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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

9:45 a.m. to 1:38 a.m.
Tuesday, April 5, 2016

441 4th Street, N.W.
Jerrily R. Kress Memorial Room
Second Floor Hearing Room, Suite 220-South
Washington, D.C. 20001

1 Board Members:

2 MARNIQUE Y. HEATH, Chairperson

3 FREDERICK L. HILL, Vice Chair

4 JEFFREY HINKLE, Board Member

5 MARCIE COHEN, Zoning Commission

6 PETER MAY, Zoning Commission

7 ANITA D'SOUZA, Board Member

8 CLIFFORD MOY, BZA Secretary

9

10 Office of Attorney General

11 MARY NAGELHOUT, Esq.

12 ARIEL EBI, Esq.

13

14 Office of Planning

15 MEGAN RAPPOLT

16 ELISA VITALE

17 ANNE FOTHERGILL

18 STEPHEN MORDFIN

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

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

9 My name is Marinque Heath, Chairperson.
10 Joining me today is Fred Hill, Vice Chairperson,
11 Jeffrey Hinkle, Board Member, Anita D'Souza, also a
12 board member. And Marcie Cohen and Peter May both a
13 member of the Zoning Commission, sitting in as a
14 member of the Board today.

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

22 All individuals wishing to testify today will
23 need to do two things. The first is, prior to
24 testifying, each person who wants to address the Board
25 must fill out two witness cards. That's two witness

1 cards per person, and give those cards to the court
2 reporter seated to my right prior to testifying.

3 The second is that you'll need to now stand
4 and take the oath, which will be administered by Mr.
5 Moy, the Board Secretary.

6 MR. MOY: Good morning.

7 [Oath administered to the participants.]

8 CHAIRPERSON HEATH: All right. Good morning,
9 Mr. Moy.

10 MR. MOY: Good morning, Madam Chair, Members
11 of the Board.

12 CHAIRPERSON HEATH: I believe you have some
13 preliminary matters for us this morning?

14 MR. MOY: Yes, I do. And this is for the
15 record of course. I'll move through this as quickly
16 as possible. There's quite a list here, Madam Chair.

17 First off, the cases that have originally been
18 noticed on today's docket have been postponed and
19 rescheduled. This is at the applicant's request and
20 granted by the Board of course. We have three cases
21 that have been moved or rescheduled to May 17th.

22 Those cases re 19153 of Independence Avenue
23 Investments, LLC., 19168 of Getachew Afework, A-F-E-W-
24 O-R-K, and 19101 of Sulekoiki.

25 Next, we have Application No. 19206 of 1302

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1 Pennsylvania Avenue Southeast, LLC., has been
2 postponed and rescheduled to April 26th, 19156 of Brad
3 Edwards, rescheduled to May 10th.

4 I'd also like to mention, Madam Chair, cases
5 that were previously announced for today and I believe
6 I've already noticed it's being rescheduled, but I'm
7 going to be redundant. One, two, three, four cases
8 rescheduled to April 19th. Those are 19205 of Magrath
9 and Shen, 19237 of Wacap, LLC., 18983 of Carrie Trieu,
10 T-R-I-E-U, and 19173 of Equity Trust Company. All
11 these were rescheduled to April 19th.

12 19239 of Deborah Jones-Miller to April 12th.
13 And we have a case that's been withdrawn, Application
14 No. 19238 of Congressional 815 5th Street, LLC.

15 Finally, before we get into one last item,
16 Madam Chair, Appeal No. 19224 of ANC 1C and 19225 of
17 McCarthy III, we have in the record a consent motion
18 from all the parties for a rescheduling to a hearing
19 date of June the 7th.

20 And the last item before the Board, Madam
21 Chair, which actually I believe would be on your own
22 motion to address Application No. 19229 of FOTP. This
23 is the application at 1503 through 1505 Pennsylvania
24 Northwest. This is the property which is the -- which
25 was formerly the Riggs Bank Building.

1 CHAIRPERSON HEATH: Okay.

2 MR. MOY: If you'll recall, Madam Chair, the
3 Board addressed this application at its hearing on
4 March 29th and continued the hearing to May the 10th.

5 CHAIRPERSON HEATH: Sure. So, the Board will
6 address that first. I would be inclined to reduce the
7 time limit, which would be the Board essentially
8 waiving the 40 days required for a variance. And
9 instead allowing the two weeks for posting the
10 applicant's counsel agreed to post, and if the Board
11 is so inclined I think we could accept the two-week
12 posting. The postings happened for all other aspects
13 of the relief being requested, and so this would just
14 be one additional piece.

15 So I'll make a motion. Is there a second?

16 MR. HINKLE: I'll second.

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

19 [Vote taken.]

20 CHAIRPERSON HEATH: So the motion carries. So
21 the new date, then, Mr. Moy?

22 MR. MOY: Okay. Madam Chair, the resulting
23 vote is five to zero; five zero, zero on your motion
24 seconded by Mr. Hinkle.

25 Staff would suggest a date of April the 19th.

1 CHAIRPERSON HEATH: Okay.

2 MR. MOY: Okay. Very good.

3 CHAIRPERSON HEATH: I assume that will work for
4 the applicant, but they can confirm. All right.

5 All right. So do you want to call our first
6 decision case, Mr. Moy? That would be Application No.
7 19187. We'll come back to our expedited review once
8 we have Commissioner May with us.

9 MR. MOY: Okay. Very good. So again, for
10 decision making, Application No. 19187 of 1212 through
11 1216 4th Street, LLC., and this application was a
12 request for variances from the lot area requirements
13 under 401.11, lot occupancy requirements under 403.2,
14 and a special exception from the nonconforming use
15 requirements under 2003. This would allow the
16 expansion of an existing residential buildings and
17 conversion of an office use to a neighborhood retail
18 or service establishment in the R-4 district, 1212
19 through 1218 4th Street Northeast, Square 513, Lots
20 155 and 158.

21 This was last heard by the Board on March
22 15th, 2016, closed the record, asked for findings of
23 fact, conclusions of law from the applicant. And as a
24 preliminary matter, Madam Chair, to remind the Board,
25 we do have two additional filings that was not

1 requested by the Board at that time, so you should
2 address those. And I have participating in the vote,
3 yourself, Chairperson Heath, Vice Chair Hill, Mr.
4 Hinkle, and Ms. Cohen.

5 CHAIRPERSON HEATH: Okay. Thank you, Mr. Moy.
6 So again, because we have two additional pieces of
7 documentation that were submitted, both were submitted
8 late to the record but both were in response to the
9 applicant's findings of facts and conclusions, I think
10 as Mr. Moy has stated, we do, the Board needs to
11 address those.

12 Both were related to the extensive work that
13 was done between the applicant and the neighbors
14 regarding conditions and one letter came from a
15 neighbor and the other came from the ANC Chair.

16 I believe counsel for the applicant is here.
17 Would you mind coming forward?

18 MS. MOLDENHAUER: Good morning, Meredith
19 Moldenhauer on behalf of the applicant.

20 CHAIRPERSON HEATH: Thank you. As you know we
21 don't typically call any parties to a case on a
22 decision. However, because we did receive these
23 filings fairly late and one as late as last night, we
24 wanted to see if you've had a chance to -- if you were
25 even aware of them, if you've had a chance to look at

1 them.

2 MS. MOLDENHAUER: I was just trying to pull
3 them up on my iPhone.

4 CHAIRPERSON HEATH: Okay.

5 MS. MOLDENHAUER: I had had conversations
6 though, with Sergi. The individual that we had
7 entered into an agreement with, and so I believe they
8 may be related to the fact that we did not summarize
9 all the conditions in one location. Is that correct?

10 CHAIRPERSON HEATH: That's part of it. And
11 there were some that they felt were missing still.
12 Primarily, I believe, it was related to RPP. Again, a
13 lot of these things are --

14 MS. MOLDENHAUER: The RPP is in the findings
15 of facts and conclusions of law.

16 CHAIRPERSON HEATH: Okay.

17 MS. MOLDENHAUER: It is stated.

18 CHAIRPERSON HEATH: It may then be that it was
19 because they weren't all consolidated in one place and
20 some referred to exhibits. And so I think the concern
21 is that they want to make sure that all of their
22 concerns that were discussed were met. And I know the
23 neighbor raised that she felt like the applicant
24 wasn't being forthright about all of the things that
25 had been agreed to and that they were worried that

1 some things that had been previously agreed to may
2 sort of slip under the rug for lack of a better term,
3 if they weren't formalized.

4 MS. MOLDENHAUER: What we --

5 MS. COHEN: Excuse me, Madam Chairman.

6 CHAIRPERSON HEATH: Sure.

7 MS. COHEN: I think what we need to do now is
8 have the applicant's attorney for the record, on the
9 record, go through what they agreed to so that it is
10 consistent --

11 CHAIRPERSON HEATH: That would be helpful.

12 MS. COHEN: -- with everybody's understanding.
13 And that would help me, at least, as well.

14 CHAIRPERSON HEATH: That would be helpful.

15 MS. NAGELHOUT: [Speaking off mic.]

16 CHAIRPERSON HEATH: We'd have to.

17 MS. NAGELHOUT: I thought it was on. The
18 Board needs to preliminarily determine whether to
19 accept those filings --

20 CHAIRPERSON HEATH: Accept the documents.

21 MS. NAGELHOUT: -- in the record for starters.
22 And then if the Board is going to address them and
23 discuss them I think copies should be provided to
24 counsel.

25 CHAIRPERSON HEATH: Sure. Yes. So thank you.

1 I think the -- so, I will, unless the Board has any
2 objection to this, I think the issues that have been
3 raised by these two documents are relevant and I would
4 move that we accept them and --

5 MS. COHEN: I'll second that.

6 CHAIRPERSON HEATH: -- to the requirement.
7 Okay. So that motion has been made and seconded.

8 [Vote taken.]

9 CHAIRPERSON HEATH: Okay. So, do you have
10 copies of these? Have you seen --

11 MS. MOLDENHAUER: I have not.

12 CHAIRPERSON HEATH: Okay. All right.

13 MS. MOLDENHAUER: But I'm more than willing to
14 walk through our draft order and identify the
15 conditions that we agreed to.

16 CHAIRPERSON HEATH: Okay.

17 MS. NAGELHOUT: Madam Chair, sorry to
18 interrupt. This will be my last statement. I think
19 that, to summarize, the concerns raised are not that
20 the conditions are not discussed within the body of
21 the order or that there was an agreement or not. The
22 concern is that the conditions are not listed at the
23 end of the order specifically and are therefore not
24 enforceable. That's their position.

25 MS. MOLDENHAUER: And our response to that was

1 -- is also a response that I provide to Mr. Sergi in
2 an e-mail was that, it is not our job to identify
3 conditions. It is the Board's job. And that it is
4 the Board's opinion to determine which conditions they
5 want to make a specific part of an order. And
6 obviously there are legal requirements as to what
7 portions are deemed to be conditions and what elements
8 are simply agreements that are part of the record and
9 we do have a separate settlement agreement with these
10 individuals that are binding separate contracts.

11 And so, our position was, we were laying out
12 all of the facts, that they were all identified in the
13 detail and findings of facts and conclusions of law.
14 And then it was the Board's determination which
15 conditions they wished to identify. But I can walk
16 through the different elements that we had agreed
17 upon.

18 CHAIRPERSON HEATH: Sure.

19 MS. MOLDENHAUER: If that's helpful.

20 CHAIRPERSON HEATH: Why don't you start there?

21 MS. MOLDENHAUER: So on page 2 of the draft
22 order we identify, one, that the applicant shall
23 provide a minimum of 27 parking spaces as part of the
24 project. Two, that the applicant shall limit the
25 number of parking spaces available to residents of the

1 project to one parking space per dwelling unit, or not
2 to exceed 22 spaces being utilized by those residents.

3 Three, that the applicant shall make parking spaces
4 available to all property owners within the 200 foot
5 nearby property owners as a defined term as follows.
6 Six months after the issuance of a C of O for the
7 project or six months after 75 percent of the dwelling
8 unit for the project has been sold or leased,
9 whichever date is later. Notice shall be given to the
10 nearby property owners stating that they shall have 30
11 days from that date of notice to send a letter of
12 intent to purchase or lease the remaining parking
13 spaces available after parking spaces have been
14 offered to the residents of the project.

15 Parking spaces shall be available to nearby
16 property owners for the purchase or lease on a first-
17 come-first-serve basis at a 15 percent discount of the
18 current market rate, or rental prices from recovered
19 parking space in Mount Vernon Square. Then we go to
20 page 6, under point 20.

21 CHAIRPERSON HEATH: Page 8?

22 MS. MOLDENHAUER: Page 6 at the bottom.

23 CHAIRPERSON HEATH: Okay. Oh, I see. Okay.

24 MS. MOLDENHAUER: And here we indicate that
25 the applicant has made the following changes and

1 proffers the following conditions under Section 20.
2 And then it indicates that, impose residential parking
3 restrictions by including restrictions in condominium
4 documents recorded against the property.

5 I, the applicant condo board shall include it
6 in the condominium documents as a provision that
7 prohibits residents and owners from obtaining an RPP
8 from the property for the DCDMV under penalty of fine
9 against the condominium unit owner. The condo board
10 shall obtain written authority from each owner, either
11 through a deed, provision, or another written
12 document, allowing the DMV to release applicants or
13 boards, any and all records to the owners requesting
14 and receiving an RPP, shall monitor and compliance
15 that the RPP lease restriction by requesting from DMV
16 every six months. And the applicant shall record a
17 covenant against the property among the land records
18 prohibiting any owner of the property from obtaining
19 an RPP for the building approved as part of this
20 application.

21 And those are all of the proffers that we have
22 included.

23 CHAIRPERSON HEATH: All right. I think,
24 unless the Board has any questions of what's just been
25 read, I think I feel that I need a little bit of time

1 to go through what the ANC, that the most recent
2 letter that was sent last night to compare that to
3 what you've just proffered as a part of -- or what
4 you've publically stated on the record as your
5 conditions. Just to make sure we haven't missed
6 anything. How does the rest of the Board feel?

7 MS. BUTANI-D'SOUZA: I tend to agree because,
8 you know, we are required to give great weight to the
9 opinions of the ANC. So I think it's important to
10 carefully compare what was included in their
11 resolution to what you've proffered as part of that
12 process of giving great weight.

13 And to clarify, I did read the record to
14 participate.

15 CHAIRPERSON HEATH: There you go.

16 MS. BUTANI-D'SOUZA: There you go.

17 CHAIRPERSON HEATH: Got it. Got it. Okay.

18 MS. BUTANI-D'SOUZA: And I also watched the
19 videos.

20 MS. COHEN: Madam Chairman, I don't have a
21 problem with continuing this case.

22 CHAIRPERSON HEATH: We don't have to put this
23 on for long. I think we can --

24 MS. MOLDENHAUER: Is there any way that we can
25 -- I mean, the ANC is supportive of this application,

1 and we've done an extensive amount of outreach. I
2 mean, if there's any way that the Board can review
3 this and then maybe bring this back up again at the
4 end of the hearing today, we would greatly appreciate
5 that because there's no distinction between what the
6 ANC -- and we've offered all the conditions and have
7 agreed to those.

8 CHAIRPERSON HEATH: Sure.

9 MS. MOLDENHAUER: And we'd greatly appreciate
10 the Board to review that.

11 CHAIRPERSON HEATH: Sure. I think we're going
12 to lose a commissioner by the end of the day, but I
13 think that it would be helpful for me if we could just
14 put this on for next week for decision. I'd rather do
15 that rather than pushing this to the end of the day,
16 just because the Board has other -- we're not going to
17 have time to go through all of this today before we
18 wrap up.

19 MR. MOY: Okay. So next week, that would be
20 April the 12th, Madam Chair.

21 CHAIRPERSON HEATH: Okay. So we'll put this
22 on for decision at the beginning of the day, April
23 12th. Thank you.

24 Mr. Moy, given that we've accepted the two
25 letters that came in late, I think it's also fair to

1 allow the applicant or applicant's counsel, to respond
2 to those. We'd just need to set a date if they choose
3 to respond to these filings.

4 MR. MOY: All right. That's very good, Madam
5 Chair. If they do then let's give them until Friday,
6 end of this week, which would then would be April the
7 8th. Yes.

8 CHAIRPERSON HEATH: Okay. All right. Okay.
9 So this is -- okay.

10 All right. So our next case for decision that
11 includes Commissioner Cohen, Mr. Moy, would be 19018.

12 MR. MOY: Thank you, Madam Chair. So, here we
13 go. All right. For board decision, Application No.
14 19018 of Colleen Slattery. Again, this was advertised
15 for variance relief on the nonconforming structure
16 requirements under 2001.3. This would allow the
17 enlargement of an existing second story deck and
18 construct a third story deck in the R-4 district, 2026
19 North Capitol Street Northwest, Square 3117, Lot 834.

20 And let's see. This has been postponed a few
21 times regarding the Board's decision making. Most
22 recently, March 29th and we have participating on the
23 vote, Chairperson Heath, Vice Chair Hill, Mr. Hinkle,
24 Ms. Cohen, and I believe also Ms. Butani, who read the
25 record.

1 MS. BUTANI-D'SOUZA: Yes. I read the record
2 and watched the tape.

3 CHAIRPERSON HEATH: There are a lot of tapes
4 on this to watch. This case goes back to June, I
5 believe, and another Board chair.

6 Is the Board ready to deliberate on this? As
7 I said, this case has been in front of us for quite
8 some time and it's a fairly messy case. In this the
9 applicant seeks to legitimize the construction of two
10 rear deck additions to an existing nonconforming
11 residential building. And the structure is
12 nonconforming due to the fact that it's, the lot
13 occupancy is 78 percent.

14 The applicant contends that the decks at the
15 second and third floors were built pursuant to a
16 building permit that was issued back in August of
17 2014. But the decks were made larger than was
18 approved in the permit through contractor error.

19 After that time DCRA issued a notice of
20 revocation. That was in February of 2015, and
21 instructed the applicant to remove the third floor
22 deck and reduce the second floor deck in size. And
23 prior to the decks being constructed incorrectly there
24 was a small second floor deck and nothing at the third
25 floor. But there has always, for quite some time,

1 there has been a first floor deck, which is what has
2 led to the increased of lot occupancy.

3 So the applicant seeks relief for the area of
4 the decks that as presented in the approved building
5 plans, or building permit plans, and also the
6 additional area of the decks beyond what was approved
7 in the plans, and that was constructed in error.

8 The other thing that makes this case
9 complicated is that back in April of last year the
10 property was purchased by a new owner. So during the
11 time of all of this, these errors and building permits
12 being issued and then revoked, the property has
13 changed ownership.

14 And so I've always had a hard time with this
15 case because you know, the fact that this is an
16 existing nonconformity doesn't in and of itself make
17 this an exceptional condition, leading to practical
18 difficulty. The renovation as we know, was not
19 consistent with the permitted plans. And I don't find
20 the contractor error to be an exceptional situation.
21 And so you know, that coupled with the fact that I
22 just don't see any exceptional situation on the lot
23 that would lead to approval of this, this variance
24 request.

25 Also, Office of Planning and the ANC 5E have

1 been in denial of this, although the ANC 5E most
2 recently has determined that they are now in support
3 of this request since the applicant has worked with
4 the adjacent neighbor to come up with a solution for
5 providing screening at the decks and allowing for
6 privacy, which was the neighbor's concern.

7 That neighbor also happens to be, I believe
8 it's the ANC single-member district chairperson. And
9 so -- but even though the ANC has noted, according to
10 the applicant, that they're now in support of this,
11 they sort of put the decision as to whether or not to
12 submit a formal approval from the ANC on the
13 Bloomingdale Civic Association.

14 And that civic association has voted to
15 continue to deny this application. And so we don't
16 have any new letter from the ANC indicating that they
17 now are in approval of this. So as far as the record
18 is concerned, the ANC is still in denial of this.

19 Also, one thing to point out that during
20 testimony, during the hearings, we heard from the ANC
21 that the owner of the unit with the decks in question,
22 stated publically that the developer has agreed to
23 bear any costs of rebuilding the decks to conform with
24 the Zoning Regulations. And I thought that that was
25 important that any new construction that happens,

1 we've already heard that this doesn't fall on the new
2 property owner, that the developer will pay for this.

3 And so I don't feel that we're necessarily
4 penalizing the owner if they decide that they're going
5 to rebuild these decks to what was originally
6 permitted.

7 But I think another issue before the Board
8 with this is -- was brought up by the applicant in
9 their December 21st filing where two things, as I
10 mentioned, the applicant stated in that filing that
11 they had executed an agreement with the adjacent
12 property owner to provide the permanent screening
13 between the decks and the neighbor's property. But
14 they also included a statement requesting to bifurcate
15 the application into two alternatives.

16 The first was to request to approve the
17 variance relief to allow the existing, second and
18 third floor decks to remain as they were built in
19 error over the entire width of the house.

20 The second was to request to approve the
21 variance relief to allow the decks to exist according
22 to the dimensions originally permitted by DCRA, which
23 would reduce both the size of the second and third
24 floor decks.

25 So I think that would be the thing that we'd

1 have to decide on. First, if the Board is accepting
2 of any of these solutions at all, and if so which of
3 those two alternatives put forward by the applicant,
4 the Board might be willing to be consider. But I'm
5 having a hard time getting on board with either of
6 those at this point so I'm curious to hear what my
7 colleagues have to say.

8 MR. HILL: Madam Chair, thank you. Thank you
9 very much for going over all of that. That turned out
10 to be a bit of a story. And I appreciate the clarity.

11 I didn't have a particularly difficult time with it
12 in that I don't think that you know, when we were
13 going through this and the decks were built, the
14 second and third decks were built all the way across
15 the property. And the builder at the time said that
16 it was the contractor's error in terms of them
17 building the decks past the sliders.

18 And I found that a little surprising,
19 difficult. I don't know who the contractor is that
20 they're going to build a deck larger than, you know,
21 just out of their own free will they're like, we're
22 going to go ahead and make a larger deck.

23 So, and also I don't know why they would have
24 thought that they could have gotten away with that.
25 But regardless. So I would not, you know, be in

1 support of leaving the decks the way they are, which
2 is the first option that they had spoken about. I
3 guess it is nice that neighbors do try to work
4 together and they did come up with a covenant and try
5 to screen out the decks and you know, if in fact they
6 were allowed to remain. So that's nice that the
7 neighborhoods had talked to each other.

8 The -- for me where I was, was that you know,
9 the builder did build the second and third deck from
10 the slider over. The second story had, you know, a
11 long stairwell. And the third story didn't have a
12 stairwell. I think now there's a spiral stair that
13 goes all the way from all three decks.

14 So my thought was that, you know, the builder
15 -- why would they have built something if they didn't
16 think they were allowed to at least build that. You
17 know, I mean, you know, it was permitted. There was a
18 discussion about the permits had been stamped. There
19 was a discussion that, you know, you couldn't see the
20 stamping but I went back and again reviewed -- I had
21 to review it again just last night just a little bit
22 just to kind of refresh. I also looked through the
23 video again just of the most recent hearing. And I
24 just kind of got to the point where I was comfortable
25 with it being back to what -- and listening to what

1 the ANC had said, actually, which was that, you know,
2 if in fact the permit had been placed, if in fact they
3 had been stamped, then they would have been able to
4 live with that second story and third story without
5 the stairwell off the third story.

6 So where I am right now, and I'm, you know,
7 I'm looking forward to hearing what everyone else has
8 to say, is that I'd be back to, you know, what was
9 originally supposedly permitted, which was that the
10 second deck, you know, pulling it back to the slider,
11 the third deck, pulling it back to the slider, and the
12 first deck remaining the way it is, and then the
13 second story and the third story still has access to
14 the ground but not from the third story.

