

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

APRIL 21, 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 9:52 a.m., Lloyd Jordan, Chairman, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MARCIE COHEN, Vice-Chair of the Zoning Commission

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
STEVE COCHRAN

The transcript constitutes the minutes from the Public Hearing held on April 21, 2015.

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

(9:52 a.m.)

CHAIRMAN JORDAN: We're doing change of Zoning Commission Members. That case was carried over from another docket, and so sitting in with us today for the rest of proceedings -- well, I'll wait until she'll come in.

Joining us for the rest of today's hearing is Marcie Cohen, Member of the Zoning Commission, who'll be sitting in today as a Member of the Board of Zoning Adjustment.

Mr. Moy, let's call the first case on the docket. I think we have some procedural issues here, so let's deal with that. Oh, well, no, no, I'm sorry, I'm sorry. I didn't do something I should have done, right? Party status.

Yes, we have -- let's have a representative on 18938 for the applicant and the party status requests. I slipped that, didn't I? So, the representative of the applicant and a representative of the party status request group, okay.

I hate that I missed that. Give them a few minutes.

Ms. Fowler, would you begin introductions? Would you introduce yourselves, please?

MS. FOWLER: I'm Jennifer Fowler, Fowler Architects.

MS. EPPOLITO: Gina Eppolito, resident at 325 Fifth Street, S.E.

MR. BAILEY: Claude Bailey, Counsel for the Opponents, Robert Shelton and Mark Flynn.

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1 CHAIRMAN JORDAN: Okay.

2 MR. SHELTON: And, I'm Robert Shelton.

3 CHAIRMAN JORDAN: Just make sure your microphone is on.

4 MR. SHELTON: And, I'm Robert Shelton.

5 MR. FLYNN: I'm Mark Flynn.

6 CHAIRMAN JORDAN: Make sure your mic is on, please.
7 Just make sure that you got a bright glowing green --

8 MR. FLYNN: Oh, there we go, yes. My name is Mark
9 Flynn. I live at 323 Fifth Street, S.E.

10 CHAIRMAN JORDAN: Okay. The reason why I called you
11 up, it's the Board's intent to grant party status to Mr. Shelton
12 and Mr. Flynn. I think there is substantial information
13 provided in the application that we give them a basis for
14 joining as a party in this matter.

15 However, as we normally do -- as we -- the Board has been
16 requesting, and we request that the applicant, as well as the
17 party status group, which would be consolidated, although, we
18 received two requests, it's a consolidated group, not
19 individual groups, which would be representing the party
20 status, to meet, confer, and discuss the issues that might be
21 outstanding and see if you can resolve those issues prior to
22 this case being called again for hearing.

23 So, please go out, have conversation, have fruitful
24 conversation, intensive conversation, try to make it work. As
25 we say many, many, many times, it's better that if you can work

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1 out the differences as opposed to us working out the
2 differences, but we don't mind doing it, okay?

3 And, we're not talking about walk out the room and take
4 a second or two and come back in the room because I monitor
5 -- actually, I do monitor it, and we really want you to have
6 a conversation, all right? Appreciate it. Thanks. We'll
7 call your case back up.

8 MR. BAILEY: Thank you, Mr. Chairman.

9 MS. FOWLER: Thank you.

10 CHAIRMAN JORDAN: Similarly, can we have a
11 representative of the applicant and the two requests for party
12 status and a representative. We're not going to hear the case,
13 but we're going to have a little discussion on 18960.

14 Good morning. Please identify yourselves.

15 MR. SULLIVAN: Good morning, Mr. Chairman. My name is
16 Martin Sullivan of the law firm of Sullivan and Barros on behalf
17 of the applicant.

18 MR. MADVENE: My name is Matt Medvene. I'm the owner
19 and the applicant.

20 CHAIRMAN JORDAN: We have two party status requests.
21 One from a Jeremy Hessler and a Justin Sarver, Sarver. Are
22 they here?

23 (No audible response.)

24 CHAIRMAN JORDAN: Okay. Did you have a conversation
25 with them, Mr. Sullivan? Have they withdrawn their request

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1 for party status? Do you know?

2 MR. SULLIVAN: Not that we're aware of. Mr. Medvene
3 has had conversations with them, but we haven't heard anything.

4 CHAIRMAN JORDAN: Okay. Well, all right, they have a
5 responsibility for being here. I'm not going to deny it at
6 this point. When we call the case back up, if they're not here,
7 we're certainly going to deny the request for party status.
8 And, certainly, you can't go out and have a conversation with
9 them because they're not here, but we appreciate it and we'll
10 call the case back up. Thank you.

11 MR. SULLIVAN: Thank you.

12 CHAIRMAN JORDAN: All right. Mr. Moy, the first case
13 in the docket, please.

14 MR. MOY: To the table, parties to Application Number
15 18013A, this is the application of Franklin Commons
16 Intergenerational Day Care Center, Inc. This is property, Mr.
17 Chairman, requesting variance and special exception relief
18 from the child development center, provision under Section
19 205. This is at premises 119 Franklin Street, N.E., Square
20 3505, Lot 802.

21 CHAIRMAN JORDAN: Okay. Would the applicant come to
22 the witness table, please?

23 Good morning.

24 MS. BRADSHER: Good morning.

25 CHAIRMAN JORDAN: Just make sure your microphone is on,

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1 please. There should be a bright glowing green button. No,
2 no. Push the button. Yes.

3 MS. BRADSHER: Okay, it's on.

4 CHAIRMAN JORDAN: There we go. Would you give us your
5 name, please?

6 MS. BRADSHER: Cassandra Bradsher.

7 CHAIRMAN JORDAN: What's the last name again?

8 MS. BRADSHER: Bradsher, B-R-A-D-S-H-E-R.

9 CHAIRMAN JORDAN: And, you are the -- are you the
10 applicant or --

11 MS. BRADSHER: Yes.

12 CHAIRMAN JORDAN: We have some procedural issues with
13 this case, and we're being joined by --

14 MS. BARNES: ANC Commissioner Dianne Barnes.

15 CHAIRMAN JORDAN: Welcome. Thank you.

16 We have some procedural issues with this case, which I
17 don't believe that we're going to be able to go forward at this
18 time on this. There was a posting on this case, didn't occur
19 until April 15. Is that correct?

20 MS. BRADSHER: Yes, ma'am -- excuse me, yes, sir.

21 CHAIRMAN JORDAN: Which there's a requirement for
22 posting of 15 days prior to the hearing. Additionally, and
23 I don't have in the file a self-certification nor a zoning,
24 the zoning administrator's letter of referral, which is
25 another procedural issue. So, those things are required

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1 before we can go forward with the hearing.

2 I -- the notice to the community is something that's very
3 important for these cases, and so it's required that sufficient
4 notice is giving for others to want to weigh in. Additionally,
5 we do have at least one letter in opposition here to, to the
6 relief being requested, and so it makes us a little bit more
7 uncomfortable of seeing that there's any other mitigation with
8 that.

9 So, that would be my -- I would move this to another date
10 if that's okay with the Board if we understand -- if that's
11 -- okay. And, so we would move this to another date.

12 Mr. Moy, what -- when can we get this in comfortably?
13 (No audible response.)

14 CHAIRMAN JORDAN: Is the sign still posted?

15 MS. BRADSHER: Yes.

16 CHAIRMAN JORDAN: Okay. And, so it got posted -- what
17 was the date of posting? 15th of April, right?

18 MS. BRADSHER: That was a Tuesday.

19 CHAIRMAN JORDAN: So, at least needs to be posted --
20 can't do anything prior to the 30th. Has April got 30 days?
21 Yes, April 30.

22 So, when can we do this in May?

23 (No audible response.)

24 CHAIRMAN JORDAN: Here's the other thing. In the
25 interim, you need to either get a lawyer or an architect to,

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1 to file a certificate of, self-certification on the zoning
2 requirements, that it meets the various zoning requirements,
3 and/or the very first thing you really can do is go to DCRA
4 and meet with the office, the zoning administrator, and tell
5 him this is your application, they need to submit a referral
6 letter.

7 MS. BRADSHER: They did. They gave us -- they emailed
8 it to Steven Barr.

9 CHAIRMAN JORDAN: A referral letter?

10 MS. BRADSHER: Yes.

11 CHAIRMAN JORDAN: We don't have that in our file.

12 MS. BRADSHER: Okay.

13 CHAIRMAN JORDAN: Do you have a copy of it? Do you have
14 a copy of it?

15 MS. BRADSHER: No.

16 CHAIRMAN JORDAN: Mr. Moy, do we have her ZA referral
17 letter?

18 MR. MOY: Okay. Just a second, sir.

19 CHAIRMAN JORDAN: I don't believe we do, and -- oh,
20 well, we're still going to look for another date. Let's do
21 this. Let's -- no need to hold this up.

22 MS. BRADSHER: Okay.

23 CHAIRMAN JORDAN: Because we're going to do another
24 date anyway based upon the fact of notice here. So, we don't
25 have to, to wait on that. We'll do just a date. And, you need

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1 to be -- I would suggest that you dot your I's, cross your T's,
2 making sure that there has been a zoning administrator referral
3 letter where they have to opine on the zoning request.

4 I think I saw something where it indicated that they
5 thought it was the same relief and that they would not resubmit.
6 If that's the case, then you need to ask for the zoning
7 administrator itself to weigh in because this is a new
8 application. And, I -- maybe they were confused thinking it
9 was a continued application or a modification of an
10 application, but this is a new application.

11 Mr. Moy, where are we?

12 MR. MOY: Yes, looking for a date, sir. It's very
13 close. We could go with either May 12 or May 19. I think May
14 19 we have another child development center, so we have a
15 similar application in terms of relief.

16 CHAIRMAN JORDAN: Well, let me give the applicant the
17 opportunity to think which date works best for her. May 12
18 or May 19?

