

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY
MAY 8, 2024

+ + + + +

The Regular 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
- LORNA L. JOHN, Vice-Chairperson
- CARL H. BLAKE, Member
- CHRISHAUN S. SMITH, NCPC Designee

ZONING COMMISSION MEMBER PRESENT:

- TAMMY STIDHAM, NPS Designee

OFFICE OF ZONING STAFF PRESENT:

- KEARA MEHLERT, Secretary
- PAUL YOUNG, A/V Production Specialist

OFFICE OF PLANNING DEVELOPMENT REVIEW STAFF PRESENT:

- JOEL LAWSON, Associate Director
- SHEPARD BEAMON
- MAXINE BROWN-ROBERTS
- MATTHEW JESICK
- MICHAEL JURKOVIC
- CRYSTAL MYERS

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OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

SARAH BAJAJ, ESQ.
COMETRIA COOPER, ESQ.
CARISSA DEMARE, ESQ.
RYAN NICHOLAS, ESQ.

DISTRICT DEPARTMENT OF TRANSPORTATION STAFF PRESENT:

PRESTON JUTTE

The transcript constitutes the minutes from
the Regular Public Hearing held on May 8, 2024.

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

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(10:05 a.m.)

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CHAIRPERSON HILL: Thank you, guys. Ms. Mehlert, you can go ahead and call your next one.

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MS MEHLERT: The Board is now in its public hearing session. The first case is Application No. 21067 of 2001 RIA Owner, LLC. As amended, this is a self-certified application pursuant to Subtitle X, Section 901.2 for Special Exceptions under Subtitle C, §703.2 from the minimum parking requirements of Subtitle C, §701.5, and under Subtitle G §207.14 from the rear yard requirement of Subtitle G §207.6.

This is to construct a new four-story mixed use building with penthouse and cellar including 50 dwelling units and ground floor retail in the MU-4 zone. It's located at 2001 Rhode Island Avenue Northeast Square 4217 N, Lot 7.

This case was postponed from the March 6th public hearing, but the merits of the case have not been heard.

CHAIRPERSON HILL: Thank you. If the Applicant could hear me, if they could please introduce themselves for the record.

MR. SULLIVAN: Thank you, Mr. Chair, Marty Sullivan with Sullivan & Barros here on behalf of the applicant.

CHAIRPERSON HILL: Okay, Mr. Sullivan. If you

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1 want to go ahead and walk us through your client's
2 application and why you believe they're meeting the criteria
3 for us to grant the relief requested.

4 I'm going to put 15 minutes on the clock just so I
5 know where we are. And you can begin whenever you like.

6 MR. SULLIVAN: Thank you, if the PowerPoint
7 presentation could be loaded, please. And with us here today
8 as well is John Edwards, the project architect, and Nicole
9 White from Symmetra Design, traffic engineer, and Isaac Pinto
10 from the ownership team. Next slide please.

11 The property is 2001 Rhode Island Avenue
12 Northeast. It's on the south side of Rhode Island Avenue.
13 It's located in the MU-4 zone and was previously used as
14 office and conference rooms. It's now vacant, vacant
15 buildings on the property.

16 The applicant's proposing to raise those buildings
17 and construct a four-story mixed-use building with a
18 penthouse and cellar that will have ground floor retail and
19 50 residential units.

20 And the applicant is seeking special exception
21 relief from the vehicle parking requirement and the rear yard
22 setback in contrast to the last case, this is a case where
23 the community and particularly the ANC really valued retail
24 in this location.

25 And the applicant endeavored to meet that and so

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1 this is one of the reasons why retail is part of this
2 project. Next slide please. The Office of Planning
3 recommends approval. ANC 5C voted unanimously in support.

4 And there's a letter from the Chair of ANC 5B as
5 well which is across Rhode Island on the north side of Rhode
6 Island Avenue there has submitted a letter in support. DDOT
7 has no objection.

8 And the applicant is amenable to DDOT's TDM Plan
9 recommendations and there are about ten letters of support in
10 the file as well. Next slide please. I think I'll be
11 turning it over to Mr. Edwards now to take you through the
12 plans. John?

13 MR. EDWARDS: Good morning. John Edwards, the
14 principal at Bonstra Haresign Architects. We're located at
15 1728 14th Street Northwest. I won't go through all of the
16 exhibit in detail, but will focus on the aspects germane to
17 this special exception relief that Mr. Sullivan outlined.

18 So next slide. This shows the location of the
19 property at the corner of Rhode Island Avenue Northeast and
20 20th Street Northeast. There's a stop on metro bus route
21 8386 line directly in front of the site.

22 And it is also within walking distance to the E2
23 and the priority bus route G8. Next slide. The existing
24 conditions include a two-story brick commercial building.
25 From the toke on this claim, you can see the significant

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1 change in grade from the sidewalks of both streets to the
2 southeast corner of the property about 14 feet from 20th
3 Street at the southwest corner and about 15 feet from Rhode
4 Island Avenue to the southeast corner.

5 At the northeast corner, there is about a nine-
6 foot change in grade across the public parking from the back
7 of the sidewalk to the property line with an additional six
8 foot rise from there across the property to the southeast
9 corner.

10 Note also there are no curb cuts on either street
11 front and DDOT confirmed at our preliminary design review
12 meeting that new curb cuts would not be possible on either
13 street.

14 The rear paper alley seen in the southeast corner
15 accesses a non-maintained driveway of about ten feet in
16 width. This does not actually give access to the St. Francis
17 de Sales property to the east as there is a significant
18 change in grade and retaining wall between that property and
19 the paper alley. So next slide.

20 These site photos show the current conditions
21 where you can see, again, the significant change in grade and
22 the conditions along the street fronts, Rhode Island Avenue
23 and 20th Street. Next slide.

24 These photos show the condition of the rear paper
25 alley and also the significant change in grade between our

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1 property and the St. Francis de Sales property to the east
2 which you can see in those lower, right-hand corner pictures.

3 Next slide. And next slide from this too please.

4 The ground floor plan shows how the street fronts
5 are lined with commercial retail space with the residential
6 access to an open court to the northeast. The plan shows the
7 two parking spaces were squeezing in off the paper alley, one
8 handicapped space and one car-share space.

9 Note that even those two parking spaces require
10 ramping within the building as the alley gives access to the
11 high point of the site which is essentially just below the
12 second floor level at that point.

13 Note also, that at the request of the ANC and
14 DDOT, we are proposing enlarging the sidewalk along Rhode
15 Island Avenue to DDOT's standards. Next slide. This diagram
16 shows the relevant aspects of the rear yard relief.

17 There are only two windows on that rear face of
18 the proposed building. Neither of which are within 40 feet
19 of the neighboring buildings to the east and south. Note
20 that there is also a strip of land on the St. Francis de
21 Sales property at the same elevation as our property with a
22 retaining wall beyond that on their property where the grade
23 drops considerably. Next slide.

24 The upper floors are purely residential. I'll
25 note that there are six IZ units that are being provided.

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1 Half of which are two bedroom units located in all the upper
2 floors of the building. So next slide. And next slide from
3 this.

4 And next slide from this because all the upper
5 floors are identical. There's also a habitable penthouse
6 that does not require any relief. And it also is
7 contributing to the IZ set aside. Next slide.

8 And on the upper roof, the penthouse roof, there
9 will be a solar photovoltaic array that faces south. Next
10 slide. The elevations again show the relationship of the
11 property to the street fronts where you can see there's a
12 significant change in grade between the sidewalk and the
13 building that sits up on the property line.

14 This is viewed from the corner or from 20th Street
15 Northeast at the corner of Rhode Island Avenue. Next slide.

16 This is the façade from Rhode Island Avenue and again, you
17 can see the change in grade through the public parking up to
18 the first floor level of the building at the property line.

19 Next slide. Again, this is the rear showing where
20 we are putting parking in and how high that grade is that
21 we're digging down to provide that, those two spots almost at
22 the second floor level at that point coming off the alley.

23 CHAIRPERSON HILL: Excuse me, where are these
24 spots?

25 MR. EDWARDS: On the left, or excuse me, the

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1 right-hand side so the far right-hand side is the alley
2 access at the rear of the building. So it's in that area
3 where you see the door, the handicap entrance door.

4 The door to the left where the little man is
5 standing is actually the level of the ground floor so we're
6 having to ramp down from the alley to fit those parking
7 spaces in as well as ramping up within the building to get
8 that handicapped access.

9 CHAIRPERSON HILL: Right, but it's just two spots.
10 Correct?

11 MR. EDWARDS: Correct.

12 CHAIRPERSON HILL: Okay. Thank you.

13 MR. EDWARDS: And next slide. This is the side
14 facing St. Francis de Sales property. As you can see, there
15 are no windows directly facing the property off the rear, the
16 rear yard. There's a court where the entry is for the
17 residential.

18 It's in shadow that sits back considerably about
19 27 feet back from the property line. Next slide. And this
20 also shows, this is also looking from the south, north this
21 section cut where you can really see the change in grade from
22 20th Street on the far left-hand side to the alley at the far
23 right-hand side.

24 And the elevation of the alley in relation to the
25 first floor and second floor plans or four levels of the

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1 building. Next slide. And this, again, is the perspective
2 view, this is from the corner of 20th and Rhode Island
3 Avenue.

4 Again, showing the significant grade change across
5 the public parking zone from the sidewalk to the building
6 which sits on the property line. And with that, I'll turn
7 this over again to Mr. Sullivan to go through the relief
8 being sought unless there are any other questions about the
9 drawings.

10 MR. SULLIVAN: Thank you, John. Next slide
11 please. So the general requirements of Subtitle X, §901.2
12 are met. The granting relief will be in harmony with the
13 purpose and intent of the zoning regulations and maps.

14 The use itself in the proposed building's bulk and
15 density is permitted as a matter of right in the MU-4 zone.
16 And granting relief will not tend to affect adversely the use
17 of neighboring property.

18 The application enjoys a recommendation of
19 approval from OP and DDOT. Support from ANC 5C and ANC 5B
20 and additionally the applicant's traffic engineers concluded
21 in DDOT is accepted that parking near the site can handle
22 additional demand generated by the proposed project.

23 Next slide please. Regarding the specific
24 requirements for the parking relief, so due to physical
25 constraints of the property, the required parking spaces

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1 cannot be provided either on the lot or within 600 feet of
2 the lot.

3 The topography of the site includes a severe
4 increase in grade elevation from front to back which makes
5 excavation of a parking garage financially and physically
6 infeasible.

7 And for the same reason, surface parking is
8 infeasible to provide in any meaningful manner. The
9 applicant is providing the handicap space and the car share
10 space totaling four spaces for the purposes of the
11 requirement.

12 And DDOT noted in its report that its support was
13 based in part on the fact that it would prevent the creation
14 of a curb cut and loss of on-street parking space. The use
15 or structure is also particularly well-served by mass
16 transit, shared vehicle or bicycle facilities including the
17 Route G8 bus line which is .3 miles or a seven-minute walk
18 from the property just shy of the .25.

19 So our parking requirement did not get the benefit
20 of the 50 percent reduction. The properties also serve by
21 the following bus lines: 86 and 83 directly in front of the
22 property, T18, 14, E2 and H6 .2 miles away and the Red line,
23 two stations within 1.2 miles.

24 Land use or transportation characteristics of the
25 neighborhood minimized the need for required parking spaces.

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1 Again, the property is well served by transportation and
2 it's within walking distance to amenities. Next slide
3 please.

4 703.3, any reduction in the required number shall
5 only be for the amount that the applicant is physically
6 unable to provide so the applicant has provided the two
7 spaces that were feasible.

8 And so the reduction in the required number is
9 only for the amount the applicant is physically unable to
10 provide due to the topography and inability to get a curb cut
11 and the, also the limited alley capacity.

12 It's a semi-maintained paper alley. The applicant
13 and DDOT also have developed a TDM plan that is in the record
14 and would be a condition of any approval. Next slide please.

15 Regarding the rear-yard requirements, the specific
16 requirements for rear yard relief, now the, for zoning
17 purposes, the frontage is 20th Street and the rear yard is
18 the property line to the east.

19 And so there's the first requirement has no
20 apartment window shall be located within 40 feet directly in
21 front of another building. The portion of the rear wall
22 that's on the property line has no windows at all.

23 And then there's some north-facing and south-
24 facing windows on the courts that are in the area of the 15-
25 foot relief and there's no building within 40 feet of those

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1 windows. And that's in A-301a as a plan that shows that.

2 And there's no office windows and regarding
3 service functions, there's the two feasible parking spaces
4 and loading area are located in the south side yard and
5 service functions are not affected by the rear yard relief.
6 Next slide please.

7 And I think we might be into Nicole's slide so
8 I'll turn it over to Nicole White. Thank you.

9 MS. WHITE: Nicole White, Principal with Symmetra
10 Design. Our firm prepared the transportation statement for
11 the project. The transportation statement is in accordance
12 with DDOT's comprehensive transportation review guidelines.

13 The scope of our study was coordinated with DDOT
14 during a formal scoping process. We can go to the next slide
15 please. Thank you. As stated in the DDOT report, DDOT
16 supports the requested relief given the site's proximity to
17 transit.

18 The walkability of the neighborhood and that it
19 would prevent the creation of a curb cut and loss of on-
20 street parking space. Next slide please. Vehicular access
21 to the two parking spaces is via the public alley in the
22 rear.

23 Trash removal will occur from St. Francis de Sale
24 Place. Next slide please. The site is located directly
25 adjacent to a bus stop and is well served by transit. Next

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1 slide please.

2 The slide shows proposed pedestrian improvements.
3 The retaining wall will be pushed back which will allow the
4 sidewalk to be widened. And you can see in the image below
5 the red line shows the extent of the widening. Next slide
6 please.

7 So there we conducted a parking, on-street parking
8 study in the vicinity of the site and this study area was
9 coordinated with DDOT. This image shows the available
10 parking supply in the area and the restrictions.

11 There are various restrictions including RPP and
12 metered parking spaces in the area. Next slide please. So
13 we conducted a parking demand utilization survey, 6:00 p.m.,
14 7:00 p.m., 8:00 p.m., and 9:00 p.m. within that study area
15 shown on the previous slide.

16 We found the peak utilization occurred at 6:00
17 p.m. The parking supply is slightly less than 6:00 p.m.
18 because of on-street restrictions and 65 percent of the
19 spaces were occupied during that peak time period. Next
20 slide please.

21 So this is a detailed table showing what happened
22 during that peak utilization time of 6:00 p.m. We found that
23 86 of the 248 spaces were available to be used by the project
24 including 30 parking spaces with no parking restrictions.
25 Next slide.

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1 On this map shows again what happened during the
2 peak time of 6:00 p.m. on a street-by-street basis. The 86
3 spaces were available and 30 in unrestricted areas including
4 along Hamlin and 20th Street. Next slide please.

5 Okay, so we coordinated a transportation demand
6 management plan with DDOT. DDOT approved the plan. I do
7 want to point out an update to the plan that has been
8 coordinated. So the initial plan was April 19th.

9 And on the second page, if we go to the next
10 slide, wanted to point out one correction. I think the
11 updated TDM plan has been submitted into the record, but I'm
12 not sure. So if we could go to the next slide I'll point
13 out, okay, thank you.

14 So for the tandem bikes that requirement is 5
15 percent of the spaces. We initially had two spaces as the 5
16 percent calculation which would be 1 space instead and so
17 we've made that update in the updated transportation demand
18 management plan.

19 We've coordinated that update with DDOT, all other
20 elements and commitments of the TDM plan from April remain as
21 is. And that's all I have. Thank you.

22 MR. SULLIVAN: Thank you, Nicole.

23 CHAIRPERSON HILL: Go ahead, Mr. Blake.

24 MEMBER BLAKE: I'll wait for Mr. Sullivan. I just
25 have a quick question for Ms. White on her presentation. I

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1 can just do it now. That's a very thorough parking analysis.

2 I appreciate it. Would you please explain to the extent,
3 there's a lot of development taking place in this area.

4 To the extent that -- I assume that the parking
5 analysis looks at the current situation as it exists today
6 and it doesn't factor, it does factor in the additional
7 developments taking place or proposed developments.

8 MS. WHITE: Yes, so that is correct. What I've
9 showed, showed in the previous slide was based on existing,
10 however, we understood from a recent ANC meeting and
11 coordinated about a few nearby developments that are
12 occurring in the area.

13 And so we know there's 59 residential units coming
14 at the DC Dragon site and there are another 35 units coming
15 at 2026 Jackson Street. In both of these cases, no parking
16 relief is being sought. So we thought that our assessment
17 was representative of future conditions as well.

18 MEMBER BLAKE: Because they were not seeking, so
19 you -- the cumulative effect you felt did not change your
20 view.

21 MS. WHITE: Yes, a couple of things. One, yes,
22 because there's no parking relief being sought in the
23 background developments that we looked at and also just given
24 that there are 86 spaces, you know, that allows room in case
25 even if that supply were to go down a bit.

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1 There's still more than enough spaces to support
2 this project.

3 MEMBER BLAKE: Thank you very much.

4 CHAIRPERSON HILL: Thank you. Mr. Sullivan, does
5 that conclude your presentation?

6 MR. SULLIVAN: Yes, it does. Thank you, Mr.
7 Chair.

8 CHAIRPERSON HILL: Okay. I heard or saw Mr. Blake
9 had a question and got his answered. Did anyone --

10 MEMBER BLAKE: I have one other question for Mr.
11 Sullivan. This is, it's not quite to this, but I just wanted
12 to make sure that you had just covered how the loading would
13 take place.

14 It's not part of the particular application, but
15 with the rear yard relief and the fact that there's a paper
16 alley, I just wanted to make sure that I assume it's going to
17 be on-street loading with permits or I just wanted to clarify
18 that.

19 MR. SULLIVAN: Right, and I think DDOT mentioned
20 that in their report. There could be loading done through
21 the back and in the one space and also DDOT recommends either
22 or on the front street with permits, temporary permits for
23 people moving in and out.

24 MEMBER BLAKE: Okay, and Mr. Sullivan, could you
25 just explain to me they see matter 1.1 says that with fewer

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1 than 50 units. This is 50 units. Why is that threshold not
2 met for 50 units because it says fewer than 50, I am just
3 curious to see how you interpret that.

4 MR. SULLIVAN: I'd have to look at the, I'll pull
5 up the language and if I could do that if anyone else has any
6 questions, I'll look that up and then get you an answer, but
7 I know we've always understood to be 50 or less didn't
8 require it. But let me look at that.

9 CHAIRPERSON HILL: Okay, does anyone have any
10 questions while Mr. Sullivan is looking up that? Okay. Mr.
11 Sullivan, let me know when you come back to us and before
12 that, I will turn to the Office of Planning.

13 MR. BEAMON: Good morning, Shepard Beamon with the
14 Office of Planning. I have reviewed the application for the
15 requested relief from the required rear yard and the parking
16 requirements to allow the proposed mixed use of the building.

17 We find that the request meets the special
18 exception criteria for Subtitle C, G and X. Therefore, we're
19 recommending approval of the application with the condition
20 that the applicant comply with any conditions set forth in
21 the TDM plan.

22 And we said on the recommendation as shown in the
23 report on the record and I'm happy to take any questions.

24 CHAIRPERSON HILL: Thank you. Does anyone have
25 any questions for the Office of Planning? Mr. Blake?

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1 MEMBER BLAKE: Yes, Mr. Beamon, could you address
2 that question I asked Mr. Sullivan with regard to the loading
3 requirements for fewer than 50 versus 50?

4 MR. BEAMON: So as you were asking that, I was
5 also trying to find the section and the --

6 MR. SULLIVAN: So I have in the 901.1, I'm sorry
7 this is Marty, 901.1 states that for a residential use,
8 loading berths are required for more than 50 dwelling units
9 in the chart in C901.1.

10 MR. BEAMON: Thank you, Mr. Sullivan.

11 CHAIRPERSON HILL: Okay, I was not neglecting
12 this. The Commissioner is here I believe from the ANC.
13 Commissioner, could you introduce yourself for the record
14 please?

15 MR. KAPUR: Am I audible?

16 CHAIRPERSON HILL: Yes.

17 MR. KAPUR: Apologies for not being on camera. My
18 name is V.J. Kapur, K-A-P-U-R, Commissioner ANC 5C07.

19 CHAIRPERSON HILL: Commissioner, would you like to
20 give us your testimony?

21 MR. KAPUR: Sure. So I have an extensive report
22 in the record which I will refer to, and I'm happy to take
23 any questions. So but I will quickly make some remarks. ANC
24 5C unanimously supported this in a 5-0 vote.

25 I will also note that I am personally a 200

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1 Footer. My family of two adults, one child, one dog and two
2 cats get around primarily without a car and as a result, we
3 don't feel like, we feel like we want to make sure that we
4 are providing new homes for our future neighbors that are to
5 give them those options.

6 Because this was invoked a number of times and it
7 was queued up so well by that 4B case that happened earlier,
8 I'm going to, I want to just off-the-cuff speak to the fact
9 that this building does provide retail.

