GOVERNMENT OF THE DISTRICT OF COLUMBIA

Office of Zoning

Board of Zoning Adjustment

PUBLIC HEARING

9:21 a.m. to 1:38 p.m.

Tuesday, September 13, 2016

441 4th Street, N.W.

Jerrily R. Kress Memorial Room

Second Floor Hearing Room, Suite 220 South

Washington, D.C. 20001

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ARIEL EBI

C O N T E N T S

P R O C E E D I N G S

CHAIRPERSON HEATH: All right. The hearing will please come to order. Good morning, ladies and gentlemen. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street Northwest.

Today's date is September 13th, 2016, and we're here for the public meeting and hearings of the Board of Zoning Adjustment of the District of Columbia.

My name is Marnique Heath, Chairperson. Joining me today is Anita Butani-D'Souza, Vice Chairperson, Fred Hill, board member, Jeffrey Hinkle, board member, and Peter May, who is a member of the Zoning Commission sitting in as a member of the Board today.

Please be advised that this proceeding is being recorded by a court reporter and is also being web cast live. Accordingly we must ask you to refrain from disruptive noises or actions while in the hearing room.

The Board's hearing procedures and how we will process applications can be found on the table by the back door.

All individuals wishing to testify today will need to do two things. The first is, prior to testifying each person who wants to address the Board must complete two witness cards per person. That's two witness cards per person. And give those to the court reporter seated to my right prior to testifying.

The second is I'll need you to now stand and take the oath which will be administered by the board secretary, Mr. Moy.

MR. MOY: Good morning.

[Oath administered to the participants.]

MR. MOY: Thank you, ladies and gentlemen. You're hereby under oath.

PARTICIPANT: [Speaking off mic.]

CHAIRPERSON HEATH: I don't have any control to turn them up. We can speak louder. But I don't have any volume controls.

PARTICIPANT: [Speaking off mic.]

CHAIRPERSON HEATH: Sure.

[Pause.]

MR. MOY: Is it working now, the volume?

CHAIRPERSON HEATH: Is that better? Okay.

MR. MOY: It's good? Better? Oh, thank you.

CHAIRPERSON HEATH: Good. All right. So, Mr. Moy, good morning and welcome back.

MR. MOY: Yeah. Thank you. Welcome, Madam

Chair, Members of the Board. September. Welcome to the new historic era of ZR-16. Did I say that right?

CHAIRPERSON HEATH: Sure.

MR. MOY: For the record, Madam Chair, for today's docket and for the transcript of course, we have one case that has been postponed and rescheduled to September 27th, 2016, two cases to September 20th, 2016, which is next week.

The first case to September 27th is Application No. 19323 of Christopher D. French, and the two cases to September 20th are 18511C of Alleyoop, LLC., and 19324 of 1349 Randolph Street Holdings, LLC. And that's it for me, Madam Chair.

CHAIRPERSON HEATH: All right. Then we can start with our first hearing case.

MR. MOY: Okay. That would be applicants to the table to Application No. 19321 of Margaret A. Roberts. And this has been captioned and advertised for special exception relief under Subtitle D, Section 5201 from the rear yard requirements of Subtitle D, Section 306.1. This is to add a one-story rear addition to an existing one-family dwelling, R-1-B Zone at 3109 Park Drive Southeast, Square 5656, Lot 831.

CHAIRPERSON HEATH: Okay. All right. Good morning. If you could make sure your mic is on and then introduce yourself?

MS. ROBERTS: Hi, Margaret Roberts. I live at 3109 Park Drive Southeast.

CHAIRPERSON HEATH: Okay. Thank you. We've received all of your application materials that are in the file and we've had a chance to review them. I don't have any questions about this case. Does the Board have any questions? Okay.

Normally we would take you through a full hearing, but it appears since the Board doesn't have any questions that we don't need to drill down on anything and if you're okay with us proceeding on we'll do so.

MS. ROBERTS: Sure. Thank you.

CHAIRPERSON HEATH: Okay. Thanks. So then with that we'll turn to Office of Planning to see if they have any additional comments.

MS. THOMAS: Good morning, Madam Chair, Karen Thomas for the Office of Planning. Welcome to ZR-16.

CHAIRPERSON HEATH: Thank you.

MS. THOMAS: I hate to stand on the record for this but this is fairly straight forward so I'll take it as a win and move on.

CHAIRPERSON HEATH: Okay.

MS. THOMAS: And as you know, Subtitle D, we are in Subtitle D.

CHAIRPERSON HEATH: Uh-huh.

MS. THOMAS: Section 5201 for 223, the former 223s. So I'll stand on the record with that. Thank you.

CHAIRPERSON HEATH: Thank you. Board, any questions of Office of Planning?

Applicant, any questions of Office of Planning?

MS. ROBERTS: No, thank you.

CHAIRPERSON HEATH: All right. Thanks. Is there anyone here from ANC-7B on this case? ANC-7B? All right.

We do have their letter recommending approval by a unanimous vote, so you've done your work there.

We also have a letter of no objection from Department of Transportation on this case. I assume there's nobody here from Department of Transportation. All right.

And we have letters of support from your neighbors in the record. Is there anyone here wishing to speak in support? Anyone in support?

Anyone here wishing to speak in opposition to this application? Anyone in opposition? All right.

Then we would normally turn back to you for closing but there's probably no reason for you to close at this point.

MS. ROBERTS: I think it's all been said, thank you.

CHAIRPERSON HEATH: All right. So then we will conclude the hearing and I will make a motion that we approve the request for special exception under Subtitle D5201 from the rear yard requirements of Subtitle D306.1 to add a one-story rear addition to an existing one-family dwelling in the R-1-B at 3109 Park Drive Southeast.

MS. BUTANI-D'SOUZA: Seconded.

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

[Vote taken.]

CHAIRPERSON HEATH: The motion carries. Thank you.

MS. ROBERTS: Thank you for your time.

MR. MOY: Staff would record the vote as five to zero to zero. This is on the motion of Chairperson Heath to approve the application for the relief, special exception relief requested as shown on plans under Exhibit 21. Seconded the motion, Vice Chairperson Butani. Also in support, Mr. Peter May, Mr. Fred Hill, and Mr. Jeffrey Hinkle. Motion carries, Madam Chair.

CHAIRPERSON HEATH: All right. Summary order.

MR. MOY: Yes. Thank you.

CHAIRPERSON HEATH: And then you can go. Thank you. And, Mr. Moy, you can call our next case.

MR. MOY: Thank you. That would be parties to the table to Application No. -- okay, I'm seeing we're going by order, so that would be 19326 of Magnolia Tree, LLC., as captioned and advertised for special exception relief under the RF use requirements of Subtitle U, Section 320.2. This would convert a one-family dwelling into a three-unit apartment house in the R-F-1 Zone, 1167 Morse Street Northeast, Square 40 -- or rather, 4070, Lot 119.

CHAIRPERSON HEATH: All right. When you're ready, if you could introduce yourselves?

MR. CROSS: My name is Michael Cross. I'm the architect on this project.

MS. CHERROUSLES: My name is Suzane Cherrousles. I'm the owner and developer.

CHAIRPERSON HEATH: Okay. and is there anyone here representing the ANC single-member district? Okay.

It was our understanding that they were going to be here this morning. I know that they've requested a postponement of this hearing and we received a really brief letter from you saying that you didn't want to postpone. Is that ANC meeting this evening?

MR. CROSS: Yeah, we've attended the single-member district and met directly with the neighbors. The larger ANC meeting is this evening.

CHAIRPERSON HEATH: Okay. And did the -- at the meeting with the single-member district, was there resistance? What was the outcome of that meeting?

MR. CROSS: Yeah, we -- my office attended, myself and one of my team members attended. We presented the project to a pretty good attendance from the community. At least one direct neighbor was there.

We got feedback regarding the amount of off-street parking required, or provided, as well as the general mass of the proposed structure. We took those --

CHAIRPERSON HEATH: What kind of feedback?

MR. CROSS: They specifically wanted more off-street parking, which we took back to my client and we are now providing two off-street parking spots for this project. They also felt that the rear addition was too large and they wanted it to be pulled back. We provided studies to my client to evaluate the amount of reduction that they had asked for and she actually has met with those neighbors directly to further get their input.

Do you want to speak to the marketing component of that or --

MS. CHERROUSLES: [Speaking off mic.]

MR. CROSS: I guess the outcome of that was we found that the amount of reduction in size no longer made it marketable for a three-unit building, and therefore if we did not get the support we would be proceeding with a two-family matter of right structure of the same size. So we decided to proceed because we perceived that we were at an impasse with the ANC.

MS. CHERROUSLES: Can I say something?

CHAIRPERSON HEATH: But you said you reached out to the adjacent neighbors. And what was their response?

MS. CHERROUSLES: They stated that they -- that I could go as high as I wanted, but they were a little worried about their view. And the whole reason --

CHAIRPERSON HEATH: Because of the depth?

MS. CHERROUSLES: Because of the depth of the building. The whole reason that I chose to do three units instead of two, because by right I can go back as far as I'm going. But I wanted to do three units because I've worked in this neighborhood for over 10 years and I know a ton of the community members. And the feedback that I've been getting is that D.C. is becoming unaffordable and so people are having to leave. And there's a lot of elderly people and a lot of young couples there that would love to stay, age in place, or you know, live by their families with their new kids.

So by doing three units I can bring the cost down per unit and I can make it more affordable. And I feel like it's like a -- it's a community, you know, service. I don't want to price people out. But unfortunately the way that the marketing goes and the market is going up, and the people -- the purchase prices are going up so the sale prices are going up.

And like I said, I've been there for 10 years. I feel like I'm embedded in the community. I have friends in the neighborhood. I eat and drink in that neighborhood. Born and raised in D.C. I'm not some interloper coming in from the County. And so I mean, I feel personally responsible for doing the right thing. So that's why I wanted to do three units instead of two.

CHAIRPERSON HEATH: Right. But if your neighbors aren't -- are still --

MS. CHERROUSLES: They said they just don't like change. They're elderly and they're like, we're just not comfortable with all this change going on. And that was basically the largest part of the conversation was, they're just not comfortable with change.

But unfortunately the --

MS. BUTANI-D'SOUZA: I think it would be helpful to hear from the ANC in this case. Especially since they're meeting tonight. I don't see any reason why we wouldn't --

MS. CHERROUSLES: There was supposed to be somebody here from the ANC.

MS. BUTANI-D'SOUZA: Yes. No, but I mean the full ANC report. So and since they are meeting tonight it seems rather silly to not wait to hear from them, especially since this regulation, the whole point of it is to --

MS. CHERROUSLES: Right.

MS. BUTANI-D'SOUZA: -- enable the ANC an opportunity to weigh in on this kind of development.

MS. CHERROUSLES: Right.

MS. BUTANI-D'SOUZA: So, in the future I think if you're going to dispute a postponement it would be helpful if you could put that in writing rather than just a one-line letter saying no. But I think in this case it's silly not to postpone and wait to hear from them.

CHAIRPERSON HEATH: Right.

MS. CHERROUSLES: Okay. That pushes my schedule. Unfortunately I have a very small boutique business. So I mean, if we get postponed for another month that might mean I just go with this --

CHAIRPERSON HEATH: We haven't determined how long the postponement means.

MS. CHERROUSLES: Oh, okay.

CHAIRPERSON HEATH: It could mean a week, it could mean a month, but --

MS. CHERROUSLES: Okay. The sooner --

CHAIRPERSON HEATH: But I think the Board --

MS. BUTANI-D'SOUZA: But it would probably be helpful if you were to work with the ANC to get them to issue a report rapidly and you know, obviously if you're interested in not getting postponed then it makes sense to negotiate as much as possible because of course if they were to register as a party in opposition or something like that you would have a massive delay as you wait for all of that to get resolved. So, if speed is of the interest we would encourage you to really work with your neighborhoods and community to see what you can do.

CHAIRPERSON HEATH: All right. Anybody else have comments? Go ahead.

MR. MAY: Okay. So, how much did the neighbors suggest that you reduce the --

MS. CHERROUSLES: They didn't really have a suggestion.

MR. MAY: Well, but you did an analysis, so what was the analysis based on?

MR. CROSS: Yeah, we did study at a five foot and a 10 foot reduction and the five foot reduction did not seem like it gave -- that it satisfied the neighbor's concerns enough. While it was still a feasible amount for us, the 10 foot became unfeasible.

MR. MAY: Why? I mean, what are you -- you're looking interior study space? I mean, honestly the units themselves don't look really terrific because you've got a lot of interior space. I mean, this is a very deep building that you're proposing. And so there's a lot of interior space which winds up being, quote, "study."

MR. CROSS: Yeah, we've dealt with the depth by putting a front and rear unit.

MR. MAY: I understand that, but you're -- I mean, you're basically backing up two 35-foot units to each other, right? Thirty-five foot, 40-foot deep units. So it's basically like two normal townhouses backed up against each other.

MR. CROSS: It's a --

MR. MAY: So it means that at that depth, 35 feet or whatever, you've got a lot of interior space that doesn't get any light or air, right?

So what is it that makes that 10-foot reduction unmarketable?

MS. CHERROUSLES: What I've found from speaking with people looking for houses in the city and people -- you know, I've seen a lot of houses that are built, and condos, where there's not a lot of common area space. So basically you walk in and you have your downstairs lounge and then the top two floors are bedrooms.

So, what we liked about this design was that on the second floor there was another lounge area. And I've spoken with a lot of young couples with -- who have had to move out of condos and buy expensive houses because there's not a lot of places to put the kids, and then put their people and entertain, and just have separate spaces. So that was, that was --

MR. MAY: So it's like a rec room, TV room kind of thing.

MS. CHERROUSLES: Exactly.

MR. MAY: So what's the dimension of it in the current plans?

MS. CHERROUSLES: It's 10 feet.

MR. MAY: The entire -- that entire --

MS. CHERROUSLES: In depth.

MR. MAY: -- study space is 10 feet deep?

MR. CROSS: The study is approximately 10 by 15.

MS. CHERROUSLES: Wide, yeah.

MR. MAY: That doesn't -- all right, I have to look again at the plans. Didn't seem like that to me. It seemed like it was easily 15 feet.

MS. CHERROUSLES: No. What we're trying to build is something that people stay --

MR. MAY: Yeah.

MS. CHERROUSLES: -- stay in forever. It's their forever house.

MR. MAY: You know, I understand. You have marketing objectives. What I'm trying to do is understand the real issues here. I mean, what you're talking about is extending the existing building by -- I mean, basically doubling the depth of the building, right? And the immediately adjacent properties are only that single depth.

MS. CHERROUSLES: That's --

MR. MAY: No, they have -- I mean --

MS. CHERROUSLES: [Speaking off mic.]

MR. CROSS: Today the current adjacent buildings are only that depth. There are other projects on this block that have maximized their 60 percent lot coverage, which is the matter of right coverage for a single-family flat and apartment buildings.

MR. MAY: Yeah, I'm aware of that.

MS. BUTANI-D'SOUZA: It would be helpful if you guys actually put dimensions on your plans because I see that there is actually multiple study spaces per unit, correct?

MS. CHERROUSLES: There are.

MS. BUTANI-D'SOUZA: I see there is possibly -- this one looks like 10 feet on the second floor.

But on the third floor you have a study space that's much larger than that. So, you know, I don't -- it would be -- especially if you were trying to argue that you lose marketability because you cannot reduce the building by 10 feet. You should really have some dimensions on here so that we can actually evaluate that argument.

MR. CROSS: We'd be glad to provide dimensions. The design intent of this is to utilize the allowable footprint and develop two townhouses for folks so that they don't have to live in flats if they choose to live in condominiums. They still have the original townhouse feel of this neighborhood as it was originally built. But we've actually increased the density and allowed more people to live there.

CHAIRPERSON HEATH: And when you produced the study that you showed to the neighbors, were those full plans?

MR. CROSS: Yeah, we presented --

CHAIRPERSON HEATH: With the five-foot and 10-foot reduction?

MR. CROSS: Yeah. I do not believe if the plans were presented to the neighbors. Essentially the neighbors asked for a certain amount of reduction and we were unable to meet that.

MS. BUTANI-D'SOUZA: I thought you said that they didn't ask for a specific amount of reduction.

CHAIRPERSON HEATH: Right. Did you produce plan --

MS. CHERROUSLES: I would --

CHAIRPERSON HEATH: Did you produce plans as a part of your study?

MR. CROSS: We produced plans as a part of our study for our client.

CHAIRPERSON HEATH: For the five-foot and 10-foot reduction?

MR. CROSS: Correct.

CHAIRPERSON HEATH: Could you submit those for the Board to see as well?

MR. CROSS: For this Board to see?

CHAIRPERSON HEATH: Correct.

MR. CROSS: We can, we did not.

CHAIRPERSON HEATH: I know you didn't. I'm asking you if you could submit those.

MR. CROSS: Sure. Certainly.

CHAIRPERSON HEATH: All right.

MR. MAY: So I have some other questions on this. Did you meet with the directly abutting neighbors, the ones on either side?

MS. CHERROUSLES: I did.

MR. MAY: And are they both opposed to it, or are they both in favor of it?

MS. CHERROUSLES: I didn't meet with both neighbors. The neighbors to the left are never home and they weren't -- they didn't go to the meeting, and I've knocked and they're just -- I've been over there on the weekends.

MR. MAY: Right.

MS. CHERROUSLES: Yeah. And then the neighbors to the right that were in opposition, they're lovely people. She just doesn't like change.

MR. MAY: Yeah, but please, do not try to attribute their motives. Okay?

MS. CHERROUSLES: Okay.

MR. MAY: I mean, you know, if they're going to speak to us --

MS. CHERROUSLES: That's what she said.

MR. MAY: If they're going to speak to us --

MS. CHERROUSLES: Right.

MR. MAY: -- we'll hear it in testimony, we'll hear it in letters. We may hear it in what the ANC reports to us. But for you to come up here and say that they simply don't want change is being really dismissive of people's attitudes about this and I don't think that's going to really help your case.

MS. CHERROUSLES: I'm in no way trying to be dismissive. I'm just --

MR. MAY: Good, then don't say it.

MS. CHERROUSLES: -- relaying the feedback that I got from them.

MR. MAY: Then just -- then I suggest --

MS. CHERROUSLES: Verbatim.

MR. MAY: -- you don't say it, okay?

MS. CHERROUSLES: Okay.

MR. MAY: Okay. You know, there are lots of reasons why they would do it. They may not be able to articulate what those reasons are, but we're going to base that on the facts that we have in evidence.

MS. CHERROUSLES: Okay.

MR. MAY: Not based on -- I mean, you know, I understand where you believe you are coming from. But a lot of the things that you are saying indicate to me that you are not really being attentive to the concerns of the neighbors. And the fact that, you know, having this -- you know, this interior study space is so important, I mean, you know, I just don't -- I'm not buying the whole sales job you're trying to give us. So I would like us to be focused on what the facts of the matter are and if you can actually make a workable unit.

You know, we have seen cases like this before where they have built back, or attempted to build back extreme lengths like this. And when we said you know, no, that doesn't make a whole lot of sense or the ANC pushed back or the Office of Planning pushed back, what happened was the developer came back with a plan that actually worked reasonably well and could get you know, really good units, and also get light and air to the interior of the building and things like that.

You know, this is just from the looks of it, this is not a great project. It has extraordinary impacts. Yes, it's true, you could do a lot as a matter of right, but you are asking for relief in order to have multiple units and that means getting a blessing from us that says, yes, this is okay. And what I've seen so far is that a 30 to 40 -- 30 to 38, 28 to 38 foot projection along, from the back, from the abutting properties, that's not something that I find acceptable.

You know, in the Zoning Commission we set a limit of 10 feet. And it is something that can be waived, but waiving it and tripling it is not necessarily what we'd want to do and you know, the only circumstances where I can see doing it is if it is -- you have demonstrable support from abutting neighbors and from the people around you. This is what they want their -- the way they want their neighborhood to change.

MR. CROSS: Just for the record, at the time of application the 10 foot requirement was not applicable for this property in this zone. So we've added it to our application.

MR. MAY: Right.

MR. CROSS: And subsequently asked for relief of that. We are only asking for relief from that and the architectural features, components. Otherwise you know, we -- one of the reasons we continued with this case is we're standing by Office of Planning's letter of support for the project.

MR. MAY: Right. I have things to say to them too.

MR. CROSS: Just trying to stay on kind of the facts of the case.

MR. MAY: Right.

MR. CROSS: And so just making sure that that's all clear.

MR. MAY: Right. So I mean, a lot of my

understanding of cases like this is based on an extensive hearing in which we took up this issue about how you make improvements and enlargements to buildings in R-4 neighborhoods. What were R-4 neighborhoods, now they're R-F-1.

