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

PUBLIC MEETING OF THE BOARD OF ZONING ADJUSTMENT

9:52 a.m. to 2:45 p.m.
Tuesday, February 23, 2016

441 4th Street, N.W.
Jerrily R. Kress Memorial Room
Second Floor Hearing Room, Suite 220 South
Washington, D.C. 20001

1 Board Members:

2 MARNIQUE Y. HEATH, Chairperson

3 FREDERICK L. HILL, Vice-Chairperson

4 JEFFREY L. HINKLE, Board Member

5 ROBERT MILLER, Zoning Commission

6 MARCIE COHEN, Zoning Commission

7

8 Office of Planning:

9 STEVE COCHRAN

10 STEPHEN MORDFIN

11 ANNE FOTHERGILL

12 ELISA VITALE

13

14 Also Present:

15 CLIFFORD W. MOY, Secretary to the Board

16 ARIEL EBI, Esq., Office of the Attorney General

17 MARY NAGELHOUT, Esq., Office of the Attorney

18 General

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

2 CHAIRPERSON HEATH: The hearing will please
3 come to order. Good morning, ladies and gentlemen.
4 We're located in the Jerrily R. Kress Memorial
5 Hearing Room at 441 4th Street Northwest. Today's
6 date is February 23rd, 2016, and we're here for the
7 public meeting and hearings of the Board of Zoning
8 Adjustment of the District of Columbia.

9 My name is Marnique Heath, Chairperson.
10 Joining me today is Fred Hill, Vice Chairperson,
11 Marcie Cohen, a member of the Zoning Commission
12 sitting in as a member of the board today. And we
13 also have Rob Miller. They'll be playing musical
14 chairs at some point, but also sitting in as a member
15 of the Board today.

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

21 The Board's procedures and how we will
22 process applications can be found on the table by the
23 back door. All individuals wishing to testify today
24 will need to do two things. The first is, prior to
25 testifying each person who wants to address the Board

1 must complete two witness cards. Again, that's two
2 witness cards per person, and give them to the court
3 reporter seated to my right.

4 The second thing I'll need you to do is now
5 stand and take the oath as administered by the Board
6 Secretary, Mr. Moy.

7 MR. MOY: Good morning.

8 [Oath administered to the participants.]

9 MR. MOY: Ladies and gentlemen, you may all
10 consider yourselves under oath.

11 CHAIRPERSON HEATH: Good morning, Mr. Moy.

12 MR. MOY: Good morning, Madam Chair, Members
13 of the Board.

14 CHAIRPERSON HEATH: I'm happy to be back and
15 thank you to the Vice Chair. I have to acknowledge
16 you for stepping in for the past two weeks.

17 MR. HILL: Oh, you're welcome. Thank you so
18 much.

19 CHAIRPERSON HEATH: And for doing such a
20 great job. Thank you.

21 MR. HILL: That's kind of you to say. Thank
22 you very much.

23 CHAIRPERSON HEATH: Mr. Moy, do we have any
24 preliminary matters coming before the Board today?

25 MR. MOY: Yes, we do, Madam Chair. Just

1 a request to postpone to March 15th, 2016. The
2 second case is 19196 of 1247 ESE, LLC. Also at the
3 applicant's request, and has been rescheduled to
4 March 8th, 2016. Application No. 19195 of Nash
5 Street Investors. And all these, of course, are at
6 the applicant's request, Madam Chair. That has been
7 rescheduled to April 19th, 2016. Application No.
8 19149 of Romi Satoh, rescheduled to April 12th, 2016.
9 As well as 19147, or rather, 19140 of Southwest
10 Social Scene, Inc. to April 12th. And finally
11 Application No. 19189 of Christopher Leary, has been
12 withdrawn by the applicant.

13 There are two preliminary matters, Madam
14 Chair, that will require board action. In no
15 particular order, the first is Application No. 19148
16 of Park View. My understanding this morning is the
17 applicant is considering requesting a continuance.
18 So the Board may want to call that case initially.

19 The second is Application No. 19228 of
20 Michael Buff. And here again this is a request from
21 the applicant to waive the time requirements, to
22 reschedule an earlier hearing date. Or to be more
23 specific, this application is currently scheduled for
24 on an expedited review calendar, date of April 5th,
25 2016, and they're asking to move that date to an

1 earlier hearing date. So those are the two that I'm
2 teeing up for the Board.

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

5 So then let's start by calling up the
6 parties, if they're here, for Application 19148.
7 Good morning.

8 MR. WOODILL: Good morning.

9 CHAIRPERSON HEATH: Would you introduce
10 yourselves?

11 MR. WOODILL: Job Woodill with Park View
12 Condominium Ventures.

13 MR. CROSS: And, Michael Cross, architect.

14 CHAIRPERSON HEATH: Okay. So you all were
15 here with us earlier in February and we asked you to
16 go back and spend some time working with OP in order
17 to determine exactly what relief would need to be
18 requested as a part of this application. Where do
19 you stand on that and how would you like to proceed?

20 MR. CROSS: Yeah, we appreciate the time. We
21 have been working with OP. We have also retained
22 some legal counsel to help position our statement
23 properly as a variance. In the short time between
24 the last case and today we were able to reposition it
25 and work with Mr. Cochran from Office of Planning.

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1 But we received a verbal report from him last
2 night saying that they still didn't feel like it was
3 meeting the test. We felt like it was in our best
4 interest to wait and receive a written report so that
5 we understand exactly what their concerns are and if
6 there's any additional information we can provide
7 them, we'd try to do so.

8 CHAIRPERSON HEATH: Okay. All right. So you
9 are requesting a continuance?

10 MR. CROSS: Yes, ma'am, at this time --

11 CHAIRPERSON HEATH: Okay.

12 MR. CROSS: -- we are requesting a
13 continuation.

14 CHAIRPERSON HEATH: Okay. And I think that's
15 fair to allow you the time that you need to work with
16 the Office of Planning. And once you receive their
17 report obviously we expect that you'll continue
18 working with them to try to -- in hopes of getting
19 them on your side because that's going to be
20 important for you going forward. So how much time do
21 you think you need?

22 MR. CROSS: I think, you know, we regret that
23 we're asking for this continuation today because at
24 our last hearing Mr. Miller had made special effort
25 to accommodate us when we returned. We know that

1 that was a scheduling issue for him. We'd like to
2 honor that if there is a date where it's available
3 for him.

4 CHAIRPERSON HEATH: Okay.

5 MR. CROSS: Otherwise we feel we'd be
6 prepared at the next available date.

7 CHAIRPERSON HEATH: Very nice of you. Mr.
8 Miller, when are you back with us again?

9 MR. MILLER: I think it's sometime in March,
10 but it's fine, whatever date best suits the
11 Board's --

12 CHAIRPERSON HEATH: Okay.

13 MR. MILLER: -- schedule.

14 CHAIRPERSON HEATH: All right.

15 MR. MOY: It's actually officially Mr. Miller
16 is back with the Board on March 29th.

17 CHAIRPERSON HEATH: Okay.

18 MR. MOY: Just to let you know.

19 CHAIRPERSON HEATH: All right. So does --
20 yeah, I would think so. Does March 29th work for
21 you?

22 MR. WOODILL: It's fine for us. Probably
23 Office of Planning is the people that need to
24 respond. I think we're --

25 CHAIRPERSON HEATH: Okay.

1 MR. WOODILL: When they can get their written
2 report to us we can respond. So.

3 CHAIRPERSON HEATH: Mr. Cochran, since you're
4 here, is your report to them imminent?

5 MR. COCHRAN: We would be happy to continue
6 working with the applicant as we have, up to and past
7 the time that they filed their report yesterday
8 afternoon.

9 CHAIRPERSON HEATH: Okay. All right. Would
10 the 29th -- would you think the 29th would be --

11 MR. COCHRAN: Not a problem at all.

12 CHAIRPERSON HEATH: All right. So we'll put
13 this on for hearing on the 29th of March. And --

14 MR. HILL: And I just would -- Madam Chair.

15 CHAIRPERSON HEATH: Go ahead.

16 MR. HILL: I just would like to, again,
17 encourage you, since what you had said, you know, got
18 the report from OP, kind of understand what their
19 concerns are in terms of the variance test because
20 before I know that you were looking for a special
21 exception. And so the test obviously is a much more
22 difficult one to overcome, so I would again encourage
23 you to really take a look at OP in order to
24 understand what their concerns are with meeting the
25 test so that you can come here and have a better

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1 opportunity to discuss your case.

2 MR. WOODILL: We couldn't agree more.

3 MR. MILLER: Madam Chair.

4 CHAIRPERSON HEATH: Sure.

5 MR. MILLER: I also would -- I appreciate the
6 applicant making the effort to meet the variance test
7 in what you submitted recently, and I would encourage
8 OP and the applicant to keep talking. And maybe even
9 before you get the written -- before you get the
10 written report with OP giving advice as to how best
11 you might be able to meet those standards.

12 But, you know, you may not get there, but it
13 may not -- it's certainly worth talking -- worth the
14 time to continue talking even before you get written
15 report. So maybe there can be adjustments made in
16 your recent filing.

17 And I note that the ANC supports this
18 project. It is a good project in my view. But.

19 MR. CROSS: We appreciate your time,
20 appreciate the continued support from OP, and we'll
21 be back.

22 CHAIRPERSON HEATH: Thank you.

23 MR. CROSS: Thank you.

24 CHAIRPERSON HEATH: All right. Okay. Then,
25 Mr. Moy, let's address next the request under

1 Application No. 19228, Michael Buff. I assume
2 they're not here.

3 MR. MOY: Yes, Madam Chair, you're right.
4 It's 19228, Michael Buff and for the record this was
5 a request. Actually I should say, is a request for a
6 special exception relief under Section 223, not
7 meeting the lot occupancy requirements under 403.2,
8 open court requirements under 406.1, and
9 nonconforming structure requirements under 2001.3 at
10 1513 Church Street Northwest, Square 194, Lot 91.
11 And again, this is the applicant's request under
12 Exhibit 23, where they're requesting to change the --
13 or move forward their hearing date from April 5th to
14 a date in March. And I'm looking on the Board's
15 docket that what would be appropriate would be March
16 15th.

17 CHAIRPERSON HEATH: Okay. So I would be --
18 as long as March 15th looks okay for the Board in
19 terms of -- I mean, I know we have a lot of cases,
20 but if it looks reasonable then I would be okay with
21 shifting this to March 15th. Does the Board have any
22 issues with that?

23 MR. HILL: No, and just for the record, Madam
24 Chair, I mean, the issues were that I guess the
25 applicant was concerned about some financial issues

1 that they had in terms of cash flow and being able to
2 understand whether or not they will get this variance
3 sooner rather than later. And so that's why I would
4 also be in support of moving it sooner in order to
5 help accommodate their needs.

6 CHAIRPERSON HEATH: Okay. All right. So
7 we'll shift this.

8 MR. MOY: Yes, we can move it out. I'll take
9 that as a consensus of the Board.

10 CHAIRPERSON HEATH: Sure.

11 MR. MOY: And for clarity, this is for a
12 public hearing. All right?

13 CHAIRPERSON HEATH: Correct. Okay. All
14 right. Two more issues that I'd like to deal with
15 before we move into our decision cases and expedited
16 review. I believe we have two party status requests
17 in opposition before the Board today. So if the
18 applicant and the parties requesting party status are
19 here under Application No. 19180, that's 1525 9th
20 Street, if you would please come forward.

21 All right. Good morning. Would you all
22 please introduce yourselves and make sure your mic is
23 on. We can start at this end. Make sure your mic is
24 on. Push the push button.

25 MS. WEISS: Okay. My name is Jackie Weiss

1 and I live at 1523 9th Street Northwest. And this is
2 my husband, Jason Brown, who also loves there.

3 CHAIRPERSON HEATH: Okay. And you are
4 requesting party status?

5 MS. WEISS: Yes.

6 CHAIRPERSON HEATH: Okay. What's your
7 address again?

8 MS. WEISS: 1523 9th Street.

9 MR. BROWN: We are the directly adjoining
10 southern property.

11 CHAIRPERSON HEATH: Sure. Okay.

12 MR. LAKRITZ: Hi.

13 CHAIRPERSON HEATH: Again, push the push
14 button. Make sure you have a glowing green light.

15 MR. LAKRITZ: Okay. I'm Rob Lakritz. I'm
16 the owner of 1525 9th Street, the applicant.

17 CHAIRPERSON HEATH: Okay.

18 MR. COLLINS: Christopher Collins, Holland
19 and Knight.

20 MR. GAON: Joe Gaon, Holland and Knight.

21 CHAIRPERSON HEATH: Okay. So we're not going
22 to hear your case at this time. What I'm going to
23 encourage you to do is something that was started by
24 the previous board chair which has proved to work on
25 occasion, but it's worked enough that we like to

1 continue the practice of allowing you all extra time
2 to continue your discussions, to see if you can come
3 to some conclusion that makes both parties happy.
4 The Board will hear this case later today and at some
5 point we'll come to a conclusion. If you all don't
6 come back with something, certainly our conclusion is
7 going to make someone unhappy. So we like to
8 encourage you to do what you can. We have a long
9 docket today and so we're all going to be here for a
10 while. So we'd like for you to use this time
11 effectively.

12 I'm sure you've had conversations with your
13 neighbor, the applicant, previously, but we would
14 encourage you to continue those conversations and see
15 if you can voice your concerns, talk through what is
16 planned for the project as it is currently proposed,
17 and see if you can come to some agreement.

18 And then we'll call you back. There should
19 be some space, whether you spend time in the hallway
20 or you go back to the front desk of the zoning
21 office, ask them if there's a conference room or some
22 space that you can use in order to have some time to
23 talk. All right?

24 MS. WEISS: Would you know how -- I was
25 expecting to -- because I knew we were second on the

1 docket. I was expecting to get into work and I
2 hadn't taken off.

3 CHAIRPERSON HEATH: It's probably going to be
4 a while.

5 MS. WEISS: Okay.

6 CHAIRPERSON HEATH: We're here for a long
7 time today.

8 MR. BROWN: Would we rather just get on with
9 it?

10 MS. WEISS: I think [inaudible do to
11 simultaneous speech].

12 CHAIRPERSON HEATH: We're not going to call
13 you up now. We have a number of decision cases and
14 other cases that we deal with first.

15 MR. BROWN: Uh-huh.

16 CHAIRPERSON HEATH: And then we would be
17 proceeding to our hearing cases. And typically we
18 shift our party status requests because those cases
19 take longer, to the end of the day. So you're going
20 to be sometime this afternoon.

21 MR. BROWN: Oh, okay. Okay.

22 CHAIRPERSON HEATH: I can't tell you what
23 time, but it will be sometime this afternoon.

24 MR. BROWN: How do we handled, I guess,
25 checking status?

1 CHAIRPERSON HEATH: You can come back in and
2 see where we are, but yeah, that's pretty much --

3 MS. COHEN: Or we'll come get you.

4 CHAIRPERSON HEATH: Yeah. If you're not
5 back. But I'm sure you'll be back by that time.

6 MS. WEISS: I mean, do we -- I mean, I may
7 have to -- because I did not plan --

8 MR. BROWN: I guess for her work.

9 MS. WEISS: -- to be gone for the entire day
10 of work. Those were not the arrangements I made.

11 CHAIRPERSON HEATH: Okay.

12 MS. WEISS: That was not the request that I
13 made.

14 CHAIRPERSON HEATH: I understand.

15 MS. WEISS: I mean, I, you know, we wrote up
16 something in a statement and that kind of stuff and
17 we had private conversations before and I --

18 CHAIRPERSON HEATH: Okay. So you understand
19 that party status allows you to --

20 MS. WEISS: Right.

21 CHAIRPERSON HEATH: -- as a party, you can
22 present testimony, you can cross-examine when the
23 applicant presents their testimony. It allows you to
24 receive notice when anything is added to the record.
25 That's what party status affords you.

1 MS. WEISS: Right.

2 MR. BROWN: Yes.

3 CHAIRPERSON HEATH: And so --

4 MS. WEISS: I guess to the extent, are both
5 of us necessary for that?

6 CHAIRPERSON HEATH: Probably not.

7 MS. WEISS: Probably not? Okay.

8 CHAIRPERSON HEATH: No. You have the same
9 position.

10 MS. WEISS: Right. Yeah.

11 CHAIRPERSON HEATH: So, yeah, you're
12 certainly --

13 MS. WEISS: We do, yeah.

14 CHAIRPERSON HEATH: And only one of you would
15 represent your party, so you wouldn't both be
16 presenting to the Board.

17 MS. WEISS: So I mean, that's what I'm saying
18 is like we could still go forward with that to the
19 extent that we have discussions. Then only one of us
20 can be here for this afternoon is --

21 CHAIRPERSON HEATH: That's perfectly fine.

22 MS. WEISS: Okay. Yeah.

23 CHAIRPERSON HEATH: That's perfectly fine.

24 And if for some reason we don't decide today --

25 MS. WEISS: Okay.

1 CHAIRPERSON HEATH: -- we'll call this case
2 back for a future date and you can certainly come
3 back at that time.

4 MS. WEISS: Thank you.

5 CHAIRPERSON HEATH: All right? Thank you.
6 We'll see you all later today.

7 All right. And one more, I'm going to call
8 one more applicant and parties in opposition to the
9 table. Would the applicant and those that have
10 requested party status on Application No. 19188
11 please come forward? That's Reneau Real Estate.
12 19188.

13 Okay. Would you all please introduce
14 yourselves?

15 MS. PHELPS: I am Elizabeth --

16 CHAIRPERSON HEATH: Make sure your mic is on.

17 MS. PHELPS: Is it on?

18 CHAIRPERSON HEATH: Push the push button.
19 You'll have a glowing green light.

20 MS. PHELPS: I am Elizabeth Phelps. I am an
21 owner of a condo at 1717 T Street Northwest.

22 CHAIRPERSON HEATH: Okay.

23 MS. ARMUSH: I'm Maha Armush and I'm also an
24 owner at 1717 T Street.

25 CHAIRPERSON HEATH: Okay. And so I believe

1 you all are the parties requesting party status. We
2 don't have an applicant at this time and so my guess
3 is they are coming at some point later today. You
4 haven't heard anything otherwise, Mr. Moy?

5 MR. MOY: No, I have not, Madam Chair, but I
6 want to take advantage of this microphone for a
7 minute. Just want to remind you that they also filed
8 a request to waive the time requirements to file for
9 party status.

10 CHAIRPERSON HEATH: Sure.

11 MR. MOY: So you may want to take action on
12 that.

13 CHAIRPERSON HEATH: Sure. Okay.

14 MS. PHELPS: We also just wanted -- I think
15 we didn't -- just hearing the previous applicants, I
16 don't think that we realized that this was quite so
17 involved in terms of, you know, our needing to be
18 here all day and potentially meet with the applicant
19 and everything. We both unfortunately need to get to
20 work, so I don't know, it may be that we just decide
21 to withdraw our application for party status.

22 CHAIRPERSON HEATH: Okay. It's up to you.
23 And even if you decide you want to withdraw you can
24 still submit your opposition into the record and that
25 we take into consideration.

1 MS. PHELPS: Right. And, yeah.

2 CHAIRPERSON HEATH: Even if you're not here,
3 that still becomes a part of what we discuss with the
4 applicant.

5 MS. PHELPS: Okay. Yeah, we have submitted a
6 written letter of opposition and we were planning to
7 testify just as a regular witness, if not a party
8 witness.

9 CHAIRPERSON HEATH: Okay.

10 MS. COHEN: Have you met with the applicant?

11 MS. PHELPS: We have not, no.

12 MS. COHEN: You have not. And you live next
13 door?

14 MS. ARMUSH: We know the owner of the
15 building on the other side of the lot we're talking
16 about. There's a small lot that divides our building
17 and his building. And we know him from previous
18 interactions, but that's the extent of our
19 discussions with him.

20 MS. PHELPS: And we're not actually sure that
21 he is -- we're very unclear about who exactly --
22 they're different. There's Reneau Real Estate,
23 there's Reneau Hopkins Development, there's the guy
24 who we think owns the lot. So no, we haven't. I
25 don't think we're really even sure who to reach out

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1 to exactly. But --

2 MS. COHEN: I think one of the parties is
3 your ANC because my understanding is they have
4 approved the relief.

5 MS. PHELPS: I have been in touch with the
6 ANC commissioner or chair or whatever her name is.
7 And I have voiced opposition after the fact. We were
8 not familiar with that process and did not realize
9 that there was a hearing that was taking place that
10 we could have attended in which to voice our
11 opposition.

12 MS. ARMUSH: As soon as we were notified we
13 jumped on it. We wrote a letter. We're here. We're
14 taking this seriously but we just weren't notified in
15 advance so we didn't understand the full procedure.

16 CHAIRPERSON HEATH: So you contacted the
17 chair of the ANC after they submitted their letter of
18 support, and after the vote?

19 MS. PHELPS: Correct.

20 CHAIRPERSON HEATH: Okay.

21 MS. COHEN: It seems to me that even though
22 there are all these affiliated parties your ANC
23 person would know who to meet with. I think that's
24 important. Maybe some of your concerns can be dealt
25 with by the applicant. And if not we do have, for

1 the record, your letter. So --

2 MS. PHELPS: Okay.

3 MS. COHEN: -- that will be of help to us.
4 As we said, or as the Chair said, you really have an
5 opportunity to cross-examine. But you really need to
6 find out who to meet with and do that.

7 MS. PHELPS: Yes --

8 MS. COHEN: Insist on it.

9 MS. PHELPS: -- we didn't realize that that
10 was something that we should be doing. So, okay.

11 CHAIRPERSON HEATH: Okay. How long are you
12 able to stay today?

13 MS. PHELPS: I think we were anticipating
14 that the hearing would be sometime this morning. We
15 both need to get to work around lunch time.

16 CHAIRPERSON HEATH: What I'll do, because I'd
17 like -- if the applicant does show up today I'd like
18 for you to, at least while you're here, have a chance
19 to speak to them.

20 MS. PHELPS: Okay.

21 CHAIRPERSON HEATH: Similar to what I've
22 recommended for the previous party that came before
23 us. And so we have a few cases to go through this
24 morning. I'll call the applicant -- I'll try to call
25 the applicant back up at some point later today.

1 MS. PHELPS: Okay.

2 CHAIRPERSON HEATH: If not later this
3 morning, and see if they're here so that you'll have
4 a chance to meet with them before the hearing.

5 MS. PHELPS: Okay.

6 MR. MILLER: Madam Chair, I believe the
7 applicant to this case just walked through the doors.

8 CHAIRPERSON HEATH: Oh, okay. Great.
9 Perfect timing.

10 MR. MILLER: Mr. Toya, would you like to come
11 to the table for a second?

12 CHAIRPERSON HEATH: Does he need to be sworn
13 in?

14 MR. BELLO: Good morning. My apologies for
15 being late.

16 CHAIRPERSON HEATH: Sure.

17 MR. MOY: Maybe I should swear you in very
18 quickly, Mr. Bello.

19 [Oath administered to Mr. Bello.]

20 MR. MOY: Thank you.

21 CHAIRPERSON HEATH: Good morning, Mr. Bello.
22 So you're familiar with the previous board chair's
23 process with respect to trying to get parties
24 together prior to a hearing when we have a party
25 status request before us. We have two people who

1 have requested party status. They've not yet had a
2 chance to meet with the applicant, and so it would be
3 really beneficial, we think, if you all could use
4 some time this morning to talk so that you understand
5 their position, they understand where this
6 application stands, and what's proposed, and see if
7 you can come to some sort of an agreement, or at
8 least understanding.

9 If you can come to some sort of agreement
10 that would be great. But we'll allow you that time
11 this morning while we go through a number of other
12 cases that we have before the Board today.

13 MR. BELLO: We welcome the opportunity.

14 CHAIRPERSON HEATH: Okay.

15 MR. BELLO: Thank you.

16 MS. ARMUSH: Could I ask a question. Is this
17 the same scenario as the last person, where we'd have
18 to be here this afternoon when you call us back?

19 CHAIRPERSON HEATH: Likely. It's going to be
20 a while.

21 MS. ARMUSH: And if neither one of us can be
22 here then what happens?

23 CHAIRPERSON HEATH: Then you can -- you
24 wouldn't be able to maintain party status, but you
25 could still be somebody who submits documentation to

1 the record in opposition. Again, we take that
2 documentation seriously, so we have your statements
3 in the record, and so that would be the other
4 alternative for you.

5 MS. PHELPS: If we were not to -- if we were
6 just to not request the party status, I mean, is
7 there any chance that the hearing would go forward
8 this morning? No. It's not -- okay.

9 CHAIRPERSON HEATH: One second.

10 [Pause.]

11 CHAIRPERSON HEATH: So we could potentially,
12 if you are just a witness in opposition. But the
13 reason that we do this is out of courtesy for
14 everybody else who is here who waits all day. So we
15 try to make the cases that are going to be the
16 longest, that we anticipate being the longest, happen
17 at the end of the day.

18 And so -- and typically a party status
19 request because you have a number of people
20 presenting and cross-examining, that process takes
21 longer. So --

22 MS. PHELPS: Okay. Yeah, I don't think we
23 appreciated what was involved --

24 CHAIRPERSON HEATH: Okay.

25 MS. PHELPS: -- in doing that. I think, you

1 know, we were -- we oppose the project as it
2 currently exists and we definitely wanted to make
3 sure that you all were aware that, you know, a number
4 of neighbors really are opposed to the current
5 project. But I don't know what -- I mean, if we
6 could just testify as public witnesses this morning.

7 MS. ARMUSH: I mean, we're happy to talk
8 to --

9 MS. PHELPS: Yeah, we're also --

10 MS. ARMUSH: -- the gentleman here and --

11 MS. PHELPS: -- happy to talk to him. Yeah.
12 Yeah.

13 MS. ARMUSH: And talk it out. But
14 unfortunately --

15 CHAIRPERSON HEATH: Sure.

16 MS. ARMUSH: -- I --

17 MS. PHELPS: Just, yeah, we just can't be
18 here this afternoon.

19 CHAIRPERSON HEATH: As I said, we have a
20 number of cases that come before our hearing agenda
21 even starts this morning, and so I can't promise you
22 what time. But if you are going to withdraw your
23 party status request and just be parties in
24 opposition, it should allow us to shift you to
25 earlier in the day and -- but --

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1 MS. ARMUSH: Why don't we talk with them.

2 CHAIRPERSON HEATH: -- regardless, I think
3 yeah, I would encourage you to --

4 MS. PHELPS: Yeah.

5 MS. ARMUSH: And then if we can't figure
6 something out, then we'll come back to you with a
7 decision.

8 CHAIRPERSON HEATH: Sure. Sure.

9 MS. ARMUSH: Okay.

10 CHAIRPERSON HEATH: Right. We're not
11 accepting or denying your party status request at
12 this time.

13 MS. PHELPS: Okay.

14 CHAIRPERSON HEATH: Just encouraging you to
15 start dialog while you're here.

16 MS. PHELPS: Okay.

17 CHAIRPERSON HEATH: All right? Thank you.

18 MR. BELLO: Thank you.

19 MS. PHELPS: All right. Thank you.

20 CHAIRPERSON HEATH: Yes. All right. So, Mr.
21 Moy, we're ready to start our public meeting agenda.
22 And I'd like to start with Application 1901 -- 19091,
23 our Foreign Missions case. Musical names.

