

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

JULY 3, 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 BLAKE, Member  
CHRISHAUN S. SMITH, NCPC Designee

ZONING COMMISSION MEMBERS PRESENT:

ROBERT MILLER, Vice-Chairperson  
JOSEPH S. IMAMURA, PhD, AOC Designee

OFFICE OF ZONING STAFF PRESENT:

KEARA MEHLERT, Secretary  
MICHAEL SAKINEJAD, Zoning Data Coordinator  
PAUL YOUNG, A/V Production Specialist

OFFICE OF PLANNING DEVELOPMENT REVIEW STAFF PRESENT:

RON BARRON  
SHEPARD BEAMON  
PHILIP BRADFORD  
MAXINE BROWN-ROBERTS  
MATTHEW JESICK  
MICHAEL JURKOVIC  
CRYSTAL MYERS

OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

SARAH BAJAJ, ESQ.  
CARISSA DEMARE, ESQ.  
NANCY NAGELHOUT, ESQ.

The transcript constitutes the minutes from  
the Regular Public Hearing held on July 3, 2024.

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

2 (9:51 a.m.)

3 CHAIRPERSON HILL: Okay, great. Thank you.  
4 Morning, ladies and gentlemen. The Board of Zoning  
5 Adjustments. Today's July 3 public hearing please come to  
6 order.

7 My name is Fred Hill, Chairman of the District of  
8 Columbia Board of Zoning Adjustment. Joining me today are  
9 Board members, Vice Chair Laura John, Carl Blake, and  
10 Crishaun Smith, and Zoning Commissioners Rob Miller, Dr. Rob  
11 Miller, and Dr. Joe Imamura. Today's meeting and hearing  
12 agenda are available on the Office of Zoning's website.

13 Please be advised this proceeding is being  
14 recorded by a court reporter and is also webcast live via  
15 Webex and YouTube Live. The video of the webcast will be  
16 available on the office of Zoning's website after today's  
17 hearing. Accordingly, everyone who is listening on Webex or  
18 by telephone will be muted during the hearing. Also, please  
19 be advised that we do not take any public testimony at our  
20 decision meeting sessions.

21 If you're experiencing difficulty accessing Webex  
22 or with your telephone call in, then please call our OZ  
23 hotline number 202-727-5471 once again, 202-727-5471 to  
24 receive Webex, login or call in instructions. At the  
25 conclusion of a decision meeting session I shall, in

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1 consultation with the Office of Zoning, determine whether a  
2 full or summary order may be issued.

3           A full order is required when the decision it  
4 contains is adverse to a party, including in effect at ANC.  
5 A full order may also be needed if the Board's decision  
6 differs from the Office of Planning's recommendation.  
7 Although the Board favors the use of summary orders, whenever  
8 possible, an applicant may not request the Board to issue  
9 such an order.

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

19           All persons planning to testify, either in favor  
20 or in opposition, should have signed up in advance. They'll  
21 be called by name to testify. If this is an appeal, only  
22 parties are allowed to testify. By signing up to testify.  
23 All participants plead the oath or affirmation as required  
24 by subtitle Y408.7.

25           Request to enter evidence at the time and online

1 virtual hearings such as written testimony or additional  
2 supporting documents other than live video, which may not be  
3 presented as part of testimony, may be allowed to pursuant  
4 to Y103.13, provided that the person is making the request  
5 to enter an exhibit explain A) How the proposal is relevant;  
6 B) the good cause justifies allowing the exhibit into the  
7 record, including explanation of why the requester did not  
8 file the exhibit prior to the hearing pursuant to YA206 and  
9 see how the proposed exhibit would not unreasonably prejudice  
10 any parties. The order of procedures for special exceptions  
11 and variances are pursuant to Y409. The order of procedures  
12 for appeals are pursuant to Y507.

13           At the conclusion of each case, an individual who  
14 is unable to testify because of technical issues may file a  
15 request for leave to file a written version of the plan  
16 testimony to the record within 24 hours following the  
17 conclusion of public testimony in the hearing. If additional  
18 written testimony is accepted, then parties will be allowed  
19 a reasonable time to respond as determined by the Board. The  
20 Board will then make its decision at its next meeting  
21 session, but no earlier than 48 hours after the hearing.

22           Moreover, the Board may request additional  
23 specific information to complete the record. The Board of  
24 the staff will specify at the end of the hearing exactly  
25 what's expected and the date when persons must submit the

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1 evidence the office is owning. No other information shall  
2 be accepted by the Board.

3           Finally, the District of Columbia Administrative  
4 Procedures Act requires that the public hearing on each case  
5 be held in the open for the public. However, pursuant to 405  
6 and 406 of that act, the Board may, inconsistent with its  
7 rules of procedures and act, enter into a closed meeting on  
8 a case for purposes of seeking legal counsel on a case  
9 pursuant DC Official Code section 2575B4, and/or deliberate  
10 on a case pursuant DC official code Section 2-575B13, but  
11 only after filing the circumflex public notice in the case  
12 of emergency closed meeting after taking a roll call vote.

13           Madam Secretary, do we have any preliminary  
14 matters?

15           MS. MEHLERT: Morning, Mr. Chairman. Members of  
16 the Board, Application number 21109 of Jamal's Corcoran LLC  
17 has been withdrawn. Regards to the filings, the Chairman has  
18 reviewed and granted waivers to allow late filings into the  
19 applicable case record pursuant to Subtitle Y Section 206.7  
20 and Section 103.13.

21           Any other late filings during the course of  
22 today's live hearing should be presented before the Board by  
23 the applicant, parties, or witnesses after the case is  
24 called, and any other preliminary matters will be noted when  
25 the case is called.

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1 CHAIRPERSON HILL: Okay, thanks. Let's see.  
2 Well, good morning, everybody, and thank you. Thank everyone  
3 for their patience as there are a few issues again here at  
4 my office that I'm having to contend with as I am the only  
5 one in the building and so I may get pulled away, and I  
6 apologize if that happens. Let's see, you want to go ahead  
7 and call our first case with Commissioner Miller?

8 MS. MEHLERT: Yes. The first case in the Board's  
9 hearing agenda is Appeal No. 21082 of Wardman Hotel strategy  
10 team, Lucian Ramachandran and Renata Wallenberg.

11 This is an appeal pursuant to Subtitle X, Section  
12 1100, challenging decisions made on October 23 and 26th, 2023  
13 by the Department of Buildings Zoning Administrator to issue  
14 building permits number B 230-7474 and B 230-5655.

15 This is a brand new residential development with  
16 approximately 60 dwelling units on a record lot. The project  
17 is located in the RA2 and RA4 zones at 2650 Woodley Road  
18 Northwest and 2601 Calvert Street, Northwest, Square 2132,  
19 Lots 855 and 856. The Board heard this appeal on May 15 and  
20 then at the June 5 public meeting the Board denied the  
21 property owner's motion to strike and instead allowed  
22 responses from parties and scheduled a continued hearing on  
23 the submissions. And participating are Chairman Hill, Vice  
24 Chair John, Mr. Blake and Commissioner Miller.

25 CHAIRPERSON HILL: Okay, great, thank you. Mr.

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1 Brown, can you hear me? Mr. Brown, can you hear me? You're  
2 on mute, I think. Mr. Brown?

3 MR. BROWN: Yes, I can hear you.

4 CHAIRPERSON HILL: Okay, great. Could you  
5 introduce yourself for the record, Mr. Brown?

6 MR. BROWN: Yes. My name is David Brown and I  
7 represent the Wardman and Hotel strategy team and two  
8 individuals mentioned in the introduction.

9 CHAIRPERSON HILL: Okay, great. Thank you. Mr.  
10 Brown, you're a little bit low on your volume, but we'll see  
11 how we can go. Or maybe it's just me, I don't know. Mr.  
12 Cox, you want to introduce yourself and your team?

13 MR. COX: Sure. Good morning, I'm Eric Cox, the  
14 deputy general counsel for the DC Department of Buildings.  
15 With me today are DOB attorneys Brent Fuller and Colleen  
16 Smythe. Good morning, everybody.

17 CHAIRPERSON HILL: Good morning, Mr. Avitable.  
18 Can you introduce yourself for the record?

19 MR. AVITABLE: David Avitable with Goulston and  
20 Storrs, land use counsel to the property owner, joined by my  
21 colleagues Liv Torres and Shane Dettman.

22 CHAIRPERSON HILL: Okay, great, thank you. I  
23 don't necessarily think this is going to take very long  
24 because I read the record and what I think or where I think  
25 we are.

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1           So what happened is at the end of the last hearing  
2 I was trying to be a little bit efficient in asking for  
3 conclusions to be delivered. And so the appellate gave some  
4 conclusions and at the time I think also mentioned rebuttal,  
5 which really I think was more of a conclusion. And then  
6 there was opposition to this rebuttal from the Department of  
7 Buildings and the intervener because they didn't think they  
8 had an opportunity to respond.

9           And once I have allowed time to kind of follow  
10 through, it seems as though the Department of Buildings and  
11 the intervener are comfortable with where we are now in terms  
12 of this case. And I think that there's nothing much now to  
13 say, and the Board would have an opportunity to review what  
14 we have.

15           I do not think we will have a decision today. It  
16 will be an opportunity for the Board to now review the files.  
17 But that's what I believe we currently are. Mr. Brown, does  
18 that sound accurate to you?

19           MR. BROWN: I do recall the vice chair saying that  
20 you would anticipate that there would be some kind of closing  
21 arguments by all of us this morning, rather than testimony  
22 or cross examination.

23           CHAIRPERSON HILL: Okay. I think we have the  
24 closing arguments in the record currently now. And so I  
25 don't think there's anything necessarily that we need unless

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1 the Board has any questions. Mr. Cox, is that where you  
2 think we are as well?

3 MR. COX: Yes, I agree with that.

4 CHAIRPERSON HILL: Okay, Mr. Avitable, do you  
5 agree with that?

6 MR. AVITABLE: Yeah, we agree as well. Though if  
7 the Board wants us to reiterate our closing arguments, we  
8 don't have an objection to that either.

9 CHAIRPERSON HILL: I think that the Board has  
10 everything it needs in the record. I don't think that we  
11 need anything further. I think that what this now, the  
12 reason why I wanted to have this was have an opportunity to  
13 clear everything up and tidy everything up before the Board  
14 reviewed everything. So therefore, I'm going to turn to the  
15 Board and see if they have any questions of anyone as this  
16 final opportunity before we then take our time in reviewing  
17 the record. Okay? I don't see anybody raising their hand.

18 All right, then. What I propose is we'll go ahead  
19 and have this on for decision next week. And I appreciate  
20 the time that you all came here for. And I appreciate my  
21 fellow Board members in allowing me to tidy up this hearing.  
22 So we will see you all for deliberation next week. Thank you  
23 very much.

24 I'm sorry. Sorry, Vice Chair John. Wait a  
25 minute.

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1 Vice Chair John has something.

2 VICE CHAIR JOHN: Are we meeting next week?

3 MS. MEHLERT: We have no hearing next week. The  
4 next would be July 17.

5 CHAIRPERSON HILL: Okay, I'm sorry. July 17 then.  
6 Thank you, Madam Vice Chair. All right, please, Madam  
7 Secretary, put this on for decision on the 17th. Thank you.  
8 Thank you all very much.

9 MR. COX: Thank you.

10 CHAIRPERSON HILL: Okay, and for the record, I'm  
11 closing the hearing, that portion of the hearing, and there's  
12 nothing that we need. All right, let's see the next one we  
13 have, and this may again, if I get interrupted. I don't know  
14 how to handle it. I'll get interrupted. But if you want to  
15 call our next case that Commissioner Miller is on.

16 Oh, wait a minute. Let's let, and I apologize,  
17 Mike. What's your last name?

18 MR. SAKINEJAD: It is Sakinejad, but you can just  
19 call me Mike.

20 CHAIRPERSON HILL: Okay, I'll go with Mike.  
21 Thanks, Mike. So, Mike, I was waiting until we excused all  
22 of the participants. And now, Madam Secretary, if you want  
23 to call our next case.

24 MS. MEHLERT: Yes. Next is in the hearing agenda,  
25 Application No. 20472B of the River School. This is a

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1 remand of an order approving subject to conditions, special  
2 exceptions to allow daytime care use under Subtitle U,  
3 Section 20351H of private school use under Subtitle u,  
4 Section 203.1M Subtitle X, Section 104 and a reduction in the  
5 minimum vehicle parking requirements of Subtitle c, Section  
6 701.5, under Subtitle C, Section 703.2. This is for a new  
7 child development center and private school campus for 350  
8 children with accessory clinic use. It's located in the R1B  
9 zone at 4220 Nebraska Avenue Northwest Square 1727. Lots 4  
10 and 5.

11           And on May 15, the Board voted to issue a  
12 procedural order on remand which requested additional  
13 information from the parties based on the Board of Appeal's  
14 decision and scheduled for a one-day hearing. Participating  
15 are Chairman Hill, Vice Chair John, Board members Blake and  
16 Smith, and Commissioner Miller.

17           CHAIRPERSON HILL: Okay, great. Thank you. All  
18 right, let's see. Let's go ahead and have the applicant  
19 introduce themselves first. If they could hear me, please.

20

21           MS. PRINCE: Allison Prince here on behalf of the  
22 River School.

23           CHAIRPERSON HILL: Great. I don't know about you  
24 guys. Like, I'm getting a very big echo. Are you hearing  
25 the echo? Okay, everyone else is hearing me. Some people are

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1 hearing. Okay, I'm going to log off and I'm going to log  
2 back on. Okay, maybe the feedback may be coming. Okay, can  
3 you all hear an echo now? Okay, sorry, Ms. Prince, it was  
4 you. If you can just. I don't know, just when you talk,  
5 unmute yourself. I'll mute myself and then, or unmute  
6 yourself. Everybody else, mute themselves. Whoever's  
7 talking, please mute yourselves and therefore we'll survive  
8 the echo. Okay, so that was the, okay, let me see who else  
9 we have.

10 Ms. Prince, do you have anyone else here with you?  
11 I didn't hear you. I'm sorry, you're on mute now, Ms.  
12 Prince.

13 MS. PRINCE: I have Jami Milanovich here with me.  
14 She's our traffic engineer. She's our only witness. And  
15 then I also have Nancy Mellon available for any questions you  
16 may have.

17 CHAIRPERSON HILL: Okay, great. Thank you. All  
18 right, and with TPA, who is here now. You've got to mute  
19 yourself again, Ms. Prince.

20 MR. HARR: Hi, this is Tim Harr. I'm president  
21 of the TPA and I also have Spencer Churchill of counsel.

22 CHAIRPERSON HILL: Okay, which one is that?

23 MR. CHURCHILL: One of my speaking will help to  
24 identify me. Nor can I tell whether my video camera is  
25 working at the moment.

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1 CHAIRPERSON HILL: Your video camera is not  
2 working. I don't mind. I'm just saying. I just want to  
3 make sure that you know that and we're just not going to  
4 worry about it right now. Is that correct?

5 MR. CHURCHILL: That's fine. Thank you.

6 MR. HARR: And also on the line is the secretary  
7 of TPA, Winfield Crigler. But I don't expect she will  
8 testify unless questions that she needs to answer come up.

9 CHAIRPERSON HILL: Okay, thanks, Mr. Harr. Okay,  
10 I see the commissioner here also. Could the commissioner  
11 from the ANC please introduce themselves?

12 MS. GIANINNO: Hi, I'm Alexandra Gianinno and I'm  
13 the commissioner of ANC 306.

14 CHAIRPERSON HILL: Okay. All right, Ms. Prince,  
15 you know, I think why we're here, in terms of what the remand  
16 has put forward and what the procedural order asks for.  
17 Perhaps you can walk us through what you believe and what you  
18 have proposed, and we can go ahead and have all of the other  
19 parties have opinion on your proposal, and then we'll see  
20 where we are with the Board. And I'm going to mute myself  
21 now.

22 MS. PRINCE: Can you hear me?

23 CHAIRPERSON HILL: We can hear you. I'm going to  
24 mute myself.

25 MS. PRINCE: I can't hear anything.

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1 CHAIRPERSON HILL: We can hear you. We can hear  
2 you. You know, it's so funny you would think I'd know how  
3 to use the chat.

4 MS. PRINCE: Can you hear me now?

5 CHAIRPERSON HILL: Yes.

6 MS. PRINCE: Great.

7 MS. PRINCE: Okay, I'll just walk through my  
8 opening. And just to give you a sense of time, Chairman  
9 Hill, I believe our entire presentation will be under 20  
10 minutes. Probably more like 15.

11 So good morning, Chairman Hill and members of the  
12 Board. I'm Allison Prince with Goulston and Storrs here on  
13 behalf of the River School.

14 As you will recall, this Board unanimously  
15 approved the school's application to establish a child  
16 development center and school on the Nebraska Avenue site.

17 After a six hour hearing on October 27, 2021, two  
18 and a half full years ago, you heard testimony from a total  
19 of four experts, including two traffic engineers, one for the  
20 school and one for the opposition party.

21 The favorable decision was based on a full and  
22 complete 631 page record. And I want to note that almost 100  
23 pages of that record was the applicant's comprehensive  
24 transportation report. Traffic was the main issue at the  
25 hearing.

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1           The party opponent appealed the decision to the  
2 DC Court of Appeals. Six months ago, the DC Court of Appeals  
3 partially affirmed the Board's decision. The court stated,  
4 we find most of Tenleytown's arguments unpersuasive and  
5 remanded on a single narrow issue, to seek clarity on the  
6 exact role of the school's proposed shuttle bus in meeting  
7 the school's trip reduction commitment.

8           We are here today to present testimony on the  
9 narrow issue outlined in this Board's procedural order that  
10 was prepared in response to the remand. As you know, the  
11 court questioned whether the use of the shuttle by children  
12 in grades K-6 should have been mandated by the inclusion of  
13 a condition in the order. We have responded to the courts  
14 and the Board's directive by reiterating the mandatory nature  
15 of the shuttle for grades K-6 consistent with Head of school  
16 Nancy Mellon's representation at the hearing.

17           In connection with this remand, we've offered a  
18 single, straightforward condition for inclusion of the order  
19 mandating the use of the shuttle. And I should note the idea  
20 of the shuttle was suggested by the ANC in the first place.  
21 In proposing the condition, we included practical,  
22 reasonable, and very limited exceptions that we pulled from  
23 the record.

24           For example, a student who lives within walking  
25 distance of the campus or has a disability that cannot be

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1 accommodated on the bus would be exempt. This is common  
2 sense. We shared the proposed condition with the ANC and  
3 engaged in extensive discussions, including a lengthy  
4 dialogue at the recent ANC meeting.

5 While we have been able to address some of the  
6 expressed concerns, we are not willing to engage in requests  
7 that are far beyond the scope of the remand. We are not  
8 willing to relitigate this case. We are required to respond  
9 to the procedural order.

10 As I mentioned today, we have just one witness,  
11 Ms. Milanovich, our traffic expert. Our presentation, as I  
12 mentioned, will take under 20 minutes, probably closer to 15.  
13 And Nancy Mellon is also here just in case the Board has  
14 additional questions.

15 So we welcome your questions either during Jami's  
16 presentation or once she's done. And certainly we welcome  
17 any cross-examination from the parties, and I thank you for  
18 your time.

19 MS. MILANOVICH: Good morning, Chairman, Board.  
20 For the record, my name is Jami Milanovich with Wells and  
21 Associates. We are the transportation consultant for the  
22 project. If we could bring up our presentation, please, and  
23 advance to slide five, I think that Ms. Prince has covered  
24 the first few in her opening remarks. I'm sorry. If you  
25 could go back one, please. Perfect.

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1           Thank you. So, as Ms. Prince mentioned, from the  
2 Board's procedural order on remand, we were asked to answer  
3 three very simple questions.

4           Number one, what is the role of the shuttle bus  
5 in achieving the River School's trip reduction commitment.  
6 Number two, is one hundred percent compliance required to  
7 meet that trip reduction commitment? And number three, if the  
8 shuttle bus is required, how will the school enforce the  
9 requirement? So I'd like to take just a few minutes and  
10 address each of those questions. Next slide, please.

11           I want to take just a very brief step backwards  
12 first and remind the Board that when we did our original  
13 traffic study, we studied the a.m. peak hour, the p.m. peak  
14 hour of the school, and the p.m. commuter peak hour.

15           Because the a.m. peak hour was projected to have  
16 the highest vehicular trip generation, and because it was of  
17 greatest concern to the ANC and members of the community, the  
18 River School committed to a forty-five percent vehicle trip  
19 reduction for the a.m. peak hour.

20           However, because both of the p.m. peak hours were  
21 projected to have a much lower trip generation, the River  
22 School committed to a fifteen percent reduction during each  
23 of the p.m. peak hours. So the role of the shuttle bus is  
24 to contribute to reducing the vehicular trips during that  
25 a.m. peak hour to meet that forty-five percent trip reduction

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1 commitment. The shuttle bus was never discussed nor  
2 contemplated for use during the p.m. peak hours.

3 So again, the role of the shuttle is to contribute  
4 to that forty-five percent reduction in the a.m. peak hour.  
5 Next slide, please.

6 So, in answer to the Board's question, is the  
7 shuttle bus necessary to achieve the River School's a.m. peak  
8 hour trip reduction commitment? The answer is yes. The use  
9 of the shuttle was specifically requested by the ANC and is  
10 one of several strategies that River has identified that they  
11 would utilize to meet the peak hour trip reduction  
12 thresholds.

13 As Nancy Mellon, the head of the River School,  
14 testified at the original hearing, the shuttle would be  
15 provided for students in grades K-6 forty-five percent and  
16 confirmed that those students would be required, as a  
17 condition of their enrollment, to utilize the shuttle,  
18 subject to limited exceptions. Next slide, please.

19 And that leads to the second question. Is one  
20 hundred percent compliance required for children in grades  
21 K-6? And the answer to that is no, because there are certain  
22 limited exceptions that would be allowed while still allowing  
23 the River School to meet the trip reduction commitment that  
24 they made in the a.m. peak hour.

25 So, for example, students who walk or bike to

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1 school would not generate a vehicular trip and so they would  
2 not be required to take the shuttle bus. Students who take  
3 public transportation also would not generate a vehicle trip  
4 and would be exempt from the shuttle. Students who arrive  
5 in a vehicle with a younger sibling who is permitted to  
6 arrive on campus in a vehicle also would not generate an  
7 additional vehicle trip and would be exempt from the shuttle.

8           Likewise, students who arrive with a parent who's  
9 permitted to drive to campus also would not generate a  
10 vehicle trip and therefore would be exempt from the shuttle.  
11 And the last bullet point, we have a limited number of  
12 students who have a documented physical disability or  
13 condition so severe that it would prevent them from using the  
14 shuttle. That would need to be approved by the head of  
15 school ahead of time and it would be very limited. I want  
16 to give you a couple of examples of the types of things we're  
17 talking about.

18           The River School has a student who has such severe  
19 diabetes that they cannot be on a bus without a nurse. That  
20 student would be exempt. The River School also has a student  
21 who is deaf and is going blind. That student would be exempt  
22 from taking the shuttle bus.

23           Under no situation does this exempt the River  
24 School from adhering to that forty-five percent trip  
25 reduction commitment. They still have to meet that. And so

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1 with a handful of exemptions, those would be offset by the  
2 River School more aggressively using other tools in their  
3 toolbox to offset those trips that would occur by this very  
4 limited exemption. Next slide, please.

5           And so the third question is, how will the school  
6 enforce the shuttle bus requirement? As I indicated, all  
7 students in grades K-6 would be required as a condition of  
8 their enrollment and as part of the student contract to use  
9 the shuttle bus during the morning drop-off, subject to those  
10 very limited exceptions that I just detailed. To ensure the  
11 enforceability of the shuttle bus requirement, the River  
12 School has proposed that the BZA adopt an additional  
13 condition of approval. And if you go to the next slide, this  
14 is wholly consistent with the record in this case. I'm not  
15 going to read this. This is identical to what was in our  
16 submission.

17           There have been no changes since our submission,  
18 but I'll just highlight a couple of things. So again,  
19 students in Kindergarten through six would be required unless  
20 they fall under one of those very limited exceptions. It  
21 will be a condition of their enrollment. It will be part of  
22 the student contract that they are required to use the  
23 shuttle bus during the morning drop-off period. Next slide,  
24 please.

25           Failure to comply with the requirement of the

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1 student contract would result in progressive consequences up  
2 to and including dismissal from the school as specifically  
3 outlined in the student contract and set forth in the River  
4 School's transportation management plan, which is Exhibit  
5 100B of the record. Next slide, please.

6 I want to take just a couple of minutes to address  
7 the River School's efforts to work with the ANC. We met with  
8 ANC commissioners on three separate occasions. We exchanged  
9 a number of emails with revised statements based on ANC  
10 feedback, and we also presented at the ANC's regularly  
11 scheduled meeting last month. We've made a number of changes  
12 based on that feedback. As Ms. Prince had indicated, the  
13 feedback related to the narrow scope of the remand order is  
14 where the changes were made.

15 So first, we narrowed the exception for students  
16 with a documented disability or condition to clarify the  
17 hearing loss alone would not be the basis for an exemption  
18 and that students would need to qualify for accommodation  
19 pursuant to local laws and federal laws.

20 Second, the ANC requested that we ask the BZA to  
21 clarify condition four, which deals with pickup and drop-off  
22 activities. You can see condition four there on the screen  
23 in italics. I've bolded the text we're asking to be added,  
24 and this is simply clarifying that all student drop-off and  
25 pickup activities must occur on campus and that no drop-off

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1 and pickup activities can happen on neighbor any neighborhood  
2 street. So, just a minor clarification on condition four the  
3 ANC asked for we were happy to agree.

4           The third, we agreed to update the transportation  
5 management plan with additional protocols to address specific  
6 concerns the ANC raised regarding the tracking of students  
7 on shuttle buses.

8  
9           Essentially what this means is the school has  
10 agreed to take attendance on the shuttle bus to ensure that  
11 all of those students who are supposed to be riding the  
12 shuttle bus actually are riding the shuttle bus. That will  
13 be included in the TMP and reported out on the annual  
14 monitoring reporting that's required.

15           Fourth, we agreed to review the shuttle bus routes  
16 with the ANC in the DDOT before they're finalized. So as we  
17 get closer to opening the school, once we're able to  
18 establish the appropriate locations for the bus stops, we  
19 will submit the proposed bus routes to both the ANC and DDOT  
20 to get their feedback prior to finalizing those. Next slide,  
21 please.

22           And finally, the ANC expressed concerns about how  
23 students who walk to school would be identified so that  
24 they're not confused with students who may be dropped off a  
25 couple of blocks away by a parent. And we pointed the ANC

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1 back to again the original transportation management plan  
2 that's in the record where we contemplated exactly this  
3 thing.

4 Under the operations management component of the  
5 TMP, item 1E requires families who walk their children to  
6 school to be given badges that identify them as walkers so  
7 that the school staff that the River School has committed to  
8 having on campus at the pedestrian entrances to campus will  
9 check their badges to ensure that they are in fact a student  
10 who is supposed to be walking and not somebody disobeying the  
11 requirements and dropping off children a couple of blocks  
12 away on a neighborhood street.

13 So that was already contemplated and covered, and  
14 so we've pointed, as I said, the ANC. Back to that  
15 stipulation in the TMP. Next slide, please.

16 And so to conclude, I just want to walk through  
17 those questions again. The role of the shuttle is to  
18 contribute to reducing the trips during the a.m. peak hour  
19 to allow the River School to meet that forty-five percent  
20 trip production commitment. The use of the shuttle bus is  
21 a necessary tool. However, one hundred percent compliance  
22 for all children in K-6 is not required.

23 For example, students who would arrive to campus  
24 and not generate an additional vehicle trip, for example,  
25 walkers, would not be required to take the shuttle bus. And

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1 we've contemplated a very limited number of students with  
2 documented disabilities who would be allowed to arrive in a  
3 vehicle. Again, the River School would still be required to  
4 meet that trip reduction commitment.

5 River School has proposed an additional condition  
6 that would ensure enforceability of the shuttle requirement,  
7 and failure to comply with the shuttle requirement would  
8 result in progressive consequences up to and including  
9 dismissal from the school, as specifically set forth in the  
10 TMP and the student contract. And with that, I believe we  
11 are ready to take questions.

12 CHAIRPERSON HILL: Okay, thanks. All right.  
13 Thank you for presentation. Does my fellow Board members,  
14 and I'm looking at them, have any questions? I see Mr.  
15 Blake's handout, please. Mr. Blake, go ahead.

16 MEMBER BLAKE: With regard to students that simply  
17 missed the shuttle, how would they be treated?

18 MS. MILANOVICH: So students who missed the  
19 shuttle would not be able to arrive on campus during the  
20 morning drop-off period. If they had to be dropped off in  
21 a vehicle, they would have to come late to school after the  
22 morning drop-off period.

23 MEMBER BLAKE: Okay. Thank you.

24 CHAIRPERSON HILL: What's the time frame of the  
25 morning dropout period again?

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1 MS. MILANOVICH: So we're required to, when we  
2 monitor it, we're required to do counts over a two-hour  
3 period, and then the single highest hour within that two hour  
4 time period is what they're required to report and monitor  
5 on. So I'll let Nancy speak to the exact time in terms of,  
6 you know, when the bell rings and that type of thing.

7 MS. MELLON: So our morning peak is between 8:00  
8 a.m. and 9:00 a.m., generally.

9 CHAIRPERSON HILL: Okay. So then after. And I'm  
10 just trying. Ms. Milanovich, I'm just trying to understand.  
11 Again, after that drop-off period, there's not a concern  
12 about the trips. Is that what is. I can't remember. I  
13 mean, again, it was two years ago and it was a six hour  
14 hearing, I've now been reminded.

15 MS. MILANOVICH: Yeah, that's right. The concern  
16 is in that 8:00 to 9:00 window when the traffic on the  
17 neighborhood roads is highest, and also coincides with when  
18 most students would be arriving at the school. So they would  
19 need to arrive after the 8:00 to 9:00 hour window. Again,  
20 we'll be counting. When we're required to do the monitoring,  
21 we count longer than that.

22 So there should be no thought that so many  
23 students are going to miss the shuttle, that we have a huge  
24 surge after 9:00. If that were to be the case, that would  
25 be reflected in the monitoring, and it would count against

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1 the River School.

2           So, you know, the one off student that misses the  
3 bus occasionally can arrive at 9:00, and it doesn't impact  
4 the peak hour at all.

5           CHAIRPERSON HILL: Okay. You guys have thought  
6 about so many things. I'm a little disturbed, actually, by  
7 some of the things you thought about. But if the one person  
8 is late a lot? I mean, I'm just trying to understand, like,  
9 if somebody's late all the time, there's nothing in this huge  
10 list of things as to what happens to that person who's late  
11 a lot. Is that correct?

12           MS. MILANOVICH: Well, I'll let Nancy address  
13 that, because I think that would probably be similar to, you  
14 know, even without the shuttle today, students who are late  
15 all the time, I presume that the River School has a plan for  
16 that and consequences for that.

17           MS. MELLON: Right. They get into that escalating  
18 correction because they're not following, they're not abiding  
19 by the carpool rules, and that's part of the enrollment  
20 contract. So we don't have that problem today. And I don't  
21 anticipate we'll have it, because they are very interested  
22 in getting their kids to school, typically, and getting to  
23 work, our parents. So we don't currently have a problem with  
24 tardiness, and I don't anticipate we'll have one.

25           CHAIRPERSON HILL: Okay. I was just curious, Mr.

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1 Smith, I mean, Mr. Blake, is that all your questions? I saw  
2 Mr. Smith's hand up.

3 MEMBER BLAKE: Yes, that answers my question.  
4 Thank you very much.

5 CHAIRPERSON HILL: Mr. Smith?

6 MEMBER SMITH: I don't know what Ms. Mellon kind  
7 of answers some of my questions. I share some of the same  
8 comments that you had, Mr. Hill. This is very proscriptive,  
9 extremely proscriptive. And I worry about, because of this  
10 proscriptiveness, whether the River School will really be  
11 consistent in these very -- it seems fairly draconian, to be  
12 completely honest with you.

13 So I think my two questions are, is someone  
14 standing out on that driveway, enforcing these very  
15 prescriptive conditions, and am I to believe that the school  
16 is actually going to turn a child away? A parent that may be  
17 running late, or the child missed the bus? And the parent has  
18 to, as you state, drop it, go to school, then the River  
19 School is going to turn your child away, or somebody that's  
20 out on the driveway is going to enforce that and say you  
21 can't drop your child off until after these drop-off hours?

22 MS. MELLON: Do you want me to take that one?

23 MEMBER SMITH: Yes, please.

24 MS. MELLON: Yes. I've been accused of being  
25 draconian because of safety. So it all started during COVID

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1 right? We have one hundred percent requirement for  
2 vaccination. We have lost students because parents don't  
3 want to abide by that. During COVID every hundred percent  
4 of kids had to be dropped off in the carpool line, even 18  
5 month olds. Our parents abided by that.

6 So I think this is a community that takes very  
7 seriously its commitments, and we would work with a family  
8 to help them figure out why they're arriving late every day  
9 and perhaps getting them in a carpool with another child.  
10 So there are things that we can do to prevent that consistent  
11 late drop-off. We already do those things.

12 MEMBER SMITH: Thank you. I think that's all the  
13 questions that I had thus far. Thank you.

14 CHAIRPERSON HILL: Go ahead, Mr. Blake.

15 MEMBER BLAKE: Yeah. I have one question. In  
16 listening to this, and I reviewed the record carefully. It  
17 looks like the plan was to have about six shuttle buses,  
18 which seem like they'd be relatively small shuttle buses,  
19 around 24 foot type buses. And I know a lot of the logistics  
20 have not been figured out yet as to where those buses would  
21 come from, but could you just talk a little bit, not to go  
22 beyond where, I believe that's all that's in the record.  
23 Could you give me any color on that?

24 MS. MELLON: Do you want me to do that?

25 MS. MILANOVICH: We did enough analysis because

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1 we wanted to make sure that the shuttle bus was included in  
2 that trip threshold that we agreed to adhere to. But what  
3 is going to make the shuttle bus successful is locating the  
4 stops in places where it intercepts parents on their way into  
5 town at the most convenient locations.

6           And so we sort of have to wait until we're,  
7 because where parents live today may not be where they live  
8 in the future, and so we can't identify exact locations for  
9 shuttle bus stops today until we know for sure where our  
10 parent body lives.

11           The other issue we have is if we would make an  
12 agreement with a location today. For example, one of the  
13 locations we contemplated was the Wells Fargo on MacArthur  
14 Boulevard. Our understanding is that site is sold, is going  
15 to be redeveloped, and so it's not going to be available  
16 three years from now when we're ready to identify bus stop  
17 locations.

18           So from a practical perspective, we aren't able  
19 to pinpoint the exact locations, and so we can't pinpoint the  
20 exact shuttle bus routes. That's why we agreed to go back  
21 to the ANC to review the routes with them once we've  
22 identified those bus stop locations.

23           We also haven't procured buses. You know, we  
24 anticipate that we would not own our own fleet of buses. We  
25 anticipate that we would contract that out. And so we took

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1 a little bit of a conservative approach, assuming we would  
2 use smaller buses, and therefore would need more buses,  
3 again, so that we could include those in the trip generation  
4 estimates that we presented.

5 If we have larger buses, again, depends on where  
6 the stops are located, but that would just result in fewer  
7 trips for the buses. Does that help?

8 MEMBER BLAKE: Yes, it does. Thank you.

9 CHAIRPERSON HILL: Go ahead, Vice Chair John.

10 VICE CHAIR JOHN: My question is, how close is the  
11 school to the Wisconsin Metro station? I've forgotten the  
12 exact distance. Seems to me to be about three or four  
13 blocks. Anyone can take the question.

14 MS. MELLON: I think when we did the original  
15 hearing, we said it was half a mile. So that's like five  
16 blocks, right? Five city blocks, yeah.

17 VICE CHAIR JOHN: Okay.

18 MS. MILANOVICH: It's a little more than three or  
19 four blocks. I believe it's about a half mile from the Metro  
20 station. Okay. Because I'm wondering if someone who misses  
21 the shuttle bus could be dropped off at a school at a street  
22 that's not one of the ones identified in your proposal. I  
23 mean, I just don't like the idea of a kid missing the first  
24 period of class because the parent couldn't get him to the  
25 shuttle bus on time. That's my concern.

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1 MS. MILANOVICH: Right. So the ANC was very  
2 concerned about drop-offs happening on any neighborhood  
3 street. And so they've asked us to clarify that condition  
4 four, indicating that there would be no drop-offs on any  
5 neighborhood street. So I think if they miss the shuttle  
6 bus, the only option is for them to be dropped off on campus,  
7 but a little bit late. And, Nancy, I don't know if you can  
8 speak to. Does that mean they miss an entire period of class  
9 or did they just miss homeroom?

10 MS. MELLON: Well, it depends on the grade. So,  
11 kindergartners, it's not such an urgent matter to be late,  
12 but if you're in 6th grade, I can envision someone missing  
13 a class. And I think that's why we'd have to really work  
14 with families to make sure that they're able to either meet  
15 the shuttle or find an earlier start to their day. And we've  
16 had to do that a lot in the past.

17 VICE CHAIR JOHN: Thank you.

18 CHAIRPERSON HILL: Go ahead, Mr. Smith.

19 MEMBER SMITH: And that's in light of the vice  
20 chair's question, because again, I am still very concerned  
21 about the prescriptiveness of these conditions and how the  
22 district's government can effectively enforce some of these  
23 conditions, to be completely honest with you going forward.  
24 My question, and maybe this came up again, is the Chairman  
25 said this was a very long hearing two years ago.

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1           Was there any discussion or even a recent  
2 discussion with any of the properties in close proximity,  
3 whether it's AU or the National Presbyterian Church, which  
4 has a large parking lot where you could use that for pickup  
5 and drop-off of a very limited nature that you're referencing  
6 now to effectively get to the point that Ms. John is stating  
7 where there is some type of small, limited off site pick up  
8 and drop-off where a staff member could be there and pick up  
9 a child and address some of the concerns in the neighborhood  
10 and still have an opportunity to have a pickup/drop-off.

11           MS. MILANOVICH: We haven't had any specific  
12 conversations with any nearby property owners? However, you  
13 may recall that we had provided in the transportation  
14 management plan some, what we called enhanced enforcement  
15 strategies. In the event that the monitoring plan  
16 demonstrates that the drop-off and pickup is not able to  
17 happen on campus, that the school would be required to  
18 implement at least one of those enhanced strategies.

19           And one of those strategies was exactly what you  
20 just described, Mr. Smith, where we would be required to work  
21 with a nearby property owner, presumably somewhere like along  
22 Wisconsin Avenue, you know, not immediately adjacent to the  
23 school, but obviously close enough where they could still  
24 walk from that site to the school.

25           So it was contemplated in that way, if the

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1 monitoring study reveals that we're having problems getting  
2 all of the pickup/drop-off to happen on campus. But we did  
3 not have conversations or contemplate that proactively for  
4 tardy students.

5 MEMBER SMITH: Okay, thank you. Thanks for the  
6 reminder. I'll take a look back at that again.

7 CHAIRPERSON HILL: Vice Chair Miller, you look  
8 like you might be having a question.

9 COMMISSIONER MILLER: Thank you, Mr. Chairman.  
10 I might have more questions, or they may be answered after  
11 the ANC and party in opposition, Tenleytown preservation  
12 testifies or ask questions themselves.

13 But let me just say thank you first of all to  
14 River School for responding to the procedural order and  
15 providing the revisions and clarifications that you've  
16 provided. I think they're helpful to making this a  
17 successful project. On the ANC, in the ANC resolution, and  
18 they'll probably get into this, but they had a couple, they  
19 had a tweaking of your language regarding the bus exemption.

20 You had something in the language about for  
21 physical disability that qualifies under the ADA. I think  
22 they had something that says that the ADA would require the  
23 accommodation that would prevent them from utilizing the  
24 school bus. I mean, this can be worked out, but do you have  
25 an objection to the language, the revised language to that

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1 bus exemption conditions for ADA issues? Did you understand  
2 the question?

3 MS. MILANOVICH: I'll defer to either Alison or  
4 Nancy. I'll be honest with you. I'm not quite sure what  
5 the. There's a meaningful difference between the language,  
6 and I feel like it might be better for an attorney to weigh  
7 in on exactly what that difference might mean for us.

8  
9 COMMISSIONER MILLER: I'm not sure that there is  
10 either, but maybe it'd be better to ask these questions after  
11 the ANC testifies. But if, but if the, if house, if Ms.  
12 Prince wants to say something.

13 MS. PRINCE: I'm happy to address that. The ANC  
14 was a bit of wordsmithing, wanting to require a student to  
15 require accommodation as opposed to qualify for an  
16 accommodation. We wanted a little bit more flexibility on  
17 that issue.

18 We certainly don't want to be in a position to  
19 ever turn away a student from an exemption when they require  
20 an accommodation under the Americans with Disabilities Act.  
21 And frankly, I was surprised by the level of interest and  
22 discussion in this issue. This is a very minor federally-  
23 mandated exemption because of the Americans with Disabilities  
24 Act.

25 The school is required to accommodate students

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1 with disabilities. We just want to make sure that the  
2 section is worded in a way that we don't leave a student in  
3 the lurch.

4 COMMISSIONER MILLER: Okay. Thank you for that  
5 response. The other two, Ms. Prince, I think you're on. Not  
6 muted. Thank you. So I think the other two wordsmithing,  
7 which I think they are issues are, well, one is on the, they  
8 said there's still no condition or enforcement. But you do  
9 refer to the student code of conduct and the mandatory  
10 progressive penalties for violating.

11 So I think that, I think that they track each  
12 other. They're just spelling out the student conduct  
13 provisions in their language. And you refer to the student  
14 conduct provisions that are part of the TMP. I don't think  
15 there's an issue there. But do you agree that there might  
16 not be an issue there?

17 MS. PRINCE: There's no issue there.

18 COMMISSIONER MILLER: Right. So, and then the  
19 final thing that they asked that they say that the school is  
20 representative expects no more than four exemptions from  
21 busing per year. Well, this number might be compensated,  
22 considered -- Ms. Prince, I think you're not muted again.

23 MS. PRINCE: I'm sorry. I can address that we're  
24 very concerned about any kind of actual cap on the number of  
25 students who require an accommodation. We think it is a very

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1 small amount. Historically, it's been a very small amount,  
2 but we certainly don't want to be, as I said, in a position  
3 of turning away a student who has a disability and is unable  
4 to ride the shuttle. That would really be entirely contrary  
5 to the school's mission.

6 COMMISSIONER MILLER: But as far as monitoring and  
7 reporting on what those, the number of exemptions there are  
8 per semester or something, or per year, do you have a problem  
9 with reporting that to the ANC and DDOT?

10 MS. PRINCE: There are minimal number of  
11 exemptions every year. We certainly are very concerned about  
12 any kind of confidentiality. We simply ask that the Board  
13 recognize that this is a federally mandated requirement to  
14 accommodate a student with disabilities. We do have a lot  
15 of requirements, and we're very intent on making sure that  
16 we comply strictly with all the requirements.

17 But we don't want to get to the point where we're  
18 literally having to report on every single student who  
19 requires an accommodation.

20 COMMISSIONER MILLER: Right. And let me ask about  
21 the shuttle bus. Just following up on Board Member Smith's  
22 reference to a nearby site, and you say that's in the  
23 enhanced transportation measures that you could go to in the  
24 event you're not meeting the trip thresholds. And I realize  
25 that's the way the whole plan is constructed. It's

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1 monitoring to meet the threshold, and then there are tools  
2 in that toolbox that you can go to. And I'm glad it's  
3 clarified that the shuttle bus is a mandatory part of the  
4 tool, which wasn't clear in our order, unfortunately.

