

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

NOVEMBER 30, 2022

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
CARL H. BLAKE, Board Member
CHRISHAUN S. SMITH, Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
ROBERT MILLER, Vice Chair

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN COCHRAN, Zoning and Special Project Planner
CRYSTAL MYERS, Development Review Specialist
STEPHEN MORDFIN, Development Review Specialist

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JONATHAN KIRSCHENBAUM, Development Review Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQUIRE

The transcript constitutes the minutes from the
Public Hearing held on November 30, 2022.

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(9:39 a.m.)

CHAIRPERSON HILL: Good morning, ladies and gentlemen, to the Board of Zoning Adjustment. Today's date is 11/30/2022. The public meeting will please come to order.

My name is Fred Hill. I'm chairperson of the District of Columbia Board of Zoning Adjustment. Today is -- well, sorry. Joining me today is Board Members Carl Blake and Chrishaun Smith and -- sorry -- Chairman Anthony Hood from the Zoning Commission as well as Vice Chair Rob Miller.

Today's meeting and hearing agenda are available on the Office of Zoning's website. Please be advised 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 that we do not take any public testimony at our decision meeting sessions.

If you're experiencing difficulty accessing Webex or with your call-in, then please call our O.Z. hotline number at 202-727-5471 to receive Webex call-in log in instructions.

At the conclusion of a 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

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1 required when the decision it contains is adverse to a party,
2 including an affected ANC. A full order may also be needed if
3 the Board's decision differs from the Office of Planning's
4 recommendation.

5 Although the Board favors the use summary orders
6 whenever possible, an Applicant may not request the Board to
7 issue such an order. In today's hearing session, everyone who's
8 listening on Webex or by telephone will be muted during the
9 hearing, and only persons who have signed up to participate or
10 testify will be unmuted at the appropriate time.

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

17 All persons planning to testify either in favor or in
18 opposition should have signed up in advance. They'll be called
19 by name to testify. If this is an appeal, only parties are
20 allowed to testify. By signing up to testify, all participants
21 completed the oath or affirmation as required by Subtitle Y, 408.

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

1 Subtitle Y, 103.13, provided that one, the person making the
2 evidence to request -- person making the request to enter an
3 exhibit explain (a), how the proposed exhibit is relevant; (b)
4 the good cause it justifies allowing the exhibit into the record,
5 including an explanation of why the requester did not file the
6 exhibit prior to the hearing pursuant to Y, 206, and how the
7 proposed exhibit would not unreasonably prejudice any parties.
8 The order of procedures for special exceptions and variances are
9 pursuant to Y, 409.

10 At the conclusion of each case, an individual who is
11 unable to testify because of technical issues, may file a request
12 for leave to file a written version of planned testimony to the
13 record within 24 hours following the conclusion of public
14 testimony in the hearing. If additional written testimony is
15 accepted, the parties will be allowed a reasonable time to respond
16 as determined by the Board. The Board will then make its decision
17 at its next meeting session, but no earlier than 48 hours after
18 the hearing. Moreover, the Board may request additional specific
19 information to complete the record. The Board and the staff will
20 specify at the end of the hearing exactly what was expected, and
21 the date when a person must submit the evidence to the Office of
22 Zoning. No other information shall be accepted by the Board.

23 Finally, the District of Columbia Administrative
24 Procedures Act requires that the public hearing on each case be
25 held in the open before the public. However, pursuant to

1 Section 405(b) and 406 of that Act, the Board may, consistent
2 with its rules and procedures and the Act, enter into a closed
3 meeting on a case for purposes of seeking legal counsel on a case
4 pursuant to D.C. Official Code, Section 2-575(b)(4) and/or
5 deliberate on a case pursuant to D.C. Official Code, Section
6 2-575(b)(13), but only after filing the necessary public notice
7 in the case of an emergency closed meeting after taking a roll
8 call vote.

9 Mr. Secretary, do we have any preliminary matters? And
10 welcome back, Mr. Moy.

11 MR. MOY: Thank you, Mr. Chairman, and members of the
12 Board. Good morning. It's good to be back. Yeah. So I may be
13 off a step this morning, but I think I should be good to go.

14 So very quickly, I do have a brief announcement. First,
15 regarding today's docket, these are a list of cases that have
16 been removed from today's docket. The first is Application No.
17 20826 of Nadine Vassell, V-A-S-S-E-L-L, removed from the
18 Expedited Review Calendar and scheduled for a public hearing for
19 December 7th, 2022.

20 The next category of cases, the first two cases have
21 been rescheduled -- postponed and rescheduled to
22 April 12th, 2023. These two cases are Application No. 20768 of
23 districtproperties.com, Inc. The second is Application No. 20769
24 of districtproperties.com, Inc. Both of these two cases
25 rescheduled to April 12th, 2023. The next two cases have been

1 postponed and rescheduled to April 26, 2023. Application No.
2 20770 of districtproperties.com and Application No. 20771 of
3 districtproperties.com. And that should do it for that category.

4 Finally, Mr. Chairman, we do have preliminary matters
5 on cases, and I think, as I've always done, will bring that before
6 the Board when I call that specific case.

7 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.
8 Yeah, I know -- anyway, so we have a couple of preliminary matters
9 in terms of party status, but why don't you go ahead, Mr. Moy,
10 and call our first meeting issue. We need to -- and I think
11 Chairman Hood is only on this one.

12 MR. MOY: That's correct. So this first of two cases
13 for the meeting session is Application No. 20802 of 639A, as in
14 Alpha, LLC. And let me read the caption for the record. This
15 is a self-certified application pursuant to Subtitle X,
16 Section 901.2. It was heard by the Board for special exception
17 relief under Subtitle E, Section 5201 from the accessory building
18 area requirements of Subtitle E, Section 5003.1 and special
19 exception under Subtitle U, Section 301.1(e) that would permit a
20 dwelling unit in an accessory building located within a required
21 setback within five years of the approval of the building permit.
22 The project is located in the RF-1 zone at 639A Street, Southeast,
23 Square 870, Lot 113.

24 As this Board will recall, you heard this application
25 at its -- at your public hearing on November the 9th and made a

1 decision. You adjudicated that case. What is before you now
2 are three motions to reopen the record to accept filings. One
3 is from an Enise, E-N-I-S-E, Han, and the other is from a Patricia
4 Mink. And yesterday there was a -- last night, there was a filing
5 from a George Dee. So of the three requests to reopen the record,
6 two of the requests are outside the 200-foot requirement. So
7 that's what's before the Board.

8 CHAIRPERSON HILL: Okay. All right.

9 So, Mr. Smith, were you able to address your technical
10 issues?

11 BOARD MEMBER SMITH: Can you hear me now?

12 CHAIRPERSON HILL: Yes.

13 BOARD MEMBER SMITH: Okay.

14 CHAIRPERSON HILL: Okay. Wonderful.

15 All right. Let's see. So in terms of this case, I
16 went back and looked at all of the requests to open the record
17 and the reasons for those. And then I went back and looked at
18 the record itself, as well as the content of the hearing, and I
19 didn't really -- I -- two of the requests, as Mr. Moy had pointed
20 out, are outside of people that are within 200 feet of the
21 project. Not that that precludes anybody from asking to reopen
22 the record or participate in the hearing. And then one of them
23 was within the 200 feet that actually was sent out a notice.
24 Now, we didn't receive back anything from that person that they
25 hadn't received the notice; meaning there was nothing that

1 returned back. So there was no reason that they -- we, you know,
2 whether it got missed in the mail or what have you, you know, we
3 did send that out. The office did send that out. And then, in
4 terms of -- and so, they should have received that. So I'm
5 talking about the 200-footer person. And then I went back and
6 again looked at the hearing, as I said.

7 So let me say this. I was trying to figure out whether
8 or not I was convinced by what was submitted to reopen the record.
9 I was not, and these are the reasons why. And then you all can
10 tell me what you all think.

11 The two people that are outside the 200 feet, they also
12 would have been able to see the placard if they had --
13 (indiscernible) by the placard was in the front of the building
14 and in the back of the building. The 200-footer person would
15 have seen the placard in the front of the building and the back
16 of the building. The 200-footer person received a mailer or
17 should have received a mailer, and if not, they would have seen
18 the placard if they had walked by.

19 The ANC heard this, and they voted in favor, actually.
20 But the -- it has gone through the process. We had the hearing.
21 I think at this point, it would be detri -- you know, it would
22 be a -- I'm trying to think of that legal word, again --
23 detrimental to the Applicant if for some reason we went back and
24 reopened this. And I didn't see any -- I thought that the hearing
25 went well. I thought that we addressed all of the issues

1 concerning the regulations, and I didn't see any reason to reopen
2 the record. So I would not be in favor of reopening the record
3 unless one of my colleagues thought differently.

4 And I'm going to go around the table here and start
5 with you, Mr. Smith, if I could.

6 BOARD MEMBER SMITH: Oh, because I didn't participate
7 in this one -- the hearing for this case, I'm not going to
8 participate in this one, so I'll just abstain.

9 CHAIRPERSON HILL: Okay. That's fine. That's fine.
10 So then you didn't read in then also.

11 So then, Mr. Blake?

12 BOARD MEMBER BLAKE: Yeah, I agree with your
13 assessment. I do not believe in either cause that the situation
14 saw good cause to reopen the information again. As you pointed
15 out, it -- what -- the placard was made available, and also the
16 ANC meetings were posted, and the parties had the opportunity to
17 participate in the ANC meeting. So for that reason, I would be
18 -- I do not believe that good cause has been presented in this
19 case so far. So I would not -- I'd be more inclined to deny the
20 request to reopen the case.

21 CHAIRPERSON HILL: Thank you.

22 Chairman Hood?

23 CHAIRMAN HOOD: I would agree, Mr. Chairman, with you
24 and Board Member Blake. Also, we -- there's another caveat that
25 we also noticed it in the Register. But I'm not going to hold

1 anybody to that, because I don't look at the Register myself a
2 lot. But I think you've covered it. I think we've covered
3 ourselves -- the Office of Zoning always covers itself in three
4 ways, and I think you hit the two that are most pertinent to the
5 residents of this City. And if we open it back up, I think we
6 open ourselves up -- back up to something that I don't know the
7 legal term because I don't have my law degree, but I think we're
8 starting to cause problems with the whole process. So I would
9 agree with both of my colleagues.

10 CHAIRPERSON HILL: All right. Thank you, Chairman
11 Hood.

12 I'm going to make a motion then to deny the request to
13 open the record from Ms. Han, the person named Mink and then also
14 the person named George Dee, and ask for a second.

15 Mr. Blake?

16 BOARD MEMBER BLAKE: Second.

17 CHAIRPERSON HILL: The motion has been made and
18 seconded.

19 Mr. Moy, if could take a roll call, please?

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

21 When I call your name, if you'll please respond to the
22 motion made by Chairman Hill to reopen the record to allow filings
23 into the case record. This motion to reopen the record was second
24 by Mr. Blake.

25 Zoning Commissioner -- Zoning Commission

1 Chair Anthony Hood?

2 CHAIRMAN HOOD: Yes.

3 MR. MOY: Mr. Blake?

4 BOARD MEMBER BLAKE: Yes, to deny.

5 MR. MOY: Chairman Hill?

6 CHAIRPERSON HILL: Yes, to deny.

7 MR. MOY: Staff would record the vote as three to zero
8 to two. And this is on the motion of Chairman Hill to deny the
9 request to reopen the record. The motion to deny was second by
10 Mr. Blake, also in support of the motion to deny, as well as
11 Chairman -- Zoning Commission Chairman Anthony Hood to deny and
12 Chairman Hill to deny with two Board members not participating.
13 So again, your motion to deny is on a vote of three to zero to
14 two.

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

16 All right, Mr. Moy, you can call our next meeting.

17 Oh. Oh, Chairman Hood, are you leaving us?

18 CHAIRMAN HOOD: You all -- yeah, I'm leaving. You all
19 have a great day.

20 CHAIRPERSON HILL: All right, Chairman Hood. We'll see
21 you later.

22 CHAIRMAN HOOD: I'm leaving you all in good hands.

23 CHAIRPERSON HILL: That's right. I agree.

24 All right, Vice Chair Miller. Welcome.

25 VICE CHAIR MILLER: Good morning.

1 CHAIRPERSON HILL: Good Morning.

2 All right. Mr. Moy, you can call our next one.

3 MR. MOY: The next and last case in the Board's meeting
4 session is an application -- is a Case Application No. 20291-A
5 of 2100 M Street Property Owner, LLC. This request is -- from
6 the Applicant is for a two-year time extension, pursuant to
7 Subtitle Y, Section 705.1. This property is located in the D-5
8 zone at 2100 M Street, Northwest, Square 82 (sic), Lot 75.

9 CHAIRPERSON HILL: Okay. Great.

10 All right. I began taking a look at this particular
11 application. I looked at the record. I -- there's the letter
12 here from Goulston & Storrs that outlines how they believe they
13 are meeting the criteria for the time extension and the reasons
14 why, what is primarily being their concern and why they can't
15 move forward is -- it seems to be the different issues that have
16 arose from the pandemic. And they provided, I think, significant
17 exhibits and reports as to how their delay in this project is
18 supported. I would agree with them. The item that I do make
19 note of is that their time extension actually would be to
20 October 21st, 2024, not October 31st, 2024, because of when the
21 order was issued. So that would be my only thought concerning
22 this case. And I am turning to my colleagues to hear their
23 thoughts. And I'll begin with you, Mr. Smith, if I could.

24 VICE CHAIR MILLER: Hello.

25 BOARD MEMBER SMITH: By and large, I agree with your

1 assessment --

2 CHAIRPERSON HILL: There -- I -- Mr. Smith, give me one
3 moment. I think we've lost Vice Chair Miller, or I think we
4 have.

5 Vice Chair Miller?

6 VICE CHAIR MILLER: Sorry.

7 CHAIRPERSON HILL: That's all right.
8 Vice Chair Miller, are you still there?

9 VICE CHAIR MILLER: Yes, sorry about that.

10 CHAIRPERSON HILL: That's all right. No problem. You
11 weren't on mute, but we'll turn to Mr. Smith.

12 BOARD MEMBER SMITH: So I, by and large, agree with
13 your assessment of this particular case, including the time when
14 the term of validity should end for this. So it should be the
15 time of when the last order expired, lining up with the date at
16 least and then two years from that, so October 21st, 2024. And
17 given everything that was in the record, I am inclined to support
18 the application.

19 CHAIRPERSON HILL: Thank you.

20 Vice Chair Miller?

21 VICE CHAIR MILLER: I concur with my colleagues. Thank
22 you.

23 CHAIRPERSON HILL: Thank you.

24 Mr. Blake?

25 BOARD MEMBER BLAKE: Yeah. I believe the Applicant has

1 met the criteria of Subtitle Y, 705.2, and should be granted the
2 requested extension. The request was filed timely. The ANC was
3 notified, although there's nothing in the report from the ANC.
4 They were in support of the original application. There's no
5 substantial change in any of the material facts upon which the
6 Board based its original decision or approval, and the Applicant
7 has certainly demonstrated good cause in its ability -- inability
8 to obtain project financing, given the conditions in the downtown
9 market, which is really bad. Therefore, I'd be in support of
10 granting the time extension.

11 CHAIRPERSON HILL: Thank you.

12 All right. I'm going to go ahead. I didn't miss
13 anybody, right? No, I don't think so. I'm going to go ahead
14 and make a motion to approve the time extension of 20291-A, as
15 in an apple, and make note again of it ending at 10/21/2024 and
16 ask for a second.

17 Mr. Blake?

18 BOARD MEMBER BLAKE: Second.

19 CHAIRPERSON HILL: Motion has been made and seconded.

20 Mr. Moy, if you could take a roll call.

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

22 When I call your name, if you'll please respond to the
23 motion made by Chairman Hill to grant the request for a time
24 extension to October 21st of 2024. The motion to grant was second
25 by Mr. Blake.

1 Zoning Commissioner Rob Miller?

2 VICE CHAIR MILLER: Yes.

3 MR. MOY: Mr. Smith?

4 BOARD MEMBER SMITH: Yes.

5 MR. MOY: Mr. Blake?

6 BOARD MEMBER BLAKE: Yes.

7 MR. MOY: Chairman Hill?

8 CHAIRPERSON HILL: Yes.

9 MR. MOY: Staff would record the vote as four to zero
10 to one, and this is on the motion to grant the time extension.
11 The motion was -- to grant was second by Mr. Blake in support.
12 Also in support of the motion to grant is Zoning Commissioner
13 Rob Miller, Mr. Smith, of course Mr. Blake and Chairman Hill. We
14 have a Board member not participating, Mr. Chairman, so the vote
15 count is four to zero to one. Motion carries.

16 CHAIRPERSON HILL: Okay, great. Thank you, Mr. Moy.

17 Okay, you guys, my thought -- and we'll see whether we
18 take a break, when or not, but there's a couple of preliminary
19 issues. I like to go ahead and address those, and then if we
20 take a break, we do, or we'll just see where we're at.

21 Mr. Moy, I think there's two party status preliminary
22 issues that I wanted to address, and then we'll probably have
23 those cases later in the day. If you could call our first one,
24 please, when you have an opportunity.

25 MR. MOY: Okay. The first of the two case applications

1 that involve requests for party status. The first is Case
2 Application No. 20817 of Hannah Kemp. And this is an application
3 for a special exception relief for a property located at
4 311 U Street, Northwest, Square 3086, Lot 31, property located
5 in ANC-1B. And I think that's sufficient for me. So anyway.
6 There's a request from Janet Campbell for party status in
7 opposition. Thank you, Mr. Chairman.

8 CHAIRPERSON HILL: Thank you, Mr. Moy.

9 So do we have the people that are requesting party
10 status here and the Applicant also?

11 MS. KEMP: Yes, the Applicant is here.

12 CHAIRPERSON HILL: Okay, great. Could the Applicant
13 introduce themselves for the record, please?

14 MS. KEMP: Sure. My name is Hannah Kemp of
15 311 E Street, Northwest. I'm a D.C. resident representing
16 myself.

17 CHAIRPERSON HILL: Okay. Okay, Ms. Kemp, right. So
18 you don't have an attorney with you, correct?

19 MS. KEMP: No, I do not. Just myself.

20 CHAIRPERSON HILL: Okay. No problem.

21 Ms. Campbell, can you hear me? Ms. Campbell?

22 And Ms. Kemp, can you turn on your camera, if you can?

23 Ms. Campbell, can you hear me?

24 Thank you. Hi, Ms. Kemp.

25 Mr. Young, supposedly Ms. Campbell is there, correct?

1 MR. YOUNG: Right, she's on. She just needs to unmute
2 herself.

3 CHAIRPERSON HILL: Ms. Campbell, if you can unmute
4 yourself, or there's like a button -- like if you touch the --
5 there's a button at the bottom that says mute. Oh, there we go.
6 No, maybe not. It says mute/unmute at the bottom of your screen.
7 Okay. Well, maybe I can ask Ms. Kemp also. I don't know. We're
8 going to -- I have an opinion on this one, so I don't -- we'll
9 see what happens, but --

10 Ms. Kemp, can you tell me again where -- do you know
11 Ms. Campbell's property?

12 MS. KEMP: I do, yes.

13 CHAIRPERSON HILL: Okay.

14 MS. KEMP: It's located in the alley behind her house.

15 CHAIRPERSON HILL: Right. Give me a second.

16 MS. KEMP: 312 Elm Street, Northwest.

17 CHAIRPERSON HILL: Thank you. Thank you. Thank you.

18 MS. KEMP: It's 67 feet according to Google Maps.

19 CHAIRPERSON HILL: Okay. Hold on.

20 All right. All right. Mr. Moy, can you hear me?

21 MR. MOY: Yes, sir.

22 CHAIRPERSON HILL: I mean, I don't know if Ms.
23 Campbell's there. Is Ms. Campbell there?

24 MR. MOY: Mr. Young, can you answer that question for
25 the Chairman, please?

1 CHAIRPERSON HILL: Well, he says that it's there,
2 meaning it's the first --

3 MS. KEMP: I can see her name.

4 CHAIRPERSON HILL: No, no. I can -- it's okay,
5 Ms. Kemp. We got you.

6 MR. MOY: If she is having difficulty unmuting herself,
7 of course, what we've done in the past is for the person to call
8 in.