24 MR. MOY: Yes, very good. Thank you, Madam
25 Chair. Before I do that, just a real quick

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1 administrative announcement. The application that
2 the Board took action on, which was -- mind is
3 drawing a blank. It's --

4 CHAIRPERSON HEATH: Michael Buff?

5 MR. MOY: Yes. Yes. Yeah, that's it. 19228
6 of Michael Buff. Just, I was alerted by counsel that
7 the applicant -- and this of course will be for the
8 record -- would need to repost because of the change
9 in date. So that covers me for that. But of course
10 staff always will reach out to the applicant to relay
11 that information.

12 CHAIRPERSON HEATH: Sure.

13 MR. MOY: At least 9.99 percent of the time.

14 CHAIRPERSON HEATH: Okay.

15 MR. MOY: Okay. So with that then we're on
16 to Application No. 19091. This is the Embassy of
17 Kyrgyzstan Republic. As the Board is aware, the
18 Board held its hearing and its decision on September
19 22nd, 2015 and because of an administrative, I guess
20 it's deficiency in noticing the published rulemaking,
21 that the staff had to bring this back to the Board
22 for action for its own motion to act on the
23 application.

24 CHAIRPERSON HEATH: Okay. All right. So
25 subsequent to the hearing, we do understand that the

1 applicant has published notice as of January 15th,
2 for a 15 day period and no comments were received.
3 So at this time I think it's appropriate for the
4 Board to rescind our previous vote and then revote to
5 either -- to potentially not disapprove. That was
6 our previous vote on this was to not disapprove this
7 application. And so I will move that the Board
8 rescind our previous vote and vote again now that
9 notice has been posted for the appropriate period of
10 time to not disapprove this application.

11 MR. HILL: I second the motion.

12 CHAIRPERSON HEATH: The motion has been made
13 and seconded. Any further discussion?

14 [Vote taken.]

15 CHAIRPERSON HEATH: The motion carries. Do
16 you have an absentee?

17 MR. MOY: Yes, we do, Madam Chair. You're
18 clairvoyant. We will do -- we have two absentee
19 ballots from two participants on a Foreign Missions
20 case. And of course the first is from Marcel Acosta,
21 who is the Executive Director at the National Capital
22 Planning Commission, and his vote is to also not to
23 disapprove.

24 The second absentee ballot is from Mr. Peter
25 May representing National Park Service, the U.S.

1 National Park Service, let me say. And of course his
2 vote is to not disapprove the application. So that
3 would give a final vote of four to zero to one, if my
4 math is correct, right? And the motion carries,
5 Madam Chair.

6 CHAIRPERSON HEATH: Okay.

7 MR. MOY: This is on your motion and seconded
8 by Vice Chair Hill.

9 CHAIRPERSON HEATH: Thank you. Summary.

10 MR. MOY: Yeah, it's a full order.

11 CHAIRPERSON HEATH: A full for -- okay.

12 MR. MOY: Yes. Yes.

13 CHAIRPERSON HEATH: Okay. Full. All right.

14 MR. MOY: Yeah, the counsel to my left will
15 be writing this order.

16 MS. COHEN: Mr. Secretary, do you need to
17 state that I'm here for a quorum? For the record.

18 MR. MOY: Well, since you've already done
19 that, thank you.

20 CHAIRPERSON HEATH: All right. Okay. So
21 we'll continue to proceed through our agenda, Mr.
22 Moy, with our expedited review.

23 MR. MOY: Okay. Madam Chair, we have three
24 cases on the expedited review calendar. And to
25 refresh your memory these are cases where the

1 applicant has waived his or her right to a public
2 hearing. And that first -- and these are special
3 exception cases.

4 So the first one for the Board is Application
5 No. 19192 of Rebecca Mann and Thomas Gallagher.
6 Again that request for special exception relief under
7 Section 223, not meeting a lot occupancy requirements
8 under 403, and the rear yard requirements under
9 Section 404, to construct a rear addition to an
10 existing one-family dwelling in an R-4 district, 916
11 K Street Northeast, Square 931, Lot 4.

12 CHAIRPERSON HEATH: All right. Thank you.
13 So on this case I think the relief being requested is
14 rather minimal. We also have approval from Office of
15 Planning and ANC 6A and no objection from DDOT, no
16 support or opposition on this. So I don't have any
17 issues with this.

18 Does the Board have any? All right.

19 Then I would move that we accept Application
20 No. 19192 requesting special exception under 403 lot
21 occupancy, and 404 rear yard.

22 MS. COHEN: Second.

23 CHAIRPERSON HEATH: The motion has been made
24 and seconded. Any further discussion?

25 [Vote taken.]

1 CHAIRPERSON HEATH: The motion carries.
2 Summary.

3 MR. MOY: Yes. Thank you, Madam Chair.
4 Summary order. This is on your motion to approve the
5 application for the relief requested, seconding the
6 motion, Ms. Marcy Cohen. Also in support, Vice Chair
7 Hill. We have a board member not present and of
8 course not voting with us today.

9 CHAIRPERSON HEATH: Okay. Our next.

10 MR. MOY: The second on the calendar is 19209
11 of Larry Schmidt. Also special exception relief
12 under Section 223, not meeting lot occupancy under
13 403, rear yard requirements under 404, to construct a
14 rear deck to an existing one-family dwelling in an R-
15 4 district, 1861 Ingleside Terrace Northwest, Square
16 2617, Lot 156.

17 CHAIRPERSON HEATH: All right. This
18 application again seems pretty straight forward to
19 me. And we do have approval from OP, ANC 1D, and no
20 objection from DDOT. Any issues from the Board?

21 MS. COHEN: No.

22 CHAIRPERSON HEATH: Okay. Then I will move
23 that we accept and approve Application No. 19209 for
24 special exception under 223 for rear yard relief
25 under 404, and lot occupancy under 403.

1 MR. HILL: I second.

2 CHAIRPERSON HEATH: The motion has been made
3 and seconded. Any further discussion?

4 [Vote taken.]

5 CHAIRPERSON HEATH: The motion carries. Mr.
6 Moy.

7 MR. MOY: Yes, staff would record the vote as
8 three to zero to two and this is on the motion of
9 you, Madam Chair, to approve the applicant for the
10 relief. Seconded the motion, Vice Chair Hill. Also
11 in support, Ms. Cohen. We have a board member not
12 present and a boards seat vacant. And actually this
13 would actually be recorded, it's the same vote in the
14 previous case. I forgot that. We had one --

15 CHAIRPERSON HEATH: Oh, right.

16 MR. MOY: -- one vacancy on the seat. So
17 that number again would be three to zero to two.

18 CHAIRPERSON HEATH: Okay. Summary.

19 MR. MOY: Thank you. All right. The last of
20 the calendar cases, 19204 of Kevin Mulshine,
21 Mulshine, M-U-L-S-H-I-N-E. special exception under
22 223, not meeting lot occupancy 403, rear yard 404.
23 This is for a rear deck to an existing one-family
24 dwelling in an R-1-B district, 3620 Kanawha Street
25 Northwest, Square 1990, Lot 80.

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1 CHAIRPERSON HEATH: All right. If they could
2 all be this easy.

3 MR. MOY: Yeah.

4 CHAIRPERSON HEATH: So this is another
5 straight forward application requesting similar
6 relief, similar conditions as the previous two. I
7 don't have any issues with this. So unless the Board
8 has any issues I will move that we approve
9 Application No. 19204 for special exception.

10 MS. COHEN: Second.

11 CHAIRPERSON HEATH: Motion has been made and
12 seconded.

13 [Vote taken.]

14 CHAIRPERSON HEATH: The motion carries. Mr.
15 Moy.

16 MR. MOY: Staff would record the vote as
17 three to zero to two. This is on the motion of Chair
18 Heath. Seconding the motion, Ms. Cohen. Also in
19 support, Vice Chair Hill. And again, a member not
20 present, the board seat vacant, three to zero to two,
21 Madam Chair.

22 CHAIRPERSON HEATH: Okay. Summary.

23 MR. MOY: Yes. Thank you.

24 CHAIRPERSON HEATH: All right. So now our
25 decision cases, Mr. Moy.

1 MR. MOY: Okay. I'll need a little help
2 here. Which case would you want to take up?

3 CHAIRPERSON HEATH: Sherman, 19127.

4 MR. MOY: Sherman. Okay. That's great.
5 That's on my list.

6 MS. COHEN: Go ahead.

7 MR. MOY: All right. For a decision then
8 would be Application No. 19127. This is of 2800
9 Sherman, LLC. And to read again for the record,
10 Madam Chair, this application was amended and now is
11 for a request for variances from the lot area
12 requirements under 401.3, lot occupancy requirements
13 under 403.2, rear yard requirements under 404.1,
14 limitation in compact parking space requirements
15 under 2115.2, special exceptions from the lot width
16 under 2604.3, and accessory parking space location
17 requirements under 2116.5.

18 This is to build or construct I believe 10
19 flats in the R-4 district, 2800 Sherman Avenue,
20 Square 2857, Lot 818.

21 CHAIRPERSON HEATH: Okay.

22 MR. MOY: And I have participating, you,
23 Madam Chair, Mr. Hill, Vice Chair Hill, Mr. Hinkle
24 with an absentee ballot, and Mr. Hood. That's four.

25 CHAIRPERSON HEATH: Okay. All right. And I

1 will state for the record that although I wasn't here
2 for the hearing dates on February 2nd and 9th, I did
3 spend a number of hours this weekend watching the
4 hearings. So I'm fully up to speed on those
5 proceedings. I'm prepared to deliberate. Is the
6 Board ready to deliberate on this?

7 MR. HILL: Sure.

8 CHAIRPERSON HEATH: All right.

9 MR. HILL: Yeah, I can start if you'd like.

10 CHAIRPERSON HEATH: Sure. You can.

11 MR. HILL: I mean, this went over two
12 different hearing days and there was a lot of, I
13 guess, opposition from three neighbors and again the
14 concern was -- there was concerns of easement and
15 then encroachment. And the property there was like,
16 concerns about where the property lines were for
17 their property versus the applicant. There was also
18 all kinds of issues in terms of like how the
19 neighbors were going to be able to exit their
20 property. And the applicant worked with the
21 neighbors and also actually met with the Chief of
22 Staff for the councilmember Nadeau's Chief of Staff,
23 and they kind of went over, you know, what the
24 different options were.

25 Kind of where I was following was that it

1 seems as though, you know, the Office of Planning
2 really had opposition to the area variance. And for
3 me it was a -- just kind of where I am now as we
4 start the discussion, kind of a confluence of factors
5 as to why I felt that the lot actually was irregular
6 and that you know, holding them to the zoning was
7 going to be kind of a taking of what they were going
8 to be able to do with the property, as well as there
9 was some issues with a gap concerning the design and
10 the way that they were having to articulate the
11 properties off of one of the roads there.

12 As I recall, the ANC -- I can't remember the
13 vote, but was in support of the proposal. And then
14 also they were going to provide two units, IZ units,
15 at 50 percent AMI, which I'm sure, you know, helped
16 the ANC get to that position in terms of you know,
17 approving their -- you know, being able to approve
18 the property and the project.

19 I guess I did take into consideration pretty
20 hard, as far as like you know, OP is concerned with
21 them not meeting that lot area variance. But for me
22 the confluence of factors that came into account
23 leads me to be able to approve the variances as is,
24 given also that they worked with the opposition to
25 come to an ability to, you know -- so they could exit

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1 the back of their homes.

2 And I think that's -- and then the proposal,
3 I mean, they lowered the number of units, not that it
4 matters so much for our discussion, but from -- they
5 went from 22 to 20 and the lots from 11 to 10. The
6 last thing, I guess is that overall the variance in
7 terms of the square footage that they needed, you
8 know, on average was only 110 square feet from the
9 1500 square feet required for the units. And so then
10 I kind of thought it was de minimis. So that's
11 where, kind of where I am right now.

12 CHAIRPERSON HEATH: Okay. Very well said.
13 I'm with you on this one. I think this is an
14 application that's a good example of an applicant
15 working with the community and coming to some
16 conclusion that makes all parties feel whole. You
17 know, there were neighbors, those who weren't a part
18 of the encroachment issue, but still in the
19 neighborhood who were concerned about the density.
20 And Office of Planning was also initially concerned
21 about the density. So as you mentioned, the
22 applicant did reduce the number of units here, and
23 the number of flats. And so I thought that was a
24 positive step.

25 The IZ units, relocating them to Girard

1 Street so that they're more integrated and not sort
2 of cast off to the side, I thought was also a
3 positive change through this process. And so the one
4 area as you mentioned that I was also concerned about
5 was the Office of Planning's issue with lot area.
6 And what has allowed me to come around to being in
7 support of this despite their opposition, it that
8 through the course of the hearings and all of the
9 discussion, Office of Planning did change their
10 position to say that they still couldn't support the
11 lot area relief, but if the Board approved that then
12 they wouldn't -- then they wouldn't oppose all of the
13 other relief being requested.

14 And Office of Planning also stated that
15 maintaining the street wall, you know, there was a
16 lot of discussion about the distance between the
17 properties on the two different sides and whether
18 we'd have the 16 feet or the 46 feet, and I think
19 everybody seemed to agree that the 16 feet was
20 better, even though it caused the applicant to have
21 to request a lot area variance.

22 But that it was stated as a part of Office of
23 Planning's testimony that maintaining the street wall
24 is preferred, that the project was contextual, that
25 the density had been reduced, and that the project

1 fits with the scale of the area. And I tended to
2 agree with all of those comments, and also agreed
3 with the applicant's position on their practical
4 difficulty and the hardship.

5 I think one of the things -- I'm not sure if
6 you mentioned this, but the fact that this was
7 previously a gas station and there had to be
8 remediation added to their costs pretty significantly
9 for this. And so all of those factors together have
10 led me to being in support of this application. And
11 in its revised form.

12 One of the other things that I will say is
13 that I -- because of the new penthouse regulations
14 and the timing of this request, we do also have to
15 weigh in on an additional request for 411.5, the roof
16 structure requirements. And so I'm in support of all
17 of the relief including that additional relief that's
18 been added as a part of the applicant's order.

19 MR. HILL: I agree.

20 CHAIRPERSON HEATH: All right. So then I
21 will move that we approve Application No. 19127 as
22 it's been amended.

23 There's one other thing that I do want to
24 address, and I'm not sure if we need to make this a
25 part of the order, but the applicant did propose two

1 MR. HILL: Yeah, I agree with the conditions
2 that they had suggested also because like they don't
3 know if the neighbors didn't necessarily agree that
4 they wanted the rear egress because it was going to
5 be like there was going to be a gate issue, I think.
6 Or like, you know, and so I would be comfortable with
7 adding that to the order.

8 CHAIRPERSON HEATH: All right. So then I
9 will restate my motion as approving Application No.
10 19127 with the relief as noted in the applicant's
11 order and the two conditions also stated by the
12 applicant in their order.

13 MR. HILL: I second.

14 CHAIRPERSON HEATH: The motion has been made
15 and seconded.

16 [Vote taken.]

17 CHAIRPERSON HEATH: Mr. Moy, we have a --

18 MR. MOY: Yes, we do. Before I give a final
19 vote, Madam Chair. The first is from Mr. Hinkle, who
20 participated on the application, and his vote is to
21 approve the application with such conditions as the
22 Board may impose. So that's number one.

23 Number two, we also have an absentee ballot
24 vote from Mr. Hood, Chairman Hood who is on the
25 Commission, who participated on the application. And

1 he wanted me to read -- well, first of all he
2 approves the application with conditions as the Board
3 may impose. And he wanted me to read for the record
4 that he quote, "Especially wants to thank Chief of
5 Staff," Ms. Jackson, I believe was her name. "I have
6 reviewed the record and the order. The order
7 continues the intent."

8 So that would give final vote of four to zero
9 to one. The one is the seat vacancy. And this is on
10 the motion of Chairperson Heath to approve for the
11 relief requested, including the penthouse
12 requirements with two conditions. Seconding the
13 motion, Vice Chair Hill, and also in support, Mr.
14 Hinkle and Mr. Hood.

15 And staff is reminding me that this should be
16 a full order.

17 CHAIRPERSON HEATH: Sure. Okay.

18 MR. HILL: And I would like to say, also,
19 that it was very nice of Ms. Jackson, the Chief of
20 Staff of Councilmember Nadeau, to meet with the
21 applicant and the parties in opposition so quickly.
22 It really was something that I thought was of great
23 use for the opposition.

24 CHAIRPERSON HEATH: Yeah, it's very rare that
25 we have that happen; but that was --

1 MR. HILL: That fast.

2 CHAIRPERSON HEATH: -- incredibly helpful.
3 Yeah.

4 MR. HILL: Yeah.

5 CHAIRPERSON HEATH: Incredibly helpful.
6 Okay. All right.

7 Our next decision case, Mr. Moy, should be
8 Application No. 19169.

9 MR. MOY: Perfect. Application NO. 19169, of
10 311 K Street, LLC. And I believe this application
11 also was amended and what we have before the Board
12 now is variance relief from the rear yard
13 requirements under 774.1, off-street parking
14 requirements under 2101.1, loading requirements under
15 2201.1. This is for a hotel and apartment building,
16 or rather to construct a hotel and apartment building
17 in a DD/DD-HPA/C-2-C district, 303 through 317 K
18 Street Northwest, Square 528, Lots 20, 21, 804, 805,
19 824, 825, and 829.

20 And the Board met on this on February the
21 9th, scheduled its decision for today with additional
22 information which is in your record. And I have
23 participating on this decision, Vice Chair Hill, Mr.
24 Robert Miller, Mr. Jeffrey Hinkle, which I have an
25 absentee ballot for, and I don't know if you're

1 participating or not but -- you're not. Okay.

2 MR. HILL: So, Madam Chair, I guess with the
3 discussions here, you know, the Office of Planning
4 was in approval and, you know, I read through
5 obviously the entire record and also particularly
6 what their argument was for why they met the
7 standard. And I also agreed in how they were coming
8 up with their argument of this project meeting the
9 standard.

10 The ANC was also in approval for the project,
11 but I guess DDOT had the most issue with it in terms
12 of the loading dock and how particularly a large
13 truck was going to be able to service the property.
14 They did, the applicant came in and explained how
15 they had worked with DDOT for like 20 foot vans
16 coming in and, you know, smaller delivery vehicles,
17 and there was a lot of discussion about how long it
18 took to walk from the vehicle to the elevator. But
19 you know, so the applicant was then asked to go back
20 to speak with DDOT to see if there was a way to
21 somehow get their sign off in terms of being able to
22 work with the loading and unloading of a large truck.

23 They were able to go back to DDOT. They did
24 come up with a solution that I could get behind. And
25 you know, for me again, the part of the test where it

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1 was going to affect the public good really, is what I
2 was struggling with in terms of DDOT and that, you
3 know, I actually live not too far away from this
4 project and it is an area where there is a lot of
5 density going on in terms of a new development and I
6 think it will continue to be that way and -- which is
7 nice for the neighborhood.

8 But so now, after the applicant going back to
9 DDOT and the solution that they were able to come up
10 with, I would now be able to support this project.
11 Again, depending upon how the deliberations go here
12 with my colleagues. But given also that the comments
13 being read into the record from the Office of Zoning
14 in terms of, you know, what their comments were from
15 DDOT.

16 And I don't know if there's any other
17 comments from my colleagues for this.

18 MR. MILLER: Thank you, Vice Chair Hill.
19 Yes, I too appreciate the applicant working with DDOT
20 on the loading issue. They did go back again and
21 DDOT did issue a second supplemental report in which
22 they say that the applicant and DDOT -- and this is
23 on page 7 of DDOT's second supplemental report dated
24 February 16th. That they coordinated closely to
25 create a functional 20-foot service delivery space

1 located on the same level as and in close proximity
2 to the core, and they say that such a design results
3 in a loading space that is likely to be utilized for
4 deliveries and will accommodate some onsite loading
5 activity.

6 So I'm very appreciative that the applicant
7 did work closely with DDOT and if you wanted to read
8 those Office of Zoning staff conditions into the
9 record, I would just note that the DDOT second
10 supplemental report also has other TDM strategies. A
11 transit screen and transportation demand management
12 coordinator. They don't necessarily have to be
13 listed because the applicant in their informational
14 draft order agreed to all those other TDM strategies.
15 So I think we have a good project going forward and I
16 don't know if we need to read into the record the
17 Office of Zoning staff conditions, but I'm prepared
18 to go forward.

19 MR. HILL: Okay. Well, then I will follow
20 along with that suggestion and not read into the
21 record because it's in the record. But I would then
22 move to make motion to approve Application 19169 as
23 amended pursuant to 11-DCMR-3103.2 for variances from
24 the rear yard requirements under 774.1, the off-
25 street parking requirements under 2101.1, and the

1 loading requirements under 2201.1 to construct the
2 hotel and apartment building in the DD/DD-HPA/C-2-C
3 district at 3303-30 -- I'm sorry, 303-317 K Street
4 Northwest.

5 MR. MILLER: I would second that and just
6 note for the record just to be careful --

7 MR. HILL: Please.

8 MR. MILLER: -- that on the short-term
9 bicycle spaces that the applicant has agreed to do,
10 the eight short-term bicycle spaces, that we're not
11 going to have any reference to where that's
12 necessarily going to be. I think DDOT's
13 recommendation had said on public space, but there is
14 a separate process that we're not part of that will
15 determine that. And so if there is any condition in
16 this summary order that refers to the short-term
17 bicycle spaces, it doesn't have to say -- it should
18 not say, on public space.

19 MR. HILL: Thank you, Commissioner Miller.
20 Thank you very much. I agree.

21 MR. MILLER: Thank you.

22 MR. HILL: I've made a motion.

23 MR. MILLER: And I've seconded it.

24 [Vote taken.]

25 MR. MOY: Okay, before I give a final --

1 MR. HILL: We have an absentee ballot there,
2 Mr. Moy?

3 MR. MOY: Oh, yes, sir, Mr. Chair. We have
4 an absentee ballot from Mr. Hinkle who participated.
5 And his vote is to approve the applicant with such
6 conditions as the Board may impose that would give a
7 final vote of three to zero to two. We have the
8 Chair not participating, a board seat vacant.

9 MR. HILL: May I ask for a summary order with
10 that?

11 MR. MOY: Yes, the Board -- yes. Yes, you
12 may.

13 MR. HILL: Thank you.

14 MR. MOY: I would follow the lead of the
15 Chair and the Board, Mr. Vice Chair. So again, the
16 final vote is three to zero to two. This is on your
17 motion, Vice Chair Hill, to approve the application
18 for relief you cited with two conditions and as
19 clarified by Mr. Miller, seconded the motion, Mr.
20 Miller, and absentee vote in the affirmative by Mr.
21 Hinkle. Motion carries.

22 MR. HILL: Thank you.

23 MR. MOY: Summary order.

24 MR. HILL: Thank you. And, Madam Chair, now
25 that you weren't participating on that one I'd like

1 to turn this back over to you. Thank you.

2 CHAIRPERSON HEATH: You did so well. Thank
3 you.

4 All right. So we are at our last decision
5 case.

6 MR. MOY: That would be Appeal No. 19067 of
7 ANC 4C. For the record, as captioned, this is the
8 appeal from a May 18th, 2015 decision by the Zoning
9 Administrator, Department of Consumer and Regulatory
10 Affairs to issue Building Permit No. B, B as in
11 Bravo, 1505734, to allow the construction of a rear
12 two-story addition and conversion of a one-family
13 dwelling into a three-unit apartment house in the R-4
14 district at premises 1117, or 1117 Allison Street
15 Northwest, Square 2918, Lot 59.

16 I have participating and voting on this
17 decision, Madam Chair, yourself, Vice Chair Hill, and
18 Mr. Miller. And just a reminder that I believe there
19 is a motion to strike that the Board should address.

20 CHAIRPERSON HEATH: Okay. All right. So
21 let's deal with that motion first. So this case was
22 back before us, and I don't have the date in front of
23 me, but was recently back in front of us for decision
24 and at that time the appellant asked that we -- or
25 made a motion that we reopen the record to accept a

1 new permit. And this is such a messy case because
2 we've had so many different permits as a part of this
3 project. But a December permit was submitted during
4 this process and so the appellant asked that we
5 reopen the record to allow this December permit to
6 become a part of the record.

7 The Board granted that motion and since then
8 the applicant has canceled that permit. So which
9 also makes this case even more messy than it already
10 was because as I stated, there have been so many
11 permits issued, revisions made, new permits issued,
12 or new permits issued through December, and so I
13 think from my perspective the Board's hands are tied
14 here with respect to the December permit because the
15 applicant or the property owner has canceled that
16 permit.

17 And so it's no longer relevant and rendered
18 moot. I do understand the appellant's position, at
19 least from what I read as stating that, you know,
20 because we see the trend happening here with the
21 changes made through the various permits and
22 specifically through the December permit, that the
23 applicant never really intended to make the
24 alterations to the porch that were proposed as a part
25 of the May, and correction through the October

1 permit, that the December permit proves that they
2 never were intending to do that. But the other thing
3 that complicates this is the property owner has
4 changed throughout the course of this appeal.

5 And so -- but I do -- and I'm curious to see
6 where the Board is on this application or this appeal
7 in its totality, not just this motion. But I do,
8 getting back to the motion, I do feel that our hands
9 are tied because this permit has been canceled, that
10 the motion to strike -- the motion to strike the
11 December permit being a part of the record, we sort
12 of have to accept that because the permit is rendered
13 moot.

14 MR. MILLER: Madam Chair, if I may? I'll go
15 along with whatever you want to do on that motion. I
16 mean, there have been a lot of late filings in
17 addition to that motion to strike. There are a lot
18 of filings. There was filings by council members,
19 there were amended --

20 CHAIRPERSON HEATH: DCRA.

21 MR. MILLER: -- amended findings of fact and
22 conclusions of law. And I've read it all.

23 CHAIRPERSON HEATH: Uh-huh.

24 MR. MILLER: So, I'm fine with accepting it
25 all and it all being part of the record because it --

1 you know, whether -- but if you want to -- but
2 apparently in some of those late filings they didn't
3 even request that we accept them late. But I read
4 them, and they're in our exhibits and they're in the
5 public record. So I have no problem with accepting
6 everything that's there. Including the permit that
7 was -- the December permit that the appellants put
8 into the record, and putting the motion to strike in
9 from the -- just putting it all in there and then
10 proceeding with our decision.

11 So, but however you want to proceed. They
12 all seem to be in our record anyway.

13 CHAIRPERSON HEATH: They are.

14 MR. MILLER: So --

15 CHAIRPERSON HEATH: Right.

16 MR. MILLER: -- to me, I think it's helpful
17 maybe to the public to see what's happened along the
18 way.

19 CHAIRPERSON HEATH: Sure.

20 MR. MILLER: But I'll defer to you as chair.

21 CHAIRPERSON HEATH: Do you have a position?

22 MR. HILL: I didn't have a position until Mr.
23 Miller just -- you know, we were talking about this
24 and this is why we do this. I will also agree. I
25 mean, I will go with your lead.

1 CHAIRPERSON HEATH: Okay.

2 MR. HILL: However, if you include everything
3 that's fine. I don't think it's going to do anything
4 in terms of the deliberations that we're about to do,
5 and so you know if you want to leave it all in that's
6 fine. If you want to strike that, that's also fine.
7 So.