And it is, you know, this is a big issue and that is why we actually changed. There was a -- you know, there was a bit of a glitch in the final production of the language, and that's when we added the 10-foot limit on the back to recognize the fact that we had you know, most of us were intending for that to occur, first time around, and we had a second action to take that up.

Buildings like this have a substantial impact. I mean, do you want to live next door to a building that is just a 30-foot wall? That's the sort of circumstance that is problematic. The fact that it faces south is beneficial. It means that for half the day you're going to get direct sunlight. But for half the day you're going to start seeing a lot of shade. Not to mention the fact that there is an enclosure and what happens with, you know, you don't do it but you have them on both sides. And then you're, you know, your backyard is now a courtyard.

And this is what people are concerned about. It's not just being -- you know, that they don't want change. It's that they don't want this change. They don't want this change in character to their neighborhood.

MR. CROSS: I completely agree on a subjective and qualitative level. The fact is that it's 60 percent lot occupancy for this zone so the same neighbors who are protesting today could do the same thing to my client tomorrow in a single family structure. So that's the only position I can work off of. It's what's written in the code.

MR. MAY: Right.

MR. CROSS: And it's 60 percent.

MR. MAY: Right. So let's talk about the matter of right alternative. I mean, you suggested that if you can't get this relief in order to do three units, that you'd just go back to a two-unit matter of right. Just do flats, right?

MR. CROSS: Yeah.

MR. MAY: And there was testimony that that would have an impact. I mean, that has a schedule -- sorry. That if we wind up postponing our hearing it's going to have a schedule impact, right?

MR. CROSS: Correct.

MR. MAY: So what's the schedule impact of redesigning the building to be flats?

MR. CROSS: Yeah, the background on this is we're at the September hearing here. Obviously there was an August recess which has created a bit more of a schedule create for my client on this particular project. So they're a little farther ahead than they would be otherwise.

The marketing analysis done with my client and her real estate team has proven that a two-family flat is equally or more marketable in its full 60 percent coverage than the reduced footprint three-unit. That's just the data that we're working on.

MR. MAY: Okay. So my question was about schedule impact.

MR. CROSS: The schedule --

MR. MAY: Your --

MR. CROSS: The schedule -- sorry.

MR. MAY: Your client testified that our delaying to hear from the ANC would have a serious impact on your schedule and she would consider just going with the two-unit matter of right.

MR. CROSS: And that is true.

MR. MAY: But what is the impact on your schedule if you have to redesign the project as a two-unit matter of right?

MR. CROSS: Yes, sir. The basement apartment would be eliminated. Everything else would --

MR. MAY: Schedule impact. How long will it take you to redesign it to the point where you are now?

MR. CROSS: I'm not being clear, I guess. There's no --

MR. MAY: Right.

THE COURT: There's no redesign required. We are going to eliminate the basement apartment as --

MR. MAY: Simply just eliminate it. It's going to become vacant space and you're just going to do exactly the same units.

MR. CROSS: Exactly.

MR. MAY: Okay. Thank you. You know, I'm sorry if I'm -- I'm just trying to get the direct straight answer.

All right. Well, I think that's it for my questions for the applicant. I do support hearing from the ANC on this because this is an issue for the broader community and I would like to hear from them as quickly as we can.

MR. HILL: So, you're going to the ANC meeting tonight, possibly. Or, you're not on the agenda. Are you on the agenda? Yeah, you're probably not on the agenda.

MS. BUTANI-D'SOUZA: That's quite a game to play when you're trying to do this to not even get on the agenda. I mean, if you're an experienced developer I would expect you to know a little better. Neither here nor there.

MR. CROSS: I can't confirm that we are but we have not said that we are not going to the ANC tonight.

MR. HILL: Okay. So, I guess my issue again is going to be just kind of hearing from the ANC and what they think, right? And there's some, you know, petitions in here from people that are opposed to it, and we've already had a lot of like, you know, there was the pop-ups, the pop-backs. I mean, that's where we're coming from.

And so, you know, the matter of right issue, I'm always a little bit -- I find it interesting because like I personally would find it difficult to live in something that big as a two-unit. But, you know, maybe it is -- sorry.

[Cell phone ringing.]

MR. HILL: Maybe it is marketable and that might be, you know, what you end up with I suppose.

But hearing from the ANC is something that, you know, we want to know about. Particularly the neighbors next door to it because it is a large, you know -- the whole 10-foot thing, that's what the whole, you know, the Zoning Commission went through, to kind of limit the pop-backs.

So, you're basically hearing the same thing but I'm just not as adamant, you know.

MS. BUTANI-D'SOUZA: I would say that, you know, we've seen some people in with pop-backs, and they've been able to do simple things like adding green wall screening to the pop-back wall that has made their neighbors much more amenable to this. So that's why I think it's very important for you to actually have these conversations and go in there and really present them with some options.

You may find that they're more amenable than you expect. Especially if you're making adjustments to things like parking. But the whole point of these regulations is to allow the community an opportunity to have input. So it is a little bit shocking and frankly frustrating that you would sort of write a one-line letter to say, no, we don't want to postpone when you have an ANC meeting literally tonight.

So, that's all I have to say about that. I think we should move on.

CHAIRPERSON HEATH: All right. So, since we have Office of Planning here I'd like to hear from -- well, Mr. May had some comments for Office of Planning. Did you want to talk through those now or --

MR. MAY: No, I just, I'm baffled by the conclusion that a 30-foot, 30 plus foot projection at the back of the building does not have a negative impact on light and air because I think that that was critical to the discussions that we had during the R-4 zoning case, and these are the sort of things that people are concerned about.

And I mean, I don't know, I was baffled by that conclusion.

MR. MORDFIN: Well, we thought in this case because it faced south that it really wasn't going to affect the light and air. It wasn't going to affect the light as the sun came across.

We also thought that because there are no windows on the sides or anything that it would add a level of privacy to the yards on either side whereas when they don't extend out as far you can still see into the rear yards of the adjoining properties. And we thought in this case, it looks like this would preserve their privacy because with their windows at the back only they would not be able to see into the rear yards of the adjoining properties, and that would give them a level of privacy that they wouldn't otherwise have when they all have the same wall in the back, which is typical. Anyway, but you can always look out and look right into the rear yard of the adjoining property, and we thought this would eliminate that possibility.

MR. MAY: So the rear yards now, what separates them generally on that block? Do they have six-foot privacy fences, or do they have three-foot garden fences? What do they have?

MR. MORDFIN: I don't recall what they have. I think there's --

MR. MAY: Yeah. I mean, sometimes, you know, I've lived in circumstances with both and sometimes, you know, you want to have that shared openness that comes with the three-foot garden fence rather than having the six-foot privacy fence or looking at a wall. I mean, and it is very different looking at a -- I mean, we're talking about a 30-foot high wall.

I had another question about this. The plans indicate that there is a penthouse on top of the third floor addition. Is that right?

MR. MORDFIN: Yes.

MR. MAY: Okay. And so how is that permissible under the new penthouse regulations? I thought that you needed as special exception to add a penthouse in an R-F-1.

MR. MORDFIN: R-F-1. I think it -- trying to remember because we didn't evaluate it in the report, that it can form -- it's not too big because it just has a landing at the top. And right now I don't recall specifically all the penthouse regulations and how it does conform. I would have to --

MR. MAY: Okay. So since it seems we're likely to postpone that I would like to have some analysis of that because my recollection is that in row house neighborhoods like this, and anything -- I think it was residential neighborhoods, 40 feet or below. It might even be all neighborhoods if you're talking about residential units that are 40 feet or less, that penthouses were not permitted as a matter of right and that required -- they required relief.

So, and if I'm wrong about that at the very least I'd like to understand how visible that penthouse is given that it's sort of in the middle of the building, because there may be setback requirements or something like that, that need to be met. Okay. Thanks.

CHAIRPERSON HEATH: All right. Any other questions of Office of Planning from the Board? Okay.

All right. Then so I know I called earlier for -- to see if there was anybody here from the ANC. I'll just call one last time. Anybody here from the ANC on this case, Single-member District 5D-06?

All right. And while we're here, in case there is somebody who took the time to come down today, is there anybody here wishing to speak in support of this application? Anyone in support? Anyone here wishing to speak in opposition to this application?

MR. LEVESGE: [Speaking off mic.]

You're wishing to speak in opposition? Then please come forward.

MR. LEVESGE: [Speaking off mic.]

MR. MOY: I need you on the microphone.

MR. MAY: Been sworn?

CHAIRPERSON HEATH: Were you sworn in this morning, since you got here late?

MR. LEVESGE: I wasn't.

CHAIRPERSON HEATH: Okay. So, we'll have you stand and take the oath.

[Oath administered to the participant.]

MR. MOY: Thank you. You may be seated.

CHAIRPERSON HEATH: Okay. And we'll ask you to give your name and let us know your relationship to the property, and then you can -- we'll give you up to three minutes to make your statement, after which you'll give your cards to the court reporter.

Make sure your mic is on because it's not yet. Push the button that says, "Push."

MR. LEVESGE: Okay, how is that?

CHAIRPERSON HEATH: That's good.

MR. LEVESGE: Great. My name is Cyrus Levesge. I live at 1184 Morse Street Northeast, so I'm on the same block. I'm on the north side, so I can speak with experience about every aspect of the south side of the block. Just, sun during the day makes a difference and things like that.

I want to address a few minor points. The houses on that side of the street have a mix of three-foot and six-foot fences, some shrubbery and trees in addition to actual fences. So privacy is a concern for people who live there.

Sunlight would be important. It is a 30-foot wall -- a 30-foot wall with no windows does give you more privacy than the lack of it, but it's still a wall right there. It's still three neighbors in the space of one, and it is -- facing south it wouldn't obstruct the sun at noon in the summer, but at basically any other time that's a big wall to be blocking the afternoon or morning sun if you're trying to grow something on either side. I know some people there have gardens.

I think, I was not one of the people who was able to sign the letter you received a couple days ago, but I was made aware of it late and I mostly agree with it. And I don't have prepared remarks, I'm sorry to say. But I mostly agree with it and I think we'd really appreciate if any development could stay within the footprint of the existing house.

And the issue was also raised of how obtrusive it would be. There are now four or five pop-ups on that side of the street. Not many. Out of about -- not even five. Definitely not five, out of about 40 houses on that side of the street. So one more house that's three or four stories would definitely stand out next to all the ones that are just two-stories right there.

That's all I have to say. Some relatively minor points, but I agree with the letter from the residents there. Thank you.

CHAIRPERSON HEATH: All right. Thank you. Does the Board have any questions for this witness before he leaves? All right. You're fine, thank you. All right.

Anyone else here wishing to speak in opposition? None in opposition. Okay. All right. Then we're going to put this on for a later date, Mr. Moy, to give the applicant time to meet with the ANC. We assume that you'll have that opportunity tonight. But if for some reason that doesn't happen because it sounds like there's some question as to whether or not you're on the agenda, then if you could let the office know.

But we, you know, we definitely need you to work with the ANC and your adjacent neighbors. And we'll give you time to do that.

Do we want to look at the next time Mr. May is here?

MR. MOY: Yes, Madam Chair. I have two dates. Mr. May is due to return on October the 18th. If the Board is interested in anything previous to that date the only other possibility, depending on Mr. May's availability, would be September 27th.

MR. MAY: I mean, I'm certainly willing to come in on the 27th for this case.

CHAIRPERSON HEATH: Okay.

MR. MAY: If that --

MR. MOY: We could do this first, or in the morning. Whatever time --

MR. MAY: Yeah.

MR. MOY: -- is good for Mr. May.

[Discussion off the record.]

MR. MAY: Well, in terms of readiness, I'm really mostly interested in what the ANC has to say. Office of Planning asked them to do a little bit more on the penthouse question. The applicant is also free to do that.

I mean, it seems to me that all that can be done within a week. We're talking about two weeks from now.

CHAIRPERSON HEATH: Right. So, as long as you're able to meet with the ANC and your neighbors in that time, I would encourage you to do what you can to get the ANC to submit a letter immediately after the meeting tonight. And then any letters you can get from your adjacent neighbors. You'd need to get those as quickly as possible as well.

MR. HILL: May I say?

CHAIRPERSON HEATH: Sure.

MR. HILL: And I mean, I was just thinking from kind of a developer/development standpoint again, the whole issue of the special exception was that we got to hear from the neighborhood. And so I understand how you kind of are getting to this point that, you know, because the Office of Planning gave their blessing, you thought that it was going to be something that would just kind of, I suppose, work itself out.

And I say that again, only for any kind of future things that might be going on. You know, that that is -- that's why this special exception is here, so that we can hear from the neighborhood. Otherwise, just do it by right and just don't even have to come here. So, thank you.

MR. MAY: Madam Chair if I could --

CHAIRPERSON HEATH: Go ahead.

MR. MAY: So, you know, I'm sorry if I sound really harsh on this. I'm just trying to get to the basic facts of it. I do think -- you know, I do appreciate, excuse me, Ms. Cherrousles, your efforts to work with the community and to do good work, and we certainly have evidence in the record about the good work that you've done on other buildings, which is disturbingly not what we always see. We usually see a lot of complaints about quality of construction and so on.

That's all good. And I appreciate, you know, honestly your intentions, your desire to be a good neighbor and to do well. And there are certainly examples of that happening in other development projects and we see it on small projects and we see it on really big projects as well. And the developers that are often the most successful are the ones who really do try to make that genuine effort to meet -- you know, to come to some common ground with the neighbors. Maybe you're not going to satisfy everybody, but, you know, if you can trim back the building a little bit. If you can do some, you know, do some other measures that might make it more acceptable to them, I mean, all of these things I think are -- you know, could be beneficial to how this is received by the community, but also to your project as a whole.

You know, there -- you don't want to build a project that winds up being hated by the neighbors. It's not going to be what, you know -- I don't know what it's going to mean for the people who buy the units, but you really want to have something that people can get along with. And I think you've done some really good things. So far. I mean, I appreciate the fact -- or the way you have modified the design at the front of the building and I think that's done pretty well.

So I think, you know, you're making good steps. You're saying a lot of the right things. I just want, you know, I'm hopeful that you can come forward with a little bit more progress with the neighbors.

CHAIRPERSON HEATH: All right.

MR. MOY: Madam Chair, so where did the Board stand on the continued hearing date?

CHAIRPERSON HEATH: We'll put it on for the 27th.

MR. MOY: Okay. So --

CHAIRPERSON HEATH: If for some reason you are not able to meet with the ANC tonight, if you could let the office know because we'll need to shift this to a later date.

MR. MOY: So if we set this for the 27th, can the applicant make their filing deadline? I'll give you as much time as possible to perhaps Thursday, September the 22nd, so the Board will have time to review the additional information? I'd like to --

MS. BUTANI-D'SOUZA: Is there a way to request that the ANC provide their report rapidly in this case?

MR. MOY: As soon as possible.

MS. BUTANI-D'SOUZA: Since we are postponing at their request. You know.

MR. MOY: And I guess Office of Planning, same date, the 22nd.

CHAIRPERSON HEATH: All right. So just to be clear, we're looking for the letter from the ANC. Any additional letters in your favor, certainly from adjacent neighbors. We're also looking for your plans to be dimensioned and resubmitted into the record. And the study that you produced showing the five-foot and 10-foot reduction also added to the record. And then of course the questions that Mr. May has asked of Office of Planning for the penthouse compliance.

Anything else? All right. Okay.

MR. CROSS: We appreciate your time. Thank you.

CHAIRPERSON HEATH: Thank you.

MS. CHERROUSLES: Thank you.

MR. MOY: The next application before the Board, parties to the table to Application No. 19327. This is of Landmark Holdings, Inc., as captioned and advertised for a special exception relief under penthouse reg requirements of Subtitle C, Section 1504.1, and variances from the expansion of nonconforming structure requirements at Subtitle C, Section 202.2, Sub B, the expansion of gross floor area of nonconforming use requirements of Subtitle C, Section 204.1, lot occupancy requirements of Subtitle F, Section 304.1, and the rear yard requirements of Subtitle F, Section 305.1.

This would allow the construction of an exterior egress stairwell to an existing hotel, RA-5 Zone, 1201 13th Street Northwest, Square 281, Lot 46.

CHAIRPERSON HEATH: All right. Good morning. If you all could introduce yourselves, please?

MR. KADLECEK: Good morning. Cary Kadlecek from Goulston and Storrs, land use counsel on behalf of the applicant.

MR. TRACE: Good morning. David Trace, Studio 3877 Architecture, architects.

MR. PATEL: Good morning, Chet Patel. I'm with Landmark Holdings.

CHAIRPERSON HEATH: All right. Okay. So we've now received the letter from the ANC, ANC 2F, recommending their approval of the variances. You presented both the variances and the special exception.

MR. PATEL: We did. They opted not to take any action on the special exception.

CHAIRPERSON HEATH: Okay. Is there a reason for that, that they stated?

MR. PATEL: Yeah, they have a committee process that reviews before the full ANC, and they just decided they didn't want to review it at the full ANC because the committee hadn't reviewed it.

CHAIRPERSON HEATH: Okay.

MR. PATEL: They just had no opinion on it.

CHAIRPERSON HEATH: Okay. All right.

MS. BUTANI-D'SOUZA: I have a question, looking at the plans and the rendering. It looks like there is some kind of driveway or alleyway there. Can you help us understand, is that being blocked?

MR. TRACE: It is currently the loading dock. It will still remain in operation. We're going to take a little bit of the space but not the whole loading dock.

MS. BUTANI-D'SOUZA: Okay. Got it. So it's on your private property?

MR. TRACE: Correct.

MS. BUTANI-D'SOUZA: Okay.

CHAIRPERSON HEATH: All right. Does the

Board have any other specific questions?

MR. HILL: Actually, if you could just show me on the diagram again, the special exception, the penthouse and the relief that you need?

MR. TRACE: I don't know that I have the roof plan. Oh, yes. So, I do.

So, effectively the -- do you want me to kind of walk through the whole stair situation?

MR. HILL: Yeah, that would be great.

MR. TRACE: So currently there are two stairs in this building. I'm actually going to go back two pages. You'll see stair one and stair two. They're immediately adjacent to each other. In order for us to meet any of the current codes there has to be a separation of 27-foot, 10 and a half, which is what that circle and diagram shows.

So what we're --

MS. BUTANI-D'SOUZA: Which exhibit are you on? I just, I can't quite see that far.

MR. TRACE: Oh, we're on -- oh, sorry.

MR. PATEL: It's, in the record, it's Exhibit 40.

MR. TRACE: Thank you. So, our intent here is to expand that separation by adding the supplemental stair, which is shown on the last page.

And that supplemental stair then would allow us to abandon the non-conforming or non-code compliant stair. And that's effectively what we're asking for. And the supplemental packet was asked by Office of Planning to show why it couldn't sit within the building square footage.

MR. HILL: Okay. Thank you.

MS. BUTANI-D'SOUZA: So this is visible from 13th Street?

MR. TRACE: It is.

CHAIRPERSON HEATH: Go ahead.

MS. BUTANI-D'SOUZA: No, I'm curious to get Mr. May's thoughts on it.

[Pause.]

MR. HINKLE: Well, I'll ask. In terms of the architecture, the proposed stair tower, I guess, have you talked to the neighbors in the adjoining building?

MR. PATEL: We reached out to the condo that's across. There's a small public alley. Actually it's not drivable. It's like five feet wide.

We did reach out to them but we didn't hear anything back.

MR. HINKLE: No comments?

MR. PATEL: No.

MR. HINKLE: And this replaces, there's like a series of balconies, if I recall. This replaces those balconies?

MR. PATEL: Yeah, they're like a -- it's like a four-foot square balcony that's adjacent to an old shaft. We go right up against. We remove those balconies and that's become part of the landing of the stair. Correct.

CHAIRPERSON HEATH: All right. Any other questions from the Board?

All right. Then, we may come back to you with more questions, but if you're okay with us proceeding on --

MR. PATEL: Yes, we're happy to proceed. Thank you.

CHAIRPERSON HEATH: Okay. All right. Then we'll hear from Office of Planning now.

MS. COHEN: Well, OP is happy to just stand on the record unless the Board wishes otherwise.

CHAIRPERSON HEATH: Okay. Any questions for Office of Planning from the Board? Don't have any? All right.

Applicant have any questions of Office of Planning?

MR. PATEL: No questions, thank you.

CHAIRPERSON HEATH: All right. All right. Is there anybody here from ANC 2F on this application? As I said earlier, we've seen the letter that's now in the record granting their approval of the variances with no action taken on the special exception.

And we also have a letter of no objection from Department of Transportation on this case. And I assume no one is here from DDOT. Is there anyone here wishing to speak in support of this application? Anyone in support? Anyone wishing to speak in opposition to this application? No opposition?

All right. Then we'll turn back to you for any closing.

MR. PATEL: We have nothing further to add but happy to answer any additional questions if the Board has any.

CHAIRPERSON HEATH: All right. Any questions from the Board? All right.

