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

PUBLIC MEETING

9:42 a.m. to 6:32 p.m.
Wednesday, February 8, 2017

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

OLENDER REPORTING, INC.
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Board Members:

- FREDERICK L. HILL, Chairperson
- CARLTON HART, Board Member
- PETER MAY, Zoning Commission
- CLIFFORD MOY, BZA Secretary

Office of Attorney General

- MARY NAGELHOUT, Esq.

Office of Planning:

- KAREN THOMAS
- JOEL LAWSON
- BRYAN GOLDEN
- MATT JESICK
- STEPHEN MORDFIN
- CRYSTAL MYERS

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CHAIRPERSON HILL: All right. Good morning, everyone. The hearing will please come to order. We're located in the Jerrily R. Kress Memorial Hearing Room at 441 4th Street Northwest. This is the February 8th, 2017 public hearing of the Board of Zoning Adjustment of the District of Columbia.

My name is Fred Hill, Chairperson. Joining me today is Carlton Hart, Board Member, and representing the Zoning Commission is Peter May.

Copies of today's hearing agenda are available to you and are located on the wall bin near the door.

Please be advised that this proceeding is being recorded by a court reporter and also is webcast live.

Accordingly, we must ask you to refrain from any disruptive noises or action in the hearing room. When presenting information to the Board please turn on and speak into the microphone, first stating your name and home address. When you're finished speaking, turn off your microphone so that your microphone is no longer picking up sound or background noise.

All persons planning to testify, either in favor or in opposition must have raised their hand and

1 been sworn in by the secretary. Also, each witness
2 must fill out two witness cards. These cards are
3 located on the table near the door at the witness
4 table. Upon coming forward to speak to the Board,
5 please give both cards to the reporter sitting to the
6 table at my right.

7 If you wish to file written testimony or
8 additional supporting documents today, please submit
9 one original and 12 copies to the secretary for
10 distribution. If you do not have the requisite number
11 of copies, you can reproduce copies on an office
12 printer in the Office of Zoning located across the
13 hall.

14 The order of procedures for special
15 exceptions, variances, and appeals is also located in
16 the bin to my left.

17 The record shall be closed at the conclusion
18 of each case, except for any materials specifically
19 requested by the Board. The Board and the staff will
20 specify at the end of the hearing exactly what is
21 expected and the date when the persons must submit the
22 evidence to the Office of Zoning. After the record is
23 closed, no other information shall be accepted by the
24 Board.

1 The District of Columbia Administrative
2 Procedures Act requires that the public hearing on
3 each case be held in the open before the public,
4 pursuant to Section 405B, and Section 406 of that act.

5 The Board may, consistent with its rules or
6 procedures and the act, enter into a closed meeting on
7 a case for purposes of seeking legal counsel on a case
8 pursuant to D.C. Official Code Section 2-575(b)(4),
9 and/or deliberating on a case pursuant to D.C.
10 Official Code Section 2-575(b)(13), but only after
11 providing the necessary public notice. And in the
12 case of emergency closed meeting after taking a roll
13 call vote.

14 The decision of the Board on these contested
15 cases must -- the decision of the Board in cases must
16 be based exclusively on the public record. To avoid
17 any appearance to the contrary the Board requests that
18 persons present not engage the members of the Board in
19 conversation.

20 Please turn off all beepers and cell phones at
21 this time so as not to disrupt these proceedings.
22 Preliminary matters are those which relate to whether
23 a case will or should be heard today, such as request
24 for postponement, continuance, or withdrawal, or with

1 a proper and adequate notice of the hearing that's
2 been given. If you're not prepared to go forward with
3 the case today, or you believe that the Board should
4 not proceed, now is the time to raise such a matter.

5 Mr. Secretary, do we have any preliminary
6 matters?

7 MR. MOY: I do have, for the record,
8 clarification on the cases, case applications on the
9 docket for today, Mr. Chair. By the way, good
10 morning, and good morning members of the board.

11 Very quickly, the scheduled decision on
12 Application No. 18908A of Donald Hurlbert and Barbara
13 Watanabe has been postponed and rescheduled to
14 February 22nd, 2017. Appeal No. 19407, Friends of
15 Lowell Street -- Lowell Street, L-O-W-E, double L, has
16 been rescheduled to April 12th, 2017. And finally,
17 Application No. 19382 of GPI Holdings US, LLC has been
18 withdrawn by the applicant. And that's it, Mr.
19 Chairman.

20 CHAIRPERSON HILL: Okay. Great. Thank you,
21 Mr. Moy. We're going to go a little bit out of order
22 today and I just want to let the audience know as to
23 how we're going to do this.

24 So, there is the hearing agenda and the

1 meeting agenda. We're going to -- the first case
2 we're going to hear, actually, is we're going to bump
3 up the first hearing ahead of the meeting cases, which
4 is the application of Embassy of the State of Kuwait.

5 After that we're going to go back to the meeting
6 cases in order, and then we're going to come back
7 again and hear Application of Georgetown Visitation.
8 And then we'll go back to the order.

9 It's going to be a really long day today, and
10 so we're probably going to break for lunch probably
11 sometime around 12:30. So, just to let everybody know
12 what's going on.

13 So, with that, Mr. Moy, if you wouldn't mind
14 administering the oath?

15 MR. MOY: People who are planning to testify,
16 if you wouldn't mind standing and, as I administer the
17 oath? Good morning.

18 [Oath administered to the participants.]

19 CHAIRPERSON HILL: All right, Mr. Moy, if you
20 could just go ahead and call our first hearing case?

21 MR. MOY: All right. Parties to the table to
22 Application No. 19395. This is of the Embassy of the
23 State of Kuwait, and it's captioned and advertised for
24 special exception relief under Subtitle D, Section

1 5201 from the accessory structure location
2 requirements of Subtitle D, Section 5000.4. This
3 would allow the installation of a security booth in
4 front of the Ambassador's residence in the R-8 Zone,
5 3107, Fessenden Street Northwest, Square 2277, Lot 8.

6 CHAIRPERSON HILL: Okay. Great. Good
7 morning, everyone. If you could just please introduce
8 yourself from my right here, to left?

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

11 MR. AL-SABAH: Good morning. Salem Al-Sabah,
12 Ambassador of the State of Kuwait.

13 MR. COLLINS: Christopher Collins, Holland and
14 Knight.

15 MS. BOTHMA: Jacqui Bothma, Senior Branch
16 Manager for Securitas.

17 MR. JONES: Michael Jones, Jones Associates,
18 Architects.

19 CHAIRPERSON HILL: Okay. Welcome, everyone.
20 Welcome, Mr. Ambassador.

21 So, Mr. Collins, you're going to be presenting
22 to us today?

23 MR. COLLINS: Yes, I will.

24 CHAIRPERSON HILL: Okay. I don't really have

1 a lot of questions in particular. I guess I'd like to
2 hear if there's other members of the Board here that
3 has a lot of questions for you. I know that there has
4 been some concern from some of the neighbors, I
5 suppose. But I'd like to hear, I guess a little bit,
6 if you could just kind of, at a higher level, kind of
7 go over the application and then we can see if there's
8 any questions that the Board has as well, and then
9 turn to the Office of Planning.

10 MR. COLLINS: Great. Great. Thank you.

11 If I may, first of all I'd like to ask that
12 our two, two of our witnesses be qualified as expert
13 witnesses. We've submitted their resumes that the
14 resumes are at Exhibit 11, the record. Jacqueline
15 Bothma is an expert in diplomatic security, and
16 Michael Jones is an expert in architecture.

17 CHAIRPERSON HILL: Okay. Yeah, I looked at
18 those over the weekend and I don't have any problem
19 with submitting them in as expert testimony. Does the
20 Board?

21 [No audible response.]

22 CHAIRPERSON HILL: Okay. That's fine. Thank
23 you.

24 MR. COLLINS: Thank you. Thank you. This is

1 an application for a special exception to allow the
2 location of the guard booth in the front yard, the
3 yard between the front of the house and the front lot
4 line.

5 Under Subtitle D, Section 5201, the guard
6 booth itself as an accessory building, meets all of
7 the development standards for an accessory building,
8 other than the location. And that's laid out in pages
9 2 and 3 of our prehearing statement, which is Exhibit
10 36.

11 The standards for special exception are set
12 forth in pages 4 through 6 of our Exhibit 36, and they
13 are generally -- the light and air available to
14 neighboring properties shall not be unduly effected,
15 that the privacy of use and enjoyment of neighboring
16 property shall not be unduly compromised, and that the
17 proposal shall not substantially visually intrude upon
18 the character, scale, and pattern of houses along the
19 street, and must be in harmony with the general
20 purpose and intent of the regulations, and not tend to
21 adversely affect the use of neighboring property.

22 We do believe that we've met all those
23 standards. We'd be happy to answer any questions on
24 that. We do have the support of the Office of

1 Planning, the Advisory Neighborhood Commission, and
2 the Department of State. There is, to my right on the
3 easel is the site plan that is part of Exhibit 36.
4 It's Exhibit, if I may just, 36B. It shows the
5 location of the guard booth and the location of all
6 the other features on the property.

7 So, if that's sufficient I'll just open it up
8 for your questions.

9 MR. HART: Yes, one question. Thank you for
10 the presentation and for keeping it a summary.

11 It is a fairly straightforward project. The
12 only question that I had was kind of a strange one,
13 only -- it had to do with the tree. It looks like
14 maybe a willow oak that's to the east. I shouldn't
15 say east. Yeah, east of the guard booth. How is that
16 going to be impacted by this, because I'm assuming
17 you're putting this on a slab, and that's going to be
18 -- you know, you're going to have some problems with,
19 you know, hitting on roots and that sort of thing.

20 Just, because the area for where the tree is
21 growing is already fairly confined, this is going to
22 be making it more confined. And I only bring it up,
23 not necessarily, not just because of the health of the
24 tree, but also because the tree provides a lot of

1 shade which also then helps to in some ways screen the
2 guard booth. And I just don't want the project to
3 impact the health of the tree, then you have to remove
4 the tree, and now the guard booth is more visible,
5 because I think what it does is it shades, and so it
6 doesn't have that much of a view from the street.

7 So, if you could talk about that a little bit,
8 I'd appreciate it.

9 MR. COLLINS: Sure. Thank you for that
10 question because that's a very important part of our
11 application. And the Ambassador is here, not a staff
12 person but the Ambassador, because there's personal
13 interest in this, and his personal desire to see this
14 being done and also the personal commitment of the
15 Ambassador to save the tree.

16 The tree was a discussion that we had with the
17 ANC. And when the original plat that we had did not
18 show the building restriction line on the property,
19 when we realized there was a building restriction
20 line, we pushed the guard booth back to respect the
21 building restriction line, and therefore that's where
22 it's located -- why it's located the way it is, why
23 it's configured the way it is with the curved wall,
24 and why it is set back from the tree.

1 And then, at this point I'd like to maybe turn
2 it over to Mr. Jones to talk about how the foundation
3 of that guard booth is going to be constructed.

4 MR. JONES: Thank you. The building, we've
5 actually had to adjust the footprint of the building
6 slightly to keep it as far away from the tree as
7 reasonably possible. In addition to that it's going
8 to be a structural slab. So, in other words, we're
9 going to have -- we're going to hand dig, and there's
10 an arborist that is retained by the Embassy to go on
11 and inspect the tree, he's going to inspect the
12 landscaping. He will be on site.

13 They will then hand dig and they'll set down
14 pilings, you know, to support that slab so that in
15 that process any root larger than I believe it's two-
16 inches in diameter, has to be protected and the
17 intention is to maintain that tree.

18 Early on in the process I went out on the site
19 with the Ambassador. We looked at it and there was no
20 question in his mind, that tree was going to stay.
21 So, we're going to make every effort to keep it.

22 MR. HART: And, can you also talk a little bit
23 about the -- there were -- the operation of the -- not
24 really operation, but the operation of the guard booth

1 is it -- are people actually going in there or is it
2 just for the guards themselves?

3 I mean, is there somebody like, you know,
4 being reviewed in there, or just it seemed like there
5 were a lot of doors that were in it. I was just a
6 little kind of curious as to how that works.

7 MR. COLLINS: I'll ask that Ms. Bothma answer
8 that question.

9 MS. BOTHMA: Good morning. There will be the
10 security officers that go in, as well as the
11 Ambassador's driver will be located there. And that
12 will only be when he's on the property. But the
13 intention is for the inclement weather for the
14 security officers themselves. We will not be signing
15 guests or anything in the guard booth. That's not the
16 intention.

17 CHAIRPERSON HILL: Mr. May? Okay. Mr.
18 Collins, so just as far as like with the ANC, the
19 meeting that went there, there was a few conditions
20 that they had. Where are you with those conditions
21 and --

22 MR. COLLINS: Sorry. We agree with those
23 conditions. They are not all zoning conditions, so
24 they're not things that normally appear in a BZA

1 order. But to the extent that they do relate to a
2 zoning issue, we're happy for you to include them.

3 We are happy to comply with all of them.

4 CHAIRPERSON HILL: Okay.

5 MR. COLLINS: Some of them won't apply. For
6 instance, a traffic control plan, and a construction
7 staging plan, if required by D.C. Regulations. D.C.
8 Regulations will not require either one of those for
9 this. So, I, certain number 2, will notify the
10 neighbors when construction begins. We will comply
11 with all regulations governing care, replacement of
12 existing trees. We do affirm that the guard booth
13 will sit on the platform as described by Mr. Jones.

14 Additional plantings if necessary, will be
15 installed. The Ambassador is very concerned about how
16 this looks both from the street and from inside the
17 property, and we'll install plantings as necessary.

18 There will be, number 6, there will be no
19 temporary permanent structures built over the front
20 property line or the front building restriction line.

21 The whole purpose is to pull this back so it does not
22 go over the building restriction line.

23 There is an existing fence already on the
24 front property line, and that is not being changed or

1 altered at all.

2 Number 7, we agree to comply with all
3 regulations and laws regarding treatment of public
4 space. I would think that that only requires a permit
5 to cross public space with construction equipment. I
6 think that that's -- if that's necessary there already
7 is a driveway there.

8 And then the storm water management plan, this
9 is -- this project is small enough that there is no
10 requirement for storm water management plan. So, in
11 essence, those are how we intend to address those
12 issues.

13 CHAIRPERSON HILL: Okay. I appreciate that.
14 I'm comfortable with you reading through the
15 conditions as you did. With that I'm going to -- oh,
16 I'm sorry. Mr. May?

17 MR. MAY: Yeah, I did have one question. The
18 driveway itself that abuts this, there's reference to
19 it being gravel. It's not clear from the photographs.
20 I mean, that is just gravel and it's pervious, so the
21 root structure of the tree under that driveway will --
22 it will still have the benefit of that. It's not
23 totally boxed in.

24 MR. COLLINS: That's correct.

1 MR. MAY: Okay.

2 CHAIRPERSON HILL: Okay. Mr. Collins, if
3 you're all right, I'm going to turn to the Office of
4 Planning.

5 MS. THOMAS: Good morning, Mr. Chair and
6 members of the Board, Karen Thomas for the Office of
7 Planning, and we will rest on the record of our report
8 in support of this application. We see no issues
9 beyond the issues discussed here today. Thank you.

10 CHAIRPERSON HILL: Okay. Great. Thank you.
11 Does the Board have any questions for the Office of
12 Planning? Does the applicant have any questions for
13 the Office of Planning?

14 MR. COLLINS: No, sir.

15 CHAIRPERSON HILL: All right. Then, I'm going
16 to turn to the audience here. Is there anyone here
17 from the ANC? Is there anyone here from the ANC?

18 Is there anyone here to speak in support of
19 the application? Is there anyone here to speak in
20 opposition to the application?

21 [No audible response.]

22 CHAIRPERSON HILL: All right. Then with that
23 I'm going to turn back to you, Mr. Collins. Do you
24 have anything to close?

1 MR. COLLINS: No. Thank you for your time.
2 We do think that the application is fairly straight
3 forward and we would request your approval at the
4 earliest possible time.

5 CHAIRPERSON HILL: Okay. Great. All right.
6 Then I'm going to go ahead and close the hearing. Is
7 the Board ready to deliberate? Okay.

8 So, I have again reviewed the record and all
9 of the drawings and I do very much appreciate everyone
10 coming here. I do appreciate the Ambassador coming
11 and spending his time. It also does clarify to us
12 your commitment to the tree and the neighborhood and
13 you know, I think that it's a special exception that
14 meets all the criteria.

15 So, that being the case I would go ahead and
16 make a motion to approve Application No. 19395 as read
17 by the secretary.

18 MR. MAY: Second.

19 CHAIRPERSON HILL: Motion has been made and
20 seconded.

21 [Vote taken.]

22 CHAIRPERSON HILL: The motion passes, Mr. Moy.

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

1 Chairman Hood to approve the application.

2 CHAIRPERSON HILL: Chairman Hill.

3 MR. MOY: Oh, I'm sorry.

4 CHAIRPERSON HILL: It's all right. I'm a
5 little smaller than Chairman Hood.

6 MR. MOY: This is the first case for the day.
7 Chairman Hill to approve the application for the
8 relief requested. Seconding the motion, Mr. Peter
9 May. Also in support, Mr. Hart. We have two seats
10 vacant. The motion carries, sir.

11 CHAIRPERSON HILL: Thank you. If we could do
12 a summary order?

13 MR. MOY: Yes. Thank you.

14 CHAIRPERSON HILL: Thank you. Thank you,
15 gentlemen. Ma'am.

16 MR. COLLINS: Thank you very much.

17 MR. MOY: All right, Mr. Chairman, I believe
18 we're back to the cases scheduled for decision.

19 CHAIRPERSON HILL: And we are.

20 MR. MOY: Our meeting portion of the hearing.
21 So, with that I believe we're at Application No.
22 19421 of Edward and Donna Naybor, N-A-Y-B-O-R. This
23 is an application that's on our expedite review
24 calendar for special exception relief under Subtitle

1 E, Section 5201, from the lot occupancy requirements
2 of Subtitle E, Section 304.1, which would renovate a
3 flat in the RF-1 Zone, 18 T Street Northeast, Square
4 3509S, Lot 43.

5 This application has been amended as of
6 yesterday, Mr. Chairman. The applicant filed
7 additional relief to nonconforming structure provision
8 under Subtitle C, Section 202.2. So, that's the
9 addition. There's no other changes to this
10 application.

11 CHAIRPERSON HILL: Okay. And, I'm sorry, Mr.
12 Moy, you said that they did add 202.2?

13 MR. MOY: That's correct, sir.

14 CHAIRPERSON HILL: Okay. Is the Board ready
15 to deliberate?

16 Okay. Again, after -- this seemed
17 straightforward to me and after reviewing the record I
18 didn't have a lot of questions or issues with it. I
19 mean again, the Office of Planning is in approval, the
20 ANC 5E voted eight to zero to zero in approval, and
21 DDOT has no objections. There's also a letter in
22 support from the Eckington Civic Association, as well
23 as 11 letters of support from nearby residents.

24 So, with that, unless the Board has anything

1 else they'd like to say, I'd go ahead and make a
2 motion to approve Application No. 19421 as read by the
3 secretary.

4 MR. HART: And having read the record as well,
5 I would second that motion.

6 CHAIRPERSON HILL: Okay. The motion has been
7 made and seconded.

8 [Vote taken.]

9 CHAIRPERSON HILL: All right, Mr. Moy, the
10 motion passes.

11 MR. MOY: Yes. Staff would record the vote as
12 three, to zero, to two. This is on your motion, Mr.
13 Chairman, Chairman Hill, for the relief requested.
14 Seconded the motion, Mr. Hart. Also in support, Mr.
15 Peter May. We have two seats vacant. Motion carries.

16 CHAIRPERSON HILL: Thank you, Mr. Moy. Can
17 you do a summary order?

18 MR. MOY: Yes, thank you.

19 Okay. The next case application before the
20 Board for decision is Application No. 19411 of 2814
21 Georgia LLC, captioned for special exception relief
22 under the parking requirements of Subtitle C, Section
23 703.2, which would combine two lots and permit the
24 construction of a new four-story, 10-unit apartment

1 building, MU-4 Zone, 2812 through 2814 Georgia Avenue
2 Northwest, Square 2886, Lot 330, and 331.

3 As you'll recall, Mr. Chairman, the hearing
4 was scheduled and heard on January 18th, 2017 and
5 scheduled for decision for today, February the 8th.

6 CHAIRPERSON HILL: Okay, great. Thank you.
7 Is the Board ready to deliberate? Okay.

8 Again, I was -- well, actually it's just you
9 and me, Mr. Hart. It was, as I recall again, there
10 was some questions from Commissioner Turnbull in terms
11 of like the plans and also the flexibility of those
12 plans and kind of seeing what those issues were. And
13 although they didn't pertain directly to the parking,
14 I was happy that the applicant went ahead and
15 submitted those plans to clarify what those
16 flexibility issues might have been. And after
17 reviewing the plans I'm comfortable with what was
18 submitted by the applicant, as well as then the Office
19 of Planning did have a chance to take a look at the
20 plans and did not see anything that changed their
21 report.

22 So, the applicant did agree to the conditions
23 in terms of implementing the transportation demand
24 management plan in Exhibit 32A of the record, and then

1 again trash shall be stored within the private
2 property.

3 So, I would go ahead and be comfortable making
4 a motion. But, Mr. Hart, do you have anything to add?

5 MR. HART: No, I think you've summed it up
6 nicely. I also have, after looking through all of the
7 documents that have been submitted, I thought that I
8 could support the application and would second a
9 motion if you --

10 CHAIRPERSON HILL: Okay. Well, I'll go ahead
11 and make a motion then, to make a motion to approve
12 application No. 19411 as read by the secretary.

13 MR. HART: Seconded.

14 CHAIRPERSON HILL: Motion has been made and
15 seconded -- oh, sorry.

16 MR. MOY: Sorry to interrupt during your
17 motion.

18 CHAIRPERSON HILL: Sure.

19 MR. MOY: There were conditions attached. You
20 read that or not?

21 CHAIRPERSON HILL: Yeah, I read the two --
22 yeah, the two conditions. I'm sorry. Just again to
23 clarify, the applicant shall implement the
24 transportation demand management plan in Exhibit 32A

1 of the record, and then also trash shall be stored
2 within private property.

3 MR. MOY: Okay. Very good. Thank you, Mr.
4 Chairman.

5 CHAIRPERSON HILL: So, that motion has been
6 made and seconded.

7 [Vote taken.]

8 CHAIRPERSON HILL: And then also I believe we
9 have an absentee. Is that correct?

10 MR. MOY: Yes. Thank you, Mr. Chairman.
11 You're clairvoyant. We do have an absentee ballot.

12 CHAIRPERSON HILL: There's only three of us so
13 it's not really difficult.

14 MR. MOY: And it is from participating member,
15 Mr. Michael Turnbull, and his absentee ballot vote is
16 to approve with such conditions as the Board may
17 impose. So, that will give a final vote of three, to
18 zero, to two on your motion again, Chairman Hill, to
19 approve the relief requested with conditions as cited.

20 Seconding the motion, Mr. Hart. And of
21 course, in support of the motion, Mr. Turnbull.
22 Motion carries.

23 CHAIRPERSON HILL: Thank you, Mr. Moy.
24 Summary order.

1 MR. MOY: Yes. Thank you.

2 Okay. The next three action before the Board,
3 Mr. Chairman, this is the first of the three where
4 there is a request for advance party status, prior to
5 a public hearing. So, this first is Application No.
6 19377 of the boundary companies and the missionary
7 society of St. Paul, the Apostle. And for the record,
8 I'm just going to read the application that was
9 publicly noticed for special exception under
10 theoretical lot subdivision requirements of Subtitle
11 C, Section 305.1, and the RA new residential use
12 requirements of Subtitle U, Section 421, variance from
13 the vehicular access requirements, Subtitle C, Section
14 305.3, which would construct 12 new buildings with
15 approximately 78 one-family dwelling units in the RA-1
16 Zone, 3015 4th Street Northeast, Square 3648, Lot 915.
17 And this request for party status is the St. Paul's
18 College Neighbors for Thoughtful Development, filed
19 under Exhibit 39.

20 CHAIRPERSON HILL: Okay. Great. Thank you,
21 Mr. Moy. Is the Board -- well, to talk to actually
22 the applicant. I believe they probably are here. Is
23 that correct?

24 Okay. Could the people that are putting

1 forward the advanced party status please step forward?
2 Whoever is here for the advance -- you're here for
3 the advance party status? If you could please come
4 forward and sit down?

5 If you could please just introduce yourself?
6 Just go ahead and push the little button there.

7 MR. BROWN: David Brown of Knopf & Brown in
8 Rockville, Maryland for the applicant.

9 CHAIRPERSON HILL: Okay. And, Mr. Brown, did
10 you get sworn in?

11 MR. BROWN: No, I did not. I did not get
12 sworn in?

13 CHAIRPERSON HILL: Do they need to get sworn
14 in? I guess you don't have to get sworn in if you're
15 a lawyer? Is that how that works? Okay, I guess you
16 got sworn in whenever you finish your -- whenever you
17 finish your schooling, I guess you're sworn in for the
18 rest of your life. You're just supposed to tell the
19 truth. Is that how it works for the rest of your
20 life?

21 MR. BROWN: That's how I'm doing it.

22 CHAIRPERSON HILL: That's interesting. Okay.
23 Let's see, the -- oh, yeah. And then, did you fill
24 out your witness cards?

1 MR. BROWN: I did.

2 CHAIRPERSON HILL: Okay. Great. So, what I
3 am -- I guess there's a few things that I am unclear
4 on. I guess one of which is kind of the -- like, I'd
5 like to kind of hear your, like just a minute or two
6 about how your client, and I guess yourself, are
7 meeting the requirements under the regulation for
8 advance party status.

9 I know you submitted you know, the letter, or
10 your letter to the record.

11 One of the items that I was unclear on was
12 that I guess that there has to be affidavit of service
13 that was provided to the party who is putting forward
14 the application. Did you prove that affidavit of
15 service to them, and I guess also the ANC. Is that
16 correct, Ms. Nagelhout? Okay.

17 MR. BROWN: I believe we did serve the
18 applicant, Your Honor. If the paperwork is somehow
19 lacking on the record it's certainly something we can
20 cure promptly.

21 CHAIRPERSON HILL: Mr. Moy, do you know if
22 that's in there somewhere?

23 MR. MOY: I'm checking right now, Mr.
24 Chairman.

1 CHAIRPERSON HILL: Okay. And, Mr. Brown, I'm
2 not Your Honor. Just to -- my wife continues to tell
3 me, I'm not an attorney over and over again. She is
4 an attorney and so.

5 MR. MOY: What we're speaking of is not
6 exhibited in the record, Mr. Chairman.

7 CHAIRPERSON HILL: Okay. So, if you could
8 just go ahead and add that to the record?

9 MR. BROWN: I will.

10 CHAIRPERSON HILL: And then also, I guess, we
11 don't have any opposition from the applicant in terms
12 of them being a member of party status, and they had
13 seven days, I guess, to oppose. Is that correct, Ms.
14 Nagelhout?

15 MR. MAY: But isn't that part of the reason
16 why they were served?

17 CHAIRPERSON HILL: Yeah, well that's what I'm
18 kind of confused by, I suppose. Like, I mean, I don't
19 have anything on the record that says that they were
20 served so, I don't know how to do the seven-day time
21 limit. Okay. All right.

22 MR. MOY: What OAG says I think is --

23 CHAIRPERSON HILL: Okay. Is the --

24 MR. BROWN: Well, we filed this in November

1 anticipating that this matter was going to be heard
2 much earlier.

3 MR. MOY: Okay.

4 MR. BROWN: Certainly it's been on the -- our
5 request has been on the public record for a long time.

6 MR. MOY: Okay. If you don't mind, just take
7 a little bit of time to tell me again how you're
8 meeting the regulation for a party status.

9 MR. BROWN: My clients live in the development
10 that was done by EYA, which is right next to this
11 property. And when that project went through there
12 was at least, we believe, on the part of those who did
13 the approval, a PUD at the Zoning Commission, and
14 understanding that the rest of the open space on the
15 property was going to stay open space. And among the
16 other things that were done on that property was that
17 there was a storm water runoff detention facility
18 built into the ground in that open space. And all of
19 that is being changed as a result of this proposal to
20 build townhomes on that property. My clients live
21 directly adjacent to --

22 CHAIRPERSON HILL: Okay. So, that's okay.

23 MR. BROWN: -- this open space.

24 CHAIRPERSON HILL: I'm just going to cut -- so

1 they're within the 200 feet?

