

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA

2 OFFICE OF ZONING

3 BOARD OF ZONING ADJUSTMENT

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9 BOARD OF ZONING ADJUSTMENT PUBLIC HEARING

10 AND PUBLIC MEETING

11

12

13

14 9:46 a.m. to 2:30 p.m.

15 Tuesday, October 27, 2015

16

17 441 4th Street, N.W.

18 Jerrily R. Kress Memorial Hearing Room

19 Suite 220 South

20 Washington, D.C. 20001

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5      ROBERT MILLER

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15     ELISA VITALE

16

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18     KAREN THOMAS

19

20     OFFICE OF THE ATTORNEY GENERAL:

21     LAWRENCE FERRIS

22

23

24

25

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

2 [ 9:46 a.m.]

3 VICE-CHAIRPERSON HEATH: Good morning. The  
4 hearing will please come to order. We're located in the  
5 Jerrily R. Kress Memorial Hearing Room, at 441 4th  
6 Street, N.W. Today's date is October 27th, 2015, and  
7 we're here for the Public Meeting and Hearings of the  
8 Board of Zoning Adjustment of the District of Columbia.

9 My name is Marnique Heath, Chairperson.  
10 Joining me today is Fred Hill, Vice-Chairperson; Jeffrey  
11 Hinkle, Board member; and Anthony Hood, who is a member  
12 of the Zoning Commission, sitting in as a Board member  
13 today.

14 Please be advised that this proceeding is  
15 being recorded by a court reporter and is also being  
16 webcast live. Accordingly, we must ask you to refrain  
17 from any disruptive noises or actions in the hearing  
18 room.

19 The Board's hearing procedures and how we  
20 will process applications can be found on the table at  
21 the back door, and please note that our order of  
22 procedure for hearing cases will generally follow the  
23 order listed on that memo.

24 All individuals wishing to testify today  
25 will need to do two things. The first is, prior to

1       testifying, each person who wants to address the Board  
2       must complete two witness cards per person and give those  
3       cards, prior to testifying, to the court reporter, who is  
4       seated to my right. Second, we'll also need you to stand  
5       and at this time to take the oath, which will be  
6       administered by Mr. Moy, the Board secretary. Anyone  
7       wishing to testify.

8 MR. MOY: Or even if you think you may  
9 testify, would you please stand and take the oath. It's  
10 not going to hurt.

11 CHAIRPERSON HEATH: We don't want to have  
12 to repeat it multiple times today.

13 MR. MOY: Good morning. Do you solemnly  
14 swear or affirm that the testimony you are about to  
15 present in this proceeding is the truth, the whole truth,  
16 and nothing but the truth?

17 [Witnesses sworn en masse.]

18 MR. MOY: Ladies and gentlemen, you may  
19 consider yourselves under oath.

20 CHAIRPERSON HEATH: Thank you.

21 Mr. Moy, are there any preliminary matters?

22 MR. MOY: Yes, I do, Madam Chair. Good  
23 morning. Good morning to the Board.

24                           This is for the record, to clarify cases on  
25 the docket today. First, Application No. 19088 of Jose

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1 Ayala has been postponed and rescheduled to January 26th,  
2 2016.

3 Three cases, there are three foreign  
4 mission cases, 16620A, 19134, and 19130 have been  
5 rescheduled to November 10th, 2015.

6 And finally, Madam Chair, Application No.  
7 18983, of Carrie Trieu has been postponed and rescheduled  
8 to December 8th, 2015. And that completes the Staff's  
9 remarks.

10 CHAIRPERSON HEATH: Thank you. So we'll  
11 call our first meeting case.

12 **APPEAL NO. 19027**

13 MR. MOY: All right. That would be for  
14 decision-making, Application Appeal, Application No.  
15 19027 of Rima Calderon and William Sawicki.  
16 Participating on this appeal discussion is Chairperson  
17 Heath, Mr. Hood, and I believe Vice-Chair Hill and Mr.  
18 Hinkle.

19 CHAIRPERSON HEATH: Not Mr. Hinkle.

20 MR. MOY: All right. Minus Mr. Hinkle.

21 CHAIRPERSON HEATH: He's off the hook for  
22 this one.

23 VICE-CHAIRPERSON HILL: For the record,  
24 I've read through everything and watched all the videos  
25 so I'm prepared to participate. Thank you.

1 CHAIRPERSON HEATH: Thanks. All right. Is  
2 the Board ready to deliberate on this case?

3 [No audible response.]

4 CHAIRPERSON HEATH: Okay. So, this appeal  
5 was originally heard on June 30th of this year, and the  
6 Board deliberated on September 15th but continued the  
7 decision to September 29th, and at the Appellant's  
8 request the Board continued the decision again until  
9 today, October 27th.

10 At the original hearing there was a motion  
11 to dismiss for timeliness, submitted by the owner, and  
12 that was not addressed at the previous hearing, so the  
13 first matter we're going to have to address this morning  
14 is that motion to dismiss and whether we will allow it or  
15 not. And so, I don't know if anybody has any thoughts on  
16 that. If not, I'll start, just with my thoughts.

17 I am inclined to not allow the motion to  
18 dismiss, to not support that motion. During the hearing  
19 it was made clear that there were several permits filed  
20 for this project. The first permit was issued on October  
21 14th and it was for work only associated with Floors 1  
22 through 8. The work associated with the ground floor and  
23 cellar, which are the floor and the permit being  
24 appealed, was a part of the second permit, which was  
25 issued on March 19th, and that permit, again, only

1 included the ground floor and cellar, no other parts of  
2 the project.

3 There were a lot of conversations, as we  
4 heard during the testimony, a lot of conversations, e-  
5 mails, meeting with the ANC over the course of time  
6 during 2013 and 2014, but the Appellants testified that  
7 none of these conversations, e-mails, or meetings  
8 included proposed design plans for the cellar and  
9 basement, and that they didn't have that information  
10 available to them until the permit was issued and DCRA  
11 submitted the permit drawings to them on March 30th. So  
12 the Appeal was filed April 17th, 2015.

13 So, again, I am not in support of the  
14 motion to dismiss for timeliness. I believe that the  
15 Appeal was filed within the window of 60 days of when the  
16 Appellants were aware of what was included in the plans,  
17 and had enough information in order to be able to submit  
18 their appeal, on the basis that the ZA erred in their  
19 determination of the various areas under appeal on the  
20 ground floor and the cellar.

21 That was a mouthful.

22 VICE-CHAIRPERSON HILL: Yeah, I'm in  
23 agreement. I thought what you just read through is very  
24 thorough and I would support -- be on that side as well.

25 CHAIRPERSON HEATH: Okay.

1                   COMMISSIONER HOOD: I would agree, Madam  
2 Chair. Actually, when the former Chair and I started  
3 deliberating on the 15th, that's kind of in line with  
4 what was thinking, we need to move to and get to the  
5 merits of the case to appeal.

6                   CHAIRPERSON HEATH: Okay. All right. So  
7 then we will deny the motion to dismiss for timeliness,  
8 and proceed to the rest of the merits of this case.

9                   I think there are a few issues here. One  
10 that sticks out to me, in looking at the plans that were  
11 submitted, both by the owner and by the Appellant is,  
12 first, the ground floor, and we'll have to speak to both  
13 the ground floor and the cellar, and whether the area  
14 constituted under commercial adjunct and function room  
15 remain the same from the time that -- well, if I back up,  
16 I think in this case both the owner and the Appellant  
17 agree that there was no information that was in existence  
18 prior to May 16th, 1980, and that the first record of  
19 information on this site was with the earliest recorded  
20 Certificate of Occupancy, which was December 3rd, 1986,  
21 but that Certificate of Occupancy did not specify square  
22 footage of the commercial adjunct, exhibit space, or  
23 function rooms. It only specified that there were 196  
24 units on eight floors in this hotel.

25                  So the Appellants have adopted, as the

1 baseline for evaluating what's being proposed for this  
2 hotel and what was permitted against the uses of the  
3 hotel when the previous owner sold the hotel to the  
4 owner. I'm inclined to think that that is the basis for  
5 which we should evaluate the difference between the  
6 drawings that were permitted, or the basis for how we  
7 should review the drawings that were permitted, if that  
8 makes sense. Okay.

9                           So in looking at the drawings that were  
10 submitted by both the Applicant and the owner, the thing  
11 that stuck out to me was, at the ground floor, the  
12 kitchen and dining area -- and if we can just reference  
13 back to those plans -- at issue here, under Section 35.1  
14 -- oh, I'm sorry, 351.2(c), one of the Appellant's  
15 arguments is that the plans include new commercial  
16 adjunct space visible from the sidewalk, which is a  
17 violation of 351.2(c). The owner and DCRA argue that the  
18 kitchen, which -- the kitchen and dining space, which was  
19 previously visible, was just relocated and is still  
20 visible at the ground floor.

21                           But the thing -- again, the thing that  
22 stuck out to me was that the kitchen and dining area  
23 appears to have increased substantially. When I look at  
24 the Appellant's plans they include square footages, which  
25 show that the kitchen area and dining area, based on the

1 changes, are significantly different in area from where  
2 the kitchen was previously located and where it's now  
3 located in the new permit drawings. The owner's drawings  
4 don't show square footages, but the difference is visibly  
5 increased, such that I have hard time believing that we  
6 could support the argument made by the owner that they  
7 have not changed the visibility of the restaurant and  
8 kitchen on the ground floor. Again, there was a portion  
9 that was visible before, but now that has increased  
10 pretty substantially.

11 Does anybody have any thoughts about that?

12 [Inaudible comments, speaking off mic.]

13 CHAIRPERSON HEATH: Again, that's one of  
14 the points that we'll have to speak to, is one of the  
15 Appellant's arguments.

16 The other point that we'll need to speak to  
17 is the first point made by the Appellant, that the ZA  
18 erred in determining that the renovation would not  
19 increase the total commercial adjunct or function room  
20 area in the hotel, and as required under Section 350.4(3)  
21 and 351.2(a).

22 So, again, I would argue that under Point  
23 3, the visibility has substantially increased.

24 VICE-CHAIRPERSON HILL: That's the part  
25 that I wasn't clear on, actually, from the plans, as to

1 what the visibility was from the street.

2 CHAIRPERSON HEATH: So there are windows,  
3 and if we -- let me go back to those drawings.

4 VICE-CHAIRPERSON HILL: I'm sorry. Which  
5 exhibit are you on?

6 CHAIRPERSON HEATH: Well, there are two.  
7 There's Exhibit 2E2. It's one of the -- it's, yeah, 2E2.  
8 And then there's also -- the other one, I believe, is  
9 Exhibit 32, which I think you had opened just a moment  
10 ago.

11 So if you look at either of those exhibits,  
12 along the south wall, there are a number of windows  
13 there, but based on the -- if I do a quick tabulation.

14 VICE-CHAIRPERSON HILL: [Inaudible comment,  
15 speaking off mic.]

16 CHAIRPERSON HEATH: I was going with the  
17 big points.

18 VICE-CHAIRPERSON HILL: [Inaudible comment,  
19 speaking off mic.]

20 CHAIRPERSON HEATH: Mm-hmm, and their  
21 square footages associated with each of those.

22 [Continued conversation between Chairperson  
23 Heath and Commissioner Hill regarding exhibits.  
24 Inaudible comments from FH, speaking off mic.]

25 CHAIRPERSON HEATH: All right. So we'll

1 start from Point 1, and the question under number 1 is,  
2 did the ZA err in determining that the approved  
3 renovations would not increase the hotel's total  
4 commercial adjunct or function room space?

5                   The regulation's prohibiting an increase in  
6 the amount of commercial adjunct and function room space  
7 the hotel had, as of May 16th, 1980, but as I said,  
8 because there's no evidence regarding the square footages  
9 on that date, the parties agree that the baseline for  
10 this measurement should be the total commercial adjunct  
11 and function room space at the earliest time frame for  
12 which there was this information.

13                  The ZA states that he used this earlier  
14 time frame as the basis, and the Appellants argue that  
15 he, instead, looked at the uses of the time of his 2013  
16 review. There's no dispute that the uses changed during  
17 this interval, from offices and an engineering room to a  
18 yoga studio and an art gallery. However, even if the ZA  
19 did base its determination on the wrong time frame, this  
20 error would only be consequential if the change in use  
21 increased the commercial adjunct and function room space.

22                  So I think we can look at how much  
23 commercial adjunct and function room space was in the  
24 cellar first. So the Appellants claim that the disputed  
25 area, which totaled 3,652 square feet, was used as the

1 hotel's administrative office, which is constituted as  
2 guest room under Section 199. The owner and DCRA contend  
3 that the previous owner used 3,192 square feet for office  
4 space, some of which was used for the hotel and some was  
5 used for a real estate business, which was completely  
6 separate, and that the remaining 460 square feet of area  
7 was used as an engineering room, and occasionally for  
8 storage for a restaurant on the ground floor. So I think  
9 one of the first things we'll need to decide is if that  
10 office space would constitute commercial adjunct space,  
11 as defined under Section 199. The question would be, is  
12 it a retail and service establishment, customarily  
13 incidental and subordinate to the hotel's use? And so  
14 that would be our first question.

15 COMMISSIONER HOOD: You're talking about a  
16 leftover additional amount of 460 square feet, I believe.

17 CHAIRPERSON HEATH: Right.

18 COMMISSIONER HOOD: Right. Okay.

19 VICE-CHAIRPERSON HILL: In my initial eyes,  
20 it would be, you know, commercial adjunct space.

21 CHAIRPERSON HEATH: The engineering room?

22 VICE-CHAIRPERSON HILL: Yes.

23 CHAIRPERSON HEATH: On the basis that this  
24 is in support of the retail establishment, it's necessary  
25 because it provides service and support to the

1 restaurant?

2 VICE-CHAIRPERSON HILL: Yes.

3 CHAIRPERSON HEATH: Okay. All right.

4 COMMISSIONER HOOD: I would agree with the  
5 Vice-Chair on that one.

6 CHAIRPERSON HEATH: Okay. And I can agree  
7 on that as well, so I think we would all support that.

8 So then the office use -- we jumped to the  
9 second part, which was about the engineering space, but  
10 the other part of this is, does the office use -- that  
11 really is the 3,192 square feet -- does that constitute  
12 commercial adjunct? And I'm having a hard time with that  
13 because that office space, part of it was used to support  
14 the hotel but part of it was designated as a real estate  
15 business, which was separate from the hotel. So I'm  
16 having a hard time classifying that as being consistent  
17 with a retail and service establishment, customarily  
18 incidental and subordinate to the hotel use.

19 VICE-CHAIRPERSON HILL: I was a little  
20 torn, in general, about how I was kind of looking at  
21 everything, and just was curious as to how my colleagues  
22 would go through this. For me, as I was going through  
23 it, the adjunct spaces, could it have been used as a  
24 hotel room, or what was it used before, and the yoga  
25 studio and the art gallery and then the office space, I

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1 mean, that is what I was thinking as adjunct. When I got  
2 to the next part, which was, you know, can you see it  
3 from the street, what kind of changes were there, that's  
4 the part that I'm a little torn with, as to, you know,  
5 what does it look like from the neighborhood, you know,  
6 as far as, like, you know, can you see inside, is that  
7 kind of thing, in terms of like the advertising of what's  
8 going on there.

9 CHAIRPERSON HEATH: Okay. So we'll come  
10 back to that part, the visibility.

11 COMMISSIONER HOOD: I guess, for me -- and  
12 I had to refresh myself with the definition -- we're  
13 talking about the office space now -- is it subordinate  
14 to the main use, I guess is the question for me. How do  
15 we see that as being a commercial adjunct? And I think  
16 the main purpose of the use is hotel. I'm talking aloud.  
17 I'm talking myself through this. The main purpose of  
18 that is hotel use, and the office, is that subordinate to  
19 the main use? That's kind of where I am. I don't know.

20 CHAIRPERSON HEATH: But what about this --  
21 and I agree with you. The office is -- where I get hung  
22 up is that part of it was office for the hotel but part  
23 of it was for a separate real estate business.

24 COMMISSIONER HOOD: And I think under the -  
25 - but can't you have, in the definition -- well, even

1 that doesn't say it, real estate business -- but it talks  
2 about other uses, but then again, they're not subordinate  
3 to the hotel.

4 CHAIRPERSON HEATH: Mm-hmm. That's where  
5 I'm getting hung up on it.

6 COMMISSIONER HOOD: Well, I don't know,  
7 because I'm looking at our definition. We talk about  
8 floors. Okay. I'm with you. I see where we are.

9 CHAIRPERSON HEATH: So I think that's -- if  
10 we want to keep going through these points, that's one  
11 that we would have to come back, because if we do feel  
12 that that portion of office space does not fall under the  
13 categorization of commercial adjunct then we need to  
14 subtract that from the total commercial adjunct space  
15 that's being considered here.

16 COMMISSIONER HOOD: Madam Chair, I don't  
17 think -- for me, I don't need to go back to it. I think  
18 we need to subtract it. I don't know where everyone else  
19 is, but -- unless you all just want to come back to it.

20 CHAIRPERSON HEATH: I'm fine to not come  
21 back to it.

22 COMMISSIONER HOOD: Okay.

23 CHAIRPERSON HEATH: I would be in agreement  
24 that we should subtract that.

25 So, then, with the first floor, then, how

1 much commercial adjunct and function room space did the  
2 first floor previously have? The Appellant's claim the  
3 disputed rooms are guest rooms, and that area was about  
4 -- let's see -- that area totaled 2,652 square feet. The  
5 owner and DCRA contend that those rooms have been used as  
6 meeting rooms -- of that, 2,325 square feet was used for  
7 meeting rooms -- except for Room 126, which was 357  
8 square feet, which was used for a private massage  
9 contractor. So we'll first need to decide if the meeting  
10 rooms constitute function rooms, which -- another way to  
11 look at that question would be are they used primarily to  
12 accommodate gatherings of hotel guests and visitors such  
13 as meetings, banquets, and other events.

14 It looked to me to be pretty clear from the  
15 plans that those rooms couldn't be used as guest rooms.  
16 There were two that didn't have a wall between them, and  
17 so they clearly looked like they should be considered as  
18 meeting and function room space. There was another that  
19 didn't have a window, and so my feeling here is that  
20 those were not guest rooms, but that the total here, the  
21 2,652, should be constituted as function room space.

22 VICE-CHAIRPERSON HILL: I would agree.

23 CHAIRPERSON HEATH: And I sort of jumped  
24 ahead, but I would consider both the meeting rooms and  
25 the massage contractor's room, which was Room 126, to

1 both fall into the category of function room or  
2 commercial adjunct.

3 So I don't feel that there's anything in  
4 this location to subtract.

5 COMMISSIONER HOOD: I would go along with  
6 that. I was just stuck on the massage contractor. So I  
7 would go along with that.

8 CHAIRPERSON HEATH: I considered that to be  
9 -- I mean, it seems to me to be a use that's in support  
10 of what hotel guests would need during their stay, so, to  
11 me, it falls under that category.

12 COMMISSIONER HOOD: As well as the meeting  
13 rooms.

14 CHAIRPERSON HEATH: Right.

15 COMMISSIONER HOOD: Okay. All right. So  
16 on this one we just stay with the 2,652?

17 CHAIRPERSON HEATH: Mm-hmm.

18 COMMISSIONER HOOD: Okay. All right.

19 CHAIRPERSON HEATH: So then going to the  
20 next point, the post-renovation cellar, how much  
21 commercial adjunct and function room will the cellar have  
22 after renovation, the Appellants claim that an additional  
23 1,045 square feet in the cellar should be included in the  
24 calculation of post-renovation commercial adjunct  
25 function room space.

1 So the first question here is, does the  
2 cellar restroom, which makes up 115 square feet,  
3 constitute a commercial adjunct or function room space?  
4 The owner contends that those restrooms are a service  
5 area, because they'll be primarily for staff, and DCRA  
6 contends that it's a guest room area because it will be  
7 used by guests using the gym, and the hotel staff would  
8 use those as well. So how would we qualify the cellar  
9 restrooms, this 115 square feet? Do we believe that  
10 falls within commercial adjunct or function room space?

11 COMMISSIONER HOOD: I would think it would  
12 fall under commercial adjunct, because it also includes  
13 the gym -- correct?

14 CHAIRPERSON HEATH: It does. So that's  
15 another 930 square feet, which makes up the gym, and  
16 that's used exclusively by guests, so I would not exclude  
17 any of these from the commercial adjunct and function  
18 room space.

19 COMMISSIONER HOOD: Okay. I would agree,  
20 because it's like meeting space. The gym is incidental  
21 use of a hotel, so I would agree with that.

22 CHAIRPERSON HEATH: Okay.

23 VICE-CHAIRPERSON HILL: I would also agree.

24 CHAIRPERSON HEATH: Okay. All right.

25 Let's see where we are.

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1                   COMMISSIONER HOOD: Are we on C or E?  
2                   CHAIRPERSON HEATH: E. We're on E.  
3                   COMMISSIONER HOOD: You're taking us back.  
4                   VICE-CHAIRPERSON HILL: That's right. It  
5                   looked like a C from here.

6                   CHAIRPERSON HEATH: Right. It does. It's  
7                   really small.

8                   So if the total pre-renovation commercial  
9                   adjunction and function room space, minus any area under  
10                  the sections we've just gone through, is less than the  
11                  total post-construction, then the renovations would be in  
12                  violation, under Section 350.4(e) and 351.2(a), and we  
13                  would find that the ZA erred by approving this permit  
14                  application. So -- were you writing down the numbers?  
15                  Okay.

16                  COMMISSIONER HOOD: Did somebody do the  
17                  math?

18                  CHAIRPERSON HEATH: Yeah. So we had the  
19                  11,435. We did subtract -- and I don't know that it's  
20                  clear here how much office area we could subtract,  
21                  because the office area was both designated as office and  
22                  real estate business.

23                  [Off-the-record discussion.]

24                  CHAIRPERSON HEATH: Okay. So then we would  
25                  have to subtract the total for all of the office space,

1 which was 3,600-and -- I'm sorry -- 3,192 square feet,  
2 which results in a delta which, I believe, points to the  
3 fact that we believe, if we're all in agreement, we  
4 believe that there was an error in the calculation of the  
5 commercial adjunct and function room space, as determined  
6 by the ZA.

7                   So if we go to Point Number 2 -- Point  
8 Number 2 and Point Number 4 are both provisions that  
9 would not have any applicability to the ZA's  
10 determination. Those are both purpose provisions, which  
11 would be strictly for, right, the Zoning Commission or  
12 for this Board, and would then not be criteria under  
13 which we should evaluate whether or not the ZA erred. So  
14 I think those are easy for us to dismiss, as a part of  
15 this appeal.

16                   COMMISSIONER HOOD: Madam Chair, the last  
17 one, I guess, did the ZA err when it approved plans to  
18 move the point of visibility from the hotel's first-floor  
19 restaurant and meeting room?

20                   CHAIRPERSON HEATH: Right. And that's the  
21 one that I jumped to first, when I went out of order, so  
22 I'll just quickly state that, in looking at the plans  
23 that were submitted, both by the Applicant and the owner,  
24 it appeared clear to me that the visibility of the first-  
25 floor restaurant was increased by moving it, because in

1 its new location the restaurant expanded and there are  
2 windows along that first-floor wall, which speaks to the  
3 visibility of the hotel's restaurant from the first  
4 floor.

5 COMMISSIONER HOOD: I don't think I can add  
6 any more to that. I would agree with that, and I think  
7 due to our exercise and our calculation, I think our  
8 findings are a result that the ZA did err.

