

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

MARCH 31, 2015

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
MARNIQUE HEATH, Vice-Chairperson
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD, Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
BRANDICE ELLIOTT
MATT JESICK
STEPHEN MORDFIN
MEGAN RAPPOLT

The transcript constitutes the minutes from the
Public Hearing held on March 31, 2015.

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

(10:16 a.m.)

BZA CHAIR JORDAN: Do you want to call 18966 please?

MR. MOY: Okay, to the table, Applicants to Case 18966 of RAP, R-A-P, Inc., as amended. Mr. Chairman, this is a request for a special exception relief from the roof structure setback at property 1959 4th Street, Northeast.

BZA CHAIR JORDAN: Okay. Good morning. Let's make sure your microphone is on. Are on. And also, did we give the witness cards to the court reporter?

MS. ANDERSON: Yes, we did.

BZA CHAIR JORDAN: Thank you. All right, so if this is amended relief from a variance to special exception on several sections dealing with the roof here.

I believe that the file, in my opinion, I believe the file supports the relief that's submitted here. What about ANC? Did we get an ANC letter on this? Did you --

MS. ANDERSON: There is no ANC letter, but we do have a petition of signers in the area.

BZA CHAIR JORDAN: Did you present in front of the ANC?

MS. ANDERSON: We did.

BZA CHAIR JORDAN: And did they take a vote?

MS. ANDERSON: They said they created a resolution and they stated that they would write a letter based on the fact that 51 percent of the folks in a 200 foot radius signed our

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1 petition. And we did that, but we didn't get a letter.

2 BZA CHAIR JORDAN: Okay. Did they take a vote?

3 MS. ANDERSON: Based on the resolution. I think things
4 moved a little fast.

5 BZA CHAIR JORDAN: Hold on.

6 MS. ANDERSON: And --

7 BZA CHAIR JORDAN: Let me slow you down.

8 MS. ANDERSON: Okay.

9 BZA CHAIR JORDAN: First. Did they take a vote,
10 yes/no?

11 MR. PICKERING: Yes.

12 MS. ANDERSON: Yes.

13 BZA CHAIR JORDAN: Yes, you were there? Yes. Okay.

14 MS. ANDERSON: Yes.

15 BZA CHAIR JORDAN: Okay. And what was the outcome of
16 the vote?

17 MS. ANDERSON: That we would have to get 16 signatures
18 on our petition.

19 BZA CHAIR JORDAN: Okay. That's all they said that
20 they required you to do, is that correct?

21 MS. ANDERSON: Yes.

22 BZA CHAIR JORDAN: All right. Board, any other
23 questions about this event?

24 ZC CHAIR HOOD: I'm looking at your, I know ANC 5, but
25 I'm looking at your petition that you got and I notice we have

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1 a lot of X's and, what are the X's for? And then the N/A.

2 I mean I don't understand that. I was trying to look
3 at that yesterday even late, so. But I'm just curious, how
4 is this petition running?

5 MR. PICKERING: The X's represent -- there were two
6 petitions. We had folks going down either side of the street.

7 And we had to do it over a couple of days to capture folks
8 who weren't home the first day. So that we would know who was
9 out -- who hadn't been to the day before, I combined the two
10 petitions and folks didn't have to go to a place with an X.

11 And then the ANC resolution was that they would support
12 the project with 51 percent of support from the residents
13 within 200 feet of the project. And so the N/A's are actually
14 commercial properties.

15 ZC CHAIR HOOD: So that's how we got to what 16?

16 MS. ANDERSON: Sixteen.

17 ZC CHAIR HOOD: Sixteen gives you that 51 percent.

18 MR. PICKERING: Correct.

19 ZC CHAIR HOOD: Okay.

20 BZA CHAIR JORDAN: Okay. Any other questions for the
21 Applicant, Board? Well good. Then as I said, the Board seems
22 to believe there's a sufficient information in the file to
23 grant the relief requested.

24 If it's all right with you, we'll proceed on in the
25 hearing. And if you can save any other comments you may have

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1 or presentation you want to do, if it's necessary for any
2 rebuttal, but I don't think that's going to be necessary at
3 this point.

4 So if we could turn to the Office of Planning and see
5 if there's anything in addition.

6 MS. RAPPOLT: Good morning.

7 BZA CHAIR JORDAN: Good morning.

8 MS. RAPPOLT: Megan Rappolt for the record, and I don't
9 have anything additional. OP stands on the record.

10 BZA CHAIR JORDAN: In support of the application?

11 MS. RAPPOLT: Correct. In support of the application.

12 BZA CHAIR JORDAN: Board, any questions for the Office
13 of Planning? The Applicant, any questions for Office of
14 Planning?

15 MS. ANDERSON: We have no questions.

16 BZA CHAIR JORDAN: Then we would go to the Department
17 of Transportation. Is anyone here for this particular case
18 -- we do have a letter from the Department of Transportation
19 with no objection to the relief requested.

20 Anyone here from ANC 5E? Anyone here from ANC 5E? Is
21 anyone here wishing to testify in support? Anyone wants to
22 speak in support of the application?

23 Anyone wishing to speak in opposition? Anyone in
24 opposition? Then we'll close the record in this matter. And
25 I would move that we grant the relief requested in 18966.

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1 VICE CHAIR HEATH: Second.

2 BZA CHAIR JORDAN: Motion made and seconded. All those
3 in favor, aye?

4 (Chorus of ayes)

5 BZA CHAIR JORDAN: Those oppose nay? The motion
6 carries. Mr. Moy?

7 MR. MOY: Staff would record the vote as 4-0. This on
8 the motion of Chairman Jordan to approve the application for
9 the relief requested as amended. Also seconding the, or
10 rather second the motion, Vice Chair Heath.

11 Also in support, Mr. Heath and Mr. Hinkle. Board seat
12 vacant. Motion carries, sir.

13 BZA CHAIR JORDAN: Okay, summary please.

14 MR. MOY: Thank you.

15 (Off mic comment)

16 BZA CHAIR JORDAN: Let's do Number 51, Mr. Moy.

17 MR. MOY: 51, all right to the table then. Application
18 Number 18951. This is the application of Matthew --

19 MR. SWEENEY: Seligman.

20 MR. MOY: Seligman, I'm sorry. Thank you, sir. This
21 is property requesting relief, multiple relief for variances
22 at Property 1534 Swann Suite -- Swann Street, Northwest.

23 BZA CHAIR JORDAN: Okay. Please identify yourselves.

24 MR. BLAIR: I'm Bryce Blair.

25 MR. SWEENEY: Steve Sweeney.

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1 BZA CHAIR JORDAN: All right. Let me ask, I know this
2 was initially advertised as a special exception and then it's
3 been converted to a variance. Has the variance -- was the
4 variance advertised?

5 MR. SWEENEY: Correct. Yes.

6 MR. BLAIR: Yes.

7 BZA CHAIR JORDAN: Okay. So how was it advertised?
8 You changed the signage and tell me what happen?

9 MR. BLAIR: Yes, actually I came down and picked up a
10 second sign and re-posted it and another affidavit was
11 completed and sent in as well.

12 BZA CHAIR JORDAN: Okay, good. Good, good. Board,
13 any questions you have on this matter that we need to hear
14 anything from the Applicant? Any concerns about the relief?

15 I believe that the -- based upon what's in the file and
16 the records and the support received from the Office of
17 Planning and the ANC and Department of Transportation all in
18 support, that leave a sufficient basis to provide the relief
19 requested. And that we don't need to hear anything from you.
20 I think the file is already complete.

21 Unless the Board has some additional questions. Then
22 in light of that, if it's okay with you, we proceed on the
23 hearing. If there's something you need to talk about, you can
24 do it in a rebuttal phase.

25 MR. BLAIR: Okay.

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1 BZA CHAIR JORDAN: So then let's go to Ms. Elliott in
2 the Office of Planning and see if there's anything in addition.

3 MS. Elliott: Thank you, Mr. Chairman. OP has nothing
4 to add. We continue to support the relief as requested and
5 I'd be happy to answer any questions you have.

6 BZA CHAIR JORDAN: Okay. Board, any questions of Ms.
7 Elliott? Applicant, any question of Office of Planning?
8 Okay.

9 Anyone here from Department of Transportation on this
10 case? We do have a letter of no objection to the relief
11 requested submitted by the Department of Transportation.

12 Is there anyone here from ANC 2B? ANC 2B? We have a
13 letter of support from ANC 2B who supports the relief
14 requested.

15 Is there anyone here wishing to speak in support of the
16 application? Anyone wishing to speak in support?

17 Anyone wishing to speak in opposition? Please come
18 forward. Okay, make sure your microphone is on.

19 MR. NOVAK: Okay.

20 BZA CHAIR JORDAN: And did you give the witness cards
21 to the court report? Okay, very good. And your name?

22 MR. NOVAK: My name is John Novak. I'm a homeowner
23 right around the corner from the Applicant.

24 BZA CHAIR JORDAN: Okay. All right, you have three
25 minutes to tell us what's on your mind.

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1 MR. NOVAK: All right. So I'm one of the owners in our
2 four-story, five-story condo building. We actually own the
3 three parking spots behind the building, which run up to the
4 deck plans that Mr. Seligman is proposing.

5 Our objection is with the plans, modification of the
6 fence, which is on our property line. We object to any plans
7 that, you know, the original plans we received indicate that
8 he wanted to lower the height of the fence as well as put posts
9 underneath the fence. Which would either remove the fence or
10 cause damage to it which be incurred by us. And we don't want
11 that.

12 BZA CHAIR JORDAN: So your opposition is that you think
13 that the fence is going to be damaged?

14 MR. NOVAK: Yes. And we also don't want the fence to
15 be lowered either. The original plans we received indicated
16 that the height of the fence was going to be lowered. And the
17 fence is actually on our property line.

18 BZA CHAIR JORDAN: Okay. Let me pull up those
19 drawings. What's going on with the fence?

20 MR. BLAIR: I can answer that question. Actually I
21 believe the fence wasn't specifically measured on the height,
22 so it was just kind of guesstimated, the height.

23 We have no intentions of changing the fence or lowering
24 the fence.

25 MR. NOVAK: Got you.

1 MR. BLAIR: We really want to keep the appearance across
2 the backside. We want to keep that the same. We're not out
3 to --

4 MR. NOVAK: Okay.

5 MR. BLAIR: I think that might have been just a
6 communication --

7 MR. SWEENEY: Address the support structure too, was
8 your other question.

9 BZA CHAIR JORDAN: Right.

10 MR. BLAIR: Yes, the --

11 BZA CHAIR JORDAN: Right, the footings --

12 MR. BLAIR: I have a small copy of the drawings, I have
13 multiple, do you guys want to see it?

14 BZA CHAIR JORDAN: We have them.

15 MR. BLAIR: Okay. So the footings on the front, the
16 footings are always larger than what the support posts are.

17 BZA CHAIR JORDAN: But they're all on your property
18 line?

19 MR. BLAIR: Yes. Well the footing itself, usually make
20 a little bit wider than the posts.

21 BZA CHAIR JORDAN: Right.

22 MR. BLAIR: What it is is that the backyard area is
23 sunken by three feet. And they're going to cut the slab and
24 dig a footer down there, fill it with concrete and put the posts
25 in. So this is all kind of underground.

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1 MR. NOVAK: All right.

2 MR. BLAIR: And nothing out into the parking lot area.

3 MR. NOVAK: It was my understanding that the footings
4 were directly underneath that fence.

5 MR. SWEENEY: No. No, they're within the property
6 line. And actually it's like a sunken three foot area.

7 MR. BLAIR: Do you want a copy? You want to see it? If
8 you look from the side right here, I didn't draw it all the
9 way down, but see how far the bottom --

10 BZA CHAIR JORDAN: Okay. All right. All right.
11 Okay. All right. Is there anything else?

12 MR. NOVAK: No, I think that's all I have to say.

13 BZA CHAIR JORDAN: Real good. And appreciate it.
14 Thank you. Thank you for coming down. But certainly these
15 are conversations that you, you know, as we go knock on our
16 neighbors doors.

17 And I know you do -- you are presenting to us a number
18 of signatures from neighbors. What did I do with it?

19 MR. BLAIR: Yes, I have.

20 BZA CHAIR JORDAN: At least five of them. At least five
21 neighbors. Board, any other questions? Anything else we
22 need to hear from the Applicant? Then I would close the
23 hearing and I would move that we grant the relief in 18951.

24 VICE CHAIR HEATH: Second.

25 BZA CHAIR JORDAN: Motion made second. All those in

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1 favor of the motion, aye?

2 (Chorus of ayes)

3 BZA CHAIR JORDAN: Those opposed, nay? Motion
4 carries. Mr. Moy?

5 MR. MOY: Yes, sir. Staff would record the vote as 4-0.
6 It was on the motion, Chairman Jordan to approve the requests
7 for relief, variance relief.

8 Second the motion, Vice Chair Heath. Also in support
9 Mr. Hood and Mr. Hinkle. Board seat vacant. Motion carries,
10 sir.

11 BZA CHAIR JORDAN: Thank you. Summary.

12 MR. MOY: Thank you.

13 BZA CHAIR JORDAN: Very good, thank you.

14 MR. SWEENEY: All right, thank you very much.

15 MR. BLAIR: Thank you. Thank you, very much.

16 BZA CHAIR JORDAN: Mr. Moy, 25 please?

17 MR. MOY: All right, to the table then would be the
18 Applicant to Application Number 18925. This is the
19 application of Hwa Golden. This is a request, Mr. Chairman,
20 for a special exception relief from the parking lot requirement
21 at 6400 Georgia Avenue, Northwest.

22 BZA CHAIR JORDAN: Right, okay. All right, please
23 identify yourself.

24 MR. SULLIVAN: Good morning, Mr. Chairman and members
25 of the Board. My name is Martin Sullivan with the law firm

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1 of Sullivan & Barros here on behalf of the Applicant.

2 MS. GOLDEN: My name is Hwa Golden.

3 BZA CHAIR JORDAN: Okay. Interesting case. It's one
4 which should have been like a no-brainer. Missed some
5 deadlines and dates.

6 I guess the Applicant, instead of just trying to extend,
7 so we kind of looked at this as new. But I think the conditions
8 ask -- I think the circumstances has not changed from the other
9 time the relief was provided. Would that be correct, Mr.
10 Sullivan?

11 MR. SULLIVAN: Yes, that's correct. The lot is
12 basically, we believe as it existed, for the last 50 or 60
13 years.

14 But Ms. Golden purchased the property in 2003, which was
15 several years after the last approval. And didn't even know
16 that it was subject to a special exception or approval or that
17 it had expired until she got notice from the zoning
18 administrator.

19 BZA CHAIR JORDAN: Now let me ask you, because I don't
20 think there's much to have to drill down in from the Board,
21 I don't have, I don't know unless the Board wants to ask.

22 But it seems like this area has been going in and out
23 of disrepair and that there was some concerns about that. Can
24 you just talk about that for a while. For a minute.

25 MR. SULLIVAN: Sure. There admittedly needs to be some

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1 work done on the lot. And Ms. Golden has already undertaken
2 a lot of that work. She has already installed the fence, at
3 the request of the closest neighbor.

4 And she's -- the wall is undergoing repair right now.
5 She's installed gates that lock. As requested.

6 So she's gone through most of what is -- and I'm
7 uncertain, does the Board have the ANC's submission?

8 BZA CHAIR JORDAN: Yes.

9 MR. SULLIVAN: Okay. So she's gone through some of the
10 items there. And she's committed to do all the other items
11 on the Office of Planning's condition list as well as the
12 voluntary agreement of course.

13 BZA CHAIR JORDAN: Okay. Here's the issue. You guys
14 are asking for, what, an unlimited or 25 year term or something?

15 MR. SULLIVAN: I'm sorry, I amended that. Five years.

16 BZA CHAIR JORDAN: Five years.

17 MR. SULLIVAN: So, yes, whatever --

18 BZA CHAIR JORDAN: Okay.

19 MR. SULLIVAN: Yes.

20 BZA CHAIR JORDAN: Okay. Yes, I was going to say. You
21 know, showing a pattern of good steward is a whole different
22 ball game than coming in at the last minute and kind of start
23 making -- being a good steward. It doesn't sit well with us.
24 It doesn't sit well with me, I don't know about anybody else.

25 So I have here, in addition to or separate from the

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1 voluntary agreement, which was executed with the ANC, what,
2 nine conditions here?

3 One, that approval be for a period of five years. The
4 hours of operations shall be from 7:00 a.m. to 9:00 p.m. The
5 gate at the entrance and exist shall be closed and locked when
6 the lot is closed. Is that something that the community wanted
7 or?

8 MR. SULLIVAN: That is something that they --

9 BZA CHAIR JORDAN: Okay.

10 MR. SULLIVAN: -- we suggested and they agreed to.

11 BZA CHAIR JORDAN: Because we've kind of seen it both
12 ways. But okay, that's -- all right.

13 Fencing shall be maintained along the Northern and
14 Eastern sides of the lot. Pavement and wheel stops shall be
15 repaired and replaced. And the rest of that that's there.

16 Six, existing brick wall and cap shall be repaired and
17 maintained in good condition.

18 Seven, the grass strip on the East side of the parking
19 lot and the open space on the West side of the parking lot should
20 be kept free of refuge and maintained in a healthy growing
21 condition.

22 Eight, up to five dumpsters maybe kept within the lot.

23 Nine, location of the light pole shall be indicated on
24 the plans.

25 Is there anything else I missed in conditions? Board,

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1 any other questions we want to ask of the Applicant on this?

2 Sullivan, if we can, we can proceed on and go to Office
3 of Planning and see if there's any addition?

4 MR. SULLIVAN: Okay, thank you.

5 BZA CHAIR JORDAN: Yes, Mr. Mordfin?

6 MR. MORDFIN: Good morning, Mr. Chairman and members of
7 the Board. The Office of Planning continues to support this
8 application and is available for any questions. Thank you.

9 BZA CHAIR JORDAN: Okay. All right, you filed the
10 conditions. Any other changes, anything that's out of whack?

11 MR. MORDFIN: No.

12 BZA CHAIR JORDAN: Okay.

13 MR. MORDFIN: No requests for changes.

14 BZA CHAIR JORDAN: Board, any questions of the OP?
15 Applicant, any questions for Office of Planning?

16 MR. SULLIVAN: No thanks.

17 BZA CHAIR JORDAN: Thank you. Anyone here from the
18 Department of Transportation on this case? Anyone from
19 Department of Transportation?

20 I have a letter of no objection from Department of
21 Transposition, but they have a condition here which I don't
22 really understand. And I don't know if it's something you had
23 conversations with them on, Mr. Sullivan.

24 The Applicant shall provide two dedicated handicap
25 accessible spaces in the parking lot. What's that about?

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1 MR. SULLIVAN: We're willing to do that, I guess since
2 it's not a new parking lot. And the lots not that, right up
3 against the uses that it served anyways.

4 BZA CHAIR JORDAN: Okay.

5 MR. SULLIVAN: So I don't know that any space would have
6 that much benefit.

7 BZA CHAIR JORDAN: And I don't know any reason why. And
8 no one's here from the Department of Transportation to find
9 out the basis of why they want it.

10 So unless the Board -- I mean I think it's, I don't know.
11 We can't answer that which we can't ask questions to, so.

12 All right is anyone here from ANC 4A? ANC 4A? We do
13 have a letter of support and a voluntary agreement that's been
14 executed between the Applicant and the ANC. Which is part of
15 our record and also enforceable.

16 Is anyone wishing to speak in support of the
17 application? Anyone wishing to speak in support?

18 Anyone wishing to speak in opposition? Anyone in
19 opposition?

20 Then we'll close the record, based upon what we've
21 already gathered, and close this hearing. Board ready to
22 deliberate in this case? Okay.

23 I would move that we grant the relief requested in 18925
24 with the conditions as defined, as specified here.

25 ZC CHAIR HOOD: Second.

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1 BZA CHAIR JORDAN: Oh, he beat you. That's okay.

2 ZC CHAIR HOOD: Second.

3 BZA CHAIR JORDAN: He was loud enough it picked it up
4 over here. So motion made and second by Anthony Hood, Chairman
5 of the Zoning Commission, and not Mr. Heath. Any further
6 discussion? All those in favor of the motion, aye?

7 (Chorus of ayes)

8 BZA CHAIR JORDAN: Those oppose, nay? The motion
9 carries. Mr. Moy?

10 MR. MOY: Staff would record the vote as 4-0. This is
11 on the motion of Chairman Jordan to approve the application
12 for the special exception relief requested under Section 214,
13 for accessory parking lot, with a cited nine conditions.

14 Second the motion, Mr. Hood. Also in support, Vice
15 Chair Heath and Mr. Hinkle. Board seat vacant. Motion
16 carries, sir.

17 BZA CHAIR JORDAN: Thank you. Summary letter please.

18 MR. MOY: Thank you.

19 BZA CHAIR JORDAN: And we'll take five minutes and we'll
20 come back with the very first, 18964 case, our first hearing
21 case. Thank you very much.

22 (Whereupon, the above-entitled matter went off the
23 record at 10:37 a.m. and resumed at 10:45 a.m.)

24 BZA CHAIR JORDAN: We said we were ready.

25 MR. MOY: Okay, I'm sorry. All right, to the table,

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1 Application Number 18964 of 1220 Potomac Avenue, Southeast.

2 BZA CHAIR JORDAN: Fellows, why you always sitting at
3 the ends instead of sitting in the middle. I always have to
4 turn left or right. Come on down. No, no, no, save that spot
5 for Mr. Bello who's going to sit right there for us.

6 He think he's getting out of the line of fire. He's been
7 here many times and he knows this. No. No, he's a good guy.

8 All right, please identify yourselves please.

9 MR. DIRUGGIERO: My name is Gerard DiRuggiero from
10 UrbanLand Company.

11 MR. BELLO: Toye Bello, representing the Applicant.

12 MR. ALI: Ramy Ali, designer.

13 BZA CHAIR JORDAN: Okay. Talk in your mic.

14 MR. RAGIMOV: Todd Ragimov, Applicant.

15 BZA CHAIR JORDAN: Okay. Mr. Bello's, I think we, as
16 you know, we review these files. And I understand the issues,
17 as you've placed forth, why you need relief. But there's some
18 other questions that I'd like to drill in.

19 As you know, there's been some -- how did the meeting
20 go? Did you resolve any issues?

21 MR. BELLO: We're resolved. Went fairly well.

22 BZA CHAIR JORDAN: What does that mean?

23 MR. BELLO: We've sort of separated the issues. Agreed
24 to the demand of the neighbors to have zero RPP. The other
25 --

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1 BZA CHAIR JORDAN: Yes, because I was right there too.

2 MR. BELLO: The other issues are pertaining to
3 construction management issues. Been resolved to meet at a
4 later date to iron out those items.

5 BZA CHAIR JORDAN: Let me ask the two party status
6 folks, just to come forward please. I think if that's been
7 a concession with the RPP, I think that's a good move.

8 Yes, just come. Just kind of getting get a report out
9 from your session. I understand you've kind of worked
10 something's out. Regarding the parking, the RPP issue.
11 They'll be no RPP.

12 And anything else came out of that? The construction
13 issues are not before the Board. That's just not what we do
14 here. We don't handle those kind of issues.

15 But I believe you have some kind of conversation going
16 on about the construction, timing and issues, right?

17 MR. BELLO: That's correct.

18 BZA CHAIR JORDAN: Is there anything else that you guys
19 resolved or not resolved?

20 MS. GREEN: We did it regarding the, I think it's the
21 TMD.

22 BZA CHAIR JORDAN: Okay, say your name just so they make
23 sure you come back.

24 MS. GREEN: Linda Green.

25 BZA CHAIR JORDAN: Okay.

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1 MS. GREEN: On the TMD we agreed to providing metro
2 smart card, smart trip access.

