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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning
Board of Zoning Adjustment

PUBLIC HEARING OF THE BOARD OF ZONING ADJUSTMENT

9:50 a.m. to 2:30 p.m..

Tuesday, December 1, 2015

441 4th Street, N.W.

Jerrily R. Kress Memorial Room

Second Floor Hearing Room, Suite 220-South

Washington, D.C. 20001

1

2 Board Members:

3 MARNIQUE HEATH, Chairperson

4 FREDERICK HILL, Vice-Chairperson

5 ROBERT MILLER, Zoning Commission

6

7 Office of Planning:

8 STEPHEN GYOR

9 STEPHEN MORDFIN

10 ANNE FOTHERGILL

11 MATT JESICK

12 MAXAMILIAN TONDRO

13

14 Also Present:

15 CLIFFORD W. MOY, Secretary to the Board

16 MARY NAGELHOUT, OAG

17 MARTIN SULLIVAN, Esq.

18 WILL TEASS

19 AMIT VORA

20 SCOTT EVANS

21 MERIDITH H. MOLDENHAUER, Esq.

22 TRENT HEMINGER

23 BOBBY HOLMES

24 MIKE JORDAN

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1 Betsy MCDANIEL

2 CHRISTINE SHIKER, Esq.

3 Also Present:

4 JESSICA BLOOMFIELD, Esq.

5 STEPHEN M. SMITH

6 JAY KELLY

7 ERWIN ANDRES

8 JOEL HEISEY

9 PHYLLIS L. TURNHAM

10 TIM TURNHAM

11 SAMANTHA MAZO, Esq.

12 JOHN CASEY

13 KC PRICE

14 RON LEWIS

15 ALAN GAMBRELL

16 JON MARC BUFFA

17 MATT LEGRANT

18 TAALIB-DIN A. UQDAH

19 LYN ABRAMS

20 DEREK HORA

21 ANDREW WIBLE

22

23

24

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P R O C E E D I N G S

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CHAIRPERSON HEATH: The hearing will please come to order. Good morning, ladies and gentlemen. We're located in the Jerrily R. Kress Memorial Hearing room at 441 4th Street Northwest. Today's date is December 1st, 2015, and we're here for the public meeting and hearings of the Board of Zoning Adjustment of the District of Columbia.

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12

My name is Martinique Heath, Chairperson. Joining me today is Fred Hill, Vice Chair, and Robert Miller, a member of the Zoning Commission sitting in as a member of the board today.

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

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The Board's hearing procedures and how we will process applications can be found on the table by the back door. All individuals wishing to testify today will need to do two things. The first is prior to testifying each person who wants to address the Board must complete two witness cards. That's two witness cards, and give them to the court reporter seated to my right prior to testifying.

24

The second thing you'll need to do is now stand and

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1 take the oath, which will be administered by the Board
2 secretary, Mr. Moy.

3 MR. MOY: Good morning.

4 [Oath administered to the participants.]

5 MR. MOY: Ladies and gentlemen, your -- well, yeah.
6 Thank you.

7 CHAIRPERSON HEATH: All right. Mr. Moy, do we have
8 any preliminary matters coming before the Board today?

9 MR. MOY: Yes, I do, Madam Chair. Good morning.
10 Good morning members of the board. Very quickly, two cases
11 that were originally on the docket that have been postponed and
12 rescheduled. For the record, those cases are Application No.
13 19125 of Sanford Roskes, been rescheduled to January 12, 2016
14 as well as Application No. 19074, of Alexander Hastings. And
15 that has also been rescheduled to February 9th, 2016. That's
16 it. Thank you, Madam Chair.

17 CHAIRPERSON HEATH: Okay. Thank you, Mr. Moy. So
18 our dockets continue to get more and more full each week, but
19 we're doing our best to try to manage them so that we're as
20 efficient as we can possibly be. So today we're going to start
21 with our meeting case. We only have one meeting case on the
22 docket today. We also have two appeals and so following our
23 meeting case we will move right into our hearing cases, and
24 we'll follow generally the order that's listed on the agenda at

1 the back of the room today with the exception of the appeals,
2 the two appeals which will be last.

3 So other than those we'll follow the general order,
4 just so people who are participating in hearings will have a
5 general sense of when you'll be up today. So, Mr. Moy, you can
6 call our first meeting case.

7 MR. MOY: Yes. That would be Application No. 18640A,
8 Barry S. Jackson and this is as you'll recall, request for a
9 modification at property 761 10th Street Southeast. And this
10 was last heard at the Board's hearing on November 24th, 2015,
11 and I believe the Board requested revised drawings for board
12 action today.

13 CHAIRPERSON HEATH: Okay. Thank you. And the Board
14 did receive those drawings. We've reviewed them and as is
15 consistent with what the applicant proposed last week, they
16 have repositioned their pergola after conversations with their
17 neighbor. The drawings do reflect what they proposed and so I
18 would move that we approve this application for this
19 modification with the revised drawings.

20 MR. HILL: I second the motion.

21 CHAIRPERSON HEATH: The motion has been made and
22 seconded. Any further discussion?

23 [Vote taken.]

24 CHAIRPERSON HEATH: All right. The motion carries.

1 Mr. Moy, you have an absentee?

2 MR. MOY: Yes, I do, Madam Chair. The third member
3 who participated is Ms. Marcie Cohen from the Zoning Commission
4 and her absentee ballot vote is to approve with any conditions
5 that the Board may impose, so that would give a final vote of
6 three to zero to two. So this would be on Chairperson Heath's
7 motion to approve the application for the relief requested.
8 Seconded the motion, Vice Chairperson Hill. Also in support of
9 course, Ms. Cohen. No other member is participating so the
10 motion carries.

11 CHAIRPERSON HEATH: Thank you. Summary order?

12 MR. MOY: Yes, you can. Thank you.

13 CHAIRPERSON HEATH: Okay. So we can move to our
14 hearing cases then, Mr. Moy.

15 MR. MOY: So I believe the first application would be
16 No. 19117. This is the application of 1010 Irving, LLC. And
17 this is what has been captioned and advertised for public
18 notice. Request for a variance relief on the lot with
19 requirements under Section 401.3 to allow the construction of a
20 two one-family semi-attached dwellings on two new record lots
21 in the R-2 district at premises 1010 Irving Street Northeast,
22 Square 3877, Lot 7. Unless there has been any revisions to the
23 project from the applicant.

24 CHAIRPERSON HEATH: Okay. Thank you. We'll see.

1 If you'd please introduce yourselves?

2 MR. SULLIVAN: Good morning, Madam Chair and members
3 of the Board. My name is Marty Sullivan with the law firm of
4 Sullivan and Barros on behalf of the applicant.

5 MR. TEASS: Good morning. My name is Will Teass, an
6 architect with Teass-Warren Architects.

7 MR. VORA: Good morning. My name is Amit Vora with
8 1010 Irving Street, LLC.

9 CHAIRPERSON HEATH: Okay. All right. Mr. Sullivan,
10 did we get a letter of authorization from you?

11 MR. SULLIVAN: I thought you did, but apparently not.

12 CHAIRPERSON HEATH: Okay. All right.

13 MR. SULLIVAN: If you don't have it in the file I'm
14 sorry about that. I know we were working on that but it must
15 not have gotten done.

16 CHAIRPERSON HEATH: Okay. If you could supplement
17 the file with that.

18 MR. SULLIVAN: Sure will. Thank you.

19 CHAIRPERSON HEATH: All right. Okay. So aside from
20 that I think what we're going to want to hear from you is
21 really going to need to focus on just proving your -- the
22 practical difficulty relative to the relief you're requesting.
23 And you're aware of Office of Planning's position on this
24 right now, and so if you could speak to their issues.

1 Does the Board have anything else you'd like to hear
2 from the applicant, or does that suffice? Okay. So if you
3 could focus there, on practical difficulty?

4 MR. SULLIVAN: Okay. Sure. Thank you. And we'll
5 get right into it. Shortly I just wanted to note that I think
6 a critical element here is that the lot area, we have plenty of
7 lot area to do the two lots, and it's just the shape of the
8 lot. If it was rectangular and shorter lot you could easily do
9 two lots and we'd have 1,000 feet to spare for each lot. So
10 that's the source of the unique condition and the practical
11 difficulty. And so we've studied some alternatives because
12 there are matter of right alternatives that would provide for
13 two separate lots with two separate buildings. And the
14 architect can go over those alternatives.

15 CHAIRPERSON HEATH: Okay.

16 MR. TEASS: Good morning. I'd like to, before we get
17 into hat condition I do want to call the Board's attention to
18 the existing conditions. As we've put up on the screen the
19 subject property here is a irregularly shaped trapezoidal lot
20 of almost -- a little over 8,000 square feet, located between
21 10th and 12th on Irving. And as you can see from this slide,
22 the shape of that is, in our opinion, exceptional because of
23 the narrow frontage. There's actually only about -- well,
24 there's exactly 37.8 feet of frontage along Irving Street and

1 then the site widens as it continues to the rear so that you're
2 out at a 69.4 feet at the rear of the property.

3 So in response to the Office of Planning's report
4 which we received last week, we developed a slide that we
5 wanted to share with you which is a, as we understand it, a
6 matter of right development that utilizes a 10-foot rule that
7 the Zoning Administrator has utilized in evaluating past
8 projects. The 10-foot rule basically says if you have an
9 irregularly shaped lot, if you go through and from the front,
10 moving backwards at 10 foot increments, measure the lot width,
11 the average of those dimensions is what the Zoning
12 Administrator could consider to be the average lot.

13 So what you're seeing here is a configuration where
14 on the east you have the larger lot, which is a pipe stem lot.
15 The lot to the west is a smaller lot. Both these lots meet
16 the minimum 3,000 square foot minimum standard for semi-
17 detached single-family dwellings. They also meet the minimum
18 lot width. Lot A, which is the larger lot would be considered
19 to be 30.6 feet wide. So it conforms with the 30-foot minimum.
20 Lot B is 32.4.

21 While this is certainly a possibility for a site plan
22 and a configuration of a record lot, I think that this really
23 is a significantly less than ideal. Quite frankly it
24 constitutes a hardship on our case when taken -- when this

1 project would be taken in the context of architectural design
2 of how those units would work, as well as the impact that they
3 would have on the neighborhood.

4 The area in green that's hatched represents the
5 approximate building footprint that would conform to the 40
6 percent. And as you can see the project, we have a very
7 dramatic impact on the rear yards of adjacent properties. And
8 also because of the narrowness of the front of the site, create
9 a very atypical condition to what is a very nice street with
10 some very nice porch fronts.

11 So what I wanted to do is illustrate what we're
12 proposing here, which is to do -- create two lots that are as
13 Mr. Sullivan pointed out, meet the minimum area standard but
14 are deficient by 3.2 feet in regards to width. And so when you
15 have lots that are not parallel, if you take the average of
16 those you come up with 26.8, which is where we are today in the
17 relief that we're seeking. In our opinion this project
18 presents a much more amenable footprint to the neighborhood.
19 What we're doing here is proposing to align the -- we have a
20 front porch. We would align that front porch, neighborhood
21 properties, and then have a footprint that's more consistent
22 with other properties on the street.

23 One other thing I did want to point out is to the
24 east there are several lots that are 25 feet wide and 142.5

1 feet deep. So those lots are also being used as semi-detached
2 single-family dwellings. Those lots are conforming for a lot
3 area but they are not conforming at 25 feet for a lot width.

4 CHAIRPERSON HEATH: So why -- you've obviously looked
5 at, or have you looked at the potential for a single-family
6 dwelling on this site?

7 MR. TEASS: We have. And so this is a slide that
8 would show a single-family. We would be permitted to do a
9 semi-detached structure. And so in this case we're showing a
10 configuration that puts the -- aligns the front of the
11 structure to the adjacent structures, adheres to the side yard
12 requirement. But we think you know, this -- what you're doing
13 here is essentially leaving 5,000 square feet of land area that
14 we would consider unused or wasted. And so we are -- our
15 position is that in and of itself constitutes a hardship and
16 that there's a significant portion of our land that's not
17 usable.

18 CHAIRPERSON HEATH: Well, it's usable as green space,
19 yard space.

20 MR. TEASS: Correct. Correct.

21 CHAIRPERSON HEATH: But not buildable space.

22 MR. TEASS: Correct.

23 CHAIRPERSON HEATH: Right. And this neighborhood,
24 and when you zoom out, it looks like even in this block there

1 are a number of -- there's a good mix of single-family detached
2 and row homes of varying sizes, some with a lot of green space
3 around them.

4 MR. TEASS: Uh-huh.

5 CHAIRPERSON HEATH: Significant property. Or
6 significant size of property around the house. So a single-
7 family dwelling would be consistent with this neighborhood and
8 this block, correct? Even with as much green space as you just
9 described.

10 MR. TEASS: Yes, I would concede that but I would
11 also say that there is also, and particularly on slide 4 here,
12 which is some of the aerial photographs, there is also a
13 pattern of development that are single-family detached with
14 porch fronts, which is really the project that we're proposing.
15 You know, I think in both cases ample green space is provided.
16 But I think, you know, in our case it's really, as Mr.
17 Sullivan pointed out, if we had two lots that were 30 feet wide
18 by 142 feet deep, we would not need the relief. But we're in a
19 case where we have almost, you know, over 8,000 square feet of
20 lot area that we're proposing to utilize.

21 CHAIRPERSON HEATH: Okay.

22 MR. HILL: Just had a question.

23 CHAIRPERSON HEATH: Go ahead.

24 MR. HILL: In the diagram that was back there, why

1 didn't you center the single-family home? I know that --
2 because of the side yard?

3 MR. TEASS: I mean, this is an option where we're
4 showing as a single-family detach, or a semi-detached, as
5 opposed to a fully detached. So another option would be to do
6 a fully detached.

7 MR. HILL: And you'd center it in the property. On
8 the front there.

9 MR. TEASS: Correct. Yeah, you did here to the
10 eight-foot side yards.

11 CHAIRPERSON HEATH: All right. Board, any other
12 questions of the applicant?

13 MR. HILL: I've just got -- if you go back to the one
14 that's the two lots, so the design you're talking about is
15 going back in an angle off of the -- yeah, there you go. So
16 the building, the structure is going back at an angle?

17 MR. TEASS: Correct. So the party that's shared
18 between would be at a non 90-degree angle to the street. And
19 what we're proposing to do is to have that -- the difference in
20 the angles is made up in the front porch and how the front
21 porch is constructed. It's a way to mitigate that somewhat odd
22 condition.

23 CHAIRPERSON HEATH: So the habitable, the interior
24 portion of the front of the house would be perpendicular to the

1 demising wall.

2 MR. TEASS: Correct.

3 MR. HILL: Okay. Thank you.

4 CHAIRPERSON HEATH: Go ahead.

5 MR. MILLER: Thank you, Madam Chair. So the lot
6 previously was developed with a single-family detached home?

7 MR. TEASS: Correct. And that structure was razed in
8 2013 by a previous owner.

9 MR. MILLER: So it's been vacant for two years?

10 MR. TEASS: Correct. Yes.

11 MR. MILLER: And do you know how that lot, how that
12 property, that house was situated?

13 MR. TEASS: We do. The aerial photographs are from
14 sometime before the structure was razed, and so you can see
15 particularly in the upper left-hand corner, the arrow indicates
16 the subject property at the time, which was razed. So it
17 looked to be a fully detached two-story with a one-story rear
18 and a deck that sat back significantly from the street.

19 MR. MILLER: Okay. Thank you.

20 CHAIRPERSON HEATH: Okay. Any other questions?

21 Okay. Thank you for your presentation. I'm going to -- I'm
22 still having a hard time getting over the practical difficulty.

23 I don't know where the Board stands but I'd like to hear from
24 Office of Planning next if you're fine for us to proceed on

1 with the hearing. Is there anything else you'd like to
2 present?

3 MR. SULLIVAN: Just like to ask a question of Mr.
4 Teass. The overall lot coverage could be the same regardless
5 of whether this is one lot or two lots. Is that correct?

6 MR. TEASS: Correct. So in the case of a fully
7 detached it would be 40 percent. In the case of a semi-
8 detached it would also be 40 percent.

9 MR. SULLIVAN: Thank you. Nothing further. Thanks.

10 CHAIRPERSON HEATH: Okay.

11 MR. MILLER: So the actual -- what is the actual
12 relief being requested? Is it the width that --

13 MR. SULLIVAN: It's the width, yes.

14 MR. MILLER: The width. So instead of 30 feet it's
15 26.8?

16 MR. TEASS: Yes, that's correct.

17 MR. MILLER: Okay. Thank you.

18 CHAIRPERSON HEATH: Okay. So we'll turn to Office of
19 Planning.

20 MR. MORDFIN: Good morning.

21 CHAIRPERSON HEATH: Good morning.

22 MR. MORDFIN: Chair and members of the Board. I'm
23 Stephen Mordfin. And the Office of Planning cannot support
24 this application, primarily because of the practical difficulty

1 issue. The lot has previously been developed with one single
2 dwelling on a lot that then conformed to the lot width. And
3 therefore the Office of Planning doesn't see where the hardship
4 is that it could not continue to be used that way, even though
5 the previous dwelling was demolished, does not see why a new
6 structure could not be constructed there, similar to what it
7 was used for before.

8 CHAIRPERSON HEATH: Okay. Thank you. Applicant, any
9 questions of Office of Planning?

10 MR. SULLIVAN: Just one. Would you consider the fact
11 that the lot would have an extra 5,000 square feet beyond the
12 minimum lot requirement to factor into the practical difficulty
13 analysis?

14 MR. MORDFIN: I don't know that a larger lot results
15 in a practical difficulty. Smaller lots result in practical
16 difficulties because it's difficult to situate a building on
17 there for a variety of reasons perhaps. But in this case
18 there's sufficient area to do that and having a lot with a
19 larger yard, maybe it's a larger rear yard, is not a detriment
20 to the use of the property for a residential property.

21 MR. SULLIVAN: But the lot coverage would be the same
22 overall, whether this is one lot or two lots. Is that correct?

23 MR. MORDFIN: The maximum permitted lot coverage
24 would be the same, yes.

1 MR. SULLIVAN: So there's no more green space to be
2 gained by making this one lot rather than two lots?

3 MR. MORDFIN: Depending on the size of the structure
4 that you build. And if there's no more green space then it
5 doesn't have additional area that can't be used. It would all
6 be part of -- it would be part of the front yard or a side yard
7 or a rear depending on how you laid out the property.

8 MR. SULLIVAN: But that could be the same. The
9 maximum permitted lot coverage would be the same on this lot
10 regardless of whether it's one or two, correct?

11 MR. MORDFIN: Yes.

12 MR. SULLIVAN: I have no further questions. Thanks.

13 CHAIRPERSON HEATH: Okay. Board, any questions of
14 Office of Planning?

15 Okay. I do have another question for the applicant.
16 So how much remaining green space is there with the two units
17 versus the single family?

18 MR. TEASS: Are you referring to the proposed
19 development or the --

20 CHAIRPERSON HEATH: The proposed. Not the matter of
21 right.

22 MR. TEASS: If you can permit me to do a quick
23 calculation I can tell you. We were --

24 CHAIRPERSON HEATH: Roughly.

1 MR. TEASS: -- closer to 30 percent as opposed to the
2 40 percent maximum.

3 CHAIRPERSON HEATH: Okay.

4 MR. TEASS: So I think the intent was not to utilize
5 our full footprint on the proposed unit development.

6 CHAIRPERSON HEATH: Okay. Okay. Sure. Go ahead.

7 MR. MILLER: Yeah, I just had another question. I
8 know the answer to the question but just for the benefit of the
9 public. Can you just put on the record what the position is of
10 the (indiscernible) advisory neighborhood commission and the
11 immediate neighbors?

12 MR. TEASS: I can take that question. We've gone to
13 the ANC twice, actually, and gotten their full support for the
14 project. We were in a somewhat unique position in that there
15 was not a single member ANC Commissioner elected to this
16 location at the time of our first hearing, so the ANC's support
17 was condition upon us going out to quite frankly everybody, all
18 the 45 -- 43 people on our 200-foot radius list, and soliciting
19 their support. And so what we've filed subsequent to that ANC
20 meeting was a list of I think 17 neighbors who were in support
21 of the project.

22 We've also presented the project to the Brookland
23 Neighborhood Civic Association and we've also received their
24 support. So we've gotten support from the ANC, 17 neighbors

1 including the adjacent neighbors, and the Brookland
2 Neighborhood Civic Association.

3 MR. MILLER: Thank you for that information.

4 CHAIRPERSON HEATH: We do have that letter. We
5 received it late but we do have the letter from the Brookland
6 Neighborhood Civic Association. Okay.

7 Okay. Let me get to that. So if there are no other
8 questions of Office of Planning, is there anyone here from DDOT
9 on this application? Anyone here from DDOT?

10 We do have a letter of no objection from DDOT. Is
11 there anyone here from ANC 5B wanting to speak on this
12 application? So they're not here, so you.

13 MR. HILL: Thank you, Madam Chair. I had a question
14 of the applicant. So you guys went to the ANC, and so why were
15 they in support of this particular -- like why were they in
16 support of this project as opposed to either I guess you showed
17 them a single-family house perhaps, or the pipe lot and the way
18 that it could be divided up by right?

19 MR. TEASS: I think we really focused on presenting
20 this proposal and clarifying that the nature of -- we see the
21 relief as 3.2 feet, 10 percent being relatively minor. There
22 is a tradition and a legacy of semi-detached dwellings on the
23 property. We had also shared with them some architectural
24 drawings of what it could look like and how it conformed to the

1 fabric of the neighborhood, which is I think what really helped
2 the BNCA kind of support the project.

3 You know, we didn't really propose coming back with a
4 four or 5,000 square foot home, a single-family home. We
5 really felt that that wasn't the appropriate solution here and
6 that doing something that was more contextual to the
7 neighborhood and to the urban fabric.

8 And I did want to just address the lot occupancy
9 question. What we're proposing is about 25 percent of lot
10 occupancy versus the 40 percent that would be permitted, which
11 is a previous question, so we're significantly under what we
12 could be doing here because we feel, you know, the proposal
13 that we have is complimentary of the neighborhood.

14 MR. HILL: Okay. So they liked the project.

15 MR. TEASS: Yes.

16 MR. HILL: Okay. And then the two lots that you can
17 do by right, the pipe lot and like what could you do with that?

18 MR. TEASS: This could also be developed, albeit
19 challengingly, as a two-family semi-detached. This was
20 developed relatively late in response to the Office of Planning
21 report so we did not share that with the --

22 MR. HILL: So that's the semi-detached?

23 MR. TEASS: That would be a semi-detached solution.

24 MR. HILL: Okay. Thank you.

1 CHAIRPERSON HEATH: So you developed this after
2 conversations with Office of Planning but hadn't had a chance
3 to share it with the Office of Planning. I mean, you can see
4 the issues related to it just by looking at the plan. But you
5 all didn't have conversations about this after developing it.

6 MR. TEASS: No, we didn't. We didn't take this back
7 to the ANC or to the neighbors or to the Civic Association.

8 CHAIRPERSON HEATH: Okay. All right. Is there
9 anyone here wishing to speak in support of this application?
10 Anyone in support? You can come forward.

11 Yes, you do. You can do that after. Please come to
12 the table and we'll need you to introduce yourself and make
13 sure your mic is on. No, push the --

14 MR. EVANS: That better?

15 CHAIRPERSON HEATH: That is.

16 MR. EVANS: Thanks.

17 CHAIRPERSON HEATH: Were you sworn in this morning?

18 MR. EVANS: Yes.

19 CHAIRPERSON HEATH: Okay.

20 MR. EVANS: My name is Scott Evans and I live within
21 a 200-foot radius of the development and me and a lot of my
22 neighbors feel like there's a great opportunity here to have
23 something that fits in with our neighborhood. The alternative
24 would be something large and ostentatious and we don't want

1 that in our little neighborhood that has a certain fabric and
2 feel to it.

3 I think if you give any developer the opportunity to
4 build something big and large, they will do it. And what we're
5 hoping is that you have some sort of a control over that and
6 allow something to fit in a little bit better with the
7 neighborhood and that's what we're hoping that you'll do today.

8 CHAIRPERSON HEATH: Okay.

9 MR. EVANS: That's all I wanted to say. Thanks.

10 CHAIRPERSON HEATH: Thank you. Yes, please fill that
11 out and give it to the court reporter. Two of them, please.

12 Anyone else wishing to speak in support? Anyone here
13 wishing to speak in opposition? Anyone in opposition? Okay.

14 As you noted we do have 17 letters of support and the
15 letter of support from the Brookland Neighborhood Civic
16 Association. So that would conclude our hearing. Are there
17 any closing remarks that you'd like to make?

18 MR. SULLIVAN: I would like to make a couple remarks,
19 thank you. The thing that I think is readily apparent here, I
20 want to go to the degree of relief requested and as you know
21 one of the factors that the Board can consider in the practical
22 difficulty analysis is the degree of relief requested. And
23 minimum lot dimensions include lot area and lot width, and we
24 have the lot area and plenty to spare. And so I think that

1 affects the degree. So we're only asking for half of what the
2 minimum lot dimension requirement is, and that's the minimum
3 lot width.

4 And as Mr. Teass said, it's about 10 percent of the
5 lot width. So I think that can factor in as well. And of
6 course we have ANC support and the support of so many in the
7 community as well and would hope that that would push us over
8 the edge too because I know you're concerned about the
9 practical difficulty analysis. But I think those two factors
10 weigh in our favor significantly.