9 CHAIRPERSON HILL: Right. I'll tell you what. Let's
10 go ahead and -- let me think here -- to try to reach out to
11 Ms. Campbell, Mr. Moy. Okay?

12 MR. MOY: Okay. We're working on it.

13 CHAIRPERSON HILL: Because I'm confused as to -- okay,
14 where she is. All right. Okay.

15 So Ms. Kemp, anyway, the way this was going to work was
16 that we were going to hear from Ms. Campbell. We were going to
17 hear if there was a -- hear her argument as to how she's meeting
18 the criteria for party status, which is in -- which is under
19 Y, 404.1. And then we were -- we weren't going to ask any
20 questions of you, and then -- you just have to be here. And then
21 we were going to put you second to last, because that's what I
22 do with party status people. We determine the party status --
23 usually what I've done, not always, but do the -- determine the
24 party status, and then we go to the end of the day so they have
25 time to kind of figure out and make sure everybody knows what's

1 going to happen.

2 So I'm going to let -- Mr. Moy, I'm going to let you
3 try to reach out to Ms. Campbell, because if she doesn't -- if
4 she's not actually with us, then she does not meet the criteria
5 to receive party status or at least one of the things; you have
6 to be here.

7 So Ms. Kemp -- let me think a second. What we're going
8 to do, Ms. Kemp, is we're going to --

9 And Ms. Campbell, I don't know if you can hear me or
10 not.

11 So what we're going to do is we're going to put you,
12 Ms. Kemp, at the end of the day -- the second to last case, okay,
13 because there's another case that's coming up right after this
14 where we're also going to determine party status. So whether or
15 not Ms. Campbell can or can't hear me, we're going to determine
16 her party status at the beginning of your hearing. Okay.

17 MS. CAMPBELL: I'm hearing you. Can you hear me now?

18 CHAIRPERSON HILL: Oh, Ms. Campbell, can you hear us?

19 MS. CAMPBELL: Yes. I could hear you all the time.
20 You couldn't hear me.

21 CHAIRPERSON HILL: Okay. Can you hear me now?

22 MS. CAMPBELL: Yes.

23 CHAIRPERSON HILL: Okay. Great. Wonderful. Are you
24 able to turn on your camera or not?

25 MS. CAMPBELL: I can see you all.

1 CHAIRPERSON HILL: Okay. That's all right. So
2 Ms. Campbell, can you introduce yourself for the record, please?

3 MS. CAMPBELL: My name is Janet Campbell. I reside at
4 312 Elm, E-L-M Street, Northwest.

5 CHAIRPERSON HILL: Okay. Ms. Campbell, can you -- do
6 you know or have you looked at the criteria for party status by
7 any chance?

8 MS. CAMPBELL: Yes.

9 CHAIRPERSON HILL: Okay. Can you tell me why you
10 believe you meet the criteria for party status?

11 MS. CAMPBELL: Because Ms. Kemp's property is directly
12 behind -- right across from my property in the rear.

13 CHAIRPERSON HILL: Where exactly -- now, can you tell
14 me your address again, please?

15 MS. CAMPBELL: 312.

16 CHAIRPERSON HILL: 312?

17 MS. CAMPBELL: Elm.

18 CHAIRPERSON HILL: Elm.

19 MS. CAMPBELL: E-L-M.

20 CHAIRPERSON HILL: Okay. So she's directly across --

21 MS. CAMPBELL: Her property is directly across from
22 mine in the rear.

23 CHAIRPERSON HILL: In the rear.

24 MS. CAMPBELL: Yes.

25 MS. KEMP: Yes, separated by a public alley.

1 MS. CAMPBELL: A small public alley.

2 CHAIRPERSON HILL: I understand.

3 Okay. Does the Board have any question --

4 And so Ms. Campbell, yours is -- so what are you most
5 in particular concerned about this -- well, I shouldn't go into
6 that. Your argument is the proximity to your property, correct?

7 MS. CAMPBELL: Yes. And apparently, you know, people
8 enter this alley. We have about nine parking spaces back here,
9 seven to nine. And the alley, it ends just past the house next
10 door to me. I'm getting feedback.

11 MS. KEMP: Yeah.

12 MS. CAMPBELL: (Audio interference) alley, which when
13 people come in my --

14 CHAIRPERSON HILL: Ms. Campbell? Ms. Campbell, I'm
15 sorry. You're breaking up a lot.

16 MS. CAMPBELL: I know.

17 CHAIRPERSON HILL: Can you hear me?

18 MS. CAMPBELL: I can hear you.

19 CHAIRPERSON HILL: Maybe, Ms. Campbell, why don't
20 we -- okay. Let me just see -- I'm just having trouble finding
21 your house first. That's what I'm trying to find.

22 MS. CAMPBELL: It's directly across from her, the rear
23 of her house. The rear.

24 CHAIRPERSON HILL: I understand, Ms. Campbell.

25 MS. KEMP: If you look on Google Maps, I know it's hard

1 to hear. I think she's 312 Elm, E-L-M, Street.

2 MS. CAMPELL: Elm.

3 CHAIRPERSON HILL: No, no. I got it, and I appreciate
4 that, Ms. Kemp. Okay. I got you. Okay. Okay. Does --

5 Ms. Campbell, are you there?

6 MS. CAMPBELL: I'm here.

7 CHAIRPERSON HILL: Ms. Campbell?

8 MS. CAMPBELL: Yeah.

9 CHAIRPERSON HILL: Okay, great.

10 All right. Do my fellow Board members have any
11 questions of Ms. Campbell?

12 Mr. Blake?

13 BOARD MEMBER BLAKE: Ms. Campbell, did you participate
14 in the ANC meeting process?

15 MS. CAMPBELL: I did not.

16 BOARD MEMBER BLAKE: You did?

17 MS. CAMPBELL: I did not.

18 BOARD MEMBER BLAKE: Okay. Thank you.

19 CHAIRPERSON HILL: Did you know about the ANC meeting,
20 Ms. Campbell?

21 MS. CAMPBELL: Not at that time, no.

22 CHAIRPERSON HILL: Okay. Okay. All right.

23 So Ms. Campbell, this is what's going to happen.

24 And Ms. Kemp, this is what's going to happen.

25 Ms. Campbell, you can hear me, correct? Ms. Campbell?

1 MS. CAMPBELL: Yes.

2 CHAIRPERSON HILL: You can hear me, correct?

3 MS. CAMPBELL: Yes.

4 CHAIRPERSON HILL: Okay. Do you have a pencil and a
5 piece of paper by any chance?

6 MS. CAMPBELL: I do.

7 CHAIRPERSON HILL: Could you write this number down?

8 MS. CAMPBELL: Sure.

9 CHAIRPERSON HILL: It's 202-727-5471.

10 MS. CAMPBELL: Uh-huh.

11 CHAIRPERSON HILL: Okay. So regardless of what happens
12 to your party status, you will have an opportunity to participate
13 in the hearing. And so I would suggest you call that number,
14 and that might be a better way to -- for us to hear you.

15 MS. CAMPBELL: You want me to dial that number now?

16 CHAIRPERSON HILL: No, you're okay right now. You're
17 okay right now. So, yeah.

18 Okay. Let's see. So what I'm trying to tell Ms. Kemp
19 and Ms. Campbell, what's going to happen is we're going to excuse
20 you guys.

21 We're going to deliberate as to whether or not we
22 believe you, Ms. Campbell, meet the criteria for party status.
23 If you are approved party status, then what that means is you
24 would participate in the hearing as a participant, right? So
25 you'd be able to ask questions, the Office of Planning would be

1 able to ask questions of you, you'd be able to ask questions of
2 everybody, and you'll be able to give a presentation of your
3 concern.

4 If you're not given party status, you will still be
5 able to give your testimony during the public portion of the
6 hearing. So I'm just trying to explain to you what will happen.
7 In either case, this will be the second to the last case of the
8 day.

9 Do you have any questions, Ms. Campbell, of what I just
10 said?

11 MS. CAMPBELL: Not -- no. When you say second to the
12 last, what time?

13 CHAIRPERSON HILL: Pardon me, Ms. Campbell?

14 MS. CAMPBELL: Second to the last.

15 CHAIRPERSON HILL: Yes. Second to the last. I don't
16 know when that would happen today. I don't have an exact time.
17 I can just tell you it shouldn't be that long, to be quite honest,
18 today.

19 MS. CAMPBELL: Okay.

20 CHAIRPERSON HILL: Okay.

21 MS. CAMPBELL: Sure.

22 CHAIRPERSON HILL: You just have to watch and know.
23 Okay?

24 Ms. Kemp, do you have any questions of anything I just
25 said?

1 (No audible response.)

2 CHAIRPERSON HILL: Okay. I'm going to close this
3 portion of the hearing unless anybody -- do any of my Board
4 members have any questions of anybody before I close this portion
5 of the hearing?

6 (No audible response.)

7 CHAIRPERSON HILL: Okay. I'm going to close this
8 portion of the hearing.

9 Ms. Campbell and Ms. Kemp, you -- please watch, and I'm
10 going to excuse you from this portion of the hearing. Thank you.
11 Bye-bye.

12 MS. CAMPBELL: Bye.

13 CHAIRPERSON HILL: Okay. I'm a little torn, right.
14 Like, I don't -- party status, I think, needs to show how they
15 are, again, more uniquely affected than other people in the area.
16 I don't -- sometimes we have talked about somebody who's right
17 across from the alley being more affected and other times not.
18 I think it really kind of determined -- I'm sorry. I think it
19 really kind of depends on the type of work that is going on with
20 the project. I'm a little hesitant about this for the alley,
21 I'm sorry, being across from the alley, as I don't know whether
22 this is -- how this is more uniquely affected than anybody else
23 that's on the other side of the alley. So you know, I'm leaning
24 towards no on the party status. But I can, you know, I'm not
25 hard and fast. Does anybody want to go next?

1 BOARD MEMBER BLAKE: I can go next. I mean, I --

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

3 BOARD MEMBER BLAKE: The -- I would agree with you.
4 The proximity of her location is relatively close, and I think
5 it is with regard to the general public that's even more affected.
6 So she is one of several, but she would be more affected than
7 the general public. I think that when I look at the issues that
8 she has of concern, they are mostly of a construction related
9 nature, not necessarily within the purview of the Board. So my
10 concern is, while I do believe that geographically, she does have
11 some, you know, an area of concern, the fact that her areas
12 of -- her issues of concern are more of a construction issue,
13 which may not be within our purview. So for that, I'm a little
14 bit concerned about actually granting party status as well.

15 CHAIRPERSON HILL: Okay.

16 Who would like to give me their thoughts next?

17 Mr. Smith?

18 BOARD MEMBER SMITH: I mean I -- yeah, I'll go next.
19 I agree that she is within -- says she's within 100 feet of this
20 proposed improvement. And typically we have erred on the side
21 of granting party status. But I think in those particular cases,
22 just as Mr. Blake stated, some of those concerns more so dealt
23 with zoning concerns that were within our purview. As stated by
24 the person requesting party status, Ms. Campbell, a lot of her
25 questions relate to construction management, which is beyond the

1 purview of this Board, explicitly to get into the details of
2 that. She can work out an arrangement with the Applicant or
3 definitely file some grievances with the Department of Building,
4 if we do grant a special exception, if we do find that they meet
5 -- that she -- that the Applicant meets the criteria. But based
6 on what I'm hearing, I'm not inclined to grant their party status
7 request either.

8 CHAIRPERSON HILL: Okay.

9 Vice Chair Miller.

10 VICE CHAIR MILLER: Thank you, Mr. Chairman. I concur
11 with my colleagues -- the -- regarding -- even though she is
12 right across the alley, the issues that she raised in her party
13 status request seem to be construction related. When we -- and
14 we can hear of a concern about that, and maybe the Applicant,
15 Ms. Kemp, can address that, even though, as my colleagues have
16 said, that's not something we would get into in our zoning --
17 it's not in our zoning purview. But we often do ask the Applicant
18 to try to work with their neighbors, and I'm sure we'll get into
19 that maybe a little bit when -- in -- during the public hearing
20 testimony.

21 CHAIRPERSON HILL: Sure.

22 Mr. Blake?

23 BOARD MEMBER BLAKE: Yeah. I think, though, that her
24 proximity to the building does warrant party status. And I
25 understand the issues aren't really there, but I would actually

1 -- and I know I'm reversing myself a little bit here, but I just
2 think that we would be -- it's not really -- that the issues
3 themselves aren't really -- we do need to at least examine if
4 she is being impacted in terms of the conditions that we do
5 observe: light, air privacy, et cetera. We should give her that
6 as being that location.

7 CHAIRPERSON HILL: Okay. So we got one the other way
8 now. Okay.

9 BOARD MEMBER BLAKE: Yeah, I know. I know.

10 CHAIRPERSON HILL: I'm sticking with my original one,
11 which is that I think that in this particular case -- and party
12 status is something that we determine on a case-by-case basis
13 -- in this particular case, I do not think she meets those
14 criteria. But I'll see how this vote goes. So I'm going to go
15 ahead and make the motion to deny party status for the person
16 -- and I just don't have the name. Did somebody -- where's that
17 name?

18 BOARD MEMBER BLAKE: Ms. Campbell.

19 CHAIRPERSON HILL: Thank you.

20 Ms. Campbell. Deny party status to Ms. Campbell as she
21 put down but still have the opportunity to speak at the hearing
22 as a member of the public and look for a second from Mr. Smith.

23 BOARD MEMBER SMITH: Second.

24 CHAIRPERSON HILL: Motion has been made and second.

25 Mr. Moy, if you could take a roll call.

1 MR. MOY: When I call your name, if you'll please
2 respond to the motion made by Chairman Hill to deny the request
3 for party status in opposition from Janet Campbell.

4 Zoning Commissioner Rob Miller.

5 VICE CHAIR MILLER: Yes, to deny the request.

6 MR. MOY: Mr. Smith?

7 BOARD MEMBER SMTIH: Yes.

8 MR. MOY: Yes, to deny?

9 BOARD MEMBER SMITH: Yes. Yes, to deny.

10 MR. MOY: Mr. Blake?

11 BOARD MEMBER BLAKE: No.

12 MR. MOY: Chairman Hill?

13 CHAIRPERSON HILL: Yes, to deny.

14 MR. MOY: Staff would record the vote as three to one
15 to one. And this is on the motion made by Chairman Hill to deny
16 the -- to deny the request for party status in opposition. The
17 motion to deny is seconded -- second by Mr. Smith. Also in
18 support of the motion to deny is Mr. Miller. Opposed to the
19 motion to deny is Mr. Blake. We have also a Board member not
20 participating. The motion carries on a vote of three to one to
21 one.

22 CHAIRPERSON HILL: Okay. Great. Thank you.

23 And then also those that are listening, Ms. Kemp, if
24 you're going to reach out to Ms. Campbell during the time here
25 and see if you can discuss any issues that Ms. Campbell may have,

1 in terms of construction management or whatever her issues are,
2 it might be helpful to talk prior to when we hear the case.

3 Ms. Campbell, again, you will be able to speak during
4 the public meeting portion when we take testimony, and so I
5 encourage you, again, to participate at that time.

6 And again, for the record, I do not think or did think
7 that Ms. Campbell met the criteria under Y, 404.1. Specifically,
8 I just think that there are other people in that alley that are
9 also affected by or could be affected by this and that it's not
10 any more specific than others.

11 Let's see. So that's one.

12 Mr. Moy, you want to go ahead and call the next
13 preliminary matter?

14 MR. MOY: Yes. Thank you, sir. So the next request
15 for party status opposition goes to Application No. 20808. This
16 is the application of Alvin E. Gross. This is a request for an
17 area variance from the minimum lot dimension requirements of
18 Subtitle D, Section 302.1, pursuant to Subtitle X, Section 1002,
19 property located at 1936 Upshur Street, Northwest, Square 2631,
20 Lot 9. The property is located in ANC 4A08. Again, this is a
21 request for party status in opposition from an Edward Tower.

22 CHAIRPERSON HILL: Okay, great.

23 Let's see. I see Mr. Tower. Do I see someone from the
24 Applicant?

25 MR. YOUNG: The Applicant has told staff that they were

1 not going to participate in this portion.

2 MR. TOWER: Hello?

3 CHAIRPERSON HILL: All right.

4 Mr. Tower, can you hear me?

5 MR. TOWER: I do. Can you hear me?

6 CHAIRPERSON HILL: Yes. Mr. Tower, you're the adjacent
7 party, correct?

8 MR. TOWER: Yes, directly adjacent.

9 CHAIRPERSON HILL: Okay, great. All right.

10 Okay. Does anybody -- does the Board have any questions
11 for the Applicant, I'm sorry, for the party status person?

12 (No audible response.)

13 CHAIRPERSON HILL: Okay.

14 Mr. Tower, I think that you are actually qualified for
15 party status. I think my other Board members are going to agree
16 with me. So what that means, Mr. Tower, is that during the --
17 we're going to put you last at the end of the day, and that means
18 that you'll have an opportunity to give a presentation. You'll
19 have an opportunity to ask questions of the Applicant, to ask
20 questions of the Office of Planning; to cross-examine the
21 Applicant, meaning, you know, after their presentation, as well
22 as the Office of Planning, and then the Board will have an
23 opportunity to ask questions of you. Do you have any questions
24 of me as to what's going to happen during the hearing?

25 MR. TOWER: I do not. I'm pretty familiar with the

1 process.

2 CHAIRPERSON HILL: Oh, great. How come? Have you done
3 it before?

4 MR. TOWER: I'm an architect.

5 CHAIRPERSON HILL: Oh, all right. Well, there you go.
6 All right, Mr. Tower. Then -- and then I don't know whether
7 you -- have you been in contact with the Applicant?

8 MR. TOWER: I have.

9 CHAIRPERSON HILL: Okay. I mean, again, for whatever
10 it's worth, Mr. Tower, if you can work something out, or if you
11 and the Applicant can speak before the case, or if there's
12 anything you all can do, that would be better to be done before
13 the hearing.

14 MR. TOWER: Very well. Thank you.

15 CHAIRPERSON HILL: Okay?

16 MR. TOWER: Very good.

17 CHAIRPERSON HILL: Okay, great.

18 MR. TOWER: I appreciate your consideration.

19 CHAIRPERSON HILL: All right, Mr. Tower, we'll see you
20 at the end of the day.

21 MR. TOWER: Okay. Thank you.

22 CHAIRPERSON HILL: Thank you. All right.

23 All right. In this particular case, again, I do think
24 there must -- the party status requester is meeting the criteria
25 for us to grant party status. So I'm going to be making a motion

1 to grant party status. I don't think anyone is going to disagree
2 with that, as is why the Applicant probably did not even show
3 up. And so I'm going to make a motion to approve party status
4 for Application 20808 of Mr. Tower and ask for a second.

5 Mr. Blake?

6 BOARD MEMBER BLAKE: Second.

7 CHAIRPERSON HILL: Could you take a roll call, Mr. Moy?

8 MR. MOY: When I call your name, if you'll please
9 respond to the motion made by Chairman Hill to grant the request
10 for party status in opposition from Mr. Edward Tower. The motion
11 to grant was second by Mr. Blake.

12 Zoning Commissioner Rob Miller?

13 VICE CHAIR MILLER: Yes.

14 MR. MOY: Mr. Smith?

15 BOARD MEMBER SMITH: Yes.

16 MR. MOY: Mr. Blake?

17 BOARD MEMBER BLAKE: Yes.

18 MR. MOY: Chairman Hill?

19 CHAIRPERSON HILL: Yes.

20 MR. MOY: Staff would record the vote as four to zero
21 to one. And this is on the motion made by Chairman Hill to grant
22 the request for party status. The motion to grant was second by
23 Mr. Blake, also in support of the motion, as well as Zoning
24 Commissioner Rob Miller, Mr. Smith, and of course, Mr. Blake,
25 Chairman Hill. Board member not present. Staff would record the

1 vote as four to zero to one. The motion carries, sir.