3 BZA CHAIR JORDAN: Okay.

4 MS. GREEN: Bike share or both, depending on what's
5 going to be built. And to provide bike rack and bike storage.
6 Or bike storage.

7 BZA CHAIR JORDAN: Okay, I thought we had bike racks in
8 here. We didn't?

9 MR. BELLO: Well we did in the report. We're committed
10 to them.

11 BZA CHAIR JORDAN: Yes, I thought you did. But -- okay,
12 bike. Yes, no metro card was in here? Okay, very good. Good
13 save. Okay, is there anything else?

14 MR. ORTON: Understanding that a number of issues were
15 discussed aren't germane to the conversation today. I just
16 want the record to reflect that there was an agreement to meet
17 again in 60 days, which would be June 1st, to discuss these
18 additional matters.

19 BZA CHAIR JORDAN: Okay. And it's probably going to
20 take that long maybe to try to get an order out or something.

21 So Mr. Bello's is a very honorable person. He knows
22 how, he comes back in front of this board and he would never
23 retreat on those kind of things. I've never seen him do it,
24 so.

25 MR. BELLO: Thank you, sir.

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1 BZA CHAIR JORDAN: Okay. So for the record then, I'm
2 going to -- well we didn't really grant the party status, but
3 I'm also going to note that we're withdrawing our opposition
4 that we really had -- see how the discussions work? And you
5 had discussions before you came here today, didn't you? Did
6 it change?

7 MR. ORTON: Yes, sir.

8 BZA CHAIR JORDAN: That's why we do it. That's why we
9 do it. And we're all living together and so we need to try
10 to become good neighbors. Thanks so much, I really applied
11 both -- all three of you, or three different groups, trying
12 to get this done. Thank you.

13 MR. ORTON: Thank you.

14 MS. GREEN: Thanks.

15 BZA CHAIR JORDAN: With that, the only other question
16 I have, Mr. Bello, is, one, although it's not necessarily for
17 us, but what about the trees? How the trees are being treated.
18 I mean someone raised the issue about a tree. Is there a tree?

19 MR. BELLO: Well DDOT has a tree removal process that
20 requires a permit. And the Applicant is obligated to --

21 BZA CHAIR JORDAN: To go through that process.

22 MR. BELLO: -- go through that process.

23 BZA CHAIR JORDAN: It's not really something that we,
24 but I just wanted to ask that. And this -- yes?

25 MS. GREEN: And regarding the tree, because it's been

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1 overgrown for decades, it has spread across other, across our
2 property. So coordination needs to be made.

3 BZA CHAIR JORDAN: Yes, with DDOT. So make sure that's
4 done in the right way.

5 MR. BELLO: That's correct.

6 BZA CHAIR JORDAN: Good. Real good save on that RPP
7 issue. Because that's just one concern I had.

8 Board, is there any other questions we need to hear from
9 this Applicant on this case? I think now, in light of this
10 fruitful discussions, I think this might be ready for
11 processing. Board, any other questions?

12 We understand, because the records real clear, you're
13 hands are tied. One, the regulations got you locked in and
14 then HPRB has you locked in and DDOT has you locked in. And
15 so we understand that.

16 So let's talk about the TDMs. So we're amending the TDM
17 to say that there will be zero RPP.

18 MR. BELLO: Correct.

19 BZA CHAIR JORDAN: The transit screen, how big a
20 building is it? I mean you're going to do a transit screen?

21 MR. BELLO: It's absolutely impractical. We didn't
22 commit to that in our discussions with DDOT. But actually the
23 property doesn't really have much of a lobby to.

24 BZA CHAIR JORDAN: He is down here? No. It's a small
25 space.

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1 MR. BELLO: It's very small.

2 BZA CHAIR JORDAN: Yes. Okay. Unless the Board is
3 jumping up and feels this is necessary, I would be inclined
4 that wouldn't be one of the -- I mean don't let me stop you
5 if the Board thinks it's -- it's a small space. Plus I think
6 with the ability, people use their smart phones anyone. Tie
7 you in.

8 Residents will be provided with complimentary annual
9 bikeshare membership. Now, is this going to be condos or
10 apartments? Is that still up in the air?

11 MR. BELLO: Yes, it's still in the air.

12 BZA CHAIR JORDAN: Okay. Well I want these things to
13 run with the land, particularly the no RPP. We need to have
14 this document run with the land. So you need a properly
15 recorded document that the restrictions in place.

16 Additional, if there's a condo association, I want to
17 make sure that they're in the condo docs, these requirements.
18 Particularly the bikeshare and the smart card.

19 Smart card, is it \$100 for each? No, it was going to
20 be each new resident. We do \$50 for each new resident. Okay.
21 These condos I would say once and raise the amount. But all
22 right.

23 Also that there's going to be a bicycle rack placed.
24 Did I miss anything? Okay. Anything else you think we need
25 to hear? Because I think we're there. So we can move on.

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1 Turn to the Office of Planning and see with Mr. Jesick
2 has anything addition to add.

3 MR. JESICK: Thank you, Mr. Chairman, members of the
4 Board. The Office of Planning stands on the record in support
5 of the application. Thank you.

6 BZA CHAIR JORDAN: Okay. On ANC, I'm losing myself.
7 ANC 6B, right? It's the ANC 6B, right? Is that the right --

8 MR. BELLO: Correct.

9 BZA CHAIR JORDAN: We have a letter of support from ANC
10 6B. Is anyone here from the ANC 6B on this case? Please come
11 forward. Good morning.

12 MS. OLDENBURG: Good morning. That's on.

13 BZA CHAIR JORDAN: There you go.

14 MS. OLDENBURG: Hi. Should I proceed?

15 BZA CHAIR JORDAN: Yes, please.

16 MS. OLDENBURG: Hi. Thank you very much for having us
17 here today, Mr. Chair, and all members of the Board. I'm the
18 chair of ANC 6B and I'm here representing the position taken
19 by ANC 6B that you see in the letter.

20 We voted 6-3-1 on that position at a meeting that was
21 a quorum president and a dually un-notified meeting on March
22 10th. And we've submitted that letter, what you have, through
23 ISIS.

24 Some of the events here today, I have a written
25 statement, but some of the events here today seem to have

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1 eclipsed my statement. So I'm not going to proceed to that
2 because I understood two of the issues I was going to raise
3 was about zero RPP and that seems to be already taken care of
4 here. And that's what the intent of the ANC was when we asked
5 for RPP restrictions.

6 We also had concerns about what came out on the TDM
7 measures in the Applicant's statement. Pre-hearing
8 statement. But that's sort of moved on from there,
9 apparently.

10 So what I'd ask, if you could please clarify, because
11 I was sitting and not quite sure what kind of TDM measures you
12 think will go into the order.

13 And I noted, I've seen DDOT report, which was -- I guess
14 the screen has been removed. I understand that. But there
15 were some ideas there that, in terms of the time limit of these
16 kind of TDM measures. Like smart cards, etcetera.

17 So just would like clarification from the Board.

18 BZA CHAIR JORDAN: Correct. One, that there be -- this
19 property is going to be RPP restricted. That's residential
20 parking permit restricted.

21 And that the Applicant's required to coordinate with the
22 Department of Transportation, DMV, to verify that there have
23 been no requests for RPPs that have been issued. The parking
24 permits.

25 As well as, if this is a -- it will be our standard order.

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1 Well if there's been -- if this is going to be rental property,
2 that the provision is placed in anybody's lease that if they
3 violate this, they're subject to eviction.

4 And that's the same information that gets recorded in
5 the condo, if it becomes condominium, the condominium docs so
6 that they run with the land.

7 We struck the transit screen because I just thinks that
8 impractical for a small place like that.

9 The residents will be -- Applicants going to provide the
10 residents with a capital bikeshare membership or annual car
11 sharing membership. And that they are also going to provide
12 a metro smart card. A \$50 for all new residents.

13 They're going to also provide a bike rack. And I think
14 three bicycle rack for, how many bikes did it say?

15 MS. OLDENBURG: I think DDOT now has a three -- they have
16 a DCMR regulation on it. At least they have to provide at least
17 three secure bike --

18 BZA CHAIR JORDAN: I didn't know how many they might
19 have --

20 MS. OLDENBURG: I don't know how many they --

21 BZA CHAIR JORDAN: -- how many did you talk with DDOT
22 about?

23 MR. BELLO: Really we can't -- we don't have any space
24 to accommodate more than three.

25 BZA CHAIR JORDAN: I say it's three. And DDOT says

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1 three. Okay, so that's the TDMS.

2 MS. OLDENBURG: So we have -- sorry. Well we'll see it
3 in the order, but I appreciate your efforts to help to protect
4 the neighborhood against the parking problems. Thank you very
5 much.

6 BZA CHAIR JORDAN: And we really appreciate you coming
7 down. And certain we give weight to the ANC. And again, I
8 just commend everybody for working together. This is the way
9 it should work.

10 Any questions Board? Applicant? No. All right, is
11 there any -- did I do DDOT yet? No. DDOT? Did I do DDOT?
12 No. Did I skip past DDOT?

13 MS. OLDENBURG: Yes.

14 MR. CHAO: Mr. Chair?

15 BZA CHAIR JORDAN: Yes.

16 MR. CHAO: I'm sorry to interrupt.

17 BZA CHAIR JORDAN: And you are?

18 MR. CHAO: I am Daniel Chao. I am the SMD ANC member.

19 BZA CHAIR JORDAN: And --

20 MR. CHAO: This is my first. And I just -- I know that
21 we're talking about --

22 BZA CHAIR JORDAN: Okay, let me give -- you got another
23 little spot. I'll give you another spot, but let me finish
24 doing what I need to do.

25 MR. CHAO: Sure.

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1 BZA CHAIR JORDAN: Okay. I understand. Now don't go
2 anywhere. Don't leave, we're good.

3 Anyone here with Department of Transportation on this
4 case? Anyone from Department of Transportation? We do have
5 a letter of no objection and also asking that the Applicant
6 be require to have three bicycle racks, which we already put
7 in the TDM spaces.

8 Now, I don't know which side you fall on this, but anyone
9 who wish to speak in support of the application? Are you in
10 support or opposition?

11 MR. CHAO: I was in opposition. I'm in support now.

12 BZA CHAIR JORDAN: Okay.

13 MR. CHAO: I do have one extra item that I would like
14 to suggest. On TDM.

15 BZA CHAIR JORDAN: Okay. You get three minutes to talk
16 to us, or you might not even take that long, but tell us what
17 you want?

18 MR. CHAO: I just want to make sure that for future
19 occupants, that the Applicant provide a way for them to initial
20 that they understand that they can have zero RPP.

21 BZA CHAIR JORDAN: Well that's what we talked about
22 already. It has to be in the, if it's apartments, it's going
23 to be in the lease.

24 MR. CHAO: Yes.

25 BZA CHAIR JORDAN: And if it's condos, it has to be in

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1 the condominium declared documents.

2 MR. CHAO: And that the resident would be able to have
3 to initial that.

4 BZA CHAIR JORDAN: I'm not going that far, but it would
5 be in the documents and they're going to sign off on the lease,
6 so they'll see that.

7 MR. CHAO: Okay.

8 BZA CHAIR JORDAN: Okay. You know, it gets to what can
9 be supervised and what can be managed. And we're already kind
10 of stretched in some of that. But we've done our job and so
11 you have a way to enforce it because it's going to be part of
12 the order.

13 MR. CHAO: It doesn't hurt to ask.

14 BZA CHAIR JORDAN: Yes. No, no, no, not a problem.
15 Not a problem.

16 I saw another hand. Was it a hand in support? Yes,
17 please come forward. Somebody who's not, yes, thank you.
18 Right here. Thank you for -- it's kind of like musical chairs
19 sometimes, but no.

20 I didn't even see you sitting back there. How you
21 doing? Good. Just for the record, identify yourself.

22 MR. PETERSON: Yes, fine, Mr. Chairman. My name is
23 Gary Peterson, I live at 1810 Massachusetts Avenue, Northeast.
24 I'm the chairman of the Capital Hill Restoration Society,
25 zoning committee.

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1 I'm sorry not to give you something in writing, but were
2 weren't able to affirm out a position till yesterday evening.
3 First, this is a very strange case, in our opinion. And I'll
4 explain.

5 I think we're left with no option but to support the
6 application because of the parking situation. And the fact
7 that HP wants the curb cuts closed.

8 So in going before HP, the Applicant had a different set
9 of plans, which were to keep the curb cut and to do five units
10 with the required amount of parking. Because HP is insisting
11 on closing the curb cut, they then, because they couldn't
12 provide the parking they felt that needed to go up in the number
13 of units, but then reduce the size.

14 So instead of having five family size units, we're now
15 going to have eight units that are more for single people.

16 What I'd like to ask you to do is to hold off on your
17 opinion. To go ahead and consider all the evidence. I'm not
18 asking you to defer the hearing, I think that would be a
19 mistake.

20 But just hold off on your opinion, because they're going
21 to have to go back to HP now with their new plans. And that
22 will give an opportunity, both for the people who want to talk
23 about the construction details to look at it.

24 And secondly, I would urge you in deferring an opinion
25 until HP does something to comment that you would prefer that

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1 they keep the curb cut. And the reason for that is, with --

2 BZA CHAIR JORDAN: Say that again?

3 MR. PETERSON: That you would -- the commission would
4 prefer --

5 BZA CHAIR JORDAN: We can't do that.

6 MR. PETERSON: Well I think you can say you prefer. You
7 can't order them to do something but you can say you prefer
8 it. Let me finish please.

9 The reason you can do that is, what HP is doing is they're
10 forcing them into requiring a variance. And I don't think you
11 can do that.

12 This was a lawful curb cut prior to the existence of the
13 historic district. And I don't think that HP has the authority
14 to order a curb cut closed. They definitely don't have --

15 And I think you can go ahead and consider that curb cut
16 as being opened, if you wished. So I think that's why, one
17 of the reasons is going back to HP. And we're probably object
18 at that point.

19 The set of plans that we reviewed were totally different
20 than what they have at this time. So I don't think the City
21 should be allowed to force someone into a nonconforming use.

22 And it's really bizarre, that you wouldn't have this
23 case if they went ahead with the curb cut. And I don't think
24 you should force them to go ahead with a variance.

25 BZA CHAIR JORDAN: All right, thank you. Board, any

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1 questions for Mr. Peterson? Applicant, any questions for Mr.
2 Peterson?

3 MR. BELLO: Just some clarification. These are not new
4 plans.

5 BZA CHAIR JORDAN: Wait, wait. We can do that during
6 a rebuttal period. Any other questions? Thank you Mr.
7 Peterson.

8 Anybody else wishing to speak in support? We've
9 already been there. Anyone else speaking in support? Anyone
10 else in opposition? In opposition?

11 I'll give an unusual difference back, give you
12 opportunity to speak. Just briefly if you could.

13 MS. OLDENBURG: Just two aspects. There is an existing
14 curb cut on Potomac Avenue. The initial request was add to
15 close that and put one on I Street. That's what HPRB said they
16 couldn't do that curb cut on I Street. That involved a change
17 in the plan. So I want to clarify it's about two curb cuts
18 here.

19 The other point is that by going back, the reason it's
20 going back to HPRB, according to my conversations with staff
21 there, is that there were some unresolved design issues of the
22 building. Windows, what have you.

23 Those kind of things that the Board requested the staff,
24 after they had approved the project, requested the staff to
25 discuss with the Applicant and then come back to the Board with

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1 some solutions.

2 So it's not about the, as far as I now, it's not about
3 the building per say but aspects of the design. And that's
4 why it's going back to HPRB.

5 BZA CHAIR JORDAN: Okay.

6 MS. OLDENBURG: Just to clarify. That was my
7 understanding.

8 BZA CHAIR JORDAN: All right, thank you. Mr. Bello,
9 any rebuttal please?

10 MR. BELLO: Well actually the building envelope remains
11 the same, but, you know --

12 (Off mic comments)

13 BZA CHAIR JORDAN: Okay, thank you. Sorry, Mr.
14 Bello's.

15 MR. BELLO: But the building envelope remains unchanged
16 from what the Historic Preservation Review Board actually
17 reviewed and granted consent approval of.

18 The routine process of the building permit process was
19 actually that the staff would, you know, work out some of the
20 details of the exterior of the building. That's standard
21 procedure.

22 So the contrary to Mr. Peterson's testimony, this is not
23 a different plan than the Board saw. Those items are standard
24 procedure items that needs to be resolved in the course of the
25 building permit process.

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1 BZA CHAIR JORDAN: Board, any additional questions?
2 Okay. Then I'm going to close the hearing based upon what
3 we've already received.

4 As been advised by Counsel, the Board cannot hold the
5 ruling in lieu of something of HPRBs doing, nor can we be
6 instructive to HPRB. We understand the communities concern.

7 But I think our order should include, if there is some
8 changes by HPRB which alters the plans, other than what we have
9 before us, then they ought to come back to this Board. That's
10 about the best I can do to try and hold that and make those
11 changes.

12 So if anybody's going to make an argument to HPRB, then
13 we kind of left that door so you can kind of do something at
14 that point. But there's nothing we can do preemptive. And
15 we certainly can't provide advisory opinions.

16 As I said, and Counsel has certainly recommend contrary,
17 that we don't -- we can't be instructive to HPRB. Just can't
18 do it. Even though we may want to, but we just can't.

19 So, Board, any -- is the Board ready to deliberate in
20 this case or is there anything else that you want to hear or
21 get any action? Anything? Okay.

22 When is this supposed to go back to HPRB?

23 MR. BELLO: In the course of the process for obtaining
24 the building permit.

25 BZA CHAIR JORDAN: Okay. So it's not -- Mr. Peterson,

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1 there's nothing scheduled with HPRB at this point, is it?

2 MR. PETERSON: No, there isn't. Sorry, no, there
3 isn't. But we can always ask that it be considered by the full
4 Board during that process.

5 BZA CHAIR JORDAN: Okay, this is what I'm going to do.
6 I'm going to put this for decision in 30 days. So if you're
7 going to get something done, get it done within that time.

8 MR. PETERSON: Okay, you just told the parties it would
9 be 60 days, so? You said earlier 60 days so maybe I miss --

10 BZA CHAIR JORDAN: No, I said I don't know when the order
11 is coming back -- for when the order would normally get out
12 is what I was saying.

13 MR. PETERSON: Ah. Okay, thank you.

14 BZA CHAIR JORDAN: But I just don't, I mean, because it
15 still may not even help in 30 days.

16 ZC CHAIR HOOD: Mr. Chairman, I will tell you. In all
17 my years here, and I understand what Mr. Peterson's concern,
18 but, you know, there have been issues that HPRB would have to
19 deal and issues that we would have to deal with. And one never
20 really related, dependent on the other one.

21 Unless your concern is, as Mr. Peterson stated, to wait
22 and just see if anything changes. That would only, the way
23 I would see perceive no caution. But I would definitely not
24 be in agreement with moving forward and waiting for somebody
25 else to make a decision.

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1 BZA CHAIR JORDAN: All right. Then hearing that then,
2 let's then -- and what we can do is certainly keep the order
3 if or as necessary as a standard, if there's some alterations
4 by HPRB then it would have to come back here before us. If
5 it changes in regards to what the zoning regulations are.

6 ZC CHAIR HOOD: Actually, I'm learning from one of my
7 predecessors, John Parson, who was well-respected. That's
8 the way we approached things at that point in time.

9 BZA CHAIR JORDAN: And certainly we've been advised by
10 Counsel that way. I was trying to give some deference to the
11 request.

12 How's the Board, anybody have an idea what they want to
13 do with this case, anybody want to move forward? Mr. Hood?

14 ZC CHAIR HOOD: I mean for me, if we're in deference,
15 Mr. Peterson also is a well-respected person. If we want to
16 do that, I just don't want to prolong anything and we're in
17 the same position we are.

18 BZA CHAIR JORDAN: I understand.

19 ZC CHAIR HOOD: So if we're going to give 30 days, let's
20 do it. I don't have a problem.

21 MR. BELLO: Mr. Chair?

22 BZA CHAIR JORDAN: Yes, Mr. Bello.

23 MR. BELLO: If I can offer. The only relief that we're
24 asking for is the one that's imposed upon us. It is not likely
25 that the Historic Preservation Review Board would grant us a

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1 much bigger building to raise as a zoning issue.

2 BZA CHAIR JORDAN: Yes. I'm good. We're trying to
3 bounce this thing around. I know what we've been advised.

4 I'm been trying to find a way stretch it, but I'm just
5 not comfortable with trying to stretch it like I was trying
6 to do, but I just wanted to give some deference to see, but
7 there is some push back. So I think we're just going to have
8 to proceed in a normal course.

9 So anybody want to move this? Anyone? No? Yes, no,
10 okay. All right guys, always wait for me.

11 ZC CHAIR HOOD: Let me just say this, I don't want to
12 be the one to --

13 BZA CHAIR JORDAN: No, you're not. You're not.

14 ZC CHAIR HOOD: No, but I felt you were trying to be in
15 deference to Mr. Peterson. I don't want to be the one that
16 spoils what he asked for. So I don't have a problem waiting
17 30 days, but I just don't want to go on record as me waiting
18 on another board's decision.

19 BZA CHAIR JORDAN: Yes.

20 ZC CHAIR HOOD: That's just it. Just, you know, put it
21 off 30 days and just see what happens.

22 BZA CHAIR JORDAN: All right, I'm getting that feel.
23 We'll do 30 days, put it on the decision docket and if nothing
24 changes, nothing changes, so you got to do what you're going
25 to do.

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1 And Mr. Bello's knows. He's willing to do that.
2 Especially since we haven't quite decided what we're doing with
3 the building as he still moves things forward. Because in
4 light of anything else, we're already going to grant this. So.

5 MR. PETERSON: Mr. Chairman, I'll commit to informing
6 you expeditiously on what we are doing. Just as an informal
7 letter. I will send you a letter telling you if --

8 BZA CHAIR JORDAN: All right.

9 MR. PETERSON: -- just so if it will expedite your
10 decision. I don't want to delay the developer, is what I don't
11 want to do. Unduly. So.

12 BZA CHAIR JORDAN: Yes. Is there any big issue with
13 you, Mr. Bello's, in this? In a time delay.

14 MR. BELLO: Well the -- well my experience again is that
15 --

16 BZA CHAIR JORDAN: I understand that. But it's not
17 going to --

18 MR. BELLO: Yes. It's --

19 BZA CHAIR JORDAN: You can be doing things. Moving
20 things along.

21 MR. BELLO: Well the question is whether Historic
22 Preservation would move fast enough to do anything.

23 BZA CHAIR JORDAN: Well they don't -- if they do or
24 don't, we've given it a shot. So. I would rather for everyone
25 to be comfortable with what we are on something like this than

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1 not be.

2 So we're going to do 30 days decision. I would do it
3 another way, but I don't even want to rock that boat. But go
4 ahead, Mr. Moy, give me.

5 MR. MOY: If the Board scheduling is for decision, then
6 I think May 5th.

7 BZA CHAIR JORDAN: And this record is locked. There is
8 nothing else to be submitted in this record, unless there's
9 been some major altercations that effect the zoning
10 regulations by Historic Preservation.

11 And we say that again, the record is locked. No
12 submissions unless it's something regarding from Historic
13 Preservation -- regarding Historic Preservation making a
14 ruling that affects the zoning regulations. Period.

15 All right. Because I know otherwise, people be dumping
16 -- pulling up trucks and dumping into ISIS on the case. So
17 that -- okay, we're all clear? Thank you. Appreciate it.

18 Breaking. Breaking, breaking, breaking. Breaking,
19 five minutes. And then, Ms. Moldenhauer, if we can get your
20 group up here.