Then, we'll conclude the hearing and move to deliberation and decision. Anybody want to make a motion?

MS. BUTANI-D'SOUZA: Motion to approve the relief requested.

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

MR. MAY: Yeah. I would just say that, I mean, this is a fairly straight forward case where, you know, the relief is very understandable in order to preserve and extend the life of the building and it doesn't seem like there's any adverse effect associated with it, even though there's you know, this additional footprint and there's no penthouse setback. I mean, I'm not troubled by granting relief in this case.

MR. MOY: Madam Chair.

CHAIRPERSON HEATH: Yes.

MR. MOY: If I may ask for clarification for the staff when we get to the drafting of the order, are the supplemental drawings under Exhibit 40 in addition to the initial drawings under Exhibit 7? Or did they replace the drawings under Exhibit 7?

MR. PATEL: They're in addition. They're actually the same drawings, they just have more illustration on them.

CHAIRPERSON HEATH: All right.

[Vote taken.]

CHAIRPERSON HEATH: The motion carries.

Thank you.

MR. PATEL: Thank you.

MR. MOY: Staff would record the vote as five to zero to zero. This is on the motion of Vice Chair Butani. Also in support, Chairperson Heath. Also in support, Mr. May, Mr. Hill, and Mr. Hinkle. Motion carries, Madam Chair.

CHAIRPERSON HEATH: All right. Thank you. Summary. And we'll take a five-minute break and then we'll come back with your last two.

[Recess from 10:41 a.m. to 10:51 a.m.]

MS. BUTANI-D'SOUZA: Mr. Moy, can you call the next case, please?

MR. MOY: Yes, with pleasure. Parties to the table for Application No. 17527A of John R. Kline II as captioned and advertised for variances from the parking space requirements under Section 2115.1 and 2117.5, and a special exception from the parking lot requirements under 213. This would permit continued operation of an accessory parking lot, R-1-B District, this is at the rear of 4418 through 4420 Connecticut Avenue Northwest, Square 1971, Lot 825. And Mr. Peter May will be sitting on this application.

MR. MAY: If I could just say, to start with

I reviewed the record from the previous hearing and viewed the video, so I'm prepared to fully participate.

MS. BUTANI-D'SOUZA: Okay. Why don't we begin if you could introduce yourselves for the record?

MR. BORGER: I'm Joe Borger with Borger Management.

MR. BROWN: Patrick Brown from Greenstein DeLorme and Luchs on behalf of the applicant.

MR. NUGENT: And I'm Malachy Nugent. I'm the SMD, the ANC Chairman for 3F and the SMD Commissioner.

MS. BUTANI-D'SOUZA: Wonderful. Okay. So, I believe that we already completed our hearing procedures on the 19th, and we requested some additional information which I see has been submitted to the record, a letter from the applicant's paving contractor certifying that the lot -- certifying when the lot needs to be repaved.

Some filings related to compliance with 2115.1, supplemental information from DDOT. So as far as the hearing procedures go on this, I think it would be helpful to hear from the applicant. It sounds like you've made changes to your proposal;

your original proposal.

MR. BROWN: Yes, Madam Chair. And just briefly, after the July hearing date we went back and met with DDOT and as a result of that we came up with a revised parking plan. This drawing here was basically the existing condition has been some time where you had 66 degree angle parking which created various problems that were noted by the ANC as well as DDOT.

In consulting with DDOT we came back to this plan, revised parking plan, 19 parking spaces. They were all nine by 16, so they're the nine-foot width required, but only 16-feet deep with an 18-foot drive aisle. We've produced turning diagrams that DDOT reviewed and that are in your package and indicated that the vehicles could go front end in with relative efficiency, but more importantly would eliminate the need for people to back out into the alley to leave, which was important both to the ANC and DDOT, as well as our client.

MS. BUTANI-D'SOUZA: So they're going to be reverse parking into the parking lot?

MR. BROWN: No, no, no. The front end. They --

MS. BUTANI-D'SOUZA: They can go at normal.

MR. BROWN: Yes.

MS. BUTANI-D'SOUZA: In the normal end.

MR. BROWN: And these turning diagrams so indicate.

In DDOT, in their response, indicated that they supported or had no objection to the variance relief to update for the dimensions of the parking spaces which are less than nine by 19, and the drive aisle which is 18 feet, not 20, as required under the applicable regulations.

They also asked to quote, preserve space for a pass through, a future potential pass through. You'll see on this drawing down at the top left-hand corner you've got a hashtag space and a parking space. That's approximately, what is it, 15 feet wide, which we preserved in the event that a pass through from this lot to the adjoining lot, which is operated currently by Burger King, should come into play.

We'll still continue to use that space, the compact space that's marked as a parking space, but it's a potential site for a pass through, which would allow one-way traffic into our lot and exiting out to the adjacent lot, or vice-versa, depending on how that arrangement is ever finalized.

And also they've indicated that DDOT -- that we put a sign up that the lot is for compact cars only, which we agree to do. So at the end of the day I think the only outstanding issue, and putting this in context, this lot was established in 1948 and it's been in continuous use, approved by the BZA many times over the 68 years. I think this plan works better but the importance of the 19 spaces, 18 of which are, you know, for regular and one handicapped, it's important to the commercial business, and important to the neighborhood.

So the only outstanding issue which I think the Board has faced at this point is the duration of the approval period. And you'll see from the history I provided that there have been numerous approvals of five years at a stretch. Mostly recently the last one was for 10 years. We think 10 is appropriate under all the circumstances.

As part of the 10-year plan there was a schedule inherent in that to replace the current impervious surface with pervious surface, within the useful life of the existing surface. And anything less than 10 years we don't reach the point where it makes sense or is appropriate to make that change.

So I think while the ANC, and we respect their position, and DDOT and OP want four years, that's too brief a period of time in the context of this lot in its history. And also importantly, one of the things we've added from the longstanding conditions is an annual reporting to the ANC so that we don't have periods of time where there's no communication or issues arise that aren't dealt with. And I think that's an appropriate method to extend the useful life of the Board's order, and also achieve the objectives for everybody involved.

So, I think I'll --

MS. BUTANI-D'SOUZA: And is it your position that -- of your client's position that you want the term to be 10 years, and are you proposing -- when are you proposing that it would be repaved with impervious material?

MR. BROWN: At the end of, as we've indicated, the useful life of the surface now is, with proper maintenance, which it is properly maintained, would be eight to 10 years, so that in the 10-year approval period I think our obligation would be to make the shift to the impervious -- the pervious surface during that period.

MS. BUTANI-D'SOUZA: Within eight years? Or 10 years? I just would like this to be clear because this is a real topic of debate. So let's just be clear with what you're proposing.

I think if we got the 10-year extension we would certainly do the impervious surface within that 10-year period. If there was a date, year period that we had to live, I would say somewhere after the eighth year.

MS. BUTANI-D'SOUZA: Okay. So --

MR. BROWN: So the eighth year we would -- but you know, give us a 12 month period to put the surface --

MS. BUTANI-D'SOUZA: So you're saying, somewhere between the eighth and ninth year you would commit to making this pervious if we were to provide you with a 10-year term?

MR. BROWN: Yes.

MS. BUTANI-D'SOUZA: Okay. And you'd be willing to accept that as a condition?

MR. BROWN: Yes.

MS. BUTANI-D'SOUZA: Okay. All right. We have someone from the ANC here. Mr. -- I'm probably not going to pronounce this -- Kenagen (phonetic). Kenugen (phonetic).

MR. NUGENT: It's Nugent.

MS. BUTANI-D'SOUZA: Nugent. All right. I don't know where I got the K from. All right.

MR. NUGENT: Thank you. Thank you, Madam Chair.

Yes, we on the ANC have looked at this, this plan, and we don't have a problem with the revision. It's quite clear that it's chaos in this whole parking lot area. This parking lot and the adjacent, and then the alley that goes between the businesses and the parking lot. It gets very busy. It's certainly the busiest commercial alley in our ANC. So much so that the City chose one alley to resurface during one of the mayor's AlleyPalooza projects and it was this particular alley because it does get so much traffic.

So, certainly cars backing out of this particular parking lot was never an ideal situation. This is better. It's still not ideal as witness to the fact that we're here now and they have to look for exceptions to have the shorter spaces, that it's going to be a very tight turn. They can only have compact cars.

So something needs to be done, in our view at the ANC, something needs to be done to the parking lot situation here and in the adjacent space. And, you know, the City agrees. DDOT agrees, which is why they've asked to preserve that space for the pass through at the back.

Ideally, from our view, and we've communicated this to the applicant, we would be willing to work with them to come up with a plan, actually to unify the two lots, to allow entry on one side, come through, and exit on the other and to rationalize the whole system back there. That's fine. They sat down with us. The ANC is even willing to spend some of its money to look at a plan to rationalize the system back here.

Our concern then is if you approve this for 10 years those discussions will be on hold for a decade.

Now, it's possible there may be a reason to, you know, within those 10 years, to go back and look at all of this and make changes. But there's no urgency then, to do that if you approve it for 10 years.

What we would -- and the Burger King parking lot, the exception was only for three years. The zoning exception was only for three years. That comes up next year. Other lots in the back are also less than 10 years. So our goal with the ANC was to try to harmonize, bring these, all of these lots closer together in terms of the timing, and then to be able to work to unify them in such a way that it would be more rationale and safer. Safer and the traffic flow would be easier in the back there. So we had asked for four years for --

MS. BUTANI-D'SOUZA: So that wouldn't really get at your goal to make these on the same timeline, thought.

MR. NUGENT: Well, we could ask for one year but we thought -- which would bring it in line with the adjacent parking lot.

MS. BUTANI-D'SOUZA: Are these owned -- do you also own the Burger King parking lot?

MR. BORGER: No, these are separate owners. Each of these properties along the alley are individual owners.

MS. BUTANI-D'SOUZA: Okay. And are you intending on looking at this possibility of creating a pass through or unifying the lots?

MR. BORGER: We have tried to meet with the Burger King representative, and in the last five years we've had one point of contact.

MS. BUTANI-D'SOUZA: Meaning, they haven't been responsive?

MR. BORGER: They have not been responsive.

MS. BUTANI-D'SOUZA: Okay. And have they been responsive to you on this issue?

MR. NUGENT: We had a meeting with Burger King and with representatives from the Zips Dry Cleaner about two months ago, was that?

MR. BORGER: Yes, that's the meeting I was speaking --

MR. NUGENT: That's the one, the one meeting.

MR. BORGER: The one meeting.

MS. BUTANI-D'SOUZA: Okay. So it sounds like you're making some progress. And it sounds like the ANC is concerned that you're just going to let this issue linger if we provide an approval for 10 years. What kind of assurances can you provide? Or what kind of conditions would you be willing to agree to, to meet this -- address this concern that they have?

MR. BORGER: Zips Dry Cleaners are a very busy business. Its business plan is based off of a huge volume of traffic of clothes so they keep the prices down. Consequently, there's a lot of foot traffic and there's a lot of car traffic.

Burger King, same situation. And what hasn't been mentioned, the car wash is, you know, an enormous amount of traffic in the alley. So, we're all in agreement that the alley is burdened and it's, you know, very -- the traffic plan that they mentioned, that the District is looking at to do, makes a lot of sense because right now it's a two-way alley, and you know, that's out of our control. We represent the ownership. We will listen and sit down with any of the neighbors and work with them if there is a viable solution that we can live with.

We have obviously contractual obligations with Zips Dry Cleaners for the number of parking spaces, so that's crucial to us. That's why we're here. His lease goes out to 2025. So, if we have a shorter term for the exception I'm going to be back here again and have to spend, you know, a considerable amount of money to get to this process between the engineering and the lawyer's fees.

So, you know, it's a burden on Zips, it's a burden on the owner. To answer your question, we will sit down with anybody on the block, the ANC, we have a good relationship with them. If there is a viable plan that makes sense for the businesses there, we certainly will cooperate.

MS. BUTANI-D'SOUZA: Terrific. Do we have any other questions or should we move to the conditions?

MR. MAY: This is a minor, almost silly

question, but I feel like I can't let it pass. On Exhibit 41, the letter to BZA, this is your follow up letter. On page 3 it says that the proposed cost for the 2016 scheduled maintenance is $3 million.

MS. BUTANI-D'SOUZA: I think it was a typo.

MR. MAY: Is that correct?

MR. BROWN: No.

MR. MAY: I didn't think so.

MR. BROWN: It's 3,000.

MR. MAY: Yeah. I thought so.

MR. BORGER: I could clarify. The stripping and sealing of the lot we intend to do is $3,000.

MR. MAY: Okay. Yeah, I thought so. I mean, it was contradictory but I just wanted to make sure that, you know, we don't have something, such a strange error in the record.

Okay. I don't have any other questions. I mean, I've thought some -- when we come to deliberate, if we come to deliberate today.

MR. HILL: So again, the conditions, the first condition was again, the four years, where the ANC and OP and DDOT were all in four years and you're now here asking for 10.

And then there was the, what I thought the nonpervious, or the paving material, I thought you had somewhere, six years in there. But so, if you were to get the four years, let's just say, so then there would be no change to the lot until you need it to absolutely do something. So that would be six or eight years, correct?

MR. BORGER: Yes, that's correct.

MR. HILL: Okay. So the lot would just remain the way it is.

MR. BORGER: We would reseal it. It's scheduled to be resealed and striped this year, regardless of this hearing and the exception. It needs to be done as far as the regular maintenance. But as far as replacing the surface with an impervious -- I mean, with a pervious surface, no, we wouldn't obviously do that.

MR. HILL: Okay. And I know that this may be not something that you can answer so quickly, but like if you were to make those changes would it be worth the 10 years to you, and if you did the pavers now?

MR. BORGER: The pavers cost is just about $100,000 to do a 50 by 100 foot lot. So $20 a square foot. That's the rate of it.

MR. HILL: And you don't have to do it now for another six years or anything, so, yeah.

MR. BORGER: It doesn't need it right now. We have just gone through a very expensive legal process to get to this point. We need a little time out. The owner does. But it is something as I said, he would do.

MR. HILL: Got it. Okay. Thanks.

MS. BUTANI-D'SOUZA: You may want to move sooner rather than later given how the city is tightening up its storm water regulations. You may find that, just for your own purposes, you may find that it would be much more expensive the longer you wait if they change some of those regulations. Right now your lot can get under there without having to --

MR. BORGER: Do know right now as we sit here today, now this is going to change, the ownership is paying for an impervious surface. The water, the sort of run-off rates. If he puts the impervious surface, he still pays the same rate. The District has -- LASA has not seen fit to give a credit for the impervious surface of the run-off now. So that water bill that he's paying, which is significant, the Zips is, doesn't change if we put the impervious surface in today. So there does seem to be a balance. You know, if you're going to put the impervious surface down the City needs -- WASA needs to cooperate and give you the credit for doing that.

But right now -- so there's not a lot of incentive.

MS. BUTANI-D'SOUZA: Uh-huh. No, I'm making the point you should keep your eye on those regulations because they're changing and becoming more and strict. So you may have a more expensive outlay if you wait.

But okay. So, the ANC still wants four years, and there would -- under a four year commitment there would be no condition regarding pervious surfaces, I suppose, because we're -- seems that there's no need to repave for eight to 10 years.

MR. NUGENT: If I may? Actually, in the conditions that we passed at our ANC meeting we had asked for seven years. What we had said was, we understood that they were going to do resurfacing this year. And so, let that go ahead but then they would replace with impervious surface at the first -- at the next available opportunity no later than seven years from this year.

So we had asked for seven. What we didn't want to have happen was major repairs done back there to extend the life of the current surface, rather than simply replacing the surface within seven years.

MS. BUTANI-D'SOUZA: And is it your intention to do major resurfacing of this asphalt, like mill-and-overlay within the next eight to 10 years?

MR. BORGER: Our asphalt company that takes over our property says we have about seven to eight year --

MS. BUTANI-D'SOUZA: Before we need -- you need to do an overlay. Okay.

MR. BORGER: We need to take it up. So it would have to be, you know, it would have to be milled as you said, and resurfaced. Or at that point we intended to go ahead and put the impervious surface down.

MS. BUTANI-D'SOUZA: Mill-and-overlay would be a pretty significant activity in --

MR. BORGER: Well, there is a cost effect aspect. The other real problem is the operations of Zips Dry Cleaners because they're open six days a week. And you can't very well accomplish either of those tasks in a couple days. So it's going to, you know, impact his business as well so we'd have to shut down. And it would have to be a coordinating effort. We can stripe and seal in one day on a Sunday, but we can't do the other major work that's required and it would probably take five to six, seven business days.

So it's going to have an impact on his business, which means we'll have to make some concessions to him for his loss of business. And you know, there's a lot of impact. There's a financial impact for everybody.

But the point to the ANC, we did say at that meeting that we would put the impervious surface down, but not until such time as the lot was, you know, scheduled to be either milled and repaved, or replaced with some other type of surface.

MS. BUTANI-D'SOUZA: So let's be clear because I think this is going to go into the conditions. So you're saying that the next time that the lot needs to be milled you intend on, rather than milling it, installing pervious pavers. Is that correct?

MR. BORGER: Well, yes. If that's a condition we would do that. Would I like it to keep it that way and not have to spend the owner's money? Yeah, of course. But yes, we would do that, as I said, when we started, we would do that after the eighth year, you know, within a 12-month period of you know, between the eighth and the ninth year, we would agree to, in a condition, to replace the lot with a pervious surface.

MS. BUTANI-D'SOUZA: Okay. All right. Let's go through these conditions, unless there are other questions. All right. Let's go through these conditions then. Okay.

So, looks like we have conditions from the Office of Planning. Why don't we table this discussion of term for a couple minutes? Condition number 2 is the parking spaces, which seems to be -- I'm going through the Office of Planning's conditions.

MR. BROWN: Madam Chair, in the last page of my PowerPoint there's a list of conditions that -- because I've added some to --

MS. BUTANI-D'SOUZA: Have you revised these conditions to reflect the comments from the Office of Planning and Department of Transportation and the ANC?

MR. BROWN: Yes.

MS. BUTANI-D'SOUZA: Or these --

MR. BROWN: With the exception of the term of years. I think I -- and if I haven't done a very good job on it, that's on me. But I've attempted to do that, adding 11 and 12, which go to the DDOT most recent report.

[Pause.]

MS. BUTANI-D'SOUZA: All right. So as I understand it, you -- the conditions that OP has proposed are the same as your conditions except your conditions include now DDOT's conditions and OP had made perhaps a couple of comments on the conditions. So I think it would be cleanest to use OP's conditions and then we can add DDOT's on. Is that -- that's my understanding.

Can the representative from the Office of Planning just confirm? Good morning.

MS. BROWN-ROBERTS: That's correct.

MS. BUTANI-D'SOUZA: Okay. All right. So, let's go through these very quickly.

MR. BROWN: Which are in OP's supplemental report, or in their -- I think they're in their original report, aren't they?

MS. BUTANI-D'SOUZA: Okay. And then I think there's some question about condition 7, regarding the landscaping plan, 7E.

MR. BROWN: Yeah, I'm not aware of any questions about the landscaping plan.

MR. BORGER: We have a landscaping contract and landscape. There's pictures in our proposal, to create the shielding at the end of the parking lot.

MS. BUTANI-D'SOUZA: So it looks like there's a landscaping plan in Exhibit 7E, and then another landscaping plan in Exhibit 39.

No. It looks like the landscaping plan is Exhibit 7E. So just for the Office of Zoning --

MR. BROWN: But I think, aren't we referencing in our list of conditions --

MS. BUTANI-D'SOUZA: I'm going through OP's conditions and making sure that they're all clear so they can be correctly added in the record. I see that there's a condition number 8. No other use shall be conducted from or on the premises.

Can we get a clarification from the Office of Planning on what this was in reference to, or if this condition originated with the ANC or the applicant?

MS. BROWN-ROBERTS: No, I think, let's see, in a section that talks about, you know, parking lots and all those sort of things --

MS. BUTANI-D'SOUZA: Uh-huh.

MR. BROWN: -- this was one of the conditions that was there. And this came over also from the conditions on the prior case.

MS. BUTANI-D'SOUZA: Okay.

MS. BROWN-ROBERTS: So this is just something that was taken from --

MS. BUTANI-D'SOUZA: So this is sort of a legacy condition?

MS. BROWN-ROBERTS: Yes. Uh-huh.

MS. BUTANI-D'SOUZA: Can we take this condition out? I don't really see any --

MS. BROWN-ROBERTS: Yes.

MR. MAY: No, I mean, it's part of the conditions under which this use can be granted in the regulations. So I think we're just repeating what's in the regulations.

MS. BROWN-ROBERTS: That's correct.

MS. BUTANI-D'SOUZA: Perhaps it would be cleaner to just take it out because obviously the use is governed by the Zoning Code.