5 But on the location of the -- I realize that we're  
6 far out from identifying sites, but obviously that is what  
7 will help make this a success.

8 Is the Tenleytown Metro one of the sites that,  
9 where a shuttle bus might come because it's a half a mile  
10 away, or is that not going to be? And so the people who are  
11 taking public transportation can just hop on the bus rather  
12 than walk, I guess the ten or 15 minutes if they're running,  
13 ten or 15 minutes late, if the bus is there and if there's  
14 room on it, is that one of the places where there would be  
15 a shuttle bus, or are you contemplating at this point just  
16 one where Virginia people are going to come on MacArthur  
17 Boulevard or something?

18 MS. MILANOVICH: I mean, it certainly could be a  
19 rotation and I think realistically we're probably looking at  
20 more than one bus stop. So, it would be people coming from  
21 the south would, obviously, we wouldn't want them to have to  
22 drive through the neighborhood to get to the North to a stop.  
23 So, realistically, like I said we're probably looking at at  
24 least two stops.

25 The Tenleytown Metro Station could be a good

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1 candidate. I think it depends on number one, how many of our  
2 parents are driving in from, you know, points north,  
3 Maryland, points north. And how many students are actually  
4 taking the Metro so that potentially could combine the two  
5 and give the students on the Metro a ride on the shuttle bus.  
6 But, again, we won't know for certain until we get closer to  
7 opening and know where our parents live and how many students  
8 have signed up to ride the Metro, essentially. But it  
9 certainly could be a good option.

10 COMMISSIONER MILLER: Okay. Thank you for that  
11 response. I appreciate all the information that the school  
12 has provided in this case. Thank you.

13 Thank you, Mr. Chair.

14 CHAIRPERSON HILL: I'll come back to you guys,  
15 John, I'm sorry.

16 MEMBER BLAKE: I'm sorry, one last question. With  
17 regard to the assumptions behind the students using the  
18 shuttle when reviewing the report 46A it seems that about 68  
19 percent of the students were projected to actually use the  
20 shuttle for K through 6. Could you just go through that  
21 calculation a little bit just to make sure I'm clear that  
22 it's about that percentage. I know it's a dynamic number  
23 that will change as the student enrollment grows. But just  
24 give me a sense of how that calculation came about and is  
25 that the right number from the initial.

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1 MS. MILANOVICH: So, we actually in doing the trip  
2 generation analysis where we landed was that in presenting  
3 those number we assumed that any student who was in K through  
4 6 that wasn't a parent of a faculty of staff member would  
5 take the shuttle and for that we were using for an estimate  
6 so there's a current number of students or then current I  
7 should say or three and a half years ago, so the River School  
8 provided information on the number of students who had a  
9 parent of faculty staff member.

10 So, we used that percentage and applied it to the  
11 future enrollment. So, any student who had a parent that was  
12 a faculty staff member was taken out of the shuttle bus  
13 riding number. Any student who had a younger sibling, so  
14 again we used proportionally we used the number that was  
15 currently had younger siblings and projected that to the  
16 future enrollment. So, those were taken out of the shuttle  
17 bus equation.

18 And then we also assumed a five percent absentee  
19 rate was a little bit of a conservative number because the  
20 school reported that historically their absenteeism rate is  
21 actually a little bit higher than that. So, those were taken  
22 out of the shuttle bus calculation.

23 Everybody else in grades K through 6 was assumed  
24 to ride on that shuttle bus. So, I don't have the exact  
25 percent off the top of my head because that's not the way we

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1 did it. We did it step by step based on those people.

2 I'm sorry, we also had a projection for the number  
3 of students who would walk or bike or take Metro. Those were  
4 not included in the number of students who would ride the  
5 shuttle bus. So, we did it step by step based on those  
6 different categories. We didn't just apply an overall  
7 percentage. So, I would have to go back and double check the  
8 number what that exact percentage is but that gives you an  
9 idea of how we arrived at the number of students who would  
10 be taking the shuttle.

11 MEMBER BLAKE: Thank you, Ms. Milanovich. I think  
12 however in the document was 338 total students and 203 in K  
13 through 6 division and just doing the simple math I think  
14 came out with 68 percent. But thank you very much.

15 MS. MILANOVICH: Uh-huh.

16 CHAIRPERSON HILL: I apologize. Vice Chair John,  
17 could you just hold your thought for moment and I'm come  
18 right back.

19 Okay. Sorry. Okay. Do we have everybody back,  
20 Mr. Smith.

21 MEMBER SMITH: Vice Chair John.

22 CHAIRPERSON HILL: Okay. Great. All right. Just  
23 so that everybody knows, we're going to lose a Board member  
24 at 11:30. So, I'm going to -- we're going to do as much as  
25 we can until 11:30. If this goes over 11:30 we're going to

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1 adjourn this case. I'm going to have other cases and then  
2 we'll come back. Okay.

3 Let's see. So, Ms. John, you had some questions?

4 VICE CHAIR JOHN: I'll hold my questions until  
5 later. It might be answered by someone else.

6 CHAIRPERSON HILL: Okay. Thank you, Ms. John.

7 All right. Could I turn to the ANC Commissioner  
8 and have her give us their thoughts?

9 MS. GIANINNO: Sure, that would be wonderful.

10 MS. PRINCE: Could I just ask that you provide the  
11 ANC with an opportunity for cross-examination?

12 CHAIRPERSON HILL: Provide the ANC, yeah. So,  
13 everyone. I was going to have everyone present and then  
14 everyone is going to have an opportunity to ask questions of  
15 everyone. Okay?

16 Go ahead, Commissioner.

17 MS. GIANINNO: That's great. All right.

18 Thank you, Commissioners, for the opportunity to  
19 testify today. Again, I'm Alexandra Gianinno and I'm the ANC  
20 Commissioner for SMD, the SMD-3E06 where this property is  
21 actually located. And my remarks are going to focus on River  
22 School's application, their job shuttle plan and the concerns  
23 of the ANC mainly if the job shuttle plan answers the  
24 questions posed by the Board or the question posed by the  
25 Board.

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1           The primary issue that we've had and continue to  
2 have regarding the River School Plan to purchase the property  
3 to locate their school, their day care center and the  
4 National Center for Hearing Innovation is the impact on  
5 traffic and safety and the proposed development of all these  
6 activities, the impacts they would have on the surrounding  
7 community and not just the shuttle plan. The shuttle was an  
8 important element of how they would address the additional  
9 trips that will impact the community. But it's also all of  
10 the traffic-related issues.

11           Regarding the shuttle plan which is the --

12           VICE CHAIR JOHN: Excuse me.

13           MS. GIANINNO: -- thing you asked us to address  
14 today.

15           VICE CHAIR JOHN: Ms. Milan, Ms. Milan, the court  
16 asked us to focus on the shuttle bus. Because even though  
17 there may have been information in the record, when the  
18 opinion was written it did not address the shuttle bus  
19 directly. And I think that's the limited circumstance under  
20 which we're here today. So --

21           MS. GIANINNO: Yes.

22           VICE CHAIR JOHN: -- in the interest of time and  
23 efficiency if you could please focus on the shuttle bus.

24           MS. GIANINNO: Yes.

25           VICE CHAIR JOHN: I'm interested in knowing what

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1 streets would be acceptable for parents to drop off kids if  
2 they miss the shuttle bus.

3 MS. GIANINNO: At this time there have not been  
4 a discussion within the ANC with the community nor with the  
5 River School about all of the different streets given that  
6 the TMP that the River School developed is based on data  
7 that was collected during COVID and does not include the  
8 impacts of all the new developments in the area or the  
9 changes in traffic since COVID. So, there has not been an  
10 opportunity to revisit a traffic study that would actually  
11 give us accurate data so we would know which streets would  
12 not just, but what streets actually have issues now based on  
13 new data and they looking at a new, sort of new information  
14 about where the students are coming from the River School,  
15 what their routes might be, where the busses might be. Then,  
16 you know, we could possibly come up with some streets. But  
17 at this point, we don't have enough information and the data  
18 that was used in there, TMP is outdated and was based on  
19 COVID-related information and does not include current  
20 traffic.

21 So, honestly, while we would really like to know  
22 the routes, we'd like to know more information about the  
23 shuttle plan but that was not provided. We don't have any  
24 of that information which is why the ANC despite working with  
25 the River School could not come to an agreement and support

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1 their plan because their plan doesn't have any details and  
2 because the data is old and needs to be revisited.

3           So, we can't provide you with streets right now,  
4 while we would like to we really can't. We can say that Van  
5 Ness, 42<sup>nd</sup> Street, Nebraska the corner around there and  
6 Warren Street are already dangerous intersections. DDOT has  
7 identified them as DDOT. That was in the record from the  
8 original BZA hearing. And the issues related to the  
9 intersections around the property have not been remedied.  
10 So, they're still dangerous. They're still failing.

11           VICE CHAIR JOHN: Thank you.

12           MS. GIANINNO: I guess to skip forward, there are  
13 several concerns that the specific concerns that the ANC has  
14 with the shuttle plan which are and they include but not  
15 limited to the exceptions to the rule guiding who will ride  
16 the shuttles and we have submitted some language that we  
17 would request if an order is written that supports the  
18 project. But it would require that the exemptions be based  
19 on the ADA and the D.C. Human Rights rules. And we still  
20 require because we believe that that's the most important  
21 thing. If you have a shuttle bus, the important this is that  
22 all those, we respect River School's opinions but it should  
23 be, the shuttle rider should be based on or the exemptions,  
24 I'm sorry.

25           The exemptions to the shuttle should be students

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1 who are required because of whatever the ADA or the human  
2 rights laws say that those are the people that are exempted,  
3 not other people based on what Nancy Mellon and the people  
4 from the River School deem to be people who should be  
5 exempted because any additional trips by cars will impact the  
6 community. And that was raised as an issue in the original  
7 BZA hearing as well.

8           So, it's the exceptions to the rule who ride the  
9 shuttle, the need for more stringent enforcement mechanisms.  
10 The court and the BZA have discussed at different times that  
11 it's really important for enforcement mechanisms to be  
12 stronger. And one of the major issues that we've sort of  
13 been facing in our neighborhood is that currently just to go  
14 back. We have issues with several schools in the area,  
15 Maret, Sidwell, St. Albans and importantly GDS who have had  
16 -- it's difficult for the ANC and the communities to manage  
17 some of the traffic and safety related issues if they're  
18 aren't strong enforcement mechanisms both punitive  
19 enforcement mechanisms that would punish a student and their  
20 family and also the school.

21           The enforcement mechanisms that were included in  
22 the TMP we believe are not strong enough to actually impact  
23 the school in any way to change behavior. And once the  
24 school has actually been located on the property and  
25 purchased the property that, unfortunately, because the

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1 parents are paying tuition they might favor being treated  
2 more kindly the families that are already at the school  
3 versus dealing with some of the enforcement mechanisms that  
4 aren't really that stringent as based in their TMP.

5           But I would say because I know in the interest of  
6 time you kind of want to move forward. So, what I do want  
7 to say is in the resolution from June 25<sup>th</sup>, 2024, the ANC  
8 unanimously voted to support it. But the ANC 3 does not  
9 believe that the applicant's plan provides enough detail to  
10 be considered at this time as more than a notional plan. ANC  
11 3E lacks confidence in the viability and enforceability of  
12 the latest draft proposal to satisfy the conditions of their  
13 man and there remains concerns the shuttle bus plan will not  
14 adequately reduce the impacts of additional traffic this  
15 project will generate and does not support the draft proposal  
16 at this time.

17           Another important point I do think is when you  
18 listen to the TPA arguments while the ANC has not fully  
19 flushed them out or analyzed them. They raise a lot of valid  
20 concerns and arguments and that those should definitely be  
21 considered.

22           If the BZA doesn't heed the concerns of the ANC  
23 and the TPA on this notional shuttle plan, because it doesn't  
24 include a lot of details that are actually very important as  
25 many of the commissioners have asked questions that are

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1 trying to get at additional details. There are a few things  
2 that we respectively request that the BZA consider adding to  
3 any order which would be to add the language about exemptions  
4 that would say basically that the K through 6 students who  
5 have documented physical disabilities or conditions such as  
6 the Americans with Disabilities Act or the DC Human Rights  
7 Act which would require an accommodation which would prevent  
8 them from using the shuttle bus approved each school year by  
9 the head of school and hearing loss in itself shall not  
10 constitute an acceptable exemption.

11 We just want the required in there so that there  
12 is some way to enforce the number of students that would be  
13 riding the shuttle or that would be exempt from riding the  
14 shuttle bus.

15 Number two, the school indicated that it expects  
16 no more than four exemptions from busing each year although  
17 this number might be considered de minimis any more isn't.  
18 We ask the BZA to add a condition requiring the school to  
19 notify not give the names, not give the type of issues that  
20 the people be having but just notify the DDOT and ANC of the  
21 number of exemptions each year and require that if it is more  
22 than four and those are granted that the school must work  
23 with DDOT and the ANC to develop compensatory measures. We  
24 recognize that there are privacy related issues. Nobody is  
25 asking for any personal data about families, students

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1 anything like that. We just want an understanding or to be  
2 notified that, in fact, there are additional exemptions.  
3 Thus, hence the language changing the word to require related  
4 to the exemptions.

5           There is much need for more enforcement.  
6 Currently, there's no condition that specifies precise  
7 consequences for those who impermissibly arrive at school by  
8 automobile. Accordingly, we request the BZA require a  
9 condition that incorporates the school's purported escalating  
10 discipline system along the lines of the following.

11           Students who violate these policies shall be  
12 subject to mandatory escalating discipline which shall  
13 require a warning on the first offense, suspension on the  
14 fifth offense and expulsion on the sixth offense.

15           If more than five families are sanctioned the  
16 student suspension in a given academic year during years one  
17 and two post school opening in year three the case should be  
18 reopened and a new traffic study conducted. At the same  
19 time, River School shall also meet with DDOT and the ANC to  
20 implement compensatory measures.

21           And then third, the ANC in its Resolution on June  
22 25<sup>th</sup>, 2024, and the parties in opposition have noted with  
23 concern the precarious lack of details provided to the ANC,  
24 DDOT, OP and BZA by River School regarding the River shuttle  
25 plan despite the remand order.

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1           The ANC requests that the BZA include in its order  
2 the timely development of a robust shuttle plan that includes  
3 details in clear language including routes, including the  
4 process for real-time community input.

5           We have a lot of concern about the data that's  
6 been used and that the shuttle plan and the any details  
7 related to the shuttle plan are actually new, not provided  
8 to you in the hearing in 2021 and, thus, we would request  
9 that additional analysis and data be provided relating to the  
10 traffic in the area around the property.

11           I have more to say but I think in the interest of  
12 giving TPA and others time to speak and then for you guys to  
13 ask questions I'll leave it at that.

14           I'm happy to answer any questions you might have.

15           CHAIRPERSON HILL: Thank you.

16           CHAIRPERSON HILL: Thank you, Commissioner.

17           Yes, as I'm trying to process this as efficiently  
18 as possible can I hear from TPA now and then we'll go around  
19 and ask questions from everybody including the Board.

20           MR. HARR: Yes, thank you.

21           CHAIRPERSON HILL: Can you hear me?

22           MR. HARR: Yes, I can. Can you hear me?

23           CHAIRPERSON HILL: Yes. Just again because the  
24 Vice Chair did articulate again what we are looking at on a  
25 remand are the question about, you know, I'm going to

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1 reiterate. The parties and agency should address the role  
2 of the shuttle bus in achieving the applicant's reduction  
3 goal and whether 100 percent compliance is required to meet  
4 the goal if the shuttle bus will be required, how will the  
5 applicant enforce the requirement. So, that's what we, the  
6 Board, is supposed to be looking at right now so I just  
7 wanted to focus your attention on that and you can continue  
8 whenever you like.

9 MR. HARR: Yes, thank you, Mr. Chairman.

10 What we are planning to do is have Mr. Churchill  
11 sort of do the first half of this presentation. I'll do the  
12 second half of the presentation and we'll try to keep it as  
13 efficient as we can.

14 CHAIRPERSON HILL: Great, thank you. Thank you.

15 MR. HARR: Spencer Churchill.

16 MR. CHURCHILL: Thank you, members of the Board.

17 I'd like to first briefly note our agreement with  
18 the limited nature of the remand excluding the instruction  
19 that evidence must be limited to what was in the original  
20 record. In that mind I would like to note our objection just  
21 for the record to new testimony that was offered today to the  
22 extent it goes beyond the original record. In particular,  
23 many of those responses provided by the school's witnesses  
24 to the Board's questions including their speculations about  
25 possible details of the shuttle plan.

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1 Turning to the questions on remand. The D.C.  
2 Court of Appeals made abundantly clear that 100 percent usage  
3 of the morning shuttle by K through 6 students was a critical  
4 assumption underlying River's traffic study, River's traffic  
5 reduction goal and River's traffic reduction strategies.

6 Without 100 percent compliance there was "no  
7 evidence that River could meet its traffic reduction goal."  
8 and, therefore, no evidence of traffic impacts will be  
9 consistent with River's projections.

10 This answers the first two questions posited by  
11 the Board. The only answers that are consistent with the  
12 Court's opinion and supported by the original record are that  
13 (1) the role of the shuttle is critical in achieving the  
14 applicant's reduction goal because (2) 100 percent shuttle  
15 usage is required to meet that goal.

16 Turning to the third question posited by the Board  
17 the record cannot support a finding that the school will  
18 successfully enforce a 100 percent shuttle usage requirement.  
19 And this is true for at least three reason that I'll go  
20 through quickly.

21 The first, the original record reflects that the  
22 school will not implement effective enforcement measures for  
23 any shuttle usage requirement. The student contract and the  
24 Transportation Management Plan that are cited by the River  
25 are inadequate because they allow every student four in

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1 fractions without any consequences other than a reminder by  
2 email or in meeting to use the shuttle.

3           If the school wants to provide four virtually free  
4 passes to every student, it can't reasonably project 100  
5 percent compliance with the shuttle usage requirement. And  
6 even though the student contract in the Transportation  
7 Management Plan eventually provide for repeat offenders to  
8 be dismissed from the school. This is not an effective  
9 enforcement measure given the school's own admission on the  
10 record that it won't actually enforce this provision.

11           At the October 27, 2021, hearing, this is on page  
12 of 164 of the transcript, Mr. Donahue asked River, asked Ms.  
13 Mellon, what are the repercussions for students failing to  
14 ride the bus? She responded that riding the bus would be "a  
15 condition of their enrollment." But when Mr. Donahue  
16 confirmed so expulsion Ms. Mellon did respond by no. She  
17 fell back in an argument much like we heard today that  
18 parents would abide by conditions of student contracts simply  
19 because they're very community minded. In other words, River  
20 relied on parents to comply essentially out of the goodness  
21 of their hearts and she couldn't answer the question about  
22 repercussions by identifying any specific enforcement measure  
23 that the school would actually try to enforce.

24           The school's admission that it does not intend to  
25 implement the paper enforcement measures in its student

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1 contracts and the Transportation Management Plan underscores  
2 how strong the economic incentives are not to give up student  
3 or upset their parents when they're the school's clients.

4 I think this reinforces the court's instruction  
5 on page 10 of its opinion that the Board should consider  
6 whether this will adequately enforce any shuttle usage  
7 requirement. And that it also enforces the warning in both  
8 ANC resolutions. But there has to be some enforcement  
9 mechanism against the school itself which would provide a  
10 counter incentive to actual implementation of the measures  
11 that the school points to on paper.

12 But the record doesn't contain any enforcement  
13 mechanism against the school itself. River hasn't identified  
14 any mechanism in its recent submission or in today's hearing  
15 and there has been some discussion that the monitoring plans  
16 list enhanced strategies. But I think it's important to note  
17 that there is it's a non-exclusive list of measures the  
18 school could take if it fails to meet the thresholds. And  
19 the strategies include things like increased carpooling  
20 requirements which would carry no cost to the school. And  
21 because it's not an exclusive list the school can be expected  
22 to develop an advocate for other cost free strategies because  
23 it's in its best interest.

24 The second reason the record can't support a  
25 finding that the school was success would enforce 100 percent

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1 shuttle usage requirement is that the school doesn't even  
2 intend to impose such a requirement. As we discussed today  
3 and River's sub mission makes clear it does intend to allow  
4 exceptions that generate additional car trips by K through  
5 6 students beyond the zero K through 6 trips assumed in the  
6 traffic study and in addition to the pre-K and faculty trips  
7 for which the study accounts.

8 Ms. Milanovich's testimony today detailed how the  
9 trip counts were calculated and the calculation didn't  
10 include any adjustment or exceptions allowed for students  
11 with qualifying disabilities. Similarly, a supplemental  
12 submission doesn't claim that the disability exception from  
13 a shuttle requirement is part of the original record. It  
14 just says that this exception is consistent with a different  
15 exception in the record related to carpool requirements. So,  
16 there's a citation for note 7 of their submission is to a  
17 discussion of disability exceptions from carpooling and not  
18 from shuttles.

19 The River argues that the disability exceptions  
20 won't have any impact because 100 percent utilization of the  
21 shuttle isn't necessary to reach their reduction goals. I  
22 think Ms. Milanovich attempted to supplement the record today  
23 with the representation that more aggressive mitigation  
24 measures and other strategies can effectively substitute for  
25 these students using the shuttle. But the Board can't adopt

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1 this position consistent with the court's opinion which notes  
2 that provide "no evidence to show that it could use  
3 alternative measures to reach its traffic reduction goal if  
4 there were K through 6 trips than covered in the traffic  
5 report."

6           Can I just also that I don't think it will be  
7 reasonable for the Board to determine that the school can  
8 reach its traffic reduction target without any clear evidence  
9 or commitment from River about how many students will be  
10 exempted from shuttle use. And Ms. Prince explained today  
11 that it can't agree to any cap or firm number on how many  
12 exceptions will be allowed.

13           The school has represented to the ANC that it  
14 expects no more than four exceptions. In its submission to  
15 the Board, again, Footnote 7, it said that based on current  
16 and historical population fewer than five students each year  
17 would  
18 have qualified in past years. But the whole reason the  
19 school is seeking to relocate is just its substantial  
20 expanded student body and so I think we should expect a  
21 substantial increase in the number of students with  
22 qualifying disabilities as well.

23           And importantly the school doesn't argue. I  
24 believe the school has argued today or in its submission that  
25 it can avoid objectionable traffic impacts even if it

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1 slightly exceeds the trip thresholds on which its traffic  
2 study is based. The question is beyond the scope of the  
3 court's remand order and the BZA procedural order presumably  
4 because there just isn't any record evidence about the  
5 traffic impacts that will be caused by a higher number of  
6 trips nor is there any record evidence to support any  
7 suggestion that there's some number of additional trips that  
8 could occur with de minimis impacts beyond those already  
9 projected. Instead the evidence confirms the common sense  
10 understanding that small increases in the numbers of cars at  
11 a struggling intersection could have an out sized impact on  
12 traffic like when a car blocks the box or prevents other  
13 cards from entering a turn lane.

14         The citation is you look at page 236 of the transcript  
15 there is a discussion there of the exponential impacts of  
16 adding an incremental additional number of cars.

17         The third reason just quickly, the third reason  
18 that the record cannot support a finding that the school will  
19 successfully enforce a 100 percent shuttle use requirement  
20 is that the Board can't even find that the school is  
21 permitted to providing a shuttle without acting contrary to  
22 the court's opinion or reopening the record contrary to its  
23 own procedural order.

24         River cites statements from the record to suggest  
25 that it made a firm commitment on the original record to a

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1 shuttle. But the court has already discussed those  
2 statements in its opinion at/or argument before I criticized  
3 what it terms the firm's failure to commit to the shuttle.

4  
5 In short, River has failed to support the critical  
6 assumption of 100 percent shuttle usage that underlies all  
7 of its purported evidence about traffic impacts. To the  
8 contrary, Rover admits that this expressly stated assumption  
9 of a traffic study is false. Without any actual anticipated  
10 traffic impacts, the school can't carry its burden of proving  
11 that those impacts are unlikely to become objectionable.

12 Now, with that I'll turn the remainder of my times  
13 to Mr. Harr.

14 MR. HARR: Thank you, Spencer.

15 I just have three points that I want to cover  
16 today. The first is that if contrary to its own procedural  
17 order the Board accepts any new assertions, factual claims  
18 or representations from River about the use of the shuttle  
19 buses or any other relevant matter because the Board has to  
20 provide an opportunity and ample time for TPA and other  
21 parties to review those claims or assertions and to present,  
22 you know, responsive submissions of arguments of the  
23 proceeding. We're following rules without putting anything  
24 new on the record. And if the rules are changed, I think we  
25 deserve a chance to say something.

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1           The new alleged facts and commitments just in the  
2 pleading and then more today include River's latest  
3 submission are the claim that the River is firmly committed  
4 to providing a shuttle, the claim that River can meet the  
5 traffic reduction goals without 100 percent use of the  
6 shuttle against that's completely new. River's plan to allow  
7 exceptions from the shuttle requirement which would increase  
8 the amount of traffic which we've been discussing. River's  
9 offer to accept two new proposed conditions and River's post  
10 remand discussions which it describes with the ANC, DDOT and  
11 OP and DDOT and OP's support for River's post remand  
12 discussions that are also outside the record. So, if we're  
13 going to open the record we need to give the parties who  
14 played by the rules a chance to say something in addition in  
15 a reasonable time to do so.

16           Second, the Board cannot mix and match the new  
17 information River wants considered with the old information  
18 that other parties believe is outdated. If the Board's  
19 willing to consider the school's new plan regarding the  
20 shuttle it has to evaluate whether the new plan is likely to  
21 cause objectionable traffic impacts based on the information  
22 that's current as of the plan's development, i.e., you know,  
23 2024, not information that's years old. In order to do this  
24 the Board must have updated accurate facts on this issue.  
25 It cannot rely on an obsolete traffic study and other

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1 representations. To make a valid decision today about the  
2 likely impact of the school's new plan on neighborhood  
3 traffic the Board needs to use up to date information about  
4 the school's likely adverse effects on neighborhood traffic.  
5 Therefore, if the Board moves forward to decide whether the  
6 school would like cause objectionable conditions for the  
7 neighborhood it should require updated traffic study as the  
8 basis for such analysis.

9 My third and final point is that even if as  
10 supplemented by River the current record does not contain the  
11 information that would be required to support responsible  
12 analysis of the central issues now before the Board,  
13 particularly, in light of the court's finding in this remand.

14 The court found that although the school admitted  
15 that it had "a hard automobile trip count problem to solve"  
16 the school "did not elaborate on the logistics of the  
17 shuttle." These logistics are crucial factors determining  
18 whether the shuttle would effectively reduce the school's  
19 adverse traffic impacts. Among the logistics' question that  
20 are essential to cover, in the Board's assessment with any  
21 shuttle proposal are, will the shuttle bus pick up the  
22 students at a location that itself adds to neighboring  
23 traffic and we've heard mention of that lady going across the  
24 street to NPS or to some AU site which would not  
25 significantly change the traffic impact, maybe increase it.

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What route will the shuttle buses take in getting to the school and how many will there be? How will the offloading of lots of young kids from the shuttle bus in the narrow school driveway affect the ability and speed of processing cars that are in the same space and trying to off load even younger school children.

River's latest submission also notes that the number of shuttle buses that we required has not yet been determined. And that's a significant question both in terms of where they're coming from and, you know, how large, how many people getting off the bus? Without that type of information it's hard to know what the traffic impact will be.

Without getting any answers to these questions which are not contained in the evidence from River in the original proceeding the Board cannot responsibly assess whether any school shuttle or other transportation proposal will present objectionable results with the neighborhood.

The court also emphasized the need to evaluate compliance measures on remand because the school's goals and strategies depended on "a hefty assumption" that no K through 6 students would arrive by car and that 100 percent of K through 6 students would utilize the morning shuttles. Without explicit discussion regarding the likelihood of full

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1 compliance, the court said the school and the Board likely  
2 underestimated the projected traffic impacts. Moreover, the  
3 court agreed with us that the mere provision of a shuttle  
4 does not insure that all K through 6 students will use it and  
5 that whether the school would actually require the use of a  
6 shuttle is unclear even though its traffic figures assumed  
7 100 percent compliance to achieve its goal, and the school  
8 provided no evidence it could reach the goal without 100  
9 percent compliance.

10           The school's failure to commit to the shuttle is  
11 especially problematic because even with 100 percent  
12 compliance by K through 6 students said the court and found  
13 the court, the traffic study predicted that the school would  
14 already cause adverse impacts at various intersections.  
15 Accordingly, the court found that even with everyone on the  
16 shuttle there would still be adverse impacts which would  
17 normally be considered objectionable by the affected  
18 neighborhood.

19           The court also made clear just as important as  
20 providing a shuttle bus for all K through 6 students was the  
21 effectiveness of enforcement measures against the school.  
22 The court said, "additionally if shuttle use will be  
23 required, the Board should consider whether the school will  
24 adequately enforce that requirement. Without this discussion  
25 the Board's conclusion that the school's development was not

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1 likely to cause objectionable traffic effects lacks  
2 sufficient finding."

3           Here the court is not simply asking what the  
4 school's enforcement policy vis-a-vis that students and  
5 parents would be but rather is raising the central question  
6 "whether the school will adequately enforce the requirement."  
7 That is what provisions and measures are there in the order  
8 to insure that the school vigorously and successfully prevent  
9 parents from deciding not to use the shuttle for their  
10 children. Nothing that the school has agreed to or put into  
11 the record states what will happen to the school itself if  
12 it fails to enforce whatever shuttle rules it nominally  
13 adopts.

14           Promises by the school that it would need with  
15 the ANC and DDOT on an annual basis to work on some different  
16 approaches that the school fails to enforce its rules as  
17 promised, or its traffic becomes objectionable or it failed  
18 to achieve its trip targets, were not sufficient. That would  
19 allow a year of the violations to occur without any sanctions  
20 against the school or relief with neighborhood. If non-  
21 exempt K through 6 students arrive at the school or nearby  
22 streets in the morning by car the only effective preventative  
23 measure against such violations is immediate sanctions  
24 against the school.

25           The Board must insure that such non-compliance

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1 sanctions of mechanisms of River will be sufficient to compel  
2 River to enforce the plan's requirements against parents and  
3 drivers who are River's essential valuable customers on whom  
4 River relies for its existence.

5           Given the financial reality of this dynamic is  
6 particularly important that there be some sanctions against  
7 River itself if there are violations of the commitments.  
8 Without such consequences for non-compliance, the Board  
9 cannot not rationally find that River traffic reducing plan  
10 will likely prevent the project from becoming objectionable.

11           The school suggested approaches such as self-  
12 monitoring, self-reporting, vague promises to implement its  
13 own choice of measures from their tool box to help reduce the  
14 adverse effects of violations is clearly too weak and vague  
15 to be relied upon to insure that 100 percent shuttle  
16 commitments or --

17           CHAIRPERSON HILL: Mr. Harr. Mr. Harr. I'm  
18 sorry, I'm just trying to, I'm going to realize I'm going to  
19 lose somebody. How much time do you have left?

20           MR. HARR: A minute and a half.

21           CHAIRPERSON HILL: Okay, go ahead.

22           MR. HARR: They're just too vague. They're hard  
23 to enforce. It's hard to know what they're going to be. A  
24 commitment that may not be met cannot be the basis for a  
25 Board conclusion of no objection as impacts.

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1 Failure by the school to meet its commitments to  
2 prevent drop-offs in the nearby neighborhood or reduce auto  
3 traffic into and out of the school should have serious  
4 consequences that will reduce the adverse impacts such as  
5 mandatory reductions in student population or monetary fines  
6 to be used by the ANC or the neighborhood to hire monitors  
7 to get the school back in compliance.

8 Finally, such an assessment of whether there have  
9 been failures by the school to meet a requirement need not  
10 await an annual compliance assessment by the school itself.  
11 If violations of the no drop-off rules occur, effective  
12 sanctions should be applied to insure that such violations  
13 cease.

14 In conclusion as the Court of Appeals found, the  
15 original record does not support a finding that River's rules  
16 operations will not cause objectionable conditions. And if  
17 we're stuck on that record which is what's in the Board's  
18 procedural order, that is a necessary conclusion.

19 Even if the Board considered River's new plans,  
20 River has not presented nearly enough evidence for the Board  
21 to conclude that River's proposed but not well defined  
22 shuttle bus will, in fact, avoid serious traffic problems at  
23 intersections that are already problematic and likely  
24 elsewhere in the neighborhood.

25 Therefore, the Board should not approve this

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1 application. At most, the Board should open the proceedings  
2 for more submissions and evidence on the issues above to get  
3 better evidence of how, when and where the River shuttle will  
4 operate, under what rules and what enforcement measures and  
5 penalties would exist to insure that the transportation  
6 operations match whatever promises River makes.

7 Thank you.

8 CHAIRPERSON HILL: Thank you. Thank you, Mr.  
9 Harr.

10 Let me just see here. So, okay, I'm waiting to  
11 hear back from somebody.

12 Mr. Smith, do you want me to hear from OP or do  
13 you want me to stop now? Pardon me, I can't hear you, Mr.  
14 Smith.

15 MEMBER SMITH: Stop. Let's stop now.

16 CHAIRPERSON HILL: Stop now.

17 MEMBER SMITH: Stop now.

18 CHAIRPERSON HILL: Okay, great. All right.  
19 Everyone so this is what's going to happen. We're going to  
20 come back to hear from the Office of Planning, okay, with you  
21 guys. Then first the Board's going to have an opportunity  
22 to ask, well, actually, I know what I'm going to do.

23 I'm going to let all the parties ask questions of  
24 each other and the Board will ask questions at the end of  
25 anybody they want. So, that's what I think is going to be

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1 the format. Then we'll have a little bit of a conclusion  
2 from each party ending with the applicant.

3 Let's come back -- we're going to continue moving  
4 forward with our day. Unfortunately, Commissioner Miller,  
5 you're going to leave for a minute and then you guys, I'm  
6 going to say 20, 30 minutes we might be back here with you  
7 guys. Okay? All right. Thank you.

8 All right. Mr. Mike if you could remove everyone  
9 from this hearing and then, yes, then actually I think  
10 Commissioner Miller, I'm sorry but we're going to put you on  
11 break for 20 minutes and then we're going to kind of go ahead  
12 and move with Dr. Imamura.

13 COMMISSIONER MILLER: I'll get back to you later.

14 CHAIRPERSON HILL: Thank you.

15 Dr. Imamura, can you hear me?

16 COMMISSIONER IMAMURA: Yes, I can.

17 CHAIRPERSON HILL: Okay, wonderful.

18 Madam Secretary, could you call our first  
19 expedited review case. Okay.

20 Mr. Mike, are you there?

21 MR. YOUNG: It's Paul, I'm back.

22 CHAIRPERSON HILL: Okay, great. Mr. Young, if you  
23 could go ahead and, Ms. Mehlert, if you can call us back and  
24 then have all the parties back in here.

25 MS. MEHLERT: Sure. The Board is returning to its

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1 hearing session and coming back to remand which is  
2 Application Number 20742B of the River School.

3 (Whereupon, the above-entitled matter went off the  
4 record at 11:50 a.m. and resumed at 12:04 p.m.)

5 CHAIRPERSON HILL: Ms. Prince, are you there.

6 MS. PRINCE: Yes, I am.

7 CHAIRPERSON HILL: Mr. Harr, are you there?

8 MR. HARR: Yes, I am.

9 CHAIRPERSON HILL: Okay. Okay. Great. Is the  
10 Office of Planning here?

11 MS. BROWN-ROBERTS: Yes, Mr. Chairman. I'm here.

12 CHAIRPERSON HILL: Oh, great. Okay. All right.

13 So, just for the record all the same people are  
14 back as previously introduced in the first portion of the  
15 hearing.

16 Could we turn from the Office of Planning and hear  
17 from the Office of Planning on their report?

18 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman  
19 and Members of the BZA.

20 For the record, Maxine Brown-Roberts from the  
21 Office of Planning. OP stands on the record for a report at  
22 Exhibit 170 and it's supportive of the proposal to shuttle  
23 condition which is submitted by the applicant.

24 Thank you, Mr. Chairman, and I'm available for  
25 questions.

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1 CHAIRPERSON HILL: Thank you, Ms. Brown-Roberts.

2

3 What I'm going to do is I'm going to allow  
4 everybody an opportunity to ask questions. And I'm going to  
5 go ahead and start with, I'm going to work in backwards order  
6 here.

7 Mr. Harr, can you hear me?

8 MR. HARR: Yes, I can.

9 CHAIRPERSON HILL: I'm going to ask if you have  
10 any questions of different people that have testified, the  
11 first being. Do you have any questions of the Office of  
12 Planning?

13 MR. HARR: I do not.

14 CHAIRPERSON HILL: Okay. The second being do you  
15 have any questions of the ANC?

16 MR. HARR: I do not.

17 CHAIRPERSON HILL: Okay. Do you have any  
18 questions of the applicant?

19 MR. HARR: I do not.

20 CHAIRPERSON HILL: Okay. The next person that I  
21 have here is the ANC. ANC Commissioner, do you have any  
22 questions of the Office of Planning? Do you have any  
23 questions of Mr. Harr?

24 MS. GIANINNO: No, I do not.

25 CHAIRPERSON HILL: Do you have any questions of

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1 the applicant?

2 MS. GIANINNO: I do.

3 CHAIRPERSON HILL: Okay. Go ahead and ask your  
4 questions.

5 MS. GIANINNO: Could you let us know what years  
6 the traffic study data was collected from that were infused  
7 in the TMP and all the calculations that were used to develop  
8 a shuttle proposal?

9 CHAIRPERSON HILL: You're on mute maybe, Ms.  
10 Prince.

11 MS. PRINCE: I think I'm getting that.

12 MS. MILANOVICH: I mean, I certainly go back and  
13 look up the dates that the traffic counts were done. I'm not  
14 sure that I testified to that and I'm not sure that that's  
15 within the scope of the order. But if the Board would like  
16 I can, you'll need to give me a minute to go back and pull  
17 up the actual dates of the counsel event.

18 MS. PRINCE: Right if --

19 CHAIRPERSON HILL: Okay. If everybody can mute  
20 except for Ms. Prince, let's try that first.

21 Go ahead, Ms. Prince.

22 MS. PRINCE: Hi, I'm back. Am I not creating the  
23 echo problem again? Everyone can hear? Okay, wonderful.

24 I would ask that we restrict questions to Mr.  
25 Milanovich's direct testimony. I don't feel any need to dig

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1 back into the specifics of the 100 page traffic report that  
2 was done that took into account 14 intersections, far more  
3 than normally required at the request of the ANC that took  
4 into account present and future developments. That's not the  
5 purpose of this hearing.

6 MS. GIANINNO: I recognize that but the question  
7 is very important because you're saying that the shuttle plan  
8 was developed based on the information included in the TMP  
9 and the TMP was based on data that was collected during COVID  
10 or actually pre-COVID which means that the information would  
11 actually be based on reduced traffic or different traffic  
12 given that Upton Place, City Ridge and several other  
13 developments have come on line and the lower middle school  
14 of GDS moved into the area and there are still issues with  
15 other schools in the area. So, it's actually, I believe,  
16 directly relevant.

17 CHAIRPERSON HILL: Okay. Hold on, hold on, hold  
18 on. So, I have to figure this out. You give me a minute.  
19 Okay.

20 So, you had a question. What we're here to do is  
21 answer a question on remand. However, we're not a trial and  
22 so I'm not a judge. Okay. I'm just trying to get through  
23 the Q & A's, right. If Ms. Prince, you're saying you don't  
24 want to answer the question and that's fine. I can kind of  
25 figure out whether or not I need the question answered or

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1 not. Do you know when the traffic study in general was kind  
2 of done?

3 MS. MILANOVICH: I can answer it generally.

4 CHAIRPERSON HILL: Okay.

5 MS. MILANOVICH: So, the vast majority of the  
6 counts that we used in doing our traffic impact study were  
7 done in February of 2020 so pre-COVID. We did have to  
8 supplement those counts because we didn't have everything we  
9 needed in the counts that had already been done. And so we  
10 did count during COVID but we also repeated some of those  
11 counts that were done in February of 2020 so that we could  
12 develop a growth factor to factor up the counts that were  
13 done during COVID because we recognized that the volumes  
14 would be slightly lower.

15 CHAIRPERSON HILL: Okay. I'm just trying to also  
16 clarify in that all of my fellow Board members help me out  
17 if they think that a question is not necessarily germane and  
18 it looks like Mr. Smith has a response. But I just also want  
19 to point out. The Board knows what the Board is here to look  
20 at. And the Board is going to be able to decipher what  
21 questions apply or don't apply or what answers apply. But  
22 once you guys are all gone, we have to sit back and figure  
23 out and determine what we think. Right. So, I'm just trying  
24 to get through the day.

25 So, go ahead, Mr. Smith. You had a comment?

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1           MEMBER SMITH: Yes, I have a comment and this is  
2 the follow up on the comment that Ms. John made very early  
3 into this discussion.

4           This is a remand that relates to the shuttle bus.  
5 This is not a remand that relates -- and I'm going to say it  
6 again. This is not a remand that relates to the traffic  
7 study. The court did not raise a question about the traffic  
8 studies. What most of the traffic that is supposed to go to  
9 the site is supposed to be captured in the shuttle bus.

10           The question that the courts had raised relates  
11 to the shuttle buses and how we can regulate those particular  
12 impacts that relate to the shuttle bus. This is not a  
13 question about the traffic study. We will not be reopening  
14 the traffic study as part of this remand. So, I would  
15 recommend that the parties in opposition adjust their  
16 questions to the task before the Board today.

17           Thank you.

18           CHAIRPERSON HILL: Okay. All right. Thank you,  
19 Commissioner. Go ahead with your next question.

20           MS. GIANINNO: My next question just relates to  
21 the timing of the students who -- the arrival time for the  
22 students for pre-K and the K through 6. I think we talked  
23 about that in the original hearing, but just to understand --  
24 the discussion of tardy students and things like that hadn't  
25 come up before. So, in just trying to get a better

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1 understanding, if there's a recommendation that a child who's  
2 late and has discussions with Ms. Mellon or others and  
3 they're recommended to join a carpool, I'm just trying to  
4 understand, when the carpools are taking place, if all the  
5 people who are driving to school are in -- for the most part  
6 are in the shuttles. So I'm just trying to understand, if  
7 you could let us know when the pre-K and younger arrive  
8 versus the K through 6.

9 MS. MELLON: K through 6 students arrive at eight  
10 o'clock -- between eight o'clock and 8:30. They're late  
11 officially at 8:45. And some of our toddlers and very young  
12 children tend to wander in around 8:30. So, that's why we  
13 say that the busiest time is from eight to nine -- sometime  
14 between eight and nine, every student should be at school.

15 MS. GIANINNO: Thank you. And just on the -- on  
16 the -- what -- Metro, the -- the -- where the shuttle buses  
17 would be. Have you explored some of the locations within the  
18 neighborhood? I know we had discussions with Jami and with  
19 Ms. Milanovich, Ms. Rutherford about locations, and queuing,  
20 and pickup, drop-off, and where the stops might be, and you  
21 haven't provided that in any sort of details yet in the  
22 shuttle plan. But in one of the comments there was  
23 discussion of potentially having a passive pickup at the  
24 Tenleytown Metro, and that would be problematic, based on the  
25 information that we have about traffic that was used for the

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1 TMP.

2           So, have you actually had discussions about  
3 specific locations -- not NPS or AU, because NPS has its  
4 other -- has its own traffic issues, and as does AU. But  
5 have you had discussions with -- or figured out some of the  
6 locations, or looked at locations within, let's say, three  
7 quarters of a mile of the 4220 Nebraska Avenue location?