2 MR. BROWN: Most of -- some of them are. Not
3 all of them are. Some of them are a little further
4 away.

5 CHAIRPERSON HILL: Okay.

6 MR. BROWN: But all of them are within that
7 development.

8 CHAIRPERSON HILL: Okay. Does anyone have any
9 questions for the applicant? No? Okay.

10 I'm a little unclear as to how to move forward
11 again because is the party who is submitting the
12 application, do they happen to be here? Could you
13 come forward, please?

14 Could you state your name, please?

15 MR. UTZ: Sure. I'm Jeff Utz, with the law
16 firm of Goulston and Storrs.

17 CHAIRPERSON HILL: Mr. Utz, did you get
18 notification about the party status request?

19 MR. UTZ: It was sent to the applicant in the
20 case, my client.

21 CHAIRPERSON HILL: Okay. So, you didn't have
22 any opposition to it?

23 MR. UTZ: We're not opposed to the application
24 itself.

1 CHAIRPERSON HILL: Okay.

2 MR. UTZ: We --

3 CHAIRPERSON HILL: The party status
4 application?

5 MR. UTZ: Yeah.

6 CHAIRPERSON HILL: Okay.

7 MR. UTZ: We obviously wish that they wouldn't
8 oppose the --

9 CHAIRPERSON HILL: Sure.

10 MR. UTZ: -- application, but we're going to
11 be working with them over the next couple of months.

12 CHAIRPERSON HILL: Okay.

13 MR. UTZ: And actually, there was some fairly
14 significant outreach over basically the last year or
15 the last summer.

16 CHAIRPERSON HILL: All right, great. Yeah, I
17 didn't know again, since I didn't see the affidavit of
18 service, I wasn't sure if you had your seven days.
19 You know, and so I just wanted to make sure you had
20 that opportunity and so I understand that great. And
21 I really think that it would be wonderful if
22 obviously, Mr. Brown, your clients can get together.
23 And if you could again go through the regulation to
24 make sure that you're submitting everything properly

1 to us in terms of also your witnesses and people that
2 you plan to bring forward at the hearing, that would
3 be great. Okay?

4 All right. Does anyone have any questions?
5 Okay. All right. Thank you, gentlemen.

6 Then, I'm going to go ahead and, are we ready
7 to deliberate this?

8 MR. HART: Sure.

9 CHAIRPERSON HILL: Okay. So, I don't have any
10 issue granting the party status. Particularly since
11 the person who should have the most issue with it does
12 not have an issue. So, I'm going to go ahead and make
13 a motion to approve the party status of Application
14 No. 19377.

15 MR. HART: Second.

16 CHAIRPERSON HILL: Motion has been made and
17 seconded.

18 [Vote taken.]

19 CHAIRPERSON HILL: Okay. Great. Thank you.
20 Motion passes, Mr. Moy.

21 MR. MOY: Yes. Staff then would record the
22 vote as three, to zero, to two. Three, to zero, to
23 two. This is on the motion of Chairman Hill to
24 approve the request for party status. Seconding, Mr.

1 -- Seconding the motion, Mr. Peter May. Also in
2 support Mr. Hart. Motion carries.

3 CHAIRPERSON HILL: Okay, great. And, Mr.
4 Brown, I think you're with us for the next two. Is
5 that correct?

6 MR. BROWN: Correct.

7 CHAIRPERSON HILL: So, you might as well just
8 have a seat.

9 MR. MOY: All right. Application No. 19450 of
10 the D.C. Department of General Services. Let me read
11 the advertisement in the record. This is a request
12 for special exceptions under the parking requirements
13 of Subtitle C, Section 703.1, in the RA use
14 requirements of Subtitle U, Section 420.1(f),
15 variances for the number of primary structure
16 requirements, Subtitle C, Section 302.2, loading
17 requirements of Subtitle C, Section 901.1, height and
18 number of stories requirements of Subtitle F, Section
19 303.1. This would allow the construction of a six-
20 story short-term family housing facility in the RA-1
21 premises, 3320 Idaho Avenue Northwest, Square 1818,
22 Lot 849.

23 And, under Exhibit 32 is the request for party
24 status from the Neighbors for Responsive Government.

1 CHAIRPERSON HILL: Okay, great. Thank you,
2 Mr. Moy. Just making sure I'm pulling up the right
3 case here.

4 Mr. Brown, again, it's a similar question in
5 terms of the affidavit of service. So, I know that
6 the applicant is opposed to this particular request
7 for party status, and we're going to hear from them
8 just for a minute, in a minute. But just to clarify.
9 So, I assume, then, you did notify the applicant.
10 Correct, Mr. Brown?

11 MR. BROWN: That is stated on the party status
12 request. It's also at the bottom of the party status
13 request form. It's also reiterated in a letter that I
14 sent to the Board on February 6th, certifying that a
15 copy had been sent to the applicant.

16 CHAIRPERSON HILL: Okay. Great. And, is that
17 also the same for the ANC?

18 Ms. Nagelhout, is that correct, they have to
19 notify the -- there has to be an affidavit of service
20 for the ANC and the applicant?

21 MS. NAGELHOUT: That's what the rules say,
22 yes.

23 CHAIRPERSON HILL: Okay. All right. So, I
24 need something like that again, for the record.

1 MR. BROWN: All right.

2 CHAIRPERSON HILL: Okay? So, let's see. All
3 right. So, again, as I understand, and this one is a
4 little bit more clear than the previous one, but the
5 people whom you are representing again are within the
6 200 feet?

7 MR. BROWN: I would say that 17 of the 40
8 property owners live within 200 feet.

9 CHAIRPERSON HILL: Okay. All right. So, then
10 again, as before, if we do approve this we'll need a
11 list of your witnesses and just again kind of go
12 through the regulations there to see what things
13 perhaps you need to submit for the record. Okay?

14 MR. BROWN: We have submitted a list of
15 witnesses and the subject matters of their testimony.
16 It's in their supplement to the application.

17 CHAIRPERSON HILL: Okay. All right. So, the
18 applicant is here, correct? Would you please step
19 forward?

20 Could you please state your name for the
21 record?

22 MS. MOLDENHAUER: Good morning. Meredith
23 Moldenhauer with the law firm of Griffin, Murphy,
24 Moldenhauer, and Wiggins.

1 MS. CHIN: Good morning. Good morning,
2 Michelle Chin with the Department of General Services.

3 CHAIRPERSON HILL: Okay. All right. Well,
4 nice to have you guys here. Nice to have somebody
5 from the city.

6 So, I'm going to give you two minutes. Okay?
7 Right, Mr. Moy? I'm going to put you on the clock.
8 You don't need five minutes. And so like, you know,
9 just to tell me about why you think that this
10 application should not be approved. If you need more,
11 we'll give you more than two minutes. Okay?

12 MS. MOLDENHAUER: Thank you, Chairman Hill.
13 We are here to clarify and to confirm that the group
14 filed requesting party status actually satisfies the
15 standard under 404.13. The Board has ruled on
16 multiple occasions, evaluating party status standing,
17 and who may or may not qualify.

18 I briefly want to review four points. A group
19 of individuals must each individually qualify and show
20 their own uniqueness to the Board has ruled that 200
21 footers have historically been the threshold for
22 distinguishing between general concerns and individual
23 significant concerns. Three, concerns cannot be
24 general in nature. And four, concerns must be within

1 the jurisdiction of the Board.

2 First, in regards to whether the fact that
3 there is a group of individuals here that Mr. Brown
4 confirmed a majority of them are not within 200 feet,
5 in Case 17454, the Board did indicate, quoting from
6 the record when Chairman Griffith stated that we must
7 determine how the requester would be distinguished, or
8 the unique impact on the relief that was being
9 granted. This is a situation where there was a group
10 of individuals.

11 Also, in case 17323, the Board specifically
12 stated that, again this is with Chairman Griffith,
13 stating, we're going to have to find out how each is
14 significantly and distinctively or uniquely affected.
15 And they went through and they discussed that.

16 And then there is another case which had to do
17 with, this is Case 19259, which was a case in which
18 there was individuals, and they stated that in regards
19 to the question of uniqueness, they went and they
20 asked the applicant to go through each of the
21 individuals and identify how each of those individuals
22 are uniquely affected.

23 They also, here, this was a more recent case
24 where Chairperson Heath stated, "As someone who is

1 across the street from the project, where all of the
2 work is happening in the back, I just want to
3 understand how they are uniquely impacted differently
4 from the general public."

5 Here, we have a group where Mr. Brown just
6 stated that there -- I believe he stated that there
7 were 16. When I count and I look at the list, there
8 are only 12 of his long list of individuals who are in
9 opposition that are actually within 200 feet. So, I
10 would need some clarification, or I would think the
11 Board would want clarification on how those
12 individuals are within 200 feet, and what their
13 individual specific concerns are.

14 In addition to that, when looking at the
15 question for 200 footers in a case numbered 18560, the
16 Board actually denied party status based on the fact
17 that the applicant admitted, or the individuals
18 requesting party status, admitted that they were not
19 within the 200 feet. And this is Chairman Hood
20 stating that the party requesting status is, as he's
21 basically represents that he is representing the whole
22 neighborhood. And based on that they then deny the
23 application.

24 We believe that a lot of the submissions that

1 are being presented here today by the opposition are
2 general concerns. There are general concerns
3 regarding, and the terminology pulled directly from
4 the 140 form for party opposition says, "General
5 congestion."

6 So, the question would be, how is that not a
7 general concern?

8 Crowding of, or degradation of a neighborhood
9 community garden, and crowding of Eaton, which is a
10 public school that has a very broad jurisdiction, and
11 general character. And then carrying out of police
12 operations. Again, a general concern as well.

13 And then we would ask, there are additional
14 comments. One, which is the loss of line of sight,
15 this Board has found that that is not within the
16 purview. There is Court of Appeals cases that state
17 that the lack of a view or the change of a view is not
18 something that the Court or the District recognizes.

19 So, we would ask that either the Board deny
20 the request, or that they limit the scope based on the
21 comments I've just provided.

22 CHAIRPERSON HILL: Does the Board have any --
23 you got your five minutes, by the way. Does the Board
24 have any questions for counsel?

1 MR. MAY: So, one of your contentions is that
2 a number of people in this party are outside 200 feet.
3 So, are you suggesting that if they were all within
4 200 feet you wouldn't have a problem?

5 MS. MOLDENHAUER: I would state that if they
6 were all within 200 feet they would need to
7 articulate, individually what the significant
8 impact --

9 MR. MAY: Really? And do you really, in every
10 case that this Board considers, or that the Zoning
11 Commission considers, that we actually look at the
12 individual issues of the members of that party?
13 Because I honestly don't recall that ever happening.
14 I mean, I'm not saying that you're not citing things
15 that are correct in the record. I just don't know
16 that those are the norm.

17 MS. MOLDENHAUER: There is a case where --

18 MR. MAY: There was a case.

19 MS. MOLDENHAUER: There was one -- there's
20 multiple cases, but there are some specific cases.

21 A lot of times, as we know, applicants
22 conceded or consent to opposition parties. We've had
23 exceptional amount of outreach on this project, and
24 so --

1 MR. MAY: And an exceptional amount of
2 controversy as well.

3 MS. MOLDENHAUER: And as well, exactly. So,
4 that is why we are here, that we want to make sure
5 that if opposition is granted status, that it is
6 limited to those issues that are not general, that
7 would be presented --

8 MR. MAY: Have you been in -- are you aware of
9 cases where we've actually limited what a party can
10 say?

11 MS. MOLDENHAUER: Based on jurisdiction, yes.
12 And when there's issues of construction that are not
13 relevant to the Board's jurisdiction --

14 MR. MAY: Well, of course, we're not going to
15 rule on issues that are related to construction. I
16 mean, that's not within the Board's purview. But it's
17 not -- I mean, again, I don't recall previous cases
18 where the Board or the Zoning Commission has limited
19 the scope of testimony of a party based on you know,
20 particular issues.

21 Yeah, I mean, during the normal course of
22 order we tried to keep people focused on what the
23 actual zoning issues are, but we should be doing that
24 anyway.

1 MS. MOLDENHAUER: And at this point as a
2 preliminary matter, we are pointing out that some of
3 the issues that have been raised are matters of
4 general concern in which, procedurally the ANC would
5 speak on, and that if the party in opposition is
6 granted that those should be limited to those --

7 MR. MAY: Yeah.

8 MS. MOLDENHAUER: -- aspects that are
9 specifically impacting those individuals. That would
10 be --

11 MR. MAY: Wouldn't you say, though, that there
12 is actually a substantial history of when there is a
13 concern about a particular development that a group of
14 neighbors organize in opposition and they typically
15 get party status?

16 MS. MOLDENHAUER: I've gone back and I've
17 looked at a lot of the cases. There is a lot of cases
18 where individuals file individually, and the Board
19 does ask for that each of those then qualify
20 individually. And then for purposes of efficiency --

21 MR. MAY: But sometimes they walk in the door
22 as a group, right?

23 MS. MOLDENHAUER: There are times, but based
24 on my review, more often than not it would be

1 situation where individual neighbors file, and then by
2 the time they get here, I think the change in the
3 regulations, also in ZR-16, is trying to frontload a
4 lot of these issues, and by having the new
5 regulations --

6 MR. MAY: Right. So, that people can prepare
7 and be appropriately prepared and be efficient with
8 the use of their time and that of the Board or the
9 Commission.

10 MS. MOLDENHAUER: Or so, in older cases a lot
11 of people had filed individually, and then they come
12 before the Board and would have to --

13 MR. MAY: You know, I'm aware that that has
14 happened. I don't think that that was the norm, and
15 you know, my experience with that kind of circumstance
16 only goes back three or four years, or maybe five
17 years. Something like that. But you know, I started
18 serving on this Board in, I don't know, 2000 or
19 something like that.

20 So, it's -- I mean, even though this is not a
21 particularly well drafted party status application
22 outlining the specific concerns, the general
23 configuration of the group seems to be quite
24 consistent with what's been granted in the past by the

1 BZA and the Zoning Commission.

2 And I'm not hearing a substantial argument
3 that this is truly outside the norm. You're saying
4 that some cases, it has been granted, some cases it
5 hasn't.

6 MS. MOLDENHAUER: Typically in cases where the
7 applicant consents to the party status. And all we
8 would be asking is that the Board does --

9 MR. MAY: Is there some strategic advantage
10 that you see in stifling this participation?

11 MS. MOLDENHAUER: We seek to ensure that if
12 the applicants satisfy that they articulate those
13 issues now, and that also would provide us with
14 additional knowledge and understanding of what those
15 specific aspects are to the individual --

16 MR. MAY: But they'll be required to submit
17 their arguments in advance as well, right?

18 MS. MOLDENHAUER: I would --

19 MR. MAY: I forget what the new rules are, but
20 I think it's --

21 MS. MOLDENHAUER: I would hope that, but that
22 doesn't -- that's not specifically outlined in the
23 regulations. The regulations actually require that
24 they identify that as part of the Form 140. The Form

1 140 in our opinion was insufficient. And so, we are
2 here, if the Board does grant that, then we would be
3 very happy if the Board could require that the party
4 in opposition outline those in more specificity --

5 MR. MAY: Okay.

6 MS. MOLDENHAUER: -- in its filing.

7 MR. MAY: So, we can certainly request that of
8 the applicant.

9 MS. MOLDENHAUER: That would be greatly
10 appreciated, and clarity things. Thank you.

11 CHAIRPERSON HILL: Mr. Brown, do you have any
12 comments?

13 MR. BROWN: Yes, just a few. First of all,
14 this is the only party status request in this case.
15 If we were denied party status this case would, like
16 the other homeless shelter applications that were all
17 -- there were at least three or four of them approved
18 in a single day on summary orders last June.

19 My clients have decided that the most
20 effective way to present their concerns is through
21 counsel in the form of a neighborhood organization.
22 Yes, not all of them live within 200 feet, but all of
23 them are very concerned about this application.

24 And it is my job to make sure that they direct

1 their concerns to this Board, consistent with the
2 issues that this Board has to decide, which are zoning
3 issues.

4 The reasons that my clients have concerns
5 about this project go beyond zoning questions, and I
6 think it's fair for the application to explain that
7 they are personally affected in ways different from
8 the general public, because of matters that are beyond
9 this Board's jurisdiction.

10 The question of party status and interest in a
11 proceeding goes beyond merely the question of what
12 this Board has to decide. Nevertheless, we will be
13 confining our statement of issues to the issues that
14 this Board has to decide.

15 And as I said in my supplement to the letter,
16 I do intend to provide this Board with a detailed
17 argumentation of what those issues are. I just
18 haven't had the opportunity to fully prepare that yet
19 because I am hoping after party status is granted,
20 that I can sit down with the Office of Planning, go
21 over our issues and concerns with them, see to what
22 extent we are in agreement or disagreement, and then
23 present you with an informed memorandum outlining for
24 you the legal issues and concerns that we think have

1 to be addressed in this case.

2 And, I think frankly that by mentioning all of
3 the people that I'm representing here, I do the Board
4 a service by helping to direct their concerns to the
5 issues in this case, rather than to matters that are
6 not relevant to this Board's decision.

7 So, for all those reasons I request that our
8 party status be granted. But if for some reason the
9 Board feels that certain individuals on this list
10 ought to be deleted, our party status request still
11 stands. We would be happy to, if necessary, to limit
12 the list of those who are within 200 feet.

13 By the way, the ones that I listed as within
14 200 feet were the ones that were on the service list
15 as within 200 feet. So, if their service list is
16 wrong, ours is wrong. If theirs is correct, ours is
17 correct.

18 MR. MAY: Mr. Brown, you know, you know, I'm a
19 little concerned that the first thing you have to say
20 in response to this is that your concerns go beyond
21 zoning. This is only about zoning, and you know, I'm
22 going to rely on what you said toward the end of your
23 testimony that you're going to keep the group's focus
24 on the zoning issues, because it's a waste of this

1 Board's time to consider all of the other issues that
2 may be associated with any project beyond zoning.

3 And it's, I mean, I do see the value in your
4 representing this group and representing the broader
5 group because you can focus them on things that are
6 actually relevant to the zoning issues. But, you
7 know, like I said, it doesn't help you when the first
8 words out of your mouth are how far this goes beyond
9 zoning issues, because this is -- I mean, we're really
10 only about the zoning issues.

11 MR. BROWN: I understand that, but my clients
12 are motivated by larger issues. That's all I'm
13 saying.

14 MR. MAY: I understand that, and if that's the
15 extent of what you said I might have let it pass.

16 MR. BROWN: All right.

17 MR. MAY: Okay? So, you know, again, keep
18 them focused, and I think that actually would be
19 beneficial to this Board, to your clients, and to the
20 applicant, frankly, because I think it is much more
21 efficient to have 41 people represented as a group,
22 than having 41 people come in here and you know,
23 reiterate three minutes of testimony about matters
24 unrelated to the zoning issues.

1 MR. HART: And I would actually concur with
2 that. I mean, Ms. Moldenhauer brought some -- raised
3 some issues about kind of focusing what the -- your
4 testimony is going to be, or their testimony is going
5 to be. And I also was somewhat taken aback by the
6 comment that this was going to be more than zoning.
7 So, I think you do need to make sure that they are
8 focused on the zoning aspects of this. I mean, and
9 there are things that need to be looked at with that.
10 So, if you could do your best to be able to focus
11 them, that would be very helpful.

12 MR. BROWN: It's, keeping 41 people under
13 control is a little like herding cats, but I will do
14 my best.

15 MR. HART: You've chosen, this is the group
16 that has presented itself, so you're going to have to
17 figure out how to manage all of that yourself.

18 CHAIRPERSON HILL: Yeah and, Mr. Brown, I
19 guess if this is to be approved I would again advise
20 you to kind of take a hard look at, again, the
21 regulation there and see if there's anything that -- I
22 mean, again, I'm just initially speaking of kind of
23 like affidavit of service, different things just to
24 kind of take a look and see if there's anything that

1 you're missing in terms of before you come before us
2 again, if this is something that gets approved.

3 Also, you know, to what extent it is possible,
4 working with the applicant, as in the previous case to
5 see, or at least you know, application to see if
6 there's something that you can do. And then also,
7 right, as both of my colleagues have said to keep your
8 client's focus. I mean, I was just curious. Are any
9 of the people within the 200 feet here today?

10 MR. BROWN: No.

11 CHAIRPERSON HILL: You're just all alone
12 representing everybody?

13 MR. BROWN: Yes.

14 CHAIRPERSON HILL: Okay. So, again, keeping
15 them focused, and I don't know how we would go through
16 this when the appropriate time comes, but you know, I
17 don't know if Mr. May is going to be here with us, but
18 we're not going to have three minutes at 41 people.
19 So, you know, you'll have to kind of get together and
20 stay focused as to the zoning issues that are before
21 us.

22 MR. BROWN: Okay. As I said in my party
23 status request, we will keep -- we will organize it to
24 keep the presentation to one hour.

1 CHAIRPERSON HILL: Yeah, I don't think that
2 we've ever done an hour for anybody like that, in
3 terms of like party status and things such as that.
4 And so, you won't get an hour.

5 MR. BROWN: Okay. Fine.

6 CHAIRPERSON HILL: And so, you know, we can --
7 maybe you want to check with Mr. Moy, the secretary,
8 before you come back here, just to see what is
9 normally -- what we do with people. That way you'll
10 be prepared for the time that you have available.

11 Okay. I don't have any more comments or
12 anything. The only -- I do -- oh, sorry.

13 MR. MAY: I had one question for the Office of
14 Attorney General. So, since it's not explicitly a
15 requirement that the argument be of the party be
16 presented in advance, I mean, certainly we can request
17 or require in whatever order comes out of today's
18 proceeding, that they submit additional information
19 responsive to the application and addressing some of
20 the issues that were raised by Ms. Moldenhauer in
21 advance of the hearing. Can we require that?

22 MS. NAGELHOUT: I'm not sure an order is
23 coming out of this.

24 MR. MAY: Okay.

1 MS. NAGELHOUT: But yes, you can certainly
2 request it and also ask that it be served on the ANC
3 as well as the applicant.

4 MR. MAY: Right. Okay. All right. Thank
5 you.

6 CHAIRPERSON HILL: Mr. Brown, did you follow
7 that?

8 MR. BROWN: I do intend to provide such a
9 document in advance of the hearing.

10 CHAIRPERSON HILL: Okay. And for the ANC as
11 well.

12 MR. BROWN: For the ANC, yes.

13 CHAIRPERSON HILL: Okay. Great. Thank you.

14 MR. MAY: So what would that -- I mean, 10
15 days or something like that? Is that what we would
16 normally want to see? I mean, you're bound by 10
17 days. Is that what it is?

18 MS. MOLDENHAUER: Obviously, we would
19 appreciate a time schedule articulated by the Board, I
20 think which would help ensuring that --

21 MR. MAY: Just 10 days, yes or no? Fourteen
22 days, seven days.

23 MS. MOLDENHAUER: We're filing our prehearing
24 statement at the end of the day today. Today is the

1 21st day for the prehearing statement. So, if he
2 would have then seven days to review that, so 14 days,
3 and then we would be able to file a response in 7 days
4 or 10 days before the hearing.

5 MR. MAY: Okay.

6 MS. MOLDENHAUER: Really appreciate it.

7 CHAIRPERSON HILL: Mr. Moy, did you follow any
8 of that?

9 MR. MOY: Yeah, I got it.

10 CHAIRPERSON HILL: Do you have a date, because
11 just to be clear to Mr. Brown? Because I don't recall
12 when this -- because I know the previous one, I
13 thought, was getting postponed, perhaps.

14 MR. MOY: Yeah, it should be -- this is, I
15 believe it's March 1st.

16 MS. MOLDENHAUER: I believe that's correct,
17 Mr. Moy.

18 MR. MOY: I just want to double-check. Just
19 want to double-check that.

20 Yes, it's March 1st is the hearing, Mr.
21 Chairman. So, we're going, what was it, 10 days for
22 filing, right? So --

23 MS. MOLDENHAUER: Fourteen days for the
24 opposition party to file theirs, and then we would

1 file ours maybe seven days prior to the hearing.

2 MR. MOY: Okay.

3 MS. MOLDENHAUER: In response.

4 MR. MAY: You know, I don't think the point of
5 this is to try to get a lot of back and forth on paper
6 in advance. I think the point is simply for you to be
7 well informed about whether their argument is going to
8 be. I mean, remember under the old rules we would
9 have been having this discussion on the day of the
10 hearing and you would have known nothing about it.

11 So, I think that, you know, for him to provide
12 some more substantial information seven days in
13 advance so that you can be prepared for the arguments
14 on the day of is probably sufficient. At least,
15 that's my opinion.

16 CHAIRPERSON HILL: Oh, I love having you here.
17 You can -- that's great. Good for me.

18 MS. MOLDENHAUER: Commissioner May and
19 Chairman Hill, I would just request that given the
20 nature of this case, I would prefer to have something
21 in the files that Mr. Brown, if we would have to
22 respond or provide additional documentation, that Mr.
23 Brown then has an opportunity to see that in advance
24 of the hearing.

1 I would just request, then, if we do ask for
2 relief to file something in addition, that way Mr.
3 Brown would have an opportunity to review anything
4 prior to the hearing.

5 CHAIRPERSON HILL: Mr. Brown, are you fine
6 with that?

7 MR. BROWN: Kind of like a brief and a reply
8 brief. That's fine with me, Your Honor.

9 CHAIRPERSON HILL: Okay.

10 MR. BROWN: Mr. Chairman.

11 CHAIRPERSON HILL: Okay. I'm going to tell my
12 wife you called me the Honor all day. I'm going to
13 tell, from now on she's going to have to call me Your
14 Honor. That would be great.

15 MR. BROWN: I would propose that if they're
16 filing something 21 days in advance, we will file
17 something 10 days in advance. And if they want to
18 respond before the hearing, they can respond before
19 the hearing.

20 MR. MOY: Yeah, this time frame is very tight,
21 Mr. Chairman, because this hearing is scheduled --

22 CHAIRPERSON HILL: March 1st.

23 MR. MOY: -- March 1st. Unless you want to
24 move the March 1st date, because today is the 8th.

1 Seven days from today is the 15th. And seven days
2 after that is the 22nd, and then we have the hearing.

3 CHAIRPERSON HILL: Okay. Again, one second.
4 So, I'm not postponing the hearing. I'm not trying to
5 postpone the hearing. I'm just trying to get people
6 what they can kind of get. So, I'm going to look to
7 you, Mr. Moy.

8 MR. MOY: Okay. Well --

9 CHAIRPERSON HILL: You're going to decide the
10 dates. Okay?

11 MR. MOY: Okay. So, if we're going 14 days
12 for filing, that's next week. That's March 15, with
13 the Ides of March, however you want to look at that.
14 And then seven days after that is the 22nd, so that
15 would be the second deadline. Right? That would be
16 seven days.

17 MR. BROWN: I thought I understood Ms.
18 Moldenhauer to say they were filing tomorrow.

19 CHAIRPERSON HILL: They're filing today.

20 MR. MOY: Oh, it will be today?

21 MS. MOLDENHAUER: Our prehearing statement is
22 due by close of business today. So, you will have a
23 comprehensive document that outlines, also a reduction
24 in relief that we just had. We're removing our

1 parking request for relief, and that will be filed
2 today so you'll have, then time to review that and
3 then filing.

4 MR. BROWN: Yeah. I would request 10 days
5 after today to file a response.

6 MR. MOY: Okay. That would be February the
7 18th, which is a Saturday. So, we'll make that the
8 20th of February, which is a Monday.

9 MS. MOLDENHAUER: Which is a holiday, a
10 federal holiday.

11 CHAIRPERSON HILL: That's okay. Or you can --
12 okay, then do it before.

13 MR. MOY: Then, let's go Friday the 17th. Is
14 that good for you, sir?

15 CHAIRPERSON HILL: Mr. Brown?

16 MR. BROWN: That will work.

17 CHAIRPERSON HILL: Okay.

18 MR. MOY: Okay. Friday the 2nd.

19 CHAIRPERSON HILL: The 17th.

20 MR. MOY: The 17th is your filing. Okay. And
21 after that, what, another seven days for Ms.
22 Moldenhauer. So, that's the 24th, which is a Friday.

23 CHAIRPERSON HILL: Yeah. Whatever. Exactly.
24 Whether or not Ms. Moldenhauer submits anything is up

1 to her.

2 Okay. So, I did have one question, though, or
3 a comment I suppose, for DGS. Which is that, when you
4 guys come back, and then also even for the next one,
5 I'd like to see the -- is the architect planning on
6 coming as well? Okay.

