

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

SEPTEMBER 15, 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 10:15 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER[S] PRESENT:

ANTHONY HOOD, Chairperson
MARCIE COHEN, Vice Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
JOHN NYARKU, Zoning Specialist

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D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.
LAWRENCE FERRIS, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

ANNE FOTHERGILL
KAREN THOMAS

The transcript constitutes the minutes from the
Public Hearing held on September 15, 2015.

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

(10:15 a.m.)

CHAIRPERSON JORDAN: All right, so then let's move into our hearing cases, Mr. Moy. And let's call I think 19064 first.

SECRETARY MOY: All right, to the table the Applicants to Application Number 19064 of Andrew Hollinger. Mr. Chairman, this is a request for variances from lot occupancy and rear yard requirements and non-conforming structure requirements at premises 1007 F Street, N.E.

NO. 19064, ANC-6A, APPLICATION OF ANDREW HOLLINGER

CHAIRPERSON JORDAN: Thank you. Good morning. Okay, try that again. Good morning.

ALL: Good morning.

CHAIRPERSON JORDAN: All right. So and make sure your microphones are on. Please identify yourself.

MS. FOWLER: Good morning. I'm Jennifer Fowler with Fowler Architects.

MR. HOLLINGER: I'm Andrew Hollinger at 1007 F Street.

MS. HOLMES: And I'm Niki Holmes, also owner of 1007 F Street.

CHAIRPERSON JORDAN: Okay. Let me make an assessment for the Board, Ms. Fowler. I don't see any issues from my view of the case. As you know, we go through these

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1 cases, you know, many hours before we come here today.

2 Does the Board have any issues or questions or
3 anything they need to drill down with the Applicant in this
4 case? We're on 64. This is a case which OP, the ANC and DDOT
5 and other neighbors in support have written letters in support
6 of this matter. And the relief, the request is for a deck.
7 And it seems like it's a pretty simple deck.

8 So, Ms. Fowler, you know how we proceed. The Board
9 doesn't have any questions. I believe that the application
10 on its face as we sit here today meets the guidelines for the
11 requested relief. You have the opportunity to put on
12 testimony if you would like again since we're after the break.
13 You do that at your own peril. Or we can continue on and
14 process.

15 MS. FOWLER: Thank you. We're happy to proceed
16 without a statement.

17 CHAIRPERSON JORDAN: Okay. Then we return to Office
18 of Planning to see if there is anything in addition. Good
19 morning.

20 MS. FOTHERGILL: Good morning. For the record, I'm
21 Anne Fothergill from the Office of Planning. And the Office
22 of Planning rests on the record in support of the variance
23 relief.

24 CHAIRPERSON JORDAN: Does the Board have any
25 questions for Office of Planning?

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1 (No response.)

2 Does the Applicant have any questions of Office of
3 Planning?

4 MS. FOWLER: No, thank you.

5 CHAIRPERSON JORDAN: Is anyone here from the
6 Department of Transportation for this case? The Department
7 of Transportation on this case?

8 (No response.)

9 The Department of Transportation has submitted a
10 letter of no objection to the requested relief.

11 Is anyone here from ANC-6A for this case? ANC-6A on
12 this case?

13 (No response.)

14 We do have a letter of support from ANC-6A
15 recommending the approval.

16 Is there anyone here wishing to speak in support of
17 this application? Anyone wishing to speak in support?

18 (No response.)

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

21 (No response.)

22 Then we will close the record in this matter. And
23 I would move that we grant the relief requested in 19064.

24 MEMBER HINKLE: I'll second.

25 CHAIRPERSON JORDAN: Motion made and seconded.

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1 Additional discussion?

2 (No response.)

3 All those in favor, aye.

4 (Chorus of ayes.)

5 Those opposed, nay.

6 (No response.)

7 The motion carries. Mr. Moy?

8 SECRETARY MOY: Staff would record the vote as 4 to
9 0. It's on the motion of Chairman Jordan to approve the
10 application for relief requested. Seconding the motion, Mr.
11 Hinkle. Also in support Mr. Hood and Mr. Hill. We have a
12 member not present today.

13 Motions carry 4 to 0, Mr. Chairman.

14 CHAIRPERSON JORDAN: Thank you. Summary please?

15 SECRETARY MOY: Thank you.

16 CHAIRPERSON JORDAN: Thank you very much.

17 Sixty-two I guess. It doesn't get any better; right?
18 Yes, I don't think it gets any better.

19 SECRETARY MOY: Okay, the Applicants to Application
20 Number 19062 of 1106 Montello LLC. This is request for
21 variance relief from the size of the parking space requirements
22 under 2115.1. And this is at property 1112 Montello Avenue,
23 N.E.

24 NO. 19062 ANC-5D, APPLICATION OF 1106 MONTELLO LLC

25 CHAIRPERSON JORDAN: Okay. Good morning. Would

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1 you please identify yourselves.

2 MR. TEASS: Good morning. My name is Will Teass, a
3 principal with Teass-Warren Architects.

4 MR. THORNTON: Good morning. Justin Thornton, the
5 managing member, 1106 Montello LLC.

6 CHAIRPERSON JORDAN: Okay. Right off the bat we,
7 we're going to need -- well, tell me what relief are you seeking
8 in this case?

9 MR. TEASS: We are seeking relief on the width of a
10 standard parking space, which is section 2115.1. The Office
11 of Planning Report notes variance relief from two other
12 sections. And we had reached out to the Zoning Administrator
13 to get clarification on whether or not we needed relief from
14 those other two sections.

15 The other sections are with regard to compact spaces.
16 And so on our original application on the plat we had indicated
17 three -- Let me step back for a moment.

18 CHAIRPERSON JORDAN: Here's the problem we have.
19 Your self-certification that was filed has a lot of other
20 requested relief. And I'm trying to understand, I don't know
21 if it was the same one that was used in the companion case or
22 not. And you just used it kind of dual.

23 MR. TEASS: We had filed on the 11th a document --

24 CHAIRPERSON JORDAN: 11th of what?

25 MR. TEASS: September, sir. -- a document with the

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1 owner's signature on it. And it didn't indicate, the Form 135
2 didn't indicate any additional variance relief on it. And the
3 original form, self-certification that was filed also did not
4 have any other relief on it.

5 CHAIRPERSON JORDAN: Just a second.

6 Well, your original, I don't know what you put in your
7 original because you've got lot width, lot area, and you're
8 not indicating what's miss -- okay, you just put it -- I don't
9 see anything on that one that's indicating what relief.

10 Ms. Glazer, do you have a second please.

11 (Pause.)

12 Yes, your self-certification form is not proper, the
13 one that was submitted, Exhibit 5, the first one. I mean, you
14 list these different dimensions but you're not saying what
15 relief is necessary. Do you see?

16 MR. TEASS: Well, I'm looking at the original Form
17 135 that was submitted and there's a row for parking spaces
18 which indicates the number of parking spaces.

19 CHAIRPERSON JORDAN: Form 135. Any problem with
20 original 135?

21 MS. GLAZER: Mr. Chair.

22 CHAIRPERSON JORDAN: Yes, please.

23 MS. GLAZER: I believe that there was a second
24 self-certification that may not have been filed at the time
25 of review. We're trying to pull it up by having technical

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1 difficulties.

2 CHAIRPERSON JORDAN: When did you file the second?

3 MR. TEASS: The second Form 135m, which was identical
4 to the first with the exception of the owner's signature, was
5 filed on the 11th of September at the request of the Office
6 of Zoning.

7 MS. GLAZER: I believe Exhibit 28 is the second
8 filing.

9 CHAIRPERSON JORDAN: Exhibit 28. I don't have a 28
10 in mine. I'll see if I can pull it up.

11 All right, so it's the same. Can you show me on your
12 self-certification, either one of the two, where you've
13 indicated what relief is necessary?

14 MR. TEASS: May I approach the bench?

15 CHAIRPERSON JORDAN: No, you can't. Why don't you
16 tell us to look where on the form we can find it.

17 MR. TEASS: So I'm looking at the form that was filed
18 on the 11th. Under "relief sought" it's an area variance
19 pursuant to subsection 2115.1.

20 CHAIRPERSON JORDAN: Okay. I see that one on -- you
21 have a use variance. Okay, you have area -- you put the number
22 2115.1 in two places. And I see you have a box checked. Is
23 that what you're trying to indicate?

24 MR. TEASS: Correct.

25 CHAIRPERSON JORDAN: All right. Regarding the

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1 second page, what are you indicating the need?

2 MR. TEASS: So on the second page we're not, we're
3 not indicating the dimensions of the parking place because it
4 is not a -- sorry.

5 CHAIRPERSON JORDAN: So just to make sure. That's,
6 you know, that's just not -- so we're clear, you're looking
7 for relief from 2115.2 and .4?

8 MR. TEASS: No. We're just asking for relief on the
9 width of a standard space, 2115.1.

10 CHAIRPERSON JORDAN: Okay. All right, so we're
11 locking into that. If you need anything else and it happens
12 then that's on you. Okay? So we're looking at this in regards
13 to 2115.2, relief from standard width.

14 Really it's a relatively easy case but we really need
15 to lock down what the relief was in that regard. And I'm
16 understanding in looking at what has been pled by you or the
17 Applicant is that if we did the standard width the property
18 is not wide enough to have the standard length -- width for
19 the required size of the spaces; is that correct?

20 MR. TEASS: That's correct.

21 CHAIRPERSON JORDAN: In fact, you need another 1.3
22 feet of land to meet the requirement?

23 MR. TEASS: That is correct.

24 CHAIRPERSON JORDAN: Okay. Board, do you need
25 anything else for me to drill down? I think the application

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1 would support that. Does anybody have any other discussion
2 about it or any questions you need to hear from him on, the
3 Applicant, before we go to OP? Because I know OP has some.
4 Let's do that.

5 Office of Planning had -- Department of
6 Transportation had a concern that they would not object if you
7 installed -- have you had a conversation with them about
8 installing bicycle spaces and three long-term bicycle spaces
9 and installing a minimum of one short-term bicycle parking
10 rack? Have you had conversations with them about that?

11 MR. TEASS: We haven't had conversations with them.
12 We've seen the letter and are willing, I mean we can certainly
13 provide those.

14 CHAIRPERSON JORDAN: Okay. Board, do you have any
15 other questions? Anything you need to hear from this
16 Applicant?

17 (No response.)

18 Then you have a right to put on a case. So it's
19 probably best that you hold anything for rebuttal. But right
20 now I think the Board can grant you, based upon what's filed.
21 We would certainly now turn to Office of Planning, and if
22 there's a need to respond to something you have an opportunity
23 to do that.

24 MR. TEASS: Thank you.

25 CHAIRPERSON JORDAN: Good morning.

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1 MS. THOMAS: Good morning, Mr. Chair. Can I comment
2 for the Office of Planning?

3 So we really understood it was that he -- when he first
4 approached us in May, 25th of May, we have something from him
5 from the 25th of May, is that he was asking for relief from
6 relief the size of the space under 2115.5. Now, if that's the
7 case that he's asking for 2115.1, we have no objection to that.

8 CHAIRPERSON JORDAN: Okay. So we weren't by our
9 self being confused.

10 MS. THOMAS: Yes.

11 CHAIRPERSON JORDAN: Got it.

12 MS. THOMAS: Yes.

13 CHAIRPERSON JORDAN: All right, got it.

14 Board, any additional questions of the Office of
15 Planning? Does the Applicant have any questions of the Office
16 of Planning?

17 MR. TEASS: Not at this time.

18 CHAIRPERSON JORDAN: All right. Is anyone here from
19 Department of Transportation on this case?

20 (No response.)

21 We do have a letter of no objection from Department
22 of Transportation with the conditions that we've just
23 mentioned that you're agreeing to do the bicycle racks, et
24 cetera, et cetera, the two conditions.

25 Anyone here from ANC-5D? Anyone here from ANC-5D?

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1 (No response.)

2 I don't have in my record a report from ANC-5D. Did
3 we receive one?

4 SECRETARY MOY: I'm checking, Mr. Chairman.

5 CHAIRPERSON JORDAN: Sure. Did you meet with
6 ANC-5D?

7 MR. TEASS: We have met. We've attempted to meet
8 with the full ANC several times. We've met with the single
9 member commission, reviewed the project. There were no
10 objections from the commissioner and the public at that
11 meeting.

12 CHAIRPERSON JORDAN: And what happened with the
13 ANC-5D, the full ANC?

14 MR. TEASS: We attempted. There's a situation I
15 think where there's an internal ANC conflict between the
16 commissioner. And we've made several attempts, and we've gone
17 to the meetings to attempt to present the project to them and
18 they, ANC's refused to review the case.

19 CHAIRPERSON JORDAN: The ANC refused to?

20 MR. TEASS: The chairperson.

21 CHAIRPERSON JORDAN: They affirmatively or they just
22 haven't, didn't get to it?

23 MR. TEASS: No, they --

24 MEMBER HOOD: Mr. Chairman, they're having some
25 issues with ANC-5D.

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1 CHAIRPERSON JORDAN: Okay. All right, got it.

2 MEMBER HOOD: Without telling you what it is.

3 CHAIRPERSON JORDAN: All right. But it's important
4 that the applications are reviewed by the ANC, and we take that
5 very seriously. So I need to know if there's some reason why
6 it didn't happen. So now I'm understanding. And it's been
7 underlined by the Chairman of the Zoning Commission that there
8 is something going on. Got it.

9 MEMBER HOOD: But I'm sure they're going to work --
10 they're watching this -- I'm sure they're going to work through
11 those issues.

12 CHAIRPERSON JORDAN: Okay. So, all right, so we'll
13 move past that.

14 Is anyone here wishing to support the application,
15 speak in support? Speak in support, anyone?

16 (No response.)

17 Anyone speaking in opposition? Yes, please come
18 forward.

19 MR. MARION: Good morning. I have a few supporting
20 documents.

21 CHAIRPERSON JORDAN: Just give me one second before
22 you get going.

23 You're going to have three minutes to tell us what's
24 on your mind. And if you'd give us your name, please?

25 MR. MARION: My name is Blaise Marion. I live at

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1 1116 K Street, N.E., right across from the project. And I have
2 a few supporting documents if I can approach the Board.

3 CHAIRPERSON JORDAN: Would you give those to the
4 Board Secretary, please.

5 Your first name again?

6 MR. MARION: Blaise, B-L-A-I-S-E.

7 CHAIRPERSON JORDAN: Thank you.

8 Okay, proceed please.

9 MR. MARION: Okay. So I live right across the --

10 CHAIRPERSON JORDAN: Excuse me one second. Mr. Moy,
11 we've got to hit the clock.

12 Thank you.

13 MR. MARION: I live right across the street. And we
14 are in Zone 6. And, unfortunately, we are running into a
15 parking situation that I believe could be impacted by this
16 development, as well as other development. You'll see on the
17 first map kind of the patchwork of parking situation we have
18 going on in the neighborhood.

19 We also have a lot of spaces that need to be vacated
20 for traffic. As you will see on the second map, these are all
21 the accesses used mainly by Maryland residents. And the local
22 residents are having issues finding parking.

23 With this project being developed we believe that
24 this could further increase the pressure on the neighboring
25 parking, especially that section right across the street and

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1 in Zone 5 and Zone 6. We would like to have the ANC-6A be
2 consulted with regards to this project as it is right across
3 in Ward 6.

4 We would also like to have the Department of
5 Transportation come to this meeting in order to hear the
6 complaints. I believe somebody, one of my neighbors provided
7 also a letter to the Board with regards to this request.

8 CHAIRPERSON JORDAN: Okay, here's the issue with
9 this. They are going -- they are required to provide five
10 parking spaces, and they're going to provide five but they're
11 not going to be wide as -- they're going to be off in size.
12 That's where it really, really falls.

13 MR. MARION: I understand the requirements for five
14 spots. Unfortunately, I know there's another case that has
15 been removed from today's agenda and will be another day. But
16 in total between the two projects that they're working on we're
17 looking at 15 units, which means potentially up to 30 cars.
18 And we know very well that it won't, the neighborhood will not
19 be able to accommodate that. So we would like to get a review
20 from the Department of Transportation with regards to the 6
21 area, and possibly provide --

22 CHAIRPERSON JORDAN: Have you had contact with
23 Department of Transportation to ask them to do that?

24 MR. MARION: I have over the years made multiple call
25 backs and I have been told that they will not issue in Zone

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1 6 only parking, or any zone only parking. It apparently has
2 been going on for several years.

3 CHAIRPERSON JORDAN: And, you know, we have no
4 control over Department of Transportation.

5 MR. MARION: I understand that. But unfortunately,
6 we are having a lot of pressure from the businesses that are
7 operating on H Street, from the condos that are being developed
8 on 12th Street in zone -- on the first map you will see all
9 the zones in red are condos being developed or in the process
10 of being developed. And we are having a very hard time.

11 I have three kids. The oldest is four. I've had to
12 park three blocks away, and it's just not acceptable at this
13 point.

14 CHAIRPERSON JORDAN: All right, appreciate it.

15 Board, any questions of this witness? Mr. Hood.

16 MEMBER HOOD: Yes, I do, Mr. Chairman.

17 You're asking that we allow ANC-6A to weigh in. I've
18 sat on numerous occasions where the Board was 5D. And there
19 has never been a problem with ANC-6A weighing in. Why didn't
20 they weigh in on this one?

21 MR. MARION: I do not believe they were consulted on
22 that.

23 MEMBER HOOD: They're usually pretty up to speed on
24 their cases, trust me.

25 CHAIRPERSON JORDAN: Did you take it to ANC-6A and

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1 ask them to?

2 MR. MARION: I have not. I would like to take that.

3 CHAIRPERSON JORDAN: Well, we are where we are today.

4 Any other questions from the Board?

5 (No response.)

6 Does the Applicant have any questions they would like
7 to ask this witness?

8 MR. TEASS: Not at this time.

9 CHAIRPERSON JORDAN: All right. Is there anymore --
10 Thank you very much. And I'm sure, I think you said you were
11 going to be back for the other party, whatever other relief
12 they're --

13 MR. MARION: Yes. They're right, right from one,
14 half a block from each other. So we believe the two are
15 related.

16 CHAIRPERSON JORDAN: You probably should have a
17 conversation with ANC-6A to sit in on it.

18 MR. MARION: We will. No problem.

19 CHAIRPERSON JORDAN: Anyone else wishing to speak in
20 opposition? Anyone else in opposition?

21 (No response.)

22 Then we would close the record based upon the
23 testimony and the record before the Board. Is the Board ready
24 to deliberate on this case? Anyone?

25 (No response.)

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1 So then I would move that we grant the relief
2 requested in 19062 to allow the variance from the parking width
3 on the spaces.

4 MEMBER HILL: I'll second the motion.

5 CHAIRPERSON JORDAN: Motion made and seconded.

6 Discussion?

7 (No response.)

8 All those in favor, aye.

9 (Chorus of ayes.)

10 Those opposed, nay.

11 (No response.)

12 The motion carries. Mr. Hill -- I mean Mr. Moy.
13 Hill, Moy, Hill.

14 MEMBER HOOD: You want me to call the vote?

15 CHAIRPERSON JORDAN: Yes, could you do it? Fine.

16 MEMBER HOOD: The vote was -- the motion made by
17 Chairman Jordan, seconded by Anthony Hood. The vote is 4, 0
18 to 1; right?

19 CHAIRPERSON JORDAN: All right, you've got that.

20 SECRETARY MOY: That's correct. I'm fine with that.

21 CHAIRPERSON JORDAN: Are you? You can accept that?

22 SECRETARY MOY: Well, we'll right it into the order.

23 The vote is 4 to 0 on the motion of Chairman Jordan. Second
24 to the motion, Mr. Hood. In support Mr. Hood, Mr. Hinkle.
25 Board member not present. 4 to 0.

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1 CHAIRPERSON JORDAN: All right, thank you. And I
2 think -- yes, summary.

3 SECRETARY MOY: Thank you.

4 CHAIRPERSON JORDAN: Let me see what we have here
5 that doesn't take all day. And I don't think this is a docket
6 that we can get past doing anything expediently. So I guess
7 we're going to do -- we'll take a 5-minute break and come back
8 with 19023. All right, five minutes, 19023.

9 (Whereupon, at 10:34 a.m., the hearing went off the
10 record for a break and reconvened at 10:43 a.m.)

11 CHAIRPERSON JORDAN: All righty now. Are we back?
12 Mr. Moy, would you call 190, was it 23?

13 SECRETARY MOY: Yes, I will in a split second, sir.
14 Just I believe the parties at the table. So if you want Number
15 19023, that's ANC-2A. And this is property at 924 25th Street,
16 N.W.

17 CHAIRPERSON JORDAN: Give me one second.

18 NO. 19023, ANC-2A, APPEAL OF ANC-2A

19 CHAIRPERSON JORDAN: Good morning. Would you
20 please identify yourself.

21 MS. MOLDENHAUER: Good morning. My name is Meredith
22 Moldenhauer with the law firm of Griffin, Murphy, Moldenhauer
23 & Wiggins on behalf of ANC-2A.

24 MR. KENNEDY: Patrick Kennedy, Chairman of ANC-2A.

25 MR. TONDRO: Maximilian Tondro, counsel on behalf of

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1 the Zoning Administrator, representing DCRA.

2 CHAIRPERSON JORDAN: Okay.

3 MR. LeGRANT: Good morning. Matt LeGrant. I'm the
4 Zoning Administrator DCRA.

5 MR. EVANS: Good morning. Philip Evans on behalf of
6 Alamac, LLC, the owner of the questioned property.

7 MR. CAFRITZ: Good morning. If I can figure out how
8 to work the microphone. Conrad Cafritz, managing member of
9 the ownership of the River Inn.

10 CHAIRPERSON JORDAN: All right. All right, what do
11 we have here? I don't know what's going on.

12 So there's some motion to dismiss, there's some other
13 kind of stuff happening. And there's a motion to dismiss filed
14 by the property owner challenging the timeliness of appeal;
15 is that correct?

16 MR. EVANS: That's correct.

17 CHAIRPERSON JORDAN: And does DCRA join in that?

18 MR. TONDRO: No, we do not.

19 CHAIRPERSON JORDAN: Okay. And then is there a
20 question about jurisdiction? Let's let -- I'm going to ask
21 the Appellant counsel first to tell us how do we have
22 jurisdiction. Isn't this a public space issue?

23 MS. MOLDENHAUER: I'd like to take about 15 minutes.
24 I'm going to go through jurisdiction and why this Board has
25 jurisdiction. I'll walk through three part -- a three-part

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1 analysis of why this Board has jurisdiction:

2 One, why overlapping jurisdiction exists here;

3 Two, why the discussion of public space regulations
4 do provide for zoning review in regard to uses, and;

5 Three, why the Zoning Administrator is the proper person
6 to conduct this interpretation of the zoning regulations.

7 First, the District and the owner assert in their
8 prehearing statement that because DDOT and the Public Space
9 Committee are provided the authority to just issue a public
10 space rental, then the Zoning Administrator must have zero
11 authority --

12 CHAIRPERSON JORDAN: Let me stop you one second. Is
13 there still a contention from DCRA and the owner that there
14 is a jurisdictional question?

15 MR. TONDRO: Yes.

16 CHAIRPERSON JORDAN: Okay. Go ahead.

17 MS. MOLDENHAUER: The interpretation that the
18 District and the owner are trying to present we believe is just
19 too conflicted. It's not how most of us understand how our
20 government works.

21 The Supreme Court has also tackled and resolved this
22 issue. For example, the Supreme Court in Gomez v. Oregon
23 interpreted the Chevron doctrine and determined that the
24 agency interpretation connected with overlapping jurisdiction
25 found that here, where DDOT has the authority to make a final

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1 determination, when a sidewalk permit is issued, does not
2 automatically preclude the Zoning Administrator, the BZA or
3 the Zoning Commission from having overlapping jurisdiction on
4 public space.

5 Congress commonly delegates authority to act to one
6 agency but issues authority then to multiple other agencies
7 who are experts of their subset in that area. Thus,
8 overlapping jurisdiction.

9 In reviewing cases we look to common examples of
10 overlapping jurisdiction: the Controlled Substance Act,
11 FOIA, American Disabilities Act. Here though in the zoning
12 world and in the world of real estate development we see clear
13 evidence of overlapping jurisdictions all the time. Working
14 with DCRA, HPRB, Commission of Fine Arts, NCPC and DDOT, each
15 agency being an expert in their own regulations and rules, are
16 sometimes required to provide reports and interpretations of
17 their regulations to other agencies.

18 Overlapping jurisdiction between agencies helps us
19 collectively achieve a common goal of a cohesive development
20 and a unified concept of land use and planning. In Clinton
21 v. Johnson in 520 U.S. 681, the Supreme Court stated that,
22 "systems impose a degree of overlapping responsibility, a duty
23 of interdependence as well as independence, the absence of
24 which would preclude the establishment of a nation capable of
25 governing itself efficiently."

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1 Here we dispute the issue of jurisdiction and fine
2 that just because public space permits something does not mean
3 that the Zoning Administrator does not have jurisdiction over
4 the use. Zoning is about uses. It's about how we see the city
5 from our cars, from our sidewalks, from our homes, and how those
6 uses interact with the city.

7 CHAIRPERSON JORDAN: So, so your contention is that
8 the use issue is that allowing the public café, I mean outside
9 café is part of the overall use of the hotel and that it rolls
10 into -- let me catch up with myself. One second here. That
11 it is a violation of 350.4. And you're saying that the outside
12 use of the property actually is still part of the inside use
13 or what we would normally look under 350 as part of the use
14 of the hotel.

15 MS. MOLDENHAUER: Since we can combine --

16 CHAIRPERSON JORDAN: Just answer my question.

17 MS. MOLDENHAUER: It has to do, yes, with the use of
18 the hotel but also the public space regulations reference that
19 --

20 CHAIRPERSON JORDAN: I'm moving aside public space.
21 I'm trying to get to a specific what I'm thinking and asking
22 what the zoning question is that you're saying under 350.4 is
23 it?

24 MS. MOLDENHAUER: Yes.

25 CHAIRPERSON JORDAN: -- that allowing the public, by

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1 using, allowing this outside café violates 350.4. And 350.4
2 is a zoning regulation. And so you're calling upon this Board
3 to determine whether or not that is correct?

4 MS. MOLDENHAUER: Absolutely. In 1971, actually
5 ANC-2A asked the Zoning Commission to look into this issue of
6 having hotels in residential neighborhoods. And based on that
7 concern, the Zoning Commission then promulgated and had
8 multiple hearings and instituted the text amendment of 350.
9 350 then specifically addressed how these commercial uses --
10 because they considered and they discussed it in their final
11 order that a hotel was actually a hybrid between residential
12 and commercial uses.

13 CHAIRPERSON JORDAN: I got you. Let me control the
14 hearing. I got you. That's what I want to drill down to be
15 certain that we're all on the same page as to what your question
16 is. I understand your position now. I understand all of the
17 other -- I don't, you know, I don't need to take the walk down
18 the court case history, I just need that what you're arguing
19 is the zoning issue.

20 So now let me turn to DCRA regarding that. The
21 question is that, the challenge here is that by allowing the
22 outside café that in effect it triggers 350.4. And your
23 response to that is what? That's just kind of --

24 MR. TONDRO: That 350.4 refers to the area within the
25 hotel?

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1 CHAIRPERSON JORDAN: Well, the Appellant's argument
2 that the sidewalk café triggers 350.4, and it if triggers 350.4
3 then it's not valid. Correct?

4 MS. MOLDENHAUER: Yes.

5 CHAIRPERSON JORDAN: And you're -- so that's how we
6 would have jurisdiction because their argument is that 350.4
7 is in play. Now, whether or not this Board decides that, yes
8 or no, that that's correct, the jurisdictional question is that
9 Regulation 350.4 is what we're being asked to address, which
10 would give this Board jurisdiction to answer that question
11 solely. I hope that wasn't a curve ball. Right? Is that
12 right?

13 MR. TONDRO: I would argue that 350.4 is limited to
14 covering the area within the hotel per the regulation itself.

15 CHAIRPERSON JORDAN: So you admit the Board does have
16 jurisdiction to render a decision regarding 350.4. Whether
17 or not it's going to be applicable to this situation or not
18 is the question?

19 MR. TONDRO: Absolutely.

20 CHAIRPERSON JORDAN: I got that.

21 MR. TONDRO: Okay.

22 MR. EVANS: I think it's a fair statement. I join
23 with DCRA. I think on the overlapping jurisdiction what --

24 CHAIRPERSON JORDAN: I'm thinking overlapping
25 jurisdiction, do we, are we not being called to see whether

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1 or not this particular use is within the purview of 350.4?

2 MR. EVANS: It's limited to that very question as to
3 whether or not --

4 CHAIRPERSON JORDAN: So the answer to my question is
5 yes?

6 MR. EVANS: For this panel, yes.

7 CHAIRPERSON JORDAN: Okay. Limited means yes.
8 That means they have some application thereof. It's included
9 but not like that, I mean it's not over the wall?