10 I believe it's moving our ratio of new retail to
11 new homes in a better direction. We do have a number of
12 matter of right projects going up nearby that are replacing
13 existing older single-story retail with multi-family, but not
14 providing a retail component.

15 I understand that it is not within the current
16 purview of anybody to force retail use, but I think that this
17 case is very demonstrative of where on the margins we might
18 be failing here because they're, the parking relief being
19 sought is very specifically on the matter of topology and
20 access.

21 But as a result of the inability to provide the
22 parking, it's probably enabling on the margins some capacity
23 to build this retail. Most matter-of-right buildings nearby
24 the ground floor is consumed by parking rather than retail.

25 I mean, I can speak to how this doesn't really

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1 meet our goals as a city environmentally and transportation
2 multi-motor transportation wise, but also just a matter of
3 logistics that many neighbors, even those who drive as their
4 primary form of transportation would benefit a lot more,
5 including the neighbors that are future neighbors in these
6 buildings by having ground floor retail they could walk to
7 that meets their needs for some of those trips rather than a
8 small subset of the residents of this building having on-
9 street parking on that ground floor.

10 And the reason for these mechanics is some stuff
11 that we can't really control, it's too expensive to build
12 underground parking and it just makes the most sense to then
13 put it at grade.

14 But there's one thing that's kind of in our
15 control and that is what I believe to be an improper drafting
16 and also improper interpretation of Subtitle C, 702.1. The
17 language here allows for Rhode Island Ave. buses to count as
18 high-frequency transit for the purposes of having the parking
19 requirement.

20 OP's report and the applicant's report presumes
21 that they will not, they would not receive that having. And
22 the reason why is because there's a specific bus line listed
23 in Item 9 after mentioning Rhode Island Ave. and that's the
24 G8 bus.

25 And so I would say this is improper drafting

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1 because the G8 bus does not follow Rhode Island Ave. east of
2 the metropolitan branch tracks. At the time that this was
3 written, it was maybe not much of a concern how much multi-
4 family was being built east of metro on bus transit, but as
5 we can see now, we have hundreds of units coming online.

6 Very many of them are meeting the full parking
7 requirement without the having along Rhode Island Ave. and
8 it's taking up ground floor capacity that could be better put
9 towards retail to serve the community.

10 And so and I as part of our work on this case, I
11 did get ANC 5C's authorization on a separate accompanying
12 resolution which I did put in the record and it does
13 authorize me to represent the Commission in advocating for
14 this with OP and with the zoning administrator.

15 I can only ask the BZA consider this when they're
16 considering any parking relief cases along Rhode Island Ave.
17 that the current interpretation of this provision would not
18 seem to be in the spirit of how it was written and this is
19 only going to get worse as the new remodel plan comes into
20 force because not mentioned previously is that we do have a
21 new bus line that's very likely to come into play, the D32
22 bus line which follows Rhode Island Ave. all the way east to
23 South Dakota Ave. and then goes down to Fort Lincoln.

24 It's a spiritual successor, the G9 bus line that
25 has not run since the pandemic and so obviously the D32 bus

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1 line, a brand new bus line with an identifier never before
2 known is not going to be in the zoning regulations which
3 don't get updated that often.

4 And yet it is very much a Rhode Island Avenue bus
5 line and it very much runs as frequently as the ones that
6 were considered in that language. So big aside, off-the-cuff
7 volleying only on the stuff that was said previously as I do
8 hope that that's taken into consideration here.

9 And in future cases while I work on advocating
10 with the zoning administrator and OP to correct that language
11 or correct the interpretation of the language. And happy to
12 take any questions that's it for me. Thank you.

13 CHAIRPERSON HILL: No, that's great, Commissioner.
14 That was actually thorough. Mr. Beamon, can you hear me?

15 MR. BEAMON: Oh, yes.

16 CHAIRPERSON HILL: If you want to refer back to
17 what the Commissioner mentioned and then also take that back
18 to Mr. Lawson and who else you might need to take that back
19 to, you know, we're not the Zoning Commission, but that might
20 be something the Commissioner at least is interested in.

21 And I guess is going to follow up with the Office
22 of Planning as well as the Zoning Administrator. Does
23 anybody have any questions for the Commissioner? Okay. Mr.
24 Blake, go ahead.

25 MEMBER BLAKE: Yes, Commissioner, I would like to

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1 just congratulate you and the -- or commend you and your ANC
2 for the work you did on that whole resolution that is
3 presented to the Board and if, you know, the appropriate
4 Government agency.

5 It is a very thorough analysis and does factor in
6 all the issues that well the cumulative development taking
7 place. I just want to thank you for that effort.

8 MR. KAPUR: I appreciate that. Thank you very
9 much for that and I will also extend that to the constituents
10 who pushed me with their very thorough recounting of concern
11 for this building so that I could be driven to very as
12 thoroughly as I could articulate to the appropriate
13 stakeholders the concerns that were being expressed. So
14 thank you.

15 CHAIRPERSON HILL: Thank you, Commissioner. All
16 right. Mr. Young, is there anyone here wishing to testify?

17 MR. YOUNG: There is.

18 CHAIRPERSON HILL: Okay, could you please give me
19 their names and bring them in?

20 MR. YOUNG: The first is Jeremiah Montague, Jr.
21 And the second is Reverend Brian Sanderfoot.

22 CHAIRPERSON HILL: Okay, great. Oh, Mr. Montague.
23 It's been a long time since we've seen you. If you wanted
24 to go ahead and introduce yourself for the record and as you
25 know, you'll have three minutes to give your testimony and

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1 you can begin whenever you like.

2 MR. MONTAGUE: Thank you, Chairman Hill, and
3 Members of the Board. It has been a while since I've been
4 here, but as they say, I'm back. I did file an objection
5 from the in the, excuse me. I live at 2914 25th Street
6 Northeast.

7 I am the President of the Woodridge Civic
8 Association. So we have a large area that we cover in this
9 particular project is what's in that area. So not to repeat
10 what I filed in writing, the general concerns that we have
11 about the parking and the elevations, there were new drawings
12 that were added to the record on May the 7th.

13 But I'm sitting here looking on my separate
14 computer, there was a discussion in the presentation about
15 where the rear yard is and unless I misunderstood it, the
16 rear yard faces towards St. Francis de Sales Church and not
17 3011 20th Street.

18 Also, there was a comment made that the entrance
19 of this new development is not on Rhode Island Avenue, but
20 designated as on 20th Street. So it kind of mechanically
21 manipulates the concerns.

22 So on the elevation in drawing 402 shows windows
23 on the south side. Now, there's a small single family house
24 that still exists at 3013 20th Street. That's not shown in
25 the wonderful drawings that the applicant presented and is

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1 directly impacted by this building as well as the building
2 that's at 3011.

3 So it's going to be a, become an oasis amongst two
4 giants. Okay? The other thing is there's an existing
5 parking pad behind the existing teamsters building which this
6 is replacing.

7 So I just for me, I don't understand it beyond the
8 issues of costs, the lack of creativity to put parking for
9 these 50 units on property. Clearly there's the mention that
10 there's going to be used of the, what they call the paper
11 alley to move trash in and out.

12 But there is, I think if they commit a Zoning
13 Adjustment Commission looks further at the missing elements
14 in these presentation drawings as the St. Francis de Sales to
15 the east and 3013 20th Street to the south to realize the
16 impacts.

17 And that there may be some adjustments necessary
18 to not affect the light, air and enlivenment of those
19 properties. Thank you. That's about it.

20 CHAIRPERSON HILL: Thanks, Mr. Montague.

21 MR. MONTAGUE: Thank you.

22 CHAIRPERSON HILL: Let's see. Let me first hear
23 from I guess it's Reverend Sanderfoot. If you could please
24 introduce yourself for the record and you'll also give, have
25 three minutes to present your testimony and you can begin

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1 whenever you like.

2 REV. SANDERFOOT: Sanderfoot, I represent St.
3 Francis de Sales properties. So we have both the property at
4 2015, the Church building. We also own a property on 2028
5 St. Francis de Sales Place adjacent to the alley.

6 We occupy a great deal of each adjacent real
7 estate next to this development. Back in February and I
8 don't know that I can hold a developer responsible for this,
9 but back in February I received a call from a third-party who
10 had been involved in the real estate transaction.

11 And he indicated to me that the developer wished
12 to speak to me about the special trees along the property
13 line and that never happened. To this point, the developer
14 has not reached out to me.

15 So I would ask the Board to encourage, if it's
16 possible, require the developer to speak with me, reach out
17 to me directly as representing the adjacent property directly
18 affected in several ways.

19 I'm sure ways I don't even understand at this
20 point by this proposed development, but the proposed
21 exception. The sidewalk changes in the front will impact us.

22 We have a piece of the sidewalk which currently matches the
23 Union Hall.

24 That will be then set back I guess another seven
25 to eight feet so we'll be left with about a 15-foot strip

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1 hanging out into the public space. I would think that would
2 be something we should address together.

3 The protection of the retaining wall in the alley
4 if that's been used for construction staging, that's our
5 retaining wall in the alley and I would like to speak with
6 the developer about how we're going to protect our retaining
7 wall.

8 I don't understand the changes in grey that are
9 being proposed. It seems to me from the drawings that there
10 are, there is some construction with zero lot lines set back,
11 but on the other hand the drawing, other drawings don't seem
12 to show that.

13 So I don't understand where we're at with that and
14 how that will affect our protected trees. So I would just
15 encourage the Board, to the extent possible, to encourage the
16 developer to actually reach out to us. Thank you.

17 CHAIRPERSON HILL: Okay, thank you, Reverend.
18 Let's see. Before I ask my fellow Board Members if they have
19 any questions, Mr. Sullivan, in terms of the outreach to the
20 immediate neighbors there. How have --.

21 MR. SULLIVAN: Yes, so Mr. Pinto is here I believe
22 from the ownership team and I believe he's, has told me that
23 he has reached out to Father Sanderfoot, but maybe it's a
24 problem with contact information at this point because I, so

25 --

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1 CHAIRPERSON HILL: That's okay. Mr. Sullivan,
2 give me one second. So, Mr. Pinto, I guess I'm just looking
3 at a map. I mean, the Church is right next to you guys as is
4 3013 20th Street. So you haven't had outreach to your
5 neighbors?

6 MR. PINTO: So first of all, I'll start by saying
7 I did and Reverend Brian, nice to meet you. I actually tried
8 to reach out to you a few times. I don't know if I have the
9 wrong number or what's the reason.

10 And then I sent my broker to try and contact you
11 which he was able to do and he told you that I'm going to
12 call you. And I tried to call a couple of times that week
13 and another couple of times the month after.

14 I made several attempts and to be fully honest, at
15 the beginning, it was for the trees which is not an urgent
16 request on our side. But I definitely planned on meeting and
17 tried to meet with you and speak with you.

18 Something definitely fell between the cracks here
19 and I'm trying to understand what exactly is the reason. Is
20 it the wrong number or what exactly is the reason?

21 CHAIRPERSON HILL: Give me a second. Mr. Pinto,
22 can you first introduce yourself for the record again?

23 MR. PINTO: Yes, sorry. Isaac Pinto and I
24 represent the ownership, I am part of the ownership group of
25 July Residential Group.

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1 CHAIRPERSON HILL: Okay, give me one second, Mr.
2 Pinto. So let turn to my fellow Board Members because I'm
3 going to let Mr. Montague go unless you all have any
4 questions for Mr. Montague.

5 First, I'm looking to my Board Members. Do you
6 have any questions for Mr. Montague? Okay, no one's raised
7 their hand. All right, Mr. Montague, so nice to see you.
8 Hopefully we'll see you again.

9 MR. MONTAGUE: I'm sure you will.

10 CHAIRPERSON HILL: Thank you. Mr. Young, could
11 you please excuse Mr. Montague. All right, so Mr. Sullivan,
12 Mr. Pinto, I'm trying to figure out how to get Mr. Pinto and
13 the reverend together.

14 I don't want anybody to repeat any, I don't want
15 anyone to say any name, addresses or phone numbers out loud
16 over the hearing here and so I'm trying to think, Madame
17 Secretary, are you able to connect Mr. Pinto and Reverend
18 Sanderfoot?

19 MS MEHLERT: Yes.

20 CHAIRPERSON HILL: Okay. All right. So it seems
21 as though, Mr. Pinto, the Reverend has a bunch of questions
22 about, you know, the project and hasn't really had an
23 opportunity to discuss those questions.

24 I mean, I'll let my fellow Board Members also tell
25 me what you think. I'd rather have the neighbors talk to

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1 each other before we make a decision. I mean, I'm not, I
2 don't have to I suppose, but given that it is really both
3 properties surround this property and it is a big enough
4 project that at least I'd like to hear the discussion took
5 place.

6 And what happened from that discussion before
7 making a decision because I like to hear more about just what
8 the issues are between the neighbors. Now that's not to say
9 that within the regulations, it may or may not be within our
10 purview, whatever comes up from those discussions.

11 But I know that once we leave, there's not a whole
12 lot of influence that we might have on people kind of
13 communicating together. I mean, I don't doubt that Mr. Pinto
14 wants to reach out to his neighbor there.

15 So, but I don't know what you all think and I'll
16 let you all decide or tell me what you think and I'll start
17 with Vice Chair John if I could.

18 VICE CHAIRPERSON JOHN: So I agree with your
19 comments, Mr. Chairman. And it's always good when there is
20 direct communication between developers and immediate
21 neighbors.

22 And whatever the breakdown in the communications
23 were in this case, I think if we were to continue for a brief
24 period to allow that to take place before deciding on the
25 merits of the application.

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1 And as I said, in reference to the previous case,
2 this is a special exception. And the regulations state that
3 basically if the applicant meets the criteria for relief, the
4 Board should grant the application.

5 But it's important to hear from the neighbors as
6 well notwithstanding all of that. So I would, in short, I
7 would agree with you we can continue for a short period of
8 time to allow this communication to take place.

9 I did have a question for the applicant based on
10 Mr. Montague's comment that there was parking existing,
11 surface parking existing, and he wasn't sure why that was
12 eliminated. Did I understand him correctly, Mr. Sullivan?

13 MR. SULLIVAN: There is a flat area back there. I
14 don't know if it's flat, but there's a paved driveway.
15 There's not parking spaces lined up, but I guess you could
16 park cars on that.

17 But that would, if we were to park on that, that
18 would severely limit the ability to develop the property
19 because it's pushed too far forward. One of the things
20 happening here too is that the retaining wall is going back
21 four feet.

22 And because of the topography to do a building
23 that's anywhere near a full GFA requires it to be back
24 further. And so there's no ability to put that kind of, to
25 leave that space there open.

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1 VICE CHAIRPERSON JOHN: I think I understand.

2 MR. SULLIVAN: And that --

3 VICE CHAIRPERSON JOHN: In other words, you're
4 saying you need all of that space to meet the 47 unit or
5 whatever, 50 unit --

6 MR. SULLIVAN: Correct, and the retail to those.

7 VICE CHAIRPERSON JOHN: And the retail.

8 MR. SULLIVAN: Yes.

9 VICE CHAIRPERSON JOHN: Okay. All right, thank
10 you.

11 CHAIRPERSON HILL: Okay, let me see what I would
12 like to do. Oh, quickly, Mr. Sullivan. Is Exhibit 50A, is
13 that the correct TDM plan? That has that one addendum? I
14 think it is.

15 MR. SULLIVAN: Yes, that's the last one that was
16 filed. Yes.

17 CHAIRPERSON HILL: Okay, okay. Now let me see.
18 Mr. Pinto and Reverend Sanderfoot, I assume you guys could
19 get together relatively soon?

20 MR. PINTO: Sure.

21 CHAIRPERSON HILL: Okay. Now, Ms. Mehlert,
22 unfortunately I got Commissioner Stidham with me here now so
23 what is our schedule looking like over the next couple of
24 weeks?

25 MS MEHLERT: To let you know that I'm out of town

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1 next week. So if we could look at the following week, what
2 is it the week of the 20th?

3 CHAIRPERSON HILL: 22nd?

4 MS MEHLERT: 22nd.

5 CHAIRPERSON HILL: Yes. What does the 22nd look
6 like, Ms. Mehlert?

7 MS MEHLERT: The 22nd you have seven hearing cases
8 and three expedited review cases.

9 CHAIRPERSON HILL: That's okay. I won't take long
10 I think. What about the 29th?

11 MS MEHLERT: There's no hearing on the 29th. The
12 next would be June 5th.

13 CHAIRPERSON HILL: Okay. Let's come back on the
14 22nd. And so, Mr. Pinto and Mr. Sanderfoot, I mean Reverend
15 Sanderfoot, if you could just kind of like get in touch with
16 each other and Reverend, you know, what you're not, you don't
17 probably deal with zoning issues.

18 Like we have particular criteria that we look at.
19 And so, some of the items that you might discuss with Mr.
20 Pinto won't necessarily be zoning related issues. But go
21 ahead and talk to Mr. Pinto.

22 And then Mr. Pinto, if Reverend Sanderfoot and you
23 need the help of your zoning attorney to clarify what is or
24 what isn't a zoning related issue, please make sure you make
25 available that and then we'll come back just for a limited

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1 scope hearing just to hear what happened with the discussion
2 just -- and the reason why I'm not making a decision is
3 because we could have had information in the record as to
4 what happened.

5 I suppose you could put something into the record
6 as to what has happened and then therefore, the ANC would
7 have an opportunity to respond to that as well being a party.

8 But then if we had, the only reason why, again, I'm not
9 making this decision is we actually needed any clarifying
10 questions.

11 The Board could quickly ask those questions. I
12 think you're near the finish line here, but definitely
13 talking to your immediate neighbors is helpful. Commissioner
14 Kapur, can you hear me? So again, I don't, we don't -- I
15 guess Mr. Sullivan, if you can put something into the record
16 by the 17th, is that fair?

17 MR. SULLIVAN: Yes.

18 CHAIRPERSON HILL: Okay, so then Commissioner, if
19 you went ahead, if you did want to respond at all, you could
20 give something to the Board by the 21st which is that
21 Tuesday?

22 MR. KAPUR: Okay.

23 CHAIRPERSON HILL: Okay, I mean you might, they're
24 going to submit something into the record on the 17th about
25 their discussion. Okay?

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1 MR. KAPUR: Understand. And I would just, I'll
2 even add that I apologize to Reverend Sanderfoot for not
3 having reached out and talked to them just a little bit as
4 well, but I'm happy to have those discussions as well.

5 CHAIRPERSON HILL: Great, so if you wanted to go
6 ahead and reach out to him, then that would be great. And
7 then we'll get back here for a continued hearing on the 22nd.
8 Okay? Go ahead Vice Chair John.

9 VICE CHAIRPERSON JOHN: Might I ask the
10 Commissioner to also reach out to the applicant at 3013 20th
11 Street if that hasn't been done yet?

12 MR. KAPUR: I attempted, but I will make further
13 attempts for sure in the next week.

14 VICE CHAIRPERSON JOHN: Thank you.

15 CHAIRPERSON HILL: Continue hearing on 5-22.
16 Okay, great. All right, then we will see you guys and
17 Commissioner Stidham, you're not with us on the 22nd
18 normally. Correct? Okay. You shook your head no. I can't
19 --

20 COMMISSIONER STIDHAM: You're right. Sorry, yes,
21 no. I'm not. Well, yes, I'm not supposed to be here on the
22 22nd.

23 CHAIRPERSON HILL: Okay. Then we'll go ahead and
24 do this first thing.

25 COMMISSIONER STIDHAM: Okay.

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1 CHAIRPERSON HILL: So, Ms. Mehlert, if you can go
2 ahead, we'll put this on first thing so that the Commissioner
3 -- we'll even do this before, well we'll see what happens
4 whether we do it before a decision cases or not, but it will
5 be the first case.

6 MS MEHLERT: Okay, sounds great.

7 CHAIRPERSON HILL: Okay. Thank you. All right,
8 you guys all take care. I'm closing this portion of the
9 hearing. We'll see you all on the 22nd. Okay. Let's take,
10 it's 11:50 -- I'm sorry, it's 10:55 a.m.

11 How about we take a quick ten minutes if that's
12 good with everybody? Ten, 15 minutes and we'll come back at
13 11:10 a.m.

14 (Whereupon, the above-entitled matter went off the
15 record at 10:55 a.m. and resumed at 11:17 a.m.)

16 CHAIRPERSON HILL: All right, Ms. Mehlert, if you
17 want to call us back and call our next case, that would be
18 wonderful. Thank you.

19 MS MEHLERT: Back from a quick break. The next
20 case is Application No. 20976 of 1427 Shepherd Street, LLC.
21 As amended, this is a self-certified application pursuant to
22 Subtitle X, §901.2 for a special exception under Subtitle U,
23 §320.2 to allow the conversion of an existing residential
24 building to an apartment house use.

25 And this is converting an existing two-story

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1 attached principle dwelling to a three-unit apartment house.