7 MS. MOLDENHAUER: Yes.

8 MS. CHIN: Yes.

9 MS. MOLDENHAUER: I mean, we'll have the
10 architect and additional --

11 CHAIRPERSON HILL: Okay. Because just to give
12 you a heads up, just to give you a heads up, I was
13 kind of curious about the program and how certain
14 things work.

15 I mean, in particular I think with this one,
16 again just curious so you know what I was thinking
17 about, like the bathroom doors are kind of lined up on
18 each other and I didn't understand why that was the
19 case. I was just curious if it was a programmatic
20 reason or something like that. So, okay. Okay?

21 MS. MOLDENHAUER: Can I just ask the Board?
22 The new regs do say under Section Y, 404.9 that
23 replies to the opposition will not be accepted into
24 the record. I'm assuming that the Board is waiving

1 that new requirement given this new time schedule.

2 So, it's just a procedural issues to make sure
3 we dot all of our Is and --

4 CHAIRPERSON HILL: Ms. Nagelhout?

5 MS. NAGELHOUT: Yes, that is one of the
6 provisions you can waive.

7 CHAIRPERSON HILL: We will waive that
8 provision. Thank you.

9 All right. So, I'm going to stop this
10 discussion. Is the Board ready to deliberate? Okay.

11 So, again for me, and it seems like this is
12 where we're going anyway, the whole issue that I'm
13 laying on is the 200 feet. I shouldn't say is the
14 whole issue. That's not correct. After looking
15 through the regulations I believe that the applicant
16 is meeting the criteria so that I could move forward
17 with approving the party status. In addition to that
18 it is, I think, a case that is somewhat controversial
19 and so I would like there to be an opportunity for all
20 parties to have a chance, given that I think they meet
21 the criteria within the regulation.

22 So, I would go ahead. Does anyone have any
23 other comment?

24 Okay. Then I would go ahead and make a motion

1 to approve Application 19450 for the proven party
2 status of neighbors for responsive government.

3 MR. MAY: Second.

4 CHAIRPERSON HILL: Motion has been made and
5 seconded.

6 [Vote taken.]

7 CHAIRPERSON HILL: Okay.

8 MR. MOY: Staff would record the vote as
9 three, to zero, to two. This is on the motion of
10 Chairman Hill, approving the request for party status.
11 Seconding the motion, Mr. Peter May. Also in
12 support, Mr. Hart. Two seats vacant. Motion carries,
13 sir.

14 CHAIRPERSON HILL: Okay. We're going to take
15 a quick five-minute break. Okay?

16 [Off the record from 10:45 a.m. to 10:53 a.m.]

17 CHAIRPERSON HILL: All right, Mr. Moy.

18 MR. MOY: All right. We're back in session.
19 Thank you, Mr. Chairman.

20 So, I believe the last of the three requests
21 for advance party status is Application No. 19452 of
22 D.C. Department of Environmental Services. Again, I'd
23 like to read the caption that's been advertised, Mr.
24 Chair.

1 CHAIRPERSON HILL: Yes, please do.

2 MR. MOY: This is a request for a special
3 exception under the MU Use Requirements, Subtitle U,
4 Section 513.1, Sub B, Sub 6, variances from the
5 parking requirements, Subtitle C, Section 701.5,
6 loading requirements, Subtitle C, Section 901.1, open
7 court requirements, Subtitle G, Section 202.1, height
8 requirements, Subtitle G, Section 403.1, lot occupancy
9 requirements, Subtitle G, Section 404.1, rear yard
10 requirements, Subtitle G, Section 405.2, which would
11 allow the addition to an existing building and operate
12 a short-term family housing facility, MU-4, 1700 Rhode
13 Island Avenue Northeast, Square 4134, Lot 800.

14 Again, there is request for advance party
15 status under Exhibit 27, and this is for the -- from
16 the citizens for responsible options.

17 CHAIRPERSON HILL: All right. Great. Thank
18 you, Mr. Moy.

19 If you could please introduce yourself from my
20 right to left?

21 MR. BROWN: David Brown, counsel for the
22 applicant, the Citizens for Responsible Options.

23 MS. MAZO: Samantha Mazo of the law firm of
24 Griffin, Murphy, Moldenhauer, and Wiggins, counsel for

1 the Department of General Services.

2 MS. MOLDENHAUER: Good morning, Meredith
3 Moldenhauer, counsel for the applicant from the law
4 firm of Griffin, Murphy, Moldenhauer, and Wiggins.

5 MS. CHIN: Good morning, Michelle Chin with
6 the Department of General Services.

7 CHAIRPERSON HILL: Okay. All right. So, Mr.
8 Brown, you know, we've done this now two other times
9 with you today, so what my question is again, is I've
10 read through the record and I've read your
11 application. I just wanted to clarify for my benefit,
12 some of the people who are in the association. In
13 fact, in this particular case some of them border the
14 property. Is that correct?

15 Could you push the mic, please?

16 MR. BROWN: I believe that's correct. But
17 there are at least 13 within 200 feet.

18 CHAIRPERSON HILL: Okay. And again, I did
19 read through the application that you had. I think
20 that again the applicant is going to have some issues
21 with what they perceive to be how you meet the
22 regulation. But I will let them speak to that in a
23 minute.

24 I guess again, I don't know whether or not

1 there was in this case, whether there was an
2 affordability of service in the record. Do you know,
3 Mr. Brown?

4 MR. BROWN: I believe that we filed an
5 affordability of service on February 6th to confirm
6 what was stated in the party status application.

7 CHAIRPERSON HILL: Okay. That's all right.

8 MR. BROWN: It does not state service on the
9 ANC, but in fact we did file the supplemental, the
10 supplemental submission on the ANC. And that's in the
11 -- that's on my cover letter. If something more
12 formal is necessary I'll be happy to provide it.

13 CHAIRPERSON HILL: Ms. Nagelhout, I thought
14 they did have to formally notify the ANC. Is that not
15 the case?

16 MS. NAGELHOUT: The regulation refers to an
17 affidavit showing that they served the applicant and
18 the ANC.

19 CHAIRPERSON HILL: Okay. So, that's something
20 that we would need. All right?

21 MR. BROWN: I'll take care of that.

22 CHAIRPERSON HILL: Okay. And then again, I
23 know that there will be a request for specificity
24 concerning what will be the zoning argument that

1 you'll be providing if this in fact is approved. And
2 so, I'm going to just go ahead and again, give the
3 opposition since they are opposing this, or I should
4 say the applicant, since they're opposing your party
5 status. I'm just going to give them two minutes and
6 then you can respond if you like.

7 Ms. Moldenhauer, or Ms. Mazo, who's going to
8 speak? Okay. I'm just going to keep you two minutes
9 because we did this already. Okay.

10 MS. MOLDENHAUER: I would then request that we
11 incorporate any of our arguments previously filed in
12 19450 into the record. But what we are articulating
13 here --

14 CHAIRPERSON HILL: Hold on one second. Ms.
15 Nagelhout, is that okay?

16 MS. NAGELHOUT: Yes.

17 CHAIRPERSON HILL: Okay. Thank you.

18 MS. MOLDENHAUER: What we are articulating
19 here is concerns regarding that the individuals who
20 are within the 200 feet are specifically identified
21 and articulated as to how they meet the threshold
22 requirement.

23 We also point out for the Board that there are
24 a number of points that are articulated in generality

1 that are not going to the general public concern,
2 which would not be something that would qualify under
3 the standard of a party status, such as general
4 congestion, loss of open sight lines, which again
5 there are Court of Appeals cases that state that in
6 the District of Columbia sight lines and views are not
7 protected. Destruction of significant portions of a
8 architecturally significant building, the Board has
9 confirmed that obviously HPRB or other, or CFA, or
10 other types of procedures can go on in a parallel
11 basis, but that those are not elements that would be
12 germane to this jurisdiction and are concerns of
13 generality that should not be part of a party status.

14 Overcrowding of the local public school, which
15 again are concerns of the general individuals. And
16 there's no information on the record as to whether
17 these individuals that are parties have children in
18 the school or are specifically or uniquely affected.

19 Also, exposure of children to vital origins,
20 compounds from auto shop, auto paint shops, and
21 insufficient outdoor space, again, those are generic
22 concerns that are also not specifically articulated.

23 So, we would oppose the party status
24 application. If the party status application is

1 granted, we would ask the Board to follow a similar
2 process, as they did in the prior case in regards to
3 one, trying to limit those issues, two, those issues
4 that are specifically related to the zoning relief,
5 and provide a briefing schedule as you previously
6 discussed.

7 The Board did talk about notice to the ANC.
8 We would just like to note for the record that
9 Councilmember Brown provided notice to Ward 3's ANC in
10 their letter, not Wards 5 ANC. And so, that while
11 these are very similar cases in regards to they use,
12 that they are -- that the ANC for Ward 5 is being
13 served, and not Ward 3 on those cases.

14 CHAIRPERSON HILL: Okay, thank you. Mr.
15 Brown, do you have any comments in response?

16 MR. BROWN: Very briefly. As I said before, I
17 regard it as my job to make sure that my clients stay
18 focused on matters that are of concern to this Board
19 and its decision. We intend to file a brief legal
20 memorandum outlining what we regard as the legal
21 issues in this case and summarizing the testimony that
22 we intend to provide on to amplify those legal issues.
23 And although there are something like 13 or more
24 concerns identified by my clients in their party

1 status applications, as to why they are concerned
2 about the grant of the requested relief, only some of
3 them are directly related to the legal issues, and
4 those are the issues that will be focused on in the
5 hearing.

6 CHAIRPERSON HILL: Okay. Thank you. I just
7 wanted to clarify something. Is this property, this
8 project is within ANC 3? No, it's in ANC 5?

9 MS. MOLDENHAUER: It's within ANC 5.

10 CHAIRPERSON HILL: Okay. And you notified ANC
11 3?

12 MR. BROWN: The letter that my secretary sent
13 seems to have been -- seems to have listed the wrong
14 ANC people. I will --

15 CHAIRPERSON HILL: Okay.

16 MR. BROWN: I will get that straightened out.

17 CHAIRPERSON HILL: Okay. Mr. Brown, I'm just
18 letting you know, when you come back, like that's
19 something that flags me as a bit of a concern. You
20 notified the wrong ANC. So, really, when you come
21 back with your people, you're really going to have to
22 spend some time to focus on what is the issue and kind
23 of get all your ducks in a row, because that's
24 something that's very telling in terms of when you

1 come forward, if this does pass, that is, again,
2 making sure that you're prepared to present your case
3 in a way that is to zoning and to the particular
4 issues at hand. Okay?

5 So, that being the case, does anybody on the
6 Board have anything else?

7 MS. MAZO: I'm sorry. Just sorry, one very
8 minor issue. Again, I would just ask the Board to
9 waive the requirement under 404.9, which specifically
10 limits a situation in which a party who is seeking
11 opposition can then file supplemental submissions into
12 the record.

13 CHAIRPERSON HILL: Okay. Okay.

14 MS. MAZO: And so, again, as you did --

15 CHAIRPERSON HILL: I did in the previous case.

16 MR. MAY: -- in the previous case, I would ask
17 the Board to waive that specifically, please.

18 CHAIRPERSON HILL: Okay. That's fine. We
19 will do so if we get to that point.

20 Mr. May?

21 MR. MAY: Should I go through my whole routine
22 again?

23 CHAIRPERSON HILL: I would -- it's up to you.

24 MR. MAY: No, I don't think so. I think these

1 cases are very similar and I would just say that I'm
2 inclined to grant the party status with the same kind
3 of submission schedule to make sure that it's clear to
4 the applicant in the case what the party status or the
5 parties' objections are.

6 CHAIRPERSON HILL: Okay. And, Mr. Hart,
7 unless you have any comment, I'm going to throw this
8 over to Mr. Moy to deal with the calendar. Okay.

9 So, Mr. Moy, can you help us with the
10 calendar?

11 MR. MOY: Well, my first thought, Mr. Chair,
12 would be to follow the similar schedule --

13 CHAIRPERSON HILL: Oh, yeah. Everything is on
14 the same day.

15 MR. MOY: So, the dates sequentially is
16 February 17th, Friday, and February 24th, Friday,
17 hearing March 1st.

18 CHAIRPERSON HILL: Mr. Brown, okay? All
19 right, great. All right. So, I'm going to close this
20 portion, unless anybody has anything to add.

21 Okay. Then I'm going to go ahead and make a
22 motion to approve Application No. 19452, allowing
23 party status for Citizens of Responsible Options.

24 MR. HART: Seconded.

1 CHAIRPERSON HILL: Motion has been made and
2 seconded.

3 [Vote taken.]

4 CHAIRPERSON HILL: Motion passes.

5 MR. MOY: Recording the vote results, three,
6 zero, two. Three, to zero, to two on your motion,
7 Chairman Hill. Seconding the motion, Mr. Hart. Also
8 in support, Mr. Peter May. Two seats vacant. Motion
9 carries.

10 All right, Mr. Chairman, I believe the next
11 case application is Georgetown Visitation. So, that
12 would be Application No. 17549A, of Georgetown
13 Visitation Preparatory School, captioned and advertised
14 for their request for a modification of significance
15 of BZA Order No. 17549, now requesting special
16 exception relief under the R Use Requirements,
17 Subtitle U, Section 203.1L to complete additions to
18 existing academic buildings, increase the student
19 enrollment to 530 students, and increase faculty and
20 staff to 125 persons for an existing private school,
21 R-3 Zone, 1524 35th Street Northwest, Square 1292, Lot
22 202.

23 And also, here, Mr. Chair, I believe there is
24 a request for expert witness status, which I imagine

1 the applicant will present to the Board.

2 CHAIRPERSON HILL: Okay, great. Thank you,
3 Mr. Moy.

4 All right. If we could just introduce
5 everyone, please, from my right to left?

6 MR. GIBBONS: Thank you. Sorry, Joe Gibbons,
7 ANC 2E Chair.

8 MR. BURKE: Good morning, Patrick Burke,
9 Executive Director of D.C. Police Foundation.

10 CHAIRPERSON HILL: I'm sorry, could you say
11 your name again?

12 MR. BURKE: Patrick Burke.

13 MR. KERNS: Dan Kerns, Head of School.

14 MR. CLARE: Tom Clare from the law firm of
15 Clare Locke, LLP, counsel for the applicant.

16 MR. SPACK: Bill Spack, Principal with Cox
17 Graae & Spack Architects.

18 MR. ANDRES: Good morning, Chairman Hill.
19 Erwin Andres with Gorove/Slade Associates.

20 MR. TRESELER: John Treseler, Trustee,
21 Georgetown Visitation.

22 CHAIRPERSON HILL: Okay, Mr. Clare, I guess
23 you're going to be presenting. Is that correct?

24 MR. CLARE: Yes, very briefly.

1 CHAIRPERSON HILL: Okay. Just, before you do
2 that I guess, so you're the expert testimony people.
3 Oh, okay. I've reviewed the record in terms of the
4 people you've submitted, and I'm comfortable with
5 those people being submitted as experts. Does the
6 Board have anything else?

7 [No audible response.]

8 CHAIRPERSON HILL: Okay. Then that's fine.
9 But I'm glad to see everyone. You guys make up like
10 half the audience. And then, we tried to get you here
11 a little sooner, but you know, you couldn't beat the
12 Ambassador, so you had to wait.

13 I don't have a lot of questions to be quite
14 honest. There are a lot of questions that I have in
15 terms of the previous conditions, and to make sure
16 that that is something that is put forth in this
17 application. So, if you can kind of like clarify the
18 old conditions for me, I would be interested in a
19 pretty high level presentation, I suppose, in terms of
20 -- I mean, I'm actually just a little curious just for
21 myself like, you know, what is being proposed. And
22 then does the Board have any other particular issues
23 they'd like to hear about?

24 MR. HART: Just a minor thing. I guess CFA

1 had -- you went to CFA at some point. Just explain
2 kind of where you -- where that's -- what happened and
3 how you responded to that.

4 CHAIRPERSON HILL: Mr. May, anything
5 additional?

6 MR. MAY: Just, where they are -- sorry.
7 Have, you know, where you are on any of the conditions
8 that DDOT is suggesting.

9 CHAIRPERSON HILL: So, Mr. Clare, as you're
10 going through that if you could just highlight those
11 issues. Thank you.

12 MR. CLARE: Sure. Yes. Good morning, Mr.
13 Chairman. Tom Clare, again, counsel for the
14 applicant, and we will address all of those questions
15 in the course of our presentation this morning.

16 The applicant is Georgetown Visitation
17 Preparatory School. It's a Catholic all-girls school
18 in an R-3 Zone. It has been on its current site since
19 1799, and we're seeking a special exception in order
20 to build an eight-classroom addition and student
21 learning commons.

22 This is to replace smaller temporary
23 classrooms that were put in place after a fire 23
24 years ago. I use the word temporary very loosely.

1 And also, to increase the student enrollment cap and a
2 corollary increase on the faculty cap.

3 No relief is sought from the Zoning
4 Regulations.

5 I would like to highlight for the members of
6 the Board that the negotiations and discussions with
7 the community have been very collaborative in this
8 process. The record, including the detailed
9 prehearing statement and letters in support
10 demonstrate that Visitation has received overwhelming
11 support from the neighbors and the neighborhood
12 organizations, including the ANC, presentations to the
13 Old Georgetown Board, and the Cloisters Homeowner's
14 Association which is the immediate neighbor to the
15 north, and the one closest to the affected zone.
16 We're proud of the process that we've engaged with,
17 with the neighbors in order to get to this point.

18 The witnesses who will be answering the
19 questions today, Mr. Kerns is the head of school. We
20 have architecture and transportation folks to answer
21 those questions. Also, present in support would be
22 Mr. Joseph Gibbons, the Commissioner of the ANC 2E.
23 Mr. Burke, with the Executive Director for the U.S.
24 Police Foundation, D.C. Police Foundation, former U.S.

1 Marshal for the District of Columbia, former Assistant
2 Chief for the Metropolitan Police Department. And we
3 also have Mr. Treseler here as a trustee of the school
4 to demonstrate the school's commitment to satisfying
5 all the conditions that the Board would put forward.

6 So, with that I'll turn it over to Mr. Kerns,
7 who can answer some of those questions.

8 MR. KERNS: Thank you very much, Board. We're
9 very grateful for the opportunity to present to you
10 today. Just to elaborate on a couple of the points
11 that Mr. Clare mentioned, the eight-classroom addition
12 that we proposed to the north of our, one of our
13 primary classroom spaces, would allow us not only to
14 replace the temporary classrooms that are clearly
15 inadequate in another portion of the campus, but
16 really allow us to grow our STEM, Science, Technology,
17 Engineering, and Math program, and also provide us
18 with an expansive art studio.

19 To the south of Saint Joseph's Hall we propose
20 a connector, and Mr. Spack will talk about the design
21 of that space, which would give us an opportunity to
22 connect to our library and create student gathering
23 space. We feel that this addition, both of these
24 additions, but these improvements to our primary

1 academic space are really critical for us to be able
2 to respond to clearly changing academic needs in the
3 areas of science and technology and math,
4 particularly. So, we are very, very, we're very
5 anxious to begin the process and to improve our campus
6 in that regard.

7 In addition, we have requested an enrollment
8 cap increase from 490 to 530, and faculty staff
9 increase from 120 to 125.

10 For the last six years, we have been at our
11 enrollment cap. This creates a situation with little
12 flexibility in terms of our ability to look at
13 students, transfer students, students off wait lists,
14 students who may apply later in the application cycle.
15 We feel that we can adequately accommodate this
16 increase of students on our campus. We have a 23-acre
17 campus. All of our parking, all of our traffic
18 emanates and occurs on the campus, and we feel that
19 this would have very little impact on our neighbors
20 either in the Cloisters area or on 35th Street, or any
21 of the people who are impacted by traffic in that
22 regard.

23 I would now ask Mr. Spack to give us an
24 overview, or give you an overview of the design

1 elements.

2 MR. SPACK: I'm happy to keep it brief just to
3 give you the general overview. We have some exhibits
4 that are up on the screen. A vicinity map just shows
5 the campus in the heart of Georgetown, just to the
6 east of Georgetown University. The specific campus is
7 24 acres, with a series of buildings that have evolved
8 over time.

9 This school was founded in 1799. Saint
10 Joseph's Hall is highlighted in the orange color
11 there, and we illustrate the two additions that we're
12 speaking of. One is an addition to the north of about
13 11,000 square feet, eight classrooms. The other is an
14 in-fill that Dan discussed between Saint Joseph's Hall
15 and the adjacent Saint Bernard's Library.

16 The additions are about 150 feet plus from the
17 north property line, and they're set back about 450
18 feet from the east property line along 35th Street.

19 In terms of the existing conditions, Saint
20 Joseph's Hall was built in 1958. It's a fairly
21 classic educational building from the late '50s.
22 That's to say it was a corridor of the classrooms on
23 either side, and that really doesn't meet their
24 educational needs as they advance forward.

1 It sits adjacent to a utility building that
2 was built in the late 1800s on the campus, converted
3 to a library in 1959. It's connected by a breezeway.

4 So, a proposal illustrated here is an addition
5 to the north of eight classrooms, four on two floors,
6 four science and art, as well as general academics,
7 and then a connector piece between the library and the
8 academic building to meet the needs of their STEM
9 program and create a building commons. It's a two-
10 story addition on the north, and a one-story, two-
11 story volume between the two buildings.

12 In terms of the architecture, it's meant to be
13 derivative from the existing structures and recessed
14 back in order to maintain focus on the original
15 structures, and have a glass expression, and give you
16 a sense from the existing conditions to the new
17 proposal illustrating the new entrance piece, which is
18 glass, set back in the addition which is significantly
19 set back on the north, preserving a beautiful red
20 maple tree that's on the site as well.

21 CHAIRPERSON HILL: I'm sorry, I just wanted to
22 kind of interrupt you. So, I just wanted to see if
23 Mr. Hart is getting his question answered.

24 MR. SPACK: Right, so --

1 CHAIRPERSON HILL: Okay. Great. There you
2 go.

3 MR. SPACK: -- in conclusion, the case was
4 presented to the Old Georgetown Board at their January
5 5th hearing. We worked closely with staff to evolve
6 the scheme to meet some of their concerns and
7 questions, and we got really enthusiastic approval at
8 that January hearing, went to full CFA two weeks
9 later, and that we're fully approval for concept
10 design.

11 CHAIRPERSON HILL: Okay. I just want to cut
12 real quick over to Commissioner Gibbons.

13 So, Commissioner, can you just tell me kind of
14 how it all went there at the ANC meeting, and tell me
15 a little bit about that if you wouldn't mind?

16 MR. GIBBONS: Well, we've been having
17 meetings, and then we had the open meeting with the
18 Cloisters and the rest of the community. And we
19 achieved a community consensus. Visitation has been a
20 wonderful respectful neighbor to the community, and
21 that was before I was a chair or a commissioner on --
22 that wasn't last year, but we're a rolling committee,
23 so all the resolutions are still in force, and we
24 continue to agree with the resolution and strongly

1 support it.

2 I've been at the OGB supporting the
3 Visitation's plans. And we're here and I personally
4 walked the proposed site with Mr. Kerns of Georgetown
5 Visitation, and the Cloister West Homeowner's
6 Association representative, to collaborate on a
7 harmonious landscape design which will minimize any
8 effects of any lights, buildings, and parked cars
9 around the school's property adjacent. So, we've been
10 walking that property continuously and there has been
11 strong, strong community consensus for this project.

12 CHAIRPERSON HILL: Okay. Great. Okay, great,
13 and thank you so much for coming down today.

14 MR. GIBBONS: My pleasure.

15 CHAIRPERSON HILL: Does anyone have any more
16 questions for anyone?

17 MR. ANDRES: I was going to answer --

18 MR. MAY: Yes.

19 MR. ANDRES: -- Commissioner May's question.

20 CHAIRPERSON HILL: Sorry. Sorry. Sure.

21 MR. ANDRES: With respect to the DDOT
22 conditions, we are committed to meet all of DDOT's
23 conditions in their January 31st letter.

24 CHAIRPERSON HILL: Okay, great. And I'm

1 sorry, I'm kind of moving along here because I'm
2 hoping to avoid having dinner here.

3 So, I'm going to go ahead, if it's all right,
4 and turn to the Office of Planning. All right.
5 Office of Planning?

6 MS. THOMAS: Good morning, Mr. Chair, members
7 of the Board.

8 CHAIRPERSON HILL: Good morning.

9 MS. THOMAS: Karen Thomas for the Office of
10 Planning. We have nothing further to add. We would
11 just like to commend the applicant for working with
12 the community for all these years and we hope they
13 continue to do so. Thank you.

14 CHAIRPERSON HILL: Thank you. Does the Board
15 have any questions for the Office of Planning?

16 Does the applicant have any questions for the
17 Office of Planning?

18 MR. CLARE: No.

19 CHAIRPERSON HILL: Okay. Then, I'm going to
20 turn to the audience. Is anyone here from the -- oh,
21 is there anyone additionally here from the ANC? No.
22 All right.

23 Is there anyone here to -- who wishes to speak
24 in support of the application? Is there anyone here

1 who wishes to speak in opposition to the application?

2 [No audible response.]

3 CHAIRPERSON HILL: All right. Then, with that
4 I'm going to turn back to the applicant. Is there
5 anything else you'd like to add?

6 MR. CLARE: No, Mr. Chairman.

7 CHAIRPERSON HILL: All right. So, I'm going
8 to go ahead and close the hearing unless anyone has
9 any more questions? All right. I'm going to close
10 the hearing.

11 I would like to say that again, I mean, is it
12 Mr. Kerns? Kerns?

13 So, Mr. Kerns, I mean, you brought a plethora
14 of people with you and it was all worth it, because
15 you never know what's going to happen and it's very
16 nice that all the people came down. Thank you for
17 your service, also, to the city, sir.

18 And so, I don't really have a lot of
19 questions. I mean, you went ahead and you've
20 obviously worked very hard with the Office of
21 Planning. Oh, actually no, I did have one question.
22 And this is back to the Office of Planning, so I don't
23 have to reopen this.

24 But, so everyone is on the same page with the

1 conditions, the old conditions and -- I get a
2 little -- there's a long list of conditions in terms
3 of what was agreed to. So, I just want kind of a
4 verbal that the Office of Planning and the applicant
5 are on the same page with the conditions that they're
6 enforcing from the previous set of conditions.

7 MS. THOMAS: Yes. We did refer to that in our
8 report with respect to the conditions, and with
9 respect to DDOT I'll just speak for DDOT right now
10 that the applicant has come to agreement with DDOT's
11 conditions. So, I sort of put that into an
12 abbreviation that whatever DDOT works out for the
13 applicant that it be included in the order.

14 CHAIRPERSON HILL: Okay. And, Mr. Clare,
15 that's acceptable?

16 MR. CLARE: Yes.

17 CHAIRPERSON HILL: Okay, great. So, then now
18 to go back to my synopsis. It's nice to see everybody
19 here. And so again, I'm closing the hearing and is
20 the Board ready to deliberate?

21 Okay. So, as I said before, or started to
22 say, the Office of Planning, they've obviously worked
23 quite well with the Office of Planning. I mean, the
24 ANC 2E Commissioner is -- chair is here, and so, it's

1 very nice to have their support as well, and so I
2 think that, you know, there's 10 letters in support.
3 I mean, the school has been there, you know, forever.
4 And so, hopefully it will be there forever more. It
5 sounds like it's a wonderful place.

6 And so, with that I'd go ahead and make a
7 motion to approve Application No. 17549A as read by
8 the secretary.

9 MR. HART: Second.

10 CHAIRPERSON HILL: Motion has been made and
11 seconded.

12 [Vote taken.]

13 CHAIRPERSON HILL: The motion passes, Mr. Moy.

14 MR. MOY: Staff would record the vote as
15 three, to zero, to two. This is on the motion of
16 Chairman Hill to approve the application with the
17 conditions requested, along with the relief requested,
18 along with the conditions as cited by the Chair.

19 Seconding the motion, Mr. Hart. Also in
20 support, Mr. Peter May, two seats vacant. Motion
21 carries.

22 CHAIRPERSON HILL: Thank you. We can do a
23 summary order, Mr. Moy.

24 MR. MOY: Yes, thank you, sir.

1 CHAIRPERSON HILL: Thank you. Thank you.

2 MR. CLARE: Thank you.

3 MR. MOY: I believe the next case application
4 before the Board is Application No. 19416 of Robert
5 Edwards, as captioned and advertised for a special
6 exception relief under the RF Use Requirements,
7 Subtitle U, Section 320.2, variance from the lot
8 dimension requirements of Subtitle E, Section 202. --
9 or rather, 201.4, to convert an existing one-family
10 dwelling into a three-unit apartment house in the RF-1
11 Zone, 1412 Shepherd Street Northwest, Square 2693, Lot
12 23.