10 I'm trying some folks to be really straight to the
11 point so we can -- I mean because it's hard enough trying to
12 understand a lot of this stuff from everybody's perspective.
13 So --

14 MS. MOLDENHAUER: Mr. Jordan, it's 350.4 and 351.2.
15 I don't want to leave that out.

16 CHAIRPERSON JORDAN: 351.2. 351.2, I didn't see.
17 Let me take a gander at that. 351.2.

18 MEMBER HOOD: Ms. Moldenhauer, you say 351.2 --

19 MS. MOLDENHAUER: 351.2.

20 MEMBER HOOD: -- is it (a) or the whole, are we
21 looking at the whole?

22 MS. MOLDENHAUER: We're looking at pretty -- I mean
23 (a) through 8.

24 MEMBER HOOD: (a) through 8, okay.

25 CHAIRPERSON JORDAN: Yeah, and I should have -- Okay.

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1 MS. MOLDENHAUER: I just wanted to clarify that.

2 CHAIRPERSON JORDAN: But I didn't see that argument
3 in any of the pleadings. So is that --

4 MS. MOLDENHAUER: Yes, it is.

5 CHAIRPERSON JORDAN: Is it?

6 MS. MOLDENHAUER: It's in the prehearing statement.

7 CHAIRPERSON JORDAN: Okay. So that's just, that's
8 just how you measure and look at the commercial adjunct space
9 and functional end space, et cetera. Okay.

10 All right, so got that. I think then, I think on
11 those limited bases that this Board, I would offer that this
12 Board does have jurisdiction certainly to render a decision
13 whether or not 350.4 and 351.2 are applicable. And so on those
14 bases I, anyone who's challenging jurisdiction on that ground
15 I would offer that we deny that. And that would be the order
16 of the Board unless there's -- all right, so that will be the
17 order of the Board.

18 Now, on the timeliness issue, you want to?

19 MR. EVANS: That's my motion, Your Honor. I think
20 we've established in the record while the ANC takes the
21 position that they did not learn of the Zoning Administrator's
22 decision until February 13th, which would have made their
23 appeal timely 58 days later, I think the evidence supplied by
24 the owner shows that the ANC Commissions, at least two of them,
25 were well aware that there had been a change on the zoning

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1 question involving a sidewalk café at the applicable property
2 as early as January the 12th. January the 12th would put an
3 April 9th appeal well outside the 60-day deadline.

4 We think also the Zoning Administrator's letter had
5 been published on the website back in November the 28th, so
6 we believe that the record establishes the question that the
7 ANC, at least two members of the ANC were aware that the zoning
8 issue had been resolved, there may have been changes to prior
9 issues, back in January of 2015.

10 CHAIRPERSON JORDAN: Now what was published on the
11 website on January 2015?

12 MR. EVANS: November 25th this letter determination
13 that's at issue here, right here, was published four days later
14 on the DCRA website.

15 CHAIRPERSON JORDAN: It would have been the November
16 28th decision, not 24th? Is it 28th or 24th?

17 MR. EVANS: We believe that Mr. LeGrant's letter is
18 dated the 24th and on the 28th it made its way to the DCRA
19 website.

20 CHAIRPERSON JORDAN: So what happened on January 12,
21 2015?

22 MR. EVANS: It's attached to Exhibit F to our
23 prehearing submission. Mr. Cafritz reached out to at least
24 two members of this ANC, Dr. Smith and Mr. Johnson I believe
25 it was.

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1 MR. CAFRITZ: Mr. Williams.

2 MR. EVANS: Mr. Williams. Sorry, Mr. Williams.
3 And informed him that given the issues that had come up in the
4 prior year about the possibility of the sidewalk café, the
5 owner had gone back and gotten clarification from the Zoning
6 Administrator. And the zoning issues had been resolved that
7 was allowing the owner to proceed with their public space
8 permit.

9 The public space permit and the ABRA endorsement were
10 both filed in early to mid-January. ANC had notice that both
11 of those --

12 CHAIRPERSON JORDAN: The public space request was
13 January, was it --

14 MR. EVANS: 21 I believe, or 19th. January 21 for
15 public space, January 9 for the ABRA application. And notice
16 of both of those was provided by the agency to the ANC. So
17 there are a number of circumstances really collectively
18 between the direct communication to the two ANC members, the
19 other applications that were filed in January, that put the
20 ANC on notice that the zoning question had been determined that
21 would allow us a sidewalk café to proceed, and it chose not
22 to act upon it.

23 They did -- they did not participate in the public
24 space proceeding but they did participate in the ABRA
25 proceeding and objected to that. But they've been waiting

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1 till April 9th to appeal the Zoning Administrator's
2 determination.

3 CHAIRPERSON JORDAN: What was the substance of the
4 ANC's objection in the ABRA proceeding?

5 MR. EVANS: ANC's objection was to the limits and
6 scope of times of service and issues related to the ABRA
7 license. It was resolved.

8 CHAIRPERSON JORDAN: As referenced to an outside
9 café?

10 MR. EVANS: Yes.

11 CHAIRPERSON JORDAN: Anything else?

12 MR. EVANS: On the issue of timeliness, no.

13 CHAIRPERSON JORDAN: Okay. DCRA on the timeliness
14 issue?

15 MR. TONDRO: No.

16 CHAIRPERSON JORDAN: Ms. Moldenhauer?

17 MS. MOLDENHAUER: Yes. We have a fact witness that
18 will be able to present testimony as to the factual issues which
19 drive the analysis for this Board based on Baskins and Bonham
20 in regards to whether or not timeliness is appropriate. Just
21 I'll turn in a moment to --

22 CHAIRPERSON JORDAN: Just give me an overview or
23 summary what the testimony is going to be and then we'll do
24 that.

25 MS. MOLDENHAUER: Sure. One, the fact that there is

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1 no clear evidence that the information letters actually posted
2 on the website. We'll have oral testimony from Mr. Kennedy
3 that it --

4 CHAIRPERSON JORDAN: That it actually posted?

5 MS. MOLDENHAUER: That it's actually posted or
6 available. That the community did multiple reviews and that
7 it was there and then it wasn't there. There was no way to
8 affirmatively rely upon that. They had no reason to look on
9 the Zoning Administrator's website prior to February 13th
10 because they were relying upon the 2002 Noble zoning
11 determination letter which had decided this exact same issue,
12 which they had informed the owner of back in May of 2014 when
13 then the owner withdrew the application from public space.

14 The first time, there are documentations in the
15 owner's reference in regards to email exchanges. But just
16 because the owner asserted that they may have resolved the
17 issue, they never stated we have a new zoning determination
18 letter. It was never informed that there was a new zoning
19 determination letter, not until the 13th, Mr. Kennedy will
20 testify to, was he actually aware that there was possibly a
21 new zoning determination letter. And that is the date upon
22 which they knew or should have known of this new zoning
23 determination letter.

24 CHAIRPERSON JORDAN: All right, what about this AN
25 -- excuse me -- the ABRA application and the -- January 19th

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1 ABRA application and the ANC's position opposing that? Did
2 they have knowledge at that time?

3 MS. MOLDENHAUER: They did not have knowledge at the
4 time until February 13th. And we have, ANC has entered into
5 a voluntary agreement. But they had requested the council
6 that that would not be used to challenge timeliness in this
7 proceeding because they were moving forward to protect the
8 citizens.

9 CHAIRPERSON JORDAN: Maybe I'm missing something.

10 MS. MOLDENHAUER: It was subsequent to the fact,
11 subsequent they moved forward to appeal the ABRA. Subsequent
12 to February 13th.

13 CHAIRPERSON JORDAN: So when they participated in
14 the ABRA --

15 MS. MOLDENHAUER: It was subsequent -- Mr. Kennedy
16 can testify.

17 CHAIRPERSON JORDAN: When was the hearing? When was
18 the hearing? When was the ABRA hearing?

19 MR. KENNEDY: Mr. Chairman, the posting date for the
20 petition with ABRA was February 13th. That was our first
21 knowledge of the actual application. The deadline for
22 protests in that case was March 30th. The Board elected to
23 receive the ANC's protest pursuant to the timetable's outline.
24 We had a number of --

25 CHAIRPERSON JORDAN: Slow up a minute. I'm trying

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1 to write this down and you're just kind of like running. So
2 let's go back. February 13th, the posting of the application;
3 correct?

4 MR. KENNEDY: Correct. That is the date at which the
5 Applicant posted on the exterior of his premises the standard
6 ABRA notice. And we were contacted by residents at that time.

7 CHAIRPERSON JORDAN: And when did, when did the ANC
8 enter into the ABRA proceeding?

9 MR. KENNEDY: The ANC entered into the ABRA
10 proceeding I believe on or about March 31st or April
11 1st, whenever that process was drawing to a close,
12 because we had formally voted to protest the
13 application at our March meeting within the, within
14 the standard ABRA timetable.

15 CHAIRPERSON JORDAN: Okay. And this appeal
16 was filed when?

17 MS. MOLDENHAUER: April 9th.

18 MR. KENNEDY: April 9th.

19 CHAIRPERSON JORDAN: April 9th.

20 MS. MOLDENHAUER: We have copies of Mr. Kennedy's
21 transcript that we can provide for --

22 CHAIRPERSON JORDAN: All right. We'll have to do it
23 the hard way. I can't read use the computer for these things.

24 So April 9th the appeal was filed. Okay, so April
25 9th. Got it.

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1 Go ahead, please. So do you want to -- is this the
2 testimony or additional?

3 MS. MOLDENHAUER: We have a written chronology that
4 Mr. Kennedy is prepared to walk through in regards to the time
5 frame.

6 CHAIRPERSON JORDAN: Okay.

7 MR. KENNEDY: If it pleases the Chair. My name is
8 Patrick Kennedy. I am the Chairman of ANC-2A. I have been
9 the Chairman since January of 2014.

10 And I have presided over multiple ANC hearings
11 regarding The River Inn, the first of which was in the summer
12 of 2014 when The River Inn had sought a substantial change to
13 its liquor license, which included a sidewalk café.

14 The single member District Commissioner for the area
15 at that time, Asher Corson, had in his files a zoning
16 determination letter dated from 2002 where the Zoning
17 Administrator had issued a notice to the owner of The River
18 Inn that an expansion of the commercial adjunct was
19 impermissible from a zoning standpoint. The River Inn had
20 previously made an application to ABRA that was substantially
21 the same as this one. And Commissioner Corson uncovered this
22 2002 letter from the Zoning Administrator that foreclosed on
23 the possibility of a café at that time.

24 We provided a copy of that termination to Mr. Cafritz
25 and discussed it with him at length. Mr. Cafritz and The River

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1 Inn thus withdrew their application for a change to the liquor
2 license at that time on the basis of the letter.

3 In January 2015, Mr. Cafritz apparently approached
4 two of my colleagues, Commissioner Will Smith, who was sworn
5 in that same month and who represents another district aside
6 from the one in which The River Inn is located. It's my
7 understanding that there was no substantive conversation or
8 correspondence between Mr. Smith and Mr. Cafritz regarding The
9 River Inn and these issues.

10 In his correspondence with Mr. Smith, who had no
11 knowledge really of the 2014 request to amend the liquor
12 license, much less the nuances of that particular case, nor
13 the 2002 determination letter, Mr. Cafritz notes that there
14 were issues with the Zoning Administrator but those have been
15 resolved. Mr. Cafritz in this case is putting forward the
16 claim that those conversations constituted notice to the ANC
17 in January 2014, and therefore our appeal should have been
18 filed in March.

19 But in fact, we had no knowledge of the existence of
20 the zoning determination letter allowing a sidewalk café, the
21 decision which is under appeal in this case, until February.
22 And I think at this period in time the first, you know, rumors
23 that heard of this from my colleagues were that they were
24 interesting in proceeding. But at that time we had no
25 knowledge that there had been an actual letter issued. And

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1 we had no knowledge at that time that they were not going for
2 something like a variance to overcome this rather than
3 necessarily a new determination letter which we thought was
4 precluded under the rules of appeal filing.

5 I will say the first verbal confirmation of this came
6 to me late on the evening of February 12, 2015, when I
7 encountered Mr. Cafritz at a political function and we
8 discussed this case. And it was at that time, based on my
9 knowledge of the previous circumstances, that he informed me
10 that a new zoning determination letter had been issued. And
11 on February 13th, indeed, there was the ABRA posting that
12 substantiated that.

13 And subsequently, this had been a week prior, less
14 than a week prior to our regularly scheduled meeting the
15 following Wednesday, we had actually added this issue on to
16 our agenda for the following week based on this conversation
17 and the ABRA posting on Friday because there was an outpouring
18 of residential interest in this, this being a long-running
19 issue in the community.

20 And I would say that the substance of that is that
21 it was a surprise to community members because based on our
22 conversations the previous summer we thought that it was an
23 impermissible use of public space and had been ruled as such.

24 I will say the commissioners took several days
25 leading up to the meeting trying to figure out what the

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1 situation was. I contacted Durrell Mack in the Zoning
2 Administrator's office of DCRA on Wednesday morning, that is
3 Wednesday the -- I suppose that would be the 18th, and attempted
4 to retrieve a copy of the letter. He did send me that letter
5 that morning.

6 In all of Commissioner Smith's communications with
7 Mr. Cafritz regarding the Inn, Mr. Cafritz apparently had never
8 mentioned a new determination letter much less sent it, so Mr.
9 Mack forwarded on this copy on February 18th.

10 Upon receiving the new determination letter we did
11 check the online repository, as Ms. Moldenhauer pointed out,
12 and were not able to reliably locate the letter on that list
13 at various points. I did go back and forth during the work
14 day with my fellow commissioners and we attempted to straighten
15 out the situation and, in fact, took screen shots of the
16 situation just to underline our confusion.

17 And so February 18th, again, you know we have copies
18 of the correspondence as well, we did invite Mr. Cafritz to
19 our meeting on the 18th. Mr. Cafritz appeared and explained
20 his desire to have a sidewalk café. We reviewed the 2002
21 determination, discussed the timing of the posting of the ABRA
22 notice. And at the discussion we noted our desire to retain
23 counsel and appeal the 2015 determination, during which Mr.
24 Cafritz was present. So this whole proceeding took place with
25 Mr. Cafritz present.

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1 And we voted to authorize the Chair to expend a
2 certain amount of money to retain counsel, which we did on March
3 8, 2015, when we formally reached out to counsel upon
4 consulting as to who would be the right person to represent
5 us. We began to research the legality of the determination
6 letter and the change in determination letters, in fact, as
7 well as the lack of notice from Mr. Cafritz and how that all
8 played into the situation.

9 On April 9th our counsel did indeed file an appeal
10 to the Board of Zoning Adjustment. As we were preparing the
11 appeal we were simultaneously talking with Mr. Cafritz about
12 the liquor license zoning and all other matters tied up in this.
13 We did need the full 30 days to organize, retain counsel, and
14 then prepare and file the appeal based on the number of
15 regulatory issues that were on the table at the same time.

16 But certainly all throughout this process Mr. Cafritz
17 was aware of the ANC's intent to appeal and the arguments that
18 we were presenting in opposition to the new determination
19 letter. And then post facto on May 7th we personally met with
20 Mr. Cafritz and Mr. Cafritz's attorney Ms. Shiker in the
21 offices of Holland & Knight and discussed further the
22 legalities at play here as well as our pending appeal.

23 The argument that we would put forward is that there
24 is simply no way that the appeal was untimely. We did the best
25 job that we could, given the competing regulatory processes

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1 and the roles that we needed to play in each. ABRA is
2 necessarily going to be more leaning in the direction of
3 compromise. So engagement with that process throughout the
4 course of several months was going to be on the very narrow
5 issues of the ABRA application. Same with public space. Same
6 with zoning.

7 But we always felt above all else that our interests
8 in this matter were most directly tied up in zoning and we
9 wanted to take our due diligence and prepare the fullest case
10 possible to bring to you based on the 2002 determination letter
11 which we think should still be controlling in this case.

12 CHAIRPERSON JORDAN: So, February 13, 2015, you were
13 aware that, of the public space and that determination letter
14 and all that. February 13, 2015, right?

15 MR. KENNEDY: February 13th, yes.

16 CHAIRPERSON JORDAN: And you filed the appeal April
17 9th, 2014?

18 MR. KENNEDY: Correct.

19 CHAIRPERSON JORDAN: How many days is that?

20 MS. MOLDENHAUER: Fifty-five, 54.

21 CHAIRPERSON JORDAN: Fifty-four?

22 MR. KENNEDY: Fifty-five, 54.

23 CHAIRPERSON JORDAN: Is it? Okay.

24 MS. MOLDENHAUER: It's under 60 days.

25 CHAIRPERSON JORDAN: Okay.

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1 MS. MOLDENHAUER: I know that for a fact. I don't
2 know the exact. I can calculate the number. It's under 60
3 days.

4 CHAIRPERSON JORDAN: All right. Any
5 cross-examination of this witness from either DCRA and/or the
6 owner?

7 MR. EVANS: No cross-examination. Mr. Cafritz
8 would like to speak, to testify on that.

9 CHAIRPERSON JORDAN: All right. We're not at that
10 point yet.

11 MR. EVANS: Okay.

12 CHAIRPERSON JORDAN: We're on the cross-examination
13 point.

14 Any other? While it's not your motion to really
15 prosecute because they're moving the timeliness, so but you've
16 got somebody else you want to support on this issue?

17 MS. MOLDENHAUER: There's no other factual witnesses
18 in the interests of time. And I'll reserve any closings or
19 arguments after they present theirs.

20 CHAIRPERSON JORDAN: Appreciate it.

21 MR. EVANS: Before Mr. Cafritz testifies, Mr.
22 Chairman, he was unfortunately out of this room when the oath
23 was given. If you could ask that the oath be administered to
24 him before?

25 CHAIRPERSON JORDAN: Certainly. Thank you.

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1 Mr. Moy.

2 (Witness sworn.)

3 MR. CAFRITZ: I do.

4 SECRETARY MOY: You may be seated. Thank you.

5 MR. CAFRITZ: Let me just say a couple things if I
6 can. We did reach out, as this indicates in the emails, not
7 just to Mr. Kennedy but also to John Williams, who happened
8 to be away, about our intent to pursue a sidewalk café. We
9 showed him drawings. We showed him that it had 28 seats, 7
10 tables. And eventually they met with me I think maybe on the
11 13th, I'm not quite sure of the date they met with me. But
12 John Williams had been in California but he received my emails.
13 And Mr. Smith received my emails.

14 And it was very clear, I think, that we thought we
15 had the absolute right to go ahead. We were familiar with the
16 prior jurisdiction -- I mean the prior ruling in 2004 or 2002.
17 And, obviously, we wouldn't have gone ahead without -- in the
18 face of that ruling.

19 And I met with Patrick, who was the Chair, by really
20 by, by coincidence. I can't remember when I reached out to
21 Patrick. I assume I reached out to Patrick before; I don't
22 remember whether I did. But I met with him and discussed this
23 issue in detail at a Jack Evans fundraiser.

24 You know, I went to then a hearing at the ANC. And
25 after the hearing Florence -- at the hearing Florence Harmon

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1 was taking the lead at the ANC saying that she wanted to appeal
2 this. She was clearly the strongest member. And after that
3 meeting -- I'm sorry she's not here -- I said to her -- she
4 had claimed she didn't know of the ruling. And when I went
5 up to her I said, Why didn't you know the ruling? Why didn't
6 you read the registry or have someone, if not you, someone else
7 read the registry?

8 And she said to me, I'm not -- I don't have time to
9 do that. I'm not paid to do that.

10 But the ruling had clearly apparently been issued.
11 The ANC had notice, informal notice if nothing else. The ANC
12 chose not to appear at the public space hearing which had the
13 relevant jurisdiction here. There was no one from the ANC who
14 appeared at that hearing. And after we had the ABRA hearing
15 we came to an agreement, partly because we had shown at the
16 public space hearing that all our response from the community
17 was broadly in support. We showed a green map of all the, all
18 the houses, whether these were the renters or the owners, and
19 there were two red marks for people who were against at that
20 time in our inquiry. And there were at least 20 or 25 houses
21 marked green, which meant they were for. And there were a
22 number marked, maybe 7 or 8, yellow which meant we didn't get
23 a response.

24 By the way, parenthetically, since we've opened the
25 café we basically had no negative judgments on it. So I think

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1 the community supported us. The ANC had a technical reason
2 for opposing it. And we did come to an agreement at the ABRA
3 hearing which limited the hours both at the beginning and at
4 the end, and when I chose to be out there when they had to be
5 taken back, other issues.

6 MS. MOLDENHAUER: Are we on timeliness.

7 MR. CAFRITZ: I'll finish just as fast as I can. But
8 anyway, so --

9 CHAIRPERSON JORDAN: So what are we testifying to?
10 Are we still on the issue of timeliness?

11 MR. EVANS: The timeliness question, yes.

12 CHAIRPERSON JORDAN: Because it does raise another
13 issue.

14 MR. CAFRITZ: All right, fine.

15 MR. EVANS: We've presented our record on
16 timeliness, Mr. Chair.

17 CHAIRPERSON JORDAN: Okay. Well, let's then, I
18 would suggest that the Board take it, submit it and then we
19 continue on with the hearing and the arguments on the main
20 question, if that's acceptable to the Board.

21 So let's move into your --

22 MS. MOLDENHAUER: Could I provide a brief objection
23 to timeliness and provide our legal argument now that I've
24 heard their factual submission?

25 CHAIRPERSON JORDAN: Can you do what?

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1 MS. MOLDENHAUER: Provide our legal argument as to
2 why timeliness is appropriate and why we timely filed, now that
3 I've heard their factual submission?

4 CHAIRPERSON JORDAN: I think we already understand
5 what the issue is. It's going to be a factual determination
6 based upon the time lines as discussed. I think the legal
7 argument is the statute itself and it's a factual finding that
8 the Board has to make whether or not someone knew or reasonably
9 should have known. So outside of that, I don't know what
10 you're --

11 MS. MOLDENHAUER: I would present that Mr. Cafritz
12 identified that they always knew about the intent and that the
13 intent did not mean that the ANC had knowledge or should have
14 known of the ANC's determination, the new determination
15 letter.

16 CHAIRPERSON JORDAN: That still goes to why the same
17 --

18 MS. MOLDENHAUER: Yes.

19 CHAIRPERSON JORDAN: -- goes to what the law is. And
20 for this Board to determine factually if, based upon the
21 testimony that was given, whether or not the ANC knew or should
22 have known and if that, based upon the conditions that's been
23 set forth by the two witnesses.

24 You certainly -- but I was remiss in not allowing you
25 do cross-examination if you would like?

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1 MS. MOLDENHAUER: Not at this time. I preserved the
2 cross-examination during the merits because what he was
3 specifying to confirmed the time frame that Mr. Kennedy
4 identified. And the rest was mostly about the merits.

5 CHAIRPERSON JORDAN: Okay. DCRA, any
6 cross-examination of this witness?

7 MR. TONDRO: No.

8 CHAIRPERSON JORDAN: Okay. So then let's move to
9 the merits of the argument, please.

10 SECRETARY MOY: Excuse me, Mr. Chairman, do you care
11 to set any time frame on the testimonies?

12 CHAIRPERSON JORDAN: Oh, you're absolutely right.
13 Let's set all kind of time frames. Because it seems like we're
14 going to get a little verbose here. We're trying to, folks,
15 we're really trying to get on the center of these issues so
16 we can move on. There's other people here who have cases. And
17 you certainly have a right to be exhaustive of it but, you know,
18 there's a lot, sometimes a lot of rhetoric versus getting to
19 the meat and potatoes. So I'm just going to add that to this.

20 So from the Appellant's standpoint how much time are
21 you going to need?

22 MS. MOLDENHAUER: I've asked for 20 minutes.

23 CHAIRPERSON JORDAN: Do you think you need --

24 MS. MOLDENHAUER: Fifteen?

25 CHAIRPERSON JORDAN: Yeah, I think it's more like 15

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1 minutes which is going to be running the course. Because I
2 mean this just basically boils down, to me, a determination
3 of we know the facts here, so I don't know how much more we've
4 got to go through. We know the facts. It's either there's
5 an outside café either fits within 350.4, and then do we
6 consider the outside café part of commercial adjunct space or
7 functional space, and does that fit within 351.2. Is that --
8 Isn't that about it? Unless I'm just missing the boat because
9 it seems like it's that simple to me.

10 However, I mean, honestly, right? Did I just, did
11 I frame it right. Don't we have enough facts to go forward
12 with that?

13 MR. TONDRO: Yes, if I can, sir. I think the only
14 thing I would say is I do think there is this issue of the public
15 space. It is -- I agree that the Board has jurisdiction to
16 determine the -- whether this is an extension under 350.4 and
17 351.2, but I do believe that as part of that analysis there
18 is having -- I think one has to look to the issue of the
19 jurisdiction as far as the space coming in.

20 CHAIRPERSON JORDAN: Now you take me back 20, 30
21 minutes ago. I hear what you're saying and I appreciate it.
22 I really do appreciate it. But I think that we have, this Board
23 has to deal with that sole issue. And whether or not what
24 happened to the public space is a whole other ball game. But
25 and then do we include -- we, I think we have to look at the

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1 case, as I stated, from the zoning regulations, whether that's
2 applicable or not.

3 It's the same thing. It gets you to the same point;
4 right?

5 MR. TONDRO: Yes. And I agree. I would only just
6 ask that the Board keep in mind the issues of the Public Space
7 Committee and not as being a separate jurisdictional issue,
8 but.

9 CHAIRPERSON JORDAN: Okay.

10 MS. MOLDENHAUER: I thought we resolved the
11 jurisdictional issues and we were going on to the merits.

12 CHAIRPERSON JORDAN: Yeah, I got it. I just want to
13 make sure Mr. Tondro understands it. Okay. And I think we're
14 all in agreement where we are.

15 All right, so you really think you --

16 MS. MOLDENHAUER: May I proceed?

17 CHAIRPERSON JORDAN: Yes. If you really think you
18 need 15 minutes to tell us that the café is either there or
19 is not there, then go ahead.

20 MS. MOLDENHAUER: I will proceed.

21 We disagree that the zoning determination letter
22 correctly applies 350.4(e) and 351.2. In this discussion I
23 will first talk about why did the Zoning Commission implement
24 this text amendment and when.

25 The Zoning Commission implemented the text amendment

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1 in 1971 prompted by a letter from ANC-2A, the Appellant in this
2 case, requesting them to review the commercial uses of hotels
3 in residential districts. New hotels are not permitted in
4 residential districts. And The River Inn is only permitted
5 because it is grandfathered.

6 The Commission attempted during those hearings to
7 address the question of How can external impacts of hotels in
8 residential areas be reduced? That was the question that they
9 addressed. And in their order they approved the text
10 amendment stating the following reason: "A hotel is not
11 purely a residential use but rather a hybrid, a hybrid use where
12 the commercial aspect of the exhibit space and the commercial
13 adjuncts are actually more similar to the commercial use."
14 And in that purpose then they wanted to reduce and restrict
15 the commercial use.

16 In applying these two sections they then affirmed
17 that if any resident were to be impacted by a hotel, how would
18 they then feel on impacting it not just in their homes but also
19 impacting them while they walked along the sidewalk of the
20 residential community?

21 The Zoning Commission absolutely prohibited the
22 increased of commercial adjuncts and providing additional
23 conditions that would limit such visibility of commercial
24 uses.

25 We then go to look at the plain meaning of the rule.

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1 So we know that the intention was to limit the impact on the
2 residential community. We go to then the plain meaning of the
3 rule. And Section 51.2(b) through 8 -- or (a) through 8. And
4 in that it states that a commercial adjunct as an accessory
5 use for hotels shall not be permitted in R-5B residential
6 districts, provided that, A) the total areas in the hotel
7 devoted to a function rooms or exhibit space or commercial
8 adjuncts shall not be increased.

9 CHAIRPERSON JORDAN: Yes, you're going to the
10 visibility aspect, aren't you?

11 MS. MOLDENHAUER: Well, yes, I'm going -- first of
12 all I'll jump to the question of why was this put into place?
13 It was put into place, B especially, there shall be no direct
14 entrance to the commercial use from outside. Why? Why are
15 they trying to limit direct entrance? Because it has to go
16 to advertising. When you -- what do you see when you see a
17 sidewalk café? You see the advertising of the commercial use.
18 You walk down the street, you see the sidewalk café or you can
19 directly then enter that establishment, that restaurant, that
20 brunch location. It increases the commercial feel of the
21 street.

22 This is a residential district. And when the Zoning
23 Commission put in place this rule and put in place the fact
24 that there shall be no direct entrance to the commercial use
25 from the outside of the building --

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1 CHAIRPERSON JORDAN: Make sure you're clear because
2 I hear what you're saying. And let me tell you, we really
3 understand this because we've got a couple of other, at least
4 one other case on here dealing with the same kind of issues
5 on commercial adjunct space and functional space. And I'm
6 understanding your argument is not the -- because I haven't
7 seen anything to the contrary -- that there's been an increase
8 in commercial adjunct space per se, but that whatever it is,
9 it's still visible and that in and of itself violates 351.2.