8 CHAIRPERSON HEATH: Okay. So then I think
9 where I am at this point then is that we allow all of
10 the filings to remain a part of the record. We've
11 all read them. All of them. And so we won't strike
12 anything from the record. I think given the fact
13 that we've read them, it is helpful to keep them in
14 the record so that there is a record for the public
15 to see all that played into this case, and all of the
16 complexity associated with it due to all of the
17 filings. And so we all make a motion that we accept
18 all of the filings, whether they were requested to be
19 a late filing or not, that we just keep those as a
20 part of the record.

21 MR. MILLER: I would second that.

22 CHAIRPERSON HEATH: Okay. All right. So
23 we'll proceed on the basis of all of that information
24 that's in the record currently and that we've all
25 read.

1 And so I'll start then.

2 MR. HILL: Sure.

3 CHAIRPERSON HEATH: Again, I don't know where
4 this is going to end up and this is a part of the --
5 this specific deliberation process I think is going
6 to be important for me on this case because I think
7 talking through it and going back through all that
8 we've heard is going to be helpful to getting to
9 conclusion. But where this started was with the
10 issue of the ZA erring, according to the appellants,
11 on allowing minor flexibility with respect to lot
12 occupancy, and that in the appellant's position the
13 ZA approved lot occupancy as being greater than 60
14 percent based on the May and then October permits.

15 The information that we have in the record
16 from the appellant, however, does -- they had an
17 expert witness who presented a few different
18 scenarios. One which said that if the porch was new
19 and uncovered, that it didn't factor into the lot
20 occupancy and therefore the lot occupancy did not
21 exceed the 60 percent. And they went through all of
22 their calculations in order to show how they got to
23 the 56.97 percent lot occupancy.

24 And we saw from DCRA that they also were
25 arguing that because the porch was new that they also

1 agreed that they were not above the maximum lot
2 occupancy.

3 What we saw from the December permit, though,
4 went against what the applicant had -- or the
5 property owner had originally stated as their intent
6 to create a new porch. And this application or this
7 permit maintained the existing porch, which again put
8 this into a position of being cloudy as to whether or
9 not they were exceeding lot occupancy. Or in some
10 opinions that they were exceeding lot occupancy.

11 That permit, though, as I mentioned earlier,
12 has been canceled. What makes this more complicated
13 for me is the fact that this does appear through some
14 of the hearings and the presentations that were made,
15 this project appears to be extremely large. Not as a
16 pop-up, but more as what some might call a pop-back
17 because of the addition on the back of the house.
18 And I can understand why there would be opposition
19 from the neighbors to this project. But I'm having a
20 hard time based on the information presented,
21 relative to the May permit, and even the October
22 permit which was intended to correct some errors from
23 the May permit, I'm having a hard time getting to the
24 fact that this does exceed the 60 percent lot
25 occupancy and that the Zoning Administrator erred in

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1 their judgment, despite the fact that I don't
2 necessarily agree with this project and I understand
3 why there might be opposition to it.

4 I'm curious to hear your positions from
5 either one of you.

6 MR. HILL: Well, thank you, Madam Chair. I
7 guess I, to begin with, really find these to be
8 difficult to work through because I can understand
9 and empathize the neighbors and the project and how
10 this was something that came to be before 1411 was
11 put in place, giving the neighborhood an opportunity
12 to really vet more of the, you know, whether
13 conversion happens just, you know, to a three-unit
14 and take a harder look at the project because it was
15 a matter of right before 1411 came into play.

16 So, you know, for me it was more, has the
17 appellant made the case that the ZA has erred. And,
18 you know, according to DCRA, the new owner of the
19 subject property was authorized to build within the
20 scope of the May permit as revised by the October
21 permit. And then the ZA testified that was issued to
22 clarify the May permit and correct scribner's errors.

23 The appellant was using the October plans to
24 argue that they represent a material change from the
25 May permit, which should have been reviewed under the

1 recent amendments that would not permit the
2 conversion as a matter of right. But it was already
3 issued before that took place. So DCRA responded to
4 the plans provided by the property owner as requested
5 by DCRA to correct scribner's errors in the original
6 plans and to clarify some potential ambiguous
7 elements, show that no error had been committed and
8 no material changes had been made.

9 And so you know, I do agree with the ZA that
10 those changes were just, they were scribner's errors.
11 And so the fact that this was issued as a matter of
12 right, you know, I wasn't convinced that the ZA had
13 erred. And you know, I again empathize with the
14 neighbors and the neighborhood, but the fact that,
15 you know, this had been done before the changes were
16 made concerning pop-ups and I don't think that they,
17 the appellant made the case that the ZA erred.

18 And so I just wasn't swayed. I mean, that's
19 kind of where I am with the discussion.

20 CHAIRPERSON HEATH: Mr. Miller?

21 MR. MILLER: Thank you, Madam Chair, and Mr.
22 Vice Chair. I think you each have provided a good
23 summary of a very messy case, and I think you've
24 brought clarity to the proceedings.

25 I too agree that with one of the -- that the

1 zoning -- I give weight and I was convinced that the
2 plans approved by the ZA on the original permit --
3 well, the ZA testified that the plans were approved
4 under the original permit were under the 60 percent
5 lot occupancy. The appellant's own expert witness,
6 as you pointed out, Madam Chair, in one of the
7 scenarios, demonstrated that if you interpreted it
8 one way it would be under 60 percent.

9 And there was this confusion about these
10 other sheets that were part of the application, and I
11 think the property owner pointed out that the ZA
12 directed the then, the former property owner, to
13 clarify those plans and even following that
14 clarification the appellant's expert testified that
15 the project met the, under one scenario, met the
16 scenario of interpretation, which was the
17 interpretation they were going on by the ZA and the
18 property owner, that it met the lot occupancy and
19 previous requirements.

20 So I do empathize again, I share your empathy
21 with the neighbors' concerns and if this had gone
22 through a special exception process there might have
23 been certain things we could have mitigated, but
24 that's the timing of the new regulations affect. And
25 so I think the May permit -- I think there was enough

1 evidence that the May permit did meet the -- even by
2 the appellant's own submission, did meet the lot
3 occupancy and pervious surface requirements. So I'm
4 ready to proceed.

5 CHAIRPERSON HEATH: Okay. All right.

6 MR. MILLER: I don't know where our absentee
7 ballot person was on this, but we'll find out soon, I
8 guess. There is an absentee -- no, there's not an
9 absentee ballot?

10 CHAIRPERSON HEATH: It's just the three of
11 us.

12 MR. MILLER: Okay. All right. Just us.

13 CHAIRPERSON HEATH: Right. So.

14 MR. MILLER: We don't have any other help up
15 here.

16 CHAIRPERSON HEATH: We don't. It's all on
17 us.

18 All right. So then based on our deliberation
19 and where it appears the Board is now, I will make a
20 motion that we deny Appeal No. 19067. This is appeal
21 of ANC 4C.

22 MR. HILL: I second.

23 CHAIRPERSON HEATH: The motion has been made
24 and seconded. Any further discussion?

25 [Vote taken.]

1 CHAIRPERSON HEATH: The motion carries. Mr.
2 Moy.

3 MR. MOY: Staff would record the vote as
4 three to zero to two. This is on the motion of
5 Chairperson Heath to deny the appeal. Seconding the
6 motion, Vice Chair Hill. Also in support, Mr.
7 Miller. We have a board seat vacant and a member not
8 participating on the appeal case. Your motion
9 carries, Madam Chair.

10 CHAIRPERSON HEATH: All right. Thank you.
11 And we will take a quick five-minute break before we
12 come back with our hearing cases and switch Zoning
13 Commissioners.

14 [Off the record from 11:12 a.m. to 11:26
15 a.m.]

16 CHAIRPERSON HEATH: Mr. Moy, if you'll call
17 our first hearing case. Before you do that, though,
18 I just want to let those who are here today know that
19 rather than change the order that's listed in the
20 agenda we will keep it as it's listed. So that will
21 give you a sense of when your case will be called as
22 we proceed through the rest of the cases this morning
23 and afternoon.

24 MR. MOY: Yes. Thank you, Madam Chair. So
25 with that, to the table parties to Application No.

1 19178. 19178 of Doug Church.

2 Madam Chair, I believe this application has
3 been amended for special exception relief under 223,
4 not meeting the lot occupancy requirements under 403,
5 and the rear yard requirements under 404, to
6 construct a two-story rear addition to an existing
7 one-family dwelling in an R-5-B district, 1436
8 Florida Avenue Northwest, Square 202, Lot 804.

9 CHAIRPERSON HEATH: Good morning. Would you
10 all please introduce yourselves?

11 MR. BARROS: Good morning.

12 CHAIRPERSON HEATH: Make sure your mic is on.

13 MR. BARROS: Good morning, Tony Barros from
14 Sullivan and Barros.

15 MR. BEIDLER: Michael Beidler from Trout
16 Design. We're the architects.

17 MR. CHURCH: And I'm Douglas Church. I am
18 the property owner.

19 CHAIRPERSON HEATH: Okay. We've reviewed the
20 full application and all the materials in the record
21 and this appears to be a pretty straight forward
22 request. I don't see any issues based on what we've
23 seen so far, and so does the Board have anything that
24 you'd like to hear from this applicant?

25 MS. COHEN: No.

1 CHAIRPERSON HEATH: Okay. So we're not going
2 to need a full presentation from you today. We may
3 have questions for you as we proceed through the
4 hearing, but if you're okay with us to proceed
5 without you making a full presentation we'll ask for
6 any additional comments from Office of Planning.

7 MR. BARROS: Madam Chair, we're happy to
8 stand on the record and answer any questions the
9 Board might have.

10 CHAIRPERSON HEATH: Thank you.

11 MS. ELLIOTT: Good morning, Madam Chair,
12 Members of the Board. I'm Brandice Elliott
13 representing the Office of Planning and we are going
14 to go ahead and rest on the record, supporting this
15 application. We have no concerns, but I'm happy to
16 answer any questions that you have.

17 CHAIRPERSON HEATH: Okay. Thank you. Does
18 the Board have any questions of Office of Planning?
19 I don't.

20 All right. Thank you. Does the applicant
21 have any questions of Office of Planning?

22 MR. BEIDLER: No, ma'am, thank you.

23 CHAIRPERSON HEATH: Is anyone here from ANC
24 1B? ANC 1B. We do have a letter recommending
25 approval from ANC 1B.

1 I also have a letter of no objection from
2 DDOT, Department of Transportation. I assume there's
3 no one here on this case from DDOT.

4 Is there anyone here wishing to speak in
5 support of this applicant? Anyone in support?
6 Anyone here wishing to speak in opposition to this
7 application? Any opposition?

8 All right. Then normally we would turn back
9 to the applicant for rebuttal or closing, but there's
10 not much to rebut and I don't know if you need to
11 close. It's probably not a good use of your time. I
12 think we've heard everything we need to hear.

13 MR. BARROS: No, Madam Chair, nothing
14 further.

15 CHAIRPERSON HEATH: Okay. Thank you. All
16 right. Then is the Board ready to deliberate on
17 this? Okay. Given that the Board seems to be
18 satisfied with this application I will move that we
19 approve the request for special exception under
20 Application No. 19178.

21 MR. HILL: Second.

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

24 [Vote taken.]

25 CHAIRPERSON HEATH: The motion carries.

1 Thank you.

2 MR. MOY: Staff would record the vote as
3 three to zero to two, this is on the motion of
4 Chairperson Heath to approve the application for the
5 relief requested. Seconded the motion, Vice Chair
6 Hill. Also in support, Ms. Marcie Cohen. Board
7 member not present and a board seat vacant. Motion
8 carries three to zero to two, Madam Chair.

9 CHAIRPERSON HEATH: Okay. Summary please.

10 MR. MOY: Thank you. The next case on the
11 docket is Application No. 19180 of 1525 9th Street
12 LLC. as captioned and advertised for a special
13 exception relief on the nonconforming use
14 requirements pursuant to 2003 to permit a change in
15 use in the R-4 district at 1525 9th Street Northwest,
16 Square 397, Lot 811.

17 CHAIRPERSON HEATH: All right. Thank you all
18 for sticking around and for coming back. If you
19 could introduce yourselves again?

20 MS. WEISS: Hi, I'm Jackie Weiss, resident at
21 1523 9th Street, and this is my husband, Jason Brown.
22 Who is also a resident.

23 MR. BROWN: We're the resident owners of 1523
24 9th Street.

25 CHAIRPERSON HEATH: Thank you.

1 MR. LAKRITZ: I'm Rob Lakritz. I'm a long
2 time owner of 1525 9th Street.

3 CHAIRPERSON HEATH: Okay.

4 MR. COLLINS: Christopher Collins, Holland
5 and Knight.

6 MR. GAON: Joe Gaon, Holland and Knight.

7 CHAIRPERSON HEATH: Okay. All right. So I
8 know you all had some discussion over the past hour
9 or two. Did anything come out of that and where do
10 you stand on your party status request? Are you
11 still --

12 MR. BROWN: We still wish to pursue it.

13 CHAIRPERSON HEATH: Okay. All right. And so
14 no -- okay. All right.

15 So as the next door neighbor I have no issues
16 with granting your party status request. Does the
17 Board --

18 MS. COHEN: No.

19 CHAIRPERSON HEATH: -- have any issues?
20 Okay. Then we will grant your party status. As I
21 said, this allows you to make a presentation. We'll
22 start with the applicant's presentation and you'll
23 have the ability to cross-examine them after their
24 presentation, then we'll turn to you, allow you to
25 make your presentation. Could be your statement or

1 whatever you want to put before the Board to state
2 your case, and then the applicant will have the
3 opportunity to cross-examine you.

4 MR. BROWN: Okay.

5 CHAIRPERSON HEATH: All right? So, let's see
6 where we are.

7 MR. MOY: Madam Chair, while you're doing
8 that. How much time will you be allowing for their
9 oral arguments?

10 CHAIRPERSON HEATH: I'll ask, Mr. Collins,
11 how much time do you need to --

12 MR. COLLINS: Probably need 20 minutes.

13 CHAIRPERSON HEATH: Okay. All right. And
14 Mr. Brown, do you --

15 MR. BROWN: We have a -- we had a written
16 statement we wanted to admit, which we gave to the
17 clerk.

18 CHAIRPERSON HEATH: Okay. Okay. So we'll
19 allow you 20 minutes. You don't have to use it all,
20 but just to be fair to both parties we'll allow you
21 both 20 minutes.

22 MR. COLLINS: Just, could I get a copy of
23 what was submitted?

24 CHAIRPERSON HEATH: Is that new, or was that
25 in the record? Okay. Okay.

1 [Discussion off the record.]

2 CHAIRPERSON HEATH: Okay.

3 MR. COLLINS: Thank you, Madam Chair and
4 Members of the Board. Christopher Collins with
5 Holland and Knight, here for Application 19180, which
6 is an application for a change of nonconforming use
7 to allow the first floor of the building to be
8 devoted to retail and service uses that are otherwise
9 permitted in the C-1 zone as a replacement for the C-
10 1 office use that has historically been in the
11 building for many years.

12 Our application also includes a request to
13 allow us to continue the office use if an office
14 tenant can be secured. This is a small space on the
15 first floor of the building. We are unable, the
16 applicant is unable to lease it to retailer service
17 use without knowing whether it would be allowed, and
18 that's why we're asking for a list of C-1 uses,
19 retail and service uses. Smaller tenants simply
20 cannot wait the four to five months for the BZA
21 process to be completed in order to finalize their
22 lease, so we're seeking this range of uses.

23 After discussions with the neighbor and with
24 the ANC and with Office of Planning, they applicant
25 narrowed the range of uses in the application, which

1 you've seen in our prehearing submission. The
2 applicant also negotiated with the neighbor on hours,
3 sound-proofing, trash enclosure, and other issues,
4 all of which are included in the letter that's in
5 Exhibit 29D-1 of the record.

6 Office of Planning's report includes further
7 restrictions to which the applicant has agreed. We
8 have the support of the neighborhood to the north and
9 the ANC as well. And at this time I'd just like to
10 turn it over to Mr. Rob Lakritz on behalf of 1525 9th
11 Street.

12 MR. LAKRITZ: Hi. Sorry. It's a powerful
13 microphone.

14 My name is Rob Lakritz. I am the cofounder
15 of Lakritz Adler Development, a D.C. based
16 neighborhood development company that was founded in
17 2002 and specializes in neighborhood serving retail
18 and services. For example, in 2005, just a little
19 bit of history about the firm. In 2005, at the
20 urging of Petworth Restaurant -- residents, we
21 brought the first sit-down restaurant to Petworth in
22 45 years. We also turned an abandoned gas station
23 into Petworth's first retail pharmacy since the
24 1950s. And over the last 15 years we've helped
25 recruit and maintain businesses, small businesses,

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1 like coffee shops and yoga studios and the like, and
2 the greater U Street area, Shaw, DuPont Circle, and
3 other locations in the city. We've been doing this a
4 long time.

5 This particular property is special to me
6 because it happens to be the very first project we
7 ever did. In 2000 -- there's a bit of a storied
8 history so I thought I'd tell you just the brief
9 version of it. In 2002, in Shaw, which was a
10 community still reeling from the crack epidemic of
11 the late '90s, a group of concerned neighbors, myself
12 included as a resident of Shaw in those years, were
13 concerned about the lack of retail opportunities in
14 some of the commercial corridors. And I was able to
15 track down the owner of a two-story small vacant
16 commercial property in California, no less, and
17 negotiate to buy what was a vacant, broken, roof
18 exposed, structure.

19 At the time one of the neighbors who was
20 really skilled at historical research found out that
21 the building was in fact central to the
22 neighborhood's history and development. It was the
23 home and plumbing shop of a man named Watha T.
24 Daniels, who was a noted civil rights leader and
25 plumber, and after whom the library is named in the

1 Shaw neighborhood.

2 We were excited because we thought that the
3 best use for the first floor of that building would
4 be a plumbing shop, called Drip. Kind of humorously.
5 Much to the chagrin of the group, we -- and despite a
6 beautiful retail storefront on that building, in fact
7 there was no retail C of O for that space. But yet,
8 Mr. Watha T. Daniels had an office C of O for his
9 plumbing shop.

10 So we scrapped our plans to do the coffee
11 shop, not having the money nor the experience in
12 those years to go through the BZA process to have the
13 zoning adjusted. And we renovated the building into
14 a three-unit apartment on the second floor, with
15 vacant office space on the ground floor. And in
16 those years there weren't many things on that street.
17 There were lots of vacant commercial spaces. But we
18 got very lucky and we found a young real estate agent
19 who took a chance on a transitioning neighborhood,
20 and we signed a five-year lease for office space.
21 And he stayed there for the next 11 years.

22 Unfortunately, like many products these days,
23 because of technology, insurance is no longer sold
24 person to person. It's sold online. So he
25 downsized, moved out, and we've had a vacant space

1 for almost the last two years. It's a bit of a
2 bitter pill for me to swallow knowing that we devoted
3 the last 15 years to neighborhood development to have
4 a vacancy there.

5 So our plan in talking with the neighbors,
6 members of the ANC, counsel, and amongst ourselves
7 was, we should -- this is probably the right time to
8 pursue a zoning adjustment to permit a retail or
9 service use in what is all of 1,252 square feet. And
10 we started conversations. We had very progressive
11 conversations with both immediate neighbors to start.
12 That led to us going to the -- having a vote in
13 support by the local SMD, zoning and planning
14 subcommittee on the ANC. That led to a five/two vote
15 in favor on the ANC. And then that led to OP's
16 recommendation of support.

17 I guess the final thing to say is that it was
18 specifically the conversations that we had with our
19 neighbors, both neighbors, that led to what was a
20 very good idea from -- I think it came from the
21 Office of Planning early discussions to self-impose a
22 set of restrictions and conditions on that retail or
23 service use, cull down the list of retail uses to
24 those which would be less impactful, perhaps, and
25 seven of the nine conditions that we agreed to come

1 from our discussions with those neighbors and are set
2 forth in our letter to the ANC. And those
3 conditions, by the way, would be imposed by lease on
4 any new retail tenant that we would hopefully find
5 for that space.

6 So with that, thank you for your time. Thank
7 you for listening to that story.

8 CHAIRPERSON HEATH: Thank you.

9 MR. COLLINS: Madam Chair, we have submitted
10 a prehearing statement which goes through section by
11 section how we believe that we meet the test for
12 special exception relief, and I can have Mr. Lakritz
13 go through that if you would like, or you can just
14 accept them as a submission in the exhibit in the
15 record.

16 CHAIRPERSON HEATH: I think at this point,
17 unless the Board would like to hear them, I'm fine to
18 leave it as it's stated in the record. If questions
19 come back up through the course of the testimony and
20 cross-examination, we can come back to that.

21 MR. COLLINS: All right.

22 CHAIRPERSON HEATH: And have you formally
23 present it.

24 I do have one question for the property
25 owner. You said that the conditions that you

1 established were through discussions with your
2 neighbors. Were your neighbors at 1523 also a part
3 of these discussions?

4 MR. LAKRITZ: Not only were they a part of
5 them, they came out of discussions one on one with
6 them.

7 CHAIRPERSON HEATH: Okay.

8 MR. LAKRITZ: Lengthy, lengthy discussions.

9 CHAIRPERSON HEATH: Okay. All right.

10 MR. LAKRITZ: Yeah. In fact, let me just to
11 be very clear, we met, we spent a long time together
12 talking about what we wanted to do to bring this kind
13 -- a new kind of retail and service to the block that
14 would enhance the block. And we negotiated a set of
15 conditions, I think three of which -- maybe four, I'd
16 have to look back at the letter -- were specifically
17 tailored to their property and protecting them from
18 noise and vermin and trash, which is highly unusual.
19 I've actually never done that in 15 years of doing
20 this, but anyway, yes, to answer your question.

21 CHAIRPERSON HEATH: Okay. All right. So I
22 assume those are the conditions referring to how
23 trash will be handled, hours of operations.

24 MR. LAKRITZ: Correct.

25 CHAIRPERSON HEATH: Okay.

1 MR. LAKRITZ: And also the -- more to the
2 point, more to your point, the installation of
3 soundproofing materials along the party wall with the
4 neighbor to the south at 1523.

5 CHAIRPERSON HEATH: Okay.

6 MR. LAKRITZ: In addition, repairing of
7 concrete in an enclosed shared side yard court.

8 CHAIRPERSON HEATH: Okay. All right. Thank
9 you. Board, any other questions of the applicant?

10 MR. HILL: None at this time.

11 CHAIRPERSON HEATH: All right. Does that
12 conclude your presentation, Mr. Collins?

13 MR. COLLINS: Yes, it does.

14 CHAIRPERSON HEATH: Okay. All right. Thank
15 you. So we've granted your party status request, but
16 I neglected to restate that we need one of you to
17 represent your party. Is that going to be you, Mr.
18 Brown, or how do you want to handle that? Okay. So
19 you'll represent.

20 MS. WEISS: I'll represent.

21 CHAIRPERSON HEATH: Okay. So at this time
22 you can ask questions or cross-examine the applicant
23 based on the testimony they've just presented. If
24 you don't have any questions you can proceed to make
25 your statement.

1 MS. WEISS: I think we'll just proceed to --

2 CHAIRPERSON HEATH: Okay.

3 MS. WEISS: -- make a statement.

4 CHAIRPERSON HEATH: All right.

5 MS. WEISS: I guess first just a walkthrough,
6 sort of we submitted the written testimony which is,
7 we object to sort of the generalized exceptions, or
8 granting a special exception based on sort of generic
9 protections as opposed to sort of a specific use and
10 a specific tenant that has in mind. And in ourselves
11 we've also included a list of the majority of
12 residential homeowners on the block who have also
13 signed a statement opposing the application, or
14 adjoining with us in that.

15 In addition, while we're aware of the fact,
16 as he stated, that the property has been vacant for,
17 you know, the past two years, we were you know, very
18 friendly and knew the prior tenant, the office
19 insurance tenant, and we have included a signed
20 statement from him saying the reason he left was the
21 yearly rent increases were so high, which were no
22 longer able to support that rather than his business
23 shrinking and that he's like, moved across the street
24 because of the yearly rent increases that unable to
25 continue to pay those, and that that sort of is why

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1 the property has remained vacant.

2 We are aware of the fact that we did discuss
3 -- I think I should have drank something a little bit
4 more before I started talking.

5 MR. BROWN: Is she allowed to have liquid?
6 Are we allowed to have liquid? No? Okay.

7 CHAIRPERSON HEATH: No.

8 MS. WEISS: That's okay.

9 CHAIRPERSON HEATH: Is it okay, Mr. Moy, if
10 she has water?

11 MS. WEISS: I'll be fine. It's fine. Yeah.

12 CHAIRPERSON HEATH: I think it's fine if you
13 have water. We don't want you to --

14 MS. WEISS: Yeah. No, no.

15 CHAIRPERSON HEATH: -- choke.

16 MS. WEISS: Yeah.

17 MR. HILL: If you have water right there
18 you're welcome to get some water.

19 CHAIRPERSON HEATH: Yeah, go ahead.

20 MR. HILL: That's all right. Yeah, sure.

21 CHAIRPERSON HEATH: Whatever it is. Yeah.
22 Go ahead.

23 MR. BROWN: Appreciate it.

24 MS. WEISS: We are aware that we had
25 discussions sort of, you know, kind of we had

1 actually written -- we had originally planned to
2 oppose the application when we received notice and we
3 had written an e-mail to the ANC representative
4 asking for the ANC support in opposing the
5 application initially.

6 And I guess a week before the committee
7 hearing, the ANC committee hearing, we heard from Rob
8 and we had a meeting with him and you know, in the
9 interest of not sort of going through this and doing
10 this is like, you know, he proposed certain
11 restrictions on sort of the generalized thing and we
12 were talking about that, and it was just very short
13 time frame in which to agree to it and sort of, in
14 the interest of not sort of going through the
15 opposition process wanted to kind of give -- allow
16 the exceptions to work through the ANC thing and give
17 us an opportunity to just have like an additional
18 week to like look at them before we decided to like
19 sign on and agree and sort of in doing that, you
20 know, it's like we, I think, confused the process a
21 little bit in terms of like what our interests were
22 and like in terms of you know, talking to the ANC and
23 giving ourselves the opportunity.

24 And that was, you know, it was like
25 indefinitely, you know, partially our fault. We

1 just, you know, kind of things were happening and we
2 wanted to sort of all get along and you know, look at
3 the exceptions and try and work things out without
4 going through all of this and, you know, proceeding
5 and have the exceptions and just, you know, once I
6 did have like more than three days to sort of look at
7 them and you know, was able to have some time and you
8 know, quite, and realize sort of the implications of
9 everything and you know, going forward and living
10 there and how, you know, much I've enjoyed the house
11 and things, you know, I want to be -- and my
12 neighbors as well is that we really were not able to
13 sort of envision kind of like a generalized multi,
14 you know, C-1 uses with sort of like list as just
15 being kind of the protections that were going to
16 cover any possible deleterious or adverse effects to
17 like the rest of the residence.

18 So I guess that was -- and I guess, and we've
19 included a written statement which is probably a
20 little bit more articulate than I just was. But in a
21 written statement as well as like sort of including
22 the signatures of our neighbors and sort of showing
23 where we are in the property and the residential side
24 of the street and like the residential characters is
25 filling most of the street. And just some pictures

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1 of sort of the -- because we are sort of a wooden
2 town home, it is like we are directly sort of at
3 ground level as is the next door townhouse, which
4 makes it a little -- or particularly concerned about
5 any, you know, commercial uses next door in terms of
6 you know, foot traffic or noise transmission because
7 unlike you know, a lot of the townhouses in the
8 District, we're not raised or you know, above or like
9 in a brick or larger townhome.