21 (Whereupon, the above-entitled matter went off the
22 record at 11:14 a.m. and resumed at 11:24 a.m.)

23 BZA CHAIR JORDAN: Let's get back to the ball game.

24 MR. MOY: Yes, sir. The last case on the docket for
25 today, March 31st, is Application Number 18886. This is the

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1 application of Hoorazor.

2 And I believe this application has been amended for
3 special exception under 223, not meeting lot occupancy, side
4 yard and nonconforming structure provisions.

5 BZA CHAIR JORDAN: Okay. All right, let's start this
6 over again. All right, let's do identifications. Please
7 identify yourselves?

8 MS. MOLDENHAUER: Good morning, members of the Board,
9 my name is Meridith Moldenhauer on behalf of the Applicant.
10 I'll allow the Applicant to introduce herself.

11 MS. HOORAZOR: Good morning. I am Niloufar Hoorazor.
12 I bought this house at 2709 36th Street as my primary residence
13 with my husband --

14 BZA CHAIR JORDAN: I just need you to identify
15 yourselves.

16 MS. HOORAZOR: Oh. Niloufar Hoorazor.

17 MR. TEKMEH: Ahmet Tekmen, homeowner.

18 BZA CHAIR JORDAN: Yes.

19 MR. CUNNINGHAM: I'm Paul Cunningham. I'm president
20 of the Massachusetts Avenue Heights Citizens Association.

21 I ask your patience with my voice. I am what they call
22 a cancer survivor and I have no saliva glands left so I'm
23 constantly having to lubricate it and I know it's a little
24 annoying.

25 BZA CHAIR JORDAN: Yes, sir, there's water here.

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1 MR. CUNNINGHAM: I am also a neighbor on the South side
2 of the Applicant. And thank you.

3 MS. BRINK: Malia Brink from the Massachusetts Avenue
4 Heights Citizens Association.

5 DR. MAY: Catherine May, commissioner of the ANC 3C08.

6 BZA CHAIR JORDAN: Okay. How did our discussions go?
7 Any fruitful discussions or we resolve any issues?

8 MS. MOLDENHAUER: We had discussions for about an hour
9 and a half, back and forth, but unfortunately, nothing was able
10 to be resolved.

11 BZA CHAIR JORDAN: Oh, that's a shame. Okay. As you
12 saw with our last case, we were kind in the same posture and
13 they were able to work something's out. Which worked out well.

14 All right, but that's okay. Well we'll do what we have
15 to do.

16 MR. CUNNINGHAM: Mr. Chairperson?

17 BZA CHAIR JORDAN: Yes.

18 MR. CUNNINGHAM: May I ask a procedural question? I
19 don't really know how to follow the procedure.

20 I filed a letter, which we discussed earlier, last
21 night. And I would appreciate it if I could understand whether
22 -- that it's going to be stricken and I should resubmit it as
23 evidence today or I can spare the duplication?

24 BZA CHAIR JORDAN: You can present it here to us today.

25 MR. CUNNINGHAM: I can present it. So I should hand it

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1 up and so forth?

2 BZA CHAIR JORDAN: Yes, when we get it to. If you think
3 it's still necessary.

4 MR. CUNNINGHAM: Thank you.

5 BZA CHAIR JORDAN: We're going to take it bit by bit and
6 take it for what the responses are. Ms. Moldenhauer, it's your
7 opportunity to present the case. I think that the Board
8 understands the file, understand the relief requested for
9 special exception.

10 I think if I was you I would take my time to deal with
11 the opposition's points. Because I think what's already been
12 submitted in the record, subject to something coming up in this
13 hearing, that the initial basis of what you submitted would
14 be something where relief would be followed.

15 So why don't you --

16 MS. MOLDENHAUER: Okay.

17 BZA CHAIR JORDAN: -- especially in light of this thing
18 that what happened in such a minuscule avenue of relief, I was
19 wondering how come the zoning administrator didn't use his
20 level of discretion to grant that relief? Did you have
21 conversation?

22 MS. MOLDENHAUER: It's over the two percent deviation.

23 BZA CHAIR JORDAN: It's over two percent?

24 MS. MOLDENHAUER: It's over two percent. Because it's
25 two percent of 40 percent. So it's actually only 42 percent

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1 that could be granted by the zoning administrator's authority.
2 Not the 44 percent.

3 BZA CHAIR JORDAN: Got it.

4 MS. MOLDENHAUER: And actually that was exactly my
5 intention was to rest in the record, but to reserve opportunity
6 to provide rebuttal and a closing statement. So thank you.

7 BZA CHAIR JORDAN: So we can do it that way.

8 MS. MOLDENHAUER: Yes, thank you.

9 BZA CHAIR JORDAN: I didn't know if you wanted to put
10 it out first and then come back to it. Okay. Because I do
11 think that, you know, subject to what comes out in this hearing,
12 that at least initial burden has been proven.

13 Unless the Board needs to hear something directly now,
14 from the Applicant? Okay.

15 All right. So then let's turn to the Office of Planning
16 and see if there's anything additional that Ms. Brown-Roberts
17 might want to add that -- to report. If you --

18 MS. BROWN-ROBERTS: Good morning, Mr. Chairman and
19 members of the Board. I'm Maxine Brown-Roberts for the Office
20 of Planning.

21 I'd like to stand on the record for this application.
22 And we continue to support it unless, as you said, something
23 else comes up. Thank you.

24 BZA CHAIR JORDAN: Board, any questions of the Office
25 of Planning? The Applicant in question, Office of Planning?

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1 MR. CUNNINGHAM: Well, we=d like --

2 BZA CHAIR JORDAN: Mr. Cunningham, we kind of go through
3 the process. And when it's turn I'm going to say, Mr.
4 Cunningham, any questions for Office of Planning.

5 I start with the Board, asking is there any questions
6 that they have and the Board said no. And then I asked the
7 Applicant any questions for Office of Planning. Or Applicant
8 --

9 MS. MOLDENHAUER: Yes, I just have a few. Ms.
10 Brown-Roberts, did you visit the site?

11 MS. BROWN-ROBERTS: Yes, I did. On two occasions
12 actually.

13 MS. MOLDENHAUER: And so you're -- recommend --
14 recommendation for approval is based on physically seeing the
15 structure and seeing the existing conditions and the
16 neighboring conditions?

17 MS. BROWN-ROBERTS: Yes, that's correct.

18 MS. MOLDENHAUER: And did you also then walk around and
19 see the local character of the community and your decision is
20 also based on that?

21 MS. BROWN-ROBERTS: Yes, that's correct.

22 MS. MOLDENHAUER: Thank you.

23 BZA CHAIR JORDAN: Okay. Board, any questions? Okay,
24 two things. One, you would have the opportunity to cross
25 examine Ms. Brown-Roberts, but now we're also in your

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1 wheelhouse, so you can ask questions of Office of Planning if
2 you wish.

3 MR. CUNNINGHAM: I have no questions, thank you.

4 BZA CHAIR JORDAN: Sure?

5 MR. CUNNINGHAM: Yes. Oh pardon me, of whom?

6 BZA CHAIR JORDAN: Office of Planning.

7 MR. CUNNINGHAM: No, I have no questions.

8 BZA CHAIR JORDAN: Okay. Okay. All right. All
9 right, is there anyone here from the Department of
10 Transportation on this case? Department of Transportation?
11 We do have a letter of no objection to the relief requested
12 by Department of Transportation.

13 Is there anyone here from ANC 3C? ANC 3C? And you are?

14 DR. MAY: Catherine May. And I am the Commissioner of
15 ANC 3C08 and authorized to speak on behalf of the commission.

16 BZA CHAIR JORDAN: Okay. I didn't see that in the
17 letter. But, Okay. Go ahead. So go ahead. Do you want to
18 --

19 In fact, let me go back procedurally. You can ask
20 questions of Office of Planning too if you wish. Do you have
21 any questions you want to ask Office of Planning?

22 DR. MAY: Are there any other structures in the
23 neighborhood that are as imposing in size and in intrusion on
24 privacy of other houses?

25 MS. BROWN-ROBERTS: I'm not sure what you mean by --

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1 BZA CHAIR JORDAN: Yes, could you restate your
2 question?

3 MS. BROWN-ROBERTS: -- imposing intrusions. I'm not
4 sure what that means.

5 BZA CHAIR JORDAN: Thank you, Ms. Brown-Roberts.
6 Would you ask the question again, because it kind of lost me
7 too.

8 DR. MAY: Are there any other homes in the neighborhood
9 that are as large --

10 BZA CHAIR JORDAN: Let's kind of breakup the question
11 so then we can --

12 DR. MAY: Okay. Are there any other houses in the
13 neighborhood that are as large on a single plot?

14 MS. BROWN-ROBERTS: I don't -- I'm sorry. I don't
15 know. I didn't take, you know, measurement of all units.

16 What I can say is that if you're looking at the height,
17 I looked at the heights. And yes, you know, they are
18 three-story buildings.

19 They are also two-story buildings. And this one is
20 two-story building. Is a three-story building. So that's
21 all consistent with other houses.

22 I looked at the architecture, you know, the roof styles.
23 They're also houses within in the community which have similar
24 characteristics that you can see.

25 DR. MAY: Are there any other houses in the community

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1 that have large roof decks?

2 MS. BROWN-ROBERTS: I don't know. I don't know.

3 DR. MAY: Are there any other houses in the community
4 that have such large windows overlooking other properties?

5 MS. BROWN-ROBERTS: There are other houses that has
6 windows overlooking other properties. I can't remember the
7 different sizes.

8 DR. MAY: Thank you.

9 MS. BROWN-ROBERTS: But I know there are windows
10 overlooking other properties.

11 DR. MAY: Thank you.

12 MR. CUNNINGHAM: Mr. Chairperson, may I ask one
13 question?

14 BZA CHAIR JORDAN: Yes. No. Well, didn't I ask you
15 already?

16 MR. CUNNINGHAM: You asked me and I made a mistake.

17 BZA CHAIR JORDAN: Okay. No, you --

18 MR. CUNNINGHAM: Okay, thank you.

19 BZA CHAIR JORDAN: All right. You can bring it up in
20 your side of the case. Okay. Now --

21 DR. MAY: So am I on?

22 BZA CHAIR JORDAN: Yes, you are.

23 DR. MAY: Okay. Good morning, Chairman Jordan and
24 members of the Board.

25 BZA CHAIR JORDAN: Let's do this. Let's do -- how long

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1 do you think you need?

2 DR. MAY: Well I'm in very large font here. Lucky for
3 all of us. I don't know, you know --

4 BZA CHAIR JORDAN: Five minutes?

5 DR. MAY: -- four or five minutes.

6 BZA CHAIR JORDAN: Okay. Let's do five minutes on the
7 clock please.

8 DR. MAY: And then if you have questions --

9 BZA CHAIR JORDAN: Certainly.

10 DR. MAY: -- I'm happy to answer them as I am able.
11 Okay.

12 BZA CHAIR JORDAN: Proceed.

13 DR. MAY: Good morning, Chairman Jordan, and members of
14 the Board. My name is Catherine May and I am the commissioner
15 of ANC 3C08. I reside at 2800 36th Street, Northwest.

16 And I am testifying both as an authorized representative
17 of ANC 3C and as a resident of the affected neighborhood.

18 In my ten years as ANC commissioner I've participated
19 in dozens of applications for special exceptions to the
20 existing zoning and land use regulations. ANC 3C08 has been
21 willing, in all circumstances, to work with applicants seeking
22 to make modifications, both large and small, which require
23 special exceptions.

24 There's an established and well known procedure for
25 doing this. And most often it results in ANC 3C being able

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1 to support most applicants coming before the ANC because they
2 abide by the process and reach an agreement with the affected
3 neighbors.

4 This is only the second time in ten years that I have
5 had to appear before this Board in a contested matter. ANC
6 3C voted 5-0 in one extension, to oppose the Applicant's
7 request for special exception.

8 And the grounds to oppose are laid out in the ANC
9 resolution, 2014043, which is on file with this Board. The
10 submissions from the Massachusetts Avenue Heights Citizen
11 Association and affected neighbors will detail the particular
12 violations for which the owners and developers seek
13 dispensation.

14 My major concern, that of my constituents, and I trust
15 the concern of this Board, is that the compelling reason to
16 deny the exception is the fundamental disregard for
17 established legal process for considering products -- projects
18 that indisputably violate zoning requirements.

19 Those requirements, which have the force of law, exist
20 to protect neighbors who are citizens of the District of
21 Columbia, are entitled to rely on them and on those charged
22 with enforcing them, to ensure that their interests are
23 protected. And that all applicants are held to the same
24 standards.

25 If citizens interests can be ignored in the hope or

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1 expectation that violations will be forgiven after the fact,
2 the Board will be put in the position of setting a policy that
3 ultimately undermines confidence in the integrity of the
4 process.

5 Applicants should not be able to secure approval after
6 ignoring proceeds and their neighbors --

7 MS. MOLDENHAUER: Can I object? Chairman Jordan?

8 BZA CHAIR JORDAN: What's your objection?

9 MS. MOLDENHAUER: My objection is that so far
10 everything I've overheard is opposing this because it is a
11 request under a retroactive basis. We've --

12 BZA CHAIR JORDAN: Yes.

13 MS. MOLDENHAUER: This case is not -- the evidence in
14 this case should not be based on that issue. It should be
15 whether or not we satisfy the 223 standard.

16 BZA CHAIR JORDAN: Yes. And I agree with you
17 wholeheartedly, but we'll take it for what it's worth. And
18 the Boards able to cipher those things which are issues germane
19 to this particular issues. The Commissioner is expressing
20 this overall opinion.

21 DR. MAY: Right. And I'm not an attorney.

22 BZA CHAIR JORDAN: And she's trying -- stay with me. So
23 she'll get to that point. But the issues should be germane
24 to the zoning regulations and not the violation of how they
25 got here, but they're here. But that's okay.

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1 DR. MAY: Okay, thank you for --

2 BZA CHAIR JORDAN: Proceed on. I understand --

3 DR. MAY: -- your indulgence. Okay, so whether -- I
4 mean whether or not they think that the Board might have
5 approved this application had it been filed in a timely
6 process, the disregard for process was further compounded by
7 the fact that the Applicant continued to work on the project
8 for more than a year, after having been informed that they
9 needed to file for a special exception, before they even went
10 ahead and filed.

11 So I want to note that the ANC vote was based on several
12 factors. Most important was the lack of effort of the
13 Applicant to show that she met requirements for the zoning law.
14 Particularly with regard to light, air and privacy.

15 Second, was the finding during several site visits, by
16 several commissioners, and the photographic documentation
17 which demonstrate adverse impact on light, air and privacy of
18 surrounding properties.

19 For example. One, the large picture window in close
20 proximity to the back garden of Ms. McKee entirely prevents
21 any sense of privacy.

22 Two, the view from the homes across the alley of the
23 structure totally out of proportion and out of character with
24 the neighborhood.

25 Three, the intrusion expected from the Applicant's roof

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1 top deck.

2 And four, the placement of a structure eight feet above
3 the prior grade of the side yard to the South.

4 BZA CHAIR JORDAN: Let me stop you a second.

5 DR. MAY: Sure.

6 BZA CHAIR JORDAN: What did you say about the rear? You
7 said something about the property to the rear?

8 DR. MAY: Yes. The properties to the rear, across the
9 alley, are confronted with a wall of very large windows. There
10 is in fact no other property in this neighborhood that is so
11 imposing and so intrusive and has so many large windows out
12 of proportion to the more traditional characteristics of this
13 neighborhood. That look into both the homes and the backyards
14 of the surrounding properties.

15 BZA CHAIR JORDAN: Help me to understand. The distance
16 between the back windows of the subject property and the rear
17 property, is that like more than 25 feet?

18 DR. MAY: The distance between the property to the
19 North, and I think you'll -- is there going to be a picture
20 submitted demonstrating the large windows that look over the
21 backyard of the property to the North --

22 BZA CHAIR JORDAN: Yes, so how far --

23 DR. MAY: -- which are part of the --

24 BZA CHAIR JORDAN: How far is the separation, from
25 window to window?

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1 DR. MAY: Well it's window to backyard in that case.
2 And it's the depth of the disputed side yard.

3 BZA CHAIR JORDAN: I'm just taking for -- I'm just
4 trying to keep up --

5 DR. MAY: I'm sorry.

6 BZA CHAIR JORDAN: -- what you're saying so I could
7 visualize. Because you said that the large picture window in
8 the rear of this property, to overlooking, imposing upon the
9 privacy of the lot to the rear across the alley. Is that right?

10 DR. MAY: Yes.

11 BZA CHAIR JORDAN: Okay. And I'm saying, what's that
12 distance? That's okay, I can get it from --

13 DR. MAY: I don't know it off the top of my head.

14 BZA CHAIR JORDAN: -- Applicant.

15 DR. MAY: I can provide it for you. And I think there
16 are pictures that are going to be submitted, which show the
17 view from those windows into the backyard.

18 BZA CHAIR JORDAN: All right. Go ahead.

19 DR. MAY: My point being basically, there is no other
20 home in this neighborhood that is this large, this imposing
21 or has windows of this size that directly impact the neighbors.

22 And then fifth, the structure to the South in an area
23 marked existing concrete driveway on the plans, but clearly
24 is a new structure. Which now brings the wheel wells of the
25 cars parked on that driveway up to the level of the dining room

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1 windows in the house directly to the South.

2 And which is not included in the total occupied space,
3 even though it occupies a large piece of land and is integrated
4 into the main floor of the house.

5 Okay, third. The posture of the Applicant was that she
6 was not bound by law because the structure had essentially been
7 completed and she is entitled to a special exception.

8 And, fourth, consistent with my experience and reports
9 of my neighbors, the Applicant has made no effort to work with
10 the neighborhood about mitigating adverse impacts during the
11 building process. But has instead maintained the position
12 that she's entitled to build whatever she wants.

13 The Applicant asked to postpone the BZA hearing
14 scheduled for January in order to reach out to neighbors and
15 to attend other ANC meetings, supposedly to address some of
16 these concerns. Since January, the Applicant has continued
17 to work on the project and has made no attempts to reach out
18 to the ANC or apparently to the neighbors.

19 Finally, the ANC is very concerned that developers, like
20 the Applicant, believe they can develop properties out of
21 compliance with regulations, come before this Board and get
22 a special exception based on the assumption that the BZA will
23 be reluctant to require adherence to the law after the fact.

24 This sort of behavior should not be rewarded as it
25 undermines the confidence into the review process, the

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1 fairness of the application of law and penalizes those
2 residents who adhere to the process.

3 If tolerated, it will encourage other developers to
4 pursue the same tactic. And we are willing to work with anyone
5 in the neighborhood who is willing to work within the
6 guidelines to which all of us are subject.

7 It's not too much to ask what the law requires. Thank
8 you for considering these comments.

9 BZA CHAIR JORDAN: Okay.

10 DR. MAY: And I'm open to any questions you might have.

11 BZA CHAIR JORDAN: The Board generally shows this --
12 it's public knowledge that people come to us sometimes after
13 they've started. Doesn't give them any points.

14 In fact, many times structures had to be brought down.
15 So that's clearly -- if someone does that, they do that at their
16 own peril.

17 And we really don't care about that unless they've been
18 -- unless they completely relied on some outward expression
19 of authority given by the District of Columbia, in writing or
20 something, that they can do what they did and then they did
21 it in reliance upon the government. But if we don't have that,
22 then it's completely different.

23 I just wanted to add that. So we don't know the
24 dimensions. So there was no community -- you're saying there
25 was no community outreach prior to -- there has not be any

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1 community outreach?

2 DR. MAY: There has not -- they asked to postpone the
3 BZA hearing scheduled for January.

4 BZA CHAIR JORDAN: And prior to that they had not --

5 DR. MAY: Stating in their letter to you that they were
6 going to reach out to the ANC. And they did not reach out to
7 the ANC.

8 BZA CHAIR JORDAN: There's not been any -- the Applicant
9 has not meet with the ANC?

10 DR. MAY: No, the Applicant did meet with the ANC. I
11 believe in the November or no, December meeting where the ANC
12 passed the resolution, which has been submitted to the Board,
13 opposing this application.

14 BZA CHAIR JORDAN: So you're saying subsequently they
15 didn't reach out?

16 DR. MAY: Subsequently they did not reach out. They
17 did appear at the planning and zoning meeting that the ANC held
18 in the first week of December. And then at the first week in
19 November.

20 And then at the ANC meeting I put them in touch with the
21 immediate neighbors. And you'll have to ask the immediate
22 neighbors about what the extent of their outreach was to the
23 neighbors.

24 BZA CHAIR JORDAN: Okay. Board, any other questions of
25 --

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1 ZC CHAIR HOOD: Mr. Chairman.

2 BZA CHAIR JORDAN: Yes.

3 ZC CHAIR HOOD: I want to do, Commissioner May, do we
4 have a copy of your written testimony? I know we have the
5 resolution.

6 DR. MAY: No. I can email it to you.

7 ZC CHAIR HOOD: Could you make sure we get that
8 uploaded.

9 DR. MAY: I can do it before I leave.

10 BZA CHAIR JORDAN: Or before you leave, just make copies
11 --

12 DR. MAY: Yes.

13 BZA CHAIR JORDAN: -- and they'll do that for us. Any
14 other questions of Commissioner? Does the Applicant have any
15 cross examination?

16 MS. MOLDENHAUER: Yes I do. Thank you. Did the
17 Applicant and Counsel attend the ANC zoning committee?

18 DR. MAY: I stated that you did.

19 MS. MOLDENHAUER: And were there any concerns presented
20 by the two ANC commissioners at that time or questions posed
21 of the Applicant? During that meeting.

22 DR. MAY: I'm sorry?

23 MS. MOLDENHAUER: Were there any questions from the
24 zoning committee members of the ANC, of the Applicant, during
25 that meeting?

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1 DR. MAY: I believe so.

2 MS. MOLDENHAUER: And you were asking questions about
3 what exactly?

4 DR. MAY: Community outreach and the nature of the
5 additions. I think I asked a question about the effect of the
6 elevation of the driveway on the large tree.

7 MS. MOLDENHAUER: And you asked about the -- I'm sorry,
8 I lost my train of thought. In your resolution, you state that
9 the Applicant provided no diagrams. Did we in fact present
10 large boards of diagrams both to the ANC and boards at the
11 zoning committee meeting?

12 DR. MAY: I don't recall diagrams demonstrating that
13 there was no effect on light and air. And I don't recall any
14 pictures that you presented --

15 MS. MOLDENHAUER: You don't recall large --

16 DR. MAY: -- demonstrating --

17 MS. MOLDENHAUER: -- that we brought in?

18 BZA CHAIR JORDAN: Ms. Moldenhauer, let her finish her
19 response please.

20 DR. MAY: No, I think you brought in diagrams of plans,
21 but you did not bring in diagrams demonstrating that there was
22 no effect on light and air. Or privacy.

23 MS. MOLDENHAUER: And you indicated that there was a
24 site visit by many ANC commissioners. Did any of the ANC
25 commissioners reach out to the Applicant indicating that they

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1 were going to do a site visit and have an opportunity to talk
2 and walk around the property?

3 DR. MAY: I don't know, you'd have to ask them.

4 MS. MOLDENHAUER: And you indicated that one of your
5 major concerns is that the property is not of a more traditional
6 character, is that correct?

7 DR. MAY: No, I indicated that the other homes in the
8 neighborhood were of a more traditional character. I believe
9 is my statement.

10 MS. MOLDENHAUER: And isn't it true that I emailed you
11 on multiple occasions, myself and other staff members on behalf
12 of the Applicant, emailed you on multiple occasions requesting
13 to have a sit down meeting with yourself and other community
14 members and there was no response to that email?

15 DR. MAY: No.

16 BZA CHAIR JORDAN: Wait a minute. Wait a minute.
17 Because the question was so compounded, I don't know what she's
18 saying no to.