13 CHAIRPERSON HILL: All right. Thank you, Mr.
14 Moy. Could you please introduce yourself from my
15 right to left?

16 MR. HEISEY: Good morning. Joel Heisey,
17 architect for the applicant.

18 MR. EDWARDS: Robert Edwards, owner. Just a
19 point of clarification, I'm not a lawyer so I don't
20 know if that means I'll be more truthful or less, but
21 we missed the swearing in this morning.

22 CHAIRPERSON HILL: Okay.

23 MR. EDWARDS: Just, if we need to do that.

24 CHAIRPERSON HILL: Yeah, I'm going to not

1 answer your question, but please go ahead and stand if
2 you wouldn't mind, and take the oath from Mr. Moy.

3 MR. MOY: If I might ask if there is anyone
4 else that has not been sworn in if you wouldn't mind
5 standing, please?

6 CHAIRPERSON HILL: Yeah, please stand if you
7 haven't been sworn in. Thank you.

8 [Oath administered to the participants.]

9 CHAIRPERSON HILL: Okay. It's Mr. Heisey,
10 right? Heisey? I think you have to push the mic
11 there.

12 MR. HEISEY: Heisey.

13 CHAIRPERSON HILL: Heisey?

14 MR. HEISEY: Heisey.

15 CHAIRPERSON HILL: Heisey.

16 MR. HEISEY: Joel is fine.

17 CHAIRPERSON HILL: Okay. Heisey. You know
18 that the Office of Planning is in denial of the
19 variance relief, correct?

20 MR. HEISEY: Yes, I am.

21 CHAIRPERSON HILL: And so, I guess you're
22 going to have to give a pretty good presentation here
23 that I'd like to hear about in terms of, you know, how
24 you were going to overcome the Office of Planning's

1 concerns. And then also I guess you can, you know,
2 kind of clarify to me what happened at the kind of
3 further -- the ANC, because there's a couple of
4 different reports here from the ANC.

5 But, do you know how much time you might need?

6 MR. HEISEY: Trying to keep it short. I know
7 you have a long agenda.

8 CHAIRPERSON HILL: Sure.

9 MR. HEISEY: If we can do it, 15 minutes would
10 probably be more than enough.

11 CHAIRPERSON HILL: Okay. All right. We'll go
12 ahead and put 15 minutes on the clock, Mr. Moy.

13 And then, does anyone else have anything in
14 particular they'd like Mr. Heisey to focus on?

15 [No audible response.]

16 CHAIRPERSON HILL: Okay. All right. Okay.
17 Go ahead, please.

18 MR. HEISEY: All right. Thank you, Mr.
19 Chairman.

20 This property is a typical D.C. property up in
21 the Columbia Heights neighborhood. It's a street of
22 what were built as single-family homes, very uniform
23 application. My drive here isn't working. I can't
24 get the pictures. But on your file you have all the

1 photos.

2 CHAIRPERSON HILL: Which exhibit, do you know?

3 Or can you refer me to?

4 MR. HEISEY: I don't.

5 CHAIRPERSON HILL: You don't know off the top

6 of your head.

7 MR. HEISEY: I don't know your exhibit

8 numbers.

9 CHAIRPERSON HILL: Okay. Okay.

10 MR. HEISEY: What they've been listed as.

11 CHAIRPERSON HILL: I think we've got 29 is the

12 architectural plans.

13 MR. HEISEY: Yeah, there should be -- there is

14 more recent -- there were some revisions from the

15 original submission after meeting with the ANC and OP,

16 so there was a second revised set so it would have

17 been after all the notices were sent. There was a

18 slightly revised. It just included the solar panels

19 and the adjoining properties as really the largest

20 change.

21 CHAIRPERSON HILL: Okay.

22 MR. HEISEY: Most noticeable change on it.

23 CHAIRPERSON HILL: Okay. I think we're

24 looking at the -- oh, we're having some help. Thank

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1 you.

2 MR. HEISEY: Thank you. While he's doing that
3 I'll just continue on.

4 CHAIRPERSON HILL: Sure.

5 MR. HEISEY: This application was submitted
6 earlier last year as a two-unit property with a third-
7 story addition. However, between July 30th when we
8 decided on the program and used those Zoning
9 Regulations and then between September 12th, when we
10 actually submitted the application, the Zoning
11 Regulations changed that any addition in the RF-1
12 needed to comply with solar panels on the adjoining
13 properties.

14 So, we had to redesign the entire project
15 without any guidance being available from Office of
16 Planning other than we expect you to work out
17 something with your neighbors, and the Zoning
18 Administrator's office fighting zero -- you know,
19 their guidance was zero impact.

20 There's really no way we could have gotten a
21 full third story up on the property, which made it to
22 do two units of, you know, two floors each virtually
23 impossible.

24 So, the program was rewritten then to go to a

1 three-unit building and go back rather than up. So,
2 the largest problem with that here is that there's --
3 we're 185 square feet short. It's three and a half
4 percent, or four percent depending if you use the
5 recorded lot size, or the surveyor when he surveyed
6 it, he got a different lot size.

7 But anyway, we're talking about a de minimis
8 amount of variance from the 900 square feet per lot,
9 and that's just on that specific lot where that small.

10 If you look at the entire square, and this is --
11 there is a chart or table that I had done that lists
12 all the properties in this square, well -- the single-
13 family properties. The property to the rear of this
14 is a multistory 500-unit apartment building. It's in
15 the same square. So, I've kind of deleted that as
16 kind of not relevant to this.

17 But across the street, those are identical
18 properties and those all are 2,700 square feet or
19 larger. Or on the side of the street we're on, of the
20 15 properties, there are six that are not 2,700, and
21 they're just minimally below the 2,700 square feet
22 required, from 3.3 percent to 7.9 percent, not making
23 that.

24 So, in a sense, everybody in the street,

1 except for six out of the 30 properties, can do a
2 three-unit by-right. And we're asking because of the
3 unique factors of the situation, physical
4 configuration of the square and of this site
5 specifically, the variance --

6 CHAIRPERSON HILL: What's the unique situation
7 again?

8 MR. HEISEY: That of the 31 parcels on this
9 street, six of them are just minimally below the
10 2,700. Every other lot on the square is above 2,700
11 and can do the three units by right. Well --

12 MR. MAY: By right or by special exception?

13 MR. HEISEY: With special exception. I mean,
14 when I say by-right, I mean without the 900 square
15 feet by special exception in the RF-1.

16 MR. MAY: The 900-foot rule still applies.

17 MR. HEISEY: Yes.

18 MR. MAY: But it's a special exception.

19 MR. HEISEY: Right. But everybody else in the
20 square, except for six out of the 30 properties --

21 MR. MAY: Has that.

22 MR. HEISEY: -- meet that 2,700. And there
23 are several properties that already have done three
24 units. There's many properties that have bumped up to

1 a third story on those street. Like I said, we're
2 precluded from doing that because both neighbors have
3 solar panels, both of which are tight up against our
4 property line. So, the addition that we have proposed
5 is very minimal height, minimal depth, to not impact
6 that solar at all. And that's as much as a third
7 story that can be made. So, there can't be any
8 expansion up. We're kind of forced to go back.

9 And to do that, it also -- you need three
10 units, two units becomes awkward. You know, you have
11 a large upper floor and a basement unit, essentially,
12 which from a development standpoint, I mean, wont
13 work. So, I mean, that's where the -- largely we're
14 saying that everybody in this square can do this with
15 a special exception, we're minimally below what the
16 others are, and it's because of the configuration.
17 It's a trapezoid square. And there's a few lots in
18 the center of that square that do not meet the 2,700.

19 The other thing that Office of Planning has
20 opposed was there is -- in the new regulations there
21 is a new requirement that development may not extend
22 more than 10 feet beyond the adjoining buildings. In
23 working with our neighbors to not build zero lot line
24 tight up against and to reduce the sense of the

1 massing of the building, we've retained the existing
2 area way on the side. It's become a covered porch,
3 but it's open. The covered porch was to meet the
4 zoning of having a zero lot line. But we want the
5 building setback to keep that open. To do that, you
6 lose the square footage that way, and it forces the
7 building back a little further.

8 The neighbor on the other side is fine with
9 the extension to 13 feet, 2 inches, and like I said,
10 we kept it narrower, the area way. Here, let's see if
11 I can go down.

12 CHAIRPERSON HILL: I'm sorry just to
13 interrupt. When you say the other neighbor on the
14 side is fine with it, does that mean the --

15 MR. HEISEY: 408.

16 CHAIRPERSON HILL: Does that mean that one of
17 the --

18 MR. HEISEY: The east side.

19 CHAIRPERSON HILL: -- neighbors is not fine
20 with it?

21 MR. HEISEY: Well, I say, he's fine with the
22 extension and their extension is back because the
23 other neighbor is fine with that we've left the area
24 way open. And as far as I know, I won't -- she's here

1 so she can address it.

2 CHAIRPERSON HILL: Okay.

3 MR. HEISEY: I believe she'd okay with the
4 depth of the building.

5 CHAIRPERSON HILL: Okay.

6 MR. HEISEY: As well. At least we hope so.

7 CHAIRPERSON HILL: Okay. Okay.

8 MR. HEISEY: We've worked as --

9 CHAIRPERSON HILL: We'll get to there.

10 Thanks.

11 MR. HEISEY: Yeah, we've worked very -- as
12 much as we could with her. And I'm not sure what the
13 magic number of 10 feet, where that came from or why
14 that's so significant. But as I said, we're again,
15 just minimally over that. And we still have a rear
16 yard setback of 50 feet from the proposal that we
17 have.

18 Now I've lost my notes here. Like I said,
19 keeping this short, is the solar panels I've mentioned
20 that we are not impacting them at all. So, that
21 portion of the special exception we should be fine
22 with.

23 The architectural features, again, is a new
24 item in the new regulations. We're proposing moderate

1 modifications to retain the proportions, if not the
2 exact feature. There is one of the properties, 406 --
3 no, 408, which is this property right here. You'll
4 notice the upper, they've also modified the dormers.
5 These would be the existing dormers, and they've
6 modified them again when they did their extension of
7 the roof to keep the proportions. And that's
8 essentially what we're proposing as well, to retain
9 the proportions of the roof rather than the specific
10 feature.

11 The only other thing is, like I said, the
12 owner has worked extensively with the community on
13 this for the past year. We met with the ANC. They
14 did support it. The ANC representative is here. He
15 will talk more to that as well. Unless there are
16 other further questions I think we can just take
17 questions from you.

18 CHAIRPERSON HILL: Thank you. Does the Board
19 have any questions?

20 MR. MAY: The uniqueness argument that you're
21 trying to make is essentially that there are a number
22 of other properties on the block that are bigger than
23 this one.

24 MR. HEISEY: Yeah. The way the block is laid

1 out, they were all laid out for --

2 MR. MAY: But --

3 MR. HEISEY: Yes.

4 MR. MAY: -- what you're describing is a fact
5 of life, right, that some properties are bigger than
6 others. It's been subdivided differently. I mean,
7 it's not -- what is a struggle here is that you're
8 simply saying that the property is too small for, you
9 know, it's less than 2,700 square feet and therefor
10 it's too small to get the special exception for three
11 units, and so therefore you have to have a variance to
12 do that.

13 I mean, it's like there's no argument there at
14 all.

15 MR. HEISEY: Well, the argument comes under
16 the uniqueness of the lot relative to the others.

17 MR. MAY: But, you already said that there --
18 well, you said the property is fairly typical, but
19 I'll put that aside.

20 You also said that there were six other
21 properties that are just like it, right? That are
22 less than 2,700 square feet. So, every one of those
23 should then theoretically be entitled to what you
24 would be asking for.

1 MR. HEISEY: Yes.

2 MR. MAY: That's not the way it works. I
3 mean, it's just, it's not a very strong argument.
4 There has to be an argument that there is something
5 about that property that makes this a necessary
6 action, that it makes it necessary to grant a variance
7 from the Zoning Regulations, and there's just --

8 MR. HEISEY: Well, the other --

9 MR. MAY: There's not much there.

10 MR. HEISEY: The other part is, I mean, we are
11 constrained because of the solar panels that we can't
12 go up.

13 MR. MAY: Right. And that was all done
14 because of the things that are already in evidence on
15 that block, right? I mean, the Zoning Commission took
16 action to control the development of third floor
17 additions so that they do not have an undue impact on
18 neighboring properties. And the number of ways that
19 we acted to control that was to be concerned about
20 adjacent solar panels, and to be concerned about
21 things like how far in addition can project into a
22 rear yard.

23 And, you know, we -- it was lengthy hearings
24 and we took a lot of consideration into how to do

1 that, and it was a very strong concern of people in
2 what at the time were four neighbors across the
3 city -- excuse me -- now were redesignated to RA-1 or
4 whatever it is. Or sorry, RF-1. That this was a
5 necessary step to protect the character of these
6 neighborhoods.

7 Furthermore, the 900-foot rule is now, and
8 always was intended to prevent the widespread
9 conversion of rowhouse neighborhoods into apartment
10 neighborhoods. So, you're asking us to just sort of
11 forget all of that. I mean, you know, you've done a
12 good job, I think, accommodating the solar panels and
13 I think the, you know, the dormer modification is
14 great. I mean, for a third-floor addition, you know,
15 this is, it's really good. It's the three-units and
16 the rear extension that I think are problematic.

17 MR. HEISEY: The problem is by imposing the
18 solar panels, that is effectively denying any third-
19 floor roof. I mean, we can --

20 MR. MAY: No, you've managed to get in the
21 third-floor addition.

22 MR. HEISEY: It's not enough to be usable as
23 a --

24 MR. MAY: All right. So, even if you could

1 have that you would still be arguing here that you
2 need to have three units.

3 MR. HEISEY: No, if we could do the full third
4 floor like we originally had submitted an application
5 for, it would be two units. But because the solar
6 panels have been erected, you know, since this
7 development even started --

8 MR. MAY: So, the two units would have been a
9 basement and ground floor.

10 MR. HEISEY: And a second and third floor.

11 MR. MAY: And then a second floor and third
12 floor.

13 MR. HEISEY: Because of the impact of the
14 solar panels we're not -- and there's lack of guidance
15 from anyone other than to say, zero impact. There's
16 no guidance for if you're allowed five percent, 10
17 percent, 20 percent. There is no guidance --

18 MR. MAY: Yeah, that's not the way we --

19 MR. HEISEY: -- and it's --

20 MR. MAY: It's impossible to try to predict
21 every circumstances and say that a certain level is
22 acceptable. I mean, you know --

23 MR. HEISEY: But, exactly. And that's what
24 we're working with. We don't know what our boundaries

1 are.

2 MR. MAY: Right.

3 MR. HEISEY: And so, we had to go with zero
4 because that's what everybody said was they would
5 accept. So, it effectively precludes doing a full
6 length third-story.

7 MR. MAY: And, I'm still puzzled with how that
8 means that the property doesn't work as a two-unit. I
9 mean, you know, having an uneven units between the
10 first floor and the second floor is not an uncommon
11 thing.

12 MR. EDWARDS: Yes, sir. We're trying to find
13 a balance between the units as well.

14 MR. MAY: Right.

15 MR. EDWARDS: And in our neighborhood, we
16 already have other units that have been done with
17 three levels.

18 MR. MAY: Right.

19 MR. EDWARDS: The one that was done across the
20 street has a stairway that leads to a 10 foot by 10-
21 foot deck. I want to do -- their fourth level. What
22 I'm trying to do is provide a balance so we have a
23 balance within our own building, and I'm also trying
24 to maintain, so for instance, the separation between

1 myself and my neighbor with the five feet. I didn't
2 want to crowd the property line. I've seen what that
3 looks like and it's terrible.

4 I'm also trying to not have a visual impact
5 from the street. In other words, where you have a
6 stairway coming up.

7 So, when we put all things into consideration
8 I'll be left with a very lopsided project. They'll
9 have a lower level and then I'll have an upper level
10 which is almost twice the size. And so, we're trying
11 to find the right balance.

12 MR. MAY: I'm sorry, the upper level is twice
13 the size?

14 MR. EDWARDS: If we did two units the way --

15 MR. MAY: Yeah.

16 MR. EDWARDS: -- we're working with --

17 MR. MAY: Right.

18 MR. EDWARDS: -- everything, we'd have a lower
19 level unit, like a basement unit.

20 MR. MAY: Right.

21 MR. EDWARDS: Then we'd have an upper level
22 unit with two floors. And it would be two to one
23 almost.

24 MR. MAY: Two and a half floors.

1 MR. EDWARDS: And so we'd have two different
2 types of families in there. So, I'm looking for --

3 MR. MAY: Right.

4 MR. EDWARDS: -- a better balance.

5 MR. MAY: Which is a very, very common housing
6 type. You're describing the typical townhouse in
7 rowhouse neighbors across the city where it's you
8 know, two or three floors up and one down.

9 MR. EDWARDS: Well, a lot of those, the ones
10 that say for instance, you have the basement first
11 floor.

12 MR. MAY: Yeah.

13 MR. EDWARDS: You want it with renters in the
14 basement. So, you have renters --

15 MR. MAY: Right.

16 MR. EDWARDS: -- in basement, you have owner
17 on the first floor, owner on second floor. By --

18 MR. MAY: No, I'm talking about one owner
19 second and third floor and then a renter in the
20 basement. That's a very common thing. That's not
21 possible here?

22 MR. EDWARDS: No, it is possible, but that's
23 not -- we're trying to find a better balance. We're
24 not trying to attract more renters in. We're trying

1 to find owners. So, you have owner, owner, owner, and
2 they feel equal, and there's not a lopsided balance.

3 And so --

4 MR. MAY: So, there's another provision in the
5 Zoning Regulations that there has to be a balance
6 between the units. It's not an argument to make
7 that's persuasive that you have to do this in somehow
8 in three units, you know, because achieving balance
9 between the sizes of the units is -- you know, meets
10 some other you know, zoning requirement or something
11 else. I mean, having that, you know, a large unit up
12 and a smaller unit down, it's a very, very common
13 thing.

14 You know, I mean, it almost sounds like you're
15 trying to make an economic argument that the
16 redevelopment of the property is not possible unless
17 you can get three units. But I'm not really hearing
18 that.

19 And if you were going to make that argument
20 you'd have to submit a whole lot information into the
21 record to try to make that argument.

22 MR. EDWARDS: That wasn't -- we didn't come
23 with that because that wasn't the main driver here. I
24 had a two-unit proposed, and it went into review and

1 it's sitting in review, or we got our comments back.
2 But because we effect the neighbors' solar panels with
3 that plan, not by much, but enough, more than zero and
4 there's no guidance, that's when we stepped back and
5 said, well, if there's zero guidance and we can't
6 infract by one little bit, not even two percent, like
7 the -- we're off by three percent. You can get the
8 administrator to sign off on two percent. We're
9 asking for one more percent. That's what we --

10 MR. MAY: So, you can get a third-floor
11 addition with a three percent impact on the solar
12 panels?

13 MR. EDWARDS: No, I'm saying we cannot impact
14 them whatsoever, the way the rules are right now.

15 MR. MAY: I mean, did you look at how much it
16 would if you did try to do the minimal thing for an
17 addition?

18 MR. EDWARDS: The minimal third-floor addition
19 we did and it's a lot more than zero. That's where we
20 sat with the Zoning Administrator's office and we
21 discussed it and they said, look, we can't tell you.

22 MR. MAY: Right.

23 MR. EDWARDS: You have to go to the BZA and
24 have the conversation.

1 MR. MAY: Right.

2 MR. EDWARDS: And --

3 MR. MAY: But instead you completely
4 reconfigured the project. I mean, if you could have
5 come to us and said, well you need to have relief from
6 the solar panel impact requirement, and tried to work
7 with your neighbors and figure out some way that they
8 would find it acceptable --

9 MR. EDWARDS: That was never offered. That
10 was never offered in the community. And it wasn't
11 something that there was -- because there was no
12 guidance with that, we just, we chose to go this route
13 because there's been past, I guess precedent past
14 exceptions made for size of -- you know, when you're
15 not off by two percent, you're off by three percent.

16 MR. MAY: I understand. I mean, the Zoning
17 Administrator's flexibility is only two percent. If
18 you want more than that you have to come here and make
19 the case.

20 MR. EDWARDS: Correct. And so, since there's
21 allowances to some degree with the Zoning
22 Administrator, and we're not 10 percent --

23 MR. MAY: Right.

24 MR. EDWARDS: -- we're not --

1 MR. MAY: So, I mean, I think what you're --
2 what it boils down to is the full third floor argument
3 is similar to the argument that -- or the requirement
4 that -- that requirement not to affect the solar
5 panels is similar to the requirement that you not go
6 back more than 10 feet. But here you are asking to go
7 back more than 10 feet. You could have been coming
8 here asking to do something that would affect the
9 solar panels.

10 Now, I don't know whether you would have any
11 greater success with the community about that, but at
12 least there is some basis for an argument there. I
13 mean, again, you'd have to talk with the Office of
14 Planning and see whether they would be supportive of
15 something that had a 10 percent impact or what have
16 you.

17 MR. HEISEY: But see, that's the thing. We
18 did --

19 MR. MAY: As a variance.

20 MR. HEISEY: We did ask them and the only
21 guidance that was received was, we expect you to work
22 something out with your neighbors.

23 MR. MAY: Okay, so --

24 MR. HEISEY: That was the guidance.

1 MR. MAY: Right.

2 CHAIRPERSON HILL: But then you changed the
3 project.

4 MR. MAY: Yeah, I mean, the problem is that
5 the --

6 MR. HEISEY: The neighbor was at zero. The
7 neighbor would not agree to any impact at all.

8 MR. MAY: Okay. Well, so then --

9 MR. HEISEY: That's why we had to change it.

10 MR. MAY: Then the problem is that all of this
11 does not add up to an argument for three units.

12 MR. HEISEY: Right, but the whole thing --

13 MR. MAY: The argument for three units seems
14 to be driven by things that are completely -- well,
15 there isn't really a justification in any of your
16 argument go to three units to fix this particular
17 problem.

18 I mean, I understand it's a problem, but the
19 solution that you're proposing doesn't flow from that
20 problem.

21 MR. HEISEY: But it's a circular argument in
22 that we can't do two units and a third-floor addition
23 because we don't know any guidance on the impact of
24 the solar. And nobody is giving us any impact or any

1 idea of what would be allowed --

2 MR. MAY: So, the guidance --

3 MR. HEISEY: -- for impacting the solar.

4 MR. MAY: Okay. So, you're going to have to
5 get over --

6 MR. HEISEY: So (simultaneous speech).

7 MR. MAY: -- there is no guidance of it.

8 There's a lot of things in the Zoning Regulations that
9 don't have specific guidance about how to address
10 something that doesn't comply with the Zoning
11 Regulations.

12 MR. HEISEY: So, it forecloses them out?

13 MR. MAY: The guidance is that you work with
14 the Office of Planning and you work with your
15 neighbors and you try to find something that's
16 acceptable to them that they can recommend approval.
17 If they don't recommend approval then we have to
18 demonstrate in our decision making, why we disagree
19 with their opinion.

20 MR. HEISEY: Right.

21 MR. MAY: There is nothing that you've given
22 us so far that gives us a basis to disagree with their
23 opinion.

24 MR. HEISEY: But --

1 MR. MAY: So, you know, it doesn't help us at
2 all for you to say there's no guidance, there's no
3 guidance, there's no guidance. There's 1,000 pages of
4 zoning regulations that you have to comply with, and
5 you have the Office of Planning, you have the Zoning
6 Administrator, all of whom can give you what
7 information they can. They can't solve your problem.

8 MR. HEISEY: Exactly. And this is our attempt
9 to solve the problem because we are precluded,
10 essentially, from adding a third story and our option
11 -- and what we're trying to do here is get a variance
12 to do the three units, which is not altering the
13 general characteristic of the neighborhood, since 75,
14 85 -- my math isn't correct doing real well at six out
15 of 30 percent of the properties can, with a special
16 exception, do three. It's not like we're coming into
17 a single-family area and converting something to an --
18 it's the rear property is already an apartment.

19 MR. MAY: But, you're not understanding the
20 full --

21 MR. HEISEY: I am -- yes.

22 MR. MAY: Clearly, you're not. You're making
23 the argument that it's just like everything else in
24 the neighborhood, when it's not. This is a rowhouse

1 neighborhood. It is not an apartment neighborhood.
2 There may be some apartments there, but that's why we
3 have the 900-foot rule. And you're asking for that to
4 be waived because of other internal desires having to
5 do with how you want to configure the units. It's not
6 connecting.

7 Anyway, we can move on.

8 CHAIRPERSON HILL: Okay. Mr. Hart, do you
9 have anything?

10 MR. HART: Just to kind of reiterate some of
11 the points that Commissioner May, Board Member May has
12 provided, there are three prongs that we have to kind
13 of go through in terms of understanding what the -- or
14 being able to agree and approve the variance.

15 If we can't get to a point that we can approve
16 those, or think that you've met those, then we can't
17 give you the -- approve the variance. And so, that's
18 the difficulty we have, and that's what Commissioner
19 May was talking about.

20 So, it's hard for us to then kind of look at
21 this and say, oh sure, yeah, we can do this. There
22 has to be an exceptional situation and we're not
23 seeing it. At least not with the information that you
24 provided.

1 And the arguments you give is, while we
2 understand it, it's just not enough. So, that's it.
3 It wasn't really -- it was just giving you some
4 comments on that.

5 CHAIRPERSON HILL: Okay. Thanks, Mr. May. Do
6 you have anything else to add before I turn to the
7 Office of Planning? Okay.

8 Office of Planning?

9 MR. GOLDEN: Good morning, Mr. Chair and
10 members of the Board, Bryan Golden with the Office of
11 Planning. Four reasons that have been explained
12 already, our denial was essentially based on not
13 meeting the minimum required lot area per unit, the
14 900 square feet per unit.

15 The conversion to three units for this
16 building is a more stringent test. It's the variance
17 test instead of a special exception because three
18 units is not in keeping with the intent of the RF-1
19 zoning, which is allowed up to two units, and then
20 there are intended to be larger units for families.

21 In regards to the rear extension, we believe
22 that the three feet additional beyond the 10-foot
23 allowable is more of a design choice, it's not a
24 zoning regulation, to keep that area way that the

1 applicant described.

2 And then, just to reiterate again about the
3 solar shading, our zoning requirements don't specify
4 an allowable percentage reduction that you can impact
5 your neighbor, so that's why we deferred to working
6 that out with their neighbors. If it's impactful to
7 them, then that would be considered.

8 CHAIRPERSON HILL: So, Mr. Golden, I'm a
9 little -- just looking for clarification. So, I mean,
10 the Office of Planning is in support of the adjacent
11 solar energy operation, they're in support of the rear
12 extension, and they're in support of the architectural
13 element? Those waivers.

14 MR. GOLDEN: Right. So, that's under the
15 condition that the Board, if the Board so chooses to
16 grant the variance for three units, then those other
17 requirements that are part of the special exception to
18 -- for the rear addition -- I'm sorry, for the special
19 exception for the RF conversion, we would be in
20 support of the rooftop architectural element
21 requirement, and the solar energy operation
22 requirement.

23 CHAIRPERSON HILL: So, we would -- the Office
24 of Planning is saying, if we were in support of the

1 variance, then you would be in support of the special
2 exceptions. But you're not necessarily on your own in
3 support of the special exceptions?

4 MR. GOLDEN: Right. The principle factor for
5 us is the variance for the --

6 CHAIRPERSON HILL: And the reason why I'm
7 asking is also just for future cases for me, like what
8 actually would be the Office of Planning being in
9 approval of the waiver for solar energy operations or
10 the rear extension, or the rooftop, you know,
11 architecture for that matter. But really, my question
12 is more towards when would the Office of Planning be
13 in approval of adjacent solar energy operation waiver?

14 MR. GOLDEN: So, I think that if that were the
15 case here, if it were strictly -- if we were looking
16 at that on its own, we would be looking for support
17 from the neighbors since we don't have --

18 CHAIRPERSON HILL: Right. So, you don't have
19 that yet anyway, can't make a determination. Okay,
20 all right, okay.

21 MR. GOLDEN: Right.

22 CHAIRPERSON HILL: Does anyone else have a
23 question for the Office of Planning?

24 [No audible response.]