8           MS. MELLON: We have not had any conversations  
9 about shuttle locations. We have been on hold while we wait  
10 for this zoning process to unfold, and we anticipate we  
11 wouldn't occupy the campus until like, 2030 at the earliest.  
12 So, we don't feel like it's constructive to have those  
13 conversations at this point.

14           MS. GIANINNO: Okay.

15           And just -- last point, what -- when will the  
16 shuttles, if you purchase the property if this is approved,  
17 when would the shuttles start, just to confirm? I believe  
18 you've given that information, but could you just confirm  
19 when the shuttles would start for all the students who will  
20 be riding?

21           MS. MELLON: Yes. From when we open the school  
22 in the new location, the shuttle bus will be in place.  
23 Shuttle buses.

24           MS. GIANINNO: Okay. Thank you.

25           Thank you for the opportunity to question.

1 CHAIRPERSON HILL: Thanks, Ms. Mellon. I just  
2 want to -- when -- if this were to all happened, when is the  
3 shuttle -- when would the school open?

4 MS. MELLON: Well, we have to build the buildings.  
5 We have to -- We haven't -- We have the property under  
6 contract, then we have to renovate the house, bury the  
7 parking. Like, it is a long process once we get through the  
8 appeal -- final appeal.

9 CHAIRPERSON HILL: So, yeah. So, anyway, years,  
10 obviously.

11 MS. MELLON: Right. So that's why we feel like  
12 anything we do now, we're just going to be redoing later.  
13 It doesn't make -- all of our children that we currently have  
14 will have graduated our school. We have very young children.

15 CHAIRPERSON HILL: I was just trying to figure out  
16 when the project might finish.

17 Okay. Okay. Now I'm turning to the Board. If  
18 they have any questions for me -- We heard from the  
19 applicant. We heard from the ANC. We heard from the party  
20 in opposition, and then also the Office of Planning. Does  
21 the Board have any questions of anyone?

22 Mr. Blake?

23 MEMBER BLAKE: Yeah. I have a quick question for  
24 the ANC Commissioner. Ms. Milanovich testified that they had  
25 agreed to review the shuttle bus routes with the ANC. And

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1 I believe did that before -- they -- when they got closer to  
2 the opening of the school, once they established what the  
3 locations and so forth would be for the bus stops. Have you  
4 -- are you -- you're familiar with that. And you have agreed  
5 to do that. Is that correct?

6 MS. GIANINNO: We have -- We actually requested  
7 that we meet with them to discuss routes. Yes. We actually  
8 asked --

9 MEMBER BLAKE: Okay. So there's going to be --

10 MS. GIANINNO: -- to have -- to do it sooner.

11 MEMBER BLAKE: So, there is going to be a meeting,  
12 and -- and that's agreed upon already. And you'll have an  
13 opportunity to do that? Okay.

14 MS. GIANINNO: Yes.

15 MEMBER BLAKE: All right. Thank you.

16 My questions for Ms. Milanovich, then, would be,  
17 in the context of that agreement, what parameters do you have  
18 to work with to -- and what -- what are you expecting to do  
19 -- work with the ANC once you go and review those bus  
20 schedules and routes? What types of things would be  
21 addressed in that -- in -- from those meetings?

22 MS. MILANOVICH: The vision was that we will  
23 prepare, you know, a map showing where the bus stop locations  
24 were. And then we would present what we believe to be the  
25 most appropriate routes that the shuttle buses would take to

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1 get to and from those bus stops and -- between the bus stops  
2 and the school. And then we would present that to the ANC  
3 and to DDOT to solicit their feedback, any concerns that they  
4 have.

5 We would obviously be looking at things like you  
6 know, are there any weight limit restrictions that would  
7 apply? You know, is there a left turn prohibition somewhere?  
8 To make sure that the bus routes we propose, the buses can  
9 legally traverse those routes.

10 Once we establish those, like I said we'd meet  
11 with the AMC and DDOT, share that information with them, and  
12 solicit feedback to see if they had any additional concerns  
13 that we had not contemplated. And then we would make any  
14 changes to those bus routes that we would be able to, to  
15 address those comments that we received from both the ANC and  
16 DDOT.

17 MEMBER BLAKE: In this agreement that you have  
18 with the ANC, where is that codified? Is that -- Is that --  
19 that memorialized in one of the other agreements that we've  
20 had? Or was that a separate agreement that you've done  
21 recently?

22 MS. MILANOVICH: You have to give me a second. I  
23 -- I don't know that we have that documented in any of our  
24 current submissions. It's just something that we had agreed  
25 to do --

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1 MS. PRINCE: I can address this. Am I getting the  
2 echo again?

3 Okay. That's in the statement that we submitted  
4 in connection with this remand on June 21st. Our commitment  
5 to work with the ANC and share shuttle bus routes.

6 MEMBER BLAKE: Well, seeing you agreed to that as  
7 well, they had agreed to do that? To meet with you to do  
8 that?

9 MS. PRINCE: Right.

10 MEMBER BLAKE: Okay. I don't have any further  
11 questions.

12 CHAIRPERSON HILL: Does anyone else in my Board  
13 have questions of anyone?

14 (No response.)

15 CHAIRPERSON HILL: Okay, go ahead, Ms. John.

16 VICE CHAIR JOHN: I'm trying to remember the  
17 question. Oh. So, Ms. Mellon, -- And I apologize for  
18 confusing you with the ANC Commissioner before. But I wanted  
19 to find out if the school had considered staggering the drop-  
20 off times beyond the 8:00 to 8:30 window, so that if someone  
21 missed the shuttle bus in the morning -- I'm really concerned  
22 about that one hundred percent compliance with the shuttle  
23 bus.

24 And I guess what I'm trying to get to here is, if  
25 there's a way to accommodate those children without

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1 penalizing them for missing a session or expelling them. I  
2 -- I don't think it's realistic. So, I would look at your  
3 proposal for a drop-off point, as you said before, maybe  
4 staggering attendance as some schools do. I think they all  
5 finish around 8:15, 8:30. But maybe because of your  
6 population, and -- and the need for some of the younger kids  
7 to be driven to school, that there might be another --  
8 something else to look at that maybe was mentioned in the  
9 record that I did not pay attention to.

10 So I guess my question is, what was in this  
11 toolbox, apart from disciplinary action, and the -- the  
12 alternate locations for drop-off, which I fully appreciate  
13 that it will be difficult to identify what those sights would  
14 be, because you don't open until 2030. And you don't know  
15 what your student population might be. There might be more  
16 people who walk -- kids to walk to school. It might be  
17 entirely different.

18 So, I think there are a couple of questions in  
19 there. So, please answer what you feel like answering.

20 MS. MELLON: No worries. We're dedicated problem  
21 solvers.

22 So, a couple of ideas were to have a late shuttle  
23 that runs to the different locations. So because some of the  
24 -- the kindergarten kids it's very important that they get  
25 to school, but it's not as important whether they're there

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1 at 8:00 or 8:30. So, one idea would be to have the eight  
2 o'clock pickup and then the 8:30 pickup. If you don't make  
3 the eight o'clock you can come for the 8:30.

4 Or, you know, some -- There's invariably going to  
5 be kids who have a doctor's appointment in the morning. So,  
6 they might come late. Right? So, there are going to be  
7 those one off things that happen when people are late. The  
8 trip count allows us to adjust, so that still wouldn't be a  
9 car arriving during the critical time.

10 So, yes. We -- We -- I am also concerned about  
11 kids who arrive late. We don't have an enormous problem with  
12 that right now. There are one or two kids who are routinely  
13 late, and often we've had the school psychologist reach out  
14 to the family about morning routines. Or there's a work  
15 related issue, and we just problem solve with the family to  
16 make sure that children are getting to school.

17 We do have to report our attendance, and we do  
18 have to report tardies. So, I'm -- you know, a lot of these  
19 requirements are things we put in place to try to satisfy the  
20 ANC's concerns. And we know we're -- we're making guesses  
21 right now, because it's so many years before we think we will  
22 be on the campus.

23 I don't know if that answers your question or is  
24 responsive.

25 VICE CHAIR JOHN: We're still looking at a hundred

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1 percent compliance with the shuttle, though? To meet the  
2 target, right?

3 MS. MELLON: No. There's --

4 VICE CHAIR JOHN: That's incorrect?

5 MS. MELLON: No. The -- The -- The shuttle is  
6 just one of the mechanisms. Carpooling is another. Kids  
7 coming with faculty members is another. Kids riding with  
8 younger children is another. And when -- when I originally  
9 testified in the original hearing, I mentioned all of those  
10 --

11 VICE CHAIR JOHN: Okay.

12 MS. MELLON: -- reasons.

13 VICE CHAIR JOHN: All right.

14 MS. MELLON: -- and walkers and bikers as well.

15 VICE CHAIR JOHN: Okay.

16 MS. PRINCE: Commissioner John, if I could just  
17 add, the court clearly asked us about the shuttle and whether  
18 the shuttle was mandatory, and of course it is. What -- What  
19 is impossible for us to delve into at this stage -- and it  
20 would be equally impossible for any school, are the exact  
21 operational features of the shuttle route the shuttle bus  
22 driver, does he wait for late kids, does he know a  
23 chronically late kid, report it to the school.

24 These -- These like, day to day operational  
25 features are not something that we can answer right now. But

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1 as Nancy said, she's a problem solver. And we won't let a  
2 situation like that get to a problem level without having  
3 tackled it. So, the court asked a question. We've given  
4 them a condition which we believe was desired. And  
5 operationally, we will deal with challenges as they arise.  
6 But it is a mandatory shuttle.

7 VICE CHAIR JOHN: Okay. And Ms. Prince, you also  
8 are aware that the Board cannot really regulate the internal  
9 operation of the school?

10 MS. PRINCE: Exactly.

11 VICE CHAIR JOHN: Okay.

12 CHAIRPERSON HILL: Mr. Blake, you had your hand  
13 up.

14 MEMBER BLAKE: Yeah. I -- I have a question. And  
15 I feel it's a fairly simple question, and -- and I feel  
16 foolish asking it. But, could you -- could you just tell me  
17 what we are understanding one hundred percent compliance  
18 means.

19 If I look at the original study, that meant  
20 sixty-eight percent of the K through twelve -- K through six  
21 would be participating on the shuttle. If -- When I hear the  
22 word one hundred percent compliance, I almost feel like  
23 everyone must -- I just -- I want to make sure we all agree  
24 on what one hundred percent compliance means.

25 And so, maybe Ms. Prince, you can address that and

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1 maybe you can see what -- I just want to make sure I  
2 understand actually what it means.

3 MS. PRINCE: This is a question for Jami, but just  
4 -- let's be clear. A mandatory shuttle does not mean one  
5 hundred percent compliance. We have walkers. We have  
6 bikers. We have transit users. And we have a very small  
7 number of people who are requiring an accommodation.

8 But Jami, you can -- you can address that further.

9 MS. MILANOVICH: And that's a really good  
10 question, and I appreciate the question and the opportunity  
11 to clarify, because perhaps we're not all on the same page.

12 So we interpret a hundred percent compliance to  
13 mean that every single student in grade K through six would  
14 need to ride that shuttle bus. That is obviously not the  
15 case for all of those reasons that I had enumerated, and  
16 Allison just alluded to them. We will have some students  
17 that would walk to school, bike to school, take public  
18 transportation, ride with a younger sibling, ride with a  
19 parent who's a faculty staff member. All of the students  
20 could be in -- in grades -- grades K through six, but would  
21 not have to take the shuttle.

22 And then, as we talked about, the very limited  
23 disability exception. So -- So for us, we interpreted a  
24 hundred percent compliance to mean that every single student  
25 in grade K through six would need to ride the shuttle. As

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1 I said, that's -- that's obviously not the case. It doesn't  
2 make sense. And so when we say a hundred percent compliance  
3 is not necessary, we're talking about just those exemptions  
4 that we walked through.

5 Does that help, Mr. Blake?

6 MEMBER BLAKE: Yes it does.

7 VICE CHAIR JOHN: Can I ask a follow up?

8 MEMBER BLAKE: Go ahead, Vice Chair. I'd like to  
9 make sure we're all on the same page. That -- Ms. Prince,  
10 you want to add to that? And Ms. Mellon?

11 MS. PRINCE: To add, I think it's very clearly  
12 delineated in the PowerPoint that there are some students --  
13 generally students who won't generate trips, because they're  
14 walkers, they're public transit use -- users, they're bikers,  
15 or they're already coming with the faculty member. So a  
16 hundred percent compliance wouldn't make any sense.

17 We -- We certainly want people that aren't  
18 generating trips anyway, to not be required to drive across  
19 town to get in a shuttle. That wouldn't make any sense. So,  
20 we're not -- we're not proposing that. We're posing a  
21 mandatory shuttle, with reasonable common sense exceptions.

22 MR. CHURCHILL: If I might just add, just -- just  
23 to be clear. While it's true that many of these exceptions  
24 would not generate extra trips, the disability exemption does  
25 add extra trips. And so, even if we accommodate -- even if

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1 we consider a hundred percent compliance only to be limited  
2 to those students who would not otherwise have a way to get  
3 to the school without generating extra trips, we're still not  
4 looking at any plans for, sort of, this new definition of  
5 compliance, that would be comport with the assumptions of the  
6 traffic study.

7 MS. PRINCE: I'm not sure if that was a question  
8 for me. And I didn't know we're engaging in a dialogue but  
9 I want to be responsive.

10 We're not proposing anything new here. The -- The  
11 exceptions that we've cited are in the record. They were  
12 brought up at the time of the hearing. They're common sense  
13 exceptions. Ms. Milanovich can address the fact that a very  
14 de minimis number of trips related to disabled students will  
15 not move the needle in her traffic analysis.

16 And Jami, I don't know if you want to address that  
17 at all.

18 MS. MILANOVICH: I want to address it.

19 So, I want to remind everyone, we're still  
20 committing to a trip cap. So, the school has got to stay  
21 under the trip cap. So, if there are a few students that  
22 qualify for that disability exception, the school still has  
23 to adhere to that same trip cap number, which means as I said  
24 before, that the school can use other tools in their toolbox.  
25 The shuttle is one, and it's a mandatory one. But there are

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1 other tools in their toolbox that they can use to further  
2 reduce trips, to ensure that they're going to adhere to that  
3 trip cap.

4           So, I don't -- I want to make sure we don't lose  
5 sight of the trip cap, when as DDOT testified to in the  
6 original hearing, many projects in the district are not  
7 required to adhere to a trip cap. The trip cap is what gives  
8 everyone assurance that we are going to mitigate our impact.  
9 And that we are going to address those concerns that the  
10 community had.

11           MR. CHURCHILL: I -- I don't have a further  
12 question, but I --

13           CHAIRPERSON HILL: Mr. Churchill.

14           MR. CHURCHILL: I would like to --

15           CHAIRPERSON HILL: Mr. Churchill.

16           MR. CHURCHILL: Yes.

17           CHAIRPERSON HILL: This isn't a -- This isn't a  
18 back and forth. I was asking --

19           (Simultaneous speaking.)

20           CHAIRPERSON HILL: I was -- I am currently in the  
21 portion of this hearing where my fellow Board members are  
22 asking questions. And so, currently Mr. Blake is asking a  
23 question.

24           Mr. Blake, do you have any more questions?

25           MEMBER BLAKE: Yeah, I think so. Just regard with

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1 the Exhibit 46A from the original record, I think you did go  
2 through -- if anyone -- if there's anyway, can we pull that  
3 up? Exhibit 46A -- eight -- page thirty-eight?

4 CHAIRPERSON HILL: Mr. Young, can you pull that  
5 up, please? Mr. Young, can you hear me? Oh. Never mind.  
6 Thanks.

7 (Pause.)

8 MEMBER BLAKE: Thirty-six is what -- 38, I  
9 believe.

10 (Pause.)

11 MEMBER BLAKE: That's not the one I want. I want  
12 the one that has the summary of the study on it -- with the  
13 summary of the plan. Let me see if I can find it. Go back  
14 up. I apologize, everybody. Just --

15 Ms. Milanovich, do you know what page that is on,  
16 what I'm looking for?

17 MS. MILANOVICH: I believe it's on the actual  
18 page number thirty-eight, which --

19 MEMBER BLAKE: Oh, I'm sorry.

20 MS. MILANOVICH: -- would be different than the  
21 PDF number.

22 MEMBER BLAKE: Oh, yeah. Different page  
23 thirty-eight. I'm sorry. What is that number? Do you know?

24 Oh, yeah, much better now. Thank you.

25 (Pause.)

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1 MEMBER BLAKE: Okay, yeah, that's it. So, go back  
2 to one -- one of -- sorry about that.

3 All right. So, we -- this -- Ms. Milanovich, if  
4 you get this -- go up a little further. At the top of this  
5 page, it says very clearly, and I apologize for doing this.  
6 I want to go through it really quickly. A little bit  
7 further. A little bit further up. Click one more time.  
8 Okay. It's there.

9 Okay. This talks about full -- This is full  
10 compliance. Correct? This is the full compliance that we're  
11 talking --

12 MS. MILANOVICH: This is --

13 MEMBER BLAKE: Mm-hmm. Go ahead --

14 (Simultaneous speaking.)

15 MS. MILANOVICH: I apologize for interrupting.  
16 But this is actually the table that shows the trip generation  
17 and TDM plan.

18 MEMBER BLAKE: All right. Go down to -- Go down  
19 to --

20 MS. MILANOVICH: If you go down a couple of pages  
21 to table 9B.

22 MEMBER BLAKE: B. Okay. Great. Perfect. Okay,  
23 great. Sorry about that. Here we go.

24 Okay. So, this plot assumes all -- all students  
25 K through six are shuttle. So, this is full compliance.

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1 Correct?

2 MS. MILANOVICH: Well, again, it takes out  
3 students that are assumed to be --

4 MEMBER BLAKE: I just -- I understand. But from  
5 --

6 (Simultaneous speaking.)

7 MEMBER BLAKE: If we look at this as full  
8 compliance, this is what we're looking at, assuming that all  
9 students -- because for all students in K through six are  
10 shuttle, that's what it says at the top. Correct?

11 But the underlying data assumption is -- Or there  
12 are several assumptions, like forty percent of bussing  
13 person, forty -- I can't remember what percentage that is --  
14 are auto person trips, and so forth, in those beginning  
15 periods. Correct?

16 So -- So -- I just want to make sure that it's  
17 clear that full compliance, if from what I understand, is  
18 this, but it actually is a subset of all these things laying  
19 on the outset. Is that right? Or am I -- am I missing  
20 something?

21 MS. MILANOVICH: That's correct.

22 MEMBER BLAKE: And in the notes following this in  
23 the back, you actually lay it out specifically with what  
24 percentage that represents for each area, correct?

25 MS. MILANOVICH: That's correct. Yeah. If you

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1 go to the next page, there are a list of sixteen footnotes  
2 that detail all of our assumptions and calculations.

3 MEMBER BLAKE: Okay. And it does -- And so -- And  
4 that -- Okay. So -- that's what I want to make sure.  
5 Because that, to me, basically, does represent everything  
6 that you've talked about. And all the conditions that you've  
7 laid out, are pretty much laid out in these assumptions.  
8 From what I can see.

9 MS. MILANOVICH: That's correct.

10 MEMBER BLAKE: Okay. Thank you.

11 Thank you, Mr. Chairman for indulging.

12 CHAIRPERSON HILL: Sure, of course.

13 Anybody else from my Board have any questions?

14 VICE CHAIR JOHN: Just a quick question. So  
15 ninety percent -- Just looking at this chart, ninety percent  
16 of River School students currently arrive by car. And where  
17 am I getting the sixty-eight percent figure from? Somewhere  
18 there was a statement that sixty-eight percent of the  
19 population would be on the shuttle?

20 MS. MILANOVICH: Ms. John, I think you're looking  
21 at table 9A, which represents conditions without any type of  
22 TDM plan.

23 VICE CHAIR JOHN: Right.

24 MS. MILANOVICH: And so, that ninety percent of  
25 students arriving by car was assuming that we did not have

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1 a shuttle.

2 VICE CHAIR JOHN: So, if you go to table 9B,  
3 that's where we introduce the shuttle bus, as well as some  
4 other TDM measures that change that ninety percent. It  
5 reduces that 90 percent.

6 VICE CHAIR JOHN: Okay. And table 9B is on which  
7 page?

8 MS. MILANOVICH: It's page 38. So, the actual  
9 page number 38 to the bottom of the page, not --

10 VICE CHAIR JOHN: Okay.

11 MS. MILANOVICH: Not page 38 of the PDF, if you're  
12 looking electronic.

13 (Pause.)

14 VICE CHAIR JOHN: Okay. I see that. Okay, thank  
15 you.

16 CHAIRPERSON HILL: Okay. Does anyone else have  
17 any questions?

18 (No response.)

19 CHAIRPERSON HILL: Okay. Ms. Prince, there's been  
20 some discussion about new information that's been put into  
21 the record. And what I thought was that the information that  
22 was put into the record was clarifying and answering what was  
23 in the remand and in the -- what the BZA had asked for. Is  
24 there new information in there that I'm unfamiliar with?

25 MS. PRINCE: That's exactly right.

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1 CHAIRPERSON HILL: Okay. All right.

2 And then, just another comment. Oh. Yeah. All  
3 right. All right. So, does anybody have any other -- Oh  
4 wait a minute. So, now I'm back to this. Ms. Prince, you'll  
5 have rebuttal. Then, there will be any questions from the  
6 other people on the rebuttal.

7 So, what I'm just trying to again, point out, is  
8 that the questions are on whatever is mentioned in rebuttal.  
9 Okay? So, the questions are just for rebuttal. It's not  
10 that ask other questions. And then, we're going to have a  
11 conclusion from all the parties, including the applicant, and  
12 then we're going to be done.

13 Ms. Prince, would you go ahead and like to provide  
14 any rebuttal if you have any?

15 MS. PRINCE: Ms. Milanovich is our rebuttal  
16 expert.

17 CHAIRPERSON HILL: Okay.

18 (Pause.)

19 CHAIRPERSON HILL: Ms. Milanovich, you're giving  
20 rebuttal?

21 MS. MILANOVICH: I'm sorry.

22 (Simultaneous speaking.)

23 MS. MILANOVICH: Yes.

24 CHAIRPERSON HILL: That's okay.

25 MS. MILANOVICH: I apologize. But, yeah, just

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1 very quickly, I just wanted to address a couple of things.

2           First, we heard a lot of testimony about the  
3 adequacy of the traffic study that was conducted for this  
4 project. I want to first remind everyone, this study  
5 analyzed fourteen intersections. Eight of those were  
6 actually added at the request of the ANC. DDOT only required  
7 that we study six intersections, so it was a very full and  
8 comprehensive evaluation of the traffic impacts associated  
9 with this project.

10           The study was thoroughly reviewed by DDOT. In  
11 DDOT's testimony at the original hearing, they expressed full  
12 support of the methodology we utilized, and indicated that  
13 they believed that the River School had adequately mitigated  
14 its traffic impacts.

15           The notion that we would need to revise or update  
16 the study is not only unfounded, but it's also outside of the  
17 scope of the very limited scope of the Remand Order.

18           We also have something that we didn't provide  
19 sufficient details regarding the shuttle bus. The traffic  
20 study did analyze the impact of the shuttle bus. In Table  
21 9B, which we were just looking at, there is a line item that  
22 included twelve shuttle bus trips as part of the A.M. peak  
23 hours. So, those were included and analyzed as part of the  
24 traffic impact study.

25           In terms of not providing sufficient detail, as

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1 I indicated, there are operationally some -- some details of  
2 the shuttle bus that we're not able to provide at this time  
3 -- at this very early stage. We are still several years away  
4 from opening the school. And as Nancy indicated, the  
5 students who are in the school now will have graduated. And  
6 so, we want to make sure we choose the most effective shuttle  
7 bus stop locations as possible. And that means we need to  
8 wait until we're closer to opening.

9           We have agreed to meet with the ANC and DDOT to  
10 discuss those details once we are able to clarify those.

11           But again, the questions that we were asked to  
12 address on remand were very limited. It was the role of the  
13 shuttle bus, which we have talked about, whether the subtle  
14 grass was necessary to meet the A.M. peak trip cap, which we  
15 have addressed -- we have indicated it is necessary and it  
16 is mandatory -- whether or not one hundred compliant -- one  
17 hundred percent compliance is necessary, which we have  
18 addressed and discussed, and how the school would enforce  
19 that shuttlebus requirement, and we've proposed a new  
20 condition that ensures enforceability and also ties back to  
21 the TMP that's in their record, and that is incorporated into  
22 the conditions of approval in terms of ensuring compliance.

23

24           So, we believe we've addressed all of those  
25 issues, and just wanted to address a couple of things that

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1 we've heard and -- and clarify those for the record.

2 CHAIRPERSON HILL: Okay. Let's see. So, Mr.  
3 Harr, do you have any questions concerning rebuttal?

4 MR. HARR: No. I -- I don't really have any  
5 questions. I note that Ms. Milanovich and Ms. Prince,  
6 they're proposing new set -- condition conditions. So, I do  
7 note that.

8 CHAIRPERSON HILL: Okay. Commissioner, do you  
9 have any questions on rebuttal?

10 VICE CHAIR JOHN: No.

11 CHAIRPERSON HILL: Okay. All right. Mr. Harr,  
12 would you like to give us a brief conclusion? Then we will  
13 go to the commissioner, and then the applicant will get the  
14 last word.

15 MR. HARR: If it's all right with you, I will have  
16 Mr. Churchill do our conclusion.

17 CHAIRPERSON HILL: Okay. Mr. Churchill, you're  
18 going to have around three minutes. Okay?

19 MR. CHURCHILL: Appreciate it.

20 To start, I'd reiterate that the original record  
21 contains no disability exception for shuttle usage. River  
22 has represented today that its proposed exemptions were all  
23 contained in the original record, but the citation and its  
24 supplemental submission shows that the disability exception  
25 in the original record apply -- was an exemption from

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1 carpooling requirements, not from federal mandates.

2           Second, Ms. Milanovich testified on rebuttal that  
3 the traffic study adequately accounts for shuttles by  
4 projecting about six -- six round trips by buses. But  
5 River's own submission says that they do not know how many  
6 shuttles there will be.

7           Ultimately, River wants to turn a single family  
8 home in a residential neighborhood whose intersections are  
9 already fielding into a school with hundreds of students.  
10 And it's River's burden to show we can do this without  
11 causing objectionable traffic impacts.

12           We believe the Board should decide this question  
13 on the original record, pursuant to its original order, and  
14 without considering Rivers new shuttle plan or extra record  
15 answers to the Board's questions and concerns that were  
16 stated today. On the original record, River cannot carry its  
17 burden, because it has provided no evidence of what traffic  
18 impacts would be without the critical and unsubstantiated  
19 assumption of one hundred percent usage of the morning  
20 shuttle by K through six students.

21           River's testimony that it has other tools in its  
22 toolbox that can counterbalance the impact of its new  
23 disability exemption, for example, is not supported by the  
24 record, and it's contrary to the court's determination at  
25 page ten of its opinion. There, the court determines that

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1 the other tools in the school's toolbox only make the  
2 school's trip counts attainable on the assumption of one  
3 hundred percent compliance by K through six students. In  
4 other words, the full force of these tools is exhausted,  
5 reducing the impact of pre K trips and additional trips that  
6 are generated by K through six students beyond those who  
7 can't afford the traffic report could not be absorbed by use  
8 of these tools.

9           Very quickly, there are two issues that we would  
10 ask the Board to consider, if it is willing to -- can -- to  
11 take account for River's new shuttle plan. The first would  
12 be, the plan is missing many crucial details, as discussed  
13 by Mr. Harr, and reflected in the Board's questions today.  
14 And second, River's new shuttle plan should not be accepted  
15 without a reasonable opportunity for the other parties to  
16 respond, including with their own supplementation of the  
17 record.

18           With that, unless Mr. Harr has anything further,  
19 I'm concluded. Thank you.

20           CHAIRPERSON HILL: Okay, great. Thanks. And --  
21 And I'm going to ask your question for OZLD the next time,  
22 again, we are around, I want to kind of talk about  
23 conclusions, because I find them, at times, difficult for me  
24 to parse out what's a conclusion, and what is a new argument  
25 or a reiterating -- or reiterating argument. But again,

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1 we're not at court, so. But, it's something that maybe OZLD  
2 can help me with.

3 Commissioner, would you like to give us your three  
4 minutes?

5 MS. GIANINNO: I would just say that the ANC still  
6 has several specific concerns with the shuttle plan that  
7 include but are not limited to the exceptions to the rule  
8 regarding who shall ride the shuttles, the need for  
9 enforcement mechanisms that need to be stronger on both the  
10 students and the school, that were not included in the TMP,  
11 and enforcement mechanisms that work prior reporting to the  
12 ANC and DDOT.

13 There needs to be clearly delineated sanctions,  
14 and there have to be more details provided related --  
15 specific traffic related issues such as entry and egress from  
16 the Nebraska Avenue property, locations of the pickup -- the  
17 bus pickup and drop-off, and where will the buses idle. The  
18 queuing of the buses, the -- just traffic flow on Nebraska,  
19 depending upon how the buses enter and exit the property,  
20 routing through Tenleytown and AU Park neighborhoods, and how  
21 to deal with some of the intersections.

22 At this time, we still think that a lot of the  
23 information that has confided is new and thus agree with the  
24 arguments made by TPA. But, still want to state that the ANC  
25 voted unanimously to support the resolution -- resolution

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1 that said that we don't believe that the applicant's plan --  
2 plan provides enough detail to be considered at this time.  
3 And we hope that you'll take that into account when reviewing  
4 this. Thank you.

5 CHAIRPERSON HILL: Thank you, Commissioner.

6 Ms. Prince?

7 MS. PRINCE: Thank you. Thank you for your time,  
8 both this morning and this afternoon. I want to remind the  
9 Board of the narrow scope of the remand. Basically, the  
10 court wanted to know the shuttle would be required. And if  
11 a hundred percent compliance was needed. And the shuttle  
12 plan -- the concept of a shuttle is nothing new. That's why  
13 the court asked about it. It's in the record, and it was in  
14 the comprehensive traffic report. We always knew that there  
15 would be a shuttle, so that is not new. There's nothing new  
16 about it.

17 The only thing new is the condition, and the court  
18 specifically asked the Board to consider whether a condition  
19 should be required. So, of course we have to put one before  
20 you. And that's what we've done.

21 We -- We -- We really are facing a balancing act  
22 here. We want to work with the community. Absolutely. And  
23 we want to make sure they're comfortable with the approach  
24 that we've taken. But -- But we have to have reasonable and  
25 enforceable conditions, not conditions that we're not capable

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1 of enforcing. And we've proposed only conditions that we  
2 believe are reasonable and enforceable.

3           And I would add that the conditions -- the  
4 condition regarding the shuttle would be the same -- subject  
5 to the same enforcement language that you heard about at the  
6 hearing, and the Court of Appeals specifically found in its  
7 decision that the enforcement provisions that the ANC had an  
8 issue with had been given -- given great weight -- that the  
9 ANC's concerns had been given great weight, and they were  
10 adequate. So, those same enforcement conditions would apply  
11 to our shuttle condition.

12           So, thank you very much for your time. We are  
13 really interested in moving forward with this plan. It's  
14 been a long road, and we appreciate your patience and your  
15 cooperation. Thank you.

16           CHAIRPERSON HILL: Okay, thank you. Thank you,  
17 everyone.

18           Ms. Mehlert, can you hear me?

19           MS. MEHLERT: Yes.

20           CHAIRPERSON HILL: What are our days looking like  
21 moving forward? Like, I know we just put on a decision on  
22 the 17th for another case that I think is pretty extensive.  
23 How does the 24th look for decision?

24           MS. MEHLERT: For a decision you just have two --  
25 two other motions for other cases that are pending. So, the

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1 24th could work.

2 CHAIRPERSON HILL: Do we have a lot of other stuff  
3 on the 24th? Is there an appeal on the 24th?

4 MS. MEHLERT: No. There's five cases. Or, six,  
5 but one is asked for postponement. So.

6 CHAIRPERSON HILL: Okay.

7 Mr. Miller, are you around on the 24th?

8 ZC VICE-CHAIR MILLER: I should be.

9 CHAIRPERSON HILL: Okay, great.

10 All right. Then we'll come back for a decision  
11 on the 24th, and I really appreciate everybody being here.

12 We do this every week. And there are all kinds of different  
13 community members that we have an opportunity to listen to.

14 And even though this may be your only time with us, or not  
15 often with us, I know the Board appreciates all of the input.

16 So, with that, hope you guys have a nice day.

17 And Mr. Young, if you could please excuse  
18 everyone, I'm closing the hearing.

19 (Pause.)

20 CHAIRPERSON HILL: Okay. So, I have -- I'm trying  
21 to get to somewhere also, later today. And so, if we -- it's  
22 up to you guys. I mean, if we can squeeze one more in real  
23 quick, and then we'll go to lunch. Does that sound fair?

24 (No response.)

25 CHAIRPERSON HILL: Okay. All right. Ms. Mehlert,

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1 do you want to call our next one?

2 MS. MEHLERT: Yes. I believe we are going to case  
3 -- in the public sharing application number 21091 of Freedom  
4 828 21st Street NE, LLC.

5 This is a self-certified application from certs  
6 and subtitle S section 901.2 for special exceptions under  
7 subtitle E, section 204.4, on the roof top and upper floor  
8 element requirements of subtitle E section 204.1 to allow the  
9 removal -- removal of a rooftop architectural element, and  
10 subtitle E, section 207.5 to allow the rear of the row of  
11 building to extend further than ten feet beyond the privacy  
12 wall of any adjoining principal residential building on the  
13 adjacent property. This is to construct a new third story  
14 and three story new addition to an existing two story  
15 attached principal dwelling for conversion to a three unit  
16 apartment house.

17 It's located in the RF4 Zone at 828 21st Street,  
18 NE, Sq. 4495, Lot 5. This was previously -- previously  
19 scheduled for April 17th, and the Board granted the  
20 applicants' request for postponement.

21 CHAIRPERSON HILL: Thank you. And Commissioner  
22 Miller is leaving. Thank you so much. Have a nice day. We  
23 are back with Dr. Imamura, Commissioner.

24 And if the applicant could hear me, if they can  
25 introduce themselves for the record.

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1 MR. CROSS: Yeah, my name is Robert Michael Cross.  
2 I'm the architect associated with this application. I'm  
3 joined here by project designer Garima Gupta, as well. I  
4 believe I will be presenting today.

5 CHAIRPERSON HILL: Great. Mr. Cross, do you want  
6 to go ahead and walk through your client's application, and  
7 why you believe they're meeting the criteria for granting the  
8 relief requested? And I'm going to put fifteen minutes on  
9 the clock, so I know where we are.

10 And you can begin whenever you like.

11 MR. CROSS: Certainly. Appreciate that. If Mr.  
12 Young could pull up the presentation file and exhibit number  
13 39.

14 As mentioned, we're here on behalf of the owner  
15 of 828 21st Street NE. This project is located in the RF4  
16 Zone. The applicant is requesting just two areas of relief.  
17 One under subtitle E(207.4) for a rear addition that exceeds  
18 ten feet past the adjoining neighbor, and the other being  
19 subtitled 204.1A to modify an existing architectural rooftop  
20 element.

21 The property is proposed to become a matter of  
22 right, three unit multifamily structure. Again, this is RF4  
23 -- with a third story and rear addition. Two units are  
24 proposed to be family sized with two bedrooms, two baths, and  
25 the third is a one bedroom, one and a half bath unit.

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1           Outside of the area of -- areas of relief being  
2 requested, the rest of the proposed volume and its use are  
3 designed to be matter of right, as allowed in the RF4 zone.

4           Next slide, please.       This is the existing  
5 structure, both from the front and the rear. As seen on the  
6 front, the property already has a taller two story facade  
7 when compared to the adjoining massings of the adjacent  
8 structures.

9           Next slide.       Existing lot occupancy of the  
10 structure is only about 26 percent of the lot. This is a  
11 very deep lot. And the owner is proposing a rear addition,  
12 which would be compliant with the 60 percent lot occupancy.  
13 We are proposing only 57 percent.

14           Next slide. This is the proposed site plan. Here  
15 you see that we're providing two required parking spaces off  
16 of the alley. We're also providing some dedicated trash  
17 space at the rear of the property. The proposed addition  
18 projects 23 feet beyond the adjoining neighbors, which is 13  
19 feet beyond what would be allowed as matter of right. Again  
20 the proposed footprint is conforming at 57 percent.

21           Next slide.       The secondary of relief being  
22 requested is to modify the existing architectural rooftop  
23 element in order to shift the existing mansard roof up to  
24 accommodate the increased second floor heights, under  
25 subtitle 204.1A. The proposed mansard is intended to be in

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1 keeping with the character of the neighboring structures.  
2 The existing brick facade at the front of the building is  
3 proposed to be maintained.

4           Next slide. Here's the same elevations in a  
5 rendering format, again, showing that elevated mansard to  
6 complement the character of the neighborhood, as well as a  
7 setback third story.

8           Next slide, please. We prepared solar studies to  
9 show the net increase in shadows cast by the proposed  
10 structure, over that which would be allowed as matter of  
11 right. Here show the matter of right shadows on the top, and  
12 the proposed shadows on the bottom. We've labeled the net  
13 increase, that is the shadow cause -- increase in shadow  
14 caused by the proposed project over that which is matter of  
15 right, in red. These are for the equinox, spring and fall.  
16 And as you can see at 10:00 a.m. and 12:00 p.m., there is  
17 some increased shadow -- shadow in the rear of the property  
18 to the north.

19           Next slide. And then to a more limited extent at  
20 2:00 and 5:00 p.m., again, still at the equinox, some limited  
21 shadow -- increase in shadows.

22           Next slide, please. This is the summer solstice.  
23 We do have a little bit of increased shadow here, again, at  
24 10:00 and two o'clock on your screen, the increase shown in  
25 red.

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1           Next slide. And some at two o'clock. Virtually  
2 none at 5:00 p.m. on the summer solstice.

3           Next slide, please. And so on the winter  
4 solstice, there is some increase in shadows. Obviously the  
5 winter solstice, there's already a lot of shadows here. This  
6 is at 10:00 and 2:00 p.m. -- that's 10:00 a.m. and 2:00 p.m.

7           Next slide. And, again, at 2:00 p.m. and 5:00  
8 p.m. I think the shadow studies show that while additional  
9 propose would increase the shadows on the property to the  
10 north, those additional shadows would occur deeper in the  
11 rear yard and in the alley, where they're less likely to  
12 impact the structures, or in the case on the screen  
13 potentially on the rooftop of adjacent structures.

14           If we could go back to the first slide, please.  
15 A statement of opposition was added to the record yesterday.  
16 It is signed by several members of the community. While we  
17 would love to have the full support of the community, we did  
18 find that it is -- unfortunately, there are still some  
19 opposition in the community to the development in general.  
20 Similar to the sentiments expressed in the letter, most of  
21 the opposition we heard was regarding the multifamily nature  
22 of the project, and the parking, both of which are matter of  
23 right as proposed.

24           That said, we have worked extensively with the  
25 ANC, having met with the zoning committee, committee of --

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1 of the whole, and presented three -- at three of their full  
2 ANC meetings. We also postponed our original BZA hearing,  
3 which was scheduled for April 17th, in order to continue to  
4 work with the ANC.

5           Based on the feedback received from the ANC, we  
6 have revised the front facade from its original submitted  
7 form, as well as reduced the projection beyond the rear  
8 adjacent properties by three feet.

9           Additionally, our client has been active in the  
10 community, speaking with many -- many neighbors personally.  
11 The client also held an open house at the property on June  
12 8th, where we spoke with many neighbors, and we actually did  
13 not have anyone show up expressing any opposition.

14           She's been in touch with both of the adjacent  
15 neighbors, the -- the neighbor to the south, she's met in  
16 person. Has -- They have received the materials and they  
17 have discussed the project. The neighbor reported concerns  
18 about the conversion from single family to a three unit  
19 apartment house, but acknowledged that this was allowed given  
20 the zoning.

21           We have received no objections to the relief being  
22 sought. Our client has also talked to the neighbor to the  
23 north. That's the neighbor who's most impacted. And that  
24 neighbor has signed a statement taking no position on the  
25 project, again acknowledging that they have been notified,

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1 and have effectively, no opposition.

2           While the ANC may not have submitted their report  
3 in time for the hearing, we were present when they voted on  
4 this case in June.

5           CHAIRPERSON HILL: We have their report, Mr.  
6 Cross.

7           MR. CROSS: Oh. Okay. Very good. So, you have  
8 their motion to support?

9           CHAIRPERSON HILL: Yes.

10          MR. CROSS: And, I believe, currently, there are  
11 six letters from residents on that block in support --

12          CHAIRPERSON HILL: Mr. Cross, I'm going to  
13 interrupt you for one second. Just because, I think, I have  
14 heard enough of this. I mean of your presentation. Let me  
15 go ahead and drop this down, and see -- well, before I drop  
16 it down -- before I drop it down, if my Board has any  
17 questions that they want to see the presentation again -- Did  
18 -- Does my Board have any questions?

19          MEMBER BLAKE: Mr. Chair, I had one quick question  
20 with regard to the Office of Planning, which does relate --  
21 relate to the designed. So, I would reserve the  
22 opportunities to bring that back up after the Office of  
23 Planning.

24          CHAIRPERSON HILL: Sure, of course.

25          Dr. Imamura?

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1 COMMISSIONER IMAMURA: Thank you, Mr. Chairman.

2

3 Mr. Cross, just to confirm, we're talking  
4 twenty-three feet? Is that right? Past the furthest wall  
5 of the adjoining neighbor in the north and south? Is it  
6 like, twenty-three or twenty-six?

7 MR. CROSS: Yes. The -- The current revised  
8 design is twenty-three feet. Again, that was shortened three  
9 feet from the original based on discussions with the ANC.  
10 Thirteen past what is matter of right.

11 COMMISSIONER IMAMURA: Okay, thank you.

12 CHAIRPERSON HILL: Okay.

13 Let's see -- Let me turn to the Office of  
14 Planning.

15 MR. JESICK: Mr. Chairman and members of the  
16 Board. My name is Matt Jesick, presenting OP's testimony in  
17 this case, and I think I can mostly rest on the record of our  
18 staff report. We submitted that report at exhibit 22. And  
19 since that time, the applicant, as they noted, continue to  
20 work with the ANC on the design of the project. We feel  
21 they've improved the front facade. We also appreciate that  
22 they have reduced the depth of the rear edition. So, those  
23 changes reinforce our recommendation of approval from our  
24 earlier report. And we continue to recommend approval of the  
25 project. I'm happy to take any questions. Thank you.

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1 CHAIRPERSON HILL: Mr. Blake, you had a question  
2 for the Office of Planning?

3 MEMBER BLAKE: Yeah. Thank you, Mr. Chairman.

4 Mr. Jesick, you -- you said that they revised some  
5 -- You had some concerns, and they revised those issues. Was  
6 it the rear yard, that the rear extension edition that you  
7 concerned with or the façade? I thought it was more of the  
8 facade with visual intrusion. Is that correct?

9 MR. JESICK: Well, we did recommend approval based  
10 on the original design.

11 MEMBER BLAKE: Mm-hmm.

12 MR. JESICK: We had noted to the applicant some  
13 potential architectural improvements. So, we appreciate that  
14 they have revised that --

15 MEMBER BLAKE: What were --

16 MR. JESICK: architecture --

17 MEMBER BLAKE: What were the architectural  
18 improvements? I -- I looked at the thing. I couldn't -- I  
19 couldn't tell what the changes were. What -- What were they,  
20 that you recommended?

21 MR. CROSS: There have been some changes from the  
22 first plans. And those were at Exhibits -- Exhibit 10, I  
23 think, were the original plans, up through Exhibit 34 for the  
24 revised plans. And there have been significant changes --  
25 I can pull up the original plans here in a moment.