10 MS. MOLDENHAUER: C.

11 CHAIRPERSON JORDAN: Right.

12 MS. MOLDENHAUER: Yes, C is visibility. I think it
13 has to do with visibility, entrance, and the fact that it is
14 an increase. And it has to do with use. If use is not
15 permitted, if you're looking at whether or not the Zoning
16 Commission or the Zoning Administrator should be interpreting
17 whether if I walk past it a use would be permitted in a
18 residential zone, you have to go to whether that use is
19 permitted. A hotel use is not a matter of right. If it's only
20 grandfathered then we have to look at 350 and look at the
21 restrictions.

22 A sidewalk café clearly would then not be a permitted
23 use under the zoning regulations because it is visibly
24 advertising the commercial uses within the hotel. It is then
25 visibly accessible by the community and the public,

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1 advertising that space.

2 There are restaurants in the city that sometimes due
3 to their location constantly fail. They are failing because
4 they are not being able to advertise or be visible. The
5 legislation and regulations also limit signage. It's going
6 to the visibility and the advertising of this commercial use
7 in a residential district.

8 There was testimony that this has not had any adverse
9 impact. But going to Section B in regards to no direct
10 entrance, as I was identifying, there actually has been, have
11 been neighbors who have contacted the ANC and the owner
12 indicating that the sidewalk café is open and operational right
13 now that people were sitting outside on chairs chatting and
14 talking after the restaurant had already closed, purely
15 illustrating that people could directly enter and sit on the
16 sidewalk café and conduct commercial uses in increase of the
17 permitted hotel use on the sidewalk visible to residents.

18 And the plan that the Zoning Administrator reviewed
19 showed now evidence of a physical restriction from being able
20 to access this from the outside. And the zoning regulations
21 talk about accessing it from the outside. The Zoning
22 Administrator and the owner want to input the word "within"
23 under the Section B of "no direct entrance." But that is not
24 specifically provided, nor is it within this Board to apply
25 a word that was not already stated in the zoning regulation.

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1 Section C, which has to go to visibility, talk about
2 "no part." So no matter whether you determine this is a part
3 of the commercial use, the owner pays the rent, the owner gets
4 the benefit financially from this sidewalk café. It is a part
5 of the hotel and it is within the hotel's operation and control
6 and their financial benefit which is increasing the commercial
7 square footage and increasing the visibility in direct
8 contradiction of the plain meaning and the interpretation and
9 intention of the zoning regulation.

10 We also have testimony in regards to, like I said,
11 this analysis was the same conclusion and interpretation that
12 the Zoning Administrator Noble came to in 2002. The owner,
13 who was the same owner as this time, never appealed that 2002
14 decision. And even though it was never appealed, they then
15 went back and tried to file a new public space application in
16 May. When the ANC then informed them of the prior
17 determination, they then withdrew that.

18 CHAIRPERSON JORDAN: Are you considering, are you
19 offering to this Board that a determination from a prior Zoning
20 Administrator creates precedence for this Board to rule in
21 conjunction to what the Zoning -- that we're limited to what
22 a Zoning Administrator did in the past? A Zoning
23 Administrator decision, not a Court of Appeals decision but
24 a Zoning Administrator decision? That was not -- one that was
25 not appealed and so there is no, there is no court support from

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1 a higher authority that validated that determination; is that
2 what you're offering?

3 MS. MOLDENHAUER: No.

4 CHAIRPERSON JORDAN: Okay.

5 MS. MOLDENHAUER: I'm offering it for two points:

6 One, that the prior Zoning Administrator
7 determination, the prior Zoning Administrator followed the
8 same analysis that we are presenting to you today.

9 CHAIRPERSON JORDAN: Okay. So --

10 MS. MOLDENHAUER: And then two --

11 CHAIRPERSON JORDAN: Because in the brief it argues
12 that it's limiting and controlling.

13 MS. MOLDENHAUER: Well, two, that the Zoning
14 Administrator if they want to change their opinion that they
15 have to provide, based on Springer v. The District of Columbia
16 Department of Employee Services, the logical analysis as to
17 how they, how they changed it. Was this back-changed? Did
18 the Zoning Commission put forth new text amendments that
19 they're now interpreting? They typically would have to
20 explain why this decision has changed.

21 And we put forth that there is nothing in the zoning
22 determination that was more recently issued that explains what
23 the change in circumstances were or why the decision differed
24 from the original 2002 decision which we believe is the proper
25 analysis of Section 2 --

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1 CHAIRPERSON JORDAN: What's the cite on Springer?

2 MS. MOLDENHAUER: It's -- sorry, I have the section
3 here. I'll pull it.

4 CHAIRPERSON JORDAN: But on appeal isn't that really
5 -- wouldn't that be relevant in the sense that it's on appeal
6 now. So even if the Zoning Administrator did whatever he did
7 and didn't do it properly, it's for this Board to determine
8 whether or not the action of by allowing the sidewalk café is
9 proper, regardless what a previous Zoning Administrator did?
10 Whether that they followed their own precedent or not, this
11 Board determines what would be the interpretation of the
12 regulation at the end of the day?

13 MS. MOLDENHAUER: Absolutely. Because at the end of
14 the day this Board -- one of the points we're making is that
15 from an ANC's perspective, which is the Appellant here, they
16 are interesting in understanding from both this Board and the
17 Zoning Commission the ability for the community to rely upon
18 and have some transparency and being able to rely upon zoning
19 determination letters so that they are not simply changed or
20 reinterpreted unless facts or law change.

21 CHAIRPERSON JORDAN: What's the relevance to this
22 appeal whether or not the Zoning Administrator acted correctly
23 as to the interpretation of the regulation based upon this case
24 that's before us now?

25 MS. MOLDENHAUER: I just wanted to provide the cite

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1 because I have it, before I forget. 743 A. 2d 1213 (1999).

2 Again, I had those two issues. And I think the former
3 is the primary issue, that the Zoning Administrator in 2002
4 followed the same analysis that we've put forth to you today.
5 That the Zoning Administrator had jurisdiction in 2002, that
6 they found that a sidewalk café clearly violated these
7 regulations. That it was a residential district in which a
8 hotel commercial use is only permitted if it complied with the
9 specific restrictive subsections. And that because a
10 sidewalk café would be visible, would be then advertising for
11 its restaurant, enhancing the commercial nature of this, of
12 this use, that it was then in violation of the specific
13 subsections of the zoning regulations. And are putting for
14 the fact that it is an affirmation of that decision.

15 Lastly, I just wanted to simply indicate that we --
16 the Board and Zoning Administrator both do -- the zoning
17 decision does represent he has no jurisdiction. We want to
18 affirm in our argument that the Board and the Zoning
19 Administrator have jurisdiction over interpreting the use and
20 the purpose of use of these sections in regard to the advice
21 and the counsel that the Zoning Administrator gives to the
22 Public Space Committee.

23 If you even look on Section G of the owner's
24 prehearing statement, it's the DDOT form. And it actually
25 says "zoning agencies for review." And under that section it

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1 actually identifies the Zoning Administrator.

2 We also express some concerns about if you were not
3 to obviously uphold this but rather to indicate that DDOT alone
4 has jurisdiction, there would be a problem with multiple
5 agencies interpreting the zoning regulation and possibly
6 having divergent or different interpretations of the zoning
7 regs.

8 For those reasons above, we believe that this use of
9 a sidewalk café is visible, is in violation of the intent and
10 the plain reading of 350.4(e) and 351.2(a) through (d) in that
11 it is clearly visible, provides a direct access. It is then
12 increasing the commercial use in a residential street by
13 marketing and advertising and enhancing the commercial nature
14 of that residential block.

15 CHAIRPERSON JORDAN: Okay. I don't see anybody --
16 in anybody's brief that, I'm assuming that this café was not
17 there on May 16, 1980; right?

18 MS. MOLDENHAUER: No, it was not.

19 CHAIRPERSON JORDAN: Because I didn't see that in
20 anybody's brief. So I'm assuming that there's not an argument
21 that it's grandfathered. Because you guys kind of leapfrogged
22 over that one. But anyway, because otherwise -- Okay. I just
23 wanted to get that clear for the record.

24 Okay, thank you. Mr. Tondro, your argument.

25 MR. TONDRO: Members of the Board and Mr. Chair,

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1 thank you.

2 I think things have been laid out in the brief, in
3 my brief on this issue. As you say yourself, I think this is
4 a relatively straightforward case. I think, however, that the
5 issue is that under 340.4(e) and also under 351.2(a) it is very
6 clear that the issue of the commercial adjuncts expansion is
7 within the hotel, and that, that very much limited. I think
8 that --

9 CHAIRPERSON JORDAN: What about the visibility
10 portion issue on 351.2?

11 MR. TONDRO: I would, if I may, ask is there any
12 administrator to testify on that? Thank you.

13 MR. LeGRANT: Can you repeat the question?

14 MR. TONDRO: Yes. Commissioner LeGrant, would you
15 please comment on how it was that you arrived at your
16 conclusion, your determination that the proposed sidewalk café
17 would not violate 351.2(b) and 8 in terms of the -- particularly
18 8 in terms of the visibility?

19 MR. LeGRANT: Okay. Thank you.

20 So when the counsel for the property owner met with
21 me back in September 2014, they brought to my attention the
22 letter of Mr. -- of the Acting Zoning Administrator Darryl
23 Noble of May 16, 2002, and presented that letter, which I've
24 read, and presented an analysis that they asserted was that
25 that letter was in error. And we both then walked through the

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relevant sections and then spoke, wording here today.

Specifically 351.2 starting with 8, which I will read out loud, "No part of the adjunct or entrance to the adjunct shall be visible from the sidewalk." Okay. So inherent in that was the other language going back to 350.4(e) that talks about commercial adjuncts and, as my counsel has noted, clearly referenced in terms of areas within a hotel, which are consistently seen as floor area within the building. It was presented to me in a drawing so I could review it was that there was no change to the current visibility of that commercial adjunct within the hotel from the sidewalk.

In terms of 351.2(d), "no sign or display indicating the existence of the adjunct shall be visible from the outside of the building." I asked was there going to be any change in the signage? Was there going to be new signage or displays erected to try and get attention of the commercial adjunct or the proposed sidewalk café seating? And the response was there was no. The drawings that I reviewed showed no new signage. And, therefore, I determined that there was no change to the signage or display for the commercial adjunct of the hotel.

And those were the two sections in my analysis of looking at those provisions.

CHAIRPERSON JORDAN: All right. So, Mr. Tondro -- and I'm going to give the Appellant the opportunity to cross

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1 -- but the other question then is how do we reconcile 350.4
2 with 351.2? Don't they stand on their own merits? Or does
3 one enhance the other? Or you don't get to -- you can't get
4 to 350.4, are you arguing, if you don't get to 351.2?

5 MR. TONDRO: I would say that 351.2 is sort of a
6 subset of 340 --

7 CHAIRPERSON JORDAN: 350.4.

8 MR. TONDRO: -- 350.4(e), thank you. Yes, that
9 350.4(e) is the sort of the blanket, the over all. And then
10 subsequent to that you have 350.1, 351.2 which then further
11 elaborates the distinctions that are there.

12 If I can also just make -- and at the risk of
13 belaboring it -- I just want to bring to the Board's attention
14 this fundamental issue about the Public Space Committee and
15 issues of right-of-way. I feel that what the Appellant is
16 asking is for all subsequent permit requests that are made to
17 DDOT are now going to have to go to the Zoning Administrator
18 for review and approval. The Public Space Committee itself
19 is set up as an inter-agency committee. And as Appellant's
20 counsel themselves just indicated, there is in that process
21 an opportunity to request permission from the ZA.

22 What we are asserting is that the appropriate
23 response to the permit was to go and appeal whatever it was
24 that the Public Space Committee requested and received and
25 relied upon in making their determination from the ZA. If that

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1 was just the zoning determination letter, that would be the
2 appropriate way of doing that. But I would also argue that
3 they then should have appealed and participated in the Public
4 Space Committee's review of that process and challenged at that
5 time their assertion.

6 CHAIRPERSON JORDAN: We're going a little beyond my
7 initial question but I'm going to come back to that because
8 I think this is opening a whole quagmire of worms that's going
9 to reverberate for a long time.

10 Would you like to cross-examine, and only
11 cross-examine Mr. LeGrant about the testimony he just
12 provided?

13 MS. MOLDENHAUER: Good morning, Mr. LeGrant.

14 MR. LeGRANT: Good morning.

15 MS. MOLDENHAUER: In regards to 350, if you're
16 reviewing it individually and on its own would you believe that
17 the use of a sidewalk café would permit the commercial adjunct
18 to be then visible from the sidewalk or from the outside of
19 the building?

20 MR. LeGRANT: Can you repeat that? I'm not sure if
21 I understand the question.

22 MS. MOLDENHAUER: If you were to evaluate 3508
23 without the limitations that you've just assumed on it in
24 regards to the prior section, would this section -- would a
25 sidewalk café violate the visibility language?

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1 MR. LeGRANT: I don't think so, no.

2 MS. MOLDENHAUER: And why would it not violate the

3 --

4 MR. LeGRANT: Well, 354(e) which of course is cited
5 in our brief, which I will just read the section: "A hotel
6 located in RFI D, RFI C and RFI D or RFI E districts in existence
7 on May 16, 1980, with a valid certificate of occupancy or valid
8 application for a building permit; provided the gross floor
9 area of the hotel may not be increased and the total area within
10 the hotel divided into function rooms, exhibit space and
11 commercial adjuncts may not be increased. Existing hotel may
12 be repaired, renovated, remodeled or structurally altered."

13 So as my counsel has noted, as we note in our brief,
14 it's very specific saying "within the hotel." That language
15 is repeated in 351.2. And frames discussions of why there is
16 an expansion of a hotel.

17 MS. MOLDENHAUER: Can a sidewalk café be issued if
18 the adjacent property owner does not have a restaurant or a
19 commercial C of O?

20 MR. TONDRO: Objection. I believe that is asking
21 for an interpretation of the Public Space Committee
22 regulations as opposed to the zoning regulations.

23 CHAIRPERSON JORDAN: Say that again? I'm sorry, I
24 missed it.

25 MS. MOLDENHAUER: I asked if Mr. LeGrant new whether

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1 a sidewalk café could be issued without the adjacent property
2 owner having a C of O for a restaurant use.

3 CHAIRPERSON JORDAN: If you know, you can answer.

4 MR. LeGRANT: I do defer to DDOT on those questions
5 as a sidewalk café is a -- requires, as I understand it, a permit
6 from the Public Space Committee as to what has to be the
7 adjacent referential use. I cannot specifically tell you what
8 uses are limited to, that DDOT has to look to those uses
9 themselves.

10 MS. MOLDENHAUER: Is a sidewalk café a commercial
11 use?

12 MR. LeGRANT: I would say that a sidewalk café is a
13 type of auxiliary operation that can be, if they receive the
14 proper approvals from Public Space Committee for conducting
15 that activity.

16 MS. MOLDENHAUER: What are people doing in a sidewalk
17 café?

18 MR. LeGRANT: Well, I think we all know that they
19 consume food and beverage.

20 MS. MOLDENHAUER: So if you were to apply a zoning
21 category to a sidewalk café, what would that zoning category
22 be: residential, commercial, industrial or retail?

23 MR. LeGRANT: Given those choices I would probably
24 say retail or service. Service is the type of not sale of goods
25 but provision of an activity. It's permitted in some

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1 regulations.

2 MS. MOLDENHAUER: So in your zoning knowledge is a
3 service or a retail use permitted in an R-5 zone?

4 MR. LeGRANT: Well, as I understand the regulations,
5 the hotel use which we've --

6 MS. MOLDENHAUER: I'm not asking right now about the
7 hotel use. I'm just asking is a retail or service use
8 permitted in an R-5 zone as a matter of right?

9 CHAIRPERSON JORDAN: You mean one that's not
10 grandfathered?

11 MS. MOLDENHAUER: I'm asking as a matter of right.

12 MR. LeGRANT: Well, it's, okay, so the -- a
13 commercial adjunct of a hotel is permitted. I'm hesitant to
14 use the word "grandfathered" because it specifically calls up
15 those uses not be treated as non-complying uses but instead
16 sets forth a set of regulations that governs, as we all
17 discussed here, the extent of the limitations on expansions
18 of those uses.

19 MS. MOLDENHAUER: And expansions would be changes to
20 the use or increasing the use?

21 MR. LeGRANT: Well, as the code clearly says,
22 expansions of floor area or commercial adjuncts within a hotel.

23 MS. MOLDENHAUER: If you, I know sometimes you do a
24 sight visit or inspections or speeches about, you know, whether
25 something is a fast food establishment or whether it's a

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1 restaurant, you sometimes send somebody out. If you were to
2 send somebody out today to look at the sidewalk café would it
3 be visible, would the sidewalk café be visible from the
4 sidewalk?

5 MR. LeGRANT: I believe it would be, yes.

6 MS. MOLDENHAUER: That you.

7 CHAIRPERSON JORDAN: Is that it?

8 MS. MOLDENHAUER: Oh, sorry, one more question.

9 CHAIRPERSON JORDAN: I knew it.

10 MS. MOLDENHAUER: Mr. LeGrant, did you look at the
11 intent from the Zoning Commission when you were, you were going
12 back and you were re-reviewing this, the prior zoning
13 determination letter with opposing or with the owner's
14 counsel, did you go back and look at the Zoning Commission's
15 intent of the regulation?

16 MR. LeGRANT: Let me respond like this, as this. If
17 there is presented to me a regulation that is unclear, then
18 I certainly would conduct research to see what was the context
19 of the Zoning Commission's decision looking at the orders that
20 were presented under Office of Planning Reports, the
21 transcript.

22 In this case I would not do so because I thought it
23 was pretty straightforward, it was pretty clear in the
24 regulation as to what, what this particular proposal, a
25 sidewalk café sitting on the public sidewalk, was that a

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1 conflict with either 350.4 or 351.2? And as we all know, I
2 concluded it was not.

3 MS. MOLDENHAUER: So even though you knew you were
4 in essence reversing a prior analysis you did not go and review
5 the zoning intention of this regulation?

6 MR. LeGRANT: When I looked at the prior analysis
7 which was --

8 MS. MOLDENHAUER: I know the Board's strict with yes
9 or no.

10 MR. LeGRANT: Well, I can't say just yes or no because
11 when I looked at the 2002 letter I note that Mr. Noble did not
12 use, did not quote the extent of the provision, he left out
13 provision in reference to areas within the hotel. And so I
14 believe there was an error in what was issued because it did
15 not look at the full text of the provision.

16 MS. MOLDENHAUER: Did he evaluate the full text of
17 352?

18 MR. LeGRANT: Did I?

19 MS. MOLDENHAUER: Did he?

20 MR. LeGRANT: I do not know. I don't know what --
21 if he read part of it, which I think led to an incorrect
22 conclusion.

23 MS. MOLDENHAUER: No further questions.

24 CHAIRPERSON JORDAN: Okay. Does the property owner
25 have any questions of Mr. LeGrant?

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1 MR. EVANS: Mr. Chairman, I'll do my best not to
2 duplicate the legal arguments made by Mr. Tondro --

3 CHAIRPERSON JORDAN: I'm not asking you that. I'm
4 asking you any cross?

5 MR. EVANS: I'm sorry. No, I have no cross.

6 CHAIRPERSON JORDAN: Okay. Mr. Tondro, so now you
7 were trying to make your argument trying to tell us why 351
8 is subservient to 350.4 because that's in essence what I think
9 you were saying to me, saying to the Board. Right?

10 MR. TONDRO: Yes.

11 CHAIRPERSON JORDAN: I know you don't want to say it
12 like that, but.

13 MR. TONDRO: Yes.

14 CHAIRPERSON JORDAN: Okay. So because doesn't
15 350.4 stand on equal weight with 351? I mean it's a regulation
16 and the one doesn't say if this case, if 354 is not applicable,
17 351's not applicable, does it?

18 MR. TONDRO: I guess I would agree with you, Mr.
19 Chairman.

20 CHAIRPERSON JORDAN: You don't want to but yeah.
21 And I'm just trying, I'm just trying to understand.

22 MR. TONDRO: Yes.

23 CHAIRPERSON JORDAN: Because I think I understand
24 that. I think this opens up a whole can of worms generally
25 in regards to how the District processes things and going

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1 forward. I really see that.

2 MR. TONDRO: I think if I may, Mr. Chairman, respond
3 to that. I think that the Zoning Commission in its wisdom
4 determined that 350.4(e) was not sufficient and wanted also
5 to further elucidate 351.2. I certainly cannot explain as to
6 why they felt the need to have two separate regulations that
7 cover the same issue.

8 But the fact that 350.4 covers the overarching issue
9 that is then repeated in 351.2(a), to me strongly suggests that
10 this is a further elucidation and clarification as to what
11 exists in 350.4(e). In other words, that the Zoning
12 Commission came back and saw fit to further specify how it was
13 to interpret 350.4(e).

14 CHAIRPERSON JORDAN: Yes. They kind of conflict,
15 don't they. Okay?

16 MR. TONDRO: Yes.

17 CHAIRPERSON JORDAN: All right.

18 MR. TONDRO: Yes. In an ideal world the Zoning
19 Commission would have had one or the other.

20 CHAIRPERSON JORDAN: And it might be something that
21 the Zoning Commission should take up to resolve the conflict
22 between 350.4 and 351.2. Does that sound right?

23 MR. TONDRO: It would make the life of the Zoning
24 Administrator much easier, yes.

25 MEMBER HOOD: We're going to probably make his life

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1 a lot easier. That's the goal. We want to make your life a
2 lot easier.

3 CHAIRPERSON JORDAN: All right. So now let's go the
4 owner if there is anything additional that you would like to
5 add to the argument?

6 MR. EVANS: I think I can just, you know, briefly
7 supplement the argument of Mr. Tondro. We think that the 2014
8 decision by the Zoning Administrator is the correct one. As
9 the Zoning Administrator testified, the 2002 ruling was
10 insufficient because it didn't look to area within the hotel.
11 I would also note that it was not addressed to the owner.

12 CHAIRPERSON JORDAN: I will really try to help
13 everybody in this case: I don't think that we will use the
14 Zoning Administrator's determination in either matter because
15 now it's before the Board of Zoning Adjustment to make its own
16 determination whether 350.4 or 351.2 is applicable based upon
17 the facts which have been presented to the Board. And I think
18 that's within our purview.

19 MR. EVANS: Getting to that point, Mr. Chairman,
20 350.4 or 351.2, the zoning stops at the property line. It
21 applies to the, it applies to the building itself. The key
22 language is "within the hotel" itself. The zoning does not
23 reach into the public space. That's why we think that there
24 -- we talk about the two jurisdictions and the limited role
25 that the Zoning Administrator has upon request from the Public

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1 Space Committee.

2 So that the key thing here is who is to make the
3 determination as to who can do what on the sidewalk which is
4 in the public space? And it's not for the Zoning Administrator
5 to make that determination. So I think his opinion was proper
6 and his analysis of either 350.4 or 351.2 held none of those
7 elements would restrict this proposed application, and he then
8 deferred ruling on it.

9 So I believe that the matter is set for a decision
10 by this Board.

11 Mr. Cafritz, would you like to add anything briefly
12 to this.

13 CHAIRPERSON JORDAN: We're not doing a round unless
14 he's going to testify or something.

15 MR. CAFRITZ: Let me just, let me just say one thing.
16 We were never advised of Mr. -- of the Acting Zoning
17 Administrator's opinion of Darryl Noble.

18 CHAIRPERSON JORDAN: It's Denzil. His name is
19 Denzil Noble.

20 MR. CAFRITZ: I'm sorry. Denzil Noble.

21 CHAIRPERSON JORDAN: That's his name, Denzil.

22 MR. CAFRITZ: There's a signature line that crosses
23 over Denzil. Okay, that Denzil Noble made in May 16, 2002.

24 I want to explain two seconds about the circumstances
25 of The River Inn in terms of how this confuse this, and then

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1 come back to I think the critical issue here. The River Inn
2 it's not clear that Mr. Nobel knew where the property line was
3 in this case, in his determination.

4 CHAIRPERSON JORDAN: Let me ask a question. So the
5 outside café is not on hotel property?

6 MR. CAFRITZ: If I can just --

7 CHAIRPERSON JORDAN: I'm asking it straight up.

8 MR. CAFRITZ: Fine. Absolutely.

9 CHAIRPERSON JORDAN: Somebody answer it, please.

10 MR. CAFRITZ: It's not because the property line
11 stops at the edge of the building. It actually goes into a
12 planter and across the entrance. Then there is a sidewalk
13 space. And then there's a tree space and then there's more
14 sidewalk.

15 CHAIRPERSON JORDAN: Okay, so the property line
16 stops and then there is public space, is that how it is?

17 MR. LeGRANT: The sidewalk café is entirely in public
18 space.

19 CHAIRPERSON JORDAN: All right. Let me ask the
20 Appellant your view in that. Is the café on the owner's
21 property?

22 MS. MOLDENHAUER: It is located in public space.

23 CHAIRPERSON JORDAN: All right, thank you.

24 I think that's so key in this whole argument. But
25 go ahead. You've got something to add to that?

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1 MR. CAFRITZ: No, no. Just the point is who has
2 jurisdiction over public space?

3 CHAIRPERSON JORDAN: Come on, don't take me back
4 there. I'm trying to move forward with this thing.

5 MR. CAFRITZ: Okay.

6 CHAIRPERSON JORDAN: All right. Okay, so anything
7 else?

8 MR. LeGRANT: Nothing else, Mr. Chair.

9 CHAIRPERSON JORDAN: Anything else?

10 MR. TONDRO: if I may just, I would request that the
11 Board consider again both the issue of administrability, the
12 fact that there is already an established inter-agency process
13 for review of public space permits that does look to the Zoning
14 Administrator for approval or denial based on that response.
15 And that's the appropriate process to decision to be appealed
16 at that time.

17 I would also ask, and I believe, Mr. Chair, that you
18 have already suggested the same thing, but I would hope that
19 the Board in considering the issue of what Appellant has
20 asserted, that the Zoning Administrative is somehow bound by
21 the zoning determination letters of a prior Zoning
22 Administrator. But I believe it was in the most recent Court
23 of Appeals remand of the Stadium Club that there was a referral
24 to the fact that it was the Board that was to make
25 determinations as opposed to --

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1 CHAIRPERSON JORDAN: That's why I said that.

2 MR. TONDRO: Thank you.

3 MS. MOLDENHAUER: I'm good with that.

4 MR. TONDRO: Thank you, Chair.

5 CHAIRPERSON JORDAN: Wow. Rebuttal please. Take
6 two, three minutes.

7 MS. MOLDENHAUER: I want to first address the
8 District's concern over, and possibly the Board's concern over
9 this being a slippery slope and going in uncharted territories
10 that we have not done before. We disagree with that.

11 For instance, the Foggy Bottom Overlay District which
12 was put forth by the Zoning Commission in 1992, specifically
13 includes that the purpose of the Foggy Bottom District is to
14 enhance the streetscape by maintaining public space in front
15 of a building and limiting future curb cuts.

16 There are sections in our zoning regulations which
17 speak to and affect public space. In addition to that, Section
18 605, which is an area of mixed use commercial/residential
19 districts which has in a CR a Planning Office review portion.
20 Here the zoning regulations refer an application to DDOT and
21 have a section that literally, Section E, Treatment of Public
22 Space. This Board in BZA cases has evaluated that in granting
23 hospitals and clinics and evaluated the treatment of public
24 space.

25 We are doing the same here. Maybe the Zoning

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1 Commission when they first instituted these regulations in
2 nineteen seventy --

3 CHAIRPERSON JORDAN: What section did you just read?

4 MS. MOLDENHAUER: I was reading Section 11 DCMR 605.

5 CHAIRPERSON JORDAN: 605?

6 MS. MOLDENHAUER: Yes.

7 CHAIRPERSON JORDAN: And read that again, please?

8 MS. MOLDENHAUER: I paraphrased it. But it has a
9 planning -- do you have copies?

10 CHAIRPERSON JORDAN: It's Planning Office Review.

11 MS. MOLDENHAUER: It's Planning Office Review. And
12 it indicates that a portion of which the Zoning Commission
13 shall consider in a special exception relief, so that this
14 Board at the request of the special exception shall consider
15 the treatment of public space.

16 And so in that situation as well as in Zoning
17 Commission cases where the PUD reviews the public space they
18 have conditioned in PUDs constantly that limit the sidewalk,
19 material, lighting in public space. Just because a Zoning
20 Commission PUD limits those issues or restricts those issues
21 does not take away DDOT's ability to issue the permit. We are
22 simply indicating that the zoning regulations has authority
23 to implement and imply their own regulations.