2 It is located in the RF-1 zone at 1427 Shepherd Street
3 Northwest, Square 2694, Lot 30.

4 The hearing for this case was originally scheduled
5 for November 8th and it's been postponed several times at the
6 applicant's request and the merits have not been heard.

7 CHAIRPERSON HILL: Great, thank you. If the
8 applicant could hear me, if they could please introduce
9 themselves for the record.

10 MS. FERREIRA: Good morning, everyone. My name is
11 Catarina Ferreira and I am the architect and I am
12 representing 1422nd Shepherd Street, LLC.

13 CHAIRPERSON HILL: Okay, great. Ms. Ferreira, if
14 you want to go ahead and walk us through your client's
15 application and why you believe they're meeting the criteria
16 for us to grant the relief requested, I'm going to put 15
17 minutes on the clock just so I know where we are. And you
18 can begin whenever you like.

19 MS. FERREIRA: Thank you. The application is for
20 a conversion of an existing residential building to a three-
21 unit apartment house pursuant to Subtitle U, §320.2. The
22 property was originally built in 1922 based on public records
23 and the law area is 3,300 square feet.

24 The majority of the building will be demolished
25 and renovated. Framing will be replaced, roofing will be

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1 replaced. Rear wall is being demolished. We will make every
2 effort to maintain as much of the building as possible.

3 However, I should note that there are structural
4 issues with the front façade of the building which are going
5 to be remediated during construction and dealt with at that
6 time.

7 And this is mentioned in the prehearing statement
8 as well. We meet the burden of proof for Subtitle U, §320.2
9 in the sense that the building is in existence at the time
10 that the Department of the Buildings accepts the building
11 permit application which is imminent.

12 The next condition is that there, if there is a
13 fourth unit that unit must be allocated for inclusion of area
14 zoning. There is no fourth unit as we are converting to
15 three units only.

16 And the last condition is that the, there must be
17 a minimum of 900 square feet of land area per unit being
18 proposed which is the case here and we, in fact, exceed that
19 requirement as we have a total lot area of 3,300 square feet.

20 As mentioned, the project is for three units and
21 those units are located in the primary building. There's
22 also an accessory building being proposed at the rear of the
23 property which includes parking for two spaces at the ground
24 level.

25 And in addition, it has some living space for one

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1 of the units on the second floor. However, there is no
2 relief related to that accessory building as it meets the
3 zoning regulation criteria. I will be glad to answer any
4 questions you may have.

5 CHAIRPERSON HILL: Okay. Ms. Ferreira, I guess my
6 question a little bit is the ANC's letter and the items that
7 they list in terms of their condition for support, I don't
8 think a lot of them are actually within our purview.

9 However, could you kind of walk us through what
10 you understand the applicant and the ANC has come to a
11 conclusion upon?

12 MS. FERREIRA: Absolutely. There has been
13 extensive coordination with the adjoining neighbors on both
14 sides of this property and this was the reason why this
15 hearing was postponed a few times as you know.

16 And the property owner and the adjoining neighbors
17 finally reached an agreement. The conditions of the
18 agreements with the neighbors are basically what is restated
19 in the ANC letter in summary form.

20 And I believe that's the reason why those have
21 been included there. Just to, I guess, give them additional
22 emphasis, but that's really where that comes from. The ANC
23 did express support for the project unanimously when we had
24 the hearing.

25 CHAIRPERSON HILL: Okay, given those conditions?

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1 MS. FERREIRA: Correct.

2 CHAIRPERSON HILL: Okay. All right, I'm going to
3 turn to my Board Members when we get to that issue. Go
4 ahead, Mr. Blake.

5 MEMBER BLAKE: Yes, I have a quick question for
6 Ms. FERREIRA. Given the, you said there would be a number of
7 remedial activities or demolishing it would take place of the
8 existing structure because it's in poor condition. Is there
9 a potential for that to turn into a raise?

10 MS. FERREIRA: I guess that's always possible.
11 You know, it's hard to predict what happens during
12 construction. As you know, when a rear wall is being
13 demolished and framing is being replaced and only two shared
14 party walls remain, the front façade is what remains. Right?

15 Of the building. In this case, the front façade
16 does have some serious structural issues and there has been
17 some settlement. So that is something that we are, you know,
18 continuing to look into from a structural standpoint and will
19 be, it will be addressed during construction.

20 But that is why I brought it up because it is, you
21 know, the drawings and renderings currently show the facade
22 remaining and if during construction it is determined that is
23 not feasible, there is a chance that we may have to rebuild
24 it.

25 MEMBER BLAKE: Okay, thank you.

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1 CHAIRPERSON HILL: Okay, anyone else for the
2 applicant? Go ahead, Vice Chair John.

3 VICE CHAIRPERSON JOHN: Ms. Ferreira, if you have
4 to rebuild that front wall and remove the back wall, would
5 you, would this be a raise or a conversion? Would you have
6 the 40 percent or whatever it is you have said that should be
7 that the remaining property should constitute at least 40
8 percent of the building?

9 MS. FERREIRA: Yes. And I've gone through that
10 process several times with DOB. There's a certain percentage
11 of the exterior walls that must be maintained. Right? In
12 this case, that means our front wall because the two party
13 walls are shared walls and the rear wall is being demolished.

14 So any, we will make every attempt to keep the
15 front façade and reinforce it. It will be underpinned and
16 the settlement that occurred over the years should be
17 remediated during construction so we -- it is not our
18 intention to raise this building.

19 VICE CHAIRPERSON JOHN: Okay, thank you.

20 CHAIRPERSON HILL: Okay, anyone else? All right,
21 I'm going to turn to the Office of Planning.

22 MS. MEYERS: Good morning, Crystal Meyers with the
23 Office of Planning. The Office of Planning is recommending
24 approval of this case and can stand on the record of the
25 staff report. But of course, here for questions. Thank you.

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1 CHAIRPERSON HILL: Thank you, Ms. Meyers. All
2 right, does anybody have any questions for the Office of
3 Planning? All right, I do a little bit. Ms. Meyers, if it's
4 a raise, would that bring in different relief?

5 MS. MEYERS: I believe so. I actually didn't know
6 about that as much because this is, you know, we reviewed it
7 for conversion. But if it's no longer considered a
8 conversion, I do think there may be some other, some other
9 zoning challenges.

10 I believe it might even be considered a completely
11 new building and in this case it would be like an apartment
12 building which I think there might be some problems because
13 this is an RF zone so. But I did not review it for that. We
14 just reviewed it for the conversion.

15 CHAIRPERSON HILL: So Ms. Ferreira, just so you
16 know, if you did come back, if you had to raise it, you would
17 be back before us for other relief.

18 MS. FERREIRA: Understood.

19 CHAIRPERSON HILL: Okay. All right, anyone else
20 for the Office of Planning? Mr. Young, is there anyone here
21 wishing to speak? Okay, could you give me their names
22 please?

23 MR. YOUNG: Yes, the first is Karen Griffin. And
24 the second is Tolsun Waddle.

25 CHAIRPERSON HILL: Okay. Ms. Griffin, can you

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1 hear me?

2 MS. GRIFFIN: Yes.

3 CHAIRPERSON HILL: Okay, great. Ms. Griffin, if
4 you could introduce yourself for the record. And then as a
5 member of the public, you'll be given three minutes to give
6 your testimony. And you can begin whenever you like.

7 MS. GRIFFIN: Okay. Thank you. I'm Karen
8 Griffin, I'm a neighbor. And I'm confused in terms of what I
9 just heard, but I was -- my concern is and has always been,
10 the qualifications for a RF-1 zone that does not allow for
11 apartment housing.

12 I made this presentation at the ANC Board meeting,
13 and it was supposed to be listed into the record and they
14 were supposed to make adjustments to specifically refer to
15 the units as condominiums. Condominiums and apartments are
16 different; apartment housing is different.

17 So that is my concern, I'm not -- I'm not seeing
18 that that is included in what I heard presented here this
19 morning. So I'm just concerned that the, if you're doing
20 special conditions, which is what this is, I thought that
21 there needed to have been an outreach to the entire
22 neighborhood to get support. And when they did meet, the
23 full neighborhood met, they were opposed to the term
24 apartment housing period, within any of the documents. So
25 that is my concern.

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1 CHAIRPERSON HILL: What's your address, Ms.
2 Griffin?

3 MS. GRIFFIN: I'm at 1421 Shepherd Street. And
4 also when you count the units, they are actually putting in
5 four units, including the ADU, so it's more than just the
6 three.

7 CHAIRPERSON HILL: Yes, Ms. Shepherd, they're just
8 putting in three units.

9 MS. GRIFFIN: So they're no longer putting in a
10 unit off of the alley?

11 CHAIRPERSON HILL: That's not a separate unit,
12 it's part of one of the units. And the definition, it's just
13 a definition, it being an apartment building.

14 MS. GRIFFIN: Yes, and it's in reference to the
15 zoning code, they use the reference that in RF-1 zone
16 apartment housing, that's the terminology they use, is not
17 permitted.

18 CHAIRPERSON HILL: Right. I'm saying they're here
19 for a conversion. And if it were a raze, meaning if they
20 were to tear down that first, the portion there of the
21 building, then they would be here under different relief.
22 But this is just a conversion to the three units.

23 MS. GRIFFIN: If they are putting a third unit in
24 terms of a two-story house, how can it not be a raze? I
25 mean, we've had several pop-ups on the block. In fact we had

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1 the ones when it was legal to do the three units, and we've
2 got the ones that do the two units. They've all been
3 condominiums, so they've all been within the regulations.

4 CHAIRPERSON HILL: Yes. Ms. Ferreira, just out of
5 curiosity, are they selling these?

6 MS. FERREIRA: Oh, pardon, I was on mute. Yes,
7 they are selling these. And I had a conversation with Ms.
8 Karen at the ANC hearing about this. The code definition of
9 a multi-unit building in terms of use is apartment house.
10 That is a term that comes from the use classification of the
11 building, not a term that we came up with and not how we are
12 describing the building in terms of what we call it, right.

13 An apartment to some people means rental
14 apartment, to others it's a generic term that could be both
15 rental apartment or a condominium. That's an ownership
16 issue, right. So what it is, is a multi-unit building. And
17 I made that clear to Ms. Karen that this is not intended to
18 mean rental apartments.

19 MS. GRIFFIN: My concern is at that, and during
20 our discussion, I was quoting the language in the BZ Zoning
21 Code. And it specifically says RF-1, homes in RF-1 zone are
22 not permitted to have apartment housing, period. That's the
23 language in the zoning book.

24 CHAIRPERSON HILL: All right, Ms. Griffin, Ms.
25 Griffin, what I'm trying to, what we're trying to clarify

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1 it's the definition within the zoning code. These are going
2 to be, you know, condominiums, I guess, that are going to be
3 sold, so it's just the way that the definitions are written.

4 And so these are going to be condominiums.

5 MS. GRIFFIN: Okay. That was the only thing that
6 then they agreed in that meeting that they would change the
7 terminology to condominiums. And that's why when I was
8 listening, I wasn't hearing that. So that's fine.

9 CHAIRPERSON HILL: Okay. I understand --

10 MS. GRIFFIN: As long as the Zoning Board
11 understands that each one will be individually sold, and that
12 an overseer is renting them out.

13 CHAIRPERSON HILL: What I'm trying to just
14 explain, Ms. -- go ahead Ms. John.

15 VICE CHAIRPERSON JOHN: So I don't think we can
16 compel the owner to sell these units. The code, the
17 regulations allow conversion to a three-unit apartment
18 building in the RF-1 zone, which typically only allows two
19 units. So the Applicant is seeking a conversion in this
20 case.

21 And the regulations don't stipulate that those
22 three units have to be rented, so that's not something the
23 BZA can mandate. Now frequently, these units end up being
24 condominiums because the developers want to recoup their
25 investment. But what you're asking is for the Board to

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1 mandate that these three units will be condominiums.

2 MS. GRIFFIN: I just want to clarify, it's not me
3 making that request, it's what's written in your regulations.

4 VICE CHAIRPERSON JOHN: Well, the regulations
5 don't say that. The regulations allow a conversion to a
6 three-unit apartment house.

7 MS. GRIFFIN: Well actually, it specifically says
8 apartment housing is not permitted in RF-1 zones, that's in,
9 that's what I read in the regulations.

10 VICE CHAIRPERSON JOHN: And what I'm explaining to
11 you, that's what I'm explaining to you. That there is an
12 exception that allows what's called a conversion from two
13 units to three units under U320.1, which is the regulation if
14 you would like to look at it. And to apply for that
15 conversion, the building has to be in existence for a certain
16 time.

17 So in this case, there's a single-family unit that
18 is being converted to a three-unit apartment house, because
19 over two units, it's an apartment. So if you would like
20 additional clarification, I suppose you can speak to the
21 architect again. But how the Board interprets the
22 regulations is what I've just explained to you.

23 MS. GRIFFIN: Then the neighbors have been
24 misrepresented through this entire process, and I was never
25 been actually included in the process outside. And I

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1 recognize that the, without special conditions, it's only the
2 adjoining homes. But with special conditions, I believe the
3 neighbors are supposed to be included in this. That's not
4 been done.

5 VICE CHAIRPERSON JOHN: Okay. Thank you.

6 MS. GRIFFIN: Right. Thank you.

7 CHAIRPERSON HILL: So Ms. Griffin, I know that --

8 MS. FERREIRA: I'm having issues with my laptop,
9 so if I get disconnected, I will reconnect, but just wanted
10 to make sure you know ahead of time.

11 CHAIRPERSON HILL: Okay. Thanks, Ms. Ferreira.

12 And, Ms. Griffin, just to again clarify, and thank
13 you, Ms. John. This is for a conversion to a three-unit
14 apartment house, meaning they could rent it if they wanted
15 to, their intent is to sell these as condominiums.

16 But as Vice Chair John indicates, it's not
17 something that the Board would dictate. And so I think
18 probably, Ms. Griffin, they have been clear as to what their
19 intent is, but it is not something that the Board would
20 dictate.

21 MS. GRIFFIN: Is it the Board's responsibility to
22 include the neighbors when there is a special condition
23 request on the table?

24 CHAIRPERSON HILL: Yes, and everyone was notified,
25 like all the 200 Footers were notified, the ANC was notified,

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1 everyone has been notified as to this Special Exception
2 that's being requested. They've also put a placard up in
3 front of the house to let everybody know.

4 MS. GRIFFIN: Not in terms of apartment housing.
5 I can only say that, that everyone on the block, they were in
6 the meeting, they were on a Zoom meeting, and everything was
7 referenced to condominiums. And I just, I don't understand
8 what I'm reading in your regulation that is different from
9 what you're saying, but anyway.

10 CHAIRPERSON HILL: Okay. Well then, maybe Ms.
11 Griffin, that's okay. If you want to go back and reach out
12 to the architect, maybe they can further clarify for you.

13 MS. GRIFFIN: She clarified at the ANC meeting.
14 In fact, they voted on the fact that they would be
15 condominiums and not apartments, at that ANC meeting. And
16 that should be in their records.

17 CHAIRPERSON HILL: Right. And I'm clarifying for
18 the record, that we are not able to dictate what they are or
19 aren't going to be. They intend on using them -- they intend
20 on selling them as condominiums. However, if they choose to
21 rent them as apartments they can, because they're here for a
22 special exception within the regulations to convert this from
23 a two-bedroom home to a three-bedroom apartment house. So I,
24 you know, what their intent is, is again, to sell these. But
25 we, the Board, can't dictate what they do with them.

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1 MS. GRIFFIN: So you cannot support the fact that
2 in your own zoning rules, I'm going to read here from your
3 zoning rules, I quoted it at that ANC meeting, it should be
4 in their records, that you have listed, and the language in
5 it, I don't have --

6 CHAIRPERSON HILL: All right, Ms. Griffin -- Ms.
7 Griffin?

8 MS. GRIFFIN: Yes?

9 CHAIRPERSON HILL: Ms. John was sending you to the
10 point in the regulations. Again, Ms. John, where did you say
11 it was?

12 VICE CHAIRPERSON JOHN: U320.2. And Ms. Griffin,
13 you are misreading the regulations.

14 MS. GRIFFIN: Okay. I'm only saying if there's no
15 apartment housing, I'm going to have to re-read it.

16 VICE CHAIRPERSON JOHN: Then just take it from me,
17 you are misreading the regulations. We've had this provision
18 before the Board numerous times. And basically, it means
19 what the Chairman has said to you and what I have said to
20 you.

21 Now because conditions change frequently, maybe
22 the developer has the intent to convert to condominiums, and
23 the economy doesn't allow the developer to do that, and they
24 have to end up renting them. The Board does not and cannot
25 mandate that they convert to apartments -- I'm sorry, to

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1 condominiums.

2 So I think, as the Chairman suggested, if you'd
3 like to follow up, maybe with the architect, you can maybe
4 talk to the Office of Zoning and get the contact information
5 from Ms. Ferreira, and -- but the Board has to move on at
6 this point.

7 MS. GRIFFIN: Okay. I can only say for the last
8 thing that when they met with us and the neighbors were all
9 together, when the neighbors stipulated to apartment, so
10 that's something that they have not had an opportunity to
11 discuss. So thank you.

12 CHAIRPERSON HILL: Right. And I'm just going to
13 repeat again, Ms. Griffin, because --

14 MEMBER BLAKE: Mr. Chair, I want to say one thing
15 to the, Ms. Griffin. The Board does not have jurisdiction
16 over the ownership structure of the building. We're talking
17 about the structure of the building, not the ownership
18 structure.

19 The condominium is the ownership structure, it's
20 not the structure of the building. The building is three
21 apartments, which could be a condominium or it could be a
22 rental unit by our regulations, the ownership structure is
23 not a factor in that.

24 CHAIRPERSON HILL: Okay. All right. The next
25 person I have is Mr., Ms. Waddle or Mr. Waddle, can you hear

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1 me?

2 MR. WADDLE: Mr. Waddle, yes, hey, how are you
3 doing.

4 CHAIRPERSON HILL: Okay, great. Mr. Waddle, if
5 you could introduce yourself for the record? And then,
6 you'll again, have three minutes to give your testimony and
7 you can begin whenever you like.

8 MR. WADDLE: Thank you very much. My name is
9 Tolsun Waddle. I am, along with my wife, own the structure
10 at 1429 Shepherd, which is the adjoining property to 1427.
11 I'd initially registered in opposition to this project
12 because at the time we, the owners of 1427, and my family
13 were at a standstill with respect to the proposed -- the
14 proposed development's infringement on our solar generation
15 array on top of 1429.

16 In the last several weeks we have reached a
17 settlement agreement on that point. And so with the, over
18 the Board's approval, I would like to withdraw my opposition
19 to the project.

20 CHAIRPERSON HILL: Okay. All right. Thank you,
21 Mr. Waddle.

22 MR. WADDLE: Thank you for your time and sorry, I
23 did not do the withdrawal earlier, it slipped my mind.

24 CHAIRPERSON HILL: That's all right, Mr. Waddle.
25 Thank you. All right.

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1 Does the Board have any further questions? Okay.

2 Ms. John, if you could please excuse the witnesses? Okay.

3 Ms. Ferreira, are you there? Well, I had Ms.
4 Ferreira, I think a moment, we might have lost her. Hope
5 she's coming in in a different way. Ms. Ferreira, can you
6 hear me? Ms. Ferreira, can you hear me? Yes, yes, great,
7 good.

8 MS. FERREIRA: Okay, good.

9 CHAIRPERSON HILL: Okay.

10 MS. FERREIRA: So sorry.

11 CHAIRPERSON HILL: No, that's okay -- that's okay.

12 So I just wanted to -- I don't see anything in these
13 conditions necessarily that would be things that the Board
14 would be putting in as conditions. I'm looking to my fellow
15 Board members. I mean, I think these are all things that now
16 the Applicant has agreed to with the ANC, and I guess, the
17 different various neighbors. But I don't really have a need
18 to implement any of these as conditions.

19 And I'm looking at my fellow Board members, if
20 anybody has any issues with that, please raise your hand.
21 Okay. All right, Ms. Ferreira, so you guys have agreed --
22 oh, sorry. Ms. John, did you have your hand up? You're on
23 mute, Ms. John.

24 VICE CHAIRPERSON JOHN: Maybe the Office of
25 Planning can help, but I don't remember if this is the

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1 regulation that has the solar study require -- the solar
2 requirement.

3 And if it is, then it would be proper to include
4 the condition of the solar -- the condition that discusses
5 the solar agreement. So there is no chimney, there is no
6 chimney raising in this -- in this project, right, Ms.
7 Ferreira?

8 MS. FERREIRA: I'm sorry. I can clarify that.
9 The agreement between the adjoining owners and the property
10 owner is in the case records. But just so that everyone is
11 aware, so all the conditions are already listed there. But,
12 yes, there is a chimney that will need to be raised, and
13 that's already been agreed to.