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1           Yeah. The original design had a very flat front.  
2 There was, no sort of, canopy or roof over the front porch.  
3 I believe the revised design has that. The revised design  
4 incorporates the sort of mansard type roofline at the second  
5 floor, which we feel is an improvement. And just the -- the,  
6 I think revised color scheme probably is a little more  
7 sympathetic to the -- the neighbors.

8           So we appreciate the -- the revisions that were  
9 made at Exhibit 34

10           MEMBER BLAKE: Okay. Thank you. I see it now.  
11 One last question, and we'll go back to Mr. -- And it -- the  
12 caption says thirteen feet beyond existing rear walls of  
13 dwellings to the north, which is three feet beyond permitted.  
14 Is it twenty -- I -- I -- I was confused about the number of  
15 feet again. I think Mr. Imamura -- Dr. Imamura pointed that  
16 out. Could you just clarify that one more time for me? It's  
17 thirteen feet behind the existing wall? Or twenty-three  
18 feet?

19           MR. CROSS: Twenty-three feet past the existing  
20 rear wall. That's thirteen feet past what is permitted.

21           MEMBER BLAKE: Okay. Thank you.

22           CHAIRPERSON HILL: Mr. Jesick, again, since like,  
23 all, you know -- what was it? The ten foot rule we -- we,  
24 you know, end up talking about a lot. And so, 23 feet I  
25 mean, just -- just on its face, 23 feet sounds like a lot.

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1 Like, you guys weren't that concerned about the light and air  
2 and shadowing, and can you tell me why?

3 MR. CROSS: Well, certainly we wanted to review  
4 the information in the record as a regard to those -- those  
5 impacts. And I think as the applicant demonstrated in their  
6 sun study, there are new shadows, but those new shadows  
7 mostly fall on the -- the rear yard or the alley, to the  
8 north and northwest.

9 Once you get into those afternoon hours, there is  
10 a little bit of new shadow on the property to the north. But  
11 those impacts do not rise to a level of an undue impact. You  
12 know, in terms of light and air. So, we were comfortable  
13 with that depth.

14 CHAIRPERSON HILL: Got it. Okay. All right. Mr.  
15 Young, is anyone here wishing to speak? Can I -- Okay. Go  
16 ahead, Ms. John. You're on mute, Ms. John.

17 VICE CHAIR JOHN: Thank you. I'm looking at the  
18 Exhibit 4, which is the plat, and I don't know if I'm reading  
19 it correctly, Mr. Cross, so maybe you have me. Is -- Is the  
20 extension 25 feet or 23 feet from the existing rear wall?

21 MR. CROSS: Revised, the plans, as seen in Exhibit  
22 34 to be a 23-foot addition. I'm looking in the record to  
23 see if there is a revised plat. It does look like we may  
24 need to submit a revised plat to match Exhibit 34.

25 VICE CHAIR JOHN: Okay. What page is that?

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1 MR. CROSS: Oh, yes. So, in Exhibit 34 -- Let me  
2 just -- It's going to be page four of Exhibit 34 shows a 23-  
3 foot addition. Again, the discrepancy comes from the fact  
4 that we revised the application based on AMC feedback,  
5 reducing our overall projection by three feet.

6 VICE CHAIR JOHN: Okay. All right. Thank you.  
7 So, that has to be updated.

8 MR. CROSS: Can do.

9 VICE CHAIR JOHN: Thank you, Mr. Chairman.

10 (Pause.)

11 CHAIRPERSON HILL: I was on mute. I said thank  
12 you, Ms. John.

13 Mr. Cross, when do you think you could update  
14 that?

15 MR. CROSS: We can have that uploaded this  
16 afternoon.

17 CHAIRPERSON HILL: Okay. Go ahead, Dr. Imamura.

18 COMMISSIONER IMAMURA: Thank you, Mr. Chairman.

19 Mr. Cross, so just wanted to verify. I'm taking  
20 another look at the solar studies, and I just wanted to  
21 confirm that the shadows actually terminate in the public  
22 alley. Is that right? They don't actually extend beyond the  
23 public alley?

24 MR. CROSS: I don't know if I could tell you that.  
25 There could be some shadows that cross the alley into the

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1 properties across the street.

2 COMMISSIONER IMAMURA: So, I guess my question --  
3 that confirms my question in that just the way the image was  
4 cropped, just sort of truncates the shadow. So, we don't  
5 really have complete study of that, in terms of how far it  
6 actually extends, because of the way it's cropped.

7 MR. CROSS: Yeah. That's true. Our analysis  
8 usually only projects one or two properties, and doesn't  
9 cross the public right of ways.

10 COMMISSIONER IMAMURA: Conceivably, as Mr. Jesick  
11 mentioned, the shadows can -- will probably project the cost  
12 of public alley into somebody else's backyard.

13 MR. CROSS: Yeah.

14 COMMISSIONER IMAMURA: Thank you, Mr. Cross.

15 CHAIRPERSON HILL: Okay. Anyone else?

16 (No response.)

17 CHAIRPERSON HILL: Okay. What I'd like to do is,  
18 I'd like to wait for deliberations until we have the record  
19 full with the plat. So, what I'll go ahead and do is, let's  
20 go ahead and Mr. Cross, if you can put that revised plan in  
21 to match Exhibit 34 into the record, and we will come back  
22 at the end of the day and deliberate.

23 MR. CROSS: Very good. I appreciate your time.

24 CHAIRPERSON HILL: Okay. Does anyone else need  
25 anything else?

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1 (No response.)

2 CHAIRPERSON HILL: All right. Okay. Then I'm  
3 going to go ahead and close the hearing and the record,  
4 except for what I just asked for concerning the revised plat,  
5 and we will decide this at the end of the day.

6 Thank you. Okay. All right. It's 1:14. Do you  
7 want to try for 1:45? Okay. See you at 1:45.

8 (Whereupon, the above-entitled matter went off the  
9 record at 1:14 p.m. and resumed at 1:53 p.m.)

10 CHAIRPERSON HILL: All right, Ms. Mehlert, if you  
11 want to call us back in.

12 MS. MEHLERT: The Board has returned from their  
13 lunch recess, and will return to the hearing session. And  
14 the next case is Application Number 21098 of ALTA LAQUEARIA,  
15 LLC this was formerly John Seki and Jonathan Schmidt.

16 This is a self-certified application pursuant to  
17 Subtitle X, Section 1002, for an area variance from the alley  
18 lot building development standards of Subtitle E, Section  
19 5100.1(a). This is to construct first and second-story  
20 addition to an existing one-story building on an alley lot  
21 for use as a principal dwelling.

22 The project is located in the RF 1 zone at 633  
23 Rear E Street SE, Square 877, Lot 88. The hearing was  
24 scheduled for April 24<sup>th</sup> and postponed at the applicant's  
25 request.

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1 CHAIRPERSON HILL: Thank you. If the applicant  
2 can hear me, if they could please introduce themselves for  
3 the record.

4 MS. WILSON: Hi, Alex Wilson from Sullivan and  
5 Barros on behalf of the applicant. And I'm also here with  
6 J.D. Schmidt, who's the owner, and Michael Dowling, who is  
7 the architect.

8 CHAIRPERSON HILL: Okay, great. And I see the ANC  
9 Commissioner. Could you introduce yourself, please, also?  
10 You're on mute, I think, sir.

11 MR. D'ANDREA: Frank D'Andrea, Commissioner for  
12 ANC 6B04 and Chair of the ANC 6B Planning and Zoning  
13 Committee.

14 CHAIRPERSON HILL: Great, thank you. All right,  
15 Ms. Wilson, if you want to go ahead and walk us through your  
16 Client's application and why you believe they're meeting the  
17 criteria. I'm going to put 15 minutes on the clock so I know  
18 where we are. And you can begin whenever you like.

19 MS. WILSON: Great, thank you so much. Mr. Young,  
20 could you please pull up the presentation?

21 Thank you. Could you please go to the next slide?

22 So the subject property is an alley lot located  
23 in the RF I zone. It is improved with a one-story building  
24 most recently legally used as a warehouse. The building is  
25 a contributing building in the Capital Hill Historic

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1 District, and the applicant is proposing to adaptively re-use  
2 the building for a single-family home which is permitted by-  
3 right for this alley property.

4 HPO restrictions prevent the applicant from  
5 demolishing the building. Separately, and perhaps more  
6 important for the variance argument, there are very real  
7 risks to the building structure, observed by the structural  
8 engineering, for doing any substantial modifications to the  
9 building.

10 So even without HPO restrictions, the building is  
11 unique as it is a 100-year old building with a massive  
12 concrete roof, beams, and existing historic openings. The  
13 openings are not set back from the alley, and using those  
14 openings for bedroom windows creates safety and privacy  
15 issues as they will be at eye level on the alley.

16 Every other home on the alley either has a second  
17 story, the ability to construct a second story, and/or walls  
18 that abut private space. The subject property abuts three  
19 alleys to its north, south, and west and cannot change its  
20 condition. So the only option for bedroom egress windows,  
21 if limited to the first floor, is at grade windows with no  
22 privacy.

23 And as I'll discuss, the roof removal to create  
24 a new second-story, is a substantial undertaking.  
25 Accordingly, the applicant is proposing a solution for

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1 adaptive reuse which minimizes impact on surrounding  
2 properties, and is compatible with the Historic District, and  
3 has been approved by HPRB, which is a second story addition  
4 set back from all sides which will house the bedrooms.

5           It will not be visible from the surrounding  
6 streets around the alley, and it will have limited views from  
7 the alley itself, if any, meaning the presumed intent of the  
8 alley lot height requirements.

9           Accordingly, the addition requires relief on the  
10 alley lot height limit of 20 feet to increase the overall  
11 height to 28 feet. It's currently 17 and a half feet. The  
12 addition will be within the two-story limit and meet all  
13 other development standards for alley lots in the RF1 zone.

14           Next slide, please. Just for some background,  
15 this application was submitted in January. Since then we've  
16 presented it to the ANC a few times, and the owners' team has  
17 done neighbor outreach and talked to the neighbors, including  
18 reaching out to those who are still in opposition.

19           The ANC supported both BZA and HPRB portions.  
20 This hearing was originally scheduled for April. Then there  
21 was a neighbor who submitted a letter a few days before the  
22 hearing and then some additional letters in opposition. And  
23 so given the time in which the documents were submitted, and  
24 in light of OPs report, I suggested we postpone the BZA  
25 hearing.

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1           And so we met with OP. They seemed to understand  
2 that there are some structural concerns creating a practical  
3 difficulty even if they got there in a different way. Their  
4 issue is primarily with the third prong, at least as I read  
5 the report. And that's the primary basis of their continued  
6 denial.

7           Regarding the concern from the neighbor to the  
8 north, the relevant concerns were reduced light and privacy.  
9 And so to address this, the applicant reduced the second  
10 floor footprint and set it back even further from the north  
11 wall. And so this reduction, coupled with the existing trees  
12 which shade the yard, could mean that there is limited to no  
13 impact on light and air. And so we do have photos and shadow  
14 studies to demonstrate that. And those were also submitted  
15 to the record.

16           So then after updating the plans, the owner's team  
17 sent the updated materials to those neighbors with no  
18 response until, I believe, yesterday just in the record. We  
19 still have not directly heard back from her.

20           For the neighbor to the east, her concern was  
21 primarily privacy related. And so the additional information  
22 in the record also relates to the tree on her property, which  
23 will not be impacted, and also the shared party wall which  
24 should not be impacted either.

25           And so the other thing we did to address her

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1 privacy concern is remove the window that was proposed on the  
2 second story facing her blank wall. And so now there are no  
3 windows facing her building at that level at all. Her wall  
4 has no windows facing the subject property, so now if  
5 approved there would just be two blank walls facing each  
6 other on the respective second stories.

7           And, of course, there are letters of support in  
8 the record, including the owner to the south and the owner  
9 next to 518 at 516 Archibald, Ellen Psychas, who wrote a very  
10 thoughtful letter explaining this warehouse has been used  
11 since she's lived there. Apparently one of the previous  
12 owners used it for rock bank practice.

13           Next slide, please. So in terms of variance test,  
14 the argument we are presenting today is one that fits within  
15 the strict variance framework in that these specific  
16 exceptional conditions cited are unique to this property.

17           And so, as a result of the attributes of this  
18 specific piece of property, the strict application of the  
19 zoning regulations, in this case limiting the property to a  
20 20-foot height limit, would result in a peculiar and  
21 exceptional practical difficulties to the owner of the  
22 property. And peculiar is certainly the way to describe the  
23 type of building that would result from a strict application  
24 of the zoning regulations.

25           Next slide, please. And so regarding the first

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1 prong of the exceptional situation are conditions of property  
2 can be related to the confluence of factors and improvements  
3 on the property which is exactly the situation in this case.

4           Next slide, please. So first I want to talk about  
5 historic considerations since OP talked a lot about this in  
6 the report. And I saw it mentioned in a neighbor opposition  
7 letter. So yes, the historic consideration provide an  
8 overall challenge in that the building cannot be raised, and  
9 the applicant has to generally work within the existing  
10 structure including the existing openings.

11           So let's say this wasn't in a historic district.  
12 It would still be true that the applicant has to work within  
13 the existing structure and existing openings, to a degree,  
14 from a structural perspective too. So the exceptional  
15 conditions and practical difficulty exists independent of the  
16 HPO restrictions.

17           And so if those have been conflated or confused,  
18 and not explained well enough, I apologize. In an effort to  
19 eliminate that confusion, I'll just state on the record the  
20 argument is not based on HPO limitations at this point. We  
21 can just take that off the table.

22           And so while I'm sure there is a point where HPO  
23 would certainly go, that is not compatible, I don't think  
24 it's necessary at this point to go through that exercise,  
25 given the other exceptional conditions which include a

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1 confluence of factors related to the improvements on the  
2 property, with respect to its age, history of use, the  
3 existing or historic openings, meaning the long-existing  
4 openings, location of beams and columns, lack of setbacks,  
5 size, location on three alleys, and existing height.

6 Other factors that maybe are not as strong but  
7 definitely add to this confluence is the location within the  
8 alley. The alley itself is unique. And the location near  
9 an RA-2 zone and MU-4 zone come into play too. Again, the  
10 structure is unique without these other factors, but they  
11 reinforce the practical difficulties faced and go to the  
12 third prong as well, which speaks to the intent of the  
13 regulations and impact on public good.

14 Next slide, please. First on the list of  
15 exceptional conditions is the age and history of use of the  
16 building.

17 Next slide, please. It is one single-story  
18 building which occupies the entire lot. It was designed by  
19 noted D.C. African American architect, Lewis W. Giles, and  
20 was built in 1925. It was used by Walker Hill Dairy as a  
21 dairy bottling plant until the dairy went out of business in  
22 the '30s. The building is a utilitarian, brick masonry  
23 structure, linteled openings, and linteled detailing.

24 One of its defining architectural characteristics  
25 is the existing low sloped roof structure, originally

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1 designed to provide a large, unencumbered functional interior  
2 space. This reinforced concrete system consists of an  
3 innovator for its time, grid of massive intersecting concrete  
4 beams and purlins bearing on only two interior columns. The  
5 employment of reinforced concrete at this scale was unusual  
6 in this era for such a small scale building.

7           Next slide, please. Next are the original  
8 openings. And one thing I want to note here that I also  
9 think caused some confusing is that there is a difference  
10 between windows and openings. Not all openings are windows,  
11 but all windows are openings.

12           And so in some earlier statements there were some  
13 discussions with the neighbors, I think there is a  
14 misunderstanding about what we were talking about when we  
15 said we cannot create the new openings since we are adding  
16 new windows. But the new window frames are going to be  
17 located in the original openings. And so this side shows the  
18 garage openings, for example, and so the applicant is  
19 proposing to maintain these as covered openings, albeit with  
20 new materials.

21           Next slide, please. And then to demonstrate this,  
22 so the west wall may look blank, but it had these historic  
23 openings which had been bricked over. And you can see where  
24 the beams up top intersect with the walls outlined in red.  
25 And those clearly avoid those openings.

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1           And so the applicant is proposing to put new  
2 windows in the upper portion of one of these openings. And  
3 so the windows will serve an office area. While new windows  
4 are being proposed, no new openings are being proposed.

5           And then of course, J.D. and Michael, please feel  
6 free to jump in if you hear me misspeak or you have anything  
7 to add as I walk through the building. It's certainly a  
8 complex structure.

9           Next slide, please. So a similar situation is  
10 occurring on the north side. You can see where a portion of  
11 one of the historic openings is. And that window is about  
12 a half or a third of where the original opening site is  
13 located. It's just been bricked over. But from a structural  
14 perspective, you can see where the beams tie into the walls  
15 clearly avoiding those areas which were historically open.

16           Next slide, please. Next slide, please. Just a  
17 closer look at the location of the beams and columns as this  
18 is integral in the roof and overall building structure  
19 integrity. They are holding up a massive concrete structure.  
20 This is the south wall showing the beams intersecting with  
21 the garage openings.

22           Next slide, please. This is the north and west  
23 wall again. You can get a sense of the massiveness of the  
24 structure.

25           Next slide, please. And this is the north wall

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1 again.

2           Next slide. And the west wall again, and all of  
3 this goes to show how the building's existing structure  
4 operates which is relevant, because the practical  
5 difficulties are related to window locations, structural  
6 integrity, and magnitude of modifying this building.

7           Next slide, please. And so that brings us to the  
8 roof structure.

9           Next slide, please. Thank you. It is a complex,  
10 substantial, reinforced concrete roof. It's very unusual for  
11 its time. The HPO report states that the proposal also  
12 includes preservation of the distinctive roof system of  
13 reinforced concrete beams and decks which was part of Louis  
14 W. Giles original design and is among the building's most  
15 unique features.

16           So I think the argument that the roof is unique  
17 is generally accepted, and we're not arguing that it's the  
18 greatest historic element. We are arguing that a massive  
19 concrete roof such as this is unique, and it is held up by  
20 these massive beams and columns, also unique.

21           And what's even more interesting is that the  
22 building across the street was designed by the same architect  
23 around the same time. And it has a completely different roof  
24 structure. So the subject property is unique even compared  
25 to a building that was constructed around the same time by

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1 the same architect.

2           In summary, the roof and support system for the  
3 roof are unique compared to other structures in the area, and  
4 this unique roof system and structural support are quite old.  
5 And so this limits how much of the building can be modified.

6           Next slide, please. This shows the roof and views  
7 from the roof. Oh, that's the wall to the east which shows  
8 that there are no windows there.

9           Next slide, please. And here are these pictures  
10 again with the context that's been cited, that this is a  
11 massive concrete system.

12           Next slide, please. And you can see a person in  
13 the corner for reference for the size of this building.

14           Next slide, please. Thank you. So those were the  
15 unique aspects of the improvements on the property. And then  
16 the aspects of the property itself are also unique.

17           Next slide, please. It's unique due to its  
18 location in both the center of the alley system, within an  
19 alley system, and it is bounded on three sides by public  
20 alleys. And this information is pertinent when it comes to  
21 window locations as the building faces public space and is  
22 directly located on public space.

23           It is also important for viewed as its location  
24 within this alley system limits views from the street,  
25 obviously, given how far it is from street-facing lots and

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1 from elsewhere in the alley, given the width of the alley.

2           Next slide, please. And again the reason, that  
3 being located on three alleys versus on two is important.  
4 It's highlighted even more when we see that the property  
5 across the street, the one that was built at the same time  
6 with the same architect, has a one story building as well.  
7 So any of its windows would also have to be on the first  
8 floor, except they have private space to the east and south,  
9 and we do not.

10           So their bedroom windows can safely be located  
11 where the arrows are shown. And while they could technically  
12 be at risk, the purple dotted property contains a historic  
13 easement, and the neighbors would have to obtain relief if  
14 they ever built further to the shared property line. So  
15 there's a very, very slim chance that those windows would be  
16 blocked in.

17           The only private space we face is to the east.  
18 That neighbor is opposing because of privacy concerns. So  
19 in a world where that neighbor was supportive, and would  
20 grant an easement to our windows facing into her private  
21 space, the easement would cost a lot of money, because it's  
22 effectively preventing her from exercising by-right property  
23 rights.

24           That lot adjacent is the type of lot that could  
25 occupy 100 percent of the lot without any relief, because it

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1 has no setback requirements since it's not touching any other  
2 street-facing lots. The only one would be -- it wouldn't  
3 even have a setback from the rear, because it is not touching  
4 an alley.

5 So it's much more complicated and, quoting the  
6 standard here, practically difficult for us to provide  
7 windows facing into private space, even relative to the  
8 property to the south which is a first-story building. And  
9 that neighbor to the south is supportive of the project.

10 And of course, again, even if we were to enter in  
11 some sort of agreement with the neighbor, neighbors can  
12 always say no at the last minute. So an easement and windows  
13 facing that property are not a practical or viable option.  
14 So the applicant's only options for first floor bedroom  
15 windows are windows directly facing public space with no  
16 setback and no other properties face this predicament.

17 Next slide, please. So just some additional  
18 context.

19 Next slide, please. Thank you. So this is the  
20 general alley system and surrounding buildings. The subject  
21 building has a blue line coming out of it in the center. In  
22 this angle, we are facing north from F Street through the  
23 alley as it goes to E Street. The distance between F Street  
24 and E Street is about 500 feet.

25 And so the church building is to the west of the

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1 blue roof. There are a lot of street-facing buildings that  
2 are at least 35 feet or over. There are other alley  
3 buildings that are taller than 20 feet. And so the subject  
4 property is shown with its proposed addition which will, of  
5 course, not be visible from F Street, I'm sorry, from the  
6 streets in general, given the setback.

7           Next slide, please. This is shown here too,  
8 although this highlights the distance between each street and  
9 the subject property which ranges between 215 feet and 300  
10 feet, which is much more than your typical alley lot. It's  
11 effectively in the center of the alley. There are two named  
12 historic alleys in this alley with a greater mix of  
13 residential properties. There are either historic alley  
14 dwellings or garage conversions.

15           Next slide, please. Thank you. And then on the  
16 rest of these photos go through the alley. I'll try to go  
17 through them quickly. This is the entrance from E Street as  
18 you're facing south and entering the alley.

19           Next slide, please. This is moving further into  
20 the alley.

21           Next slide, please. As you see as you enter,  
22 there are fences and walls. And those properties up ahead  
23 on the left are 512 and 514 F Street Terrace.

24           Next slide, please. So this shows those buildings  
25 head on. As you can see, there are unbarred windows above

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1 on the second story, likely for bedroom windows, appearing  
2 to meet egress.

3           Next slide, please. So this is as if you turned  
4 into the alley behind those properties. And this is a view  
5 of the corner, the U-shaped alley closest to the subject  
6 property. So the property shown ahead is 518 Archibald Walk  
7 which is one neighbors who had concerns about light and  
8 privacy. And these properties here have private space and  
9 second stories for bedroom windows. And then the blue house  
10 is 516, and they are supportive.

11           Next slide, please. The bottom two views would  
12 be exiting the U-shaped alley on the north side of the  
13 property. And then the other views are around the building.

14           Next slide, please. So just getting back to the  
15 alley, if we exit back onto F Street Terrace, we have 512 and  
16 514 to the left, the subject property is ahead on the left,  
17 and the church is on the right-hand side with a fence around  
18 its property.

19           Next slide. This is just a different angle  
20 entering or, I guess, viewing the alley to the west from the  
21 alley to the south.

22           Next slide. And so moving further down the alley  
23 to the south, further to the east, facing north, then you  
24 have 520 Archibald Walk. On the east it shows the wall of  
25 the subject property. The windows are small, bared, not

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1 egress windows, and so none of the egress windows on this  
2 side.

3           Next slide, please, nor on this side of the  
4 property.

5           Next slide, please. Thank you. Instead, they are  
6 located at the rear up top facing private fenced-in space,  
7 520 and the adjacent property are to the left. And that's  
8 the rear of those buildings there.

9           And then to the right you can see the rears of 518  
10 and 516, this shows that they're relatively tall, two story  
11 alley drawings located adjacent to the subject property. All  
12 of the windows on the first floor are secured. And so the  
13 bedroom windows, our legal egress windows would typically be  
14 on the second floor.

15           And the private space they have is accessed either  
16 in the front or the rear into common space with secure  
17 windows. So they have separate private space. None of these  
18 houses, at least 516 or 518, are accessed directly from the  
19 alley. At least the front door is not sitting on the alley.  
20 And the properties that do have access directly on the alley  
21 also have rear yards. And so the subject property does not  
22 have any of this.

23           Next slide, please. And so these are more recent  
24 photos just showing the additional foliage and fence.

25           Next slide. And then this is the entrance from

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1 alley to the south. And so the building to the right is over  
2 40 feet. And at this point, we are 270 feet from the subject  
3 property, and you cannot see it.

4 Next slide, please. So this is just proceeding  
5 down that alley.

6 Next slide, please. Again, next slide. So these  
7 buildings have alley frontage. There is one next to this one  
8 to the left. And these buildings are both two stories and  
9 have approximately 30 feet in height. So the subject  
10 property will be shorter if the addition is approved.

11 Next slide, please. And then coming back here,  
12 the church is on the left. And then the property to the  
13 south of the subject property is on the right.

14 Next slide, please. These are some additional  
15 views from the roof to provide some context.

16 Next slide, please. This shows the roof of the  
17 subject property and rear of 520.

18 Next slide, please. And so for reference, the  
19 proposed addition will be set back over 15 feet from that  
20 corner and be approximately the same height as that pillar,  
21 but again significantly set back. The applicant pushed the  
22 railings for the back too so no views are possible either.

23 Next slide, please. This is more of the same.

24 So next slide, please. These are the two-story  
25 houses you see entering from the south. And these houses are

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1 located on the alley and are blocking the view from the  
2 street. And the addition will be shorter than the top of  
3 those roofs.

4           Next slide, please. It's location is also  
5 important as the square is adjacent to the MU-4 zone to the  
6 east, an RA-2 apartment zone to the south. And this is a  
7 little bit different than some typical RF-1 zone blocks which  
8 are often surrounded by other RF-1 zone blocks.

9           Next slide, please. The Eastern Market Metro is  
10 close by. And this is important for context, because there  
11 are security concerns present with one of the by-right  
12 alternatives which is having bedroom windows on the first  
13 floor at grade on the alley. And so we want to show why  
14 there might even be increased security concerns in the area  
15 compared to other RF-1 areas that are primarily residential  
16 in the overall surrounding area.

17           Next slide, please. Moving to the second prong,  
18 at a high level the argument is that, without the relief, the  
19 applicant cannot feasibly create a second story without  
20 removing the roof which would lead to a practical difficulty.  
21 And then without that second story, the applicant would face  
22 practical difficulties related to providing private, secure,  
23 code-complaint bedrooms on the first floor.

24           The Board and Office of Planning have considered  
25 similar challenges to raise the level of practical

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1 difficulties. We're not saying that it's impossible to  
2 physically reside in the structure, it's not a use variance,  
3 it's not the standard.

4 I do think it's accurate to say that the by-right  
5 options risk the structural integrity. And the end product  
6 is an undesirable house from a design perspective or a  
7 structural safety perspective. So in terms of developing the  
8 property, it is highly unlikely without the relief.

9 And this certainly meets the lower bar for a  
10 practical difficulty and is certainly unnecessarily  
11 burdensome. And I think while OP's report maybe takes some  
12 detours, it eventually agrees that there are issues present  
13 which would result in a practical difficulty.

14

15 And again, I think the primary issue is the third  
16 prong. And so typically what we've done for the Court of  
17 Appeals is try to demonstrate why the alternative by-right  
18 options are a practical difficulty.

19 Next slide, please. And so these by-right options  
20 include either that second-story addition but limited to 20  
21 feet, or a first-floor only program. And so this would lead  
22 to security, privacy concerns and risks from a structural and  
23 design perspective. And so these have been considered  
24 practical difficulties by the Board and OP.

25 Next slide, please. Okay, there's your by-right

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1 options.

2           Next slide, please. So the first-floor only  
3 program presents the strongest challenges related to privacy,  
4 and safety, and egress. Building code requires that bedroom  
5 window sills be located no more than 44 inches above the  
6 floor. And meaningful security bars are not permitted for  
7 egress windows due to fire and life safety concerns, of  
8 course.

9           The current proposal intends to use the upper  
10 portion of the existing openings for windows for living  
11 spaces but not bedroom spaces. The proposed use of this  
12 upper portion keeps those private living spaces safe, because  
13 the windowsills sit well above the alley and above the floor.  
14 But because they sit well above the alley and floor, they  
15 cannot be used for egress windows for bedrooms.

16           Next slide, please. For the north elevation to  
17 use the existing openings for windows for bedrooms that meet  
18 egress, the applicant would have to use the portion of the  
19 windows that is at eye level in the alley. It is bricked up  
20 in this elevation, but the window on the right shows where  
21 that line is being drawn relative to the building. So you  
22 can see how open this window would have to be or how low it  
23 would have to be to the alley.

24           And this is a clear privacy issue. And I don't  
25 think it's controversial to say that bedroom windows at eye

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1 level in an alley create privacy issues. It can also be  
2 considered a security issue given its proximity to the MU-4  
3 zone. There's a high level of traffic in a commercial zone  
4 located nearby, and it's also located to the RA-2 zone.

5 Next slide, please. To demonstrate this, this is  
6 approximately where eye level would be on the alley. This  
7 is an obvious privacy concern. And the elevation shows the  
8 person next to that white space, which represents the lower  
9 portion of the windows in this case.

10 Next slide, please. So on the south elevation,  
11 the applicant is keeping the garage doors which have been  
12 identified as the most historic identifiable feature, so  
13 modifying these would start to genuinely disrupt the historic  
14 character, one could argue. But even without that, that  
15 would be a separate issue, because we have the same issues  
16 on the north elevation. You would have bedroom windows at  
17 grade on an alley.

18 And so one thing OP brought up, we had a very long  
19 discussion with them, was raising the floor to either create  
20 space below, which doesn't work from a code perspective. And  
21 then, of course, there are structural issues related to,  
22 like, that level of excavation that would be required.

23 Next slide, please. And so this is somewhat  
24 demonstrated in the northwest corner, because the applicant  
25 is selectively raising up that portion of the floor of the

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1 building and using existing openings for windows.

2           And this is that mechanical space underneath. And  
3 so the result is really unusual and peculiar, because the  
4 windows shown are going to be on the floor of that room. And  
5 the clear head height is extremely low because of the beams.

6           This works in this specific location, because it's  
7 proposed to be an office, a den space, and a potential guest  
8 room. But this would not be a functional bedroom for every-  
9 day use given that the windows are on the floor and it's  
10 really low head height.

11           And there are also limited structural impacts in  
12 this location. This would not be the case everywhere else,  
13 as you can imagine, but structural impact reasons if the  
14 raising of the floor is extended elsewhere.

15           Next slide, please. So not only would it risk  
16 structural integrity, it would require a massive amount of  
17 reinforcement, additional construction removal, naturally  
18 increasing the cost and scope of the project, and just  
19 overall resulting in an undesirable building.

20           And so it would never be a viable alternative to  
21 raise the floor around the building, especially considering  
22 large overhead beams creating low head height and issues of  
23 clear height throughout the building, especially on the north  
24 side where the roof slopes. And there are beams that are up  
25 to three feet in some places.

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1           And so I'll also note, I just saw this image  
2 marked up and submitted by one of the neighbors. I think  
3 it's in Exhibit 46 on Page 4. So it's interesting, because  
4 the design she proposed still has the first floor windows on  
5 the north as the egress windows. And so even the alternative  
6 solution still runs into that problem where you have egress  
7 windows open on an alley. And these are bedroom windows.

8           And so the windows she suggested would be in that  
9 northwest corner which, I mean, that is about two feet from  
10 the entrance to her home. So the proposed solution, which  
11 also has other issues in terms of code, but we're discussing  
12 the privacy issue here, so not only would it, I think,  
13 increase her privacy concerns, it would create new privacy  
14 concerns for future residents of the subject property.

15           So it certainly doesn't resolve those issues. And  
16 I think it reinforces the difficulties and challenges of  
17 working within this existing first floor.

18           Next slide, please. And so that red line shows  
19 approximate location of the bottom of the proposed sills, and  
20 so the floor would have to be at least 44 inches from that  
21 point. And so again, it would create a really low head  
22 height and windows on the floor, effectively.

23           And so one thing I want to bring and really  
24 emphasize too, just in addressing some of the neighbors'  
25 concerns, so Ms. Lamb and all of the other neighbors, I

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1 believe, who are opposing this, have purchased historic homes  
2 or garage conversions with second-story additions.

3           And so the subject property is really unique.  
4 It's not -- this was not originally used for a home. And so  
5 of course, you know, the single family use is by-right in the  
6 zone, so we're not trying to prove the use or anything like  
7 that. But because those residents have purchased either  
8 purposeful homes, or perhaps conversions, they have secure  
9 first-floor spaces. And those spaces were intended to have  
10 bedrooms and living spaces. They have egress windows on the  
11 second story or are facing private space. The only windows  
12 they have directly on the alley frontage are barred windows,  
13 as shown in some photos.

14           And so we're trying to propose the same solution  
15 for bedroom windows, to put them upstairs facing private  
16 space so we don't have open windows on grade. And so whether  
17 it's their opinion that the alley is quiet or not, at this  
18 point we can't predict what's going to happen in any  
19 neighborhood or city.

20           It's not contentious to say that residents of this  
21 home deserve the same security, privacy, and peaceful  
22 enjoyment as other residents of the alley by not having a  
23 bedroom window right on the alley level. And so D.C. won't  
24 allow meaningful security. There's also security issues  
25 present. Because at that point you're contemplating putting

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1 meaningful security bars that could create a risk for life  
2 safety in fire.

3           And so again, the diagram submitted by the  
4 neighbor really drives home the difficulty here. Because  
5 it's effectively showing, you know, the balance of privacy  
6 and safety compared to, let's say, fire and life safety for  
7 a bedroom window.

8           So I think, you know, at least in my mind, it  
9 indicates that we've hit a clear practical difficulty if the  
10 solution proposed by someone opposing still includes the  
11 issues related to privacy. The solution for privacy and  
12 security, and at least not privacy, but security, could be  
13 bars. And then you're balancing fire safety versus security.

14           This sort of discussion really hits on a practical  
15 difficulty. Because I think we can all agree that the  
16 residents of this building and the residents of D.C.  
17 shouldn't have to sacrifice privacy or security for fire  
18 safety, or vice versa.

19           Next slide, please. And so beyond that, the other  
20 option is to do a second story but limit it to 20 feet. And  
21 this is the option that I suggested the applicant explore  
22 further during our postponement. I thought, okay, this might  
23 be a more viable option. And please take a look at this.  
24 And so going through this, it turns out that it's just as  
25 difficult and creates just as many or more issues with safety

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1 and structural integrity.

2           So this is a historic element, as noted in the  
3 HPO's report, but historic considerations aside, removing the  
4 roof would be extremely costly, wasteful, and result in the  
5 destruction of a 100-year old piece of architecture. The  
6 cost of removal would be approximately \$225,000. The  
7 logistical effort of demolishing the structure would also be  
8 substantial, as it is akin to removing a section of an  
9 overpass.

10           The demolition would require the removal of many  
11 tons of material. This would be extremely wasteful as the  
12 roof is a unique and perfectly useable element of this  
13 historic building that could otherwise be integrated into and  
14 adaptively reused by the proposed project, as opposed to  
15 being thrown in the landfill as trash since there would be  
16 no way to salvage the structure or reuse it elsewhere  
17 throughout the demolition process.

18           A replacement structure would be required to  
19 support the new second story. This would sit lower than the  
20 height of the existing walls and require additional  
21 structural support and structural risk. So in addition to  
22 wasting an existing defining element of the building, new  
23 materials and structural support would be required, adding  
24 to further waste and a longer and therefore naturally more  
25 c o s t l y           c o n s t r u c t i o n           s c o p e .

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1

2

Next slide, please. And so what is the end result of all this work and waste? The applicant would have to retain the existing 17 and a half perimeter walls as it cannot substantially demolish the structure without risk. While it could construct a second floor measuring 20 feet in height, that floor would effectively be blocked by those walls. So the windows on a 20-foot second floor would just face a brick wall. Because there would only be three feet of difference between the 20-foot addition and the existing 17 and a half foot walls.

12

And so this scenario, it still failed to provide appropriate light and air, and it could introduce potential egress issues with code requirements potentially requiring ladders or uncommon egress mechanisms to get over the perimeter walls. So it doesn't resolve that issue. And it would also make it very difficult to maintain watertight integrity and manage that water in an effective way.

19

So while this approach is technically more private and resolves that issue, it would be a better option than the first-floor bedrooms, it's still extremely costly, wasteful, and compromises the architectural integrity and marketability of the building. And it results in bedrooms that face a solid brick wall.

25

Next slide, please.

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1           Next slide, please.    As I mentioned, these  
2 difficulties are unique to the subject property.

3           Next slide, please.    So the report agrees that,  
4 OP's report agrees that the structural issues exist. It does  
5 still state that a two-story building is not required in the  
6 zoning, and the existing building, at over 5,600 square feet  
7 in area, is large, particularly for this area. And so the  
8 argument for a practical difficulty appears to rest in the  
9 desired interior program which would require additional  
10 residential bedroom windows to be added on the first floor.

11           To be clear, the applicant is not arguing, nor  
12 ever argued, a two-story building is required, nor that the  
13 space is too small. So I'm not sure what that is responding  
14 to. So the applicant agrees the space is large. It's not  
15 motivated by a desire for more space, nor requiring a second  
16 story, more specific, interior program.

17           The interior program it's trying to meet is a  
18 livable home with private bedrooms, secure bedroom windows,  
19 and bedroom windows that are not on the floor or facing a  
20 wall. I don't think it's debatable that homes should have  
21 secure living spaces, private bedroom windows meeting egress,  
22 light, air, and building code requirements, common access to  
23 the entrance of the home, and a physically safe structure to  
24 live in. And that is the applicant's desire, because the by-  
25 right alternatives do not provide all of these things.

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1           If those were achievable within the space, the  
2 applicant would not be at BZA. And the applicant postponed  
3 to further evaluate a by-right project, specifically that 20-  
4 foot option. And then it also modified the project to  
5 eliminate all impacts to neighbors.

6           And so the safe spaces, egress, light, air,  
7 building code requirements, common access, none of these  
8 things can all be achieved by-right without practical  
9 difficulties.

10           Next slide, please. And so I want to talk a lot  
11 about the third prong, because I think this OP's biggest  
12 hurdle in recommending approval. So these are the intents  
13 as stated in the regulations in the Court of Appeals.  
14 Effectively, the purpose of the variance is to allow the  
15 Board, in unique situations, to provide an exception to the  
16 strict application in appropriate circumstances.

17           Next slide, please. I just wanted to show this  
18 one more time to show the heights of the surrounding  
19 buildings.

20           Next slide, please. The Court has also provided  
21 that if a by-right project --

22           VICE CHAIR JOHN: Ms. Wilson?

23           MS. WILSON: Yes?

24           VICE CHAIR JOHN: Ms. Wilson, I hate to stop you  
25 in your presentation. Could you go back to that slide for

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1 me and show me where the subject property is and --

2 MS. WILSON: Absolutely.

3 VICE CHAIR JOHN: -- and point out the two-story  
4 buildings that are 30 feet high that are located on the  
5 alley?

6 MS. WILSON: Yes. So if you see that blue line  
7 sort of coming out of that building in the middle, next to  
8 the 28 feet --

9 VICE CHAIR JOHN: What number is it? Yes, I see  
10 Number 28. That looks like the church.

11 MS. WILSON: No, I'm sorry, in the middle of the  
12 -- yes, right there. Thank you.

13 VICE CHAIR JOHN: Okay. So it's on the alley.

14 MS. WILSON: Yes. So that's the subject property.  
15 And then the buildings in front of that, let's see, so the  
16 building to the south is 16 feet, and then the buildings to  
17 the south of that are 30 feet, right there, yes. So those  
18 two buildings are on the alley. Well, one of them is tucked  
19 behind, but it faces another alley, or no, it's the historic  
20 easement. But yes, that other property, the 30 feet fronts  
21 directly on the alley there. And those are both two-stories.

22 VICE CHAIR JOHN: And then Number 16, what is  
23 that?

24 MS. WILSON: That's an existing first-floor  
25 building. That's the one to the south that I've been using

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1 as a comparison to our building. Because it was designed and  
2 constructed at the same time period and designed by the same  
3 architect. But it has a completely different roof structure  
4 and it faces private space to the south and east. That's the  
5 property I was referencing.

6 VICE CHAIR JOHN: Okay. Could you also show the  
7 church? Is that Number 28?

8 MS. WILSON: Yes, to the left.

9 VICE CHAIR JOHN: Okay. And those two small  
10 buildings, 518, 520, that are opposed, are those Number 24  
11 over there?

12 MS. WILSON: Yes.

13 VICE CHAIR JOHN: Okay. And --

14 MS. WILSON: Oh, sorry, so there's two sets of  
15 24s.

16 VICE CHAIR JOHN: Can you go back to that, Mr.  
17 Young? Because I've been having trouble figuring out what --

18 MS. WILSON: Sure. So we're facing north here.  
19 So the buildings that are opposing, or the neighbors that are  
20 opposing, one is directly to the east of the subject  
21 property. And then to the north of that building is the 518  
22 building.

23 VICE CHAIR JOHN: But what's 24?

24 MS. WILSON: Those are just the heights. All of  
25 the numbers are the heights.

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1 VICE CHAIR JOHN: Okay. All right, so the height,  
2 let's see, height, Number 28 is next to Number 24. Are those  
3 two, what are those two small buildings?

4 MS. WILSON: Those are two-story alley dwellings.  
5 It's 512 and 514 F Street Terrace.

6 VICE CHAIR JOHN: Okay. And the two neighbors  
7 with the adjoining wall, is that the one --

8 (Simultaneous speaking.)

9 MS. WILSON: The one neighbor would be adjoining  
10 wall, and that is to the east. It's one shared wall. The  
11 property doesn't share a wall with any other neighbors but  
12 that one.

13 VICE CHAIR JOHN: Okay. And that's where you're  
14 planning to recess 15 feet from that wall, where the  
15 applicant is planning to recess?

16 MS. WILSON: I think it was from the north wall,  
17 but we also have a significant recess there, as you can see,  
18 I think.

19 MR. SCHMIDT: On that side.

20 MS. WILSON: Okay, so 12 feet from the east and  
21 15 feet from the north, is that accurate?

22 MR. SCHMIDT: It's 14 from the north and 12 on the  
23 east.

24 MS. WILSON: Okay, but from the corner it's more,  
25 because of the angle?

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1 MR. SCHMIDT: Yes, because of the angle it's more  
2 like 18 feet on the corner.

3 VICE CHAIR JOHN: Okay, thank you.

4 MR. SCHMIDT: But that is pointing out that those  
5 two neighbor buildings that are opposed are 24 feet tall.

6 VICE CHAIR JOHN: Okay. And I wish you had shown,  
7 in a graphic like this, where those neighbors are. So the  
8 subject property is the one that's proposed to be 28 feet  
9 next to the one that's 16 feet and the church, right?

10 MS. WILSON: Yes. So there's an alley separating  
11 -- yes, we could probably upgrade this model, yes,  
12 absolutely.

13 VICE CHAIR JOHN: Yes.

14 (Simultaneous speaking.)

15 MS. WILSON: -- some labels, some more color in  
16 here. I understand. That's why I have a very long  
17 presentation and trying to take you around the alley. So  
18 anything that you all would like to clarify --

19 MR. SCHMIDT: Just so you're clear while we're  
20 looking at it, the subject property is the 28-foot tall.  
21 You're clear where that is, Ms. John?

22 VICE CHAIR JOHN: Yes.

23 MR. SCHMIDT: Okay. So directly to the right of  
24 that, right there, that is the neighbor that is opposed. And  
25 then directly to the north of that, right there, is the other

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1 neighbor that's opposed.