24 CHAIRPERSON JORDAN: Let me ask, what's this?

25 MS. MOLDENHAUER: It's providing a copy of specific

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1 public space regulations which referenced zoning review and
2 the zoning. And it also provides, if you look at the end in
3 the section, in the very last section it provides copies of
4 the Foggy Bottom Section 1221.3 and it provides a copy of
5 Section 605. It was just for your reference to review those
6 issues.

7 In addition, it also provides a copy --

8 CHAIRPERSON JORDAN: Does opposing counsel has this?

9 MR. EVANS: We didn't get it 14 days ago and we didn't
10 get it now. I think it's inappropriate for the record now.

11 MS. MOLDENHAUER: It's public zoning regulations
12 which we are copy -- which we are referencing. We're
13 referencing the zoning regulations.

14 CHAIRPERSON JORDAN: Maybe it was referencing but I
15 don't know what's in the document. And as he said, we have
16 not gotten it in advance. But I don't think -- you can just
17 reference it.

18 MS. MOLDENHAUER: It was just for you had asked which
19 section it was and so I was just saying we have a copy of it.

20 In addition, in BZA Order 17632, which we can provide
21 a copy with as well, this Board specifically conditioned an
22 order on the Foggy Bottom Overlay District. And in that order
23 the condition said the Appellant will clean the sidewalk and
24 the Appellant will clean the trash from the sidewalk. This
25 clearly shows that that order allowed this Board to consider

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1 not just what is within the property lines but also what occurs
2 outside of the property lines.

3 Our zoning constantly considers how things are viewed
4 from the street and from the public sidewalk. 350 --

5 CHAIRPERSON JORDAN: So what about, what about the
6 argument or the statutory construction argument that specifics
7 control general, and if the legislative body or the Zoning
8 Commission intended for this body to encroach itself into
9 public space, then they would have put this into public -- they
10 would use the word "public space" like they might have done
11 in other sections but didn't do it in this one.

12 MS. MOLDENHAUER: I believe it's a question of
13 timing. This was written in '79. I think as our city has
14 evolved post-Home Rule we have slowly increased our efficiency
15 of our joining agencies. And we've slowly had a better
16 understanding how each of these cross-jurisdictions work and
17 mirror each other better.

18 If you actually look at a history of the different
19 text amendments, the text amendments become clearer in '91,
20 '92 where they literally reference DDOT's review, it shall be
21 subject to public space review, and identify the term "public
22 space" more clearly. I think it's a question of evolution over
23 time and the synergy amongst agencies become more efficient.
24 And it was not as efficient back in '79.

25 But if you go to the intention of the zoning

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1 regulation and these sections, they are meant to stand on their
2 own in order to protect the residents of a residential
3 community in which a hotel is used as deemed by the Zoning
4 Commission to be a hybrid of both residential and commercial
5 uses. We are not talking about putting a residential use on
6 the sidewalk, we're talking about putting a commercial use on
7 a residential district sidewalk. And that use is visible and
8 is apparent and can be accessed and walked up to by anybody,
9 and is of increasing the marketability and the frequency of
10 that restaurant, which is the exact intention to not permit,
11 to not allow signage, to not allow visibility so that the
12 commercial impact on the residents in this zone and pursuant
13 to this section would not be impacted.

14 And for those reasons we ask that this Board find that
15 the Zoning Administrator's decision was in error.

16 CHAIRPERSON JORDAN: Got it. Board, any additional
17 questions? Just need to have answers from any --

18 MEMBER HOOD: I have one question, Mr. Chairman. If
19 I could go back to Mr. LeGrant.

20 Mr. LeGrant, help me out. I may have not understood
21 you correctly. But did I hear you in your testimony -- I forget
22 whether you were being crossed or whatever -- but you said you
23 had to ask, you were looking at drawings --

24 MR. LeGRANT: Yes.

25 MEMBER HOOD: -- and you said you had to ask whether

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1 or not there were two signs. Why would you have to ask if you
2 were looking at final drawings? Doesn't it show those
3 drawings on the -- I mean those signs on the drawings? Or
4 shouldn't it?

5 MR. LeGRANT: Well, the drawings that were presented
6 to me did not indicate any signs. But I thought it was
7 incumbent upon me to press, to say, Oh, and aren't there any
8 signs? Is this something I may have missed in the drawings?

9 And their reply was, No, there was no new signs

10 MEMBER HOOD: So, okay. I'll leave it at that for
11 now. Thank you.

12 MR. LeGRANT: Okay.

13 CHAIRPERSON JORDAN: All right. So then we will
14 close the record on this. And I was just looking at the Board
15 to see if we think we should deliberate now or just get findings
16 of fact and conclusions of law and then deliberate on this at
17 another time. What's your feeling? I see heads going.

18 MEMBER HOOD: I think findings of facts and
19 conclusions and deliberate another time. Maybe next week.

20 CHAIRPERSON JORDAN: Yes. Actually, counsel is
21 shaking her head up and down, yes. Because this, this is
22 really a case that we really need to drill into, I think,
23 because it has a lot of ramifications. And I think there's
24 a lot of, a lot of lot of in this case. And I could see --
25 no, we would not, I would not continue it for another hearing.

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1 I think we've about heard all we need to hear.

2 I think it's really going to boil down to the Board
3 of Zoning Adjustment to do an interpretation of the zone regs
4 which is within our purview to do based upon the facts as
5 submitted.

6 MEMBER HOOD: Okay.

7 CHAIRPERSON JORDAN: Is that okay? So then let's
8 have findings of facts issued by the parties, please.

9 Mr. Moy, what date are we working with? I would like
10 to do it before the 30th.

11 SECRETARY MOY: Of September?

12 CHAIRPERSON JORDAN: We could do it next week.
13 That's kind of quick though. I think we're kind of stacked
14 up next week. Oh, but that's okay, you're right down the
15 street, you can come. In fact, you can spend all night after
16 one of the Zoning Commission meetings.

17 What are we looking like for two weeks.

18 SECRETARY MOY: In two weeks? So in two weeks that
19 date would be September 29th.

20 CHAIRPERSON JORDAN: Is that two weeks?

21 SECRETARY MOY: Today's the 15th, so two weeks.

22 CHAIRPERSON JORDAN: What's on that docket? How do
23 we look?

24 SECRETARY MOY: That's the 29th. On that docket we
25 have one, two, three, four, five, six, seven, eight, nine on

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1 the hearing and four or five for decision.

2 CHAIRPERSON JORDAN: Whoa. Well, let's do like the
3 airlines. You probably can over book because some people are
4 not going to show and they're going to ask for continuances.
5 Let's go ahead and put that for decision.

6 SECRETARY MOY: Okay. So we're looking at decision
7 on September 29th. A draft --

8 MS. MOLDENHAUER: Is there any -- sorry -- is there
9 any way we could have more time in order to work with our clients
10 because it's an ANC and I just want to make sure if there's
11 any additional authorization I need?

12 CHAIRPERSON JORDAN: No, let's -- we're going to put
13 this on the 29th. Trust, we're going to get rid of it on the
14 29th. So then we need to get by the 22nd, Mr. Moy?

15 SECRETARY MOY: Of September or October?

16 CHAIRPERSON JORDAN: September. Isn't that what
17 you're talking about September?

18 SECRETARY MOY: October.

19 CHAIRPERSON JORDAN: That's where you are. I was in
20 September.

21 SECRETARY MOY: That's when Mr. Hood would be --

22 CHAIRPERSON JORDAN: Yes, but that's why he said he
23 could do it next week. But he's going to come in earlier.

24 MEMBER HOOD: Okay. Mr. Chairman, I have a case
25 where I have to come next week.

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1 CHAIRPERSON JORDAN: Yes.

2 MEMBER HOOD: And then it looks like we're trying to
3 make me come back again the following week. Zoning Commission
4 members do have other jobs that they would like to keep as my
5 boss is watching.

6 CHAIRPERSON JORDAN: I thought the Office of Zoning
7 paid you a salary and you didn't work any other job and you
8 can do this night and day. No, I'm just saying that.

9 What's it look like within the next two weeks?

10 SECRETARY MOY: Next two weeks. Well, then we're
11 back to September 29th; right? That's in two weeks.

12 CHAIRPERSON JORDAN: Two weeks is September 29th.
13 What's the docket look like?

14 SECRETARY MOY: That's what I said before, we have,
15 we have a full docket on the 29th.

16 CHAIRPERSON JORDAN: Yes, yes, yes, that's what
17 we'll do. Mr. Moy, we'll move the other decision case to the
18 29th too, so that Mr. Hood comes in on the 29th for both those
19 cases. We'll go back and send a corrected notice on the case
20 that we continued that we could not make the decision on.

21 SECRETARY MOY: That was 19027, Mr. Chairman.

22 CHAIRPERSON JORDAN: Yes, thank you.

23 SECRETARY MOY: Okay. So then it's September 29th.

24 CHAIRPERSON JORDAN: Right.

25 SECRETARY MOY: September 29th. And draft findings

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1 of fact, conclusions of law should be submitted I would say
2 --

3 MS. MOLDENHAUER: The 23rd?

4 SECRETARY MOY: -- to allow some time, the 23rd?
5 Okay, I was going to say the 25th.

6 MS. MOLDENHAUER: 25th would be great.

7 SECRETARY MOY: But Wednesday it is.

8 MS. MOLDENHAUER: Does that give enough time for the
9 Board to review if we do it the 25th, that's Friday? No, 24th.
10 24th?

11 CHAIRPERSON JORDAN: Well, no, 24th yes. Because
12 you know how we work. Yes, 24th.

13 MS. MOLDENHAUER: Okay, 24th.

14 CHAIRPERSON JORDAN: We need to get it so they can
15 get it to us by the 25th.

16 SECRETARY MOY: The 24th is a Thursday.

17 CHAIRPERSON JORDAN: Okay. On point, argument on
18 facts that are here. If you think it's necessary, it's
19 probably really an argument, legal argument generally. And
20 so the record's closed on everything else.

21 I think we need to really always say that because
22 people next thing you know we get all kind of stuff. We have
23 some cases that are coming up that people in their finding of
24 facts added facts or testimony that wasn't before us. So let's
25 make sure we're just kind of on point.

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1 So the order will be the twenty -- that's the 24th
2 for the finding of facts. And then we will make a decision
3 on the 29th.

4 Thank you. I think this is fine. It's really
5 another one of those things that unless you do when you set
6 up these regulations you also not only just look at what the
7 issue is but you've got to do a cross walk. And a lot of our
8 rules and regulations and code we don't have cross walks
9 because one thing affects something else and it wasn't intended
10 to.

11 Thank you.

12 SECRETARY MOY: Thank you, Mr. Chairman.

13 CHAIRPERSON JORDAN: Let me make an assessment from
14 the Board where we are.

15 (Pause.)

16 CHAIRPERSON JORDAN: So we're standing down for a
17 five minute break. We're going to continue through the lunch
18 hour. We're not going to take a lunch break. We have to --
19 we can't, excuse me, we just can't have that level of
20 interaction.

21 So we'll take five minutes. But we are going to
22 continue and the Board has decided not to take a lunch break.
23 So we're just taking a five minute break now and we're going
24 to come right back into it.

25 SECRETARY MOY: Which case will be on deck, Mr.

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1 Chairman? Do we know yet? Well, we can come back to it in
2 five minutes.

3 (Whereupon, at 12:09 p.m., the hearing recessed, and
4 reconvened at 12:21 p.m.)

5 CHAIRPERSON JORDAN: Mr. Moy, 34.

6 SECRETARY MOY: Thirty-four, all right.

7 The Applicants to Application Number 19034 of the
8 Industrial Bank of Washington.

9 I believe, Mr. Chairman, that this application is
10 before the Board for a special exception from the parking lot
11 requirements under 213 at property 1931 11th Street, N.W. But
12 I would ask that the Applicants confirm the relief that they're
13 seeking.

14 NO. 19034, ANC-1B, APPLICATION OF INDUSTRIAL BANK OF
15 WASHINGTON

16 CHAIRPERSON JORDAN: Would you please identify
17 yourselves, starting with my right and let's go left. Make
18 sure you microphone is on. And did everybody who's here this
19 morning get sworn in and everyone submitted their witness cards
20 to the court reporter?

21 Okay, identify yourself, please.

22 MR. TESHONE: My name is Joseph. I'm from Avenue
23 Parking.

24 CHAIRPERSON JORDAN: Joseph?

25 MR. TESHONE: Teshone. Joseph Teshone. And I'm

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1 from Avenue Parking.

2 CHAIRPERSON JORDAN: Okay.

3 MR. LEE: Hi. I'm Rick Lee of Lee's Flower and Card
4 Shop.

5 MR. MITCHELL: Doyle Mitchell, Industrial Bank.

6 CHAIRPERSON JORDAN: Microphone.

7 MS. JOHNSON: Elduise Johnson, Industrial Bank.

8 MR. JONES: Jimmie Jones, architectural designer.

9 MR. RIGGINS: William Riggins. William Riggins.
10 I'm a resident at 1921 11th Street, N.W.

11 MR. BOERTLEIN: Neil Boertlein. I'm a resident at
12 1930 11th Street, N.W.

13 CHAIRPERSON JORDAN: Now, procedurally let me find
14 out where the heck we are. Mr. Moy, what did we do at the last
15 hearing, did we complete testimony on this case?

16 SECRETARY MOY: This is continued from June 30th.
17 And the Board I believe allowed the Applicant to amend and
18 re-post notice. And I believe at that time they had filed a
19 revised self-certification, affidavit of posting, letter of
20 authorization and an amended prehearing statement under
21 Exhibit 43.

22 CHAIRPERSON JORDAN: Okay. So we -- they had to
23 re-post and, okay. Oh, so there's a change of site plan.

24 Which site plan is applicable and how many spaces are
25 we asking for relief from?

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1 MS. JOHNSON: The site plan that was uploaded onto
2 the system last week is the most recent site plan.

3 CHAIRPERSON JORDAN: Okay. How many parking spaces
4 does that include?

5 MS. JOHNSON: Fifteen.

6 CHAIRPERSON JORDAN: Fifteen parking spaces.

7 MS. JOHNSON: The information on the sheet, on the
8 schedule today is incorrect.

9 CHAIRPERSON JORDAN: And also this was a special
10 exception case. Well, first you wanted a use variance. Then
11 that went away and it kind of became a special exception. Then
12 I get a prehearing statement that indicates that you're asking
13 now also for a variance.

14 So you're asking for a special exception and a
15 variance?

16 MS. JOHNSON: We're only requesting a special
17 exception with respect to the usage of Lot 36 as -- the
18 continued use of that space as a parking lot. There's a
19 requirement that under the zoning regs that a portion of the
20 parking lot be 5 percent green space, and we're requesting a
21 variance from that regulation.

22 CHAIRPERSON JORDAN: Right. Got that.

23 But, and that's the first time you raised it in this
24 subsequent post-hearing statement -- prehearing statement.

25 MS. JOHNSON: Yes. Per my conversations with Office

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1 of Planning and DDOT.

2 CHAIRPERSON JORDAN: So it's just the green space.
3 You're asking for a variance.

4 SECRETARY MOY: It's 42.

5 CHAIRPERSON JORDAN: It causes a slight problem.
6 But I think, I think then the impact of the green space
7 requirement in light of what we've already talked about, the
8 special exception, and this thing has been previously noticed,
9 I don't think we will require another notice. Normally we
10 might require you to do another posting and another waiting
11 period to provide notice of a change of relief where you are
12 going from a special exception to a variance. You're still
13 maintaining the same special exception, however you are not
14 adding for a little quirk by asking a variance from one of the
15 requirements of how the parking lot's going to be used.

16 I think there's been adequate notice to the public
17 that something's going on. We've had a lot of input already.
18 So I would, I would offer that we would proceed onboard with
19 this amended relief, adding to it the variance from that one
20 particular small section, if that's not any objection to that.

21 MEMBER HOOD: No objection, Mr. Chairman.

22 CHAIRPERSON JORDAN: All right, so where are we
23 process-wise? We've already gone through -- there's been a
24 list of -- we went through this and understand what you're
25 trying to do. Then we also gave some directions where you have

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1 a meeting with Office of Planning and Department of
2 Transportation.

3 Then I see there was some type of matrix that was
4 submitted as to what's been done and what has not been done;
5 is that correct?

6 MS. JOHNSON: Correct.

7 CHAIRPERSON JORDAN: And so there is a -- is there
8 amended -- think there's amended offer of conditions from the
9 Office of Planning on this. I know we already took testimony
10 in this case. I'm just wondering if we need to go back around
11 the block.

12 Why don't you talk to us about the variance, why you
13 think a variance is necessary from the one particular provision
14 on the green space?

15 MS. JOHNSON: There was some confusion admittedly in
16 our discussions with Office of Planning and DDOT where the
17 Office of Planning's recommendation was that we beautify the
18 entrance of the parking lot. And the bank immediately
19 proceeded to do so after our last hearing. And you'll see the
20 uploaded photos of the landscaping that we provided to the
21 right of the entrance.

22 And we also have ensured that the planter pots were
23 updated, painted and new shrubbery added to those. So we feel
24 that that landscaping that we've invested in is sufficient to
25 satisfy the intention of the zoning regulation.

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1 CHAIRPERSON JORDAN: I though your argument for why
2 you shouldn't have to have the other greenage is because the
3 lot was already surfaced and it requires you to break up the
4 lot, et cetera. I thought that's what the argument was; right?

5 MS. JOHNSON: Yes, that is the -- that speaks to the
6 uniqueness -- I apologize. That speaks to the uniqueness of
7 the lot. The lot is unique in that it's not, we're not starting
8 from ground zero literally. This is already a paved lot. And
9 it would be a hardship for the bank to have to break up a small
10 portion of the lot simply for the beautification of the lot.

11 CHAIRPERSON JORDAN: And you're providing so your
12 offset is that the other beautification, the other greenage
13 will offset that?

14 MS. JOHNSON: Yes.

15 CHAIRPERSON JORDAN: I don't know about the hardship
16 point because you say it costs \$5,000. You're a bank.

17 MS. JOHNSON: Well, we've already expended a
18 significant amount of funds, as you can see in the chart that
19 we provided. We've done a significant amount. And because
20 we're a bank this is not our primary source of revenue and
21 it is --

22 CHAIRPERSON JORDAN: Now, now the other thing I saw
23 as a switch in regards to some of the requirements, this is
24 not going to be an open public lot anymore, it's going to be
25 valet only. Is that my understanding?

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1 MS. JOHNSON: No, it was never an open, public lot.
2 It was only authorized -- it was always authorized parking
3 only. It's just that it wasn't monitored so --

4 CHAIRPERSON JORDAN: And it was open?

5 MS. JOHNSON: Yes.

6 CHAIRPERSON JORDAN: It wasn't secure. I mean
7 people had, you had all kinds of stuff going on in this lot.
8 That's what I meant by open. So now it's my -- what's this
9 valet thing that you're doing?

10 MS. JOHNSON: So the valet is evening parking.
11 There's a -- Mr. Teshone provides valet parking to --

12 CHAIRPERSON JORDAN: What's the valet parking for?

13 MS. JOHNSON: For customers of the commercial
14 resident -- commercial district, businesses in the area.
15 People come to that area and need parking and so they park there
16 and visit the restaurants and theater.

17 CHAIRPERSON JORDAN: Just a second.

18 MEMBER HOOD: Mr. Chairman, may I ask a question
19 while we're waiting?

20 Are there particular restaurants or flower shop, are
21 their patrons the ones that use the lot? I mean is it
22 specialized, synchronized exactly who's going to use the lot?

23 MS. JOHNSON: Well, we have, we have implemented
24 during the day we have now issued parking permits so only
25 certain cars can park on the lot for daytime parking. So

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1 daytime parking has there's an attendant, a full-time
2 attendant who will ensure that the only people who park, who
3 park on the lot have the hang-tag hanging from the car.

4 In the evening when Mr. Teshone's business takes
5 over, that's the traditional valet parking where the cars will
6 be parked by the business.

7 MEMBER HOOD: And a lot of this is contingent review
8 to the previous hearing that we started having some of the
9 concerns you have in the neighborhood, the landscaping,
10 monitoring the parking lot, re-paving the parking lot and
11 beautifying it. So a lot of that was due to some of the
12 concerns that you've already heard from the neighbors;
13 correct?

14 MS. JOHNSON: Yes, sir.

15 MEMBER HOOD: Okay. Thank you, Mr. Chair.

16 CHAIRPERSON JORDAN: So is the lot going to be locked
17 at night?

18 MS. JOHNSON: Yes. After the service, the valet
19 service has completed it will be locked.

20 CHAIRPERSON JORDAN: Because I thought I read that
21 -- okay, so that's --

22 MR. MITCHELL: When you say "at night"?

23 CHAIRPERSON JORDAN: I'm talking about after
24 whenever the last use is done.

25 MR. MITCHELL: Yes.

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1 MS. JOHNSON: The lot, the lot will be locked at all
2 times when there's no attendant present.

3 CHAIRPERSON JORDAN: See, I was confused because it
4 says it's going to be monitored by full-time staff. And, okay,
5 so you're saying at night it will be when there's no one on
6 the property. There's going to be someone on the property
7 during the day. All times that this lot is being used there
8 will be someone p resent; that's my understanding.

9 MS. JOHNSON: Yes.

10 MR. MITCHELL: Yes.

11 CHAIRPERSON JORDAN: Which is different than before?

12 MS. JOHNSON: Yes.

13 MR. MITCHELL: Yes.

14 CHAIRPERSON JORDAN: And when there is no one on the
15 lot, attending to the lot, the lot will be secure?

16 MS. JOHNSON: Yes.

17 CHAIRPERSON JORDAN: Have you already posted a name
18 and contact person on this lot?

19 MS. JOHNSON: Yes. The photos we uploaded shows the
20 new phones that we are now displaying on the property.

21 CHAIRPERSON JORDAN: And the trees are, everything
22 is already planted?

23 MS. JOHNSON: Yes.

24 CHAIRPERSON JORDAN: As Mr. Hood said, we did have
25 enough uproar about this property being left in the condition

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1 that it was. But I think you're making some headway to it.

2 Something else I wanted to ask. Did it get striped?

3 MS. JOHNSON: No. We're waiting to receive formal
4 approval of the site plan that we submitted. We have repaired
5 the pavement on the lot but we're waiting before having the
6 final stripes applied. The company is waiting for us to give
7 them the go-ahead for that.

8 CHAIRPERSON JORDAN: Okay. Board, is there
9 anything else you want to drill down? Anything?

10 (No response.)

11 Okay, anything else you want to present to the Board
12 on this?

13 MS. JOHNSON: No, sir.

14 CHAIRPERSON JORDAN: So you're aware of all the
15 conditions that are offered by the Office of Planning on this.
16 Is there any issue with any of those? Meaning that the -- that
17 if we gave approval it would only be short-term for a year,
18 that the -- well, we talked about the evergreens being at
19 least 42 inches. And you already put that in place.

20 That the gate should be closed and locked. You've
21 already said you're doing that.

22 No parking should be permitted within public space.
23 Is that an issue now?

24 MS. JOHNSON: Now that we have the attendant there,
25 no.

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1 CHAIRPERSON JORDAN: But it was an issue?

2 MS. JOHNSON: Apparent -- yes, apparently.

3 CHAIRPERSON JORDAN: Okay. And the attendant will
4 make sure there's no loitering?

5 MS. JOHNSON: Yes.

6 CHAIRPERSON JORDAN: And you're going to have
7 security cameras so if there's something that goes on in this
8 lot then you'll be able to reference it; is that correct?

9 MS. JOHNSON: I apologize. We also have several
10 requests for waivers of the recommendations that were made by
11 your Board and several of the recommendations that were made
12 by the Office of Planning.

13 CHAIRPERSON JORDAN: Which ones? And so what are
14 you asking waivers on?

15 MS. JOHNSON: We would like waiver, a waiver of the
16 requirement that we install cameras. And we, I've discussed
17 these waiver requests as a side note with the Office of Planning
18 and DDOT and the office, the Zoning Office just to ensure that
19 we made modifications to address your particular concerns.
20 And they told me to make sure I let you all know that we were
21 working closely with them.

22 CHAIRPERSON JORDAN: I see a list of waivers. So
23 you've got the camera waiver.

24 MS. JOHNSON: Yes.

25 CHAIRPERSON JORDAN: And here you go: fencing and

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1 gate. I knew I saw it someplace. You're asking for waiver
2 of fencing and gate. Keep gate locked at all times. You're
3 asking for a waiver.

4 MS. JOHNSON: Yes. That's what we were, that's what
5 we were discussing earlier. When the requirement is to keep
6 the gate locked at all times. We're requesting to simply keep
7 the gate locked at all times when there's no secure -- when
8 there's no attendant present.

9 If we were to keep the lock at the gate locked at all
10 times even when the attendant was present it would create a
11 difficulty for customers and business owners who need to use
12 the lot to access ingress and egress onto the lot.

13 CHAIRPERSON JORDAN:

14 MEMBER HOOD: Mr. Chairman, I'm just curious, where
15 did the camera recommendation come from, the Board?

16 MS. JOHNSON: Yes. In our last hearing that was --

17 MEMBER HOOD: This Board? This Boards? We don't
18 usually did that. If they did I must have been out of the room
19 and I don't remember leaving.

20 CHAIRPERSON JORDAN: When did we do that?

21 MEMBER HOOD: For the record, we don't usually do
22 that.

23 CHAIRPERSON JORDAN: We might have questions of
24 security. But we haven't --

25 MS. JOHNSON: That was not --

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1 CHAIRPERSON JORDAN: But we haven't put forth any
2 conditions on this property, so.

3 MS. JOHNSON: Well, maybe it was the recommenda --
4 at the end, at the end of our hearing I made a note that --

5 CHAIRPERSON JORDAN: Let me say this: we have not
6 issued any conditions. Now, we might have asked in some other
7 ways or talked about ways of making this lot secure. Because
8 as I understand the testimony this has been a, that lot -- and
9 I'm going to paraphrase and paraphrase only -- was like the
10 wild, wild west. And so we had some discussion because there
11 was strong community backlash about continuing the use of this
12 lot by the bank. And so maybe there were some discussions of
13 things that you might talk about doing.

14 But we have not issued any conditions yet because we
15 have not concluded the hearing nor issued an order in that
16 regard.

17 Right? Is that?

18 MEMBER HOOD: Yes, I would agree. Because I don't
19 want us to go on record, because we don't require people to
20 -- you know, it might have been mentioned in conversation of
21 trying to help. I think from what I see, Mr. Chairman and
22 others, I think that the way we left that last hearing was that
23 they were going to try to start working on some of the things
24 that were brought up by the community. And at that time I see
25 -- I think this record does that.

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1 But anyway, I'll put off my remarks until later, but
2 I think we're going in that direction from what I see here
3 already. So when you say cameras, I don't think we, this
4 Board, we require anybody. I don't think we can do that.

5 MS. JOHNSON: Okay.

6 MEMBER HOOD: It might have been just a conversation
7 going back and forth.

8 MS. JOHNSON: Okay.

9 MEMBER HOOD: So.

10 MS. JOHNSON: Well, we're grateful that you don't
11 require it.

12 MEMBER HOOD: I didn't say, I didn't say it was off
13 the table. I'm just saying, I mean, we were just throwing
14 suggestions out.

15 MS. JOHNSON: Okay.

16 MEMBER HOOD: If we did that. But we shouldn't be
17 saying --

18 CHAIRPERSON JORDAN: I would more-so look at the
19 recommendations that Office of Planning and DDOT, if any, have
20 provided for this property. And so the list is that, that the
21 gates, we would look at the gates being locked and closed when
22 there's no attendant. Certainly no parking in public space;
23 correct?

24 MS. JOHNSON: Yes.

25 CHAIRPERSON JORDAN: No loitering on the property.

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1 The property should be maintained free of trash.

2 MS. JOHNSON: Yes.

3 CHAIRPERSON JORDAN: That you should post the name
4 and contact person so that the public will know who to contact
5 when there's an issue.

6 MS. JOHNSON: Yes.

7 CHAIRPERSON JORDAN: And that you should appoint a
8 liaison person to coordinate with the ANC and the community.
9 That's the contact person.

10 MS. JOHNSON: Yes.

11 CHAIRPERSON JORDAN: And I think the last one was
12 that you have security cameras, offered by OP. Maybe that's
13 where it came from.

14 MS. JOHNSON: Okay. May I ask a question, Mr.
15 Chairman?

16 CHAIRPERSON JORDAN: Yes, certainly.

17 MS. JOHNSON: Is it required that a person be
18 identified in the signage or is the telephone number
19 sufficient? Because we did not name, for privacy reasons, we
20 didn't name the person.

21 CHAIRPERSON JORDAN: Phone number will be fine.

22 MS. JOHNSON: Okay.

23 CHAIRPERSON JORDAN: But you still have to have --
24 but the ANC should know who the contact person is.

25 MS. JOHNSON: Okay.

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1 CHAIRPERSON JORDAN: I mean by name.