10 MR. BROWN: There's no front yard or
11 anything.

12 MS. WEISS: Yeah.

13 CHAIRPERSON HEATH: Sure. So is that the
14 conclusion of your presentation?

15 MS. WEISS: I think that's probably it. It's
16 like, yeah, it's like we have the statement and
17 we've --

18 CHAIRPERSON HEATH: Sure.

19 MS. WEISS: -- elaborated a little bit more
20 in there and --

21 CHAIRPERSON HEATH: So a question for you.
22 It sounds like you're not opposed to them having some
23 retail use, but you just want some restrictions on
24 what that might be.

25 MS. WEISS: I think what we'd like is sort of

1 the ordinary process, sort of described in the Office
2 of Planning's statement which is that they have a
3 specific tenant and use in mind and that they apply,
4 you know, through the process for like whether that,
5 you know, specific tenant or change in use is going
6 to have deleterious affects. I mean, it's like we
7 had -- it's like Swatch Room, which is one building
8 over. It's a design architecture firm and they
9 applied for limited retail use to enable them to sell
10 paintings on the first floor, and we got the zoning
11 application and they're like, you know, we're a
12 design architectural firm, we want to sell a few
13 paintings and other works of art associated with
14 that. And we're look -- looked at their hours and
15 it's like that was great. You know, it's like and we
16 thought that was a great use for the neighborhood and
17 we thought, you know, fit right in with what was
18 going on and that was probably -- and I think we just
19 we're not opposed to like any and all retail uses or
20 any of that. We just want -- we just think it should
21 go through the ordinary process of, you know, a
22 specific use and a specific tenant and they're
23 applying for that rather than sort of this generic
24 list of restrictions which may you know, which are
25 supposed to cover everything which could possibly

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1 happen and sort of just like a greater than typical
2 flexibility for a vacancy, which I think has been --
3 as we have with the statement of Barry's, partially
4 as a result of like rent increases and seeking
5 increased rent for the spaces.

6 Like the fact that it is vacant for 18 months
7 is to some extent, prima facie evidence that it's an
8 above market rate. It's like, if it was market rate
9 it would be easier to, you know, it's like, rent out
10 at a lower rate and I think asking you know, the
11 residents of the block to sort of waive sort of the
12 standard BZA process and the opportunity to weigh in
13 during the standard BZA process, it is because of
14 like, you know, the developer who is seeking you
15 know, just -- who has, you know, increased the rent
16 beyond which a long time tenant was able to pay, it
17 has not necessarily served either us or like sort of
18 the general process of like the BZA hearing as
19 designed to like protect, you know, residential
20 tenants or in the exception in those zones again.

21 MR. HILL: Madam.

22 CHAIRPERSON HEATH: Have you --

23 MR. HILL: Sorry.

24 CHAIRPERSON HEATH: One more question. Have
25 you -- do you have in mind specific retail types of

1 tenants that you --

2 MS. WEISS: As a, you know, it's like
3 we've -- you know, it's like I thought to myself of
4 like several people, it's like you know, if an
5 optometrist wanted to open in the back and he wanted
6 to sell frames in front, you know, that would be
7 great. You know, it's like if -- you know, I was
8 able to think, you know, it's like several --

9 CHAIRPERSON HEATH: Or conversely any retail
10 tenant types that you would oppose?

11 MS. WEISS: Right. Well, I mean one of the
12 things which you know, initially is like once we had
13 sort of talked about the exceptions and I had
14 actually, you know, to some extent like looked at the
15 list and what could be there and not be there, and I
16 realized, I was like, you know, something -- I was
17 like, you could open like, it's like liquor license
18 is other process, but you could open a take-out
19 Chinese. You know, it's like and that would be you
20 know, it's like foot traffic or whatever, it's noise,
21 food. And it's like, and I think also the potential
22 of the garbage room inside and thinking of that
23 because there's already been sort of vermin issues
24 for us, and it's been my spouse's habit to -- it's
25 like and we knew, as I said, the tenant next door

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1 very well and he would go in and he actually would
2 climb through the light well into the light well.
3 And the reason we're interested in it is -- and set
4 out rat traps and then like go back in and like
5 remove the little bodies and like take them away.
6 And so that's, right, not one of the more fun things
7 in life.

8 And so, you know, the possibility of a food
9 use in addition, as we're already sort of, you know,
10 fighting that issue is like obviously of increased
11 concern to us as like anyone who is in the District
12 knows is like, when you have, you know, even more
13 food uses, you know, it's like continue to fight like
14 the vermin issues.

15 And so, you know, it's like -- and then, you
16 know, as somebody mentioned, oh, you know, have you
17 thought that it could end up being a nail salon. And
18 as someone who is like sensitive to chemicals, I was
19 like, holy smokes, I hadn't even thought about like,
20 you know, the possibility of like, you know, being
21 like large amounts of like, you know, acetone or
22 whatever of like flowing through because we're just
23 so, you know, sort of right next to each other with,
24 you know, interior sort of like venting access that
25 you know, sort of looking at that -- when I had the

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1 opportunities, the generic possibilities just was
2 30,000 things that I hadn't thought of ahead of time
3 and like --

4 CHAIRPERSON HEATH: Sure.

5 MS. WEISS: -- without the application --
6 which made me realize, I was like, there was a
7 reason, you know, that I really wanted like the BZA
8 process and it's like go through and you look at it
9 and you, you know, it goes through in the Office of
10 Planning and you know, whether or not it's a
11 specific, you know, exception is going to, you know,
12 have deleterious effects on the entire neighborhood.
13 You know, it's like or just some things like, like,
14 you know, and it's like take-out pizza.

15 In that case many years ago when I was living
16 in New York and when the take-out place, the place,
17 and you know, it was like a regular drug market. You
18 know, I mean, which is like the neighborhoods -- you
19 know, many neighborhoods have changed greatly since
20 like the late '80s, but you know, it was like that --

21 CHAIRPERSON HEATH: You're giving a very long
22 answer to my question.

23 MS. WEISS: I'm sorry. I am so sorry.

24 CHAIRPERSON HEATH: And I'm not even sure if
25 you answered it.

1 MS. WEISS: I am so sorry. I didn't mean --

2 MR. BROWN: If I could refer you to page 7 of
3 our written statement --

4 CHAIRPERSON HEATH: Okay.

5 MR. BROWN: -- there's a footnote 11 at the
6 bottom. We did list a list of uses which we know we
7 would not want there.

8 CHAIRPERSON HEATH: Okay.

9 MR. BROWN: This is not you know, obviously
10 doesn't represent --

11 MS. WEISS: I really apologize for just --

12 CHAIRPERSON HEATH: That's okay.

13 MS. WEISS: -- having a run-on there as a
14 sentence. Please, feel free to cut me off.

15 MR. BROWN: It's on the bottom of page 7,
16 footnote 11.

17 CHAIRPERSON HEATH: Okay.

18 MS. WEISS: I didn't mean to.

19 CHAIRPERSON HEATH: Yes.

20 MR. BROWN: And we were looking at the, I
21 guess the C-1 list that the Office of Planning had
22 attached with various things crossed out and the
23 Office of Planning had also recommended no restaurant
24 use, no bar/cocktail lounge. We know -- and then
25 there's the rest of the list here.

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1 CHAIRPERSON HEATH: Okay.

2 MR. BROWN: Of businesses that we know we
3 definitely would not want.

4 CHAIRPERSON HEATH: Okay. Did you have a
5 question, Marcie?

6 MS. COHEN: Yeah. One of your -- your
7 concerns are related to noise and vermin. But again,
8 there's certain things that have been proffered by
9 the applicant to deal with those. Okay? So I guess
10 you're still not satisfied or would you be satisfied
11 with what he has suggested that can prevent, you
12 know, the noise attenuation.

13 MR. BROWN: We certainly appreciate and like
14 all of those things. Those are good things. But
15 given that we don't know what specific type of tenant
16 it is we feel there are potentially other things that
17 you know, could be deleterious to us that you know,
18 we just couldn't envision because, you know.

19 MS. WEISS: Yeah, I mean, I understand it's
20 like a specific use and like going through, and I
21 guess the problem is, is that in even given a greater
22 time frame is that it was difficult for us to
23 conceive of how to tailor each of those exceptions
24 for each of the C-1 uses and like what those would
25 be, and we simply didn't have the experience --

1 MS. COHEN: I understand.

2 MS. WEISS: -- and knowledge to sort of
3 understand sort of --

4 MS. COHEN: We just want to know where --

5 MS. WEISS: -- on the [simultaneous speech]
6 basis.

7 MS. COHEN: -- you're coming from. What the
8 real --

9 MR. BROWN: I mean, we definitely, I mean,
10 definitely we had a list of businesses in footnote
11 11. We're also, you know, very concerned about late
12 hours obviously because you know, we want to come
13 home from work and not have, you know, depending on
14 the business there could be people, you know,
15 standing outside, you know, our front step is right
16 up on the sidewalk. People could -- you know, we
17 don't want it to become de facto outdoor seating for
18 whatever business goes in. And we want to be -- we
19 want to sit in our living room in the evening and
20 not, you know --

21 MS. COHEN: But what if you -- you know, but
22 sometimes, you know -- let's talk about another issue
23 you raised, and that is the value of your home. And
24 I would want to know where you're coming from because
25 I think the value of your home is presently

1 compromised by having a vacant storefront next to you
2 that's underutilized, that can be broken into, that
3 you know, is not eyes on the street. So can you tell
4 me what your position is with regarding to the value
5 of your property?

6 MR. BROWN: I think I'll let my -- do you
7 want to handle that?

8 MS. WEISS: Well, I guess I think -- well, A,
9 the building itself is not entirely vacant. There's
10 a resident on the second floor. So he is like, there
11 is currently -- it's not a vacant building. It's
12 like there is somebody living there right now.

13 MR. BROWN: The second floor of the building
14 is a --

15 MS. WEISS: It's a tenant. It's a rental
16 tenant.

17 MR. BROWN: -- apartment.

18 MS. WEISS: Yeah. Yeah, and then we were --
19 and so we're -- so there is like a -- it's not a true
20 vacant building and I'm aware of like, we've been
21 aware of sort of like the problems associated with
22 vacant buildings and when 1519, a few doors down, was
23 vacant I spent a long time communicating with having
24 the property cleaned and like people who are
25 squatting, getting cleared out. So I'm like -- so,

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1 you know, it's like I'm aware of like sort of the
2 issues associated with you know -- it's like a vacant
3 property when no one is there and there's trash, and
4 I think while vacant, I guess office space is not
5 ideal, I think as a remedy for that, and I think like
6 a vacancy which has largely been occasioned by just
7 sort of, you know, you know, increases in rent you
8 know to the prior tenant, and sort of like simply the
9 market conditions is kind of trading sort of that
10 vacancy for the issues associated with sort of the
11 exceptions being asked for, is not -- would be, in
12 the long-term, more harmful to our property. Our
13 property value.

14 You know, particularly I think like the --

15 MS. COHEN: What are you basing that on?

16 That's what I need to understand, where you're coming
17 from.

18 MS. WEISS: It is in terms of like whether or
19 not -- it is having a residence next to like a really
20 active commercial site is never -- is never really
21 enhancing to the residence. I mean, it's like a very
22 active -- it's like, that close -- sorry, it's like
23 active commercial. It's like, and that's why usually
24 commercial businesses aren't in, you know, like
25 wholly residential areas is because you know, it's

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1 like a really active you know, commercial or retail
2 establishment does not -- you know, can be like very
3 harmful to like the residential homeowners. And
4 there can be many uses that would be, you know,
5 harmful to us. And I think sort of intermittently
6 sort of putting in -- and, you know, other residents
7 on the block have agreed with us in terms of not
8 wanting like commercial uses further down the block
9 as they're continuing. It's like they've been sort
10 of like on the -- you know, it's like at the end
11 where the commercial zone is and it's actually
12 separated by a fair amount of like, you know, space
13 and that kind of -- you say it's very close, but you
14 know, to us it doesn't seem like you know, it's like
15 that we're, you know, living sort of with you know,
16 it's like the restaurant uses that are further away
17 from us.

18 MS. COHEN: You are aware that there are many
19 neighborhoods in the District that do live cheek by
20 jowl commercial and residential?

21 MS. WEISS: Yes. Yes. Yes.

22 MS. COHEN: So it's not something that hasn't
23 existed in our city. And because this building was
24 up and operated since 1925 did you say, there
25 obviously you know, is a history and a tradition of

1 living cheek by jowl. So I just wanted to bring -- I
2 want to understand what your fears are.

3 MS. WEISS: And I think a lot -- and I think
4 a lot -- and I'd be happy with a lot of, is like
5 different retail uses. And I think a lot of
6 different retail uses that went through sort of the
7 BZA process and said, look, you know, it's like we
8 are such and such, you know, specific, you know,
9 retail use. We're not going to, you know, harm the
10 character of the neighborhood additional residence
11 because we do X. You know, and it's like this is
12 what we are. I mean, and that's great.

13 I mean and I think, you know, it's like when
14 you look at them and you frequently -- it's like you
15 do. And as I said, it's like we had the application
16 from the Swatch Room, you know, and it's like we
17 looked at it and we said, you know, this is great.
18 This, you know, fits in line with the neighborhood.
19 It's not going to cause problems. You know, they are
20 indeed right, you know, it's like next to us. We
21 were right next to Barry for many years as an office
22 use. We didn't feel that, you know, he was harm.
23 You know, it was like we traded treats and you know,
24 snacks, and like we felt that that was -- you know,
25 it's like --

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1 MS. COHEN: You're just giving a lot of, you
2 know --

3 MS. WEISS: Yeah. Sorry.

4 MS. COHEN: -- the same. So one last point I
5 want to make and that has to do with, do you know the
6 market and what's going on on retail pricing per
7 square feet or pricing at all because sometimes
8 people raise rents if their taxes are raised, if
9 their expenses for utilities are raised. I mean,
10 what I'm just suggesting to you is that commenting on
11 your concern.

12 MR. BROWN: Well, I spoke with Mr. Lumsten
13 and he was responsible for utilities and taxes on the
14 property and he has a letter stating that the annual
15 rent increases were what drove him out of the
16 property.

17 MS. COHEN: Thank you.

18 MR. BROWN: And out of the block.

19 MR. HILL: Actually, just I'm kind of curious
20 of a couple things. So all of the neighbors that
21 signed this, and you have a nice map that shows all
22 of the ones that signed against. So where were they
23 during the ANC meeting? I'm just saying, they didn't
24 come to the ANC meeting. You didn't go to the ANC
25 meeting.

1 MR. BROWN: We went to the ANC meeting.

2 MS. WEISS: We did go to the ANC meeting.

3 MR. HILL: Oh, okay. And so you, you know --

4 MS. WEISS: We -- yes.

5 MR. HILL: -- testify in opposition.

6 MR. BROWN: We were made neutral at the
7 committee meeting, the planning committee meeting.

8 MR. HILL: Okay.

9 MR. BROWN: And then we decided to oppose at
10 the ANC meeting, and then we decided to continue to
11 oppose into this process.

12 MR. HILL: Okay. And so the vote was
13 five/two in support?

14 MR. BROWN: Yes.

15 MR. HILL: Do you know why the two objected?

16 MS. WEISS: I think -- I think well,
17 specifically I guess our statement is that we spoke
18 about the fact that as residents were not -- we
19 couldn't support sort of the open-ended possible uses
20 in the property next door.

21 MR. HILL: Okay.

22 MS. WEISS: And we were concerned about that.

23 MR. HILL: Okay. Yeah, and you share a
24 common light well. Is that what you're saying? And
25 so the property on the other side of yours doesn't

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1 have a light well there, you only share a light well
2 with them, correct? All right.

3 And you've seen all of the conditions that
4 the ANC listed that are in the letter, I suppose.

5 MR. BROWN: Yes. And as those were made with
6 the ANC, you know, if we were to lose today we
7 definitely you know, want those to go forward.

8 MR. HILL: Okay. And of those particular
9 conditions is there a condition that you like least?

10 MR. BROWN: Well, the conditions were for the
11 benefit of the neighborhood. I suppose if I was to
12 say which one I like the least it would be the hours,
13 and that I would want them shorter. The evening
14 hours.

15 MR. HILL: Oh, that's okay. So that's number
16 3, just I think.

17 MR. BROWN: I think the hours were currently
18 going until 10:30.

19 MR. HILL: 10:30. Yeah, and then 11:00 on
20 Friday and Saturday.

21 MR. BROWN: Yeah. If this were to be granted
22 we'd really like to dial that back. Ideally to 8:00.
23 That's what we also mentioned in footnote 11 of page
24 7.

25 MR. HILL: Okay. Yeah, and just to echo my

1 colleague's comment, I mean again, the rent thing
2 like, I don't really have any comment about it. I
3 mean, if they raised the rent, they raised the rent.
4 I mean, that doesn't really do anything for me in
5 terms of your argument.

6 MR. BROWN: Well, I guess we would -- I guess
7 we're arguing on the -- I'm sorry.

8 MR. HILL: I understand. That's okay. I'm
9 just kind of sharing with you, my thoughts.

10 MR. BROWN: Well, I guess our feeling was
11 that the rental rate drove out a previous tenant and
12 the fact that it's remained empty is kind of de facto
13 evidence that it is higher than the market supports
14 for an office tenant currently.

15 MR. HILL: I understand.

16 MR. BROWN: That's all we were saying.

17 MR. HILL: Sure. Yeah, those are all the
18 questions I have right now. Thank you. Thank you
19 Madam Chair.

20 CHAIRPERSON HEATH: All right. Does the
21 applicant have questions of the party in opposition?
22 Sure.

23 MR. COLLINS: No, thank you.

24 CHAIRPERSON HEATH: Okay. All right.
25 Anymore?

1 MR. HILL: I have a question.

2 CHAIRPERSON HEATH: Okay.

3 MR. HILL: I'm sorry. So you have discussed,
4 obviously, the hours of operation. So --

5 MR. BROWN: Extensively.

6 MR. HILL: -- and that seems to be the
7 sticking point with your party here in opposition.
8 So, I mean, you're just -- you want to keep
9 continuing with -- so why would you need -- let me
10 state this -- what need do you see, what retail
11 option is there that they're going to be there until
12 11:00?

13 MR. LAKRITZ: Right. It's a great question.
14 Let me give you a little bit of history on that.

15 MR. HILL: Sure.

16 MR. LAKRITZ: We actually didn't start there.
17 Originally we had thought that we would go later with
18 some sort of restaurant, potentially a bar use, as
19 one option. Actually, it's not a preferred option.

20 MR. HILL: Got it.

21 MR. LAKRITZ: I have tenants who live
22 upstairs, so I have some interest in having something
23 that's lower impact.

24 MR. HILL: Sure. I live above a pizzeria by
25 the way, so yeah.

1 MR. LAKRITZ: I actually used to live above a
2 pizzeria too.

3 MR. HILL: Yeah.

4 MR. LAKRITZ: Once in my life.

5 MR. HILL: Yeah. It's handy in a lot of
6 ways.

7 MR. LAKRITZ: It's very convenient.

8 MR. HILL: It kind of makes you hungry at
9 certain times also.

10 MR. LAKRITZ: So we started in our
11 discussions with the Browns at midnight, and I recall
12 that they were at 9:00. In our discussions with the
13 ANC single-member district representative, I came
14 back at 11:00, and I think we settled at 10:30. So
15 this was a result of extensive negotiation. The
16 process has been somewhat frustrating.

17 MR. HILL: Yeah. And so I'm just -- and I
18 appreciate it. I understand what you're saying. I
19 appreciate all -- and again, I am just curious --

20 MR. LAKRITZ: The answer to your second
21 question --

22 MR. HILL: Yeah, what is it that's going to
23 be there until 10:30 in your --

24 MR. LAKRITZ: Sure.

25 MR. HILL: -- you know --

1 MR. LAKRITZ: It's a great question.

2 MR. HILL: Thanks.

3 MR. LAKRITZ: In all of our discussions the
4 one -- just as an example --

5 MR. HILL: You've already taken out, I mean,
6 in your first condition you don't have anything with
7 booze or you know, dancing and live entertainment.
8 So what's there until 10:30?

9 MR. LAKRITZ: Coffee shop.

10 MR. HILL: Okay.

11 MR. LAKRITZ: Coffee shop would be an easy
12 one. Ice cream. Yogurt.

13 MR. HILL: Okay. Okay.

14 MR. LAKRITZ: I could easily -- I mean, yeah,
15 I mean another perfect example is something that the
16 Browns and we had heated agreement about, would be a
17 great use, which would be a neighborhood wine and
18 cheese shop.

19 MR. HILL: Okay.

20 MR. LAKRITZ: Most people in the District
21 work, you know, past 6:00.

22 MR. HILL: Okay. I'm just curious. Okay.

23 MR. LAKRITZ: Yeah. I was just giving an
24 example.

25 MR. HILL: That's good enough. No, I

1 appreciate it. Thank you.

2 CHAIRPERSON HEATH: Okay. Then if that
3 concludes the presentations by the applicant and the
4 party we'll ask for any additional comments from
5 Office of Planning.

6 MS. FOTHERGILL: Good afternoon, for the
7 record, I'm Anne Fothergill from the Office of
8 Planning. And you'll see in the staff report that we
9 recommended approval of the application with two
10 conditions as the applicant mentioned, limiting the
11 C-1 uses to those permitted by Section 701.1, except
12 not a bar or a cocktail lounge or a gas station, and
13 Section 701.4, and except not a restaurant. And then
14 also allowing an office use in keeping with the
15 previous ground floor use. And the second condition
16 being those conditions that were proposed by the
17 applicant. And we rest on the record in support of
18 the application.

19 CHAIRPERSON HEATH: Okay. Go ahead.

20 MR. HILL: Yeah, just to be clear. So in
21 your report it's not a restaurant.

22 MS. FOTHERGILL: That is correct.

23 MR. HILL: Okay. Thanks.

24 CHAIRPERSON HEATH: Okay. Applicant, any
25 questions of Office of Planning?

1 MR. COLLINS: No questions but I'd just like
2 to clarify that we do agree with the Office of
3 Planning report.

4 CHAIRPERSON HEATH: Okay. All right. That
5 was going to be a next question for you. All right.
6 Any questions from the opposition party?

7 Go ahead.

8 MR. HILL: I'm sorry. I just have one more
9 question. In your conditions, number 7 says, "If a
10 tenant is a restaurant." So that's why I get a
11 little confused with Office of Planning.

12 MR. LAKRITZ: It was a timing issue. We
13 agreed to this with the ANC and then it went to
14 Office of Planning, and then we agreed with Office of
15 Planning that we would cull the list even more and
16 exclude a restaurant.

17 CHAIRPERSON HEATH: So these can be --

18 MR. HILL: So you're striking number -- oh,
19 sorry.

20 MR. LAKRITZ: Right. I don't think we -- I
21 don't think we'd need to strike it. It's just a
22 matter of saying that it won't be a restaurant
23 because that won't be a permitted use if approved.
24 Right.

25 CHAIRPERSON HEATH: If we were to approve

1 this we'd just -- and adopt the conditions, we'd just
2 want to --

3 MR. LAKRITZ: Yeah.

4 CHAIRPERSON HEATH: -- make sure that this is
5 cleaned up so that there's not conflicting --

6 MR. LAKRITZ: Sure.

7 CHAIRPERSON HEATH: -- information in the
8 conditions.

9 MR. LAKRITZ: No problem. No problem.

10 MS. COHEN: I have a question for the
11 applicant.

12 MR. LAKRITZ: Sure.

13 MS. COHEN: Again, your store is vacant for a
14 year and a half. Why do think that was?

15 MR. LAKRITZ: I actually, I'm somewhat
16 disappointed that the last tenant wrote that letter
17 because it puts me in a strange position because this
18 is a public hearing. But the reason that he couldn't
19 pay the rent there was because he, for a long period
20 of time, was not able to pay the rent. The business
21 was just shrinking.

22 In fact I suffered many years of nonpaid
23 rent.

24 MS. COHEN: All right. Let's move on though
25 because it was a year and a half empty.

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1 MR. LAKRITZ: Yeah.

2 MS. COHEN: So --

3 MR. LAKRITZ: Oh, why do I think it's still
4 been vacant? Right. Well, there's no question why
5 it's still been vacant. There has been not one
6 promising office tenant that would go there at --
7 even at much lower rates. So actually everything
8 that the Browns have said is not true. And in terms
9 of retail, retail would actually get me back to where
10 the insurance agent was. That's actually -- that
11 rent would get me -- in other words, retail is the,
12 in my opinion, the single only use for that space,
13 rather than office. It's just not an office
14 location.

15 MS. COHEN: Okay. Can you expand upon
16 your --

17 MR. LAKRITZ: Yeah.

18 MS. COHEN: -- local knowledge of who is
19 looking for space --

20 MR. LAKRITZ: Yeah.

21 MS. COHEN: -- for that particular building.
22 Who do you think you're going to be talking to --

23 MR. LAKRITZ: Sure.

24 MS. COHEN: -- if you receive approval?

25 MR. LAKRITZ: Sure. Well, I've already had

1 discussions. They haven't reached the level of
2 signed lease, but I've had discussions. We had
3 interest from a local sandwich shop. I wasn't really
4 -- that's really, I don't think, the best use because
5 it's not really a daytime location in that way. But
6 nevertheless there was a sandwich shop down the
7 street and so a sandwich shop I guess would work
8 there. And it would be a nice neighborhood use.

9 Remember, I own the -- I still have a
10 residential tenant upstairs.

11 There is a hair salon that is very
12 interested. It's a woman who is from 14th Street who
13 can no longer pay the rents on 14th Street and wants
14 to move down to 9th Street, which is an emerging
15 corridor.

16 There was -- well, those were really the two
17 primary ones. I mean, remember, I had a broker, an
18 office broker, who was listing the space for the
19 better part of the 18 months. It's only recently
20 that I've started talking to retail brokers. But
21 based on my experience and what else is going on in
22 the neighborhood, I'm fairly confident that it will
23 be a use similar to a neighborhood wine and cheese
24 shop. Perhaps ice cream. Perhaps it is a frame
25 store or maybe an art gallery. I mean, there's a

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1 variety of C-1 uses that are in that list that we've
2 culled it down to that I feel very confident that
3 it's better than an office use, more likely to get a
4 tenant.

5 MS. COHEN: Thank you.

6 MR. LAKRITZ: Welcome.

7 CHAIRPERSON HEATH: All right. Any other
8 questions, Board? Okay. All right. Is there anyone
9 here from DDOT on this application? We do have a
10 letter of no objection from DDOT. They just posed
11 questions about the bays of the façade projecting
12 into public space. Not the Board's issue, but just
13 something I want to make you aware of if you weren't
14 already.

15 MR. COLLINS: May we clarify that?

16 CHAIRPERSON HEATH: Sure.

17 MR. COLLINS: I can't -- I assume that what
18 they did was take a look at the plans and assume they
19 were plans for construction. This Oriel window has
20 been on the building since as long as anybody can
21 remember.

22 CHAIRPERSON HEATH: Okay.

23 MR. COLLINS: And there is a conservation
24 easement on the façade, so Mr. Lakritz couldn't touch
25 it if he wanted to.