1 CHAIRPERSON HILL: Okay. Does the applicant
2 have any questions for the Office of Planning?

3 MR. HEISEY: Just one, sir. Has Office of
4 Planning ever recommended approval for variance in the
5 900 square feet?

6 MR. GOLDEN: As far as I know we have not.
7 But, I'm not positive on that.

8 MR. HEISEY: So, you don't see there's any
9 circumstances ever for that to be waived?

10 MR. GOLDEN: Every case is on an individual
11 basis so we would have to analyze based on unique
12 criteria every time.

13 MR. HEISEY: Are you aware of cases that the
14 Board has granted that variance?

15 MR. GOLDEN: I'm not aware of any, but that --
16 I'm not aware of any.

17 CHAIRPERSON HILL: Mr. Heisey, while I've been
18 here, it has been a long time, they haven't granted
19 it. And I've been here before Mr. Golden. He's from
20 Austin. So, you know.

21 Okay. Does the Board have any more questions
22 for the applicant at this time?

23 [No audible response.]

24 CHAIRPERSON HILL: Okay. Is there anyone here

1 from the ANC? Would you please come forward?

2 Good morning.

3 MR. HALPERN: Good morning.

4 CHAIRPERSON HILL: Would you please state your
5 name for the record?

6 MR. HALPERN: Yes. My name is Michael
7 Halpern. I'm Commissioner for 4C-04, and I'm
8 representing ANC 4C as a whole for the purposes of
9 this issue.

10 CHAIRPERSON HILL: Is this project in your
11 SMD?

12 MR. HALPERN: Yes.

13 CHAIRPERSON HILL: Okay. Great.

14 MR. HALPERN: And as full disclosure, I live
15 three doors down from the property.

16 CHAIRPERSON HILL: Okay.

17 MR. HALPERN: 1418 Shepherd Street. I own the
18 property and for the purposes of the --

19 CHAIRPERSON HILL: Mr. Halpern, just to
20 interrupt you real quick. You're the ANC. I'm just
21 going to put five minutes on the clock.

22 MR. HALPERN: Great.

23 CHAIRPERSON HILL: I don't know if you're
24 going to use it all, but, Mr. Moy?

1 MR. HALPERN: Okay. For the purposes of the
2 vote in the ANC, I have recused myself just because of
3 any perceived conflict of interest there might be.

4 So, you just want to hear what the ANC, how
5 the ANC considered this?

6 CHAIRPERSON HILL: Sure. Whatever your
7 testimony you'd like to give.

8 MR. HALPERN: So, our ANC tends to support
9 projects where developers work with neighbors and
10 oppose those where they don't. Individual
11 commissioners, myself included, supported by most of
12 our residents, would prefer that these homes do stay
13 single-family homes, and that needed housing capacity
14 be added to the District in other ways.

15 The new regulations, I don't think, took
16 anybody by surprise as Commissioner May stated. You
17 know better than I do how much public conversation
18 there was, and testimony there was around them. But,
19 the new zoning rules do allow townhouses to be
20 converted, at least to the two-unit. And so, we do
21 encourage developers to work with neighbors to come up
22 with an outcome that is best for the neighborhood.

23 Our understanding is that the developer could,
24 by right, create something that would be even more

1 objectionable to neighbors, to immediate neighbors, by
2 going to the property line and by maximizing the space
3 that was available.

4 So, our discussions were predicated on the
5 kind of expectation that if a variance was not granted
6 that the developer would take advantage of that
7 opportunity to go as far as possible and you know,
8 create something that is both aesthetically
9 challenging and has adverse effects on the immediate
10 neighbors.

11 So, the one that was done across the street
12 that they mentioned earlier was done under the
13 previous zoning rules. It did go back very far, and
14 it did have significant impact on both the character
15 of the neighborhoods and the neighbors themselves.

16 They ANC -- so, the ANC was under the
17 understanding that the developer was working with both
18 adjacent neighbors, had been in conversations with
19 them, and had met with the adjacent neighbors and the
20 neighborhood in advance of the ANC meeting to discuss
21 different modifications that could be made, and some
22 of those are indicated in the letter that was
23 presented to the Commission. It was not uploaded
24 until yesterday and I apologize for that. That was a

1 new term oversight and so I'd be happy to answer any
2 specific questions about the letter that we did
3 submit.

4 We did vote seven to zero to two, with two
5 abstentions, to support the project. But again,
6 that's given the fact that the -- you know, knowing
7 what constraints we have as an ANC to be able to
8 direct these kinds of projects, that rather than see a
9 two-unit building that was less -- that did not fit
10 into the character of the neighborhood, we would
11 support a three-unit building with some of the
12 modifications that were made.

13 There have been a number of properties in the
14 neighborhood that were previously developed under the
15 previous zoning rules that are much, much more
16 offensive and much more disruptive. And so, I think
17 that is some of the sentiment that was being brought
18 forward here. I think I'll stop there.

19 CHAIRPERSON HILL: Within your community,
20 though, the ANC, what you all are concerned about is
21 what the by-right option is. So, what is it that's
22 different from this in terms of, I thought they were
23 still filling out the envelope to the size that
24 they're able to do so.

1 MR. EDWARDS: No, sir. We're not filling out
2 the envelope. As a matter of fact, I'm trying --
3 visuals are very important to me. Not only in the
4 front, but also the back because I've seen what's been
5 done in the neighborhood. The by-right options, I
6 could make this bigger, and it would be very ugly. I
7 could remove the front -- there's so many things that
8 could be done.

9 CHAIRPERSON HILL: You're not trying to make
10 it ugly. I mean, okay.

11 MR. EDWARDS: No, so it's --

12 CHAIRPERSON HILL: So, all right. That's
13 okay. You can make it bigger. Okay. Okay.

14 MR. EDWARDS: I bought the property prior to
15 the zoning changes and, but one of the things I've
16 maintained throughout the whole process is, I don't
17 want from the front or the back, to be objectionable.
18 And I've been trying to work with one neighbor had
19 solar panels prior to me purchasing.

20 CHAIRPERSON HILL: Mr. Edwards, I'm just going
21 to cut you off just for a second. I mean, really the
22 -- and I appreciate what you're saying and I really do
23 hope you mean what you say, which is that you want to
24 develop something, you want to build something that

1 works for the neighborhood. I mean, the problem that
2 we're all having here is the standard that you need to
3 meet in order to get us to approve a variance of 900
4 square feet. That's really what is -- that's why
5 we're here.

6 So, but I was just again, curious as to
7 what -- and the things that happened before the
8 regulations were changed, I mean, those obviously are
9 before the regulation change in terms of what can be
10 built.

11 Does anyone have any questions for the ANC?

12 [No audible response.]

13 CHAIRPERSON HILL: Okay. All right. Thank
14 you so much.

15 Is there anyone else here who would like to
16 speak in support of the application?

17 Okay, please, come forward.

18 CHAIRPERSON HILL: If you could please just
19 state your name? Thank you.

20 MS. DEDRICK: Hello. My name is Simone
21 Dedrick.

22 CHAIRPERSON HILL: Ms. Dedrick, I'm just going
23 to let you know, I'm going to give you three minutes.

24 Okay?

1 MS. DEDRICK: You got it.

2 CHAIRPERSON HILL: All right. Thank you.

3 MS. DEDRICK: Okay. I live at 1414 Shepherd
4 Street Northwest. My property abuts the 1412 that Mr.
5 Edwards is attempting to renovate.

6 CHAIRPERSON HILL: Now, I'm just -- I asked
7 for people in support. Are you in support or in
8 opposition?

9 MS. DEDRICK: Yeah.

10 CHAIRPERSON HILL: Oh, in support?

11 MS. DEDRICK: Yeah.

12 CHAIRPERSON HILL: Okay. All right. Sorry.

13 MS. DEDRICK: Based on the work Mr. Edwards
14 has done with the community, with me, and my neighbor,
15 I'm the person the solar panels that are in contention
16 because when he initially submitted his paperwork I
17 was in the process of getting my panels.

18 Since then, my panels have been installed.
19 And so therefore he went back to the drawing board and
20 made the modifications in order to not impact my solar
21 panels as I try to comply with sustainable energy.

22 Okay? So, yes, by right he can build fence to
23 fence and bump that 10 feet out, and I will have a
24 shadow, if he was to do it in order to have a two-unit

1 process. He has worked diligently with me to try to
2 bring it out the 10 plus three, and to leave that open
3 air because as he's indicated, there is a -- we have
4 basement entrances. It's just like a, what did you
5 say, a trapezoid like kind of thing. And if you were
6 to build --

7 CHAIRPERSON HILL: It's a dog-leg property.

8 MS. DEDRICK: Okay. If you were to build all
9 the way to the fence that straddles his property and
10 my property, I'd be cut off. Having the balcony piece
11 continues to allow structurally, the open air.

12 I understand about the economics and things
13 like that. I'm not opposed to 13 feet out as long as
14 it still works in balance. And I'll have to say,
15 initially I was going to be an opponent. But, Mr.
16 Edwards and our community has worked diligently
17 together. The picture he shows right there, that's
18 the property that was prior to zoning. It sits vacant
19 to this day on our block based on waiting for the city
20 to do whatever they need to do.

21 The other property he showed, go back to
22 there. That property is the property. It has three
23 units in it, plus a deck, and it bumps back fence to
24 fence, therefore casting a shadow on either side of

1 the neighbors on the neighbors' yards.

2 Mr. Edwards is working with me, trying to get
3 it so that we won't wholly be impacted. So, if you --
4 so, my concern is not to be so focused on the three
5 units as opposed to the structure itself and how it
6 impacts the other two structures.

7 He's trying to be a good neighbor. You know,
8 I didn't move into the neighborhood to be inundated
9 with single-family transient homes. I moved into a
10 family-friendly residence. And if this is what it's
11 going to take to get me there, continually, and I've
12 been in my house 20 years, I ask that you all pass
13 this.

14 CHAIRPERSON HILL: Okay. Thank you. Does the
15 Board have any questions for the witness?

16 [No audible response.]

17 CHAIRPERSON HILL: Okay. Is anyone else here
18 in support of the application?

19 Thank you.

20 Is anyone else here wishing to speak in
21 opposition?

22 [No audible response.]

23 CHAIRPERSON HILL: Okay. All right. Mr.
24 Heisey, do you -- is it Heisey? I'm sorry. Am I

1 pronouncing it right?

2 MR. HEISEY: Heisey.

3 CHAIRPERSON HILL: Heisey, Heisey. Sorry. Do
4 you have anything else to add?

5 MR. HEISEY: I mean, the most I can say is
6 yes, the third prong is the hardship. I mean, the
7 options are very limited. We've worked extensively
8 with the neighborhood to get their support on this and
9 this is what the neighborhood and we think are the
10 best development options for this site and for the
11 neighborhood. That's really all I'd like to leave you
12 with.

13 CHAIRPERSON HILL: Okay. Does the Board have
14 any other questions or comments?

15 Okay. All right. Then I'm going to -- oh,
16 sorry. Yes, please. Go ahead, Mr. Commissioner.

17 MR. HALPERN: Thank you. I just wanted to add
18 that we did not consider hardship when we were
19 deliberating within the ANC. This was not something
20 that was brought to us and so we would have had no
21 comment on it.

22 You know, we do believe that properties are
23 purchased with, you know, full understanding of what
24 the opportunities and constraints are, and do support

1 as much single-family housing as possible. And we
2 also don't want this to set a precedent so that it
3 becomes a lower bar for other people who want to build
4 things that are outside of the current zoning
5 regulations.

6 And so, the ANC support for this particular
7 project was predicated on the -- I'd hate to use the
8 term, lesser of two evils, but the -- what we thought
9 was best for the neighborhood given the cards that we
10 were given to play, and given the engagement process
11 that went on between the developer and the neighbors,
12 both adjacent and within the 200 feet.

13 CHAIRPERSON HILL: Okay. Great. Thank you.
14 So, since I let Mr. Halpern go, Mr. Heisey, do you
15 have anything else to add?

16 MR. HEISEY: Just to address the comment of
17 the purchaser buying it with the known options. This
18 property was purchased in April of '15, before the new
19 regulations, and those regulations were even amended
20 in August of '16 that again is what precluded our
21 original design, got held up in zoning as well. Thank
22 you.

23 CHAIRPERSON HILL: Okay, great. Thank you.

24 So, unless the Board has anything else? Okay,

1 I'm going to close the hearing. Is the Board ready to
2 deliberate?

3 Okay. Okay, I'm actually ready to deliberate
4 also so I can go ahead and start.

5 I am very sensitive to the ANC and what they
6 are trying to do with their community in terms of, you
7 know, what could be done by right versus what is
8 available and what is being presented to them. So, I
9 understand why they would be in that supporting
10 situation.

11 I'm also sensitive to the neighbor and how the
12 developer, or you know, the person who has decided to
13 try to work through this property. Unfortunately for
14 me, and I suspect it's for others here, I just can't
15 get past the, you know, what we are here to do, which
16 is to decide whether or not the variance passes the
17 three-prong test.

18 And as has been outlined within the Office of
19 Planning's report, I don't think that -- and the 900-
20 square feet by the way, I've never seen changed. And
21 in addition to the fact that the Office of Planning is
22 opposed to this variance for that reason, the
23 applicant themselves states that there is, you know,
24 six other homes that are on this row that would be

1 before us again if we were to grant this and then they
2 would say that you know -- I mean, it doesn't seem to
3 me that it even passes the uniqueness characteristics
4 of the standard.

5 So, that's where I am and I am in opposition.
6 And so, I'd wait to hear what other members from the
7 Board have to say if that would be changing my
8 opinion.

9 MR. MAY: Thank you, Mr. Chair. And so, I
10 would agree with you for all the reasons stated, so I
11 won't go into that in any greater detail.

12 I do think that you know, what we heard today
13 in the testimony of the ANC and the abutting neighbor
14 is a good rationale for waiving the extension to the
15 rear yard to go from 10 to 13 feet, if that's what --
16 I mean, I understand the argument that it's better to
17 be a little bit narrow and stick out a little further
18 and preserve that light well. So, that's an
19 understandable argument and that is an area where
20 there is, I think, greater flexibility to waive that
21 requirement.

22 But there's just no way that I can see this
23 getting over the 900-square foot minimum per unit.
24 So, if this were simply a request, I mean, if this --

1 if that request were dropped and we were back to you
2 know, the other relief that's requested, I mean, I
3 think the solar waiver is no longer needed because it
4 doesn't affect it, the modification to the dormer, I
5 think is acceptable as it is designed. And I think
6 even the waiver for the projection of the rear yard,
7 that might be fine. But I can't see granting the 900
8 feet.

9 CHAIRPERSON HILL: So, Commissioner May, what
10 I was -- when I was asking the Office of Planning
11 then, they said that if they didn't -- if we approved
12 the variance, then they would be approval of the
13 waivers. And so, where I'm confused, and I'd have to
14 maybe go back to the Office of Planning is that, that
15 same design, the design would have to be the same way
16 and then the Office of Planning would have to weigh in
17 as to whether or not they would approve those waivers?

18 MR. MAY: Well, certainly you know, I think
19 the simplest path forward for this in terms of, you
20 know -- we'll just do a little bit of a theoretical,
21 right? If the applicant were to drop the request for
22 three units and go back to two units, I think that
23 based on what we have in the record from the Office of
24 Planning not supporting the waiver, I think it becomes

1 a more complicated -- slightly more complicated
2 decision for us. I mean, you know, obviously they
3 didn't support the variance if that relief request
4 were withdrawn, then we're down to only the opposition
5 to the waiver for the rear projection.

6 If the Office of Planning were to work with
7 the applicant and come back to us and say, you know
8 what, on second thought in consideration of everything
9 else that occurred at the hearing, or any of their
10 information presented by the applicant, they would
11 support that waiver, then it was a very easy decision
12 for us to make and it's also a summary order.

13 But, I don't think that that's something that
14 could happen here and now.

15 CHAIRPERSON HILL: No, I understand. I don't
16 think it could happen here and now.

17 MR. MAY: Right.

18 CHAIRPERSON HILL: But we can go back to the
19 applicant in a second. But, Mr. Hart, have you
20 followed this conversation and do you have anything to
21 add in terms of that conversation?

22 MR. HART: No, I think everything has been
23 stated that I would have raised for the case.

24 Again, it gets -- I mean, I do have a hard

1 time with the three prongs. Or at least understanding
2 how this could -- this particular case can be approved
3 with that -- with not seeing how this is such an
4 exceptional situation, that it would be able to be --
5 we would be able to grant that approval.

6 So, because of that, then it becomes very
7 difficult to then say, I think we're not at a point
8 that we could actually approve it. We are -- we would
9 have to deny that portion of the application. I'm not
10 going to talk about the rest of it because I think
11 once we get to the variance then we have to see where
12 the applicant would be, you know, with the actual
13 project.

14 CHAIRPERSON HILL: Okay. And I just wanted to
15 ask again, the OAG there, just to make sure I'm
16 procedurally doing this correctly, if anything, just
17 let me know. I'm going to turn to the applicant here,
18 so what is I guess a possibility is that the variance
19 would be denied and then the -- you would have to go
20 back to work with the Office of Planning in terms of
21 if you were to pull the variance now, right, then you
22 could go back to work with the Office of Planning to
23 see if you could get those waivers that they already
24 say that they might be in approval of. I don't know

1 how the design would work. They'd have to take a look
2 at the design, make sure they're in acceptance of
3 that. And then you come back, I suppose, with just
4 the waivers.

5 Would you be interested in doing that?

6 MR. HEISEY: Could we request that the record
7 remain open as is and then we work with OP and come
8 back and either modify our request at the next
9 hearing?

10 MR. MAY: Mr. Chairman.

11 CHAIRPERSON HILL: Sure.

12 MR. MAY: Just suggest. I mean, I actually
13 think we don't have to vote on the variance at this
14 moment.

15 CHAIRPERSON HILL: Okay.

16 MR. MAY: And, you know, if the applicant
17 wants to reconsider what they're applying for I think
18 that would be perfectly fine.

19 CHAIRPERSON HILL: Okay.

20 MR. HEISEY: If it would give us some time to
21 perhaps look farther into the hardship or strengthen
22 the third prong of the variance request, or ultimately
23 perhaps, withdraw the request.

24 CHAIRPERSON HILL: Okay.

1 MR. HEISEY: If you could leave the record
2 open for us and then schedule another hearing?

3 CHAIRPERSON HILL: Okay. Mr. Moy, so we're
4 going to leave the record open, and we're going to
5 leave the record open just for the information
6 requested from the applicant. That was kind of a
7 question the way I said it, but it's more a statement.
8 One second, ma'am.

9 MR. HEISEY: If I know what I'm being asked,
10 yeah.

11 CHAIRPERSON HILL: Yeah, no. That's all
12 right.

13 Ms. Dedrick, you had a comment?

14 MS. DEDRICK: Yes. So, for me to understand
15 better, we're going to leave the -- you all are going
16 to leave the record open so that they can come back.
17 But in the result -- in the final thought process, if
18 you all deny the variance then the applicant has the
19 right to build fence to fence?

20 CHAIRPERSON HILL: No. If we deny the
21 variance, the applicant then has to go back again and
22 figure out what they want to do. And if they need a
23 variance then they'll be back before us. If they
24 don't need a variance and they want to build whatever

1 they can by right, then they won't be back before us.

2 MS. DEDRICK: The 10 feet is by right.

3 CHAIRPERSON HILL: If they decide to do the 10
4 feet by right, then that's what they'll do.

5 MS. DEDRICK: And that's fence to fence, not
6 leaving an open-air walk.

7 CHAIRPERSON HILL: Well, I don't know what's
8 going to happen yet because they still are looking for
9 waivers. And one of those waivers is for the solar
10 paneling. And so, they will still have to talk to you
11 about possibly getting your approval for the Office of
12 Planning to get a waiver for that. You'll still have
13 an opportunity to speak with them.

14 MS. DEDRICK: But I'm talking about the
15 structure of the building too.

16 CHAIRPERSON HILL: I understand what you're
17 talking about. And what I'm saying is, we can't get
18 past the variance.

19 MS. DEDRICK: Okay.

20 CHAIRPERSON HILL: Like, we can't approve
21 that.

22 MS. DEDRICK: Okay.

23 CHAIRPERSON HILL: It's not something that
24 we're going to be able to approve.

1 MS. DEDRICK: Okay.

2 CHAIRPERSON HILL: So now we're just working
3 from that point forward.

4 MS. DEDRICK: Okay.

5 CHAIRPERSON HILL: Okay?

6 MS. DEDRICK: All right.

7 CHAIRPERSON HILL: Thank you. All right. So,
8 we're going to leave the record open again, and I'm
9 going to leave the record open, actually, for anybody
10 -- well, the ANC, they can always submit something,
11 correct? So, I'm going to leave the record open also
12 for Ms. Dedrick if she'd like to submit something.
13 Okay?

14 And, as far as -- and I'm having such a hard
15 time, Mr. Heisey, Heisey.

16 MR. HEISEY: Joel.

17 CHAIRPERSON HILL: Joel. Okay, I'm going to
18 go with Joel, right. I'm having such a hard time. I
19 don't know. But Joel, the three-prong test, you're
20 having a tough time with. Okay? The 900 square feet
21 I've never seen them do. Okay?

22 MR. HEISEY: I understand.

23 CHAIRPERSON HILL: Okay. And so, you know --

24 MR. HEISEY: So, we'll look at that and --

1 CHAIRPERSON HILL: -- you might as well stop
2 wasting your time on that. Okay? In my opinion.
3 Okay?

4 So, Mr. Moy?

5 MR. MOY: Mr. Chairman, so I'm assuming
6 rightly or wrongly, this could possibly be a --

7 CHAIRPERSON HILL: It would be great while Mr.
8 May is back, maybe?

9 MR. MOY: Yeah. I'm assuming this would be a
10 continued hearing because of the continued discussion,
11 and Mr. May is back on March the 8th.

12 CHAIRPERSON HILL: Okay. Great. So, then we
13 need information from the applicant when, Mr. Moy?

14 MR. MOY: Let's see, March 8th. If the
15 Board's not -- if it's a continued hearing and the
16 Board is not asking for responses to the filing, then
17 I suppose the applicant can make their supplemental
18 filings by February the -- let's say February the --
19 could you do that, Monday, February 27th? Or is that
20 too soon?

21 MR. HEISEY: Two weeks. It really, if we can
22 get a meeting with OP fairly quickly, and resolve
23 things. It's difficult to get meetings with DCRA
24 anymore, so. If we can -- it really depends on my

1 being able to schedule a time --

2 CHAIRPERSON HILL: Maybe Office of Planning,
3 you can try to schedule something right after this
4 hearing? Okay. All right. So, that is good.

5 And which is the date again?

6 MR. MOY: For the applicant to file, Monday,
7 February the 27th. Continued hearing would be
8 Wednesday, March the 8th. If you need more time, you
9 know, if the Board is not asking for any responses
10 from anyone or --

11 CHAIRPERSON HILL: I just want --

12 MR. MOY: Unless we hear something from OP.

13 CHAIRPERSON HILL: Okay, yeah, I do want to
14 hear something from OP. All right. So, Office of
15 Planning will have to have to time to -- so that date
16 will probably be best so that it gives time for the
17 Office of Planning.

18 And then that means that you will add your
19 information to the record on the 23rd. Okay? I'm
20 sorry, 27th. Is that what you said? Sorry, 27th.

21 MR. MOY: It would be Monday, February 27th.

22 MR. HEISEY: At the hearing on March 8th.

23 MR. MOY: The hearing on March 8th, and OP
24 will have the opportunity to respond let's say a week

1 before the hearing.

2 CHAIRPERSON HILL: Okay. And --

3 MR. MOY: March 1st.

4 CHAIRPERSON HILL: Okay. And, Ms. Dedrick,
5 that means that the information is going to be in the
6 record on the 27th. Okay?

7 And then I --

8 MR. HEISEY: We'll be working with her anyway.

9 CHAIRPERSON HILL: Okay.

10 MR. HEISEY: During the process.

11 CHAIRPERSON HILL: And I'm going to leave the
12 record open again, for Ms. Dedrick, until March 1st,
13 which is the same day as Office of Planning.

14 MR. MOY: Yes.

15 CHAIRPERSON HILL: Okay? Okay. All right.
16 Does anyone have anything else?

17 MR. HALPERN: And it is true we can weigh in
18 at any point?

19 CHAIRPERSON HILL: I believe so. Yeah.
20 Right, Ms. Nagelhout? The ANC. The ANC is all
21 powerful, right?

22 MR. HALPERN: Okay. Not always listened to,
23 but -- oops.

24 CHAIRPERSON HILL: Okay. Yeah. So, then

1 that's it. So, we're done with you guys. Thanks so
2 much. And actually --

3 MR. MOY: I believe the next case application
4 before the Board is Application No. 19419 of Steven
5 and Jennifer Cummings as captioned and advertised for
6 special exception relief under Subtitle D, Section
7 5201, rear yard requirements of Subtitle D, 306.1, and
8 side yard requirements, Subtitle D, Section 307.1
9 which would allow the construction of a rear deck to
10 an existing one-family dwelling, R-1-B, at 3125
11 Worthington Street Northwest, Square 2357, Lot 35.

12 CHAIRPERSON HILL: All right. Give me one
13 second.

14 Okay. If you could please introduce yourself
15 for the record?

16 MR. WHITE: I'm Terrel White. I'm an agent
17 for the homeowner. Authorized agent.

18 CHAIRPERSON HILL: Okay. Mr. White, I don't
19 think I'm going to need a really extensive hearing
20 from you. But I did have a couple of questions, I
21 guess about there was some question in terms of the
22 Office of Planning had to whether or not the neighbor
23 to the northeast had been satisfied, was one question.

24 And then the other was just that there is a

1 six-foot privacy fence, which seems to be shown in
2 Exhibit 39. And so, just kind of, if you want to
3 speak to those two issues, Mr. Hart or Mr. May, do you
4 have anything else that you'd like to hear from?

5 Wait just one second.

6 MR. HART: No, I think I'm -- I agree, the
7 figuring out where we are with this, the privacy
8 fence, is helpful for the case.

9 CHAIRPERSON HILL: You can just go ahead and
10 start and then Mr. May, if he has any questions he'll
11 definitely let you know.

12 MR. WHITE: Well, I can see that. I was on
13 site trying to do some readjustments with the
14 homeowner to try to address the rear yard issue with
15 the rear facing neighbor, and they happened to be --

16 CHAIRPERSON HILL: Is that the northeast one?

17 MR. WHITE: Yes, 6608 31st Street. They're
18 directly behind the house. And they just happened to
19 be home that day and they came over and he sat down
20 with me and we worked it out and I had my design
21 program right there. And his big issue was really
22 just because of the way the deck was situated, it was
23 going to be about four or five feet higher than his
24 first floor. Their first-floor deck will be about

1 four or five feet higher than his first floor, and he
2 didn't want people looking from the deck down into his
3 living room window.

4 So, I proposed that we would put in, instead
5 of doing standard railing, we would do a six-foot
6 privacy railing and I built it into the 3-D design.
7 You can see it actually in his letter that he agreed
8 to.

9 And he asked me to extend it a little bit
10 more, a little bit more, and I got it to where he was
11 happy with it. And he goes, if you can do that I'm
12 all about big decks, you can go ahead and do it.

13 And so, I put the letter together and put the
14 3-D renderings of what the railing will now look like
15 in that section, and he gave his approval. I sent
16 that approval to ANC. They said okay. And I also
17 sent it to -- I think I sent it to OP as well.

18 CHAIRPERSON HILL: Okay. Great. All right.
19 Let's see, Mr. May, do you have anything specific,
20 perhaps?

21 MR. MAY: Yeah. So, I can't say that I love
22 this solution of putting in the big privacy fence on
23 top of a deck that's already fairly high up. I mean,
24 it seems to me that you know, there are ways to

1 reconfigure that deck to maintain the size.

2 I think there's -- I don't really have a
3 problem with the rear yard relief. I mean, that's
4 easily explainable. But the side yard relief, I mean,
5 you're getting very close there, and then, you know,
6 to build to that close and that high up, and then to
7 add six feet of height to it, it creates a mass and it
8 doesn't necessarily give the advantage even to the
9 applicant in terms of the deck, because you know,
10 you've got your -- yeah, you're outside, but you don't
11 get to see the, you know, the beautiful trees that
12 surround and all the neighboring properties and all
13 that sort of stuff.

