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

PUBLIC MEETING OF THE BOARD OF ZONING ADJUSTMENT

9:48 a.m. to 4:50 p.m.

Tuesday, November 17, 2015

441 4th Street, N.W.

Jerrily R. Kress Memorial Room

Second Floor Hearing Room, Suite 220-South

Washington, D.C. 20001

1

2 Board Members:

3 MARNIQUE HEATH, Chairperson

4 FRED HILL, Vice-Chairperson

5 MICHAEL TURNBULL, Zoning Commission

6

7 Office of Planning:

8 STEPHEN GYOR

9 BRANDICE ELLIOTT

10 STEPHEN MORDFIN

11 KAREN THOMAS

12 MAXINE BROWN-ROBERTS

13

14 Department of Transportation:

15 JONATHAN ROGERS

16

17 Also Present:

18 CLIFFORD W. MOY, Secretary to the Board

19

20

21 Office of Attorney General:

22 MARY NAGELHOUT

23 LAWRENCE FERRIS

24

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P R O C E E D I N G S

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CHAIRPERSON HEATH: The hearing will please come to order. Good morning, ladies and gentlemen. We are located in the Jerrily R. Kress Memorial Room at 441 4th Street, N.W. Today's date is November 17, 2015, and we are here for the public meeting and hearings of the Board of Zoning Adjustment for the District of Columbia.

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My name is Marnique Heath, Chairperson. Joining me today is Fred Hill, Vice Chairperson, Michael Turnbull, Member of the Zoning Commission, sitting in as a Member of the Board today. Please be advised that this proceeding is being recorded by a court reporter and is also being Webcast live. Accordingly, we must ask you to refrain from any disruptive noises or actions in the Hearing Room. The Board's hearing procedures and how we will process applications will be found at the table at the back by the door.

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All individuals wishing to testify today will need to do two things. The first is, prior to testifying, each person who wants to address the Board must complete two witness cards per person and give them to the court reporter who is seated to my right. The second thing we will need you to do is now stand and take the oath, which will be administered by Mr. Moy, the Board secretary.

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1 MR. MOY: Good morning. Do you solemnly swear or
2 affirm that the testimony you are about to present in this
3 proceeding is the truth, the whole truth, and nothing but the
4 truth? Ladies and gentleman, you may consider yourselves under
5 oath.

6 CHAIRPERSON HEATH: Thank you, Mr. Moy. Do we have
7 any preliminary matters?

8 MR. MOY: Yes, I do. Good morning, Madam Chair and
9 Members of the Board. As to cases on the docket for today,
10 this is an update.

11 There are three cases for decisions that have been
12 postponed and rescheduled. The first is Application number
13 19018 of Colleen Slattery. That has been rescheduled to
14 December 22, 2015. Case number 16068, Old Pentecost Church
15 Temple of Truth has been postponed and rescheduled to December
16 8th. Third, the Special Exception Application that scheduled
17 on the Expedited Review Calendar, Case number 19120 of Kang and
18 Calomiris, because of a request for party status, so that case
19 has been pulled of the calendar and rescheduled for a public
20 hearing on December 22nd.

21 Two more cases on the open hearing session, 18843A of
22 Christopher Pashby has been postponed and rescheduled to
23 December 15, 2015, and Case number 19075 of Michelle Munn has
24 been postponed and resecheduled to January 26, 2016. That

1 completes my statements, Madam Chair.

2 CHAIRPERSON HEATH: Thank you. One thing that I will
3 note before we call our first case is that the order for cases
4 being heard today will be in line with the Agenda listed at the
5 back of the room, with the exception of the two appeal cases
6 that we have before us today. Those will be heard last, at the
7 end of our session today.

8 So, with that, Mr. Moy, we will call our first, and
9 only, at this point, decision case.

10 MR. MOY: Just a second, Madam Chair. Sorry about
11 that, too much paper. All right, that would be Application
12 number 19093 of Warder, LLC. As the Board will recall, there
13 was, let's see, ahh, the Board last heard this last week on
14 December - rather, November 10th and requested that the
15 Applicant submit revised plans or drawings, and I believe that
16 document was submitted by the Applicant under Exhibit 34, so
17 this is back on the table for decision, Madam Chair.

18 CHAIRPERSON HEATH: Okay, thank you. So, the Board
19 did receive the revised drawings, and in reviewing those
20 drawings, it was clear that the front porch had been revised,
21 as per the Board's request, and those revisions are consistent
22 with the recommendations from the Office of Planning. So,
23 based on those revised drawings, I would support approval of
24 this project subject to the conditions proposed by OP, most of

1 which have already been met, based on the revised drawings, but
2 I will read those conditions to be clear.

3 The first is that the Applicant shall use brick
4 material on the court, similar to the South façade of the
5 building. The second is that the Applicant shall include
6 windows on the East façade. The third is that the Applicant
7 shall restore the building's former front porch, and the last
8 is that the Applicant shall submit dimension plans consistent
9 with the Board's approval to facilitate plan review by DCRA.

10 So, with that, I will move that we approve this
11 application.

12 VICE CHAIR HILL: I second the motion.

13 CHAIRPERSON HEATH: The motion has been made and
14 seconded. Any further discussion? All those in favor?

15 (Chorus of ayes)

16 CHAIRPERSON HEATH: Any opposition? The motion
17 carries.

18 MR. MOY: Madam Chair, before I give final vote,
19 Mr. Peter May, who sat with the Board on this application,
20 submitted an absentee ballot vote, and his vote is to approve
21 the application with such conditions as may be imposed by the
22 board, so that would give a final vote of 3-0-2 based on the
23 motion of Chairperson Heath to approve the applicant for the
24 relief requested, and conditions as you have just cited,

1 seconding the motion Vice Chairperson Hill, and, of course,
2 Mr. Peter May. No other members on this case, and a seat
3 vacant, motion carries 3-0.

4 CHAIRPERSON HEATH: Okay, summary. Thank you. All
5 right, so we will call our first meeting case. Okay, I believe
6 that would be Application number 19099 of RP 3701 NW LLC,
7 correct? This was advertise and captioned for variance relief
8 on the lot occupancy requirements under § 772.1 and off-street
9 parking requirements under § 2101.1. This is to allow the
10 construction of a new, mixed-use building with 21 residential
11 units and ground-floor retail in the GA/C3A District at
12 premises 3701 New Hampshire Avenue N.W., Square 3030, Lot 805.
13 And, unless there has been an amendment to relief requested, I
14 think this is what is before the board, Madam Chair.

15 CHAIRPERSON HEATH: Okay, thank you, Mr. Moy. And, I
16 mistakenly said first public meeting case; this is obviously
17 our first public hearing case. So, with that, if you will
18 please introduce yourselves.

19 JAMI MILANOVICH: Good morning, Madam Chair and
20 Members of the Board. My name is Jami Milanovich, Traffic
21 Consultant for the project.

22 LEX LEFEBVRE: My name is Lex LeFebvre. I am with
23 the owner, the developer, Rooney Properties.

24 JEFF GOINS: I am Jeff Goins, with PGN Architects.

1 JEFF UTZ: I am Jeff Utz, with Goulston & Storrs,
2 Land Use counsel for the Applicant.

3 JAMES LEE: James Lee, I am with Rooney Properties.

4 TIMOTHY A. JONES: Hi, I'm Timothy A. Jones. I am
5 the ANC Commissioner for ANC 4C08, which encompasses the site.

6 CHAIRPERSON HEATH: If you could give us just a
7 moment, we've just received new documentation from ANC 4C. All
8 right, so we've reviewed all the documentation on this case,
9 and it appears that the biggest issue, and, say the biggest
10 hurdle you will have to get over, has to do with parking and
11 the variance request for such. If, unless the Board has
12 anything else you would like to hear, I would like to ask that
13 you focus your presentation on the requested parking relief and
14 why that should be granted.

15 JEFF UTZ: Sure, we would be happy to do that, thank
16 you.

17 CHAIRPERSON HEATH: If you could also talk about your
18 TDM strategy as well as a part of that - I assume you would.

19 JEFF UTZ: Right. I will turn it over to Ms.
20 Milanovich, who will handle a lot of the discussion of these
21 concepts.

22 I just wanted to give a quick caption of the case. I
23 am Jeff Utz with Goulston and Storrs. I won't go through
24 everybody's names here again, but we appreciate the opportunity

1 to appear before you this morning. The application in total
2 requests two variances; one is for lot occupancy relief under §
3 772.1, and the other is for parking relief under § 2101.1.

4 Just quickly, the project will create a 64-foot, 5-
5 story, residential and retail building. It has an FAR of about
6 4.8, which is about 22,840 square feet in total, which equates
7 to 21 residential units and 45 - a little over 4,500 square
8 feet for the retail use on the first floor. And, it will not
9 provide parking spaces, which relates back to the variance
10 request from 2101.1. But, all in all, it is a relatively small
11 site, and it is a small project on this small site. It is
12 zoned C3A, and it is also in the Georgia Avenue Commercial
13 Overlay, which allows a building to reach a height of 70 feet,
14 4.8 FAR, and 80% lot occupancy for residential, and 100 for
15 commercial.

16 So, just getting straight to the parking relief
17 request, the parking regulations right now would require 12
18 parking spaces. That would be 11 parking spaces, 1 space for
19 each 2 units, for the 21 residential units, and then 1 space
20 for the retail space on the first floor, altogether 12 would be
21 required.

22 So, with that quick caption, I wanted to turn it over
23 to - I think the first thing to do, the best thing to do, would
24 be have the architect kind of walk through some of the

1 different kinds of parking options we looked at, and kind of
2 the layout of the site.

3 JEFF GOINS: Once again, thanks to the Members of the
4 Board. When we first looked at the site, I think we were
5 looking at different options for the parking, and I think the
6 first slide here demonstrates if we were using the existing
7 curb cut, the ramp would take up a large portion of the first
8 floor to get the ramp down. And, we looked at other options as
9 well, moving the ramp to where the core is located, and I think
10 once we got down there, we were able to park one or two parking
11 spaces, but we were not able to get any more spaces, and far
12 from the 11 that we would be required for the residential and 1
13 for the retail space.

14 JAMI MILANOVICH: I'll take just a few minutes to
15 walk you through the transportation and parking study that we
16 did and hopefully address the questions that you may have, but
17 I am obviously certainly happy to answer questions when I'm
18 done should I not have answered the questions that you have.

19 From a transportation perspective, this site is
20 ideally situated. We are right across the street from the
21 Georgia Avenue Petworth Metro Station, which, as you know,
22 serves both the Green and Yellow lines. There are seven Metro
23 bus routes that serve this site. There are nine car-sharing
24 vehicles such as Zipcar in the area within a quarter mile of

1 the site, and there is a Capitol Bike share station with 15
2 docks right across the street from the site.

3 The site is also situated such that a car is not
4 necessary to run daily errands. There are a number of
5 amenities, including a grocery store, pharmacies, banks,
6 convenience stores, and restaurants within easy walking and
7 biking distance of the site.

8 In response to some concerns by the neighborhood, we
9 did look at what parking is available near the site, and to the
10 extent that that parking may be available. And, what we found
11 is there are two residential properties very close to the site
12 that have excess parking today, and you can see on this map
13 that the two properties, 3828 Georgia Avenue has 88 available
14 parking spaces, and 850 Quincy Street has 43 available. So,
15 those are parking spaces that are not currently leased by
16 residents of those buildings. So, in order to address some
17 concerns raised by the neighborhood, the Applicant did agree to
18 reach out to those owners, or property managers, as well as
19 others in the area to secure up to 11 parking spaces should
20 future residents of the project want to have that off-site
21 parking. And, again, that was in response to concerns by the
22 neighborhood.

23 CHAIRPERSON HEATH: One question regarding that, have
24 you, are you maintaining your position, or have you changed it,

1 regarding these parking spaces being paid for for those who
2 want them paid for for the first three years, or I know there
3 has been a lot of hesitation about the fact that that comes
4 across as providing encouragement for people to have a car for
5 those first three years, and, if you are still there with the
6 way your positioning the parking and what you're providing, if
7 you could address the request to not pay for - to offer that
8 parking at market rate to those who are looking for parking for
9 the first 3 years.

10 JAMI MILANOVICH: Sure, so I am going to take a stab
11 at answering this, but then Lex can jump in. So, I think
12 because we had indicated to the neighborhood that we would be
13 willing to provide parking, pay for parking, I think that is
14 our current position. Having heard DDOT's concern about that
15 encouraging people to drive and what not, what we did do to
16 address that issue was to extend our TDM plan. Originally we
17 were proposing the incentives as part of the TDM plan for a
18 period of three years from the time the project was opened, and
19 what we did was extend those for a period of 10 years, so that
20 all new residents within that first 10 years would be eligible
21 for the TDM measures such as either a car share membership or a
22 bike share membership. So, in trying to address two different
23 opinions or two different sides of that issue, again, trying to
24 address the community's concerns with making sure there is

1 available parking for residents who may own a car, but also
2 recognizing DDOT's concern about not wanting to encourage
3 people to drive. So, that is kind of where we are right now in
4 terms of trying to compromise on both of those issues.

5 LEX LEFEBVRE: Just to add to that, we do agree that
6 providing parking tends to encourage car use, and that part of
7 our TDM really was - so it's not really a TDM, but it was sort
8 of an issue we discussed with the ANCs in response to their
9 concerns. The idea behind the three years was that we truly
10 believe that the few people that live here that will own cars
11 and choose to use off-street parking will quickly learn that
12 they are not using their cars, that they are using the Metro,
13 they are using the bus, they are walking, and after a certain
14 time, probably less than three years, they simply will get rid
15 of their car. That is sort of something that we see in a lot
16 of these locations. We would be happy to remove that from our
17 plan, but we would obviously want to discuss that with both
18 ANCs. I know that was an issue that was important to them, so
19 we would certainly want to make sure that if we did remove
20 that, that they are still satisfied with the other options that
21 we are providing.

22 CHAIRPERSON HEATH: Okay, and is that the first three
23 years that the building is operational, or is it the first
24 three years of any resident's lease? It is the first three

1 years - I saw you nodding - okay, of operation. Okay.

2 JAMI MILANOVICH: So, as I mentioned, we did make a
3 couple of changes to the TDM plan. You can see the different
4 measures on screen, you know, things like providing the real-
5 time transportation information on a screen in the lobby of the
6 building, having a transportation management coordinator
7 available. The two that are highlighted in red are the two
8 that have changed as a result of DDOT's comments to try to
9 alleviate their concern. And, again, we would be providing a
10 one-time, one-year car share membership or a one-time, one-year
11 Capitol Bike share membership. It would be the resident's
12 choice for all new residents for the first 10 years the project
13 is open, and we will also be providing a \$25 Smart Trip card
14 for all new residents in that same first 10-year period.

15 As part of our parking study, one of the things we
16 did look at was, what is the demand for parking on-street
17 today, and should there be any spill-over to the on-street
18 parking, what is the availability to accommodate that.

19 So, initially we did parking counts, and it is within
20 an approximate two-block radius of the site, which is about a
21 five-minute walk for residents of this site. We first did a
22 period - this was back in June, where we did parking inventory
23 and parking occupancy counts from 5:00 PM until midnight to
24 determine what the demand is. The reason those times were

1 chosen was because that is where the overlap between retail and
2 residential happens. You know, people are out and about, going
3 to dinner, but the residents are also coming home from work,
4 and that is typically considered the peak period for parking in
5 these types of areas where you have a mixture of residential
6 and retail.

7 Subsequent to that, we heard some concerns from the
8 neighborhood about because there is a Metro Station nearby, the
9 parking during the daytime is actually quite high. So, we went
10 back out last month in October, and we did those same parking
11 occupancy counts from 9:00 AM until noon. So, on this graph,
12 you can see the red horizontal line indicates what the parking
13 supply is - that is how many parking spaces are available in
14 that two-block radius, and then the blue bars represent the
15 number of occupied spaces in that same radius, hour-by-hour.
16 And, you can see in that morning period, the peak was at noon,
17 when 71% of those spaces were occupied, and in the evening, the
18 peak occurred at 10:00 PM, when 83% of those spaces were
19 occupied. So, what we found was in the morning during that
20 peak hour, with the 71% occupancy, that meant that there were
21 146 spaces available within the two-block radius, and in the
22 evening, there were 85 spaces available within that two-block
23 radius.

24 LEX LEFEBVRE: Just to add to that, we did hear in a

1 number of meetings with the community, that there is this, I
2 guess a park-and-ride phenomenon happening here where people
3 from other areas of the Ward are coming - they don't live in
4 the neighborhood - but they are coming in the morning, parking
5 their cars, using the Metro to commute, and leaving their cars
6 all day. That really seemed to us like a separate issue from
7 what we are requesting here, and then we would certainly
8 support investigating that more and taking, you know, looking
9 at ways to address that, whether it be limiting the
10 unrestricted daytime parking to a smaller radius to ensure that
11 really it is residents of this neighborhood that are primarily
12 using those spaces, so I think that is something else we could
13 certainly discuss with the ANCs.

14 COMMISSIONER TURNBULL: The two-block parking study,
15 that is two blocks in any direction from the site?

16 JAMI MILANOVICH: That's correct, and I can walk you
17 through roughly the area. Sorry, bear with me one second here.

18 So, we looked along Georgia Avenue from south of Randolph
19 Street to Otis Place, south of our site. We looked at New
20 Hampshire Avenue from Otis Place to Randolph Street, Princeton
21 Place from New Hampshire to Warder Street, Quebec Place from
22 Georgia Avenue to Warder Street, and then Rock Creek Church
23 Road from Spring Road, which is west of New Hampshire Avenue,
24 to 7th Street, and then there is also a small section of 9th

1 Street that runs between Quincy and Rock Creek Church Road, so
2 that is roughly the area that we looked at there.

3 COMMISSIONER TURNBULL: Now, some of those streets
4 have no parking, right?

5 JAMI MILANOVICH: Right, so as part of our inventory,
6 we noted the number of spaces as well as the restrictions, and
7 there are a number of either partial blocks or blocks where
8 parking is not permitted, and that is noted in our study as
9 well.

10 COMMISSIONER TURNBULL: Okay.

11 JAMI MILANOVICH: So, if there are no more questions
12 at this point, I would just conclude by summing up. The site
13 is well served by a variety of transportation modes. We are
14 right across the street from the Metro Station as well as being
15 served by seven Metro bus routes. There are a number of
16 amenities nearby that eliminate the need to have to have a car
17 to do those daily errands. They are very easily done by bike
18 or on foot.

19 In addition to the provision of providing off-site
20 parking for those who may want to own a car, we have
21 strengthened our TDM plan and extended the duration of that TDM
22 plan to really encourage the residents to make use of those
23 alternate modes of transportation that are available to them.

24 So, through all of our work and analysis, we

1 concluded that the proposed redevelopment would not have a
2 negative adverse impact on the surrounding neighborhood.

3 COMMISSIONER TURNBULL: I just had a question. I
4 mean, if the 11 spaces - I'm assuming that - let's just say we
5 are going to approve the three-year plan. I'm assuming that
6 you have already paid a site vendor, and you've got a reserve
7 for these spaces, so you are already putting down, you've
8 already reserved these spaces - these 11 spaces.

9 LEX LEFEBVRE: We have not reserved them. We were
10 going to do it as residents wanted them.

11 COMMISSIONER TURNBULL: How do you know they will be
12 available then, I guess.

13 LEX LEFEBVRE: I mean, those, you know, we have
14 spoken that those parking places have been there for five to
15 six years, and we've talked to the property manager, and they
16 have never had a full garage, and there has only been more
17 parking brought on line in the last couple of years. We just
18 didn't think it was necessary, given that we really have no
19 idea, you know, how many people would actually want cars, so it
20 didn't seem to make sense to reserve them, you know, two years
21 out at this point.

22 COMMISSIONER TURNBULL: So, it's basically a
23 placeholder for you. You're basically saying that as this
24 project goes ahead and gets approved, you are willing to, as a

1 placeholder, have 11 spaces reserved in one of those two
2 garages for cars.

3 LEX LEFEBVRE: Correct, we would rent them for
4 residents when requested.

5 COMMISSIONER TURNBULL: So, you would rent them, and
6 the residents would be paying you, then, for the space?

7 LEX LEFEBVRE: No, we would just rent them. It would
8 be part of our building operations, and we would secure them
9 for the residents. They would have exclusive access to it.

10 COMMISSIONER TURNBULL: I gotcha, okay, all right,
11 thank you.

12 CHAIRPERSON HEATH: And then, after the three years,
13 if the resident still chooses to have a car, do they have to
14 contact the parking garage and make arrangements? It is on
15 them at that point?

16 LEX LEFEBVRE: Right, we would let them know that
17 the, sort of the free parking is up, and that they have an
18 option of either continuing to make those payments, or they can
19 find an alternative.

20 CHAIRPERSON HEATH: Okay. Any other questions?

21 COMMISSIONER TURNBULL: Actually, I do. Let me just
22 have an architectural question. We gotta make the architects
23 work. On the roof plan...

24 JEFF GOINS: Yes.

1 COMMISSIONER TURNBULL: I wonder if we could just
2 talk about setbacks and go over heights and just confirm that
3 we are in compliance. You're not asking for any relief, so...

4 JEFF GOINS: No, we are intending to be in
5 compliance, so let's hope the drawings match that. We do have
6 - I've got the roof plan up now - there is one liveable unit on
7 the penthouse there that will make it the 21st unit. It is set
8 back on all sides. It will be 10'8" in height, and it exceeds
9 the 1:1. The decks, we are trying to hold those at 4 feet from
10 the parapet.

11 COMMISSIONER TURNBULL: Okay, and how high are the
12 parapets? Are you within the 42 inches?

13 JEFF GOINS: We are within the 42 inches.

14 COMMISSIONER TURNBULL: All the way around?

15 JEFF GOINS: All the way around.

16 COMMISSIONER TURNBULL: Okay. So, 42 is consistent
17 from metal railings to brick or masonry?

18 JEFF GOINS: Yeah, we intend to bring the parapet up,
19 I think you can see. We haven't done those details yet - it's
20 a little bulky right now, but we intend to bring the brick up
21 and have that serve as the parapet.

22 COMMISSIONER TURNBULL: And, it would be at 42
23 inches, then?

24 JEFF GOINS: It will be at 42.

1 COMMISSIONER TURNBULL: Okay.

2 JEFF GOINS: Or less.

3 COMMISSIONER TURNBULL: Okay.

4 JEFF UTZ: And the roof structure, itself, is then
5 constructed to the maximum. Right now, it is showing it under
6 11.

7 COMMISSIONER TURNBULL: I saw that. Okay, that is
8 all my questions then, thank you.

9 VICE CHAIR HILL: I had a question. The ANC was
10 concerned about the Chuck Brown mural.

11 LEX LEFEBVRE: Yeah, that is something that came up
12 with everyone we met with. We were actually able to contact
13 the original artist, a local artist named Charles Jean Pierre.
14 He did it in 2012 with students at MacFarland Middle School.
15 We have been working with him to identify - I mean, the
16 ultimate goal would be to preserve it somehow on site. We
17 don't want to do it in the building, because that basically
18 limits its visibility to our residents, so we are looking for
19 an exterior location. We have identified a number of fairly
20 prominent locations in the neighborhood that would be, I think,
21 adequate replacements. It would involve, you know, some of
22 them are city-owned, and we would have to work with the city.
23 That really led us to look at keeping it on-site and given the
24 new building, we do have an at-risk wall along, facing

1 northeast of New Hampshire Avenue that would be about three
2 stories tall, and we think that rather than just have it being
3 sort of a blank wall that you see often around town, that we
4 would have the artist recreate it on that wall. It would be
5 probably larger than it is now. It would be facing the other
6 direction, but still highly visible for anyone coming down New
7 Hampshire Avenue. So, we have not finalized that with him, but
8 we are in regular contact with him and are working on that.

9 CHAIRPERSON HEATH: So, is that what we see in the
10 upper right?

11 LEX LEFEBVRE: Yeah, it's the green mural right on
12 the face, yeah.

13 VICE CHAIR HILL: So, have you spoken to the ANC
14 about that plan?

15 LEX LEFEBVRE: Yes.

16 VICE CHAIR HILL: And, what did they say?

17 LEX LEFEBVRE: I think people, certainly some were
18 adamant that it remains, some were less concerned, but I think
19 they were pleased with the fact that we actually did find the
20 original artist. He did come to the meetings and I think the
21 ANCs were satisfied with our efforts to preserve it in some
22 way.

23 COMMISSIONER TURNBULL: Could you show where your
24 plan is to maybe place it?

1 LEX LEFEBVRE: Sure, you can see on the left side
2 there, so that is the last property, our neighbor in the C3A
3 District.

4 COMMISSIONER TURNBULL: Okay.

5 LEX LEFEBVRE: So, that wall, we don't plan any
6 windows on that wall on the left side of the core, so from
7 basically stories three, four, and five, you would have no
8 building next to it. It would really just be a large blank
9 wall. So, it actually makes a pretty interesting canvas for
10 the artist.

11 CHAIRPERSON HEATH: Any other questions, Board?
12 Okay, then if that concludes your presentation, then I would
13 like to request comments from Office of Planning, unless you
14 have anything further you would like to add.

15 VICE CHAIR HILL: Sorry, I would just like to add one
16 more thing. I think we touched on this a little bit, but I
17 wanted to sort of reiterate. We don't have specific data for
18 this location, but there are a number of studies in our traffic
19 report showing that car ownership, car usage around these types
20 of Metro locations is dramatically reduced. Our sales and
21 marketing team has sold out a lot of projects in these types of
22 Metro locations. They didn't have exact data, but when we
23 talked to them about the likelihood of buyers for condo units
24 in a location on top of the Metro, they estimated that we

1 really would only have a handful of residents who would be
2 owning a car. We really believe that the impact from not
3 providing the parking is pretty minimal given the location.

4 JEFF UTZ: I just wanted to offer also a couple of
5 other points on the zone plan effect, the third prong of the
6 variance test. I think that we have talked about as Jeff Goins
7 was mentioning the first two standards of satisfaction and the
8 first two standards of variance test, given the small nature of
9 the site, the triangular nature of the site, and the high
10 degree of street frontage that would tend to disallow curb cuts
11 leading to a garage, so it is really kind of lot of this
12 discussion centered around the zone plan.

13 One point that hasn't been made yet is after ZIR is
14 brought into effect at this location, the parking requirement
15 actually drops significantly from 12 spaces to 4, and that is
16 kind of a tribute to just how Metro-accessible this location
17 is, and kind of celebrates being built almost. It doesn't get
18 much closer than being adjacent to a Metro stop. It's about
19 100 feet away, directly across the street from across New
20 Hampshire Avenue. So, I wanted to make sure to say that as
21 well.

22 CHAIRPERSON HEATH: Okay. So then with that, I would
23 like to ask for any additional comments or questions from
24 Office of Planning.

1 STEPHEN GYOR: Good morning Madam Chair and Members
2 of the Board, Stephen Gyor with the Office of Planning. As we
3 noted in our report, while we support the relief, I would just
4 add one other additional point about the Georgia Avenue overlay
5 and the intent of the overlay, which is to provide viable
6 retail along the Corridor and a parking ramp would potentially
7 impact the floor plate for the retail area, so I just wanted to
8 add that into the record. Thank you.

9 CHAIRPERSON HEATH: Thank you. Board, any questions
10 of Office of Planning? Applicant, any question of Office of
11 Planning?

12 JEFF UTZ: No.

13 CHAIRPERSON HEATH: All right. So then I would like
14 to ask that we hear from ANC 4C.

15 TIMOTHY A. JONES: Yes, good afternoon. In the
16 report that has been submitted, it talks about how that would
17 add a detrimental impact on the community, and I had a question
18 for OP. On the 3700 block of Georgia Avenue, there are seven
19 residents, and three of them are occupied, only occupied by
20 seniors, and that denser land use impacts upon land values, and
21 we have - we talk about age and place in the District of
22 Columbia, if you get increasing land values, it doesn't sound
23 there is going to be too much age and place for seniors. That
24 is one point I would like to make.

1 As far as talking about the neighborhood serving
2 retail, it is being replaced by residential development, and
3 will there be enough neighborhood-serving retail within that
4 community where cars are not needed or there is equilibrium
5 between alternative modes of transportation and demand for
6 transportation to meet those demands, because you have to go
7 outside of the community for other things. The assumption is
8 made that everybody who will bank at Wells Fargo, and other
9 than that, there is really no neighborhood-serving retail there
10 other than a Safeway. I can remember when there were furniture
11 stores, shoe repairs, 5&10s, pet store, I mean there is a pet
12 store there now, and other amenities that were on Georgia
13 Avenue, and they are no longer there. So, you have retail,
14 men's haberdasher, clothing stores, all those are gone. So, if
15 they are not within walking distance and close to the site,
16 where do you have to go? One bicycle, one car share can only
17 be one place at one time.

18 CHAIRPERSON HEATH: Okay. We do have a letter from
19 ANC 4C where a number of votes were taken, and in conclusion it
20 appears that ANC 4C voted to deny the parking variance or voted
21 to support the lot occupancy.

22 TIMOTHY A. JONES: That is correct as well.

23 CHAIRPERSON HEATH: Okay, and it looks like the vote
24 was fairly close, 5-4, but that the motion to deny the parking

1 variance was passed.

2 We also have a letter from ANC 1A, who is the
3 adjacent ANC, who recommends approval subject to three
4 conditions. Have you had conversations with that ANC at all?

5 TIMOTHY A. JONES: I received a copy of the report,
6 and I read it with the resident, in fact, several residents of
7 1A have been at 4C's meetings and expressed their opposition to
8 the project, so I am at wit's end. I think the Commission
9 could go forward with the residents who are most directly
10 impacted by this project have spoken out at public meetings in
11 opposition to it.

12 CHAIRPERSON HEATH: Okay, and you don't feel that the
13 fact that there is a lot of public transportation options -
14 there may be not be all of the retail that you spoke about
15 previously existing in the neighborhood, it may not all be
16 there today, but the fact that there is lots of access to
17 public transportation, buses, Metro...

18 TIMOTHY A. JONES: In the 4C report, we talk about
19 demographics, and those alternative modes of transportation,
20 are they available across the demographic stream, if you have a
21 family household, would it reflect upon that, if you have a
22 growing family, and you need a bicycle or what not, or if you
23 are looking for cars. If you're a senior, and there's a lot of
24 seniors. They are not going on the ground and aren't big fans

1 of riding on the bus. So, what do you do with the indigenous
2 population, those that are there now? They will be the ones
3 that would be impacted upon by the parking.

4 CHAIRPERSON HEATH: Okay. Board, any questions for
5 ANC Commissioner?

6 VICE CHAIR HILL: I had a question, actually.

7 CHAIRPERSON HEATH: Okay, go ahead.

8 VICE CHAIR HILL: So, Commissioner, the vote was 5-4?

9 TIMOTHY A. JONES: That is correct.

10 VICE CHAIR HILL: And, you were one of the 5 who
11 denied it, I assume.

12 TIMOTHY A. JONES: That is correct.

13 VICE CHAIR HILL: Can I just ask you, I'm just
14 curious, why were the four saying yes? What were some of their
15 arguments to agree to the variance?

16 TIMOTHY A. JONES: Well, they - hook, line, and
17 sinker, the difficulty of providing the parking as stated in
18 the report by the Application by the developer, but none of
19 them, they are distant from the site, so they lacked the
20 familiarity of the site, and they do not have the pulse on the
21 hands or the arms of the residents of that neighborhood, as I
22 do. I have been in that neighborhood since '59.

23 VICE CHAIR HILL: Okay, I was just curious. Thank
24 you.

1 COMMISSIONER TURNBULL: I just had one - did you see
2 the drawings by the architect that showed them trying to put a
3 garage in and the problems?

4 TIMOTHY A. JONES: I read through it, I have not seen
5 the drawing, but I read over what was contained in the report.

6 COMMISSIONER TURNBULL: It is a very difficult, small
7 site.

8 TIMOTHY A. JONES: I think if you read the report,
9 though, the option was if they provide parking, they would have
10 to do away with the retail. I think the report states that, am
11 I correct?

12 COMMISSIONER TURNBULL: Right. So, I mean, it's a -
13 there is a give and take.

14 TIMOTHY A. JONES: Well, 1400 - I mean, that is a
15 problem with retail on Georgia Avenue, and after the size of
16 the retail base, I mean, what can you get in there, coffee
17 shops, restaurants, lounges? I mean, is that really
18 neighborhood-serving retail when you have to go outside of the
19 community for other things? That doesn't create jobs in the
20 community, and it doesn't keep - it hinders further development
21 of the community.

22 CHAIRPERSON HEATH: Okay, all right. Applicant, any
23 questions or comments that you would like to make based on the
24 ANC Commissioner's statement?

1 JEFF UTZ: We actually did present the various
2 parking options and kind of showing the difficulty in ramping
3 down to the basement level, and then it was in our 14-day
4 submission in a little bit more detail as well to try to
5 justify that hardship.

6 CHAIRPERSON HEATH: Okay, thank you. All right. So,
7 it appears we have someone here from DDOT. So, I would like to
8 hear from you regarding this issue.

9 JONATHAN ROGERS: Good morning. For the record, my
10 name is Jonathan Rogers with the District Department of
11 Transportation. DDOT has no objection to the requested relief
12 as has been discussed in the Applicant's presentation. The
13 site is ideally located close to transportation options. It is
14 offering a very strong transportation demand management
15 program, and so those things together would lead to hopefully
16 low car ownership.

17 The concern with offering off-site parking free of
18 charge is an outstanding question for DDOT, and thinking that
19 will encourage auto ownership. I think that question has been
20 discussed a lot today. I am happy to answer questions, if
21 there are any, about how we think that might impact parking,
22 but, other than that, I'll end my speech, and I'm happy to
23 answer any questions. Thank you.

24 CHAIRPERSON HEATH: Okay, thanks.

1 COMMISSIONER TURNBULL: It sounded like the parking
2 plan was an interim measure, at best. I don't know if that
3 makes a difference to you or not, but it sounded like it was
4 only for a three-year period max, basically phasing that out
5 after the three years.

6 JONATHAN ROGERS: So, given the site's location and
7 the strong transportation demand management plan, we believe
8 that there really is an ability to attract people to the
9 building that don't desire to own cars, and that is something
10 that we think is very realistic.

11 The concern with offering parking off-site free of
12 charge is that pricing is one of the major determinants in
13 people's decision to bring a car with them to a new place, and
14 offering parking free of charge, while it would strongly
15 encourage anyone who has a car to park off-site as opposed to
16 on the street, and achieving a short-term goal, in the long-
17 term what it could do is attract people to the building that
18 have cars, and after three years, there is a concern that with
19 the incentive dropping, that they would look for other options
20 for parking, which may include parking on the street. They may
21 decide to continue parking where they are parking and pay out
22 of pocket, or they might get rid of their cars, or they might
23 look for another parking option, but sort of the sure-fire way
24 to - a more sure-fire way to attract people without cars from

1 the outset is to not offer free parking from the beginning.
2 So, I understand there is a give and take between trying to
3 address neighbor's concerns, but there is also this sort of
4 longer-term potential impact that is out there that is creating
5 by offering free parking spaces.

6 COMMISSIONER TURNBULL: So, if you had your druthers,
7 you would rather see it unbundled from a buy-out plan and
8 simply a measure where the owner would assist in parking
9 somehow rather than...

10 JONATHAN ROGERS: Correct. Offering parking at
11 market price would, I think, serve to facilitate finding off-
12 site parking options, but not go so far as to actually
13 financially incentivize folks to move in with cars.