19 MR. MOY: Yes, sir.

20 MS. BRADSHER: The 12th, the better.

21 CHAIRMAN JORDAN: Okay.

22 MS. BRADSHER: The sooner, the better.

23 CHAIRMAN JORDAN: Yes, please, yes.

24 And, your name again?

25 MS. SUTHERLAND: My name is Gwen Sutherland, and I am

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1 one of the incorporators and the Board member and a registered
2 agent for the Franklin Commons Intergenerational Center, but
3 also I'm the president of the tenants association, and they
4 need to weigh in, the residents of Franklin Commons. Here's
5 the problem. We have to give a 30-day notice to the rental
6 office.

7 CHAIRMAN JORDAN: Of what?

8 MS. SUTHERLAND: For the tenants to meet.

9 CHAIRMAN JORDAN: Yes, I hear you, but that has no
10 impact upon the zoning requirements and what we're doing here,
11 so I would suggest that --

12 MS. SUTHERLAND: Okay.

13 CHAIRMAN JORDAN: -- you may have conversation with
14 them or whoever you're going to do, but --

15 MS. SUTHERLAND: Okay.

16 CHAIRMAN JORDAN: -- it's not one of our requirements,
17 so if -- whatever you're going to do, if you can expedite it,
18 fine.

19 MS. SUTHERLAND: Okay.

20 CHAIRMAN JORDAN: We're going to continue this matter.
21 I'll give you a little extra time. We'll do this on --

22 MS. SUTHERLAND: Okay.

23 CHAIRMAN JORDAN: -- the 19th.

24 MS. SUTHERLAND: Great.

25 CHAIRMAN JORDAN: We'll do this May 19th.

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1 MS. SUTHERLAND: Great.

2 CHAIRMAN JORDAN: Please do whatever you need to do to
3 get input in. And, I hope it's not an inconvenience also to
4 the ANC.

5 Did I have a letter? No, did you meet last night or
6 something? No, that's not correct.

7 MS. BARNES: We meet tonight.

8 CHAIRMAN JORDAN: Meet tonight.

9 MS. BARNES: Yes.

10 CHAIRMAN JORDAN: So, it works out even better, okay.
11 You're going to discuss this, I see.

12 MS. BARNES: Yes.

13 CHAIRMAN JORDAN: So, it works out even better. Thank
14 you. So, all right, we backed into something. So, May 19th,
15 we'll set this for, for hearing. And, please don't forget to,
16 two things, to file your affidavit of posting at least five
17 days prior to the hearing. Secondly, you want to find out
18 about the zoning administrator letter, okay?

19 MS. SUTHERLAND: Okay.

20 CHAIRMAN JORDAN: Real good.

21 So, that would be the order in this case. Thank you.

22 I guess we're going to call -- oh, yes, Franklin. We
23 have 1890 -- 18982. Okay, that's pretty straightforward.
24 No, 18981, I'm sorry.

25 MR. MOY: Okay, that's better. Okay, Application

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1 Number 18981, the applicant to the table. This is the
2 application of Frances Raskin.

3 Mr. Chairman, this is a request for special exception
4 under Section 223, at 333 F Street, N.E.

5 CHAIRMAN JORDAN: Very good. Thank you.

6 Would you please identify yourself?

7 MS. RASKIN: Good morning. My name is Frances Raskin.
8 I'm the owner of 333 F Street, N.E. My architect is out in
9 the hall for a prior case that you asked them to discuss.

10 CHAIRMAN JORDAN: Okay. You can go -- yes, if you can
11 go tap her. Well, I'll tell you what. We get started in the
12 other -- let's -- and I want them to have that conversation,
13 so we'll --

14 MS. RASKIN: Well, there's no opposition in this case.
15 And, I'm an attorney if, if you'd like to proceed.

16 CHAIRMAN JORDAN: Okay. And, I think, that's fine
17 because I do not believe that -- I think the application
18 presents the necessary documentation in support to grant the
19 relief. I don't have any questions. I don't know if any other
20 member of the Board has questions.

21 With that, then let's proceed on. Did you have an issue
22 you want to talk -- are you on this case?

23 MS. RASKIN: No, I don't believe they are.

24 MR. ROMNEY: A witness.

25 CHAIRMAN JORDAN: No, no. Okay. We're not at that

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1 point.

2 MR. ROMNEY: Oh, I'm sorry.

3 CHAIRMAN JORDAN: Yes, thank you.

4 So, where we normally proceed that if the Board is
5 comfortable with the requested relief at this point, then the
6 applicant has the opportunity to waive any further testimony
7 at this point. Always can come back for rebuttal if something
8 comes up, but we proceed on if that's your wish.

9 MS. RASKIN: That's fine. Thank you.

10 CHAIRMAN JORDAN: Then let's turn to the Office of
11 Planning.

12 Mr. Mordfin, you've been doing a lot of substituting
13 here recently. Please.

14 MR. MORDFIN: Hi. Good morning. The Office of
15 Planning supports this application, and it stands on the record
16 and is available for any questions. Thank you.

17 CHAIRMAN JORDAN: Does the Board have any questions for
18 Planning?

19 MEMBER: No.

20 CHAIRMAN JORDAN: Does the applicant have any questions
21 for Planning?

22 MS. RASKIN: No, thank you.

23 CHAIRMAN JORDAN: Then let's -- anyone from -- anyone
24 here from Department of Transportation?

25 (No audible response.)

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1 CHAIRMAN JORDAN: We do have a Letter of No Objection
2 to the court requested relief from Department of
3 Transportation.

4 Is anyone here from ANC 6C? ANC 6C?

5 (No audible response.)

6 CHAIRMAN JORDAN: We do have a letter of support from
7 ANC 6C in support of this application.

8 Does anyone here wishing to speak in support of the
9 application? Anyone wishing to speak in support?

10 Are you here to speak in support or against? Are you
11 on this case?

12 MR. ROMNEY: Yes.

13 CHAIRMAN JORDAN: Are you here to speak in support of
14 the application or against the application?

15 MR. ROMNEY: Yes. I'm curious about the --

16 CHAIRMAN JORDAN: Come, please sit at the table, and
17 give us your name, please. Give us your name.

18 MR. ROMNEY: My name is Chris Romney, 635 Acker Place,
19 N.E.

20 COURT REPORTER: Sir, is your microphone on?

21 MR. ROMNEY: Chris Romney, 635 Acker Place, N.E.

22 CHAIRMAN JORDAN: Okay. And, are you -- well, let's do
23 this.

24 Does anyone else here wishing to speak in support?

25 (No audible response.)

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1 CHAIRMAN JORDAN: Anyone wishing to speak in
2 opposition? Anyone in opposition?

3 (No audible response.)

4 CHAIRMAN JORDAN: Mr. Romney, why don't you talk to us?
5 You have three minutes to tell us what's on your mind and --

6 MR. ROMNEY: Thank you.

7 CHAIRMAN JORDAN: -- why you're here.

8 MR. ROMNEY: Yes, what's on my mind is, as you pointed
9 out with one of the earlier cases about getting the community
10 notice and feedback, and I went online and looked at the
11 application. And, I'm wondering why the Planning Board and
12 the Zoning Board would grant relief to an exception of a rule
13 that they have in place when, you know, the additional lot
14 coverage doesn't make sense to me when there's a limited lot
15 coverage.

16 And, why would you start granting exceptions and go down
17 that road of setting precedence for that block? And, I realize
18 the neighbors don't object, and that's, you know, very
19 understandable. Neighbors very often don't object to their
20 neighbors because they're being neighborly, but as we start
21 to overbuild the lot, it -- then would set a precedent for other
22 people going down the block.

23 CHAIRMAN JORDAN: Okay. We appreciate your comment.
24 First, each case sits on its own bottom. And, under the zoning
25 regulations, we have regulations and rules. However, under

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1 the law, we're required to have, allow for exceptions to those
2 rules if certain criteria is met, so that's when we do it.

3 We don't just -- this Board and the Office of Zoning just
4 does not just do it because of some request. There's
5 guidelines within the law that has to be followed.

6 Every case stands on its own bottom. So, meaning that
7 there's no precedence from one case to another case in the same
8 area because they have to meet all the criteria that's required
9 under the law to get any different changes than what the
10 regulation is set for.

11 So, that's -- I just wanted to give you a response back
12 for that. Is there anything else? I think you have a little
13 time left.

14 MR. ROMNEY: I did. And, so why are we granting relief?

15 CHAIRMAN JORDAN: We haven't granted relief yet, but we
16 -- we haven't granted relief yet. I mean, you can make that
17 comment. We're not necessarily set to say what we're
18 thinking. We haven't even deliberated whether or not we're
19 going to give it, but I do say at this point, the applicant
20 has met all the guidelines required by the, by regulations in
21 our, in initial belief that relief should be granted as
22 requested.

23 MR. ROMNEY: Okay.

24 CHAIRMAN JORDAN: Okay. So, turning back to the
25 applicant, I don't know if there's anything you believe that

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1 you need to rebut, but I think we could -- if not, then we can
2 proceed on.

3 MS. RASKIN: No, thank you. I just wanted to point out
4 his opposition is not specific to my request and he lives --
5 or his residence is more than three blocks from the location.

6 CHAIRMAN JORDAN: Oh, really? Okay. Well, still
7 everybody's input is important, --

8 MS. RASKIN: Yes.

9 CHAIRMAN JORDAN: -- but we certainly, this Board tries
10 to look at mitigating any impact upon, you know, certainly the
11 media community and the community around the property. We
12 appreciate anyone coming in and giving us their viewpoint
13 because sometimes we're very persuaded by it, so we want to
14 encourage that.

15 And, thank you for coming, Mr. Romney.

16 So, with that, do you have anything else you want to
17 present to the Board?

18 (No audible response.)

