

Table of Contents

ZC Case No. 14-11	January 15, 2015, Hearing Transcript Pg. 10	Pg. 2
ZC Case No. 14-11	January 15, 2015, Hearing Transcript Pg. 11 & 15	Pg. 4
ZC Case No. 14-11	January 15, 2015, Hearing Transcript Pg. 13 & 25	Pg. 7
ZC Case No. 14-11	January 15, 2015, Hearing Transcript Pg. 19-20	Pg. 10
ZC Case No. 14-11	January 15, 2015, Hearing Transcript Pg. 27	Pg. 13
ZC Case No. 14-11	January 15, 2015, Hearing Transcript Pg. 25-32	Pg. 15
ZC Case No. 14-11	January 15, 2015, Hearing Transcript Pg. 31-32; 209	Pg. 24
ZC Case No. 14-11	June 8, 2015, Hearing Transcript Pg. 8-11	Pg. 28
BZA Case No. 19517	September 27, 2017, Hearing Transcript Pg. 133, 136-137	Pg. 33
BZA Case No. 20116	October 2, 2019, Hearing Transcript Pg. 193-195	Pg. 37
BZA Case No. 20002	June 12, 2019, Hearing Transcript Pg. 35-41	Pg. 41
BZA Case No. 21335	July 30, 2025, Hearing Transcript Pg. 44-45, 57	Pg. 49
BZA Case No. 19959	April 3, 2019, Hearing Transcript Pg. 217-220	Pg. 53
BZA Case No. 19718	May 2, 2018, Hearing Transcript Pg. 40-41, 46-67	Pg. 58
BZA Case No. 19570	October 25, 2018, Hearing Transcript Pg. 19-21	Pg. 83

ZC Case No. 14-11
January 15, 2015,
Hearing Transcript Pg. 10

1 would like to get the sign-in sheet a little early
2 so I can kind of maneuver that, too.

3 So let's turn it over to the Office of
4 Planning. Ms. Steingasser.

5 MS. STEINGASSER: Yes, sir.

6 Commissioners, I would also like to point out that
7 joining us this evening is Art Rogers. He's our
8 Senior Housing Planner with the Agency. And he'll
9 be able to answer a lot of questions about housing
10 on a broader scale than just the issues before us.

11 So, this case is 14-11. It has to deal
12 with the R-4 zones only. And I've broken the
13 discussion into two basic themes: building form,
14 which gets to some of the physical changes that
15 we're proposing to the zone; and the issue of
16 conversions, which is probably the more
17 controversial of the two, and how they work
18 together.

19 So, let's go to the next one.

20 We started by asking, you know, what is
21 the R-4? And there's a lot of confusion about the
22 R-4. This is straight from the zoning
23 regulations. And what's important is that the R-4
24 is not an apartment zone. It is not a zone that
25 is intended for multifamily development.

ZC Case No. 14-11
January 15, 2015,
Hearing Transcript Pg. 11 & 15

1 So we started by looking at the intent
2 purposes out of the zoning reg. And as you can
3 see, it talks about its having very little vacant
4 land. Its primary purpose shall be the
5 stabilization of the remaining one-family
6 dwellings. And we took that very seriously.

7 And then the next purpose statement talks
8 about that it shall not be an apartment house
9 district, as contemplated in the general residence
10 zones, which are the R-5, which are intended for
11 multifamily and apartment zones.

12 Go to the next one.

13 So then we looked at, you know, where is
14 the R-4? And most of the R-4 is in the center of
15 town. It buffers a lot of the outlying single-
16 family lower-density semi-detached, and also
17 attached dwellings that don't have more than one
18 dwelling unit. So we see them primarily in the R-
19 1, R-4, R-5, and R-6 zones.

20 Some of them, about 40 percent, are
21 covered by historic districts. And those are the
22 Mount Pleasant Historic District, U Street, Shaw,
23 and Capitol Hill Historic Districts. The historic
24 districts give a certain level of review that the
25 properties that are not in the historic districts

1 neighborhoods."

2 And this is really important, and I draw
3 all of our attention, including the audience, to
4 this one section, because it talks about
5 protecting these row house neighborhoods.

6 And it doesn't just talk about it in
7 general terms, but it's pretty specific about the
8 elements and the issues that are instructed to be
9 reviewed: heights and scale of structures,
10 consistent with existing pattern, considering
11 additional row-house neighborhoods for historic
12 district designation, regulating the subdivision
13 of row houses in the multiple dwellings.

14 And then it completes its statement
15 saying, "Upward and outward extension of row
16 houses which compromise their design and scale
17 should be discouraged." So we found this to be
18 just downright instructive. It told us what to
19 look at. It told us how to look at it, and it
20 told us the purpose of the policy and what we were
21 to look at.

22 So, the next element we looked at in the
23 Comprehensive Plan is the addition of floors and
24 roof structures to row houses and apartments. And
25 I'm not going to read this out loud, but basically

ZC Case No. 14-11
January 15, 2015,
Hearing Transcript Pg. 13 & 25

1 And the R-4 also represents, in terms of
2 the total District, and that's the District land
3 that's zoned, that excludes the federal lands and
4 the water, 11 percent of all of the zone. And
5 that includes the commercial, the mixed-use, the
6 waterfronts, the downtown, the special-purpose.
7 That's 11 percent of all the zoned land in the
8 District.

9 So, in addition to these residential
10 zones, there's also 3,500 acres of zoned land in
11 the District that can accommodate multifamily
12 residential units as a matter of right. So we
13 found that to be a very important issue to think
14 about in terms of the R-4 and its purpose as being
15 a residential row-house zone.

16 So, going now to the proposals, we've
17 started with building form. And we started to
18 look at height. So, for the detached, the semi-
19 detached, the row houses, and the flats, which are
20 a row house with two units, the matter of right
21 currently is 40 feet.

22 We surveyed over 10,300 lots zoned R-4
23 with residential structures on them. And our
24 recommendation was to address that height to 35
25 feet, and to still allow 40 feet, but have that be

1 And we want those families. We want
2 those children. They're important both for the
3 economic health of the District, as well as the
4 educational reform that's going on. The recent
5 census figures from the U.S. Census has also
6 suggested that D.C. is on track to meet that
7 forecast.

8 But then we also looked at, again
9 addressing some of the concerns we've heard about
10 if the R-4 can't absorb these affordable -- these
11 housing units, then the housing crisis will
12 result. Well, what is the land capacity of the
13 areas that are identified for multifamily? And
14 those are both in terms of apartments, high-
15 density to low-density apartments, as well as
16 commercial.

17 Every commercial zone in this district
18 either permits -- most of them actually
19 incentivize residential. So in order to get your
20 maximum density, you know, in most of your
21 commercial zones or most of your waterfront or
22 special-purpose zones, you have to do residential.
23 And the City has had that in place for many years.
24 It has been very long-sighted with that.

25 So we looked at that capacity. And under

ZC Case No. 14-11
January 15, 2015,
Hearing Transcript Pg. 19-20

1 of right. But it does reduce that height from
2 18.5, which is currently allowed, to 10 feet.

3 However, it maintains the 18.5 for all
4 other buildings. So, churches, schools, other
5 type of buildings that you might see in the R-4,
6 including existing apartment buildings, would
7 still maintain their 18.5.

8 This item actually needs no action
9 because the Zoning Commission already took action
10 as part of 08-06A. And if it needs to be
11 revisited, we could revisit it as part of the
12 comprehensive rooftop structure case. But it
13 needs no action as part of this case tonight.

14 So then we come to conversions, which is
15 probably the most controversial element. And
16 there's two types of conversions. There's the
17 conversion of the residential row houses and the
18 conversion of nonresidential structures.

19 And by "nonresidential structures," we're
20 talking about churches, firehouses, schools, civic
21 buildings that are typically in residential
22 neighborhoods that have been converted, no longer
23 have their intended use, but are converted, often
24 for residential. We see a lot of them on Capitol
25 Hill, where it's -- the church on the bottom is on

OLENDER REPORTING, INC.

1100 Connecticut Avenue NW, #810, Washington, DC 20036

Washington: 202-898-1108 • Baltimore: 410-752-3376

Toll Free: 888-445-3376

1 D Street, Northeast. It was converted.

2 So we distinguish between those two. And
3 the original advertised -- the original OP
4 recommendation was to remove the provision that
5 allows the conversion of residential row houses
6 that's been on the books since 1958. It allowed
7 for the conversion of row houses that predated
8 1958, but had 900 square feet of land per unit.

9 And over the years, we've been seeing
10 that encroach more and more into established row-
11 house blocks. And so we had recommendation
12 through our setdown report that that no longer be
13 permitted, but that the nonresidential structures
14 continue to be permitted and that there be more
15 flexibility. That was where we were seeing real
16 problems. It's where we wanted to actually
17 incentivize the adaptive reuse of these buildings,
18 whether they were historic or not.

19 And yet, developers were telling us they
20 were having a hard time making the case. They
21 were having a hard time filling in old playgrounds
22 or parking yards where they wanted to maintain
23 that street wall. So we proposed more flexibility
24 in that area and removal of the residential
25 conversion.

ZC Case No. 14-11
January 15, 2015, Hearing
Transcript Pg. 27

1 affordability, then let's tie it to affordability.

2 So whence you get to that fourth unit,
3 that fourth unit and every unit beyond has to be
4 part of the IZ program. It has to have an
5 affordability covenant. If we're arguing that
6 taking these row houses and making smaller units
7 is the same thing as affordable housing, then our
8 proposal was to put it in writing and put the
9 covenant on it.

10 If they can't make the -- if a proposal
11 can't make the 900-square-foot-per-unit, and
12 that's important -- again, this is an esoteric
13 nuance of D.C. zoning. The 900-square-foot is
14 important because it gets to the density ratio.
15 In the R-4, you're allowed two units as a matter
16 of right, but your minimum land area has to be
17 1,800 square feet. So that ratio of 1 to 900
18 springs from that.

19 If you can't have that then, have minimum
20 land area, and you have to get some kind of
21 variance, which means your density is
22 disproportionately high compared to the
23 neighborhood, then we're saying that everything
24 beyond two units would be subject to the
25 affordability requirements of IZ.