9 CHAIRPERSON HEATH: Okay.

10 COMMISSIONER HOOD: And I would agree with  
11 your last assumption of the visibility -- not your  
12 assumption but your last conclusion.

13 CHAIRPERSON HEATH: Right. My last  
14 statement. All right. So I think we've made it through  
15 -- we've made it through all four points here then, and  
16 then, do you want to make a motion, based on what you  
17 just stated? That sounded like you were close to making  
18 a motion.

19 COMMISSIONER HOOD: Okay. The last time I  
20 made a motion on an appeal I overturned the ZA, and I  
21 understand that that may not be the right language.  
22 Well, anyway, I rule that the Zoning Commission --

23 CHAIRPERSON HEATH: In support of the  
24 appeal.

25 COMMISSIONER HOOD: -- in support of the

1 appeal, the Zoning Commission -- well, BZA appeal 19027  
2 and that the ZA, that we do not agree with the ZA's  
3 findings. I don't want to necessarily say "overturn,"  
4 but we want to uphold the appeal.

5 CHAIRPERSON HEATH: Okay. All right. I  
6 will second. So any further discussion?

7 COMMISSIONER HOOD: Yes. Let me just ask  
8 Mr. Ferris. Is that motion satisfactory?

9 CHAIRPERSON HEATH: Just to be clear.

10 COMMISSIONER HOOD: Because I've done it  
11 three or four different ways.

12 MR. FERRIS: Good morning. Commissioner  
13 Hood, that motion is satisfactory.

14 COMMISSIONER HOOD: Okay. Thank you. And  
15 former Chairman Lloyd, if you're watching, that was  
16 satisfactory.

17 [Laughter.]

18 CHAIRPERSON HEATH: All right. He'll text  
19 you. Okay. So then the motion was made and seconded.  
20 All those in favor?

21 [Chorus of ayes.]

22 CHAIRPERSON HEATH: Anyone opposed?

23 [No audible response.]

24 CHAIRPERSON HEATH: The motion carries.

25 MR. MOY: Staff would record the vote as 3

1 to 0 to 2. This is on the motion of Mr. Anthony Hood, or  
2 Chairman Hood of the Zoning Commission. Seconding the  
3 motion, Madam Chairperson Heath. Also in support, Vice-  
4 Chair Hill. Member not participating, a seat vacant.  
5 Motion carries 3 to 0.

6 CHAIRPERSON HEATH: Okay. All right. Our  
7 next meeting case would be the remand, but we're going to  
8 shift that to be our last for the day, so we can move to  
9 our first hearing case.

10 **APPLICATION NO. 18095B**

11 MR. MOY: Yes. Thank you. The first  
12 application on the docket in the hearing session is  
13 Application No. 18095B -- B as in Bravo -- of Servants of  
14 the Lord and the Virgin of Matara. Madam Chair, this is  
15 a request for a special exception on the residence  
16 requirements under Section 215, to allow the continued  
17 operation of a clerical and religious group residence in  
18 the R-1-B District at premises 1326 Quincy Street, N.E.,  
19 Square 3968, Lot 17.

20 CHAIRPERSON HEATH: Okay. Thank you. Good  
21 morning. Can you please state your names for the record,  
22 and make sure your mic is on when you do. Push it. Make  
23 sure it's glowing green. There you go.

24 SISTER ADAMS: My name is Sister Elinor  
25 Adams. Sister Theotokos.

1                             SISTER AMBROZIO: My name is Sister Kathryn  
2 Ambrozio, Sister Immaculate.

3                             CHAIRPERSON HEATH: Thank you. All right.  
4 We're reviewed the record and all information submitted  
5 prior to this hearing, and as we understand, you are  
6 seeking to continue your operation. If you could clarify  
7 for me, you're seeking to continue your operation with  
8 96, a maximum of 96 individuals?

9                             SISTER ADAMS: Yes, that's correct.

10                          CHAIRPERSON HEATH: All right. With no  
11 time limit?

12                          SISTER ADAMS: Yes.

13                          CHAIRPERSON HEATH: Okay. The previously  
14 approved order was for a capacity of 96 but for a term of  
15 5 years, so if we approve this that would be the change.

16                          I don't see any issues with what's been  
17 presented, and there are a number of letters in support  
18 of the request. Does anybody on the Board have any  
19 questions of the Applicant or issues that you want to  
20 address.

21                          COMMISSIONER HOOD: Just the time limit. I  
22 think we said, originally they had, what, a 5-year time  
23 limit and now they're recommending no time limit?

24                          CHAIRPERSON HEATH: Right.

25                          COMMISSIONER HOOD: I would concur with

1 that.

2 CHAIRPERSON HEATH: Okay. All right. So  
3 then to the Applicant, you have the right to a full  
4 hearing. However, we believe that the information that's  
5 been submitted so far is complete and that we don't see  
6 any reason to go forward with a full hearing. So if it's  
7 okay with you, we'll turn to Office of Planning.

8 SISTER ADAMS: Yes. That's fine. Thank  
9 you.

10 MS. ROBERTS: Good morning, Ms. Chairman --  
11 Madam Chairman -- I'm sorry -- members of the BZA.

12 We also want to stand on the record. We  
13 think that the Application meets the requirement and also  
14 we support the no time limit and recommend approval with  
15 the conditions for the 96, the housing of 96 persons.  
16 Thank you.

17 CHAIRPERSON HEATH: Okay. Great. So  
18 that's your -- that is your condition, that it's for --

19 MS. ROBERTS: For a maximum of 96 persons  
20 at any one time.

21 CHAIRPERSON HEATH: Okay. All right.  
22 Thank you. Any questions of Office of Planning, Board?

23 [No audible response.]

24 CHAIRPERSON HEATH: Does the Applicant have  
25 any questions of Office of Planning.

1                   SISTER ADAMS: No, ma'am.

2                   CHAIRPERSON HEATH: Okay. Thanks. All  
3 right. Is there anyone here from ANC 5B, as a part of  
4 this case?

5                   [No audible response.]

6                   CHAIRPERSON HEATH: We do have -- actually,  
7 we don't have a letter on file from ANC 5B, but based on  
8 information from the Office of Planning we understand  
9 that they voted in support.

10                  SISTER ADAMS: Yes. There was a letter  
11 given December of 2014, and application in July, and then  
12 we were present September 30th, again, of 2015, where we  
13 were asked to update the ANC and the local community on  
14 the progress, and so at that time they didn't -- they  
15 weren't asked to supply another letter since their letter  
16 of support was in the Application.

17                  CHAIRPERSON HEATH: Okay. Did that  
18 original letter of support include the 96?

19                  SISTER ADAMS: Yes. It was according to  
20 the -- according to what was being asked.

21                  CHAIRPERSON HEATH: Okay. So consistent  
22 with the 96 and the no term limit?

23                  SISTER ADAMS: Yes.

24                  CHAIRPERSON HEATH: Okay. All right.

25                  Okay.

1                   Is there anyone from DDOT here on this  
2 case?

3                   [No audible response.]

4                   CHAIRPERSON HEATH: We do have a letter  
5 recommending no objection from DDOT, and as I mentioned,  
6 we have a number of letters in support from neighbors who  
7 support both the 96 individuals and the no term limit.

8                   Is there anyone here wishing to speak in  
9 support of this application? Anyone in support?

10                  [No audible response.]

11                  CHAIRPERSON HEATH: Anyone wishing to speak  
12 in opposition to this application?

13                  [No audible response.]

14                  CHAIRPERSON HEATH: Then I would close the  
15 record and make a motion that we approve this  
16 application.

17                  COMMISSIONER HOOD: I would second the  
18 motion, Madam Chair, just with the friendly amendment  
19 that we accept the one condition that Office of Planning  
20 recommended, which you already spoke to, the 96  
21 residents, persons.

22                  CHAIRPERSON HEATH: Okay. Did you have --

23                  COMMISSIONER HINKLE: Yeah, Madam Chair. I  
24 sat here on the original application and I'm pleased to  
25 see that there's such support and no opposition. We did

1 have concerns initially about the impacts to the  
2 neighborhood and obviously it's working well. So  
3 certainly I'd support this application without a term  
4 limit.

5 CHAIRPERSON HEATH: Okay. So then I will  
6 make a motion that we approve this application with the  
7 maximum capacity of 96 individuals and no term limit.

8 COMMISSIONER HOOD: Second.

9 CHAIRPERSON HEATH: All right. Any further  
10 discussion?

11 [No audible response.]

12 CHAIRPERSON HEATH: All in favor signify by  
13 saying "aye."

14 [Chorus of ayes.]

15 CHAIRPERSON HEATH: Anyone opposed?

16 [No audible response.]

17 CHAIRPERSON HEATH: So the motion carries.

18 Thank you.

19 MR. MOY: Staff would record the vote as 4  
20 to 0 to 1. This is on a motion of Chairperson Heath to  
21 approve the Application for the relief requested not to  
22 exceed a maximum of 96 persons and without a term limit.  
23 Seconding the motion, Mr. Hood. Also in support, Vice-  
24 Chair Hill and Mr. Hinkle. We have Board seat vacant.  
25 Motion carries, ma'am.

1 CHAIRPERSON HEATH: Okay. Summary order.

2 MR. MOY: Thank you.

3 CHAIRPERSON HEATH: Thanks. So our next  
4 application, 19090.

5 **APPLICATION NO. 19090**

6 MR. MOY: Applicants to Application No.  
7 19090. This is the Application of Basque Bar LLC. Madam  
8 Chair, this is a request which was advertised for a  
9 special exception from the Green Area Ratio requirements  
10 under Section 3405.1, to establish a restaurant in the C-  
11 2-A District at premises 300 Florida Avenue, N.W., Square  
12 519, Lot 73.

13 CHAIRPERSON HEATH: Okay. Would you please  
14 introduce yourselves for the record.

15 MR. SULLIVAN: Good morning, Madam Chair  
16 and members of the Board. My name is Marty Sullivan with  
17 the law firm of Sullivan & Barros, here on behalf of the  
18 Applicant.

19 MR. BLAKE: My name is Michael Blake,  
20 principal of bestudio architecture.

21 MR. BOLEN: Hello. My name is Brian Bolen.  
22 I'm the landscape architect on the project.

23 MR. FITZ: My name is Sam Fitz. I'm the  
24 owner of Basque Bar LLC.

25 CHAIRPERSON HEATH: Okay. Can you clarify

1 if the relief being requested is strictly the relief from  
2 3405.1?

3 MR. SULLIVAN: Thank you, Madam Chair, and  
4 that's actually why I'm here. I've recently been  
5 retained by the Applicant address comments that were  
6 received in permit processing regarding rooftop  
7 equipment.

8 The first order of business, I suppose,  
9 though, is I haven't been formally authorized to  
10 represent the Applicant, so if we can do so orally, we  
11 would ask that you do this at this time, or I can submit  
12 a letter after the hearing.

13 CHAIRPERSON HEATH: You could submit a  
14 letter.

15 MR. SULLIVAN: Okay. So I just wanted to  
16 touch on that relief first and then allow them to go into  
17 the GAR issue, if the Board pleases.

18 CHAIRPERSON HEATH: I don't know that we'll  
19 need to drill down on the GAR. We may have a few  
20 questions, but if you could just start with the roof  
21 structures, the additional relief.

22 MR. SULLIVAN: Sure. So I'll start talking  
23 and then the architect will interrupt me when he realizes  
24 that I don't know what I'm talking about.

25 CHAIRPERSON HEATH: Okay.

1                   MR. SULLIVAN: But my understanding is that  
2 there's three pieces of rooftop equipment and you need  
3 this equipment, because it's a restaurant to be a certain  
4 distance apart, and the way the structure is -- and these  
5 are the revised plans.

6                   COMMISSIONER HOOD: Madam Chair, may I  
7 interrupt? I do want them to touch a little bit on the  
8 GAR. We put that in place for a reason, and I realize  
9 the argument as far as costs and stuff like that. I saw  
10 that about the green roof. But if they can just touch on  
11 that.

12                  CHAIRPERSON HEATH: Okay. All right.

13                  COMMISSIONER HOOD: This is my first time  
14 hearing someone ask for that against the GAR, which we  
15 just put in place.

16                  CHAIRPERSON HEATH: Okay.

17                  MR. SULLIVAN: So there's these three  
18 pieces of equipment. If measured from the roof as viewed  
19 on three sides, it's under 4 feet in height above those  
20 roof or parapets, but regarding the rear of the property,  
21 the rear building line, due to drainage issues there is  
22 no parapet back there, and so they're over 4 feet above  
23 the edge of the roof at the rear -- not tremendously over  
24 -- and they're quite a distance from the rear as well.  
25 They all meet the one-to-one setback. It's just that

1 they're not exempt from the requirement to be within one  
2 enclosure.

3                   And so, as the architect is going to  
4 explain, to put them in one enclosure would actually be  
5 more obtrusive than having them up there in the first  
6 place, and also there is a need to have them a certain  
7 distance apart. So I'll turn it over to Mr. Blake, if  
8 the Board doesn't have any questions for me.

9                   MR. BLAKE: Yeah, that's correct. With  
10 kitchen equipment that needs to go on the roof there are  
11 certain requirements for the distance from the property  
12 line and distance from -- for grease-laden exhaust from  
13 intake air. So given the narrow lot, and then there's  
14 also this parapet roof along the side, which does  
15 effectively screen this property, getting all this in one  
16 enclosure would be difficult and the enclosure would end  
17 up being much larger than just the equipment itself.

18                   And I think the elevations in the packet  
19 that you have -- we're going to see if we can project  
20 this -- I think tell the story most clearly, and that's  
21 that from Florida Avenue and 3rd Street, on both sides,  
22 where we have this parapet roof, the equipment itself  
23 does not project more than 4 feet. The maximum that it  
24 projects above that is 1 foot, 8-3/4. And from the rear  
25 side where we do not have the parapet roof, that's the

1      alley side, that's probably about a 10-foot alley, and  
2      given the setback from that, the roof edge, it wouldn't  
3      be possible to see that equipment from the alley.

4                    CHAIRPERSON HEATH: All right. Did you  
5      have anything else relative to the roof structures you  
6      wanted to show, or are you trying to get something, a  
7      presentation up on the screen?

8                    MR. BLAKE: I was going to try to project  
9      the sheets that you have in front of you, just to walk  
10     through it, but if you don't have any questions I don't  
11     have anything else that I would like to add.

12                  CHAIRPERSON HEATH: Okay. Any questions,  
13     Board, on the roof structures? I'm okay with it.

14                  [No audible response.]

15                  CHAIRPERSON HEATH: Okay. So, then, if you  
16     could now shift to the issue of GAR.

17                  MR. BLAKE: I wanted to start by just  
18     briefly describing the project. This is an interior  
19     alterations project, and we're renovating a building that  
20     was built in 1900, and it's been vacant for 20-plus  
21     years. The site is -- it's a corner lot with a public  
22     space side yard adjacent, and it's a one-basement, two-  
23     story restaurant.

24                  The building itself has been used as a  
25     corner market, a church, an office, among other uses, and

1 I wanted to add that in 2012 this same property was  
2 permitted for a one-basement, two-story restaurant, which  
3 is what we are -- the proposed project.

4 The total assessed tax value in 2015 for  
5 the property was \$389,050, and because of that value,  
6 combined with a construction budget of around \$900,000,  
7 we are subject to the new Green Area Ratio requirements.

8 We have a lot size of 1,187 square feet,  
9 and the existing building takes up about 98 percent of  
10 that lot. As a result, the GAR is impractical to meet,  
11 and in the special exception that we are pursuing is for  
12 the GAR that's impractical as a result of equivalent  
13 sustainable measures, and I just wanted to make the point  
14 that reviving this building is what I would argue to be  
15 one of the most sustainable efforts that we can make by  
16 preserving the materials and the embodied energy within  
17 the building. You know, we won't disrupt the site or any  
18 other site with any construction. We'll save hauling  
19 away demolition debris, and so that's the basis of our  
20 request for the exception.

21 And we do understand the importance of the  
22 GAR and we engaged a landscape architect to join the  
23 design team, to help us try to integrate some of the  
24 landscape elements and meet the intent and the spirit of  
25 the exception -- I'm sorry, of the requirement. We have

1 come up with a design that is going to incorporate a  
2 trellis in the back with growing, cultivating vines, and  
3 we've reached out to solar panel companies to look at  
4 that. There are some letters in the supplemental  
5 documents stating that because of the roof area, the  
6 small roof area, it's just not practical for the  
7 building. And we also looked at doing a green roof but  
8 with the existing roof structure it's not practical for a  
9 green roof to survive.

10 CHAIRPERSON HEATH: Okay. Have you also  
11 looked at purchasing green energy?

12 MR. BLAKE: We did, yes, and that's  
13 something that we can pursue. We talked to the same  
14 companies that do the solar panels on the roofs, and they  
15 need to see the energy usage to make sure it's a good fit  
16 for them, but that's something that we could pursue.

17 CHAIRPERSON HEATH: Okay.

18 COMMISSIONER HOOD: You did mention that  
19 you did have some vegetation in the back -- you said on  
20 the trellis?

21 MR. BLAKE: Yes.

22 COMMISSIONER HOOD: So, basically, you're  
23 not necessarily asking for a full waiver. You have tried  
24 to put some sustainability effort towards this.

25 MR. BLAKE: Correct. Yes. Unfortunately,

1 with the way the GAR is written, vertical surfaces, green  
2 vertical surfaces, you only get to count the linear  
3 footage, as opposed to the vertical footage, of how the  
4 trellis is going to be. So it doesn't help us much. We  
5 need a 0.3 GAR. I think that -- Brian, do you know the  
6 number off hand?

7 MR. BOLEN: Yes. Currently we've maximized  
8 planting as much area on the lot as possible, but it only  
9 allows us to get a 0.05 of a total score.

10 COMMISSIONER HOOD: Okay.

11 VICE-CHAIRPERSON HILL: And what did you  
12 need to get to?

13 BOLEN: 0.3. The vegetation itself will  
14 extend beyond the footprint of the available planting  
15 area though, through the trellis, but as mentioned  
16 before, it doesn't get counted as additional points for  
17 the score.

18 MR. FITZ: If I could just clarify that  
19 quickly, we're showing a plan that includes a lot of  
20 public space. Anything that we do on public space does  
21 not contribute to our GAR, so in the effort of making our  
22 strongest effort, we are hoping to develop a space that  
23 will give us no points for GAR.

24 CHAIRPERSON HEATH: We saw that is a part  
25 of your submission.

1                   MR. FITZ: And we do achieve a 0.3, if you  
2 consider the public space with our property.

3                   CHAIRPERSON HEATH: Okay. All right.  
4 Board, any other questions of the Applicant?

5                   [No audible response.]

6                   CHAIRPERSON HEATH: All right. So I think  
7 you've satisfied the questions that we have, and so I  
8 don't know that we need to hear anything further from  
9 your presentation, and we can turn to Office of Planning  
10 if you're fine for us to proceed.

11                  MR. BLAKE: Yes.

12                  CHAIRPERSON HEATH: Okay. Thanks.

13                  MS. ELLIOTT: Good morning, Madam Chair.

14 I'm sorry. This is taking some getting used to for us, I  
15 think. It needs an adjustment.

16 I would like to point out really quick,  
17 since Chairperson Hood and I have a little bit of rapport  
18 going back and forth about names, I think you have the  
19 wrong nameplate. It says you're Robert Miller, and he  
20 may not appreciate you posing --

21                  COMMISSIONER HOOD: No, I'm actually sorry  
22 that John came out here and changed it, because if  
23 anybody doesn't know me, if I do something wrong they can  
24 blame it on Rob.

25                  [Laughter.]

1 MS. ELLIOTT: I foiled your plan. Sorry.

2 The Office of Planning is recommending  
3 approval of the request for GAR relief. As Board member  
4 Hood noted, this is the first special exception that we  
5 have received regarding GAR, and it's been in effect  
6 since 2013. We draw a pretty hard line when we talk to  
7 people about it, and say, "There must be another way. Go  
8 out there and keep trying." So this is the first case  
9 where we've across and we think that there are some  
10 legitimate reasons as to why the Applicant cannot comply  
11 with GAR.

12 First of all, the property is really -- the  
13 existing structure covers 98 percent of the lot, and so  
14 that really doesn't leave much space for landscaping. I  
15 think that they have done what they can with the vertical  
16 landscape wall around the trash enclosure, and they did  
17 make an effort to reach out to solar companies and then  
18 also regarding the green roof, and I think at one time we  
19 were discussing a green roof and possibly, you know, one  
20 could be constructed, but the company couldn't guarantee  
21 that it would survive. So it's quite an investment to  
22 not be able to have that kind of guarantee. We did meet  
23 with DOEE, initially, and those were their two  
24 suggestions. They said vertical landscape wall and solar  
25 panels, and I think that the Applicant's demonstrated

1 that those aren't going to work.

2 OP wanted to make it very clear that we  
3 don't want to set a precedent for applicants including  
4 public space in their GAR relief, or in their Green Area  
5 Ratio, but we certainly wanted to acknowledge that in  
6 this case they are going above and beyond in enhancing  
7 that area. It's not just going to be an outdoor seating  
8 area but they're also going to plant apple trees, and  
9 those apples will be harvested and used in the  
10 restaurant. So we think that we're getting something out  
11 of this too, and they're certainly increasing the  
12 environmental performance of the public space as well.

13 So for those reasons we are supporting the  
14 special exception relief for the GAR.

15 In regards to the roof structures, we see  
16 this as minimal relief. They're not much taller than 4  
17 feet. I think one of the drawings says 4 feet 11 inches,  
18 but I don't know if that's -- yeah, I might be looking at  
19 the wrong measurement. But regardless, it's not much  
20 relief, and certainly enclosing those structures is going  
21 to create a larger structure that could potentially be  
22 visible from Florida Avenue, and as well as 3rd Street,  
23 and actually having the mechanical equipment separate  
24 decreases the visibility. So I think that this is a  
25 relief that we would be willing to support as well.

1                   But if you have any questions, I'm happy to  
2 answer them.

3                   CHAIRPERSON HEATH: All right. Thank you.  
4 Board, any questions of Office of Planning?

5                   COMMISSIONER HOOD: No, I'm just going to  
6 say, Ms. Elliott, I really appreciate you all considering  
7 the GAR and your comments, because I didn't know this was  
8 the first time. I just noticed it's the first time I've  
9 seen it. But I do appreciate your comments. Thank you.

10                  CHAIRPERSON HEATH: Okay. Applicant, any  
11 questions of Office of Planning?

12                  MR. BLAKE: No.

13                  CHAIRPERSON HEATH: Okay. Is there anyone  
14 here from ANC 5E? Are you here to speak on behalf of  
15 this application?

16                  ATTENDEE: [Inaudible comment.]

17                  CHAIRPERSON HEATH: Oh, no. No questions.

18                  Are you from ANC 5E?

19                  ATTENDEE: [Inaudible comment.]

20                  CHAIRPERSON HEATH: Okay. So it looks like  
21 there is no one here from ANC 5C.

22                  MR. FITZ: I believe that we submitted a  
23 letter of support from them.

24                  CHAIRPERSON HEATH: We do -- I believe we  
25 do have a letter indicating that they voted to support,

1 unanimously, this request.

2 Is there anybody here from DDOT on this  
3 application?

4 [No audible response.]

5 CHAIRPERSON HEATH: DDOT indicated that  
6 they had no objection but they wanted us to adopt  
7 conditions which are all about public space, and I would  
8 not recommend that we adopt those conditions. But has  
9 the Applicant done anything to modify your plans based on  
10 DDOT's comments?