MR. MAY: No, I mean, I think it's not uncommon to repeat all those conditions in this sort of a circumstance. But, Ms. Brown-Roberts, maybe you want to talk to that but on this kind of a use to go through all those things that are spelled out in the regs is common.

MS. BROWN-ROBERTS: It is. And that's where, as I said before, that's where a lot of these -- the conditions came from.

MS. BUTANI-D'SOUZA: Okay.

MS. BROWN-ROBERTS: Just to make sure that they're abiding by them.

MS. BUTANI-D'SOUZA: Okay. And then we have applicant to provide ANC 3F an annual report demonstrating compliance with conditions 2 through 10. All right.

So, and then we're adding in the conditions from the Department of Transportation that the applicant will post a compact vehicles only sign at the entry to the parking lot, and the applicant will preserve a future pass through space for possible drive aisle connection to the adjacent parking lot s shown in the revised parking plan, which is Exhibit -- where is 39, it looks like? Is that correct? Is it 39?

MR. HINKLE: If I may, Madam Chair?

MS. BUTANI-D'SOUZA: Uh-huh. Yup.

MR. HINKLE: Just for condition number 2 as well as number 12, which you're speaking of, shouldn't this be a little bit forward looking in terms of them not having to come back to the BZA to modify these conditions if this pass through were to occur? So, under number 2 where it says, "19 parking spaces should be provided," should it be, "up to 19 parking spaces?" And then 12 perhaps could be modified to state that, you know, the Board is okay with this pass through occurring.

MS. BUTANI-D'SOUZA: Uh-huh.

MR. HINKLE: Rather than just having it be preserved.

MS. BUTANI-D'SOUZA: I think that's a great point. Mr. Moy, do we need to provide any further wording on that or is that sufficient for the Office of Zoning to write the condition?

MR. MOY: I think it's straight forward for us.

MS. BUTANI-D'SOUZA: Okay. Terrific. Just curious, is there any reason why you're not individually striping the spaces to say compact cars only? I mean, a sign could be very easy to miss.

MR. BROWN: DDOT asked for the sign at the entrance. We can mark the spaces. And in fact I think we actually intended to mark the spaces compact but --

MR. BORGER: Yeah, we have no problem with that.

MR. BROWN: But they had a belt and suspenders approach to it so we're happy to put the sign up.

MS. BUTANI-D'SOUZA: I think a belt and suspenders approach sounds like the best way to go when you have such a difficult alley and parking lot situation. So why don't we have that condition number 11 read that the applicant will post a compact vehicles only sign and mark the spaces as compact vehicles only?

Okay. So now let's talk about the term and the --

MR. BROWN: Actually, before we get to the term, and Commissioner Nugent and I, we have the applicant should provide ANC annual report demonstrating compliance. We ought to make it for all the conditions, two to 12, or however we end up numbering them, because we've added some.

MS. BUTANI-D'SOUZA: I think that seems reasonable. So we'll update that condition to be that the ANC is going to report -- is going to receive a report on compliance with all of the conditions since we have more than -- since we would like to see compliance with all 12 conditions.

Okay. So it sounds like we have a couple proposals on the table. The first one is to have a four-year term, if I'm understanding the ANC position correctly; a four-year term. And there would be no -- I suppose the condition would be with regard to the impervious, versus pervious surface, that you're proposing that the conditions state that at the next opportunity or next need for this to be -- surfacing to be replaced, that the owner install pervious paving. Pervious paving, correct? That's what you're --

MR. NUGENT: The next opportunity but no later than seven years.

MS. BUTANI-D'SOUZA: The next opportunity but no later than seven years. And we have the owner stating that this surface is good for the next eight to 10 years, and requesting a term of 10 years with the carve out that the impervious surface would be installed between year eight and nine.

Now, knowing something about asphalt, I know that it tends to degrade faster when you have heavy snows and things of that nature. So I presume that you would be comfortable if it were to be repaved within eight to nine years, or sooner, if necessary. Is that correct?

MR. BORGER: Yes, that would be fine.

MS. BUTANI-D'SOUZA: Okay. All right. So those are the two options. Why don't we do this? Why don't we take any closing remarks you have, and then we will -- I'll make a motion to move to deliberation. Would that be acceptable?

Okay. We have a question from the Office of Planning. And Office of Planning, if you could introduce yourself for the record as well. Thank you.

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

MR. HILL: Hi, Ms. Brown-Roberts.

MS. BROWN-ROBERTS: Good morning.

MR. HILL: So, again, this was before it was -- it was a five-year or a 10-year. And so now the Office of Planning is recommending four years. Why are you recommending four years?

MS. BROWN-ROBERTS: I think there were two issues for us. One was a paving, which we have discussed here. The second one is that I was present at the former approval, and at that time there were concerns about the operation of the parking lot, and that has continued for the extent of that time.

And so now we're coming up with something that we hope will solve the problem. And so we just didn't want to make it go for 10 years, so we wanted an interim time so we could look at, you know, what are the impacts, how can we -- how can we address them sooner than later? And especially that we continue to hear from the community and the ANC that the parking lot does have an impact on the traffic along the alley.

So, you know, the working with DDOT and the ANC, and trying to come up with something to solve the problem, we thought that having a shorter period of time to come back and take a look at it would be appropriate.

And then we went with a four-year in discussions with DDOT, and what the ANC had recommended on that four-year.

MR. HILL: And the last time, since you were here, it was five years ago? It was 10 years ago? You were here for the first one, 10 years ago.

MS. BROWN-ROBERTS: Yes. Yes, I was here.

MR. HILL: Just checking.

MS. BROWN-ROBERTS: Yes.

MR. HILL: Okay. So after hearing the testimony here today, I mean, what do you still think of the four-year?

MS. BROWN-ROBERTS: I still -- I still stand by that because I continue to have, and DDOT continues to have the concern about the operation of the -- you know, the traffic, I think, is the -- is a problem. I think we have sort of addressed the resurfacing and that sort of thing. But the operations is to the question.

MR. HILL: Okay. Thank you.

MS. BUTANI-D'SOUZA: Do you have any suggestions for how to mitigate OP's concern, and the ANC's concern that this new circulation plan isn't actually going to alleviate the issues with the alley and the need to therefore revisit the design in four years? Do you have any suggestions on how to mitigate that concern?

MR. BROWN: One I think, and Mr. Borger can testify, but quite a bit of resources have been spent looking at this from our end, trying to come up with a plan that works. We won't know if it works until it's in operation, which means that restriping and implementing it and giving it some time.

The other thing to remember is that the Zips is busy morning and evening, but you've got a Burger King drive through, which may no longer be there shortly, but, and a car wash which are the 800 pound gorillas in the alley. So that my client can't do this alone. The ANC has been supportive. We'll need the support of DDOT and the other property owner.

So I think the annual reporting institutionalizes and regularizes communications that will bring everybody together and I think that's our best kind of immediate approach if a year from now the report is that it works well, then great, we move on to the other elements or what doesn't work well.

So I think we've got a built-in safeguard that gives us a little more flexibility on the end approval period. And the economics are certainly difficult for the property owner because this process is expensive and the cost of the pervious surface is expensive.

MS. BUTANI-D'SOUZA: Is the ANC comfortable with that? You still wish to have a four-year time limit on this?

MR. NUGENT: We still wish to have a four-year time limit. I think what Mr. Brown said is absolutely right. They can't do it, Zips can't do it on its own. The ANC can't do it on its own. We have the attention now of OP, of DDOT, and of some of the clients in this area.

What we're trying to do is align all of the incentives together so that everybody has an incentive to move forward and to make this situation -- to improve the situation back there. I think Zips has come to the table and has been very cooperative with us, and we appreciate that. And you're absolutely right, you do the striping, seen how that works, give that a little bit of time.

Our point is simply, 10 years is too much time. In four years we can look at that and if it hasn't worked we want to be able to come back and say, we have to come sit down at the table and come up with a new plan.

MS. BUTANI-D'SOUZA: Okay. Okay. Do we have any other questions?

MR. BORGER: May I comment, please --

MS. BUTANI-D'SOUZA: Sure.

MR. BORGER: -- on behalf of the ownership just for quickly?

Historically this parking lot, prior to this 10-year agreement, these spaces were at this 90-degree angle we are now. And during that process they looked at it and said, this is a better solution, the angles. It wasn’t a better solution and now we're going back to the way it was prior to that.

Ownership will cooperate with the ANC, the neighborhoods. If this pattern doesn't work right and we need to change it and we get their support, we'll go back in and restripe it or change some stripes, do whatever it takes to work. It needs to work for Zips so they can operate and have a profitable business.

At the same time, this time around we didn't do this prior to this, we spent a considerable amount of money with VIKA Engineering to look at all ways of how to make this parking lot work. And there was a number of other patterns that they tried, that they didn't work. These were the best solution that they could come up with.

MS. BUTANI-D'SOUZA: There was no possibility to eliminate the landscaping strip, correct?

MR. BORGER: The landscaping is at the far back end of the property. So you gain nothing by --

MS. BUTANI-D'SOUZA: Okay.

MR. BORGER: -- taking the landscaping out. It does make a nice buffer because there's a hill that goes up the property line. The property line behind the tree line --

MS. BUTANI-D'SOUZA: So that's not on the long side --

MR. BORGER: -- is about 15 feet.

MS. BUTANI-D'SOUZA: -- so it doesn't eliminate your issue.

MR. BORGER: No, it wouldn't help us.

MS. BUTANI-D'SOUZA: Understood.

MR. BORGER: We couldn't gain any more space.

So VIKA looked at this long and hard and came up with this plan. And I think what's really important, what's really going to make the difference for us and everyone, is what DDOT decides to do with the traffic flow in the alley, which we have no control over.

MS. BUTANI-D'SOUZA: Okay.

MR. BORGER: It's a two-way alley right now. And I think that, you know, when that --

MS. BUTANI-D'SOUZA: All right.

MS. DOUGLAS: -- gets dealt with, it will make a big difference.

MS. BUTANI-D'SOUZA: Okay. Thank you so much. Do we have any other questions for the applicant or the Office of Planning or the ANC?

So then I would move that we go to deliberation on this. I'll -- oh, yeah, go ahead.

MR. HILL: So, I mean, we're going to go to deliberation but I'm just -- the 10-year is the issue that I'm just coming up against because you've got four recommendations from the ANC, four recommendations DDOT, and four recommendations OP. And as far as like having any kind of teeth in the fact that you know, you have the report once a year and you talk, like, I don't know if -- and maybe again, this is what we're going to talk about, trying to get it timed up. Like in three years Zips is coming up and then Zips gets a -- I know the area. And then Zips gets a five year that takes you to eight years, and then you're back online, perhaps, with the two lots getting you know, tied together.

My question is to the ANC, does that sound reasonable to you? Zips comes up in three years. I don't know what's going to happen in three years, but let's -- the lease, sorry. The permit, I thought. Oh, sorry.

Burger King.

MR. BORGER: Burger King.

MR. HILL: Burger King. I'm sorry. The adjacent lot.

MR. NUGENT: Burger King was approved for three years back in early 2014.

MR. HILL: Oh, so it's another year.

MR. NUGENT: So our initial -- sorry. Our initial proposal --

MR. HILL: It was the one year.

MR. NUGENT: -- was one year to align them. We agreed pretty quickly that that might not be reasonable, so we moved to four years to start to bring it closer.

MR. HILL: Okay. Okay. All right. I don't have any more questions. Thank you.

MS. BUTANI-D'SOUZA: All right. Let's move to deliberation. Who would like to kick it off, or would you like me to?

MR. MAY: You know, I think the conditions that have been established are fine, and when it comes to the term, you know, 10 years is a really, really long time. And since this is something where the answers are not clearly known it makes sense to me to have a relatively brief period.

So four years makes sense to me and if Burger King comes up next year and they get another three years, then all of a sudden they are aligning. So, you know, I'm inclined to keep it short and I'm also hopeful that in that time period we'll come to a greater understanding about whether it makes sense for this to become a pervious surface parking lot and what's involved in that. And all that will get sorted out as well.

And since DDOT and the ANC are focused on it, they'll have some time to figure these things out. So I don't see any reason to go to 10 years. I would be inclined to do four.

MS. BUTANI-D'SOUZA: So, I actually

respectfully disagree with my colleagues here. I think that the owner has indicated a first, that it is well within their interest to make sure that this parking lot operates efficiently because their tenant depends upon efficient traffic flow in that alleyway to be able to maximize their revenue.

They've put in a reporting mechanism whereby if this isn't working, if it's not maximizing traffic through, if there's a lot of congestion, which of course would back up Zips' ability to get customers in and out, that you know, it would be in their interest to restripe the lot, absolutely.

And I think the central issue here is really around Burger King, which is next year, and I don't think that four years gets to this goal of aligning those any better than 10 years does. And I do agree that I think this process is extremely costly for a lot that has effectively been approved again, and again, and again, for 50-odd years, 60 years. Seems silly to impose this cost, and there is a tremendous cost, to get engineering and legal support to come in front of the BZA to impose this cost four years from now. And I also think that, you know, I recognize the cost associated with installing permeable paving.

And the owner is under no obligation from a storm water management perspective to install that paving since certainly they could make the design less than 5,000 square feet which would not qualify as a major land disturbance activity. Therefore they would not be required to do storm water management such as permeable paving.

The fact that they have agreed to undertake that expense of about $100,000 or more, depending on how that under drain has to be designed, frankly I think that that's a huge, huge give to the community. And I think that in exchange for that kind of cooperation I think that it is absolutely reasonable for the BZA to say that, you know, we expect you, owner and ANC and Burger King and DDOT, to have to work together. It's in all of your best interest to do so. We expect you all to be reasonable adults and do that, and you know, appreciate the fact that these guys have provided a very significant promise in my view.

So I tend to believe that the conditions should state 10 years with a commitment to repave as permeable pavement within the eighth year, between year 8 and year 9. Or sooner if major repaving activities are required sooner. That's my view.

MR. HINKLE: I tend to agree with the Vice

Chair on this. I think there's a lot of factors that are contributing to the operations of the alley or how it doesn't operate. And I think going with the shorter term actually puts a fairly large burden on this property owner to address all these external factors that, you know, they're not necessarily responsible for.

So with that I certainly support the term as stated by the Vice Chair, as well as all the other conditions.

MR. NUGENT: I'm sorry. Could I make a point of clarification. I know it's --

MS. BUTANI-D'SOUZA: No, since were in deliberations.

MR. NUGENT: Okay.

MS. BUTANI-D'SOUZA: I'm sorry. Mr. Hill, do you want to add anything?

MR. HILL: Yeah. No, I mean, I think you make some good points. The expense for the pavers is something that I think is, you know, something that's good for the community. I mean, and the fact I guess that there is the annual reporting and the hope is that, you know, obviously the two parties, you know, everyone concerned gets together and comes to an understanding and you know, to be good neighbors. I mean, I still think it's a long term and I doubt that Mrs. Brown-Rogers (sic), I don't know if she'll be here the next 10 years when that comes up again.

But I mean, I'll go along with my colleagues and with the Vice Chair on the term limit.

MS. BUTANI-D'SOUZA: Okay. So I'm going to make a motion, unless, Mr. May, do you want to add something?

MR. MAY: No, I mean, I disagree. I think 10 years is way too long for this. I think that the certainty of getting pervious pavement is, even if it's written in here as a condition, is not very certain from my perspective. I think that we need to keep the pressure on the owner. I don't think that the cost is extraordinary for having to do this. Clearly they're making money, you know, using it for this purpose, otherwise they'd be redeveloping it for some other purpose or selling it, or whatever.

So, you know, I just don't -- I'm not buying it. And I agree with the Office of Planning, DDOT, and the ANC that four years is the right term.

But that being said, I don't think I'm going to persuade anybody, so feel free to make a motion.

MS. BUTANI-D'SOUZA: Okay. So, I would make a motion to adopt the conditions as discussed during this hearing, which are OP's conditions with the modifications that we described, to add conditions 11 and 12 to make the modifications indicated by Mr. Hinkle, forward looking wording for condition 2 and condition 12, and does that cover it? Did I get it all?

MR. MOY: Also I can add whether or not in terms of the language, on their condition 3, because I thought you also added that under condition number 3 that the pervious material be installed within the eighth year.

MS. BUTANI-D'SOUZA: Yes.

MR. MOY: Or did you mean eight to nine years? I can't --

MS. BUTANI-D'SOUZA: Yes, and then so the motion would be for the term to -- approval shall be for 10 years. The owner shall be required to install impervious -- or sorry, pervious paving between the eighth and ninth year, or sooner if major repaving activities are required.

MR. MOY: Okay. Got it.

MS. BUTANI-D'SOUZA: Okay. All those in favor.

MR. HINKLE: Do you need a second?

MS. BUTANI-D'SOUZA: Oh, second. Is there a second?

MR. HINKLE: I'll second. Yeah.

MS. BUTANI-D'SOUZA: Okay.

[Vote taken.]

MR. MOY: The staff would record the vote as three to one to one. This is on the motion of Vice Chair Butani to approve the application for the relief requested and the conditions as cited. And these would go to the revised drawings I believe, that are attached to the applicant's filing under Exhibit 41. And seconding the motion, Mr. Hinkle. Also in support, Mr. Hill. Opposed, Mr. Peter May. Chair Heath not present, not voting. So the motion carries.

MS. BUTANI-D'SOUZA: Thank you, Mr. Moy.

MR. BROWN: And a summary order, please?

MS. BUTANI-D'SOUZA: Is a summary order possible here? Summary order.

MR. BORGER: Thank you very much.

MS. BUTANI-D'SOUZA: Mr. Moy, shall we --

MR. MOY: Excuse me, Mr. Borger. Could you do me a favor and turn off the microphone on the far end? On the edge of the table, the light? I can see it's still lit. Thank you, sir.

All right. The next case before the Board, parties to the table to Application No. 19244 of Club Monaco. This is a request for a special exception from the roof mounted mechanical equipment requirements under Section 411.11 to construct new rooftop mechanical equipment in the C-2-A District, 3295 M Street Northwest, Square 1206, Lot 38. And this was also heard, Madam Chair, on July 19th and you had completed the hearing procedures with request for supplemental information.

MS. BUTANI-D'SOUZA: Thank you, Mr. Moy. Can you introduce yourselves for the record?

MR. LEE: Andrew Lee with Michael Newman Architecture, the architect of record.

MR. HENRY: Michael Henry, Club Monaco, Vice President of Construction.

MS. BUTANI-D'SOUZA: Thank you. Okay. So during the last hearing we requested plans showing the height of the duct work to conform that it was not visible from, I believe it was prospect street, and an analysis of whether screening for the equipment was feasible and required specifically the duct work. And then comments from CFA on the revised proposal if necessary.

So I didn't see any comments in the record from CFA. Did you take this back to them to look at it?

MR. LEE: Yes. I had a lot of correspondence with the CFA. They did not want to look at it until we submitted it to the BZA, but they did respond to one of my e-mails and that was uploaded yesterday. It is Exhibit No. 48.

MS. BUTANI-D'SOUZA: Okay.

MR. LEE: And it includes a response from myself.

MS. BUTANI-D'SOUZA: Let's take a quick look at that.

MR. LEE: One thing I do want to clarify is that in my e-mail that I said that they approved the duct work. That should be, they decided no action on the duct work.

MR. HILL: I'm sorry. You said CFA said no action on the duct work, but they were approving the screening?

MR. LEE: No, they did not approve the duct work. They did not approve the screening. When we submitted the duct work plan in May to the CFA OGB, they returned it with a recommendation for no action, and that is Exhibit No. 47. It's -- their recommendation is highlighted. However, the screening, we're presenting it to the Board today and then if it is required then we'll need to go through the OGB process.

[Pause.]

MS. BUTANI-D'SOUZA: Okay. Does the Board have any questions? Can Office of -- why don't we turn to Office of Planning first. Can you introduce yourself for the record, please?

MS. FOTHERGILL: Sure. For the record, good morning. I'm Anne Fothergill with the Office of Planning. And there has been a lot of back and forth for this application and sort of clarification of exactly what relief is needed and why the relief is needed.

The CFA e-mail does confirm that should they propose screening they would need to go back to CFA for their approval. So that would be a separate process. The neighbor who had the concerns would have their opportunity at that time to comment on design. That would be after this is resolved here.

The Office of Planning continues to support the relief for screening and setbacks based on the special exception criteria relating to operating difficulties and conditions of the building. So that recommendation has not changed.

MS. BUTANI-D'SOUZA: Thank you.

MR. HILL: And I'm sorry, I got a little confused earlier because of all the back and forth.

So, the Office of Planning, they are approving or in support of the relief without the screening, correct?

MS. FOTHERGILL: The initial application was for screening for relief from all the screening. The BZA suggested that if possible, if the building conditions allowed, if they could do screening at the north side because of the concerns of the visibility from Prospect Street.

