

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA

2 Office of Zoning

3 Board of Zoning Adjustment

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9 PUBLIC HEARING

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13 9:45 a.m. to 11:30 a.m.

14

Tuesday, March 22, 2016

15

16

441 4th Street, N.W.

17

Jerrily R. Kress Memorial Room

18

Second Floor Hearing Room, Suite 220 South

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Washington, D.C. 20001

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3 FREDERICK L. HILL, Vice-Chairperson

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5 ANTHONY HOOD, Zoning Commission

6 CLIFFORD MOY, Board Secretary

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1	C O N T E N T S	
2		PAGE
3		
4	Introductory Remarks	4
5		
6	A.M. Session	
7		
8	Application No. 19222	6
9	Application No. 19225	8
10	Application No. 18471A	8
11	Application No. 19188	37
12	Application No. 19202	52
13		
14		
15	Conclusion of Meeting	85
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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

2 CHAIRPERSON HEATH: All right. The hearing
3 will please come to order. Good morning, ladies and
4 gentlemen. We're located in the Jerrily R. Kress
5 Memorial Hearing room at 441 4th Street Northwest.
6 Today's date is March 22nd, 2016 and we are here for
7 the public meeting and hearings of the Board of
8 Zoning Adjustment of the District of Columbia.

9 My name is Marnique Heath, Chairperson.
10 Joining me today is Fred Hill, Vice Chairperson
11 Jeffrey Hinkle, Board member, and Anthony Hood,
12 Member of the Zoning Commission sitting in as a
13 member of the member of the board today.

14 Please be advised that this proceeding is
15 being recorded by a court reporter and is also being
16 webcast live. Accordingly, we must ask you to
17 refrain from any disruptive noises or actions while
18 in the hearing room. The Board's hearing procedures
19 and how we will process applications can be found on
20 the table by the back door.

21 All individuals wishing to testify today will
22 need to do two things prior to testifying. The first
23 is that each person needs to fill out two witness
24 cards and give those two cards to the court reporter
25 seated to my right prior to testifying.

1 The second is that you will now need to stand
2 and take the oath as administered by the Board
3 Secretary, Mr. Moy.

4 MR. MOY: Good morning.

5 [Oath administered to the participants.]

6 CHAIRPERSON HEATH: All right. Good morning,
7 Mr. Moy. Do we have any preliminary matters coming
8 before the Board today?

9 MR. MOY: Yes, I do. Good morning, Madam
10 Chair and Members of the Board. Very quickly, and
11 this for the record on cases that's scheduled on the
12 docket today, or rather will not be. We have okay,
13 two cases that have been, at the applicant's request
14 and granted by the Board, postponed, rescheduled to
15 April the 5th, 2016. These are Case No. 19227 of
16 Serracod (phonetic) and 19211 of Catherine Johnson,
17 both again to April 5th.

18 We have Application No. 19205 of Magrath and
19 Shen removed from the expedited review calendar and
20 scheduled to a public hearing on April the 19th,
21 2016. Application No. 19219 of 2001 2nd Street
22 Northeast, LLC., rescheduled to April 26th, 2016.
23 And finally Application No. 19221 of Aaron Presnall
24 has been withdrawn by the applicant. And that's it
25 for me, Madam Chair.

1 CHAIRPERSON HEATH: Okay. Thank you.

2 MR. MOY: Oh, wait. There is one. Well,
3 maybe this is the time to tee up for the Board. We
4 do have, at the 12th hour to Application No. 19177 of
5 615 Upshire Street Northwest, LLC., there's a consent
6 motion from ANC 4C and the property owner to postpone
7 the hearing, and staff would suggest moving it to
8 next week, March the 29th.

9 CHAIRPERSON HEATH: Okay. So we'll grant the
10 motion to postpone and put this on for the 29th. I
11 think that works.

12 MR. MOY: Okay.

13 CHAIRPERSON HEATH: Okay. All right. So
14 then with that, Mr. Moy, do you want to call our
15 first and only public meeting case?

16 MR. MOY: Yes. As you've said there's one
17 application on the expedited review calendar, and
18 that is Application No. 19222 of Robert Bailey,
19 request or a special exception under Section 223, not
20 meeting the minimum lot width requirements under
21 Section 401, lot occupancy requirements under Section
22 403, rear yard requirements under 404, nonconforming
23 structure provisions under Section 2001.3. This is
24 to allow an enclosed -- to enclose a rear porch for
25 an existing one-family dwelling, R-4 District, 1105

1 Abbey Place Northeast, Square 773, Lot 176.

2 CHAIRPERSON HEATH: Okay. Thank you. This
3 is a pretty straight forward application and I don't
4 see any issues with hit. It has approval from OP,
5 ANC, DDOT, and four letters of support. So I will
6 make a motion that we approve the request for special
7 exception for Application No. 19222.

8 MR. HILL: I second.

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

11 [Vote taken.]

12 CHAIRPERSON HEATH: The motion carries.

13 MR. MOY: Staff would record the vote as four
14 to zero to one. This is on the motion of Chairperson
15 Heath to approve the request for a special exception
16 relief and this is per the revised plans as shown on
17 Exhibit 22. And seconding the motion, Vice
18 Chairperson Hill. Also in support, Mr. Anthony Hood,
19 Mr. Jeffrey Hinkle, board seat vacant. Motion
20 carries, Madam Chair.

21 CHAIRPERSON HEATH: Okay. Thank you, Mr.
22 Moy. Summary order.

23 MR. MOY: Thank you.

24 CHAIRPERSON HEATH: Okay. So we're ready to
25 start our hearing cases, but before we proceed to the

1 first let's call up the appeal.

2 MR. MOY: Yes, that is Appeal No. 19225 of
3 Frederick W. McCarthy III. As the Board is aware
4 this is an appeal of an October 22nd, 2015 decision
5 by the Zoning Administrator to issue Building Permit
6 No. B, B as in Bravo, 1502005, to convert a one-
7 family dwelling to a four-unit residential building,
8 R-5-B district, 1835 Ontario Place Northwest, Square
9 2584, Lot 818. You know, there are motions before
10 the Board for preliminary matters, Madam Chair.

11 CHAIRPERSON HEATH: Could you please
12 introduce yourselves?

13 MR. TONDRO: Maximilian Tondro with DCRA
14 representing the Zoning Administrator.

15 MS. MAZO: Samantha Mazo with the law firm of
16 Griffin, Murphy, Moldenhauer & Wiggins representing
17 the property owner.

18 CHAIRPERSON HEATH: Okay. We have received
19 the motions to consolidate this appeal with one that
20 is before the Board, I believe on April 12th, because
21 it appears that the subject of the two appeals are
22 the same. We just wanted to confirm that with the
23 appellant.

24 We understand, Mr. Tondro, that you've
25 received an e-mail from the appellant stating that

1 they agreed to the consolidation.

2 MR. TONDRO: Yes. So there are two different
3 appellants. There's the private appellant who is one
4 of the neighborhoods. That's Frederick McCarthy
5 whose appeal was scheduled for today. He has given
6 consent to both the continuance, as well as the
7 consolidation and I would say I apologize for the
8 late hour of my motion. Mr. McCarthy and I think
9 were confused as to who was going to make the motion
10 to continue.

11 CHAIRPERSON HEATH: Okay.

12 MR. TONDRO: And we caught up at the last
13 minute. So I apologize for that.

14 I have reached out to the other neighbor on
15 the other side, Ms. Jacobs, who is representing the
16 April -- who is the appellant in the April 12th,
17 which is technically the ANC.

18 CHAIRPERSON HEATH: Okay.

19 MR. TONDRO: And asked her if she would agree
20 to the consolidation. I have not yet heard back from
21 her. She's aware and I did notify her about that
22 consolidation, so that was why in my motion I moved
23 that we -- that I think the continuance we all have
24 consent for. The question of consolidation, maybe
25 there is a concern by the ANC. But I'm not saying

1 there is. I just haven't received a full response
2 but we could presumably deal with that at the April
3 12th, hearing.

4 CHAIRPERSON HEATH: Okay. All right. And so
5 then unless the Board has any issues with that we
6 will, at this point, continue this. And if we get
7 the consent from the ANC to consolidate, then we will
8 proceed on that basis on the 12th.

9 MR. TONDRO: Thank you.

10 MS. MAZO: All right. Thank you.

11 CHAIRPERSON HEATH: Okay. Thank you.

12 MR. HINKLE: And, Madam Chair, before we move
13 on to the next case I'd just like to take an issue up
14 with the Board.

15 On March 8th, the Board took a decision.
16 That was with myself, Commissioner Hood, as well as
17 Board Member Hill, to approve some setback reliefs
18 for penthouses based on the new regulations that
19 became effective in January. And this is Case 19124,
20 which is I Street. It's a development in China Town.
21 And there was some discussion at the decision meeting
22 with the representative of the applicant that we
23 initially, I think the Board initially took a vote to
24 not approve any penthouse setback relief. And then
25 we had this discussion with the applicant in terms of

1 there could be some portions that they were
2 requesting that we could allow some relief for.

3 So we did. We took a vote and allowed some
4 relief, setback relief in certain areas. But I don't
5 think we got it completely correct. So what I would
6 like to do is make a motion today. And I understand
7 a board member can do that, to reopen that case for a
8 separate decision. And what I think I would like to
9 see, at least from the applicant, but also from the
10 Office of Planning, is within the plans there are
11 some spaces, alley spaces, current public alleys that
12 will be closed. And above those, at the penthouse
13 level, are some locations where the applicant is
14 requesting setback relief.

15 I think what I would like from the applicant
16 is a brief on, once those alley spaces are closed
17 what does that space become and how does that affect
18 the setbacks for the penthouses as it relates to the
19 new regulations.

20 And I think that's it. But that would be my
21 motion to reopen that case for a decision following a
22 briefing by the applicant and the Office of Planning
23 if they so choose.

24 MR. HOOD: I will second that motion as one
25 who was watching it, streaming, and I saw we were

1 running into that difficulty because as was
2 mentioned, actually my proxy was not to approve any
3 setbacks, and I was trying to accommodate, as this
4 Board often does, trying to accommodate the
5 applicant. I think we hasten and rush without
6 clarification. So I would second that motion to
7 Board Member Hinkle.

8 CHAIRPERSON HEATH: So the motion has been
9 made and seconded. Any further discussion? All
10 right.

11 [Vote taken.]

12 CHAIRPERSON HEATH: All right. So.

13 MR. MOY: Madam Chair, before I give a final
14 vote count, I believe that you did not participate on
15 it so --

16 CHAIRPERSON HEATH: I did not.

17 MR. MOY: -- it would be the three members
18 here who sat on this case, which of course is Mr.
19 Hinkle, Mr. Hood, and Mr. Hill.

20 So with that then the motion carries, Madam
21 Chair, and on the vote of three to zero to two, this
22 is on the motion of Mr. Hinkle, seconded by Mr. Hood
23 and also in support, Mr. Hill.

24 CHAIRPERSON HEATH: So, Mr. Moy, we'll put
25 this on for decision and request that the applicant

1 provide the information requested by Mr. Hinkle.