14 COMMISSIONER TURNBULL: Okay, than you.

15 VICE CHAIR HILL: And then the residents, they can
16 apply for permit parking for street parking?

17 JONATHAN ROGERS: We did look at the residential
18 permit-parking database. This block is eligible for RPP. It
19 is in the RPP database, and residents would be eligible to
20 apply for that, for those permits.

21 VICE CHAIR HILL: And, is there a way to set that up
22 so they wouldn't be eligible to apply for those permits?

23 JONATHAN ROGERS: That is something that could be
24 initiated on the Applicant's side. There is not currently a

1 way to exclude and to enforce from the District side. That is
2 something that has been done in the past from the private
3 sector from the developer's side to write that into leases or
4 condo documents.

5 COMMISSIONER TURNBULL: But, it could be, I mean is
6 New Hampshire Avenue considered a major thoroughfare for you to
7 not allow parking adjacent to the building? I forget how that
8 works now.

9 JONATHAN ROGERS: The block is currently in the RPP
10 database.

11 COMMISSIONER TURNBULL: On all sides?

12 JONATHAN ROGERS: I believe. So, it's based on the
13 main address, which is on New Hampshire Avenue. This
14 particular block on New Hampshire Avenue is already in RPP
15 database. If it weren't already but were being petitioned to
16 be entered into the RPP database, we would evaluate it on a
17 number of factors. Given the commercial nature of the ground
18 floor, it would probably have a more difficult time of getting
19 into the RPP database if it were a new application, but, like I
20 was saying, it is already eligible and therefore that is the
21 reality that this building is coming into. It's already part
22 of a block that is RPP eligible.

23 COMMISSIONER TURNBULL: So, what you're saying is
24 that it would be like on several - many planned unit

1 developments where the owner writes into the leasing agreement
2 that there will be no RPP or that they will not be eligible for
3 RPP.

4 JONATHAN ROGERS: That is how that would be done.
5 That's not necessarily DDOT's position to advocate for
6 exclusion of RPP for a particular building, but in the past,
7 that is how it has been done with other projects.

8 COMMISSIONER TURNBULL: Okay.

9 JONATHAN ROGERS: We think, you know, like I said,
10 given the location, given the TDM, exclusion from RPP is not
11 something that we necessarily are advocating for.

12 CHAIRPERSON HEATH: Okay, thank you. Any other
13 questions of DDOT? Applicant, any question of DDOT?

14 JEFF UTZ: No.

15 CHAIRPERSON HEATH: Okay, all right. Is there anyone
16 here wishing to speak in support of this application? If you
17 would please come forward. Anyone wishing to speak in support?
18 Once you are seated, if you could please state your name, make
19 sure your microphone is on.

20 JOSEPH MARTIN: My name is Joe Martin. I live at
21 4230 4th Street N.W., which is just a block east of Grant
22 Circle. I serve on the ANC, and I have previously served on
23 the ANC for seven years. For six of those seven years, I
24 chaired the ANC.

1 VICE CHAIR HILL: I'm sorry, which ANC?

2 JOSEPH MARTIN: 4c, serving with Timothy. I
3 supported the variances in both of the votes because one of my
4 biggest concerns is the housing crunch that we have. I have
5 been living in Petworth for 12 years. I have been living in
6 the city for, it will be 31 years on January 10th. As
7 everybody knows, the housing costs are skyrocketing. On my
8 block and in the immediate Grant Circle area, homes are selling
9 for, once renovated, the high \$700s to the high \$800s. We had
10 someone working for the ANC who lived a block from Sweet Mango,
11 Larry Chang, who had a rent-controlled apartment. I went to a
12 going-away party for him, he moved out the neighborhood, he
13 moved to Thailand. He grew up in Jamaica. He mentioned to me
14 that the rent of his one-bedroom apartment after he left went
15 from \$1,400 a month to \$2,800 a month. I am very concerned
16 with that kind of rent increase, and I know I heard there was a
17 campaign of E-mails to us from people dead-set against the
18 development. One of my constituents or one of the residents of
19 my SMD is here today. I told him, I don't know why I'm so
20 nervous speaking, I speak publicly a lot, but, I told him that
21 I saw unless the city figures out a way to create more housing,
22 the neighborhood will change and will keep changing
23 significantly. Lower-income people will have fewer and fewer
24 options, and that concerns me.

1 The parking situation concerns me too. One of the
2 things I said at the ANC consideration for this was that the
3 elephant in the room was DDOT. I don't know what options are
4 for creating more parking in existing spaces.

5 One of the things I was proudest of about six years
6 ago when I chaired the ANC, and as DDOT was installing traffic
7 islands on New Hampshire Avenue, DDOT was eliminating one of
8 the islands between Randolph and Shepard, where First Baptist
9 congregants parked in the middle of the street on Sunday and
10 during special services. I asked DDOT to not install a median
11 on that block, while the neighborhood came up with an alternate
12 plan. The plan that we came up with, which I thought was
13 wonderful, was to allow, and DDOT approved this, the ANC
14 supported this, was to allow First Baptist congregants and
15 Pastor Tucker at First Baptist vigorously supported this, to
16 park on both sides of the medians for two blocks. We
17 effectively, from Quincy at the northern end of the block that
18 _____ is on, to Shepard, we tripled the available parking
19 for congregants.

20 So, my own record on parking, I think, is very
21 sensitive to the neighborhood. This was a hot issue, and I
22 understand why. Our meeting was very, very heated over this,
23 but I think the votes I took were with a long-range view of
24 where Petworth is going, most helpful.

1 When I first moved to Petworth 12 years ago, the old
2 ladies in my neighborhood encouraged me to get on the ANC. I
3 felt I had no right to be on the ANC. I had only been living
4 in Petworth a year and a couple of months when I ran, and I ran
5 as a write-in, deciding the day before. On some of the years
6 that I served on the ANC, I was the top vote-getter of all 10
7 Commissioners. I was deeply flattered by that level of
8 support. I am from a working class background myself in
9 Boston, so I am very sensitive on a very deep level about these
10 issues. I like the diversity of Petworth and reflecting of
11 what Timothy said a few minutes ago, one of the first things I
12 heard from seniors was, and I have never forgotten what one
13 woman said. She said, "Georgia Avenue used to be beautiful.
14 We used to love walking on Georgia Avenue. It's all boarded-up
15 storefronts now. What can you do about that?" And, I said to
16 her, "I'll do my best to bring in new businesses, but we also
17 need to support development on Georgia Avenue to create the
18 mass of residents who will support the new businesses." We
19 still have a great cobbler, shoe repair shop, on Upshur Street
20 that has been there since 1945, and the same family, the same
21 couple who own it today owned it in 1955. We have tailors. We
22 have dry cleaners. We have restaurants that are often too
23 pricey, and I've said to the merchants, and I know all the
24 restaurant owners, it would be nice if you came up with an

1 option that is more affordable.

2 So, just winding up, I understand the heated
3 opposition to the variances, but I thought in the long run this
4 was in the best interest of the neighborhood, and I would like
5 to see DDOT come up with a plan that could create more parking
6 for the residents, whether it is angled parking or whatever it
7 is, and I don't think - I don't know, if there has been enough
8 done to look at that. Thank you.

9 CHAIRPERSON HEATH: Thank you. Any questions? All
10 right. I should have said before you started speaking that we
11 normally give people in support or opposition three minutes, do
12 you think three minutes is sufficient?

13 JOSEPH MARTIN: My apologies.

14 CHAIRPERSON HEATH: That's okay.

15 KENT BOESE: I can be as fast as you need me to be.

16 CHAIRPERSON HEATH: Okay, all right. So, we'll give
17 you three minutes.

18 KENT BOESE: Okay, sure. My name is Kent Boese. I
19 am the Chair of ANC 1A. I am a single-member District
20 Commissioner for 1A-08, which is the 1A SMD directly across the
21 street from this project. Since we exercise their great weight
22 to weigh in on the project, and you have that submission, I
23 wanted to at least be here to answer any questions.

24 To underscore what Commissioner Martin said, the

1 issue of parking is important to us; however, when I look at
2 this particular site and the practical difficulty of this site
3 and the impact this site can have in an extremely positive way
4 on this community, you know, you're right, there has to be give
5 and take, and at the end of the day, I think that there is a
6 lot of merit to this project that well outweighs the negatives.

7 With regard to the parking, I have a hard time
8 fathoming that this building will create a huge detriment to
9 the neighborhood. What my observation is, is that there is a
10 lot of commuter parking. I don't want to say that this block,
11 particularly the 700 block of Rock Creek Church Road, it does
12 have its parking challenges. I admit that. I have seen it,
13 but I have also seen a lot of Ward 4 residents use that as
14 their commuter parking, which is an issue, and one that we are
15 not dealing with. I also have seen over the years three-story
16 row houses converted into three and four-unit apartments, all
17 without removing their parking requirements or participation in
18 the RPP, and every time you get another five of those, you
19 increase the same parking demands that this building is trying
20 to do as a building in a commercial zone. I think that, as a
21 matter of policy, I would hate for us to oppose a building
22 trying to do the right thing in a commercial zone, when we are
23 really not addressing the elephant in the room of these row-
24 house conversions and apartmentization of our residential

1 single-family homes, which has a far more detrimental impact to
2 the community.

3 With regard to some of the parking, one of the things
4 we requested was the removal of the loading zone on Rock Creek
5 Church Road. If you remove that loading zone, you will
6 recapture two on-street parking spaces, and that actually will
7 increase parking. Furthermore, if those new parking spaces
8 were reserved to something like Zipcar, then, again, you are
9 encouraging people to not own cars, and you are putting it
10 right next to Metro. A few years ago, we supported two Zipcar
11 spaces down on Otis, which are three blocks south of the Metro,
12 and the feedback we get from Zipcar is those are the most
13 heavily used spaces in Ward 1. We put them where we could. We
14 put them where we needed them. We put them where they didn't
15 remove parking from the residents who live there. They are
16 extremely popular.

17 With regard to the whole RPP issue and denying a
18 building from RPP, I understand the intent. I have seen it
19 happen to another parcel where the property owner proposed
20 doing it. But, I do have concerns that I think it's a bad
21 policy. I don't think it's sustainable over time. I think it
22 is something, even though a decision here, you know, carries
23 the weight of law, I think it amounts to nothing more though
24 than a restrictive covenant that someone is eventually going to

1 challenge and could overturn, and, if that happens, we will see
2 many building that are restricted from participating in RPP all
3 of a sudden have to flood the streets with cars.

4 I guess the last thing I'll say is among the
5 conversations that people have had with me that were opposed to
6 supporting the parking variance, one of the arguments was
7 concern where visitors would park. And, you know, again, that
8 is throughout the city, whether this building participates in
9 RPP or has a good parking plan, visitors are going park
10 wherever they can, visiting anyone, including this building,
11 should someone drive to this building.

12 At the end of the day, I just think that the
13 configuration of this lot does have a practical difficulty.
14 It's location - if this building can't be granted a variance
15 for parking, and I don't think any building should be granted a
16 variance for parking in the District of Columbia, and I've seen
17 buildings with much weaker cases get this, so I have a concern
18 with that as well.

19 CHAIRPERSON HEATH: Okay, thank you. Board, any
20 questions?

21 VICE CHAIR HILL: What do you think of their plan for
22 the Chuck Brown mural?

23 KENT BOESE: I would make one suggestion. Murals, by
24 nature, are temporary. Either they will face over time or a

1 building will come up at an at-risk wall, and, in this case,
2 the building being redeveloped. My suggestion would actually
3 be that the mural be created on some kind of panel system so
4 that if it ever had to be moved in the future, it could be
5 removed from the building, and a new location could be found.
6 I think that would be something that would be far more
7 permanent, and we would not have to go through the angst of
8 recreating the mural in the future.

9 Again, I think that it is - I like that they are
10 trying and doing what they can to recreate it. I would just
11 like to see it done in such a way that if the location we
12 choose ultimately is at risk, then we can move the mural and
13 not lose that spirit or run the risk of the artist no longer
14 being in the community to recreate it in the future.

15 VICE CHAIR HILL: Okay, I'm just curious. The
16 developers are all nodding your heads, is that...

17 LEX LEFEBVRE: Yeah, we are really in the process of
18 working with the artist. We intended to come back to the ANC
19 to let them know sort of what direction we are heading in.

20 VICE CHAIR HILL: All the rest of their stipulations,
21 you have read them and everything? Are you comfortable with
22 all of them?

23 LEX LEFEBVRE: Yeah, those were all discussed at the
24 meeting. We are fine with those, yes.

1 CHAIRPERSON HEATH: So, the curb cut, and the car
2 share parking spaces?

3 LEX LEFEBVRE: So, it's not entirely a cut. It is
4 sort of an indented loading area, but, yeah, we've talked about
5 that with DDOT.

6 VICE CHAIR HILL: And, the rate abatement?

7 LEX LEFEBVRE: Yeah, the plan is to absolutely move
8 the trash area inside the building. On the plan, we are
9 showing sort of a back-of-house trash area in the building that
10 will be secure, so the trash will no longer be on the sidewalk.

11 CHAIRPERSON HEATH: Okay, all right, thank you. Any
12 other questions? All right. Does the applicant have any other
13 questions of the witnesses or comments? Okay.

14 JEFF UTZ: No, I just wanted to note that ANC-1A is
15 automatically a party to the case since they are directly
16 across the street from the property, directly across Rock Creek
17 Church.

18 CHAIRPERSON HEATH: Okay. Anyone else wishing to
19 speak in support? Is there anyone here wishing to speak in
20 opposition? Okay. Are all of you wishing to speak, or are
21 some of you - do some of you have representatives that you
22 would like to come up? I saw quite a few hands. Okay, please
23 come forward. We are going to have to make some room.

24 [Speaking off mic.]

1 CHAIRPERSON HEATH: Okay, could you please state your
2 names.

3 MARCUS KEDRICK: My name is Marcus Kedrick. I am the
4 Vice President of the Park View United Neighborhood Coalition.

5 CHAIRPERSON HEATH: Okay.

6 PATRICIA KALIL: I'm Patty Kalil. I live on 711 Rock
7 Creek Church Road, a block down.

8 LENA AMICK: My name is Lena Amick, and I live at
9 1210 Lamont Street, NW.

10 MITZIE SMITH: Good morning, my name is Mitzie Smith,
11 and I live in the 700 block of Rock Creek Church Road.

12 COLLEEN DELL: Good day. I'm Colleen Dell...

13 CHAIRPERSON HEATH: Make sure your mic is on.

14 COLLEEN DELL: Yes, good day, my name is Colleen
15 Dell. I live on the 700 block of Rock Creek Church Road.

16 NICHOLAS UDU-GAMA: Good morning, my name is Nicholas
17 Udu-Gama. I live at 4708 3rd Place NW at New Hampshire and
18 _____.

19 ANTHONY JOYNER: Good morning, my name is Anthony
20 Joyner. I am at 738 Quincy Street, NW.

21 CHAIRPERSON HEATH: Okay. Thank you all for coming
22 down.

23 JARED MILLER: One more. My name is Jared Miller. I
24 live at 730 Rock Creek Church Road NW.

1 CHAIRPERSON HEATH: Okay. There are quite a few of
2 you. We are going to give each of you 3 minutes, but I would
3 ask that you not duplicate your statements. If you could keep
4 them to specific points and any new points that you want to
5 make that we haven't heard from those who speak prior to you.

6 MARCUS KEDRICK: I'm here on behalf of the Park View
7 United Neighborhood Coalition. We are a nonprofit civic
8 association for the neighborhood of Northern Park View and
9 Southern Petworth. The property in question is within our
10 membership boundary, and on November 4, 2015, during a
11 regularly scheduled meeting, our membership voted on a
12 resolution to oppose the variance unless permanent parking
13 mitigation was established; either an exclusion from the RPP
14 System or permanent off-site parking acquired by the developer.

15 Exhibit 43 is a letter from our President on it. I
16 will just briefly address some of the factors that we think the
17 Board should consider in assessing whether or not to grant the
18 parking variance.

19 Our first concern is that street parking on the
20 blocks nearest the site already are strained by existing uses
21 and continuing development in the neighborhood. As our ANC
22 Commissioner mentioned, many of the row houses immediately
23 adjacent to that property are being turned into small multi-
24 unit apartments, so there is an increasing density that is

1 going on already, and those are all by-right developments.

2 Someone else also mentioned nearby churches. There
3 are four churches within two blocks of this site, six, if you
4 expand that to three blocks. These churches can create a sort
5 of surge in parking need for periods of time during the week
6 not covered by the Thursday sampling of parking that the
7 developers did in their transportation analysis, which leads us
8 to our second point. It is really a followup on that.

9 That is the 83% mentioned by the developer at peak
10 parking, is actually pretty close to capacity when you factor
11 in surges we get in other times of the week and the fact that
12 there is human error so that people parking on residential
13 sometimes end up where two cars will end up taking up three
14 spaces because they don't leave room for a third. So, when you
15 start getting to 83%, 90%, you can see some of those parking
16 spaces disappear, even though they are still technically
17 available.

18 Moving on very quickly, the original mitigation was
19 only for three years. The developer has kindly increased that
20 to 10, and we think that is helpful, but, many of our members
21 noted that the available, free, off-street parking for a
22 temporary period encourages people who already own cars to move
23 into the house, which will undermine the mitigation plan.

24 So, our membership thought that a good option for

1 this particular site, which was done for the property two
2 blocks south on Georgia and Princeton, is to order the
3 developer to establish covenant to run with the land to insure
4 that the residents of the building don't seek RPP permission.
5 That was in order for under Application No. 18847, and our
6 letter includes the provisions from the order that were
7 relevant there.

8 We think that exclusion from the RPP is appropriate
9 here because if the developer's mitigation plan is successful,
10 the residents of the new building won't really need parking
11 anyway, so it's a low cost to the developer.

12 Furthermore, if it turns out the mitigation plans
13 aren't as successful as the developer thinks, the property
14 manager or the condo association will be in a much better
15 position to secure the available off-street parking at the
16 nearby buildings than the folks who live in one or two units
17 further down the street can. They will have, you know, a
18 larger organization, they will have bargaining power to
19 actually access those off-street sites that a random person in
20 the community wouldn't necessarily have.

21 So, because the exclusion from the RPP is very low
22 cost to the developer and insures that those 21 units won't
23 increase parking strain, where I think most people agree there
24 is already a problem or will be soon be a problem with the

1 increasing density, our membership thought, almost
2 overwhelmingly, that this was a good solution to solve the
3 parking problem that would allow the development to go forward
4 and still meet the concerns of the neighbors.

5 I would point out that while both ANCs had mixed
6 votes, our vote was something like 11 in favor, 1 against, and,
7 the minutes aren't final yet, but I don't think we registered
8 who the folks who didn't take a position, only the number of
9 people who abstained. So, with that, I will wrap up my
10 statements. Thank you for your time.

11 CHAIRPERSON HEATH: Again, if you could stick to the
12 3 minutes. Mr. Moy, if you could reset the timer. You'll see
13 the clocks on either side. Thank you.

14 JARED MILLER: All right. I already submitted a
15 letter in opposition to the project, and I just submitted a
16 petition that I circulated from residents from Quincy Street to
17 the north, the 600 block of Rock Creek Church Road, Princeton
18 Place, and Quebec, and they are all against granting the
19 parking variance.

20 I have lived on the block for 38 years. I have seen
21 parking go from bad to worse. There are over 20
22 rooming/condos/apartments on my side of the street alone, and
23 most of the time they can contain four to five people, which
24 means more cars, more visitors, and I think the parking problem

1 has been simplified. There is no parking in the rear. The
2 alleys are too narrow. The parking pads or garages that are
3 there are too small to accommodate a modern-sized car. So,
4 there is no off-street parking, and no one has taken into
5 consideration the street cleaning, which limits parking at
6 least up to 75%. I, at times, have to park maybe two blocks
7 away a day ahead of time to reserve a space so I don't get
8 ticketed.

9 You also have people, Metro riders, that come and
10 park from 7:00 in the morning to sometimes 6:00 in the evening,
11 and they are waiting for spaces. We also have a nursery school
12 on the corner, which has a drop-off and a pick-up at peak times
13 during the say, and it is hard to either find a space or to get
14 a space, you know, if you are coming and going, depending on
15 the time of day.

16 I'm also concerned about the statement that parking
17 will be available directly beside the building that is going to
18 be built, because we do have a bus route, the H8, that roars up
19 Rock Creek Church Road, and the onset of the block is very,
20 very narrow, and people don't park there anyway because of
21 that. You know, they don't want their car torn apart. There
22 is also a fire hydrant, which will also eliminate several
23 spaces. So, I just think the parking situation has been
24 simplified by the developers and personally my ANC, and I'm one

1 of its constituents because I am on the 700 block side.

2 I just think it's been simplified. There is nothing
3 like coming and seething, sitting in your car for an hour, and
4 not being able to get a spot because you are waiting for people
5 to leave or commuters waiting to come home, and, again, just
6 the rooming houses, that's a problem, because you are adding
7 sometimes four cars per house, and you multiply that times 20,
8 and you have a problem.

9 I think that's pretty much it. I think I've said
10 what I needed to say on the matter. Thank you.

11 CHAIRPERSON HEATH: Thank you.

12 PATRICIA KALIL: Thank you for having us here today.

13 I just want to start by saying that I have never spoken to
14 anyone on my block that is not aware of and understands that
15 Georgia Avenue is a major Avenue and that it will be developed,
16 and that commerce and things are coming. The concern is that
17 things aren't being done in a way where locals are being
18 prioritized and what they need. It seems like, in terms of
19 parking and affordable housing, that those concerns, because
20 development companies are spearheading it, there is no
21 longevity in the decision-making, and so 3-year plan, 10-year
22 plan is nice, but for me as a homeowner, knowing that I could
23 have that house for the rest of my life, that the longevity of
24 these decisions isn't necessarily being talked about or

1 prioritized within the development companies.

2 So, for us, we - our main concern is that not
3 everyone can afford or want to have Zipcars and car-sharing
4 things, and also that the majority of those houses or the
5 apartments being created are probably going to be not
6 affordable for anyone located in that area. Just like someone
7 spoke earlier, that my property taxes have increased hundreds
8 and hundreds of dollars within three years because of not just
9 the pop-up condos but because of these large apartment
10 buildings. And, I think right now it is easy to say that there
11 are many, many spots available across the street and things
12 like that because maybe those apartments aren't being filled.
13 But, the moment every single apartment building in Petworth is
14 filled, the concern is, what happens then? At that point,
15 development companies will be away and removed from the
16 project.

17 So, the concern is thinking about it not just in 3
18 years or 10 years, but even longer, especially as commerce
19 becomes a bigger thing in that area and knowing in terms of
20 commerce, knowing that more and more local businesses are being
21 taken out, and that it is becoming extremely difficult to live
22 in Petworth and have any sort of commercial venture in Petworth
23 because right now, most of the development happening seems to
24 be prioritizing and helping those wanting to come move, but not

1 those who are already there, and that is a large concern from -
2 that's why I think there is sometimes a difference in opinion
3 of the residents there versus the people who are actually
4 developing. I don't want to repeat the things they said, so
5 I'll let the next one speak. Thank you.

6 CHAIRPERSON HEATH: Thank you.

7 LENA AMICK: Hi, again my name is Lena Amick, and I
8 live on Lamont Street, 1210 Lamont Street, and we've had a lot
9 of talk here about what the elephant in the room being DDOT or
10 different things that we're not talking about. For me, the
11 elephant in the room in this conversation is race and the fact
12 that building - developments like this that we see across the
13 street, across the same street on Georgia Avenue, down the
14 street, all over the neighborhood that are popping up
15 everywhere, are displacing renters, and most of those renters
16 are Black and Latino residents, and that's a big concern to me,
17 also as a renter who wouldn't be able to afford to live in
18 these apartments, that just creating more housing is not
19 something that is actually going to create livable conditions
20 for people. In fact, it is something that is pushing people
21 out.

22 So, my concerns are both with the affordability of
23 what we're building and the kind of neighborhood that we're
24 trying to create, and especially I see a Board such as

1 yourselves as something that could represent people in being
2 able to decide what kind of neighborhood we're creating. And,
3 then also the mural itself as a representation of the culture
4 of Washington D.C. and of the people who have lived in that
5 neighborhood for a long time.

6 I would like to trust that the developers are having
7 this conversation with the artist of the mural, and I
8 appreciate that, and that is great to hear. I would like to
9 see that in writing and have some sort of plan put forward
10 before any sort of approval, because that is so easy to go back
11 and be like, well, whoops, it didn't work, you know, or
12 something like that, but to have some sort of plan going
13 forward is something that I would like to see in order to
14 preserve something that is so important to the neighborhood, to
15 the culture, so that all of that is not erased, and people are
16 not displaced.

17 I am also interested in having - this is a 21-unit
18 building, I would assume then that is 1-2 units, which would be
19 mandated to be affordable housing, to have those units be
20 actually affordable, because the way the AMI works, as I'm sure
21 you're aware, those units are - the projection is that they
22 would be at 80% AMI, which is still an income for a family of
23 four of about \$80,000 a year, which is way more than I make,
24 way more than many of my neighbors make. I also work in a

1 professional capacity with a school down the street, with
2 Bruce-Monroe Park View Elementary School, and I know that
3 people's major concern is housing. They are getting pushed
4 out. They can't support their students because they have to
5 move from place to place. There are a lot of people who are
6 homeless in our neighborhood, and I'm really concerned that
7 developments like this are not for those people when we're
8 talking about building a Starbucks, or not a Starbucks
9 necessarily, but like a coffee shop or having, you know,
10 something fun for people to do, like the people that I'm
11 working with cannot afford to even go and sit down in a
12 restaurant a lot of times. So, that is a big concern to me
13 that when we're talking about having a livable community, that
14 it's a livable community where people can actually live for
15 low-income people, for Black and Latino, and our low-income
16 immigrant residents, and for myself as well. Thank you.

17 MITZIE SMITH: Good morning, I am a resident of the
18 700 block of Rock Creek Church Road. I echo all of my
19 neighbor's sentiments about the parking conditions. There are
20 mornings that I take my two children to school, and there are
21 cars waiting for me to take my parking space, and by the time I
22 return from my drop-off routine, I have to park like two blocks
23 away and then walk back to my house. So, the parking condition
24 is very real, as well as everyone's sentiment about the large

1 number of condos that are coming up on our block. I went to an
2 Open House Sunday. All of the single-family homes are being
3 converted to condos or multi-unit building, and there is just a
4 tremendous parking strain in our block.

5 The other thing I wanted to highlight for you all is
6 that you all have already approved parking variances for
7 buildings in the immediate area of this site. You all have
8 approved 3825-29 George Avenue their parking variances, which
9 is a 20-unit building, which is one block north, and then you
10 also approved 3831 Georgia Avenue, which is a 12-unit condo
11 building at the Latney Funeral Home. And then, as my neighbors
12 mentioned, there is the one on Princeton, which was a 27-unit
13 building. So, you all have approved - if you approve this one
14 - you've approved four buildings in a three-block radius, all
15 on the east side of Georgia Avenue, and they have only been
16 required to produce two parking spaces. That is 80 units all
17 on our side of Georgia Avenue, and when you look at the traffic
18 study that the developer presented, you know, there is some
19 room, but if you factor in all of these new units coming
20 online, those spots are gone, and there is nowhere to park.

21 I understand that this site is unique, and that
22 parking variances are permitted, but this site is not a good
23 site for a parking variance to be approved. Thank you.

24 COLLEEN DELL: Good day. I'm gonna make this very

1 short. This project, to me in the community, has become very
2 personal. Two reasons; if I leave here now and go home, I
3 can't have a park. It have no parking. If I come home from
4 work, I have no parking until late in the night. I do work
5 transit, so I know what, you know, the parking area and, you
6 know, the time zone of certain things are, but whether the
7 developer is saying they could cut out where the trash is in
8 Sweet Mango and put two parking, the bus turns there. Anyone
9 that parks there, you can't park there. You can't make parking
10 there because it has the bus that goes there. Okay, I don't
11 know where they get the figures from, their numbers from, but
12 it is sad that in a community, there is no community. Our
13 representation for the Counsel Members 1 and 4, they're for
14 this. They didn't speak directly or knock on doors and speak
15 to the community who voted for them, who put them there. You
16 know, they went and did whatever they had to do and then come
17 back and say, hey, we're for this. I'm good for
18 revitalization, but something like this, it's not something
19 that I would recommend or hope you all could really see where
20 we're coming from, you know, before you all make the decision
21 of allowing this 21-unit condo. Thank you.

22 CHAIRPERSON HEATH: You did it once, but if you could
23 just give your name again, please.

24 NICHOLAS UDU-GAMA: Yeah, I was just about to. Good

1 morning, my name is Nicholas Udu-Gama. I live at 4708 3rd
2 Place. I'm actually in Commissioner Martin's SMD. Yeah, I'm
3 not going to repeat everything. I submitted a letter that had
4 been circulated around the community. I don't know the number
5 of what it was, but it was a letter regarding the - I don't
6 know if you all saw it - but it was a letter about the issues
7 including mural, labor, affordability, and retail space. That
8 letter also, just to put on the record, has been supported by
9 the Georgia Avenue Committee Development Task Force.

10 Basically, what I feel about this development is, as
11 a renter, and renters like me, will be very directly affected
12 by this project in the sense that I think it's a little bit -
13 when we were having discussions in the SMD meeting with Mr.
14 Jones and the developer, we were able to talk to the developer
15 then. Also, there was a little bit of discussion at the 4C
16 meeting, and the developer said that bringing in these
17 apartments would ease the housing crisis, and I think
18 Commissioner Martin also repeated that today that it would ease
19 the housing crisis in the neighborhood. I think that's
20 completely disingenuous. I think bringing in 21 luxury condos
21 into the area is completely disingenuous in terms of trying to
22 ease affordable housing. As you can already see, and I think
23 people have mentioned, there are buildings - there are
24 supposedly luxury condos that have been built in the area.

1 They are vacant because it's too expensive, and they had to go
2 into luxury rentals, and those are things that people can't
3 afford. And, as more and more of these projects come into the
4 area, you are having other landlords taking advantage to be
5 like, "Okay, we can raise the rent too because all of these
6 other developments are going up, all the prices are going up."
7 And so it is going to be a huge impact.

8 We have heard a lot of things also, the developer has
9 promised, at the last 4C meeting, that they would be in touch
10 with ANCs in terms of labor issues. We had asked that even
11 though this is not one of those issues where they are obligated
12 to hire local, we asked them to, and they were kind enough to
13 say that they would hire and ask their subcontractors and
14 contractors to hire local in the development of this building.
15 We think it's very important. We would like to actually see
16 that somehow in writing, because as Lena and also other people
17 have said before, it's easy to say, "Okay, we promise to do
18 this, and then oops, we can't do it."

19 In terms of the mural, of course, yes, we have heard
20 that they have found different places to put the mural. It's a
21 very big issue in D.C. right now, the disappearance of murals,
22 and that disappearance of murals is very connected to the
23 disappearance of the African-American culture in D.C. and the
24 culture of working-class people in D.C. So, it's not something

1 that we take lightly. It's not something that I sure you take
2 lightly. There was a big article in the Washington Post about
3 all the disappearance murals, so it is something that we feel
4 that that space needs to continue to be visible at the Georgia
5 Avenue and New Hampshire Avenue intersection, and we really
6 want to see some guarantees on all that. That's it, thank you.

7 CHAIRPERSON HEATH: Thank you. Please give us your
8 name, again.

9 ANTHONY JOYNER: Good morning, Anthony Joyner. My
10 statement is going to be about sacrifice, because that is what
11 the neighbors who have lived her long-term have done or will be
12 doing, and will continue to do as long as they live.

13 I came into this neighborhood when I was 27. I was
14 gathered by the seniors in this area to come together so that
15 we could fight the battle to keep our neighborhood as it is, or
16 as it improves that we don't lose control of it. So, I was
17 brought up to do certain things. I was told what I couldn't
18 do, also, by the same group of neighbors, which a lot of them
19 have died and gone on, but there is still a few here, and I
20 have a letter from one, an 80-year-old Ms. Joyce Britney [sic]
21 here that I would like to submit into evidence, into this case.

22 But, it's about them giving up yard space to widen New
23 Hampshire Avenue, all for us to be locked in by fences in order
24 to build the Metro system, which is what is guiding most of

1 this redevelopment, all for us now to have to suffer additional
2 loss of parking to inconvenience us even more.

3 We are constantly asked to sacrifice a little more to
4 better the opportunities of others who are, in most cases,
5 short term, because if this becomes condo, the chances are that
6 the person that buys the condo isn't going to live in it. He
7 is going to rent it out, and that could go from two people to
8 now four to six people, and, again, all the possibilities of
9 how they are going to provide transportation, it's all going to
10 fall back onto the residents who are long-term here.

11 The reason why we oppose it is the fact that it's not
12 going to help us any; it's only going to add to it, and as the
13 aging infrastructure in our neighborhood goes, there are older
14 apartment buildings that may get bought out and torn down and
15 redeveloped, and it's the same case again. And, even the new
16 units that we have in this area; we are bombarded by the fact
17 that even by them providing the parking, the residents are
18 still avoiding it by doing the off-street parking. Most of
19 these cars are sitting in these spaces sometimes three, four,
20 or five days a week because they are probably working out of
21 town or the need for the cars isn't there.

22 So, again, these parking spaces are being taken up by
23 people who aren't even driving their cars. Like Ms. Britney,
24 if she has to go the doctor, she has to get in her car and go

1 to the doctor. When she comes back, she has to drive around
2 the block until she finds a space to park. And, most of us do,
3 if we are caught into that morning rush. You know, I'm not
4 sure when they did the survey of the available parking, but
5 when I look out my window, and my window faces east on New
6 Hampshire Avenue and up toward Georgia and A Street, everywhere
7 I see, the parking is full. So, I'm not sure what day it was,
8 whether it was a street-sweeping day where there was off-street
9 parking, or maybe it was just a light day; I don't know. Thank
10 you.

11 CHAIRPERSON HEATH: Thank you. I think that's
12 everyone wishing to speak in opposition. All right, Board, any
13 questions?

14 COMMISSIONER TURNBULL: I just had one. I know a lot
15 of you are talking about losing your parking spaces when you
16 move - are the streets you're parking on RPP?

17 JARED MILLER: Yes.

18 COMMISSIONER MILLER: They are, but they are 1 or 4?

19 JARED MILLER: 1 and 4.

20 [Speaking off mic.]

21 COMMISSIONER TURNBULL: So, anybody from 1 and 4 can?

22 Unknown speaker: Correct, yes. Anywhere in Ward 1
23 or Ward 4 can come into this boundary location, which is 4 and
24 1, this general area, and they can come from anywhere in Ward 1

1 and anywhere in Ward 4 and park within a block over the zone
2 boundaries, and they do - regularly.

3 COMMISSIONER TURNBULL: I think the Department of
4 Transportation needs to think about trying to tighten up some
5 of that RPP. It sounds like it's a losing battle for a lot of
6 people in those areas. One of your other issues is
7 affordability of the building. If there was a greater
8 affordability for the IZ unit, you would appreciate that a lot?

9 PATRICIA KALIL: I think not just affordability in
10 the building but also in the retail. Every single time a
11 building is abandoned and redeveloped, it's a local business
12 being taken out and a new business coming in, and it's because
13 the rental prices are so beyond what someone local can really
14 produce for themselves that we can no longer rent and have a
15 mom and pop, you know, the Dunkin Donuts opened up, and now any
16 other neighborhood coffee shop is losing business, the grocery
17 stores, and everything, and it's also the idea that it has to
18 be both has to happen.

