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GOVERNMENT OF THE DISTRICT OF COLUMBIA

Office of Zoning

Board of Zoning Adjustment

PUBLIC HEARING OF THE BOARD OF ZONING ADJUSTMENT

9:41 a.m. to 12:33 p.m.

Tuesday, December 22, 2015

441 4th Street, N.W.

Jerrily R. Kress Memorial Room

Second Floor Hearing Room, Suite 220-South

Washington, D.C. 20001

OLENDER REPORTING, INC.

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2 Board Members:

3 MARNIQUE Y. HEATH, Chairperson

4 JEFFREY HINKLE, Board Member

5 MARCIE COHEN, Board Member

6 CLIFFORD MOY, BZA Secretary

7

8 Office of Attorney General

9 SHERRY GLAZER, Esq.

10

11 Office of Planning

12 STEVE COCHRAN

13 STEPHEN GYOR

14 MATT JESICK

15 MEGAN RAPPOLT

16 Others

17 JOB WOODILL, Applicant

18 MICHAEL CROSS, Witness

19 MIKE RAFFERTY, ANC 1C Representative

20 STACIE DESAI, Homeowner and ANC 1C Representative

21 CHRIS BOGDEN, Homeowner

22 SAMANTHA MAZO, Esq.

23 MAXIMILIAN TONDO, Esq. for DCRA

24 PAUL MICHAEL RODGERS, Applicant

1 SUE ELLEN CLIFFORD, Applicant
2 GABRIEL KLEIN, Applicant
3 Others
4 STEPHANIE KLEIN, Applicant
5 JULIAN HUNT, Architect
6 MEREDITH MOLDENHAUER, Esq.
7 JAMES KENNERKNECHT, Applicant
8 RON SCHNECK, Architect
9 ERIC BUTLER, JCR Retail Brokerage
10 DAN ROTH, Applicant
11 MARTY SULLIVAN, Esq.
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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're located in

the Jerrily R. Kress Memorial Hearing Room at 441 4th Street

Northwest. Today's date is December 22nd, 2015, and we're here

for the public meeting and hearings of the Board of Zoning

Adjustment of the District of Columbia.

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My name is Marnique Heath, Chairperson. Joining me

today is Jeffrey Hinkle, Board Member, and right now Rob Miller

sitting in as a member of the Zoning Commission and we'll have

Marcie Cohen joining us after this first case, also a member of

the Zoning Commission, sitting in as a member of the Board

today.

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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 while in the hearing room. The Board's

hearing procedures and how we will process applications can be

found on the table by the back door.

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All individuals wishing to testify today are going to

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. That's two witness cards per person, and

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1 give them to the court reporter who is seated to my right.

2 The second thing you will need to do is now stand and
3 take the oath as administered by the Board secretary, Mr. Moy.

4 [Oath Administered to the participants.]

5 MR. MOY: Ladies and gentlemen, you may consider
6 yourselves under oath.

7 CHAIRPERSON HEATH: All right. Good morning, Mr.
8 Moy. Do we have any preliminary matters?

9 MR. MOY: Yes. Good morning, Madam Chair, Members of
10 the Board. This is for the record regarding cases that are on
11 the docket, or cases that have been postponed and rescheduled.
12 The first is Case No. 19138 of James Suh, S-U-H. That has
13 been postponed and rescheduled to January 26th, 2016.

14 Also Case No. 19142 of First FSK, Limited Partnership
15 has been withdrawn by the applicant.

16 Application No. 19149 of Romi Satoh has been
17 postponed and rescheduled to January 26th, 2016.

18 And two other cases that will not be heard today,
19 18400A, as in Alpha, application of Jewish Primary Day School,
20 has been rescheduled to January 12th, 2016. And finally,
21 Application No. 19120 of David Kang and Mary Calomiris has been
22 rescheduled to February 2nd, 2016. That's it for me, Madam
23 Chair.

24 CHAIRPERSON HEATH: Okay. Thank you, Mr. Moy. So we

1 have a number of cases on the docket today. We're going to
2 begin with our first two meeting cases and that is Application
3 No. 19119 of Warder, LLC. And then we have a reconsideration
4 which is Application No. 19116. And then we will continue with
5 our hearing cases and we'll go through that order a little bit
6 later this morning.

7 All right. So, Mr. Moy, when you're ready you can
8 call our first meeting, please.

9 MR. MOY: Yeah. Thank you. Sorry for the delay,
10 Madam Chair.

11 All right, the Board's decision making on Application
12 No. 19119 of Warder, W-A-R-D-E-R. This was last heard on
13 December 1st, 2015, and scheduled for a decision for today.
14 And sitting on this, or participating on this case is you,
15 Madam Chair, Mr. Miller, and I believe also Mr. Hinkle.

16 MR. HINKLE: That's correct, Madam Chair. For the
17 record I read the record and will participate.

18 CHAIRPERSON HEATH: Okay. Thank you. So, is the
19 Board ready to deliberate? All right.

20 This case was recently before us and it's a request
21 for variance for lot area, courts, and nonconforming structure
22 and a special exception for a residential conversion. This is
23 one where the Office of Planning stated that they oppose the
24 lot area variance and could go along with the other relief, but

1 recommend denial of the lot area variance relief.

2 At the time of this hearing we heard from the ANC.
3 We had one commissioner who was present, and other than that
4 the ANC really hadn't taken a position on this application, but
5 we did also have a neighbor who was here. And I believe it was
6 the immediate next door neighbor who had concerns about the
7 conversion.

8 The applicant has submitted additional information to
9 us since the hearing that makes it clear that they've had
10 additional meetings with the -- this is a decision case, so --

11 [Participant in the audience is speaking off mic.]

12 CHAIRPERSON HEATH: They're what?

13 [Participant in the audience is speaking off mic.]

14 CHAIRPERSON HEATH: We don't typically take
15 additional information. You can pass it along to the Board
16 secretary, but this is a decision case and so there is no
17 opportunity to speak. That's only a part of the hearing.

18 [Participant in the audience is speaking off mic.]

19 CHAIRPERSON HEATH: That's fine. We're, again, we're
20 not -- this is not the forum for us to discuss this, so you can
21 pass along any information. Mr. Moy, are you willing to take
22 any information. I don't know that at this point it would
23 become a part of the record.

24 MR. MOY: Madam Chair, as the Board knows, the public

1 hearing was scheduled on December 1st. And after testimony
2 received the record was closed except for any supplemental
3 information that the Board requested for its decision today.

4 [Participant in the audience is speaking off mic.]

5 CHAIRPERSON HEATH: The applicant, right. But we're
6 not here to discuss this, so that's not a part of -- the
7 discussion is not a part of decision case. So, if you could
8 please take a seat? Thank you.

9 All right. So as I was saying, we did receive
10 additional information from the applicant as requested during
11 the hearing where the applicant indicated that they had had
12 additional meetings with I believe at least three members of
13 the community. And there was no mention of whether or not the
14 applicant had additional meetings with the immediate next door
15 neighbor who was here and testified as a part of the hearing as
16 someone who was in opposition.

17 We also haven't received any additional information
18 from the Office of Planning as to their change of position on
19 this application. Nor have we received any additional
20 documentation from the ANC signifying a change in their
21 position, which as I indicated really originally didn't take a
22 position, but we're certainly not in support of this
23 application.

24 So I'm still struggling with this one. The applicant

1 has made a case for trying to request this variance. And part
2 of their case is that converting this to a two-unit rather than
3 a three-unit residence would be a hardship because two units
4 would command such a price that this part of the neighborhood
5 can't really support. And it's a hard argument for me to
6 support. I don't know where the Board is on this but I'm
7 struggling to get to a point of approval on this. Any
8 thoughts?

9 MR. MILLER: Thank you, Madam Chair. Yeah. I think
10 that argument -- I saw that argument by the applicant and they
11 provided a comparables of what two units sell for and three
12 units sell for. I think that argument would have been
13 bolstered if they had provided some of the cost information of
14 renovation because they just kind of created -- made a
15 conclusionary statement about what the cost of renovating and
16 they wouldn't recoup, wouldn't be able to recoup -- they'd have
17 to sell the two units for more than what the market bears, and
18 then they wouldn't get back from the two what they would get
19 back from the three in terms of the cost. I thought that's
20 what the argument they made with it, but there was no
21 information on the cost.

22 But on the other hand this is on the lot area,
23 relief, which is the variance. It is de minimis. It's nine
24 feet, and a lesser burden of proof under case law is allowed

1 for those types of arguments. And you know, given that this
2 property has been long vacant and a nuisance in the community,
3 I don't know if the applicant ownership, if that overlapped
4 with the applicant's ownership, but clearly there is a plan to
5 have three units, and they've set back that top unit six feet
6 to try to mitigate any adverse impacts in terms of visual on
7 the neighborhood. And they've offered to do the -- in their
8 latest filing, to do a tree, you know, a tree in front to have
9 further visual mitigation.

10 I'm prepared to go forward with getting a vacant unit
11 back on -- a vacant house back on the market and being a
12 productive contributor to this neighborhood. And so I could
13 support the application.

14 MR. HINKLE: No, Madam Chair, I tend to agree with
15 Commissioner Miller. I think the argument for practical
16 difficulty is a little slim --

17 CHAIRPERSON HEATH: Uh-huh.

18 MR. HINKLE: -- in this case, and so I do have a
19 difficulty in that. But as Commissioner Miller mentioned, the
20 relief is actually nine square feet.

21 CHAIRPERSON HEATH: Uh-huh.

22 MR. HINKLE: And, you know again, as he mentioned in
23 case law, the burden is lessened, you know, if it's a minimum.

24 So I think I can support this.

1 CHAIRPERSON HEATH: Okay.

2 MR. HINKLE: It's you know, tough to get these houses
3 back in line and you know, available and productive, so I think
4 I'm in support.

5 CHAIRPERSON HEATH: Okay. All right. I certainly do
6 appreciate the applicant's efforts to get this house back on
7 the market. This is one, as you pointed out, that has had
8 significant issues and has been vacant for quite some time.
9 And so I do -- I would like to see this house once again
10 occupied and no longer a potential source for any other
11 criminal activity, potentially. So, all right. You --

12 MR. MILLER: I would add, Madam Chair, that I also
13 would have liked to have seen something from the applicant
14 about what effort was made with the abutting neighbor who did
15 testify. However, that the applicant -- that neighbor's
16 concern primarily was that they wanted homeownership and the
17 applicant did represent that these were going to be marketed as
18 homeownership units, three condominium units. So for that
19 reason too, I think that the concerns can be addressed.

20 CHAIRPERSON HEATH: Okay.

21 MR. MILLER: So if you --

22 CHAIRPERSON HEATH: You're going to make a motion?

23 MR. MILLER: Sure. So I would move that the Board of
24 Zoning --

1 CHAIRPERSON HEATH: Wait. You're going to have to
2 refrain from any noises, any more speaking. You're completely
3 out of line.

4 MR. MILLER: Madam Chair, I would move that the Board
5 of Zoning Adjustment approve Application 19119, 549 Park Road
6 Northwest, and ask for a second.

7 MR. HINKLE: I'll second.

8 CHAIRPERSON HEATH: The motion has been made and
9 seconded. Any further discussion?

10 [Vote taken.]

11 CHAIRPERSON HEATH: So, the motion carries. Mr. Moy,
12 we'll have to do a full order on this one.

13 MR. MOY: Yes, Madam Chair. Staff would record the
14 vote as three to zero to two. This is on the motion of Mr. Rob
15 Miller to approve the application for the relief requested.
16 Second the motion, Mr. Hinkle, and of course in support,
17 Chairperson Heath. We have a board member not present with us
18 today and a board seat vacant so the motion carries three to
19 zero for --

20 CHAIRPERSON HEATH: Thank you.

21 MR. MOY: Okay. The next item before the Board is a
22 reconsideration of the Board's order in fact to Application
23 No. --

24 [Participant in the audience is speaking off mic.]

1 MR. MOY: Application No. 19116 of D.C. Department of
2 General Services. Madam Chair, this motion for a
3 reconsideration was filed by ANC 4C on December 10th, 2015.
4 The order was issued on December 2nd, 2015.

5 CHAIRPERSON HEATH: Okay. Okay. All right. So this
6 reconsideration is concerning a decision that was part of a
7 hearing that took place on November 24th, where this
8 application was approved. The reconsideration was filed on
9 December 10th stating that DGS had presented misleading
10 information. More specifically that the ANC was misled by the
11 applicant, and that the ANC hadn't been able to fully
12 participate in the hearing, but also thought that the applicant
13 was going to be working with them in later months to address
14 the issues at hand as a part of this application, and that
15 didn't take place.

16 And so the applicant, and this we can -- or the party
17 requesting reconsideration is asking that the Board allow the
18 case to come back so that the ANC can participate.

19 I'm inclined to support the reconsideration. I don't
20 know where my colleagues are. I'm not sure where I'd stand if
21 this does come back, but I do feel that it's fair for the ANC
22 to participate, and if they were misled by the applicant I'm
23 inclined to allow the opportunity to be heard.

24 MS. COHEN: Madam Chairman, one of the things that I

1 did read the record to participate because I didn't sit on the
2 original case, is the presumption of GSA that they hadn't been
3 involved with the --

4 CHAIRPERSON HEATH: DGS.

5 MS. COHEN: GS, I'm sorry. With the GS, I thought
6 that -- now I lost my train of thought.

7 CHAIRPERSON HEATH: I'm sorry.

8 MS. COHEN: No, that's okay. I basically believe
9 that they thought the ANC was involved earlier in the process,
10 and frankly it's almost moot now because the work has been
11 complete. So I think it was an omission. I think the ANC
12 should have been involved, but I don't know now --

13 CHAIRPERSON HEATH: What they would get out of --

14 MS. COHEN: What they would get out of it as well as
15 the fact that the work had to be done.

16 So that's my position right now, is other than their
17 being left out, and we don't encourage that at all, what can
18 they do at this point in time. And at an earlier time
19 apparently they were engaged, but it seems to have dropped off.
20 And if anything I think we should reprimand GS and in the
21 future make sure that they are meeting with all ANCs in any
22 work they're involved in. But I don't know what we're going to
23 get out of that if they do -- if we do reconsider.

24 CHAIRPERSON HEATH: This has happened -- well, we've

1 seen recently quite a few DGS applications come before us where
2 they're pushing to get schools -- the school work done and open
3 at a really fast pace. And so some steps get missed. We've
4 seen that happen pretty recently.

5 And so unfortunately it seems that that may have
6 happened in this case. I agree with you. I'm not sure what
7 they stand to gain, and I don't know that the ANC has indicated
8 what they hope to gain out of this. I don't think I saw that.

9 MS. COHEN: Again, I think what we need to do is make
10 sure that the Department of General Services does not make this
11 a habit, and that we emphatically say, you will not get
12 approval in the future if you do not include the ANC. They
13 must be part of this.

14 And in this case, however, the work -- the necessary
15 work was done. I don't know what else the ANC possibly could
16 now affect. So I don't know if we normally send out letters
17 with regard to the process, but this is a lesson and
18 unfortunately I just don't think it's possible for the ANC to
19 go back and have them, you know, unrepair what they've done.

20 MR. HINKLE: Yeah, Madam Chair, I think I'm supposed
21 to state that I didn't participate in this case as well, but I
22 did read the record and will participate now.

23 My concern is that I didn't see any discussion of new
24 evidence that the ANC brought forward, and I was trying to find

1 the regulation but I think that's one consideration that the
2 Board is supposed to consider. I'm, I guess, with Commissioner
3 Cohen. I'm not quite sure what would be gained in, you know,
4 opening up the discussion again on this case. I think that the
5 ANC seems to have been a participant early on, but I'm not
6 quite sure why that didn't carry through to the Board hearing.
7 And you know, there was an opportunity there, just like any
8 other public participant. And I don't necessarily think they
9 took it, and now they're asking for a reconsideration. I'm not
10 quite sure if that's fair to the applicant in this case.