14 And there are also solar panels on both
15 properties, there is also a Solar Impact Agreement in place,
16 so all of those issues have been agreed -- discussed
17 extensively and agreed to in terms of mitigation. Only one
18 of the properties is actually impacted in terms of the solar
19 shading.

20 So that is why we requested postponement of the
21 hearing of this case several times in order for all of these
22 issues to be resolved and agreed to, and they have been.

23 VICE CHAIRPERSON JOHN: Okay. So the Solar
24 Agreement -- the chimney that will be raised is on the 1429
25 Shepherd Street house, right?

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1 MS. FERREIRA: 1425, the one closest to --

2 VICE CHAIRPERSON JOHN: Okay. So Mr. Chairman, I
3 would support including that condition as to 1425, because it
4 is more a zoning issue in terms of raising the chimney.

5 CHAIRPERSON HILL: Okay. So Number 2 in the ANC's
6 letter?

7 VICE CHAIRPERSON JOHN: Okay. Let me go back to
8 that.

9 CHAIRPERSON HILL: Okay.

10 VICE CHAIRPERSON JOHN: Could you, I can't get to
11 it, Mr. Chairman? Could you --

12 CHAIRPERSON HILL: Sure, it's in -- I'll read it
13 to you, but it's also, it's in Exhibit 41. It's Exhibit 41,
14 Condition 2, which says the owner of 1427 Shepherd Street,
15 Northwest, agrees to pay for a contractor to be selected at
16 fair market price, or have the option to use the project
17 licensed contractor, if they wish, to and managed by the
18 owner of 1425 Shepherd Street, Northwest, to extend the
19 chimney of 1425 Shepherd Street, Northwest immediately after
20 the construction of the third floor at 1427 Shepherd Street,
21 Northwest in order to maintain breathability of the chimney,
22 including the full function of the dryer vents and two
23 bathroom vents.

24 VICE CHAIRPERSON JOHN: I think that's it. I'm
25 looking at it now.

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1 CHAIRPERSON HILL: Are you comfortable with that
2 language, Vice Chair John?

3 VICE CHAIRPERSON JOHN: It's just a -- or the, the
4 OZLD can put in the correct language. But I'm fine with
5 Condition No. 2.

6 CHAIRPERSON HILL: Okay. And, Ms. Ferreira, your
7 client is obviously fine with Condition No. 2, since they
8 have agreed to all the conditions?

9 MS. FERREIRA: Correct.

10 CHAIRPERSON HILL: Okay. All right. Anything
11 else for the Applicant or anyone? All right. Ms. Ferreira,
12 I'm going to close the hearing of the record. Thank you,
13 have a nice day.

14 MS. FERREIRA: Thank you.

15 CHAIRPERSON HILL: Okay. I thought this was a
16 relatively straightforward application actually, in terms of
17 the conversion to three units. I mean, we've seen similar
18 projects that have asked for a lot more relief. I would
19 agree with the analysis the Office of Planning has put
20 forward in terms of how they are meeting the regulations.

21 I would also agree with what Vice Chair John has
22 suggested, including the language in, or something that the
23 OZLD can put forth in the order to the extent of a condition
24 for No. 2, within the ANC's letter to us regarding the
25 chimney.

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1 And that would be, and then I'm going to be voting
2 in favor of the application.

3 Mr. Smith, anything you would like to add?

4 MEMBER SMITH: I have nothing to add, Chairman,
5 you know. I do believe that it's a fairly straightforward
6 case, and I believe they've met the burden of proof of the
7 grant of Special Exception. And I do agree with what Vice
8 Chair John has stated regarding this particular case, as you
9 just reiterated. So I will be voting in support.

10 CHAIRPERSON HILL: Thank you. Mr. Blake?

11 MEMBER BLAKE: Yes, the burden of proof has been
12 met and I would be in support of the Application.

13 CHAIRPERSON HILL: Thank you. Commissioner
14 Stidham?

15 COMMISSIONER STIDHAM: I also agree they've met
16 the burden of proof, and with Board Member John's additional
17 relief to the chimney, I am prepared to support it as well.

18 CHAIRPERSON HILL: Thank you. Vice Chair John?

19 VICE CHAIRPERSON JOHN: I am also in support of
20 the application and agree with the comments so far.

21 CHAIRPERSON HILL: Thank you. All right. I'm
22 going to make a motion to approve Application No. 20976 as
23 captioned and read by the Secretary, including asking OZLD to
24 help implement Condition No. 2 in the ANC's letter concerning
25 the raise of the -- I'm sorry, the chimney. And I ask for a

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1 second, Vice Chair John?

2 VICE CHAIRPERSON JOHN: Second.

3 CHAIRPERSON HILL: The motion made and seconded,
4 Madam Secretary, if you take a roll call, please?

5 MS. MEHLERT: Please respond to the Chair's motion
6 to approve the Application with Condition No. 2 from the ANC
7 Report in Exhibit Number 41. Chairman Hill?

8 CHAIRPERSON HILL: Yes.

9 MS. MEHLERT: Vice Chair John?

10 VICE CHAIRPERSON JOHN: Yes.

11 MS. MEHLERT: Board Member Smith?

12 MEMBER SMITH: Yes.

13 MS. MEHLERT: Board Member Blake?

14 MEMBER BLAKE: Yes.

15 MS. MEHLERT: Commissioner Stidham?

16 COMMISSIONER STIDHAM: Yes.

17 MS. MEHLERT: Passed, the vote is 5 to zero to
18 zero to approve Application 20976 with the condition on the
19 motion made by Chairman Hill and seconded by Vice Chair John.

20 CHAIRPERSON HILL: Thank you. I just have to
21 print off the next case, could you all just give me one
22 minute?

23 Okay. Thank you. If you could call our next
24 case, Ms. Mehlert?

25 MS. MEHLERT: Yes. Next is Application No. 21058

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1 of Rupsha 2011, LLC. This is a Self-Certified Application
2 pursuant to Subtitle X, Section 901.2 for a Special Exception
3 under Subtitle U, Section 421 to allow a new residential
4 development.

5 The project is to construct a 39-unit apartment
6 house in a new three-story detached building with cellar.
7 It's located in the RA-1 zone at 2424 Pomeroy Road,
8 Southeast, Square 5873, Lots 856, 857, 104, 903, and 932.

9 The public hearing for this case was postponed
10 from March 20th at the ANC's request, and it has not been
11 heard. As a preliminary matter, there is a request from
12 Ronald Montgomery to defer this hearing until proper notice
13 has been given to all owners within 200 feet of the property.

14 And then just this morning, a letter from ANC was submitted
15 to the recorded in Exhibit 47.

16 CHAIRPERSON HILL: Okay. Give me a moment,
17 please.

18 MS. MEHLERT: Also a representative from DDOT is
19 available on the call as well, if you have questions for
20 them.

21 CHAIRPERSON HILL: Okay, great. It's just going
22 to take me another moment, please. Okay. In terms of the
23 postponement, I mean, Ms. Mehlert, we did mail out everything
24 to the 200 Footers, right? I mean, we did all of the notice
25 requirements that we're required to do by law, correct?

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1 MS. MEHLERT: So what happened in this case is
2 there's multiple lots involved, the 200-foot ownership list
3 that was submitted by the Applicant was only on one of those
4 lots, so it did miss some owners that are within 200 feet of
5 some of the outer lots. So there are some neighbors who did
6 not receive notice.

7 CHAIRPERSON HILL: Okay. Let me get the Applicant
8 to introduce themselves for the record, please?

9 MR. SECK: Good afternoon -- good morning,
10 Chairman Hill, Oumar Seck representing Rupsha 2011, LLC.

11 CHAIRPERSON HILL: Okay. Mr. Seck, so you guys,
12 according to the secretary, did you not mail out to the
13 correct list of all the 200 Footers or was there 200 Footers
14 that you missed?

15 MR. SECK: As the Secretary explained, but I have
16 my architect here, Michael Blake, who has more in-depth
17 explanation of that. But because of the composition of this
18 property, when we requested it, the list that was sent was
19 mailed out. But then, when you combine it into one, then I
20 guess, you'd add more residents. But if you can let Michael
21 Blake introduce himself and elaborate on that, that would be
22 great.

23 CHAIRPERSON HILL: Okay. Mr. Blake, could you
24 please introduce yourself for the record? You're on mute,
25 Mr. -- all right. I got you.

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1 MR. BLAKE: Michael --

2 CHAIRPERSON HILL: We can't hear you, Mr. Blake.
3 You're kind of choppy like.

4 MR. BLAKE: And --

5 CHAIRPERSON HILL: Okay. Now I can hear you
6 better -- now I can hear you better.

7 MR. BLAKE: Okay. My name is Michael Blake, I'm
8 with bestudio architects. What has been described, that's
9 what happened. So this is a very large lot with several kind
10 of irregular lots that make up what will eventually become
11 one record lot. And so the list that was submitted only came
12 from basically the center lot. And so the lots around the
13 perimeter of the site, were the 200 feet did not come from
14 the outer -- outer lots, just the center one.

15 CHAIRPERSON HILL: Okay. So do you have now a
16 correct list of all the 200 Footers, given all the lots that
17 you are trying to work with?

18 MR. BLAKE: Not yet. This has been requested, but
19 we haven't -- it hasn't come through. We were just notified
20 of this last -- last week by an email from the -- from the
21 Office of Zoning. And the information has been requested but
22 hasn't been received yet.

23 CHAIRPERSON HILL: When will you get that list?

24 MR. BLAKE: I don't know how long it takes. I
25 don't think it takes a while, I am hoping that by the end of

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1 this week, we will have the new, the updated list. And then
2 it will be a matter of getting it in the mail -- the Office
3 of Zoning Permits.

4 CHAIRPERSON HILL: Okay. All right. So to my
5 fellow Board members, I mean, this is what I propose, since
6 we have DDOT here and since we have everybody here, I would
7 say we go ahead and hear the case.

8 And then we'll let the notification go out to any
9 200 Footers that might have been missed. I mean, they did --
10 they did present to the ANC, they have had community input.

11 MR. JOHNSON: Chairman Hill. I am the Chair --
12 they did not present.

13 CHAIRPERSON HILL: Yes.

14 MR. JOHNSON: -- not present as of yet. They are
15 presenting on May 21st, that's on a Tuesday to the general
16 public and to address the concerns that have been raised by
17 the constituents. But they have yet, as of yet, they have
18 not presented as of yet.

19 CHAIRPERSON HILL: Okay. Great. Thanks
20 Commissioner, I'm sorry, I was just pulling up your letter.
21 Could you introduce yourself for the record, please?

22 MR. JOHNSON: Sure. My name is Joseph Johnson.
23 I'm the Chair of 8B and the Commissioner of 8B-05.

24 CHAIRPERSON HILL: Got it. And is this in your
25 SMD, Commissioner, this project?

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1 MR. JOHNSON: It is not in my SMD, the -- it is
2 not in my SMD, the single member district commissioner, the
3 last time we had spoke, she said that she was in support of
4 affordable housing.

5 But I don't think that she had all the
6 information, because she was thinking that this was a
7 project, 100 percent -- affordable housing, the information
8 and the developer is coming to the HUP meeting, it's supposed
9 to be voted on this month and discussed this month.

10 CHAIRPERSON HILL: Okay. All right.
11 Commissioner, well again, since we have everybody here --
12 well, anyway. So thank you, Commissioner.

13 What I would think is that, what was I going to
14 say, we should go ahead and have the hearing because we have
15 everybody here. And then we would wait to make any decision
16 until we had a chance for the ANC to hear the case. And then
17 we can get any feedback from the ANC as well as then the
18 correct list for all the 200 Footers from all of the
19 different lots have a chance to go out and work on it in that
20 regard.

21 I don't know what my fellow Board members have an
22 opinion on. Does anybody have an opinion? Or do you think
23 we should just wait until all of this gets clarified and then
24 come back? Is DDOT here, and if so, could they introduce
25 themselves?

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1 MR. JUTTE: Hey, there. I'm Preston Jutte, I'm
2 the Ward 7 and 8 Planner for DDOT.

3 CHAIRPERSON HILL: Oh, fine. So could you
4 pronounce your last name for me? I'm sorry.

5 MR. JUTTE: It's Preston Jutte.

6 CHAIRPERSON HILL: Oh, Jutte. All right. Mr.
7 Jutte, again like DDOT has, they're unable to make a
8 recommendation. Is that still the case?

9 MR. JUTTE: Yes.

10 CHAIRPERSON HILL: Okay. Well now it's getting
11 more confusing for me, meaning, now I think we should even
12 just wait until the Applicant has had a chance maybe to kind
13 of work with DDOT to get some of these issues more clear so
14 that the Board will have at least a clear understanding of
15 what DDOT's recommendation is.

16 And since this is something that appears to be
17 affecting issues concerning DDOT, I would like to hear the
18 report, I guess, in full. Commissioner Stidham, what do you
19 think about that?

20 COMMISSIONER STIDHAM: I agree with you. I think
21 we should hold off on hearing the case until the ANC has
22 heard the case, the extra 200 Footers have been notified, and
23 DDOT has prepared their report.

24 I think there's a lot hanging out there that
25 having their report, having a hearing today would only give

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1 us part of the information we are seeking.

2 CHAIRPERSON HILL: Okay. I agree.

3 MR. JUTTE: I just want to clarify, we do have two
4 reports on the record, we just don't have a final
5 recommendation as to the relief itself. And there's an
6 ongoing TOPS application in TOPS regarding a conceptual curb
7 cut approval.

8 CHAIRPERSON HILL: When do you think, Mr. Jutte,
9 DDOT would be able to give us a recommendation?

10 MR. JUTTE: After they're clear of the conceptual
11 curb cut approval with the public, the space permitting
12 process, that's our supplemental report. That's sort of
13 where we're headed, where we'd like this to go through the
14 conceptual curb cut approval process.

15 CHAIRPERSON HILL: And how long do you think that
16 will take?

17 I see you, Mr. Blake.

18 How long do you think that will take, Mr. Jutte?

19 MR. JUTTE: I'd have to defer to the Applicant, it
20 depends on the design of the curb cut, working through the
21 various reviewers and getting somewhere that's ready to go
22 before the Public Space Committee. What's in TOPS now, it's
23 not ready yet.

24 CHAIRPERSON HILL: Okay. Mr. Blake, you had your
25 hand up?

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1 MEMBER BLAKE: DDOT, would that design require a
2 redesign of the entire project? Because I think the issue
3 that also outstands, is the issue with the shared curb cut
4 with Pomeroy Gardens, which is not included in the 200
5 Footers for this reason. So I'm wondering sir, does that
6 include that or is it a different cut?

7 I understand there was a heritage tree issue on
8 the other side, which would have potentially required to
9 reconfigure lots, and addressing a house. Does that require
10 a redesign, I guess, is my question?

11 MR. JUTTE: So on our report, which is in, I think
12 it's Exhibit 42 on the record, gets into some of the nuances
13 of that. I can't say yes or no, because we don't know the
14 final design.

15 Depending on the results of the conceptual curb
16 cut approval, depending on how the Public Space Committee
17 views the ultimate design, it could, it could not, it's
18 difficult to say without getting to a design that the
19 commenters can either support or not and get through the
20 public space permitting process.

21 MEMBER BLAKE: Okay. Mr. Chair, well, based on
22 that comment, to me it seems like they are asking to file a
23 development plan that is not actually feasible as stipulated,
24 although it may only just require some time of parking, at
25 least. It does seem like it's not, like we are a little bit

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1 ahead of it.

2 Although we should hear the entire question, just
3 seem like there is a sticking point here, which you have a
4 development plan that's not clear and it's feasible as
5 situated, and what might change.

6 So I would be inclined to agree with Commissioner
7 Stidham to hold off until we get a little bit more, some of
8 these issues resolved, including the 200 Footer input,
9 especially with regard to Pomeroy Gardens next door.

10 CHAIRPERSON HILL: Okay. Mr. Seck, can you hear
11 me? Okay. So what I would suggest is, and this is what, Mr.
12 Seck, I don't know where you are in this process. I mean,
13 you were to present something to the ANC, which is actually
14 what you are going to build. And so if that changes in some
15 regard after speaking with DDOT, it sounds this is a couple
16 of steps away from where we would actually hear it.

17 And so I, you know, unfortunately for you guys, I
18 mean, we're so backed up, that, you know, the next time that
19 I think we'd even be able to do this now is September 11th,
20 because that's when I think you guys would have enough time
21 to clear up everything you might need to clear up.

22 And get, you know I mean, because you might be
23 scheduling this the wrong way, right. Like first of all, you
24 need to get all the 200 Footers notified, right. And so
25 that's something that I guess you can do right away. Then,

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1 whether or not your presenting the correct information to the
2 ANC, that would be after, I guess, you talk to DDOT.

3 So I'm going to let you kind of figure out what
4 you think you need to do in order to get this before us in a
5 way that as you know, because Mr. Seck, this isn't your first
6 time here, that has been through the process, has been
7 through the ANC, has been through the Office of Planning,
8 with the plans that we're actually taking a look at, because
9 we have to approve the plans that we get.

10 Otherwise, you'd be back before us again if you
11 had to change the plans. So I'm going to suggest you come
12 back on September 7th, I'm sorry, September 11th. And then,
13 hopefully, you're all organized and squared away with us by
14 that time. Madam Secretary, do you have -- September 11th,
15 what do we have already?

16 MS. MEHLERT: It's kind of a full schedule
17 already. We haven't necessarily noticed some of the cases
18 yet, but we continue to have new cases that are coming in
19 that we need to put on hearing dates as well. So there's
20 also an appeal or two scheduled for that day. We anticipate
21 one of them being removed at least, but it's going to be a
22 busy day.

23 CHAIRPERSON HILL: How many other cases do you
24 already have scheduled on that day do you think? If one of
25 these appeals drops off, then we would still have an appeal

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1 and how many cases?

2 MS. MEHLERT: Then there would be an appeal plus
3 four, four or five hearing cases.

4 CHAIRPERSON HILL: Okay. And then what again, was
5 the next one, it was September?

6 MS. MEHLERT: The 18th.

7 CHAIRPERSON HILL: The 18th. And what again, do
8 you have on September 18th?

9 MS. MEHLERT: We haven't put cases on there, but
10 there is at least five to eight cases that are ready to be
11 scheduled. So, I mean, we can -- we can move things around,
12 there's flexibility, but --

13 CHAIRPERSON HILL: Okay. Let's go ahead and put
14 this on September 18th.

15 MS. MEHLERT: Okay.

16 CHAIRPERSON HILL: Okay. Mr. Seck, I will let you
17 coordinate with the Office of Zoning, and, you know, making
18 sure that we get everything we need in order to do this by
19 9/18.

20 MR. SECK: Okay.

21 CHAIRPERSON HILL: Okay?

22 MR. SECK: Yes.

23 CHAIRPERSON HILL: All right. Does any of my
24 Board members have any questions?

25 Okay. Then we'll see you on 9/18, Mr. Seck.

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1 MR. SECK: All right. Thank you, thank you
2 everybody.

3 CHAIRPERSON HILL: Thank you. Okay. Let's see,
4 all right. You guys, I'm sorry, can we just take a ten-
5 minute break real quick? I'll be right back.

6 VICE CHAIRPERSON JOHN: That would be great.

7 CHAIRPERSON HILL: Thank you.

8 (Whereupon, the above-entitled matter went off the
9 record at 12:07 p.m. and resumed at 12:19 p.m.)

10 CHAIRPERSON HILL: All right, Ms. Mehlert, do you
11 want to call our next case?

12 MS. MEHLERT: Sure, the next case is
13 Application No. 20631-A of 723 Morton Street, LLC. This is a
14 Self-Certified Application pursuant to Subtitle Y, Section
15 705 for a time extension to extend the validity of the
16 Board's order in Application Number 20631, which was final on
17 April 7th, 2022.

18 And pursuant to Subtitle Y, Section 704 for a
19 Modification of Consequence to approve an Area Variance
20 pursuant to Subtitle X, Section 1002, from the lot dimension
21 requirements of Subtitle E, Section 202.1. This project is
22 to subdivide a record lot into two new adjoining record lots
23 and construct two new flats, including one IZ unit, in the
24 RF-1 zone. The project is located at 723 Morton Street,
25 Northwest, Square 2894, Lot 91.

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1 CHAIRPERSON HILL: Okay. If the Applicant can
2 hear me, if they could please introduce themselves for the
3 record?

4 MS. WILSON: I'm from Sullivan and Barros on
5 behalf of the Applicant in this case. I'm here with Mo
6 Fridy, who is the owner and architect for the project.

7 CHAIRPERSON HILL: Okay. Great. Ms. Wilson, I
8 guess, do you want to go ahead and walk us through your
9 client's application. There seems to be a lot of things we
10 are going to be talking about. And, you know, let us know
11 why you believe that they are meeting the criteria for us to
12 grant the relief requested. And I will let you begin
13 whenever you like.

14 MS. WILSON: Okay. Thank you so much. Mr. Young,
15 could you please pull up the presentation? Thank you. Next
16 slide, please.