19 MS. MOLDENHAUER: No. Did I email you requesting a
20 meeting for you to help us coordinate with the neighbors?

21 DR. MAY: And I introduced you at the P&Z meeting to the
22 counsel --

23 BZA CHAIR JORDAN: Wait a minute. Wait a minute.

24 DR. MAY: -- representing --

25 BZA CHAIR JORDAN: That was a yes or no and I didn't

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1 hear.

2 DR. MAY: Oh, I'm sorry.

3 BZA CHAIR JORDAN: Because your response is so --

4 DR. MAY: You're going to have to repeat the question.

5 MS. MOLDENHAUER: Did I email you asking you, for you
6 as the ANC commissioner, to help us coordinate and have a
7 discussion amongst the neighbors?

8 BZA CHAIR JORDAN: Did she email you and say to help
9 coordinate with the neighbors?

10 DR. MAY: I had offered to help coordinate with the
11 neighbors or help to put them -- actually help put them in
12 contact. I did not offer to coordinate the meeting.

13 BZA CHAIR JORDAN: She's saying did she send you an
14 email to ask your help?

15 DR. MAY: She sent me an email asking to me to put her
16 in touch with the neighbors.

17 BZA CHAIR JORDAN: Okay.

18 DR. MAY: Because I had offered to do that.

19 BZA CHAIR JORDAN: Okay.

20 DR. MAY: Already.

21 BZA CHAIR JORDAN: All right. Your second part of your
22 question or is that --

23 MS. MOLDENHAUER: Well I think she already indicated
24 that she didn't coordinate that but rather you -- you said that
25 you did not coordinate that but you put me in touch with their

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1 counsel. And who --

2 DR. MAY: At the P&Z meeting.

3 MS. MOLDENHAUER: Who was your understanding of their
4 counsel?

5 DR. MAY: At that time it was my understanding that Mr.
6 Sullivan was going to represent them. I understand that
7 subsequently that is not the case. But at that time that was
8 my understanding.

9 MS. MOLDENHAUER: No further questions.

10 BZA CHAIR JORDAN: All right. Mr. Cunningham, any
11 cross examination of the ANC commissioner?

12 MR. CUNNINGHAM: No, sir.

13 BZA CHAIR JORDAN: Okay. I'm trying to keep up with my
14 notes. Okay, good. All right. So now we'll return to Mr.
15 Cunningham see if there's something -- anything you want to
16 -- hold up. Let me stop.

17 We kind of skipped over one other spot. Because we kind
18 of got out of whack just a little bit. But we can come back
19 to that. How should we do this?

20 Anyone wishing to speak in support of the application?
21 Anyone wishing to speak in support? Anyone in support?

22 Okay. Now let's turn with opposition. And that would
23 begin with Mr. Cunningham. And right now we working on eight
24 minutes. But let's go ahead and do ten and see where we start
25 and work our way back, if we go over. I'm just trying to keep

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1 a bearing of where we are. Okay.

2 MR. CUNNINGHAM: I'm here to address three things. One
3 the statements made by the Applicant in both the initial
4 statement and the pre-hearing statement. And I'll do that
5 first.

6 Second, the view of the Massachusetts Avenue Heights
7 Citizens Association, which Ms. Brink was going to offer and
8 I will offer on her behalf. Because she is our zoning
9 coordinator.

10 BZA CHAIR JORDAN: She certainly can read a statement
11 within three minutes of any position that you want to read.
12 But we'll do that when we get to that point.

13 MR. CUNNINGHAM: Okay. So why don't we do that after
14 that. And then I would like to address the merits on behalf
15 of the association and the affected property owners, some of
16 whom are here, of the air, light, et cetera. Which I think
17 is the ultimate question you have to address.

18 May I proceed on that basis?

19 ZC CHAIR HOOD: Mr. Jordan, let me interrupt. I
20 understand we were going to get some photos?

21 MR. CUNNINGHAM: We have a lot photos here.

22 BZA CHAIR JORDAN: He's going to introduce photos --

23 MR. CUNNINGHAM: And I'm going to introduce photos as
24 I go forward.

25 BZA CHAIR JORDAN: -- his case.

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1 MR. CUNNINGHAM: Okay. That's all right?

2 ZC CHAIR HOOD: You're going to give them to us after?

3 MR. CUNNINGHAM: I'm going to do it during.

4 BZA CHAIR JORDAN: He's going to do it as he proceeds.

5 MR. CUNNINGHAM: As I go forward.

6 ZC CHAIR HOOD: Oh, as you go along. Okay. Okay.

7 Because I like to look at stuff while people are talking.

8 MR. CUNNINGHAM: Right. What you have before you that
9 I will now introduce for the second time, my letter of last
10 night to the Chairperson. I miss addressed it to the Chairman.
11 And the exhibits.

12 How do I admit these, Mr. Jordan?

13 BZA CHAIR JORDAN: You give them to Mr. Moy. If they're
14 the same documents. But you're going to have to talk us
15 through it because we're not reading it. We haven't pre-read
16 it. And you need to make sure Counsel has a copy.

17 MR. CUNNINGHAM: Counsel may certainly. She has one
18 already, but -- she's responded to it. Here you go. And here
19 are, do you want to hand out the exhibits if --

20 MS. BRINK: That's the letter, isn't it?

21 MR. CUNNINGHAM: This is my letter.

22 MS. BRINK: Are you sure?

23 MR. CUNNINGHAM: Yes. No, I'm sorry.

24 MS. BRINK: No.

25 MR. CUNNINGHAM: That's a different set.

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1 MS. BRINK: No, sorry.

2 MR. CUNNINGHAM: That's a different set of --

3 MS. BRINK: That's a different document.

4 MR. CUNNINGHAM: Different set of letters. Sorry.

5 (Off mic comment)

6 MR. CUNNINGHAM: There we go. Pardon me.

7 BZA CHAIR JORDAN: Do we have like A to G? A to G. Oh,

8 50. You got 50?

9 MS. BRINK: I'll pass them up. I'll walk up.

10 MR. CUNNINGHAM: What?

11 MS. BRINK: I'll go up.

12 BZA CHAIR JORDAN: What are we doing?

13 MR. CUNNINGHAM: We're putting in the exhibits to my
14 letter.

15 BZA CHAIR JORDAN: Well let's -- all right, let's take
16 time. Let's get this things up here. Because we're wasting
17 a lot of time. So let's go ahead.

18 If you're going to -- get whatever you're going to give.
19 Give everything now that you're going to present to this Board,
20 give it to Mr. Moy. We'll pass them out now.

21 We'll use them as you present them. And if there's some
22 objection to them, then we'll pull it back. At least want to
23 get it distributed. Because --

24 MS. BRINK: This was already was filed last night.

25 BZA CHAIR JORDAN: It's already filed?

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1 MS. BRINK: You might already have it on --

2 BZA CHAIR JORDAN: We already have it on ISIS --

3 MS. BRINK: -- so I don't know if you need to --

4 BZA CHAIR JORDAN: -- so you don't need to re-file. If
5 that's what --

6 MS. BRINK: They have new documents as well, but.

7 BZA CHAIR JORDAN: -- put on last night, we're going to
8 step through them as you do your presentation here. We already
9 have those if that's what you --

10 MR. CUNNINGHAM: So then he doesn't need these --

11 BZA CHAIR JORDAN: No.

12 MR. CUNNINGHAM: -- extra exhibits?

13 BZA CHAIR JORDAN: No.

14 MR. CUNNINGHAM: Okay.

15 BZA CHAIR JORDAN: But they're not necessarily admitted
16 until we go through the process and admit them. We have them.
17 We do have them.

18 ZC CHAIR HOOD: So the photos are the same photos that
19 are in here?

20 BZA CHAIR JORDAN: That's what my understanding is.

21 ZC CHAIR HOOD: Oh. I thought it was something
22 different.

23 MR. CUNNINGHAM: Photos are coming later.

24 MS. MOLDENHAUER: I believe they have new photos. We
25 haven't seen those.

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1 MR. CUNNINGHAM: Some of them were taken last night. I
2 got one and two.

3 MS. BRINK: Okay.

4 BZA CHAIR JORDAN: If you got photos that you're going
5 to use in your exhibit, let's get those done now please.

6 MR. CUNNINGHAM: This is a different --

7 BZA CHAIR JORDAN: I understand that. Let's do it now.

8 MR. CUNNINGHAM: Well okay.

9 (Off mic comments)

10 MR. CUNNINGHAM: Sorry, I understood from counsel
11 advising us on procedure that I could go through this and talk
12 about it as I hand it out.

13 BZA CHAIR JORDAN: You can -- you could do it that way,
14 but I want to get it done. Because we're --

15 MR. CUNNINGHAM: I'll try to do what the Chairperson
16 wants. I don't practice here but I do practice.

17 BZA CHAIR JORDAN: Let's do this. If that's the way you
18 want to do it, take a seat. Because it's going to take -- you
19 have a lot standing there. Leave those where they are with
20 her. Leave those with her because you're going to get to
21 those. Let's go ahead and proceed.

22 MR. CUNNINGHAM: Okay. I'm going to try and cut my
23 preliminary pre-hearing comments very short of the benefit of
24 the Board.

25 BZA CHAIR JORDAN: Okay, I think we kind of stopped the

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1 clock, but we're going to start the clock again, Mr. Moy. And
2 it's your time to do what you want.

3 MR. CUNNINGHAM: And how much do I have?

4 BZA CHAIR JORDAN: Well you had ten minutes. We're
5 going to put ten minutes back on the clock.

6 MR. CUNNINGHAM: All right.

7 BZA CHAIR JORDAN: We're going to give you a bonus
8 round.

9 MR. CUNNINGHAM: Okay.

10 BZA CHAIR JORDAN: Put ten minutes back on the clock.

11 MR. CUNNINGHAM: This is a very straightforward
12 proposition.

13 BZA CHAIR JORDAN: And I'm going to suggest that you
14 allow the narrative. We probably don't need to hear --

15 MR. CUNNINGHAM: Did you --

16 BZA CHAIR JORDAN: -- we need you to get to the point
17 of the issues that's before the Board.

18 MR. CUNNINGHAM: Well I'm --

19 BZA CHAIR JORDAN: We understand that the community's
20 -- there are some people in the community that's upset, we need
21 to understand that. Your association is.

22 And we understand the process that they already started
23 building and then they came, they filed the application with
24 the Board.

25 MR. CUNNINGHAM: But they are asserting that they, in

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1 their -- I'm asking, Mr. Chairperson, I'm asking to have an
2 opportunity that they had to deal with an issue that is --

3 BZA CHAIR JORDAN: I'm not stopping. Listen, Mr.
4 Cunningham, I'm trying to help you. I'm trying to help you
5 use your time wisely.

6 MR. CUNNINGHAM: Okay.

7 BZA CHAIR JORDAN: You can use the time whichever way
8 you want to use it. So here.

9 MR. CUNNINGHAM: This is going to be quick.

10 BZA CHAIR JORDAN: I mean whichever way you want to do
11 it.

12 MR. CUNNINGHAM: All right. Our exhibits --

13 BZA CHAIR JORDAN: And I recognize if you're not used
14 to this. It's kind of foreign, so I understand.

15 MR. CUNNINGHAM: It's foreign, yes, sir.

16 BZA CHAIR JORDAN: I understand that. I understand
17 that.

18 MR. CUNNINGHAM: Our exhibits, especially Exhibits 1
19 and 2, all right.

20 BZA CHAIR JORDAN: What's indicated by Tab 1, Tab 2 in
21 your --

22 MR. CUNNINGHAM: Yes.

23 BZA CHAIR JORDAN: Okay.

24 MR. CUNNINGHAM: Tab 2 is what the Applicant says the
25 Applicant relied on in going forward with the construction.

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1 Which throughout the pleadings, Counsel for the Applicant
2 prepared, is asserted to be a reason you should be lenient in
3 your review of the air and light requirements.

4 BZA CHAIR JORDAN: I don't believe they're saying that
5 at all.

6 MS. MOLDENHAUER: Yes, I would just object on the record
7 then.

8 BZA CHAIR JORDAN: I understand.

9 MR. CUNNINGHAM: Well I'm telling you what I think it
10 says. And they have said that to us. And they said it to the
11 ANC.

12 The first Exhibit, 1, is a surveyor's plat, which is in
13 the permit file. And if you'll see it it's dated 7/11/13.
14 Okay. That's July.

15 That's two months before they got the permit to build
16 the addition. And it makes it clear, as do the other exhibits
17 which they put in the file, with one exception. That it was
18 understood that the side yard was not a conforming side yard.

19 They knew it. Only the last document they put on the
20 record, in addition to this one which is in this record, but
21 in the hearing -- in the permitting file, only the last
22 document, which is very much like the priors that they
23 submitted, shows it to be a conforming side yard.

24 But otherwise they had notice, as these exhibits shows
25 and my presentation shows, as early as July, official notice

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1 form the surveyor --

2 BZA CHAIR JORDAN: I'm going to give you one more help.
3 The fact that they have come after the fact for relief, is not
4 probative of anything that's before us now. So that's what
5 I'm trying to help you with.

6 This conversation that we're having now means that,
7 you're saying they're trying to justify why they came late.
8 We can care less whether they came late before or after. They
9 have to deal with DCRA on that.

10 But the only thing that's before us now is the request
11 for relief and whether or not this relief will cause a
12 substantial impact upon the community or violations on the
13 regulations.

14 MR. CUNNINGHAM: Thank you very much. And I am
15 delighted to hear that. And now I will, if I could, hand out
16 some pictures.

17 BZA CHAIR JORDAN: Yes.

18 MR. CUNNINGHAM: And I'm going to you, well --

19 (Off mic comment)

20 MR. CUNNINGHAM: Your Honor, sorry about this. The
21 critical picture is in here.

22 BZA CHAIR JORDAN: Write the names on them for me.

23 MR. CUNNINGHAM: Pardon me?

24 (Off mic comments)

25 MR. CUNNINGHAM: I just need to find this picture. I'm

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1 running out of time. Well I'm going to start -- you have this?
2 I'm going to start with a walk around the neighborhood.

3 BZA CHAIR JORDAN: Are these new pictures that the Board
4 does -- does the Board have those pictures?

5 MR. CUNNINGHAM: No, I'd like to put them before you.

6 BZA CHAIR JORDAN: Okay. Do you want to give them to
7 Mr. Moy to give to us please?

8 MR. CUNNINGHAM: These are all pictures that were taken
9 on an iPhone or iPad.

10 BZA CHAIR JORDAN: Okay. Let's identify the pictures.

11 MR. CUNNINGHAM: One at a time. That is the view from
12 the alley. From the side --

13 BZA CHAIR JORDAN: So, so, so, stay with me.

14 MR. CUNNINGHAM: Yes.

15 BZA CHAIR JORDAN: All right, so we have offered to us
16 pictures and what we already got, Tab 1 and 2. All right, let's
17 go ahead.

18 Just right now, let's just call these -- I'm going to
19 call them Exhibit 49. These set of pictures, 49. And the
20 first one you gave is 49A.

21 MR. CUNNINGHAM: Okay. Now we're doing it.

22 BZA CHAIR JORDAN: Okay? We got 49 -- I'm sorry, this
23 is going to be 51. 51A, thanks. Okay.

24 MR. CUNNINGHAM: Maybe I can put this mic in pocket.

25 BZA CHAIR JORDAN: There you go.

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1 MR. CUNNINGHAM: Can you hear me?

2 BZA CHAIR JORDAN: Look at you, that works. Go ahead.

3 MR. CUNNINGHAM: Glad to be your entertainer. Okay, we
4 have, which one did I give you?

5 BZA CHAIR JORDAN: That's the backyard of something.
6 The rear.

7 MR. CUNNINGHAM: This illustrates the Applicant's
8 house and the McKee house from the alley taken, as I said,
9 either with an iPad or iPhone. No photoshopping, no nothing.
10 Okay.

11 This is another view --

12 BZA CHAIR JORDAN: We got these?

13 MR. CUNNINGHAM: -- which you have.

14 BZA CHAIR JORDAN: Okay.

15 MR. CUNNINGHAM: Okay.

16 BZA CHAIR JORDAN: Let's give Mr. Moy a set of whatever
17 that is.

18 MR. CUNNINGHAM: Yes, this is another view of that same
19 alley. A little North.

20 BZA CHAIR JORDAN: So this becomes 51B.

21 MR. CUNNINGHAM: Showing the proportion of the houses.
22 This is a view of the addition and the new windows added, since
23 your -- as I understand it by a lawyer, you're required to look
24 at the totality of the structure in deciding the impact of light
25 and air and privacy, from Ms. McKee's backyard. And I have

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1 a statement from Ms. McKee that I will submit.

2 BZA CHAIR JORDAN: Okay, so what are you giving us now?

3 MR. CUNNINGHAM: This is a picture from Ms. McKee's
4 backyard.

5 BZA CHAIR JORDAN: Okay.

6 MR. CUNNINGHAM: And her light, as she testifies in her
7 statement, which used to be available until mid-afternoon on
8 the back terrace, is now available only till mid-morning. And
9 her privacy is intrusion upon by those windows. Neither of
10 which --

11 BZA CHAIR JORDAN: What time was this picture taken?

12 MR. CUNNINGHAM: That picture was taken mid -- it was
13 taken about 9 o'clock in the morning.

14 BZA CHAIR JORDAN: And whose backyard is this?

15 MR. CUNNINGHAM: This is McKee who's on the North side.
16 They have a 4.8 inch or 4.8 foot side yard.

17 BZA CHAIR JORDAN: What time of day was this?

18 MR. CUNNINGHAM: It was early in the morning. I think
19 around 8:30, 9 o'clock.

20 MS. MOLDENHAUER: I'm sorry, what picture are you
21 looking --

22 MR. CUNNINGHAM: That's the one --

23 BZA CHAIR JORDAN: It's 51C. Do you have this?

24 MS. MOLDENHAUER: C, yes. Okay. So it's the back
25 patio, okay.

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1 MR. CUNNINGHAM: Right.

2 BZA CHAIR JORDAN: But -- okay. Yes.

3 MR. CUNNINGHAM: You okay?

4 BZA CHAIR JORDAN: Yes.

5 MR. CUNNINGHAM: So that shows, you know, it was full
6 daylight at that time.

7 BZA CHAIR JORDAN: Well I can't tell from these
8 pictures, but go ahead.

9 MR. CUNNINGHAM: Okay.

10 BZA CHAIR JORDAN: This is going to be --

11 MR. CUNNINGHAM: This picture was taken in the evening,
12 last night, and shows the --

13 BZA CHAIR JORDAN: All right, we're going to mark this
14 51D. As soon as I get it.

15 MR. CUNNINGHAM: Shows the view from the center of the
16 alley.

17 BZA CHAIR JORDAN: All right, 51D.

18 (Off mic comment)

19 MR. CUNNINGHAM: This -- pardon me. I'm moving a
20 little fast here, but I don't have much time.

21 (Off mic comment)

22 BZA CHAIR JORDAN: Okay, what is this? 51E, because
23 you have to be able to -- from the aspect of discretion.
24 Otherwise you would bog everything down. So 51E. What is
25 51E?

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1 MR. CUNNINGHAM: That is the, let's see. May I see
2 which one, where we are?

3 MR. MOY: This one.

4 MR. CUNNINGHAM: Yes. This is a picture from the alley
5 of the structure to the left of, to the South of the house,
6 with the elevated driveway and patio that the ANC commissioner
7 referred to. Which is not included in the lot occupancy
8 figures submitted by the Applicants.

9 BZA CHAIR JORDAN: Okay.

10 MR. CUNNINGHAM: Okay?

11 BZA CHAIR JORDAN: Yes.

12 MR. CUNNINGHAM: Further we're going clockwise around
13 from Ms. McKee's place. This -- I gave you that, have you
14 handed that out?

15 MR. MOY: No.

16 MR. CUNNINGHAM: We'll just wait. The next picture is
17 the picture from my backyard.

18 BZA CHAIR JORDAN: I'm making this 51F.

19 MR. CUNNINGHAM: And that shows the intrusion of the
20 house into our back porch where previously there was no close
21 and visible window. And there's no way to be on our back porch
22 with their looking into it.

23 Or blocking the sky. They don't block the light, but
24 they block the sky. But there's certainly intrusion into our
25 privacy.

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1 BZA CHAIR JORDAN: So before this addition was here, I'm
2 just trying to understand these pictures. So before this
3 addition was here, was the back of your house protruding
4 further than that house?

5 MR. CUNNINGHAM: Yes.

6 BZA CHAIR JORDAN: So then you could look into the back
7 of theirs?

8 MR. CUNNINGHAM: No.

9 BZA CHAIR JORDAN: You couldn't?

10 MR. CUNNINGHAM: No, because you can't see from -- the
11 way out lot is structured, you would have to walk over, look
12 over a --

13 BZA CHAIR JORDAN: Fence?

14 MR. CUNNINGHAM: No, it's a wall which --

15 BZA CHAIR JORDAN: A wall.

16 MR. CUNNINGHAM: -- we erected with the understanding
17 and design help of the neighbors that were there at the time.

18 BZA CHAIR JORDAN: Okay.

19 MR. CUNNINGHAM: They had a driveway, concrete
20 driveway, that held three or more cars.

21 BZA CHAIR JORDAN: Okay.

22 MR. CUNNINGHAM: And the land slopped down gradually
23 back to the alley. And they had a big yard that rolled around.
24 I have a picture of it if you'd like it submitted for the record?

25 BZA CHAIR JORDAN: So I'm just trying to ask some

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1 questions to understand.

2 MR. CUNNINGHAM: We put the fence -- we put that in lieu
3 of a wooden fence, which is roughly the same. It was beat up
4 and a lot of old --

5 BZA CHAIR JORDAN: Okay.

6 MR. CUNNINGHAM: -- planting's and stuff. It didn't
7 provide much to either one of us. They also had a little garage
8 there at the end of the lot on the corner here. On the
9 Southeast corner.

10 And we've erected that wall to hide the cars they would
11 park there.

12 BZA CHAIR JORDAN: Okay.

13 MR. CUNNINGHAM: And they understood that. And
14 thought the wall was an improvement.

15 This is the front view, which shows that the street --
16 that the driveway rises, that Ms. May, Dr. May, pointed out.
17 Rises a considerable way to that back shot that we saw before.
18 And is an integrated part of the house. For all practical
19 purposes. Thank you.

20 And then last, if you get to that driveway and you pivot
21 left and look --

22 BZA CHAIR JORDAN: Let me really help you.

23 MR. CUNNINGHAM: Yes.

24 BZA CHAIR JORDAN: I've tried to help you before.

25 MR. CUNNINGHAM: I have a point there I want to make.

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1 BZA CHAIR JORDAN: Mr. Cunningham, I'm really trying to
2 help you. You're talking about the pictures and then you're
3 giving us the pictures. That doesn't help you.

4 Why don't you pass out the picture the talk about the
5 picture so we can follow you. I'm just trying to help you know.

6 MR. CUNNINGHAM: Okay.

7 BZA CHAIR JORDAN: I'm trying to battle you or anything
8 I'm just trying to help you. Because by the time you finish
9 talking about everything you give us the picture and we're not
10 focused on what you're trying to say to us. That's all.

11 ZC CHAIR HOOD: Thank you, Mr. Chairman. Because
12 that's what I asked a couple minutes ago, for the pictures.

13 BZA CHAIR JORDAN: That's --

14 MR. CUNNINGHAM: Well I'm --

15 BZA CHAIR JORDAN: Yes, sir.

16 MR. CUNNINGHAM: Pardon me.

17 BZA CHAIR JORDAN: All right. So what --

18 MR. CUNNINGHAM: What I've tried --

19 BZA CHAIR JORDAN: -- is this one?

20 MR. CUNNINGHAM: This is the driveway that goes up to
21 being a patio and is supported by that retaining wall that you
22 saw earlier, from the rear.