11 MS. GLAZER: Madam Chair, I just want to state for
12 clarification purposes that this is a motion for
13 reconsideration, so the standard is not that new evidence is
14 necessary.

15 MR. HINKLE: Right. Okay.

16 MS. GLAZER: The standard is different. That's for a
17 rehearing. With a reconsideration the Board can determine that
18 the Board -- that it erred in some way. And the error doesn't
19 have to be an error that it is responsible for. It can be, you
20 know, just a misunderstanding. It can be because they were
21 misled, or it can be a simple mistake or a misunderstanding.

22 CHAIRPERSON HEATH: Okay. Thank you for that
23 clarification.

24 MS. COHEN: And, Madam Chairman, I would say that the

1 Board did rely on, and maybe it probably was as council said, a
2 misunderstanding of the ANC's involvement because there was no
3 letter either for or against, and they did ask for it, so --
4 during the hearing.

5 CHAIRPERSON HEATH: Right. And so yeah, again, I
6 believe that the ANC as they've stated, may have been misled.
7 But -- and that's part of the reason why I'm struggling with
8 this because the -- they could have likely been misled but
9 again, I agree with you. I'm not sure what they stand to gain
10 by the reconsideration.

11 MS. GLAZER: I just want to say, I don't think it's -
12 - I don't think it's really relevant whether the ANC was
13 misled. The Board doesn't have to reach that question.

14 CHAIRPERSON HEATH: Okay.

15 MS. GLAZER: The issue is whether the Board decided
16 that it could go forward without the ANC's input based on
17 misunderstanding.

18 CHAIRPERSON HEATH: Okay.

19 MS. COHEN: And I think that that's where my comments
20 were tracking what you just said with regard to the -- at the
21 hearing, you know, the Board was hopeful to have heard from the
22 ANC and relied on the applicant's statement that they had met
23 with the ANC.

24 CHAIRPERSON HEATH: Right. We did rely on that. So,

1 I think it sounds like we're at a point where we're ready to
2 deny the reconsideration. Is that -- so I'll make a motion
3 that we deny the reconsideration of application NO. 19116.

4 MS. COHEN: And, Madam Chairman, I hope it's
5 appropriate to state that the G -- GS.

6 CHAIRPERSON HEATH: DGS.

7 MS. COHEN: DGS, must, must provide proof in the
8 future on any projects they wish to undertake, that they have
9 met with the ANC. And they have to make sure it's clear to the
10 Board of Zoning Adjustment that they did so. And I'll second
11 your motion.

12 CHAIRPERSON HEATH: The motion has been made and
13 seconded. Any further discussion?

14 [Vote taken.]

15 CHAIRPERSON HEATH: The motion carries.

16 MR. MOY: Staff would record the vote as three to
17 zero to two. This is on the motion of Chairperson Heath to
18 deny the request for a reconsideration. Seconded motion, Ms.
19 Cohen. Also in support, Mr. Hinkle. We have a board member
20 not present today, board seat vacant. Motion carries. Thank
21 you, Madam Chair.

22 CHAIRPERSON HEATH: Thank you, Mr. Moy.

23 MR. MOY: Okay. I believe you're going to do the
24 lineup of the hearing cases for the remainder of the day, Madam

1 Chair?

2 CHAIRPERSON HEATH: Yes. So we're going to next
3 start our hearing cases with Application No. 19148, and that's
4 Parkview Condominium Ventures. We're then going to take our
5 appeal case, which is 19081. Following that we will hear
6 Application No. 19150. That's Sue Ellen Clifford and Paul M.
7 Rodgers. The next case that we'll hear will be Application No.
8 19066. That's Gabriel and Stephanie Klein. Our next case will
9 be 19145. That's Linden Court Partners. And then the last two
10 cases for today will be Application No. 19161. That's
11 application of 1537 6th Street Northwest. And then we will
12 take Application No. 19018. That's application of North
13 Capitol Number 2 Land Trust, or Carlene Slattery. And that
14 will conclude us for the day.

15 So, Mr. Moy, if you want to call our first case?

16 MR. MOY: Yes. Thank you, Madam Chair. Parties to
17 the table to Application No. 19148. Madam Chair, this is the
18 application of Parkview Condominium Ventures, LLC. as captioned
19 and advertised for public announcement, request for a special
20 exception under 337 for the expansion of an existing
21 residential building into a 12 unit apartment building not
22 meeting the requirements of Section 330.7 in an R-4 district at
23 525 Park Road Northwest, Square 3037, Lot 55. And let's see,
24 and staff would ask the Board that the applicant clarify the

1 requested relief, Madam Chair.

2 CHAIRPERSON HEATH: Would that applicant please come
3 to the table?

4 Once you're seated, if you could introduce
5 yourselves?

6 MR. WOODILL: Job Woodill and I'm the Principal of
7 Landmark Construction Development, and we are the controlling
8 entity which owns 525 Parkview Condominium Ventures.

9 MR. CROSS: My name is Michael Cross. I'm the
10 architect working with Landmark Construction Development at 525
11 Park Road, Northwest.

12 CHAIRPERSON HEATH: Okay. As Mr. Moy has stated
13 there appears to be some confusion on this application as to
14 what relief is being requested. Can you clarify for us what
15 you're asking for?

16 MR. WOODILL: Yeah, we apologize in advance maybe to
17 tell you a little bit about the circumstances behind it will
18 help you understand.

19 When we purchased this property it was a lengthy
20 process. There was another purchaser involved that couldn't
21 perform. I don't know if you know anything about the
22 properties. It's a blighted property. It's been on and off
23 the market and fairly vacant for quite a long time.

24 At the time of purchasing it was sort of around the

1 time when the rules were changing so to speak, so there is a
2 little bit of confusion. We did meet with the Zoning
3 Administrator, and I think we're ready to speak on how we got
4 to what we asked for, and maybe it's not quite the appropriate
5 thing, but given the time constraints and --

6 CHAIRPERSON HEATH: What are you asking for now?

7 MR. WOODILL: We are still asking for the special
8 exception at this point, but the Board may deem to opine
9 differently but again it was -- we're not quite sure if we need
10 to ask for a special exception at this point. We have
11 competing information, so.

12 MR. CROSS: I brought some information that I could
13 present to kind of show you the existing property, what we're
14 asking for, why we feel we need to ask for expansion, as well
15 as a little bit of the history of how this property came into
16 existence to help try to complete as much of a picture for you.

17 CHAIRPERSON HEATH: Right. But why do you -- you
18 understand that Office of Planning and the Zoning Administrator
19 have recommended that you should be applying for a variance
20 relief, correct?

21 MR. CROSS: We do. We feel that the information that
22 we have is -- supports that this is a legal conversion in 1968,
23 therefore not subject to the variance that they are
24 recommending.

1 CHAIRPERSON HEATH: Okay. Okay. We also have the
2 Zoning Administrator here, and at some point, if not now, we
3 may call him to the table to address this.

4 MR. WOODILL: We might add that we just spoke to Mr.
5 LeGrant. We have a long relationship with Mr. LeGrant and
6 we've rarely if ever disagreed. But I think this may be the
7 one time that we agree to disagree.

8 CHAIRPERSON HEATH: Okay. All right. So you're
9 going to go forward with the request for special exception for
10 the residential conversion?

11 MR. CROSS: Given the amount of ambiguity both in the
12 state of the rewrite of the codes and the information on the
13 property, we felt that we might as well proceed because it
14 seemed like something that wasn't exactly clear to be handled
15 at any other level, so we just hold our appointment here today
16 and give you the information. And if we can proceed, great.

17 CHAIRPERSON HEATH: Okay. We will proceed, but what
18 I'd like to do before you proceed with any presentation is call
19 Mr. LeGrant to the table if he's willing to address this issue
20 of the requested relief.

21 MR. LeGRANT: Good morning, Members of the Board and
22 the public. Again, Matt LeGrant, Zoning Administrator, DCRA.
23 I wasn't planning to address the Board on this case. It's sort
24 of out of usual order for me to opine on an application. But I

1 understand the situation. It's -- the key here is what drives
2 how this will be regulated, is how whether the building that's
3 there today, a 12 unit apartment building, was previously
4 converted from one use to the present use, or if the 12 unit
5 apartment building was -- that is there, was originally built
6 in that building as that use. And the term that we're
7 increasingly using, if it was purpose built as a 12 unit
8 apartment building.

9 The Zoning Regulations specify a specific lot
10 occupancy in the R-4 district, and as many of the members of
11 the Board may recall, it's a conversion then the standard is
12 the greater of 60 percent, or the lot occupancy existing at the
13 time of the conversion. So that's the standard that's employed
14 if the conversion was in the history of that property, either
15 historically or in some instances, in a case called an instant
16 application if it's part of the conversion.

17 In this instance there is no change in the number of
18 units. There's 12 units there. So the question is, was there
19 historically a conversion. The applicant asserts there is and
20 has presented evidence to me that they believe documents a
21 conversion.

22 As I noted to them, I must rely on the records of the
23 District of Columbia Government as the key information and then
24 other information certainly can be brought to my attention.

1 The piece of information that I've relied on in this case is a
2 certificate of occupancy application from 1968 in which the
3 application states -- the application that goes with that
4 certificate of occupancy notes that the quote/unquote, the use
5 prior to that construction for that building was a vacant lot.

6 And then the application was for a 12 unit apartment building.

7 Based on that piece of information I concluded that
8 that was then -- there was no conversion involved. It was a
9 purpose built 12 unit apartment building in which the C of O
10 was granted in 1968. I'm sure you'll hear from the applicant
11 they have other information that I ultimately found was not
12 persuasive.

13 CHAIRPERSON HEATH: Okay. Thank you. Sure, Mr.
14 Cochran.

15 MR. COCHRAN: Thank you, Madam Chair. For the
16 record, Steve Cochran, Office of Planning.

17 I wanted to add one more thing in some respects to
18 further muddy the issue. The applicant has asked for relief
19 under Section 330.7H. That's a new section adopted by the
20 Zoning Commission and modifying the R-4 regulations. 330.7H
21 says an apartment house in the R-4 district, converted from a
22 nonresidential building prior to June 26th, 2015, shall be
23 considered a conforming use, et cetera, et cetera, but shall
24 not be permitted to expand either structurally or through

1 increasing the number of units unless approved by BZA pursuant
2 to and as a special exception.

3 So the important phrase there is converted from a
4 nonresidential building prior to June 26th, 2015. Whether or
5 not the building in 1968 was converted was built anew, or was
6 converted from an existing residential structure may be
7 irrelevant because under the regulations under which the
8 applicant has applied for a special exception, the building has
9 to have been converted from a nonresidential structure. I
10 don't think anyone is contesting that. Nobody has alleged that
11 it was a nonresidential structure.

12 So it seems like under the new regulations, that
13 section wouldn't apply. That's not to say that the applicant
14 doesn't have a legitimate way to apply for relief under other
15 sections.

16 CHAIRPERSON HEATH: Okay. All right. Thank you. It
17 seems to me that you need more time to be able to work with the
18 Zoning Administrator and with Office of Planning.

19 MR. CROSS: We greatly appreciate the time that both
20 Mr. LeGrant and Mr. Cochran have put into this, and in many
21 ways very much agree with them, and particularly agree with
22 kind of the muddiness of the waters.

23 CHAIRPERSON HEATH: Uh-huh.

24 MR. CROSS: And if we may, we have a very short

1 presentation that addresses both of these. We have the C of O
2 that Mr. LeGrant references because there's very limited
3 information that's some of the best information we have to go
4 off of. And we also have the code citations which Mr. Cochran
5 references and we show why we're using that section and how the
6 spirit of the code is the same across three different sections
7 that might apply here, which were also published after the date
8 of our application. So we were working with kind of a moving
9 target in some ways.

10 CHAIRPERSON HEATH: Okay. All right.

11 MR. CROSS: So --

12 CHAIRPERSON HEATH: Do you want to make a comment,
13 Marcie?

14 MS. COHEN: Yeah. So are you specifically talking --
15 you know, make it simple for me. The new regulations on R-4?
16 Is that what you're talking about?

17 MR. CROSS: Correct. The new regulations on R-4.

18 MS. COHEN: I thought we were still looking at
19 projects under the old regulations and there was a period of
20 time until the new regulations took effect. So, I thought we -
21 - you know, we grandfathered everything. You know, I think --

22 MR. WOODILL: We didn't entirely go at this
23 ourselves. So it may appear that we just -- we did have a
24 meeting with the -- we had a PDRM. So this was -- when we

1 initially made this application the initial application we made
2 came from the guidance of the Office of Zoning Administrator.
3 Now later on there's things, opinions, and things may have been
4 rehashed. But this was entered into because of that initial
5 meeting. So it wasn't -- we didn't interpret the rules
6 ourselves. We did self-certify, but this initial applicant
7 came out of a meeting with the Office of Zoning Administrator.

8 MS. COHEN: I know, but the Zoning Administrator is
9 disagreeing with you, so --

10 MR. WOODILL: Well, he didn't originally, so.

11 MR. CROSS: The point of disagreement today is
12 about --

13 MS. COHEN: Why don't we take a --

14 MR. WOODILL: Yeah. Sorry.

15 MS. COHEN: [Speaking off mic.] The point that I
16 was making is that I don't think that --

17 [Pause.]

18 CHAIRPERSON HEATH: I don't think there's any issue
19 with you making your presentation. You've said that you have a
20 short presentation. I do think that your proceeding under the
21 -- or with the relief that you've requested you're sort of
22 acting in your own peril. You've heard what the Zoning
23 Administrator has said and the Board can deny your application
24 and you wouldn't be able to reapply. I think we can go forward

1 with this, but again, it's at -- you're treading on thin ice
2 here. So I think it's up to -- I'll allow you to present and
3 we can --

4 MR. WOODILL: We understand. We know it perhaps
5 doesn't exactly follow the rules of order. But I think at this
6 point we're looking to the Board to give us a little bit of a
7 guidance to be honest with you, and hear a little bit from
8 yourself.

9 Also, if necessary, and I don't know what the point
10 of order for this is though, we're willing to ask -- I think
11 when you see what we're asking for, it's very little.
12 Everybody in the community agrees with it. Everybody is in
13 support of the ANC. We're willing, if the Board thinks that we
14 are asking for -- in the inappropriate area to ask for a
15 variance from the notification requirements, and today just say
16 well, it's a -- I don't think -- you know, nobody cares whether
17 this is a variance or a special exception. They support the
18 project. I mean, I know it's a point of order. I'm just
19 putting out there, we're willing to do that work, you know,
20 because it has been quite a while and we're trying to get this
21 done some way, one way or another.

22 CHAIRPERSON HEATH: Okay. So go ahead with your
23 short presentation and then the Board will determine how we
24 want to act.

1 MR. CROSS: Thank you. And again, we really
2 appreciate your time and the time of everybody in Department of
3 Zoning and Planning thus far.

4 We're here seeking special exception because of a
5 structural expansion of an existing apartment building without
6 increasing the number of units per the new R-4 regulations.
7 The existing building on the --

8 MS. COHEN: I'm sorry. Per the new R-4, I think we
9 cannot hear this until those regulations are in effect.

10 CHAIRPERSON HEATH: Right.

11 MS. COHEN: I may be -- we're --

12 CHAIRPERSON HEATH: We can't decide on it.

13 MS. COHEN: Yeah, we can't decide on it.

14 CHAIRPERSON HEATH: For sure.

15 MR. CROSS: The regulations that I'm referring to
16 have a published date of 9/25/2015.

17 MS. COHEN: But there's a time period and I forgot
18 what it is, that we will consider projects after a certain
19 period of time. And I know that it's not this year.

20 CHAIRPERSON HEATH: Right.

21 MS. COHEN: So I just think you're a little premature
22 to be considered under the new regulations.

23 MR. CROSS: Okay. So maybe after the presentation
24 you can tell us that this special exception is not required and

1 we just are deferred back to work with staff.