11 MR. BLAKE: Yes. We are working with them  
12 and we're proposing another solution that's using a  
13 platform lift instead of the ramp that's shown on some of  
14 the drawings. This is being permitted separately from  
15 the interior alterations project that the GAR requirement  
16 pertains to, but we are working with them to stay within  
17 the 10-foot offset from the face of the building, to get  
18 our accessible route into the building.

19 CHAIRPERSON HEATH: Okay. All right. So  
20 since you indicated that they're being permitted  
21 separately, and that site, the public space is not a part  
22 of this application, we won't delay a decision for the  
23 reason of waiting for the revised plans to be submitted,  
24 unless anybody -- does the Board have any objection to  
25 that?

1 [No audible response.]

2 CHAIRPERSON HEATH: Okay. All right. So  
3 we'll proceed. Is there anybody here wishing to speak in  
4 support of this application? You can come forward.

5 Do you have your witness cards? You'll  
6 need to fill those out. You can do it after you speak,  
7 but you'll need to fill out two witness cards and give  
8 them to the court reporter.

9 Please state your name.

10 MR. TURNER: My name is Daniel Turner. I'm  
11 an owner on the block, the same block as the restaurant  
12 that's coming in.

13 I don't have a lot of knowledge about this  
14 kind of thing but I've been on the block for 10 years.  
15 That place has been empty for 10 years. I've been sad  
16 for 10 years. I would like to be happy. We would really  
17 like to have a restaurant there, or -- this one sounds  
18 like a really excellent restaurant. We're very excited  
19 about it. All the neighbors have been talking about it.  
20 We're all in favor, as far as I can tell. I haven't  
21 talked to anybody who is nervous or unhappy, and it seems  
22 like they'll be a great neighbor and a great addition.

23 CHAIRPERSON HEATH: Okay.

24 MR. TURNER: That's all I wanted to say.

25 CHAIRPERSON HEATH: Thank you.

1 MR. TURNER: Thank you.

2 CHAIRPERSON HEATH: Anyone else wishing to  
3 speak in support?

4 [No audible response.]

5 CHAIRPERSON HEATH: Anyone wishing to speak  
6 in opposition? Okay. You can come forward.

7 You'll need to do the same thing that I  
8 requested of him. Fill out two witness cards, get them  
9 to the court reporter, and you can do that right after if  
10 you haven't given those to the court reporter already.

11 Just make sure your mic is on.

12 ATTENDEE: I'm not necessarily speaking in  
13 opposition, but the notification I received, my family  
14 received was that it was a bar, and my only question is,  
15 yes, it has been empty. We have been there for many,  
16 many years, and we love seeing a new development coming  
17 in. But as people who actually live in the neighborhood,  
18 like, I just felt that how are the noise issues? There's  
19 a lot of, like, you know, so many bars in D.C. and it's  
20 getting kind of saturated, and I wanted to see  
21 development but I saw bar, and there was nothing there  
22 about a restaurant in terms of identification we  
23 received.

24 So is it a bar, is it a restaurant, or  
25 both, and, you know, like the parking, the drunkenness,

1 the loud clubbing -- like how are the neighbors being  
2 considered, because, I mean, I get you've been sad for 10  
3 years, but, you know, I just want to know what is the  
4 alternative, you know, respectfully so.

5 CHAIRPERSON HEATH: Okay.

6 ATTENDEE: This is not about dissent. It's  
7 just a question, you know.

8 CHAIRPERSON HEATH: Sure. The Applicant --  
9 do you want to respond to that question? Okay.

10 MR. FITZ: First off, I appreciate your  
11 concerns as a member of the community. It was about 9  
12 months ago that we applied for our liquor license through  
13 the community. I personally have attended seven Bates  
14 Civic Area Association meetings over that time. Our  
15 liquor license went 100 percent uncontested at both Bates  
16 and our ANC meetings, where concerns like this are most  
17 properly voice, I feel. We are both certainly a  
18 restaurant. The name of our LLC is Basque Bar LLC, but  
19 that's not because we're a bar first and foremost. We do  
20 have two chefs. We've cooked for the neighborhood,  
21 actually, on our lawn, with our chef, and we've now done  
22 three dinners across the city, showcasing some amazing  
23 food.

24 So our commitment, most certainly, is to be  
25 a restaurant, and we also negotiated with the ANC to have

1 our patio close at midnight, specifically because of the  
2 concerns that you're raising.

3 ATTENDEE: Okay. Well, thank you. I just  
4 -- you know, because it's so close. I look at the  
5 building across the street almost at a 90-degree angle,  
6 so it's going to be coming directly, and, believe me, I  
7 love the whole thing about development -- I get that --  
8 but at the same time when you actually live there, you  
9 know, it's different. It's about like having a Friday  
10 night and disappearing.

11 CHAIRPERSON HEATH: Sure. Thank you.

12 ATTENDEE: Thank you.

13 COMMISSIONER HOOD: Madam Chair, can I ask  
14 the Applicant? I think the young lady brings up a good  
15 point. Did you all enter into a voluntary agreement when  
16 you did your -- this is for the Applicant. Did you all  
17 enter into a voluntary agreement when you did your liquor  
18 license?

19 MR. FITZ: We did not have to sign a  
20 voluntary agreement because we consented to all the  
21 requests. The main request from the ANC was that we  
22 restrict our patio hours to midnight, which we amended  
23 ourselves on our liquor license, and they did not ask for  
24 any signed agreement beyond that.

25 COMMISSIONER HOOD: Okay. And the

1 chairperson is 5E is --

2 MR. FITZ: Teri Quinn.

3 COMMISSIONER HOOD: Quinn. Okay. Thank  
4 you.

5 MR. FITZ: Yes, sir.

6 COMMISSIONER HOOD: Thank you, Madam Chair.

7 CHAIRPERSON HEATH: All right. Anyone else  
8 wishing to speak in opposition?

9 [No audible response.]

10 CHAIRPERSON HEATH: Okay. One thing that I  
11 didn't but I will now, we do have several letters in  
12 support from neighbors and from the Bates Area Civic  
13 Association, all supporting this application.

14 Normally at this point we'd turn back to  
15 the Applicant for any rebuttal before closing, but I  
16 don't know that that's necessary in this case.

17 MR. SULLIVAN: I just realized, maybe I  
18 didn't actually say exactly the relief. It's special  
19 exception under 411.11. I just wanted to say that for  
20 the record.

21 CHAIRPERSON HEATH: Okay.

22 MR. SULLIVAN: For the rooftop.

23 CHAIRPERSON HEATH: And we'll need a  
24 revised self-certification reflecting the new relief.

25 MR. SULLIVAN: Okay.

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1 CHAIRPERSON HEATH: And I'm sure you're  
2 aware of this but there will be an additional filing fee  
3 associated with this as well.

4 MR. FITZ: Is that saying that can be taken  
5 care of all together?

6 CHAIRPERSON HEATH: Right. If you go to  
7 the Zoning Office right after this you can take care of  
8 that.

9 All right. Then we will close this and  
10 move to deliberation if the Board is ready. Okay.

11 Then I would move that we accept or approve  
12 the special exception application for both the Green Area  
13 Ratio relief and the roof structure relief, as amended by  
14 the Applicant.

15 VICE-CHAIRPERSON HILL: I'll second that.

16 CHAIRPERSON HEATH: It's been moved and  
17 seconded. Any further discussion?

18 [No audible response.]

19 CHAIRPERSON HEATH: All those in favor?

20 [Chorus of ayes.]

21 CHAIRPERSON HEATH: Anyone opposed?

22 [No audible response.]

23 CHAIRPERSON HEATH: The motion carries.

24 Thank you.

25 MR. MOY: Staff would record the vote as 4

1 to 0 to 1. It's on the motion of Chairperson Heath to  
2 approve the amended application for special exception  
3 relief under 3405.1 and 411.11. Seconding the motion,  
4 Vice-Chairperson Hill. Also in support, Mr. Hill, Mr.  
5 Hinkle. We have a Board seat vacation. Motion carries.

6 CHAIRPERSON HEATH: Summary order.

7 MR. MOY: Thank you.

8 CHAIRPERSON HEATH: So we'll call the next  
9 application, Mr. Moy, 19093.

10 **APPLICATION NO. 19093**

11 MR. MOY: Yes. This would be Application  
12 No. 19093 of Warder LLC. Madam Chair, this was captioned  
13 and advertised for a special exception from the use  
14 requirements under Section 336 to renovate and convert a  
15 vacant one-family, semi-detached building into a three-  
16 unit apartment house in the R-4 District at premises 2708  
17 Sherman Avenue, N.W., Square 2858, Lot 53. And I believe  
18 there are revised plans under Exhibit 10C.

19 CHAIRPERSON HEATH: All right. Would you  
20 please introduce yourselves?

21 MS. MOLDENHAUER: Good morning, Chairman  
22 Heath and members of the Board. My name is Merideth  
23 Moldenhauer on behalf of the Applicant.

24 MR. HEMINGER: Good morning. My name is  
25 Trent Heminger and I'm an investor with the project as

1 well as a real estate agent.

2 CHAIRPERSON HEATH: Okay. All right.

3 Board, does anybody have any questions of this  
4 application? Anything you want to drill down on?

5 [No audible response.]

6 CHAIRPERSON HEATH: All right. I believe  
7 the information that you've submitted is sufficient for  
8 us to proceed. We don't have any questions, and nothing  
9 that we'd like to hear presented.

10 MS. MOLDENHAUER: We will rest on the  
11 record. Thank you.

12 CHAIRPERSON HEATH: All right. Then we'll  
13 turn to Office of Planning.

14 MS. THOMAS: Good morning, Madam Chair, and  
15 members of the Board. The Office of Planning is  
16 recommending a special exception relief request to  
17 convert the single-family dwelling into a three-unit  
18 apartment building, as having satisfied the criteria for  
19 that under Section 336. We also requested the Applicant  
20 to include variance relief from the open court, which was  
21 created through the addition. So we also support that  
22 relief and we subject the grant of this relief to the  
23 conditions noted in our report, including putting brick  
24 on the façade windows and the restoration of the porch  
25 that was on the building before.

1                   And I'll rest on the record of our report.

2   Thank you.

3                   CHAIRPERSON HEATH: Okay. So has the  
4   Applicant revised your request to include 406?

5                   MS. MOLDENHAUER: Yes. We did in our pre-  
6   hearing statement.

7                   CHAIRPERSON HEATH: Okay.

8                   MS. THOMAS: Madam Chair, and just one more  
9   thing. The dimension plans, we asked that they submit  
10   dimension plans because the plans were sort of, not very  
11   legible for the record, and we wanted to make sure that  
12   those plans, whatever is approved here today, that the  
13   plans should be submitted to that effect, with the  
14   corrected dimensions.

15                  CHAIRPERSON HEATH: The correct dimensions  
16   or just dimension, period?

17                  MS. THOMAS: Whatever -- dimensions,  
18   period.

19                  CHAIRPERSON HEATH: Okay.

20                  MS. THOMAS: Including for the court area,  
21   which was very indistinguishable in what was presented.

22                  MS. MOLDENHAUER: The plans do have  
23   dimensions on them. I think the challenge was when we  
24   uploaded them there was -- there was a challenge in  
25   regards to reading the dimensions and the clarity of

1 those.

2 CHAIRPERSON HEATH: Yeah, the dimensions on  
3 the plans that are under Exhibit 10C, I believe it is?

4 MS. THOMAS: So, for instance, if we said  
5 the court was 6.75 feet, we wanted to make sure that the  
6 record reflected in the dimension plans, reflected it was  
7 6.75 feet, or the Applicant could correct that at this  
8 time.

9 CHAIRPERSON HEATH: Do you have -- I don't  
10 see a dimension there. Oh yeah, I see it. Okay. Yeah,  
11 it is there.

12 MS. MOLDENHAUER: We actually have a  
13 revised set of plans that we can provide to Cliff Moy  
14 that can be part of the record, that may clarify some of  
15 the challenges both in reading and making sure that it's  
16 accurate.

17 CHAIRPERSON HEATH: Okay. All right. I  
18 see it here on Sheet A101, but it is hard to read, so  
19 thank you.

20 COMMISSIONER HOOD: Can I ask a question?  
21 When was this application filed? What was the date of  
22 this application? When was it filed?

23 MS. MOLDENHAUER: The Application was filed  
24 on July 21st, 2015.

25 CHAIRPERSON HEATH: We don't have a pre-

1 hearing statement. We have your original statement from  
2 July 21st, and that is the -- in that statement it's  
3 strictly the special exception that's referenced.

4                   Also, how was this advertised? Was it  
5 advertised as a special exception?

6                   MS. MOLDENHAUER: It was advertised as  
7 originally provided.

8                   CHAIRPERSON HEATH: Special exception?

9                   MS. MOLDENHAUER: Special exception. But  
10 we did present to the ANC both the special exception and  
11 the variance relief.

12                  CHAIRPERSON HEATH: So this would need to  
13 be reposted to reflect the variance relief.

14                  MS. MOLDENHAUER: Yes.

15                  CHAIRPERSON HEATH: Okay. All right.  
16 Yeah, and we -- let's see. We do have a letter from the  
17 ANC 1B, but they -- I'm looking back at it, because --  
18 yeah, they only talk about the special exception. So,  
19 yeah, we don't have anything on file, either your pre-  
20 hearing statement, anything from the ANC reflecting the  
21 variance relief, and as you noted, the Affidavit of  
22 Posting reflects that the relief was just for special  
23 exception. So we're going to need to continue this in  
24 order to give you time to post with the amended relief  
25 and to get your additional information in to the record.

1                   MS. MOLDENHAUER: Can we continue this,  
2 then, for 15 days from today, or 2 weeks from day, and  
3 come back on the 10th? Would that be sufficient time to  
4 post and obtain a supplemental letter from the ANC?

5                   CHAIRPERSON HEATH: What does the 10th look  
6 like?

7                   MR. MOY: Madam Chair, typically it's 40  
8 days, but the Applicant is claiming that they've already  
9 shared the amendment to include the variance, so I'm  
10 assuming that this is on the decision on the Board as to  
11 later or sooner, in terms of number of days. It's all  
12 about public notice, but it appears that they have moved  
13 in that direction already.

14                  CHAIRPERSON HEATH: Okay.

15                  MS. MOLDENHAUER: I mean, we did provide --  
16 I don't know why the pre-hearing statement isn't being  
17 published but we did provide a letter both to the Office  
18 of Zoning and the ANC, supplementing our pre-hearing  
19 statement which included -- and we can provide that.  
20 That was on October 14th, indicating that we were  
21 requesting the revised -- but we can clarify this and if  
22 we could be on the November 10th, that would be  
23 fantastic. Thank you.

24                  COMMISSIONER HOOD: Can I ask this? What's  
25 on the placard? What was on the placard? Was it a new

1 placard?

2 MS. MOLDENHAUER: No. The placard just had  
3 the special exception relief, but we did inform the ANC  
4 of both areas of relief. We e-mailed the ANC a pre-  
5 hearing statement which identified both areas of relief  
6 on October 14th.

7 COMMISSIONER HOOD: So you're talking 15  
8 days, but, you know, when you go from a variance --  
9 because usually when you're going from a variance, you're  
10 going to a lesser -- a regulation to a special exception.  
11 When you're going special exception to a variance, that's  
12 a little more tougher. So what I would suggest -- my  
13 suggestion is that they repost. Now, you don't have to  
14 repost for the whole 40 days, but at least make sure that  
15 that variance is not just with the ANC but out there for  
16 those who don't attend the ANC meetings.

17 MS. MOLDENHAUER: I would recommend that we  
18 would post it, literally this afternoon, and then  
19 supplement the language both to identify the special  
20 exception and the variance on the property, on the post,  
21 providing the public that information, and then be able  
22 to come back and ensure that the pre-hearing statement  
23 that we e-mailed, make sure that that's actually part of  
24 the record as well, and speak with the ANC.

25 CHAIRPERSON HEATH: Okay.

1                   COMMISSIONER HOOD: And then the ANC's  
2 probably going to -- do you know when they meet? All  
3 those things become factors then. They probably meet on  
4 the 9th or the 10th.

5                   MS. MOLDENHAUER: I don't, but, I mean, I  
6 would ask the Board to provide us with deference in that  
7 regard, and whether we -- we have a letter that would  
8 receive great weight for the special exception relief,  
9 which I believe is the larger issue for the community.  
10 The court relief, obviously, while a variance -- we  
11 worked with the community on a lot of different issues  
12 here. We conceded to different materials. We conceded  
13 to windows.

14                  So we have had extensive discussion with  
15 the community about even this core area in regards to  
16 materials being brick, in regards to having windows on  
17 that area. So the community did engage us in a dialog  
18 about that specific issue. So I would hope that we might  
19 be able to meet with the community or even get a letter  
20 that may not get great weight but may inform this Board  
21 that the community was fully aware of that area of relief  
22 as well.

23                  CHAIRPERSON HEATH: Okay.

24                  COMMISSIONER HOOD: Another Zoning  
25 Commission member can take this case, so it doesn't have

1 to be around my schedule, because I don't know when I  
2 come back, but I'm sure that won't meet that time frame.

3 CHAIRPERSON HEATH: Okay. All right. What  
4 does our day look like on the 10th? Pretty jam packed?

5 MR. MOY: The 10th is not a good day for  
6 the Board. We have a number of foreign mission case as  
7 well. Staff would not recommend that, but the Board can  
8 do whatever they want.

9 CHAIRPERSON HEATH: Right. The Board can  
10 punish themselves. What does the 17th look like?

11 MR. MOY: November 17th?

12 CHAIRPERSON HEATH: Right.

13 MR. MOY: Actually, that would be -- that's  
14 another bad day, Madam Chair.

15 CHAIRPERSON HEATH: We don't have any good  
16 days coming up.

17 MR. MOY: The first opportunity probably  
18 would be, actually, November 24th, at the earliest.

19 CHAIRPERSON HEATH: Okay. All right. So -  
20 - you're not going to be here either way. Okay. So the  
21 Vice-Chair is fine with the 10th as well.

22 VICE-CHAIRPERSON HILL: I'm fine with the  
23 10th.

24 CHAIRPERSON HEATH: Okay. We'll stick with  
25 the 10th.

1                   MR. MOY: Madam Chair, is this the 10th for  
2 public hearing or for decision-making?

3                   CHAIRPERSON HEATH: I think we should still  
4 keep it as a hearing.

5                   MR. MOY: All right. Sounds good.

6                   CHAIRPERSON HEATH: All right. So November  
7 10th. Okay. Thank you.

8                   MS. MOLDENHAUER: Thank you.

9                   CHAIRPERSON HEATH: On Case 19093, the  
10 court reporter doesn't have your witness cards, if you  
11 could get those to the court reporter. Thank you.

12                  So then, Mr. Moy, you can call our next  
13 case.

14                  **APPLICATION NO. 19094**

15                  MR. MOY: Applicants to Application No.  
16 19094. This is the Application of 28th Street Partners  
17 LLC. Madam Chair, this was advertised and captioned for  
18 special exception relief from the use requirements under  
19 336, to convert a residential building into a three-unit  
20 apartment house in the R-4 District at premises 64 W  
21 Street, N.W., Square 3118, Lot 52.

22                  CHAIRPERSON HEATH: Would you please  
23 introduce yourselves?

24                  MR. PISHVAEIAN: Good morning. My name is  
25 Mo Pishvaeian.

1 CHAIRPERSON HEATH: Can you repeat that?

2 MR. PISHVAEIAN: My name is Mo Pishvaeian.

3 CHAIRPERSON HEATH: And you are --

4 MR. PISHVAEIAN: I'm the developer, the  
5 owner of 64 W Street.

6 CHAIRPERSON HEATH: Okay.

7 MS. MOLDENHAUER: Good morning. My name is  
8 Merideth Moldenhauer from the law firm of Griffin,  
9 Murphy, Moldenhauer & Wiggins, on behalf of the  
10 Applicant.

11 CHAIRPERSON HEATH: Okay. I don't know  
12 where the Board stands on this, but in my review of the  
13 plans, and I'm looking at what you've stated as what  
14 you're trying to do here, I see a lot of inconsistencies,  
15 and so I think you're going to need to clarify, at least  
16 for me, what really are the final plans. I've seen a  
17 number of iterations and looks like even in the last  
18 iteration of plans you were still showing a spiral stair  
19 that was going up from the cellar to the second floor.  
20 And then I'd also like to understand what's going on with  
21 the porch and roof, whether it's being maintained or  
22 whether it's not.

23 Any other questions for the Board, or  
24 anything else you want to drill down on?

25 [No audible response.]

1 MS. MOLDENHAUER: Good morning, Board  
2 members. We did supplement the record. We had worked  
3 with the ANC extensively and the Civic Association. We  
4 apologize for some of the inconsistencies in the record.  
5 The architect had a personal issue and so we were trying  
6 to obtain revised documentation. But the revised plans  
7 do show the existing, and maintaining the porch. The  
8 spiral stairs will be at the priority but they only go --  
9 if you look at the plans -- to the second floor. They  
10 don't now continue up to the roof deck, and the roof deck  
11 has been removed.

12 CHAIRPERSON HEATH: Okay.

13 MS. MOLDENHAUER: I believe that addresses  
14 the questions that requested.

15 VICE-CHAIRPERSON HILL: But those stairs do  
16 go down all the way to the ground level -- correct? The  
17 spiral stairs?

18 MS. MOLDENHAUER: Yes. They are on the  
19 rear of the property but they only extend to the -- so if  
20 you look at the image here, they originally went all the  
21 way to the top for a roof deck access, but they were  
22 removed. They stop now at the second floor and they do  
23 not continue up to the rooftop, so those have been  
24 shortened so that you no longer have rooftop access.

25 CHAIRPERSON HEATH: Okay. So in your

1 condition that you proposed, you indicate that the stair  
2 will no longer lead from the ground level to the roof,  
3 meaning that it will only go to the second floor.

4 MS. MOLDENHAUER: Correct. It will only go  
5 to the private patios off of the rear.

6 CHAIRPERSON HEATH: Okay. And in your  
7 conversations with the Civic Association, the ANC, the  
8 neighbors, they were fine with this, as a concern of  
9 privacy? They were fine with this and were not concerned  
10 about privacy, based on the balconies in the back and the  
11 stair to the second floor?

12 MS. MOLDENHAUER: The Civic Association had  
13 a large degree of questions and had a lot of concerns  
14 with conversions that have occurred in their community,  
15 so a lot of it was simply walking them through the  
16 process, walking through other projects that the  
17 Applicant had provided. We provided them with multiple  
18 different concessions that affected the interior  
19 insulation, which would be abutting another property  
20 owner's wall. And so we felt as though these were a  
21 mutual compromise that everyone was happy with, that the  
22 Civic Association -- the Civic Association has a  
23 situation where they actually -- they all vote, and  
24 members who are present actually vote for the project,  
25 and they all voted in favor. There were no opposing

1 votes at that Civic Association, and the ANC also voted  
2 unanimously to support the case.

3 CHAIRPERSON HEATH: Okay. Do you have a  
4 question?

5 VICE-CHAIRPERSON HILL: No. I was just  
6 going to say, we don't have anything from the ANC, or we  
7 do?

8 CHAIRPERSON HEATH: We don't. Yeah, we  
9 only have the statement from the Applicant that the ANC  
10 voted unanimously to support this, and that the  
11 Bloomingdale Civic Association, according to the  
12 Applicant, voted to support this.