2 MS. JOHNSON: Yes.

3 CHAIRPERSON JORDAN: If we get that far, because we
4 still haven't granted it. But this is potential for what the
5 conditions would be. And there might be some more before we
6 get finished here.

7 MS. JOHNSON: Okay.

8 CHAIRPERSON JORDAN: Okay. Is there anything else
9 that you want to add to your request for relief or a reason
10 why we should continue the special exception and for this
11 variance?

12 MS. JOHNSON: Well, I want to, I want to mention the
13 specific request to waive the requirement of rear fencing with
14 the gate to the alley providing access to the alley as a way
15 to exit the alley.

16 CHAIRPERSON JORDAN: Well, let's hold that for our
17 questions in talking about the planning because I think Office
18 of Planning made those recommendations, is kind of where we
19 are now. I think now.

20 Okay, Board have any other questions of the
21 Applicant? If not, then let's go to the Office of Planning
22 to see where we are on this.

23 MS. THOMAS: Good afternoon, Mr. Chairman, members
24 of the Board. Karen Thomas sitting in for Steve Mordfin whose
25 case this was.

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1 The way I understand it we, we provided a supplemental
2 report where we listed the conditions agreed to by the
3 Applicant. And one of that would be to operate the parking
4 lot as valet only, eliminating the need for a gate on the east
5 side of the property to allow for egress into the alley. And
6 everything else, you know, we will stand with the record with
7 that.

8 CHAIRPERSON JORDAN: Where we were on lighting? I
9 don't see anything here about lighting. Is the lot lit
10 already?

11 MS. JOHNSON: Yes. There is light. There is
12 motion-detected lighting on the adjacent property. And the
13 evening attendant will provide portable lighting in the
14 evening. He will provide portable lighting in the evening and
15 use the adjacent property as a power source.

16 MR. MITCHELL: The parking company will have
17 portable lighting at night.

18 CHAIRPERSON JORDAN: Okay, portable lighting.

19 MS. JOHNSON: Not flashlights. The large, square --

20 CHAIRPERSON JORDAN: It's not going to impact the
21 community, it's going to be pointed down to the ground and not
22 affect any of the residents?

23 MS. JOHNSON: It will only light the surface of the
24 parking lot.

25 CHAIRPERSON JORDAN: And you are, and the lot is

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1 screened, is that correct, with the slats through the fencing?

2 MS. JOHNSON: We are proposing slats in the -- as a
3 screening requirement.

4 CHAIRPERSON JORDAN: And what about Planning; is
5 that acceptable do you know? I know you inherited the case.

6 MS. THOMAS: Yes. We seem, we seem to have supported
7 slats. And we included it as a part of the condition of the
8 order.

9 CHAIRPERSON JORDAN: Okay. So the site plan, has it
10 been updated?

11 MS. JOHNSON: Yes, sir.

12 CHAIRPERSON JORDAN: What about the fencing, has any
13 other fencing been replaced or been repaired?

14 MR. MITCHELL: Yes.

15 MS. JOHNSON: Well, there was wiring -- yes, there
16 has been repair. There was wiring at the top of the fencing.
17 That was noted as an issue. That's been removed.

18 CHAIRPERSON JORDAN: And the broken pavement has
19 been replaced?

20 MS. JOHNSON: Yes, sir.

21 CHAIRPERSON JORDAN: Anything else from Planning
22 that we need?

23 MEMBER HOOD: Mr. Chairman, I'm going to go back to
24 the -- if this is the appropriate time, let's talk about this
25 one year.

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1 I believe that previously the one year was an issue
2 because we didn't see any movement. I think this Applicant
3 has made some movement from, even from the last time we have
4 had the previous hearing.

5 And, Ms. Thomas, I don't know if you know, I don't
6 know if Mr. Mordfin has mentioned it to you, did we have any
7 change of mind of the period of time due to the results that
8 have happened since our last hearing?

9 MS. THOMAS: I would not go off from that because I'd
10 like to see them operate, how they operate as well. You know,
11 we commend them and appreciate the fact that they have made
12 some changes, physical changes to date. But with respect to
13 any other thing I think we should look at the operate as well
14 because that has also been of concern to the Board.

15 MEMBER HOOD: Let me just say in my previous cases,
16 I know one time I tried to give someone six months. This is
17 some years back. And that was before anything was done. I
18 think in consideration, a lot of applicants, and I don't know
19 where the Chair and the other Board members are, but one year
20 I think is really to me it's a disservice to the Applicant.
21 So, you know, maybe two years I would go for. But one year?
22 We tried six months. And I think they have made progress and
23 due diligence to the community already, and that's faster than
24 what we've ever done.

25 And do we typically -- how many other cases have we

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1 had where we put one year? Maybe we have and maybe I wasn't
2 on the Board at those particular hearings, but do we usually
3 do one year?

4 MS. THOMAS: I mean it's not usual. I mean, I would
5 be amenable to two years if, if the Board agreed to that. But
6 we just to see something where the community supports the
7 operation and the way they intend to operate going forward.

8 MEMBER HOOD: Okay. I just think one year, we need
9 to re-look at that from my previous knowledge of other cases,
10 especially since this Applicant has made some improvement.
11 But I'll wait to hear from everyone else.

12 CHAIRPERSON JORDAN: Yes, I would want to hear it
13 from where we are with the community because this is one where
14 the community had some backlash on it.

15 And the other thing that we found, by keeping
16 sometimes short pants on some of these applications is the only
17 way we're getting compliance. But I don't want to say that's
18 happening in this case. But, you know, so let's just see how
19 we get through.

20 MEMBER HOOD: Otherwise, Mr. Chairman, the Board has
21 previously to make sure they're getting compliance is we have
22 delayed cases for six months. So, you know, it's --

23 CHAIRPERSON JORDAN: We've done that.

24 MEMBER HOOD: Yes. It's another way. But now it
25 looks like they're doing it and moving forward, one year I think

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1 is a disservice to this Applicant. So that's just why.

2 CHAIRPERSON JORDAN: Yes. Like I said, I haven't
3 made -- I'm not one way or the other till we get to the hearing.

4 Any other questions for Planning? Does the
5 Applicant have any questions for Planning?

6 MS. JOHNSON: No.

7 CHAIRPERSON JORDAN: Any -- is there anyone from the
8 Department of Transportation on this case?

9 (No response.)

10 We have a letter of no objection from Department of
11 Transportation. And I think we have been in communication
12 with Department of Transportation and we've made these changes
13 that they requested. Would that be correct?

14 MS. JOHNSON: Yes.

15 CHAIRPERSON JORDAN: I thought we had ANC-1B before.
16 But is anyone here from ANC-1B?

17 MS. JOHNSON: We have corresponded with ANC-1B.
18 We've received -- we've emailed and she did note that she was
19 pleased with the progress we've made, via email.

20 CHAIRPERSON JORDAN: They still haven't taken back
21 their opposition but if no one's here, they would usually be
22 here and follow up on it. And before you had not had contact.
23 And I'm glad you had contact. We keep saying to all
24 applicants, you've got to contact the ANC and have a
25 conversation with them because we take this very, very

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1 seriously.

2 All right, anyone here wishing to speak in support
3 of this application?

4 MR. LEE: And what, what did you say?

5 CHAIRPERSON JORDAN: Speak in support, anyone
6 willing to speak in support?

7 MR. LEE: Oh, yeah. I definitely support what has
8 taken place with them.

9 CHAIRPERSON JORDAN: What's your name again? Say it
10 again?

11 MR. LEE: My name's Rick Lee and I'm Chairman of the
12 Board of Lee's Flower and Card Shop. And we use the parking
13 lot. We've been renting from for many years, probably 30 years
14 or more, from Industrial. And I applaud them for stepping up
15 and, you know, bringing the parking lot into compliance. And
16 they've done a wonderful job. So that's, I'm definitely in
17 support of moving forward.

18 And I think that the one year stipulation is, is too
19 short, as was mentioned. You know, just to because of the
20 process and what-not and all the time that we've been sitting
21 here today. It's just like, you know, we're business people.
22 And I heard somebody mention that, you know, we all have other
23 things to do. So I wouldn't want to see us come back in one
24 year and what-not. So I think that there's got to be a way
25 for you guys to monitor this thing without us having to come

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1 back down here to, to the hearing.

2 CHAIRPERSON JORDAN: That's not what we do.

3 MR. LEE: Okay, great.

4 CHAIRPERSON JORDAN: It's for the public and
5 citizens to monitor and work in conjunction with the DCRA to
6 do that. And one of the reasons why we're having this
7 discussion because evidently it had not happened during the
8 time that this might have gotten into disarray.

9 Anybody else wishing to speak in support? Anyone
10 else in support?

11 (No response.)

12 Anyone in opposition? Anyone in opposition?
13 Please, starting with my left. Yes, on your microphone
14 please, make sure you say your name again.

15 MR. BOERTLEIN: My name is Neil Boertlein and I live
16 at 1930 11th Street, N.W. And I spoke at the last meeting.
17 And so this time I'd like to comment specifically on the
18 requirements to grant a special exception because we weren't
19 talking about that or we weren't aware that that's what we were
20 talking about at the last meeting. And then also about the
21 public notice.

22 I've got, first, I've got copies here. These are the
23 posting at the site. And you can see the same information --
24 Let me, I guess conform those to them -- you can see the same
25 information on their affidavit of posting that the posting was

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1 in fact for a variance request for 9-space parking lot. And
2 that was, the notice to the ANC, the notice to the City Council,
3 the notice to neighboring property owners was all for a
4 variance request. The sign that was posted for the last two
5 months was for a variance request for nine spaces. The
6 application was for a variance request.

7 Curiously, the fee paid by the Applicant was for an
8 owner-occupied dwelling variance request. There's been no
9 site plan posted until just now. And until last week the only
10 documentation referenced was for an 8- or 9-car parking lot.

11 Now the Applicant is asking for a 15-car lot with no,
12 with no real notice to the community. By the way, just as a
13 note, I bring this up not as a request to further drag out what
14 has become a multi-year process. I'm sympathetic to the
15 Applicant's desire not to be back here in a year. I was here
16 last year when they applied for the same request and it was
17 dismissed after three hearings for failure to prosecute. So
18 this is my second year into this process.

19 And I bring it up not for that reason but because
20 special exceptions and variances should not be granted to
21 Applicants who just continually fail to meet their
22 obligations.

23 Second, the lot must comply with all provisions of
24 Chapter 23 of the Zoning Regulations. As the Applicant
25 stated, they no longer intend to comply with the screening

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1 requirements and the landscaping requirements of Chapter 23.
2 They also no longer intend to comply with other requirements
3 that the Office of Planning gave at the last hearing as the
4 minimum necessary conditions for approval based on the
5 specifics of this case.

6 I think that the Applicant considers it an
7 unnecessary hardship to spend a few thousand dollars to bring
8 this property up to the standards set by the Code and the BZA
9 and the Office of Planning. Really serves to reinforce my
10 concerns about the low priority the owner places on keeping
11 this property managed, properly managed and maintained.

12 Third, there's a requirement that there be no
13 dangerous or otherwise objectionable traffic conditions that
14 shall result from the establishment of the use. Because of
15 the narrowness of the lot, Department of Transportation has
16 argued that this lot should be operated as valet-only at all
17 times because there's no enough space to turn around on the
18 lot and there's not enough room for two-way traffic. I think
19 that that solves some of the safety issues.

20 But really, the weekend and late night traffic, both
21 turning left into this lot and backing up out of the driveway
22 across the heavily-used sidewalk and into the street filled
23 with cars, buses and bicycles is just inherently dangerous.
24 And the danger comes both from users of the lot but, honestly,
25 more so from just taxis and users and other cars that use this

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1 driveway to turn around in. So they pull into the lot and they
2 back out into the street.

3 And like I say, keeping the gate closed except when
4 cars are entering and leaving, and operating the lot as
5 valet-only, which DDOT has recommended for safety reasons, I
6 think would help mitigate this. But it still, there's still
7 going to be people using this driveway to turn around in busy
8 traffic right at that intersection. Because they come to that
9 intersection and, for whatever reason, they don't want to cross
10 U Street and so they use that driveway to turn around. And
11 there's been some near misses with bikes on, I don't know, a
12 pretty regular basis. It's kind of scary.

13 And lastly, the parking lot should be reasonably
14 necessary and convenient for other uses in the vicinity. And
15 I think that residents and the elected officials of this
16 neighborhood have made it resoundingly clear that this parking
17 lot, far from being necessary, is a detriment to the
18 neighborhood.

19 And I think in somewhat of a unique turn of events
20 in a separate case currently I think coming before this BZA
21 in a month regarding a lot directly across or diagonally across
22 the street from this lot, Industrial Bank is arguing that this
23 area is in desperate need of housing and does not require
24 additional parking either for residents or retail. And they
25 go to extensive lengths to explain why in their reasoning this

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1 isn't required. And that's, I submitted that, I think it's
2 Exhibit 44 in today's case that really captures the bank's own
3 argument against why additional residential and retail parking
4 is not needed in this area and residences are.

5 So I think that speaks to the genuineness of any
6 motives that they have, that they're contradicting their
7 argument for this in another case that's before the BZA.

8 Thank you.

9 CHAIRPERSON JORDAN: Thank you. Board, any
10 questions of this witness.

11 MR. MITCHELL: Can I make a statement?

12 CHAIRPERSON JORDAN: No, you can't. I'm sorry, you
13 can't. That's just not our procedure.

14 Board, any question of this witness?

15 (No response.)

16 Does the Applicant have any questions of this
17 witness?

18 MR. MITCHELL: Well, I think there's, I think there's
19 a couple of things. Number one --

20 CHAIRPERSON JORDAN: No, no, no. You're going to
21 ask him a question.

22 MR. MITCHELL: Oh.

23 CHAIRPERSON JORDAN: You're going to get a chance to
24 do any rebuttal a little bit later.

25 MR. MITCHELL: I'm sorry.

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1 CHAIRPERSON JORDAN: Okay. All right, thank you.

2 MS. JOHNSON: I'm sorry, I would like to ask a
3 question on that.

4 Why do you feel that the application that is before
5 the Board in a separate case relates to this application when
6 this is a separate parking lot that's already been in existence
7 for the last 30 years?

8 CHAIRPERSON JORDAN: Leave that one alone. Don't
9 answer that. That's just flat on out of line. I don't think
10 you necessarily need to ask that question.

11 Have you got any other questions?

12 MR. MITCHELL: Can I ask a question?

13 CHAIRPERSON JORDAN: No, I'm sorry, you cannot .

14 MR. MITCHELL: Don't ask a question. Okay.

15 CHAIRPERSON JORDAN: The Board will take the
16 testimony of the witness as the Board will weigh it whichever
17 way it is.

18 MS. JOHNSON: Okay. Okay.

19 CHAIRPERSON JORDAN: All right. Anybody else in
20 opposition? Yes, your name again please?

21 MR. RIGGINS: My name is William Riggins. I live at
22 1921 11th Street, N.W.

23 CHAIRPERSON JORDAN: Let me let you know you have
24 three minutes, please. Thank you for coming.

25 MR. RIGGINS: I live five doors down from the parking

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1 lot. I am opposed to the special exception because I've lived
2 in this location for 11 years and in the 11 years that I've
3 lived there, during the entire time the parking lot has been
4 a nuisance and a detriment to the neighborhood, particularly
5 to the residents.

6 The parking lot is unsightly. It attracts drunk
7 people. They go across the street and buy beer and wine and
8 then come out and loiter in front of the parking lot all day
9 and into the early evenings.

10 Cars park in the public space. And even though there
11 are now planters in much of the public space, I would expect
12 that cars will continue to pull into the public space and sit
13 there, be it for a few minutes or for hours.

14 The curb cut is dangerous. Cars pull in and back out
15 of the curb cut all the time. It happens 20, 30 times a day,
16 cars, taxis, whatever. And it's unsafe for pedestrians and
17 bicyclists when these cars pull in and then back out. And I
18 think it's just a matter of time before a bicyclist or a
19 pedestrian gets hit in this spot, if it hasn't already
20 happened.

21 I'm also concerned about --

22 CHAIRPERSON JORDAN: How long has this lot been
23 there; do you know?

24 MR. RIGGINS: It's been there the entire 11 years
25 that I've lived on 11th Street.

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1 CHAIRPERSON JORDAN: Since the 11 years or before the
2 11 years, do you know? Since you got, when you got there it
3 was there?

4 MR. RIGGINS: It was there, yes.

5 CHAIRPERSON JORDAN: And -- I'm sorry, go ahead.

6 MR. RIGGINS: I'm also concerned about the hours that
7 the Applicant wants to have public parking there. There has
8 been a sign out there that says "public parking until 3:00 a.m."
9 We have a big problem on this block with the bar and nightclub
10 crowd. People are drunk and rowdy and they spill down the
11 block. And having a public parking lot open until 3:00 a.m.
12 in this location is only going to make that problem worse.

13 If the Board does grant this special exception I would
14 ask that they keep the one-year approval period in place. I
15 think given the history of this property and how it's been
16 operated in the past, it's important that we have a chance to
17 come back before the Board in one year and, as residents, report
18 on how we think they've been doing.

19 As far as the fence, I would say that the fence does
20 not look good. And the proposal to put green slats I can't
21 imagine is going to look good either. I would recommend
22 something more like an iron fence like the Industrial Bank
23 parking lot on the north side of U Street looks better than
24 the chain link fence that they have here in this location.
25 This is part of the U Street Historic District.

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1 CHAIRPERSON JORDAN: All right, so that -- thank you,
2 we appreciate your testimony.

3 Let me, so let me ask this question: what's the hours
4 of this parking lot?

5 MS. JOHNSON: The daytime hours, the attendant will
6 be present from 9:00 to 4:00 daily.

7 CHAIRPERSON JORDAN: Okay. Were --

8 MS. JOHNSON: And 9:00 to --

9 CHAIRPERSON JORDAN: -- you intending to use this
10 parking lot, keep it open for what period of time?

11 MS. JOHNSON: When there's no attendant present the
12 parking lot will be locked.

13 CHAIRPERSON JORDAN: No, that's not what I'm asking
14 you. You said after hours the lot's going to have an attendant
15 or a valet service.

16 MS. JOHNSON: Yes.

17 CHAIRPERSON JORDAN: What is the period of time that
18 the lot stops being in use?

19 MS. JOHNSON: I think 3:00 a.m. is the correct time.

20 MR. TESHONE: Maximum 3:00 a.m. Some people stay
21 for a little while so we wait for them, give them another hour.
22 But usually we close at 1:00 o'clock.

23 CHAIRPERSON JORDAN: Okay, so the answer is 3:00 a.m.

24 MR. TESHONE: Yes.

25 CHAIRPERSON JORDAN: That's all -- okay, all right.

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1 All right. Anyone else wanting to testify in
2 opposition?

3 (No response.)

4 Did you provide us a rendering what the lot was going
5 to look like with the slats through the fencing?

6 MS. JOHNSON: No, we don't have a rendering. But
7 what we are -- what we've assessed are silver slats to match
8 the silver chain link fence.

9 CHAIRPERSON JORDAN: They're not going to be green,
10 they're going to be silver?

11 MS. JOHNSON: No, they're not going to be green.
12 They're going to be attractive. They have to pass my approval,
13 my aesthetics.

14 CHAIRPERSON JORDAN: Oh yes?

15 MS. JOHNSON: I mean we're not going to just throw,
16 you know, green slats. I was very --

17 CHAIRPERSON JORDAN: Here's what we're trying to do,
18 we're trying to make sure we maintain the credibility of the
19 bank. Right now we have some problems with the neighborhood
20 based upon how you've operated. That's just bottom line. So
21 we have to make sure going forward that everything is going
22 to be on the up-and-up if we allow it to go forward.

23 So that's kind of what we're asking. What about that
24 barbed wire stuff? What happened?

25 MS. JOHNSON: It's been removed.

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1 CHAIRPERSON JORDAN: It's been removed.

2 MS. JOHNSON: It was removed soon after the hearing,
3 the June 30 hearing.

4 CHAIRPERSON JORDAN: That little shack looking thing
5 on the back, is that a garage or something? That's not yours.
6 It's on the back. I'm looking at your pictures, so I guess
7 that's something --

8 MS. JOHNSON: That may be the neighboring property.

9 CHAIRPERSON JORDAN: I don't mean shack, it could be
10 a garage.

11 So the pictures that you provided us are old pictures;
12 right?

13 MS. JOHNSON: I've provided some "before" pictures
14 because --

15 CHAIRPERSON JORDAN: Exhibit 36 I have a picture.
16 And I'm just wondering, I thought the lot, the pavement had
17 been replaced. And it doesn't look like that in Exhibit 36.

18 MS. JOHNSON: I hand wrote in marker what the
19 pictures, what they're reflecting. So those pictures, the
20 pictures that show the repair of the pavement say "pavement
21 repair."

22 CHAIRPERSON JORDAN: So this was something that you
23 submitted after the previous hearing; would that be correct?

24 MS. JOHNSON: Yes, sir. I've submitted a number of
25 pictures since the previous hearing.

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1 CHAIRPERSON JORDAN: Okay.

2 MS. JOHNSON: We were uploading --

3 CHAIRPERSON JORDAN: Forty-five? When did they get
4 posted?

5 MEMBER HOOD: Forty-five. And you have three
6 pictures; right?

7 MS. JOHNSON: Yes. But we uploaded a number of
8 pictures.

9 MEMBER HOOD: Some more? I see Exhibit 45.

10 CHAIRPERSON JORDAN: They had to be upside-down
11 though.

12 MEMBER HOOD: Repair pavement. Yes.

13 CHAIRPERSON JORDAN: Okay, thank you. Okay. We
14 didn't resurface the whole thing, we kind of spot resurfaced
15 it; is that what we did?

16 MS. JOHNSON: Yes. We were told that, by Office of
17 Planning that that was acceptable. And they'd stated that in
18 a memo.

19 CHAIRPERSON JORDAN: Thank you.

20 MS. JOHNSON: That repair was acceptable and that we
21 did not have to resurface the entire lot.

22 CHAIRPERSON JORDAN: All right. Anyone else in
23 opposition?

24 (No response.)

25 Then let's turn back to the Applicant for any

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1 rebuttal, meaning that you can reply now if you want, Mr.
2 Mitchell.

3 MR. MITCHELL: Oh thank you. Thank you, Mr.
4 Chairman.

5 Since, if I can summarize, the lot really fell into
6 disrepair when we stopped operating it in the evening. It's
7 a very busy area down there. And that's not going to go away
8 whether the lot is there or it isn't.

9 Since my involvement I think, as you all know, we have
10 committed to operate the lot safely. With the, with hiring
11 an attendant, contrary to popular opinion because we are a bank
12 doesn't mean we have money to throw at any particular project
13 when it's not necessary. So, you know, some of the -- we've
14 already spent thousands of dollars in hiring an attendant so
15 that this does not happen during the day. It is a commitment
16 that we made.

17 There will not be any backing out of the parking lot
18 either during the day or at night because we will have either
19 the parking service operating it at night or the attendant
20 operating it during the day. And as much as possible the
21 attendant will prevent people from driving around and blocking
22 the sidewalk.

23 We're trying to make it look aesthetically pleasing,
24 as we've done with the landscaping and with the slats. We are
25 trying to be very particular about how the slats look to provide

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1 the screening. I think all we've done is try to comply with
2 everything that the Board, Office of Planning, the
3 neighborhood and DDOT has requested of us.

4 We've been there for a long time. We are a wonderful
5 community organization. We plan to be there for a long time.
6 And there's nothing more that we would like to do is to make
7 everyone happy about how the lot operates.

8 Thank you.

9 CHAIRPERSON JORDAN: All right. So the Board is
10 ready to deliberate on this case.

11 You know, I think I, you know, since this is a special
12 exception and there's been some movement and it's a different
13 standard than when you were asking for a hearing, and there's
14 been some compliance, certainly it's a different position that
15 we had -- I certainly had regarding this case prior to these
16 changes and some attempt to be in compliance. The Office of
17 Planning is supportive of this matter.

18 With the conditions that require approval, let's come
19 back to the approval period, but approval for a limited period
20 of time. And let's talk about that:

21 That the Applicant must continue to improve the site
22 and submit to OP the site plan. I understand there has been
23 one or one has been updated. That the evergreen shrubs be at
24 least 42 inches in height. That the gate be kept locked at
25 all times when there is no attendant on the property. And that

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1 no parking shall be permitted within public space and that
2 there shall not be any loitering permitted on the property.
3 And the property shall be maintained trash free. And that the
4 owner would post the name and contact -- the contact telephone
5 number of the person responsible for answering any issues on
6 this lot but, however, provide the ANC and any community-based,
7 named community-based organization with the name of a liaison
8 person who is going to be the intermediary. And that they
9 maintain this property be secure at any time, would probably
10 mitigate any issues that we've had.

11 But that's why we had sometimes limited time frames
12 on special exceptions because we, you know, we shouldn't have
13 to do it, but trying to keep people honest. I'm concerned
14 though about having this -- and this is just a thought and I
15 want to hear from, certainly hear from everybody else --
16 keeping this open till 3:00 a.m. That just kind of rubbed me
17 a little differently about this.

18 The curb cut aspect, I mean this curb cut's been there
19 longer than what the witnesses have been there. So this
20 parking lot was there. And we have a lot of curb cuts. And
21 I know DDOT's trying to remove them as we have the opportunity
22 to. But here's an active parking lot.

23 I don't find relevant the testimony about what's
24 going on in another application because we'll deal with that
25 at that time.

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1 So that's kind of my thought. Oh, and I think that
2 there, that it's the variance which should be allowed in
3 regards to the 5 percent green space because this lot is already
4 ongoing and they have made some changes regarding other aspects
5 of greenery on this lot. So that's kind of where I am. That's
6 my thought on it.

7 MEMBER HOOD: I would, I would concur. I don't think
8 you have a finding on the time frame, not yet. Okay.

9 I do understand the issue about 3:00 a.m. for one who
10 is coming to the neighborhood because there's nowhere to park.
11 So, so that's one of the things we need to balance. You know,
12 we hear that argument a lot. But, you know, I want to go back
13 to one of the former councilmen's told me, we hear that argument
14 a lot. We hear the argument about we need parking and then
15 we take away parking.

16 Here we have a lot for the vendors and those who want
17 to do whatever they do on U Street. I don't know. I hear
18 stories but I'm at home at night, so I don't know what -- they
19 party or what they do on U Street. But I know people are
20 looking for parking spaces. So, you know, that can be a
21 two-way sword. That can work against you from my perspective,
22 I think.

23 So we've heard it both words down here. But I do
24 think --

25 CHAIRPERSON JORDAN: You mean two ways, two ways

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1 because they can go to the street parking?

2 MEMBER HOOD: Yes, they park in front of your house.
3 I won't. Won't be my car. But I'm not making light of it,
4 I'm being serious, this is stuff that we have to grapple with.
5 It sounds like -- and I understand the community's concern but
6 when I have the president of the bank here in front of me saying
7 what they're going to do, I don't think we're going to have
8 -- I think we're going to have more attention paid to it. I
9 think that Industrial has been there for years along with Lee's
10 Flowers on U Street. They were on U Street when nobody else
11 would come to U Street.

12 So I think that people who are seated here in front
13 of me I think makes a big difference for me. And I don't think
14 it should be curtailed to one year. That's just where I am.
15 I don't believe that -- I'll be here in two years, so if it
16 comes back and Mr. Mitchell has not done what he has done I
17 will, I will eat everything I have said, but I believe that
18 they will take care of business there and be good neighbors,
19 just like they expect everyone else to be good neighbors.
20 That's why, Mr. Chairman.

21 CHAIRPERSON JORDAN: So what time, is there a time
22 period that you think?

23 MEMBER HOOD: 3:00 a.m., I don't know what all goes
24 on down there. I'm not one of the neighbors that has to deal
25 with the issues, but I do know, again like I said, it's a two-way

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1 sword. You know, a lot of people in the city, well, there's
2 no parking. We don't want it in front of our house. And,
3 respectfully, we should not park in front of, right in front
4 of folks' houses.

5 MR. MITCHELL: Mr. Chairman, can I just clarify
6 something about 3:00 a.m.? It's not the intent to let cars
7 in the lot at 3:00 a.m. Mr. Teshone, you know, they try to
8 close as soon as the last car is out. And, if necessary, they
9 will wait until the last car is out.

10 MEMBER HOOD: So the lot closes at 1:00.

11 MR. MITCHELL: They are not letting cars in at
12 quarter to 3:00.

13 MEMBER HOOD: Okay. So the lot closes at 1:00 and
14 they give two hours for everyone to vacate the lot?

15 MR. MITCHELL: That's right.

16 MEMBER HOOD: Okay.

17 CHAIRPERSON JORDAN: Yes, but it's still open. So,
18 and I hear what you're saying, but I'm just, but I was talking
19 about the time frame if there's a limitation to the special
20 exception. That's what I was talking about.