ZC Case No. 14-11
January 15, 2015,
Hearing Transcript Pg. 25-32

1 And we want those families. We want
2 those children. They're important both for the
3 economic health of the District, as well as the
4 educational reform that's going on. The recent
5 census figures from the U.S. Census has also
6 suggested that D.C. is on track to meet that
7 forecast.

8 But then we also looked at, again
9 addressing some of the concerns we've heard about
10 if the R-4 can't absorb these affordable -- these
11 housing units, then the housing crisis will
12 result. Well, what is the land capacity of the
13 areas that are identified for multifamily? And
14 those are both in terms of apartments, high-
15 density to low-density apartments, as well as
16 commercial.

17 Every commercial zone in this district
18 either permits -- most of them actually
19 incentivize residential. So in order to get your
20 maximum density, you know, in most of your
21 commercial zones or most of your waterfront or
22 special-purpose zones, you have to do residential.
23 And the City has had that in place for many years.
24 It has been very long-sighted with that.

25 So we looked at that capacity. And under

1 the current zoning, it would be 2040 before we
2 would be pushing the edge of that. And that's not
3 maximizing the zoning under the comp plan; that's
4 maximizing the zoning that we have in place.

5 So we don't think that these efforts to
6 protect the R-4 zone are going to have a
7 significant impact on the overall growth of the
8 City to absorb the multifamily units that would
9 result from that.

10 So, this you can't see, which is
11 unfortunate.

12 So, this is a summary of the public
13 hearing notice. And it goes through the various
14 options on conversion. And even I can't read that
15 one. Let me get my bigger page.

16 (Pause.)

17 MS. STEINGASSER: So, the number one,
18 which is what was in our OP report and got
19 advertised, was that conversion of row houses, the
20 residential structures, no longer be permitted.

21 The option number two -- again, this is
22 focusing on residential row houses only -- that
23 there still be the matter of right, that it
24 maintain its 900-square-foot per unit conversion
25 ratio, but that if the issue really is about

1 affordability, then let's tie it to affordability.

2 So whence you get to that fourth unit,
3 that fourth unit and every unit beyond has to be
4 part of the IZ program. It has to have an
5 affordability covenant. If we're arguing that
6 taking these row houses and making smaller units
7 is the same thing as affordable housing, then our
8 proposal was to put it in writing and put the
9 covenant on it.

10 If they can't make the -- if a proposal
11 can't make the 900-square-foot-per-unit, and
12 that's important -- again, this is an esoteric
13 nuance of D.C. zoning. The 900-square-foot is
14 important because it gets to the density ratio.
15 In the R-4, you're allowed two units as a matter
16 of right, but your minimum land area has to be
17 1,800 square feet. So that ratio of 1 to 900
18 springs from that.

19 If you can't have that then, have minimum
20 land area, and you have to get some kind of
21 variance, which means your density is
22 disproportionately high compared to the
23 neighborhood, then we're saying that everything
24 beyond two units would be subject to the
25 affordability requirements of IZ.

1 And that's basically saying if you're
2 asking a neighborhood to absorb these units and
3 absorb a density that's disproportionate, then
4 let's make it really, really move forward that
5 public policy.

6 So that's recommendation two.

7 Recommendation three gets to the
8 nonresidential structures. And this is the
9 churches, the schools, the firehouses. And the
10 top part talks about special exception, which
11 means it goes through a public review. It
12 establishes no adverse impact. It looks to the
13 issue of light and air, transportation, how a
14 project would fit in with its neighborhood. And
15 it would not require the 900-square-foot per
16 dwelling unit.

17 And that's important because this is
18 where we're seeing developers have the hardest
19 time trying to get a variance to get that density.
20 So we propose there be no limit on that and that
21 it be subject to the IZ limits. These are
22 typically larger lots. The IZ doesn't kick in
23 until 10 units. And that's another reason that
24 the lower threshold is important. Very, very few
25 of these row house conversions meet the IZ level.

1 So there's an argument that they're
2 providing affordable housing, but in reality the
3 IZ doesn't come into effect until they hit 10
4 units. The 10 units is typically not seen until
5 they get into a conversion of a church or these
6 larger civic-type buildings.

7 Also advertized were two more
8 alternatives. And they addressed both residential
9 row house and the nonresidential buildings. And
10 again, based on whether you met the 900-square-
11 feet or didn't meet the 900-square-feet, there
12 would be a limit on four units maximum if you
13 couldn't meet 900-square-feet.

14 The final option advertized had to do
15 with no limit on the number of units regardless of
16 the land size and that there be no -- and that IZ
17 would just kick in at its normal rate, which is at
18 10 units, which we, like I said, seldom see in the
19 residential row house.

20 OP's recommendation, based on the overall
21 public policies, are that if we continue with the
22 residential row house conversion, that it would be
23 option number two, that it be tied to a true
24 public policy of affordability, that that
25 affordability be at 60 percent of an average

1 median income, and that it would trigger at the
2 fourth unit, which means that the third unit would
3 be matter of right without an IZ covenant, and
4 that if it has to get zoning relief to go forward
5 that it would tie to the third unit and above.

6 And that basically sums up what our
7 recommendations are. And we're available to
8 answer any questions.

9 CHAIRPERSON HOOD: Okay. Thank you very
10 much, Ms. Steingasser, for that recap and review
11 and the recommendations that are being proposed.

12 Colleagues, again, I'm going to ask --
13 we're going to have plenty of time to have a
14 discussion with the Office of Planning, and the
15 community will have plenty of time to hear us
16 deliberate. I really would like to hear from the
17 community this evening, because they are here.
18 But I will tell you that, let's open it up and see
19 if we have any burning questions that we need to
20 ask on the front end.

21 I'm not saying we can't ask questions.
22 But I want us to be cognizant, because when I
23 look, I see a lot of people that want to come up
24 and testify and give us their point of view also.
25 So we want to make sure that we're courteous to

1 the public. Because we can ask two and three
2 hours' worth of questions; we usually do. But
3 tonight, if you're got something burning, let's
4 ask that, and then we'll go to the public.

5 I didn't shame anybody. I mean, I'm sure
6 you've got one question.

7 (Laughter.)

8 CHAIRPERSON HOOD: Mr. Turnbull.

9 MR. TURNBULL: Yes. Well, thank you, Mr.
10 Chairman.

11 I want to thank the Office of Planning
12 for their brief and, I think, a very concise
13 explanation of the R-4.

14 When you talk about the R-4 as being not
15 an apartment-house area, but here we get into
16 apartment-house conversions, I just think for the
17 public it might -- further explanation about what
18 kind of impact it is. We're talking about it
19 being not an apartment area, but at the same time
20 we're talking about the ability to be able to
21 convert to apartments.

22 MS. STEINGASSER: Right. Most of our row
23 house zones in the District predate 1958, which is
24 when the zoning regulations were adopted. Many of
25 them go back to the 1800s. And there are many

1 areas where there are existing small walk-ups,
2 little four-squares, or really larger lots,
3 really. Especially some of the outer rings you'll
4 see over in parts of the park where large mansions
5 came in, and lots were larger.

6 And the zoning regulations recognized
7 that in 1958 that some of these could be
8 appropriately converted if they had the land area
9 to equalize that density.

10 And the reason it's important now is that
11 we're seeing it not only on the end with the 900-
12 square-feet, but we're seeing it push its way into
13 mid-blocks and start to put properties together.
14 We subdivide them. And it starts to gut the
15 traditional row houses.

16 And in those areas that are historic,
17 there is some review. But in the other areas, the
18 other 60 percent, there is no review. And it
19 really does start to change the character. And
20 the single-family row house now becomes part of a
21 multifamily development.

22 MR. TURNBULL: Okay. My other question
23 is, you talked about IZ applying for your
24 recommendation as to the third unit, the fourth
25 unit. But am I looking at -- but on a

ZC Case No. 14-11
January 15, 2015,
Hearing Transcript Pg. 31-32; 209

1 the public. Because we can ask two and three
2 hours' worth of questions; we usually do. But
3 tonight, if you're got something burning, let's
4 ask that, and then we'll go to the public.

5 I didn't shame anybody. I mean, I'm sure
6 you've got one question.

7 (Laughter.)

8 CHAIRPERSON HOOD: Mr. Turnbull.

9 MR. TURNBULL: Yes. Well, thank you, Mr.
10 Chairman.

11 I want to thank the Office of Planning
12 for their brief and, I think, a very concise
13 explanation of the R-4.

14 When you talk about the R-4 as being not
15 an apartment-house area, but here we get into
16 apartment-house conversions, I just think for the
17 public it might -- further explanation about what
18 kind of impact it is. We're talking about it
19 being not an apartment area, but at the same time
20 we're talking about the ability to be able to
21 convert to apartments.

22 MS. STEINGASSER: Right. Most of our row
23 house zones in the District predate 1958, which is
24 when the zoning regulations were adopted. Many of
25 them go back to the 1800s. And there are many

1 areas where there are existing small walk-ups,
2 little four-squares, or really larger lots,
3 really. Especially some of the outer rings you'll
4 see over in parts of the park where large mansions
5 came in, and lots were larger.

6 And the zoning regulations recognized
7 that in 1958 that some of these could be
8 appropriately converted if they had the land area
9 to equalize that density.

10 And the reason it's important now is that
11 we're seeing it not only on the end with the 900-
12 square-feet, but we're seeing it push its way into
13 mid-blocks and start to put properties together.
14 We subdivide them. And it starts to gut the
15 traditional row houses.

16 And in those areas that are historic,
17 there is some review. But in the other areas, the
18 other 60 percent, there is no review. And it
19 really does start to change the character. And
20 the single-family row house now becomes part of a
21 multifamily development.

22 MR. TURNBULL: Okay. My other question
23 is, you talked about IZ applying for your
24 recommendation as to the third unit, the fourth
25 unit. But am I looking at -- but on a

1 block character analysis could be considered. Not
2 a long drawn-out process, but each block has its
3 own character.

4 And I think that if a person wants to
5 build, understand that when you buy a property,
6 you're given certain rights that other people
7 can't encroach on. So everybody's here like
8 saying, "I bought property. What about my
9 rights?" Well, it goes both ways. It can't just
10 go your way. If I buy a property and I want to
11 paint my door pink, I'm allowed to. And you may
12 not like it, but I can. So, please.

13 But I think that if you're going to build
14 on the block, the neighbors' opinions should be
15 included. At the end of the day, the owner has
16 the right to do what -- to carry out his plans as
17 he sees fit.