15 And then to throw another thing in this, and I
16 don't know where we go with this, is that Commissioner
17 Turnbull who is on this several ones ago, iterations
18 ago, there was a spiral staircase that was there.
19 And, you know, again just my feeling was that you
20 know, they -- the permit was for these long wooden
21 stairs that went from the second floor. So if there's
22 a way to do it with the spiral stairway, I don't know,
23 and I don't know how that is something that we talk
24 about or discuss. So that's where I am as of now.

25 MS. COHEN: Madam Chairman, my position is,

1 and maybe I am channeling Commissioner Turnbull in
2 saying this, but I'd suggest we go back to the
3 original building permit and construct it according to
4 the original building permit. It's that simple.

5 MS. BUTANI-D'SOUZA: Madam Chairwoman, I tend
6 to agree with you that I have difficulty with this.
7 You know, I looked at the two options and it seems to
8 me that, you know, this was built by a professional
9 developer or builder who has familiarity with the
10 zoning code or requirements of the District of
11 Columbia. It was designed by an architect who
12 presumably is familiar with the code.

13 So to me I don't think that the permitting --
14 how do I say this? You know, they got it through the
15 permitting process but to me that doesn't change the
16 fact that there was a violation of the code. And I
17 worry about the precedence that it sets if you
18 authorize somebody to go forward with a set of plans
19 that did not come in front of the BZA when it should
20 have come in front of the BZA. I just struggle with
21 that because to me it just incentivizes -- it seems
22 that it would incentivize a developer in the future to
23 try to slip it through the Zoning Administrator in
24 order to avoid going to the BZA. And that was why I
25 struggled with that, although I did see the stamp.

1 You know, I take it very seriously, the concept of
2 having to ask a homeowner to remove something that was
3 constructed and paid for, you know, putting that cost
4 on the developer.

5 But I do go back to this question of
6 precedent, and I go back to this question of, should
7 they have known how to follow the code and I believe
8 that in this case they should have. So I'm inclined
9 to not support either; either of the two options.

10 MR. HINKLE: I mean, I think most things have
11 been said already but I'll simply state that I think
12 that going back to what was originally permitted in
13 terms of the smaller deck on the second floor. And if
14 I recall, there was not a deck on the third floor.
15 Right. Okay.

16 CHAIRPERSON HEATH: Originally there wasn't,
17 but I believe the permitted drawings --

18 MR. HINKLE: The permitted had --

19 CHAIRPERSON HEATH: -- included the second and
20 the third floor, but both smaller --

21 MR. HINKLE: Okay.

22 CHAIRPERSON HEATH: -- than were built.

23 MR. HINKLE: Okay.

24 CHAIRPERSON HEATH: So you would be inclined
25 to go back to the permitted.

1 MR. HINKLE: That's correct.

2 CHAIRPERSON HEATH: Okay. Yeah, I agree that
3 I struggled with the precedent that this sets, and
4 just questioned whether I really felt that this met
5 the variance test. So, I am still not inclined to
6 support this. But if somebody wants to make a motion?

7 MS. COHEN: Madam Chairman, I move to approve
8 Application No. 19018 of Colleen Slattery to approve a
9 variance for the nonconforming structure requirements
10 under 2001.3 to allow the enlargement of second story
11 deck and construction of a third story deck in the R-4
12 district at premises 2026 North Capitol Street
13 Northwest, Square 3117, Lot 834 as originally
14 approved, and I don't have the permit number, but I'm
15 not sure that that's a requirement. As originally
16 approved by the Zoning Administrator. And I ask for a
17 second.

18 MR. HILL: I'll second.

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

21 [Vote taken.]

22 CHAIRPERSON HEATH: So --

23 MR. MOY: I'm sorry, Madam Chair, who was
24 opposed? Was it two or one? Two?

25 CHAIRPERSON HEATH: Two. Three to two.

1 MR. MOY: All right. Staff would record the
2 vote as three to two to zero. This is on the motion
3 of Ms. Cohen, seconded the motion Vice Chair Hill,
4 also in support, Chairperson Heath, Mr. Hinkle.

5 CHAIRPERSON HEATH: Not in support.

6 MR. MOY: Oh, rather, not in support would be
7 -- I'm having a difficult time today, clearly. Ms.
8 Butani and --

9 CHAIRPERSON HEATH: And me.

10 MR. MOY: And Chair Hill. Chair Heath. This
11 is terrible.

12 CHAIRPERSON HEATH: It's going to be a long
13 day.

14 MR. MOY: All right. Madam Chair, to help the
15 staff, are there plans here that we need to --

16 CHAIRPERSON HEATH: The permitted --

17 MR. MOY: Which exhibit number would that be?

18 CHAIRPERSON HEATH: The permitted plans.

19 MR. HILL: I think it was 33. I don't know if
20 that's --

21 MR. MOY: Thirty-two or 33?

22 MR. HILL: Thirty-three.

23 MR. MOY: Okay, 33 then. Okay. That's good.
24 I've got it. You don't want me to repeat this do you?

25 CHAIRPERSON HEATH: No.

1 MR. HILL: No.

2 CHAIRPERSON HEATH: I think we've got it.
3 It's recorded. All right. Thank you, Ms. Cohen.

4 MS. COHEN: Thank you.

5 CHAIRPERSON HEATH: Why don't we, while we're
6 waiting for the change of commissioners, Mr. Moy, we
7 could go to another decision case which is 19202.

8 [Pause.]

9 MR. MOY: Okay. Application No. 19202 of Alon
10 Eckhaus. This application as amended for special
11 exception relief under 223, not meeting lot occupancy
12 requirements under 403.2, side yard requirements,
13 405.8, penthouse requirements under 411.5, and
14 nonconforming structure provisions under 2001.3. This
15 is for a third story addition to an existing flat
16 interview he R-4 district, 2803 Sherman Avenue
17 Northwest, Square 2886, Lot 335.

18 And we have, participating on the vote, Chair
19 Heath, Vice Chair Hill, Mr. Hinkle, and Mr. Hood.

20 MS. BUTANI-D'SOUZA: And also I read the
21 record to participate.

22 MR. MOY: And, Ms. Butani, thank you.

23 CHAIRPERSON HEATH: Okay. This one is fairly
24 straight forward. We delayed decision on this case in
25 order to allow the applicant time to follow through on

1 his commitment to repair the neighbor's window that
2 was, according to the neighbor, damaged through some
3 of the construction work that happened at the
4 applicant's property. And so during the two-week
5 period since the hearing the applicant has submitted a
6 letter, which is Exhibit 38 in the record, stating
7 that he's contracted with the company that originally
8 installed the neighbor's windows. I know that was
9 important to the neighbor to maintain his warranty.
10 And that the applicant has also paid for the repairs
11 already, based on an estimate of what the work is
12 going to cost.

13 So at this point the neighbor just needs to
14 schedule a time for the window repair work to happen.
15 And so I think the applicant has also stated that he
16 will continue to work with and communicate with the
17 neighbor and others in order to be a part of this
18 community and to be neighborly. And so I think he's
19 showed that he's followed through on his commitment
20 and so given that and the information that we heard
21 during the hearing, I would be in support of approving
22 this request. Anybody else?

23 MR. HILL: I agree.

24 CHAIRPERSON HEATH: Okay.

25 MS. BUTANI-D'SOUZA: I agree as well, and I

1 thought in reading the record that this was a great
2 example of an applicant working together with the
3 community, the neighbors, the Office of Planning to
4 minimize the amount of exceptions needed and to
5 respect the intention of the zone as much as possible.

6 CHAIRPERSON HEATH: All right. So then I will
7 make a motion to approve the request for special
8 exception under 223, not meeting 403 lot occupancy,
9 405 side yard, and 2001.3 nonconforming structure as
10 well as 411.5 and 411.18 under the penthouse
11 requirements.

12 MR. HILL: Second.

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

15 [Vote taken.]

16 CHAIRPERSON HEATH: Mr. Moy, I believe we also
17 have an absentee on this one?

18 MR. MOY: Yes, we do. I have an absentee
19 ballot from Mr. Hood, who also participated, and his
20 vote is to approve the application, and of course with
21 any conditions as the Board may impose. So that would
22 give a resulting vote of five to zero to zero. This
23 is on your motion, Chairperson Heath, seconding the
24 motion, Vice Chair Hill, also in support, Ms. Butani,
25 Mr. Hinkle, and of course, Mr. Hood.

1 CHAIRPERSON HEATH: Okay.

2 MR. MOY: Motion carries and --

3 CHAIRPERSON HEATH: Summary.

4 MR. MOY: Summary order.

5 CHAIRPERSON HEATH: Yes.

6 MR. MOY: Also for the full record in the
7 preceding case, 19018, that's a full order.

8 CHAIRPERSON HEATH: Full order. Yes.

9 MR. MOY: Just want to say that on the record.

10 CHAIRPERSON HEATH: Okay. All right. So
11 let's see where we are. So, our expedited review?

12 MR. MOY: Which would be 19227 of Paul
13 Skorochood. I think that's how you pronounce it, S-K-
14 O-R-O-C-H-O-D. This is on the expedited review
15 calendar where the applicant waives their right to a
16 hearing, requesting special exception relief under
17 223, not meeting side yard requirements under 405.
18 This is to enclose a rear yard. Or rather, a rear
19 porch for an existing one-family dwelling, R-1-B
20 district at 1410 Hamlin Street Northeast, Square 4016,
21 Lot 808.

22 CHAIRPERSON HEATH: All right. Thank you, Mr.
23 Moy. This application was pretty straight forward and
24 I didn't have any issues with it as an expedited
25 review case. So, unless anyone else does, I will make

1 a motion that we approve application No. 19227 for
2 special exception under 405. Is there a second?

3 MR. HILL: Second.

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

6 [Vote taken.]

7 CHAIRPERSON HEATH: So the motion carries.

8 MR. MOY: Staff would record the vote as five
9 to zero to zero. This is on the motion of Chairperson
10 Heath to approve the application as the relief
11 requested. And seconding the motion, Vice Chair Hill.
12 Also in support, Mr. Peter May, Ms. Butani, and Mr.
13 Hinkle. And this is plans as shown on Exhibits 8A and
14 8B.

15 MR. MOY: Okay. Summary was it?

16 CHAIRPERSON HEATH: Summary.

17 MR. MOY: Thank you.

18 CHAIRPERSON HEATH: All right, so our last
19 decision case, Mr. Moy. Minor modification.

20 MR. MOY: Yes. That would be Application No.
21 17300A of St. Patrick's Protestant Episcopal Church.
22 Let's see, originally approved as a special exception
23 under 206 to allow an increase in the student
24 enrollment at a private school from 40 to 60 children
25 interview he R-1-B district, 4925 McArthur Boulevard

1 Northwest, Square 1339, Lot 17.

2 CHAIRPERSON HEATH: Okay. Thank you. So I
3 think before we get too far into this decision there
4 are a few preliminary matters that we need to deal
5 with. The first is that the applicant requested a
6 waiver of the two-year filing requirement for minor
7 modification, but this isn't necessary because that
8 two-year filing requirement only applies to changes or
9 minor modifications to plans. And in this case this
10 isn't a plan modification but rather a condition
11 modification.

12 And so typically a -- well, under the
13 regulations, under 3129, the Board can consider
14 requests to approve minor modifications to plans, and
15 we also -- but again, as I pointed out, this is not a
16 modification to plans. However, the Board can waive
17 that requirement and find that even though other
18 issues outside of plans typically require a hearing,
19 that the Board doesn't find that a hearing is really
20 necessary; that there's nothing prejudicial to any of
21 the parties if we move forward with allowing this to
22 remain a minor modification.

23 So I would move that we allow this to move
24 forward as a minor modification despite the fact that
25 it's not a modification to plans but rather a

1 condition.

2 MR. HILL: I would second that.

3 CHAIRPERSON HEATH: Okay. So the motion has
4 been made and seconded.

5 [Vote taken.]

6 CHAIRPERSON HEATH: Okay. So then I found
7 that this, again, fit the -- fit what I would consider
8 to be minor, despite the fact that it's a condition
9 that we're modifying. And seeing that over the course
10 of conversations with Office of Planning and
11 Department of Transportation, the applicant modified
12 their request so that this condition now includes the
13 addition of a sentence to condition no. 7, and just to
14 preface, condition no. 7 was about providing shuttle
15 bus service to employ a roundtrip route between one --
16 White Haven Campus and the subject property here.

17 The addition to that condition was a sentence
18 that read, "If traffic conditions allow, the shuttle
19 bus shall be permitted to take a legal U-turn on
20 McArthur Boulevard at Chain Bridge Road and return to
21 the White Haven Campus via McArthur Boulevard."

22 And so I think that was the original
23 condition. The applicant, through their work with
24 Office of Planning and Department of Transportation
25 modified that to propose the legal U-turn to take

1 place at Cushing Place, which is a street that has
2 fewer conflict points, according to Department of
3 Transportation. And so that allowed Department of
4 Transportation and Office of Planning to both be on
5 board with this.

6 And so given that there aren't any traffic
7 concerns with DDOT I would be inclined to approve this
8 requested modification.

9 MR. HILL: Yeah, I also agree, Madam Chair. I
10 thought that it was, you know, a minor modification
11 and the fact that they worked with DDOT to make the U-
12 turn at Cushing Place rather than McArthur, I also
13 would be in favor.

14 CHAIRPERSON HEATH: All right. So, then I
15 will make a motion that we approve the minor
16 modification as proposed by applicant and agreed to by
17 Department of Transportation and Office of Planning to
18 condition no. 7C of BZA Order No. 17300.

19 MS. BUTANI-D'SOUZA: Second.

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

22 MR. HINKLE: Yeah, Madam Chair, I'm not sure.
23 I just want to note that the ANC 3D also took a
24 resolution of support for this --

25 CHAIRPERSON HEATH: Yes.

1 MR. HINKLE: -- modification.

2 CHAIRPERSON HEATH: Thank you for pointing
3 that out. That is correct. So we do have full
4 support of this. So, any other discussion?

5 [Vote taken.]

6 CHAIRPERSON HEATH: So the motion carries.

7 MR. MOY: Staff would record the vote as five
8 to zero to zero. This is on the motion of Chairperson
9 Heath. Seconding the motion, Ms. Butani. Also in
10 support, Mr. May, Vice Chair Hill, and Mr. Hinkle. So
11 it's four, zero, zero. I'm sorry. Four, zero, one.
12 Thank you. Four, zero to one. And again, this is on
13 the motion of Chairperson Heath. Seconding the
14 motion, Ms. Butani. Also in support, Vice Chair Hill
15 and Mr. Hinkle. And --

16 CHAIRPERSON HEATH: Okay. Summary.

17 MR. MOY: -- one member not participating.
18 Summary. Thank you.

19 CHAIRPERSON HEATH: All right. So, if we
20 could take a five-minute break, we'll come back with
21 our hearing cases.

22 [Off the record from 10:38 a.m. to 10:42 a.m.]

23 CHAIRPERSON HEATH: All right. We'll come
24 back to order.

25 MR. MOY: Yes. Thank you, Madam Chair. I

1 wanted to back track a little bit on the former case
2 because I neglected -- I was reminded by staff I
3 neglected to record the vote count on your motion on
4 the two-year time -- two-year waiver. The waiver of
5 the two-year time period.

6 So that was a vote of four to zero to one.
7 That was on the motion of Chairperson Heath.
8 Seconding the motion, Vice Chair Hill. Also in
9 support, the motion, Mr. Hinkle and Ms. Butani, a
10 board member not present. That was four, zero, one
11 for the record.

12 Okay. So we're back to the agenda, the
13 docket, and I believe we're, Board, addressing
14 Application No. 19231 of Habitat for Humanity of
15 Washington, D.C. Parties can come to the table.

16 This is a request as advertised for variance
17 relief on the lot width requirements under 401.3 and
18 the off-street parking requirements under 2101.1
19 permitting the construction of four new flats in the
20 R-4 district, 1814 Central Place Northeast, Square
21 4047, Lot 57.

22 CHAIRPERSON HEATH: Good morning. Would you
23 all please introduce yourselves?

24 MS. BLOOMFIELD: Good morning. I'm Jessica
25 Bloomfield from the law firm of Holland and Knight.

1 MS. SLATTER: I'm Susanne Slattery, president
2 and CEO of Habitat for Humanity of Washington, D.C.

3 MR. MROCZKOWSKI: And Nicholas Mroczkowski
4 with Stoiber and Associates Architects.

5 CHAIRPERSON HEATH: Okay.

6 MR. FREEMAN: I'm Kyrus Freeman, Holland and
7 Knight.

8 CHAIRPERSON HEATH: Thank you. So we've
9 reviewed this application and it appears that we have
10 all of the information that's necessary to evaluate
11 this. And so unless the Board has any questions of
12 the applicant, we're not going to need a full
13 presentation from you. And if you're okay with us
14 proceeding on, you may do so.

15 MS. BLOOMFIELD: Yes. Thank you.

16 CHAIRPERSON HEATH: Okay.

17 MS. BLOOMFIELD: Actually, we were under the
18 impression that both of these cases would be heard --

19 CHAIRPERSON HEATH: Together?

20 MS. BLOOMFIELD: -- together. Is that what
21 you're doing, or are you separating them out?

22 CHAIRPERSON HEATH: I think they were called
23 separately so --

24 MS. BLOOMFIELD: Okay.

25 CHAIRPERSON HEATH: -- I think just for

1 simplicity --

2 MS. BLOOMFIELD: Sure.

3 CHAIRPERSON HEATH: -- let's just do them each
4 -- and the same parties are all a part of the second.
5 So we'll just keep you up here and we'll keep going.
6 All right.

7 So, with that then does Office of Planning
8 have anything else you'd like to add?

9 MS. RAPPOLT: No, Office of Planning will
10 stand on the record in support of the application.
11 Thanks.

12 CHAIRPERSON HEATH: Okay. All right. Thank
13 you. We also have a letter recommending approval from
14 ANC 5D and a letter of no objection from Department of
15 Transportation. Is there anyone here from ANC 5D on
16 this application?

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

21 Then normally we would turn back to the
22 applicant for closing, but there's probably no reason
23 to. So if you're okay with us continuing?

24 MS. BLOOMFIELD: Yes. Thank you very much.

25 CHAIRPERSON HEATH: Thanks. All right. Then

1 the Board doesn't have any questions. Are we ready to
2 deliberate? All right.

3 I will then make a motion that we approve the
4 request for variance relief from 401.3 lot width, and
5 I'm sorry. Yeah, 401.3 lot width, and 2101.1 off-
6 street parking for Application No. 19231. Is there a
7 second?

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: All right. So the motion
13 carries.

14 MR. MOY: Staff would record the vote as five
15 to zero to zero. This is on the motion of Chairperson
16 Heath to approve the application as, for the relief
17 requested. And these are as shown on plans under
18 Exhibit 9. Seconded the motion, Vice Chair Hill.
19 Also in support, Mr. Peter May, Ms. Butani, and Mr.
20 Hinkle.

21 CHAIRPERSON HEATH: All right. Summary order.

22 MR. MOY: Thank you.

23 CHAIRPERSON HEATH: All right. So, you can
24 call the next.

25 MR. MOY: Yes. And the next is 19232, also of

1 Habitat for Humanity of Washington, D.C., also for
2 variance relief on a lot width, 401.3, off-street
3 parking requirements, 2101.1 construction of two new
4 flats, R-4 district, 1833 Central Place Northeast,
5 Square 4047, Lot 10.

6 CHAIRPERSON HEATH: All right. Just for the
7 record could you all introduce yourselves again?

8 MS. BLOOMFIELD: Good morning, Jessica
9 Bloomfield with the law firm of Holland and Knight.

10 MS. SLATTER: Good morning. Susanne Slatter,
11 President and CEO of Habitat for Humanity of
12 Washington, D.C.

13 MR. MROCZKOWSKI: And Nicholas Mroczkowski
14 with Stoiber and Associates Architects.

15 MR. FREEMAN: Kyrus Freeman, Holland and
16 Knight.

17 CHAIRPERSON HEATH: All right. Thank you. So
18 much like the last application I think this one is
19 fairly straight forward. And so if you're okay with
20 us proceeding on without a full hearing, we will.

21 MS. BLOOMFIELD: Thank you very much. Yes.

22 CHAIRPERSON HEATH: Thanks. Anything else
23 from Office of Planning?

24 MS. RAPPOLT: No. OP continues to support the
25 application.

1 CHAIRPERSON HEATH: All right. Thanks. And
2 we also have a letter of approval from ANC 5D and a
3 letter of no objection from DDOT. Still no one here
4 from ANC 5D. Is there anyone here wishing to speak in
5 support on this application? No one in support.

6 Anyone in opposition? All right. Then if
7 you're okay we can conclude and the Board can
8 deliberate.

9 Anyone want to make a motion?

10 MR. HILL: Yeah, just so people don't think
11 it's the same case.

12 CHAIRPERSON HEATH: Right. I know.

13 MR. HILL: I'll make a motion. Grant the
14 relief pursuant to 11-DCMR-3103.2 for variances from
15 lot width requirements under 401.3, and the off-street
16 parking requirements under 2101.1 to permit the
17 construction of two new flats in the R-4 district at
18 premises 1833 Central Place Northeast, Square 4047,
19 Lot 10, and ask for a second.

20 CHAIRPERSON HEATH: Second. Yep. So the
21 motion has been made and seconded. Any further
22 discussion?

23 [Vote taken.]

24 CHAIRPERSON HEATH: So the motion carries.
25 Thank you.

1 MR. MOY: Staff would record the vote as five
2 to zero to zero. This is on the motion of the Vice
3 Chair Hill for the relief requested. And these are
4 plans as shown on Exhibit 8. Also seconding,
5 Chairperson Heath. Also in support, Mr. May, Mr.
6 Hinkle, and Ms. Butani.

7 CHAIRPERSON HEATH: Summary.

8 MR. MOY: Thank you.

9 CHAIRPERSON HEATH:

10 MR. MOY: Okay. I believe the next
11 application is No. 19218 of, I'm going to spell this.
12 J-A-H-A-G-I-R-D-A-R, and Charles Bergen to the table,
13 as advertised for a special exception relief from the
14 accessory apartment requirements under 202.10. And
15 this is to permit an accessory apartment in an R-1-B
16 district, 1511 Lawrence Street Northeast, Square 4010,
17 Lot 38.

18 MR. BERGEN: Good morning. It's pronounced
19 Jahagirdar. Do I need to introduce it or --

20 CHAIRPERSON HEATH: Can you just introduce
21 yourself?

22 MR. BERGEN: Okay. My name is Charles Bergen
23 and I own the property with my fiancé, Sujatha
24 Jahagirdar. And it's a 1920's Sears house and it has
25 a --

1 CHAIRPERSON HEATH: That's fine for now.

2 MR. BERGEN: Okay.

3 CHAIRPERSON HEATH: Thanks. So this was
4 previously postponed in order to allow you to meet the
5 posting requirements --

6 MR. BERGEN: That's correct.

7 CHAIRPERSON HEATH: -- and you've since
8 posted.

9 MR. BERGEN: Yes, we have. Yeah.

10 CHAIRPERSON HEATH: Okay. Okay. Does the
11 Board have any other questions of the applicant?
12 Okay.

13 MS. BUTANI-D'SOUZA: I had one question. Is
14 the roofline changing at all with the addition? Are
15 you like, raising the height or anything?

16 MR. BERGEN: It's going up about two feet.

17 MS. BUTANI-D'SOUZA: Okay.

18 MR. BERGEN: The roofline.

19 CHAIRPERSON HEATH: All right.

20 MR. BERGEN: Wait a sec. It's been a busy
21 day. They were keep -- the original roofline was
22 fairly shallow, and when we got to -- when we pulled
23 the drywall off on the inside we realized there were
24 two by fours for the roof. And our original idea was
25 just to pop up a shed dormer in the back. Well, we

1 have to replace the entire roof if we do that, and
2 also the attic flooring. So, as we had to do that
3 we're doing a full second floor which is two -- it's a
4 shed dormer on the front and a shed in the back. So
5 it is going up.