14 So, what I'm wondering is whether you actually
15 tried to configure the deck in such a manner that it
16 didn't, you know, that it didn't project that far. I
17 mean, this is a big deck, undoubtedly. But, you know,
18 if you trimmed off just a few feet and you know,
19 pushed the barbeque grill in a little bit closer to
20 the door, you know, you probably could have gotten by.

21 MR. WHITE: Well, the issue I had, and
22 obviously dealing with homeowners, that you know, the
23 size that she was looking for, I didn't want to go to
24 the -- more towards the side yard because I was right

1 at the side yard setbacks at eight feet.

2 As far as --

3 MR. MAY: You mean the side yard on the other
4 side?

5 MR. WHITE: Yeah. On the other --

6 MR. MAY: Right. And I can understand that.
7 I wouldn't want you to go there either.

8 MR. WHITE: And then the thing you have to
9 understand is what you're looking at, and I don't know
10 if you can see it in the 3-D renders in the letter of
11 approval from the neighbor, is that in essence what
12 the neighbor is -- what the homeowner is looking at is
13 directly the side of the house, and the screen porch.

14 What the rear facing neighbor is looking at is
15 the back house of the neighboring, putting in
16 application. There's not any trees that are being
17 restricted or anything. All the neighbor wants to do
18 is he doesn't want people looking down from that deck
19 in his yard, and he just doesn't want to look up and
20 look up at people's, you know, midsections when he's
21 sitting in his living room.

22 So, the screen doesn't block line of sight to
23 anything else other than the two adjacent properties.

24 It doesn't restrict line of sight to trees on the

1 street to the right or you know, trees in the back
2 yard of even that adjacent neighbor. It's only
3 restricting the light and the -- not the light, the
4 line of sight from the rear of the house to the side
5 of the house, and from the side of the house to the
6 rear of the house.

7 MR. MAY: I'm trying to find that. The
8 exhibit that had the --

9 MR. WHITE: I can pull it.

10 MR. MAY: Thirty-nine.

11 MR. WHITE: I went ahead and took the
12 measurements of the rear house and put it in relation
13 to the existing house and was able to show him the
14 line of sight from both properties.

15 MR. MAY: All right. So, I mean, I understand
16 how you, you know, you designed the deck and now
17 you've designed a solution that addresses the
18 neighbor's problems. Neighbor's problem isn't
19 necessarily my problem. My issue is, which is a
20 little bit slightly different perspective on it, again
21 the question for me is, did you look at configuring
22 the deck to actually pull it back away?

23 MR. WHITE: Yes. Yes. Yes, we did.

24 MR. MAY: Okay. And so, what happened when

1 you did that?

2 MR. WHITE: It wasn't working with what she
3 was trying to get out of the area. The door that you
4 have coming out of the back of the yard, right there
5 where the main bump out that's the issue, that was the
6 issue with the neighbor, is where -- is her kitchen
7 and where she was setting the grill. And then the
8 sides you see that's bumped out on the right is where
9 the food and -- I mean, the eating and sitting area
10 is.

11 When you put that -- when we tried to bring
12 that back and basically brought the grill right into
13 your door. The door was opening right into the grill,
14 and we tried doing a slam --

15 MR. MAY: But I mean, it looks like there's at
16 least six or seven feet between the door and where the
17 grill is.

18 MR. WHITE: Yeah. Well, what I mean is the
19 neighbor's original request was to try to bring it
20 back to a six-foot deck. That's what he was
21 originally okay with. He was originally okay with a
22 six-foot deck in that area, then cutting through and
23 doing an abnormal slant all the way over to the larger
24 area.

1 MR. MAY: Right.

2 MR. WHITE: And then when I met with him I
3 said, well look, what is your concern? He's like, my
4 concern is you know, the line of sight and I was like,
5 well, the line of sight is not --

6 MR. MAY: Well, I mean, I think his solution
7 was -- I mean, I prefer his original solution which
8 was to push it back. I mean, whether it had to be six
9 feet to comply with the Zoning Regulations, I don't
10 know. But I mean, that's the sort of solution that
11 would have made more sense to me, to push it back.

12 Again, having that -- you know, it's going to
13 be fairly high off the ground in the back yard there,
14 right?

15 MR. WHITE: It's only eight feet off the
16 ground. It's just --

17 MR. MAY: Only eight feet.

18 MR. WHITE: Yeah, it's eight feet off the
19 ground.

20 MR. MAY: Eight feet is tall. Eight feet is a
21 story practically, right?

22 MR. WHITE: Yes. The basement --

23 MR. MAY: So, I mean, it's --

24 MR. WHITE: The basement is exposed on the

1 back side of the house, so --

2 MR. MAY: Right. Right. It slopes down, and
3 I presume the neighbor's yard slopes down as well,
4 right?

5 MR. WHITE: The neighbor's yard is basically
6 at the same grade as the rear yard.

7 MR. MAY: Is it -- yeah, right. So, it's also
8 lower, right?

9 MR. WHITE: Yeah.

10 MR. MAY: You're eight feet above. This deck
11 is eight feet above his yard.

12 MR. WHITE: Yes.

13 MR. MAY: Right. Yeah, and that's why, you
14 know, I would have preferred a different solution.

15 MR. WHITE: Well, he was the one that was okay
16 with it. He was like, look, I would prefer for them
17 to have a bigger deck. Can you come up with a
18 solution that will block my line of sight issue?

19 And I was like, this is what I can come up
20 with. He was the one that was actually pushing for it
21 to be okay with being a larger deck and that's --

22 MR. MAY: Okay.

23 MR. WHITE: -- what I got him to approve.

24 MR. MAY: Okay. All right. Thank you.

1 CHAIRPERSON HILL: Okay, Mr. May? I mean, Mr.
2 Hart.

3 MR. HART: Yeah, I understand the -- I guess I
4 was looking at the photographs on Exhibit 5.

5 MR. WHITE: Uh-huh.

6 MR. HART: And do you have a photograph of the
7 neighbor that is to the -- if you're looking at the
8 house, to the left of the house?

9 MR. WHITE: I don't have a photograph to the
10 left. I have a satellite view that you can see where
11 -- they have a large deck on the back of their house.
12 Basically, that's in line with the -- they actually
13 have a -- they have a rear porch addition, and then
14 they have a deck behind that on the back of the house.

15 MR. HART: Okay.

16 MR. WHITE: And I could load that up if you
17 wanted to see it.

18 MR. HART: No, I just was trying to figure out
19 what the -- what other --

20 MR. WHITE: Well, they're --

21 MR. HART: The plan that you provided didn't
22 really show a lot of the neighbor. Like where some of
23 the trees were, some of the neighbors. So, you could
24 kind of understand what some of the --

1 MR. WHITE: Yes.

2 MR. HART: -- trees that could shield, you
3 know, the other neighbors on either side from, you
4 know, from where this -- your deck is going to be.

5 MR. WHITE: Well, there actually is -- there
6 are trees on the neighbor's property between that --

7 MR. HART: I see some of them. That's why I
8 was saying, it's just harder to kind of visualize what
9 that was when you don't have an image.

10 MR. WHITE: The only -- the party privacy wall
11 that we're discussing, the privacy railing.

12 MR. HART: Yes.

13 MR. WHITE: Is actually --

14 MR. HART: On the back.

15 MR. WHITE: Yeah, when you're standing --

16 MR. HART: Yeah.

17 MR. WHITE: -- on the neighbor's deck, it
18 doesn't really block your line of sight because it's
19 perpendicular. It's not --

20 MR. HART: Yes.

21 MR. WHITE: Yeah. And so, they literally can
22 see right through to the street.

23 MR. HART: Oh, I know. Oh, I know. That part
24 I understood. I just was trying to figure out what

1 the -- if the person that was to the -- where the
2 stairs kind of go down, that neighbor.

3 MR. WHITE: Yes, that's what I'm talking
4 about.

5 MR. HART: Yeah, yeah.

6 MR. WHITE: Yeah, that neighbor can look
7 and --

8 MR. HART: Look directly at it, yes.

9 MR. WHITE: -- they'll see the privacy
10 screening would probably be about a two-foot
11 obstruction as far as they're concerned because it's
12 perpendicular.

13 MR. HART: Yeah. Yeah, they don't -- they're
14 looking down at it as opposed to looking at the wall.

15 MR. WHITE: Yeah.

16 MR. HART: Like the back neighbor would, does.
17 That's it. I understand that there's -- you know,
18 that the six-foot screen -- I mean, it just seems like
19 it's just going to be a fence, is somewhat high to
20 have someone, the back of somebody's house. But I
21 also understand that folks do like to have you know,
22 some privacy, and don't want to have --

23 MR. WHITE: That was his --

24 MR. HART: -- somebody playing and then --

1 MR. WHITE: That was his main request.

2 MR. HART: -- whatever, you know.

3 MR. WHITE: When I originally designed it, I
4 designed it literally just on the corner of the deck.
5 It was going to be four feet, four feet, and four
6 feet at a little, you know, a little wrap-around. He
7 was the one when we were out there at my program, he's
8 like, can you extend it down to the slant on the big
9 part of the deck?

10 I was like, yes. He's like, could you -- he
11 goes, but if I'm standing here I'll still be able to
12 see into my living room. Can you extend it on the big
13 slant as well? And I want to make sure that it can't
14 be -- you know, someone else can't remove it.

15 I was like, look, it will be permanently built
16 into the railing. In order for them to remove it we'd
17 have to get a new permit and get a new variance and
18 then the neighbor would still have to -- they'd still
19 have to get your approval.

20 So, his biggest issue was he didn't want
21 something put up that would block the line of sight
22 that could then be removed. And that was his main --
23 that was one of his big concerns.

24 CHAIRPERSON HILL: I don't know if you know

1 this, Mr. White, now I'm just curious. Do you know
2 how long that property owner has been there?

3 MR. WHITE: No. No, I don't. That, I don't.

4 CHAIRPERSON HILL: All right. I'm going to go
5 ahead, then, and turn to the Office of Planning,
6 unless the Board has any other questions. Office of
7 Planning?

8 MR. GOLDEN: Good afternoon. We are
9 recommending approval for this application, and are
10 satisfied that the applicant has worked with the
11 neighbor to address the issues that were raised.

12 Okay. Does the Board have any questions for
13 the Office of Planning?

14 Does the applicant have any questions for the
15 Office of Planning?

16 Okay. All right. Let's see. So, the issue
17 that I have a little bit in terms of before we can
18 even kind of get to a vote I suppose, is that we don't
19 have drawings that show what you are proposing. We
20 just have the 3-D rendering.

21 Mr. Moy, is that something that you guys would
22 like to see more -- or we would like to see more
23 specifics. Is that correct?

24 MR. MOY: Typically, Mr. Chairman, of course

1 the 3-D renderings are always welcome, but they should
2 be consistent with the submitted drawings, the site
3 plan, and elevation drawings, because they show
4 something different. So, if you can update that
5 section --

6 MR. WHITE: I certainly can. I just, this
7 neighborhood neighbor thing happened within the last
8 like two weeks. They were out of town for almost a
9 month, and I wasn't aware of the procedure how to --
10 this is my second one.

11 MR. MAY: I think all we need is what you
12 submit, what the neighbor submitted, which is just the
13 weird thing is that we got -- we have it on the
14 record, but we don't have it in the record from the
15 applicant, we have it from the neighbor.

16 MR. MOY: Correct.

17 MR. WHITE: Well, yeah, actually then the
18 neighbor sent it to me and then I uploaded it on to
19 the site, but --

20 MR. MAY: Well, in any case, it's showing up
21 as a submission from the neighbor, not a submission
22 from you.

23 MR. WHITE: Okay.

24 MR. MAY: So, I mean, maybe it's a matter of,

1 you know, resubmitting the same thing coming from you.

2 MR. WHITE: I mean, it literally doesn't
3 change the footprint of it. It's literally just a --

4 MR. MAY: It's not a matter of the substance,
5 it's just a matter of, you know, having the right
6 submission in the record.

7 MR. WHITE: Okay. I can, I can --

8 CHAIRPERSON HILL: Yeah, no, that's great.
9 So, Mr. White, so I just want to be clear so you know
10 what we need, Mr. Moy?

11 MR. MOY: Yes, I know what we need and if --

12 MR. WHITE: Updated elevations.

13 MR. MOY: -- Mr. White needs --

14 CHAIRPERSON HILL: Updated elevations.

15 MR. MOY: -- clear, then talk to me afterwards
16 or call me.

17 MR. WHITE: You want updated elevations and
18 top views showing the location of the privacy screen.

19 MR. MOY: That's right, and the side view so
20 we have an understanding in the record the height of
21 the railing and so on and so forth.

22 MR. WHITE: Okay.

23 CHAIRPERSON HILL: Okay. So, I'm going to --
24 does the Board have any other questions for the

1 applicant?

2 [No audible response.]

3 CHAIRPERSON HILL: Okay. I'm going to turn
4 now to the audience. Is there anyone here from the
5 ANC?

6 [No audible response.]

7 CHAIRPERSON HILL: Is there anyone here
8 wishing to speak in support of the application? Is
9 there anyone here wishing to speak in opposition to
10 the application? All right.

11 Then, I'm going to turn back to the applicant.
12 You don't have anything else to add, correct?

13 MR. WHITE: No.

14 CHAIRPERSON HILL: Okay. Then, I'm going to
15 close the hear -- yeah, I'm going to close the hearing
16 but we are going to have to wait until we can vote on
17 this because we have to see, we have to get the record
18 straight, right? So, we can vote on this next week.
19 And so, if you can go ahead and submit what you need
20 to submit, Mr. Moy by when?

21 MR. MOY: If, assuming that the Board is going
22 to set this for a decision meeting, next Wednesday, if
23 you can submit the revised drawings and plans by this
24 Friday? Is that possible?

1 CHAIRPERSON HILL: Can I interrupt you just
2 one second?

3 Mr. May, Commissioner May has pointed out a
4 very generous idea, which is that if you can get this
5 done before the end of the day, because we're going to
6 be here a long time, then we can go ahead and come
7 back and just vote on this today.

8 MR. WHITE: [Speaking off microphone.]

9 CHAIRPERSON HILL: Okay, there you go. So, we
10 are going to go to lunch after this, actually, for
11 everyone who is here. And so --

12 MR. WHITE: I'm the next case.

13 CHAIRPERSON HILL: Pardon me?

14 MR. WHITE: And I'm the next case.

15 CHAIRPERSON HILL: Oh, well, that's -- there
16 you go.

17 So, if you can go ahead and do that then we'll
18 go ahead and take care of that. I am going to close
19 this hearing, though, at this point. Okay? And then
20 I don't know -- so we're going to just take 20 minutes
21 for lunch. And so, that's because we're going to be
22 here a really long time.

23 And, I don't know if you all have noticed,
24 like you all are on this side of the room. So like,

1 there's like brides and grooms. Like, you all can mix
2 it up if you want. You know. Okay.

3 MR. WHITE: So, when I submitted it in the
4 next 20 minutes will it show up immediately or --

5 CHAIRPERSON HILL: Well, that I don't know
6 whether -- oh, I don't know --

7 MR. MOY: If you submit it into IZIS.

8 MR. WHITE: Yes.

9 MR. MOY: It's --

10 CHAIRPERSON HILL: Why don't you just talk to
11 Mr. Moy right after this, okay? And then, so -- okay.
12 So, we're going to come back here in about 20 minutes
13 or so. Thank you all very much.

14 [Luncheon recess from 12:38 p.m. to 1:16 p.m.]

15 CHAIRPERSON HILL: Mr. Moy, can we come back
16 to order here?

17 MR. MOY: Yes, sir. We're, I believe,
18 returning to Application No. 19419 of Stephen and
19 Jennifer Cummings.

20 CHAIRPERSON HILL: Okay, great. Yeah. And
21 just, let's see, for the record again, what I had done
22 previously was we had gone through the entire hearing,
23 asked for the ANC opposition, and also support, and
24 had closed that hearing, except for information from

1 the applicant to clarify the drawings concerning the
2 deck. All right, Mr. Moy?

3 MR. MOY: Yes.

4 CHAIRPERSON HILL: Okay. And, so just again
5 for the record, if you wouldn't mind stating your
6 name? You need to push the button.

7 MR. WHITE: Terrel White.

8 CHAIRPERSON HILL: Okay.

9 MR. WHITE: Agent for the owner.

10 CHAIRPERSON HILL: Mr. White, I forget, did
11 you get sworn in earlier?

12 MR. WHITE: Yes.

13 CHAIRPERSON HILL: Okay. And you gave the
14 witness cards to --

15 MR. WHITE: Yes.

16 CHAIRPERSON HILL: Okay, great. Wonderful.
17 All right. Well, I see the drawings that you now have
18 submitted for Steven and Jennifer Cummings, 19419.
19 Does the Board -- is the Board satisfied with those?

20 Okay, I'm also satisfied with those. So, then
21 I would then just again turn back to the applicant.
22 Do you have anything further you'd like to add?

23 Then, I will again now close the hearing. Is
24 the Board ready to deliberate? Okay. All right.

1 Yeah, I mean, I think that the fact that the
2 applicant has worked with the neighbor, which was what
3 the Office of Planning was initially most concerned
4 about, and then about the actually seeing the six-foot
5 privacy fence. I understand, you know, Mr. May, some
6 of your concerns about the fence itself. I don't
7 necessarily know whether I would have been in
8 agreement if I were the neighbor, but that's not my
9 place.

10 I do, however, think that based upon the
11 report and the recommendations from the Office of
12 Planning that this meets the criteria for the special
13 exception. So, I would be -- as well as the fact that
14 the ANC 3G is in approval from four -- with a vote of
15 four to zero, and that DDOT has no objections, as well
16 as again, letters of support from 3130 Worthington
17 Street, as well as 606 31st Place. I would be
18 comfortable moving forward with approving this.

19 Does anyone have anything else to add?

20 MR. MAY: Mr. Chairman, you know, I can't say
21 that I love this particular solution, but it's not
22 enough -- my objections are not so strong that I would
23 vote against it. So, I won't go -- I think I can
24 support it.

1 CHAIRPERSON HILL: Okay. That's great,
2 because we need three.

3 So, I'm going to make a motion to approve
4 Application No. 19419 as read by the secretary.

5 MR. HART: Seconded.

6 CHAIRPERSON HILL: Motion has been made and
7 seconded.

8 [Vote taken.]

9 CHAIRPERSON HILL: The motion passes.

10 MR. MOY: Staff would record the vote as
11 three, to zero, to two. This is on the motion of
12 Chairman Hill to approve the application for the
13 relief being requested. Seconding the motion, Mr.
14 Hart. Also in support, Mr. Peter May. And for the
15 record, the revised drawings and plans are under
16 Exhibit 44, for the record. Motion carries, sir.

17 CHAIRPERSON HILL: Thank you. Summary order,
18 Mr. Moy.

19 MR. MOY: Yes, thank you.

20 MR. WHITE: You say summary order?

21 CHAIRPERSON HILL: Yes, I did.

22 MR. MOY: Okay, Mr. Chairman, the next
23 application should be Application No. 19420 of Steven
24 and Stephanie, is that pronounced Hoehn? Hoehn. Oh,

1 okay. As in Star Wars. All right. Thank you.

2 So, as captioned and advertised for special
3 exception under --

4 CHAIRPERSON HILL: Hoehn.

5 MR. MOY: Hoehn? Okay. Subtitle D, Section
6 5201, lot occupancy requirements of Subtitle D, 304.1,
7 rear yard requirements of Subtitle D, Section 306.2,
8 and side yard requirements, Subtitle D, Section 307.1.
9 This would replace a rear deck to an existing one-
10 family dwelling R-2 Zone, 720 Tewkesbury Place
11 Northwest, Square 3163, Lot 31.

12 MR. WHITE: Can I make a correction? It's not
13 replacing a deck. It's actually a side landing and
14 steps. There was no rear deck on the house initially.

15 CHAIRPERSON HILL: Mr. Moy, is that all right?

16 MR. MOY: Yes, he's amending the caption.

17 CHAIRPERSON HILL: Okay, great.

18 MR. MOY: The applicant.

19 CHAIRPERSON HILL: Thank you. Could you
20 please introduce yourself?

21 MR. WHITE: Terrel White, agent for the owner.

22 CHAIRPERSON HILL: Great. Okay. Mr. White, I
23 again in this particular instance, don't have a lot of
24 questions. I did, obviously, we all have reviewed the

1 record. There was, and maybe this was part of the
2 amendment but I don't think so, there was something
3 about the Office of Planning had recommended
4 additional relief from C-202.2, are you aware of this?
5 No?

6 MR. WHITE: No, I'm not.

7 CHAIRPERSON HILL: Okay. Then we can kind of
8 get to that when we get to that with the Office of
9 Planning.

10 Outside of that I actually am interested, I
11 suppose, in just kind of a high-level review as to
12 your case there, and if you could just kind of tell us
13 a little about the project. I don't know if anyone
14 else on the Board specifically has something that
15 they'd like to hear about. Please.

16 MR. MAY: Yes, I did have one question which
17 had to do with the rear yard relief because there
18 seems, I'm seeing some contradictory information in
19 the case having to do with the existing depth of the
20 rear yard. There's an indication that the existing
21 rear yard would drop from 32 feet to 13, implying that
22 the deck was 19 feet deep. But the plans show the
23 deck as 12 feet deep. So, if you can sort of clarify
24 what the depth of the yard is, and, you know, in the

1 course of doing whatever your presentation is. Just
2 clarify for me the existing rear yard depth and the
3 depth of deck.

4 MR. WHITE: I believe it might be a typo. The
5 depth of the deck is, I believe, 12 feet.

6 MR. MAY: Right.

7 MR. WHITE: And the yard is 32. So, we're
8 reducing --

9 MR. MAY: So, you would still have a 20-foot
10 rear yard?

11 MR. WHITE: I think it was a -- I thought 25
12 was their restriction.

13 MR. MAY: Yeah. In any case --

14 MR. WHITE: Yeah, it would still, it would
15 still --

16 MR. MAY: -- if would be, you would need 20.
17 There was an implication that it was dropping to 13.

18 MR. WHITE: No.

19 MR. MAY: Okay.

20 MR. WHITE: No.

21 CHAIRPERSON HILL: Okay. So, just go ahead
22 and walk us through that, Mr. White, your presentation
23 here, and then address the question that Mr. May had.

24 MR. WHITE: The homeowners are just asking

1 for, you know, the relief from the setbacks because
2 they're trying to have a rear deck on the back of
3 their property like some of the neighbors have. They
4 have an existing egress on the side of the house where
5 the existing landing and overhead roof is at, and then
6 there's steps coming down into the back yard. They'd
7 like to remove that landing and steps and make it a
8 walkway to a rear deck off the back of the house.
9 They don't have the set up as far as the kitchen is
10 concerned to try to cut through the back of the house
11 and put a door directly on the back, so that's why
12 it's impinging on the side yard, because a landing and
13 steps can impinge on a side yard, but a deck can't.

14 So, the zoning classified that as a deck once
15 it got attached to what was on the rear. And, they're
16 basically, that's what they're looking for.

17 CHAIRPERSON HILL: Okay.

18 MR. WHITE: And I do have some pictures of
19 neighboring properties within the immediate vicinity
20 that have decks of the same size if --

21 CHAIRPERSON HILL: You can throw those up if
22 you want. Thank you.

23 MR. WHITE: Those are, the top two are on the
24 same street. And then the bottom one is on the

1 adjoining street, the cross-street, actually, 8th, I
2 believe. And then the other one is on the street
3 parallel to Tewksbury. The one on the bottom right.

4 CHAIRPERSON HILL: Okay, great. Mr. Hart, do
5 you have anything else? I'm sorry.

6 MR. WHITE: And the one on the top left is
7 actually two houses down from -- is like two duplexes
8 down from this duplex.

9 CHAIRPERSON HILL: On the same side?

10 MR. WHITE: Yeah. On the same side of the
11 street. It's same street, same side.

12 MR. HART: Did any of these require any
13 relief, zoning relief?

14 MR. WHITE: I am not aware.

15 MR. HART: I just didn't know if you knew.

16 MR. WHITE: Yeah, I didn't ask the homeowners.
17 I went and took pictures of the neighborhood.

18 CHAIRPERSON HILL: Okay. I'm going to --
19 unless anybody has any questions for the applicant, at
20 this moment I'm going to turn to the Office of
21 Planning.

22 MR. MAY: Well, just one thing.

23 CHAIRPERSON HILL: Sure.

24 MR. MAY: Can you say again what you said

1 about the kitchen? I mean, it's not possible to
2 reconfigure the kitchen to come out the back wall as
3 opposed to the deck.

4 MR. WHITE: Yeah, all of the duplexes have
5 side egresses at the rear back of the house.

6 MR. MAY: Yeah.

7 MR. WHITE: And then they have landings and
8 steps coming down.

9 The reason why they're asking for -- we're
10 asking for a side setback relief is we want to
11 maintain that step down.

12 MR. MAY: No, I understand why you want to,
13 but another solution could be for you to put in a new
14 door --

15 MR. WHITE: Yeah.

16 MR. MAY: -- on the back wall. Tell us why
17 that's not possible.

18 MR. WHITE: The kitchen sink and -- the
19 kitchen sink and refrigerator are right there, and
20 they're not looking to redesign the --

21 MR. MAY: I understand.

22 MR. WHITE: -- whole kitchen.

23 MR. MAY: Okay.

24 CHAIRPERSON HILL: Okay. I did have a -- so,

1 you went through the ANC, right? So, how did that go?

2 It was just a quick presentation?

3 MR. WHITE: The ANC went well. I actually
4 didn't do the presentation, the homeowners did. The
5 ANC presentation went well. The only, I wouldn't say
6 necessarily a hang up, but then some people here at
7 BZA said that's very common, the neighbors were okay
8 with it. There's actually a letter, there was an e-
9 mail from the ANC saying they had spoken to both the
10 neighbors and they were okay with it, but neither one
11 of them was willing to sign anything. They didn't
12 like to sign stuff.

13 CHAIRPERSON HILL: Right. Right. Sure.
14 Okay, I understand.

15 MR. WHITE: That was the issue.

16 CHAIRPERSON HILL: Sure. Okay. All right,
17 I'm going to turn to the Office of Planning.

18 MR. JESICK: Thank you, Mr. Chairman and
19 members of the Board. My name is Matt Jesick. The
20 Office of Planning is supportive of the application
21 and recommends approval regarding the additional area
22 of relief that is more of a, I don't want to call it a
23 technicality, but a smaller relief. Just because the
24 existing house is nonconforming. The existing side

1 yard is less than eight feet, so in order to make an
2 addition to a nonconforming house you need to get
3 relief under Subtitle C, Section 202, which is very
4 common.

5 Regarding the rear yard, the DCRA tabulation
6 sheet, which accompanied the application, noted that
7 the rear yard would be 13 feet. I think what happened
8 there was they were counting the deck, as well as part
9 of the stair leading up to the deck. So, once you
10 subtract out all of that, you're left with 13 feet.

11 But we did not find any issue with --

12 MR. WHITE: Yeah, that may be.

13 MR. MAY: Yeah, I'm confused by that.

14 MR. WHITE: The deck comes across --

15 CHAIRPERSON HILL: Excuse me. That's okay.

16 That's all right, Mr. White.

17 MR. MAY: Let him.

18 CHAIRPERSON HILL: Thank you.

19 MR. WHITE: Sorry.

20 MR. MAY: Go ahead.

21 MR. JESICK: Okay. So, the deck as was
22 stated, is about 12 feet deep.

23 MR. MAY: Right.

24 MR. JESICK: The total stair is also around 12

1 feet, I believe.

2 MR. MAY: Oh, I see, because it has to do with
3 how far it extends out into the yard.

4 MR. JESICK: That's correct. And well, how
5 high it is above grade too.

6 MR. MAY: Right.

7 MR. JESICK: So, once you get above four feet
8 in grade --

9 MR. MAY: Yes.

10 MR. JESICK: And add in that portion of the
11 stair --

12 MR. MAY: Got it.

13 MR. JESICK: -- plus the deck, you get down to
14 13.

15 MR. MAY: So, there's not -- there's seven
16 feet of stair that's above four feet in height, within
17 the rear yard?

18 MR. JESICK: That was the way we interpreted
19 their calculation. Yes.

20 MR. MAY: Wow. Okay. I mean, but if that
21 stair had actually come from a landing at the back of
22 the house, it wouldn't have counted.

23 MR. JESICK: That's correct.

24 MR. MAY: Because it's coming off of a deck,

1 it counts?

2 MR. JESICK: That's correct.

3 MR. MAY: Okay. Now I understand.

4 CHAIRPERSON HILL: Okay. Does anyone have
5 more questions for the Office of Zoning? I mean
6 not -- Office of Planning? No? Okay.