2 CHAIRPERSON HILL: Okay, great. Thank you.

3 Are you all ready to keep going?

4 (No audible response.)

5 CHAIRPERSON HILL: Let's keep going. Okay. All right.
6 Everybody seems okay.

7 Mr. Moy, you can call our first hearing when you get a
8 chance.

9 MR. MOY: In -- first case in the Board's public hearing
10 session is Application No. 20785 of Andy and Debbie Wilson, LLC.
11 This is a self-certified application pursuant to Subtitle X,
12 Section 901.2 for special exceptions under Subtitle D,
13 Section 5206, which would allow a voluntary IZ development on new
14 lots, meeting minimum lot width and lot area requirements under
15 Subtitle D, Section 302.5. And let's see. This is located in
16 the R-3 zone. The ANC 8A is affected. Property address,
17 1531 U Street, Southeast, Square 5776, Lot 812.

18 The preliminary hearing matter here, Mr. Chairman, is
19 that there is a request for a postponement. Yeah.

20 CHAIRPERSON HILL: Okay. When did that happen? But
21 that's okay. I can hear from the Applicant if that's accurate.

22 MR. MOY: Okay. Yeah.

23 CHAIRPERSON HILL: Okay. Mr. Dales, I hear you
24 speaking. Are you the representative or the Applicant? And
25 either way, could you introduce yourself for the record?

1 MR. DALES: Yes, Mr. Chairman. I'm representative for
2 the Applicant, Phil Dales, formerly of Liff, Walsh and Simmons,
3 181 Harry S. Truman Parkway, Annapolis. Recently at my own firm,
4 Dales Associates at 238 West Street in Annapolis and of Counsel
5 to Kagan Stern at the same address, 238 West Street in Annapolis.

6 Yeah, it is true that we requested -- we've made a
7 motion to postpone.

8 CHAIRPERSON HILL: Okay. Why are you postponing?

9 MR. DALE: Mr. Chairman, as I made the switch in my law
10 firms, we missed a communication from the Office of Planning that
11 alerted us to the fact that we needed additional relief for a
12 lot coverage requirement. That changed one of the lots that are
13 subject to this application. Basically, the condition of that
14 lot will no longer meet the coverage requirements, and when we
15 found out fairly recently, we did everything we could to find an
16 adjustment that would allow us not to need another special
17 exception.

18 CHAIRPERSON HILL: Okay. I got you, Mr. Dales.

19 MR. DALES: Yeah.

20 CHAIRPERSON HILL: So how much time do you think you
21 need, Mr. Dales?

22 MR. DALES: I was looking at the dates for future
23 hearings, and we could be, I think, prepared as early as the
24 February 8th hearing, if there's any availability, or if not,
25 March 22nd or 29th would also be fine for us.

1 CHAIRPERSON HILL: Okay.

2 Mr. Moy, can you hear me?

3 MR. MOY: Yes, sir, I can.

4 CHAIRPERSON HILL: Do you know any -- do you know where
5 -- I know that we are pretty jammed up overall, but you want
6 Mr. Dales to repeat those dates or what? Did you hear them, and
7 if so, do you have a suggestion?

8 MR. MOY: Yes. I believe Mr. Dales mentioned February
9 -- was it the 8th or 15th? What was that again?

10 MR. DALES: I believe -- I was told the 8th was a
11 hearing date and that the 22nd of March was the next one after
12 that. If there's one in between, we're also happy for -- to take
13 any of the dates between the 8th and the 22nd.

14 MR. MOY: Certainly, Mr. Chairman, February 8th can be
15 accommodated, as we have two cases for that date at the moment.

16 CHAIRPERSON HILL: Oh, great. Perfect.

17 All right, Mr. Dales, we're going to move you to
18 February 8th --

19 MR. DALES: Thank you.

20 CHAIRPERSON HILL: -- unless my Board members have any
21 questions.

22 Do you have any questions?

23 BOARD MEMBER BLAKE: I have one question.

24 Mr. Blake, go ahead.

25 BOARD MEMBER BLAKE: Yes.

1 Mr. Dales, have you had a chance to get in touch with
2 the ANC?

3 MR. DALES: We were in touch with the ANC, but we
4 postponed with them, or we let them know we were going to
5 postpone, and the motion has been sent. That was just sent last
6 night, but that was also sent to the ANC to make sure that they're
7 aware that we've officially moved for the postponement.

8 BOARD MEMBER BLAKE: Okay, thank you.

9 CHAIRPERSON HILL: And so, Mr. Dales, you'll have
10 presented to them by then, and we would have an opportunity to
11 get a report from them by then.

12 MR. DALES: Mr. Chairman, I think that's a good
13 question. I would be prepared to; if they can fit us in for one
14 of their meetings prior to that, then, yes. I don't know their
15 availability for meetings between now and February 8th, so --

16 CHAIRPERSON HILL: What were the other two -- what were
17 the other two dates that you had said in March?

18 MR. DALES: March 22nd and March 29th.

19 CHAIRPERSON HILL: Mr. Moy, how does the 22nd or the
20 29th look?

21 MR. MOY: Well, Mr. Chairman, for March 22nd, you
22 currently have on the docket seven cases. March 29th you have
23 seven as well. So either of the two dates.

24 CHAIRPERSON HILL: All right.

25 So Mr. Dales, go ahead. I mean, my issue is we need

1 something from the ANC, right. So go ahead and try to make it
2 happen by the 8th. Okay.

3 MR. DALES: I will.

4 CHAIRPERSON HILL: All right. We'll see you back here
5 on February 8th.

6 MR. DALES: Thank you, Mr. Chairman.

7 CHAIRPERSON HILL: All right. Thank you.

8 I'm going to close this portion of the hearing.

9 February 8th. February 8th. Okay. Well, now let's
10 take a break. Oh, wait, hold on. Give me a second. Sorry.

11 No, let's go ahead and do the next one, if that's okay.

12 You all all right? Everybody okay?

13 (No audible response.)

14 CHAIRPERSON HILL: Okay.

15 20810, I think, Mr. Moy. Mr. Moy, are you there?

16 MR. MOY: I'm here. I'm pulling up the case.

17 CHAIRPERSON HILL: Yeah. Take your time.

18 MR. MOY: All right, thank you. And here we go. So
19 the next application before the Board is Application No. 20810
20 of Jay LeBlang -- or spelled L-E-B-L-A-N-G and Stephanie Cantor.
21 This is a self-certified application pursuant to Subtitle X,
22 Section 901.2 for special exceptions under Subtitle D,
23 Section 5201 from the lot occupancy requirements, Subtitle D,
24 Section 304.1 and rear yard requirements, Subtitle D,
25 Section 306.2. The property is located in the R-3 zone at

1 5316 Kansas Avenue, Northwest, Square 3297, Lot 7. And checking
2 one other thing. All right. That's all I have for you,
3 Mr. Chairman.

4 CHAIRPERSON HILL: Thank you.

5 Mr. Sullivan, if you can hear me, if you could introduce
6 yourself for the record.

7 MR. SULLIVAN: Thank you, Mr. Chairman, and members of
8 the Board. Marty Sullivan with Sullivan & Barros on behalf of
9 the Applicant.

10 CHAIRPERSON HILL: Okay, great, Mr. Sullivan.

11 Mr. Sullivan, if you want to go ahead and walk us
12 through the application and your reasoning as to why you believe
13 your client is meeting the criteria to grant the relief requested.
14 I'm going to put 15 minutes on the clock so I know where we are,
15 and you can begin whenever you like.

16 MR. SULLIVAN: Thank you.

17 If Mr. Young could load the PowerPoint, please.

18 This request is for a special exception for lot
19 occupancy and for rear yard for a deck extension, 5316 Kansas
20 Avenue.

21 Next slide, please.

22 This is in the R-3 zone. And the Applicant's proposing
23 to extend and enlarge an existing deck and requesting relief from
24 lot occupancy and rear yard. The rear yard would be 3.5 feet.
25 The lot occupancy would be 69.9 percent and 70percent is permitted

1 by special exception.

2 Next slide, please.

3 We do have unanimous support from ANC 4D, support from
4 the Office of Planning, DDOT and there are five letters of support
5 from surrounding neighbors, including the two adjacent neighbors.

6 Next slide.

7 This photo shows existing conditions generally along
8 the rear of the properties. The subject property is on the left
9 bottom, and then you see the general view of the properties down
10 the block on the right bottom.

11 Next slide, please.

12 This shows a rear elevation. It's not as helpful as
13 the next slide.

14 Next slide, please.

15 So at the top of this is the house. So the existing
16 building is at the top of this graphic. There's an existing deck
17 there. There's going to be a walkway deck to a rear deck. This
18 allows to continue parking underneath and continues -- the entire
19 yard is underneath of this deck.

20 Next slide, please.

21 We'll see an elevation that shows this from the side.

22 Next slide, please.

23 This is in harmony with the general purpose and intent
24 of the Zoning Regulations. It's a single-family home. It's a
25 deck that's within 70 percent.

1 Next slide, please.

2 Because it's merely a deck, it will not tend to unduly
3 affect the light and air available to the neighboring properties
4 and -- nor privacy and useful enjoyment of neighboring
5 properties. And also there are similar structures in the back
6 of several decks in the back along this block. And so the
7 proposed deck, of course, will not be visible from the front
8 street and will not visually intrude upon character, scale and
9 pattern as viewed from the alley either.

10 Next slide, please.

11 And that's it. If the Board has any questions -- and
12 the Applicant/Owner is with us today as well, Mr. Jay Leblang,
13 if the Board has any questions for him.

14 CHAIRPERSON HILL: Mr. Sullivan, what did the next door
15 neighbors have to say?

16 MR. SULLIVAN: So all neighbors are in support. They
17 filed letters in support, including the immediate neighbors on
18 both sides.

19 CHAIRPERSON HILL: Okay. How -- is the architect here
20 or the -- oh, just the Applicant?

21 MR. SULLIVAN: Yes, the Applicant's here.

22 CHAIRPERSON HILL: Okay. And I don't know,
23 Mr. Sullivan, if you know. I was just curious, how did they come
24 up with this design?

25 MR. SULLIVAN: Jay, you can respond to that if you

1 want.

2 MR. LEBLANG: Yes.

3 CHAIRPERSON HILL: Mr. LeBlang, can you introduce
4 yourself for the record, and I'm sorry if I'm not pronouncing
5 your last name correctly.

6 MR. LEBLANG: Sure. No worries. LeBlang is correct.
7 My name is Jay LeBlang of 5316 Kansas Avenue, Northwest.

8 CHAIRPERSON HILL: Yeah. So my question was how did
9 you come up with this design?

10 MR. LEBLANG: Yeah. So in consulting with Mr. Sullivan
11 and understanding the sort of requirements for lot occupancy, I
12 wanted to maximize the usefulness of the backyard with the deck,
13 which essentially is simply the extension of the deck to cover
14 the current parking pad, so to make additional use of the space
15 where the parking driveway is today.

16 CHAIRPERSON HILL: Yeah, I mean, I just haven't seen
17 this design in a while, or even -- I mean, it's a good design
18 for what you're trying to do with the program.

19 Do my fellow Board members have any questions?

20 (No audible response.)

21 CHAIRPERSON HILL: Okay. I'm going to turn to the
22 Office of Planning.

23 MS. MYERS: Good morning. Crystal Myers with the Office
24 of Planning. The Office of Planning is recommending approval.
25 I do want to note a staff report correction. The lot occupancy

1 numbers on the first page are incorrect. The correct numbers are
2 on the second page, which are that the existing is 48.2 percent
3 and the proposed is 69.9 percent. But otherwise, and with that,
4 I'll stand on the record of the staff report. Thanks.

5 CHAIRPERSON HILL: Okay.

6 Does anybody have any questions of the Office of
7 Planning?

8 (No audible verbal response.)

9 CHAIRPERSON HILL: Mr. Sullivan, do you have any
10 question of the Office of Planning.

11 MR. SULLIVAN: No. Thank you.

12 CHAIRPERSON HILL: Mr. Young, is there anyone here
13 wishing to speak?

14 MR. YOUNG: We do not.

15 CHAIRPERSON HILL: Mr. Sullivan, do you have anything
16 at the end?

17 MR. SULLIVAN: No, we do not. Thank you.

18 CHAIRPERSON HILL: Okay. I'm going to go ahead and
19 close the hearing and the record. Mr. Young, if you can please
20 excuse everyone.

21 All right. I'm smiling. I've been talking a long
22 time.

23 Mr. Blake, you want to talk?

24 BOARD MEMBER BLAKE: Sure. First of all, I'd say I
25 believe the Applicant has met the burden of proof for the special

1 exception relief from the rear yard and lot occupancy
2 requirements of Subtitle D, pursuant to D, 5201 and X, 901.2.
3 And I do agree with the Office of Planning's analysis of the
4 project and how it meets the criteria for approval.

5 The proposed deck addition is rather elaborate, large,
6 but it does allow them to preserve parking and have some yard
7 space. It's very creative. It's also on the first floor. It's
8 open to the sky and should not have any undue impact on the use
9 of light, air, or privacy of neighboring properties. And like I
10 said, you continue to have a rear yard, some green space, and
11 parking.

12 It shouldn't substantially visually intrude on the
13 character and scale and pattern of the houses along the alley.
14 There are a number of large structures on the alley, garages,
15 sheds, and things of that nature, so this should certainly fit
16 in. So I give great weight to the Office of Planning's
17 recommendation for approval. I note that DDOT has no objection.
18 I give great weight to the report of the ANC 4D, which is in
19 support of the application and stated no issues or concerns. I
20 would also note that there are letters of support from neighbors,
21 including the adjacent neighbors. I'll be voting in favor of the
22 application.

23 CHAIRPERSON HILL: Okay. Thank you.

24 Mr. Smith?

25 BOARD MEMBER SMITH: I, by and large, agree with

1 Mr. Blake's position on this. I do believe the Applicant has met
2 the burden of proof for us to grant the special exceptions given
3 the criteria that we must evaluate that against in Subtitle D,
4 Section 5201.4. The -- as Mr. Blake stated, it is a fairly
5 elaborate structure. It's going to be, you know, a deck that
6 extends out to the extreme rear yard of the property. But I do
7 believe that, you know, given the size and scale of this and that
8 it is open, it will not have any light and air impacts on the
9 adjacent neighbors, and we do have within the record, as Mr. Blake
10 stated, the support of those adjacent neighbors who would be most
11 impacted by such a structure. You know, granted that support
12 from the neighbors, and looking at the Office of Planning's
13 report, I do believe that they have provided a very thorough
14 argument on the reasons why they also meet the criteria for us
15 to grant this special exception as presented. So with that, I
16 would support the -- both the special exceptions from lot
17 occupancy and the rear yard requirements to construct the
18 structure.

19 CHAIRPERSON HILL: Thank you. Vice Chair Miller.

20 VICE CHAIR MILLER: Thank you. Thank you, Mr. Chairman.

21 I concur with my colleagues' thorough analysis and
22 appreciate the Applicant's outreach to their neighbors and to the
23 ANC, which they have support of. Thank you.

24 CHAIRPERSON HILL: Thank you, Mr. Miller.

25 I'm going to go ahead. I agree with everything that

1 my colleagues have said. Thank you for taking the time to provide
2 your analysis.

3 I'll make a motion to approve Application No. 20810,
4 as captioned and read by the secretary and ask for a second.

5 Mr. Blake?

6 BOARD MEMBER BLAKE: Second.

7 CHAIRPERSON HILL: Motion has been made and second.

8 Mr. Moy, if you could take a roll call.

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

10 When I call your name, if you'll please respond to the
11 motion made by Chairman Hill to approve the application for the
12 relief requested. The motion to approve was second by Mr. Blake.

13 Zoning Commissioner Rob Miller?

14 VICE CHAIR MILLER: Yes.

15 MR. MOY: Mr. Smith.

16 BOARD MEMBER SMITH: Yes.

17 MR. MOY: Mr. Blake?

18 BOARD MEMBER BLAKE: Yes.

19 MR. MOY: Chairman Hill?

20 CHAIRPERSON HILL: Yes.

21 MR. MOY: Staff would record the vote as four to zero
22 to one. And this is on the motion made by Chairman Hill to
23 approve. The motion to approve was second by Mr. Blake,
24 also -- who is also in favor of the motion to approve. In
25 addition in support of the motion to approve, Zoning Commissioner

1 Rob Miller, Mr. Smith, and of course, Mr. Blake and Chairman
2 Hill. We have a Board member not present, not participating.
3 The motion carries on a vote of four to zero to one.

4 CHAIRPERSON HILL: Thank you, Mr. Moy.

5 Okay, everybody, let's just take a quick 10-minute
6 break, if that's okay, and we'll come back. Thank you.

7 (Whereupon, the above-entitled matter went off the
8 record at 10:49 a.m. and resumed at 10:59 a.m.)

9 MR. MOY: Okay. After a brief recess, the Board has
10 returned to its public hearing session, and the time is at or
11 about 10:59 a.m.

12 The next case before the Board is Application No. 20713
13 of Jeffery and Jill Miller. This is a self-certified application
14 pursuant to Subtitle X, Section 901.2 for a special exception
15 under Subtitle E, Section 5201 from the lot occupancy
16 requirements of Subtitle E, Section 304.1. The property is
17 located in the RF-1 zone at 135 Kentucky Avenue, Southeast,
18 Square 1014, Lot 26.

19 CHAIRPERSON HILL: Okay. Thank you.

20 Ms. Jones, if you could hear me, if you can introduce
21 yourself for the record.

22 MS. JONES: Hi. Yes. Good morning. Jobi Jones. I
23 reside at 5120 New Hampshire Avenue, Northwest, and I am architect
24 of record for Jeff and Jill Miller.

25 CHAIRPERSON HILL: Okay, great. So Ms. Jones, if you

1 want to go ahead and walk us through your client's application
2 and why you believe they have -- they meet the criteria for us
3 to grant the relief requested? I'm going to put 15 minutes on
4 the clock so I know where we are. You can begin whenever you
5 like. The only question I have for you as you're kind of going
6 through this, is making sure that the change from the original
7 plans to the updated plans are still consistent with what the ANC
8 and the Office of Planning has reviewed. And so you can go ahead
9 and begin whenever you like.

10 MS. JONES: All right. Wonderful. Thank you so much.

11 I do have a PDF of the plans and elevations.

12 So yeah, so this is an owner-occupied row house, and
13 they are seeking relief for lot coverage to accommodate a
14 two-story rear addition with deck and also a two-story rear
15 addition to an existing garage. The existing lot occupancy is
16 57.2, and we're seeking approval for 68.4. The two combined
17 additions combined for just under 200 square feet.

18 If we could go to the third page.

19 So this is the back of the property. The property on
20 the left, you can see they have a two-story addition. So -- and
21 this is 133 Connecticut. So our addition will still be roughly
22 7 foot 9 inches short of their addition. And that owner also
23 has future plans to close in their lower portion of their
24 addition. And the property on the right is 137. So our addition
25 would be 6 feet beyond their rear wall but still would not --

1 would still be shy of their existing two-story porch. There is
2 a dogleg separating these two properties to preserve light and
3 air. And then on the other side, you will see an image of the
4 existing garage. And we do plan to build on, like I said, one
5 story on top and then come 4 feet into the property, because the
6 garage is very tight.

7 If you go to the next slide, you'll see there's a
8 precedent right across from us for this addition. And the change
9 that was made -- so when we first started doing our due diligence
10 way back when for this project, there was a 12-foot setback rule
11 from the centerline of the alley to the second story addition.
12 Around that time, either just before or just after, that condition
13 changed to 7.5 feet, so we no longer have to step back. That's
14 what our initial application showed was a step back on that second
15 addition. But actually through the HPRB review, they wanted us
16 to have a consistent, uniform facade.

17 By that time, we had realized that there was, you know,
18 we didn't have that 12-foot rule anymore. So now the consistent
19 facade is in line with the regulations. And we did go back to
20 the ANC. They said, we don't need to re-review this. It's fine.
21 Like, we -- our initial approval still stands. So that was our
22 update.

23 And if you go to the last slide, that shows the proposed
24 plat, which will further show you graphically the -- how our
25 proposed addition interacts with the two neighboring properties.