2 MR. MOY: Okay. How much time --

3 CHAIRPERSON HEATH: We'll just need a date.

4 MR. MOY: -- did the Board have in mind?

5 MR. HINKLE: I think this could be relatively
6 quick. We don't have to stretch this out too far.

7 MR. MOY: Okay. Well, of course staff will
8 follow through and alert the parties to filings.

9 CHAIRPERSON HEATH: When is Mr. Hood back
10 again?

11 MR. HOOD: I won't be back until May the 3rd,
12 but if we get the submissions and look at it I can
13 always send a proxy.

14 CHAIRPERSON HEATH: Okay.

15 MR. MOY: Okay.

16 MR. HOOD: I think I come back May the 3rd.
17 One of those days.

18 MR. MOY: If we say reasonable to give the
19 parties two weeks to make their filing, that would
20 take us up to the first week of April. So, let's say
21 April the 12th for a decision.

22 CHAIRPERSON HEATH: Okay.

23 MR. HINKLE: Thank you, Madam Chair.

24 CHAIRPERSON HEATH: Thank you. All right.

25 So when you're ready, Mr. Moy, you can call our next

1 hearing case.

2 MR. MOY: Okay. That's, according to the
3 lineup on the agenda, correct?

4 CHAIRPERSON HEATH: Correct.

5 MR. MOY: So that would be Application No.
6 18471A of Universalist. Did I pronounce that right?
7 National Memorial Church, as advertised and captioned
8 for a variance relief from the use requirements under
9 350.4 to allow the continued use of theater
10 performances on or in the basement level of a church
11 in the DC/R-5-B district, 1810 16th Street Northwest,
12 Square 177, Lot 802.

13 CHAIRPERSON HEATH: All right. Thank you.
14 Could you all please introduce yourselves?

15 MS. OLSON: Hi. My name is Kate Olson with
16 the law firm of Greenstein, DeLorme, and Luchs
17 representing the applicant.

18 MR. HENRICH: I'm Richard Henrich, artistic
19 director of Spooky Action Theater, the theater.

20 CHAIRPERSON HEATH: Okay.

21 MR. GATTON: Dave Gatton, a pastor at the
22 church.

23 CHAIRPERSON HEATH: Okay. Thank you. So we
24 understand the request and we know that this is --
25 that the Board previously granted this use and that

1 there is also a request to change a few of the
2 conditions to increase the term limit from three
3 years to six years, and to increase the number of
4 performances annually from 48 to 60.

5 The last time the Board approved this
6 applicant you also had to satisfy the variance test,
7 and you still need to satisfy that. If you could
8 just state for the record, I don't think we need a
9 full presentation, but if you could just state for
10 the record how this application satisfies the
11 variance test for us I think that would be helpful.

12 MS. OLSON: Sure. As you know, the test, the
13 first part of the test is a unique and physical
14 aspect or other extraordinary exceptional situation
15 or a condition of a specific piece of property. The
16 property is exceptional in two significant respects.
17 First, as the result of the earthquake in 2011 the
18 building suffered significant damage, which required
19 expensive repairs and restoration which could not
20 have been undertaken without the income generated by
21 a theater use in the building.

22 Second, the basement of the building cannot
23 be economically used by the church except
24 occasionally because of a small and declining
25 congregation of active church members. And so unless

1 it's put to a viable income producing use, such as
2 the theater use, the church really does struggle very
3 much.

4 The second part of the test is undue hardship
5 to the owner. The applicant, the church, is a
6 nonprofit entity. It faces undue hardship as a
7 result of declining membership, managing the church
8 with minimal operating budget. The expense of both
9 the repairs needed as a result of the earthquake and
10 the effect of its age of the church. As you know the
11 church is a contributing structure in the 16th Street
12 Historic District. The BZA also has more flexible
13 standards for determining hardship when the applicant
14 is a public service or nonprofit entity which the
15 church is.

16 The theater, just so you know, provides three
17 main functions. It allows the church to convert the
18 auditorium space in the basement to a use that is
19 functioning year round. It also furthers the
20 church's mission of community outreach and service,
21 and provides a source of income. The relationship of
22 the church company is an important partnership that
23 not only helps the building stay vibrant and busy
24 throughout the week, but it offers much needed income
25 which is expected to be over 30,000 in 2015, last

1 year.

2 Most importantly the theater really uses --
3 the theater use provides necessary funds to be used
4 by the church for the ongoing repair.

5 Lastly, no substantial harm to the public
6 good and no substantial impairment of the zoning
7 plan. The requested use variance can be granted
8 without creating any adverse impacts on nearby
9 residential properties. You may have noted that
10 three years ago there was some issue about the use of
11 the rear entrance of the building for access to the
12 basement for theater use. That has been
13 discontinued. The church has received no complaints
14 for any of the residences nearby. The ANC is in
15 support and the Office of Planning and DDOT reports
16 also show support. Thank you.

17 CHAIRPERSON HEATH: Okay. Thank you. And
18 thank you for bringing up the issue that was raised
19 at the last hearing regarding issues with the
20 neighbors because that was one thing that I believe
21 Mr. -- you were on that, on that hearing and so --

22 MR. HINKLE: That's correct. You're right.

23 CHAIRPERSON HEATH: -- you would have heard
24 those comments. And we didn't receive any
25 correspondence from the neighbors either positive or

1 negative, but we assumed because the ANC was in
2 support of this that there hadn't been any issues
3 with the neighbors.

4 MR. HINKLE: Yeah. Good job. Just a quick
5 question. Where does the name Spooky Action come
6 from?

7 MR. HENRICH: It actually comes from Albert
8 Einstein. It's a phenomenon in quantum mechanics
9 officially called quantum entanglement, which is
10 really interesting to little bits of matter get
11 entangled in such a way that their fates are
12 identified with each other no matter where they are
13 in space. One could be on Earth; another could be on
14 the moon or on Mars. Something happens to one, it's
15 happening to the other at the same time.

16 It was predicted by Einstein's theory, but he
17 said, well, that would be spooky action at a
18 distance. And he wasn't quite so sure. But it's
19 been proved, and it's actually in use when you hear
20 about quantum computers, that's one of the bases of
21 how a quantum computer works, and why it's so
22 infinitely fast.

23 And we felt it was a metaphor for a
24 connection that's mysterious and instantaneous in the
25 theater, in live theater between actors and audience,

1 and so we chose that name.

2 MR. HINKLE: Great. I appreciate it. Sorry
3 to get us off track, Madam Chair, but --

4 CHAIRPERSON HEATH: No, no problem.

5 MR. HINKLE: -- you learn something new every
6 day.

7 CHAIRPERSON HEATH: Thank you. All right.
8 Does the Board have any other questions?

9 MR. HOOD: Madam Chair, I just want to ask
10 the pastor, with the increase of performances has it
11 ever been communicated -- obviously I know it's been
12 communicated to the ANC, and that ANC is pretty well
13 together so they have a level of approval. But have
14 the neighbors also been notified that we're
15 increasing the performances by 12?

16 MR. GATTON: We have talked to some of the
17 neighbors. I can't say we've talked to all of them,
18 but we certainly talk to the gentleman who was mostly
19 concerned last time, and he's very comfortable with
20 it. And again, we've simply not received over the
21 last three years, any complaints from any neighbors.

22 CHAIRPERSON HEATH: Okay. Well, thank you,
23 Pastor. I think the record reflects that you all
24 haven't had any opposition and you've done as Board
25 Member Hinkle mentioned, a great job since the last

1 hearing. So, thank you, Madam Chair.

2 CHAIRPERSON HEATH: Thank you. All right.
3 So then with that, if there aren't any other
4 questions from the Board we'll turn to Office of
5 Planning for any comments.

6 MR. JESICK: Thank you, Madam Chair, Members
7 of the Board. My name is Matt Jesick, filling in
8 this morning for Mr. Stephen Gyor, and the Office of
9 Planning is happy to rest on the record in support of
10 this applicant and in support of the amended
11 conditions. Thank you.

12 CHAIRPERSON HEATH: Okay. Thank you. Board,
13 any questions of Office of Planning. Did the
14 applicant have any questions of Office of Planning?

15 MS. OLSON: No.

16 CHAIRPERSON HEATH: Okay. As we've noted we
17 also have a letter recommending approval from ANC 2B.
18 Is there anyone here from ANC 2B? All right.

19 We also have a letter of no objection from
20 Department of Transportation, and no letters of
21 support or opposition. Is there anyone here wishing
22 to speak in support of this applicant? Anyone in
23 support?

24 Anyone in opposition? No opposition. All
25 right. Then we'll turn back to the applicant for any

1 closing you might want to make. You don't have to.

2 MS. OLSON: I think we can stand on the
3 record given that there's no opposition, I
4 respectfully request a bench decision.

5 CHAIRPERSON HEATH: Okay. Certainly. All
6 right. Is the Board ready to deliberate on this?
7 All right.

8 MR. HOOD: Madam Chair, if you want, I would
9 move that we continue the use variance, 201216 and
10 350.4 to allow a theater to continue the use of co-
11 locate with an existing church, use property located
12 at 1810 16th Street with a change of the two
13 conditions going from a period of three years to six
14 years, as well as the performances from 48 to 60.
15 That's my motion.

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

19 [Vote taken.]

20 CHAIRPERSON HEATH: The motion carries.
21 Thank you.

22 MS. OLSON: Thank you.

23 MR. MOY: Before I call the vote, who
24 seconded the motion?

25 CHAIRPERSON HEATH: I did.

1 MR. MOY: You did? Oh, I'm sorry. Okay. So
2 the vote count is four to zero to one. This is on
3 the motion of Mr. Anthony Hood to approve the
4 application for the relief requested along with the
5 two conditions. Seconding the motion is Chairperson
6 Heath. Also in support, Vice Chair Hill, and Mr.
7 Hinkle. Board seat vacant. Motion carries.

8 CHAIRPERSON HEATH: Summary order.

9 MR. MOY: Summary order, thank you.

10 CHAIRPERSON HEATH: Thank you. And you can
11 call our next case when ready, Mr. Moy.

12 MR. MOY: Okay. To the table, applicants to
13 Application No. 19223 of 5 Design Development, LLC.
14 as captioned and advertised for variance relief from
15 the floor area ratio requirements under Section
16 402.4, nonconforming structure requirements under
17 2001.3. This is for the construction of a third
18 story on an existing one-family dwelling, R-5-B
19 district, 2233 10th Street to Northwest, Square 357,
20 Lot 90.

21 CHAIRPERSON HEATH: Thank you. Good morning.
22 If you could introduce yourself? Your mic is not on.

23 MS. MAZO: Yeah, of course. Samantha Mazo,
24 again from Griffin, Murphy, Moldenhauer, and Wiggins
25 and I'm here on behalf of the applicant.

1 MR. MOSTASHARI: Good morning. My name is
2 Shaw Mostashari. I'm a principal with 5 Design
3 Development.

4 CHAIRPERSON HEATH: Okay. Thank you. I
5 think for the most part this application seems pretty
6 straight forward and based on the information that we
7 received I think the application is complete. Does
8 the Board have any questions of the applicant?

9 [Discussion off the record.]

10 CHAIRPERSON HEATH: Yeah, go ahead and ask,
11 because there were --

12 MR. HILL: I just had a question. There's
13 something about there was an Option A that the ANC
14 recommended and then an Option B which says,
15 "Intended to respond to OP's comments but is not
16 reviewed by the ANC." So I was confused as to which
17 option we're actually talking about and if that
18 option has been reviewed by the ANC.