2 CHAIRPERSON HEATH: I'm going to defer you back now.

3 I think --

4 MR. CROSS: Before I can even explain our position?

5 CHAIRPERSON HEATH: I think based on what we've
6 heard, you presenting right now is not going to be a good use
7 of any of our time. We can't approve your application under
8 the new regulations. And you've already heard from the Zoning
9 Administrator and his position. The Board is not -- we're not
10 prepared to act on this today, regardless. So --

11 MR. WOODILL: So just to be clear, there's no legal
12 avenue for relief right now? Is that what we're saying?

13 CHAIRPERSON HEATH: There is under a variance, but
14 not under the new R-4 regulations, which is what you --

15 MR. CROSS: But what --

16 MR. WOODILL: We don't --

17 MR. CROSS: So now --

18 MR. WOODILL: -- believe we need a variance.

19 MR. CROSS: -- I don't know what rules I'm following
20 in terms of DCMR 11. There's a published code in DCMR 11,
21 that's what we're working under. And furthermore --

22 MS. COHEN: But please read the date that it's in
23 effect. It's not in effect. Am I correct?

24 MR. CROSS: It's published on 9/25.

1 MS. COHEN: But it's not effective of that date, I
2 believe.

3 MR. CROSS: Section 330 is not effective, Section
4 330.6 is not effect, and Section 337 is not in effect today?
5 Doesn't seem accurate.

6 MS. GLAZER: Madam Chair, I think the ZA is going to
7 address the questions.

8 CHAIRPERSON HEATH: Okay. Okay.

9 MR. LeGRANT: Madam Chair, if I may? The changes to
10 the R-4 regulations that I think are being referred to is that
11 under Zoning Commission Order 14-11, who -- which the effective
12 date of that order was June 26th, 2015.

13 Now, the vesting aspects of that was -- and as some
14 people may recall, it was a little complicated depending upon
15 the type of proposal, the zone it was in, and the date a
16 particular application was filed. I think in this instant
17 case, correct me if I'm wrong, I don't believe a building
18 permit has been filed.

19 MR. CROSS: It has been in the last week but not --

20 MR. LeGRANT: Okay. Just this last week.

21 MR. CROSS: -- in a relevant date.

22 MR. LeGRANT: Okay. So I'm of the opinion that if an
23 application filed in this instance, and of course now there's a
24 little bit of uncertainty or muddiness, as was noted, as to was

1 it a conversion or not, you know, I've given my opinion, I
2 would say that that application is now subject to the new
3 provisions enumerated in 14-11, including if it is ultimately
4 ruled to be a conversion under new sections 336 or 337,
5 whatever that provision is.

6 So yes, given the time frame on that very narrow
7 question, is the building permits that's before us subject to
8 order 14-11. Answer is yes.

9 MS. COHEN: I stand corrected.

10 CHAIRPERSON HEATH: Okay. All right. Thank you, Mr.
11 LeGrant. Okay.

12 MS. COHEN: Sorry.

13 CHAIRPERSON HEATH: All right.

14 MS. COHEN: So maybe we should hear it.

15 CHAIRPERSON HEATH: Yeah, probably.

16 MR. CROSS: If I might, Madam Chair, that does mean
17 that it would be a variance, not a special exception, under the
18 new rules.

19 CHAIRPERSON HEATH: Okay. Okay. All right. So
20 we're going to continue this and that will give you the time to
21 work through the relief that you need. If you're going to
22 apply for a variance, you'll need to readvertise because this
23 has been posted as a special exception and the threshold for a
24 variance is greater. So we always require that you repost so

1 that even if people in the community are in support of this
2 they're at least aware of the relief that's being requested,
3 and when you'll be back with us.

4 MR. WOODILL: We understand that, but I guess
5 although I think Steve has been very helpful, I think they
6 agree that this wasn't a detriment to the community. But this
7 hinges on the fact that we disagree with the Zoning
8 Administrator's ruling. And I said, I have a longstanding
9 relationship with Matt LeGrant. I'm meeting with him later
10 today. Had one on Friday. We rarely disagree, but I disagree
11 on this one. I think we have a burden of proof which is
12 superior to his. And under that, I mean, I think there is a
13 greater person to appeal to and I would assume that would be
14 the BZA. That's what we're asking for you to opine on today.

15 Is, there's no way you can do that? Or I mean, if
16 there's no way you can do that we move on. But I still think
17 if we ask for a variance, in my mind we're asking for
18 inappropriate relief. We're just pushing the problem down the
19 road.

20 CHAIRPERSON HEATH: Well, I think that because the
21 waters are so muddy right now as we've said a number of times,
22 that it's not a good use of our time right now to continue
23 talking about this. We're going to give you additional time,
24 and if you come back and you still are asking for the same

1 relief, we'll hear this. But I think it's to your benefit to
2 work with Office of Planning and the ZA and try to come to some
3 consensus on what relief is really being requested and what's
4 necessary. And again, as I said, if you do decide to move
5 forward with the variance, just know that you need to repost.
6 And there will likely be additional fees that you'll need to
7 pay, but you can work that out with the Zoning Office.

8 So, Mr. Moy, if we continue this what is our next
9 date?

10 MR. MOY: Madam Chair, the dates for January are
11 chock full of cases. Of course I could always squeeze another
12 one in on the 26th of January, but staff would suggest the week
13 following, which would be February 2nd.

14 And plus, it gives time to readvertise the --

15 CHAIRPERSON HEATH: Right.

16 MR. MOY: Readvertise the relief.

17 MR. WOODILL: Does the Board -- I don't think the ANC
18 is going to care or want to hear about this again. I don't
19 think it really matters to them. But I assume we'll have to go
20 back to ANC and explain the differential here. Again, I don't
21 think we'll have any different support.

22 CHAIRPERSON HEATH: And yes, you would if you're
23 changing your request.

24 MR. WOODILL: I'm just wondering if there's enough

1 time to do that. I don't think there is.

2 CHAIRPERSON HEATH: When do they meet?

3 MR. WOODILL: They don't have a meeting, I don't
4 believe. I mean, we had the meeting. There's no meeting in
5 December.

6 CHAIRPERSON HEATH: Right.

7 MR. CROSS: We met both --

8 CHAIRPERSON HEATH: But they would meet in January.

9 MR. CROSS: We met with the subcommittee and got
10 their support. And then with the --

11 CHAIRPERSON HEATH: Okay.

12 MR. CROSS: -- full ANC, and did a public
13 presentation there and got unanimous support from the ANC at
14 that time.

15 CHAIRPERSON HEATH: Okay. And if they're fully in
16 support of the project, as you've said, I wouldn't expect that
17 they would have any issues with you changing the relief that's
18 being requested. The project would still be the same. But if
19 they're meeting in January it would be helpful if you could
20 just make them aware, or let them know how you're proceeding.
21 So February 2nd.

22 MR. MOY: February 2nd would be the earliest. I
23 actually would prefer the 9th but I don't see a reason to hold
24 them, hold the applicants off any longer.

1 CHAIRPERSON HEATH: Okay.

2 MR. MOY: Leave that --

3 CHAIRPERSON HEATH: Okay.

4 MR. MOY: -- at the Board's discretion.

5 CHAIRPERSON HEATH: Does February 2nd look jam
6 packed? Probably.

7 MR. MOY: Yes, but the 9th would be better, but it's
8 only by one or two cases, so.

9 CHAIRPERSON HEATH: Okay. All right. Well, let's do
10 the 9th.

11 MR. MOY: Okay.

12 CHAIRPERSON HEATH: All right. Thank you.

13 MR. WOODILL: Thank you.

14 MR. CROSS: Thanks for your time.

15 MR. MOY: All right, Madam Chair, the next case is
16 Appeal No. 19081, this is the appeal of ANC 1C and all, as
17 captioned and advertised for notice, this is the appeal from
18 the May 13th, 2015 decision of the Zoning Administrator to
19 issue the building permit No. B, B as in Bravo, 1412288,
20 allowing the conversion of a one-family dwelling into a
21 four-unit apartment house in R-5-B district at 1828 Ontario
22 Place Northwest, Square 2583, Lot 438.

23 CHAIRPERSON HEATH: Okay. All right. So we have a
24 few preliminary matters to address with this appeal. The first

1 is that there is a singular appellant and that is ANC 1C. And
2 I'll allow you all to introduce yourselves but we will want to
3 address who the appellant actually is, is being represented by.
4 And if you are also requesting to be an intervener as well.

5 MR. RAFFERTY: Right.

6 CHAIRPERSON HEATH: We'll also have to address the
7 motion to dismiss. But let's -- before we address who the
8 appellant is going to be represented by, if you could each
9 introduce yourselves we'll come back to that issue.

10 MR. RAFFERTY: Mike Rafferty, one of the
11 representatives of ANC 1C, and the owner of 1826 Ontario Place.

12 MS. DESAI: Stacie Desai, homeowner at 1830 Ontario
13 Place, and also a representative of ANC 1C.

14 MR. BOGDEN: Chris Bogden, the owner of the LLC.,
15 1828 Ontario, LLC.

16 MS. MAZO: Samantha Mazo, we're counsel to the
17 property owner.

18 MR. LeGRANT: Matt LeGrant, the Zoning Administrator,
19 DCRA.

20 MR. TONDRO: And Maximilian Tondro representing the
21 General Counsel's Office, DCRA.

22 CHAIRPERSON HEATH: Thank you. Okay. So I'll turn
23 back to you, Mr. Rafferty.

24 MR. RAFFERTY: Right. Are we going to deal with --

1 which are we going to deal with first? You want to deal with
2 the appellant --

3 CHAIRPERSON HEATH: Right.

4 MR. RAFFERTY: -- issue. Both Stacie and I have been
5 authorized by ANC 1C to represent them in this matter. I
6 intervened as an appellant as well, as the adjacent property
7 owner I'm uniquely affected by this and I'm hoping to be
8 granted appellant status as well.

9 CHAIRPERSON HEATH: Okay. But if you've been -- if
10 the ANC has given you their authorization to represent the ANC
11 then --

12 MR. RAFFERTY: Right.

13 CHAIRPERSON HEATH: -- we will -- we'll accept that
14 and allow you to represent the ANC in this matter.

15 MR. RAFFERTY: Okay.

16 CHAIRPERSON HEATH: Okay.

17 MR. RAFFERTY: Is there a problem with me being
18 granted appellant status as well?

19 CHAIRPERSON HEATH: That's fine.

20 MR. RAFFERTY: Okay. Great.

21 CHAIRPERSON HEATH: I don't have any issues with
22 that.

23 MR. RAFFERTY: Okay. Wonderful.

24 CHAIRPERSON HEATH: Okay. So you will be --

1 MR. RAFFERTY: Both of us are authorized for --

2 CHAIRPERSON HEATH: Okay.

3 MR. RAFFERTY: And there's evidence in the record of
4 that, that ANC 1C has given us authority to represent them in
5 this matter.

6 CHAIRPERSON HEATH: Okay.

7 MR. TONDRO: So I assume I'll be both as an appellant
8 and a representative of ANC 1C, and Stacie would be the
9 representative of ANC 1C.

10 Madam Chair, just for clarification does that mean
11 that they are splitting, then the role of ANC 1C and they're
12 splitting the time between the two of them, and then separately
13 that Mr. Rafferty as an individual appellant? Just to be clear
14 what's going on.

15 CHAIRPERSON HEATH: Sure. Before I answer your
16 question I'd like to hear from counsel.

17 MS. GLAZER: Well, I think the first question is
18 whether the two should join as a party or whether the Board
19 wants to authorize Mr. Rafferty as a separate party. And the
20 next question would be having one person designated to speak on
21 behalf of each party, or any party.

22 CHAIRPERSON HEATH: Right. Okay. So if you were
23 both representing the appellant, then you're sharing that
24 responsibility and you would share the time.

1 MR. RAFFERTY: That's fine.

2 CHAIRPERSON HEATH: Okay. All right.

3 MR. RAFFERTY: That's not a problem.

4 CHAIRPERSON HEATH: Okay. All right.

5 MS. MAZO: Sorry. Point of order, though. I don't
6 believe Ms. Desai has filed her own separate intervenor request
7 to intervene, so I'm not exactly sure how she and Mr. Rafferty
8 could join together as a separate intervenor in the case.
9 Maybe I misunderstood.

10 CHAIRPERSON HEATH: But yes, she's representing ANC
11 1C. So not an intervenor. Okay. All right. So then we also
12 have on the table, two requests to -- or two motions to
13 dismiss.

14 MR. RAFFERTY: Right.

15 CHAIRPERSON HEATH: Based on the fact that the issue
16 appears to be now moot, given the second permit and that the
17 second part of the issue really is that based on your -- the
18 statement that you submitted to the Board most recently, the
19 majority of the issues that you've brought before us are
20 related to construction and not issues that would come before
21 this Board.

22 MR. RAFFERTY: Right. But what I would say to that
23 is pending -- what I'm hoping we could do today is stay this
24 appeal pending the outcome of the OAH appeal, because if we are

1 successful there, which we hope we are, we will then have a
2 zoning issue again. And if the motion to dismiss were granted,
3 our right to appeal might go away, and I don't think that's the
4 intent here.

5 The only reason -- I'm not forum shopping. We're not
6 forum shopping. The OAH appeal came about because of revised
7 permit No. 1 and revised permit No. 2 that both came about
8 after our original appeal was filed.

9 MR. TONDRO: Madam Chair, DCRA would strenuously
10 object to that. In terms of if the Board -- I'm sorry. If the
11 Office of Administrative hearings were to rule for appellant on
12 this issue, at that point, depending on the specifics of what
13 the ruling are, which at this point we have no determinations,
14 we do not know what it is. It may be that the permit holder is
15 able to comply with that ruling and still have no outstanding
16 zoning issues. It may be that as a result of that ruling there
17 would be zoning issues. If there were to be zoning issues
18 raised then the permit holder would have to get a revision to
19 the building permit and that one would be able to be appealed
20 by the appellant. So I don't believe that there's any loss of
21 appellant's rights. Thank you.

22 MR. RAFFERTY: Madam Chair.

23 CHAIRPERSON HEATH: One moment. Yes.

24 MS. MAZO: Yeah, the property owner is in accord with

1 DCRA. And also, we have clearly laid out our argument as to
2 why there is no zoning regulation -- no error that has
3 currently been alleged of the Zoning Regulations at this time
4 under these permits that are now before us. And for that
5 reason we would ask that the case be dismissed for
6 jurisdictional purposes.

7 MR. RAFFERTY: I was going to say Mr. Tondro's point
8 is basically proving my point that we don't know until the
9 outcome of that OAH case whether our zoning appeal is live or
10 not, and I think we need to know that before you can dismiss
11 it. We had a very valid appeal when we filed initially. I
12 think it's proven how valid it is because DCRA raised to issue
13 a revised permit to correct what was brought up in our first
14 prehearing statement. They did the same with what we brought
15 up in our second prehearing statement. I just think that there
16 was an error initially and they've added to that error by what
17 -- by their actions in issuing these revised permits. And the
18 problem is if this were not stayed, our appeal right might go
19 away.

20 MR. TONDRO: Madam Chair.

21 CHAIRPERSON HEATH: Go ahead, Mr. Tondro.

22 MR. TONDRO: I apologize. Again, I think it's
23 clearly established in this particular case I think we have
24 been now on two months of -- since original hearing was

1 scheduled. I think that the issues have been addressed under
2 the building code. The permit holder is authorized to amend
3 and to revise the permits, so I want to be clear that that is
4 allowed.

5 In this particular case DCRA believes that all issues
6 have been addressed in terms of the zoning. If there are
7 anything under the building -- under the building code, that
8 would have to be resolved at that point. Thank you.

9 CHAIRPERSON HEATH: Great. Okay. So I think as you
10 stated, the issues that you've brought before the Board as a
11 part of this appeal have all been addressed by the permit
12 revisions. And so as Mr. Tondro has stated, they are -- DCRA
13 is in their right to revise permits. That is allowed.