1 If we could go to the last page. Yeah. Yeah.

2 So the one on the left is the proposed. So you can
3 see we're still shy of the neighbor on the left, and we are just
4 past the neighbor on the right, but we do have that dogleg.

5 CHAIRPERSON HILL: Okay. Okay. Is that it, Mr. Jones?

6 MS. JONES: That's all.

7 CHAIRPERSON HILL: Okay.

8 Does the Board have any questions of the Applicant?

9 (No audible response.)

10 CHAIRPERSON HILL: Okay. I'm going to turn to the
11 Office of Planning.

12 MR. MORDFIN: Good morning, I'm Stephen Mordfin with
13 the Office of Planning. And the Office of Planning is in support
14 of this application, finding that it does conform to the
15 requirements for the granting of a special exception for
16 increasing lot occupancy to 68.4 percent. That is the only relief
17 that this application needs at this time. And they do meet the
18 criteria, so therefore, we support it. And I'm available for
19 questions.

20 CHAIRPERSON HILL: Does the Board have any questions
21 for the Office of Planning?

22 (No audible response.)

23 CHAIRPERSON HILL: Does the Applicant have any
24 questions for the Office of Planning?

25 MS. JONES: No.

1 CHAIRPERSON HILL: No.

2 Mr. Young, is there anyone here wishing to speak?

3 MR. YOUNG: We do not.

4 CHAIRPERSON HILL: Ms. Jones, do you have anything to
5 add at the end?

6 MS. JONES: I do not.

7 CHAIRPERSON HILL: Okay. All right. I'm going to go
8 ahead and close the hearing and the record.

9 Mr. Young, if can please excuse everyone.

10 Okay. I didn't have any issues with this application.
11 I thought that it was relatively straightforward. I did want to
12 see the changes that were made between the original and the
13 updated modified plans. I don't have any concerns about those
14 as well. I do believe they're meeting the criteria within the
15 regulations for us to grant this relief, and I'll be voting in
16 favor. I also will note that the Office of Planning's analysis
17 I would agree with, as well as that of the ANC being in support
18 of both the original and as the Applicant has stated, of the
19 updated modified plans. And DDOT did not have any objections.

20 Mr. Blake -- I'm sorry.

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

22 BOARD MEMBER SMITH: I don't have anything to add. I
23 completely concur with your opinion on this case, and I will
24 support it. I will also support it. Sorry.

25 CHAIRPERSON HILL: Vice Chair Miller?

1 VICE CHAIR MILLER: Thank you, Mr. Chairman. I agree
2 with your analysis as well and support the application.

3 CHAIRPERSON HILL: Thank you.

4 Mr. Blake?

5 BOARD MEMBER BLAKE: I will concur with your analysis.
6 I would agree that the Applicant has met the burden of proof, be
7 granted relief. I give great weight to the Office of Planning's
8 recommendation of approval and note DDOT has no objection. I'd
9 also give great weight to ANC 6B, which recommends approval and
10 states no issues or concerns. I'd also acknowledge the support
11 of the adjacent neighbors and the letter of support from the
12 Capitol Hill Restoration, which is in the record. I will be
13 voting in favor of the application.

14 CHAIRPERSON HILL: Thank you, Mr. Blake.

15 I'm going to make a motion then to approve Application
16 No. 20713 as captioned and read by the secretary and ask for a
17 second.

18 Mr. Blake?

19 BOARD MEMBER BLAKE: Second.

20 CHAIRPERSON HILL: Motion made and seconded.

21 Mr. Moy, if you could take a roll call.

22 MR. MOY: Thank you, sir. When I call your name, if
23 you'll please respond.

24 Zoning Commissioner Rob Miller?

25 VICE CHAIR MILLER: Yes.

1 MR. MOY: Mr. Smith?

2 BOARD MEMBER SMITH: Yes.

3 MR. MOY: Mr. Blake?

4 BOARD MEMBER BLAKE: Yes.

5 MR. MOY: Chairman Hill?

6 CHAIRPERSON HILL: Yes.

7 MR. MOY: Staff would record the vote as four to zero
8 to one, and this is on the motion made by Chairman Hill to approve
9 the application for the relief requested. The motion to approve
10 was second by Mr. Blake, who is also in support of the motion,
11 as well as Zoning Commissioner Rob Miller, Mr. Smith, and of
12 course, Mr. Blake and Chairman Hill. We have a Board member not
13 present. The motion carries on a vote of four to zero to one.

14 CHAIRPERSON HILL: Thank you, Mr. Moy. You can call
15 our next one when you have an opportunity, Mr. Moy.

16 MR. MOY: The next case before the Board is Application
17 No. 20817 of Hannah Kemp. This is an application pursuant to
18 Subtitle X, Section 901.2 for special exceptions under
19 Subtitle E, Section 5201. This is from the lot occupancy
20 requirement of Subtitle E, Section 304.1 as well as from the rear
21 yard requirements of Subtitle E, Section 306.1. Property located
22 in the RF-1 zone at 311 U Street, Northwest, Square 3086, Lot 31.

23 CHAIRPERSON HILL: Thank you.

24 Ms. Kemp, can you hear me?

25 MS. KEMP: Yes.

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

3 MS. KEMP: Hi. I'm Hannah Kemp. I'm the owner/occupant
4 of 311 U Street, Northwest.

5 CHAIRPERSON HILL: Okay. All right, Ms. Kemp, if you
6 could go ahead and walk us through your application and why you
7 believe you're meeting the criteria for us to grant the relief
8 requested. I got 15 minutes on the clock there, and you can
9 begin whenever you like.

10 MS. KEMP: Great. So I'd shared some slides with Paul.
11 Would it be possible to bring those up?

12 CHAIRPERSON HILL: Sure. Does he know? And which
13 exhibit? Could you tell us, or you don't know?

14 MS. KEMP: Looks like he found them. They were also
15 uploaded into IZIS. Which Exhibit?

16 CHAIRPERSON HILL: Oh, I got you. I see it. It's
17 Exhibit 40. Okay, great. Thank you.

18 MS. KEMP: Great. All right.

19 I -- so, Paul, do you have to move the slides, I'm
20 guessing?

21 CHAIRPERSON HILL: He does have to move the slides.

22 MS. KEMP: He does.

23 Okay. Next slide.

24 So I will try to keep this under 15 minutes, but I'm
25 going to first start with an overview of the property and the

1 project, talk about the criteria for special exemption, talk
2 about the support that we have from the different organizations
3 and of neighbors, also talk about some examples of comparable
4 decks, and then respond directly to the comments, letters of
5 opposition that we've received.

6 So next slide.

7 So we're looking for a special exemption to -- both for
8 the lot occupancy requirement and also the rear yard requirement.

9 Next slide.

10 So this is the location of the house on U Street,
11 Northwest between 3rd and 4th Street, Northwest.

12 Next slide.

13 The front and the back of the house. So in the rear
14 of the house, you can see we are looking to put on a second floor
15 deck. I'll show the plans in a minute. What is -- not hard --
16 which is hard to see from this picture, but we can jump to the
17 next slide, is that there is a 20-foot-wide public alley located
18 behind our house. After that public alley, there is parking
19 spots and then neighbors' houses -- backyards and then houses.
20 This is a view of the park -- public alley.

21 Next slide.

22 This is the drawings of the deck. So I just want to
23 note a few things. All these are part of the record. One, the
24 entrance to the deck is going to be off the second floor of the
25 House. We designed that for security and privacy. Second, is

1 that the deck is designed to maintain parking in our existing
2 parking pad. So that the places where the holes are in these
3 drawings is designed so that we can still easily park underneath
4 the deck. The deck is not a perfect square, but it goes out
5 about 10 feet from this house.

6 Next slide.

7 Here's another picture. So it goes on about 10 feet,
8 and then there's going to be -- there's also significant space
9 between the end of the deck and the end of our property.

10 Next slide.

11 So we believe that we meet the criteria for a special
12 exception for a few reasons. One, the light and air is not unduly
13 affected. So we've got letters of support from both neighbors
14 to the east and west saying that they support the deck.
15 They -- that it's not going to affect that -- their light and
16 air. One of these neighbors does have a solar system on the
17 roof. This deck is of the -- is one floor lower than that. So
18 it's not going to affect that at all. There -- the neighbor on
19 the left, 313 U Street, already has an existing shaded patio on
20 their first floor. So it's an elevated deck patio. I don't know
21 if that has an awning. They also have a very large tree that's
22 providing significant shade. The light is predominantly sun in
23 the north of the house. So we actually don't get much light back
24 there in the alley anyway. Between that house and between the
25 deck and then the neighbors on the rear of the alley, there is

1 at least 60 feet, so the light and air should not be affected
2 there.

3 Next slide.

4 So the deck is overlooking a public alley. You can see
5 from this picture it's primarily used for parking. There are
6 four houses in the back that you can see actually the four parking
7 spots. There's also other decks that are located on this alley,
8 and the views from that is going to be similar to the views from
9 the other second floor decks in the alleys and similar to other
10 row houses in D.C.

11 Next slide.

12 I -- as I mentioned, you know, in D.C., many, many
13 people have these second four decks. I'm going to show you some
14 slides from second ones. There's also two existing second floor
15 decks in the alley located between U Street and Elm Street,
16 Northwest. And you will not -- the deck is not visible from the
17 street in any way. You actually have to walk around to the back
18 public alley to see it.

19 Next slide.

20 So we've gotten broad support from this deck. The
21 LeDroit Park Civic Association has support. We've presented our
22 plans; they've supported it.

23 Next slide.

24 The ANC has also supported this plan.

25 Next slide.

1 DDOT has also reviewed and have -- do not have any
2 objections to this.

3 Next slide. Next slide.

4 The Office of Planning memo has come out and
5 recommending approval for this.

6 Next slide.

7 We also have letters of support from our adjacent
8 neighbors. So during the period where -- between when we
9 submitted in this hearing, one of the neighbors actually moved
10 and sold the house and someone else moved in. We have letters
11 from both the former owner and the current owners of support that
12 have been submitted to the record.

13 Next slide.

14 We also have nine letters of support from people
15 located on this alley. So if you see -- besides the first
16 Applicant, which is within 200 feet. That's actually across the
17 street from us. All of the other letters of support are located
18 within very close proximity in the alley, either on U Street or
19 Elm Street or Third Street, which is a buttness in this way from
20 the alley.

21 Next slide.

22 The proposed deck structure aligns with the character
23 and existing structure in the neighborhood. As I mentioned,
24 there's two similar second floor deck structures located in the
25 same alley. About a third of the homes in this neighborhood have

1 elevated decks. Some of -- most of them are kind of elevated on
2 the first floor, but we're proposing a second floor to maintain
3 our ability to park. And I'm just going to show you in some
4 subsequent slides, other second floor decks that are located both
5 in this alley and throughout the historic neighborhood.

6 Next slide.

7 So this is a picture of 328 Elm Street on the same
8 block as the Applicant. So this neighbor is located in the same
9 alley, just a few houses down. They have a second floor deck
10 structure.

11 Next slide.

12 And as you can see, there's parking underneath that
13 deck.

14 Next slide.

15 346 Elm Street also has a second floor slide -- second
16 floor deck located in the same public alley.

17 Next slide.

18 Just standing on my front porch, there are four
19 comparable decks. So second floor decks either located on kind
20 of a bump out of the house, second or third floor.

21 Next slide.

22 This is literally the view from my front porch. This
23 is another view from my front porch. So other additional second
24 floor decks are located within one -- less than 300 feet and
25 viewable from my front porch.

1 Next slide.

2 Walking around the neighborhood, there are a number of
3 other decks, too, that are similar in size and nature. This is
4 actually a really large deck, but an example of a deck located
5 on a public alley where a car is parking underneath of it. Our
6 proposed deck is much stronger, or sorry, much smaller.

7 Next slide.

8 And we can just run through these really quick because
9 these are just examples, so of other decks.

10 Next. Next. Next.

11 As you can see, we took a walk and actually the neighbor
12 in the back, 312, has an existing elevated first floor deck as
13 well. So even within the view of this deck, there are other
14 decks.

15 Next slide.

16 So in between the conversation that we had around party
17 status, we actually reached out to Ms. Campbell to talk about her
18 concerns. We also sent her the correct architectural drawings.
19 There was an error on one that was submitted that showed a very
20 large deck. We submit -- we corrected that as soon as it was
21 noticed, but there were some misunderstandings in terms of the
22 size of the deck.

23 So just kind of to quickly respond to a few of Ms.
24 Campbell's concerns. One, you know, she was concerned about
25 safety, and we're going to -- we're hiring a licensed contractor.

1 We're going to get it all permitted through BZA, all the
2 inspections, all the applicable building code. We'll take every
3 possible precaution during construction.

4 So we are separated from Ms. Campbell's property by a
5 public alley that's used by all residents. There's going to be
6 no impact to them. The deck is only on our property, and we're
7 maintaining parking underneath our deck. So there's going to be
8 no impact really on any of the neighbors' ability to park or use
9 the alley, because it's all on our property, and we are able to
10 park under it. Yeah. Yeah, our house is -- so between
11 Ms. Campbell and our house, Google Maps has it at 67.87 feet, so
12 that's a significant amount of way apart. And yes, Ms. Campbell
13 will be able -- and all the other residents will be able to park
14 on their property during construction and after. We anticipate
15 this is going to be a two-week construction process. It's -- as
16 you saw, it's not a big deck. It's a pretty small structure, so
17 it should be pretty quick.

18 If you'd go to the next slide.

19 You know, we have to understand that we live in D.C.,
20 so that's the Google Maps.

21 Next slide.

22 We understand we live in D.C., right. Okay. Sorry,
23 there's a view of the public alley. Sorry.

24 Next slide.

25 I made a lot of slides not realizing that I wouldn't

1 be able to click through; I would have did it otherwise. So we
2 understand we live in D.C., right, and there's tight quarters.
3 People do construction projects all the time. And so we're really
4 committed to being good neighbors. We're going to hold -- we're
5 not going to start construction until all the materials are ready.
6 We're going to really try to minimize the impact on our neighbors
7 during this time. So I'm going to get our contractor's permit
8 so that they can park on the street so that they won't have to
9 be parking in the alley. We're going to try to keep all the
10 staging on our property, not using the alley. We're going to
11 have limited construction hours.

12 I'm also going to give all of our neighbor -- my
13 neighbors my personal cell phone -- Ms. Campbell actually has my
14 personal cell phone already -- in case there are any issues. And
15 overall, you know, we want to do this in a way that minimizes
16 the impact on others while also maintaining our ability to stay
17 in the space. I think COVID and having a baby really impacted
18 our need for some outdoor space. And so this project is our way
19 of being able to get a little bit more sunshine, get outside,
20 and stay in our home. That's it.

21 CHAIRPERSON HILL: Okay. Thank you, Ms. Kemp.

22 Let's see. Does -- I'll wait for Mr. Young to pull the
23 deck down.

24 Thank you.

25 Doe the Board have any questions of the Applicant?

1 (No audible response.)

2 CHAIRPERSON HILL: Okay. I'm going to turn to the
3 Office of Planning.

4 MR. COCHRAN: Thanks, Mr. Chair. I'm Steve Cochran
5 representing the Office of Planning on BZA Case 20817.

6 OP supports the request for the special exception for
7 lot occupancy and rear yard. Other than that, we would like to
8 correct a typo on page three. The deck would actually extend 9
9 feet past each adjacent neighbor, not what we had put in our
10 report. That's based on more recent filings from the Applicant.
11 And beyond that, we stand on the report on the record.

12 CHAIRPERSON HILL: Thank you.

13 Does anybody have any questions of the Office of
14 Planning?

15 (No audible response.)

16 CHAIRPERSON HILL: Ms. Kemp, do you have any questions
17 for the Office of Planning?

18 MS. KEMP: No.

19 CHAIRPERSON HILL: Okay.

20 Mr. Young, is there anyone here wishing to speak?

21 MR. YOUNG: Yes, just Ms. Campbell.

22 CHAIRPERSON HILL: Okay. We can bring Ms. Campbell in.
23 Ms. Campbell, can you hear me?

24 (No audible response.)

25 CHAIRPERSON HILL: Ms. Campbell, can you hear me? Ms.

1 Campbell?

2 (No audible response.)

3 CHAIRPERSON HILL: Mr. Young, you can see -- she's just
4 muted, right? That's all you have?

5 MR. YOUNG: Yeah.

6 CHAIRPERSON HILL: Ms. Campbell, can you hear me?

7 MS. CAMPBELL: Can you hear me?

8 CHAIRPERSON HILL: Yes. Ms. Campbell, can you hear me?

9 MS. CAMPBELL: Yes.

10 CHAIRPERSON HILL: Okay. Wonderful.

11 MS. CAMPBELL: Ms. Campbell, could you introduce
12 yourself for the record again, please?

13 MS. CAMPBELL: Janet Campbell. I reside at 312 Elm
14 Street, Northwest.

15 CHAIRPERSON HILL: Okay. Ms. Campbell, you'll have
16 three minutes to give your testimony, and you can begin whenever
17 you like.

18 MS. CAMPBELL: Good morning again. My problem is, yes,
19 the deck would be straight across from my property. But --

20 CHAIRPERSON HILL: Ms. Campbell? Ms. Campbell, I'm
21 going to interrupt one second. Did you call into the phone line,
22 or are you still using your computer?

23 MS. CAMPBELL: I'm on my computer.

24 CHAIRPERSON HILL: Okay. Can you try calling into the
25 phone line?

1 MS. CAMPBELL: Okay.

2 CHAIRPERSON HILL: Can you try that 202-727-5471
3 number?

4 MS. CAMPBELL: Okay. I'll do that.

5 CHAIRPERSON HILL: Okay. We'll wait for you, okay?

6 MS. CAMPBELL: Yes.

7 CHAIRPERSON HILL: Maybe go ahead and put the computer
8 on mute.

9 Mr. Young, can you mute Ms. Campbell, or no?

10 (No audible response.)

11 MS. CAMPBELL: Hi.

12 CHAIRPERSON HILL: All right, Ms. Campbell, go ahead
13 and mute your computer.

14 MS. CAMPBELL: I did. I shut it down.

15 CHAIRPERSON HILL: Okay. Great. All right.
16 Ms. Campbell, can you go ahead and introduce yourself again for
17 the record and then go ahead and give your testimony?

18 MS. CAMPBELL: Yes. My name is Janet Campbell. I
19 reside at 312 Elm Street, Northwest.

20 CHAIRPERSON HILL: Okay, great. And Ms. Campbell,
21 you'll have three minutes to give your testimony, and you can go
22 ahead and begin.

23 MS. CAMPBELL: Okay. Well, I listened to Mrs. --
24 Ms. Kemp's testimony, and what she didn't show you was that the
25 alley does not go much further than my property, which means that

1 if anyone -- not seeing it has anything to do with the
2 construction of her deck. My problem is the traffic that comes
3 into that alley. When they come in, my property is open. What
4 they'll do is back up into my property to get out. And that --
5 with that deck there, it's going to cause even more problems when
6 people come and enter that alley.

7 CHAIRPERSON HILL: Okay.

8 MS. CAMPBELL: Hello?

9 CHAIRPERSON HILL: Yes, I can hear you, Ms. Campbell.
10 I'm just listening to -- is that all of your testimony?

11 MS. CAMPBELL: No. What else I want to say is that in
12 the past, we -- up until 2019, we didn't have any additional
13 parking spaces in this alley, with the exception of the person
14 living in 314 Elm Street and myself. All the other parking spaces
15 were put in since 2019. And as far as having additional decks
16 in the neighborhood, yes, we do, but they do not open up into
17 the alley where people use it to get into their parking spaces,
18 which is definitely going to be a safety problem.

19 CHAIRPERSON HILL: Okay. Have you been in touch with
20 Ms. Kemp?

21 MS. CAMPBELL: I have.

22 CHAIRPERSON HILL: Okay.

23 MS. CAMPBELL: She called me --

24 CHAIRPERSON HILL: Okay.

25 MS. CAMPBELL: -- since our first part of this hearing.

1 CHAIRPERSON HILL: Okay. Is that the conclusion of
2 your testimony?

3 MS. CAMPBELL: For the most part, yes.

4 CHAIRPERSON HILL: Okay.

5 Does the Board have any questions of the witness?

6 (No audible response.)