23 BZA CHAIR JORDAN: Okay, I'm calling this 51G. And
24 then we just got something else.

25 MR. CUNNINGHAM: That's the view from the neighbors

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1 across the street. It shows the character of the
2 neighborhood.

3 BZA CHAIR JORDAN: See, we were two pictures behind you.
4 So 51H.

5 MR. CUNNINGHAM: Yes. So I'll sit down and quickly
6 explain what I was trying to do in this tour.

7 (Off mic comment)

8 MR. CUNNINGHAM: The point of these pictures is to show
9 that by any normal measure, the new addition adversely effects
10 the light and privacy of the immediate neighbors and the
11 neighbors across the alley. It radically changed it from the
12 prior circumstance.

13 And if that is the test, the Applicants have not, by any
14 submission they have yet made, shown that they did not have
15 such an effect imposed on Ms. McKee's light and privacy. And
16 I have her statement here, which I will submit for the record
17 on her behalf.

18 Which documents her complaint. Which essentially is
19 she has none of the privacy she had otherwise and she has far
20 less light on her backyard than she would have had before.

21 So I had anticipated that there would be some
22 presentation, since there was virtually none other than
23 assertions, in the statements of the Applicants. There would
24 be some presentation that would meet their burden.

25 There has been none. And I'm assuming this is my reply.

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1 And they are not in a position to supplement their
2 presentation, at this point.

3 They didn't do it before the ANC. They showed nothing
4 about light, air or privacy. And you can see from these
5 pictures why they cannot make that showing.

6 If you take pictures that are not distorted, not
7 photoshopped, just clear pictures of what is going on as a
8 result of this addition, there's been a radical change to the
9 light, privacy and conformity of the house that was there
10 before, to the neighborhood.

11 So we could not imagine how there can be a finding that
12 they've meet their burden of proof under the requisite
13 standards. And I'm very glad, Mr. Chairperson and members of
14 the Board, that you recognize as we do, that whether they built
15 this building or not, knowing that they were out of compliance.

16 The question is, what would you have done had this
17 application been before you, de novo, before they did the
18 construction. And they had at least two months= notice,
19 before they did the construction, that they were out of
20 compliance.

21 And as Ms. Brink and Dr. May and I and the other persons
22 here in the neighborhood who are directly affected, would make
23 clear there was no effort to ascertain or seriously negotiate
24 any mitigation of the adverse effects on light and air before
25 they built this structure.

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1 And that is the end of my presentation. Subject to
2 questions. And, Mr. Chairperson?

3 BZA CHAIR JORDAN: Do you have any light and air
4 studies?

5 MR. CUNNINGHAM: We have no light and air studies, they
6 had no light and air studies. And our understanding is that
7 have the burden of proof here.

8 BZA CHAIR JORDAN: But you also have --

9 MR. CUNNINGHAM: I showed you that picture.

10 BZA CHAIR JORDAN: But, Mr. Cunningham, I'm not trying
11 --

12 MR. CUNNINGHAM: Right.

13 BZA CHAIR JORDAN: -- really trust me. I'm trying to
14 get you to where you need to be and I'm trying to find out if
15 you have what I need to have --

16 MR. CUNNINGHAM: I appreciate it.

17 BZA CHAIR JORDAN: -- in the record. Well you had I
18 both can't talk at the same time. And the only way that you're
19 going to accept and be able to be properly advised, which I
20 probably have gone beyond, trying to help you to give us what
21 we may need. As I tried to help you with these pictures when
22 we really got lost.

23 It's incumbent upon both parties to present their
24 position to the Board. And so I'm just asking, do you have
25 anything else that's going to indicate any shadow studies or

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1 anything like that --

2 MR. CUNNINGHAM: We do not. If we had thought they were
3 warranted, in light of the fact that there were none, we would
4 have gladly developed them. And we be glad to do so now if
5 you'd like to hold the record open.

6 BZA CHAIR JORDAN: No.

7 MR. CUNNINGHAM: I think I know --

8 BZA CHAIR JORDAN: I understand this is new to everyone.
9 But kind of when come here is what you should say is kind of
10 show time. And people take it at their risk what they bring
11 and don't bring.

12 And I also know there's also the issue about communities
13 and neighbors not having the resources to be able to fund some
14 of the things. That's something we've talked about
15 collectively as a -- and indicated to the zoning commission.

16 There probably should be some type of advocate or
17 something. Or some advocating fund. Or we've talked about
18 some type of internship or what did we talk about, Mr. Moy,
19 about getting people to be able to provide public health.
20 Because, you know, zoning is very, very technical.

21 MR. CUNNINGHAM: Mr. Chairperson, on that point, we
22 tried to get counsel.

23 BZA CHAIR JORDAN: I understand.

24 MR. CUNNINGHAM: We were not able to find counsel who
25 wanted to appear against developers.

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1 BZA CHAIR JORDAN: Okay, understand. All right,
2 Board, any questions of Mr. Cunningham and presentation?

3 ZC CHAIR HOOD: Yes, Mr. Chairman.

4 BZA CHAIR JORDAN: Yes.

5 ZC CHAIR HOOD: If you're going to indulge me for a
6 minute, now that I have the pictures in front of me. I would
7 like to talk.

8 Mr. Cunningham, I want you to help me understand what
9 you're trying to represent to us with the pictures.

10 MR. CUNNINGHAM: Yes.

11 ZC CHAIR HOOD: 51A.

12 MR. CUNNINGHAM: I don't have the marked numbers any
13 longer.

14 BZA CHAIR JORDAN: Go in the order you have them. Go
15 in the order --

16 ZC CHAIR HOOD: The way you gave them out.

17 MR. CUNNINGHAM: That is the picture of the structure
18 at issue. On the left and on the right is Ms. McKee's house.

19 ZC CHAIR HOOD: Okay. So --

20 MR. CUNNINGHAM: From the alley, center of the alley.

21 ZC CHAIR HOOD: Ms. McKee, as the Chairman was talking
22 about, is saying that she's losing, she said privacy --

23 MR. CUNNINGHAM: And --

24 ZC CHAIR HOOD: -- as well as light. Okay. Now let's
25 come on down. Now I think 51B, which is the second one, I kind

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1 of see there -- I'm struggling with that one.

2 MR. CUNNINGHAM: This is another perspective on the
3 same relationship of, between the two houses.

4 ZC CHAIR HOOD: I'm just --

5 MR. CUNNINGHAM: It faces south.

6 ZC CHAIR HOOD: I'm struggling a little bit with 51C.
7 51D, I'm really struggling with that one. Now help me. This
8 is the 5th picture, again, that you're -- and this I coming,
9 I believe from the alley, you said? 51E?

10 MR. CUNNINGHAM: Yes, that's in the alley.

11 ZC CHAIR HOOD: And how far away is the other residents?
12 How many feet would you say --

13 MR. CUNNINGHAM: Well it's whatever that distance is.
14 And I would --

15 ZC CHAIR HOOD: So it's right there where the picture
16 is?

17 MR. CUNNINGHAM: No, there's an alley from --

18 ZC CHAIR HOOD: Where's the alley?

19 MR. CUNNINGHAM: I'm standing in the alley. There's an
20 alley and then there are the further residents.

21 ZC CHAIR HOOD: Okay. And then when I go --

22 MR. CUNNINGHAM: Same is true for all those pictures
23 from the alley.

24 ZC CHAIR HOOD: When I go to 6, that's where I'm trying
25 to understand, I guess the only way I see in Picture 6 is the

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1 issue of privacy.

2 MR. CUNNINGHAM: Yes.

3 ZC CHAIR HOOD: Okay, that's what 6 is representing to
4 me. Again, now what is 7, which is 51G, the one with the
5 driveway?

6 MS. MOLDENHAUER: Which one was 6 that you referred to?
7 Just so I can understand, I can follow along. Okay.

8 MR. CUNNINGHAM: The privacy of our yard. And those
9 windows, there's a string of windows that face all of our house.
10 But that's not --

11 ZC CHAIR HOOD: Now help me understand the next picture.

12 MR. CUNNINGHAM: This is the --

13 BZA CHAIR JORDAN: What are we talking about next
14 pictures?

15 ZC CHAIR HOOD: 51G.

16 BZA CHAIR JORDAN: 51G? Okay.

17 MR. CUNNINGHAM: And that's about conformity with the
18 neighborhood there. No such elevated structures nor are there
19 any cuts with driveways in the immediate neighborhood.

20 ZC CHAIR HOOD: So what you're representing, what I see
21 to the left on the top, is what the issue is in this picture?

22 MR. CUNNINGHAM: Yes, that's conformity.

23 ZC CHAIR HOOD: Okay. Okay.

24 MR. CUNNINGHAM: From the street. And that's from the
25 main street.

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1 ZC CHAIR HOOD: That's from the main street.

2 MR. CUNNINGHAM: The Office of Planning thought was
3 consistent, but I don't believe it is.

4 BZA CHAIR JORDAN: Say that -- they didn't change the
5 driveway or anything, it was --

6 ZC CHAIR HOOD: No, I'm not talking about the driveway
7 --

8 MR. CUNNINGHAM: They raised the driveway eight feet.

9 BZA CHAIR JORDAN: I'm talking specifically what's
10 before the Board.

11 BZA CHAIR JORDAN: I'm not asking --

12 ZC CHAIR HOOD: Oh, okay.

13 BZA CHAIR JORDAN: -- that's what I was asking.

14 ZC CHAIR HOOD: Okay.

15 MR. CUNNINGHAM: They raised it eight feet, Mr.
16 Chairperson.

17 BZA CHAIR JORDAN: What eight feet?

18 MR. CUNNINGHAM: What?

19 BZA CHAIR JORDAN: Raised what eight feet? The
20 driveway?

21 MR. CUNNINGHAM: The driveway, yes. The driveway used
22 to be flat, followed the property --

23 ZC CHAIR HOOD: I'm not looking at the driveway. I'm
24 actually not looking at the driveway. I'm looking at the
25 addition. You know, the last picture, that's what I was

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1 looking at.

2 BZA CHAIR JORDAN: Okay, Anthony's --

3 MR. CUNNINGHAM: It's the driveway that I was -- that
4 that was there for. That's is the driveway that was previously
5 --

6 ZC CHAIR HOOD: Okay.

7 MR. CUNNINGHAM: -- with the base of our wall.

8 ZC CHAIR HOOD: Okay.

9 MR. CUNNINGHAM: And now has been raised eight to nine
10 feet above that.

11 ZC CHAIR HOOD: Okay, I was looking at the addition.
12 Let me, the last picture, which I'm referring to this one --

13 MR. CUNNINGHAM: Yes.

14 ZC CHAIR HOOD: -- Ms. Moldenhauer, the last picture.
15 What were you trying to represent to --

16 MR. CUNNINGHAM: I was trying to represent the nature
17 of the neighborhood across -- which that's directly across the
18 street. You see, there's no curb cuts, there's no ponderous
19 large windowed houses.

20 And if you were, I have a bunch of pictures, but if you
21 were to go down the street from -- that's looking at the
22 Southwest corner. And if you were to go on up to the North,
23 it's like that all the way along.

24 BZA CHAIR JORDAN: Let me ask you a question. So are
25 you saying there's no large windows? 51H, not taking into

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1 consideration the three smaller windows which are --

2 MR. CUNNINGHAM: Those three smaller windows don't
3 allow you to walk up to them and look down into somebody's yard.

4 BZA CHAIR JORDAN: And these other windows on the side,
5 collectively?

6 MR. CUNNINGHAM: They're not of the same magnitude.
7 They're de minimus compared to the windows.

8 BZA CHAIR JORDAN: Okay, I hear you.

9 ZC CHAIR HOOD: Mr. Cunningham, if I can just go back.
10 Let's go back to the ANC. Thank you for walking me around with
11 these pictures.

12 MR. CUNNINGHAM: Thank you.

13 ZC CHAIR HOOD: What I heard from the ANC is that --

14 BZA CHAIR JORDAN: Dr. May.

15 ZC CHAIR HOOD: I'm sorry, Dr. May. What I've heard
16 from Dr. May, I'm use to calling her May. I have a hearing
17 aid system. Sorry, Commissioner.

18 But what I hear from Dr. May is that these issues have
19 not been discussed with the community, or maybe I heard it from
20 somebody else, I thought it was Dr. May, that's why I want her
21 testimony, that these issues have not been discussed with the
22 community. Even to this point.

23 And I guess my question is, as the Chairperson has done
24 previously with a previous group, is there a way that we can
25 come together on some of those issues, maybe if that

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1 opportunity was provided, could there be some headway made?

2 MR. CUNNINGHAM: Would you like my citizen's view or my
3 lawyer-like view?

4 ZC CHAIR HOOD: No, I don't want your lawyer view, I want
5 the citizen's view.

6 MR. CUNNINGHAM: I said it in my view, after sitting for
7 an hour and a half, and Ms. Brink is our zoning coordinator
8 so she may have a better sense of this, is that there is nothing
9 likely available that would be satisfactory to the Applicants
10 that would minimize the effects on light, air, privacy and
11 conformity.

12 BZA CHAIR JORDAN: Let me ask you a question. Have you
13 seen what can be done as a matter of right? Full capacity on
14 this --

15 MR. CUNNINGHAM: I have. I wish --

16 BZA CHAIR JORDAN: And what's --

17 MR. CUNNINGHAM: -- something that elegant had been
18 placed next to it. So it would have been terrific. It would
19 have raised our property value.

20 BZA CHAIR JORDAN: Which would expand it more --

21 MR. CUNNINGHAM: It's not the volume unto itself.

22 BZA CHAIR JORDAN: What is it?

23 MR. CUNNINGHAM: It's the impact on light and air and
24 privacy. They could not have done too --

25 BZA CHAIR JORDAN: You're going to say that they have

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1 built out further back into that area, which you point on
2 Exhibit 50 --

3 MR. CUNNINGHAM: Well I'm most concerned about Ms.
4 McKee.

5 BZA CHAIR JORDAN: But I'm -- let's, 51F.

6 MR. CUNNINGHAM: Sorry, I don't, as I said --

7 BZA CHAIR JORDAN: 51F, would have been your backyard,
8 right? That's you?

9 MR. CUNNINGHAM: Yes.

10 BZA CHAIR JORDAN: Okay.

11 MR. CUNNINGHAM: Yes.

12 BZA CHAIR JORDAN: All right. As a matter of right,
13 wouldn't have been able to build at least there?

14 MR. CUNNINGHAM: I don't know actually.

15 BZA CHAIR JORDAN: Okay.

16 MR. CUNNINGHAM: But I'll assume so for the purpose of
17 the argument.

18 BZA CHAIR JORDAN: Okay. I'm sure we'll get that on
19 cross examination.

20 MR. CUNNINGHAM: But I don't think, frankly, I don't
21 think that's the issue. Because if they had come --

22 BZA CHAIR JORDAN: You know, let me say this, Mr.
23 Cunningham. And I'm really trying to help you.

24 When the Board ask question, it's the issue. Because
25 we're the ultimately --

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1 MR. CUNNINGHAM: I'll stipulate to that.

2 BZA CHAIR JORDAN: -- the trier of fact and decision
3 here. And when we -- we can be wrong, don't get me wrong, but
4 when we ask questions about something it's probably because
5 we really think we need to hear it. And it's probably
6 something that would be determinative for us.

7 So I just want to help you, because I know you haven't
8 been here before. But that's kind of why we ask questions
9 because we're really trying to get an understanding --

10 MR. CUNNINGHAM: I don't know what they could have done
11 as a matter of right.

12 BZA CHAIR JORDAN: Okay. All right. Board, any other
13 questions of Mr. Cunningham? You don't want to cross examine.
14 I just know you don't. Go ahead please. She's been chomping
15 at the bits back here and I just kind of thought I'd tease her.

16 MS. MOLDENHAUER: I'll try to limit my cross
17 examination. Mr. Cunningham, in your initial party status
18 application you stated that the addition is less than five feet
19 from Ms. McKee's property. Do you understand that to be
20 incorrect now?

21 MR. CUNNINGHAM: I understand that the structure on the
22 whole is, but that the addition has been set in by some amount.

23 MS. MOLDENHAUER: And that the addition has been set in
24 by over eight feet, which is beyond the --

25 MR. CUNNINGHAM: I don't know that.

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1 MS. MOLDENHAUER: -- required side yard?

2 BZA CHAIR JORDAN: Say that again, because you're --
3 that the side yard on that side is over eight feet? Is that
4 what you're saying?

5 MS. MOLDENHAUER: That the addition -- I'm asking if he
6 understands that in his party status submission he incorrectly
7 stated. And I'm asking if he now understands that the addition
8 is over eight feet setback. And actually you can see it in,
9 let's just look at exhibit -- sorry. Exhibit B.

10 BZA CHAIR JORDAN: 51, is it B or C?

11 MS. MOLDENHAUER: B.

12 BZA CHAIR JORDAN: Ms. McKee's house?

13 MS. MOLDENHAUER: The one from the rear.

14 BZA CHAIR JORDAN: Oh, yes. Okay, that's B. Yes.

15 MS. MOLDENHAUER: So you can see that the addition is
16 setback from the original structure. Is that correct?

17 MR. CUNNINGHAM: Um-huh.

18 MS. MOLDENHAUER: Can you answer yes or no?

19 MR. CUNNINGHAM: Yes.

20 MS. MOLDENHAUER: Thank you.

21 MR. CUNNINGHAM: I can't testify as to the distance, but
22 it is setback.

23 MS. MOLDENHAUER: And how many windows are on the
24 addition facing Ms. McKee's property?

25 MR. CUNNINGHAM: There's one major window. But the

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1 fixed -- we were trying to illustrate that as a result of the
2 overall, the overall structure by virtue of the changes in the
3 windows, reduce your privacy substantially.

4 MS. MOLDENHAUER: Are you stating that the existing
5 openings have changed on the original structure?

6 MR. CUNNINGHAM: The nature of the windows has. If not
7 the openings, I don't know. But --

8 MS. MOLDENHAUER: You don't know that the original
9 openings have -- are allegedly been enlarged or not. You don't
10 --

11 MR. CUNNINGHAM: They appeared to have been enlarged.
12 But I don't know.

13 MS. MOLDENHAUER: You don't know. Okay.

14 MR. CUNNINGHAM: Ms. McKee was under the view that they
15 were enlarged.

16 BZA CHAIR JORDAN: That the original windows were
17 enlarged under the roof area that --

18 MR. CUNNINGHAM: Yes.

19 MS. MOLDENHAUER: He's saying he does not know that.

20 BZA CHAIR JORDAN: I got you. Right.

21 MS. MOLDENHAUER: That's all -- I was asking whether he
22 knew it and he said he did not know it.

23 BZA CHAIR JORDAN: Okay.

24 MS. MOLDENHAUER: And is that a correct statement of
25 your testimony?

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1 MR. CUNNINGHAM: That is a correct statement.

2 MS. MOLDENHAUER: Okay.

3 MR. CUNNINGHAM: They appear to have, but I wasn't
4 supervising the construction.

5 MS. MOLDENHAUER: Do you know how far -- is Ms. McKee's
6 property located on her lot line?

7 MR. CUNNINGHAM: I don't know what that means.

8 MS. MOLDENHAUER: So is her, the face of here building,
9 the side of her building, on her lot line? Is it next to or
10 on top of her fence on her --

11 MR. CUNNINGHAM: It's -- her fence is back from her lot
12 line, toward the North.

13 MS. MOLDENHAUER: And then is the actual house further
14 setback from her fence?

15 MR. CUNNINGHAM: I don't know. Her house has been
16 there.

17 MS. MOLDENHAUER: Okay. And going to your house.
18 Your house is on the South side --

19 BZA CHAIR JORDAN: 51F. I think is our F, right?

20 MS. MOLDENHAUER: Is it F? Sorry, I --

21 BZA CHAIR JORDAN: No, G is it? This --

22 MS. MOLDENHAUER: F.

23 BZA CHAIR JORDAN: No, F.

24 MS. MOLDENHAUER: F. The one that Mr. Hood indicated
25 was 6.

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1 BZA CHAIR JORDAN: F, yes. Yes.

2 MS. MOLDENHAUER: Is F. This is taken, do you how --
3 I guess, how much farther does your back patio extend beyond
4 where this picture is taken?

5 MR. CUNNINGHAM: Let me see that. That is taken
6 roughly -- well it's behind the middle, midpoint. Because the
7 windows -- this is the midpoint. This line basically.

8 So I would say that that's two -- the picture is taken
9 from two-thirds back from the patio.

10 MS. MOLDENHAUER: So two-thirds back from the patio?

11 MR. CUNNINGHAM: Yes.

12 MEMBER HINKLE: Okay. And then -- but I'm asking in
13 regards to, this is -- looks like it's probably like three feet
14 from the actual door of your patio. And what I'll do is I'll
15 actually pass out, I've got pictures of his building permits
16 that just show how far back his patio goes.

17 BZA CHAIR JORDAN: Right. Because you were losing me
18 at two-thirds and one-third. Because that doesn't help me.
19 I just need to know distance.

20 (Off mic comment)

21 MS. MOLDENHAUER: This doesn't need to be entered in as
22 an exhibit. If the Board wishes they can. But this is more
23 just to help out in the cross examining phase.

24 BZA CHAIR JORDAN: Great thanks. Okay, got it.

25 MS. MOLDENHAUER: So based on this --

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1 BZA CHAIR JORDAN: Yes, but we're going to have to
2 identify it.

3 MS. MOLDENHAUER: Okay.

4 BZA CHAIR JORDAN: We're going to have to talk about it
5 because I like to be able to track in our record.

6 MS. MOLDENHAUER: So then this would be --

7 BZA CHAIR JORDAN: But at least for discussion points,
8 let's call this 52.

9 MS. MOLDENHAUER: 52, okay.

10 BZA CHAIR JORDAN: If it's a set of 52 then we can go,
11 you know, A, B --

12 MS. MOLDENHAUER: So 52, Page 2, does this appear to be
13 the plans that you submitted to DCRA for your house?

14 BZA CHAIR JORDAN: I have no memory of the plans that
15 we submitted. I haven't --

16 MS. MOLDENHAUER: You can flip to the second page.
17 Does this look -- is this the address of your house?

18 MR. CUNNINGHAM: It is --

19 MS. MOLDENHAUER: And is that 2707?

20 MR. CUNNINGHAM: Absolutely.

21 MS. MOLDENHAUER: Okay. And does this appear to be an
22 illustration of what would be your existing conditions -- you
23 need to be on the second page, which is right here. Second
24 page.

25 MR. CUNNINGHAM: Oh. Okay.

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1 MS. MOLDENHAUER: So just kind of trying to get a
2 perspective of, in your right to privacy. This looks like you
3 might have taken it within like the first, I don't know, you've
4 got your patio, maybe the first two or three feet from the rear
5 of your property.

6 But you have what, a significant additional patio which
7 is labeled new terrace on this design. So if you were to
8 actually step further back, would you not be protected by some
9 of the significant mature planters that you have in regard to
10 privacy?

11 MR. CUNNINGHAM: No, we would not. I could take a
12 picture from this back corner and I would look in those same
13 windows.

14 BZA CHAIR JORDAN: What are you --

15 MR. CUNNINGHAM: This is where our dining, there's a
16 dining table there which is why I didn't stand there. But from
17 that table you look right into those windows, just as you do
18 from the stance right --

19 MS. MOLDENHAUER: And there's no trees that you've
20 planted that obviously provide you with some privacy?

21 MR. CUNNINGHAM: They don't protect us from those
22 windows. And they're quite tall. And I'd be glad to supply
23 pictures for the record. As a witness.

