Mehlert, is there anyone  
9 here wishing to speak?

10 MS. MEHLERT: We do not.

11 CHAIRPERSON HILL: Okay.

12 Does the Board have any final questions?

13 Ms. Wilson, do you have anything on the end?

14 MS. WILSON: No, thank you.

15 CHAIRPERSON HILL: Okay. All right. I'm going to go  
16 ahead and close the hearing on the record. Thank you all very  
17 much.

18 MR. EDWARDS: Thank you.

19 CHAIRPERSON HILL: I thought in this particular case  
20 he was relatively straightforward. I didn't really have any  
21 issues with it. In fact, I thought it was interesting that as  
22 they were going through the criteria as well as their presentation  
23 it seemed like the masking of the parking pad might actually be  
24 better off or better in terms of like the views that some of the  
25 even the community I guess had spoke about. So with that being



1 the Office of Planning's report, as I look at it, I would agree  
2 with that as well as the comments from the ANC and they're voting  
3 in favor of the application, and also then the Applicant itself,  
4 their presentation, I would agree with what they have put forward  
5 in terms of meeting the criteria, and I will be voting in favor  
6 of this application.

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

8 COMMISSIONER SMITH: I don't have anything to add  
9 (indiscernible) the Office of Planning and the Applicant in their  
10 report and testimony, I do believe that the Applicant's met the  
11 burden of proof based on what was in the record and what was  
12 presented (indiscernible) special exceptions and I will support  
13 the application.

14 CHAIRPERSON HILL: Thank you.

15 Mr. Blake?

16 COMMISSIONER BLAKE: I have nothing to add. I'm in  
17 support of the application.

18 CHAIRPERSON HILL: Thank you.

19 Chairman Hood?

20 ZC CHAIRPERSON HOOD: I have nothing to add. And I  
21 think the merits in this record, I will be supporting the  
22 application as well.

23 CHAIRPERSON HILL: Thank you.

24 Vice Chair John?

25 VICE CHAIR JOHN: Thank you, Mr. Chairman. I support

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1 the application. I'm also going to give great weight to the  
2 Office of Planning's report and note that it's -- this is a fairly  
3 straightforward application, and I appreciate all of the effort  
4 that's gone into explaining how the massing is chiefly shifted  
5 towards the Norton Place side of the building. So I thought that  
6 it meets the application -- the criteria for relief.

7 CHAIRPERSON HILL: Okay. Great. Thank you, Vice Chair  
8 John.

9 All right. I'm going to go ahead and make a motion to  
10 approve Application No. 20812 as captioned read by the secretary  
11 and ask for a second, Ms. John?

12 VICE CHAIR JOHN: Second.

13 CHAIRPERSON HILL: The motion made and second, Mr. Moy,  
14 if you'd take a roll call?

15 MR. MOY: Thank you, Mr. Chairman. When I call your  
16 name, if you'll please respond to the motion made by Chairman  
17 Hill to approve the application for the relief requested. The  
18 motion to approve was second by Vice Chair John, who is also in  
19 support of the motion as well as support from Zoning Commission  
20 Chair Anthony Hood, Mr. Smith, Mr. Blake.

21 ZC CHAIRPERSON HOOD: I'll just say yes I approve the  
22 motion.

23 MR. MOY: I'm sorry about that. You know, it just  
24 occurred to me I skipped a step, Mr. Chairman.

25 CHAIRPERSON HILL: I love it, Mr. Moy, we've been doing

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1 this for a long time now. That's the first time you've done  
2 that. I was confused. Mr. Moy, you might want to take vote.

3 MR. MOY: Oh, so sorry. Oh, my goodness. Okay. So  
4 when I call your name, if you'll please respond.

5 Zoning Commission Chair Anthony Hood?

6 ZC CHAIRPERSON HOOD: Yes.

7 MR. MOY: Mr. Smith?

8 COMMISSIONER SMITH: Yes.

9 MR. MOY: Mr. Blake?

10 COMMISSIONER BLAKE: Yes.

11 MR. MOY: Vice Chair John?

12 VICE CHAIR JOHN: Yes.

13 MR. MOY: Chairman Hill?

14 CHAIRPERSON HILL: Yes.

15 MR. MOY: Staff will record the vote as five to zero  
16 to zero. Those voting to approve the application is Chairman  
17 Hill, Vice Chair John, Zoning Commission Chair Anthony Hood, Mr.  
18 Smith, Mr. Blake, and of course, again -- once again Vice Chair  
19 John, Chairman Hill. I guess I enjoyed the party too much last  
20 night, sir. Motion carries on a vote of five to zero to zero.  
21 But I want to thank everyone here for assisting the Board have a  
22 good time yesterday.

23 CHAIRPERSON HILL: Thank you. Okay. The Office of  
24 Zoning's holiday party was last night. So Mr. Moy's making a  
25 joke.

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1 All right. Mr. Moy, you can call the next case.

2 MR. MOY: We have parties to the table to Application  
3 No. 20814 of Tillman Development Company, LLC. This is a self-  
4 certified application for special exceptions pursuant to Subtitle  
5 X, Section 901.2 from under Subtitle E, Section 205.5 to allow a  
6 rear addition extending more than ten feet beyond the farthest  
7 rear wall and under Subtitle E, Section 206.4 from the rooftop  
8 or upper floor architectural element requirements of Subtitle E,  
9 Section 206.1. Property is located in the RF-1 zone at 726 11th  
10 Street, N.E., Square 959, Lot 23. The preliminary matter here,  
11 Mr. Chairman, there's a request to waive the 21-day filing  
12 deadline to allow exhibit -- well, that's -- to enter Exhibits  
13 24 through 24D.

14 CHAIRPERSON HILL: Okay. Thanks.

15 Mr. Sullivan, if you could hear me, could you introduce  
16 yourself for the record please?

17 MR. SULLIVAN: Thank you, Mr. Chair. Marty Sullivan,  
18 zoning counsel for the Applicant.

19 CHAIRPERSON HILL: Mr. Sullivan, I'm working on limited  
20 screens today. Can you tell me what it is you're trying to get  
21 it into the record and why it's late?

22 MR. SULLIVAN: Yes. We had to make an amendment to the  
23 application to ask for relief for a change in the porch roof.  
24 Thank you to the Office of Planning for catching that. And that  
25 was my mistake not catching it. And but then we also made

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1 revisions to that change in the porch roof to respond to comments  
2 from the Office of Planning. And so those were filed late. And  
3 then I also -- in our case directly I can explain the ANC's  
4 position on that change as well because I'm sure the Board's  
5 interested in that.

6 COMMISSIONER SMITH: Okay. All right. I'd rather have  
7 a complete record and I think those things will help the Board.  
8 I would like to go ahead and include those into the record, unless  
9 the Board has an issue with it. If so, please speak up.

10 Hearing none, Mr. Moy, if you could please add those  
11 to the record?

12 Mr. Sullivan, if you could please walk us through your  
13 client's application and why you believe they're meeting the  
14 criteria for us to grant the relief requested? I'm going to put  
15 15 minutes on the clock just so I know where we are, and you can  
16 begin whenever you like.

17 MR. SULLIVAN: Thank you, Mr. Chair. If we could have  
18 the PowerPoint loaded please? This is 726 11th Street, N.E. If  
19 you could go to the second slide please?

20 The property's located in the RF-1 zone district.  
21 Applicant's proposing to construct a rear addition and a third  
22 story addition on that rear addition and -- or for the entire  
23 building, and our alteration of the porch roof. The intended use  
24 will be a flat and a two-unit building. So we require relief  
25 from the ten-foot rule and from architectural elements relief.

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1 And we have the support of the Office of Planning. We have the  
2 support of the ANC for the ten-foot rule relief regarding the  
3 architectural elements relief. The ANC, we sent the revised  
4 application to the ANC and the zoning committee chair, Brad  
5 Greenfield, sent me a letter saying I think -- or he sent a letter  
6 to his SMB which said I think this is a pretty small change and  
7 would be extremely unlikely to change our recommendation on the  
8 project. I would recommend that we give Marty the informal okay  
9 to move forward with their case and just ask them to keep the  
10 record open. And then he responded to me saying we're fine with  
11 you moving forward, just have them leave the case open so we can  
12 submit our report later. We will consider the case at our  
13 December EDZ and January ANC meetings. So the ANC intends to  
14 submit a report. And they've communicated to me that they would  
15 like the case to move forward and would like to leave the record  
16 open for their submission on the amended part of the application  
17 regarding the porch roof.

18 CHAIRPERSON HILL: Okay. Mr. Sullivan, I appreciate  
19 your testimony for the ANC and the Board will take it under  
20 consideration and see what happens next. Please continue.

21 MR. SULLIVAN: Thank you. Next slide please? So here's  
22 a photo on the on the top left is the subject property. This is  
23 from the rear of the property. There's a side facing alley.  
24 It's important to note that to the left is the north. So the  
25 property -- and I'll show that -- that'll be better shown on

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1 another drawing. And on the right side you see the front of the  
2 property and the alley and the large apartment building to the  
3 right of the building across the alley. Next slide please?

4 And I also should note the architect, Justin Graham,  
5 should be with us today. I'll go through the plans quickly. And  
6 he's available to answer questions. And the property owner, Mr.  
7 Tillman, may also be on as well. So here is a section showing  
8 the building. You can get a sense on the top there from the site  
9 plan. So there's a first-story addition on the property to the  
10 south of this, the only adjacent building or the only adjoining  
11 building, and that first story addition extends out. So we're  
12 only extending two feet past that rear wall. But because the  
13 relief is now required on a story-by-story basis, we need relief  
14 for story number two for exceeding the ten-foot rule. Next slide  
15 please?

16 And here you can see that a little better on the floor  
17 plans. To the left is the building, the adjacent building. And  
18 you see how the extension on the second from the left drawing  
19 shows their first floor addition extending out and we're two feet  
20 past that, but on the second floor it's 20, a little over 20 feet  
21 past that. Next slide please?

22 And again, that building, that adjacent building, is  
23 to the south, so there's actually no direct impact on the sunlight  
24 to that building. The Office of Planning asked that we make  
25 changes to the coloring of the materials on the wall that faces

1 that south property, and we've agreed to make those changes.  
2 There you see a side elevation and front -- the rear elevation.  
3 Next slide please?

4 And there's a front rendering and then showing the  
5 porch. Regarding the porch roof, the original proposed porch  
6 roof was changed following discussion with the Office of  
7 Planning. As they noted in their report, they asked that this  
8 porch roof more closely resemble the porch roof to the -- on the  
9 adjacent building. Around the block generally there are not  
10 similar porch roofs to this, and mostly no porch roofs on the  
11 rest of the block.

12 CHAIRPERSON HILL: So what does the porch roof look  
13 like now?

14 MR. SULLIVAN: So this is a rendering of it. It's  
15 being --

16 CHAIRPERSON HILL: You mean a rendering of it?

17 MR. SULLIVAN: Yes. And it's on the front elevation  
18 as well.

19 CHAIRPERSON HILL: I mean, is this the --

20 MR. SULLIVAN: Oh, you mean what it looks like now?  
21 Yeah, we can go back to the photos on page three. And the photo  
22 on the right shows what it looks like. It doesn't match the  
23 porch roof to the left exactly, but it's similar in character.

24 CHAIRPERSON HILL: Okay. Okay. Thank you, Mr.  
25 Sullivan.



1 MR. SULLIVAN: So if we could go back down a few slides  
2 to the next slide please? We did a shadow study and of course  
3 there's no shadow coming to the adjacent property to the south.  
4 There is some additional shadow on the apartment building across  
5 the alley. And as OP noted in their report, it's not undue, not  
6 an undue amount of shadow. Next slide please?

7 Is showing times on the shadow study. And again, north  
8 is to the right, important to note, on this shadow study. Next  
9 slide please? And next slide please?

10 The property's in harmony with the purpose and intent  
11 of zoning regulations. It's a two-unit dwelling within lot  
12 occupancy. Next slide please?

13 Specific requirements of E 5201 which apply to both  
14 areas of relief, the light and air available to neighboring  
15 properties should not be unduly affected, as noted. There's no  
16 impact on light and air to the south from the sunlight. Office  
17 of Planning mentioned some impact on ambient light and proposed  
18 a change in the materials, which we agreed to. And regarding  
19 across the street on -- it's a large apartment building taller  
20 than this building with a large amount of lot occupancy and  
21 there's a small impact, but it's not undue. For the same reason,  
22 no impact on privacy of use and enjoyment of neighboring  
23 properties. And the proposed addition accessory structure as  
24 viewed from the street alley on the public way shall not  
25 substantially visually intrude upon the character, scale, and

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1 pattern of houses along the street or alley frontage. I'll note  
2 the ANC's support for the building design as part of their review  
3 and approval of the ten-foot rule relief and ANC 6A is very much  
4 in tune with the design and concerned about the design of projects  
5 in their neighborhood that are in the historic district. And as  
6 OP noted too, there's some -- it fits in a little better because  
7 of the of the larger apartment buildings, there's a four-story  
8 apartment building across the alley as well. And the Office of  
9 Planning also asked for some changes in materials on the third  
10 floor addition, which the Applicant agreed to as well, to help  
11 it better or less visually intrude upon character, scale, and  
12 pattern.

13 CHAIRPERSON HILL: Can you just tell us what this light  
14 colored material is that you're speaking of, Mr. Sullivan?

15 MR. SULLIVAN: Maybe I can have Mr. Graham talk about  
16 that.

17 CHAIRPERSON HILL: Will you need to do that after you're  
18 done with your slide deck?

19 MR. SULLIVAN: Yeah, that would probably be.

20 CHAIRPERSON HILL: Okay. Go ahead, Mr. Sullivan, and  
21 finish your slide deck first please.

22 MR. SULLIVAN: Next slide please? Oh, and that's it.

23 So Mr. Graham, if you could talk about the change in  
24 the materials and the change in the color --

25 CHAIRPERSON HILL: And Ms. Mehlert, before you pull

1 that -- if you want to go just up to the slide that has kind of  
2 the rendering of the building? I mean, I just generally kind of  
3 want to know what the Office of Planning is kind of talking about  
4 and then what you all had proposed. And I guess Mr. Sullivan,  
5 your architect, can speak to that.

6 MR. GRAHAM: Yes, I can. I'm Justin Graham, I'm the  
7 project architect for the project.

8 CHAIRPERSON HILL: Okay, Mr. Graham.

9 MR. GRAHAM: Originally, we had proposed a wood look,  
10 sort of fiber cement panel where you see the white third floor  
11 addition. And we changed that to not be as contrasting and  
12 intrusive to the color palette on the street. So we changed it  
13 to be a sort of large panel, fiber cement panel. So before, it  
14 was like a tan wood look, very contrasting color to the blue and  
15 the surrounding neighbors. And we changed that to be a lighter  
16 color, sort of a off --

17 CHAIRPERSON HILL: Which is what we're looking at or  
18 it's different now?

19 MR. GRAHAM: Yes, this is what we're looking at now.

20 CHAIRPERSON HILL: Okay. But with a different roof?

21 MR. GRAHAM: Different porch.

22 CHAIRPERSON HILL: Porch, I'm sorry. The rendering,  
23 this rendering does not have the porch that you are going to  
24 eventually land on, correct?

25 MR. GRAHAM: No, it does.

1 MR. SULLIVAN: It does.

2 MR. GRAHAM: This does.

3 CHAIRPERSON HILL: Oh, okay.

4 MR. GRAHAM: This is what we changed the porch to. The  
5 porch before was a much more modern version that didn't have the  
6 posts. It was a little thinner, and it hung with cables from  
7 the brick wall. So it was supported back by the -- so it was a  
8 different design.

9 CHAIRPERSON HILL: Before I get off this photo, before  
10 I get off this photo and the slide deck, does the Board have any  
11 questions of this photo or the slide deck? And speak up because  
12 I can't see everybody.

13 ZC CHAIRPERSON HOOD: Mr. Chairman?

14 CHAIRPERSON HILL: Sure. Go ahead, Chairman Hood.

15 ZC CHAIRPERSON HOOD: I do have a question of Mr.  
16 Graham. I'm trying to follow the color scheme. I'm concerned  
17 about the -- and I know the BZA might not get into colors, but  
18 Zoning Commission, we do. I'm concerned about the white, is that  
19 white? I'm, you know, I'm getting older, so I may be a little  
20 colorblind. At the top is that white or is that light, is that  
21 a tan?

22 MR. GRAHAM: I had made -- I made it an off white, so  
23 it's sort of a light gray, very, very light gray, something that  
24 would -- I was hoping would start to just kind of get lost in  
25 the background.

1           ZC CHAIRPERSON HOOD: So that's -- it's more of a --  
2 so again, Mr. Sullivan probably knows where I'm going, the concern  
3 has always been when we start using materials like that that it  
4 gets dirty. And I'm sure that the homeowner would be very  
5 concerned. I don't know if there's a way to make sure it's  
6 cleanable, but over the years the Commission, we have voted on  
7 stuff and we've seen it, been around long enough we've seen it,  
8 it starts off looking nice and white and pretty, and after about  
9 five years it starts looking very dirty like. So you know, just  
10 a suggestions. I don't think the Board gets into material, but  
11 just a suggestion you might want to relook at that unless you've  
12 already got a number of other approvals from somewhere else. So  
13 let me just hear your thoughts on that.

14           MR. GRAHAM: Well, I made it this color so it wouldn't  
15 be intrusive. And we were still waiting for the owner to  
16 ultimately approve the color. I will say it doesn't have to be  
17 this white color. I was trying to make it something that was  
18 lighter and more -- and appealing more than the wood look plank  
19 that I had shown before. So we can take your suggestion --

20           ZC CHAIRPERSON HOOD: Yeah, just a suggestion. And  
21 whatever material you use, I know you had said fiber cement or  
22 whatever, but whatever you use make sure that it's cleanable. So  
23 that's kind of where I am. So thank you.

24           Thank you, Mr. Chairman.

25           MR. GRAHAM: Thank you.

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1 CHAIRPERSON HILL: Sure, Chairman Hood.

2 Anyone else while the slide deck is up?

3 All right, Ms. Mehlert, you can pull the slide deck  
4 then.

5 Does anyone have any questions?

6 All right. I'm going to turn it -- oop, go ahead, Ms.  
7 John?

8 VICE CHAIR JOHN: Yes, this is for the architect. Was  
9 there any consideration to just making the entire building a  
10 light color? You know, I am -- I don't get into color at all  
11 because I think homeowners repaint their homes as they see fit.  
12 So I don't understand the rationale for the color requirement.  
13 So that's my question, was there a consideration to making the  
14 entire building a lighter color?

15 MR. GRAHAM: I'll say no, there wasn't a consideration  
16 for it. We -- I sort of made this design attempt with a more a  
17 dark, more modern color that we use typically in in design, and  
18 we use a lot in my practice. So I was using something, a color  
19 that I'm familiar with and sort of grabs a little bit of attention  
20 and is more of an aesthetic function rather than, you know,  
21 creating a lighter tone that might fit in with the house right  
22 next door. It was more of an aesthetic option. But if that's  
23 something that you all suggest we look at, then that's absolutely  
24 fine. Nothing has been purchased or anything like that. So we  
25 can always look at a lighter color, a different version of this.

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1 VICE CHAIR JOHN: No, I'm not suggesting anything. I  
2 mean, I'm just noting that homeowners repaint their houses, you  
3 know --

4 MR. GRAHAM: Yes.

5 VICE CHAIR JOHN: -- all the time, soon after it's  
6 purchased sometimes. So I'm not sure what the color requirement  
7 does. That's just an observation.

8 MR. GRAHAM: Okay.

9 VICE CHAIR JOHN: Thank you.

10 CHAIRPERSON HILL: Okay. Thank you.

11 Anyone else?

12 All right. Now turn to the Office of Planning.

13 MR. COCHRAN: Thanks, Mr. Chair. I'm Steve Cochran.  
14 I'm representing OP on Case 20814. OP's recommending the approval  
15 of both of the special exceptions. The first one is from E 205.4  
16 is limitation on the length into a rear yard that an addition  
17 may extend past an adjoining building. Our recommendation, as  
18 Mr. Sullivan noted, is subject to the condition in our report  
19 that we would require that the south wall of the addition be of  
20 a light color or painted a light color for the length of the  
21 project. And the Applicant has agreed to this.