19 CHAIRMAN JORDAN: If not, then we close this hearing.
20 Is the Board ready to deliberate?

21 (No audible response.)

22 CHAIRMAN JORDAN: Okay. All right. I would move that
23 we grant the special exception relief requested by the
24 applicant. It's that simple, yes.

25 COMMISSIONER COHEN: I will second that, Mr. Chairman.

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1 CHAIRMAN JORDAN: Motion made and second.

2 Additional discussion?

3 (No audible response.)

4 CHAIRMAN JORDAN: All those in favor, aye.

5 (Chorus of ayes.)

6 CHAIRMAN JORDAN: Those opposed, nay.

7 (No audible response.)

8 CHAIRMAN JORDAN: The motion carries.

9 Mr. Moy?

10 MR. MOY: Staff would record the vote as three to zero.
11 This is on the motion of Chairman Jordan to approve the
12 application for the relief requested. Second the motion, Ms.
13 Cohen, also support Mr. Hinkle. We have a Board. Member not
14 present today, and a Board seat vacant. Motion carries three
15 to zero.

16 CHAIRMAN JORDAN: Summary, please?

17 MR. MOY: Thank you.

18 CHAIRMAN JORDAN: Thank you all for coming. Thank you.

19 MS. RASKIN: Thank you.

20 CHAIRMAN JORDAN: Okay. So, let's now call -- let's
21 call -- it's -- let's call 18960. Is it 60 or am I missing
22 -- yes, 06.

23 Mr. Moy.

24 MR. MOY: Yes. Again, that would be Application Number
25 18960. This is the application of Mark and Matthew Medvene.

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1 CHAIRMAN JORDAN: Please identify yourselves again,
2 please.

3 MR. SULLIVAN: Thank you, Mr. Chairman. My name is
4 Martin Sullivan with the law firm of Sullivan Barros here on
5 behalf of the applicant.

6 CHAIRMAN JORDAN: Is --

7 MR. MEDVENE: And, my name is Matt Medvene. I'm the
8 owner and applicant.

9 CHAIRMAN JORDAN: Are the two parties, the two persons
10 requesting party status here? The two persons requesting
11 party status here?

12 (No audible response.)

13 CHAIRMAN JORDAN: This is like -- this is the second
14 time we've called for this, so the request for party status
15 is going to be denied.

16 This is another case in going through these, this file,
17 I believe, in my, in my opinion, that it -- certainly, the
18 documentation supports the relief. I don't have any
19 questions. I didn't know if the Board has any questions on
20 this particular application.

21 VICE CHAIRPERSON HEATH: Yes, thank you, Mr. Chair.
22 Just a quick question to the applicant.

23 And, just in looking at the plans, it looks like there's
24 an exterior staircase to the rooftop, as well as one on the
25 interior. What's the purpose of two staircases?

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1 MR. MEDVENE: Correct. The exterior staircase is to be
2 meant for the general body of the house, the common guests,
3 and the interior is going to be access to the attic space and
4 mechanical room, as well as a private master entry. It's --
5 I mean, if you look at that door, it's a very -- it's going
6 to be a two-foot door to the roof, which is we're not planning
7 on it being used as frequently as the outdoor staircase, which
8 will be a standard width door.

9 VICE CHAIRPERSON HEATH: So, it's not the primary --

10 MR. MEDVENE: Correct.

11 VICE CHAIRPERSON HEATH: -- entrance to the, the
12 rooftop deck.

13 MR. MEDVENE: Storage for the attic space, that's going
14 to be upstairs, and the mechanical space.

15 VICE CHAIRPERSON HEATH: Thank you for the
16 clarification. Appreciate it.

17 CHAIRMAN JORDAN: Any additional questions? Anything
18 that we need to hear from the applicant?

19 (No audible response.)

20 CHAIRMAN JORDAN: Mr. Sullivan, as of right now, it
21 looks like that everything is okay. Certainly, you have the
22 right to rebuttal or you want to -- if you think you need to
23 present anything to the Board, then you certainly have the
24 right to.

25 MR. SULLIVAN: Thank you, Mr. Chairman. We're happy to

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1 stand on the record.

2 CHAIRMAN JORDAN: All right. Well, then let's turn to
3 the Office of -- this is your case, Mr. Mordfin. All right.
4 Turning to the Office of Planning, please.

5 MR. MORDFIN: The Office of Planning supports this
6 application and stands on the record and is available for any
7 questions. Thank you.

8 CHAIRMAN JORDAN: Board, any questions?
9 Please, Ms. Cohen.

10 COMMISSIONER COHEN: Mr. Mordfin, were you able to go
11 out to see this particular project? Because the opposition
12 states that it has an impact on the light and air of your
13 properties.

14 MR. MORDFIN: The opposition has stated that some of
15 what they were opposing to also was the staircase, which was
16 constructed to -- you couldn't -- can't really tell the impact
17 of what it looks like there, so -- that was done by looking
18 at the drawings. And, it's not bringing -- the addition is
19 not going any closer to the adjoining house than it does today.

20 Right now, this property goes lot line to lot line. By
21 definition, it's row housing even though it's not attached on
22 the north side. There are no windows that are going to be on
23 that north side. They're being added.

24 There's that one window on the ground floor, which was
25 on an angle facing that house, which is going to be reoriented

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1 and face the street. So, with respect to those changes and
2 proposals, we didn't see that this was going to adversely
3 affect the property to the north.

4 COMMISSIONER COHEN: Thank you.

5 CHAIRMAN JORDAN: Any other questions for Planning,
6 Board?

7 (No audible response.)

8 CHAIRMAN JORDAN: Does the applicant have any questions
9 for Planning?

10 MR. SULLIVAN: No, thank you.

11 CHAIRMAN JORDAN: All right.

12 Department of Transportation has submitted a Letter of
13 No Objection to the relief requested.

14 Is anyone here from ANC 1B? 1B, yes. ANC 1B?

15 (No audible response.)

16 CHAIRMAN JORDAN: We do have a letter of support from
17 ANC 1B in support of this application. We do have a letter
18 of support from the adjoining neighbors in support of this
19 application.

20 Does anyone wish to speak in support? Anyone else wish
21 to speak in support?

22 (No audible response.)

23 CHAIRMAN JORDAN: Anyone in opposition? As I
24 indicated before, we had two letters in opposition from a
25 neighbor, but they're not here, and they asked for party

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1 status.

2 Is anyone else wishing to speak in opposition to this
3 relief? Anyone else wishing to speak in opposition?

4 (No audible response.)

5 CHAIRMAN JORDAN: Then we -- then I would suggest we --
6 unless you have any rebuttal that you think is necessary.

7 MR. SULLIVAN: No, thank you.

8 CHAIRMAN JORDAN: Does the Board have any additional
9 questions that you would like to, of this applicant?

10 (No audible response.)

11 CHAIRMAN JORDAN: Okay. Then we'll close the hearing
12 based upon the evidence before the Board at this point.

13 I would move that we grant the relief in this matter.
14 I move we grant the relief.

15 VICE CHAIRPERSON HEATH: Second.

16 CHAIRMAN JORDAN: Motion made and seconded.

17 Additional discussion?

18 (No audible response.)

19 CHAIRMAN JORDAN: All those in favor, aye?

20 (Chorus of ayes.)

21 CHAIRMAN JORDAN: Those opposed, nay?

22 (No audible response.)

23 CHAIRMAN JORDAN: The motion carries.

24 Mr. Moy?

25 MR. MOY: Staff would record the vote as three to zero.

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1 That is on the motion Chairman Jordan to approve the
2 application for the relief requested; second the motion Mr.
3 Hinkle; also support Ms. Marcie Cohen; we have a Board member
4 not present today and a Board seat vacant. Motion carries,
5 sir.

6 CHAIRMAN JORDAN: Very good. Thank you. Then we have
7 a summary order.

8 MR. MOY: Thank you.

9 CHAIRMAN JORDAN: Thank you. Thank you.

10 All right, so let's call 18938.

11 And, with that I'm going to take five minutes.

12 (Whereupon, the above-entitled matter went off the
13 record at 10:20 a.m. and resumed at 10:22 a.m.)

14 CHAIRMAN JORDAN: Did we -- did we call the case, Mr.
15 Moy?

16 MR. MOY: I will in a second, sir. That would be
17 Application Number 18938 of Gina Eppolito, and this is a
18 request for a special exception relief under 223 at 325 5th
19 Street, S.E.

20 CHAIRMAN JORDAN: Okay. Again, let's do
21 introductions.

22 MS. FOWLER: Jennifer Fowler with Fowler Architects.

23 MS. EPPOLITO: Gina Eppolito, Applicant, 325 5th
24 Street, S.E., resident.

25 MR. BAILEY: Claud Bailey, Counsel for the Opponents.

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1 MR. SHELTON: Robert Shelton, 323 5th Street.

2 MR. FLYNN: Mark Flynn, 323 5th Street, S.E.

3 CHAIRMAN JORDAN: Okay. How did -- what happened
4 during our negotiations and our discussion? Did we resolve
5 any issues?

6 MS. FOWLER: No, we have not. As we stated on the
7 supplemental filing, we did meet with Mr. Shelton and Mr. Flynn
8 on March 28 in their home, and we were unable to reach an
9 agreement at that time. We did address some of their concerns
10 regarding the measurement of the wall. We filed supplemental
11 site plans to address that. And, we also performed a sun study
12 to measure the impact on their property, shadow study.

13 CHAIRMAN JORDAN: Yes, I understand. I was just asking
14 what happened during the discussion. Did you --

15 MS. FOWLER: Right.

16 CHAIRMAN JORDAN: Yes, I -- as you know, I understand
17 what's in the file.

18 MS. FOWLER: Right.

19 CHAIRMAN JORDAN: And, you know, the Board spends at
20 least, you know, 8, maybe even more -- actually, you know,
21 sometime I'm 12 hours going through all these cases prior to
22 getting here, so we're very comfortable and understand what's
23 in the files.