19 MS. MAZO: Sure. I'd be happy to show you.
20 So there was an interesting effect in scheduling, I
21 guess. So we and Mr. Mostashari can speak to this,
22 but we went to the ANC 1B. They have a zoning and
23 planning subcommittee, and we went there and they
24 supported the project and they said, you know, it's
25 not really within our purview but we've seen a bunch

1 of additions in this area that we don't like and
2 would it be possible for us to give you some
3 direction as to the type of façade that we do like?

4 And the ZPD indicated that they would like
5 the façade of the 3rd story to be in brick, and that
6 they reviewed a few other surrounding third stories
7 in the neighborhood, which are kind of coming up in
8 your screen. And they said, well, we don't like this
9 one, we don't like this one. What we'd really like
10 is if you could repeat the cornice across the top.

11 So we got a revision and we went to the full
12 ANC with this, what we call Option A, which has the
13 cornice across the top and embellishments around the
14 window. This hard copy of this plan was shown to the
15 ANC by Mr. Nelson, who is the chair of the ZPD, and
16 the ANC, they said that they approved the plan and
17 that they liked this particular façade, but that they
18 were very pleased that the applicant had responded to
19 their request by providing the façade to be in brick.

20 Then the next day we heard from the Office of
21 Planning and the Office of Planning said that they --
22 and I'm sure Ms. Brown-Roberts can speak, and her
23 staff report is very straight forward, but that they
24 prefer a façade that does not have the cornice across
25 the top and that does not have the window

1 embellishments.

2 So luckily all of this happened before we
3 filed our prehearing statement and we made all
4 parties aware. We made the ANC aware that OP was
5 requesting this. We made OP aware that ANC supported
6 the other plan. And so we thought we would leave it
7 up to the experts here at the Board to decide which
8 one you prefer. And the applicant will proffer that
9 he will construct either one, either with the cornice
10 or without the cornice. It's --

11 CHAIRPERSON HEATH: So that's the only
12 difference.

13 MS. MAZO: Yeah. Yeah, that's the only
14 difference is the cornice and then some window
15 embellishments across the top.

16 And again, our position which we, you know,
17 set out in the prehearing statement is, we are happy
18 to do either and we're happy to construct this in
19 brick and make it look really nice for the community.

20 MR. HILL: It's brick either way, right?

21 MS. MAZO: Correct.

22 MR. HILL: Okay.

23 MR. MOSTASHARI: Yes.

24 MR. HINKLE: The cornice on the third floor,
25 that just -- I'm sorry. It replicates the cornice on

1 the second floor, or is it modified in some way?

2 MR. MOSTASHARI: It would replicate it.

3 MR. HOOD: That's also what the ANC had
4 preferred, correct?

5 MR. MOSTASHARI: That was the way the ANC --

6 MR. HOOD: They're the ones who are going to
7 -- the neighborhood is going to be the ones who are
8 going to look at it. Office of Planning is going to
9 be up here with us. No offense. Okay.

10 MS. MAZO: Oh, and I'm sorry, and just for
11 the record, we appreciate everything, including the
12 humor. And just for the record the property is not
13 in a historic district so you know, just take that
14 fact as part of your decision.

15 CHAIRPERSON HEATH: So the window
16 embellishments, I assume those are painted?

17 MR. MOSTASHARI: They are currently painted
18 as an accent for the first and the second levels.

19 CHAIRPERSON HEATH: Okay. And do you intend
20 for them to be painted white with the gray as --

21 MR. MOSTASHARI: That was a depiction to
22 allow a visual. Right now --

23 CHAIRPERSON HEATH: But they'd all be the
24 same is what you're --

25 MR. MOSTASHARI: Well --

1 CHAIRPERSON HEATH: Or has that not been
2 determined?

3 MR. MOSTASHARI: It's not been determined at
4 this time.

5 CHAIRPERSON HEATH: I see it rendered as all
6 gray, but then in the elevation it shows as all
7 embellishments as white, with one as gray, just
8 curious.

9 MR. MOSTASHARI: It's not been determined.

10 CHAIRPERSON HEATH: Okay.

11 MR. MOSTASHARI: Madam Chair, at the moment.
12 I think the home at the moment is a red two-level.

13 CHAIRPERSON HEATH: Okay.

14 MR. MOSTASHARI: But we wanted this to be a
15 visual for the ANC and also for the Office of
16 Planning to take a look at and kind of give us their
17 feedback as to what they would desire for that area.

18 CHAIRPERSON HEATH: Okay. All right. Does
19 the Board have any other questions? Yeah, I'm
20 curious to hear from Office of Planning. So if
21 you're okay for us to proceed on we'll turn to them
22 and proceed.

23 MS. MAZO: Please proceed.

24 MR. MOSTASHARI: Yes.

25 CHAIRPERSON HEATH: Thanks. All right.

1 MS. BROWN-ROBERTS: Good morning, Madam
2 Chairman and Members --

3 CHAIRPERSON HEATH: Good morning.

4 MS. BROWN-ROBERTS: -- of the Board. Maxine
5 Brown-Roberts from the Office of Planning.

6 As the applicant said, you know, this has --
7 the development of the façade has sort of evolved
8 over both ours and the ANC review. One of the things
9 that we took a look at was the buildings along that
10 row. All the buildings have this consistent cornice
11 at the second floor. We also looked at buildings
12 that had additions to them. None of those buildings
13 had where they carry the cornice line up on to the
14 second floor. Majority of times when we look at
15 these buildings we want to separate what is original
16 building. This is a pre '58 building. This is a
17 very old building. And so we want to differentiate
18 the building, the original building, you want to
19 highlight the original building and then you note
20 that whatever is on top is an addition.

21 And so that has carried through this row.
22 It's a very short row of houses. You know, small
23 two-story houses along 10th Street. And so what we
24 were trying to do is to preserve that look when you
25 look along the row of all the buildings have a

1 distinct two-story original building and then the
2 addition.

3 And so what we don't want to be doing, is to
4 replicate the third floor to let it read as if that
5 was an original building, which it is not. And there
6 is going to be a different in look from the bottom,
7 the bottom two floors, with the third floor. I mean,
8 it's going to be new brick so you're going to see the
9 difference.

10 And so what we were trying to do is to
11 maintain, again as I said, maintain the two-story
12 original and then the -- and then, you know, you can
13 see what the addition was.

14 We don't mind the embellishment around the
15 windows. I think that's fine. But again, trying to
16 maintain the character of the buildings along the
17 street, again, there are a number of buildings that
18 have second floor addition. Some of the buildings
19 like, I think, north I mean, you know, it was a
20 complete redo, and then some of the others just had
21 the addition and there was nothing sort of carried --
22 the details on the cornice was not carried up to the
23 third floor. So that was where we were coming from,
24 and you know, that's where we stand.

25 CHAIRPERSON HEATH: Okay. All right. All

1 right. Thanks for that explanation. I think your
2 logic makes a lot of sense. And I was first inclined
3 to agree with the ANC's position on having the
4 cornice at the top. But in looking -- I noticed as
5 well that the surrounding properties that do have
6 additions don't have that cornice. And I think it
7 appears there's a mixture of whether some have the
8 window embellishments or not. That appears to be
9 split based on what I can see here.

10 So, does the applicant have any questions of
11 Office of Planning?

12 MS. MAZO: No. Thank you for your help.

13 CHAIRPERSON HEATH: All right. Did you have
14 a question?

15 MR. HINKLE: Yeah.

16 CHAIRPERSON HEATH: Go ahead.

17 MR. HINKLE: If I could ask the applicant a
18 question. Are you set on either this design or this
19 design? Is there a third option that you've heard or
20 seen?

21 MS. MAZO: No, and there's no third option.

22 MR. MOSTASHARI: We did not present a third
23 option or have a discussion. I guess the main
24 concern was, are you going to do it in siding, which
25 was something that the ANC did not want.

1 MR. HINKLE: Uh-huh.

2 MR. MOSTASHARI: To have another construction
3 that looks out of place, I guess, so to speak. But
4 the two options that we presented for them to review,
5 for everyone to review, were the two options that
6 we've considered. But there's really no -- we've not
7 strayed one way or the other, I guess. We wanted
8 everyone's input and we want to do it the right way.

9 MR. HINKLE: Sure.

10 CHAIRPERSON HEATH: Okay.

11 MR. HINKLE: I know we are not doing
12 deliberations yet, but I'm just curious if we could
13 just provide flexibility on the third floor façade
14 because I'm not sure, you know, this Board just
15 looking at this for five minutes does this justice.
16 It sounds like, you know, the Office of Planning has
17 done quite a bit of work. It sounds like the
18 neighborhood has done quite a bit of work. So that's
19 just my concern.

20 CHAIRPERSON HEATH: Okay.

21 MR. HINKLE: Thought I'd express it.

22 MR. HILL: Has the ANC, have they heard about
23 OP's opinion as far as the cornice at the top, or --

24 MR. MOSTASHARI: Yes.

25 MR. HILL: Oh, they have?

1 MR. MOSTASHARI: Yes.

2 MR. HILL: Okay.

3 MR. MOSTASHARI: I believe that there is even
4 some discussions between the two areas.

5 MS. BROWN-ROBERTS: Can I speak?

6 MR. HILL: Yeah, sure. Please.

7 MS. BROWN-ROBERTS: Yes. I did speak to the
8 single-member district representative yesterday and
9 explained, and he said, yeah, he agreed. So.

10 MR. HILL: Oh, so he agreed with your
11 argument.

12 MS. BROWN-ROBERTS: With my argument, yes.

13 MR. HILL: I see. Okay. Thank you.

14 CHAIRPERSON HEATH: Okay. All right.

15 MR. HOOD: Okay. Well, Madam Chair, I would
16 agree with Board Member Hinkle. And Ms. Brown-
17 Roberts is a very good friend of mine so I wasn't
18 throwing no cast at Office of Planning. But I would
19 agree with Board Member Hinkle. And if not, I would
20 yield to your discretion because you're the
21 architect, I'm not.

22 CHAIRPERSON HEATH: Sure. Well, it sounds --
23 I'm fine to, even though we're not in deliberations
24 yet, I would be fine to grant flexibility on this but
25 it sounds like both parties have come to the

1 conclusion that Option B is the preferred, without
2 the cornice at the top. And so I'm --

3 MR. HILL: Yeah, that's what I just heard
4 too.

5 CHAIRPERSON HEATH: Yeah. And then I tend to
6 agree --

7 MR. HILL: Ms. Brown-Roberts, that's what --

8 CHAIRPERSON HEATH: -- based on the logic
9 that --

10 MR. HILL: I'm just saying, Ms. Brown-
11 Roberts, you talked to the single-member district and
12 he agreed that without the cornice is the better way
13 to go?

14 MS. BROWN-ROBERTS: He didn't say it's a
15 better way to go, but he said he understood and now
16 he understood where I was coming from and basically,
17 yes.

18 CHAIRPERSON HEATH: Okay.

19 MR. HILL: Okay.

20 MS. MAZO: And just to clarify for the record
21 that that option and the plans that satisfy that
22 option are at Exhibit 28B of the record.