21 MEMBER HOOD: You mean as far as putting down whether
22 it be 3:00 a.m.

23 CHAIRPERSON JORDAN: One year, two years, three
24 years.

25 MEMBER HOOD: Oh. Oh, the time frame. Oh, I would,

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1 two, no less than two years. Really like to go five but I
2 understand what the community's saying. No less than two. I
3 think a year, again, because I know previously we don't usually
4 require it, at least since I, when I was on the Board we don't
5 usually require a year unless someone has not done anything.
6 But I think this Applicant has already done a number of things
7 which has been approved, with the paving and what they've asked
8 for with the landscaping and some of the other things.

9 I think they've done, they've showed some movement
10 and some progress. And I think the president of the bank being
11 here says a lot. That's just where I am.

12 Thank you, Mr. Chairman.

13 CHAIRPERSON JORDAN: Anyone else? Mr. Hinkle?

14 MEMBER HINKLE: Yes, thank you, Mr. Chairman.

15 I am familiar with this area because I don't live too
16 far. And it's a busy area in the evening, late in the evening.
17 I can testify to that.

18 But, you know, it would be nice to be able to put some
19 sort of limitation in terms of how late it can be open. You
20 know, that's one of my concerns. And if it's one of, you know,
21 not allowing new cars in after 1:00 o'clock in the morning or
22 something, I think that that's important.

23 If this were an application for a new parking lot I
24 certainly cannot support it because I do think it would have
25 or does have external impact from the residential neighbors.

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1 But because this parking lot has existed for a while I can
2 certainly support the special exception.

3 And I can also support the one-year term simply
4 because we have had testimony as to how impactful this parking
5 lot has been. And I appreciate all the work that the Applicant
6 has done, you know, over the past couple months especially.
7 But we still have residents here who testified again about all
8 the problems that have been caused by this parking lot.

9 And so I still maintain some concerns about how this
10 will be managed. So for me, one year is appropriate.

11 CHAIRPERSON JORDAN: Any thoughts on that?

12 MEMBER HILL: Yes. I also, I'm familiar with the
13 area and am aware of kind of lot itself. And I guess for me
14 I, I'd like to see kind of what it is going to end up looking
15 like. Like I mean, you know, the, I mean the owner -- I mean,
16 I'm sorry, the head of the bank is here. And, you know, I hope
17 to also be here in two years. But, you know, the, you know,
18 the landscaping that you've done so far, I don't know what the
19 fence is really going to end up looking like.

20 You know, the patchwork that you've kind of done on
21 the lot itself like, you know, that to me says right now you
22 just don't know what you're going to do with it perhaps. Like,
23 you know, you're just kind of fixing things and see if you get
24 approved or not.

25 I mean I could support the variance but I think I'd

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1 be on more, you know, the one year thing just as far as like
2 coming back and seeing how it looks.

3 MR. MITCHELL: We can certainly, you know, --

4 CHAIRPERSON JORDAN: It's not a give and take at this
5 point. This is deliberation of the Board.

6 MR. MITCHELL: Sorry. I was just, you know, offer
7 that we can work with the, we can work with the community on
8 the color of the slats.

9 CHAIRPERSON JORDAN: Okay. All right then. So
10 this is -- where do we go, Board? So what about the hours?
11 What was your feeling, Mr. Hinkle, on the hours? I think what
12 I said, it was okay for 3:00 a.m. but you wanted no new park
13 -- new cars cannot come in after 1:00. Is that what I heard?

14 MEMBER HINKLE: That's correct.

15 MEMBER HILL: Yes, that's correct.

16 CHAIRPERSON JORDAN: Okay. So the parking lot
17 closes at 1:00 would be -- would close at 1:00 for new cars
18 but they could have it open until 3:00. That's what I'm
19 understanding.

20 All right. All right, why don't we -- what if we kind
21 of look at this and split this. If we did one year and we're
22 right back, we might as well start preparing the case for one
23 year like right as they walk out of here. What about if we
24 look at two years? That gives you a short term, gives you the
25 opportunity to come back here. And it's not really pushing

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1 out like five years and seven years.

2 MEMBER HOOD: You can actually go with two. But I
3 thought I heard two people who use the neighborhood and
4 probably park in the lot say that they were going to use --
5 they would like to stay with one. But I would agree with your
6 assessment.

7 CHAIRPERSON JORDAN: Well, we've got a little --

8 MEMBER HOOD: I agree with your assessment. But I'm
9 just saying what I heard.

10 CHAIRPERSON JORDAN: I'm trying to be the
11 compromising voice here.

12 MEMBER HOOD: Well, let me just say this: it's not
13 a showstopper for me. I just think that we do this Applicant
14 a disservice if we do two years. But I don't frequent the
15 neighborhood like I heard other two do who park in your
16 neighborhoods. I don't do that.

17 CHAIRPERSON JORDAN: All right. So we have one year
18 then. All right.

19 All right, so then we would -- Come on, you can rescue
20 this one. All right, so then what the order would, I propose
21 the order would look like is that we would grant a special
22 exception for a continuation of the parking lot with a waiver
23 of 2303.2 on the greenery, and that we would allow a variance
24 between 2301(f) for the, I think the wall situation. I think
25 that's what it is because we have other ways to build up.

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1 That we will issue an order that this will be for a one year
2 period. And I understand the bank also may have some other
3 plans anyway.

4 MEMBER HOOD: Mr. Chairman, let me add to that,
5 please. I would ask Board Member Hill and my other board member
6 if they would consider a year-and-a-half? I'm just asking.

7 CHAIRPERSON JORDAN: No, no, no.

8 MEMBER HOOD: I'm just asking.

9 CHAIRPERSON JORDAN: I'm just trying to see where
10 you're at.

11 MEMBER HINKLE: Yes, I certainly could be open to
12 this. I do understand that one year is pretty tight.

13 CHAIRPERSON JORDAN: All right, two years.

14 MEMBER HOOD: Okay. Great.

15 CHAIRPERSON JORDAN: All right, thank you.

16 MEMBER HOOD: You better not mess up. I'm serious.

17 CHAIRPERSON JORDAN: And that doesn't stop the
18 citizens from going in and showing violations and let DCRA do
19 some enforcement. That always is in place.

20 So the conditions would be approval for two years;
21 that the evergreens and shrubs should be at 42-inch height and
22 be physically planted along the 11th Street frontage; the gate
23 should be closed and locked at any time that there is not an
24 attendant to this lot; the lot should stop accepting cars at
25 1:00 a.m. and allow the exit of cars till 3:00 a.m.; no parking

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1 shall be permitted within public space; no loitering shall be
2 permitted on the property; the property shall be maintained
3 free of trash; the owner shall post on the property a telephone
4 number of a contact person; the owner shall name a liaison
5 person to the ANC so they have direct contact with the ANC and
6 other named -- formed community organizations.

7 And I think that was it? Right?

8 Also, that the owner needs to submit a revised
9 self-certification form in accordance with the amended relief
10 that's being requested here.

11 I think that takes it all; right?

12 So then I would move that the order be as I just set
13 forth.

14 MEMBER HILL: I second.

15 CHAIRPERSON JORDAN: Motion made and seconded.

16 Additional discussion?

17 (No response.)

18 All those in favor of the motion, aye.

19 (Chorus of ayes.)

20 Those opposed, nay.

21 (No response.)

22 The motion carries. Mr. Moy?

23 SECRETARY MOY: Yes, sir. Staff would record the
24 vote as 4 to 0, this on a motion of Chairman Jordan to approve
25 the special exception and variance, amended variance relief

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1 with conditions as cited by the Chairman. Seconding the
2 motion Mr. Hill. Offer in support of Mr. Hood and Mr. Hinkle.
3 Board member not present today. Motions carries 4 to 0, sir.

4 CHAIRPERSON JORDAN: Oh, summary.

5 SECRETARY MOY: Thank you.

6 CHAIRPERSON JORDAN: Summary. Thank you, all.
7 Appreciate it.

8 MS. JOHNSON: Thank you.

9 CHAIRPERSON JORDAN: Thank you, witnesses,
10 everyone. Thank you for being here.

11 Mr. Moy, I think we have one other case; is that
12 correct?

13 SECRETARY MOY: Yes, we do, sir.

14 CHAIRPERSON JORDAN: Okay then.

15 SECRETARY MOY: That would be Appeal Number 18991 of
16 John A. Stokes. This is the appeal case. Let me suffice to
17 say that this is property located at 1521 Varnum Street, N.W.

18 Mr. Chairman, as you are aware, there are numerous
19 preliminary matters on this in the form of motions, including
20 the innovator status request.

21 CHAIRPERSON JORDAN: On that last case, since the ANC
22 didn't remove their opposition then we're going to do the full
23 order, Mr. Moy. They did not remove it.

24 NO. 18991, ANC-4C, APPEAL OF JOHN A. STOKES

25 CHAIRPERSON JORDAN: Here we go. All right, so

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1 let's identify yourselves. Mr. Tondro, would you start us
2 off, please?

3 MR. TONDRO: Yes. Maximilian Tondro, Assistant
4 General Counsel with DCRA, representing the Zoning
5 Administrator.

6 MR. LeGRANT: Matthew LeGrant, Zoning Administrator
7 DCRA.

8 MS. McCARTY: Shauna McCarty at 1529 Varnum Street,
9 N.W. My property abuts the proposed apartment.

10 MR. STOKES: John Stokes, 1519 Varnum Street,
11 Appellant.

12 MS. IRWIN: Elisa Irwin, ANC-4C.

13 MS. BUSH: Jane Bush, 1516 Webster Street, N.W. I
14 am right behind John Stokes's apart -- property.

15 CHAIRPERSON JORDAN: Your name again?

16 MS. BUSH: Pardon me?

17 CHAIRPERSON JORDAN: What is your name again?

18 MS. BUSH: Jane Bush.

19 MR. SULLIVAN: Marty Sullivan on behalf of the
20 property owner.

21 MR. WENG: Henrik Weng.

22 CHAIRPERSON JORDAN: Make sure your mike is on.

23 MR. WENG: Yes. Henrik Weng, 1520 Webster Street,
24 neighbor to the proposed development.

25 CHAIRPERSON JORDAN: Okay.

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1 MR. WENG: I was not sworn in this morning.

2 CHAIRPERSON JORDAN: I was going to ask. That's
3 what -- thank you, that's what I -- I want to apologize. I
4 know sometimes I'm going to say it and then everybody starts
5 saying their names.

6 Has everybody been sworn in and has everybody
7 submitted witness cards to the court reporter? Then we do have
8 one person we need to swear in.

9 SECRETARY MOY: Anyone who has not been sworn.

10 CHAIRPERSON JORDAN: No, just him.

11 SECRETARY MOY: Oh, just yourself. All right, I'm
12 sorry.

13 (Witness sworn.)

14 MR. WENG: I do.

15 SECRETARY MOY: Thank you.

16 CHAIRPERSON JORDAN: All right. So we have a lot of
17 things going on here. Procedure or summary kind of questions
18 and issues.

19 Mr. Stokes, are you asking for a continuance? Is
20 that correct?

21 MR. STOKES: I was asking for a continuance because
22 when I received the last set of plans I had to have them
23 reviewed. And so I went ahead and I did submit testimony for
24 today.

25 CHAIRPERSON JORDAN: Okay. I thought you had. So

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1 you are withdrawing your motion of continuance; right?

2 MR. STOKES: That is correct.

3 CHAIRPERSON JORDAN: Okay. Now, all righty,
4 righty, righty.

5 MR. STOKES: But I do have information that I do need
6 to submit because I'm not going to ask for an extension.

7 CHAIRPERSON JORDAN: Well, you can do that during
8 your testimony or whatever. You can do it during the case.

9 MR. STOKES: Okay, thank you.

10 CHAIRPERSON JORDAN: Okay. Then there is a motion.
11 There's all kind of motions.

12 All right, so we have DCRA's motion to request a late
13 filing; right? Is that correct? That's pending.

14 And, okay, so I think that's the only thing. Okay,
15 so I went back and reviewed all the previous setting and
16 hearings on this case. So we'll definitely grant DCRA's
17 motion for a late filing because that, again the dates kind
18 of got mixed up and became confusing as to when the time frame
19 was for filing them. So that we'll accept that unless the
20 Board, anybody has an issue with that.

21 Also accepting in the record because there's so much
22 stuff that went on in this record after this record should not
23 have had anything else in it, that the only other thing we're
24 going to be accepting in this record is on September 1st the
25 Applicant filed a prehearing statement. September 8th the

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1 property owner filed its response. September 10th DCRA filed
2 its response and requested the late filing. That's going to
3 be accepted in the record.

4 All other motions to intervene and party status are
5 going to be denied as being beyond the time period allowed under
6 the rules. And we've already began this hearing with the
7 persons we had. We additionally began we had, Mr. Weng, you
8 gave testimony at that last hearing. Everybody else who has
9 made a request for party status and to intervene can testify
10 in regards to being a witness, their three minutes as a witness,
11 but they will not be allowed as an intervenor nor as a party
12 status.

13 And that would be the order unless we have objection
14 because we've already started this hearing and we've gotten
15 this ball rolling and it's beyond the time period of 3106.
16 Unless the Board has an objection, that would be the order.

17 So if anyone else --

18 MEMBER HOOD: I'm just trying to remember, did we --
19 yes, that's right, we went through -- did we entertain party
20 status last time, or we didn't have party status?

21 CHAIRPERSON JORDAN: We didn't have any party status
22 requests. We did have Mr. Weng testify because when we decided
23 to continue the hearing, and I thought Mr. Weng didn't know
24 if he was going to be here or not we let him testify. We called
25 for others to testify in the case and nobody else was here but

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1 you to testify at that matter.

2 So we, but more importantly, we're beyond the time
3 frame under 3106 to have any party status.

4 MEMBER HOOD: Okay. Also, there's one other thing.
5 Mr. Stokes mentioned that he may have some additional material.
6 What I do not want to happen is Mr. Stokes was saying that he
7 had not had a chance to respond to that material. So I don't
8 know how we're going to work that out but we need to work that
9 out since we did not -- he just mentioned that he has some
10 additional material to submit.

11 And typically what would normally happen, what I've
12 seen happen is then they say, Well, I haven't had a chance to
13 respond to it. But if he presents it today, but if it's
14 presented later or if it's entered into the record later then
15 Mr. Sullivan will say that he didn't -- I'm not saying you would
16 say it, but you probably will -- we agree on that; right? Will
17 say that he did not have a chance to look at whatever he submits.
18 That's just only my concern moving forward.

19 CHAIRPERSON JORDAN: I just don't know what it is at
20 this point. And I don't know if it's his testimony or
21 something that can be taken care of during the time of the case.

22 MEMBER HOOD: So noted.

23 CHAIRPERSON JORDAN: So I mean I don't want to start
24 with any preconceived notions regarding that.

25 MEMBER HOOD: Yes. But I just know what usually

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1 happens. That's my point.

2 CHAIRPERSON JORDAN: All right, so where are we on
3 this? So let's go now, Mr. Stokes, you have limited or been
4 more specific in regards to your point of error. Would you
5 like to go through that and present your testimony regarding
6 that?

7 MR. STOKES: Good afternoon. Good afternoon,
8 Chairman, Jordan, Member Hood, Member Hill and Member Hinkle.
9 For the record, I'm John Stokes and I reside at 1519 Varnum
10 Street, N.W.

11 CHAIRPERSON JORDAN: Excuse me one second. Thank
12 you, Mr. Moy. How much, excuse me, how much time do you think
13 you're going to need?

14 MR. STOKES: I'm going to try to be brief. I've
15 learned, I've learned to try to be brief with these hearings.

16 CHAIRPERSON JORDAN: Yes, yes, yes, but --

17 MR. STOKES: Probably, probably about ten minutes.

18 CHAIRPERSON JORDAN: Okay. Then let's set the clock
19 on ten minutes per party, Mr. Moy.

20 Thank you.

21 MR. STOKES: Okay. My testimony will be brief this
22 afternoon. But before I begin I would like to point out that
23 there are several neighbors who live within 200 feet of the
24 proposed construction that have come to the hearing today to
25 testify in support of my appeal. As a part of the appeal I'd

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1 like for them to just stand and show themselves.

2 CHAIRPERSON JORDAN: Sir, we're not doing that.

3 MR. STOKES: No? Okay.

4 CHAIRPERSON JORDAN: If they want to testify,
5 they'll testify.

6 MR. STOKES: Okay.

7 CHAIRPERSON JORDAN: We're not doing a number count.

8 MR. STOKES: Okay. I also note that my ANC
9 commissions for 4C03 is here today to testify in support of
10 the appeal.

11 The pleadings previously filed with the Board for the
12 case describe all of the adverse impacts reasonably to be
13 expected with the construction of the proposed apartment
14 building at 1521 Varnum Street, N.W. But I want to make it
15 clear in this morning's testimony -- today's testimony the
16 basis of the appeal is why the permit should not have been
17 approved by the Zoning Administrator for six apartment units,
18 let alone seven apartment units.

19 This testimony includes additional zoning code
20 violations as well as the interpretation, implementation
21 provisions of Section 101 and 330. And the updated appeal of
22 yet another set of final plans submitted by the owner to me
23 on August 14th of this year there are several zoning code
24 violations.

25 Peer review number one, and I have copies of the peer

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1 review report, peer review --

2 CHAIRPERSON JORDAN: Give me one second please. Let
3 me catch up, pull that back up.

4 MR. STOKES: Sure.

5 CHAIRPERSON JORDAN: I just closed that up. Give me
6 one second, I'm sorry.

7 MR. STOKES: Sure.

8 CHAIRPERSON JORDAN: I have a computer problem.
9 Let me find that exhibit. What's the exhibit number
10 on that, do you know?

11 MR. TONDRO: I believe it's 68.

12 CHAIRPERSON JORDAN: 68.

13 MR. STOKES: What's that?

14 MR. TONDRO: The peer review report.

15 MR. STOKES: Oh, this is an updated peer review
16 report.

17 CHAIRPERSON JORDAN: Updated?

18 MR. STOKES: This is updated. This is why--

19 CHAIRPERSON JORDAN: Updated as of when?

20 MR. STOKES: As of, as of yesterday.

21 CHAIRPERSON JORDAN: Oh. So that gets into what Mr.
22 Hood is talking about.

23 MR. STOKES: Right. See, that's why --

24 CHAIRPERSON JORDAN: What's changed in regard to
25 that?

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1 MR. STOKES: Well, there are two zoning errors that
2 were -- that the, that my architect found.

3 CHAIRPERSON JORDAN: Have you provided that to Mr.
4 Sullivan and Mr. Tondro?

5 MR. STOKES: I have not. This just came, this was
6 just completed.

7 CHAIRPERSON JORDAN: I'd let them look at it and see
8 if they are ready and prepared to go forward on that first,
9 if you would please.

10 MR. STOKES: A copy for --

11 CHAIRPERSON JORDAN: Okay, could you give it to them.
12 (Pause.)

13 CHAIRPERSON JORDAN: What sections on this new one
14 is different than the one that's online?

15 MR. STOKES: So again, for this new peer review there
16 are, there's a cellar peer review note. There's two, there's
17 two notes. And then on the last set of plans that they
18 submitted, the owner submitted to me, when my architect went
19 back to review those plans, peer review Note Number 2 which
20 shows that the wall configuration to provide a building setback
21 from the existing chimney creates a closed court.

22 CHAIRPERSON JORDAN: I'm not asking for you to go
23 into any merits, I just want to see what's different. Just
24 point out to me what's different on here.

25 MR. STOKES: One and 2.

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1 CHAIRPERSON JORDAN: Tell me what sections.
2 Section 1 and 2 is different, is that what you're saying?

3 MR. STOKES: So this peer review is a new peer review
4 report and the biggest difference is that this peer report
5 covers those two zoning code violations.

6 CHAIRPERSON JORDAN: So you're adding something else
7 to it; is that what you're saying?

8 MR. STOKES: Yes. Because, again, the plans were
9 changed. And this is why I was asking for the extension
10 because I needed to from the last peer review.

11 CHAIRPERSON JORDAN: But it appears to be shorter.

12 MR. STOKES: Yes.

13 CHAIRPERSON JORDAN: So something was taken out
14 also?

15 MR. STOKES: Well, again, we this peer review was
16 just to focus on anything that was not included in the first
17 peer review.

18 CHAIRPERSON JORDAN: This is a supplement? It's a
19 supplement or am I wrong?

20 MR. STOKES: Yes. Well, yes.

21 CHAIRPERSON JORDAN: We've got to use both?

22 MR. STOKES: Yes.

23 CHAIRPERSON JORDAN: Well, so now we went from what,
24 how many pages before to -- 22 before. They add another 14?

25 MR. TONDRO: Mr. Chair, Members of the Board, if I

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1 may, just as a point of information, those most recent plans
2 that were sent by the owner's counsel, those have not been
3 approved by DCRA.

4 CHAIRPERSON JORDAN: So that's not before us?

5 MR. TONDRO: So that is not before us. And,
6 therefore, to the extent, I would move that this supplementary
7 peer review only focuses on alleged additional errors. And
8 those additional plans I would view it as --

9 CHAIRPERSON JORDAN: The ones prior to --

10 MR. TONDRO: The ones prior should be the ones
11 controlling, and only those.

12 MEMBER HOOD: Maybe I'm not following that. I'm not
13 following that.

14 CHAIRPERSON JORDAN: He's saying there's been some
15 new plan -- I think he's saying a new --

16 MEMBER HOOD: Yes, and that's concerning me. He's
17 saying there's some new plans that have not been renewed. What
18 are reviewing, old plans?

19 MR. SULLIVAN: Well, if I could clear that up. So
20 the reason why the plans were changed this last time is in
21 anticipation of being stopped regarding the chimney issue. So
22 the issue of the 10-foot clearance for the chimney which just
23 came around about a year ago, in December is when it began to
24 be enforced, has been enforced -- has been spottily enforced
25 at best.

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1 So when these plans were originally approved, nobody
2 even knew that the chimney clearance thing was an issue. And
3 DCRA never made a comment to us to allow for the chimney
4 clearance. On our own voluntary, so that we wouldn't get
5 caught with it later, we decided to make that change now with
6 the chimney.

7 So those plans were then submitted to Mr. Stokes as
8 soon as they were ready. They were also submitted to DCRA.
9 At which point DCRA would not process them because of the notice
10 to revoke that was issued and that put a hold on their
11 processing it.

12 So those plans were ready over a month ago but it was
13 only for the chimney and it was to provide the chimney clearance
14 because we didn't want them to come back in two months and say,
15 Hey, we missed this chimney issue.

16 CHAIRPERSON JORDAN: But that's not --

17 MR. SULLIVAN: So it doesn't change anything with
18 zoning.

19 MR. STOKES: But to the extent, I'm not worried about
20 anything in his report either, if you wanted to accept it.

21 CHAIRPERSON JORDAN: Well, no, no, no. But we've
22 got to clear this up. Items that are not, that the Zoning
23 Administrator has not rendered a decision on is not before the
24 Board. So is that what this supplement is about or is this
25 supplement going deeper on the other stuff that is, the Zoning

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1 Administrator has made a decision about?

2 MR. STOKES: Part of the supplement.

3 CHAIRPERSON JORDAN: We're taking five minutes.
4 You guys get your act together, let us know where we are.

5 (Whereupon, at 1:43 p.m., the hearing was recessed,
6 and reconvened at 1:59 p.m.)

7 CHAIRPERSON JORDAN: All right, here we go again.
8 So where are we in regards to this supplemental document?

9 MR. STOKES: I'm just going to address one peer
10 review note from this new document.

11 CHAIRPERSON JORDAN: This is what we're going to do
12 because this -- you know, and I understand, as I said, you know,
13 I certainly understand how difficult this zoning thing is.
14 People have been doing it for 50 years and it's still an issue.
15 And so let's do this, let's sit here now and you're going to
16 list for me claims of error. Okay? Can you do that for me,
17 then we'll step through that. Because it's kind of all over
18 the place when we look at a lot of different documents that's
19 been submitted.

20 And certainly, you know, we've moved this all the way
21 back down to where we started off. Do you already, do you have
22 it listed in one spot that we can reference? Because I do,
23 in your peer review, in that first peer review on page 7 there
24 is a matrix. Is that what you're using?

25 MR. STOKES: Well --

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1 CHAIRPERSON JORDAN: I don't see your claim of error
2 330 here in that matrix.

3 MR. STOKES: No. Because that was just the peer
4 review from the actual structure itself. That was not the peer
5 review for the 100 which I leave --

6 CHAIRPERSON JORDAN: Okay, let's just let you
7 continue. And I need you to be specific because this is going
8 to lock you in. You know, we've been all over the place on
9 this, not just because of any issues with you but also there's
10 been some moving targets. So let's go ahead and list those.

11 MS. IRWIN: Mr. Chairman?

12 CHAIRPERSON JORDAN: Yes?

13 MS. IRWIN: May I go first?

14 CHAIRPERSON JORDAN: And?

15 MS. IRWIN: I am Elisa Irwin, ANC 5C03.

16 CHAIRPERSON JORDAN: Please, go ahead.

17 MS. IRWIN: Thank you.

18 CHAIRPERSON JORDAN: Are you representing the ANC
19 or?

20 MS. IRWIN: Representing the ANC. My name is Elisa
21 Marie Irwin. I am Commissioner for ANC 4C03, and I am
22 representing the ANC.

23 CHAIRPERSON JORDAN: Okay. And are you listing for
24 the Appellant the claims of error? I just need the list of
25 claims of error. I just need the list of the code sections

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1 and what you're claiming is wrong, regulation section and what
2 you're claiming is wrong. I'm not asking for testimony.

3 MR. STOKES: Yes.

4 MS. IRWIN: Okay. Excuse me.

5 I apologize, Commissioners, I cannot. I can speak
6 to what the ANC wrote. I can speak to what the ANC believes.

7 CHAIRPERSON JORDAN: Yes, but they --

8 MS. IRWIN: Yes, so --

9 CHAIRPERSON JORDAN: But hold on.

10 MS. IRWIN: I'm going to go through it right now.

11 No?

12 CHAIRPERSON JORDAN: The ANC is a party.

13 MS. IRWIN: Yes.

14 CHAIRPERSON JORDAN: By virtue of being a party.

15 However, this was filed initially by Mr. Stokes.

16 MS. IRWIN: Correct.

17 CHAIRPERSON JORDAN: I need to find out if Mr. Stokes
18 could list for me by regulation the claim -- the regulation
19 in contention and the claim of error.

20 MS. IRWIN: May I start?

21 CHAIRPERSON JORDAN: No.

22 MS. IRWIN: Okay.

23 CHAIRPERSON JORDAN: Then we'll add you on to see if
24 yours is any different. Unless Mr. Stokes is saying whatever
25 you say is going to lock him in to the point of contention;

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1 I can live with that. But we've got to bring this into the
2 universe.

3 We've been all over on this. This is our second,
4 third time the thing's been set or something.

5 MR. STOKES: Why can't I just --

6 CHAIRPERSON JORDAN: Why can't you do what? Let me
7 say, Mr. Stokes, we asked you earlier on, remember when you
8 did the shotgun blast of all the -- you cited all these
9 regulations when we said you weren't specific. And we asked
10 you to give to us the specific allegations of what's wrong.
11 So that's all I'm asking you for.

12 Excuse me one second, please.

13 MR. STOKES: Just read this? Okay. Because that's
14 part of it too. Title --

15 (Pause.)

16 CHAIRPERSON JORDAN: So let's try this. What
17 document is that? So you submitted a document entitled, well,
18 it was what we have Exhibit 42. And if you pull up on page,
19 the third page of that document you have cited Section 400.7(b)
20 and 3202.1, the rooftop penthouse structure; correct? You're
21 claiming that to be in error?

22 MR. STOKES: I'm sorry, which document was that?

23 CHAIRPERSON JORDAN: It's document 42 is it? 42 in
24 our record. It's a document that was filed -- it's posted on
25 the website 5/5. May -- it was after that date, so I don't

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1 know. You posted it after the first hearing. Yes, it started
2 off, it says, John Stokes and ANC-4C, Appellants, BZA Case
3 18991.

4 Did anybody sign it? Oh, John Stokes. There's his
5 name at the end. So it's something you posted it which it looks
6 like it's concise. And your signature on page 7; right? Yes.
7 So your signature's on page 7 of that document and it's pretty
8 concise.

9 I want to make sure this is the claim of errors that
10 we're talking about as we sit here today.

11 Cliff, did you tell them I couldn't get in Zdocs?

12 SECRETARY MOY: Yes, I did. The tech person said
13 he's on the way.

14 CHAIRPERSON JORDAN: Where's he coming from, out of
15 town?

16 MR. STOKES: So I would like to -- the document that
17 you have I would like that to be part of this consideration.
18 And I'm only going --

19 CHAIRPERSON JORDAN: Just one more second. Let me
20 try and pull it up again.

21 (Pause.)