6 We had submitted the drawings and I don't have
7 them in front of me. The overall building height is
8 like 22-9 or something. There's a two-story house on
9 each side which looked pretty similar. Actually, the
10 house on the right has the same roof line. It's just
11 been rotated 90 degrees. So.

12 MS. BUTANI-D'SOUZA: Thank you.

13 MR. BERGEN: Sure.

14 CHAIRPERSON HEATH: All right. All right.
15 So, I think then with that the Board doesn't have
16 anything else that we need to hear from you at this
17 time.

18 MR. BERGEN: Okay.

19 CHAIRPERSON HEATH: So if you're okay with us
20 proceeding on --

21 MR. BERGEN: Sure.

22 CHAIRPERSON HEATH: -- with a full hearing,
23 we'll turn to Office of Planning for any additional
24 comments.

25 MR. BERGEN: Okay.

1 MS. VITALE: Good morning, Madam Chair,
2 Members of the Board. Elisa Vitale with the Office of
3 Planning and we'll rest on the record in support of
4 the application and can answer any questions. Thank
5 you.

6 CHAIRPERSON HEATH: Okay. Does the Board have
7 any questions of Office of Planning? Okay.

8 We also have a letter from ANC 5D recommending
9 approval. Is there anyone here from ANC 5D? No. All
10 right.

11 And a letter of no objection from Department
12 of Transportation. Is there anyone here wishing to
13 speak in support of this application? Anyone in
14 support? Anyone wishing to speak in opposition? No
15 opposition. All right. So fairly straight forward.

16 So, again, normally we would turn back to you
17 for closing but I don't know that that's necessary.

18 MR. BERGEN: Yeah, I --

19 CHAIRPERSON HEATH: So, you don't want to talk
20 yourself into trouble. So, all right. So then, is
21 the Board ready to deliberate on this? All right.

22 Based on the information that we've received,
23 and now the posting requirements being met, I'll make
24 a motion that we approve the request for special
25 exception and the accessory apartment requirements to

1 permit an accessory apartment at 1511 Lawrence Street
2 Northeast under Application No. 19218.

3 MS. BUTANI-D'SOUZA: Seconded.

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

6 [Vote taken.]

7 CHAIRPERSON HEATH: The motion carries.

8 MR. BERGEN: Great. Thank you very much.

9 CHAIRPERSON HEATH: Thank you.

10 MR. MOY: Staff would record the vote as five
11 to zero to zero. This is on the motion of Chairperson
12 Heath for the relief being requested as shown on plans
13 under Exhibit 24. These are the revised plans.
14 Seconding the motion is Ms. Butani. Also in support,
15 Mr. Peter May, Vice Chair Hill, and Mr. Hinkle.
16 Motion carries, Madam Chair.

17 CHAIRPERSON HEATH: Thank you. Summary, Mr.
18 Moy.

19 MR. MOY: Thank you.

20 CHAIRPERSON HEATH: So, I think we have two
21 cases left. If we could do Case No. 19211 and then
22 we'll come back to the first on our agenda.

23 MR. MOY: Right. Very good. Parties to the
24 table to Application No. 19211 of Kathryn Johnston,
25 advertised and captioned for special exception relief

1 under 223, not meeting the lot occupancy requirements,
2 403.2, court width requirements, 406, nonconforming
3 structure requirements, 2001.3. This is for a second
4 story addition to an existing one-family dwelling, R-4
5 district, 629 L Street Northeast, Square 856, Lot 166.

6 CHAIRPERSON HEATH: All right. Good morning.
7 Would you all please introduce yourselves?

8 MS. JOHNSTON: Yes, I'm Kathryn Johnston. I'm
9 the applicant and the homeowner.

10 CHAIRPERSON HEATH: Make sure your mic is on.

11 MR. MILLHOLLAND: Good morning. I'm Bill
12 Millholland with Case Design Remodeling.

13 CHAIRPERSON HEATH: Okay.

14 MR. WAGUESPACK: My name is David Waguespack
15 with Case Design and Remodeling.

16 CHAIRPERSON HEATH: Okay.

17 MR. HILL: I'm sorry, Mr. Millholland, could
18 you just repeat your name again for the record?

19 MR. MILLHOLLAND: I'm sorry. Bill Millholland
20 with Case Design Remodeling.

21 MR. HILL: Thank you.

22 CHAIRPERSON HEATH: Okay. All right. So on
23 its face this application seems fairly straight
24 forward but you do have some opposition that the ANC
25 had to this, and it looks like it might be based on an

1 early meeting with them and that you've done some work
2 since then.

3 Can you just talk about what --

4 MR. MILLHOLLAND: Yeah, we have. We did meet
5 with the ANC and there was, not opposition to the
6 project, but more procedural opposition for some
7 stamps from structural engineers, some fire rated wall
8 assemblies. It was more relating to that. And
9 honestly we had not prepared for that. We were more
10 looking for their feedback on what we were proposing
11 to do from a zoning perspective. We certainly will
12 comply with all regulations, everything that DCRA will
13 require to permit the project. But we felt that at
14 that time we would be discussing impact on neighbors,
15 zoning issues, the open court, those sorts of things.
16 So we just weren't prepared to deal with that.

17 We have now stamped structural drawings. We
18 have letters from neighbors. We've done all of those
19 things that had been requested.

20 CHAIRPERSON HEATH: Okay. And we saw all of
21 the letters in the file, so it seemed like you didn't
22 have any of those when you met with the ANC.

23 MR. MILLHOLLAND: Exactly.

24 CHAIRPERSON HEATH: They particularly brought
25 up your neighbor at 627. Have you spoken to them

1 because I notice they're not one of the neighbors who
2 have submitted a letter?

3 MS. JOHNSTON: You have my letters? All of
4 the neighbors on both sides, both sides have submitted
5 -- there should be something on the file now.

6 CHAIRPERSON HEATH: Okay. Got it.

7 MS. JOHNSTON: Do you see it? Yeah.

8 CHAIRPERSON HEATH: Yes, we do.

9 MS. JOHNSTON: Good. Yeah.

10 MR. MILLHOLLAND: From 627.

11 MS. JOHNSTON: From 627, right?

12 MR. WAGUESPACK: 627 was, his support letter
13 was added after the other support letters.

14 CHAIRPERSON HEATH: Got it.

15 MS. JOHNSTON: Yeah. He was in Kirgizstan, so
16 he was a little --

17 CHAIRPERSON HEATH: I understand.

18 MS. JOHNSTON: Little difficult to reach him
19 but we eventually did. So I think you have an e-mail
20 record, on record there.

21 CHAIRPERSON HEATH: We do. Yes.

22 MR. MILLHOLLAND: Do you have that? I have
23 it.

24 CHAIRPERSON HEATH: It is --

25 MR. MILLHOLLAND: Okay.

1 CHAIRPERSON HEATH: -- in our file, yes.

2 MS. JOHNSTON: Thank you.

3 CHAIRPERSON HEATH: Thank you for getting
4 that. That was just the one that I wanted to bring up
5 since the ANC specifically pointed to that; that
6 address. Okay.

7 All right. So, any other questions of the
8 Board? Okay. All right. Then I don't think we're
9 going to need a full presentation from you. Again, if
10 you're okay with us proceeding on.

11 MR. MILLHOLLAND: I think your advice to not
12 talk our way out of this is well heard and we
13 appreciate it. Thank you.

14 CHAIRPERSON HEATH: Sure. Okay. All right.
15 Thank you.

16 Anything additional Office of Planning would
17 like to add?

18 MS. FOTHERGILL: Office of Planning rests on
19 the record in support of the application.

20 CHAIRPERSON HEATH: Okay. All right. Thanks.
21 All right. So is there anyone here from ANC 6C? All
22 right.

23 MR. MILLHOLLAND: Not that I'm aware of.

24 CHAIRPERSON HEATH: We still have a letter
25 recommending denial from them but we understand that

1 you've done the work that they were -- that was
2 causing their opposition. And so we appreciate that
3 you've done that and I just want to state for the
4 record that we do have that letter recommending
5 denial, even though we know you've met their
6 requirements.

7 We also have a letter from DDOT recommending
8 no objection, and a number of letters from your
9 neighbors indicating their support, and including both
10 adjacent neighbors now.

11 Is there anyone here wishing to speak in
12 support of this application? Anyone in support?
13 Anyone here wishing to speak in opposition? No
14 opposition? All right. Then, we'll turn back to you.

15 Probably not necessary for you to make any closing,
16 and so we'll --

17 MR. MILLHOLLAND: I think we're good. Thank
18 you.

19 CHAIRPERSON HEATH: We'll conclude then. Is
20 the Board ready to deliberate on this? All right.
21 Then I will make a motion that we approve the
22 requested relief under 223 for 403, lot occupancy and
23 406 court as well as 2001.3 for nonconforming
24 structure for Application No. 19211.

25 MS. BUTANI-D'SOUZA: Seconded.

1 CHAIRPERSON HEATH: And the motion has been
2 made and seconded. Any further discussion?

3 [Vote taken.]

4 CHAIRPERSON HEATH: The motion carries. Thank
5 you.

6 MR. MILLHOLLAND: Thank you.

7 MS. JOHNSTON: Thank you.

8 MR. MOY: Staff would record the vote as five
9 to zero to zero. This is on the motion of Chairperson
10 Heath to approve the relief requested. These are
11 plans as shown under Exhibit 27. Seconding the
12 motion, Ms. Butani. Also in support, Mr. Peter May,
13 Vice Chair Hill, Mr. Hinkle, and yeah, motion carries.

14 CHAIRPERSON HEATH: Summary.

15 MR. MAY: Can't do a summary because the ANC
16 was in opposition.

17 CHAIRPERSON HEATH: Yes. Good point.

18 MR. MAY: So, I mean, it's kind of -- I don't
19 know how long it takes to get a full order but it may
20 actually be better not to make a decision and get a
21 revised letter from the ANC to get a summary order.

22 CHAIRPERSON HEATH: Could be.

23 MR. MOY: Yeah, could be.

24 CHAIRPERSON HEATH: I know in the past we've
25 done a modified -- like a summary but with more

1 emphasis on the fact that the ANC might have been in
2 dispute.

3 MR. MOY: Yeah, I --

4 CHAIRPERSON HEATH: Just a quick question for
5 you. Given the work that you've done do you think
6 that the ANC would be willing to submit an approval
7 letter?

8 MS. JOHNSTON: I can't imagine why they
9 wouldn't. The only thing that we have here is a bit
10 of a kind of a technical glitch with the ANC as I
11 understand it, overstepping a bit what is actually
12 their purview, and if they had to reverse themselves
13 they would then have to go kind of on record saying we
14 overstepped a bit.

15 So, I think that that was kind of the gray
16 area. But if you wish me to approach the ANC and ask
17 them for a formal reversal of their opposition I will
18 certainly do that. It's up to you to decide what
19 you'd like us to do.

20 MR. MAY: Madam Chair, I mean, is it
21 conceivable that we could go ahead with it as it is
22 and leave the order question up in the air, but leave
23 the record open to receive that from the ANC? And
24 then if it's received in time then perhaps a summary
25 order could be done. I wouldn't be able to predict

1 whether a summary order can be done. I don't know
2 whether Mr. Ebi can opine on that. Maybe it's a
3 little harder question than you can handle at this
4 moment, but without the advice of some of the -- with
5 Mr. Bergstein, perhaps.

6 CHAIRPERSON HEATH: I would be fine to --

7 MR. MAY: Yeah.

8 CHAIRPERSON HEATH: -- leave it, leave the
9 record open just for that letter.

10 MR. MAY: Yeah.

11 CHAIRPERSON HEATH: And hold an order until --

12 MR. MAY: Until we receive it, yeah.

13 CHAIRPERSON HEATH: -- we receive it. Or
14 something.

15 MR. MAY: And if we don't get it then, you
16 know, the decision stays the same and they just have
17 to write a full order. It takes a little longer.

18 MR. MOY: From the staff's side, Mr. May is
19 correct. It would facilitate our efficiency with a
20 revised ANC letter. But if not, then we have to go to
21 the other alternative.

22 MR. MILLHOLLAND: Okay. So we will endeavor
23 to get you a letter.

24 CHAIRPERSON HEATH: Thank you. All right. So
25 when you're ready, Mr. Moy, you can call 17535A.

1 MR. MOY: Okay. That would be Application No.
2 17535A of Mary Goodman as amended. This is captioned
3 and advertised for a special exception relief under
4 Section 223, not meeting the rear yard requirements
5 under 404. There is a revised self-certification
6 under Exhibit 32 in the record.

7 And let's see. Finally, Madam Chair, there is
8 an ANC 2E report in the record, and to note that
9 embedded in the letter there is a request from the ANC
10 to -- of the Board to defer -- I'm assuming to the
11 Board to defer decision as opposed to defer the
12 hearing until the alley issue is clarified. But I'll
13 leave that to the Board.

14 CHAIRPERSON HEATH: Sure. Thank you. Would
15 you all please introduce yourselves?

16 MS. MOLDENHAUER: Meredith Moldenhauer from
17 the law firm of Griffin, Murphy, Moldenhauer & Wiggins
18 on behalf of the applicant.

19 MR. MARKUS: Rich Markus, an architect.

20 MS. GOODMAN: Mary Goodman, 3254 O Street, the
21 applicant.

22 CHAIRPERSON HEATH: Okay. So as Mr. Moy
23 pointed out, we do have that letter from the ANC. I
24 interpreted that to mean deferral of a decision, not
25 deferral of this hearing. So if -- are you ANC?

1 MR. JONES: ANC. I can comment towards that.

2 CHAIRPERSON HEATH: Okay. Do you want to just
3 -- why don't we address that from the beginning?

4 MR. JONES: Okay.

5 CHAIRPERSON HEATH: Sure. If you could come
6 forward, please?

7 MR. JONES: Go ahead. Jeff Jones, ANC 2E
8 Commissioner. This is within my single-member
9 district. And we're asking for the hearing to be put
10 on hold because there's a dispute over a private alley
11 lot that's adjacent to this property that's been
12 ongoing quite some time with the OAG's office, and
13 with counsel for possible imminent domain and we were
14 just asking to postpone this hearing until that matter
15 is resolved. And then if it's -- and then based on
16 your decision if you want to continue the hearing then
17 I'm already prepared to do that as well.

18 CHAIRPERSON HEATH: Okay. I was prepared to
19 go forward with the hearing but postpone a decision.
20 But you think -- you've indicated that this alley
21 issue has been going on for a while.

22 MR. JONES: Probably a couple years or longer.
23 And basically it's a -- there are tax lots that were
24 purchased and our position is they're unbuildable lots
25 and it's kind of holding up a lot. But we really --

1 it's undetermined still today, what's going to be
2 occurring, whether there's going to be any properties
3 built there or not. That decision hasn't been made
4 yet. But again, it's under dispute and the latest
5 understand within the OAG's office and discussing with
6 the owner of the tax lots about trying to resolve this
7 matter.

8 Also I testified at a committee, the whole
9 hearing Council Member Mendelson chaired regarding
10 possible imminent domain proceedings as well. But the
11 matter is, it still hasn't been resolved whether these
12 tax lots are buildable or not.

13 MR. HILL: When do you think they're going to
14 be resolved?

15 MR. JONES: I wish I could answer that.

16 MR. HILL: No, no, I'm just -- but you said
17 it's been going on for years.

18 MR. JONES: I have -- I really don't. I
19 really have no idea.

20 MR. HILL: So it could go on for years?

21 MR. JONES: I don't know. Months, years,
22 weeks. I don't know. I don't have an answer. But
23 because you know, we might be proceeding with
24 something going forward here, then these turn out to
25 be buildable lots, it could be a real conflict. So

1 that's why we put that -- we want to make sure you're
2 aware of this and requested the hearing to be put on
3 hold until that matter is resolved.

4 But finally, if the hearing continues I'm
5 prepared to make statements today and so forth.

6 CHAIRPERSON HEATH: Okay. It's just, because
7 we have no sense it's not as though we think that this
8 could be resolved in a few weeks or a month, it's
9 just --

10 MR. JONES: I have no idea.

11 CHAIRPERSON HEATH: -- it's been going on for
12 so long.

13 MR. JONES: I'm just giving you the
14 information.

15 CHAIRPERSON HEATH: Sure. And I appreciate
16 that. It's great that you're here --

17 MR. JONES: Sure.

18 CHAIRPERSON HEATH: -- so that you can help us
19 get clarity on this.

20 And just so I understand, does the applicant
21 have access through the alley at this time to your
22 property?

23 MS. MOLDENHAUER: So let me just -- obviously
24 one, we strenuously object to any postponement or
25 delay of even a decision based on an issue that is

1 outside the scope of this property itself.

2 MR. MAY: Answer the question.

3 MS. MOLDENHAUER: Oh, right.

4 CHAIRPERSON HEATH: Yeah.

5 MS. MOLDENHAUER: Well, I'd like to address
6 and respond to --

7 MR. MAY: No, we want you to answer the
8 question.

9 MS. MOLDENHAUER: -- that in a moment but the
10 answer is that right now, yes, all of the property
11 owners both on O Street and on, what is it, N, all
12 have access to the alley and are driving over the
13 property that is privately owned and in dispute.

14 The aspect of this project would be able to be
15 access from O Street and would not need access from
16 the alley if that was at any point ever determined to
17 be closed off.

18 CHAIRPERSON HEATH: See, but you would still
19 need access to the garage from --

20 MS. MOLDENHAUER: For purposes of parking a
21 car --

22 CHAIRPERSON HEATH: -- through the alley for
23 parking.

24 MS. MOLDENHAUER: -- but that's not --

25 CHAIRPERSON HEATH: But not for the --

1 MS. MOLDENHAUER: -- part of this application.
2 The application is only for the accessory dwelling
3 unit, which could be accessed from the street.

4 CHAIRPERSON HEATH: Okay.

5 MS. MOLDENHAUER: It would not need to be
6 accessed from the alley if that was at any point in
7 time closed.

8 MR. MAY: Does the addition of the accessory
9 apartment trigger a parking requirement that's
10 addressed by having those four parking spaces?

11 MS. MOLDENHAUER: No, it does not trigger a
12 parking requirement, and it was also a historic
13 building so there would be no parking requirement in
14 that regard. And so obviously there's a benefit of
15 having those four parking spaces, but we don't believe
16 that it is something that would affect the relief of
17 the request that we're asking for today.

18 MR. MAY: Right.

19 MS. MOLDENHAUER: If I may respectfully
20 address the request for postponement.

21 CHAIRPERSON HEATH: Uh-huh. Sure.

22 MS. MOLDENHAUER: Thank you, Chairman Heath.

23 I just want to point the Board to a specific
24 BZA case, Case 18398, which I believe is specifically
25 on point. This was decided and issued a decision on

1 January 8th, 2013 where there was questions of an
2 easement. Here we obviously have questions of
3 possibly eminent domain or prescriptive easements over
4 private property, but in that case the Board
5 determined that the standard was a 223 standard and
6 that the scope of the Board's authority, I'm quoting,
7 "Is defined by the statute." And because those
8 requirements do not address the issue related to the
9 neighbor's expectation of a compliance with an
10 easement, any elements of adjoining to that property
11 that the Board lacks the legal authority to deny the
12 application solely based on the grounds of the
13 concerns of the violation of an easement.

14 Here, we believe the same issue is a parallel
15 issue and that, you know, any claims or discussion, we
16 know that there was a filing last night by the
17 individual who owns these tax lot alley properties,
18 and that there was claims that, you know, there would
19 be an issue here. We believe that those are not
20 germane to the 223 standard that we are seeking, and
21 would ask that it not delay the proceedings. Thank
22 you very much.

23 CHAIRPERSON HEATH: All right. Thank you. I
24 don't know how the Board feels about this but I think
25 that given the applicant has indicated that access to

1 this apartment would be from O Street and not from the
2 alley, it does seem that while this alley issue is a
3 major one and hopefully is resolved soon, we have no
4 idea when. It's still an issue but it doesn't seem to
5 be an issue that would directly impact the ability for
6 them to have this apartment and to be able to access
7 it.

8 So if the Board is okay with proceeding --

9 MS. BUTANI-D'SOUZA: I would tend to agree.

10 CHAIRPERSON HEATH: -- to a hearing.

11 MR. MAY: It certainly makes sense to me that
12 we would have the hearing. Whether or not we can
13 decide it, I mean, who knows what we'll hear in
14 testimony today. We'll listen to what is said and we
15 can figure out where to go from there.

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

17 MR. JONES: That's fine. We'll continue then,
18 and I'm prepared. So should go back then and wait --

19 CHAIRPERSON HEATH: It's up to you. You can
20 stay there if you'd like.

21 MR. JONES: Okay. I'll stay here then.

22 CHAIRPERSON HEATH: But we will come back to
23 you.

24 MR. JONES: All right. Thank you.

25 CHAIRPERSON HEATH: At the appropriate time

1 during the hearing.

2 MR. JONES: Great.

3 CHAIRPERSON HEATH: All right. So and we're
4 going to allow you to make your presentation. And
5 we've talked about the issues of access and the alley
6 issue I think we're also going to need to talk about
7 the conditions put forth by Office of Planning and how
8 you're addressing those modifications to the drawings.

9 MS. MOLDENHAUER: Yes, we can address those
10 and we also filed. I apologize for the late filing.
11 We requested relief for that to be accepted by the
12 Board, but that did provide some additional
13 illustrations of the compliance based on conversations
14 with Office of Planning, and I believe those addressed
15 the questions that OP raised.

16 CHAIRPERSON HEATH: Okay.

17 MS. MOLDENHAUER: We can walk through that.

18 CHAIRPERSON HEATH: That would be helpful.

19 MS. MOLDENHAUER: I'm having just some
20 technical difficulty. The computer indicated that it
21 was too full to be able to open up the images. So
22 bear with me one moment. I apologize.

23 [Pause.]

24 MR. JONES: Excuse me. If it's not working
25 how long do we have to wait?

1 MS. MOLDENHAUER: We can proceed. I mean,
2 what we'll do is we'll just proceed without the image.
3 We have some images that I think are very helpful,
4 that we're trying to at least get a hardcopy made of
5 that. And but we'll go ahead and proceed with that.

6 MR. MAY: They're different from what you
7 submitted?

8 MS. MOLDENHAUER: I think some of them were
9 just -- one of the things that we did was we pulled
10 together some images of the local community and some
11 other -- in other words, the character of scale --

12 MR. MAY: So you haven't submitted them to the
13 record yet.

14 MS. MOLDENHAUER: We have not submitted those.
15 And but that's the only thing that would be new. And
16 we'll try to get copies of those right now.

17 So, we will just go ahead and get started
18 without the PowerPoint, and if we can pull that up at
19 a later date, that would be great.

20 CHAIRPERSON HEATH: Okay.

21 MS. MOLDENHAUER: So the property is located
22 in Georgetown and is a -- I'm trying to pull it up on
23 Google Images. It is a fully detached property as you
24 view it from O Street. The property is located in the
25 R-3 zone. What we're seeking here, it's actually it's

1 very similar to one of the cases that you just granted
2 earlier in the R-1-B zone. We're seeking special
3 exception relief for an accessory dwelling apartment
4 building for an individual who would be maintaining a
5 primary residence at the property for the period of
6 time in which they would be occupying and using the
7 residence.

8 Here, you can see that the images actually --
9 the property is a double-wide lot. The lot is 5,533
10 square feet. It is substantially larger than all of
11 its comparable lots within the square. The other lots
12 in the square are between, you know, 667, 1,000, 935,
13 315, 3150 square feet. There is only one other lot
14 within the square that is 4,000 square feet that we
15 would even meet the minimum square foot requirement
16 for the R-3 accessory dwelling apartment building
17 project.

18 If you could see the image. The property is,
19 I apologize, a fully detached and it is actually also
20 set back. The image from the street on O Street will
21 not change. One of the issues that came up was
22 accessibility. Because the property is fully detached
23 and that is not going to change based on the proposed
24 accessory dwelling unit, the -- in other words the
25 standard, that is one factor and it's a very unique

1 factor. A lot of the properties in Georgetown are
2 either semi-detached or are full row structures in the
3 surrounding community.