2 MS. WILSON: A little lower, yes.

3 MR. SCHMIDT: A little lower.

4 VICE CHAIR JOHN: Right. And that's the neighbor  
5 with the stack, the brick chimney.

6 MR. SCHMIDT: The brick chimney stack is on our  
7 building.

8 VICE CHAIR JOHN: Okay, but in which corner? Is  
9 that the --

10 MR. SCHMIDT: Yes, that's the corner there.

11 VICE CHAIR JOHN: Okay. Yes, that's helpful.  
12 Thank you.

13 MR. SCHMIDT: Okay.

14 MS. WILSON: And there's a separation there,  
15 because there is a little bit of alley space, so we're not  
16 sharing any walls with 518, but we do share a wall at 520.

17 Let's see, next slide, please. Thank you all for  
18 giving me a break from talking for many minutes straight.

19 So the court has also provided that if a by-right  
20 project and proposed grant of a variance would result in  
21 little difference in impact, it would not impair the  
22 integrity of the building plan.

23 Next slide, please. So the alley lot height  
24 requirements don't have a stated intent in the regulations.  
25 OP says the intent and integrity could be compromised because

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1 this will be above the 20-foot height limit.

2           Now one way that you could read what OP is saying  
3 is sort of, like, the intent of the alley lot height is to  
4 limit the height. So since you're asking for more height,  
5 it doesn't meet the intent.

6           And I think you could say this about most area  
7 variances. For example, when you ask for a rear yard area  
8 variance you're asking for the reduction of open space. And  
9 that's contrary to the stated intent of the rear area  
10 regulations which is to provide open space.

11           So there's more, obviously, to it than that, or  
12 else all variances would not meet the intent and integrity  
13 of the regulations. So the Court of Appeals has determined,  
14 when it comes down to it, it's the impact, and stated intent,  
15 and specifically the impact of the requested relief, since  
16 just about all area variances are requesting a relief to go  
17 beyond the development standard limit. So it's a comparison  
18 between the by-right and the proposal.

19           OP also states that the intent is for all lots to  
20 be secondary in scale to street-facing properties, and that  
21 is certainly met here. It's not going to be visible from  
22 the street, have extremely limited visibility even from the  
23 alley.

24           And this is in the Capitol Hill Historic District.  
25 It received unanimous approval. HPRB had some great things

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1 to say about its compatibility which, in this particular  
2 case, would go to what OP stated was the intent of the alley  
3 lot height regulations too.

4 In certain cases, HPRB arguably has stricter  
5 limits than the zoning regulations, particularly with respect  
6 to height and views. And that is why they require standard  
7 frequent setbacks, which are being provided in this case.

8 At any rate, where an applicant seeks relief from  
9 height, let's say via special exception, the standards that  
10 will not substantially visually intrude upon the character,  
11 scale, and pattern of houses along the street or alley, it  
12 certainly meets that standard. And in cases related to  
13 architectural elements, the Board defers to HPRB.

14 So it stands to reason that, since this is  
15 secondary in nature to street lots, it's compatible and has  
16 no substantial visual intrusion, and will have little to no  
17 impact compared to a by-right addition, then the proposal  
18 meets the intent of the regulations.

19 Next slide, please. An so these are the shadow  
20 studies, just further demonstrating this. There are no shade  
21 impacts now that the second story has been set back. And  
22 there is additional foliage around the area including a large  
23 tree which shades the Archibald Walk properties and  
24 properties to the east, which I think I showed on the  
25 photographs.

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1 Next slide, please. This is in March and in June.  
2 Next slide, please. Next slide, please. Next  
3 slide, please. And next slide, please. And next slide.  
4 Thank you.

5 So again, in terms of this being secondary to the  
6 street facing lots, the property is very far away from these  
7 lots. It's not going to be visible from the street.

8 Next slide, please. To summarize, it's not a  
9 controversial statement that the property is unique with  
10 respect to both the existing structure and also its location  
11 within a relatively unique alley system in an area which has  
12 a mixture of commercial, institutional, and residential uses.

13 The by-right options create practical difficulties  
14 in that the applicant cannot provide safe, secure, private  
15 spaces without compromising code requirements or structural  
16 safety of the building.

17 These issues have been considered practical  
18 difficulties before. And these difficulties are directly  
19 related to the unique aspects of the existing structure, the  
20 roof, the age of the building, the existing structure  
21 location, et cetera.

22 These practical difficulties are unique to the  
23 property even relative to the property across the street  
24 which was built at the same time by the same architect but  
25 faces private space and does not have the same roof.

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1           But finally, if the intent is to make sure that  
2 alley lots cannot be seen from the street and fit in  
3 appropriately with the context, the intent is being met and  
4 it's compatibility with the surrounding historic district,  
5 as HPRB approval has reinforced it. And the intent of the  
6 variance procedure, as stated in the regulations and Court  
7 of Appeals case law, is to address this type of unique  
8 circumstance.

9           Additionally, a long time neighbor at 516 provided  
10 written testimony as to the long-standing issues with this  
11 property, specifically its myriad of likely unsanctioned uses  
12 by previous owners. The existing structure has no  
13 residential features. It is a big undertaking to adaptively  
14 reuse this. It goes to the difficulty of developing it as  
15 a housing unit.

16           This is not an empty lot or fresh shell. It's a  
17 100-year-old warehouse with a massive concrete structure  
18 which can only take so much change before the structural  
19 integrity becomes at risk. The proposed solution of the  
20 second story solves the issues of privacy and egress without  
21 risking its structural integrity or removing the roof.

22           While this task is not impossibility, it is highly  
23 unlikely and impractical to develop this property without  
24 relief, as no one would reasonably develop a home with this  
25 level of difficulty of adaptive reuse just to have bedroom

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1 windows on the floor, a bare minimum clear height, structural  
2 risk, alternatively no legal bedrooms or private bedrooms,  
3 or alternatively, bedrooms facing a brick wall.

4           Next slide, please. And so this concludes my  
5 portion. Regarding the plans, so the original set we  
6 submitted to HPRB is in Exhibit 22D, and that includes a  
7 model and colored elevations. And so we've reduced the  
8 second floor footprints of the plan.

9           We don't have an updated model, as the model was  
10 done primarily for HPRB. They didn't require a further  
11 presentation. So if there are questions about the plans, in  
12 addition to the sheet shown today, there is a model showing  
13 the proposed materials at the proposed height but just not  
14 with the reduced setbacks.

15           We did, of course, submit an updated architectural  
16 set. That would be more of the permit set, and that's in  
17 Exhibit 37. And that shows the reduced footprint but, yes,  
18 if anyone has questions about those two things too. And that  
19 concludes my part if you have any questions.

20           CHAIRPERSON HILL: Thank you for that  
21 presentation. Let's see, so I am trying to also be a little  
22 efficient on something, because I'm trying to -- I have a  
23 time issue later. And so what I'm going to try to do is see  
24 -- Mr. Young, how many people are here wishing to testify?

25           MR. YOUNG: Six.

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1 CHAIRPERSON HILL: Okay. All right, let me hear  
2 from OP next. And then I'll take the testimony, and then we  
3 can ask questions if that would be appropriate with the  
4 Board.

5 Office of Planning, could you please give us your  
6 report?

7 MR. JUROKOVIC: Yes. Good afternoon, Chairman,  
8 members of the Board. This is Michael Jurkovic, Development  
9 Review Specialist with the Office of Planning. OP recommends  
10 denial of the requested area variance for relief to the  
11 maximum alley of lot height requirement of the RF zones.

12 When reviewing the request with the three-prong  
13 test, OP would agree that the culmination of factors  
14 described in detail by the applicant's engineer would result  
15 in some practical difficulty as it relates to the desired  
16 conversion. And, based on the submitted shadow studies, we  
17 concur that the proposal should not result in significant  
18 impacts to neighboring properties.

19 However, the zoning regulations provide additional  
20 requirements for the development of alley lots. In this  
21 case, the large lot is well above the minimum RF1 lot  
22 dimensional requirements and is currently non-conforming as  
23 it relates to alley centerline setback, alley lot maximum lot  
24 occupancy, and alley lot minimum pervious surface.

25 In this case, granting of the requested height

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1 variance would result in the building which would be larger  
2 and taller than most other nearby residential properties and  
3 would be the tallest alley lot structure along the alleyways.  
4 This is contrary to the intent of the current alley lot  
5 regulations to ensure that alley lot dwellings are secondary  
6 in scale to street fronting properties and the general intent  
7 of zoning to promote conformity with regulations, not to  
8 exacerbate or expand existing non-conformities.

9           In summary, OP recommends denial, as granting of  
10 the variance would result in substantial impairment to the  
11 intent, purpose, and integrity of the zoning regulations,  
12 specifically the alley lot provisions of the RF zones. Thank  
13 you, and I'm here to answer any questions.

14           Okay, before we do that, Mr. Young, can I hear  
15 from the witnesses? I mean, I'm sorry, the public?

16           MR. YOUNG: Yes, do you want me to bring them all  
17 up?

18           CHAIRPERSON HILL: Do three at a time, please.

19           MR. YOUNG: Okay.

20           CHAIRPERSON HILL: And just tell me their names.

21           MR. YOUNG: The first is Brittany Lamb, the next  
22 is Wesley Blaha, and the next is Carol Stapp.

23           CHAIRPERSON HILL: Ms. Lamb, can you hear me?  
24 Okay, great. If you could please introduce yourself for the  
25 record and then you'll have, as a member of the public,

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1 three minutes to give us your testimony. And you can go  
2 ahead and begin whenever you like.

3 MS. LAMB: Sure, thank you. My name is Brittany  
4 Lamb, and I live at 518 Archibald Walk. The applicant has  
5 not met the burden for a variance, and I urge the Board the  
6 deny the application.

7 The alleged exceptional conditions identified by  
8 the applicant are smoke and mirrors, because the property  
9 could easily be converted into a residence without removing  
10 the roof, making new openings, or adding a second level.

11 The crux of the applicant's argument is the 5,600  
12 square foot space is unable to accommodate bedrooms. This  
13 is implausible to say the least. Bedrooms could be located  
14 on the building's north side which faces the quiet pedestrian  
15 only walkway, not the busy alley that the applicant claims.

16 This would impose safety or privacy concerns  
17 beyond those that accompany typical city living and could be  
18 addressed the same way city residents have always addressed  
19 them, with curtains and window bars which, contrary to the  
20 applicant's false statements, are code compliant if  
21 releasable from the inside.

22 Multiple sites for bedrooms could also be located  
23 in the 1,300 square feet currently devoted to a home gym in  
24 the first floor plans. Bedrooms located there would be code  
25 compliant for light and egress due to the adjacent courtyard,

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1 which opens to a public way, and the windows and door already  
2 planned on the building's north side. The door would be the  
3 egress. The windows high up on the building would provide  
4 light.

5 Changes wouldn't be required to the already  
6 planned exterior windows, so privacy and security wouldn't  
7 be a concern. The living spaces would also get the same  
8 light they do under the proposed plans.

9 The applicant could also demolish the same 800  
10 square foot portion of the roof that he is already  
11 demolishing for the courtyard and build a limited second-  
12 level with bedrooms there. But he instead chose to  
13 prioritize the courtyard over bedrooms just as he prioritized  
14 a home gym.

15 The applicant and his representatives have also  
16 told us multiple times that if the variance is not approved  
17 they will build a by-right project. So the issue isn't any  
18 practical difficulties that the applicant would face in  
19 converting this to a single-family home, it's his lack of  
20 interest in a regulation compliant design.

21 The proposed design would also subvert the zoning  
22 plan by dwarfing not only the other alley dwellings but also  
23 street facing properties. We also can't evaluate the impact  
24 on our home's light as the shade studies submitted to the  
25 Board don't appear to be to scale.

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1           On Page 6 of his statement, the applicant states  
2 that three small bedrooms and a primary suite are, and I  
3 quote, "an appropriate number of bedrooms for this size and  
4 space." But that's not what he's asking for. He's asking  
5 for a 2,100 square foot addition, nearly the size of the  
6 average D.C. home. He's essentially seeking special  
7 dispensation to build an entirely new home on top of an  
8 already enormous warehouse.

9           This proposed addition includes a primary suite  
10 that is almost as big as our entire house, plus three  
11 additional bedrooms, four walk-in closets, a laundry room,  
12 and a second home office. And I know they didn't include the  
13 second level floor plan in their presentation. This goes  
14 well beyond the baseline livable home that their presentation  
15 just claimed they are seeking. And it's offensive that they  
16 would describe these plans that way.

17           If the variance is granted, the second floor  
18 addition should be limited to what the applicant himself  
19 claims is needed, a primary suite and two small bedrooms, as  
20 the proposed plans already a bedroom on the first level. All  
21 this could be done in an addition that's closer to 600 square  
22 feet rather than the 21,000 requested.

23           I just have a few more sentences. Ultimately the  
24 applicant doesn't want a regulation-compliant 5,600 square-  
25 foot house, even though this would be a luxury for most

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1 people. He wants a 10,000 square-foot house with a 1,300  
2 square-foot gym, five large bedrooms, and multiple outdoor  
3 spaces. The proposed design is not a good faith effort to  
4 grapple with zoning restrictions, it's simply to the design  
5 that the applicant wants, all at the expense of the  
6 surrounding community.

7 I urge the Board to deny the variance. Thanks for  
8 your time.

9 CHAIRPERSON HILL: Thank you, Ms. Lamb.

10 Ms. Blaha, can you hear me?

11 MS. BLAHA I can. Can you hear me?

12 CHAIRPERSON HILL: Yes. Could you introduce  
13 yourself for the record. And then you also have three  
14 minutes.

15 MS. BLAHA: Excellent, thank you. My name is  
16 Leslie Blaha. I am the owner/occupant of 520 Archibald Walk,  
17 referred to earlier as the neighbor to the east. I'm also  
18 the newest on the block with the exception of the renters at  
19 516.

20 I am testifying in opposition and respectfully ask  
21 the Board to deny the request for variance. The proposed  
22 project constitutes a substantial detriment to the privacy,  
23 security, and quality of life of the surrounding homes.

24 One unique feature of 633 not yet highlighted is  
25 that its eastern wall was constructed around 520's western

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1 wall such that we do not just have a shared party wall, but  
2 my wall is integral to the structure of 633 itself. Indeed,  
3 the interior of my western wall is -- the exterior of my  
4 western wall is an interior feature of the project design as  
5 shown in Exhibit 37 of architectural plans.

6 I am learning this morning that the degree of  
7 impact on my property may have warranted an application for  
8 party status. But being new to D.C., I did not know that was  
9 an option.

10 You have been shown visuals of the interior of  
11 633, but none of those were at the eastern wall showing the  
12 current state of potential impacts of the project to my home.  
13 The applicant has shared no information with me about risk  
14 mitigation for the proposed excavations or any structural  
15 work that stands to impact 520, as well as 522, which is  
16 structurally connected to my east.

17 The newly filed claims of that newly discovered  
18 structural integrity considerations are particularly  
19 concerning for any of the possible courses of action here.  
20 Five-twenty already has visible exterior wall damage, likely  
21 resulting from un-permitted interior demolition work at 633  
22 this year, exacerbating my concerns about the lack of  
23 communication. Lack of notification of construction activity  
24 violates D.C. building codes.

25 The applicant has demonstrated so far that they

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1 will do whatever they want with the property regardless of  
2 regulations or potential interference and negative impacts  
3 to neighboring properties. With its extremely  
4 disproportionate size undermining zoning intent, this  
5 proposed second story threatens the public good, eliminating  
6 privacy, safety, and security for my home and degrades the  
7 privacy of other homes.

8           The multiple rooftop terraces and access points  
9 will result in people being on 633's roof on a regular basis  
10 where they have direct vantage points looking into the  
11 bedrooms and private spaces in all the surrounding homes.  
12 But terrifying to me, the proposed project creates  
13 opportunity for physical breaches of my home through the  
14 second story. From my bedroom window I can reach out and  
15 grasp the roof of 633 as pictured in my letter. People on  
16 the roof are in arm's length from my bedroom as well as a  
17 bathroom window on the southern elevation.

18           The applicant argues that they cannot put bedrooms  
19 on 633's first floor because, quote, "People could quite  
20 literally touch the bedroom window." This is exactly the  
21 situation they would force upon me, sacrificing my security  
22 for their desired but not necessary design.

23           As applicant stated on Slide 67, quote, "It is not  
24 controversial that homes should have secure living spaces,  
25 and I am asking for exactly that." The applicant claims to

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1 have requested the hearing today to, quote, "Modify the  
2 project to eliminate all impacts to neighbors," end quote.

3           They have not done this. Over the six months of  
4 this application process, Alta Laquearia, which translates  
5 to high ceilings, have had zero discussions with me about my  
6 concerns and the impacts to 520's privacy, security, and  
7 safety, and integrity.

8           I further concur with my neighbor's concerns about  
9 substantial reduction of available natural light to our homes  
10 negatively impacting our quality of life and potentially the  
11 health of designated heritage trees in our gardens. Recent  
12 changes in design do not eliminate these impacts affecting  
13 all the neighbors in historic Archibald Walk.

14           The proposed project does not meet the requirement  
15 that the variance is without substantial detriment to the  
16 public good. I respectfully ask the Board to deny the  
17 requested height variance. Thank you.

18           CHAIRPERSON HILL: Thank you, Ms. Bajaj.

19                           Commissioner, I'm sorry, your screen was  
20 blank and I kind of got out of order there.

21           But give me a second, Commissioner. I'll be right  
22 back there with you.

23           MR. D'ANDREA: Okay.

24           CHAIRPERSON HILL: Ms. Stapp, can you hear me?  
25 Or Stapp, Carol Stapp?

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1 MS. STAPP: That's correct, Carol Stapp. I'm  
2 still muted.

3 CHAIRPERSON HILL: Okay. No, we can hear you now.  
4 Can you hear me?

5 MS. STAPP: Yes, I can.

6 CHAIRPERSON HILL: Okay, great. Could you  
7 introduce yourself for the record? And then you'll have  
8 three minutes also to give us your testimony.

9 MS. STAPP: Thank you so much. My name is Carol  
10 Stapp, owner/occupant of 611 E Street, since 1981, as well  
11 as the owner of 522 Archibald Walk, which has been occupied  
12 by my daughter, Rose, since 1993.

13 There's been some references to 516 Archibald  
14 Walk, and I'd like to point out that that is not owner  
15 occupied. I appreciate the opportunity to contribute my  
16 voice to the proceedings in opposition to BZA's approval of  
17 a height variance for the proposed version of 633 Rear E from  
18 a commercial building to a principal dwelling unit with a  
19 28-foot high second story.

20 Let me begin by stating that the relief that the  
21 applicant seeks will permit the intrusion of a structure  
22 detrimental to both the ambiance of one of DC's remaining  
23 clusters of historic alley dwellings, of which only 108 of  
24 the original 2,000 plus have survived, as well as their  
25 residents' quality of life.

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1 I'd like to emphasize two major problems with the  
2 proposed project. One, a second story will produce the  
3 jarring effect of a pop up.

4 The proposed plan will result in a principal  
5 dwelling unit that glaringly conflicts in scale with the  
6 nearby historic alley dwellings.

7 Two, a second story will have a negative effect  
8 on the neighbors' quality of life. The applicant wants  
9 natural lighting and privacy.

10 In consequence, the residents of 518, 520, and 522  
11 Archibald Walk will suffer a loss of natural light and  
12 privacy.

13 Archibald Walk, tucked away from a busy  
14 streetscape, is a congenial setting. Had the surviving alley  
15 dwellings added a story, withstanding their footprint,  
16 however, the surrounding built environment would no longer  
17 be as attractive for prospective neighbors.

18 Further, I want to make clear that the opposition  
19 to the proposed project is not an instance of nimby with  
20 residents objecting to the introduction of affordable housing  
21 into their gated community.

22 In fact, we welcome a renovation of 633 Rear E if  
23 it is in keeping with the surrounding built environment and  
24 if it doesn't compromise the everyday lives of neighboring  
25 residents.

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1 In sum, an appropriate proposal should take into  
2 account both the practical limitations of the existing  
3 structure, which should have been recognized by someone whose  
4 professional developer with access to structural engineers  
5 and the zoning restrictions of a designated historic district  
6 and it should also avoid impinging on the livability of  
7 nearby homes.

8 We therefore respectfully urge the BZA to deny the  
9 applicant's request for a height variance for 633 Rear E  
10 Street Southeast. Thank you so much.

11 CHAIRPERSON HILL: Thank you, Ms. Stapp.  
12 Commissioner, I'm going to get to you in one second here, but  
13 just real quick, do you have any questions for the witnesses,  
14 Commissioner?

15 MR. D'ANDREA: No, I don't.

16 CHAIRPERSON HILL: Okay. Does the applicant have  
17 any questions for the witnesses? Okay, that's a nod of no.  
18 Okay, let's see, why doesn't everybody just -- I'm going to  
19 -- I'm going to put you back into the other waiting area,  
20 okay?

21 And you can continue to watch. And Mr. Young, if  
22 you can bring up the next three, please?

23 MR. YOUNG: One more.

24 CHAIRPERSON HILL: Okay, if you could bring that  
25 person up, please.

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1 MR. YOUNG: Yes, that's Brian Kidwell.

2 CHAIRPERSON HILL: Mr. Kidwell, can you hear me?

3 MR. KIDWELL: I can, can you hear me?

4 CHAIRPERSON HILL: Yes. If you can introduce  
5 yourself, and you'll have three minutes to give your  
6 testimony as well.

7 MR. KIDWELL: Yes, thank you. My name is Brian  
8 Kidwell, and I live at 518 Archibald Walk. The applicant's  
9 argument hinges on the claim that he cannot fit bedroom  
10 windows into a 5,600-square-foot building.

11 After months of arguing the historic  
12 considerations prevented him from adding first floor windows,  
13 only to have that completely refuted by OP and HPO, the  
14 applicant now claims there are structural reasons the windows  
15 can't be added and offers a vague and unverifiable statement  
16 of a support from a structural engineer in his employ.

17 To this point, all of this is an intentional and  
18 bad faith misdirect in an attempt to trick you into believing  
19 that while the building is so concrete laden, that it would  
20 be difficult to alter, it simultaneously has the unfortunate  
21 fragility of papier mache-inspired glass in just the right  
22 places to rule out developing the proper in any other way  
23 than that which he most desires.

24 This is a comically egregious case of motivated  
25 reasoning and I strongly urge the Board to reject it.

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1           The applicant's own presentation shows three giant  
2 roll top garage doors on the south side of the building. The  
3 support structure is identical on the north side of the  
4 building, which the applicant claims is not even able to fit  
5 windows.

6           In fact, the north side of the building already  
7 shows large areas of cinder block and mortar where there used  
8 to be the very same garage doors, very obviously filled in  
9 and patched over by a previous owner.

10           Take a look and compare what is transparently  
11 feasible on the south side of the building and contrast that  
12 with the applicant's claim of what is somehow impossible on  
13 the north side.

14           Genuinely, the misdirect here is so large, you  
15 could drive a very literal truck through it. In tacit  
16 recognition that it would be possible to add windows of all  
17 shapes and sizes to the north side of the building, the  
18 applicant has turned to portraying the area around the  
19 property as some sort of busy alley network unsuitable for  
20 first floor bedrooms.

21           It's more accurately described as one genuine low  
22 traffic alley to the west, a T-shaped and shared driveway to  
23 the south, and a sleepy idyllic Norman Rockwell looking  
24 pedestrian only footpath to the north full of plants and art.

25           The truth of the matter is, is that the applicant

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1 has prioritized amenities on the first floor, like a  
2 1,300-square-foot gym, over necessities like bedrooms.

3           Rather than sacrificing the gym, which could  
4 easily accommodate multiple large bedrooms, he is instead  
5 demanding that the surrounding community sacrifice its light,  
6 openness, and character.

7           And although he claimed that he just needs to fit  
8 a primary suite and three small bedrooms, in reality, he's  
9 asking for a 2,100-square-foot addition to accommodate much  
10 more than that.

11           In an attempt to preserve his desired layout, he  
12 has shifted the proposed design westward such that it will  
13 be easily visible to passersby on E Street, very much a  
14 rebuke of the zoning plan itself.

15           I verified this myself last night when I went out  
16 and looked from E Street.

17           The applicant is a real estate developer, a  
18 professional in this field. He purchased this property  
19 knowing full well what it was, where it was located, and what  
20 the restrictions were.

21           He told the ANC that he had been searching high  
22 and low for a property like this, and now he comes before the  
23 Board as if he were forced to purchase this property and the  
24 only way for him to salvage this is to be given full license  
25 to create 10,000-square-foot dream home.

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1 He could easily convert this building into a  
2 luxury house in line with the zoning restrictions. At the  
3 end of the day, this design was never about conforming to the  
4 intent of the zoning plan, but rather reverse engineering  
5 arguments to justify his design.

6 The DC Court of Appeals has recognized that a  
7 variance should not be granted because the property makes it  
8 difficult for the owner to construct a particular building,  
9 when the owner could use or improve the land in other ways  
10 compatible with the zoning restrictions.

11 The same result should follow here, and I urge the  
12 Board to deny the application for a variance. Thank you.

13 CHAIRPERSON HILL: Thank you, Mr. Kidwell. Does  
14 the Board have any questions of the witness? Does the  
15 Commissioner have any questions of the witness?

16 MR. D'ANDREA: I don't.

17 CHAIRPERSON HILL: Does the applicant have any  
18 questions of the witness? All right. Mr. Kidwell, thank you  
19 for your time. I will put you in the waiting room again.

20

21 Commissioner, I'm sorry, I neglected, because I  
22 just missed you having your camera off, but if you want to  
23 go ahead and give us the ANC's testimony, please.

24 MR. D'ANDREA: Thank you, and good afternoon,  
25 Commissioners. Thank you for having me here today. At a

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1 regularly scheduled, properly noticed meeting on April 8,  
2 2024, with a quorum present, Advisory Neighborhood Commission  
3 ANC 6B voted 5-3-0 to support the applicant's request that  
4 they're making.

5           And just very briefly, a bit more detail on what  
6 we thought on this, is as OP's report states, we thought that  
7 the proposed project had practical difficulties.

8  
9           We thought that it did not have, even without the  
10 additional setbacks that the applicant has now provided, did  
11 not impact light and air.

12           And I guess that we thought that the confluence  
13 factors and the relief that they were asking for in the  
14 variance for 18 when the buy rate was 20 was fairly modest,  
15 all things considered.

16           I'll also say that we did approve the HPRB portion  
17 of the project and we thought that the project was a fairly  
18 handsome project from that standpoint and was an interesting  
19 solution to what we thought a tricky problem.

20           And that's really my testimony. I'll be happy to  
21 answer any questions you might have.

22           CHAIRPERSON HILL: Thank you, Commissioner. Okay,  
23 I'm going to turn to my fellow Board members for either  
24 questions of the applicant, ANC, or the Office of Planning,  
25 and let me know who wants to go first.

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1 VICE CHAIR JOHN: I'll go first. I want to hear  
2 from the architect. Is the architect here?

3 MR. DOWLING: Yes. Yes, I am.

4 VICE CHAIR JOHN: Okay. So there's been a lot of  
5 testimony about what HPO requires and does not require. So,  
6 HPO has not prohibited you from creating new windows, right?

7 MR. DOWLING: No, it has not, but we, in our  
8 original -- in our design, we have used the existing openings  
9 for all our windows. So we did not -- except for one new  
10 3-foot wide door on the south alley, we were not proposing  
11 to create any new openings, just use the existing ones that  
12 have been referenced as garage door openings.

13 VICE CHAIR JOHN: But you were --

14 MR. DOWLING: So all openings were to be within  
15 those structural -- existing structural conditions.

16 VICE CHAIR JOHN: Right, and you could create new  
17 windows on the north side that's quieter. Is that true or  
18 not true?

19 MR. DOWLING: Well, we could, yes, we could use  
20 those existing openings for windows. And we do propose to  
21 use them for some of the living spaces as well.

22 VICE CHAIR JOHN: Okay.

23 MR. SCHMIDT: Mike, I think her question was can  
24 we --

25 VICE CHAIR JOHN: May I finish?

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1 MR. SCHMIDT: Sure.

2 VICE CHAIR JOHN: Now I've forgotten what I was  
3 going to ask. Gosh. Okay, let me see if I can remember.  
4 There was a question about security and having security bars.

5 Now, it's also possible to have bars on windows  
6 that can be easily removed from the inside.

7 MR. DOWLING: Yes, the code allows egress windows,  
8 which have certain dimensional requirements, like the 44-inch  
9 maximum height from the floor for the sill, to have security  
10 bars.

11 But they cannot be up -- you have to be able to  
12 use them without a key --

13 VICE CHAIR JOHN: Right.

14 MR. DOWLING: -- or a special tool or special  
15 knowledge, which is a very difficult thing to achieve. I  
16 know it's possible, but it's -- I have not found it a really  
17 workable solution for ease of opening of those bars,  
18 especially so close to the ground.

19 VICE CHAIR JOHN: I think there's a switch that  
20 pops. I don't know. That's my understanding. Okay.

21 MR. DOWLING: It is something we'd have to  
22 explore.

23 VICE CHAIR JOHN: And those windows could also be  
24 glazed.

25 MR. DOWLING: You mean with obscure -- with --

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1           VICE CHAIR JOHN:    Yes, for privacy.    Maybe  
2 partially or not.

3           MR. DOWLING:    That's always -- glazing could be  
4 obscured, yes.

5           VICE CHAIR JOHN:    And there's something that  
6 somebody mentioned that I did not get in my review.    Is a  
7 part of the building being demolished to create a courtyard?

8           MR. DOWLING:    Yes, in one portion, I would say  
9 one-sixth, not even one-sixth of the floor area, we are  
10 proposing to demolish just the roof, leave the beams that  
11 we've been talking about but just demolish the part of the  
12 roof slab to allow an open courtyard to give the house some  
13 private space for light and air and private outdoor space,  
14 since it goes right up the property line on the alleys on all  
15 sides.

16           VICE CHAIR JOHN:    Right.    So you would remove the  
17 roof in that section and --

18           MR. DOWLING:    Just the --

19           VICE CHAIR JOHN:    -- and one wall?

20           MR. DOWLING:    Just the roof structure in the  
21 center of the building.    A portion of the center of the  
22 building.

23           The beams that were shown in those photographs  
24 would remain.    So it would be like a lattice work above your  
25 head in that courtyard, creating shadows and other things in

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1 the space.

2 VICE CHAIR JOHN: And how would you -- how would  
3 you build a second floor if you're not able to remove the  
4 roof?

5 MR. DOWLING: Well, we're going to -- we're  
6 aligning with -- when we increase the setback from originally  
7 proposed, what we've done is we're setting it right above  
8 some of the lines of the existing beams.

9 And so we'll just be essentially piggybacking a  
10 floor structure directly on top of the existing roof. So  
11 we're providing new floor joists to have a level floor and  
12 then building on top of that, all set back from the  
13 perimeter, the existing perimeter walls of the building.

14 VICE CHAIR JOHN: And there would be stairs going  
15 up to the second floor from the first floor?

16 MR. DOWLING: Yes. Luckily, there's three areas  
17 where there used to be skylights, which are already open.

18 So we would just take out the blocking and use one  
19 of those for a stair to the second floor.

20

21 VICE CHAIR JOHN: Okay, I think that was the  
22 question I had forgotten. Thank you.

23

24 MR. DOWLING: All right.

25 VICE CHAIR JOHN: Thanks, Mr. Chairman.

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1 CHAIRPERSON HILL: Thank you. Mr. Smith?

2 MEMBER SMITH: To the questions that Ms. John  
3 raised, what is the total square footage of the second floor  
4 that you're proposing to construct?

5 MR. SCHMIDT: I believe it's around 2,100 square  
6 feet.

7 MEMBER SMITH: So what is the first floor? Is it  
8 5,000 square feet?

9 MR. SCHMIDT: The square footage of the lot is  
10 5,600 square feet, but there's a garage. So livable square  
11 footage on the first floor is under 4,000.

12 So I think in total, we're at about 6,000 or 6,500  
13 in the square footage with the second floor, proposed second  
14 floor addition.

15 MEMBER SMITH: Okay, so you removed -- with the  
16 second floor addition, your architect has said that they're  
17 removing or construction 2,000 some odd square feet of  
18 livable space on the second floor, so you're removing about  
19 what percentage of the concrete roof are you removing in the  
20 proposal?

21 MR. SCHMIDT: About 800 square feet of the  
22 concrete roof is getting removed.

23 MEMBER SMITH: Only 800 square feet?

24 MR. SCHMIDT: Yes, 800 square feet.

25 MEMBER SMITH: For 2,000 square feet?

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1 MR. SCHMIDT: Say that again.

2 MEMBER SMITH: You're removing only 800 square  
3 feet of the existing roof when you're adding 2,000, roughly  
4 2,000 square feet onto the second floor of livable space?

5 MR. SCHMIDT: Correct, and we're taking about 800  
6 square feet or 700 square feet out of the first floor for  
7 parking.

8 MEMBER SMITH: That's the only question I had.

9 VICE CHAIR JOHN: You're breaking up, Mr. Smith.

10 MEMBER SMITH: Oh, I was saying thank you, that  
11 was the only question I had.

12 CHAIRPERSON HILL: Oh, okay. All right. Anyone  
13 else?

14 VICE CHAIR JOHN: I have one more question of the  
15 architect.

16 CHAIRPERSON HILL: Sure.

17 VICE CHAIR JOHN: Did you consider a sloped roof  
18 which would be sort of like an attic configuration that would  
19 not be so -- it would only be high in a limited area, but  
20 there would be enough head room for maybe a bedroom or  
21 bathroom or maybe two bedrooms and a bathroom. I don't know.

22 MR. DOWLING: The idea was to build a new --  
23 because it's a fairly low-sloped roof now, I mean, I don't  
24 think it's any more than a 1, 1 ½ and 12 slope now, and  
25 given, rather than having too many studs, I mean slope --

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1 having to make up different levels on that second floor, we  
2 opted to pick at one point and come straight back from that  
3 with one level floor and allow us one level roof above that.

4 So no, we did not explore that.

5 VICE CHAIR JOHN: Thank you. That was it, Mr.  
6 Chairman.

7 MR. SCHMIDT: Can I comment on that?

8 VICE CHAIR JOHN: Sure. Sure.

9 CHAIRPERSON HILL: Go ahead.

10 MR. SCHMIDT: I think if I'm interpreting your  
11 question, a sloped roof would mitigate sightlines is kind of  
12 what I think you're getting at maybe.

13 And I think we're mitigating any of that by the  
14 setback. The height that we're asking for is really bare  
15 minimum to be able to fit livable space up on top of that  
16 concrete structure.

17 And it's set back 14 feet. And so, we're set back  
18 far enough that I believe the sightline and perception of  
19 height is significantly diminished as if a sloped roof were  
20 there.

21 VICE CHAIR JOHN: Okay. Thank you.

22 CHAIRPERSON HILL: Dr. Imamura, and then I'll go  
23 to Mr. Blake.

24 COMMISSIONER IMAMURA: You can go to Mr. Blake  
25 first.

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1 CHAIRPERSON HILL: Okay, go ahead, Mr. Blake.

2 MEMBER BLAKE: I have one quick question. It's  
3 with regard to the windows. You indicated you would attempt  
4 to put windows in existing openings. What would preclude you  
5 from putting windows, new windows, in other locations?

6 MR. SCHMIDT: Michael?

7 MR. DOWLING: Yes.

8 MR. SCHMIDT: So one thing to just -- because Ms.  
9 John also brought this question up in a certain way, of can  
10 we make more openings?

11 In the presentation, Alex was showing all the  
12 different walls that have existing -- they have very large  
13 existing openings.

14 And then in between those openings, some of those  
15 openings or most of those openings are bricked in and we're  
16 proposing to reuse some of those.

17 And then in between those openings, you have very  
18 large columns that are supporting these intersecting beams  
19 that are between these existing window openings.

20 On top of that, the existing window openings are  
21 -- they have these almost two-foot-tall concrete headers  
22 above them.

23 And so changing the header height of those  
24 windows, which isn't possible on any of the very visible  
25 alleys, the south alley and the west alley, we probably could

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1 (audio interference) from a historic perspective alter the  
2 header heights on the north alley.

3 But historic has been clear that the industrial  
4 use of the building needs to be perceived in the final -- in  
5 the final design, and that these bay -- these large bay  
6 openings really should not be altered.

7 Also from a structural standpoint, the headers  
8 that are there are tied into, and they're quite massive and  
9 substantial, and so removing those headers again becomes a  
10 very complicated structural process.

11

12 Also, too, one of the comments that -- and this  
13 is tied to this, of one of the neighbors, that were arguing  
14 that the building is this massive concrete structure but also  
15 quite delicate at the same time, I would say that that is  
16 absolutely the truth.

17 This is a 500-ton reinforced concrete roof with  
18 massive beams supporting a seven-inch thick concrete  
19 reinforced steel deck.

20 There's a tremendous amount of weight, and all of  
21 that roof structure is tied into these exterior walls with  
22 steel.

23 And so when you're talking about removing or  
24 altering these things, you're talking about removing steel  
25 and concrete out of a brittle brick supporting wall system.

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1           Also, a concern for the neighbor to the east, Ms.  
2 Bajaj, who's concerned about her party wall, that is a party  
3 wall. It's a shared wall, so it's ours and hers.

4           Any proposal that would require us to remove the  
5 roof from that side of the building would be significantly  
6 more risky for her and her wall system for that same reason.

7           The concrete slab is tied to the walls and the  
8 walls are brick. Does that make sense?

9           MEMBER BLAKE:       Yes, thank you very much.

10

11           MR. SCHMIDT:    Yes.

12           CHAIRPERSON HILL:  Dr. Imamura?

13           COMMISSIONER IMAMURA:  Thank you, Mr. Chairman.  
14 I have one question for Mr. Jurkovic and Mr. Schmidt, I  
15 guess. I'll start with Mr. Schmidt.

16           When you purchased this property, I guess, if --  
17 was the intent the entire time to pursue sort of this  
18 residential use? Or what is your alternative plan if it's  
19 not approved for the variance?

20           MR. SCHMIDT:  I didn't hear the last part of your  
21 question.

22           COMMISSIONER IMAMURA:  What's the strategy if not  
23 approved for the variance?

24           MR. SCHMIDT:  If not approved for the variance,  
25 I can't say that we have a robust strategy mapped out if not

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1 approved for the variance.

2 COMMISSIONER IMAMURA: Do you have an alternative  
3 use for the property?

4 MR. SCHMIDT: The existing use of the property is  
5 an industrial warehouse. And further use in that vein is  
6 obviously going to be quite complicated because it's a  
7 warehouse completely bounded by residents.

8 And so, residential use is absolutely the path for  
9 this property.

10 COMMISSIONER IMAMURA: I appreciate that, Mr.  
11 Schmidt. All right. Thank you. Mr. Jurkovic, my question  
12 for you is you made a comment that said if the Board does  
13 approve the variance, it's a substantial impairment to the  
14 regulation.

15 I just wanted you to elaborate a little bit more  
16 on that and what you meant by substantial impairment.

17 MR. JURKOVICH: Yes, as it's discussed in our  
18 report, and I think brought up several times over the course  
19 of the presentation today, is that specifically for this,  
20 with regard to alley lot regulations and the idea that alley  
21 lots should be secondary to surrounding street fronting  
22 properties, one of the most crucial ways to do that is the  
23 height limitation.

24 And in this particular case, the existing maximum  
25 height for the alley lot regulations would be 20 feet and the

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1 proposal is asking for 28.

2           And to my knowledge, the tallest alley lot  
3 structure along the course of these alleyways is only 24  
4 feet. I do understand that there are two panhandle lots that  
5 front on Proffer Street, Front Street, that are currently 30  
6 feet in height.

7           But those are not regulated by the alley lot  
8 development requirements. So I don't think it's fair to  
9 compare this property to those.

10           But as I said, for this particular case, and  
11 really the RF zone in itself, the maximum alley lot heights  
12 really works to create that secondary end scale in nature of  
13 alley lot properties in relation to street fronting  
14 properties.

15           COMMISSIONER IMAMURA: Thank you, Mr. Jurkovic.  
16 That's all I have, Mr. Chairman.

17           CHAIRPERSON HILL: Mr. Jurkovic, just a quick one  
18 from me. Like, I know, I can't remember if -- I don't think  
19 the Office of Planning really opines on all this, but if you  
20 all don't think that they make the case for the variance,  
21 then do you know what they might be able to do with the  
22 property? Or you guys don't think about that?

23           MR. JURKOVICH: We extrapolate as much as the  
24 applicant provides information to us.

25           MEMBER SMITH: Chairman Hill, I can answer that

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1 one for him. I would say that it's the Plaintiff's job  
2 probably to take a look at the application as it was  
3 presented as final.

4 And looking at the -- looking at the application,  
5 within the application, it's saying that it can be used as  
6 some type of residential property.

7 The question is more so about that second floor  
8 addition and the request before them for the area of  
9 variance. So the applicant can in some way, shape, or form  
10 proceed with operating it as a residential use.

11 CHAIRPERSON HILL: Okay. All right, Mr. Smith.  
12 So, does anybody have any final questions? Okay, as I  
13 stated, I'm trying to get to another -- oh, go ahead, Mr.  
14 Blake.

15 MEMBER BLAKE: I think I want to talk one more  
16 time about raising the floors again. Just very briefly, what  
17 was the limiting factor there in raising the floors a little  
18 bit on the first level so that you could have higher windows?

19 CHAIRPERSON HILL: You're on mute, sir.

20 MR. SCHMIDT: Michael, you're muted.

21 MR. DOWLING: Oh, I'm sorry. I'm sorry. Can you  
22 hear me now?

23 CHAIRPERSON HILL: Yes.

24 MR. DOWLING: Okay, part of it comes from the  
25 addition of -- by raising the floor, we have the limitation

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1 of, as Mr. Smith mentioned, about the existing lentils of the  
2 existing openings that we want to open up and reuse.

3           As we raise the floor, we get closer and closer  
4 to that, and we also have the issue of the depth of the beams  
5 up above. So to get a practical ceiling height in those  
6 spaces, we would be raising the floor, we would still then  
7 have windows that would be closer to the floor, again, at  
8 closer to knee level, and providing again -- we're concerned  
9 about privacy and security.

10           Does that answer?

11           MR. SCHMIDT: Just to highlight something that  
12 hasn't been specifically stated in there, the building at its  
13 highest point is about 17 feet. At its lowest point, it's  
14 14 ½ feet.

15           So you have about a median height of about 15 ½  
16 or so feet. And then this beam grid system that covers the  
17 whole interior of the space, those beams are a minimum of two  
18 feet to, in some places, three and a half feet in depth.

19           And so you're talking about very limited space to  
20 be able to navigate. If you're raising the floors, say,  
21 three or four feet, you're going to have head height issues  
22 everywhere with the beams that are in place along with an  
23 inability to have windows that aren't on the floor.

24           CHAIRPERSON HILL: Any more questions? Okay, Ms.  
25 Wilson, is there anything you would like to add at the end?

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1 H: I guess I'll just touch on the intent again  
2 and integrity. Again, the variance procedure is in place to  
3 address unique circumstances such as this, I would argue.

4 This is a 100-year-old warehouse, fully created  
5 before the zoning regulations. And so OP's stated intent of  
6 the regulations is that these be secondary in scale to  
7 street-facing properties.

8 This certainly is meeting that here. And you also  
9 have, to our detriment or benefit, approval from HPRB. So  
10 in this particular case, the HBRB reviewed this and its  
11 compatibility, and HPRB is typically very strict with  
12 limitations on visibility for additions to historic  
13 buildings.