18 But I think that if you go block for
19 block and try to make the addition fit in with the
20 character of the building, as opposed to creating
21 this tall tower in the middle of lower row homes,
22 I think that would be appealing to the developer
23 from a financial standpoint, because it's his
24 business, and also appealing to the neighbors, who
25 really don't have a say in what you can do with

OLENDER REPORTING, INC.

1100 Connecticut Avenue NW, #810, Washington, DC 20036

Washington: 202-898-1108 • Baltimore: 410-752-3376

Toll Free: 888-445-3376

ZC Case No. 14-11
June 8, 2015,
Hearing Transcript Pg. 8-11

1 didn't want to necessarily --

2 CHAIRPERSON HOOD: Want to join me? Oh.

3 MR. MILLER: -- join you but I thought
4 where the Commission landed, given all of the
5 testimony we received and given what the existing
6 matter of right zoning is for conversions, which
7 is basically almost -- as long as there is the 900
8 square feet of land area, it's a matter of right.
9 So there's almost an unlimited number if it's a
10 particularly large lot, which we know that there
11 are some unusually large lots in the city.

12 So I think we've arrived at a balanced
13 approach which -- and in the matter of right
14 scenario all these design criteria were added,
15 including you know, the no more than 10 feet to
16 the rear of the adjacent property, and the no more
17 of 30 percent demolition. I think it, in reality,
18 is that those criteria, that there will likely
19 have to be a review process if somebody wants to
20 propose something that maybe the neighbors might
21 support, but that doesn't quite meet -- I think
22 there were at least seven or nine, seven or eight
23 criteria that's in the proposal. So I thought it
24 was, that particular issue was a balanced
25 approach.

OLENDER REPORTING, INC.

1100 Connecticut Avenue NW, #810, Washington, DC 20036

Washington: 202-898-1108 • Baltimore: 410-752-3376

Toll Free: 888-445-3376

1 Anyone else? Anyone else like to comment
2 on that?

3 MR. MAY: So this is a difficult one. I
4 mean, we certainly didn't get a lot of comment on
5 this particular topic in the proposed -- from the
6 proposed regulations. You know, I guess what I
7 still struggle with is that I think that the
8 controls that are being put in place here, 35 foot
9 maximum, 900 square feet of land area per dwelling
10 unit, the 4th unit at IZ, 30 percent -- no more
11 than 30 percent demolition of the gross floor
12 area, 10 foot limit. I mean, all these things add
13 up to relatively small additions to row houses. I
14 mean, I think there is a concern that what we're
15 running into is that people don't want to see any
16 kind of addition or any kind of incentive for an
17 addition. And I think what we're experiencing is
18 that even with two units row houses are growing
19 exceptionally large and they're not resulting in
20 more and more affordable housing, necessarily.
21 They're simply -- I mean, you know, houses that
22 sell for \$500,000 get split into two condos that
23 sell for six and \$700,000. And because, you know,
24 they add a floor and they add the roof deck and
25 all these other things.

1 So I mean, I don't know. It's a real
2 quandary for me because I'm not sure -- you know,
3 I think that the limits that are being put on this
4 are actually quite reasonable and allow some of
5 the larger properties to become multi-unit as they
6 have for decades. But at the same time we're
7 seeing, I think, egregious examples of what people
8 will do when they redevelop some of these
9 properties. And we're not really even addressing,
10 you know, what can happen with just flats.

11 MS. COHEN: No, I concur that there has
12 been some horrible examples of additions that have
13 been made and that's why I think we see a lot of
14 people in the audience and we've received a lot of
15 comments. And again, if there was horrendous add-
16 ons or pop-ups as we all like to call them,
17 continue, there is going to be a problem.

18 Again, I think all along I did not see
19 this as a zoning issue but as an architectural
20 issue, and that we should have looked at it in
21 that way.

22 I would think that a lot of people do not
23 want to see added units to their neighborhood. I
24 mean, they like their neighborhoods, they're
25 peaceful, they're where they've put down their

1 roots. But we're a growing city and we need to
2 have the flexibility to enable other households to
3 come in to a neighborhood. And we need the
4 flexibility as an owner to be able to expand
5 within our own space, or to add our own family,
6 expanded family. I mean, there's lots of
7 different cultures who have more than one
8 household living in a home.

9 So I think that the problem that I see
10 with this is again, where illuminating personal
11 flexibility and not necessarily dealing with the
12 problem, which I'm not saying doesn't exist. But
13 I think that what we're doing is we're not giving
14 the people who have done it well, have had
15 setbacks, have been engaged with their neighbors,
16 the same opportunity to expand, and there are
17 tasteful examples throughout the city. So I guess
18 I just have the same dilemma you have, but I'm
19 looking at it more as a need to expand the
20 opportunity to add space in a particular row
21 house.

22 CHAIRPERSON HOOD: Okay. I would --

23 MR. TURNBULL: Mr. Chair, I wonder if I
24 could -- I have to comment on the Vice Chair's
25 comment. I mean --

BZA Case No. 19517
September 27, 2017,
Hearing Transcript Pg. 133, 136-137

1 three units to be retained.

2 CHAIRPERSON HILL: Okay. And just for my own
3 clarification, I mean, yeah, it's extremely odd for
4 the 900 square feet and the Office of Planning. So
5 just so I know again, can you kind of walk me through
6 again why you are in support?

7 MS. FOTHERGILL: Sure. What we found was the
8 exceptional condition was that it's an existing
9 condition that has existed prior to this applicant's
10 ownership. There have been three units in this
11 building at least to one previous owner. The building
12 has been converted, as the applicant mentioned.

13 There's been reconfigurations of stairs and bathrooms.
14 And so that leads to a practical difficulty to
15 compliance because if they had to convert to two units
16 to go back to a flat, it would be a practical
17 difficulty to make the renovations to the house. And
18 also, there's an existing tenant, who is a long-
19 standing tenant, that would need to be evicted.

20 And so, for this specific case, because
21 there's no additional impact to neighbors, there's not
22 a new amount of density coming into the property,
23 we've found that it meets the variance test,
24 specifically for this one, not in general for the 900
25 square feet for all cases across the board.

1 So we're just trying to be compliant, and I
2 guess it's been quite an education process. And you
3 know, we love the place and we want to have good
4 people in there that get on with the neighborhood, and
5 certainly are, you know, the neighbors on either side
6 have been very supportive, and I think we've also, you
7 know, partly won over some others that once they found
8 out how we've been managing the place in the time that
9 we've had it.

10 CHAIRPERSON HILL: Okay, great. Thank you.
11 Board have anything else?

12 [No audible response.]

13 CHAIRPERSON HILL: All right. I'm going to go
14 ahead and close the hearing.

15 Is the board ready to deliberate? Okay. I'm
16 fine to start.

17 I mean, I'm glad that the applicant has come
18 down. I've seen you guys here before and everything.
19 I hope that you've enjoyed your time here with us the
20 past few times that you've been with us. And I
21 thought that, again, the -- what I found enlightening
22 -- or, enlightening. What I found to be the best
23 analysis for me was the report from the Office of
24 Planning and how they had gotten to their analysis in
25 terms of approving this application. So I had said

1 the 900 square feet is something that they do not -- I
2 can't even remember the last time that they approved
3 that. And so, you know, I can then get behind the
4 application based upon the analysis that has been
5 provided for the Office of Planning in addition to
6 that the ANC has been in support of this application.

7 Does the Board have anything else to add
8 before I make a motion?

9 [No audible response.]

10 CHAIRPERSON HILL: Okay. I'll go ahead and
11 make a motion to approve Application No. 19517 as read
12 by the secretary.

13 MR. HART: Seconded.

14 CHAIRPERSON HILL: Motion been made and
15 seconded.

16 [Vote taken.]

17 CHAIRPERSON HILL: The motion passes, Ms.
18 Rose.

19 MS. ROSE: Staff would record the vote as
20 four, to zero, to one, with the motion by Mr. Hill
21 seconded by Mr. Hart, with Ms. White and Mr. Hood in
22 support of the motion to approve the application. One
23 board seat vacant.

24 CHAIRPERSON HILL: Okay, great. Summary
25 order.

BZA Case No. 20116
October 2, 2019,
Hearing Transcript Pg.193-195

1 were looking to do two units, even though that is -- I guess
2 that wouldn't be, that wouldn't be -- that wouldn't come into
3 play.

4 I was thinking that the number of total square
5 footage of the lot is 1,400 square feet. I guess you don't
6 have the 900 square foot per unit requirement for a flat.
7 So you wouldn't have to deal with that particular issue,
8 because I was thinking that while that's -- the 1,800 square
9 feet. So that may not be -- that may be more of a -- never
10 mind. I was thinking that that might connect into this as
11 well, but I was remembering -- now I'm remembering that the
12 900 square foot per unit is really four, really over that two
13 units.

14 But I understand that what you're looking for is
15 something that is well below what is required under the
16 zoning regs. So sorry for the little detour. It just kind
17 of came to me as I was looking through this, but that's it.

18 CHAIRPERSON HILL: All right. We're going to go
19 ahead and close the record. I think in terms of
20 deliberation, I mean I just -- I always find it very
21 interesting when the Office of Planning, or I shouldn't say
22 very interesting. Like the Office of Planning in their
23 recommendations, when we get to this 900 square foot thing,
24 it rarely -- they rarely veer from where the 900 square foot
25 rule is.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So in other words, I'm always somewhat kind of
2 interested as to how the Office of Planning gets to this.
3 That being the case, I do agree with the analysis that the
4 applicant has put forward in terms of the financial aspects
5 and how the property was the way it was, and how we're
6 getting to the three prongs of the test in order to grant the
7 variance relief.

8 So I will be voting in favor of this application.
9 I'm also happy to see that ANC 1B is in support, as well as
10 the six letters of support that we've also seen from the
11 applicant. Is there anything else that anyone would like to
12 add?

13 MEMBER JOHN: Mr. Chairman, I would just -- I
14 agree with you that 418 square feet per unit is really quite
15 small. But I'm also persuaded by OP's analysis and the
16 notation that from everything that we know, the property has
17 existed like this for some time. And so that I think meets
18 the exceptional condition requirement, and there is the
19 practical difficulty that I think they described fairly well.
20 So I would support the application.