23 CHAIRPERSON HEATH: Thank you. All right.
24 Is anyone here from ANC 1B? No, okay. And we do
25 have their letter recommending approval and we

1 understand now their position on the façade design.
2 We also have a letter of no objection from Department
3 of Transportation.

4 MR. HOOD: Madam Chair, just for the record.

5 CHAIRPERSON HEATH: Sure.

6 MR. HOOD: For future reference, I do agree
7 with Commissioner Footer who expressed his
8 disappointment with the project being a pop-up, but
9 overall the design of the property was well-received
10 by the community. But I do agree with -- I would
11 associate myself with Commissioner Footer while at
12 this point, when I look up and down that block it's
13 too late because the law allowed for it. But I just
14 associate myself with his comments.

15 CHAIRPERSON HEATH: All right. Okay. All
16 right. Do we have anyone here wishing to speak in
17 support of this application? Anyone in support?

18 Anyone here wishing to speak in opposition?
19 Any opposition? We do have one letter in opposition
20 from Michelle White. That's already in the record.

21 So with that we'll turn back to the applicant
22 for any closing you might want to make.

23 MS. MAZO: No closing, but just to set for
24 the record, we believe that letter in opposition,
25 that individual does not live anywhere close to the

1 property and is approximately 1.6 miles away and is
2 in a different ANC.

3 CHAIRPERSON HEATH: I thought so.

4 MS. MAZO: Yeah. So I just wanted to make
5 that clear.

6 And then, just in closing, this is a -- the
7 variances that have been requested are to modernize
8 the project. It's currently a one-bedroom, one full
9 bathroom row house, and that it will retain -- it
10 will continue to be a single-family dwelling. And
11 the proposal is consistent with the existing
12 footprint and with the plan designs that we have
13 changed, that we have adopted, we believe that it
14 would also be a benefit to the neighborhood. Thank
15 you.

16 CHAIRPERSON HEATH: All right. Thank you.
17 Is the Board ready to deliberate on this? Okay.

18 I am in support of this application and we've
19 discussed the façade. I think I tend to be in
20 agreement with Ms. Brown-Roberts on this one based on
21 her explanation and really looking at the context of
22 the neighborhood. We can see in some of the
23 photographs that are in the record, similar additions
24 where the cornice is not present and there are and
25 are not window embellishments.

1 But as we've discussed, I'm fine to grant
2 flexibility on the façade design to allow the
3 applicant to work through this with OP and ANC to
4 come to the right conclusion. I don't think either
5 are a particularly bad design. And so I would be
6 fine to support either and to support this
7 application. So I'll make a motion that we approve
8 the request for variances from floor area ratio
9 requirements and nonconforming structure requirements
10 to allow the construction of a third-story onto an
11 existing one-family dwelling for Application No.
12 19223.

13 MR. HILL: Second.

14 CHAIRPERSON HEATH: The motion has been made
15 and seconded. Any further discussion?

16 MR. HINKLE: Was that with the flex --

17 CHAIRPERSON HEATH: With the flexibility.
18 Yes, with the flexibility.

19 [Vote taken.]

20 CHAIRPERSON HEATH: The motion carries.

21 MS. MAZO: Thank you. And we would just
22 request a summary order, please.

23 CHAIRPERSON HEATH: Yes.

24 MS. MAZO: Thank you.

25 CHAIRPERSON HEATH: We'll get a summary.

1 MR. MOY: Staff would record the vote as four
2 to zero to one. This is on the motion of Chairperson
3 Heath, seconding the motion Vice Chair Hill. This is
4 to approve the application for the variance request
5 for FAR 2001.3 as shown in the revised plans for both
6 Exhibit 28A and B. Those are the two options.
7 Supporting is Mr. Hood, Mr. Hinkle, board seat
8 vacant. Motion carries. Summary order.

9 CHAIRPERSON HEATH: Okay. Thank you. Before
10 we call our next case can we just take a quick five-
11 minute break? All right.

12 [Off the record from 10:30 a.m. to 10:40
13 a.m.]

14 CHAIRPERSON HEATH: All right. We'll come
15 back to order. You can call our next case, Mr. Moy.

16 MR. MOY: Thank you, Madam Chair. That would
17 be Application No. 19188 of Reneau Real Estate, LLC.,
18 as amended. This is a request for variance relief
19 from the FAR requirements under Section 402.4, lot
20 occupancy requirements under 403.2, and the closed
21 court requirements under 406.1 to construct a three-
22 story four-unit apartment house in an R-5-B district,
23 1719 T Street Northwest, Square 151, Lot 10.

24 As the Board is aware the applicant has
25 withdrawn earlier request for special exception

1 relief under 3402.1, and although revised plans or
2 notice under Exhibit 34, there was a very late or a
3 recent filing, Madam Chair, or newer drawings. And
4 as well in the record I believe there's a letter
5 withdrawing opposition and it's unclear to the staff
6 whether that's a withdrawal of opposition from an
7 individual or from one of the party status that was
8 asking for party status status. Party status status.
9 Party -- a request for party status.

10 CHAIRPERSON HEATH: We get it.

11 MR. MOY: Thank you.

12 CHAIRPERSON HEATH: It's withdrawn. All
13 right. Good morning. If you could introduce
14 yourselves, please?

15 MR. BELLO: Good morning, Teye Bello for the
16 applicant.

17 MR. KEARLEY: Greg Kearley with Inscape
18 Studio, the architect for the project.

19 MR. HOPKINS: I'm John Hopkins.

20 CHAIRPERSON HEATH: Your mic is not on.

21 MR. HOPKINS: Is that better?

22 CHAIRPERSON HEATH: That is.

23 MR. HOPKINS: Yeah. I'm John Hopkins. I'm
24 the resident and owner along with my partner, Paul
25 Reneau. I'm a resident of 44 years.

1 CHAIRPERSON HEATH: Okay.

2 MR. HOPKINS: In the building.

3 CHAIRPERSON HEATH: All right. Okay. So we
4 did receive a letter from Saint Clare Condo
5 Association indicating that they were withdrawing
6 their party status request as Mr. Moy noted. But you
7 have added quite a few documents to the record at the
8 last minute. So we're going to need you to walk us
9 through those.

10 MR. BELLO: Very well. I'll let the
11 architect do that.

12 CHAIRPERSON HEATH: Okay.

13 MR. BELLO: But most of those submissions are
14 as a result of the negotiated settlement with the
15 opposition.

16 CHAIRPERSON HEATH: Okay. All right. And so
17 this will address what you've modified at the back of
18 the property to adhere to their concerns?

19 MR. KEARLEY: Yes.

20 MR. BELLO: That's correct.

21 CHAIRPERSON HEATH: Okay.

22 MR. KEARLEY: Basically the project is
23 similar except we pulled the project back from north
24 to south four feet to mitigate the light that would
25 be in the -- they have some rear decks and their

1 concern was that our building would be blocking the
2 light to the rear decks.

3 CHAIRPERSON HEATH: Okay.

4 MR. KEARLEY: So we pulled the building four
5 feet from north to south.

6 CHAIRPERSON HEATH: Okay.

7 MR. KEARLEY: But everything else -- and that
8 also, I was talking with Matt, we had a number of
9 discussions. It reduced FAR and the lot occupancy as
10 well, which I'm not -- he'll have to speak for Office
11 of Planning but it addressed some of his concerns in
12 terms of the density of the project.

13 CHAIRPERSON HEATH: Okay. All right. I was
14 also going to bring up that Office of Planning was
15 not in support of this so we'll see where -- what
16 your modifications have done to get them on board.

17 MR. KEARLEY: Exactly.

18 CHAIRPERSON HEATH: Okay.

19 MR. KEARLEY: And so he'll obviously speak to
20 that.

21 CHAIRPERSON HEATH: Sure.

22 MR. KEARLEY: I would love to speak for him
23 but I don't think he would -- he would feel better
24 that way. So, do you want me to take you through the
25 drawings?

1 CHAIRPERSON HEATH: If you could take us
2 through the changes that have been made?

3 MR. KEARLEY: Really, the changes here, I
4 have -- if this will work. In terms of this area
5 right here, our building used to sort of align with
6 the back of the decks of the neighboring property to
7 what would be the east? Right there. And we dropped
8 it. We dropped it down four feet, basically from --
9 so our stair, which is a rear stair at the northeast
10 corner of our building, which is that right there,
11 drops down four feet. So we are no longer blocking
12 their sun. It only blocked a sort of a sliver of
13 their northeast corner of their building, but we
14 worked with them and in good faith pulled it down
15 four feet.

16 CHAIRPERSON HEATH: Okay.

17 MR. KEARLEY: But that's really the only
18 changed. But that changed the FAR from over 2.4 to
19 2.3. It changed lot occupancy from 73 to 70 percent.

20 CHAIRPERSON HEATH: Okay. When you were
21 saying you shifted it I thought you meant you shifted
22 it in its entirety. But just the back you pushed.

23 MR. KEARLEY: Yeah. The inside spaces shrunk
24 four feet, right.

25 CHAIRPERSON HEATH: Okay.

1 MR. KEARLEY: There is a rear bedroom and
2 some living space on the third floor there. And that
3 just, it's just stretched it down so it --

4 CHAIRPERSON HEATH: Okay.

5 MR. KEARLEY: -- we lost four feet on the
6 interior of the building.

7 CHAIRPERSON HEATH: Okay.

8 MR. KEARLEY: But the profile is exactly what
9 it was.

10 CHAIRPERSON HEATH: Okay.

11 MR. KEARLEY: It just reduced the depth of
12 the building by four feet.

13 CHAIRPERSON HEATH: Okay. Sure.

14 MR. HILL: There was something about a
15 translucent shade or something like that.

16 MR. KEARLEY: Yeah, we also agreed on that,
17 that instead of having an opaque covering to the
18 stair, the stair needs to be covered by code because
19 you can move down it, that we would use a translucent
20 material to be determined. We have to do the
21 research on that. So the covering of the stair would
22 be translucent instead of opaque because that would
23 again help mitigate some of the light that would
24 transfer over into the rear of their property.

25 It doesn't change the design of the --

1 MR. HILL: No, I understand. I was just
2 curious of it. Thank you.

3 MR. KEARLEY: -- of the stair. Yeah. Yeah,
4 so we just, we agreed that we would do that as a
5 translucent material, whether it's acrylic or
6 whatever material we come up with.