22 Then the second special exception is from E 206.1's  
23 restrictions on the modification of original rooftop  
24 architectural elements, in this case, that would be the front  
25 porch roof. Both of these special exception requests meet the

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1 requirements of Subtitle E, Section 5201 and of Subtitle X Chapter  
2 9. That is our report. For the rest, we'd stand on the record.  
3 But of course, I'm happy to answer any questions.

4 CHAIRPERSON HILL: Thank you. Does anyone have any  
5 questions for the Office of Planning? Sure, Mr. Blake?

6 COMMISSIONER BLAKE: Yeah, I'm sorry. Could you  
7 explain exactly the -- and I think I may have missed this, the  
8 adverse impact that's being mitigated by the light color again?  
9 I want to make sure I understand that.

10 MR. COCHRAN: Sure. There's no significant impact on  
11 the direct light that would be available to the house that's to  
12 the south, but we just had to acknowledge that there might be an  
13 impact on ambient light. So simply painting the addition a  
14 lighter color would reflect more ambient light into the house.  
15 There are very few windows that are north facing on the house to  
16 the south. I know this from personal experience when we had a  
17 group house we rented back in the '70s, we asked the applicant  
18 to please paint the light well a light color, and it changed  
19 things significantly.

20 COMMISSIONER BLAKE: Is there anything in the record  
21 that gives us a sense of what you're describing to me?

22 MR. COCHRAN: Well, I --

23 COMMISSIONER BLAKE: The views and all that where I can  
24 see where that heavy light (indiscernible)?

25 MR. COCHRAN: You mean, the light color? There's



1 nothing that specifies what light -- what the word light as  
2 applied to color means. No, nothing beyond that. It did -- by  
3 the way it didn't apply to the rest of the edition. It was only  
4 to the portion of the addition that is the south facing wall that  
5 faces the building to the south.

6 COMMISSIONER BLAKE: Okay. Is there -- can you show  
7 me -- and I apologize, if you can pull up the slide that just  
8 shows me that south side, I just want to make sure I can see it  
9 and understand that. I just -- for some reason I can't seem to  
10 grasp it, I apologize. Mr. Graham, maybe you can you can help  
11 me with that.

12 MR. GRAHAM: Yes, I can just -- I can kind of speak  
13 from this image here actually. The facade to the south is left  
14 in this image, is to the left. So it's essentially the party  
15 wall on the side of the property. They want to ensure that we  
16 paint that entire side of the building, even the addition, sort  
17 of at the rear, a light color so that the sun will be coming from  
18 the south essentially, that the ambient light can reflect off of  
19 our property and make sure that the other house has proper light  
20 -- indirect light. So if we paint it a dark color, it'll absorb  
21 all that light and it'll create sort of a slightly dark space  
22 for that neighboring property.

23 COMMISSIONER BLAKE: Did you have some discussion with  
24 the neighboring property about this issue, this matter, is that  
25 something they asked you to do or?

1 MR. GRAHAM: I --

2 MR. SULLIVAN: I can talk on that unless Mr. Tillman  
3 had made it on. He's had discussions with the neighbor and she's  
4 in favor of the project. He just never did get a letter of  
5 support from her. And but I don't think there was any discussion  
6 specifically. I think the issue was just raised by the Office  
7 of Planning.

8 MR. TILLMAN: I am on the call, Martin, I can confirm  
9 that.

10 MR. SULLIVAN: Thank you. Mr. Tillman, if you could  
11 introduce yourself please?

12 MR. TILLMAN: Hi, everybody. I'm Luke Tillman, and I'm  
13 the owner of the property. And as Martin mentioned, I have spoken  
14 with the neighbor on several occasions. I'd gave her -- you  
15 know, she has the full plans that we prepared. Her and I talked  
16 about the addition sort of while she was moving to the house  
17 right when we were getting the project so it was a great time  
18 just to kind of explain to her what was going on. And other than  
19 she did not submit a letter of support, she -- I mean, throughout  
20 explained that she was fine with what was happening. So on that  
21 point, I can confirm that she does know that the house -- the  
22 addition is going to be a level higher than hers, but we didn't  
23 really sort of discuss the color of that addition.

24 COMMISSIONER BLAKE: Okay. Thank you.

25 CHAIRPERSON HILL: Okay. Mr. Tillman, maybe you want

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1 to put yourself on mute, somebody has got some static going on.  
2 I don't know who it is.

3 Okay. Does anybody have any questions while the slide  
4 deck is up again?

5 Okay. Ms. Mehlerts, can you drop the slide deck please?

6 Okay. Anyone else have questions?

7 Okay. Mr. Cochran, I have kind of a question I'm trying  
8 to figure this out. Like, I'll be honest, I don't know, I mean,  
9 I like the whole concept of the lighter color for that  
10 (indiscernible). I don't know what (indiscernible) is necessary  
11 sometimes in the Board's purview when it comes to that kind of  
12 thing, so I'm not -- I feel about it overall, but the question  
13 that I would have for the Office of Planning was like how -- it  
14 says in perpetuity for -- whatever -- project. That would be  
15 something that then if somebody came and painted, A, how would  
16 they know about the paint color thing? Like it would be -- like  
17 if they painted it a different color then after the fact, it  
18 would be somebody -- like you don't go through zoning to paint  
19 something.

20 MR. COCHRAN: That's usually correct.

21 CHAIRPERSON HILL: I'm not trying to be -- you know  
22 what I'm saying, right, if somebody goes and, you know, 20 years  
23 from now and paints it black, and then somebody has to come back  
24 and say hey, you messed up the condition, then it's back here  
25 again because it was painted black, is that kind of how that

1 would end up ?

2 MR. COCHRAN: Well, usually it would be something that  
3 the owner of the adjacent building would question. If they want  
4 to go back into the record, they'd have some support for their  
5 concern about the change in color.

6 CHAIRPERSON HILL: Okay. Okay. All right. Okay.  
7 Great. Thank you. Mr. Cochran.

8 Ms. Mehlert, do you have anything -- oh, I'm sorry,  
9 does anybody here wish to speak?

10 MS. MEHLERT: No, we don't.

11 CHAIRPERSON HILL: Okay. Thanks.

12 All right. Does anybody have any questions for  
13 anybody?

14 Mr. Sullivan, you have anything at the end?

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

16 CHAIRPERSON HILL: Okay. Thank you.

17 I'm going to go ahead and close the hearing on the  
18 record. Thank you all very much for your participation.

19 Okay. All right. I've been talking a lot. Does  
20 anybody want to start?

21 VICE CHAIR JOHN: Okay. I'll start. So in terms of  
22 the addition, I thought that based on the shadow studies, there  
23 should not be an adverse impact from the addition. The Applicant  
24 really is asking for relief of 12 feet, 8 inches in length beyond  
25 what's allowed by right. And so in this case, I agree with the

1 Office of Planning's recommendation as to how the application  
2 meets the requirement for relief. I don't believe that the Board  
3 should include a condition relating to the paint color. In my  
4 view, there's a sort of subjectivity to that criteria. And I  
5 think it's something beyond the Board's jurisdiction, you know,  
6 and it's really too limiting on a homeowner, as the Chairman  
7 indicated. So I generally steer clear of those kinds of  
8 requirements because I have seen homes change color like every  
9 other week. As new owner moves in and it's like a kaleidoscope  
10 of color that shows up, you know, on the block. So anyway, I  
11 would think that the application otherwise is fairly  
12 straightforward and I appreciate the changes to the rooftop,  
13 upper -- to the porch roof to bring it into a more consistent  
14 pattern with the neighboring porch. So I'm in support of the  
15 application, but not the condition with respect to the paint.

16 CHAIRPERSON HILL: Okay. Thank you, Vice Chair John.  
17 Mr. Smith?

18 COMMISSIONER SMITH: I do agree with the assessment of  
19 Ms. John on the metrics of the special exception. I do believe  
20 that they met the burden of proof for us to grant special  
21 attention. And looking at the shadow studies, I do not believe  
22 that there will be any impacts to -- even though this building  
23 will be taller than the other rowhomes that are to the south,  
24 me, I do believe that based on sun studies, shadow studies, that  
25 there wouldn't be a major impact on the light and air to the

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1 adjacent properties with the rear addition and also that  
2 additional plain above the existing roofline (indiscernible) of  
3 the building. So I do believe it meets all the criteria of E  
4 201.4 and the general space exception criteria. In regards to  
5 this condition about painting, while I do think in certain  
6 circumstances, limited circumstances, the Board can require  
7 special treatments regarding design and building materials, I  
8 mean, that's spelled out in 5207(a)(3)(c) that we can do those  
9 types of circumstance. But I do not in this particular situation  
10 believe it's warranted for the exact same reasons that were stated  
11 by Ms. John. I do believe that this will be a major hindrance  
12 for the homeowner and just as Chairman Hood stated that, you  
13 know, the color could fade and a property owner could be, you  
14 know, on the hook to paint it back or to clean it regularly via  
15 this particular special exception condition on a single family  
16 homeowner in this particular situation. So I think it would be  
17 overly burdensome for the scale of the project that we're  
18 deliberating right now today with this application. So I'm not  
19 inclined to support the condition as recommended by the Office  
20 of Planning, but I will support the special exceptions for this  
21 application.

22 CHAIRPERSON HILL: Okay.

23 Oh, sorry, Ms. John?

24 VICE CHAIR JOHN: Mr. Chairman, it just occurred to me  
25 that we're also being asked to leave the record open for the

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1 ANC's report. And if I recall, we had taken the new position  
2 that we would not leave the record open anymore, and we would  
3 make the decision based on what's in the record. And so I am  
4 assuming that this that's what we're doing now if we're  
5 deliberating, we're deliberating on what's in the record and not  
6 waiting for something else to come in to make a decision, in  
7 which case we would -- we should address the ANC report, which I  
8 did not address. And so because there is nothing in the record,  
9 I would say there's nothing to give great weight to for the ANC.

10 CHAIRPERSON HILL: Okay. We're going to talk about a  
11 bunch of stuff here now too because I don't --

12 VICE CHAIR JOHN: Okay. I just wanted to add that lest  
13 we forget. Thank you.

14 CHAIRPERSON HILL: Yeah, no, no, I appreciate it. I  
15 mean, the reason why I -- what I meant to say is that I saw Mr.  
16 Blake's hand up and I know Chairman Hood's thoughts on some of  
17 this stuff, or at least usually, and what I am now just saying,  
18 Ms. John, also is like I don't remember exa- -- like what I recall  
19 from the past in terms of some of the things that we did, and I  
20 appreciate you bringing this up and I'm completely happy to --  
21 or I shouldn't say happy, I'm completely open to talking about  
22 however which way it goes, right. The ANC report, what I thought  
23 we had done before, and maybe I don't remember, was that like we  
24 had left the record open for the ANC report and then maybe this  
25 is where there was a problem, if once the report came in, there

1 was something in the report that the Board thought was  
2 problematic, we reopened the record and discussed it and talked  
3 about it, therefore not having to hold up this process if we were  
4 comfortable and also allowing the ANC to put something into the  
5 record. That's what I kind of remember. But I'm also maybe  
6 misremembering, which is complete- -- and actually to be quite  
7 honest, I don't even know if I'm remembering correctly or that's  
8 just the way I wish we remembered it. How's that? Okay. So  
9 I'm going to go back around and everything. But now that I am  
10 talking, I am comfortable with the argument that the Applicant  
11 has made concerning the regulations that we need to look at for  
12 the relief being requested concerning again, the ten foot beyond  
13 the farthest wall and the rooftop upper floor architectural  
14 element requirements. I thought that the front porch, although  
15 again I thought the front porch was fine and I thought that the  
16 -- meaning it meets the regulations, and I think -- for us to  
17 grant the relief -- and that I think the ten feet, I was not  
18 concerned about the additional shadowing. Concerning the paint,  
19 I really just don't think that -- it's kind of a weird condition  
20 for us because we're not the Zoning Commission, right? Like we  
21 don't get a chance to really talk about, as I've said many time  
22 when Chairman Hood's in here, about paint color and design  
23 elements, unless they do fall within our purview, I don't  
24 necessarily think the paint does. I mean, it's funny, like I'd  
25 be happy to put a condition in there that they'll paint it. But

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1 I don't I don't feel comfortable about the part that it's for  
2 the life of the project. I mean, I just don't know how, you know  
3 -- and we can again keep talking about this. I got one no on  
4 the condition completely, and that -- and I don't want to get  
5 too hung up on all of this, although my concern again is that we  
6 put somebody in a weird spot if ten years from now they paint it  
7 and they didn't know that they're not painting the color that we  
8 thought maybe was correct, and so -- anyway. So I guess there's  
9 a couple of things on the table. I'm comfortable with the  
10 application and discussing how we handle the ANC letter. And  
11 then I think I saw -- so Mr. -- well, first, let me go back around  
12 with just where we were.

13 Mr. Blake, I saw your hand up. You're ready to discuss  
14 the case and all the things mentioned?

15 COMMISSIONER BLAKE: Sure, I would love to. First of  
16 all, I have to agree with you that the conditions for the approval  
17 have been met for the two issues of -- two questions of request  
18 for relief. As it relates to the condition proposed by the Office  
19 of Planning, I am in favor of not including that condition. My  
20 area of concern there is that I'm not comfortable there was a  
21 specific adverse impact identified. I did ask the Applicant if  
22 there had been an issue raised by the party next door and is that  
23 a reason why you chose to do it. I don't think it's a bad idea.  
24 I just don't think it would be appropriate for our -- a condition  
25 for the approval also because of the enforcement issue. I think

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1 it'd be very difficult to enforce. And lastly, I have some issues  
2 about whether it fits within our purview. So I think for those  
3 reasons, I would not include that particular condition in the  
4 final order. As it relates to the ANC, we do have an ANC report  
5 that we can attribute great weight to that does address everything  
6 except the porch. It does address the rear addition. It does  
7 not -- so we do have something we can ascribe great weight to.  
8 We do not have the ability to -- we do not have something that  
9 ascribes great weight to the porch. In this case though the  
10 Applicant has represented they've had discussions with it. We've  
11 had the emails back and forth. We just do not have the ability  
12 to ascribe great weight to that element of it. But we have  
13 assessed the fact that it does not -- through the Office of  
14 Planning's reports, that it would not have necessarily an adverse  
15 impact or create some issues, concerns. So I would be comfortable  
16 making the decision based on the information we have in front of  
17 us in the record currently without holding record open for the  
18 additional input from the ANC based on representations from the  
19 Applicant.

20 CHAIRPERSON HILL: Okay.

21 Chairman Hood?

22 ZC CHAIRPERSON HOOD: Okay. I will try to remember.  
23 It's been a lot said. I will just tell you that sometime when I  
24 come to the BZA I feel like a pair of windshield wipers, you  
25 know, I bring the Zoning Commission and then I have to flip over

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1 to the BZA, and that's not always easy to do. But I do agree  
2 with most of what I've heard my colleagues say. The only thing  
3 I said about the fiber cement panels -- and I was basically --  
4 and I know you all won't get into the color and everything, I've  
5 heard Ms. -- Vice Chair John has made that loud and clear, and I  
6 don't plan on sua sponteing either. But one thing I will say to  
7 these -- all I'm doing -- I said that for the Application because  
8 you're right, Vice Chair John, it is a burden to the homeowner.  
9 And I do know that when we use fiber cement light colors at times  
10 they get dirty. And that was just -- that was just a note to  
11 them to make sure that they have something they can clean it with  
12 or do something different. So I'll leave that part alone. Other  
13 than that, I don't have any issues with the application. I think  
14 that the test has been met and I know that as Board Member Smith  
15 has said about the impacts, there are going to be some impacts.  
16 We realize that. We stated that upfront, but I think it's not  
17 harmful, especially with the support that we see. And about the  
18 ANC letter, Mr. Chairman, I'm thinking you we need to necessarily  
19 nail down specifically, I think I kind of remember what Vice  
20 Chair John is mentioning, but I kind of would rather capture it  
21 the way you mention it, I think. And as Board Member Blake  
22 mentioned, we do have a letter. But I also want to note that I  
23 think Mr. Sullivan mentioned that he had an email. And I know  
24 that doesn't give great weight, but he put that on the record.  
25 And as far as I'm concerned, I'm ready to vote in favor of this

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1 case today and leave it as is and not accept the conditions as  
2 well. So those are my comments.

3 CHAIRPERSON HILL: Okay.

4 All right. I don't want to belabor -- Mr. Smith, do  
5 you have anything additional after this discussion to add? You're  
6 shaking your head no.

7 I don't want to belabor this too much longer in terms  
8 of what we do with the record. I think maybe on a later point,  
9 maybe during a training or next time, Mr. Moy, we all have an  
10 opportunity to speak, we can talk about this leaving the record  
11 open issue, because I am comfortable not leaving the record open  
12 in this case because Mr. Blake has, I think, adequately talked  
13 about what we do have in the record and what we have seen, and  
14 then what it also is testimony from the Applicant concerning the  
15 ANC, but I also don't want it to be like a, you know, a hard and  
16 fast rule for us necessarily where if we wanted to, you know,  
17 keep the record open for something and then if we wanted to,  
18 after we saw that, we can always reopen the record, you know, it  
19 usually comes -- you know, we could give it a time limit of like  
20 a week or something, you know, or two weeks, and then it wouldn't  
21 prejudice the Applicant. But that's for a later discussion.

22 Then I think I can make a motion and see where everybody  
23 is. So I'm just going to make the motion without the condition  
24 and see where we get. So I'm going to -- does anybody have  
25 anything to add before I make a motion?

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1           Okay. I'm going to make a motion to approve Application  
2 No. 20814 as captioned and read by the secretary and ask for a  
3 second, Ms. John?

4           VICE CHAIR JOHN: Second.

5           CHAIRPERSON HILL: Motion made and second, Mr. Moy, if  
6 you could make a roll call?

7           MR. MOY: Thank you, Mr. Chairman. When I call your  
8 name, if you'll please respond to the motion made by Chairman  
9 Hill to approve the application for the special exception relief  
10 being requested. The motion to approve was second by Vice Chair  
11 John.

12           Zoning Commission Chair Anthony Hood?

13           ZC CHAIRPERSON HOOD: Yes.

14           MR. MOY: Mr. Smith?

15           COMMISSIONER SMITH: Yes.

16           MR. MOY: Mr. Blake?

17           COMMISSIONER BLAKE: Yes.

18           MR. MOY: Vice Chair John?

19           VICE CHAIR JOHN: Yes.

20           MR. MOY: Chairman Hill?

21           CHAIRPERSON HILL: Yes.

22           MR. MOY: Staff would record the vote as five to zero  
23 to zero. And this is on the motion made by Chairman Hill to  
24 approve. The motion to approve was second by Vice Chair John  
25 who is also in support of the motion, as well as -- in favor of

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1 the motion to approve from Zoning Commission Chair Anthony Hood,  
2 Mr. Smith, Mr. Blake, Vice Chair John, and Chairman Hill. The  
3 motion carries on a vote of five to zero to zero.

4 CHAIRPERSON HILL: Okay. Thank you.

5 And also for the record, you know, the ANC like they've  
6 got a lot of things to work on. I mean, if they wanted to,  
7 however, they could also ask to reopen the record and then have  
8 the report put in the record. And if they didn't know that, they  
9 can do that, so.

10 All right. Mr. Moy, can you call our next case please?

11 MR. MOY: So the next case is Application No. 20816 of  
12 Ben and Caitlin LaRocco. This is a self-certified application  
13 pursuant to Subtitle X, Section 901.2 for a special exception  
14 under Subtitle E, Section 5201 from the lot occupancy  
15 requirements of Subtitle E, Section 304.1 property located in the  
16 RF-1 zone at 663 Maryland Avenue, N.E., Square 864, Lot 66.