24 MS. MOLDENHAUER: One of your concerns indicated was
25 the massing. Is your house 39 percent lot occupancy?

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1 MR. CUNNINGHAM: I don't know.

2 MS. MOLDENHAUER: If you look on the first page of this
3 submission, which is marked as 52, does it indicate that those
4 permit plans were for a 39 percent lot occupancy addition?

5 MR. CUNNINGHAM: It appears to, yes.

6 (Off mic comment)

7 BZA CHAIR JORDAN: Sir, I can't have you do that. I'm
8 going to ask --

9 (Off mic comment)

10 BZA CHAIR JORDAN: Okay, I'm going to ask that you
11 refrain from talking out like that. Because that's not how
12 we have the process here.

13 (Off mic comment)

14 BZA CHAIR JORDAN: Let's just go --

15 MS. MOLDENHAUER: There was a --

16 BZA CHAIR JORDAN: Ms. Moldenhauer?

17 MS. MOLDENHAUER: -- question in regards to --

18 BZA CHAIR JORDAN: Ms. Moldenhauer?

19 MS. MOLDENHAUER: -- light -- I was going to ask about
20 light and air.

21 BZA CHAIR JORDAN: I want --

22 MS. MOLDENHAUER: Okay.

23 BZA CHAIR JORDAN: I just want everybody to take
24 timeout. Just timeout.

25 We have a process on how we proceed and I want everybody

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1 to be on even keel. I know these things are aggravating,
2 frustrating and everybody's excited. But we have to do it the
3 way we have to do it. Okay.

4 ZC CHAIR HOOD: And I think that the way we're
5 proceeding is fine. Because he did produce a picture, 51F,
6 which he identified as his property.

7 So, you know, and I don't necessarily think she's
8 necessarily -- I know we're taking up for him, but I just wanted
9 to make it clear for the record.

10 Because what was spoken out from the audience. I think
11 when he mentioned his property as some of the adverse impacts
12 that he's impacting, which throws down the questions that I'm
13 trying to realize. Even though --

14 BZA CHAIR JORDAN: Mr. Hood? Mr. Hood? I'm talking
15 about the process and procedures.

16 ZC CHAIR HOOD: I know what you're talking about, Mr.
17 Chairman. But what I'm saying is for the record, for this
18 Board. I think what was said was incorrect from the audience
19 as far as how we're proceeding. Because he did allude to his
20 property.

21 BZA CHAIR JORDAN: Yes.

22 ZC CHAIR HOOD: So it's not like this Board is sitting
23 up here allowing anyone to pick on someone. Because we don't
24 play that.

25 BZA CHAIR JORDAN: Oh, yes.

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1 ZC CHAIR HOOD: Okay.

2 BZA CHAIR JORDAN: I understand what you're saying.
3 And I'm just -- yes, okay. Yes. And it's not the way we have
4 the quorum. And be civil in these processes.

5 ZC CHAIR HOOD: I understand it.

6 BZA CHAIR JORDAN: No, no, I'm not talking about --

7 ZC CHAIR HOOD: Okay.

8 BZA CHAIR JORDAN: -- I'm adding to what you said. Ms.
9 Moldenhauer, I'm sorry that you were interrupted in your cross
10 examination.

11 MS. MOLDENHAUER: Okay. I'm now going to ask you a
12 question about the light and air to your property. Trying to
13 understand the distance between the side yards.

14 You've seen the Applicant's submission? You had a
15 chance to review it?

16 MR. CUNNINGHAM: I did.

17 MS. MOLDENHAUER: So you understand that the Applicant
18 has substantially setback its addition from your side?

19 MR. CUNNINGHAM: I understand that.

20 BZA CHAIR JORDAN: How big -- distance -- what's the
21 distance from the setback?

22 MS. MOLDENHAUER: Let me get that. Sorry. That the
23 setback is 15 to 26 feet setback on the -- sorry, that's the
24 second floor. Let me get that. I believe it's eight to 16
25 feet on the first floor, but let me just reference the specific

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BZA CHAIR JORDAN: That would be the northern property?

MR. CUNNINGHAM: We are the Southern property.

BZA CHAIR JORDAN: You're the Southern property.

MS. MOLDENHAUER: Cunningham's are the Southern property.

BZA CHAIR JORDAN: Okay. I actually have that in my notes here. Ms. McKee is north. Oh, I see it says --

MS. MOLDENHAUER: Yes, sorry.

BZA CHAIR JORDAN: I don't have a measurement for the South property.

MS. MOLDENHAUER: I'm sorry, I've got it here. On the first floor it's 28 to 35 feet.

MR. CUNNINGHAM: Does that include the driveway and the patio that are built into the house and directly abut our wall? I think they're setback six inches.

MS. MOLDENHAUER: So it's ten feet from the front of the property and 15 feet from the rear.

MR. CUNNINGHAM: With the exception of the patio. Which is six inches from our property. There are trucks and people on that patio every day.

MS. MOLDENHAUER: And is that not a permitted --

MR. CUNNINGHAM: And that intrudes on the privacy.

MS. MOLDENHAUER: Is that not --

MR. CUNNINGHAM: I didn't put that in.

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1 BZA CHAIR JORDAN: Wait, wait, wait. Come on folks.
2 Come on, come on, come on. Even when we watch television we
3 know that when we're having testimony folks don't talk at the
4 same time.

5 Okay. Ms. Moldenhauer, would you ask your question,
6 and would you please respond. Once you give a response and
7 she's given another question, we're going to have to kind of
8 cut it off. You can, you know, get it all in but, yes, please.

9 Because the court reporters going crazy, I'm going crazy
10 trying to understand. They can't like write two people's
11 conversation out at the same time. It just doesn't happen.
12 Please.

13 MS. MOLDENHAUER: You made a reference right now to the
14 patio.

15 MR. CUNNINGHAM: Yes.

16 MS. MOLDENHAUER: Or to the side, which is part of the
17 side yard. The use of that side yard is for cars, is that your
18 objection?

19 MR. CUNNINGHAM: I didn't object to it, I was
20 explaining, in response to your question about distance and
21 separation, which I don't think bares frankly on privacy if
22 they can look down and I can look up and see everybody is walking
23 around.

24 But the driveway patio, which is half a driveway and half
25 a patio, which has had trucks up on the top of the patio, but

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1 is directly against our wall and has been, at least in the last
2 three weeks, consistently occupied by people all during the
3 day. And there's no protection, except the very recently
4 erected temporary plants. That were put there for the
5 purposes of this hearing.

6 MS. MOLDENHAUER: Are you trying to allude that the
7 plants were only put there for the purposes of this hearing
8 and that they're going to remove them after the hearing?

9 MR. CUNNINGHAM: Well that's what happened at the last
10 hearing. They put the same type of plants up, they let them
11 die and then after they sat there for almost a month dead, they
12 removed them. And then a week ago they put these up.

13 BZA CHAIR JORDAN: Not really -- either question is not
14 really relevant for where we are. So please refrain from that
15 please.

16 You were asking a question about the side here and the
17 fact that the drive is being of proper use within the zoning.
18 That's where you were. Right?

19 MS. MOLDENHAUER: Yes, thank you. So if there was more
20 open space that would allow for more people to possibly
21 congregate on their side yard, would that be more objectionable
22 to you?

23 MR. CUNNINGHAM: I don't understand the question.

24 BZA CHAIR JORDAN: I don't either.

25 MS. MOLDENHAUER: You indicated that you were concerned

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1 because too many people were standing on the side yard and that
2 that created an impact on your privacy. So if there was a
3 greater side yard provided, would that have a greater, negative
4 impact in your mind?

5 MR. CUNNINGHAM: Because the side was, at the eight feet
6 down where it was before they built the project, we wouldn't
7 have any concern with people walking along there. No.

8 MS. MOLDENHAUER: You continue to allege that it was
9 eight feet. Do you have documentation? I see nothing in the
10 submission.

11 MR. CUNNINGHAM: I think in the drawings it shows that
12 above the prior grade --

13 BZA CHAIR JORDAN: Let me do --

14 MR. CUNNINGHAM: -- it's 9.2 feet.

15 BZA CHAIR JORDAN: Let me do better than that. Was the
16 driveway raised in any way?

17 MS. MOLDENHAUER: Yes. It was raised, but it was
18 raised a minor degree.

19 BZA CHAIR JORDAN: And a minor degree meaning what?

20 MS. MOLDENHAUER: Meaning from zero, at the property
21 line not being changed in the public space, to, I believe
22 between like three or four feet.

23 MR. CUNNINGHAM: That's incorrect. It's 9.2 feet
24 above the prior grade at the back.

25 MS. MOLDENHAUER: And I've asked if they have

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1 documentation of that?

2 MR. CUNNINGHAM: Yes, your drawings. Would you like me
3 to open them up?

4 BZA CHAIR JORDAN: Look, I've said this once before.
5 We're not going to have the going take the back and forth. Mr.
6 Cunningham, you speak when you're addressed.

7 MR. CUNNINGHAM: Well she asked me a question.

8 BZA CHAIR JORDAN: No she didn't, she was talking to me
9 in response to my question. You jumped in and put it in.

10 MR. CUNNINGHAM: Pardon me.

11 BZA CHAIR JORDAN: Come on, let's -- we do this all time.
12 We go through these processes and we try to have some civility
13 in our response and what we do. There's order to it. Please
14 bear with me. Let's do it that way.

15 Ms. Moldenhauer, you're saying that it was three to four
16 feet?

17 MS. MOLDENHAUER: Yes.

18 BZA CHAIR JORDAN: All right. Go -- ask your next
19 question.

20 MS. MOLDENHAUER: Is it your understanding that the
21 mass of this house, both on the first, second and third floor,
22 are less than what would have been permitted as a matter of
23 right?

24 MR. CUNNINGHAM: I don't know, but I'm guessing that
25 because that's what you stated in your statement.

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1 BZA CHAIR JORDAN: What was your last question again?

2 MS. MOLDENHAUER: If he understood that the mass of this
3 structure is smaller or is equal on the first floor, as a matter
4 of right, and is small on the second and third floors.

5 BZA CHAIR JORDAN: Got it. And he already responded.
6 I heard the response.

7 MS. MOLDENHAUER: And is it your understanding that if
8 the property was built as a matter of right, that the property
9 would be actually be able to be closer to your house on that
10 side of the property?

11 MR. CUNNINGHAM: I don't know. I'm not concerned with,
12 I'm going to finish my answer. I am not concerned with what
13 the Applicant might have done. But what the Applicant did
14 without getting a variance ahead of time.

15 MS. MOLDENHAUER: You've indicated concerns about --

16 MR. CUNNINGHAM: Special exception, pardon me. I get
17 the terms confused.

18 MS. MOLDENHAUER: You've indicated concerns that's a
19 visual impairment. Is that predominately based on the size
20 of the windows, the size of the openings?

21 MR. CUNNINGHAM: No, that's a privacy question. The
22 size of the windows is a privacy question.

23 Visual impairment and the nonconformity with the
24 neighborhood is a, essentially as you've pointed out, a white
25 block with black large person high windows painted with white

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1 reflective paint. You said in the meeting we had was
2 reflective. And of which there -- and there is no other
3 building like that in the neighborhood.

4 And there was nothing like that in your view, prior to
5 it being built. So it does not conform with the rest of the
6 neighborhood.

7 BZA CHAIR JORDAN: Next question please.

8 MS. MOLDENHAUER: Do you understand that the existing
9 footprint of the structure is at 40 percent lot occupancy?

10 MR. CUNNINGHAM: I don't know. That's what you have
11 asserted. I have not measured it and I have not hired and
12 architect.

13 MS. MOLDENHAUER: Are there other properties in the
14 community that have substantial amount of side windows as part
15 of the character of this area?

16 MR. CUNNINGHAM: Not that I'm aware of that looms such
17 over their neighbors.

18 MS. MOLDENHAUER: Are --

19 MR. CUNNINGHAM: That were built without first securing
20 a special exception.

21 MS. MOLDENHAUER: Are a lot of the properties in the
22 area, is it common -- I'm sorry, let me rephrase the question.
23 Is it common in this community, in the character of this
24 community, to have a substantial number of homes that have
25 nonconforming side yards?

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1 MR. CUNNINGHAM: I don't know. But I don't know of any
2 that --

3 BZA CHAIR JORDAN: No, no, no. Mr. Cunningham, I'm
4 going to cut your answers. Answer the question. Let's not
5 get into long narrative.

6 MR. CUNNINGHAM: But --

7 BZA CHAIR JORDAN: No. But you usually add in other
8 stuff. Every time you do it you add other stuff. Answer her
9 question and -- next question.

10 MS. MOLDENHAUER: I'm looking at your plans, it appears
11 as though your South property line is nonconforming at 3.95
12 feet and 4.10 feet. Is that what you understand your house
13 to have, a nonconforming side yard as well?

14 MR. CUNNINGHAM: It is not my understanding. It was --
15 we were told, and we had it surveyed three times, that it was
16 conforming.

17 And we, having missed by an inch on the other side and
18 having outlaid several tens of thousands of dollars for design
19 and preconstruction work, we had to pull it down because we
20 were told we would need to get a special exception in order
21 to pursue it.

22 MS. MOLDENHAUER: Do you --

23 BZA CHAIR JORDAN: So did you get a special exception?

24 MR. CUNNINGHAM: We didn't need one. We just
25 redesigned the house --

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1 BZA CHAIR JORDAN: Okay.

2 MR. CUNNINGHAM: -- and built it and had it inspected
3 according to the law at the time.

4 BZA CHAIR JORDAN: Got it.

5 MS. MOLDENHAUER: I'm trying to understand the, I'm
6 looking at what the party in Opposition's 51D, trying to
7 understand where this was kind of taken from for advantage
8 point.

9 MR. CUNNINGHAM: May I see it?

10 MS. MOLDENHAUER: Sure. This was your exhibit.

11 MR. CUNNINGHAM: 51D was taken from the middle of the
12 alley roughly. Where I stood and held the camera like this.
13 Right here.

14 MS. MOLDENHAUER: How tall are you?

15 MR. CUNNINGHAM: I'm 6, well I used to be 6'2". I've
16 gotten old.

17 MS. MOLDENHAUER: And this -- the wall here I understand
18 is about a five foot wall. So you're saying at 6'2", standing
19 in the middle of the alley, this is -- and you held the camera
20 here?

21 MR. CUNNINGHAM: Those are rather wide, I think they're
22 38 millimeter lenses on those iPads and iPhones. So I didn't
23 do anything to change it, I just stood there and took the
24 picture.

25 MS. MOLDENHAUER: And are you claiming that what you

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1 submitted as Exhibit A, Exhibit C and G and E are what you are
2 presenting as evidence that shows that there's no light and
3 air?

4 MR. CUNNINGHAM: No, I'm not saying there's no light and
5 air. That's not the question. Allow me, since I don't have
6 a copy.

7 Your Honor, this is to show the relationship between --

8 BZA CHAIR JORDAN: Hold on one second. Can you hear him
9 on the record?

10 MS. MOLDENHAUER: No. Maybe if you sit down.

11 MR. CUNNINGHAM: This picture is this property, again
12 from --

13 MS. MOLDENHAUER: Can I rephrase so we don't have to
14 take so much time?

15 BZA CHAIR JORDAN: Please do.

16 MS. MOLDENHAUER: Okay, thank you. Exhibit A, does
17 this show the open nature of the space between the Applicant's
18 property and Gail's property?

19 MR. CUNNINGHAM: It shows the proportional
20 relationship from standpoint of the people across the alley.
21 As does that.

22 BZA CHAIR JORDAN: All right, so he's authenticating
23 the picture and the picture shows what it shows.

24 MS. MOLDENHAUER: I won't --

25 BZA CHAIR JORDAN: Is that where you're trying to get?

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1 Yes. Do you know the distance of that?

2 MS. MOLDENHAUER: The distance between Gail's property
3 and the addition?

4 BZA CHAIR JORDAN: Yes, what the picture shows. You
5 can see there's a gap, right?

6 MS. MOLDENHAUER: Yes.

7 BZA CHAIR JORDAN: Okay, that would be the question.
8 So --

9 MS. MOLDENHAUER: And yes, I don't know if he would not
10 know the difference nor do -- do you know the distance between
11 the two houses?

12 MR. CUNNINGHAM: I'm guessing it's six to eight feet.
13 At that point. Because of where the addition is.

14 MS. MOLDENHAUER: You're saying between both --

15 BZA CHAIR JORDAN: Just six to eight?

16 MS. MOLDENHAUER: Six to eight.

17 MR. CUNNINGHAM: Between the fence line, her fence
18 line.

19 MS. MOLDENHAUER: Okay.

20 MR. CUNNINGHAM: I'm guessing, six to eight feet.

21 MS. MOLDENHAUER: Okay. You're saying from the fence
22 line, but I'm asking about actually from, you know, window to
23 window or kind of --

24 MR. CUNNINGHAM: I don't know.

25 MS. MOLDENHAUER: -- from building to building.

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1 MR. CUNNINGHAM: I don't know.

2 INVESTIGATOR HOUGHLAND: You don't know, okay. But
3 it's probably greater than six to eight feet.

4 MR. CUNNINGHAM: I don't know that.

5 MS. MOLDENHAUER: It's right over ten feet?

6 MR. CUNNINGHAM: The fence is pretty close to the --

7 BZA CHAIR JORDAN: Okay, I'm --

8 MS. MOLDENHAUER: No further questions.

9 BZA CHAIR JORDAN: I see. That's -- okay. Okay.

10 MS. MOLDENHAUER: Oh, can I just -- I'm sorry, can I put
11 an objection just in general? I was trying not to do it in
12 the middle of when Mr. Cunningham was making statements.

13 But just for the record, I object to any allegations that
14 photos have been photoshopped and any objection to him
15 continuing to refer to the Applicants as developers, seeking
16 as this is their primary residence. I apologize, but that's
17 on the record. Thank you.

18 MR. CUNNINGHAM: May I speak to that please?

19 BZA CHAIR JORDAN: No, because I didn't hear it the
20 first time, not until it was reflecting. And it's no debate
21 about it. And what's in the record is in the record.

22 Okay, where are we? So we just did cross examination.
23 I'm so confused. Right, and there's cross examination. All
24 right. Now, is -- did you finish your cross? All right.

25 MS. MOLDENHAUER: Yes.

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1 BZA CHAIR JORDAN: So now let's have those who wish to
2 speak in opposition? Those wish to speak in opposition? And
3 miss --

4 MS. BRINK: Brink.

5 BZA CHAIR JORDAN: Brick? Brink?

6 MS. BRINK: Brink.

7 BZA CHAIR JORDAN: Yes, Ms. Brink.

8 MS. BRINK: Okay. Bear with me for a moment.

9 BZA CHAIR JORDAN: You got three minutes to speak, so
10 go ahead.

11 MS. BRINK: Thank you. I am here on behalf of the
12 Massachusetts Avenue Heights Citizen Association, which is a
13 group of roughly 140 homeowners within the neighborhood
14 bounded by Mass Avenue, Wisconsin Ave and the Observatory.

15 The neighborhood is significantly interested in this
16 case. And I'd like to introduce to you 21 letters from
17 neighbors within that block of 140. Sorry.

18 They were going to sort of come in mass in January and
19 when the hearing got postponed we didn't ask people to hold
20 another day because people work. And so instead they've
21 submitted letters demonstrating their interest.

22 Why? I want to contextualize this a little bit for you.
23 And I know that that has no direct bearing on it, but I think
24 it helps to understand why the community is so interested.

25 We are a neighborhood inundated right now by developers

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1 and individuals seeking to dramatically expand properties.
2 In the past year, developers have purchased at least five
3 properties within our neighborhood with the intention of at
4 least doubling their size, often remodeling and flipping them.
5 In some cases raising and rebuilding them.

6 And most of these new homes come within one to five
7 percent of lot occupancy. Meaning that an error like this one
8 would push them over in a similar fashion.

9 We rely on the protections of the zoning process to keep
10 these efforts from causing harm to our properties. The zoning
11 process ensures that when buildings exceed certain scope,
12 height, etcetera, neighbors are provided notice in advance and
13 an opportunity to comment and to oppose.

14 At its best, this forces neighborhoods to work together
15 to come up with a mutually agreeable solution so that we never
16 end up here.

17 And I know, Mr. Chairperson, that you've said often that
18 how they got here is not relevant or the fact that it's after
19 the fact is not relevant. But I think for the community it
20 is very important.

21 Because in advance, you can make changes that don't
22 require someone to break down something that they've already
23 built. You can have a conversation and try to get to the point
24 whereas Catherine says, you can then agree to an exception that
25 then doesn't have the same impact.

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1 BZA CHAIR JORDAN: I'm just letting you know it doesn't
2 work that way. Because we've made people have had property
3 forced down.

4 MS. BRINK: I understand. I understand that it doesn't
5 result in you having any hesitancy about doing what you're
6 having --

7 BZA CHAIR JORDAN: Right.

8 MS. BRINK: -- what you need to do, but from our
9 perspective as a community. And I think probably from your
10 perspective on the Board, it is better when in advance we can
11 address these problems and never get here.

12 BZA CHAIR JORDAN: Absolutely.

13 MS. BRINK: Unfortunately what we've seen is an
14 increased perception by developers, by contractors. I've
15 actually had contractors say this is to me. That you can gain
16 this process. That you can skirt the edges or even ignore it
17 entirely.

18 That you can propose plans and then change them without
19 filing changes. You can do something over the line and
20 apologize for it afterwards. And there are few consequences.

21 I hear you that you've told people to tear it down, I'm
22 just giving you my perception. And as I said, what contractors
23 have actually said to me. Get a permit for one thing and then
24 do something else in the name of that permit.

25 This house, the process that it went through, to the

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1 community seems like this type of disregard for the process.
2 When you have a plat that says you have a nonconforming side
3 yard and then you go ahead and do something, for an extended
4 period of time without actually -- and you have direct notes
5 saying apply to the BZA and it doesn't happen, that seems like
6 a disregard for the required process.

7 Similarly, I mean this is just the things that jump out
8 to us when we looked at the permit. Are things like, the idea
9 that the scope of work for an extension like this is \$50,000.
10 That seems insane to me.

11 And reliance on something that says that it isn't
12 accurate or that it's plus or minus one foot accurate and it
13 says it's specifically five feet. And five feet is really the
14 line.

15 Throughout this process it feels as though in the
16 permitting on the papers, Applicants have under represented
17 the scope of the work. And they've continued to construct
18 dispute this process.

19 Particularly when there was a delay in the hearing to
20 supposedly talk to the neighborhood. The construction
21 continued and the conversations didn't happen.

22 It's MAHCA's fervent hope that the BZA will act to ensure
23 better respect for the zoning and permit process, both by the
24 Applicant and in the future. Quite honestly, failing to
25 enforce, specifically in these types of cases, to us encourages

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1 the type of behavior we've seen in others. In which we've seen
2 with dramatically increased frequency in our neighborhood.

3 Beyond that, I would only say that there are
4 individuals, members of MAHCA in the audience. Some of whom
5 had submitted letters, who are part of the direct impact on
6 privacy and light.

7 And I know that you want to limit the number of people
8 who speak, but I would ask that if they're directly behind the
9 property and want to speak --

10 BZA CHAIR JORDAN: That's not correct.

11 MS. BRINK: Okay.

12 BZA CHAIR JORDAN: People can speak for their three
13 minutes and provide their comment. But as regards to a party
14 in opposition --

15 MS. BRINK: Got it.

16 BZA CHAIR JORDAN: -- it's not a group -- it's not --
17 we don't have 20 or 30 parties in opposition. Under the rules
18 we're allowed to consolidate them, which is our normal
19 practice.