21 CHAIRPERSON HILL: Okay, thank you. I'm going to
22 make a motion to approve Application No. 20116 as captioned
23 and read by the Secretary and ask for a second.

24 MEMBER JOHN: Second.

25 CHAIRPERSON HILL: Motion has been made and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 seconded. All those in favor say aye.

2 (Chorus of ayes.)

3 CHAIRPERSON HILL: All those opposed?

4 (No response.)

5 CHAIRPERSON HILL: The motion passes. Mr. Moy.

6 MR. MOY: Staff would record the vote as 4 to 0
7 to 1, this on the motion of Chairman Hill to approve the
8 application for the relief requested. Seconding the motion
9 Ms. John. Also in support Vice Chair Hart and Zoning
10 Commissioner Peter Shapiro. No other members present.

11 CHAIRPERSON HILL: Thank you Mr. Moy. Thank you
12 very much.

13 MR. DETTMAN: Thank you.

14 (Pause.)

15 CHAIRPERSON HILL: So Mr. Moy, there was -- so
16 there was an applicant who I believe we have tried to reach
17 out to, who said that they had forgotten; is that correct?

18 MR. MOY: Yes sir. It was a case that we called
19 earlier, and the applicant was not present. So I asked the
20 staff to contact the applicant and they said that they had
21 neglected to appear today. They had -- well yeah, they had
22 forgotten, and so in that process, they are requesting a
23 postponement of the Board, postpone their application to a
24 future date.

25 CHAIRPERSON HILL: Yes. I'm just kind of talking

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

BZA Case No. 20002
June 12, 2019,
Hearing Transcript Pg. 35-41

1 BZA CHAIR HILL: Good morning.

2 MS. MATTIE JOHNSON: My name is Mattie Johnson.
3 I'm the co-owner of the property at 21 Seaton Place,
4 Northeast.

5 MS. SALLIE JOHNSON: Sallie Johnson, and I am also
6 the co-owner of the property.

7 BZA CHAIR HILL: Okay, great. If you guys could
8 just have one microphone on at a time if you wouldn't mind.
9 It just kind of feeds back up here. Thank you. Which one
10 of you is going to be presenting to us first?

11 MS. MATTIE JOHNSON: I will be.

12 BZA CHAIR HILL: Okay, Ms. Johnson. All right.
13 Ms. Johnson, if you can just kind of walk us through what
14 you're trying to do and how you believe you're meeting the
15 criteria for us to grant the application. I'm going to put
16 15 minutes up on the clock so you can see on the top corner
17 there. And you can begin whenever you like.

18 MS. MATTIE JOHNSON: Oh, yes. The issues, we are
19 trying to make 21 Seaton Place what its legal status is. 21
20 Seaton Place is a three-unit apartment house. It has been
21 such since around -- between 1993 and 1994. The issue is the
22 land area is 1,725 square feet. The requirement for a three-
23 unit apartment is at least 1,800 feet. And that does not
24 exist at 21 Seaton Place.

25 We have exceptional circumstances here because we

1 purchased the property in 2002. At the time we purchased the
2 property, it was already a three-unit apartment house. That
3 is evidenced by the -- submitted by the neighbors who have
4 been on that street for 10, 20 years.

5 Not only is that extraordinary that it has been
6 renovated prior to 2015, prior to the new statute, the other
7 problem is that it would be an undue burden and hardship on
8 us, both person and financial, to try to convert it back into
9 a single family dwelling or a multi-family dwelling.

10 There are no interior walls. These are three
11 separate units with their own individual access. That would
12 mean -- if that was even feasible, that would mean knocking
13 down barrier walls, redoing plumbing which would create a
14 hardship, a financial hardship. And to be quite frankly, it
15 is something we would have to decide whether to maintain our
16 home or to sell it. That's number one. So that's our
17 exceptional circumstances.

18 We did not do anything to create this situation.
19 We are not asking to add anything or do anything to the
20 residence as to what we purchased in 2002. So because of
21 that, we're requesting a special -- a variance, an area
22 variance.

23 If you look at the photographs, 21 Seaton Place
24 aligns with all other properties on the street at 21 Seaton
25 Place. And Seaton Place, it is the same height of the

1 properties surrounding it. It does not interfere with the
2 air, light, or enjoyment of any other properties in the area.

3 BZA CHAIR HILL: Okay, great. Thank you. Does
4 the Board have any questions for the applicant?

5 ZC CHAIR HOOD: How did we come to -- I'm just
6 trying to understand because I know we worked hard to put
7 that 900 square foot. And I realize that you can't
8 accomplish that, and I'm just trying to figure out how did
9 it come to the -- how did you have to come -- I'm just trying
10 to figure this whole thing out. Because if you were there
11 before the regulations, then why now are we -- why are we
12 here? I'm just trying to figure that out. But some of that,
13 I may ask Ms. Fothergill. Maybe I missed it because you all
14 are going from -- each unit is going to be about, what, 575
15 square feet?

16 MS. MATTIE JOHNSON: Well --

17 ZC CHAIR HOOD: Turn your mic on.

18 MS. MATTIE JOHNSON: -- according to an appraisal
19 that was done for the bank a couple of years ago -- and I
20 submitted that as one of the --

21 ZC CHAIR HOOD: Okay.

22 MS. MATTIE JOHNSON: -- examples.

23 ZC CHAIR HOOD: Okay. That's the reason.

24 MS. MATTIE JOHNSON: Each unit has 998 square
25 feet, the three units. And I believe that is because they

1 are counting the basement unit.

2 ZC CHAIR HOOD: They included the basement?

3 MS. MATTIE JOHNSON: Basement. But if we was just
4 counting the amount -- a square amount, yes, that we have
5 amount of land that we have above ground, it would be about
6 -- the Commissioner is right. Correct, it would be about
7 five-something --

8 ZC CHAIR HOOD: Five-something?

9 MS. MATTIE JOHNSON: -- square feet.

10 ZC CHAIR HOOD: Okay. All right. Thank you.
11 Thank you, Mr. Chair.

12 BZA CHAIR HILL: Thank you. Anyone else? All
13 right. I'm going to turn to the Office of Planning.

14 MS. FOTHERGILL: Good morning. I'm Anne
15 Fothergill with the Office of Planning. To answer
16 Commissioner Hood's question, my understanding is the
17 applicant was going to get a license to rent the third unit
18 and then it came to light that they don't have the
19 appropriate C of O. They only have it for two units.

20 And so that's what started this process. That's
21 why they're here in order to get the appropriate C of O so
22 that they can rent the third unit. They had a change in
23 their situation, and so now they are hoping to rent that
24 third unit. That's my understanding.

25 ZC CHAIR HOOD: Okay.

1 MS. FOTHERGILL: And in terms of their
2 application, while the Office of Planning generally takes a
3 very hard line on the 900 square feet per unit, in this case,
4 we did find that they have an exceptional situation that
5 meets the variance test. And we have recommended approval
6 and are in support of this application and rest on the
7 record. But I'm happy to take any questions about it.

8 BZA CHAIR HILL: Does anybody have any questions
9 for the Office of Planning?

10 ZC CHAIR HOOD: So thank you, Ms. Fothergill,
11 because I too take a hard line on 900 square feet. But I
12 think Ms. Johnson -- even before you spoke, I think Ms.
13 Johnson's testimony persuaded me otherwise. This would be
14 my first time since we put that rule in place. So thank you.

15 BZA CHAIR HILL: Just for Office of Planning. I
16 know I saw it again. But how short are they in terms of what
17 they need?

18 MS. FOTHERGILL: The requirement is 900 square
19 feet per unit, so that would be 2,700 square feet of land
20 area. And they have a lot that is 1,725 square feet. So
21 they're significantly short.

22 BZA CHAIR HILL: All right. Does the applicant
23 have any questions for the Office of Planning?

24 MS. MATTIE JOHNSON: No.

25 BZA CHAIR HILL: Okay. Is there anyone here

1 wishing to speak in support? Is there anyone here wishing
2 to speak in opposition? All right. Either Ms. Johnsons, do
3 you have anything you'd like to add at the end?

4 MS. MATTIE JOHNSON: No, we don't.

5 BZA CHAIR HILL: Okay. All right. Thank you.
6 I'm going to go ahead and close the record, close the
7 hearing. Is the Board ready to deliberate? Sure. I can
8 start.

9 So I mean, to echo Chairman Hood, I mean, it kind
10 of is -- I always think it's kind of interesting. The 900
11 square feet thing is really something that the Office of
12 Planning never seems to budge on. And so I'm a little
13 surprised in terms of their analysis. However, I have read
14 through it and I agree with their analysis. And so I will
15 be in favor of this application.

16 In addition to that, I guess -- no, actually, I
17 forgot to ask the applicant. So I'm going to ask the
18 applicant. The ANC, what happened with your ANC again?

19 MS. MATTIE JOHNSON: Oh, we went before the ANC
20 and they filed a report to the file, I guess. It was a
21 unanimous agreement. They filed a report approving it. It's
22 about Exhibit 52 or --

23 BZA CHAIR HILL: I think it's 58.

24 MS. MATTIE JOHNSON: Yes.

25 BZA CHAIR HILL: Okay. That's right.

1 MS. MATTIE JOHNSON: And we also went before our
2 civic association, and they approve.

3 BZA CHAIR HILL: Okay. All right. Okay. So I'm
4 going back to deliberating here. And so I was just finding
5 a little bit more clarification in terms of the ANC. But I
6 am seeing it here that they were in support. And so I think
7 they've met the criteria and I'm going to vote in favor. Is
8 there anyone that'd like to add anything?

9 ZC CHAIR HOOD: And I would just -- I think this
10 is one of those rare cases, and I just would put on the
11 record that this is not precedent setting. But I think this
12 is a difficulty as Office of Planning has already mentioned.
13 I think this is one of those rare cases that actually the
14 first one I think I've seen which would allow for us to grant
15 this request.

16 BZA CHAIR HILL: Okay. I'll go ahead and make a
17 motion to approve Application No. 20002, as captioned and
18 read by the Secretary and ask for a second.

19 MEMBER JOHN: Second.

20 BZA CHAIR HILL: Motion made and seconded. All
21 those in favor, say aye.

22 (Chorus of aye.)