24 MR. FOWLER: Okay.

25 CHAIRMAN JORDAN: And, so --

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1 MR. FOWLER: So, we were unable to reach an agreement
2 in the hallway. The only compromise was offered by the owners
3 of 323 were to build to the existing footprint, which is the
4 six feet porch that's there now, and they were not willing to,
5 to give any inches beyond that.

6 CHAIRMAN JORDAN: Okay. That's okay.

7 MR. FOWLER: Yes.

8 CHAIRMAN JORDAN: Anything you want to say about the
9 negotiations, Mr. Bailey?

10 MR. BAILEY: I'll just say I think my -- my clients feel
11 though that this proposed --

12 CHAIRMAN JORDAN: You don't need to get into merits.

13 MR. BAILEY: Right. Proposed best acceptance just --

14 CHAIRMAN JORDAN: Okay.

15 MR. BAILEY: -- has an adverse impact upon them, so they
16 would prefer to keep, kind of maintain the status quo I'll say.

17 CHAIRMAN JORDAN: Got it. Okay. So, let's do this.
18 As you know, as I said, we're very comfortable with the file,
19 so we don't require a full presentation. And, the way we've
20 been handling it is the Board has any issues or issues with
21 the matter, we want the applicant to address.

22 I don't have any questions on the application. I think
23 I seen the -- I've seen all the amended documentations, and
24 certainly, the shadow study, which I examined and looked at.

25 I don't know if the other Board members might have

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1 questions they want to discuss with you in this case.

2 (No audible response.)

3 CHAIRMAN JORDAN: All right, so it seems like the Board
4 doesn't have any questions on this case, and I think maybe what
5 we would then do is to, if it's all right with you, we'll proceed
6 on. And, certainly, you can come back and rebuttal after the
7 party in opposition puts on their case and, and do it, but right
8 now, I think there is anything, so we can turn now -- if that's
9 okay, we'll turn now to the Office of Planning.

10 MR. FOWLER: That's fine. Thank you.

11 MR. COCHRAN: Thank you, Mr. Chair. The Office of
12 Planning has nothing to add to the substance of our report in
13 support of the application. The one thing we might suggest
14 as part of this discussion is whether a green screen wall on
15 the north side might help to reduce the impact of the three
16 to four foot increase in the depth of the applicant's house.

17 CHAIRMAN JORDAN: Yes, I did have a question for you
18 when I was going through the file. And, I was trying to
19 understand that one paragraph, and I'll read it, you know it.

20 It says, "The proposed addition could lessen an
21 intrusion on privacy at the first floor level as an open porch
22 would be replaced by a wall that would screen reciprocal views
23 between the applicant and the neighbor's property. A window
24 is included -- if a window is included on the north wall of
25 the addition, it would be no less than six feet above the level

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1 of the floor."

2 Are you saying -- I guess, I kind of --

3 MR. COCHRAN: I'd be happy to answer that.

4 CHAIRMAN JORDAN: Yes.

5 MR. COCHRAN: And, by the way, for the record, since you
6 pointed this out before, Steve Cochran, Office of Planning.

7 Okay, right now, there's an open porch on both floors.
8 The applicant is proposing to enclose that porch, extend
9 another -- I'm sorry, three feet, I believe, yes, three feet
10 beyond that. On the first floor, they would either have a
11 solid wall on the north side or if the zoning administrator
12 and construction code permits, they would put in a window that
13 would begin approximately six feet above the level of the
14 proposed addition.

15 Either way, there'd be no easy view from the first floor
16 into the northern property or vise versa, so that would
17 increase the privacy of the property to the north. However,
18 on the second floor, there would continue to be an open porch
19 so there would be no increase in privacy.

20 In fact, just because of the angle, you get another three
21 feet farther back from the house to the north, so you could
22 conceivably get a different view into the house. I have not
23 been out there to measure that.

24 CHAIRMAN JORDAN: Are you saying it might add further
25 -- more privacy?

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1 MR. COCHRAN: On the second floor no. On the first
2 floor yes.

3 CHAIRMAN JORDAN: Okay.

4 MR. COCHRAN: The first floor is what would be occupied,
5 and the second floor would be the, you know, occasionally used
6 an open porch.

7 CHAIRMAN JORDAN: As an open porch, okay. Thank you.
8 That's -- when I was looking at this this weekend, I was like,
9 okay, I didn't understand. I guess I ran -- I thought you were
10 saying initially. I said, "This doesn't make any sense that
11 putting a window on that floor gave more privacy," but I
12 understand if it happens, it still won't have impact is what
13 you're saying on the first floor.

14 MR. COCHRAN: Well, the impact it would have is, is less
15 than what's there now.

16 CHAIRMAN JORDAN: Okay. Okay.

17 Board, any additional questions for Planning?

18 (No audible response.)

19 CHAIRMAN JORDAN: Ms. Fowler, any questions of
20 Planning?

21 MS. FOWLER: No, thank you.

22 CHAIRMAN JORDAN: Does the -- Mr. Bailey, any questions
23 you want to ask?

24 MR. BAILEY: I do want to ask Mr. Cochran the date of
25 your report to the Board was, I think, it was April 14 if I'm

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1 not mistaken. Did you take into account the supplemental
2 filing that the applicant made when they, when they submitted
3 that when you made your recommendation to the Board?

4 MR. COCHRAN: I had seen a draft of that supplemental
5 filing, so yes.

6 MR. BAILEY: So, you had --

7 MR. COCHRAN: I mean, I had seen -- for instance, they
8 had supplied -- office supplied them the shadow studies that
9 I believe didn't come in until -- what would it be? Probably
10 on the 14th or the 21st. Usually, reports -- my report is due
11 to my boss a week before the filing date, and the applicant
12 had supplied the information in time for me to consider it for
13 the report.

14 MR. BAILEY: Okay. Thank you.

15 CHAIRMAN JORDAN: Let me ask a question. So, they gave
16 you a draft of what they were going to submit. They already
17 had something filed, and then I guess you saw, you saw
18 everything that's been filed. I guess that's the question.

19 MR. BAILEY: I have.

20 CHAIRMAN JORDAN: Okay.

21 MR. BAILEY: And, then my second question is relative
22 to the sun study. It's my understanding that the sun study
23 considered the existing -- was done with the assumption of the
24 existing conditions on that site, and that, obviously, with
25 this addition that's going to change the, the way the light

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1 affects both lots. Is that -- is that --

2 CHAIRMAN JORDAN: Let me -- before you -- before you
3 respond, I'm trying to get the question clear. Are you asking
4 Mr. Cochran if the sun study only reflected the present --

5 MR. BAILEY: Right. Yes, as he understood it. Yes, as
6 he understood it, yes.

7 MR. COCHRAN: The document I'm looking at has both
8 existing conditions and proposed additions, so it seems like
9 it is studying both the existing impact and what might be the
10 impact of the proposed addition. Now, this is, again, the
11 draft. If this is not what is in the actual file, then that
12 would be different.

13 MR. BAILEY: Mr. Chair, if you could indulge us for a
14 second? My client would like to speak to this matter if he
15 might.

16 CHAIRMAN JORDAN: No.

17 MR. BAILEY: No, he can't?

18 CHAIRMAN JORDAN: No, absolutely not.

19 MR. BAILEY: Can't, okay.

20 CHAIRMAN JORDAN: You can --

21 MR. BAILEY: Okay.

22 CHAIRMAN JORDAN: We're on cross-examination.

23 MR. BAILEY: Okay.

24 CHAIRMAN JORDAN: And, you have the right to
25 cross-examine and talk to witnesses about it.

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1 MR. BAILEY: Okay. All right, that's fine.

2 CHAIRMAN JORDAN: The applicant -- the party in -- the
3 party in opposition has the opportunity to place their case
4 before us and they can talk all they want about it, provide
5 testimony, and etc., and then we go to rebuttal.

6 MR. BAILEY: Okay. We'll wait -- we'll wait for that
7 point. Thank you, sir.

8 CHAIRMAN JORDAN: All right, now I'm confused. Okay,
9 where were we? So, we were asking the opposition party were
10 asking questions of the Office of Planning.

11 MR. BAILEY: Right.

12 CHAIRMAN JORDAN: Do you have any more questions?

13 MR. BAILEY: I don't have any more questions.

14 CHAIRMAN JORDAN: Okay.

15 Yes, please.

16 COMMISSIONER COHEN: Mr. Cochran, is this type of
17 addition and its impact on adjacent properties a very common
18 thing that we see a lot in the city?

19 MR. COCHRAN: A rear addition is a very common thing and
20 common enough that it's included in Section 223 as a special
21 exception rather than a variance.

22 COMMISSIONER COHEN: Thank you.

23 CHAIRMAN JORDAN: Okay. So, no other questions?

24 MR. BAILEY: No. No, Mr. Chairman.

25 CHAIRMAN JORDAN: All right, so then let's see where we

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1 are. Department of Transportation, anyone here from
2 Department of Transportation?

3 (No audible response.)

4 CHAIRMAN JORDAN: We have a Letter of No Objection
5 proffered by Department of Transportation.

6 Is there anyone here from ANC 6B? Please come forward.
7 Oh, yes. I know I saw you, and then I just took my, my eye
8 away from you. Good morning. Good seeing you. Please.