20 MS. BRINK: Got it. I misunderstood that first part of
21 this hearing. But I appreciate the three minutes that I was
22 given. And I --

23 BZA CHAIR JORDAN: Actually you're well over that.
24 You're about a six. But anyway.

25 MS. BRINK: Sorry. I'm done.

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1 BZA CHAIR JORDAN: It's all about perception sometimes
2 and how you look at it, what's reality. But anyway --

3 MS. BRINK: Right.

4 BZA CHAIR JORDAN: -- I understand. Okay. Thank you
5 very much. Board, any questions? Applicant, any questions?

6 MS. MOLDENHAUER: Just a few. Did you, I'm trying to
7 make sure I understand. You said that you're the zoning
8 committee member --

9 MS. BRINK: Yes.

10 MS. MOLDENHAUER: -- he is --

11 (Simultaneously speaking)

12 MS. BRINK: I'm happy to --

13 MS. MOLDENHAUER: -- who you are in regards --

14 MS. BRINK: -- actually, because it's relatively
15 recent. So in November, when we noticed this as a pattern,
16 the MAHCA executive committee asked me if I would start
17 monitoring all of the zoning and permit websites and coordinate
18 what was going on in the neighborhood. In terms of what
19 applications had been filed, who didn't have things.

20 MS. MOLDENHAUER: Okay.

21 MS. BRINK: So since then, when we see construction
22 starting and there's no permit filed I knock on the door and
23 say, did you know that there's a permit process.

24 MS. MOLDENHAUER: And did you knock on the door here to
25 the Applicants?

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1 MS. BRINK: By the time I was involved, which is last
2 November, they were already before the ANC and this was in
3 process. So no, I did not.

4 MS. MOLDENHAUER: But you still didn't --

5 MS. BRINK: I did not engage in that.

6 MS. MOLDENHAUER: -- try to engage in this dialogue that
7 you're talking about?

8 MS. BRINK: Well in fairness, I thought that the
9 dialogue was part of the process that was already started. I
10 mean ideally it would have started long before the addition
11 was already in place.

12 I agree, things -- that this would have been perhaps
13 different if there -- but I also do not understand why it would
14 be incumbent on a community --

15 BZA CHAIR JORDAN: Yes, Ms. Moldenhauer --

16 MS. BRINK: -- to have this.

17 BZA CHAIR JORDAN: -- you know that the burden actually
18 lies with the Applicant.

19 MS. BRINK: Right.

20 BZA CHAIR JORDAN: So let's go --

21 MS. MOLDENHAUER: I'm going to that next question
22 actually. Part of Mr. Cunningham's filing from last night
23 included email exchanges. I emailed Mr. Cunningham, and it's
24 now part of the record, on behalf of the Massachusetts Avenue
25 Heights Association.

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1 Did he forward that to you, as the zoning committee
2 member, and inform you that we were asking to have a meeting?

3 MS. BRINK: I'm not a zoning committee member, I just
4 want to be careful. I'm just coordinating some stuff.

5 MS. MOLDENHAUER: Coordinating, right.

6 MS. BRINK: Right.

7 MS. MOLDENHAUER: As coordinating member?

8 MS. BRINK: Fair enough. Well, okay. I don't know is
9 the answer. I don't believe I saw an email from you.

10 MR. CUNNINGHAM: May I --

11 BZA CHAIR JORDAN: No, Mr. Cunningham, you cannot
12 please. Thank you.

13 BZA CHAIR JORDAN: Are you complete with your question?

14 MS. MOLDENHAUER: Yes, no other questions.

15 BZA CHAIR JORDAN: Okay. Mr. Cunningham, you have a
16 cross examine. You can ask a question of Ms. Brink.

17 MR. CUNNINGHAM: How many --

18 BZA CHAIR JORDAN: Just make sure you're on the
19 microphone please.

20 MR. CUNNINGHAM: Thank you, sir. How many neighbors
21 would you say have been directly affected within a 200 foot
22 radius and have complained about this? The impacts.

23 MS. BRINK: Sure. In the back, the Grays, you, Gail.

24 BZA CHAIR JORDAN: I really don't need you to count up
25 because I --

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1 MS. BRINK: Five.

2 BZA CHAIR JORDAN: -- don't have time for --

3 MS. BRINK: Five or so. Two in the back, two on either
4 side and at least one from across the street. That I know of
5 directly.

6 MR. CUNNINGHAM: Okay.

7 BZA CHAIR JORDAN: Okay. And Dr. May, you got a
8 question you want to ask of Ms. Brink? Okay, good. All right.
9 You say you all in, got you.

10 All right, so where am I now. Any other person wising
11 to speak in opposition? Any other in opposition?

12 Then we'll turn back to the Applicant for rebuttal. The
13 Applicant for rebuttal?

14 (Off mic comment)

15 BZA CHAIR JORDAN: Wait, wait, wait folks.

16 (Off mic comment)

17 BZA CHAIR JORDAN: At this time, one second. Just one
18 second. I asked was there people who wanted to speak in
19 opposition like three times and then waited and then went to
20 ask for --

21 MR. GLOWACKI: I want to speak in opposition.

22 BZA CHAIR JORDAN: Would you please bear with me. I was
23 about to bring you up until you started talking back like and
24 being, again, obstinate. I'm trying to let folks understand
25 our process.

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1 You can come forward and take a microphone, identify
2 yourself for the record. Make sure you've given the witness
3 cards to the court reporter. And have you been sworn in?

4 MR. GLOWACKI: Yes.

5 BZA CHAIR JORDAN: All right. Then please do those
6 things. Thank you.

7 MR. GLOWACKI: I just -- my name is Tony Glowacki.

8 BZA CHAIR JORDAN: Would you please take a seat please.

9 MR. GLOWACKI: Sure.

10 BZA CHAIR JORDAN: And use the, you can use that
11 microphone. You did give the witness cards to court reporter?

12 MR. GLOWACKI: I will in just a second. You were out
13 of witness cards.

14 BZA CHAIR JORDAN: We're out of witness cards?

15 MS. BRINK: In the back. They're up here. The ones on
16 the side are gone.

17 MR. GLOWACKI: All right.

18 BZA CHAIR JORDAN: You have three minutes.

19 MR. GLOWACKI: Okay, I won't take three minutes. I'm
20 just speaking on the privacy thing. I am directly, my name
21 is Tony Glowacki, I'm directly behind the property here.

22 And so for the last year and a half we have been intimate
23 with this whole, you know, construction effort. The --
24 basically from my house, I wake up in the morning, look in their
25 house. I walk down the steps, look in their house. Walk

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1 upstairs, look in their house.

2 Their house is imposing on our house. And there is no
3 privacy near any window in the back of our house. We step into
4 the backyard and there is no privacy.

5 So just to give you a perspective on those pictures that
6 you saw, the structure is impressive into the houses that, you
7 know, about our house. And that's my perspective on it.

8 It does, it certainly blocks some light from our side,
9 but the biggest issue is the privacy issue. And that's it.

10 BZA CHAIR JORDAN: Board any questions of --

11 ZC CHAIR HOOD: Mr. Chair?

12 MR. GLOWACKI: I apologize for my outbursts before.
13 You know, I was trying to protect my neighbor here.

14 ZC CHAIR HOOD: Yes, sir. Mr. Chairman. Mr.
15 Glowacki, I wanted to ask you. With the pictures, I know you
16 probably don't have some, I don't want to go through all these.
17 You said you're on the side or you're from the back?

18 MR. GLOWACKI: I'm from the back.

19 ZC CHAIR HOOD: So this would be a representation, is
20 this from the back?

21 MR. GLOWACKI: No.

22 ZC CHAIR HOOD: Okay. Which one is it, A? This one?

23 MR. GLOWACKI: Yes. So -- I mean I look at it from a
24 different perspective.

25 ZC CHAIR HOOD: Okay.

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1 MR. GLOWACKI: Yes, I see that.

2 ZC CHAIR HOOD: And I will tell you that, Ms.
3 Moldenhauer, that was one of my issues. I was going to wait
4 for you to do rebuttal. I want to know how you meet the fact
5 of the privacy?

6 Because the statute talks about light and enjoyment of
7 privacy. And for me I'm struggling. That's why I went around
8 all those pictures. I'm looking at the privacy issue.

9 But for me, this was the one that I had the issue on.
10 This is the one. So you can do that in rebuttal. Okay, thank
11 you, Mr. Chairman.

12 BZA CHAIR JORDAN: Board, any other questions? Okay,
13 Applicant, any questions?

14 MS. MOLDENHAUER: Yes. You're on the other side of the
15 alley, is that correct?

16 MR. GLOWACKI: Yes. Across from them.

17 MS. MOLDENHAUER: Okay. And how wide is that alley?
18 Is that a 15 foot alley?

19 MR. GLOWACKI: It seems like it's 15 feet.

20 MS. MOLDENHAUER: And do you have a compliant rear yard?
21 You know, how --

22 MR. GLOWACKI: Absolutely.

23 MS. MOLDENHAUER: So you have at least a 25 foot rear
24 yard? That's the requirement.

25 MR. GLOWACKI: Sure.

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1 MS. MOLDENHAUER: So if you have a 15 foot rear -- 15
2 foot alley, plus a 25 foot rear yard, plus the Applicant has
3 a 29 foot rear yard, that means that your property is 69 feet
4 away from these windows inside your house. Is that
5 approximately correct you think?

6 MR. GLOWACKI: Absolutely. That's how impressive
7 these windows are that they can see inside our house from that
8 distance.

9 MS. MOLDENHAUER: And did you ever -- did the Applicant
10 or her husband ever talk to you about the property?

11 MR. GLOWACKI: No.

12 MS. MOLDENHAUER: They never had any conversations with
13 you?

14 MR. GLOWACKI: No. Not about what they were building.
15 They certainly had conversations with us why they were
16 jackhammering in the backyard for four months.

17 MS. MOLDENHAUER: No other questions.

18 BZA CHAIR JORDAN: Okay. So we have about 69 foot
19 separation between window to window?

20 MR. GLOWACKI: I --

21 BZA CHAIR JORDAN: Approximately?

22 MR. GLOWACKI: Those numbers are a lot for me.

23 BZA CHAIR JORDAN: They're a lot for me too.

24 MR. GLOWACKI: I would say it would be more like, my mind
25 would be more like 45. But --

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1 BZA CHAIR JORDAN: Forty-five, okay.

2 MR. GLOWACKI: -- if 69 is what it is, I'm not a --

3 BZA CHAIR JORDAN: Okay. I just want to be sure the
4 perspective was -- understood perspective.

5 MR. GLOWACKI: I mean once you get up, once you're --
6 I mean if several of you are architects, once you get up in
7 the, you know, above grade and you start to look across, then
8 there's a much different perspective than when you're looking
9 down and looking up.

10 When you're in the top of our house, we look directly
11 across at their house. So the perspective is, you know, if
12 you were to come to look at it you'd see it pretty clearly.

13 BZA CHAIR JORDAN: Okay. Have you seen them looking
14 into your house?

15 MR. GLOWACKI: I see the -- I understand conversations
16 that their workers have. So I haven't seen them much.
17 They've only been around the house. I've been more, their
18 workers have been around there, you know, every day for the
19 last 18 months.

20 BZA CHAIR JORDAN: Okay.

21 MR. GLOWACKI: So we can hear conversations between the
22 people that are working on their property.

23 BZA CHAIR JORDAN: Thank you. Mr. Cunningham,
24 questions? I'm going to take it that you don't.

25 MR. CUNNINGHAM: I was just about to ask him --

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1 BZA CHAIR JORDAN: All right, you need to move to the
2 microphone please.

3 MR. CUNNINGHAM: Yes, sir. Do you have -- what is the
4 difference in grade between, would you say, between their --
5 I mean when you look across from your top floor, what floor
6 of their --

7 BZA CHAIR JORDAN: A difference in grade. What are --

8 MR. CUNNINGHAM: The properties from 36th Street and
9 above slopes down quite steeply. And I'm trying to see what
10 he is looking at from his top floor. What level of this
11 property you are looking into?

12 MR. GLOWACKI: I --

13 BZA CHAIR JORDAN: Are you above --

14 MR. GLOWACKI: No, we're not. You know, it's just
15 massive. And mostly what I look at it just a bunch of windows.
16 And so I can't really -- the perspective of it is that you just
17 see windows.

18 And that you're either looking at, you know, you're
19 looking at the second story, the third story, the top of it.

20 MR. CUNNINGHAM: Okay.

21 MR. GLOWACKI: You know, if they take that tree down we
22 might get DIRECTV. But that's not --

23 BZA CHAIR JORDAN: All right. Thank you.

24 MR. GLOWACKI: -- in the discussion.

25 BZA CHAIR JORDAN: All right, thank you. All right,

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1 thank you. You can just turn that off. Now, Ms. Moldenhauer,
2 your rebuttal please. Direct rebuttal to the points --

3 MS. MOLDENHAUER: Yes, I'm going to provide some --

4 BZA CHAIR JORDAN: -- at issue here.

5 MS. MOLDENHAUER: -- case law and then I'm going to have
6 rebuttal testimony and then --

7 BZA CHAIR JORDAN: I think you're good on case law. I
8 think you need to give us the facts as you lay. If you -- we
9 may subsequently give you opportunity to provide any briefing
10 on it, but just do facts as what we're doing.

11 MS. MOLDENHAUER: Let me just provide one element of
12 case law in words to Draude, the second case that went back
13 before the Court of Appeals twice.

14 But in that case, the Court of Appeals gave deference
15 to the BZA's findings of fact that had to do with whether or
16 not there was a reasonable level of direct or reflective light.
17 And they also gave deference to the board's finding in regards
18 to the fact that they stated that the, we note the buildings
19 addition is made, sorry, of light and material and is also --

20 BZA CHAIR JORDAN: Is this your rebuttal or your
21 closing?

22 MS. MOLDENHAUER: It could have been built as matter --
23 I'll quickly as the Applicant to provide a brief statement in
24 rebuttal and then we'll present a few diagrams.

25 MS. HOORAZOR: Hi, I introduced myself before. I'm

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1 Niloufar Hoorazor. My husband, my two sons and I purchased
2 this property for our family to live in as our primary
3 residence.

4 We love the area. And it was close to where our two sons
5 go to school. We previously live in Virginia and are happy
6 to move to D.C.

7 Made every -- we made every initial efforts as new
8 homeowners to get to know the neighbors and try to communicate
9 with them if there were any issues. Unfortunately, as this
10 Board may see from time to time, sometimes neighbors don't act
11 as neighborly as one would hope.

12 I would hate to have to say, but wanted to make sure that
13 the record is clear. Mr. Cunningham was very aggressive with
14 us from the beginning.

15 We were under the impression that we were building an
16 addition as a matter of right. We have never been through this
17 process before and never intended to have to seek BZA approval
18 for our personal residence. My husband and I never wanted to
19 be here, at all, to beginning with.

20 As the record reflects, the wall check conflicts with
21 our survey that the zoning administer replied upon, in issuing
22 our permit that we started construction. Based on that
23 background, we are here today.

24 We talked with many of our neighbors, we attended some
25 of the local community parties, attended the local Guy Mason

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1 Park fundraiser. And we everybody seemed very positive about
2 our addition, or at least neutral, until Mr. Cunningham started
3 expressing his extreme opposition to our renovations.

4 We spoke with Ms. Gail McKee and she's never formally
5 opposed the project. Just wanted more -- she just wanted more
6 information.

7 The structure has been up since January and I have not
8 noticed any higher decree of shadow. Our windows don't create
9 any privacy concerns.

10 We don't believe that our proposed property, as it
11 exists today, taking up a footprint of 40 percent, plus four
12 percent of a nonconforming, non-contributing side yard,
13 contributing to lot occupancy, does not create a substantial
14 adverse effect on our neighbors. And is not unduly impacting
15 light or air or privacy.

16 To be -- also I wanted to clarify for the record --

17 MS. MOLDENHAUER: No, so let me just ask you a couple
18 questions.

19 MS. HOORAZOR: Okay.

20 MS. MOLDENHAUER: Looking at what Mr. Chairman Hood was
21 indicating, 51C. So this picture that Chairman Hood was
22 concerned with.

23 The window on the right, that's part of -- is that a
24 window that's part of the original structure, the structure
25 of the building that was built in 1917?

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1 MS. HOORAZOR: Yes.

2 MS. MOLDENHAUER: And the only new window that was be
3 presenting any new privacy concern is the one to the left?

4 MS. HOORAZOR: Yes.

5 MS. MOLDENHAUER: And that one is setback how far?

6 MS. HOORAZOR: Eight feet, two inches.

7 MS. MOLDENHAUER: And does that, you know, have you
8 discussed the willingness to put in some additional trees in
9 this area?

10 MS. HOORAZOR: We did express that.

11 (Laughter)

12 MS. MOLDENHAUER: I was asking if --

13 ZC CHAIR HOOD: Ms. Moldenhauer, let me, and I hate to
14 interrupt. You said exactly where I was getting. I
15 understand about the window closets to the front. You said
16 in your comments and your question of the Applicant, is that
17 you said privacy concern.

18 BZA CHAIR JORDAN: To your privacy concern.

19 MS. MOLDENHAUER: I said are there any concerns.

20 ZC CHAIR HOOD: No, you said privacy concerns. So
21 you're making my point. With the last window. You made my
22 point. Okay, just unmake it. But you've made it for me.

23 MS. MOLDENHAUER: How far. I asked how far that window
24 is setback. Because there is a window there.

25 ZC CHAIR HOOD: Actually it was --

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1 MS. MOLDENHAUER: But the question is --

2 ZC CHAIR HOOD: I didn't mean to interrupt. Just keep
3 going.

4 BZA CHAIR JORDAN: Hold up. Now you confused me. But
5 the window that we're talking about is a window that is not
6 part of the addition and it's -- it's not part of the addition,
7 is that what the question was?

8 MS. MOLDENHAUER: The smaller window --

9 BZA CHAIR JORDAN: Okay.

10 MS. MOLDENHAUER: -- is the one that's the closets --

11 BZA CHAIR JORDAN: Was already there.

12 MS. MOLDENHAUER: -- to the property.

13 BZA CHAIR JORDAN: Got it. Yes.

14 ZC CHAIR HOOD: That's the one closets --

15 MS. MOLDENHAUER: To Ms. McKee's property.

16 ZC CHAIR HOOD: Right.

17 BZA CHAIR JORDAN: Right.

18 MS. MOLDENHAUER: And if I asked if that was an original
19 location of her window from the 1917 structure.

20 ZC CHAIR HOOD: Got it. Got that.

21 BZA CHAIR JORDAN: That's the --

22 ZC CHAIR HOOD: We're here together.

23 BZA CHAIR JORDAN: All right. All right, then.

24 ZC CHAIR HOOD: But then the other window.

25 MS. MOLDENHAUER: The other window. Yes, the other

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1 window.

2 ZC CHAIR HOOD: Is what you said.

3 MS. MOLDENHAUER: And that one I asked I how far that
4 was setback from the property line. And my Client answered
5 --

6 ZC CHAIR HOOD: Checked the transcript. Because you
7 said privacy. So but anyway, go ahead. I didn't mean to
8 interrupt.

9 BZA CHAIR JORDAN: I think she's just --

10 MS. MOLDENHAUER: The issue I was asking about how far
11 that was setback from the property line.

12 BZA CHAIR JORDAN: That's --

13 MS. MOLDENHAUER: And then I also, in words to your
14 question, I asked was, is the Applicant willing to put up trees
15 in that area.

16 MS. HOORAZOR: Yes.

17 MS. MOLDENHAUER: And then, let's see here. So I'll
18 wait till the Board gets these images.

19 (Off mic comments)

20 BZA CHAIR JORDAN: What are we doing? Because times
21 marching on. What are we doing? It's like dead air. We're
22 on the radio and we've got dead air.

23 Okay, some more tree issues.

24 MS. MOLDENHAUER: I believe this would be 53 or --

25 BZA CHAIR JORDAN: What was 52?

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1 MS. MOLDENHAUER: I believe 52 was the Cunningham
2 plans. Yes, 52 was the Cunningham plans.

3 BZA CHAIR JORDAN: Okay.

4 MS. MOLDENHAUER: So this would be 53. And I would just
5 ask Ms. Hoorazor to kind of walk through the --

6 BZA CHAIR JORDAN: No, no, no. Let's step back up.
7 The Cunningham plans would be?

8 MS. MOLDENHAUER: 52.

9 BZA CHAIR JORDAN: 52. Then the 53 is the packet of
10 letters.

11 MS. MOLDENHAUER: Oh, sorry. Yes.

12 BZA CHAIR JORDAN: And then 54 would be the small one?
13 The small --

14 MS. MOLDENHAUER: Yes.

15 BZA CHAIR JORDAN: Okay. And then 55 is the larger.
16 Okay. So 53 is a package of letters that was provided by Ms.
17 Brink. And 54 and 55 are these two letters. See, I pay
18 attention.

19 MS. MOLDENHAUER: So if you can please describe the
20 comparable properties and kind of where property is on this
21 diagram?

22 MS. HOORAZOR: Our property is where there's a blue dot.
23 And the other properties are of different scale in the
24 neighborhood. Some are still the original structures, some
25 have additions.

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1 Some have been two properties added together to become
2 one large property. So you can see the different scales.

3 MS. MOLDENHAUER: And when you looked at buying this
4 property, did you intentionally buy a property that was not
5 in a historic district?

6 MS. HOORAZOR: Yes.

7 INVESTIGATOR HOUGHLAND: Can you elaborate on that?

8 MS. HOORAZOR: Yes. It was very important for us that
9 we wanted to create a home that was more contemporary. And
10 we did search to find a home in a neighborhood that was not,
11 by any means, inside of historic district. And this home is
12 not in any historic district area.

13 MS. MOLDENHAUER: And can you look at Exhibit 55 and
14 describe the character of the community in regards to the
15 windows on the side and multiple properties in your
16 neighborhood?

17 MS. HOORAZOR: Most of the homes in the neighborhood
18 have windows that are ten feet away from each other facing each
19 other. So it's very common to have, from window to window,
20 only ten feet between two homes.

21 Some of them are existing structures, some of them are
22 additions that were made to an already less than eight feet
23 wall. So some of those windows are new and larger.

24 MS. MOLDENHAUER: And then going to your rear yard.
25 The dimension -- do you know if your property is greater than

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1 the required rear yard?

2 MS. HOORAZOR: Yes. We have a 29 foot rear yard versus
3 the 25 foot rear yard that was permitted. So from our property
4 to the fence of that back alley, is 44 feet to the end of the
5 alley. To the property line of any of the neighbors. And it's
6 69 feet to their properties if they had built it accordingly.

7 MS. MOLDENHAUER: You've been at the property through
8 construction obviously, you know now, is that correct?

9 MS. HOORAZOR: Yes.

10 MS. MOLDENHAUER: Have you had any opportunity to
11 observe the light and air from either of your neighboring
12 property owners?

13 MS. HOORAZOR: We had, yes.

14 MS. MOLDENHAUER: Is it fair to say that, yes, there's
15 an addition so, yes, it has changed your neighbors condition?

16 MS. HOORAZOR: It has changed, but --

17 MS. MOLDENHAUER: But do you believe that it has
18 substantially changed or unduly changed their light and air
19 as it previously existed?

20 MS. HOORAZOR: No. Especially to the South, the
21 Cunningham property is towering over our property so there's
22 -- and our property on the second floor is about 30 feet away
23 from our property line. So there's very little compared to
24 what could have been.

25 MS. MOLDENHAUER: And have you offered, during

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1 conversations, to try to provide landscaping or other types
2 of issues to address the privacy concerns that would
3 potentially alleviate some of the concerns of the neighbors?

4 MS. HOORAZOR: Yes. And privacy is important to us as
5 well. We're the ones with the big window and I feel like it's
6 mainly them looking into our property that is of concerning.