19 We understand that development has to happen, but
20 that, you know, it's like with property taxes. Never is there
21 a question of why so many units in this building. I mean, of
22 course, parking is difficult in this space. It's a very
23 awkward lot, but then maybe we consider the amount of units
24 being built, because I think that first and foremost, the idea

1 is that what kind of financial endeavor is going to be put into
2 place, and not necessarily what the neighborhood actually
3 needs. I can say that not a single neighbor of mine or people
4 looking for housing complain that there isn't housing; it's
5 that there isn't affordable housing, and that my neighbor right
6 now just built two apartments next to me. She built two floors
7 above my house, and those - each condo is being sold for the
8 price of my entire house, so my property tax is affected.
9 Every neighbor of mine that is being pushed out is being taken
10 out because their landlords can no longer - they have to raise
11 their property taxes and the rent. And, so it's this long
12 sequence of events that happens - that starts from development
13 of this kind of buildings.

14 COMMISSIONER TURNBULL: Okay, thank you.

15 LENA AMICK: I would like to see in the Inclusionary
16 zoning that the Inclusionary zoning units are at least 30% AMI
17 or below, because that is something that would be truly
18 affordable.

19 Also, again just reiterating wanting to see that
20 mural really displayed in a place where it can stay for a long
21 time, be seen, and appreciated by the community, and we can
22 honor that history.

23 COMMISSIONER TURNBULL: Okay, thank you.

24 NICHOLAS UDU-GAMA: If I may, I think that as the

1 Board of Zoning Adjustment, you can, I know the ANC's have said,
2 "Oh well, we don't have really any weight. We can't really do
3 much." But, there are things that we can do. I know that the
4 laws are set up against normal folks in favor of developers,
5 but there are things and there are ways that we can say, "Okay,
6 this has to kind of stop, this outpaced development just really
7 has to slow down." We're willing, if you don't give the
8 parking variances to the developer, you know, we've said we're
9 willing to work with the developer to create real affordable, I
10 look for ways to make affordable housing work with the banks,
11 put pressure on the banks. I mean, there are ways. There is a
12 lot of - I know the developer is saying that they have their
13 hands tied, but we can do it. You know, just, you can't come
14 into the neighborhood and say that you're gonna be a good
15 partner and then dump parking like over, dump more cars into
16 the street, into that very highly congested area, and also
17 change up a very symbolic area of Georgia Avenue and New
18 Hampshire, and not think, "Hey, we can work with the community
19 to create actual affordable housing." Thank you.

20 JARED MILLER: I just have one more comment. And,
21 also, on the corner of Shepard and Georgia Avenue, the
22 Fahrenheit, I guess they are apartments/condos, they were
23 granted a variance because the building that was there before
24 did not have parking, so this is another brand new apartment

1 building, which makes 11 from Georgia and New Hampshire to
2 Upshur Street or Taylor Street. So, there are 11 buildings.
3 So, they don't have parking, so I assume if they needed
4 parking, they would also be renting spaces, and to think that
5 people are going to pay \$100 and say \$130+ for parking every
6 month on top of insurance, car note, gas, and maintenance, not
7 to make light of it, I mean, it's a joke because people are
8 going to do what they want to do. If they want to park outside
9 of where they live, that's what they are going to do.

10 So, I think all the problems that the developer is
11 making are kind of fluff. I mean, people are going to do what
12 they want to do, and we all know, you know, if you see a space
13 outside your building, that's where you're going to park.

14 COMMISSIONER TURNBULL: Or, that's where you'd like
15 to park.

16 JARED MILLER: That's what you did. That's where
17 you'd like to park. And, you know, I've always been told if
18 you can't do something, you just can't do it. You kind of have
19 to rethink, you know, your building or your plans. And, in
20 addition, in order for Georgia Avenue to be beautiful - I mean,
21 I've lived there for 38 years. My mother lived there for 50,
22 and my grandparents bought in the 600 block in 1949. In order
23 for Georgia Avenue to be beautiful, it doesn't mean you need
24 tall, shiny buildings. You need businesses that thrive, places

1 that people want to go, and, you know and shop. So, it always
2 doesn't have to be a large building. I mean, I know we are
3 really talking about the parking as well, but I just wanted to
4 mention about the new building on Georgia and Shepard that has
5 no parking, whatsoever.

6 COMMISSIONER TURNBULL: Thank all of you for your
7 comments.

8 VICE CHAIR HILL: Yes, thank you.

9 CHAIRPERSON HEATH: Thank you, everyone.

10 [Speaking off mic.]

11 CHAIRPERSON HEATH: So, I'm going to allow you to make
12 any closing statement. I think at the conclusion of your
13 statement, the Board is going to have some requests of you
14 because we're going to need some additional information before
15 we are ready to deliberate and decide on this case, but if you
16 could close, then we will address anything else that the Board
17 wants to see.

18 JEFF UTZ: Sure. So, there was a lot to discuss
19 there. I'm not going to spend too much time, I know we've been
20 up here quite a while already, but at the end of the day, we do
21 believe that this parking request - this variance request meets
22 the standards of variance relief under the Zoning Regulations.
23 There is a unique circumstance. There is a small lot that is
24 triangular, and there is a practical difficulty to get parking

1 onto this site. It's simply not feasible to create a ramping
2 system to get parking underground. So, I think the first and
3 second problems are clearly satisfied here.

4 The discussion, again, is all about the third prong
5 of the variance test, which is whether this is in accordance
6 with the Zone Plan and other kinds of planning guidance
7 documents in the District, and, as we said before, we believe
8 it is. A lot of what we just heard from the community, we
9 agree with, we are sympathetic to it. A lot of it we disagree
10 with, and we don't think it's relevant to this project or this
11 specific request about lot occupancy and parking.

12 The reality of this situation is that no residents
13 are being displaced from this site. It is a commercial kind of
14 site that _____ Café recently went out of business. It is
15 going to bring retail to the site, and it is going to bring
16 residents to the site to help patronize exactly what this kind
17 of thriving retail corridor would be that everybody wants.

18 We believe that the traffic study and the parking
19 study really does show kind of a robust set of data. We are
20 not making this stuff up. There is an ability for the project
21 without parking to be accommodated at this specific site, right
22 across the street from a Metro, and the TDM that is in place is
23 robust enough to make sure that happens.

24 A lot of the discussion also seemed to center around

1 things that were along the lines of an amenities package for a
2 PUD. This is a technical request for relief from lot occupancy
3 and parking, and there isn't kind of a lot of room to run here.
4 It's a small deal. It is 21 spaces. It's a little over
5 22,000 square feet, so it's not along the lines of the typical
6 PUD that you would see, and, really, it actually is a little
7 bit kind of - in my mind, it's a bit downsized. It's only 64
8 feet as opposed to 70 feet that would be permitted here, and
9 there actually are three affordable units. It's the first
10 project that I know of that is actually implementing the new
11 roof structure regulations that would require enhanced
12 affordability and more affordable units in the project. So,
13 even though it's not related to these requests for relief, this
14 actually does have a pretty sizable component to it in
15 satisfaction of IZ, and then it goes even beyond that. And,
16 that actually starts to look like an amenities package even
17 though it doesn't need to as the case that it is with the
18 request that they are asking. I think that's it for me, but I
19 wanted to turn it over to Lex as well.

20 LEX LEFEBVRE: Thank you, yeah, just a few things
21 came up in the last round of statements, and I just, I don't
22 think we addressed a couple of things really thoroughly. One
23 is the existing condition of the building. I just want to
24 reiterate we are not displacing any existing residential units.

1 There is no residential in this property now. When we bought
2 the property, it was a largely vacant, fairly delapidated,
3 retail structure. We are replacing the exiting retail space
4 almost 1:1 with the new project, and we're adding 21
5 residential units that do not currently exist.

6 It's a little frustrating to hear - as Jeff said, we
7 are totally sympathetic with the questions of issues of
8 affordability in the city. It is an issue in this city, and
9 it's an issue in a lot of cities. The idea that stopping new
10 development and stopping an increase in the housing supply will
11 somehow help affordability, it doesn't make any sense. This
12 project that we're proposing is doing the absolute most with
13 this site that it could do to address issues of affordability,
14 housing supply, and community-served retail. I just wanted to
15 also mention, sort of, just the comments that Jeff made about
16 sort of the simple standards of the variance and our inability
17 to provide the parking. I think that really should be the
18 focus of the decision. Thank you.

19 JEFF UTZ: One other thing I wanted to add on to
20 that. We hadn't yet mentioned that there are many letters in
21 support of our request beyond the ANC-1A letter. Many
22 neighbors actually did file, so hopefully you all have received
23 those. I saw at least five, and maybe even a few more trickle
24 in, so there are actually neighbors in the immediate vicinity

1 that are in support of the specific request. Thank you.

2 CHAIRPERSON HEATH: Thank you. We do have those
3 letters, at least six in support, six or seven, at least. So,
4 we have those on file as well. So, thank you, and I would like
5 to ask the Board if you have any additional information, I know
6 any additional information you would like to receive from the
7 applicant prior to deciding on this case. I know the issue of
8 affordability came up quite a bit in the statements by those
9 who are opposed to the development project, and a number of
10 them requested that you try to achieve the 30% AMI or below. I
11 would like for you to just - if you could submit something to
12 the record that speaks to that point, whether it is something
13 you can meet or if you can't, why, and what your...

14 COMMISSIONER TURNBULL: Okay, just to clarify that
15 too. Anything other than 80%.

16 CHAIRPERSON HEATH: Sure.

17 COMMISSIONER TURNBULL: 50% AMI, a reasonable effort
18 to...

19 CHAIRPERSON HEATH: Better than 80.

20 COMMISSIONER TURNBULL: Better than 80%.

21 LEX LEFEBVRE: Okay, just to clarify, so one of our
22 three ADUs is at 50% already, but we can respond to that as
23 well in writing.

24 CHAIRPERSON HEATH: Okay.

1 COMMISSIONER TURNBULL: How many?

2 LEX LEFEBVRE: We have three ADUs planned, and one of
3 them is at 50% AMI, and two are at 80.

4 COMMISSIONER TURNBULL: If you could take another
5 look at the 80 and see if there is a way of getting a little
6 bit lower on those.

7 LEX LEFEBVRE: Sure.

8 CHAIRPERSON HEATH: The other thing that I'd like to
9 see - I don't believe we have any financials in the record
10 right now that state why you - that state the justification for
11 the 21 units. The 21, although this is a small development and
12 21 is not a lot of units, it is the reason for the requested
13 relief of up to 12 parking spaces, and so if you could just
14 provide that justification as to why this, the 21 units is
15 financially what you need for this development to help justify
16 the request for 12 parking space. Board, other...

17 VICE CHAIR HILL: You know, I just, in Exhibit 32,
18 there is kind of a listing of three or four things. One about
19 the Chuck Brown mural again being replaced, and in it, they
20 mention kind of the same size, and so I just kind of am curious
21 if you are addressing that, like it's the size it is now and
22 trying to keep it that size or put it on the plats or what the
23 ANC Commissioner was talking about in a way to move it, panels,
24 because, you know, you're talking about doing it where at-risk

1 windows would have been, so rather than doing that, you're
2 putting a mural there, which would eventually, possibly get
3 covered up, is what they were saying.

4 So, my questions were kind of along the lines of what
5 is in Exhibit #32, so if you do go look there about the 30% or
6 less AMI, one of colleagues also mentioned that already, hiring
7 51% local residents from Wards 1 and 4 and then just how you
8 would address like national franchises like trying to encourage
9 local businesses into the retail space, and how any of that
10 would be actually in writing.

11 COMMISSIONER TURNBULL: I would just echo Mr. Hill's
12 comment about getting into the neighborhood-serving retail, and
13 what efforts have been made to actually look at local
14 businesses moving in. I think that would be a good - it's a
15 good way to fit in with the neighborhood, and I think it would
16 be good to see what possible local businesses are willing to go
17 into this space.

18 We heard a lot about, and you're looking for the
19 relief for the parking, and on the surface, I'm in total
20 agreement with you. I think it's from a practicality sense.
21 It doesn't make sense, and you can't go with a mechanized
22 parking system that would be incredibly expensive for a small
23 space like this to be able to have it do anything. I think
24 preserving the retail on the ground floor is a key for the

1 neighborhood also, but at the same time, I think we heard
2 talking about the 12 spaces, and I think as was mentioned
3 before, the possibility of building into the program for this
4 building, no RPP. So, I think we would need to look at this
5 building not getting RPP. If you could build that into the
6 agreements with whoever is going to be the future rental units.
7 Is this rental or owner; I can't remember.

8 LEX LEFEBVRE: Right now, it's planned for condo, but
9 we would consider changing to rental a market conditions
10 dictate.

11 COMMISSIONER TURNBULL: Right. So, either way, I
12 think it would be looked at building into the building
13 operations that such a thing as no RPP for this building. And,
14 we talked about the IZ parking. I would like the Department of
15 Transportation to keep us better informed when we do projects
16 like this. We also did this on hotels. The boutique hotels in
17 downtown, an area where we had an issue where small hotels are
18 coming, and they don't want any parking, and we suddenly
19 realize we've got a whole bunch of these in the area, and we
20 haven't realized, and we don't know what the impact is. I
21 would like to have this on projects such as these condos and
22 apartment buildings that are coming up that are not requesting
23 parking, and suddenly we find that we've got eight of them in
24 an area that doesn't have parking, and now we've got - you

1 know, we just heard that there were 88 or so many units that
2 have just been added into this area that do not require
3 parking. So, I think if you look at these projects one at a
4 time, that is one way to do it, but I think when we start
5 having numerous projects like this concurring within a several
6 block area, I think the dynamics of the Board looking at this,
7 it changes. And, I think we get to be a little bit suspect, at
8 least, this member of the Board, gets a little bit suspect
9 about what he's agreeing to when we don't know the full impact
10 of what's happening in the area with regard to parking. It
11 sounds like there is a bigger issue here than maybe what the
12 Department of Transportation realizes.

13 So, I would like, just a sidebar, not for this
14 particular case, but in the future going forward, I would like
15 to - Mr. Moy, you can help on that.

16 But, we talked about the Chuck Brown mural. I think
17 we need a definite plan as to what is going to happen, where
18 it's going to go. I think the idea of having it, if it is
19 going to go on the side of the building that it should be,
20 movable in the future so that we don't go through this process
21 again and we lose this beautiful work of art.

22 Other than that, I think I am duplicating what we
23 already said.

24 CHAIRPERSON HEATH: Okay, all right. So, I think

1 that's all of it we need to see, but we'll continue this at a
2 later date once you've had a chance to compile that information
3 and get it back to us. How long do you think you need?

4 LEX LEFEBVRE: Probably in the two-week area.

5 CHAIRPERSON HEATH: Okay. So, Mr. Moy, can we look
6 at a date somewhere in the two to three week range?

7 MR. MOY: Yes, Madam Chair. At the earliest,
8 considering the size of the docket that is already scheduled
9 for the Board in the recent upcoming hearings, Staff would
10 propose revisting this application on December 8th, although,
11 and I say that...

12 CHAIRPERSON HEATH: Is Commissioner Trumbull back
13 with us?

14 MR. MOY: Well, I was going to get to that. He is
15 not due back until January...

16 COMMISSIONER TURNBULL: I'll make myself available.

17 MR. MOY: Okay, all right. So, I would suggest, and
18 you said continued hearing, Madam Chair, correct? So, it would
19 be a hearing as opposed to a decision meeting? That's what I
20 heard. You can correct me if I'm wrong.

21 [Speaking off mic.]

22 MR. MOY: So, it's December 8th, and then Staff would
23 ask that the Applicants submit the...

24 CHAIRPERSON HEATH: Mr. Moy, let's make it a

1 decision.

2 MR. MOY: Decision.

3 CHAIRPERSON HEATH: On December 8th.

4 MR. MOY: Okay, so that would be December 8, 2015 and
5 Staff would suggest that the Applicants submit their filing of
6 supplemental information by Wednesday, December 2, 2015, so
7 that gives you two weeks and a day.

8 JEFF UTZ: Thank you.

9 CHAIRPERSON HEATH: Thank you. All right. We're
10 going to take a 5-minute break and come back with our next
11 case, Mr. Moy which should be 19100.

12 MR. MOY: Correct.

13 CHAIRPERSON HEATH: Okay.

14

15 [recess 11:41 a.m.]

16

17

18

1 [session resumes at 11:52]

2

3 CHAIRPERSON HEATH: We'll come back to order. If you
4 all would please introduce yourselves.

5 MR. MOY: Madam Chair, if I can call the case first.

6 CHAIRPERSON HEATH: Oh, sorry. They're here, so...

7 MR. MOY: Yes, Application No. 19100. This is the
8 application of 525 Longfellow Street, LLC. This is a request
9 as advertised for variance relief from the lot area and lot
10 width requirements under § 401.3, and I believe it was amended
11 to also include minimum distance to adjacent driveway
12 requirements under § 2117.8, and this is to allow the
13 construction of three flats on the three new record lots in the
14 R-4 District at premises 52 Longfellow Street N.W., Square
15 3206, Lot 3.

16 CHAIRPERSON HEATH: Okay. Now, you can introduce
17 yourselves.

18 MR. TESSEMA: My name is Sima Tessema. I am a real
19 estate agent and also a D.C. resident.

20 MR. TEASS: Good morning, my name is Will Teass. I
21 am a principle with Teass-Warren Architects.

22 MR. SULLIVAN: Good morning, my name is Marty
23 Sullivan with Sullivan and Barros on behalf of the Applicant.

24 MR. VORA: Hi, my name is Amit Vora. I am part of

1 the principle group with the Applicant, and I am a local D.C.
2 resident as well.

3 NANCY ROTH: Hello, my name is Nancy Roth, and I am
4 Coomissioner on the Advisory Neighborhood Commission 4D, and my
5 single-member District includes this project.

6 CHAIRPERSON HEATH: Okay, thank you. We have
7 reviewed the full record on this case, and I think what I would
8 like to see you address are the concerns that OP has put
9 forward and specifically their recommendation of how to
10 subdivide the lots rather than as three, and so if you could
11 address that. Does the Board have anything else that you would
12 like for the Applicant to focus on? Okay, all right. So, if
13 you could specifically just address that, we won't need a full
14 presentation.

15 MR. SULLIVAN: Okay, that you, Madam Chair. We bring
16 today what we hope is a little bit of a palate cleanser for
17 you; a row dwelling development with plenty of parking. It's
18 525 Longfellow. There are three areas of relief, lot width,
19 lot area, and the parking in the back, which happens to be a
20 street that is effectively used as an alley.

21 The issues that the Office of Planning has brought up
22 about alternative possibilities; first of all, I would mention
23 that one of them is a conversion, which the Office of Planning
24 has spent a year arguing very effectively that it is not

1 consistent with the character of the R-4 District. What we are
2 proposing here is, so I would point that out.

3 Regarding the four units in area, there are a couple
4 of issues at play there. One is that you are still creating
5 lots, which are much wider and much larger than every other lot
6 on this side of the street. I know the Office of Planning has
7 mentioned - they have put in there that the average lot size is
8 over 2,100 square feet. You will find, and the architect will
9 present, that the average lot size is actually much lower than
10 that. And, they have also mentioned that the average lot width
11 is 20 feet, and it is actually much lower than that as well on
12 this street. I think they may have included some large lots -
13 outlier lots - to raise those averages up.

14 But, the issues relating to the practical difficulty
15 relate to design and aesthetics, marketing and economics, and
16 also there is a potential issue with security with the property
17 as it currently exists with the five-unit scenario, and we'll
18 get into that. So, I'll turn it over to the architect to do a
19 quick presentation, which I think addresses those points that
20 you asked us to address with what Office of Planning has said.
21 Thank you.

22 MR. TEASS: Thank you, so I will go through the
23 presentation as briefly as I can, really focusing on the OP
24 issues.

1 The first slide I wanted to call your attention to is
2 a modified version of the vicinity map that we submitted, and
3 really what I want to do is call your attention to the specific
4 frontage of the project along Longfellow. The site is
5 approximately a third of the block between 5th and 7th Streets,
6 and what we did in this analysis here, was look at the lots
7 east of the property. There are 11 lots. The total frontage
8 is about 200 feet, and the average lot width there is a little
9 over 18.18 feet. The total lot area is 13,000 square feet, and
10 the average lot area of those lots to the east is only 1,229
11 square feet.

12 So, I would like to turn your attention to the lots
13 to the west. There are 20 lots west between the property and
14 7th Street. There is about 350 feet of frontage. The result
15 there is an average lot width of 17.5, and an average lot area
16 of 1,613 square feet.

17 The lots in the west are below the minimums, the 18-
18 foot wide and 1,800-square foot that are prescribed for row
19 houses in the R-4. Lots to the east, while a little bit wider
20 than the minimum are certainly far less than 1,800 square feet.

21 So, our subject property is located between these two
22 row house zones, and we have a lot that is 50 feet wide and
23 4,700, almost 4,800 square feet. So, this is part of why we
24 feel that there is a special condition or a unique

1 characteristic of the property that is conducive to development
2 as we propose.

3 I'm going to skip ahead and go immediately to - we
4 prepared two alternative site plans, which we believe
5 graphically depict the options that the Office of Planning
6 asked us to look at.

7 The first, we are calling Alternate Site Plan OP
8 Option 1. Here, we take the existing 50-foot wide lot, divide
9 into two equal lots that are approximately 20 [sic-25?] feet or
10 exactly 20 [sic-25?] feet wide. The areas vary slightly due to
11 the trapezoidal shape of the overall lot. And, I think what is
12 significant here is that you create lots that are about 30%
13 wider than the average lot. The lot immediately east is 17.4
14 feet, the lot to the west is 18.1 feet. And, I think, perhaps
15 more significantly is the fact that this 25-foot wide would
16 yield a footprint if utilized as a flat would give you a flat
17 that is about 90% larger than the adjacent properties.
18 Adjacent properties seem to be somewhere between 1,400 and
19 1,500 square feet, according to tax records. A flat, which is
20 to day one of the two units here would be closer to 2,600 to
21 2,700 square feet. So, under a two-unit scenario, your flats
22 would be significantly larger than what is around it. I think
23 there are some financial issues that we can address later in
24 regard to the return on subdividing this into two lots. And, I

1 think the other issue here is that the marketability of a 2,600
2 square foot flat in the context of 1,400 and 1,500 square foot
3 row homes can be a challenge.

4 The second scenario we looked at, which was also
5 articulate in the Office of Planning Report, which we are
6 calling OP Option 2, was taking the space between the existing
7 structure and the adjacent property to the east and creating a
8 new record lot. That record lot would be about 19.6 feet wide
9 and would be just over 1,800 square feet, and that could be
10 developed as a matter-of-right into two row-house flat, two
11 units, and then the remainder of the property would yield a lot
12 that is about 30.4 feet wide, so it meets the minimum dimension
13 for a semi-detached. And, I think this is where things get a
14 little bit curious from our end, in that you did have an Office
15 of Planning that very clearly articulated their concerns about
16 conversions of existing structures to apartment houses in the
17 R-4 District, and then in the report, they are suggesting that
18 we do just that. So, what they have articulated, which is
19 certainly from a lot configuration permitted, would be to take
20 the existing structure, construct a significant addition
21 alteration to it, to create three units in a three-unit
22 apartment house.

23 I think in both these cases, you know, in both Option
24 1 and Option 2, we would still need to obtain relief for the

1 parking, and specifically the dimension from the driveway to
2 the adjacent driveways. So, in both cases, we would still be
3 facing that issue. But, I think that our concern here is that
4 one of the concerns that we heard from the community is the
5 security, and particularly the gap that exists between the row
6 houses and the existing wood frame structure. And, there is
7 some loitering and other activities that go on there in a
8 situation where we're simply maintaining that nonconforming
9 side yard, we still have that security issue pertains.

10 I would like to add, just for the record, that we did
11 take this to the ANC. We received unanimous support from the
12 ANC. The representative is here to speak on behalf of the
13 project as a proponent. We have also spoken with the neighbor
14 to the east, who is a single-family row house. He is a
15 property owner, and he has submitted a letter of support, which
16 was submitted as part of the Application. We have attempted to
17 reach out the applicant [sic] to the west, which is actually a
18 rental situation, so we have made numerous attempts to contact
19 the landlord, but have not been able to contact him.

20 So, at this point, I think that concludes our portion
21 or relief, focusing our presentation on the Office of Planning
22 concerns.

23 MR. SULLIVAN: I would have one other thing that I
24 would add, and we have some additional, very brief testimony,

1 that the gap cannot be eliminated without variance relief,
2 because it is less than 5 feet in width - the fact that it is
3 nonconforming, it doesn't need to be less than 5 feet in width.
4 The fact that it is nonconforming, 405.8 says you shall not
5 decrease the size of a nonconforming side yard, so we can't get
6 rid of that gap as a matter-of-right anyway, and that creates a
7 little more practical difficulty.

8 Also, something that the Office of Planning mentioned
9 in regard to the two 25-foot wide lot scenario is that in the
10 report, they started "Larger lots do not require the provision
11 of larger structures." While this is true, that doesn't say
12 that it doesn't create some practical difficulty in not fully
13 realizing an already limited building envelope. So, they are
14 saying, "Well, you just don't need to use all of the property,"
15 and that's a good reason for variance relief when you can't use
16 all of your property for some unique condition like this.

17 I would like to move on for brief testimony from the
18 real estate agent to discuss issues generally with marketing,
19 what we'll call unique lots in a block like this that is filled
20 with very consistently characterized structures. Sima, if you
21 could talk about that very briefly

22 VICE CHAIR HILL: I just wanted to ask a quick
23 question. The practical difficulty with Option 1, those slides
24 that you just had right there, so, you are talking about there

1 is a financial component to that in terms of renting two units
2 of that size?

3 MR. SULLIVAN: There is a financial component of
4 that, and we are going to have the Applicant address that with
5 some testimony as well after we hear from his real estate
6 agent.

7 MR. TESSEMA: Hi, my name is Sima again. The project
8 as proposed, this configuration, it is in line with the rest of
9 the neighborhood, which would make it easier to market and
10 sell. The other option that was discussed, four units or five
11 units, Will touched on it very well with the lot size being odd
12 compared to the other properties on that street. If we were to
13 go down that route, it would be incredibly difficult to market
14 and sell. And, I think the way we see it here, it is just
15 beautiful buildings where it would be in line, once again, with
16 the neighborhood and that street.

17 CHAIRPERSON HEATH: By in line, what do you, can you
18 just be more specific?

19 MR. TESSEMA: Consistent.

20 CHAIRPERSON HEATH: In terms of size, height? I
21 mean, like, what are you...

22 MR. TESSEMA: In terms of width and appearance.

23 CHAIRPERSON HEATH: Okay, all right.

24 MR. SULLIVAN: Thank you. We'll ask the Applicant to

1 discuss briefly - there is a financial component, and this ties
2 into his experience in purchasing the property and filing a
3 permit application prior to the change in the regulations.
4 WE're not saying that being caught by a change in the
5 regulations is the sole reason or even a good reason, but it is
6 there.

7 He filed a permit application about six or seven
8 weeks prior to the regulations becoming effective. They were
9 in a state of flux. It wasn't until the last proposed
10 regulation, I think, when they cut off the three-unit option as
11 well.

12 COMMISSIONER TURNBULL: But, that whole process had
13 been in play for a long time. It didn't just appear.

14 MR. SULLIVAN: No, and he is not claiming that he
15 wasn't aware of that. He just thought that he had time to get
16 it done. And, it is a self-imposed practical difficulty of
17 some sort, which, we know, you can still consider. We don't
18 think it's our - it's just a small part of our argument. But,
19 he did purchase the property with a certain expectation, and
20 that plays into the economic practical difficulty of trying to
21 move four units which are of a larger size than every other
22 house on the block. If you want to briefly go over the
23 conclusion in your...

24 MR. VORA: Sure, that conclusion, you know, like Mr.

1 Sullivan was saying, that we had intention to do something,
2 obviously we were aware - I was aware of the pending
3 regulations, trhere were various forms of it, and we went back
4 to the community and asked them, what makes sense for this or
5 was kind of the spirit of the zoning change to preserve row
6 houses. Then I looked at the financial component in looking at
7 doing it as four extra-wide units or six units.

8 The conclusion that we can to is with the four units,
9 it wasn't economically feasible to do a development, to bring
10 that development to that neighborhood at the costs that are
11 typically associated with construction and development of a
12 property.

13 When we did the six units, you know, the numbers made
14 sense. You know, we are a small, local D.C. developer. Folks
15 primarily own smaller residential projects, and when we did the
16 actual numbers, that is how it came out to. Thank you.

17 CHAIRPERSON HEATH: The information that you are
18 referencing, the financial information, is that Exhibit 26?

19 MR. TEASS: Yes.

20 [Speaking off mic.]

21 MR. SULLIVAN: It is 26, yes.

22 CHAIRPERSON HEATH: Okay.

23 VICE CHAIR HILL: And, just for my clarity, at the
24 time when you purchased the property, you didn't know about the

1 pending regulation? Is that what you're stating?

2 MR. VORA: No, I was aware of the pending
3 regulations. There were just many versions of what was going
4 happen, so I was - we were under the impression that we would
5 be able to get it, I guess, vested in time, and that is where,
6 I guess, that issue came about.

7 VICE CHAIR HILL: Okay.

8 MR. VORA: There were just many iterations of what
9 was going to happen.

10 VICE CHAIR HILL: Okay, and when you purchase it, you
11 purchased it assuming what?

12 MR. VORA: Assuming that we would be able to do a
13 development - doing a five-unit development.

14 VICE CHAIR HILL: Okay.

15 MR. VORA: But, that was kind of what the essence of
16 the law change that they wanted to kind of keep the historical
17 nature.

18 VICE CHAIR HILL: Okay. I'm just curious. When you
19 were trying to come together with a price, what you were basing
20 it off of right, and so that is what you are basing it off of?

21 MR. VORA: Yes, that's correct.

22 COMMISSIONER TURNBULL: So, when you bought this, you
23 had no intention of buying this as a single-family residence
24 with a nice side yard and living in it yourself. You bought it

1 as a development opportunity to get as much money out of it as
2 you could, is that right?

3 MR. VORA: Not as much - it was to do a development
4 that we felt would take in the characteristic of, you know,
5 what the neighborhood would want. I live in the adjacent
6 neighborhood there, but, yes, there was a financial incentive.

7 COMMISSIONER TURNBULL: So, you were shooting for
8 five units, so four units is not enough for you then?

9 MR. VORA: Four units wouldn't work out financially
10 for us.

11 COMMISSIONER TURNBULL: But, five does, and six is
12 even better. I'm just asking where you're coming from, that's
13 all.

14 MR. VORA: At that time, five did, yes, and now six
15 does.

16 COMMISSIONER TURNBULL: Six works really well, now;
17 is that right?

18 MR. VORA: Six does work well.

19 COMMISSIONER TURNBULL: Okay.

20 MR. TESSEMA: Could I add a comment?

21 MR. SULLIVAN: I think just from a good-faith
22 standpoint, I don't think that somebody would purchase a
23 property on the expectation that they would receive variance
24 relief. If it was purchased on the expectation that he would

1 get it done in time, and, in fact, he filed an application
2 seven weeks before the deadline, but it was a mistake,
3 obviously, in hindsight, but not a plan. It wouldn't have been
4 a good plan.

5 COMMIONER TURNBULL: Why was it a mistake?

6 MR. SULLIVAN: It was a mistake that he didn't get it
7 accomplished in time. He didn't get a permit application in in
8 time - or a mistake in estimating that five or six months would
9 have been enough time to go from purchase to permit approval.

10 CHAIRPERSON HEATH: All right.

11 MR. SULLIVAN: I would add that making a mistake does
12 not preclude you from receiving variance relief, if it's a good
13 faith mistake.

14 CHAIRPERSON HEATH: Is that it for your presentation?

15 MR. SULLIVAN: Yes, it is.

16 CHAIRPERSON HEATH: All right, thanks. Board, any
17 other questions of the Applicant?

18 COMMISSIONER TURNBULL: What did you say the average
19 width is of the units in this area? You gave two dimensions,
20 one on one side and one on the other.

21 MR. TEASS: I would say it's about 17.75 feet, so
22 some are averaging around 17.5, some are averaging 18.1.

23 COMMISSIONER TURNBULL: And, your units are 16.8?

24 MR. TEASS: 16 foot 8, correct.

1 COMMISSIONER TURNBULL: That's inside to inside or
2 from centerline to centerline, or what?

3 MR. TEASS: That's the record lot dimension, so you
4 would have to subtract out the party wall thickness of the
5 intermediate unit and then it would be face on lot line walls
6 on the exterior, so you would still be at, you know, 14'10" to
7 15'2" interior clear dimension.

8 COMMISSIONER TURNBULL: That is tiny, small.

9 CHAIRPERSON HEATH: Um-hum. All right, any other
10 questions, Board? Then, I will turn to Office of Planning.

11 MS. ELLIOTT: Good afternoon, Madam Chair, members of
12 the Board. For the record, I am Brandice Elliott with the
13 Office of Planning.

14 OP is continuing to recommend denial of this request.
15 I think the fundamental issue is, it is a conforming lot now,
16 and it could be developed now in its conforming state. It
17 could also be divided into two lots, two conforming lots, and,
18 you know, be developed in accordance with our development
19 regulations as well.

20 I would like to address, there was the numbers issue.
21 I was using GIS data that is available to us, and, I guess, my
22 number does come in a little bit larger for the average lot
23 width along this block. It still comes in at about 19 feet.
24 But, I think regardless these at 16.8 feet are still smaller

1 than what both of us are calculating as the average on that
2 block. The average lot area that I calculated, just along this
3 block on the north side of Longfellow, is 1,581 square feet,
4 which is still smaller than the 1,800 feet that is required,
5 but, you know, it's a little bit closer to what the Applicant
6 has requested in terms of lot area.

7 But, the problem with the variance is you have to
8 justify it based on the conditions of that lot. It is not
9 based on what the surrounding - how the surrounding lots are
10 developed. There has to be practical difficulty identified
11 with this particular lot. This one can be developed in its
12 current state as a conforming lot. It can still be subdivided,
13 and then there is still the option of conversion, which I guess
14 I need to address that as well.

15 It was a very long process for OP to institute the
16 new R-4 regulations, and it was a very - it was participated in
17 by residents of D.C. This was what they wanted. So, whereas
18 before, this could have been converted by right into five
19 units, we do have that extra layer of approval now, where it
20 can be done by special exception. So, it's not that we would
21 suggest the Applicant not do it; it's just that now, there is
22 going to be an additional layer of review, and we're going to
23 make sure that, you know, any of the existing architectural,
24 you know, that the character with the existing structure is

1 maintained. You know, the dormers stay, or whatever we decide
2 is pertinent to the character of this neighborhood, it remains
3 and is preserved.

4 So, it's not that we would suggest they not go down
5 that road, it is an option, and, you know, there would just be
6 an additional layer of review. I think I'll go ahead and leave
7 it there.

8 There was the issue of the driveway access from the
9 street, and I just want to get it on the record that we are
10 okay with that relief. Shepard operates as an alley. We have
11 no concerns with the proximity of one driveway to another along
12 that roadway. So, if you have any questions, I'll be happy to
13 respond.

14 COMMISSIONER TURNBULL: I still don't - maybe you
15 could explain again, that extra layer of review. I'm trying
16 to...