13 MS. MOLDENHAUER: The ANC just met on the  
14 20th and we've been following up with them via e-mail,  
15 but we have not received anything yet. But I was present  
16 at the meeting in which they voted unanimously.

17 CHAIRPERSON HEATH: Okay. All right.  
18 Based on what I could see, it looked like the community's  
19 concerns initially were that this was going to be a pop-  
20 up, and when they found that it wasn't, a lot of their  
21 concerns were alleviated.

22 Any other questions for the Applicant?

23 [No audible response.]

24 CHAIRPERSON HEATH: All right. Okay. Then  
25 if you're find to proceed without going through a full

1 hearing --

2 MS. MOLDENHAUER: I'll rest on the record.

3 If there's any comments from OP or anybody in the  
4 audience I'll then reserve any time to rebut or to  
5 address those questions.

6 CHAIRPERSON HEATH: Okay. That works. So  
7 we'll turn to Office of Planning.

8 MS. VITALE: Good morning, Madam Chair and  
9 members of the Board. As you're aware, the Applicant has  
10 submitted a late filing, which the Office of Planning has  
11 reviewed. I do think it would be helpful to have the  
12 ANC's official submittal in the file, as well as final  
13 plans for this proposal. However, we do believe that  
14 with this additional information OP could support the  
15 requested relief. However, we believe that the final  
16 order should include the conditions as agreed to with the  
17 ANC, as well as the condition that OP recommended in its  
18 report, that final plans be submitted to the record for  
19 review when this project goes potentially to DCRA for  
20 permitting.

21 We do think it is important that the front  
22 façade be maintained as is. It does appear, in the  
23 supplemental filing, that there are still some  
24 modifications to the porch, particularly the railing.  
25 It's showing a horizontal railing in the supplemental

1 filing and if you look at the photo of the porch as it  
2 exists today it's got, you know, vertical posts on the  
3 front railing. So we'd want to make sure that the porch  
4 was being retained, as well as the roof dormer.

5 And then we would also support elimination  
6 of the roof deck, as well. I guess there's some question  
7 as to whether or not the ANC and the Civic Association  
8 were looking for removal of the spiral stair in its  
9 entirety or elimination of the stair leading to the roof  
10 deck.

11 So I think those would be our outstanding  
12 issues, would really be to clarify those points about the  
13 porch and the stair at the rear.

14 CHAIRPERSON HEATH: Okay.

15 MS. VITALE: That concludes my report. I  
16 can answer any questions. Thanks.

17 CHAIRPERSON HEATH: Thank you. Does the  
18 Board have any other questions?

19 COMMISSIONER HOOD: Madam Chair, maybe  
20 you're overlooking it. Ms. Moldenhauer, or even Office  
21 of Planning, how many square feet is each unit? It's  
22 probably right here in front of me, but I -- I'm looking  
23 here on the stat sheet.

24 MR. PISHVAEIAN: 1100 square feet.

25 COMMISSIONER HOOD: Each unit is 1100?

1 MR. PISHVAEIAN: Yes.

2 COMMISSIONER HOOD: Ms. Vitale, is it in  
3 your report, each unit -- is it somewhere in your report  
4 that I'm missing it?

5 MS. VITALE: No. We did not include unit  
6 size. The R-4 conversion regulations pertain to lot  
7 area, and they would require 900 square feet of lot area  
8 per dwelling unit. So for three dwelling units this  
9 particular property would need 2,700 square feet. They  
10 meet that requirement. They have 2,880 square feet.

11 COMMISSIONER HOOD: Okay. That's all I  
12 have for now.

13 CHAIRPERSON HEATH: Can the Applicant speak  
14 to the questions regarding the porch, and what's been  
15 maintained?

16 MR. PISHVAEIAN: Yes. I don't have any  
17 problem keeping it vertical. I have another property  
18 that I just finished at 27 Bryant Street, and I invited  
19 everybody from Civic Association, and I went there on  
20 Sunday, and I had seven, eight people show up to show  
21 them. Bryant Street is two blocks up. It's still in  
22 Bryant neighborhood. I was trying to show them how -- I  
23 brought a poster to show you how we preserved the façade  
24 of what it had to be, before and after, and we kept the  
25 roof line the same, and how we maintained the same unity

1 in the neighborhood.

2 So we're going to do the same thing. We're  
3 not going to put -- there's so many different details  
4 that you can't show in drawings, so, like, we're not  
5 going to put metal railing or metal steps. We're going  
6 to maintain the same thing, and we're going to have it --  
7 I just made a note of this, to have it changed in the  
8 architect report, to make sure the stairs are vertical,  
9 not horizontal.

10 CHAIRPERSON HEATH: The rail?

11 MR. PISHVAEIAN: I'm sorry?

12 CHAIRPERSON HEATH: The rail.

13 MR. PISHVAEIAN: Correct. We changed these  
14 plans about three, four times. Every time we went to the  
15 meeting with Civic Association they came up with  
16 something new. They wanted it to be changed. So we took  
17 the rooftop deck off. We took the spiral off. We  
18 changed the spiral, not going to the roof. Now they want  
19 us to have DCRA inspector. They don't want us to have  
20 third-party inspector. We agreed with all of that.

21 CHAIRPERSON HEATH: Okay. All right. Were  
22 you -- are you okay with the proposed changes to the  
23 rail, as long as they're still vertical? Does that meet  
24 your -- or were you asking for it to be maintained in its  
25 --

1 MS. VITALE: We would ask that the porch be  
2 maintained as it stands today. Obviously if there were  
3 any repairs that needed to be made, but, yeah, that the  
4 porch would be maintained.

5 CHAIRPERSON HEATH: Okay. And are you not  
6 able to do that?

7 MR. PISHVAEIAN: No, no. We're going to  
8 maintain the porch.

9 CHAIRPERSON HEATH: The porch and the rail?

10 MR. PISHVAEIAN: Correct.

11 CHAIRPERSON HEATH: You're proposing to  
12 replace the existing rail. Is that correct? You're  
13 proposing to replace the existing rail with a metal rail?

14 MR. PISHVAEIAN: No, no. I was --

15 CHAIRPERSON HEATH: What is the current?

16 MR. PISHVAEIAN: The current --

17 CHAIRPERSON HEATH: Do you have a photo,  
18 because I think you had that up at the beginning, a  
19 photo.

20 MS. MOLDENHAUER: Oh, of the --

21 MR. PISHVAEIAN: Of the actual property.

22 CHAIRPERSON HEATH: Right. So that's the  
23 rail that I believe Office of Planning is asking you to  
24 maintain.

25 MR. PISHVAEIAN: So we're going to maintain

1 the same railing. If we can repair the same railing,  
2 we'll repair the same railing.

3 CHAIRPERSON HEATH: Or replace in kind?

4 MR. PISHVAEIAN: If we can't, we'll just  
5 replace it and make it to look just like this.

6 CHAIRPERSON HEATH: Okay.

7 MR. PISHVAEIAN: And the same thing as the  
8 posts. We're going to have round posts like this, not  
9 box posts.

10 CHAIRPERSON HEATH: Okay.

11 MS. MOLDENHAUER: Can you just briefly  
12 explain to the Board the only modifications that you  
13 would be doing to the porch in regards to raising the  
14 elevation slightly?

15 MR. PISHVAEIAN: Correct. We did have  
16 that. I don't see a picture up close here. There is no  
17 -- the lower unit entrance is right below the porch, so  
18 we're going to raise the porch only 1 foot, but the roof  
19 would stay the same and everything else would stay the  
20 same.

21 CHAIRPERSON HEATH: Okay. All right.

22 VICE-CHAIRPERSON HILL: Is Office of  
23 Planning fine with that?

24 MS. VITALE: Without seeing the final plans  
25 to review it's a little bit difficult. I think it would

1 be very helpful to have the full set of drawings, in  
2 terms of what the Applicant is proposing to do or not do,  
3 with respect to alterations to the façade.

4 CHAIRPERSON HEATH: Okay. And the plans  
5 that you've just submitted as your supplemental  
6 submission are not the final plans, obviously.

7 MS. MOLDENHAUER: They are. I think one of  
8 the challenges here, and I think one of the things that  
9 came out during the R-4 conversion is that these are the  
10 conversions are obviously -- this is not a larger PUD.  
11 They're working with a smaller architectural firm, and so  
12 this is obviously a pre-development, pre-building set  
13 final plans through the BZA process. What we would  
14 recommend is that, based on the proffers and the  
15 transcripts that we've provided here, that, then,  
16 obviously, that would be approved, and then those  
17 conditions would be part of the record so that the client  
18 could then move forward and obtain a finalized building  
19 set that would include the details that we've provided  
20 and discussed during this hearing process.

21 CHAIRPERSON HEATH: And I think where we  
22 started, with questions about the drawings, and which are  
23 final, and I think we're still there, that we need to be  
24 looking at final drawings before we can make a ruling on  
25 this case. It sounds like Office of Planning is in

1 agreement with that.

2 MS. MOLDENHAUER: And we do have a set of  
3 updated plans we can provide to Cliff as well. These  
4 show horizontal railings versus the vertical railings.  
5 But otherwise it does show the, you know, raised porch  
6 and where that would be. Again, this is a BZA in regards  
7 to the conversion for the three units and any conditions  
8 that the Board would want to include on an order, we  
9 would consent to.

10 CHAIRPERSON HEATH: Okay. Are these the  
11 same as the plans in the supplemental submission, or are  
12 these changed?

13 MS. MOLDENHAUER: I believe they've changed  
14 slightly in regards to the porch, showing the porch in  
15 more detail, I believe.

16 CHAIRPERSON HEATH: Okay. All right. Do  
17 you have any other questions? You have these new plans?

18 MS. VITALE: Just looking at the new plans,  
19 I think -- I'm not looking for like a full permit set but  
20 I still think there's some troubling inconsistencies.  
21 These show no spiral stair at the first floor. They do  
22 show a spiral stair at the second floor. The proposed  
23 rear elevation shows the spiral stair at the second  
24 floor, the first floor, and going down to ground level.  
25 And while you have a proposed front elevation, there's no

1 existing front elevation with which to compare this, and  
2 it doesn't have any dimensions so it's not clear when you  
3 indicate that you're raising the porch 1 foot to provide  
4 access to that lower level unit, that's not demonstrated  
5 at all.

6 I just think there are still some  
7 inconsistencies between the plans in this set as well as  
8 the elevations in this set, and it doesn't provide a  
9 comparison of existing versus proposed. So I think it's  
10 really difficult to evaluate the ultimate proposal, based  
11 on these plans. I think certainly plans could be  
12 provided that showed existing versus proposed that were  
13 fully dimensioned, and reflected whatever was agreed to  
14 with the Civic Association and the ANC. I just don't  
15 think we're there yet.

16 CHAIRPERSON HEATH: Okay. All right. Any  
17 other questions from the Board?

18 [No audible response.]

19 CHAIRPERSON HEATH: I would agree, there  
20 are a lot of inconsistencies in these plans. They're  
21 just messy. And so we would need -- we would need  
22 drawings that reflect accurately what is being proposed  
23 as a part of this conversion. And I would agree that the  
24 detail that Office of Planning is asking for, with  
25 existing versus proposed, the front elevation, would also

1 be helpful. But I think the biggest thing is that there's  
2 still the same type of inconsistencies that we saw in the  
3 drawings that are on file, are still reflected here.

4 MS. MOLDENHAUER: And in regards to that,  
5 I'll let my client address some of the challenges,  
6 obviously, with the time frame, and if he has to go back  
7 and then get revised plans. And we would ask the Board  
8 that there are, you know, Applicants that go through this  
9 process that provide, you know, hand-drawn plans, and we  
10 think that via the written testimony in the record and  
11 the written statements, and in comparison to the images  
12 of what exists now and the proffers that would be made,  
13 that that should be sufficient for the Board. But I'll  
14 let my client testify in regards to the timing and the  
15 challenges of revising the plan.

16 COMMISSIONER HOOD: Madam Chair, I think,  
17 from my standpoint -- and excuse me for interrupting -- I  
18 think the Board -- I think your direction is clear. I  
19 don't know why we keep rehashing it. I was sitting here  
20 and I was starting to count how many times we keep  
21 rehashing the same thing. I think it's clear. We have  
22 other people in the audience who want us to get to them,  
23 so I'm ready to move forward. I think it's clear.  
24 Either they give it to us or they don't.

25 CHAIRPERSON HEATH: Right. Okay. We also

1 would like to get a formal letter from the ANC stating  
2 their position. Then I think the Board would agree that  
3 we can continue this. We've made it clear what we're  
4 looking for, so we'll give you that opportunity to  
5 provide it to us.

6 Mr. Moy, should we look at the 24th?

7 MR. MOY: I think the 24th -- yes.

8 CHAIRPERSON HEATH: Okay. All right. So  
9 we'll continue this until November 24th, which will give  
10 you sufficient time to get us what we've asked for.

11 MS. MOLDENHAUER: If we can push to get  
12 this sooner is there any way we can come back next week?

13 CHAIRPERSON HEATH: No. The 24th is the  
14 date. All right. Thank you.

15 Do you want to take a quick break?

16 [No audible response.]

17 CHAIRPERSON HEATH: We'll take a quick, 5-  
18 minute break and then we'll come back.

19 ATTENDEE: [Inaudible comment.]

20 CHAIRPERSON HEATH: We did not close the  
21 hearing, so -- one second.

22 We haven't closed this. Should we take  
23 witnesses before -- if there are people here who want to  
24 speak?

25 ATTENDEE: It sounds reasonable, before you

1 close the record.

2 CHAIRPERSON HEATH: Right. So the record's  
3 still open, and before we take a break, since we do have  
4 witnesses here, and you took the time to come down, we  
5 will allow you to speak.

6 Can you state your name for the record?

7 DR. SHANKLIN: Yes. My name is Dr. Sharia  
8 Shanklin.

9 CHAIRPERSON HEATH: Okay. And we'll give  
10 you 3 minutes.

11 DR. SHANKLIN: I have a prepared testimony.

12 CHAIRPERSON HEATH: Okay.

13 DR. SHANKLIN: In 1995, I moved from a  
14 high-crime, drug-ridden southwest, predominantly multi-  
15 family housing community to make a home for my three  
16 children who were 10, 8, and 4, in the Lederle Park  
17 Bloomingdale Community on W Street. At that time, the  
18 neighbors and family members who resided in their homes  
19 were second- and third-generation, which fostered a  
20 definite sense of community on this exclusively single-  
21 family home street, and was one of the factors that  
22 motivated me to purchase after looking extensively  
23 throughout the district. Additionally, it was imperative  
24 for me that my children interact and play with peers  
25 whose adult family members instilled values that would

1 enable their children to thrive, so the peer influence  
2 would be more positive and consistent with my children's  
3 upbringing.

4 Over the years, my children developed long-  
5 standing, significant relationships with their  
6 neighborhood peers, all of whom went to college and are  
7 successful professionals in highly regarded positions.

8 While this narrative is not unique to this  
9 community, the lack of transient residents facilitated  
10 ability and continuity and community human relationships.  
11 As long-standing members moved and sold their properties,  
12 even after renovations, the single-family home structure  
13 remained. These properties appealed to new residents  
14 who, like me, valued the turn-of-the-century historical  
15 characteristics and beauty of these homes, and  
16 intentionally purchased in the neighborhood because of  
17 the housing style and significant sense of community.

18 It is within this context I oppose the 28th  
19 Street Partners' application to convert a single-family  
20 house into a three-unit apartment. I realize the  
21 district's growth in population, economic, social, and  
22 cultural opportunities attract business owners, and  
23 particularly real estate investors and developers, as  
24 certain neighbors become viable marketplaces to generate  
25 revenue and increase wealth. However, there are many

1 neighborhoods in the district that could benefit from  
2 real estate investors and developers enhancing and  
3 expanding quality housing to support current residents  
4 and attract newcomers. Many parts of this city are now  
5 examples of how thriving communities are a result of  
6 improved housing, as new residents increase the demand  
7 for more businesses and amenities in their neighborhoods  
8 to satisfy their needs and wants.

9                         The Board of Zoning Adjustment, with NDCRA,  
10 is entrusted with working for the common good of our city  
11 and its residents. I contend, as a resident of W Street,  
12 allowing this exception is not consistent with the common  
13 good or interest amongst the residents of W Street. The  
14 majority of our front yards host the "Stop the Popup"  
15 sign as a statement of what really matters to us and how  
16 we want to live on our block and in our community. The  
17 implications of approving this request will have a  
18 snowball effect and dramatically change the way our  
19 neighborhood looks and feels.

20                         I implore the Board not to give in to what  
21 I consider a request motivated by greed versus sincere  
22 interest to foster positive social change by maintaining  
23 stabilizing versus transient housing structures.

24                         CHAIRPERSON HEATH: Thank you. Board, any  
25 questions for this witness?

1                   COMMISSIONER HOOD: I just want to ask.

2 Doctor -- what was your name -- Doctor -- I'm sorry.

3                   DR. SHANKLIN: Shanklin. Sharia Shanklin.

4                   COMMISSIONER HOOD: Dr. Shanklin, are there  
5 other -- and I know this is not germane to the case --  
6 are there other units on that block that have been  
7 converted?

8                   DR. SHANKLIN: Yes. There was one that was  
9 completed, I would say, 6 months ago, and it's still  
10 vacant because the community protested at every open  
11 house. It was before the regulations were changed and it  
12 went well above the height limitations that are now in  
13 place.

14                  COMMISSIONER HOOD: And I know the Board  
15 doesn't look at this -- I haven't figured out why -- and  
16 you think that changes the characters of those who have  
17 been there and some who come to buy there -- it's  
18 changing the character, from what I got out of your  
19 testimony.

20                  Do we have your testimony?

21                  DR. SHANKLIN: No, I don't have it -- yes,  
22 I submitted it as a letter but I can give a copy.

23                  CHAIRPERSON HEATH: We have it. It was a  
24 late submittal, but we have it as Exhibit 31.

25                  COMMISSIONER HOOD: Okay. All right.

1 Well, thank you very much.

2 DR. SHANKLIN: Thank you.

3 CHAIRPERSON HEATH: All right. Thank you.

4 Is there anyone else here wanting to speak,  
5 in either support or opposition to this application?

6 Anyone who happens to be here?

7 ATTENDEE: [Inaudible comment.]

8 CHAIRPERSON HEATH: Sure. You can. You  
9 can. That's fine. Thank you. Okay. So then we will  
10 conclude this hearing until we continue it on November  
11 24th.

12 ATTENDEE: [Inaudible comment.]

13 CHAIRPERSON HEATH: No. It is going to  
14 happen on November 24th. Yes. Thank you.

15 Okay. Now we will take a 5-minute break.

16 MS. MOLDENHAUER: And obviously we will  
17 defer any response to this testimony or any other  
18 testimony at the hearing when it's continued.

19 CHAIRPERSON HEATH: Correct.

20 MS. MOLDENHAUER: Thank you.

21 CHAIRPERSON HEATH: Yes. And then when we  
22 come back, Mr. Moy, we'll resume with Application No.  
23 19095.

24 MR. MOY: Very good. Thank you, Madam  
25 Chair.

1 CHAIRPERSON HEATH: Thanks.

2 [Break taken from 11:50 a.m. to 12:03 p.m.]

3 CHAIRPERSON HEATH: So 19095?

4 **APPLICATION NO. 19095**

5 MR. MOY: Thank you, Madam Chair. To the  
6 table, I see the table is fully loaded with the  
7 Applicant, the team. Application No. 19095 of Carr  
8 Properties. I'm going to ready very quick, Madam Chair,  
9 what's been captioned and advertised for public notice.  
10 This is a request for a special exception from multiple  
11 roof structures with walls of uneven height requirements,  
12 pursuant to 770.6, and I'll also throw in a special  
13 exception to the 411.11, to construct an addition to an  
14 existing mixed-use building in the C-4 District at  
15 premises 1100 15th Street, N.W., Square 197, Lots 81,  
16 812, 858, and 859. And I believe in the record, Madam  
17 Chair, the Applicant is requesting two witnesses as  
18 expert status.

19 CHAIRPERSON HEATH: Thank you, Mr. Moy. If  
20 you all could please introduce yourselves.

21 MR. GLASGOW: Yes. I'm Norman M. Glasgow,  
22 Jr., of the law firm of Holland & Knight, representing  
23 Carr Properties.

24 MR. DETTMAN: Good morning, Madam Chair.  
25 Shane Dettman, Director of Planning Services with the law

1 firm Holland & Knight.

2 MR. JAMES: Hi. I'm Doug James with WDG  
3 Architecture. We're the architect of record for the  
4 project.

5 MR. BOCKENEK: My name is Jason Bockenek.  
6 I'm with the Applicant, Carr Properties.

7 CHAIRPERSON HEATH: Okay. So Shane  
8 Dettman, you've submitted your resume as an expert, and  
9 in what area are you requesting to be considered as an  
10 expert?

11 MR. DETTMAN: Land use planning and zoning.

12 CHAIRPERSON HEATH: Okay.

13 MR. GLASGOW: Mr. Dettman has been accepted  
14 as an expert previously by the Zoning Commission.

15 CHAIRPERSON HEATH: Okay. We didn't have  
16 him in our book, but okay.

17 We also received a resume from Doug James,  
18 requesting to be an expert.

19 MR. JAMES: Field of architecture.

20 MR. DETTMAN: Madam Chair? Resumes -- my  
21 resume, as well as Mr. James' resume is attached as  
22 Exhibit H in the pre-hearing statement.

23 CHAIRPERSON HEATH: We have it. Thank you.  
24 All right. I'm fine to accept both as experts in their  
25 respective fields, architecture and land use planning.

1        Does the Board have any hesitation about accepting?

2                         [No audible response.]

3                         CHAIRPERSON HEATH: All right. So we'll --  
4        should it become necessary we will accept your testimony  
5        as experts, expert witnesses. Okay. Thank you.

6                         One other point of clarification. The  
7        Application was submitted as multiple roof structures.  
8        Can you clarify? It looked like we weren't talking about  
9        multiple roof structures.

10                  MR. GLASGOW: We did not submit for  
11        multiple roof structures. We submitted for roof  
12        structure of unequal height.

13                  CHAIRPERSON HEATH: Okay. Got it. Thank  
14        you. Board, do you have any questions? Does anybody  
15        have any questions of the Applicant?

16                  [No audible response.]

17                  CHAIRPERSON HEATH: I believe this, based  
18        on the information presented, that the Application  
19        appears to be complete, so obviously you have the right  
20        to a full hearing, but the Board doesn't feel that any  
21        information is necessary. We can turn back to you if any  
22        issues come up along the way, but are you fine for us to  
23        proceed?

24                  MR. GLASGOW: Madam Chair, we're pleased to  
25        exercise our ability to rest on the record.

1 CHAIRPERSON HEATH: Thank you. So we'll  
2 turn to Office of Planning.

3 MR. COCHRAN: Office of Planning is also  
4 pleased to rest on the record.

5 CHAIRPERSON HEATH: Okay. All right.

6 Board, any questions of Office of Planning?

7 [No audible response.]

8 CHAIRPERSON HEATH: Applicant, any  
9 questions of Office of Planning?

10 [No audible response.]

11 CHAIRPERSON HEATH: Okay. We do have a  
12 letter from ANC 2B recommending approval. Is there  
13 anyone here from ANC 2B?

14 [No audible response.]

15 CHAIRPERSON HEATH: We also have a letter  
16 from DDOT of no objection. They just request that you  
17 continue conversations regarding public space like  
18 parking and the design of loading and parking areas. So,  
19 I see nodding heads so it looks like you agree to  
20 continue those conversations.