17 In BZA Case No. 20631, the Applicant obtained
18 relief for a subdivision via Special Exception to create two
19 16-foot wide lots. As some of you may recall from the case,
20 the subject property consists of one single record lot which
21 is 31 feet and four and three quarter inches. So it's about
22 seven inches shy of being able to create those two 16-foot
23 wide record lots under the IZ Special Exception for
24 subdivisions in the RF-1 zone.

25 In the original case, we first requested this

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1 exact same variance relief. Before we had the final hearing,
2 the Applicant and adjacent neighbor signed a contract which
3 would grant an additional piece of land from the neighbor.
4 With this strip of land, the Applicant then had enough lot
5 width for the subdivision for two 16-foot wide lots and was
6 able to seek the aforementioned Special Exception.

7 The order became effective on April 7, 2022, after
8 which the Applicant actively pursued the subdivision.
9 Initially the neighbor was cooperative in the process and the
10 subdivision was approved. However, a series of unexpected
11 issues arose and due to those issues, the neighbor is now
12 refusing to continue the process and the neighbor's attorney
13 has confirmed that he no longer wants to proceed with the
14 sale of the land.

15 So accordingly, the Applicant is returning to the
16 Board to seek the Area Variance as it is seven inches shy of
17 being able to subdivide the lots and pursue the project. The
18 project is effectively already approved by the Board since
19 the building design has not changed and the updated plans are
20 nearly identical, except for the seven inches.

21 So the request is for an Area Variance to
22 subdivide, have one lot be shy of the 16 feet at 15 feet, 4
23 3/4 inches. And then we are also seeking a time extension
24 for the original order and relief as this does not replace
25 the need for the original relief, it's in addition to.

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1 The ANC has supported this project from the
2 beginning, and continues to support this project as this lot
3 has now been vacant for many, many years. Next slide,
4 please.

5 The property is unique due to size, location, and
6 configuration, as well as the history, both by previous
7 owners, and then the most recent history. Next slide,
8 please. In terms of the lot, it measures 31 feet and 4 and
9 3/4 inches in width and has a land area of 4,475 square feet.
10 So per the 900 square foot rule, if we had an existing
11 building on the lot, it would be permitted to be converted to
12 four units.

13 However, these lots are extremely deep relative to
14 the lot width. So it's unimproved. There are no properties
15 of this size on the block and square that are unimproved
16 except for some smaller record lots across the street, which
17 are used for parking access for the adjacent properties.

18 This project could be achieved there by right, so
19 this property is unique even compared to those properties.
20 Any properties in the area of this width and size are
21 improved with multiple units already. So it is a unique lot
22 in this area, and because of that fact, it's the only
23 unimproved lot of this size.

24 And coupled with its history, which I'll discuss
25 on the next few slides, it faces specific issues in

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1 developing this lot that are not faced by other lots in the
2 area. Next slide, please.

3 This block is a unique block with non-conforming
4 lot sizes. Some of the lot widths even go down to 12 feet in
5 width. This property was originally split into two lots
6 measuring 15.7 feet in width. It has a unique history
7 whereby previous owner's actions have made it so this lot can
8 be -- cannot be developed in the same way as all other lots
9 in the area this size.

10 For decades these lots were configured as two
11 separate lots with two separate buildings. In 2002, the lots
12 were combined into the existing record lot. In 2013, a
13 previous owner illegally constructed an eight-unit apartment
14 building on the property, despite only having a foundation
15 permit. It's unclear whether the existing buildings were
16 combined and then converted, or whether the original
17 buildings were razed and a new building was constructed.

18 But either way, a subsequent owner attempted to
19 bring the illegally constructed building into compliance, but
20 was eventually required to raze the building, leading to the
21 property being in a unique situation, unlike other properties
22 in the area, and that's the loss the existing buildings and
23 no longer had those two tax lots.

24 Without either of these events, this lot would not
25 face the issues which create the unique practical

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1 difficulties in developing it. For example, if there is an
2 existing building on the lot, it could have been converted to
3 four units with one IZ via Special Exception, or they could
4 have been sold as individual tax lots and requested
5 conversion to record lots using the existing tax lot
6 boundaries.

7 And while that would have been an Area Variance,
8 it's routinely granted because it's not possible to make any
9 improvements on existing buildings without the relief. Or
10 there could have been some internal reconfiguration of the
11 space to get two units on each of the lots. And so all of
12 these options remain in effect for other properties in the
13 area of similar size and original configuration. However
14 they were lost for this lot due to the actions of past
15 owners. Next slide, please.

16 So four years ago, I'm sorry, two years ago during
17 the first case, these conditions still existed. The
18 Applicant, in an attempt to address the width, pursued
19 purchasing a small strip of land through the neighbor. The
20 Applicant and neighbor signed a contract for the sale of land
21 on February 28, 2022, and the Application was updated from an
22 Area Variance to a Special Exception.

23 On September -- on April 2022, the order became
24 effective, and the Applicant started the subdivision process
25 immediately. The neighbor signed and notarized the plats in

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1 September 2022. Permits for development, which included that
2 strip of land were submitted in December 2022. So while the
3 permits were being processed and reviewed, the subdivision
4 was approved and recorded in February of 2023.

5 But then there was an issue with the recordation
6 as the subject lot and neighbor's property were co-mingled,
7 the ownership of it. OTR initially indicated that a
8 confirmatory deed would be sufficient to address the issue.
9 The Applicant continued with the permitting process given
10 these indications, the first permit was issued on August 17,
11 2023.

12 The neighbor signed the confirmatory deed in
13 August 2023, but then it was refused by OTR. And then at
14 that point, the neighbor was no longer responding. So
15 eventually OTR cancelled the approved subdivision and both
16 permits had been issued at this point. DOB then notified the
17 Applicant that since the subdivision was cancelled, the
18 permits were no longer valid.

19 And this is all certainly interesting in terms of
20 what has gone on since, and informative in terms of the
21 timeline, that the Applicant did have two permits based on
22 the subdivision and Special Exception approval.

23 But what this comes down to is demonstrating what
24 a difficulty it has been to strictly comply with the zoning
25 regulations by obtaining land from an adjacent neighbor. The

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1 other conditions and history still exist, and are unique, of
2 course. And then this recent history has exacerbated the
3 practical difficulties in developing this lot as a matter or
4 right. Next slide, please.

5 This just shows the difference between what was
6 approved and what is requested. It's not really perceptible,
7 it's a difference in width on the left building here in 7 and
8 1/4 inches. Next slide, please.

9 In terms of variance tasks, the degree of relief
10 is important here. The Applicant is permitted to provide a
11 16-foot wide lot via Special Exception approval and the
12 referred lot is 15 feet and 4 3/4 inches shy -- sorry, 4 3/4
13 inches which is 7 inches shy of being able to request the
14 Special Exception relief for the proposed lot width.

15 And the Court of Appeals considers the degree of
16 relief a factor when determining whether the Applicant meets
17 the variance test. In Washington Canoe Club, the court
18 explained that the relevant factors in considering a request
19 for variance relief include the severity of the request for
20 relief.

21 In considering whether to grant or deny a
22 variance, various factors are relevant, including the weight
23 of the burden of strict compliance, the severity of the
24 variances requested, and the effect that the proposed
25 variances would have on the overall zone plan. Accordingly,

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1 the degree of relief is the relevant factor in considering
2 this variance request. Next slide, please.

3 So I mentioned some of this already, but no other
4 lots face these exact circumstances, even if we leave out the
5 most recent running history, the two buildings were razed due
6 to the actions of previous owners. And this is demonstrating
7 the fact that there are no other lots in the area that face
8 this set of circumstances.

9 There are a few other properties in the area that
10 have a width in that 31-foot range, but they are all already
11 improved with multiple dwelling units or they have the
12 ability to convert because of the land area. With the unique
13 history of the property, the properties would already be
14 improved with buildings which would provide a much better
15 range of development options.

16 Even during the original application, the
17 practical difficulties of developing only two units on such a
18 large lot were present. It is unnecessarily burdensome to
19 design a two-unit project that could balance providing market
20 appropriate unit types and sizes on such a large piece of
21 property in this area for the appropriate price.

22 Clearly it had also been unnecessarily burdensome
23 for others as well, as the property had been vacant for so
24 long. The applicant even attempted to avoid this variance
25 relief for the project by purchasing that land. And the

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1 outcome has clearly created additional practical
2 difficulties.

3 In terms of balancing unit sizes, lot size, and
4 market in this area, the largest these units should be for
5 this market is about 2,000 square feet, and even that is a
6 bit large for the area, as the average condo size is
7 approximately 1,000 square feet.

8 Units larger than that would be out of character
9 with the neighbor, so continuing a project in the same
10 configuration even in 2022 or 2021 was risky. There aren't
11 any comps in the area for such large units, so that was not
12 an option two years ago.

13 And then having just two units at the size that
14 are being proposed now, which is around 2,000 feet, versus
15 the four units at 2,000 feet would have been risky, I'm
16 sorry, 2,000 square feet would have been risky, because then
17 they would have needed to sell for much higher prices than
18 the comps in the area.

19 And for the cost of the project versus the
20 outcome, never made sense for two units, and that was in 2021
21 and 2022. Even at that point, financing would have been
22 difficult and the project would have been risky. Next slide,
23 please.

24 And so again, the long-term vacancy, still for
25 that issue two years ago. And then in the current real

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1 estate climate, things are worse, and the options are even
2 more limited. The simplest option in terms of design would
3 be to keep the existing design and permit documents and cut
4 the project down to two units.

5 But to cut the project down to two units and keep
6 the design, those units would be about 4,000 square feet.
7 And projects like that are staying on the market upwards of
8 nine months and selling for a lot less than they were two
9 years ago.

10 The alternative is to start over completely with
11 new plans and go through the entire process again, which
12 would devastate the project since two smaller units would
13 never sell for what it would take to break even at this
14 point. It was difficult two years ago to make those numbers
15 work, but now it would not be possible, and the lot would
16 continue to sit vacant.

17 The degree of relief is approximately 4 percent,
18 as the requested lot width is 96 percent of the required lot
19 width for IZ subdivisions in this zone, which has already
20 been approved by the Board.

21 And the Board may weigh the degree of relief
22 against the weight of the burden of strict compliance. Now
23 after going through full permitting for this project without
24 the relief, it goes from difficult to catastrophic. Market
25 conditions have changed and attempting to configure this

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1 buyer's lot for two units, does not make any economic sense.

2 And I understand that some of this information and
3 explanation with respect to the sizes and the market units
4 was not mentioned in as much detail on the record. We did
5 receive OP's report Friday, and thought that we could expand
6 on the difficulty in this presentation, of course, and get
7 more information on the record related to that. Next slide,
8 please.

9 So relief can be granted without substantial
10 detriment to the public good and without impairing the
11 intent, purpose, and integrity of the zone plan. The
12 preferred use of each lot, which is two units on each lot, is
13 permitted as a matter of right, and the proposed project
14 overall will improve the existing condition on the property
15 as it's currently unimproved.

16 The property is unique and that is the only
17 remaining property of this size that is unimproved, and the
18 only property that is unused and vacant. But for the actions
19 of previous owners who razed the existing buildings, the lots
20 would already be configured as proposed by the Applicant.

21 As the lot has 4,175 square feet, four units would
22 be permitted via Special Exception, one of which would be an
23 IZ unit, like we are proposing here. The original
24 configuration of the property matched this pattern of
25 substandard lot widths on the block.

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1 The Applicant attempted to comply with the zoning
2 regulations by purchasing land and that is no longer an
3 option. The site has been vacant for years. And the
4 proposal is to provide four high quality residential dwelling
5 units, one of which will be an IZ unit, as opposed to two
6 large expensive units or a project that results in a
7 catastrophic loss and would not be pursued.

8 Not only is the project restoring the original
9 building and lot configuration, it is also contributing to
10 resolving the affordable housing crisis. The lot sizes are
11 consistent with many lots in the area, as the area is
12 characterized by a number of long narrow lots for residential
13 use and generally wider lots for multi-families. Next slide,
14 please.

15 I would also like to touch on some of things
16 mentioned in the OP reports. We haven't had a chance to talk
17 to OP about its reports, I do think that would be helpful.
18 I'm a bit surprised there's no acknowledgement, at least that
19 the lot is unique, based on the zoning history or the fact
20 that it's the only unimproved lot on the size of the square.

21 I think it would be helpful for us to talk to OP more about
22 that. Next slide, please.

23 And so for Prong 2, it seems like the report may
24 be comingling the standards for approval, because it says we
25 can make reasonable use of the property. And so this isn't a

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1 use request, the use is permitted by right. And the number
2 of units on each lot is appropriate based on the size of the
3 lot.

4 We're talking about a difference in seven inches
5 for lot width on a block with much smaller lot widths than
6 you might typically see in an RF-1 zone, which is often
7 unique in and of itself. Maybe this can read as a use
8 variance, since we were talking about number of units. But
9 again, the number of units is permitted by right. Without
10 the relief, the Applicant would be limited to one large
11 record lot.

12 And so, also there was a comment in the report
13 that we took a risk in proceeding with what was approved, and
14 that isn't unique. And so I get the sense there might be a
15 self-imposed hardship argument from OP, but I just want to
16 mention that does not apply to Area Variances. Next slide,
17 please.

18 And for Prong 3, OP agrees there will be no
19 substantial detriment to the public good, and notes that the
20 additional seven inches would be inconsistent with the intent
21 of the zone plan.

22 And so the Court of Appeals allows the Board to
23 balance the severity of the relief requested, in this case
24 the seven inches, and the burden of strict compliance which
25 is vacancy versus four units, with Prong 3. And on balance,

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1 four units of new housing, including an IZ unit, compared to
2 a vacant lot far outweigh the imperceptible difference
3 between a lot that is 16 feet and a lot that is 15 feet and 4
4 3/4 inches.

5 I will also add that this is an RF-1 zone in a row
6 dwelling zone, which contemplates smaller lots. And so the
7 use they are proposing is consistent with the zoning
8 regulations and the lot sizes are consistent with the block.

9 And the specific circumstances are entirely unique to this
10 lot. Mr. Fridy has tried to avoid this variance relief, and
11 it's resulted in an additional practical difficulty.

12 So while I understand that there is perhaps a
13 policy from OP related to granting relief for subdivisions
14 like this, I don't think this is the type of case that
15 another BZA applicant could use to site for support for its
16 subdivision given everything that's happened on this lot and
17 the small degree of relief.

18 So with that, I will turn it over to Mr. Fridy,
19 who is the owner and architect for some additional context.
20 And I also know Commissioner Wray is here, and he has a
21 longer history of these lots and could provide additional
22 context. And we also have planned at the end, if there are
23 any specific questions about the project.

24 Mo, I will turn to you, if you have anything to
25 add to that? Mr. Fridy, can you hear me?

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1 MR. FRIDY: I'm sorry, I was on mute. Can you
2 hear me now?

3 CHAIRPERSON HILL: Yes. Could you introduce
4 yourself for the record, please?

5 MR. FRIDY: Yes, yes. Good afternoon. My name is
6 Mo Fridy, I'm the architect as well as the owner and
7 developer for this lot. I'm actually also the long-time D.C.
8 resident and resident of that neighborhood and that ANC in
9 particular. I've lived there for almost 15 years. I have
10 also designed and built numerous projects around -- around
11 the neighborhood.

12 So I want to start by saying that this is by far
13 probably one of the worst projects that I have been involved
14 in in my career, 20-year career. And if this variance is not
15 really approved, because of this six, seven inches, we are on
16 a course to lose \$400,000, \$500,000 on this project, which is
17 a huge sum of money for a company our size.

18 I do want to explain a little bit, you know,
19 forgive me if I'm going to repeat what Alex said. But I do
20 want to explain a little bit, the saga that happened with OTR
21 and a new subdivision. I want to emphasize that we tried our
22 best not to ask for a variance, but eventually we failed.

23 We negotiated with the owner next door, next door
24 neighbor, and we were able to secure his approval on buying
25 the six-inch or seven-inch strip of land. We actually paid

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1 him five times the fair market value of that property. We
2 completed all of our drawings, all of our engineerings, and
3 all of our permits. And we were gearing up for construction
4 when OTR and DOB came back and said there was an issue with
5 the subdivision.

6 Somewhere along the line, a mistake happened and
7 the subdivision was recorded wrong. So we -- they recorded
8 us as tenants-in-common, which means that the next door
9 neighbor became a part owner of my lot, and I became a part
10 owner of his lot.

11 Obviously when this happened, both me and the
12 neighbor, we freaked out and we've, you know, we went back to
13 OTR and we tried to undo this the best way we can. But the
14 only solution that OTR gave us is to undo the subdivision,
15 cancel all the permits, okay. And lead us back to, you know,
16 set us back for two years.

17 So obviously my neighbor got scared, his, you
18 know, he's doesn't do this for a living. He, you know, his
19 English is not good, and he's an elderly gentleman and
20 decided to pull out of the deal. I want to emphasize that
21 even though he doesn't want to sell us this piece of land, he
22 is still in support of this project, both neighbors on both
23 sides are still in support of the project, as far as we know
24 to this point.

25 So two years ago, we came in front of you and

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1 there was practical difficulties and it was a great risk to
2 develop the two units. And without the relief, it's going to
3 go from difficult to really catastrophic. The market
4 conditions in these two years have changed. The real estate
5 market is not good.

6 And in addition to that, we have expended over,
7 you know, close to \$200,000 on plans, permits, approvals,
8 attorneys, on this particular lot to actually permit four
9 units. This is in addition to two years of delay and another
10 \$250,000, \$200,000 in interest and loan fees and everything
11 else.

12 If we don't get approval on four units, this all
13 is going to be basically goes to waste and we will have to
14 start to scratch -- from scratch on designing and permitting
15 two units.

16 So I don't know, at this point, really, I don't
17 have a lot of options, you know. The option is to sue my
18 neighbor, okay, and try to force the deal, which is according
19 to attorneys is not even an option. Because you don't think
20 that a judge, okay, will force the neighbor to sell me that
21 piece of land, okay. And to sell me that piece of land, he
22 might oh, give me some damages, but no judge will come in and
23 say, no he has to sell.

24 And in addition to that, I really don't want to
25 sue my neighbor, you know. Again, he's an elderly gentleman,

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1 I'm part of this neighborhood, okay. This is going to put me
2 in a very difficult position in the neighborhood, and that's
3 something I don't want to do.

4 My other option is basically to let it be and just
5 let the property go into foreclosure and this will leave it
6 undeveloped. I'm going to wrap this up and I understand this
7 is a small decision for this Board, but this decision has a
8 major impact on us, on our neighbor, on our firm, and our
9 employees. And I really implore you to think hard and long,
10 you know, when rendering a decision. Thank you for that,
11 thank you.

12 CHAIRPERSON HILL: Thank you, Mr. Fridy. Ms.
13 Wilson, can you hear me?

14 MS. WILSON: Yes. That concludes our
15 presentation, although we do have plans at the end if there
16 are any specific questions about the difference between what
17 we're proposing and what was proposed.

18 CHAIRPERSON HILL: Okay. Let me see. All right.
19 Is Commissioner Wray here?

20 MR. WRAY: I'm here.

21 CHAIRPERSON HILL: Hi Commissioner.

22 MR. WRAY: Hello.

23 CHAIRPERSON HILL: Do you want to go ahead and
24 give us your testimony and introduce yourself for the record,
25 please?

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1 MR. WRAY: Sure. This is Michael Wray, I'm the
2 ANC Commissioner for 1E03, and I will be representing the
3 full ANC in this matter. We reviewed the plans the first
4 time, and clearly the ANC did support, without this
5 particular variance. We got a chance to review it again a
6 few months ago. We heard the same story that you all heard
7 today about the history. I can give a little bit more on
8 that in a moment.

9 But the ANC was fully in support, that we thought
10 this was a very unique situation that required the additional
11 variance relief and we have no problems with that. I think
12 Ms. Wilson gave you a very good history on how difficult this
13 fight has been. I live on the block, I will tell you it
14 actually goes back to 2006. So it's been over 17 years that
15 this saga has been going on with the illegally constructed
16 building that had absolutely nothing to do correctly with the
17 zoning, as well as a litany of problems with the building
18 codes, so ultimately it did have to be tore down.

19 But as the Board tried to explain to a previous
20 member of the public what happens when you take the buildings
21 off the lots in an RF-1 zone, that's why we are now here in
22 this very difficult situation of how to put it back to the
23 way that it was.

24 But I would remind the Office of Planning that it
25 was two lots for over a hundred years and, you know, the

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1 neighborhood seemed to function pretty well without that.
2 Beyond that, you know, I think, I'll keep it simple.

3 We were perplexed by the Office of Planning's
4 report. We do not feel that it directly addressed all of the
5 points made by the Applicant. Even in some cases where it
6 did address the points, they weren't particularly well-based
7 in the regulation. In some cases, I think they simply said
8 no.

9 So I would think that the Board might ask the
10 Office of Planning to continue its evaluation to address all
11 of the points and work with the Applicant to maybe find a
12 path forward. The ANC will certainly make itself available
13 to help with that process if need to be.