14 And so that is an added protection in this case.  
15 And that's my final comment. Thank you so much for your time  
16 today. I know we've taken a lot of it.

17 CHAIRPERSON HILL: Thank you. Thank you. All  
18 right, so unless anyone has any issues, I'd like to put this  
19 on for decision on, I think, Ms. Mehlert, we have the 17th,  
20 right, is what had been -- oh, or the 24th. I can't remember  
21 which day you said was kind of a little bit more open.

22 MS. MEHLERT: The 24th is probably better for a  
23 decision.

24 CHAIRPERSON HILL: Okay, let's do the 24th. 7/24  
25 for a decision. Okay, I want to thank you all for your time

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1 and coming in here today and whether this goes one way or  
2 another, I wish you all luck. Okay, thank you so much.

3 MR. SCHMIDT: Thank you, Mr. Hill.

4 CHAIRPERSON HILL: Bye-bye. Closing the hearing  
5 on the record.

6 Okay, Ms. Mehlert, we have one more, and then I  
7 am going to have to leave. And then Ms. John said she was  
8 going to take over for me for the last one, including the  
9 vote.

10 And so, if you all need me for the vote, I'll come  
11 back for the vote. But if not, we'll see how that goes. So  
12 if you could call our next case, please, which I believe Ms.  
13 John is not on.

14 MS. MEHLERT: Correct, the next case is applicant  
15 Number 21118 of Carren Wang. This is a self-certified  
16 application pursuant to Subtitle X Section 1002 for an area  
17 variance of the floor area ratio requirements of Subtitle X  
18 Section 01.1.

19 This is to construct additions to an existing  
20 three-story semi-detached building for use as a principal  
21 dwelling. The project is located in the RA 2 Zone at 2850  
22 27th Street Northwest, Square 2109, Lot 72.

23 The hearing began on May 22, and the Board heard  
24 testimony and requested additional information from the  
25 applicant and response from the abutting neighbor.

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1 And participating are Chairman Hill, Board Members  
2 Blake and Smith, and Dr. Imamura.

3 CHAIRPERSON HILL: Okay. Actually, did I make an  
4 -- am I -- how many -- what do we have left, Madam Secretary?  
5 I thought we only had the one case left, no?

6 MS. MEHLERT: No, there's three more cases after  
7 this one.

8 CHAIRPERSON HILL: Wait, I'm confused now. Okay.  
9

10 VICE CHAIR JOHN: Ms. Mehlert, I think that  
11 includes the case that was moved to the end of the day,  
12 right?

13 MS. MEHLERT: No, it doesn't.

14 VICE CHAIR JOHN: Okay, so then I'm confused.

15 MS. MEHLERT: Okay. Do you want me to run through  
16 the remaining cases?

17 CHAIRPERSON HILL: Yes, please, go ahead.

18 MS. MEHLERT: So after this case, 21118, there's  
19 21051A, and 21141, and then 21144.

20 CHAIRPERSON HILL: Okay. And then 21091, we still  
21 have to decide. Is that correct?

22 MS. MEHLERT: Correct.

23 CHAIRPERSON HILL: Okay. All right. Okay, well,  
24 go ahead and introduce everyone. Okay, here we go. If the  
25 applicant can hear me, if they can please introduce

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1 themselves for the record.

2 PB: Jones, architect of record for this project.

3 CHAIRPERSON HILL: Okay. Ms. Jones, I remember  
4 you from the last time, and I think you've changed the  
5 application. Can you tell us what you've changed?

6 MS. JONES: Yes, we, since there was support for  
7 the additions on the first and second floor, but not so much  
8 for the third, we eliminated the third floor.

9 And we're just going with the first and second  
10 floor.

11 CHAIRPERSON HILL: Okay.

12 MS. JONES: And we also provided the shadow  
13 studies for the neighboring property.

14 CHAIRPERSON HILL: Okay, what was your  
15 communication with the neighboring property? And how did  
16 they react to the new design?

17 MS. JONES: I had no response from the neighboring  
18 property.

19 CHAIRPERSON HILL: Okay. Can I hear from the  
20 Office of Planning?

21 MS. MYERS: Good afternoon. Crystal Myers for the  
22 Office of Planning. We submitted a supplemental report in  
23 this case and we are in support.

24 We did review the shadow study and we felt that  
25 the addition will not substantially cause harm to the

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1 adjacent property. We thought that when compared to the  
2 existing scenario it was not to a substantial detrimental  
3 level.

4 So we continue to recommend support. And  
5 actually, this is more in line with what we were recommending  
6 in our original report, which was the third addition or the  
7 third story was not justified by the variance argument.

8 So removing it brings it into complete compliance  
9 with what our report was recommending. So that's all I have.

10 CHAIRPERSON HILL: Okay, thank you. Mr. Young,  
11 is there anyone here wishing to speak?

12 MR. YOUNG: One signed up.

13 CHAIRPERSON HILL: Okay, could you bring in that  
14 witness, please?

15 MR. YOUNG: Yes.

16 CHAIRPERSON HILL: Is it, I'm having a hard time,  
17 Ms. Aniko?

18 MS. SZIGETVARI: How are you?

19 CHAIRPERSON HILL: Good. Could you introduce  
20 yourself for the record?

21 MS. SZIGETVARI: Aniko Szigetvari. I don't know  
22 why the video is not on. It's definitely open for me. But  
23 I'm Aniko Szigetvari. I'm the neighbor, 2702 Cathedral  
24 Avenue. So --

25 CHAIRPERSON HILL: Ms. Szigetvari, just to make

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1 sure, I think you introduced yourself. You have three  
2 minutes for your testimony.

3 MS. SZIGETVARI: Yes.

4 CHAIRPERSON HILL: And can begin whenever you  
5 like.

6 MS. SZIGETVARI: Okay, thank you. So I would just  
7 like to state for the record that I have not received the  
8 shadow study from the applicant.

9 I reached out on Monday to your offices and that's  
10 when Mr. Hamala sent the shadow study to me. Thus, I haven't  
11 had sufficient time to study it.

12 It's been less than two days. Just for the  
13 record. But as I look through the -- as you well have seen  
14 from those shadow studies, I have very little light in the  
15 back of the patio as is because the existing building  
16 protrudes quite a bit out to the alley versus my house and  
17 all the other houses on Cathedral Avenue.

18 And this addition, even with the third floor  
19 removed, it still significantly reduces the light from the  
20 spring to the fall in that patio.

21 The study in the mornings, the study looked at  
22 10:00 o'clock and noon. But the patio is used very early in  
23 the morning. I have a small business I run from home where  
24 I work in a time zone that is six hours ahead of the East  
25 Coast in Africa.

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1           So I am on the phone very early in the mornings  
2 out in the patio working. So I don't know what the prior to  
3 10:00 a.m. sunlight might look like.

4           My hunch in looking at it a few times in the  
5 mornings is that by adding that addition on the first and  
6 second floor, it will completely block any sunlight.

7           But as is, there's in my view significant  
8 reduction in the morning. Winter, not impacted, but spring,  
9 summer, and fall, it doubles the shade that's there now.

10           Will leave very little light. So I would like to  
11 request that further design changes are made to eliminate  
12 this reduction in sunlight.

13           CHAIRPERSON HILL: Okay, thank you. Ms. Jones,  
14 can you reach out to the witness here just so you guys can  
15 communicate with each other.

16           MS. SZIGETVARI: Just call me, Aniko. Yes, she  
17 has my email address. Yes.

18           CHAIRPERSON HILL: Sorry. Sorry. Could you just  
19 reach out to Aniko? Go ahead, Ms. Jones.

20           MS. JONES: Yes, so, maybe, sorry, I'm getting an  
21 echo, maybe my understanding was confused, because all of us  
22 including Aniko received the memo stating that we were  
23 supposed to provide the shadow study to upload it by the 20th  
24 to provide that information.

25           And then she had until the 27th to review that

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1 information. I was assuming we were doing this through the  
2 public document --

3 CHAIRPERSON HILL: That's correct. That's  
4 correct, Ms. Jones. I'm sorry. What I meant in general --

5 MS. JONES: Oh, no, sorry, I just wanted -- yes,  
6 I just wanted to make sure that Aniko was aware that this  
7 stuff is publicly available.

8 And again, in the memo that she and I both  
9 received with the dates and the due dates and the timeline,  
10 I just want to make sure that she understands that it is  
11 available to her, even if I -- even if somebody's not  
12 emailing it to her directly, that --

13 CHAIRPERSON HILL: It's in the record, yes.

14 MS. JONES: Yes.

15 MS. SZIGETVARI: Okay. Okay, I was under the  
16 impression that it would be shared to me. I did on Monday  
17 actually look at a DC government website export.

18 But I did look. I found documents. I didn't find  
19 this particular document, and that's why I emailed a bunch  
20 of people on this phone call. And that's where Mr. Hamala  
21 sent it to me. So, anyway, it does not change the fact that  
22 it still does impact the sunlight in the patio that already  
23 has very little sunlight.

24 The other question I actually have is not clear  
25 from the drawings is whether you are still planning to put

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1 in a fence and create a patio over the garage, and whether  
2 the impact of that has been taken into consideration? It's  
3 hard to tell from the drawings.

4 MS. JONES: Did you say --

5 MS. SZIGETVARI: You were going to put in a  
6 five-foot fence over the garage to create the patio. Is that  
7 still being planned? And if so, was that considered in the  
8 sun study or shadow study?

9 MS. JONES: Yes, that is included in the sun  
10 study. And the thing I also wanted to point out is that I  
11 did have a presentation for this, but the sun -- the shadow  
12 study includes all four seasons, four times a day.

13 But my presentation only included morning because  
14 both of our -- the rear-facing yards are south facing.  
15 There's like really no impact like after noon.

16 And again, I only included the few that showed any  
17 impact and --

18 CHAIRPERSON HILL: Okay, let me interrupt you, Ms.  
19 Jones. I was trying to -- I thought I had a more clear  
20 understanding as to what I was trying to do here.

21 Ms. Aniko, can you just hang on one second, okay?

22 MS. SZIGETVARI: Sure.

23 CHAIRPERSON HILL: Ms. Jones, what presentation  
24 did you have to give?

25 MS., JONES: I sent it to Mr. Young. It was

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1 really just comparison of what was presented on the 22nd  
2 versus what we're presenting now and then any shadow study  
3 with any change in shadow.

4 Like, I didn't include them all because they were  
5 --

6 CHAIRPERSON HILL: I understand. Mr. Young, can  
7 you pull up what you have? Ms. Aniko, we'll bring you back,  
8 okay?

9 MS. SZIGETVARI: Okay. No problem.

10 MS. JONES: Okay. Yes, so if you go to the second  
11 page, oh, sorry, this was just going back through the  
12 structure. You can go to the next slide. The next slide.

13 So on the right is the backyard that we're talking  
14 about. The next slide. So on the May 22 hearing, this was  
15 just where we had left off.

16 First and second floor viewed favorably. Addition  
17 to the third either needed to be limited or presented with  
18 a stronger argument.

19 And in either scenario, we needed to provide the  
20 shadow studies. Next slide.

21 I don't think you guys really are too concerned  
22 with the floorplan itself. Sorry, next slide.

23 But this was the comparison of the third floor.  
24 Again, we're keeping the footprints. Next slide.

25 This is the comparison to the existing elevation,

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1 the one we presented last time, and then the revised  
2 elevation that no longer has the third-floor addition.

3 We are still doing a parapet around the garage.  
4 Next slide.

5 This is just a larger view of that one. Next  
6 slide. The south elevation, the one that has the shadow  
7 studies, again. The existing, the one we presented on the  
8 22nd, and then the revised. Next slide.

9 And these were the various shadow studies. Again,  
10 only the ones that were of consequence, which again were only  
11 up until noon, really.

12 So, on the -- so it's a grouping of four in each  
13 scenario, and the existing is on the right, the proposed is  
14 on the left in each scenario.

15 CHAIRPERSON HILL: Okay.

16 MS. JONES: Next slide. And then the other  
17 scenarios. Again, groupings of four. The existing is on the  
18 right. The proposed is on the left.

19 CHAIRPERSON HILL: Okay.

20 MS. JONES: So there are more, like, that were put  
21 in the record, the complete shadow study. But again, I only  
22 showed the ones that had any change no matter the degree of  
23 change.

24 CHAIRPERSON HILL: Okay. All right. Thank you,  
25 Ms. Jones. Okay, Ms. Aniko? Aniko?

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1 MS. SZIGETVARI: Yes, hello?

2 CHAIRPERSON HILL: Hello, can you hear me?

3 MS. SZIGETVARI: Yes.

4 CHAIRPERSON HILL: I just want to make sure that  
5 Ms. Jones had your information so that if she could, she  
6 could help explain what is happening there and also if this  
7 does move forward, then you will have contact with somebody  
8 who is working on the project.

9 MS. SZIGETVARI: Yes. I'm good. Both Ms. Jones  
10 and one of the owners, Ms. Wang, Tracy Wang, has my email  
11 address. We've been going back and forth prior to the  
12 hearings.

13 I had a lot of questions running up to the initial  
14 hearing on what was being proposed. So they have my details.  
15 Thank you.

16 CHAIRPERSON HILL: Okay. All right, thank you.  
17 Thank you for coming, Ms. Aniko, and thank you for your  
18 testimony. Mr. Young, if you could please excuse the  
19 witness.

20 Okay. All right. All right, Ms. Jones, does the  
21 Board have any final questions of anyone? Okay, all right,  
22 I'm going to close the hearing and the record.

23 Thank you, Ms. Jones, for taking the time --

24 COMMISSIONER IMAMURA: Not a question, but just  
25 comments from me.

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1 CHAIRPERSON HILL: Oh, sorry, I didn't see you,  
2 Dr. Imamura.

3 COMMISSIONER IMAMURA: That's all right, just  
4 wanted to comment to Ms. Jones. I appreciate, I'm not sure,  
5 maybe my other Board members noticed this, too, but I  
6 appreciate the shadow studies.

7 Normally, we get those in 2D plan view, so I  
8 really appreciate the perspective that you applied to the  
9 shadow studies and the time that you spent to do that.

10 So we don't get that very often, and I hope other  
11 applicants are watching because that's incredibly helpful.  
12 So thank you very much.

13 CHAIRPERSON HILL: Okay, thank you. Dr. Imamura  
14 is our architect, so that's what you get, Ms. Jones. All  
15 right, thank you so much. I'm going to close the hearing and  
16 the record.

17 Okay, I was -- I found the previous argument not  
18 particularly easy to follow, and so I'm glad that part of  
19 what we did is spend a lot of time talking about if they  
20 removed what they have removed, whether or not they would  
21 need the amount of relief that they needed.

22 And so, I'm comfortable with now the application  
23 the way it is. I'm also comfortable that the Office of  
24 Planning has provided their supplemental report, and is also  
25 recommending approval.

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1           And I do appreciate that the applicant, again, has  
2 chosen to do a design which will be less intrusive to the  
3 area and the neighbors.

4           And I hope that, as has been stated, the neighbors  
5 can reach out to Ms. Aniko so that they can at least help,  
6 even knowing when construction is going on and things such  
7 as that, just to be a good neighbor.

8           After that, I'm going to be voting in approval and  
9 I have nothing to add. Mr. Smith, do you have anything to  
10 add?

11           MEMBER SMITH: No, I agree with your assessment,  
12 Chairman Hill. I share with you the same concerns the last  
13 time we heard this regarding that additional addition off the  
14 rear of the building.

15           And I share the same concern that I did not at  
16 that particular time think that it rose to the level of a  
17 practical difficulty, as most of the argument was based off  
18 of design and the architectural integrity of the existing  
19 building, how that ties together.

20           And unfortunately, zoning is not an exact science,  
21 and probably takes into consideration some of those concerns.  
22 So I didn't think that it would rise to the level of  
23 practical difficulty.

24           So I'm happy that the applicant has revised --  
25 we've had those conversations with the applicant to revise

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1 this application to remove not only -- to remove that  
2 addition but also in removing that addition, it reduces the  
3 amount of impacts to the adjacent property owner's relation  
4 to shadowing.

5 So I'm glad that the applicant has moved towards  
6 with also planning, wanted them to be with this application.

7  
8 And I believe they've met the burden of proof for  
9 us to grant the area variance, and we support the application  
10 as well.

11 CHAIRPERSON HILL: Thank you. Mr. Blake?

12 MEMBER BLAKE: Mr. Chair, thank you. I'm in  
13 support of the application. I do believe that the applicant  
14 has met the burden of proof to be granted leave.

15 I would credit the Office of Planning's analysis  
16 on the area variance and give great weight to its  
17 recommendation.

18 I believe that they determined the substantial  
19 detriments of public good with looking at the shadow study  
20 and crediting also planning's supplemental report.

21 I believe that there will not be a substantially  
22 adverse impact on the neighboring property, and it would not  
23 be a substantial detriment to the public good. So I will be  
24 in support of the application.

25 CHAIRPERSON HILL: Thank you. Dr. Imamura?

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1 COMMISSIONER IMAMURA: Thank you, Mr. Chairman.  
2 I agree with my fellow Board members. Also want to  
3 acknowledge this project has moved forward with great design  
4 sensitivity to listen not only to OP but as well as our  
5 comments from the Board.

6 And I'm prepared to vote in support of this.

7 CHAIRPERSON HILL: Okay, great. Thank you. I'm  
8 going to make a motion to approve Application Number 21118  
9 as captured and read by the secretary and ask for a second  
10 from Mr. Blake.

11 MEMBER BLAKE: Second.

12 CHAIRPERSON HILL: Motion made and seconded. Take  
13 a roll call.

14 MS. MEHLERT: Please respond to the motion to  
15 approve the application. Chairman Hill?

16 CHAIRPERSON HILL: Yes.

17 MS. MEHLERT: Mr. Smith?

18 MEMBER SMITH: Yes.

19 MS. MEHLERT: Mr. Blake?

20 MEMBER BLAKE: Yes.

21 MS. MEHLERT: Dr. Imamura?

22 COMMISSIONER IMAMURA: Yes.

23 MS. MEHLERT: Staff will approve the vote as 4-0-1  
24 to approve application 21118 on the motion made by Chairman  
25 Hill and seconded by Mr. Blake with one Board member not

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1 participating.

2 CHAIRPERSON HILL: Thank you, Ms. Mehlert. You  
3 can call our next case.

4 MS. MEHLERT: Next is Application Number 21051A  
5 of 1840 Kalorama, LLC. This is a self-certified application  
6 pursuant to Subtitle Y Subsection 704 for a modification of  
7 significance to BZA Order 21051 to approve a special  
8 exception under Subtitle C Section 1506, and pursuant to  
9 Subtitle X Section 901.2 to house and closing wall  
10 requirements of Subtitle C Section 1502.4.

11 This is to construct a rear addition and penthouse  
12 in an existing attached four-story building previously used  
13 as an 11-building apartment house.

14 It's located in the RA2 zone at 1836-1840 Kalorama  
15 Road Northwest. It's 2553 Lot 826.

16 CHAIRPERSON HILL: Thank you. If the applicant  
17 can hear me, if they can please introduce themselves for the  
18 record.

19 MR. SULLIVAN: Thank you, Mr. Chairman, and  
20 members of the Board. My name is Marty Sullivan with  
21 Sullivan and Barros, here on behalf of the applicant.

22 CHAIRPERSON HILL: Okay. Mr. Sullivan, this being  
23 a modification of significance, if you could walk us through  
24 your presentation, I'm going to go ahead and put 15 minutes  
25 on the clock so I know where we are, and you can begin

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1 whenever you like.

2 MR. SULLIVAN: Thank you. If we could load the  
3 PowerPoint presentation, please. Next slide, please. The  
4 property is in the RA2 zone. It's improved currently with  
5 two separate portions of a single building.

6 They are currently connected. The lot is going  
7 to be consolidated. And in the original case, the Board  
8 granted special exceptional relief for the parking screening  
9 and for lot occupancy.

10 And this will allow the project, which will  
11 include the construction of a rear addition and a habitable  
12 penthouse, and a conversion to 11 residential units including  
13 an IZ unit.

14 The applicant then determined that the penthouse  
15 walls were not at a single uniform height and we further  
16 required relief from that penthouse requirement. So hence,  
17 we're asking for the modification of significance for that.  
18 Next slide, please.

19 The Office of Planning is recommending approval  
20 and ANC 1C has voted unanimously to support both the  
21 application and the modification. Next slide, please.

22 Here you see a rendering of the proposal, the  
23 buildings that are shaded darker is what this will look like  
24 when constructed. Next slide, please.

25 So, if you can zoom in, there's a highlighted

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1 portion on the top of the section on the bottom half of this  
2 drawing.

3           And you will see that there's an angle. The  
4 penthouse is angled at the front corner or maybe literally  
5 less than two feet, the bottom, if you go to the bottom half.

6           There, there's the highlighted portion there. So  
7 where that's angled, that's where the penthouse failed for  
8 that uniform height.

9           So we're asking for relief for that little piece.  
10 And the purpose of that was the slant was made in order to  
11 satisfy the concerns of the Historic Preservation Office and  
12 HPRB to protect the sight lines for the penthouse addition.

13           And so, that's what we're asking for relief for,  
14 just that small portion. Next slide, please.

15           So, Section 704 outlines the requirements for the  
16 modification of significance. After BZA approval, during the  
17 permitting process, it's been brought to our attention that  
18 we needed this relief.

19           The property is located in the Washington Heights  
20 historic district and the plans are subject to HPRB approval.  
21 And as part of that process, the penthouse walls were sloped  
22 to the front to limit its viewable height from the street.  
23 Next slide, please.

24           General requirements, we've gone over this  
25 already. HPRB request this very minor relief. It's for a

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1 small portion of the penthouse. Next slide, please.

2           The specific requirements for this relief, I'll  
3 just point out two of them, number two and three. The relief  
4 requested would result in a better design without appearing  
5 to be an extension of the building wall. And the relief  
6 requested would result in a penthouse or rooftop structure  
7 that is visually less intrusive.

8           We think we meet both of these requirements as  
9 guided by HPO staff and approved by HPRB, included as slope  
10 type near the front of the building in order to limit the  
11 view of the top of the penthouse.

12           The design, therefore, does result in a better  
13 design without appearing to be an extension of the building  
14 wall.

15           And the slope front also makes the penthouse  
16 visually less intrusive. Next slide, please. And that's it.  
17 Thank you.

18           CHAIRPERSON HILL: Thank you, Mr. Sullivan. Thank  
19 you for your presentation. Can I hear from the Office of  
20 Planning, please?

21           MR. BARRON: Hello, good afternoon, Commissioners.  
22 For the record, my name is Ron Barron, Development Review  
23 Specialist with the DC Office of Planning.

24           OP recommends approval of the request for special  
25 exception, this modification of significance to order 21051.

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Approval would not be inconsistent with the general purpose or intent of the zoning regulations or with that of the original order.

The Office of Planning is content to rest on the report in the record as Exhibit 16, and if you have any questions, I am available to answer them. Thank you.

CHAIRPERSON HILL: Thank you, Mr. Barron. Does the Board have any questions of the applicant or the Office of Planning? Mr. Young, is there anyone here wishing to speak?

MR. YOUNG: We do not.

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

MR. SULLIVAN: No, thank you, Mr. Chairman.

CHAIRPERSON HILL: Okay, thank you. All right, I'm going to close the hearing and the record. Thank you all. Okay, I thought this was actually relatively straight for a modification.

I understand why they're asking for the modification. I am glad to see that the Office of Planning is in support.

I agree with their analysis, and then also the ANC, they didn't have any issues with it in it already being through our process once before.

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1 I am going to be voting in favor of this  
2 application. Mr. Smith, do you have anything you would like  
3 to add?

4 MEMBER SMITH: I also share your opinion of this  
5 fairly straightforward application. I will also support  
6 them.

7 CHAIRPERSON HILL: Thank you. Mr. Blake?

8 MEMBER BLAKE: I'll be in support of the  
9 application as well.

10 CHAIRPERSON HILL: Thank you. Dr. Imamura?

11 MR. D'ANDREA: I support.

12 CHAIRPERSON HILL: Thank you. Vice Chair John?

13 VICE CHAIR JOHN: I'm also in support.

14 CHAIRPERSON HILL: Thank you. I make a motion to  
15 approve Application 21051A as captured and read by the  
16 secretary and ask for a second. Ms. John?

17 VICE CHAIR JOHN: Second.

18 CHAIRPERSON HILL: The motion was made and  
19 seconded. Take a roll call, please.

20 MS. MEHLERT: Please respond to the motion to  
21 approve the application. Chairman Hill?

22 CHAIRPERSON HILL: Yes.

23 MS. MEHLERT: Vice Chair John?

24 VICE CHAIR JOHN: Yes.

25 MS. MEHLERT: Mr. Smith?

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1 MEMBER SMITH: Yes.

2 MS. MEHLERT: Mr. Blake?

3 MEMBER BLAKE: Yes.

4 MS. MEHLERT: And Dr. Imamura?

5 COMMISSIONER IMAMURA: Yes.

6 MS. MEHLERT: Staff for the vote is 5-0-0 to  
7 approve Application 21051A on the motion made by Chairman  
8 Hill and seconded by Vice Chair John.

9 CHAIRPERSON HILL: I thank Vice Chair John from  
10 the bottom of my heart because she's going to take these last  
11 two cases and they are going to take a little bit of time.

12 And I'm sorry you all have got to stay around.  
13 I've got to pick up something that just happened. So I  
14 appreciate it.

15 I hope you all have a good day. Happy Fourth of  
16 July and see you next time around.

17 VICE CHAIR JOHN: Bye. Thank you. So let's take  
18 a five-minute break. And it's a long five minutes. So  
19 maybe, gosh, five minutes. 6:05. I'm sorry, 4:05. Thank  
20 you.

21 (Whereupon, the above-entitled matter went off the  
22 record at 3:59 p.m. and resumed at 4:07 p.m.)

23 VICE CHAIR JOHN: Okay, Ms. Mehlert. Can you call  
24 us back in, please?

25 MS. MEHLERT: Yes, the Board has returned from a

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1 quick break. And the next case in the hearing agenda is  
2 Application Number 21141 of Jason Chung, Shiwei Wang, Chong  
3 Zhang, and Lifang Zhang.

4 As amended, this is a self-certified application  
5 pursuant to Subtitle X Section 910.2 for a special exception  
6 under Subtitle D Section 5201 from the accessory building  
7 location requirements of Subtitle D Section 5004.1a to allow  
8 an accessory building in required rear yard.

9 This is to construct a new one-story accessory  
10 structure in the prior required rear yard of an existing  
11 two-story detached principal dwelling.

12 Project is located in the R1B zone at 4005  
13 Fessenden Street Northwest, Square 1756, Lot 36.

14 VICE CHAIR JOHN: Thank you. Good afternoon, Mr.  
15 Heisey.

16 MR. HEISEY: Good afternoon, Madam Chairman.

17 VICE CHAIR JOHN: Okay, please introduce yourself  
18 and tell us a little bit about your application and how it  
19 meets the requirements for relief. And you have 15 minutes.  
20 I assume you're presenting, no?

21 MR. HEISEY: Yes, yes.

22 VICE CHAIR JOHN: Okay.

23 MR. HEISEY: I'm the architect for the owner. I  
24 believe one of the owners, Jason Chung, is in the room. He  
25 was intending to be. I hope he is.

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1 MR. CHUNG: I'm here.

2 MR. HEISEY: Oh, you are. Welcome. I won't be  
3 needing a shuttle so we can keep this short. I know you guys  
4 are very good about reviewing the materials, so I don't have  
5 anything additional to add.

6 But for the record, I will do a brief summary of  
7 the case. This is an existing single family home. It is a  
8 corner lot.

9 If you look at the photos in Exhibit 5, it does  
10 very clearly show the conditions here. There is an existing  
11 single car garage facing the alley.

12 There's existing rear yard of 18 feet 6. And the  
13 proposal is to just demolition this garage. It's too small.  
14 I don't think it's been used for years. And make a two-car  
15 garage that will reduce the rear yard to 16 feet 10 inches.

16 So we're asking for a special exemption where the  
17 rear accessory building for a rear yard slots. Other than  
18 that, the part is to look at the plans are very simple.

19 They are Exhibit Number 6. We chose the existing  
20 footprint of the garage and then we chose the two-car garage  
21 overlaying that existing footprint and extending toward the  
22 street an addition -- as my phone goes off for an Amber  
23 Alert. I'm sorry. Bad timing.

24 VICE CHAIR JOHN: Everyone's phone is going off.  
25 It's an Amber Alert. Okay, please go ahead.

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1 MR. HEISEY: All right, sorry about that. The  
2 justification there, this is minimally expansive, the  
3 existing garage.

4 It is staying at about the same height and it is  
5 much below the 20 feet allowable.

6 It is on the rear alley. It's a very little used  
7 alley. And it's not affecting anyone's light or air since  
8 it just faces the alley and a blank wall of the adjoining  
9 neighbor across the alley.

10 The ANC has been in unanimous support. I believe  
11 their letter is also in the file. There are letters of  
12 support from several neighbors including the most adjacent,  
13 the immediately adjacent neighbor as well.

14 And if you have any other questions, I'll be glad  
15 to try to answer those.

16 VICE CHAIR JOHN: Okay, thank you. Does the Board  
17 have any questions for Mr. Heisey? So I'll go to the Office  
18 of Planning.

19 MEMBER BLAKE: Sorry. I'm sorry. I should have  
20 said I --

21 VICE CHAIR JOHN: Oh, okay. Your video is off,  
22 Mr. Blake.

23 MEMBER BLAKE: I'm sorry, was there -- I believe  
24 there's a letter in the file and record most recently from  
25 a neighbor with some concerns. Jane Luxner, is that right?

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1           Would you be able to address that?

2           MR. HEISEY: I'm looking at the --

3           VICE CHAIR JOHN: What exhibit is that, Mr. Blake?

4           MR. HEISEY: This is Case 21141.

5           VICE CHAIR JOHN: Yes, but where is the --

6           MR. HEISEY: There is a letter of support --

7           MEMBER BLAKE: I'm not aware of any --

8           MR. HEISEY: -- in this case for and then there's  
9 four letters of -- six letters of support in Exhibit 26, but  
10 I'm not seeing any other letters --

11           MEMBER BLAKE: Thirty-three.

12           MR. HEISEY: -- for or against.

13           MEMBER BLAKE: Thirty-two and 33.

14           VICE CHAIR JOHN: Thank you, Mr. Blake. There  
15 were two letters that were submitted, I believe, with the  
16 request.

17           MR. HEISEY: They were just submitted, and I just  
18 refreshed in my view, and I'm seeing it for the first time.

19           Your question, you've read the letter. I have  
20 not.

21           VICE CHAIR JOHN: So, Mr. Helsey, let's do this.  
22 Let's go to the Office of Planning and then I'll circle back  
23 and ask you to address it then.

24           MR. HEISEY: Okay.

25           VICE CHAIR JOHN: Okay. Is the Office of Planning

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1 here?

2 MR. BRADFORD: Can you hear and see me?

3 VICE CHAIR JOHN: Mr. Bradford, could you please  
4 go ahead and give your report?

5 MR. BRADFORD: Yes, good afternoon, Vice Chair  
6 John, Commissioners. Phillip Bradford, Development Review  
7 Specialist with the Office of Planning.

8 The Office of Planning is recommending approval  
9 of the requested special exception relief and finds that it  
10 meets the review criteria in Subtitle D 5201 and X 901, and  
11 we stand on the record of the report in Exhibit 25. And I'm  
12 available for any questions.

13 VICE CHAIR JOHN: Does the Board have any  
14 questions for the Office of Planning? Okay, so thank you.  
15 Thank you very much.

16 I am looking at the letter, the first letter from  
17 Ms. Luxner. Is she signed up to testify, Mr. Young?

18 MR. YOUNG: Yes, she is.

19 VICE CHAIR JOHN: Okay, and what about the other  
20 letter, which is from --

21 MR. HEISEY: They're the same letter, Madam  
22 Chairman.

23 VICE CHAIR JOHN: Oh, okay. All right. So are  
24 they the only two people signed up to testify?

25 MR. YOUNG: Ms. Luxner is the only one signed up

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1 to testify.

2 VICE CHAIR JOHN: Okay. All right. So, the Board  
3 had no questions for the Office of Planning. Is that right?  
4 So I'll go to Ms. Luxner now. If you could bring her in,  
5 please.

6 MS. LUXNER: Can you hear me?

7 VICE CHAIR JOHN: Yes, Ms. Luxner. Can you  
8 introduce yourself and give us your testimony? And you'll  
9 have three minutes.

10 MS. LUXNER: Okay. Yes, thank you. My name is  
11 Jane Luxner. I'm the owner of 5020 Elk Road, which is the  
12 property right adjacent behind the property with the proposed  
13 structure.

14 You can see it in Exhibit 5 in the last two photos  
15 where the brick building with the wall immediately behind.

16 So our main concerns is, as this has been -- as  
17 was stated at the beginning, thus used more storage facility  
18 that's now going to be converted into a two-car garage, our  
19 main concern is, as this is a very tight alley, we're now  
20 going to have traffic going in and cars backing out on a more  
21 regular basis, that there could be potentially damage to our  
22 retaining wall, which is visible in the picture.

23 In addition, just lesser concern but still a  
24 concern is the -- a wider structure, still very close to the  
25 alley, a more prominently viewed from the front of our --

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1 from the front of our house.

2           So respectfully, like, request that the 12-foot  
3 observance from 12-foot from the alley be adhered to and to  
4 give a bit -- mitigate the risk of cars hitting the wall as  
5 they back out.

6           In addition, again, less of a priority, but solely  
7 respectfully requests the final structure -- I'm not sure,  
8 I don't think color was indicated in the sketching, but the  
9 final structure be of like muted tones, not a bright color  
10 or bright white.

11           And thank you, and happy to answer any questions.

12           VICE CHAIR JOHN: Thank you. Mr. Young, can you  
13 pull up Exhibit, I believe it is four.

14           MR. HEISEY: Five is the photos.

15           VICE CHAIR JOHN: Did someone speak?

16           MR. HEISEY: It's Mr. Heisey. Five is the photos.  
17 The last photo is the one she's referring to.

18           VICE CHAIR JOHN: Okay, thank you. Exhibit 5.  
19 And so let's look at slides --

20           MR. HEISEY: The last photo.

21           VICE CHAIR JOHN: The last one? Okay, and can you  
22 describe what's happening there and address her questions,  
23 Ms. Luxner's questions?

24           MR. HEISEY: Of course. You'll see the existing  
25 garage is set back 10 feet 4 from the existing center line

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1 of the alley.

2           This code only requires 7 ½ feet. We're  
3 maintaining that 10 ½ feet, simply because it is only a 10  
4 foot alley.

5           But that will give us an 18 ½ feet between the  
6 retaining wall and the alley and the garage structure. So  
7 I believe that's more than sufficient.

8           And of course, the owners will not want to be  
9 backing into that wall, either, because it messes up their  
10 car.

11           As far as protruding or distance of enlarging it,  
12 it is all entirely on the private lot and if you look at the  
13 plat, which is --

14           VICE CHAIR JOHN: I'm not sure what he --

15           MR. HEISEY: The plat exactly is Exhibit 2,  
16 there's also a 9.94, almost a 10-foot side step back when  
17 there's only an 8 foot setback required.

18           So we're well within by right limits for this  
19 structure itself. The only exception needed is because it  
20 protrudes into the rear yard, is the only exception we need.

21           VICE CHAIR JOHN: Okay, thank you. Mr. Young, can  
22 you take that down. Thank you. Does the Board have any  
23 questions for the applicant or Ms. Luxner?

24           Okay, so Mr. Young, there are no more witnesses  
25 signed up?

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1 MR. YOUNG: That's correct.

2 VICE CHAIR JOHN: All right. Thank you, Ms.  
3 Luxner, for your testimony.

4 MS. LUXNER: Thank you.

5 VICE CHAIR JOHN: Thank you. Mr. Heisey, did you  
6 have anything in closing?

7 MR. HEISEY: Just that I would like to stand on  
8 the record as what is presented with the comments next door.

9  
10 Yes, we do appreciate the changes there, but we  
11 are well within our right construction limits.

12 So I would appreciate if the Board would approve  
13 this request for the special exemption. Thank you.

14 VICE CHAIR JOHN: Thank you. So with that, thank  
15 you, Mr. Heisey. Oh, I'm sorry. Mr. Blake, did you have a  
16 question?

17 MEMBER BLAKE: Yes, Mr. Heisey, there was, I think,  
18 the ANC had talked to --

19 (Simultaneous speaking.)

20 MEMBER BLAKE: Yes, can you discuss that and what  
21 your intentions would be? I don't think that falls  
22 necessarily within our purview.

23 MR. HEISEY: I don't believe it does, either, and  
24 one of your earlier cases, you had mentioned the same thing.  
25 But, yes, they did request, and the owners have agreed that

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1 they would do that.

2 MEMBER BLAKE: Okay, thank you very much.

3 MR. HEISEY: And Mr. Chung is giving a thumbs up  
4 as I think.

5 MR. CHUNG: Yes.

6 VICE CHAIR JOHN: Mr. Chung, would you like to  
7 introduce yourself before you speak?

8 MR. CHUNG: Sure. Jason Chung speaking. Thanks  
9 for having me. And thanks for your time. Yes, the barrel  
10 would be acceptable to us, just as a way to store and reuse  
11 the water to water the lawns and flowers and so on and so  
12 forth.

13 VICE CHAIR JOHN: Okay. All right. Thank you.  
14 Thanks. All right, Mr. Heisey, was that it?

15 MR. HEISEY: That's all I have. Thank you, ma'am.

16 VICE CHAIR JOHN: Okay. Well, thank you for your  
17 testimony. I'm going to now close the record and the  
18 hearing.

19 So, I think that this case is fairly  
20 straightforward. This is an existing accessory structure.  
21 And so, there's no change between the distance that  
22 previously existed and what's there now, or if there is, it's  
23 nominal.

24 But the applicant is only asking for two feet of  
25 relief because it's the existing structure and the proposed

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1 extension would be within the required rear yard.

2           And I don't believe that there's any potential  
3 adverse in terms of light, air, and privacy. And I  
4 appreciate Ms. Luxner's testimony, but I agree with the  
5 applicant that there really should not be any potential  
6 damage to the retaining wall because the applicant meets the  
7 criteria for relief and, excuse me, the applicant is not  
8 seeking relief from the setback, the alley setback  
9 requirement.

10           So, the Office of Planning supports the  
11 application as does the ANC and DDOT has no objection. As  
12 Mr. Blake mentioned, the rain barrel option is not something  
13 that we would include in the order, and I will not include  
14 it at this point.

15           So does anyone have any other comments? Okay, so  
16 with that, I'll make a motion to support application to  
17 approve application number 21141 as captured and read by the  
18 secretary and ask for second. Mr. Blake?

19           MEMBER BLAKE: Second.

20           VICE CHAIR JOHN: Ms. Mehlert, would you take the  
21 roll call, please?

22           MS. MEHLERT: Motion to approve the application.  
23 Vice Chair John?

24           VICE CHAIR JOHN: Yes.

25           MS. MEHLERT: Mr. Smith?

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1 MEMBER SMITH: Yes.

2 MS. MEHLERT: Mr. Blake?

3 MEMBER BLAKE: Yes.

4 MS. MEHLERT: Dr. Imamura? Staff would record the  
5 vote as 4-0-1 to approve application 21141 on the motion made  
6 by Vice Chair John and seconded by Mr. Blake.

7 VICE CHAIR JOHN: Thank you. Next case is 21144?

8 MS. MEHLERT: Yes, next is Application Number  
9 21144 of Taco Bell of America, LLC. As amended, this is a  
10 self-certified application pursuant to Subtitle X Section  
11 901.2, with special exceptions under Subtitle U Section  
12 513.1e to commit a fast food establishment use on the first  
13 floor, and under Subtitle C Section 1506.1, near penthouse  
14 lawn perjury requirements in Subtitle C Section 1503.1, and  
15 the penthouse walls that back requirements of Subtitle C  
16 Section 1504.1d.

17 Again, this is to allow fast food establishment  
18 use on the first floor of an existing two-story attached  
19 building. It's located in MU4/CHC Zone at 411 9th Street  
20 Southeast, Square 902, Lot 16.

21 There are two requests for party status. First  
22 is in support of Linda Elliot and John S., located at 414 7th  
23 Street Southeast, and then the second is from Max Moncaster  
24 at 418 7th Street Southeast, and I'll just note that the  
25 certificate of service for Mr. Moncaster was filed on Monday

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1 and did a request for that filing deadline.

2 VICE CHAIR JOHN: Okay, thank you. Good  
3 afternoon, Ms. Laturulu (phonetic). I'm sorry, Ms. Shiker.  
4 Good afternoon. How are you?

5 MS. SHIKER: Good afternoon.

6 VICE CHAIR JOHN: Please introduce yourself for  
7 the record. Tell us how your application meets the criteria  
8 for relief, and we'll start off with 15 minutes.

9 MEMBER BLAKE: Chair, do we have to do the party  
10 status issue first?

11 VICE CHAIR JOHN: We do. Thank you. So we also  
12 have another preliminary matter, which is Ms. Elliot is being  
13 proffered as an expert witness.

14 And I have no objection to approving Ms. Elliot.  
15 Does the Board have any comments?

16 MEMBER BLAKE: I have no objection, Chair John.

17 VICE CHAIR JOHN: Okay.

18 MS. SHIKER: I'm sorry, who is that, Ms. Elliot  
19 is being -- I didn't know that there was an expert witness.

20

21 I think the only expert witness is we have a  
22 potential expert who would answer questions, but we would  
23 only offer him as an expert if those questions came up.

24 We do have a preliminary matter where we have  
25 requested a waiver as to the posting requirement, which was

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1 detailed in our statement, and I'm happy to talk through.

2

3 I was also supported by the ANC. We are not  
4 offering anyone else has experts for our direct presentation.  
5 And then there are the two party status requests.

6 VICE CHAIR JOHN: Yes, I'm aware of the party  
7 status requests, but there is in my notes that Ms. Brandis  
8 Elliot is request approval as an expert witness. So that is  
9 not correct?

10 MS. SHIKER: Oh, thank you for clarifying. Ms.  
11 Elliot is not going to be testifying today, so we do not need  
12 to grant her expert status. Thank you.

13 VICE CHAIR JOHN: Okay. All right. So, we will  
14 move on now to -- there's also a request for waiver of the  
15 public notice requirements.

16 Well, let's do the party status first before we  
17 address the other matters. So, we have Ms. Linda Elliot and  
18 John West.

19 So, Ms. Elliot? Linda, okay.

20 MS. ELLIOTT: Yes.

21 VICE CHAIR JOHN: Tell us why you should be  
22 granted party status, but please don't go into the details  
23 of your presentation.

24 You will have time to do that later on. Why do you  
25 think that you're entitled to party status? Just briefly.

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1 MS. ELLIOTT: Why? Because we share our property  
2 backs up exactly to the property line of 411 Eighth Street,  
3 where Taco Bell is proposing to come in as a fast food  
4 establishment.

5 When we look at -- our application provides  
6 additional detail, but given the time, I will stop if you'd  
7 like me to stop there.

8 VICE CHAIR JOHN: No, that's fine. And Mr. Max  
9 Moncaster, I hope I got that right.

10 MS. ELLIOTT: Yes, you did, and likewise, we're  
11 right behind the -- or very close, I should say, to the  
12 neighboring property line.

13 My unit has nine units in total, 12 feet from Taco  
14 Bell's property line. And we have a backyard that we all use  
15 and enjoy for barbecues and other things like that. So it  
16 does have a direct bearing on our properties as well.

17 VICE CHAIR JOHN: Okay. So, based on that  
18 representation, I have no objection to admitting both Ms.  
19 Linda Elliot and Mr. Moncaster as party opponents.