4 I also will provide an opportunity for the
5 user of the accessory dwelling unit to gain access
6 from O Street and would not be required to gain access
7 by the private property, the private alley in the rear
8 of the property.

9 As I indicated, the property is exceptionally
10 large. It's 5,533 square feet. It is a two-story,
11 one-family dwelling. It has an existing 91-foot rear
12 yard. It has an extremely large open rear yard. We
13 had some images that are part of the record as well of
14 the open nature of the rear yard and the number of
15 trees that are in the middle of the rear property of
16 the applicant. And in fact that will not change and
17 there's substantially well maintained open space that
18 will also not be changed by the proposal. There's a
19 one-story accessory garage currently that is existing
20 on the property. That garage abuts a 22-foot private
21 alley. Twenty-two feet is a very private alley, I
22 think for most areas. And so that also contributes to
23 the high quality of light and air that is provided to
24 all of the surrounding community owners in this
25 neighborhood.

1 We have some pictures that are interview he
2 record for your reference at Exhibit -- sorry. They
3 are at Exhibit 8. So if you flip to Exhibit 8 in your
4 record there are images of the alley condition and
5 what it appears to be from the alley. And if you go
6 to Exhibit 8A-003. I'll give you a moment to pull
7 that up. And we're actually -- we're providing copies
8 of this actually in a larger version for all of the
9 Board members.

10 But if you look at Sheet A003 on the large 11
11 by 17 you can see an image of the existing conditions
12 along the alley that are there with the property at
13 3259 N Street, being an almost identical two-story
14 structure that is being proposed. And you can see the
15 large heights of the other properties, including 3250
16 O Street which has a double heighted garage structure
17 as well. Give the Board a moment to --

18 MS. BUTANI-D'SOUZA: Can I just ask a question
19 since you're discussing the view of the new structure?

20 I believe it was in -- I don't know if it was in a
21 letter or if it was in something from the ANC. They
22 noted that you've said that you can't see the addition
23 from O Street, but they noted that you can see it
24 from, I think N Street and 33rd Street. Can you
25 address that?

1 MS. MOLDENHAUER: Let's see here. If you look
2 at -- I believe if you look at A001, which is part of
3 the larger printout that we just provided you, you can
4 see it's boxed in a black box. You can see the image.
5 There will be, and I think Office of Planning in
6 their report does acknowledge that there will be some
7 small degree of visibility of this, but we don't
8 believe that that is an obstacle in regards to
9 changing or having an undue substantial, undue, which
10 is the standard, substantial undue impact on the
11 character of the neighborhood. We have and we'll
12 provide handouts of some images of other properties in
13 the local community that have other similar
14 appearances, and we believe that the project, as
15 proposed, will be in character with the community even
16 though it will be seen, to some degree, slightly from
17 the alley.

18 MS. BUTANI-D'SOUZA: Okay.

19 MS. MOLDENHAUER: At this point in time I'll
20 turn over to Mr. Markus in order to kind of walk
21 through the architectural plans of both the existing
22 condition and then the proposed structure.

23 MR. MARKUS: Thank you. Just to be clear,
24 too, you just mentioned where you would see it. It's
25 from the two side streets that abut the alley, so it's

1 32nd and 33rd. And you see it just in what she
2 pointed out.

3 So, what we're proposing is to add a second
4 story on top of the existing accessory garage,
5 actually making it larger. Right now it does not butt
6 up against the property line at the alley, so we're
7 pushing it out four feet. I think it's four feet,
8 four, to the alley. And then putting the second story
9 on top.

10 The second story that Meredith pointed out
11 would be accessible from O Street because the house
12 has actually two side yards because it's set on --
13 it's fully detached. So you could walk down the side
14 yard and all the way back to the garage.

15 Also, we're attaching it to the main house
16 with two elements. One is a trellis down the center
17 of the property, and that's actually detailed on A.
18 There's a good elevation, two elevations of the rear
19 of the existing house, and kind of a partial elevation
20 of the side, which details on A307. Oh, there you go.

21 So that details, that's the picture on the
22 left is the rear of the house. And right in the
23 center you see the new trellis going right down the
24 center. And then to the right there is a -- we're
25 putting on a new porch on top of the existing stairs.

1 So the stair that leads up to the main level of the
2 house, the main first floor, that's existing. We are
3 putting a new covering over top of it. That's the
4 porch that you see up top with the railings and the x
5 design. And then the trellis comes below that at a
6 lower level, and they both attach at the bottom of the
7 stair. So it's a continuous covered walkway from the
8 accessory building back to the house, and then up to
9 the door. That's the main connection.

10 And I think that's pretty much it. Happy to
11 answer questions.

12 Okay. I can walk through this a little bit.
13 So this is the new proposal. This is the view. The
14 view on the left that you see, the north elevation,
15 that is the new elevation. We're keeping all the
16 windows and the center door that's on the first floor.
17 And then above is new, and we're just kind of
18 repeating the window patterns. And then on the alley
19 view, which is the south elevation, so that's new.
20 The garage doors are new. We're still maintaining
21 four parking spaces. But right now there are three
22 garage doors. So we're breaking it into two garage
23 doors. The door on the left has actually -- there's
24 an existing door there. We're replacing it. But the
25 location of the door is exactly the same.

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1 And then we're adding the second story with
2 the windows and you see the pitched roof on that.

3 MS. MOLDENHAUER: Are there any images or any
4 windows on the side of the proposed addition?

5 MR. MARKUS: No. It actually goes lot line to
6 lot line on the two sides, and it's a solid wall.

7 MS. MOLDENHAUER: So the only windows are
8 facing the alley or facing the inside of Ms. Goodman's
9 property.

10 MR. MARKUS: That's correct.

11 CHAIRPERSON HEATH: And I know you indicated
12 that you had some photographs of the surrounding
13 context. I'm just wondering if you -- if that's
14 something you can't pull up. But if you could speak
15 to that and how the finishes that you've selected are
16 in keeping with the context.

17 MR. MARKUS: The existing -- can you go back
18 to the elevation?

19 MS. MOLDENHAUER: This one.

20 MR. MARKUS: That one. Yeah. So if you go
21 back to the elevation page. So the existing building
22 is brick on the interior of the lot and we're
23 replicating that and taking that up another story, and
24 actually keeping the majority of that intact on the
25 main level. And then as on the alley side, the idea

1 is to keep the same brick and match the brick, the
2 existing building, and use that on the alley side.

3 And then when you look at the view of the
4 different existing buildings in the alley and some of
5 the imagery, if you have that, of some of the other
6 buildings that they found and are expressed in photos,
7 the idea is that the brick -- we're kind of breaking
8 it into two garage pieces and the massing of it kind
9 of relates to the building that's directly across the
10 alley. And it just basically has the two windows
11 above each garage and it's basically relating to the
12 building across the alley and some of the other
13 proportions of the windows in the existing buildings.

14 CHAIRPERSON HEATH: Okay.

15 MR. HILL: Can you just show me what the
16 current south elevation looks like? Do you have a
17 photo of that?

18 MS. MOLDENHAUER: It's actually in the package
19 that you have. Page A002.

20 MR. MARKUS: So there's three garage doors and
21 there's a, to left side, there's an existing door.

22 MR. HILL: Thank you.

23 CHAIRPERSON HEATH: And is that small brick
24 portion that we see on the south elevation in the
25 current south elevation just the gate access? Looks

1 like the rest of that elevation is not brick.

2 MR. MARKUS: It's --

3 CHAIRPERSON HEATH: On the left side of --

4 MR. MARKUS: Right.

5 CHAIRPERSON HEATH: -- the photograph.

6 MR. MARKUS: That is a brick wall with a door
7 within it.

8 CHAIRPERSON HEATH: Okay. Okay. So there's a
9 brick wall along the side of the property and the door
10 that allows you to enter the back yard between the
11 current garage and the property line. Okay.

12 MR. MARKUS: Right. And we're keeping that.
13 What we're showing there is the same exact location of
14 the door, but we're replacing the door.

15 CHAIRPERSON HEATH: Got it.

16 MS. MOLDENHAUER: So I'll quickly, I'll walk
17 through, unless the Board has any other questions for
18 the architect.

19 MS. BUTANI-D'SOUZA: Can you talk a little bit
20 about this term, meaningful connection between the
21 structure and the main house? Or sorry, the accessory
22 and the main house. And I see that it's an open
23 trellis, so can you talk a little bit about how this
24 satisfies the requirement that this be one structure?

25 MR. MARKUS: Sure. It is a trellis, but it's

1 covered to a point where it's still defined as a
2 covered structure, and it's touching -- when you look
3 at it in plan, if you look at the site plan, which I
4 think --

5 MS. MOLDENHAUER: Which is up.

6 MR. MARKUS: Okay. Yeah, there. So the site
7 plan if you're looking at it from above, it's actually
8 the trellis is connecting the garage and it's going
9 straight back, and it's actually touching that
10 structure, which is covering the existing stair. So
11 that's a new structure. That's a balcony on top of
12 the second story. And from the top it's actually
13 touching the two. So the meaningful connection is
14 that it's part of the lot coverage. It's actually
15 covering the lot, both of those structures, and
16 touching at that point. Does that answer your --
17 clarification?

18 MS. BUTANI-D'SOUZA: Sure. Yeah.

19 MS. MOLDENHAUER: Just for a point of
20 reference, there are about four different cases where
21 this Board has approved meaningful connections. One
22 of them is Case 18398 in which it was a 223 under an
23 R-3 zone where there was a meaningful connection
24 connecting it via a trellis. And the Zoning
25 Administrator has found that so long as more than 51

1 percent of the trellis is covered to the sky, and that
2 it connects from a door access to a door access, and
3 then entire access is under roof, which is one of the
4 reasons why we went through this image to show that
5 it's all under roof in order to gain access from the
6 main building, all the way back to the garage
7 building, that it's deemed to be a meaningful
8 connection creating one single structure.

9 MS. BUTANI-D'SOUZA: Okay.

10 MR. MAY: I should note, this is not really
11 relevant to the case but this is something that was
12 redefined in the Zoning Regulations rewrite, so it
13 will change September 6th.

14 MS. MOLDENHAUER: September 6th. But we are
15 currently under the current regulations.

16 MR. MAY: This would not qualify as a
17 meaningful connection under the new regulations.

18 MS. BUTANI-D'SOUZA: Can you clarify what the
19 -- why it would not qualify under the new regulations?

20 MR. MAY: Well, I mean, we changed the rules
21 because -- not in response to this, but in response to
22 a whole series of things, and basically it has to be a
23 real building connection so it has to be fully
24 enclosed and it has to be heated and lit and all those
25 sorts of things. And it's because there are many

1 attempts to, you know, make things into a single
2 building in order to gain height and things like that.
3 You know, it's a way that you can manipulate the
4 regulations a little bit and we just thought it needed
5 clarity so that it was easier for this Board to decide
6 such things. But that doesn't happen until September
7 6th.

8 MS. MOLDENHAUER: Then we are currently under
9 the current regulations.

10 MR. MAY: Correct. You are.

11 MS. MOLDENHAUER: So, I will, if the Board is
12 at a point where I can walk through the legal standard
13 or I can either wait. I know that there are obviously
14 the ANC has concerns and we'd like to voice those, and
15 there are individuals in the audience. I can either
16 hold this for a conclusion and address it at that
17 point, or I can go through it now.

18 CHAIRPERSON HEATH: You can go through it now.

19 MS. MOLDENHAUER: Okay.

20 MR. MAY: Well, can I ask a question before
21 you do?

22 MS. MOLDENHAUER: Sure.

23 MR. MAY: So, where do you stand in terms of
24 historic preservation review?

25 MS. MOLDENHAUER: We are first going through

1 this body as you know, this case has gone before the
2 Board in different variations. So we felt as though
3 it would be prudent to go through the BZA first and
4 then following any decision we would then go to
5 Historic Preservation Review, so we have not embarked
6 on that process under this current proposal.

7 MR. MAY: Okay. I mean, we usually get things
8 after they go through HPRB, or at least get concept
9 approval. So it's a little bit unusual.

10 MS. MOLDENHAUER: There are a lot of cases
11 where, I mean, the applicant has the choice to
12 determine which agency to review first and we felt as
13 though that --

14 MR. MAY: Right.

15 MS. MOLDENHAUER: -- this was the larger
16 hurdle in regards to the consideration.

17 MR. MAY: So this case has a history, or not
18 this case, but there is history to doing this --

19 MS. MOLDENHAUER: To the property, yes.

20 MR. MAY: Attempting this change at this
21 property. And I seem to recall that at least one
22 point it was turned down on the Historic Preservation
23 side. Is that correct? I remember that correctly?

24 MS. MOLDENHAUER: There was a different
25 proposal that did have some questions, yes.

1 MR. MAY: So it was turned down at one point
2 by OGB or HPRB or?

3 MS. GOODMAN: They were concerned about
4 zoning. They started out saying they don't consider
5 zoning but they ended up by saying they were concerned
6 whether it would pass zoning. So that's why we came
7 here first.

8 MR. MAY: So they denied that. They denied it
9 on a basis. They just didn't make a decision?

10 MS. GOODMAN: They sort of -- it's a little
11 more complicated than that.

12 MR. MAY: Okay. So how long ago was that?

13 MS. GOODMAN: Three years.

14 MR. MAY: Okay.

15 MS. BUTANI-D'SOUZA: Sorry. I just want to
16 make sure that I'm understanding correctly. So you
17 believed that the BZA would be a larger hurdle than
18 the Georgetown -- Old Georgetown Board and the DC
19 Historic Preservation Office in this neighborhood.

20 MS. MOLDENHAUER: This is Georgetown, and so
21 obviously that comes with all of the beauty and also
22 the grandeur. And you know, neighbors. All areas of
23 the District of Columbia as this Board knows and as
24 our firm is aware, have different kind of unique
25 special review.

1 We felt as though it would be, given the fact
2 that this case has been before the Board in different
3 variations, that we come to the BZA first and then we
4 move forward to the other areas of, you know, review
5 second.

6 This case had come before the Board back in
7 2001 under a variance. This is not a variance. That
8 case had been denied. Then they came back before the
9 Board for a special exception which was granted. And
10 so we are here today for a special exception relief,
11 not for a variance.

12 MS. BUTANI-D'SOUZA: Can I ask a question
13 about how this impacts -- when the regulations change,
14 if this were to be approved by this Board, when the
15 regulations about meaningful connections change, does
16 that impact the decision?

17 MS. MOLDENHAUER: Not if it's already been
18 decided.

19 MS. BUTANI-D'SOUZA: Okay.

20 MS. MOLDENHAUER: Yeah, the Zoning Commission
21 determined any cases that come before this Board would
22 be vested under the current regulations.

23 MR. MAY: The special exception that was
24 approved is not the same as what you're requesting
25 today, though.

1 MS. MOLDENHAUER: The special exception that
2 was approved was for rear yard relief, and that is the
3 -- for rear yard relief we are asking for the same,
4 obviously, degree of special exception under 223 for
5 rear yard relief. So that is the same.

6 But then there is a second area of special
7 exception, which is the accessory dwelling unit, which
8 is a new area of relief that had not previously been
9 requested.

10 MR. MAY: Well, okay. Not as a special
11 exception but they're related.

12 MS. MOLDENHAUER: It had been -- I believe,
13 yeah.

14 MR. MAY: It had been requested as a variance.
15 The first step was, can we build an accessory
16 apartment. The second was, can we do the trellis and
17 the accessory apartment, and you got approval for the
18 trellis, but not the accessory apartment?

19 MS. MOLDENHAUER: It was just for the trellis.

20 MR. MAY: Yeah. With a promise that you
21 wouldn't build the accessory apartment.

22 CHAIRPERSON HEATH: Right.

23 MS. BUTANI-D'SOUZA: That was, I mean, facts
24 change, individuals -- that was when the applicant had
25 previously --

1 MR. MAY: I'm just trying to --

2 MS. MOLDENHAUER: -- been married. She is,
3 you know --

4 MR. MAY: -- trying to understand what the
5 facts were back then.

6 MS. MOLDENHAUER: The facts were simply,
7 originally that they were seeking a variance. So a
8 different legal standard under a request to house a --

9 MR. MAY: But that variance was denied, right?

10 MS. MOLDENHAUER: Yes, that's --

11 MR. MAY: So that's water under the bridge.

12 MS. MOLDENHAUER: Okay. And he special
13 exception --

14 MR. MAY: And then the special exception --

15 MS. MOLDENHAUER: -- was for the meaningful
16 connection.

17 MR. MAY: Which was granted but it was granted
18 under the condition that it would not include an
19 accessory apartment.

20 MS. MOLDENHAUER: It was granted --

21 MR. MAY: You would not pursue the accessory
22 apartment. And then it was never built.

23 MS. MOLDENHAUER: It was never built.

24 MR. MAY: Right.

25 MS. MOLDENHAUER: And so here --

1 MR. MAY: So now you're coming back for the
2 connection and you're basically trying to redo what
3 was done last time.

4 MS. MOLDENHAUER: We are trying to --

5 MR. MAY: When you got partial relief.

6 MS. MOLDENHAUER: We're trying to see -- I
7 think the best thing to do is, we are trying to seek
8 an addition for an accessory dwelling unit under
9 202.10 and a rear yard for relief under 223. And the
10 rear yard relief is the same relief that we're --

11 MR. MAY: Right. So I mean, you're asking
12 essentially for the same thing that was only partially
13 granted before and not fully granted.

14 MS. MOLDENHAUER: Yes. Yes.

15 MR. MAY: Okay.

16 MS. MOLDENHAUER: So I'll just walk through
17 the standard. For an accessory apartment building,
18 it's the 202.10. This is the same standard that was
19 approved earlier this morning under the R-1-B. There
20 are multiple conditions that are required so there are
21 some concerns in the record about this creating a
22 dangerous precedent, I believe is the terminology used
23 by one of the individuals in opposition. But we don't
24 believe that that is the case because you have to
25 actually satisfy a large host of conditions which

1 actually would exclude a majority of the Georgetown
2 homes in the surrounding area.

3 One, the lot has to have a minimum lot size of
4 4,000 square feet. There's only one other lot in this
5 square that actually meets that requirement. This
6 lot, our lot for the applicant is 5,533 square feet.
7 The house shall have at least 2,000 square feet of
8 gross floor area, exclusive of the garage space, which
9 this property complies with, showing that the
10 properties obviously have a large residential
11 property. The accessory apartment unit may not occupy
12 more than 25 percent of the gross floor area of the
13 home, which this applicant satisfies. The new
14 apartment may create -- be created only through
15 internal connections of the house without any addition
16 to the lot occupancy or gross floor area.

17 Under the Section I, which we'll go through,
18 you're allowed to waive two conditions. Here it is
19 obviously deemed to be an internal connection through
20 the meaningful connection of the property, but we are
21 adding gross floor area, so there is an addition above
22 the garage that is adding gross floor area that we're
23 asking for a waiver from.

24 E, in an additional entrance to the home is
25 created, it shall not be located on a wall of the

1 house that faces a street. Here, there are no walls
2 that will be added on O Street. The O Street image
3 will be absolutely the same. When someone walks by it
4 going down into Georgetown, when they are walking the
5 property will not appear to change at all. There will
6 be no entrances added that will be any different. As
7 Mr. Markus indicated the one side door exists on the
8 alley and is being maintained in its exact location.
9 There would be no appearance from the street of any
10 change.

11 F, that either the primary dwelling or the
12 accessory apartment must be owner occupied. Ms.
13 Goodman is intending to stay and reside in the main
14 property, and possibly use this for accessory rental
15 income. And then eventually when she retires possibly
16 move into the garage and remain there. This would
17 obviously, if it's approved by the Board, it would be
18 required that any individual owning the property would
19 have to have it as their primary residence or the
20 approval would then no longer be deemed permitted, or
21 the use would no longer be permitted.

22 G, the --

23 MS. BUTANI-D'SOUZA: Can I ask a question
24 about that?

25 MS. MOLDENHAUER: Sure.

1 MS. BUTANI-D'SOUZA: One of the things that
2 was noted in the case was, as you said, that the
3 intention is to use this as a rental property to
4 increase the stock of housing, affordable housing
5 available. I think you said affordable housing in the
6 case. I can't remember the exact terminology but I'm
7 sure you'll remind me. The intention was to increase
8 the stock of housing available in the District.

9 I'm just curious about whether the applicant
10 would be willing to also, I don't know what the right
11 term is, promise, I guess, that this would remain
12 rental housing after it's constructed in perpetuity,
13 that this accessory apartment would remain.

14 MS. MOLDENHAUER: I mean, it's the goal that
15 this would obviously be used as rental housing. I
16 mean, that's the purpose of the regulation is to allow
17 for an accessory. I don't think that it can be done
18 in perpetuity because if somebody ends up buying the
19 property and it's not -- she ends up selling the
20 property, there would be an issue then if then the
21 next owner would have to obviously use this as their
22 primary residence, or if they determined as in
23 Georgetown sometimes people don't have properties as
24 their primary residence, I think that that would be
25 possibly an issue.

1 I think that the goal is still the same but I
2 don't know if the applicant could agree to that.

3 MS. BUTANI-D'SOUZA: So, I'm sorry. Maybe I
4 misunderstood. I thought you were saying that after
5 the sale of the property in the future the following
6 owners would be required to use this as their primary
7 residence. So is there not the ability to also
8 require future owners to use the accessory apartment
9 as a rental?

10 MS. MOLDENHAUER: There could be, yes, as we
11 know that there are tools at our discretion, such as
12 covenant and agreements that that could be possibly
13 something. Obviously Ms. Goodman is looking at either
14 possibly, as I said, eventually retiring and moving
15 into the rental property. So it would have to be that
16 not just the accessory dwelling unit would always be
17 rented, because there might be a time where she
18 personally rents the accessory dwelling unit, and then
19 rents the house.

20 MS. BUTANI-D'SOUZA: Okay.

21 MS. MOLDENHAUER: But that could obviously be
22 something that the Board, if the Board wishes, could
23 be a condition.

24 MS. BUTANI-D'SOUZA: It just seemed like that
25 was an important part of your justification for the

1 accessory apartment that you were increasing the stock
2 of housing in the District of Columbia. So it would
3 seem to me that if you are making that argument that
4 it would be sensible to include that as a condition on
5 this order if we were to decide in favor that that
6 should be something that you commit to rather than
7 just possibly.

8 MS. MOLDENHAUER: We would not oppose that.

9 MS. BUTANI-D'SOUZA: Okay.

10 MS. MOLDENHAUER: On section G, the aggregate
11 number of persons that may occupy the house, including
12 the primary dwelling and accessory apartment combined
13 shall not exceed six. That is a stated condition that
14 we're not requesting relief from and would be complied
15 with.

16 H, that the accessory apartment may not be
17 added where a home occupancy is already located in the
18 property. There is no home occupancy permit that is
19 recorded here and we're not requesting relief on that
20 section H.

21 I, the Board may modify or waive not more than
22 two of the requirements specified in sections A
23 through H. And here, this is where we are requesting
24 pursuant to the regulations and the permitted
25 flexibility, two areas of relief or permit. Asking

1 one, when the meaningful connection is conducted the
2 property will transform from a, or convert from a
3 fully detached structure to a row dwelling. So we're
4 asking for relief from that condition, and then asking
5 from relief for the increase on the gross floor area.

6 As section 3 indicates, any request to modify
7 more than two transition to variance. We're not
8 asking for more than two reliefs so it still is within
9 the special exception standard, and there are cases
10 that would permit the detached relief to be granted,
11 and we've quoted those in our initial prehearing
12 statement as well.

13 Now, just to go to the standard, the special
14 exception standard regarding no unduly, substantial
15 undue impact on the character of the neighborhood. I
16 did hand out one copy and I apologize. Oh, the
17 PowerPoint is now uploaded. Technology. Okay. Is
18 now uploaded on to ISIS so everybody, if you had your
19 iPads you could actually access this. This is
20 PowerPoint, I believe, page 17 in your PowerPoint
21 presentation. Or should I -- 16, that is now uploaded
22 to ISIS. I don't know if I could access it through
23 this computer that way or not. I don't believe I can.