11 And the issue of the single-family house relates to
12 the practical difficulty analysis of having a property be idle.
13 Now usually that is meant to address a single lot property
14 that wouldn't be developed at all. But I think it applies to a
15 certain degree in this case too, where you have 8,000 square
16 feet where the minimum lot area is only 3,000 square feet. So
17 I think the Board could consider all those factors as well in
18 their analysis. Thank you.

19 CHAIRPERSON HEATH: Okay. Thank you. Board, any --
20 okay. All right. Then are we ready to deliberate? Okay. All
21 right.

22 Then you know, as I said, I was having a hard time
23 getting over the practical difficulty of developing this lot
24 with two units as opposed to one single-family detached or

1 semi-detached. As you've pointed out the relief is minimal and
2 I do appreciate the fact that you have significant support from
3 the neighborhood. It's been made very clear that they want to
4 see this property developed, and I appreciate you coming down
5 to speak in support and to give -- to represent the opinion of
6 someone in the neighborhood and what they'd like to see here.

7 So I would -- I find to support this. So I would
8 move that we support the requested relief for a variance for
9 lot width for the development of the two one-family semi-
10 detached dwellings.

11 MR. HILL: And, Madam Chair, I just also wanted to
12 mention, I was also kind of on the fence with this at the
13 beginning. I didn't know what I thought about like the -- you
14 know, why it couldn't work as a single-family house, home, and
15 I mean, I'm just now telling you for discussion's sake I
16 suppose, is that the pipe lot, you know, this, the slide that
17 they have up right now and how this could be a by right design,
18 I think would be something that you know, the neighborhood
19 wouldn't want to see as much as, you know, the person here
20 representing the neighborhood. And I thought again it was nice
21 that someone came from the neighborhood and spoke about the
22 fact that there would be a large property that would be out of
23 scope, perhaps with, you know, the other existing homes. So
24 all that being said I would also be in support of this.

1 MR. MILLER: And, Madam Chair, I would second your
2 motion and since it hasn't been officially seconded, but I
3 would support all of the arguments you made. I think the
4 applicant made a compelling case, the de minimis relief, the
5 trapezoidal lot presents the narrow width from -- the width
6 from being accomplished here. The support of -- appreciate the
7 applicant working with the neighbors and the ANC. This is one
8 of those types of cases which as a Zoning Commissioner,
9 frustrates me that we haven't taken care of this in the ZRR,
10 that this kind of situation should be a special exception
11 situation that somebody shouldn't have to jump through hoops.
12 But I think you're able to jump through the hoop here pretty
13 easily. So at least from my point of view. So I'm supportive
14 of this application and seeing this lot developed in character
15 with the neighborhood.

16 CHAIRPERSON HEATH: Okay. So the motion has been
17 made and seconded, and I think we've had discussion. Any
18 further? All right.

19 [Vote taken.]

20 CHAIRPERSON HEATH: All right. The motion carries.
21 Thank you.

22 MR. MOY: Madam Chair, before I give a final vote
23 count, we would need -- map disappeared. We would need a copy
24 of the pipe stem drawing for the record. It's currently not in

1 the record.

2 CHAIRPERSON HEATH: Okay.

3 MR. MOY: Anyway, the staff would record the vote as
4 three to zero to two. This is on the motion of Chairperson
5 Heath to approve the application for the relief requested for
6 the lot width, the variance for the lot width. Seconding the
7 motion is Mr. Miller. Also in support Vice Chairperson Hill.
8 Member not present today, seat vacant. The vote, three to
9 zero, Madam Chair.

10 CHAIRPERSON HEATH: Thank you. Summary order.

11 MR. MOY: Thank you.

12 CHAIRPERSON HEATH: Thanks.

13 MR. MOY: The next case is Application No. 19119 of
14 Warder, W-A-R-D-E-R, LLC. As captioned and advertised for
15 public notice, request for variance relief on lot area, court
16 requirements and nonconforming structure requirements, and at
17 special exception from the conversion requirements under 336.
18 This is for a three-story apartment house containing three
19 residential units in the R-4 district at premises 549 Park Road
20 Northwest, Square 33037, Lot 48.

21 CHAIRPERSON HEATH: All right. Thank you, Mr. Moy.
22 Would you all please introduce yourselves?

23 MS. MOLDENHAUER: Good morning, Meredith Moldenhauer
24 from the law firm of Griffin, Murphy, Moldenhauer, and Wiggins

1 on behalf of the applicant.

2 MR. HEMINGER: Good morning, Trent Heminger, the
3 applicant.

4 MR. HOLMES: Good morning, Bobbly Holmes, ANC
5 Commission 1A09, single-member district.

6 CHAIRPERSON HEATH: Okay. Thank you.

7 MS. MOLDENHAUER: I believe the applicant will need
8 to be sworn in.

9 CHAIRPERSON HEATH: Okay. Okay. You weren't here?
10 All right.

11 [Oath administered to the applicant.]

12 CHAIRPERSON HEATH: Okay. All right. So what I'd
13 like to request is at least a modified presentation from you
14 that just speaks to why you feel you need to develop this
15 project as three units rather than two. We've gotten the
16 revised drawings which, you know, I appreciate that you've
17 worked with the neighborhood to speak to their issues by
18 sloping the roof in order to make the third story not visible
19 from the street level. But if you could still talk about why
20 the two units -- also, we just received the ANC report this
21 morning. So we'll allow the single-member district
22 commissioner to speak about that. But if you want to talk
23 about your engagement with the ANC as well that would be
24 helpful.

1 Board, anything else that you'd like to hear from the
2 applicant? Okay. All right. So you can begin your
3 presentation when you're ready.

4 MS. MOLDENHAUER: Thank you. Good morning. So what
5 we'll do is we'll just kind of try to jump through and I'll ask
6 the applicant a couple questions, just hone in on some of the
7 questions that you specifically have.

8 One of the things is, can you talk a little bit about
9 the history of the site and some of the uniqueness in regards
10 to the challenge of the area and how that relates directly to
11 the specific property?

12 MR. HEMINGER: So I think when we're talking about
13 the uniqueness we're talking about the block with the porch and
14 how we would try to keep the porch, or --

15 MS. MOLDENHAUER: No, also just the -- there are some
16 unique aspects of the property in regards to the criminal
17 history of the property, and kind of just go through that and
18 how that challenges the ability to provide two units here in
19 the overall area.

20 MR. HEMINGER: So when we looked at developing not
21 just this property but some of the other properties that have
22 been done, the two units versus the three, and a lot of them,
23 people were trying to look at three units -- or excuse me, the
24 two units that are much larger and they're kind of like more

1 family alternatives. And I think in this particular block,
2 more than the neighborhood, it's definitely set up more for not
3 necessarily family living but you know, young professional
4 living, which the spaces tend to be smaller, the price points
5 tend to be more desirable to attract the people that can
6 actually, you know, afford to get the financing, but yet
7 actually will live in the properties and you know, take care of
8 them as their residence.

9 MS. MOLDENHAUER: Do you believe that three units
10 would be more viable as regards to a project, in regards to
11 marketability for this area rather than two units?

12 MR. HEMINGER: Absolutely. We could get -- as we
13 know, we could get a lot large units for the two units than we
14 are by coming in to do the smaller three, but the three is
15 definitely targeted towards the actual individuals that would
16 purchase there and stay there for an amount of time versus the
17 larger units would be more for, like I said, families that
18 probably wouldn't purchase. So they end up being more rental
19 units is what they'd have to be then.

20 MS. MOLDENHAUER: And some of the challenges with
21 family units, just this property, can you just describe a
22 little bit about the criminal history of this specific
23 property?

24 MR. HEMINGER: Excuse me. Yes, well, so this is kind

1 of a tough block. I'm not sure what I should say or not say,
2 but it's also right across from the park, Morton. If anyone
3 knows about this. I think actually I was here a couple weeks
4 ago when they were talking about in zoning. Or actually that
5 was the ANC meeting. But they're doing a lot of work over in
6 the park Morton. It's right across the street so not only is
7 it known to be a tougher block, it's also going to go through a
8 lot of construction over the next five years.

9 With that also said, we were very surprised to get a
10 visit from the local police department, about maybe six weeks
11 ago. And they actually -- I don't know what I'm supposed to
12 say or not say, but there was a lot of money along with things
13 that, you know, illegal subsidances (sic) in the house. So it
14 was that the house --

15 MS. MOLDENHAUER: So the police --

16 MR. HEMINGER: -- was vacant, the police contacted us
17 and they --

18 MS. MOLDENHAUER: Police visited the house. Okay.

19 MR. HEMINGER: -- found several hundred thousands of
20 dollars plus drugs in the house. So it's got a rough history
21 right there as well. And so, you know, again, trying to target
22 after families and they Google the address, et cetera, if we
23 went for the larger two-unit, would not be super desirable.

24 CHAIRPERSON HEATH: But it's just this house, not the

1 block necessarily.

2 MS. MOLDENHAUER: The specific house had -- we've
3 actually been in contact with Office of Attorney General for
4 the criminal division and they actually see that the applicant
5 is actually working with them to provide access in regards to
6 this house specifically.

7 CHAIRPERSON HEATH: Okay. And can you tell me
8 approximately what the square footage of a two-unit
9 development, what the two units would be versus the three?

10 MR. HEMINGER: You know, we have actually played
11 around with them. I don't know if we have them on us but if we
12 went for two individual units they would be somewhere in the, I
13 think it's 18 to 2,000 square foot range per unit for two.
14 Well, I mean, I think they can go up to like 2,400 apiece but I
15 think we'd -- that we typically hit them between 1,800 and
16 2,200, and then just kind of look at the layouts and figure out
17 what would make the most sense.

18 MS. MOLDENHAUER: And can you describe a little bit
19 about the modifications that you've made and your discussions
20 with the ANC and some of the additional discussions that we
21 even had yesterday with the ANC and some of the compromises
22 that we provided?

23 MR. HEMINGER: Yeah. One of the things that I think
24 was most important to the ANC by going through and meeting with

1 them was to try to keep the front porch, which we have agreed
2 to do in this particular three-unit layout. We also have the
3 upper -- the addition on the top floor much higher, and now
4 we're pushing it back so it's not as visible -- or it's not
5 really visible from the street at all. So these are things
6 that we've compromised to go with the three-unit, which we
7 feel, like I said, would be much more marketable than having
8 the two larger units. So we're losing our overall square
9 footage and a little bit of light in the front to try to keep
10 the porch and to push back the addition.

11 MS. MOLDENHAUER: So this is what's on the board at
12 the moment as the revised plans that were filed to the Board of
13 Zoning Adjustment for showing that this was a revised -- the
14 revised plans were something that was changed after the ANC
15 meeting to address some of the ANC's concerns?

16 MR. HEMINGER: Correct.

17 MS. MOLDENHAUER: And then also there was a
18 discussion yesterday with the chair of the ANC. Today we have
19 the SMD present. But there's also been conversations with the
20 chair who had voted in opposition of the letter of support, but
21 they never submitted a motion to fully oppose the project, that
22 just simply a motion to support the project failed, and
23 Commissioner Holmes can address that as well. But we also
24 discussed possibly relocating a tree and if you can just

1 discuss that?

2 MR. HEMINGER: Yeah. Actually we're keeping space in
3 the back of the house as well as in the front. You know, we're
4 not expanding it to the full lot. And we talked about putting
5 the tree in the front to prevent the visibility at all from the
6 addition.

7 MS. MOLDENHAUER: So you would be proposing to locate
8 a tree that could mature in the Southeast corner of the front
9 of the property, on the property, not on the public space that
10 would then potentially reduce the visibility of the addition.
11 Is that correct?

12 MR. HEMINGER: Correct.

13 MS. MOLDENHAUER: I believe that answers most of the
14 Board's questions. I can address the actual degrees of relief
15 and how we satisfy the legal standard. But if the Board wants
16 I can hold that until the end and provide that in our
17 conclusion.

18 CHAIRPERSON HEATH: You can speak to that now.

19 MS. MOLDENHAUER: Okay. So we are seeking area
20 relief for a lot area, open court, an addition to an existing
21 nonconformity, and then the new special exception standard for
22 the three units.

23 We believe that we have walked through in regards to
24 the character of the area for the special exception standard.

1 I'll just address that first. We've worked, I think, in depth
2 with the community to try to preserve the exterior character of
3 the building, and then also one of the things that we discussed
4 with the chair of the ANC over the last few weeks was their
5 desire as an ANC in the community to try to create a new
6 historic district. Obviously this property is not in a
7 historic district now, but one of the things that I think this
8 application is doing is trying to respect that community
9 request and to preserve the existing character of the building
10 and to set back at an angle, that top addition which would be
11 something that would be required for satisfying the special
12 exception standard.

13 In addition to that the locating of a tree on the
14 front Southeast corner of the land would also provide some of
15 the buffering of any visibility of any the addition as well due
16 to the angled aspect of the property. That's the special
17 exception standard then.

18 In regards to the variance standard we are -- the
19 property is unique in regards to the fact that it has an angled
20 property line and all the other lots on the block are parallel.

21 This property is nine feet less than the required 900 square
22 foot requirement. We would believe that would be a de minimis
23 area of relief and thus, you know, satisfy or have aspects of
24 the general standard for reducing the ability so it's literally

1 less than half of a percent of deviation from the lot area
2 requirement. The lot area requirement for the three units
3 would be 2,700. This lot is 2,691. If that line to that
4 street was somehow subdivided back in the day, not on an angle
5 but rather on a straight line, this property would be
6 substantially over the 2,700 square feet requirement.

7 And I would just indicate that, you know, Gill Martin
8 does state that when you're looking at a variance and you're
9 looking a de minimis nature, which I believe nine feet would be
10 de minimis, especially in this case, you're looking at a lesser
11 degree of burden of proof. And I believe based on the
12 testimony that we've heard today from the applicant that due to
13 the unique conditions of the area and the location of the
14 property, that there would be a practical difficulty in trying
15 to create two larger units. And at the same time there would
16 be less of a public benefit in regards to some of the specific
17 unique characteristics that are being considered and thought
18 about in regards to trying to enhance this project for a three
19 unit project that have to do with the special exception
20 standard for the requested relief here.

21 We also have, in addition to an existing
22 nonconformity, I was going to show, due to the angle, the
23 unique angle of the lot line, we have a nonconforming side yard
24 here on the bay window. That bay window is going to be

1 maintained on the addition, so we're creating an addition to a
2 nonconformity there that we're seeking relief from as well.

3 And we believe that we've satisfied the standards.
4 We will be available to answer any other questions.

5 CHAIRPERSON HEATH: Okay. Board, any other questions
6 of the applicant? All right. So I'll turn to Office of
7 Planning for any comments you have.

8 MR. GYOR: Good morning, Madam Chair and members of
9 the Board. Stephen Gyor with the Office of Planning. Although
10 we support the concept of the project and the proposed increase
11 to the District's housing supply, as well as the rehabilitation
12 of a vacant structure, I think the issue that we have is with a
13 nexus between the exceptional situation and the practical
14 difficulty as it relates to the lot area. I'll add that we
15 support the revised design that we saw here today, including
16 the sloped roof and retention of the porch.

17 I think that if the Board finds that there is a nexus
18 there, that we would support the court variance and the special
19 exception relief, but we would request that the retention of
20 the porch be included in the order. I'd be happy to answer any
21 questions that you may have. Thanks.

22 CHAIRPERSON HEATH: Board, any question of Office of
23 Planning? Applicant, questions of Office of Planning?

24 MS. MOLDENHAUER: No questions.

1 CHAIRPERSON HEATH: Okay. All right. Thank you. Is
2 there anyone here from DDOT wishing to speak on this
3 application? No one here from DDOT? We do have a letter of no
4 objection from DDOT. I'd like to hear from the single-member
5 commissioner from ANC 1A.

6 MR. HOLMES: 09.

7 CHAIRPERSON HEATH: 09. Okay.

8 MR. HOLMES: Good morning. My name is Bobby Holmes.
9 I'm the Commissioner for the ANC. I actually came up -- I
10 moved down to area 72, that's where my mother moved up in the
11 area. Back then it was a little rough around there, rough and
12 ready. But lately developments have moved up and the place has
13 changed a whole lot. I have personally went around there with
14 the developer and he was showing by step what he's planning to
15 do. I'm not a construction worker but I see what he was trying
16 to do. It will work out for this community. It would be hard
17 for a single family if he leaves two stories like it is.
18 Nobody would rent it or nobody would buy it because the way it
19 sit and the attitude the people having.

20 In two more years, maybe three years, probably more,
21 and it will be tore down and moved; rebuilt over there. Them
22 trying to get rid of public housing and making it joint where
23 low-income and family homes and the market price and the
24 housing to be worked together up in that neighborhood. So this

1 idea would work perfectly with the neighborhood and it would be
2 more income for the neighborhood and make a better place for
3 everybody.

4 CHAIRPERSON HEATH: Okay. All right. Thank you.

5 MR. HOLMES: You're welcome.

6 CHAIRPERSON HEATH: Board, any questions? All right.

7 So --

8 MS. MOLDENHAUER: Can I just ask Commissioner Holmes
9 a question?

10 CHAIRPERSON HEATH: Sure. Sure.

11 MS. MOLDENHAUER: So, Commissioner Holmes, you were
12 not present during the ANC vote so you weren't able to
13 articulate your support when they voted on this?

14 MR. HOLMES: No, I had to leave early but I already
15 told them that I would support the idea because I personally
16 went and called him, reached out to him, we went out there and
17 we walked the lot. And I asked certain things. I got
18 neighbors that really that's my voting strong point. That's my
19 stronghold. That's why I stayed at ANC because I rode around
20 there a lot and we worked together. They asked me about that
21 house a couple of times. He didn't mention that they found a
22 body in the house with the drugs and the money, so they did.
23 They reached out to me. I reached out to him and I told him if
24 you work here, I'll work with you. We need more security than

1 what you did here, and put more locks on it. He got somebody
2 to come there and they were (indiscernible) and make it look
3 like somebody live in there so that way it's no problems in the
4 house. So that's why we would really like you all to approve
5 this so they could start working on it so we won't have that
6 issue no more.

7 CHAIRPERSON HEATH: Okay. Thank you.

8 MR. HOLMES: You're welcome.

9 CHAIRPERSON HEATH: Based on the letter that we
10 received from the ANC, though, it seems like there's still a
11 lot of question about the development and I interpret their
12 comments and their vote, where the motion to support failed,
13 but they didn't make a motion to oppose to mean that they do
14 still have significant questions, or at least some questions
15 about the development. And that's what's keeping them from
16 giving their support.

17 MR. HOLMES: Excuse me, I can answer that.

18 CHAIRPERSON HEATH: Sure.

19 MR. HOLMES: The reason they didn't give them the
20 support, I went there to verify that I had went out there to
21 witness what was going on. And my area around there, we had
22 two more developments going on which a whole lot of people is
23 upset about. They had two houses. They tore the middle wall
24 down and built condos up, made two house into one. And see,

1 and people are really upset with that issue because they figure
2 that if you got two houses why you going to convert to one and
3 put all that property up there, and that means more people
4 going to drive, more parking, going to be a problem with the
5 parking. And they ain't going to stay long because I lived
6 around there since '72, in the 600 block of Keefer Place where
7 I seen five people move in and they left when they had kids
8 because it's hard to find a good education schooling around
9 there.

10 But this way, you've got places for people who are
11 not ready to have a family but just need a place to stay and go
12 to work. It's a prime good deal and this would be a good idea
13 for us.

14 CHAIRPERSON HEATH: Okay. All right. Thank you.

15 MR. HOLMES: You're welcome.

16 CHAIRPERSON HEATH: Applicant?

17 MS. MOLDENHAUER: Can we just address your question
18 about the ANC?

19 CHAIRPERSON HEATH: Sure.

20 MS. MOLDENHAUER: Following this vote we have had
21 conversations, obviously, with Commissioner Holmes who
22 continues to support the project. And also with the ANC chair,
23 and who filed this application, Kent. And so one of the issues
24 that I think the community, as I said, is very concerned about

1 was the character and the historic potential of development of
2 a historic district, which is why we have modified the
3 application from the ANC meeting.

4 I don't know if I would characterize it as there is,
5 you know, still outstanding issues. I think that we've
6 addressed those and I think that it was also just a unique
7 situation in which the SMD was not present while he had
8 informed the Commissioner of his support. He was able to
9 actually be there during the discussion and during the vote to
10 articulate that and to potentially express that to some of his
11 other commissioners. And I think that you can see that from
12 the mixed vote and the fact that they did not file a request to
13 -- or submit a motion to oppose, that they do not specifically
14 oppose it; that they were just simply you know, waiting. And
15 we will continue to work with them. But we think that the case
16 is ripe for moving forward.

17 CHAIRPERSON HEATH: Okay. Board, any questions? Go
18 ahead.

19 MR. MILLER: So I just had one question for the
20 applicant, or the ANC Commissioner. Was there any outreach to
21 immediate neighbors and feedback from them on the project?

22 MR. HOLMES: An outreach in the neighborhood, I'm
23 going to tell you in that neighborhood, they are not allowed to
24 knock on doors because that's the way it is. And they sent me

1 e-mails and tell -- I went around there. We had a little pow-
2 wow. They just want the area to be built and they do their
3 work they want somewhere they could have remove the trash
4 constantly, in which we discussed they will move the rubbish
5 through the back alley, that way it will not block off more of
6 the main roads in and out. And the hours of operation, they
7 would sit there and discuss the hours of operation where they
8 could come in and leave without disturbing the neighbors. And
9 they all agree on asking me to ask you all, will you all go
10 ahead and let them have their way, let them start the work so
11 that way we won't have to have nobody breaking in the building
12 again.

13 MS. MOLDENHAUER: So just to follow up on that. I
14 mean, we worked with Commissioner Holmes in our outreach, and
15 Commissioner Holmes, we did have multiple meetings with
16 Commissioner Holmes at the property, near the property, and
17 Commissioner Holmes did reach out specifically to the people on
18 the block and we utilized him as our, you know, moderator to
19 work with the community and make sure we understood what the
20 community's needs were. And a lot of it had to do with trash
21 and the parking, and this property does have parking via the
22 rear access alley.

23 MR. MILLER: Thank you.

24 CHAIRPERSON HEATH: Okay. Thank you, Commissioner,

1 for taking the time to come down to speak to us.

2 MR. HOLMES: You're welcome. I thank you all for
3 doing this for us.

4 CHAIRPERSON HEATH: Sure.

5 MR. HOLMES: We appreciate you all a lot more than
6 you all really think.

7 CHAIRPERSON HEATH: Thank you. Is there anyone here
8 wishing to speak in support of this application? Anyone in
9 support? Anyone here wishing to speak in opposition? Can you
10 please come forward?

11 Yes, please, have a seat at the table and make sure
12 your mic is on and then you can introduce yourself.

13 MR. JORDAN: Oh, okay. My name is Mike Jordan, and I
14 actually live adjacent to this house at 551 Park Road and I'm
15 not seeing what the Commissioner here is seeing, you know, as
16 far as -- the problem is, what this block needs is more home
17 ownership. It doesn't need -- the block already has
18 significant amount of rental units. There's an apartment
19 building two houses to the left. There's another apartment
20 building like three houses down to the left, to the right. The
21 Park Morton is across the street. They're going to be knocking
22 that down and there's going to be multi-family there. And I
23 bought my house and I've invested a lot. I'm a single-family
24 homeowner. I have a family. And it just seems like these

1 developers, they're coming in from somewhere else and they
2 don't have -- the reason that this house was taken over by drug
3 dealers and drug addicts was because whoever owns it neglected
4 it for almost eight months. The grass grew almost 10 feet
5 high. They wouldn't clean the property. They didn't take care
6 of it. And this is the attitude of these developers from the
7 outside that are coming in to this block.

8 You see, and now they want to -- because they don't
9 care about this neighborhood, they're just trying to maximize
10 their profits, they're trying to do three-unit apartment
11 building, where this block, it has had some problems in the
12 past and what it needs now is a homeownership on this block.
13 People -- and it's been proved, and people are buying homes on
14 our street for 650, \$700,000. So there is an opportunity and
15 there is proof that people will buy single-family homes on our
16 block if they are renovated and done right. There's a demand
17 for single-family homes and it's been proven that they will
18 sell on our block.

19 I mean, it's this attitude that our streets is a drug
20 street and nobody cares. And that attitude is pervasive and
21 outside developers, they don't know this area. They'll drive
22 down the street and they'll have a certain attitude about what
23 they see. But the reality is there are several -- there are a
24 lot of single-family homeowners, families on this block, who

1 care about this neighborhood and want to see homeownership on
2 this block. It's not rental units that uplift the community.
3 It's people who buy homes, stay there, invest in them, and have
4 pride in their homes. Not a one-year rental guy who is going
5 to come and be gone in a year. He doesn't care about the
6 neighborhood, just like these developers don't care about us on
7 this block.

8 So I completely oppose this. And I don't know, no
9 one knocked on my door. I've been ready to come to this
10 meeting to deny this since I saw that letter on the door. You
11 know, it's just, I completely oppose what they're trying to do.

12 We need homeownership to uplift neighborhoods. That's what --
13 not more rental units. We got so many rental units on the
14 block. That's the problem with the block. There's not enough
15 homeownership.

16 And there will be if developers come in and build
17 good single-family homes that people want to buy. I mean,
18 maybe a two-unit where somebody could -- a dwelling with a
19 rental unit. A dwelling with a rental unit is probably much
20 better than a three-unit apartment building, because you still
21 have someone who is going to buy the home and invest in the
22 neighborhood and maintain one single -- maybe use one of the
23 units to help pay their mortgage. But they will be there to
24 invest in the neighborhood, to appreciate the neighborhood, and

1 love the neighborhood and build it up. Not more rental
2 apartments for people that don't care. They're only going to
3 be there for -- I'm there. I've been there since 2003. I've
4 been working on my house for years.