14 And so --

15 MR. RAFFERTY: But if they're doing it in violation
16 of the building code --

17 CHAIRPERSON HEATH: They're not. Right. They're
18 fully in their right and are acting within the building code.
19 So if -- and as Mr. Tondro has pointed out, you will have -- if
20 as a result of the OAH hearing there are zoning issues --

21 MR. RAFFERTY: Right.

22 CHAIRPERSON HEATH: -- they will have to address
23 those zoning -- those zoning issues will have to be addressed
24 at that time.

1 MR. RAFFERTY: So can I ask clarification on that
2 point? Right now we have a second revised permit that was just
3 issued on December 11th. So I assume that there is -- from the
4 issuance of that date there is a 60 day appeal right that
5 exists. Are you also saying that depending on the outcome of
6 the OAH hearing that the appeal right would vest at that time
7 if there are zoning issues that come about as a result of that?
8 So that's what you're saying?

9 MS. GLAZER: Madam Chair, I think the Board is
10 treading on thin ice about getting into advisory questions.

11 CHAIRPERSON HEATH: Okay. All right. So I will
12 refrain from answering that question. But on the basis of what
13 we've heard so far as a part of this appeal, I don't know where
14 the Board stands, but --

15 MR. TONDRO: Madam Chair, may I just address what the
16 appellant just said?

17 CHAIRPERSON HEATH: Sure.

18 MR. TONDRO: First of all we have, in our pleadings,
19 we have specifically sought to incorporate the most recent
20 permit. So all three permits are joined together as
21 effectively one permit for the subject of this appeal.
22 Therefore, whatever happens in this appeal we believe that
23 should be the end of these series of permits.

24 If, however, under the appeal that has been brought

1 by the appellants under the building code, if there were a
2 ruling that required a change, that would require a new
3 building permit. And if there were zoning -- if the appellants
4 deemed at that time that that new permit had zoning issues that
5 they sought to appeal zoning violations, then that would start
6 a new separate appeal process of that other permit, if that had
7 to happen.

8 CHAIRPERSON HEATH: Okay. All right.

9 MS. GLAZER: Madam Chair, I just want to point out
10 one thing. According to my notes, at the last board hearing
11 the case was adjourned at the ANC's request to allow them time
12 to review the revised building permit and submit any other
13 responses to the permit revisions and also to allow the owner
14 and DCRA to respond. And so --

15 CHAIRPERSON HEATH: That's correct.

16 MS. GLAZER: -- by those actions it appears that the
17 revised permit was, as Mr. Tondro says, incorporated into the
18 appeal, which is --

19 CHAIRPERSON HEATH: That is correct.

20 MS. GLAZER: That's the procedural history as far as
21 I can tell.

22 CHAIRPERSON HEATH: That is correct. Right. Okay.
23 So --

24 MR. RAFFERTY: And by, just to clarify what your

1 counsel has said, she's referring to revised permit number 1.
2 Magically we've gotten a revised permit number 2 since that
3 time and what's very frustrating, one of the many frustrating
4 things about this whole process is, we were granted that extra
5 time in order to prepare for this hearing. To date, as
6 recently as last Friday, we're still being told by DCRA that
7 there's zero supporting information supporting either revised
8 permit number 1, or revised permit number 2. So it's been a --
9 it's added to the frustration of this process.

10 MS. MAZO: Right. And also, just a quick point of
11 clarification. So what Mr. Rafferty is referring to as
12 building permit number 2, only --

13 MR. RAFFERTY: Revised building permit number 2.

14 MS. MAZO: Revised building permit number 2, only
15 addresses structural issues. It does not make any changes to
16 the underlying alleged zoning error that has been raised by the
17 appellants in regard solely to the size and location of the two
18 parking spaces on the property.

19 Accordingly, the zoning error that they -- I'm not
20 sure which one. The November permit. I refer to it as the
21 November permit, that they alleged was in the November permit,
22 will -- is resolved and they have conceded that that error is
23 resolved. And the second building from the December permit
24 only addressed structural issues that are under the building

1 code.

2 MR. RAFFERTY: Just to clarify that, there's been no
3 concession that an error has been resolved. Actually we think
4 that there has been an attempt to resolve an error and there
5 has been additional errors in that attempt. So just to clarify
6 that.

7 MS. MAZO: Right. But clarify your new allegations
8 of new errors are all in relation to structural and the
9 building permit. I'm sorry, the building code application.
10 Thank you.

11 CHAIRPERSON HEATH: Okay. So again, the first issue
12 before the Board at this time is the motion to dismiss. And I
13 don't know where the Board stands on this but I'm inclined to
14 grant the dismissal on the basis that the information that
15 you've presented to us really does justify that the statements
16 of DCRA and the property owner, the issues right now all are
17 structural and are not -- and construction related, and are not
18 -- I'm not taking any questions. But the issues are structural
19 and are not issues that are before this Board.

20 So, you know, you still have your hearing before OAH,
21 and --

22 MR. RAFFERTY: I would really make an appeal to stay
23 this hearing pending the outcome of that OAH appeal. But if
24 you -- it sounds like from the very beginning you aren't

1 inclined to do that so that's -- I won't waste my breath on
2 that any further. But I wanted to state that for the record.

3 CHAIRPERSON HEATH: Okay. All right. So does the
4 Board -- okay. All right. All right. So we will grant the
5 motion to dismiss.

6 MS. COHEN: Well, let me just state for the record
7 that I did not sit on the original case, but I have read the
8 record.

9 CHAIRPERSON HEATH: Okay. Thank you. Do we need to
10 vote on that? Okay. All right.

11 MR. MOY: We haven't had a second.

12 CHAIRPERSON HEATH: Okay. All right. Did I have a
13 second?

14 MR. MOY: No.

15 MS. COHEN: Yes, second.

16 MR. MOY: Oh, now you do.

17 CHAIRPERSON HEATH: Okay. So I'll officially make a
18 motion to grant the motion to dismiss.

19 MS. COHEN: And I say second.

20 CHAIRPERSON HEATH: Okay. So the motion has been
21 made and seconded.

22 [Vote taken.]

23 MR. MOY: Staff would record the vote as three to
24 zero to two. Three to zero to two. This is on the motion of

1 Chairperson Heath to grant the motion to dismiss. Seconding
2 the motion, Ms. Cohen, also in support. Mr. Hinkle. We have a
3 board member not present with us today, board seat vacant,
4 motion carries, Madam Chair. Three to zero.

5 All right. I believe the next application is Case
6 No. 19150. This is the application of Sue Ellen Clifford and
7 Paul M. Rodgers, as captioned and advertised for a special
8 exception relief on the side yard requirements under 406.1 and
9 the nonconforming structure requirements under 2001.3. This is
10 to construct a two-story rear addition to an existing one-
11 family dwelling in the NO/R-1-B district at 3530 Edmunds Street
12 Northwest, Square 1937, Lot 29.

13 CHAIRPERSON HEATH: Okay. Would you both please
14 introduce yourselves? Make sure your microphone is on. You'll
15 have a glowing green light. Not yet.

16 MR. RODGERS: Hi. Now you can. Hi. Paul Michael
17 Rodgers, the owner, along with my wife who will introduce
18 herself, and resident at 3530 Edmunds Street Northwest.

19 MS. CLIFFORD: Sue Ellen Clifford, owner and
20 applicant, 3530 Edmunds Street Northwest.

21 CHAIRPERSON HEATH: Okay. Thank you. We have a lot
22 of confusing cases on our docket today, but this is one, I'm
23 happy to say, that is pretty straight forward. And so I don't
24 have any questions or have anything that I need to hear from

1 you as the applicant. Does the Board have any questions?

2 Okay. I believe, based on the information that
3 you've submitted to the record, that your applicant appears to
4 be complete. There may be questions that we have that come up
5 along the way. But if you're okay for us to proceed on without
6 a full presentation we'll then turn to Office of Planning to
7 see if they have additional comments.

8 MS. CLIFFORD: Okay.

9 MR. RODGERS: Yeah. Happy, yeah.

10 CHAIRPERSON HEATH: Thank you.

11 MR. GYOR: Good morning, Madam Chair, Members of the
12 Board. Stephen Gyor with the Office of Planning. We support
13 the relief and rest on the record. Thanks.

14 CHAIRPERSON HEATH: Thank you. Any questions of
15 Office of Planning? Does the applicant have any questions of
16 Office of Planning? Okay.

17 MR. RODGERS: No, no questions. Thank you.

18 CHAIRPERSON HEATH: All right. We also have a letter
19 of no objection from the department of Transportation, and I
20 assume there's no one here on this case for Department of
21 Transportation. Additionally, we have a letter recommending
22 approval from ANC 3C. No other letters of support or
23 opposition. Is there anyone here from ANC 3C?

24 [No audible response.]

1 CHAIRPERSON HEATH: Anyone here wishing to speak in
2 support of this application? Anyone wishing to speak in
3 opposition?

4 [No audible response.]

5 CHAIRPERSON HEATH: All right. Then we'll turn back
6 to the applicant. Normally this would be your opportunity for
7 rebuttal or closing, but I don't think there's anything to
8 rebut. And I don't know that there's any need for you to make
9 additional comments. So if you're okay we can close --
10 conclude the hearing and --

11 MR. RODGERS: Yes, we're fine with that. Yes.

12 MS. CLIFFORD: Thank you.

13 CHAIRPERSON HEATH: All right. Do you want to
14 comment, Marcie?

15 MS. COHEN: No, I was just going to move to approve
16 Case No. 19150, Sue Ellen Clifford and Paul M. Rodgers, and ask
17 for a second.

18 CHAIRPERSON HEATH: Second. So the motion has been
19 made and seconded. Any further discussion?

20 [Vote taken.]

21 CHAIRPERSON HEATH: So the motion carries.

22 MR. MOY: Staff would record the vote as three to
23 zero to two, this is on the motion of Ms. Marcie Cohen to
24 approve the application for the relief requested. Second the

1 motion, Vice Chairperson Heath, also in support, Mr. Hinkle.
2 Board member not with us today, board seat vacant. The motion
3 carries, Madam Chair.

4 CHAIRPERSON HEATH: Thank you. Summary.

5 MS. CLIFFORD: Thank you.

6 MR. RODGERS: Thank you.

7 MR. MOY: Thank you.

8 CHAIRPERSON HEATH: Thank you.

9 MS. CLIFFORD: Thank you very much.

10 MR. MOY: The next case before the Board, I believe,
11 is Application No. 19066. This is the application of Gabriel
12 and Stephanie Klein. Madam Chair, this application was
13 originally advertised for a variance relief and I believe it
14 was amended for special exception relief under Section 223, not
15 meeting lot occupancy in rear yard, 403.2 and 404.1,
16 respectively. And if the applicants would confirm that for me,
17 that would be terrific.

18 And that completes what I have to say, Madam Chair.

19 CHAIRPERSON HEATH: Okay. Thank you. Would you --

20 MR. KLEIN: Yes.

21 CHAIRPERSON HEATH: -- introduce yourselves,
22 please --

23 MR. KLEIN: Sure.

24 CHAIRPERSON HEATH: -- and then we can talk about the

1 revisions that you've made. Make sure your microphone is on.

2 MR. KLEIN: Okay. My name is Gabe Klein. I'm the
3 owner/occupant at 1100 Euclid Street Northwest.

4 MR. HUNT: And I'm Julian Hunt, the architecture of
5 Gabe Klein.

6 CHAIRPERSON HEATH: Okay. So --

7 MS. COHEN: Would you repeat your name, please?

8 MR. HUNT: Julian Hunt.

9 CHAIRPERSON HEATH: Okay. So if you could just
10 quickly state the -- I don't know that we need a full
11 presentation yet, but if you could just quickly summarize the
12 requested relief as it's been modified, and quickly recap the
13 changes that you've made to get to that point.

14 MR. KLEIN: Okay. Do you want to do that?

15 MR. HUNT: Sure. When we originally approached this
16 we were thinking of an apartment unit on top of this existing -
17 - you'll see here, this existing garage right here, is at
18 grade.

19 CHAIRPERSON HEATH: Uh-huh.

20 MR. HUNT: So originally we were thinking of it as an
21 apartment. When we went to Office of Planning and talking to
22 the neighbors, there was some pushback. And so we decided to
23 kind of renegotiate that idea.

24 MR. KLEIN: Actually, can I jump in?

1 MR. HUNT: Yes, sir.

2 MR. KLEIN: Sorry to jump in. So the deal is,
3 there's a garage and I wanted to have an office in the short-
4 term, above the garage. For those of us who work out of the
5 home you know how it can be tough.

6 So in the longer term when we went to the Office of
7 Zoning and we talked to them about our needs they said, well,
8 you know, what would you really want. And I said, well you
9 know, long term it would be nice to have an au pair as we
10 expand our family, an au pair flat or maybe a place for my
11 mother-in-law to live when she's older in 10 years.

12 So they encouraged us to, you know, go ahead and do a
13 conversion to a three-unit apartment building. I sort of
14 reluctantly agreed. I mean, I just had a feeling it was going
15 to be a lot of work and in the short term it's not really what
16 I needed. So after we had some push back, not for the
17 apartment, but actually just the idea of a three-unit building,
18 because there were some concerns by one of our neighbors that,
19 you know, maybe I was just going to sell it to developers.
20 I've been there for 15 years, so that's not the case. But we
21 sort of put it all together and realized there was no reason to
22 do that right now, and what I really need is an office, and
23 then if we wanted to come back down the road, particularly as
24 things change in the city, maybe the rules change, it's easier,

1 that we would look at that down the road.

2 Does that answer everything that --

3 CHAIRPERSON HEATH: Sure.

4 MR. KLEIN: Okay.

5 CHAIRPERSON HEATH: Can you just confirm that you are
6 not requesting special exception relief under 223 for 403.2,
7 lot occupancy, and 404.1, rear yard?

8 MR. HUNT: That's right.

9 CHAIRPERSON HEATH: Okay. All right. Thank you.
10 Okay. And it seems that the work that you did with Office of
11 Planning and the back and forth has been very successful. So
12 we appreciate the effort that you took to make that happen and
13 your reconsideration of the relief on this project. Okay.

14 MS. COHEN: I have a question.

15 CHAIRPERSON HEATH: Sure.

16 MS. COHEN: What's happening with the roof?

17 MR. KLEIN: Yeah. So that's actually permitted. As
18 our family is expanding we are adding a bedroom. The inside of
19 the house has been converted into sort of a loft space, so it's
20 actually -- while it looks sort of big, there's only two, two
21 bedrooms. And as we've had children and our family is
22 expanding we need more space. So the idea is to have a bedroom
23 for us up there, the kids downstairs, and then in the back have
24 an office.

1 MR. HUNT: This has already been permitted and we
2 have a building permit for that.

3 MS. COHEN: Okay.

4 MR. KLEIN: Yeah, as a matter of right.

5 MS. COHEN: Okay. So what's the height of that,
6 total height? I was just curious.

7 MR. HUNT: It's 35 feet.

8 MS. COHEN: Okay. Thank you.

9 MR. HUNT: So we had to do all of that. We were very
10 aware of that.

11 CHAIRPERSON HEATH: Okay. All right. Thank you.
12 Any other questions of the Board? Okay. All right.

13 Then if you're okay with us proceeding on, I think
14 you've answered our questions and we don't have a need for a
15 full presentation. So if you're okay with us proceeding on
16 we'll ask for any additional comments of Office of Planning.

17 MR. KLEIN: Okay.

18 MR. JESICK: Thank you, Madam Chair, Members of the
19 Board. My name is Matt Jesick. We appreciate the applicant
20 working with us on this case and with the revisions that
21 they've made we can fully support the application. I'd be
22 happy to take any questions. Thank you.

23 CHAIRPERSON HEATH: Okay. Thank you. Any questions?
24 All right. Does the applicant have any questions of Office of

1 Planning? Okay.

2 MR. KLEIN: No, it's been a long but fruitful
3 process. I think we've gotten, actually, to a better project
4 overall as a result. So thanks to Office of Planning and
5 everybody who worked with us.