17 MS. ELLIOTT: The special exception review. So, in
18 R-4, a conversion in the R-4 Zone would have been permitted by
19 right to five units based on the lot area that this lot has.
20 Once the new regulations came into play, they can still do
21 that, but only with special exception approval, so that's the
22 extra layer I was referring to.

23 COMMISSIONER TURNBULL: Right. Okay, I know what
24 you're saying now. The three units, is it the width that you

1 don't like? They are shallower? They are close to - well, I'm
2 not exactly sure. I mean this is really - I mean, the
3 architect said they are 16 foot 8 inches as a record lot, I
4 guess, and the others, I guess, I don't know how you would
5 verify this, 17.75 roughly. So, you're talking maybe a foot
6 off or, I'm guessing, I'm not sure, maybe more. It's close.
7 I'm just looking, I mean...

8 MS. ELLIOTT: Sure, it is close. But, I think our
9 argument is that creating three nonconforming lots doesn't seem
10 like - it doesn't seem like it should be an option when it can
11 be a conforming lot or two conforming lots.

12 COMMISSIONER TURNBULL: Two conforming lots. So, you
13 would rather - I mean, they could develop two units, row
14 houses, and get four units out of it, and have conforming lots,
15 which would be...

16 MS. ELLIOTT: Correct. We have issues - so, if these
17 were existing, nonconforming lots, there is a provision in the
18 regulations that would - depending on the degree of deviation
19 from the current regs, they would be able to either just
20 develop it, matter-of-right, or they could request a variance,
21 but those types of variances, we tend to be more supportive of,
22 because they are existing lots. But, in this case, they are
23 creating those nonconforming lots. You know, after going
24 through the R-4 process and understanding some of the

1 neighborhood concerns with the densification of their
2 neighborhoods, we're a little cautious...

3 COMMISSIONER TURNBULL: I got it.

4 MS. ELLIOTT: ...about supporting additional density in
5 the R-4 Zone.

6 COMMISSIONER TURNBULL: Just to reiterate, you're
7 going from, let's say, you're supporting going from one
8 conforming lot to two conforming lots, and then keeping within
9 the Zone characteristics.

10 MS. ELLIOTT: Correct.

11 COMMISSIONER TURNBULL: What about the height that
12 they are showing here?

13 MS. ELLIOTT: Well, I don't have any details on what
14 the actual height is.

15 COMMISSIONER TURNBULL: It's over 35 feet.

16 MS. ELLIOTT: It is over 35 feet?

17 COMMISSIONER TURNBULL: I think it says 37 feet.

18 MS. ELLIOTT: Well, we'd have to take a look at how
19 they've actually measured it.

20 CHAIRPERSON HEATH: From the parapet, 37.

21 MS. ELLIOTT: Yeah, that would require special
22 exception relief, I'm sorry, I didn't catch that before.

23 COMMISSIONER TURNBULL: Okay, I'm just curious.
24 Okay.

1 MS. ELLIOTT: Yeah, anything over 35 feet requires
2 special exception relief, so they could either adjust that so
3 that it conforms, or they can add that to the relief.

4 COMMISSIONER TURNBULL: Right, okay, thank you.

5 VICE CHAIR HILL: How do you get the five - you said
6 five units - how do they get the five units?

7 MS. ELLIOTT: So, the new R-4 provisions, they do
8 allow a conversion of an existing structure by special
9 exception. So, this is how it works. Basically, by our
10 assessment, and I think, yes, what Mr. Taess is showing on the
11 screen. So, that's the two lots. You would have to divide it
12 just past the existing structure, and you would - there would
13 be a conforming - I think it's just over 1,800 square-foot lot
14 to the east, and then the western lot would be larger, but that
15 western lot, based on its lot area, would be permitted three
16 units.

17 COMMISSIONER TURNBULL: But, you end up with that
18 little courtyard, the side yard there, which is causing some
19 angst with the neighborhood.

20 MS. ELLIOTT: Right, you do. You know, I think that
21 we often take a position that new development actually
22 discourages that kind of behavior as well, so, I mean, right
23 now, it's a vacant lot. No one is living there. I think that
24 these things change once, you know, you have people living

1 there, taking care of it, managing the property.

2 CHAIRPERSON HEATH: Any question of Office of
3 Planning, Applicant?

4 MR. SULLIVAN: No, thank you.

5 CHAIRPERSON HEATH: Okay, all right. It appears
6 there is no one here from DDOT, but I believe we do - do we
7 have anything from DDOT on this? Okay, all right. No
8 objection. So, we do have a letter of no objection from DDOT.
9 So, we have someone here from the ANC 4-D, and we'll allow you
10 time to speak on behalf of the application.

11 MS. ROTH: Thank you very much. I, over a period of
12 time, have become convinced that this proposed project is a net
13 gain for the neighborhood, and I don't believe that the denial
14 by OP really recognizes the particular challenges that our
15 neighborhood has, and that we're struggling with, and that this
16 project would help address. There are parts of the city,
17 including to the south of us, where density is an important
18 factor that is - that may provide concern about changing the
19 character of the neighborhood. In our case, I'm working
20 actually with the OP in developing and extending the retail
21 offerings on Kennedy Street, which is a struggling commercial
22 corridor, and density helps us in supporting business
23 development, a wider range to serve the residents of the
24 neighborhood.

1 So, let me explain as quickly as I can why it's a net
2 gain for the neighborhood. The first is improved aesthetics.
3 The house that exists there now would never, if a similar
4 situation existed, and there was a gap in the row houses and
5 somebody proposed to put that house there, it would never
6 happen today. That house is totally out of character. It
7 provides for a gap between two continuous rows of townhouses.
8 The porches at the ground level, the porches on the townhouses
9 are up here, so there is no communication, and there is that
10 big fat side yard that the neighbors on this street tell me is
11 a frequent exit route for thieves and criminals who cut through
12 to the area in the - on Shepard Road, and that is a serious and
13 significant acutely felt discomfort by the neighbors on
14 Longfellow Street. One young woman who lives across the street
15 told me that her motor bike, her Vespa, was stolen and carried
16 through that yard. She found it there later. I guess they
17 couldn't figure out how to start it, so they abandoned it
18 there.

19 So, yes, it may be true that development would take
20 care of it, but there used to be people living there, and that
21 was still going on, so people who were living there and
22 maintaining it didn't prevent that area from being used that
23 way. I also understand that crime won't stop if we close that
24 gap, but it's just one more disincentive - it's one less handy,

1 mid-block escape route.

2 So, the proposed project would sort of almost like
3 heal that gap that is there now and join that row of houses in
4 a way that they communicate with each other.

5 And, we also have, in terms of the six units versus
6 four, I just think that it, from the perspective of just
7 knowing who is in my neighborhood, who they are, and across the
8 street are just one multi-unit after another, so we have people
9 who are property owners and renters mixed together, and I just
10 feel like it's a middle-class neighborhood and creating a very
11 large house there suddenly demands a sort of, I don't know, a
12 sort of disparity that I don't know if it's like the healthiest
13 thing. I think it creates a difference that is not necessary.
14 I think middle-class families, working families in that space
15 are what's appropriate so you have six units that are
16 affordable by middle-class residents. I just think that that
17 on the whole is more woven into the fabric, the neighborhood
18 fabric, than having two very large residences that are very
19 different from everything else around them.

20 There was one concern brought up by somebody who
21 attended our meeting, which was a parking issue and the fact
22 that there were only three parking spaces allocated for six
23 proposed units. This is not close to mass transit, so cars are
24 much more of a part of life, and so we asked the developers to

1 go back and try to - in fact, we made our approval of the ANC
2 conditional upon their trying to get a plan that would expand
3 the number of parking spaces, and they were very communicative
4 to us. They kept us in touch with the E-mails back and forth,
5 and they were successful in providing two extra spaces, and
6 we're also in discussions with members of the block to extend
7 residential parking. It is on the next block over, and it
8 seems like the logical thing to add it to this block. So, you
9 know, that's going to probably also address some of the issue.

10 So, I'm trying to think - I think that's it.
11 Improved aesthetics, improved function, improved safety, I
12 believe, and we have the mitigation of the one outstanding
13 neighborhood concern. I haven't heard any negative comments
14 from the neighbors except for concern about parking. So,
15 that's why I thought it might be worthwhile to come in just to
16 present that for perspective.

17 CHAIRPERSON HEATH: Thank you. We appreciate you
18 coming down and explaining that to us.

19 COMMISSIONER TURNBULL: I'm not quite sure I agree
20 with you that these are going to be affordable middle-class
21 units when they are finished and they are all for sale, but, I
22 think we can argue that point back and forth. But, I don't
23 think they are going to be affordable middle-class units when
24 they're done.

1 MS. ROTH: Based on what, sir?

2 COMMISSIONER TURNBULL: Based on the fact that these
3 are going to be very expensive units when they're done. You're
4 going to be selling them for a lot of money, and I don't think
5 somebody making \$60,000 to \$80,000 is going to be able to put
6 out a lot of money for these. But, that's just - I mean the
7 economics are there. The Applicant can probably show that they
8 can, and I'm sure - I'm still not sure that six units
9 aesthetically looking different from four units architecturally
10 can be handled very well. So, I'm not sure size-wise, getting
11 six sandwiched in or having four, two of two-units makes that
12 much of a difference aesthetically.

13 MS. ROTH: I think that we want to preserve the
14 continuity as best we can.

15 COMMISSIONER TURNBULL: They would be if they would
16 be row houses.

17 MS. ROTH: Possibly. I can't say I've seen the
18 latest iterations. I saw what they...

19 COMMISSIONER TURNBULL: They haven't really shown us
20 any drawings. They've only shown a plan. They haven't shown
21 any elevations, and the elevations are different from what they
22 show in perspective, so there is a discrepancy upon a lot of
23 the drawings as to what they really look like.

24 MS. ROTH: Well, I guess, you know, I'm not prepared

1 to argue...

2 COMMISSIONER TURNBULL: I'm just saying that we don't
3 have a full record either of some of these things.

4 MS. ROTH: I can just tell you that a 2,600 square
5 foot house versus a 1,600 or 1,800 square foot house, if I
6 understand correctly, is going to be out of step with the
7 houses that are there, sir.

8 COMMISSIONER TURNBULL: Yeah, I think we need more
9 information on that.

10 MS. ROTH: Yeah, I would be concerned about having a
11 much bigger house there than what already exists.

12 COMMISSIONER TURNBULL: Well, what already exists is
13 a single-family house, which would be gone. You would have...

14 MS. ROTH: The single-family house has nothing to do
15 with what else is in the neighborhood.

16 COMMISSIONER TURNBULL: Well, that's - I agree with
17 you. I said whatever gets put in is going to be a lot
18 different than the single-family house that is there.
19 Commissioner Roth, are you a Commissioner?

20 MS. ROTH: Roth.

21 COMMISSIONER TURNBULL: I think that it's going to be
22 a lot different. I mean, the character with the - if you had,
23 you know, row houses sandwiched in between what is existing now
24 would be very much in character. Whether it is two or four - I

1 think we might need some more information from the Applicant to
2 actually explain exactly what they're proposing a little bit
3 better.

4 MS. ROTH: Yes, I suppose more information is better,
5 but I also think it's better not to assume in the absence of
6 information either.

7 COMMISSIONER TURNBULL: Assume what?

8 MS. ROTH: Assume that it's going to be too
9 expensive, assume that the houses that result are going to be
10 too small.

11 COMMISSIONER TURNBULL: We can get that information
12 from the Applicant.

13 MS. ROTH: I raised my family in a house that was 14
14 feet wide. We did fine.

15 COMMISSIONER TURNBULL: Okay, good. Thank you.

16 MS. ROTH: Yeah, it's urban life.

17 COMMISSIONER TURNBULL: We appreciate you coming
18 down.

19 MS. ROTH: Yeah, thank you.

20 CHAIRPERSON HEATH: All right. Applicant, any
21 questions of the ANC Commissioner?

22 MR. SULLIVAN: No, thank you.

23 CHAIRPERSON HEATH: Okay, all right. Is there anyone
24 here wishing to speak in support of this application? Anyone

1 in support? Anyone in opposition? No opposition? Okay, then
2 we will turn back to the Applicant for - sure.

3 VICE CHAIR HILL: Just, Mr. Sullivan, can I see that
4 slide again, it's Option 2, that has - yeah, there you go. So,
5 the open space that is there -- is that basically - how wide is
6 that open space?

7 MR. SULLIVAN: The distance between the existing
8 structure and the adjacent wall is 4.9 feet.

9 VICE CHAIR HILL: And, is that basically how wide the
10 open space is now? I don't if you can - there is an open
11 space...

12 MR. SULLIVAN: What is showing here on the drawing is
13 the space that is there now. We are unable to diminish that
14 any further. So, the idea is that if we did an addition...

15 VICE CHAIR HILL: Yeah, that would stay there.
16 That's what I'm saying.

17 MR. SULLIVAN: It would stay there, correct.

18 VICE CHAIR HILL: Okay, thank you.

19 CHAIRPERSON HEATH: okay, so we'll turn back to the
20 Applicant for closing.

21 MR. SULLIVAN: Thank you. I would just like to
22 address a few points of some of the things that we've talked
23 about here. The Office of Planning, I think, bases its
24 position on the point that the lot is potentially developable

1 or developable as a matter-of-right, and that is not exactly
2 the test for variance relief. If it was, then almost anybody
3 could meet that - could not meet that test, because a project
4 is almost always developable as a matter-of-right. The test is
5 whether or not there is a practical difficulty in pursuing that
6 alternative, and we think we have shown that here.

7 And, on that point too of practical difficulty, one
8 of the factors that the Board can consider in a practical
9 difficulty test is the degree of variance relief requested.
10 And, if you take the average lot width of all the lots on the
11 left side of this block, it is 17.53. It is actually - we're
12 within a foot of that. So, we're asking, when you compare it
13 to that - when you compare it to the 18 feet, we're asking for
14 less than a foot and a half. If you compare it to the
15 surrounding lots, we're asking for between 3/4 of a foot and a
16 foot and a quarter. Maybe de minimis, I don't know, but the
17 fact is that degree of variance can be considered when you are
18 considering a practical difficulty test.

19 I would also point out that the Office of Planning
20 mentioned it is just this lot that needs to be considered, and
21 I believe there is case law saying otherwise - I'm not sure
22 which case it is, maybe Monaco, that says you consider the
23 property's condition as it relates to the surrounding area, or
24 you can consider the property's condition as it relates to the

1 surrounding area, and it's relevant in this case.

2 I would also point there is no review, matter-of-
3 right, if we did four units matter-of-right, no chance to have
4 a say in the design of this. On that point as well, I believe
5 we can go to 40 feet. We have three contiguous row dwellings,
6 and I believe that was corrected originally to apply only to
7 single-family row dwellings, but I think they corrected that,
8 and now it applies to row dwellings and flats as well, if you
9 build three contiguous. But, we can confirm that.

10 Regarding the affordability, while affordability is a
11 relatively term, so I think six units will be more affordable
12 than four units. That is part of our problem here. We don't
13 want to create units that are too large or have to create units
14 that are too large, that are out of character with the
15 neighborhood. When people come into this neighborhood and they
16 are expecting a certain price or a certain size, they don't get
17 that there. They're not possibly looking on this block for
18 that particular price range or size. So, that's all I have.
19 Just want to leave you with the fact that it's a practical
20 difficulty. We don't have to prove it's impossible to do the
21 four-unit scenario. Obviously it's not impossible, there is
22 just some practical difficulty involved with the other
23 alternatives. Thank you.

24 CHAIRPERSON HEATH: Okay, thank you. Do you want to

1 request...

2 COMMISSIONER TURNBULL: Well, yeah, I think - I don't
3 think I can vote on this today. I think I need a little bit
4 more information. I would like to see some financials on the -
5 between the two - I mean between four units and six units as to
6 what we would be looking at for that. And, I - we don't really
7 have any good architectural drawings that would show a four-
8 unit scheme. I wouldn't mind seeing something like that.

9 The other question is - and I'm not sure - you know,
10 you're right about that height. I think we have to have the
11 Office of Planning check that height on that. But, also, the
12 first floor looks like its 4 foot 9 inches above grade, so it's
13 actually considered then a story? The basement is a story - so
14 you're actually going to have four stories? I think OP would
15 have to look at that also. But, I think that may play a
16 factor. I'm not sure myself. I'd have to go back and look at
17 the regs more carefully, but maybe Office of Planning could
18 look at that.

19 MR. SULLIVAN: It would, but the architect assures me
20 it is 3'9".

21 COMMISSIONER TURNBULL: The drawing shows 4'9", I
22 believe.

23 MR. SULLIVAN: Okay.

24 COMMISSIONER TURNBULL: Yeah, I'm looking at your

1 last submittal - I forget what Exhibit this is - but, ground
2 finished floor 4'9", front 0'0", so my math says 4'9". But, if
3 you could confirm that. We would need to check that.

4 [Speaking off mic.]

5 CHAIRPERSON HEATH: They can confirm that.

6 COMMISSIONER TURNBULL: You can confirm that, yeah.
7 The other thing is that your elevation - your plan sort of
8 shows the elevation that I am seeing in your documents, show
9 brick going straight up with a little bay in the - on one side,
10 but your elevation actually shows a recess for the top floor.
11 It looks like its set back, so there is some - maybe one is a
12 later version of the drawing than the others, so...

13 MR. SULLIVAN: Yeah, no, I think part of the
14 discussion was a meeting we had last week with Brandice and
15 another member of the Office of Planning who looked at the
16 original submission, which was submitted in the two-week pre-
17 hearing statement deadline and said - and asked us to make some
18 modifications as part of the Office of Planning's new Design
19 Studio Program. So, we adapted the rendering based on the
20 commentary that we received, and we certainly understand and
21 will follow up with line drawings that more clearly represent
22 the project.

23 COMMISSIONER TURNBULL: Okay, and if you're going to
24 make any changes - I like the rendering of the street for

1 perspective. If you need to make any corrections, I would like
2 to see a - I'm not totally out of favor with this, but I just
3 need a little bit more information on what it really needs to
4 look like. But, and I guess I would like to see a four-unit
5 version, and, again, you're going to provide the financials,
6 the comps between four and six units. Is this going to be
7 still - is this one record lot, or are you making three
8 nonconforming lots?

9 MR. SULLIVAN: It would be three record lots.

10 COMMISSIONER TURNBULL: And, so the parking at the
11 back then, how does that relate ownership wise, one car is on
12 one?

13 MR. SULLIVAN: Well, each, well, that's the reason
14 for the other area of relief that we haven't even discussed,
15 because we need three cuts, but it's a street that operates as
16 an alley. You can tell from the pictures up here. So, show
17 one of the photos, if we have it. It looks like an alley, it's
18 a street. So, we formally need to get cuts, even though
19 they're not really cuts. And, so, there will be one space on
20 each lot, and there will be two additional spaces, and they may
21 have to be cross-easements for purposes of ownership, but there
22 will be five spaces back there.

23 COMMISSIONER TURNBULL: Yeah, and if you could
24 explain that a little bit more, I think that would be - that's

1 a little confusing.

2 [Speaking off mic.]

3 VICE CHAIR HILL: Just to get back to - we're coming
4 back here - whenever you come back here - but, me getting to
5 the practical difficulty, I'm not completely there yet. I
6 mean, I see the - particularly like - I'm not particularly
7 there with either Option A, I'm sorry Option 1 or Option 2.
8 With Option 2, I see you getting five units, and then you have
9 the funny little alley thing, right? So, just explaining
10 financially or otherwise why you can't - why those two options
11 don't work for you.

12 CHAIRPERSON HEATH: I don't believe we have that
13 document that you were presenting today in the record, and I
14 don't remember seeing it in any of the drawings, so if we could
15 get a copy of that, of your presentation from today, that would
16 be helpful.

17 MR. TEASS: Yes, we'll provide that.

18 CHAIRPERSON HEATH: Thanks. All right, so, any
19 questions on what you've been asked to provide? We do have
20 some financial information, so, as Exhibit 26. Any other
21 questions?

22 MR. SULLIVAN: Is that - is that - would you like
23 that information expanded, I guess, is my question. I mean, we
24 can explain it in more detail in our additional submission, of

1 course.

2 CHAIRPERSON HEATH: That would be helpful, if you
3 could just explain it in your statement. Any other questions?

4 Okay, all right. So, Mr. Moy, if we could find a date for -
5 we'll put this on for a limited hearing.

6 MR. MOY: Limited hearing. Okay, well, okay, let me
7 back up a little bit. We do have a decision on a previous case
8 set for December 8th that would include Mr. Turnbull, so if the
9 Applicant can provide, I would think, materials to be submitted
10 by December 2nd or December 3rd, then we can come back with a
11 limited hearing on December 8th. If not, then maybe we can
12 push it to the 15th, but I would like to have Mr. Turnbull
13 participating.

14 CHAIRPERSON HEATH: All right, okay.

15 [Speaking off mic.]

16 CHAIRPERSON HEATH: Can you get the documents into us
17 by the 2nd of December? Is that enough time?

18 MR. SULLIVAN: No, it's not going to be enough time.
19 We'll have to take the next available date with Mr. Turnbull.

20 MR. MOY: Okay, then...

21 CHAIRPERSON HEATH: January?

22 MR. MOY: That would be January 20, what did I say,
23 January 26th, I believe - let me check. January 26th for a
24 limited hearing.

1 MR. SULLIVAN: That's what we'll have to do, thanks.

2 CHAIRPERSON HEATH: Okay, all right.

3 MR. MOY: Okay, if we do that, January 26th, then
4 perhaps filings from the Applicant and maybe a followup
5 Supplemental Review by OP by January the - 26, let's say,
6 January 19th, or is that a holiday? Let's make it January
7 20th, just in case. Filings from the Applicant by January
8 20th, and a limited hearing - scope hearing on this on January
9 26th, which is a Tuesday, of course.

10 [Speaking off mic.]

11

1 CHAIRPERSON HEATH: All right, so, thank you. I think
2 we're all set. So, as I said at the beginning of the morning,
3 we're pushing our appeals cases to the end, and so, Mr. Moy, if
4 you could call the next.

5 MR. MOY: The next Application for the Board is
6 Application No. 18929A. This is the application of Saint
7 John's College High School. This application has been
8 captioned and advertised for special exception relief from §
9 206 to renovate and expand the gymnasium area in an academic
10 building in the R-1-A District at premises 2607 Military Road
11 N.W., Square 2308, Lots 804-807.

12 CHAIRPERSON HEATH: Okay, thank you Mr. Moy. Would
13 you please introduce yourselves.

14 NORMAN GLASGOW: I am Norman M. Glasgow, Jr., with
15 the Law Firm of Holland & Knight.

16 JESSICA BLOOMFIELD: Jessica Bloomfield with the Law
17 Firm of Holland & Knight.

18 Jeff MANCABELLI: Jeff Mancabelli, President of Saint
19 John's College High School.

20 MATTHEW BELL: Matthew Bell, architect with Perkins
21 Eastman.

22 LEONARDO VARONE: Leonardo Varone, architect with
23 Perkins Eastman.

24 CHAIRPERSON HEATH: Okay, thank you. So, as OP

1 noted, you need relief from 411.3, and you have added that. I
2 don't believe we have a revised self-certification, so we'll
3 need that.

4 JESSICA BLOOMFIELD: We can add that to the record.

5 CHAIRPERSON HEATH: Thank you. All right. So, other
6 than that, I don't see any issues that I have with this
7 application. Board, do you have any questions or anything you
8 want to hear? All right. So, based on the filings in the
9 record, we believe your application is complete, and so we
10 don't see any need for a full hearing at this time. If you're
11 fine to proceed on, we'll do so.

12 JESSICA BLOOMFIELD: We just had one comment. We're
13 happy to otherwise rest on the record, but the plan that we
14 submitted to the Commission of Fine Arts, which they approved,
15 did not include the current roof plan, and we will be going
16 back to them again to get their support. We already received
17 it once, and you have a letter in the record to that effect.
18 But, we would like - if we are approved with the plans that
19 have been submitted to the record in our pre-hearing
20 submission, to have some minor flexibility to slightly change
21 the location of those roof structures, assuming that there
22 would be no additional areas of relief needed for those roof
23 structures, just in case CFA would like us to make any minor
24 tweaks to the roof plan.

1 CHAIRPERSON HEATH: Okay. When are you submitted
2 this to CFA?

3 JESSICA BLOOMFIELD: It's been submitted and
4 presented, and can get the architects to talk about that, and
5 they've approved it. The letter of approval is in the record
6 at Exhibit 29D. So, they've already looked at the whole
7 project and approved it, but in order to go back for our
8 building permit, it is my understanding that we need CFA's
9 sign-off one more time. So, they will look at the final set of
10 plans.

11 CHAIRPERSON HEATH: Okay, all right.

12 JESSICA BLOOMFIELD: At the staff level.

13 COMMISSIONER TURNBULL: What would you think they
14 would possibly do on the roof? I mean, it's a pretty flat roof
15 - I mean, you've got some air handlers up there, or, and that's
16 it. I mean, other than that, there are no corners. I just
17 think it's a very flat building all the way around.

18 CHAIRPERSON HEATH: And, you said this is just a
19 staff review, it's not a...

20 MATT BELL: Yeah, the remanded the decision for final
21 review to staff.

22 CHAIRPERSON HEATH: Okay, all right. Then, unless
23 the Board has any other questions.

24 COMMISSIONER TURNBULL: No, I'd be okay. I can't see

1 what...

2 CHAIRPERSON HEATH: It doesn't seem like there would
3 be any major...

4 COMMISSIONER TURNBULL: I can't see what they would -
5 yeah, I can't see what they would be looking for.

6 CHAIRPERSON HEATH: Okay, all right. So, Office of
7 Planning.

8 KAREN THOMAS: Yeah, good afternoon, Madam Chair,
9 members of the Board. The Office of Planning would rest on the
10 record of our report. We have no issues with or any concerns
11 if the applicant has to go to CFA again, and we are in support
12 of this application. Thank you.

13 CHAIRPERSON HEATH: Okay, thank you. Board, any
14 questions?

15 COMMISSIONER TURNBULL: I guess the only thing would
16 be to get them, if there is a change, the record changed of the
17 roof.

18 MR. GLASGOW: I think, Commissioner Turnbull, this is
19 similar to the types of flexibility that we have when we have
20 Historic Preservation Review Board, it's the same type of
21 thing.

22 COMMISSIONER TURNBULL: Same type of thing, okay.

23 MR. GLASGOW: Correct.

24 CHAIRPERSON HEATH: Okay, all right. So, Applicant,

1 any question of Office of Planning.

2 JESSICA BLOOMFIELD: No, thank you.

3 CHAIRPERSON HEATH: Is there anyone here from DDOT on
4 this application? We do have a letter of no objection from
5 DDOT. We also have letters from the ANC recommending approval.
6 Is there anybody here from the ANC? No ANC on this
7 application? Okay, all right. Is there anyone here wishing to
8 speak in support of this application? Anyone in support? And,
9 we have the letter from CFA in support of this. Anyone wishing
10 to speak in objection? Any opposition? Okay. Well, if the
11 Board has no other questions. Normally we would turn back to
12 the Applicant for closing, but there is no reason for a close
13 at this point, so, I think we are probably ready to deliberate
14 on this.

15 COMMISSIONER TURNBULL: Yeah, did you mention that we
16 had a letter from the ANC?

17 CHAIRPERSON HEATH: I did. Yes, we do have a letter
18 from the ANC.

19 COMMISSIONER TURNBULL: Okay.

20 CHAIRPERSON HEATH: All right, then I will move that
21 we approve this special exception for the private school use
22 requirements to renovate and expand the gym.

23 VICE CHAIR HILL: I second the motion.

24 CHAIRPERSON HEATH: The motion has been made and

1 seconded. Any further discussion? All those in favor?

2 [chorus of ayes]

3 CHAIRPERSON HEATH: Anyone opposed? The motion
4 carries.

5 JESSICA BLOOMFIELD: And, that's with the flexibility
6 for the room and plans?

7 CHAIRPERSON HEATH: That is, yes, with flexibility.

8 JESSICA BLOOMFIELD: Thank you.

9 CHAIRPERSON HEATH: Thank you.

10 MR. MOY: Staff would record the vote as 3-0-2, this
11 on the motion of Chairperson Heath to approve the application
12 with amended relief requested, yes? Second the motion of Vice
13 Chair Heath, Hill rather, it was close, and also in support Mr.
14 Turnbull. We have a member not present with us today, Board
15 seat vacant, motion carries 3-0-2. I believe Applicant offered
16 to file the self-cert to the record as well as if there is any
17 fee associated with the added relief.

18 CHAIRPERSON HEATH: All right, thank you. Summary
19 order, Mr. Moy.

20 MR. MOY: Thank you, Madam Chair.

21 CHAIRPERSON HEATH: We'll call our next application,
22 Mr. Moy.

23 MR. MOY: To the table, Applicants to Application No.
24 19107 of Calvin Smith, as advertised for special exception from

1 the Child Development Center requirements pursuant to § 205.1
2 to allow a Child Development Center for 38 children and 8 staff
3 in R-1-B District at premises 3101 Adams Street N.E., Square
4 4364, Lot 5.

5 CHAIRPERSON HEATH: All right. Hi, please introduce
6 yourselves.

7 CALVIN SMITH: Calvin Smith for Growth Spurts Child
8 Development Center.

9 LEON SWAIN: Leon Swain, Community, LLC. We assisted
10 Mr. Smith with his application.

11 CHAIRPERSON HEATH: Okay. First question I have for
12 you, was this posted? Was notice of this hearing posted at the
13 property?

14 MR. SWAIN: I was advised that it had been, yes,
15 Ma'am.

16 CHAIRPERSON HEATH: Okay. We don't have an Affidavit
17 of Posting on file. Typically we would have Affidavit with
18 photographs of the posting.

19 MR. SWAIN: Yes, Ma'am.

20 CHAIRPERSON HEATH: And, so, do you know who posted
21 this?

22 MR. SWAIN: That should have been Ms. Sharon Sheron.
23 Unfortunately, she is not here today, and I was given this
24 early this morning.

1 CHAIRPERSON HEATH: Hmm, okay, all right.

2 MR. SWAIN: I apologize for that.

3 CHAIRPERSON HEATH: Okay. Um, okay, and have you met
4 with the ANC-5C?

5 MR. SWAIN: We have reached out to the ANC and asked
6 them for a letter of support or any type of information that
7 they could provide. We have not heard from them. But, we did
8 reach out to them.

9 CHAIRPERSON HEATH: Did you meet with them to present
10 the project at all?

11 MR. SWAIN: I called a member of the ANC, and she,
12 she said she was going to try to facilitate a meeting, but she
13 never got back with us. But, like I said, I did personally
14 reach out to her.

15 CHAIRPERSON HEATH: Okay.

16 MR. SWAIN: I will tell you that we do have a number
17 of letters of support from the community, and basically the
18 reason we're here is because when Reverend Smith bought the
19 business two years ago, or, I'm sorry, about a year ago, he
20 thought that it had been operating as a day care center. When
21 he went to change the information over to his name, we found
22 out that there was not a valid Certificate of Occupancy that
23 the previous owner was using. So, that is what brings us here
24 today.

1 CHAIRPERSON HEATH: Okay. Board, is there anything
2 else you want to hear from this Applicant? Okay. Then, we'll
3 come back to the Affidavit of Posting, but other than that, I
4 don't see any reason for additional information to be presented
5 to the Board at this time. There may be questions that come
6 up, so although you have the right to a full hearing, you can
7 waive that right, and allow us to proceed on.

8 MR. SWAIN: We'll waive that right.

9 CHAIRPERSON HEATH: All right. We'll come back to
10 you if we have questions, certainly. All right. So, then
11 we'll turn to Office of Planning.

12 STEPHEN MORDFIN: Good afternoon, I'm Stephen
13 Mordfin, and the Office of Planning supports this application
14 subject to the three conditions that are contained in the Staff
15 Report that the center should be limited to 38 children and 8
16 staff, no more than 12 children shall be permitted to play
17 outdoors at any one time, and also that the outdoor play should
18 be limited to two days per week between the hours of 10 and 11
19 AM. Thank you.

20 CHAIRPERSON HEATH: Okay. One question, what was
21 your reason for limiting the amount of outdoor play so
22 significantly?

23 STEPHEN MORDFIN: That was the - I had requested
24 from the Applicant how much time they play outside. They also

1 play in a park about a block away and across the street, and
2 this was what the Applicant said that they do, and that's why I
3 put it in.

4 CHAIRPERSON HEATH: So, this doesn't limit them from
5 going to the park. This is just play at this...

6 MR. MORDFIN: This is just for play in the yard, next
7 to the house, and that was because of the adjacent residents.

8 CHAIRPERSON HEATH: Got it, okay, all right,
9 understood. All right, and so the Applicant has agreed to each
10 of the three conditions that Office of Planning has presented?
11 Okay?

12 MR. SWAIN: Yes.

13 CHAIRPERSON HEATH: Okay, all right, thank you. Any
14 other questions of Office of Planning? Okay.

15 [Speaking off mic.]

16 CHAIRPERSON HEATH: It is, it's very short. I assume
17 you are supplementing with the park.

18 MR. SWAIN: Yes, we are.

19 CHAIRPERSON HEATH: Right. Okay, all right.

20 VICE CHAIR HILL: That's a short recess.

21 [laughing]

22 CHAIRPERSON HEATH: Two days a week?

23 VICE CHAIR HILL: Two days a week for an hour.

24 CHAIRPERSON HEATH: Right? All right, okay. So, is

1 there anyone here from ANC-5C? Again, we don't have a report
2 from ANC-5C. It sounds like you did reach out. We do have the
3 - I don't know how many, but there are numerous letters of
4 support.

5 MR. SMITH: 19.

6 CHAIRPERSON HEATH: Okay. Thank you, numerous
7 letters. Is there anyone here from DDOT wishing to speak on
8 this application? We do have a letter from DDOT of - oh, no,
9 actually we don't have a letter from DDOT. Typically we would
10 have a letter of no objection, but we don't have anything from
11 DDOT here. All right, one more question of Office of Planning.
12 Have you heard anything from the ANC on this application?

13 [Speaking off mic.]

14 CHAIRPERSON HEATH: Your mic isn't on.

15 MR. MORDFIN: I did not hear from the ANC. I did
16 contact them and request comments, but I never heard back from
17 them.

18 CHAIRPERSON HEATH: Okay, all right, thank you.
19 Okay, is there anyone wishing to speak in support of this
20 application? Anyone in support? Anyone wishing to speak in
21 opposition? No opposition, all right. Then, again, normally
22 we would turn to you for closing, but there doesn't appear to
23 be a need for that, so, one thing that we do still need to
24 address is the Affidavit of Posting, and if - are we - if we

1 get Affidavit of Posting, if we get that added to the file...

2 MR. FERRIS: Madam Chair, you could require the
3 Applicant to file it, and condition your approval on that being
4 filed.

5 CHAIRPERSON HEATH: Okay, all right, so we'll do
6 that. Our approval will be on the condition that you do file
7 that Affidavit of Posting.

8 MR. SWAIN: Yes, Ma'am.

9 CHAIRPERSON HEATH: Okay, so assuming we approve, but
10 are you ready to deliberate? Okay. I then will move that we
11 approve this special exception for the Child Development
12 Center.

13 VICE CHAIR HILL: I second the motion.

14 CHAIRPERSON HEATH: The motion has been made and
15 seconded. All those in favor?

16 [chorus of ayes]

17 CHAIRPERSON HEATH: Anyone opposed? All right, then
18 Mr. Moy, the motion carries with the condition that they
19 supplement the record with the Affidavit of Posting.