7 CHAIRPERSON HILL: Okay.

8 All right, Ms. Campbell, I guess, again, if you can
9 continue to -- I don't know what's going to happen here next.
10 But if this does move forward, I saw how Ms. Kemp had proposed
11 to keep you in touch with construction and things that are going
12 on. So it's good that you guys do have each other's phone
13 numbers. And I would continue to, you know, encourage
14 communication. Okay. All right. Thank you for, Ms. -- for
15 your -- Ms. Campbell for your testimony.

16 MS. CAMPBELL: Thank you.

17 CHAIRPERSON HILL: Mr. Young, if you could please
18 excuse Ms. Campbell.

19 Okay. All right. Does the Board have any final
20 questions of Ms. Kemp?

21 (No audible response.)

22 CHAIRPERSON HILL: Okay.

23 BOARD MEMBER BLAKE: I've got a quick question. I have
24 one quick question.

25 CHAIRPERSON HILL: Oh, sure. Go ahead, Mr. Blake.

1 BOARD MEMBER BLAKE: Excuse me. You did show her the
2 -- Ms. Campbell, the plans, and she understands it's an elevated
3 deck and so forth? Did she see the plans? You said you spoke
4 to her on the phone. Did you show her the plan?

5 MS. KEMP: I spoke to her on the phone, and then I
6 emailed her the plans, so we could share that with her.

7 BOARD MEMBER BLAKE: Okay. Then maybe -- she may not
8 be quite able to understand the -- what you're saying, so you
9 may want to try to help her better understand exactly what you're
10 trying to do with the second -- with the -- where the level of
11 the deck is versus --

12 MS. KEMP: And I will.

13 BOARD MEMBER BLAKE: Because I get the sense that she
14 doesn't have a full understanding of what you're doing.

15 MS. KEMP: Yeah. I'm happy to print out the plans and
16 put them in her mailbox. We can walk over and do that after the
17 hearing and chat with her about it.

18 CHAIRPERSON HILL: Okay. Does anybody have any other
19 question?

20 Ms. Kemp, I wouldn't put anything in anybody's mailbox,
21 just to let you know.

22 MS. KEMP: Okay. What I will --

23 CHAIRPERSON HILL: And so -- yeah.

24 MS. KEMP: Well, Ms. Campbell, if you're still on the
25 phone, we're happy to walk you through the plans whenever you'd

1 like.

2 CHAIRPERSON HILL: Okay.

3 Let's see. Okay. I'm going to go ahead and close the
4 hearing and the record.

5 If you would excuse everyone, please, Mr. Young.

6 Okay. Who would like to go first?

7 BOARD MEMBER SMITH: I'll go.

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

9 BOARD MEMBER SMITH: Awesome. Thanks.

10 Oh, okay. I do believe that the Applicant has met the
11 burden of proof for us to grant the special exception. Looking
12 at the criteria under Subtitle X, 901, the general special
13 exception standards, I do believe that the proposed deck would
14 be in general in -- would be in harmony with the general purpose
15 and intent of the Zoning Regulations. B, it would not tend to
16 adversely affect the use of neighboring property in accordance
17 with the Zoning Regulations and Zoning Maps. I do recognize
18 concerns that was raised by the -- by Ms. Campbell and many of
19 her questions more so relate to construction management concerns,
20 not so much in how the proposed deck that would be constructed
21 would have some other adverse impact in its construction on her
22 property.

23 The proposed deck would be open to the -- would be open
24 so it wouldn't impact any light and air to any of the adjacent
25 properties to the south -- to the east and west of the property

1 and across the alley.

2 I do not believe there should be any special conditions
3 that may be imposed on this particular property. This is a fairly
4 -- we even -- we've seen many decks of this particular
5 construction, and we haven't required any type of special
6 treatment or -- unless it was raised by a neighboring property.

7 In regards to E, 5201, going down the list of criteria
8 that we must evaluate this against, again, going back to the
9 light and air argument, I do not believe it would affect any of
10 the neighboring properties -- unduly affect any of the
11 neighboring properties. B, the privacy and use of enjoyment of
12 neighboring properties. I do not believe it will be unduly
13 compromised. And the proposed addition is largely in character
14 with the scale and pattern of the properties and decks that we
15 see along that alley. And the Applicant has presented different
16 images of different types of open decks within that square.

17 So with that, I stand on the record as presented. And
18 also OP's -- giving great weight to OP's staff report and will
19 support the application with the recommendation that the
20 Applicant continue to engage with Ms. Campbell so that she fully
21 understands the construction that she proposes and also, in the
22 spirit of being a good neighbor, have -- continue to have dialogue
23 with her through the construction process when the Applicant
24 obtains a building permit, if we grant this special exception.
25 So with that, I will support the application.

1 CHAIRPERSON HILL: Thank you.

2 Mr. Smith?

3 BOARD MEMBER BLAKE: I think you meant Mr. Blake.

4 CHAIRPERSON HILL: Oh, sorry. Mr. Blake. Sorry.

5 BOARD MEMBER BLAKE: Yes, sure. I -- thank you. Well,
6 I agree with the comments made by Board Member Smith. I do
7 believe the Applicant has met the burden of proof pursuant to E,
8 5201 and X, 901.2.

9 It's an open deck on the second floor, extending only
10 9 feet into the yard, which is currently used for other, among
11 other things, parking. This would essentially provide a needed
12 outdoor space without sacrificing parking on what is a relatively
13 small lot. The proposed deck should not have any undue effect,
14 as you point out, on light and air or privacy use. Decks of this
15 type are common in the area and should not be visually intrusive
16 as well. It is in the historical zones, so HPRB has and will
17 weigh in.

18 I agree that most of the issues that came up from
19 Ms. Campbell were construction related issues, which I pointed
20 out at the party status portion of the hearing. And I did like
21 the comments that Ms. Kemp made about the, you know, how she
22 would be a good neighbor and provide, you know, keep in touch
23 and communicate. I'd appreciate if in earnest that took place,
24 because that will mean a lot to all the neighbors. It does seem
25 like a relatively quick project, though, and I don't see how it

1 would be that intrusive ultimately. But we should be mindful.
2 But I can appreciate her concerns about the K turns in her dead-
3 ended alley.

4 I give great weight to the Office of Planning's
5 recommendation for approval. I note that DDOT has no objections.
6 I also give great weight to the ANC 1B's report which stated no
7 issues and is in support. I'd also note the support of the
8 adjacent neighbors on U Street. I'll be voting in favor of the
9 application.

10 CHAIRPERSON HILL: Thank you.

11 Vice Chair Miller?

12 VICE CHAIR MILLER: Thank you, Mr. Chairman. Yeah, I
13 agree with all the comments of Board Members Blake and Smith.
14 And I appreciate the Applicant's presentation here today. The
15 photos were -- and the thoroughness of that presentation
16 addressing all the criteria and possible concerns. And I think
17 the only thing I'd add on maybe one of our Board members said
18 it. I appreciate the community outreach and the
19 neighborhood -- the neighbor outreach, including, I think,
20 LeDroit Park Civic Association has also weighed in in support of
21 this application. So I support it. Thank you.

22 CHAIRPERSON HILL: Thank you. All right. I appreciate
23 my colleagues' input. I would agree with their statements, and
24 I will make a motion to approve Application No. 20817 as captioned
25 and read by the Secretary and ask for a second.

1 Mr. Blake?

2 BOARD MEMBER BLAKE: Second.

3 CHAIRPERSON HILL: Motion made and seconded.

4 Mr. Moy, if you would take a roll call.

5 MR. MOY: When I call your name, if you'll please
6 respond to the motion made by Chairman Hill to approve the
7 application for the relief requested. The motion to approve was
8 second by Mr. Blake who -- yes.

9 Zoning Commissioner Rob Miller?

10 VICE CHAIR MILLER: Yes.

11 MR. MOY: Mr. Smith?

12 BOARD MEMBER SMITH: Yes.

13 MR. MOY: Mr. Blake?

14 BOARD MEMBER BLAKE: Yes.

15 MR. MOY: Chairman Hill?

16 CHAIRPERSON HILL: Yes.

17 MR. MOY: Staff would record the vote as four to zero
18 to one, and this is on the motion made by Chairman Hill to approve
19 the request for a special exception relief. The motion to approve
20 was second by Mr. Blake, who is also in favor of the motion, as
21 well as Zoning Commissioner Rob Miller, Mr. Smith, of course,
22 Mr. Blake and Chairman Hill. We have a Board member not present.
23 The motion carries four to zero to one.

24 CHAIRPERSON HILL: Okay. Thanks, Mr. Moy.

25 Do we -- you all -- it's up to you all, like, we

1 got -- this one might take a little bit longer. Do you want five
2 minutes, or you just want to go right into it?

3 (No audible response.)

4 CHAIRPERSON HILL: Five minutes? Okay. All right.
5 See you all in five minutes.

6 (Whereupon, the above-entitled matter went off the
7 record at 11:41 a.m. and resumed at 11:55 a.m.)

8 CHAIRPERSON HILL: All right, Mr. Moy, if you're there,
9 feel free to call our next case?

10 MR. MOY: Thank you, Mr. Chairman. The -- after another
11 quick recess, the Board is back with its public hearing session.
12 And the time is now at or about 11:55 in the morning.

13 The next and last case before the Board is Application
14 No. 20808 of Alvin E. Gross. This application is pursuant to
15 Subtitle X, Section 1002 for an area variance from the minimum
16 lot width requirements, Subtitle D, Section 302.1. Property is
17 located in the R-1-A zone at 1936 Upshur Street, Northwest, Square
18 2631, Lot 9.

19 And as a reminder, Mr. Chairman, earlier this morning,
20 the Board granted party status to a Mr. Edward Tower.

21 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.

22 If the Applicant can hear me, could you please
23 introduce yourself for the record?

24 MS. BATTIES: Good morning, Chairman Hill. Can you
25 hear me?

1 CHAIRPERSON HILL: Yeah, I can hear you.

2 MS. BATTIES: Okay.

3 MR. GROSS: I'm Alvin Gross. I'm the Applicant, owner
4 of 1936 Upshur Street. Oh, sorry.

5 MS. BATTIES: Can you -- all right. We're here,
6 Mr. Chair. Do you want us to get to --

7 CHAIRPERSON HILL: Yeah, no. Ms. Batties, can you go
8 ahead and introduce yourself as well as, I guess, the gentleman
9 to your left?

10 MS. BATTIES: Yes, sure. Leila Batties and John Oliver
11 with Holland and Knight, 800 17th Street, Northwest, on behalf
12 of Alvin Gross, the owner of 1936 Upshur Street.

13 CHAIRPERSON HILL: Great. Thanks, Ms. Batties. Yeah,
14 Ms. Batties, you guys look so far away.

15 MS. BATTIES: I -- yeah, we tried to move it closer.

16 CHAIRPERSON HILL: No, no, no. That's okay. That's
17 okay. Just for future, this is the way this particular set up
18 looks for you.

19 Mr. Blake?

20 BOARD MEMBER BLAKE: Yeah, I just wanted to, for the
21 record, disclose the fact that I live in the neighborhood, and
22 I'm familiar with the property.

23 CHAIRPERSON HILL: Okay.

24 BOARD MEMBER BLAKE: But I don't think that will bias
25 my opinion, but I wanted to make sure it was on the record.

1 CHAIRPERSON HILL: Okay, great. All right. Thank you,
2 Mr. Blake.

3 All right. Let's see. And Mr. Tower, can you hear me?

4 MR. TOWER: Yes, I just unmuted. I can hear you.

5 CHAIRPERSON HILL: Great. Could you introduce yourself
6 for the record, please?

7 MR. TOWER: My name is Ed Tower. I live at
8 1930 Upshur Street, which is the direct neighbor adjacent to 1936
9 Upshur Street.

10 CHAIRPERSON HILL: Great. Thank you.

11 Let's see what I was going to say. Oh, right. Okay.
12 Great.

13 So Ms. Batties, I know that you know how this works.

14 And Mr. Tower, I guess, you being an architect --
15 Mr. Tower, are you able to join us via video? If you can, that'd
16 be great. If not, it's not necessary.

17 MR. TOWER: My camera is on. Let -- oh. Hold on a
18 second. I'm not sure what the problem is.

19 CHAIRPERSON HILL: That's all right, Mr. Tower. That's
20 all right.

21 MR. TOWER: Were you able to see me previously?

22 CHAIRPERSON HILL: No.

23 MR. TOWER: Oh, okay.

24 CHAIRPERSON HILL: No, that's all right.

25 Mr. Batties, is Mr. Doan is here with you also?

1 MS. BATTIES: He's not part of the Applicant's team.

2 CHAIRPERSON HILL: Oh.

3 Mr. Tower, is there somebody here joining you?

4 MR. TOWER: No. I will be representing myself.

5 CHAIRPERSON HILL: Okay. Then maybe I'm confused.

6 Mr. Doan, could you introduce yourself for the record?

7 MR. DOAN: Yes. My name is Samuel Doan. I am with

8 DDOT Urban Forestry, so I'm here just representing the Government

9 and --

10 CHAIRPERSON HILL: Okay.

11 MR. DOAN: -- our point of view in this.

12 CHAIRPERSON HILL: Okay, great. All right, Mr. Doan,

13 thank you.

14 All right. Let's see. Okay. Ms. Batties, if you want

15 to go ahead and begin your presentation and explain to us why

16 you believe your client is meeting the criteria for us to grant

17 the relief requested. I have 15 minutes on the clock there, just

18 so I know where we are, and you can begin whenever you like.

19 MS. BATTIES: Thank you. First, I'd like to note that

20 there are a number of architectural plans in the BZA record, and

21 we're going to ask that the Board ignore them. We're not asking

22 the Board to review or approve any plans related to the proposed

23 construction on the property. The only request before the Board

24 is the variance from Subtitle D, Section 302.1 to permit a lot

25 width of 70 feet, where 75 feet are required. And based on our

1 discussions with Mr. Tower, the property owner at 1930 Upshur
2 Street, immediately to our east, we ask that the Board grant the
3 request -- the variance request subject to the following
4 conditions: That the construction of any dwelling unit be subject
5 to a tree protection plan that is reviewed and approved by the
6 Urban Forestry Division of DDOT.

7 We met with Mr. Tower yesterday, and we believe that
8 the condition is consistent with his concerns and those raised
9 by the ANC. So I'll just note we appreciate that Mr. Edward
10 was -- Mr. Tower, sorry, was willing to meet with us yesterday.
11 From our discussion, it's -- he's not opposed to the proposed lot
12 width of 70 feet, but instead wants to make sure that the existing
13 trees on the property boundary are protected. They are. We went
14 to the site. They're very close to his house, and he wants to
15 make sure that the trees are not compromised. And we have no
16 objection to that.

17 The Applicant has also been in communication with the
18 neighbor to the immediate west at 1940 Upshur Street, and they
19 are in support of the application. The application was also
20 presented to ANC 4A who voted not to object to the variance
21 request on the condition of Urban Forestry's review and input on
22 the tree protection plan.

23 So Mr. Young, if you can bring up slide four, please.

24 So I'm just going to give a little bit --

25 Slide 4, please.

1 -- of background on the development of the property.
2 And the background is important because it goes to the first
3 prong of the variance test, which is the exceptional condition
4 or situation affecting the property.

5 This property was originally part of lot -- a single
6 record lot, Lot 5, and -- which was improved with a single-family
7 home. In 2013, the Applicant subdivided -- Applicant owned all
8 of Lot 5 -- subdivided Lot 5 into two tax lots, Lot 821 and Lot
9 822, which is the subject of this application.

10 In 2019, Lot 821 with the existing -- was improved with
11 an existing single-family home. That lot was sold, and the
12 Applicant retained ownership of Lot 822 and proceeded to seek
13 approvals for the construction of a new single-family home on Lot
14 822.

15 The subdivision of the property was approved. The
16 District reviewed and approved several architectural plans and
17 permits in connection with the development of the lot, and during
18 the permitting process of -- during the permitting process -- and
19 I'm going to ask Mr. Young to go to slide five.

20 MR. YOUNG: Slide deck five.

21 MS. BATTIES: During the permitting process last year
22 or this year, sorry, the Applicant was advised that the
23 subdivision plat did not -- was not in compliance with the minimum
24 lot width requirements. Up until that point, the Applicant has
25 expended nearly \$200,000 toward the development of the site, and

1 that is detailed in Exhibit D of the Applicant's pre-hearing
2 statement. Nearly \$200,000 toward the development of the site
3 based on review and approvals that were granted by the District.

4 Mr. Young, if you can go to slide seven.

5 So as it relates to the variance test, the Applicant
6 has to demonstrate the three criteria listed: the exceptional
7 situation or condition; that the owner would encounter practical
8 difficulties if the regulations were strictly applied; and that
9 the variance would not cause substantial detriment to the public
10 good or not be inconsistent with the intent of the zone plan as
11 provided in the Zoning Regulations and on the Zoning Map.

12 Next slide, please.

13 So the first test or criteria is that, again, because
14 of the unusual history of the property as it -- as we are here
15 today, the Applicant has expended a significant amount of money
16 in reliance of the approvals granted by the District and most
17 significantly, the approval of a subdivision by the District of
18 a substandard lot. So the lot as it was approved and accepted
19 by the District was substandard. The Applicant has also, as
20 shown on this slide, expended a significant amount of money in
21 reliance of the District's review and approvals for the
22 development of the site, and they're listed here.

23 Next slide, please.

24 The second criteria is that the owner would encounter
25 practical difficulties if the Zoning Regulations were strictly

1 applied. And in this case, first, it's impossible for the
2 Applicant to comply with the minimum lot width requirements,
3 because the Applicant does not own any of the adjacent land. So
4 there's no way for the Applicant to widen the lot. And then I
5 think more importantly, if the variance is not granted, the
6 Applicant will not have any use of the property, despite having
7 made significant changes toward -- and detrimentally relying
8 toward -- detrimentally relying on the District's approvals for
9 the development of property. And I think that's the most
10 significant factor here. There is no use of the property if the
11 variance is not granted.

12 Next slide, please.

13 And the final criteria is that the variance would not
14 cause any substantial detriment to the public good or be contrary
15 to the intent of the Regulations and the Zoning Map. And I'll
16 just point out, as it relates to this last criteria. First,
17 there are a number of lots in proximity to the site that have
18 lot widths less than 75 feet, including Mr. Tower's lot
19 immediately to the east. So there are 23 percent of the lots in
20 Square 2631 that are less than 75 feet. So the request to have
21 a lot that's less than 75 feet is not out of character with the
22 surrounding neighborhood.

23 The other factor to be considered is that if
24 the -- notwithstanding the lot width of 70 feet, the Applicant
25 intends to construct a home that will comply with all of the

1 other criteria under the R-1-A zone.

2 And Mr. Young, if you can go back to slide six, I just
3 want to pull those development standards up so the Board can see
4 what they are.

5 Mr. Young, can you go to slide six, please? Thank you.

6 So these are all -- notwithstanding the lot width, all
7 of the other criteria for the construction of a single-family
8 home would be met. We're not seeking relief from any of the
9 development standards from the Board -- any other relief.

10 So just to conclude, I'll note that the Office of
11 Planning has issued a report in support of the application. DDOT
12 has issued a report in support of the application. ANC 4A has
13 no objection. The concerns of Mr. Tower have been sufficiently
14 addressed with the proposed condition. And in light of the
15 foregoing -- in light of all of those factors, we'd ask that the
16 Board approve this application. Of course, Mr. Gross is available
17 to answer any questions that you may have. Thank you.

18 CHAIRPERSON HILL: Okay.

19 Does the Board have questions of the Applicant? I see
20 Mr. Blake's hand up.

21 I'll let you think about it for a second.

22 You guys can all think about it for a second. I have
23 a question with Urban Forestry.

24 Mr. Doan, can you hear me?

25 MR. DOAN: Yes.

1 CHAIRPERSON HILL: So who asked you to come, Mr. Doan,
2 or who are you here for?

3 MR. DOAN: I was requested to come by Mr. Tower. He
4 had conversations with myself and with our director and just
5 wanted us to be available to speak to what the requirements would
6 be to protect the trees through construction, so.