20 And I noticed that the applicant has not opposed  
21 their admission as a party. Is that correct, Ms. Shiker?

22 MS. SHIKER: Yes, we do not oppose either of their  
23 admissions to the party. I believe that Ms. Elliot is a  
24 party in support of the case.

25 VICE CHAIR JOHN: Okay. So Ms. Elliot, you are

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1 in support?

2 MS. ELLIOTT: Yes, and let me just also be clear.  
3 It's my husband and I both applied for party status, John  
4 West, who is on, and we are in support.

5 And I believe also there's been some confusion in  
6 the paperwork, but I believe Mr. Moncaster is also in  
7 support.

8 MR. MONCASTER: I am.

9 VICE CHAIR JOHN: Okay. I don't see, oh, I see,  
10 Mr. West.

11 MS. ELLIOTT: Yes.

12 VICE CHAIR JOHN: Could you introduce yourself for  
13 the record, please?

14 MR. WEST: John West. I also live with my wife,  
15 Linda Elliot, at 414 Seventh Street Southeast, and I think  
16 she said all that needs to be said. So I will pass on  
17 anything further.

18 VICE CHAIR JOHN: Okay, thank you. So I think we  
19 now have it right. Ms. Elliot, Mr. West, and Mr. Moncaster  
20 will be accepted as parties in support.

21 And each of you will have the same amount of time  
22 as the applicant has. So now we'll go to the waiver of the  
23 notice requirement.

24 And Ms. Shiker, do you want to address that?

25 MS. SHIKER: Yes, thank you very much. We have

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1 requested a waiver of the notice requirement in that we added  
2 the roof structure specialist exception following publication  
3 of the public hearing notice.

4           This relief was added in direct connection with  
5 our work with the immediate neighbors in order to create the  
6 sound barriers which I'm going to talk about.

7  
8           We were able to present the proposed relief to the  
9 ANC multiple times. The neighbors knew about it. We were  
10 also able to include it on our posted notice.

11           So we did include that. We also presented to the  
12 restoration society and was able to identify that relief in  
13 that case.

14           And it was in our pre-hearing submission. It just  
15 was not in the public hearing notice that was published in  
16 the DC register.

17           The Board has the opportunity to waive a defect  
18 as long as actual notice has been given. And so, therefore,  
19 we would ask the Board to do that.

20           VICE CHAIR JOHN: Thank you. And so I didn't  
21 notice that it was part of the record. So if the Board has  
22 no objection, then we'll go ahead and waive the notice  
23 requirement because there was actual notice.

24           Okay, thank you. So is the ANC here?

25           MR. D'ANDREA: Good afternoon, Vice Chair John.

1 VICE CHAIR JOHN: Good afternoon. Would you mind  
2 introducing yourself, please?

3 MR. D'ANDREA: Yes, my name is Frank D'Andrea,  
4 Commissioner for ANC 6B04 and also chair of ANC 6B's Planning  
5 and Zoning Committee.

6 VICE CHAIR JOHN: Okay, thank you. All right, I  
7 think we can go ahead and get started. So we'll go back to  
8 you, Ms. Shiker.

9 MS. SHIKER: Yes.

10 VICE CHAIR JOHN: Is there a presentation that  
11 you'd like us to pull up?

12 MS. SHIKER: Yes, please, if Mr. Young could pull  
13 up the revised PowerPoint presentation of Exhibit 37. Thank  
14 you. So again, I thank you so much.

15 I'm Christine Shiker with the Law Firm of Holland  
16 and Knight. I'm representing the applicant, Taco Bell of  
17 America, in this case. Next slide, please.

18 I'm also joined by my colleague, Chris Cohen, from  
19 Holland and Knight, and we also have representatives from our  
20 team that will be available to answer questions.

21 So the property at issue is located at 411 Eighth  
22 Street in Barracks Row. It's improved with a two-story brick  
23 building and it's zoned MU-4 in the Capitol Hill commercial  
24 zone. Next slide, please.

25 Here is a picture of the property. It is

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1 immediately adjacent to the Chipotle in this image, and it's  
2 behind that rather large green tree. Next slide, please.

3 We originally filed to seek a special exception  
4 to permit a fast food restaurant at this site. It's going  
5 to be a Taco Bell restaurant.

6 And we had audit the relief, as I mentioned about  
7 the configuration of the rooftop structure, and that has come  
8 directly from our work with the immediate neighbors.

9 The work that is proposed today is simply to do  
10 a tenant shutout on the first floor of the building to allow  
11 the Taco Bell and then to incorporate the rooftop structure  
12 that we'll talk about. Next slide, please.

13 We have worked very closely with the district  
14 agencies and the community. As you've seen, the Office of  
15 Planning has no objection to the application, recommends  
16 approval.

17 There's no objection from DDOT. We have support  
18 from ANC subject to the conditions that I will talk about.  
19 We also have the two-party status requests that are both in  
20 support.

21 They have worked very closely and been very  
22 actively involved in ensuring that this application has  
23 conditions that mitigation any adverse impact.

24 And then there's also a letter in as conditional  
25 support from the Square 902 neighbors which are other

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1 neighbors in the square supporting the conditions.

2           So, next slide, please. As I've mentioned since  
3 we've filed the application, we've been working very closely.

4  
5           And we ultimately were able to get the ANC support  
6 subject to conditions and an agreement that were put in  
7 place. Next slide, please.

8           And I will say, this is the most important part  
9 of our application, given the commitments that we have made.

10

11           We are requesting this special exception subject  
12 to the Board incorporating the agreement that is found at  
13 Exhibit 22B in the record.

14           So this is the agreement that has been worked on  
15 by all of the parties with good faith. And so therefore, we  
16 are asking that the Board incorporate that agreement and the  
17 exhibits into any order approving this application.

18           We have formatted the condition, which I'm going  
19 to walk through in just a moment, in such a way that they can  
20 easily be dropped into an order, but there is no intent to  
21 change the conditions that are listed in Exhibit 22.

22           And we wrote those lines to ensure that there is  
23 none but again to make sure it's on the record. The Exhibit  
24 22B is the agreement and the condition.

25           So I want us to walk through what those conditions

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1 are because I think that they set up really how we meet the  
2 separate section standard, which I'll go through next. Next  
3 slide, please.

4 VICE CHAIR JOHN: Ms. Shiker?

5 MS. SHIKER: Yes?

6 VICE CHAIR JOHN: Would you mind going through the  
7 application, showing how you meet the criteria for relief?  
8

9 And then we'll receive the conditions will  
10 mitigate any adverse impacts.

11 So if we can do it that way, that would be great.  
12 Keep us all on the same page.

13 MS. SHIKER: Yes, absolutely.

14 VICE CHAIR JOHN: Thank you.

15 MS. SHIKER: So if we could move to Sheet 14,  
16 please. And then we'll come back to those.

17 VICE CHAIR JOHN: Thank you.

18 MS. SHIKER: Okay, thank you. So here is the  
19 first floor plan, as I mentioned, which is going to be a  
20 tenant but out.

21 I point out that on the right side of the plan is  
22 where we have a walk in cooler for all of our trash, which  
23 is something that is very important to ensure that we have  
24 that inside.

25 We'll talk about this hose bib which we are -- to

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1 help with the maintenance of the public space. And all of  
2 these things are going to help out the fast food restaurant  
3 would operate.

4 And so that's what all the conditions were  
5 relating to. If you could go to the next slide, you could  
6 see the rooftop structure.

7 And this is where we have a kitchen hood exhaust  
8 fan. This fan has a -- that's on the lefthand side. It's  
9 pointed at with a green arrow.

10 This fan is to direct any odors or smells up above  
11 the street to dissipate into the air towards the commercial  
12 zone and to ensure that they would be away from the  
13 residential community to the west.

14 And then we have the two HVAC facilities. And I'm  
15 going to talk about those more with the roof structure.

16 So let us go to the next page, which talks about  
17 the special exception standard.

18 So, the Taco Bell is a fast food restaurant. And  
19 this special exception standard says that it is permitted  
20 subject to the special exception general standard and subject  
21 to specific conditions that are set forth in the 513.1. Next  
22 slide, please.

23 As to the special exception standard, the use will  
24 be in harmony with the general purpose and intent of the  
25 zoning regulations.

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1           As I noted, the zone is MU 4 and this is in the  
2 CHC, which is where the concentration of non-residential uses  
3 is directed for the Capitol Hill area.

4           This would be in Barrack Square, which is filled  
5 with nonresidential and commercial type uses. The use will  
6 not tend to adversely affect the use of the neighboring  
7 property.

8           We've worked very closely and we'll talk through  
9 that to mitigate impacts of noise, of odor, and of pests,  
10 which were the main concerns that were raised by the  
11 immediate community.

12           And so, we are proposing a variety of conditions  
13 that will be tailored to mitigate those concerns.

14           And then the next prong is that it would meet any  
15 special conditions, the special exception, if we can go to  
16 the next slide, we can see what those are.

17           Oh, I think the PowerPoint accidentally got taken  
18 away. Thank you. Yes, next slide, please. Thank you. So  
19 here are the specific conditions that are listed for a fast  
20 food restaurant.

21           The first condition applies to detached buildings.  
22 So it is not applicable. The second condition references  
23 outdoor dumpsters.

24           As I mentioned and as we will talk about, Taco  
25 Bell has agreed to include all of its -- all of its trash and

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1 recycling in an indoor conditioned refrigerated section.

2           You shall not include a drive through. This does  
3 include a drive through. The use shall be designed and  
4 operated so as not to become objectionable to the neighboring  
5 properties for a variety of reasons.

6           And again, we have worked directly with the  
7 immediate neighbors and the ANC to ensure that it can be  
8 operated in an acceptable manner, subject to conditions that  
9 would limit any of those objectionable situations.

10           The next one, the next prong, is that we should  
11 provide sufficient off-street parking. This amount of square  
12 footage for the use does not trigger a parking requirement  
13 and therefore there is no parking provided or required.

14           It should be located and designed so as not to  
15 create a dangerous or otherwise objectionable traffic  
16 position. As I noted, there is no parking requirement  
17 provided.

18           This is in a busy commercial area. So we  
19 anticipate that most people coming to the site will be by  
20 foot or by bicycle, and anyone who is coming by car is coming  
21 to Barrack's Row, which is an area that does not have a lot  
22 of parking and all of the commercial use is operating that  
23 way.

24           DDOT did conclude they had no objection to the  
25 use. And then the final category for the special exception

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1 for fast food restaurant use is that the Board may impose  
2 conditions.

3           And at this point, I think I'd like to go back to  
4 those conditions because I think that might help understand  
5 how we would mitigate those impacts, and then we'll talk  
6 about the roof structure relief, which comes directly from  
7 kind of those proposed commitments.

8           So if we could please go back to Sheet 8, thank  
9 you. And then we'll walk through -- this is how we would  
10 propose to mitigate any adverse impacts.

11           So the first is, we talk about the approved plans,  
12 but would be a term limit of ten years. So the fast food use  
13 would be proposed to be there for ten years before it needed  
14 to come back to the BZA for review again.

15           And during that time, the applicant has committed  
16 to work in good faith. So therefore, if there are issues  
17 that relate to pests or odors or noise, that haven't been  
18 rectified in the way we believe they will be, we have a  
19 contact for the applicant such that we will continue to work  
20 with the immediate neighbors and the community to make sure  
21 the intent of these mitigations are achieved.

22           The next one is limiting the time of deliveries  
23 Monday through Friday between 10:00 a.m. and 4:00 p.m., and  
24 that goes to making sure there are not objectionable traffic  
25 impacts, because we are limiting when those deliveries can

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1 come.

2           The next would be the hours of operation. And we  
3 have agreed to 7:00 a.m. to midnight. The walk up service  
4 window would have additional hours, but that would be limited  
5 to mobile orders or third-party deliveries. Next page,  
6 please.

7           Page 9, please. Thank you. So this one gets to  
8 the heart of a lot of the potential adverse impacts. So, the  
9 restaurant trash and the recycling will be picked up.

10           The trash would be picked up six days a week. The  
11 recycle five days a week. Those pickups would not be any  
12 earlier than 7:00 a.m.

13           And then condition seven is that all of that would  
14 be stored in an indoor walk-in style cooler that is going to  
15 be exclusively for the trash and recycling and the used  
16 cooking oil and grease.

17           And this gets to making sure that we're mitigating  
18 for rodent control and for smells outside the building.

19           There's also a concern about litter and trash that  
20 can come from a fast food restaurant. So Taco Bell, the  
21 applicant, has agreed to make sure that during the hours of  
22 operation, and at specifically opening and closing, that they  
23 would monitor that abutting public space for trash, litter,  
24 or other debris, and making sure that that's removed, keeping  
25 it in a clean condition.

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1           And the hose bib that I mentioned on the plan,  
2 that has been agreed to in being installed. So it would be  
3 easier to wash down any spills. You would have water access  
4 there.

5           Number eight would be that we would agree that all  
6 condensers and compressors would be located within the lease  
7 portion of the building, versus being on the roof.

8           Those can make noise, and that can cause adverse  
9 impacts. The HVAC system, so when you have this indoor  
10 cooler and you have the conditions and compressors, we need  
11 to have a certain size of HVAC equipment to ensure that the  
12 space is being conditioned correctly.

13           And so we've worked very closely to make sure that  
14 we've selected HVAC equipment that has acoustical levels and  
15 measures, and placed it in such a way as to mitigate impacts  
16 to the nearby neighbors. Next page, please.

17           The kitchen exhaust fan is also a bit more unique  
18 than what you would typically see in a fast food. It's been  
19 designed again with certain acoustical measures attached to  
20 it, as shown in Exhibit D in the record at 22B.

21           And it has been directed so that it will dissipate  
22 any odors towards the commercial section, not towards the  
23 residential neighbors.

24           And then little of this equipment, the applicant  
25 has agreed to install sound barriers that will mitigate sound

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1 attenuation that comes from this equipment.

2           So not only has it been moved up, but the  
3 equipment on the roof moved further toward the commercial  
4 section, but it's also been encased in this, so these sound  
5 barriers that have been successful in other projects on  
6 Barracks Row.

7           Again, agreeing to maintain that equipment in good  
8 working condition with a contract for four annual service  
9 inspections, agreeing not to use the rear yard for employees,  
10 for storage, or for restaurant patrons, to make sure there  
11 is separation from that for commercial use from the residents  
12 to the rest. Next page, please.

13           Maintaining that rear yard so that it is not  
14 getting trash or debris or backed up water to ensure that  
15 there aren't adverse impacts to the neighbors, using  
16 commercial and reasonable efforts for pest control and doing  
17 a specific pest control plan that is at Exhibit E2 in the  
18 record at 22B.

19           And then again for landscaping, pruning or  
20 trimming trees on adjacent properties only with adjacent  
21 property owner consent. Next page, please.

22           So all of those have been put in place to try to  
23 mitigate the use and there have been other potential  
24 mitigations are that important that would be owner-related  
25 conditions, and that is that there wouldn't be another

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1 restaurant in this building, prepared food, fast food, or  
2 restaurant.

3           None of those would be on the second floor, and  
4 if there is any additional equipment on the roof, there would  
5 be similar soundproofing incorporated.

6           And the owner has agreed to those conditions. And  
7 that is in the record at Exhibit 31. And again, those are  
8 to again mitigate and go to the special exception standard,  
9 making sure there's no adverse impact. Next page, please.

10           Okay, and then these would just be approval  
11 related, making sure that this is in Barracks Row, which is  
12 in a historic district.

13           This is a noncontributing building, so anything  
14 that is installed on the roof is subject to approval by  
15 historic preservation.

16           We have done our due diligence and met with the  
17 historic preservation office, presented the plan that is  
18 before you today, and they have indicated that they have no  
19 objection to that.

20           So we do not anticipate that there would be any  
21 refinements needed because we've already met with them. But  
22 this is a standard condition.

23           And then also while this is legally required,  
24 we've also agreed with the neighbors that if Taco Bell was  
25 not the restaurant and another fast food restaurant took the

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1 benefit of this order that they would also be required to  
2 comply with all these conditions because it is what is  
3 helping moderate the potential adverse impacts of the use.

4 All right, so that is how we satisfy the special  
5 exception standard for the fast food use. Because these are  
6 the conditions that are really necessary to satisfy that  
7 standard.

8 If we could go to sheet 18, that would be good.  
9 We'll go through the final special exception for -- no, 19,  
10 thank you. If we could go to 19, please.

11 So the special exceptions to permit the proposed  
12 rooftop structures. We need two areas within that special  
13 exception.

14 One is that we need relief from the single  
15 enclosure and the second is for the setbacks for the side.

16 So when we originally submitted the roof as  
17 designed complied with the regulations. However, three  
18 things have happened that put us in a situation where we need  
19 this special exception.

20 First, the exhaust vent got taller. It went from  
21 less than four feet to something more like around seven feet.

22

23 And whenever a rooftop structure under the  
24 regulations exceeds four feet, it is required to be placed  
25 into a rooftop enclosure.

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1           So, basically have screen walls around it.  
2 Secondly, as I mentioned, the HVAC equipment also got taller  
3 and bigger, as possibly five feet instead of four feet, and  
4 that is because it needed to be enlarged in order to make  
5 sure that the space is fully conditioned with the walk-in  
6 cooler and all the condensers being inside the leased space.

7           And then third, there was concern given the  
8 proximity of this building to residential homes about the  
9 sounds from the HVAC equipment and the exhaust vent.

10           And so therefore, we had worked with the  
11 consultant to put in the sound barrier walls. Now, we went  
12 to the zoning administrator, because oftentimes the  
13 mechanical permit doesn't have to comply.

14           There's certain exceptions for it not to comply  
15 with the site setbacks. But the zoning administrator said  
16 the sound barrier wall is something more than mechanical  
17 equipment.

18           So she said, you should get the special exception,  
19 which is why we're requesting it. So for the enclosure, if  
20 we could just go back to -- no, if we could go to the next  
21 slide, please.

22           Here you can see and circled in yellow is where  
23 we have not fully enclosed the rooftop equipment that's  
24 greater than four feet.

25           And the reason we have not enclosed it on that one

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1 side is because it starts to not work very well if you have  
2 a wall right in front of it.

3           So we're trying to dissipate any odors up into the  
4 air on the commercial side above the commercial area. And  
5 if you put a wall right there, it doesn't help.

6           You would have to elongate the entirety of the  
7 rooftop structure, which would result in a bigger rooftop  
8 structure.

9           It would also result in the HVAC equipment moving  
10 closer to the neighbors, which is not what we wanted.

11           And the fact is, is with the parapet and the fact  
12 that we're set back one to one with the front of the  
13 building, you cannot see the piece of equipment that is the  
14 vent because of the setback one to one sight lines and the  
15 three and a half foot parapet.

16           So there really is no adverse impact from not  
17 setting it back in. It is unduly restricted because we serve  
18 to not achieve the goals that we have for the rooftop  
19 structure.

20           As to the sound barrier walls not being set back  
21 one to one from the sight building walls, I will note that  
22 they are set back well more than one to one from Eighth  
23 Street and a factor of multiple times from the rear lot line,  
24 but they are not set back from the side lot lines.

25           There is an exemption for mechanical equipment not

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1 to be set back in this situation, but there was a recent  
2 change to the zoning regulations that said that if you have  
3 a contributing building on either side and those buildings  
4 are less than ten feet, or excuse me, are more than ten feet  
5 below the maximum permitted height, you don't have to have  
6 a sight set back.

7           So all of these buildings are about the same  
8 height. And so typically, in the old regulations, you  
9 wouldn't need a sight set back, but because they're all about  
10 20, 22 feet, and they're not closer to the 50 feet that's  
11 permitted, we do need that sight set back.

12           These sound barrier walls are from the sight set  
13 backs are not visible at all from any of the pedestrian space  
14 because they are so far set back.

15           And the site is only 20.75 feet. There's no  
16 scenario where you could set back from the side walls. So  
17 it is unduly restrictive, and we believe that there is no  
18 adverse impact.

19           So if we could go to the two slides from here, and  
20 this will be my last slide. So here is how we meet each of  
21 the standards.

22           The roof structures are only slightly visible from  
23 the pedestrian level, and it's only the very top of them.

24           We've worked with the historic preservation office  
25 to make sure that they are having no adverse impact.

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1           The sound barrier walls do achieve the goals that  
2 we're looking for and again, we talked about the narrow lot.

3

4           All of this is an effort to be responsive to the  
5 community feedback and to ensure that we are mitigating  
6 adverse impacts.

7           And a strict compliance would restrict our ability  
8 to do that. So therefore, we would be at this point happy  
9 to answer any questions, but we believe we have satisfied the  
10 standard for each of the special exceptions. Thank you.

11           VICE CHAIR JOHN: Thank you. Does the Board have  
12 any questions for the applicant? Okay. I'll go ahead, then,  
13 and ask the ANC to make your presentation, Mr. D'Andrea.

14           MR. D'ANDREA: Thank you, Chair John. Again, my  
15 name is Frank D'Andrea, and for ANC 6B, but Commissioner for  
16 ANC 6B04, and at the regularly scheduled and properly noticed  
17 meeting on June 24, 2024, with a quorum present, Advisory  
18 Neighborhood Commission 6B voted 8-0-0 to support the  
19 applicant's request and authorized me to testify.

20           I don't think that much more needs to be said.  
21 The ANC is in support conditional on the terms of Exhibit 22B  
22 being incorporated in, and the attached exhibits in that  
23 exhibit, Exhibits A-E, being incorporated into the Board's  
24 order.

25           I would just like to note that we did have a

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1 little technical hiccup on the first letter, but our revised  
2 letters can be seen at Exhibits 35A and our revised Form 129  
3 can be seen at 35 and 35A, I'm sorry, for a letter and our  
4 Form 129.

5 I'd also just like to say that I want to commend  
6 Linda and the neighbors and the applicant for being so  
7 collaborative on this and having robust protections that I  
8 think will allow Taco Bell to operate with little adverse  
9 impact on the neighbors.

10 Thank you. And I'd be happy to take any of the  
11 Board's questions.

12 VICE CHAIR JOHN: Thank you. So just one point  
13 of clarification. You referenced an Exhibit, which is BZA  
14 Exhibit 22B. Now, does that refer to the conditions --

15 MR. D'ANDREA: Correct, that refers to the --

16 VICE CHAIR JOHN: -- that the applicant is  
17 proposing?

18 MR. D'ANDREA: That refers to the conditions, yes.  
19 It's an agreement between the applicant and the Square 902  
20 neighbors or the close end neighbors as we sometimes  
21 colloquially call them.

22 VICE CHAIR JOHN: Okay, thank you. Does the Board  
23 have questions of Mr. D'Andrea? Okay. Does the applicant  
24 have any questions?

25 MS. SHIKER: No, thank you.

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1 VICE CHAIR JOHN: Okay, so I'll go to Ms. Elliot.  
2 I don't know if Mr. West is also presenting at the same time  
3 or are you representing him as well?

4 MS. ELLIOTT: I'm representing him as well. I'm  
5 speaking for both of us.

6 VICE CHAIR JOHN: Okay. So go ahead. Give your  
7 presentation.

8 MS. ELLIOTT: Okay. What I would like to do,  
9 actually, there are a couple of things. One, I want to make  
10 it very clear that we are in support.

11 Max Moncaster is in support. And then we have a  
12 list of 36 people on Square 902 representing every  
13 residential property on the square, plus 11 commercial  
14 property on the square.

15 The property owners, there are 11 commercial  
16 property owners who are in support, all of us, conditional.

17

18 Our support, like the ANC's, is conditional on the  
19 Board incorporating into any order it may issue granting a  
20 fast food exception, the conditions that Christine, and I'm  
21 sorry, I'm going to mispronounce -- Christine Shiker, Ms.  
22 Shiker's, the conditions she just went over with the Board.

23 In addition, because this is a little bit unusual,  
24 I realize that, but it is the result of months of  
25 negotiations which were extremely collaborative, like

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1 impressively so, because we've been through a number of  
2 these, with Taco Bell and their representatives and their  
3 architect.

4           It is also somewhat unusual, and so I want to make  
5 this clear up front, what we're asking the Board to do, but  
6 there is clear precedent for it on Square 902.

7           The Board has incorporated very similar orders,  
8 very similar conditions and exhibits, into the orders it  
9 granted for a fast food by &Pizza several doors down from  
10 where Taco Bell proposes to come in, and for Chipotle, which  
11 is right next door to where Taco Bell proposes to come in.

12           And if you at some point want the order numbers,  
13 we can give you those Board order numbers. And then we have,  
14 although we have 36 people who signed in support of what Taco  
15 Bell proposes to do conditional on the conditions being part  
16 of the order, we have three neighbors, exemplary neighbors,  
17 who can speak too as public witnesses, one Mr. Moncaster, as  
18 a party status witness who can speak briefly to their  
19 experiences on the block and why these conditions are  
20 necessary.

21           And after they speak, we have a -- I have a set  
22 of slides that I would like to show the Board in part to make  
23 it very clear graphically to the Board the conditions we've  
24 faced before you imposed the conditions with respect to  
25 Chipotle and how much the rodent problem and sound problems

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1 had been abated, had been abated, since Chipotle implemented  
2 the conditions the Board approved.

3           So I defer to the Chair, if you want me to do  
4 those slides first or would allow me, allow us to have the  
5 three witnesses we have who would speak briefly to the  
6 impacts on their property with and without conditions for the  
7 food establishments on our block.

8           VICE CHAIR JOHN: So I take it you have no  
9 comments on whether or not the application meets the criteria  
10 for relief, apart from the conditions.

11           You only wish to speak on the conditions.

12           MS. ELLIOTT: That's right.

13           VICE CHAIR JOHN: Okay.

14           MS. ELLIOTT: We only want to make it clear why  
15 we think for the sake of the Board that these conditions are  
16 extremely important to what has been a 20-year effort to get  
17 our mixed-use block cleaned up.

18           VICE CHAIR JOHN: Okay, I hear you. Let me see  
19 if I can get you this. Okay. So next up would be Mr. West.

20

21           You are -- I'm sorry, Mr. Moncaster, you are also  
22 a party. So do you want to make a presentation now?

23           MR. MONCASTER: I don't have a presentation. Just  
24 a few comments that I'll make overall.

25           VICE CHAIR JOHN: All right.

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1 MR. MONCASTER: I think like Linda said, it's been  
2 a very collaborative process. I'm very impressed with Taco  
3 Bell and Christine and Chris as well.

4 They definitely earned their paycheck because we  
5 asked for a lot and I feel like they came to the table with  
6 a lot of solutions.

7 So, overall, I want to commend the process there  
8 as well. I think I represent one of the newer generations  
9 on this square. I've got a daughter who is one year old.  
10 My wife and I live in this condominium. The other owners are  
11 probably in their 30s or 40s mostly.

12 So definitely the next generation of folks who  
13 want to see this mixed-use development and this mixed-use  
14 area really thrive and prosper.

15 I think we've got a really good place with some  
16 of the mitigations that Taco Bell has agreed to. They really  
17 are a gold standard for how we mitigate some of these  
18 challenges.

19 And I'll just share. At the outset of this  
20 process, I was actually part of a group of neighbors that was  
21 actually circulating a petition against any more fast food  
22 coming into the block.

23 There have been I think in the past challenges  
24 with trash and loitering, traffic, and other areas that I  
25 think were very concerning. But after seeing the process

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1 play out, after seeing the effort that Taco Bell and their  
2 team really went through to address and lower concerns, I am  
3 in support of, and I think they've been really committed to  
4 being a good neighbor and a good steward, even going so far  
5 as you probably saw in the presentation to really include  
6 contact information for Taco Bell going forward and a  
7 commitment to work with the neighbors if any of our concerns  
8 we have laid out weren't really addressed by some of the  
9 mitigation.

10           So I think the good faith effort throughout the  
11 whole process, combined with their commitment to continue to  
12 work with us going forward in making this mixed-use block  
13 really thrive, to me says it all.

14           So I'll just leave it there. I'm very supportive  
15 of granting the special exceptions with the conditions that  
16 are attached.

17           And again, I want to commend the team and the  
18 neighbors also for the collaborative process and where we go  
19 to in the end.

20           VICE CHAIR JOHN: Okay, thank you. So, I'm doing  
21 this sort of backwards, but anyway, does anyone have any  
22 questions of the ANC or Mr. Elliot or Mr. Moncaster? And I  
23 guess that's first to you, Ms. Shiker.

24           MS. SHIKER: I do not have any questions. Thank  
25 you.

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1           VICE CHAIR JOHN: Okay. Ms. Elliot, do you have  
2 any questions of anyone?

3           MS. ELLIOTT: No, not of Mr. Moncaster or Ms.  
4 Shiker.

5           VICE CHAIR JOHN: Okay. All right. So does the  
6 Board have any questions of anyone? So I'll go the Office  
7 of Planning.

8           MR. BEAMON: Good afternoon, members, this is Shep  
9 Beamon with the Office of Planning. And we've reviewed the  
10 application for the special exception for the new fast food  
11 establishment and the relief requested for the rooftop  
12 structure.

13           We've found that the request meet the criteria for  
14 Subtitle C, U, and X. We find that the requested rooftop  
15 structure -- sorry, the requested relief for the rooftop  
16 structure in an effort to help mitigate potential negative  
17 impacts, including noise and odors, for surrounding  
18 properties, and proposed use would not conflict with the  
19 existing character of the Eighth Street commercial corridor.

20

21           We also have no objections to the conditions as  
22 proposed by the applicant as shown in Exhibit 22B.  
23 Therefore, we're recommending approval.

24           And I would also like to note that there should  
25 be a clarification in OP's report. There is one typo that

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1 says that requesting relief from Subtitle D, Section 403,  
2 which is the rooftop structure relief for the Capital  
3 Interest Only Zone.

4 So that part is incorrect under OP's  
5 recommendation. But the overall analysis and report  
6 following that is all correct.

7 So if there was any confusion, just wanted to  
8 c l a r i f y t h a t f o r e v e r y o n e .  
9

10 VICE CHAIR JOHN: Okay, thank you. Let me see.  
11 We did have a report from the architect at the Capitol with  
12 no objection. So, okay.

13 So does anyone have questions for the Office of  
14 Planning? I'll go to you first, Ms. Shiker.

15 MR. SHIKER: I do not. Thank you.

16 VICE CHAIR JOHN: Ms. Elliot?

17 MS. ELLIOTT: No, thank you.

18 VICE CHAIR JOHN: Mr. Moncaster? Mr. D'Andrea?

19 MR. D'ANDREA: No.

20 VICE CHAIR JOHN: Thank you. Did I cover  
21 everybody? Mr. Young, is there anyone who is signed up to  
22 testify?

23 MR. YOUNG: We have two witnesses signed up.

24 VICE CHAIR JOHN: Okay, can you let them both in,  
25 please?

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1 MR. YOUNG: Yes.

2 VICE CHAIR JOHN: There's Mr. Beatley and Mr.  
3 Rodriguez. So I'll go to Mr. Beatley first.

4 MR. YOUNG: No, Ms. Szafran is the other one.

5 VICE CHAIR JOHN: Oh. Who is --

6 MR. YOUNG: It's Mr. Beatley and Ms. Szafran.

7 VICE CHAIR JOHN: So I see a Luis Rodriguez.

8 MR. RODRIGUEZ: I'm on the Taco Bell team.

9 VICE CHAIR JOHN: Oh, okay, sorry. Okay, thank  
10 you. So, I don't see --

11 MR. YOUNG: They are both on.

12 VICE CHAIR JOHN: I'm not seeing them on my  
13 screen. Just a minute. Mr. Beatley, okay, there you are.  
14 Please introduce yourself for the record and give us your  
15 home address. And you will have three minutes. Mr. Beatley?

16 MR. BEATLEY: Yes, can you hear me?

17 VICE CHAIR JOHN: Very faintly. We're not hearing  
18 you, Mr. Beatley?

19 MR. BEATLEY: Any more clear now?

20 VICE CHAIR JOHN: Not very well.

21 MR. BEATLEY: Oh, I'll just be very clear. My  
22 only concern has been addressed -- concerns have been  
23 addressed and I just want to thank the representative for  
24 Taco Bell, as well as Linda Elliot, for coordinating this on  
25 behalf of the neighborhood.

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1           Hopefully, we can keep this going smoothly and  
2 don't have any -- address. I'll leave it at that since I'm  
3 having difficulty with --

4           VICE CHAIR JOHN: Okay, thank you. Does anyone  
5 have -- does the Board have a question for the witness? Ms.  
6 Shiker, do you have a question for the witness? Ms. Elliot?

7           MS. SHIKER: I don't, thank you.

8           VICE CHAIR JOHN: Ms. Elliot, do you have a  
9 question for the witness?

10          MS. ELLIOTT: No, thank you.

11          VICE CHAIR JOHN: And Mr. Moncaster, do you have  
12 a question? Okay, and Mr. Young, what's the name of the next  
13 witness?

14          MR. YOUNG: Ms. Szafran.

15          VICE CHAIR JOHN: Okay, I don't see her. Ms.  
16 Szafran, can you hear me?

17          MS. SZAFRAN: Can anybody hear me?

18          VICE CHAIR JOHN: Yes, we can. Are you choosing  
19 not to use your video?

20          MS. SZAFRAN: My video is on.

21          VICE CHAIR JOHN: Okay.

22          MS. SZAFRAN: I can see myself. I don't know if  
23 anybody else can see me.

24          VICE CHAIR JOHN: Okay.

25          MS. SZAFRAN: Okay. I guess --

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1 VICE CHAIR JOHN: I see you now. I see you now.

2 MS. SZAFRAN: Great.

3 VICE CHAIR JOHN: Thank you. Please state your  
4 name and give your home address for the record. And you'll  
5 have three minutes.

6 MS. SZAFRAN: My name is Anna Katherine Szafran.  
7 I am at 704 E Street Southeast, which is one of the  
8 properties on Square 902, which is the square in which Taco  
9 Bell is coming in.

10 I support this special exception on the  
11 application, assuming that these special conditions are  
12 approved and implemented.

13 This has been a long negotiation process, and I'm  
14 very grateful to Taco Bell for participating, for getting to  
15 this place.

16 I should say that I have been on this block for  
17 almost 25 years. We have witnessed the closing of some old  
18 mom and pop shops and many new food serving establishments  
19 coming in.

20 That initially caused a significant problem for  
21 us in terms of rodents and odor and noise. And it has been  
22 quick to process learning through basically seminars offered  
23 by the District, through consulting with private companies,  
24 as to what to do to appropriately mitigate this.

25 And we have had a lot of success on this block,

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1 some of which the, I think BZA has seen, such as with &Pizza.

2           One thing that hasn't been talked about a lot here  
3 that I'm going to raise is the noise issues that come from  
4 the mechanicals do not just impact the immediately adjacent  
5 properties.

6           This is a close block without an alley with a lot  
7 of hard surfaces. In the past, some of the mechanicals  
8 mounted on the roof, the noise used to bounce around my own  
9 property, which is sort of boxed in on three sides, but open  
10 to some of the commercial businesses, used to get so much  
11 noise that we would have to go crawling on the rooves of some  
12 of these places to determine who was having problems with  
13 mechanicals.

14           So I am very grateful that Taco Bell has agreed  
15 to these noise mitigation measures, even though they have had  
16 to ask for the special exception.

17           I do think it's critical for the future enjoyment  
18 of our properties. I'm very glad that of the other steps  
19 that they have taken to mitigate some of the other problems  
20 that we have seen.

21           And again, I am in support of this application.

22           VICE CHAIR JOHN: Okay, thank you. So does the  
23 Board have any questions for the witness? Ms. Shiker, do you  
24 have any questions?

25           MS. SHIKER: No, thank you.

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1 VICE CHAIR JOHN: Ms. Elliot, do you have any  
2 questions?

3 MS. ELLIOTT: No, thank you.

4 VICE CHAIR JOHN: Does the ANC have any questions?

5 MR. D'ANDREA: No, thank you.

6 VICE CHAIR JOHN: Okay, and Mr. Moncaster, do you  
7 have any questions?

8 MR. MONCASTER: No questions from me.

9 VICE CHAIR JOHN: Okay. So now we get to the fun  
10 part. And I recognize and appreciate the hard sell on the  
11 conditions.

12 So let's go to the conditions, if my Board does  
13 not object. Ordinarily, we might excuse all the witnesses,  
14 but this is of such great interest to everyone that we can  
15 discuss the conditions. Ms. Elliott, I saw your hand up.

16 MS. ELLIOTT: Madam Chairman, I had -- it may --  
17 this -- I think it makes sense to go to the conditions at  
18 this point.

19 I would just remind you that in the beginning I  
20 was trying to reserve some of my time if it becomes an issue  
21 and the Board would like to see the difference that the  
22 conditions have made in the rodent activity.

23 In particular, that's what the slides cover. And  
24 also to show the sound mitigation that the Board ordered for  
25 Chipotle and &Pizza, I have two pictures of that just to show

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1 that what Taco Bell is offering to do is very comparable to  
2 what the Board ordered and Chipotle and &Pizza did.

3 But I can bring that up.

4 VICE CHAIR JOHN: We'll get to that when we get  
5 to the conditions. So is that -- does the Board have any  
6 objection to this proposal? No?

7 MEMBER SMITH: No.

8 VICE CHAIR JOHN: Okay. Let's go to, I believe  
9 it's Exhibit 22B. Mr. Young, can you pull that up, please?  
10

11 Okay, so first I'm going to address the Board, and  
12 then if we have questions, we will address the parties.

13 And so, I'll say to my Board members, these are  
14 the conditions that I believe cannot be. And I'll hear from  
15 the parties if the Board has a question after we've gone  
16 through the ones that we don't think we have the jurisdiction  
17 to include.

18 And I have heard all of the testimony. I know  
19 it's very important to you, but the Board cannot expand its  
20 jurisdiction, even if there is valiant agreement among the  
21 parties.

22 And the Board appreciates, and I'm speaking for  
23 my Board members, that we appreciate all of the work that has  
24 gone into putting this together, because we're here every  
25 week, and we see some applications that go south really fast.

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1           This is not that. So let me start off by  
2 complimenting everyone on the hard work. Okay.

3

4           So that's the good news. So let's go to the ones  
5 I don't think we can include in the order. So the Board's  
6 practice is to mention these conditions in the order but not  
7 as part of the order.

8           So the lawyers will put it in the correct  
9 language, which would be that the Board notes that the  
10 applicants have entered into an agreement on these certain  
11 things.

12           And I believe that's the way it will work. Now,  
13 as to Condition Number Six, no, that's not what I was looking  
14 at before.

15           Ms. Shiker, can you put up what you had when you  
16 were going through the conditions?

17           MR. SHIKER: The PowerPoint presentation starting  
18 on Page 8, it is those exact conditions, just in a different  
19 format.

20           It looks more similar to the conditions you've  
21 typically seen, but the language is identical.

22           VICE CHAIR JOHN: That's fine, I just need to look  
23 at it in terms of how I wrote my notes. So, on the slide  
24 presentation, what page is that, Mr. Young?

25           MR. YOUNG: This is Page 8.

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1 VICE CHAIR JOHN: Okay. Okay, here we are. So,  
2 I'll discuss each condition, then I'll hear from the Board,  
3 and if any one of the parties would like to comment, that's  
4 fine.

5 So, maintenance of abutting public space. The  
6 Board has no jurisdiction over public space. And we can't  
7 include it.

8 Does any Board member have a comment about that?  
9 Please just speak up, because I can't see all of you. Mr.  
10 Smith?

11 MEMBER SMITH: Yes, Ms. John, I don't have any --  
12 I completely agree with your comment thus far. We cannot  
13 regulate the public space and we can't include that  
14 particular condition.

15 VICE CHAIR JOHN: Thank you. Mr. Blake? Dr.  
16 Imamura?

17 COMMISSIONER IMAMURA: Agreed.

18 VICE CHAIR JOHN: Okay. Next one is, I'm going  
19 to go through them with the Board. That's okay, I'll hear  
20 you, Ms. Elliot. I'll hear you loud and clear.

21 The next one is Number 16. Landscaping. This  
22 says any pruning or trimming of trees on adjacent properties  
23 will only be done with the prior consent of the adjacent  
24 property owners.

25 That's outside of the Board's jurisdiction. So,

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1 Mr. Blake?

2 MEMBER BLAKE: I agree.

3 VICE CHAIR JOHN: Mr. Smith?

4 MEMBER SMITH: Agreed.

5 VICE CHAIR JOHN: Dr. Imamura?

6 COMMISSIONER IMAMURA: Agreed.

7 VICE CHAIR JOHN: Okay. Condition number 17, no  
8 restaurant use on the second floor. So, the application does  
9 not request leave for anything pertaining to the second  
10 floor, so this is outside of the Board's jurisdiction. Okay,  
11 Mr. Blake?

12 MEMBER BLAKE: I agree.

13 VICE CHAIR JOHN: Mr. Smith?

14 MEMBER SMITH: Agreed.

15 VICE CHAIR JOHN: Okay. Dr. Imamura?

16 COMMISSIONER IMAMURA: Agreed.

17 VICE CHAIR JOHN: Okay. Condition Number 18, this  
18 is a future condition. Again, I'll hear from you, Mr. Blake.  
19 This is maintenance of the HVAC system.

20 MEMBER BLAKE: Well, this is to add the second one  
21 for a second tenant on the second floor.

22 VICE CHAIR JOHN: Yes, and --

23 MEMBER BLAKE: And prior, in 17, we agreed that  
24 whatever the restaurant, whatever the use is for the second  
25 floor today, that it would not be able to open a restaurant

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1 there without seeking relief, assuming it's not allowed for  
2 that today.

3           They also would not need to have this if we had  
4 a second tenant, but for the condition we have today, this  
5 is where -- yes, for the issue we have today, we do not need  
6 18, I do not believe.

7           VICE CHAIR JOHN: Okay. Mr. Smith?

8           MEMBER SMITH: I agree with that statement. I  
9 will also state that I believe we are conditioning this to  
10 the plans.

11           So if the plans don't show an HVAC unit, then they  
12 would need to come back with either a line modification or  
13 approval from the Zoning Administrator.

14           So I don't think that this condition is needed  
15 now.

16           VICE CHAIR JOHN: Okay. Dr. Imamura? Dr.  
17 Imamura?

18           COMMISSIONER IMAMURA: I agree.

19           VICE CHAIR JOHN: Okay. All right. Condition  
20 Number 20. So this will bind another applicant or another  
21 first floor tenant benefiting from this order.

22           So the relief goes to the owner, and any future  
23 relief has to be required by the owner. That's my view of  
24 20. Do you have any comments on 20, Mr. Blake?

25           MEMBER BLAKE: The relief fell with the land, and

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1 if someone were to come into this position, they would have  
2 the right to this under these same conditions to operate  
3 this, up until the 10-year term is up.

4 So, I believe it is applicable and it's just the  
5 way it would work. It would not be necessary to put that in  
6 because it's the way it works.

7 VICE CHAIR JOHN: Well, maybe the lawyers can word  
8 it another way so that it's clear that all we're doing is  
9 what exists now, that the relief runs with, I think we say  
10 runs with the land, but it goes to the property.

11 And the new fast food restaurant could take  
12 advantage of the same relief that we are granting now,  
13 assuming everything is the same.

14 So, I'll leave that one to the lawyers. Now, is  
15 there something else that we neglected to include? Oh, there  
16 was a request for design flexibility.

17 And generally, that one is okay and the lawyers  
18 will reword that one. Basically, the Board can grant design  
19 flexibility.

20 But if there is a need for additional relief, then  
21 the applicant has to return to the Board to seek relief.

22 So if we say there's design flexibility, and HPRB,  
23 excuse me, requires some other design that would require  
24 relief that was not granted in this application, then the  
25 applicant needs to return to the Board.

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1           So, my view is the answer to that is yes, and the  
2 lawyers will word it in a legally appropriate way.

3           So does any Board member think there's a condition  
4 that we should not grant apart from the ones that I just  
5 mentioned?