And so the applicant has come back with very tall screening across the back, and then still needs relief from the screening on the sides.

So the Office of Planning initially supported relief from all screening because there was -- the application stated screening couldn't be supported and there wasn't room and there were operational difficulties.

So in this case now, if the BZA wants that screen they still need relief from the screening on the sides. So, so the Office of Planning still supports the relief from that screening.

MR. HILL: And just so I'm being clear for myself, again, you're in support of the -- relief from all the screening?

MS. FOTHERGILL: Well, the screening at the rear, at the north side, I'm not sure that it is beneficial to the project in terms of this is -- there's a parapet wall at the front for screening. The screening at the rear is very tall, and so if the concern is light and air, I'm not sure this solves the problem.

MR. HILL: Okay. Thank you.

MS. BUTANI-D'SOUZA: Do we have any other questions for the Office of Planning?

MR. MAY: Yes, I do. I mean, have you actually gone out and done the same sort of inspection as OGB did to see whether in fact it is visible from Prospect, because it just seems so farfetched to me.

MS. FOTHERGILL: The applicant has provided photos. My site visit was only from the front, I do have to say. So no, I don't have the answer to that.

I mean, OGB initially said it was invisible, which is why they took no action. And then a neighbor brought it to their attention. That's my understanding, that a neighbor brought it to their attention that it may in fact be visible.

MR. MAY: Eve Barsoum must have some

incredible eyes to be able to see that. I just don't -- I'm having trouble seeing how it's visible.

Now, that doesn't mean that it's not -- that it shouldn't be screened because the requirement for the screening is not explicit to the relationship between the object being screened and public space, right? And this is clearly something that's visible and ugly from adjacent properties. It's OGB that gets interested in what's visible from public space. So that's a distinction that doesn't really apply to us. Public space is just visible only from private space.

So, yeah, if I live right nearby there and I had to look at that, I wouldn't be so keen on it. And I would be very much in favor of screening it from the north and from the east and west, or at least from the east because that's where it's visible, most visible. So anyway, well, I appreciate your answers on that. Thank you.

MS. BUTANI-D'SOUZA: Do we have any other questions for the applicant or for Office of Planning?

Okay. Then I would suggest that we move to deliberation on this. So, I would please kick it off, Mr. May.

MR. MAY: Yeah, so I wasn't looking so much to kick it off. I just want to make sure that the statement is on the record that I've reviewed the record for this and viewed the video of the previous hearing so I am prepared to fully participate in place of Commissioner Cohen.

And if you want to kick it off, if you want me to kick it off, I mean I kind of tipped my hand a little bit. I think that the notion that it's somehow visible from Prospect Street doesn't make sense to me. And even if you could in the momentary, you know, that moment when you're walking past, see it in the distance, I mean it's so far away as to be of no consequence whatsoever. So I don't really buy the visibility from public space as a strong issue.

MS. BUTANI-D'SOUZA: Plus the screen, I guess as proposed, is a lot more visible.

MR. MAY: Well, right. But it also would be -- I mean, I don't have anything -- you know, the issue for us is, do we say it's okay to not be screened or not.

If we say that they can't get that relief, then they're going to have to design a screen. We don't have to approve what the screen is. So if it's this design or if it winds up being something else because they have to go back and forth with OGB and come up with something that's -- you know, that strikes the right balance or you know, works better and you know, goes through their process, you know, so be it. We don't have to figure out what the right design is.

You know, I think some of the earlier arguments that it's not possible to screen that equipment didn't make a whole lot of sense to me. I mean, you have a handrail mounted on the parapet wall, so why can't you have screening mounted on that? It doesn't have to be very heavy weight.

I also think that if this project had been undertaken correctly from the beginning, and when I say correctly I don't mean that there was a deliberate error on the part of anybody, but if it was undertaken correctly they would have had to take a different approach for the equipment and mount that equipment on steel that spanned the entire, you know, way across. Or, you know, somehow made use of the steel that supports -- because it looks like there's some steel in the roof framing to begin with, somehow makes use of that to be able to support it so that it's a little bit closer to the middle of the roof.

And, you know, greater attention to making sure that the duct work was below four feet and, I mean, it seems to me that the whole thing could have been designed within the bounds of the regulations. The point is that now it doesn't comply, right? And I don't think it's reasonable for us to say, well go back and redo the whole thing. Which is kind of what OGB has implied in the e-mail exchange from Eve Barsoum. I don't think that's a reasonable thing.

But, you know, I mean, clearly years ago the easiest way to get the units on those rooftop was to span the corners, and it was all the way at the back. And somehow that happened and they just more or less repeated that, got through permitting, got it built, and now there's a problem.

You know, I am not inclined to -- I'm certainly okay with the notion of granting the relief for the setback of the equipment because it's done. It was an honest mistake on somebody's part that it wound up being done the way it is. So I'm okay with that.

On the screening thing, I think that for the sake of the immediate adjacent neighbors I think some kind of screening is appropriate and I would not be inclined to grant that relief, which means that they'll just have to continue to work with OGB to get something done that's appropriate from OGB's perspective.

I hate to sort of keep sending them through that, but hopefully you can come up with something that's relatively straight forward and simple to execute, and probably not as high. Those are my thoughts.

MR. HILL: Go down the line. Yeah, I am comfortable in terms of the analysis that the Office of Planning did and I would have approved this without the screening. I mean, personally when the person that was here last, the last time, they were complaining about the screening, it confused me in terms of, I thought it was going to block more light and air from -- like, and then the louvers that got put up there, and that's where, you know, I am confused in terms of what you know, would be the solution for -- and that's just a personal opinion. That's just my own personal thoughts on the louvers.

However, if you know, that has to go now through another process in terms of the screening and the applicant would rather move forward, and Mr. May is on board with the screening on the north side, then I could also support the screening on the north side and they just have to work through the process to get the screening approved and I would be happy to approve this.

MS. BUTANI-D'SOUZA: Mr. Hinkle?

MR. HINKLE: Yeah, I tend to agree with what's been stated, and I always thought the notion that you could see this from Prospect Street was a non-issue, even in the first hearing.

But my concern was what you could see from, you know, the other houses on the block. And so I certainly, I think it was me that kind of pushed to look at some sort of design to actually screen this. And I’m glad we see this here.

So certainly in terms of the setback I'm comfortable granting that relief, but I do as well, would like to see some screening up there. I think it's important.

You know, obviously you see the equipment on the next building but you know, hopefully whenever that building is redone and something is modified, that has screening as well. So I don't support the relief to not have screening up there. Even if it's just on the north side as well as perhaps the east side.

MS. BUTANI-D'SOUZA: Okay. Thank you. I appreciate the comments of my colleagues and I agree that we should go forward with some form of screening to be reviewed by the appropriate folks at CFA.

So, would someone like to make a motion?

MR. MAY: So I would make a motion that the Board grant relief from Section -- well, this is under ZR-58, so 411.18, penthouse setbacks, but deny relief for 411 -- well, I'm sorry. And grant relief under 411.7, enclosure of mechanical equipment with regard to the enclosure on the south side only. So they would have to screen on the east and west, but not on the south. East, west, and north, but not on the south.

MS. BUTANI-D'SOUZA: The south is the side that would be closest to the --

MR. MAY: To M Street, yeah.

MS. BUTANI-D'SOUZA: Okay. All right. Understood. Seconded.

MR. LEE: Sorry, the proposal and the resubmitted material only has screening on the north side. If we were to provide screening on the east and west sides, it would be the full extent of the duct work that runs on the roof. Is that what your --

MR. MAY: Maybe I should clarify. The east and -- I think my concern is primarily the equipment.

When you get to the point where it's just duct work, I don't think that it is necessary to continue that screening. So --

MR. LEE: So should -- sorry to interrupt. Should it be screening just for the units located on the northeast corner, to the northeast corner, to the north and the east?

MR. MAY: No.

MS. BUTANI-D'SOUZA: Where are the pictures and the --

MR. LEE: If I could go through Exhibit No. 42 with the Board?

MR. HINKLE: I don't see a dimension but I think where you want to go is where the existing handrail is, which appears to go approximately 10 feet back from the rear wall, and that would be on both the east and west walls.

MR. LEE: Right. So as part of Exhibit 42, Drawing A202.1, shows a photograph taken from one of the neighboring properties of our rear façade, which is the red brick façade. As you can see there's a white brick building to the north of this building.

MR. MAY: Right.

MR. LEE: Which sufficiently -- which spans quite a great length of this particular property. If we go to the following page which is A190.2, you can see hatched in black, the large unit to the northeast, and to the top of that page you can see the property located to the north. So if there's a concern about the visual impact of this unit from the neighboring properties, would it be prudent to only include screening for that particular unit?

MS. BUTANI-D'SOUZA: I'm sorry, the unit on the east or on the west?

MR. LEE: Northeast.

MS. BUTANI-D'SOUZA: In the northeast corner. So you're saying only screen --

MR. LEE: That portion that is visible.

MS. BUTANI-D'SOUZA: What's going on on the -- do you have an image looking at the building from the west?

MR. LEE: Correct. So the photograph included on A202.1 is a photograph from the northeast, looking at the property.

MS. BUTANI-D'SOUZA: Looking at the northeast. Do you have a picture from the northwest?

MR. LEE: The building to the north is in the way.

MS. BUTANI-D'SOUZA: And are there windows on that building?

MR. LEE: There is a window on the second floor, I believe, yes.

MS. BUTANI-D'SOUZA: Second floor looks to be below the roofline.

MR. LEE: That looks --

MS. BUTANI-D'SOUZA: Or below the top floor.

MR. LEE: That looks directly at the property, correct.

MS. BUTANI-D'SOUZA: So the -- sorry, so the second floor in this picture, it looks like this is a three-story building.

MR. LEE: I believe so, yes.

MS. BUTANI-D'SOUZA: Okay. All right. So --

MR. LEE: And then if -- sorry if we go back to the beginning, but if this analysis was really looking at the visibility of this particular property from any back yard or public right of way. So it's really only a portion of the property which is potentially visible.

MR. MAY: I mean, I think the complication is that it is difficult to -- without essentially reviewing the specific design for that screening, it's hard for us to be that particular. So, this is why I'm thinking that you know, what we should be granting relief to has to do with screening the equipment along the north side and the east and the west. And again, screening only the equipment, not the duct work. I think if we can word it that way, and then your -- you know, then you only have to work with OGB.

MS. BUTANI-D'SOUZA: How high is the duct work, though? Isn't it four feet high?

MR. LEE: That was -- it's my, in the office's statement that --

MR. MAY: I think at some point it hits like 49 inches or something like that. But I think that may be close to the unit.

MR. LEE: Forty-nine inches high at the lowest point --

MR. MAY: At the --

MR. LEE: -- of the roof.

MR. MAY: At the lowest point of the roof.

MR. LEE: On the roof.

MR. MAY: But for the rest of it, is it still at 49?

MR. LEE: It's flat, but the roof --

MR. MAY: It flats. It's flat.

MR. LEE: The roof itself slopes.

MR. MAY: So by the time you get 10 feet south of that north wall, you're below four feet.

Okay. Start at the north wall and you go south 10 feet.

MR. LEE: We have a section.

MR. MAY: Yeah. Right there. So, 10 feet from the left on that drawing.

MR. LEE: Uh-huh.

MR. MAY: Your duct work is below 48 inches, right?

MR. LEE: So the 48 inches is measured from -- or the 49 inches, sorry, is measured from the building line to the north, which is on the left of the screen.

MR. MAY: Right.

MR. LEE: And then the moment you've started --

MR. MAY: As soon as you're up an inch higher you're at 48 inches, right?

MS. BUTANI-D'SOUZA: Which is the regulation.

MR. MAY: Right.

MS. BUTANI-D'SOUZA: Okay.

MR. MAY: My point is that there isn't -- the duct work, once you get a few feet, or a few inches even --

MR. LEE: Okay.

MS. BUTANI-D'SOUZA: I see your point. I see your point.

MR. MAY: -- away from that north wall, everything is below four feet in terms of duct work. But the equipment is not. So that's why I'm --

MR. LEE: So you're only screening up to 48, for up to that point which is above the building line at its point.

MR. MAY: You don't need to screen something that's 48 inches or less.

MR. LEE: Correct. But that depends on where you measure the unit or duct work from. So are we going to continue the measurement from the lowest point of the roof or do you want to --

MR. MAY: I think it has to be above the surface that it's over.

MS. BUTANI-D'SOUZA: Are you asking on the east and west sides where we would measure the duct work from? So in my view you'd measure it from the closest wall, right? So on the east side you'd measure it from -- because he's trying to figure out --

MR. LEE: Because this is where we got into this discussion is that if I want to take the measurement from the parapet to the south wall, then none of this needs to go through this Zoning

Regulation.

MR. MAY: All right. So I'm not sure how you'd have to measure the 48 inches. That, I mean, it seems to me that that's something that -- what would make sense to me is that if that's measured, you know, at any given point on the roof. So if the duct work is 36 inches above the roof, you know, halfway up the roof, then it doesn't need to be screened at that point.

But if it's, you know, at any point that it's above 48 it needs to be screened. Now, I'm not the Zoning Administrator so it's really -- the Zoning Administrator is called to determine that. And if they want to measure it from a fixed location somewhere along the perimeter of the roof, I mean, it seems pretty bizarre to me but if that's the way they want to do it, so be it.

However, again, what I would suggest is that we grant relief from the requirement to screen the equipment from all sides, and the equipment does include duct work. It's not just the unit. And that we grant relief for --

MS. BUTANI-D'SOUZA: You mean relief for the setback?

MR. MAY: For relief from the requirement.

No, setback relief is granted all the way across the board. And what I suggest that we grant relief for in terms of the screening is anything beyond whatever the dimension is on the plans where we can see that the equipment stops, the unit itself stops. So anything south of that point, whether it's eight feet up or 10 feet up or whatever, you don't have to screen the sides there. You basically have to do a u-shaped screen, you know, east, north, west, and that dimension on the sides is determined by whatever we can see in the plans. And then anything else you have relief from.

MR. LEE: Correct.

MR. MAY: That's what I would suggest.

MS. BUTANI-D'SOUZA: So, the -- when you say dimension we can see from the plans, so it looks as though it's seven foot, eight and a half inches on the west side. And --

MR. HINKLE: It's a seven feet, eight and a half inches, plus the two --

MS. BUTANI-D'SOUZA: Plus the two foot, seven. Okay.

MR. HINKLE: -- feet, seven.

MS. BUTANI-D'SOUZA: So it's essentially 10 feet, correct? No. More than that.

MR. MAY: What I'm seeing is that on the latest plan was nine foot, 10 and a quarter.

MR. LEE: Seven foot, 10 and three quarters.

MR. MAY: Okay. I am looking at A190.2.

MR. LEE: Yes.

MR. MAY: In Exhibit 42.

MR. LEE: Yes. It is on the screen right now?

MR. MAY: Yeah. So the dimension string that's immediately to the left of the unit on the right, can you zoom in on that, because when I zoom in on it, it says nine feet, 10 and a quarter.

MR. HINKLE: Let's just be specific and say 10 feet from the rear. That would satisfy --

MR. MAY: Yeah.

MR. LEE: Oh, you mean the distance along the east.

MR. MAY: Right.

MS. BUTANI-D'SOUZA: Oh, you were talking about that side. Okay.

MR. LEE: So to encompass that, to encompass the full depth of that unit.

MR. MAY: Correct.

MR. LEE: And then the -- so we'll have screening.

MR. MAY: So you have 10 feet of screening there and then you have the entire north wall and you have 10 feet of screening on the other side.

MR. HINKLE: Right.

MR. LEE: And to the height of this unit, which is the 12th unit, correct?

MR. MAY: You know --

MR. LEE: Because it's uniform.

MR. MAY: -- you have to meet the regulations. So I think it's up to, you know, whatever OGB tells you to do, and then it's satisfactory to the Zoning Administrator.

MR. LEE: So the zoning regulation says that screening for equipment needs to be at a uniform height.

MR. MAY: Okay.

MR. LEE: So then it would appear as how we've presented it in this image here, however --

MR. MAY: Assuming that's the design. I mean, you know, it's up to you and how to design it in a way that makes sense to OGB.

MR. LEE: Correct. But in terms of scale it will be in the -- and it's the same height as this. However, return that 10 feet as requested on the east.

MR. MAY: Right.

MR. LEE: And however --

MR. MAY: Return 10 feet on the west as well.

MR. LEE: Returning 10 feet on the west as well.

MS. BUTANI-D'SOUZA: And this elevation shows that the screen is visible from M Street.

MR. LEE: Correct.

MR. MAY: Well, in --

MS. BUTANI-D'SOUZA: No, because the façade lifts above so you can't see it from M Street. That's what you're saying.

MR. MAY: Yeah, we're seeing a true elevation there. And in a true elevation --

MS. BUTANI-D'SOUZA: Okay. But if you're at the street level you can't see it.

MR. MAY: Yeah.

MS. BUTANI-D'SOUZA: Got it.

MR. MAY: But if you're in the building across the street --

MR. LEE: Currently the property to the west of this property is taller. So, in its current form as the taller unit is located at the northwest corner, it is the visibility of it is screened by the building itself. However, because we are raising the potential height of the unit on the northeast corner now to encapsulate both units with the uniform height of screening, I can't say right now if that will --

MS. BUTANI-D'SOUZA: So you're suggesting that the screen on the west side is not necessary because the building is higher than the screen would be?

MR. LEE: What I am suggesting -- what I'm saying is that I'm not sure if we include screening as shown here, whether it will not have a visibility from the public right of way.

What I could suggest is perhaps we just have screen -- if we want to have screening, is to screen that unit and in the northeast corner as the properties on both the west and north already screen the unit on the northwest corner.

MR. MAY: You know, not knowing what the visibility is and knowing that all OGB is going to be concerned about is visibility from any and every angle, again, I think the only thing that I am prepared to do at this moment is grant relief from the requirement to screen anything further south than 10 feet of the north façade. And so it's just that, you know, that c-shaped screen, and I would clarify my motion to state that. Ten feet on east and west, and across the entire north wall. And then, you know, that's what you have relief from.

What you have to do in terms of the height and the placement and everything else, you work out with OGB and the Zoning Administrator.

MR. HILL: I second.

[Vote taken.]

MS. BUTANI-D'SOUZA: The motion carries. Thank you.

MR. MOY: Madam Chair, what I'm going to propose to do because there were so many nuances to the language. I'd like to, once the staff prepares the order, like to run it by the board. And certainly Mr. May for sure, since he's the maker of the motion.

So anyway, staff will record this as five to zero to one. This is on the motion of -- or, I'm sorry, four. Four to zero to one. This is on the motion of Mr. Peter May to grant the relief under 411.11 and per language which will appear magically in the order. Seconded by Vice Chair Butani, also in support --

MS. BUTANI-D'SOUZA: Seconded by --

MR. MOY: -- Mr. Hill.

MS. BUTANI-D'SOUZA: -- Mr. Hill. Seconded by Mr. Hill.

MR. MOY: Oh, you seconded it. Oh, thank you. So also in support, Ms. Butani, Mr. Hinkle, Ms. Heath not present, not voting. And I think that's it.

MS. BUTANI-D'SOUZA: Thank you. Summary order. Thank you very much.

Mr. Moy, we're ready for our next case.

MR. MOY: All right. Last but not least, Application No. 19315 of Associated Catholic Charities. This was last before the Board on July 6th, completed its hearing procedures, and as now advertised but I would like confirmation from the applicant, requested relief from variances from the lot dimension requirements, 401 -- Section 401, lot occupancy requirements 403.2, rear yard requirements 404.1, the flats on alley lot requirements under 2507.1, and the alley access requirements under 2507.2.

This is to construct three flats, R-4 District at the rear of 611 through 617, Rhode Island Avenue Northwest, Square 442, Lots 4 and 49 through 50.

MS. BUTANI-D'SOUZA: Thank you, Mr. Moy. Good morning. Good afternoon.

MS. MOLDENHAUER: Good afternoon, Chairman D'Souza and Members of the Board. My name is Meredith Moldenhauer, land use counsel for the applicant. I'll let everybody introduce themselves and then I'll clarify to make sure that we have the areas of relief correct.

MS. BUTANI-D'SOUZA: Thank you.

MR. DEWY: Good afternoon. I'm Matt Dewy with Urban Pace.

MR. SCHNECK: Good afternoon, Ron Schneck, Square 134 Architects, architect.

MS. BUTANI-D'SOUZA: Thank you.

MS. MOLDENHAUER: And then just for clarification, the area list that Mr. Moy, Secretary Moy just read, you -- I believe I heard you state that rear yard was being requested and that's no longer being requested. We had modified the plans so that the rear yard is satisfying the standards.

And we also, I don't believe you read it, but I just want to make sure that the Board is under the understanding that we also would not need relief from the lot width requirement.