7 Mr. White, are you aware -- so, the Office of
8 Planning is recommending relief from C-202.2. Are you
9 amending -- you can further clarify, they, the Office
10 of Planning are recommending and approving that if you
11 would amend your application to that. They think you
12 need that for the permit.

13 MR. WHITE: Not quite sure I understand
14 what --

15 CHAIRPERSON HILL: Okay. That's all right.
16 So, you can ask Office of Planning maybe to clarify
17 what they think you need. They're giving it to you.

18 MR. WHITE: Sure.

19 CHAIRPERSON HILL: If you say yes.

20 MR. JESICK: It's just a small matter, when
21 you're making an addition to a nonconforming structure
22 such as this one, you also need to ask for this
23 additional area of relief.

24 MR. WHITE: I'm fine with that.

1 CHAIRPERSON HILL: Yeah, I should clarify
2 again, they're supporting it. We're the ones that
3 actually approve. So, okay, you're fine with that.
4 Okay, good. All right.

5 So, does anyone have any other questions for
6 the applicant? All right.

7 Is anyone here -- you don't have any more
8 questions for the Office of Planning? Okay.

9 Is anyone here from the ANC?

10 [No audible response.]

11 CHAIRPERSON HILL: Is there anyone here
12 wishing to speak in support of the application?

13 [No audible response.]

14 CHAIRPERSON HILL: Is anyone here wishing to
15 speak in opposition of the application?

16 [No audible response.]

17 CHAIRPERSON HILL: Okay. Then with that, I'm
18 going to go ahead and turn it back to you, Mr. White.
19 Do you have anything further you'd like to add?

20 MR. WHITE: No, I don't.

21 CHAIRPERSON HILL: Okay. All right. Then I'm
22 going to go ahead and close the hearing. Is the Board
23 ready to deliberate? Would someone else like to start
24 the deliberations?

1 MR. HART: Yeah, Mr. Chair, I think we've
2 heard quite a bit of -- well, the information that you
3 provided and read through the record, understanding
4 what was being proposed, looking at the OP report
5 regarding the relief requested. I think the OP report
6 kind of does a good job of summing up what it is
7 that's necessary. I will be supportive of the
8 application, which is 19420, and would like to make a
9 motion to approve that application.

10 CHAIRPERSON HILL: I second that motion.

11 The motion has been made and seconded.

12 [Vote taken.]

13 CHAIRPERSON HILL: The motion passes. Mr.
14 Moy.

15 MR. MOY: Staff would record the vote as
16 three, to zero, to two. This is on the motion of Mr.
17 Hart to approve the application for the relief
18 requested, as well as your amendment to add
19 nonconforming provisions under Subtitle C, Section
20 202.2. Seconded the motion, Chairman Hill, also in
21 support, Mr. Peter May. Two seats vacant. Motion
22 carries, sir.

23 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.
24 Summary order.

1 MR. MOY: Yes.

2 CHAIRPERSON HILL: Thank you. Mr. White,
3 you're better at this than some of the attorneys.

4 MR. WHITE: And I don't talk as long.

5 CHAIRPERSON HILL: Thank you.

6 MR. MOY: The next case application before the
7 Board, if I can have parties to the table to
8 Application No. 18690-A of Rito Loco, LLC. This was
9 captioned and advertised for a special exception
10 relief under the requirements of Subtitle C, Section
11 1500.3(c), variances from the lot occupancy
12 requirements of Subtitle G, Section 404.1, rear yard
13 requirements, Subtitle G, Section 405, side yard
14 requirements, Subtitle G, Section 406.2, rear yard
15 service staircase requirements, Subtitle X, 1001.2.
16 This is a proposal to construct a roof deck above an
17 existing fast food establishment, MU-4 Zone, 606
18 Florida Avenue Northwest, Square 441, Lots 819, 837,
19 and 838.

20 And these are the -- well, I'll leave it at
21 that.

22 CHAIRPERSON HILL: Okay. Great. Thank you,
23 Mr. Moy. If you could please introduce yourself from
24 my right to left?

1 MR. BROWN: Tony Brown, ANC 6E.

2 CHAIRPERSON HILL: Brown? Is that correct?

3 MR. BROWN: Yes.

4 CHAIRPERSON HILL: Thank you.

5 MR. LAWRENCE: Stephen Lawrence, owner, 606
6 Florida Avenue.

7 MR. DIAZ: Daniel Diaz, co-owner Rito Loco.

8 MS. MORRIS: Emily Morris, counsel for the
9 applicant.

10 MR. HANKINS: Louie Hankins, co-owner Rito
11 Loco.

12 CHAIRPERSON HILL: Could you say your name
13 again?

14 MR. HANKINS: Louie Hankins.

15 CHAIRPERSON HILL: Hankins?

16 MR. HANKINS: Yes, sir.

17 CHAIRPERSON HILL: Okay, great. So, Ms.
18 Morris, I assume you're going to be presenting with us
19 today?

20 MS. MORRIS: Yes.

21 CHAIRPERSON HILL: Okay. So, there was some
22 kind of confusion, I suppose, that we're trying to
23 figure out a lot of, in that it's a little unclear as
24 to -- there's quite a few lots, right? There's 838,

1 819, 837. And I guess kind of -- and as you go
2 through your presentation, but we were a little
3 confused as to what exact -- or I was a little
4 confused as to what exactly was being proposed on each
5 lot and the specific relief that was being asked for.

6 And so, as you can kind of go through that.
7 And then there was some questions as to whether it was
8 captioned properly or advertised properly. And I am
9 going to ask the Office of the Attorney General, Ms.
10 Nagelhout, to help me work through this as we kind of
11 do, if there's any other questions.

12 But I guess to begin with, as you're going
13 through your presentation, again clarifying which
14 relief is being asked for in which lot, and that's
15 where I kind of want to start. Does anyone have
16 anything else to add before they begin?

17 [No audible response.]

18 CHAIRPERSON HILL: Okay. So, that's what
19 would be great.

20 MS. MORRIS: So, there are three --

21 CHAIRPERSON HILL: And before you start, I'm
22 sorry, I've actually got to put a clock on you. Do
23 you know how much time you might need?

24 MS. MORRIS: I am hoping less than like five

1 minutes.

2 CHAIRPERSON HILL: Okay, great. We'll give
3 you -- throw that up there. Thank you.

4 MS. MORRIS: So, just to start, so it's a
5 block of three lots that are all owned by Mr.
6 Lawrence, who is here with us today. He's the owner
7 of all three lots.

8 Rito Loco is the tenant of the middle lot,
9 which is 838. And so, 838 is a building that's
10 attached to 837 -- no, 819. So, 838 and 819 are
11 attached to each other. They're adjoined buildings.
12 Then there's an alley, and then there's -- no, I'm
13 sorry, there's an open space and then there is 837,
14 which is a stand-alone structure.

15 And so, they're seeking to build a roof deck
16 on top of -- mainly on top of 838, that extends over
17 to 819, but they need access through 837 to get to the
18 roof deck because it's such a narrow lot. There is --
19 it's built to the lot lines on either side.

20 CHAIRPERSON HILL: Can you show me that
21 somewhere?

22 MS. MORRIS: I apologize for not -- I can
23 point to you where in the record is it.

24 CHAIRPERSON HILL: Okay.

1 MS. MORRIS: I should have brought my
2 computer. If you look at Exhibit 19 -- I'm sorry,
3 Exhibit 49, I believe, that there is a plat. I
4 apologize, for one second.

5 CHAIRPERSON HILL: That's all right. I'm
6 trying to get there too.

7 MS. MORRIS: It's actually, it's in --
8 [Pause.]

9 MS. MORRIS: I believe it's probably in
10 Exhibit --

11 CHAIRPERSON HILL: Is it in 49 in your
12 supplemental statement?

13 MS. MORRIS: I think so. I thought it was.
14 One second. I apologize.

15 CHAIRPERSON HILL: That's all right. It looks
16 like the surveyor's plat is in No. 5.

17 MS. MORRIS: Yeah. But I don't think the
18 surveyor plat has what the different lots are. That's
19 just the surveyor plat for the actual lot itself.

20 CHAIRPERSON HILL: Okay. That's all right.
21 Just walk me through it again. You said that the roof
22 deck is on 838, and then 839 is attached. I was a
23 little confused because 837, you said, there's a gap.

24 MS. MORRIS: There is a side yard that's on

1 837, that separates the structure that is on 837 from
2 the structure that's on 838.

3 CHAIRPERSON HILL: Oh, okay. Okay, we've got
4 it.

5 MS. MORRIS: Yeah. So, they're building a
6 structure -- most of the roof deck is going to be on
7 838, but extends on to 819, a portion of it.

8 CHAIRPERSON HILL: Okay.

9 MS. MORRIS: So, that's why 819 was included.
10 Originally, when the applicant was filed it was filed
11 by the Rito Loco and then I came in later and we've
12 had to kind of rejigger it, which is part of the
13 reason the record is a little bit less clear than it
14 should be.

15 MR. HART: And do you have two different
16 access points, stairs?

17 MS. MORRIS: So, there are two stairs. One is
18 on the side yard, which is the public entrance that
19 will come off of Florida Avenue. And the other one is
20 -- goes through the back of 837, basically to allow
21 trash removal, and also, it's the service exit, so
22 they can go out down to the kitchen to bring the food
23 up. So, it's not a public access in the back. That's
24 why there are two stair cases. And fire egress as

1 well.

2 MR. HART: Probably for fire access. Fire
3 egress.

4 MS. MORRIS: Yes, of course. Egress. And
5 it's mostly for service egress, but it's not open to
6 the public and there is going to be a gate that
7 prevents people from coming in the back of 837, which
8 is already existing, currently.

9 MR. HART: And both stairs are actually
10 accessed from 837.

11 MS. MORRIS: No, actually the -- yes. Yes,
12 they are. Yes, they are both on 837.

13 MR. HART: Just looking at the drawings you
14 will --

15 MS. MORRIS: Yes, exactly. They are both.
16 I'm sorry, I thought you meant from the public point.
17 It comes from, basically --

18 MR. HART: No, no, it's just that there --
19 it's just like there's one stair kind of looks like
20 they're perpendicular to each other. One comes down
21 along the, kind of parallel to 838, and then one is
22 kind of, I don't know, perpendicular to it on the
23 back.

24 MS. MORRIS: Yes.

1 MR. MAY: Just to be clear, the food service
2 will be coming up that stair to the rear of the
3 property.

4 MS. MORRIS: That's right.

5 MR. MAY: So, they'll be coming out of the
6 building below, walking out to where the stair starts,
7 and then walking up a flight and a half of stairs?

8 MS. MORRIS: Uh-huh. Yes.

9 CHAIRPERSON HILL: Okay. And okay, please go
10 ahead and continue. And then also, we still don't
11 have an ANC report. Is that correct?

12 MS. MORRIS: Actually, the ANC report was
13 filed two days ago.

14 CHAIRPERSON HILL: Oh, wait a minute. I do
15 see it now.

16 MS. MORRIS: So, and they're in support of the
17 application, as are all of the neighbors that are on
18 the east and the west side, the tenants of Mr.
19 Lawrence have all submitted --

20 CHAIRPERSON HILL: Okay.

21 MS. MORRIS: -- letters of support.

22 The building to the rear is a four-story
23 building. I think it was incorrectly stated as a six-
24 story building, but it's a four-story condo building.

1 I can have Mr. Hankins speak to the conversations
2 he's had with those neighbors. But the one that has
3 filed an opposition is not directly impacted. We just
4 think that they don't like having roof decks.

5 CHAIRPERSON HILL: Okay. Well, we can hear
6 from them if they're here.

7 Okay. And then just, there was one condition
8 from the Office of Planning concerning an easement?

9 MS. MORRIS: Yes, and it was recorded --
10 actually, it was drafted and signed before in October,
11 and it was recorded in January, and the Recorder of
12 Deeds is in compliance with the OP request.

13 CHAIRPERSON HILL: Okay.

14 MS. MORRIS: And that was attached to the
15 report. The January 18th submittal to the Board.

16 CHAIRPERSON HILL: Okay. Does the Board have
17 any questions from the applicant at this time?

18 [No audible response.]

19 CHAIRPERSON HILL: Okay. Then, if it's all
20 right with you, I'm going to turn to the Office of
21 Planning.

22 MR. MORDFIN: Good afternoon, I'm Stephen
23 Mordfin. And the Office of Planning supports this
24 application subject to the one condition that the

1 applicant has indicated that has now been met, and is
2 available for questions.

3 CHAIRPERSON HILL: Okay. So, Mr. Mordfin, as
4 far as what was initially a bit of confusion for me
5 concerning all the different lots, I mean, the Office
6 of Planning is comfortable with the way this
7 application was presented.

8 MR. MORDFIN: Yeah. It's a lot of different
9 pieces. It's four buildings on three lots, which is
10 part of the confusion, I think, also, and a couple of
11 different -- several different uses. But it's all
12 under one ownership and from my understanding it does
13 make sense. Do you have any specific questions?

14 CHAIRPERSON HILL: Okay. Does anyone have any
15 questions for the Office of Planning?

16 Okay. Does the applicant have any questions
17 for the Office of Planning?

18 MS. MORRIS: No.

19 CHAIRPERSON HILL: All right. Well, with that
20 then I'm going to go ahead and turn now to the
21 audience here. I know that there's someone here from
22 the ANC, which is great. Is there anyone else, just
23 kind of curiosity, is there anyone else here from the
24 ANC?

1 No. All right. So, Mr. Brown again. So, Mr.
2 Brown, I don't know how long you have to testify or if
3 you'd like to. I'm going to give you five minutes
4 just because that's what the ANC is allowed to have.
5 But please, just go ahead and tell me whatever -- tell
6 us whatever you'd like to share.

7 MR. BROWN: Thank you, Chair. I've been
8 working with the ANC, particularly the Zoning
9 Committee, for about three years now. During that
10 time this project has come up, and we've met on
11 several occasions and they've worked very closely with
12 the neighborhood on trying to achieve their goals as
13 well as to get the concurrence of the neighborhood.

14 I think everybody that I've spoken to are
15 basically in agreement with the project. I think I
16 just had one person that had an issue, and I think
17 we've talked about that several times. And sometimes
18 you just can't please everyone. But I think the vast
19 majority approves of this project and we, as the ANC
20 6E, support it.

21 CHAIRPERSON HILL: Okay, great. Commissioner
22 Brown, are you the SMD?

23 MR. BROWN: Yes, I am.

24 CHAIRPERSON HILL: Okay.

1 MR. BROWN: 02.

2 CHAIRPERSON HILL: Okay. That's great. Well,
3 that's very kind of you to come down here and spend
4 this much time with the applicant. I hope they
5 understand how much time you spent and how
6 appreciative they should be.

7 So, does anyone have any questions for the
8 ANC?

9 [No audible response.]

10 CHAIRPERSON HILL: Okay. I'm going to see
11 who's here. Is there anybody here wishing to speak in
12 support of the application?

13 [No audible response.]

14 CHAIRPERSON HILL: Anyone here wishing to
15 speak in opposition to the application?

16 [No audible response.]

17 CHAIRPERSON HILL: Okay. All right. Then,
18 with that I'll go ahead and turn back to the
19 applicant. Is there anything that the applicant would
20 like to add?

21 MS. MORRIS: Not other than, thank you for
22 taking the time to hear our case.

23 CHAIRPERSON HILL: Okay. Before I close this,
24 does the Office of the Attorney General have anything

1 they'd like to add?

2 MS. NAGELHOUT: I do not.

3 CHAIRPERSON HILL: Okay. Great. Perfect.
4 So, I'm going to go ahead then and close the hearing.
5 Is the Board ready to deliberate? Okay.

6 So, again I can start. I thought that, you
7 know, there was the first condition with the Office of
8 Planning, I thought that that, you know, was something
9 that the applicant was able to work through. I was
10 actually quite confused, I guess, in terms of the lots
11 and how that all works out. Now, I am much more clear
12 on that and I also do appreciate the ANC coming down,
13 the Commissioner coming down to speak. I know that
14 Commissioner Padro sometimes is down here and he's
15 definitely one that, if there was an issue, would let
16 us know.

17 And so, I'm in comfortable supporting the
18 application based upon primarily the, again, that the
19 ANC is in support, and also the report from the Office
20 of Planning and DDOT has no objection, as well as I
21 guess there's 25 letters of support within the
22 adjacent neighbors, which is just great. I mean, you
23 guys must really have a lot of support within the
24 neighborhood, and I wish you all the best.

1 The menu looks great, by the way. I'm going
2 to come on by. That's good.

3 So, I would go ahead and approve Application
4 No. 18690-A as advertised -- or as read by the
5 secretary.

6 MR. HART: Second.

7 CHAIRPERSON HILL: Motion has been made and
8 seconded.

9 [Vote taken.]

10 CHAIRPERSON HILL: The motion passes.

11 MR. MOY: Staff would record the vote as
12 three, to zero, to two, this is on the motion of
13 Chairman Hill to approve the application for the
14 amended relief requested. Seconded the motion, Mr.
15 Peter May. Also in support, Mr. Hart. We have two
16 vacant seats, Mr. Chair, and the motion carries.

17 CHAIRPERSON HILL: Okay, great. Thank you.
18 Can we get a summary order, Mr. Moy?

19 MR. MOY: Yes, sir.

20 CHAIRPERSON HILL: Thank you. Thank you all
21 very much.

22 MS. MORRIS: Thank you for your time.

23 MR. BROWN: Thank you for your time.

24 [Pause.]

1 MR. MOY: I believe the next application
2 before the Board is Application No. 19408 of Serra
3 Sippel, I believe, captioned and advertised for
4 special exception relief under Subtitle D, Section
5 5201, nonconforming structure requirements of Subtitle
6 C, 202.2, lot occupancy requirements, Subtitle D,
7 Section 304.1, rear yard requirements, Subtitle D,
8 Section 306.1, side yard requirements under Subtitle
9 D, Section 307.1, and side yard requirements of
10 Subtitle D, Section 307.5. This is for a second story
11 rear addition to an existing one-family dwelling, R-1-
12 B, 3619 15th Street Northeast, Square 4005, Lot 18.

13 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.
14 Oh, you want to take a second there to pull it up?
15 Are you good? Okay.

16 If you could just introduce yourself, please,
17 from my right to left.

18 MS. SIPPEL: Serra Sippel.

19 MS. BRITTINGHAM: Lacy Brittingham, and the
20 architect, and agent for the owner.

21 CHAIRPERSON HILL: Okay. All right, Ms.
22 Brittingham, I mean, I'm interested I guess in just
23 having the hearing kind of like a high-level report.
24 I mean, we have a pretty long day with us today. I

1 don't have a lot of questions. I guess just for
2 clarification for me in terms of it's an enclosed room
3 versus an enclosed porch, and kind of what, you know,
4 you're planning on doing again at a high level from
5 the project.

6 I also don't see, or maybe there was an ANC
7 report came in late, but I don't see anything. Oh,
8 yeah, I do see it. Okay. So, I can take a look at
9 that and you can kind of speak to that as well. Does
10 the Board have anything else particularly they'd like
11 to hear from the applicant?

12 MR. HART: Just one question, and that's --
13 and I don't know if it's just -- I don't know if you
14 actually have a wood burning stove that you're
15 proposing with this. Is it -- how is it vented, if
16 you could just kind of explain that, because there
17 didn't seem like there was anything on the drawings.
18 So, I was just curious as to how you were doing that.

19 CHAIRPERSON HILL: So, just as you kind of go
20 through it, just keep that in mind, and go ahead and
21 do your presentation. I'm just going to throw five
22 minutes up there just because, and so, let's see how
23 this goes. Thank you.

24 MS. BRITTINGHAM: Okay. Sorry, I can't figure

1 out how to get rid of the portion to the right to make
2 the drawings larger.

3 CHAIRPERSON HILL: As long as you can move
4 around what we need to see, I think that's okay.
5 Control, L. Look at that tech over here to the right.

6 MS. BRITTINGHAM: Okay. Thank you. All
7 right. So, this single-family home we are proposing
8 to add a second story addition on top of an existing
9 single-story addition. I think it's easy to see on
10 the elevations. So, there is an existing single-story
11 portion on the back of the house, then additional
12 existing covered deck behind that. So, we are
13 proposing to remove that deck, add a second story on
14 top of the single-story portion of enclosed interior
15 space, and then rebuild a new single-story addition in
16 place of the deck that was taken down, the covered
17 deck.

18 The original application had the deck to be
19 rebuilt as a screened in porch. We modified the
20 application to, instead of have it be a screened in
21 porch, it is now part of an enclosed interior space.
22 Let me show you the plan.

23 So, on the removals you can see at the back of
24 the house there's an existing screen porch dashed.

1 We're removing that. We were opening up the wall at
2 that sort of back bonus room, on the back of the
3 house. And the proposed first floor, we opened up
4 that wall, the space that was originally proposed to
5 be a screened in porch, now is fully open to the
6 existing back room to make a larger family room on the
7 back of the house.

8 And then as far as venting, sorry, I did not
9 catch that I didn't put it in the elevations. It is
10 shown on the plan here, there is a flue coming out of
11 the top of the porch. So, it should be, then, on the
12 proposed elevation on the right-hand side of that
13 addition.

14 MR. HART: Do you have the drawings that show
15 that?

16 MS. BRITTINGHAM: Show --

17 MR. HART: Where the vent, the --

18 MS. BRITTINGHAM: I'm sorry, it's in the plan.
19 See the circle in the roof? It's not labeled. That
20 would be the vent coming out of the roof.

21 CHAIRPERSON HILL: Oh, I see. Okay.

22 MS. BRITTINGHAM: And then it would be sort
23 of --

24 CHAIRPERSON HILL: Okay. That's okay. That's

1 fine.

2 MS. BRITTINGHAM: -- the rest of that.

3 CHAIRPERSON HILL: All right. Does the Board
4 have any questions for the applicant?

5 [No audible response.]

6 CHAIRPERSON HILL: All right. Then, if it's
7 all right with you, I'm going to turn to the Office of
8 Planning.

9 So, Office of Planning?

10 MS. MYERS: Good afternoon, members. This is
11 Crystal Myers for the Office of Planning. The Office
12 of Planning is recommending approval and stands on the
13 record of the staff report and is here for any
14 question.

15 CHAIRPERSON HILL: Does the Board have any
16 questions for the Office of Planning?

17 [No audible response.]

18 CHAIRPERSON HILL: Does the applicant have any
19 questions for the Office of Planning?

20 [No audible response.]

21 CHAIRPERSON HILL: Okay. Then, I don't have
22 any questions for the Office of Planning.

23 I'm going to go ahead and turn it now to the
24 audience. Is anybody here from the ANC?

1 [No audible response.]

2 CHAIRPERSON HILL: Is anyone here wishing to
3 speak in support of the application?

4 [No audible response.]

5 CHAIRPERSON HILL: Is anyone here wishing to
6 speak in opposition to the application?

7 [No audible response.]

8 CHAIRPERSON HILL: Okay, great. I was there
9 once and so when we say opposition, you're just
10 holding your breath. Right?

11 So, does the applicant have anything further
12 they'd like to add?

13 MS. BRITTINGHAM: No.

14 CHAIRPERSON HILL: Okay, great. So, then I'm
15 going to go ahead and, I did want to make one comment,
16 I guess. We did get the report from the ANC 5B, and
17 they did vote to support this unanimously, five, zero,
18 zero. In fact, they did mention that ANC 5B was
19 overwhelmingly pleased with the architectural drawings
20 and consideration made to maintain the existing
21 character of the neighborhood. So, that's great.

22 So, okay. So, with that does the Board have
23 anything further they'd like to add?

24 MR. HART: Just one small question. What's

1 the material on the outside of the -- what's the
2 exterior material for the addition? I know you had
3 the cedar siding for kind of a portion of it, but I
4 wasn't sure what was going on with the rest.

5 MS. BRITTINGHAM: Yeah. So, the horizontal
6 stripes on the elevation drawings, it's all labeled as
7 the stained cedar siding. And then just the portion
8 that's under the lower roof, covering the large window
9 on the back, that would just be like painted, one by
10 trim, essentially.

11 MR. HART: Thanks. I just was curious.
12 That's all.

13 MS. BRITTINGHAM: Sure.

14 CHAIRPERSON HILL: Okay, great. All right,
15 then I'm going to go ahead and close the hearing. Is
16 the Board ready to deliberate?

17 MR. HART: Yes.

18 CHAIRPERSON HILL: Okay. Well, I can start.
19 Based again on the record and the report by the Office
20 of Planning, actually in particular, I am satisfied
21 with what has come forward with us in terms of
22 recommending or voting for the special exception.
23 Also, that we did get a unanimous vote from ANC 5B.
24 There are actually three letters in support from

1 adjacent neighbors, and I would be making a motion to
2 approve Application No. 19408 as announced by the
3 secretary.

4 Motion has been made and seconded.

5 [Vote taken.]

6 CHAIRPERSON HILL: The motion passes, Mr. Moy.

7 MR. MOY: Staff would record the vote as
8 three, to zero, to two. This is on the motion of
9 Chairman Hill to approve the application for the
10 relief requested. Seconding the motion, Mr. Peter
11 May. Also in support, Mr. Hart. We have two seats
12 vacant, and the motion carries, sir.

13 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.
14 Could we get a summary order?

15 MR. MOY: Indeed. Thank you.

16 CHAIRPERSON HILL: Thank you. Thank you, all.

17 Mr. Moy, before you kind of call the next
18 case, I just do want to clarify something for myself
19 for the record. For the attorneys that are in the
20 room, I mentioned that on a previous case, that the
21 900 square feet never gets approved. I want to just
22 clarify, we look at things on a case-by-case basis.
23 We're here to see if one passes the variance standard.
24 Therefore, things do get approved. I just hadn't

1 seen anything recently approved by the 900 square
2 feet. I just wanted to clear that up in case anybody
3 was going to tell me that they had an issue with the
4 word never. So, thank you.

5 Thank you, Mr. Moy, for your indulgence.

6 MR. MOY: The next case, application parties
7 to Application No. 19409 of Maple Park Associates,
8 LLC, requesting special exception under the eating and
9 drinking establishment requirements of Subtitle H,
10 Section 1106.1, Sub E-1. This would establish, I was
11 going to say coffee shop, but perhaps prepared food
12 shop with more than 24 seats. I could use
13 clarification on that if there's a change, from the
14 applicant. In the NC-2 Zone, 232, Carroll Street
15 Northwest, Square 3354, Lot 833.

16 MR. DONOHUE: Mr. Chairman, I have a witness
17 that needs to get sworn in.

18 CHAIRPERSON HILL: Sure. Okay, that would be
19 great. If you could please, stand and take the oath
20 from Mr. Moy?

21 [Oath administered to the witness.]

22 CHAIRPERSON HILL: Okay, great. Thank you.
23 If you could please introduce yourselves from my right
24 to left?

1 MR. GIBBS: My name is Joseph Gibbs. I'm the
2 Store Development Manager for Starbucks Coffee
3 Company.

4 MR. DONOHUE: My name is Ed Donohue, counsel
5 for the applicant.

6 MR. SPINELLI: My name is Joe Spinelli. I'm a
7 consultant to Starbucks Coffee.

8 CHAIRPERSON HILL: Okay. Could you say your
9 last name again?

10 MR. SPINELLI: Joe Spinelli.

11 CHAIRPERSON HILL: Okay. So, Mr. Gibbs, you
12 work for Starbucks?

13 MR. GIBBS: Yes.

14 CHAIRPERSON HILL: So, you're part of the
15 behemoth.

16 MR. GIBBS: Yeah.

17 CHAIRPERSON HILL: The giant.

18 MR. GIBBS: Yes, I am.

19 CHAIRPERSON HILL: I see. All right. Not a
20 mom and pop, this is Starbucks moving in.

21 MR. GIBBS: Yes.

22 CHAIRPERSON HILL: Okay. All right. Mr.
23 Donohue, are you going to be presenting, I suppose?

24 MR. DONOHUE: I can be very brief, Mr.

1 Chairman. This is an existing operation. Starbucks
2 has been in the neighborhood on Carroll Street since
3 September, is it 18th, Joe?

4 MR. GIBBS: September 14th.

5 MR. DONOHUE: September the 14th, Joseph's
6 mother's birthday, and they're seeking an increase in
7 the seating, up to 50. We've met a few times with the
8 ANC, with the ANC Design Review Committee. Happy to
9 have the support of the ANC, and also the Office of
10 Planning. We're proposing no physical changes to the
11 store itself. We're simply adding seating and an
12 outdoor patio as shown on your plans.