5 CHAIRPERSON HEATH: Okay. Thank you so much. We
6 appreciate you taking the time to come down. Your time is up.
7 But we really appreciate you taking the time to come down and
8 to give us your testimony.

9 MR. JORDAN: Right. I'm right next door to the
10 house, 551.

11 CHAIRPERSON HEATH: We appreciate that.

12 MR. JORDAN: They neglected the house and that's why
13 it turned into -- these developers, they don't care. They're
14 from outside. They neglected that house and the drug people
15 went inside and destroyed it because they neglected it. Now
16 here is more neglect.

17 CHAIRPERSON HEATH: Thank you. Any questions, Board,
18 of this witness?

19 Okay. Okay. All right. All right. Anyone else
20 wishing to speak in opposition on this? Okay. You can come
21 forward. Please introduce yourself.

22 MS. MCDANIEL: Good morning, Madam Chair, members of
23 the Board. My name is Betsy McDaniel. I don't live in the
24 neighborhood but I do live in an R-4 neighborhood and a request

1 for an exception to the minimum lot requirement is very
2 concerning to me and I noticed in this particular area almost
3 all the lots across the alley and across the street, are too
4 small for three units. And I would hate to see a precedent for
5 that neighborhood or and for all the other R-4 neighborhoods.

6 You haven't mentioned, there is another letter of
7 opposition in the file this morning from someone across the
8 street. So I also would like to question how much outreach
9 that they really did do. I also think that it's really not
10 substantiated that they need three units to make this project
11 work, and I don't -- you know, the crime issue is concerning of
12 course, but I'm also concerned about the testimony that we just
13 heard that the crime -- the property became a problem after the
14 current owner purchased it. So there are remedies for securing
15 a property and keeping it from being a crime scene. So that's
16 all I'd like to say.

17 CHAIRPERSON HEATH: Thank you. Board, any questions?

18 All right. Thank you so much.

19 If there's no one else here wishing to speak in
20 opposition then I'll turn back to the applicant for rebuttal or
21 closing.

22 MS. MOLDENHAUER: So I'll turn to the applicant for a
23 moment just to talk about the timing in regards to when they
24 bought the property and some of the challenges that occurred

1 prior to them acquiring the property, and then also to
2 elaborate on the practical difficulty of the three units and to
3 explain that this is going to be a condominium. The intention
4 is the three-unit condominium with homeownership. So I'll turn
5 it over to the applicant.

6 MR. TEASS: Yeah. First of all, I'm happy to meet
7 with you and I'm sorry we have been going through Commissioner
8 Holmes, and we were actually at the ANC meeting and hadn't had
9 anyone else reach out to us. But apologize about that.

10 I do think there is some confusion. I think if the
11 goal is to have the homeownership, which is -- I don't live in
12 the neighborhood but I have lived in the neighborhood, I have
13 employees that live in the neighborhood, and I spend a lot of
14 time over there. The goal here is if we can do the three units
15 they will be condominiums and they will be sold, so they would
16 bring homeownership, three separate homeownership, you know,
17 families or individuals to the neighborhood. And I do think
18 condo -- people who own their condominiums as well as single-
19 family homes, invest just as much into the neighborhood and it
20 is their -- where they live and they love to live there and,
21 you know, want to take care of it.

22 If there is any confusion on the rentals I think it
23 was before coming here today. But if it was what I had
24 mentioned, when you get down to these two, doing the two larger

1 units, it is -- it does become, you know, more challenging to
2 sell, financially much more of a hardship. That's why we were
3 willing to make the structures smaller and more attractive to
4 go for the three units. So there is a chance it could be a
5 rental unit, absolutely. If it's done in the two units, just
6 because of the financials, or at least one of them maybe would
7 be sold and one would be held as a rental and they'd be larger
8 units, and that you would probably honestly get young
9 professional but single, you know, lots of roommate situation.
10 So if that's what we're trying to avoid we're happy to work
11 with you on that.

12 But again, the intention is three individual units
13 not to keep to rent out but to be sold to individual
14 homeowners.

15 I know the property has been an issue for quite some
16 time. We have only owned it for several months, but not a
17 year. Not even close to it. So I think it was in the state of
18 what it was, was there then. But again, we're happy to
19 continue to work with you and I know we've worked with the
20 police to clean it up and Commissioner Holmes.

21 I think that's all I have to say.

22 MS. MOLDENHAUER: From a perspective, I think
23 obviously this is one of the first cases that is requesting a
24 lot occupancy or lot occupancy or lot area requirement

1 following the new R-4 change. That being said, the Zoning
2 Commission, when they evaluated it, they did not put an
3 absolute bar on lot area relief. It is a variance standard.
4 It is the same standard in which this Board has granted
5 numerous areas of relief and has affirmed and voted in favor of
6 those. I think that the reality is, is that this is a unique
7 case where we're not asking for a large degree of relief.
8 We're talking about nine feet. The property is uniquely
9 situated in which it has an angular lot which creates that
10 unique situation. None of the other properties on the square
11 have that same condition that are under the 2,700 square feet.
12 Or a lot of them as we heard from Betsy who spoke, who lives
13 in another ANC, those are properties that are substantially
14 below. You know, 1,800. That's not the case here. We're
15 talking about something that is nine feet below the
16 requirement.

17 And if you're looking at that issue I think that Gill
18 Martin and the case precedent has to go to what is this Board
19 evaluating that under. And then what are the standards. And
20 the standards are, based on the Court of Appeals case, that a
21 de minimis degree of relief, which I believe nine feet would
22 definitely qualify for, there is a lesser degree of burden of
23 proof.

24 We believe that we do satisfy that, though. There is

1 substantial evidence in regards to the condition of the
2 property. The property is being developed, though, at a 49
3 percent lot occupancy rather than what would potentially be
4 able to be a 35-foot-high no architectural characteristics
5 being preserved as a two-unit flat that would have financial
6 challenges and practical difficulty as you heard testified
7 today by the applicant for marking those two units.

8 The applicant is looking to bring three homeowners to
9 some of the points of concern, both in the letter that was
10 filed this morning and from the adjacent property owner. We
11 are looking to provide almost a historic level of preservation
12 to the building including the porch which OP reference, as well
13 as planting a tree so that as you walked down the street, even
14 though the line of site would not be visible, as you walked
15 down the site that tree would help shade some of the addition
16 height of the project.

17 We believe that this does satisfy the special
18 exception standard for the three unit, and that the small area
19 relief in regards to the variance standards are also satisfied.

20 CHAIRPERSON HEATH: Board, any other questions of the
21 applicant? Okay. Then that will conclude the hearing. I
22 don't know where the Board stands on this but I'm not ready to
23 deliberate on this application yet. I really appreciate that
24 you are wanting to move forward with developing this property

1 and to remove it from its current blighted situation. But I
2 still feel like I need to see more information about why you
3 feel that you need three units here rather than two. You are
4 adding on to this property which is making the two units, if
5 you were to propose two units, it's making the two units
6 larger. But I don't feel like I've seen enough information.

7 You've talked about some of the financial
8 implications of a single-family versus two unit, versus a three
9 today, but we haven't seen much information so I feel like that
10 argument is still fairly weak, and I'd like to see you provide
11 us with more substantial information to justify the three
12 units.

13 I'd also like to see you continue your work with the
14 neighborhood and to work with the neighbors, the adjacent
15 neighbors, and the ANC to help them better understand the
16 project and to see if you can come to some agreement that will
17 allow them to be in support of the development. I think you've
18 talked today about the potential for this to be condos rather
19 than rental, which I think will speak to a lot of the
20 neighbor's concerns. But I would like to see you have more
21 time to be able to continue those conversations.

22 Anybody else?

23 MR. MILLER: Thank you, Madam Chair. I would agree
24 with you. I think the relief that's being requested is de

1 minimis. But I think your own point that we need more --
2 because there is opposition from the next door neighbor and
3 other neighbor, and the ANC had a divided vote that didn't
4 support the application, I think more time to work that out,
5 show what you've done to try to fit this into the neighborhood
6 to make this work for the neighborhood, what would be
7 beneficial to the project and for us.

8 I think if you can show financial or other
9 information that shows how this -- it will be homeownership for
10 the three units versus another -- if it was just two units and
11 how that would benefit the neighborhood, I think that would
12 help the application. But I think if the Commissioner could
13 help maybe work with and get the support of the neighborhood
14 and show maybe the ANC how the renderings that you -- the
15 revised renderings have addressed concerns that were raised,
16 maybe you can garner more support that would make this a better
17 project going forward. So I appreciate everyone coming down
18 here and I think you're inclination to defer, not for a long
19 period but for a short period to try to get this to get more
20 consensus would be good.

21 CHAIRPERSON HEATH: Okay.

22 MR. HILL: And, Madam Chair. You know, for the
23 benefit of the applicant and the other people in the
24 neighborhood that came in, where I'm kind of at right here is

1 also, I'm not there yet and I don't know if I would necessarily
2 get there. And you know, I like the design. I like the fact
3 that there was -- you know, the discussion about it being
4 condominiums as opposed to apartments, you know, that's
5 something that I thought was strong for the case. And yeah, so
6 I mean, so I'm also fine with coming back and hear more
7 information.

8 CHAIRPERSON HEATH: Okay. So how long would you need
9 to be able to get us additional information?

10 MS. MOLDENHAUER: The ANC doesn't have a meeting in
11 December. The next meeting is January, so we would prefer if
12 maybe we can work with the neighbors and kind of have a dialog
13 with them but not defer this until another ANC meeting, and we
14 can obviously continue to work with Commissioner Holmes and
15 maybe provide some additional information in the record. We
16 would then be looking maybe to a December 22nd date. If that's
17 possible.

18 CHAIRPERSON HEATH: Mr. Moy, what would you propose
19 as a date for us?

20 MR. MOY: If the Board is wishing for a hearing
21 before the holidays then December 22nd would be the latest.
22 Otherwise we're into mid-January as the next hearing after
23 that.

24 CHAIRPERSON HEATH: Okay. Okay. Okay. All right.

1 We should have Jeff back by then. All right. So if you can
2 continue to work with the single member commissioner and the
3 neighbors, I would be fine to move this to December 22nd.

4 MS. MOLDENHAUER: Would that be a decision date, or
5 would that be a continued hearing? I'm just trying to
6 understand.

7 CHAIRPERSON HEATH: We could put this on for
8 decision.

9 MR. MOY: Okay. Then if the applicant can provide
10 filings by December -- I'll go as late as the 17th, which is a
11 Thursday.

12 MS. MOLDENHAUER: Thank you. So we'll shoot for a
13 COB on the 16th, that way that helps out.

14 CHAIRPERSON HEATH: Thank you.

15 MS. MOLDENHAUER: Thank you very much.

16 CHAIRPERSON HEATH: Okay. Thanks. All right. Okay.
17 So, Mr. Moy, we'll call the next application.

18 MR. MOY: Yes. Thank you, Madam Chair. That would
19 be parties to Application No. 19121. Excuse me. This is the
20 application of the JBG Companies, and as captioned and
21 advertised for public notice, request for variance relief in
22 the off-street parking requirements, loading requirements, and
23 a special exception from the roof structure setback
24 requirements under 411 and 770.6 to implement second phase of a

1 mixed use development in the C-3-C district at premises located
2 on Square 672 and Lot 260.

3 CHAIRPERSON HEATH: All right. Thank you. Would you
4 all please introduce yourselves?

5 MS. SHIKER: Good morning. My name is Christine
6 Shiker with the law firm of Holland and Knight, representing
7 the applicant.

8 MS. BLOOMFIELD: Good morning, I'm Jessica Bloomfield
9 from the law firm of Holland and Knight.

10 MR. KELLY: Jay Kelly from JBG, the JBG Companies.

11 MR. SMITH: Good morning. Steve Smith. Good
12 morning, Steve Smith with Cooper Carry. We're the project
13 architect on the job.

14 MR. ANDRES: Good morning, Erwin Andres with
15 Gorove/Slade Associates.

16 CHAIRPERSON HEATH: Good morning. So we've reviewed
17 the file and I don't have any questions or issues with what
18 I've seen. The file appears to be complete based on what's
19 been submitted for record. Board, do you have any questions or
20 issues you'd like for the applicant to drill down on? Okay.

21 Then you obviously have the right to a full hearing
22 but you can waive that right and allow us to move on if you so
23 choose.

24 MS. SHIKER: We'd be happy to stand on the record

1 with the clarification that the relief is under the approved
2 regulations for the penthouse.

3 CHAIRPERSON HEATH: Sure.

4 MS. SHIKER: As described in the prehearing
5 submission. Thank you.

6 MS. SHIKER: Okay. Thank you. All right. So then
7 with that, Office of Planning?

8 MR. JESICK: Thank you, Madam Chair and members of
9 the Board. My name is Matt Jesick. The Office of Planning
10 also recommends approval of the application and I'd rest on the
11 record and be happy to take any questions. Thank you.

12 CHAIRPERSON HEATH: Okay. Now you also suggested in
13 your letter that this application be postponed until the new
14 regs are in place. What was your thinking behind that?

15 MR. JESICK: That was one option that the Board did
16 pursue on Case 19103, which was 901 5th Street Northwest. But
17 last week the Board also approved a case, 19122, which also
18 fell under the new regulations. So either way would be fine,
19 but I think it's fine to also proceed forward today with the
20 understanding that it would be under the new regulations.

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

23 MR. MILLER: Yes.

24 CHAIRPERSON HEATH: Go ahead.

1 MR. MILLER: So with the approval last week in that
2 case, contingent upon the new penthouse regulations taking
3 affect, maybe this is a question for you or OAG, is that how
4 the order reads, contingent? Or does it just not get published
5 until after the other -- until the penthouse regulations get
6 published and take effect?

7 MR. JESICK: I believe it wouldn't be published until
8 after the penthouse regulations are published.

9 MR. MILLER: Right.

10 MR. JESICK: But OAG can probably shed more light on
11 that.

12 MR. MILLER: Okay. Well, yeah. It obviously
13 couldn't be effective until --

14 CHAIRPERSON HEATH: Right.

15 MR. MILLER: Either way. So.

16 CHAIRPERSON HEATH: Right.

17 MR. MILLER: That makes sense. I just wanted to
18 clarify that.

19 CHAIRPERSON HEATH: Okay. Applicant, any questions
20 of Office of Planning?

21 MS. SHIKER: No.

22 CHAIRPERSON HEATH: Okay. All right. Thank you. Is
23 anyone here from DDOT on this application? We do have a letter
24 of no objection from DDOT with one condition, and you're

1 familiar with that condition and --

2 MS. SHIKER: Yes, the additional TDM measure of the
3 unbundling of the parking, and we have committed to DDOT we'll
4 do that and we're representing to the Board today that we'll do
5 that as well.

6 CHAIRPERSON HEATH: Okay. All right. Is there
7 anyone here from ANC 6C? We do have a letter recommending
8 approval from them. That's in the record.

9 Is there anyone here wishing to speak in support of
10 this application? Anyone in support? Anyone in opposition to
11 this application? Any opposition?

12 We do have a letter of support that came in late, but
13 it's in the record from the President of the No-Ma Bid
14 recommending support for this application.

15 So normally we would turn back to you for closing
16 but --

17 MS. SHIKER: We would request approval of the
18 application based on the submissions in the record. Thank you.

19 CHAIRPERSON HEATH: All right. Okay. Question?

20 MR. MILLER: Yeah, I'm sorry, Madam Chair.

21 CHAIRPERSON HEATH: Sure.

22 MR. MILLER: I did have one question, and that the
23 applicant can speak to. So the new penthouse regulations would
24 trigger an affordable housing requirement. I wonder if you

1 could just briefly speak to that and the applicant's commitment
2 to compliance with that.

3 MS. SHIKER: Absolutely. The new penthouse
4 regulations do require the production of affordable housing if
5 you have occupiable space in the penthouse. This project will
6 produce quite a bit of affordable housing, over a million
7 dollar contribution to the Housing Production Trust Fund based
8 on the proposed occupiable space. And that will be made in
9 accordance with the approved regulations.

10 MR. MILLER: Thank you.

11 CHAIRPERSON HEATH: Okay. All right. Board, any
12 other questions of the applicant? All right. Then that would
13 conclude the hearing and we can move to deliberation. Okay?

14 Then I will move that we approve this application for
15 both variances and special exception for this mixed use
16 development.

17 MR. MILLER: I would second it.

18 CHAIRPERSON HEATH: All right. The motion has been
19 made and seconded. Any further discussion?

20 [Vote taken.]

21 CHAIRPERSON HEATH: Then the motion carries. Mr.
22 Moy.

23 MR. MOY: Yes. Staff would record the vote as three
24 to zero to two, this is on the motion of Chairperson Heath to

1 approve the application for a relief requested and advertised,
2 and seconding the motion, Mr. Miller. Also in support, Vice
3 Chairperson Hill, no other member present. Seat vacant. The
4 motion carries three to zero.

5 CHAIRPERSON HEATH: Thank you. Summary order, Mr.
6 Moy.

7 MR. MOY: Yes. Thank you.

8 CHAIRPERSON HEATH: All right.

9 MS. SHIKER: Thank you.

10 CHAIRPERSON HEATH: All right. We'll take a five
11 minute break and then come back with our next application.

12 [Recess from 11:13 a.m. until 11:20 a.m.]

13 CHAIRPERSON HEATH: Okay. So you can call our next
14 case.

15 MR. MOY: Thank you, Madam Chair. That would be
16 Application No. 19126. This is the application of Timothy
17 Turnham. I believe I pronounced that correctly.

18 For the record I'm going to read the request that was
19 -- the applicant requested and was noticed, unless they have
20 changes. And they had asked for a relief, for a variance
21 relief on the lot occupancy requirements, and special exception
22 under 223, not meeting the rear yard, the court width, and
23 nonconforming structure provisions, and the special exception
24 from the alley setback requirements under 2300.2, Sub B. And

1 this is for constructing a one-story rear garage and a deck
2 addition to an existing one-family dwelling on in an R-4
3 district at premises 1252 Columbia Road Northwest, Square 2583,
4 Lot 70.

5 CHAIRPERSON HEATH: All right. Thank you. Would you
6 all please introduce yourselves?

7 MS. TURNHAM: I'm Phyllis Turnham, applicant.

8 CHAIRPERSON HEATH: Okay.

9 MR. TURNHAM: I'm Tim Turnham, applicant. And you
10 did a good job on the last name. Thank you.

11 MR. HEISEY: Joe Heisey, architect for the
12 applicants.

13 CHAIRPERSON HEATH: Okay. Thank you. Can you
14 clarify the relief being requested because there's been some
15 information that has --

16 MR. HEISEY: Yeah, it's been going back and forth.
17 The setback for the garage, I guess, will be not applicable
18 because it's been determined that this is a continuous
19 structure, not an independent structure. So the garage setback
20 would not apply but a rear yard setback variance would be
21 required in substitution of the garage variation. A closed
22 court variation would be required and the lot coverage variance
23 would be required.

24 CHAIRPERSON HEATH: Okay.

1 MR. HEISEY: So it's lot coverage, closed court, and
2 lot coverage.

3 CHAIRPERSON HEATH: Rear yard.

4 MR. HEISEY: Yes.

5 CHAIRPERSON HEATH: Okay. Rather than the garage
6 setback because it was determined since it's a connected
7 structure with the main structure it's not an accessory
8 building, it's one building.

9 CHAIRPERSON HEATH: Okay. And you're currently
10 nonconforming, right?

11 MR. HEISEY: Correct. Yea.

12 CHAIRPERSON HEATH: So, 2001.3.

13 MR. HEISEY: Right. That would also just, you know,
14 the recordkeeping, yeah.

15 CHAIRPERSON HEATH: Okay. All right.

16 MR. HEISEY: And it's nonconforming just because of
17 the open court. It currently conforms to the lot coverage.

18 CHAIRPERSON HEATH: Okay. So we're going to need you
19 to revise your self-certification form because I believe it
20 still showed special exception request.

21 MR. HEISEY: Does it? I know we revised it.

22 CHAIRPERSON HEATH: Okay.

23 MR. HEISEY: I thought it was revised as was
24 requested. It wasn't?

1 CHAIRPERSON HEATH: Let me see.

2 MR. HEISEY: You didn't see it?

3 CHAIRPERSON HEATH: You could confirm for us.

4 MR. MOY: It's under Exhibit 48, Madam Chair.

5 CHAIRPERSON HEATH: Okay.

6 MR. MOY: If you want to take a quick look at it.

7 CHAIRPERSON HEATH: Okay.

8 MR. MOY: It should be revised for a variance relief
9 from those requirements, I believe.

10 CHAIRPERSON HEATH: Okay. Let me make sure it's --

11 MR. HEISEY: I have a copy of it here but I'm not
12 finding it right away.

13 [Pause.]

14 CHAIRPERSON HEATH: Okay. All right. Thank you.

15 [Pause.]

16 CHAIRPERSON HEATH: All right. So if you could -- I
17 think we have a few questions. But if you could just speak to
18 the relief being requested relative to your exceptional
19 situation in order to satisfy the variance test I think in
20 order for us to get there in order to be able to approve your
21 application we're going to need to hear --

22 MR. HEISEY: Right.

23 CHAIRPERSON HEATH: -- justification on your
24 exceptional situation.

1 MR. HEISEY: Part of it is the size of the lot.
2 While it meets the minimum lot size, I mean, minimum lot size
3 is 1,800. This is 1,930. So just barely over the minimum lot
4 size, but it is only 17 feet wide, where a minimum is 18 feet.
5 So that's part of it.

6 But the main part of it is the topography of the
7 site. This site in the front is much higher than the rear.
8 The main level of the property, the residence, is eight feet
9 above the grade of the alley below. So there really is
10 effectively no usable rear yard. Almost every property on this
11 block on this side of the street, the rear yard is either a
12 parking pad or an unkempt patch of grass. It's just not usable
13 in a practical sense.

14 So the current deck that is there is small, it's only
15 about what, 10 feet deep. Something like that. Plus it's an
16 awkward configuration, it takes out the parking space and
17 there's also an encroaching concrete bank that encroaches on to
18 the neighbor's property that we would like to be corrected
19 through this proposal as well.

20 The other thing that makes it kind of a hardship, and
21 we have a bit of a disagreement with Office of Planning on
22 this, is these lots taper. If you look at the aerial
23 photograph that's been included, the lots at the east end of
24 the block are much deeper. And then they taper to be much

1 smaller toward the west as you approach 13th Street. And what
2 this does is in the block most of the lots could do what we're
3 proposing with either clearly just by right on 60 percent
4 coverage, or special exemption at 70 percent. There's 20
5 percent of the lots that have to go beyond the 70 percent to be
6 able to do what the other 80 percent can do.

7 So that is kind of the hardship. If we were three
8 blocks to the east this would be a 70 percent special exemption
9 which Office of Planning has no disagreement with. All the
10 neighbors even agree with this. The immediate neighbors, the
11 neighbors across the street, the ANC discussed it for all of
12 five minutes and then had a unanimous supporting vote.

13 There was a previous garage here that had covered the
14 lot as well. I think the advantages of having the deck are, it
15 puts more eyes out in the alley. It makes it more safe and it
16 provides an actual usable rear yard that is not there at the
17 time being. And it will also add an additional parking space
18 to take stress off the on-street parking.

19 So the actual hardship is more the impracticality of
20 using the lot as it is and compared to other lots, the majority
21 of the other lots in the square that could have this done by
22 right or a special exception.

23 MR. TURNHAM: And if I could just add to that? The
24 house immediately to the west of us has the exact configuration

1 that we're requesting. And the house next to them has a
2 parking pad, and then the house next to that one has also the
3 same configuration that we're requesting. So three of the four
4 houses to the left of us have a garage that's contiguous with
5 the house and that's just the nature of the fact that the block
6 does taper and we have no other space in that area.

7 We have support from neighbors on both sides of us,
8 and it is our neighbor to the west of us who said that we
9 originally did have a house in that garage. His family has
10 inhabited that dwelling since -- well, for almost 100 years.
11 And he can remember a garage in our location.

12 MR. HEISEY: And that's also supported in the
13 documents that were presented in the Baptist maps.

14 CHAIRPERSON HEATH: All right. Board, any --

15 MR. HEISEY: The only other thing that I would like
16 to point out is that the method of calculating the lot
17 coverage, in practice, in discussions with the Zoning
18 Administrator over the years, was that entries to the first
19 floor level did not count, and that open courts, even if they
20 were nonconforming, did not count toward the lot coverage. If
21 you use that method of calculating the lot coverage this
22 proposal is actually at 70 percent.

23 Office of Planning, when they checked with one of the
24 techs at Zoning said, well, no, open courts count and

1 stairways, anything above four feet counts. So if you use that
2 calculation you arrive at the 77 percent lot coverage. So the
3 actual lot coverage could be either 70 percent or definitional
4 it could be 77 percent. So we're right at that tipping point
5 between a special exemption and a variance requirement.

6 MR. HILL: And that home to the east of you, that has
7 a garage what you're trying to do, and there is a deck on it?

8 MR. HEISEY: To the west. Just to the --

9 MR. HILL: To the -- if --

10 MR. TURNHAM: The house to the west of us has --

11 MR. HILL: Oh, I'm sorry. Right. To the west.

12 MR. TURNHAM: Yeah, to the west of us has the --

13 MR. HEISEY: In fact it's those -- it's all the
14 smaller lots to the west actually have a garage on them, and
15 most of the larger lots -- there were several garages. Some
16 had been removed. I think there's two others, one of which
17 actually has a garage and a deck.