MS. BUTANI-D'SOUZA: So can you just state exactly what relief you're requesting for -- and this is relief for each of the lots, correct?

MS. MOLDENHAUER: Yes.

MS. BUTANI-D'SOUZA: Or is it different for each lot?

MS. MOLDENHAUER: So it's lot area under 401.3, alley access under 2507.2, and then permitting the flat use under 2507.1.

MS. BUTANI-D'SOUZA: And you're proposing that all of these lots be the same dimensions.

MS. MOLDENHAUER: No, they are slightly different, but they are -- they are all in need of the same areas of relief.

MS. BUTANI-D'SOUZA: Okay. And can you just remind us which exhibit has your plans and your scenarios in it?

MS. MOLDENHAUER: I just want to make sure I get -- I direct you to the most convenient location to find that. Bear with me a second.

It would be Exhibit 26A, which has the architectural plans in Exhibit A.

MS. BUTANI-D'SOUZA: So I don't have a 26A. Wait, am I looking at the wrong case. Hang on one second. Yeah.

MS. MOLDENHAUER: Exhibit 26 was our --

MS. BUTANI-D'SOUZA: I don't have --

MS. MOLDENHAUER: -- prehearing statement.

MS. BUTANI-D'SOUZA: So, I don't have an Exhibit -- it's within your 26?

MS. MOLDENHAUER: Yeah, 26A.

MS. BUTANI-D'SOUZA: It's not your PowerPoint?

MS. MOLDENHAUER: No, it's not our PowerPoint.

MS. BUTANI-D'SOUZA: Okay. So it's within -- so there is an Exhibit A within your -- so it's not in your supplemental submission?

MS. MOLDENHAUER: No, I don't believe that the plans have changed in our supplemental submission, but --

MS. BUTANI-D'SOUZA: Okay. So while we wait for this to load up, so to recap, so where we are in this is we completed our hearing procedures on the 6th, and we requested an e-mail from D.C. Water describing the ability of the lots to -- or rather D.C.'s ability to service these lots with water. I believe the concern was around whether -- the fire marshal indicated that he was -- he had no issue with the alley size as long as the units could be sprinklered.

So we wanted confirmation from D.C. Water that there was sufficient water capacity to achieve that for six units.

We requested a financial analysis from the point of view of selling the properties to a developer. We requested a commitment from the Catholic Charities regarding all of the proceeds going to the Mulumba House. We requested information looking at the -- clarifying this argument relating to the IZ parallels. We wanted an ANC report and then we wanted -- in response to the issues raised in OP's report, including the alternative lot subdivision configurations.

Do we have a representative from the Office of Planning here?

Good afternoon.

MS. BROWN-ROBERTS: Okay. Good afternoon.

MS. BUTANI-D'SOUZA: I can't --

MS. BROWN-ROBERTS: Good afternoon. I think you're going to be involved in this discussion so I think you should introduce yourself for the record.

Ms. Brown-Roberts, can you introduce yourself again for the record?

MS. BROWN-ROBERTS: Sorry. Maxine Brown-Roberts, for the record.

MS. BUTANI-D'SOUZA: Thank you. Okay. So I think it would be helpful to briefly have you go through the additional submissions. And then I think we may have some questions. But I just request that you do it briefly.

MS. MOLDENHAUER: Absolutely, so we -- you're asking the applicant's counsel? Sorry.

So we have a fire letter from fire EMS indicating that, you know, they would have, you know, generally no concern with providing residential dwellings at this location at Exhibit 30.

We have a letter from a trash company indicating that they provide access to alleys of this size at Exhibit 32I. We have unanimous support from ANC at Exhibit 33. We have a letter from D.C. Water as Commissioner D'Souza indicated, to confirm that the water would be sufficient to provide service to the project, and that's at Exhibit 32H.

We then had worked with the applicant based on request to the board and supplement to the record in our supplemental filing with a pro forma at Exhibit 32D, and supporting that we have a letter from a bank at Exhibit 32F. We also have a letter from Urban Pace that is also attached to that at Exhibit 32C.

And then we have an additional letter supporting the different scenarios that we provided from a condominium attorney at Exhibit 32G.

We have evaluated and kind of broke down alternative scenarios that the Board had inquired, I think, us to kind of look at, and we broke those down in the prehearing statement as, you know, scenario A, B, and C. No, sorry, one, two, three, and four, and indicated, you know, the financial challenges with providing a two-unit single-family home on the lots, two-unit flats, and then a one scenario where it was a three lots with flats, but one lot would be conforming as to reduce the requested lot area requirement relief on the other -- on that one lot.

MR. HILL: Where is that again, that you're looking at? I'm sorry, just the --

MS. MOLDENHAUER: I'm looking at page 12, which outlines the four scenarios of Exhibit 32, the written --

MR. HILL: Okay.

MS. MOLDENHAUER: -- statement.

MS. BUTANI-D'SOUZA: And I'm sorry. In your financial analysis, in your supplemental written statement, you indicated that only one scenario satisfied your 10 percent threshold. But in your actual financial analysis there were two that did. So I'm --

MS. MOLDENHAUER: What we said --

MS. BUTANI-D'SOUZA: And you also had the construction costs not consistent, which we noticed too.

MS. MOLDENHAUER: All the construction costs were at $200 a square foot, but the --

MS. BUTANI-D'SOUZA: I don't think that's what you had written in your statement. You had written it as $100 a foot.

MS. MOLDENHAUER: Hundred, sorry. Maybe. But the -- I can ask.

MS. BUTANI-D'SOUZA: But your analysis was at --

MS. MOLDENHAUER: I can turn to --

MS. BUTANI-D'SOUZA: Your analysis was at $200 a foot. So it --

MS. MOLDENHAUER: They're all at $200 a square foot, so that might have just been a typographical error. The pro forma is correct. I don't know where we state something other than that.

MS. BUTANI-D'SOUZA: So in your letter you indicated that only Scenario one --

MS. MOLDENHAUER: The hundred dollars was for the arts studio. So that was a different scenario doing the art studio, versus building an actual habitable home.

MS. BUTANI-D'SOUZA: One second.

MS. MOLDENHAUER: But I can turn to Ron Schneck to address I think what Vice Chair D'Souza is asking about the difference in the one scenario that had the more narrow lot configuration.

MS. BUTANI-D'SOUZA: Okay. So before we go there let me just see if any members of the board want to kind of go in a different direction first. No?

Okay. I would like to go in a different direction first. So, you're asking for relief from -- variance relief from lot area, alley access, and permitting the flat use. So, I understand your argument for the use variance. I'd like you to restate what your argument is for what the practical difficulty is on the lot area, and on the alley access. But let's start with the lot area, just really quickly because you need to prove -- I believe you need to prove a practical difficulty, correct?

MS. MOLDENHAUER: Yes.

MS. BUTANI-D'SOUZA: Relating to the -- relating to the lots themselves. So can you go through that?

MS. MOLDENHAUER: Sure. Do you want me to start off with the first prong of the uniqueness or are you okay -- you feel as though we satisfy that and you want me to start off with the practical difficulty?

MS. BUTANI-D'SOUZA: No, I want you to go through the -- I want you to go through the whole thing.

MS. MOLDENHAUER: That's fine. So one, the property is unique. It was originally constructed and there were residential dwellings existing on these properties back in 1903. We have records of that which both are part of the prehearing statement and we have attached as Exhibit, and go into more detail in our initial application, we actually include the full breakdown and attach --

MS. BUTANI-D'SOUZA: Okay. So, I just want to be -- I just want to understand the argument. So the first part of it is that there were residential uses here?

MS. MOLDENHAUER: Yes. That's one of the unique factors. It's a confluence of factors as to uniqueness.

MS. BUTANI-D'SOUZA: Okay. What are the other factors?

MS. MOLDENHAUER: The rhombus shape of the property, which when you look at that you can just see the shape of the property. The other factor is the fact that the properties are alley properties and that in their existing condition as lots 50, 49, and 4, lots 50 and 49 are all -- are existing nonconforming as to lot width. They're about 14 feet wide right now. So, if the Catholic Charities might -- the applicant were to try to sell them as they exist in their separate lot structure and not obtain the Board's approval for the subdivision, the lot 50 and 49 are only at 14 feet in width and are under the current nonconforming as to lot area.

In addition to that --

MS. BUTANI-D'SOUZA: So you're saying that they're not developable without BZA approval if they were to sell them individually?

MS. MOLDENHAUER: Yes. They would not even be able to develop them as a matter of right garage use because a garage structure would be under the all other structure requirements and would have a larger lot width requirement that would not be feasible on this site. So that also creates and contributes to the request for the lot area relief in order to develop these vacant, underutilized properties.

The additional uniqueness is the fact that it is vacant and underutilized and its unique proximity to transit, and also the fact that the property is located on a split zone site. So not all of the site is in the R-4 zone. Half the site is --

MS. BUTANI-D'SOUZA: Can you go to a zoning map that shows that?

MS. MOLDENHAUER: So you can see here that the --

MS. BUTANI-D'SOUZA: You mean the square is split zoned?

MS. MOLDENHAUER: The square. The square is split zoned. So you have a higher density along the left-hand side portion of the square. Also a PUD at a C-2-B zone. So the uniqueness of these, you know, R-4 vacant lots being closer to a higher density zone, you can see that as you look at the proximity and the -- and what is actually being developed around the outside of this, you know, alley cluster.

MS. BUTANI-D'SOUZA: Okay, then, so is that -- that's your uniqueness argument.

MS. MOLDENHAUER: So that's the uniqueness argument.

MS. BUTANI-D'SOUZA: Okay. So take us through --

MS. MOLDENHAUER: And the confluence of those factors.

MS. BUTANI-D'SOUZA: Take us through practical difficulty.

MS. MOLDENHAUER: Then the practical difficulty argument has to do with --

MS. BUTANI-D'SOUZA: That results from those factors.

MS. MOLDENHAUER: Yes. So, because the lot is vacant, and I'm just trying to jump down here. Because you have all those factors and the site is rhombus, you have to then determine what can the site potentially be developed and divided into.

And so what we have done is we've provided a financial difficulty showing that in scenario 2, if you were to reduce the area of relief, not get rid of it completely, but reduce the area of relief, creating a conforming Lot C, but having lots A and B only requesting relief, so here you're --

MS. BUTANI-D'SOUZA: I'm sorry. I've missed the practical difficulty.

MS. MOLDENHAUER: I'm saying it's a financial practical difficulty, so I'm just trying to walk through that. So I'm trying to walk through the different scenarios and why it creates a practical difficulty. And I think that's shown by the analysis of the alternative scenarios and the inability to develop the site without obtaining the relief for the area.

And so Ron Schneck, our architect, can testify to why scenario 2, having one compliant lot and having two much smaller lots that have a 16-foot width with only a 14-foot interior, are not practical. So if Ron, can you address that for the Board?

MR. SCHNECK: Sure. So, for scenario 2, as Meredith mentioned, Lot C would be compliant.

MS. BUTANI-D'SOUZA: Can you hang on a sec.

MR. SCHNECK: Yeah.

MS. BUTANI-D'SOUZA: Sorry.

MR. HILL: No, I'm sorry. I was just trying to figure out which exhibit this was on.

MS. MOLDENHAUER: This is our most updated Exhibit 34, and it's page 23 of Exhibit 34, the PowerPoint that was updated.

MR. HILL: Thank you.

MS. MOLDENHAUER: Sure.

MS. BUTANI-D'SOUZA: Page 23?

MS. MOLDENHAUER: Yes, and it's on the bottom of the PowerPoint too, so you can look up and see kind of where we are, 23.

MS. BUTANI-D'SOUZA: So what you're saying is that you have a practical difficulty, you cannot financially develop these as anything other than this scenario that you're proposing. That's what you're arguing?

MS. MOLDENHAUER: Correct.

MS. BUTANI-D'SOUZA: Okay. All right. Go ahead.

MR. SCHNECK: So, slide 23 shows scenario 2, which would have one conforming lot, which is Lot C, and two nonconforming lots, A and B.

And both A and B lots become pretty much infeasible in terms of their width. They'd only be 16 feet wide and that's out to out. So you're talking about, about 14 feet usable area, whereas Lot C becomes almost too large.

MS. BUTANI-D'SOUZA: Why is 16 feet not --

MR. SCHNECK: So --

MS. BUTANI-D'SOUZA: Not wide enough? Because I believe there are row houses in the District that are -- and certainly alley dwellings as well, that are more narrow than this.

MR. SCHNECK: Yeah, we find in sort of the projects that we work on, that 16 feet is just very hard to work with. Especially with this type of unit where you would have the living and the kitchen sort of at one level.

MS. BUTANI-D'SOUZA: So you're saying that it's not wide enough for flats.

MR. SCHNECK: Correct.

MS. BUTANI-D'SOUZA: But it is wide enough for a single-family home.

MR. SCHNECK: It's not -- correct. There are a lot of row dwellings, existing row dwellings throughout the city that are 16-feet wide, typically with sort of the new types of spatial layouts. Sixteen feet is pretty small. We typically would look for, you know, 18 feet wide is probably more standard.

MS. BUTANI-D'SOUZA: Do a lot of those existing homes have older nonconforming stairwells that would not -- you could not build that today?

MR. SCHNECK: In general, yes. A lot of the old row homes have less than three-foot wide stairs, so.

MS. BUTANI-D'SOUZA: So are you arguing that you cannot build a 16-foot-wide row house that complies with current zones, zoning -- or sorry, current building codes?

MR. SCHNECK: You can, but it is not feasible in terms of what we think the sort of end-user is going to be for this property.

MS. MOLDENHAUER: So it would create a practical difficulty --

MS. BUTANI-D'SOUZA: Okay. Well, I want to set aside the use argument here because we're looking at the area of relief.

MR. SCHNECK: Okay.

MS. BUTANI-D'SOUZA: So, let's start there. So from an area point of view you can build row houses.

MR. SCHNECK: Correct.

MS. BUTANI-D'SOUZA: Correct. Okay.

MS. MOLDENHAUER: But would it create the same practical difficulty in regards to layout and complying with building code?

MR. SCHNECK: Yes. Sixteen feet wide is, in my opinion, an infeasible sort of modern use for this lot, and so that's what we're arguing.

MS. BUTANI-D'SOUZA: I'm sorry. I'm confused. So you're saying that -- is 16-feet wide buildable as a row house, or is it not? Are you saying it's not as a flat, but it is as a row house?

MS. MOLDENHAUER: I think there's a difference because -- can I just, can I clarify something. I'm just getting -- I think what you're asking is, can it be done, and physically yes, anything could be built. But I think what Mr. Schneck is asking and I asked him personally to testify, not myself, but is the practical difficulty of designing that and, you know, would you recommend to design something like that, or would it be, in your opinion, not something you would recommend.

MR. SCHNECK: We would not recommend, if this were a new lot regardless of where it is, we would not recommend anything that's 16-feet wide. Just because it is that much more difficult to accommodate what we find is sort of the more common modern uses, primarily the sort of the open space, the open living kitchen area, and then when you get upstairs to sort of the more desirable larger bedrooms.

MS. BUTANI-D'SOUZA: Okay. So are you saying that you don't think you could sell these?

MR. SCHNECK: As not being responsible for selling them, I would not recommend -- I would not recommend to a client to design something that small. As an architect I wouldn't recommend a developer to develop something that small because I think they would have a hard time finding the, either tenants or the purchasers.

MS. BUTANI-D'SOUZA: So I guess this goes to Urban Pace. Are you saying that you can't sell a 16-foot wide new construction row house on an alley, because I mean, I know there's many, many alley houses in D.C. that are 16-feet wide that have no problem selling in -- based on the comps you provided, selling at quite a premium, actually.

MR. DEWY: Yes. So there's two different things about that. So fee simple versus condo. So, the fee simple 16 would be easier to sell than a condo. Fee simple is just more desirable in the District, and they're going to carry a premium versus a condo.

The second piece just comes down to what people are looking for in a layout, and everything just gets too narrow. You have a two-bedroom where a dining room table, which is almost a given for these people, would not be realistic.

MS. BUTANI-D'SOUZA: This is in the condo or in the fee simple?

MR. DEWY: In the condo. And so when you --

MS. BUTANI-D'SOUZA: Again, let's set aside the condo because that's a separate -- that's a separate type of relief that's being requested here. I'd really like to focus on this question of whether

-- of the lot area relief. So --

MR. DEWY: So, can you sell it? Yes. It comes down, but it does come down to the overall price point of which you can sell it. Also time to which it takes to sell the unit.

MS. BUTANI-D'SOUZA: So you're arguing that you cannot sell for more than, what was it, $340 a foot?

MR. DEWY: The --

MS. BUTANI-D'SOUZA: In your financial analysis. Or was that for the larger units?

MR. DEWY: That was for the larger units. So, yeah for these it was 475, 470, 450, and 425.

MS. BUTANI-D'SOUZA: And where did you get those numbers from? Did you provide comps in the record? I don't know that I saw, or --

MR. DEWY: Yes, we have comps in the record which will support that. We also --

MS. BUTANI-D'SOUZA: Can you remind me which exhibit this is so we can all look at it at the same time?

MS. MOLDENHAUER: The comps were provided at Exhibit 32C.

MS. BUTANI-D'SOUZA: And the financial analysis is?

MS. MOLDENHAUER: At 32D.

MS. BUTANI-D'SOUZA: Okay. So you're saying the comps are the District studio comps?

MS. MOLDENHAUER: No, the District studio comps are the analysis for the art studio analysis. But then following that there is a large package of MRIS printouts that go for 11 pages.

MS. BUTANI-D'SOUZA: Okay. So can you direct me to the comps for your $475 a foot?

MS. MOLDENHAUER: So, Mr. Schneck, I guess can you kind of elaborate on looking at these how you, in your professional opinion then --

MS. BUTANI-D'SOUZA: Because I mean, I see on your first page you have 917 Hughes Muse, which is 1,000 square feet, if I'm looking at this correctly. And it sold for $775,000.

MS. MOLDENHAUER: Correct.

MS. BUTANI-D'SOUZA: So, to me that would be -- and that's not new construction. So to me that would be --

MR. DEWY: So this would -- sorry to interrupt you.

MS. BUTANI-D'SOUZA: I think that would be a lot higher than what your assumption is here. The point that I'm getting to is that you've made an argument about not being able to sell these at a point that justifies, you know, developing them. And so in order to make that argument you really need to justify every single assumption that you're making because of course pro forma is only as valuable as the assumptions that underlie it. So that's where I'm going here.

MR. DEWY: Yes, so that specific comp, although not a -- not new construction, it was a fully renovated, beautifully renovated home. It also is in a more sort of historically desirable neighborhood, being in sort of the Foggy Bottom/Georgetown neighborhood, which it is a premium.

MS. BUTANI-D'SOUZA: And what level of premium would you assign to that? Did you have an appraiser look at that?

MR. DEWY: We didn't specifically have an appraiser look at that. But I mean, from what I see you're looking at probably 10 to 15 percent over Shaw.

MS. BUTANI-D'SOUZA: Ten to 15 percent over Shaw. So, this is selling at 775 bucks a foot, so 10 to 15 percent over would be 700 bucks a foot? Seven hundred to --

MS. MOLDENHAUER: Can you go through I think --

MS. BUTANI-D'SOUZA: -- 650 to 700?

MS. MOLDENHAUER: I think that we're looking at one. Can you provide your overall analysis based on not just this one comp, but on the collection of comps and the time frame in which these comps were pulled from?

MR. DEWY: Yeah. So the identifying alley comps in the District, it's a very limited -- there's a very limited pool to pull from. So I went from present day all the way back to 2013 to get a large sample size.

The most comparable comps are going to be the ones that are in the northeast section, because that's where we see prices being more comparable.

One of the things that we're looking at when pulling together this pro forma is, I mean, there is a difference between fee simple and condo. You have to factor in condo fees which pull down affordability for buyers, and fee simple is, it's just more desirable.

MS. BUTANI-D'SOUZA: So again, I'm asking you to focus on fee simple because in this case you are arguing that you cannot build anything else on this property. So anything else, and I'm trying to say, based on the evidence that you've given us in the record, you could very well build fee simple row houses here and they would sell very well. So that's why I'm asking you to really focus on the fee simple here and explain to us why you don't believe that that could be built, or why that could not be sold.

MS. MOLDENHAUER: I think the question is, it's not nothing else could be built. We're focusing right now just on the area, the lot area. It's a -- not that nothing else could be built, but it would create a practical difficulty for buyers. And so not -- right now if we're not focusing on the use variance, we're just focusing on the lot area of relief, then it's a question of, you know, creating a practical difficulty for buyers.

And I would just indicate, if you can provide us, you know, your opinion on -- and leasing in figure number 2, scenario number 2, you know, in your opinion would a buyer choose to purchase a fee simple home that is 16 feet wide with a 14 or 12-foot passage way at the stair in an alley. Or would they choose to purchase something else?