7 CHAIRPERSON HILL: Okay.

8 MR. DOAN: Yeah.

9 CHAIRPERSON HILL: Okay. I was just curious, Mr. Doan.
10 Thank you.

11 All right. Does the Board have questions of the
12 Applicant?

13 Yeah, Mr. Smith?

14 BOARD MEMBER SMITH: I will just throw out a
15 hypothetical question, granted we're here because of this -- the
16 width of the lot. Was there any consideration or an analysis
17 done on if the property owner could, you know, buy a portion of
18 any of the adjacent properties? Was there an analysis done on
19 if that was even possible? If that was possible, would the other
20 properties still meet zoning requirements?

21 MS. BATTIES: That was my studied, and I will say that
22 the existing lots also have to comply with --

23 BOARD MEMBER SMITH: Right.

24 MS. BATTIES: -- zoning. So it's not like you can just
25 buy -- I mean, they would have to, one, be willing to sell.

1 BOARD MEMBER SMITH: Right.

2 MS. BATTIES: We spoke to Mr. Tower, and he's not
3 willing to sell. And then I would presume that the lot to the
4 east, they are in support of this application, but they have to
5 meet their setback requirements -- side yard requirements and
6 what have you.

7 BOARD MEMBER SMITH: Okay. Yeah, I was just. I wanted
8 to see if there was an analysis done, if you were to do an
9 addition, would those other two properties meet Zoning
10 requirements. Sounds like that wasn't done, but, you know,
11 sufficient -- I'm satisfied with that answer anyway. Thank you.

12 CHAIRPERSON HILL: Okay.

13 BOARD MEMBER BLAKE: I have a question, Mr. Chairman.

14 CHAIRPERSON HILL: Go ahead, Mr. Blake.

15 BOARD MEMBER BLAKE: Yeah. When the lot configuration
16 was drawn, is there any particular reason why it was drawn where
17 it was drawn? The issue of self-creation is sort of a matter. I
18 just want to clarify that.

19 MR. GROSS: Well, the property at 1940 was built and
20 with a 15-foot setback when it was built in 1948. And because
21 of that, when -- we could not divide the lot equally. We could
22 not divide the lots into two equal lots. So what the existing
23 setback that was created, I think we have an 8-foot setback now
24 on the west side. And we could not increase it -- make it any
25 larger than that. So that's -- we --

1 MS. BATTIES: So the side yard.

2 MR. GROSS: Yeah, so we had to maintain an 8-foot side
3 yard.

4 MS. BATTIES: Right.

5 BOARD MEMBER BLAKE: So the side yard on the
6 larger -- the existing property is a larger side yard or it --
7 what's the total square footage of the property?

8 MR. GORSS: I think it's 80 feet -- of 1940, I believe
9 it's 83 feet, and -- but it has a 15-foot setback to the west,
10 which pushes it more toward the center of the lot. So we could
11 not draw the line right down the middle of the lot. That has to
12 move slightly to the east to allow for the 8-foot setback for
13 requirement.

14 MS. BATTIES: I think -- and just to clarify or
15 reiterate things. The home that's on 1940 was an existing home,
16 and so there was no way to shift the lot other than to make sure
17 it complied with the minimum side yard requirement. So the lot
18 line was created to make sure that that lot complied with zoning,
19 understanding you could not relocate the home one way or another
20 in order to make that happen.

21 CHAIRPERSON HILL: So you're speaking of Lot 821,
22 correct?

23 MS. BATTIES: Correct.

24 Mr. Young --

25 CHAIRPERSON HILL: And so could you have asked for a

1 special exception on lot -- on its -- on side -- on the side yard
2 requirements on 821?

3 MS. BATTIES: Well, there was no reason to ask for the
4 side yard. They subdivided the lot. They never had to go before
5 -- like, there was no zoning relief or action required with regard
6 to Lot 821.

7 CHAIRPERSON HILL: Yeah, but what I'm saying is
8 that -- and maybe I'm just -- again, knowing that you are then
9 going to put yourself in a bad situation on Lot 822, an
10 unbuildable situation, you could have asked for a special
11 exception for 821 on the side yard relief and then had a compliant
12 822.

13 MS. BATTIES: Well, we'd be basically at the same. One
14 of the lots would not be able to comply. Right? If there was --

15 CHAIRPERSON HILL: Right, but maybe it wouldn't have
16 been a variance. It would have been a special exception.

17 MS. BATTIES: Well, I cannot -- I -- my understanding
18 is that the subdivision was approved, and Mr. Gross was not aware
19 that the lot did not comply with the minimum lot requirements,
20 which is why he expended a significant amount of money toward the
21 development of the site. That's the --

22 CHAIRPERSON HILL: Okay. I see. He got the -- that
23 makes sense. He --

24 MS. BATTIES: Yeah.

25 CHAIRPERSON HILL: He didn't know there was a problem

1 with Lot 822.

2 MS. BATTIES: Right.

3 CHAIRPERSON HILL: He did the subdivision according to
4 the side yard requirements for the home on 821, and that made
5 Lot 822 noncompliant. But he didn't know that because he got a
6 subdivision, correct?

7 MS. BATTIES: Correct. And then proceeded to go forward
8 with the development of Lot 822.

9 CHAIRPERSON HILL: Got it.

10 MS. BATTIES: And that's how we learned of the
11 noncompliant width.

12 CHAIRPERSON HILL: Got it. And if he did -- wait a
13 minute. Okay. So right. Okay.

14 Mr. Smith, did you have your hand up?

15 BOARD MEMBER SMITH: (No audible response.)

16 CHAIRPERSON HILL: No.

17 Died anybody else have a question?

18 Mr. Blake?

19 BOARD MEMBER BLAKE: Yeah. I -- Mr. Chairman, I believe
20 the creation would have required a variance, even in that case.
21 Because in order to create a subdivision, you need to meet all
22 the requirements. I don't think you can do a -- you need a
23 variance to have gotten that done. Either -- neither lot would
24 have been the right size if you didn't, so a variance would have
25 been required then. It would essentially be the same relief as

1 being requested now.

2 CHAIRPERSON HILL: Okay. All right.

3 Okay. Mr. Tower, can you hear me?

4 MR. TOWER: Yes.

5 CHAIRPERSON HILL: Do you have any questions of the
6 Applicant on what has been presented thus far?

7 MR. TOWER: No. I have seen this before.

8 CHAIRPERSON HILL: You had seen this discussion before
9 you mean?

10 MR. TOWER: Well, I've reviewed the exhibit that was
11 just presented to you.

12 CHAIRPERSON HILL: Oh, okay, all right. I got you. I
13 got you. Okay. And so, Mr. Tower, like, your -- now it's your
14 opportunity to give us a presentation. I saw that -- I'm a little
15 confused as to whether or not we are now -- whether your issues
16 have been laid to rest, and if so, if you're still in opposition.
17 Would you like to give a presentation or clarify?

18 MR. TOWER: Well, I -- I'd like to give the presentation
19 to at least clarify the conditions and what my concerns are. The
20 statement the Applicant just made that they want to ignore all
21 building plans, well, that was just presented to me yesterday.
22 And part of my presentation, and therefore, the objection, is
23 based on, and as I said in my party status application, the many
24 discrepancies, and vague information that were on the drawings.
25 If one were to review these exhibits, one would end up being --

1 CHAIRPERSON HILL: Okay. That's all right.

2 MR. TOWER: -- confused.

3 CHAIRPERSON HILL: Mr. Tower, I got you.

4 MR. TOWER: Yeah.

5 CHAIRPERSON HILL: So if you want to go ahead and give
6 your presentation. Is there anything in particular you want us
7 to pull up?

8 MR. TOWER: Yes, if you could just --

9 Mr. Young, if you could just pull up my presentation
10 to the first sheet, S1?

11 VICE CHAIR MILLER: Mr. Chairman, you didn't want to
12 hear from the Office of Planning first?

13 CHAIRPERSON HILL: I can do that as well.

14 VICE CHAIR MILLER: I don't want to tell you how to run
15 the hearing, but usually we --

16 CHAIRPERSON HILL: No, that's all right. I mean, I --

17 VICE CHAIR MILLER: You can take it whatever way you
18 want to do it.

19 CHAIRPERSON HILL: That's okay. I don't -- it's so
20 funny that you bring that up, Mr. Miller now. Like, this is the
21 way that I've always done it in the past; however, now someone
22 else has -- it's okay. Someone else has reminded me, and that
23 shouldn't surprise me.

24 VICE CHAIR MILLER: No, that's okay. That's okay. I
25 think it might work better this way.

1 CHAIRPERSON HILL: No, no. Commissioner Miller, I got
2 to tell you, I -- since you now have mentioned this again, I
3 was -- no, it's okay, because I'd rather -- I appreciate it. I'd
4 rather do it the way that I was supposed to do it. And I sometimes
5 get confused on how that way is supposed to be. So let me --

6 Mr. Tower, give me one minute, all right?

7 MR. TOWER: Sure.

8 CHAIRPERSON HILL: Let me -- because I'm going to look
9 at this thing that I read every time. Okay. Well, now that
10 Mr. Kirschenbaum is there.

11 Could the Office of Planning go ahead and introduce
12 themselves for the record, please?

13 MR. KIRSCHENBAUM: Good afternoon. I'm
14 Jonathan Kirschenbaum with the Office of Planning. We recommend
15 approval of the variance for lot width. We are persuaded based
16 on the subdivision approval history, evidence submitted in the
17 record by the Applicant, and a discussion with the Zoning
18 Administrator that an exceptional -- sorry -- an extraordinary
19 situation exists with the specific property and that the
20 applicant, to their detriment, relied on an erroneously issued
21 subdivision by the Department of Buildings. Please let me know
22 if you have any questions. Thank you.

23 CHAIRPERSON HILL: Okay. Thanks.

24 And yeah, Vice Chair Miller, I've been doing this a
25 different way now, apparently. And apparently, I'm allowed to

1 do it a different way. But this is the way the correct -- is
2 the order, and it actually makes it -- does it make it easier?
3 I don't know. We'd have to figure it out. But this is the way
4 it's going to go down today.

5 So let's see. Does anybody have any questions for the
6 Office of Planning? And if so, please raise your hand.

7 Go ahead, Mr. Blake.

8 BOARD MEMBER BLAKE: Mr. Kirschenbaum, could you
9 elaborate on that a little bit? It -- I just want to understand
10 that -- you said based on conversations with the ZA, you came to
11 this conclusion. Just give me a sense of what that tone was and
12 why that you reached that conclusion.

13 MR. KIRSCHENBAUM: Sure. So the subdivision was
14 erroneously approved by the Department of Buildings. The -- as
15 far as I understand, the zoning reviewer thought the 70 was a
16 76, and it was approved. There is no mechanism to revoke
17 subdivisions once they are approved and recorded. So as far as
18 I understand, the subdivision -- the variances for the lot width,
19 I -- the Zoning Administrator's office will not issue building
20 permits for this property though, because of this situation.

21 BOARD MEMBER BLAKE: All right. Thank you for
22 clarifying that.

23 CHAIRPERSON HILL: Thank you so much.

24 So Mr. Kirschenbaum, so had the person saw that it was
25 a 70 and not a 76, then the subdivision would not have been

1 approved, and there would be only one lot?

2 MR. KIRSCHENBAUM: That would be correct. So there
3 would be one record lot underlying those two tax lots that were
4 created in 2013.

5 CHAIRPERSON HILL: Okay. So if this does happen, the
6 fact that somebody saw a 70 versus a 76 is going to give somebody
7 another lot. Is that correct?

8 MR. KIRSCHENBAUM: That is what happened in this case.
9 The subdivision was created because it was under -- the reviewer
10 thought that the lot width was 76 feet.

11 CHAIRPERSON HILL: That's a very odd lottery ticket
12 that's being issued currently.

13 All right. Let's see. Does anybody have any questions
14 -- further questions for the Office of Planning?

15 (No audible response.)

16 CHAIRPERSON HILL: Okay. So back to Mr. Tower.

17 Mr. Tower, do you have any questions for the Office of
18 Planning?

19 MR. TOWER: Based on what you just described, I was
20 going to have a question, but it seems like their decision was
21 based on things other than the issues I'm concerned about.

22 But let me ask a question. First, let me preface that
23 my concern about this entire application has been the vagueness
24 of the drawings. You know, vague drawings can often lead to
25 misunderstandings. So the question could say, well, what

1 actually was presented that caused the zoning reviewer to think,
2 you know, this was a different size?

3 But more related to my concern, which are the trees,
4 which -- and this goes to the three prongs, the one being
5 detrimental to the public good. If you had been presented with
6 a more detailed site plan or plot plan showing all of my trees
7 there, the proximity to the property line, would that have changed
8 any of your decisions or view of this project?

9 MR. KIRSCHENBAUM: No, it would not. The R-1-A zone
10 that this property is located in does not have any zoning
11 requirements related to trees. That would be an issue that would
12 be dealt with at Urban Forestry.

13 MR. TOWER: Okay.

14 MR. KIRSCHENBAUM: So that's out of the purview of
15 Zoning. And typically, for a subdivision variance case, there
16 are generally no architectural plans that are usually submitted
17 with these cases. This review is purely based on the subdivision.

18 MR. TOWER: Okay. Thanks.

19 CHAIRPERSON HILL: Okay.

20 All right, Mr. Tower, you can go ahead and give your
21 presentation.

22 MR. TOWER: If Mr. Young can pull up my first page, S1.
23 That's one. That's the cover sheet. So let's go to the next
24 slide, please.

25 Now, again, this presentation was prepared before my

1 meeting yesterday with the Applicant in which they advised me
2 that they would be eliminating any reference to any proposed
3 floor plan.

4 But I would like to continue here just to provide some
5 perspective. So the objective of this particular presentation was
6 to identify some of the discrepancies. And I was -- I just
7 narrowed it down to a couple relevant ones here. And the fact
8 that none of these existing conditions of the adjacent
9 properties, including the building footprint of the adjacent
10 properties, has been shown in any of these documents. The
11 objective here is to request additional conditions to the simple
12 granting of the variance, which again, the Applicant has provided
13 a general condition, which is a good start.

14 And then in the end, you know, all these drawings and
15 the designs need to be redone to comply with any requirements
16 that Urban Forestry may have on this. So -- and then the -- I
17 think I just covered all of the issues here. But again, I am
18 not in support of this application, but I will not object to it
19 as long as some additional conditions can be placed on it. So
20 that's just to sum some things up.

21 So if we could go to the next slide?

22 So here's the source of my concern here, in terms of
23 conflicting information. The Applicant in their presentation to
24 you presented the plan on the left with the -- with zero zero --

25 No, if you could go to S2, Mr. Young? Keep it here.

1 And I'm calling that version A. And that particular
2 plan is showing a 44-foot-wide building and an 18-foot total side
3 yard setback adjacent to my property. And that agrees with the
4 zoning table that they've provided. They're showing a side yard
5 table for -- I'm not quite sure what that was, but -- so
6 simultaneously, the building permit application, B2101909 is
7 showing Option B on the right-hand side. That's showing a wider
8 building and a more narrow side setback, which is for the tree
9 root protection.

10 So that is the source of my concern, where they're
11 showing these simultaneously. And it's, you know, my assumption
12 is the variance request is somewhat tied to the actual building
13 that's being proposed. One egregious error in the drawing is if
14 you compare the street property line on the drawing to the left,
15 version A, you can see it from right to left is going from the
16 lower part to the upper part, which is at the top of the plan.
17 But if you look at the version B, it's actually 180 degrees
18 reversed. And there are actually set back lines shown for that
19 particular reversed orientation. Now, if that were taken
20 literally in the field, the front of that building would encroach
21 past the proper setback line.

22 So again, I'm just using these as an example of how
23 errors on drawings, vagueness on drawings can lead to
24 misunderstanding. Again, these were being presented
25 simultaneously. Version B does not agree with the Zoning

1 tabulations that were presented in the Exhibit today. So again,
2 these are just -- the other concern I have is -- this gets down
3 to a more detailed level -- is the Applicant is showing a tree
4 protection line, but at the same time in version B, they're
5 showing projections like a window well and patio beyond that,
6 which would seriously disrupt the root zone, which I'll show in
7 the following slide.

8 If you can go to S3, the next slide, Mr. Young?

9 So I just want to give a little context here. This is
10 the vacant lot that has been created in this variance request.
11 And I'm showing the tree canopy and accurate building footprint
12 for both 1940 Upshur Street and 1930 Upshur Street, which had not
13 been done. All of these are taken from actual surveys,
14 information from --

15 CHAIRPERSON HILL: Mr. Tower?

16 MR. TOWER: Yes?

17 CHAIRPERSON HILL: Can I interrupt? I mean, by the
18 way, I think your slide deck's really helpful, and I'm kind of
19 like flipping through it. But again, your big -- your concern
20 is the trees, correct?

21 MR. TOWER: Yes.

22 CHAIRPERSON HILL: Okay. And so I mean, I think -- let
23 me just -- and I guess I have a question.

24 And you don't have to drop -- you do not have to drop
25 the slide deck, Mr. Young.

1 Ms. Batties, if you can hear me, I'm going back to your
2 presentation. Again, all of the zoning requirements concerning
3 the side yard, front, and backyard, you know, those are all being
4 fulfilled, correct? You're here just for the lot width, correct?

5 MS. BATTIES: That's correct.

6 CHAIRPERSON HILL: Okay.

7 MS. BATTIES: The plans were filed originally just to
8 show the level of approvals that the Applicant had sought in
9 connection with the development of the property. We're not asking
10 the Board to approve the plans. We're just demonstrating the
11 detrimental --

12 CHAIRPERSON HILL: Well, all right. That's good.

13 So Mr. Tower, and I appreciate that you understand
14 this. I mean, they're here for an area variance for the lot
15 width, and so they're arguing that issue. And I mean -- and
16 there's nothing wrong with why you're here. I mean, that's
17 wonderful that we're here, and it's wonderful that they seem to
18 have come up with something that is amenable to both parties
19 concerning the trees. And so I guess I'm curious to you -- and
20 Mr. Tower, you know, please clarify anything that I am
21 misstating, if that gets there. But there's an Exhibit that the
22 Applicant has put forward concerning the trees in Exhibit 38A,
23 as in apple. I don't know if that's something that you,
24 Mr. Tower, have looked at.

25 MR. TOWER: I have, and it is -- well, primarily it's

1 a tree survey, but the actual tree protection is so vague, it's
2 illegible. I can't read the actual setback lines. Again, that's
3 the purpose of my presentation to show that.

4 CHAIRPERSON HILL: Got it. Okay. Got it.

5 MR. TOWER: So -- and Mr. Doan may be able to speak to
6 that level.

7 CHAIRPERSON HILL: I got it. And what I'm trying --
8 and I -- and, again, this is how these hearings go, Mr. Tower.
9 Like, I'm not necessarily sure the trees are something that's
10 within our purview. I mean, all this -- different things come
11 up because of these hearings. So that's what I'm also just trying
12 to work through.

13 Mr. Blake, you had your hand up?

14 BOARD MEMBER BLAKE: Yeah, I was just curious if
15 Mr. Doan could explain the process that the Applicant would go
16 through to go forward to get through these permits, just so we
17 have clarification on kind of how -- since we have someone here
18 from the Urban Forestry, kind of tell us how that would go from
19 this point forward for them to figure that out.

20 MR. DOAN: Yes. So you are correct in stating and
21 planning stated as well that -- that usually we are not involved
22 at this point in the process. The fact that they're asking for
23 this area difference is not something we get involved in. It's
24 further along in the process when those architectural plans are
25 put together, and the civil engineers get involved, and you have

1 erosion and sediment controls that DOEE reviews. At that point,
2 when there are plans that are a little bit more set in stone, as
3 it were, that's what we review. And we give feedback to, you
4 know, are the trees considered in this or what protection measures
5 are in place? Is the actual footprint of the building appropriate
6 to, you know, to protect the trees so that the trees don't fall
7 over or die, and those kinds of things that are important to
8 consider. So generally, we get involved a little bit later.