24 But so if you're looking at your PowerPoint,
25 PowerPoint page 16, just simply shows the fully

1 detached unchanged view of the property. And then if
2 you go to PowerPoint page 17 that has been uploaded on
3 ISIS, what we've done here, the yellow house box is
4 where the property is located. We have identified
5 five sites that are within the local neighborhood,
6 showing the exact image of other -- and I'll just
7 provide this to the ANC so that we're trying to --
8 there are, you can see, five images of other
9 comparables in ISIS --

10 UNIDENTIFIED SPEAKER: [Speaking off
11 microphone.]

12 MS. MOLDENHAUER: Slide 17. Yeah. They got
13 it. I'm sorry, is everybody -- we're working with.

14 So this shows that, you know, there are other
15 comparable within the character and nature of the
16 Georgetown community images, one through five. Image
17 2 shows a double car garage with, you know, mirroring
18 windows on the second story. Number 4, same thing.
19 You know, then you have a grouping of other, you know,
20 alley, two-story structures that we are proposing.

21 If you go to slide 18, this shows another
22 image which is a couple blocks away on Q Street.

23 MS. BUTANI-D'SOUZA: I have a question about
24 these images. Are these accessory apartments on top
25 of these garages?

1 MS. MOLDENHAUER: I don't know the uses. And
2 this is not for the purpose of saying that the use is
3 in character because the use is permitted by special
4 exception. This has to do with the image or the
5 appearance of the structure would be in character.

6 MS. BUTANI-D'SOUZA: Okay.

7 MS. MOLDENHAUER: So I don't know and I would
8 not represent to know what specifically these --
9 whether they're being used for storage or they're
10 being used for an art studio, which is permitted by
11 matter of right. Or whether people have come in and
12 gotten accessory dwellings, or that they're illegal.
13 But it's more for the special exception standard of
14 what is in keeping with the local community and
15 character of the design.

16 MS. BUTANI-D'SOUZA: Okay.

17 MS. MOLDENHAUER: And as Mr. Markus testified
18 to, right now the structure is wood and that they're
19 proposing to do a brick in similar materials and
20 concept which obviously would have to be approved by
21 OGB, but this shows another grouping of clusters. Ten
22 -- sorry, seven through 11 of two-story structures as
23 well in regards to, you know, the character and
24 concept of the neighborhood.

25 Under 223 for the rear yard relief, proposal

1 for the project right now, the garage structure is
2 occupying the rear yard. That will not be changing.
3 As similar as this Board found that the 223 for the
4 rear yard was appropriate and granted that relief.
5 And the project meets the 223 standards of having no
6 undue effect on the light and air, no undue impact on
7 the privacy, use, and enjoyment, and no visual
8 intrusion on the character or scope.

9 Lot occupancy in the R-3 shall not exceed 70
10 percent. This property is very unique. It's actually
11 -- the house only occupies about 20 percent of the lot
12 occupancy and the physical garage structure occupies
13 about another 20 percent. So the total building is
14 actually at about 40 percent, 42 percent of the total
15 lot. A lot of other homes in Georgetown are
16 extraordinarily much larger. They're occupying
17 between 60, 70 percent of lot occupancy.

18 This property, the primary residence itself is
19 actually only 20 percent, given the fact that it is
20 set back and detached on both sides.

21 MS. BUTANI-D'SOUZA: What is the lot occupancy
22 maximum for a detached structure?

23 MS. MOLDENHAUER: For a detached structure is
24 40 percent, but it's 50 percent by special exception.

25 MS. BUTANI-D'SOUZA: Okay. So this meet -- so

1 this is 40 percent which is the maximum for a
2 single --

3 MS. MOLDENHAUER: And 50 percent pursuant to
4 the accessory dwelling.

5 MS. BUTANI-D'SOUZA: Was there a special
6 exception granted to allow it to be 50 percent as a
7 single-family home?

8 MS. MOLDENHAUER: No, what would happen is by
9 connecting it and by building that trellis is where
10 we're adding the additional lot occupancy.

11 MS. BUTANI-D'SOUZA: Yeah. No, I understand
12 that. I'm just trying to understand that this -- so
13 this does -- this is not less than what it is
14 currently built to. In other words, this does not
15 occupy less than the single-family maximum, is what
16 you're saying because it's 40 percent.

17 MS. MOLDENHAUER: It's 40 percent. Yes, no.
18 So it's actually matter of right. It's complying now.

19 MS. BUTANI-D'SOUZA: Okay.

20 MS. MOLDENHAUER: And so, because it's 20 and
21 20 but then the addition is just the 2.3 percent for
22 the trellis.

23 MS. BUTANI-D'SOUZA: Okay.

24 MS. MOLDENHAUER: Which then is under the 50
25 percent requirement.

1 MS. BUTANI-D'SOUZA: Okay. So it's maxed out
2 now but if you make it into a row home by making the
3 garage wall to wall and then you --

4 MS. MOLDENHAUER: We're under the requirement.

5 MS. BUTANI-D'SOUZA: Okay.

6 MS. MOLDENHAUER: If you now switch to
7 PowerPoint Exhibit 21. What we've done is if you go
8 through the requirements for an accessory dwelling
9 structure and you determine whether they meet either
10 the minimum lot size or the requirement for being
11 detached, those would then determine that there's only
12 four properties within the immediate vicinity of the
13 area that actually would possibly comply. So the
14 concern about this creating -- this is slide 21, which
15 has the red blocks on them. It's a slide that is
16 meant to be persuasive in the fact that while there
17 are concerns by the neighbors of this creating a
18 dangerous precedent, because of the underlying
19 standards and the very large size requirements for a
20 home, meaning that it has to be over 4,000 square feet
21 in size, that the number of other Georgetown
22 properties that actually would be able to comply with
23 that are very limited and that they would still
24 require to go through the BZA for review.

25 If you go then now to PowerPoint, slide 22,

1 this is just an image of a -- yeah.

2 MR. MAY: Can we back up just one second?

3 MS. MOLDENHAUER: Sure.

4 MR. MAY: I mean, but everything, any time you
5 do an accessory apartment it would have to go to BZA
6 for approval right?

7 MS. MOLDENHAUER: Yes. Yes.

8 MR. MAY: So, but the requirement, with regard
9 to lot size is one of the waivable requirements?

10 MS. MOLDENHAUER: Yes, I believe it is. Yes,
11 it's one of the --

12 MR. MAY: So perhaps there is a reason for the
13 concern.

14 MS. MOLDENHAUER: It would have to go to the
15 BZA for review and we don't --

16 MR. MAY: Has to anyway.

17 MS. MOLDENHAUER: What?

18 MR. MAY: It has to anyway.

19 MS. MOLDENHAUER: It has to, yes.

20 MR. MAY: Yeah.

21 MS. MOLDENHAUER: And actually, well
22 Commissioner May, you brought up the ZRR. Under the
23 ZRR they actually are permitted accessory dwelling
24 units in all areas of the District as a matter of
25 right, except for in Georgetown, which the Georgetown

1 community lobbied for to have that specifically still
2 be maintained as special exception relief. So there
3 would still need to be this Board's review of any
4 other accessory dwelling units.

5 And this property is also --

6 MR. MAY: But when you bring cases before us
7 you're always citing the previous cases where we've
8 granted relief. So, I mean, all I'm saying is that we
9 can't dismiss the notion that this might be -- there
10 might be some precedent related to this.

11 MS. MOLDENHAUER: I think that every case is
12 unique in and of itself and if we do reference other
13 cases it is for parallel analysis. But at the same
14 time every case has to stand on its own. Not a lot of
15 other properties in Georgetown are fully detached as
16 this property is, from the front. So, you would have
17 to then either change the front façade of a structure
18 to provide access or have that possibly be visually
19 accessible for an accessory dwelling unit, which is a
20 unique factor.

21 MR. MAY: So, you're venturing apart from my
22 original point, but I accept that point. But I'm
23 going to write that down, parallel analysis. So
24 anytime somebody tries to cite a precedent I'll say,
25 well, that's not a precedent it's just a parallel

1 analysis.

2 MS. MOLDENHAUER: Illustrative for the point
3 of legal -- we are providing it as an illustrative
4 argument.

5 MR. MAY: Okay. Thank you.

6 MS. MOLDENHAUER: Well, every case is unique
7 before the Board and every property is unique as I
8 have been told by the Chair and other Chairs before
9 me.

10 So we were just trying, obviously though,
11 image on page 22 is the images just showing the light
12 and air that is available and the open nature of the
13 back yard. The degree and number of trees that are in
14 the back yard that provide both a benefit to the
15 surrounding property owners and that will be
16 unaffected or unchanged by the requested relief.

17 There have also been questions and concerns
18 that date back to some of the initial application's
19 concerns about obstruction of views, or views that
20 would be possibly impacted on to the 223 standard. We
21 just point to Case 18398, which I've referenced
22 before. More for that -- not for a parallel but more
23 as that fact that that Board was stating a point of
24 law. And that point of law is that under 223 that a
25 neighboring property does not require an unchanged

1 view of the applicant's lot from the adjoining
2 property, and that preservation of its existing
3 landscaping and a courtyard is not mandated by the
4 Zoning Regulations.

5 So I think what this is saying in kind of a
6 summary is, you're not entitled to a view of your
7 neighboring property owner and that by granting and
8 looking under the 223 standard, that is not part of
9 the Zoning Regulations, the fact that someone's view
10 may be changed. The standard is under a 223, whether
11 you have substantial undue impact on light and air and
12 privacy.

13 MS. BUTANI-D'SOUZA: Okay. Are you --

14 MS. MOLDENHAUER: So --

15 MS. BUTANI-D'SOUZA: Are you referencing a
16 case that pertains to landscaping?

17 MS. MOLDENHAUER: No, it had to do with a
18 neighboring property and it was seeking a 223 for, I
19 believe it was rear yard relief, and it was impact on
20 light and air and the Board was indicating that
21 because the neighbors were complaining that their view
22 was going to be changed --

23 MS. BUTANI-D'SOUZA: Because of a change in
24 landscaping?

25 MS. MOLDENHAUER: No, because of an additional

1 structure.

2 MS. BUTANI-D'SOUZA: I see.

3 MS. MOLDENHAUER: So, and existing landscaping
4 in a courtyard is not mandated. So it was changing
5 that the existing landscaping may have changed. And
6 they were looking on to a beautiful landscaped back
7 yard that was going to change.

8 MS. BUTANI-D'SOUZA: Okay.

9 MS. MOLDENHAUER: That being said, at this
10 point in time we believe that we satisfy the 223
11 standard and the special exception standard for the
12 accessory dwelling units. We will answer any
13 questions that the Board may have and then reserve
14 time for rebuttal.

15 MS. BUTANI-D'SOUZA: One of the things that
16 you mentioned was that an art studio is an allowed use
17 by right. You're saying that you don't require a
18 special exception to build an art studio above the
19 garage?

20 MS. MOLDENHAUER: An art studio is one of the
21 uses that you could locate above an alley dwelling or
22 in an accessory apartment.

23 MS. BUTANI-D'SOUZA: And why didn't the
24 applicant decide to do an art studio, because
25 presumably that would provide rental income as well?

1 MS. MOLDENHAUER: Ms. Goodman, if you can just
2 indicate why you -- if you --

3 MS. GOODMAN: Before I moved to D.C. I used to
4 teach porcelain doll making and this was originally
5 supposed to be my art studio. And I applied
6 originally for an art studio, but the neighbors kept
7 insisting that oh, no, no, no, she's building an
8 apartment. So that's what happened to my application.
9 And now I have to, you know, I haven't taught doll
10 making now for a long time so now it's an apartment
11 because the neighbors basically have forced me to
12 apply under an apartment.

13 MS. MOLDENHAUER: But that was back in --
14 right, that was back in 2001. So now your goal is to
15 have an accessory apartment now?

16 MS. GOODMAN: For me to retire into, yes.

17 MS. BUTANI-D'SOUZA: Okay.

18 MS. MOLDENHAUER: So they're no longer, the
19 goals are no longer to have an art studio. It's more
20 to have an accessory apartment building to have
21 additional income.

22 MS. BUTANI-D'SOUZA: Okay.

23 CHAIRPERSON HEATH: Any other questions from
24 the Board? All right. Okay. We'll get to him in
25 just a second.

1 All right. So, then if you're okay with us
2 proceeding on since there are no other questions from
3 the Board, I'd like to hear from Office of Planning
4 and where they stand based on the conditions that
5 you've put forward and the new proposed solution from
6 the applicant.

7 MR. MORDFIN: Good afternoon, I'm Stephen
8 Mordfin and the Office of Planning supports this
9 application subject to two conditions. One be that
10 the design reflect the accessory buildings along the
11 private alley and other alleys to the west. And the
12 primary reason for that is because under Section 202,
13 202I, 10.I, the Board shall -- it says any
14 modifications, you know, if they're waiving the
15 criteria for two of them, any modification shall not
16 conflict with the intent of this section to maintain a
17 single-family residential appearance and character.

18 And I don't think the use of the building is
19 relevant. It's what the building looks like compared
20 to what the other buildings look like. And so that is
21 why we put that first condition in there, that it
22 should reflect the other accessory buildings in terms
23 of what, you know, the roofing, the -- the roofing
24 materials, the bricks, the doors, the windows that it
25 matches those or is consistent with those. It doesn't

1 have to match, so that it maintains the single-family
2 residential appearance. It doesn't look like an
3 apartment building back there, it just looks like --
4 you know, it can look alike a two-story garage similar
5 to other two-story garages that are in that alley and
6 in the surrounding neighborhood.

7 The second condition that we put in was that
8 the applicant revised the drawings to indicate that
9 the trellis completely connect with the rear of the
10 house. The applicant submitted those drawings this
11 morning showing how it would connect and it would lead
12 up to the stairs into the house, just to make sure
13 that -- because it has to be one meaningful connection
14 and meaningful connection has been previously defined
15 as it's okay to be a trellis. I think the -- I think
16 your poles have to be a minimum of four feet on center
17 or something like that. So this will conform to that
18 and this will show that it will be then one structure.

19 It will convert it into a row house and then the
20 application then, will then conform to the other
21 requirements as provided in the R-3 district.

22 CHAIRPERSON HEATH: Okay. So based on the
23 design as the applicant has proposed it and presented
24 it today do you feel that based on what you know of
25 the neighborhood that it's in keeping with the design

1 of other properties nearby? Do you think it's --
2 their design is consistent?

3 MR. MORDFIN: I think it's --

4 CHAIRPERSON HEATH: Do you think they've met
5 your first condition?

6 MR. MORDFIN: I do believe they've met the
7 first condition. There are other two story garages
8 with similar roof lines, windows on the second floor.
9 So, and they're not all the same. If you go up and
10 down the alleys, I don't know that you're going to
11 find two of them that are exactly the same. So it
12 just has to be generally consistent with, you know,
13 giving the appearance of a two-story garage.

14 CHAIRPERSON HEATH: Okay. Okay. Board, any
15 other questions of Office of Planning?

16 MR. MAY: So, this case has been before the
17 Board several times. The Office of Planning must have
18 opined on some of the previous applications. Did you
19 recommend support of the special exception relief, I
20 think which was the most recent one having to do with
21 I guess the apartment and the trellis connection?

22 MR. MORDFIN: You're speaking of the previous
23 application prior to this one?

24 MR. MAY: Yeah.

25 MR. MORDFIN: The one prior to this one was

1 just for the covered walkway.

2 MR. MAY: It was just for the covered walkway.

3 MR. MORDFIN: In 2006.

4 MR. MAY: Right.

5 MR. MORDFIN: And Office of Planning did
6 recommend approval of that application and the Board
7 did approve.

8 MR. MAY: Okay. Did you take a -- do a report
9 and have an opinion on the earlier variance case?

10 MR. MORDFIN: Oh, the earlier variance case
11 that was withdrawn in 2005?

12 MR. MAY: Yeah. Well, I don't know what it
13 was, but --

14 MR. MORDFIN: Okay. Well, in 2005 the
15 applicant did apply to allow for a second floor
16 addition to that same garage. But it was withdrawn
17 before --

18 MR. MAY: Before you had to --

19 MR. MORDFIN: -- we had a hearing.

20 MR. MAY: -- take a position.

21 MR. MORDFIN: Yeah.

22 MR. MAY: Okay. Thanks.

23 CHAIRPERSON HEATH: Were you asking about the
24 2001 variance request that was denied or --

25 MR. MAY: There was one in 2001 that was

1 denied as well.

2 MR. MORDFIN: In 2001 there was an application
3 to allow a second story addition to the garage for a
4 maid's quarters, which is only permitted in the R-1 --

5 MR. MAY: Right.

6 MR. MORDFIN: -- in R-1-B. And that was --

7 MR. MAY: And you recommended what? Did you
8 recommend anything at that point?

9 MR. MORDFIN: I don't have access to that
10 file. I don't know what the application --

11 MR. MAY: Right. Okay.

12 MR. MORDFIN: What the file was. I mean, what
13 the recommendation was.

14 MR. MAY: Okay. Thank you.

15 MR. HILL: I just have a question of the
16 applicant. The walkway, so currently there's not a
17 covered walkway there, correct?

18 MS. MOLDENHAUER: No, there's no covered
19 walkway currently.

20 MR. HILL: And so in 2006 how come you guys
21 didn't build the trellis and the walkway?

22 MS. GOODMAN: I got divorced.

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

24 MR. MAY: Madam Chair, can I ask another
25 question of the applicant?

1 CHAIRPERSON HEATH: Sure.

2 MR. MAY: So going back to the question of
3 Historic Preservation Review, our review and approval
4 is based on what's submitted to us so if that changes
5 in any substantive way you'd wind up having to come
6 back here.

7 MS. MOLDENHAUER: So if the Board approves the
8 project they are approving the accessory dwelling
9 unit. If anything from a zoning perspective changed
10 in regards to lot occupancy or that changed if those -
11 -

12 MR. MAY: Well, it would be based on the
13 plans. I mean --

14 MS. MOLDENHAUER: On the plans.

15 MR. MAY: -- the plans become part of the
16 record.

17 MS. MOLDENHAUER: Yes.

18 MR. MAY: And become part of what's approved.

19 MS. MOLDENHAUER: And so if there are material
20 changes or things that are substantial, yes, you will
21 come back for a minor modification.

22 MR. MAY: Right.

23 MS. BUTANI-D'SOUZA: I'm sorry. Is there a
24 notice requirement for a minor modification to the
25 plans?

1 MS. MOLDENHAUER: Uh-huh.

2 MS. BUTANI-D'SOUZA: What is that notice
3 requirement?

4 MS. MOLDENHAUER: I'm sorry.

5 MS. BUTANI-D'SOUZA: Is that the --

6 MS. MOLDENHAUER: Commissioner, I don't
7 believe you were on the record, on the mic. I
8 couldn't hear you.

9 MS. BUTANI-D'SOUZA: Oh, I'm sorry. I said,
10 is there a notice requirement for a minor modification
11 to the plans? Is that the two-year requirement?

12 MS. MOLDENHAUER: Yes, you have --

13 CHAIRPERSON HEATH: Two years.

14 MS. MOLDENHAUER: You have to notice all
15 individuals that were party to the original
16 application.

17 MS. BUTANI-D'SOUZA: So if it --

18 MS. MOLDENHAUER: You would have to notice the
19 ANC and provide notice to the Office of Zoning.

20 MS. BUTANI-D'SOUZA: And is it a two-year
21 notice requirement?

22 MS. MOLDENHAUER: No.

23 MS. BUTANI-D'SOUZA: No.

24 MS. MOLDENHAUER: The permit would be valid,
25 the order would be valid for two years. If we did a -

1 - we would have to go through, I believe it's like a
2 30-day notice.

3 MS. BUTANI-D'SOUZA: Okay.

4 MS. MOLDENHAUER: And then we would come
5 before the Board for them -- for this Board to vote
6 either to approve or to deny a minor modification of
7 the plans.

8 MS. BUTANI-D'SOUZA: And if that occurred
9 after the new regulations were in place with regard to
10 the meaningful connection, would we be required to
11 consider the new regulations or would we still
12 consider the old regulations?

13 MR. MAY: I mean, I'm not the Board's lawyer
14 but --

15 CHAIRPERSON HEATH: Yeah, right.

16 MS. BUTANI-D'SOUZA: Maybe I'm looking down
17 there at OAG.

18 MR. MAY: Yeah. Well, I mean, can I -- I'll
19 go ahead and opine on this, which is that it really
20 depends on the extent to which it changes. And if it
21 changes enough that we'd have to reconsider the nature
22 of that connection then it might not be in the minor
23 territory anymore, and if it becomes major then it
24 becomes subject to the new rules.

25 MS. MOLDENHAUER: And that's also, though, OGB

1 and Historic typically do not take into consideration
2 what's happening on the interior of a lot. This
3 trellis would be on the interior of a lot so the
4 likelihood that OGB will opine, I you know, would say
5 that it's less likely that they would opine on the
6 trellis itself, and so if there are modifications, but
7 you don't know.

8 MS. BUTANI-D'SOUZA: I'm under the impression
9 that OGB does sometimes opine upon the interior of
10 lots and of buildings.

11 MS. MOLDENHAUER: Typically when they're
12 historic structures you're talking about whether they
13 can remodel or change historic aspects of a property.
14 This is brand new construction or brand new
15 construction of the trellis.

16 MS. BUTANI-D'SOUZA: So the --

17 MR. MAY: Yeah, I wouldn't say that it's
18 necessarily off limits. But, I mean, you know, who
19 knows.

20 MS. MOLDENHAUER: Who knows.

21 MR. MAY: We can spin ourselves in circles if
22 we try to speculate too much. But I think that it's
23 an important point that you've got to follow up pretty
24 quickly, I think, with -- depending on where, you
25 know, if we decide to grant relief then you'd have to

1 follow up pretty quickly with your historic review and
2 make sure that it all falls into place.

3 MS. MOLDENHAUER: Yes. And it's obviously
4 there's a self-certified application and it's the
5 applicant's obligation to pursue that, you know. And
6 they are pursuing this at their own risk, obviously,
7 depending upon what possibly happens in the future in
8 regards to --

9 MS. BUTANI-D'SOUZA: So can I ask, I suppose
10 for the record or just because I'm curious, but why
11 not just wait until the new regulations go into place;
12 the new regulations regarding the meaningful
13 connection? In other words, why not just do the
14 historic process first rather than going through this?

15 MS. MOLDENHAUER: It's the applicant's choice.
16 We believe this that this was the best process to
17 move forward with this process. She's been obviously
18 waiting a long time to try to move forward and I think
19 this is her opportunity to either say, this is going
20 to happen, or you know, she's going to have to
21 consider her other options.

22 MS. BUTANI-D'SOUZA: Okay.

23 CHAIRPERSON HEATH: All right. Any other
24 questions from the Board? Okay. Then at this time
25 I'd like to hear from the ANC.

1 MR. JONES: Hi, thank you. Jeff Jones, ANC
2 2E. Good afternoon and thank you.

3 First I want to just say that I'm not a zoning
4 attorney, don't know a lot of technicalities. We deal
5 with a lot of different things as ANC commissioners.
6 We do have a pro bono counsel attorney, Rick Murphy,
7 who is out of the country. We did request through the
8 applicant's counsel that we postpone this for a week
9 to be heard so he could come back and join us here
10 today. He's not able to so I'd like to at least keep
11 the record open to give us that opportunity to
12 continue this. So I'm making that request first.

13 CHAIRPERSON HEATH: If we could -- I don't
14 know that the Board is going to be prepared to decide
15 on this today. I don't know where we stand.