18 MR. HILL: Does your neighbor to the west have a deck
19 on that garage?

20 MR. HEISEY: Yes, he does.

21 MR. TURNHAM: Yes, they do.

22 MR. HILL: Thank you.

23 CHAIRPERSON HEATH: And so currently you have one
24 parking space in the rear. This would provide two?

1 MR. TURNHAM: That's correct.

2 CHAIRPERSON HEATH: All right. Any other questions?

3 All right.

4 So you've made the comment that you're aware of your
5 difference with the Office of Planning and I'd like to hear
6 from them based on the comments you've just made and their
7 prior discussions with you.

8 MR. HEISEY: Steve and I have had several
9 conversations about also trying to get it to 70 percent and
10 what restrictions are, and we played with a couple different
11 things and it runs into creating more variances. So I mean, we
12 have tried a few other alternatives as well.

13 CHAIRPERSON HEATH: Okay. All right. So Office of
14 Planning?

15 MR. MORDFIN: Good morning. I'm Stephen Mordfin.
16 And the Office of Planning recommends against this case because
17 although the lot occupancy is at 70 -- rather, the lot itself
18 is larger than the minimum required, and it is not an unusual
19 lot compared to the entire row of houses there. They're all
20 pretty much the same. They're developed pretty much
21 consistently along that block, although they do get narrower as
22 you go from east to west. This one is still -- or rather,
23 shorter. This one is still larger than is required and
24 therefore we don't find that to be a uniqueness that the larger

1 lot results in the need to have an increase in lot occupancy.

2 We did discuss, you know, now the stairs would count
3 or not count towards lot occupancy. I did meet with DCRA and
4 the reason that this one, they we're going to count it from
5 four feet and above towards lot occupancy, had to do with the
6 fact that this staircase didn't go up and result in a landing
7 outside a door, and you went right into your house. What it
8 does is it provides access to both the dwelling and to the
9 deck, and that was the reason why DCRA did not want to exclude
10 the entire staircase, because of the access to the deck.

11 CHAIRPERSON HEATH: Okay.

12 MR. MORDFIN: Let's see. So the Office of Planning
13 recommended against the lot occupancy because it is a larger
14 lot. It's not an unusual lot. Also because the rear yard is
15 almost completely eliminated. You have the deck, you have the
16 -- which will be over a garage, and then you're left with three
17 feet before you hit the alley, and that's a substantial
18 variance and we did not see what on this property was unique
19 that would result in having to have the rear yard reduced to
20 three feet from the 20.

21 The closed court, what that does -- I mean, it
22 results from having to build -- from building what they are
23 constructing. I understand that, you know, the court is
24 existing, it's an open court, and it's very easy to make it

1 into a closed court. But because the Office of Planning was
2 recommending against the construction of everything else, it
3 was the lot occupancy and the reduced rear yard, we did not
4 support the closed court because it was a result of those other
5 things.

6 So that's office -- so I'm available for questions if
7 you have any. Thank you.

8 CHAIRPERSON HEATH: Sure. Do you know if the
9 neighbor who has a garage, if their garage takes up their
10 entire rear yard? Do you remember?

11 MR. MORDFIN: There were drawings submitted by the
12 applicant that showed, I think the existing situation in the
13 early '50s that showed the garage on the subject property, and
14 it also shows it on this one.

15 MR. HEISEY: If I may jump in, Chair? Where Steve
16 referred to that we have a three-foot setback, that there's --
17 we line up with theirs on their eastern side, which they have
18 about two and a half feet on that side. On their western side
19 they have about a foot and a half setback.

20 CHAIRPERSON HEATH: Okay.

21 MR. TURNHAM: And it does take up -- the garage next
22 to us is attached to their house. So they walk straight out of
23 their back door on their main level, on to their deck, and then
24 can take a stairway down. It's a little challenging to see on

1 this photograph, but on the lower -- on the one that's marked
2 aerial view of the south side of Columbia Road, our home is the
3 home where the number 52 on 1252 Columbia Road, 52 is right on
4 top of our roof. The house just to the left of that you can
5 see the deck comes straight off the back of that house and
6 there's no yard. There's no green space on any of these houses
7 several houses to the east or to the west from us.

8 CHAIRPERSON HEATH: Okay.

9 MR. TURNHAM: They're all either parking pads or
10 garages.

11 CHAIRPERSON HEATH: Okay. One more question for
12 Office of Planning. If the applicant were to reduce the size
13 of the garage to a single car, would that be -- is that
14 something you explored with them and would that be something
15 that you could approve? Because at that point, I mean, you're
16 still -- they're still going back as far as they'd need to with
17 the two car garage, so they'd be -- the garage's relationship
18 to the alley would be the same. But it wouldn't then need to
19 take up the entire rear yard. So is that something that you
20 explored or that you would support?

21 MR. MORDFIN: I think the Office of Planning would
22 support that. We did explore that. The applicant, though, had
23 requested that they wanted to be able to provide two parking
24 spaces in their rear yard and that this didn't provide for

1 their needs. It is one thing that we did discuss.

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

5 MR. HEISEY: If I could just kind of respond to a few
6 things.

7 CHAIRPERSON HEATH: Sure.

8 MR. HEISEY: Just for information, you were asking
9 about the -- the original set of photographs that were
10 submitted, this has a photograph of -- this is our property and
11 this is the adjoining garage.

12 CHAIRPERSON HEATH: Okay.

13 MR. HEISEY: That you were saying how close it was.
14 The only thing that I would comment about the Office of
15 Planning is that stating that the rear yard is now three feet.
16 In a technical term that may be right. But since there, like
17 I said, there's an eight-foot grade change, effectively we're
18 creating a back yard where there isn't one now, by having the
19 deck where you can actually come out and use the space, because
20 right now it's an unused parking pad and every other block
21 they're either a parking pad or brown and dirt and grass. No
22 one uses it. This is actually creating a usable rear yard
23 rather than saying it's a three-foot rear yard. It's, you're
24 creating a rear yard.

1 As far as making this a single space, then you come
2 into the side yard requirements where you need eight feet on a
3 17-foot lot so you're down to a nine-foot coverage of a deck.
4 So but the structural portion to that den, you're barely
5 sliding one car in. So that's part of the situation we're at
6 is, you know, we can make it narrower but then we run into a
7 zero or an eight-foot lot line and we're trying to keep this as
8 minimal as possible, trying to keep it in the character of what
9 the existing properties are there, and make it a usable and
10 more friendly space for the alley as well.

11 CHAIRPERSON HEATH: Okay. Board, any other questions
12 of the applicant or Office of Planning? Okay. We do have a
13 letter of no objection from DDOT, and I don't see anyone from
14 DDOT here on this application, but again we do have the letter
15 of no objection. Is there anyone here from ANC 1A on this
16 application?

17 As the applicant noted, we do have a letter
18 recommending approval, so you met with the ANC, presented your
19 project, and they voted to approve it. We also have seven
20 letters of support from your neighbors. Is there anyone here
21 wishing to speak in support of this applicant? Anyone in
22 support? Anyone in opposition to the application? No
23 opposition. All right.

24 Then I'll allow you to make any closing statement or

1 final comments.

2 MR. TURNHAM: I don't know this process and I don't
3 know the rules. I just -- we've lived in the neighbor for nine
4 years and we've never been able to spend any time behind our
5 house because it's just been a parking pad and a very narrow --
6 I wouldn't call it a deck. It's a back porch that a lot of
7 these houses have.

8 We've seen this same configuration at other houses on
9 our block. It works well for those people. It provides them a
10 place to visit with friends and to be out on the alley space.
11 I think this is an improvement to the alley. It's an
12 improvement to the neighborhood. We've talked to neighbors and
13 nobody has had any objections. Even the people on either side
14 of us, and the people behind the alley to us. And it's
15 consistent not only with the houses that are around us but with
16 the way the house was built originally, which is something
17 that's important to us as well.

18 CHAIRPERSON HEATH: Okay.

19 MR. HEISEY: And I would just kind of like to jump in
20 in saying that, you know, the spirit of what we're doing here
21 is to be, you know, consistent with what is in the
22 neighborhood. It looks like a lot of variances and quite a bit
23 of variances, but it's, at bottom line, it's a suburban zoning
24 code that's been superimposed on an urban environment, and

1 we're trying to at least maintain or improve the environment
2 that we're in and make it a more livable house for the
3 applicant.

4 CHAIRPERSON HEATH: Okay. Thank you. Board, are we
5 ready to go deliberate on this? Anybody want to start? I'm
6 sort of on the fence. Go ahead.

7 MR. MILLER: Thank you, Madam Chair. This is another
8 one of those cases where as a Zoning Commissioner I'm
9 frustrated with how our regulations create unreasonable burdens
10 on homeowners who simply want to improve their deck, put a deck
11 on their house, improve a garage, and just improve the
12 neighborhood in character with the neighborhood. I realize we
13 do have the variance test and I think we can make the case that
14 there are a confluence of factors which -- of conditions which
15 make this an exceptional condition that requires them to need a
16 variance, to be able to use and improve their backyard in a way
17 that will be beneficial to both themselves and to the public
18 and to the neighborhood.

19 So I think the tapering aspect, if we need to cite a
20 physical condition to get to the exceptional, the tapering
21 aspect of their lot as it goes down that alley is a factor that
22 contributes to this exceptional condition. So I would be --
23 and I appreciate the applicant having -- and this is an
24 important consideration. You don't get to it until you get

1 past those first tests, but they worked with the ANC and
2 they've worked with their neighbors and they got their support
3 and I think that's very important. So I'm prepared to support
4 this application.

5 CHAIRPERSON HEATH: All right. You have any
6 comments?

7 MR. HILL: I was just struggling with the practical
8 difficulty. I mean, I really can see -- I'm still on the
9 fence. I don't know, you know, I mean I'm thinking that, you
10 know, Commissioner Miller, he makes some good points that I
11 could also agree with in terms of like the practical difficult
12 and getting to it. And then at the same time I'm thinking
13 about how, you know, if it were a one-car garage I would be
14 more in line with approving the side yard, or whatever the
15 other variances were needed, because you're right, you can't,
16 in order to make use of the backyard in a way that makes sense
17 also, is -- I mean, and I appreciate the neighbors -- I mean,
18 the homeowners very much in what you're trying to do. So I'm
19 still kind of working it through a little bit, I suppose.

20 CHAIRPERSON HEATH: I think I'm still very much on
21 the fence with this. I appreciate what you're trying to do
22 here and I see how this can improve your parking situation and
23 your ability to enjoy the back, the rear yard, the back of your
24 house and to have some outdoor space. I also agree with

1 Commissioner Miller that this is, it's frustrating that for a
2 property owner to have to meet the variance test in order to be
3 able to enjoy that rear of your space makes it really difficult
4 for us. It's not a special exception. You have to prove an
5 exceptional condition.

6 I think, you know, this -- while I'm having a hard
7 time buying that this is an exceptional condition for your
8 property because all of your neighbors, as the slope continues,
9 have the same issue. And those who are on the extreme end of
10 that have an even greater case that they could make for why
11 their property might be more exceptional because yours would be
12 larger than even theirs on the extreme angle. It just, it
13 makes it hard for me to get on board with supporting the
14 variance request, even though I support what you're doing in
15 concept with the project.

16 I think I may be able to get there if you -- because
17 again, I do appreciate what you're trying to do and I
18 appreciate Commissioner Miller's comments about his frustration
19 with the current Zoning Regulations. And I'm not sure if
20 seeing another option and what -- because the relief would -- I
21 don't know that it would strengthen the case for the variance
22 request if we saw another option, but I would appreciate seeing
23 the one car garage option and just seeing that you've explored
24 other possibilities before -- and if you want to make a

1 stronger case I'm still on the fence. I could be talked off.

2 MR. MILLER: I'm not sure I can to meet the first
3 prong of the variance test. I mean, I think about two years
4 ago I jokingly said, on the day then, but what makes it
5 exceptional is that they're doing this by the book but with a
6 permit as opposed to maybe others who didn't.

7 CHAIRPERSON HEATH: Right.

8 MR. MILLER: Or others who did it before 1958 when
9 these regulations were superimposed upon an urban dense
10 neighbor where it doesn't necessarily make sense.

11 CHAIRPERSON HEATH: Right.

12 MR. MILLER: So, that's what I find exceptional and
13 why I was using the confluence of factors that make it a unique
14 condition that they are trying to address and with an
15 improvement to their home and to the neighbor. That doesn't
16 adversely affect the neighbor. So that's the best I can do at
17 this moment.

18 CHAIRPERSON HEATH: Okay.

19 MR. TURNHAM: Can I just --

20 CHAIRPERSON HEATH: One moment.

21 MR. TURNHAM: I'm sorry.

22 MR. HILL: And even that, I mean, after hearing you
23 know, what Commissioner Miller had to say, I mean, the
24 confluence of factors and whether or not it would, you know, if

1 I had to look at it differently in terms of the one car garage
2 versus the two car garage and the neighbors, again, they were
3 in support of this and the ANC was in support, I mean, I could
4 also see in terms of how the standard is met. So I could be in
5 agreement with Mr. Miller.

6 CHAIRPERSON HEATH: Okay.

7 MR. HILL: So I can make a motion.

8 CHAIRPERSON HEATH: You can make a motion.

9 MR. HILL: I would like to make a motion that we
10 approve the variance, and I don't have the number here.

11 CHAIRPERSON HEATH: If you want the application it's
12 19126.

13 MR. HILL: 19126 for variance relief.

14 CHAIRPERSON HEATH: All right.

15 MR. MILLER: I would second that.

16 CHAIRPERSON HEATH: All right. So the motion has
17 been made and seconded. Any further discussion? All right.

18 [Vote taken.]

19 CHAIRPERSON HEATH: All right. So the motion
20 carries. Thank you.

21 MR. HEISEY: Thank you very much.

22 CHAIRPERSON HEATH: Thank you for the work that you
23 did with your neighbors and with the ANC. I think that went a
24 long way towards -- thank you.

1 MR. MOY: Madam Chair, before I read the final vote I
2 just want to note for the record that staff informed me that in
3 the reading of the location of the square number, and I
4 confirmed with the surveyor's plat, so as that was captioned as
5 Square 2583, it is in fact 2853. So that's the square number
6 which is shown on the surveyor's plat on Exhibit 3.

7 So with that staff would record the vote as three to
8 zero to two. This is on the motion of Vice Chair Hill,
9 seconding the motion, Mr. Miller. Also in support, Chairperson
10 Heath. No member present, seat vacant. Motion carries three
11 zero.

12 CHAIRPERSON HEATH: Summary order.

13 MR. MOY: Thank you.

14 CHAIRPERSON HEATH: Thank you. We can call our next
15 application, Mr. Moy.

16 MR. MOY: Okay. I believe that would be Application
17 No. 19056. This is the application of Margaret Cheney, and
18 again as captioned, advertised for public notice, request for
19 variances from the minimum lot width requirements under 401 and
20 off-street parking requirements under 2101.1. This is for
21 constructing two new one-family dwellings in an R-3 district at
22 premises 3324 Dent Place Northwest, Square 1278, Lot 251.

23 CHAIRPERSON HEATH: Okay. Thank you. So I
24 understand that there have been a number of changes since the

1 application was before us. And if you could just talk about
2 that? We also had party status requests on this. We
3 haven't -- I don't believe those have been withdrawn yet, but
4 we have received -- have they? Oh, they have not been
5 withdrawn. Okay.

6 But we do have a letter stating that they are now in
7 support of the project based on changes. So I'll want to just
8 address that as well to see if the parties who requested party
9 status are here. If they are, if you could please come forward
10 as well. I don't know if they are. Okay.

11 Then if you could speak to your conversations with
12 them and just briefly the changes because we've seen them and
13 we now see the support that you've been able to get from the
14 neighborhood. So.

15 MS. MAZO: Sure. Thank you. Samantha Mazo with the
16 law firm of Griffin, Murphy, Moldenhauer, and Wiggins. I have
17 with me today John Casey who is contract purchaser of the
18 property and KC Price who is our design consultant.

19 We are very happy today to be coming forward with a
20 project that has full support of ANC 2E. Commissioner Lewis is
21 here. We had a meeting last night and they have full support.

22 I know that Commissioner Lewis e-mailed their letter of
23 support last night. We submitted hard copies to Mr. Moy. We
24 also have a project that has support of the Citizen's

1 Association of Georgetown, and of those neighbors who had tried
2 to file or who had submitted applications for party status. So
3 on behalf of Cags letter, was submitted on behalf of those
4 individuals as well, we also have support from the Office of
5 Planning.

6 The revised project, the initial project that was
7 coming forward was one that was proposing to subdivide the
8 property into two separate lots. And it was seeking some lot
9 width relief as well as parking relief. In our extensive
10 discussions with the neighbors that began shortly after our
11 last hearing and concluded last night at the ANC, we have
12 revised the plan to now we are providing -- we are proposing
13 one single family detached dwelling on the property that --
14 with two seven and a half foot side yards. We are not able to
15 provide parking so accordingly we are seeking side yard relief
16 and parking relief.

17 If I could get the computer to work I could show a
18 presentation if you need it. We have submitted our revised
19 plans. We also, at Exhibit 39 of the record, we updated the
20 notice, the posting notice and we submitted that into the
21 record on October -- sorry, November 13th, so more than 15 days
22 before today's hearing, reflecting the new areas of relief that
23 have been requested.

24 We also submitted a revised self-certification form

1 last Wednesday that's in the record. So we believe the record
2 is complete. I'm happy to take any questions that you may
3 have.

4 CHAIRPERSON HEATH: Okay. Before we go forward, if
5 the other two here could introduce themselves, we didn't do
6 that at the beginning.

7 MR. CASEY: My name is John Casey. I'm the contract
8 purchaser of the property.

9 MR. PRICE: KC Price, principle at KCDC Studios.

10 CHAIRPERSON HEATH: Okay. Thank you. Board, any
11 questions of the applicant?

12 All right. Office of Planning was previously not
13 recommending approval. We do have a letter now stating that
14 you are recommending approval. Do you want to speak to the
15 changes that have been made and your position?

16 MS. FOTHERGILL: Sure. Good morning, Madam Chair and
17 members of the Board. For the record I'm Ann Fothergill with
18 the Office of Planning, and yes, we had originally recommended
19 denial for the lot width for the subdivision, the variance
20 needed for the lot width. And now we are pleased to be
21 recommending approval. We feel they meet the variance test for
22 relief for off-street parking and the minimum side yard. They
23 are proposing 7.5 feet and eight feet is required.

24 And we rest on the record in support of the

1 application.

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

5 MS. MAZO: We have none. Thanks.

6 CHAIRPERSON HEATH: Okay. And we also have a letter
7 of no objection from DDOT. I assume there's no one here from
8 DDOT on this application. So ANC 2E.

9 MR. LEWIS: Thank you, Madam Chair and members of the
10 Board.

11 CHAIRPERSON HEATH: Thank you.

12 MR. LEWIS: I'm glad to be here today. The process
13 worked well in the end. It took a while. But every element of
14 it I think worked well. Including, and I thank you, sending
15 everybody back to talk about it some more. And including the
16 old Georgetown board, frankly, which made clear that there was
17 no way there was going to be a house -- two houses on this lot,
18 and any house on it had to respect the history with significant
19 side yard green spaces.

20 Office of Planning, DDOT, the applicant, and the
21 designer, we all kind of got the message at the same time at
22 the end. And so we are fine with the current proposal with the
23 zoning aspects of the current proposal. The side yard variance
24 is very slight. And to the extent there's a lower standard of

1 proof on that, I think that's what technically brings it over.
2 But for six inches we're not going to fight about the width.
3 The width of the house. Getting the driveway out of there was
4 very important. DDOT played a big role as to the Old
5 Georgetown Board.

6 So it was worth it. This is a site of extraordinary
7 historic importance, as I know you know. And the ability to
8 have a rather modest house with significant views into the
9 green interior as a visual reference to its historic times is
10 very important. So we're happy to support the two variances
11 requested today and we look forward -- there's more work to be
12 done at OGB on things like height perhaps, but we're confident
13 in the process and pleased to have voted unanimously to support
14 these variances.

15 CHAIRPERSON HEATH: Okay. Thank you. Thank you for
16 working with them and thank you to the applicant for all of
17 your work to address the neighborhoods and the commissioner,
18 the commission's requests. The changes are significant and our
19 former chair who always insisted that parties go back and have
20 further conversation would be proud to see that it actually
21 worked in this case, and you all came to your own agreement on
22 what should be developed here, rather than the Board having to
23 make someone unhappy. So we appreciate the work that you did
24 here. Thank you.

1 Any questions from the Board? All right.

2 [Pause.]

3 MR. MILLER: Madam Chair, I meant to say at the
4 outset that although I wasn't on the original case I did review
5 the entire record and am prepared to vote.

6 CHAIRPERSON HEATH: Thank you.

7 MR. MILLER: With you.

8 CHAIRPERSON HEATH: Thank you. Okay. Is there
9 anyone else here wishing to speak in support of this
10 application? Anyone in support? Anyone wishing to speak in
11 opposition? No opposition. Okay.

12 Then you know, we previously had party status
13 requests on this. Although they're not here and we have gotten
14 letters from the parties who requested party status, stating
15 that they are now in support of this application, we will deem
16 that the request is denied just to close that issue since we
17 did not get a withdrawal from those parties.

18 So is there -- do you have any closing remarks you'd
19 like to make?

20 MS. MAZO: No, we just appreciate the community
21 support, ANC support, and OP's support in getting to this point
22 and we hope that you approve this application. Thank you.

23 CHAIRPERSON HEATH: Thank you. So, Board, are we
24 ready to deliberate? All right.

1 Based on the significant changes and the work that
2 the applicant has done to progress this project to its new
3 design I would move that we support this application from
4 variances for off-street parking and side yard, the two side
5 yards.

6 MR. HILL: I second.

7 CHAIRPERSON HEATH: The motion has been made and
8 seconded. Any further discussion?

9 [Vote taken.]

10 CHAIRPERSON HEATH: All right. The motion carries.
11 Thank you.

12 MS. MAZO: Request for a summary order.

13 CHAIRPERSON HEATH: Sure. With the party status
14 request being denied and no further opposition I would ask for
15 summary.

16 MR. MOY: Yes. Thank you. Also staff would record
17 the vote as three to zero to two. This is on the motion of
18 Chairperson Heath to approve the request for variance relief
19 from the two areas of relief, and noting that the project was
20 amended for a one family dwelling unit. Seconded the motion,
21 Vice Chairperson Hill. Also in support, Mr. Miller. Member
22 not present, board seat vacant. Motion carries. Summary
23 order. Thank you.

24 CHAIRPERSON HEATH: Thank you. All right. When

1 you're ready, Mr. Moy, you can call our next case, the first
2 appeal.

3 MR. MOY: Okay, the first of the two appeals, the
4 first being Appeal No. 19115 of ANC 1C. This is appealing the
5 decision of the Zoning Administrator, DCRA, to issue Building
6 Permit No. B, B as in Bravo, 1509180, to alter, repair, and
7 remove a cellar and install a retaining wall in the R-5-B
8 district at premises 1636, 1636 Oregon Place Northwest, Square
9 2589, Lot 460.

10 CHAIRPERSON HEATH: Thank you, Mr. Moy. Once you all
11 are settled if you could introduce yourselves? You can start.
12 That's fine. Make sure your mic is on.

13 MR. BUFFA: I'm sorry. My name is Jon Marc Buffa. I
14 am ANC 1C08 Commissioner and Chairman of ANC 1C's Parking,
15 Zoning, and Transportation Committee.

16 CHAIRPERSON HEATH: Okay.

17 MR. GAMBRELL: And I'm Alan Gambrell, ANC 1C05,
18 Lanier Heights.

19 MR. SULLIVAN: Marty Sullivan representing the
20 property owner.

21 CHAIRPERSON HEATH: Okay.

22 MR. TONDRO: Maximilian Tondro representing DCRA. I
23 want to take this opportunity to apologize for the fact that
24 the Zoning Administrator is on his way.

1 CHAIRPERSON HEATH: Okay.

2 MR. TONDRO: And so he will be here momentarily. I
3 think he's stuck in the Metro right now as we speak. Sorry.

4 CHAIRPERSON HEATH: Okay. All right. Thank you. So
5 this is one of the first issues that we need to address here is
6 that this is the same permit that was the subject of the appeal
7 of 18980, Concerned Citizens of Argonne. And that was heard on
8 July 7th and then decided upon in September of this year. The
9 same ANC was a party to that case and so before we go any
10 further I'd like for you to just address why you think this
11 appeal is different.

12 MR. BUFFA: Yes, ma'am.

13 CHAIRPERSON HEATH: You can't bring a case back to
14 the Board if it is the same case, the same issues that we have
15 already decided upon. So I need to know from you what makes
16 this different.

17 MR. BUFFA: Yes, ma'am. I think there's a couple
18 fundamental differences of what your initial comment that I
19 think is pertinent. First and foremost, ANC 1C was not
20 formally a party to the first appeal. We did not file an
21 application for party status. The parties who appealed were
22 Concerned Citizens of Argonne Place. They filed a \$1,400
23 filing fee. Had ANC 1C been a party we would not have been
24 required to pay that fee. ANC 1C simply submitted a letter

1 sharing the unanimous opinion or our ANC regarding the issues.

2 If you accept DCRA's memorandum's position that any
3 time the ANC sends a formal statement and designates a
4 commissioner to come in and share that opinion, we
5 automatically become a party to a litigation, or in this case
6 to the Zoning Commission. That would upend the standard
7 practice which is, if you wish to be a party you must
8 affirmatively make that demand, and you must grant that. We
9 never made that demand.