14 But beyond that, I'm here then to help answer any
15 questions and to continue to offer our support. Thank you.

16 CHAIRPERSON HILL: Thanks, Commissioner Wray. All
17 right. Before I turn to the Office of Planning, no, I will
18 turn to the Office of Planning. Let's go ahead and hear from
19 the Office of Planning and then I will turn it back to our
20 Board members.

21 MR. JURKOVIC: Good afternoon Chairman, members of
22 the Board, this is Michael Jurkovic with the Office of
23 Planning. OP recommends denial of the requested additional
24 Area Variance relief from the minimum lot width requirement
25 for a voluntary IZ development and stand on the record of our

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1 report, excuse me. And I'm here to answer any questions.

2 CHAIRPERSON HILL: Okay. Mr. Jurkovic, I always
3 pronounce it wrong, Jurkovic or Jurkovic?

4 MR. JURKOVIC: I'm sorry. You had it right the
5 first time.

6 CHAIRPERSON HILL: Jurkovic. All right. Okay,
7 Mr. Jurkovic, let's see. Well, I know that you all have
8 heard everything that was presented before us today, just
9 now. And including the reasoning behind how they believe
10 they are meeting the variance criteria. I understand why the
11 Office of Planning would have difficulty in terms of getting
12 to that point.

13 I'm kind of at that point, I'm just letting
14 everybody know where I am. And so, I don't know, Mr.
15 Jurkovic, if you think that working with the Applicant in
16 some regard if there's further communication that might help
17 with this analysis or if you think that there is nothing
18 further.

19 I mean, is there anything new that's being
20 submitted right here that might be able to at least give a
21 little bit more time to speaking with the Applicant? Would
22 the Office of Planning speak with the Applicant a little bit
23 more, is what I'm asking?

24 MR. JURKOVIC: As always, the Office of Planning
25 is open to communicating with applicants, you know, as was

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1 stated in even our original report for when this proposal
2 initially had this relief included.

3 We are supportive of infill development. And we
4 would not say that this is, per se, a bad proposal. Our
5 issues more so align with the consistency and the intent of
6 the zone. But like I said, we are open to communicating with
7 the Applicant.

8 CHAIRPERSON HILL: And I get it, Mr. Jurkovic,
9 again, like this being denied first, like actually what gives
10 me more difficulty with it is actually everything that
11 happened from when it was denied first.

12 Like I think it actually adds to the discussion as
13 to why this is a unique situation. I don't know where my
14 fellow Board members are, but I'm just saying where I am.
15 Let me see, do my fellow Board members have questions for the
16 Office of Planning, and/or the Applicant? Vice Chair John?

17 VICE CHAIRPERSON JOHN: If I could hear from the
18 Applicant about why a two-unit would not be feasible. I
19 listened to his, I believe he was trying to make a financial
20 hardship argument. But I would like to hear from him further
21 on developing a two-unit flat.

22 MR. FRIDY: So two units would be problematic.
23 First, you know, in order to utilize the full -- the full
24 size of the lot, okay, we have to build a 4,000 square feet
25 unit, so -- and 4,000 square feet units will not be sellable

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1 in that area.

2 The average size of the units in that
3 neighborhood, is anywhere between 600 to 2,000 unit max. I
4 believe, we did some research and the biggest unit in that
5 neighborhood that was sold recently was 2,700 square feet.
6 So anything above that is probably not sellable.

7 In addition, there's actually a financial problem
8 with that, because even if we do a unit that is 2,300 to
9 2,400, this it can really, now they are selling for less than
10 a million dollars, maybe like 900,000, 950,000. This lot has
11 cost us so far around 1.2 million.

12 So this is, if this goes into construction, with
13 the construction costs and everything else, okay, we will end
14 up losing money with two units, you know, there's going to be
15 a big, catastrophic loss of \$300,000 to \$400,000.

16 So, you know, in addition to that, you know,
17 because of the economics and the size of the units, that are
18 not meeting the average of the neighborhood, the banks will
19 not finance it. We explored, it was a couple of banks,
20 community banks, financing the two units, and they have
21 determined that it's not a feasible project.

22 VICE CHAIRPERSON JOHN: Okay. Thank you.

23 CHAIRPERSON HILL: Okay. Anyone else from my
24 fellow Board for the Applicant and/or the Office of Planning?
25 Okay.

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1 MEMBER SMITH: I think I have a question for the
2 Office of Planning.

3 CHAIRPERSON HILL: Go ahead Member Smith.

4 MEMBER SMITH: Given the, I mean, there were two
5 requests from the Applicant, one is for a time extension, one
6 is for the variance. You didn't speak to the time extension
7 in your staff report. Can you speak to the reason why you're
8 supporting a time extension of this particular project given
9 that this current proposal probably can't go forward without
10 the variance, so why support the time extension?

11 MR. JUKOVIC: Yes. We acknowledged this when we
12 originally receive this application for review that in the
13 Applicant's justification, they spoke to a time extension. I
14 believe the Applicant has since elaborated on that further.

15 In general, we would support a time extension
16 since, you know, there seems to be an outstanding civil
17 matter in regards to that exchange of land. I think that
18 alone would be enough justification for it.

19 MEMBER SMITH: Okay. Thank you.

20 CHAIRPERSON HILL: Okay. Anyone else --

21 MEMBER BLAKE: Just to clarify what the Office of
22 Planning just said. So you do see a path through the Special
23 Exception because of the civil suit that might exist?
24 Because without the variance, there is not a clear path to
25 approval by the creation of the subdivision.

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1 So if we were -- maybe that didn't do it. If we
2 were to not approve the subdivision, I mean the variance,
3 what would remain as in the order that we would be
4 sustaining, or how would it create a path to the proper path
5 to approval, independent of that lot?

6 MR. JUKOVIC: Right. So I'm not aware of the, you
7 know, the entire nuances of the situation past what was, you
8 know, put into the record. But as I said in my report,
9 applicants who proceed with outstanding matters beyond their
10 control of, you know, this Board, proceed at their own risk.

11 From OP's opinion, we do not see the failure to
12 purchase the land, as something new to consider. So I guess,
13 what I could recommend would be to, you know, continue the
14 communications and those negotiations, but past that I, which
15 is why I would generally support the time extension to see if
16 that can be fruitful.

17 CHAIRPERSON HILL: Go ahead, Mr. Blake.

18 MEMBER BLAKE: I have a question for the owner.
19 Could you tell me, was the transaction actually, was it
20 completed with an exchange of funds, the -- was the title
21 actually transferred to you for that property?

22 I don't see how that would have, would have ended
23 up in the graveyard, it seems like a hard place to end up
24 with having, you know, having actually completed the
25 transaction yet, having it as part of your ownership but not

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1 really select like to the code. I'm not sure what happened
2 there?

3 MR. FRIDY: The transaction was completed. The
4 owner, we have a contract from the owner. The owner was paid
5 the full amount actually to purchase the land. But the
6 problem has happened during the perfecting of the
7 subdivision, there was a mistake that happened along the way.

8 We're not sure if it's OTR's mistake or the
9 surveyor's office mistake, but it will be a mistake, and that
10 basically created a whole issue, ownership, deed issue. And
11 in order to, we were told by OTR and DOB, that in order to
12 preserve the integrity of the deeds, we'd have to undo
13 everything.

14 And that's why we are in this position that we're
15 in. Otherwise the owner, the next door neighbor was very
16 cooperative in the beginning. And, you know, again, we gave
17 him all of his money and we still have a good relationship
18 with him.

19 But the issue is, he is now scared of this whole
20 process. And he doesn't want to go through it -- through it
21 again, and honestly, I don't blame him. It's been -- it's
22 been -- it's been a disaster. It's been a nightmare.

23 MEMBER BLAKE: Did you -- did you -- did he refund
24 your money?

25 MR. FRIDY: No, no we haven't.

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1 MEMBER BLAKE: And let me ask, don't think it was
2 that quick and simple, because I realize the beginning of the
3 last, the original case, there was a back and forth between
4 the owner -- that owner and you with regard to buying that
5 property. And at some point it flip-flopped a couple of
6 times, it's not like just the one time you've had, from what
7 I can recall. The question I would ask -- thank you very
8 much.

9 The question I have also for you, Ms. Wilson, is
10 in the event that this, because we're doing an incident, it's
11 a tough case of significance, certain elements of this order
12 would be preserved, if it's still being preserved, could you
13 talk a little bit about what would be preserved in this
14 situation?

15 MS. WILSON: Absolutely, I would be happy to. So
16 what would be preserved is the original approval which
17 contained relief for two 16-foot wide lots and I think we had
18 a 10-foot rule relief in there, too. We don't have two 16-
19 foot wide lots anymore, so we couldn't pursue the original
20 approval.

21 And so the options would be, I mean, there's
22 always the option to sue the neighbor, right, that's an
23 option. I think that would be impractically difficult option
24 as well in order to achieve this project. And there's still
25 not a guarantee you would get that seven inches of land,

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1 right.

2 Even if we go through the process of suing, so
3 we're going to have years of litigation, possibly to end up
4 in this same or similar position. It doesn't make, it
5 doesn't fix this issue. And so that's one option, sue the
6 neighbor, see where it ends up.

7 The other option would be, since we don't have the
8 two 16-foot wide lots would be to just scratch everything,
9 start over and see where we land with two units on this lot
10 in a completely different configuration. That would also be
11 practically difficult to start this project over, as Mr.
12 Fridy has mentioned, he will never get financing for that
13 type of a project.

14 The other option, so we don't have to scrap all
15 the plans, would be to convert -- would be to keep the
16 existing record lot, keep the design of the building, and
17 instead of doing four units in it, do two units because we
18 have an existing record lot, so we could do two units by
19 right in the same configuration.

20 But those would be 4,000 square feet. And so
21 projects like that, they're staying on the market for, I
22 think, Mr. Fridy, when we discussed it, you said upwards of
23 nine months. Yes, it's not a feasible project, you're also
24 not going to get financing for that. So those are our
25 options, and that's why we're here, because the three

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1 options --

2 MEMBER BLAKE: Right. Ms. Wilson, I appreciate
3 that review, but what I asked you was what would be preserved
4 by, if the variance were not approved and the Board was, you
5 know, we did the extension, what would be preserved? See, as
6 we're in this review, we can't -- we don't want to revisit a
7 lot of the elements of this case. So I'm asking you what is
8 preserved by, in this situation by extending it, if the
9 variance is not approved?

10 MS. WILSON: Sure, it's a Special Exception
11 approval for two 16-foot wide lots that is preserved.

12 MEMBER BLAKE: Okay.

13 MS. WILSON: But it -- it doesn't -- it doesn't
14 matter, I guess, like and we still couldn't do anything with
15 that at this moment.

16 MEMBER BLAKE: Because we don't have two 16-foot
17 lots?

18 MS. WILSON: Exactly.

19 MEMBER BLAKE: And we don't have a path to get to
20 two 16-foot lots?

21 MS. WILSON: Other than suing the neighbor and
22 hoping for a specific performance, no we don't.

23 MEMBER BLAKE: Other than a variance is what
24 you're saying?

25 MS. WILSON: Yes. Other than a variance.

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1 MEMBER BLAKE: All right.

2 MR. FRIDY: I want to say this to answer Mr.
3 Blake's question, we came first, we did not -- we did not
4 talk to the owner in the beginning, okay. We came first in
5 front of the BZA to get a variance.

6 So at, during the BZA meeting, the hearing, that
7 we did two years ago, you know, it was mentioned, I think
8 from Office of Planning, that there is this seven inch with
9 the neighbor, go try and buy it, that would be the path of
10 least resistance.

11 And that's what we did. We never really -- we
12 went back to the neighbor, and the neighbor, we went back and
13 forth a little bit, negotiated with him, and he agreed.
14 There was no issue with the neighbor until this thing that
15 happened with OTR. And I think Michael can attest to that,
16 that we never really had issues with the neighbor, okay.
17 Until this whole thing came crumbling down because of the
18 mistakes that DOB and OTR did.

19 MEMBER BLAKE: All right. I have one question,
20 Mr. Chairman, for the Office of Planning. When you looked at
21 the prongs of the test, you have two stumbling blocks, one
22 was the first prong. And it was the last prong with regard
23 to the parting with the zoning regulations given the width of
24 the property, in these, the width of these, the two lots.

25 If you had been comfortable that the first prong

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1 had been met, would the later prong still be an issue, still
2 being a factor? I'm trying to get at the threshold for which
3 the lot size becomes a critical gaming factor.

4 MR. JUTTE: It's a difficult hypothetical, I would
5 have to say maybe. But I'm not certain of an example.

6 MEMBER BLAKE: Let me rephrase that. If the first
7 prong of the test was met, would the application be in
8 harmony with the zoning regulation and plan?

9 MR. JUTTE: So again, it's really difficult for me
10 to answer that considering that from our perspective, they
11 haven't met the first prong. In considering when we are
12 talking about lot width, and density in regards to zoning.

13 I really don't see a circumstance where a case like
14 this, we would recommend approval without it meeting both
15 those prongs, because they are kind of intertwined in a way.

16 So and like I said previously, we have not been
17 presented any new information. We were aware of the
18 Applicant's intention to pursue the purchase of land as was
19 discussed in the original application and as of today, as of
20 what's been added to the record, we haven't been presented
21 with anything new.

22 MEMBER BLAKE: Are you aware of any other
23 mechanism by which the Special Exception could be achieved
24 for this property, within the zoning regulations?

25 MR. JUTTE: Are you saying the original Special

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1 Exception approvals, or --

2 MEMBER BLAKE: Is there any way -- is there any
3 way that you would see aside from the variance, that we could
4 potentially get to approve of these two projects, these two
5 lots?

6 MR. JUTTE: You know, ultimately OP makes our
7 recommendation and the Board can take it into account how
8 they wish, so I can't really advise you specifically how to
9 get through on this.

10 MEMBER BLAKE: Thank you very much.

11 CHAIRPERSON HILL: Anybody else?

12 VICE CHAIRPERSON JOHN: I have a question for the
13 Applicant. There is an exhibit that shows the lot sizes.
14 It's in the PowerPoint presentation, and I don't remember
15 which slide it is. But I'm trying to understand what the
16 numbers mean. And I don't know if I'm reading it correctly
17 that some of the lots are 15.6 feet wide, some are 16, some
18 are 18.

19 MS. WILSON: Sure.

20 VICE CHAIRPERSON JOHN: Unfortunately, I can't
21 tell you which slide it is, but it's the slide that has the
22 723 Morton Street in the big red marker and another property
23 to the, above it in another red marker. One's 30 feet wide,
24 and the subject property is 31.3 feet wide.

25 MS. WILSON: Is it Exhibit 11?

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1 VICE CHAIRPERSON JOHN: Okay.

2 MS. WILSON: The base map perhaps?

3 VICE CHAIRPERSON JOHN: Yes, it's the base map.

4 MS. WILSON: Yes.

5 VICE CHAIRPERSON JOHN: I will look at it again.

6 MS. WILSON: The one that's hard to read?

7 VICE CHAIRPERSON JOHN: What are you trying to
8 explain there?

9 MS. WILSON: I was just showing the original
10 configuration of this property. Those are the two original
11 buildings, and they were on separate lots.

12 VICE CHAIRPERSON JOHN: Okay. So the one lot
13 would be 136? No.

14 MS. WILSON: The red, the red outline is the
15 subject property in its original configuration where each lot
16 was 15.7 feet in width.

17 VICE CHAIRPERSON JOHN: I don't see that, though,
18 15.7 feet.

19 MS. WILSON: It's at the bottom of the red line,
20 it's really -- I understand.

21 VICE CHAIRPERSON JOHN: Okay. But it's also in
22 your presentation.

23 MS. WILSON: (Audio failed.)

24 CHAIRPERSON HILL: Can we put that exhibit up so I
25 can see it?

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1 VICE CHAIRPERSON JOHN: Yes.

2 MS. WILSON: It's Exhibit 11, I think, Mr. Young.

3 VICE CHAIRPERSON JOHN: You mean slide 11, it's in
4 your PowerPoint presentation.

5 MS. WILSON: Yes, it's also in the presentation.

6 VICE CHAIRPERSON JOHN: Okay.

7 CHAIRPERSON HILL: But Exhibit 11 might be easier
8 to zoom into.

9 VICE CHAIRPERSON JOHN: Okay. Oh, Exhibit 11 is
10 not as, doesn't really answer the question I had. In the
11 PowerPoint, it seems that some of the lots were fifteen and a
12 half feet wide, based on the notations.

13 MS. WILSON: Some of the lots on the block, is
14 that what?

15 VICE CHAIRPERSON JOHN: On the block, yes.

16 MS. WILSON: Yes. So there's Exhibit 15 which
17 shows the map of the lot widths, and that might be a little
18 more clear, because it's from -- it's from an Atlas, it's not
19 from a base map.

20 VICE CHAIRPERSON JOHN: Okay. That's, it does say
21 base at the top. Anyway, regardless, so am I understanding
22 this correctly that there's a lot that's 15.6 feet wide?

23 MS. WILSON: Yes.

24 VICE CHAIRPERSON JOHN: And I'm trying to find it
25 again, yes. It's, it's about one, two, three, four, and five

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1 side lots west of the subject properties.

2 MS. WILSON: Yes.

3 VICE CHAIRPERSON JOHN: Okay.

4 MS. WILSON: And there are lots across the street
5 that are twelve and a half feet wide and twelve feet and
6 thirteen feet and fifteen and a half.

7 VICE CHAIRPERSON JOHN: When you say across the
8 street, not north of this, not --

9 MS. WILSON: Exactly south.

10 VICE CHAIRPERSON JOHN: -- across the road.

11 MS. WILSON: Correct, it's exactly south on
12 Morton. And Commissioner Wray can probably speak to this,
13 too.

14 MR. WRAY: Because my own home is only twelve and
15 a half feet wide.

16 VICE CHAIRPERSON JOHN: Yes, I can see that now,
17 if you scroll down a little, there is one 12.5, 12, 13,
18 another one that's 15, okay, 15.5. Okay. Thank you.

19 MEMBER BLAKE: I have a question for the Applicant
20 again. If we, on this slide deck, do you have slide 16? Is
21 it possible that you could just explain to me, the difference
22 between the Lot A and B in here. Because it seems like Lot B
23 has the approval for the, it's got a few results reversed on
24 here.

25 VICE CHAIRPERSON JOHN: What exhibit is that, Mr.

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1 Blake?

2 MEMBER BLAKE: It's page 16 on the slide
3 presentation.

4 VICE CHAIRPERSON JOHN: Okay.

5 MEMBER BLAKE: And the exhibit here, it seems to
6 be, I think Lot A was the lot that was on the west side and
7 Lot B was on the east side, and the relief for Lot B was on
8 the, this would have been on the east side of the property.
9 But I think that somehow this is adjusted.

10 So I wanted to make sure as to which was, are we
11 giving relief for Lot A on the east side or Lot B on the west
12 side? It would seem like if you're buying the property, a
13 piece of property from the person on the west side, it would
14 have been for that, or just it all shifted, I'm not quite
15 sure.

16 MR. FRIDY: I believe, I can't see, this is, you
17 have to zoom in, I don't, on this exhibit. But I believe
18 it's the --

19 MS. WILSON: The left side, right?

20 MR. FRIDY: Yes. The left side, it's the left
21 side that we were buying, there's a six-inch, so it's Lot B.

22 MEMBER BLAKE: Lot B, is right, so but what, so
23 it's Lot B is now Lot A and Lot A is now Lot B, is that
24 right?

25 MS. WILSON: It switches from the original

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1 approval was that the --

2 MEMBER BLAKE: Yes, the Lot A, the original
3 approval is for the IZ in the Lot B and for the 10-foot rule
4 in Lot B. In this case we have Lot B, what I believe Lot A
5 was, I'm just trying to get, definitely could clarify, it
6 just seems a little off to me, I just want to make sure we --

7 MS. WILSON: Yes, there --

8 MEMBER BLAKE: You said that the -- you said that
9 the relief wouldn't change, but it, yes, when you use the
10 left and right lot, east and west lot would be clearer, but I
11 think the way it's labeled is a little bit confusing.

12 MS. WILSON: We can update that, I will look into
13 it, but yes, the lot on the east, it's the 16-foot wide lot
14 and those applications and that was the 10-foot rule relief.

15 And then the lot on the left is what we're requesting the
16 Area Variance for and that did not have 10-foot rule relief
17 related to it. So I'll, that might be an administrative
18 issue from the previous case, so I will make sure that's
19 consistent.

20 CHAIRPERSON HILL: Let me know if you guys want,
21 Commissioner Wray, can you hear me? Are you good yet to go?

22 MR. WRAY: No, I'm fine.

23 CHAIRPERSON HILL: Okay. All right. Okay. All
24 right. So then, let me see. So back to the questions. Mr.
25 Young, real quick, does anybody here want to speak?