21 Is anybody here from DDOT on this  
22 application?

23 [No audible response.]

24 CHAIRPERSON HEATH: All right. We don't  
25 have any other letters of support or opposition. Is

1 there anyone here wishing to speak in support of this  
2 application? Anyone in support?

3 [No audible response.]

4 CHAIRPERSON HEATH: Anyone wishing to speak  
5 in opposition?

6 [No audible response.]

7 CHAIRPERSON HEATH: It appears no  
8 opposition either. Then we will turn back to the  
9 Applicant, if there's anything else that you want to add.

10 MR. GLASGOW: We would request a bench  
11 decision and a summary order. This is going to be the  
12 new headquarters for Fannie Mae and our time frames are  
13 very tight.

14 CHAIRPERSON HEATH: Understood. Thank you.  
15 All right. Then, Board, unless there's anything else I  
16 would move that we accept this application for special  
17 exception for roof structure with uneven heights.

18 VICE-CHAIRPERSON HILL: I second.

19 CHAIRPERSON HEATH: Any further discussion?

20 [No audible response.]

21 CHAIRPERSON HEATH: All in favor?

22 [Chorus of ayes.]

23 CHAIRPERSON HEATH: Anyone opposed?

24 [No audible response.]

25 CHAIRPERSON HEATH: So the motion carries.

1      Summary order.

2                    MR. MOY: Thank you, Madam Chair. Staff  
3      would record the vote as 4 to 0 to 1. This is on the  
4      motion of Chairperson Heath to approve the Application  
5      for the relief requested, and seconding the motion, Vice-  
6      Chairperson Hill. Also in support, Mr. Hood and Mr.  
7      Hinkle. Board seat vacant. Summary order. Thank you.

8                    CHAIRPERSON HEATH: Thank you. All right.  
9      Next up to bat, 19061.

10                  **APPLICATION NO. 19061**

11                  MR. MOY: Yes. Applicants to Application  
12      No. 19061 of 1106 Montello LLC. This application was  
13      amended for variance relief from the floor area ratio  
14      requirements under 771.2, lot occupancy requirements  
15      under 772.1, the rear requirements under 774.1, and the  
16      off-street parking requirements under 2101.1, to convert  
17      an existing two-story masonry building into a four-story,  
18      seven-unit apartment house with ground floor retail in  
19      the C-2-A District at premises 1140 Florida Avenue, N.E.,  
20      Square 4070, Lot 84.

21                  CHAIRPERSON HEATH: Thank you. Would you  
22      introduce yourselves?

23                  MR. TEASS: Good morning. My name is Will  
24      Teass. I'm a principal with Teass-Warren Architects,  
25      here on behalf of the Applicant.

1                   MR. THORNTON: Good morning. Justin  
2 Thornton, managing member and owner of 1106 Montello LLC.

3                   MR. WARREN: Good morning. I'm Charles  
4 Warren. I'm architect of the Applicant, here on the  
5 Applicant.

6                   MR. SULLIVAN: Good morning, Marty Sullivan  
7 from the law firm of Sullivan & Barrow, on behalf of the  
8 Applicant.

9                   CHAIRPERSON HEATH: Okay. Are you -- is  
10 the Applicant also aware that OP is recommending variance  
11 relief from 2001.3 for nonconforming structure?

12                  MR. SULLIVAN: We are, and if we haven't  
13 amended the Application we would like to do so. Thank  
14 you.

15                  CHAIRPERSON HEATH: Okay. All right.  
16 Thank you. Let's see. I think one of the things here  
17 that -- so you're also aware that there's -- that OP is  
18 only in support of a part of your application, not the  
19 full application, for 771, the FAR? If you could  
20 strictly speak to your justification for floor area, that  
21 would be helpful. We don't need a full presentation. If  
22 you could just speak to that.

23                  MR. SULLIVAN: Okay. Sure. I think while,  
24 we won't do a full presentation, a lot of what we're  
25 going to do has to do with FAR, because it's kind of

1 similar to the lot occupancy relief, that we'll try to  
2 abbreviate and focus on those issues.

3 I'd like to have Mr. Thornton speak very  
4 briefly, for 30 seconds or less, and then move straight  
5 to the architect, if that's okay with the board.

6 CHAIRPERSON HEATH: That's fine.

7 MR. THORNTON: Thank you. Madam Chair, Mr.  
8 Vice-Chair, members of the Board, and constituents in the  
9 audience, again, my name is Justin Thornton. I'm a  
10 native Washingtonian and a local developer. I'm truly  
11 excited to be here today to present this amazing project  
12 at the entrance to Trinidad. As a resident of Trinidad,  
13 I am looking forward to redeveloping this site and  
14 retaining it for many years to come. After meeting with  
15 neighbors, concerned citizens, the Advisory Neighborhood  
16 Commission, and countless other residents, I believe that  
17 the plans that are before you balance the needs of the  
18 community and the intent of the master plan for the city,  
19 while protecting the character of the neighborhood.

20 I hope that I can answer any questions you  
21 may have, and will now turn it over to my talented team,  
22 who has worked diligently with staff, neighbors, and  
23 commissioners to get us to the point we are at today.  
24 Thank you.

25 MR. WARREN: Good afternoon. I'm Charles

1 Warren. I'm the architect, Teass-Warren Architects, the  
2 architect of the project. I thought we'd run through the  
3 project pretty quickly, sort of our presentation and the  
4 location of the site, which I think speaks to the FAR  
5 specifically. You can see from this image that it's  
6 located at the intersection of Montello Avenue and  
7 Florida Avenue, N.E. 12th Avenue is just to the south  
8 and the 8th Street corridor is about four blocks away,  
9 three blocks away. We've envisioned this -- as Justin  
10 mentioned, we are envisioning it as sort of a gateway to  
11 the Trinidad neighborhood.

12 The existing property is a two-story  
13 masonry building, as noted. It is currently occupying  
14 about 88 percent of the lot. We are proposing to remove  
15 this sort of one-story piece at the rear of the property,  
16 to bring it down to sort of an 81 percent lot occupancy.  
17 Madam Chair, I know we're talking about FAR but I think  
18 this directly affects our FAR calculations.

19 The lot, as mentioned, is about 2,500  
20 square feet, exactly 2,500 square feet. It's zoned  
21 C-2-A. And although most people wouldn't classify it as  
22 a beautiful building, we certainly think it's significant  
23 in keeping with the Trinidad neighborhood character.

24 Again, these aerial views sort of show that  
25 the building is at the intersection of two major

1 neighborhood roads and sits where ground-floor retail  
2 really makes a lot of sense in this property, and the  
3 historic uses reflect that.

4 Our project is conceived as a mixed-used  
5 project, in order to maintain the commercial use of the  
6 ground floor while providing six residential units above.  
7 I think there is a typo in the statement. It says seven  
8 units but we actually amended that and now are only  
9 asking for six units.

10 Our intent with the project is to maintain  
11 commercial use of the ground floor, six units above. It  
12 seems that retail at the ground floor really makes sense  
13 here, from both the neighborhood. We have met with the  
14 ANC and they've expressed an interest in retail at the  
15 ground floor here. And from our own personal perspective  
16 and the owner's perspective, it feels like the right  
17 thing to do, with the goals of the project.

18 In order to provide that retail, however,  
19 it creates a little bit of hardship in the sense that we  
20 cannot put cellar units, because we have a grade entry  
21 level and it really forces those units too deep into the  
22 grade to be viable units. So in order to do that, we  
23 really need to provide them on the upper floors.

24 The only way to really keep that -- you can  
25 see -- this view really shows a lot of the construction

1 that's in the surrounding neighborhoods. The majority of  
2 these projects are residential-only projects. The images  
3 at the top show the properties just directly across the  
4 street, 100 percent residential buildings, no retail.  
5 You can see that, on the north side of Florida Avenue,  
6 adjacent to our property and including our property  
7 really has a mix of uses with retail at the ground floor  
8 and residential above, and this is something that we are  
9 trying to hold onto.

10 I think specifically that affects our FAR  
11 calculations, in the sense that in order to achieve  
12 viable units, we really need more lot area, basically,  
13 and when we multiply and keep the existing structures at  
14 81 percent of lot occupancy, times two floors, we're  
15 really pushing our FAR, 0.48 over, which is essentially  
16 1,200 square feet over four floors, which is 300 square  
17 feet per floor, essentially. This allows for viable  
18 units on the upper floors and to get two actual units,  
19 when we sort of get into core factors and stuff like  
20 that, it's really hard to get two viable units on the  
21 upper floors.

22 It's really stemming from the fact that  
23 we're trying to do an adaptive reuse project where we're  
24 maintaining the existing structure. So these elevations  
25 just sort of show our intent at maintaining the ground

1 floor retail and the masonry building itself, and doing  
2 two floors above it.

3                   Here you can see, in this image, that we're  
4 maintaining the brick on the lower levels, extending the  
5 building two stories up, and that's sort of pushing us  
6 into that FAR calculation to get viable units, one to  
7 maintain sort of existing structure and existing bearing  
8 lines, and to get some reasonable efficiency out of the  
9 units where they match and the floor plans are similar,  
10 and we can get plumbing and things like that to stack.

11                  CHAIRPERSON HEATH: So you have two units  
12 per floor.

13                  MR. WARREN: Two units per floor.

14                  CHAIRPERSON HEATH: On 2 through 4.

15                  MR. WARREN: Yes, ma'am.

16                  CHAIRPERSON HEATH: And if you could speak  
17 to -- you know, obviously if you didn't have the fourth  
18 floor you'd then have four units rather than six. If you  
19 could speak to the practical difficulty associated with  
20 the four units, and elimination of the fourth floor.

21                  MR. WARREN: Right. I think that is  
22 essentially an economic hardship that the Applicant would  
23 probably be better at answering that question than I  
24 would be.

25                  MR. THORNTON: Again, for the record,

1       Justin Thornton. Madam Chair, I think before you, in the  
2 record, you should have a financial analysis for the  
3 property. At four units, with construction costs, a  
4 cash-on-return is minus 1.78 percent, and as many of you  
5 may know, when you go to the bank, they won't give you  
6 the construction financing if it looks like there won't  
7 be a return on their money, a safe investment for them.  
8 But even at six units we're only looking at a potential  
9 4.14 percent return on any investment. So the six units  
10 really gets you over the hurdle of being able to get the  
11 financing to do the construction.

12                   I can answer any specific questions about  
13 the finances in front of you, but it really just boils  
14 down to the return on investment.

15                   CHAIRPERSON HEATH: Can you just repeat --  
16 the return on investment for four was --

17                   MR. THORNTON: For four units it's negative  
18 1.78 percent, but, again, I want to make sure everyone is  
19 aware that even at six units, we're only looking at a  
20 4.14 percent return at the onset. Obviously, as I stated  
21 earlier, I'd like to hold it long-term. I'm only 30  
22 years old so it would be a longer-term investment. I'm  
23 not necessarily looking for a 20 percent return out the  
24 gate.

25                   CHAIRPERSON HEATH: Okay. Thank you.

1 Board, any questions of the Applicant, or anything else  
2 you want to hear?

3 [No audible response.]

4 CHAIRPERSON HEATH: Okay.

5 VICE-CHAIRPERSON HILL: Yeah, I'm curious.  
6 So to get to the FAR, so you'd have to lose that top  
7 floor? Or if you lost one -- I'm just trying to figure  
8 out what the difference is, the delta with the FAR.

9 MR. THORNTON: Sure. Actually, if we  
10 actually lost the entire top floor we'd be under the FAR  
11 by almost 0.13 or something like that.

12 MR. WARREN: I believe it's about 0.25 from  
13 the OP report.

14 VICE-CHAIRPERSON HILL: And if you lost one  
15 of the units then you've be below the FAR?

16 MR. THORNTON: We would be potentially  
17 below the FAR. I think that would get into more of how  
18 the building not only looks but is constructed. I mean,  
19 if you only have half of a floor on the fourth floor, it  
20 just --

21 VICE-CHAIRPERSON HILL: No, I understand.

22 CHAIRPERSON HEATH: Okay. Then if the  
23 Board doesn't have any further questions, I'd like to  
24 turn to office of Planning at this point, if the  
25 Applicant is fine for us to proceed, because they really

1 had issues with this. I just want to hear their --

2 MR. SULLIVAN: I have something to submit  
3 from the ANC when we get to that.

4 CHAIRPERSON HEATH: Sure. Okay. All  
5 right.

6 MR. MORDFIN: Good afternoon, Chair, and  
7 members of the Board. I'm Stephen Mordfin with the  
8 Office of Planning, and the Office of Planning supports  
9 most of the application -- the lot occupancy, the  
10 enlargement to a nonconforming structure, and the off-  
11 street parking, subject to two conditions that did come  
12 from DDOT, having to do with bicycle parking.

13 The only portion of the Application that we  
14 could not support had to do with Section 771, which is  
15 the floor area ratio. The max of 2.5 is permitted --  
16 2.98 is proposed -- and the reason for that is just  
17 because it goes above what is permitted in C-2-A, and  
18 that it starts to push into other zone districts. So  
19 whether or not that's appropriate or not is why we had  
20 issues with that could not support that request.

21 CHAIRPERSON HEATH: Okay. Hearing the  
22 Applicant talk about the return on investment with the  
23 four units that they would have as a result of losing the  
24 fourth floor, does that change your recommendation at  
25 all?

1                   MR. MORDFIN: Well, we were aware of that.  
2 The Applicant had submitted that ahead of time so we did  
3 have a copy of that. So we did know about that. The  
4 only issue I have with that is that it has to do with  
5 monetary and whether or not that should go towards the  
6 variance or whether it should just be what, you know, it  
7 should go to the actual piece of property, and that's  
8 where we have some issues with the FAR variance.

9                   CHAIRPERSON HEATH: Okay. Board, any  
10 questions of Office of Planning.

11                  COMMISSIONER HINKLE: Yeah. Thank you,  
12 Madam Chair. Just real quick, could you describe maybe  
13 the surroundings and whether additional FAR would  
14 actually harm the public in the surrounding neighborhood?

15                  MR. MORDFIN: Well, the surrounding area  
16 has other buildings that are more or less the same size.  
17 The total number of floors, which is four, is permitted  
18 in the C-2-A. So if constructed as a four-story  
19 building, I don't think that that would have any adverse  
20 impact on the surrounding neighborhood.

21                  COMMISSIONER HINKLE: Okay. Thank you.

22                  CHAIRPERSON HEATH: Any other questions,  
23 Board?

24                  [No audible response.]

25                  CHAIRPERSON HEATH: Applicants, any

1       questions of Office of Planning?

2                    MR. SULLIVAN: No, thank you.

3                    CHAIRPERSON HEATH: Okay. All right.

4       Thank your, Mr. Mordfin. All right. Let's see, so you  
5       said you do have a letter from the ANC?

6                    MR. SULLIVAN: We do, and maybe Justin can  
7       explain a little bit about it. I will pass it out here.

8                    MR. THORNTON: Again, for the record,  
9       Justin Thornton. Commissioner Hood, as you noted last  
10      time at our hearing, it's been difficult dealing with ANC  
11      5D. We've met multiple times on a single member district  
12      level. We met with the full ANC two weeks ago, where  
13      there was a vote of four to three in support of the  
14      project as presented to you. Unfortunately, the Chair  
15      was unable to get a letter to you. However, in my haste  
16      to make sure that their vote was on the record I did get  
17      a letter from the secretary and the vice-chair of ANC 5D,  
18      and that's what's in front of you today. I apologize for  
19      the lateness but I was running around trying to get  
20      someone to give me a letter recognizing the vote.

21                    CHAIRPERSON HEATH: Okay. It says here  
22      that the vote was 4 to 3 to 0. What was some of the  
23      opposition against the project?

24                    MR. THORNTON: Thank you. Justin Thornton  
25      again, for the record. I know I keep saying that but I

1 just want people to know who's talking.

2 In terms of the non-support of the project,  
3 actually it was centered around two issues, I think. One  
4 issue being actually affordable housing, and changing  
5 neighborhood characteristics, and who's going to be  
6 buying these properties. And so that was mainly kind of  
7 people's thought processes in terms of not supporting the  
8 project. The second being parking, which, as you may or  
9 may not know, this property is landlocked and unable to  
10 provide parking. I mean, I'd love to provide it if I  
11 could. It actually would probably make this return a  
12 little better, that we spoke about earlier.

13 But those were the two main issues, but,  
14 again, on a single member district area, which surrounds  
15 the property, it was full support. There was no  
16 opposition at all. And then the 4 votes in favor of the  
17 project, again, were looking for new retail at that  
18 location. Previously there was a liquor store and there  
19 was a carryout in the building. So we'll be replacing  
20 that with a restaurant. So a lot of people are looking  
21 for that renovation. There's a lot of people who hang  
22 out outside and cause ruckus, from the liquor store and  
23 from the carryout.

24 CHAIRPERSON HEATH: Did you consider any  
25 affordable units?

1                   MR. THORNTON: We did look at the  
2 affordable units. Unfortunately, on a project of this  
3 size -- and when I say that I don't mean it's a big  
4 project because it's actually a fairly small project --  
5 it's just difficult to make the numbers work, with a  
6 project less than 10 units. But we did try. Again, it  
7 made those numbers that you're looking at even worse than  
8 what they are now.

9                   CHAIRPERSON HEATH: Okay. Board, any other  
10 questions?

11                  COMMISSIONER HOOD: I do have a question.  
12 I'm looking at this letter from the ANC. Did the Chair  
13 vote? Or who were the 4 to 3? Were they commissioners?

14                  MR. THORNTON: Commissioner Hood, yes. The  
15 Chair did not vote in support, which is probably why we  
16 don't have a letter in front of you.

17                  COMMISSIONER HOOD: But I mean -- okay, so  
18 this was the commission that voted 4 to 3?

19                  MR. THORNTON: This is the full ANC, yes,  
20 and the -- excuse me -- the Chair of the commission did  
21 not vote in support, which is, again, why I don't think  
22 we have a letter in front of you from the Chair.

23                  COMMISSIONER HOOD: Okay. Thank you.

24                  VICE-CHAIRPERSON HILL: I have a question,  
25 just one more question, maybe for OP or whoever wants to

1 answer. So the 81 percent lot occupancy, that's the  
2 nonconforming? If they were to tear it down, what would  
3 have been the lot occupancy?

4 MR. MORDFIN: Well, they are going to tear  
5 down a portion of the building to get to the 81 percent.  
6 They are currently at, I think, 88 percent. I'm not sure  
7 I understood your question.

8 VICE-CHAIRPERSON HILL: Okay.

9 MR. THORNTON: Commissioner Hill? I think  
10 we can show you a picture of not only what we're bringing  
11 it down to and why I think that's driving the FAR.

12 MR. WARREN: This portion of the building  
13 here, this one-story piece, puts it at 88 percent. We're  
14 proposing to take it down to this bearing line here, in  
15 the rear, and that's at 81 percent lot occupancy.

16 CHAIRPERSON HEATH: Okay. One other  
17 question I didn't ask at the beginning and I should have.  
18 You initially were requesting special exception from  
19 3405.1. Is that still a part of your application, GAR?

20 MR. WARREN: Madam Chair, I'll answer that.  
21 We have endeavored to provide GAR on-sites. We've  
22 withdrawn that from our application.

23 CHAIRPERSON HEATH: Okay. So you've met  
24 the -- what is it? -- 0.3?

25 MR. WARREN: 0.3. Yes, ma'am.

1 CHAIRPERSON HEATH: Okay. Great. Anybody  
2 have any other questions?

3 [No audible response.]

4 CHAIRPERSON HEATH: All right. So thank  
5 you for this letter, it looks like, from the vice-chair  
6 and the secretary. I assume there's nobody here from ANC  
7 5D?

8 [No audible response.]

9 CHAIRPERSON HEATH: There doesn't appear to  
10 be. Okay. Nobody here from ANC 5? All right.

11 Is there anybody here from DDOT wishing to  
12 speak on this case?

13 [No audible response.]

14 CHAIRPERSON HEATH: We do have a letter of  
15 no objection and they've noted that their recommendation  
16 is subject to the conditions proposed by Office of  
17 Planning. We didn't talk about your conditions, but I  
18 assume you're still in support of the conditions,  
19 particularly those that don't apply to public space.

20 MR. MORDFIN: The two conditions that I  
21 included in there were the two that came from DDOT --

22 CHAIRPERSON HEATH: Okay.

23 MR. MORDFIN: -- to provide parking --  
24 bicycle parking.

25 CHAIRPERSON HEATH: Okay. Great. I would

1       be in support of maintaining the first condition from  
2       DDOT but not the second, since it's more a public space  
3       issue.

4                   All right. Is there anyone here wishing to  
5       speak in support of this application? Anyone in support?  
6                   [No audible response.]

7                   CHAIRPERSON HEATH: Anyone in opposition?  
8       Any opposition?

9                   [No audible response.]

10                  CHAIRPERSON HEATH: All right. Then we'll  
11       turn back to the Applicant for any closing statements you  
12       might want to make.

13                  MR. SULLIVAN: Thank you, Madam Chair. I  
14       do have one letter of support that we just received, and  
15       I have copies of it I can pass out, from a neighbor.

16                  CHAIRPERSON HEATH: Thank you. All right.

17                  MR. SULLIVAN: I don't think we really have  
18       anything else to add. Just, I think, the unique  
19       conditions, there's several, and I think they're  
20       interrelated to the lot occupancy and parking issues. I  
21       don't know if it's been pointed out that the height will  
22       be consistent with the only adjacent building, and it's  
23       below the permitted height as well, and I think from all  
24       that's in the record you can see that there's no harm to  
25       the public good, as well, in this project. Thank you.

1 CHAIRPERSON HEATH: Thank you. All right.  
2 I think we can close this hearing. Is the Board ready to  
3 deliberate?

4 [No audible response.]

5 CHAIRPERSON HEATH: All right. Do you want  
6 to lead off? Is that what you were saying?

7 ATTENDEE: [Inaudible comment.]

8 CHAIRPERSON HEATH: Okay. All right. Then  
9 I don't have -- given that the scale, the height is  
10 consistent with other neighboring properties, I don't  
11 have any issues with approving this application. I would  
12 recommend that we approve it with the conditions proposed  
13 by the Applicant, all related to TDM and the additional  
14 condition from DDOT, stating that the Applicant shall  
15 install three long-term bicycle spaces within a secure  
16 room for use by tenants. As I mentioned previously, the  
17 second condition from DDOT is related to installing  
18 bicycle parking spaces within public space, as permitted  
19 by public space permitting process, and I don't feel that  
20 we can hold the Applicant to something that is subject to  
21 public space approval.

22 So I would move that we -- unless there's  
23 any further discussion?

24 COMMISSIONER HOOD: Did we make a decision  
25 on the FAR? I may be just catching up. Did we --

1 CHAIRPERSON HEATH: I'm fine to accept the  
2 request for FAR relief.

3 COMMISSIONER HOOD: And I also want to say,  
4 I just wanted to -- yeah, I'm fine with what's requested,  
5 with the exception of the condition that you mentioned.  
6 And I also want to applaud this applicant requesting  
7 relief from the Green Area Ratio. The Application was  
8 modified to confirm to the requirement and he eliminated  
9 the request, so I appreciate that. I mean, thank you.