9 Public space isn't -- is quite often involved a little
10 bit earlier and Sharon Dendy, landscape architect, and others
11 within DDOT, have worked with this group to look at the curb cut
12 and considerations for that, and changes were made to adjust
13 based on the trees that are in that area. And they shifted the
14 driveway from one side of the property to the other and things
15 like that. But at that time, they also requested that a tree
16 preservation plan be put together as part of that. And what they
17 were requested to do is -- was to just outline what measures
18 would be done and depict those actually on the plans.

19 And so it's one thing to have a plan that's all written
20 out, which this group has, but it's another to actually depict
21 those plans, you know, so that whomever is building, you know,
22 you look at those plans, and you have lines that show where
23 fencing is going, where root protection matting is going, and all
24 of those things and the details and specifications that go with
25 that. So that's usually how things go. They -- we usually get

1 involved a little bit later on in the process. And I think that's
2 where some of the confusion has come from, the fact that there
3 are indeed multiple footprints and different things, moving
4 parts.

5 We gave feedback to this group that the trees that are
6 along the adjacent property need to be depicted, they need to be
7 considered, and the footprint should be shifted. And there are
8 some plans that do reflect those requested changes, but not all
9 of them. So it's -- so yes, it is -- it's difficult simply
10 because there are many plans floating out there.

11 BOARD MEMBER BLAKE: Thank you. That's very helpful
12 for me. Thank you.

13 CHAIRPERSON HILL: Okay. All right, Mr. Tower, I guess
14 I kind of interrupted you. I'm going to pull back up -- I was
15 just trying to help move us along, Mr. Tower. I got your slide
16 deck back up again. And I see the slides -- okay. I mean, would
17 you like to just continue through your presentation?

18 MR. TOWER: No, I understand and appreciate what you're
19 saying, that this may or may not be a voting variance. But again,
20 it goes back to detrimental to public good. And so --

21 CHAIRPERSON HILL: I understand.

22 MR. TOWER: And let me -- I will continue in an
23 abbreviated fashion, just so not to --

24 CHAIRPERSON HILL: Yeah. Because I just want to -- I
25 just -- I'm just trying to get to the whole tree agreement thing,

1 and like, where we are with that. But I'm back on your slide
2 deck.

3 Mr. Young, if you want to pull it up, and I think we
4 left him at maybe 11, or it was slide 10.

5 MR. TOWER: Yeah. If you could put that on full screen.
6 Thank you.

7 Okay. Well, the other thing here is, more for the
8 record probably, is to be able to show the existing conditions
9 accurately, which has not been done. And this may be put on the
10 record for future reference. So I'm thinking this is somewhat
11 helpful for that. But again, this tree shows just the tree
12 canopy.

13 If you could go to the next slide.

14 This is an analysis showing the structural root zone
15 in the dark green and the critical root zone. So you can see,
16 you know, how any construction will impact these trees.

17 CHAIRPERSON HILL: Yeah, Mr. Tower. I am going to just
18 kind of move you along here, because I can't -- the slide deck
19 is in the record, and so it's not necessary to go -- for us to
20 go through this just for it to be part of the record. So I'm
21 kind of scrolling through this, and I'm getting down to --
22 actually, I'm just going to take you to your summary, and then
23 we can talk about the trees. Because as far as it being the
24 public good or not, it still is not -- I mean, that's the argument
25 you're making. I'm just trying to get us to, again, the point

1 where you and the Applicant are on the same page in terms of the
2 trees. And it seems to be all the way down to your summary in
3 Slide 16, or is that not accurate?

4 MR. TOWER: Well, let me --

5 If Mr. Young can just flip through the whole
6 presentation, you know, like, for two seconds for each --

7 CHAIRPERSON HILL: Okay. Go ahead.

8 MR. TOWER: -- slide, just to, you know, that's version
9 A, version B. That would be next. Yeah, just -- and these are
10 just -- these are the trees. Quite significant.

11 Next slide.

12 This is just showing proximity to the root zone.

13 Next slide.

14 Larger footprint.

15 Next slide.

16 Here are some of -- here's the big deal is you can
17 locate the house right along the setback line, but there are
18 excavation zones.

19 Next slide.

20 That's to the lot. And it severely impacts the trees.

21 Next slide.

22 That's just in detail. Again, you can see how it
23 impacts it.

24 Next slide.

25 Sections --again, the proposed building showing the

1 triangle excavation zone in the dark brown.

2 Next slide.

3 Close up again. See how close the excavation gets to
4 the tree roots?

5 And the final slide.

6 Next slide, please. Summary.

7 So -- the gist of this is just to place some conditions
8 on this variance experience that assures and preventing abuse of
9 the approval for future projects. If the Applicant is saying to
10 ignore all the plans, if that means that the existing permit
11 application, which is for the wider building, is withdrawn, that
12 goes a long way toward, you know, giving me comfort here,
13 basically requiring them to redesign based on input from Urban
14 Forestry. That will satisfy my concerns. My concern here all
15 along was that that building permit will -- would go through
16 after the variance is approved.

17 CHAIRPERSON HILL: Okay. I got you.

18 MR. TOWER: So like that --

19 CHAIRPERSON HILL: I got you, Mr. Tower.

20 MR. TOWER: Yeah.

21 CHAIRPERSON HILL: Okay, you want to drop that slide,
22 Mr. Young?

23 Mr. Doan, I've got to say, I've been here now seven
24 years. I don't think I've ever seen Urban Forestry, so this is
25 new for me also. I mean, if you have, I mean, it's great. Like,

1 I know who got you here, but it's a wonderful experience for
2 myself as well. So I'm going to ask you a question. So I don't
3 even know the answers. If we approve a project, right --

4 MR. DOAN: Yes.

5 CHAIRPERSON HILL: -- and we -- and usually they have
6 to build it according to our plan, right? And they're zoning
7 compliant and whatever, and they get -- then it goes to you guys.
8 And then if there's some problem with the trees, they might have
9 to redesign. Is that correct?

10 MR. DOAN: As it stands now, yeah, that happens. Yeah,
11 that happens sometimes that basically things go through DCRA and
12 whatever, and they don't get on our radar. The new legislation
13 that has gone through, we are going to be involved earlier in
14 the project which is something that I and our group have pushed
15 for, so that people, like, know that there's a large tree that's
16 adjacent to this site, and we need to design around that
17 accordingly so that we're not wasting time going back and going,
18 wait a minute, you're going to kill this tree, or it's going to
19 fall over if you build this as presented. So yes, you are
20 correct.

21 CHAIRPERSON HILL: That's great, Mr. Doan, because I'm
22 -- see I'm just curious. Like, I've never gotten an answer to
23 this. Now it's completely of my own curiosity. Let's say --
24 like, what is the size of it? Like, let's say there's a giant
25 tree right in the middle of this lot, right?

1 MR. DOAN: Yes.

2 CHAIRPERSON HILL: What is it that just kills the
3 project completely? Like how big a tree does it have to be that
4 now that lot is useless because the tree is there?

5 MR. DOAN: Yeah. So if the tree is deemed to be
6 heritage, which is over 100 inches in circumference, if it
7 is -- if it's over basically 32, 33 inches in diameter, beyond
8 that, that becomes a heritage tree that by legislation has to be
9 saved and cannot be removed or asked to be moved on a site or
10 something like that. So basically that's the size. Below that,
11 then if the tree is healthy, then it has to be paid for.

12 CHAIRPERSON HILL: Below that if the tree is healthy,
13 it has to be paid for?

14 MR. DOAN: Right. If it's a special tree. If it is a
15 tree that is that is deemed to be of special size, which is --
16 basically that is 14, 15 inches in diameter and up, those trees
17 are documented, and then monies go into the fund to plant more
18 trees in the City or other places.

19 CHAIRPERSON HILL: Right. And then they cut it down.
20 Then they can cut it down.

21 MR. DOAN: Yes. Yeah.

22 CHAIRPERSON HILL: Right. And the heritage tree,
23 because it -- and I'm sorry -- Mr. -- everybody's going to have
24 to wait a second. So people have cut these things down before.
25 Right.

1 MR. DOAN: Yes.

2 CHAIRPERSON HILL: And now there's a fine for cutting
3 the heritage tree, right?

4 MR. DOAN: Yeah. Yes.

5 CHAIRPERSON HILL: And so -- right. And again, the
6 heritage tree is --what's the diameter again?

7 MR. DOAN: Thirty -- it's basically 32 inches in
8 diameter and above.

9 CHAIRPERSON HILL: Right. So all developers know this.
10 And so as soon as that tree gets to 29 inches, they cut the tree
11 down. Right?

12 MR. DOAN: Yeah, that's -- you know what, that is
13 happening.

14 CHAIRPERSON HILL: Right?

15 MR. DOAN: That is happening.

16 CHAIRPERSON HILL: Actually, that makes -- that makes
17 sense that you would do that.

18 MR. DOAN: That's right.

19 CHAIRPERSON HILL: Okay. Right. Okay. So --

20 MR. DOAN: I'm not advocating for the law or against
21 it. I'm just --

22 CHAIRPERSON HILL: Oh, no, no. I'm just --

23 MR. DOAN: I'm just saying what I have to do as far as
24 what the law has imposed.

25 CHAIRPERSON HILL: I've never had Urban Forestry here

1 before.

2 MR. DOAN: Yeah.

3 CHAIRPERSON HILL: So -- okay. Okay. So how -- then
4 again now the normal process is this would get approved, it gets
5 to you, and then these trees would or wouldn't -- they fall into
6 your domain and then now this building would get pushed back or
7 not. So regardless of what happens to us here, right, you would
8 then get these plans, and you would determine whether or not
9 these plans move forward; is that correct?

10 MR. DOAN: Yeah. And then we -- yeah, then we look at
11 the plans, and we give comment about, you know, what may or may
12 not be lacking in those and what can be done to adjust things as
13 necessary.

14 CHAIRPERSON HILL: Right.

15 MR. DOAN: We --

16 CHAIRPERSON HILL: So Mr. Tower's trees are going to
17 get protected.

18 MR. DOAN: Yes. Yeah, that -- we can --

19 CHAIRPERSON HILL: Regardless of what we do.

20 MR. DOAN: Yeah, because we have the right to shut down
21 a project --

22 CHAIRPERSON HILL: Right.

23 MR. DOAN: -- if, in fact, the (indiscernible).

24 CHAIRPERSON HILL: So regardless of what we do here,
25 those trees are now going to get protected?

1 MR. DOAN: That's correct.

2 CHAIRPERSON HILL: Okay. Got you.

3 MR. DOAN: That's correct.

4 CHAIRPERSON HILL: All right.

5 Okay, Mr. Tower, do you have any questions? Did you
6 follow along with everything I just said.

7 MR. TOWER: I do. I just want to make -- point out,
8 which is obvious, all these trees are on my property. So as
9 Mr. Doan was saying, well, you could cut down a special tree and
10 pay for it --

11 CHAIRPERSON HILL: No, no, no, no. I was --

12 MR. TOWER: (Indiscernible). Yeah, I just wanted to
13 clarify that.

14 CHAIRPERSON HILL: Yeah.

15 MR. TOWER: Yes.

16 CHAIRPERSON HILL: I was -- nobody's coming on to your
17 property and cutting trees down.

18 MR. TOWER: No, I know. I know, but I just wanted to
19 clarify.

20 CHAIRPERSON HILL: That'd be a whole new situation. I
21 appreciate that. What I'm saying is that regardless of you being
22 here, Mr. Towner, Urban Forestry is going to watch out for your
23 trees supposedly. You're right. Never knows what's going to
24 happen, but that's supposed to what's happened.

25 MR. TOWER: I understand that. And again, my concern

1 is that the proper drawings be prepared, that there's no omission
2 on those drawings, there's no vagueness on the drawings. I don't
3 know how to enforce that. There's nothing your Board can do
4 about that, but that's been the whole concern here all along,
5 that all the review agencies that complete information in order
6 to make decisions on whether it's necessary --

7 CHAIRPERSON HILL: And I understand. And Mr. Tower,
8 as we are even going through this process, that's not what is
9 before us.

10 MR. TOWER: I understood.

11 CHAIRPERSON HILL: Right. So. Okay.

12 MR. TOWER: So --

13 CHAIRPERSON HILL: Go ahead, Mr. Tower.

14 MR. TOWER: So I guess the final question is, can you
15 attach in some form the Applicant's statement that they will
16 basically discard all previous plans and design a new building
17 that would comply with Urban Forestry's restrictions? Is that
18 something you can actually apply?

19 CHAIRPERSON HILL: I don't know if that's within our
20 purview. Like, it's not something that -- I got two Board members
21 that are shaking their heads.

22 BOARD MEMBER BLAKE: No.

23 CHAIRPERSON HILL: Like, you know, Mr. Smith is already
24 saying no. We're not here for that. Right. So -- but you being
25 a party status person, because you're an adjacent property owner

1 has brought all of this up, which is great, which is how this
2 process does also work. Right. So we're not approving -- and
3 this is what I'm even a little confused about. We're not
4 approving plans, right. We're just hearing the argument as to
5 whether or not they're making the criteria for the variance
6 argument for the lot width. Right. And so the plans aren't even
7 something that's before us. So if I were to have been the
8 Applicant, I would have been trying to figure out how to negotiate
9 you away, Mr. Tower, and get something in the record for them
10 that would make you happy and satisfied. And so, I don't know.
11 Okay. So --

12 BOARD MEMBER SMITH: So I have a --

13 CHAIRPERSON HILL: Go ahead, Mr. Smith.

14 BOARD MEMBER SMITH: I have a question for Mr. Doan
15 that may help clarify this, and maybe I missed it when you
16 explained it. Administratively, regardless of a variance or not,
17 administratively, if somebody wants to construct a single-family
18 house and they're disturbing a certain amount of land, is that
19 when you get involved? Like, is there a grading plan that you
20 see? Is there, you know, an administrative set of plans that
21 you see anytime there's a certain amount of disturbance that
22 occurs where you're evaluating the trees?

23 MR. DOAN: Right. So that's a good question. So it
24 is -- it's not a threshold. Like, the Department of Environment,
25 they have thresholds, and beyond certain thresholds, you know,

1 different things are required for stormwater and all those kinds
2 of things. We get involved whenever a tree could be impacted by
3 construction. And some of those -- sometimes those are pretty
4 small projects, you know, somebody putting in a new driveway pad
5 in Georgetown or whatever. You know, there's always trees around.
6 So yeah, so basically, we get involved when trees are in proximity
7 to construction. We review, you know, utility cuts and all of
8 those kinds of things as well.

9 BOARD MEMBER SMITH: Okay. So --

10 MR. DOAN: Yeah.

11 BOARD MEMBER SMITH: -- just as a segue from that, when
12 you say you get involved, who triggers your involvement? Is it
13 the Department of Building when they get the building permit,
14 assess the plans, and they route it to you, your -- Urban
15 Forestry, for your review prior to, you know, it's part of the
16 review process with the building permit?

17 MR. DOAN: That is coming. We are not there yet. Right
18 now.

19 CHAIRPERSON HILL: I lost you, Mr. Doan.

20 BOARD MEMBER SMITH: Your sound. We lost you. The
21 sound went out. Your sound went out again. I guess he can't
22 hear us either.

23 CHAIRPERSON HILL: Mr. Doan, we can't hear you.

24 MR. DOAN: (Audio interference) on or adjacent to the
25 property that may be impacted. And can I get a report of what

1 those plans are, and then we act on those just to work with the
2 civil engineers and inform them and review their plans. And they
3 put together permit documents for us to review.

4 BOARD MEMBER SMITH: So we lost, I think, 80 percent
5 of your convo, Mr. Doan.

6 MR. DOAN: Oh, I'm sorry. I'm sorry. Okay. I'll try
7 to back up and answer again. So in any case, the Department of
8 Environment, they look at erosion, sediment control and different
9 things. And when Applicants put in their applications, part of
10 the checklist that they have to put together is: Are there trees
11 on this property? Are there trees adjacent to this property?
12 Are there trees adjacent to this property? Check, yes or no.
13 Will any trees of a certain size be affected?

14 And then those plans that are coming through, those
15 projects that are coming through, DOEE are sent over to my office
16 for us to reference, and then we follow through. What the
17 majority of the civil engineers and architects and different
18 people that are doing construction in the City recognize that
19 they need to have tree preservation plans, or they need to have
20 permits for curb cuts and those things and they know the process,
21 and they put together those plans for us to review in conjunction
22 with DOEE.

23 DCRA, at this time, does not do that, but that is
24 something that recently the Board has put together legislation
25 to where we'll be more inserted earlier in the process, which I

1 think will be more effective for everyone involved.

2 BOARD MEMBER SMITH: Definitely sounds like it would
3 be more effective, but I think you've answered my question.

4 And Mr. Tower, just to, you know, kind of sum it up,
5 it's an administrative process that is handled within the
6 District's government. It's -- as Mr. -- as the Chairman stated,
7 what we're deciding here is not the construction of the building.
8 This is a variance for the legality of the subdivision itself.
9 So the -- saying nothing about the home. So as part of that,
10 the -- your questions will be evaluated through an administrative
11 process, and if it's found to have any issues, then that's relayed
12 back to the Applicant, and Applicant would have to do some
13 redesign at that point. But what are here is not for the
14 construction of their home, it's for the subdivision.

15 Thank you, Mr. Doan.

16 MR. DOAN: Yes.

17 CHAIRPERSON HILL: Okay. All right.

18 Okay. Let's see. Mr. Tower, do you have any other
19 questions for anyone?

20 MR. TOWER: I do not.

21 CHAIRPERSON HILL: Okay. All right.

22 Ms. Batties, do you have any questions for anybody?

23 MS. BATTIES: No, sir.

24 CHAIRPERSON HILL: Okay.

25 Let's see. All right. Does the Board need anything?

1 (No audible response.)

2 CHAIRPERSON HILL: No.

3 BOARD MEMBER BLAKE: I would just like to have
4 clarification as to Mr. Tower's position. Is he withdrawing his
5 party status in opposition or is he neutral? I just -- I want
6 to get a feel for that, that's all.

7 MR. TOWER: Well, I guess you could say it's -- well,
8 I -- you know, I understand the process here. I was just hoping
9 that perhaps there could be a further constraint. We understand
10 that that may have to happen at the DOB administrative level. It
11 had not previously, but -- so again, I'm not opposed to this
12 project. It's (indiscernible) protection of the tree, and
13 basically what you're saying is that's not within your purview,
14 and I can understand that.

15 So whether you consider that neutralizing or
16 withdrawing, I'm not sure. But if nothing else, the issues have
17 been presented here, and that may be enough, so --

18 CHAIRPERSON HILL: That's okay. I understand.

19 Mr. Blake, yeah, he's not withdrawing. He still has
20 his party status, And so the only thing, I guess, I wonder --
21 and this is more like because it's the only case we have here
22 for the rest of the day. But I know that, like, we're kind of
23 get -- and here and that lunch is kind of coming up. Like, I
24 wouldn't mind talking to legal. I don't have to talk to legal,
25 but do any of you guys need to talk to legal? If not, then it's

1 okay.

2 (No audible response.)

3 CHAIRPERSON HILL: Okay. Nobody's needing to talk to
4 legal. Okay. All right.

5 Ms. Batties, do you have anything you'd like to add at
6 the end in conclusion, either in -- what's the word called -- in
7 conclusion or --

8 VICE CHAIR MILLER: Rebuttal.

9 CHAIRPERSON HILL: Yeah, rebuttal. Thanks so much.

10 I hate that word. That's why I just block it out of
11 my brain. Rebuttal just blocks out of my brain. Okay.

12 Do you have any rebuttal and/or conclusion,
13 Ms. Batties?

14 MS. BATTIES: I just want to reiterate that we are
15 agreeable to a tree protection plan as a condition of the
16 approval, and I think that adequately addresses Mr. Tower's
17 concerns. We've demonstrated why this is a unique situation, in
18 terms of the approval of the subdivision, and the amount of
19 development approvals and expenditures into the development of
20 the site.