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1 MR. YOUNG: They do not.

2 CHAIRPERSON HILL: Okay. All right. So I'm back
3 to the fellow Board members. Do you all have any more
4 questions for anybody?

5 And this is what I'm going to propose also. I was
6 going to propose that we get clarification from the Applicant
7 on the question that Mr. Blake just asked, as to which lot is
8 the relief being requested for the variance, and then which
9 lot I guess would have, I guess, the other relief, which
10 would be the 10-foot rule, I guess still associated with it,
11 just clarification.

12 I would also ask that the Applicant speak with the
13 Office of Planning again to see if there's any new
14 information that might provide further clarity. I mean look,
15 I don't know whether the Office of Planning is going to
16 change their mind or not. I'm not trying to get the Office
17 of Planning to change their mind or not. I know where I am,
18 okay. And so like to me, I will just tip my hand again.

19 I mean, I got the ANC Commissioner here, we got,
20 you know, an unused property that's not being used. I have
21 seven inches to get to a variance. I think that we -- I
22 understood the Office of Planning said no in the beginning,
23 which I completely understand.

24 Then they went down the rabbit hole of trying to
25 get the seven inches from the neighbor. They were going to

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1 get the seven inches from the neighbor. I think this now
2 makes the property even more unique and the situation even
3 more unique and a confluence of factors even more unique that
4 makes this 4 percent deviation, I think, in order to get
5 housing for the City and then an IZ unit and this lot still
6 in the ANC.

7 That again the Commissioner is here to voice their
8 opinions on, and this ANC is very active and I know the
9 Commissioner is very active to spend his time here, giving us
10 all this information that I am clearly telling you where I
11 am.

12 So I don't know where my fellow Board members are
13 at all. And so I'm just going to let us find more
14 clarification from the Applicant in terms of what is actually
15 being requested from each lot, and then have a further
16 supplemental report from the Office of Planning, which may be
17 nothing.

18 And/or if the Office of Planning doesn't want to
19 give a supplemental report, that's also fine. I mean, we,
20 you know, I don't know where, as I said, where my fellow
21 Board members are, you know. We can disagree with the Office
22 of Planning or not.

23 And so that would be my vote, just in terms of
24 taking a little time on this. Regardless, I would think that
25 the Board would need time to think.

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1 So what I would propose then is getting --
2 Commissioner Stidham, when are you back with us?

3 And Mr. Fridy -- Fridy?

4 MR. FRIDY: Fridy.

5 CHAIRPERSON HILL: Fridy. And Mr. Fridy, I mean
6 obviously it sounds very disappointing that this, you know,
7 the mistake that happened either at the surveyor's office or
8 OTR or whatever scared the neighbor away, you know, cannot be
9 resolved.

10 I mean, obviously, I would continue to see if
11 there's something that you can say, I mean, you know, suing
12 does not sound like the way to go about it to me either. But
13 if there is something to get your seven inches, that would be
14 wonderful as you already know. Maybe some miracle will
15 happen between now and the time we get back here before, but
16 I would continue discussion with that neighbor.

17 MR. FRIDY: I just want to say that we discovered
18 this issue back in July or August or June of last year. I
19 have tried with the neighbor, including basically offering
20 him more money, doubling the money, okay. And we have tried
21 with his attorney, and he absolutely doesn't want to go
22 through this again. He basically --

23 CHAIRPERSON HILL: That's okay, Mr. Fridy, that's
24 all right. I believe you.

25 MR. FRIDY: I'm going to try again and make a note

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1 how many times I've tried.

2 CHAIRPERSON HILL: That's fine. I got you, I got
3 you. And then -- and then if you could actually, I mean, Ms.
4 Wilson, submit some financial numbers in terms of any part of
5 possible financial hardship that might be coming into play
6 here, because, you know, and more specificity, Mr. Blake is
7 getting excited.

8 More specificity, which means I'm on the right
9 path, which is more specificity on, you know, the inability
10 to sell a 4,000 square foot unit or financing, or anything
11 that might help your argument, which is something that might
12 be new information to the Office of Planning. But I don't
13 know.

14 And Mr. Blake, can you tell me what else you, and
15 other people might have something they want or not want, but
16 Mr. Blake, did you have something to clarify?

17 MR. BLAKE: Strengthen the argument with regards
18 to the documentation that you mentioned, Ms. Wilson, that you
19 could actually present to help us better understand exactly
20 the magnitude of that would be helpful.

21 I think there's some other properties around this
22 lot that, these lots, three or four places down that are
23 smaller as well, it might be helpful to kind of help us
24 better understand that.

25 There may be some apartment buildings that are the

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1 size of this building, all of which have, or have three or
2 four units, if you have something like that, we might be able
3 to look at. And of course, you said you weren't able to find
4 any history of this, rather it was the raze that had the
5 other two buildings really at this point, it's tough to
6 answer, probably from that.

7 So those would be, I stress that, and I would
8 actually try to explore if there are any other avenues with
9 the Office of Planning that might actually get to your
10 desired result. Because I, it just seems like there might be
11 some other mechanism within the confines of regulations that
12 could get you to where you might want to be. That's it.

13 And the Office of Planning, if it's possible, if
14 you could help us get just a little more color on that,
15 minimum lot size, I think that the threshold we've used is
16 the 16-feet.

17 That's a little bit confusing to me, because we
18 have properties in the block that are at twelve and a half
19 feet, and so forth and this is restoring it to the original
20 size, the density that we have would be four units, which
21 would be permissible under the regulations had other things
22 not gone wrong in the past.

23 I would be curious about that, because there would
24 be mechanisms by which you could probably get to the end
25 result if that -- if that, if we give some flexibility on

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1 that level.

2 Because I do think you can design a building to
3 look however, so from the outside it's not the problem. With
4 the amount of width you've got, the depth you have, you can
5 create enough space for comfort. So I'm not, I would just be
6 curious to see how you did it, looking at it. This doesn't
7 seem to me, you look at me like --

8 VICE CHAIRPERSON JOHN: I'm sorry. I need to
9 learn to hold a poker face, you know, better. I just think
10 that what you're suggesting is admirable and if it's
11 possible. I think the issue is that the IZ unit has allowed
12 them to go below what's required at 16 feet.

13 So I'm not sure if there's any other regulation
14 that would allow them to go below 16 feet, which is why
15 they're here for their variance. But I would encourage Mr. -
16 - the owner, I'm going to ruin your name again, to, now that
17 we've had this second hearing, to take another pass at the
18 owner of the adjoining property to see what, you know, you
19 can come up with. And I understand his issue given what
20 happened with OTR.

21 So that would be my two cents. I don't know where
22 I am yet, Mr. Fridy. I would just suggest you go back and
23 talk to the owner to see what you can come up with. Maybe
24 this time, what's the saying three's the charm or something
25 like that, three times is the charm, I get it wrong, but --

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1 MR. FRIDY: Ms. John, I promise you I will.

2 VICE CHAIRPERSON JOHN: Okay.

3 MR. FRIDY: However, I can also with 99 percent
4 certainty, I can tell you that I have for six or seven months
5 nonstop, I was calling him and trying to level with him. And
6 eventually he basically hired an attorney and he said don't
7 bother me anymore.

8 VICE CHAIRPERSON JOHN: Oh, okay.

9 MR. FRIDY: So that's what --

10 VICE CHAIRPERSON JOHN: Maybe talk to the attorney
11 and --

12 MR. FRIDY: And I talked to the attorney and I
13 told him name your number. This is, we got to the point
14 where I told him look, I paid this \$12,000 for six inches
15 piece of land, okay. I'm going to pay you another \$12,000
16 just to go back to the process again, and he said no. And we
17 talked to the attorney, we told the attorney get us a number
18 from him.

19 VICE CHAIRPERSON JOHN: Okay.

20 MR. FRIDY: What is his number, okay, if he wants
21 to sell that. And he said there is no number, I am not
22 willing to sell this piece of land, I'm not going through
23 this. You've got to understand, he's an elderly gentleman,
24 he's retired. He barely speaks English, he doesn't
25 understand all of this regulation.

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1 And he really thought, you know, he was going to
2 lose his property because of this mistake. He saw on his tax
3 documents that I became an owner of his -- of his house,
4 which is probably his only asset.

5 VICE CHAIRPERSON JOHN: Uh-huh.

6 MR. FRIDY: And he basically, he nearly had a
7 heart attack, his wife told me he nearly had a heart attack.

8 VICE CHAIRPERSON JOHN: Of course.

9 MR. FRIDY: You know, so it was his only asset.
10 And he's like basically, I am not talking about this issue
11 anymore. Build your project, I'm supportive of that, but I
12 am not going to go through this anymore, no matter how much
13 you pay.

14 VICE CHAIRPERSON JOHN: Okay.

15 MR. FRIDY: So this is where we are, I'm going to
16 try one more time, you know.

17 VICE CHAIRPERSON JOHN: Okay, Mr. Fridy. I get
18 it.

19 CHAIRPERSON HILL: Sorry. I've been waiting to
20 ask this question. There's two sides, right? Like you tried
21 the other side of the property, too, right?

22 MR. FRIDY: The other side is, this neighbor has
23 the six -- his property is not built up to the property line.

24 So the other side, you know, it's built all the way to the
25 property line and the guy doesn't have any --

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1 CHAIRPERSON HILL: Okay, okay. Commissioner Wray
2 nodded, okay. So all right.

3 COMMISSIONER STIDHAM: I am back with you on June
4 26th.

5 CHAIRPERSON HILL: Okay. All right. Okay. Let's
6 see. Mr. -- so I got -- I heard from Mr. Blake. I think I
7 heard from Ms. John. Mr. Smith, do you have anything you
8 would like from the Applicant?

9 MEMBER SMITH: I don't have anything I would like
10 from the Applicant at this point, you know. I think some of
11 the comments that was raised about providing some additional
12 financial information, I think that may be helpful.

13 But I would echo one second comment that Mr. Blake
14 said was, yes, and Ms. John, sure go back and talk with the
15 neighbor and property owner and see where you can get, maybe
16 there will be some type of change of heart in the spring, I
17 don't know.

18 But the second, the point that was raised by Mr.
19 Blake was maybe, you know, have some additional conversations
20 with the Office of Planning. Because what I'm hearing a lot
21 of, most of, you know, what I'm hearing more so relates to,
22 unfortunately I will say this, a financial hardship in
23 developing the property and marketability.

24 The zoning regulations do allow you to construct
25 some type of development on this particular property without

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1 granting the variance. A lot of it, this case and the
2 previous case is predicated on the amount of density that you
3 want to put on the lot, not necessarily that the lot's not
4 buildable.

5 So maybe I'm tipping my hand as to where I'm at in
6 my mind right now. But I would recommend that you probably
7 go back and talk with the Office of Planning, because I do
8 share their same concern about practical difficulty at this
9 point in time.

10 CHAIRPERSON HILL: Right. Okay. So I don't know,
11 Ms. Wilson, you know, you can -- you can put your case
12 together again with the numbers that you were asked for. And
13 I guess, we'll try to see what happens with that submission
14 to us and the Office of Planning. And then, I mean, the
15 26th, is that, do you want a yes or no before that?

16 MS. WILSON: I also have a conflict that I could
17 move on the 26th, but yes, it would be preferable.

18 CHAIRPERSON HILL: So Ms. Mehlert, like where are
19 we in terms of like anything between now and the 19th, I
20 guess, of June. Like what's kind of, is there any date that
21 doesn't provide a tremendous amount of heartburn for me?

22 MS. MEHLERT: So there would be a continued
23 hearing?

24 CHAIRPERSON HILL: Limited scope.

25 MS. MEHLERT: We could do this on June 5th.

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1 CHAIRPERSON HILL: Okay. Why June 5th, just
2 curious?

3 MS. MEHLERT: So there's two meeting cases, two
4 hearing cases, and then two appeals.

5 CHAIRPERSON HILL: Right. Two appeals and you
6 don't think any of those appeals are going to drop?

7 MS. MEHLERT: It's possible.

8 CHAIRPERSON HILL: It's possible, possible. Two
9 appeals is just awful, if you all didn't know. I know you
10 know that, but like, yes. So let's come back on June 5th.
11 If we come back on June 5th, can you please help me explain
12 to the Applicant what we might need from them when?

13 MS. MEHLERT: So looking at a June 5th hearing
14 date. So perhaps they could submit, the Applicant could
15 submit by the 22nd and OP could provide a response and the
16 ANC could provide a response by the 29th. Is two weeks
17 enough time for the Applicant?

18 MS. WILSON: Yes, absolutely.

19 CHAIRPERSON HILL: Okay. Let's see. Mr. Fridy, I
20 don't know Mr. Fridy. You might want to figure out just how
21 much this is worth and throw that big number at that guy and
22 say hey, this is a hail Mary, and you know, come up with a
23 number as to what you really think this is worth, and then
24 see that happens. And then Commissioner, I know it doesn't
25 matter, but I like the mustache.

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1 MR. WRAY: Yes, we'll see how long it lasts.

2 CHAIRPERSON HILL: Yes. I probably don't get a
3 vote but. So all right, okay. We will see you all on June
4 5th.

5 MR. FRIDY: Thank you.

6 CHAIRPERSON HILL: Great, bye-bye. Good luck.

7 MR. FRIDY: Okay. Bye-bye.

8 CHAIRPERSON HILL: All right. So we haven't had
9 lunch, so it's 1:30. We have three cases left, I guess we're
10 going to have lunch, right?

11 VICE CHAIRPERSON JOHN: Yes.

12 CHAIRPERSON HILL: So, okay. Why don't we try, I
13 mean I'm going to say 2:10, okay, let's shoot for 2:10. I've
14 got to go get lunch, so that's the problem. Okay. Thank
15 you.

16 (Whereupon, the above-entitled matter went off the
17 record at 1:33 p.m. and resumed at 2:24 p.m.)

18 CHAIRPERSON HILL: All right, we are back. Madam
19 Secretary, you may call us back and call our next case,
20 please.

21 MS. MEHLERT: Sure, the Board has returned from
22 its lunch break. Next case is Application Number 21112, the
23 Heritage Foundation. This is a self-certified application
24 pursuant to Subtitle X 901.2 for a Special Exception under
25 Subtitle U §203.1(k) to allow an accessory parking lot use.

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1 Elsewhere on the same lot is -- and pursuant to Subtitle X
2 §1002 for Area Variances from Subtitle U §203.1(k)(8)(A) to
3 allow parking spaces further than 200 feet from the use to a
4 chair accessory, and from Subtitle U §203.1(k)(8)(B) to allow
5 parking spaces that are not contiguous to or separated only
6 by an alley -- this is to mark the continued use of existing
7 accessory parking use of 55 spaces located in the RF-1/CAP
8 zone at 415 3rd Street, NE, and 416 and 424 4th Street NE,
9 Square 780, Lots 43, 62, and 810.

10 CHAIRPERSON HILL: Great. Thank you. If the
11 Applicant can hear me if they could please introduce
12 themselves for the record.

13 MR. KADLECEK: Hi. Good morning, members of the
14 Board, Chairman Hill. I am Cary Kadlecek from the Law Firm
15 of Goulston & Storrs, Plaintiff's Counsel on behalf of the
16 Applicant, and I am joined by my colleague Liv Torres.

17 CHAIRPERSON HILL: Okay. All right, hold on, Mr.
18 Kadlecek, something is going on with my computer.

19 Okay. Mr. Kadlecek, if you want to go ahead and
20 walk us through your client's application and why you believe
21 they are meeting the criteria for us to grant the relief
22 requested. I will cut a little bit to the chase. I have
23 read the ANC report, and I guess if you want to argue against
24 the ten year time limit, but I am currently leaning towards
25 it just because of their argument in terms of the alley

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1 housing, but I will let you speak to that, and then the board
2 members will have something to say about that, as well as
3 then you would have obviously the support of the ANC, but I
4 will go ahead and let you begin and you can begin whenever
5 you like. I know we have a PowerPoint there, so please go
6 ahead.

7 MR. KADLECEK: Yes, thank you. Mr. Young, if you
8 could bring up our presentation, please. I am doing my --
9 for the Heritage Foundation as well, just to let you know.

10 CHAIRPERSON HILL: Great. Thank you.

11 MR. KADLECEK: All right. Again, good afternoon.
12 We are here to present the Application for Special Exception
13 and Variance Relief to Allow the Continued Use of Accessory
14 Parking Lots in the RF-1/CAP zone. These three subject lots
15 have been approved as accessory parking by the Board four
16 prior times, most recently in 2014.

17 During the Applicant's 33-year history of using
18 those lots as accessory parking it still legitimately
19 maintained them, complied with all conditions set forth by
20 the Board, and offered their use to the community on nights
21 and weekends. Nothing new or different is now being proposed
22 with this application. As noted in our pre-hearing filing we
23 consent to the same 12 conditions as the previous order, but
24 as noted by the Chairman we are asking that the term limit be
25 lifted.

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1 We're pleased to have the support of the Office of
2 Planning, DHCD, the Architect of the Capitol, and ANC 6C. Go
3 to the next slide, please. Just to give you an overview of
4 where these are located, this is just off of Massachusetts
5 Avenue, NE, on Capitol Hill in Square 780, that is
6 highlighted in green there.

7 Next slide, please. Looking a little bit more
8 closely, the Heritage Foundation's Buildings, office
9 buildings and associated buildings, are located in orange on
10 Massachusetts Avenue to the left. The three subject lots are
11 in the interior of square 780, as noted, and those are due
12 noted in the green squares here on this slide. Next slide,
13 please. Here are just some photos of the lots. They are
14 stripped, they are well maintained, they are even set back
15 slightly from the alley to allow the trash trucks to maneuver
16 more easily in and out of the alley system, and that has just
17 been something that has been a practice of how these lots
18 have been maintained for the many years that they have been
19 used as parking.

20 Next slide, please. Just an overview of the
21 application and background. As mentioned, these are existing
22 parking lots that have been in use for 33 years as approved
23 by the Board. One of the lots actually has been use as
24 parking for over 50 years. There are 55 spaces. The last
25 order was 18807 in 2014. The application here is for the

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1 same special exception, of course under the 2016 zoning
2 regulations, subject to the 12 conditions laid out under
3 203.1. As noted in our application we satisfy all those
4 conditions except two from which we are seeking variance
5 relief.

6 Next slide, please. I will not go through all the
7 criteria. They are all laid out in our filing. I am happy
8 to answer questions to the extent the Board has any of them,
9 but there are 11 criteria that we satisfy, or if they are not
10 applicable as existing legally non-conforming conditions as
11 confirmed by the ZA that is all laid forth in our pre-hearing
12 submission. I just want to note that, again, this is a long,
13 very well established use. As the Board knows, often times
14 these applications are trying to be predictive about what the
15 impact of something will be. In this case there is 33 years
16 of knowing exactly what the impact of these lots will be, and
17 that they have been, like I said, well maintained, well
18 received by the community, and been really a benefit to the
19 community, and something very useful to the Applicant.

20 Next slide, please. As noted, there are two
21 subsections in 203.1 that cannot be satisfied, so we are
22 seeking variance relief from those. One is that all the
23 parking spaces are located within 200 feet of the areas to
24 which they are accessory. The office buildings where
25 Heritage is located, as noted, are located to the west, more

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1 than 200 feet away, and that they are to be contiguous or
2 separated by an alley. Again, they are separated by 3rd
3 Street from the Heritage Foundation's buildings, which we are
4 also seeking variance relief from that section as well.

5 The variance standards are laid out again in the
6 filing, but just as a brief summary of that, the size, the
7 location, and, of course, the long and continued use of these
8 lots as parking contribute to the exceptional and
9 extraordinary condition of these lots. As a practical
10 difficulty there is not really a feasible developmental
11 alternative. I disagree with the argument laid out by the
12 ANC, but I can get to that in a bit. Again, all the
13 practical difficulty is laid out. The practical difficulty
14 has also been found four previous times by the Board, and
15 then of course there is no substantial detriment to the
16 public good. We have 33 years of empirical evidence that
17 these have been operated without any sort of adverse impact
18 on the neighborhood.

19 Next slide, please. Maybe that is the end. So,
20 Chairman Hill, just to answer your question about the term,
21 it is our position, and as we noted in our pre-hearing
22 filing, if the Board so determines that the term is necessary
23 we are agreeable to that, but it is our position, and I
24 believe the Office of Planning supports, or at least they
25 said they do not object to the removal of the term, that

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1 these lots have been used without adverse impact on the
2 neighborhood for a long time. The purpose in prior orders of
3 having a term was to make sure that there was not any sort of
4 adverse impact to guarantee that the applicant was complying
5 with the conditions set forth in those orders. Now there has
6 been four orders, each of which had terms on them, each of
7 which had conditions on them. The Applicant has complied
8 with those conditions, it has shown that there is no adverse
9 impact, so for that reason it is our position that there is
10 no need for further term on this.