17 CHAIRPERSON HILL: Okay. If the Applicant is here, if  
18 they could just please introduce themselves for the record?  
19 You're on mute, I believe.

20 MS. RAO: Thank you. Good morning, good afternoon. My  
21 name is Heather Rao. I represent my clients, Ben and Caitlin  
22 LaRocco. I believe Ms. LaRocco is also in the list of attendees,  
23 if she could be admitted as well. Please. I am an architect  
24 with Old City Design Studio. My clients live at 663 Maryland  
25 Avenue, N.E.

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1 CHAIRPERSON HILL: Okay. Great. All right. Ms.  
2 LaRocco (sic), if you wanted to go ahead and walk us through your  
3 client's application and why you believe they're meeting the  
4 regulations for us to grant the relief requested. I'm going to  
5 put 15 minutes on the clock so I know where we are, and you can  
6 begin whenever you like.

7 MS. RAO: Great. Could I have the slides please, the  
8 presentation slides? Thank you.

9 As I mentioned, I represent Ben and Caitlin LaRocco,  
10 they live at the subject property with their three children. And  
11 we are here today to request special exception from the lot  
12 occupancy requirements of Subtitle E 304.1 in order to construct  
13 a new two-story and basement rear addition to an existing two-  
14 story and basement attached dwelling at this property. The  
15 project has been supported by the HPRB and ANC 6C as well as the  
16 Office of Planning and DDOT staff. We have included several  
17 letters of support from neighbors in the case file. My clients  
18 have been in discussion with their immediate neighbor to the west  
19 and will continue to do so to work with and keep this neighbor  
20 informed as we proceed to develop the engineering, drawings, and  
21 details for the project. Next slide please?

22 The subject property is located on the north side of  
23 the block. It is a triangular block. It is adjacent to -- the  
24 property's adjacent to another attached dwelling and to the  
25 Northeast Neighborhood Library. The subject property is an

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1 irregular six-sided shape with, I believe, one 90-degree angle  
2 to it. It is about 19 feet wide at the front and less than 13  
3 feet wide at the back of the lot. The existing home includes a  
4 rear deck that is partially covered by an enclosed second floor  
5 porch and the existing lot occupancy is 66.8 percent. This is  
6 an RF-1 zone and the required lot occupancy is -- maximum is 60  
7 percent. So it's already a nonconforming structure. Like several  
8 of the other properties along the block, the property also  
9 includes a detached garage. Next slide please?

10           The proposal includes removing the existing deck and  
11 overhanging enclosed porch, replacing them with a new two-story  
12 and partial basement rear addition. This will extend to align  
13 with the existing library addition to the east. The back wall  
14 of the new proposed addition will be a few inches short of where  
15 the existing deck is now, which brings it a few inches short of  
16 the neighbor to the west. The sidewall of the rear addition is  
17 parallel to the adjacent library, while maintaining a three-foot-  
18 one distance for the length of the addition. The proposal also  
19 includes a one-story plus basement addition in the existing  
20 dogleg and a landing and stair to access the ground floor. Next  
21 slide please?

22           Here on the top row, you see the view from Maryland  
23 Avenue. Second row is the view of the subject property from the  
24 alley entrance on Seventh Street. And then third row is again  
25 the view in between the library and the subject property. Next

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1 slide please?

2 More photos of the subject property. The front to the  
3 top left rear of the property, showing that existing deck and  
4 enclosed porch to the top right. And then two additional views  
5 from the alley showing where the subject property is and that the  
6 relationship of it to both a neighborhood library next door and  
7 to the attached dwelling on the west side. Next slide please?

8 This is our lot occupancy diagram included to show you  
9 that we have included a portion of the existing covered front  
10 porch, which is within the property line. Note that this takes  
11 up over 1 percent of the allowed lot occupancy because of the  
12 porch being within the property line and the existing two-story  
13 plus basement home, the existing garage, and the two additions.  
14 We have been in discussion with the staff at the zoning  
15 administrator's office and the landing at the rear of the addition  
16 will not be included in the occupancy calculations. Next slide  
17 please?

18 Ben and Caitlin LaRocco live in the home with their  
19 three young children. This is the basement floor plan. It will  
20 be extended below the new addition in order to provide an  
21 additional bedroom adjacent to the existing full bath at that  
22 level. There are some additional reconfigurations to be done in  
23 the utility and office spaces and we'll be maintaining the access  
24 to the rear yard with an extension below the dogleg infill. Next  
25 slide please?

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1           The existing main level includes the living room,  
2 dining room, and kitchen, as well as a full bath. The front  
3 porch is partially within the property, as I mentioned. The rear  
4 yard, which is to the bottom of the slide, you can see the  
5 overhang of the second-floor enclosed porch, as well as the extent  
6 of the existing deck and its proximity to both adjacent  
7 properties. Next slide please?

8           The existing upper level has three full bedrooms and  
9 one full bath, and the existing enclosed porch space. With three  
10 young children, Ben and Caitlin hope to reconfigure and expand  
11 this level to be more usable for their family. Next slide please?

12           This is the roof plan. Existing HVAC is located on the  
13 roof. Next slide please?

14           Proposed floor plans. At the basement level the  
15 existing storage room, which is on the lower portion of the page,  
16 will be expanded and a new window added to turn this into a  
17 bedroom with en suite bath. The remainder of the addition will  
18 be above a crawl space at grade with a concrete pad for outdoor  
19 storage. The infill addition at the dogleg will include an  
20 addition at the basement level to provide access to the rear yard  
21 from that level. Next slide please?

22           The ground floor additions and renovation will include  
23 an expanded kitchen, new half bath, and new mudroom for access  
24 to the rear yard via the exterior landing and stairs. At this  
25 level you can see the relationship of the addition to the

1 properties on each side as well. Next slide please?

2 At the upper level, the only addition will be at the  
3 rear of the house, not in the dogleg infill, and will provide a  
4 new bedroom with adjacent playroom and expanded storage space for  
5 the family. Existing bath will be renovated, a new full bath  
6 added adjacent to the primary bedroom. Next slide please?

7 At the roof level, existing HVAC equipment will remain.  
8 The existing roof will be modified to slope toward the new  
9 downspout locations as well. Next slide please? Could you  
10 actually go one slide past and then we'll come back to this one  
11 please? Thank you.

12 This is a combination of two drawings that were  
13 submitted in the case file. It is the two A5 and A6 drawings  
14 together so that you can see the relationship of the building  
15 height at the front of the house to the right-hand side of the  
16 page to the addition on the left-hand side of the page. The  
17 existing parapet at the front is taller than the addition.  
18 Therefore, the building height of 30 feet, 10 inches will be  
19 unchanged. The existing home is primarily brick, except at the  
20 enclosed second floor porch now. Materials for the one-story  
21 infill addition are anticipated to be fiber cement horizontal  
22 siding with fiber cement trim above a new masonry basement level  
23 with clad wood windows and metal roofing. The two-story rear  
24 addition will be brick at the basement level with brick piers and  
25 wood or composite infill at the crawlspace. Above this, the

1 addition is anticipated to be fiber cement horizontal siding,  
2 fiber cement trim, and a membrane roof. New windows and doors  
3 will be wood clad, and the landing and stairs will be a  
4 combination of wood and composite. Could you go back one slide  
5 now please? Thank you.

6           This is the rear elevation of the proposal. The  
7 addition will not unduly impact the light and air available to  
8 the neighboring properties. It will not extend beyond the  
9 existing home adjoining the property to the west. It will not  
10 extend past the existing (indiscernible) to the east. This shows  
11 the approximate height of both structures on the existing -- to  
12 the existing and to the proposed addition. It will not affect  
13 the privacy of either of the neighbors or of those to the south  
14 across the alley. The existing home includes east facing windows.  
15 The new addition will have new east facing windows toward the  
16 library addition, which has a blank brick wall. The new addition  
17 will also have two windows and a door facing south into the rear  
18 yard. If you'd go two slides forward please? Thank you.

19           Once again, this is the building section and you can  
20 see again the relationship of the proposed addition to the  
21 existing house. The massing of the proposed addition is not  
22 excessive, nor will it unduly impact the light, air, or privacy  
23 of its neighbors. Massing and design are in keeping with other  
24 structures on the block. Shadow studies were included with the  
25 application and materials and in this presentation, if there are

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1 any questions, I'd be happy to walk them -- through those as  
2 well. If not, the owner, Ms. LaRocco, and I are available to  
3 respond to any questions from the Board. Thank you.

4 CHAIRPERSON HILL: Thank you, Ms. Rao.

5 Ms. Mehlert, drop the slide deck. Thank you.

6 Does the Board have any questions of the Applicant?

7 Okay. I'm going to turn to the Office of Planning.

8 Mr. KIRSCHENBAUM: Good afternoon, Chair Hood and  
9 Members of the Board of Zoning Adjustment. I am Jonathan  
10 Kirschenbaum with the Office of Planning and we recommend  
11 approval. I'm sorry, Chair Hill.

12 CHAIRPERSON HILL: That's all right.

13 MR. KIRSCHENBAUM: I'm so sorry about that. I --

14 CHAIRPERSON HILL: It's happened before, I don't even  
15 bother anymore.

16 MR. KIRSCHENBAUM: I spoke a lot with Chair Hood on  
17 Monday night, so.

18 CHAIRPERSON HILL: No, I understand. I would rather  
19 be Chair Hood most of the time I would think.

20 COMMISSIONER SMITH: Anyway. So we recommend approval  
21 of the lot occupancy special exception and we rest on the record  
22 of our staff report. Please let me know if you have any  
23 questions. Thank you.

24 CHAIRPERSON HILL: Okay.

25 Does anybody have any questions of the Office of

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1 Planning?

2 All right. Ms. Mehlert, is there anyone here who wishes  
3 to speak?

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

5 CHAIRPERSON HILL: Okay. Ms. Rao, do you have anything  
6 you'd like to add at the end?

7 MS. RAO: I don't believe so. Thank you for your time.

8 CHAIRPERSON HILL: Okay. Thank you.

9 All right. I'm going to go ahead and close the hearing  
10 on the record.

11 Okay. Again, I think this is a relatively  
12 straightforward case. I didn't have any issues with it. I  
13 thought that they were meeting the criteria for the relief that  
14 they're requesting in order for us to grant this application. I  
15 would agree with the analysis that the Office of Planning has  
16 provided in their report as well as that as DDOT, as well as that  
17 we now have the ANC report that is in the record, which also is  
18 in support of this. And I think it's a pretty straightforward  
19 project as I mentioned, and I'll be voting in favor of the  
20 application.

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

22 COMMISSIONER SMITH: I by and large agree with your  
23 assessment and to the testimony of Office of Planning, and the  
24 cooperation of the Applicant. It's a fairly straightforward  
25 application. The proposed addition is largely in line with what

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1 currently exists now, except for they will be providing a  
2 (indiscernible) which would more so protect the roof at 661 so  
3 everything slides onto the -- anything on the roof will slide,  
4 so no water onto the Applicant's property. So you know, I hand  
5 it to them for putting that particular design. Other than that,  
6 looking at the shadow studies, there will be very little impact  
7 to any of the adjacent properties. Most of the shadowing that's  
8 occurring here is coming from 318 Seventh Street, the larger  
9 apartment building. And I do believe that based on what was  
10 presented by the Office of Planning, I would give their report  
11 great weight and will support the application.

12 CHAIRPERSON HILL: Okay. Thank you, Mr. Smith.

13 Mr. Blake?

14 COMMISSIONER BLAKE: Yes, I would agree with the  
15 comments made by you and Board Member Smith. I agree with the  
16 Office of Planning's analysis that the criteria's been met. I  
17 believe the granting relief is in harmony with the zoning  
18 regulations and won't adversely affect the use of neighboring  
19 properties. I will be voting in favor of the application.

20 CHAIRPERSON HILL: Thank you.

21 Chairman Hood?

22 ZC CHAIRPERSON HOOD: Yes, Mr. Chairman. I believe as  
23 well as everyone else, I believe all Subtitles, who spoke thus  
24 far, all Subtitles have been met and I don't have any objections.  
25 And I think everything that does cause an adverse impact can be

1 mitigated. And I will be voting to support this application.

2 Thank you.

3 CHAIRPERSON HILL: Thank you, Chairman Hood.

4 Vice Chair John?

5 VICE CHAIR JOHN: Thank you, Mr. Chairman. I am in  
6 support of the application and I have very little to add, except  
7 to note that this is a minor increase in lot occupancy from 66.8  
8 percent to 69.5 percent. And the application meets the criteria  
9 for relief.

10 CHAIRPERSON HILL: All right. Thank you, Vice Chair  
11 John.

12 All right. I'm going to go ahead and make a motion to  
13 approve Application No. 20816 as captioned and read by the  
14 secretary and ask for a second, Ms. John?

15 VICE CHAIR JOHN: Second.

16 CHAIRPERSON HILL: Motion is made and second, Mr. Moy,  
17 if you'd take a roll call please?

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

22 Zoning Commission Chair Anthony Hood?

23 ZC CHAIRPERSON HOOD: Yes.

24 MR. MOY: Mr. Smith?

25 COMMISSIONER SMITH: Yes.

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1 MR. MOY: Mr. Blake.

2 COMMISSIONER BLAKE: Yes.

3 MR. MOY: Vice Chair John?

4 VICE CHAIR JOHN: Yes.

5 MR. MOY: Chairman Hill.

6 CHAIRPERSON HILL: Yes.

7 MR. MOY: Then staff would record the word as five to  
8 zero to zero. And this is on the motion made by Chairman Hill  
9 to approve. The motion to approve was second by Vice Chair John,  
10 who is also in support of the motion as well as support of the  
11 motion from Zoning Commission Chair Anthony, Mr. Smith, Mr.  
12 Blake, Vice Chair John, and of course Chairman Hill. The motion  
13 carries, sir, five to zero to zero.

14 CHAIRPERSON HILL: Okay. Thank you.

15 I'd like to just talk to the Board and figure out what  
16 you guys want to do about the rest of the day. So I'm ahead in  
17 the time zone. So I'm -- it's 12:30 now. If you all want -- I  
18 don't think that -- I don't know whether I'll be able to do the  
19 last case or not, Vice Chair Joh. I can call you later in terms  
20 of my need to leave early. And if you all want to either take  
21 lunch now and do another case, take lunch, what do you feel like  
22 doing?

23 VICE CHAIR JOHN: I think I'd like to have lunch now.

24 CHAIRPERSON HILL: Okay. Well, there you go. That's  
25 easy enough. All right. Then you want to say 45 minutes?

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1 VICE CHAIR JOHN: Yeah.

2 CHAIRPERSON HILL: Okay. All right.

3 See you guys at -- Mr. Blake, you had your hand up?  
4 No, okay, great. See you guys at 1:15 your time.

5 VICE CHAIR JOHN: Thank you.

6 CHAIRPERSON HILL: Bye-bye.

7 (Whereupon, there was a brief recess.)

8 CHAIRPERSON HOOD: All right. Mr. Moy, we're ready for  
9 you to start us back and call our next case.

10 MR. MOY: Thank you, Mr. Chairman. The Board has  
11 returned to its public hearing session after a lunch recess break.  
12 And the time is at or about 1:18 p.m.

13 The next case before the Board is Application No. 20826  
14 of Nadine Vassell, V-A-S-S-E-L-L. This is an application  
15 pursuant to Subtitle X, Section 901.24 special exceptions under  
16 Subtitle D, Section 5201 from the rear yard requirements Subtitle  
17 D, Section 306.2 and Subtitle D, Section 306.4. Property located  
18 in the R-3 zone at 237 Valley Avenue, S.E., Square 6153, Lot 37.  
19 And I believe the preliminary matter here, Mr. Chairman, is that  
20 there is an Applicant's motion to accept filing within the 24-  
21 hour deadline.

22 CHAIRPERSON HILL: Okay. If the Applicant is here, can  
23 you please introduce yourself?

24 MS. VASSELL: Good afternoon. Nadine Vassell.

25 CHAIRPERSON HILL: Hi, Ms. Vassell, how are you?

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1 MS. VASSELL: Good, thank you.

2 CHAIRPERSON HILL: Good. If you -- you had-- what is  
3 it that you are trying to get into the record late?

4 MS. VASSELL: I'm not trying to get anything into the  
5 record late.

6 CHAIRPERSON HILL: Oh.

7 Mr. Moy, is there something that --

8 MR. MOY: Yeah. I believe there was a earlier filing  
9 that requires that the Applicant file --

10 CHAIRPERSON HILL: It says an exhibit --

11 MR. MOY: -- 21 days prior to a hearing.

12 CHAIRPERSON HILL: Okay. Well, I'm going to go ahead  
13 and -- I think it's probably already in the record because I  
14 think we reviewed everything. But I'm going to go ahead and  
15 allow it into the record unless my fellow Board members have any  
16 issues with it?

17 Okay.

18 Ms. Vassell, you want to go ahead and tell us about  
19 your project? You're here representing yourself, correct?

20 MS. VASSELL: I am.

21 CHAIRPERSON HILL: You go ahead Ms. -- and tell us  
22 about your project and we'll see where we get. Okay?

23 MS. VASSELL: Okay. Thank you. Thank you. Thank you,  
24 Board, for taking the time to review this request for relief.  
25 This is a totally new process to me, so bear with me.

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1 CHAIRPERSON HILL: No problem.

2 MS. VASSELL: So the project is on 237 Valley Avenue,  
3 S.E. I purchased this property August the 30th, 2021 from the  
4 homeowner. And after we settled on the property, the addition  
5 that the homeowner put on the property, he never obtained a  
6 building permit for it. I then finding this out, I went and went  
7 to DCRA, I hired an architect. We submitted the plans. It went  
8 through all the disciplines and I was issued the first building  
9 permit, B2112415. I then resumed work on the project doing all  
10 the disciplines, the plumbing, the electrical, the rough in, the  
11 concrete work, all of that work. And then when I went to get a  
12 closing inspection, the closing inspector said well, where's the  
13 permit for the addition. And I said well, here it is right here.  
14 And he said no, you're going to have to permit the addition  
15 separately. Okay. Fine. Hired the architect again. We did  
16 the plans, went through DCRA, went through the disciplines again,  
17 zoning, structural, everybody, and I received building permit  
18 B2204762. So now I'm good.

19 At the wall check the surveyor came and said that the  
20 building now was built over the allowance and I needed to see  
21 zoning. And that's when this whole thing started for me back in  
22 May of '22. Mr. M-D-A-W, Mdaw, I don't know how to pronounce it  
23 --

24 CHAIRPERSON HILL: Yeah, yeah.

25 MS. VASSELL: -- he was very helpful. He told me what

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1 I needed to do. And he pointed me the way. And that's how I  
2 ended up in front of you today. So the relief that I'm asking  
3 for is the rear yard, 306.2 and 306.3. I did want to say that I  
4 have been in front of the ANC and that's in the record. They  
5 approved it.

6 CHAIRPERSON HILL: Okay. All right, Ms. Vassell. No,  
7 that's the part I wanted to just get to. Okay. Because there's  
8 something else I'm trying to get through later today. So I'm  
9 going to just turn to the Office of Planning and then I'll come  
10 back to my fellow Board members in a minute.

11 MR. COCHRAN: Thank you, Mr. Chair. Again, Steve  
12 Cochran, representing the Office of Planning for 20826. The  
13 Office is recommending approval of both special exceptions from  
14 D 306.2's requirements for rear yard minimum depth and from D  
15 306.4's a limitation on the length into a rear yard that the  
16 addition may extend past an adjoining building. Both of the  
17 special exceptions meet the criteria of Section D 5201 and  
18 Subtitle X, Chapter 9. That's our report. Of course, I'm happy  
19 to answer any questions.

20 CHAIRPERSON HILL: Okay. Thanks, Mr. Cochran.

21 Does the Board have any questions of Mr. Cochran? Ms.  
22 -- I'm blanking on your last name, I'm sorry. Is there anyone  
23 here wishing to testify?