7 Because if you want to look out at someone, if you have
8 a small window or a big window, your eyes are what look out.
9 But for them they can see a larger mass of the interior of our
10 house.

11 So we did approach the neighbor to try to come up with
12 some vegetation plan that would reduce this between us and the
13 Southern neighbor. But it didn't work out well because they
14 were not responding.

15 Mr. Cunningham was busy, he didn't want to speak. He
16 wanted us to make arraignments. And then we tried doing it
17 through you and he was not interested.

18 Meridith gave four different dates as dates that we were
19 available that we could meet with Mr. Cunningham to sit down
20 and talk about this, and he did not respond to any of those
21 four dates.

22 MS. MOLDENHAUER: Just bear with me one moment, I'm
23 sorry. I just want to make sure I have no other questions.

24 MS. HOORAZOR: I'd like to show the wall to the South
25 as well, where my children play.

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1 BZA CHAIR JORDAN: Excuse me.

2 DR. MAY: I need to ask to be dismissed --

3 BZA CHAIR JORDAN: Oh certainly. Thank you. Yes,
4 thank you. Thank you for coming.

5 DR. MAY: Thank you so much.

6 (Off mic comment)

7 BZA CHAIR JORDAN: It seems like dead air.

8 MS. HOORAZOR: On the South we have a wall that Mr.
9 Cunningham built that's 13 and a half feet tall. It sits on
10 almost on his property line and my kids play daily next to a
11 prison wall of more than 13 feet that blocks the Southern sun
12 from our property.

13 We have no sun in our backyard at all due to this large
14 wall. The wall has towering trees on top of it, so basically
15 the entire yard is free of any light.

16 So I don't understand when he says that we're blocking
17 his light. He's the one blocking our light.

18 And then also on the Northern side, Ms. McKee has a
19 garage structure, which I was hoping that Meridith could show,
20 and that property is built on the property line as well with
21 two windows overlooking into our backyard.

22 So when my kids play, Mr. Cunningham can stand on his
23 -- top of his wall and look into our yard directly. And also
24 on the other side, Ms. McKee or whoever is in her house, can
25 sit inside of their yard and they will be literally a foot away

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1 from my backyard looking in.

2 MS. MOLDENHAUER: Structure is pulled up. The image of
3 Ms. McKee's garage with windows looking onto your rear yard.
4 If you want to --

5 MS. HOORAZOR: The trees are in my property and that's
6 her garage. So you can see my kids are playing and they're
7 playing right against her garage structure.

8 MS. MOLDENHAUER: And the windows look onto your
9 property?

10 MS. HOORAZOR: Right. And this is the relationship
11 between the walls. The one on the right, where my husband's
12 standing --

13 BZA CHAIR JORDAN: Is that the wall to the left of --

14 MS. HOORAZOR: That wall on the left is Mr. Cunningham's
15 wall, which is more than a 13 and a half feet tall. And the
16 one on the right is our property. So you can see what -- this
17 is what it looks like.

18 And that's the only such structure built in the
19 neighborhood.

20 MS. MOLDENHAUER: And I'm sorry, that's 13 not 16.
21 That was my err in reading the --

22 MS. HOORAZOR: It's 13 feet six inches. We have a tape
23 measure there.

24 MS. MOLDENHAUER: So when you're standing in the alley
25 way coming down, can you actually see beyond Mr. Cunningham's

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1 garage structure --

2 MS. HOORAZOR: No.

3 MS. MOLDENHAUER: -- to see your property?

4 MS. HOORAZOR: No. Nobody can see our structure
5 because that wall is blocking it.

6 MS. MOLDENHAUER: And he has vegetation surrounding the
7 entire patio, if you look on the plans that was submitted. So
8 vegetation surrounding the entire patio, provided him with a
9 significant amount of privacy, is that correct?

10 MS. HOORAZOR: Yes. That is correct.

11 BZA CHAIR JORDAN: When you say 13 feet, where is it
12 being measure from?

13 MS. HOORAZOR: From the alley. From where you see
14 where the tape measure is, we zoomed into the tape measure.
15 It's 13 and a half feet from the alley.

16 BZA CHAIR JORDAN: Um.

17 MS. MOLDENHAUER: The property changes in grade from
18 the front to the rear --

19 BZA CHAIR JORDAN: Right.

20 MS. MOLDENHAUER: -- but there are questions as to, you
21 know --

22 MS. HOORAZOR: And this wall also has pipes in it which
23 collects his storm water into our property.

24 BZA CHAIR JORDAN: Okay, but we're -- okay.

25 MS. MOLDENHAUER: We're just showing this for the fact

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1 that, and I think I asked the question, if you're standing in
2 the alley next to Mr. Cunningham, can you see beyond the
3 structure to see the rear of your property?

4 MS. HOORAZOR: No.

5 MS. MOLDENHAUER: So it's a question of proximity and
6 perspective that I wanted to put on the record.

7 BZA CHAIR JORDAN: Wasn't there a great philosopher
8 that said something like, can't we all just get along.

9 MR. MOY: Mr. Chairman?

10 MS. MOLDENHAUER: And that's a copy of the garage. And
11 I think -- actually can you describe this, in regards to what
12 you -- whether you can actually see the limited view at times
13 of your addition or the rear of your property, from portions
14 of the public alley?

15 MS. HOORAZOR: There's another alley that leads into
16 this alley. The alley is by Mr. Cunningham's house. So this
17 is us walking down that alley and trying to capture if our
18 property can be seen from this side alley. And it cannot be
19 seen because it's being blocked by that wall structure.

20 (Off mic comments)

21 BZA CHAIR JORDAN: We're having a lot of dead air here.

22 MS. MOLDENHAUER: A lot of what?

23 BZA CHAIR JORDAN: Dead air.

24 MS. MOLDENHAUER: Dead air? I apologize. I was just
25 wanting to confirm that we had no other questions at this point

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1 in time.

2 I'd like to provide -- oh, I guess we'll first, if
3 there's any questions from the Board. I was just trying to
4 say we have no other witnesses. I'm sorry.

5 BZA CHAIR JORDAN: Oh, thank you. All right, Board any
6 questions on rebuttal? To the rebuttal witnesses. Okay, Mr.
7 Cunningham, you have any questions on the rebuttal?

8 MR. CUNNINGHAM: Yes.

9 BZA CHAIR JORDAN: Of the rebuttal.

10 MR. CUNNINGHAM: Thank you.

11 BZA CHAIR JORDAN: Okay.

12 MR. CUNNINGHAM: We'd like to start with this exhibit,
13 whatever the number was.

14 (Off mic comment)

15 MR. CUNNINGHAM: Yes. Are there any windows in this
16 exhibit that are of the dimension of the windows that look out
17 over Ms. McKee's property, the alley or our property?

18 MS. HOORAZOR: These are to show the character of the
19 neighborhood. That shows other windows looking into each
20 other, within ten feet of each other.

21 MR. CUNNINGHAM: Yes. But are they of the dimension of
22 the windows in your house?

23 MS. HOORAZOR: There are additions and where there are
24 additions, yes, there are large windows.

25 MR. CUNNINGHAM: I asked if there were any windows in

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1 this exhibit that you presented, to show conformity --

2 MS. HOORAZOR: I put this picture to show that the
3 windows are overlooking into each other.

4 MR. CUNNINGHAM: I see. As you can't point to any
5 windows in this exhibit that are of the dimension of the many
6 in your house --

7 MS. HOORAZOR: I mean --

8 BZA CHAIR JORDAN: I think we've asked and answered this
9 about 50 times.

10 MR. CUNNINGHAM: Didn't answer actually. But --

11 MS. HOORAZOR: I don't think the size of the window
12 creates privacy, so.

13 BZA CHAIR JORDAN: Wait a minute. So ask your question
14 one more time.

15 MR. CUNNINGHAM: Are there any windows on this --
16 demonstrated on this exhibit, that are of the dimension of the
17 windows at the rear and side of your house, that overlook --

18 BZA CHAIR JORDAN: Wait a minute. Whoa, whoa, whoa. I
19 can't even understand that. Are there any windows --

20 MR. CUNNINGHAM: Pictured in this exhibit, to show
21 conformity?

22 BZA CHAIR JORDAN: Are there any pictures in -- are
23 there any windows in this picture that, what?

24 MR. CUNNINGHAM: That are of the size and dimension of
25 the ones that are in the rear and side of her house --

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1 BZA CHAIR JORDAN: That are comparable in size to what's
2 in her house?

3 MR. CUNNINGHAM: Yes.

4 BZA CHAIR JORDAN: That's kind of where we're getting.
5 So did you understand the question? Does the pictures that
6 you have in that exhibit, show any windows of comparable size
7 to your windows?

8 MS. HOORAZOR: No. But that was not the purpose of this
9 exhibit.

10 BZA CHAIR JORDAN: Okay, but the answer is no. All
11 right, so.

12 MR. CUNNINGHAM: Thank you, Your Honor. You were
13 concerned about my aggressive behavior. When did that begin?

14 MS. HOORAZOR: Pretty much from the beginning.

15 MR. CUNNINGHAM: So when you first represented to us --
16 well let me ask. Did you represent to us initially that you
17 were going to build something within the perimeters?

18 MS. HOORAZOR: Yes, and we did. As far as we knew, as
19 far as we're concerned, we built something according to the
20 permit that we had. Which is what we informed you from the
21 beginning.

22 That our permit was public information. Our plans were
23 public information. But you questioned us and you threatened
24 us, on multiple occasions.

25 MR. CUNNINGHAM: Pardon me, I have never threatened

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1 anybody --

2 BZA CHAIR JORDAN: You're going to have to -- you're not
3 making arguments, you're asking questions.

4 MR. CUNNINGHAM: No, but I want -- may I ask. When did
5 you -- when you first came to our home, if I recall --

6 MS. HOORAZOR: Yes.

7 MR. CUNNINGHAM: -- you were going to build within the
8 perimeter of the existing -- of the prior structure, is that
9 correct?

10 MS. HOORAZOR: No.

11 MS. MOLDENHAUER: I think that was already stated and
12 already answered. And I don't know if this line of questioning
13 is going to be helpful.

14 BZA CHAIR JORDAN: What's your question?

15 MR. CUNNINGHAM: Were there any plans on record, at that
16 time, demonstrating the magnitude of the addition?

17 BZA CHAIR JORDAN: At the time that you had
18 conversations --

19 MS. HOORAZOR: I don't remember when I first meet him.
20 The first moment I meet him --

21 (Simultaneously speaking)

22 BZA CHAIR JORDAN: -- so you don't remember what --

23 MS. HOORAZOR: I don't remember.

24 BZA CHAIR JORDAN: Okay.

25 MS. HOORAZOR: I don't remember the initial meeting

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1 time.

2 MR. CUNNINGHAM: Okay. Would any of those meetings
3 been during the summer of '13?

4 BZA CHAIR JORDAN: She said she didn't remember.

5 MS. HOORAZOR: I don't remember.

6 MR. CUNNINGHAM: Well I'm trying to help her.

7 BZA CHAIR JORDAN: Okay.

8 MS. HOORAZOR: I don't remember.

9 MR. CUNNINGHAM: Okay. Would they have been in the
10 fall of '13?

11 MS. HOORAZOR: I don't remember the dates.

12 BZA CHAIR JORDAN: You have -- there's no way that
13 you're recollection can be refresh, is that what you're saying?

14 MS. HOORAZOR: No.

15 BZA CHAIR JORDAN: So she's saying there's no way her
16 memory can be refreshed.

17 MR. CUNNINGHAM: So I was -- strike that.

18 BZA CHAIR JORDAN: Okay, next question.

19 MR. CUNNINGHAM: And the -- was the wall, that you
20 complained blocked your light, present before you bought the
21 property?

22 MS. HOORAZOR: Yes it was.

23 MR. CUNNINGHAM: Was it present when you designed your
24 property?

25 MS. HOORAZOR: Yes it was.

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1 MR. CUNNINGHAM: Did you know that it was setback six
2 inches from the property line?

3 MS. HOORAZOR: You told us it was setback by a certain
4 amount and we took your word.

5 MR. CUNNINGHAM: Well that was when? Much later,
6 right?

7 MS. HOORAZOR: I don't remember the dates.

8 MR. CUNNINGHAM: But when you bought the property you
9 had not --

10 MS. HOORAZOR: No, we didn't know.

11 MR. CUNNINGHAM: Okay. Thank you.

12 BZA CHAIR JORDAN: All right, then. Brief two minute
13 closing.

14 MS. MOLDENHAUER: The Court of Appeals in Stuart
15 indicates that a special exception, unlike a variance, are
16 expressly provided for in the zoning regulation.

17 The Board discretion to grant is limited to determine
18 whether the exceptions sought meets the requirements. We
19 believe here that we have proven that it does.

20 In regards to light and air, Draude, has went back to
21 the court of appeals twice, in regards to the standard of light
22 and air and privacy. As indicated earlier, that case actually
23 relied upon, and the court of appeals relied upon that, for
24 having it sent back twice to the board, the BZAs finding that
25 the standard was a reasonable level of direct or reflective

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1 light.

2 The court of appeals also made reference to the light
3 colored materials used in construction of the board -- of the
4 addition. And the condominium in regards to the conductive
5 aspect of the reflective light.

6 They also noted that the Georgia Washington University
7 could build a matter of right building that would block all
8 of the light of the portion of the condominium.

9 As here, we are presenting to the Board that this is a
10 question of a substantial unduly adverse effect. We're not
11 saying that this building obviously, or the addition here, did
12 not have some change to their neighbors. Yes it changed their
13 neighbors.

14 But we do not believe, and we believe that all of the
15 pictures have been presented, that there is a substantial
16 amount of distance, both between the Southern neighbor, the
17 Northern neighbor and the rear.

18 The Applicant built actually beyond or provided a larger
19 than required rear yard. As you indicated, it's 44 feet from
20 the rear of the property to the property line on the alley.
21 And most likely somewhere over 69 feet to actually any of the
22 rear structures.

23 In addition to that, the addition is setback on multiple
24 floors, going to the second and third floor, trying to maintain
25 the original design of the building. While still allowing for

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1 a, what my Client believes to be a beautiful addition, that
2 is within the character. And as OP indicated in their report,
3 the varying styles of architecture of the community.

4 And we think that the degree of relief, in regards to
5 the four percent deviation, is extremely minor. Especially
6 given the fact that the footprint of this structure is at 40
7 percent.

8 So the four percent deviation that we're seeking here,
9 the four percent additional lot occupancy, is only created by
10 the existing nonconforming side yard. The addition, as
11 indicated by Commission Hood on the Northern side of the
12 property, has been setback more than the zoning requirements
13 require.

14 And as in Draude, the question of whether or not a matter
15 or right project could actually create more impact or have more
16 of an adverse impact on light and air, should be considered
17 by this Board.

18 We think that even with the submissions provided by the
19 party in opposition, that there's no documentation that
20 specifically refutes what we've presented in evidence in
21 regards to any adverse impact on light and air. To the degree
22 in which would stop the Board from being able to grant this
23 relief.

24 In that regard, we would request that the Board find in
25 agreements with the Office of Planning's report and in what

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1 we've submitted and what's in part of the record and ask that
2 they grant the relief in this case. Thank you.

3 BZA CHAIR JORDAN: Two minute closing.

4 MR. CUNNINGHAM: Thank you very much, Mr. Chairperson.
5 I want to thank you and the Board members here.

6 BZA CHAIR JORDAN: Wait. Excuse me a second. Mr. Moy,
7 can I have the clock please? All right, proceed please.

8 MR. CUNNINGHAM: Thank you very much. I want to thank
9 you and the Board members for your patience with my lack of
10 familiarity with the process. I understood it to be different
11 on advice of counsel. And if I've interrupted
12 inappropriately, I regret that and apologize for that.

13 I think that we agree, Mr. Chairperson, on the standard
14 applicable here and it has nothing to do with the side yard.
15 The issue has nothing to do with the -- when they thought they
16 could build and when they couldn't.

17 The issue is one of light, air, privacy and conformity
18 to the neighborhood. And I do not believe, in light of the
19 circumstances, that they have been able to demonstrate that
20 there is not an adverse.

21 It doesn't have to be a substantially undo, it's an
22 adverse -- a substantial un-adverse impact, on those factors
23 in this property without a doubt. Has those adverse impacts.
24 Thank you very much.

25 BZA CHAIR JORDAN: Okay. Make sure -- you said it

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1 didn't have to be a substantial adverse?

2 MR. CUNNINGHAM: No, I said it does not have to be a
3 substantial undo.

4 BZA CHAIR JORDAN: Okay.

5 MR. CUNNINGHAM: Which is, I think --

6 BZA CHAIR JORDAN: Yes, all right.

7 MR. CUNNINGHAM: -- a foot.

8 BZA CHAIR JORDAN: Yes, it's just a -- All right, a
9 couple things. We will -- is there anything else that the
10 Board wants in the record? I understand there might be a need
11 to have shadow studies done.

12 And the Board is -- there is nothing has been presented
13 to this Board indicating shadows in any shape, form or fashion.
14 And whether or not there's been an effect upon light.

15 Clearly you have here people's visual may be impaired,
16 but that doesn't hit the standard of light and air. And so
17 there's been no presentation, I think.

18 Is there a need Board for the shadow? Is that what I'm
19 understanding? Shadow?

20 ZC CHAIR HOOD: Yes, shadow would be fine. But I'll
21 wait until you've finished.

22 BZA CHAIR JORDAN: Yes. So -- well I'm just making sure
23 before we decide how we close and what we're doing with the
24 record.

25 So at least that. A shadow study needs to be presented

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1 to the Board. So we're clear that there's no unduly affect
2 upon the light upon the properties by shadow.

3 ZC CHAIR HOOD: Mr. Chairman, I'd like to add. And I
4 know we've said this before and I heard comments of Mr.
5 Cunningham. But I think there's some screen issues when it
6 comes to 22 -- 223.3 that needs to be dealt with. Especially
7 with the 51C issue.

8 And I think those are some of the things that could be
9 mitigated to cut back on some of those impacts, as far as
10 dealing with privacy. So I would ask that the Applicant also
11 work with that particular neighbor.

12 I'm not sure if that's Mr. Cunningham. Whoever's in 51C
13 at this point.

14 BZA CHAIR JORDAN: I think that's --

15 MR. CUNNINGHAM: That's Ms. McKee.

16 BZA CHAIR JORDAN: -- Ms. McKee.

17 ZC CHAIR HOOD: Okay, well Ms. McKee. That's one of the
18 photos that brought me some concern, as far as privacy. And
19 work with that neighbor and see if some of those things can
20 be resolved.

21 I mean if it's not fully resolved, I mean that happens,
22 we'll make the decision. But at least some of the screening,
23 which is required. I think that's where we fall short.

24 And I go back to the first issue. I think that there
25 could be some resolution if everybody just talk. And I heard

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1 that from Dr. May early on that there was not a lot of
2 conversation.

3 But at least that's what this Commissioner picked up.
4 So those are my comments.

5 BZA CHAIR JORDAN: Yes. Okay. I'm trying to think how
6 we proceed from here. And I also think that what's missing
7 is also there's, you know, some knowledge and understanding
8 what the zoning regulations require or allow then what's done
9 as a matter of right. And what it really means by light and
10 air.

11 And so those things need to be -- this is where I think
12 we're proceeding. So I would like to have the record
13 supplemented by -- both parties can submit shadow studies.
14 Submit them, cross submit them.

15 Then I would -- both parties can submit the shadow
16 studies. Both of you submit proposed findings and facts and
17 conclusions of law.

18 And then we will put this on for a decision. I don't
19 think, I mean the shadow studies are going to show what the
20 shadow studies are going to show. Right? And we can read them
21 and look at them and take that all in.

22 I don't know, do you think you'll need additional
23 testimony? Okay.

24 ZC CHAIR HOOD: Board doesn't want to consider -- even
25 consider what I mentioned about the screen?

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1 BZA CHAIR JORDAN: What do you mean about the screen?
2 Part of the order, what are you saying?

3 ZC CHAIR HOOD: No, what I'm asking is I'm trying to give
4 them an opportunity --

5 BZA CHAIR JORDAN: Oh.

6 ZC CHAIR HOOD: -- Ms. McKee and them the opportunity
7 to work it out as opposed to us.

8 MS. HOORAZOR: Sure.

9 ZC CHAIR HOOD: Yes, certainly.

10 BZA CHAIR JORDAN: Okay.

11 ZC CHAIR HOOD: Thank you.

12 BZA CHAIR JORDAN: If you can add to any change like that
13 in the record that's there been some mitigation, certainly can
14 be added to the record. And it's strongly encouraged if that
15 occurs.

16 Mr. Moy, let's have a date?

17 MR. MOY: Staff, Mr. Chairman, would suggest a decision
18 date of Tuesday April the 21st. And that would allow parties
19 to prepare the supplemental information that the Board
20 requested.

21 BZA CHAIR JORDAN: So what's the date?

22 MR. MOY: Decision on April 21st. And the filing is to
23 be submitted by Monday April the 13th.

24 BZA CHAIR JORDAN: Okay.

25 MR. MOY: That should be almost two weeks.

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1 BZA CHAIR JORDAN: That should be sufficient time?

2 MS. MOLDENHAUER: That's sufficient. Thank you.

3 BZA CHAIR JORDAN: Okay.

4 MR. CUNNINGHAM: Can we -- is there an office related
5 to the Board that could direct us to shadow study people?
6 Sorry, we're not --

7 BZA CHAIR JORDAN: I know.

8 MR. CUNNINGHAM: -- professionals at this.

9 BZA CHAIR JORDAN: No, I don't know what to tell you
10 because we can't provide that type of advice. But why don't
11 you go over across the hall and see if someone over there can
12 help you. Yes, I just don't know where we draw the line in
13 that regard. But yes, go across the hall.

14 MR. CUNNINGHAM: Thank you.

15 BZA CHAIR JORDAN: They should be able to talk to you
16 about that. All right, so that's where we stand on this one.
17 Thank you, appreciate it.

18 MR. CUNNINGHAM: Thank you very much.

19 BZA CHAIR JORDAN: All right. In accordance with
20 Section 405(c) of the Open Meetings Act of DC's Code, Section
21 2575, I move that the Board of Zoning adjustment hold closed
22 meetings on Monday April 6th, 13, 20 and 27. The meetings
23 should start at 4:00 p.m. and be held by telephone for purposes
24 of obtaining legal advice from our council and deliberate upon,
25 but not voting on cases scheduled to be publically heard and

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1 decided on the Board, by the Board, the day after each closed
2 meeting.

3 These cases are identified on the Board's public hearing
4 agenda for April 7th, 14, 21 and 28. Closed meetings for these
5 purposes is permitted by the Administrative Procedure Act and
6 under DC law. Is there a second?

7 VICE CHAIR HEATH: Second.

8 BZA CHAIR JORDAN: Will the secretary please take roll
9 call or call the roll of the vote for the motion? Whatever
10 this is.

11 MR. MOY: Yes, thank you, Mr. Chairman. If Board
12 members will reply with a yes or no, yay or nay. Roll call
13 vote, Mr. Hood?

14 ZC CHAIR HOOD: Yes.

15 MR. MOY: Vice Chair Heath?

16 VICE CHAIR HEATH: Yes.

17 MR. MOY: Chairman Jordan?

18 BZA CHAIR JORDAN: Turn the mics back on. Yes.

19 MR. MOY: Mr. Hinkle?

20 MEMBER HINKLE: Yay.

21 MR. MOY: And we have a Board seat vacant. The motion
22 carries, sir.

23 BZA CHAIR JORDAN: As it appears the motion pass. I
24 request that the Office of Zoning provide notice of those
25 closed meetings according with the act. Is there another

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1 business coming before us? No. All right, we're adjourned.

2 (Whereupon, the above-entitled matter went off the
3 record at 1:41 p.m.)

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