20 MR. MOY: Yes, what Staff could also do as part of
21 that last condition is Staff could hold the Order until the
22 Affidavit is brought into the record as well.

23 CHAIRPERSON HEATH: Okay, thank you.

24 MR. MOY: So, this is Staff's count of 3-0-2 on the

1 motion of Chairperson Heath to approve the application for the
2 relief requested with three conditions and seconding the motion
3 was Vice Chairperson Hill, also in support Mr. Turnbull, we
4 have a Board member not present today, Board seat vacation, and
5 motion carries 3-0.

6 CHAIRPERSON HEATH: All right, so, Summary.

7 MR. MOY: Okay, thank you.

8 CHAIRPERSON HEATH: Thank you.

9 MR. SWAIN: Thank you.

10 CHAIRPERSON HEATH: Okay, so our next case, Mr. Moy.

11 MR. MOY: Yes, the next case, this is parties to the
12 table to Application No. 19111 of Victory Village Development
13 Corporation as captioned and published. This is a request for
14 special exception relief from the Community Service Center
15 requirements under § 334. This is to allow a Community Service
16 Center in the R-4 District at premises 1533 9th Street N.W.,
17 Square 397, Lot 31.

18 CHAIRPERSON HEATH: Okay, would you please introduce
19 yourselves?

20 JESSICA BLOOMFIELD: Good morning, again, Jessica
21 Bloomfield from the Law Firm of Holland & Knight.

22 SIMONE GORING DEVANEY: Good morning, I'm Simone
23 Goring Devaney with CSG Urban Partners.

24 THOMAS DORSEY: Good morning, I'm Thomas Dorsey.

1 CHAIRPERSON HEATH: Make sure your mic is on.

2 THOMAS DORSEY: Good morning, I'm Thomas Dorsey from
3 MWB Architects.

4 WENDELL BUTLER: Good morning, I'm Wendell Butler,
5 Administator of Shilo Baptist Church.

6 CHAIRPERSON HEATH: Okay, thank you. Is there
7 parking relief also being requested here?

8 JESSICA BLOOMFIELD: Yes, currently we don't need any
9 relief. The reason that we have requested relief from §
10 2117.4, which is to provide two tandem parking spaces on the
11 site, is in the event that we have to reapply through the
12 Public Space Community to DDOT for the current existing curb
13 cut that is on 9th Street, since we're changing the use of the
14 row dwelling, and in the event that for whatever reason the
15 Public Space Committee does not approve the reuse of that curb
16 cut, three parking spaces would be directly accessible from the
17 public alley, and two would normally be accessible from 9th
18 Street, but if the curb cut is closed, those two spaces would
19 have to be accessed as tandem spaces from the alley. So, we're
20 requesting that relief in the event that we may need it in the
21 future.

22 CHAIRPERSON HEATH: Okay, all right. So, if you
23 could revise your self-certification form to include that, I
24 would appreciate it.

1 JESSICA BLOOMFIELD: Sure.

2 CHAIRPERSON HEATH: Any, any fees associated with
3 that, you'll have to address as well, if there are additional
4 fees.

5 JESSICA BLOOMFIELD: Okay.

6 CHAIRPERSON HEATH: All right, so I don't have any
7 other questions on this application. Board, anything you want
8 to hear about?

9 COMMISSIONER TURNBULL: I just had done. The current
10 curb cut, you're looking to put a gate - you're looking to
11 close that off, then? So, it doesn't really function as a
12 driveway, per se.

13 JESSICA BLOOMFIELD: There would be a gate that could
14 open.

15 COMMISSIONER TURNBULL: A gate that could open, okay,
16 and how many cars would park there then?

17 JESSICA TURNBULL: There would be five parking
18 spaces, which is five parking spaces that are required, and we
19 would provide all five.

20 COMMISSIONER TURNBULL: Okay, so you still have five.
21 Okay.

22 CHAIRPERSON HEATH: Okay, all right. Any questions
23 from you? Okay. So, as you've seen previously, you have the
24 right to a full hearing, but we don't believe it's necessary

1 based on the information that we have in the record.

2 JESSICA BLOOMFIELD: We'll just rest on that, thank
3 you.

4 CHAIRPERSON HEATH: Thank you. So, with that, I will
5 turn to Office of Planning.

6 MS. BROWN-ROBERTS: Thank you, Madam Chair, good
7 afternoon. The Office of Planning is supportive of the Child
8 Development Center, and as started in our report, we recommend
9 approval, and also with the request for the parking, we are
10 also in support of that, and recommend approval in both. Thank
11 you.

12 CHAIRPERSON HEATH: Okay, thank you. Any question of
13 Office of Planning, Board? Applicant, any question of Office
14 of Planning? Okay, thank you. We also have a letter of no
15 objection from DDOT. I don't believe there is anyone here from
16 DDOT wishing to speak on this application, but, as I said, we
17 do have that letter. We don't have a report from ANC-6E.

18 JESSICA BLOOMFIELD: So, ANC-6E submitted their
19 letter either last night or this morning. I believe it was E-
20 mailed to Cliff Moy. I have some copies, but they did vote in
21 support of the application, and it was a unanimous vote.

22 [Speaking off mic.]

23 CHAIRPERSON HEATH: Okay, very good, got it, thank
24 you. All right. Okay, is there anyone wishing to speak in

1 support of this application? Any support? Anyone wishing to
2 speak in opposition? No opposition, okay. Then, we will turn
3 back to you. Any closing comments? Okay.

4 JESSICA BLOOMFIELD: Just requesting that you would
5 support this application, thank you.

6 CHAIRPERSON HEATH: Thank you. All right. Then,
7 Board, are we ready to move on this? Okay, so, then I will
8 move that we approve this special exception from the Community
9 Service Center requirements.

10 COMMISSIONER TURNBULL: Second.

11 CHAIRPERSON HEATH: Motion has been made and
12 seconded. Yes, any further discussion?

13 JESSICA BLOOMFIELD: Does that include the variance
14 for the tandem parking spaces as well?

15 CHAIRPERSON HEATH: That would, yes.

16 COMMISSIONER TURNBULL: And, my second would go along
17 with that.

18 CHAIRPERSON HEATH: Yes, so Community Service
19 requirements and the tandem parking. Then, all those in favor?

20 [chorus of ayes]

21 CHAIRPERSON HEATH: Anyone opposed? Mr. Moy, the
22 motion carries.

23 MR. MOY: Yes, Staff would record the vote as 3-0-2,
24 this on the motion of Chairperson Heath to approve the amended

1 application, which is the special exception relief under § 334
2 for the CSE and to include variance relief from § 2117.4, and,
3 let's see, seconding the motion was Mr. Turnbull, and also in
4 support Vice Chairperson Hill, one Board member not present
5 with us today, Board seat vacant, motion carries 3-0.

6 CHAIRPERSON HEATH: Thank you, Summary Order.

7 JESSICA BLOOMFIELD: Thank you very much.

8 CHAIRPERSON HEATH: Thanks. So, our next case, Mr.
9 Moy.

10 MR. MOY: Okay, I believe the next case would be
11 Application No. 19070 of David and Sheila Hoxie. My
12 understanding is this application was amended to include
13 variance relief from the use requirements under § 330 to
14 establish an Inn with four rooms and accessory central area for
15 transient food consumption that includes alcohol in the R-4
16 District at premises 1207 Kenyon Street N.W., Square 2844, Lot
17 49.

18 CHAIRPERSON HEATH: Thank you, Mr. Moy. Would you
19 please introduce yourselves.

20 SHEILA HOXIE: I am Sheila Hoxie.

21 DAVID HOXIE: David Hoxie.

22 CHAIRPERSON HEATH: Okay, thank you. So, the last
23 time you all were here, we heard testimony from you and asked
24 that you come back to us after you had a chance to readvertise

1 your relief.

2 Mr. HOXIE: Yes.

3 CHAIRPERSON HEATH: We asked that you submit your
4 Certificate of Occupancy, and we also asked that you work with
5 Office of Planning. We haven't received anything from you
6 since then, so no additional filings have been made to the
7 record, so I am curious to know what you've done since then and
8 what additional information you would like the Board to be
9 aware of.

10 MR. HOXIE: Well, as far as I know, we resubmitted
11 the Certificate of Occupancy that was on file, and I have been
12 working with Ms. Brown-Roberts to clear up our document trail,
13 and, as far as my understanding, everything was in order. I
14 resubmitted the - pretty much the package of documents that
15 were requested, as in discussions with Ms. Brown-Roberts.

16 CHAIRPERSON HEATH: Did you jut submit those?

17 MR. HOXIE: I submitted them to her last week, and
18 then I sent them to Stephen Varga over the weekend, and he sent
19 an E-mail back acknowledging that he had received everything.

20 CHAIRPERSON HEATH: Okay.

21 MR. HOXIE: That included our Posting Affidavit and
22 everything that I was, that we were instructed to do.

23 CHAIRPERSON HEATH: Okay, we didn't have this as of
24 this morning, so, this is all new information to us, which is

1 never fun. We spend a lot of time going through information
2 prior to the hearings, and so when we get new information
3 during a hearing, it's a little difficult to digest all at
4 once.

5 MR. HOXIE: I'm sorry.

6 COMMISSIONER TURNBULL: Well, the Certificate of
7 Occupancy that I am seeing in the documents here from 1993 is
8 for a rooming house, three rooms, not sexually oriented.

9 MR. HOXIE: That's what they put on there.

10 [laughing]

11 COMMISSIONER TURNBULL: I don't know why they do
12 that, but, it's an interesting classification.

13 [laughing]

14 MR. HOXIE: Yeah, that is kind of interesting.

15 CHAIRPERSON HEATH: I guess.

16 COMMISSIONER TURNBULL: I thought they called those
17 something else, but...

18 VICE CHAIR HILL: Is it currently three rooms?

19 MR. HOXIE: No, it's actually five, and I submitted
20 documentation in that regard to Ms. Brown-Roberts and to
21 Stephen Varga's office, and that was actually even before the
22 first time we were here, so I don't know why it continues to
23 say four.

24 VICE CHAIR HILL: No, I'm sorry, I'm looking at your

1 Certificate of Occupancy, and it says three rooms.

2 MR. HOXIE: Oh, um, I - another understanding is that
3 from Ms. Brown-Roberts was that we would be receiving an
4 updated Certificate of Occupancy, so I hope that is in process
5 based on what I was told.

6 COMMISSIONER TURNBULL: No, I don't think Ms. Brown-
7 Roberts has anything to do with the Certificate of Occupancy.

8 MR. HOXIE: Well, we've - didn't you give her the new
9 application? We certainly filed for it. I'm sure of that.

10 CHAIRPERSON HEATH: Okay, that would be a part of
11 your permitting process.

12 MR. HOXIE: Oh, brother. Why, okay, all right.

13 CHAIRPERSON HEATH: If I could, I have a few
14 questions for Ms. Brown-Roberts, given this information and her
15 time working with you since you were last here. So, Ms. Brown-
16 Roberts, could you talk to us.

17 MS. BROWN-ROBERTS: Explain?

18 CHAIRPERSON HEATH: Yes, please, explain your
19 conversations and where you are.

20 MS. BROWN-ROBERTS: Yeah, the conversations were that
21 in order to - because this is a use variance, and he has to
22 provide the hardship, and so one of the things that he
23 portrayed to me was that this has never been used a single-
24 family dwelling. So, one of the things I asked for is, okay,

1 what do you have to prove to show that. And, so this - that
2 Certificate of Occupancy was one of the things that he brought
3 to me to say, you know, here it was a rooming house at that
4 time, and what upgrades have been made to the house over that
5 period of time since that Certificate of Occupancy, because
6 that rooming house, the use as a rooming house, went out some
7 time ago, and the continued using it as, you know, rental for
8 students, and then into sort of renting it out to vacationers,
9 and that sort of thing.

10 So, yes, and then when I spoke to the Administrator's
11 office, I was told that with this use, he would need to get a
12 new Certificate of Occupancy for the new use, if it is approved
13 by the BZA.

14 [Speaking off mic.]

15 CHAIRPERSON HEATH: So, you're still recommending
16 denial of this, or have you changed your position?

17 MS. BROWN-ROBERTS: Well, I think he did - I think
18 I've changed my position. He did provide information, and I
19 think some of it will come out in what he has provided in that
20 this property has not been used as a single-family dwelling or
21 a flat for some time, and, you know, if - and he has upgraded
22 it to this use on the assumption that he was - you know, that
23 he had this old Certificate of Occupancy and has been using it
24 in that fashion over the years. In addition to that, I asked

1 him for some evidence to show that, you know, how it is being
2 used right now. He did provide some backup information to show
3 how he advertises it, and, you know, how people get there to
4 make sure, because there are certain criteria for the Inn, he
5 does meet those criteria.

6 In addition to that, you know, it is supported by the
7 ANC and the neighbors, and they know that is what has been
8 going on there. It's not going to change, and so they have
9 been supportive of that, and therefore, the second and third
10 criteria of the variance has been met.

11 COMMISSIONER TURNBULL: But, it's not really
12 permitted in an R-4 Zone, an Inn serving alcohol to guests.

13 MS. BROWN-ROBERTS: Right, and one of the things that
14 I asked for clarification on the serving of the alcohol, and
15 the information I got from him was that let's say a person
16 calls in to make a reservation and they want, I don't know,
17 some liquor, and they make the reservation at that time, and
18 then that is given to them as part of, you know, when they
19 check in and that sort of thing. So, it's not like they are
20 operating a bar, you know, having an open bar for people to
21 come in and serve, and it's only for, you know, if a guest
22 requests that they provide it of, you know, your regular check-
23 in into a facility.

24 COMMISSIONER TURNBULL: But, they could request

1 alcohol every day then?

2 MS. BROWN-ROBERTS: I suppose, yes.

3 COMMISSIONER TURNBULL: Which would mean a bar?

4 [Speaking off mic.]

5 COMMISSIONER TURNBULL: Which would mean they would
6 have to have a stocked bar to provide alcohol.

7 MS. BROWN-ROBERTS: I think that's - yeah, that's a
8 question I hadn't asked. That's a question you may want to ask
9 of him, how, you know, how often they provide it - I don't
10 know.

11 [Speaking off mic.]

12 MR. HOXIE: Can we answer that?

13 COMMISSIONER TURNBULL: Sure.

14 MR. HOXIE: Oh, okay. It's purely a prepackage
15 situation, and I would doubt that anyone would be making any
16 requests on a daily basis.

17 COMMISSIONER TURNBULL: But I just, we're in a
18 residential zone, and I'm just concerned about the amount of
19 alcohol being served, and people coming. Well, I would like to
20 clarify exactly what you're doing and what your program
21 involves in this if we're going to grant relief.

22 MR. HOXIE: It would - I'm not sure...

23 COMMISSIONER TURNBULL: Are we talking just wine and
24 beer, or are you talking mixed drinks, hard liquor?

1 MR. HOXIE: No, this is a Category CX, which is
2 liquor, wine, and beer prepackaged to, for the residents only,
3 and it's not - it's like really helping with their groceries,
4 because it's a convenience. It's pretty common now with making
5 hotel reservations.

6 COMMISSIONER TURNBULL: So, it's like a fruit basket,
7 only it's a wine basket taken to their room?

8 [laughing]

9 MS. HOXIE: Sort of.

10 MR. HOXIE: Not exactly, not quite, but it's
11 certainly not a bar setting or any kind of an outlet for
12 alcohol sales. It is strictly for the guests.

13 COMMISSIONER TURNBULL: Well, if we're gonna approve
14 it, I think we need to specify exactly that there will not be a
15 bar on the premises, and that we need to define exactly what
16 type of service you are providing.

17 MR. HOXIE: Okay.

18 COMMISSIONER TURNBULL: I think that would need to be
19 part of the definition that goes in here then.

20 CHAIRPERSON HEATH: So, just to be clear, when a
21 person makes their reservation, they make at that time a
22 request for some sort of alcohol to be provided to them on
23 check-in.

24 MR. HOXIE: Right, exactly. That's the way the

1 website is set up - it's not active though, but it's all - it's
2 merely a click, yes I want this, or yes, I would like
3 accommodation for me pet, yes, there is a list of extras. Do
4 you need one of those roll-away beds. It's only in that
5 capacity.

6 CHAIRPERSON HEATH: It's only one of the extras.

7 MR. HOXIE: You're right.

8 CHAIRPERSON HEATH: And, can they say, to
9 Commissioner Turnbull's point, can they say, yes, I'd like a
10 bottle of "x" sent to me every day that I'm here?

11 MR. HOXIE: No. It wouldn't work like that. They
12 would be purchasing a bottle - like a bottle of wine, and
13 that's all that would be in their room upon arrival.

14 CHAIRPERSON HEATH: Just one, or however many they
15 order.

16 MR. HOXIE: Whatever they ordered.

17 CHAIRPERSON HEATH: So, it's there when they check
18 in.

19 COMMISSIONER TURNBULL: Okay, I guess - this isn't
20 actually covered in the Zoning regs what we're doing, and I see
21 the Zoning administrators probably cringing over there trying
22 to figure out what the hell we're agreeing to. I don't want to
23 give him more angst than we've got ourselves, so I think, Ms.
24 Brown-Roberts, we need to somehow define exactly what we're

1 putting in here so that it's not strictly an Inn serving
2 alcohol, per se, with a bar, so it's not really an Inn - it's a
3 rooming house that will provide a bottle of wine or something.
4 So, I'm not sure how to deal with this technically.

5 MS. BROWN-ROBERTS: One of the qualifications of
6 being an Inn is that persons only stay there, I think, for two
7 or three days. It's not a long-term facility.

8 COMMISSIONER TURNBULL: Okay.

9 MS. BROWN-ROBERTS: So, I think what we could say is
10 that, you know, any liquor that is ordered is just provided at
11 the time of check-in. I'm not sure how that would be enforced.

12 COMMISSIONER TURNBULL: Is it just wine? It is wine
13 or beer or liquor too, hard liquor it could be.

14 MR. HOXIE: Any of those three choices.

15 MS. BROWN-ROBERTS: If you wanted, you could limit it
16 to just beer and wine.

17 CHAIRPERSON HEATH: Yeah.

18 MS. HOXIE: To champagne and wine.

19 MS. BROWN-ROBERTS: Yes.

20 CHAIRPERSON HEATH: So, you'd be willing to limit it
21 to beer, wine, and champagne. One bottle upon, or one, I
22 don't...

23 MR. HOXIE: Well, we would hope that we would be able
24 to sell packaged, like in the event that maybe somebody wanted

1 a 6-pack of beer, but that would not - some people stay for -
2 we've had people stay two weeks at a time.

3 CHAIRPERSON HEATH: That doesn't sound consistent
4 with the definition of an Inn, then, in that case.

5 MR. HOXIE: Well, the Inn is less than 30 days,
6 according to the regulations.

7 [Speaking off mic.]

8 COMMISSIONER TURNBULL: I wonder - I don't want to
9 put you off again, but I wonder if you could talk with
10 Ms. Brown-Roberts just a little bit more and maybe she has to
11 talk to the Zoning - I think we need to figure out exactly how
12 we define this so that we don't - I'm not opposed to this, I'm
13 just confused as to how we actually write this up and make it
14 conditional upon certain things. So, Madam Chair...

15 CHAIRPERSON HEATH: Sure, when you come back, if you
16 could have conditions worked out with Ms. Brown-Roberts that
17 just state how you intend to operate, what the rules are here,
18 what you're really asking for, then we can more appropriately
19 speak to that and if you've worked through this with Ms. Brown-
20 Roberts, then we could, if you think you could work through
21 something that quickly, I mean they are here, so, okay. We
22 will take a break. I think before we do that, we do have a few
23 other applications. We could bring this back at the end of the
24 day. We have a couple of appeals. We could bring this back

1 later. I know you don't want to stay longer than you have to.

2 MR. HOXIE: I think we could probably do it within a
3 break time.

4 CHAIRPERSON HEATH: Okay, all right.

5 COMMISSIONER TURNBULL: Okay, can you do it in half
6 an hour, then? Maybe we can get another case in while we're...

7 MS. BROWN-ROBERTS: Yes.

8 CHAIRPERSON HEATH: Okay, so then we'll give you that
9 time, and then we'll call you back before we get to the end of
10 the day.

11 MS. BROWN-ROBERTS: Yes.

12 CHAIRPERSON HEATH: If you could just signal when,
13 right - that would be helpful. Right, thank you.

14 MS. HOXIE: Okay, thank you.

15 MR. HOXIE: Thank you very much.

16 CHAIRPERSON HEATH: So, Mr. Moy, let's see, Munn is
17 postponed. Right. So, Mr. Moy, our next application?

18 MR. MOY: Yes, that would be Application No. 19055.
19 This is an application of Valor Minnesota, LLC, and this has
20 been postponed several times, Madam Chair. The last time the
21 Board heard this was October 20, 2015. And, at that time,
22 unless there has been an amendment, relief requested were
23 variances from the minimum lot area requirements under § 401
24 lot occupancy with rear yard, under § 404 side yard setback,

1 under § 405 and special exception from minimum lot dimension
2 requirements under § 2604.3, and this, unless, again, this has
3 changed, it was to construct 31 one-family attached and semi-
4 detached dwellings in the R-2 District at premises 4409
5 Minnesota Avenue N.E. Square 5097, Lot 846.

6 CHAIRPERSON HEATH: Okay, all right. If you all
7 would please introduce yourselves.

8 MERIDITH MOLDENHAUER: Good morning, Chairwoman Heath
9 and Members of the Board, my name is Meridith Molenhauer,
10 representing the Applicant.

11 SEAN PICHON: Good morning, Board. My name is Sean
12 Pichon, and I am principle of PGN Architects.

13 KURT WEIERSTALL: Good morning, Kurt Weierstall with
14 Valor Development.

15 MS. DOUGLAS: Good morning, almost afternoon, really.

16 CHAIRPERSON HEATH: Much after noon.

17 [laughing]

18 MS. DOUGLAS: I'm Commissioner Douglas, ANC-7D03.

19 CHAIRPERSON HEATH: Okay, thank you. Based on the
20 information that we've seen submitted to the record since the
21 previous hearing, it looks like you've made pretty significant
22 changes through your conversations with the neighborhood and
23 with Office of Planning. What I'd like to do - we don't need a
24 full hearing on this, but I would like for you to just quickly

1 touch on the changes, and one that is particularly a question
2 for is why the new gate that is being added around the
3 community and the outdoor space; if you could just explain that
4 and what the purpose of that is.

5 MERIDITH MOLDENHAUER: I'll turn to Sean to kind of
6 walk through the changes.

7 CHAIRPERSON HEATH: Okay. Just the changes that
8 you've made.

9 MR. PICHON: Yeah. Thank you, I'll keep this as
10 brief as possible. So, pointing directly to the changes that
11 were made from the last time we were here, the last time we had
12 an application that included 31 townhomes with their various
13 reliefs requested. We have reduced that down to a total of 30
14 townhomes across the site. We have taken the additional area
15 and created a tot lot at the end of the street, end of
16 Minnesota Avenue. We've also increased the size of four of the
17 lots by 1 foot each. That 4-foot increase was the result of
18 losing the 31st townhouse and the street frontage that was
19 associated with that house. We've given that back to four lots
20 across the site.

21 The other changes that have been added, as you
22 mention, the gate that goes around the site, that was a request
23 that was brought up by the neighbors in the surrounding
24 neighborhood. There was concern about security. It's, I

1 guess, an image that they have surrounding their existing lots,
2 and they are concerned about people traversing across the site
3 in the rear of the property where we have the new access aisle
4 that would be provided for parking.

5 We also have, sorry, included a disclaimer in our
6 presentation that the gates are there. We understand the
7 concern from OP and DDOT. We are open to further discussion
8 with DDOT about how to best mitigate the, I believe, the access
9 to the sites and how those gates work to minimize the impact of
10 that and whether or not they deem that to be a possible
11 solution to the enclosure of the site.

12 We did update some of the materials that were being
13 used, the sound wall. Last time we went through that, the
14 sound wall, now we've gone through some research with the sound
15 engineer. The sound wall will be 16 feet high. We show a
16 representation of the materials that we're anticipating using
17 on that sound wall, the fencing that's being used, we're
18 proposing a monument sign at the entry point of the property,
19 and the street lighting that is being proposed for the street
20 side of the new Minnesota Avenue.

21 We have also updated and given more detail on the
22 materials that are being proposed for the actual houses. All
23 this stuff is in the record. I'll just run quickly through it.
24 We're using a fiber cement siding board with appropriate

1 trims. We're accenting the entry ways with some column
2 details. The windows will all be trimmed out, and we are using
3 an architectural shingle on the roofs. This is just an image
4 of potential playground setting that would be proposed for the
5 new playground at the end of the lot.

6 MS. MOLDENHAUER: Can you state the square footage of
7 the playground?

8 MR. PICHON: The playground is approximately 2,900
9 square feet of land.

10 CHAIRPERSON HEATH: So, the way the fence works, I'm
11 trying to make sure I understand from the drawing submitted,
12 there is fencing in between each set of homes, and then that
13 goes around to the back and there is a large, like all of the
14 rear yards or back yards are open to each other within that
15 fenced-in area, just not to the rest of the community, and that
16 park is also - it has its own fence around it, and so it is
17 separate from the rear yards of the homes. Is that correct?

18 MR. PICHON: Correct.

19 CHAIRPERSON HEATH: Okay, and who has access to the
20 park?

21 MR. WEIERSTALL: So, the neighborhood has access to
22 the park as well as the tenants of the new homes.

23 CHAIRPERSON HEATH: Okay.

24 COMMISSIONER TURNBULL: But, is the gate locked, or

1 lockable, or how is that going to...

2 MR. WEIERSTALL: The community has requested a
3 combination lock that can be distributed to local, yeah, by the
4 ANC.

5 [Speaking off mic.]

6 COMMISSIONER TURNBULL: Okay, just a regular
7 combination or a...

8 CHAIRPERSON HEATH: Like a push/pull.

9 COMMISSIONER TURNBULL: A push button, a keypad. I
10 had a vision of a little high school lock.

11 [laughing]

12 COMMISSIONER TURNBULL: I know, I'm dating myself
13 here, okay. I guess my first feeling was when I saw the gate,
14 I thought, are you people afraid of the neighborhood or what?
15 It just sounded like you guys were like isolating yourself, but
16 you're saying it's the other way, the neighbors were concerned
17 and wanted the gate, so.

18 MS. MOLDENHAUER: Yes, it stemmed from conversations
19 with the community. We did not have the gate on our original
20 application.

21 COMMISSIONER TURNBULL: I didn't see that, and when I
22 saw that, I thought, well, what's wrong with you people? Don't
23 you want to be part of the neighborhood, you know? So, I was a
24 little bit concerned that you were like, we're going to be

1 isolated. So, I could see the neighbors' concern. It is an
2 area that has never been - it's been open, it's been wide open,
3 so they're worried about it. But, I think once homes are
4 there, you're not going to see that, but that's just me.

5 Yeah, the gates going in and out for your car, I
6 mean, do you have a little clicker that would open - I mean,
7 that's an expensive little door you've got there, then.

8 MR. PICHON: Yeah, that would be similar to a garage
9 door or, yeah, it will be on...

10 COMMISSIONER TURNBULL: When I was in college, I
11 rented a garage, and it was an old wooden garage door, and you
12 had to get out, pull it, and open it up. So, you're going to
13 have little clickers so these people can just click it and go
14 out, okay.

15 MR. PICHON: Correct.

16 CHAIRPERSON HEATH: Okay, all right, okay.

17 MS. MOLDENHAUER: If there are no other questions,
18 then we'll rest on the record and answer any questions after OP
19 and anybody else presents.

20 CHAIRPERSON HEATH: Okay, thank you. Ms. Elliott.

21 MS. ELLIOTT: Good afternoon, Madam Chair, again, and
22 the Board. For the record, I am Brandice Elliott with the
23 Office of Planning. We really appreciate the Applicant's
24 efforts to revise the application in response to some of the

1 neighbor's concerns and the ANC's concerns. We have reversed
2 our recommendation, so instead of one of denial or nonsupport,
3 we are now able to recommend approval.

4 We kind of justified this through some calculations.
5 This project is a little bit different. It asked to dedicate
6 right-of-way, and in that right-of-way, about 150 square feet
7 or maybe a little bit more was actually lost to each property.
8 And then with the addition of the tot lot, when we averaged
9 that out, that adds about another 100 square feet of land area
10 to each lot. The issue that we've had from the very beginning,
11 it was density. We thought there were far too many units for
12 the size of the property, and in our original report, we
13 suggested that the Applicant reduce the number of lots to 27,
14 so they would lose four lots, and in doing so, they would gain
15 larger side yards and about 200 square feet per lot. With the
16 revisions, when we add up the right-of-way, and the park, we
17 end up with over 200 square feet potentially gained by each
18 lot, even though the lots, they either remain unchanged or
19 slightly larger than what they were originally proposed to be,
20 so this way we actually get more usable space than, you know,
21 the 200 square feet along the side for the tot lot and so we
22 feel more comfortable with this rendition of the plans.

23 We are still concerned about the gates and the fact
24 that the tot lot will be locked, and we understand that it was

1 through conversations with the neighbors and the ANC that that
2 came about, but we hope that they will continue having
3 conversations, and that those will actually become open spaces
4 in time. I realize it isn't part of the relief here, but it is
5 a concern that we have. So, I'm happy to answer any questions
6 you have.

7 VICE CHAIR HILL: I'm just curious, what's your
8 concern about the gate and enclosing the lot - I mean the tot
9 lot.

10 MS. ELLIOTT: Well, the tot lot, you know, the issue
11 is with access. If it's intended to be an open space, its, you
12 know, for the neighborhood to enjoy. I think it was anticipate
13 that it wouldn't just be the residents of this new development,
14 but also the people that already live there, and I think that
15 the idea of, you know, making it access by a key code or key or
16 what have you, it kind of limits, you know, the usability of
17 that open space.

18 VICE CHAIR HILL: Okay, and the other gate the same
19 thing?

20 MS. ELLIOTT: Yeah, I think with the other gate,
21 yeah, you're right, we do have some social issues with the
22 gate.

23 VICE CHAIR HILL: So, OP would rather there are no
24 fences.

1 MS. ELLIOTT: We would rather there be no fences. WE
2 would like it all to be open. DDOT also does have some
3 concerns about the circulation, how circulation would be
4 impacted with the gate, but the Applicant wants to continue to
5 work with DDOT to make sure that there aren't any issues with
6 that.

7 COMMISSIONER TURNBULL: Mowing the lawn would be a
8 pain around these fences. Of course, I'm just a practical guy
9 out there doing stuff around the house, but, hopefully in time
10 we can resolve all of this so that maybe some of these things
11 will go away. I have a feeling that the gate is going to be
12 open. A lot of people are just going to leave it open unless
13 it's got some kind of a hinge that automatically closes it that
14 it doesn't stay open, but, I mean, I can see the concerns on
15 both sides. I mean, it's hard to weigh it, and hopefully in
16 time a lot of this stuff will go away.

17 CHAIRPERSON HEATH: Thank you, Ms. Elliott. Does the
18 Applicant have any questions of Office of Planning?

19 MS. MOLDENHAUER: No questions of Office of Planning.

20 CHAIRPERSON HEATH: We do have the Commissioner from
21 the ANC here from the single-member District. We will allow
22 you some time to speak.

23 MS. DOUGLASS: Yes, that's me. Dorothy Douglass
24 again. I just wanted to say that the reason that the community

1 came to the understanding of enclosing it because of the
2 safety. You know, little kids have a tendency to run outside
3 of the gates, and we were worrying about the safety of the
4 little ones getting in the way. So, that was really protecting
5 them, because they will run outside of the gate and the yard
6 and get hurt because of the traffic. So, we wanted to make
7 sure, and I know with safety previously, that you can't unlock
8 the gate and make sure that you leave the gate open for a
9 certain period of time, and that way, you can lock it, and that
10 way you have certain hours, like from 9-3 that the gate will be
11 open, and then close it back. So, you are looking at a safety
12 issue for the kids to protect it. So, that is the reason why
13 the community came to the conclusion in reference to that, and
14 that's where we met. Not that we are trying to lock anybody
15 out. We just want to make sure that everything was safe, and
16 that was the issue.

17 CHAIRPERSON HEATH: That makes sense. Okay, all
18 right.

19 MS. DOUGLAS: I'm just saying.

20 CHAIRPERSON HEATH: We understand.

21 MS. DOUGLAS: Yeah, you understand.

22 CHAIRPERSON HEATH: It's good to hear your position
23 on it. We understand what the source of this request is.

24 MS. DOUGLASS: Yes, yes. I just wanted to - I had a

1 letter I wanted to leave, and it was kind of late. I'm _____
2 just like she is. We kind of _____ around, but I did have
3 a concern, and I will read my letter of support for the
4 project. But, I did want to hope that we would try to have the
5 information earlier to discuss any changes that you all have so
6 we can review I in a timely manner to look over, I would
7 appreciate that from Mr. _____ and Mr. Kurt, because I know
8 things do change, and we would like to look at the changes too,
9 so that would help us to get along and to be clear on that.
10 But, I will just go through...

11 CHAIRPERSON HEATH: Are you referring - one question
12 before you start - are you referring to any changes that might
13 result from today's hearing, or are you talking about the
14 changes that they've already made?

15 MS. DOUGLASS: No, about today's hearing because I
16 understand they've got some new changes that I wasn't aware of,
17 and I would appreciate that. I know we are still working
18 together and in that effort, but this, all due respect, so I
19 can know what is going on too, to express my concern and share
20 with the community what's going on so we can all be on the same
21 accord. I would appreciate that. That's all.

22 CHAIRPERSON HEATH: Okay, go ahead.

23 MS. DOUGLASS: Oh, okay. I just want to say, Dear
24 Miss Chairman Heath. Congratulations to your position that on

1 behalf of ANC-7D residents and myself, our Commissioner
2 _____ presenting a brief analysis of the reason for
3 supporting the Applicant. Of course, by the law, the Applicant
4 of Valor Minnesota Avenue and the rear yard requirement under §
5 404 and the side yard setback requirement under construction
6 was 31 townhouses, which is 30 now, and also the lot is Square
7 5097, Lot 846. On Saturday, July 18, 2015, the developer
8 presented data in support of this project at a public community
9 meeting for the residents in a single-member District. This
10 meeting was held at the Fruit of the Spirit Temple at 4311
11 Sheriff Road N.E. The meeting consisted of ANC-7D Chairman,
12 Commissioner Member Justin, and also Mohammed, which is the
13 Chairman, and Janice Hazum, ANC, and myself. [sic] ANC-7D05
14 was in support of this project and raised a question that
15 allowed that the residents and the Commissioner to rest assured
16 that this project would be beneficial to the community. There
17 were other prominent leaders that were present, Pastor Bennett,
18 Dr. William Bennett, and the _____, and also the Fruit of
19 the Spirit, Antionne Holmes, who is the Chairman of ANC-7D03
20 and David Smith, the President _____ Association. The
21 residents and the surrounding community affected by the project
22 stand in agreement with supporting the particular project.
23 These individuals _____ will be enhancing the standard of
24 living in the community. Listed below are some of the findings

1 addressed at this meeting. We agreed to submit the
2 environmental assessment report for the phases 1 and 2, and I
3 think that is what Mr. Bower [?] said he is going to be working
4 on. He did work on that project, making sure that everything
5 was together, so we are waiting on the outcome of that. He
6 also assured that the residents of Ward 7 or ANC-7D03 received
7 the first preference of the work force program, in other words,
8 that they allow that people living in Ward 7 and my single-
9 member District have an opportunity to work on the project
10 _____, and also that they will provide feedback to the
11 residents.