9 MS. OLDENBURG: Thank you, Mr. Jordan, and members of
10 the Board. Yes, I'm here. I'm the Chair of ANC 6B. And, we
11 --

12 CHAIRMAN JORDAN: You have to give your name for the
13 record.

14 MS. OLDENBURG: Oh, sorry. Kirsten Oldenburg.
15 Thanks.

16 And, we only voted last evening on this case because that
17 was when our monthly meeting was held, so I've come -- we
18 haven't submitted anything, but I'm hand-delivering our
19 letters, our letter, to you in person, and so -- and our vote
20 on the, the case, and I will distribute these, the letter, is
21 at our meeting last night, we voted six, zero, four in support
22 of the application.

23 CHAIRMAN JORDAN: All right. Thank you. And, a
24 quorum was present and --

25 MS. OLDENBURG: Oh, yes, excuse me, right. Properly

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1 scheduled -- a regular scheduled meeting, properly notice
2 meeting with a quorum present, yes. Yes, sir, yes, for a ten
3 -- ten votes, that's all ten commissioners.

4 CHAIRMAN JORDAN: Well, we thank you for doing a quick
5 turnaround and coming down.

6 MS. OLDENBURG: Yes, well --

7 CHAIRMAN JORDAN: It's always glad to see you.

8 So, Board, any question of the Commissioner?

9 (No audible response.)

10 CHAIRMAN JORDAN: We appreciate it.

11 The applicant, any questions of the Commissioner?

12 MS. FOWLER: No. I just also wanted to reiterate the
13 thanks to the Commissioners for turning it around so quickly
14 for us.

15 CHAIRMAN JORDAN: Mr. Bailey, any questions of the
16 Commissioner?

17 MR. BAILEY: No, not at this point, no.

18 CHAIRMAN JORDAN: Thank you very much.

19 MS. OLDENBURG: Thank you.

20 CHAIRMAN JORDAN: The architect of the Capitol, we have
21 a Letter of No Objection or saying that the plans are not
22 inconsistent -- are not inconsistent, so it means they are
23 consistent with the Capitol Hill overlay.

24 Is there anyone wishing to speak in support? We do have
25 several letters from the, from six neighbors who are in support

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1 of this, and also a letter from DHCD in support of the changes,
2 the application.

3 Anyone else wishing to speak in support? Anyone
4 wishing to speak in support?

5 (No audible response.)

6 CHAIRMAN JORDAN: Then let's turn now to the party in
7 opposition to have them put their, put on their case. And,
8 I think we -- we're probably at about 20 minutes were we, Mr.
9 Moy?

10 (No audible response.)

11 CHAIRMAN JORDAN: Okay.

12 Please, feel free --

13 MR. BAILEY: Thank you, Mr. Chairman. My client,
14 Robert Shelton, who's been, you know, involved with this the
15 last few weeks would like to kind of make the case and make,
16 make some specific points.

17 CHAIRMAN JORDAN: Certainly.

18 MR. BAILEY: So, I would like Mr. -- Mr. Shelton to open
19 up and kind of express the reasons why he does not think this
20 is such a good idea.

21 MR. SHELTON: Thank you very much for your
22 consideration and attention. I would summarize -- and I'm
23 going to, I'm going to talk about the properties, the effect
24 on us, and the sun study, and also to some extent process if
25 I may.

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1 The essence of the matter, it seems to me is 40 percent
2 of the rear lot will be multistory masonry, and that's our
3 concern. That obviously affects light and air and it
4 obviously affects our enjoyment of the property.

5 Let me start out with a little bit of history. My
6 friend, Mark, and I bought this house in March of 1977. We
7 had been there close to 40 years. We have done absolutely
8 nothing to the footprint and we've done actually essentially
9 nothing to the house itself because this had been renovated
10 prior to our purchase.

11 The two properties are described like some houses in
12 Capitol Hill is that our house was built in 1890. The house
13 next to us was built in either 1910 or 1912, depending on what
14 historical record you look at. The confluence of the houses,
15 our house is 16 feet, 2 inches wide. The adjacent house is
16 18 feet, 5 inches wide.

17 The crux of the matter is that when it was built, is that
18 the party wall was built on 325 12 feet longer than our house,
19 so that we are, when we look out our window in the back, we
20 see that 12 feet of two-story masonry.

21 I get a little bit confused about this sun study
22 argument, and I'll come back to it. The point of it is if you
23 can't look through 12 feet of two-story masonry, I mean, that's
24 the way I see it in terms of light and air in terms of the way
25 the statute is written.

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1 The proposal is to extend an additional ten feet, and
2 I want to come back to the law in a moment because I think it's
3 very confused of the way the record is. But, that will be a
4 story and a half high with these windows going through it. In
5 terms of this effect on us, I think it's self-evident.

6 I want to go a minute in terms of process. This project
7 was started really quite some time ago because the first letter
8 from the adjacent neighbor -- by the way, there's only one
9 neighbor that can see the way our property is situated.

10 And, also let me say is that we have chosen not to run
11 around getting the neighbors involved period. We think that's
12 not -- it's a very cohesive block. It's two blocks and a very
13 desirable part of Fifth Street. And, we have purposely chosen
14 not to go around and have people choose up sides, but I think
15 the important point is not one of these houses across the street
16 or on Fourth Street or at 335 or whatever, the only one that
17 can -- there are two -- only the one to the north can see what
18 our layout is in terms of our property.

19 So, the rest of them as far as I'm concerned are a product
20 of a very -- and we've been very friendly, and she's a very,
21 very good mom and a good parent, and also good neighbor, is
22 we have chosen not to get people involved, but I think the main
23 point is other than the house to the north, nobody can see the
24 layout of what we're talking about.

25 So, in any event, although the project was apparently

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1 started in October 14, there were drawings available because
2 the first document in the file says October 14, I have reviewed
3 the plans, and that's signed by Glenda Sloan, we didn't see
4 this, we disagree a little bit, but in any event, we left on
5 a long scheduled departure, actually, on Christmas Day, and
6 we got notice from the planning and zoning people dated October
7 -- December the 19th.

8 So, let's leave it prior to this to whether we got the
9 plans. At any event, when we got to Florida, I was extremely
10 concerned, and I called Mr. Moy on occasion and I called Mr.
11 Nyarku on occasion to make sure that we had rescheduled this
12 hearing.

13 Any event, we got back on March the 18th, and we
14 immediately made plans to meet with the applicant and the
15 applicant's architect. We met on March -- March 28th. They
16 came to our residence. And, the first thing that happened,
17 I said -- and we couldn't tell from the drawings. The first
18 thing that I said was, "Let's look and see that you've got the
19 crucial dimensions right."

20 So, we took a tape measure and we went out to the back
21 deck. We opened it up, and it's not 7 feet, it's 12 feet. And,
22 her -- her drawings also show inaccurately the dimensions of
23 our house.

24 So, in any event, what difference does that make? Well,
25 I'll tell you, I'm going to slip into process if I can for a

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1 moment. When the planning and zoning people met, they didn't
2 have the amended C2 and C5. They didn't have -- Ms. Fowler,
3 so you know, the dimensions are incorrect in terms of the light
4 and air effect.

5 And, that filing wasn't made until the 14th of this
6 month, seven days ago. I'd like to point out, with all due
7 respect, sir, Mr. Cochran, there are two points. One is those
8 drawings are dated December the 20th, although -- the 20th,
9 although filed -- 10th, although filed the 14th, is the sun
10 study, which I now want to address, is only for the incremental
11 four feet. And, that was not told to the Planning and Zoning
12 Committee.

13 And, you know, it's very difficult to, unavoidable tell
14 you, it's very difficult to un-ring a bell. The vote at the
15 Planning and Zoning Committee was almost identical to what it
16 was at the full meeting last night. So, in any event, there
17 is a defective application. The Planning and Zoning Committee
18 votes on the defective application, and the sun study is
19 incorrectly presented until the supplemental letter to the
20 Board, which was dated a few days ago.

21 It might be -- I don't mean to be too dramatic. I'm
22 asking my lawyer whether I ought to be, whether I ought to be
23 a little more -- so in any event, I also wanted to point out
24 that the neighbors bought the house and we -- it was nice to
25 see new people in our block, and they bought it about five or

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1 six years ago.

2 And, the first thing that they did is they did some
3 renovation, and then they took out the entire concrete in the
4 basement, which required drilling down through all that
5 concrete, which took months and months. And, we were -- I'm
6 told that we didn't have to consent to it. The fact of the
7 matter is, is that we did consent to it.

8 And, the result was, is they now have a 3,000 square foot
9 house. On the ground floor, there's a family room, there's
10 a living room, there's a playroom, a family room, a laundry,
11 I forget what else is, what else is there, and so at this point
12 in time, we think that we are -- we wanted to be accommodating,
13 but where we are right now is we think this affects us in a
14 material way.

15 Let me come to the law here, and I'll be quick, I'm sorry.
16 I'll be -- I'll be quick here on the law. Is this is a special
17 exception for ten feet, and that's what the application says?

18 Only at the, at the Planning and Zoning hearing for the
19 very first time, it was proffered that this was, the six feet
20 was as a right. And, you know, there's a lot of sort of a
21 process, and I can, and I can understand that, but the point
22 of it is, is that that's sort of -- so the argument is if you
23 can have six feet as a right, then why not an additional four?

24 But, the law says that if you have six feet as a right,
25 you can't have an additional four. 2001.3(b) says, "The

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1 additional enlargement itself shall neither increase or
2 extend," so it is a prejudicial argument to come before a
3 neighborhood group and say, "You know, we can have six feet
4 as a right and you all are being whatever because you won't
5 let us have the additional four."

6 So, my point is in -- and that's also in the letter that's
7 addressed to you. My point is in terms of the record and the
8 way this is played out with a neighborhood group that it is
9 prejudicial to come in and say -- and I had no idea. It took
10 me two weeks to find out what statute they were talking about.