22 Mr. Moy, is he coming, Mr. Moy?

23 SECRETARY MOY: He's on the way.

24 MR. STOKES: Okay, I'm going to try to get through
25 this. All right.

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1 CHAIRPERSON JORDAN: Were you going to list them for
2 us or are you going to just refer us to a document? What are
3 you going to do?

4 MR. STOKES: I was going to actually go through and
5 talk about some of the zoning code violations where I believe
6 them to be and just no go into depth. But as we --

7 CHAIRPERSON JORDAN: I just need you to list them.
8 That's where I'm trying to stay at because it's getting --

9 MR. STOKES: 101, 330.

10 CHAIRPERSON JORDAN: Wait a minute. 101.

11 MR. STOKES: Do you want the purpose?

12 CHAIRPERSON JORDAN: 330.

13 MR. STOKES: Interpretation and implementation of
14 the regulations. That's 101, 330. 199, definitions.

15 CHAIRPERSON JORDAN: What in the definitions? What
16 provision in the definitions?

17 MR. STOKES: The basement, cellar.

18 CHAIRPERSON JORDAN: Okay.

19 MR. STOKES: 330, of course.

20 CHAIRPERSON JORDAN: What's your contention on 330?

21 MR. STOKES: 330.3, R-4 shall not be an apartment
22 house district.

23 CHAIRPERSON JORDAN: Okay.

24 MR. STOKES: 330.2.

25 CHAIRPERSON JORDAN: Uh-huh.

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1 MR. STOKES: Primary purpose shall be the
2 stabilization of remaining one-family dwellings.

3 MR. STOKES: So you're just talking about the
4 apartment house issue under 330. Okay, go ahead.

5 MR. STOKES: Also and of course on 407.1 which of
6 course --

7 CHAIRPERSON JORDAN: 407.1?

8 MR. STOKES: 407.1.

9 CHAIRPERSON JORDAN: Okay.

10 MR. STOKES: Of course which is the minor
11 flexibility.

12 CHAIRPERSON JORDAN: Okay.

13 MR. STOKES: And 402 which is the FAR.

14 CHAIRPERSON JORDAN: You're claiming that it is over
15 FAR?

16 MR. STOKES: Yes.

17 CHAIRPERSON JORDAN: Go ahead.

18 MR. STOKES: I think that's it.

19 CHAIRPERSON JORDAN: Okay. Well, so then we really
20 -- okay.

21 MR. STOKES: Oh, and of course the newer one would
22 be with the cellar.

23 Okay, and the rear yard which is 404.1.

24 CHAIRPERSON JORDAN: 404.1.

25 MR. STOKES: Yes. And the side yard, 405.2 and

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1 405.9.

2 CHAIRPERSON JORDAN: What about 25 -- what is that,
3 Ms. Glazer?

4 MS. GLAZER: Section 2500, the claim is that there
5 is an impermissible second building.

6 CHAIRPERSON JORDAN: Is that still what you're
7 arguing?

8 MR. STOKES: Yes. Because you know what, I think in
9 anybody's right mind I think it looks like there's two
10 buildings.

11 CHAIRPERSON JORDAN: Okay. I've just got to lock
12 this in because this has to be a sense of fairness to --

13 MR. STOKES: Yes.

14 CHAIRPERSON JORDAN: -- to everyone --

15 MR. STOKES: Yes.

16 CHAIRPERSON JORDAN: -- regarding this. To
17 yourself, to the government, DCRA in that regard, to the
18 building owner and to the public at large so we know what we're
19 working with. So that's why we have to kind of box it in.

20 MR. STOKES: Yes, that's it. Thank you, Mr. -- thank
21 you.

22 CHAIRPERSON JORDAN: All right. So let's go ahead
23 with your first point of contention.

24 Let me ask for ANC, are those the same or do you have
25 additional for ANC?

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1 MS. BUSH: Those are the same.

2 CHAIRPERSON JORDAN: All right, thank you.

3 All right, so then let's take this walk and let's
4 start with your testimony. Put two minutes on the clock and
5 let's talk about whichever one you want to start first.

6 MR. STOKES: I'd like to start with 101 which is the,
7 which is basically the umbrella, which is the umbrella of this
8 whole thing which is the interpretation and implementation of
9 the regulations. And I think that this was not followed. And
10 I think this was violated. Because 101.1 concerns, has
11 concerns of light, air, noise, lack of privacy, safety
12 problems, parking problems, traffic problems on the street and
13 alley, potential property damage from cars parking in the
14 alley, impacts from the side yard opening between Varnum and
15 Webster on potential --

16 CHAIRPERSON JORDAN: I understand the position.
17 How is it being violated?

18 MR. STOKES: Because I don't think that those things
19 are -- that is not being taken into consideration by the
20 granting of the minor flexibility.

21 CHAIRPERSON JORDAN: Okay.

22 MR. STOKES: By the granting of minor flexibility I
23 don't think they considered this 101, the overarching,
24 overarching
25 interpretation of the regulation.

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1 CHAIRPERSON JORDAN: That's kind of a thing that runs
2 through zoning regulations to a great extent; correct?

3 MR. STOKES: Yes, that is correct.

4 CHAIRPERSON JORDAN: So why don't we flow through the
5 others and you can always back yourself up. Because those
6 things would be considered by the Board by its overall impact
7 upon the community.

8 MR. STOKES: Okay. I would like to move on to 330.
9 330.4 states that the R-4 district shall not be an apartment
10 house district as contemplated under the R-5 districts. And
11 the R-5A districts, which is a low height and low density
12 apartment district, the maximum permitted FAR is .9.
13 Therefore, if 1521 were to be developed in accordance with the
14 R-5 district, it would be limited to an apartment building
15 totaling 5,651 square feet given its lot size of 6,271 square
16 feet.

17 CHAIRPERSON JORDAN: So the proposed FAR is how much?

18 MR. STOKES: 94 out of the -- .9 is the FAR. Is this
19 one happened it would be 1.5.

20 CHAIRPERSON JORDAN: Would you let Mr. Stokes
21 provide the testimony, then you can clean up whatever you need
22 to. But otherwise we're going to -- you two, first of all you
23 can't have you two doing it. And you're whispering in his head
24 and saying, no, no, no, we're going forward. Because it's hard
25 enough to move forward.

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1 So what are you saying the proposed FAR is?

2 MR. STOKES: 1.5.

3 CHAIRPERSON JORDAN: 1.5. With the limitation of
4 one point -- or .9. Got you.

5 Excuse me. I think I have a working computer; right?

6 MEMBER HOOD: So might I ask, Mr. Stokes, help me
7 understand again. You say the FAR is .9. Well, what did you
8 say again? I'm not --

9 MR. STOKES: So in the R-5 -- so again, the 330.4
10 states that the R-4 district shall not be an apartment house
11 district as contemplated in the R-5 districts. In the R-5A
12 district, which is a low height and low density apartment
13 district, the maximum permitted FAR is .9. But in this -- So
14 there, but if 1521 were to be developed in accordance with the
15 R-5 it would actually be 1.5, the FAR would be 1.5.

16 So, again, what this shows is that this is a much
17 larger than even if it were in an R-5, which is not supposed
18 -- this is not supposed to be an apartment house district. But
19 this project is making it into an apartment house district.

20 MEMBER HOOD: Okay, thank you.

21 CHAIRPERSON JORDAN: Okay.

22 MR. STOKES: Let's go real quickly into, I guess, the
23 definitions since that is part of the, of the what my architect
24 has given me. So the definition, again, of basement versus
25 story.

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1 CHAIRPERSON JORDAN: Yes, we understand the
2 definitions of basement versus cellars. So we know that. So
3 your contention is what?

4 MR. STOKES: Is based on the dimensions derived by
5 the plans that were submitted, the below grade level ceiling
6 is more than 4 feet above the adjacent finished grade, which
7 is in fact the new grade level at the base of the window row
8 along the western side of the building. Therefore, the below
9 grade level is a basement. And -- and I won't tell you what
10 a basement you know what a basement is. And it's a basement
11 as opposed to a cellar.

12 CHAIRPERSON JORDAN: What's the adjacent finished
13 grade? I can get it from the other folks and we can work our
14 way back.

15 Go ahead. Continue. Okay, go on to whatever. So
16 your contention is that the, that we have a basement that needs
17 to be counted toward the FAR because of the fact that it's 4
18 feet above the adjacent finished grade; correct?

19 MR. STOKES: Well, that it's, it needs to be
20 considered a basement and not a cellar. And it should be
21 counted.

22 CHAIRPERSON JORDAN: And it should be counted. So
23 that's what you're trying to get at?

24 MR. STOKES: That's correct.

25 CHAIRPERSON JORDAN: And next?

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1 MR. STOKES: 330.2, primary purpose shall be the
2 stabilization of remaining one-family dwellings. There
3 according -- this is not a project that will be in keeping with
4 the stabilization of remaining one-family dwellings. This is
5 not just a one-family, it's a two, three, four, five, six, maybe
6 seven-family dwelling.

7 So I covered 101. I covered the 330s. I've covered
8 the FAR. And I've covered the definitions. And again, I
9 believe that the error with the 407.1 is the minor flexibility,
10 these other factors were not taken into consideration in this,
11 when this minor flexibility was granted. This was already a
12 very large project. This project was already on an unusual
13 sized lot, which they admit to. And so if there was any
14 thinking at all with that minor flexibility, minor flexibility
15 under 407.1 says that it's a, it's an authority that can be
16 granted but it's not a duty to actually have to go and grant
17 that minor flexibility.

18 CHAIRPERSON JORDAN: So you're saying it abused the
19 minor flexibility. How do you -- how?

20 MR. STOKES: I'm thinking, I'm saying that I don't
21 think there was -- I do think there was an abuse there. I don't
22 think there was any thought given to the, to the 407.1. I don't
23 know if you ever asked and said, you know, was there, was there
24 any vision or did anybody actually look at the property, did
25 anybody else go and see the lot size and see how large it was.

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1 Again, just because you have an authority to grant that minor
2 flexibility does not make it a duty to grant that minor
3 flexibility. This project was already so large, it was
4 already looming over the landscape, over the projects in an
5 area that should not be an apartment district.

6 CHAIRPERSON JORDAN: But isn't it discretionary for
7 the Zoning Administrator to exercise when he can exercise that
8 flexibility?

9 MR. STOKES: But when you're looking at one unit, two
10 units, three units, four units, five units, six units, seven
11 units, you did not take into consideration all the things in
12 101, you did not take into consideration the extra trash, the
13 extra parking, the extra, you know, impact on the
14 infrastructure. I don't think any of those things were taken
15 in consideration.

16 I think if somebody logically had been looking at
17 saying, you know what, this is already by right this was a "you
18 could do up to six," okay, let's just throw in a seventh, a
19 seventh unit. I think even six and seven I think this project
20 was already too large. So I think that minor flexibility and
21 that discretion was not used wisely.

22 CHAIRPERSON JORDAN: Okay. So do you want to talk
23 about the other areas?

24 MR. STOKES: I will let my ANC talk about the rear
25 yard and the side yard and also, also go into more depth and

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1 also into the conversion situation.

2 CHAIRPERSON JORDAN: Sure then, please.

3 MS. IRWIN: Good afternoon. I'm really tired. I
4 don't know if my brain's working anymore. If I'm not talking
5 loud enough, please tell me.

6 CHAIRPERSON JORDAN: You're good. Thank you.

7 MS. IRWIN: Please don't interrupt me because then
8 I'll get lost and I won't be able to finish. But I can take
9 questions at the end.

10 It's the ANC's position that we're the least able
11 people in this whole process to know what's going on. So we're
12 relying on -- I am not going to speak to the side yard of those
13 yards but I think Ms. Bush is going to be able to do that --
14 the ANC is going to stick with 330 and on the letter from the
15 Zoning Administrator. And then if I have time and I have a
16 brain left and you guys, if I think you're listening to me,
17 I may talk about cellars and basements and minor flexibility.

18 When ANC looked at this we looked at the Zoning
19 Administrator letters and we said, "Minor flexibility? Huh?"
20 Where's the model of right? Where's the explanation that you
21 can put seven apartments of 1,350 square feet on an R-4 lot?
22 And in all four districts, as you all know because you have
23 the code in front of you, there's I'm going to say six points
24 to the analysis about whether it fits within the general
25 provisions of an R-4:

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1 One, does it go to the purpose, the primary purpose
2 of the R-4 district to maintain single family and stabilize
3 single family dwellings? I don't think it does. Because
4 while we don't know under what analysis the Zoning
5 Administrator used to decide that this was a matter of right,
6 it can only be because he wasn't reading -- he was reading out
7 a bunch of the requirements of the R-4. And that means that
8 any developer or any property owner can come and say, well,
9 this case is all about the size of the lot, so I can just build
10 as much as the size of the lot allows me.

11 And it's the ANC's contention that an appropriate
12 analysis of the matter of right to convert an existing building
13 or structure requires several points:

14 One is does this support the priority of the R-4 to
15 stabilize single family housing? It does not.

16 Two, an R-4 shall not be an apartment house district
17 as contemplated under the general residence 5A district.

18 An R-4 does not have a FAR requirement. Why?
19 Because it's not an apartment house district. R-5, which is
20 an apartment house district, has a FAR requirement. R-5, 5A,
21 FAR requirement is .9.

22 I know Mr., Mr. Stokes, sorry -- as I said, my heart's
23 going and my bones melted -- I know that he gave you some
24 neighbors. I had fun. I had my calculator out and I did the
25 numbers. The lot area on this lot is 6,279 square feet, as

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1 per the Zoning Administrator's letter. If you do .9, which
2 is what would be permitted in an R-5A you get 5,651.1 square
3 feet. So any development as a -- any apartment house
4 development as a matter of right in an R-5A would be maxed out
5 at 5,651.1 square feet.

6 In the case before the BZA, in the case that the Zoning
7 Administrator said it was a matter of right, there are seven
8 apartments at 1,350
9 square feet. If you multiple 1,350 square feet by 7 you get
10 9,450 square feet. This would not be allowed in an R-5A
11 district because it exceeds the maximum matter of right in an
12 apartment house district.

13 The ANC just does not understand how that would be
14 allowed in an R-4 district which is not an apartment house
15 district as per section 330.3.

16 Finally, the other issue is the matter of right. It
17 is a matter or right to convert an existing building or
18 structure built before May 12, 1958, into an apartment
19 building. It's a matter of right of use, not of the size of
20 the property. The matter of right of use in that section is
21 limited by 401, which is the minimum lot area requirement. And
22 403.2, which I apologize, I don't remember what that is because
23 that's I've 50 million papers.

24 But BZA case law says that this means you are not
25 allowed to do new construction. If you look at these plans

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1 I don't understand how you wouldn't see there's new
2 construction. At a minimum, in that front building they are
3 taking out the slab and they are building down. There will
4 be a brand new foundation in that first building. And the
5 second building, which is a legal section of being one
6 building, would have another new foundation.

7 So if this goes forward, we will have two new
8 foundations and all new internal systems and structures.

9 I kind of forgot to change my place here so give me
10 a second till I get to that page. Okay.

11 CHAIRPERSON JORDAN: Take your time. You're okay.

12 MS. IRWIN: So let me just point out a couple of other
13 numbers. Thank you.

14 So, in the existing floor space according to Redson
15 -- I guess that's not in the -- anyhow, in the existing floor
16 space there's approximately 2,380 square feet of living space.

17 CHAIRPERSON JORDAN: Once again, what did you say
18 about the existing floor space?

19 MS. IRWIN: In the existing finished floor space, so
20 in the current house currently we have a single family dwelling
21 that's two stories, a basement or cellar, and it's two
22 habitable floors. And the current existing finished floor
23 space is approximately 2,380 feet.

24 In the proposed finished floor space it will be 9,450
25 square feet. I don't know how that can be not new

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1 construction. I don't know because it's over four times.

2 The proposed -- the current existing footprint of the
3 house as it exists now, as it stands right now, is 1,611 --
4 well, 1,163.4 square feet. The proposed final footprint of
5 this development will be 3,130.7 square feet. Once again, how
6 is that not new construction? Which is not permitted by BZA's
7 interpretation of the fact that this is a conversation of use
8 of a building, not of the size of the property.

9 Thank you. And I'm just going to say two more things
10 very quickly. The matter of the minor flexibility, I actually
11 don't understand the whole argument about the minor
12 flexibility because the Zoning Administrator talks about a
13 lot, but we're not talking about a lot here, we're talking about
14 a matter of right to convert a use. That can be affected by
15 the lot, but that's not the only analysis that needs to take
16 place if it's a matter of right.

17 And then the basement versus the cellar. I've
18 wondered all along but I don't have the abili -- I mean I can
19 measure something fives times and get five different numbers.
20 I swear I could do that. So I don't really, and I don't know
21 how to read drawings so I couldn't do it. But it's actually
22 very key and it shouldn't be up to the Appellant and the ANC
23 to do the measurements. I mean that should be the job of DCRA
24 or the Zoning Administrator or the person who's putting this
25 in to do it.

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1 I mean we should be able to rely on the documents that
2 are being submitted are being vetted as completely as possible.
3 And I think that that's the biggest frustration of the citizens
4 who are against this stuff is we don't know what any of this
5 means and we're being told it's okay. And yet, there seems
6 to be a question about and being a basement or a cellar is
7 important because if it's a basement it makes three stories
8 in that house and so they don't get the fourth story. And they
9 don't get the fourth apartment in that front area.

10 If it's a cellar, then they get the fourth story. And
11 if it's a basement and they don't get the fourth story, we might
12 not have an issue about the chimney. The chimney issue
13 actually goes away if there's not fourth story. Okay? And
14 also, some of the privacy issues go away if there's no fourth
15 story. But if there's a fourth story you have chimney issues,
16 you have major, you have major privacy issues and you also have
17 additional light issues.

18 Thank you so much. I don't know if anyone has any
19 questions.

20 CHAIRPERSON JORDAN: Just so that we're clear, we keep
21 bouncing this thing around.

22 MS. IRWIN: I know.

23 CHAIRPERSON JORDAN: The minor flexibility goes to
24 actual measurements, it doesn't go to overall theory of what
25 the zoning regulations are. So I just want you to understand

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1 what's what it means by minor flexibility.

2 So if something should be a foot and it's one point
3 some micro micro numbers, then the Zoning Administrator has
4 flexibility within the 2 percent range to do that. So because
5 I hear you both saying minor flexibility tacking toward the
6 aspect of what a district should look like or what a zone should
7 be. That's not what that provision is.

8 MS. IRWIN: May I just say one last thing, and I
9 apologize. It's actually the ANC's contention that the whole
10 project is beyond the scope of what would be permitted -- of
11 what is permitted in an R-4 district. And we don't even rise
12 to the level of the minor flexibility. I just wanted to point
13 out that the analysis in that letter was the analysis of a lot,
14 which has nothing to do with the conversion that is talked about
15 in 330.

16 CHAIRPERSON JORDAN: So now let's have the DCRA to
17 respond to the -- there's, I guess there wasn't any testimony
18 presented, so there's no reason to cross-examine Mr. Sullivan
19 or Mr. Tondro. So, so your case, please.

20 MR. TONDRO: Good afternoon, Mr. Chairman, Members of
21 the Board. I'm going to go through just a few issues here with
22 this.

23 First of all, with regards -- let me actually back
24 up first of all and just make it clear, if it's not clear
25 already, that from the standpoint of DCRA, the DCRA understands

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1 and the Zoning Administrator understanding that neighbors who
2 will be affected by this are not happy with the project. But
3 that it is the Zoning Administrator's duty to administer the
4 regulations as they are provided to him. And that is what he
5 attempted to do in this circumstance.

6 So with that in mind I would just point out that in
7 terms of this, this evaluation of the R-5 issue that we are
8 not, respectfully, in the R-5 zone, we're in the R-4 zone.
9 That was the determination made by the Zoning Commission in
10 its wisdom. And that is what is provided for notice for all
11 residents near, adjacent as well as the property owners. And
12 so with all due respect I think that's something that's very
13 crucial to understand.

14 I understand there's been a lot of controversy over
15 the issue of the R-4 and the fact that the conversion exemption
16 or the conversion provision within the R-4 permits, the what
17 might seem to be over -- an overly large development. I
18 believe that's why the Zoning Commission had acted recently
19 on that, precisely that issue. But the permit that was issued
20 that we are looking at right now today was issued under those
21 old rules which did allow for that, for that development in
22 the way in which they did.

23 And I would just point out, too, that Section 330.3,
24 which they specifically cite, does, which refers to the R-5
25 districts does itself specifically -- I'm sorry. Pardon me

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1 one second. Does specifically provide or refer to this issue.

2 So I'm just going to quote 330.3. "The R-4 District
3 shall not be an apartment house district as contemplated under
4 the general residence or R-5 Districts." And here's the key,
5 I believe. "Since the conversions of existing structures
6 shall be controlled by a minimal lot area per family
7 requirement."

8 In other words, there's a provision of, there is a
9 specific check that was put in place by the Zoning Commission,
10 and that is the 900 square foot per unit requirement. So
11 that's the first issue I wanted to bring up.

12 The second issue, actually to move on --

13 CHAIRPERSON JORDAN: Let's stop there.

14 MR. TONDRO: Sorry.

15 CHAIRPERSON JORDAN: Because we deal with this all the
16 time. There, each unit is at least 900 square feet?

17 MR. TONDRO: The first six units are each 900 square
18 feet. The reason for the minor flexibility is for the seventh
19 unit. And the seventh unit was --

20 CHAIRPERSON JORDAN: Let me catch up with you first.

21 MR. TONDRO: Absolutely.

22 CHAIRPERSON JORDAN: I'm not doing this with my
23 computer now, I'm doing this the old fashioned way with paper
24 and pen, which means I'm going to have to change it at some
25 point. And so the seventh unit is what?

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1 MR. TONDRO: The seventh unit is 21 square feet short
2 of the 900.

3 CHAIRPERSON JORDAN: Is 21 square feet short of the
4 900. And --

5 MR. TONDRO: In other words it's 879 square feet.

6 CHAIRPERSON JORDAN: They used minor flexibility.

7 MR. TONDRO: Of .33 percent. In other words --

8 CHAIRPERSON JORDAN: .33?

9 MR. TONDRO: Percent. In other words one-sixth of the
10 total he is authorized to use. Okay?

11 CHAIRPERSON JORDAN: So all the others fit within the
12 provision of 330.3 because it's a conversion. And as we
13 sometimes get requests for variances that people are not
14 meeting the 900 and they're well beyond the flexibility point.
15 Because we've had some here at 700, 400 and all that other kind
16 of crap. So got you, right.

17 MR. TONDRO: So, again, just to beat on that, this
18 isn't as a matter of right under the zoning code since this
19 is a conversion this is, therefore, those first six units are
20 allowed.

21 In addition, the bulk of the project, in other words,
22 the side yard, rear yard, height and so forth, those are also
23 irrelevant. They're not addressed by the number of units.
24 Those are controlled by other requirements and which have been
25 met. So in other words, the minor flexibility granted by the

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1 Zoning Administrator was solely for the purpose of allowing
2 that seventh unit within that maximum building uplift that had
3 already been provided, that had already been established by
4 other provisions elsewhere.

5 MEMBER HOOD: So, Mr. Chairman, Mr. Tondro, let me back
6 up. You mentioned our new rules that the Zoning Commission
7 just put in place in the R-4 zones. But you also mentioned
8 in the same sentence that we're going up under the old rules.
9 So I'm curious where you're going. So you're saying this falls
10 up under the old rules but why do we mention the new rules?

11 MR. TONDRO: I hear you, Commissioner Hood.

12 I mentioned the new rules in order to address the
13 issue that their, that the Zoning Commission determined, as
14 I understand -- you're in a better position to know, but as
15 I understand, the Zoning Commission in enacting the new rules
16 felt that under the old rules the provisions allowing for the
17 conversion was too generous and, therefore, sought to restrict
18 that. That is the way that I understand the Zoning
19 Commission's actions.

20 And I only brought that up to indicate that that,
21 however, was per old rules, and those are the rules under which
22 this permit was granted.

23 Does that address your concerns there?

24 CHAIRPERSON JORDAN: And I think -- you're asking why
25 did he say it? You know, why did he say it?

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1 MS. IRWIN: Yes. Why are you mixing the two?
2 Because I was the one who helped with the new rules. So I'm
3 just trying to figure out why are you bring on new rules but
4 you want to go up on the old rules? I mean, you know, I'm just
5 curious. I'm trying to put all this together. This goes back
6 to the flexibility in interpretation to me.

7 MR. TONDRO: I apologize for any confusion.

8 MS. IRWIN: No, it's not confusing. You're actually
9 setting me on a very clear path, and that's probably why we're
10 here. So okay, thank you.

11 CHAIRPERSON JORDAN: So and I think so then what you
12 led is saying that you understand that the public is upset and
13 the Zoning Commission has taken care of that going forward.
14 We shouldn't have this situation again. Is that what you're
15 saying?

16 MR. TONDRO: Yes.

17 MS. IRWIN: So that's an interpretation. That's
18 actually not true. You're right, I'm in a better situation
19 to know that.

20 But, again, that goes back to this whole argument that
21 I'm hearing, not just in this case, but about interpretation
22 and what is minor flexibility. No, everybody is not going to
23 be happy, Mr. Tondro. I'm going to let you know that right
24 now.

25 MR. TONDRO: Okay.

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1 MS. IRWIN: But anyway, that's irrelevant to what
2 we're doing today.

3 CHAIRPERSON JORDAN: All right. So do you want to
4 address the other points of contention?

5 MR. TONDRO: Yes.

6 CHAIRPERSON JORDAN: And so actually in talking
7 you're saying the 407 that provides for minor flexibility is
8 applied towards these particular provisions, and so you're
9 saying that it's within the realm of minor flexibility?

10 MR. TONDRO: Yes, sir. That the Zoning
11 Administrator duly followed the regulations as were provided
12 in 407.1 and considered the request for a waiver under that
13 provision. That was a waiver of the otherwise applicable
14 regulations. In other words, in this particular case the
15 minimum lot, minimum 900 square feet per unit for that seventh
16 unit.

17 CHAIRPERSON JORDAN: Okay, what about the FAR?

18 MR. TONDRO: Again, in terms of the FAR, the FAR is
19 not applicable to the R-4 zone. That is applicable to the R-5
20 but we're in the R-4 zone. Short of a map amendment this is
21 not the subject for this conference.

22 CHAIRPERSON JORDAN: Although they did not talk
23 about it but it was raised in a kind of an after thought, the
24 rear yard, I think it was rear yard and side yard -- someone
25 whispered rear yard, side yard is.

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1 MR. TONDRO: Quite frankly it's the first time it's
2 been brought up. I think if we look at the plans we can see
3 that it's very clear that the rear yard, which is a 20 foot
4 rear yard, is provided because there are regulation -- as
5 regulation requires, there are parking spaces that are the 9
6 by 19 in that rear, in the additional buffer space. So if
7 you're looking at --

8 CHAIRPERSON JORDAN: Twenty. There's a 20-foot
9 rear yard?

10 MR. TONDRO: There's a minimum 20. At least -- I
11 don't have offhand right now since that was just raised here,
12 the dimensions --

13 CHAIRPERSON JORDAN: Well, while you're doing that,
14 you can continue but that's okay, I'm going to ask when we get
15 to the owner's side to give me what those, what those are.

16 So what about the side yard?

17 MR. TONDRO: And the side yard, there's only one side
18 yard that's required.

19 CHAIRPERSON JORDAN: And what's the dimensions? I
20 guess Mr. Sullivan can give me that.

21 MR. TONDRO: Yes, he can provide that.

22 Just for the record, I am looking at sheet A001 of
23 the plans that were submitted to the BZA. Those are the ones
24 that were approved. And they show on the upper portion of
25 that, right up here, that in the rear, on the bottom right there

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1 it says the rear yard which is 21 feet 5 inches minimum rear
2 yard. That's the shortest dimension of that overall rear
3 yard.

4 CHAIRPERSON JORDAN: Okay.

5 MR. TONDRO: That same, that same drawing also shows
6 on the upper left-hand side that the side yard, the one side
7 yard required is 16 feet.

8 CHAIRPERSON JORDAN: So the side yard is 16 feet.

9 MR. TONDRO: And that the reason that there's only
10 one side yard required is because under Section 405.6 in the
11 R-4 district there is only, if there is a yard that is provided
12 then it specifies what it has to be. But in this particular
13 case on the other side, since it is concurrent with the lot,
14 the lot line, as a result there is no requirement. There's
15 no lot -- there is no side yard provided, therefore none needs
16 to be measured on that side.

17 CHAIRPERSON JORDAN: What about 2500, impermissible
18 second building?

19 MR. TONDRO: I believe I addressed that in my brief
20 in specifics which that it's longstanding practice that the
21 -- I'm going to quote from the Board's order in BZA Application
22 Number 18263B of Stephanie and John Lester. It's provided in
23 my most recent brief, page 4. I quote the definition building
24 under Section 199.1, "permit separate portions of a structure
25 to be considered as a single building for zoning purposes,

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1 provided that a communication exists between those separate
2 portions at or above the main floor." And in this case they
3 connect on all of the floors.