23 BZA CHAIR HILL: All those opposed? Motion
24 passes, Mr. Moy.

25 MR. MOY: Staff would record the vote as 3 to 0

BZA Case No. 21335
July 30, 2025,
Hearing Transcript Pg. 44-45, 57

1 combined. In fact, the doors that you're looking at to the
2 property do not even lead into the same area. One leads into
3 the ground floor unit and the other leads into a hallway that
4 diverges into the second and third floor units. It's not feasible
5 to combine these into two units.

6 There's also a bit of history as to how the Applicant
7 came to this property. When she acquired the property after her
8 brother had passed away she relied in good faith on the
9 longstanding use as a three-unit residential property as being a
10 valid operation. She maintained and restored the property
11 following the fire to its original construction which I put up
12 here and you can see the pre-fire and the post-fire restoration.
13 You can see that the architecture of the building did not change.
14 It is as it has always been architecturally. She maintained and
15 restored the property and obtained a valid building permit to do
16 so.

17 The BZA actually faced a very similar situation back
18 in 2018 in case No. 19662 where Mr. Demetrios Bizbikis inherited
19 a property that, before he owned it, had been erroneously
20 converted into a four-unit apartment building that did not meet
21 the 900 foot rule. It had been issued an incomplete Certificate
22 of Occupancy. I'd like to quote the order that granted the
23 variance waiving the 900 foot rule in that case.

24 "The Board concludes that the Applicant's good faith
25 detrimental reliance creates an exceptional zoning history which

1 meets the first prong of the variance test."

2 The Bizbikis case actually affirmed an earlier similar
3 finding by the Board in 2012 in case 18452 where the Applicant,
4 Lynn Myers, acquired a three-story two-unit property as part of
5 a four person partnership. The partnership converted the
6 property to a three-unit building, one unit per floor, no direct
7 access between the floors, similar to this case here. Ms. Myers
8 then bought out her partners after the work had already been
9 completed and then discovered that it was not compliant with the
10 900 foot rule.

11 She sought conversion to a three-unit building and a
12 variance. There is only a summary order of that case available
13 but the burden of proof statement submits that the uniqueness of
14 the property is justified on the basis that no work, that the
15 work on the property was completed prior to Ms. Myers' control
16 and she had no intent to make further changes to the property.
17 That is also true in our case here. The work has already been
18 completed. There is no intent to make additional changes and
19 actually the Applicant in this case did not do the conversion.
20 If you wouldn't mind going to the next slide.

21 We also identified three past cases in the vicinity
22 that were approved to go from two units to three units
23 establishing that in this area there are a limited number of
24 three unit buildings. We are not introducing any kind of a new
25 use. At 2034 North Capitol Street, Northwest, which is on square

1 21335 as captioned and read by the secretary, and ask for a
2 second. Mr. Blake?

3 VICE CHAIRPERSON BLAKE: Second.

4 CHAIRPERSON HILL: Motion made and seconded. Madam
5 Secretary, take a roll call, please.

6 MS. MEHLERT: Please respond to the Chair's motion to
7 approve the application.

8 Chairman Hill?

9 CHAIRPERSON HILL: Yes.

10 MS. MEHLERT: Vice Chair Blake?

11 VICE CHAIRPERSON BLAKE: Yes.

12 MS. MEHLERT: Board member Smith?

13 COMMISSIONER SMITH: Yes.

14 MS. MEHLERT: Commissioner Stidham?

15 ZC COMMISSIONER STIDHAM: Yes.

16 MS. MEHLERT: Staff would record the vote as four to
17 zero to one to approve Application No. 21335 on the motion made
18 by Chairman Hill and seconded by Vice Chair Blake.

19 CHAIRPERSON HILL: Thank you. Madam Secretary, if you
20 can call our next one, please.

21 MS. MEHLERT: Next is Application No. 21336 of United
22 Unions, Incorporated. This is a self-certified application
23 pursuant to Subtitle X, Section 901.2 for special exceptions
24 under Subtitle C, Section 1501.1(e) to allow a penthouse
25 habitable space on a building within the area bounded by I Street,

BZA Case No. 19959
April 3, 2019,
Hearing Transcript Pg. 217-220

1 MEMBER JOHN: Okay. Thank you.

2 CHAIRPERSON HILL: Okay. Now I'll turn to the Office
3 of Planning.

4 MR. COCHRAN: Thank you, Mr. Chair. OP is happy to
5 stand on the record, but of course answer any questions you
6 would like.

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

9 VICE CHAIRPERSON HART: Just a similar question
10 around the incorporation of this unit into the basement
11 level. Did you all consider that?

12 MR. COCHRAN: We certainly -- we didn't do a
13 feasibility analysis. We did look at what the Applicant has
14 said about the practicality of combining them. I also know
15 from conversations with DHCD that it's relatively unusual for
16 there to be demand for a four-bedroom unit, and that's with
17 respect to IZ units and other things. We're often talking
18 about the need for larger family units, but the types of
19 units that, they have more difficulty filling the larger
20 units than the smaller units.

21 This isn't IZ. It's probably what we used to call
22 Section 8, but the same kind of profile holds. Going to a
23 four-bedroom unit didn't seem as desirable as adding another
24 additional affordable unit.

25 CHAIRPERSON HILL: Okay. Anyone else? Okay. Does the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Applicant have any questions of the Office of Planning?

2 MS. WILSON: No, thank you.

3 CHAIRPERSON HILL: Is there anyone here wishing to
4 speak in support? Is there anyone here wishing to speak in
5 opposition? Is there anything you would like to add, Ms.
6 Wilson?

7 MS. WILSON: No, thank you.

8 CHAIRPERSON HILL: Okay. I'm going to go ahead and
9 close the hearing. Is the board ready to deliberate? Would
10 someone else like to start?

11 MEMBER JOHN: Okay, I'll start. So when I read this
12 case I thought it was fairly straightforward. It seemed to
13 me that the Applicant does have an exceptional situation
14 because the building needs to be renovated and the utilities
15 are being moved from one big open space utility area in the
16 basement to the individual units, and that it would make
17 sense to convert that space into residential space.

18 I think that the Office of Planning has explained
19 the difficult in renting a four-bedroom unit for the price
20 point and the clientele that's anticipated and so based on
21 OP's testimony and analysis and the Applicant's
22 representation, I am able to support this application.

23 CHAIRPERSON HILL: All right. Thank you. Anyone
24 else?

25 MEMBER WHITE: Mr. Chair, I would support the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 application as well, especially with the Office of Planning
2 weighing in on the fact that he believed that they met the
3 criteria for the area variance test that there is an
4 exceptional condition as well as a practical difficult and
5 that it makes sense to modify part of that basement floor
6 into one unit, and that there's a demand and a need for these
7 sorts of Section 8-type units in the community. And the price
8 points made sense to me as well.

9 So I would be in support of the application. I
10 believe that we also got an ANC report, too, that was filed
11 yesterday, so it is supportive of the application as well.
12 I'll be voting in favor of it.

13 COMMISSIONER MILLER: Thank you, Mr. Chairman. I
14 agree with my colleagues and if I read the record correctly,
15 I think it is a benefit to public good that the existing
16 units and the proposed unit are going to be two-bedroom units
17 if I read it correctly. And so I think that's a beneficial
18 aspect to the public good, just speaking to the third prong.

19 VICE CHAIRPERSON HART: I would, I mean, I still
20 have some concerns about it. I don't think that the concerns
21 rise to me not being able to support it, but I think that
22 it's, I almost think that there could be a case to make this
23 into a one large unit. I understand, we've heard three
24 bedrooms, four bedrooms, might be viable but I understand
25 what the Applicant and the attorney here are describing.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And I do understand it being, it could be
2 practically difficult to incorporate it, so that's where I
3 am.

4 CHAIRPERSON HILL: Okay. I have nothing to add. I'm
5 going to make a motion to approve application number 19959
6 as captioned and read by the Secretary, and ask for a second.

7 MEMBER JOHN: Second.

8 CHAIRPERSON HILL: Motion made and seconded. All
9 those in favor say aye.

10 (Chorus of aye.)

11 CHAIRPERSON HILL: All those opposed? The motion
12 passes. Mr. Moy?

13 MR. MOY: Staff would record the vote as 5-0-0. This
14 on the motion of Chairman Hill to approve the application for
15 the relief requested; seconding the motion, Ms. John. Also
16 in support Ms. White, Vice Chair Hart and Commissioner Rob
17 Miller. Motion carries, sir.

18 CHAIRPERSON HILL: Okay, great. Thank you. Thank you
19 very much. Mr. Moy, do we have anything left for the Board
20 today?

21 MR. MOY: Not from the staff, Mr. Chairman.

22 CHAIRPERSON HILL: Okay. We stand adjourned. Thank
23 you.

24 (Whereupon the above-entitled matter went off the
25 record at 4:38 p.m.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

BZA Case No. 19718
May 2, 2018,
Hearing Transcript Pg. 40-41, 46-67

1 unusable spaces.

2 So we felt that that did contribute to the
3 variance test. And I'll go ahead and rely on our report for
4 the rest of the items, but I just wanted to add some
5 clarification. And I'm happy to answer any questions you
6 have.

7 VICE CHAIR HART: And one of the points that
8 you're making too is that because the stairwell is an
9 independent feature that is not in any unit, that if it were
10 to be incorporated into a unit, then that would reduce the
11 size of the unit as well as just -- it would eat up a lot of
12 -- as well as not -- you wouldn't -- it would be hard to
13 figure out what to do with the area where the existing
14 stairwell is.

15 MR. THOMAS: Right.

16 VICE CHAIR HART: And so that issue is -- it kind
17 of compounds itself because the stairwell is not incorporated
18 into a unit right now.

19 MS. ELLIOTT: Correct. I mean we'd be starting
20 from scratch. And circulation does eat up a lot of floor
21 area. And in the end we may not end up with much larger
22 units through combining the basement and the first floor than
23 we would have, you know, otherwise.

24 VICE CHAIR HART: Are there any other questions
25 for the Office of Planning?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Does the Applicant have any questions for the
2 Office of Planning?