10 ANC 1C simply was executing its obligations as the
11 ANC for this area to share its opinion with the Board with the
12 hope that the Board would take our opinion seriously and give
13 us great weight for our opinions. We were not a party,
14 therefore the issues of preclusion and issue preclusion cannot
15 apply because there's a two-part test for that. And the first
16 test, part of that test, is we must be the same parties and we
17 were not a party. And so that fundamentally DCRA's position is
18 inaccurate. And so I do not believe this is the same issue.

19 Secondly, as to the substance of this new -- the new
20 permit, that permit wasn't even issued until two months after
21 ANC 1C submitted its first resolution. And we have issued a
22 second resolution designating me to be the representative for
23 the ANC for that. So not only were we not a party to the first
24 issue, this permit is distinctly different, and the issues that

1 are raised were not addressed. So therefore I don't believe
2 you can qualify for either clamor issue preclusion, and under
3 that legal standard it would be clear error to not allow us to
4 go forward with our appeal.

5 CHAIRPERSON HEATH: But the issues of adjacent
6 finished grade and FAR related to the retaining wall were all
7 addressed as a part of that last appeal. How are your issues
8 any different? What I've seen from the statements that you've
9 made, the issues are the same.

10 MR. BUFFA: Well, I think just two parts. First I
11 think the first issue I think is that we were not a party. So
12 that would put issue preclusion off. Then on the six errors
13 that we've identified, not all six were ever addressed prior.
14 So therefore we are entitled to bring those issues which were
15 not previously addressed to your view. And we do recognize
16 that the concept of adjacent finished grade is a necessary
17 component of but nor preclusive of the analysis of the other
18 issues which we have raised. And you cannot address the
19 secondary issues without having that premise. So even if we
20 accept, for purposes of this hearing, that you did rule on
21 those first two issues which I think is fair, the other issues
22 are still open. And even with those considerations are worthy
23 of our appeal. And we believe that D.C. case law is clear that
24 since we're not precluded, because we were not a party

1 previously, we are entitled to raise the issues which were not
2 previously addressed by this Board.

3 CHAIRPERSON HEATH: Okay. Board any questions of the
4 appellant?

5 MR. HILL: If the six ones that you mentioned, what
6 are the ones that weren't addressed?

7 MR. BUFFA: We believe that the second one -- I mean,
8 I'm sorry. I have the wrong sheet in front of me.

9 MR. HILL: And if you can tell me what they are,
10 also, that would be good. Thanks.

11 MR. BUFFA: So as we mention, you identified six.
12 The first question is what -- number 2, or item 2 on ours, was
13 not addressed, Your Honor. Secondly we believe that the
14 meaning of three was not addressed. We believe four was not
15 addressed. We believe, five, we believe you did address, the
16 retaining wall question. But we don't agree, we believe that
17 you did address that. And then six, the legitimate purpose.
18 That, there was some discourse at the hearing according to the
19 transcript on whether or not this wall did serve a legitimate
20 purpose. But I don't believe you firmly ruled on that.

21 MR. HILL: So two, three, four, and six.

22 MR. BUFFA: Yes.

23 MR. HILL: Okay.

24 MR. BUFFA: We do realize, but for the analysis, for

1 those secondary ones, it does imply a consideration of issues 1
2 and 4.

3 MR. HILL: I'm sorry. Say that again.

4 MR. BUFFA: So I do concede that in order to do the
5 FAR analysis which requires the grade, you do need to -- you
6 guys have ruled about where the measurements are, that we don't
7 agree with that. You do need to have that background to
8 address the other items. Because you're using the grade plane
9 method. So your prior holding, I do concede, is; is pertinent.
10 But it doesn't answer the question to -- for (indiscernible)
11 number 3.

12 MR. MILLER: To the ANC, you were the appellant in
13 case 18980, is that correct?

14 MR. BUFFA: No, my understanding is that we were only
15 the appellant to this appeal, 19115. The Concerned Citizens of
16 Argonne Place were the appellants in the first one. And we
17 merely sent a letter and then we designated Mr. Gambrell as our
18 representative.

19 But to say that just because we sent a letter and
20 sent a representative, that automatically makes us a party,
21 well then you would have to refund the \$1,400 to the Argonne
22 Place because they wouldn't have to pay that if we were the
23 appellants. And secondly, we did not represent or make any
24 application to you to be deemed a party. That is a formal

1 process that you have established that we did not engage upon.

2 So I just think it's a dangerous precedent to attempt to say
3 that any time an ANC comes before you that they automatically
4 become a party. In this case an appellant, which I think is a
5 very distinct legal position, and to make that logical jump I
6 think is inapposite.

7 CHAIRPERSON HEATH: But the regulations state that
8 the ANC is automatically a party, so --

9 MR. BUFFA: But we weren't the appellant and I think
10 that's a distinct position, just difference. But I think that
11 fundamentally to imply that issuing claim preclusion, which is
12 the most powerful of legal remedies applies to us simply
13 because we sent a resolution in, I think is not consistent
14 with --

15 CHAIRPERSON HEATH: It's not because you sent a
16 resolution in, but you are automatically a party, so --

17 MR. BUFFA: But we're not -- sorry.

18 CHAIRPERSON HEATH: So, I do want to -- if you have
19 any other points you want to make, we can hear them now. And
20 then I want to hear from the property owner and DCRA.

21 MR. BUFFA: Yeah, and my only last point is that we
22 have no quarrel with the property owner, we just think that the
23 Zoning Administrator has misinterpreted the law. And so though
24 we do feel for the property owner, that he's caught up in this,

1 we think the fundamental issue of how you analyze these
2 principles is so fundamental given the status of our neighbors,
3 that this is going to be an issue which you'll be setting a
4 precedent which will apply to numerous other projects of this
5 kind.

6 And so I do apologize that we have no crawl with him
7 personally, or his client --

8 MR. SULLIVAN: Objection, he's arguing the claim. We
9 haven't decided on the motion to dismiss.

10 CHAIRPERSON HEATH: Sure.

11 MR. SULLIVAN: I mean.

12 CHAIRPERSON HEATH: Sure. Okay. So I'd like to just
13 address this first issue of why this appeal coming before us is
14 different from the previous that was already decided on. And
15 if Mr. Sullivan, if you'd like to address --

16 MR. SULLIVAN: Sure.

17 CHAIRPERSON HEATH: -- any comments that the
18 appellant has made, or make any statement, you can go forward.

19 MR. SULLIVAN: Yes. You are correct, pursuant to
20 3199.1A the ANC is automatically a party to an appeal. And I
21 suspect he knows that because it says it every BZA order as
22 well, and when you confronted him with that he said, well,
23 we're different kind of party, after saying we're not a party,
24 not a party, not a party. His entire argument is based on him

1 not being a party, and he clearly is a party. It's not a bad
2 precedent, it does not bend the system. It is what it is.

3 I didn't -- I don't even have to file. I didn't file
4 a request for party status. I'm automatically a -- my client
5 is automatically a party in this appeal as well.

6 Res judicata and claim preclusion can be summarized
7 under that doctrine, when a valid final judgment has been
8 entered on the merits, the parties or those in privity with
9 them are barred in a subsequent proceeding from relitigating
10 the same claim, or any claim that might have been raised in the
11 first proceeding. So if you have the same parties involved it
12 doesn't matter what they raised or failed to raise or what
13 other issues come up. There has been no changes to the permit.
14 The permit as issued stayed as it was and as you saw from our
15 statement or from our submission, the July 7th hearing was all
16 about this permit.

17 So they're precluded from saying there is anything
18 different. In fact it says, further case law says a prior
19 adjudication bars claims actually raised, and those which the
20 plaintiff failed to raise. They're said to merge into the
21 prior judgment. So that's the law, and they are a party. So,
22 and I don't really have anything else to add to that.

23 CHAIRPERSON HEATH: Okay. All right. So DCRA.

24 MR. TONDRO: Yes. Good afternoon, Madam Chair,

1 members of the Board. Yes, I'd just like to emphasize that the
2 ANC, in their motion in opposition that was filed yesterday,
3 and I want to take this time to apologize on DCRA's behalf for
4 the fact that we filed our most recent statement yesterday that
5 was in response to that. But I apologize for the late filing
6 given I appreciate how much you have to read at the last minute
7 and how much you're involved. So I apologize for that.

8 But I want to emphasize the fact that the ANC at that
9 time, in their motion filed yesterday, specifically stated that
10 they carefully, very carefully constructed the language that
11 they used to authorize their -- they carefully construct the
12 language that their letters that they send to the Board. And I
13 just want to point out that in this particular case they chose
14 very clearly to nominate Mr. Gambrell, not merely to present
15 the resolution to the Board in support of the appeal, but to
16 represent ANCl before the Board.

17 And I quote, "To represent ANC 1C before the BZA in
18 connection with this matter." In addition to all the other
19 issues, the fact that they're automatically a party, I fail to
20 understand how that can be interpreted in any other way than
21 that Mr. Gambrell is authorized.

22 I would also emphasize that perhaps there might be a
23 difference if Commissioner Gambrell was not the lead
24 representative of the appellants in that case. In other words,

1 had it been somebody -- had Commissioner Gambrell been merely a
2 simple bystander not representing, not carrying the case, not
3 arguing the case, that maybe there's a shadow of difference.
4 But in this particular case they were one in the same person.
5 And I note that Commissioner Gambrell is present here at the
6 table again. So I just wanted to emphasize that.

7 Turning instead to those other issues in terms of
8 whether or not these issues were raised by the prior appeal, I
9 think as I laid out in my two motions, I think they've all been
10 addressed by the Board. I think we're dealing with this issue
11 that the Board recognized and ruled on timing in 18980, that
12 the only issues -- that there was a time bar on all issues
13 dealing with the termination of FAR except for that narrow
14 determination of what the rear adjacent finish grade was. FAR
15 analysis, everything else, that was all based -- they had
16 already made the determination to the front grade. The only
17 thing outstanding, the only thing that changed with the second
18 revised permit was that determination of the rear grade, the
19 adjacent finish grade. And that was specifically what the
20 Board chose then to address.

21 And I would point out again, if you look at the
22 transcript that the, then Board Chair, also specifically raised
23 the issue of whether the second revised permit would have made
24 the entire appeal moot. And my response at that time was yes,

1 but the reason we wanted to include it was in order to make
2 sure that we're not wasting time enforcing them to come back
3 with the second appeal of that same permit.

4 Again, as I've stated in my motion I filed yesterday,
5 once the revised -- once a permit revision is issued that moots
6 out as then Chair Jordan noted, that moots out the prior
7 aspects of the prior permit. They've been replaced. They're
8 no longer valid. They're not within the scope of the permit.
9 So I think I'll leave it at that. Thank you.

10 CHAIRPERSON HEATH: Okay. Thank you. Board, any
11 questions of DCRA? Does the appellant have any comments based
12 on what has been stated by the property owner or DCRA?

13 MR. BUFFA: Yeah, I guess I have two small comments.
14 One to my -- to the right's comment, the issue preclusion is a
15 two-step process, same party, same facts. And so even if you
16 were to concede -- even if you were to determine that we were
17 in fact the same party, which I don't believe we are because we
18 were not formally the appellants, we were just -- even if I
19 concede that the issues that we raised in this permit, which as
20 you mentioned before, our other permit was moot and replaced by
21 this one, we have a second resolution from the ANC specifically
22 addressing the permit that is before you today. And that is
23 the permit we are appealing.

24 And so though some of the issues were raised it

1 doesn't automatically mean that every issue is precluded. And
2 you have the discretion under clear D.C. appellate law, that if
3 a subsistent issue that was not formally raised, but which
4 could have been raised, doesn't get automatically precluded, if
5 that issue wasn't clearly before you. And so our position has
6 been that there is a fundamental factual distinction in the
7 second portion of this -- those items I elicit to you that were
8 not addressed, and though they are -- they relate to the ones
9 you ruled on and we don't challenge that, but we do believe
10 that issue preclusion does not apply because those issues were
11 not resolved by you.

12 And I think the transcript, as you read it, it was
13 clear that the chair at the time had cut off discussion and
14 said I'm not going to discuss this, this, and this. So for us
15 to be precluded from debating something that we weren't allowed
16 to raise last time is not what the purpose of issue preclusion
17 is. Issue preclusion is to not waste your time to have
18 multiple issues reappealed. But the fact that those prior
19 issues were not determined is the purpose for why we're here
20 today.

21 And so I do believe that we are entitled to have a
22 fair hearing on the items. Not all the items. I concede that.
23 But the ones for which there was not in fact a full and
24 thorough hearing last time because the prior chair did not

1 allow Mr. Gambrell and the others who were speaking,
2 particularly the appellants, to go down those roads.

3 And I know, Ms. Heath, you were a member of the
4 Commission then and you do, I'm sure, recall that, that he --

5 MR. SULLIVAN: Objection, is this the Court of
6 Appeals argument? He's arguing that he wasn't happy with how
7 the hearing went.

8 MR. BUFFA: No, I'm saying that just as a matter to
9 make the record clear, in the event that I do choose to appeal
10 I need to raise that with you here so that you cannot argue at
11 the appellate level, that issues wasn't raised. So I think
12 it's absolutely appropriate for me to make sure on the record
13 that that position is known.

14 CHAIRPERSON HEATH: Okay.

15 MR. SULLIVAN: If I may address that briefly?

16 CHAIRPERSON HEATH: Sure.

17 MR. SULLIVAN: He's playing with words. He keeps
18 talking about issue preclusion, and we don't even need to rely
19 on issue preclusion, even though the issues are all the same.
20 It's claim preclusion, which means anything having to do with
21 the transaction or the occurrence. So they had their bite at
22 the apple, and anything that they didn't raise, they lose the
23 right to raise that. As you would expect. I mean, here they
24 are, they were here.

1 Whether or not they authorized, as you stated,
2 doesn't really matter. It's the fact that they're
3 automatically a party and that's it, and that should be the end
4 of the analysis. What makes it more egregious that we're back
5 here is that Ms. Gambrell handled the hearing. I mean, a lot
6 of times you have an ANC just give a letter of support. This
7 time they went even further. They were actually at the table.
8 So to sit here after filing a 40 page prehearing statement
9 talking about this same permit, and then come in and talk about
10 the same permit, and have the Chairman say this is about this
11 permit, it's so clear, I guess is what I'm saying.

12 CHAIRPERSON HEATH: Thank you, Mr. Sullivan.

13 MR. SULLIVAN: So, thank you.

14 CHAIRPERSON HEATH: All right.

15 MR. TONDRO: Madam Chair.

16 CHAIRPERSON HEATH: Sure.

17 MR. TONDRO: If I can just add one thing? I would
18 just point you to page 4 of my first motion, or if you have the
19 transcript of the July 7th, 2015 hearing. And I would point
20 you to, again, they're in mine, page 4 at the top, which is
21 page --

22 MR. HILL: Do you know which exhibit that is?

23 MR. TONDRO: I'm sorry, that --

24 CHAIRPERSON HEATH: Exhibit 22.

1 MR. TONDRO: I believe so, yes. But it's page 68 of
2 the July 7, 2015 transcript. And I just want to point out, I
3 think appellant is confusing issues here in terms of discussing
4 what it was that the then chair did or didn't do. Here, I
5 think we have a very clear motion that was made. It was
6 seconded. There was votes on it and Mr. Moy recorded it. I
7 think that that should be about as final as there needs to be.
8 I think discussing whether or not the prior chair did not
9 allow Mr. Gambrell to talk or not, this was an issue that was
10 decided jointly by the Board.

11 Finally, I'd just like to point out again, as well,
12 brief return to the issue of Commissioner Gambrell.
13 Commissioner Gambrell, I believe, had responsibility. To the
14 extent that he felt that he was not representing the ANC, given
15 the clear language of that ANC letter I believe he had a very
16 clear job, or it was incumbent upon him to distinguish himself
17 and to say that we were only filing in this way. And I do not
18 represent the ANC in this way. Otherwise I think it is a
19 perfectly reasonable understanding. And otherwise, in terms of
20 the issue of the dangerous precedent, I think there is
21 potentially a dangerous precedent otherwise, that we're going
22 to be in a situation where the ANC can sort of change
23 figureheads as to who it is who is nominally representing them,
24 and then we end up with the same permit being appealed over and

1 over again, hoping in the fact that there's a change in
2 membership of the Board, that we end up in a situation where
3 that decision that was not appreciated by the ANC can now be
4 challenged again by a different -- by a nominal different
5 figurehead. Thank you.

6 CHAIRPERSON HEATH: Thank you. So then I think the
7 motion that we need to address is the motion to dismiss from
8 the property owner, and from DCRA based on the fact that if
9 this Board feels -- it would be based on the fact that this
10 challenge has already been argued and considered and decided by
11 the Board. And so I think that is the first thing that we need
12 to address, and then we see if we go forward from here.

13 I, you know, having participated in part of the
14 previous appeal and having reviewed all of the information, I
15 still affirm that this is the same parties coming back to us
16 with the same issues that the Board has already deliberated
17 upon and decided on, and I just don't see -- I don't see any
18 difference that would substantiate us denying this motion to
19 dismiss.

20 MR. MILLER: Madam Chair, I went back and reviewed
21 the record of that other case, 18980, and I would agree with
22 you that it's the same claims, and the arguments that have been
23 made by the property owner and DCRA would support a motion to
24 dismiss.

1 CHAIRPERSON HEATH: Okay. Then --

2 MR. HILL: No, I would also agree.

3 CHAIRPERSON HEATH: Okay. All right. Then I will
4 make a motion that we approve the motion -- approve the motion
5 to dismiss based upon the fact that this, the same parties are
6 bringing back the same issues to this board. So.

7 MR. HILL: I second. Sorry.

8 CHAIRPERSON HEATH: Everybody seconds?

9 MR. MILLER: I defer to the Vice Chair.

10 CHAIRPERSON HEATH: Okay.

11 MR. HILL: I second.

12 CHAIRPERSON HEATH: All right. All right. So the
13 motion has been made and seconded. Any further discussion.

14 [Vote taken.]

15 CHAIRPERSON HEATH: Okay. So the motion carries.
16 Thank you.

17 MR. MOY: Staff would record the vote as three to
18 zero to two, this is on the motion of Chairperson Heath to
19 grant the motion to dismiss. Seconded the motion, Vice
20 Chairperson Hill. Also in support, Mr. Miller. Member not
21 present, board seat vacant. Motion carries, Madam Chair.

22 CHAIRPERSON HEATH: Thank you. All right. So our
23 next appeal in the last case, Mr. Moy?

24 MR. MOY: The next application or the appeal

1 application of ANC 4C, Number 19067. This is the appeal of the
2 decision of the Zoning Administrator, DCRA, to issue Building
3 Permit No. B, B as in Bravo, 1505734 to allow the construction
4 of a rear two-story addition and conversion of a one-family
5 dwelling into a three unit apartment house in the R-4 district
6 at premises 1117 Allison Street Northwest, Square 2918, Lot 59.

7 CHAIRPERSON HEATH: Would you all please introduce
8 yourselves? Make sure your mic is on when you do.

9 MR. UQDAH: Sorry. It looked green at first.

10 CHAIRPERSON HEATH: It will glow once you push the
11 button.

12 MR. UQDAH: Taalib-Din Uqdah. First name is spelled
13 T-A-A-L-I-B, as in boy, dash, capital D as in David, I-N, as in
14 Nancy. Last name is Uqdah, U-Q-D as in David, A-H, as in
15 Henry. I am the Secretary of ANC 4C, single-member district
16 4C01.

17 CHAIRPERSON HEATH: Okay.

18 MS. ABRAMS: I'm Lyn Abrams. I am the representative
19 for the ANC in this appeal. I also am one of the neighbors who
20 live next door to the project.

21 MR. WIBLE: My name is Andrew Wible. I'm here
22 representing the intervener, the Concerned Citizens of Allison
23 and Buchanan Streets. I am also a neighboring property owner
24 as well.

1 MR. SULLIVAN: Marty Sullivan with Sullivan and
2 Barros on behalf of the property owner.

3 MR. TONDRO: Maximilian Tondro on behalf of DCRA and
4 the Zoning Administrator.

5 MR. HORA: Derek Hora on behalf of the DCRA and the
6 Zoning Administrator.

7 MR. LEGRANT: Good afternoon. Matt LeGrant, I'm the
8 Zoning Administrator, DCRA and I've not been sworn.

9 CHAIRPERSON HEATH: Okay. All right. We will have
10 Mr. Moy do that.

11 [Zoning Administrator sworn.]

12 MR. MOY: Thank you. You may be seated.

13 MR. HILL: Madam Chair, just in an abundance of
14 caution for the record I have reviewed the earlier hearing,
15 although nothing -- it was just a continuance that was granted.

16 MR. MILLER: And, Madam Chair, I also have reviewed
17 the --

18 CHAIRPERSON HEATH: Okay.

19 MR. MILLER: -- other continuance of the hearing,
20 even though I wasn't sitting that day.

21 CHAIRPERSON HEATH: Okay. Okay. Okay. So to first
22 address the motion to intervene, I believe we have a motion to
23 intervene from Lyn Abrams, who is representing -- you've been
24 given permission to represent the ANC.

1 MS. ABRAMS: Yes.

2 CHAIRPERSON HEATH: Correct?

3 MS. ABRAMS: That's correct.

4 CHAIRPERSON HEATH: Okay. All right.

5 MS. ABRAMS: And if you'd like me to explain why I
6 have a motion to intervene, I would --

7 CHAIRPERSON HEATH: Sure.

8 MS. ABRAMS: -- happy to do that. It's to preserve
9 appeal rights because the ANC cannot appeal.

10 CHAIRPERSON HEATH: Okay.

11 MS. ABRAMS: To the Court of Appeals. So I wanted to
12 preserve my appeal rights.

13 CHAIRPERSON HEATH: Okay. Okay. To Court of
14 Appeals. Okay. And then we had a motion for -- you stated
15 that you were making a motion to intervene, but we have a
16 motion for party status.

17 MR. WIBLE: That's correct.

18 CHAIRPERSON HEATH: Okay. And so do you have a
19 specific right or interest that will be impacted by this
20 appeal?

21 MR. WIBLE: Yes. I'm here representing an
22 unincorporated association of neighboring property owners. I,
23 myself, am a member of that organization and I am a neighboring
24 property owner. I own the property at 1121 Allison Street,

1 which is immediately adjacent to Ms. Abram's property. So I'm
2 one over from the subject property which is 1117 Allison
3 Street.

4 CHAIRPERSON HEATH: Okay. And do you have any
5 interest or concerns that are different than the ANC or their
6 representative?

7 MR. WIBLE: Only in the sense that again our
8 interests are representing the adjoining property owners and we
9 filed this to preserve appeal rights as the ANC did not have
10 appeal rights at the time. I don't recall the timing of when
11 Ms. Abrams sought to intervene her party status, but at the
12 time that the association sought party status that was -- I
13 believe there was no other party other than the ANC.

14 CHAIRPERSON HEATH: Okay. So now that Ms. Abrams has
15 requested the motion to intervene, even though she's
16 representing the ANC, do you still feel that you want to make
17 your motion to intervene? Do you still feel it's necessary?

18 MR. WIBLE: I would say that Ms. Abrams probably
19 adequately represents the interest of the adjoining homeowners,
20 so to the extent that BZA is going to grant her motion to
21 intervene and grant her party status independent of her
22 appearance here today as a representative on behalf of the ANC
23 that my appearance would not be necessary. I don't believe
24 that I have any independent or unique interests that Ms. Abrams

1 in her independent capacity is unable to represent.

2 So I'm just being honest with that, but you know, I
3 do personally have an interest in the outcome of this and
4 wanted to lend my voice to it.

5 CHAIRPERSON HEATH: Okay. Then given what you've
6 stated I will -- did you have another comment that you wanted
7 to make?

8 MS. ABRAMS: Yes. If there's going to be a conflict
9 because I have a motion to intervene then I will withdraw that
10 motion because I think it's more important for the neighbors to
11 be represented here, rather than just me as one party. So if
12 there is a conflict, I will withdraw my motion. As I said, it
13 is to preserve our appeal rights. As far as the type of
14 standing that the Association would have in the Court of
15 Appeals, we don't know what that would be so I actually filed a
16 motion to intervene afterwards because we have not looked at
17 whether or not the Court of Appeals would recognize standing
18 for the Association. So we wanted to cover all of our bases.

19 But I do believe that it is important for the
20 neighbor association to be represented here. I think there are
21 other arguments that will be raised that are different than the
22 arguments of the ANC. So I would prefer that, if it's a choice
23 between my motion and the motion of the neighbor association, I
24 will withdraw mine. But I think it's better for both

1 interveners to be parties because as we've both said, this is
2 to preserve our appeal rights to the Court of Appeals.

3 MR. WIBLE: Let me just, if I may, add on briefly to
4 what she said. I am aware in a very general sense of Court of
5 Appeals case law concerning organizational standing. In a very
6 general sense I believe that the unincorporated neighbor
7 association satisfies those requirements. But again, out of an
8 abundance of caution I think that's why we have separate
9 motions to intervene here. And to the extent that it's going
10 to have any bearing on this proceeding, I do not intend or
11 desire to burden the Board with duplicative testimony or
12 argument. So I do think it would probably be in our best
13 interest that all interveners remain pending appeal, an outcome
14 of this case.