7 CHAIRPERSON HEATH: Okay. Any other
8 questions? Go ahead.

9 MR. HILL: Mr. Hopkins, how long have you had
10 the property?

11 MR. HOPKINS: Since June 30th, 1982.

12 MR. HILL: Since '82. And what have you been
13 doing with the property, or what were you going to --
14 you've just been hanging on to it? I'm just curious.
15 Like, it's a very --

16 MR. HOPKINS: It's been --

17 MR. HILL: -- unique --

18 MR. HOPKINS: I brought my mother down after
19 my father died and lived in one of the units. My
20 first cousin and his wife and baby lived there. And
21 his wife's parents had a unit. And it's been pretty
22 much my sister --

23 MR. KEARLEY: I'm going to jump in here.
24 He's speaking of the property next door that he owns
25 as well.

1 MR. HOPKINS: Oh.

2 MR. HILL: Oh, yeah. No, I'm sorry. I'm
3 talking about the lot.

4 MR. HOPKINS: Oh the lot. Oh, excuse me.

5 MR. KEARLEY: It's a vacant lot.

6 MR. HILL: Right. Right.

7 MR. KEARLEY: So he lives next door on the
8 vacant --

9 MR. HILL: I was confused.

10 MR. KEARLEY: -- lot.

11 MR. HILL: Okay. Right. Okay.

12 MR. HOPKINS: Sorry.

13 MR. HILL: That's all right.

14 MR. KEARLEY: He doesn't live in the vacant
15 lot.

16 MR. HILL: That's all right. Got it.

17 MR. KEARLEY: He lives next door in the
18 apartment building next door.

19 MR. HILL: Got it. So how long have you had
20 the lot?

21 MR. HOPKINS: Oh, since we built the
22 building. It was a part of the purchase.

23 MR. HILL: I see. Okay. Thank you.

24 MR. HOPKINS: And we bought that from the
25 former owner of the building where we moved in, in

1 February 1 of 1972.

2 MR. HILL: Okay.

3 MR. HOPKINS: And he -- we lived on the third
4 floor for 10 years. And then we moved down after we
5 took possession of the building, to the second floor
6 where we've been for almost 34 years.

7 MR. HILL: Okay. Thank you.

8 MR. HOPKINS: Uh-huh.

9 CHAIRPERSON HEATH: All right.

10 MR. HOPKINS: And I was born in the
11 neighborhood as well, during World War II.

12 CHAIRPERSON HEATH: Okay. And this has been
13 through Historic Review?

14 MR. KEARLEY: Yes, it was through historic --

15 MR. HOPKINS: Yeah, HPRB.

16 MR. KEARLEY: -- and was approved and it was
17 ANC, we had a unanimous vote on ANC in terms of their
18 recommendation as well.

19 CHAIRPERSON HEATH: Okay.

20 MR. HOPKINS: They liked it.

21 CHAIRPERSON HEATH: Okay.

22 MR. HOPKINS: Yeah.

23 CHAIRPERSON HEATH: That's great.

24 MR. HOPKINS: And the former chair thought it
25 was terrific. Thought that it really was a great

1 resolution to the building on the other side of our
2 sister building which has a terrible setback in the
3 front and the back, and just it's an eyesore to the
4 community.

5 CHAIRPERSON HEATH: Okay.

6 MR. HOPKINS: A lot of people are complaining
7 about it today. Even the owner would like to, if he
8 could afford to, tear it down and build again. Yeah.

9 CHAIRPERSON HEATH: Okay. Thank you.

10 MR. HOPKINS: Sure.

11 CHAIRPERSON HEATH: All right. Board, any
12 other questions? All right.

13 Then if you're okay for us to proceed on I'd
14 like to hear from Office of Planning to see where
15 they stand.

16 MR. JESICK: Thank you, Madam Chair, Members
17 of the Board. As the Board noted, Office of Planning
18 originally could not recommend approval, the three
19 areas of relief as noted in our written report. I
20 did have the opportunity to sit down with the
21 architect and review several iterations of the plans.
22 Most recently the one that was submitted yesterday.

23 I think the relief for lot occupancy and
24 court width are most clear. I think now we can
25 recommend approval of those. The arguments that were

1 compelling to me on those points were that there
2 could be a practical difficulty if the building were
3 set back from the north much farther. They would be
4 between these two larger buildings on either side,
5 creating sort of a dark rear yard, not allowing much
6 light to enter the back of the building. So we found
7 that argument compelling for the lot occupancy
8 variance.

9 On the court width they are providing a court
10 to allow light into their own units, of course, but
11 also into the units on the adjacent building and we
12 found that that could also be a practical difficulty
13 or exceptional condition.

14 The FAR, we struggled a little bit more with
15 that one. I didn't see a direct practical difficulty
16 and exceptional condition link. But I think if you
17 look at the combination of factors the side walls
18 that intrude on to this lot, the existence of -- or
19 the proposed rear stair, which is not required by
20 code, but is provided as a convenience to get to the
21 rear parking, which of course is valuable for the
22 future residents.

23 I think when you look at all these factors,
24 and of course the increased lot occupancy, I think
25 the case could be made for a variance to FAR as well.

1 CHAIRPERSON HEATH: Okay.

2 MR. JESICK: Thank you.

3 CHAIRPERSON HEATH: All right. Thank you.

4 Board, any questions of Office of Planning?

5 Does the applicant have any questions of
6 Office of Planning?

7 MR. BELLO: No. Thank you.

8 CHAIRPERSON HEATH: All right. Thank you.

9 We appreciate that explanation. All right.

10 So is anyone here from ANC 2B? No one here
11 from ANC 2B? Okay. We do have a letter recommending
12 their approval.

13 And we also have a letter of no objection
14 from Department of Transportation.

15 Is anyone here wishing to speak in support of
16 this application? Anyone in support? Anyone wishing
17 to speak in opposition to this application? No
18 opposition? All right.

19 Then we'll turn back to the applicant for any
20 closing, if you want to make a closing statement.

21 MR. BELLO: We'll just rest on the records.
22 Thank you, Madam Chair.

23 CHAIRPERSON HEATH: All right. Thank you.
24 So is the Board ready to deliberate on this? All
25 right.

1 MR. HOOD: Madam Chair, I just want to make
2 sure I'm clear. Mr. Jesick, I think you have changed
3 your recommendation. Is that what I've heard?

4 MR. JESICK: That's correct, Mr. Hood. We
5 are recommending approval of the three areas of
6 relief.

7 MR. HOOD: Okay. Is that already noted or
8 can we get that noted for the record? I think that's
9 very important these days.

10 CHAIRPERSON HEATH: Thank you, Mr. Hood.

11 MR. HOOD: For the Board.

12 CHAIRPERSON HEATH: Good point.

13 MR. HOOD: So if you could just give us a
14 one-pager? My boss always asks me to give her a one-
15 pager. If you can give us a one -- hopefully she's
16 not watching. But if you can just give us a one-
17 pager so we can make sure that it's in the record, so
18 if anybody counts any variances or anything that the
19 Board gives out it will be memorialized.

20 MR. JESICK: I will be certain to do that.
21 We would have done that already but with the late
22 filings --

23 MR. HOOD: Okay.

24 MR. JESICK: -- we of course didn't have time
25 to prepare that.

1 MR. HOOD: Okay. Thank you.

2 CHAIRPERSON HEATH: Thank you, Mr. Hood. I
3 appreciate that.

4 MR. HILL: And, Madam Chair, I mean, I think
5 that you know, now obviously that Office of Planning
6 is on board and I agree with, you know, their review
7 and, you know, I would be on board with this. I
8 mean, I think the project is really interesting. I
9 think that the lot obviously is very unique and that
10 you know, my struggle was also basically that the
11 Office of Planning and the increase in the FAR, and I
12 think it's interesting that since you worked with the
13 neighborhoods and pulled back, you know, the four
14 feet and you actually lost some of the FAR enough
15 probably that you got OP --

16 MR. KEARLEY: Forced us to reduce the FAR a
17 bit like you're saying, yes.

18 MR. HILL: That you got OP on board,
19 otherwise it would have been a pretty tough sell, I
20 think. So this is one where working with the
21 neighbors in opposition, actually I think, you know,
22 helped you out in the end. So, but so that's where I
23 am.

24 CHAIRPERSON HEATH: Okay. Do you want to
25 make a motion?

1 MR. HILL: So with that being the case I'd
2 like to make a motion to approve 19188 as amended
3 pursuant to 11-DCMR-3103.2 for variances from the FAR
4 requirements under Section 402.4, the lot occupancy
5 requirements under Section 403.2, and the closed
6 court requirements under Section 406.1 to construct a
7 three-story four-unit apartment house in the R-5-B
8 district at premises 1719 T Street Northwest, Square
9 151, Lot 10.

10 CHAIRPERSON HEATH: Second. So the motion
11 has been made and seconded. Any further discussion.

12 [Vote taken.]

13 CHAIRPERSON HEATH: The motion carriers.
14 Thank you.

15 MR. BELLO: Thank you.

16 MR. HOPKINS: Thank you.

17 MR. KEARLEY: Thank you.

18 MR. MOY: Staff would record the vote as four
19 to zero to one. This is on the motion of Vice Chair
20 Hill, seconding the motion, Chairperson Heath to
21 approve the request for the variance relief per the
22 revised plans as submitted within the past 24 hours.
23 Also to include the record opening for a supplemental
24 report from the Office of Planning as he's orally
25 gave recommendations today. In support of the

1 motion, Mr. Hood, Mr. Hinkle. Board seat vacant.

2 Motion carries, Madam Chair.

3 CHAIRPERSON HEATH: Thank you. Summary.

4 MR. MOY: Thank you.

5 CHAIRPERSON HEATH: Thanks. And you can call
6 our last case, Mr. Moy.

7 MR. MOY: Parties to the table. This is to
8 Application No. 19202 of Alon or Alon Eckhaus as
9 amended, request for a special exception relief under
10 Section 223, not meeting the lot occupancy
11 requirements under 403.2, side yard requirements,
12 405.8, the penthouse requirements under 411.5,
13 nonconforming structure requirements, 2001.3. This
14 is for a third story addition to an existing flat, R-
15 4 district, 2803 Sherman Avenue, Square 2886, Lot
16 335. And let's see, I think that's it.

17 CHAIRPERSON HEATH: All right.

18 MR. MOY: I believe updated plans are shown
19 on Exhibit 29, I believe.

20 CHAIRPERSON HEATH: Okay. What exhibit did
21 you say that was?

22 MR. MOY: 19202.

23 CHAIRPERSON HEATH: No, exhibit.

24 MR. MOY: Oh, exhibit. Exhibit 29.

25 CHAIRPERSON HEATH: Oh, 29. Okay. Got it.

1 All right. Thank you. All right. If you could
2 introduce yourselves, please? Make sure your mic is
3 on.

4 MR. ECKHAUS: Good morning. My name is Alon
5 Eckhaus, applicant.

6 MS. ALBANNA: Good morning. Aseel Albanna
7 with Heliocentric Architectural Design.

8 CHAIRPERSON HEATH: Okay. So this has been
9 postponed a few times. I believe the last time was
10 because you didn't have an affidavit of posting. The
11 project has -- the application has since been posted
12 and so you're fine with respect to posting
13 requirements.

14 Does the Board have any other questions that
15 you want to draw down on with this applicant?

16 [No audible response.]

17 CHAIRPERSON HEATH: All right. What is, just
18 out of curiosity, looking at the most recent plans,
19 and there's a curve. Can you just explain the
20 rationale behind that curve?

21 MS. ALBANNA: Sure. The existing structure
22 has a two-story bay window projecting about two feet
23 from the actual side of the building. And putting
24 the third floor addition the sort of similar concept
25 to what was discussed earlier, we want to put a

1 third-floor addition. While the existing structure
2 has its own character, we felt strongly that putting
3 -- not putting a third story bay window to match the
4 existing would be perhaps finding another solution
5 for, an architecturally appealing solution where it
6 matches the scale -- it respects the scale of the
7 existing space between the two properties, as well as
8 going up as a third floor it will show as an
9 addition. However, it doesn't have to force itself
10 to match the existing.