16 MR. JONES: Okay. So I'd like to keep the
17 record open.

18 CHAIRPERSON HEATH: But we'll certainly consider
19 that request.

20 MR. JONES: Thank you. All right. And before
21 I read my statement I've just got to say that this has
22 been going on for about 15 years and I've been
23 commissioner now six years. A lot of frustration
24 through the -- all the surrounding neighbors. They've
25 all opposed this from the beginning whether it's going

1 to be doll making house, apartment, whatever. There's
2 a lot of frustration with this and that we're still
3 working through a lot of these minor technicalities
4 and a meaningful walkway that's meaningful only in way
5 of circumventing this law and a way to get this thing
6 into a place for producing rental income.

7 So there's a lot of neighbors here that are
8 not here today, but I've been receiving and hearing a
9 lot of frustration and so that's how I'd like to at
10 least start this off.

11 So we did provide a copy of our resolution we
12 sent to you and I just had some bullet point
13 statements I'd like to read at this time. And that
14 over the last -- over the course of the last 15 years
15 the applicant has been trying, thus far,
16 unsuccessfully to find a way to get permission to
17 build her garage apartment.

18 In 2001 when the plaintiff applied for
19 permission to construct a second story addition to her
20 garage to be used as an apartment, the Board of Zoning
21 Adjustment concluded, among other things, that the
22 proposed project would drastically alter the character
23 of the zoned district and denied her relief that she
24 sought as Case No. 1696, page 23.

25 Then for the addition of the cupboard, open-

1 sided walkway connecting the applicant's garage to her
2 house, which will not be visible from any of the
3 surrounding streets, the addition the applicant is
4 proposing today is virtually identical to the project
5 the Board turned down in 2001.

6 The applicant has applied for special
7 exception, but ANC 2E submits the plain language of
8 202.10 makes it clear that what she really needs is a
9 use variance and that her application should be
10 subject to the burden of proof that applies to request
11 for variances. 202.10 says that a request to modify
12 more than two of the requirements for permitted
13 accessory use shall be deemed a request for a use
14 variance. 202.10(i)(3), a case cited by the applicant,
15 Case No. 18232, establishes that the two requirement
16 limit applies to both the requirements listed in
17 paragraphs A through H of 202.10 and the requirements
18 contained in the introductory provision of the
19 subsection.

20 The applicant has explicitly requested a
21 waiver of two requirements. The conditions of
22 202.10(d) that prohibit any increase in lot occupancy
23 and gross floor area, and the requirement that the
24 one-family building be detached because the project is
25 to complete the newly connected structure would be

1 larger and it would be a row dwelling.

2 But that's not the end of it. The applicant
3 has also implicitly asked the Board to waive the
4 requirement that the dwelling within which the
5 accessory apartment is to be constructed be in
6 existence at the time of the application. The
7 introductory provision of 202.10 is unambiguous,
8 stating that an accessory apartment may be added
9 within an existing one-family detached dwelling. The
10 proposed apartment will not be an existing dwelling.
11 Nor will it be within a detached dwelling. Under the
12 applicant's proposal the garage and the house would be
13 a row dwelling. This does not comply with the clear
14 requirement that the accessory apartment be in an
15 existing detached dwelling.

16 The applicant proposes to convert her existing
17 detached dwelling and semi-detached garage into a new
18 row dwelling, apparently to take advantage of the more
19 generous lot occupancy requirements applicable to row
20 dwellings. The proposed accessory apartment would be
21 added to the new row dwelling that would be created by
22 expanding the footprint of the accessory garage in
23 constructing a covered walkway to connect the garage
24 to the existing detached dwelling. In summary the
25 applicant is really requesting three waivers.

1 One, a waiver of the requirement that the
2 proposed accessory apartment be added to an existing
3 dwelling. Two, a waiver of the requirement that the
4 proposed accessory apartment be added to a detached
5 dwelling. And three, a waiver of the conditions of
6 202.10(d) prohibiting increases in lot occupancy and
7 gross floor area. That being the case, 202.10(i)
8 tells us the applicant needs a use variance and not a
9 special exception.

10 In addition to the basic legal point about
11 which type of relief is required, a key fact is that
12 the addition of the second story to the applicant's
13 garage to accommodate an apartment would be in
14 disputably at conflict with intent of 202.10 to
15 maintain a single-family residential appearance and
16 character. That's one of the questions I'm going to
17 ask you about, what does character mean of an R-3
18 district. The new apartment would be accessed from
19 33rd Street or Potomac Street via an alley, and would
20 have no visible connection to a single-family dwelling
21 that fronts on O Street.

22 In view of the ANC 2E the construction of what
23 would appear to be a free standing alley accessed
24 apartment would not be consistent with the single-
25 family appearance and character of the neighborhood.

1 The fact that there is a historic service building
2 behind 3259 N Street, and apparently there's a couple
3 others, which is across from the alley from the
4 applicant's property, does not change the analysis.
5 To our knowledge that building has never been used for
6 human habitation.

7 I also checked with Matt LeGrant who has
8 confirmed, there's been no permits provided to any of
9 these garages here on the back for any kind of
10 residential use. Heating, cooling, electric never has
11 been applied and there's no other garages on this
12 alley that are being requested in any time in the
13 future. This is an alley with garages.

14 The existence of the historic service building
15 plainly does not provide a justification for approving
16 the construction of an accessory apartment that would
17 be accessed through the alley. It is important to
18 note that if the project were allowed to proceed the
19 structure that would result would be almost identical
20 to the structure this Board concluded 15 years ago,
21 would drastically alter the characteristic --
22 character of the R-3 district. That's my statement.

23 And that's one of the things I would like to
24 ask you is, if you can -- you talked about design, but
25 you know, what about the character? What is the

1 meaning of that as far as impacting the character, in
2 terms of residential use, if you could help me
3 understand that?

4 CHAIRPERSON HEATH: Would Office of Planning
5 like to offer a response first?

6 MR. MORDFIN: Sure. In my opinion what the
7 character is, is how the building appears. And that's
8 why I talked about the windows and the doors and the
9 brick and the materials and things like that. What's
10 going on on the inside, I don't see as that as
11 affecting the character so much as what the exterior
12 of the building is. It doesn't talk about use in the
13 criteria under Section 202.10. It talks about the
14 one-family residential appearance.

15 So this will appear as a two-story garage to
16 the rear of a one-family house, which is not at all
17 unusual in this neighborhood. There are other two-
18 story garages to the rear of one-family houses, be
19 they attached or detached or semi-attached -- semi-
20 detached.

21 So, I think what's most important is how that
22 building looks when you view it from the alley or from
23 the streets like 33 Street and Potomac Street. It's
24 how it looks, not what's going on on the inside
25 because that's not going to be apparent when you walk

1 down the alley. It's not really apparent what's going
2 on inside any of these buildings; whether they're
3 using them for storage, whether they're using them for
4 -- I don't know, like we talked about art studio.
5 Whatever. It's not apparent what's going on inside
6 and as long as this one -- it's not apparent that it
7 looks any difference being used any differently than
8 the other ones and I don't think it's adversely
9 affecting the character of the neighborhood.

10 MR. JONES: I'd like to comment to that,
11 please.

12 I sit on also what's called the Georgetown
13 Community Partnership, which is -- it's a working
14 group of folks from the community and Georgetown
15 University. And one of the key issues we focus on our
16 dealing with rental properties in Georgetown
17 community. And we can -- just not what happens inside
18 but we can -- have determined through the last few
19 years and one of the committees just deals with rental
20 properties. And there's a clear impact on Georgetown
21 when you have a abundance or change in rental
22 properties within a certain area that's not normally
23 having rental properties. And from traffic, parking
24 conditions, exterior. It may not apply. I'm sure
25 that Ms. Goodman would be a wonderful landlord and

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1 have the utmost respect for the neighbors, but we
2 don't know what's going to happen 20 years from now or
3 30 years from now and what this could lead to for
4 others along this alleyway.

5 Basically opening up a Pandora's Box if you
6 grant this for this alley. Then, you know, this is
7 something that we're trying to preserve and protect
8 this neighborhood. And this alley has been
9 historically, you know, from the beginning, nothing
10 but service garages. And I'd like to continue to see
11 it that way.

12 MS. BUTANI-D'SOUZA: Can I ask a question of
13 OP? So, as I read the code it says, any modifications
14 approved shall not conflict with the intent of this
15 section to maintain a single-family residential
16 appearance and character. So are you saying that in
17 OP's view there is no difference between the term
18 appearance and the term character? Or if there is a
19 different can you just clarify what that difference
20 is, however slight it may be?

21 MR. MORDFIN: Yeah. I do believe it is slight
22 but you know, how the building appears, what it looks
23 like when you view it, does it look like a residential
24 building? The character is it -- I was just looking
25 at that as are you maintaining the character of a one-

1 family residential neighborhood, which is what this
2 is.

3 So, I think it's hard to really split them but
4 I think it's going to appear that the neighborhood is
5 not changed. It's going to still appear as a one-
6 family residential neighborhood. I don't see -- I
7 mean, yes, there will be one more residence there
8 but --

9 MS. BUTANI-D'SOUZA: Okay.

10 MR. MORDFIN: -- I don't know that that's the
11 appearance and the character.

12 MR. JONES: Yes, I'd like to comment about
13 that.

14 MS. MOLDENHAUER: Can I just ask for order?
15 Are we going back and forth here with both or --

16 CHAIRPERSON HEATH: The Board was asking
17 questions.

18 MS. MOLDENHAUER: No, but I was --

19 CHAIRPERSON HEATH: Oh, yes. Certainly.

20 MR. JONES: I'm raising my hand for that I'm
21 next.

22 MS. BUTANI-D'SOUZA: Can I actually also
23 ask --

24 CHAIRPERSON HEATH: We'll come back to you.

25 MS. BUTANI-D'SOUZA: Can I ask a question of

1 the gentleman from the ANC?

2 Okay. So, it's as we've discussed and has
3 been testified here several times, there's this key
4 question. In my mind the key question is, what's the
5 difference between a two-story garage and a garage
6 with an accessory apartment?

7 So can you talk a little bit in your opinion
8 why this is different from a two-story garage. Like,
9 really, I'm asking you to be really specific here
10 about why you believe that this is different from
11 everything else in the alley.

12 MR. JONES: Okay. I think that's what the
13 word character actually gets into and when you have --
14 talking about this doesn't change any residential
15 character to this area, I mean, this alley has never
16 had a residence on it, ever. And so to change it, the
17 character of the -- there's never -- this is going 180
18 degrees from garages to residential use. So right off
19 the bat you're going from parking a car into a
20 structure, walking into your home, shutting off the
21 lights, quite, peace, no noise, no trash, no
22 pedestrians, no who knows what else. You know, when
23 you have people living in a property, okay, the use of
24 the property changes. It just does.

25 And what happens, it impacts -- not only

1 happens inside but you have trash, you have noise, you
2 have rats, you have a variety of things that can start
3 occurring when you start habiting with people. What,
4 you know, do they -- you know, and it's not saying
5 that people are necessarily wrong but we have an
6 impact on our surroundings. When we live in a
7 property some neighbors are great. We do the best we
8 can and take care of our environment. Some, not so
9 much.

10 But we're opening up a Pandora's Box here and
11 we allow this one to start changing something that has
12 not residential use anywhere on this alley to say, you
13 know, this is a complete change of character. There's
14 nothing close to a residence or use on this. These
15 are garages with cars. It's quite. They park. They
16 don't eat. They don't have trash.

17 MS. BUTANI-D'SOUZA: Can I ask a question? So
18 if the person who -- or people who resided in this
19 accessory apartment were to put their trash in the
20 same place that the current occupant places her trash
21 and if they were to agree not to use the alley to
22 access their apartment, would your opposition change?

23 MR. JONES: No. Not at all.

24 MS. BUTANI-D'SOUZA: Why not?

25 MR. JONES: Because you can't guarantee people

1 to do these things. You can't hold people to what
2 they're going to do and how they're going to behave.
3 I deal with a lot with Department of Public Works and
4 environmental issues, and people have certain habits
5 and behaviors. And you can't guarantee, hey, this
6 apartment, these people will only put their trash can
7 at this particular spot, and they're going to turn --
8 you know, they're going to behave this -- these people
9 are -- there's human nature that you have to weigh in
10 to factor. This is to say completely different
11 character that you're going to open this alley up to.

12 So I mean, you can't -- other than to tell
13 people to be robots and do X, Y, and Z, and anything
14 else is out of order, it's just -- you can't expect
15 people to live like that.

16 MS. BUTANI-D'SOUZA: Can I, Mr. Moy, since I'm
17 new to the Board can I just ask a question, a
18 procedural question?

19 So, I assume that the Board can attach a
20 condition that the occupant to the accessory apartment
21 not access through the alley and that the trash be
22 treated in the same manner that the current occupant's
23 trash is. My question is, how does that get enforced
24 as the ANC, the representative from the ANC has
25 testified, that people may violate those conditions?

1 How does that get enforced?

2 MR. MOY: Well, that's a good question but we
3 wouldn't have the enforcement powers here with this
4 office. The enforcement powers would be under the
5 agency of the DCRA.

6 MS. BUTANI-D'SOUZA: So the Zoning
7 Administrator would enforce it?

8 MR. MOY: Any conditions that are attached to
9 the order is -- as the wishes of the Board and as I
10 said before, it would be DCRA to follow up on that the
11 conditions are followed.

12 MS. BUTANI-D'SOUZA: Okay. So presumably the
13 neighbors could go to DCRA if there were, you know,
14 violations on that?

15 MR. MOY: Yes.

16 MS. BUTANI-D'SOUZA: Okay.

17 MR. JONES: I can say we have rental
18 properties with cars parking on lawns. We asked DCRA
19 for help with, we have --

20 MS. MOLDENHAUER: Can I just -- this is not --

21 MR. JONES: I'm sorry.

22 MS. MOLDENHAUER: We're talking about this
23 property. We're not talking about the ANC in
24 Georgetown.

25 CHAIRPERSON HEATH: Sure. Sure.

1 MS. MOLDENHAUER: All of their concerns, all
2 of their concerns about renters, all their concerns
3 about trash. I mean, we are more than willing to do
4 certain conditions but I just ask the ANC commissioner
5 to focus it on this particular property not providing
6 hypotheticals, but rather addressing the standards.

7 MS. BUTANI-D'SOUZA: I think his comments
8 are --

9 CHAIRPERSON HEATH: He was talking about
10 parallel arguments. So parallel situations. Not so
11 hypothetical. So as long as he can talk about
12 specifics that are relatable to this case then I think
13 it's still relevant.

14 MR. JONES: Yeah, I think the point is, this
15 does change the character of this alley. And it's
16 because when people live in properties it's different
17 than putting a car in them. It's just different. It
18 does have impacts, and this is an alley that has no
19 residential uses and it never has. You can check with
20 Matt LeGrant.

21 MS. BUTANI-D'SOUZA: So basically the point
22 that you're making if I am understanding correctly is
23 even if the applicant were to take steps to mitigate
24 the impact of people living in accessory structure,
25 the ANC would remain opposed to this?

1 MR. JONES: Absolutely, because I live in the
2 real world with human nature as far as how they behave
3 and leases and landlords and you know, visitors and
4 guests and who is the tenant 20 years from now. It's
5 just the reality of the world.

6 MS. BUTANI-D'SOUZA: Okay.

7 MR. JONES: It's not that people are bad,
8 you're just asking them -- you can't expect people to
9 be robots. You just can't do that. That's all.

10 And again, when we go back to also our point
11 that we have, this is more of a variance. They want
12 to forget that too, that we believe this is something
13 that requires a variance versus a special exception
14 for the three conditions that we pointed out in my
15 statement.

16 [Pause.]

17 MS. BUTANI-D'SOUZA: I'd like to ask you to
18 submit your written testimony to the record just so
19 that the Board can have the opportunity to --

20 MR. JONES: Sure.

21 MS. BUTANI-D'SOUZA: -- review the arguments
22 that you're making and really deliberate.

23 MR. JONES: I kind of like scribbled on these
24 notes so I have to start over, but what I read to you,
25 my statement is --

1 MS. BUTANI-D'SOUZA: That's what I'm looking
2 for, for you to submit.

3 MR. JONES: I will submit that. And just
4 where it's crossed out, I did not read that part.

5 MS. BUTANI-D'SOUZA: Okay.

6 MR. JONES: Okay.

7 MR. MAY: Can I ask a question --

8 CHAIRPERSON HEATH: Sure.

9 MR. MAY: -- Madam Chair. So, Commissioner
10 Jones.

11 MR. JONES: Yes.

12 MR. MAY: Is that right? So you're arguing
13 that they're essentially asking that three
14 requirements be waived.

15 MR. JONES: That's correct.

16 MR. MAY: So tell me again what the three are
17 and if you could relate them to 202 --

18 MR. JONES: Okay. 202.10.

19 MR. MAY: -- 10, A, B, C, D.

20 MR. JONES: Right. So here we go. 202.10,
21 okay, the introductory provision.

22 MR. MAY: Got that one. The next one?

23 MR. JONES: Okay. That's one. Two, a waiver
24 of the requirement that the proposed accessory
25 apartment be added to a detached dwelling. It will

1 not be detached. It will be a row house.

2 Three, a waiver of the conditions 202.10(d)
3 prohibiting increases in lot occupancy and gross floor
4 area.

5 MS. MOLDENHAUER: Where was the second one?
6 I'm --

7 MR. MAY: Yeah. I'm sorry. Start again from
8 the top. I cut you off on the first one.

9 MR. JONES: Okay. So --

10 MR. MAY: So let's start from the top.

11 MR. JONES: I'll just read this. Okay.

12 MR. MAY: Okay.

13 MR. JONES: A waiver of the requirement that
14 the proposed accessory apartment be added to an
15 existing dwelling. That's on the -- that's in 202.10
16 in the introductory provision.

17 MR. MAY: It says when an existing one-family
18 detached dwelling.

19 MR. JONES: It says an accessory apartment may
20 be added within an existing one-family detached
21 dwelling.

22 MR. MAY: Right.

23 MR. JONES: But the proposed apartment will
24 not be in an existing dwelling, okay?

25 MR. MAY: Right.

1 MR. JONES: And it will be in a detached
2 dwelling. It's going to be in a --

3 MR. MAY: You're regarding that as two
4 conditions.

5 MR. JONES: Yes.

6 MR. MAY: Okay. That's where I got confused.

7 MR. JONES: Sorry.

8 MR. MAY: That's okay. And then otherwise
9 it's just 202.10(d), correct?

10 MR. JONES: And -- yes.

11 MR. MAY: Right. Okay.

12 MS. BUTANI-D'SOUZA: I don't mean to put OP on
13 the spot, but I'm just wondering if you could opine on
14 the argument that he's making about the request being
15 for three -- exemptions to three provisions as opposed
16 to two.

17 MR. MORDFIN: Okay. Well, I believe it is
18 two. I agree with the one for D. The other where it
19 says, you know, a one-family detached dwelling, I
20 think that that's also one. That's not two. I think
21 that's just splitting the one sentence into two
22 requirements and I don't read it that way. I think
23 it's one requirement and that's one requirement that
24 they're asking to be waived. Not two.

25 MR. MAY: Okay. So how do you respond to the

1 notion that that's not actually one of the waivable
2 requirements?

3 MR. MORDFIN: Well, I respond to that because
4 in the past this Board has waived that, has considered
5 it as one of the ones that have been waived. I
6 referenced a previous case, 18232 is one. There are
7 others where the Board has waived that first one there
8 under I. I guess it's like a preamble. 202.10, an
9 accessory apartment may be added within an existing
10 one-family detached dwelling, so the Board has done
11 that before and based on the history of the Board
12 doing it before, we reviewed this under the same way
13 that those other ones were approved.

14 MR. MAY: Oh, great. So now you're doing a
15 parallel analysis too. All right.

16 MS. BUTANI-D'SOUZA: So sorry. I just want to
17 make sure I'm understanding. So you're saying that in
18 the parallel analysis that the Board has waived this
19 preamble as one of the two provisions that can be
20 waived?

21 MR. MORDFIN: Yes.

22 MS. BUTANI-D'SOUZA: Okay.

23 MS. MOLDENHAUER: And for the Board's
24 reference we actually attached that order as part of
25 our prehearing statement. So the Board could actually

1 go to Exhibit 28 in their record. And we attached the
2 entire decision which walks through that.

3 MS. BUTANI-D'SOUZA: Okay.

4 MS. MOLDENHAUER: And I would just say that I
5 believe there's also an element of trying to have the
6 Board be consistent for the public. So.

7 MR. MAY: And right too, right?

8 MS. MOLDENHAUER: Always right.

9 MS. BUTANI-D'SOUZA: Sorry. So, OP, just one
10 other question on this. So, I'm a little bit confused
11 about what you're saying. So are you saying that --
12 it seems to me that the ANC is arguing that because
13 this is in an existing one-family detached dwelling,
14 existing one -- it seems that the ANC is arguing that
15 because this is a new row home that this does not
16 apply? I'm a little bit confused by this argument of
17 the three. And I guess what I'm trying --

18 MR. JONES: I can read it again and I could
19 hand it to you. I mean, that's my --

20 MS. BUTANI-D'SOUZA: I think it would be
21 helpful for you to enter it into the record.

22 MR. JONES: That's the argument. That's one
23 of -- and it's one of the arguments besides the
24 residential character and also the precedent with the
25 past on non -- you know, not granting relief from the

1 BZA --

2 MS. BUTANI-D'SOUZA: Okay.

3 MR. JONES: -- in previous requests for the
4 last 15 years.

5 MS. BUTANI-D'SOUZA: I don't want to belabor
6 this point but I think that it would be helpful to me
7 if that argument were submitted to the record.

8 MR. JONES: Okay.

9 MS. BUTANI-D'SOUZA: So that we could review
10 it.

11 MR. JONES: Sure.

12 MS. BUTANI-D'SOUZA: And also if OP could sort
13 of provide us with their opinion on that argument.

14 MR. JONES: Do you want a copy of this or
15 would you like me to e-mail it? Or how would you like
16 me to provide it?

17 CHAIRPERSON HEATH: If you could upload it to
18 the file, the same way you did with your previous
19 report.

20 MR. JONES: Okay. I didn't do that but
21 I'll --

22 CHAIRPERSON HEATH: Okay.

23 MR. JONES: -- figure it -- sorry.

24 CHAIRPERSON HEATH: The zoning office can help
25 you --

1 MR. JONES: Okay. Thanks.

2 CHAIRPERSON HEATH: -- once this hearing
3 concludes today.

4 MR. JONES: All right.

5 CHAIRPERSON HEATH: Any other questions,
6 Board?

7 MR. HILL: Commissioner, so again, all the
8 neighbors, everyone is in opposition.

9 MR. JONES: I haven't heard of -- feel free to
10 ask the applicant if they have anybody in support.

11 MR. HILL: So then you were also in opposition
12 to when it was maybe going to be an artist's studio.

13 MR. JONES: Correct.

14 MR. HILL: So just regardless of what might
15 have taken place above that garage.

16 MR. JONES: Well, I became a commissioner
17 2010, so from that time there was something submitted
18 shortly after that we opposed. I can't recall which
19 one it was at that time. But the history has been
20 that there has been opposition throughout the ANC and
21 the neighbors.

22 MR. HILL: Okay.

23 MR. JONES: That's my understanding.

24 MR. HILL: Okay. Thank you.

25 MR. JONES: That's my understanding.

1 CHAIRPERSON HEATH: Okay. All right. Any
2 other questions? All right. Then we'll keep moving.

3 Just to state for the record we do have a
4 letter recommending no objection from Department of
5 Transportation. We also have a number of letters from
6 neighbors and I believe we have --

7 MS. MOLDENHAUER: Commissioner Heath, will I
8 be provided an opportunity to cross-examine
9 Commissioner Jones?

10 CHAIRPERSON HEATH: Sure. Yes, you can do
11 that now before we hear from support or opposition.

12 MS. MOLDENHAUER: Okay. I can wait and do it
13 later, I just --

14 CHAIRPERSON HEATH: No.

15 MS. MOLDENHAUER: -- wanted to make sure I
16 didn't lose my window.

17 CHAIRPERSON HEATH: Sure. Go ahead now.

18 MS. MOLDENHAUER: Commissioner Jones, is this
19 -- I've got the power point up from ISIS. Is this a
20 picture of the property as it currently exists today?
21 Commissioner Jones?