6 CHAIRPERSON HEATH: Thank you. All right. We also
7 have a letter of no objection from DDOT and I assume they're
8 not here on this case either. Is there anyone here from ANC
9 1B? They're also recommending approval, and we have 15 letters
10 of support in the file from neighbors.

11 Is there anyone here wishing to speak in support?
12 Anyone wishing to speak in support? Anyone wishing to speak in
13 opposition? No opposition. Okay. All right. Then if you're
14 okay with us concluding the hearing, the Board is ready to
15 deliberate, I believe. And I'm ready to make a motion to
16 approve the request for special exception under 223 for lot
17 occupancy and rear yard as the application has been revised.

18 MS. COHEN: Second.

19 CHAIRPERSON HEATH: The motion has been made and
20 seconded. Any further discussion?

21 [Vote taken.]

22 CHAIRPERSON HEATH: So the motion carries. Thank
23 you.

24 MR. KLEIN: Thank you very much. Thanks.

1 MR. MOY: Staff would record the vote as three to
2 zero to two, that is on motion Chairperson Heath, to approve
3 the special exception relief. Second the motion, Ms. Cohen.
4 Also in support, Mr. Hinkle, board member not present, board
5 seat vacant. Motion carries.

6 CHAIRPERSON HEATH: Okay. Summary order.

7 MR. MOY: Thank you.

8 CHAIRPERSON HEATH: We'll take a quick five-minute
9 break.

10 [Break from 11:05 a.m. until 11:06 a.m.]

11 CHAIRPERSON HEATH: All right. When you're ready,
12 Mr. Moy.

13 MR. MOY: Yes. Thank you, Madam Chair. That would
14 be -- thank you. I was looking for my quick notes there.

15 Yeah, Application No. 19145. This is the application
16 of Linden Court Partners, LLC. Unless there's been a change in
17 the request, but this has been advertised for variances from
18 the FAR, 771, lot occupancy, 772, rear yard, 774, nonconforming
19 structure provisions, 2001.3, and height requirements under
20 2507.4. This is for a five -- one-family dwelling in a
21 neighborhood service retail establishment in the C-2-A
22 district. 1313 through 1323, Linden Court Northeast, Square
23 1027, Lots 57, 58, 59, 60, 61, and 112. Yes. Thank you.

24 CHAIRPERSON HEATH: Okay. All right. Would you all

1 please introduce yourselves?

2 MS. MOLDENHAUER: Good morning, Madam Chair. Yes,
3 still morning. Meredith Moldenhauer from the law firm of
4 Griffen, Murphy, Moldenhauer, and Wiggins here on behalf of the
5 applicant.

6 MR. KENNERKNECHT: Good morning, James Kennerknecht,
7 Linden Court Partners, here as the applicant.

8 MR. SCHNECK: Ron Schneck, Square 134 Architects.

9 CHAIRPERSON HEATH: Okay. All right. And so I think
10 the first that we need is just a clarification of relief and
11 what your position is on 2507.3, which has been recommended by
12 Office of Planning. I think the other thing we'd want to hear,
13 if you can speak to that, the other thing we'd want to hear is
14 you talk about the height that's being requested and your
15 justification for why you feel you need the additional height.

16 MS. MOLDENHAUER: So to start off, in our prehearing
17 statement which is Exhibit 24 on page 9 under Section F, we did
18 state that if the Board found or disagreed with our analysis
19 that we could follow or that we believe that it was opportunity
20 both for the Board to either grant the relief under 2003 as you
21 had articulated as a change of an existing nonconforming use,
22 or potentially under 2507.3, and that was for Lot 5.

23 CHAIRPERSON HEATH: Right.

24 MS. MOLDENHAUER: But we are -- that if the Board

1 found that Lot 5 required the variance under 2507.3, we believe
2 that we satisfied that standard. So it's really, I believe, up
3 to the Board to either acknowledge our legal arguments our or
4 thought process through 2003 as a change of an existing
5 nonconforming use, to a more conforming relief, still being
6 nonconforming under that subsection, 2507.3. But if the board
7 finds that it is more appropriate to ask for the direct relief
8 then we would concede to the Board's request on that, and we
9 believe we've addressed it. We still satisfy that standard.

10 MS. COHEN: You're off.

11 CHAIRPERSON HEATH: For some reason, your mic --

12 MS. MOLDENHAUER: Did my mic just all of a sudden go
13 off?

14 CHAIRPERSON HEATH: Yeah, it went away. Yeah.

15 MS. MOLDENHAUER: Is it on now?

16 CHAIRPERSON HEATH: It is.

17 MS. MOLDENHAUER: Okay. Did the Board miss anything
18 that I said?

19 CHAIRPERSON HEATH: Okay. We're good.

20 MS. MOLDENHAUER: Okay.

21 CHAIRPERSON HEATH: Thanks.

22 MS. MOLDENHAUER: So does that address the first
23 question?

24 CHAIRPERSON HEATH: Yes. Yes. So all right. I do

1 think we're going to need to hear at least -- hear your
2 presentation. So we can address whether we think 2003.1 or
3 2507.3 is applicable once we hear that.

4 MS. MOLDENHAUER: But I understand that the Board is
5 looking for us to focus, then, on the area of relief for Lot 5
6 and then the height.

7 CHAIRPERSON HEATH: Right. Right.

8 MS. MOLDENHAUER: Okay.

9 CHAIRPERSON HEATH: Anything else? Yeah, if --

10 MS. COHEN: I don't think so.

11 CHAIRPERSON HEATH: Okay. Yeah, so if you could
12 focus on those areas?

13 MS. MOLDENHAUER: Absolutely.

14 CHAIRPERSON HEATH: Okay.

15 MS. MOLDENHAUER: So, we're just going to walk
16 through the presentation and focus on those different areas.
17 You can see the location of the property here on the PowerPoint
18 slide. This is actually a very unique C-2-A alley lot. A
19 majority of the cases that have come before the Board over the
20 course of the years, starting at about 1988, are mostly I think
21 a majority in an R-4 zones, so there is but one other or two
22 other cases that actually have been in a commercial zone. So
23 that is one of the uniqueness.

24 It's also an interior alley lot rather than a through

1 alley lot or an alley lot that's more like an island, which you
2 see a lot of times in the city. There's actually -- it's
3 landlocked on the back side of this alley property.

4 Here you can see that the property is unique, as
5 you've articulated in our brief. It was built originally as
6 six single-family home dwellings. As we had articulated in our
7 statement, and as you can see here from an old base map there
8 are originally six lots that were for single-family use that
9 were then converted to one large nonconforming use, which was a
10 auto repair garage, and that has obviously been the use that I
11 guess has existed now for a number of years, and it was
12 currently operating prior to my client's acquisition of the
13 property.

14 I'll turn it over now to Ron Schneck, who is the
15 architect for the property, to walk through some of the -- I'm
16 sorry, over to Jim, to walk through the property, to introduce
17 himself, and to identify some of the issues that you've
18 requested.

19 MR. KENNERKNECHT: Thank you. Again, my name is
20 James Kennerknecht. I have been involved in the real estate
21 building and development industry for 35 years. This is my
22 first D.C. opportunity to do something. And we've tried to be
23 -- reach out to the neighborhood. The community, we've
24 received full support, unanimous at every level that we've gone

1 with this project here. We have letters of support. I'm not
2 aware of any recommendations of denial for our project here.

3 When we first saw the property we were challenged by
4 not only our lack of D.C. knowledge, but also by the
5 constraints that the existing building presented us with, in
6 that the building has for its rear wall, an adjacent
7 residential building that covered five of the original lots
8 there, leaving us with a challenging rear yard environment.

9 In the front of our building we have the anchor of H
10 Street there, the Atlas Theater, which from the front side is a
11 beautiful building, but from the rear side is a 44 foot tall
12 brick structure, which we needed to address as the other tall
13 buildings on H Street there.

14 So I would say probably our existing conditions in
15 that, our desire was to retain the character of the building,
16 bring it back to its original feel, post-auto body shop, and
17 the constraints of the narrow lots and the shallow back yard
18 areas there.

19 I'm sorry. We have reached out to the community as I
20 mentioned to you. We have nine letters of support from
21 neighbors. We have support from every neighbor that abuts the
22 property. We went to the ANC, Economic Development Zoning
23 Committee three times. We had very good interaction with them.
24 They voted five to zero in support of us. And then we were

1 fortunate enough at the full ANC to have a unanimous vote there
2 as well on the property.

3 MS. MOLDENHAUER: That provides you with some general
4 background of the property and some of the existing conditions.

5 I'll now turn it over to Ron Schneck to kind of walk through
6 the architecture and some of the restraints on the property.

7 MR. SCHNECK: Good morning, again. My name is Ron
8 Schneck with Square 134 Architects.

9 Architecturally the approach to this project is a
10 contextual one. One that we employ on most of the projects
11 that we work on in historic districts. We reuse as much as
12 possible, the existing massing and structure, while introducing
13 contemporary materials for the intervention.

14 Here, this is probably most visible at the Northeast
15 corner as viewed from sort of the commercial strip along H
16 Street. We've had extensive conversations with the committee
17 members, both sort of in a formal ANC and subcommittee, as well
18 as some informal meetings to ensure that the corner has enough
19 sort of visual presence to activate the alley, which we think
20 is important for the residential component, while maintaining
21 sort of a deference to the existing structure that I think we
22 wanted to see as well as the community.

23 This next slide shows the sort of typical floor
24 plans. As you can see in the floor plans it's a relatively

1 modest development in terms of unit size with some real
2 challenges. First and foremost is providing parking at the
3 front of the unit, which is, I would argue, relatively a-
4 typical. You know, it takes up a lot of square footage and it
5 minimizes, you know, the opportunities for us to have openness
6 towards the front of the unit. So sort of in addition to the
7 size of the unit and the narrowness of the lot, sort of what
8 that's been challenging is the -- is for us to provide outdoor
9 space.

10 The rear yards that we do have basically face an
11 adjacent structure. So the really -- sort of the only real
12 opportunity for sort of good accessible exterior space is sort
13 of the roof decks that are accessible through the mezzanines
14 and just sort of coincidentally the mezzanine and the sort of
15 garage are the same in terms of square footage.

16 The next slide shows just the difference at the Lot
17 1, which is a slightly smaller building. This also has access
18 to the mezzanine.

19 So and then there's sort of Lot 5, so in addition to
20 sort of what the third floor massing does is it sort of
21 architecturally -- it's use as sort of an additional
22 residential unit decreases the amount of relief that we're
23 asking for, as compared to commercial, which would be more.
24 And this was also sort of something that we talked a lot about

1 with the community and they were in support of this being
2 residential and not commercial.

3 And the next slide, this next slide, I mean,
4 obviously we're asking for a height relief. And what this
5 slide shows is what we believe is a relatively small amount of
6 relief in that it's only nine feet. And, you know, more
7 importantly from a perceptual sort of architectural standpoint,
8 you know, it's set back one to one. We're not too sure it's
9 ever going to be perceived from the alley. And again it, you
10 know, is there as a result of the parking and also gives us
11 sort of, you know, very good exterior space.

12 The next -- not a whole lot to talk about here, but
13 just wanted to sort of go over the architecture a little bit
14 more. This is sort of a view, sort of from the south -- sort
15 of a southeast view. Again, what you can see here is, you
16 know, where the actual height is. There's the roof setback,
17 which we think kind of really makes it not -- you know, makes
18 the height a lot less perceivable.

19 The next slide then is one of the issues that we
20 talked to the ANC about from an architectural perspective was
21 their sort of desire for us to sort of activate the alley and
22 the property line is basically right on the building line. But
23 we did have a meeting with DDOT and we will have some
24 opportunities to, you know, activate the floor plan a little

1 bit. Basically we're not able to put anything structurally in
2 that space but they're going to probably allow us -- we have to
3 go to Public Space Committee, but we're going to try to do as
4 much as we can.

5 And this last slide is again, just sort of some
6 images that we had, you know, have been taking with us to the
7 different committees, sort of trying to activate the alley to
8 make it sort of both good for the potential residents as well
9 as for the community.

10 MS. MOLDENHAUER: Let me just ask you a couple of
11 quick questions, really drilling in on the question of
12 practical difficulty and the uniqueness. If this property was
13 not located in the alley or the original structure was not
14 faced online with the building, is it typical that you see
15 outdoor public space in public space or in other areas that
16 would allow for an entrance or a vestibule to be located off of
17 the property line? And how does that then affect the
18 limitations or restrictions on this project, directing then,
19 relating to the additional small area of square footage on the
20 height area that we're requesting?

21 MR. SCHNECK: Yes. It is typical. I mean, and we do
22 a lot of projects where there is enough sort of public space
23 between the building face and say, the street, that we use for,
24 you know, exterior space. And here we do not have that

1 opportunity. There's obviously no public space to speak of
2 that we can use for either, you know, exterior space or
3 parking.

4 MS. MOLDENHAUER: And typically in the District you
5 see stairs or other semi-structural elements for people to sit
6 on or enjoy light and air outside in the front of their
7 property. Is that correct?

8 MR. SCHNECK: That is correct. Stairs, patios, more
9 and more so as more and more projects are being developed,
10 there's sort of the whole front yards are becoming very usable.
11 Yes.

12 MS. MOLDENHAUER: And in this project when you met
13 with DDOT were we allowed to build any small public seating or
14 raised flower gardens in the public space that was on the
15 alley?

16 MR. SCHNECK: No. But in short we're allowed to do
17 sort of -- we can take great liberty with the paving pattern.
18 But we're basically not allowed to build anything structure
19 wise, which is a little unfortunate here because you know, it
20 would have been nice to have some outdoor space. But we really
21 can't do that here.

22 MS. MOLDENHAUER: In the diagram that's being shown
23 here, the grass is actually going to be at grade grass. It's
24 going to be built into the pavers?

1 MR. SCHNECK: Correct. Correct. Everything needs to
2 be at grade. That is -- yeah, they were clear about that.

3 MS. MOLDENHAUER: And so then how does the relief for
4 the requested height relate to that? Does that provide outdoor
5 space that's unique and is necessary?

6 MR. SCHNECK: No. So I think the -- in terms of why
7 we think the additional height is warranted is sort of two-
8 fold, one is because you know, the most of the or half of the
9 first floor is taken up with parking, and we have no other
10 access to what we feel would be good outdoor space for the
11 units because we can -- I wouldn't consider the strip outside
12 the building as being good outdoor space.

13 MS. MOLDENHAUER: And what is the square footage of
14 the garage?

15 MR. SCHNECK: The garage is about 150 square feet,
16 and the mezzanine is 150 as well. Yeah, it's the same size.

17 MS. MOLDENHAUER: At this point in time I can provide
18 kind of our closing legal argument, and then open it -- or the
19 Board has questions for the applicants.

20 CHAIRPERSON HEATH: You can -- you want to make your
21 closing?

22 MS. MOLDENHAUER: No, I was going to see if the Board
23 had questions.

24 CHAIRPERSON HEATH: Oh.

1 MS. MOLDENHAUER: And then I could provide a closing.
2 Sorry.

3 CHAIRPERSON HEATH: Any questions? Go ahead, Marcie.

4 MS. COHEN: Thank you, Madam Chairman. I had a
5 question. This is a conversion from an auto shop to
6 residential. Have you done any environmental work on this
7 site, test borings or anything, to see if it's a dirty site?

8 MR. KENNERKNECHT: Yes, that was done at our
9 acquisition and there was nothing that appeared from that
10 evidence there.

11 MS. COHEN: The lot that's going to be made into
12 retail, what type of retail are you anticipating since it's on
13 an alley and people have to sort of seek it out?

14 MR. KENNERKNECHT: We had suggestions from the
15 neighborhood, something like a coffee shop, a flower shop,
16 perhaps like a bicycle repair establishment. I'm not sure what
17 that would be termed, exactly, but secondary kind of uses
18 there. Nothing in bar, nightclub kind of activities there.

19 MS. COHEN: Question about the 15 foot wide side
20 alley. Have you discussed this with anybody in, you know, the
21 fire department? Are they finding this site acceptable? Or
22 maybe this is an OP question.