24 MS. MEHLERT: We do have one person. Her name is Lenora  
25 Robinson.

1 CHAIRPERSON HILL: Okay. Could you please bring that  
2 person forward?

3 MS. ROBINSON: Hello, my name is Lenora Robinson. I  
4 am the homeowner at 239 Valley Avenue, S.E.

5 CHAIRPERSON HILL: Okay. Mr. Robinson, as a member of  
6 the public, you'll have three minutes to give your testimony, and  
7 you can begin whenever you like.

8 MS. ROBINSON: Okay. Thank you. Again, my name is  
9 Lenora Robinson. I am the resident that is directly next door  
10 to 237 Valley Avenue, S.E. I had submitted -- I wanted to request  
11 if I could submit pictures of the add-on from my home's  
12 perspective. I'm not sure.

13 CHAIRPERSON HILL: I don't think you can submit them  
14 at this point right now. Why don't you go ahead and give your  
15 testimony and we'll see what the Board wants to do after your  
16 testimony.

17 MS. ROBINSON: Okay. Thank you. My testimony is in  
18 opposition to approval basically based on that it would impose  
19 what I believe both a privacy issue and potentially dependent on  
20 the intended use of the building a security issue. The rear of  
21 the -- where the add-on is being added is so close to my rear  
22 porch area that Ms. Vassell had requested to have her workers  
23 come onto my property to complete the work that needed to be done  
24 on the side of the addition, which I'm unable to approve, because  
25 it would put me under liability if the -- if the workers injured

1 themselves on my property or anything like that. It's that close  
2 to where my property is on that side. I'm not sure if the  
3 property will have windows on that side or not, but that would  
4 place -- to me deem it intrusive of my privacy on that side of  
5 the addition. And the pictures that I submitted do show -- do  
6 reflect that it is extremely close on that side to where my back  
7 porch is. There is no privacy fence there. My fence was torn  
8 down during a hurricane.

9 CHAIRPERSON HILL: Sure.

10 Mr. Moy, I see you have your hand up.

11 MR. MOY: Yes. This is a good time for me to interrupt.  
12 I apologize. I'd like to amend my earlier statement. The --  
13 actually within the 24-hour block, Mr. Robinson attempted to file  
14 photographs into the record. So that's the one we should  
15 entertain.

16 CHAIRPERSON HILL: Okay. All right. Well, then, Mr.  
17 Robinson, if you've already filed those -- so then I'd like to  
18 see the photographs. That's if my fellow Board members have any  
19 issues with it, you can raise your hand.

20 All right. Mr. Moy, go ahead and submit those photos  
21 into the record please. Are they there?

22 MR. MOY: Be there momentarily, sir.

23 CHAIRPERSON HILL: Okay.

24 All right. Ms. Robinson, you can continue.

25 MS. ROBINSON: Yes. As I stated, being -- having to

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1 allow the workers to come onto my property to complete the work  
2 on that side of the house, I believe is intrusive to, again, my  
3 own privacy and security. My back porch is not stable to allow  
4 the workers to come on to my porch to complete that work. It's  
5 that close to where my back porch is. And my back porch is mostly  
6 wooden. And during a hurricane a few years ago, I had a large  
7 tree fall from the alleyway all the way into my yard, destroying  
8 my fence and damaging my back porch. So that is why I would have  
9 to decline any request for her workers to come onto my property  
10 to finish the work on that side of the house, which is the  
11 attached side of our houses.

12 CHAIRPERSON HILL: Okay. Ms. Robinson, I don't know  
13 the realities to how that works. I mean, I know that people come  
14 into people's yards all the time to work on the next-door  
15 neighbor's property. But I don't know -- I don't know how that  
16 works. Let me see. I'm just trying to see if I can pull these  
17 up. But continue -- your concern, again, is privacy, and you  
18 said security?

19 MS. ROBINSON: Yes, sir. Dependent on the intended use  
20 of the add-on --

21 CHAIRPERSON HILL: What's the security part that you're  
22 worried about?

23 MS. ROBINSON: Well, we have a number of group homes  
24 on the block already with -- for returning citizens and I've had  
25 some issues with some of the citizens --



1 CHAIRPERSON HILL: I got you.

2 MS. ROBINSON: -- on my property. So I don't know the  
3 intended use of the add-on. And also there was an armed robbery  
4 on her property while the workers were working. One of the  
5 workers was robbed at gunpoint. So that's a bit of a concern.

6 CHAIRPERSON HILL: I got you. Right. So this is  
7 already -- right -- these are the photos that was -- and, okay.  
8 All right.

9 And then, Ms. Vass- -- Ms. Vassell, right? I saw all  
10 the permitting things, and I know that you originally had this  
11 as an expedited review with us.

12 MS. VASSELL: Yes.

13 CHAIRPERSON HILL: So this was all built -- this was  
14 built this way when you were told from zoning that you needed  
15 the relief?

16 MS. VASSELL: Yes, sir. When I purchased the property  
17 August of 2021, it was already up.

18 CHAIRPERSON HILL: Right. Well, it's already the way  
19 -- is this the condition it's in now?

20 MS. VASSELL: The only thing different is that the  
21 siding has been put on on one side and on the back. And --

22 CHAIRPERSON HILL: Right. But not on Ms. Robinson's  
23 side?

24 MS. VASSELL: That's correct. Will I be able to address  
25 what she said just for clarification?

1 CHAIRPERSON HILL: In one minute, Ms. Robinson (sic).  
2 Let's see, that's a good question. I actually don't know the  
3 answer to that one.

4 Does anybody have any questions for Ms. Robinson?

5 COMMISSIONER BLAKE: I have a quick question for Ms.  
6 Robinson.

7 Ms. Robinson, is this -- the picture you have here, the  
8 first picture, is that -- that's the condition of the property  
9 today?

10 MS. ROBINSON: Correct.

11 COMMISSIONER BLAKE: Okay.

12 MS. ROBINSON: I don't see the pictures in front of me,  
13 so I'm not sure which -- yes, all of the -- the pictures that I  
14 submitted are from the perspective of my rear yard. And that is  
15 the current condition.

16 COMMISSIONER BLAKE: You took those pictures when?

17 MS. ROBINSON: I believe it was November 27th.

18 COMMISSIONER BLAKE: Okay. Thank you.

19 CHAIRPERSON HILL: Okay.

20 Mr. Nicholas, and actually Ms. Mehlert, I haven't had  
21 this question asked in a while. The Applicant can ask questions  
22 of the witness and/or then they get rebuttal afterwards, is that  
23 how that works?

24 MR. NICHOLAS: Yes, Mr. Chair.

25 CHAIRPERSON HILL: Okay. And then is the -- but the

1 witness doesn't ask questions of the Applicant, correct?

2 MR. NICHOLAS: That is correct.

3 CHAIRPERSON HILL: Okay. All right. Let's see. First,  
4 my Board members, does my Board members have any questions for  
5 Ms. Robinson?

6 Okay. Go ahead, Mr. Blake.

7 COMMISSIONER BLAKE: Not for Ms. Robinson, I have  
8 questions for Ms. Vassell.

9 CHAIRPERSON HILL: Okay. Great.

10 All right. Ms. Vassell, do you have any -- so rebuttal  
11 means that you have an opportunity to speak about the things that  
12 were brought up. Right? It doesn't go into a back and forth  
13 between the witness and the Applicant, it's just you rebutting  
14 what was said. And then there's -- before that, I'm going to  
15 ask you if you have any questions of Ms. Robinson. Do you have  
16 any questions of Ms. Robinson?

17 MS. VASSELL: No, Ms. Robinson seems to be a very nice  
18 lady. I don't have any questions of her, but I do want to address  
19 the points she brought up to the Board.

20 CHAIRPERSON HILL: Okay. Great.

21 All right. Okay. Let me see. All right. Ms.  
22 Robinson, I'm going to go ahead and excuse you. Okay. And then  
23 if we have anything further from you, I'll bring you back in.  
24 Okay.

25 MS. ROBINSON: Should I remain in?

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1 CHAIRPERSON HILL: Yeah, yeah, yeah. Just stay -- just  
2 remain ready. Don't go anywhere. They're just going to pull  
3 you out of the hearing room for a minute. And if we have any  
4 further questions, we'll bring you back in.

5 MS. ROBINSON: Okay.

6 CHAIRPERSON HILL: Okay? Thank you for your testimony,  
7 Ms. Robinson.

8 MS. ROBINSON: Thank you.

9 CHAIRPERSON HILL: All right, Ms. Vassell, now you can  
10 rebut what the testimony was.

11 MS. VASSELL: Okay. When I purchased the property, the  
12 first thing I do is I always speak with neighbors because it's  
13 the proper thing to do. I knocked on her door. I introduced  
14 myself. This is back in August of 2021. I introduced myself.  
15 I said we'll be working on the property. I gave her my telephone  
16 number. I said if there's any issues, any concerns with my  
17 workers, with anything you don't like, please, please, please  
18 reach out to me. Right? That's a standard practice for me. She  
19 said thank you. It was Christmas time. It was getting to be  
20 Christmas time. I put a nice little card on her door, you know,  
21 just to say, because I know banging and --

22 CHAIRPERSON HILL: That's okay. What's the rebuttal  
23 part?

24 MS. VASSELL: Okay. Okay. What I'm trying to say is  
25 that when I found out about the BZA part, I tried to contact her

1 on three different occasions and each time she'd never responded  
2 because I wanted to let her know from me what was happening.

3 CHAIRPERSON HILL: I understand. She's concerned about  
4 privacy and security.

5 MS. VASSELL: I'm getting to that.

6 CHAIRPERSON HILL: And actually the security is not  
7 really -- or I don't even know what it falls into, but the privacy  
8 issue -- are there any windows on that side of the building?

9 MS. VASSELL: That's when I was getting to next. There  
10 are no windows on her side at all.

11 CHAIRPERSON HILL: Right.

12 MS. VASSELL: And she says her porch is -- we asked  
13 her, we said in order to side the side of the house -- in order  
14 to do the siding on her side, is it okay if the workers come on  
15 her property and do the siding and she said yes, just make sure  
16 they clean up. And I said of course I'll make sure it's cleaned  
17 up.

18 CHAIRPERSON HILL: Okay. I understand. Okay. So all  
19 right, you --

20 MS. VASSELL: There's no way to side that side without  
21 going on her property.

22 CHAIRPERSON HILL: I don't know how that works. I  
23 don't know how that works. So you know, that's interesting. I  
24 always forget how that works. Okay. So. All right.

25 Does anybody have any questions of Ms. Vassell before

1 I go over to the Office of Planning?

2 COMMISSIONER BLAKE: Yeah, Ms. Vassell, a quick  
3 question for you. I want to just clarify this. So you purchased  
4 this property in its unfinished state where that just the framing  
5 had been completed, but none of the -- a lot of the other things  
6 had not been, like the, I see the water and electric, none of  
7 that stuff had been done, so you kind of bought it as a work in  
8 progress?

9 MS. VASELL: Right, that's correct. But it was closed  
10 in as in the back was on, the roof was on.

11 COMMISSIONER BLAKE: Okay.

12 MS. VASELL: The addition was on.

13 COMMISSIONER BLAKE: And just to clarify, you're a  
14 developer, you basically do this on a regular basis?

15 MS. VASELL: Semi-regular basis, yes.

16 COMMISSIONER BLAKE: Okay. Okay. Okay. Because to  
17 me that was a question because I would assume as a developer,  
18 you would have done the analysis to determine if we had gone  
19 through the proper procedures prior to making an acquisition.

20 MS. VASELL: And that's why I'm saying semi. I'm not,  
21 you know, on a large scale. I don't do it all the time. I talked  
22 with the homeowner. He walked me through the property. He said  
23 he had permits, but it wasn't until after closing where I then  
24 went into the system to my own due diligence, found out that he  
25 had not.

1 COMMISSIONER BLAKE: Okay. Thank you.

2 CHAIRPERSON HILL: Okay.

3 Anyone else for Ms. Vassell?

4 Okay. Mr. Cochran, are you there?

5 VICE CHAIR JOHN: Mr. Chairman, if I could just ask Ms.  
6 Vassell one more question.

7 CHAIRPERSON HILL: Go ahead, Ms. John.

8 VICE CHAIR JOHN: I was a little bit confused about the  
9 permits. So did any of the permits that you received from DCRA  
10 show where the rear wall was going to be?

11 MS. VASSELL: Absolutely. There's staff plans in the  
12 record.

13 VICE CHAIR JOHN: Okay. And those were stamped  
14 approved. Was there anything from Zoning on any of those permits?

15 MS. VASSELL: Zoning is one of the disciplines it has  
16 to go through to get a permit issued. It went through Zoning  
17 two times.

18 VICE CHAIR JOHN: And both times it had the back wall  
19 where it is now?

20 MS. VASSELL: Absolutely.

21 VICE CHAIR JOHN: Okay. Thank you.

22 MS. VASSELL: Uh-huh.

23 CHAIRPERSON HILL: Mr. Cochran?

24 MR. COCHRAN: Yes, sir.

25 CHAIRPERSON HILL: Can you do me a favor? Can you just

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1 walk me through your analysis again? And then a little -- you  
2 know, how you got to where you think that this is meeting the  
3 criteria for us to approve it? And then also, if you could just  
4 speak to the -- I don't think security's part of our area, but  
5 the privacy in terms of how that factored into your analysis?

6 MR. COCHRAN: Sure. The privacy is very easy. There  
7 are no windows facing the property to the northeast and there's  
8 no deck or porch on the back of the Applicant's property. So  
9 there'd be no line of sight into the structure, the home to the  
10 north. And -- well, there might be a line of sight into the end  
11 part of the rear yard to the north, but that would be it. So  
12 that did not seem to be an untoward impact on privacy,  
13 particularly since there are no windows on that side of the  
14 addition.

15 Let's see, the light and air, there wouldn't be any  
16 impact on that -- the property to the north. There's nothing on  
17 the other side of the property to the north that would impact  
18 it. There's nothing to the east that would impact it. There  
19 might be some shadowing from the Applicant's property. But I'd  
20 have to look at the orientation again to give you a better idea  
21 of at what times of the year that would be.

22 Talked about privacy of use. The -- with respect to  
23 how it's going to look from the street or the alley, the addition  
24 wouldn't be very visible from Valley Avenue because you'd be able  
25 to see it only on an acute angle. And you've got some photographs

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1 in the file that already show that that wouldn't be a substantial  
2 intrusion on neighborhood character. I don't know what District  
3 Properties is proposing to do on the development to the south at  
4 235. It's possible that the opening may be even narrower by the  
5 time that District Properties finishes their multi-building  
6 development to the south.

7           There are -- there's nothing but trees in the back.  
8 Not on the Applicant's property, but to the east of the alley  
9 that is seemingly in the back of the building. It's pretty  
10 difficult to see whether that's a paper alley or a functioning  
11 alley when you're looking at pictures of the site and Google  
12 aerials. But the Applicant has said that there would be a parking  
13 space back there, so I had to assume that it's a functioning  
14 alley.

15           Let's see what else. Didn't seem to be any need for  
16 special treatments. The use would remain conforming, as far as  
17 I know, it would be used either as a single-family household or  
18 as a single-family house with an accessory apartment, and it's  
19 designed the latter way. So you know, it's a residential  
20 property. There wouldn't be the opportunity to use it for  
21 commercial purposes.

22           CHAIRPERSON HILL: Okay. All right. Thanks, Mr.  
23 Cochran.

24           All right. Anyone else have questions for Mr. Cochran?  
25 Mr. Blake?

1 COMMISSIONER BLAKE: No, I don't have a question for  
2 Mr. Cochran.

3 CHAIRPERSON HILL: Okay.

4 Does anybody have more questions for the Office of  
5 Planning?

6 Okay. Mr. Blake, you had a question for the Applicant.

7 COMMISSIONER BLAKE: Yeah, one question for the  
8 Applicant. Do you intend to put a fence up on that property --  
9 between those two properties?

10 MS. VASSELL: There is a fence up already. Between 237  
11 and 239?

12 COMMISSIONER BLAKE: Yeah.

13 MS. VASSELL: Yes, there's an existing fence there  
14 already.

15 COMMISSIONER BLAKE: Well, the pictures I'm looking at  
16 for this property, that it's a -- there isn't a nice fence from  
17 the lady --

18 MS. VASSELL: It's not a nice fence.

19 COMMISSIONER BLAKE: Is it a chain, what kind of fence  
20 is it?

21 MS. VASSELL: It's a chain -- sorry, it is a chain link  
22 fence, right. And at the end of the project, I offered to, you  
23 know, to replace it and even to help her with any repairs she  
24 may want done on her side, you know, just for the beauty of it.

25 COMMISSIONER BLAKE: Okay. Thank you. Thank you.

1 CHAIRPERSON HILL: Okay.

2 And Mr. Cochran, I got one more question for you. Are  
3 you there?

4 MR. COCHRAN: I am.

5 CHAIRPERSON HILL: How does -- it comes up every now  
6 and again, but I don't know actually how the mechanics work out,  
7 I am curious. The neighbor -- if the neighbor doesn't let people  
8 get onto their property to do the work, how does the work get  
9 done? You don't know?

10 MR. COCHRAN: I don't know.

11 CHAIRPERSON HILL: Okay. All right. Okay. Thank you,  
12 Mr. Cochran.

13 All right. Does anybody have any questions for anyone?  
14 Sure, Ms. John?

15 VICE CHAIR JOHN: For Ms. Vassell. So I saw the chain  
16 link fence. Are you planning to replace it on your side?

17 MS. VASSELL: Yes, that was the intention. While we  
18 were doing the siding on her side, then I would replace and put  
19 a whole new fence. So she would benefit -- of course we benefit  
20 on that side.

21 VICE CHAIR JOHN: Right. And would that be a six-foot  
22 fence?

23 MS. VASSELL: Yes. Yes, because the back will have a  
24 six. And then the adjoining people that are building the side  
25 will have the same type of fence. So everything will be, you

1 know, uniform.

2 VICE CHAIR JOHN: So it would match the fence on the  
3 opposite side?

4 MS. VASSELL: Yes, yes.

5 VICE CHAIR JOHN: Okay. Just to get an idea. All  
6 right. Thank you.

7 MS. VASSELL: Yes, ma'am.

8 VICE CHAIR JOHN: Thank you.

9 CHAIRPERSON HILL: Okay. All right. If anybody doesn't  
10 have anything else, then I'll close the hearing and we can talk.

11 All right. Thank you, Ms. Vassell.

12 MS. VASSELL: Thank you so much.

13 CHAIRPERSON HILL: I'll close the hearing on the  
14 record.

15 I don't know, I think that I -- as I'm looking through,  
16 again, the application in the record, I think I would agree with  
17 the analysis that the Office of Planning has cited and that also  
18 what the ANC has put forward in terms of their -- no, wait a  
19 minute. I'm looking at that ANC report again.

20 (Pause.)

21 CHAIRPERSON HILL: Right, so they just approved the  
22 relief, okay, meaning they didn't have any issues or concerns I  
23 suppose. So but as far as the regulations go, I mean, I would  
24 turn to the Office of Planning's recommendation for the help with  
25 the standard. So I guess the way I'm kind of stuck is just about

1 -- I mean, I don't -- and I'm just now kind of speaking to my  
2 Board members. I can't recall whatever happened if anybody was  
3 not allowed to get on the other property to finish off the  
4 building. But I guess I can vote in favor of this application  
5 and just hear what my fellow Board members have to say about  
6 where we are right now.