22 MR. JONES: Yes.

23 MS. MOLDENHAUER: Based on the proposal is the
24 appearance of that property from O Street, is your
25 understanding is that appearance from O Street going

1 to chance at all?

2 MR. JONES: The appearance no. The character
3 may.

4 MS. MOLDENHAUER: From O Street?

5 MR. JONES: Yes. If people are going to
6 access through there, they're going to be parking
7 their cars somewhere, they're going to be accessing
8 that. I mean, it's an area that will change some,
9 yes.

10 MS. MOLDENHAUER: And you are aware that the
11 property does have an excess of parking on the site?

12 MR. JONES: How many parking spots?

13 MS. MOLDENHAUER: Four. Is that an excess of
14 parking under the current zoning requirements?

15 MR. JONES: I don't know.

16 MS. MOLDENHAUER: Is it more than most homes
17 in --

18 MR. JONES: I would say that it's more than
19 most.

20 MS. MOLDENHAUER: It was more than most homes
21 in Georgetown have?

22 MR. JONES: I mean, there was testimony from
23 the applicant, from you all that said that's how the
24 tenants were going to be arriving, is going through
25 that pathway, through the side, along the house.

1 MS. MOLDENHAUER: You indicated it was one if
2 there is an issue with the alley.

3 MR. JONES: Okay.

4 MS. MOLDENHAUER: It's one of. But is four an
5 excess of parking beyond most properties in
6 Georgetown?

7 MR. JONES: I would say so.

8 MS. MOLDENHAUER: Okay. Oh, sorry. Going
9 this way.

10 MR. JONES: And I could also add --

11 MS. MOLDENHAUER: I think this is just a
12 question portion where I'm asking questions.

13 Can you tell if any of these properties that
14 are located in Georgetown between Dent and Q Street,
15 can you tell if they have residential units on the top
16 level of their second floor garage structures?

17 MR. JONES: Not from appearance, I can't.

18 MS. MOLDENHAUER: Does number 7 have a through
19 the wall air conditioning unit, providing air
20 condition for that space?

21 MR. JONES: I don't know which one number 7
22 is.

23 MS. MOLDENHAUER: It's listed as number 7.
24 Let me see if I can get my arrow working here.

25 MR. JONES: If you say there's one there, I'll

1 say okay.

2 MS. MOLDENHAUER: Right there.

3 MR. JONES: I don't see it, but if you say
4 there's one there -- I can't see the PowerPoint.

5 MS. BUTANI-D'SOUZA: Sorry, are you trying to
6 imply that that is a residence?

7 MS. MOLDENHAUER: I'm not implying anything.
8 I'm implying that there -- I'm just simply pointing
9 out that there is an air conditioning unit.
10 Commissioner pointed out earlier that there was no air
11 conditioning or things to that affect that were
12 applied for. I'm just indicating that there is an air
13 conditioning unit. I'm just --

14 MS. BUTANI-D'SOUZA: I think he said that
15 there were no --

16 MS. MOLDENHAUER: The picture speaks for
17 itself.

18 MS. BUTANI-D'SOUZA: -- permits for electrical
19 or mechanical applied for, but I don't think that that
20 means that there's no electrical mechanical ever in
21 any garage.

22 MS. MOLDENHAUER: That's what I'm trying to
23 prove.

24 MS. BUTANI-D'SOUZA: Okay.

25 MS. MOLDENHAUER: By the pictures. Thank you

1 for pointing out that.

2 And then this is obviously just, again, can
3 you indicate, these are properties that are located in
4 Georgetown? Are you familiar with --

5 MR. JONES: Possibly. I don't recall any
6 specific one. Which one are you talking about?

7 MS. MOLDENHAUER: Well, each of the numbers at
8 the top indicate --

9 MR. JONES: Okay.

10 MS. MOLDENHAUER: -- or refer to the locations
11 on the --

12 MR. JONES: That's fine.

13 MS. MOLDENHAUER: -- the map and image. So if
14 the proposal is to be similar to these, would that
15 then in your opinion not be within the character of
16 Georgetown even though there are similar projects?

17 MR. JONES: Well, I'm talking about this. I'm
18 talking about this specific case where there's no
19 current residential use or history of residential use
20 on this alley, being changed to residential use,
21 changing the character of that alley.

22 MS. MOLDENHAUER: And you made reference in
23 your argument about the cases in the history. But you
24 are aware that the prior case in 2001 was a use
25 variance?

1 MR. JONES: Yes, and so we're arguing that
2 this is, again --

3 MS. MOLDENHAUER: And you're arguing that
4 because you're parsing out the introductory sentence
5 into two sections, not one?

6 MR. JONES: I would -- I have to have our
7 counsel answer that question if we get a chance to
8 keep the record open.

9 MS. MOLDENHAUER: And is your opinion that you
10 are also arguing that having a meaningful connection,
11 are you disagreeing with the Zoning Administrator's
12 decision on whether meaningful connection under the
13 current regulations is permitted to create one
14 building and then having it be one structure and
15 within one structure?

16 MR. JONES: Again, I will defer that to
17 counsel for ANC 2E if we can keep the record open.
18 Thanks.

19 CHAIRPERSON HEATH: Do you have additional
20 questions?

21 MS. MOLDENHAUER: I just, under Section 223,
22 are you aware that by special exception the property
23 could go up to 70 percent lot occupancy and the
24 proposal is only to be at 43.5 percent lot occupancy?

25 MR. JONES: Again, I'll refer to keeping the

1 record open, letting our counsel answer those kind of
2 technical questions.

3 MS. MOLDENHAUER: I guess I will then ask to
4 respond to any written statements by the counsel if
5 we're going to -- I mean, obviously not answer any of
6 the questions I have on cross so I'll ask for an
7 opportunity to respond in writing. No other
8 questions.

9 CHAIRPERSON HEATH: Okay. Thank you. Then at
10 this time I'd like to cover anybody who is here
11 wishing to speak in support of this application. In
12 support.

13 Okay. Then anyone wishing to speak in
14 opposition, please come forward.

15 MR. R. JONES: Madam Chair, members of the
16 Board, I'll be brief.

17 CHAIRPERSON HEATH: Okay. Thank you. We
18 typically give you three minutes, so you can take it
19 or use any part of that.

20 MR. R. JONES: My name is Robert Jones. I
21 live at 3252 O Street. I'm here with Mary Carter and
22 Helen Turner. We are three neighbors of Ms. Goodman
23 representing ourselves and six other immediate
24 neighbors on O Street, N Street, and 33rd Street. We
25 share use of the alley upon which the proposed

1 apartment would be situated, and we've submitted a
2 letter in opposition for the record.

3 We are very respectful of the property rights
4 of Ms. Goodman, as we would be for any neighbor. We
5 don't like to have to be here speaking in opposition
6 to this project. But the proposal to create a garage-
7 based apartment on the alley represents to us a very
8 dangerous precedent that would ultimately change, and
9 I'll use the word character, of our immediate
10 neighborhood.

11 As such, we are united in opposition to this
12 proposal and have been ever since the first time she
13 proposed this to the BZA back in 2001, and through all
14 the subsequent proposals that we've had to come to
15 Boards and OGB and ANC and others for this project.

16 I really want to emphasize that we are all the
17 immediate single-family homeowner neighbors in close
18 proximity to the proposed project. There is an event
19 house that's owned by the Estee Lauder Corporation
20 that sits on the alley, and we tried to get in contact
21 with them unsuccessfully. But they have been in
22 opposition to this proposal in the past.

23 So my point is that this is not the objection
24 of a single cantankerous neighbor, nor is it the
25 objection of a majority of the neighbors. It's the

1 objection of all the neighbors. All the immediate
2 neighbors in this area. And in previous appearances
3 before the OGB and others, we have amassed as many as
4 60 signatures of people in West Georgetown who are
5 opposed to this precedent of creating garage based
6 apartments.

7 Now, our letter in no certain --

8 MS. MOLDENHAUER: Can I just -- I just --

9 MR. R. JONES: Yeah.

10 MS. MOLDENHAUER: -- one, object to the fact
11 that he's speaking on behalf of individuals that he
12 does not have a letter of authorization to speak on
13 behalf of, and that he's referencing an apartment
14 where that would be three or more units, and this is
15 an accessory. So I just --

16 MR. R. JONES: Well, I'll amend my term,
17 accessory apartment.

18 MS. MOLDENHAUER: That's fine.

19 MR. R. JONES: And what am here speaking of is
20 the nine people who signed the letter in opposition,
21 and I'll restrict it to that, if the counsel allows.

22 Now our letter does note certain conditions.
23 You've talked about them, which we believe the
24 proposal does not meet for Ms. Goodman to be granted a
25 special exception. You will decide that. I'm not a

1 zoning expert, nor are our neighbors. I'm just here
2 to demonstrate the resolve of neighbors and our hope
3 that you will see fit to protect the character of our
4 neighborhood by rejecting this proposal. Thank you
5 for the opportunity to comment.

6 CHAIRPERSON HEATH: Sure. Thank you for
7 coming down and for hanging in there with us today,
8 all morning. Sure, go ahead.

9 MS. BUTANI-D'SOUZA: Hi, sir. Thank you so
10 much for your testimony. I have a couple of questions
11 for you. First question is, what do you think of her
12 argument that this should be approved in part because
13 the applicant is trying to increase the stock of
14 rental housing in the District of Columbia?

15 MR. R. JONES: Yeah, I don't have a view of
16 that. I mean, what I fear is the precedent that this
17 is we're going to create a whole series of this
18 apartments along the line in our alley and the alley
19 up the street between 33rd and 34th. And I think yes,
20 that will increase stock, but I think it really
21 fundamentally changes the character of the
22 neighborhood. So, I don't have anything else to say
23 about that.

24 MS. BUTANI-D'SOUZA: So you feel that
25 preserving the character of the neighborhood is more

1 important than increasing the stock of housing?

2 MR. R. JONES: Well, I don't know that we're
3 responsible for that objective in our neighborhood.
4 Are you giving us that responsibility for
5 increasing --

6 MS. BUTANI-D'SOUZA: I'm just curious.

7 MR. R. JONES: No.

8 MS. BUTANI-D'SOUZA: Okay. I also was
9 wondering, it seems like your opposition is based on
10 the impact that the additional residence could have on
11 the alley. So, I believe what the ANC testified to
12 was trash and access. If the applicant were to -- or
13 if the Board were to impose conditions on the
14 application, that those impacts be mitigated. For
15 example, that access could only be through O Street
16 and that trash could only be picked up or placed in
17 the same location as trash is currently picked up or
18 placed, such that the -- this is in effect like her
19 taking on a boarder. Would your position change?

20 MR. R. JONES: No. Like Jeff Jones has
21 indicated, when change -- you know, what I'm trying to
22 look at is 10 years from now, what the alley looks
23 like and how the slippery slope argument, and if you
24 start creating that, it's not just trash from one
25 accessory apartment. It's trash from, and noise, and

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1 whatever, from a series of accessory apartments which
2 fundamentally changes then, the nature and character
3 of the neighborhood. So I don't think it -- I don't
4 know that you can enact those conditions and enforce
5 them to begin with, you know, frankly. And you know,
6 it's really not going to change. Humans are going to
7 be like, as Jeff said, humans are going to be like
8 humans, not robots.

9 MS. BUTANI-D'SOUZA: Okay. Okay.

10 CHAIRPERSON HEATH: All right. All right.

11 MS. MOLDENHAUER: I'd like to ask a couple
12 cross questions.

13 CHAIRPERSON HEATH: Sure, you can ask.

14 MR. R. JONES: Is this a legal proceeding? I
15 didn't understand that.

16 MS. MOLDENHAUER: This is, yes.

17 CHAIRPERSON HEATH: It is and --

18 MS. MOLDENHAUER: It's an administrative
19 proceeding which has quasi-judicial.

20 MR. R. JONES: So let me say for the record
21 that I'm not a zoning expert. I know hardly anything
22 about the zoning laws --

23 MS. MOLDENHAUER: I'm just simply --

24 MR. R. JONES: -- and I'm just offering my
25 opinion as to what me and my neighbors feel as

1 experiencing about the impact of this project.

2 MS. MOLDENHAUER: And I'm just --

3 CHAIRPERSON HEATH: I don't know that we
4 typically have cross on witnesses, but --

5 MS. MOLDENHAUER: Yes.

6 MR. R. JONES: I don't --

7 CHAIRPERSON HEATH: Okay. Okay. So --

8 MS. BUTANI-D'SOUZA: I would also just greatly
9 appreciate it if the applicant's counsel could refrain
10 from interrupting a witness by you know, points of
11 order to say that they cannot say this or that. It's
12 my understanding, clarified by my colleagues here,
13 that they are allowed to say whatever they would like
14 to say. They are allowed to testify on behalf of
15 other folks. So I'd just appreciate it if you could
16 refrain because it interrupts our ability to listen to
17 what they're saying.

18 MS. MOLDENHAUER: And some of the times when I
19 -- I try not to object a lot, but when I do object
20 it's for purposes of an appeal to put an objection on
21 the record, and only for that purpose. So that's a
22 requirement and the opportunity to possibly state an
23 appealable issue.

24 MS. BUTANI-D'SOUZA: I think it would be great
25 if you could pause on that until the person is done

1 speaking.

2 MS. MOLDENHAUER: I will adopt a new process
3 where I --

4 MS. BUTANI-D'SOUZA: Thank you so much.

5 MS. MOLDENHAUER: -- provide that at the end.
6 I just have a couple of factual questions.

7 So you, your property, you are lot 810. I
8 don't know if you know your square lot number. You
9 might now.

10 MR. R. JONES: I used to know it. So I'm the
11 house next door. One of the houses next door to Ms.
12 Goodman.

13 MS. MOLDENHAUER: And are you -- do you know,
14 are you attached on each side of your property? Does
15 your building go all the way from --

16 MR. R. JONES: I am, I am --

17 MS. MOLDENHAUER: -- property line to property
18 line?

19 MR. R. JONES: I am not attached on the side
20 where Ann is my neighbor. I am partially attached on
21 the other side.

22 MS. MOLDENHAUER: So you would not then be a
23 detached dwelling structure. And do you know if your
24 lot is less than 4,000 square feet?

25 MR. R. JONES: I think it's 700ths of an acre.

1 And so I think it's -- what is that? I don't know.

2 MS. MOLDENHAUER: About 3,150 square feet.

3 MR. R. JONES: Oh, you're good. I think that
4 sounds about right. That sounds about right.

5 MS. MOLDENHAUER: I'm cheating.

6 CHAIRPERSON HEATH: I'm sure she knows the
7 answers to the questions that she's asking.

8 MR. R. JONES: I didn't know there was going
9 to be math involved.

10 MS. MOLDENHAUER: Right.

11 [Laughter.]

12 MS. MOLDENHAUER: And then if you -- you have
13 a garage on your house?

14 MR. R. JONES: I don't have a garage in my
15 house. I have two detached garages on the alley.

16 MS. MOLDENHAUER: Okay. And if you were to by
17 this hypothetical concept of creating an adverse
18 precedent, if you were to add an apartment building on
19 top of your garage would that be adding gross floor
20 area? You would be adding space on top? Yes?

21 MR. R. JONES: If I -- you're asking me
22 technically would I be adding gross square area?

23 MS. MOLDENHAUER: Would you be adding space on
24 top?

25 MR. R. JONES: If I put a second floor on my

1 garages I guess that would be adding gross square
2 area.

3 MS. MOLDENHAUER: Okay. So then that would be
4 three requirements for you if you were to try to apply
5 the 202.10 which would be --

6 MR. R. JONES: I have no idea what 202.10 is.
7 You know, and what you're talking about. But if
8 you're asking me the question about whether if I build
9 a second story on my garage and got approval, that
10 would add gross square area, sure.

11 MS. MOLDENHAUER: Thank you. That's all.

12 CHAIRPERSON HEATH: Okay. All right. Okay.
13 Thank you.

14 MR. R. JONES: Thank you.

15 CHAIRPERSON HEATH: So were you also wishing
16 to speak in opposition?

17 Okay. If you could turn your mic on and give
18 us your name and then you can make your statement,
19 we'll also give you three minutes.

20 MR. ZERE: Okay. My name is Kebreab Zere. I
21 am the owner of the vacant lots designated at Square
22 1230, lot 804, 814, 818, 820, and 822. Here today to
23 express my strong opposition to BZA Application No.
24 1735A to construct accessory apartment above the
25 garage at premises 3254 O Street Northwest.

1 My lots have a total are of 31,000 square
2 feet. They are 22 by 150 feet and they are build
3 [garbled speech] for our city zoning requirements.

4 People with a lot calls them alley, but they
5 are lots. So conveniently that calls them alley, but
6 they are private lots.

7 I think in the interest of time I don't like
8 to read the whole thing to save you your time. I
9 would like to give you only the main points. Well,
10 the City Council held the hearing on October 8, 2015,
11 Bill 21218 to condemn these lots by imminent domain,
12 but this was under the chairmanship Mr. Phil Mendelson
13 and Mr. Jack Evans. But the committee has not made a
14 decision yet.

15 And another thing is the D.C. Government has
16 filed a lawsuit. It has filed a lawsuit on October 2
17 and it's seeking a declaratory judgment and it prefer
18 to give it the nomenclature of public prescriptive
19 easement. The case has the potential of going to the
20 Supreme Court and thus it's not known how long this is
21 going to take. It's going to be a long legal battle.

22 So and I consider these are lots, but I was
23 denied by the mayor's agent. I was denied again. And
24 the reason they gave me was that the alteration of the
25 private alley that would be incompatible with the

1 character of contributing accessory buildings facing
2 the alley. Potential for affecting the context and
3 possibly obscuring the primary elevations and causing
4 physical alterations to the that. That's why they
5 denied me.

6 And if someone builds an apartment then
7 they'll have more solid reasons to deny me to
8 consolidate my lots and not build anything. As I
9 think is, is applicant completely disregarded that
10 there are private lots when she wants to construct
11 windows, doors, and another thing is individual, my
12 lawsuit will not have any future. I'll not be able to
13 build anything.

14 So it's completely disregarded that there are
15 private lots.

16 CHAIRPERSON HEATH: I'm going to need you to
17 bring your testimony to a close.

18 MR. ZERE: I beg your pardon?

19 CHAIRPERSON HEATH: Your time is up. You're a
20 minute over your time so if you could bring your
21 statement to a close, please?

22 MR. ZERE: Okay. Okay. Okay. I will finish.
23 So, as the neighbors, they don't have recorded or
24 unrecorded easements. And the garage are not alley
25 dwellings. They have a historical significance and as

1 a matter of fact, they shouldn't legally exist at all.
2 So finally, from a legal, historical, and
3 architectural point of view, I [garbled speech] Board
4 reject the application. Thank you very much.

5 CHAIRPERSON HEATH: Okay. Thank you. So you
6 bought these five lots intending to do what with them?
7 I'm just curious. What was your intention when
8 you --

9 MR. ZERE: When I bought these lots?

10 CHAIRPERSON HEATH: Right.

11 MR. ZERE: Well, the thing is I asked DCRA --
12 well, first I bought to the two lots, then asked them
13 if I can build something. They say that if you meet
14 the [garbled speech] requirements of R-3 zone you can
15 build on these lots. Then after three -- I waited for
16 three years and I bought the rest, three. So I have a
17 letter stating that I can build something on these
18 lots. I have a letter from DCRA which are written in
19 2003.

20 MS. BUTANI-D'SOUZA: Can you submit that
21 letter to the record? Can you submit that letter to
22 the record, please?

23 MR. ZERE: Well, I don't have it but I can
24 submit it after --

25 MS. BUTANI-D'SOUZA: Okay.

1 CHAIRPERSON HEATH: After this hearing today.

2 MR. ZERE: I can submit it.

3 MS. BUTANI-D'SOUZA: After the Board
4 proceedings.

5 MR. ZERE: Another thing is, funny thing is,
6 the funny thing is, in 2003 the council member, Jack
7 Evans and the neighbors, they ask the Department of
8 Transportation to repave the lots. They use the tax
9 payer's money to repay my -- the private properties,
10 which is illegal and unethical. So they are trying to
11 create facts on the ground.

12 CHAIRPERSON HEATH: Uh-huh. Understood.

13 MR. ZERE: These are that way. [Garbled
14 speech] even to put a fence around my property, secure
15 my property.

16 CHAIRPERSON HEATH: Right.

17 MR. ZERE: So they are doing everything so
18 that I cannot do anything on these lots.

19 CHAIRPERSON HEATH: Sure.

20 MR. ZERE: And they don't want to compensate
21 me. They don't want to condemn me. So I guess -- and
22 I will fight up to the end. So you have to take this
23 into serious consideration.

24 CHAIRPERSON HEATH: Okay. Any other questions
25 from the Board?

1 MR. HILL: I just have one quick question.
2 What were the first two lots that you bought?

3 MR. ZERE: The first two, I really don't have
4 the record but --

5 MR. HILL: Okay.

6 MR. ZERE: -- I can give you.

7 MR. HILL: That's okay. I was just curious.
8 I was just curious.

9 MR. ZERE: Yeah, I don't remember the lots.

10 MR. HILL: That's all right. That's okay.
11 Thank you so much. You own all five lots. I got it
12 but thank you so much. Thank you.

13 MR. ZERE: Yeah, yeah, yeah.

14 MR. HILL: No, thank you. Thank you.

15 MR. ZERE: But I can give you the records, no
16 problem.

17 CHAIRPERSON HEATH: Okay. Any other -- did
18 you have a question? Okay. All right. Thank you.

19 MR. ZERE: Oh, thank you.

20 CHAIRPERSON HEATH: For coming down. Anybody
21 else wishing to speak in opposition? Okay. Then if -
22 - did the Board have any other questions? If not,
23 we'll allow the -- okay. Okay.

24 [Discussion off the microphone.]

25 CHAIRPERSON HEATH: Oh one more? Okay, sure.

1 All right. If you could state your name and we'll
2 also give you three minutes to take a statement.

3 MS. CARTER: Mary Carter, 1317 33rd Street.
4 So the back of my property directly abuts where this
5 proposed building would be.

6 I have attended every meeting since 2001 in
7 opposition to Mrs. Goodman's plans. Are we aware that
8 there are, prior to this meeting, 50,000 pages of
9 documentation on this case? The reason I speak today
10 is that it would make a serious impact on the back of
11 my property and the gentleman who lives next to me who
12 is renting, he's out in Illinois for a couple of
13 years. He's 1319, and it would make a tremendous
14 difference in light and in air to the back of our
15 properties.

16 CHAIRPERSON HEATH: Okay.

17 MS. CARTER: Thank you.

18 CHAIRPERSON HEATH: Thank you. Excuse me,
19 ma'am, before you leave can you tell me your address
20 again?

21 MS. CARTER: 1317 33rd Street. I'm at one end
22 of the alley, the 33rd Street end of the alley.

23 CHAIRPERSON HEATH: Okay. Thank you.

24 MS. BUTANI-D'SOUZA: I'm sorry, can I ask a
25 question of you, ma'am?

1 CHAIRPERSON HEATH: One more question for you.

2 MS. BUTANI-D'SOUZA: Can you just tell us a
3 little bit more about how it will affect the light and
4 air in your property?

5 MS. CARTER: Well, at one point Mrs. Goodman
6 planted a row of trees and they exceeded the height of
7 my own home, and they, even though it was a porous
8 fence let's say, it impacted light and air. But a
9 solid building would make a tremendous difference to
10 the value of my property and my neighbors' as well.

11 MS. BUTANI-D'SOUZA: Okay. Thank you. I
12 think it would be helpful if the applicant could
13 provide some shadow studies to help us understand the
14 impacts on the properties on 33rd Street.