4 CHAIRPERSON JORDAN: So you're saying there's a
5 meaningful connection?

6 MR. TONDRO: There's a meaningful connection.
7 Therefore, this is effectively this is an expansion out, a
8 horizontal expansion of the existing building. It is not a
9 new building.

10 And then finally, just addressing this issue that was
11 just raised of the so-called cellar, I would like to present
12 the testimony or have the Board hear the testimony of the Zoning
13 Administrator on that issue. But it is longstanding practice
14 that the -- that adjacent finished grade is defined, as it says,
15 with certain exceptions, exceptions being for airways and also
16 for window wells. But the Zoning Administrator, if I may,
17 can provide more detailed testimony to that.

18 CHAIRPERSON JORDAN: Certainly. Go ahead.

19 MR. LeGRANT: Yes, thank you.

20 So the allegation was that the building should be
21 measured from the bottom of the window well. And to be clear,
22 the zoning regulations are silent, airways and window wells
23 are not mentioned in the zoning regulations.

24 It's longstanding practice of our office to treat
25 those features as exceptions to grade. So, therefore, in the

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1 many projects that we review, applicants often propose airways
2 and window wells. In the case of a window well it's a shaft
3 which, you know, adjacent to a window that's inside the
4 building and has retaining wells. The grade, therefore, is
5 measured from the grade, the adjacent finished grade that's
6 held up by those retaining walls. And that becomes the
7 reference point for measuring the building height, not the base
8 or bottom of the window well.

9 And I believe there was an appeal, 5333 Connecticut
10 Avenue, this Board affirmed the application for that practice
11 that window wells are not to be used as a grade measuring point.

12 CHAIRPERSON JORDAN: So the measurement from the,
13 from the top of the window well to where this cellar is is what?
14 What are you saying? So the other stuff, this cellar that's
15 being contended that is a basement is? What's that
16 measurement on that?

17 MR. LeGRANT: I don't have the figures here. So the
18 first floor is 3 feet 7 inches above the grade. And that is,
19 of course, less than the 4 foot figure that is used to
20 differentiate a basement from a cellar. In fact, it's going
21 to be less. Taking into account the thickness of that first
22 floor it's going to be actually less than 3 foot 7 inch. So
23 still below the 4 foot figure.

24 CHAIRPERSON JORDAN: So you're considering that a
25 cellar.

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1 MR. TONDRO: In addition, I would just like to point
2 out that it is -- that since this is the R-4 district, the
3 determination of a cellar is made up according to the
4 determination of building height which is the front of the
5 middle of the building. And in that case this window well is
6 off on the side, it's not at the front of the building, per
7 the definition of stories. It's ancillary.

8 CHAIRPERSON JORDAN: Yeah, okay. All right. Got
9 it. Okay. Is there anything else that you want to present
10 in your case?

11 MR. TONDRO: I don't think so at this point, no.

12 CHAIRPERSON JORDAN: Then let's turn to the building
13 owner. If there's anything, you know, you can certainly
14 present your case or you can just say you agree to certain
15 positions taken by DCRA or not.

16 MR. SULLIVAN: Thank you, Mr. Chairman. I do agree
17 with all of that and only have a couple comments to highlight
18 some matters.

19 On the cellar/basement issue, their contention I
20 believe is that there's a fourth story. But the area that
21 they're pointing out is on the west wall of the building. For
22 purposes of measuring the number of stories you measure where
23 your height is measured from, and that's the center of the front
24 of the building. So there's actually only one grade that can
25 be calculated when you're measuring the number of stories; it's

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1 the center of the front of the building.

2 So the west wall is irrelevant completely and the
3 window walls are irrelevant as far as, as far as that goes.

4 Regarding FAR, of course there is no FAR requirement.
5 And if you wanted to use FAR as a guide -- or R-5A as a guide,
6 R-5A is the least dense district there is. It has the density
7 as the R-1A. So the density is 60 percent, which we're well
8 under, and three stories.

9 Regarding minor flexibility, there are just two
10 requirements. One, that we're not asking for more than two
11 areas of relief, which we did not. And the other being that
12 it does not impair the purpose of the otherwise applicable
13 regulations. And for that it's important to note that the
14 minor flexibility had nothing to do with the mass of the
15 building, the shell of the building, it had to do between six
16 units and seven units. It didn't add any density, it didn't
17 allow the apartment building to happen. It's basically
18 whether there's a basement unit or whether it's storage is the
19 minor flex.

20 And the Board, as you know, has approved or denied
21 an appeal on the Zoning Administrator's decision on minor
22 flexibility in a similar case where a lot became two lots and
23 a single family house lot became two lots and where the density
24 was in a sense doubling. And here we're not doubling anything
25 about the mass of the building at all and there's only a slight

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1 increase in the number of units.

2 I would, just because it's mentioned in the documents
3 although it hasn't been mentioned in the testimony today, I
4 would note that the stairway penthouse was corrected after it
5 was initially located too close to the exterior wall because
6 it was by an open yard. That's usually, that's a confusing
7 provision sometimes, what's an exterior wall and what isn't.
8 But if you have an open yard, that's an exterior wall and you
9 have to be set back from that.

10 If you're on a party wall, generally speaking
11 that is not an exterior wall and there is no setback requirement
12 from that.

13 And regarding other structures up there, they're all
14 under 4 feet. There's other equipment up there but it's under
15 4 feet and not subject to any of the roof structure
16 requirements.

17 And that's all I have. Thank you.

18 CHAIRPERSON JORDAN: All right. Board, any
19 questions that you may have of the, any of the parties?

20 Wait, wait. No, no. No, no, no, there isn't.
21 There wasn't any testimony, just basically oral arguments.
22 You can ask questions. I was remiss for not allowing you and
23 ANC to ask questions of Mr. LeGrant regarding his testimony.
24 And he provided testimony only on the adjacent finished grade
25 and the cellar. So you can ask questions about what he

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1 testified to.

2 MR. STOKES: So, according to the plans, and I could
3 be wrong, but according to the plans this, this project, the
4 front of the building is on the side. And the side is actually
5 on the street, faces the street. So what do you measure?

6 CHAIRPERSON JORDAN: So maybe I can help you. So
7 he's asking you what are you considering the front of the
8 building because evidently there's several places you can
9 consider the front. Is that what you're saying?

10 MR. STOKES: Right. That the front is the side
11 actually.

12 CHAIRPERSON JORDAN: So what are you considering the
13 front of the building?

14 MR. LeGRANT: So the front of the building is that
15 portion of the lot that fronts upon Varnum. So that it's a
16 short, short dimension of the lot that fronts directly along
17 Varnum becomes the front of the building. And then for
18 measuring building height, as was otherwise voiced here today,
19 you go to the middle of the front of that building to figure
20 out how that becomes the building height measuring point from
21 which the height of the building is determined.

22 CHAIRPERSON JORDAN: Did that answer your question?
23 You'll get a chance to ask your questions. Just I'm going to
24 need you to relax, okay.

25 MR. STOKES: Well, it kind of does but, again, it

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1 still sounds to me like you just said Varnum a couple of times
2 for the front. And I mean I'm, again I'm not an expert on this
3 kind of stuff, but we can all tell that --

4 CHAIRPERSON JORDAN: No, you're doing fine.

5 MR. STOKES: But I still, you still said Varnum. But
6 it was said that the front is a side. The front of this
7 building is not on Varnum. The front of this building is on
8 the side next to her house.

9 CHAIRPERSON JORDAN: Are you asking him a question?
10 That's what you're doing, right? Please ask it.

11 MR. STOKES: So how does Var -- okay, let me cut to
12 the chase. How does Varnum Street fit into the calculation
13 of what the front of -- the front of this house?

14 MR. LeGRANT: Okay. So in definitions section 101.1
15 there's a definition of street frontage which is used to
16 determine what becomes the front of the lot. It's critical
17 because we have other parts, other zoning regulations then are
18 driven where if you don't know the front, how do you know the
19 rear of the building for measuring the rear yard, how do you
20 know the sides of the building? So the street frontage tells
21 us what piece of the lot becomes the front. And then as a
22 result, things like the building measurement that we discussed
23 we use as a reference going forward.

24 So that's how I concluded that the portion of the lot
25 that fronts upon Varnum is the front of the building.

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1 CHAIRPERSON JORDAN: Is there additional questions
2 of Mr. Stokes?

3 (No response.)

4 No. Okay, let's turn to the ANC to see if there's
5 any questions you'd like to ask of Mr. LeGrant?

6 MS. IRWIN: No thank you.

7 CHAIRPERSON JORDAN: All right. So then let's turn
8 back to the Appellant to see if there's any rebuttal that you'd
9 like to provide to the Board?

10 MR. STOKES: I cannot see a compelling reason for
11 allowing even the minor flexibility that has been granted under
12 the ZA's authority. The flexibility allowed in Section 407
13 is a delegated authority, not a duty.

14 In this case to use the authority to arbitrarily grant
15 a deviation from the minimum lot dimensions when they benefit
16 entirely to the developer without regard to the affected
17 community is a grave misuse of the intent of that authority
18 and violates the intent of the zoning regulations. By
19 entrusting the minor flexibility authority under Section 407
20 to the ZA, such decisions can only be as valid as the
21 understanding and thoughtfulness of that individual. The
22 authority can effectively limit needed opportunities for
23 citizens such as me to raise our voices toward protecting our
24 homes and lifestyles from the current citywide onslaught of
25 pocket development initiatives that are invading and over

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1 building in our established neighborhoods.

2 As well, the issue of merit seems to be missing from
3 the ZA's decision making here. Certainly the matter of right
4 as the preferred tool to abide by the limits established by
5 a broad set of the zoning criteria, carefully crafted to
6 protect the rights of everyone on a level playing field. Any
7 modification should be carefully considered, especially if
8 there are broad implications to a well-established residential
9 community.

10 On my neighborhood street each new residential unit
11 imposes an additional burden on everyone by increasing the
12 vehicular traffic from visitors, as well as residents, and
13 imposes other impacts upon our city services.

14 I believe that building permit numbers 1503050 and
15 1411058 must be invalidated and reversed. It is crystal clear
16 that these two apartment buildings are not in keeping with the
17 intent and purpose of the zoning regulations for the R-4
18 district. Section 101 was totally ignored but it should be
19 the basis for which all other provisions of Title 11 should
20 be interpreted and applied. If it is not a consideration, it
21 should be stricken.

22 The allowed deviation in this project will ruin the
23 character of this neighborhood. It visually intrudes and
24 ruins the character, scale and pattern of houses along the
25 front, back and side frontage, as it impairs the purpose of

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1 the regulations.

2 I think this is a matter of right gone wrong. I think
3 everything was not done correctly: erroneous permits,
4 submitted plans over and over again, no concerns for the
5 neighborhood, no proper notification given to me, the intent
6 of the regulations gone astray, destroys character of the
7 neighborhood, decisions made in error, DCRA is now looking to
8 revoke the permits. There's no human element here, this is
9 all about what is the building, what's going on, no thought
10 to any of these neighbors that stayed here all day to have their
11 voices heard and to stand up.

12 I just think as residents we deserve better.

13 (Applause.)

14 CHAIRPERSON JORDAN: I'm going to -- all right,
15 folks, let's -- please, please, please. It's just that, you
16 know, zoning regulations are so technical in nature. And also
17 our procedures. I know there are a lot of people here who want
18 to speak on this but under our normal rules there's no provision
19 for, you know, open for the public to speak.

20 However, I'm going to allow -- because I understand
21 there's some people who want to speak to this and it's kind
22 of gotten all confused. And they made these requests for
23 intervenor status and party status which is well out of time.
24 I'm going to allow you two minutes to speak about what you want
25 to say to the Board in regards to this. So I'm going to

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1 exercise some discretion, some minor deviations, some
2 flexibility, some minor flexibility under the power of the
3 chair to allow that to happen because I understand how rooted
4 this is in the community and people are living by this.

5 So who wants to maybe wants to say anything in regards
6 to this?

7 MS. BUSH: I would.

8 CHAIRPERSON JORDAN: Yes. Mr. Moy, would you start
9 a clock please.

10 MS. BUSH: Thank you. Thank you very much.

11 First of all I want to quote Mr. LeGrant in a letter
12 to Mr. Sullivan saying that "I have not reviewed this proposal
13 for compliance with any requirements other than normal lot area
14 requirements under 401."

15 We've got a word issue with the 401.3 because the
16 basement does measure less than 900 square feet. I understand
17 under 407 we let that go.

18 We've got Section 404.1, definition of a rear yard.
19 We actually have this building being turned on its ear so that
20 what we are sides with a front, one entrance facing towards
21 the church parking lot. So my feeling is if that's the front
22 entrance of the building we need to have a rear. And there
23 is no rear yard as is defined under 404.1.

24 Section 405.3, definition of a side yard. There is
25 no side yard. There's a walkway. There's a passageway that

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1 now connects Varnum street all the way to Webster Street on
2 a boundary line between R-4 and R-15. That's open. That's
3 going to be for garbage, pike path, a passageway. That's where
4 your mailman will come. But in the alleyway there is the
5 service alley between Varnum and Webster, we have an exit from
6 one of the apartments and we've got a 4-car parking lot that's
7 under too 101, that's not legal technically since it's one
8 parking for every three.

9 We have an apartment exit onto an alley that's going
10 to create a lot of problems. That's going to be the area where
11 the delivery trucks come, the garbage is dumped, mattresses,
12 all of that, all violations of 101.

13 I can cite other cases similar where the side yard
14 was also put up as a variance and rejected by the Board.

15 CHAIRPERSON JORDAN: Good. Which are you --

16 MS. BUSH: Okay. I have 16811. I can read that for
17 you.

18 CHAIRPERSON JORDAN: Whatever you want to do in the
19 last 20 seconds that you have. We understand the cases and
20 we use those things in being applicable to our decision. So
21 I don't know how you want to use your time.

22 MS. BUSH: All right. It's just the purpose of side
23 yard requirements, restrictions on land development
24 controlling building setback lines, and requiring front, side
25 and rear yard areas that must be kept free from structural

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1 development, have long been recognized by courts as being
2 reasonably related to the promotion of the public welfare.

3 We don't have any of that anymore with this. And if
4 you call the front of this building facing the parking lot a
5 side, then we're in trouble here.

6 CHAIRPERSON JORDAN: All right. We appreciate,
7 appreciate your testimony because we're a bit over now. I
8 understand.

9 We've had, we've had some buildings which have a lot
10 of different sides to it, lot of different streets
11 intersecting. And like under theregs they kind of define that
12 the street has the front of the building. But I'm not saying
13 that's in this case. But I've seen a lot of different things
14 called the front of the building. And then we had to side,
15 well, where was the rear? If you remember those cases.

16 Thank you. Thank you for your testimony. Does
17 anyone else want to testify, give us a statement? Please.

18 Make sure you mike is on.

19 MS. McCARTY: My name is Shauna McCarty, 1529 Varnum
20 Street. My property abuts this proposed development to which
21 I am opposed.

22 Before I start my statement I do want to say not only
23 that the entrance faced the parking lot, it faces my house.
24 It is 9 feet from my house, right across my driveway is where
25 this side yard, side yard entrance starts.

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1 My testimony is in the record but I wanted to come
2 in person to say a few things. My husband and I have two
3 daughters, age 16 and 9. And this complex will adversely
4 impact us in many ways: privacy both inside and out in our
5 yard. The entrances to all of these units are right outside
6 my house, specifically, my bedroom, my 9-year-old daughter's
7 bedroom and my 16-year-old daughter's bedroom.

8 The balconies and most of the windows also face my
9 house. So I'm in a position to having my shades down all the
10 time to have any privacy in my home.

11 Also, this will impact the privacy in our yard. We
12 have a small herb garden we groom four times a week, year round.
13 We're hardy, we do it year-round. And we've spend quiet family
14 time in our yard. That's important to us as a young family.
15 And now my yard overlooks 1521's yard.

16 If this complex is developed it will be overshadowing
17 my entire yard. I will have neighbors on the balcony hearing
18 my conversations and really diminishing our enjoyment of our
19 property and our yard.

20 Parking. I have one of only two driveways on the
21 street. And there has been a recurring problem of people
22 parking and blocking my driveway. I've had to call the
23 police on a recurring basis. They even acknowledged that
24 there was a problem and put up additional signs so people
25 wouldn't block my driveway, and they still do. This has caused

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1 us frustration. It has caused us expense. I have been late
2 to work, my husband's late to work, my children have been late
3 to school because of this. And adding a potential 14, 14 more
4 cars with only provision for four parking spaces is completely
5 insufficient. We can't even support the cars we already have
6 on the street. It is a severe problem.

7 These cars will also increase traffic and the
8 potential for accidents. We have young children on our street
9 who would like to be able to be outdoors without the fear of
10 being run over because people drive quickly and it's very
11 congested.

12 And the side yard now is essentially, as I believe
13 Jane stated, is now essentially an alley. It's a walkway. It
14 will have garbage right next to my house and will also create
15 a new means for criminals to get access to my property that
16 they have never had before. That yard connects Varum all the
17 way to Webster and gives unprecedented access to my property.

18 Also, the addition of the lights and the noise will
19 diminish enjoyment of our property. Finally, there's been lot
20 of testimony about the fact that this, this proposed
21 development simply does not fit within our R-4 district. It
22 does not preserve the stock of family housing.

23 Personally, my husband and I and our daughters spent
24 a year looking for this house. We researched neighborhoods.
25 We looked at countless houses. And we chose this one because

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1 it's in a well-established, nearly 100-year-old neighborhood
2 with a tree-lined street, with a diverse community of people
3 from all walks of life who stand together in opposition to this
4 project.

5 We did not considering buying in areas with apartment
6 complexes, we chose a single-family neighborhood. I also feel
7 that this will decrease my property value because my house is
8 a family house, has a large master bedroom and two smaller
9 bedrooms appropriate for children. It is not a house
10 roommates would rent. And so now my house is less desirable
11 to a family, it's less desirable to me with this huge
12 development looming right across my driveway.

13 This structure will be twenty -- this building will
14 be 25 feet from my house, 25 feet from my daughters' bedrooms.
15 The side yard and the alley and the entrances are directly
16 facing my property.

17 CHAIRPERSON JORDAN: Are the entrances -- well, go
18 ahead, let me -- Well, you're really out of time.

19 MS. McCARTY: Thank you. Thank you.

20 (Applause.)

21 CHAIRPERSON JORDAN: Let me ask you, Mr. Sullivan.
22 The entrance to this property is on Varnum?

23 MS. McCARTY: No.

24 VOICES: No.

25 CHAIRPERSON JORDAN: Folks, I really can't have that

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1 kind of outburst. We really cannot. I mean, please, Mr.
2 Sullivan.

3 MR. SULLIVAN: I could bring the architect up to talk
4 about that if you have more questions.

5 CHAIRPERSON JORDAN: I'm just asking a very direct
6 question.

7 MR. SULLIVAN: My understanding is the entrance is
8 on the side.

9 CHAIRPERSON JORDAN: It's on the side?

10 MR. SULLIVAN: Yes. Yes. But the front is always
11 tied to street frontage. You need a street to have a front.

12 CHAIRPERSON JORDAN: Well, you do have the -- I
13 understand that. I, trust me, understand the technicalities
14 of all of that. And that's, but I just wanted to ask that
15 question.

16 MR. SULLIVAN: Yes.

17 CHAIRPERSON JORDAN: I understand it. But it didn't
18 come out during the other testimony that way. And I'm hearing
19 the witnesses talk about is the actual entrance is some other
20 place. I understand how we measure the front and how we've
21 had cases where because there was three or four houses kind
22 of in a triangle or all kinds of things, that this is more
23 advantageous so we chose this to be the front of the house.
24 I understand that. I just asked a very direct question.

25 MR. SULLIVAN: We didn't have a choice.

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1 CHAIRPERSON JORDAN: I understand. I understand.

2 MR. SULLIVAN: There's only one place it could be,
3 yes.

4 CHAIRPERSON JORDAN: All right. When we conclude
5 this matter based upon the record presented, we're done. We
6 really are done. We're really done.

7 The ANC has already presented its case. You spoke
8 and you spoke a couple of times, you cross-examined witnesses
9 and et cetera. The only -- yes, you had the opportunity and
10 you waived the right to cross-examine Mr. LeGrant. We already
11 had your testimony.

12 So the Board will close the record on this. Yes?

13 MS. WALDIELE: Can we testify?

14 CHAIRPERSON JORDAN: I asked and there was only two
15 people who said they wanted to. Please. Come on, you've got
16 two minutes, please. Come forward.

17 If we can have room by the folks who already testified
18 to let the other folks come forward.

19 MALE VOICE: Those of us who have uploaded our
20 testimony --

21 CHAIRPERSON JORDAN: Yes, oh certainly. We've
22 already read it. Certainly.

23 MALE VOICE: You do consider it?

24 CHAIRPERSON JORDAN: Oh, absolutely. We read all of
25 those. We, before we take this sit-down here we've probably

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1 spent 12 to 15 hours individually reading through every
2 document. And some of us have nothing else to do, we go back
3 to look at previous footage and everything. So, yes, we will.

4 Why don't you come up and sit there. And I've got
5 to be careful because we're now entertaining a dialog that's
6 not part of our procedure. But I'm giving some leeway because
7 I think it's important that people understand.

8 So give us your name, please.

9 MR. SMITH: Charles Smith, 4320 15th Street. The
10 back of my house is on the alley that will become the main
11 thoroughfare for this apartment building. And I'm just
12 concerned that all this technical talk about, you know, is this
13 the basement and how many feet, square feet, this and that and
14 the other thing, would sort of drown out the quality of life
15 issue that we all face here. The value of our property day
16 to day when we walk out of that back door to empty the garbage,
17 to go outside to put the garbage in the alley, what do we see?
18 Who do we see? How many people?

19 That's all.

20 CHAIRPERSON JORDAN: Yes.

21 MR. SMITH: Thank you.

22 CHAIRPERSON JORDAN: And just so every understands,
23 and you raise a question about the technicality. What we are
24 called on to do, we don't have the discretion the Zoning
25 Commission has to come extent when they're doing the PUDs and

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1 et cetera, we are bound by what the zoning regulations provide.
2 This is a case that's appeal of the Zoning Administrator's
3 decisions and so we're only called upon to measure what the
4 decision is based upon the zoning regulations.

5 I know there's a lot of humanistic aspects of this
6 and impact upon the community. And we will look at it from
7 every perspective that we have to see if it's within the zoning
8 regulations. That's all we can tie it to.

9 This wasn't brought before us asking for a variance
10 and some other things where we can do -- we have a little bit
11 more discretion, this is on the appeal of a decision. And we
12 have to look at that decision based upon what the zoning
13 regulations say. So it's a little different than if you were
14 coming in on a variance kind of hearing where we have a lot
15 more discretion, this Board has a lot more discretion.

16 Because this is what happens, which we don't, we're
17 not frightened of because it happens all the time, but where
18 we may err, you know, if we do something outside the rule and
19 the regulation, the narrowness of the regulation, it goes to
20 the Court of Appeals. Then the Court of Appeals will then do
21 whatever they're going to do which gets even further removed
22 from the community.

23 So our decisions have to be based upon the zoning
24 regulations and the technicalities of it. That's why you hear
25 us asking that. Because Lord knows, we understand that there

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1 are some other issues and there is some impact upon this
2 community. And we will look at all of that to see if it's
3 within the realm of the technicality that we can render our
4 decision.

5 So that's all I can tell you.

6 And next we have?

7 MS. WALDIELE: Cecilia Waldiele.

8 CHAIRPERSON JORDAN: Two minutes, Mr. Moy, please.

9 MS. WALDIELE: I guess, you know, I do understand
10 your limits, you know, in terms of power. But you do have the
11 power to revoke this permit. And to citizens --

12 CHAIRPERSON JORDAN: We may or we may not. Depends,
13 you know.

14 MS. WALDIELE: The citizens here, the whole zoning
15 regulations due to this inflexibility we have for while a
16 person can pull down and demolish an existing row home and build
17 a whole new 7-unit apartment building without any review, no
18 review, to citizens like myself when we see other cases coming
19 before you today to get new permission to expand a deck, there's
20 something seriously wrong with the zoning code in D.C. and its
21 implementation when such a huge project like this can fly by
22 with no review. And at the same time, if I want to increase
23 my deck a few feet I have to go through all this paperwork.
24 So just basic point.

25 I guess I would like you all to read that story The

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1 Emperor Has No Clothes. It's a child's story but maybe will
2 give you insight about where myself and other neighbors are
3 who see developments under 330.5(e). I lived right next store
4 to one at 1424 Buchanan and it seemed odd when three, you know,
5 back haulers came and tore down the entire building except for
6 the front wall, that this was new construction. And they said
7 because it came under this exemption no base permit was needed.
8 And my health and safety and those of my neighbors was
9 imperiled. There was absolutely no regulation over the
10 removal of the demolition which has, presumptively, lead
11 paint. It had asbestos tiles.

12 I called OSHA. I called DCRA. I called the
13 Environmental Agency of D.C. There's regs in place to protect
14 the neighboring homes and health. But believe me, I'm putting
15 you all on notice that when you allow permits like this under
16 330.5(e), none of that other regulatory protection is enforced
17 in D.C. And this is my experience in the last year-and-a-half.

18 And the neighbors had damage to their buildings.
19 They got flooded by the construction site. They had cold air
20 and mice in their buildings. They had dirt and dust and
21 debris. And only after lots of intervention by people in our
22 neighborhood getting Ms. Bowling involved was there any
23 recourse for the neighbors.

24 So I wanted to put you on notice to that.

25 And then the other point I want to make is the primary

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1 purpose is to present destabilization of R-4 as a
2 single-family, you know, resident or neighborhood. And when
3 I look at the new zoning amendments, particularly 330.7(d)
4 which allows the addition, you know, someone can add an
5 addition that goes 10 feet beyond the adjacent neighborhood
6 home, I think that allowing this project is going to
7 destabilize that entire block.

8 Mr. Stokes and actually Ms. McCarty maybe they will
9 sell their buildings to somebody else and they will be able
10 to extend those lots and those buildings into a very large
11 multi-unit building. Because 1521 is the longest lot on the
12 block. And I guess I'd like to ask Mr. LeGrant if he got an
13 application for 1519 extending to within 20 feet of the back
14 service alley would he approve it under 330.7(d) or would he
15 limit it somehow after 1521 is built?

16 And as you can see, that sort of triggering effect
17 can go all the way down the block because the lots on Varnum
18 Street are long and, you know, obviously can have larger
19 additions built on them. And I think this destabilization for
20 this particular project should be considered by the Board when
21 they review this case.

22 Thank you.

23 CHAIRPERSON JORDAN: We can't have that. Please,
24 please, please, please. I understand the emotion that's built
25 in this. I mean and certainly if you're living there and

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1 you're right next to all this. But I appreciate everyone
2 coming down and giving us their input on this.

3 Board, how do we want to proceed. Do we put it on
4 the 29th? Is everyone going to be here? Okay.

5 So do we need findings, proposed findings? Yes,
6 proposed findings of facts. I know it's going to be difficult.
7 Let's not do that because I think it would be unfair because
8 I think Mr. Stokes, I think you -- and not talking about your
9 ability to do it, I just think that you'd be disadvantaged.
10 And I think we can get around without doing that.

11 I think we have enough in the record for us to make
12 a decision or be able to do so. Although we typically will
13 require findings of fact and conclusions of law, I'm not going
14 to do it in this case because I want to make sure we at least
15 try to stay somewhere near an equal playing field in that
16 regard.

17 So with that, then we'll put this on for decision for
18 September 29th and put those together and we'll render a
19 decision here.

20 I really thank everybody for their time and patience
21 on this. I understand the importance of it. And we'll do what
22 we can do and need to do in this case. So okay? Thank you,
23 appreciate it.

24 And, Mr. Stokes, don't worry about it. Like I said,
25 many people they could be zoning experts and are still going

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1 to have some issues. And you've done a yeoman's job. Thank
2 you.

3 MR. LeGRANT: Miss my opportunity.

4 CHAIRPERSON JORDAN: No, no, no. I'm telling you,
5 we have some people who profess to be experts and will sit in
6 this chair and, Oh gosh.

7 And, Mr. LeGrant, thank you for being here all day.
8 I know you've got many things to do back at DCRA. And thanks
9 everyone. Appreciate it.

10 Any other business before us? No, we're not doing
11 the --

12 SECRETARY MOY: After looking at this, we connected
13 it. But nothing from the staff, sir.

14 CHAIRPERSON JORDAN: Board, we're okay, we can
15 adjourn? Okay, so we're adjourned. Thanks, everyone. Long
16 day.

17 (Whereupon, at 3:21 p.m., the Public Hearing was
18 adjourned.)

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