15 CHAIRPERSON HEATH: Okay. Then for --

16 MR. SULLIVAN: Madam Chairman, may I respond --

17 CHAIRPERSON HEATH: Sure.

18 MR. SULLIVAN: -- briefly? We wouldn't oppose the
19 intervener status of Ms. Abram, as she's a next door neighbor.
20 We would oppose the intervener status of the other party.
21 They as much as said, they don't have a specific interest in
22 the property, other than wanting to appeal it, and I don't
23 think wanting to preserve your appeal rights is a valid
24 argument for getting intervener status. Thanks.

1 MS. ABRAMS: There's one more thing that we did not
2 mention. There are 19 neighbors who are part of this
3 association, and the neighbor on the other side of the property
4 is one of those who is also intervening an adjoining neighbor.
5 So there are two adjoining neighbors on this that are part of
6 the association, in addition to other neighbors in very close
7 proximity. Also neighbors who are immediately behind property
8 are also part of the neighborhood association. So we're
9 looking at 19 neighbors who would be affected by this project.

10 CHAIRPERSON HEATH: Okay. I don't know where the
11 Board stands on this but I was initially inclined to grant Ms.
12 Abram's motion to intervene and allow the citizens group to
13 speak if Ms. Abrams wants you to speak as a witness. Or does
14 anybody else have any position on this at this point?

15 MR. MILLER: I will defer to your judgment --

16 CHAIRPERSON HEATH: Okay.

17 MR. MILLER: -- Madam Chair, but I have no objection
18 to both of them being interveners and both of them being able
19 to participate in this proceeding.

20 CHAIRPERSON HEATH: Okay. All right.

21 MR. HILL: I would also defer.

22 CHAIRPERSON HEATH: Okay.

23 MR. HILL: But I also didn't have any problem with
24 both of them being included, particularly since the association

1 now said that one of the people in the association is the
2 immediate next door neighbor --

3 CHAIRPERSON HEATH: Okay.

4 MR. HILL: -- to the property.

5 CHAIRPERSON HEATH: Then what we'll do is we'll allow
6 the citizens to -- we'll grant the motion to intervene by the
7 citizen's group. Ms. Abrams will accept that you've withdrawn
8 your motion to intervene, and so the way that we'll proceed is,
9 Ms. Abrams, since you are now the appellant, you're
10 representing the ANC, we'll allow you to present your case.
11 You can bring forward any witnesses that want to include as a
12 part of the case that you're presenting. And then we will turn
13 to the Zoning Administrator. We'll then turn to the property
14 owner, after which time normally we would turn to the ANC. You
15 are representing the ANC, so at that time we'll turn to the
16 intervener for any comments that the intervener might want to
17 make. And then we'll turn back to you as the appellant for
18 closing. Okay?

19 Typically we would give you 60 minutes for you and
20 any witnesses you want to bring forward. How much time do you
21 think you need to make your case?

22 MS. ABRAMS: About maybe half an hour.

23 CHAIRPERSON HEATH: Okay. And that's --

24 MS. ABRAMS: Does that include any cross-examination

1 of the Zoning Administrator? Or is that just --

2 CHAIRPERSON HEATH: That does not. That's just your
3 statement.

4 MS. ABRAMS: Okay.

5 CHAIRPERSON HEATH: For you and any witnesses you
6 want to bring forward.

7 MS. ABRAMS: Maybe 30, 45 minutes.

8 CHAIRPERSON HEATH: Okay. We'll set it at 30 and if
9 you could -- Mr. Moy, if you could keep an eye on the time and
10 just give us a head-up incase we're paying attention and not
11 noticing the time clock. Okay.

12 MS. ABRAMS: Okay.

13 CHAIRPERSON HEATH: All right.

14 MS. ABRAMS: We also have a motion to exclude the new
15 building plans that were submitted and subsequently approved as
16 a new permit.

17 CHAIRPERSON HEATH: I have reviewed that motion and
18 the Board will have to decide on that but I am inclined to
19 allow those plans to remain. I'd like to be able to have DCRA
20 speak to DCRA speak to the difference between the original
21 plans and the revised plans as a part of any statement that
22 they make. And so my inclination is to deny that motion to
23 exclude.

24 MS. ABRAMS: Okay.

1 CHAIRPERSON HEATH: I don't think so, but you can.

2 MR. HILL: I second the motion.

3 CHAIRPERSON HEATH: Okay. Just in case. I don't
4 know, Mr. Moy, if we need to second and have an official vote
5 on that but we're denying the motion to exclude. All right.

6 MR. MOY: I'll do that as consensus.

7 CHAIRPERSON HEATH: Okay.

8 MS. ABRAMS: Okay. Thank you. Well, this project
9 is, it's a conversion to a three-unit apartment building. It
10 requires adding an addition, rear balconies, and rear stairs.
11 The total addition in the rear would be 60 feet from -- an
12 addition of 60 feet when you include the balcony and the rear
13 stairs.

14 The permit was approved in May of 2015 for this
15 conversion. I also just want to add that the addition will
16 more than double the footprint of the existing row house. The
17 ANC submits that the permit violates the Zoning Regulations and
18 we ask that it be revoked.

19 The building plans the Zoning Administrator reviewed
20 and approved for the May permit, they're shown at BZA Exhibit
21 34 and there are also pages that are attached to appellant's
22 last submission, which was submitted in October. I believe
23 October 22nd, through ISIS. It's one of the exhibits listed in
24 the rear of -- towards the back of the exhibit list.

1 In late April the applicant submitted five building
2 plan revision sheets to DCRA, and these revised sheets included
3 a revised building plat that's dated April 27th, 2015. And
4 that is also shown on our exhibit. It's revised Sheet C1 and
5 it's Exhibit 5 in our submission, and I believe it might be
6 Exhibit 33 for the BZA exhibits.

7 The building plans that were submitted for the permit
8 that was ultimately approved in May contains multiple
9 inconsistencies and errors that would have made it impossible
10 for the Zoning Administrator to determine whether the building
11 plans fully complied with the Zoning Regulations. There are
12 several arguments that we laid out in our submission, our
13 submission of September the 22nd. However, in the interest of
14 time we will focus on the violations of lot occupancy.

15 We'd like to start with the cover sheet. The cover
16 sheet, Sheet A1. If you look at the cover sheet --

17 CHAIRPERSON HEATH: Which exhibit are you referencing
18 now?

19 MS. ABRAMS: That would be Exhibit -- to our
20 submission that would be Exhibit 6. To the BZA exhibit it
21 would be Exhibit 34 of the BZA exhibits.

22 So if you look at that cover sheet it shows, for the
23 zoning data, it shows that the lot occupancy, the maximum
24 allowed is 1,876 square feet. And it's showing here, 1,933

1 square feet provided lot coverage. So this cover sheet clearly
2 shows that the proposed building would exceed lot coverage; the
3 maximum lot occupancy of 60 percent. 1,876 allowed, 1,933
4 provided.

5 Also, if you look at the plat, that is -- that was a
6 revised plat and that was -- that's Exhibit 31 to BZA exhibit,
7 and it's Exhibit 5, an appellant's statement. If you look at
8 that plat the zoning data shows the same thing. It shows a lot
9 coverage proposed at 1,933 square feet. So the zoning data on
10 both of those sheets show that lot occupancy is over 60 percent
11 coverage.

12 If you calculate it the 1,933 square feet, that
13 coverage that's indicated on the zoning data results in a lot
14 occupancy of 61.8 percent, which is well over the maximum of 60
15 percent. And if you use the dimensions shown on the plat, then
16 you get a lot occupancy of 61.57 percent. Again, well over the
17 60 percent lot occupancy.

18 And both DCRA and the owner stated that the Zoning
19 Administrator did not grant minor flexibility for the lot
20 occupancy requirements. Initially when appellant and the
21 intervener, when we submitted our prehearing statements, we
22 thought that there was minor flexibility granted because lot
23 occupancy was over 60 percent. But the Zoning Administrator
24 has said that that was not the case. There was no minor

1 flexibility. So because the lot occupancy is over 60 percent
2 and no minor flexibility, the permit should not have been
3 issued because it violates the Zoning Regulations.

4 DCRA submitted a copy of the plat, of a plat with its
5 prehearing statement. That is -- it is Exhibit 51C of DCRA's
6 statement. However, that plat that they submitted, the
7 applicant revised the plat before DCRA issued the permit. The
8 applicant sent me, as a neighboring property owner, this is
9 before the permit was issued. There is a section of the
10 building code that requires the applicant to notify the
11 adjoining homeowners if there's going to be underpinning and
12 other structural work to the property. So as part of that
13 notification the owner was required to send me the building
14 plans and also send me updates to the building plans.

15 So in April they sent me an updated plat. That was
16 April the 26th, and that is the plat that is included as
17 Exhibit 31, and it's also the same plat that is attached to
18 appellant's October submission as Exhibit 5. And if you look
19 at that plat it is dated April 27th. It has a date stamp from
20 D.C. Government of April 27. So that is actually the plat that
21 is part of the record because it was replaced by the plat that
22 DCRA submitted as part of the record as an exhibit.

23 And this -- one of the things that DCRA has said is
24 that the porch is actually a deck. But if you look at this

1 revised plat it shows that there is a porch there. And it
2 continues to show lot occupancy of 1,933 square feet, which is
3 over the 60 percent. And also one other thing to note is that
4 when the permit was issued the Zoning Administrator had two
5 approvals. The first one was March 27th, which was one day
6 after the permit application, but then there was a subsequent
7 approval on May 22nd, 2015. And I actually have copies of that
8 that I can provide you. This is, sorry, tracking the permit
9 status.

10 There you'll see that there was a subsequent review
11 from the -- subsequent zoning review. This is after this April
12 27th plat was submitted showing still the lot occupancy is over
13 60 percent, showing that there's a porch that will be remaining
14 on that for the project.

15 Based on all of this the DCRA should have known that
16 the lot occupancy exceeded 60 percent. So as further evidence
17 of the building plans demonstrate a lot occupancy was over 60
18 percent when the permit was issued, I'd like to draw your
19 attention to another set of building plans from the applicant.
20 Those building plans are for a permit DCRA issued in February
21 of 2015 for the conversion of the same property into a three-
22 unit building. The original May permit, and this is the permit
23 that we are approving, replace a permit that DCRA issued in
24 February 2015 and subsequently revoked in March, 2015 for

1 building code violations. Both the cover sheet and the plat
2 also -- of that permit, the February permit, also show that lot
3 coverage is 1,933 square feet, which is well in excess of the
4 60 percent. And that is also submitted as an exhibit to
5 appellant's statement. That would be Exhibit 8, and Exhibit 11
6 of our statement.

7 Exhibit 8 is the cover sheet and it shows 1,933
8 square feet lot coverage. And Exhibit 11 is the plat and that
9 also shows -- it shows a porch on the plat, and it shows 1,933
10 square feet coverage.

11 MR. TONDRO: Objection, Madam Chair. This is not the
12 permit at issue. That was a different permit, maybe for the
13 same process but it has been revoked. It is not relevant to
14 the issue at hand. Sorry.

15 CHAIRPERSON HEATH: Okay. You'll need to just speak
16 to the relevant permits.

17 MS. ABRAMS: That's fine.

18 CHAIRPERSON HEATH: Any that have been withdrawn or
19 are rendered moot at this point, so the approved permit. The
20 current.

21 MS. ABRAMS: What I would like to say to that,
22 though, is that it is not moot because if you look at the
23 building plat you would see that DCRA actually wrote on that
24 that it is a revision, that the permit that they issued in May

1 is a revision to the permit that was subsequently revoked in
2 February. That was revoked earlier in February. So that's
3 actually on the first building plat that was -- DCRA actually
4 submitted this as part of their -- as an exhibit. So they've
5 actually already entered into the record that it's a revision.

6 CHAIRPERSON HEATH: Okay.

7 MS. ABRAMS: You will see that on 51C of DCRA's
8 submission, where they wrote -- there is a notation on there
9 that --

10 MR. HILL: Are you in your exhibits right now?

11 MS. ABRAMS: Actually, no. These are not my
12 exhibits. This is actually DCRA's exhibit.

13 MR. HILL: Okay.

14 MS. ABRAMS: This is Exhibit 51C, Tab C. It's an
15 approved plat that DCRA entered into the record, and if you
16 look at that, at the very top, it says revision of B140999828,
17 which is the February permit that was revoked.

18 MR. TONDRO: Again, Madam Chair, if I can say, in
19 this particular case what happened was that this plat
20 substituted for the prior one. The prior one is not -- doesn't
21 exist, is irrelevant at this particular point.

22 CHAIRPERSON HEATH: Okay. All right. Okay.

23 MS. ABRAMS: Okay. So let's move on to the front
24 porch. The total area of the proposed building for the permit

1 that was approved includes the front porch. Although DCRA and
2 the owner both said that the front porch is not included, we
3 strongly disagree with that and the building plan actually
4 shows that the front porch was part of the building plans.

5 There are two details that I'd like to draw your
6 attention to on that. First, contrary to what the government
7 has alleged, the original building plans show that the front
8 porch will remain and will not be demolished. If you look at
9 our submission, which is Sheet A3, that is --

10 CHAIRPERSON HEATH: Of which exhibit?

11 MS. ABRAMS: It is Exhibit 3. If you look at the
12 first, existing first floor plan, you will see where it shows a
13 porch. If you look at the legend, the legend over to the
14 right. It is right underneath where it says Exhibit 3. Do you
15 see that legend?

16 CHAIRPERSON HEATH: It's a different exhibit for us.

17 MS. ABRAMS: It's Exhibit 3 of Appellant's
18 submission, and it's sheet A3 of the May building plans.

19 MR. TONDRO: I believe that may be BZA Exhibit 34.
20 Is that correct?

21 MS. ABRAMS: Yes. That's BZA Exhibit 34.

22 CHAIRPERSON HEATH: Okay. And you're referring to
23 Sheet 3?

24 MS. ABRAMS: A3.

1 CHAIRPERSON HEATH: A3.

2 MS. ABRAMS: Yes.

3 [Pause.]

4 CHAIRPERSON HEATH: All right.

5 MS. ABRAMS: Are you there?

6 CHAIRPERSON HEATH: Yes, finally.

7 MS. ABRAMS: Okay. Great. Okay, if you look at the
8 legend, the legend is at the bottom right where it says, "House
9 renovation." To the left of that there's a legend. And the
10 legend shows that existing partition to remain, that's
11 indicated with solid lines. And existing partitions to be
12 removed are indicated with dotted lines.

13 If you look at the front porch it shows solid lines.
14 If you look at the other floors, including the first floor, you
15 will see the interior partitions, dotted lines, showing that
16 they're supposed to be removed. If you look at the rear porch
17 you'll see dotted lines showing that they're supposed to be
18 removed. If you look at the rear stairs in the back, the first
19 floor and the basement, you look at the stairs, dotted lines,
20 to be removed. If you look also at the exterior wall it's
21 actually written in the back of the house. There's a notation
22 here saying that that's to be removed.

23 So there are multiple indications on the existing --
24 of the existing floor plan showing what is to be removed and

1 what is to remain. You will see the front porch. There is no
2 indication that this to supposed to be removed. It's
3 remaining. So the front porch is actually part of the new
4 building because it is not indicated on the building plans that
5 it will be demolished. And as a result of that, that is also
6 included in the calculation of lot occupancy.

7 Also, if you look at the plat that's again, C1. This
8 is just another indication of what is shown on the building
9 plans to be removed. There is also a notation on there showing
10 that the existing garage will be removed. So the architect
11 took at least some degree of care to show what would be removed
12 and what would be remained, and there's nothing on here
13 indicating that the front porch would be removed. But it shows
14 the garage will be removed, the rear porch will be removed,
15 interior partitions will be removed. Other things will be
16 removed, but not the front porch.

17 Also, one other thing that I -- that's to the front
18 porch being removed. The second matter that I'd like to raise
19 with the front porch is the size of the front porch. If you
20 will look at the building plans the size of the front porch is
21 indicated as being six feet deep, and that's incorrect. The
22 front porch is actually larger than what is reported in the
23 building plans. It is actually eight feet deep. If you look
24 at that same sheet, A3, it shows six feet. If you look at the

1 plat it shows six feet deep. If you look at everything it
2 shows the front porch is six feet deep.

3 The front porch is actually eight feet deep and Mr.
4 Uqdah will testify that it is eight feet deep. He did measure
5 it. We also have pictures of that, that I will present to you
6 also, showing that that front porch is eight feet deep, not six
7 feet deep. So in actuality the total area of the front porch
8 is 152 square feet, not what was reported. And so if you use
9 the correct dimensions of the porch, and also the 1,933 square
10 feet that is indicated on the cover sheet, A1, you will see
11 that lot occupancy in actuality is 62.9 percent. Well over the
12 60 percent maximum.

13 Our expert also found that -- we had an architect who
14 reviewed the May building plans and reviewed the October
15 building plans. That is included as Exhibit 12 in our
16 submission. And he also found that lot occupancy exceeded 60
17 percent. Contrary to what the government had alleged, our
18 expert never opined that those building plans showed lot
19 occupancy of less than 60 percent. In fact our expert reported
20 in no uncertain terms that the building plans for that permit
21 that was approved, contained numerous errors and
22 inconsistencies, including lot occupancy that exceeded 60
23 percent.

24 Section 3101 of the Zoning Regulations clearly states

1 that a building permit shall not be issued for the proposed
2 erection, construction, conversion, or alteration of any
3 structure, unless the building plans fully conform to the
4 Zoning Regulations. This provision makes it clear that the
5 Zoning Administrator shall not issue a permit that does not
6 fully comply with the regulations. The building plans did not
7 comply with the Zoning Regulations. It is irrelevant what was
8 intended. It doesn't matter what the permit owner -- what the
9 permit holder wanted to do, what DCRA thought. It's actually
10 what is it that the building plans showed.

11 The building plans show here, clearly, that lot
12 occupancy is over 60 percent. The law is clear that the
13 building plans must comply and partial compliance is not
14 sufficient. So DCRA issued this permit in error for the May
15 permit.

16 Now we'd like to turn to the October building plans.
17 These are the building plans that were submitted by the permit
18 holder in October. And I must also add that these building
19 plans, they were submitted after appellant submitted its
20 prehearing statement, pointing out the lot occupancy exceeded
21 60 percent. And in fact D.C.'s entire argument in its
22 prehearing statement is based on the October revised building
23 plans.

24 So just to give you a little history, the hearing

1 initially in this matter was scheduled for September. I
2 believe the 29th. Appellant, we submitted our prehearing
3 statement two weeks before that. About a week or so before the
4 hearing date we received a request from DCRA asking for a
5 continuance to allow the permit holder to submit revised
6 building plans. We said no, that we did not want to allow
7 continuance, or we did not want to agree to a continuance. We
8 filed an objection with the Board. And in that objection we
9 noted that we believed that DCRA was going to allow the permit
10 holder to change the building plans to comply with the
11 regulations and to change lot occupancy. That was actually in
12 our objection to the motion for a continuance.

13 But it was granted and exactly as we predicted, that
14 is what happened. The permit holder submitted new building
15 plans with lot occupancy being reduced. The front porch was
16 actually removed from the new building plans, and lot occupancy
17 was reduced to, I believe, about 57 percent. So in October
18 DCRA entered a new permit number. Or I'm not sure how they
19 enter this into their system, but it was shown as a new permit
20 number entered into DCRA's system, I believe on October the
21 13th. And then on October 27th DCRA issued a new permit using
22 the new building plans that now remove the front porch. So now
23 there's a new permit here that is supposed to correct the
24 problems with the May permit.

1 So one other thing that I'd like to point out is that
2 DCRA has asserted that BZA should accept and focus on the
3 October revised building plans. However, those were not the
4 plans that the Zoning Administrator reviewed and approved for
5 the permit. And these plans, the October plans, our position
6 is that those plans should not be considered because those are
7 not the plans that were used for the permit. Those plans came
8 in after the fact. The Zoning Administrator requested them
9 after we pointed out that there was a problem with the initial
10 building plans.

11 So what DCRA is attempting to do now is to substitute
12 the new October plans for the May plans that were reviewed and
13 approved with the permit. DCRA is attempting to confuse the
14 Board by referring to the revised October plans and ignoring
15 the building plans that were reviewed and approved for the May
16 permit, which clearly showed a violation of lot occupancy. It
17 was over 60 percent. In fact, DCRA did not even submit the May
18 building plan as part of the record. We submitted those plans
19 as part of the record, and DCRA is acting as if those May plans
20 never existed. However, they did exist. They were reviewed.
21 They were approved in error.

22 And one of the things to point out to the porch, DCRA
23 has said that the porch always was supposed to be removed.
24 However, if you look at the new building plans that they

1 submitted, and I believe that that is either their Exhibit 51A
2 or 51B, DCRA's exhibit. And it is our Exhibit No. 1, look at
3 that exhibit 1. Just let me know when you're there. I just
4 want to point out -- that's Sheet A3 also, of the October
5 building plans.

6 Are you there?

7 CHAIRPERSON HEATH: Uh-huh.

8 MS. ABRAMS: Okay. If you look now it's showing a
9 notation that the existing porch is to be removed, which was
10 not shown on the May building plans. So that is a change. Now
11 they're saying porch is to be removed.

12 Also, if you look at Sheet C3, this is the plat that
13 they submitted for October, the October building plans, this is
14 listed as Exhibit 2 to our statement. It's now changing that
15 porch in the very front. It's now showing a partial deck. So,
16 again further evidence that there's now a change to the October
17 building plans. We submit that those changes are a material
18 change to the building plans. It's a change to the structure
19 of the proposed building. It's a change that did not occur,
20 did not exist in the May building plans.

21 Also, our expert who reviewed the October building
22 plans found that the applicant had removed the front porch. He
23 compared the building plans for the May permit and the building
24 plans submitted in October and found that there was a

1 difference between the two, that the October plans are showing
2 now, that the front porch removed. And that is a material
3 change in the building plans from May to October, requiring
4 rereview. And as I indicated earlier, there's also now a brand
5 new permit for these October plans.

6 The Zoning Administrator's request for the new
7 building plans and issuance of a new permit based on those
8 building plans is an admission that the original building plan
9 did not fully comply with the Zoning Regulations. If they had
10 it would not have been necessary for the Zoning Administrator
11 to request new building plans, and for the government to issue
12 a new permit to replace the original permit.

13 This new permit materially changes the scope of the
14 original permit because the new building plans now show that
15 the front porch will be demolished to reduce lot occupancy to
16 under 60 percent. This new permit violates the new R-4
17 regulations because the Zoning Administrator applied the now
18 repealed R-4 regulations to the new permit application. The
19 permit that was -- the permit for October was issued to convert
20 a row house into a three-unit apartment building. This is no
21 longer permitted as a matter of right because the Zoning
22 Commission, which is the exclusive body in the District with
23 the authority to enact zoning laws, changed the law to prohibit
24 conversions as a matter of right in R-4.

1 The new R-4 regulations only allow conversions
2 through a special exception relief granted by this Board. The
3 new regulations became effective on June 26th, 2015. There
4 were only two exceptions for vesting under the old R-4 zoning
5 regulations, and only one applied to conversions, and that's
6 Section 3209.9. The rest and rules do not apply to this new
7 permit application.

8 Furthermore, Section 3104.2 and 31.04 -- 3104.3, I'll
9 read from both of those. 3104.2 of the Zoning Regulations
10 states that, "In the case of a use that was originally
11 permitted and lawfully established as a matter of right, and
12 for which the Zoning Regulations now require special exception
13 approval from the Board of Zoning Adjustment, any extension or
14 enlargement of that use shall require special exception
15 approval from the Board."

16 Also, 3104.3. "In determining whether to approve any
17 extension or enlargement under 3104.2," the section I just read
18 from, "the board shall apply the standards and criteria of the
19 Zoning Regulations to an entire use," whole thing, "rather than
20 just to the proposed extension or enlargement."

21 By approving this new permit, a permit that was
22 specifically changed to comply with the zoning law, the Zoning
23 Regulations, the Zoning Administrator had acted unilaterally to
24 undermine the special exception authority that is exclusively

1 reserved to this Board. In addition he has deprived the ANC
2 and the neighbors who live in close proximity to this project
3 of the opportunity to appear in front of the board and
4 demonstrate how the project will affect our homes, our quality
5 of life, and enjoyment of our properties. To deprive us of
6 this right is to deprive us of our property rights.

7 The special exception regulations for conversion
8 state that any addition shall not have a substantially adverse
9 effect on the use or enjoyment or any abutting or adjacent
10 dwelling or property. This project will add 60 feet to the
11 rear of the existing home. More than doubling the footprint of
12 the home it will affect light, air, and privacy to nearby
13 homes. The scale of this addition and increased density will
14 adversely affect all neighbors in close proximity. Nineteen
15 neighbors and the ANC are appealing this permit. Our Ward 4
16 councilman, Todd, also weighed in and that's also an exhibit.
17 It's the last exhibit.

18 We ask that you not disregard the abuse of authority
19 and the effect that Zoning Administrator's unilateral decision
20 to approve this new permit will have on us as neighbors.
21 Conversions of a residential home are no longer permitted as a
22 matter of right. The Zoning Commission changed the law to give
23 effected neighbors a voice and an opportunity to be heard
24 before a permit is issued to convert a home. There is a

1 process that must be followed under the new law. The Zoning
2 Administrator had apprised us of that process and of the
3 opportunity to be heard that the law provides for.

4 Also in DCRA's exhibit in their submission. There
5 nothing that they pointed to in the Zoning Regulations that
6 gives the Zoning Administrator the authority to go back and
7 request changes to a building plan and apply an old law that
8 has been repealed to those changes.

9 And with this I would turn it over to Mr. Uqdah to
10 testify. He actually has -- he's going to speak to the size of
11 the porch being over -- greater than eight feet. I'm sorry,
12 deeper than six feet as indicated in the building plans. And
13 he has a couple of other things as well.