3 MR. THOMAS: No.

4 VICE CHAIR HART: Mr. Brown, do you have any
5 questions for the Office of Planning?

6 COMMISSIONER BROWN: No.

7 VICE CHAIR HART: I had to ask.

8 So, Mr. Brown, it is actually your turn to provide
9 us with the ANC -- I should say Commissioner Brown -- sorry
10 -- with the insight from the ANC. If you could just let us
11 know how the ANC meeting went and then what your final vote
12 was for this case.

13 COMMISSIONER BROWN: Good morning, Vice-Chair Hart
14 and Committee Members. ANC 6E, we have met with the Zoning
15 Committee as well as they presented to the full ANC. In the
16 zoning meeting, which I am the chair, we went through the
17 entire project with them. Their request to add the two
18 additional units to the building seemed very amenable to us.
19 We only had one concern and that was regarding egress, and
20 I believe they have addressed that. So at this point in time
21 we were in unanimous consent that we could support this, both
22 in the Zoning Committee and in the full ANC.

23 VICE CHAIR HART: And the issue with egress was
24 what exactly?

25 COMMISSIONER BROWN: We couldn't really readily

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 testimony, I appreciate all of you for coming down,
2 Commissioner Brown as well. And reading through the Office
3 of Planning report, the one concern that I had was
4 understanding the floor plan issue with regard to the
5 circulation. And after listening to the Office of Planning
6 report, as I was looking at the plan itself, the proposed
7 floor plan, I understand that there would be a difficulty,
8 a practical difficulty in reconfiguring the circulation for
9 the building so that it could provide access to the -- well,
10 to provide access to the basement so that could be used by
11 one of the existing units.

12 So as I felt that you all had met that prong, and
13 I didn't feel that there were -- and I agreed with the Office
14 of Planning for the other two prongs of the -- excuse me --
15 of the variance test, no substantial detriment to the public
16 good and no substantial harm to the zoning regulations, I
17 felt that I could be in support of the application to grant
18 your variance.

19 And I would like to hear. Do the other Board
20 Members have any comments or anything else that they'd like
21 to add to this.

22 Very quiet today.

23 MEMBER JOHN: I would just add that I agree with
24 the report from the Office of Planning, especially concerning
25 the circulation issue. In looking at the layout of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 basement, in one of the exhibits, I could see where the
2 stairs really in the middle of the building, so you'd really
3 have to do substantial reconfiguration in order to get usable
4 space for the first-floor apartment. So based on the fact
5 that the building is landlocked and you're not adding any
6 more area, any more space, just adding two units in the
7 basement, I would concur with everything everyone else has
8 said and I would be prepared to support the application.

9 VICE CHAIR HART: Okay. So with that I would make
10 a motion to approve Application Number 19718 of Revie Dow
11 LLC, as read and captioned by the Secretary. Do I have a
12 second?

13 COMMISSIONER SHAPIRO: Second.

14 VICE CHAIR HART: All those in favor say aye.

15 (Chorus of aye)

16 VICE CHAIR HART: Any opposed?

17 Motion carries, Mr. Moy.

18 MR. MOY: Staff would record the vote as four to
19 zero to one.

20 This is on the motion of Vice Chair Hart to
21 approve the application for the relief being requested.
22 Seconded the motion, Mr. Peter Shapiro also support Ms.
23 Lesyllee White, Ms. Lorna John. We have no other Board
24 Members with us today. The motion carries, sir.

25 VICE CHAIR HART: A summary order, Mr. Moy.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MOY: Thank you.

2 VICE CHAIR HART: Thank you all very much.

3 COMMISSIONER BROWN: Thank you.

4 VICE CHAIR HART: So moving right along, Mr. Moy.

5 MR. MOY: Thank you. The next case application
6 before the Board is Number 19730. This is of Sons of Italy
7 Foundation, caption and advertised with special exception
8 under the nonprofit use provisions of Subtitle U, Section
9 203.1(n), and pursuant to 11 DCMR Subtitle X, Chapter 10, for
10 an area variance from the gross floor area requirements of
11 Subtitle U, Section 203.1(n)(2), to continue a nonprofit
12 office use, RF-3 District at 219 E Street, Northeast, Square
13 755, Lot 32.

14 VICE CHAIR HART: Good morning. If you all could
15 introduce yourselves.

16 MS. MAZO: Sure. Samantha Mazo from the law firm
17 of Cozen O'Connor. I'm here on behalf of the Applicant.

18 VICE CHAIR HART: Good morning.

19 MR. ISGRO: Morning. My name is Biagio Isgro, Jr.
20 I'm the National Co-Chair for the Budget and Finance
21 Committee for the organization.

22 VICE CHAIR HART: Could you say your last name
23 again?

24 MR. ISGRO: Last name is Isgro, I-s-g-r-o. First
25 name Biagio, B-i-a-g-i-o, and that's Jr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR HART: Thank you.

2 MS. JEROME: Carly Jerome. And I am the Director
3 of Operations and Programming for the organization.

4 VICE CHAIR HART: Good morning to you all.

5 Ms. Mazo, I'm assuming you're going to be
6 presenting the case to us.

7 MS. MAZO: Yes. Thank you very much. Hopefully
8 this will be a short presentation. This application.

9 VICE CHAIR HART: Long. I'm kidding.

10 MS. MAZO: Okay. That was a joke, for the record.

11 VICE CHAIR HART: Yes.

12 MS. MAZO: It will not be a long presentation.

13 This application has the support of the ANC, OP.
14 We also have support from both adjacent neighbors. There is
15 also support from the CHRS, Capitol Hill Restoration Society,
16 as well as Architect of the Capitol. So I just wanted to let
17 that out there.

18 As an initial matter, I'm here on behalf of the
19 Sons of Italy, which is a 501(c)(3) nonprofit organization
20 that's organized and operated for charitable purposes. The
21 property is located at 219 E Street, Northeast. Sons of
22 Italy has owned this property and operated their nonprofit
23 office out of this property since it was constructed in 1980.
24 As discussed at length in the record, Sons of Italy has --
25 excuse me -- obtained business licenses for the property in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the past, most recently, as recent as 2015.

2 Really the reason we're here, I know that that
3 question has come up, the reason we're here is because I
4 believe Ms. Carly Jerome went down to go obtain a new
5 business license maybe in the fall and was informed by DCRA
6 that it couldn't be issued because they couldn't locate a
7 CofO. So we know we spent some time working with DCRA and
8 with the Zoning Administer. It was determined that while
9 there was a CofO that was identified on the business
10 licensed, it could not be located on DCRA's records. So
11 essentially the Zoning Administer said just go to the Board
12 and ask the Board for relief in order to be able to continue
13 the nonprofit office use at this site.

14 So the property is laid out as an office. It is
15 an office. It has never been used as a residence although
16 it was constructed as a residence.

17 The background again on the Sons of Italy. They
18 have -- it's a very small nonprofit organization. And one
19 thing I do just want to mention is Mr. Isgro is a volunteer.
20 He volunteers his time for this organization. And he lives
21 in Albany, New York. And he has been coming back and forth
22 to Washington to get this issue addressed. And I think, you
23 know, it's amazing to me of people who contribute that much
24 to their community and their organizations, and I wanted just
25 to put that on the record.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The foundation has always operated in a quiet and
2 harmonious manner. No violations or complaints. Really all
3 we're here to do is to maintain the status quo. There is no
4 building expansion, there is no change in operations. We're
5 really here to be able to get the approval for the Special
6 Exception and the Associated Area Variance, and to then go
7 to DCRA. And, in fact, I was just sending an email to Mr.
8 Whitescarver at DCRA. We're hoping to be able to move
9 forward through the CofO process very quickly at DCRA once
10 today is over.

11 Just very quickly, the foundation has no
12 conference room -- or no large conference room. It has three
13 parking spaces. Only one is used. It is -- let's see, I'm
14 just trying to move forward through the presentation.

15 VICE CHAIR HART: You should just be able to use
16 the arrow keys.

17 MS. MAZO: Okay, perfect. All right.

18 VICE CHAIR HART: Does that work?

19 MS. MAZO: I'm having a little trouble with the
20 mouse.

21 Okay, let's try this. Okay. As we said, there
22 are previous building permits and business licenses for the
23 site, including two business licenses that have been issued
24 to the Sons of Italy. There is also -- they also have
25 obtained a certificate of good standing from OTR as recently

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 as 2010. They pay commercial taxes. They have been paying
2 commercial taxes since at least 2005. The property has been
3 assessed as a private club. And, just a little bit of
4 background, up until -- the property had been zoned R-4.
5 It's now the RF-3, which is the Capitol Hill RF -- R-4 zone.
6 But under the R-4 zone, a private club was permitted as a
7 matter of right. That's honestly what we believe the CofO
8 was for, was for a private club. But when the -- under the
9 new zoning regs, when they came in in 2016, private club was
10 no longer permitted as a matter of right and so we are here
11 for a special exception. But they have been assessed and
12 paying as a private club.

13 The relief requested. We are here for relief from
14 the Special Exception Requirements of Subtitle U, 203.1, to
15 continue the nonprofit organization's use for the purposes
16 of its office. As one of the criteria of that special
17 exception is that the property needs to be 10,000 square feet
18 in gross floor area. This property is approximately 3200
19 square feet in gross floor area, so we don't satisfy that
20 requirement. Accordingly, we're seeking an area variance.

21 A question that had come up both from the ANC and
22 also from OP is just confirmation that this relief, the area
23 -- the 10,000 square foot relief can be granted as an area
24 variance, and that has been squarely addressed both by the
25 DC Court of Appeals in the French case as well as by this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Board in other cases. And so, further, there is an OAG
2 discussion, that the Office of the Attorney General has
3 opined that this relief can be granted as an area variance.

4 Just very quickly I'm going to walk through how
5 the property -- the property is -- relief is harmonious, with
6 the intent. This is the Special Exception Standards. The
7 foundation satisfies the nonprofit organization definition.
8 The property was constructed as a residence.

9 It's located only two lots away from commercially-
10 zoned properties. The foundation has used it for 37 years.
11 Continuing the current use will not tend to adversely affect
12 the use of the neighbors. There is no traffic impact, only
13 four employees. No large events or associated noise. The
14 status quo will be maintained.