10 CHAIRPERSON HEATH: Okay. All right. So  
11 then I will formally make a motion that we approve this  
12 application for the variance relief requested, including  
13 variance from 2001.3, which the Applicant will add to the  
14 Application, and subject to the conditions proposed,  
15 associated with TDM, and the bicycle parking spaces,  
16 requested by DDOT.

17 COMMISSIONER HOOD: Second.

18 CHAIRPERSON HEATH: Any discussion?

19 [No audible response.]

20 CHAIRPERSON HEATH: All those in favor?

21 [Chorus of ayes.]

22 CHAIRPERSON HEATH: Anyone opposed?

23 [No audible response.]

24 CHAIRPERSON HEATH: The motion carries.

25 MR. MOY: The Staff would record the vote

1 as 4 to 0 to 1. This is on the motion of Chairperson  
2 Heath to approve the relief requested, the variance  
3 relief to the FAR lot occupancy and off-street parking  
4 requirements, as well as amending to add nonconforming  
5 structure provisions under 2001.3. Seconding the motion,  
6 Mr. Hood. Also in support, Vice-Chairperson Hill and Mr.  
7 Hinkle. Board seat vacant. Motion carries.

8 CHAIRPERSON HEATH: Thank you. Summary  
9 order.

10 MR. MOY: Thank you -- and also with the  
11 conditions as you cited.

12 CHAIRPERSON HEATH: Yes. With conditions.

13 MR. SULLIVAN: Thank you.

14 CHAIRPERSON HEATH: All right. Next up.

15 Yes. Next in our order would be Application No. 19063,  
16 but we've had a request from the Applicants under Case  
17 19097 to be heard now, because they have somebody who  
18 needs to leave, I believe to catch a flight. So is that  
19 -- would the Applicants of 19063 be amenable to waiting,  
20 to be heard after this next case?

21 [No audible response.]

22 CHAIRPERSON HEATH: Okay. Thank you. All  
23 right. So we will then proceed to 19097.

24 **APPLICATION NO. 19097**

25 MR. MOY: All right. This application was

1 captioned and advertised for special exception relief  
2 from the new residential development requirements under  
3 Section 353, to allow the construction of three new --  
4 did I skip something? Oh, yes, I did. Thank you.  
5 19097. Captioned and noticed for special exception  
6 relief under 223, not meeting the lot occupancy  
7 requirements under 403, to construct a one-story rear  
8 addition to an existing three-story, one-family dwelling  
9 in the R-3 District at premises 1626 29th Street, N.W.

10 CHAIRPERSON HEATH: All right. Okay. This  
11 application was previously on our expedited review  
12 calendar, but because there was opposition it was  
13 postponed and shifted to our hearing calendar for today.

14 Based on the information that I've  
15 reviewed, I don't have any questions or issues. Does the  
16 Board have anything you want to hear?

17 [No audible response.]

18 CHAIRPERSON HEATH: Okay. One moment. So  
19 before we go any further, can I have you please introduce  
20 yourselves?

21 MR. LOWELL: Of course, Madam Chair, and  
22 members of the Board. I am Abbe Lowell. This is my  
23 wife, Molly Meagan. This is our wonderful architect,  
24 Christian Sabaka. First, though, let me thank my fellow  
25 applicant for allowing us to switch positions. That was

1 very nice and I appreciate it. We are the homeowners  
2 that made the application.

3 CHAIRPERSON HEATH: Okay. Thank you. So  
4 did you meet with the ANC?

5 MR. LOWELL: Yes, Madam Chair. Well, in a  
6 manner of speaking we did two things. The Single  
7 Commissioner came and spent considerable time on our  
8 property and also spoke to all the neighbors that wanted  
9 to speak to her, and made a recommendation, both to the  
10 ANC and also has written this Board a letter, which is in  
11 your record. And the ANC met and decided, based on her  
12 review and what they've seen, that they decided it was  
13 not -- first of, as to the planning -- I'm sorry, as to  
14 the design part, they approved, and as to any other part  
15 they thought it was minimal enough not to take it up.

16 CHAIRPERSON HEATH: Okay. Great. Okay.  
17 We do have a letter from the Single Member District  
18 Commissioner, but not from the ANC. Okay. Thank you.

19 MR. LOWELL: I would just note, as well,  
20 for what I've now learned is your process, to point out  
21 that we've tried to take all the steps along the way,  
22 including the ANC. I think you know better than I do  
23 that we had to be before the Old Georgetown Board, which  
24 has approved, and we went and met with the L'Enfant  
25 Trust, approved. We had been at the ANC, which you've

1 just asked about, and we know there's a letter on the  
2 file from the Department of Transportation. We also have  
3 read through the report of the Office of Planning that's  
4 recommending approval of the project.

5 CHAIRPERSON HEATH: Okay. All right. And  
6 unless the Board has any other questions or things that  
7 they want to hear from the Applicant, I would turn to you  
8 and just let you know that you have a right to a full  
9 hearing. However, the Board feels that there is no  
10 additional information that we need, based on what we've  
11 seen in the record. We may come back to you with  
12 questions after proceeding through the hearing, should  
13 additional issues come up, but if you're fine to waive  
14 your right to a hearing, we'll proceed on.

15 MR. LOWELL: We are. I'd like to just make  
16 two quick points then, because I think it makes sense,  
17 given that this is a neighborhood project and not one of  
18 those large things that you've been dealing with all  
19 morning, and especially in the light that we know that  
20 there is a letter of opposition.

21 We're excited to becoming members of the  
22 community of the District of Columbia, moving from  
23 Maryland. It was very important for us to work with our  
24 neighbors. The most important neighbor, in the sense of  
25 what this project, small as we think it is, might be, is

1 the house -- is the people that live in the same building  
2 that is abutting us. It has a fence. It has an  
3 adjoining wall. And you have a letter from them that  
4 approves and supports this proposition, this project. I  
5 think that was something we wanted you to know. And  
6 also, while it's not a BZA issue per se, I've listened to  
7 the proceedings this morning, and no matter what the  
8 construction will be, because we're doing to do  
9 something, we understand the need to make sure that we  
10 minimize the disruption to our neighbors, even if it  
11 isn't a zoning issue, because we do want to be very good  
12 neighbors.

13 CHAIRPERSON HEATH: Okay. Thank you. So  
14 with that we'll turn to Office of Planning for any  
15 comment.

16 MR. COCHRAN: The Office of Planning  
17 recommends approval and is happy to stand on the record.

18 CHAIRPERSON HEATH: Okay. Thank you.  
19 Board, any questions of Office of Planning?

20 [No audible response.]

21 CHAIRPERSON HEATH: Applicant, any  
22 questions of Office of Planning?

23 MR. LOWELL: No. I appreciate their review  
24 and consideration, and, of course, I appreciate their  
25 recommendation.

1 CHAIRPERSON HEATH: Sure. Okay. All  
2 right. So we talked about the ANC. Is there anyone here  
3 from ANC 2E?

4 [No audible response.]

5 CHAIRPERSON HEATH: It appears there's no  
6 one here from ANC 2E.

7 We do also have a letter of no objection  
8 from DDOT. Is there anyone here from DDOT, on this case?

9 [No audible response.]

10 CHAIRPERSON HEATH: No one here from DDOT.

11 I believe we have the letter of support  
12 that you spoke about. It's from your neighbor at 1624  
13 29th Street?

14 MR. LOWELL: Yes, ma'am.

15 CHAIRPERSON HEATH: So we do have that  
16 letter on file. Is there anyone here wishing to speak in  
17 support of this application? Anyone in support?

18 [No audible response.]

19 CHAIRPERSON HEATH: Anyone wishing to speak  
20 in opposition? Okay.

21 MS. CHAPIN: Excuse me. I don't hear well.

22 CHAIRPERSON HEATH: Oh, that's okay. Once  
23 you are seated, if you could tell us your name, and make  
24 sure your microphone is on, please.

25 MS. CHAPIN: Okay. Is that working?

1 CHAIRPERSON HEATH: That is.

2 MS. CHAPIN: Thanks. This is sudden for me,  
3 and I have some new hearing aids but they aren't working  
4 very well so please bear with me.

5 My name is Dolly Chapin, and I live here in  
6 Washington at 1628 29th Street, N.W. I'm the next door  
7 neighbor of the Applicants. Is that enough?

8 CHAIRPERSON HEATH: Yes. That is. So  
9 we're going to give you 3 minutes -- we're going to give  
10 you 3 minutes to speak.

11 MS. CHAPIN: Okay. Fine. Have you read  
12 the reports I've filed on the record? Have you read  
13 those, or should I read them to you again?

14 CHAIRPERSON HEATH: Give me one moment.  
15 So, yes, we do have your letter.

16 MS. CHAPIN: I think it's the last one on  
17 the list.

18 CHAIRPERSON HEATH: We do have your letter,  
19 and so that is in the record, and we've reviewed it. So  
20 if there's anything else that you're wishing to speak to  
21 --

22 MS. CHAPIN: I understand that Lowells want  
23 a bigger room. I just wonder why it has to be so big.  
24 Why can't it meet the requirements that the neighbors  
25 have met? Why can't they reduce the size of it so that

1 it can comply? The houses on either side of it have been  
2 compliant, and we live in a very crowded neighborhood,  
3 so, you know, one is always sensitive about overbuilding  
4 and making it even more crowded. They do have some room  
5 to expand, and why can't they just use that room that's  
6 available? Why do they have to have such a big room?

7 CHAIRPERSON HEATH: So you are -- so your  
8 house --

9 MS. CHAPIN: I'm sorry?

10 CHAIRPERSON HEATH: Your house is adjacent to  
11 --

12 MS. CHAPIN: Next door.

13 CHAIRPERSON HEATH: Okay.

14 MS. CHAPIN: We have a fence between us.

15 CHAIRPERSON HEATH: Would this addition  
16 infringe on your --

17 MS. CHAPIN: No light. No air. No, it's okay.  
18 That's all right. It's just big. It's a large volume, and  
19 none of the supporting letters I have seen have addressed the  
20 problem, the relationship of the size of the addition to the  
21 size of the lot. And it's going to take up most of the lot.  
22 I think they'll only have about 20 feet left in the back. You  
23 know, I just -- they have plans for a lovely garden. I wish  
24 the garden could be bigger and the addition could be smaller.

25 CHAIRPERSON HEATH: Okay. All right. Thank

1 you.

2 MS. CHAPIN: Mm-hmm.

3 CHAIRPERSON HEATH: Does the Board have any  
4 questions for Ms. Chapin?

5 [No audible response.]

6 CHAIRPERSON HEATH: Thank you, Ms. Chapin.

7 MS. CHAPIN: Thank you very much.

8 CHAIRPERSON HEATH: All right. Okay. Does the  
9 Applicant wish to speak to the issues raised by Ms. Chapin?

10 MR. LOWELL: Just briefly, Madam Chair, I  
11 appreciate Ms. Chapin's view and I just wanted the record,  
12 though, because of the standards of the section that we are  
13 conforming with, Section 223, to make sure that even she  
14 understands this would not invade the privacy, air, light. As  
15 to the issue of how much space, I think we did submit material  
16 which would show that we're actually increasing the green  
17 space by the design of this, beyond which it is now, which is  
18 completely sort of paved over. In terms of the garden area,  
19 she's wrong about the spatial numbers. That's not how much  
20 would be left.

21 And I think the record also points that the 40  
22 percent rule that we're seeking an exception to is a minor  
23 one. It's just 3 percent and change, 100 square feet more  
24 than we do without even taking up your time today, just  
25 worrying about the building permit. And just to put that in

1 perspective and then I'll be done, so that we do have a  
2 graphic we can put in the record -- I don't know if you can  
3 hear me, but so the Board is clear --

4 CHAIRPERSON HEATH: Can you take -- just please  
5 take the mic.

6 MR. LOWELL: Just so that you know, this is Ms.  
7 Chapin's house, to our north, and this is our house, and our  
8 neighbor already has an extension that comes out almost as far  
9 as ours, going a bit further. But you'll see that ours,  
10 notwithstanding her view, that this a large thing, is a one-  
11 story, and hers is a two-story.

12 MS. CHAPIN: Excuse me.

13 MR. LOWELL: And so, consequently, I just  
14 wanted the record to have a picture.

15 The other picture I just want you to see as  
16 well, just because it is so important that we make sure that  
17 she understands that we're taking to heart all that she said,  
18 is because of her property being raised and having a fence and  
19 having the well, the only thing that she would ever see of our  
20 property from hers is going to be the very top of the roof  
21 line, because it is a single story. So it's only going to be  
22 a very bit, and you have that in the record as well.

23 And the lastly, but maybe most importantly,  
24 that small amount of extra space is the reason we're here.  
25 You know, the rules provide us to have the 40 percent. We're

1 looking for that bit more of 100. That's why we're here. We  
2 don't think it's a very big and imposing, and I think in the  
3 context it's why the Old Georgetown Board, the L'Enfant Trust  
4 Plaza, the Office of Planning, and the ANC has said this  
5 should be approved.

6 CHAIRPERSON HEATH: Sure. Okay. Thank you.

7 MS. CHAPIN: May I add one thing?

8 CHAIRPERSON HEATH: No. Sorry, Ms. Chapin.

9 MS: CHAPIN: I don't have a two-story addition.

10 CHAIRPERSON HEATH: Ms. Chapin, we're not going  
11 to take additional comments. Thank you.

12 Was there another -- yeah, I think the Board is  
13 fine, unless you all have any other questions.

14 I am satisfied with what I've heard, and I  
15 agree this is a special exception, so the relief that you're  
16 requesting is minimal. I think the addition that you're  
17 adding is fairly minimal, as a single-story addition. And so  
18 given the standard of approval for a special exception, I  
19 agree that you've met that, and that it's not imposing on the  
20 light and air or enjoyment of your neighbors, and your  
21 neighbor, Ms. Chapin, also agreed that this does not infringe  
22 on that for her, as your adjacent neighbor.

23 So I would be fine to close the hearing and  
24 move to deliberation. Is the Board fine to deliberate?

25 [No audible response.]

1 CHAIRPERSON HEATH: Okay. Then we'll close  
2 this hearing and I will make a motion that we approve the  
3 special exception under 223 for this one-story rear addition.

4 VICE-CHAIRPERSON HILL: I'll second the motion.

5 CHAIRPERSON HEATH: The motion has been made  
6 and seconded. Any discussion?

7 [No audible response.]

8 CHAIRPERSON HEATH: All those in favor?

9 [Chorus of ayes.]

10 CHAIRPERSON HEATH: Any opposition?

11 [No audible response.]

12 CHAIRPERSON HEATH: The motion carries. Thank  
13 you.

14 MR. LOWELL: Thank you for your time, and  
15 again, thank you, Ms. Chapin, for taking the time, and thank  
16 to the Applicant for giving us your time.

17 MR. MOY: Madam Chair, for the record, Staff  
18 would record the vote as 4 to 0 to 1. This on the motion of  
19 Chairperson Heath to approve the special exception, 223, not  
20 meeting the lot occupancy 403. Seconding the motion, Vice-  
21 Chair Hill. Also in support, Mr. Hood and Mr. Hinkle. Board  
22 seat vacant. And Staff would as, Madam Chair, that the  
23 Applicant, which he is doing, submitting a copy of the  
24 axonometric drawing. That's good.

25 CHAIRPERSON HEATH: Okay. So you got what you

1 were asking for? Okay. Perfect.

2 So we'll take a step --

3 MR. MOY: A step back, you said?

4 CHAIRPERSON HEATH: Yeah, the previous case

5 --

6 MR. MOY: Oh, yes, yes, yes.

7 CHAIRPERSON HEATH: -- in our docket.

8 **APPLICATION NO. 19063**

9 MR. MOY: Applicants to Application No.

10 19063 of Mekonnen -- I believe I pronounced that  
11 correctly. This is a request, Madam Chair, for a special  
12 exception from the new residential development  
13 requirements under Section 353, to allow the construction  
14 of three new one-family dwellings in R-5-A at premises  
15 2306-2308 16th Street, S.E., Square 5753, Lots 73, 74,  
16 and 75.

17 CHAIRPERSON HEATH: All right. Thank you.

18 Would the Applicant please introduce yourself?

19 MR. BELLO: Madam Chair, good afternoon.

20 Toye Bello, on behalf of the Applicant.

21 MS. MEKONNEN: Woinshet Mekonnen.

22 CHAIRPERSON HEATH: Okay. Thank you. So  
23 first you're aware that Office of Planning is not in  
24 support of this application, correct?

25 MR. BELLO: Yes, I am. I'm also aware that

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1 it's a single condition of some additional information to  
2 clarify an issue, which we just submitted to her this  
3 morning or this afternoon, and we have copies.

4 CHAIRPERSON HEATH: Okay. Is that the  
5 grading plan?

6 MR. BELLO: The grading plan and the GAR  
7 plan.

8 CHAIRPERSON HEATH: Okay. Great. Did you  
9 also meet with the ANC 8A?

10 MR. BELLO: Well, unfortunately, no,  
11 because is the same ANC that I had an application last  
12 week. The ANC is largely unresponsive, and there isn't  
13 any way that we can get on the ANC's agenda without any  
14 response from our Single Member District Commissioner.  
15 We simply can't walk onto their hearing if we're not on  
16 the agenda.

17 CHAIRPERSON HEATH: Sure. Have they had  
18 meetings recently? Do you know when they meet?

19 MR. BELLO: No, I don't, but I'm not aware  
20 that there were meetings because we're never contacted  
21 back. We reached out by e-mail and phone calls. No  
22 response.

23 CHAIRPERSON HEATH: Okay.

24 COMMISSIONER HOOD: Madam Chair, can I ask,  
25 who is the chair of the ANC?

1                   MR. BELLO: I don't have the chair of the  
2 ANC's name. I can pull up my e-mails and see if I can get  
3 that information for you.

4                   COMMISSIONER HOOD: No. I just was  
5 wondering because I've dealt with this ANC some and  
6 they're usually pretty on top of -- especially when it  
7 comes to zoning, at least from my experience. So I'm  
8 just --

9                   CHAIRPERSON HEATH: 8A is usually  
10 responsive?

11                  COMMISSIONER HOOD: Yeah. We just got a  
12 letter from them last week, so I'm trying to figure out  
13 why -- what's going on here. And that troubles me.

14                  MR. BELLO: Well, I had an application last  
15 week also, with the same ANC, with the same result. No  
16 response from them.

17                  COMMISSIONER HOOD: They might have been  
18 working on what they sent to me, sent to us.

19                  [Laughter.]

20                  COMMISSIONER HOOD: So we'll give them some  
21 latitude. They don't get paid so we'll give them some  
22 latitude.

23                  MR. BELLO: Absolutely.

24                  CHAIRPERSON HEATH: All right. Okay. Does  
25 the Board have any other questions of the Applicant?

1                         [No audible response.]

2                         CHAIRPERSON HEATH: Then since the biggest  
3     issue here is really your landscaping grading plans, I'd  
4     like to turn to Office of Planning to see if they have  
5     any further comment on those, or if those were  
6     satisfactory, based on their request.

7                         MR. BELLO: Thank you.

8                         MS. RAPPOLT: Good afternoon, Madam  
9     Chairman and members of the Board. I did have a chance  
10    to look over the revised grading plan that the Applicant  
11    submitted and it has spot shots on it so you can tell  
12    that they're actually going to be accessing the easement  
13    in the back, I guess, on grade with the alley. So I  
14    think this is sufficient and we're happy to change our  
15    recommendation to support, with the submission of this  
16    plan.

17                         CHAIRPERSON HEATH: Okay. Great. Thank  
18    you. Any questions of Office of Planning? I imagine you  
19    don't have any questions.

20                         MR. BELLO: Not at all.

21                         CHAIRPERSON HEATH: Okay. All right.  
22    That's good. And there's no one here from the ANC, I  
23    assume, 8A, and again, we don't have anything on file  
24    from them. It is troubling that you've reached out on  
25    several cases, and you, in particular, haven't heard from

1 them, even though they've submitted information to the  
2 Zoning Commission pretty recently. So -- but, yeah.  
3 We'll proceed, even though we don't have a letter from  
4 them.

5 We do have a letter of no objection from  
6 DDOT. Is there anyone here from DDOT, on this case?

7 [No audible response.]

8 CHAIRPERSON HEATH: Anyone here wishing to  
9 speak in support of this application? Anyone in support?

10 [No audible response.]

11 CHAIRPERSON HEATH: Anyone wishing to speak  
12 in opposition to this application? Anyone in opposition?

13 [No audible response.]

14 CHAIRPERSON HEATH: Then I would recommend  
15 that we close this hearing, unless you have any further  
16 comments you want to make or any comments.

17 MR. BELLO: I'll rest on the records.

18 CHAIRPERSON HEATH: Okay. Thank you. Then  
19 based on the revisions that you've submitted, and the  
20 change of position from Office of Planning, I would  
21 recommend that we accept this, so I'll make a motion that  
22 we approve this special exception from the new  
23 residential development requirements.

24 VICE-CHAIRPERSON HILL: I second the  
25 motion.

1 CHAIRPERSON HEATH: Any further discussion?  
2 [No audible response.]  
3 CHAIRPERSON HEATH: All those in favor?  
4 [Chorus of ayes.]  
5 CHAIRPERSON HEATH: Any opposition?  
6 [No audible response.]  
7 CHAIRPERSON HEATH: All right. The motion  
8 carries, Mr. Moy.

9 MR. MOY: Staff would record the vote as 4  
10 to 0 to 1. This is on the motion of Chairperson Heath to  
11 approve the application for the relief requested.  
12 Seconding the motion, Vice-Chairperson Hill. Also in  
13 support, Mr. Hood and Mr. Hinkle. Board seat vacant.  
14 Motion carries, ma'am.

15 CHAIRPERSON HEATH: Summary order.

16 MR. MOY: Okay. Thank you.

17 COMMISSIONER HOOD: Let me correct myself.  
18 I misspoke. It's 8E that I received something from. I'm  
19 sorry. So maybe y'all are having some issues.

20 CHAIRPERSON HEATH: Thank you for the  
21 correction. Thank you.

22 MR. BELLO: Thank you.

23 CHAIRPERSON HEATH: Okay. So where does  
24 that put us? Okay. So we're at the appeal?

25 MR. MOY: Yes.

1                           **APPEAL NO. 19067**

2                           MR. MOY: Appeal, Application No. 19067 of  
3 ANC 4C. As advertised and noticed, Madam Chair, this is  
4 an appeal from a May 18, 2015, decision by the Zoning  
5 Administrator, Department of Consumer and Regulatory  
6 Affairs, to issue Building Permit No. B1505734, to allow  
7 the construction of a rear two-story addition and  
8 conversion of a one-family dwelling into a three-unit  
9 apartment house in the R-4 District at premises 1117  
10 Allison Street, N.W.

11                          Madam Chair, I believe there are a number  
12 of filings, motions in this appeal, even as late as last  
13 night.

14                          CHAIRPERSON HEATH: Okay. But this one is  
15 new, this motion for continuance?

16                          Great. Would you please introduce  
17 yourselves, and then we'll talk about this.

18                          MR. UQDCOMMISSIONER HOOD: I'm Taalib-Din  
19 Uqdah, Secretary for ANC 4C, Single Member District 401.

20                          MS. ABRAMS: I'm Lyn Abrams. I am the  
21 representative for the ANC in this appeal. I'm also the  
22 next door neighbor to the project.

23                          CHAIRPERSON HEATH: Okay.

24                          MR. SULLIVAN: My name is Marty Sullivan  
25 from Sullivan & Barros, here on behalf of the property

1 owner.