1 CHAIRPERSON HEATH: Got it. Okay. All
2 right. That makes sense. Okay.

3 Is there anybody here from ANC 6E?

4 MR. PADRO: Yes.

5 CHAIRPERSON HEATH: Okay. Please come
6 forward. Introduce yourself, please.

7 MR. PADRO: Madam Chair and Members of the
8 Board, I am Alexander M. Padro. I am Advisory
9 Neighborhood Commissioner for single-member district
10 6E-01 and I am Vice Chair of the Commission.

11 CHAIRPERSON HEATH: Okay. Thank you. We do
12 have your letter. We understand that you all voted
13 on the 3rd of February and that your --

14 MR. PADRO: I believe it was the 2nd of
15 February.

16 CHAIRPERSON HEATH: Okay. All right. But
17 your vote was five to two?

18 MR. PADRO: That is correct.

19 CHAIRPERSON HEATH: Okay. Is there anything
20 you want to say either in support of the application
21 since your letter affirms the ANC support, or if you
22 could also speak to some of the hesitation with the
23 two who opposed the application. That would be
24 helpful.

25 MR. PADRO: Certainly. And I am in an

1 interesting position here because I have represented
2 this block since January of 2001. And I'm also a
3 historian that's done extensive research on the
4 neighborhood's history.

5 This building was actually vacant for at
6 least a decade before Mr. Lakritz's development firm,
7 as he mentioned, acquired it and renovated and
8 historically it was the home and place of business of
9 an important neighborhood leader who was Mr. Watha T.
10 Daniel, now the neighborhood library's namesake.

11 You know, but specific to the retail history
12 I've actually gone through the permit history, you
13 know, for the building as well and yes, there were --
14 from the 1940s until the 1970s, when Mr. Daniel
15 passed, this was a plumbing shop and had subsequently
16 been vacant. I had the opportunity to go into the
17 plumbing shop in the period before the renovations
18 and there were still materials from Mr. Daniel's
19 occupancy there. There were several motorcycles. He
20 was a motorcycle aficionado. He still had his
21 motorcycles there. He had his awards for all the car
22 and auto shows that he had participated in.

23 So the building was vacant for quite a
24 substantial time, and then we were very grateful when
25 the building was acquired and renovated, and glad

1 when Mr. Lumsen came from Pittsburgh to a Nationwide
2 Insurance brokerage in that location. And also
3 disappointed that despite the fact that there are
4 other office spaces in the neighborhood that are
5 renting for as much \$55 a square foot currently,
6 across the hall from where my office is, a couple
7 blocks away, those are 21st Century spaces. They are
8 you know, not early 20th Century buildings that have
9 been retrofit to be offices. So yes, if this was a
10 state of the art, you know, office, and certainly Mr.
11 Lakritz would be able to command that type of rental
12 square foot rate there.

13 But that having been said, the renaissance of
14 the neighborhood has been based on other retail
15 types, and we have been successful in working with
16 property owners as mentioned in the letter. In three
17 instances in close proximity to be able to
18 accommodate other retail, and we're very grateful for
19 the BZA support for those applications, when having
20 seen the fact that the space had been vacant for
21 almost two years because it was not able to reliably
22 be leased to a potential retail tenant, then yes, we
23 were very much encouraging of the application to be
24 able to allow the property to be marketed for retail.
25 And that was the reason why the Commission did

1 support the application.

2 Our commission very often does split on
3 votes. We don't specifically ask why, you know,
4 certain votes are not provided on a particular case.
5 In this instance I believe that naturally there were
6 some concerns about having an undefined retail
7 operation with a party wall with a residential
8 property where the property owners and residents were
9 expressing concerns in opposition, so that would
10 naturally be the hesitation that two of my colleagues
11 would have expressed in voting to oppose.

12 CHAIRPERSON HEATH: Okay. All right.

13 MR. PADRO: But the important thing, you
14 know, to say is that I am very much aware of the
15 dynamics in the neighborhood in terms of the
16 transformation. I've been behind them. My day job
17 is as executive director of -- Shaw Main Street is
18 the commercial revitalization organization for the
19 neighborhood and we're very pleased to have been able
20 to attract over 200 now, almost 250, retail
21 businesses to the neighborhood of a wide variety of
22 types over the past 15 years. And I am you know,
23 comfortable in having negotiated on behalf of the
24 Browns to have achieved the levels of protections
25 that are incorporated into the letter that was

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1 submitted to the ANC and is incorporated in with our
2 correspondence as well.

3 So, I think that in the two cases where there
4 have been applicants of zoning relief specific to
5 that particular block related to retail, we have
6 required, you know, extensive mitigation measures.
7 1544 9th Street, the location of the upcoming Shaw
8 Bisou (phonetic) Restaurant being the most recent
9 example. And I believe that we, that the Commission
10 has acted responsively in trying to protect the
11 concerns of adjacent residential neighbors in
12 accommodating the ability to bring additional retail
13 to the neighborhood.

14 CHAIRPERSON HEATH: Okay. Thank you. And
15 thank you for taking the time to come down.

16 MR. PADRO: Absolutely.

17 CHAIRPERSON HEATH: All right. Any
18 questions?

19 MR. HILL: No, I'd just also like to thank
20 Commissioner Padro. Padro, is that correct? For
21 coming down. I mean, I know that all of the work
22 that the ANC does is very difficult and trying at
23 times. And so, you know, I appreciate you coming
24 down. Appreciate you coming down during the day to
25 help represent the neighborhood.

1 MR. PADRO: Thank you.

2 CHAIRPERSON HEATH: Okay. All right. Thank
3 you. Is there anyone here wishing to speak in
4 support of this application? Anyone in support?
5 Anyone here wishing to speak in opposition? Anyone
6 in opposition? Okay.

7 Then with that I'll turn back to the
8 applicant for any closing you'd like to make.

9 MR. COLLINS: Thank you. We do have some
10 rebuttal. There was some significant discussion
11 about property values being depressed, and we would
12 like to address that.

13 CHAIRPERSON HEATH: Okay.

14 MR. COLLINS: And we have a handout, thank
15 you, for the Board on that issue. We could just go
16 through that. Can you bring that up?

17 And I would ask, once you receive it, that
18 Mr. Lakritz could walk through that.

19 MR. LAKRITZ: I guess I'll just do this
20 quickly so that we don't belabor the point.

21 But I think Mrs. Brown brought up some
22 questions about the property values and said fairly
23 definitively that property values would go down. And
24 so I thought that it, you know, let's be clear. And
25 so what we did was we pulled property values

1 specifically of the three neighboring lots to the
2 south, which are residential.

3 MR. COLLINS: Can you identify the source of
4 this information?

5 MR. LAKRITZ: Yeah. This all comes from
6 Zillow. If nobody is -- if everybody is -- if not
7 everybody is aware of Zillow, Zillow, I believe, is
8 the largest single tracking site for real estate
9 property values in the entirety of the United States.
10 In fact they have 110 million property tax records
11 and there are, we checked this, only 117 million
12 homes in the United States. So this covers almost
13 all of them.

14 Turns out that in fact in the last 10 years,
15 and I'll direct you to page 2 of each of these
16 property records gives you a beautiful graph. And on
17 that graph, the bottom line, and this is 1523, the
18 bottom line is the Washington area from 2006, it
19 seems, to -- it's from 2016. It's the bottom line.
20 The middle line is the home in question. And the top
21 line is the Shaw neighborhood in general.

22 And what this shows is that over the last 10
23 years, during the renaissance that Commissioner Padro
24 was talking about where there was, what did you say,
25 250 new retail establishments that came into the

1 neighborhood, property values shot up. And in fact,
2 in the case of this property, recently this property
3 shot up higher than the trend line for Shaw.

4 Now, in addition, what's happened in the last
5 few years on that block is that within 150 feet of
6 our properties, there have been two restaurant and
7 bars opened. So one would think that if retail on
8 the block would shrink property values it would be
9 reflected in this data, and it's not.

10 The next page is 1521, one property to the
11 south. You see an even more -- this is actually, by
12 the way, closer to the retail of the bars and
13 restaurants. So it's now within, let's say, 120
14 feet. You see an incredibly high spike in property
15 values, above trend.

16 Going down to the next one, 1519, same, way
17 above trend in Shaw.

18 And then finally we were interested in in
19 looking from an analytical standpoint at was there,
20 on this block or maybe one block north, an example of
21 a home that is next to retail. And in fact there is.
22 And that's at the corner where there was a new barber
23 shop that went in a few years ago. And that is at
24 1508 8th Street. And I think that the chart actually
25 shows something remarkable, which is that it is way

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1 above the Shaw trend line.

2 So I think Commissioner Cohen made this point
3 that there are many examples in our city about people
4 living around and next to retail, and in fact
5 property values -- it shows that property values go
6 up as neighborhoods change.

7 MR. BROWN: Can we respond? Or, sorry.

8 CHAIRPERSON HEATH: Not quite yet.

9 MR. BROWN: I apologize.

10 CHAIRPERSON HEATH: Any further rebuttal?

11 MR. COLLINS: No, but we would like to make a
12 closing statement at the appropriate time.

13 CHAIRPERSON HEATH: Okay. Okay. Then before
14 you get to closing I will allow you to --

15 MR. BROWN: Just real quickly looking at
16 this, I guess I would point out that the spike in our
17 own home value has been while we were not adjacent to
18 a retail space. The spike in the value of 1521 is
19 due to the fact that it was torn down and rebuilt
20 from scratch into a brand new state of the art
21 townhouse.

22 The alleged barber shop on 8th Street, he
23 actually go the address wrong. That is on the corner
24 of 9th Street and Rhode Island, a block north of us.
25 So that is really far from us and not relevant at all

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1 to our daily life. I think that was all I had on
2 here.

3 MR. COLLINS: Thank you. In closing I do
4 believe -- I believe that the applicant has attempted
5 to address, in good faith, the concerns of the
6 neighbors to the south and the Office of Planning and
7 the ANC by agreeing to a certain list and then
8 further agreeing with the opportunity to eliminate
9 certain C-1 permitted uses. And also then by making
10 certain improvements to the building to protect the
11 concerns of the neighbors to the south, that's in the
12 Exhibit 29D-1, that letter that was done by Mr. Padro
13 from Mr. Lakritz.

14 In terms of the concerns of the neighbors,
15 although they mention that there are 30,000 things
16 that they are concerned about, we believe or what we
17 thought we heard was that it really came down to a
18 number of things, trash, noise, vermin, odor, and
19 hours. We think that those have been addressed in
20 the letter that was written to Mr. Padro about having
21 the trash inside, having soundproofing. The vermin
22 issue was, as described to us, was that there are
23 cracks in the concrete that allow the rodents to go
24 underground and establish habitats underneath the
25 broken concrete, and we've agreed to fix that.

1 Odors, it's just simply a matter of just keeping the
2 windows closed. We heard something about nail salon
3 and chemicals and things like that. That all can be
4 dealt with, with proper ventilation.

5 The hours of operation were something that
6 was negotiated. It's not that every business that's
7 on the list that we submitted is going to stay open
8 until 10:30. The businesses are going to decide
9 whether it makes sense for them to stay open. What
10 we're looking for is an approval for something for
11 the long-term. And so we're looking for something
12 that does fit each and every one of these instances.
13 And as Mr. Lakritz mentioned, the things that would
14 be 10:30 would be maybe a coffee shop. Maybe a wine
15 and cheese store. Things of that nature. But all
16 the other things on the list typically, you wouldn't
17 have an appliance store staying open until 10:30 at
18 night.

19 So liquor license, that's off the table
20 because we're not seeking a restaurant. Takeout
21 Chinese, we heard that. That's restaurant. We're
22 not doing a restaurant. We've agreed with Office of
23 Planning about no restaurants, no bars, no cocktail
24 lounge.

25 In closing I think what we do believe that --

1 let me just, if I may, just look through. The list -
2 - the submission that the neighbors gave we didn't
3 really have a chance to review it totally, but
4 looking at concerns under page 1 about the external
5 affects that they list, and we've tried to address
6 those in our submission and in the letter agreement.
7 And these come throughout, the foot traffic and
8 people sitting out front, it's just not likely to
9 happen. We're not doing a restaurant so there will
10 not be any sidewalk café out front. There won't be
11 any seating out front.

12 Transmission of odors, we talked about that.
13 Vermin. Food service establishments. The only thing
14 we're doing that's on the list is a prepared food
15 shop. And a prepared food shop, the definition of
16 prepared food shop says you can only prepare food by
17 either toaster or microwave. Ninety-nine percent of
18 all homes in the District have a toaster and/or a
19 microwave. So it wouldn't be doing anything that's
20 not a residential type of situation.

21 So in conclusion we do believe that we have
22 met the test for special exception relief. We have
23 worked closely with the community to the extent that
24 we can, and we've received substantial amount of
25 support through the ANC process and Office of

1 Planning, and we would respectfully request that you
2 approve the application. Thank you.

3 CHAIRPERSON HEATH: Thank you. All right.
4 So that concludes the hearing. Is the Board ready to
5 deliberate on this?

6 MS. COHEN: Yes.

7 MR. HILL: Sure.

8 CHAIRPERSON HEATH: All right. Do you want
9 to start.

10 MS. COHEN: Yeah, I'll start. I don't think
11 it's our position to get into the -- our mandate to
12 get into the weeds and micromanage, although, you
13 know, it has been negotiated certain elimination of
14 C-1 uses. But we can't, it's not part of our, as I
15 said, mandate, to tell an applicant that they can't
16 do certain other retail marketing.

17 So I think that they need to continue to work
18 with all neighbors. The ANC will continue to work
19 with all neighbors to get the type of retail that has
20 the less offensive impact on the neighborhood. I
21 think that that's been stated. It's been proposed
22 certain items that they will take to ensure the
23 control of rodents, the control of odor, the control
24 of noise. But we cannot say, you can't have X, Y,
25 and Z. They've already gone through that process

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1 with OP and the ANC, and some of the neighbors.

2 So I want to hear what my colleagues have to
3 say, but that's the position that I take, that we
4 cannot micromanage this.

5 CHAIRPERSON HEATH: Go ahead.

6 MR. HILL: I'm basically in line with what
7 you're saying. My esteemed colleague. I guess, you
8 know, the thing that I'm a little confused about and
9 I don't know how to move forward with it, is that in
10 the Office of Planning's report, you know, they say
11 that there's no restaurants, and then no cocktail
12 lounges. And then there's all the stipulations that
13 the owner has gone through. And then in the
14 stipulation it says there's going to be a restaurant.
15 Or, and so that has to be cleaned up somehow.

16 I can't take one or the other because in the
17 Office of Planning it doesn't have all the
18 stipulations. So I don't know how, Madam Chair, to
19 kind of move to a vote with that.

20 As far as the discussion, however, you know,
21 I do think that the applicant has gone through and
22 provided a lot of work in terms of you know, working
23 with the neighbors to meet the special exception
24 standard and also going through the ANC and getting
25 their approval. I also know 9th Street and the

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1 corridor, that that is -- and the retail environment
2 that is there, I didn't -- I wasn't necessarily
3 swayed by the discussion about rents and, you know,
4 those type of things. Being that the standard is one
5 where, you know, special relief as far as the
6 exception and how it adversely affects the
7 neighboring property, the neighborhood traffic,
8 noise, lighting, I think that the applicant has gone
9 and shown that they've gone -- you know, it is an
10 extensive list of standards.

11 I think that since the opposition is the
12 immediate neighbor and some of their concerns were
13 the hours, whether or not this would be something
14 that would -- you know, the Board would agree to and
15 think is appropriate. I mean, I would just to offer
16 something would be, you know, instead of 10:30 on the
17 weekdays, it goes to 10:00 on the weekdays and 11:00
18 on the weekends. That's the only stipulation that I
19 would kind of offer for discussion.

20 And then the clearing up, they're not going
21 to have a restaurant, they're not going to have a
22 bar, they're not going to have odors and supposedly,
23 you know, odors from the different things that are
24 going -- that could possibly go in there, cooking. I
25 think that as the applicant had stated, and this, I

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1 believe to be a true condition, that you know, having
2 particularly local retail have to wait through the
3 BZA process to decide whether or not they're able to
4 go in there, it does make it more difficult to
5 negotiate a lease. So those are my thoughts.

6 CHAIRPERSON HEATH: Okay. I think you both
7 made great points and I agree with them. I think if
8 we were to approve this and adopt the conditions by
9 the applicant and Office of Planning, I would
10 recommend that we strike the applicant's condition
11 number 7, which is the one that pertains specifically
12 to a restaurant use. And I don't know that there
13 would be any -- we either could strike it or we could
14 remove any reference to restaurant, which should put
15 us in a position where the two sets of conditions are
16 not -- yeah, they're not in conflict.

17 MS. COHEN: Madam Chairman, I would agree
18 with that. I think it's very important to eliminate
19 in writing in the zoning order itself, the restaurant
20 use. And I think the applicant is shaking their head
21 so they agree with that.

22 MR. COLLINS: Agree.

23 CHAIRPERSON HEATH: Okay. All right.

24 MR. HILL: That would clear it up for me
25 also, then. It's just confusing. And so just

1 getting rid of number of 7 and then everything else
2 seems very straight forward.

3 MR. COLLINS: Yeah.

4 CHAIRPERSON HEATH: Okay. All right. Then
5 with that I would move that we -- oh yeah.

6 MR. HILL: Can I ask the applicant.

7 CHAIRPERSON HEATH: I'm okay with that, but
8 just --

9 MR. HILL: What do you think about the 10:30
10 -- the 10:00 on the weekdays?

11 [Discussion off the record.]

12 MR. COLLINS: I think it's great.

13 MR. HILL: Okay. Thank you.

14 MR. COLLINS: You know.

15 MR. HILL: All right. Okay. Thank you.

16 CHAIRPERSON HEATH: Okay. So then I would
17 move that we accept the application for special
18 exception for Application No. 190 -- 19180, with the
19 conditions put forward by the applicant and Office of
20 Planning with the exception of condition number 7
21 proposed by the applicant. That one we will strike.
22 And with a modification to condition number 3 of the
23 applicant's conditions where we changed the hours of
24 operation during the weekdays, Sunday through
25 Thursday, to 7:30 a.m. to 10:00 p.m., rather than

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1 10:30. On the weekends we would still maintain 7:30
2 a.m. to 11:00 p.m. That's Friday and Saturday.

3 MR. HILL: I second.

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

6 [Vote taken.]

7 CHAIRPERSON HEATH: Okay. The motion
8 carries. Thank you.

9 MS. COHEN: Thank you very much.

10 MR. LAKRITZ: Thank you.

11 MR. MOY: Staff would record the vote as
12 three to zero to two. This is on a motion of
13 Chairperson Heath to approve the application for the
14 relief requested and the conditions as just cited by
15 the Board and modified. Seconding the motion, Vice
16 Chair Hill. Also in support, Ms. Cohen. Board
17 member not present, board seat vacant. Motion
18 carries, Madam Chair.

19 CHAIRPERSON HEATH: Thank you. Summary.

20 MR. MOY: Summary. Thank you. Oh, you
21 can't. There's a party in opposition.

22 CHAIRPERSON HEATH: Oh, right, right, right.
23 Right, right, right. Yes, full order, please.

24 [Pause.]

25 CHAIRPERSON HEATH: All right. So our next

1 application, Mr. Moy.

2 MR. MOY: All right, the --

3 [Discussion off the record.]

4 CHAIRPERSON HEATH: All right. So, Mr. Moy,
5 given some recent information we'll call Application
6 No. 19188.

7 MR. MOY: Yes, of -- Application No. 19188 of
8 Reneau Real Estate, LLC., as amended variances from
9 the FAR requirements under 402.4, lot occupancy
10 requirements under 403.2, and closed court
11 requirements under 406.1, three-story, four-unit
12 apartment house in the R-5-B district at premises
13 1719 T Street Northwest, Square 151, Lot 10.

14 CHAIRPERSON HEATH: Okay. So, please
15 introduce yourselves again.

16 MR. BELLO: Toye Bello representing the
17 applicant.

18 MR. CURELY: I'm Greg Curely, the architect
19 for the project, representing the applicant.

20 CHAIRPERSON HEATH: All right. So we
21 understand that you all have had some additional
22 conversations and you have a request for the Board?

23 MR. BELLO: Yeah, both parties have resolved
24 to welcome their differences. We're going to ask for
25 a short continuance of the case.

1 CHAIRPERSON HEATH: Oh, okay. That's great.
2 So I would gladly grant the continuance to allow you
3 to continue to work through this. Mr. Moy, he asked
4 for a short continuance.

5 MR. MOY: A short continuance being a number
6 of weeks?

7 MR. BELLO: Well, I think 30 days will be --

8 CHAIRPERSON HEATH: Oh, okay.

9 MR. CURELY: Yeah, for the next -- when is
10 the next hearing?

11 CHAIRPERSON HEATH: So end of -- every week.

12 MR. CURELY: Every week, so --

13 CHAIRPERSON HEATH: Yeah.

14 MR. MOY: All right. So --

15 CHAIRPERSON HEATH: End of March.

16 MR. MOY: Be end of March.

17 [Discussion off the record.]

18 MS. COHEN: So, do it without me.

19 CHAIRPERSON HEATH: Okay.

20 MS. COHEN: You'll do it without me.

21 MR. MOY: We're going to do it without you.

22 CHAIRPERSON HEATH: With or without you.

23 MR. MOY: All right. That would be the last
24 hearing in the month of March, Madam Chair, is March
25 29th.

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1 MS. COHEN: Yeah, I won't be here.

2 MR. CURELY: Could we do it the week before
3 that? I think we'll be ready the week before that if
4 necessary.

5 CHAIRPERSON HEATH: 22nd.

6 MR. CURELY: Which would be the 22nd, then?

7 MR. MOY: That would be good.

8 CHAIRPERSON HEATH: Okay.

9 MR. MOY: The docket is good for that.

10 MR. CURELY: We have some pretty minor
11 difference that we want to work out but --

12 CHAIRPERSON HEATH: Okay.

13 MR. CURELY: -- there would take a -- and I
14 think it would -- I would suggest too that we would
15 share that with Office of Planning --

16 CHAIRPERSON HEATH: Sure.

17 MR. CURELY: -- because some of the concerns
18 for the neighboring that we'll be dealing with might
19 have -- will want to share that with Office of
20 Planning so that he can weigh in again on whatever we
21 finally propose.

22 CHAIRPERSON HEATH: Sure. Yeah. Yes, I was
23 going to suggest that you continue to work with
24 Office of Planning to --

25 MR. CURELY: Oh, yeah. Sounds great. That's

1 -- yeah.

2 CHAIRPERSON HEATH: Get their support.

3 MR. CURELY: But I think the 22nd will -- it
4 won't take us very long to, I think, work out what we
5 need to --

6 CHAIRPERSON HEATH: Okay. All right.

7 MR. MOY: Madam.

8 CHAIRPERSON HEATH: So much --

9 MR. MOY: I'm sorry to interrupt, Madam
10 Chair, just for our record, staff records, did the
11 Board take up the issue of the party status or --

12 CHAIRPERSON HEATH: We haven't yet.

13 MR. MOY: We have not yet. Okay.

14 CHAIRPERSON HEATH: No. We're waiting. They
15 still weren't sure if they were going to withdraw
16 their request. So I'll wait until you come back
17 again and see what their position is, if they still
18 want party status we'll deal with it then.

19 MR. CURELY: Yeah. We're hoping we're going
20 to have an agreement and that they'll be supporting
21 us.

22 CHAIRPERSON HEATH: Sure.

23 MR. CURELY: So that's the intention.

24 CHAIRPERSON HEATH: Okay. Great. All right.
25 So at that point they would withdraw their party

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1 status if that is the case.

2 MR. MOY: Very good.

3 CHAIRPERSON HEATH: All right. Thank you.

4 MR. CURELY: Thank you.

5 CHAIRPERSON HEATH: March 22nd.

6 MR. MOY: All right. So the next application
7 would be parties to the table to Application No.
8 17600B of Fort Totten North, LLC., as advertised for
9 a special exception relief from the fast food
10 establishment requirements, 733, Section 733 for
11 three fast food establishments in the C-2-A district
12 at 300 through 320 Riggs Road Northeast, Square 3748,
13 Lot 52.

14 CHAIRPERSON HEATH: All right. Good
15 afternoon.

16 MR. KADLECEK: Good afternoon.

17 CHAIRPERSON HEATH: You all please introduce
18 yourselves.

19 MR. KADLECEK: Cary Kadlacek from law firm of
20 Goulston and Storrs.

21 MS. MARTINO: Samantha Martino with Fort
22 Totten North, LLC., which is a subsidiary of the JBG
23 companies.

24 CHAIRPERSON HEATH: Okay. All right. We've
25 reviewed your application and I don't have any

1 questions. It all seems pretty straight forward to
2 me. Board, do you have any questions of the
3 applicant?

4 Okay. All right. Then if you're okay with
5 us proceeding on without a full presentation, we'll
6 do so.

7 MR. KADLECEK: Yes, we're comfortable
8 standing on the record. Thank you.

9 CHAIRPERSON HEATH: Thank you. Does Office
10 of Planning have any additional comments you'd like
11 to make?

12 MR. MORDFIN: Hi. Good afternoon. I'm
13 Stephen Mordfin. The Office of Planning has no
14 additional comments and continues to support this
15 application.

16 CHAIRPERSON HEATH: Okay. Thank you. Board,
17 any questions of Office of Planning?

18 MS. COHEN: No.

19 CHAIRPERSON HEATH: I assume you don't have
20 any questions of Office of Planning?

21 MR. KADLECEK: No, I have no questions.
22 Thank you.

23 CHAIRPERSON HEATH: All right. We also have
24 a letter of no objection from the Department of
25 Transportation and I assume nobody is here from

1 Department of Transportation on this application.

2 In addition we have a letter recommending
3 approval from ANC 4B. And is there anybody here from
4 ANC 4B? All right. Is there anyone here wishing to
5 speak in support of this application? Anyone in
6 support? Anyone in opposition? Any opposition?
7 Okay.

8 Then we will turn back to the applicant for
9 any closing you might want to make.

10 MR. KADLECEK: We have nothing further.
11 Thank you.

12 CHAIRPERSON HEATH: Okay. Thanks. Is the
13 Board ready to deliberate on this?

14 MR. HILL: Yes.

15 CHAIRPERSON HEATH: Okay. I would make a
16 motion that we approve the special exception request
17 for fast food use under 733 for Application No.
18 17600B.

19 MS. COHEN: Second.

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

22 [Vote taken.]

23 CHAIRPERSON HEATH: The motion carries.
24 Thank you.

25 MR. KADLECEK: Thank you.

1 MS. MARTINO: Thank you very much.

2 MR. MOY: Staff would record the vote as
3 three to zero to two. This is on the motion of
4 Chairperson Heath, seconding the motion, Ms. Marcie
5 Cohen, also in support Vice Chair Hill. We have a
6 board member not present, seat vacant. This is for
7 the relief as requested and I believe there's no
8 conditions to this. Am I correct? I just want to
9 double-check. You didn't mention it so --

10 CHAIRPERSON HEATH: No.

11 MR. MOY: All right. I just wanted to
12 double-check that.

13 CHAIRPERSON HEATH: I don't think we need to
14 make them a part of the order.

15 MR. MOY: That's good. So the motion
16 carries. Summary order? Or not?

17 CHAIRPERSON HEATH: Yes.

18 MR. MOY: Okay.

19 CHAIRPERSON HEATH: Summary order. And we'll
20 take a quick three minute break and then we'll come
21 back with Application No. 19153.