11 As mentioned if the Board determines otherwise
12 that is something that we can find acceptable. I would ask
13 though if the Board is desirous of imposing a term that it
14 could be longer than ten years, to sort of come back every
15 ten years for an application and sort of argue the same thing
16 with -- change in facts. It does not seem like the best use
17 of everyone's time and resources, but we are open to
18 listening to however the Board would like to discuss that.
19 So with that I will conclude our presentation, and we are
20 happy to take any questions.

21 CHAIRPERSON HILL: Okay. Thank you, Mr. Kadlecek.
22 Okay, let's see, does the Board have any questions currently
23 for the applicant?

24 Okay, we are going to hear from the Office of
25 Planning, please.

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1 MR. JESICK: Hello Chairman and members of the
2 Board. My name is Matt Jesick, presenting OP's testimony in
3 this case. For our testimony this afternoon I can largely
4 rest on the written record of our staff report, but, of
5 course, I am happy to take any questions. Thank you.

6 CHAIRPERSON HILL: Okay. Does anybody have any
7 questions for the Office of Planning?

8 Okay. I will ask just because I am curious, so,
9 Mr. Jackson, in terms of the argument that the ANC had
10 brought up that Lot 810 could possibly be used for housing in
11 the future, does the Office of Planning think about that, I
12 mean, I actually know the answer to that, does the Office of
13 Planning think about that possibility when they are providing
14 any kind of analysis?

15 MR. JESICK: Well, I think we came to the
16 conclusion that it would be a practical difficulty to
17 establish a new use on this site for the Applicant, and that
18 was the basis of our recommendation of approval or the
19 variances. We just saw the ANC letter this morning, so I
20 have not had a chance really to delve into that argument. We
21 did not examine that in depth and prior to issuing our
22 report, so our recommendation is not really based on an
23 analysis of each possible use on the site, what could go here
24 or could not go here, but I think we felt that there was a
25 practical difficulty given the long history of the parking

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1 use on this site, the need of the spaces, and the impact that
2 it would have on the neighborhood, should the spaces go away
3 where would all those people park in the neighborhood. That
4 was also a consideration.

5 CHAIRPERSON HILL: Okay. From a practical
6 standpoint if, and Mr. Kadlecek probably knows this, while an
7 order is being put forth by the Board you would be able to
8 use the lot as they are, is that correct, Mr. Kadlecek?

9 MR. KADLECEK: Sorry, can you -- I am not sure I
10 understand the question.

11 CHAIRPERSON HILL: If while you are waiting for an
12 order to be written --

13 MR. KADLECEK: Oh, yes.

14 CHAIRPERSON HILL: -- are you able to use the lots
15 as they exist?

16 MR. KADLECEK: Yes, so it has been our practice
17 and understanding that given that we have an entitlement, and
18 if the Board approves it and we are waiting for the order
19 then, yes, it is my understanding that the zoning
20 administrator would allow the use to continue.

21 CHAIRPERSON HILL: Okay. All right. Let's see,
22 is there anyone here who wishes to speak, Mr. Young?

23 MR. YOUNG: No, we do not.

24 CHAIRPERSON HILL: Okay. Let's see, does the
25 Board have any final questions of the Applicant?

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1 Okay. All right. Mr. Kadlecek, I hope you have a
2 nice day.

3 MR. KADLECEK: Thank you, you too. Thank you for
4 your time.

5 CHAIRPERSON HILL: Bye, bye. All right, I am
6 getting tired of talking. If somebody else wants to start
7 first, number one and/or number two. Does anybody have any
8 thoughts on the ten-year condition?

9 VICE CHAIRPERSON JOHN: Continue the ten-year
10 limit. Based on the ANC's concerns, even though I agree with
11 the Applicant that with respect to any adverse impact that
12 potential impact is known because of the existence of its use
13 for 33 years. I appreciate the ANC's analysis of what they
14 consider lack of an exceptional condition for that lot, which
15 I believe was a ten, but on balance I am going to give great
16 weight to the Office of Planning's analysis and I think that
17 this use has existed for 33 years, which I think is
18 significant and is an exceptional condition. It is now a
19 legally nonconforming use, and I would support its continuing
20 for another ten years. I would also support continuing all
21 of the conditions, in addition to the ten-year limited, which
22 is what I noted before. Other than that, I have no other
23 comments.

24 CHAIRPERSON HILL: Okay. Let's see, Mr. Blake.

25 MEMBER BLAKE: I also agree with Vice Chair John's

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1 analysis that the area of variance standard has been met with
2 a very large lot unsuccessful development at this point, it
3 is a large part of the community, it is appreciated by the
4 community, have wide support from the community, and the
5 impact is certainly well known to be of value. I also agree
6 with the Office of Planning's analysis, I mean, the ANC 6C's
7 analysis, because this is the type of thing that we talk
8 about before where you put a rule in or variance in, and
9 sometimes it just becomes outdated, but we do have the
10 ability to continue it which I am comfortable with, and I do
11 agree that a ten-year term would be appropriate. I like the
12 argument of it being longer, but ten years is not that short,
13 five years would be ridiculous, so I feel very comfortable
14 with the ten-year term, so I will be supporting.

15 CHAIRPERSON HILL: Thank you. I guess the other
16 thing is the ten-year term is what the ANC had mentioned in
17 terms of their support, so they would at least then, again,
18 enjoy the support of the ANC. Mr. Smith.

19 MEMBER SMITH: -- This particular case, and how it
20 meets the criteria for us to grant the special exception in
21 the area in this request. I agree also the promise raised by
22 the ANC regarding the ten-year time limit. I would be in
23 support of that as well, so I will support the application
24 giving great weight to the staff report.

25 CHAIRPERSON HILL: Okay, great. Commissioner

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1 Stidham.

2 COMMISSIONER STIDHAM: I agree with the comments
3 that have already been made, essentially the continuation of
4 the ten-year time limit. I think while they have enjoyed
5 this for 33 years it is not unreasonable to require them to
6 come back every ten years to ensure that that use is
7 consistent with what it should be, so I am prepared to
8 support.

9 CHAIRPERSON HILL: Okay.

10 Okay. I am going to make a motion then to approve
11 Application Number 21112 as captioned by the Secretary,
12 including the previous conditions that were in Application
13 18807, including the ten-year term, and ask for a second.
14 Ms. John.

15 VICE CHAIRPERSON JOHN: Second.

16 CHAIRPERSON HILL: The motion made and seconded.
17 Madam Secretary, begin roll call, please.

18 MS. MEHLERT: As motion to approve the application
19 with the conditions, and the previous approval of Case 18807,
20 including the ten-year term limit. Chairman Hill?

21 CHAIRPERSON HILL: Yes.

22 MS. MEHLERT: Vice Chair John?

23 VICE CHAIRPERSON JOHN: Yes.

24 MS. MEHLERT: Board Member Smith?

25 MEMBER SMITH: Yes.

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1 MS. MEHLERT: Board Member Blake?

2 MEMBER BLAKE: (No audible response.)

3 MS. MEHLERT: Commissioner Stidham?

4 COMMISSIONER STIDHAM: (No audible response.)

5 MS. MEHLERT: The vote is five to zero to zero to
6 approve Application 21112 on the motion with conditions on
7 the motion made by Chairman Hill and seconded by Vice Chair
8 John.

9 CHAIRPERSON HILL: Okay, great, Ms. Mehlert. I
10 almost called you Mr. Moy. Okay, Ms. Mehlert, you want to go
11 ahead and call our next case that would be great. Thank you.

12 MS. MEHLERT: Next is Application Number 21113 of
13 FP CPT 1750 H Street, LLC. This is a self-certified
14 application pursuant to Subtitle X §901.2 for Special
15 Exception on Subtitle C §1501.1(e) to allow penthouse
16 habitable space and a publicly assessable rooftop deck. This
17 is to construct a new habitable penthouse with roof deck on
18 the existing ten-story office building located in the D-6
19 zone at 1750 H Street, NW, Square 166, Lot 42.

20 CHAIRPERSON HILL: Okay, thank you. If the
21 Applicant can hear me if they could please introduce
22 themselves for the record.

23 MR. BEIBLE: Yes, my name is Ryan Beible. Thanks
24 for hearing this case. Hope you are all well. It was a long
25 morning. I am going to try to make this one as quick as

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1 possible. I did put together a little slide show if we could
2 have them pull it up.

3 CHAIRPERSON HILL: Mr. Young, I think it is
4 Exhibit 31. Thank you.

5 MR. YOUNG: Oh, yes. Thank you.

6 MR. BEIBLE: All right, so this is unique. The
7 Special Exception mentions constructing penthouse habitable
8 space, however it exists. This building was built a little
9 over 20 years ago with a penthouse and roof top deck, and the
10 owner was looking to renovate the penthouse and install an
11 ADA restroom, so they submitted it for a permit and DOB
12 reviewed it. The certificate of occupancy does not
13 explicitly state penthouse on it, so DOB and the owner and
14 everyone scrambled to try to locate one that does and none
15 was located so they directed us and said we have to get a
16 special exception and go through this process, so here we
17 are.

18 Next slide, please. All right, so the Special
19 Exception we are seeking is I §1501.1(e), and has to do with
20 needing permission or clearance from the Secret Service to
21 have a habitable penthouse or roof top deck within certain
22 proximity of the White House. So it is kind of cool. Four
23 people from the Secret Service met me out there in January
24 and I felt pretty cool. We went up there and they went
25 around the roof and did their investigation, and looked at

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1 site lines, and said all was clear. They followed with a
2 letter stating such.

3 Next slide, please. Just some photos of the
4 existing roof deck and the existing interior, the penthouse
5 area, it is mainly an elevator, lobby, building engineer's
6 office, bathroom, and a storage room. Next slide, please.
7 So to get some insight, this is what the owner is trying to
8 do. I have highlighted in yellow where they are trying to
9 convert that storage room on the right to an ADA restroom, so
10 this is what triggered having to go through this was when
11 they submitted the alteration permit to DOB. That is the end
12 of my presentation.

13 CHAIRPERSON HILL: Okay. Thank you. Before I
14 turn to my Board, can I hear from the Office of Planning?

15 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman,
16 -- sorry, I show where my camera is not coming on.

17 CHAIRPERSON HILL: That is all right, Ms. Brown,
18 we can hear you.

19 MS. BROWN-ROBERTS: Okay. All right. Okay. Good
20 afternoon, Mr. Chairman, and members of the BZA. I am Maxine
21 Brown-Roberts from the Office of Planning on BZA Case 21113
22 for Special Exception to have a habitable penthouse with roof
23 deck on the building 1750 H Street, NW. As discussed in the
24 OP report, the proposal meets all requirements for the
25 habitable penthouse in Subtitle X §901, and, therefore, OP

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1 will stand on the record and recommends approval. Thank you,
2 Mr. Chairman, and I am available for questions.

3 CHAIRPERSON HILL: Thank you. Does the Board have
4 any questions for the Office of Planning, or the Applicant?

5 Okay, Mr. Young. Does anyone here wish to speak?

6 MR. YOUNG: We have one witness signed up.

7 CHAIRPERSON HILL: Okay, great. We will put that
8 person forward. Is it Mr. Worick?

9 MS. WORICK: Here.

10 CHAIRPERSON HILL: You do not have any comments.

11 MS. WORICK: Yes.

12 CHAIRPERSON HILL: Okay. Did you sign up to
13 testify?

14 MS. WORICK: No, mainly just to listen in as part
15 of building owner representative.

16 CHAIRPERSON HILL: I got you, okay. All right.
17 So just for the record then let's just clear that Ms. Worick
18 was not signed up to testify, but was here as a
19 representative to listen. All right, then please excuse Ms.
20 Worick. All right. Mr. Beible, thank you so much. I hope
21 you have a nice day.

22 Okay. I did not have any issues with this. I
23 thought it was very straightforward. I would agree with the
24 analysis the Office of Planning has put forth, as well as
25 that of the ANC, and I am going to be voting in favor of this

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1 application. Mr. Smith, do you have anything you would like
2 to add?

3 MEMBER SMITH: I have nothing to add. I agree
4 with your analysis, and will support the application as well.

5 CHAIRPERSON HILL: Thank you. Mr. Blake.
6 Thank you. Commissioner Stidham.

7 COMMISSIONER STIDHAM: I support as well.

8 CHAIRPERSON HILL: Thank you. Vice Chair John.

9 VICE CHAIRPERSON JOHN: In support, Mr. Chairman.

10 CHAIRPERSON HILL: Okay. Make a motion to approve
11 Application Number 21113 as captioned and read by the
12 Secretary, and ask for a second. Ms. John.

13 VICE CHAIRPERSON JOHN: Second.

14 CHAIRPERSON HILL: Motion made and seconded. Ms.
15 Mehlert, if you could take a roll call.

16 MS. MEHLERT: Please respond to the Chair's motion
17 to approve the application. Chairman Hill?

18 CHAIRPERSON HILL: Yes.

19 MS. MEHLERT: Vice Chair John?

20 VICE CHAIRPERSON JOHN: Yes.

21 MS. MEHLERT: Member Blake?

22 MEMBER BLAKE: (No audible response.)

23 MS. MEHLERT: Member Smith?

24 MEMBER SMITH: Yes.

25 MS. MEHLERT: Commissioner Stidham?

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1 COMMISSIONER STIDHAM: (No audible response.)

2 MS. MEHLERT: Staff would record the vote as five
3 to zero to zero to approve Application 21113 on the motion
4 made by Chairman Hill and seconded by Vice Chair John.

5 CHAIRPERSON HILL: Thank you. If you want to call
6 our last case, Ms. Mehlert, when you get a chance.

7 MS. MEHLERT: Last case today is Application
8 Number 21115 of Asa and Whitney Davis, it is a self-certified
9 application pursuant to Subtitle X §901.2 for a Special
10 Exception under Subtitle E §204.4 from the requirements of
11 Subtitle E §204.1 to allow modification of a rooftop
12 architectural element original to the principal building.
13 The project is a new third-story addition to an existing two-
14 story attachment for dwelling located in the RF-1 zone at
15 5714 8th Street, NW, Square 2989, Lot 61.

16 CHAIRPERSON HILL: Thank you. If the Applicant
17 could hear me, if they could please introduce themselves for
18 the record.

19 MS. BROPHY: Architect Devon Brophy.

20 CHAIRPERSON HILL: Okay. Let's see. Ms. Brophy,
21 if you want to go ahead and explain to us what is happening,
22 and why you believe we should grant the relief.

23 MS. BROPHY: Yes, so this is a project where my
24 clients have lived there, Asa and Whitney Davis, for about 12
25 years. In 2022 we started this process of submitting for a

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1 building permit, that is Building Permit B221614, I believe,
2 and the owners would like to construct a third floor, stay in
3 their home, just expand the current footprint of their home.

4 So if you go to the architectural plans and elevations I
5 would be happy to walk through the presentation.

6 CHAIRPERSON HILL: Exhibit 7, I think, Mr. Young.

7 MS. BROPHY: Perfect. Thank you. So here you
8 will see that it is locating the article and zone, as we have
9 said. If you go to page 2 you can see here we are not
10 proposing to increase the lot coverage at all, it is just the
11 proposed third floor addition on the existing second floor
12 footprint. If you go down to page 5 you can see here -- so
13 this is the proposed roof plan. We have the roof parapet
14 well set back about 4 foot 3 from the edge of the existing
15 facade.

16 If you go to page 6, as was said before, we're
17 presenting it as a Special Exception Subtitle E §204.1, that
18 is a modification to a rooftop element. Currently this two-
19 story home, if you go to page 8, has an existing dormer, it
20 is about 6 feet by 2 foot 4 tall located on the side of the
21 home, very typical to this area of D.C. My client is seeking
22 to elongate that dormer. So if you go to page 9, elongate
23 that dormer, as you can see, so it can expand all the way up
24 to that rooftop parapet so that the house looks like it was
25 designed in one condition, the same exact time.

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1 The owners are not looking to have this house look
2 like a Frankenstein of a house, it is just that one element
3 is obviously the existing two-story home, and then the third
4 floor is another component to the home. They are looking to
5 just make this a cohesive element. Throughout this process
6 my clients have engaged with the neighbors, both at the rear,
7 to the sides that are directly adjacent, across the street,
8 and they received six letters of support from those six
9 adjoining neighbors. They also host a community day on 4/11,
10 where they opened their doors up to answer questions that the
11 neighbors may have had. On the 17th of April we received ANC
12 approval to do this for the Special Exception.

13 To be perfectly transparent, I did reach out to
14 Office of Planning twice. I emailed them with all the
15 materials, and I called and I never heard anything back, so I
16 am not sure if my email got kicked to spam, but just want to
17 make that -- I did try and reach out, but I never heard back.

18 So if you go to the next page, number 10. You will see here
19 this is the by rights elevation that we can do. This is very
20 typical for this zone is the 3-foot set back where it has the
21 third addition projecting upwards. So this is the case that
22 we are not looking to do, like I said, we want to make an
23 architecturally cohesive front facade.

24 If you go to the next page. You will see here
25 this is the existing home. We have two different conditions

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1 on either side of the property. We have the triangular to
2 the left, and then the smaller dormer to the right. If you
3 go to page 13 you will see here this is what the proposed
4 facade looks like within the existing streetscape. The last
5 page, on page 14, you will see here this is around the corner
6 from the property, 524 Jefferson Street, NW. This was a
7 property that pursued the same Special Exception, you all may
8 remember it, I do not expect you to. This was kind of our
9 basis of design, of thinking how can we make a house look
10 like it was always there, and not meant to -- and not
11 something that was constructed at two different points in
12 time. Please let me know if you have any questions or if I
13 missed anything.

14 CHAIRPERSON HILL: Thank you. Could I hear from
15 the Office of Planning, please?

16 MR. LAWSON: Mr. Chair and members of the
17 Commission, Joel Lawson with the Office of Planning, company
18 to stand on the record with our report recommending approval
19 of this application. Thank you.

20 CHAIRPERSON HILL: Thank you. Welcome, Mr.
21 Lawson. Let's see, does anybody have any questions for the
22 Office of Planning?

23 Okay. Mr. Young, is there anyone here who wishes
24 to speak?

25 MR. YOUNG: We do not.

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1 CHAIRPERSON HILL: Okay, Ms. Brophy, do you have
2 anything you would like to add at the end?

3 Ms. Brophy, is there -- I am not sure if I am
4 pronouncing your name right, I apologize.

5 MS. BROPHY: That is all right.

6 CHAIRPERSON HILL: Is there anything you would
7 like to add at the end?

8 MS. BROPHY: No, just thank you all for your time.

9 CHAIRPERSON HILL: Okay. All right. I am going
10 to close the hearing and the record. If you could excuse
11 everyone, Mr. Young.

12 Okay, straightforward, I did not have any
13 concerns, I would agree with the analysis that has been put
14 forward by the Office of Planning, as well as that of the
15 ANC. It seems like a pretty straightforward design to me,
16 and I did not think it was going to cause any issues. I am
17 going to be voting in favor. Mr. Smith, so you have anything
18 you would like to add?

19 MEMBER SMITH: I vote in support.

20 CHAIRPERSON HILL: Thank you. Mr. Blake.

21 MEMBER BLAKE: I agree with your analysis and I
22 will be voting in support as well.

23 CHAIRPERSON HILL: Great, Mr. Stidham -- I mean,
24 Commissioner Stidham.

25 COMMISSIONER STIDHAM: I agree with -- you threw

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1 me off. I agree with what you said, and I support as well.

2 CHAIRPERSON HILL: Thank you. Vice Chair John.

3 VICE CHAIRPERSON JOHN: I am also in support, Mr.
4 Chairman.

5 CHAIRPERSON HILL: Okay. Let me make a motion
6 then to approve Application Number 21115 as captioned and
7 read by the Secretary and ask for a second. Ms. John.

8 VICE CHAIRPERSON JOHN: Second.

9 CHAIRPERSON HILL: Thank you. Ms. Mehlert, if you
10 could take a roll call.

11 MS. MEHLERT: Motion to approve the application.
12 Chairman Hill?

13 CHAIRPERSON HILL: Yes.

14 MS. MEHLERT: Vice Chair John?

15 VICE CHAIRPERSON JOHN: Yes.

16 MS. MEHLERT: Board Member Smith?

17 MEMBER SMITH: Yes.

18 MS. MEHLERT: Board Member Blake?

19 MEMBER BLAKE: (No audible response.)

20 MS. MEHLERT: Commissioner Stidham?

21 COMMISSIONER STIDHAM: Yes.

22 MS. MEHLERT: The vote is five to zero to zero to
23 approve Application 21115 on the motion made by Chairman Hill
24 and seconded by Vice Chair John.

25 CHAIRPERSON HILL: Thank you, Madam Secretary. Is

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1 there anything else before the Board today?

2 MS. MEHLERT: Nothing else from the staff.

3 CHAIRPERSON HILL: Okay. You guys have a good
4 day. We are adjourned.

5 (Whereupon, the above-entitled matter went off the
6 record at 2:58 p.m.)

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In the matter of: Public Hearing

Before: DCZC

Date: 05-08-24

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was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate complete record of the proceedings.



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