23 MS. MOLDENHAUER: We have not discussed that, but
24 this is a unique situation where there already are two other

1 single-family homes. Actually, three single-family homes that
2 are abutting and were part of the original construction. So
3 the fire department already has to possibly service those, so
4 it is not creating any -- in our opinion, we have not confirmed
5 this, but does not create any additional new issues for them
6 since they're already having to service potential single-family
7 homes that exist already adjacent to this property.

8 MS. COHEN: Thank you. And my last question is, is
9 there any way -- I mean, if this was in Europe you would have
10 flower pots outside the windows. Is that something that you
11 could consider?

12 MS. MOLDENHAUER: Geraniums.

13 MS. COHEN: Yeah, Geraniums and -- is that something
14 to kind of liven it up and make it look prettier than plain?

15 MR. SCHNECK: We will obviously push the envelope as
16 much as we can when we go in for Public Space Committee. But
17 there -- you know, we're allowed to do certain things like
18 overhangs, flower pots, yes, we're allowed to have an overhang.
19 What they're more concerned about is sort of at grade and sort
20 of building anything structurally. But we can put some things
21 on, like we're allowed to do a little awning. Things like that
22 we can do, yes.

23 MS. COHEN: Yeah, I suggest that when it came up.

24 MR. SCHNECK: Yeah. No, I mean, I think everyone

1 wants to see it. I think it's just going to be a matter of how
2 generous DDOT is feeling when we're there, so.

3 MS. COHEN: Well, I'll state this for the record
4 because --

5 MR. SCHNECK: Okay.

6 MS. COHEN: -- I'm sure they'll check the record.

7 MR. SCHNECK: Yeah.

8 MS. COHEN: It just, it will soften.

9 MR. SCHNECK: Yes. Absolutely. Yeah.

10 MS. COHEN: Thank you.

11 MR. SCHNECK: You're welcome.

12 CHAIRPERSON HEATH: Okay.

13 MR. HINKLE: Yeah. Thank you, Madam Chair. If I
14 could just jump back to Ms. Cohen's question in terms of the
15 fire department access? How come you're not asking for relief
16 from, what is it, 2507.2, which requires the 30 foot alley to
17 the street?

18 MS. MOLDENHAUER: We've articulated in our prehearing
19 statement that under Section 2507, which deals with alley
20 structures, the first section talks about the exception for a
21 single-family dwellings should be erected, constructed,
22 converted, altered, remodeled, and they pretty much go through
23 a long list in Section .1, identifying both new construction,
24 the terms erected, and then the terms, altered.

1 Then under Section 2507.2, which you're referencing,
2 that would not apply to this project because that then limits
3 the terminology only to the terms erected or constructed,
4 referring to vacant lots. There are cases that have come
5 before this Board a number of years ago. There was a project
6 that was behind a Safeway in Capitol Hill, and that was a brand
7 new vacant lot. And that would then fall under 2507.2.

8 And 2507.2 does talk about access. But then if you
9 were to look at .3, which then talks about conversion or
10 alterations, remodels from an existing structure, which is what
11 we have here, we don't have a vacant lot but we have a
12 structure that's being converted, that language does not
13 reference a need for access from a 30 foot alley. It only
14 references the need to about a 30 foot alley, so we're not
15 asking for that relief. Lots 1 through 4 do abut a 30 foot
16 alley, and no other alley. And so those are compliant.

17 The only, then, arear of relief that we would need
18 request for would be a request under Lot 5, which from a
19 conservative perspective, it abuts both a 30 foot alley and 15
20 foot alley. You could read that potentially, it complies, but
21 we are being conservative when we were reading it where, since
22 it does also abut an alley that is less than 30 feet we require
23 that relief. It indicates that, you know, nonresidential
24 structures shall not be converted to habitable use regardless

1 of cost. In this argument we're not making a cost argument,
2 we're making a practical difficulty argument based on the
3 challenge of the physical location on the corner,
4 communications with the ANC, and the desire to return what was
5 originally built as a single-family home, back to a single-
6 family home use on that one corner lot.

7 I know I may have elaborated on more than the
8 specific question you asked, but I hope that that provides a
9 full understand.

10 MR. HINKLE: That's helpful, and that seems to get
11 to, you know, kind of the issue with, you know, you asking for
12 2003 and OP recommending some other relief, I believe. But --

13 MS. MOLDENHAUER: Yeah, I mean, so the reason why
14 we're asking for 2003 was -- and it just, it's a different way
15 of approaching it.

16 MR. HINKLE: Yeah.

17 MS. MOLDENHAUER: We believe that the existing
18 building is a nonconforming use in the C-2-C zone, and so -- C-
19 2-A zone. So because it's a nonconforming use, which is a
20 garage, which is located within such a close proximity to
21 residential buildings and residential zones, it's a
22 nonconforming use.

23 Then if you go to that language it says that you can
24 convert a nonconforming use to a more conforming use, and we

1 believe that here the residential single-family use on top of
2 that commercial corner lot is a more conforming, it is a less
3 restrictive use, and thus could -- Board if they chose, could
4 approve this case under 2003, saying that you are permitting
5 that less restrictive use, even though you're acknowledging
6 that it is still nonconforming as to 2507.3.

7 MR. HINKLE: Okay. Thank you.

8 CHAIRPERSON HEATH: Thank you. All right. Any other
9 questions? Okay. Thank you for that explanation.

10 So then I'd like to hear from Office of Planning on
11 their take, particularly on 2507.

12 MR. JESICK: Thank you, Madam Chair, Members of the
13 Board. Again, my name is Matt Jesick.

14 The Office of Planning supports the concept of the
15 project. We feel that it would be a great way to activate the
16 alley. It would certainly help clean up the alley, et cetera.

17 In fact, we recommend approval of the FAR lot occupancy and
18 rear yard variances. We weren't able to recommend approval of
19 2507.3, and I can get into that a little bit more, or the
20 variance for the height.

21 Now regarding 2507.3, we feel that is applicable
22 because when you examine Section 2003, it says that one
23 nonconforming use could be changed to another use that is
24 permitted as a matter of right, subject to certain conditions.

1 And I think that permitted as a matter of right is the key
2 phrase there. And I've broken this down on page 4 of the
3 report.

4 Because of Section 2507.3 the residential use on Lot
5 5 would not be permitted as a matter of right regardless of the
6 zone. Therefore, we feel that to build Lot 5 with that
7 residential use would require a variance from 2507.3, and
8 therefor 2003 would not be applicable. Thank you.

9 MS. COHEN: Can you get into the height issue too,
10 please?

11 MR. JESICK: Certainly. Yes, we just felt that the
12 variance test was not met for the height variance. We found
13 that there was no exceptional condition or uniqueness regarding
14 parking within the structure. Certainly takes up floor space.
15 But that's not necessarily a unique or exceptional condition.
16 So we felt that there was no practical difficulty in fully
17 complying with the height limit, which in this case would be 30
18 feet. There's no need to exceed that height limit, in our
19 opinion.

20 MS. COHEN: But there is an issue with regard to
21 providing parking. Would that be a practical difficulty in
22 this case?

23 MR. JESICK: Well, certainly there would be a
24 requirement for one parking space per unit. But meeting all

1 provisions of the regulations would not constitute a practical
2 difficulty. And so the regulations are not a practical
3 difficulty or a unique condition. In fact, most alley
4 dwellings do not provide integral parking. Some allies do have
5 RPP parking as a matter of fact. But you know, providing or
6 meeting one regulation does not mean you get out from under
7 another regulation.

8 MS. COHEN: But in this case they don't qualify for
9 RPP, right? So what we would be possibly doing is exacerbating
10 a condition in the neighborhood.

11 MR. JESICK: I was not suggesting that they did not
12 provide parking. I was suggesting that the provision of
13 parking does not create a practical difficulty that would
14 necessitate exceeding the height limit.

15 MS. COHEN: Okay. Thank you.

16 CHAIRPERSON HEATH: Does the applicant have any
17 questions of Office of Planning?

18 MS. MOLDENHAUER: No questions of Office of Planning.
19 Thank you.

20 CHAIRPERSON HEATH: Okay. All right. Okay. Board,
21 any other questions?

22 MS. COHEN: Actually, I have one other -- well, I
23 want to get to the issue of height. Do you believe it would be
24 detrimental to any of the surrounding properties if we did go

1 according -- I mean, did allow the height in this case.

2 MR. JESICK: We concluded in our report that the 30
3 foot height limit should not have an undue impact on
4 surrounding use. Or construction above the 30 foot height
5 limit should not have an undue impact on the surrounding uses.
6 The applicant has provided a shadow study, which --

7 MS. COHEN: Right.

8 MR. JESICK: -- shows that there would be minimal
9 impact, if any. And of course they have the support of all
10 their surrounding neighbors. So those who would be most
11 impacted certainly are fine with the proposal.

12 MS. COHEN: Okay. Thank you.

13 CHAIRPERSON HEATH: All right. Okay. So if the
14 applicant has no other questions of Office of Planning we do
15 have a letter of no objection from Department of Transportation
16 on this case. And we also have a letter from ANC 6A
17 recommending their support with one condition. And that is
18 that the applicant shall record a covenant in the land records
19 for each of the properties prohibiting the owner or resident
20 from obtaining a residential parking permit.

21 And, Ms. Cohen just asked about residential parking
22 permits. Is there RPP in this area?

23 MS. MOLDENHAUER: Our understanding is that some of
24 the neighbors on the block have RPP and that if we wanted to

1 apply for it we could. We have not confirmed that with other
2 regulatory bodies. But we had proffered that by putting the
3 parking in the buildings, lots 1 through 4, that we would be
4 willing to, on our own, restrict RPP for lots 1 through 4, not
5 lot 5. And we would just indicate to Board that based on the
6 National Black Children's Development Institute versus the BZA,
7 the Court has found that the Board has limited authority to
8 impose conditions and that here, we believe that possibly if
9 the Board were to approve the height as we have tied our height
10 practical difficulty to our necessity to locate parking, that
11 then possibly it could be a mitigating factor. But since we're
12 not asking for parking relief if the Board did not seek to
13 approve the height relief that it would then not be a factor
14 that the Board should consider in regards to the requested
15 relief and that we would just proffer that on our own in
16 regards to the connection between the parking and the requested
17 height relief.

18 MS. COHEN: But isn't the closest street H Street?

19 MS. MOLDENHAUER: It is. Well, it's H and G.

20 MS. COHEN: Okay. So then H would be eliminated.

21 MS. MOLDENHAUER: H is commercial.

22 MS. COHEN: G is -- okay.

23 MS. MOLDENHAUER: But G is residential.

24 CHAIRPERSON HEATH: Okay. Okay. All right. Okay.

1 Then we also have the -- I thought I saw eight but you
2 indicated in your presentation nine letters of support,
3 significant support from neighbors on this project. Is there
4 anyone here wishing to speak in support?

5 [No audible response.]

6 CHAIRPERSON HEATH: Is there anyone here from ANC 6A?
7 No. Okay.

8 Anyone wishing to speak in opposition? No
9 opposition. Okay.

10 MS. MOLDENHAUER: Just to make sure the record is
11 correct; it is eight letters of support.

12 CHAIRPERSON HEATH: Okay. Okay. All right. Okay.
13 Thanks. That's what I had in my notes.

14 Okay. Then we'll turn back to the applicant for
15 closing. I think one of the issues still before the Board is
16 whether the relief for 2507.3 should be added. And if it is
17 the applicant would have to satisfy the variance test for that
18 and are you prepared to address that relief if the Board
19 decides that that should be added to the application?

20 MS. MOLDENHAUER: In our prehearing submission under
21 Section F, Page 9, we do say in a small paragraph that if the
22 Board found that an area of variance was required, that we do
23 believe we satisfy it and I can walk through that standard as
24 to why I believe we satisfy it. And I think from an issue of

1 notice we have fully disclosed the project and the areas of
2 relief have been fully disclosed to the ANC and to the
3 community and we have noticed variance relief as is, so I don't
4 believe that would be an issue.

5 But from a standard we believe that the property is
6 unique, the same way OP has confirmed that the property is
7 unique as to lot area, rear yard, and FAR, we believe do have a
8 direct nexus to the practical difficulty associated then with
9 the height. We have articulated both in an affidavit from
10 Sotheby's Realty, that is in the record in an exhibit as well
11 as testimony that you received here today from the architect,
12 Ron Schneck, that there would be a practical difficulty.

13 The standard has to do with the width of the alley,
14 and we -- if we were to demolish -- of course the building is
15 face online and the only way to possibly gain that additional
16 height would be to demolish the existing façade of the
17 building. But rather we believe that that's a practical
18 difficulty because it would be wasteful and would not be in
19 keeping with, I think, the intent of the community and the
20 desire to preserve the appearance of the alley as it always was
21 and as it always was built as the residential structure.

22 And so in that regard we also believe that there is a
23 practical difficulty in the height where we are in a C-2-A
24 zone, where the buildings right across the street are actually

1 at 90 feet in height, and so by setting that back, while we are
2 asking for relief on that small nine feet, we are creating a
3 one to one setback then, from the width of the alley. And as
4 shown in the images, it is not -- it reads -- you're mostly
5 reading the 30 foot that is then the matter of right as you can
6 see here, and the additional height is set back.

7 The correlation and the nexus between the practical
8 difficulty of the building being face online having no outdoor
9 public space to be able to enjoy in the front of your property
10 does create a practical difficulty. Then that is then
11 compounded by the need to locate parking on site. The
12 challenge of having to possibly traverse through a very highly
13 utilized public alley. We have testimony in the record -- I'll
14 just -- let me see if I can pull up an image. I'm going in the
15 wrong direction. I'm really going in the wrong direction.
16 Sorry.

17 The property is located in a very unique location
18 where it has the high traffic of H Street, and then the
19 corresponding commercial uses on that. And so if we did not,
20 OP indicated that simply complying with zoning -- well, there
21 is actually no parking requirement here because we have a large
22 credit from the commercial use. So we are putting -- because
23 of the challenges of this site in and of itself we are putting
24 parking on the site. And if you can see here there is a large

1 number of commercial establishments that are along H Street
2 that all utilize this rear alley for access to loading, and so
3 to have people traversing that to get to their cars that are
4 then possibly parked on G or 13th Street, we would believe also
5 creates a practical difficulty. And then that corresponds with
6 the requested one for one square footage in the mezzanine. And
7 we believe that all of these factors satisfy the variant
8 standard.

9 To address Lot 5, which is the corner lot, we believe
10 that as has been testified to here today, the necessity for
11 bringing residential back on top of that also creates a
12 practical difficulty where we would not be able to obviously
13 provide commercial. Commercial would, as Mr. Schneck testified
14 to, enhance the FAR variances that would potentially be
15 requested. We believe that while it -- we are seeking relief
16 for that, it's a question of what would be more appropriate on
17 that site and what would then -- and as OP indicated they do
18 not find that relief from either of those two, the height or
19 the 2507.3 would create an adverse impact on the public good or
20 zone plan, and so we believe that we have provided
21 documentation and we're open for any additional questions. But
22 we would ask the Board to deliberate and we request that the
23 Board approve this project.

24 CHAIRPERSON HEATH: Okay. Go ahead.

1 MS. COHEN: Okay. I got the impression from the
2 submission though, that there are no trucks that go in front of
3 that. Loading trucks, or trash trucks, or anything like that.
4 They don't go in front of that property. Unless I --

5 MS. MOLDENHAUER: From the Atlas Theater majority of
6 the loading trucks actually you can see pull in here. And so
7 they're not typically -- while they utilize the alley, you can
8 see a garbage facility here for a commercial residence, this is
9 H Street, these are the rear portions of H Street.

10 MS. COHEN: Uh-huh.

11 MS. MOLDENHAUER: They do traverse through here for
12 garbage. And, you know, the loading mostly for Atlas occurs in
13 this tucked away area, which is beyond this large height of the
14 Atlas structure. Does that answer your question, Commissioner
15 Cohen?