22 [Off the record from 12:52 p.m. until 1:03
23 p.m.]

24 CHAIRPERSON HEATH: All right. We're ready
25 to get back to the fun. Let's see. Independence.

1 All right, Mr. Moy, do you want to call our next
2 case?

3 MR. MOY: Okay. I'll take a stab at this,
4 because I believe it's Application No. 19153 of
5 Independence Avenue Investments, LLC., as advertised,
6 captioned for variance relief from the off-street
7 parking requirements under Section 2101.1. This is
8 for parking spaces, or rather a commitment for
9 parking spaces for car sharing service in the R-4
10 district at premises the rear of 1524 Independence
11 Avenue Southeast, Square 1072, Lots 2025 through
12 2032.

13 [Pause.]

14 CHAIRPERSON HEATH: All right. Good
15 afternoon. Would you please introduce yourself?

16 MS. VITALE: Good afternoon, Madam Chair.
17 I'm David Crowley. I'm the president of Capitol
18 Properties Group representing -- or I'm actually half
19 owner of Independence Avenue Investments, LLC., the
20 applicant. And I self-certified.

21 CHAIRPERSON HEATH: Okay. All right. I
22 think there's a lot of confusion around this
23 application.

24 MR. CROWLEY: I'm sure of it.

25 CHAIRPERSON HEATH: Right. Okay. So we are

1 going to need you to --

2 MR. CROWLEY: I'm confident I can walk you
3 through it.

4 CHAIRPERSON HEATH: That would be good. I
5 think both for our sake and for the sake of Office of
6 Planning, I think that would be helpful. We'll see
7 what other questions Office of Planning has to get
8 clarity around this so that they might get to a
9 position of approval. But right now you have a lift
10 to get to a point of approval. So.

11 MR. CROWLEY: I'm fairly strong. Yes.

12 CHAIRPERSON HEATH: All right.

13 MR. CROWLEY: Overdressed, though, for a
14 workout.

15 CHAIRPERSON HEATH: Right. Well, hopefully
16 you don't sweat. So let's -- I'll let you take it
17 from here with your presentation.

18 MR. CROWLEY: Certainly. And even though
19 there are now 42 exhibits as part of this case, I
20 handed out two and I have maybe one or two other
21 letters that are the most significant part of the
22 case.

23 And just quickly in background, this property
24 was developed as a condominium. Although there are
25 two different lots, that's the most important thing.

1 There's Lot 81 and Lot 80. Both in Square 1072,
2 obviously in two different addresses. But for all
3 intents and purposes it's one condominium
4 association, it was one project that completely sold
5 out, I guess going on nine years now, with the
6 exception of certain lots in the back that are what
7 everything -- all this discussion is about. There's
8 nothing about any project that's pending. It's all
9 about the aftermath here.

10 And the most -- I think the best way to
11 handle this is maybe go lot by lot, perhaps Lot 81
12 first, because they are almost two different --
13 they're very dissimilar cases, almost, or needs. But
14 overall, we're seeking 50 percent relief under the
15 requirements of 2101. Nine years later. The best I
16 can phrase it.

17 However, I will state our position is clear
18 in Exhibit 31, which is the letter from Susan Kelly
19 dated -- or uploaded on December 1st. That is dated
20 January 23rd, 2008, which clearly states that the
21 structure was built in 1956. The envelop, the
22 building envelope was not expanded at all, and
23 everyone is aware that the parking regulations don't
24 apply until structures built after 1958.

25 But Mr. LeGrant and I had a meeting in June.

1 I did more research after the meeting and his
2 position has been fairly unflinching that eight
3 spaces are required for each lot because each
4 building has had 12 units and has 12 units. It just
5 stayed the same. Twenty-four total.

6 But what I've handed out to you is clearly
7 the conditions at the time of sale in 2004. The
8 entire building was surrounded by an existing fence
9 that is also shown in a photograph taken in 2005 that
10 surrounds both buildings, thereby making it a chain
11 link fence without entry. Thereby making it
12 impossible to offer parking of any kind at the time
13 of the sale and the development and the permit. All
14 in that 2004 to 2006 time frame.

15 However, in the photo you see a truck that
16 looks like it's sort of, you know, maybe it's the
17 maintenance guy. I don't know. But the bottom line
18 is that at a minimum perhaps there were two parking
19 spaces at the most on the existing asphalt on Lot 81.
20 So not eight, but two.

21 And flash forward from there, from those
22 photographic evidence, the first closing started to
23 occur, I believe in late -- probably late '08. And
24 only two parking spaces were sold, period. So our
25 position is that we're in compliance.

1 Well, if we're in compliance we got a rude
2 awakening when DCRA told us we weren't. We have to
3 provide eight spaces. And I had signed an agreement
4 after the property was fallow for years and years
5 with car sharing, thinking it would be an amenity all
6 the folks would use it and enjoy it, which for the
7 most part in our opinion, in our eyes, it was.

8 But we began to get complaints from the
9 people in the condominium association, and it became
10 evident when the DCRA inspector came and looked and
11 said, well, the way the law works in this particular
12 case is by right you can have two spaces for car
13 sharing. We had three.

14 So if you look back to my first application,
15 September, it was to get relief to allow three car
16 sharing spaces, which if you look at the plat would
17 be P5, P7, and P8.

18 After going through several ANC planning
19 committee -- well, getting, obviously my application
20 in triggered ANC planning committee meetings. It
21 became apparent that their car sharing would only
22 extend to what was allowed by right. In other words,
23 the third space had me out of compliance, which is
24 why I changed the application following the full ANC
25 meeting where they did support me 7/0, but the

1 premise being once again, they're not in support of
2 car sharing but they're not going to vote against
3 something that's allowed by right, which is two
4 spaces. But that's a micro issue.

5 The macro issue is this four spaces for the
6 condo behind each building, even though until 18
7 months ago there was grass and dirt behind Lot 80.
8 And Lot 81, Mr. LeGrant specifically pointed at P4,
9 if you look to the plat, it straddles what I thought
10 was the former property line. But property lines
11 don't disappear just because they're part of a condo
12 regime. So the only way to correct that is going to
13 be to submit a new plat, revised plat, that would be
14 sure that P4, which is Lot 29, I believe, no longer
15 straddles the lot.

16 Well, what that does is slides everything to
17 the west by five feet, which takes -- the telephone
18 pole is also, you can see in photos, and I've pointed
19 in numerous descriptions in my statement of use, ends
20 up skinning down my P1, down to eight feet which is
21 a noncompliance. And P1, although it shows 10 feet
22 here obviously can't be 10 feet anymore because we're
23 only working with 35 total. If we move off of this
24 straddling condition.

25 So the measurement, and I've taken this

1 several times with a surveyor is -- there is 18 feet
2 from the property line to the telephone pole.
3 Eighteen. That means that P4 and P3 could be nine
4 feet each, even though they're currently platted as
5 10 feet wide. Still in compliance, nine by 20. On
6 the west side of the pole, once you include the pole
7 of one foot, you're only left with 16 feet, which
8 means I have two -- we would have two spaces of eight
9 feet wide each. I am not, in this application,
10 looking for any kind of approval for compact spaces.
11 I'm just trying to figure out and get the Board's
12 support of reduction of 50 percent on the requirement
13 of 2101, meaning the two spaces that were sold, P3
14 and P4, would meet the requirement for Lot 81, and
15 then behind Lot 80 there would be two spaces reserved
16 for residents. And we would work out some kind of
17 economic deal. And the other two spaces would be for
18 car sharing, by right. Just two. And we've already
19 had correspondence with the car sharing company to
20 remove the third car and it probably is gone already.
21 Certainly by the end of the month.

22 And that is about it for my introduction and
23 background. But I have numerous other exhibits that
24 have been uploaded to ISIS and I have hard copies of
25 everything here if you need any more clarification.

1 But we are seeking a resolution to all this that will
2 allow, by right, to have car sharing, but not be in
3 violation any more of this parking reservation per
4 2101.

5 CHAIRPERSON HEATH: Okay.

6 MR. CROWLEY: Or allocation, let me call it.

7 CHAIRPERSON HEATH: Let me make sure I
8 understand then. You're proposing to have two -- is
9 it two spaces on Lot 81, or --

10 MR. CROWLEY: Two spaces already exist and
11 have been sold to condo residents on Lot 81.

12 CHAIRPERSON HEATH: Right.

13 MR. CROWLEY: We're proposing to replat the
14 rear section of 81 to get off the straddling because
15 we were told that's a noncompliance.

16 CHAIRPERSON HEATH: Uh-huh.

17 MR. CROWLEY: How this got filed, how a
18 permit was -- C of O. Went through everything 10
19 years ago. Now we're here.

20 CHAIRPERSON HEATH: Right.

21 MR. CROWLEY: Okay? But we're not going to
22 fight it anymore. We're going to fix it. So we're
23 in compliance of we're granted the relief on Lot 81,
24 instantaneously.

25 CHAIRPERSON HEATH: Okay. So just keeping it

1 as is with the two existing spaces on Lot 81.

2 MR. CROWLEY: Correct. But we have to replat
3 it to get off the -- P4 can no longer be straddled.

4 CHAIRPERSON HEATH: Understand.

5 MR. CROWLEY: And the owner of P3 is here and
6 she'll testify next, I assume, and we obviously need
7 to work with her and the condo association to get
8 this fixed because we need to get in compliance.

9 CHAIRPERSON HEATH: Right. I'm assuming that
10 P1 and P2 are the existing spaces. So that's --

11 MR. CROWLEY: They're not even existing
12 spaces.

13 CHAIRPERSON HEATH: Okay.

14 MR. CROWLEY: They never got fully paved.
15 They are, and if you look at the -- you can tell the
16 different differential if you look at the existing
17 conditions, a single sheet, there is a -- there was a
18 chain link fence that ran right down the side of the
19 telephone pole --

20 CHAIRPERSON HEATH: Got it.

21 MR. CROWLEY: -- that segmented those
22 particular -- that dirt, call it, because that's what
23 it was, away from what I would call two legitimate
24 spaces.

25 CHAIRPERSON HEATH: Okay. All right. So you

1 would have P3 and P4, essentially, on Lot 81. And
2 then all four of the spaces that are shown on the
3 plat on --

4 MR. CROWLEY: Correct.

5 CHAIRPERSON HEATH: -- lot 80?

6 MR. CROWLEY: Correct.

7 CHAIRPERSON HEATH: All right. Two of which
8 you're proposing for car share.

9 MR. CROWLEY: Correct.

10 CHAIRPERSON HEATH: Okay.

11 MS. COHEN: Yeah, I just -- I just have a
12 clarification. Again, were you involved with the
13 condominium, conversion to condominium? Were you --

14 MR. CROWLEY: My wife handled that project.
15 Yes.

16 MS. COHEN: Okay. So the condominium regime
17 was issued and accepted by whom in the city? I mean,
18 it doesn't sound --

19 MR. CROWLEY: By the board. By their board.

20 MS. COHEN: By the board. But it has to be
21 submitted to an entity in the city. Do you recall
22 who that would be?

23 MR. CROWLEY: Office. I don't know. It's a
24 little out of my expertise. Office of Planning, I
25 don't -- no, surveyor. I mean, this is the official

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1 surveyor plat I handed out.

2 MS. COHEN: I don't recall myself. I think I
3 knew that answer 20 years ago but I don't recall
4 anymore. Maybe OP will. No?

5 I just think that, you know, again, the right
6 hand is not talking to the left hand. But somebody
7 in the city had to approve the condo regime is my
8 understanding on that.

9 MR. CROWLEY: Absolutely it was approved.

10 MS. COHEN: Okay. I just need that kind of
11 background.

12 MR. CROWLEY: but I will say the current
13 conditions don't match what's on the plat. I've
14 pointed it out, the condo association wrote their own
15 letter which is, I think, Exhibit 42 or 43, where
16 they pointed out that they don't match current
17 conditions. We're trying to get a plat that matches
18 current conditions, while at the same time I'm
19 seeking the relief so that we don't have to provide
20 eight parking spaces. Frankly, there's no interest
21 from those. People don't drive their cars anymore.
22 Car ownership is done by 60 percent or something.
23 And if you're closer to street cars and Metro and
24 everything else.

25 And I purposely selected -- my original

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1 application was 75 percent of relief because I felt
2 we'd be in compliance right away. However, I scaled
3 it back to 50 percent as just an idea just to have
4 everybody satisfied that the car sharing would go
5 down to two spaces.

6 CHAIRPERSON HEATH: Do you know of the owners
7 in the two buildings, what percentage currently have
8 cars?

9 MR. CROWLEY: I would say -- well, the lady
10 can speak next, Rochelle can tell you. But I would
11 say 80 percent of them do not have cars.

12 CHAIRPERSON HEATH: Okay.

13 MR. CROWLEY: They're just back in the
14 envelope.

15 CHAIRPERSON HEATH: What's the closest Metro
16 station?

17 MR. CROWLEY: They're between Potomac and
18 Armory. Very close to both.

19 CHAIRPERSON HEATH: Okay. All right.

20 MR. CROWLEY: And I purposely, I didn't
21 finish my thought, the 50 percent matches all the
22 zoning changes regarding parking that take effect in
23 September. And we meet all the criteria here in the
24 condo building, except there's no retail. So it's
25 not a mixed use building.

1 But Independence Avenue is not a street that
2 is a neighborhood preservation of two hours,
3 neighborhood parking, and it meets all the other
4 criteria. So we feel that --

5 CHAIRPERSON HEATH: It doesn't have the two-
6 hour restriction?

7 MR. CROWLEY: It does not.

8 CHAIRPERSON HEATH: Okay.

9 MR. CROWLEY: So it does fit the new
10 regulations that were passed last month to take
11 effect in September.

12 CHAIRPERSON HEATH: All right.

13 MR. CROWLEY: Now, if we had a little tiny
14 retail store on the first floor it could qualify as a
15 mixed use building and we could quality that way.

16 CHAIRPERSON HEATH: Okay. All right. Board,
17 any other questions? Okay. All right. All right.
18 Then if that concludes your presentation I'd like to
19 see where Office of Planning is on this based on what
20 you've explained to us today.

21 MS. VITALE: Good afternoon, Madam Chair,
22 Members of the Board. For the record, Elisa Vitale
23 with the Office of Planning.

24 I just heard some new information so I think
25 based on what I've just heard I don't think that the

1 Office of Planning can recommend approval. I think
2 there's still some work that needs to be done here.
3 It is my understanding that a total of eight spaces
4 would be required. I think based on this latest
5 information I think there's still a question as to
6 how many conforming spaces there are on the lot,
7 either regular or compact and kind of, I think it
8 would be incredibly helpful to have an accurate plat
9 moving forward as we work through this case.

10 I guess my first concern with respect to the
11 four spaces proposed on Lot 80 and the indication
12 that there would be two spaces for residents and then
13 two car share spaces, there aren't four conforming
14 spaces there to begin with. I think there are only
15 three spaces that meet the minimum parking
16 dimensions. And then I also understand that those
17 two car sharing spaces that are being proposed as an
18 accessory use under Section 301.1 can't take the
19 place of required spaces.

20 So I think we need to satisfy the required
21 parking on site first before we even enter into a
22 discussion of additional car share spaces. So I
23 think the exact nature of the relief needs to be more
24 clearly defined and then obviously I think the
25 applicant would need to provide, you know, a

1 statement of justification with respect to how it
2 meets the three-part test.

3 CHAIRPERSON HEATH: Sure.

4 MS. VITALE: For relief, for OP to be able to
5 conduct an analysis.

6 CHAIRPERSON HEATH: Okay.

7 MR. CROWLEY: May I respond?

8 CHAIRPERSON HEATH: Sure.

9 MR. CROWLEY: My --

10 CHAIRPERSON HEATH: Well, one second.

11 MR. CROWLEY: Go ahead.

12 CHAIRPERSON HEATH: You had a question?

13 MS. COHEN: Yeah.

14 CHAIRPERSON HEATH: Go ahead. And then you
15 can respond.

16 MS. COHEN: Ms. Vitale, this has been around,
17 this particular building has been around for I don't
18 know how many years but --

19 MR. CROWLEY: 1956.

20 MS. COHEN: Wouldn't it be grandfathered?

21 MS. VITALE: That is a question and the
22 applicant could certainly get a determination from
23 the Zoning Administrator since he did indicate that
24 he met with Mr. LeGrant and that he did indicate that
25 eight parking spaces were required. It did seem to

1 me that the Zoning Administrator was making a call in
2 this instance that this property would not be
3 grandfathered with respect to parking.

4 MS. COHEN: But again, you know, we are
5 talking about fewer -- people sell, you know, their
6 properties, obviously and other people may say, you
7 know, I want to buy this space. So we have to kind
8 of not look at just today, but the opportunity to be
9 able to you know, sell their space. But again, I
10 think that you need greater clarification to
11 readjust, maybe, your review. But also, why would
12 DDOT come up with no problem and there seems to be
13 that, you know, confusion in my mind as to -- when it
14 comes to parking, that OP has the problem and not
15 DDOT.

16 MS. VITALE: I don't know that we have a
17 problem. Like I said, I think we need to understand
18 what you know, based on an accurate plat, what exists
19 there today and what exactly the applicant is
20 proposing. And then what relief might be required to
21 get to that ultimate, you know, situation of what the
22 applicant seeks here.

23 I can say, the applicant mentioned a 50
24 percent reduction under the proposed Zoning
25 Regulations that will go into effect in September.

1 That wouldn't apply to this property. This property
2 is zoned R-4. That 50 percent reduction isn't
3 applicable to the lower density residential zones. I
4 will, however, note that under the Zoning Regulations
5 when they go into effect in September, CarShare can
6 take the place of required parking, so that is
7 something that would make this application kind of a
8 bit easier come September. That is something that
9 change when the new Zoning Regulations go into
10 effect.

11 And I think that is part of the reason I
12 think DDOT is saying, you know, we don't essentially
13 have an issue with CarShare and having CarShare in
14 this location. So I think that's why they may have a
15 more supportive letter in the record versus the OP
16 report.

17 MS. COHEN: Well, I think there needs to be a
18 meeting again with greater justification from the
19 applicant. And I know that September 6th is the day
20 that we will be implementing the zoning rewrite. I
21 don't know if any exceptions can be made to that.
22 OAG may be able to, you know, give us a hint, because
23 again, I don't think we want to postpone something
24 until September to make it fit. But that's only, you
25 know, this person's opinion.

1 So if you can do that little research as
2 well?

3 MS. VITALE: Sure. We can look into that.

4 MS. COHEN: I don't know if my colleagues
5 have any other comments, but there seems to be
6 another need for a meeting.

7 CHAIRPERSON HEATH: One other question for
8 you. If the applicant were to meet with Mr. LeGrant
9 and he found -- it sounds like he hasn't so far but
10 he found that this building was grandfathered and so
11 they haven't had to meet the parking requirements,
12 would that be sufficient for you?

13 MS. VITALE: Sure. Yeah, that would --

14 CHAIRPERSON HEATH: For this, the first part
15 of the request.

16 MS. VITALE: Right.

17 CHAIRPERSON HEATH: Okay. Okay.

18 MR. CROWLEY: May I clarify something?

19 CHAIRPERSON HEATH: Sure.

20 MR. CROWLEY: Is, I did meet with Mr. LeGrant
21 last June. He did not mention whatsoever this ruling
22 on grandfathering. I'm completely unaware of what it
23 was until I went and researched the files in our
24 company directory, found this memorandum which is
25 extremely clear that says, we didn't change the

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1 envelop of the building. It was built in '56.

2 There's no argument on that.

3 I went back to Mr. LeGrant in a series of
4 calls, series of e-mails back and forth for weeks,
5 and he never changed his position. That he never
6 said it wasn't grandfathered, he just repeatedly
7 said, and I have a copy of his e-mails, that it's
8 four spaces behind each building, eight spaces total.
9 And his position hasn't changed.

10 CHAIRPERSON HEATH: Sure. It may be
11 helpful --

12 MR. CROWLEY: And I don't know why.

13 CHAIRPERSON HEATH: Yeah, and I'm not sure
14 either. It may be helpful for you to sit down with
15 him and --

16 MR. CROWLEY: Again.

17 CHAIRPERSON HEATH: -- and just present
18 exactly what you're trying to do because I know for
19 us it was confusing when we looked at the information
20 without your explanation.

21 MR. CROWLEY: Of course.

22 CHAIRPERSON HEATH: You talking through it.
23 You can, for him --

24 MR. CROWLEY: But let me be clear about this
25 discussion on inaccuracies of surveys and plats and

1 everything. This is the plat. It's the recorded
2 plat. There's no argument. But what doesn't match
3 are the conditions in the field so to speak. Don't
4 match the plat. We're trying to fix the plat, but at
5 the same time I need the relief on the parking
6 because while we fix the plat a telephone pole comes
7 into effect on one side, the car sharing comes into
8 effect on the other side with Lot 80. And further, I
9 will point out, we're one foot short with Lot 80. So
10 in essence, P5 and P6, there's an argument, are
11 noncompliant because we're one foot short to get out
12 to the alley.

13 MS. COHEN: Well, again, I would think --

14 MR. CROWLEY: It's eight feet wide.

15 MS. COHEN: -- DDOT would kind of comment on
16 that because it has to do with maneuverability and so
17 I'm really confused about this project. It just
18 didn't really hold together for me. So I think DDOT
19 has to also, you know, comment on maneuverability.
20 You know, one foot does not seem like a lot but there
21 may be a reason.

22 MR. CROWLEY: you can get in and out of there
23 very easily.

24 MS. COHEN: Yeah.

25 MR. CROWLEY: But what we're talking about is

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1 plat, boundary lines, and eight feet, nine feet. And
2 it's coming down to feet here and there, and the
3 telephone pole and --

4 CHAIRPERSON HEATH: Understood.

5 MS. COHEN: Yeah, I just --

6 MR. CROWLEY: But the relief would solve all
7 of that.

8 MS. COHEN: But we're not in a position to
9 give you relief today because we need to give great
10 weight to the Office of Planning.

11 CHAIRPERSON HEATH: Right.

12 MS. COHEN: And I'm uncomfortable moving
13 ahead without fully understanding why the Zoning
14 Administrator is being so firm on his position
15 knowing this building was built, you know, so long
16 ago. So you know, maybe also, Ms. Vitale, you can
17 also check in with him as to why he's being so rigid.

18 MS. VITALE: No, I think it would be helpful
19 to have a meeting with the Zoning Administrator as
20 well as the applicant and we can certainly bring DDOT
21 in to that.

22 CHAIRPERSON HEATH: That would be great. All
23 right. So I think before we can make a decision on
24 this we're going to need that meeting to happen, and
25 then for any outcome from that meeting to come back

1 before the Board so we can get some clarity and
2 hopefully Office of Planning can come back in support
3 of this application because as my colleague has said,
4 the Office of Planning does get great weight in our
5 decision making process.

6 I think I'm going to proceed through the rest
7 of the hearing so -- right. Even though we
8 understand that we're going to table this decision
9 for a later date.

10 Is there anybody here from ANC 6E?

11 MR. CROWLEY: It's 6B.

12 CHAIRPERSON HEATH: Is it B?

13 MR. CROWLEY: Yeah.

14 CHAIRPERSON HEATH: Okay. ANC 6B. Nobody
15 here from the ANC?

16 Okay. We do have a letter from them
17 recommending approval with some stipulations. Have
18 you seen those?

19 MR. CROWLEY: Yes.

20 CHAIRPERSON HEATH: Okay.

21 MR. CROWLEY: I meet them.

22 CHAIRPERSON HEATH: Okay. Is there -- also,
23 we've said on the record that we do have a letter of
24 no objection from DDOT. I assume there's nobody from
25 DDOT here. And so hopefully the meeting that you

1 have will involve Office of Planning, Mr. LeGrant,
2 and DDOT so that you can all be on the same page with
3 what's proposed and what relief is necessary for what
4 you're trying to accomplish.

5 Is there anyone here wishing to speak in
6 support of this application? Anyone in support?
7 Anyone in opposition?

8 MS. ABDULLAH: Yes.

9 CHAIRPERSON HEATH: Please come forward.

10 Were you all here first thing this morning to
11 be sworn in?

12 MS. ABDULLAH: Yes. Oh, you didn't.

13 CHAIRPERSON HEATH: Okay. Okay. So --

14 MR. MOY: I was going to go to the -- I'll
15 take care of it. That's all right.

16 [Oath administered to the participants.]

17 MR. MOY: Thank you.

18 CHAIRPERSON HEATH: All right. I'll let you
19 all introduce yourselves.

20 MS. ABDULLAH: It's still green. Oh, now
21 it's good afternoon. My name is Rashida MacMurray
22 Abdullah. I am the owner of P3 represented on the
23 plan, and also I'm a member of the condo association
24 board.

25 CHAIRPERSON HEATH: Okay.

1 MS. MURRAY: My name is Alice Murray and I
2 don't own a parking space but I live in the building
3 and I'm on the Board. I'm in 1520 Independence
4 Avenue. So I'm on the condo board.

5 CHAIRPERSON HEATH: Okay.

6 MS. COLEMAN: And my name is Michelle Coleman
7 and I reside at 1532 Independence Avenue.

8 CHAIRPERSON HEATH: Okay. All right. We're
9 going to give you each three minutes to make your
10 statement.

11 MR. MOY: Excuse me, Madam Chair, are they
12 representing themselves or are they representing the
13 condo board? Because it will be five minutes if
14 she's representing --

15 CHAIRPERSON HEATH: If it's the board.

16 MS. ABDULLAH: Oh, okay. All right.

17 CHAIRPERSON HEATH: You want to represent the
18 board?

19 MS. ABDULLAH: Represent the board and
20 myself.

21 CHAIRPERSON HEATH: Okay. All right.

22 MS. ABDULLAH: Okay.

23 CHAIRPERSON HEATH: So you'll get five
24 minutes and those who are representing just
25 themselves, not the board, will get three. If you

1 don't need the full five you don't have to take it.
2 It's up to you.

3 MS. ABDULLAH: Thank you, Madam. I can
4 proceed?

5 CHAIRPERSON HEATH: Yes.

6 MS. ABDULLAH: Okay. Great. So I'll start.
7 I'll do the first, the easy one is myself as the
8 owner of P3. I purchased the parking space from the
9 developer in 2007 when I purchased my unit. At the
10 time the plats that were provided in the initial
11 public offering statement indicated that there were
12 eight parking spaces. During the chorus of sale I
13 think the units ended up selling out by May. We were
14 fully occupied.

15 Prior to that several owners had expressed
16 interest, but only two of us were able to make a deal
17 with the developer to purchase the units.

18 At the time of purchase the area, which is
19 indicated by P5, 6, 7, and 8, was paved over. The
20 current conditions, the plat actually shows P4, the
21 line going through P4. But if you actually go -- if
22 you actually look at the existing space that edge of
23 P4 actually lines at the end of that line. So when
24 you come up there's a real demarcation, the end of
25 the alley is aligned with P4. My space, P3, has a

1 telephone pole. And then P2 could be a regular sized
2 parking space but P1 currently sits about five or six
3 feet. So it would never necessarily be in
4 compliance.

5 At the time, to make a long story short, the
6 remaining spaces were never built. At some point
7 probably four or five years ago, the developer dug up
8 the asphalt from P5, P6, P7, and P8. Then a couple
9 years later, maybe about two years later, the car
10 sharing -- I'm actually not sure about dates because
11 I kind of travel. But then the car sharing was
12 introduced with three spaces.