12 Also, we talked about the sound wall during this town
13 meeting and also how, I think, Mr. Jordan at the time that was
14 him, he said 16 or 18 feet. So, those things were already
15 discussed and also the assurance for the homeowners, so that
16 assurance had already been talked about.

17 So, I just wanted to make you aware that some of
18 these things have already been elaborated on. So, to go
19 further with this, I won't take so much of your time, is that I
20 wanted to say that we are - the ANC Commission is fully in
21 support of this, and that we support the overall project and
22 the Zoning relief being required, although I wanted to say that
23 this site was - had some difficulty in the history requiring
24 that the BZA Board, if you can, the environment impact

1 statement, and that you looking at that and will see if that is
2 needed to make sure that we protect the project in regard to
3 that. I would appreciate that. And, also that any decision
4 pertaining to change in planning that community engagements
5 result in impact to this project be notified in a timely
6 manner, and that we all serve the best interests of this
7 community. So, I missed quite a lot, but I just wanted to make
8 sure that I am totally in support of this project. They worked
9 real hard and diligently to make sure that this goes forward.
10 Thank you so much.

11 Was there anything else? I know ANC-7D did have
12 something to say, but it's kind of repeating themselves,
13 because it's the same thing I said on the 16th was what they
14 are saying too, so it was not too much difference.

15 CHAIRPERSON HEATH: We appreciate you taking the time
16 to come down and present your statement. I don't have any
17 questions for you. Does the Applicant?

18 MS. MOLDENHAUER: We have no questions. Thank you
19 very much. I have enjoyed working with you.

20 MS. DOUGLASS: We will continue to work. This is the
21 beginning, and we want to go on. But, I did want to mention
22 something about Pastor Bennett, but I guess that's another
23 thing that I did have concerns that they want to build two or
24 three houses or something, but I don't think - that's separate

1 from the setback, so that shouldn't be involved with what we're
2 trying to do, so that's a separate thing for Pastor Bennett.
3 So, I just want to be clear on that. Thank you again.

4 CHAIRPERSON HEATH: Thank you. So, we do have an
5 updated submission from the Applicant indicating that the ANC
6 voted in support. Thank you for your testimony today. Let's
7 see, is there anyone here from DDOT wishing to speak on this
8 application? We do have a letter of no objection from DDOT
9 still. Board, any other question of the Applicant? Okay.
10 Then, before we close, anyone here wishing to speak in support?
11 Anyone in support? Anyone in opposition? Any opposition?
12 Okay. Then, we will now close and allow you to make any
13 closing statement.

14 MS. MOLDENHAUER: Thank you so much. I think that we
15 have obviously worked extensively with Office of Planning and
16 with the ANC, and we're very happy where we are today and able
17 to present this case as it stands. We believe we satisfied the
18 standard. We believe that some of the conditions that the ANC
19 has identified are issues that are outside the scope of the
20 BZA, and so we would ask that the BZA would allow us to work
21 one-on-one with the ANC in a continued dialogue, which is
22 something that the Applicant has agreed to, and we will
23 continue to do throughout the process and throughout the
24 construction, but that it not inhibit any conditions on the

1 Order, and that we would request a Summary Order. Thank you.

2 CHAIRPERSON HEATH: Thank you. Board, are we ready
3 to deliberate? Okay, all right.

4 MS. DOUGLASS: I just want to say something quickly.
5 I would just like for Pastor Bennett and the church to reach
6 out to the community and not a one-thing show, that he needs to
7 come together, which I do have a letter of reference to that,
8 but I'm just going to put it in the mail to Dr. Bennett,
9 because it's a separate entity, but I think that it's important
10 that he works together with the community and also with the ANC
11 to make sure that we're doing the right thing in regard to
12 working on volunteer, anything engagement, programs that are
13 available to serve the community and receiving turkeys, or
14 whatever it is, and getting young people involved. So, I just
15 want to make sure there is a clear understanding that they need
16 to know that we are working together as a team, and you still
17 need to come through the ANC, Commissioners, so we call can be
18 on the same page with this.

19 CHAIRPERSON HEATH: Sure, thank you. All right. We
20 would also encourage the Applicant to continue to work with the
21 community. It looks like you've done a great job of that to
22 this point since you were here the last time, and we certainly
23 appreciate the work that you've done with Office of Planning
24 and with the community. I have a better understanding of why

1 the changes that you made were made as a result of your
2 presentation today, and I wasn't, as Commissioner Turnbull
3 spoke, I also wasn't completely comfortable with the gate
4 because I didn't understand the reason behind it, but I
5 appreciate your testimony today and the comments back about it.

6 It completely makes sense, and I understand its use as a
7 protective mechanism for the children rather than something
8 that is acting to keep others necessarily out and shutting this
9 development off from the rest of the surrounding community.

10 So, I am of the opinion that I'm ready to approve
11 this application. Any other?

12 VICE CHAIR HILL: I second.

13 CHAIRPERSON HEATH: Well, that wasn't officially a
14 motion, but if you...

15 COMMISSIONER TURNBULL: That's one of the quickest
16 I've heard.

17 [laughing]

18 CHAIRPERSON HEATH: Okay, then I will move that we
19 approve this application for variance from lot area, lot
20 occupancy, rear yard, side yard, and the special exception of
21 the minimum lot dimensions as requested from this Applicant.

22 VICE CHAIR HILL: I second.

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

1 [chorus of ayes]

2 CHAIRPERSON HEATH: Anyone opposed? The motion
3 carries.

4 MR. MOY: Staff would record the vote as 3-0-2 on the
5 motion of Chairperson Heath to approve the application for the
6 relief requested and it is for 30 dwelling units as it was
7 amended, seconding the motion Vice Chairperson Hill, also in
8 support Mr. Turnbull, Member not present, Board seat vacant,
9 and I think that's it, 3-0.

10 CHAIRPERSON HEATH: Summary Order, but before we
11 conclude, I just wanted to say for the record that I was here
12 for one of the presentations that you made, but not all, but I
13 did review the record thoroughly, so I understood what happened
14 when I wasn't present.

15 VICE CHAIR HILL: I would also like to say for the
16 record that I've reviewed, seen, watched everything, and I'm
17 prepared to work through this, or was prepared to work through
18 this.

19 CHAIRPERSON HEATH: Okay, all right, thank you.

20 [Speaking off mic.]

21

22

1 CHAIRPERSON HEATH: Mr. Moy, we'll call back Case
2 #19070.

3 MR. MOY: Yes, okay, reconvene Application No. 19070
4 of David and Sheila Hoxie.

5 CHAIRPERSON HEATH: All right, so it looks like you
6 all did some quick work. You had all the right people here, so
7 you were sort of lucky in that regard. Ms. Brown-Roberts, one
8 question we still have, this is gonna be operating as an Inn,
9 correct?

10 MS. BROWN-ROBERTS: That's correct.

11 CHAIRPERSON HEATH: And, can you clarify what the
12 rules are regarding length of stay for an Inn?

13 MS. BROWN-ROBERTS: Can I just read the portion of
14 the code?

15 CHAIRPERSON HEATH: Sure.

16 MS. BROWN-ROBERTS: It says "a building or part of a
17 building in which habitable rooms or suites are reserved
18 primarily for transient guests who rent rooms or suites on a
19 daily basis." I spoke to the Zoning Administrator, and he said
20 that it goes up to 30 days.

21 CHAIRPERSON HEATH: Okay.

22 COMMISSIONER TURNBULL: But, is alcohol typically
23 covered in an Inn?

24 MS. BROWN-ROBERTS: I'm sorry, this is the first time

1 that I'm doing a review for an Inn, so I sort of don't have
2 that background, I don't know.

3 COMMISSIONER TURNBULL: Okay.

4 MS. BROWN-ROBERTS: I haven't heard of it before
5 either, so I don't know.

6 COMMISSIONER TURNBULL: I'm willing to go along with
7 this, but I think you better - we better talk to Ms.
8 Steingasser. The Zoning Administrator - I mean, is this a Type
9 1 Inn or Type 2? I mean, it sounds like this could be a little
10 complicated from the standpoint - I mean, I like the conditions
11 on this. I could go along with this. But, my version of an
12 Inn - if I go to an Inn, and I'm going to be there, and
13 somewhere in there, he's got a little bar that if I got down -
14 I mean, I'm thinking of a bigger kind of an Inn where you can
15 have alcohol and you're almost like a - it's not quite a hotel
16 or a motel, but it's a fuzzy kind of place.

17 MS. BROWN-ROBERTS: Well, and this is just
18 background, from the - from how the layout of the building that
19 we were shown, I didn't see anything there, you know, that
20 would seem to be say there would be a bar in the area, so, I
21 mean, you know.

22 COMMISSIONER TURNBULL: Yea, I think what this
23 clearly calls out what you can do in this - you know, we
24 approve this and go ahead - this clearly calls out the limited

1 extent of what alcohol can be served. No bar, nothing set up
2 standard that you could serve guests on a daily basis. I think
3 we should just talk to Ms. Steingasser about how we maybe tweak
4 this to cover ourselves in the future.

5 MS. BROWN-ROBERTS: Okay.

6 COMMISSIONER TURNBULL: So that we don't go through
7 this again, I mean we're not going to be able to do this.

8 MS. BROWN-ROBERTS: You mean the definition?

9 COMMISSIONER TURNBULL: The definition, yeah.

10 MS. BROWN-ROBERTS: The definition, okay, okay.

11 COMMISSIONER TURNBULL: Because we're going to be
12 taking Final Action in January on it, so I'm not sure how we do
13 this, but I think I would just talk to her about it.

14 MS. BROWN-ROBERTS: Okay.

15 CHAIRPERSON HEATH: All right, so Board, are we ready
16 to deliberate on this given the new conditions? You never
17 know.

18 COMMISSIONER TURNBULL: Well, you know, this is - I
19 can get two bottles of champagne, two bottles of wine, and a 6-
20 pack of beer per day.

21 VICE CHAIR HILL: Yeah, it's all - you're a happy
22 person.

23 COMMISSIONER TURNBULL: I'm happy, yeah.

24 [laughing]

1 CHAIRPERSON HEATH: All right, so, I mean, I
2 appreciate the quick work you did around these conditions.
3 They certainly helped to put some parameters around what we're
4 approving, because without these, it was just very confusing as
5 to what really was - what we really were saying we approved
6 regarding specifically the alcohol.

7 COMMISSIONER TURNBILL: Well, yeah, and I would
8 agree. I think it's clear that it has to be ordered at the
9 time of reservation - that's the key.

10 CHAIRPERSON HEATH: Um-hum, right. There is still
11 some question around the definition of Inn, but based on what
12 we've heard today, I am inclined to go forward with this and to
13 support the application with the conditions. So, I will make a
14 motion then that we approve the application for the use
15 variance for an Inn with four rooms - you have five currently,
16 but the application was asking for four?

17 MR. HOXIE: It was a typographical error.

18 CHAIRPERSON HEATH: Okay, so then, let me clarify the
19 motion is for the use variance for an Inn with five rooms.

20 MR. HOXIE: Yes, correct.

21 CHAIRPERSON HEATH: A maximum of five rooms with the
22 following conditions: that alcoholic beverages shall only be
23 ordered at the time of reservation, alcohol beverages ordered
24 at the time of reservation shall be limited to a maximum of two

1 bottles of champagne, two bottles of wine, and a 6-pack of beer
2 per day, beverages shall be delivered daily, if required, and
3 alcoholic beverages shall be consumed only on-site, and under
4 the definition that Inns are for transient visitors for up to
5 30 days.

6 MR. HOXIE: There is one small correction. I think
7 you said a 6-pack of beer per day, but it should be per room,
8 per day. Just for your information.

9 CHAIRPERSON HEATH: Okay, so correction to condition
10 #2, it ends with two bottles of champagne, two bottles of wine,
11 and a 6-pack of beer per room, per day.

12 MR. HOXIE: Right.

13 CHAIRPERSON HEATH: And, that's the maximum, and that
14 those beverages shall be delivered daily, if required. Okay.

15 MR. HOXIE: Right.

16 CHAIRPERSON HEATH: All right. Anybody jumping to
17 second?

18 VICE CHAIR HILL: I second the motion.

19 CHAIRPERSON HEATH: Okay, all right. Any further
20 discussion? All those in favor?

21 [chorus of ayes]

22 CHAIRPERSON HEATH: Any opposition? The motion
23 carries. Thank you.

24 MR. MOY: Staff will record the vote as 3-0-2, this

1 on the motion of Chairperson Heath to approve the use variance
2 under § 330 for five rooms per the three conditions as cited by
3 the chair, seconding motion Vice Chairperson Hill, also in
4 support Mr. Turnbull, Member not present, Board seat vacant,
5 motion carries.

6 MR. HOXIE: Thank you very much.

7 CHAIRPERSON HEATH: Summary Order.

8 [Speaking off mic.]

9 MR. MOY: I believe the board would like to call the
10 Appellants to Application No. 19081. This is the appeal of
11 ANC-1C et al, pursuant to 11 DCMR §§ 3100 and 3101, from the
12 May 13, 2015 decision by the Zoning Administrator, DCRA, to
13 issue Building Permit No. B1412288, to allow the conversion of
14 a one-family dwelling to a four-unit apartment house in the R-
15 5-B District at premises 1828 Ontario Place N.W., Square 2583,
16 Lot 438.

17 [Speaking off mic.]

18 COMMISSIONER TURNBULL: I would like to, before we
19 start, just thank the Office of Zoning Administrator for his
20 help on the last case.

21 CHAIRPERSON HEATH: Good afternoon, if you could each
22 introduce yourselves.

23 ALAN GAMBRELL: Alan Gambrell, ANC-1C.

24 TOBY OHOWOFOYEKU: Toby Ohowofoyeku, ____ Heights

1 Group and resident of Ontario Place.

2 STACIE DESAI: Stacie Desai, homeowner at 1830
3 Ontario Place.

4 MIKE RAFFERTY: Mike Rafferty, as Appellant and
5 representative of the ANC-1C.

6 CHRIS BOGDAN: Chris Bogdan, owner of the property in
7 question.

8 SAMANTHA MAZO: Samantha Mazo from the Law Firm of
9 Griffin, Murphy, Moldenhauer, & Wiggins. We represent the
10 property owner.

11 MATTHEW LEGRANT: Good afternoon, Matthew LeGrant,
12 Zoning Administrator, DCRA.

13 MAXIMILIAN TONDRO: Good afternoon, Maximilian Tondro
14 from the General Counsel's Office representing the Zoning
15 Administrator.

16 CHAIRPERSON HEATH: Okay.

17 MR. RAFFERTY: I had a preliminary matter that I was
18 hoping to bring your attention to.

19 CHAIRPERSON HEATH: Sure, if you would give me one
20 moment.

21 MR. RAFFERTY: Sure, yep.

22 CHAIRPERSON HEATH: So, we called you up now because
23 we wanted to address what we thought was a preliminary matter.
24 We understood that there was potentially a request for

1 postponement because of information that was submitted to the
2 record just recently. There is a 14-day deadline for
3 Appellants, and, unfortunately, at this time, there is no other
4 deadline for other parties to a case, but we do understand that
5 you would appreciate time to be able to review documents after
6 they are submitted, so, is that a formal request?

7 MR. RAFFERTY: Yes, that was the matter I wanted to
8 bring up. The Building Permit in question that is being
9 appealed, apparently was amended on Friday the 13th, just this
10 last Friday. I was out of the country until Sunday, so I found
11 out about it on Sunday. But, even if I had found out about it
12 on Friday, I wouldn't have had the opportunity to pull all the
13 information and review.

14 CHAIRPERSON HEATH: Okay.

15 MR. RAFFERTY: It basically renders - it seems that
16 based upon the amendment, they thought there was some merit to
17 the Appeal itself, because it addresses some of the issues, but
18 we are of the opinion that there are still issues there to be
19 addressed, but we're just not able to actually present on them
20 today given the short time period.

21 MS. MAZO: Okay, on behalf of the Applicant as
22 threshold matter, quite frankly, this amendment does exactly
23 what the Applicant has requested that the property owner do,
24 which is to conform that existing parking space to the existing

1 measurements on the ground. So, therefore, we think that there
2 should be no problem in going forward today.

3 Also, quite frankly, we have all been sitting here
4 since 9:30 in the morning. We'd be more than happy to talk to
5 the Applicant. If the Applicant was interested in trying to
6 postpone this hearing from today, we could have easily have had
7 that conversation in the intervening six hours in which we've
8 been sitting in this room.

9 MR. RAFFERTY: So, I'll apologize about that right
10 now. I'm not familiar with the process here. I know the first
11 time I asked for a postponement, it was because I needed it,
12 not because of something that they had done, which I think
13 right now, it's because of something that they've done at a
14 very late date. They were trying to oppose any postponement at
15 the outset. I did deal with Cliff Moy yesterday, hoping that
16 this might be dealt with as a preliminary matter, but he came
17 back to me and said, "We're actually going to put it on the
18 normal agenda," so I certainly didn't question that
19 determination. So, I certainly apologize. I also sat here for
20 six hours and flew here from San Francisco, actually, to attend
21 this hearing, so I definitely appreciate that frustration, but
22 I'm certainly not trying to cause any delay.

23 CHAIRPERSON HEATH: Sure.

24 MS. MAZO: Just to be frank, from the property

1 owner's perspective, we would really ask that the Board go
2 forward and hear this matter today so that it can be resolved
3 and so to the benefit of both the property owner and for the
4 surrounding neighbors, so that they can have certainty as to
5 what is going to be constructed there.

6 CHAIRPERSON HEATH: Is it your position that the
7 permit revisions that were just made address the Appellant's
8 argument?

9 MS. MAZO: Yes, it is.

10 CHAIRPERSON HEATH: Okay. Mr. Tondro, do you have a
11 position on this?

12 MR. TONDRO: Yes. The DCRA would agree with the
13 permit holder's attorney on this issue that we believe that it
14 was the Zoning Administrator who requested upon reviewing the
15 Appellant's pre-hearing statement, recognized that there was an
16 allegation of misinterpretation, and asked for additional
17 evidence from the permit holder, and that was the basis of the
18 revised permit. So, DCRA's standpoint at this point is that
19 the issues that we raised have been addressed, and therefore
20 delay won't really serve anybody's interest in the sense that
21 there will be the same issue brought back all over again. This
22 is not a new issue that was not addressed. This was a specific
23 response to an assertion about how long the existing garage was
24 before.

1 MS. MAZO: And also, on that point, in light of this
2 revised Building Permit that has now been issued by DCRA, we
3 believe that the matter at issue here is a factual one, and it
4 is, indeed, what is the length of the existing parking
5 structure based on measurements of the walls of that structure,
6 and it – the burden of proof on an Appeal is, indeed, on the
7 Appellants, however, the property owner is prepared to go
8 forward with substantial documentation of the evidence that was
9 provided to DCRA regarding the length of this existing parking
10 space.

11 CHAIRPERSON HEATH: Okay.

12 MR. RAFFERTY: Can I speak now? Would that be okay?
13 To reply to their statements?

14 CHAIRPERSON HEATH: Sure.

15 MR. RAFFERTY: Because, I do agree that the revised
16 permit actually does address the threshold matter that was
17 being argued in my – in our Appeal – in our pre-hearing
18 statement; however, we believe that it creates other issues
19 that will need to be explained including, for example, like I
20 said, we haven't had the opportunity to really fully vet this,
21 but what this revised permit assumes is that the property owner
22 has the ability to tear down party walls that are jointly
23 owned, we believe, by Stacie and myself. I think that
24 presumption is not true, and we're arguing that. That is a

1 Building Code issue that would result in a Zoning issue if it
2 were determined in favor of our opinion. That is just the one
3 thing that jumps out at us from having just been able to review
4 a couple of sentences, and not getting any of the supporting
5 documentation. So, we would love to have the opportunity to do
6 a full review. We think there are definitely issues at hand.

7 COMMISSIONER TURNBULL: We can't review a Building
8 Code issue.

9 MR. RAFFERTY: I know you can't, but if it is a
10 Building Code...

11 COMMISSIONER TURNBULL: We need just to do a strict
12 Zoning review of the issues at hand.

13 MR. RAFFERTY: But, I feel that - I'm just throwing
14 that out as an example of the one issue that jumped out without
15 being able to have a full review. I think if that Building
16 Code issue is resolved in a certain way, it will create the
17 same issue again that they are not going to be able to have a
18 permit issued on the basis that it was issued just this last
19 Friday. Does that make sense?

20 COMMISSIONER TURNBULL: No.

21 MR. RAFFERTY: The only way mathematically that they
22 can do what they're trying to do with this revised permit is if
23 they tear down the party walls, actually to the property - the
24 exterior property. Right now, there is 15.68 feet. They need

1 16 feet to do what they're wanting to do. So, the presumption
2 is...

3 COMMISSIONER TURNBULL: Let's have the owners talk.

4 MS. MAZO: Sure, to be clear, based on my
5 understanding with the architect and with us is the project
6 designer/architect, Casey Price, who, I believe can address
7 this issue, but no party walls as they are defined in the
8 Zoning Ordinance need to be torn down, and what will most
9 likely have to happen is there will have to be some shaving of
10 the existing bricks on those walls, but the party walls
11 themselves will still continue to stand. There will be no
12 structural concerns to either the adjacent parking structures -
13 the adjacent attached garages.

14 But, again, this, from my understanding, is not a
15 Zoning issue, and also is not one that is specifically part of
16 this Appeal at this time, and for that reason alone, we don't
17 think it's relevant. We'll be happy to address whatever you
18 would like us to address or whatever the Zoning Administrator
19 would like us to address, but from a legal perspective, it is
20 not directly relevant to this issue on Appeal.

21 MR. RAFFERTY: So, what I would ask is if there is
22 now a new Building Permit that is issued, if we could reserve
23 the right to appeal that within the normal 60-day process, then
24 that would be sufficient, I think, in addressing our issues,

1 but I would want that to be expressed. I thought it would make
2 more sense, since this new permit is being issued as an
3 amendment of an existing permit, that was the basis of our
4 Appeal, I thought it makes sense to make it part of this
5 Appeal, but as long as we have the ability to do that, I think
6 that would work as well.

7 MS. MAZO: We would like to just make clear on the
8 record that the Zoning issues in regard to the new permit have
9 not changed, and so accordingly, there would be - for the same
10 reason that there is no Zoning concern with the prior permit,
11 there is most certainly no Zoning concern with this permit, and
12 that could - will continue to prolong this process.

13 CHAIRPERSON HEATH: If I may, so, can I just ask the
14 Appellant if - what you are saying you would like to do at this
15 point or if you are agreeable to rescinding your Appeal that is
16 before us today, take the time to review the new permit, and
17 what's included in it, and then within the 60 days, if you deem
18 it necessary, file a new Appeal based on the information in
19 that permit.

20 ALAN GAMBRELL: May I? Alan Gambrell, ANC-1C, again,
21 just a clarification, the proposition you just laid out, I
22 presume that means this case would not go forward today, is
23 that correct?

24 CHAIRPERSON HEATH: Well, it wouldn't go forward

1 today, but it also seems that you're already saying that it's
2 difficult for you to go forward today with your current Appeal
3 based on the fact that you haven't had a chance to review the
4 new permit, and you don't know if your Appeal is still
5 legitimate.

6 ALAN GAMBRELL: Yes, yes, precisely, just because, I
7 mean, the question being, why can't we move forward today.
8 Well, it's a simple matter of justice. I mean, there's no way
9 the Appellants can move forward and have a coherent argument
10 without the information beforehand, and I understand the rules
11 apply in terms of 14 days, but we have to have a certain amount
12 of justice as well, and it is certainly within your control to
13 make that happen. It's pretty necessary.

14 COMMISSIONER TURNBULL: There is also some justice
15 for the owner too, I think. I think you can't keep adding on
16 and multiplying the same from one to another, so I think what
17 the Chair is saying is that being the case, and you want to
18 look at the new permit, we need to then rescind this Appeal,
19 and then you would have to go back and file another Appeal
20 based upon the other permit.

21 MR. RAFFERTY: As long as that right would be clear
22 that it wasn't rescinding any right for this amended permit, I
23 would not have a problem with that at all.

24 CHAIRPERSON HEATH: You have the right - you

1 absolutely have the right to appeal this new permit, again,
2 should you deem it necessary once you have the opportunity to
3 review it.

4 ALAN GAMBRELL: And, clarification from the Board, in
5 terms of the amended permit and what is appealable, would the
6 parameters of the amended permit include the permit that is
7 under discussion today, because there is always the possibility
8 that the amended permit could be framed in such a way that it
9 would remove from consideration key issues that are currently
10 under discussion with this case.

11 MR. RAFFERTY: Right.

12 Mr. GAMBRELL: We would want to avoid being basically
13 hemmed in to not make a full and robust argument.

14 CHAIRPERSON HEATH: Sure, what I would say, and I'll
15 ask for OAG to add to this, but what I would say is that
16 anything that this new permit corrects that was in the old
17 permit, if that is corrected by the new permit, then that
18 renders that issue from the previous issue moot. It is no
19 longer relevant, and so if there is something that wasn't
20 addressed by the second permit, and you still feel that it's an
21 error on the part of the Zoning Administrator, then you can
22 still appeal that.

23 MR. GAMBRELL: It seems like people might be
24 amenable, since we're talking about an amendment to a permit,

1 that, I'm just going to go ahead and throw this out there, that
2 rescinding this case - I don't know if that's the right word I
3 would use, it could be a matter of pretty much getting back to
4 the original point, which was to discuss the case since it is
5 an amendment of another permit. That's where I get
6 uncomfortable in terms of it being a piece of the equation, but
7 if it turns out that it is no the whole equation, I think that
8 creates some problems, again, in having a full and robust
9 discussion of all the issues at hand.

10 MR. OHOWOFOYEKU: May I talk, please?

11 CHAIRPERSON HEATH: Sure, go ahead.

12 MR. OHOWOFOYEKU: Okay, we came here to appeal a
13 permit. Two business days before this permit was due to be
14 appealed, it was changed. So, I am suggesting that we actually
15 grandfather and postpone today's appeal to include all the new
16 information that has been added rather than starting the whole
17 appeal process again, because they didn't start their - they
18 only revised the building permit. Since they revised it and
19 brought it in at the last minute, we should be given the time
20 that allows us to study it and to be able to prepare for it.
21 That means we still keep our Appeal, but it is grandfathered
22 against the new permit. Because, even though, I don't what
23 they've addressed in their changing of the Building Permit,
24 there are lots of errors that we are not in support of, and we

1 would like to be able to present that fully. So, if you
2 address 10% of a problem, you have not addressed the full
3 problem, and so the Appeal should really continue just to
4 postpone to a different date, giving us the time to look at the
5 new Building Permit.

6 CHAIRPERSON HEATH: Okay, one thing that I would like
7 to put on the table for the Board is that we do continue this
8 and give the Appellant time to review the new information. The
9 danger with having them rescind their Appeal, or withdraw their
10 Appeal, is that if there is something that is still relevant to
11 an Appeal from the first permit, they lose that 60-day time,
12 because it is only 60 days from the time that you knew or
13 should have known the information that you're appealing.

14 MS. MAZO: I mean -- on behalf -- our client has now
15 agreed to, or not agreed -- has now -- we've agreed to one
16 postponement and we are now being forced into another.

17 CHAIRPERSON HEATH: There is new information, so...

18 MS. MAZO: Correct, but the new information resolves
19 the only underlying Zoning issue that was raised by the
20 Applicant, and accordingly, based on what I would think that
21 this Appeal should be dismissed, I don't think that is where
22 you're going, but if you do need to continue it, please put on
23 for next week so that we can, you know, essentially end this
24 for our client.

1 CHAIRPERSON HEATH: Sure, one other thing I would
2 like to point out to the Appellants, is that you are one
3 Appellant, and so there should be one representative should we
4 bring this back. And, so, I don't know who you would want to
5 appoint as your representative to speak on behalf of the
6 Appellant.

7 MR. RAFFERTY: That's fair. I think when we
8 initially filed the Appeal, again, this is not something I have
9 ever done before, you know, most of us, have ever done before.
10 I think we listed about 25 people that were willing to join in
11 the Appeal. We thought we were all Appellants, and we came to
12 understand at a later date that the ANC was the only official
13 Appellant, and that's why you might see in the record that I
14 intervened right when I filed my pre-hearing statement as an
15 additional Appellant, so I'm actually here today both as an
16 Appellant, an individual Appellant, and as one of the ANC
17 representatives along with Stacie Desai, who is the other
18 adjoining property owner.

19 CHAIRPERSON HEATH: Okay, but you also are a
20 representative of the ANC.

21 MR. GAMBRELL: I was not going to be speaking the
22 case today, I was just being here in a supportive position. We
23 at ANC-1C want to make it very clear to the neighbors in terms
24 of the Appeals where we are willing to join with them that

1 there be a designee because we are simply not in a position to
2 routinely argue BZA cases.

3 CHAIRPERSON HEATH: Okay, and are you able to be here
4 next week?

5 MR. RAFFERTY: No, that wouldn't give adequate time.
6 I was actually going to ask for the 60 days we would get when
7 there is a new permit issued, but I would certainly ask for as
8 much as you could give within that if you can't give the 60
9 days.

10 MR. TONDRO: Madam Chair, if I may, just a couple of
11 things. To the extent that there is - that the Board decides
12 to do a postponement, I would ask that the issues at hand be
13 limited solely to what was in the Appellant's pre-hearing
14 statement, and any issues raised by the new permit. What I
15 fear is going to happen is this is going to be used as a
16 leverage to open up a whole bunch of new things, new charges
17 and allegations, that I think is a profound prejudice to both
18 the owner, but also to DCRA.

19 I think the issues that are framed by the pre-hearing
20 statement were responded to by the revised permit. I agree
21 with Counsel for the permit holder. I think it is , relatively
22 speaking, simple. We're not talking about something where
23 there is a vast amount of new plans or new changes that are
24 being done, so I would ask that the Board consider that.

1 I also think that with that in mind, this is not a
2 complicated change. This is something that there really should
3 be a short turnaround, and, again, there was already one
4 postponement agreed to in order to allow - on behalf of the
5 Appellants, and, I think having it open up to another 60 days
6 is just - it's not in anybody's interest.

7 MR. RAFFERTY: And, if I could address that, I think
8 the problem, if you were to limit it that way, is there was
9 such - what was focused on in the pre-hearing statement, was a
10 very clear error that was so clear that they even went and
11 addressed it, but we didn't go beyond that, even though we felt
12 we could have, because we felt that we didn't need to. So, I
13 would ask that you not limit it to that, because that would be
14 very prejudicial.

15 MS. MAZO: On that same vein, I would remind the
16 Board that your authority is over Zoning issues and Zoning
17 issues, alone, and that this particular question is in regard
18 to a proposed - an assumed - not an assumed, a proposed error
19 that the Appellants believe - a Zoning error that the
20 Appellants believe the Zoning Administrator made, and therefore
21 it should not be a fishing expedition for - to allow the
22 Appellants to go and dig up the Building Code and any other
23 code that they would like to bring before this Board, because
24 it's not your authority.

1 MR. RAFFERTY: What might be helpful...

2 CHAIRPERSON HEATH: We don't need to be told what our
3 authority is. We understand.

4 MR. RAFFERTY: I would like to maybe take this
5 opportunity to say that I am not once of these anti-development
6 folks that I know that there are a lot of them out there. I'm
7 actually a real estate finance lawyer. I make my living based
8 upon development and real estate deals. I just want it to be
9 done responsibly and done well and within the rules that I
10 believe were set up for a very good reason. I thought that
11 might be helpful.

12 MR. TONDRO: And, Madam Chair...

13 COMMISSIONER TURNBULL: I just want to make one
14 comment. I think that I would agree with Mr. Tondro that the
15 Appeal is a very limited Appeal, and we have to stick to what
16 that is and go no further. It has - it's very confined, it's
17 very defined as to what you're appealing, and that's what it's
18 got to be limited to. We can't open up the scope beyond that.
19 I mean, that's by point of law, that's what we have to do.

20 MR. RAFFERTY: Right, and the scope would be the
21 parking generally, the parking part of this permit application.

22 COMMISSIONER TURNBULL: Well, whatever is listed in
23 the Appeal. Whatever is listed in the Appeal is what we will
24 be discussing, and, again, I would also agree that we can't go

1 60 days. This is - we have to do this in a lot shorter
2 turnaround. That is my feeling. It will have to be in a lot
3 shorter turnaround.

4 [Speaking off mic.]

5 CHAIRPERSON HEATH: All right, so we're going to
6 continue this to December 8th, and what I'll say to the
7 Appellant is that this is being done to give you the time to
8 review what is in the new permit. If you do have issues with
9 what's in there, you're gonna need to amend your Appeal to
10 present those new issues, but they should - as Commissioner
11 Turnbull stated, this isn't just opening up this Appeal to
12 anything you might want to add.

13 MR. RAFFERTY: Understood.

14 CHAIRPERSON HEATH: We need to keep this limited to
15 the area of focus that you've already presented as a part of
16 your current Appeal.

17 MR. RAFFERTY: Right.

18 MS. MAZO: And, I would request that Mr. Moy, I'm
19 sorry.

20 MR. RAFFERTY: Go ahead.

21 MS. MAZO: I would just request that Mr. Moy would
22 make clear the date for the 14 days for any pre-hearing
23 statement on behalf of the Applicant so that we can be sure
24 that we receive the Applicant's revised...

1 MR. RAFFERTY: I would be okay with the 8th, but I
2 would ask that you give a little flexibility on the pre-hearing
3 statement if it is going to be only three weeks from now. That
4 would basically limit me to a week, and that would be
5 difficult. On this side of the house, we have no Counsel.
6 We're doing this all by ourselves on this side. They have the
7 advantage of Counsel, so maybe you could factor that in.

8 And, I also just want to say, what we're really
9 talking about here, the real Appeal is about being able to do
10 four units in a very tiny row house. We've got literally a 16-
11 foot wide row house. I know I believe that there is, you know,
12 an as of right development to do two units in that building,
13 and this has really been about what goes beyond that and what
14 should have come before you in the first place in one of the
15 applications that, you know, I sat through 10 of today. They
16 are trying to do something as of right that I don't think that
17 they have a right to do, so.

18 CHAIRPERSON HEATH: All right.

19 MR. TONDRO: Madam Chair. If I might, just to
20 respond , I don't mean to repeat, but I just want to cite, I
21 think it's § 3112.10, which specifically speaks to what
22 Commissioner Turnbull was stating that the record is
23 effectively closed at 14 days before the hearing for Appellant
24 to make it clear what it is that is being challenged, and this

1 is precisely, I think, what DCRA and the permit holder are
2 concerned about, that the issues supposedly raised are about
3 parking, which is what we dealt with, and now its being used
4 effectively as a Trojan Horse to open up a whole bunch of other
5 issues, and we just ask that that be recognized by the Board
6 going forward. Thank you.

7 CHAIRPERSON HEATH: Sure.

8 MS. MAZO: Also, we do have the Zoning Administrator
9 here now to make clear that this is the exact type of
10 development that is permitted in this Zone by matter-of-right,
11 and so questions that the Appellant may have about whether or
12 not they have a belief about whether or not this type of
13 development is permitted or not permitted, are not really
14 relevant to this matter, because we have the Zoning
15 Administrator here to make those determinations.

16 CHAIRPERSON HEATH: We're gonna continue this to
17 December 8th.

18 MR. OHOWOFOYEKU: Can we also list the issue of four
19 units - that is very, very vital to those of us who have homes.
20 That is one of the main...