MR. DEWY: They would choose to purchase something else. They would choose to either purchase a higher amenitized condo, or a larger home in a -- facing the street.

MS. BUTANI-D'SOUZA: So it's your professional opinion that Urban Pace could not sell a row house in an alley that is 16-feet wide, a new construction row house in an alley that's 16-feet wide?

MR. DEWY: Not for a premium. There would have to be a financial discount in order to achieve that.

MS. BUTANI-D'SOUZA: Okay. So, and what's the discount that you're suggesting based on from what to what?

MR. DEWY: So I mean, I've seen discounts from if we're talking street level to alley, as much as 25 percent in the city.

MS. BUTANI-D'SOUZA: So you're saying that a row house on the street would sell for 20 to 25 percent more than an alley dwelling. You're not saying that you couldn't sell the alley dwelling. You're saying that it would just sell for 20 percent less.

MR. DEWY: It would -- yes, it would sell for much less.

MS. BUTANI-D'SOUZA: Okay. And what are the price per square foot for new construction in Shaw right now?

MR. DEWY: Shaw is currently, on average, it's between 625 to 650. There are highly amenitized buildings that --

MS. BUTANI-D'SOUZA: Again, I'm talking about renovated row houses.

MR. DEWY: Renovated row houses --

MS. BUTANI-D'SOUZA: Or new built, new construction or houses, although I'm not aware of any in Shaw.

MR. DEWY: Yeah, I mean, there's not necessarily a lot. But yeah, you'd be looking about 600 bucks a foot. Maybe 575 to 600 bucks a foot.

MS. BUTANI-D'SOUZA: 575 to 600 bucks a foot for a new row house. And you're saying it's a 20 percent discount?

MR. DEWY: Yes. I've seen it be as much as that.

MS. BUTANI-D'SOUZA: You've seen it be as much as that.

MR. DEWY: Correct. There isn't -- the amount of alley comps, it's hard to find one-to-one where there's a 1,600 square foot street facing, and 1,600 square foot alley one. So it's been as much as

25 percent.

MS. MOLDENHAUER: And then the question is, if a house is getting larger, or if we were under this perception as Vice Chair D'Souza is inquiring, do price per square foots, do they decrease as a home gets larger? Is there a diminishing level of return if you have a larger home?

MR. DEWY: Correct. All comes down to affordability in the city, and the higher the square footage at a certain point, it's going to be a much -- you're going to have a hit on you price per square foot.

MS. MOLDENHAUER: And in scenario number 4, where we were showing two single-family homes on two lots, we were showing a 1.197 purchase price, do you believe that a 1. -- pretty much a $1.2 million sales price, someone is going to buy an alley dwelling?

MR. DEWY: I think it's unlikely. They have options around the city on the street where they could buy a very nice home for $1.2 million.

MS. BUTANI-D'SOUZA: And this is under three lots? Is that what we're talking about? This scenario with three lots?

MS. MOLDENHAUER: No, this is Exhibit D and it's scenario 4 that we analyzed, which are two single-family homes.

MS. BUTANI-D'SOUZA: So in scenario --

MS. MOLDENHAUER: So I'm just trying to show in regards to --

MS. BUTANI-D'SOUZA: -- D, you're assuming a price per square foot of what here? $340? Do you know of any new construction in Shaw of any size that's sold for $340, or I suppose $400 would be the 20 percent up from that?

MR. DEWY: So there has not been anything in Shaw that was built this big. And so if we were to charge the market rate the --

MS. BUTANI-D'SOUZA: I think Dittos built a couple -- isn't there one on 5th and Q that's -- 5th and Q? No, 4th and Q. There's a --

MR. DEWY: Yeah, it's --

MS. BUTANI-D'SOUZA: I'm very familiar with Shaw.

MR. DEWY: Yeah.

MS. BUTANI-D'SOUZA: And I would argue that your price per square foots here are absolutely ridiculously low. They are not in keeping with where the market is for new construction.

MS. MOLDENHAUER: Mr. Dewy, can you explain, though, a little bit about some of the challenges with an alley structure that may not -- that would change the parameters and the --

MS. BUTANI-D'SOUZA: Sure, I understand.

MS. MOLDENHAUER: -- context in which --

MS. BUTANI-D'SOUZA: You're saying that there's a 20 percent discount on alley structures. So if we're going to accept that, bearing in mind that there is no evidence that you've presented in the record that this discount exists, so we're going to take it on your word --

MS. MOLDENHAUER: I believe we have the comps that show that there is a discount.

MS. BUTANI-D'SOUZA: No, you have comps that show alley dwellings, but you haven't actually shown proof showing that there is a discount between alley dwellings and street-facing dwellings. You've just shown us alley dwelling prices.

MS. MOLDENHAUER: Yes. And we've shown that we have a professional -- an individual who is qualified as a professional testifying that based on those -- and I believe, Mr. Dewy, one of the factors is that the limited scope of the statistical information that's available because, just can you, I guess, elaborate on that again?

MS. BUTANI-D'SOUZA: So, you know, if you're going to make a financial argument I am going to ask you to provide some real evidence here. And although I certainly respect your experience, that's doesn't preclude me from asking for actual evidence before you throw out numbers like 20 percent.

MS. MOLDENHAUER: Is your question finished or do you want us to proceed?

MS. BUTANI-D'SOUZA: Yeah.

MS. MOLDENHAUER: Okay. So, Mr. Dewy, can you go through the process that you went through to try to obtain comps and to obtain what is the supporting evidence behind your opinion?

MR. DEWY: So, I looked back from 2013 to the present day because I had to get a large enough sample size in order to make the comparison, versus street to the alley. And when I looked at the alley dwellings the issue became the apples to apples.

So, when you look at alley dwellings they are going to be much smaller in size due to, because they're less desirable than street fronting. They are -- they basically have to be more affordable in order for them to trade. So you cannot -- you can't find an alley dwelling that's sold in the same time frame that's the same size as a street frontage dwelling, so.

MS. BUTANI-D'SOUZA: I mean, I can think of Naylor Court off the top of my head, which has extremely small buildings. I think they have a carriage house in the back, certainly, but they're not very wide.

MR. DEWY: But they're larger in square footage.

MS. BUTANI-D'SOUZA: Because they have the third floor?

MR. DEWY: Yeah.

MS. BUTANI-D'SOUZA: Okay. So, the point that I'm trying to make is that if you're going to state that your price per square foot hair cut is 20 to 25 percent from a street facing unit, you need to actually show me then, in comps, what the street facing unit is that you're taking that hair cut from. Because I know, and anybody who knows anything about real estate in D.C. knows that new construction Shaw is not going for $400 a foot.

So, when you show me a pro forma that lists your price per foot on a very large, which would be extremely desirable in a neighborhood like Shaw, or really any neighborhood of Northwest, many other neighborhoods in the city, and you're showing a price per foot of $340, it really raises big question marks about the analysis that's underpinning this pro forma.

So, again, I'm very supportive of this concept. You know, I think it's important to, you know, what the Catholic Charities -- gentleman from the Catholic Charities indicated in their letter. These are, you know, vacant lots that don't serve anybody and I 100 percent agree with that.

But if you're going to make an argument and request so much relief, particularly when you have the Office of Planning opposed, your argument really needs to be crystal clear and bullet proof and well supported. And I'm not seeing that here. And that's why I'm asking you a lot of questions, because I did ask previously that you provide us with a fact-based analysis. And although you have provided an analysis, I don't think that this meets the threshold for the facts required to prove financial feasibility. That's my opinion and it raises a lot of questions for me.

So, I'm trying to find something where we can hang our hats on here. But again, my personal opinion, I am not seeing it in this analysis.

So, does anyone else have questions about this? No? Okay.

I'm curious to hear from the Office of Planning and your view of the additional submissions that were made.

MS. BROWN-ROBERTS: Good afternoon, again. We did not look at the financials because we just don't have the capacity to do that sort of analysis.

However, we continued to think that some of the points that the applicant has made regarding uniqueness, we're not supportive of. One being that you know, the properties are in proximity to other properties. That can be found in a number of places around DC. So we don't consider that unique.

The uniqueness of the shape of the existing property, we contend that yes, but then the applicant has gone and done the subdivision, so that uniqueness, we think, goes away. And so that is -- and we think that they're able to create two lots, which would be something that we would be more supportive of because they're going to something that has an additional -- the area variance, which is another quality that they have to -- that they have to request, which we do not think that they meet the uniqueness standard.

Regarding the use, we had requested the information from the fire and EMS, and they did provide those and we're appreciative of those. And so on that level I think we feel a little bit more comfortable and would support that. But we're still -- but we still have the problem of the lot area variances.

MS. BUTANI-D'SOUZA: Okay. And, Ms. Brown-Roberts, is a single-family home allowable by right here?

MS. BROWN-ROBERTS: Yes, it is.

MS. BUTANI-D'SOUZA: It is. Okay. All right.

MS. BROWN-ROBERTS: Well, actually, yeah, I think that's what they can do by right. Yes.

MS. BUTANI-D'SOUZA: Okay.

MS. MOLDENHAUER: Sorry. It would not be.

MS. BUTANI-D'SOUZA: It requires the alley --

MS. MOLDENHAUER: It would require relief.

MS. BROWN-ROBERTS: Require, right, relief from the alley width.

MS. MOLDENHAUER: Any use of this property would require relief, which is one of the reasons why the property is unique. If you can't develop it without relief, how is that not then a unique factor? Or are we going to let it lie idle?

MS. BUTANI-D'SOUZA: So the question that I'm asking is, so you would require -- it would require relief for the alley in order to permit --

MS. BROWN-ROBERTS: Right. And so we had asked for -- because of the alley, and then we went on to ask for the recommendation from D.C. Water and the fire and EMS in order to satisfy ourselves concerning the alley, and we did get that.

MS. BUTANI-D'SOUZA: Okay. Okay. So a single-family use would be allowable with the alley relief.

MS. BROWN-ROBERTS: Right.

MS. BUTANI-D'SOUZA: Is that correct?

MS. BROWN-ROBERTS: Yes.

MS. BUTANI-D'SOUZA: Okay. Okay. Here is where I am on this. I think your letter from D.C. Water is not really making it clear that you can actually provide adequate water service here. So I have some open questions about that. I believe that the language that they used -- do you know which exhibit that is?

MS. MOLDENHAUER: D.C. Water is 32H.

MS. BUTANI-D'SOUZA: 32H. So --

[Pause.]

MR. HILL: Ms. Brown-Roberts, so the Office of Planning, and I'm just trying to understand the different scenarios, you know. And so there is -- you think the Office of Planning would be more in support of the two lots?

MS. BUTANI-D'SOUZA: Uh-huh.

MR. HILL: And you say more in support, right?

MS. BROWN-ROBERTS: Yes.

MR. HILL: So then the other option or scenario that was presented was again, one lot and then two -- one lot that was conforming, and then two that would need relief. So there would be three lots.

MS. BROWN-ROBERTS: Uh-huh.

MR. HILL: Right?

MS. BROWN-ROBERTS: We didn't say we supported that. We just said we wanted to look at it.

MR. HILL: Okay.

MS. BROWN-ROBERTS: Yes.

MR. HILL: And so you would still not be in support of that one?

MS. BROWN-ROBERTS: No. No.

MR. HILL: Okay. Okay.

MS. BROWN-ROBERTS: Because there's still the issue -- it's the lot area requirement that we are not getting to because of, I think the basis is that it is a rhombus right now, and that's a unique condition. However, with changing that -- doing a subdivision they're creating three new nonconforming lots.

MR. HILL: Okay.

MS. BROWN-ROBERTS: So it's not helping the situation.

MR. HILL: Okay. You'd rather have two new nonconforming lots?

MS. BROWN-ROBERTS: Right. Yes.

MR. HILL: Okay. All right. Thank you.

MS. MOLDENHAUER: Sorry, Ms. Brown-Roberts. Are you -- sorry.

MS. BUTANI-D'SOUZA: Go ahead.

MS. MOLDENHAUER: Are you still asking questions? I apologize.

MS. BUTANI-D'SOUZA: No, go ahead.

MS. MOLDENHAUER: By creating the proposed three lots are we not improving the nonconformity that currently exists, given the fact that the current lots are only 14 feet wide?

MS. BROWN-ROBERTS: Well, to think what you're doing is maybe trading one nonconforming aspect for another.

MS. MOLDENHAUER: Does OP agree that there's no permittable developable option here that does not require an area variance or variance relief?

MS. BROWN-ROBERTS: We agree that anything that's going to be done would need relief. But you also have to meet the relief requirements. And what I'm saying is that I don't think you have done that.

MS. MOLDENHAUER: And then my question is, is it OP's understanding that most alley clusters and alley lots are narrower than the required zoning?

MS. BROWN-ROBERTS: In some cases, yes. I mean, I think all the alley applications that we have gotten have had different areas of relief that they bring to the table. I don't have an overall plan to see what has been, you know, the most frequent request that has been asked for.

MS. MOLDENHAUER: And are you aware that based on what we've provided in the record, that lot 5 was original two dwellings that were, I believe it's 12 feet or 18 feet -- 12 feet wide, so this would not be increasing the density beyond what occurred here many years ago?

MS. BROWN-ROBERTS: Yeah, but I think one of the things that you and your architect, or the other people have talked about is what are the conditions today. So that's what we're looking at. Yes, it did function that way at that time, but I think over time things have changed so we're looking at what are the conditions today, what are the requirements today.

MS. MOLDENHAUER: And so then, you would be supportive of having a wider home than the 14 or 16-foot-wide home that was provided in scenario two?

MS. BROWN-ROBERTS: I think what we're looking at is two lots.

MS. MOLDENHAUER: And would you be supportive of the flats. You had indicated earlier when you were discussing with the Board that the use was not -- the use was not something that OP had as much of an issue with.

MS. BROWN-ROBERTS: As I said, we would look at the -- well, actually, because we're going from say two units to six, so that is something that we had outlined in our report that, you know, we --

MS. MOLDENHAUER: Two to four.

MS. BROWN-ROBERTS: Two to four, that we had some conditions on, so.

MS. MOLDENHAUER: So, yeah. So from six to four.

MS. BROWN-ROBERTS: Right.

MS. MOLDENHAUER: Okay.

MS. BUTANI-D'SOUZA: All right. Here is where I am on this. Let's start with alley access. What D.C. Water has said in their letter is that, "D.C. Water cautions the applicant that the water line is quite old and of small diameter. Therefore, its ability to serve additional structures is limited."

So, in my mind your fire and EMS approval really hangs on your ability to sprinkler these residences. In fact, your ability to develop them because doesn't the current building code require them to be sprinklered? So that's the first question that I have is, do you really have the infrastructure here to sprinkler these units to actually build them?

So, I think it would be helpful to go back to Mr. McDermott and get a little bit more information from him on what he meant by that statement, so that we can have some confidence here that we're not granting, you know, relief from alley access and creating a situation where you have something that's unsafe, because I think that's the point of the alley regulations.

MS. MOLDENHAUER: But I would propose, we worked really hard to get these letters. And when you're working with government agencies to try to have them provide hypothetical scenarios that have not yet been permitted is very challenging. So, if the board is looking for more information I would respectfully request that either they -- you could condition something if you're willing to look for an approval on us sprinkling the building. And we would be fine conditioning it on sprinkling the building. And if we couldn't do that because the water supply was not sufficient, then we would obviously not be able to move forward on the project.

MS. BUTANI-D'SOUZA: Okay. If you want to propose that as a condition I'm amenable to that. I think that's fine.

My second place where I am on this, the -- so, I think you've adequately demonstrated that a new construction artist space is not going to cover your costs. I think that's a reasonable argument. The question of whether a single-family use could work here is, I think, is an open question and I do think, my understanding of the regulations is that you -- is that that would come first. That, you know, if you're requesting this relief you'd have to prove that you can't do it under the regulations. You can't build anything under the regulations.

So, that's an open question for me. And I think it seems like that's the same question that the Office of Planning has as to whether you really do need to do flats here.

MS. MOLDENHAUER: And we believe that we've proven, and we can walk through this a little bit more to supplement our argument, that in order to one, one of the things we haven't talked about is the cluster and the relationship of, you know, having a larger grouping of homes in a community be quoted from a group of individuals that are for alley communities and the benefits that are associated with that. And then we've also provided documentation that -- and Mr. Dewy, I think, can elaborate on this. When you go to a single-family home you go to a unit that becomes, especially when you go to two units, and we can look at the pro forma and walk through that, that are so large. And let's just pull that up and walk through that for a quick second.

It might be too hard to read from here. Sorry.

So, here is the scenario for the -- it's really too small. I apologize. Maybe if you guys -- it might be easier if you look at it under 32D on that exhibit, that page exhibit.

But if we walk through the pro forma for two single-family homes on two lots, which is the last page on Exhibit 32D, we have two homes that are of square footages of 2,900 square feet, and 3,864 square feet. And then -- so, Mr. Dewy, are there homes of that size in your opinion typically, in the Shaw area, that are that large?

MR. DEWY: There are homes that are 28 to 2,900 square feet. It doesn't make up the bulk of the market, but there are -- I would, maybe one that is 3,800 that is -- that's just not a single-family home size that's built in Shaw.

MS. MOLDENHAUER: And you testified earlier that there is a diminishing point of return when you're talking about price per square footage as the units become so large that you're not going to be able to sell something for a certain price per square foot value. That the actual price per square foot starts to diminish and go down because you have an overall cap on the market. Is that correct?

MR. DEWY: Correct. Just because somebody can sell a 4,000 square foot home in Georgetown, there's more expendable income there. It's not the same as it necessarily is in Shaw, so there is an affordability component that somebody will pay a maximum amount to live in that specific neighborhood.

MS. MOLDENHAUER: How much, we mentioned earlier a project developed by Ditto in the Shaw area. How much are those, you know, street frontage, you know, Hollywell designed, projects are going for?

MR. DEWY: So those range from 1.1 to 1.58.

MS. MOLDENHAUER: And so if this is proposing an alley dwelling at 1.2 pretty much, do you think that you would be able to capture the same price as a street frontage price for a single-family home in an alley?

MR. DEWY: From a like overall dollar or price per square foot?

MS. MOLDENHAUER: I'm just saying overall -- I'm saying, it's not a price for square foot. I'm just saying in general because this is a two-unit scenario selling at 1.197. Do you think that that's reasonable? Someone could turn around and buy a 1.2 Ditto property on the street for the same price. You know, do you think that that is a likelihood?

MR. DEWY: They would buy the Ditto property on the street.

MS. MOLDENHAUER: And that's even, this scenario is even showing a loss of nine percent. So, you know, it's not even just a question of then your price per square foot, but it's also a comparison of what's on the market and how high you're going to end up getting for an overall alley property in a -- even at a single-family home price.

MR. DEWY: Yeah, correct.

MS. MOLDENHAUER: And so then comparing that, then, to possibly the two flat scenario, that I think we're kind of discussing going to two lots, four units, you know, these are showing at a 475, 470 price per square foot. Can you kind of walk through the math as to how you got there based on your 25 percent reduction to provide a little bit more of background to the board members?

MR. HILL: I've got a question just real quick. Sorry.

So, what she just said was, again, the two lots with the four units. Is that correct? No.

MS. MOLDENHAUER: No, we were just talking about two lots for single-family homes. So --

MR. HILL: Oh, okay. That's where you were at. Okay.

MS. MOLDENHAUER: So we were trying to prove that the use variance is --

MR. HILL: Right.

MS. MOLDENHAUER: -- needed --

MR. HILL: Right.

MS. MOLDENHAUER: -- and that an undue hardship does exist for that relief.

MR. HILL: And I'll get you to where I am, just real quick. So the -- originally, you know, the proposal again is three lots, six units, right? And so the financial and the confluence of factors is getting me to the different options, which is again the one conforming, and two more lots. So you still get six units. But two of those lots are going to have 14-foot wide buildings, whatever.

And so that's one of your financial analysis somewhere, or no? Okay.

And then the other one is again, where I think maybe the Office of Planning is, which is the two lots and the four units. So if you can just walk me through those. I see the two family -- I mean, the two-family homes are huge homes. That's fine. The two lots.

So if you can take me through those three financials, that would be great.

MS. MOLDENHAUER: So, just to be clear, I mean, the financials for the scenario 2, which is what, Commissioner Hill, you are requesting, does show the same return as our prior scenario. So, it is our position was in that regard that the layout was what --

MR. HILL: That's, and I'm sorry, that's the three lots, six units.

MS. MOLDENHAUER: That's scenario two.

MR. HILL: Uh-huh.

MS. MOLDENHAUER: Which is three flats. One conforming lot. So --

MR. HILL: Okay. Okay. I see where you're at. Okay.

MS. MOLDENHAUER: So that would show the one big conforming lot which would not need the lot area relief, and then the two smaller lots which would need lot area relief, and six units.