13 The car sharing space for P8 actually was
14 paved over in blacktop, I guess to make it
15 conforming, which actually sits on the sidewalk for
16 1524, and then P6 was marked at do not use.

17 When the plan was submitted to the unit
18 owners these were listed as tandem spaces, meaning
19 that the access for these parking spaces would only
20 be on the 16th Street side, and it was never
21 contemplated because of the tightness, and I could
22 see why DDOT would have had that because in order to
23 make the parking space, the turn access to get into
24 P5, you are coming against P3 and P4, which is where
25 my car and my other neighbor's car sits.

1 The second issue -- looking at my time. The
2 second issue that has kind of come to light, over a
3 series of discussions at the time when the building
4 was transferred over to the unit owners, there was
5 multiple discussions about where the dumpster should
6 go. It's a building between four units so obviously
7 we are not serviced by D.C. government, so we have to
8 provide private trash removal.

9 Before the condo was in effect, the developer
10 contracted with Bowie's, Bowie's to do our trash
11 removal. They still continue to do our trash
12 removal, but they had not designated actual location
13 for the dumpster. So once we had discussion, there
14 was some discussion about putting it at P6 because of
15 the fact that you couldn't really get to P6. Then
16 what happened is there was an issue with the alley
17 access, and so at some point I would probably say in
18 2007, 2008, at the latest, the dumpster was moved to
19 its current location which is P1.

20 Currently the applicant is looking to get a
21 reduction on the parking spaces with the intent, one,
22 that you know, you get a variance from not being
23 compliant. But it really doesn't issue -- resolve
24 the issue about the dumpster. We would say that
25 after nine years we think that we have a right by

1 necessity for the location of the dumpster. At the
2 time, the developer was quite aware that they knew
3 that they had to provide a dumpster for the building,
4 and now should not be able to rely, nine years later
5 to say, you know, these are parking spaces and we
6 need relief from this space.

7 So the two issues that we are most concerned
8 about is, where does our dumpster go. It's currently
9 right now in a public alley, and then the proposed
10 residential parking spaces, I don't know how that
11 would work because again these are tandem spaces.
12 So, I don't know how people would kind of manage with
13 the car sharing and getting those in and out.

14 Did I miss anything?

15 MS. COLEMAN: No, I think you covered it very
16 nicely.

17 MS. ABDULLAH: Okay. Oh, there was a comment
18 by the applicant. I would probably say 75 percent of
19 the unit owners in the buildings have cars. We do
20 have -- we're zone 6, so our street parking is
21 limited if you don't have a zone 6, you know,
22 regulation and, you know, there's no regulation on
23 the weekends. We're also located next to RFK, so
24 that also means that when there's sporting events,
25 which used to be an issue when there was football,

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1 but not so much now. But you know, there are a lot
2 of activities at RFK that can make the parking.

3 And we are also on an emergency evacuation
4 route so that when does snow the cars have to get off
5 Independence Avenue. Thank you.

6 CHAIRPERSON HEATH: Thank you. Okay.

7 MS. COLEMAN: Good afternoon. I am basically
8 here to make sure everyone understands that the
9 burden of the parking and the CarShare is not borne
10 simply by the residents of the condo association.
11 There are three row houses in that block and we are
12 in the center of those three. And the, I guess it's
13 parking spaces, P7 and P8 are the closest to us.
14 There is limited space back there. And I'm not
15 quibbling about the number of parking spaces that
16 have to be designated for the condo unit. I'm
17 indifferent as far as that's concerned.

18 I guess my real concern has to do with this
19 commercial CarShare use being where it is. I
20 understand that times have changed. I do understand
21 that not everyone drives, not everyone owns a car,
22 but I can tell you from living at 1532, or having
23 family members who have lived there before me, the
24 parking situation on that block has changed
25 dramatically from 10 years ago until today. Sure,

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1 there's CarShare now, but trust me there are plenty
2 of cars and parking is plenty tight on Independence
3 Avenue.

4 Our main concern really has to do with
5 safety. I'm not going to belabor the points about
6 trash and noise. That's obvious. There's no point
7 in going down that road again. But I do have a
8 significant safety concern. We are talking about a
9 CarShare service that would be available to anyone
10 who participates. It's one thing to have an amenity
11 for my neighbors who live in the condo building next
12 door. It's another to welcome whomever in that alley
13 behind these residences whenever, with no control.
14 With no control at all. And you don't even have the
15 benefit of vehicular traffic or foot traffic on
16 Independence Avenue to give you some additional sense
17 of security. And your alternatives are limited
18 because you don't necessarily want to have brighter
19 lights back there because we are talking about
20 people's bedrooms and bedroom windows. And that's
21 not going to work either.

22 This is just one more thing on top of all the
23 other things that seem to keep popping up. We've got
24 people who buy the lots, and the courtyard area in
25 the back, and strip it for paid parking. You've got

1 CarShare next door. We've got CAD construction and
2 drama, and now I'm told there's a 7-Eleven coming.
3 We've just got to save some little bit of peace
4 wherever we can.

5 So again, I could care less about the plat.
6 The plat, the parking spaces, the number of parking
7 spaces. I've got a real problem with the CarShare
8 service and the safety concerns that it presents.
9 Thank you.

10 CHAIRPERSON HEATH: Thank you. Sure you can.
11 Before you do, if the Board has questions of the
12 witnesses we'll --

13 MR. CROWLEY: Of course.

14 CHAIRPERSON HEATH: -- hear those first.

15 MS. COHEN: Thank you, Madam Chairman.
16 Chairwoman.

17 My question about parking and you would be
18 more comfortable -- I'm sorry, I forgot your name.
19 It's?

20 MS. COLEMAN: Coleman.

21 MS. COHEN: Coleman. Very articulate. But
22 my question is, if those spaces were available to the
23 owners of the condo units, you would have less of a
24 problem?

25 MS. COLEMAN: I would have less of a problem.

1 MS. COHEN: Okay, because you would know that
2 those people are more familiar.

3 MS. COLEMAN: They are spaces who belong to
4 my neighbors. It is not a commercial enterprise to
5 benefit people who don't have the burden of the day
6 to day people five feet outside of the condo bedroom
7 window.

8 MS. COHEN: Now, the additional trash and
9 noise, you're claiming that they are coming from
10 people who use the CarShare as opposed to, like in my
11 alley I have trash -- I mean, people who collect
12 trash, you know, just they like to walk down alleys.
13 So you're confident that they are the CarShare
14 people?

15 MS. COLEMAN: I'm not -- I really am not
16 qualified to speak to that point. I'm far enough
17 removed from the dumpster and the spaces themselves.
18 I defer to the residents of the building on that
19 issue.

20 MS. ABDULLAH: Yeah, we have picked up
21 numerous trash from that area on several occasions.
22 You know, currently the way the property is situated,
23 no maintenance has been done by current owner,
24 Independence Investment. So for instance, you know,
25 we have five feet of snow or whatever, or two feet of

1 snow we had recently, you know, no one comes out and
2 then it becomes kind of like one of the cars were
3 parked kind of like in a strange like space, angel
4 that was like kind of hanging out. So then residents
5 couldn't even really get into their unit until --
6 D.C. doesn't pave the alleys, and our alley is not a
7 single alley. Our alley could be like a whole city
8 block. The alley actually borders, A., Independence,
9 15th, and 16th. So there are pretty much -- I mean,
10 it could be a football field back there. So it's the
11 kind of the alley where it's a square cut out. So
12 when we say you have access to the alley, when you
13 come in there is significant -- you could have a
14 whole building behind that alley and still have
15 enough space to drive around.

16 MS. COHEN: Can you help me understand
17 something? You're a condominium but you keep
18 referring to the owner. But you're the owner.

19 MS. ABDULLAH: Right. So we're the owner of
20 the association. And so at the time of sale, what I
21 mentioned with the plats -- I mean, with the parking
22 spaces, for some reason the developer decided not to
23 sell all eight spots. I don't know why they reserved
24 those eight parking spots. Typically when you do a
25 development the developer sells all, you know, so

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1 they're no longer involved into the property and the
2 project. So the dilemma we've had is because the
3 developer never sold all eight plats as demonstrated
4 in the permit that they submitted to D.C. They've
5 kept the property, they're now in a situation I guess
6 they wanted to commercialize the property. But if
7 they had sold it to the unit owners at the time of
8 the condo in 2006/2007, we probably wouldn't be
9 sitting here.

10 MS. COHEN: And what about the trash? I
11 mean, again, as the condominium owners, don't you
12 have the larger say in where the receptacle would be?

13 MS. ABDULLAH: Yeah, we -- currently right
14 now it's sitting in P1, and that was agreed upon with
15 the developer at the time in 2007.

16 MS. COHEN: He's shaking his head no.

17 MS. ABDULLAH: He's saying it hasn't, but
18 it's been sitting there for 2009, and in the
19 addendum, the e-mail in there indicates that those
20 particular spaces, P1 and P2, were contemplated to be
21 transferred over to the association by recording in a
22 deed, and that was in the addendum. That was a cut
23 and paste of an e-mail chain from their attorney.

24 CHAIRPERSON HEATH: So just so I -- are those
25 two spaces there? Do they exist? I understand

1 there's a dumpster in the location that's shown as P1
2 and P2, but is the dumpster sitting in actual parking
3 spaces?

4 MS. ABDULLAH: The dumpster is sitting in P1
5 and P1 is only five feet. So it's not a nine-foot
6 parking space.

7 CHAIRPERSON HEATH: Okay. Got it.

8 MS. ABDULLAH: And then P2, I guess it could
9 be 10 feet but then there's no concrete necessarily.
10 It's part of a grassy knoll for you to get access.

11 CHAIRPERSON HEATH: Okay.

12 MS. ABDULLAH: So P2 is not really the issue.
13 That could be sold for parking. It's the P1 that's
14 nonconforming at the time.

15 CHAIRPERSON HEATH: Okay. All right. Do you
16 have a question?

17 MR. HILL: Not of the witnesses, no. Thank
18 you.

19 CHAIRPERSON HEATH: Okay. All right. So
20 does the applicant have any questions?

21 MR. CROWLEY: I have plenty to say. There's
22 no agreement whatsoever to transfer these spaces,
23 this real estate, to the condominium association and
24 I keep pointing out to the same memo that was written
25 to the Board in January of 2008, this is a lot of

1 hearsay. Talk about intent. Lawyers that
2 represented us, which don't in 2012 and never have,
3 talking about, oh, I don't recall the expression.
4 There was an intention to transfer this. There was
5 no intention. The dumpster was supposed to go where
6 the word East is on the plat between the two
7 buildings. And that is in the -- I have the original
8 plans from 2005 in my hands that show where the
9 dumpster goes. It never happened because the
10 association per the memo, was supposed to build a
11 fence and then the trash bin would be built after
12 their fence was completed. None of that happened.

13 So the fact though, the dumpster has been
14 sitting on P1 and part of P2, and we've been paying
15 property taxes on it for 10 years. What we can agree
16 on is that the plat in this one section, this one
17 five-foot section, does not match the reality, which
18 is P4 does not extend over the border. The car does
19 not park on that intersection of Lot 80 and 81. So
20 there does need to be a plat to fix that. And we can
21 work around the telephone pole.

22 The five-foot, 10-foot, and all that, let us
23 deal with that. We're the owners. We can handle the
24 plat.

25 MS. COHEN: You're the owners of the parking,

1 correct?

2 MR. CROWLEY: Correct.

3 MS. COHEN: But you're not the owners of the
4 units in the building.

5 MR. CROWLEY: We do not own a unit in the
6 building.

7 MS. COHEN: So what --

8 MR. CROWLEY: There's some argument as to
9 whether we're even part of the condo association
10 because we don't own a unit in the building.

11 MS. COHEN: Why did you keep the --

12 MR. CROWLEY: We had no intention of keeping
13 them. No one would pay for them. The parking was
14 all set for 15,000 each space in the condo offering
15 documents. People didn't pay for them because they
16 couldn't finance them.

17 MS. COHEN: So by default you are the owner
18 of all of these units.

19 MR. CROWLEY: Regrettably, yes.

20 MS. COHEN: But now apparently a couple of
21 the women from the condo association think you could
22 sell them. But not for 15,000.

23 MR. CROWLEY: I went to the condo board
24 meeting, the annual meeting in December. Their
25 property manager was there, the board was there, I

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1 said, we will sell every one of these spaces tomorrow
2 for assessed value. Just, we'll get out of this
3 completely. And I haven't heard anything. Not even
4 an e-mail from the property manager who perked right
5 up like, oh, a solution. Nothing since December
6 17th.

7 MS. ABDULLAH: That's untrue. But the reason
8 why there really hasn't been any movement on that is
9 simply because we know there was a BZA hearing. And
10 so the issue about how these spaces are designated
11 are not something the association is in a position to
12 do so.

13 I will note that this plat was done by the
14 developer. This was what's submitted so that the
15 fact that they got it in error is no fault but their
16 own. And so, you know, in terms of selling there
17 were a couple unit owners now. I mean, if you've
18 changed the market in terms of who is available to
19 make them for sale, I mean, it's nine years later.
20 So then you're going to have to kind of figure out, I
21 know at one time they were offering the sale to the
22 building -- to the row house next door. I really
23 haven't been in the full discussions with parking
24 spaces specifically. I do know that there have been
25 two other unit owners who express interest who tried

1 to purchase parking spaces, and for whatever reason
2 either the cost became prohibitive with the transfer,
3 like they wanted to buy one space, they would only
4 sell them for a tandem.

5 MS. COHEN: Let me interrupt because this is
6 not really on the table. We have an owner and now I
7 understand, you know, the relationship or lack of.
8 But I think basically what we must do first is get
9 everybody on the same page with OP, the Zoning
10 Administrator, and DDOT to find out what is needed
11 and how it can be provided. And the applicant must
12 report back. I'm suggesting this, you know, for good
13 neighborliness, back to the condo board, for their
14 input as well as it --

15 MR. CROWLEY: Of course.

16 MS. COHEN: -- directly impacts them.

17 MR. CROWLEY: I e-mailed them yesterday. Of
18 course.

19 MS. COHEN: Okay. So I just want to clarify
20 that I brought up a can of worms that is not on the
21 table but I was curious to understand the
22 relationship. So thank you, though for your
23 testimony. All of you, very articulate ladies.
24 Thank you.

25 CHAIRPERSON HEATH: Thank you. So we are

1 going to --

2 MR. HILL: Can I make --

3 CHAIRPERSON HEATH: Do you have a question
4 before we --

5 MR. HILL: I just had kind of a comment also
6 before you continue.

7 CHAIRPERSON HEATH: Okay.

8 MR. HILL: Where again, and thank you,
9 Commissioner Cohen, where I also -- just we first
10 need to get to the point where we're understanding
11 what the Office of Planning thinks of this and the
12 developer and the owner are all on the same page in
13 terms of what are the conditions we're discussing.
14 And if there were even a chance that after those
15 discussions the Office of Planning and the owner of
16 the parking plats were on the same page and were
17 somehow to be able to resolve this with the
18 association on their own, that would be wonderful
19 because I can't really get my hands around where we
20 are until after we get through the Office of Planning
21 with the developer.

22 Now, as far as the Zoning Administrator and
23 what his thoughts were with the grandfathering, that
24 is something that you're going to have to first
25 establish, and I know that you talk to him and now

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1 the Office of Planning is here and we can get that
2 straightened out, because that's the first step, I
3 would imagine, to help you clarify.

4 So I'm saying that now because if you do come
5 back, hopefully all those things are tied up in a way
6 that we'll be able to understand them and then move
7 forward. Thank you, Madam Chair.

8 CHAIRPERSON HEATH: Okay. All right. So
9 thank you all for coming down, for your patience
10 today because I know it's been long for us to get to
11 the point of you being on the agenda. We're going to
12 continue this as we've indicated, and so we probably
13 at least need a month, I would think, given --

14 MR. MOY: A month? Okay. I was going to
15 suggest if you wanted an earlier time frame, March
16 15th. Or you think that's too soon?

17 CHAIRPERSON HEATH: Three weeks.

18 MR. CROWLEY: I think it's too soon, frankly.

19 MS. VITALE: I think to get a meeting with
20 the Zoning Administrator, DDOT, and Office of
21 Planning, and the applicant all at the table, I
22 wouldn't rush it. I would give a bit more time.

23 [Off the record discussion.]

24 MR. MOY: Well, I can tell you now -- sorry
25 about that. I can tell you that the first hearing in

1 April is March -- rather, April -- I keep coming back
2 to March. Is April 5th. I don't have anyone
3 scheduled for that date, so.

4 MS. COHEN: Well, I'll just come in like --

5 MR. MOY: Oh, just for that. Okay. That's
6 fine.

7 CHAIRPERSON HEATH: Okay.

8 MR. MOY: Let's go, let's go April 5th then.

9 CHAIRPERSON HEATH: Okay.

10 MS. COHEN: Or you know, an absentee ballot
11 because I've heard everything.

12 CHAIRPERSON HEATH: Uh-huh. Okay.

13 MR. MOY: April 5th. Would this be for a
14 decision, Madam Chair, or is this for a continued
15 hearing?

16 CHAIRPERSON HEATH: I think continued
17 hearing.

18 MR. MOY: Okay.

19 CHAIRPERSON HEATH: Because we're probably
20 going to want to talk through.

21 MS. COHEN: Yeah.

22 CHAIRPERSON HEATH: Yeah. What we've gotten.
23 All right. And so I already know how we're going to
24 rule. Just, I can tell.

25 MR. MOY: Is there a need to provide any

1 deadlines for any filings, or just a typical, let's
2 say 14 days before the hearing? Or do you want to
3 give it seven days before the hearing or --

4 CHAIRPERSON HEATH: Seven days before is
5 fine.

6 MR. MOY: Seven days will be fine. So seven
7 days then would be March -- see, I am back to March.
8 March the 29th.

9 MR. CROWLEY: Do I need to placard over
10 again?

11 CHAIRPERSON HEATH: If your requested relief
12 changes, then definitely.

13 MR. CROWLEY: As soon as I get a meeting with
14 Matt LeGrant it might. We might go back to 75
15 percent relief. I don't know. So I will be
16 cognizant that it does change that I will replacard
17 as I did --

18 CHAIRPERSON HEATH: Right.

19 MR. CROWLEY: -- timely, last time around.

20 CHAIRPERSON HEATH: And if it changes you may
21 have new fees. If you could just talk to the zoning
22 office once you know.

23 MR. CROWLEY: I'm sure there will be more
24 fees.

25 CHAIRPERSON HEATH: Just, yeah. Just so, if

1 you could just talk to the zoning office.

2 MR. CROWLEY: So nothing changes. No changes
3 on the CarSharing, no changes on the dumpster. We'll
4 see what happens in April?

5 CHAIRPERSON HEATH: What are you --

6 MR. CROWLEY: I'm just expressing next steps
7 for the Board.

8 CHAIRPERSON HEATH: We'll see you when you
9 come back and --

10 MS. COHEN: If it complies with zoning.

11 CHAIRPERSON HEATH: We're not recommending
12 any changes at this point.

13 MR. CROWLEY: Thank you.

14 CHAIRPERSON HEATH: We're just recommending
15 that you talk to Office of Planning, DDOT, and --

16 MR. CROWLEY: Absolutely.

17 CHAIRPERSON HEATH: -- the ZA.

18 MR. CROWLEY: I've spoken to Alyssa last
19 week, twice.

20 CHAIRPERSON HEATH: Again, right. We
21 understand that. So we'll continue this on April
22 5th. Thank you.

23 Let's see what we have.

24 MR. CROWLEY: Thank you.

25 CHAIRPERSON HEATH: Thanks.

1 [Pause.]

2 MR. MOY: All right. The parties to
3 Application No. 19088 of Jose Ayala. This, I
4 believe, has been amended unless I'm corrected by the
5 applicant. Variance relief on the lot occupancy
6 requirements under 772.1, rear yard requirements
7 under 774.1, and off-street parking requirements
8 under 2101. This is for a construction of a new
9 four-story mixed use building in the C-2-A district.
10 3701 14th Street Northwest, Square 2826, Lot 96.

11 [Oath administered to participants.]

12 CHAIRPERSON HEATH: All right. Good
13 afternoon. If you could introduce yourselves,
14 please?

15 MR. BARROS: Good afternoon, Tony Barros from
16 -- sorry about that -- Sullivan and Barros.

17 CHAIRPERSON HEATH: Okay.

18 MR. WARREN: Good afternoon, Charles Warrant,
19 Teass-Warren Architects on behalf of the applicant.

20 MR. SCORZAFAVA: Good afternoon, Matt
21 Scorzafava with ERB Properties.

22 CHAIRPERSON HEATH: Okay. All right. There
23 seems to be some confusion as to which ANC has
24 oversight here. Do you all know?

25 MR. WARREN: I believe it's 4C. We're right

1 on the border between 4C and 1A.

2 CHAIRPERSON HEATH: Okay. All right. Not
3 that that's a major issue since they both were
4 recommending approval, but it's rare that we get two
5 letters from two different ANCs. Okay.

6 And I don't have the conditions in front of
7 me. All right. We'll come back to those. And does
8 the Board have any questions of the applicant? Oh,
9 perfect.

10 MS. COHEN: You have no -- I have a question.

11 CHAIRPERSON HEATH: Go ahead.

12 MS. COHEN: I just want to clarify that
13 you're in agreement to, at the time of sale of each
14 unit, right? I'm on the right project, aren't I?

15 CHAIRPERSON HEATH: Yes.

16 MS. COHEN: I'm a little hungry so.

17 CHAIRPERSON HEATH: OP's conditions.

18 MS. COHEN: Yeah, OP's --

19 CHAIRPERSON HEATH: One condition.

20 MS. COHEN: That you will issue a one-time
21 one-year BikeShare or CarShare membership and a
22 preloaded SmarTrip card worth \$60. Are you in
23 agreement with that?

24 MR. SCORZAFAVA: Yes, we are in agreement.

25 MS. COHEN: Thank you.

1 CHAIRPERSON HEATH: All right. Okay. So
2 then if the Board has no other questions then we
3 don't need a full presentation on this application.
4 If you're okay for us to see if Office of Planning
5 has any other comments, we will continue on.

6 MR. WARREN: I think we're okay with that.
7 Yes.

8 CHAIRPERSON HEATH: Perfect. All right.

9 MR. MORDFIN: All right. Good afternoon, I'm
10 Stephen Mordfin, and the Office of Planning continues
11 to support this application and recommends approval.
12 Thank you.

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

15 MS. COHEN: No.

16 CHAIRPERSON HEATH: All right. Then,
17 applicant, any questions of Office of Planning? I
18 assume you don't have any. Okay. All right.

19 We also have a letter of no objection from
20 DDOT and as I said, two letters, one from ANC 4C, and
21 one from ANC 1A in support of this application.

22 Is anyone here from 1A or 4C? Okay. No one
23 here from the ANC? All right. Did you raise your
24 hand, Mr. Uqdah?

25 MR. UQDAH: I am an ANC commissioner, but --

1 CHAIRPERSON HEATH: But not on this case.
2 You're not here for --

3 MR. UQDAH: I'm here for this case, but I'm
4 not here as an ANC commissioner.

5 CHAIRPERSON HEATH: Oh, understood.

6 MR. UQDAH: [Speaking off microphone.]

7 CHAIRPERSON HEATH: Okay. We'll get to you
8 in just one moment.

9 MR. UQDAH: [Speaking off microphone.]

10 CHAIRPERSON HEATH: We're almost there. Let
11 me just see, is anyone here in support of this
12 application? Anyone wishing to speak in support?

13 All right. So now is your turn, Mr. Uqdah.

14 MR. MOY: Do I need to swear you in? You
15 were?

16 MR. UQDAH: No, I wasn't here this morning.

17 MR. MOY: Okay. Well, you can step back
18 over.

19 [Oath administered to the participants.]

20 CHAIRPERSON HEATH: Okay. And is there
21 anyone else here wishing to speak on opposition?
22 Okay. All right.

23 If you would please state your name for the
24 record?

25 MR. UQDAH: Good afternoon, Madam Chair and

1 Members of the Board. My name is Taalib-Din Uqdah.
2 For the record, the name is spelled T, as in Tom, A-
3 A-L-I-B, dash, D-I-N. Last name is Uqdah, U-Q-, D as
4 in David, A, H as in Henry.

5 I am the single-member district commissioner
6 for 4C-01, and I am the lone dissenter from ANC 4C's
7 approval of this special exception with a variance
8 for lot occupancy off-street parking.

9 Even though 3701 is located in Ward 4, it
10 does affect Ward 1 as well. So I viewed this as a
11 issue that would stretch from the 3500 block of 14th
12 Street to the 3900 block, which essentially takes us
13 from Parkwood Place to Shepherd Street. 3701 is
14 located in the middle at Spring Road.

15 Historically this area has always been mixed
16 use, that up until the past two years has been three
17 story buildings with most offering ground-floor
18 retail with residential above.

19 So it's not that the developer can't build,
20 they just can't build what they want without the
21 BZA's approval. But they can build something as a
22 matter of right with retail and residential, just not
23 six units and whatever else they are applying for.

24 Second, in the geographic area I've outlined,
25 in the last two years, 3701 if approved, will become

1 only one of two developments out of eight new
2 buildings that is seeking a parking variance, where
3 all the others offer parking off-street on the
4 premises. And one of them even offers underground
5 parking. There will be another case that will be
6 coming before you soon, BZA 19237, which is 3700 14th
7 Street, directly across the street. It too will be
8 seeking parking relief.

9 I believe that these added developments at
10 3701, 3700, and we just found out at 4C that 1433 and
11 1435 Spring Road, which is a half a block away from
12 3701, will be a multi-unit apartment building that
13 will be accommodating at least 36 families. That's
14 not people, that's families. So I have no idea how
15 many people it's going to be.

16 These added developments will be weighing
17 heavily on an aging infrastructure. So I can fully
18 expect that at some point we're going to reach a
19 point where there is going to be low water pressure,
20 there's going to be problems with sewer, you know,
21 sewer and waste, et cetera.

22 As an ANC we're also allowed to rely on
23 information that impacts our neighborhoods, our
24 immediate neighborhood and the community, to also
25 include the number of conversions that have been done

1 in the neighborhood. And I've attempted to outline
2 that.

3 The effect on public transportation, light,
4 and privacy, or any other issues, neighbors, or the
5 neighborhood may have, that the BZA may not use when
6 they are deliberating any other decisions. If we are
7 to use the three-part test that the developer must
8 meet to receive the variance, exceptional strict
9 application and substantial detriment, at least two
10 of those three are questionable. The unusual shape
11 of the property, there's no question about it in my
12 mind. It is exceptional.

13 Strict application doesn't necessarily fly
14 with me as the property is currently being used and
15 could be greatly improved upon as a matter of right.

16 And finally I believe, from my own review and
17 investigation, the granting of this variance will
18 have a substantial detriment to the public good.

19 I will conclude my testimony there. My
20 letter of opposition has been entered into the
21 record. I didn't want to repeat it. I wanted to try
22 to summarize it for you. And I thank you for this
23 opportunity.