14 CHAIRPERSON HEATH: Okay. How much time do you need,
15 Mr. -- is it Uqdah. Uqdah.

16 MR. UQDAH: I'm sorry, Uqdah.

17 CHAIRPERSON HEATH: Uqdah, right.

18 MR. UQDAH: I would tell you it --

19 CHAIRPERSON HEATH: Would three minutes be sufficient
20 since you're speaking to -- five minutes?

21 MR. UQDAH: What I'll do, I'll say like five and I'll
22 just try to sum up. I have, you know, prepared testimony and
23 you know, you all look like you are literate enough to be able
24 to read it, so.

1 CHAIRPERSON HEATH: We'll understand. Can you set
2 the timer, Mr. Moy, for five minutes?

3 MR. UQDAH: Good afternoon, Madam Chair and members
4 of the Board of Zoning. My name is Taalib-Din Uqdah. I've
5 already spelled my name for the record. I'm the secretary for
6 Advisory Neighbor Commission 4C, and assigned by my colleagues
7 to shadow and assist the appellant, Ms. Lyn Abrams on behalf of
8 the ANC and the 20,000 or so, constituents we represent.

9 My volunteering to accept such a role with the
10 support and vote of my colleagues came as a result of the
11 Commission's resolution and authorization at a properly noticed
12 March 11th, 2015 with a Quorum present, voted 10 yeas and zero
13 nays to accept the report and it's conclusion to oppose this
14 variance and support the appeal of Ms. Abrams. And in a second
15 vote at the same properly noticed meeting and that same quorum
16 present voted nine yeas and one nay to have Ms. Abrams be the
17 person named and authorized by the ANC to present its report
18 before the BZA, representing the ANC's interest as our
19 representatives.

20 The later vote was taken because the 4C03 single-
21 member district seat where the subject property is located was,
22 at the time, scheduled to be vacated that same month by the
23 former commissioner and was not replaced until May of this
24 year. That SMD4 C03 commissioner, Alisa Erwin, I want to

1 acknowledge, is in the audience today.

2 Just over seven weeks ago I was ready to offer my
3 testimony before this distinguished body and was prepared to
4 offer you a litany of reasons we had previously outlined in our
5 resolution report and subsequent filings why you should rule in
6 favor of the appellant, the ANC, and against the property
7 owner.

8 Prior to this seven week period I and my colleagues
9 reviewed document after document, plans, drawings, and
10 submissions supplied by the property owner as a matter of the
11 public record, but not uploaded to ISIS. Save what we had done
12 ourselves. Throughout this process since its inception, the
13 property owner has been all but mute in their filings and has
14 relied on us to present our case against them with no rebuttal
15 of substance as DCRA has been fighting the case for them
16 against the very people whom our tax dollars should be
17 supporting, and even then the filings of DCRA have only come
18 forward here of late.

19 Now if you review the record you'll see both DCRA on
20 behalf of the Zoning Administrator and the applicant have filed
21 a flurry of motions and counter-motions just one document after
22 another, as if they're running from something. And we, at the
23 ANC know what that is. They're trying to escape and get out of
24 this mess that they've created by making ill-advised and

1 unsubstantiated decisions in the first place. I simply call it
2 shoddy work thinking no one would notice because they've been
3 doing it the same way for so long it's become second nature to
4 them.

5 Even the brief on the record testimony of Mr. Derek
6 Hora, Office of the General Council, representing the Zoning
7 Administrator, claimed on the 27th of October and I quote, "In
8 submitting DCRA's request for a continuance we specified that
9 we would be requesting plans simply with clarifications." And
10 this, I'm stressing, "That would allow it to be more easily
11 heard at the Board without having to employ the kinds of
12 instruments and go through the kind of analysis step by step
13 that the Zoning Administrator engages in in its actual
14 evaluation of plans. End quote.

15 All of this, you know, learning all the kinds of
16 analysis, instruments and step by steps that are employed by
17 the Zoning Administrator in my opinion are the very heart,
18 nature, and soul of why we are before you today. We as an ANC
19 simply don't know what those things are, other than being
20 simply words or concepts on a page. To now have it not
21 explained to us, and I get this, they've been doing it for so
22 long it's become second nature to them by now. But to espouse
23 that same rhetoric to this Board, I consider that to be
24 disingenuous at best, and at it's worst, an insult to your

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1 collective intelligence. As if to say, if you knew it you
2 wouldn't understand it. Or worse, we don't want to bore you
3 with all of the details of how we came to our decision. All
4 you really need to know is what we decided. Details, for us,
5 are just a minor annoyance. So if you would please allow us to
6 cut out all of the love scenes and just get right to the chase.

7 Madam Chair, what I want to say to you is this, is
8 that this process and procedure has been confusing from the
9 outset. And I think that it has been done on purpose. All the
10 evidence which Ms. Abrams has presented certainly points to
11 that. I would like to state for the record that I did visit
12 the property in question, that I did take the measurements of
13 the porch, and that I can comfortably state to you that it is
14 certainly more than the six feet that is shown. We have
15 provided to you -- we have provided to you the measurement that
16 was taken. The photographs, which are in front of you, I can
17 testify that those are accurate, that I'm the person's -- those
18 are my feet in the photo that you see, as well as my tape
19 measure. And it clearly shows that the porch is at least 96
20 inches deep.

21 All right. We also took another measurement of the
22 porch that showed it's width.

23 CHAIRPERSON HEATH: [Speaking off mic.]

24 MR. UQDAH: I don't see it here.

1 CHAIRPERSON HEATH: [Speaking off mic.]

2 MR. UQDAH: Oh, okay.

3 CHAIRPERSON HEATH: [Speaking off mic.]

4 MR. UQDAH: Well, the depth of the porch I think is
5 what is more important because the plans show that it was six
6 feet. This measurement here clearly shows that it's more than
7 six. And so we don't have the depth in front of us here as it
8 wasn't necessarily anything that they were claiming, but I do -
9 - I could substantiate to you that with the addition of this
10 porch it does exceed the lot occupancy.

11 I believe that the Zoning Administrator has rubber
12 stamped this project and I base this on our own observation and
13 two facts. The observation is this; it is highly unlikely
14 given the case load demands of one Zoning Administrator, plus
15 his appearances before this and other authoritative bodies and
16 whatever duties and responsibilities he has that I'm not aware
17 of, to make a thorough review of such a plan before you today
18 in the record time in which it was done. This is not a deck,
19 fence, or parking slab. It's a 3,000 square foot demolition
20 and construction development.

21 Fact one, observation one is confirmed by the fact
22 that DCRA had to request a last minute continuance in order to
23 shore up the Zoning Administrator's initial claims that it was
24 inside of the allowable lot occupancy, tainting this process

1 and calling its integrity into question.

2 Fact two, we are revisiting a decision made in March
3 of 2015. Some might say May of 2015, with new plans submitted
4 in October of 2015, based on whatever spin DCRA chooses to put
5 on it. All the while there has been an intervening change in
6 the law. So we are effectively being asked to review new plans
7 under an old law, which is causing a discrete harm, depriving
8 the communities which we represent, of their collective voice,
9 circling back to a denial of due process.

10 Once the plans were changed, for whatever reason, the
11 clock starts ticking over again. As far as I know there are no
12 do-overs in this process. What is adding more insult to injury
13 is the community is being burdened with the incompetence of its
14 own government, a government that should be protecting our
15 interests as citizens and tax payers of the District of
16 Columbia. Instead we are burdened with paying for time and
17 expertise to not only protect us from the applicant, but from
18 the very government officials we pay to protect us while
19 they're working feverishly on behalf of the applicant and not
20 the appellant.

21 DCRA's latest filings, pleadings, and motions show
22 they're not defending us. They have failed us, leaving us
23 vulnerable and responsible for defending ourselves.

24 Listen, I'm going to thank you all for your time.

1 And I am prepared to answer any questions --

2 CHAIRPERSON HEATH: Okay.

3 MR. UQDAH: -- from the Board or anyone else. Thank
4 you very much.

5 CHAIRPERSON HEATH: Thank you. So Ms. Abrams, does
6 that conclude your presentation?

7 MS. ABRAMS: Yes, it does.

8 CHAIRPERSON HEATH: Okay. All right. So I'm going
9 to take a quick -- yeah, we're going to take a quick, we'll do
10 three minute break. And then we'll come back and we'll hear
11 from DCRA.

12 MR. HILL: Just a quick question if I could. Mr.
13 Uqdah, what's there now? What is there now on the site?

14 MR. UQDAH: Last I visited the site the garage had
15 been removed. Boards had been placed in between the parties --
16 you know, the party wall.

17 MR. HILL: Uh-huh.

18 MR. UQDAH: It is a row house. As near as I can tell
19 there has been construction done on the inside, the demolition
20 of the garage. I'm not aware of anything else and my last
21 visit was last Sunday.

22 MS. ABRAMS: Yes. Yes.

23 MR. UQDAH: Yeah. My last visit was last Sunday.

24 MR. HILL: So the exterior walls still remain.

1 That's what I'm just curious of.

2 MS. ABRAMS: Actually the exterior wall in the rear
3 has been removed.

4 MR. HILL: Okay.

5 MS. ABRAMS: The porch was removed, I believe, last
6 week.

7 MR. HILL: Okay.

8 MS. ABRAMS: The first and second story rear porch
9 has been removed.

10 MR. HILL: Okay. Thank you.

11 CHAIRPERSON HEATH: Okay. All right. So three
12 minute break and then we will come back with DCRA.

13 [Recess from 1:25 p.m. until 1:32 p.m.]

14 CHAIRPERSON HEATH: So we're ready to continue and
15 DCRA can make your presentation. Is it your intention to --
16 okay. All right. And are you calling any witnesses or are you
17 handling the presentation yourself? No witnesses.

18 MR. HORA: No, I don't believe there's any need for
19 DCRA to call any witnesses.

20 CHAIRPERSON HEATH: Okay. All right. How much time
21 do you need for your presentation?

22 MR. HORA: Fifteen minutes perhaps.

23 CHAIRPERSON HEATH: Okay.

24 MR. HORA: No more.

1 CHAIRPERSON HEATH: All right. We'll give you 20
2 since they had a little longer than 30. And just, if you don't
3 need it, you don't have to use it. Okay? Perfect. All right.

4 MR. HORA: Thank you, Madam Chair. In accordance
5 with our presentation DCRA doesn't intend to impugn the motives
6 of any party here. We're here to do our jobs. Nothing more,
7 nothing less. Contrary to the assertion that DCRA has lied or
8 engages in affirmative obfuscation, I believe it should first
9 and foremost be noted that they tried to bring in an irrelevant
10 reference to a revoked permit.

11 When DCRA does something wrong, we fix it. That's
12 what happened in this particular property. There was a permit
13 that was issued erroneously, and we revoked it.

14 Now, before we proceed I just wanted to see if we
15 could verify that DCRA's understanding of the scope of this
16 hearing matches that of the esteemed members of the Board.
17 It's our understanding that the permit issue in this hearing is
18 Building Permit No. B1505734, as revised by Building Permit No.
19 B1600488.

20 On September 23rd, 2015 DCRA sought and obtained a
21 continuance specifically to allow the permit holder to provide
22 plans that correct scrivener's errors in the original plans,
23 clarifying elements of the original plans that were not
24 ambiguous but could be viewed as ambiguous to those without the

1 tools, training and experience employed by the Zoning
2 Administrator in his review of permit applications.

3 While material changes were made to the revised
4 plans, DCRA required the permit holder to seek an additional
5 permit on the basis of the revised plans to ensure that the
6 plans, once the Board makes its ruling, have been subject to
7 the full DCRA permit approval process and to provide the Board
8 with assurance that the plans on which it rules are those to
9 which the permit holder is bound in constructing the
10 complicated project, ensuring that the Board's ruling is
11 absolutely final and that the neighbors are protected.

12 As the issuance -- as of the issuance of Building
13 Permit No. B1600488 the scope of work that the permit holder is
14 permitted to conduct is confined to Building Permit No.
15 B1505734 as revised by B1600488. And in the elements of
16 Building Permit No. B1505734 that have been superseded by
17 B1600488 no longer govern the construction of the project
18 contemplated by these building permits.

19 As we proceed I believe it should be noted that
20 insofar as DCRA's presentations so the Board have been
21 concerned, the burden of proof is on the appellant and DCRA
22 can't respond until a notice of second intentions being made by
23 the appellant. So when the appellant says, oh, DCRA didn't do
24 this, didn't do this, didn't provide this, until we know what

1 they are saying is the case we can't offer anything that is
2 substantive.

3 In the first place, though, we have the case of the
4 plans. The issue with the plans is that ultimately there has
5 been no material changes. All that was made were corrections
6 to scrivener's errors and the transposition of information that
7 was -- that is from a place where they are material to the
8 process, to whether or not the appellant cites constantly to a
9 cover letter -- to a cover sheet, because that's the only place
10 where erroneous figures can be found because the actual plans
11 show the actual figures.

12 Right. Ultimately in the review process the Zoning
13 Administrator doesn't review -- doesn't make a judgment on the
14 basis of the cover sheet because the cover sheet is generally -
15 - is optional, and you know, some elements are provided as a
16 courtesy by architects, but that's now what the ZA relies upon,
17 and if the ZA relied upon it he wouldn't be actually evaluating
18 the substance of what binds, which are the plans. Right.

19 Now, on the issue of the porch that they keep on
20 talking about, this supposed porch, and saying that there was a
21 change in the new permit and the new plans and the revised
22 permit that we sought to have the -- to the permit holder
23 procure, I think if you will take a look at the original plans
24 which we cited and were accused of lying about, page -- right.

1 It's BZA Exhibit 34, page A4 and A6, demonstrate what the
2 proposed floorplans are. The only citation that the appellant
3 made was to A3, but that is the existing floorplan. And they
4 cited a partition to be removed. There's no wall to be removed
5 for the front. Or the front porch that was extant.

6 In the proposed floorplans it clearly indicates that
7 there is a deck, and it clearly indicates the dimensions. And
8 on A6 it clearly indicates that according to the DCMR, what is
9 to be in front of the building is a deck, not a porch. Upper
10 left-hand corner of page A6. Now these are the original plans
11 and this is identical to what is seen in the revised plans.

12 MR. HILL: So just so I'm clear. From that A6
13 there's no porch in the top left corner. That's what you're
14 speaking of?

15 MR. HORA: That is correct. That's (indiscernible)
16 demonstrated A4 on the far left side in the middle image. It's
17 the deck, and it describes the six-foot deck that is proposed.
18 And that's what they'll be bound to.

19 CHAIRPERSON HEATH: And so you're saying that this is
20 what is proposed, irrespective of what might be existing today?

21 MR. HORA: That is correct.

22 CHAIRPERSON HEATH: Okay.

23 MR. HORA: It is the proposed building plan to which
24 they're bound. Now if they -- if the permit holder for some

1 reason doesn't build to that, that will be a separate
2 infraction. They won't be building to the plans.

3 CHAIRPERSON HEATH: Okay.

4 MR. HORA: And again, this is page A6 on the original
5 plans, which is the same as on the revised plans. So contrary
6 to the appellant's assertion this has always been a deck and
7 not a porch.

8 MR. HILL: And maybe this will come from questions
9 later, but where is it that the appellant is saying that the
10 porch was supposed to stay? Can you point that out to me or
11 are you --

12 MR. HORA: The only document that the appellant cited
13 to the proposition that the porch was to remain is on page A3
14 of the early plans, which it indicates the existing first floor
15 plan which only indicates that this is the state of the
16 building. And the partition legend is indicating the
17 partitions to be removed. There's no partition to be removed
18 from the porch.

19 MR. HILL: Okay. Thank you.

20 MR. HORA: And as a result of the misconstruction of
21 the porch and the deck situation, the lot occupancy does not
22 exceed the lot occupancy. And the lot occupancy cited is only
23 to the cover sheet, which is just a scrivener's error.

24 CHAIRPERSON HEATH: Can I ask you one more point of

1 clarification?

2 MR. HORA: Of course.

3 CHAIRPERSON HEATH: Just because of the way the
4 demolition plans showing the existing conditions are noted, you
5 pointed out that the porch at the front is not walls. So it
6 wasn't shown as dashed based on how the demolition plans are
7 depicted. However, at the back, that was a full height wall or
8 is it not, because it's noted. I just want to be clear, at the
9 back of the residence the lines indicating the enclosed porch
10 are shown as dashed. Were those full height walls enclosing an
11 interior space so that they're different?

12 The way they're depicted makes them seem different
13 from the front porch. But if you could just talk about what
14 that space was?

15 MR. HORA: I believe that to be the case given that
16 it indicates there is an enclosed porch.

17 CHAIRPERSON HEATH: Okay. Just to be clear. I just
18 wanted to be clear about the way they are depicted differently.

19 MR. HORA: Right. No, and unfortunately the original
20 plans were not as clear as possible. That's why we sought the
21 revised plans. Unfortunately as the Commissioner previously
22 noted, it's an imperfect process and people are mortal. We do
23 what we can to clarify these things.

24 CHAIRPERSON HEATH: Okay.

1 MR. HORA: But obviously it's limited to
2 clarification. If it were anything more --

3 CHAIRPERSON HEATH: Okay.

4 MR. HORA: -- there would be more clarity.

5 CHAIRPERSON HEATH: Thank you.

6 [Pause.]

7 MR. HORA: And just as a last minute note, I just
8 wanted to make clear that the appellants make reference to the
9 new R-4 rules and the applicability. That seems to just kind
10 of not comprehend the application of those rules, insofar as
11 when there's a revised permit or there's a new permit issued,
12 it only applies to the changes. And there are no material
13 changes in this case. All it is, is scrivener's errors that we
14 actually came to -- we asked them to apply for a permit and we
15 issued a permit purely for the sake of making sure that any
16 concerns are addressed and this is all enshrined as corrected,
17 as the scrivener's errors are corrected.

18 CHAIRPERSON HEATH: Okay. Can you just be very
19 specific with what you're calling the scrivener's errors? What
20 were the errors between the first set of drawings and the
21 second set that was permitted?

22 MR. HORA: You can see it indicated on the document
23 that we submitted as -- it's 51A and 51B, the approved plans
24 for the building permit, part 1 and part 2, submitted as

1 separate parts purely due to the upload mechanism. But you
2 will see, actually, we request that they highlight all of the
3 changes in the bubbled notes.

4 CHAIRPERSON HEATH: And so those bubbled with the
5 Delta 1 next to them are the changes? Or Delta -- I see Delta
6 1 and Delta 2.

7 MR. HORA: Right. And keep in mind A3, that they
8 didn't alter A3, the existing porch to be removed. It just --
9 they did state to be removed, but they just clarify. But this
10 is the existing first floor plan because that's what exists.

11 And I just think it should be noted that on A6,
12 again, there's no changes to the alleged porch area on what is
13 to be constructed. And also on the Page C1 copy, there is
14 simply changes to this page just to clarify and reflect the
15 actual dimensions and what was approved. And it's the copy of
16 C1.

17 CHAIRPERSON HEATH: And so how was the lot occupancy
18 changed? I'm still not clear on that. On Sheet A1, this is
19 51A, Exhibit 51A. There is a -- it's the legend is bubbled
20 showing that there were changes to what's provided in the
21 zoning data. And lot occupancy is one of the categories in
22 this chart. So how was lot occupancy -- what caused the change
23 to the lot occupancy?

24 MR. HORA: The lot occupancy hasn't changed. The

1 change is only to the cover page, which was erroneously
2 transcribed. That's one of the scrivener's errors that was
3 indicated.

4 CHAIRPERSON HEATH: Okay.

5 MR. HORA: That's just, they wrote in the wrong
6 information based on old calculations.

7 CHAIRPERSON HEATH: Okay. And what was there before?
8 Is it the same?

9 [Discussion off the microphone.]

10 MR. HORA: All right. Sorry.

11 CHAIRPERSON HEATH: So what I see, and the one change
12 that I do see is the rear yard provided. Was that --

13 MR. HORA: Yes, that was based on calculations that
14 were erroneous because of the 15 foot -- the termination of the
15 15 feet on the plat, the building restriction line, and that
16 was as noted on the plat, which they erroneously cited to a
17 plot that is not in the approved -- was not the approved plat,
18 the actual plat is the one that we have included in Tab C, 51C.
19 And as we note, the number has been marked off because that's
20 an erroneous number and the approved plot has that crossed off
21 because that was miscalculating in light of the 15 foot
22 restriction line.

23 CHAIRPERSON HEATH: Okay.

24 MR. HORA: They took the total and they added the 15

1 feet, and that was what they used for the numbers that they put
2 on the cover sheet. But that didn't reflect any of the actual
3 binding construction parameters.

4 CHAIRPERSON HEATH: Okay.

5 MR. HORA: And ultimately the ZA was able to review
6 it because it's a scale drawing. Didn't need to rely on that.
7 And so it's this practice that means that isn't -- those kinds
8 of scrivener's errors are not things that are part of the
9 review.

10 CHAIRPERSON HEATH: Okay.

11 MR. HILL: And just kind of for my own clarity and
12 curiosity, how is this -- how would this be different under the
13 new R-4 versus the old R-4?

14 MR. HORA: Well, the new R-4 would --

15 MR. HILL: This project that is, sorry.

16 MR. HORA: Right. The project. There is a
17 substantially different rules that have been imposed
18 specifically because of types of construction that were raised
19 as an issue and went through the political process and the
20 rules were changed.

21 MR. HILL: No, no, I'm sorry. But I still don't
22 necessarily see the difference between how this would look and
23 how it would look under the new R-4. It would still be the
24 cellar, a basement, and two stories above, right?

1 MR. HORA: I'm not certain I'm really qualified to
2 speak to that.

3 MR. SULLIVAN: I can answer that if you -- it would
4 be the same.

5 MR. HORA: But if you'd like to hear from the Zoning
6 Administrator.

7 MR. HILL: Zoning Administrator would be great.
8 Thank you.

9 MR. LEGRANT: It would be the same.

10 CHAIRPERSON HEATH: Okay. All right.

11 MR. HILL: Okay.

12 CHAIRPERSON HEATH: Thank you.

13 MR. UQDAH: Madam Chair, I'm not absolutely sure they
14 would be the same. How many units is this?

15 CHAIRPERSON HEATH: It's three.

16 MR. UQDAH: If it's three units then it's not the
17 same because under the new --

18 MS. ABRAMS: It's special exception (indiscernible).

19 MR. UQDAH: You'd have to get a special exception for
20 anything beyond two. Now I'm not an expert, but my reading, my
21 simple reading of it is if it's three units it is not the same
22 without you getting a special exception.

23 MR. SULLIVAN: The discussion was about lot occupancy
24 and the lot occupancy can be the same whether it's two units or

1 three units.

2 MR. TONDRO: And again, just to clarify, under the
3 Zoning Regulations the revision would be subject to the new
4 rules, but only what was in the revision. And to the extent
5 that there were any changes. In this particular case there
6 were no changes of substance that were made.

7 MR. HILL: And for the appellant also, I was just
8 kind of curious. Like it's still the same argument that you
9 have and the cross and what you're arguing is the error, so.

10 MR. HORA: No, I believe we've stated everything we
11 need to say for this case.

12 CHAIRPERSON HEATH: As the property owner, we'll
13 allow you to speak.

14 MR. SULLIVAN: Thank you. I think we all know why
15 we're here. We're here because this is an R-4 conversion and
16 the neighbors don't want an addition here. And so they've come
17 here with a claim or error, the substance of which seems to be,
18 we think your original plans were confusing, may have even
19 showed an overage of 1.8 percent, as they see it, and you're
20 never permitted to change or correct or clarify those plans.

21 Some background on this, the owner of the property
22 originally wanted to do a third story addition.

23 MS. ABRAMS: Can I object to that, please? This is
24 the same objection DCRA raised about that permit, February

1 permit, that you said was irrelevant. That is what Mr.
2 Sullivan is speaking to. You've already said -- yes, the
3 revoked permit. You've already ruled on that.

4 CHAIRPERSON HEATH: We did.

5 MR. SULLIVAN: I didn't know you had said -- she's
6 the one that brought it up that the permit was revoked. I just
7 wanted to clarify that it wasn't revoked. He withdrew his --

8 MS. ABRAMS: It was revoked.

9 MR. SULLIVAN: He offered not to do a third story.

10 MS. ABRAMS: It was revoked.

11 MR. SULLIVAN: I know she doesn't want you to know
12 this --

13 MS. ABRAMS: I actually have that. I have it.

14 MR. SULLIVAN: -- but he removed the third story
15 hoping to avoid this charade here. No good deed goes
16 unpunished.

17 Then when the Zoning Administrator wished to clarify
18 the plans for the purpose of making it easier to get through
19 this process, eh did that. And apparently that -- maybe that's
20 the alleged error? I don't know because I can't really tell.
21 I know it's not lot occupancy. No good deed, again, goes
22 unpunished. But here we are with the clarified plans.

23 One thing I think that's been missed, and it should
24 clear this all up, the expert for the appellant claims that the

1 lot occupancy is 56.97 percent, on Exhibit 12 of their
2 prehearing statement on page 3. In fact, he actually admits
3 that in May 2015 there were drawings that showed a lot
4 occupancy under 60 percent as well.

5 So can we stipulate that the current plans as
6 currently approved and being appealed do not violate lot
7 occupancy?

8 MS. ABRAMS: If that is a question, was that to me?

9 MR. SULLIVAN: No, I mean, I think that's been
10 established, that the current lot occupancy is under 60
11 percent. And so that leaves us with an alleged error of what
12 exactly? That the Zoning Administrator is not allowed to allow
13 any changes or clarifications or corrections to approved plans?
14 This Board went over that two weeks ago with a project that
15 actually did make changes to plans, not clarifications. After
16 June 26th they did a chimney cut out and a trellis for 67 V
17 Street, and this Board found that you were allowed to make
18 changes like that and it was not a material change.