2 MR. LeGRANT: Good afternoon. Matt  
3 LeGrant. I'm the Zoning Administrator, DCRA.

4 MR. TONDRO: Maximilian Tondro, Office of  
5 General Counsel, DCRA, representing the Zoning  
6 Administrator.

7 MR. HORA: Derek Hora, Office of the  
8 General Counsel, DCRA, representing the Zoning  
9 Administrator.

10 CHAIRPERSON HEATH: Thank you.

11 MR. UQDCOMMISSIONER HOOD: Madam Chair, as  
12 a matter of protocol, I was not in the room when other  
13 individuals who testified may have sworn in.

14 CHAIRPERSON HEATH: Oh, okay. All right.  
15 Well, then, we will definitely have Mr. Moy administer  
16 the oath. Were you, Ms. Abrams?

17 MS. ABRAMS: I was not.

18 CHAIRPERSON HEATH: Okay. So if you could  
19 also stand please.

20 MR. MOY: Do you solemnly swear or affirm  
21 that the testimony you're about to present in this  
22 proceeding is the truth, the whole truth, and nothing but  
23 the truth?

24 MR. UQDCOMMISSIONER HOOD: I do.

25 [Witnesses sworn en masse.]

1 MR. MOY: Thank you.

2 CHAIRPERSON HEATH: Okay. All right. We  
3 just received the motion for continuance, and so you're  
4 requesting that this be continued. Can you just quickly  
5 tell us why you're requesting the continuance.

6 MS. ABRAMS: Sure. Yesterday we received  
7 -- it was yesterday afternoon around three or four in the  
8 afternoon, we received the pre-hearing statement from the  
9 owner, and also on Friday we received the pre-hearing  
10 statement for DCRA. Appellant initially filed its first  
11 pre-hearing statement on September the 15th. There was a  
12 motion for continuance. DCRA had a motion for  
13 continuance, which Appellant opposed, but it was granted,  
14 and additional plans were submitted by the owner, revised  
15 plans. And in our supplemental response, which we  
16 provided on October the 22nd, to DCRA, and to the owner,  
17 we addressed the revisions in the plans.

18 So what we believe happened is that, based  
19 on our response, DCRA then filed a response to our pre-  
20 hearing statement, but it was the first pre-hearing  
21 statement that they filed in this matter, and the same  
22 with the owner. So we have not time to review those  
23 statements.

24 CHAIRPERSON HEATH: Okay. What was  
25 included in the new information that was submitted that

1 was different from what was previously submitted?

2 MR. HORA: If by new information you're  
3 referring to the changes, the correction of errors in the  
4 plans, clarification of the Board, in submitting DCRA's  
5 request for continuance we specified that we would be  
6 requesting plans, simply with clarifications that would  
7 allow it to be more easily heard at the Board, without  
8 having to employ the kinds of instruments and go through  
9 the kind of analysis, step by step, that the Zoning  
10 Administrator engages in, in his actual evaluation of  
11 plans.

12 MR. TONDRO: And just to clarify, there is  
13 no substantive change to the project itself. This was  
14 just simply revisions to the dimensions shown on the  
15 plan. As you can see from the revised plans, the  
16 clarified plans, you can see all the various different  
17 changes are circled, are indicated, so you can follow the  
18 changes that were made between the original plans and  
19 those that came after.

20 CHAIRPERSON HEATH: And Appellant opposes  
21 that representation? The plans were substantively  
22 changed. The plans that you're saying you just received.

23 MS. ABRAMS: Actually, we received the  
24 plans on October the 8th. We had to retain an expert to  
25 review the plans, and then we responded with a

1 supplemental statement to the changes to the plans. What  
2 we just received was DCRA's pre-hearing statement, which  
3 we received Friday night, and the owner's pre-hearing  
4 statement, which we received yesterday afternoon.

5 CHAIRPERSON HEATH: Okay. So you're asking  
6 for additional time to be prepared to respond or speak to  
7 the information that you received Friday and yesterday.

8 MS. ABRAMS: Exactly.

9 CHAIRPERSON HEATH: Okay. All right. Does  
10 the representative of the owner -- this is new  
11 information, so the representative of the owner or DCRA  
12 have any opposition to this request for continuance?

13 MR. SULLIVAN: I guess it depends on how  
14 long. What we filed yesterday was in response to what  
15 the Appellant filed on Thursday, and it's about as long  
16 as the motion that I just reviewed this morning, that I  
17 was handed, simply pointing out that her own expert has  
18 determined that this project complies with the lot  
19 occupancy and the previous surface. So it's a really  
20 simple case, but, principally, no. There's no reason we  
21 oppose a short postponement, if that suits the Board.

22 CHAIRPERSON HEATH: Okay. How much time  
23 would you need?

24 MS. ABRAMS: Well, we are looking for  
25 probably sometime in late November, early December, and

1 that's because of my schedule. Unfortunately, my  
2 schedule is very busy. I have a daytime job.

3 MR. SULLIVAN: So we would be opposed to  
4 such a delay. It just doesn't seem necessary.

5 MS. ABRAMS: And if I may add, also, we  
6 filed our first statement in September, September the  
7 15th, so the owner has had that since September the 15th.  
8 They've had adequate time to respond. They waited until  
9 yesterday to respond.

10 MR. SULLIVAN: And the Appellant has had  
11 the plans, the clarified plans that were not substantive  
12 changes, since October 8th.

13 CHAIRPERSON HEATH: Okay.

14 MR. SULLIVAN: I have no new information in  
15 my statement. I just --

16 CHAIRPERSON HEATH: Okay. We're fine.

17 Until we ask for any further comment, we're not going to  
18 hear any.

19 So you said that because of your travel  
20 schedule you're asking for -- you would ask for late  
21 November or sometime in December?

22 MS. ABRAMS: Yeah. It's not travel  
23 schedule. My work schedule. I have quite a few busy  
24 projects that are -- I just have to -- unfortunately, I  
25 can't the time off.

1 CHAIRPERSON HEATH: If were to continue  
2 this until -- one second.

3 [Off record discussion.]

4 MR. SULLIVAN: Madam Chair, if it helps  
5 we'll withdraw our objection to whatever date you find.

6 CHAIRPERSON HEATH: Okay. All right.

7 [Off record discussion.]

8 CHAIRPERSON HEATH: All right. Thank you  
9 for your patience. So we will continue this. Our next  
10 date that looks good for this is December 1st, so we will  
11 adjourn for now and continue on December 1st.

12 MS. ABRAMS: Okay. Thank you.

13 CHAIRPERSON HEATH: Thank you.

14 MR. UQDCOMMISSIONER HOOD: Thank you.

15 CHAIRPERSON HEATH: We'll take a quick  
16 break before we come back for the remand, and as we  
17 switch commissioners.

18 [Break taken from 1:15 to 1:27 p.m.]

19 CHAIRPERSON HEATH: All right. So are we  
20 ready to get this started? All right. All right.

21 **REMAND OF APPEAL NO. 18114-A**

22 MR. MOY: Yes, Madam Chair. What's before  
23 the Board now, back into Public Meeting session, would be  
24 the remand of Appeal No. 18114-A of Ward 5 Improvement  
25 Association. This was last teed up on October 6th, and

1 then I believe it was lack of a quorum, I guess. But  
2 anyway, rescheduled to today, October 27th.

3 CHAIRPERSON HEATH: Okay. Yes, on October  
4 6th we voted to rescind the need for a further hearing,  
5 which the Board requested on September 22nd. So rather  
6 than have a further hearing the Board elected to continue  
7 our deliberations, based on the information that we have  
8 before us.

9 And so we have talked about this case a  
10 number of times, and most recently we went through five  
11 questions that the Board needed to answer in order to  
12 satisfy the requirements necessary in the determination  
13 here. At that time, the Board answered, really, two of  
14 the five questions, but what I'd like to do today is go  
15 through each one, and first look at the two parts, but go  
16 through each question, one by one, and even those that  
17 we've answered I'll just restate for the record where the  
18 Board stood at that time on our response to that part of  
19 the question.

20 Is everybody okay with proceeding that way?

21 [No audible response.]

22 CHAIRPERSON HEATH: Okay. Part A, was it  
23 the intent of the performers of the Stadium Club to  
24 sexually stimulate or arouse the patrons? And the first  
25 question here would be how would the Board define acts of

1 sexual stimulation or arousal, considering both the ZA's  
2 interpretation and that "words not defined" in the zoning  
3 regulations "shall have the meanings in Webster's  
4 Unabridged Dictionary."

5 So if we could first speak to how the Board  
6 wants to define sexual stimulation or arousal first.

7 On this one, I looked at Webster's for cues  
8 as to how we might define stimulation, and it led me back  
9 to "arouse." But to arouse in a sexual context, based on  
10 Webster's definition, means to excited someone sexually.  
11 So I felt that that was an appropriate definition in this  
12 context -- sexual stimulation or arousal to excite  
13 someone sexually.

14 Any comments from the Board?

15 COMMISSIONER MILLER: I would agree, and I  
16 think at the last, in our last discussion -- or maybe  
17 you're going to get to this -- we talked about that it's  
18 the intent of the performer, not necessarily the  
19 customer, the customer's behavior, but what the intent of  
20 the performer is, and if you want us to try to cite  
21 evidence in the record on that, I'm ready to go to that,  
22 whenever you are.

23 CHAIRPERSON HEATH: Okay. All right. So  
24 then we'll move to the next point, noting that the Board  
25 -- do we -- should we -- do we need to vote on this?

1                   [No audible response.]

2                   CHAIRPERSON HEATH: Okay. All right. So  
3                   then we'll move to the next point, noting that the Board  
4                   has defined sexual stimulation or arousal as, in keeping  
5                   with Webster's Dictionary, to excite someone sexually.

6                   COMMISSIONER HINKLE: Madam Chair, we don't  
7                   need to cite where we're referring to?

8                   CHAIRPERSON HEATH: Okay.

9                   COMMISSIONER HINKLE: I mean, I think Mr.  
10                  Miller was set to provide some comments in terms of,  
11                  within the record, where we're drawing that from. Or are  
12                  you saying we're just drawing that definition from the  
13                  dictionary itself?

14                  CHAIRPERSON HEATH: Right. Just -- because  
15                  I wanted to make sure we covered each part -- so we can  
16                  be finished with this once today is over --

17                  COMMISSIONER HINKLE: Right.

18                  CHAIRPERSON HEATH: -- I want to make sure  
19                  there's no additional questions that come back to us.  
20                  Because my first inclination was to jump right into  
21                  providing evidence, but after talking with counsel it  
22                  sounded like in order to make sure that we don't leave  
23                  anything open, we should go through each point and just  
24                  make sure we've satisfied it.

25                  COMMISSIONER HINKLE: Okay. Thank you.

1                           CHAIRPERSON HEATH: So the next item under  
2 Part A was -- it does speak to the evidence. And so  
3 whether there's evidence in the record adequately  
4 supporting a determination by the ZA that the type of  
5 activity occurring at the Stadium Club does not promote  
6 sexual stimulation or arousal, and therefore would not  
7 constitute a specified sexual activity, considering,  
8 especially, the Board's decision in Appeal No. 13967,  
9 which was California Steak House.

10                          And so, Commissioner Miller, do you want to  
11 -- since you just brought this up, do you want to begin  
12 the discussion of evidence in the record that you'd like  
13 to cite?

14                          COMMISSIONER MILLER: Sure, Madam Chair.  
15 Thank you. I guess I would first say that I would agree  
16 with DCRA's position and with the proposition that nude  
17 dancing alone does not constitute acts of sexual  
18 stimulation or arousal. I think it is the California  
19 Steak House standard, and I was just looking for that  
20 phrase, but I wasn't finding it, so if somebody has it --  
21 but it's the positions that the performers, that the  
22 dancers are in, and the maneuvers that they're making  
23 that lends the sexually provocative -- the act of sexual  
24 stimulation or arousal. And I think I've stated in the  
25 past that even the Zoning Administrator's own testimony,

1 where he stated -- where he's describing what his zoning  
2 investigator saw, "In the context of their performance  
3 they have a G-string or a garter, where patrons, on  
4 occasion, will place dollar bills in the garters." He  
5 reported to me that other than that, there was no  
6 touching of the performers.

7 There's a lot of evidence in the record  
8 that the way that the dancers are performing are  
9 specifically designed to get the tips that they earn for  
10 a living, that they not only are -- well, let me just go  
11 to some of this evidence in the record, rather than  
12 making statements about it.

13 In the affidavit of Benjamin Petok -- is  
14 that how it's pronounced; I don't know, Petok -- it was  
15 part of the appellant's case, describing -- the affidavit  
16 says, and I'm quoting, "Two or three stages were occupied  
17 with various dancers throughout the evening. The dancers  
18 began by wearing a bikini or dress, removed all their  
19 clothing in performances that varied slightly with each  
20 dancer. Each dancer performed for 10 to 15 minutes on  
21 stage. Once a dancer left the stage another dancer would  
22 begin to perform in her place." That's not the part, but  
23 that was just the introductory part.

24 Then it goes on to say, "Many performers,  
25 including Star, Cory, and Sonny, fondled their naked

1       breasts and genitalia in a sexual manner while on stage.  
2       The dancers gyrated their hips in a sexual manner,  
3       fondled their exposed breasts, nipples, and vaginas.  
4       Star crouched after removing her clothes, exposing her  
5       vagina. She allowed her fingers to touch the area around  
6       her vagina. She would only crouch and expose her vagina  
7       when a customer would come directly to the stage where  
8       she was dancing. After exposing her vagina to the  
9       customer she would ask for a tip to be placed in her  
10      elastic garter belt. Star performed on stage at least  
11      three times, and once said she was not pleased to have to  
12      go back on stage.

13                  "Cory also exposed her vagina to the  
14       customers by standing facing away from the customer and  
15       bending over, exposing her anus and vagina. During the  
16       table dance, Cory would remove all her clothing and dance  
17       nude, rubbing her breasts and vagina and exposing her  
18       genitalia to patrons.

19                  "Sonny also provided table dances where she  
20       encouraged patrons to touch her legs and arms while she  
21       danced in a sexual manner. She exposed and fondled her  
22       genitalia and breasts during the table dance. Sonny also  
23       charged \$20 for the table dance and tips are encouraged  
24       and expected. For one of Sonny's performances, she  
25       gyrated her hips, crouched to expose her vagina, fondle

1 her breasts. Every minute or two she would come closer  
2 to where I was standing, expose her vagina and anus to  
3 me. I would then place a \$1 bill in her elastic garter  
4 belt."

5                   The affidavit of Marshall Criswell says,  
6 "Each dancer removed most or all clothing. Many  
7 performers fondled their naked breasts and genitalia in a  
8 sexual manner. Performers on stage approached patrons  
9 standing or sitting nearby, often coming within inches of  
10 patrons. In some cases performers reached down and  
11 touched patrons."

12                  Well, I've just come across the exact  
13 language from the California Steak House. "The positions  
14 assumed by the women and the manner in which the women  
15 displayed themselves are clearly designed to stimulate or  
16 arouse patrons of the establishment and in and of  
17 themselves do not constitute a specified sexual  
18 activity."

19                  So the BZA has found that sexual  
20 stimulation and arousal does not have to involve actual  
21 touching or direct physical stimulation but is based on  
22 whether the positions assumed by the women and the manner  
23 in which they display themselves are clearly designed to  
24 stimulate or arouse patrons of the establishment.

25                  Now, the Stadium Club and DCRA -- well, I

1 don't know if we need to get to this point, but they  
2 challenged the credibility of Petok and the other  
3 affidavits, saying -- Petok was not paid, as was stated  
4 by some, to go to the Stadium Club but was partially  
5 reimbursed for his expenses. He received no financial  
6 gain. I think that Petok's testimony, that I just read,  
7 and the Criswell testimony was corroborated in many  
8 particulars by not only the Criswell affidavit but by the  
9 Zoning Administrator's own description of what was  
10 happening there, and by the owner's representation of  
11 what was happening there.

12                   The strippers at the Stadium Club engaged  
13 in several -- they touch and fondle themselves as a  
14 regular part of their routines. I mean, that's what a  
15 gentleman's club does. The Stadium Club holds itself out  
16 to be a gentleman's club. That's what the owners and the  
17 operators describe it as. It's also a restaurant on one  
18 side and it's got the nightclub and the dancers on the  
19 other side.

20                   I read this into the record previously,  
21 that a gentleman's club, which is what they hold  
22 themselves out to be, what the owners and managers  
23 describe it as, it's a nightclub for men that features  
24 scantily clad women dancers or strip-teasers, and I went  
25 through this before, but I guess it might be worth

1 repeating again, and others might challenge its  
2 relevance, but I think the common sense definition of  
3 what's going on here, and what they hold themselves out  
4 to be, and what's going on in the activity, is relevant.  
5 The definition of a strip club -- a place where people go  
6 to watch performers take their clothes off in a sexually  
7 exciting way; a nightclub with performance by strippers.  
8 And strip-tease is defined as a form of erotic  
9 entertainment in which a person gradually undresses to  
10 music, and act in a burlesque show, in which a performer  
11 removes garments one at a time, usually to the  
12 accompaniment of music.

13 The investigative report by Justin Bello,  
14 in the record, stated that "approximately 12 dancers  
15 appeared on the three stages. Dancers entered the  
16 performance area clothed in either bikini or lingerie,  
17 and then they proceeded to disrobe while performing. The  
18 dancers used a pole mounted at the center of the stage to  
19 perform various maneuvers during their allotted  
20 performance time."

21 Now, that same testimony went on to say  
22 "there were instances when a dancer would momentarily  
23 touch her breast, her buttock, but these instances lasted  
24 for no more than a second, and in my opinion did not rise  
25 to the level of fondling." I think in our previous

1 discussion -- and maybe we'll get to more of it in this  
2 discussion -- talked about the phrase that's used in the  
3 definition of sexually oriented business establishment.  
4 It says "fondling or other erotic touching," and I think  
5 it was used, Madam Chair, pointed out that a momentary  
6 slap could be -- or other erotic touching -- it doesn't  
7 have that temporal aspect that we might agree with the  
8 Zoning Administrator that fondling would require,  
9 although we do have contradictory testimony on whether  
10 there was fondling.

11                   But I don't think we have contradictory  
12 testimony that there was other erotic touching, and I  
13 think it happens in every dance, several times. That's  
14 what the whole thing is all about, is touching and  
15 maneuvering. It may not have been a lengthy contact but  
16 I think it's an integral contact to this type of dance  
17 performance, and it happens in a repeated fashion, even  
18 in one dance and then all of the dances that are going on  
19 at the same time and throughout the evening.

20                   There was the testimony -- let me just  
21 provide some further evidence in the record. In the  
22 transcript from October 26, 2010, when the BZA was -- no,  
23 I'm sorry. I apologize. There was the testimony of Ben  
24 Petok that said -- it's somewhat repetitious to what I  
25 previous read, from his affidavit, but -- describing the

1       dancers. "They would strip off their clothes shortly  
2       after arriving on the stage. They would dance  
3       suggestively, fondling their breasts, exposing their  
4       buttocks, genitalia, sometimes crouching, dancing on the  
5       pole. The women did not only perform on the stages.  
6       There were at least two other areas where they could  
7       perform. There were table dances. I don't remember  
8       specifically if the women fondled or touched themselves  
9       at the table dances. They did when they were performing  
10      on the main stage, with regularity."

11                  In response to a BZA question to Petok, a  
12       question was asked, back in October of 2010, "With regard  
13       to the actions of the dancers fondling their breasts or  
14       other touching of themselves, how regularly did that  
15       occur throughout the evening?" Answer: "It varied  
16       dancer to dancer, but it was part of the regular routine  
17       of many of the dancers," which would make sense because  
18       that's what strip-tease is, and what a gentleman's club  
19       provides, in terms of entertainment.

20                  I think I'll stop t here for now, but I do  
21       have other comments as we go through some of these  
22       questions, Madam Chair.

23                  CHAIRPERSON HEATH: Thank you. You  
24       actually cited a number of the points that I was going to  
25       make, both from the affidavit of Benjamin Petok and from

1 Marshall Criswell. In addition to what you stated from  
2 Benjamin Petok, I would also point out the activity in  
3 the private dance rooms or the champagne rooms, which Mr.  
4 Petok states when he says he was going back into that  
5 room. "I agreed to go for a 20-minute dance, and she  
6 took my hand and escorted me to a cash register, up a  
7 couple of stairs and behind the stage where the  
8 performers performed. There were two men in black  
9 tuxedos there and a red velvet rope, which cordoned the  
10 area where I was standing from a long, dimly lit hallway.  
11 One of the men took my credit card and asked me to sign a  
12 form indicating I was agreeing to the charge. I did."

13                   And I'll skip the next part and jump down  
14 to, "Once the man left, Cory took off all her clothes and  
15 began to dance for me from atop the small table. She  
16 rubbed her naked breasts and nipples. She also exposed  
17 her vagina and anus to me repeatedly and rubbed her  
18 vagina. She whispered in my ear in a sexually suggestive  
19 manner and rubbed her hand on my chest and back. After  
20 the 20 minutes was up, the man reappeared to let us know  
21 that the time had expired. Cory got dressed and we  
22 walked back out to the main bar area. I gave Cory a \$20  
23 tip for the dance."

24                   Then the next one. "I asked Sonny for a  
25 10-minute private dance for \$100. She complied, though

1 indicated she would prefer a 20-minute dance. As I was  
2 escorted to the private room by a man in a tuxedo, he  
3 told me he was going to give Sonny some extra time to  
4 dance. I was led to the same private room where Cory had  
5 danced for me earlier. Sonny removed her clothes,  
6 slapped her buttocks. She asked me to do the same and I  
7 complied. Then she danced with her back turned to me and  
8 moved her hips back and forth, bringing my face very  
9 close to her anus and buttocks. I asked what she would  
10 do back here, and she responded, 'It depends on how much  
11 encouragement I get.'"

12                  Then he states, "I understood this  
13 statement to mean that Sonny would be more sexually  
14 provocative if she received more tips. She also fondled  
15 her own breasts and complained that she didn't like  
16 them," blah-blah-blah. "She danced further by sitting on  
17 my lap and grinding her genitalia against my lap. At  
18 this point my hands were allowed to touch her legs, back,  
19 buttocks, and breasts. During this time, I also placed a  
20 number of \$1 bills in her elastic garter and was  
21 permitted to run my hand up and down her leg when doing  
22 so."

23                  The other thing I would note is that during  
24 his testimony, that then-Board chair asked Mr. Petok if  
25 he was sexually aroused by the activity at the club. He

1 stated that he was not aroused by the dancing that  
2 happened on stage but that he was by the dancing that  
3 took place in the champagne room or private room where he  
4 had this private dance.

5                   And there was similar testimony, again,  
6 similar to what Commissioner Miller pointed out already,  
7 from Marshal Criswell, who also went back to the  
8 champagne room and he said the performers said they  
9 performed dances more intimate in the champagne room than  
10 they could in the bar area, and that a visit to the  
11 champagne room would cost significantly more. "When I  
12 asked about the nature of the dances in the champagne  
13 room the performers indicated that they were willing to  
14 have physical contact with patrons in that private area."

15                   And so, based on what's been stated so far,  
16 both what I stated and what Commissioner Miller stated, I  
17 still maintain that the activities that are taking place,  
18 both on stage and in the private rooms, are sexual in  
19 nature and, therein, the dances that the women are doing  
20 are intended to stimulate sexually the viewers for the  
21 purpose of gaining tips. So I still maintain that that  
22 is the purpose of why these women are dancing, and the  
23 types of dancing that they're doing.