11 And, what they're talking about is a statute that says
12 you can do ordinary changes to modernize. I've been looking
13 through the wall for whatever. So, in any event, we have a
14 situation where the neighborhood group -- and I had no -- no
15 way to respond to it, the neighborhood group has been told,
16 said, "Look, you can have six feet as a right." I've said --
17 the Court of Appeals would find that argument isn't really the
18 point. I'm skeptical myself whether this is going to be
19 ordinary modernization, but let's leave that for a moment.

20 The point of it is, is that what's in front of you is
21 a special exception, not the six feet, in what I call a
22 bootstrap argument. So, in any event, I think -- anything that
23 I've missed, counsel?

24 MR. BAILEY: No.

25 MR. SHELTON: I would have asked -- if I could ask --

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1 in cross-examination, I would have asked him whether in the
2 sun study you had realized that it was just incremental four
3 feet that you were looking at.

4 CHAIRMAN JORDAN: Wait a minute.

5 MR. SHELTON: Okay, if I'm out -- if I'm out of order.

6 CHAIRMAN JORDAN: Let's try to get some order to it.
7 You're at the point where the, where the opposition party could
8 put on their case.

9 MR. SHELTON: Okay. Well --

10 CHAIRMAN JORDAN: You have a right to call as witnesses
11 whoever well may be in this room, and if you need to ask some
12 question of them, we will do in an orderly fashion, but we're
13 not having a round-robin. Your representative is going to ask
14 the questions.

15 MR. SHELTON: I apologize, sir.

16 CHAIRMAN JORDAN: Oh, okay. I mean, we -- we just can't
17 have -- we just don't do it that way, right? Okay.

18 MR. SHELTON: I apologize, sir.

19 CHAIRMAN JORDAN: So, whenever you want to call --
20 whoever you want to call in this room as a witness, you can
21 call, Mr. Bailey as a witness, and then you can examine, but
22 -- and we're getting close to within the time frame because
23 you're supposed to have equal time for both sides, but I'm
24 giving you --

25 MR. SHELTON: Okay.

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1 MR. BAILEY: Okay, I think we would, Mr. Chairman. I'd
2 like to call Mr. Cochran as a witness and ask him one or two
3 questions.

4 CHAIRMAN JORDAN: Certainly.

5 All right. Remember -- now, so you're deferring
6 questions you're going to give to your client to ask, but we're
7 not going to continue -- good ahead. I don't care. Let's just
8 get it done. No, go ahead.

9 MR. SHELTON: I apologize again.

10 CHAIRMAN JORDAN: Go ahead. Go ahead. Ask the
11 question. Let's just --

12 MR. SHELTON: Sir, did you realize when your report,
13 which references the sun study, did you realize it was only
14 the incremental four feet that you were looking at?

15 MR. COCHRAN: Excuse me, but I'm not even sure that I
16 understand the question when you say an incremental four feet.

17 MR. SHELTON: Okay. First -- first of all, in terms of
18 the sun study, I don't think that there's a sun study in the
19 record. I don't know what the sun study --

20 CHAIRMAN JORDAN: There is a sun study in the record.

21 MR. SHELTON: In any event, what's -- in any event, the
22 point of it is, is that in the letter that Ms. Fowler wrote
23 a few days ago, she said -- and if you look at the sun study
24 --

25 CHAIRMAN JORDAN: Let me ask. Have you seen the sun

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1 study?

2 MR. SHELTON: I've seen it on the, on the, as filed, but
3 I haven't seen the study. In other words, we did this, and
4 this is with the assumptions -- I've seen the so-called,
5 conclusions --

6 CHAIRMAN JORDAN: Assumptions?

7 MR. SHELTON: I've seen the conclusions. I have not
8 seen the assumptions. And, the assumptions are what I'm
9 coming to, and I think they're critical, which is the
10 assumption is, is what's being measured? And, if you look at
11 the sun study --

12 CHAIRMAN JORDAN: Would you like to ask that question
13 of Ms. Fowler or you think Mr. Cochran is the best person to
14 answer that?

15 MR. SHELTON: Let me ask -- let me ask the witness first
16 if I may.

17 MR. COCHRAN: Excuse me. I'm opening up the website so
18 that I can be sure that I'm looking at the same document you're
19 referring to.

20 CHAIRMAN JORDAN: Let me kind of cut to the chase on
21 that. Let's do this. Why don't we -- why don't you ask the
22 question to Ms. Fowler who's responsible for producing it, and
23 then if Mr. Cochran needs to fill in, I think that's the only
24 way because you need -- your questions are about the
25 assumptions? I don't believe Mr. Cochran has the assumptions,

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1 and I believe that's your first question for Ms. Fowler, then
2 you can ask him, "Is that -- Mr. Cochran, is that your
3 understanding?"

4 MR. SHELTON: Will I get into trouble if I respectfully
5 disagree with you?

6 CHAIRMAN JORDAN: Well, you can handle it -- I'm trying
7 to help you. You can do whatever way you want to do it, but
8 I think that we're going to make a decision, but you can handle
9 it whichever way you want to.

10 MR. SHELTON: The reason why I would respectfully
11 disagree with it --

12 CHAIRMAN JORDAN: Don't worry. You don't have to
13 defend it.

14 MR. SHELTON: -- is what -- the point of it is, is not
15 what Ms. Fowler thinks on the sun study. He's the one that
16 came to some conclusions.

17 CHAIRMAN JORDAN: I understand completely where you
18 are. Trust me I understand.

19 MR. SHELTON: Okay.

20 CHAIRMAN JORDAN: It's your case, Mr. Bailey, whoever
21 else is running this case. Please have at it because you're
22 really running short on time here.

23 MR. SHELTON: Mr. Cochran, do you know the assumptions
24 of the sun study?

25 MR. COCHRAN: The assumptions -- I assumed that the sun

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1 study was based on the plans that were in the file as of the
2 14th of April. I'm now looking at a document that seems to
3 have a picture of you leaning against a wall that does not yet
4 exist. If that's what you're talking about, no, I had not seen
5 that. It was filed after the 14th.

6 MR. SHELTON: Can I present some photos, Mr. Chairman?

7 CHAIRMAN JORDAN: I'm sorry? You can give those to Mr.
8 Moy, please. Oh, this is documents already in the file.
9 They're already exhibit.

10 MR. SHELTON: All of them are. All of them are. I just
11 thought --

12 CHAIRMAN JORDAN: You got some new ones because these
13 -- they look like -- they're the same ones that are in the file.
14 Yes, in fact, that's what I was looking at as you were talking.
15 So, all right. So, you still have some questions?

16 MR. SHELTON: Well, I was asking if he knew what his
17 assumptions were, and he's looking through his file.

18 CHAIRMAN JORDAN: I think -- I think, he said -- he
19 believes it's the -- the sun study is made up of the plans that
20 have been filed.

21 MR. SHELTON: And, what is --

22 CHAIRMAN JORDAN: Isn't that -- that was your response,
23 correct?

24 MR. COCHRAN: I believe that the sun study was based on
25 the plans that had been in the file as of the 14th of April.

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1 MR. SHELTON: Is it four feet or ten feet being
2 measured?

3 MR. COCHRAN: From where?

4 MR. SHELTON: From -- from --

5 MR. COCHRAN: I'm sorry, but I've got to ask.

6 CHAIRMAN JORDAN: No, no, Mr. Cochran.

7 MR. COCHRAN: Why not -- why not ask this of the
8 architect?

9 CHAIRMAN JORDAN: Mr. Cochran, you know better. I
10 understand your frustration, but you -- let's just stay.

11 Mr. Bailey, I'm going to ask that you make sure we
12 control this and that we're doing this right. The response
13 was responsive. It is -- his assumptions, his belief is what
14 he looked at was a sun study that reflected what's in the
15 architectural plans that was submitted as of April 14, so it's
16 been asked and answered. Let's move on.

17 MR. SHELTON: What's your understanding of the special
18 -- of the --

19 CHAIRMAN JORDAN: Make sure you're on the microphone,
20 please.

21 MR. SHELTON: What's your understanding of the total
22 length of the special exception when you made that, that
23 conclusion?

24 MR. COCHRAN: If you are looking at a measurement from
25 the back of your house, I am -- I was assuming that the total

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1 length would be 21 feet, 11 inches west of the rear of your
2 house.

3 CHAIRMAN JORDAN: Well, let's -- if you would, let's do
4 it from the present existing condition of the applicant's
5 property.

6 MR. COCHRAN: Ten feet. Excuse me, but that does
7 include -- within that ten feet, you have the, is the footprint
8 of the existing open porches according to the information that
9 I had.

10 MR. SHELTON: So, it's really four feet?

11 MR. COCHRAN: If the rear porches are six feet, then
12 yes, it would be four feet.

13 MR. SHELTON: So, it was four feet that --

14 MR. COCHRAN: I -- I'm telling you that I cannot
15 definitively answer unless I go back and look at the file
16 whether it's three feet or four feet. My report said three
17 feet. That was based on information that was provided to me
18 by the applicant.

19 MR. SHELTON: But, in any event, it wasn't ten feet?

20 CHAIRMAN JORDAN: I'm getting a little confused here.
21 Where are we?

22 MR. COCHRAN: I would need a clear and stationary
23 reference point for your questions in order to answer that.

24 CHAIRMAN JORDAN: Are you asking how -- from the present
25 -- what are you asking? From the present building, the present

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1 structure of the applicant's property, how long in addition
2 is being added. Is that what you're asking?

3 MR. SHELTON: What I'm saying is, is when I look at the
4 sun, his sun study, it looks like what the sun study assumes
5 that the six feet is already in place, and what the sun study
6 is measuring is the incremental four feet.

7 And, I would ask you, Mr. Cochran, is that what you
8 looked at?

9 CHAIRMAN JORDAN: No, this is --

10 MR. COCHRAN: The sun study measures an entire proposed
11 addition. It doesn't measure just four feet, so I was looking
12 at -- I assumed the results of the sun study of the entire
13 proposed addition. I did not see a gap in the shadows that
14 indicated that they had -- that they had simply taken the
15 existing house, then done a gap, then done another four feet.
16 No. The sun study showed the entirety of the proposed wall.