7 Mr. Smith?

8 COMMISSIONER SMITH: I believe, based on the testimony  
9 today provided by the Applicant and the Office of Planning that  
10 we can -- that, you know, I'm comfortable with supporting this  
11 special exception, both the special exceptions from the rear yard  
12 requirements and the rear addition requirements. The addition  
13 was there. It seems like she got to a stage that she needed to  
14 apply for footings, and they realized that -- I mean, the footings  
15 were laid, it didn't exactly meet what was specified on the plat  
16 and that's common, it just depends on how they lay the footings,  
17 are they laying them inside, the footing as shown on the plat,  
18 or outside the footing is shown on the plat. This is more common  
19 than you think. And, you know, just my opinion and my history  
20 of some of these types of situations. But nevertheless, as far  
21 as the special exception criteria, I do not believe that there  
22 will be an undue impact on adjacent properties given the  
23 orientation of the house and given that this is on the left --  
24 well, depending on how you looking at this, to the southwest of  
25 the attached home, I don't believe it will be a large impact on

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1 the light and air of the adjacent property, and the undue impact.  
2 As far as the privacy and use of any adjoining -- neighboring  
3 properties, because this is a semi-detached property, the  
4 Applicant can't put on windows lest there be, you know, at risk  
5 windows, but she wouldn't be able to get a permit to put in these  
6 windows. It would be something that she would have done outside  
7 the scope of the permit. But because she's not having windows,  
8 I do not believe there will be an undue adverse impact on adjacent  
9 properties due to this addition. So I give great weight to OP's  
10 staff report on this matter.

11 But to your question about access -- accessing adjacent  
12 properties during construction, that again is common, but that  
13 is -- that's a civil matter between both parties involved. So  
14 it'll be something that she will have to work out. Anyone, anyone  
15 would have to work out with the adjacent property owner if they  
16 need to have access through an adjacent property in order for  
17 them to complete the project. So it would be something if Ms.  
18 Robinson objects to this verbal agreement between her and Ms.  
19 Vassell, they will need to enter into some type of contract for  
20 her to access her private property. So, you know, stating that,  
21 this is -- that's not a matter that's, you know, before any  
22 governmental body. That's something that's a civil matter  
23 between two property owners. So with that, I would support the  
24 application.

25 CHAIRPERSON HILL: Okay.

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1 Mr. Blake?

2 COMMISSIONER BLAKE: Thank you, Board Member Smith for  
3 clarifying all those issues. That was very helpful to me as  
4 well. I think that I definitely agree that the criteria for the  
5 special exception relief via 5201 has been met. I don't -- as  
6 far as light and air, privacy, and visual intrusion. The issue  
7 with privacy, I think, is clearly without windows on that side  
8 of the property there does not appear to be a visual intrusion  
9 issue -- a visual -- undue privacy impact. So for that reason,  
10 I would agree and pay attention to the Office of Planning's report  
11 -- analysis of that situation as well.

12 I would like -- it would be nice to see a fence similar  
13 to the one on the other side, as the Applicant said she was  
14 planning to do. Obviously, that's not again part of what we are  
15 looking at and I don't think it would be necessary to mitigate  
16 the impact on privacy, but it would be a nice treatment to have  
17 in place to kind of create separate areas here. All that said,  
18 I would be voting in favor of the application.

19 CHAIRPERSON HILL: Thank you, Mr. Smith (sic).

20 I don't know, I mean, I would think that the fence is  
21 something that could be -- I don't know, what do you all -- and  
22 I'm going to -- we'll go back around -- as a condition for a,  
23 you know -- however it does -- there are some adverse impacts  
24 that could be resolved concerning privacy. Also, as Ms. John had  
25 mentioned, a six-foot high fence that was going to come over to

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1 match the other one, I mean, I'm not opposed to that being a  
2 condition. I don't know what my fellow Board members have to  
3 think about that. And you all can chew on that while I talk to  
4 Chairman Hood next.

5 ZC CHAIRPERSON HOOD: Thank you, Mr. Chairman. I don't  
6 necessarily have anything to add. I think the requirements that  
7 we're looking at under Subtitle B 306.2, as my colleagues already  
8 mentioned, and 306.4 have already been met. Let me see. And as  
9 far as -- I would agree with Board Member Smith, as far as the  
10 issue with accessing property, I wonder, I was thinking back to  
11 what the city council did yesterday, but I don't know if that's  
12 applicable here. It possibly could be, but I'm sure that will  
13 be worked out at another -- in another forum. So other than  
14 that, I'll be voting in support of this and whatever treatment  
15 we decide to do, I can go either way. So those are my comments.  
16 Thank you.

17 CHAIRPERSON HILL: Vice Chair John? You're on mute,  
18 Vice Chair John.

19 VICE CHAIR JOHN: Second time today. So I too am in  
20 support of the application. The addition is only five feet more  
21 than what's allowed by right. And as Mr. Cochran testified,  
22 there is no impact to light and air and privacy. In terms of  
23 privacy, there are no windows on that side. And so I think that  
24 the application in that respect is fairly straightforward. The  
25 other thing is that I agree that access to the property is not



1 within our jurisdiction. We can't mandate that access. And I  
2 believe -- well, let me not say -- I think DCRA might have a  
3 process to assist the Applicant in going through the correct  
4 process to get permission. But I don't know a whole lot about  
5 that and I can't be sure that what I'm saying is exactly accurate.  
6 But I read something somewhere, which I think I remember  
7 correctly, so I would start with DCRA to ask about the process  
8 for getting permission to access the neighbor's property, and  
9 DCRA can point her in the right direction.

10 I think it would be nice to have that fence to match  
11 the neighbor's fence, and I'm fine with making that a condition  
12 if everyone else would agree to that. That fence would help to  
13 mitigate some of the privacy interests of the neighbor. And the  
14 Applicant has also said that she intends to put up that privacy  
15 fence. So I don't think we would be imposing a requirement that  
16 she does not already agree to. So those are my thoughts.

17 CHAIRPERSON HILL: Thank you, Vice Chair John.

18 So thank you all very much. I would agree with  
19 everything that you all said. I'm going to make a motion here  
20 and then see what happens. I'm going to make a motion to approve  
21 Application No. 20826 as captioned and read by the secretary,  
22 including a condition to install a six-foot fence to match the  
23 other six-foot fence on the other side of the development. So I  
24 guess it's the fence that's on the north side of the property.  
25 However, I will turn it over to legal to write the order correctly

1 in case I'm misstating. I'm speaking of the fence that's in  
2 between the development and -- I'm sorry, that's in between the  
3 project and the property that was in 239, 239 Valley Avenue,  
4 S.E., and ask for a second, Ms. John?

5 VICE CHAIR JOHN: Second.

6 CHAIRPERSON HILL: The motion was made and second, Mr.  
7 Moy, if you'd take a roll call?

8 MR. MOY: When I call your name, if you'll please  
9 respond to the motion made by Chairman Hill to approve the  
10 application for the relief requested, including condition of a  
11 six-foot fence that would match the other fence. And the motion  
12 was second by Vice Chair John.

13 Zoning Commission Chair Anthony Hood?

14 ZC CHAIRPERSON HOOD: Yes.

15 MR. MOY: Mr. Smith?

16 COMMISSIONER SMITH: Yes.

17 MR. MOY: Mr. Blake?

18 COMMISSIONER BLAKE: Yes.

19 MR. MOY: Vice Chair John?

20 VICE CHAIR JOHN: Yes.

21 MR. MOY: Chairman Hill?

22 CHAIRPERSON HILL: Yes.

23 MR. MOY: The staff would record the vote as five to  
24 zero to zero. And this is on the motion of Chairman Hill to  
25 approve the application. The motion was second by Vice Chair

1 John who is in support of the motion. Also in support of the  
2 motion to approve is Zoning Commission Chair Anthony Hood, Mr.  
3 Smith, Mr. Blake, Vice Chair John, and Chairman Hill. Motion  
4 carries on a vote of five to zero to zero.

5 CHAIRPERSON HILL: All right. Thanks, Mr. Moy. You  
6 can call our next one when you get a chance.

7 MR. MOY: The next case and the final case in today's  
8 public hearing session is --

9 CHAIRPERSON HILL: Oh wait a minute, Mr. Moy, what  
10 happened to -- oh, wait a minute? Oh, okay. Great. All right.  
11 Never mind, I'm sorry. Go ahead.

12 MR. MOY: No, that's fine.

13 CHAIRPERSON HILL: I thought there was a couple more  
14 cases, so I get to stick around, which I don't know if it's good  
15 or bad, but it is what it is. All right. Go ahead, Mr. Moy,  
16 sorry.

17 MR. MOY: Oh, no, not at all.

18 Application No. 20813 of 401 K Street, LLC. Again,  
19 this is a self-certified application for a special exception  
20 pursuant to Subtitle X, Section 901.2, Subtitle E, Section 206.4  
21 from the rooftop and upper floor requirements Subtitle E, Section  
22 206.1, and also captioned request for in the alternative an area  
23 variance pursuant to Subtitle X, Section 1002 from the rooftop  
24 and upper floor requirements Subtitle E, Section 206.1. Property  
25 in the RF-1 zone at 401 K Street, N.E., Square 807, Lot 48.

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1 CHAIRPERSON HILL: Great. Thank you.

2 Mr. Sullivan, if you could hear me, if you could  
3 introduce yourself for the record please?

4 MR. SULLIVAN: Yes. Thank you, Mr. Chair. Marty  
5 Sullivan with Sullivan and Barros on behalf of the Applicant.

6 CHAIRPERSON HILL: And Mr. Sullivan, who is here with  
7 you today?

8 MR. SULLIVAN: I have the property owner, Mr. Shirka,  
9 Teddy Shirka, and building engineer making an -- I'm sorry and I  
10 don't remember his last name, but I think they should both be  
11 on.

12 CHAIRPERSON HILL: I don't see -- I see Mr. Shirka, but  
13 I don't see Mr. Mekenin, Mekenin.

14 MR. SULLIVAN: Yes, that's his first name. And I'm  
15 sorry I'm -- I --

16 CHAIRPERSON HILL: That's all right. We'll figure it  
17 out.

18 Commissioner Eckenwiler, if you could hear me, if you  
19 could introduce yourself for the record?

20 MR. ECKENWILER: Thank you, Chairman Hill. Mark  
21 Eckenwiler, Vice Chair ANC 6C on behalf of the ANC.

22 CHAIRPERSON HILL: Hi, Commissioner, welcome back.

23 Okay. So let's see. I'm always smiling because I'm  
24 very familiar with all of the ANC things. I got to the new ANC  
25 and I've been to all my ANC meetings, and so, Commissioner, when

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1 I see you I just think of all the ANC meetings that you have to  
2 do.

3 Let's see --

4 MR. ECKENWILER: I'm so sorry.

5 CHAIRPERSON HILL: Yeah, no, I meant that -- I don't  
6 know what -- I guess I meant that in some kind of a connection  
7 for it.

8 All right. Let's see, so Mr. Sullivan, I think you  
9 know everything that is currently going on with this case, and  
10 you've read the record as we have. And so you can go ahead and  
11 give us your argument as to why you believe your client is meeting  
12 the criteria for us to grant the relief that you -- oh, sure --  
13 one second, Mr. Eckenwiler, let me just finish my spiel.

14 If you go ahead and give your testimony as to why you  
15 believe your Applicant is meeting the criteria for us to grant  
16 the relief requested, and we will see where we get with this.

17 Commissioner Eckenwiler, you had your hand up?

18 MR. ECKENWILER: Yes. I just wanted to remind you, Mr.  
19 Chair, that there is a pending application for party status,  
20 along with a motion to accept that, which was filed late.

21 CHAIRPERSON HILL: Oh, yeah. Thanks. No, I appreciate  
22 it. There was actually -- thank you for reminding me actually.  
23 Vice Chair John, I totally thought I wasn't going to be here for  
24 this. And so we did get somebody who we have given party -- oh,  
25 no, no, no, no, we denied party status, Commissioner. It was at

1 the very beginning of the hearing. And so I don't know whether  
2 you saw that or not, but there was a debate about it and there  
3 was a discussion, so you could go back and see. But that person  
4 who was denied party status is going to be participating during  
5 the testimony portion of the hearing. But thank you for reminding  
6 me because I had forgotten.

7 MR. ECKENWILER: So Mr. Chairman, just one more point  
8 then to follow up on that. If that's being denied, then Exhibit  
9 27A, either there needs to be a motion to allow that, or --  
10 because that's also late filed or it needs to be struck from the  
11 record.

12 CHAIRPERSON HILL: Well, that's kind of you to ask. I  
13 don't -- I only have, since I'm not at my normal place, I can't  
14 look at things easily.

15 VICE CHAIR JOHN: So what is Exhibit 27A, Mr.  
16 Eckenwiler? I also don't have my second laptop.

17 MR. ECKENWILER: Those were some supplemental photos  
18 that Mr. Sullivan filed as an attachment to the opposition to the  
19 motion for party status. I'm happy to elaborate on why I think  
20 something more needs to be done with those, but I'll stop here.

21 CHAIRPERSON HILL: Give me a second. Let's not -- just  
22 give me a second. I'm pulling it up.

23 VICE CHAIR JOHN: So are you making a motion to strike  
24 those photographs Mr. Eckenwiler?

25 MR. ECKENWILER: Sure, I'll make such a motion.

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1 VICE CHAIR JOHN: Okay.

2 CHAIRPERSON HILL: Okay. So I need to ask our counsel.  
3 So Ms. Nagelhout and/or Mr. Nicholas, because I can't see two  
4 screens at once, can you guys tell us how that works, meaning is  
5 -- well, first of all, is that something that's already in the  
6 record? And then if it is, if then somebody who is a party, who  
7 is the ANC, can then ask for something to be stricken from the  
8 record that we are now going to discuss? And Ms. Nagelhout or  
9 Mr. Nicholas is welcome to speak.

10 MS. NAGELHOUT: I'm looking up the record at the moment.

11 CHAIRPERSON HILL: Yeah, sure.

12 MR. NICHOLAS: Mr. Chair, I have the record up, so it's  
13 Exhibit 27A, which is something that was filed by the Applicant,  
14 the ANC is a party to make such a motion, but the Applicant should  
15 have the opportunity to respond.

16 CHAIRPERSON HILL: Got it. So it's in the record,  
17 right?

18 MR. NICHOLAS: Believe so. If what are you referring  
19 to, Exhibit 27A, there is an Exhibit 27A listed as Applicant's  
20 additional photos in 20813.

21 CHAIRPERSON HILL: Yep. So those are additional  
22 photos. And so I'll go ahead -- and let's all move smoothly  
23 here.

24 Commissioner Eckenwiler, why do you believe that we  
25 should strike those photos from the record? Because -- wait a

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1 minute -- well, yeah, why do you believe we should strike that  
2 from the record?

3 MR. ECKENWILER: Because those -- well, one, they're  
4 filed within the 21-day deadline. Their purported relevance was  
5 only in response to the motion for untimely filing, which has  
6 already been denied. So you can't smuggle in additional evidence  
7 within the 21-day deadline in response to some other procedural  
8 matter which has already been disposed of and is no longer  
9 relevant to the Board's deliberations.

10 CHAIRPERSON HILL: Okay. So. All right. Well, I'm  
11 not clear as to whether or not that is just necessarily in  
12 response to the Applicant requesting party status or not. But  
13 regardless, and I like the word smuggle, that was very  
14 descriptive.

15 Mr. Sullivan, do you have a response to the -- what's  
16 being thrown out here that my brain is -- the word I'm trying to  
17 find, you know, striking from the record? Do you have something  
18 to reply to that?

19 MR. SULLIVAN: Yes. We filed a response to the party  
20 status request. Just because the party status request is denied  
21 doesn't mean that our response is not allowed to be in the record.  
22 I've never heard of such a thing. Mr. Eckenwiler's being a  
23 stickler for the rules on this, yet he filed his submission last  
24 night. And if that's not permitted in as a response to a party  
25 status request, then it's clearly permitted in his rebuttal

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1 evidence to Mr. Eckenwiler's photos that he filed last night at  
2 4:00.

3 CHAIRPERSON HILL: All right. Let's -- two things real  
4 quick. Let's remember that it's Commissioner Eckenwiler, just  
5 do I don't have to like -- that's also just for all of us here  
6 because of the whole thing, right? And then -- and so anyway, I  
7 think we got enough information. I'm happy leaving it in the  
8 record just because I want whatever we're going to have, I'd  
9 rather see everything as we always kind of have done. And then  
10 the Board can figure out what we want to -- what we find relevant  
11 or not. I'm now looking at my Board members. So there's  
12 something on the table right now to strike something from the  
13 record. And I am interested in leaving it in the record so we  
14 can just hear everything and figure out where we are with this.  
15 Do my fellow Board members have anything that they'd like to  
16 offer in response to my proposition?

17 VICE CHAIR JOHN: I'm fine with your recommendation.  
18 And I agree with the Applicant that the photos were filed in  
19 response to a late motion to grant party status. So I am fine  
20 with leaving it in the record and I see no reason to strike the  
21 photographs. And the Board is also capable of evaluating evidence  
22 and determining what weight and the relevance as well. So I am  
23 in favor of leaving them in the record.

24 CHAIRPERSON HILL: Okay. All right. So then we're  
25 going to go ahead and deny the motion that was made by the ANC

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1 to strike the exhibit from the record. And I'll ask for a second,  
2 Ms. John.

3 VICE CHAIR JOHN: Second.

4 CHAIRPERSON HILL: Mr. Moy, if you could take a roll  
5 call?

6 ZC CHAIRPERSON HOOD: Question on the motion.

7 CHAIRPERSON HILL: Oh, sorry. Go ahead, Chairman Hood.

8 ZC CHAIRPERSON HOOD: And I may be -- I may have missed  
9 it. Did Mr. Eckenwiler do that verbally or did he do that in  
10 writing? Was that in his submission? Oh, he did it verbally?

11 CHAIRPERSON HILL: I believe he did it verbally just  
12 now. Is that --

13 ZC CHAIRPERSON HOOD: Okay. I'm in line with it though.

14 CHAIRPERSON HILL: I don't know. I mean, I don't know.  
15 I'm just trying to get through the --

16 VICE CHAIR JOHN: I believe he answered yes in response  
17 to my question are you asking for a motion to strike the  
18 photographs. And he said yes. That's my recollection.

19 ZC CHAIRPERSON HOOD: Okay. I don't even know if that  
20 can be done anyway. But anyway, I'll go along with the motion.  
21 I'm fine with it.

22 CHAIRPERSON HILL: That's a good question anyway  
23 because I'd like to learn as well.

24 Ms. Nagelhout, is that possible?

25 MS. NAGELHOUT: All right. Could you repeat that?

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1 CHAIRPERSON HILL: The question was whether or not a  
2 party could make a verbal motion to strike something from the  
3 record, which is currently what I think is happening.

4 MS. NAGELHOUT: Yes, I think it --

5 CHAIRPERSON HILL: Or does it have to be in writing  
6 ahead of time and submitted?

7 MS. NAGELHOUT: No. The regs say that a party can make  
8 a motion and it has to be in writing unless it's made during the  
9 hearing. So an oral motion can be considered.

10 CHAIRPERSON HILL: Okay. So back to the motion I made,  
11 which was seconded that now, Mr. Moy, if you could take a roll  
12 call for?

13 MR. MOY: When I call your name if you'll please respond  
14 to the motion made by Chairman Hill to deny the ANC's motion to  
15 strike the Applicant's photos, which I believe is under Exhibit  
16 27A. The motion was second by Vice Chair John.

17 Zoning Commission Chair Anthony Hood?

18 ZC CHAIRPERSON HOOD: Yes.

19 MR. MOY: Yes to deny?

20 ZC CHAIRPERSON HOOD: Yes to deny.

21 MR. MOY: Mr. Smith?

22 Thank you, sir.

23 Mr. Smith?

24 COMMISSIONER SMITH: Yes to deny.

25 MR. MOY: Mr. Blake?

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1 COMMISSIONER BLAKE: Yes to deny.

2 MR. MOY: Vice Chair John?

3 VICE CHAIR JOHN: Yes to deny.

4 MR. MOY: Chairman Hill?

5 CHAIRPERSON HILL: Yes to deny.

6 MR. MOY: Then staff would record the vote as five to  
7 zero to zero. And this is on the Chairman's motion to deny. And  
8 the motion to deny was second by Vice Chair John. Also in support  
9 of that motion is Zoning Commission Chair Anthony Hood, Mr. Smith,  
10 Mr. Blake, Vice Chair John, and Chairman Hill. The motion  
11 carries, sir.