16 MS. COHEN: Actually, I didn't think they went in --
17 the trash area, though, does not go in front of this building.

18 MS. MOLDENHAUER: For the commercial?

19 MS. COHEN: Yeah. At least -- let me get to that.

20 MS. MOLDENHAUER: Are you asking where the
21 commercial --

22 MS. COHEN: Yeah.

23 MS. MOLDENHAUER: -- would be located?

24 MS. COHEN: No.

1 MS. MOLDENHAUER: Or the trash for the commercial,
2 or --

3 MS. COHEN: No, where the -- do the trash trucks from
4 the Atlas or anybody else go in front of those buildings? I
5 got the impression that it was sort of separate from the normal
6 traffic.

7 MR. KENNERKNECHT: The trash trucks do cross the
8 front of our building. They come down the alley connection
9 from G to H, and they go in both directions at the T
10 intersection there, to take care of the heavier commercial
11 buildings to the side. And the theater has little trash
12 generated there. So they're not -- they're on a daily basis
13 that I've seen, but we see them quite often on the other side.

14 MS. COHEN: Thank you.

15 CHAIRPERSON HEATH: Can you go back to your argument
16 about the variance relief for 2507.3? Why -- and speak to why
17 you feel there's a practical difficult that necessitates
18 bringing back residential.

19 MS. MOLDENHAUER: I'd actually like to call forward a
20 member of the team who also works with a retail company to try
21 to address that specifically.

22 CHAIRPERSON HEATH: Okay. Was he here earlier to be
23 sworn in?

24 MS. MOLDENHAUER: He was and he did stand up and was

1 sworn in by Mr. Moy.

2 CHAIRPERSON HEATH: Okay.

3 MR. BUTLER: Yes. My name is Eric Butler. I work
4 for JCR Retail Brokerage. I've had -- I'm a landlord listing
5 broker. I work on behalf of landlords to list and lease retail
6 space. For the most part I do some office work as well. I've
7 had four listings on H Street proper between 3rd and 13th -- or
8 14th Streets. So I'm very familiar with the market.

9 In my professional opinion the creation of a
10 live/work building on that Lot 5 within this project would
11 reduce the practical difficulty of leasing what I like to call
12 a small footprint space. So if you look at comparable listings
13 currently on the market versus our site, those comparable
14 listings not only have a contiguous floorplate of a similar
15 size, but they're also well situated on H Street proper, where
16 as we are in the alley way.

17 I'd say that our space has a detriment, being that it
18 is on a busy alley, that it has no parking. Or it is,
19 unfortunately from a leasing perspective, broken up into two
20 floor plates, where as a contiguous space is typically more
21 desirable.

22 In addition to being off of the H Street corridor and
23 kind of down the alley, whereas the other sites provided are.
24 The ANC specifically, in conversations, requested some sort of

1 live/work, and I think that this -- or requested variance to
2 have mixed use on this lot, and it created an opportunity for
3 the owner operated retail use. So someone to come in, maybe
4 it's a coffee shop or a florist, there's no parking. And so
5 maybe living above helps them operate, allows them to be more
6 successful in that space.

7 Also as stated, the challenge of the small footprint
8 and the alley location are enhanced by the positive and unique
9 option for this live/work space, which directly addresses the
10 practical difficulty of leasing stand-alone commercial
11 buildings.

12 CHAIRPERSON HEATH: Okay. All right. Thank you.
13 Any other questions? Okay. All right.

14 Then we'll turn back to the applicant for your
15 closing statement.

16 MS. MOLDENHAUER: I believe that based on the
17 testimony and the fullness of the record that we've satisfied
18 the variance standard for 2507.3, and the additional standards
19 that we've requested in regards to the lot occupancy rear yard,
20 and FAR for the corner lot. And then also for the height
21 relief. And we believe that this project would be an
22 enhancement to the community, that we have worked diligently as
23 Mr. Kennerknecht said, multiple -- you know, three different
24 meetings with the subcommittee, with the ANC, worked with them

1 to enhance the alley condition, met with DDOT to try to provide
2 what would be an overall very exciting project. And so we hope
3 that the Board would support all areas of relief that we've
4 requested.

5 CHAIRPERSON HEATH: Thank you. Is the Board ready to
6 deliberate on this now? Okay.

7 MS. GLAZER: Madam Chair.

8 CHAIRPERSON HEATH: Sure.

9 MS. GLAZER: Just, before you deliberate, the Board
10 is probably aware of this but the threshold question is whether
11 the applicant is going to amend their application and withdraw
12 the special exception request and request area variance
13 request. I'm not sure that they've requested relief in the
14 alternative. Maybe that could be clarified because the Board
15 has to decide if this application is granted, what they're
16 granting.

17 CHAIRPERSON HEATH: Sure. Absolutely.

18 MS. MOLDENHAUER: Just for the record we believe that
19 we have requested it in the alternative and it's the Board's
20 deciding then to evaluate it on whichever standard the Board
21 deems appropriate. And so we have then both requested the
22 special exception or the area variance under 2705.3.

23 CHAIRPERSON HEATH: Okay. All right. So then if the
24 Board is ready to deliberate does anybody want to start? Any

1 comments? Anybody feel any particular way about this right
2 now?

3 MS. COHEN: I believe that the applicant has made a
4 strong case for addressing important general issues such as
5 providing these dwellings, and the ANC supports it, as well as
6 the neighbor serving retail.

7 I think that they could always come up with
8 additional information in their submission with addressing the
9 -- oh, God, I lost my place. Twenty-five --

10 CHAIRPERSON HEATH: 07.

11 MS. COHEN: -- 07.3.

12 CHAIRPERSON HEATH: Point three. Uh-huh.

13 MS. COHEN: But I believe that they're extenuating --
14 ooh, sorry. Extenuating circumstances that I could support
15 this project. Anyway, I think that they do -- they do meet, if
16 you sort of -- through testimony, the variance request.

17 CHAIRPERSON HEATH: Okay. I am also inclined to
18 support this and to support 2507.3. I appreciate this project
19 and I appreciate the difficulty of making this work in an alley
20 condition. And I also really appreciate that you've been able
21 to incorporate parking, which would obviously be difficult back
22 in an alley condition.

23 The whole idea of creating the live/work space makes
24 sense to me now. Thank you for providing that information to

1 us, as a way of making Lot 5 as commercial and residential,
2 work.

3 And I appreciate the fact that you are trying to
4 create some outdoor space for the residents here, and that by
5 providing parking on the site you -- it's a one to one with the
6 additional height that you're requesting. So you've also
7 created an angle to the roof that makes it less imposing as a
8 third story. And so I'm inclined to support this. I don't
9 know where you stand, Mr. Hinkle.

10 MR. HINKLE: Yeah, I'm inclined to support it as well
11 and in terms of the height I think the argument has been made.

12 I mean, we have an existing structure and certainly the
13 provision of parking is helpful in this area.

14 You know, I agree with the 2507.3 approach and I
15 think they've made an argument towards that. And I think the
16 rest of the relief is appropriate as well.

17 CHAIRPERSON HEATH: Okay. All right. Okay. Then I
18 will make a motion that we approve the variance relief for 771,
19 772, 774, 2507.4, and the amended relief under 2507.3 as
20 discussed during our deliberations.

21 MR. HINKLE: Second.

22 CHAIRPERSON HEATH: The motion has been made and
23 seconded.

24 [Vote taken.]

1 CHAIRPERSON HEATH: Okay, the motion carries.

2 MR. MOY: Staff would record the vote as three to
3 zero to two. This is on the motion of Chairperson Heath to
4 approve the amended relief, which includes the 2507.3.
5 Seconded the motion, Mr. Hinkle. Also in support, Ms. Cohen,
6 board member not present today, board seat vacant. Motion
7 carries, Madam Chair.

8 CHAIRPERSON HEATH: Do we need to do a full order
9 because of OP's position?

10 MS. GLAZER: I think you could do a summary order as
11 revised.

12 CHAIRPERSON HEATH: Okay.

13 MS. GLAZER: Which would delete the request for
14 relief under -- or delete the approval under 2003.

15 CHAIRPERSON HEATH: Okay.

16 MS. GLAZER: And include area variance relief under
17 2507.3.

18 CHAIRPERSON HEATH: Okay. All right. Thank you.

19 MS. MOLDENHAUER: Thank you very much.

20 MR. KENNERKNECHT: Thank you.

21 CHAIRPERSON HEATH: All right.

22 MR. MOY: The next application before the Board is
23 19161. This is the application of 1537 6th Street Northwest,
24 LLC. Madam Chair, this is a request for variance relief on the

1 off-street parking requirements under 2101.1, constructing
2 three flats in an R-4 district. 1537 to 1541 6th Street
3 Northwest, Square 478, Lots, 56, 57, and 58.

4 CHAIRPERSON HEATH: Okay. My screen locked up.
5 There we go. All right. Would you all introduce yourselves,
6 please?

7 MS. MOLDENHAUER: Good morning. Almost good morning
8 afternoon. Madam Chair, Members of the Board, Meredith
9 Moldenhauer here on behalf of the applicant.

10 MR. ROTH: Good afternoon, Madam Chair and the Board.
11 My name Dan Roth with the residential, the applicant.

12 CHAIRPERSON HEATH: Okay. I was looking to see if we
13 had gotten the ANC report.

14 MS. MOLDENHAUER: I do believe that it was e-mailed
15 to us and that one of the attorneys in my office filed it on
16 ISIS this morning. It was a letter of support.

17 CHAIRPERSON HEATH: Okay. All right.

18 MS. MOLDENHAUER: Project.

19 CHAIRPERSON HEATH: Great. Yeah, we didn't have it
20 initially but, yeah, I see it. Thank you. Okay. All right.
21 So I think that was my only real issue on this. Does anybody
22 have any other issues?

23 MS. COHEN: No.

24 CHAIRPERSON HEATH: Okay. All right. So --

1 MS. MOLDENHAUER: We'd be happy, then, to rest on the
2 record. We believe that the relief is fully articulated in our
3 filings. Thank you.

4 CHAIRPERSON HEATH: Okay. Thank you. All right.
5 Then, are there any additional comments from Office of
6 Planning?

7 MS. RAPPOLT: Hi, Megan Rappolt for the record. No
8 additional comments from Planning. We'll continue to support
9 the request.

10 CHAIRPERSON HEATH: Okay. Thank you. All right.
11 Any questions, Board?

12 MS. COHEN: No.

13 CHAIRPERSON HEATH: Is there anyone here from DDOT on
14 this application? We do have their letter recommending no
15 objection, and we now have the ANC 6E report in support of the
16 application. We also have a letter of support. Is there
17 anyone here from ANC 6E? I assume there's not. Okay.

18 Anyone here wishing to speak in support?

19 MS. COHEN: I have a question.

20 [Pause.]

21 CHAIRPERSON HEATH: Okay.

22 MS. COHEN: Madam Chair.

23 CHAIRPERSON HEATH: Sure. Go ahead.

24 MS. COHEN: Yeah, I would like you to address the

1 comment that the ANC did submit with regard to the negative
2 impacts on the availability of residential parking in the area.

3 Can you address that issue?

4 MS. MOLDENHAUER: So at the ANC it was discussed in
5 regards to, you know, would the requested relief create any
6 adverse impact. And we stated at that time and the ANC voted
7 in support of the case, based on the fact that there are --
8 it's a unique area where you have -- this is the location of
9 the property. You have both a local school which then has no
10 residential use, which opens up all of this portion of the
11 square to parking, which would then not correspond with
12 individuals residing there.

13 You have Bundy Field which also has a large portion
14 of another abutting square which would not be developed as
15 residential, which would then limit the number of parking and
16 density. Again, very close to the project.

17 You then have Kennedy Playground which again would
18 not be developed as residential and would then not contribute
19 to having additional properties or parking on the street.

20 The abutting square across the street also has an
21 alley network, as you can see here, that then would be able to
22 provide off-street parking as well as then the square two over.

23 And the square to the right also has an alley network. This
24 is a stand-alone square that does not have alley access, and so

1 we believe that providing this relief would not have an adverse
2 impact to the community due to the unique surrounding area
3 where a majority of the other properties have alley access to
4 park off-street.

5 MS. COHEN: But I think my question more relates to
6 why is it exacerbating -- or their thought is that it's
7 exacerbating a problem that exists. Is it because of the
8 school and people driving to the school and using the available
9 parking spaces? I mean, I didn't quite understand their
10 reservation that they had.

11 MS. MOLDENHAUER: Well, no. I mean, they voted to
12 support the project, and they voted to support the relief. I
13 think that they were taking this as an opportunity to voice
14 their overall concerns of parking to this Board to put in a --
15 you know, I would just say, a plug to the board members, that
16 you understand the challenges that ANCs are hearing from their
17 constituents.

18 MS. COHEN: Okay. Thank you.

19 CHAIRPERSON HEATH: Okay. All right. Any other
20 questions?

21 MS. COHEN: No.

22 CHAIRPERSON HEATH: Okay. All right. So we did --
23 let's see where we are. Okay. Then if there are no other
24 comments from the applicant, I don't know if you want to make a

1 closing statement, but if not we'll conclude the hearing. It's
2 up to -- did you want to make a closing?

3 MS. MOLDENHAUER: No.

4 CHAIRPERSON HEATH: Okay.

5 MS. MOLDENHAUER: We believe that the record is full.
6 We believe that we satisfied the standards.

7 CHAIRPERSON HEATH: Okay.

8 MS. MOLDENHAUER: Thank you.

9 CHAIRPERSON HEATH: All right.

10 MS. COHEN: Madam Chairman.

11 CHAIRPERSON HEATH: Sure.

12 MS. COHEN: I will move to approve case -- BZA case
13 number 19161, application of 1537 6th Street Northwest, LLC.,
14 1537-41 6th Street Northwest, Square 478, Lots 56 to 58, and
15 ask for a second.

16 CHAIRPERSON HEATH: Second. So the motion has been
17 made and seconded. Any further discussion?

18 [Vote taken.]

19 CHAIRPERSON HEATH: Anyone oppose? So the motion
20 carries. Thank you. Thank you.

21 MR. MOY: Staff would record the vote as three to
22 zero to two, this is on the motion of Ms. Cohen to approve the
23 application for the requested relief under 2101.1. Seconded
24 the motion, Chairperson Heath. Also in support, Mr. Hinkle.

1 Member not present, board seat vacant. Motion carries, Madam
2 Chair.

3 CHAIRPERSON HEATH: Thank you. Summary order.

4 MR. MOY: Thank you.

5 MS. MOLDENHAUER: Thank you.

6 CHAIRPERSON HEATH: Thanks. Okay. So we need to
7 revisit. I'm not clear which --

8 MS. GLAZER: Okay. Madam Chair, we need to revisit
9 the Linden Court case. It was brought to my attention that the
10 ANC support was actually contingent upon a request for a
11 covenant. And there was some brief discussion in the record
12 but I don't think the Board deliberated on that particular
13 condition.

14 CHAIRPERSON HEATH: Okay.

15 MS. COHEN: Which case is it? I'm sorry, which case
16 is this?

17 MS. MOLDENHAUER: This is Linden Court.

18 MS. GLAZER: 19145.

19 MS. MOLDENHAUER: Might I go back to the table, then?

20 CHAIRPERSON HEATH: It sounds like you should not get
21 up.

22 MS. MOLDENHAUER: To -- okay.

23 CHAIRPERSON HEATH: Are you amenable to accepting the
24 ANC's condition?

1 MS. MOLDENHAUER: My client was willing to proffer
2 RPP for lots 1 through 4.

3 CHAIRPERSON HEATH: Okay.

4 MS. MOLDENHAUER: And because they have parking on
5 those lots, and Lot 5 does not have parking on that lot. So we
6 were not --

7 CHAIRPERSON HEATH: Because of the commercial space?

8 MS. MOLDENHAUER: -- proffering to provide that
9 condition upon ourselves for lot 5.

10 CHAIRPERSON HEATH: Okay.

11 MS. COHEN: I think it's incumbent upon us to request
12 it of the applicant.

13 CHAIRPERSON HEATH: That condition didn't make any
14 distinction between Lots 1 through 4 and Lot 5?

15 MS. MOLDENHAUER: The ANC was clear that they wanted
16 it on all five.

17 CHAIRPERSON HEATH: Right.

18 MS. MOLDENHAUER: Just to make sure the Board
19 understands.

20 CHAIRPERSON HEATH: Okay.

21 MS. MOLDENHAUER: The ANC did want their condition on
22 all five. We provided the distinction to them and informed
23 them that we would tell the Board that we were proffering it on
24 1 through 4, and then the Board could make that condition as

1 they deemed appropriate.