11 That's more on the architectural side.

12 CHAIRPERSON HEATH: Right. But what about
13 the --

14 MS. ALBANNA: On the practical side --

15 CHAIRPERSON HEATH: Yeah.

16 MS. ALBANNA: -- we have already, prior to
17 going through the zoning process, we had submitted
18 plans to DCRA where we were advised by the zoning
19 office there to extend the third floor all the way to
20 the property line to eliminate the nonconforming
21 court. So our original plans that were submitted to
22 DCRA had an actual third floor that went to the
23 property line and sort of just like overhang the
24 existing courtyard.

25 And with that we submitted our plans. We

1 have already done the architectural and plumbing and
2 electrical plans, so all the bathrooms were in stack
3 on that particular side. So when we -- after going
4 through a designing process and talking to OP and the
5 neighborhoods, also realizing that we actually can
6 ask for an exception for that court relief, so we
7 were able to shrink it back to where the bathrooms
8 stay where they are, but shrank it back to the new
9 addition goes -- does not project beyond the existing
10 bay window. So it goes right at the edge of that bay
11 window.

12 CHAIRPERSON HEATH: Okay. But I don't know
13 that you've answered my question. So the curve is
14 only at the third floor.

15 MS. ALBANNA: Correct.

16 CHAIRPERSON HEATH: Is that right? Okay.
17 And so that is -- that was done to differentiate the
18 third floor from --

19 MS. ALBANNA: Correct.

20 CHAIRPERSON HEATH: Okay. Got it. Got it.

21 MS. ALBANNA: In addition for a practical
22 reason, the plans already designed where the
23 bathrooms are in that area. So we came up with this
24 sort of intermediate solution to keep the floor plans
25 that have been already submitted to DCRA as they are

1 without having to revise the location of the
2 bathrooms and the entire third floor plan.

3 CHAIRPERSON HEATH: Okay. All right. I can
4 see --

5 MR. HILL: No. Yeah, that's okay. No, just
6 for clarity, also and I'm just asking out of
7 curiosity really. So you could have gone all the way
8 to the property line and you would have gotten rid of
9 the closed court.

10 MS. ALBANNA: Exactly.

11 MR. HILL: And you decided not to go all the
12 way to the property line because why?

13 MS. ALBANNA: Upon the recommendations of the
14 ANC.

15 MR. HILL: I see. Okay, because the ANC.
16 Okay. All right. Thank you.

17 MS. ALBANNA: Yeah.

18 MR. HILL: Because I didn't realize, I mean,
19 you were just giving away square footage. I didn't
20 understand why. I was like, okay, the ANC. Thank
21 you.

22 CHAIRPERSON HEATH: Okay. Any other
23 questions? All right. Okay. So I think that it
24 appears that the Board doesn't have any other
25 questions right now, and so we're not going to need a

1 full presentation. What you've discussed with us so
2 far, I think, is sufficient.

3 MR. HOOD: Madam Chair, I do have a quick --
4 I'm sorry to interrupt.

5 This is not the corner house. This is the
6 house next to the -- there's another house and then
7 we have the alley, I believe.

8 MS. ALBANNA: Correct.

9 MR. HOOD: Okay. So --

10 MS. ALBANNA: And actually, it's Gerrard.

11 MR. HOOD: Okay. The street. Okay.

12 MS. ALBANNA: So one house and then Gerrard.

13 MR. HOOD: Okay.

14 MS. ALBANNA: Yes, correct.

15 MR. HOOD: One street. So it's another house
16 in between you and the opening. Okay.

17 MS. ALBANNA: Correct.

18 MR. HOOD: Sorry about that, Madam Chair.

19 CHAIRPERSON HEATH: No, that's okay. All
20 right. So if you're okay with us proceeding on --

21 MS. ALBANNA: Yes.

22 CHAIRPERSON HEATH: -- we'll hear from Office
23 of Planning at this time. Thank you.

24 MS. ELLIOTT: Good morning, Madam Chair,
25 Members of the Board. I'm Brandice Elliott with the

1 Office of Planning. We are recommending approval of
2 the special exceptions that have been requested. And
3 just to clarify, the -- it's actually a side yard and
4 not a court, that one space that's been referred to.
5 It's mentioned in the report as well, but just to
6 clarify for the record.

7 And we are also recommending approval of the
8 special exception for the penthouse structure that
9 has been requested. If you have any questions I'm
10 happy to answer them. Thanks.

11 CHAIRPERSON HEATH: Thank you. Board, any
12 questions of Office of Planning? Does the applicant
13 have any questions of Office of Planning?

14 MS. ALBANNA: No, thank you.

15 MR. ECKHAUS: No.

16 CHAIRPERSON HEATH: All right. We also have
17 a letter from the ANC 1B recommending approval. Is
18 there anyone here from ANC 1B? Are you from ANC 1B?
19 Okay, just one second. All right.

20 So in addition to ANC 1B we have a letter of
21 no objection from Department of Transportation. We
22 have one letter in support from an adjacent neighbor
23 on the north side of your property. Is there anyone
24 here wishing to speak in support? Anyone here
25 wishing to speak in support?

1 All right. So now we'll hear from anyone who
2 wants to speak in opposition to this application.
3 Anyone wanting to speak in opposition please come
4 forward. If you could give us your name, please?

5 MR. O'MARBURY: Good morning. My name is
6 Robert O'Marbury. I live at 2805 Sherman Avenue. I
7 have lived at this address -- first of all, I am --

8 CHAIRPERSON HEATH: We're going to give
9 you -- one second. We're going to give you three
10 minutes to --

11 MR. O'MARBURY: Beg your pardon?

12 CHAIRPERSON HEATH: We're going to give you
13 three minutes to speak.

14 MR. O'MARBURY: Yes.

15 CHAIRPERSON HEATH: So you can use the full
16 time or less. It's up to you.

17 MR. O'MARBURY: Yes. I am military retiree
18 with 20 years' active duty. I retired 1972 and
19 retired again in 1985, '84.

20 I have lived at this address for 51 years.
21 It will be 52 years in this coming September. I've
22 seen many changes and some were good and some were
23 bad. And this is the first time I have been in
24 opposition to any changes that have taken place.

25 My chief opposition to this plan is the

1 addition of the third floor because of the fact that
2 2807 has already been raise to a third floor. This
3 will be raised up to the third floor, which would
4 block my property in and will restrict ventilation,
5 lighting, and in the future if I would decide, or my
6 children would decide to put in solar paneling, which
7 would effectively obstruct the effectiveness of the
8 panel, paneling.

9 I have instructed, and my wife and I have
10 instructed our children to let the property remain in
11 the family, which it will be. So we will be there
12 long-term. And any changes or -- adversely affect
13 us, would adversely affect -- that property would
14 adversely affect our quality of living and our
15 standard of living. So we are opposing the addition
16 of the third floor.

17 Basically there is three units there. Two-
18 family units, duplexes. They're all two stories.
19 There have been two additions already for three
20 stories, and they came in and the owners came in with
21 the impression that they were going to remain there.
22 But as soon as the property was converted, it was
23 sold. 2807 was completed about a month or so ago,
24 and now there is a for sale sign there.

25 So I am in essence really wanting to protect

1 the investments and of the property owners, and in
2 the interest of the property owners who are already
3 there, have been there for years, have been through
4 the good, the bad, and the indifferent.

5 CHAIRPERSON HEATH: Thank you.

6 MR. O'MARBURY: Yes.

7 CHAIRPERSON HEATH: And thanks for coming
8 down to speak.

9 MR. O'MARBURY: Beg your pardon?

10 CHAIRPERSON HEATH: You said you're located
11 at 2805?

12 MR. O'MARBURY: 2805.

13 CHAIRPERSON HEATH: Okay. And so you're on
14 the south side?

15 MR. O'MARBURY: North side.

16 CHAIRPERSON HEATH: You're on the north side.
17 Okay.

18 MR. O'MARBURY: And for about six months out
19 of the year we only have about two to three hours of
20 sunlight because the sun comes up deep in the
21 southeast and sets in the southwest in the winter
22 months. Therefore, we have little, restricted
23 lighting. We have to use lights most of the time in
24 the daytime. And it will restrict ventilation. And
25 I don't understand the other portions of the

1 expansion they're talking about. What I understand
2 it will bring that building closer to -- my
3 understanding it will be closer to our -- would
4 further restrict the ventilation to my home.

5 CHAIRPERSON HEATH: Right. But you
6 understand they could have built all the way over to
7 the property line but they pulled their -- the side
8 of their property back from the property line?

9 MR. O'MARBURY: I don't understand what
10 you're saying.

11 CHAIRPERSON HEATH: Okay. Have you seen the
12 drawings that --

13 MR. O'MARBURY: No, I haven't see anything.
14 Matter of fact, this home was bought in January of
15 2015. I never met this gentleman until around
16 Christmas time. And he came to me then wanting to
17 ask for my blessings to do this.

18 In the meantime, construction had began and
19 damages had been caused to my property. We put in
20 over \$20,000 I had to build here to replace all the
21 windows. We had damages from the contractors. I
22 asked them, who was the owner and I could get in
23 contact with the owner to register this complaint
24 about the damages. They claimed that they didn't
25 know who the owner was. Here, they're working for

1 hire and don't know the owner. So I never met the
2 gentleman until December. So I have a complaint
3 about damages already and the construction is in the
4 early stages.

5 CHAIRPERSON HEATH: Okay.

6 MR. O'MARBURY: I have photographic proof of
7 the damages if --

8 CHAIRPERSON HEATH: That's okay. Thank you.
9 Are you aware of any damage caused?

10 MR. ECKHAUS: We did start the demo in the
11 property early in 2008 -- 2015. And it was part of
12 the process to getting the permit. We weren't sure
13 if we need to go to zoning. By the time we find out
14 that we need to go to zoning, I actually went to Mr.
15 Roberts and introduced myself and told him that I
16 live in New Jersey, I'm planning to move to New
17 Jersey -- to D.C., and I plan to occupy the top
18 floor.

19 And it was the first time actually he told me
20 about the windows. And I told him that I'm going to
21 fix everything. And I guess he forgot to mention it.
22 He actually showed me the windows. The damage was on
23 the cover which is a minor damage, and I wasn't aware
24 of it. I told him the reason I didn't introduce
25 myself before is because we didn't do anything except

1 from the demo. It was a new process for me. I
2 didn't know what to expect and this is pretty much --
3 actually asked him if he is going to object, and he
4 actually mentioned the panel, solar panels. And then
5 we actually did some research and we actually
6 submitted a letter regarding the solar panel, that
7 there is no permit. There is nothing in the system
8 that suggests that it is going to install. And I go
9 the impression that he just told me that because he
10 doesn't want me to go another floor.

11 After more research we actually find out that
12 he actually supported 2807, which is the neighbor,
13 when she built another floor. Then, I didn't know if
14 he actually doing this just to --

15 [Pause.]