This does show a return that would be viable. So if the Board found that they couldn't get around the area relief, our position was, however, that the practical difficulty of the width created the practical difficulty and the need for that relief.

And so if the -- but that's just, I want to -- from a financial perspective, you know, that would be viable. It was a question of whether they would have a challenge in creating and selling these new narrower homes that already have the challenge of being located on an alley.

Then we go to, I believe, your question of the two flats, which would be four units. And that shows a six percent return which would be under the letter that we have from the bank, which is at Exhibit 32F, from Capital Bank indicating that they, in their opinion, would, based on their underwriting requirements, look for a minimum of a 10 percent return for all of the variables, market changing, interest rates increasing, water main line increasing their overall, you know, pro forma budget cost, things to that effect, that they would want to see some additional level of ROI in that regard.

So, that's the -- that is the pro forma there in regards to a six percent return versus the 10 percent return.

MR. HILL: Right. And I'm not in a deliberation here. I think I'm just kind of asking --

MS. MOLDENHAUER: I'm trying to walk through this.

MR. HILL: No, no, no, I understand. That the -- your client would prefer the three -- the one conforming and two nonconforming versus the two with the four -- scenario one, three flats, over scenario two.

MS. MOLDENHAUER: Scenario one, which was our proposed, yes, over scenario two. And that was based non on a financial position because you can see the numbers are the numbers. We're not trying to -- you know, it was still over 10 percent. But because of the layout challenges and as, you know, Ron Schneck testified to the challenges of having a, you know, a brand new built structure that is that narrow.

MR. HILL: I understand, but that one is one conforming lot and two nonconforming lots.

MS. MOLDENHAUER: Yes.

MR. HILL: Okay. Thank you.

MS. MOLDENHAUER: Scenario two.

MS. BUTANI-D'SOUZA: So where did you come up under scenario 3 with your price per foot? What was your comp that you used there?

MS. MOLDENHAUER: So, if you can kind of walk through the analysis for the comp there that would be great.

MR. DEWY: Yeah, so I mean, it's looking at new construction comps in the area. And then also these are not necessarily right sized condominiums for the neighborhood. They are -- when we talk about as condominiums, or as units get larger there is some diminishing return, at these square footages they are hitting overall price points that would make it difficult to sell with the challenges that the alley presents.

So we applied the discounts to price per square foot and came up with these numbers.

MS. BUTANI-D'SOUZA: Can you give me some more facts on what the price per foot was that you're discounting from, and which properties these are coming from?

Again, I respect that you have experience in real estate.

MR. DEWY: Uh-huh.

MS. BUTANI-D'SOUZA: But, you know, the Board of Zoning Adjustment gets a lot of these financial arguments and it's our responsibility to really evaluate them. And so quite frankly, to me new construction $450 a foot really doesn't pass the sniff test. And I know that there are new construction, two-unit flats, that are widely for sale in the District or newly renovated, that you could have used in this analysis.

So again, I'm just trying to understand. Give me something to hang my hat on where you say, look, here's a comparable building that you sold on the street in this neighborhood in Shaw, in Columbia Heights, in Bloomingdale, wherever, close by, equivalent neighborhood, H Street. Whatever it may be. And it sold for -- it was brand new and it sold for $600 a foot.

So now we're assuming that based on that we took a 20 to 25 percent discount and we got to this price per foot. That's what I'm really looking for here because your entire argument of, six percent versus 10 percent, hangs on that question.

MR. DEWY: The most comparable building that we have, and one that I used because we're selling it currently in this market has larger units, is 1111 W. It's 11th and W Northwest. The units are within this size range. They range from 1,400 to 1,600 square feet. And from a price per square foot we range from 550 to $610 a square foot. And it is, it's in the neighborhoods that you're pointing at.

MS. BUTANI-D'SOUZA: Okay. So you have one comp.

MR. DEWY: It's an active comp. I mean, we have --

MS. BUTANI-D'SOUZA: So it hasn't sold yet?

MR. DEWY: Oh, no we have every -- under contract settled.

MS. BUTANI-D'SOUZA: Okay.

MR. DEWY: But the building is of similar scale. It's not a large building, similar size. There are the majority of condominiums that are being built, or flats that are being built in the District are of lower size than this, and if they are larger they're going to be on higher floors in highly amenitized buildings.

MS. MOLDENHAUER: So can I just do the numbers then, with you? So you just said 550 a square foot. If you take 550 a square foot, you multiply that times 25 percent. That gives you, what, 412?

MR. DEWY: Uh-huh.

MS. MOLDENHAUER: A square foot. And our flat scenario is using 425, 450, 475, 470, as a price per --

MS. BUTANI-D'SOUZA: So you have one comp and it's new construction, and it's a two-building, two-flat house. Is that what 1111 W Street is?

MR. DEWY: Oh, no, it's 14 market rate units.

MS. BUTANI-D'SOUZA: Okay. So --

MR. DEWY: That range from 14 to 1,600 square feet.

MS. MOLDENHAUER: So would a 14-unit building probably sell higher per price for square foot or a flat? I mean --

MR. DEWY: Yeah, it will typically sell --

MS. BUTANI-D'SOUZA: I mean, I can think of a building on the corner of, I think it's 4th and Q, that has two -- I believe it's new construction, maybe renovation. It has two units, and those both sold for 1.1 to 1.4, I think.

So again, it really depends on what comp you're using and you really have to look at that comp. I mean, real estate is not stocks. It's very specific as you all know.

MR. DEWY: Uh-huh.

MS. BUTANI-D'SOUZA: And so again, I'm supportive of this project. I just don't think that I could vote to approve this right now. And I think if you have the ability to do the analysis, you should do it.

So that's where I am, and I think that that kind of information needs to be in the record because of course, we get a lot of these and then you're going to have another developer coming through with a financial analysis that's a bit flimsy, where that's not adequately backed up. And then you have a lawyer saying, oh, well remember this case? So, again, that's why I'm really pushing you on this because I think you can --

And, you know, Office of Planning is also pushing on this as well.

So that's where I am. I'm curious to hear from my colleagues about whether they have further questions on this, or whether they want to move to deliberations. If I'm the only one that is a hold out, then let's go to deliberation.

MR. MILLER: Madam Vice Chair, thank you. I did want to -- just a totally different question. I'll get back to where I am if that's what you want to hear.

But on the -- I appreciate the proffer of the 60 percent AMI unit. Are you -- as part of your -- if we get to conditions of an order, will you -- you'll draft a condition of how that covenant will be made with the city so that it's an enforceable covenant for affordable housing?

MS. MOLDENHAUER: Absolutely. I mean, our firm just drafted a covenant for RPP that will be recorded in the land records. We would do a similar restrictive covenant that would have the applicable language that would restrict a property at that level of AMI for the remaining life of the building. And that would be recorded against that lot. And so it would be then something that, you know, we would be fine with obviously having as a condition, and then providing a covenant.

MR. MILLER: Okay. Thank you. So, I also do appreciate that you did provide a lot of information in response to the requests that were made by the Office of Planning and by the board at the July hearing. And I appreciated it, especially the provision of the scenarios, the four scenarios including the existing scenario one that -- which is your proposed scenario. And I mean, I found reasonable, I'm not an expert as others are, but I found reasonable the information provided showing why there is an economic hardship in two of the cases, the single-family homes, and the two flats on the two large lots, why there was not an economically viable -- that is was possible, but it wasn't economically viable. And I appreciate the information. I thought it was reasonable that showed why the design was not viable for scenario number 2; that where you had one conforming lot trying to make one more conforming, and the others wouldn't be. Although I realize that others aren't persuaded and maybe more familiar with the marketability of narrow townhouses.

But I also, I also found compelling, the comparable -- or not the comparable, but the information provided about alley clusters and how that's marketable and how someone buying one of these might want three, three row houses that each had two units, and more people that has eyes on the alley. And I also found persuasive the confluence of factors on the uniqueness question. I mean, this isn't -- this square has a variety of uses as the applicant has pointed out. And as you've pointed out, Madam Chair, the vacant uses are certainly not helping anybody where they are now.

And it just, it seemed to be you know, if you could get to the prong 3, there seemed to be a lot of public good coming out of this project if you can get past one and two.

But for me, I could get past the prongs one and two. And even though more relief might be required for one rather than two, it did make more sense from a design perspective to have -- just from my own perspective, to have the design as it's being proposed, modestly sized units, all six units, and the way that the whole townhouses are designed.

So, that's where I am, and I'll be interested to see where our other colleague -- I think I know where Commissioner -- Board Member Hill is, but he can speak for himself and so can Mr. Hinkle.

MR. HILL: Yeah. I appreciate as far as like whether we're getting to deliberations or not, I mean again, I'm ready to deliberate. And so, you know, but all of the questions that you asked are very good in terms of like the numbers. And I don't particularly disagree with the numbers. I don't necessarily think, though, they're not going to you know, fix the numbers, you know, to skew in the proper direction.

However, I did think that they were more reasonable than some that have been skewed before. However, again, there is a discussion for me in terms of what it is if we were to move forward, what we would or wouldn't approve, and I'd like to have that discussion. But I'm ready to deliberate, so.

MR. HINKLE: What am I trying to say? I tend to agree with what Commissioner Miller has stated. You know, these are alley lots. They're very difficult to develop. The code makes it very difficult to develop. And as we've heard from the applicant, you know, no matter what they propose to do, they're going to have to be in here anyway. And they're here with a proposal that I think from the third prong actually makes a lot of sense. It fits the neighborhood, it's providing some housing that's desperately needed in the city.

And I thought the discussion about the clustering in the alley certainly makes sense. I've, you know, in the past have looked at purchasing alley properties and was concerned about it being the only alley property in there, or dwelling in there. So that makes sense to me.

I've seen the applicant's representative, who I was thinking, gosh I've known her six years now, progress in terms of the documentation provided in these applications in terms of doing comparables, looking at what's marketable. And while it's -- I don't think we're ever going to get the best of the best in any of these applications, I think this one is pretty good. I know that you, as Mr. Hill stated, Vice Chairman, woman, you've been asking some terrific questions and certainly appreciate you pushing these applicants more and more because we do need that.

But at this point in time I could certainly support this application. You know, there is a question about the water supply and some others. You know, that's something for the applicant to deal with. I'm not quite sure that's a question for us in this forum in terms of we're looking at specifically the zoning aspects. But that's where I'm at, at this point.

MS. BUTANI-D'SOUZA: Okay. Well, there seems to be consensus that we should move to deliberations, so let's move to deliberations then.

MR. MOY: [Speaking off mic.]

MS. BUTANI-D'SOUZA: Oh, I'm sorry. Do you have any other -- do you have any closing you'd like to offer?

MS. MOLDENHAUER: Very briefly. So, again, we represent a nonprofit organization, so the Board can, if they're reviewing these standards and they do wish to make this a situation in which they are distinguishing this from other cases, they can temper the Zoning Regulations in conjunction with the applicant. But we do feel, though, we've satisfied the standards up to the standard whether this was a nonprofit organization or not.

We also have done the research. There have been 20 alley cases that have gone before the Board in our review of the online ISIS program. And out of those 20, 16 have been approved. Only four, sorry, were not approved. And all four instances they had parties in opposition testifying about various issues. In this case we have the ANC fully in support, unanimously in support.

They, because of the holiday timeframe, did take a little bit of time to get their report in the record, but it is attached at Exhibit 33 which indicates their support and their also encouragement of this development and the needs for the Mulumba House and the other services that the applicant provides.

To Commissioner Miller's point, the affordable unit was proffered with the six-unit, the three-lot, six-unit scenario, proposal one that was not proffered with any reduced scenarios, due to the additional burden that would create on any of those scenarios. So just wanted to make sure that that was clear on the record.

If the Board did look to scenario two, which was a reduced area of relief in the smaller two lots, we would then just want to make sure that the Board understood that they would need to then modify the relief to include alley width for those two skinnier lots. But we believe we've articulated the practical difficulties since that is the area variance standard associated with those scenarios.

Other than that we believe that the record is full and would ask the Board to deliberate on this.

Thank you.

MS. BUTANI-D'SOUZA: Okay. Thank you. So again, I personally am not convinced by the pro forma because again, I think that you know, in something like this there is certain numbers that can dramatically swing what is and is not feasible. And the argument being made here is that nothing else is feasible other than this and I just don't -- I was not persuaded by that.

Taking into consideration the fact that OP is also opposed to this, that's what really raised the questions for me.

If it were up to me I would say we should continue the hearing and you know, look at getting some more facts around what the actual price points are here so that you could look and see whether there is an option where there is less relief needed, because that appears to be the Office of Planning's biggest concern.

So, as I said, I think it's a great thing to utilize the alley and you know, I think it's a good idea to be supportive of the work that this entity is doing. So I'm just a little bit torn here because I just think that there -- I'm not entirely sure where -- sure where this is justified. I just don't really see the argument.

So again, that's my point of view but if other folks are convinced then that is what it is. As I said, I'm very familiar with Shaw, very supportive of this development in general. I just don't really think that it's sort of -- that this meets the guideline for justifying the relief. You know, the argument that you're making.

So maybe that's semantics, but you know, I know that this type of thing gets used quite a lot it seems, at the BZA. And so I think it's important that we have a level of rigor behind these analyses. So that's where I am on this.

MR. HILL: Okay. Well, as I stated before, I really thought the questions were great and was able to -- when I started off I really didn't know exactly where I was going to be. And it wasn't until just now the applicant kind of clarified some of the AMI issues that -- and it kind of helped me kind of get to where I think I am. But I do want to talk about it because I think that the -- as I mentioned before, the financials, you know, they are -- and this is also, because this is going to continue to happen with us. We're going to -- I was looking at this more of the confluence of factors. You know, really as to whether or not, you know, I was able to get to the point where I was going to be able to approve this. I mean, the Office of Planning was you know -- is against this. However, you know, there is some kind of relief that would need to happen for this to be developed.

So that was actually a factor into, you know, that they did need some kind of relief. I thought that the, you know, the connection with the charity, you know, I didn't think was -- I can't remember where we heard from the -- whether it was OAG or not, that like, you know, the charity use was more -- or the ability to have a more relaxed standard in terms of if the charity themselves were using the property as opposed to selling the property and then using those funds. So I'm not even necessarily using that in my analysis or my decision process.

The supporting documentation in terms of right, like the -- I mean, I actually thought that the letter from the bank was helpful even though that, you know, return on investment could be argued, you know, as to what they could have gotten. Then it kind of got me to -- excuse me, one lot was single-family house, you know, two lots with four flats, three lots with the, you know, the one you know, lot that was conforming, and then the two nonconforming lots. And the 14 feet. I mean, once I got to the point where I was fine with the three lots, then I'm just over here with, I'm losing 60 percent AMI.

So back to where I am, I'm comfortable with the confluence of factors, although I do understand the questions that you had and do appreciate the questions. But yeah, I guess I'm, you know, I'm there. So, I'd be able to approve it the way it is but with the 60 percent AMI as a condition.

Is that -- am I making a motion? I don't know. Okay. I guess that's it. So, okay. So I'd like to make a motion to approve 11 DCMR, Section 3103.2 for variances from lot dimension requirements under 401, the lot occupancy requirements under 403.2, the rear yard requirements under 404.1, the flats on alley lot requirements under Section 2507.1, and the alley access requirements under Section 2507.2 to construct two flats in the R-4 District at premises 611-617, Rhode Island Avenue Northwest, Square 442, Lots 449-50, with the condition that one of the units is a 60 percent AMI unit.

MS. BUTANI-D'SOUZA: Do you want to add in the condition on making sure that the spaces can -- well, I suppose if they're going to be sprinklered they have to be sprinklered to meet the code, so that's fine.

MR. MILLER: I would second that motion of Board Member Hill.

MS. BUTANI-D'SOUZA: The motion has been made and seconded. All those in favor.

MR. HINKLE: If I could just make a statement first, before we vote? I'm sorry. I tend to agree with Mr. Hill in terms of the relaxed standard and the charity. I don't think it necessarily should apply here. I think if the property was being used by the charity, certainly that standard should apply. But selling these properties and using the proceeds is a different issue, I think. So I'm hoping, you know, the other board members if this is passed, would agree that that's not one of the standards that this board has looked at.

MR. HILL: Yeah, I agree. I thought that -- yeah, I agree.

MR. MILLER: Yes, I think they provided enough of the financial argument that we could -- from my own perspective, I could reasonably accept that the variance test has been made.

But I would point out, I can't ignore the fact that 100 percent of the proceeds are going to go to the mission of the Catholic Charities, including as they point out in their letter, the Capital Improvement and boiler replacement type of cases that don't necessarily attract, you know, funders to want to build because they don't get their name on a boiler or whatever.

So there is an important mission that is being -- I mean, even though I agree that the relaxed standard does not necessarily apply based on the information we've been provided from counsel, although I want to personally research that further, but I think that it is important that the funds are being used for the mission of the Catholic Charities and I think this is a good affordable housing project.

I wish that we could get the Vice Chair's -- get information for the Vice Chair to be more comfortable if the financials, she obviously has the knowledge base that I can't give you, that I don't have and can't give you a rebuttal or additional information that might make you more comfortable.

But the only question I have in terms of procedure is, we've -- oh, I also agree with Mr. Hinkle that the D.C. Water issue is an important vital issue, and they're either going to get that permit or they're not going to get the permit, and they're going to have to build the water infrastructure so that it can be built. That's a typical letter that we see in these cases that they've reviewed the building permit and if the infrastructure needs to be rebuilt it's not the city that's -- not the D.C. Water that's doing it, that's going to take care of that problem.

But my procedural question is, we do want a condition on the affordable housing proffer. We don't have anything in front of us. How is that going to be handled, or how has that been handled in the past, Mr. Moy? I mean, you just incorporate that into the order?

MR. MOY: I would yield that to OAG's advice. But I think my past experience is that we've taken the testimony at the time of the hearing in an oral fashion and then we include it into the order. So if the condition appears in the order, that's something the applicant would have to follow through on.

MS. BUTANI-D'SOUZA: So I guess, does this get to this question of enforceability of this over time and in the deed? So the applicant's attorney referenced the previous conditions that she's developed for RPP, which were quite in depth and actually required some discussion, I believe, of the board, to make sure that they met some enforceability standard. So, I don't know that that's something that we could just sort of take -- that Office of Zoning could take from the record and draft the condition, or OAG, even, without some help on, you know, understanding the issues there and --

MS. MOLDENHAUER: I know we're in deliberation but I don't know if you want me to --

MS. BUTANI-D'SOUZA: Sure. Why don't you go ahead and tell us what you think?

MR. MILLER: And are there any other conditions that are part of this proposal?

MS. MOLDENHAUER: So the only condition that would be part of this proposal would be that we would record, and I think it's very simple and I think that Office of Zoning in a summary order could attach this as a condition, but that we would record a restrictive covenant to sell the identified unit as part of the plan set as affordable at an 80 percent AMI that would be -- sorry, 60 percent, 60 percent. I'm sorry. I'm -- 60 percent AMI in perpetuity for the life of the building.

And then that's all. And then we would have -- we would not be -- you don't need to provide a condition that actually is all the language of the covenant. It just says that we have to do a covenant that satisfies those. And then we would have to produce that to the permitting office before they would issue a permit. So, all you would need to do is just pretty much say what I just said on the summary order.

MR. EBI: That's correct.

MR. HILL: OAG, is that fine?

MR. EBI: Yes, that's fine.

MR. MILLER: Thank you. And that's a covenant obviously that runs with the land and is enforceable.

MS. MOLDENHAUER: That would be recorded in the land records, yes.

MS. BUTANI-D'SOUZA: Okay. So this would be a covenant that one out of the six units would need to be affordable at 60 percent AMI, covenant on the deed.

MR. MILLER: Right. In perpetuity.

MS. BUTANI-D'SOUZA: Perpetuity. Okay. So do we need to adjust the motion that's been made?

MR. MILLER: No, I think it's incorporated. At least from my standpoint.

MS. BUTANI-D'SOUZA: All right. So the

motion has been made and seconded.

[Vote taken.]

MS. BUTANI-D'SOUZA: And I think with that, the motion carries.

MR. MOY: Staff would record the vote as three to one to one. This is on the motion of Mr. Hill granting the relief being requested, concluding the condition imposed by the Board. Seconding the motion is Mr. Miller. Also in support, Mr. Hinkle. Vice Chairperson Butani opposed, Chairperson Heath not participating. Motion carries.

MS. BUTANI-D'SOUZA: Thank you very much.

MS. MOLDENHAUER: We would request that you waive your requirements and issue a summary order.

MS. BUTANI-D'SOUZA: Summary order.

So with that I think we are adjourned. Thank you very much.

MR. MOY: Yes, thank you.

[Whereupon, at 1:38 p.m., the Board Hearing was adjourned.]