6           We'll go to you first, Mr. Blake.

7           MEMBER BLAKE: Well, I think everything that we've  
8 gone through is good. I would also suggest that we of course  
9 reference the entire agreement in the order so that -- and  
10 its exhibits so that it's the entire agreement between the  
11 ANC and the owner, that this entire agreement is reflected.

12           VICE CHAIR JOHN: I agree. The lawyers will word  
13 it appropriately. So they can incorporate the entire order  
14 except paragraphs 18, 6, whatever the lawyers want to do,  
15 they will do it correctly since there's so much of these  
16 conditions that we're approving. It might be simpler to do  
17 it that way.

18           Mr. Smith, did you have a comment?

19           MEMBER SMITH: The only comment that I have, and  
20 it's not for necessarily striking it because I understand the  
21 purpose, but it seems to me to be a little bit too  
22 restrictive, the Condition Seven, indoor cooler.

23           I'm assuming this was a recommendation of Taco  
24 Bell, but why not just a condition that says that all of  
25 these items shall be stored interior to the building?

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1 Not necessarily a cooler. Things change. And if  
2 they want to store that in a different type of way, why would  
3 you want to have that type of restrictive condition?

4 MS. ELLIOTT: I can answer that.

5 VICE CHAIR JOHN: Okay, thank you. Yes, I mean,  
6 another owner might not need it. But anyway, I mean,  
7 another, right, another owner. Who wants to answer? Ms.  
8 Shiker?

9 MEMBER SMITH: And I understand the issue. Let  
10 me preface this before you answer the question, because I was  
11 here for the Chipotle and the &Pizza discussions.

12 I understand issues about rodents and trash. So  
13 my concern is not necessarily that you want to make sure that  
14 that's contained inside.

15 My question is, why do you have to be as  
16 prescriptive as saying cooler? They can do that by just  
17 saying stored in a container inside. But go ahead. Sorry.  
18 Ms. Shiker?

19 MS. SHIKER: Oh, can the applicant respond?

20 VICE CHAIR JOHN: Sure.

21 MEMBER SMITH: Sure. Sorry.

22 MS. SHIKER: So we have agreed to that and we have  
23 shown it on the plans, so it is an appropriate condition  
24 because it has been shown on the plans.

25 It was something that was very important to the

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1 community. So while there is quite a bit of specificity in  
2 it and in some cases we might not do that, it was part of our  
3 good faith work with the community.

4 And so as long as Taco Bell is in where they are,  
5 they are building this out, this cooler area, for the trash  
6 and recycling in accordance with their agreement.

7 VICE CHAIR JOHN: Okay.

8 MEMBER SMITH: Well, my only recommendation is  
9 that you can get to that to what you're trying to do by just  
10 saying store in a unit inside.

11 It doesn't necessarily have to be a cooler.  
12 Things change. Say that you find best practice is not  
13 necessarily a cooler. Guess what? Your hands are tied.

14 So it would just be my recommendation to slightly  
15 tweak that. But it's not a deal breaker.

16 VICE CHAIR JOHN: No, it's what they want, and  
17 it's not. Because it relates to the rodent control, I can  
18 see that they might want to go above and beyond what is  
19 necessary or what the Board would ordinarily require, but it  
20 is not so unrelated to our jurisdiction that -- I'm agreeing  
21 with you, Mr. Smith, that it's restrictive, but it's not  
22 outside of our jurisdiction, right? Mr. Smith?

23 MEMBER SMITH: No, it's not.

24 VICE CHAIR JOHN: Okay.

25 MEMBER SMITH: It's not. So, we can keep the

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1 condition. Ms. Elliott, I'm sorry.

2 (Simultaneous speaking.)

3 MS. ELLIOTT: So I would just like to add a little  
4 bit of history. Right next door --

5 VICE CHAIR JOHN: Ms. Elliott, we're keeping it  
6 -- I'm indifferent to it. If you want to do it, you want to  
7 go above and beyond, that's fine, okay?

8 MS. ELLIOTT: That's okay, I just wanted you to  
9 understand the rat infestation next door and why a cooler is  
10 important.

11 (Simultaneous speaking.)

12 MEMBER SMITH: I don't think it's a conversation.  
13 I understand the rat infestation. I was here for Chipotle  
14 and --

15 VICE CHAIR JOHN: I was here for --

16 MEMBER SMITH: I fully understand.

17 VICE CHAIR JOHN: Yes, I suffered through Chipotle  
18 on a long afternoon. How long was that hearing, Mr. Smith,  
19 with numerous witnesses?

20 And we were educated in the habits of rodents at  
21 length. So, Ms. Elliott, we do understand, and the cooler  
22 is fine.

23 Okay, is there anything else, any other condition  
24 that should not be included? Okay. All right. Ms. Shiker,  
25 I will hear you on what we have excluded.

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1 MS. SHIKER: So I would -- I appreciate the  
2 Board's consideration of these conditions. And I think it's  
3 important to note that these are the agreements that we made.

4 So as Board Member Blake suggested, making  
5 reference to the agreement so that it is fully in there, we  
6 were comfortable with all of the conditions, but we have  
7 agreed to all of these conditions.

8 For the maintenance of public space and what we  
9 have shown, the hose bib on our plan, so even if it's not  
10 identified as a condition, it is identified as on the plan,  
11 so we will be required to do that.

12 We will want to work with the immediate neighbors  
13 to figure out a different way to have these conditions, the  
14 few that you have taken out, into some other type of MOA.

15 But I think that it would be very important to  
16 reference the full agreement that everyone has supported  
17 because it is what we have all agreed to and we want to make  
18 sure that it is documented in the order, even if those couple  
19 of conditions aren't put in there and we work with the  
20 immediate neighbors to do a separate MOA on our -- or that  
21 type of -- on those conditions to ensure that we live up to  
22 them.

23 But with that, I would ask that the Board would  
24 consider taking action today. We are anxious to move forward  
25 prior to the August recess.

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1           So we are very appreciative of the community and  
2 of the neighbors for working so diligently with us. We know  
3 this is not their full-time job and they worked very closely  
4 with us to make sure we could come up with a proposal that  
5 satisfied people and addressed their concerns.

6  
7           And so we appreciate their time and we appreciate  
8 the Board's consideration today. Thank you.

9           VICE CHAIR JOHN: Okay. And was that your closing  
10 statement? Okay. I'll go to Ms. Elliott first. We're doing  
11 closing statements now unless anyone from the Board thinks  
12 that there's something I've missed.

13           Okay, so we'll continue with Ms. Elliott.

14           MS. ELLIOTT: So, Madam Chairman, Chairwoman, I  
15 will forego any slides showing the improvements Chipotle's  
16 conditions made. I know you understand those at this point.

17           The only thing I would say is with respect to  
18 Conditions 17 and 18, the reason we believe those are  
19 properly included in this agreement is for the reason that,  
20 I think it was Commissioner Blake may have mentioned, and  
21 that is that this fast food exception, if granted, runs with  
22 the property.

23           The property owner is the one really getting the  
24 benefit of this fast food exception for 10 years. And in  
25 exchange for that, he was willing to give up the possibility

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1 of seeking to put another food establishment on the second  
2 floor and whatever establishment he might put on the second  
3 floor, he was willing to do the same soundproofing for the  
4 mechanical so that he -- the idea is that whoever goes on the  
5 second floor, there's no possibility of them undoing the  
6 benefits of these conditions that Taco Bell has put in place  
7 at significant expense to them.

8  
9 We think it is legitimate, again, because it is  
10 the property owner who is getting the benefit of this fast  
11 food exception because it runs with his land.

12 And it's the whole -- it is a very specific fast  
13 food exception, but it is an exception for that property,  
14 411, and it will be undone if another food place can be put  
15 on top of it, and there won't be room to do this sort of  
16 mitigation that taco Bell is doing.

17 And it is -- there are second floor -- the other  
18 issue is a restaurant does not need to come back to get a  
19 fast food exception.

20 And so we think it is well within the jurisdiction  
21 of the BZA in granting a fast food exception to this  
22 property, specifically 411, to allow the owner to agree and  
23 the condition to be added into the order, that he will not  
24 put another food place, food establishment, on top, and that  
25 he will soundproof any additional mechanicals he needs for

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1 non-food uses.

2           VICE CHAIR JOHN: Thank you. I know Ms. Shiker  
3 is not asking the Board to do that. Because she's here all  
4 the time, and she knows the Board does not have the  
5 jurisdiction to add that condition, because the request was  
6 not made.

7           The request in the file is for fast food  
8 restaurant on the first floor and that's all the Board can  
9 do. I understand what you're saying and I hear you, and I  
10 might agree with you, but the Board does not have that  
11 jurisdiction.

12           Okay, so what was your next one?

13           MS. ELLIOTT: Those were the two that I think that  
14 would fit within the jurisdiction of the Board because the  
15 fast food exception goes to the property to 411.

16           VICE CHAIR JOHN: Well, the first floor.

17           MS. ELLIOTT: I'm sorry, the two conditions I'm  
18 talking about was the no food establishment on the second  
19 floor and the soundproofing of any HVAC that needs to go in  
20 to accommodate whatever does go on the second floor.

21           VICE CHAIR JOHN: Ma'am the application says I am  
22 a little tired and it is 5:34. Okay so the application says  
23 under Subtitle U 513.1e to permit a fast food establishment  
24 use on the first floor.

25           And that's what we're approving. The second floor

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1 is not before us. If another fast food restaurant comes in  
2 and wants to go to and operate on the second floor, they  
3 would have to come in for relief if that use is not  
4 authorized there now.

5 I don't know what is on the second floor. Mr.  
6 Smith, you had your hand us?

7 (Audio interference.)

8 VICE CHAIR JOHN: I can't hear you. I'm sorry,  
9 I can't hear you.

10 MEMBER SMITH: Can you hear me now?

11 VICE CHAIR JOHN: You're breaking up.

12 (Audio interference.)

13 VICE CHAIR JOHN: You want to try again?

14 MEMBER SMITH: Can you hear me?

15 VICE CHAIR JOHN: Yes.

16 (Audio interference.)

17 MEMBER BLAKE: I think the matter is, at this  
18 point nothing has been approved for the second floor use.  
19 Not restaurant or anything. If they wish to go to the second  
20 floor for a restaurant, they're going to have to go through  
21 this entire process all over again, okay? Or to get a  
22 modification of significance to do something on the second  
23 floor.

24 They will have an opportunity to review this and  
25 we could not necessarily handicap the future Board in terms

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1 of its ability to do these matters. So we're within our  
2 bounds.

3 MEMBER SMITH: Okay, can you hear me now?

4 VICE CHAIR JOHN: Yes.

5 MEMBER SMITH: Okay. So, Ms. Elliott, I  
6 understand your concerns. I'm not necessarily tied to a fast  
7 food restaurant going on the second floor.

8 But when we declare conditions, we have to find  
9 from a legal standpoint a rational nexus related to the  
10 application in front of us right now.

11 The application in front of us right now only  
12 concerns a special exception for a fast food restaurant on  
13 the first floor.

14 The conditions, the property owner to the  
15 potentiality of something on the second floor causing some  
16 type of unknown adverse impact, we cannot do, legally.

17 So we cannot put in a condition that relates to  
18 an unknown adverse impact. For you, that may be a minor  
19 right. We just cannot do that from a legal standpoint.

20 So that's the reason why we cannot include  
21 Condition 17.

22 VICE CHAIR JOHN: Okay. Ms. Shiker, did you have  
23 anything more? Mr. West?

24 MR. WEST: Nothing further.

25 VICE CHAIR JOHN: Mr. D'Andrea?

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1 MR. D'ANDREA: Yes, I mean, just to comment on  
2 that. I mean, I think that was a provision that was  
3 important to the neighbors.

4 I understand if there is a bit of a logistical  
5 loop to say, well, the second floor is not before you,  
6 restaurants might be matter of right.

7 Therefore, there's sort of like a logical or legal  
8 hurdle to that. I don't know if there's any other way or  
9 creative way.

10 I mean, it seems like the applicant is still --  
11 if there are any conditions that aren't being adopted by the  
12 Board, they are still going to be referenced in the  
13 agreement.

14 So I don't know if there's any other creative way  
15 to do that. It may be that it's just not possible because  
16 a regular restaurant, not a fast food, would be a matter of  
17 right, and it's just something that the Board can't do.

18 I mean, I get it. I suppose I understand that.  
19 But I just want to note that in the discussions, in the ANC  
20 meetings, that was an important factor for the neighbors.

21 I would have to defer to them if that's a deal-  
22 breaker for them because they have done most of the  
23 negotiation on that. They have done the heavy lifting.

24 But I just want to note, the ANC supported on the  
25 exhibit being adopted. We're sort of pulling stuff out now.

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1 I don't know if that collapses the house of cards.

2 But I don't know if there's any creative way to  
3 include that provision one way or another.

4 VICE CHAIR JOHN: Okay, so I'll address that. So  
5 what that means, are you saying that the ANC's support is  
6 conditioned on the Board's acceptance of all of these  
7 applications, all of these conditions, and including them in  
8 the order?

9 MR. D'ANDREA: I believe that's how the letter was  
10 worded. Let's see. Condition on the BZA's incorporating any  
11 order, the conditions agreed to by the applicant and the  
12 property owner.

13 I mean, there's a bit of nuance there.

14 VICE CHAIR JOHN: Okay, let me just say this. In  
15 the interest of time, because I'm going to lose a Board  
16 member at 6:00 o'clock, so I'm going to go to Ms. Shiker who  
17 understands.

18 MS. SHIKER: So, I understand, but I want to make  
19 sure that everybody understands the commitment that was made  
20 by both the applicant and the owner, and I have gotten word  
21 that the owner would agree in a separate MOA to these two  
22 conditions if they cannot legally be put in the order that  
23 would be enforceable by suit or arbitration, that we would  
24 come to this agreement because it is what we have permitted.

25 The owner has a letter in the record at Exhibit

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1 31C that they would do this. So if the Board is unable to  
2 put them into the conditions, I would like to reassure that  
3 we are working in the background to make sure that we can  
4 live up to those conditions even if they cannot be put into  
5 the order.

6 VICE CHAIR JOHN: Okay. So I just wanted to  
7 clarify this, because what Mr. D'Andrea is saying is that if  
8 the Board does not include all of these conditions in the  
9 order, the ANC support cannot be given great weight.

10 And they would not be in support. It sounds  
11 simple, but it's quite technical. That means we vote today,  
12 right, and you don't get -- well, you have to -- you have to  
13 get a full order, okay, if the ANC is opposed, okay?

14 So my suggestion would be to sort this out with  
15 the ANC. It's late and I set this for decision.

16 MR. D'ANDREA: So, Ms. John, I just want to -- I  
17 just want to clarify. This is a bit of a curveball. Our  
18 letter was written prescriptive, fairly prescriptively.

19 This is a bit of a curveball because we had  
20 thought that this was going to get incorporated wholesale.  
21 Now things are getting pulled out.

22 Again, it's a bit of uncharted waters. I don't  
23 want to say that we necessarily will not support. Really,  
24 it's what the -- the vision of the ANC is what makes the  
25 neighbors happy makes us happy.

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1           So if they are in support, I mean, we might have  
2 to do a technical amendment at some point, but I don't know  
3 that it necessarily quashes the ANC's support.

4           VICE CHAIR JOHN: Well, I don't hear any of the  
5 lawyers chiming in, so I believe I'm correct. So, Ms.  
6 Shiker, the ball is in your court.

7           If we vote today --

8           MS. SHIKER: I think Ms. Elliott wanted to say  
9 something and then I could --

10          VICE CHAIR JOHN: Let me just -- let me just  
11 finish what I need to say. Okay? I'm going to lose a Board  
12 member at 6:00 o'clock.

13          That means we have to deliberate and vote by 6:00  
14 o'clock. Now, we can postpone this for decision. You sort  
15 things out with the ANC and they can send in a new letter  
16 without the conditions, without conditioning their support  
17 on including all of these conditions which the Board cannot  
18 do.

19          Okay? The Board will reference the conditions  
20 that are not in the order. So everyone will know that the  
21 owner agreed to these conditions.

22          But they're not enforceable. What happens is when  
23 you go to get your certificate -- did I say certificate of  
24 occupancy? C of O, then these conditions can be enforced.

25          If you don't have that condition space where you

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1 say it will be, then you won't get your C of O. So that's  
2 how this works, okay?

3 Now, we can continue this, hopefully before the  
4 recess, and sort everything out with the ANC and provide an  
5 amended letter of support.

6 And then we decide. That's my suggestion.

7 MS. SHIKER: Chair John, can Ms. Elliott speak,  
8 and then can I address the ANC letter?

9 VICE CHAIR JOHN: Yes, Ms. Elliott? I'm sorry,  
10 I didn't see your hand was still up. Sorry.

11 MS. ELLIOTT: It's all right. First of all, the  
12 offer that Ms. Shiker made on behalf of the owner of the  
13 property that we could incorporate or deal with the two  
14 conditions that might be removed under your jurisdiction in  
15 a contract or MOA that is enforceable either as Ms. Shiker  
16 said by arbitration or by suit is fine with the extended  
17 neighbors.

18 I also think that Mr. -- I mean, I think what our  
19 ANC representative was saying is that he would -- the letter  
20 is written with a little bit of squishiness in it, and that  
21 as long as the conditions, except for those two and the one  
22 about the street out front, and then I think it was 16 as  
23 well, there could be a vote today and then they would do a  
24 technical amendment to remove perhaps the four conditions  
25 that you've identified.

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1           And I think part of what our ANC commissioner is  
2 trying to do and what we the neighbors are trying to do,  
3 specifically given Ms. Shiker's representation with respect  
4 to the property owner, is ensure that a vote can happen today  
5 because we know one of the things that was very important to  
6 Taco Bell was that they get their approval today, have the  
7 vote today, because of their build out schedule.

8           And given what they are doing for the neighbors  
9 in exchange for our support for the fast food, we also  
10 appreciate what they need to do in terms of their business  
11 model.

12           MS. SHIKER: Thank you, Ms. Elliott. And I would  
13 just add that in reading the ANC 6B letter, it does say that  
14 the ANC 6B support is on the BZA incorporating a unique order  
15 that conditions agreed to by the applicant and the  
16 residential and commercial neighbors as outlined in this BZA,  
17 but it does authorize Commissioner D'Andrea to represent the  
18 Board.

19           And I think that so far as long as the conditions  
20 are -- the intent of the conditions are incorporated and  
21 Exhibit 22B is referenced as the agreement, I don't believe  
22 that the ANC 6B letter is technically defective at all.

23           I think that their support can still be considered  
24 support without even a technical amendment of their letter,  
25 especially given the long history of what the ANC 6B's vote

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1 was.

2 VICE CHAIR JOHN: Okay, let me ask Ms. Mehlert.  
3 Ms. Mehlert, when can we set this for decision? I heard what  
4 you said.

5 Let me see. And it's never good to say the Board  
6 has to decide something on a particular day.

7 MS. MEHLERT: I mean, you can set up for decision  
8 at any of the days in July. We've got three more hearing  
9 dates.

10 VICE CHAIR JOHN: Is July 17 -- we've been putting  
11 a lot of things on for July 17.

12 MS. MEHLERT: No, July 17, it will be a little  
13 busy. There are some decisions that have been added to July  
14 24, plus what will be five hearing cases.

15 So it's up to you. I don't know --

16 VICE CHAIR JOHN: How many cases do we have on the  
17 17th?

18 MS. MEHLERT: There are six cases including an  
19 appeal.

20 VICE CHAIR JOHN: And the next week?

21 MS. MEHLERT: On the 24th, there will be five  
22 hearing cases.

23 VICE CHAIR JOHN: But no appeal?

24 MS. MEHLERT: But no appeal.

25 VICE CHAIR JOHN: Okay. Let me go back to the

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1 Board. I'm going to address the Board. Mr. Blake and Board  
2 Member Smith and Dr. Imamura, do you read this ANC letter as  
3 not imposing a condition?

4 MEMBER SMITH: I don't particularly see it that  
5 way. It means that Mr. D'Andrea is just authorized to  
6 represent, but not necessarily to me holds that power to  
7 solely make that decision.

8 VICE CHAIR JOHN: Okay. So let's do this. So,  
9 have you all made your closing statements? Okay. So I'm  
10 going to excuse everyone and thank you very much for your  
11 testimony and being here at almost 6:00 o'clock on the day  
12 before July 4, and I wish you all a very happy Fourth.

13 And then I'm going to talk to the Board. Please  
14 listen in and see where we end up. Okay? So thank you.

15 MS. SHIKER: Thank you.

16 VICE CHAIR JOHN: Thank you. Okay, I will hear  
17 from everyone. I haven't heard from the lawyers, and so I  
18 have to assume that I'm doing anything that's incorrect.

19 And the way I read this ANC 6B letter, it says  
20 it's conditioned -- ANC 6B's support for the requested fast  
21 food and side setbacks special exceptions is conditioned on  
22 the BZA's incorporating any order it may issue, the  
23 conditions agreed to by the applicant and property owner, any  
24 references as outlined in Exhibit 22B.

25 And there's no exception for whatever the Board

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1 may decide. So it's yes or no. So, it seems as if the ANC  
2 is fine with taking another crack at this letter and deleting  
3 the conditioned language that I just read.

4 And then the Board can come back and vote. So  
5 I'll hear from you first, Mr. Smith.

6 MEMBER SMITH: And it seems to me that, and that  
7 was brought about, the conversation was brought about by Ms.  
8 Elliott, that they are comfortable with taking another crack  
9 at writing the letter.

10 It seems that the representatives from Taco Bell  
11 want to take the risk of the interpretation of Mr. D'Andrea  
12 representing the Board.

13 But what was interesting through that was I didn't  
14 hear Mr. D'Andrea say that he believes that he has the power  
15 to do such.

16 So, I agree with your approach on this one from  
17 the standpoint of being cautious, close the hearing subject  
18 to this additional information from the ANC, a new letter,  
19 and we'll vote at a later date.

20 VICE CHAIR JOHN: Okay, Dr. Imamura? I'm  
21 switching up the order.

22 COMMISSIONER IMAMURA: Thank you, Madam Vice  
23 Chair. Certainly, I think your proposal plan for the Board,  
24 it sounds reasonable.

25 However, it's not as if all parties were hoping

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1 for or would like a vote today and that they would resolve  
2 this matter outside the conditions that we have before us.

3 So I think it's reasonable.

4 VICE CHAIR JOHN: Thank you. Mr. Blake?

5 MEMBER BLAKE: Yes, I'll speak first for myself.

6 As I review all these conditions, I think that I'm in support  
7 of the application.

8 I also believe that these conditions are not  
9 unreasonable and they were negotiated with the parties. Our  
10 issue plainly is that certain things are not within our  
11 jurisdiction.

12 We do not know that the ANC, because it has a  
13 conditional support, did actually the other parties in  
14 support of, well, obviously, Ms. Elliott already indicated  
15 that she'd be comfortable with an MOA, I suggest that the MOA  
16 could be drafted up.

17 I would like to see it and the ANC write a letter  
18 clarifying its position, and maybe that condition would  
19 acknowledge an MOA.

20 We've already indicated that we would be willing  
21 to reference the entire order in the order, so it would be  
22 incorporated.

23 So the issue is clarity from the ANC. I would be  
24 comfortable waiting for the ANC, until next week, although  
25 I don't know what the meeting schedule is for the ANC and if

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1 they could have a special meeting to address this issue, so  
2 that we could have a clean and clear record to have a  
3 decision.

4 But I do think the intent is to, at least from my  
5 perspective, is to do this, is just that those two issues  
6 don't quite fit with our jurisdiction.

7 So therefore, it would be difficult to incorporate  
8 them in their entirety. So I would give both parties one  
9 week or so just to iron this out so we have a clean record  
10 so we can vote.

11 VICE CHAIR JOHN: Okay. All right. Mr. Young,  
12 can you let Ms. Shiker back in, please? Okay, Ms. Shiker,  
13 so I don't know if you were listening.

14 So here's my proposal to you, that the ANC take  
15 another crack at the letter, remove that condition language.

16 And since the proposal is to draft an MOA, with  
17 the conditions, including the conditions that we are not  
18 going to include, so those conditions should be deleted from  
19 Exhibit 22B.

20 So the lawyers will just simply incorporate  
21 Exhibit 22B without conditions, without, yes, 16, 17, 18, and  
22 20.

23 MS. SHIKER: And I would want to hear from  
24 Commissioner D'Andrea if they can get this on the ANC  
25 meeting.

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1 I know that they have a meeting on the 9th, which  
2 would be ideal since we have attended so many ANC meetings.

3 And if given our permitting schedule, if there was  
4 any way that this could be -- if that is the way the Board  
5 sets this up for decision on the 17th, just because we are  
6 -- we're just -- our permit schedule -- that would work so  
7 much better.

8 And I also understand that Ms. Elliott is away on  
9 the 24th. So, she was concerned about that as well. I had  
10 gotten some information about that.

11 So I understand the Board's position. I do believe  
12 there's wiggle room, but I'm hopeful that if Mr. D'Andrea can  
13 commit to getting this on the 9th then we could have a letter  
14 in the record very quickly and we will continue our very  
15 close work with the neighbors like we have done throughout  
16 this whole process.

17 VICE CHAIR JOHN: Okay, so we have an appeal. I  
18 tried to get you in on the 17th. We have an appeal that day,  
19 so, yes, we don't want to be here until 7:00 o'clock again.  
20 So here --

21 MS. SHIKER: This would not be another hearing.  
22 The hearing has been closed.

23 VICE CHAIR JOHN: I know, but -- I know.

24 (Simultaneous speaking.)

25 VICE CHAIR JOHN: We have an appeal. We have an

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1 appeal and five cases. Okay? So how about if you would  
2 delete those conditions, 6, 16, 17, 18, and 20, and put them  
3 in an MOA as an attachment. Okay? And then submit a clean  
4 Exhibit 22B. And we will incorporate Exhibit 22B into the  
5 order, which will be enforceable.

6           The MOA will not be enforceable by the Board, but  
7 it will exist as a document that memorializes what you all  
8 have agreed to. Okay? But you will -- the parties can  
9 enforce separately through arbitration or whatever you agree  
10 to. And I think --

11                         (Simultaneous speaking.)

12           MS. SHIKER: Once we are able to submit this to  
13 the record, which my understanding is that Commissioner  
14 D'Andrea has indicated that he would be able to put this on  
15 the agenda for the 9th, I just got word, so that would be  
16 excellent, so we could have this all submitted very quickly,  
17 would this be a decision case or is there going to be a  
18 continued hearing?

19           VICE CHAIR JOHN: So I'm going to close the  
20 hearing and the record and we'll set it for decision with the  
21 request that those two documents only be submitted into the  
22 record, and the Board will not be taking any more testimony  
23 or accepting any more records, I mean submissions.

24           MS. SHIKER: And so the document will be the  
25 additional -- the revised conditions in a new document so

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1 that can be specifically referenced, and then we'll show the  
2 MOA of the remaining conditions that will not be enforceable  
3 by the Board order.

4 And then the other document will be ANC's  
5 clarification letter?

6 VICE CHAIR JOHN: Yes.

7 MS. SHIKER: Thank you.

8 VICE CHAIR JOHN: So three things, the  
9 clarification letter, a clean 22B, and then the MOA or MOU  
10 or whatever it is you're going to call it, and we will -- the  
11 lawyers will just reference that agreement that says the  
12 parties have agreed separately. Okay?

13 A: Thank you very much.

14 VICE CHAIR JOHN: Okay, thank you very much.  
15 Have a great Fourth, everybody. Bye. Okay, Ms. Mehlert.  
16 So it's for the 24th?

17 MS. MEHLERT: You want it for the 24th?

18 VICE CHAIR JOHN: Well, it's up to you. Five  
19 cases and an appeal.

20 (Simultaneous speaking.)

21 MS. MEHLERT: I think, I mean, if it's just a  
22 decision, I think the 17th should be fine. But it's totally  
23 up to you.

24 VICE CHAIR JOHN: Okay, I'm looking at my Board  
25 members.

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1 COMMISSIONER IMAMURA: The sooner the better.

2 VICE CHAIR JOHN: Okay. All right, so let's do  
3 the earlier date. And then we have to notify the parties  
4 when the documents should be submitted.

5 MS. MEHLERT: So the ANC meeting I think is on the  
6 9th. So you want to give it until the 11th or 12th for the  
7 ANC, for all the documents, I guess?

8 VICE CHAIR JOHN: Yes.

9 MS. MEHLERT: Okay, does the 11th work, Thursday?

10 VICE CHAIR JOHN: Yes. Yes.

11 MS. MEHLERT: Okay.

12 VICE CHAIR JOHN: Okay, thank you. Do we have  
13 anything else?

14 MS. MEHLERT: There's still Application 21091 to  
15 deliberate on. The applicant did submit the revised plat.

16 VICE CHAIR JOHN: We are going to lose -- please  
17 call that case. We are going to lose a member.

18 COMMISSIONER IMAMURA: I urge the Board to reach  
19 a decision expeditiously.

20 VICE CHAIR JOHN: Okay. So if you can give us  
21 five minutes, Dr. Imamura?

22 COMMISSIONER IMAMURA: Yes.

23 VICE CHAIR JOHN: Okay.

24 COMMISSIONER IMAMURA: As long as this case  
25 doesn't go unnecessarily --

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1           VICE CHAIR JOHN: No, it will be five minutes.  
2 Okay, please call that case, Ms. Mehlert. I totally forgot.

3           MS. MEHLERT: No problem. So the last is, it's  
4 back for the Board's decision. It's Application 21091 of  
5 Freedom 828 21st Street Northeast LLC.

6           This is a self-certified application pursuant to  
7 Subtitle X Section 901.2 for special exception under Subtitle  
8 E Section 204.4 for a rooftop and upper floor element  
9 requirements of Subtitle E Section 204.1 to allow removal of  
10 a rooftop architectural element, and Subtitle E Section 207.5  
11 to allow the rear wall of a road building to extend farther  
12 than 10 feet beyond the farthest rear wall of any adjoining  
13 residential building on an adjacent property.

14           Again, this is constructing a third story and  
15 three-story rear addition onto an existing two-story attached  
16 principal dwelling for conversion to a three-unit apartment  
17 house.

18           It is located in the R4 zone at 828 21st Street  
19 Northeast, Square 4495, Lot 5.

20           VICE CHAIR JOHN: Thank you. Mr. Cross? Can you  
21 hear me, Mr. Cross? Pardon?

22           MR. CROSS: I thought we closed the case, but I'm  
23 here.

24           VICE CHAIR JOHN: Okay. Were you able to submit  
25 the updated plat?

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1 MR. CROSS: I'm sorry, I might have missed your  
2 statement, switching --

3 VICE CHAIR JOHN: Were you able to update the  
4 record with the revised plat?

5 MR. CROSS: Yes, ma'am, the revised plat has been  
6 submitted for your review.

7 VICE CHAIR JOHN: Okay, let me just -- and that  
8 would be at exhibit -- okay, here we go, it's Exhibit 40.  
9 Okay. Thank you.

10 And did you have any closing comments, Mr. Cross?

11 MR. CROSS: No, ma'am. I appreciate the time and  
12 consideration.

13 VICE CHAIR JOHN: Okay, thank you. Have a good  
14 Fourth. Okay, is the -- oh, I'm going to close the record  
15 and the hearing. Is the Board ready to deliberate? Yes.

16 So, the only issue I had with this application was  
17 the 10-foot -- the extension more than 10 feet beyond the  
18 rear wall.

19 And in looking at the application, I thought that  
20 the applicant's presentation did not show that there would  
21 be any adverse impact on the adjacent properties.

22 And the Office of Planning recommends approval.  
23 I'm going to give great weight to the Office of Planning's  
24 analysis and recommendations.

25 And I believe that the ANC submitted a letter in

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1 support in Exhibit 38. And I forgot to also mention that the  
2 removal of the cornice and the resulting design is quite  
3 improved from what was originally submitted.

4           So I don't think that -- I think it is consistent  
5 with the design that's on the street, that particular street.  
6 And so I don't have anything more that I'd like to add. And  
7 I don't know if any Board member wishes to add anything.  
8 Board member Smith? Dr. Imamura?

9           COMMISSIONER IMAMURA: The only thing I would add,  
10 Vice Chair John, is that I think the additional 13 feet is  
11 a bit egregious, beyond the 10 feet that's being -- it's a  
12 matter of right.

13           And I think while the neighbor to the north signed  
14 the no objection statement that was provided by Mr. Cross for  
15 them to sign, I didn't have a whole lot of -- I didn't have  
16 -- I didn't have confidence that they really understood  
17 perhaps maybe the impact of the scale of the design scope.

18           While the design is improved from the original  
19 submission, I'm uncomfortable with the requests for 23 feet,  
20 13 feet beyond matter of right, and that the shadows that are  
21 being cast do extend beyond the right of way up or down into  
22 perhaps another property.

23           So it's not just the adjacent property to the  
24 north, but it's getting beyond other properties beyond the  
25 right of way, which is pretty significant.

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1           So I'm uncomfortable with this application.

2           VICE CHAIR JOHN: Okay. Mr. Blake?

3           MEMBER BLAKE: I'm in support of the application.  
4 I do agree with Dr. Imamura. That is a very sizeable rear  
5 addition. However, the shadow studies as well as the  
6 testimony provided by the Office of Planning did support and  
7 indicated it would not cause an adverse impact to neighboring  
8 properties.

9           I also was encouraged by the support of the ANC  
10 which in a previous case in this area was very adamant about  
11 size and the rear yard extension.

12           And I believe that they were in support, stating  
13 no issues or concerns. I did have some initial concerns with  
14 the façade from a visual intrusion perspective, but I thought  
15 that was amply resolved by the work that Mr. Cross did to  
16 redesign the façade and reflecting the comments made by the  
17 Office of Planning.

18           So, I am in support of the application. And I  
19 believe the applicant met the criteria for approval for both  
20 levels of request.

21           VICE CHAIR JOHN: Thank you, Mr. Blake. So the  
22 only thing I would add is that this is a fairly long lot and  
23 even with the addition, there is still a rear yard of 29  
24 feet.

25           So, I believe that might mitigate the potential

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1 loss of light and air because there is a sizeable rear yard  
2 remaining.

3           And I would just add that comment to the rationale  
4 for supporting the application. I'm just scrolling through  
5 to make sure I got that length correctly.

6           So, I don't -- did you want to add anything more,  
7 Dr. Imamura, or can we just move on?

8           COMMISSIONER IMAMURA: Or can we just move on?  
9 I've been wanting to move on the last couple of hours.

10           VICE CHAIR JOHN: Okay, let's take that. Let's  
11 imagine that that ended the question. Did you want to add  
12 anything, Dr. Imamura?

13           COMMISSIONER IMAMURA: No, Madam Vice Chair. I'm  
14 not sure that I see the 29 feet that you see.

15           VICE CHAIR JOHN: Okay, so I was --

16           COMMISSIONER IMAMURA: I'll look at it but --

17           VICE CHAIR JOHN: I was taking my numbers from the  
18 Office of Planning report which showed what the remaining  
19 rear yard would be. I hope I got that right but --

20           COMMISSIONER IMAMURA: 27 feet 3 inches is what  
21 I see based off of the drawing set but --

22           VICE CHAIR JOHN: Yes, I looked at that and --

23           COMMISSIONER IMAMURA: But I see that I'm in the  
24 minority there, but I'm prepared to move forward so everybody  
25 can enjoy their home.

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1           VICE CHAIR JOHN:  So, Dr. Imamura, where were you  
2 finding that 27 feet?  Is it on the revised plat?  Or is it  
3 on the architectural --

4           COMMISSIONER IMAMURA:  It is in the revised plat.

5           VICE CHAIR JOHN:  Okay, so let's look at the  
6 architectural drawings, because that's what they're going to  
7 have to comply with.  Let's see.

8           I think that's Exhibit 29.  I'm looking at their  
9 presentation.

10          MEMBER BLAKE:  The issue was the three feet that  
11 they chopped off the back, right?  So one is inconsistent,  
12 27.3 versus 29.3 in the written report.

13          VICE CHAIR JOHN:  Okay, so what they presented  
14 today -- what they presented today is in their presentation  
15 plan.  And they said the presentation is what we're supposed  
16 to look at, and they were supposed to correct the plat.

17          So, looking at this --

18          COMMISSIONER IMAMURA:  This seems to happen a lot.

19          VICE CHAIR JOHN:  Pardon?

20          COMMISSIONER IMAMURA:  This seems to happen a lot.

21          VICE CHAIR JOHN:  Yes.  So looking at, Dr.  
22 Imamura, looking at Exhibit 21, that's the presentation,  
23 there is 16 feet and 10 feet 7, that's 26 7, and there's a  
24 deck.

25          COMMISSIONER IMAMURA:  So even in the drawing set,

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1 it shows 27 feet 3 inches with a 5-foot deck.

2 VICE CHAIR JOHN: If the deck is -- I don't know  
3 if the deck is over four feet, I need to look at --

4 COMMISSIONER IMAMURA: The deck shows 5 feet high.

5 VICE CHAIR JOHN: The deck is 4 feet, so it's  
6 below 4 feet. Okay, we can --

7 MEMBER BLAKE: How about we have Mr. Cross come  
8 back and clarify?

9 VICE CHAIR JOHN: And this says the rear yard is  
10 20 feet looking at -- Mr. Cross, can you help us look at  
11 Exhibit 39 and your PowerPoint? That's slide 21, I believe.

12 MR. CROSS: Yes, I believe the discrepancy between  
13 the OP report and what has been submitted is in fact the 3  
14 feet, and the difference between measuring from the rear of  
15 the deck versus the rear of the building.

16 Currently, if measured from the rear yard to the  
17 rear of the building, we have 27'3" plus 5 feet, or 32 feet  
18 3 inches.

19 If you subtract the three feet that we took out  
20 of the building from that, or add three feet to our building,  
21 which we removed three feet from the rear yard, we get to the  
22 29 feet 3 inches that was referenced in the OP report, which  
23 was based on the original design.

24 VICE CHAIR JOHN: So is it deck counted if it's  
25 4 feet or less? Does it have to be below 4 feet to not

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1 count?

2 MR. CROSS: This deck is shows at all levels. So  
3 it would be a projection from the building that would not be  
4 allowed in the rear yard.

5 I'm not sure how you would label the rear yard,  
6 but the required rear yard would have to exist beyond the  
7 deck, if that helps.

8 VICE CHAIR JOHN: Yes, and so based on this, the  
9 rear yard then is 20 feet.

10 MR. CROSS: The required rear yard is 20 feet.  
11 We are providing 27 feet 3 inches that would comply with the  
12 required rear yard.

13 VICE CHAIR JOHN: So this should have been -- this  
14 is not clear. I'm looking at Exhibit 21 that's in Exhibit  
15 21, 21, I can't calculate the rear yard from this.

16 I see lines that say 20 feet, rear yard. And then  
17 there's something that looks like a patio and a deck. Okay,  
18 so we exclude the patio, the deck, and so the distance from  
19 that line is 20 feet to the deck, not counting the steps.  
20 What is that distance?

21 MR. CROSS: I'm sorry, I'm having trouble  
22 following you. The Exhibit 21 I have is a letter of support  
23 from Gregory Goldstein.

24 VICE CHAIR JOHN: I'm sorry. I'm sorry. 39. 39  
25 is your presentation.

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1 MR. CROSS: Okay, very good.

2 VICE CHAIR JOHN: And then go to 21.

3 MR. CROSS: Page 21?

4 VICE CHAIR JOHN: Right.

5 MR. CROSS: And so that's the very last page of  
6 the presentation for -- okay. Yes, so that's page labeled  
7 BZA 14. Correct.

8 So, in this, this is the grading and landscaping  
9 plan. In this, we're simply showing that the required rear  
10 yard is 20 feet.

11 That line is going to -- it happens to be where  
12 the landscaping feature is here in this rear patio. It has  
13 no relationship to the building whatsoever.

14 Again, this is a grading and landscaping plan.

15 VICE CHAIR JOHN: So do you have a slide that we  
16 can reference in the order?

17 MR. CROSS: Well, yes, I would say the plat that  
18 was updated as well as Page 4 of the presentation, which is  
19 also BZA 04, shows the building that is a 23-foot projection.

20 That's a 5 foot rear deck and the resulting space  
21 beyond the deck of 27 feet 3 inches, which is inclusive of  
22 a required rear yard of only 20 feet.

23 VICE CHAIR JOHN: Okay. Okay. So, the Office of  
24 Planning's report hen would say 29 if they took off the two  
25 feet, right?

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1 MR. CROSS: Right. I think if they were to rewrite  
2 their report today, it would be 32 feet because it would be  
3 adding 3 feet to the rear yard, and that's consistent with  
4 the plan shown here, which is 27 feet 3 inches plus the 5  
5 feet of the deck, is how I believe they were referencing that  
6 number.

7 VICE CHAIR JOHN: Okay.

8 MR. CROSS: To the rear wall of the building.

9 VICE CHAIR JOHN: Okay, and in the interest of  
10 time, can you look at the plat and let's make sure that new  
11 plat says what you just said that, Exhibit 40.

12 MR. CROSS: Yes, ma'am. So the new plat also has  
13 those same dimensions. It has a dimension from the rear  
14 property line to the furthest point of the rear deck of 27  
15 feet 3 inches.

16 It has a 5-foot rear deck. Combined, that would  
17 be at 32 feet from the property line to the building, which  
18 is 3 feet longer than the 29 feet referenced in the original  
19 OP report.

20 VICE CHAIR JOHN: Okay, thank you. All right,  
21 thanks, Mr. Cross. So we're going to close the record and  
22 the hearing again. Thank you.

23 Okay, so Dr. Imamura, I'm not going to say  
24 anything. I'm just going to look at you to make sure I don't  
25 say the wrong thing.

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1 COMMISSIONER IMAMURA: I think I'm prepared to  
2 move forward.

3 VICE CHAIR JOHN: Okay. All right. So, I'll make  
4 a motion to approve Application Number 21091 as captioned and  
5 read by the secretary and ask for a second. Mr. Blake?

6 MEMBER BLAKE: Second.

7 VICE CHAIR JOHN: Ms. Mehlert, would you please  
8 take the roll call?

9 MS. MEHLERT: Please respond to the Vice Chair's  
10 motion to approve the application. Vice Chair John?

11 VICE CHAIR JOHN: Yes.

12 MS. MEHLERT: Mr. Smith?

13 MEMBER SMITH: Yes.

14 MS. MEHLERT: Mr. Blake?

15 MEMBER BLAKE: Yes.

16 MS. MEHLERT: And Dr. Imamura?

17 COMMISSIONER IMAMURA: Thank you for your  
18 patience, Ms. Mehlert. I will abstain.

19 MS. MEHLERT: I'm sorry, I missed that.

20 COMMISSIONER IMAMURA: I abstain.

21 MS. MEHLERT: Okay. Staff for the vote is 3-0-2  
22 to approve application 21091 on the motion made by Staff  
23 Chair John and seconded by Mr. Blake and one abstention and  
24 one Board member not participating.

25 VICE CHAIR JOHN: Thank you so much, Ms. Mehlert.

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1 Is that all for today?

2 MS. MEHLERT: Yes.

3 VICE CHAIR JOHN: Okay. So I'll see everyone next  
4 week. Happy Fourth. Happy Fourth, Dr. Imamura.

5 COMMISSIONER IMAMURA: Thank you.

6 VICE CHAIR JOHN: Enjoy. I appreciate you giving  
7 us some time to finish this up. Thank you.

8 COMMISSIONER IMAMURA: My pleasure.

9 VICE CHAIR JOHN: Thank you.

10 COMMISSIONER IMAMURA: Have safe Fourth, everyone.

11 (Whereupon, the above-entitled matter was  
12 concluded at 6:20 p.m.)

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Before: DC BZA

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