16 MR. HILL: Is 2807 the kind of the yellow
17 building?

18 MR. ECKHAUS: Yes.

19 MR. HILL: Okay.

20 MR. ECKHAUS: There is a support letter by
21 Mr. Robert, that he supported third floor.

22 MR. HOOD: What's the address in between?
23 There's a house in between.

24 MS. ALBANNA: 2805 is Mr. Robert's property.

25 MR. HOOD: I know 2805, and 28 -- Mr.

1 Robert's house is 2805, correct?

2 MR. ECKHAUS: Yes.

3 MR. O'MARBURY: Correct.

4 MS. ALBANNA: And we are 2803.

5 MR. HOOD: Right. I know you're at 2803.

6 MS. ALBANNA: And the addition to the north
7 side of Mr. Robert's house, that's 2807.

8 MR. HOOD: How do the addresses run? Okay,
9 we've got 2803, 2805, 2807, and then 2809.

10 MS. ALBANNA: Correct. Yeah.

11 MR. HOOD: At 2809 also has an extra floor,
12 correct?

13 MR. ECKHAUS: Yes.

14 MR. HOOD: So I guess I'm looking at an old
15 photo. So 2807 had an addition recently.

16 MR. ECKHAUS: Correct.

17 MS. ALBANNA: With the support letter from
18 Mr. Roberts in the records.

19 MR. HOOD: So 2807 recently -- how recently?
20 How recent?

21 MS. ALBANNA: Last year they had the hearing.
22 Last summer.

23 MR. HOOD: Okay. Okay.

24 [Discussion off the record.]

25 MR. O'MARBURY: Excuse me.

1 CHAIRPERSON HEATH: Hold on one second.
2 We're just trying to get clarity on the surrounding
3 properties.
4 MR. HILL: I'm sorry, is it Mr. Eckhaus?
5 MR. ECKHAUS: Yes.
6 MR. HILL: Eckhaus. So the one, the unit all
7 the way to the south -- I mean, I don't know how old
8 this Google photo is that I'm looking at. It looks
9 like it's already been -- it's being renovated, or
10 you don't know?
11 MR. ECKHAUS: Yes.
12 MR. HILL: Okay.
13 MR. ECKHAUS: South.
14 MS. ALBANNA: Yeah.
15 MR. HILL: The one at the end of the block.
16 MS. ALBANNA: The corner of block, correct.
17 MR. ECKHAUS: Yeah, yeah.
18 MR. HILL: And has that one gone up to three
19 stories?
20 MR. O'MARBURY: No, sir.
21 MR. HILL: Okay.
22 MR. O'MARBURY: It's the same height as the
23 original building. It's been completely rebuilt. It
24 sat vacant for years. It was bought on the -- it was
25 a program that the District had where you buy the

1 property and renovate and live in it. You must live
2 in it. And it was changed hands two or three times,
3 went back to the city, and somebody else has bought
4 it since and it's been completely torn down and
5 rebuilt to the original height.

6 MR. HILL: I see.

7 MR. ECKHAUS: And we have a support letter
8 from --

9 MS. ALBANNA: From that particular property.

10 MR. ECKHAUS: Yeah, from that particular.

11 MR. HILL: Your immediate neighbor.

12 MR. ECKHAUS: Yes, correct.

13 MR. HILL: Thank you.

14 MR. ECKHAUS: We are sharing the same wall.
15 Yeah.

16 MR. O'MARBURY: And in reference to the
17 support of 2809 -- 2807, yes, I did. But I also had
18 an attachment applied to that, that if any damages or
19 any other -- here is a copy of that letter.

20 MR. HILL: That's okay. I don't mind if you
21 have an opposition to one and support another.
22 That's okay. You know, it's --

23 MR. O'MARBURY: Plus, they have caused
24 damages which he has said that he was going to
25 correct, which has gone uncorrected. And the

1 property is up for sale. So I'm wondering if I need
2 to -- which would be another venue, put a lien on
3 that property to get my damages corrected from 2807.

4 MR. HILL: Okay. Thank you.

5 CHAIRPERSON HEATH: Okay.

6 MR. HOOD: Are you addressing the issues that
7 he had from the damages?

8 MR. ECKHAUS: Excuse me?

9 MR. HOOD: Are you addressing the damages
10 that --

11 MR. ECKHAUS: Yes. Then I met with Mr.
12 Robert and he told me about the damages for the first
13 time. I wasn't aware of it. And I told him, and he
14 can actually confirm what I said. I will fix any
15 issue that --

16 MR. HOOD: What assurances does he have that
17 that will happen, that you will fix it?

18 MR. ECKHAUS: That what?

19 MR. HOOD: What assurances does he have that
20 you will fix it?

21 MR. ECKHAUS: I can send him a letter that
22 confirms that I will do it. It's not -- I checked
23 the windows. It was actually minor, minor -- I
24 didn't see any damage, but the point to the damage
25 that he claimed that we created, I wasn't in the

1 property when we started the demo, then I couldn't
2 actually confirm that if it was before or we created
3 it.

4 Again, the windows are intact. He was
5 talking about more about the frame of the windows.

6 MR. O'MARBURY: It's the frame.

7 MR. ECKHAUS: Yes, the frame.

8 MR. O'MARBURY: Frame.

9 MR. ECKHAUS: Which is minor, and once we
10 resume the renovation I will ask my people to fix it
11 as soon as possible. And he can confirm that this is
12 what I told him.

13 MR. HOOD: Okay. I think, you know, and a
14 lot of this may not be in the Board's jurisdiction.
15 But I think, you know, a -- you know, people have to
16 have trust. But there needs to be something that
17 gives him some assurances that his place is going to
18 be taken care of.

19 MS. ALBANNA: Absolutely.

20 MR. HOOD: So I don't know how we do that or
21 how that gets done. But I've seen it done before
22 here on Sherman Avenue, and I think it can be done
23 again. Okay? Because I know we're living close
24 together, and I know about Sherman Avenue so you
25 don't have to explain it. I know all about Sherman.

1 I probably was there long before you got over there.
2 But I can just tell you, I know all about Sherman
3 Avenue, so that I know how close the properties are,
4 and I understand his concerns.

5 MR. ECKHAUS: Yeah, it should be noted that I
6 met with Mr. Robert more than once because I didn't
7 want to come to this meeting and have this argument.
8 And not only that, he told me about the traffic
9 light. The traffic in Sherman, and I actually
10 offered to help him with writing a letter.

11 But when I came before the time taking
12 advantage of the situation, then I said maybe I
13 should do nothing for now, wait until the hearing,
14 and then I will be very proactive for the neighbor.

15 MR. HOOD: And I think that's the way to go
16 because if you and I keep living and we get older,
17 we're going to also be suspect to people when they
18 tell us something because people get burned all the
19 time in this city and I think that's where a lot of
20 this is coming from. So he needs to make sure that
21 he has a -- we need to make sure that he has a
22 comfort level to be able to make sure that whatever
23 he needs, and whatever is damaged on your part, if
24 it's happened, that he has a comfort level to get
25 what he's worked hard for over years to get replaced

1 and fixed.

2 MR. ECKHAUS: Yeah, I believe it. Like if
3 it's real, I believe it.

4 MR. HOOD: So I don't know how we get there
5 at a BZA hearing, but I think that -- I know that
6 this happened once before on Sherman Avenue in recent
7 weeks.

8 MR. ECKHAUS: Yeah, I also can offer like
9 that I will fix it in the next two weeks. The reason
10 I didn't do anything is because I wanted to wait
11 until this meeting. We're going to resume once we
12 get what we get. We will have people there and this
13 is going to be the first thing we were going to do.
14 And again --

15 CHAIRPERSON HEATH: So you'll have your
16 contractors --

17 MR. ECKHAUS: Yes.

18 CHAIRPERSON HEATH: -- repair his --

19 MR. ECKHAUS: And again, it's very minor fix.
20 It's not a major. You know, we're spending so much
21 money on Sherman then to spend another few thousand
22 dollars it's not a big issue for me personally. Then
23 I told Mr. Roberts and he can -- he didn't say
24 anything about it, but he should say that I offered
25 my help and to fix it. And I told him it's the first

1 time I hear about it.

2 And also, by the way, I told him the history
3 of this GC that we hired, that he actually stole our
4 money, then we needed to fire him. And I share this
5 story with him that I wasn't aware of the situation
6 and become very involved once we started to see that
7 we are going to lose a lot of money on it, then --

8 CHAIRPERSON HEATH: Okay.

9 MR. ECKHAUS: He's aware of all the story and
10 he was very surprised when I told him about it.

11 CHAIRPERSON HEATH: Are you now local?

12 MR. ECKHAUS: No, no, I still live in --

13 CHAIRPERSON HEATH: Still --

14 MR. ECKHAUS: -- New Jersey.

15 CHAIRPERSON HEATH: Okay.

16 MR. ECKHAUS: Yeah.

17 CHAIRPERSON HEATH: But you'll be back --

18 MR. ECKHAUS: Yeah.

19 CHAIRPERSON HEATH: -- pretty often to --

20 MR. ECKHAUS: I told him that because my -- I
21 work on Wall Street, but I'm planning to move to D.C.
22 to be more involved in what's going on here. I share
23 all my story with him. He knows everything about my
24 family and my kids. I was very open about everything
25 when I met him.

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1 CHAIRPERSON HEATH: Okay. It would probably
2 also be good if you could introduce Mr. Roberts to
3 somebody who is leading the construction for your
4 property.

5 MR. ECKHAUS: Yeah, I --

6 CHAIRPERSON HEATH: So that if he does have
7 any issues he knows who to go to since you're not
8 going to be here --

9 MR. ECKHAUS: Yeah.

10 CHAIRPERSON HEATH: -- throughout the
11 construction process.

12 MR. ECKHAUS: We actually did it already.
13 Met the new guy. His name is Donnie. I think he
14 introduced him -- introduced himself to the
15 neighbors, and I think they --

16 CHAIRPERSON HEATH: He's already spoken to
17 him.

18 MR. ECKHAUS: -- met. I believe they met.
19 I'm not sure. But we're actually going to be there
20 today and I will be more than happy to introduce him
21 again and make sure that we fix everything.

22 CHAIRPERSON HEATH: Okay. All right.

23 MS. ALBANNA: And if I may just --

24 MR. O'MARBURY: He spoke of the repairs.
25 These windows were installed in 2013 for a price of

1 \$20,548. I would not like for just anyone to come in
2 there. I would like for the installers, if they're
3 going to be repaired, the installers to repair it so
4 it will be done correctly and in accordance with
5 their standards because I don't want to void --

6 CHAIRPERSON HEATH: Your warranty on your
7 windows?

8 MR. O'MARBURY: Yes. This is a transferrable
9 warranty to the new owners if we decide to sell, it
10 goes on to them. So I don't want to jeopardize it in
11 any kind of way. If any repairs are being made, or
12 any corrections are to be made, I would like for them
13 to be made by the installers.

14 CHAIRPERSON HEATH: Okay. All right.

15 MR. ECKHAUS: I have no issue with that.

16 CHAIRPERSON HEATH: Okay. All right.

17 MR. ECKHAUS: Yeah.

18 CHAIRPERSON HEATH: Good. So it sounds like
19 we have some agreement on the window fix.

20 MR. ECKHAUS: Yep.

21 CHAIRPERSON HEATH: So, which is good. Any
22 other questions from the Board? All right.

23 I assume there's no one else wishing to speak
24 in opposition? Okay. All right. Then unless the
25 Board has any other questions we'll conclude this

1 hearing and you can make the closing statement before
2 we conclude if you wish to. But if not, we'll
3 conclude.