15 I can walk through this, but we satisfy all the
16 different requirements of the Special Conditions for the
17 nonprofit. The area variance, just as a general matter, as
18 this Board knows, area variance can be applied in a more
19 flexible manner for a nonprofit that's been -- first was
20 brought forward in the *Monaco* case and has recently been
21 reaffirmed in the *St. Mary's Episcopal Church* case that came
22 out in December of 2017. The property is exceptional and
23 unique when assessing those factors. The Board is aware that
24 the court has determined uniqueness may arise from a
25 confluence of the factors. There is a more flexible standard

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of review for an exception condition for the nonprofit
2 organization. And also *Monaco* has -- stands for the past
3 actions of a permitting authority giving rise to good faith
4 detrimental reliance can create exceptional conditions.

5 And the exception conditions here are that they
6 have been using the office for almost over 40 years -- I'm
7 sorry -- 38 years, that they had basic business licenses,
8 that we can't find the CofO, we've paid commercial taxes.
9 And of course as indicated by the prior photo of the
10 building's internal configuration is non-residential.

11 The practical difficulties here. There is no way
12 to meet the 10,000 square feet requirement. And it would be
13 unnecessarily burdensome to force the foundation to move or
14 sell the building if the nonprofit use cannot continue.
15 There is no substantial impairment of the zone plan. Again,
16 close proximity to the mixed-use zones.

17 One thing that I could go back, is that the square
18 itself is very mixed-up uses. You have -- I'll identify it
19 at the end, but you've got that the Heritage Foundation,
20 you've got the Wheat Grower's Foundation, you have a very
21 large apartment house, you've got a gas station right there
22 at the corner of Second and Mass. And so there is a lot
23 going on on that square. There have been no complaints. The
24 day-to-day operations are proportionate to the building size
25 and the number of employees, and there are no changes to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 operations.

2 You have strong community for this application,
3 16 letters of support which, as this Board knows, is not easy
4 to do. I really credit Ms. Jerome with going out and getting
5 that in particular. We've got letters of support from all
6 the adjacent property owners. There is no 2017 E Street.
7 Unanimous support from the ANC 6C, support from Capitol Hill
8 Restoration Society, and the Architect of the Capitol.

9 This is just an image that was included in our
10 prehearing statement that identifies where the letters of
11 support are located, but I would like to just use this -- use
12 this image to identify that we've got the National Republican
13 Committee at the corner of E and Second. We've got the Wheat
14 Growers, you've got the Exxon station on Mass and Second.
15 There is an apartment house and then the Heritage Foundation.
16 So the block itself is really a mix of uses.

17 ANC has proposed conditions of approval, a maximum
18 of five employees and no reception or other events shall be
19 hosted for outside persons. The applicant accepts these
20 conditions. And, with that, I will be happy to respond to
21 questions as will my colleagues here at the panel.

22 VICE CHAIR HART: I thank you very much for a
23 thorough presentation, as always. I did have a question and
24 this is a question that actually our Office of Attorney
25 General was -- wanted us to understand this a little bit

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 further and I am actually interested in this as well.

2 You cite *Monaco* in this case and that's, you're
3 saying, because this is a public service and these are
4 inadequate facilities. But in this case, in the *Monaco* case
5 our OAG is saying that this is a -- that that was really a
6 case of some different facts. And the fact in particular is
7 that they were looking for an expansion and that the Court
8 was really was kind of talking about that case and that was
9 pertaining to the expansion aspect of that. There is no
10 expansion that's happening here. This is basically an
11 existing condition that you're looking to make so that it is
12 legal, I guess. And if you could just kind of explain that.
13 And I hope I asked the question correctly, but do you
14 understand the part that I'm --

15 MS. MAZO: Sure. You know the *Monaco* and that
16 generation of cases, including National Black Children
17 Foundation and really as has been more recently reviewed
18 under the Saint Mary's Episcopal Church case, yes, Vice-Chair
19 Hart, to your point, the *Monaco* case did address a situation
20 where there was an expansion of a nonprofit.

21 But the question that we're addressing here is the
22 fact that as a general matter, the court has determined and
23 has upheld in numerous cases the fact that the area variance
24 standard can be reviewed by this Board in a more flexible
25 manner for a nonprofit. And so, yes, that particular case

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 regards an expansion, but I am very intimately involved with
2 a case that's currently before the D.C. Court of Appeals
3 which is to construct a new homeless shelter in Ward 3. And
4 in that case an order has not been issued, but at the oral
5 argument before the D.C. Court of Appeals on that case, the
6 opposition in that case had brought up this exact question:
7 Could *Monaco* apply in that situation because that was not an
8 expansion in that instance. This was a brand new building,
9 which is of course different from our case here which is that
10 we're an existing building. And the court very clearly said
11 that *Monaco* applied, would apply. I mean from the dais we'll
12 have to obviously see what shakes out in the written order,
13 but the three-judge panel who was hearing that case did very
14 clearly determine that *Monaco* applied in that case where
15 there was a construction of a new building.

16 And so I would venture to say that the court's
17 view of *Monaco* is not simply that it applies only to an
18 expansion of a nonconforming use or that it only applies in
19 a very limited instance. I would certainly say that through
20 the recent iterations and the way it's been applied in *St.*
21 *Mary's* and then also, quite frankly, in the *St. Thomas* case
22 that just came down a couple weeks ago, that there is an
23 understanding that the *Monaco* and the *Monaco* doctrine applies
24 more broadly than simply in a situation where there is an
25 expansion of a nonprofit.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR HART: And there may not be a defined
2 piece to it yet, but that may actually -- there may be a
3 limitation that is placed on the *Monaco* ruling -- or not the
4 *Monaco* ruling, but the -- as you call it -- the doctrine, but
5 that may be -- that may be coming in the future, we just
6 don't know what that is.

7 MS. MAZO: And I agree with that. And, you know,
8 of course I don't have a crystal ball and I can't
9 specifically say how the court is going to come down in
10 particular on that homeless shelter case, but in that
11 instance the feedback that -- not the feedback but the
12 language of the judges who were sitting on the bench for that
13 case, they were clearly of the opinion that *Monaco* applied
14 squarely to that case, that in that instance the District of
15 Columbia acting in order to construct these homeless shelters
16 was to be entitled to the additional deference that *Monaco*
17 stands for.

18 VICE CHAIR HART: And you're saying that the
19 *Monaco* case is relevant here because this is a --

20 MS. MAZO: A nonprofit.

21 VICE CHAIR HART: -- a nonprofit.

22 MS. MAZO: Right.

23 VICE CHAIR HART: And that's the aspect of it that
24 you're --

25 MS. MAZO: Right. Exactly. So that the -- you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 know, the -- there are two aspects of *Monaco* that I say apply
2 here, and they have been applied here by this -- by this
3 Board on numerous occasions. But the first is the general
4 understanding that the Board reviews the area variance
5 standard in a more flexible manner for nonprofits. And then
6 the second, *Monaco* really addresses the question of the
7 exceptional condition. And *Monaco* has stood for the fact
8 that there is more flexible standard of review applied for
9 that exceptional condition prong of the area variance for a
10 nonprofit organization.

11 VICE CHAIR HART: And do you believe that the --
12 that your case would work without the *Monaco* doctrine.

13 MS. MAZO: I believe it would. I mean we have a
14 situation where we've got a nonprofit that's been working
15 there for 37 years, and the building's internal configuration
16 is nonresidential. And there have been permitting back and
17 forth with DCRA.

18 And one thing I wanted to clarify on the record,
19 there was a comment that the use was not legal. But, in
20 truth, the use had been licensed --

21 VICE CHAIR HART: And actually I didn't mean to
22 say that it wasn't legal, --

23 MS. MAZO: No, I know. I just --

24 VICE CHAIR HART: -- I was more saying that it --

25 MS. MAZO: Well, that -- that --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR HART: -- hadn't gotten its license in

2 --

3 MS. MAZO: Right, right. That it hadn't --

4 VICE CHAIR HART: Yes.

5 MS. MAZO: The license had not been renewed.

6 VICE CHAIR HART: Yes.

7 MS. MAZO: And, quite frankly, I think we would
8 be in a very different situation if when the 2015 license had
9 expired. Two days before that, one of them had gone in and
10 realized, oh, this is going to expire, we need to go and
11 renew this license, I am 95 percent sure that they would have
12 been able to walk out that day with a new license. And even
13 if that had been the situation, then we would have an
14 argument, a very strong argument that even if we had to come
15 to the Board for some reason -- well, I don't think we would
16 have had to come to the Board for some reason because we'd
17 have the argument that it was a non- -- the use itself
18 conforming predating the time -- the little nonconforming use
19 that was in place at the time of the zoning regulations
20 change. And if that was an acute situation, then those types
21 of uses are permitted to continue as a matter of right. So,
22 you know,...

23 VICE CHAIR HART: I'm sorry for belaboring this
24 point, but I just wanted to get a little bit of clarity, and
25 I think you have provided it. And I don't know if the other

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Board Members have any other questions, but that was the only
2 one that I needed a lot of clarity around.

3 MEMBER JOHN: Yes, Mr. Vice-Chair. I'm still
4 struggling with the *Monaco* -- everyone's mispronouncing this
5 morning -- *Monaco*. *Monaco* case. So I'm glad that you
6 clarified that as well.

7 Now you mentioned a recent case that you said
8 would also apply. Can you go into that a little bit more?

9 MS. MAZO: Sure.

10 MEMBER JOHN: *St. Mary's Episcopal*. Thank you.

11 MS. MAZO: No, so there are two cases that have
12 come out, although numerous cases have come out of the D.C.
13 Court of Appeals recently, but the first, though, the one
14 that I'm referring to in particular is the *St. Mary's*
15 *Episcopal Church* case.

16 MEMBER JOHN: Yes.

17 MS. MAZO: In that case the court upheld the
18 Zoning Commission's decision to permit the expansion of a
19 Hillel Building at the GWU campus. And part of the court's
20 argument there is that the -- or the Hillel, it's not really
21 *St. Mary's*, but the Hillel was entitled to a reduced standard
22 of review due to the fact that it was a nonprofit. And so
23 -- and *Monaco* was referenced and the court found clearly that
24 the Board may be more flexible when it assesses a nonprofit
25 organization.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER JOHN: Thank you.

2 VICE CHAIR HART: Any other questions? Yes, Mr.
3 Shapiro.

4 COMMISSIONER SHAPIRO: Just following up on that.
5 How was the standard of review reduced in that case? I'm
6 trying to see if it's applicable to this situation.