12 CHAIRPERSON HILL: Thank you.

13 Commissioner Eckenwiler, can you hear me?

14 MR. ECKENWILER: I can.

15 CHAIRPERSON HOOD: So just so you know, they -- well,  
16 not they. I don't have my chart in front of me as to the order  
17 of how things go during this hearing exa- -- I mean, I have them  
18 pretty well memorized, but the new -- the way that we have been  
19 doing it lately again is it's going the applicant, then all city  
20 agencies, then parties. So you will have an opportunity to ask  
21 all of the questions, but your presentation will come after the  
22 Office of Planning. Okay?

23 MR. ECKENWILER: You're the chair.

24 CHAIRPERSON HILL: No, no, no, no, I just wanted to  
25 make sure you -- I just wanted to make sure you understood what

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1 the plan was, that's all. Okay.

2 All right. So Mr. Sullivan, if you want to go ahead  
3 and give us your presentation?

4 MR. SULLIVAN: Thank you, Mr. Chairman.

5 If the PowerPoint could be loaded please? Next slide  
6 please?

7 This is for 401 K Street, N.E. The Applicant is  
8 requesting relief from E 206 for removal of a cornice. The  
9 cornice was removed pursuant to a duly issued building permit  
10 applied for and received in good faith. So this is effectively  
11 an after the fact request. And we have provided or proposed two  
12 paths under the zoning regulations and the BZA rules for such  
13 approval. First, asking for special exception approval pursuant  
14 to E 5207, as the removal does not have a substantially adverse  
15 effect on the use or enjoyment of any abutting or adjacent  
16 dwelling. And we'll go into more detail on that later in the  
17 presentation. If the Board does not find that the Applicant  
18 meets the above special exception criteria, then the Applicant  
19 is also requesting them to consider then area of variance relief  
20 under a reliance standard, as the Applicant justifiably relied  
21 in good faith on an approval from the District in removing the  
22 subject cornice creating an extraordinary condition that leads  
23 to a practical difficulty in complying with the zoning  
24 regulations regarding this cornice. Next slide please?

25 Note about the existing construction. You'll see

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1 photos of the building and the left side of the building go  
2 straight up when it should be pitched according to the plans. So  
3 there was some construction that was done, not exactly in  
4 compliance with the plans as approved in the permit and as  
5 proposed here in the BZA application. That's not why the stop  
6 work order was issued. We have actually been stopped by DCRA on  
7 that point, but we know we need to correct that and the Applicant  
8 won't be able to proceed without anything that doesn't comply  
9 with any BZA approved plans, just like any other case, so. And  
10 but they have been prevented over the last four or five months  
11 from correcting that situation because of the stop work order,  
12 which hasn't been lifted. And the stop work order was levied  
13 because of the cornice, which had already been removed months  
14 prior to that. So any noncompliant construction is of course the  
15 province of DOB and in the end final product for the project must  
16 be compliant with anything that the BZA may approve here today.  
17 Next slide please?

18           The Office of Planning is recommending approval and  
19 DDOT has no objection. There is one letter of support from the  
20 adjacent neighbor, the tenant in the building at 403 K Street,  
21 N.E. Next slide please?

22           So first, the special exception argument. Next slide  
23 please?

24           The requirement will be in harmony with the general  
25 purpose and intent of the zoning regulations and zoning maps and

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1 will not tend to affect adversely the use of neighboring property.  
2 The project does not adversely impact the use of any neighboring  
3 property to the east because aside from the rooftop architectural  
4 element provision, the project meets all RF-1 development  
5 standards and has received minor deviation approval for its 62  
6 lot occupancy as well. Next slide please?

7           The specific requirements of E 5207, Subtitle E 206  
8 governs changes to architectural elements original to the  
9 building. So relief from E 206 is permitted and is evaluated  
10 against the criteria as follows: the proposed construction in  
11 this case is completed, but I call it proposed because the Board,  
12 of course, looks at it as if it's not there and it does need  
13 corrected as it currently sits. Light and air shall not unduly  
14 affect -- is not unduly affected by the removal of the cornice  
15 or the matter of right construction. The proposed project will  
16 meet all other development standards, including height, and has  
17 received minor deviation for the lot occupancy. And the addition  
18 of height has no effect on any windows or open spaces on the  
19 adjacent property. Accordingly, there will be no impacts on  
20 light and air. Next slide please?

21           Privacy of use and enjoyment shall not be unduly  
22 compromised by the cornice removal. And removal of the cornice  
23 is not permitting any new or invasive views into the adjacent  
24 buildings. And when I say removal of the cornice, nor  
25 construction of the addition as well. Third, the proposed

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1 construction as viewed from the street shall not substantially  
2 visually intrude upon character, scale, and pattern of the houses  
3 along the street or alley frontage. The building's located on a  
4 corner lot and is primarily visible from 4th Street, N.W., which  
5 has multiple large apartment buildings without cornices in fairly  
6 close proximity to the property. As a corner lot, the property  
7 does not disrupt the streetscape in the same way that a property  
8 situated in between two buildings might. And on this point, I'd  
9 like to point out one of the key offenders that led to the  
10 adoption of architectural elements was that the addition, third  
11 floor addition, that removed a mansard roof and dormers in the  
12 middle of a block that had matching dormers, and cornices is a  
13 lesser aspect of it. In this case, it's an end unit, it's not  
14 in the middle of the block. And this cornice, as stated in the  
15 OP report, doesn't actually match the cornice design or level of  
16 the -- even the adjacent building. So it's of its own design  
17 and wasn't built in conjunction with other buildings on the block  
18 adjacent to it. In the zoning administrator's letter, he stated  
19 that the general scale and pattern of buildings on the subject  
20 street frontage and neighborhood will be maintained consistent  
21 with the development standards. This was in relation to his  
22 grant of minor deviation. That's one of the items that his office  
23 considers. And I think that's -- can be considered evidence  
24 here. The previously existing cornice is not, as mentioned, it's  
25 not of the same character or design as the immediately adjacent

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1 building. Next slide please?

2 And then in addition on this, the surrounding area is  
3 a mix of designs and height. It is eclectic designs, as stated  
4 in the OP report. It's not a uniform design calling for a  
5 retention of every cornice on the block. And as noted by the  
6 adjacent neighbor in his submission, a quick walk around this  
7 neighborhood will reveal that several buildings have been  
8 redeveloped without their cornices being retained. And this, I  
9 believe, satisfies the requirement that the proposal not  
10 substantially visually intrude. Next slide please?

11 So here's photos. So there's photos of the building  
12 existing as it was constructed. And it shows the extent of the  
13 tree growth on this lot as well. These photos aren't as helpful,  
14 obviously, even as the ones ANC submitted where there was no tree  
15 growth. Next slide please?

16 So here -- this photo is provided to show the difference  
17 in design between the previously existing building, the subject  
18 building, and the neighboring building to the left. Next slide  
19 please?

20 And these photos are provided to show some angles that  
21 were not shown in the ANC letter, including on the right side  
22 those two buildings are directly across the street from the  
23 subject property. So that building right across the street is  
24 directly across the street on that corner to the north of the  
25 subject property. And then the building top right is three doors

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1 down from that property. Next slide please? I'm sorry, if we  
2 could go back one slide as well?

3 So the angle with the service truck in it shows taller  
4 buildings on the next block down as well. So we wanted to show  
5 that angle too. Next slide please?

6 So that's it for the special exception argument.  
7 Regarding the variance argument, the Applicant made permanent and  
8 expensive improvements in good faith justified reliance on the  
9 issuance of a building permit. The permit application included  
10 a photo of the existing cornice and showed clearly the removal  
11 of that cornice on the plans. And there's no dispute from DOB  
12 on the nature of the error on their part. I'll note from BZA  
13 Exhibit 4D that in the letter -- this is in the notice of  
14 violation from DOB, which was issued in April, about eight months  
15 after issuance of the permit and well after the cornice was  
16 removed and construction was substantially completed. It says  
17 in this letter that the building permit issued on October 8th  
18 showed the removal of the rooftop cornice element at 401 K Street,  
19 N.E. I might as well get some rebuttal out of the way here. The  
20 ANC is suggesting because of a plan page was missing, that there  
21 wasn't enough information. I'm not even sure if he's saying  
22 there wasn't enough information, but they're saying that means  
23 bad faith. But good faith cannot be asserted because an elevation  
24 wasn't provided showing the cornice and first of all, that's not  
25 what bad faith means. But the end result was the same in that

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1 DOC has noted that the information provided to them showed the  
2 removal of the rooftop cornice element. They've admitted that.  
3 They also note that the permit was issued in error. It doesn't  
4 say that the permit was issued because you didn't provide all the  
5 information we needed or that there was confusing information.  
6 It just says it was issued in error. Next slide please?

7           So the Applicant submitted the building permit  
8 application in March 2021. During the permit review process the  
9 Applicant submitted as part of the complete plan set existing  
10 elevation showing a cornice on the building and proposed  
11 elevation showing the removal of that cornice. Now, according  
12 to -- I'm not certain if the existing elevation's shown. Mr.  
13 Eckenwiler's saying it wasn't. I'm okay to stipulate to that  
14 until we have more time to look into that. But it's clear that  
15 the photo was -- I think everyone agrees the photo showing the  
16 cornice was there and DOB has noticed that, as I just mentioned.  
17 And the Applicant submitted photos, same plans and photos were  
18 also included as part of the Applicant's request for minor  
19 deviation. The reason why we mention the minor deviation is it's  
20 another level of review, maybe not a level of review, but it's  
21 additional review, somewhat more intense. And so it still didn't  
22 show up here, or nobody raised the issue of the cornice at this  
23 point. October 8th the permit was issued. More than six months  
24 later, DCRA determined it had issued the building permit in error  
25 and issued the notice of violation and a stop work order. At

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1 this point the cornice was removed and the building was  
2 substantially completed, the exterior at least. The Applicant  
3 was perhaps a couple of months away from being completed and  
4 being able to sell the two units being renovated. So it's clear  
5 from the information provided, denial of the application would  
6 be nothing less than catastrophic economically for the Applicant,  
7 as the apparent fix would be to completely undo the six months  
8 of construction. Next slide please?

9 Here's a copy of the building permit that was issued  
10 in October. Next slide please?

11 This was what was submitted. You see an approval there  
12 stamp. This was submitted in the permit file showing the existing  
13 cornice. And this is what we've been referring to as the photo  
14 in the file. Next slide please?

15 This is an elevation showing removal of the cornice.  
16 Next slide please?

17 A side elevation showing the penthouse, stairway  
18 penthouse, as it was supposed to be -- as it was approved and  
19 should have been constructed, instead of being slanted it went  
20 straight up, and that's yet to be corrected. Next slide please?

21 Next slide please?

22 So the Applicant --

23 CHAIRPERSON HILL: Mr. Sullivan?

24 MR. SULLIVAN: Yes?

25 CHAIRPERSON HILL: What is it that still needs to be

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1 corrected?

2 MR. SULLIVAN: Essentially it's --

3 CHAIRPERSON HILL: Go back to that picture. Go two  
4 slides back.

5 MR. SULLIVAN: So you see where the stairway penthouse  
6 on top is slanted on both ends to meet the setback requirements?

7 CHAIRPERSON HILL: Yes.

8 MR. SULLIVAN: And instead of slanting it, it was built  
9 straight up.

10 CHAIRPERSON HILL: Okay. So currently it's straight  
11 up?

12 MR. SULLIVAN: Yes.

13 CHAIRPERSON HILL: Okay. Okay. Thank you.

14 MR. SULLIVAN: Next slide please? Next slide please?

15 So variance under -- the area of variance argument, the  
16 reliance or estoppel situation has been -- on several occasions  
17 been considered by the Board to be an extraordinary or exceptional  
18 condition affecting a property. An applicant's reliance in good  
19 faith can be considered an exceptional situation pursuant to  
20 these cases at least. And the Applicant's case is very similar  
21 to the above referenced cases in nature, although the degree to  
22 which the estoppel elements are met in this case is much higher  
23 than any case I've ever brought forward or seen, simply because  
24 there's absolutely no evidence of any bad faith. It was clearly  
25 fully transparently done. And a lot of times in these situations,

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1 there will be missing plans, there'll be information not  
2 provided. The information was provided. The cornice element,  
3 while the architectural element provisions are well known, it's  
4 more confusing on the cornice for applicants. So it's not  
5 surprising that a cornice gets missed in a permit application and  
6 in a permit review as well, so. And as noted above, the elements  
7 of estoppel are satisfied, must be shown in order to raise an  
8 estoppel claim against enforcement of a zoning regulation are  
9 that the party acting in good faith on affirmative acts of a  
10 municipal corporation makes expensive and permanent improvements  
11 in justifiable reliance thereon, and the equity strongly in favor  
12 of the party seeking to invoke the doctrine. Next slide please?

13           The Applicant acted in good faith. The present case  
14 had no claimed misrepresentations, ambiguities, or lack of  
15 transparency. And the building permit application prior to the  
16 issuance of the building permit, the Applicant in good faith  
17 acted with complete transparency in submitting photos and plans  
18 showing the existing cornice as part of both the minor deviation  
19 application and the building permit application. There was no  
20 additional information needed or requested prior to permit  
21 issuance. A note on good faith: the ANC letter seems to imply  
22 that there was bad faith, although it doesn't specifically say  
23 that; it states that -- let's read this, let me see here -- states  
24 that "The Applicant argues that it relied in good faith. Because  
25 the Applicant's own failures contributed to issuance of the

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1 permit, equitable estoppel does not apply." So it doesn't exactly  
2 say bad faith, but what good faith is, and maybe for the first  
3 time ever I'm actually going to refer to Black's Law Dictionary,  
4 but good faith encompasses an honest belief, an absence of malice,  
5 and an absence of design to defraud. And from the approved plans,  
6 you can see that there was clearly an absence of design to defraud  
7 or an absence of malice, and there was an honest belief that the  
8 cornice could be removed. Affirmative acts: DCRA issued the  
9 permit and has not claimed that there was anything wrong on the  
10 part of the Applicant. It was an error that it was issued. Next  
11 slide please?

12           And the Applicant has obviously made permanent and  
13 expensive improvements. In the main case on estoppel in the  
14 Court of Appeals, DCRA revoked a subject building permit two  
15 months after it was issued, and the court deemed that this was a  
16 considerable amount of time and critical in establishing  
17 estoppel. And in that case as well, the project was 60 percent  
18 completed when enforcement action was taken, you know, a  
19 substantial portion of the total project, even without  
20 documentary evidence indicating the precise amount of money  
21 expended up to that point. So they had claimed to spend \$225,000  
22 in reliance on the building permit. The reason I talk about this  
23 case is because this case extends well beyond the criteria that  
24 satisfied the court in the *Saah* case. Instead of two months,  
25 it's six months. The money spent is obviously a lot more because

1 the project is completed essentially and would be -- and not only  
2 it's completed, but the work that would be required to undo it  
3 costs almost as much or more. So if the Applicants are now forced  
4 to comply with the cornice will probably lead to additional costs  
5 of 536,000. We're talking about a million-dollar mistake,  
6 essentially, a million-dollar hit consequence. Next slide  
7 please?

8           And the equities strongly favor the Applicant.  
9 Equities strongly favor the Applicant claiming estoppel when that  
10 party acted in good faith and objectively reasonably relied on  
11 the issuance of a permanent equity will not require a wasteful  
12 act. Continuing this construction for another year, if that's  
13 possible even, will be a wasteful act, and the public's interest  
14 is minimal in this case, in my opinion, especially when borne out  
15 by the fact that we believe we also meet the special exception  
16 criteria, as OP has noted as well. Next slide please?

17           So the strict application will result in practical  
18 difficulty for those reasons, primarily the economic expense in  
19 correcting it and the money spent so far. Next slide please?

20           And relief can be granted without substantial detriment  
21 to the public good and without impairing the intent, purpose, and  
22 integrity of the zone plan. Aside from the cornice removal, the  
23 project meets all development standards of the RF-1 zone. This  
24 permitting history is unique in that the Applicant is only  
25 requesting relief because it relied on the assurances of DCRA and

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1 spent significant amount of money as a result. And the degree  
2 of relief is minimal, only removing a decayed cornice, and the  
3 Applicant would sustain a significant financial loss after  
4 relying on the validity of a validly-issued building permit if  
5 relief is not granted. Next slide please?

6 And that may be it. Yes. That's it. If the Board  
7 has any questions. Thank you. And the property owner and the  
8 engineer may be -- should be available too if the Board has any  
9 questions for them. Thank you.

10 CHAIRPERSON HILL: Okay. Thanks.

11 All right. Does the Board have -- Ms. John, I saw your  
12 hand up?

13 VICE CHAIR JOHN: So if you could put back that slide  
14 for me showing the variance argument? Let me see if I understand  
15 what you're saying, Mr. Sullivan. You're saying that the  
16 application meets the standard variance, the three-part variance  
17 test, and the fact that the permit was approved and then revoked  
18 six months later is what goes to the exceptional condition that's  
19 affecting the property. And then because of that exceptional  
20 condition, there's a practical difficulty, which is the 500 and  
21 something thousand dollar cost to comply with the regulation.  
22 And then the third prong. Is that how we should oppose -- I  
23 mean, should view your argument as opposed to a straight  
24 detrimental reliance argument? In other words, the error caused  
25 the exceptional condition which created the practical difficulty,

1 and then you get to the third prong, is that how you're seeing  
2 it?

3 MR. SULLIVAN: Yes, that's correct. I think that's a  
4 great summary of that, yes.

5 VICE CHAIR JOHN: Okay. Thank you.

6 MR. SULLIVAN: Thank you.

7 CHAIRPERSON HILL: Okay.

8 If we could drop the slide deck please?

9 Okay. Anyone else for Mr. Sullivan? Sure, Mr. Smith?

10 COMMISSIONER SMITH: This is more to the images that  
11 you placed in the new document, but I'm assuming placed in there  
12 to argue the special exception argument regarding the character.  
13 Can you speak to those images and how using those images they  
14 may support your argument that this -- the addition, the third-  
15 floor addition, without (indiscernible) meets the character of  
16 the neighborhood?

17 MR. SULLIVAN: Yes. So those were included to show  
18 examples of -- I believe in the ANC letter they stated that all  
19 cornices were intact. But those -- the photos of the two houses  
20 across the street show cornices that were, I believe, replaced.  
21 So it's not the original cornice, and in addition made -- which  
22 affects the overall appearance, which as the Board is reviewing  
23 this as well. And I would also cite -- I mean, OP, I thought  
24 described this really well, stating that -- so to the north  
25 directly across K Street is an end unit row building that was

1 expanded with an apartment above similar to the original building  
2 on the subject property, including the removal of the original  
3 cornices. So that's also why we provided that example and it  
4 states it's an eclectic mix of rowhouse styles. But I do think  
5 that -- not to say that like there needs to be one domino or it  
6 has to happen once before it's allowed to happen again, but I  
7 think because those properties exist there as renovated across  
8 the street, that certainly mitigates any visual intrusion on  
9 character, scale, and pattern of this particular design, yes.

10 COMMISSIONER SMITH: Okay. Do you know when those  
11 buildings were constructed, were they constructed prior to the  
12 new zoning regulations?

13 MR. SULLIVAN: I do not. If they were -- if they --  
14 if the cornices were replaced with a different design, they would  
15 have needed relief. And I am not aware of that, but, no, I don't  
16 know when those were built.

17 COMMISSIONER SMITH: And I think my last question is  
18 because it wasn't shown in the record, what is the height of the  
19 existing building? I mean, what is the height of the building  
20 now relative to the previous -- the exist- -- the previous  
21 building before construction, do you know?

22 MR. SULLIVAN: I think that should be in Form 135, I  
23 can look that up. But the proposed height is 35 feet. So I can  
24 look up what the existing height is.

25 (Pause.)

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1 COMMISSIONER SMITH: Which exhibit did you say it was  
2 in?