2 CHAIRPERSON HEATH: Okay.

3 MS. GLAZER: Just to be clear, if the Board is going
4 to change its decision with respect to that I think you need to
5 rescind the previous vote and revote.

6 CHAIRPERSON HEATH: Sure.

7 MS. GLAZER: Again.

8 CHAIRPERSON HEATH: Okay. Does the Board have any
9 issues with adding this condition?

10 MS. COHEN: No.

11 CHAIRPERSON HEATH: Let me go back to their report.
12 One second.

13 [Pause.]

14 MS. COHEN: All right, Madam Chair.

15 CHAIRPERSON HEATH: Go ahead.

16 MS. COHEN: Do you have to rescind it because you --

17 CHAIRPERSON HEATH: Yeah.

18 MS. COHEN: Yeah, okay.

19 CHAIRPERSON HEATH: Yeah. So we'll rescind the
20 previously vote and make a new motion that we approve the
21 variance relief requested under 771, 772, 774, 2507.4 and the
22 addressed relief of 2507.3, along with the ANC's condition
23 which reads, "The applicant shall record a covenant in the land
24 records for each of the properties prohibiting the owner or

1 resident from obtaining a residential parking permit."

2 That's the complete motion.

3 MS. COHEN: Okay. I second.

4 CHAIRPERSON HEATH: So the motion has been made and
5 seconded. Any further discussion?

6 [Vote taken.]

7 CHAIRPERSON HEATH: Okay. The motion carries.

8 MR. MOY: And so again, staff would record the vote
9 as three to zero to two on Chairperson Heath's motion with
10 condition number 1 in the relief as she has cited. Seconding
11 this motion this time is Ms. Cohen. Also in support, Mr.
12 Hinkle.

13 MS. MOLDENHAUER: We would request a summary order.

14 CHAIRPERSON HEATH: Sure. Okay. So summary. All
15 right. So our last case, Mr. Moy.

16 MR. MOY: Yes. That would be Application No. 19018
17 of Carlene Slattery, formerly North Capitol No. 2 Land Trust.
18 This application has been before the Board and heard on June
19 23rd, July 28th, and then postponed. The Board postponed its
20 decision for September 19th and November 17. Here we are
21 December 22nd with supplemental filings requested of the
22 applicant, which I believe are in your case folders, Madam
23 Chair.

24 CHAIRPERSON HEATH: Would you please introduce

1 yourself for the record?

2 MR. SULLIVAN: Good afternoon, Madam Chair, Members
3 of the Board. My name is Marty Sullivan from Sullivan and
4 Barros on behalf of the applicant.

5 CHAIRPERSON HEATH: Okay. And I understand there was
6 something submitted just last night?

7 MR. SULLIVAN: It was submitted yesterday morning, I
8 believe.

9 CHAIRPERSON HEATH: Oh, okay.

10 MR. SULLIVAN: Yes. We just came to an agreement
11 with the neighbor --

12 CHAIRPERSON HEATH: Uh-huh.

13 MR. SULLIVAN: -- on Friday. It had been in the
14 works for a long time but it seemed like until we were getting
15 close to the deadline date we didn't have any movement. But
16 the agreement was signed on Friday.

17 CHAIRPERSON HEATH: Okay. All right. There hasn't
18 been any change of position by Office of Planning or the ANC,
19 has there?

20 MR. SULLIVAN: No, not that I know of. In the
21 hearing it was understood, I think, that the ANC wasn't going
22 to take it up again.

23 CHAIRPERSON HEATH: Uh-huh.

24 MR. SULLIVAN: But that they were open to the idea of

1 scaling the decks back to what was originally permitted. And
2 that's what we were looking to do when we started talking to
3 the neighbor, Mr. Pearl, who is the single-member district
4 commissioner. We proposed screening and he was happy with that
5 idea.

6 CHAIRPERSON HEATH: Screening in lieu of scaling the
7 decks back?

8 MR. SULLIVAN: Yes. Yeah, and that's what the
9 covenant -- so we submitted a covenant that's going to be
10 recorded in the land records. And then if the Board were to
11 approve we would request that it be a condition as well because
12 he was concerned about being able to enforce it through the
13 Zoning Regulations, or through the Zoning Administrator's
14 office, in addition to the covenant.

15 CHAIRPERSON HEATH: Okay. I'm still having a hard
16 time with the issues that we addressed at the initial hearings
17 on this, where you know, the decks were built larger than they
18 were supposed to be through contractor error, and now the
19 property owner wants to keep them because it appears they're
20 representing that it's a hardship for them to have to rebuild
21 the decks in order to conform with the permitted drawings.

22 I don't like the precedent that this sets, and so you
23 know, despite the fact that you have worked with the neighbor
24 in order to come to some consensus about what the neighbor

1 would accept if the decks were allowed to remain, it just -- I
2 don't feel that a contractor error is an exceptional situation.

3 And so that's the part of this case that I'm having a hard
4 time getting over. And I'm not there with giving approval on
5 this. I don't know where my colleagues stand.

6 MR. SULLIVAN: If I may speak to that at some point?

7 CHAIRPERSON HEATH: Sure.

8 MR. SULLIVAN: Thanks.

9 CHAIRPERSON HEATH: Does anybody have any other
10 thoughts or --

11 MS. COHEN: Chairperson, I would concur with you. It
12 makes me uncomfortable as well.

13 CHAIRPERSON HEATH: Do you -- you can speak to that.

14 MR. SULLIVAN: No. Yeah, I certainly understand
15 that. It's a different situation than I think what was
16 permitted. And I would just point out, it is not to say that
17 everything that's de minimis automatically gets approved, but
18 it's de minimis, not in the sense of that it's just an extra
19 five feet, but it's part of the deck itself.

20 Also, the other thing that's unique about this is
21 when we found out about the problem of the Zoning Administrator
22 asking the developer to take the decks off completely, we were
23 two weeks away from closing with Ms. Slattery, who is now the
24 applicant. And so she was in a tough position of deciding

1 whether or not to go forward with the purchase, which of course
2 she did because the decks are just a small part of the house.
3 But so she was left with that as the applicant.

4 And I would point out that -- not to take the rule of
5 self-created hardship too far, but self-created hardship does
6 not bar area variance relief. It can be a factor. I
7 understand we're in the case of a contractor that's -- that's a
8 very specific self-created hardship and it was created by the
9 developer.

10 But I think the transfer to Ms. Slattery and the de
11 minimis amount of the request, and the fact that it's part of a
12 deck, where as if the mistake was putting up the whole deck I
13 would see that and say, hey we want to put up a deck, we made a
14 mistake, can you give us the deck. But in this case, for
15 whatever reason he thought it needed to go the whole way when
16 he was in the middle of the job. I don't know why.

17 MS. COHEN: Did he have plans to follow? And didn't
18 he -- doesn't he have to take some responsibilities? I mean,
19 if he didn't have plans and just, you know, there was a
20 handshake, that's one thing. But if he had plans, it's his
21 mistake and he should address it.

22 MR. SULLIVAN: No. Yeah, and I'm sure the developers
23 will address that with his contractor as the developer
24 addresses it with his purchaser as well.

1 CHAIRPERSON HEATH: Yeah. It was my understanding
2 from what we heard from the ANC that the developer had already
3 agreed to bear the cost of replacing the decks. And I would
4 think that it would be the contractor's responsibility, as
5 Commissioner Cohen has stated. They did have permitted plans
6 and so yeah, I just I'm -- I can't --

7 MR. SULLIVAN: They did. And I think one of the
8 other issues, though, I think maybe taking off part of the deck
9 could be seen as a little more of interference on the neighbor,
10 rather than the screening. And I think that may have been why
11 he was in favor of the screening as well, not having any
12 additional construction on the property right there. So. And
13 he wants it to look good. So they worked together on the type
14 of screening and they're going to continue to work together on
15 that if the Board was okay with that option.

16 CHAIRPERSON HEATH: I mean, I don't know how this,
17 the screening -- whether the screening is relevant if the decks
18 go back to what was originally permitted. But my position is -
19 - my feeling is still the same.

20 MS. COHEN: Yeah. Unless you can go back to the ANC
21 and kind of get them to support. You know, I just feel that we
22 would be overruling a lot that's on the record, and I think it
23 is a contractor issue. But, you know, if you want us to
24 reconsider -- because today I would vote, you know, to

1 disprove. But if you can, you know, maybe work things through
2 the proper channels --

3 MR. SULLIVAN: Yeah. We'd be happy to do that. I
4 don't think there's any hurry on anybody's part to take it
5 down, so --

6 MS. COHEN: I would prefer, you know, getting the
7 contractor to, you know, assume responsibility. He made a
8 mistake because he had plans. He just didn't bother looking at
9 them or something.

10 MR. SULLIVAN: Yeah.

11 MS. COHEN: That's probably the preference that seems
12 to be --

13 CHAIRPERSON HEATH: Yeah.

14 MS. COHEN: -- the two of us. I had to read the
15 record. I was not on the original hearing. But on the other
16 hand, if you can you know, persuade everybody, OP and the
17 ANC --

18 CHAIRPERSON HEATH: Yeah, I just feel --

19 MS. COHEN: I defer today. I don't know.

20 CHAIRPERSON HEATH: Yeah, even -- this is just such a
21 messy case. It was messy from the very beginning and I don't
22 know how you get to a point of cleaning it up, even if you
23 could get the ANC's approval of this. It just -- it still, it
24 started out so messy that I have a hard time getting to a point

1 of approval. I just don't like -- I don't like the fact that
2 if we were to approve this we'd be essentially saying that if a
3 contractor errs in what they build, even if what they build is
4 slightly off from what was permitted that it's okay, they can
5 just get a variance and they don't have to correct their error
6 and I just, I don't like setting up that precedent.

7 So I don't know where you stand, Mr. Hinkle.

8 MR. HINKLE: Yeah, I tend to agree with you. I mean,
9 it's tough and you know, it's a tough issue and certainly you
10 have this purchaser of the unit, you know. But yeah, I agree
11 with what you just said in terms of the contractor and you
12 know, he needs to be held liable at some point in time.

13 CHAIRPERSON HEATH: Right. Okay.

14 MR. HINKLE: But I'm certainly open to holding off a
15 little longer if Mr. Sullivan wants to and, you know, see if
16 you could do a little more work with the ANC and the Office of
17 Planning.

18 MR. SULLIVAN: And here is where I may come at it
19 from a different angle. If this was a de novo request and
20 there were no decks up now, I think we have a bit of an
21 argument as well for unique condition of practical difficulty.
22 We exceed the lot occupancy because of the garage. Not just
23 because of the garage. We'd be a little over 60 percent. But
24 if the garage wasn't there we'd be asking for special exception

1 relief.

2 And we're only asking for 2001.3A. So we're not even
3 increasing the lot occupancy, which really minimizes the
4 request as well. There was a deck and this footprint was
5 already accounted for. So these decks are just going on top of
6 that existing footprint.

7 So under the theory -- if the mistake doesn't get us
8 all the way there, and I think it's unique, I think the mistake
9 was kind of unique because it was part of the existing deck,
10 the property was transferred, it wasn't intended to be
11 transferred to get out of this. It was in process when this
12 was discovered. And you have a new owner now. It's a two-unit
13 building and she has no outdoor space because she's on North
14 Capitol Street, which is a busy thoroughfare. So her
15 recreation space needs to be oriented to the back, and there's
16 a lot of decks all over the place back there, going down all
17 the streets, and I could present pictures of that.

18 So I think that almost by itself would argue for
19 variance relief de novo, and if the -- maybe that's a way, if
20 we get the ANC to be on board with that, maybe the Board would
21 be more comfortable with that.

22 CHAIRPERSON HEATH: If you feel that taking more time
23 would be beneficial for your case, I'm happy to put this on for
24 some time in February.

1 MR. SULLIVAN: February should be -- I'm not sure
2 when the ANC meets. I want to make sure.

3 CHAIRPERSON HEATH: I mean, if we did it --

4 MR. SULLIVAN: Well, if it's in February we have --

5 CHAIRPERSON HEATH: You have January, the month of
6 January.

7 MR. SULLIVAN: We'll have January. So if I contact
8 them today --

9 CHAIRPERSON HEATH: Okay.

10 MR. SULLIVAN: -- I would hope we'd get on the agenda
11 for their January meeting.

12 CHAIRPERSON HEATH: Okay. 9th, or should we go
13 later?

14 MR. MOY: Oh, Madam Chair, I -- okay. I'm assuming
15 this would be for decision session, so --

16 CHAIRPERSON HEATH: Yeah.

17 MR. MOY: -- I think -- oh, this works out well
18 because Ms. Cohen is back with the Board on the 23rd of
19 February.

20 CHAIRPERSON HEATH: Okay. That should give you time
21 to work with the ANC, certainly.

22 MR. SULLIVAN: Yes. That would be great. Thank you.

23 CHAIRPERSON HEATH: All right. So February 23rd,
24 decision. Okay. Thank you.

1 MR. MOY: Final.

2 CHAIRPERSON HEATH: Yes. Any other matters coming
3 before the Board today, Mr. Moy?

4 MR. MOY: Just one thing you have, I think. Not from
5 me, but there was the roll call vote for --

6 CHAIRPERSON HEATH: Oh, right.

7 MR. MOY: Yes.

8 CHAIRPERSON HEATH: All right. Do have that. So in
9 accordance with Section 405C of the Open Meetings Act, D.C.
10 Official Code Section 2-575C, I move that the Board of Zoning
11 Adjustment hold closed meetings on the following dates: Monday,
12 January 11th; Friday, January 15th; and Monday, January 25th.
13 These meetings start at 4:00 p.m. and are held for the purpose
14 of obtaining legal advice from our counsel and deliberating
15 upon, but not voting on the cases scheduled to be publically
16 heard, or decided by the Board on the day after each closed
17 meeting.

18 Those cases are identified on the Board's public
19 hearing agendas for January 12th, January 19th, and January
20 26th. A closed meeting for these purposes is permitted by
21 Sections 405(b)(4) and (b)(13) of the Act. And I further move
22 that the Board hold a closed meeting on Tuesday, January 19th,
23 2016 from 9:00 a.m. to 12:30 p.m. for the purpose of conducting
24 internal training as permitted by Section 405(b)(12) of the

1 act. Is there a second?

2 MS. COHEN: Second.

3 MR. HINKLE: Second.

4 CHAIRPERSON HEATH: Thank you. Will the secretary
5 please take a roll call on the motion.

6 MR. MOY: Yes, thank you, Madam Chair. When I call a
7 member's name, if the member can reply with a yes or a no?

8 [Roll call vote taken.]

9 MR. MOY: But the motion carries, Madam Chair.

10 CHAIRPERSON HEATH: Okay. All right. I request that
11 the Office of Zoning provide a notice of these closed meetings
12 in accordance with the Act.

13 MS. COHEN: I wish everybody a happy --

14 CHAIRPERSON HEATH: Any other --

15 MS. COHEN: Happy Holiday.

16 CHAIRPERSON HEATH: Anything else other than everyone
17 should have a happy holiday?

18 MR. MOY: No, I think that --

19 CHAIRPERSON HEATH: I move that everyone have a happy
20 holiday.

21 MS. COHEN: I second.

22 MR. MOY: Yeah, that does it, Madam Chair.

23 CHAIRPERSON HEATH: Okay. Thank you.

24 [Whereupon, at 12:33 p.m., the Public Hearing

1 was adjourned.]

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