4 MS. ALBANNA: We are fine. Thank you.

5 CHAIRPERSON HEATH: Okay. All right. So is
6 the Board ready to deliberate on this? Okay. All
7 right.

8 MR. HOOD: Madam Chair, I actually would
9 like --

10 CHAIRPERSON HEATH: Go ahead.

11 MR. HOOD: I could go ahead and deliberate
12 but I know a lot of stuff may not necessarily be in
13 the jurisdiction of this Board, but I'd like to see a
14 progress within two weeks before we make a decision
15 if you all go along with that. You know, I don't
16 want the applicant to think I'm holding him hostage,
17 but he made some commitments here and if we vote on
18 it today, we don't have any assurances --

19 CHAIRPERSON HEATH: Sure.

20 MR. HOOD: -- that some of that won't get
21 taken care of. Or at least we can get a report back
22 from the neighbor and find out exactly what's going
23 on. We make a decision now then from what I'm
24 hearing, this is just my opinion, then I think we
25 would be not up to what I think we need to do from

1 discussions we heard. I know a lot of promises have
2 been happening. I've been here long enough to see
3 the promises and hear them, but once they go out the
4 door that's the end of them. So that's just kind of
5 where I am, not that I wouldn't be in support of this
6 project. But I'd like to see some progress between
7 the neighbors, and his concerns I think are valid.

8 CHAIRPERSON HEATH: Uh-huh.

9 MR. HOOD: So that's just where I am.

10 MR. ECKHAUS: Can I just add one point?

11 MR. HOOD: Actually, we deliberate.

12 CHAIRPERSON HEATH: No, we're deliberating.

13 MR. ECKHAUS: Oh, sorry.

14 MR. HOOD: And I'm talking to my colleagues.

15 MR. ECKHAUS: Sorry.

16 MR. HOOD: Now they can agree or disagree,
17 but we're in deliberation mode.

18 CHAIRPERSON HEATH: No, I absolutely agree
19 with you. I was kind of troubled by the fact that we
20 had heard promises but didn't have any way that I
21 thought -- I thought we didn't have any way to get
22 some reassurances or proof that the repairs actually
23 happened. So I would be in favor of delaying a
24 decision on this for two weeks. We heard two weeks.

25 MR. HOOD: I just said, yeah, two weeks. And

1 not that it has to be done, but at least some
2 progress and get a progress report. So it will be up
3 to both the neighbor and the applicant to start some
4 progress and get things moving. And then once we
5 know some assurances are underway, then I wouldn't
6 have a problem because I probably won't be here and
7 I'll send a proxy.

8 CHAIRPERSON HEATH: Okay. All right.

9 MR. HILL: So then we'd get like a progress
10 report from --

11 MR. HOOD: From both of them.

12 MR. HILL: From both of them. Okay.

13 MR. HOOD: Just, you know, it doesn't have to
14 be a book. It doesn't have to be a book.

15 MR. HILL: Right. Just the --

16 MR. HOOD: Just that some of what we heard is
17 in operation or moving that way.

18 CHAIRPERSON HEATH: Sure. So what we'd
19 expect is a brief letter from the applicant just
20 saying, this is what we've done in order to satisfy
21 the neighbor's request to repair his windows, whether
22 it's fixed or whether he's made some steps towards
23 getting it fixed.

24 And then if we could also get something from
25 Mr. Roberts. Could just be a couple sentences, a

1 letter to the Office of Zoning that just says -- or
2 to this Board that just says, my neighbor has made
3 steps to repair my windows. I think that would go a
4 long way to giving us more comfort that the promises
5 made today are being kept.

6 MR. O'MARBURY: Okay.

7 CHAIRPERSON HEATH: All right? Does that
8 make sense to --

9 MR. ECKHAUS: Can I add one comment? I don't
10 know if he claimed that we created this damage. I
11 didn't say we didn't because I could come today and
12 say, I don't know what he's talking about. But I was
13 very honest about my intention. And when he told me
14 that we created this damage, I believed him.

15 Then, in all this process I didn't say
16 anything against what he said, that it should be
17 noted that I didn't try to avoid my responsibility to
18 fix those windows. But we are being delayed on this
19 project for the last year and I told him before this
20 hearing that we are going to fix it even though I
21 didn't have a fight about this. I didn't actually to
22 actually provide proof that we created this damage.
23 I believe him. And my attitude was the same in this
24 hearing.

25 And I understand why you want to wait another

1 week or two, but for me to come from New Jersey --

2 CHAIRPERSON HEATH: You don't need to come
3 back.

4 MR. HOOD: You don't have to come back.

5 MR. ECKHAUS: Okay.

6 CHAIRPERSON HEATH: We're going to -- this is
7 going to be a decision case so we won't hear from
8 you. We won't call you up. We'll just decide. But
9 we want to see some documentation in the record that
10 indicates what you've done to adhere to the promise
11 that you made today to fix his windows.

12 MS. ALBANNA: If I may just add? If we were
13 able, since today the contractor will be on site
14 because we have a site meeting, would you be willing
15 to grant your vote as soon as we supplement the
16 required letters? Say, if we fix it next three days
17 or beginning of next week, would we be able to get --

18 CHAIRPERSON HEATH: This is going to be --
19 we're going to make a decision today to put this on
20 for a date.

21 MS. ALBANNA: Got it.

22 CHAIRPERSON HEATH: Sometime in the future.
23 So regardless of when you submit your letters, we're
24 still going to decide on this on that date.

25 MR. ECKHAUS: Okay.

1 MR. HILL: Yeah, so this was just talked
2 about. It sounds like two -- I'm sorry, Madam Chair.
3 For two weeks, we make a decision in two weeks. And
4 what I would again, based upon the discussion with my
5 colleagues and I'm also now in agreement, is that
6 present something as to your discussions as to how
7 you're going to resolve the issue with Mr. Roberts
8 concerning the windows. And you know, however that
9 may transpire, you know, whether -- hopefully you are
10 able to come to a conclusion, like you know, that is
11 something that was an easy fix that you would be able
12 to do it and this is when it's going to happen, you
13 just have to write that up. That will be submitted
14 to us and then Mr. Roberts who would also say, we had
15 a discussion and this is what we agreed to. And then
16 that would be something that we'd be able to move
17 forward with.

18 CHAIRPERSON HEATH: All right. Okay. So is
19 the Board fine with that decision? Okay.

20 All right. So, Mr. Moy, we'll put this on
21 for decision in two weeks.

22 MR. MOY: Yes.

23 CHAIRPERSON HEATH: If that works with our
24 schedule.

25 MR. MOY: Considering what I'm hearing, then

1 staff would suggest April 5th.

2 CHAIRPERSON HEATH: Okay.

3 MR. MOY: And we'll proceed from there
4 depending on what the Board receives, whether to move
5 it forward after that. Hopefully we won't have to do
6 that but I think April 5th might be a good date for
7 the Board to make a decision.

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

9 MS. ALBANNA: I'm sorry. May I just add one
10 thing? Since we're already all here and Mr. Roberts
11 has the pictures of the damages, would it be possible
12 to just put that as an exhibit, part of the --

13 CHAIRPERSON HEATH: You can post whatever you
14 want on to --

15 MS. ALBANNA: Okay. Just to eliminate any
16 future disagreement. We talked about this, but now
17 there is this so I would like to --

18 CHAIRPERSON HEATH: You can upload --

19 MS. ALBANNA: Exactly.

20 CHAIRPERSON HEATH: You can upload photos or
21 whatever you'd like.

22 MS. ALBANNA: I mean, Mr. Roberts has the
23 photos of the damages now, I believe.

24 CHAIRPERSON HEATH: It doesn't --

25 MS. ALBANNA: It doesn't.

1 CHAIRPERSON HEATH: You need to upload them.

2 MS. ALBANNA: You got it. Okay.

3 CHAIRPERSON HEATH: The same way you did with
4 all of your other exhibits.

5 MS. ALBANNA: So we will upload the damage
6 today and then the fixed.

7 CHAIRPERSON HEATH: Thank you.

8 MS. ALBANNA: Thank you.

9 CHAIRPERSON HEATH: All right. Thank you.
10 So, this again is a decision on April 5th. You won't
11 need to be here but we will make a decision about how
12 to proceed.

13 MR. ECKHAUS: Okay.

14 CHAIRPERSON HEATH: Thank you, Mr. Roberts.

15 MR. O'MARBURY: Yes.

16 CHAIRPERSON HEATH: Appreciate it.

17 MR. O'MARBURY: How will I be also informed
18 of the decision to be made from the Board on this
19 application?

20 CHAIRPERSON HEATH: You'll be able to see --
21 well, there won't be an order --

22 MR. HOOD: No, actually he can probably call
23 after the 5th. If you call maybe after 12:00, 1:00.

24 CHAIRPERSON HEATH: Okay.

25 MR. HOOD: Or if you're in the neighborhood,

1 you're not in New Jersey like he is, you can come
2 down and see.

3 CHAIRPERSON HEATH: Yeah, you could come
4 down. Or you can watch online.

5 MR. HOOD: Or you can watch it. Or you can
6 call the office and ask what's the status of your
7 case number. And your case number is 19202.
8 Correct? Yeah.

9 MR. O'MARBURY: It's after the 5th of April?

10 CHAIRPERSON HEATH: On the 5th of April you
11 can watch online or come down. But after the 5th you
12 can call.

13 MR. HOOD: After the 5th you can call, maybe
14 after 12:00, 1:00.

15 MR. O'MARBURY: Call you?

16 MR. HOOD: No, don't call me. Call the
17 office. 727-6311.

18 MR. HILL: Also, Madam Chair, if the
19 gentleman records both his phone number and e-mail
20 address on the card --

21 MR. O'MARBURY: I don't have e-mail.

22 MR. HILL: -- on the witness card --

23 MR. O'MARBURY: Yeah, I don't --

24 MR. HILL: -- then we will contact you as
25 well. Okay?

1 CHAIRPERSON HEATH: You could just list your
2 phone number, then.

3 MR. O'MARBURY: I have two phones, cell phone
4 and home phone.

5 CHAIRPERSON HEATH: You could just list
6 wherever you'd like them to --

7 MR. O'MARBURY: No e-mail.

8 CHAIRPERSON HEATH: -- contact you. The
9 office will get in touch with you.

10 MR. O'MARBURY: Office will contact me?

11 CHAIRPERSON HEATH: Yes, sir.

12 MR. HILL: On the witness card that you just
13 submitted.

14 MR. O'MARBURY: Yes.

15 MR. HILL: Have you submitted a witness card?
16 If you have a phone number on that.

17 MR. O'MARBURY: Yes, sir.

18 CHAIRPERSON HEATH: Okay. All right. Thank
19 you. Thanks for coming down.

20 MR. O'MARBURY: Thank you.

21 CHAIRPERSON HEATH: Thank you. All right.
22 Any more matters coming before the Board today, Mr.
23 Moy?

24 MR. MOY: Madam Chair, I think you've
25 exhausted the docket for today.

1 CHAIRPERSON HEATH: Well, very good. Thank
2 you. We are adjourned.

3 [Whereupon, at 11:30 a.m., the Board Hearing
4 was adjourned.]

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