24                   I don't know if you want to add to that.

25                   VICE-CHAIRPERSON HILL: You know, I agree.

1 I wanted to say a couple of things. I suppose -- I  
2 thought that it was kind of odd as I was going back and  
3 watching it all that, you know, the person -- Adoo [ph],  
4 I guess, who started this with the association, that --  
5 he was living 1-1/2 miles away, and then he was part of  
6 the association, and now he doesn't live in the area, and  
7 the association's dissolved. I guess why I say that is  
8 because, you know, I wasn't there, at that time, for the  
9 hearing, so I was not able to ask those questions as to  
10 what his intent was, you know, and how, kind of, the  
11 party status came about. I think that -- I understand  
12 where the ZA was coming from and how, you know, the rules  
13 were set forth, and if those were adhered to then it  
14 would not be considered a SOBE due to, you know, the  
15 definition.

16 I also, from watching the testimony -- I  
17 mean, it was 4 years ago, I guess, when that testimony  
18 first came out -- that I was, you know, giving more  
19 weight to the testimony, I guess, of Benjamin Petok,  
20 again, just as I was watching the testimony, that he was  
21 describing to me a normal evening, you know, going out,  
22 enjoying himself. I didn't get the impression that he  
23 was paid for his testimony. You know, he spent 5 hours.  
24 He enjoyed the club for what it is meant to be.

25 And then what I also just -- why I

1 continued to give weight to that is that in his testimony  
2 he was asked whether he was aroused, as you brought up,  
3 whether he was aroused, and he said no. And then he  
4 said, however, he was aroused in the back area. And to  
5 me that kind of clarified, you know, he could have said  
6 to being aroused in the front area, and that was the  
7 whole point. He knows what the standards were. He was  
8 an attorney. He went to law school with the other  
9 applicant. So that's why I was coming down with my  
10 thought that it was, again, the intent of the dancers,  
11 the intent of the performers, and as we go through these  
12 questions, I suppose, it's kind of -- what I understand  
13 is already just kind of to help clarify, so that the ZA,  
14 again, when he is in front of he or she, this comes  
15 before them, they can have things to kind of focus upon,  
16 as to what is to be or not to be a SOBE.

17 I suppose I found that a little, again, you  
18 know, confusing, and when I say confusing, like, whether  
19 that means that, you know, back rooms would be something  
20 that would make me think that it's not, you know, a SOBE,  
21 or table dances. I mean, again, back to the testimony  
22 from Petok, he said, you know, "I got a lap dance," and  
23 he said it in a way that it was like, he wasn't trying to  
24 pretend that he didn't get a lap dance. He got a lap  
25 dance and he said, "Well, I got a lap dance." Again, I

1 say that because I gave weight to his testimony by  
2 viewing the film.

3                   But as we go through these, I guess, you  
4 know, specifying -- but that's why I'm kind of -- that's  
5 why I was of the thought that the ZA erred.

6                   CHAIRPERSON HEATH: Okay. Any other  
7 comments?

8                   COMMISSIONER HINKLE: Yeah. Thank you.  
9 Having sat on this case and been to every hearing, I'm a  
10 little bit concerned about the direction that the Board  
11 is taking, because essentially you're saying that, you  
12 know, the determination of the type of business this is,  
13 and how it gets a CEO is really depending on whether or  
14 not a customer is excited, and I have a real difficulty  
15 with that. You know, if it's whether or not the customer  
16 is excited, is it the intent of, I don't know, a rogue  
17 dancer going against the club rules and doing their own  
18 thing? I don't know how you base a business license on  
19 that. You know, I'm having difficulty with the Board's  
20 direction.

21                   When I sat through the hearing, really,  
22 what we did is we heard a lot of testimony from Petok  
23 and, you know, the affidavits from Williamson and from  
24 Criswell, but we also heard from the Zoning Enforcement  
25 officer, from the Zoning Administrator, who spoke with

1 the owner, looked at the plans, reviewed the C of O  
2 application, and we also got an affidavit from ABRA  
3 investigator, and these are people that actually know  
4 what they're looking for, in terms of what type of  
5 business this is. At least during the hearings I was  
6 more assured of their testimony than the testimony of the  
7 people that were trying to close this club down.

8 So that's where I'm at, and that's probably  
9 where I'm going to stay throughout this. I am just a  
10 little bit concerned about the direction that this Board  
11 is going.

12 COMMISSIONER MILLER: Madam Chair and  
13 Commissioner Hinkle, or Board member Hinkle, if I can  
14 just, maybe, at least tell you my own direction, I think  
15 there is an over-reliance by both the Zoning  
16 Administrator and by the club owner on there being -- if  
17 the rule, in the club's rules, which the Zoning  
18 Administrator ruled, the first one is no playing with  
19 and/or touching yourself inappropriately. That's pretty  
20 vague, and I think that's the problem, and I think the  
21 Zoning Administrator and the club are thinking that the  
22 dancer may be having a lot of physical fondling of  
23 themselves, or with a customer, as opposed to California  
24 Steak House standard, which doesn't talk about contact.  
25 It talks about the positions that they're doing it, and

1       whether it's in a sexually provocative way.

2                  You know, the Zoning Administrator says, at  
3       one point, there was no manual manipulation, and maybe  
4       there was in the Steak House case, but there wasn't here.  
5       But that's not what the standard is in the Steak House.  
6       They didn't require to be manual manipulation or  
7       penetration by the dancers of themselves. I think there  
8       was an over-reliance on a very vague term --  
9       inappropriate contact -- and the Zoning Administrator was  
10      trying to come up with a definition that made sense, and  
11      they were using this fondling, kind of ignoring the "or  
12      other erotic touching" which they dismissed as incidental  
13      brushing. But when it's part of every performance,  
14      several times, I think it's too strict a standard.

15                  But even on the contact, the inappropriate  
16      contact, there's contradictory testimony between the  
17      owner of the club and the manager of the club of whether  
18      they even fired dancers. The owner said they didn't fire  
19      anybody and then the manager says, at another point, that  
20      he fired four people on the spot for inappropriate  
21      contact, and I'm not sure he really said what the contact  
22      even was, but he said there was inappropriate contact. I  
23      think it was in the champagne rooms.

24                  So I don't know if that gives you any less  
25      discomfort with the direction the Board's gone. If I was

1 trying to give more context as to the standard that I see  
2 is -- I mean, there was a reliance by the Zoning  
3 Administrator that the maneuvers were done in rhythm with  
4 music. I don't really see what that -- I mean, I can see  
5 that that makes it more of an artistic performance and  
6 something that's more pleasurable, maybe even more  
7 stimulating to watch if it has music. But that's me.  
8 But I don't see if it's in rhythm with music that the  
9 touching is occurring and the exposure of the genitalia  
10 is occurring, in conjunction with music, why does that  
11 make it make it not a sexually stimulating or provocative  
12 performance? I think they were really overly relying, as  
13 the Stadium Club's rules were on there being a lot of  
14 inappropriate contact or manipulation or penetration, and  
15 I think that's too tough a -- it would make it easier to  
16 bind and enforce, but that's not the California Steak  
17 House standard as I see it, and I have no problem with  
18 the California Steak House standards, that it's positions  
19 that they assumed and the maneuvers that they performed  
20 and what they were designed to do, to get the tips. It's  
21 made it sexually provocative or exciting. So that's  
22 where I was coming from in terms of direction.

23 CHAIRPERSON HEATH: And I pointed out the  
24 statement by Benjamin Petok about whether or not he was  
25 aroused, but, you know, as we concluded in our previous

1 discussion, I do believe that the basis for our argument  
2 here, under one of the questions is that we should be  
3 basing this on the intent of the provider or the intent  
4 of the dancer, not on a reasonable person standard,  
5 because I think we all had a hard time basing this on  
6 what one person might say over the other. But I continue  
7 to feel that the type of dancing that the women are doing  
8 is with the intent to be sexually stimulating, and I  
9 agree whether it's with music or not, that touching their  
10 bodies in the way that has been described, and for tips  
11 from the audience, to me seems to be about the intent of  
12 the provider to create sexual stimulation or arousal.

13 So I just -- I don't want to -- I don't  
14 want it to seem like I've giving as much weight to Mr.  
15 Petok saying he was aroused, but I am giving a lot of  
16 weight to what has been described by multiple parties as  
17 the type of dancing that's occurring and the touching,  
18 while it may not be fondling and have the lingering  
19 aspect, I do believe that the type of touching, in the  
20 areas where they're touching themselves, would constitute  
21 erotic touching, and that the point of that is to create  
22 sexual stimulation or arousal in the viewers.

23 So that's more where my head is right now  
24 on this, and I'm having a hard time getting over the fact  
25 that -- or I'm having a hard time getting to where you

1 are, and I know you sat through all of these hearings and  
2 heard a lot of testimony. But I'm still having a hard  
3 time getting to where you are, based on the description  
4 of the type of dancing and what the women are doing the  
5 dancing for to get tips, and how they're dancing changed  
6 as people got closer to them in order to get tips, and,  
7 again, as I said, how and where they touched themselves.  
8 I can't see any other way to respond to this, other than  
9 they are trying to stimulate sexually or arouse.

10 COMMISSIONER HINKLE: I appreciate that and  
11 the whole discussion. I'm just a little bit hung up on  
12 basing the type of business on acts of an employee and  
13 how that employee excites, if you will, a customer, and  
14 that's what I'm struggling with. And I'm wondering if  
15 that's the definition of a SOBE, how is that applied, not  
16 just in this case but in future cases, and future  
17 business applications? I mean, that's really where I'm  
18 stuck.

19 CHAIRPERSON HEATH: Sure. So would you  
20 say, then, that your thoughts are based more on the rules  
21 of the club, the enforcement of those rules? I mean,  
22 since you're not basing it on the actions of the dancers,  
23 not one rogue dancer but the dancers generally, are you -  
24 - what other -- is it the rules? Are there other aspects  
25 of the club that are causing you to feel that we should

1 not base our decision, or that you're not basing your  
2 decision at this point on the behaviors or acts of the  
3 dancers?

4 COMMISSIONER HINKLE: Well, I think you'd  
5 almost have to. If the business is not open, and it's  
6 making applications to open --

7 CHAIRPERSON HEATH: I see what you're  
8 saying.

9 COMMISSIONER HINKLE: -- how can you decide  
10 at that point if it's a SOBE or not if the definition of  
11 a SOBE is based on the actions of employees and whether  
12 they excite customers?

13 CHAIRPERSON HEATH: Sure. But in this case  
14 we're talking about -- well, there were several  
15 certificates of occupancy issued, temporary and then  
16 later C of O's, and correct me if I'm wrong but the one  
17 that is in question here is one that was issued after the  
18 club was already open.

19 COMMISSIONER HINKLE: That is correct.  
20 Right. Right.

21 CHAIRPERSON HEATH: So at that point they  
22 do, then, and I would agree with you in the case where an  
23 establishment has not opened, you don't have the benefit  
24 of actually seeing what occurs there. But in this case,  
25 based on the timing of the C of O, they did have the

1 benefit, and so it's hard for me to decouple that, in  
2 this case --

3 COMMISSIONER HINKLE: Sure. Sure.

4 CHAIRPERSON HEATH: -- and say that we  
5 shouldn't evaluate the activities going on in the club  
6 for the C of O because normally you wouldn't be able to  
7 be. I just -- I still feel like because of the timing of  
8 the C of O we have to take into account the activities  
9 that were happening there, and our ability to see what  
10 was actually happening there and experience it, is a  
11 large part of what I heard in the testimony and the  
12 discussion that -- well, the testimony and the evidence  
13 in the affidavits.

14 COMMISSIONER HINKLE: Right. Right. I  
15 just look at that evidence and testimony in a different  
16 way, I guess, because I initially thought with the -- I  
17 guess it was a temporary C of O, and I can't remember --  
18 was there another C of O in there, as well? -- I didn't  
19 think the Zoning Administrator did a sufficient  
20 investigation after it was initially opened. But then,  
21 what was it, a year later with the second C of O, or the  
22 third C of O -- I've lost track -- after there was a DCRA  
23 investigation and after ABRA, I felt comfortable with the  
24 determinations of those agencies that this was not  
25 operating as a SOBE, as the Zoning Administrator then

1 defined a SOBE. But obviously other Board members feel  
2 differently, and you feel differently, so that's where  
3 we're at.

4 VICE-CHAIRPERSON HILL: Well, not to muddy  
5 the waters again here now a little bit, but, I mean, I  
6 also agree with you in that, you know, DCRA and ABRA,  
7 they should have been looking for the things that would  
8 have -- they should have been the ones that would be able  
9 to determine whether or not it was a SOBE, right? They  
10 should be able to look at the California Steak House and  
11 know whether it's a SOBE. But then, at the same time,  
12 that also then confuses me a little bit. So they went  
13 there and they didn't think that there was erotic  
14 touching going on, or any eroticism, it wasn't a sexually  
15 charged environment, and it takes me, then, to, like, the  
16 Zoning Commission themselves. Like, how do you clarify  
17 this in a way that people can then operate a business and  
18 move forward?

19 And so I'm not trying to muddy the waters  
20 or waffle. I'm still going to be where I am. But I  
21 don't think that this is a necessarily clear or good  
22 process to be able to open something and move forward  
23 with it.

24 COMMISSIONER MILLER: I would agree with  
25 you, and I think that giving how everybody has struggled

1 with this SOBE definition, it obviously is something that  
2 probably ought to be looked at, outside of the context of  
3 this case, and provide more clarity.

4                   One thing, though, you can say. Given the  
5 current definition, and at least in my own thinking, no  
6 touching inappropriately, it really should say no  
7 touching erotically. It really could have had a little  
8 more -- you could've gone right to the words in the  
9 definition, "inappropriately," and relying on that as the  
10 rule.

11                  But I agree, and I certainly don't have any  
12 predilection against this type of business, and it maybe  
13 ought to be looked at as to whether it should be more  
14 permitted in more zones. But that's with appropriate  
15 checks and mitigations. But my goal is certainly not to  
16 shut down any business. I'm just working with the  
17 definition and the evidence that we have of the  
18 activities going on here. And I do give great weight to  
19 what you said, since you are the only one amongst the  
20 four of us that's -- I think that's why we're spending a  
21 lot of time talking to you, because you have that -- we  
22 just saw the replays and read the replays, so we do give  
23 credence to, yeah.

24                  But I do disagree -- and maybe it's from  
25 where I came in on it -- that there was enough due

1 diligence by the Zoning Administrator after the fact,  
2 when -- was it, I don't know, were they there only 40  
3 minutes or an hour, the ZA investigator? The ABRA  
4 investigator is looking at different issues, under a  
5 different definition, and tables -- I mean, so ABRA's not  
6 looking at the zoning issue. I don't even give that a  
7 lot of credit in terms of the zoning question. But the  
8 amount of time the inspector spent there, even though  
9 that was unusual that they even go out and look, in the  
10 case of a C of O -- not in the case of an enforcement;  
11 they're going out for a C of O -- the hours and hours of  
12 videotape from the 36 cameras, they're not going to the  
13 lap room, seeing what's going on there, or getting a  
14 video of the lap room. It's just -- or maybe they didn't  
15 know that there were cameras, but they had the plans.  
16 They were there when cameras were running.

17 So, on that issue I think there was almost  
18 a blind eye to trying to see what was going on there, the  
19 amount of time, once having decided to go out there, not  
20 really spending a lot of time there and not going to the  
21 champagne room, and not looking at all that video footage  
22 of when they weren't there.

23 CHAIRPERSON HEATH: I agree with your last  
24 point. In particular, I was surprised that the  
25 investigator didn't go the champagne room, knowing what

1 had been testified and what was in the affidavits,  
2 because I believe, if I'm recalling correctly, that they  
3 testified prior to the investigator going out to the  
4 Stadium Club, and so he knew what they cited as being the  
5 activities there but he did somewhat of a cursory review,  
6 I felt, in that he was there for a short period of time  
7 but didn't go back into the champagne room, where Petok  
8 and Criswell had already stated there was this type of  
9 activity going on, in addition to what he saw on the  
10 stage.

11 So I was really surprised by that, and that  
12 was one of the things that I wanted to point out, that it  
13 was hard to have any point of comparison on that  
14 particular piece because the investigator chose not to go  
15 back there to see what was happening, in an effort to  
16 potentially dispute, or to say, "Well, I had a different  
17 experience while I was there. I wasn't -- I didn't see  
18 the same type of things," which could have made it more  
19 difficult for us to give so much weight to what we heard  
20 was going on in the champagne rooms, from the two who  
21 presented testimony and affidavits.

22 Are we -- should we move to a different  
23 point? Do we need to -- Mary, do we need to vote on this  
24 piece, or --

25 [No audible response.]

1                           CHAIRPERSON HEATH: We do? Okay. So then  
2 we'll look at the last question that we still have to  
3 answer, or point that we should speak to, and that's  
4 number 4 here, which is whether the Zoning Administrator  
5 reasonably made determinations regarding erotic touching  
6 at the Stadium Club, including whether the activities  
7 described by witnesses who attended the Stadium Club were  
8 consistent with the ZA's determinations, and whether the  
9 rules and regulations for dancers and other measures  
10 implemented by the managers at the Stadium Club were  
11 effective to ensure compliance with zoning requirements.

12                          So think we've touched on this one quite a  
13 bit through our other discussion, but I just wanted to  
14 make sure that we didn't miss that, as one of the points  
15 that we need to address. As I said when we started this,  
16 there are two parts that we have to answer in the  
17 affirmative -- was it the intent of the performers of the  
18 Stadium Club to sexually stimulate or arouse the patrons,  
19 the first question, and the second, did the performers  
20 fondle or erotically touch their genitals, pubic region,  
21 buttocks, or breasts?

22                          I can see where we're leaning, based on the  
23 discussion, but we will have to make a determination as  
24 to whether we, as the Board, feel that -- or whether we  
25 are responding to both questions with a collective yes,

1 and in that case, we would vote as to whether or not this  
2 is SOBE, based on the determination of this Board that  
3 both questions A and B were answered in the affirmative.

4                   So I think, just to go back to the last  
5 point that I read, I think specifically regarding the  
6 rules, we've already talked about the fact that we felt  
7 that the rules, particularly the first rule on the list,  
8 is really hard to enforce because it's so vague. And so  
9 -- and we've spoken to the first part of this, regarding  
10 erotic touching. My position on this is still that the  
11 way the dancers performed, and where they touched  
12 themselves, in my opinion constituted erotic touching.  
13 If they had been touching their head it would have been  
14 different, even if it was a longer touch. But based on  
15 where they touched themselves, I felt that even though it  
16 might not be considered fondling, because it didn't have  
17 the length of, or a lingering aspect, but that where they  
18 were touching themselves constituted erotic touching.

19                   I think any other points on this would  
20 probably be repetitive at this point, so do we want to  
21 just take a poll to see where we are with respect to  
22 those two questions, if we're saying that we feel  
23 predominantly that yes is the answer to both of those  
24 questions? I'm having a hard time getting away from yes.

25                   COMMISSIONER HINKLE: Right, and I

1 understand that and I certainly find it interesting that  
2 people who weren't involved in this case have taken a new  
3 look at it and have come up with a different idea about  
4 it. I know we're supposed to get to a motion,  
5 collectively, and so certainly I kind of disagree with  
6 the definition of -- where you're going with the  
7 definition of this arousal, but certainly, as a Board, we  
8 can move towards that motion together. I'm agreeable to  
9 that.

10 CHAIRPERSON HEATH: Okay. All right.

11 Okay. So then I'll make a motion that based on the  
12 discussion today and the evidence cited from the record  
13 that the Stadium Club should be considered a SOBE.

14 COMMISSIONER MILLER: I would second that,  
15 Madam Chair, and if part of that motion is that the  
16 answers to those questions, A and B, is yes, I'm prepared  
17 to say that.

18 CHAIRPERSON HEATH: Okay. Any further  
19 discussion? You're fine? Okay.

20 So the motion has been moved and seconded.  
21 If there's no further discussion, all of those in favor  
22 signify by saying "aye."

23 [Chorus of ayes.]

24 CHAIRPERSON HEATH: All those opposed.

25 COMMISSIONER HINKLE: Nay.

1                   CHAIRPERSON HEATH: All right. So the  
2 motion carries, with 3 and 1.

3                   MR. MOY: Staff would record the vote as 3  
4 to 1 to 1. This on the motion of Chairperson Heath as to  
5 the definition that of the SOBE. Seconding the motion is  
6 Robert Miller. Also in support of that motion, Vice-  
7 Chair Hill. Opposed to that motion is Mr. Hinkle, and of  
8 course we have, actually, a Board seat vacant and no  
9 other member. Did I say that right -- Board seat? Yeah.

10                  CHAIRPERSON HEATH: All right. Thank you.  
11 And I would just echo what has been said here earlier,  
12 that there is a lot of confusion about how to define  
13 these terms, and how to determine what really is a SOBE,  
14 and if the Zoning Commission could take this up  
15 generally, to make it easier in the future, that would be  
16 really good.

17                  COMMISSIONER HINKLE: Madam Chair, I think  
18 we asked the Zoning Commission to do that back a few  
19 years ago when we had this case, since it was tough.

20                  COMMISSIONER MILLER: I'll certainly take  
21 that back to the Commission, outside of the context of  
22 this case.

23                  CHAIRPERSON HEATH: Yes. Thank you. We  
24 have one more matter before the Board today. It should  
25 be quick. Let me find it.

1                   This is the announcement for closed  
2 meetings, for legal advice and deliberating upon but not  
3 voting on cases in November. In accordance with Section  
4 405(c) of the Open Meetings Act, DC Official Code Section  
5 2575(c), I move that the Board of Zoning Adjustment hold  
6 closed meetings on the Mondays of November 2nd, November  
7 9th, November 16th, and November 23rd. These meetings  
8 start at 4 p.m. and are held for the purpose of obtaining  
9 legal advice from our counsel and deliberating upon but  
10 not voting on the cases scheduled to be publicly heard or  
11 decided by the Board, on the day after each such closed  
12 meeting. Those cases are identified on the Board's  
13 Public Meeting and Hearing agendas for November 3rd,  
14 November 10th, November 17th, and November 24th.

15                   A closed meeting for these purposes is  
16 permitted by Sections 405(b)(4) and (b)(13) of the Act.

17                   So that was a motion. Is there a second?

18                   VICE-CHAIRPERSON HILL: I second.

19                   CHAIRPERSON HEATH: Will the secretary  
20 please take a roll call?

21                   MR. MOY: Yes. Thank you, Madam Chair.  
22 When I call the Board member's name, if a member can  
23 reply with a yes or a no. Mr. Miller?

24                   COMMISSIONER MILLER: Yes.

25                   MR. MOY: Vice-Chairman Hill?

1 VICE-CHAIRPERSON HILL: Hill.

2 MR. MOY: Chairperson Heath?

3 CHAIRPERSON HEATH: Yes.

4 MR. MOY: Mr. Hinkle?

5 COMMISSIONER HINKLE: Yes.

6 MR. MOY: There's no other members. The  
7 vote is unanimous, Madam Chair.

8 CHAIRPERSON HEATH: Okay. Then I would  
9 request that the Office of Zoning provide notice of these  
10 closed meetings in accordance with the Act.

11 Any other matters today?

12 MR. MOY: Not from the Staff today, Madam  
13 Chair.

14 CHAIRPERSON HEATH: Thank you. Then we are  
15 adjourned.

16 [Whereupon, at 2:30 p.m., the public  
17 hearing and public meeting was adjourned.]

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