21 We've demonstrated that the strict compliance of the
22 regulations here would make the property absolutely
23 undevelopable, even for a single-family home, and that the
24 request that's before the Board for the minimum lot with -- or a
25 lot width of 70 feet is in keeping with the character of the

1 surrounding neighborhood. And so for all of those reasons, we've
2 met the area variance test and ask the Board's approval. Thank
3 you.

4 CHAIRPERSON HILL: Okay, great. Thank you. All right.
5 Let me --

6 Yeah, go ahead, Mr. Miller.

7 VICE CHAIR MILLER: I just had one question for
8 Ms. Batties. If you could reiterate the tree protection
9 condition that you were -- you're willing to -- that you are
10 willing to attach to this approval as a way to address the
11 adjacent neighbors' concerns. It may be just restating what the
12 law and administrative process would -- will be in any event.
13 But could you just restate --

14 MS. BATTIES: Yeah.

15 VICE CHAIR MILLER: -- what that -- the specific
16 condition?

17 MS. BATTIES: Yeah. The construction of any dwelling
18 unit be subject to a tree protection plan that is reviewed and
19 approved by the Urban Forestry Division of DDOT.

20 VICE CHAIR MILLER: Thank you. I appreciate you
21 reiterating that.

22 CHAIRPERSON HILL: Okay. You guys got to give me three
23 minutes, okay. I will be back in three minutes or five minutes.
24 Whatever. Be right back. Thanks.

25 (Whereupon, the above-entitled matter went off the

1 record at 1:04 p.m. and resumed at 1:07 p.m.)

2 CHAIRPERSON HILL: Okay. So is that everybody?

3 Okay. Mr. Batties, can you hear me?

4 MS. BATTIES: Yes.

5 CHAIRPERSON HILL: Can you do me a favor and just
6 quickly summarize your three points for the variance argument
7 again?

8 MS. BATTIES: Sure. The property is -- has an
9 exceptional condition because of the approvals that were granted
10 by the District, approving the substandard lot width and the
11 monies expended by the Applicant in reliance of the District's
12 approvals.

13 The second prong is met in terms of practical
14 difficulties, because, one, it's impossible for the Applicant to
15 comply with the minimum lot width, because he's not able -- he
16 does not own the adjacent land, can't widen the lot. And also,
17 if the variance is not granted, the lot itself is undevelopable
18 even with a single-family home.

19 And then third, in terms of no adverse impact or
20 compliance with the Zoning map and regulations we are -- the
21 Applicant will comply with all other requirements of the R-1-A
22 zone, and there are a number of lots in proximity to the site
23 that have lot widths of less than 75 feet. So it would -- the
24 70-foot lot width would be in keeping with the character of the
25 residential neighborhood.

1 CHAIRPERSON HILL: Okay, great. Thank you.

2 All right. Does anybody have any questions for
3 anybody?

4 (No audible response.)

5 CHAIRPERSON HILL: All right. Okay. I'm going to go
6 ahead and close the hearing and the record. Thank you all very
7 much.

8 It was lovely to have Urban Forestry.

9 MR. DOAN: Thank you.

10 CHAIRPERSON HILL: Okay. Well, I learned a lot today.
11 I forgot that we're -- not forgot. I -- it's kind of like once
12 we're done with it, I don't even know what happens necessarily.
13 But I didn't realize that there are other things after us that
14 can also just trump the situation, and I didn't realize how the
15 tree thing worked out.

16 These are my opinions as far as the variance -- the
17 area variance. I was -- and I appreciate Mr. Blake's question
18 as to how the line was drawn and why the line was drawn there.
19 The line was drawn because of the existing home in that other
20 lot. Then the subdivision was approved. And once the subdivision
21 was approved, why wouldn't you think that the subdivision is
22 approved, right? Like, how would -- you know, why would you not
23 think that you now have a viable lot to build upon?

24 Then after that, there are -- with all the other zoning
25 criteria, they're meeting them: front, back, rear yard, side

1 yard. You know, so why couldn't they move forward with it?
2 They're going to go ahead and move forward with it. They're
3 spending money to do so to build on that lot. Then fact that
4 -- right, the money -- oh, yeah. And that if you don't -- if
5 this doesn't get approved, they then have a blank lot that they
6 can do nothing with, right, which kind of now makes me laugh a
7 little bit, because if it wasn't approved to begin with, they'd
8 be in the same situation anyway. They would have a blank lot
9 that they have nothing to do with. Right.

10 It's not that they would have a blank lot that they
11 wouldn't have anything to do with, they wouldn't have another
12 lot. They'd just have a bigger side yard. Right. So regardless,
13 they did get approval of the subdivision, and that's what got
14 them to this situation. Therefore, they expended money.
15 Therefore, I think they are meeting their first -- the first
16 prong as to what the exceptional situation is that's leading to
17 the practical difficulty.

18 And as far as the public good, I think that, again,
19 whether the lot width is 75 or 70, I think that they show that
20 there's other lot widths in the neighborhood that are. So I
21 don't have any problem with the -- so I, therefore, think they
22 meet their case. I think they meet the criteria for the area
23 variance, and I'm going to vote in favor of the area variance.

24 As far as the tree thing goes, I think that we could
25 reference the tree protection provision that they're speaking

1 about and reference that in the order, as we've done in past
2 orders. And I think that would suffice the issue that the party
3 in opposition's bringing up and also, you know, Urban Forestry
4 is supposed to take care of this anyway, whether or not we put
5 this in there or not. And now, they -- now it's -- now they're
6 definitely on notice.

7 Like, Urban Forestry showed up. They know this
8 project, like this project is going to get looked at. Right.
9 It's not going to just kind of get by, and then the trees get
10 cut down, right. This is definitely something that is now on
11 people's radar, and those trees are going to get looked at. So
12 I don't think we even need to worry about it. But I'm happy to
13 reference it in the Order if that makes the Board comfortable.
14 I don't think we should put it in as a condition, because I don't
15 think it's part of our purview. So that's my thoughts. And I'm
16 going to turn to Mr. Smith next.

17 BOARD MEMBER SMITH: So you know, I agree completely
18 with the points that you raised based on the discussion that
19 we've had today with the Applicant and what was in the record.
20 I do believe that the Applicant has met the burden of proof for
21 us to grant the variance based on the -- all three of the prongs.
22 They do have an exceptional condition. You know, as they have
23 stated -- thank you, Mr. Blake, for raising the question.

24 They worked with the Zoning Administrator's office and
25 Surveyor's office to divide that property. And the division was

1 based on ensuring supposedly -- was supposed to ensure that you
2 were trading not only two legal lots, but also not creating a
3 non-conformity in the case of the existing single-family house
4 that was built in the '40s to the west of this particular
5 property. And for all intents and purposes, because the
6 District's -- the District approved the subdivision -- this
7 particular subdivision under the -- on the assumption that it did
8 meet those zoning requirements, this has caught the property
9 owner into -- in a bind, being that, you know, after they've
10 expended this amount of money, the time, the evaluation that was
11 done by the Zoning Administrator's office and the Surveyor's
12 office, they now find that the approval was done in error.

13 So in essence, this is an after the fact variance that's
14 being requested for a mistake done by the government in the
15 creation of a nonconforming lot of no fault of their own in this
16 particular instance. So I do believe that they've met the
17 exceptional condition.

18 From a practical difficulty standpoint, the property
19 can't be developed. It -- you know, the government approved this
20 subdivision of this lot. The property can't be developed if the
21 -- if this variance is not granted. So we will have a vacant
22 lot in perpetuity, because the only thing that can be built in
23 this zone is pretty much single-family homes. And the Applicant
24 doesn't have the ability to widen the lot, because it would mean
25 that the property to the west would -- if they -- even if they

1 wanted to sell a portion of it, or were willing to sell a portion,
2 it would become nonconforming. And in theory, the Surveyor's
3 office wouldn't create a nonconformity. And to the west -- I
4 mean to the east, the lot is already a legal nonconforming because
5 it doesn't meet the width requirements. So the options -- there
6 are no other options here. So I do believe that they have a
7 practical difficulty.

8 When it comes down to the third prong, no harm to the
9 public good or the zone plan, I don't believe that the creation
10 of this lot would be detrimental to the public good. As the
11 Applicant stated, the lot to the east is the same width. It's
12 70 feet. If you look at the block, I mean at the square, I'm
13 sorry, certain -- some properties fronting Argyle to the east are
14 roughly 70 feet in width. So this particular sized lot is not
15 out of character to what we see within the square. So I do not
16 believe that would -- I do believe it meets the third prong of
17 the test.

18 As you stated with the questions that was raised by the
19 party in opposition about the protection of those trees, it is
20 an administrative process that is handled by -- internally by the
21 District's government. And I think we received even more
22 clarification on that from Urban Forestry today. So that process
23 will play itself out. We are not approving the house if, you
24 know, as I stated earlier, if -- when this goes through the proper
25 channels, the design and placement of the house may change. They

1 have to meet not only zoning, but all the other development
2 standards of development within the District. Zoning is not the
3 final say so on this.

4 So I do know we memorialize -- we commonly memorialize
5 these types of items with some of our approvals, but I do not
6 believe that is within our purview right now. I don't even see
7 the rational nexus for that, being that we're approving this
8 subdivision, not necessarily the placement of the home where it
9 would impact these trees. So I'm not inclined to put a condition
10 nor memorialize it being that it's an administrative process.
11 But you know, I'll hear the rest of the Board out and wherever
12 it falls is where it falls. We've done it before, but I'm not
13 inclined to put or memorialize this when it's not within or
14 purview, nor do I see the nexus being that this is for the lot
15 itself. So I will support the variance.

16 CHAIRPERSON HILL: Thank you.

17 Vice Chair Miller.

18 VICE CHAIR MILLER: Okay. Thank you, Mr. Chairman. I
19 -- first of all, I appreciate everybody's time and attention to
20 this case today. The Applicant, Mr. Gross and Ms. Batties'
21 presentation, which I think was very thorough, Office of
22 Planning, Urban Forestry, Mr. Tower. We -- I think we did learn
23 a lot here, that -- which was enlightening in many respects.

24 So I don't necessarily disagree with most of the
25 points, but not all of the points that my fellow Board members

1 have made so far. And we've had this conversation in other cases.
2 I can remember in the River School case, not too far away from
3 me, where there were transportation mitigation measures being
4 offered by the Applicant to try to mitigate against, in that
5 case, adverse impacts, which are part of that -- which was part
6 of that process in a residential zone.

7 This is an area variance for the lot width. We're not
8 approving the subdivision. It's -- the lot width is 5 feet short
9 of what the lot width requirements are in the R-1-A zone and one
10 of the enlightening aspects of this case to me as the Zoning
11 Commissioner sitting on this case, is that that lot width is
12 probably too large for the R-1-A zone. It -- we have a limited
13 land area in the District, and I'm in an R-1 zone and a lot of
14 R-1 -- a lot of houses that are on large lots in the R-1 zone
15 that -- as in this neighborhood next door that don't have the
16 75-foot width. So that's something the Zoning -- that's something
17 on the Zoning Commission to look at and the Office of Planning
18 to look at in the future. So that was one of the enlightening
19 things.

20 But back to my previous point about the condition, the
21 tree preservation condition that the Applicant was offering to
22 provide as a condition of the Order approving this application,
23 I support that. I also support if he -- if three members of the
24 Board are not willing to go along with that, I support at least
25 memorializing it in the -- as a -- referencing it in the Order.

1 But I would support it as a condition. The Applicant's offering
2 it as a way to be a good neighbor. I think it's a way to be --
3 I think it does -- it is relevant, I think, to the public good
4 to be a good neighbor to comply with the law that actually exists.
5 The administrative process exists.

6 It may be just restating what the law is, but the
7 Applicant's agreeing to it. I don't necessarily think it's out
8 of this Board's purview. Legal counsel may disagree. I don't
9 think it's out of this Board's purview to put that in as a
10 condition to the order so that -- so that people see it right
11 there. That's what everybody looks at. What we reference, ZA
12 doesn't necessarily enforce what's referenced, because they don't
13 -- maybe they don't think it's in their purview. This isn't.
14 This is in DDOT's, Urban Forestry Division's purview, and they
15 will deal with it one way or the other whatever we do, as the
16 Chairman and others have noted.

17 But I would support it as a condition. I've supported
18 other DDOT mitigation issues in other cases where the Applicant
19 has offered to do that. So that's where I am. I would support
20 -- I would prefer to support it as a condition of the Order. The
21 Applicant's agreed to do it. I think Mr. Tower, the party in
22 opposition, called it -- he called it vague, in general. It's
23 the law, but he -- it's going to get that protection, so I don't
24 see what the problem. I don't see the harm to this Board and
25 the zoning process to put it there.

1 Maybe you don't want to have to deal with
2 transportation mitigation issues, but those are adverse impacts
3 and if the Applicant's offering -- anyway. That's where I am.
4 I support it as a condition. I support it -- I definitely support
5 it at least as we're referencing it in this case. Everybody
6 knows about it, whether we do it or not. But that's where I am,
7 Mr. Chairman. Thank you.

8 CHAIRPERSON HILL: Okay. Thanks, Vice Chair Miller.

9 Yeah, so this is what we're going to have to discuss.
10 I don't mind. I got -- Mr. Smith's got his hand up. And then --

11 Mr. Smith went first, Mr. Blake. Sorry. He had his
12 hand up first.

13 BOARD MEMBER BLAKE: But it's my go. I haven't said
14 my deliberation (indiscernible).

15 CHAIRPERSON HILL: Oh, I'm sorry. I thought you already
16 said your deliberation.

17 BOARD MEMBER BLAKE: I have not.

18 CHAIRPERSON HILL: Mr. Blake.

19 VICE CHAIR MILLER: I know, you caught me off guard,
20 because I thought you had gotten to Mr. Blake before me. I was --

21 CHAIRPERSON HILL: You did -- well, did I go out of
22 order?

23 VICE CHAIR MILLER: -- so I wasn't ready.

24 CHAIRPERSON HILL: Did I go out of order? Oh, you're
25 right.

1 BOARD MEMBER BLAKE: I mean, you know.

2 CHAIRPERSON HILL: All right, Mr. Blake. I'm sorry.
3 Go ahead.

4 BOARD MEMBER BLAKE: Well, I'm not going to drag this
5 out. The -- I agree with the variance analysis as provided by
6 you and Board Member Smith and by Mr. -- Commissioner Miller. I
7 got to make sure I call him Commissioner. I can't say mister,
8 it's not fair. But I want to do that.

9 First of all, so I agree with the variance. I think
10 -- I initially struggled with the whole concept of this -- the
11 error by the being the exceptional condition. But in hearing the
12 testimony today and reviewing the record very carefully, I see
13 that there is a factor -- there is a legitimate issue there.

14 As well, I do see a confluence of other factors that
15 contribute to this entire thing, in terms of the size of the lot,
16 the location of the building that existed before, and also, as
17 you said, you know, the fact that it could have been divided into
18 lots, but it couldn't because it wasn't possible. And there's
19 no way you could divide the lot without -- given the two buildings
20 on either side where they don't have the availability to sell off
21 a property if they -- a piece of -- a portion of the property if
22 they wanted to.

23 That said, we turn to the tree issue and the condition.
24 I do not think it would be appropriate to include the condition
25 in it, because it's not in our -- it's not a -- a zoning

1 requirement that applies. It's -- we do know whose purview it's
2 in. It's in Urban Forestry's purview. They were here. They
3 told us that. And we know it's -- what the next administrative
4 steps are. I do not have a problem referencing it, if that is
5 what the Board wants, but I do not think it needs to be
6 incorporated as a condition to the Order. And that's all I have
7 to say.

8 CHAIRPERSON HILL: Okay.

9 Mr. Smith, you had your hand up.

10 BOARD MEMBER SMITH: Yeah, I think I was going to
11 clarify my position on some of these, sometimes when we create
12 these conditions. I am uncomfortable with the condition -- with
13 putting in a condition, and we can -- even to a certain extent,
14 referencing in my history of zoning administration, something
15 that is an administrative process that already will occur
16 regardless. And it's also an administrative process that's not
17 within the purview of zoning. So that's the reason why I wasn't
18 comfortable. It wasn't necessarily -- the bigger issue is that
19 it's already an administrative process that they would be
20 required to do. So I wouldn't want to create any type of
21 condition that would run with the variance that would -- that
22 would condition the administrative process.

23 Also, what could happen because this runs with the
24 land. Let's say that this particular process that's now under
25 Urban Forestry, leaves Urban Forestry. And we have a condition

1 that sends it to Urban Forestry that runs with the land. So
2 being that it is an administrative process, there is no need to
3 condition it, nor do I think to reference it. But if we want to
4 reference it, that's fine. But that -- that's largely where I
5 stand on this. I think it's redundant.

6 CHAIRPERSON HILL: Okay. All right.

7 Okay. Okay. So -- and I'll just -- I 'll give, I
8 mean, I'll -- Vice Chair Miller, I -- we all very much respect
9 your opinion and think that -- I think that we -- this has been
10 one of those things that, like, in my experience thus far, like,
11 you know, we get some advice from some people within our office
12 and then also it depends on whether or not, I guess, other Board
13 members feel it's something that we want to put in as a condition;
14 however, I'm comfortable referencing it. And I think that -- but
15 we'll see how this goes.

16 Let's see. But yeah, but I do want to say that, right.
17 I mean, again, Vice Chair Miller, things that as -- I don't think
18 I -- I keep saying this, I don't know how long I'm going to be
19 here. I'm here longer than I thought I was going to be. But if
20 you all, the Zoning Commission, want to give us further
21 clarification as to things that you think we should be focusing
22 on, I'm more than happy to have different or more tools added to
23 our toolbox, such as, again, we always have this difficulty with
24 design review or things like that. So if there's other things,
25 I'm sure the Board, either now or in the future, would welcome

1 further clarification on it.

2 Some of those things could be even conditions that
3 might not be within our purview. I don't know. So -- okay.

4 I'm going to go ahead and make a motion to approve
5 Application No. 20808, as captioned and referencing the condition
6 that the Applicant had put forward concerning their tree
7 protection plan that they have put in the record and ask for a
8 second.

9 Mr. Blake?

10 BOARD MEMBER BLAKE: Second.

11 CHAIRPERSON HILL: Motion made and seconded.

12 Mr. Moy, if could you take a roll call.

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

14 When I call your name, if you'll please respond to the
15 motion made by Chairman Hill to approve the application for the
16 area variance relief, including referencing in the Order the tree
17 protection plan.

18 Mr. Smith?

19 BOARD MEMBER SMITH: Yes.

20 MR. MOY: Mr. Blake?

21 BOARD MEMBER BLAKE: Yes.

22 MR. MOY: Chairman Hill?

23 CHAIRPERSON HILL: Yes.

24 MR. MOY: Zoning Commissioner Rob Miller?

25 VICE CHAIR MILLER: Yes.

1 MR. MOY: Staff would record the vote as four to zero
2 to one. And this is on the motion made by Chairman Hill to
3 approve the application. The motion to approve was second by
4 Mr. Blake, who is also in support of the motion. Others in
5 support of the motion to approve, Zoning Commissioner Rob Miller,
6 Mr. Smith and of course, Mr. Blake and Chairman Hill. We have a
7 Board member not present. The motion carries on a vote of four
8 to zero to one.

9 CHAIRPERSON HILL: Okay, great. Thank you. All right.
10 Do we have anything else before the Board, Mr. Moy?

11 MR. MOY: Nothing from the staff, sir.

12 CHAIRPERSON HILL: Okay. Mr. Miller, are we going to
13 see you before the holidays, or we don't know?

14 VICE CHAIR MILLER: I don't look at the schedule that
15 far in advance. I don't know.

16 CHAIRPERSON HILL: Okay. All right. So if we don't see
17 you, have a happy new year.

18 VICE CHAIR MILLER: You too.

19 CHAIRPERSON HILL: Otherwise, we'll see you next time.
20 All right?

21 VICE CHAIR MILLER: Okay.

22 CHAIRPERSON HILL: Bye, Commissioner.

23 Bye everybody. We're adjourned.

24 (Whereupon, the above-entitled matter went off the
25 record at 1:31 p.m.)

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 11-30-22

Place: Teleconference

was duly recorded and accurately transcribed under my
direction; further, that said transcript is a true and
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