15 MS. MOLDENHAUER: Sure. We'd be more than
16 welcome to. We also had a little bit of rebuttal to
17 address some of the comments as well.

18 CHAIRPERSON HEATH: You can offer your
19 rebuttal now.

20 MS. MOLDENHAUER: Okay. Thank you very much,
21 Commissioners, Members of the Board. I've got a slide
22 number, I've actually got them up now so I don't even
23 know what slide number it is but the slide shows the
24 rear elevation with the proposed structure. Mr.
25 Markus can you -- Ms. Carter's property is here on the

1 corner. Can you please provide the Board with the
2 dimension of the open space between the rear of her
3 property and the proposed structure, what the
4 dimension is?

5 MR. MARKUS: Right. There is a dimension
6 listed on there. It says 24 feet, six inches from the
7 back of the smaller part of her structure to the back
8 of the property.

9 CHAIRPERSON HEATH: Can you help us understand
10 which lot number is on her --

11 MS. MOLDENHAUER: Sure. I'll go to another
12 image. Hold on. Oh, okay. So if you could just bear
13 with me for a second, I've got -- okay.

14 So this is the property, the property is --
15 the applicant's property is in orange here. Ms.
16 Carter's property is 806. So her property has the
17 light from the 22-foot private alley or property owned
18 by Mr. Zere. That's 22 feet wide here and then we are
19 looking -- so she fronts on -- and she's 806. And
20 then we were just showing -- sorry.

21 Okay. And then the dimension that she has of
22 open rear yard is what again, Mr. Markus?

23 MR. MARKUS: Twenty-four feet six.

24 CHAIRPERSON HEATH: And the Zoning Regulations
25 in this zone deem that an adequate rear yard is?

1 MR. MARKUS: Twenty.

2 MS. MOLDENHAUER: So that's -- is that greater
3 than the rear yard requirement?

4 MR. MARKUS: Yeah, it's greater by four feet,
5 six inches.

6 MS. MOLDENHAUER: So she would have sufficient
7 open air of more than what is required for her rear
8 yard. And can you, Mr. Markus, go through this image
9 and talk about the comparable size in regards to light
10 and air and comparable nature of the dwellings in the
11 alley?

12 MR. MARKUS: The idea is to, when we were
13 designing the height of this structure and the feel of
14 it. So it relates to the appearance of the other
15 buildings on the alley with the sloped roof, the brick
16 front, and there are a couple of structures that are
17 two story. And if you go to either end it's much
18 higher, the side of the property we were just talking
19 about and then the opposite end are much higher. You
20 can see it in the elevation on 306.

21 MS. MOLDENHAUER: Okay. And is your intention
22 to have the designed materials be similar in nature to
23 the other alley structures in Georgetown that are on
24 the screen now?

25 MR. MARKUS: Yes.

1 MS. MOLDENHAUER: The current proposal has
2 windows that do face the alley or private alley
3 conditions. Is that correct?

4 MR. MARKUS: Yes.

5 MS. MOLDENHAUER: Are any of those windows for
6 bedrooms?

7 MR. MARKUS: In the current plan, no.

8 MS. MOLDENHAUER: And so would they be --
9 they're not then required and they could be modified
10 if necessary.

11 MR. MARKUS: Yes.

12 MS. MOLDENHAUER: Ms. Goodman wanted to just
13 speak briefly in response to some of the comments
14 about the --

15 MS. BUTANI-D'SOUZA: Before she speaks can I
16 just ask a question?

17 MS. MOLDENHAUER: Sure.

18 MS. BUTANI-D'SOUZA: So it's my understanding
19 that the regulations state that the proposal should
20 not have an impact on the light and air of the
21 neighboring properties, but it doesn't say that that
22 only pertains to the structure and it doesn't say that
23 the impact is limited to, you know, the by-right
24 capacity of the lot. I mean, it just seems to me that
25 with your questions you're trying to argue that this

1 only affects her yard, therefore we should not
2 consider it.

3 MS. MOLDENHAUER: No, what I'm saying by my
4 argument is that the Zoning Regulations determine the
5 necessary rear yard to provide sufficient light and
6 air for your own property as well as for others. And
7 the Zoning Regulations determine that a 20-foot rear
8 yard is what is sufficient to provide the public and
9 your own individual property rights sufficient light
10 and air.

11 Ms. Goodman, who does abut the rear of -- I'm
12 sorry. Ms. Carter, who does abut the rear of Ms.
13 Goodman's property, has 24 feet of open rear yard as
14 well as a 20-foot open private alley that provide her
15 with, in our opinion, more than sufficient light and
16 air that is beyond the requirement of the Zoning
17 Regulation to be sufficient for light and air.

18 MS. BUTANI-D'SOUZA: Okay. Thank you.

19 MS. MOLDENHAUER: And there's also a case that
20 the Board -- for comparing and trying to stay
21 consistent, Case 18886 where the Board did find in
22 that case that there was neighbors who were opposing
23 and expressing questions on a special exception
24 standard for a rear addition. And in that case they
25 said the new addition will not unduly affect the light

1 available to a neighboring property due to its size
2 and location. The addition will comply with the
3 minimum, in this situation, an 8-foot rear yard
4 setback, and they determined in that case because they
5 were complying with the provided setback that that
6 would then be sufficient to comply with light and air.

7 And we are making a parallel argument here that
8 because Ms. Goodman -- Ms. Carter has the 24 feet of
9 rear yard that this would not be impacting her light
10 and air.

11 But we will also, for the Board's request,
12 provide sun studies to provide responses to that as
13 well.

14 Ms. Goodman wanted to simply address quickly
15 responses to some of the comments.

16 MS. GOODMAN: I just wanted to tell the Board
17 that when I first applied for this project and it was
18 a taller project than this, it took me about a year
19 but I went around and I showed the drawings to each
20 neighbor all around the whole square. I got everybody
21 signed off in approval of this project. Nobody had a
22 problem except for Mary Carter here, who claimed that
23 when she bought her property she bought the view over
24 my carriage house. And the view has been the issue
25 this entire time and I don't feel that's fair to me.

1 She also told the neighbors that I had
2 subversively switched the drawing that I had presented
3 to them to get their signatures for a three-story
4 multi-unit apartment building. And of course they
5 signed. I was horrified when I found out what she had
6 done.

7 I also went around to the neighbors on the 60
8 signature petition. They obviously -- I don't have 60
9 neighbors. Some of these people lived up Wisconsin.
10 They said they didn't know who I was or what my
11 project -- some of them, not all of them, didn't know
12 who I was or what my project was. They did not want
13 the person next to them building a carriage house,
14 even though that property wouldn't even remotely
15 qualify, because they said that I might set a
16 precedent and therefore the neighbor next to them, and
17 they apologized to me and said, I have to sign in
18 opposition because I don't want you to set a precedent
19 for my neighbor. They didn't know who I was, what my
20 project -- that's the 60 signatures.

21 So my property, as well as my own personal
22 self has, for all these years, never been properly
23 looked at and been slandered, both property and
24 personally because this woman wants a view. She
25 claims she bought the view over my property. She has

1 huge amount of light and air. More than most people
2 do. And this has -- I just would like the Board to
3 look at the facts on the record. There's nothing
4 built on my property. And if I can't build this my
5 residence is at 22 percent lot occupancy in an R-3
6 district. Thank you.

7 Thank you for at least letting me tell you
8 that.

9 MS. BUTANI-D'SOUZA: Would it be possible for
10 the applicant to provide some letters of support from
11 her neighbors?

12 MS. GOODMAN: Actually this one lady over
13 here, the Turners, used to support. I see her sitting
14 over there. She's in opposition now. The neighbors
15 do not want this thing built there. They don't
16 because you can't see the pictures, but my property
17 has about 48 trees on it. They want to see very leaf
18 of every tree. I'm like a mini Central Park. This is
19 a view issue.

20 As far as trash is concerned, I have lived
21 there, all the time I have lived there, I have picked
22 up all of the trash in the alley. I've kept the alley
23 swept of garbage. I pick up all of the trash on O
24 Street, a lot of the trash on Potomac Street. That
25 place is immaculate because I do all of that work.

1 Also, the garbage, this issue of the garbage
2 that I can't dump the garbage or any neighbor -- I
3 can't put my garbage out in the alley at all. If I
4 had a renter it still has to go on O Street. So
5 that's not an issue.

6 And for the ANC to complain about garbage
7 because of me, I mean, that's ridiculous. I clean all
8 of O Street, all of the alley. I keep it swept. And
9 anybody here will tell you, I'm the one that keeps
10 this place garbage free because I'm a little fussy
11 about garbage. Thank you.

12 MR. HILL: So, Mr. Commissioner, I have a
13 question for you.

14 MR. JONES: Yes, sir.

15 MR. HILL: Again, as far as our standard goes
16 in getting to the issues concerning the special
17 exception and also the issues that you brought up in
18 terms of more than two variances, I mean, I understand
19 the things that we're going to be talking about and
20 we're not going to probably get to there today, I
21 think. But I would like your honest opinion. You're
22 the SMD in this area, right? And I hear a lot about
23 the garden and the trees, you know?

24 MR. JONES: Right.

25 MR. HILL: I mean, and then really your issue

1 has not so much been that it's been just kind of a
2 rental unit there, changing the character with there
3 being now a rental unit in the alley. How much do you
4 really think it is concerning about the trees, and the
5 view? It's a very nice back yard. It has a lot of
6 nice trees there.

7 MR. JONES: Yeah.

8 MR. HILL: I mean, how much do you think
9 that's at issue with the surrounding neighborhood?

10 MR. JONES: As far as the trees being there or
11 not being there?

12 MR. HILL: If the trees weren't there would
13 there be less opposition?

14 MR. JONES: I don't think there would be less
15 -- I mean, the folks just don't want a rental unit
16 there on the alleyway. I mean, trees or no trees,
17 that's what I hear is that --

18 MR. HILL: So in your opinion it's not the
19 view whatsoever?

20 MR. JONES: It's the use. It's the character.
21 It's a changing of the character. It's a changing of
22 the character from being an alley with garages where
23 you park your cars to --

24 MR. HILL: Okay.

25 MR. JONES: -- residential use.

1 MR. HILL: Okay, thank you. I just wanted
2 your opinion. Thank you.

3 MR. JONES: Yeah, that's my opinion.

4 MS. MOLDENHAUER: I will just conclude
5 indicating that for 223, 223s are -- and special
6 exception standards are deemed to be accepted in the
7 residential neighbor, as long as you satisfy the
8 standard. We've heard, I think, a global statement
9 from the ANC that they believe that an accessory
10 apartment at all would change the character overall,
11 but the standard indicates that as long as you satisfy
12 these requirements and that you do not change the
13 appearance as Office of Planning indicated they
14 support the project because they don't believe that
15 the term character has to do with the internal use,
16 but rather the appearance from the outside.

17 The appearance of the property will always be
18 maintained as shown here today. That will not change
19 whether Ms. Goodman is forced to create a rooming
20 house or just permit it as a matter of right and have
21 additional people living in her home in order to
22 provide the additional income that she needs as she
23 gets older, or whether she's allowed to do this by
24 special exception, it's all the same concept and I
25 think it addresses the same possible concerns that are

1 written statement that the Board would like to see.

2 MS. BUTANI-D'SOUZA: I think it would be great
3 if you could provide some documentation showing that
4 this is not a slippery slope, that the other dwellings
5 would not apply for the same -- would not be able to
6 apply for the same type of accessory units, special
7 exception, I think.

8 MS. MOLDENHAUER: Yes, we --

9 MS. BUTANI-D'SOUZA: If that's what you're
10 claiming it would be nice to actually see an
11 analysis --

12 MS. MOLDENHAUER: Uh-huh.

13 MS. BUTANI-D'SOUZA: -- showing, I suppose, I
14 think the ANC mentioned that there were two alleys in
15 question where this would be an issue. So showing all
16 of those alleys and which ones would be able to apply
17 for the same special exception if we were to do this.

18 MS. MOLDENHAUER: We will drill down on this,
19 but this is an image that shows the properties within
20 this entire grouping that you see on the screen that
21 would comply with both the requirement of being a
22 semi-detached structure and comply with the minimum
23 lot size. As Mr. May indicated someone could apply
24 for a waiver but as we indicated the neighboring
25 property owner right here where my cursor is going

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1 over, based on his testimony and our review, he would
2 require three waivers and would thus get pushed into a
3 variance. So we will go through that and supplement
4 that information.

5 MR. MAY: Ms. Moldenhauer, I have a few
6 questions for you.

7 First of all, just so I understand that -- I
8 mean, the essential reason why we're doing the whole
9 trellis thing is so that this could be one building so
10 that you can bypass the restrictions on the height of
11 a garage, right?

12 MS. MOLDENHAUER: It is so that it can be
13 within one structure and it can be deemed an
14 accessory. You could not have --

15 MR. MAY: But it's not an accessory any more.
16 I mean, the garage becomes part of the house --

17 MS. MOLDENHAUER: Yes.

18 MR. MAY: -- when you do that trellis. And
19 therefore it can be above 16 feet.

20 MS. MOLDENHAUER: It's not the height. It's a
21 question so that you can't go under two --

22 MR. MAY: So you would not need height relief?

23 MS. MOLDENHAUER: I think the structure is 17,
24 so it's really not -- the width of the alley is 20 --

25 MR. MAY: Well, 16 is the limit.

1 MS. MOLDENHAUER: The width of the alley is 22
2 feet wide. So I mean, she could also have possibly
3 subdivided the lot and created a separate alley lot
4 that would comply, and then have it be an alley
5 structure and there could be a 22-foot-high alley
6 structure if this ends up becoming a public alley.

7 MR. MAY: Right. Which is a different
8 process. I mean, we'd have to go through another
9 process to do that.

10 But the point is that right now you could not
11 simply add a second story to that garage, right?

12 MS. MOLDENHAUER: We actually could.

13 MR. MAY: Why?

14 MS. MOLDENHAUER: Under 404. So under 404 it
15 indicates that you can add additional structures above
16 an existing garage that existed pre 1958. And
17 actually I met with Matt LeGrant three weeks ago, I
18 think it was, and I confirmed that we couldn't do
19 that. The only issue was the rear yard relief which
20 we're asking for relief. 404 allows you to add gross
21 floor area above an existing structure that existed at
22 the time, so long as you're staying within the
23 existing footprint of the garage structure.

24 And so under 404 we could add an additional
25 structure above that.

1 MR. MAY: 40 --

2 MR. MOY: 404.10, I believe it is.

3 MR. MAY: 404.10.

4 MS. BUTANI-D'SOUZA: And why are you not doing
5 that?

6 MS. MOLDENHAUER: Because that still wouldn't
7 allow for a rental unit; an accessory rental unit.
8 The purpose here is for Ms. Goodman to be able to
9 retire, you know, and rent out a property and be able
10 to cover her current mortgage. She's been divorced as
11 she's stated on the record. That's changed her
12 financial situation and --

13 MS. BUTANI-D'SOUZA: I get it. Thank you.

14 MS. MOLDENHAUER: I mean, it's --

15 MR. MAY: So, and I have another question.

16 MS. MOLDENHAUER: Not everybody in, you
17 know -- some people need that additional, which is I
18 think part of the reasons why we have the ability to
19 do these accessory structures.

20 MR. MAY: Okay. So the language, you know,
21 I'm not sure I buy the argument that in the preamble
22 where it says single-family and detached are two
23 separate conditions, because there are a lot of you
24 know, A through H, there are a lot of multiple
25 conditions that are embedded within each one of those.

1 But I don't understand why that would be considered
2 waivable and you know, I'm not basing it on what the
3 previous case was, but I'm basing it on the plain
4 language of 202.10(i) which says that the Board may
5 modify or waive not more than two requirements
6 specified in A through H. It doesn't say anything
7 about the entire subsection which is what that one
8 case, 18232 I think it is, refers to.

9 So why is that waivable by the Board?

10 MS. MOLDENHAUER: But because the Board -- it
11 indicates that you can waive the conditions of this
12 section. And that --

13 MR. MAY: But it says very specifically, A
14 through H.

15 MS. MOLDENHAUER: And I believe that the Board
16 has created prior precedent in this case under the --

17 MR. MAY: I thought you said there was no
18 precedent.

19 MS. MOLDENHAUER: There are --

20 MR. MAY: It's parallel analysis, right?

21 MS. MOLDENHAUER: There is --

22 MR. MAY: Yeah, I mean --

23 MS. MOLDENHAUER: It's a question of
24 consistency. And the Board tries --

25 MR. MAY: So --

1 MS. MOLDENHAUER: -- to provide consistent --

2 MR. MAY: But if the Board was wrong before,
3 why should we be consistent with it?

4 MS. MOLDENHAUER: Then the Board can reverse
5 its prior decisions --

6 MR. MAY: Right.

7 MS. MOLDENHAUER: -- if they deem it to be
8 wrong.

9 MR. MAY: Right.

10 MS. MOLDENHAUER: I believe that they were
11 correct. I believe that OP still supports that
12 decision.

13 MR. MAY: I'm sure you believe they were
14 correct. I saw who made the decision.

15 MS. MOLDENHAUER: And then I think it's a
16 question is that it is phrasing the overall context
17 and that is allowing you to waive two, and we're not
18 waiving more than two.

19 MR. MAY: All right. So I'm sure we're going
20 to get legal advice on this from the Office of the
21 Attorney General about whether in fact that's
22 considered something that's waivable. However, I
23 think it is in your best interest to make an argument
24 for why it is waivable because simply presenting that
25 precedent doesn't do it for me.

1 MS. MOLDENHAUER: Uh-huh.

2 MR. MAY: I'm not buying the ANC's argument
3 that it's two more conditions and therefore it becomes
4 a variance. But I don't see how it is waivable, and
5 if it's not waivable as explicitly provided for in the
6 regulations then it is also a variance. So I think
7 you need to make that case.

8 MS. MOLDENHAUER: We will articulate it in
9 more detail. We believe that because you can waive a
10 portion of this section that the preamble to that
11 section is thus inherently included. But we will
12 provide more information and more written statements
13 on that issue.

14 MR. MAY: That would be welcome, you know,
15 further reference back to that one particular case I
16 don't think is relevant because it does not go into
17 the detail of why that is. It simply says, the Board
18 concluded that the preamble -- that the ability to
19 waive refers to the entirety of that section. But
20 that is not what the language says. So, anything you
21 can do.

22 MS. MOLDENHAUER: We will supplement the
23 information on that.

24 MR. MAY: I don't want to be completely
25 negative about this. I mean, I think the idea of

1 adding accessory apartments on a 5,000 square foot
2 lot, you know, shouldn't be a big deal. I mean, you
3 know, properties in that vicinity are anywhere from,
4 you know, probably 1,000 square foot lots to 7,000
5 square foot lots, and you know, typical zoning
6 requires something like 1,800 or 2,000 square feet.

7 MS. GOODMAN: Thank you.

8 MR. MAY: I haven't made any decisions yet.
9 Okay? So, but I'm sympathetic to the idea of adding
10 an apartment because it's not that big a deal on a
11 5,000 square foot property. The question is whether
12 the Zoning Regulations actually allow it as a special
13 exception here.

14 CHAIRPERSON HEATH: All right. Any other
15 questions from the Board? Okay.

16 Then we will conclude for today and we're
17 going to put this on for I think a continued hearing.
18 Makes sense based on the information that the Board
19 has requested in case we have questions. Also, the
20 ANC commissioner has asked that if we come back for a
21 continued hearing, if your counsel is able to attend
22 we will allow you to speak and have your counsel speak
23 as well.

24 In the interim, if we could get your statement
25 and --

1 MR. JONES: I've provided it already.

2 CHAIRPERSON HEATH: Okay. Perfect. And then
3 the letter from Mr., is it Zere? Okay. If we could
4 get the letter that you said you have from DCRA
5 regarding how you can develop --

6 MR. ZERE: [Speaking off microphone.]

7 CHAIRPERSON HEATH: You can talk to the board
8 secretary after this and he can let you know how to
9 get that information to us.

10 Also, there are several additional documents
11 that you've indicated that you will provide on behalf
12 of the applicant. One is to articulate why you meet
13 the special exception criteria and specifically about
14 the preamble, why that's waivable. And then the
15 analysis.

16 MS. MOLDENHAUER: Uh-huh. And the sun study.

17 CHAIRPERSON HEATH: Right. And the sun study.
18 Exactly.

19 MS. MOLDENHAUER: Could I request,
20 respectfully request that the Chairwoman Heath ask the
21 ANC if they are going to provide legal argument as to
22 why this is a three conditions, that that be provided
23 since he wasn't present today and I had asked
24 questions on cross, that that be provided in writing
25 in advance of the continued hearing? I think that

1 that would expedite. But I appreciate that.

2 CHAIRPERSON HEATH: Sure. If you could work
3 with your counsel to provide a --

4 MR. JONES: Yeah. I'll have --

5 CHAIRPERSON HEATH: -- us a statement. That
6 would be helpful for us as well.

7 MR. JONES: They have each other's contacts.
8 They can -- I'm sure they're work directly with each
9 other regarding that, hopefully provide --

10 CHAIRPERSON HEATH: Sure, but it would also be
11 helpful for the Board to have something in writing
12 prior to --

13 MR. JONES: Yes. Of course.

14 CHAIRPERSON HEATH: -- a continued hearing,
15 just so we're familiar with --

16 MR. JONES: Right. Just let us know when.

17 CHAIRPERSON HEATH: Okay. We'll give you
18 dates. So --

19 MR. HINKLE: Madam Chair, if I could state?

20 CHAIRPERSON HEATH: Sure.

21 MR. HINKLE: Sometimes when we do this we get
22 extra testimony. Do you want to keep the record open
23 for additional testimony or do you want to close it to
24 everything else except for what we just requested?

25 CHAIRPERSON HEATH: I think I'd like to,

1 unless the Board objects, close it. Okay. Except for
2 what we requested.

3 MR. HINKLE: Thank you.

4 CHAIRPERSON HEATH: So thanks for making that
5 clear.

6 So, Mr. Moy, we need some new dates.

7 MR. MOY: Yes. Staff would suggest Mr. May is
8 going to be back with the Board on May the 17th, and
9 depending on the deadline for filing of the parties
10 the Board has just covered, are you expecting any
11 response to any of that, or are we just going to meet
12 on the 17th? Otherwise we can set a deadline for
13 filings for -- because I think you mentioned the
14 applicant was going to file or submit sunlight
15 studies, or sun shade studies? Sunlight studies.

16 So, I guess if parties are going to reply to
17 that at the time of the continued hearing or do you
18 want a response sooner than that?

19 CHAIRPERSON HEATH: I mean, May 17th is a ways
20 away. If you could -- if we could request that
21 everything is submitted with enough time to allow
22 responses, but we should receive those responses no
23 later than the Friday before the hearing.

24 MR. MOY: The Friday. Okay. Let's work
25 backwards then.

1 CHAIRPERSON HEATH: So, right.

2 MR. MOY: So responses from parties would then
3 be May the 19th. May the 13th. That would be a
4 Friday, May 13th. And the initial filings from
5 parties then that say, April the -- that last week of
6 April. Let's see.

7 CHAIRPERSON HEATH: Would the 6th be
8 sufficient?

9 MR. MOY: Oh, May?

10 CHAIRPERSON HEATH: Of May, yeah.

11 MR. MOY: You want to do that in May? All
12 right. Let's make that May 6th.

13 CHAIRPERSON HEATH: So May 6th for submission
14 of new documents and May 13th for any responses to
15 those submissions.

16 MR. MOY: Yes. Thank you.

17 CHAIRPERSON HEATH: But the record is closed
18 other than what the Board has requested.

19 MS. MOLDENHAUER: Thank you.

20 CHAIRPERSON HEATH: Okay. Thank you.

21 MS. GOODMAN: Thank you.

22 CHAIRPERSON HEATH: The hearing is adjourned.
23 No other matters coming before the Board.

24 [Whereupon, the meeting concluded at 1:38
25 p.m.]