19 Actually, this is the third case. 1521 Barnum had
20 changes made to it several times after June 26th as well, and
21 the Board --

22 MS. ABRAMS: Can I object? Those cases are not in
23 front of the board right now. We're talking about this.

24 MR. SULLIVAN: Exactly. They're precedent, but I'm

1 just --

2 MS. ABRAMS: So --

3 MR. SULLIVAN: If I may talk about what the Board --

4 CHAIRPERSON HEATH: (Speaking off mic.) We do allow
5 people to bring up precedent.

6 MS. ABRAMS: Okay. But those decisions have not come
7 out yet. They're not -- the Board does not have a written
8 decision on any of those cases. So I --

9 MR. SULLIVAN: That's fine. The precedent is not
10 necessary. The fact remains that you can revise a permit. The
11 Building Code 105.3.8 says the holder of a valid active
12 building permit shall be authorized to amend it or to amend the
13 plans, application, or other records pertaining to the permit
14 by filing. At any time before completion of the work for which
15 the original permit was issued, an application for revision of
16 a building permit accompanied by a copy of the originally
17 approved submittal documents and unless submitted
18 electronically, by two sets of the revised plans. Once such
19 amendments are approved and the revised permit is issued it
20 shall be deemed part of the original permit and shall be kept
21 therewith in the official records of the Department.

22 The appellant originally came here with, I think two
23 claims. One about pervious surface and one about lot
24 occupancy. I assume they've dropped the pervious surface and

1 I'm not sure if they've dropped the lot occupancy and they're
2 just claiming that we can't change plans. So I don't see any
3 other issues and I'm not sure why we're still here.

4 I might add, too, that the confusion about plans at
5 1.8 percent, and the clarification and corrections of those
6 plans do not deserve the kind of tirade that the ANC testimony
7 put forth with words about integrity, a run-around, creating a
8 mess, hiding from something, flurry of motions which to my
9 knowledge we only filed one so I'm not sure what that was
10 about. So I think not to overuse the phrase, but it's much ado
11 about nothing or very little. And there's no error.

12 CHAIRPERSON HEATH: Okay. Then we will allow the
13 intervener your time to speak. How much time do you need?

14 MR. WIBLE: I won't take long.

15 CHAIRPERSON HEATH: Okay.

16 MR. WIBLE: Five minutes should be sufficient.

17 CHAIRPERSON HEATH: Okay. Perfectly. Mr. Moy.

18 MR. WIBLE: I just want to attempt to crystalize the
19 issues before the Board today. We're here to determine whether
20 the permit that was issued in May was validly issued, whether
21 the plans fully conform to the Zoning Regulations.

22 The appellant has submitted an expert report that the
23 architect who reviewed those plans concluded that those plans
24 were ambiguous. DCRA stated that they're not ambiguous but

1 they may be viewed as ambiguous. Well, ambiguity is an
2 objective concept. Something is either ambiguous or it is not.

3 It's reasonably susceptible of more than one meaning.

4 As the expert report details, while certain sheets of
5 the May plans did have a lot occupancy of under 60 percent, the
6 plat, specifically Sheet C1, showed a lot occupancy over 60
7 percent. And it's difficult, if not impossible, when you're
8 looking at those plans, to determine what was actually going to
9 be constructed. So to the extent that the May plans, which are
10 the basis for the permit at issue here, fully conformed to the
11 regulations, clearly they did not because C1 clearly showed a
12 lot occupancy greater than 60 percent.

13 Now the question that was raised by owner's counsel
14 is whether the changes to those plans that were embodied in the
15 October plans are material or scrivener's errors as DCRA has
16 characterized, I don't see how you can walk away from this with
17 any conclusion other than that they are material because if you
18 have plans in May that say the lot occupancy is greater than 60
19 percent, which would prevent the permit from being issued, and
20 then you have plans in October which show it as a result of the
21 changes being less than 60 percent and authorizing issuance of
22 the permit, that is a material change.

23 And I think the question before the Board is, should
24 the permit in May have issued? And if the answer to that

1 question, based on the plans that were before the Zoning
2 Administrator at that time is no, then the permit is void. And
3 therefore any amendment or revision to those plans is now
4 subject to the new law, which does not permit conversion as a
5 matter of right. The owner must take those plans first to this
6 Board and obtain a special exception. And only when that
7 special exception is granted can the conversion construction
8 commence.

9 So again, I don't want to belabor too much what's
10 already been said today, but I really think that the focus here
11 is the plans as they existed in May. Did they fully conform to
12 the regulations as required by Rule 3202.1? And I think based
13 on the strength of the expert report attached to appellant's
14 prehearing statement, clearly those plans were ambiguous,
15 meaning objectively reasonably capable of more than one
16 interpretation, C1 showed a porch, it showed a lot occupancy of
17 greater than 62 percent if you, you know, count the porch as
18 actually measured as opposed to what the plans reflect. But in
19 any event, the plans show lot occupancy of greater than 60
20 percent. Therefore it did not conform. And any change to
21 bring that within conformance is necessarily material. And
22 therefore I'm not aware of any regulation that authorizes the
23 Zoning Administrator to make material changes to an amendment
24 when there's been an intervening change in law to apply the

1 old, now repealed law to that application and allow the permit
2 to be issued. Thank you.

3 CHAIRPERSON HEATH: Thank you. Sure.

4 MR. HILL: I would like to hear DCRA, what they have
5 to say about that, about the -- what you're saying is the 60
6 percent error, meaning it's a scrivener's error in terms of the
7 C1. And then also C1, there as far as the porch, that was
8 also, when you resubmitted the drawings it was to clarify
9 covered porch, not covered porch.

10 MR. HORA: Well, the porch was -- there is no porch,
11 even in the original drawings as indicated on pages A4 and A6.

12 The C1 that they cite to is not the approved plat for this
13 project. The approved plat was submitted as 51C, and that
14 indicates that there is a decks, and the numbers at the back
15 which were the erroneous calculation that the courtesy
16 coversheet figures were based on, but were not the scale
17 drawing on which the ZA was able to make his determination.

18 He talks about ambiguity, and I specifically stated
19 that we're not ambiguous but could be regarded as ambiguous to
20 those without the tools, training, and experience employed by
21 the Zoning Administrator in his review of permit applications.

22 MR. HILL: Is the 62 percent that you're speaking of
23 from the cover page?

24 MR. WIBLE: No, it is from -- and I'm reading the

1 expert report. And I believe that the architect does have
2 the --

3 MR. HORA: Who has not been admitted as an expert,
4 just --

5 MR. WIBLE: Pardon me?

6 MR. HORA: Who has not been admitted as an expert
7 before this Board.

8 MR. WIBLE: Well, he is a licensed architect, which I
9 do believe would qualify him to some degree of expertise and
10 training in these matters. And the report shows his analysis
11 of revised sheet C1 in the May 2015 permit set drawings to be
12 62 percent. If you would go to page 7 of the report.

13 CHAIRPERSON HEATH: Right. He shows, based on the
14 architect's calculations, he shows that revised sheet C1 of the
15 May permit set shows a 62 percent, 62.7 percent lot occupancy.
16 Sheet A4 of the May 15th permit set shows a lot occupancy of
17 59.82 percent. And then revised permit set dated October of
18 2015 shows 56.97 percent based on his calculations.

19 MR. HILL: And those were all from the May permits?

20 CHAIRPERSON HEATH: May and October.

21 MR. WIBLE: The last calculation was from the October
22 permit. But my point was that the May permit shows two
23 different lot occupancy calculations. One being within 60
24 percent and one being in excess.

1 MR. TONDRO: And DCRA would point out that there are
2 three -- that there may be some issue perhaps, arguably, in
3 terms of that C1 in the original, the May. But I want to
4 repeat, but that is contradicted first of all by the plat,
5 which I would argue is governing. And second of all, very
6 clearly contradicted by Sheets A6 and A4, which the permit
7 holder would be bound by as well.

8 So I can understand the appellant's desire to throw
9 every possible objection against the wall. We heard a whole
10 series earlier. I think at this point it's finally been
11 crystalized down to the issue of lot occupancy, and really only
12 to this issue, the front porch. And the fundamental issue here
13 is that scrivener's errors were the mistakes made, not in a
14 change to any structure. There's been no change to the
15 structure at all. It's rather how it's reduced and shown on
16 the plans. The Zoning Administrator relied on the plat and
17 that was what the Zoning Administrator was ruling on in terms
18 of that lot occupancy calculation.

19 And again, in terms of what my colleague has
20 indicated, the tools, just to be very clear, were scale
21 drawings. Okay? So that is the reason it's been established
22 before that the Zoning Administrator takes very seriously his
23 job. He therefore does not rely simply on the zoning data
24 calculation tables that are shown in the front, but believes

1 instead it's his responsibility to review each application and
2 the plans that come in before them.

3 CHAIRPERSON HEATH: Thank you. Any other questions?
4 Okay.

5 And, Ms. Abrams, we'll allow you to make your closing
6 statement.

7 MR. SULLIVAN: I'm sorry. Do we get a chance to
8 respond? Does the property owner get a chance to respond to
9 the intervener party's statement?

10 CHAIRPERSON HEATH: Yeah. You --

11 MR. SULLIVAN: Brief. I'll be very brief.

12 CHAIRPERSON HEATH: Sure. You can do that and then
13 we'll have her do her closing.

14 MR. SULLIVAN: Okay. Thank you. Reject the whole
15 premise that materiality is even an issue in here. What
16 3202.4B says that any amendment of the permit shall comply with
17 the provisions of this title in effect on the date the permit
18 is amended. It's the amendment of the permit. So you have to
19 be amending something that changes something in relation to the
20 new regulations. So it's not a question of whether something
21 is material and then therefore you get pulled back to what was
22 -- and everything previously approved is no longer valid.

23 Even if that were an issue, and it's not because this
24 is a clarification, and again I would point out several appeal

1 cases in R-4 -- they're going after the R-4, and this is the
2 best they could come up with. And they had their shot, and
3 they won. They got R-4 conversions wiped out. The Zoning
4 Commission took care of that. And but now they want to go back
5 and get everybody that was lucky enough to get approved before
6 the change in the regulations, and that's all we're doing here.

7 But you can make changes to a permit, so I reject
8 that premise that there's some materiality level at which now
9 you get -- you lose your permit that was already approved.
10 That's just not true. That's all I have. Thank you.

11 CHAIRPERSON HEATH: Okay. Thank you. Ms. Abrams.

12 MS. ABRAMS: Yes. Thank you. There is a change to
13 the structure. The front porch now being demolished is a
14 change to the structure. The plat that DCRA is saying is not
15 the approved plat, that plat was submitted on April 27th, 2015.
16 It was submitted before the permit was issued in May. It was
17 stamped by the city, by D.C., and it was also represented by
18 the owner that it was a revised plat, it was a change to the
19 original plat.

20 That plat clearly shows a porch and that plat also
21 shows the zoning data. It shows 1,933 square feet for the lot
22 coverage area. The plat shows that. The cover page shows
23 that. Contrary to what DCRA has said, it's not only the cover
24 page that shows lot occupancy in excess of 60 percent. It is

1 also that plat that clearly shows lot occupancy is higher than
2 that.

3 In fact, if you look at the May permit there are also
4 -- there are three possibilities for lot occupancy. There is
5 the cover sheet which shows 1,933 square feet. That, I
6 believe, is 61.8 percent, just based on the cover sheet. Then
7 there's Sheet A4 which does show 59 percent. And then there's
8 also the plat which shows 60 -- I believe it's 61.5 or
9 something like that. So there are at least two lot
10 occupancy -- two calculations of lot occupancy that are over 60
11 percent in the May permit.

12 At best, the plans were ambiguous, at best. Our
13 position, though, is that those plans violated the Zoning
14 Regulations. But even if they were ambiguous, as DCRA has
15 admitted to, the Zoning Administrator at that point should not
16 have issued the permit because we do not know what was going to
17 be built. There was no way to know what was being built or
18 what plans you were relying on. And that existing structure,
19 if you look at the porch, A3, that one of you asked about, if
20 you look at A3, the front porch does not show -- and this is of
21 the May permit. The front porch does not show the dotted lines
22 and there was a question about, is it because there are walls
23 and the dotted lines were shown only for walls.

24 But if you look at that same page, the rear stairs,

1 obviously there are no walls with rear stairs, and those rear
2 stairs show dotted lines. So those rear stairs are coming off.

3 The porch is more of a structure than rear stair are, and the
4 rear stairs clearly indicated they're going to be removed. The
5 front porch, no indication of it being removed.

6 And also, if there was some question about whether or
7 not that front porch would be removed, then the October plans,
8 the new building plans, there would not -- the owner, the
9 architect actually felt that it was important at this point to
10 specify on the October plans that the porch would be removed,
11 but did not specify that on the May plans, which is further
12 evidence that the porch was not going to be removed. So there
13 is a change to the structure. The change to the structure is
14 material.

15 The Zoning Administrator may be able to go back and
16 request revised plans. However, in this case there's a change
17 in the law. And now that there's a change in the law it has to
18 be -- the changes and the permit, and the building plan, have
19 to be evaluated under the new law. And the Zoning Regulations
20 make that clear. Section, I believe it's 3200, says that the
21 permit shall not issue unless it fully, the building plans
22 fully conform to the Zoning Regulations. It does not say
23 partial conformance. It says fully, meaning everything in
24 there has to comply with the law in effect.

1 Also, if you look at 3104.2 and 3, they both state
2 that if there is a -- in the case of a use that was originally
3 permitted and lawfully established as a matter of right, which
4 this project initially was a matter of right, and for which the
5 Zoning Regulations now require special exception approval from
6 the Board, then it requires the permit holder to come back and
7 get special exception approval. And that approval should apply
8 to the entire use, everything, meaning all of the building
9 plans. That did not occur here.

10 Also, I'd like to speak to the highlighted changes
11 that DCRA mentioned on the new building plans. The highlighted
12 change in this, they admitted, the porch was not shown as a
13 highlighted change. However, it was a change. But it was not
14 indicated in the new building plans that it was a change by a
15 bubble, but there was a notation there saying, it's going to be
16 removed. That is a change.

17 The lot occupancy that is now under 60 percent, the
18 proposed lot coverage, is now showing a 17 -- I'm not sure of
19 the exact number, but 17 and change. That lot occupancy is now
20 being reduced because the porch is being removed. So what you
21 see with the difference between the 1,933 and the 1,750
22 something I believe it is, the difference there is the porch.
23 That is not a scrivener's error. That is a material change
24 that changes lot occupancy.

1 Also, our expert, as the owner's counsel mentioned in
2 his statement when he said that the expert said that lot
3 occupancy is 57 percent, that referred to the October building
4 plans; the new building plans. However, this permit, that is
5 the subject of the appeal is not based on a review of the
6 October plans. The plans that were actually reviewed for this
7 May permit are the May plans. And those clearly show over 60
8 percent lot occupancy.

9 The black letter law is clear here. All permits have
10 to fully comply with the Zoning Regulations. The Zoning
11 Commission is an exclusive body with the authority to enact
12 zoning laws. And the zoning administrator abused his authority
13 by proving the new permit under the old law. And he does not
14 have the authority. We've been here for maybe an hour and DCRA
15 has not pointed to anything in the Zoning Regulations that
16 allows them to go back and change the permit and apply the old
17 law to that permit.

18 We've pointed to several provisions of the Zoning
19 Regulations that says that the permit has to comply, that --
20 and also the special exception provisions that we pointed to.
21 The regulations are clear, the new law should apply here.

22 The new law is intended to protect homeowners and to
23 help preserve single-family homes. If the permit holder was
24 allowed to continued to make changes, material changes to the

1 building plans and obtain new permits while still having the
2 benefit of the repealed law, it would defeat the purpose of the
3 new law. Granting this appeal does not prevent the permit
4 holder from converting the row house into an apartment
5 building. The permit holder will still be able to reapply for
6 the permit. However, the difference here is that the ANC and
7 the neighbors will have an opportunity to appear in front of
8 this Board and present our concerns and how this project will
9 affect us as adjoining property owners.

10 The May building plans must be evaluated under the
11 zoning laws in effect at that time. The plans did not comply,
12 thus we request that the Board revoke the permit. If the
13 October plans are used they must be evaluated under the new R-4
14 regulations which were in effect when the new permit was
15 issued. Thank you.

16 CHAIRPERSON HEATH: Okay. I don't know where the
17 Board is on this but I'd like to give this more thought. And
18 so if the Board would agree I'd like to conclude the hearing
19 today, but ask for findings of facts and conclusions from the
20 parties and put this on for decision. Mr. Moy, if we put this
21 on for decision, when could we do this?

22 MR. MOY: Okay.

23 MR. TONDRO: Madam. Sorry, Madam Chair, if I may
24 ask? I want to -- one of the issues that has been raised here

1 is the fact that the plans -- DCRA had been prepared that this
2 was an issue based on the clarifications. To the extent that
3 this is now an issue turning instead on the original plans,
4 DCRA would request, which we believe there have been no
5 material changes. However, we would like to have the
6 opportunity to confirm the actual approved issued plans, the
7 ones that were provided for by the appellant and submitted to
8 the record were the ones that were provided as part of the
9 review. I want to confirm in particular that the C1 that was
10 part of the actual approved plans is the same as is represented
11 by the appellant.

12 If it is, then there's no change to the record. But
13 if instead what was actually included in the May permit
14 drawings that were approved by DCRA shows -- does not have the
15 notation to the porch, I believe that that would have a
16 profound impact for the Board. So I would ask that you leave
17 the record open solely for the purpose of providing -- of DCRA
18 providing the approved plans, approved as of the May 4th -- or
19 the May, whatever the May permit drawings were. Thank you.

20 CHAIRPERSON HEATH: Okay.

21 MS. ABRAMS: May I respond, please?

22 CHAIRPERSON HEATH: Yes.

23 MS. ABRAMS: We actually would object to leaving the
24 record open for that. This submission is over -- our

1 submission is over a month old. We actually refer to the
2 revised, that revised C1 multiple times in the submission. It
3 was part of the record. It's actually part of the record, and
4 DCRA actually has that information. And what we received is
5 also stamped. It is stamped by the government. And in fact
6 you have that in the record where it does show a stamp there.

7 So we actually object to keeping the record open.

8 MR. TONDRO: If I may?

9 CHAIRPERSON HEATH: Yes.

10 MR. TONDRO: That stamp is the stamp of the licensed
11 engineer. It is not the stamp of DCRA.

12 CHAIRPERSON HEATH: Okay.

13 MR. TONDRO: So I just wanted to point out that
14 fundamentally. The reason that we have a month delay is
15 because there was a two-week continuance requested by the
16 appellant in this case, which DCRA agreed to for the purpose of
17 being able to review the plans that were the clarifying plans.

18 CHAIRPERSON HEATH: Okay. So you're asking if we can
19 leave the record open for the DCRA approved plans?

20 MR. TONDRO: Yes. Which I should say too, again, the
21 appellant has the burden of proof here. They've supplied plans
22 that were given to them as part of the process, but they did
23 not supply the actual public record plans, which are those that
24 were the approved plans by DCRA. And so I would -- I think in

1 this case it is reasonable to look at what was actually
2 approved. Thank you.

3 CHAIRPERSON HEATH: Okay. We'll allow those approved
4 documents to be submitted to the record. I think it would be
5 helpful for the Board in our decision making process.

6 So would this be December 22nd? Or does that -- is
7 that date overloaded at this point?

8 MR. SULLIVAN: I think that if we're filing -- I'm
9 sorry. If we're filing proposed findings of fact and
10 conclusions of law we would like more time than that.

11 CHAIRPERSON HEATH: Okay. All right.

12 MR. MOY: Yeah, the transcripts, Madam Chair,
13 typically take about 10 to 14 days.

14 CHAIRPERSON HEATH: Okay.

15 MR. MOY: So if we strike December 22nd, the next
16 hearing would be January the 12th, which is a huge docket.

17 CHAIRPERSON HEATH: So then not that day?

18 MR. MOY: And the only other opportunity would be the
19 afternoon of -- it sounds like a long time. Would be the
20 afternoon of January 19th where we have that -- there's a Board
21 and Commission training in the morning. That's the day. And
22 if this is going to be for decision then this could be teed up
23 for the afternoon of January 19th. So the option would be
24 either the afternoon of January 19th, or --

1 CHAIRPERSON HEATH: Why don't we do that because it
2 seems to me that's going to be a lighter day for us and give us
3 more time --

4 MR. MOY: Okay. If we do that then --

5 CHAIRPERSON HEATH: -- to review the documents.

6 MR. MOY: Maybe filings of the draft order by January
7 the -- let's do that a week ahead of time, so that would be
8 January the 12th, due date. And DCRA would file their approved
9 plans -- do you need the date or is that as soon as possible?

10 MR. TONDRO: We will do it as soon as possible. If
11 they are paper plans it may be that they are off-site. But I
12 can promise that we will get them to you as soon as possible
13 and give an update if we find, for example, that they're off-
14 site. We'll provide the Board with a letter as well as to
15 appellant and all parties indicating what the progress is.

16 CHAIRPERSON HEATH: Okay.

17 MR. SULLIVAN: Madam, Chair, I would ask that the
18 proposed order filings be done with the appellant filing first
19 since they have the burden of proof, and the property owner and
20 DCRA having a chance to respond with theirs because I have yet
21 to hear an actual violation.

22 The appellant is supposed to cite the specific
23 regulation the Zoning Administrator did not follow. And we
24 don't even have that yet. It's going to be hard to write a

1 draft order in response to -- this is a phantom violation at
2 this point. So I think it would be more helpful to be able to
3 respond to whatever they file.

4 MS. ABRAMS: Madam Chair, may I respond to that,
5 please?

6 CHAIRPERSON HEATH: No, we're going to -- there's
7 nothing in the regulations that says that the appellant has to
8 file in advance of the other parties, unfortunately. So we
9 will maintain the procedure that this Board has in the past,
10 where each of the parties has the same deadline for filing.
11 And so that will continue to be the -- what did you say, the
12 12th, Mr. Moy?

13 MR. MOY: Yes. Filings by January the 12th.

14 CHAIRPERSON HEATH: Okay.

15 MR. MOY: A decision in the afternoon of January 19th
16 at 1:00.

17 CHAIRPERSON HEATH: Okay.

18 MR. TONDRO: Can I ask one point of clarity? With
19 regard to DCRA's request to keep the record open, if we could
20 set a time on that prior to the filings being submitted so that
21 we have a closed record when the parties submit their filings.

22 CHAIRPERSON HEATH: Sure. Can you adhere to the 12th
23 so that when parties submit their filings the record is then
24 closed?

1 MR. TONDRO: I would certainly hope so.

2 CHAIRPERSON HEATH: Okay.

3 MR. TONDRO: And the only thing that gives me any
4 hesitation is if for some reason the plans were off-site.
5 However, having -- and therefore unavailable for some purpose.
6 I doubt that is the case but just in case that is the case, I
7 want to hold that out as a possibility. However, in that case
8 we could guarantee that we would respond by the end of this
9 week with a status update if that was an issue. In other
10 words, indicating whether that would be a problem because I
11 agree that there would be no point having findings of facts if
12 the record was still open.

13 CHAIRPERSON HEATH: Sure. Okay. All right. Thank
14 you. All right.

15 MR. MOY: So what was that date? I missed that, for
16 the approved plans.

17 CHAIRPERSON HEATH: The approved plans would be in no
18 later than the 12th.

19 MR. MOY: Okay.

20 MR. TONDRO: No later than the 12th, except in the
21 unusual circumstance that there was some issue stopped
22 preventing that, in which case we would then submit, I guess we
23 would propose if it's possible, that we would send a letter to
24 the Board clarifying what that was and providing an updated

1 schedule for when we would know, and at which point then the
2 Board could reorganize or push off the --

3 CHAIRPERSON HEATH: Sure. (Inaudible.)

4 MR. TONDRO: Yeah. Thank you.

5 MR. MOY: 12th of December, right? 12th of December.
6 Or was that January?

7 CHAIRPERSON HEATH: No, it was the 12th of January.

8 MR. MOY: Okay. I just wanted clarity on that.
9 Okay.

10 CHAIRPERSON HEATH: All right.

11 MR. TONDRO: And again, DCRA will make all efforts to
12 get it as soon as possible.

13 CHAIRPERSON HEATH: Right. It was to be in --

14 MR. UQDAH: Madam Chair. Madam Chair, can we at
15 least know by the end of the week?

16 CHAIRPERSON HEATH: I think Mr. --

17 MR. UQDAH: He said that, but --

18 CHAIRPERSON HEATH: Mr. Tonrdo, yeah, he did say that
19 he would let us know --

20 MR. UQDAH: He said it but I want to make sure that
21 you repeat what he's saying.

22 CHAIRPERSON HEATH: Sure. Yes. He said, and I'll
23 state again, that he will give us a status update by the end of
24 the week. Okay. Thank you.

1 MR. TONDRO: Yes.

2 CHAIRPERSON HEATH: All right. Thank you.

3 MS. ABRAMS: Thank you.

4 CHAIRPERSON HEATH: Mr. Moy, do we have any other
5 matters coming before the Board today?

6 MR. MOY: Not today, Madam Chair.

7 CHAIRPERSON HEATH: All right. Then we are
8 adjourned.

9 [Whereupon, at 2:30 p.m., the hearing was adjourned.]

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