21 CHAIRPERSON HEATH: That was not the subject of your
22 Appeal.

23 MR. OHOWOFOYEKU: It is.

24 MR. RAFFERTY: It was the basis of the Appeal,

1 whether there was the ability to do four units.

2 CHAIRPERSON HEATH: As long as we stick to the basis
3 of your Appeal. You can review this new permit, see if it
4 addresses your issues. If it doesn't, then make that clear.

5 MR. RAFFERTY: Just to clarify that, because my
6 initial - I assume you mean the initial Appeal.

7 CHAIRPERSON HEATH: Yes, the initial Appeal.

8 MR. RAFFERTY: The pre-hearing statement was a lot
9 more targeted, and that is kind of what they're talking about,
10 is they addressed, as I said before, what I thought was a very
11 clear violation of a threshold issue, so that is what I focused
12 on in my pre-hearing statement, but the Appeal itself was a
13 more general statement. So, that is what I'm going to focus
14 on.

15 MR. TONDRO: Madam Chair, if I might respond to that,
16 because I think this is a good, really vital issue here. The
17 purpose of the record being open and closing at 14 days out is
18 that that is for all evidence related to it. If they have
19 asserted, as has happened before, that the entire Zoning Code
20 is open without making any allegations, I mean, I suppose we
21 could be in a position where we then end up starting to say
22 that we have to file a motion to dismiss for failure to state a
23 claim, but I think we're really in a position where we have to
24 be very, very careful going down here. The purpose of the pre-

1 hearing statement and of the record is that is what it is
2 supposed to be restricted to so that we at DCRA as well as the
3 permit holder can respond to those issues.

4 To then walk into a hearing and be effectively
5 ambushed by new issues that we can't respond to, is not what is
6 allowed under the law, nor is it necessarily fair. I just
7 wanted to bring that up.

8 CHAIRPERSON HEATH: Sure, okay, thank you. All
9 right, so 14 days.

10 MR. MOY: Madam Chair, in terms of time line, this is
11 very tight depending on what the Board wants to do, but 14 days
12 from today would be December 1st. Of course, 7 days after
13 that, we're at December 8th, and we haven't, unless I missed
14 it, addressed whether or not you wanted any responses to the
15 filing from the Appellant, so there are those issues. And,
16 then, the last thing I have for the Board is as far as I
17 recall, you haven't addressed the intervenor request, unless
18 you want to hold that in abeyance until the next time we meet.
19 Okay?

20 CHAIRPERSON HEATH: We'll hold that in abeyance. The
21 next date we had was December 22nd.

22 MR. MOY: That's correct.

23 CHAIRPERSON HEATH: Which, I know, that's the winter
24 for you.

1 MR. OHOWOFOYEKU: I'm in New York.

2 CHAIRPERSON HEATH: So, if we move this to December
3 22nd, then it gives - you would still have 14 days prior to -
4 the 14-day roll would still be in effect.

5 MR. MOY: The 14 days, to say 14 days from today,
6 would be December 1st, or if you want to slide that to November
7 [sic] 8th, but I would think it would be reasonable...

8 MR. RAFFERTY: I thought it was 14 days before the
9 hearing, right? Is that the rule?

10 CHAIRPERSON HEATH: Right, 14 days before.

11 MR. MOY: Okay, that would be December 8th, and then
12 a reasonable time for responses, if the Board wants any, would
13 be December 15th.

14 CHAIRPERSON HEATH: Okay. That works, yeah, okay.
15 So, December 22nd. Your filing, Mr. Moy, again.

16 MR. RAFFERTY: December 8th, right?

17 MR. MOY: Right, correct, and then responses, if any
18 responses, then would be December 15th.

19 MR. TONDRO: Madam Char, if I may just ask that for
20 the Appellant's pre-hearing statement that would be due on the
21 8th, that that be the sum total, that we not be in a situation
22 where that what is there is presented and then all of a sudden
23 we come to the hearing and now they are looking to drag back in
24 - that this is their one chance to go and state everything and

1 then we can respond to that.

2 CHAIRPERSON HEATH: Absolutely. I completely agree.

3 MR. TONDRO: Thank you.

4 CHAIRPERSON HEATH: All right, you understand? Okay.

5 MR. RAFFERTY: Yes, I got that, yeah.

6 CHAIRPERSON HEATH: Okay, thank you.

7 GABRIELA MOSSI: Can I just state for the record that
8 I am the ANC Commissioner for that single-member District, and
9 I just wanted to be here, and I wanted to catch up with my
10 constituents about what happened. I am in full support of
11 their issues, as are other neighbors, and so I just want to be
12 sure that you - that I made my presence known, and that I am in
13 support with the issues that they are addressing. And,
14 again, I don't want that to be pigeon-holed or for anybody to
15 say that they were ambushed. We have been dealing with this
16 for several months, and it has been very clear where all the
17 issues are.

18 CHAIRPERSON HEATH: Okay, thank you.

19 MS. MOSSI: I am Gabriela Mossi, SMD-1C04.

20 [UNIDENTIFIED MALE SPEAKER] Can I also state...

21 CHAIRPERSON HEATH: No, we're finished. We're
22 finished, thank you.

23 MR. RAFFERTY: Thank you very much.

24 [Speaking off mic.]

1 CHAIRPERSON HEATH: So, Mr. Moy, we're gonna take a
2 quick 15-minute break.

3

4 [recess at 2:47 p.m.]

5

1 [session resumes at 3:22 p.m.]

2

3 CHAIRPERSON HEATH: Thank you all for your patience.
4 Will you please introduce - actually, you need to call the
5 case.

6 MR. MOY: If I could call the case quickly, thank
7 you, Madam Chair. This is Appeal No. 19106 of Richard Alan
8 Seutter, Jr., et al, to be short. This is the Appeal of the
9 decision of the Zoning Administrator, DCRA, to issue Building
10 Permit No. B1505056 and B1510351 to convert an existing two-
11 family flat into a three-story apartment house with three
12 dwelling units in the R-4 District at premises 67 V Street
13 N.W., Square 3118, Lot 76.

14 CHAIRPERSON HEATH: All right, now I'll ask that you
15 all introduce yourselves, please.

16 KATELIJN VAN DEN BERG: Katelijn van den Berg, maybe
17 just one small correction. It is to seek to convert a single-
18 family home, so that was the original function of the property.

19 RICHARD ALAN SEUTTER, JR.: Good afternoon, Richard
20 Alan Seutter.

21 SUSAN SEUTTER: Susan Seutter.

22 MATTHEW LEGRANT: Mat LeGrant, Zoning Administrator,
23 DCRA.

24 MAXIMILIAN TONDRO: Maximilian Tondro, Office of

1 General Counsel, DCRA, representing the Zoning Administrator.

2 MARTIN SULLIVAN: Marty Sullivan from Sullivan &
3 Barros, representing the property owner.

4 CHAIRPERSON HEATH: Okay, and are you, Richard, are
5 you representing the Appellant?

6 MR. SEUTTER: Madam Chair, we're here on behalf
7 ourselves as property owners as pro se. Ms. Van den Berg is
8 going to present as a party as well. ANC-5E has also joined
9 this Appeal. Unfortunately, they were unable to make it due to
10 the time today.

11 MS. VAN DEN BERG: But, they have authorized us to
12 represent the ANC in front of the BZA Boards and get approval
13 of the records. It was voted with 8 ayes and 0 nays at the
14 properly noticed meeting on September 15.

15 CHAIRPERSON HEATH: Okay, all right. So, we've
16 reviewed the full record, and we understand the arguments that
17 you are making as a part of your Appeal. We also understand
18 this is regarding a Building Permit that was issued as the
19 first Building Permit on June 19th of this year, and that a
20 second Building Permit was issued on July 21st of this year,
21 which corrected "some anomalies" including some Zoning issues.

22 So, I just want to say that first, we are going to
23 allow you to present your argument. Anything that is related
24 to a Building Code issue is not under the purview of the Board,

1 so I just want to make sure you understand that before you
2 present.

3 The other thing you should know is that anything the
4 second permit addressed and was changed or that - let me state
5 this - anything from the first permit that was changed and
6 corrected as a part of the second permit is no longer an issue.
7 It is considered moot for us. So, I just want to make you
8 aware of that as well.

9 So, as you present, just keep those things in mind,
10 and present to us your case of why you feel the Zoning
11 Administrator erred. I will say before you start that as we
12 see it, there were really five issues here. One was regarding
13 the trellis. The other was the issue of the lower level. The
14 third was encroachment. The fourth was the plat. Based on the
15 information that we have received, the third was addressed by
16 the second permit, but you can speak to that. The plat issue
17 was something that is a DCRA issue, and, so again, not under
18 the purview of this Board, and then there is the issue of FAR,
19 which would be the fifth.

20 So, if you could address these. If there is another
21 point that I haven't made, let me know, but otherwise if you
22 could address those five points, you can start your
23 presentation.

24 MR. MOY: Excuse me, pardon me, Madam Chair, how much

1 time will the parties require?

2 CHAIRPERSON HEATH: How much time do you think you
3 need?

4 MS. VAN DEN BERG: I think we will need about 10
5 minutes for the opening statements.

6 CHAIRPERSON HEATH: Okay, and are you, as a part of
7 your opening statement, will you address those?

8 MS. VAN DEN BERG: Yes.

9 CHAIRPERSON HEATH: Okay, all right, so 10 minutes.

10 MS. VAN DEN BERG: Dear Members of the Board, Madam
11 Chair, thank you very much for the opportunity to be here
12 today, here to clarify and discuss the errors of the Zoning
13 Administrator when issuing the main permits on June 19, and
14 then the ancillary permits on July 21st. We would like to go
15 over and clarify some of the key Zoning errors that were also
16 described in our pre-hearing statement and that you just
17 addressed.

18 I would like to make, however, one point, because it
19 is very important in this case, that in accordance with 11 DCMR
20 §§ 3202.1, the Zoning Administrator is not authorized to issue
21 Building Permits unless the plans fully conform to the
22 provisions of the Zoning Regulations. The Zoning Administrator
23 does not have the authority to authorize minor violations as
24 they are described in DCRA's pre-hearing statements. The

1 distinction between minor violations and major violations does
2 not exist in the law. Building plans have to be fully and
3 completely adherent to the Zoning Regulations before a permit
4 can be issued, and it is quite important in this case because
5 of the timing that the permit was issued just before the new
6 regulations came into effect.

7 The Appellants had informed DCRA about a noncompliant
8 court and encroachment onto the neighboring property already in
9 advanced of the issuance of the permits. This is provided to
10 you as evidence from Exhibit 8, 9, and 10. One of the pictures
11 already shows on the screen that our architect has already
12 clarified this issue and calculated on the drawing the minimum
13 size that is needed for compliance of 350 square feet, and it
14 demonstrated that the space is actually available.

15 DCRA also was aware of this noncompliant court
16 because of their structural comments that were put on record on
17 June 16, specifically instructing the permit applicant to
18 adjust the plans to insure, "that the roof deck is covered with
19 the trellis and does not create a noncompliant court". These
20 structural comments that were done on June 16 are also part of
21 our exhibits, Exhibit 7, 3rd page.

22 Because everybody was already aware that the Zoning
23 violations existed prior to the issuance of the permits, the
24 Zoning Administrator was actually obliged, again in line with

1 §§ 3202.1, to review updated plans from the developer to ensure
2 that these plans were in line with the instructions that were
3 issued, and before issuing the permits.

4 It is clear and evident from the plans that were
5 actually approved on June 19th, that they continued to continue
6 the noncompliant court. They don't have the trellis cover, and
7 the permit could not have been issued on that day, because the
8 plans just didn't comply to violations that were already known
9 to DCRA.

10 Further, it is clear and evident that DCRA
11 acknowledges that these plans were not compliant to the Zoning
12 Regulations, as they then subsequently after the new
13 regulations came into effect, approved an ancillary permit.
14 This is the July 21st permit, with now revised plans that
15 actually contain material and substantive changes to the
16 original plans. These are the Exhibits 11 and 12, which are
17 the plans that are related to the ancillary permits.

18 This decision of the Zoning Administrator to issue
19 the permit on June 19th was arbitrary and a detriment to the
20 public interest. As you well are aware, on June 26th, one week
21 after this permit was issued, new regulations came effective
22 that actually removed this matter-of-right confusion and to
23 convert single-family homes to apartment houses in R-4
24 District, except by special exception. They also don't allow

18 Again, the Zoning Administrator is not authorized to
19 issue a permit if the plans do not fully comply with the Zoning
20 Regulations, and certainly not to avoid new regulations coming
21 into effect and to apply to a permit application for which the
22 Zoning Commission rules that the regulations will become
23 effective immediately.

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1 regulations, as Mr. Wang [?], who is present here today, his
2 own public testimony, testifying against the new regulations,
3 although he didn't present himself as a developer in that
4 letter. He presented himself as a homeowner who wanted to
5 redevelop the house for his own purpose.

6 We are happy to share these records with you because
7 it is on the 1411 public record as testimony.

8 The Zoning Administrator does not have the authority
9 to decide when new regulations come into effect and to which
10 permits they do or do not apply because he has to follow the
11 regulations that are in place at the moment that the permit is
12 issued.

13 Based on this arbitrary decision alone to issue a
14 noncompliant permit that has known Zoning violations just to
15 avoid the new Zoning Regulations to come to apply to it, even
16 though the Zoning Commission to have it effective immediately,
17 is, in our view, already sufficient reason to revoke this
18 permit.

19 Now, moving to the second permit, even with the
20 errors in the original main permit, the ancillary permit with
21 the trellis is still not compliant with the Zoning Regulations.
22 The previous BZA decision and Order for Case 18263B that is
23 shown in Appellant's Exhibit 16, clearly clarifies on Pages 10
24 and 11 that if the trellis contains sufficient coverage to

1 constitute a roof, then it can meet the definition of a
2 building under the Zoning Regulations. So, there is very clear
3 case law that says that 51% coverage is required in order to
4 constitute a roof and then to constitute a building, and not to
5 be a noncompliance court.

6 Appellant's Exhibit 18 clearly demonstrates by
7 calculations of our architects that the coverage of this
8 trellis that is part of the ancillary permit only covers 8.53%.

9 Also, the other case law that we have submitted for this case,
10 confirms this ruling. This can be found in our Exhibits 15,
11 17, and 19.

12 Now, on the contrary, neither DCRA nor the property
13 owner provide any Zoning Board cases or Zoning Regulations that
14 could support their statements that adding a trellis of 8.5%
15 roughly has established that the court no longer meets the
16 definition of a court.

17 DCRA cites in their statement that the trellis meets
18 the standard of the Zoning Administrator and the established
19 practices of the Zoning Administrator. But, this is not -- the
20 standards of the Zoning Administrator is not Zoning
21 Regulations, neither is it available to the public, neither is
22 it case law. These are just arbitrary standards of the Zoning
23 Administrator that cannot be to the benefit of the public to be
24 applied as he pleases.

1 Public and adjoining homeowners should have access to
2 standards and law through approved Zoning Regulations and
3 Zoning Board cases, and these Board cases or Zoning Regulation
4 references have not been included as evidence, nor by DCRA, nor
5 by the property owner, because we don't believe that they
6 exist.

7 Based on BZA precedence, a trellis can be used to
8 constitute a building when connecting two buildings if, and
9 only if, it contains at least 51% coverage. Then, trellis
10 coverage is applicable to the final court space is a building
11 under the same Zoning Regulations. Both trellises are used to
12 define a space as a building, and therefore the same standards
13 and regulations are applicable.

14 Now, I think it is important to clarify why this
15 trellis needed to be added, as I think we have already
16 submitted to DCRA before the permit issuance about the too
17 small size of the courts, and the reason that the court had to
18 be created is because there cannot be a building next to a
19 chimney because of the Fire and Building Codes.

20 I am fully aware that this is not in front of you
21 today, but I want to point out that the reason that the courts
22 appear is because of this building violation. There is a
23 separate Appeal in front of the Office of Administration
24 Hearing regarding the trellis, and I want to just point out

1 homeowners' safety and interest.

2 Now, to briefly also - before I go for the other
3 points, I want to really - I think I addressed it before, but I
4 want to just raise it one more time. There is insufficient
5 space on the third story to have a compliant court of 350
6 square feet and of a minimum of 15 feet wide. So, that would
7 be the correct approach to issue it, because DCRA is obliged to
8 issue permits that fulfill both the Building Codes and the
9 Zoning Regulations. The space is there, the solution was
10 presented, but they chose not to follow it.

11 Now, then, indeed the official building plats should
12 have been including showing all the Zoning Summary Data that is
13 required to determine Zoning compliance. No such plat was
14 provided in the building application, even though DCRA had been
15 informed on several occasions that this plat was missing, which
16 is shown in our Exhibits 11 and 21, and still the Zoning
17 Administrator issued a permit without it.

18 The lack of these official building plats with all
19 the Zoning Summary Data impairs the purpose of the applicable
20 Zoning Regulations in relation to the basement versus cellar
21 determination of the lower level. The existing conditions of
22 the property confirm that the lower level was a basement. The
23 original drawings for the finished grades confirm that the
24 lower level was a basement. This is in our Exhibit 23. DCRA

1 should have used the plans for the finished grades to get an
2 analysis of the existing grades to confirm that this was a
3 basement rather than suggesting a grade change in the drawings
4 that does not serve any meaningful purpose other than to
5 requalify the lower level as a cellar, and then to allow a
6 fourth story on the property of 67th Street that is out of
7 scale, out of character, and disregards the long-established
8 policy to use a grade plan analysis to dermite the height and
9 the classification of the lower level.

10 Instead, DCRA allowed the developer to take a picture
11 to demonstrate the height, which was not taken all the way up
12 to the ceiling of the lower level, and was only to the
13 retaining wall rather than to the grades, and instead they
14 should have asked for a professional surveyor to do proper
15 measurements and then include it in the final approval plans.

16 I think the out-of-scale proportion of this, what is
17 an additional story, does to the neighborhood is very clearly
18 shown on our Exhibit No. 4. Because the building is rapidly
19 progressing, so you can see how it is completely out of scale
20 with everything in the neighborhood.

21 The only thing that is still missing here is the
22 additional penthouse that is also now put on top as an
23 additional insult to the neighborhood.

24 The premature issues of this permit on June 19th to

1 avoid reviewing the permit application under the new Zoning
2 Regulations were obvious and known Zoning violations, again are
3 not conforming to the 11 DCMR §§ 3202.1 and in direct conflict
4 of the passing of the Zoning Commissioner Order 1411, which
5 established immediate effectiveness of new regulations. It is
6 not within DCRA's mandate to approve noncompliant plans with
7 the expectation to make them compliant later just to avoid new
8 regulations to come into effect in the applications to very
9 specific permits in the application process.

10 The Zoning Commission voted to have the Zoning
11 Regulations become effective immediately with the size,
12 purpose, and intent of saving R-4 neighborhoods from the
13 detrimental impacts on air, light, privacy, and property
14 values.

15 Exactly this type of three-unit apartment conversion
16 of single-family homes is exactly the type of development that
17 is taking place there now. It is for this reason that this
18 matter-of-right has been abolished under the new Zoning
19 Regulations, and it is not within the mandate of the Zoning
20 Administrator to decide to which permit applications the new
21 Zoning Regulations will come into effect and to which not.

22 CHAIRPERSON HEATH: Excuse me one second. You asked
23 for 10 minutes.

24 MS. VAN DEN BERG: Oh, sorry. I have two more

1 sentences.

2 CHAIRPERSON HEATH: Okay, I was just gonna ask you
3 how much more time you needed, because we're over.

4 MS. VAN DEN BERG: It was an estimate, sorry, I'm way
5 over time.

6 CHAIRPERSON HEATH: Sure, sure.

7 MS. VAN DEN BERG: I have just two more sentences.
8 The decision of immediate effectiveness of the new regulations
9 was taken by the Zoning Commission based on public input from
10 all sides including the developers, and the criteria were very
11 clear. The plans were not ready to be issued, and it did not
12 comply, and even with the changes made to the third story, the
13 ancillary permit still doesn't make it compliant, and the
14 permit should be revoked. Sixty letters of support have been
15 submitted to the records in support of the Appeal. Not one
16 letter has been submitted in opposition. Almost all these
17 letters are from direct neighbors either on V Street or W
18 Street within 200 feet of this property or directly from
19 Bloomingdale and people nearby. This is not a minor issue in
20 the neighborhood. People are extremely concerned. Thank you
21 very much.

22 CHAIRPERSON HEATH: Thank you. Can you, I don't know
23 if you have a drawing that you could point us to, but where are
24 you getting the measurement for what constitutes the lower

1 level as basement? You're saying that it counts as a basement,
2 and thus a story. Where are you getting that measurement?

3 MS. VAN DEN BERG: We took pictures, so we looked at
4 the original drawings, the original drawings classified it as a
5 basement.

6 CHAIRPERSON HEATH: Right, but it's based on the
7 finished grade, which would mean you need to strike a
8 measurement on the drawing.

9 MS. VAN DEN BERG: Yes, according to the revisions to
10 the drawings that DCRA suggested to the developer, they changed
11 the grades, and therefore, according to the revised plans, now
12 it could be accepted according to how it is - I don't
13 particularly agree that this is allowed, but I think this is
14 the particular standard. However, we also included actual
15 pictures of the actual situation that also have been included
16 in our Exhibit 23 that also show that in reality, it is still
17 more than 4 feet. So, it's sheet A401, but if you look at our
18 Exhibit 23, then there are two things. One is that on Exhibit
19 23, Page 6.

20 CHAIRPERSON HEATH: Hold on a second because your
21 exhibits in our system are labeled with letters rather than
22 numbers, so.

23 MS. VAN DEN BERG: But, you should have, in the
24 titles, we can also show it on the screen, Page 6.

1 CHAIRPERSON HEATH: That would be helpful.

2 MS. VAN DEN BERG: Yes.

3 [Speaking off mic.]

4 MS. VAN DEN BERG: So, the Zoning Summary Data on the
5 approved plans still classify the basement as a basement. So,
6 Sheet A102 of the approved plans.

7 [Speaking off mic.]

8 MS. VAN DEN BERG: So, the Zoning Summary Data on the
9 approved plans still classify the story of the lower level as a
10 basement, which we pasted in our Exhibit 23. This is - you can
11 see the original approved plans, Exhibit 1, Page 17, and then
12 it's Sheet A102, but we copied that is the approved plans that
13 provide the Zoning Summary Data, and there you can see it's
14 still actually as per the approved plans classified as a
15 basement. And then in addition, we did an actual measurement
16 of the ceiling heights, which are the pictures below, where you
17 can see that the measured distance between the finished grade
18 and the top of the porch of the floor slab is 46 inches, which
19 is the left picture where we have the inserts. And, then there
20 are at least 15 inches between the porch floor and the first
21 floor, which is the right picture. And, since the floor ____
22 are 12 inches tall, and you can see the new floor ____ on this
23 picture, because it is in brown, the distance from the ceiling
24 to the adjacent finished grade as it's built, because these are

1 as-built pictures, is 49 inches; 46 plus 15 minus 12. This new
2 floor ____ for the first floor are shown in the picture on the
3 right, and the gap in between the blue door and the concrete
4 that you can see.

5 CHAIRPERSON HEATH: On your, in your Exhibit 23, as
6 you call it, it is 21W for us, on Page 5, you have a diagram
7 that shows a section that shows, I think it's 3 feet 6 inches
8 or 3 feet 8 inches; it's a bubble, which is from the finished
9 grade to the ceiling.

10 MS. VAN DEN BERG: Yes, these are the revised plans
11 that indeed suggest that it is 3 feet and 9 inches. But, then
12 as part of the same approved plans that provide the Zoning
13 Summary Data, it is classified as a basement, so there is a
14 conflict there.

15 CHAIRPERSON HEATH: So, it's less than 4 feet. So,
16 then that would make it - okay. Yeah, that would make it a
17 cellar. And, the drawing on the - part of the issue with the
18 drawing on the left of that is that it doesn't call out that
19 dimension between the finished grade and the underside of the
20 ceiling; it's just the new drawing that shows that dimension.

21 MS. VAN DEN BERG: Yes, it's just the new drawing,
22 but then, again, the Zoning Summary Data that are presented on
23 Sheets A102 classify it as a basement. So, yes, there is one
24 drawing that was adjusted, but then in the Zoning Summary Data,

1 but this also goes back to that you need really a building plat
2 with formal data done by a survey and formally before you issue
3 a permit so that you don't get this confusion for what is the
4 size, what was the original grade, how is it proposed to
5 change, what is the situation, and it becomes all open for
6 speculation, interpretation, and more if that is not included.

7 CHAIRPERSON HEATH: Board, any other questions for
8 the Appellant? Okay, yeah, all right. We're ready to hear
9 your rebuttal or comments based on what the Appellant has
10 presented. Do you want to take 10-15, how much time do you
11 think you need?

12 MR. TONDRO: 10 or...

13 MR. SULLIVAN: I was just wondering if we were going
14 to cross-examination first or just wait until they went.

15 CHAIRPERSON HEATH: Well, if you want to cross, why
16 don't you go ahead. You can cross before we hear their
17 presentation.

18 MR. SULLIVAN: Thank you. Ms. Van Den Berg, are you
19 an expert in D.C. Zoning Regulations?

20 MS. VAN DEN BERG: I have become, yes.

21 MS. SULLIVAN: So, do you have any credentials to go
22 with that?

23 MS. VAN DEN BERG: No, but we hired an architect, and
24 he submitted to the records that actually has credentials in

1 this.

2 MR. SULLIVAN: Did he submit a report?

3 MS. VAN DEN BERG: Yes, he submitted reports, and
4 these reports have been submitted to DCRA.

5 MR. SULLIVAN: To DCRA.

6 MS. VAN DEN BERG: And, also here for the record, we
7 have submitted part of his reports and also his CV.

8 MR. SULLIVAN: Can you point out where that report,
9 where his report was, if it's in the file.

10 MS. VAN DEN BERG: Yes, his CV has been subpoenaed to
11 the records. It is our Exhibit 5.

12 MR. SULLIVAN: His report.

13 MS. VAN DEN BERG: And, then we didn't complete the
14 full reports because there is also a lot of issue with Building
15 Code violations, which we thought would not be looked at, so we
16 extracted parts of his report that were relevant for the BZA as
17 part of the review, so that is Exhibits 6, 8, 9. There are
18 several Exhibits, and also Exhibit 18, which is directly from
19 the architect.

20 MR. SULLIVAN: So, Exhibit 18 is a portion of his
21 report.

22 MS. VAN DEN BERG: Yes, that's correct, the portion
23 that is relevant for the BZA.

24 MR. SULLIVAN: I think you said that the measurement

1 for the - the measurement from the grade to the ceiling was
2 only done up to the top of the doorway.

3 MS. VAN DEN BERG: That is from how we looked at the
4 pictures and the scaling, that is our conclusion, indeed.

5 MR. SULLIVAN: And, what page of your, I think you
6 said Exhibit 23, what page would you say proves that point?

7 MS. VAN DEN BERG: That is Exhibit 23 and then there
8 is Page 3.

9 MR. SULLIVAN: Okay, so it's up there?

10 MS. VAN DEN BERG: This is the developer's photo, but
11 we just added the scaling.

12 MR. SULLIVAN: Do you see the tape measure going
13 around the door frame and continuing on on this photo?

14 MS. VAN DEN BERG: I think we are exactly disputing
15 that it is continuing on. We think it is exactly stopping at
16 the top; that is why we put the scaling to show that.

17 MR. SULLIVAN: I would like to submit some pictures
18 that are in the building permit file, and I think it's the
19 exact picture and group of pictures that they got. And, it's
20 the original picture without the numbers on it.

21 So, on this first picture, is it any more clear to
22 you that the tape measure is going up past the top of the door
23 frame?

24 MS. VAN DEN BERG: Yeah, it was exactly clear that it

1 is not going up to the top, that is why the tape measure is so
2 conveniently turning at the point where you should be able to
3 see where it is continuing or not. It is also not conforming
4 with the scaling.

5 MR. SULLIVAN: Okay, can you take a look at the
6 second picture.

7 MS. VAN DEN BERG: The second picture is not part of
8 the file, and it was not part of the permit application, nor
9 has it been submitted here for the hearing today.

10 MR. SULLIVAN: The second picture was submitted,
11 well, just take a look at the second picture. It's a picture
12 of the inside. You see the tape measure taped up and going to
13 the top of the ceiling there.

14 MS. VAN DEN BERG: Yeah, here, yeah, here you can see
15 it going to the ceiling, but you cannot see the...

16 MR. SULLIVAN: You cannot, cannot, can I ask a
17 question. Do you see the tape where the grade of the retaining
18 wall is?

19 MS. VAN DEN BERG: It's not reliable to show the
20 grades of the retaining wall there, because you cannot see that
21 it is really at the same level. That's why you need a surveyor
22 to establish this and not a picture.

23 MR. SULLIVAN: So, in your expert experiences as a
24 Zoning expert, you think surveyors confirm this information on

1 every job in D.C.?

2 MS. VAN DEN BERG: It was precisely the opinion or
3 our architect, which we submitted as part of the public
4 application to DCRA that this exact determination should be
5 done by a surveyor and not by a picture and that it is very
6 difficult to determine.

7 MR. SULLIVAN: Do you also see in the second picture,
8 you can see through, and you see out to the steps, and you see
9 the grade, and you see the difference between the grade and the
10 retaining wall, because I believe you said there was some
11 significant difference between the retaining wall and the grade
12 - the top of the retaining wall and the grade. Do you see that
13 there is, what would you say, maybe an inch or so difference
14 between the top of the retaining wall and the grade?

15 MS. VAN DEN BERG: Um, no, we measured it, and we
16 believe that the difference is, in fact, 2-1/2 inches.

17 MR. SULLIVAN: Are you aware that you measure from
18 the center of the front of the building, not from the left
19 corner of the building?

20 MS. VAN DEN BERG: Yeah, but this is coming to
21 exactly the point to establish where this grade is.

22 MR. SULLIVAN: So, you are aware of that, or you're
23 not aware of that?

24 MS. VAN DEN BERG: I am aware of that, but...

1 MR. SULLIVAN: Okay, thank you. Are you aware that
2 DCRA actually sent out an inspector to measure this himself
3 after they saw the pictures?

4 MS. VAN DEN BERG: This wasn't confirmed as part of
5 the records.

6 MR. SULLIVAN: Finally, the numbers, the numbers on
7 here, where did they come from? As I said, we put scaling on
8 the pictures because then it is more easy to see that actually
9 the 0 is just on top of the door, and not continuous all the
10 way to the ceiling.

11 MR. SULLIVAN: Okay, so you say, right above that
12 picture, you say the measurements in the picture clearly show
13 the 0 on the door frame and not starting from the ceiling of
14 the lower level.

15 MS. VAN DEN BERG: I think it does, yes.

16 MR. SULLIVAN: But, you put the 0 there, didn't you?

17 MS. VAN DEN BERG: Yeah, because you can, if you put
18 scaling, then you can actually see where - what the distances
19 are and where it then comes. I think it also goes again to the
20 point...

21 MR. SULLIVAN: I have - I would like to move onto the
22 court issue, if I could. You cited cases that talk about a
23 trellis being constituted as a roof for purposes of being a
24 meaningful communication between two buildings, is that

1 correct?

2 MS. VAN DEN BERG: Yes, that's correct.

3 MR. SULLIVAN: How did you then jump to the
4 conclusion that this trellis in this particular instance
5 requires roof?

6 MS. VAN DEN BERG: Because these are the only case
7 laws that are available, and it is the same trellis that
8 defines a space.

9 MR. SULLIVAN: So, the case law that you mentioned
10 talks about a court and a noncompliant court, and a trellis
11 over a court?

12 MS. VAN DEN BERG: No, but it talks about how a
13 trellis defines a space.

14 MR. SULLIVAN: Are you aware of the definition of
15 court?

16 MS. VAN DEN BERG: I am very aware of the definition
17 of course and the size, the minimum size of a court in the
18 definition.

19 MR. SULLIVAN: Would you like to read the definition
20 of a court or do you want me to read it to you? Would you like
21 to hear it?

22 MS. VAN DEN BERG: I have no preference.

23 MR. SULLIVAN: Are you aware that it needs to be -
24 it's required to be open to the sky and unobstructed?

1 MS. VAN DEN BERG: I am aware that is part of the
2 definition, yes. I am also aware that there is a case law that
3 provides...

4 MR. SULLIVAN: Would you call the 7.8 - would you
5 call this trellis an obstruction?

6 MS. VAN DEN BERG: The question is whether it
7 constitutes a building in the definition of the Zoning
8 Legislation, and we believe it does not because there is no
9 case law that actually established that, it is only established
10 by the practice of the Zoning Administrator, but that is not a
11 regulation.

12 MR. SULLIVAN: Can you explain to me why that's the
13 question?

14 MS. VAN DEN BERG: Because that is the question.

15 MR. SULLIVAN: So, the definition of court says it
16 should be open to the sky, but you're saying there is a
17 different question.

18 MS. VAN DEN BERG: No, the question is...

19 MR. SULLIVAN: On what basis do you say that is not
20 the question?

21 MS. VAN DEN BERG: Because the case law determines
22 that a trellis can only make something part of a building if it
23 constitutes 51%, and this clearly doesn't, and that is the only
24 case law available to the public to make that determination,

1 and it's an arbitrary decision of the Zoning Administrator who
2 just allowed it.

3 MR. SULLIVAN: You have mentioned that the Zoning
4 Administrator knowingly approved an application with violations
5 in it. He knowingly approved this, on purpose, in order to get
6 an application out the door prior to the deadline so that he
7 could go back and change it later, is that correct?

8 MS. VAN DEN BERG: Do you have any basis for making
9 such a statement?

10 MS. VAN DEN BERG: Yes, we felt that our Exhibits,
11 this is from DCRA's own letters. Let us show this is in detail
12 because this is an important point. This is - can you show it
13 on here?

14 MR. SULLIVAN: Specifically, I would like to know the
15 knowledge, you are impugning the integrity of the Zoning
16 Administrator, and we're just...

17 MS. VAN DEN BERG: You asked a question, and I would
18 like actually to answer it. If you look at the permit building
19 tracking status, that is our Exhibit 2, I referred to it in my
20 opening statements, you can see from the structural comments
21 that were made on - I'm sorry, it is 21B in your records, no
22 sorry, this is the wrong one. It should be from the main
23 permits, this is not for the penthouse, sorry. It should be
24 our Exhibit 7, which is your 21G. This is from DCRA's tracking

1 website for the permits. Now, if you look to the structural
2 comments that were entered into the public records for June
3 16th, I believe, it was checked out specifically because DCRA
4 became aware of the noncompliant court, so the structural
5 review says here that it was checked out on June 16 to ensure
6 the roof deck is covered with a trellis and does not create a
7 noncompliant court. So, it's very clear to the public records
8 that this Zoning violation was known to DCRA and that actually
9 the plans had to be revised according to the instructions.

10 MR. SULLIVAN: And they were so revised, is that
11 correct?

12 MS. VAN DEN BERG: They were not revised because the
13 permit instead was issued on June 19th without this revision.

14 MR. SULLIVAN: So, back to the question, you said
15 that the Zoning Administrator specifically did this
16 intentionally to circumvent a deadline date on new Zoning
17 Regulations, is that correct? Do you have a basis for saying
18 that?

19 MS. VAN DEN BERG: We are saying that according to §§
20 3202.1, the Zoning Administrator is only allowed to issue a
21 Building Permit if the plans fully conform with the Zoning
22 Regulations, and it was known to DCRA that they did not. So,
23 they should not have issued the permits. They should have made
24 sure that the plans actually conformed. So, they were aware of

1 the Zoning violations.