3 MR. SULLIVAN: Exhibit 11. Twenty feet, 22 feet was  
4 the existing height, 35 is proposed.

5 COMMISSIONER SMITH: Thank you. That's all the  
6 questions I have for them, Mr. Chair.

7 CHAIRPERSON HILL: Okay.

8 Anyone else for Mr. Sullivan?

9 Okay. Commissioner Eckenwiler, can you hear me?

10 MR. ECKENWILER: Yeah.

11 CHAIRPERSON HILL: Is there a buzzing sound going on  
12 or is that my computer? Y'all don't hear a buzzing, do you?

13 COMMISSIONER SMITH: No, I hear it; it's you when you  
14 talk.

15 CHAIRPERSON HILL: Can you hear it -- I'm trying to  
16 figure out -- can you hear the buzzing when I speak?

17 ZC CHAIRPERSON HOOD: I can't hear it.

18 COMMISSIONER SMITH: It's moderate.

19 CHAIRPERSON HILL: Okay. All right. Well, okay. It  
20 seems to have gone away.

21 Commissioner Eckenwiler, can you hear me? I'm sorry.

22 MR. ECKENWILER: Yes.

23 CHAIRPERSON HILL: Yeah. Do you have any questions for  
24 Mr. Sullivan?

25 MR. ECKENWILER: No questions, Mr. Chairman.

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1 CHAIRPERSON HILL: Okay.

2 All right. I'm going to turn to the Office of Planning.

3 MR. MORDFIN: Good afternoon, Chair, members of the  
4 Commission, or rather the Board, I'm Stephen Mordfin with the  
5 Office of Planning. The Office of Planning is in support of this  
6 application both as either the special exception relief that the  
7 Applicant applied for or the variance relief. The Office of  
8 Planning finds that in reviewing this as a special exception that  
9 looking at the criteria that the light and air should not be  
10 unduly affected. These are cornices that were attached to the  
11 side of the building as an ornamental facade. This does not  
12 affect light and air, the same as it does not affect the privacy  
13 of use and of enjoyment because they are just ornamental. As  
14 viewed from the street or an alley or public way, this  
15 neighborhood does include a variety of architectural styles,  
16 including on the block on which it's located. To the east of  
17 this property on K Street there are -- there is a series of  
18 rowhouses there, they are all similar from when they were  
19 constructed, but this property, which was the end unit was always  
20 different from the others. It has a different set of windows,  
21 the cornice was different, the door entry was different because  
22 this was constructed as a corner store with an apartment above  
23 as opposed to a single residential rowhouse. So therefore this  
24 building never did match the other ones exactly. It was more  
25 similar maybe to the one that was directly across the street that

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1 the Board was speaking of. That one does have a third floor that  
2 was added on, and I believe it was Mr. Smith that asked the  
3 question from looking online at Google Maps, there is a photo  
4 from 2011 showing the third floor under construction on that  
5 property. So it -- that one does predate the regulation about  
6 removing ornamental features. As viewed from the alley or street  
7 (indiscernible) we do not find that this would substantially  
8 intrude upon the character, scale, or pattern because of the  
9 variety of houses. As you go north on 4th Street across K Street,  
10 especially on the west side of the street, there is a series of  
11 houses and each one is different. They appear to have been each  
12 built individually and separately. So there's no consistent  
13 pattern of houses within this neighborhood. And there is a  
14 variety of different kinds of ornamental features or not having  
15 the ornamental feature that was removed on this property. So  
16 there is a difference. In demonstrating compliance, the  
17 Applicant did submit photographs. I think that one of the issues  
18 in this case is that the Applicant did receive permits to do this  
19 work, and it was only after that work was completed that DCRA,  
20 at the time it was still DCRA, issued the stop work orders. So  
21 that does, I think, impact our review of this in that the  
22 Applicant did have permits to do it. As for -- let's see, I'm  
23 sorry, what was I going to say? So we don't recommend any special  
24 treatment, with the exception of we do find that everything that  
25 was built on that property does not conform to the zoning

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1 regulations, specifically what we don't know because we don't  
2 have all that information, but we do want that entire property  
3 -- it has to be brought into conformance with the exception of  
4 the cornices, but anything else -- and the Applicant's submission  
5 does do point to the penthouse not being in conformance, so OP  
6 recommending approval of this application, we don't mean that to  
7 say that whatever is built on that property that is not in  
8 conformance with the -- should be approved along with the rest  
9 of the rest of this application, just the removal of the cornices,  
10 which we find does meet the criteria for the granting of a special  
11 exception, primarily because the Applicant did have the permits.  
12 And we find that that creates the unique situation in this case.

13           As for the area variance request, we just briefly noted  
14 that the extraordinary condition affecting the property is the  
15 issue of the permit by DCRA that was later found to be issued in  
16 error by that same agency. And that's why they issued the stop  
17 work order. Unfortunately, the stop work order was issued after  
18 the work had been completed, so therefore OP would not oppose the  
19 area variance should it be requested by the Applicant. Thank  
20 you. And I'm available for questions.

21           CHAIRPERSON HILL: Okay.

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

24           Okay. The Board can think about it. I can't tell if  
25 people are thinking or not.

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1 All right. Commissioner Eckenwiler, can you hear me?

2 MR. ECKENWILER: I can.

3 CHAIRPERSON HILL: Do you have any questions for the  
4 Office of Planning.

5 MR. ECKENWILER: No, Mr. Chair.

6 CHAIRPERSON HILL: Okay. Okay. Commissioner  
7 Eckenwiler, do you want to give us your presentation?

8 MR. ECKENWILER: Sure. You have our letter, which is  
9 in the record. Give me a moment. That's Exhibit 29. The ANC  
10 voted unanimously to oppose this application in its entirety.  
11 Mr. Sullivan has already laid out, and Mr. Mordfin has already  
12 laid out the two separate theories under which relief should be  
13 granted. We don't believe that either of those arguments holds  
14 water.

15 So let's start with the special exception. In order  
16 to obtain relief authorizing the destruction of the original  
17 rooftop architectural element, as Mr. Sullivan stated, the  
18 Applicant must establish that the proposed construction, so here  
19 that's the as-built condition, shall not substantially visually  
20 intrude upon the character, scale, and pattern of houses along  
21 the street or alley frontage. And I want to pause for a moment  
22 here because we keep having this debate. We had this about 521  
23 Florida. We've had it about 1170 3rd. It keeps coming up again  
24 and again. If you read E 5207, it is not an invitation, as Mr.  
25 Sullivan and as Mr. Mordfin have suggested, to wander around the

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1 neighborhood and find buildings that look different somehow. It  
2 is about how this building looks in its specific context, the  
3 buildings next to it, what you see when you look at this building,  
4 not when you go roving through the general area because you're  
5 always going to find something different. So the focus of the  
6 analysis under E 5207 is very, very different. And all of this  
7 conversation about the building across the street or the  
8 buildings on the west side of 4th Street, north of K Street, is  
9 utterly irrelevant. So in engaging in its analysis, the Board  
10 should focus on what this looks like right here, and not, you  
11 know, other stuff a block away, other stuff that you would never  
12 see when you're looking at this building. So I want to emphasize  
13 there's a very fundamental disagreement here. As I said, the ANC  
14 has expressed this before, will continue to express this.

15           So if you look at the photographs on page two of our  
16 submission, you can see that the character and pattern is  
17 fundamentally different. I'm not going to quibble -- the ANC is  
18 not going to quibble over three stories versus two stories,  
19 because if the other points don't convince you, that's not going  
20 to either. The real issue here is this building has been  
21 fundamentally denuded. It doesn't look anything like other  
22 buildings except in its general massing. It's got some bays. It  
23 shows some brick. And that's about it. It doesn't look -- and  
24 it is a profoundly modern building in the main now. It's got  
25 this massive, completely rectilinear corner turret. It's you

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1 know -- it's faced in these fabricated panels that look nothing  
2 like the buildings going down 4th Street, the buildings going to  
3 the east, as seen in the first photograph on page two of our  
4 submission. And so it is fundamentally disharmonious. It is out  
5 of character. And it therefore substantially visually intrudes  
6 upon the character and pattern of this street frontage.

7           I have to say a word here, and frankly, it's chagrins  
8 me to have to go into this. The Office of Planning's report is  
9 -- it egregiously misreads the regulation. On page three OP's  
10 report basically says well, when you take off the cornice, it  
11 doesn't make it look all that different, and so this doesn't  
12 substantially visually intrude on the character, scale, and  
13 pattern. As pointed out in our letter, that is not the test.  
14 The regulation refers to the proposed construction. So you don't  
15 get to say well, imagine the cornice isn't there and we'll call  
16 it a day and ignore everything else that in a normal case would  
17 be built, or as here, has already been built. You look at the  
18 totality. So OP's analysis on this point is fundamentally wrong,  
19 and the Board should reject it out of hand. It just doesn't  
20 engage with the language, meaning, purpose, and intent of the  
21 regulation. And therefore, because this project as built does  
22 substantially visually intrude upon the character and pattern of  
23 this street frontage, it fails the test for a special exception  
24 under Section E 5207, and the Board should therefore deny that  
25 portion of the application.

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1           In the alternative, as Mr. Sullivan has explained in  
2 some detail, the Applicant is seeking relief under estoppel  
3 theory, equitable estoppel. The ANC is unpersuaded and we oppose  
4 the application on these grounds as well. It is true that the  
5 permit application before what was then DCRA does include these  
6 two small photos of the building and they do show the cornice,  
7 and we're not arguing that DCRA didn't mess up, would be the most  
8 polite way to characterize it, we see that all the time frankly,  
9 but we do not -- we're not so naive as to believe that the  
10 Applicant is blameless here. As set out in the letter, the  
11 Applicant had an affirmative obligation specifically in order to  
12 inform the zoning administrator. Like it isn't just some random  
13 requirement that's buried in the building code; it is  
14 specifically under the subsection dealing with zoning compliance.  
15 So it is material in this instance. It's not some sort of  
16 administrative error. I do want to pick up on something that Mr.  
17 Sullivan said. He said that applicants leave out bits and pieces  
18 of applications all the time. I could not agree more because  
19 that is how the game is played. That is how applicants skate  
20 by. That is how they deceive the zoning administrator and his  
21 staff, either through omission or sometimes affirmative  
22 misrepresentation. And that's how these types of permits get  
23 issued in error.

24           And as I said, DCRA, now DOB, certainly bears some  
25 responsibility here. Our position, because we know how the world

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1 works, we know how the permitting process works in D.C., and we  
2 know what we see all the time, we do not believe that this  
3 Applicant comes to the Board with clean hands. And because  
4 estoppel is an equitable doctrine, we believe that this Applicant  
5 is not entitled to relief under an estoppel theory. And we  
6 therefore oppose the application. That concludes my application  
7 -- or my presentation. I'm happy to answer questions if the  
8 Board has any.

9 CHAIRPERSON HILL: Okay. Thanks, Commissioner.

10 Does the Board have any questions for the ANC?

11 VICE CHAIR JOHN: Yes, Mr. Chairman.

12 So Mr. Eckenwiler, is there anything in the record that  
13 suggests bad faith or lack of clean hands by the Applicant?

14 MR. ECKENWILER: Sure, Ms. John. So we have the  
15 omission of the mandatory zoning compliance drawing. We also  
16 have, as Mr. Sullivan has conceded and Mr. Mordfin's confirmed,  
17 the obviously noncompliant construction after the fact. And as  
18 I said --

19 VICE CHAIR JOHN: Excuse me, Mr. Eckenwiler.

20 MR. ECKENWILER: -- if we were naïve --

21 VICE CHAIR JOHN: Mr. Eckenwiler, as to what the  
22 Applicant submitted, is there not a photograph of the building  
23 with the cornice as it was at the time? Are you saying that's  
24 not there?

25 MR. ECKENWILER: Ms. John, our letter states that it's

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1 here, and I've already testified that it's there.

2 VICE CHAIR JOHN: Okay. All right. Thank you. I just  
3 don't understand the argument that there's bad faith. When I  
4 could see if the Applicant did not submit that photograph, I  
5 would say definitely that's suspicious, but there is that  
6 photograph there and it's stamped. So I just wanted to make sure  
7 that there wasn't something that I was missing. So thank you  
8 for responding.

9 CHAIRPERSON HILL: Thank you, Vice Chair John and  
10 Commissioner Eckenwiler.

11 Who has another question for the ANC? Mr. Smith?

12 COMMISSIONER SMITH: You had stated that the Office  
13 Planning had made no judgment about the visual intrusion and the  
14 character, and you were saying that the Applicant was looking  
15 across the block, down the block. What is your -- could you  
16 state again what is your position on where we should -- where  
17 the Board should look? Are you saying directly to the left and  
18 right of a particular property, because this has come up several  
19 times before with the ANC?

20 MR. ECKENWILER: It has, sir. And yes, our position  
21 is that this is about how this building itself appears or in the  
22 normal case would appear if constructed as proposed. In relation  
23 to its immediate surroundings, that would -- I mean, I haven't  
24 used that phrase before, but I think that's one way to think  
25 about this, not about picking and choosing other buildings that

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1 are not what you see when you look at this property.

2 COMMISSIONER SMITH: I'm still struggling with that  
3 because, you know, two of the properties that was presented by  
4 the Applicant were in the immediate surroundings. One was across  
5 the street. One is catercorner across the street.

6 MR. ECKENWILER: So if you're looking at 401 K Street,  
7 unless you're looking north at some extremely acute angle, so  
8 among other things, not looking at the primary elevation of 401  
9 K Street, you're not going to see that building that's  
10 catercornered, I assume you're referring to the northwest corner.  
11 And the northwest corner building anyway is -- it's a historic  
12 rowhouse, features are still intact there. I know Mr. Mordfin  
13 was referring to buildings further north, at least that's how I  
14 understood his testimony. But you don't get to, in our view,  
15 say well, you know, we found something across the street that  
16 looks really, really different. If you're not looking at this  
17 building and those that are immediately adjacent to it, then I  
18 don't know what E 5207 is supposed to mean, because it seems to  
19 me that either it means you look at the immediate context looking  
20 at this building or E 5207 is just a blank check.

21 COMMISSIONER SMITH: So in your opinion, it should be  
22 looked at -- in the position of the ANC what should be looked at  
23 is the rowhome to the right of the property if I'm looking at  
24 it, to the east?

25 MR. ECKENWILER: I think it's also appropriate and our

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1 submission has included a photo, because it's a corner property,  
2 you should be looking at the properties around the corner on 4th  
3 Street and there's an example of that on page -- at the top of  
4 page three in our submission. (Indiscernible), but yes, sir, if  
5 you look at the top of the ANC submission, page three, there's a  
6 view looking northeast. This is standing on 4th Street. We see  
7 the rear of 401 K and its western facade there to the left. And  
8 then to the right, on the right half -- right hand half of the  
9 photograph you see those rowhouses that lie immediately to the  
10 rears around the corner on 4th.

11 COMMISSIONER SMITH: Okay. Yeah, I see it, the top of  
12 3, okay. Okay. I think that's the only question I had. Thank  
13 you.

14 CHAIRPERSON HILL: Okay. Anyone else for the ANC?  
15 Okay. Mr. Sullivan, do you have any questions for the  
16 ANC?

17 MR. SULLIVAN: No, thank you.

18 CHAIRPERSON HILL: Okay.

19 Ms. Mehlert, could you tell me who we have to speak to  
20 get testimony?

21 MS. MEHLERT: Sure, there's two individuals in support  
22 and one in opposition.

23 CHAIRPERSON HILL: Okay. Could you let -- why don't  
24 you let the two in support in first and tell me who they are?

25 MS. MEHLERT: Sure. There's Roger Gordon and Paul

1 Leitner-Wise.

2 CHAIRPERSON HILL: Okay. Mr. Leitner-Wise, can you  
3 hear me?

4 Mr. LEITNER-WISE: Hello? Can you hear me?

5 CHAIRPERSON HILL: Yes, can you hear me? Is this Mr.  
6 Leitner-Wise?

7 MR. LEITNER-WISE: This is Mr. Leitner-Wise.

8 CHAIRPERSON HILL: Oh, Leitner-Wise. Okay, good.  
9 Could you introduce yourself for the record please, sir?

10 MR. LEITNER-WISE: Yes, I can. My name is Paul Leitner-  
11 Wise. I'm a tenant in 403 K Street, adjacent to the subject  
12 property. I'm a designer by profession. I've lived here  
13 approximately four years. There's one other tenant in the  
14 building who lives in the basement.

15 CHAIRPERSON HILL: Mr. Leitner, I'm sorry. I just  
16 wanted to let you know, so you as a public person will have three  
17 minutes to give your testimony.

18 MR. LEITNER-WISE: Yes, sir.

19 CHAIRPERSON HILL: And I'm going to time you, and you  
20 can begin whenever you like.

21 MR. LEITNER-WISE: Okay. I'd like to start now. As I  
22 as I mentioned, I'm a designer by profession. I've lived here  
23 approximately four years. So I'm very familiar with the property  
24 and very familiar with the construction that's happened next  
25 door. As I state, I'm in approval of it continuing, subject to



1 whatever the Board decides. I'd like to pick up on a -- oh, one  
2 thing I'd like to mention. Mr. Smith asked about the two  
3 buildings opposite, one was 2011, but the other building, 410 K  
4 Street, was started in 2018 and finished in 2019. So whether  
5 that's of any use, I just thought I'd offer that. If we're going  
6 to look at 401 on its own, with regards to the buildings adjacent  
7 to it, we can't ignore the fact that the original 401 did not  
8 follow the style of any of the buildings around it. My view is  
9 that, yes, it's a modern interpretation. The only way to blend  
10 that building completely would be to build an exact replica of  
11 403, 405, 406, 407, any of those buildings, which was not feasible  
12 because you'd have to actually reduce the plot size  
13 substantially. So I think the building accurately reflects the  
14 feel of the area we live in. It's historically a mixed-use area.  
15 Design is always subjective and what some people like, other  
16 people don't. But to single it out because of the way it looks  
17 and not think about what there was before, which equally didn't  
18 blend in, I think is a is a mistake. The cornice really is  
19 irrelevant. I don't -- I understand the reasons for it, but I  
20 -- in this instance, I don't think it would fundamentally alter  
21 the appearance of the building. It certainly doesn't detract one  
22 way or another from how it is now, I think. Based on the  
23 commissioner's testimony, even if it had the cornice, he wouldn't  
24 be satisfied with the -- the ANC wouldn't be satisfied with the  
25 building as it is. So I'm -- I can't really say more than that.

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1 I think it's certainly an improvement on what went before and I  
2 think it accurately reflects the area.

3 CHAIRPERSON HILL: Thank you.

4 Does anybody have any questions for the witness, and  
5 if so, please raise your hand?

6 Mr. Sullivan, do you have any questions for the  
7 witness?

8 MR. SULLIVAN: No. No, I don't. Thank you, Mr. Chair.

9 CHAIRPERSON HILL: Commissioner Eckenwiler, do you have  
10 any questions for the witness?

11 MR. ECKENWILER: No questions.

12 CHAIRPERSON HILL: Okay.

13 Mr. Leitner-Wise, thank you.

14 Mr. Gordon, can you hear me?

15 MR. GORDON: Yes, sir, I can. Thank you.

16 CHAIRPERSON HILL: Yeah, if you could go ahead and give  
17 me your name and address please?

18 MR. GORDON: Roger Gordon, 407 K Street, N.E.

19 CHAIRPERSON HILL: Okay. Great. Mr. Gordon, you also  
20 have three minutes to give your testimony, and you can begin  
21 whenever you like.