17 CHAIRMAN JORDAN: We're down to 48 seconds, Mr. Bailey.
18 Do you have anything else that you want to present?

19 MR. BAILEY: I would like to ask that given the --
20 irregularities is not the right word, but given the fact that
21 things kind of changed at the last minute in this process and
22 my client has not really had enough time to analyze all of it
23 and the impact it would all have on him that perhaps the Board
24 might want to consider postponing a decision a week or two to
25 give us a little more time to do a bit more analysis of all

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1 of this.

2 CHAIRMAN JORDAN: I'm not inclined to do that. You
3 know, these things -- I don't see anything that's exceptional
4 or inconsistent the way we've practiced. It's been practiced
5 before this Board. I think, there's been sufficient time even
6 since the time that any revisions have been made.

7 And, we typically don't hold appearances in that regard.
8 When people come here, they're usually ready and prepared to
9 go forward, and so I've given extra time and allowed some
10 deference to your client so that you can get to the gist of
11 where you wanted to be.

12 MR. BAILEY: Right.

13 CHAIRMAN JORDAN: In the process of that, I'm a little
14 bit confused, but that's okay. And, I just wanted -- so, let's
15 kind of drill, and then give you a couple more minutes here.
16 I'll give you five more minutes to get where you need to get.

17 MR. BAILEY: Okay. I think -- I think the point my
18 client is trying to make is that the sun study does not -- did
19 not accurately reflect the conditions that should have been
20 measured.

21 CHAIRMAN JORDAN: Well, how do you know that when we
22 haven't even asked the question what does it reflect? That's
23 what I tried to get you before.

24 MR. BAILEY: But, I think, that was his -- that was his
25 point about asking the four feet versus the ten feet to try

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1 to, to try to say that the sun study did not measure proper
2 -- did not properly --

3 CHAIRMAN JORDAN: I understand. I understand what he
4 was saying.

5 MR. BAILEY: Right. Right.

6 MR. SHELTON: I'm going to keep quiet. I'm going to
7 leave it up to you.

8 CHAIRMAN JORDAN: I just gave you guys five more
9 minutes. Now, it's 4 minutes and -- 4 minutes and 29.

10 MR. BAILEY: I mean, I don't -- I don't know if we
11 necessarily need the full five minutes in all. Obviously, Mr.
12 Chairman, we appreciate that indulgence. I think, we would
13 like to hear the, hear the applicant make a case, if so, and
14 then maybe -- is there any chance for rebuttal if necessary?

15 CHAIRMAN JORDAN: No, you don't get that. That's why
16 I said if you want to call as a witness anybody in this room,
17 whether it's the applicant, the applicant's architect, or
18 whatever, you have the opportunity to do that, and I try to
19 lay out a helpful hint to how to get to the point where you
20 wanted to be, but nobody wanted to pick up with that hint.

21 MR. BAILEY: I appreciate it. No, I think, we're going
22 to -- I think we're going to rest our case at this point, --

23 CHAIRMAN JORDAN: Okay.

24 MR. BAILEY: -- Mr. Chairman, and allow the applicant to
25 go forward.

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1 CHAIRMAN JORDAN: So, now we will then -- is there any
2 cross-examination of the party in opposition you would like
3 to make or you want to just move to rebuttal?

4 MS. FOWLER: I think we'll just move to rebuttal, please.

5 CHAIRMAN JORDAN: Okay.

6 MS. FOWLER: Thank you.

7 CHAIRMAN JORDAN: All right. Let me ask, is there
8 anyone else wishing to testify in opposition to this
9 application? Anyone else in opposition to this application?

10 (No audible response.)

11 CHAIRMAN JORDAN: Okay. Then we'll move to rebuttal.
12 My first question before we start rebuttal, and I know Ms. Cohen
13 has some questions for rebuttal, in your rebuttal phase, what
14 does the sun study reflect?

15 MS. FOWLER: Okay. What we were showing in the sun
16 study was the difference between the current footprint as it
17 --

18 CHAIRMAN JORDAN: Existing condition, and then what it
19 would be built out --

20 MS. FOWLER: Existing condition, but with a by right
21 enclosure, so when you're looking at the existing conditions
22 on the sun study, this is what we could permit by right because
23 it's a pre-1958 structure, and even aside that point, we're
24 at 60.8 percent, so we're just barely over the cutoff for the
25 by right percentage.

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1 CHAIRMAN JORDAN: So, your sun study is not presenting
2 the existing condition. You, in fact, added additional six
3 feet to the existing condition showing as a matter of right
4 where you could be?

5 MS. FOWLER: Not an additional six feet, but it would
6 be if there were -- right now, it's an open porch, but that
7 could be a solid wall by right. So, it's showing that the
8 existing porch as an enclosed structure, but then with the
9 additional four feet, three foot, ten, added for --

10 CHAIRMAN JORDAN: That would be a matter of right?

11 MS. FOWLER: Well, so the originals -- yes, six feet,
12 and then the additional four foot, roughly four feet --

13 CHAIRMAN JORDAN: You're confusing me.

14 MS. FOWLER: -- is going to the 63 percent.

15 CHAIRMAN JORDAN: Your sun study, when we have existing
16 conditions, what is existing conditions? What is that? That
17 is the present -- the present dimensions of the building,
18 correct?

19 MS. FOWLER: The present footprint of the building,
20 correct.

21 CHAIRMAN JORDAN: Is there any plus to that? I thought
22 I heard you say plus some additional three or four feet.

23 MS. FOWLER: Well, no, the proposed -- if you look at
24 the second screen --

25 CHAIRMAN JORDAN: No, no, no, no, no, no, no, no. You

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1 really have me confused.

2 MS. FOWLER: Okay.

3 CHAIRMAN JORDAN: And, I thought, as we all, that we
4 understand what sun studies are.

5 MS. FOWLER: Right.

6 CHAIRMAN JORDAN: Your existing condition, which is
7 your top picture in each one of your various scenarios, says,
8 "Existing conditions," correct?

9 MS. FOWLER: Correct.

10 CHAIRMAN JORDAN: What are you representing as the
11 existing condition?

12 MS. FOWLER: We are representing the existing footprint
13 as it could be enclosed by right.

14 CHAIRMAN JORDAN: As -- its -- its existing footprint,
15 but as enclosed?

16 MS. FOWLER: As enclosed, correct. This is what we --
17 this is our impact --

18 CHAIRMAN JORDAN: I got it. I got it.

19 MS. FOWLER: -- that we could have --

20 CHAIRMAN JORDAN: I understand.

21 MS. FOWLER: Okay.

22 CHAIRMAN JORDAN: So, it is the present --

23 MS. FOWLER: Sorry, it's a little confusing.

24 CHAIRMAN JORDAN: It's the present dimensions period.

25 MS. FOWLER: Yes, but you're right it's a little

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1 confusing saying existing --

2 CHAIRMAN JORDAN: No, no, no, not if we say it as I'm
3 saying it.

4 MS. FOWLER: Okay.

5 CHAIRMAN JORDAN: It's the present condition footprint
6 of the property --

7 MS. FOWLER: Yes.

8 CHAIRMAN JORDAN: -- period. Got you. Right?
9 Understand. I think that's where we generally have sun study.

10 MS. FOWLER: Yes.

11 CHAIRMAN JORDAN: All right, because you said in
12 addition with something that --

13 MS. FOWLER: No.

14 CHAIRMAN JORDAN: That's why we're asking the questions
15 because we're all trying to get on the same page.

16 MS. FOWLER: Yes.

17 CHAIRMAN JORDAN: And, then the proposed addition is
18 what?

19 MS. FOWLER: It's the full ten-foot extension, which is
20 the six-foot existing footprint plus the, approximately four
21 feet.

22 CHAIRMAN JORDAN: Six plus four?

23 MS. FOWLER: Yes. So --

24 CHAIRMAN JORDAN: And, that's --

25 MS. FOWLER: Enclosed on the first floor, open porch on

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1 the second --

2 CHAIRMAN JORDAN: And, that would -- that would reflect
3 what's in the plans?

4 MS. FOWLER: Correct. And, I also want to state that
5 the ANC did review accurate sun study with the correct wall
6 dimension. That was presented to them as well. I think that
7 was something that was raised by the opponent that they were
8 aware -- they were aware of the dimension of the wall at the
9 neighbor's property in the committee.

10 CHAIRMAN JORDAN: And, is that Exhibit 42?

11 MS. FOWLER: I'm sorry?

12 CHAIRMAN JORDAN: Is that what we have what's called,
13 "Exhibit 42," which is -- I don't have a date on this. I only
14 have one sun study in the file.

15 MS. FOWLER: There's only one sun study, yes, exactly.

16 CHAIRMAN JORDAN: Okay. All right, fine.

17 MS. FOWLER: So, everybody at the Planning and Zoning
18 Committee at the ANC was aware of the correct wall dimension
19 when they voted to support committee.

20 CHAIRMAN JORDAN: Okay. All right. We got there.
21 All right.

22 Anything -- Ms. Cohen had a question.

23 COMMISSIONER COHEN: Yes. In the Office of Planning
24 review, there was a recommendation that the proposed addition
25 could lessen an intrusion in privacy at the first floor level

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1 if you could screen reciprocal views between the applicant and
2 the neighbor's property.

3 Is the applicant willing to provide some type of screen
4 that is, I think, I would suggest would meet the requirements
5 of 223A, the Board may require special treatment in the way
6 of design? Would you be willing to put something up?