2 MR. SULLIVAN: So, you're saying if the Zoning
3 Administrator or staff makes a mistake and a permit gets
4 issued, it is impossible to revise or correct that situation?

5 MS. VAN DEN BERG: I'm saying that the law is clear
6 that plans can only be approved if they comply with the Zoning
7 Regulations and the law is very clear about that.

8 MR. SULLIVAN: And, so they cannot be corrected. So,
9 once a permit is issued, if there is the slightest change, the
10 only option is revocation.

11 MS. VAN DEN BERG: This is not a slight change. This
12 is a substantive material change that directly goes into...

13 MR. SULLIVAN: But, I think you said it doesn't
14 matter what it is, small change, big change.

15 MS. VAN DEN BERG: The law doesn't provide for minor
16 or major violations as far as I know.

17 MR. SULLIVAN: And you have - okay. I have no further
18 questions, thanks.

19 CHAIRPERSON HEATH: Okay, thanks.

20 MR. TONDRO: May I ask just one question of the
21 Appellant?

22 CHAIRPERSON HEATH: Sure.

23 MR. TONDRO: If I might direct you to your Exhibit
24 23, which is BZA Exhibit 21W, to the final, no not the final

1 page, to Page 5. I just want to call your attention to the
2 image you are showing on the right-hand side. Can you read for
3 me what that dimension shows as the difference between the
4 adjacent finished grade as shown at the base of the stairs and
5 the lower level ceiling? If you can't make it out, I believe...

6 MS. VAN DEN BERG: I think it's 3 feet 9 inches,
7 right?

8 MR. TONDRO: I would refer you then - for clearer,
9 perhaps we can refer to your Exhibit 1, and Page 40 of 45, and
10 it's Sheet A4.01. I believe that this image that you supplied
11 was a blowup of that.

12 MS. VAN DEN BERG: Yeah, it comes from the - it comes
13 from Exhibit 1, Page 40, the revised Sheet A401 dated April 9.

14 MR. TONDRO: And, can you just read off, maybe it's a
15 little bit clearer there, what that dimension is that is shown?

16 MS. VAN DEN BERG: Yes, give me one second.

17 MR. TONDRO: Sure.

18 MS. VAN DEN BERG: So, I cannot find, but please read
19 it because I think we would agree on this, so...

20 MR. TONDRO: Okay, for the record, I'll just say, you
21 can see for the record, this is Exhibit 1 of the Appellant's
22 Page 40 of 45, and I'm looking at the lower right-hand corner,
23 and you can see it is Sheet A4.01, and specifically...

24 MS. VAN DEN BERG: I have it here. Yeah, 3'8".

1 MR. TONDRO: 3'8", thank you. And, may I just ask,
2 is that under 4 feet?

3 MS. VAN DEN BERG: On this page, yes, but on the
4 Zoning Summary, it is classified as a basement.

5 MR. TONDRO: That was all I asked, thank you. With
6 that, I'm ready to move on to my rebuttal, thank you.

7 CHAIRPERSON HEATH: Okay.

8 [Speaking off mic.]

9 MR. TONDRO: I'll try to make it as quickly as
10 possible. You can give me 15 minutes, and I'll try to make it
11 quicker if I can.

12 CHAIRPERSON HEATH: Okay, take what time you need.

13 MR. TONDRO: Okay, thank you, I appreciate that.
14 DCRA's position is that this was a validly issued permit. When
15 it was called to attention that there were errors, the Zoning
16 Administrator required that it be revised and amended to come
17 into compliance. I just wanted to address, I think, what are
18 sort of the key issues, first of all which is the issue of the
19 lower level, and then return back to the trellis.

20 As you just heard, the Appellant themselves
21 recognized that the approved plans state that it is less than 4
22 feet between the adjacent finished grade of the lower level.
23 That is what the Code requires for determining a cellar. I
24 think that's fairly clear. I would also point out in terms of

1 the argument about what is out there at the site at this
2 particular time, until final inspection, adjacent finished
3 grade is not determined, and so it really depends on getting to
4 that point, and that will be then regulated by the Certificate
5 of Occupancy Application at that particular point, so until
6 close-out by that final inspection, adjacent finished grade has
7 not been established. Therefore, until then, what is before
8 you right now is only the question of whether the Zoning
9 Administrator issued the plans, whether he determined that
10 those were compliant with the Zoning Code, and that is
11 precisely what the Appellant just recognized. So, I just
12 wanted to deal with that.

13 Second of all, in terms of the issue of the Zoning
14 Table, that table is supplied often times by architects by/for
15 their own clients, where others the Zoning Administrator has
16 made it very clear time and again that he does not trust that
17 or rely on that necessarily because he does not believe that is
18 his job to sort of trust numbers that are given. His job is to
19 go and review based on scale drawings. So, that is precisely
20 what he does. He goes and he reviews all the plans for
21 accuracy and for compliance on that basis. So, the fact that
22 it says there a basement is not relevant for his evaluation. I
23 would also point out, but I don't want to be quoted on record
24 for this, but I believe this may be a situation where you have

1 similar words using in different ways for the Building Code and
2 for the Zoning Code, and that's an issue which we'll come back
3 to again and again. Just because it's a building or a basement
4 under the Building Code does not mean that it is treated that
5 way under the Zoning Code.

6 Finally, I just want to point out again in terms of
7 the issue of the plat, as I laid out in my brief, I don't want
8 to belabor it, but it is at the discretion of the Zoning
9 Administrator what is required. A plat is not required
10 necessarily under the Zoning Regulations, nor is one
11 necessarily required that is from the Office of the Surveyor.
12 A plat from the Office of the Surveyor merely delineates the
13 boundaries. There is never any definitio of elevation or any
14 other thing that would be relevant to this particular issue.
15 In all cases, the Applicant would have their architect draw on
16 there all proposed and existing buildings. All of these are
17 issues that would be relevant. The fact that it is a
18 surveyor's plat or not is not relevant to this situation.

19 Moving then on, I think that should clarify that
20 issue about the lower level and why the Zoning Administrator
21 correctly determined that it was in compliance.

22 In terms of the issue of the trellis or the closed
23 court, the issue here is, it can be confusing because there are
24 situations where the BZA has before upheld, I would point out,

1 the Zoning Administrator's interpretation in a similar
2 circumstance where there is an absence in the Zoning
3 Regulations of a clear guidance the Zoning Administrator has
4 had to interpret. That is his job, and that is the job of the
5 Board to determine whether or not the Zoning Administrator
6 acted reasonably. The situation that was cited for the 51% was
7 once such case where the Board determined that the Zoning
8 Administrator had acted reasonably in that circumstance.

9 But, as I say in my brief, that is "different kettle
10 of fish." It is a trellis. The question there was whether or
11 not two buildings in the same lot could be determined to be
12 joined significantly enough that they became one. That is
13 something where you need to have this magical phrase, "a
14 meaningful connection." That is a very different situation
15 than what is being described here.

16 What happened here is that the Zoning Administrator
17 was faced with a situation where somebody has a trellis on
18 their backyard, and the question came up, at what point is a
19 trellis so close together that it becomes basically a cover and
20 should cover toward lot occupancy. At some point, we would
21 also agree, it is not clearly laid out in the Zoning
22 Regulations, but at some point it becomes almost a roof. It
23 becomes a cover. The Zoning Administrator has his established
24 practice for well over six years determined that 24 inches on

1 center, as long as the cross beams are 24 inches on center or
2 closer, that that was to count toward lot occupancy, because
3 it's sufficient coverage.

4 In this particular case, what's happened is that that
5 standard which had nothing to do with this issue of
6 extinguishing a closed court, it was not invented by the Zoning
7 Administrator in order to benefit or help any particular
8 developers or any situation. It was a neutral standard that
9 was actually used in many ways to limit development.

10 In this particular case, the Zoning Administrator
11 said that is the same standard. That determines an
12 obstruction. That determines a cover. In this particular
13 case, as we've already heard before, the definition of court is
14 that it is open to the sky. We now have a situation where the
15 Zoning Administrator said, well, one could argue that you have
16 a beam that crosses over it, and that would obstruct it or make
17 it no longer open to the sky, but the Zoning Administrator
18 said, that's not sufficient, we're going to go with a more
19 conservative standard, a neutral standard, and that standard is
20 the one that we use for determining whether a trellis counts
21 toward lot occupancy when it's located on the ground. And,
22 therefore, from that standpoint, it was the same issue. We had
23 the 24 inches on center, which establishes an opening of 22
24 inches, and that constitutes sufficient coverage to extinguish

1 the closed court. It is not an issue of a building or all the
2 other issues that the Appellant raises. It is merely an issue
3 of trying to determine how do you say whether something is open
4 to the sky or not.

5 Again, the Zoning Administrator lives in the world
6 that is framed by the Zoning Regulations. There are spaces and
7 gaps in it, which he has to deal with, and this is what he does
8 to the best that he can, but he can chose to use an objective
9 neutral standard applied consistently in this particular case.

10 I think the other issues have really been addressed.

11 Again, I would just finally end by saying that the Zoning
12 Administrator cannot - there is no circumstance where he is
13 able to go and get into the intent of what the developer or
14 Applicant chooses to do, whether this is a meaningful or not;
15 that's not what he can - that's not his interpretative
16 capacity. He has to determine whether the proposed plans meet
17 and comply with the Zoning, and that is the beginning and the
18 end of it, and that is precisely what he did.

19 In this particular case, he issued the permit because
20 at the time that he approved it, it was compliant. It came to
21 his attention afterward that it was not, that there were
22 specific, small, and I would impress that these are minor
23 errors. Again, we live in a world where errors happen. He
24 then immediately required then that those be fixed, and as a

1 result, they were addressed, and that is what happened with
2 that revised permit. Thank you, and I will leave it at that.

3 CHAIRPERSON HEATH: Thank you.

4 VICE CHAIR HILL: What, again, were the minor errors?

5 MR. TONDRO: The minor errors were the issue of the
6 trellis over the - that extinguished the closed court, and the
7 other issue was the footings that were encroaching. I think
8 have the Building Permit at hand, if you want to read the
9 precise - it said revision to Building Permit B1505056, and
10 here is what it says, "to move rear yard deck footings inside
11 property line, to add trellis to third floor court next to
12 neighbor chimney", and that is BZA case Exhibit No. 7. So,
13 those were the two issues that were addressed.

14 COMMISSIONER TURNBULL: I just had a question.
15 Regarding the trellis, and I know we have changed the new
16 Zoning Regulations to address some of these issues that we have
17 had questions about, the biggest thing we've had with the
18 trellis is that the meaningful connection is that we also
19 thought it had to be attached from one structure, and we've had
20 a couple of cases before the BZA where there was a gap, and we
21 made them go back and attach it to the building to make sure.
22 So, in this case, meaningful connection for the closed court,
23 we're saying that the trellis is attached to each structure?

24 MR. TONDRO: I would argue it actually differently,

1 that the meaningful connection test or standard, although it
2 involves a trellis, it is actually a totally different kettle
3 of fish.

4 COMMISSIONER TURNBULL: Well, you see, that's where I
5 was getting confused.

6 MR. TONDRO: I'm sorry if I wasn't clear, yeah.

7 COMMISSIONER TURNBULL: All right, so the trellis,
8 but the meaningful - get back to the closed court thing, go
9 back over your argument.

10 MR. TONDRO: The closed court issue, the issue is
11 that the definition of a court is that it is open to the sky.

12 COMMISSIONER TURNBULL: Right.

13 MR. TONDRO: The Zoning Administrator was then faced
14 with this question, well, then what is sufficient to constitute
15 something that closes it that renders it no longer open to the
16 sky. From that standpoint, he looked for a reference standard.
17 There was nothing in the Zoning Regulations at that time, and
18 what he looked to was his established practices for determining
19 lot coverage. When you have a trellis on, let's say the ground
20 floor, the back of your yard, or your porch, next to your
21 porch, you want to extend your porch with a trellis, at what
22 point does it become a porch and count toward lot occupancy.
23 At what point is it still sufficiently open that it doesn't
24 count toward lot occupancy, and that standard, the Zoning

1 Administrator has used is 24 inches on center for the cross
2 beams.

3 In this case of dealing with a court, what
4 constitutes sufficient coverage to render it no longer open to
5 the sky. He then looked to this definition that they use for
6 determining trellises. The meaningful connection, I just want,
7 that was raised by the Appellants, that's how they asserted it,
8 and that really is a different kettle of fish; it's only when
9 you have two different buildings and establishing that there is
10 a connection sufficient to render them one. That is not the
11 issue right here.

12 COMMISSIONER TURNBULL: Okay, so we're not talking
13 about a connection, per se. We're simply saying that you have
14 a meaningful structure up there.

15 MR. TONDRO: Something sufficient to render it no
16 longer open to the sky. Those are the "open to the sky" are
17 the magic words. I would say sufficient coverage.

18 COMMISSIONER TURNBULL: So, then, that would count
19 toward lot occupancy then.

20 MR. TONDRO: If it was on the ground floor, it would
21 count toward lot occupancy. In this particular case, since
22 it's up, the area underneath already counts toward lot
23 occupancy.

24 COMMISSIONER TURNBULL: Okay, that's interesting, I'm

1 just looking at future Zoning cases where we have trellises on
2 a roof, so I guess they count toward lot occupancy then. I
3 don't think we've ever thought about it, at least I haven't
4 thought of it that way, but it's good to see how you are
5 interpreting that. Okay.

6 CHAIRPERSON HEATH: Does the Appellant have any
7 questions?

8 MR. SEUTTER: Yes, we do. You mentioned that when
9 this came to your attention that it was answered with the
10 ancillary permit. How did this come to your attention?

11 MR. TONDRO: I would say - it's a difficult question
12 for me to answer because I'm not in the position where it came
13 directly to my attention. It came to my attention as a result
14 of this Appeal. It is an issue where the Zoning Administrator,
15 it was made aware to him, and at that point, he required that
16 it be addressed.

17 MR. SEUTTER: So, you have no knowledge if the
18 Appellants here provided this information to DCRA well before
19 the original permit was issued, and it was still issued with
20 those errors?

21 MR. TONDRO: I don't have any response to that one in
22 my particular knowledge.

23 MR. SEUTTER: I can go on record and say that these
24 issues were provided to DCRA at length to both reviewers for

1 this permit...

2 MR. SULLIVAN: Objection, is that a question?

3 CHAIRPERSON HEATH: You need to phrase this as a
4 question.

5 MR. SEUTTER: You mentioned the Zoning Administrator
6 standard. You also mentioned that this is not part of the
7 Regulations regarding the on-center 24 inch trellis, is that
8 correct?

9 MR. TONDRO: The 24 inches on center is a standard
10 that has been developed by the Zoning Administrator to fill in
11 a gap in the Zoning Regulations.

12 MR. SEUTTER: Would, in this instance, would the
13 Zoning Administrator not look at the surrounding buildings and
14 also the space of the actual property to determine if that
15 court could become compliant without a trellis?

16 MR. TONDRO: No, the Zoning Administrator has to make
17 sure that whatever interpretation standard that he uses applies
18 consistently and fairly and equitably to all properties in
19 similar circumstances and cannot take into account the
20 specifics of this particular property.

21 MR. SEUTTER: So, the Zoning Administrator would
22 apply not open to the sky, even if there was a chimney right
23 adjoining to that structure?

24 MR. TONDRO: The chimney doesn't enter into the

1 calculations. The question is whether or not it was a closed
2 court.

3 MR. SEUTTER: I'm asking would the Zoning
4 Administrator look at the chimney location as it relates to
5 placing a structure that would then not define the space as not
6 open to the sky, in violation of the Building Code?

7 MR. TONDRO: There is no provision in the Zoning
8 Regulations, which is what the Zoning Administrator is charged
9 to uphold that has anything to do with a chimney on a
10 neighboring property.

11 MR. SEUTTER: Is there any provision that would have
12 the Zoning Administrator look at the safety of the adjoining
13 structures regarding to his decisions?

14 MR. TONDRO: That is handled by the Building Code.

15 MR. SEUTTER: Can you point to the - any previous
16 precedent here at the BZA regarding the Zoning Administrator's
17 established practice or standard regarding a trellis that
18 wouldn't be 51% coverage and one that you've provided here that
19 is 24 inches on center? Where would the public find that
20 information?

21 MR. TONDRO: I believe that this is a matter of the
22 first impression before the Board. This, however, I will point
23 out, you - the Appellants brought up, for example, the issue of
24 the grade plan versus perimeter wall evaluation. I would point

1 out that was an issue where the Zoning Administrator deemed
2 that it was appropriate under certain circumstances to go and
3 use one method as opposed to the other, and the Board upheld
4 him. This is the standard practice of what the Zoning
5 Administrator does, which is when there is a gap in the
6 Regulations to try to apply a standard and then it's subject to
7 review by the Board. So, in response to your question, when
8 would the public find out about there, is an appeal, just as
9 you've done, you can challenge it, and take it to the Board,
10 and it's in the Board's purview to determine whether the Zoning
11 Administrator acted reasonably in using that standard. I would
12 say again there is significant deference due to the Zoning
13 Administrator by the Board in evaluating his standards.

14 MR. SEUTTER: Why wouldn't he apply an already
15 established precedent of the 51% coverage?

16 MR. TONDRO: As I've stated before, the 51% coverage
17 is a different issue. The only thing similar to it is the fact
18 that there are trellises involved, but I think, you know, there
19 are multiple issues of Regulations where a balcony or some
20 other issue might be viewing, might be triggering one issue,
21 and it may also be triggering another issue, but just because
22 they are both triggering say lot occupancy versus, I'm
23 struggling right now, gross floor area, but where you would
24 have two different or pervious surface or some other issue.

1 Just because they are both dealing with balconies does not make
2 them addressing the same provisions of the Code.

3 In this particular issue, the 51%, as I've explained,
4 was an issue about a meaningful connection, which was within
5 the issue of when two buildings on the same lot, what is the
6 minimum required to establish that they are now one single
7 building. That is the meaningful connection standard. That
8 does require 51%, but that is a different issue from this one,
9 which is extinguishment of a court, the court being by
10 definition in the Zoning Code, that it is open to the sky.

11 I would also point out just in terms of going back to
12 your prior question, in terms of the issue of how the public
13 might have access to learn about the Zoning Administrator's
14 determination or standard of the 24 inches on center, there are
15 numerous determination letters which are available on the web
16 site of the Zoning Administrator at DCRA's web site.

17 MR. SEUTTER: Did you provide any of those as
18 evidence here?

19 MR. TONDRO: The burden of proof is on Appellant, in
20 his particular case.

21 MR. SEUTTER: Sir, should this original permit, the
22 one at issue here today, have been issued without some clear
23 definition of that trellis above the court?

24 MR. TONDRO: I'm not sure I understand you.

1 MR. SEUTTER: You mentioned it was part of the
2 revision. Why wasn't it part of the original permit if the
3 Zoning Administrator was aware of that court?

4 MR. TONDRO: That, I'm not quite sure.

5 MR. SEUTTER: So, it should have been part of the
6 original permit.

7 MR. TONDRO: What was brought to the Zoning
8 Administrator's attention was the fact that a permit that had
9 been reviewed and had been approved had a court that was
10 noncompliant. When the Zoning Administrator was made aware of
11 that, he said, this needs to be addressed, and it was
12 addressed, along with the issue of the encroachment by the
13 footings.

14 [Speaking off mic.]

15 CHAIRPERSON HEATH: Does that conclude your question?

16 MS. VAN DEN BERG: Yeah, two additional questions.
17 It was - are you aware that this specific issue of the
18 noncompliances were even brought to the attention of the
19 Director of DCRA prior to the permit issuance on June 19th and
20 that the Director said that she would actually look into it,
21 but then instead the permit was issued?

22 MR. TONDRO: That, I am unsure. All I know is that
23 the Zoning Administrator approved the plans and then it was
24 issued, and that at a subsequent time he was made aware of the

1 fact that there was a question about the Zoning compliance.

2 MS. VAN DEN BERG: Now, the second question is you
3 said that the standard of the Zoning Administrator practices
4 typically apply to cases where the Zoning Regulations really do
5 not provide for something. However, and that may be the case
6 when it comes to trellises connected to buildings; however, in
7 the cases of courts, are you familiar with 11406.1, that are
8 very specific about minimum dimensions of courts?

9 MR. TONDRO: Yes, but that assumes that the court
10 exists. The question was not that, the question was rather
11 when does a court cease to be a court, and that determines the
12 definition, which is when it is no longer open to the sky, and
13 it is precisely that issue...

14 MS. VAN DEN BERG: But, why would the Zoning
15 Administrator not find a solution that is provided for in the
16 Zoning Regulations that would also be in line with the Building
17 Codes instead of trying to find a solution that is in violation
18 of the Building Codes?

19 MR. TONDRO: The Zoning Administrator is not charged
20 to find solutions for anybody. The Zoning Administrator is
21 charged instead to determine whether a proposed plan meets the
22 Zoning Regulations, and it is in that context that the Zoning
23 Administrator faced this question of what constitutes
24 sufficient coverage to no longer be open to the sky.

1 MS. VAN DEN BERG: Why did the Zoning Administrator
2 not apply 406 that says that the minimum size of a court should
3 be 350 square feet and would have no problem them with the
4 Building Codes?

5 MR. TONDRO: As I said before, because the question
6 was preliminary to that one, was it even a court. Had it been
7 a court, then it would have been subject to that, but if it's
8 not a court, then it's not subject to that particular
9 regulation.

10 CHAIRPERSON HEATH: Does that conclude your
11 questions?

12 MS. VAN DEN BERG: Yes.

13 CHAIRPERSON HEATH: Okay, thank you. Mr. Sullivan,
14 did you have...

15 MR. SULLIVAN: Very briefly, I don't think it's that
16 complicated. I don't think there's a gap. Don't get hung up
17 on the word trellis. It's pieces of wood. It's material.
18 It's whatever, and it became a trellis. It was a trellis.
19 They called it a trellis. But, the point is in one situation
20 you had to connect the building, and the definition of building
21 says a structure having a roof. So, in order to do a building
22 connection, that structure has to have a roof, and it was
23 determined that 51% coverage constitutes a roof, and then
24 therefore that's a meaningful communication, and now you have

1 two buildings that are one. It's used all the time.

2 In this case, call it pieces of wood. It becomes a
3 trellis, but it's a totally different situation, and the
4 definition that you have to go to instead of building is the
5 definition of court, which is defined in the Zoning Regulations
6 as unoccupied space open to the sky. In addition to that,
7 there are a couple of extra sections in Chapter 25 that talk
8 about when you have an open yard, and this is where the lot
9 occupancy issue comes in. § 2502.1 states that every part of a
10 required yard or court shall be open and unobstructed to the
11 sky. So, this can't be a court by those two very specific
12 provisions. I don't think there is a gap there. I think there
13 is an obstruction. And then others are yin to the yang. It
14 hits your lot occupancy, or in the case of a roof, if you did
15 it on a roof, Commissioner Turnbull, it wouldn't affect your
16 lot occupancy because you already have it, but it would be
17 considered an addition, which you wouldn't be allowed to do if
18 you were already exceeding lot occupancy.

19 Trellises are also used to close in courts that are
20 open all the way up. Now, in that case, you are hitting your
21 lot occupancy, so a developer or an architect has that
22 decision. Do I get rid of this noncompliant court and lose the
23 lot occupancy, or visa versa, and I have to ask for relief for
24 one or the other. This is consistent with how that's always

1 been done. The fact that there is not a case on that is
2 actually, I think that's evidence on how it's a straightforward
3 decision, and, of course, it's not our burden to prove that,
4 it's their burden to prove that the Zoning Administrator has
5 made a mistake. I think from the plain language of the
6 Regulations, it's clear that he did not make a mistake.

7 I think we've addressed the issue of the lower level
8 sufficiently. I don't think anybody's talked about FAR, but,
9 of course, FAR doesn't apply in this. That's all I have, thank
10 you.

11 CHAIRPERSON HEATH: Thank you. Does the Appellant
12 have any questions? Okay. Any questions from the Zoning
13 Administrator?

14 MR. TONDRO: No.

15 CHAIRPERSON HEATH: All right, thank you.

16 MS. VAN DEN BERG: Can I say one thing in closing?

17 CHAIRPERSON HEATH: Does the Board have any other
18 questions? Are we ready to close? Okay, all right. You may
19 close.

20 MS. VAN DEN BERG: Yes, we didn't really provide - we
21 have tons of more evidence of E-mails to the Director, E-mails
22 to all the plan reviewers asking for a meeting about where all
23 the Zoning violations occurred. They were all part of the file
24 of the Building Code Appeal that is ongoing at the same time

1 because the trellis is still a structure that cannot be next to
2 the chimney. We didn't submit it here, but if there is any
3 need to actually provide more evidence, how many times we tried
4 to make this clear before the permit was issued, all the way up
5 to the Director of DCRA, we really would be happy to provide
6 it.

7 CHAIRPERSON HEATH: Okay. Thank you.

8 [Speaking off mic.]

9 CHAIRPERSON HEATH: I just wanted to let you know we
10 received the written testimony from Lynn Grosso, who was here,
11 I understand, but not able to stay, so I just wanted to let you
12 know we do have her written testimony that we are reviewing
13 right now.

14 So, I think the Board is ready to deliberate on this.

15 MR. SEUTTER: Were you going to open it up for
16 comments from the public?

17 MR. SULLIVAN: There is nothing in the procedures
18 that would allow that. I would object to that.

19 CHAIRPERSON HEATH: Because this is an appeal, it's
20 not your typical hearing, but...

21 MS. VAN DEN BERG: We do apologize because there are
22 people who have been waiting here for seven hours to testify.

23 MR. TONDRO: Madam Chair, DCRA would also object
24 under the grounds that under 3119 there is no provision.

1 CHAIRPERSON HEATH: Sure, and we weren't even - I
2 think we had already come to conclusion on that, so, this isn't
3 your typical hearing. It's an Appeal, and so under a typical
4 hearing, we would have people speak in support or opposition.
5 In this case, that is not a part of the proceedings, so, we
6 expect that any representation of your party comes through you
7 as the Appellant.

8 So, I'll start by just saying that I understand from
9 reading a number of different letters from people who are
10 opposing this development that one of the biggest issues
11 appears to be that this development is just out of scale, and
12 that is - I think that's clear from the letter we just received
13 - it's clear from the other letters that we have in the record,
14 and there are numerous letters of opposition.

15 But, what's before the Board today is whether or not
16 the Zoning Administrator erred in issuing the Building Permit
17 for this site, and it's been made clear that there was a first
18 permit. There were errors found in the issuance of that, which
19 was the reason that the ZA asked for the permit revisions and
20 issued a new permit as permit No. 2.

21 Going through the information presented to us as to
22 why, what your argument is as to why you felt the ZA erred, as
23 I said at the beginning, there really were five points, and we
24 have talked quite substantially about two of them, and I think

1 just to begin to put this matter to rest, I would like to first
2 just say that I felt from the information presented both on the
3 record and today that the issue of encroachment was properly
4 addressed by the second permit, that the plat is not something
5 that is - it's not something that is a requirement, but it is a
6 Code issue, not a Zoning issue, and so not something that we
7 can speak to or say that the Zoning Administrator erred in not
8 requesting the plat.

9 We didn't talk about it so much today. I think Mr.
10 Sullivan may have brought this up, but the issue of FAR is not
11 relevant because this is the R-4. I understood the argument
12 that you were making relative to Zones with higher densities,
13 speaking particularly about R-5, but this is the R-4, and there
14 is no FAR limit, so there is no error with regard to FAR.

15 I think the two bigger issues that we spoke mostly
16 about today were the issue of the trellis and whether this was
17 a noncompliant court or whether there was sufficient structure
18 here to constitute that this portion of the building is not
19 open to the sky. We have heard the interpretation of the
20 Zoning Administrator today and how they came to their
21 conclusion and how they have ruled consistently on other cases
22 that the structure being spaced 24 inches on center has, in the
23 past, and on this case, constituted that the space is no longer
24 open to the sky, which at that point makes this not a court or

1 a noncompliant court.

2 With respect to the lower level, I think we talked
3 about basement versus cellar, and the issue of finished grade,
4 and it was clear from the Zoning Administrator's testimony as
5 well as from your response to his question that this - that the
6 dimension was less than 4 feet, and so I don't know where my
7 colleagues stand on this, but I don't feel that there is
8 sufficient grounds based on this Appeal and the issues before
9 us to grant the Appeal. I haven't seen enough proof to
10 determine that the Zoning Administrator is in error between the
11 two permits that were issued.

12 Again, we understand and the Zoning Administrator
13 also understands the errors of the first permit, which was the
14 reason for the second, but based on that history, I don't - I
15 can't substantiate supporting the Appeal. Anyone else?

16 VICE CHAIR HILL: Yeah, I mean, I - first I want to
17 say - what do I want to say. I'm sorry that you guys were
18 waiting here so long and weren't able to speak, and I
19 understand that also being, you know, a citizen of D.C. to -
20 you know there are lawyers here to support the developer, you
21 know, there is the Zoning Administrator and all the expertise
22 that he has, I mean, and what we have in front of us, is what
23 we're supposed to see as to whether or not the Zoning
24 Administrator erred in the way that he came to his decisions.

1 And, I mean, I can look at the photograph, and I can see why
2 everyone is upset and wants things to change, and I know what
3 I'm being charged with, which again is just to interpret
4 whether or not the Zoning Administrator erred in making his
5 decision of the issuance of the permits, and I don't think he
6 did err. I think that what he did do was within the
7 Regulations, and he interpreted it the correct way.

8 I don't particularly agree with what the result is,
9 but that is not what I'm charged to do. And, so, with that,
10 you know, I would also be on the side of denying the Appeal.

11 COMMISSIONER TURNBULL: Thank you, Madam Chair. I
12 get - I want to also apologize to the people who stayed here
13 late. I think there was just a misunderstanding of what the
14 Regulations are for what we're going through right now, so I
15 really do apologize for you staying so long.

16 We don't always agree with the Zoning Administrator.
17 I have sat on a number of cases with the ZA, and I - my only
18 thing is I think he is probably an excellent individual, and he
19 is an excellent Zoning Administrator. It is just on different
20 interpretations of things, we don't always agree.

21 In this particular case, looking at the five major
22 items that we talked about, the closed court, the lower level,
23 the encroachment, the plat, and the FAR, I think the Chair has
24 adequate, I mean has really done a well job of going through

1 four of those items, you know, the FAR, the plat, the
2 encroachment, the lower level, and I think there has been
3 enough evidence presented, especially by Mr. Tondro regarding
4 those elements, and I think I'm in total support of those.

5 The closed court is always - it's a tough issue, and
6 I have struggled with that, the angst over that, and the
7 current Zoning Regulations are not the clearest documents.
8 That is why we spent eight years and are going to be changing
9 them to initially new documents that will hopefully clarify a
10 lot of these things, especially trellis, but that's on a
11 separate issue not dealing with closed court.

12 I have a little bit of angst over it, but there is
13 also, knowing that the Zoning Regulations do not cover
14 everything, and knowing that we do rely on the Zoning
15 Administrator's history of how he has based his - what he has
16 done in the past. And, I think as has been presented, is that
17 he has tried to be uniform or consistent in all his
18 interpretations, and so looking at how he counts the closed
19 court and the structure that is in that court, and again, the
20 Zoning Regulations do not really address how this really gets
21 covered, I think, adequately, but that being the case, I think
22 relying on the Zoning Administrator's excellent record of
23 trying to be as far and unbiased as he can in looking at this,
24 I'll have to agree that he's correct on this, that based upon

1 precedent, what he's done in the past, what he's going for now,
2 that his interpretation is what we should be looking at, so,
3 that being the case, I think they've gone through and presented
4 a case that clearly says that the Zoning - I mean, construction
5 is not an exact science. Things happen, things go wrong, and
6 there always is the opportunity to go back and make a
7 correction or a change to rectify something, and that is why we
8 get a second permit issued to correct a deficiency that is in
9 the first one, and I think the second permit here has tried to
10 correct what was brought to their attention in the first place.

11 So, I guess my feeling is I would agree with my two
12 colleagues in that I would deny the Appeal.

13 CHAIRPERSON HEATH: And, I completely understand, as
14 I said at the beginning of my statement, that this is grossly
15 out of scale with the rest of the neighborhood and looking at
16 this photograph points to that. So, I started in a place of
17 having a hard time with this simply because I don't agree with
18 what is being built here, but at issue is whether or not the
19 Zoning Administrator erred, and so given that, I will make a
20 motion that we deny the Appeal on the grounds of what we've
21 each stated.

22 VICE CHAIR HILL: I second the motion.

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

1 [chorus of ayes]

2 CHAIRPERSON HEATH: Anyone opposed? All right, the
3 motion carries. Thank you.

4 MR. MOY: Staff would record the vote as 3-0-2, this
5 on the motion of Chairperson Heath to deny the Appeal or Affirm
6 the ZA decision, seconding the motion Vice Chairperson Hill,
7 also in support Mr. Turnbull, we have a member not present
8 today, Board seat vacant. Motion carries 3-0, Madam Chair.

9 CHAIRPERSON HEATH: Full Order.

10 MR. MOY: Yes.

11 MR. SEUTTER: Will there be an Order issued?

12 CHAIRPERSON HEATH: All right, thank you. There will
13 - I just asked for a full order, and o that will be issued by
14 the Office as soon as they are able.

15 MR. SEUTTER: Will that be just an Order saying that
16 they've denied - that you've denied the Appeal or will it list
17 any details for denying the Appeal.

18 CHAIRPERSON HEATH: It lists all the details of the
19 Appeal.

20 MR. SEUTTER: Okay, thank you.

21 CHAIRPERSON HEATH: All right, thank you. And,
22 again, we apologize for you all having to be here for so long.
23 This is probably our longest day.

24 MS. VAN DEN BERG: So, maybe to clarify, it will

1 contain the details, right?

2 CHAIRPERSON HEATH: It will, yes.

3 MS. VAN DEN BERG: Okay.

4

5

1 CHAIRPERSON HEATH: Thank you. Okay, so I think we have
2 one more matter. Sure, you can see this.

3 MR. MOY: Just one other Staff item for the Board,
4 Madam Chair, mostly for clarification to the Staff. As you
5 recall, last week, last Tuesday, the Board took, I guess I'll
6 say partial Action on Application No. 19079 of Industrial Bank
7 where the Board approved three area variances, and then more or
8 less held up in advance the special exception relief to the
9 roof top to December 15, so the Staff is asking for clarity as
10 to the status of where we are with the order and as well as the
11 Board's intent on their position on the conditions that were
12 attached to that approval.

13 CHAIRPERSON HEATH: So, before the Board right now,
14 we should clarify whether that Order granting variance relief
15 should be held in abeyance until the December 15th hearing or
16 whether the conditions proposed by OP and DDOT were adopted as
17 a part of the Order. I know Commissioner Turnbull wasn't here,
18 so this is really more a question for us. I would prefer - my
19 preference would be that we - that the Order is held in
20 abeyance until December 15th when we hear more about the
21 special exception.

22 VICE CHAIR HILL: I agree.

23 CHAIRPERSON HEATH: Okay, all right.

24 MR. MOY: Very good. Thank you, Madam Chair.

1 CHAIRPERSON HEATH: Okay, thank you. Any more
2 matters before the Board today?

3 MR. MOY: Absolutely nothing from the staff.

4 CHAIRPERSON HEATH: Thank you. We are adjourned.

5

6 [session ends at 4:50 p.m.]

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