22 MR. GORDON: Thank you very much. Thank you for your  
23 time. I know this is a lot of work, and we do appreciate it. I  
24 have lived in -- at 407 K, two houses over from the subject  
25 property since 2005 when I came here to attend law school at

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1 Georgetown. Before that, I lived in San Francisco and I ran a  
2 nonprofit organization that was involved in urban planning and  
3 economic development. We worked with every city agency, as well  
4 as the SBA in the state. So I've got -- you know, I look at  
5 neighborhoods with a little bit of a trained eye. And you know,  
6 what I'm getting from all this is that Commissioner Eckenwiler  
7 is inviting you to substitute his judgment and his personal view  
8 of how a city should be planned and what a neighborhood should  
9 look like for your own and for the planning departments. And I  
10 think while you should take that on board, you should recognize  
11 that an ANC commissioner in this respect, there are far more  
12 neighbors in support of this project than opposed to it. And  
13 you can always drum up someone to speak against a project. But  
14 at the ANC hearing where the ANC agreed to -- well, vote -- voted  
15 to vote down the project, it was somewhat flawed. The only people  
16 who managed to get Zoom to work that day were people who spoke  
17 out against the project. Paul Leitner-Wise and I could not speak  
18 at that hearing for some technical reason. And both of us pretty  
19 much live on Zoom all day for work, so I don't know what the  
20 problem was. As a practical matter, I think what would satisfy  
21 the ANC would be to raise the building and build a rowhouse that  
22 matched some style that no longer exists in this neighborhood.  
23 The AVA is a six-story modern building, multicolored modern  
24 building, right on the same block as the subject property. You  
25 know, planning needs to happen in this city, there needs to be

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1 some consistency in the appearance of fairness. It's hard for  
2 you to manage that because your work touches upon a number of  
3 agencies. However, this is not an opportunity to subject their  
4 property -- the project to de novo review. It is a chance to  
5 fix wrongs and get some housing built and move forward in the  
6 city. So thank you very much for your time.

7 CHAIRPERSON HILL: Thank you, Mr. Gordon. Okay.

8 Let's see. Mr. Sullivan, do you have any questions for  
9 the witness?

10 MR. SULLIVAN: No, thank you.

11 CHAIRPERSON HILL: Does the ANC have any questions for  
12 the witness?

13 MR. ECKENWILER: No, sir.

14 CHAIRPERSON HILL: All right. Okay. Thank you, Mr.  
15 Leitner-Wise (sic) -- oh, I'm sorry, Ms. John has a question for  
16 someone.

17 You're on mute, Vice Chair John.

18 VICE CHAIR JOHN: I believe the witness who just spoke  
19 was Mr. Gordon; am I correct?

20 MR. GORDON: That's correct.

21 VICE CHAIR JOHN: Okay. So you've lived in the area  
22 before the renovations were started, right?

23 MR. GORDON: That's correct.

24 VICE CHAIR JOHN: And did you have an opportunity to  
25 see the photograph that the Applicant submitted of the cornice?

1 MR. GORDON: I did.

2 VICE CHAIR JOHN: Okay. So did that building look like  
3 the others to the, I believe it to the, left, not on the corner,  
4 not on the -- yeah, not on the corner, but I believe it would be  
5 403, 405, did that --

6 MR. GORDON: No, not at all. Not at all. It was, I  
7 guess, way back when it was built, it was a store, a corner store,  
8 with housing above, and then it was a church with housing above.  
9 And then it was empty for a good long stretch there. But that  
10 building has always been different, and -- yeah, no, the photo  
11 was correct, was accurate.

12 VICE CHAIR JOHN: Thank you. And the building looks  
13 like a corner store with the large windows, one large window on  
14 the first floor and an entrance, and also built quite low to the  
15 to the ground. So there are no steps as in the house to the  
16 west. And it might be 403 or 405.

17 MR. GORDON: 403. No, there's not a -- there are no  
18 steps up to up to the ground level, no.

19 VICE CHAIR JOHN: Just your typical corner store  
20 configuration?

21 MR. GORDON: Precisely.

22 VICE CHAIR JOHN: Okay. Thank you.

23 MR. GORDON: Thank you, ma'am.

24 CHAIRPERSON HILL: Anyone else?

25 All right. I'm going to excuse please the two

1 witnesses. Thank you, Ms. Mehlert. And if you could bring in  
2 the other two please, and give me their names please?

3 MS. MEHLERT: Sure the next person's name is Shad Gone  
4 (phonetic) and they're going to be on the phone.

5 CHAIRPERSON HILL: Okay. Mr. Gone or Ms. Gone, can you  
6 hear me?

7 MR. GONE: Hello? Can you hear me?

8 CHAIRPERSON HILL: Yes. Could you introduce yourself  
9 for the record please?

10 MR. GONE: Sure. My name is Shad Gone. I'm a resident  
11 and property owner, I live about two blocks away from the subject  
12 property.

13 CHAIRPERSON HILL: Okay. Mr. Gone, you'll have three  
14 minutes to give your testimony and can begin whenever you like.

15 MR. GONE: Okay. I just wanted to mention a couple of  
16 other items and echo what Commissioner Eckenwiler said. I think  
17 one of the key questions that I would urge the Board to  
18 investigate is whether the Applicant actually did notify properly  
19 DCRA about the cornice. The two photographs, in my view, do not  
20 meet the construction code regulation. You know, that the  
21 Applicant should have submitted drawings showing the dimensions  
22 and labels of the existing conditions, and they didn't do that.  
23 And I would specifically point to the approved permit drawings  
24 on the slide that specifically has the existing roof conditions,  
25 and the cornice is not drawn on there at all. So it's no surprise

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1 in my view that DCRA made an error in issuing the permit because  
2 they didn't know about the cornice. And the photographs aren't  
3 sufficient to meet that regula- -- to meet the construction code  
4 regulation.

5           The other point I'd like to make is regarding this good  
6 faith argument that the Applicant is making. In my view, you  
7 know, the penthouse that was built above the third floor was  
8 completely illegal. It was not permitted in the approved  
9 drawings. And I appreciate the Applicant, you know, attempting  
10 to come clean on that point. But it's awfully hard to square  
11 this argument that oh, we're acting in good faith by -- with the  
12 cornice matter and then in the same breath saying we did something  
13 wrong, that DCRA specifically said you cannot build that  
14 penthouse. And that's in the written record, in the public  
15 permits, in the e-records website. And they went ahead and built  
16 that penthouse anyway. That, in my view, that does not align.  
17 And it really undercuts the good faith argument.

18           Final point I'll make is the Applicant also said that  
19 the cornice regulations are confusing. In my view, they're not  
20 confusing at all. E 206 specifically states cornices cannot be  
21 removed. There are other rooftop architectural elements where  
22 maybe there's some confusion, but the regulation specifically  
23 states cornices cannot be removed. So there is no confusion at  
24 all on that point. Thank you.

25           CHAIRPERSON HILL: Thank you, Mr. Gone.

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1 Does the Board have any questions for the witness?

2 Okay. Mr. Sullivan, do you have any questions for the  
3 witness?

4 MR. SULLIVAN: No, thank you.

5 CHAIRPERSON HILL: Commissioner Eckenwiler, do you have  
6 any questions for the witness?

7 MR. ECKENWILER: No, sir.

8 CHAIRPERSON HILL: All right. Thank you.

9 And our final witness, I guess, is -- can you pronounce  
10 your name please for me, I'm sorry?

11 MS. MEHLERT: I don't think there's any other  
12 witnesses.

13 CHAIRPERSON HILL: Oh, I thought there was -- there was  
14 one more -- there was the person who --

15 MR. ECKENWILER: Mr. Chairman, if I may?

16 CHAIRPERSON HILL: Yes.

17 MR. ECKENWILER: I believe that counsel for the owner  
18 of 403 -- and remember this was the person who sought party  
19 status, which I understand you denied --

20 CHAIRPERSON HILL: Yes. Yes.

21 MR. ECKENWILER: -- counsel is present as an attendee.

22 CHAIRPERSON HILL: Oh, I see them. Now, I see them.  
23 Now I see them. That's okay. Thanks, Commissioner.

24 So I think this is fine, right, Ms. Nagelhout, meaning  
25 Ms. Themak is -- she is the representative for the person who

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1 wanted party status so they could testify on their behalf,  
2 correct?

3 MS. NAGELHOUT: Sorry, I had some technical  
4 difficulties there. If the person the person -- the person who  
5 asked for party status and did not get it could participate as a  
6 person in opposition. And if they're represented by a lawyer,  
7 then --

8 CHAIRPERSON HILL: Okay.

9 So Ms. Themak, you're speaking on behalf of -- and I  
10 apologize, I can't --

11 MS. THEMAK: Ms. Chew.

12 CHAIRPERSON HILL: Thank you. Thank you. Ms. Chew.  
13 So you're speaking on behalf, correct?

14 MS. THEMAK: That's correct.

15 CHAIRPERSON HILL: Okay. All right. Could you  
16 introduce yourself for the record please?

17 MS. THEMAK: Yes. Tracey Themak with Donohue, Themak,  
18 and Miller, and we are representing Jane Chew, the owner of 403  
19 K Street.

20 CHAIRPERSON HILL: Okay. Ms. Themak, you'll get three  
21 minutes and you can begin whenever you like.

22 MS. THEMAK: Great. Thank you. I'd like to correct  
23 one thing that was said during the consideration of the party  
24 status request is that Ms. Chew does not own several properties  
25 in the District and this is her only rental property in the

1 District of Columbia. I know we've heard some support from the  
2 renters in her building, or at least one of the tenants. And  
3 I'd like to point out that while that's valid, the renter's  
4 interest in this property is not the same as Ms. Chew's. She's  
5 the owner of the property and stands to suffer any of the economic  
6 or detrimental effects directly that the adjoining construction  
7 will pose. With that said, we strongly support the position of  
8 the ANC and that articulated by Commissioner Eckenwiler and in  
9 the December 6th letter.

10 I think there's also a fundamental misread as well. E  
11 5207 says that the proposed construction cannot have the impacts  
12 that are listed in A 133, the proposed construction as a whole,  
13 not the requested relief. We are now, because they removed the  
14 cornice and shouldn't have, we are now looking at this -- they've  
15 opened the door to the special exception review. The Applicant  
16 has opened that door for you to consider it according to the  
17 special exception guidelines, and it simply does not meet them,  
18 the proposed construction, as a whole, not the removal of the  
19 cornice. I believe that was in the Applicant's PowerPoint on  
20 page eight, they go through the special exception requirements  
21 and say that there are not these specific listed impacts by the  
22 removal of the cornice. That's not the standard that we're  
23 looking at. We're looking now as this construction as a whole.  
24 And when we do, we find that there are impacts to light and air,  
25 there are impacts to privacy and use and enjoyment, and it is

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1 visually intrusive. So I think that we need to correct the  
2 standard under which this is being reviewed. We also agree  
3 wholeheartedly with the failure to comply with the construction  
4 code. While DCRA may have said that the permit was issued an  
5 error, we need to recognize that the reason for that error was  
6 that the correct information was not provided. Photos are not  
7 the requirement. If you look at 106.213, at specifically 4, it  
8 says the elevations fully dimensioned are what is required, not  
9 two small photos. A 007, that sheet that was also included in  
10 the PowerPoint, is not what is required. So we can't say -- an  
11 applicant should not be allowed to say I didn't submit the proper  
12 requirements that are likely intended to prevent a permit being  
13 issued in error like it was here. If all of the requisite  
14 information was provided, this error could likely have been  
15 avoided. It wasn't. So you cannot -- an applicant should not  
16 be able to claim I didn't provide what was required and now I'm  
17 protected by the fact that DCRA made an error based on my failure  
18 to provide information. That seems fundamentally wrong.

19           If you look specifically at that language, it's listed  
20 in Commissioner Eckenwiler's letter, you can find the language,  
21 and I actually have it here, in section four, but it says  
22 elevations of all existing and proposed structures fully  
23 dimensioned and shown in relation to the entire lot and existing  
24 and proposed grades, which these photos do not. That is a  
25 requirement. It was not provided. You know, with that, again,

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1 I think we have to look at the behavior of the Applicant that  
2 came prior to the error by DCRA. There's a reason for the error  
3 and that contributed to it. I appreciate your time and that's  
4 all I have.

5 CHAIRPERSON HILL: Thanks, Ms. Themak, and thanks for  
6 keeping relatively to the place, that's great.

7 Let's see. Okay. Does the Board have any questions  
8 for Ms. Themak?

9 Okay. Mr. Sullivan, do you have any questions for Ms.  
10 Themak?

11 MR. SULLIVAN: No, thank you.

12 CHAIRPERSON HILL: Commissioner Eckenwiler, do you have  
13 any questions for Ms. Themak?

14 MR. ECKENWILER: No, Mr. Chair.

15 CHAIRPERSON HILL: Ms. Themak, where is it that it says  
16 about the elevation is fully documented as required again?

17 MS. THEMAK: It is in 12 A DCMR 106.2.13, specifivally  
18 item number --

19 CHAIRPERSON HILL: Sorry, hold on. 12 A?

20 MS. THEMAK: 12 A 106.2.13, Subsection 4.

21 CHAIRPERSON HILL: Okay. Okay. Thank you.

22 All right. Anyone else?

23 Okay. If we can please excuse the witnesses? Thank  
24 you very much for your time.

25 Okay. Let me see now. Mr. Sullivan, would you like

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1 to give us your rebuttal?

2 MR. SULLIVAN: Yes. Thank you, Mr. Chair. Just in  
3 rebuttal to Ms. Themak's testimony. She mentioned the word  
4 behavior and the behavior of the Applicant, and I'm not sure --  
5 and this is part of the sort of -- seems to be a campaign to  
6 imply some sort of misbehavior on the part of the Applicant, and  
7 that's never been established. It hasn't even really been  
8 asserted. I know Mr. Eckenwiler stated that there had been other  
9 occasions where applicants have deceived the zoning  
10 administrator, and I don't know why he said that, but that's not  
11 the case here. And there's nothing about the behavior of this  
12 Applicant. Regarding that technical requirement for the  
13 submission from the building code, I learned about this argument  
14 last night at 4:00. I didn't review the building code, but what  
15 I do have and what I've stated before is that the DCRA has claimed  
16 that they knew about the removal of the cornice element  
17 regardless. So it's been substantively resolved that they knew  
18 about the cornice. And that's the key thing. It's not that  
19 there's one technical requirement of the thousand requirements  
20 that wasn't met. The reason why we have estoppel, and I don't  
21 want to go into closing, so maybe I'll just -- I'll leave it at  
22 that. Well, no, I'm sorry, two things. As a whole, Ms. Themak  
23 stated that it should be reviewed as a whole, and I think the  
24 Board is reviewing it as a whole. The Board's always reviewed  
25 special exception and the variance applications though also in

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1 the context of what can you do as a matter of right if we don't  
2 approve this. And if the cornice had stayed on, the building  
3 could have been built and designed in any way they wanted to  
4 without any input from the Board. This isn't a historic district.  
5 It's not a design review board. And so it's not the same standard  
6 as a historic district. But yeah, in general, I don't have a  
7 issue with that, but our argument is that as it's provided and  
8 per the testimony you've heard from others today too, that it's  
9 not -- it doesn't substantially visually intrude on character,  
10 scale, and pattern.

11 In regard to the sort of academic question of do you  
12 only compare it to one building or do you compare it to multiple  
13 buildings, I know the way it's been considered in all the cases  
14 that I've seen, but the regulations itself support that as well.  
15 The special exception test says character, scale, and pattern of  
16 houses along the street. It doesn't say of the adjacent house.  
17 It does say that the special exception, it does not have a  
18 substantially adverse effect on use or enjoyment of any abutting  
19 or adjacent dwelling. That's a fact, that's not the character,  
20 scale, and pattern argument. And that's it for rebuttal. I  
21 would have a short closing at the appropriate time. Thank you.

22 CHAIRPERSON HILL: Okay.

23 Commissioner Eckenwiler, do you have any questions  
24 about the Applicant's rebuttal?

25 MR. ECKENWILER: Nary a one, Mr. Chairman.

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1 CHAIRPERSON HILL: Okay. Commissioner Eckenwiler,  
2 would you like to give a conclusion? I don't -- it's not within  
3 the regulations, and sometimes it happens, and sometimes it  
4 doesn't, but would you like to give us a small conclusion?

5 MR. ECKENWILER: Mr. Chairman, I think the ANC has said  
6 its peace. There's not much more I could add.

7 CHAIRPERSON HILL: Okay.

8 Then, Mr. Sullivan, you want to give us a conclusion?

9 MR. SULLIVAN: Thank you, Mr. Chair, members of the  
10 Board, I'll be very brief. I agree, everything's been said.

11 One point maybe that hasn't been discussed in much  
12 detail is the Applicant could have caught this themselves, right,  
13 on the cornice, just like any application. But that's why there  
14 is estoppel. Estoppel only happens in the case of a mistake on  
15 one part or another. And the *Saah* case, S-A-A-H, the Court of  
16 Appeals case on estoppel, it was a case where an architect  
17 designed a building to 65 percent lot occupancy, where it was  
18 permitted 60 percent. And the Court of Appeals found, yes, the  
19 architect made a mistake, but so did DCRA and estoppel applied  
20 in that case. That was a very obvious requirement, of course,  
21 compared to this, compared to the cornice requirement. So you  
22 can't have estoppel without somebody making a mistake. And if  
23 it wasn't provided in the case a mistake, then there wouldn't be  
24 such a thing. So other than that, just to summarize, I believe  
25 we meet the special exception criteria as well as the area

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1 variance criteria for approval under whichever standard and path  
2 the Board might want to first entertain and approve. Thank you.

3 CHAIRPERSON HILL: Okay.

4 All right. If the Board doesn't have anything else, I  
5 actually -- I have this as a proposal, I unfortunately need to  
6 leave for a flight. And so I think that either way, I would have  
7 wanted to chew on this a little bit and then have a decision at  
8 the very earliest next week. And that would be my proposal, or  
9 if you all want anything or need anything or want more time than  
10 a week, then we can do whatever you want to do. I'm going to  
11 start with Mr. Smith as to what I just proposed.

12 COMMISSIONER SMITH: I mean, I agree with your position  
13 on this. I would prefer, and especially given that the Applicant  
14 has unusually, and I'll say that, applied for two types of relief  
15 and is asking us to deliberate whether we should grant -- if  
16 they're eligible for a special exception relief or a variance, I  
17 would prefer, given the testimony that we heard from everyone  
18 today and everything in the record, to also chew on it and to  
19 sit on this for about a week so that we can make the best and  
20 most prudent decision on this case between the two requests. So  
21 I agree.

22 CHAIRPERSON HILL: I lost Mr. Smith I think. Oh, there  
23 he is.

24 Mr. Blake?

25 COMMISSIONER SMITH: Hold on. Did you hear -- did you

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1 hear anything?

2 CHAIRPERSON HILL: I heard everything you said.

3 COMMISSIONER SMITH: Oh, okay. Okay.

4 COMMISSIONER BLAKE: Yeah, I too am comfortable  
5 deliberating this on and voting on this a week from today. There  
6 are two things on for us to vote on, so we should consider that  
7 as well. But yes, I do think that I'm comfortable waiting.

8 CHAIRPERSON HILL: Okay.

9 Chairman Hood?

10 ZC CHAIRPERSON HOOD: Yes, Mr. Chairman. I think it  
11 would be advantageous for me myself to wait so I can try to absorb  
12 all the information and put that in some type of order. So I'm  
13 fine with waiting one week.

14 CHAIRPERSON HILL: Okay.

15 Vice Chair John?

16 VICE CHAIR JOHN: Thank you, Mr. Chairman. I am fine  
17 with deciding next week, and I guess we would close the record  
18 and set this for a decision only?

19 CHAIRPERSON HILL: Yes.

20 VICE CHAIR JOHN: Okay. Thank you.

21 CHAIRPERSON HILL: Okay. That's what I'm going to do.  
22 I'm going to close the hearing and the record. We'll set this  
23 for decision, Mr. Moy, next week, which is 12/14.

24 MR. MOY: Yes. Yes, I recorded that.

25 CHAIRPERSON HILL: Okay.

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1 Is there anything else before the board, Mr. Moy?

2 MR. MOY: There's nothing from the staff, sir.

3 CHAIRPERSON HILL: Okay. You all have a good day.

4 Bye-bye. We're adjourned.

5 VICE CHAIR JOHN: Thank you.

6 (Whereupon, the above-entitled hearing was adjourned.)

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## C E R T I F I C A T I O N

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: BZA

Date: 12-07-2022

Place: Teleconference

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

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