24 CHAIRPERSON HEATH: Thank you. Board, any
25 questions for Mr. Uqdah?

1 MR. HILL: It's Commissioner Uqdah. Is that
2 right?

3 MR. UQDAH: Yes, sir.

4 MR. HILL: You're in ANC 2C. Is that what --

5 MR. UQDAH: No, I'm in ANC 4C-01.

6 MR. HILL: Oh, you're 4C-01. Okay. So you
7 were one of the opposition votes. Your ANC did
8 approve the project however.

9 MR. UQDAH: The ANC did approve the project.

10 MR. HILL: Do you know what the vote was? I
11 don't have it right in front of me.

12 MR. UQDAH: It was -- there were eight of us
13 present, so the vote would have had to have been
14 seven/one.

15 MR. HILL: I see, so you were the lone member
16 in opposition?

17 MR. UQDAH: I was the one dissenter. Yes,
18 sir.

19 MR. HILL: I see. All right.

20 MR. UQDAH: And that's not at all unusual.

21 MR. HILL: Thank you.

22 MS. COHEN: I have a question, sir. How far
23 is this property from a Metro in your estimation
24 roughly?

25 MR. UQDAH: I will tell you, from my

1 recollection it's in between two stations. The
2 closest being the Georgia Avenue Petworth Station
3 which I would guesstimate is six to seven blocks
4 away. I don't think I'm exaggerating when I say
5 that. Then of course there is the Columbia Heights
6 Metro Station which is a little further away. Maybe
7 eight, no more than 10 blocks. I would say. But it
8 sits right in between. And it is on 14th Street, so
9 they would be close to Georgia Avenue, close to 16th,
10 both of which have, you know, Express buses.

11 I mean, all the conditions are there, and I
12 just learned today about the condition of the bike
13 sharing and the, you know, things of that nature.
14 And that's all good. But I think my main concern is
15 not with this particular project, but the culmination
16 of everything that is happening and no one is paying
17 attention to what they can't see. You know, we don't
18 care anything about sewers and drains and things of
19 that nature because we can't see them. We just want
20 to know that the water goes down and when you flush
21 it goes down. But I'm telling you now, we have an
22 aging -- I'm from the District. And we have an aging
23 infrastructure and no one has considered whether or
24 not all of the cumulative effect of all of these
25 projects, how they're going to affect the

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1 infrastructure.

2 MS. COHEN: May I ask a question of OP?

3 CHAIRPERSON HEATH: Sure.

4 MS. COHEN: Mr. Mordfin, has the Office of
5 Planning considered the issues that have just been
6 raised?

7 MR. MORDFIN: We didn't consider the issues
8 of the water and sewer. They will have to go through
9 and get permits from D.C. Water and if there are any
10 issues they will be brought up at that time, at the
11 time of permitting. What other -- I'm trying.

12 Oh, water and sewer, they're together.
13 They're both through D.C. Water.

14 MS. COHEN: Yeah, I just wanted it to be
15 stated for the record that those things were reviewed
16 at the permit stage. Permits are not issued, or of
17 it can be mitigated by the development, you know,
18 expanding would exist, they'd have to do it.

19 MR. UQDAH: Yes.

20 CHAIRPERSON HEATH: I'm curious too, and Mr.
21 Mordfin, you may be able to answer this. Given the
22 direction that the city is headed in terms of our
23 thoughts on parking, will this -- would this property
24 still have the requirement of three spaces under the
25 new regulations that will be in place in September?

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1 MR. MORDFIN: The requirement would go down
2 to one space.

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

5 MR. HILL: So, Commissioner Uqdah again,
6 outside of the infrastructure it's the parking issue
7 that you have concerns with, correct? And the
8 culmination of different buildings, but that is one
9 of the main issues.

10 MR. UQDAH: It would be the only one right
11 now.

12 MR. HILL: I see.

13 MR. UQDAH: Within the geographic area that I
14 outlined, that has sought parking relief.

15 MR. HILL: I see.

16 MR. UQDAH: All the rest of them have been
17 able to provide it.

18 MR. HILL: And to the developers -- and I'm
19 sorry, just off the top of my head, how many units
20 are there?

21 MR. WARREN: Be six units.

22 MR. HILL: Six units. And would you consider
23 not having the owners be able to apply for RPP?

24 MR. WARREN: I believe they can't because
25 they're on 14th Street.

1 MR. HILL: Oh, they can't.

2 MR. UQDAH: That's correct. They're
3 ineligible.

4 MR. HILL: I see. Thank you.

5 MR. UQDAH: But what compounds it, since you
6 brought it up and you'll find it in my letter of
7 opposition, because this property sits at the
8 intersection of 14th and Spring Road, on the spring
9 road side there is residential parking. And because
10 of the commercial along 14th Street there is metered
11 parking from 14th and Spring to the alley on both the
12 north and the south side of the street. So even
13 though they may not be eligible for it, it still begs
14 the question of, you know, you've got six units. I
15 don't know how many people that translates into, but
16 I'm sure they're going to have cars and they're going
17 to have to try to find someplace to park.

18 MS. COHEN: Have you had the opportunity to
19 read the review by the District Department of
20 Transportation? Have you read that review?

21 MR. UQDAH: No, ma'am, I have not.

22 MS. COHEN: I think that if you do get a hold
23 of it and I think the applicant can help you out,
24 that provides us with some comfort with -- and that's
25 why they recommended -- excuse me -- having BikeShare

1 -- yeah, BikeShare, CarShare, SmarTrip benefits
2 provided because again, they are near, you know,
3 these transportation outlets and they can use these
4 opportunities to reduce having to own a car.

5 MR. UQDAH: Uh-huh.

6 MS. COHEN: I think if you've been -- you
7 probably have been following because you're on an
8 ANC, what has been evolving in our city is less car
9 ownership, especially by younger people who can't
10 afford the rent, and a car. So they're not accessing
11 that vehicle because they can't afford it.

12 So I think that based on the DDOT report I'm
13 comfortable that six units will not have a
14 detrimental effect on the parking in your
15 neighborhood because there are other choices as well.

16 MR. UQDAH: And the parking really was not an
17 issue. I mean, 3701 14th Street is really not the
18 issue. The issue here is the cumulative effect
19 that --

20 MS. COHEN: And you're welcome to come back
21 and talk to us again. I love to see you in the
22 future.

23 CHAIRPERSON HEATH: Understand, though, that
24 we have raised that with Department of Transportation
25 because we see lots of applications coming before us

1 and we evaluate them as an individual project. But
2 we know that there is a greater impact if you look at
3 all of the various properties that have requested
4 this. It's just that data doesn't exist yet, but
5 they are working on producing that. Part of the
6 reason is because so many projects are not -- haven't
7 been constructed yet, so you don't have accurate
8 information on what's been accepted. But we've
9 raised that a number of times because we are
10 concerned. We just want to make sure that we're not
11 creating adverse impact by all of the applications
12 that are being given relief. And so as soon as it's
13 feasible DDOT is going to help us understand that.
14 We hear you. Uh-huh.

15 But you can still come back.

16 MS. COHEN: Do you have any comments or
17 questions because --

18 CHAIRPERSON HEATH: You want to make a
19 motion?

20 MS. COHEN: Yeah, I'll make the motion.

21 CHAIRPERSON HEATH: Okay.

22 MS. COHEN: Madam Chairwoman, I move to
23 approve BZA Case No. 19088, 3701 14th Street
24 Northwest, approve the following area variances,
25 772.1 lot occupancy, 774.1 rear yard, 2101.1 off-

1 street parking, and ask for a second.

2 CHAIRPERSON HEATH: I'll second, and just add
3 that we are including the Office of Planning's
4 conditions.

5 MS. COHEN: Oh, thank you.

6 CHAIRPERSON HEATH: As recorded by the zoning
7 staff.

8 MS. COHEN: And DDOT's recommendations that
9 have been accepted by the applicant.

10 CHAIRPERSON HEATH: Sure.

11 MR. HILL: And, Madam Chair, I just wanted to
12 mention for the record also that, you know, I've --
13 upon reviewing everything I did also want to point
14 out that, you know, the Office of Planning has, in
15 their analysis, as kind of point out, the core factor
16 and how high the core factor was in terms of the
17 project. And from being someone who had a cousin who
18 had a restaurant in the neighborhood there, you know,
19 it unfortunately failed but I hope that your project
20 does not because of the high core factor. I mean,
21 it's pretty gutsy of you, also, to try to do that.

22 So, but I would second the -- our colleague's
23 motion.

24 CHAIRPERSON HEATH: I think I did.

25 MR. HILL: Oh, sorry.

1 CHAIRPERSON HEATH: You can third it.

2 MR. HILL: I'll third it.

3 CHAIRPERSON HEATH: All right. All right.

4 So the motion has been made and seconded. Any
5 further discussion?

6 [Vote taken.]

7 CHAIRPERSON HEATH: So the motion carries.

8 MR. MOY: Staff would record the vote as
9 three to zero to two. This is on a motion of Ms.
10 Marcie Cohen to approve the application for the
11 relief requested, along with the two conditions as
12 recommended by the Office of Planning. Seconding the
13 motion Chairperson Heath. Also in support, Vice
14 Chair Hill. Board member not present today. Board
15 seat vacant. Motion carries, Madam Chair.

16 CHAIRPERSON HEATH: Thank you. Summary.

17 MR. MOY: Thank you.

18 CHAIRPERSON HEATH: Thank you, all.

19 MR. WARREN: Thank you.

20 MR. UQDAH: Thank you.

21 MR. SCORZAFAVA: Thank you.

22 MR. MOY: Okay. I believe the next
23 application is Application No. 19162 of William
24 McGovern. And I believe this has been amended for
25 special exception relief under Section 223, not

1 meeting lot occupancy requirements under 403.2,
2 nonconforming structure requirements under 2001.3.
3 This is for an additional floor with roof deck to an
4 existing one-family dwelling in an R-4 district, 3901
5 Illinois Avenue Northwest, Square 3314, Lot 26.

6 CHAIRPERSON HEATH: Thank you. Would you
7 state your name for the record?

8 MR. FREEMAN: Yes. Hello. My name is Mark
9 Freeman; I am the architect representing Mr. William
10 McGovern.

11 CHAIRPERSON HEATH: Okay. It looks like,
12 based on the information that we have in the record
13 that this is a complete application and unless the
14 Board has any questions, I would ask that we not take
15 a full presentation from you because I don't think
16 the Board needs it, and that we, with your approval,
17 continue to proceed through the hearing.

18 MR. FREEMAN: Yes, you have my approval.

19 CHAIRPERSON HEATH: Okay. We haven't heard
20 it. Yeah. Yeah, this was previously postponed on
21 the snow day.

22 MR. FREEMAN: Actually it was -- this was
23 originally supposed to be an expedited review, but
24 the paperwork was improperly filed.

25 CHAIRPERSON HEATH: Got it.

1 MR. FREEMAN: And so that's why we were
2 absent at the last meeting.

3 CHAIRPERSON HEATH: Got it. Okay.

4 MR. FREEMAN: And I believe the secretary
5 contacted us and we couldn't make it that day.

6 CHAIRPERSON HEATH: Okay.

7 MR. FREEMAN: So that's why we've been
8 postponed to today.

9 CHAIRPERSON HEATH: Understood. Okay. We
10 thought it was just because of this --

11 MR. FREEMAN: Well, and we apologize for not
12 being present. If we would have known we would have
13 been here.

14 CHAIRPERSON HEATH: Okay. All right. So
15 Board, any questions? All right.

16 Does the Office of Planning have anything
17 that you'd like to add?

18 MS. FOTHERGILL: For the record, I'm Anne
19 Fothergill with the Office of Planning, and no, we
20 rest on the record in support of the application.

21 CHAIRPERSON HEATH: Okay. All right.
22 Thanks. All right. We also have a letter of no
23 objection from Department of Transportation on this
24 application, and a letter recommending approval from
25 ANC 4C. Is there anyone here from ANC 4C?

1 MR. FREEMAN: Mr. Uqdah would have been my
2 only question.

3 CHAIRPERSON HEATH: He left. Yeah. All
4 right. But they have recommended their approval.

5 Is there anyone here wishing to speak in
6 support of this application? Anyone in support?

7 We do have a letter of support from the
8 adjacent neighbor to the property owner. Anyone here
9 wishing to speak in opposition? Any opposition?

10 All right. Then we'll turn back to the
11 applicant. If there's anything you'd like to add, I
12 don't know that there's any need for rebuttal but --

13 MR. FREEMAN: Nothing at this time.

14 CHAIRPERSON HEATH: Okay. Thank you. Then
15 unless the Board has anything else you'd like to ask,
16 I will make a motion that we approve Application No.
17 19162 for special exception under 223, not meeting
18 2001.3 for nonconforming structure, and 403.2 for lot
19 occupancy.

20 MR. HILL: I second.

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

23 [Vote taken.]

24 CHAIRPERSON HEATH: The motion carries.
25 Thank you.

1 MR. FREEMAN: Thank you very much.

2 MR. MOY: Staff would record the vote as
3 three to zero to two. This is on the motion of
4 Chairperson Heath to approve the application for the
5 special exception relief. Seconding the motion, Vice
6 Chair Hill. Also in support, Ms. Marcie Cohen.
7 Board member not present, board seat vacant. Motion
8 carries, Madam Chair.

9 MS. COHEN: Aren't you glad you stayed the
10 whole day?

11 MR. FREEMAN: Just take one thing off the
12 list. That's all.

13 CHAIRPERSON HEATH: Sorry about that.

14 MR. FREEMAN: Thank you very much. It's
15 okay.

16 CHAIRPERSON HEATH: It is why we like to kind
17 of manage the docket and move those cases that we
18 anticipate being longer to later in the day, but
19 thank you for your patience.

20 MR. MOY: Did he waive the requirements for a
21 summary order, Madam Chair? Did I miss it or --

22 CHAIRPERSON HEATH: No, summary.

23 MR. MOY: Okay. Thank you.

24 CHAIRPERSON HEATH: So we're down to our last
25 application.

1 MR. MOY: Yes. That would be 19147 of Symi
2 Rom-Rymer. This is advertised for a special
3 exception relief under 223, not meeting lot occupancy
4 requirements under 403.2. This is for a one-story
5 rear addition to an existing three-story one-family
6 dwelling in an R-2 district, 3097 Ordway Street
7 Northwest, Square 2067, Lot 121.

8 CHAIRPERSON HEATH: So as I understand, this
9 application was previously on our expedited calendar
10 but it was removed because of opposition from the
11 ANC.

12 MR. MANU: Yes, please.

13 CHAIRPERSON HEATH: What is it that the ANC
14 is in opposition to with respect to this?

15 MR. MANU: From the document that they sent
16 us they said it's too large, basically. So we went
17 out there to meet them the first time to present what
18 we had and then they asked us to come back to provide
19 further clarity as to whether we were able to explore
20 other options, why we couldn't be within the 40
21 percent. And we went back out there and I explained
22 why we had tried some options. When you look at the
23 existing -- the rear of the existing structure,
24 there's a chimney which is six feet by two feet that
25 projects. And then also the land slopes to the north

1 and to the east.

2 So to be in compliance at the 40 percent we
3 have to have -- the addition has to be 233 square
4 feet, which is seven percent to be in compliance with
5 the 40 percent. But I have some submissions that I
6 can --

7 CHAIRPERSON HEATH: Okay. Before you do I
8 was anxious and didn't ask you to introduce yourself.
9 I just jumped right in. So if you could state your
10 name for the record?

11 MR. MANU: My name is Gyan Manu. I'm the
12 architect for the applicant.

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

15 MR. MANU: So --

16 MR. HILL: I'm sorry, could you repeat that
17 again for me, please?

18 MR. MANU: Gyan, is the first name, Manu is
19 the last name.

20 MR. HILL: Could you spell that, please?

21 MR. MANU: Gyan is G-Y-A-N, Manu is M-A-N-U.

22 MR. HILL: Thank you.

23 MR. MANU: You're welcome. Yeah, so we tried
24 other options or in terms of different iterations as
25 to what the footprint would be if we have to be in

1 compliance at 40 percent, and due to the way it
2 slopes to the north and east, and then also the two
3 by six projection in to what would be the space, it
4 wasn't working for the intended purpose.

5 I have the three options that we tried at 233
6 square feet that I can submit. One, it's the
7 property is also in the historic, the Cleveland
8 Historic District. So we had worked with the
9 Historic Preservation Board and we got the approval.
10 One of the reasons why we got the approval was
11 architecturally and aesthetically we're trying --
12 it's a duplex, and when you look at the front and the
13 rear of the house it's very very symmetrical. So
14 we're trying to preserve the character of the
15 existing house.

16 So to aesthetically comply with the existing
17 symmetry of the house, an addition to look good, if I
18 may, would have to span the entire length and at --
19 you see in Option C, which we tried, at 233 feet,
20 what happens is that we only have about six to nine
21 feet from -- including the, what you call it, the
22 bump out, which wasn't going to make the intended use
23 of the space as a guest room work.

24 So after trying all the iterations we came up
25 with what was feasible, which put us at 44 percent.

1 Now if you're looking at the rear of the house you
2 see that in Option A and B, if we shift that box to
3 either the right or the left, we create a void. And
4 then because it slopes to the east, grade is at the -
5 - facing the rear of the house grade is at the right
6 side, which would be the west side. So after toying
7 and going back and forth with the space, it just only
8 makes sense to be at 44 percent. Without the chimney
9 we could have pushed it back a little bit.

10 MS. COHEN: Mr. Manu, do you have anything in
11 writing from the Cleveland Park Historic District?

12 MR. MANU: We have approval of the stamp
13 drawings which we included in our -- it's in our
14 documents, part of our case filing documents.

15 MS. COHEN: Oh, okay. You don't know what
16 exhibit. I don't recall seeing that.

17 MR. MANU: It will be a copy, the two copies
18 of the pages that were stamped by the Historic Board.

19 MS. COHEN: But is it a stamp to receive or
20 is it the -- it says approved?

21 MR. MANU: Approved.

22 MS. COHEN: I'm trying to get my computer to
23 give it to me.

24 MR. MANU: It is a stamp to approve because
25 we started the -- because they had just implemented

1 the new system at Zoning, we actually walked it
2 through after having had deliberations with Ms.
3 McMillan, who give us staff authorization prior to
4 going out there. So we got all the approvals except
5 for the Zoning. That's why we had to come back and
6 file for the BZA special exception.

7 MS. COHEN: Does the ANC realize that you got
8 approval from the Cleveland Park Historic District?

9 MR. MANU: Yes, they do.

10 MS. COHEN: They do?

11 MR. MANU: They do.

12 MS. COHEN: And did they disapprove it
13 subsequent?

14 MR. MANU: Yeah, they --

15 MS. COHEN: Subsequent as opposed to --

16 MR. MANU: Subsequently.

17 MS. COHEN: -- prior to knowing.

18 MR. MANU: Yes. Subsequently. You notice
19 from -- we had to postpone, we had to postpone what
20 do you call it, a hearing a couple of times, just so
21 that the ANC could meet again and meet us another
22 time so we can provide the options that we had
23 explored that I've showed you. And we did that and
24 they still went ahead and opposed that.

25 CHAIRPERSON HEATH: Okay.

1 MR. HILL: Do you know, were they in denial?
2 And I'm curious as to whether they're going to be
3 here. It doesn't seem like they will be, but they
4 were in denial because why specifically? I mean, do
5 you know if it was -- because what I kind of took was
6 that there was a precedent issue they might be
7 worried about or --

8 MR. MANU: No, I have the letter here. The
9 main thing that it says, if can I read it?

10 CHAIRPERSON HEATH: Sure. We have it too.

11 MR. MANU: Oh, yeah.

12 CHAIRPERSON HEATH: But go ahead and read
13 that, that portion of it.

14 MR. MANU: Yeah, it says, "Whereas the
15 applicant has stated that the need for an increase in
16 lot occupancy is to build a large guestroom and that
17 the size room per lot occupancy will be smaller than
18 they desire."

19 It appears that the concern is that the room
20 is large. But as I have shown on the plans, just
21 because of that projection of the chimney, which is
22 two feet into the intended space and six foot across,
23 and is right in the middle of the space, putting a
24 bed in the space is kind of tricky. You either have
25 where the party wall is or behind the chimney. You

1 know, and then the moment you extend, even if it's a
2 queen size bed introduced to the space, you don't
3 have space for like, furniture. Depending on if we
4 go with the 40 percent.

5 CHAIRPERSON HEATH: Sure. Have you or the
6 property owner met with the adjacent property owners?

7 MR. MANU: Yes, we did. Right at the
8 beginning of the process the -- my main concern with
9 my structural engineer was that it's a duplex. So we
10 spent a lot of time and effort to design the addition
11 to be independent of the existing structure. So the
12 addition that was proposed has independent piece with
13 a construction joint, so we know that there's going
14 to be settlement but it's not going to affect the
15 existing house.

16 We did meet with the adjacent neighbor at the
17 client's house with the contractor. We explain all
18 the drawings to them. We told Ms. McMillan at that
19 time, which was the Historic Preservation Board that
20 we had met, excuse me, we had met with the homeowner
21 and we have e-mails to that affect.

22 CHAIRPERSON HEATH: Okay. I was just
23 wondering if the ANC's opposition was coming from one
24 of the adjacent property owners because they also
25 mention maintaining the openness of the rear yards,

1 light, air, and privacy. So I was wondering if one
2 of those neighbors had a concern about this taking
3 away from their light or infringement on their
4 privacy.

5 MR. MANU: No, but --

6 CHAIRPERSON HEATH: They haven't raised that?

7 MR. MANU: No, they haven't. And if I may
8 submit another photo of the way the -- from the back
9 of the existing house the drop is quite steep. Let
10 me present that.

11 MS. COHEN: He's prepared.

12 CHAIRPERSON HEATH: Uh-huh. That's good.

13 MR. MANU: So from the rear of the house it
14 really veers sharply all the way down, so the
15 neighbor to the north is separated by this like, you
16 see in the photo, it's all the way in the back. And
17 then to the right side, there's a screen porch which
18 is the east side. There's a screen porch and to the
19 left side there's a brick fence and driveway. So in
20 terms of air quality and sight lines, it's minimally
21 affecting the neighbors.

22 CHAIRPERSON HEATH: Okay. All right. If you
23 could please just submit this information to the
24 record.

25 MR. MANU: Okay.

1 CHAIRPERSON HEATH: Just so it's in there.

2 MR. MANU: Sure.

3 CHAIRPERSON HEATH: That would be helpful.

4 MR. MANU: Sure.

5 CHAIRPERSON HEATH: As well as these
6 alternative solutions.

7 MR. MANU: Sure.

8 CHAIRPERSON HEATH: Because I don't think we
9 had these electronically.

10 MR. MANU: Sure.

11 CHAIRPERSON HEATH: Okay. All right. So
12 where are we on this? Did we --

13 MS. COHEN: No, we haven't heard --

14 CHAIRPERSON HEATH: Okay. All right. I'm
15 tired. All right.

16 MS. COHEN: He's been patient.

17 CHAIRPERSON HEATH: So let's hear what Office
18 of Planning says. Obviously they were in support of
19 this. I assume your position is still the same?

20 MS. VITALE: Good afternoon, Madam Chair,
21 Members of the Board. Lisa Vitale. The Office of
22 Planning will rest on the record in support of the
23 requested relief. Thank you.

24 CHAIRPERSON HEATH: Okay. All right. And
25 have you concluded kind of the same thing that we

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1 are, as we look at this, that the addition based on
2 the topography and the existing house is fairly
3 minimal and isn't a detriment to light and air?

4 MS. VITALE: That is correct. We don't
5 believe this would have a negative impact on light
6 and air to adjoining properties.

7 CHAIRPERSON HEATH: Okay. All right. Thank
8 you. All right. So then we also have a letter of no
9 objection from Department of Transportation. And
10 because there's no one else here I assume they're not
11 here today on this.

12 Obviously we know where ANC 3C stands, which
13 is unfortunate, but we have their letter.

14 Is there anyone here wishing to speak in
15 support? Anyone in support? Anyone in opposition?
16 No opposition.

17 Then if you're okay we can conclude this
18 hearing.

19 MR. MANU: Yes.

20 CHAIRPERSON HEATH: I think the Board is
21 ready to deliberate. Or make a motion, which I'm
22 happy to do.

23 MR. HILL: Yeah, we can -- well no, I just
24 wanted to comment. I mean, I guess you know, for me
25 again, after viewing everything, going against kind

1 of what the ANC had I was a little confused, and I
2 wish they would have been here in order to have asked
3 them because again from reading their opinion it was
4 again that it was too large a room. And after
5 looking at the documents that were just submitted
6 again, seeing where that chimney was and that it
7 wasn't necessarily they were trying to get a larger
8 room, it just wasn't something that was going to be
9 able to work with that situation.

10 And as far as like, you know, again with OP's
11 approval and then DDOT having no objection, I would
12 go ahead and be able to make a motion that we would
13 approve the application pursuant to 11-DCMR-3104.1
14 for a special exception under 223, not meeting the
15 lot occupancy requirements under 403.2 to construct a
16 one-story rear addition in an existing three-story,
17 one-family dwelling in the R-2 district on premises
18 3097 Ordway Street Northwest.

19 CHAIRPERSON HEATH: Second. The motion has
20 been made and seconded.

21 [Vote taken.]

22 CHAIRPERSON HEATH: The motion carries.
23 Thank you.

24 MR. MANU: Thank you very much.

25 MR. MOY: Staff would record the vote as

1 three to zero to two. This is on the motion of Vice
2 Chair Hill to approve the application as for the
3 relief requested. Seconding the motion Chair Heath.
4 Also in support, Ms. Marcie Cohen. Board member not
5 present. Board seat vacant. Motion carries and with
6 a denial from the ANC this would be a full order,
7 Madam Chair.

8 CHAIRPERSON HEATH: Sure. Okay. So full
9 order. And we do have one more thing.

10 MS. COHEN: We do?

11 CHAIRPERSON HEATH: Yes. Vote for closed
12 meetings.

13 MS. COHEN: Oh. I can handle that.

14 CHAIRPERSON HEATH: Yeah, that's pretty
15 simple. Here we go. All right.

16 So in accordance with Section 405C of the
17 Open Meetings Act, D.C. Official Code Section 2-575C,
18 I move that the Board of Zoning Adjustment hold
19 closed meetings on the Mondays of February 29th,
20 March 7th, March 14th, March 21st, and March 28th.
21 These meetings start at 4:00 p.m. and are held for
22 the purpose of obtaining legal advice from our
23 counsel in deliberating upon but not voting on the
24 cases scheduled to be publically heard or decided by
25 the Board on the day after each such closed meeting.

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1 Those cases are identified on the Board's
2 Public Meeting and Hearing Agendas for March 1st,
3 March 8th, March 15th, March 22nd, and March 29th. A
4 closed meeting for these purposes is permitted by
5 Sections 405(b) (4) and 405(b) (13) of the Act. Is
6 there a second?

7 MS. COHEN: Second.

8 CHAIRPERSON HEATH: Will the Board Secretary
9 take a roll call vote on the motion?

10 MR. MOY: Yes. Thank you, Madam Chair. When
11 I call your name if you will reply with a yes or no,
12 yea or a nay.

13 [Roll call vote taken.]

14 MR. MOY: Motion carries, Madam Chair.

15 CHAIRPERSON HEATH: All right. So I request
16 that the Office of Zoning provide notice of these
17 closed meetings in accordance with the Act.

18 MR. MOY: Thank you.

19 CHAIRPERSON HEATH: And with that we are
20 concluded.

21 [Proceedings concluded at 2:45 p.m.]

22

23

24

25