7 MS. FOWLER: I'm sorry. You mean on the lower wall?

8 COMMISSIONER COHEN: Yes.

9 MS. FOWLER: On the enclosed wall?

10 COMMISSIONER COHEN: Yes.

11 MS. FOWLER: I believe so. And, we also discussed the
12 window and whether that was something that would be removed
13 or remain, so we're flexible in that.

14 CHAIRMAN JORDAN: Is there going to be a window there?

15 MS. FOWLER: There's a high window on the first floor,
16 but it's about six feet to the sill as we discussed.

17 COMMISSIONER COHEN: Yes, I would really feel much more
18 comfortable in voting for this if there is a commitment that
19 the applicant work with the party in opposition because right
20 now I find that to be an intrusion, a visual intrusion on their
21 property.

22 MS. FOWLER: The brick wall?

23 COMMISSIONER COHEN: Yes.

24 MS. FOWLER: Okay.

25 CHAIRMAN JORDAN: Anything else?

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1 MS. FOWLER: I also wanted to kind of on the same note,
2 223 had mentioned the -- it's a story and a half brick wall,
3 but really what we've done is we've shown a solid railing on
4 the second floor porch. And, part of that is to alleviate
5 privacy issues, but that's something we're, you know, it could
6 also be an open railing, so it's not a story and a half addition.
7 It's just that we brought the wall up in order to create a solid
8 guardrail. Just wanted to clarify that point.

9 CHAIRMAN JORDAN: Board, any other questions?

10 (No audible response.)

11 CHAIRMAN JORDAN: Anything else you want to present to
12 us in rebuttal?

13 MS. FOWLER: The only other comment was on the timing.
14 You know, as you know -- well, maybe we don't need to address
15 that, but we've already postponed the case. It doesn't sound
16 like you're inclined to. Okay.

17 And, then there was comments about expanding -- that the
18 house is already 3,000 square feet and that, you know, they
19 don't need the additional space by the opponent. We are
20 looking for additional space in the kitchen area, which is why
21 we've come up with this solution.

22 This is a de minimis addition. It's very small, and it
23 gets them a lot of use out of their first floor space. And,
24 we cannot expand towards the front of the house because there's
25 a stair and a bathroom blocking the kitchen expansion, so this

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1 is really the only way for my clients to get the space that
2 they need in the location of the house where they spend probably
3 95 percent of their time. Thank you.

4 CHAIRMAN JORDAN: Mr. Bailey, any cross-examination?

5 MR. SHELTON: Were the revised plans, C2 and C5,
6 available when the Planning and Zoning Committee voted on the
7 7th?

8 MS. FOWLER: They were not available at the Planning and
9 Zoning meeting, but the measurement was discussed as you
10 recall. We did talk about that revision that was made, that
11 was going to be made and filed, so they were aware of that
12 dimension during that hearing. And, they've also seen the sun
13 study that reflects that --

14 MR. SHELTON: So, the answer to my question is no?

15 MS. FOWLER: I don't --

16 CHAIRMAN JORDAN: She just -- you just said that they
17 were not available, but you did discuss the dimensions.
18 That's what I heard, so I think --

19 MS. FOWLER: ANC Committee was aware of the actual
20 dimension, the correct dimension.

21 CHAIRMAN JORDAN: Yes, but the actual showing was not
22 there, C1 and C2, whatever you asked for, you said no, and you
23 said that the dimensions were actually discussed.

24 MS. FOWLER: They were discussed. Honestly, I don't
25 recall if we had that revision in. I had four cases this month,

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1 so I'm trying to recall what was presented to them, but -- and
2 maybe Kirsten Oldenburg would recall.

3 CHAIRMAN JORDAN: But, we've already asked and
4 answered.

5 MS. FOWLER: But -- okay.

6 CHAIRMAN JORDAN: Okay. Additional
7 cross-examination?

8 MR. BAILEY: No further cross-examination.

9 CHAIRMAN JORDAN: Board, any additional questions of
10 the applicant? Anyone?

11 (No audible response.)

12 CHAIRMAN JORDAN: All right, so then we will close the
13 record in this matter. I think -- and ready to deliberate
14 because I think it's within the purview of the Board if we
15 believe that we want screening, we can order the screening and
16 etc. And, I just knocked out my thing here.

17 All right, so deliberation?

18 COMMISSIONER COHEN: Thank you, Mr. Chairman. Again,
19 I really strongly suggest that there be screening of this
20 addition. I find it to be a visual intrusion. I think it does
21 impact negatively on the -- let me just get the proper -- as
22 it says, could lessen an intrusion on the privacy of the first
23 floor level, so I would be able to vote for it if the, if the
24 applicant and the zoning order reflects that there be
25 appropriate screening. And, I think that maybe the Office of

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1 Planning can be an advisor to this screening.

2 CHAIRMAN JORDAN: Mr. Hinkle.

3 MR. HINKLE: Yes, thank you. I just needed some
4 clarification.

5 You're talking screening on the first floor or screening
6 on the second floor where their porch is?

7 COMMISSIONER COHEN: I'm talking about screening on the
8 first floor.

9 MR. HINKLE: Screening --

10 COMMISSIONER COHEN: To break up this visual --

11 MR. HINKLE: Oh, I see.

12 COMMISSIONER COHEN: Do you see how it's just --

13 MR. HINKLE: You're speaking of some sort of
14 architectural detail.

15 COMMISSIONER COHEN: Exactly. And, Mr. Cochran also
16 made the suggestion, so I'm deferring a little bit to him if
17 he wants to state anything.

18 MR. COCHRAN: The proposed addition is on the property
19 line, so unless the applicant were asking for additional relief
20 in order to create a non-confirming court, any screening would
21 need to be applied to the wall itself much like a green trellis.

22 COMMISSIONER COHEN: Right, that's what my thinking is,
23 and that's what I think I understood in reading your review.

24 CHAIRMAN JORDAN: Okay. All right. Then I'll suggest
25 that, you know, the Board have a finding that this meets the

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1 requirement of 223, that the additional structure is not
2 causing an adverse effect, however, there is some concern about
3 a visual aspect of this additional wall, and, therefore,
4 screening would help impact it.

5 If there's no impact, I would offer the finding there's
6 no impact on light and air. In fact, we have evidence through
7 the sun study that shows there's no additional, there's very
8 minimum, minimum, minimum, minimum shadow study cast with this
9 new addition.

10 The screening would also help in regards to use of
11 privacy and the enjoinder of the neighboring property. The
12 structure then as, as an addition is consistent with the
13 property in the area as represented by both the support from
14 the Office of Planning and the ANC, who has voted in support,
15 who we give great weight to both in regards to their views on
16 this property.

17 That the property can't be seen from any other
18 elevations, visible from the street nor the rear ally, and it
19 meets within the accepted allowance within a 223 expansion,
20 so that -- and so I would suggest that -- I would suggest that
21 the Board approve the -- my motion would be that we grant the
22 relief requested with the condition that the applicant must
23 provide suitable, acceptable screening on that first floor in
24 consultation with the, with the, with the neighbor, the party
25 in opposition, but certainly it's something that's acceptable

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1 to the Office of Planning in regards to what is visually
2 improving.

3 Okay, that would be my motion.

4 COMMISSIONER COHEN: Second.

5 CHAIRMAN JORDAN: Motion made and second.

6 Additional discussion?

7 MR. HINKLE: Yes. Thank you, Mr. Chair. I agree with
8 the motion. And, this is a special exception and the test to
9 the Board is whether there's a substantially adverse effect
10 on the neighboring property.

11 I am concerned about the windows, and I'm not sure I
12 could support this with windows on that side. And, if -- but
13 I'm certainly open to, to supporting this application without
14 the windows on that northern wall.

15 CHAIRMAN JORDAN: And, I think, the applicant has
16 indicated they would do without the windows, so we can add that
17 to the condition.

18 MR. HINKLE: Okay. Thank you.

19 CHAIRMAN JORDAN: So, with those -- with the
20 modifications as conditions, Mr. Moy, are we clear? You good?

21 (No inaudible response.)

22 CHAIRMAN JORDAN: Then all in favor of the motion
23 signify by saying aye.

24 (Chorus of ayes.)

25 CHAIRMAN JORDAN: Those opposed, nay?

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1 (No inaudible response.)

2 CHAIRMAN JORDAN: The motion carries.

3 Mr. Moy.

4 MR. MOY: Staff would record the vote as three to zero,
5 those on the motion of Chairman Jordan to approve the
6 application of the relief requested with the condition as cited
7 by the Board. Second the motion, Ms. Cohen, Ms. Marcie Cohen,
8 also in support Mr. Hinkle. We have a Board member not present
9 today and a Board seat vacant. Motion carries three to zero,
10 sir.

11 CHAIRMAN JORDAN: All right. All right, thank you.

12 PARTICIPANT: Thank you, sir.

13 PARTICIPANT: Thank you, Mr. Chairman.

14 CHAIRMAN JORDAN: No, thank you, but I -- Ms. Fowler,
15 are you going to present us a proposed finding of fact and
16 conclusions with the conditions submitted to the Board,
17 please? Okay.

18 MR. MOY: Mr. Chairman, just a quick thing. It just
19 occurred to me. Would the Board wish for any new drawings?

20 CHAIRMAN JORDAN: No.

21 MR. MOY: No, okay.

22 CHAIRMAN JORDAN: We don't need any new drawings for
23 this. You think -- you mean without the window on it?

24 (No audible response.)

25 CHAIRMAN JORDAN: Yes, submit with the window and the

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1 screens just so we'll have it for the record. Got you.

2 All right, thank you.

3 Any other business coming before the Board?

4 MR. MOY: Not from the staff, sir.

5 CHAIRMAN JORDAN: Okay. Then we are adjourned. Thank
6 you all.

7 (Whereupon, the above-entitled matter went off the
8 record at 11:15 a.m.)

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