7 MS. MAZO: Yeah. I mean I have to go pull it up,
8 I don't remember exactly. But you know I think to the
9 Board's -- I mean to Vice-Chairman Hart's point, I mean this
10 -- *Monaco* -- the courts are clear that *Monaco* applies here.
11 But even if you did not want to argue that a reduced standard
12 was applicable here, that the exceptional condition that's
13 presented in this case would still satisfy the requirements
14 of the Board.

15 COMMISSIONER SHAPIRO: Thank you. I mean, Mr.
16 Chair, that's sort of a direction that I would go with this,
17 in any case, that it feels appropriate. I just don't want
18 to even begin set any kind of precedent around reduced
19 standard in a case like this. But I don't have any
20 objections to it, frankly.

21 And I did have one other question related to the
22 issue of the ANC's conditions. Is that appropriate to talk
23 about now?

24 VICE CHAIR HART: Well, wait until we have the ANC
25 here, so we could talk to them when they -- at that point.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 COMMISSIONER SHAPIRO: Okay. I'll --

2 VICE CHAIR HART: So let's just put that on hold
3 for a minute.

4 Ms. White.

5 MEMBER WHITE: Yeah, just one question. I just
6 want to make sure I'm clear on -- this is a 501(c)(3)?

7 MS. MAZO: Yes, ma'am.

8 MEMBER WHITE: So you did file verification of
9 that. I just wanted to make sure that that's been verified
10 --

11 MS. MAZO: We have attested that it's a 501(c)(3).

12 MEMBER WHITE: Okay.

13 VICE CHAIR HART: Okay. So I think what we'll do
14 is go to the Office of Planning. Good morning.

15 MS. THOMAS: Good morning, Mr. Chairman, Members
16 of the Board, Karen Thomas with the Office of Planning. And
17 we are supporting the Applicant's request for variance
18 relief. We do indeed think there is an exceptional
19 situation here. And in an effort to regularize their
20 paperwork, we do accept the fact that they had been here
21 since in the 1980s. They have paid their taxes accordingly
22 as a commercial entity.

23 And it's unfortunate that neither they can provide
24 some of their CFOs, and the Office of Planning did in fact
25 try to do due diligence and search for this and through DCRA,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and we couldn't find any as well. So we view this as an
2 effort to regularize their existence as a nonprofit in a
3 location where they don't meet the area standard. And,
4 looking back in the records, we don't see any pause for
5 concern with respect to the substantial detriment to the
6 public good. It's a small size operation. They have four
7 employees. We don't see any negative impact with respect to
8 traffic. There is only one employee who drives. And on the
9 basis of the regulations, we do not see a substantial harm
10 to the zoning regulations.

11 And with that, as we go through the special
12 exception relief aspect of it, where they are permitted by
13 special exception and the other criteria, we do believe that
14 they have met those criteria. So on that, I will rest on the
15 record of our report. Thank you.

16 VICE CHAIR HART: Thank you, Ms. Thomas.

17 Are there any questions for the Office of
18 Planning?

19 Do you have any questions for the office of
20 Planning?

21 MS. MAZO: No questions.

22 VICE CHAIR HART: Okay. So let's go to the ANC.
23 Good morning.

24 COMMISSIONER ECKENWILER: Good morning, Mr.
25 Chairman. I was not here this morning, so I believe I need

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to be sworn in.

2 VICE CHAIR HART: That -- that would be very good.

3 Mr. Moy.

4 MR. MOY: Do you solemnly swear or affirm that the
5 testimony you are about to present in this proceeding is the
6 whole truth and nothing but the truth.

7 COMMISSIONER ECKENWILER: I do.

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

9 VICE CHAIR HART: So, Commissioner Eckenwiler.

10 COMMISSIONER ECKENWILER: Thank you, Vice-Chair
11 Hart, Members of the Board. Mark Eckenwiler for ANC 6C. As
12 the applicant indicated we voted last month at our April 11th
13 meeting, unanimously six-zero, to support this application
14 with two conditions. I won't consume the Board's time
15 discussing the legal standards. You've already been through
16 that with the Applicant and OP, so let me go to the issue of
17 the conditions that Mr. Shapiro broached.

18 Let me start by saying that Sons of Italy has been
19 a very good neighbor. The chair, longtime chair of our
20 commission, lives across the street. I myself live one block
21 away in the 300 block of E Street, so I'm passed there twice
22 a day. They're church mice. They are the best neighbors.
23 You would not know at all but for the sign on the front of
24 the building that there is a nonprofit use there.

25 However, we do have an issue. And Ms. Mazo

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 averted to the fact that there is a mix of uses. This is
2 right on the boundary. Second Street is zoned commercial and
3 Mass Ave of course is mixed use. Mass Ave is zoned mixed use
4 as well. And partly as a result of our proximity to the
5 Capitol, we have this ever-encroaching number of function
6 houses, stealth office buildings, and so there is a problem
7 including very much on this block. There is a building
8 directly across the street from this property where there are
9 frequent functions. We have large vehicles double parked for
10 hours at a time. It's very disruptive.

11 And so the conditions that we proposed are
12 entirely consistent with the Applicant's current use. They
13 have assented to that. In fact, we gave them a little
14 headroom there in the event that they need to expand to five
15 employees. But what we'd like to do is to ensure that if any
16 successor nonprofit occupies this building, that we have the
17 force of law to require them to be good neighbors at least,
18 you know, with respect to these large events that have proven
19 to be an issue at other nearby sites.

20 I'm happy to answer any questions.

21 VICE CHAIR HART: Mr. Shapiro.

22 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

23 I appreciate, Commissioner Eckenwiler, your
24 support of this and the conditions make sense to me. I don't
25 have a problem with the conditions. They just seem vague.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The first one isn't vague. You have a maximum of five
2 employees. The second one, I'm okay with supporting it the
3 way this is, but my reaction is I would want a little more
4 precision with it. So, in other words, I'm not sure how to
5 define reception or large gathering. And does it make sense
6 to put a specific number to this again, or, frankly, do you
7 not care. Do you feel like this is going to be adequate and
8 the Applicant doesn't have a problem with it. And in that
9 case I'm not going to dig into it too much. I'm just trying
10 to figure out who determines what large means or what
11 reception means.

12 COMMISSIONER ECKENWILER: If the Board prefers
13 simply to strike the word large and say, you know, no hosting
14 of functions, I mean it still has to be a function. So you
15 could have a business meeting where someone comes there, but
16 we know the difference between a business meeting and a
17 function. And the truth is --

18 COMMISSIONER SHAPIRO: But if I can say, we may
19 know intuitively the difference, but I don't know how to
20 apply that standard. So for me the issue seems to be you
21 don't want any more than x number of people showing up at the
22 building at the same time.

23 COMMISSIONER ECKENWILER: If that would -- I'm
24 sorry. Go ahead.

25 COMMISSIONER SHAPIRO: No, it's just that may or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

BZA Case No. 19570
October 25, 2018,
Hearing Transcript Pg. 19-21

1 a lot of those issues are not within our purview, although
2 we do take them into consideration and hope that we're doing
3 our best to kind of like use the -- look at the standards in
4 which to -- within the regulation and which to, again as I
5 mentioned, approve or deny.

6 So I was able to look back, go back again with the
7 Office of Planning's report and the ANC's report and reviewed
8 the case. And so I do think that the Applicant has met the
9 standard in order to approve this. There were some
10 conditions that I -- that the Applicant had agreed to before,
11 which were that the trash receptacle shall be stored within
12 the building, that trash shall be taken out through the front
13 door of the building and the Applicant will schedule trash
14 pickup three times a week. And those were things that were
15 going to be added in as conditions.

16 If we were to actually approve this, depending
17 upon how this discussion goes, I would continue to ask the
18 Applicant to work with the party in opposition so that as
19 best as possible alleviate their anxiety or concerns about
20 the construction.

21 Does the Board have any comments?

22 MEMBER WHITE: Yes, Mr. Chairman. I concur
23 essentially with what you said. I think that they did meet
24 the area variance criteria. What they're trying to do is
25 construct an additional apartment in an existing 12-unit

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 apartment house that's located on 220 2nd Street, S.E.

2 So after reviewing the record I think they met the
3 criteria. They're going to be constructing this additional
4 apartment in the basement level of this 3-story, 12-unit
5 apartment house. So this basement level apartment apparently
6 used to be the laundry room. And so that space is no longer
7 going to be utilized for that purpose because laundry
8 facilities are now in every unit. So there are no external
9 alternations that are going to be happening in the building,
10 so I think that was also supportive of their case, too.

11 The one question that I had was looking at the
12 concerns raised by the ANC. If we were to grant the relief,
13 the question is whether or not we could add a condition that
14 trash be stored indoors instead of outdoors. I don't know
15 if that's something that we should discuss, or if that's
16 something that they've definitely agreed to do. But that
17 appears to be something that was really raised as an
18 important issue because of some of the concerns.

19 Even the party that was granted status for this
20 particular case, Peter Waldron, he had some concerns about
21 rodents and construction and things like that. So I think
22 the whole indoor trash issue, even though there's no formal
23 construction management plan -- but I think the indoor trash
24 issue is more of an ongoing thing and not just related to the
25 construction.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 But I think just in terms of the criteria for a
2 variance if they're able to satisfy that particular
3 condition, I believe that they are not going to create any
4 kind of detriment to the public good. It's not going to
5 substantially harm the Zoning Regulations. And I think that
6 they've presented kind of an exceptional situation that
7 justifies them being able to utilize the space as an
8 additional apartment.

9 CHAIRPERSON HILL: Okay. Thank you, Ms. White.

10 VICE CHAIRPERSON HART: Yes, the only part that
11 I would add is; I would concur with my colleagues, I think
12 that the Applicant has provided sufficient information to
13 justify why the three prongs have been -- of the variance
14 relief have been met.

15 I think -- I agree with the Office of Planning's
16 report regarding the project and understand that conditions
17 that we require are -- it would be helpful if the Applicant
18 were to be okay with them, but we're requiring them because
19 we think that they are necessary as part of the Zoning -- the
20 regulations. So they're something that we were -- we would
21 be imposing on them. I -- whether or not they like them is
22 somewhat irrelevant, but I would agree with you that it's
23 always helpful because then we know that they have some
24 concurrence and they are likely to be following forward --
25 through with them.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701