13 CHAIRPERSON HILL: Okay. I see that you're
14 increasing the seating to, you know, I guess OP is
15 recommending 64, which is what you're --

16 MR. DONOHUE: So, 50 are the inside seats, and
17 that's the relief. And then 14 is the outdoor, the
18 outdoor patio.

19 We did have a fair amount of discussion with
20 the ANC about the patio and what that was going to
21 look like, and how excited they were about having
22 outdoor seating there.

23 CHAIRPERSON HILL: And so there were a variety
24 of conditions from the ANC, some of which aren't

1 really under our purview. But did you get to some
2 kind -- like, you've seen all the conditions with the
3 ANC.

4 MR. DONOHUE: Yes.

5 CHAIRPERSON HILL: And do you have -- I don't
6 know if you can actually run down, there are one
7 through eight, with me. If you can tell me what you
8 are agreeing to and where you are with it?

9 MR. DONOHUE: So, the only issue that we had
10 with the ANC was that they had an issue with one of
11 the locations of the table, and we really got down
12 into the granular level with the Design Review and
13 with the ANC.

14 But there was a table shown at the entrance of
15 the store that they felt was problematic from a flow
16 standpoint. Starbucks agrees, that table can be
17 moved. But we still feel that there's plenty of room
18 for 50 seats inside. And Joseph can testify to the
19 seating needed in the Starbucks there.

20 So, what we felt we would do is we'd like to
21 agree with the condition but not the limitation on the
22 number of seats. So, the condition was to remove that
23 table and their --

24 CHAIRPERSON HILL: Right. But you still are

1 asking for the same number of seats.

2 MR. DONOHUE: That's correct.

3 CHAIRPERSON HILL: It's just, right, the table
4 was -- okay.

5 MR. DONOHUE: Correct. The other conditions
6 were things that we had suggested, flower boxes and
7 other things to help address some aesthetics.

8 CHAIRPERSON HILL: Could you just read through
9 those for me so I don't have to do it? What you're
10 agreeing to.

11 MR. DONOHUE: So, the conditions as they
12 appear on the January 24th recommendation from the ANC
13 provide an intrinsic customer path to the service
14 counter inside the store, designate one entrance and
15 one exit to and from the parking lot, rather than
16 permitting both entry and exit from Carroll and Maple,
17 ensure that the plantings on the fence remain inside
18 the property and not project on to Carroll Street
19 public sidewalk, exterior seating not to exceed 14,
20 including handicapped seating, eliminate the inside
21 circular table, seating of five, now shown between the
22 two store entrances that could interfere with foot
23 traffic, reduce the maximum interior seating, it's the
24 one we just talked about. So, we're not agreeing with

1 that one. The suggestion was reduce the interior
2 seating capacity to between 35 and 45. Address and
3 eliminate the hazard posed by the downspout, and
4 stripe the raised concrete curb that separates the
5 outdoor seating from Carroll Street to improve
6 pedestrian safety.

7 As I explained to the ANC, and I'm happy to
8 have the Starbucks folks talk to this as well, but
9 some of these are landlord issues. For example, the
10 downspout is a building issue. We've raised it with
11 the landlord. It's a downspout that actually spills
12 water and snow melt from the roof on to the parking
13 lot.

14 So, and these are things that we, as tenants,
15 we don't control. But we certainly have raised it
16 with the landlord.

17 CHAIRPERSON HILL: Okay. And then number 8,
18 that's also not something that you control?

19 MR. DONOHUE: The --

20 CHAIRPERSON HILL: The, stripe the raised
21 concrete curb?

22 MR. DONOHUE: The strip, we can certainly ask
23 the landlord about that. It makes sense. There's a
24 change in grade of about eight inches from the

1 sidewalk on Carroll Street up to the patio.

2 CHAIRPERSON HILL: Okay, but it's something --

3 MR. DONOHUE: But that's more --

4 CHAIRPERSON HILL: -- that you don't control?

5 MR. DONOHUE: Correct.

6 CHAIRPERSON HILL: Okay. So, but one through
7 five, you do?

8 MR. DONOHUE: Yes, sir.

9 CHAIRPERSON HILL: Okay. And you just don't
10 agree with number six. Okay. And actually, number
11 six, I have you know, basically the main thing is
12 whether or not there's going to be 64. However, that
13 configuration is, I think that's at a more granular
14 level than is necessary for us to get involved in.

15 Okay, does any -- I mean, you've basically
16 made your presentation, I suppose. Do you have
17 anything else you'd like to add?

18 MR. DONOHUE: Not unless there are any
19 questions for us.

20 CHAIRPERSON HILL: Okay. Mr. Hart, or Mr.
21 May?

22 MR. MAY: The DDOT conditions. Have you --
23 bike spaces.

24 MR. DONOHUE: So, that was the -- so, the bike

1 space, I think, was fine. Right?

2 MR. MAY: Yeah.

3 MR. DONOHUE: Yes, sir.

4 MR. MAY: Including in the permanent one
5 inside somewhere?

6 MR. DONOHUE: Yes, sir.

7 CHAIRPERSON HILL: All right. So again, just
8 to be clear, the applicant shall provide two short-
9 term bicycle parking spaces and one long-term bicycle
10 parking space at the site.

11 MR. DONOHUE: No, we're fine.

12 CHAIRPERSON HILL: Okay. All right. Does the
13 Board have anything else?

14 [No audible response.]

15 CHAIRPERSON HILL: All right. Then, I'm going
16 to go ahead and turn to the Office of Planning.

17 MR. GOLDEN: Bryan Golden, Office of Planning.
18 We are recommending approval and I'm offering to
19 stand on the record of the report.

20 CHAIRPERSON HILL: Okay. Does anybody have
21 any questions for Office of Planning?

22 [No audible response.]

23 CHAIRPERSON HILL: Does the applicant have any
24 questions for the Office of Planning?

1 MR. DONOHUE: No, sir.

2 CHAIRPERSON HILL: Okay. Then, I'm going to
3 turn that over to the audience. But before I do,
4 actually, so again the clarification that the
5 secretary had read earlier was that it's not to
6 establish a coffee shop, but to establish a prepared
7 food shop.

8 MR. DONOHUE: Well to enhance the seating or
9 increase the seating on an existing food shop.

10 CHAIRPERSON HILL: Ms. Nagelhout, is that
11 okay?

12 MS. NAGELHOUT: Yes, as I understand, it's a
13 matter of right use up to 24 seats, and what they're
14 proposing is to increase the number of seats.

15 CHAIRPERSON HILL: Okay. All right. So, I'm
16 going to turn to the audience. Is anyone here from
17 the ANC?

18 [No audible response.]

19 CHAIRPERSON HILL: Is anyone here who would
20 like to speak in support of the application?

21 [No audible response.]

22 CHAIRPERSON HILL: Anyone here who would like
23 to speak in opposition to the application?

24 [No audible response.]

1 CHAIRPERSON HILL: All right. Well, with
2 that, I'm going to turn back to the applicant. Is
3 there anything else the applicant would like to add?

4 MR. DONOHUE: No, sir, nothing further.

5 CHAIRPERSON HILL: Okay. Then I'm going to go
6 ahead and close the hearing. Is the Board ready to
7 deliberate?

8 MR. HART: Yes.

9 CHAIRPERSON HILL: Would someone else like to
10 start the deliberations?

11 MR. MAY: I think this is a very
12 straightforward case and I'm prepared to make a motion
13 to approve this with I guess noting that the applicant
14 has agreed to some of the ANC conditions, or all the
15 ANC conditions with regard to the actual zoning
16 issues.

17 I don't know that any of them, you know, what
18 truly has to be made a condition of the order. As I
19 understand it, essentially the applicant is in a sense
20 amending the application to include that you have
21 addressed these things.

22 So, I would move, make a motion to approve
23 Zoning -- sorry, BZA Case No. 19409 as captioned by
24 the secretary.

1 CHAIRPERSON HILL: Okay. And just to be
2 clear, we are including the one DDOT condition in
3 there as well?

4 MR. MAY: Yeah. Yes, that's fine.

5 CHAIRPERSON HILL: Okay.

6 MR. MAY: Absolutely.

7 CHAIRPERSON HILL: So, the motion has been
8 made and seconded.

9 [Vote taken.]

10 CHAIRPERSON HILL: The motion passes, Mr. Moy.

11 MR. MOY: Staff would record the vote as
12 three, to zero, to two. This is on the motion of Mr.
13 May, right? Mr. Peter May?

14 CHAIRPERSON HILL: Yes.

15 MR. MOY: Second the motion, Mr. Hart. Also
16 in support, Chairman Hill for the relief being
17 requested as well as the conditions as cited. And
18 motion carries, three, to zero, to two, sir.

19 CHAIRPERSON HILL: Great. Thank you. Thank
20 you, gentlemen.

21 MR. DONOHUE: Thank you, Mr. Chairman.

22 MR. GIBBS: Thank you.

23 MR. MOY: Is that a full order or summary
24 order, sir?

1 CHAIRPERSON HILL: I'm sorry, summary order,
2 please.

3 MR. MOY: Thank you.

4 [Pause.]

5 MR. MOY: The next case application before the
6 Board is Application No. 18915-A of Aminta, and as
7 captioned and advertised for a modification of
8 significance to BZA Order No. 18915. And this is a
9 requested for -- requesting a special exception relief
10 under the parking requirements of Subtitle C, Section
11 703, loading requirements of Subtitle C, Section 909,
12 variance relief under the lot occupancy requirements,
13 Subtitle G, Section 404.1. This would construct a
14 mixed-use building in the MU-4 Zone, 1330 through
15 1338, Pennsylvania Avenue Southeast, Square 1044, Lots
16 12, 29, and 802.

17 CHAIRPERSON HILL: Okay. Hello. If you could
18 just introduce yourself, please, from my right to
19 left?

20 MR. FUENTES: My name is Samuel Fuentes.

21 CHAIRPERSON HILL: Fuentes?

22 MR. FUENTES: Fuentes.

23 CHAIRPERSON HILL: Fuentes.

24 MR. GOINS: Jeff Goins, one of the principles

1 of PGN Architects. Samuel needs to be sworn in.

2 CHAIRPERSON HILL: Oh, okay, great. And
3 what's your last name again, sir?

4 MR. GOINS: Jeff Goins.

5 CHAIRPERSON HILL: Goins?

6 MR. GOINS: Yeah.

7 CHAIRPERSON HILL: Okay, Mr. Fuentes, if you
8 wouldn't mind just getting sworn in here from the
9 secretary in a second.

10 [Oath administered to the participant.]

11 CHAIRPERSON HILL: Okay, Mr. Goins, I assume
12 you're presenting, correct?

13 MR. GOINS: That is correct, yeah.

14 CHAIRPERSON HILL: Okay. There is, I guess, a
15 couple of things that I am, I mean, curious of hearing
16 about, while you're making your presentation. One of
17 them, again, is the condition that OP is recommending
18 in terms of the parking and lot occupancy relief. And
19 then also, and we'll see as we work through this but
20 they, the Office of Planning, are unable to make a
21 recommendation right now concerning the loading
22 relief.

23 So, perhaps if you can kind of like walk
24 through that as well and that would be great.

1 MR. GOINS: Sure. This is -- I think the
2 screen is stretched there.

3 CHAIRPERSON HILL: Okay, Mr. Moy, if you
4 wouldn't mind just throwing five minutes up there just
5 so I know how long we've been going. But, Mr. Goins,
6 that's not necessarily how long you have. I'm just
7 kind of --

8 MR. GOINS: That's fine.

9 CHAIRPERSON HILL: So, I can monitor myself.
10 Thank you.

11 MR. GOINS: This project was approved last
12 year and I think I'm going to do kind of a high-level
13 presentation showing the before, versus where we are
14 now. The previous project was one story taller and
15 required lot occupancy and parking relief as well.

16 The project was then, the landowner, Samuel
17 there, acquired the adjacent parcel. We worked
18 extensively with the community. As you can see here,
19 this is Pennsylvania Avenue. We're about 400 feet
20 from the Metro, right here. My pointer is not working
21 on the screen.

22 But as you can see, it's near the end of the
23 block at the end of the triangle and what we were --

24 CHAIRPERSON HILL: Mr. Moy, do you have a

1 pointer by any chance?

2 MR. MOY: I usually do. Let me run to the
3 back room and --

4 CHAIRPERSON HILL: If not, it's okay.

5 MR. GOINS: That's fine.

6 CHAIRPERSON HILL: That's all right. Mr. Moy,
7 that's okay. Thank you.

8 MR. GOINS: I think our approach prior, and as
9 well as this time, was to continue the edge of G
10 Street as well as Pennsylvania Avenue.

11 Once we worked extensively with the ANC,
12 Capitol Restoration Society had a numerous
13 presentations to the community about this project.

14 And when he acquired the adjacent parcel --
15 there you go. That's a good diagram that kind of
16 shows Pennsylvania Avenue, Potomac Avenue, and the
17 Potomac Avenue Metro. The red is our site, which is a
18 triangular lot where basically Pennsylvania and G
19 Street intersect.

20 So, this is a slide kind of showing you the
21 before and the after. The previous project that was
22 approved, we were at 89 percent lot occupancy. Couple
23 things that came out --

24 CHAIRPERSON HILL: Which one is the previous

1 one that was approved?

2 MR. GOINS: The upper.

3 CHAIRPERSON HILL: Okay.

4 MR. GOINS: The top. Yeah. What we were
5 asking for then was 89 percent lot coverage. We're
6 asking for 94 now.

7 And there were a couple of results that kind
8 of came out of the hearing with the -- that hearing as
9 well as the community. The community unanimously
10 supported it then, and they are as now, ANC 6B. But
11 they did ask and they did have some concerns because
12 we were going to 50 feet in height.

13 When Samuel acquired the adjacent property, we
14 were able to drop a floor, so we're now at 38 feet in
15 height. So, it's actually three stories as opposed to
16 four, which was, I think a positive result from the
17 community standpoint. But you can see what's
18 happened, it's elongated the building and the previous
19 design was more of a vertical design and now it's a
20 little more linear.

21 This is a good slide that kind of demonstrates
22 the adjacent property and what was acquired and how
23 the project has been expanded. And when we expanded
24 the project we exceeded the 5,000 square feet for

1 retail, with the basement square footage counted. So,
2 that's added the loading relief, as opposed to the
3 previous approved BZA project.

4 There were some questions, I think, from
5 Stephen and DDOT. We worked a lot with DDOT over the
6 phone and e-mail and these diagrams. We worked a lot
7 with the neighbors as well, so I want to get into kind
8 of the loading issue. I think it was the biggest
9 concern that the neighbors along G Street had, and I
10 think you can kind of see in the enlarged floorplans
11 that you should have in the package there, that we've
12 recessed the entrance. We've worked pretty much make
13 sure that the trash was inside there, and how that
14 loading was going to work.

15 And also it's to note that along Pennsylvania
16 Avenue there is a standing, I think it's over 30
17 years, there's a commercial loading zone that is
18 currently used in front of the current establishment
19 for loading as it stands now. And I think that was
20 reflected in DDOT's report.

21 So, we did these diagrams that kind of
22 demonstrate that if we did provide loading, how you
23 would have to back into the site and you would have to
24 slide the core over. That makes the project very

1 unfeasible. And also, I think DDOT really likes for
2 you to be able to pull in and pull out, and I think we
3 would basically have to pull all the way through the
4 site and introduce a curb cut, which would not be
5 allowed.

6 And here you can kind of see the impact it
7 would have on the typical floor.

8 CHAIRPERSON HILL: Can I just interrupt you?
9 Does the Office of Planning have these? Does the
10 Office of Planning have these that were just handed
11 out?

12 MR. GOINS: The drawings?

13 CHAIRPERSON HILL: No, they're in my hand.

14 MR. GOINS: Oh, in your -- yes, they do have
15 those.

16 CHAIRPERSON HILL: Okay. Thank you. Okay,
17 please continue.

18 MR. GOINS: Well, I think I just kind of a big
19 overview here and then I'll get into the elevations,
20 kind of see the plans. We did go from nine to 10
21 units in this scenario and added an IZ unit within
22 this project. So, that was another benefit. Before,
23 like I mentioned before, we were more of a vertical
24 design. And I think you can kind of see it here, in

1 Board have questions for the applicant?

2 MR. MAY: Can we go?

3 CHAIRPERSON HILL: Yes, please.

4 MR. MAY: So, the turning radius diagrams, so
5 the -- I'm a little confused because the drawings that
6 show -- I mean, this one here that shows the 29-foot
7 turning radius. I mean, that's based on a 22-foot
8 truck? Twenty-three-foot truck?

9 MR. GOINS: Twenty-three-foot truck, yes.

10 MR. MAY: That seems really, really, really
11 big. Are you sure about that? I mean, where did you
12 get that information from?

13 MR. GOINS: I think if you see on 6/2, we have
14 the diagram that kind of shows the radius.

15 MR. MAY: No, I see the diagram. Just, what's
16 the source of the information?

17 MR. GOINS: I'd have to confirm, but I'm sure
18 we got it from -- I'm sure I got a truck software or
19 something within our CAD software.

20 MR. MAY: Uh-huh. Okay. I mean, that's a --
21 basically you'd need to have -- I mean, to do a full
22 U-turn, 60 feet seems, just seems big.

23 Is the alley currently used for any commercial
24 loading purposes now?

1 MR. GOINS: No, I don't believe so. No.

2 MR. MAY: And, I mean, I know there is other
3 commercial property on the block along Pennsylvania
4 Avenue, but a lot of those are still just homes too,
5 right?

6 MR. GOINS: That's correct, yeah.

7 MR. MAY: The other commercial properties that
8 are I guess toward the next corner, isn't there
9 something commercial next door?

10 MR. GOINS: I think there's a real estate
11 office and a dentist office and a couple of other
12 businesses of that nature.

13 MR. MAY: Yeah. Right. So, nobody is going
14 to have intensive loading needs.

15 How do you do your loading now?

16 MR. GOINS: It's off Pennsylvania Avenue.

17 MR. FUENTES: It's off Pennsylvania Avenue.

18 MR. MAY: All of it it's off Pennsylvania?

19 MR. FUENTES: Yes, because we have that
20 loading zone for almost 30 years.

21 MR. MAY: Right. I know you've been there a
22 long time. Okay.

23 So, I did have one other, at least one other
24 question. So, on the drawing, the -- what's the right

1 one to bring up? Well, actually, I mean any one of
2 these that shows the full site plan.

3 MR. GOINS: Uh-huh.

4 MR. MAY: With the property line.

5 CHAIRPERSON HILL: Mr. Goins, if you could
6 just pull it up on the computer?

7 MR. MAY: Okay. So, it's very hard to see
8 here given how light the image is. And I know it's
9 distorted, but that's not really the issue.

10 So, we see the dotted line toward the western
11 side there that traces the property line, correct?

12 MR. GOINS: Well, yeah. I think that the red
13 -- are you talking about the red dash line?

14 MR. MAY: No.

15 MR. GOINS: Oh, okay. I see. Yeah, you're
16 correct, that is the property line.

17 MR. MAY: All the way to the west.

18 MR. GOINS: Yeah.

19 MR. MAY: And I know that the reservation,
20 that land that's at the triangle there, is a National
21 Park Service Reservation.

22 MR. GOINS: That is correct.

23 MR. MAY: And I haven't heard anything about
24 it lately, but I've you know, over the years, I've

1 heard about occasional issues. And what I'm seeing
2 there is that there is a line of shrubs that are along
3 the patio. Is that right?

4 MR. GOINS: That is correct, yes.

5 MR. MAY: And are those existing?

6 MR. GOINS: Those are existing.

7 MR. MAY: All of them. And they're on that
8 line.

9 MR. GOINS: They're on that line currently.

10 MR. MAY: Okay. And they are -- and they are
11 theoretically maintained by the Park Service, or are
12 they --

13 MR. FUENTES: I maintain that.

14 MR. MAY: Okay. And so, do you have an
15 agreement with the park, about maintaining?

16 MR. FUENTES: Well, they allow me -- I don't
17 have an agreement, but --

18 MR. MAY: Do you talk to them at all?

19 MR. FUENTES: Yes, I do the maintenance,
20 cleaning.

21 MR. MAY: Okay. I mean, in the photos it
22 doesn't look great and I, you know, I mean --

23 MR. FUENTES: Yeah.

24 MR. MAY: -- I'm not going to say that we do a

1 great job maintaining it. It's one of those hard,
2 those little parcels that's hard for the Park Service
3 to maintain, given all the other priorities that we
4 have.

5 But, it you know, we frequently will work with
6 abutting neighbors to make sure that it's you know, if
7 you want to take the steps to maintain it, because it
8 improves your property as well, you know, then we'll
9 do agreements like that.

10 Have you spoken to them recently about this
11 project?

12 MR. GOINS: No, I think what we've done up to
13 this point, we were pretty far along in the previous
14 design when an appeal happened. So, kind of put that
15 on hold. We did get clearance from WMATA that we're
16 out of the area of influence.

17 So, I think that's probably the next steps
18 after this hearing, because I think we're looking at
19 this as -- I mean, this is significantly larger than
20 the current establishment, you know, we're going from,
21 you know, probably 2,000 square feet to 5,000 square
22 foot of retail. So, upgrades to that park and
23 maintaining that would be beneficial.

24 MR. MAY: Uh-huh. Okay. Well, and I mean,

1 there are two things about it. One is that, you know,
2 it could be a benefit to the Park Service and to the
3 neighbors if that parcel is improved. But I'm
4 actually, I'm less concerned about that than I am just
5 making sure that you are talking to each other because
6 you are an abutting neighborhood to the National Park
7 Service and, you know, we have certain rules about how
8 we do things and I just want to make sure that you are
9 talking to the park superintendent.

10 MR. GOINS: Okay.

11 MR. MAY: Okay. And by the way, there's a new
12 park superintendent, Tara Morrison. And you can
13 contact her directly. You know, she may pass you off
14 to one of her staff, but that's the person in charge.

15 MR. GOINS: Okay. Will do. Thank you.

16 CHAIRPERSON HILL: Mr. Hart, do you have
17 anything for the applicant at this point?

18 MR. HART: No.

19 CHAIRPERSON HILL: Okay. Then, I'm going to
20 turn to the Office of Planning if that's all right.
21 Okay.

22 MR. MORDFIN: Good afternoon. I'm Stephen
23 Mordfin, and the Office of Planning initially
24 recommended approval of only the parking of the lot

1 occupancy relief. Subsequent to that the applicant
2 did file the drawings indicating the truck turning
3 movements, and also, we received copies of the DDOT
4 report.

5 The truck turning movements showed that they
6 couldn't turn into the property without having to back
7 out into the alley, which DDOT opposes. And also, the
8 other way that they could do it would be to go in
9 maybe through the alley, but then they'd have to come
10 out through a curb cut on Pennsylvania Avenue, which
11 is also not an acceptable situation.

12 So, therefore, Office of Planning recommends,
13 now, approval of the loading relief with the condition
14 that DDOT had put into their report, which is that the
15 applicant should limit the size of moving and delivery
16 trucks visiting the site to 30 feet in length.

17 CHAIRPERSON HILL: Is the applicant
18 understanding that condition?

19 MR. GOINS: Yes.

20 MR. FUENTES: Yeah.

21 CHAIRPERSON HILL: And is comfortable with
22 that condition?

23 MR. GOINS: Yes, we are.

24 CHAIRPERSON HILL: Okay. Is that it, Mr.

1 Mordfin?

2 MR. MORDFIN: I'm sorry. Yes. Thank you.

3 CHAIRPERSON HILL: That's all right. Okay.

4 Does the Board have any other questions, or has any
5 questions for the Office of Planning?

6 [No audible response.]

7 CHAIRPERSON HILL: All right. Does the
8 applicant have any questions for the Office of
9 Planning?

10 MR. GOINS: No.

11 CHAIRPERSON HILL: All right. Then I'm going
12 to go turn to the audience here. Is there anyone here
13 from the ANC wishing to speak?

14 [No audible response.]

15 CHAIRPERSON HILL: Is there anyone here
16 wishing to speak in support of the application?

17 [No audible response.]

18 CHAIRPERSON HILL: Is anyone here wishing to
19 speak in opposition to the application?

20 [No audible response.]

21 CHAIRPERSON HILL: All right. Then, I'm going
22 to turn back to the applicant. Do you have anything
23 else you'd like to add?

24 MR. GOINS: No.

1 CHAIRPERSON HILL: All right. Okay, great.
2 Then, I'm going to close the hearing. Is the Board
3 ready to deliberate? All right.

4 MR. MAY: Oh, yeah, I would -- I'm prepared to
5 vote in favor of the requested relief. I do want to
6 make the observation, simply because it was noted in
7 the report to us, that the requirements for bicycle
8 parking that were laid out in the DDOT report, just
9 want to make sure you remember that that has to be
10 addressed. It's not something that needs to be a
11 condition because it's already a requirement.

12 So, anyway, with that I would move approval of
13 BZA Case No. 18915-A for the captioned relief.

14 CHAIRPERSON HILL: Okay. And also, I did want
15 to again mention that, right, not only is the Office
16 of Planning now in approval of the loading as well as
17 they were in approval of the parking and lot
18 occupancy, but the ANC 6B was in approval nine to
19 zero, and DDOT had their condition with the 30-foot
20 truck, but no objection. And so, mentioning those
21 things I would second the motion.

22 [Vote taken.]

23 CHAIRPERSON HILL: All right. The motion
24 passes, Mr. Moy.

1 MR. MOY: Before I read back the vote, Mr.
2 Chair, who seconded the motion? For some reason my
3 mind just kind of -- I'm sorry. Okay.

4 So, staff would record the vote as three, to
5 zero, to two. This is on the motion of Mr. Peter May
6 for the captioned relief. And seconded the motion,
7 Chairman Hill. Also in support, Mr. Hart. We have
8 two seats vacant. The motion carries.

9 CHAIRPERSON HILL: Thank you, Mr. Moy. Could
10 we do a summary order?

11 MR. MOY: Yes, thank you.

12 CHAIRPERSON HILL: Okay. Mr. Moy, just give
13 me one second before you call the next case.

14 MR. MOY: Very good.

15 CHAIRPERSON HILL: So, there's only two cases
16 left, Mr. Moy, and I'm going to switch them up. So,
17 all those that were coming up can sit back down, and
18 all those that were sitting back down can come on up.

19 We're going to do the 19413 next. And then
20 we'll probably take a five-minute break, and then
21 we're going to do the last case. So, just to let
22 everybody know.

23 So, Mr. Moy, if you'd like to call it?

24 MR. MOY: Yes. Thank you, sir. Again,

1 parties to the table to Application No. 19413 of
2 Chughtai, if I've pronounced that correctly.

3 CHAIRPERSON HILL: That's pretty good.

4 MR. MOY: Family Properties, LLC.

5 CHAIRPERSON HILL: That's pretty good.

6 MR. MOY: This is a request for variances from
7 the lot area and width requirements, Subtitle D,
8 Section 302.1, side yard requirements, Subtitle D,
9 Section 307.2, to permit the subdivision or
10 subdividing two lots, and construct four new one-
11 family dwellings in the R-3 Zone, Maple View Place
12 Southeast, Square 5803, Lots 976 and 977.

13 CHAIRPERSON HILL: Good afternoon, everyone.
14 I know I threw you there so you can take a second if
15 you'd like.

16 [Pause.]

17 CHAIRPERSON HILL: Okay. If you could just
18 introduce yourselves, please, to my right to left.
19 You can just push the button there.

20 MR. DuPONT: Oh, I thought it was on. Stephen
21 DuPont. I'm the architect.

22 MS. MOLDENHAUER: Good afternoon, Meredith
23 Moldenhauer from the law firm of Griffin, Murphy,
24 Moldenhauer, and Wiggins on behalf of the applicant.

1 MR. CHUGHTAI: My name is Mossadaq Chughtai.
2 I am the owner of the property.

3 CHAIRPERSON HILL: Great. Mr. Chughtai?

4 MR. CHUGHTAI: Yes.

5 CHAIRPERSON HILL: Okay. All right. Let's
6 see. So, Ms. Moldenhauer, I guess we're going to be
7 hearing a pretty full presentation I think, in terms
8 of what it is that the applicant is trying to do here.
9 I know that for me, I guess, you know, the fact that
10 the Office of Planning is in denial of the lot area
11 and the width relief, you know, I'd like to hear more
12 about that from you.

13 I guess again, you know, how things went with
14 the ANC and I guess, you know, we can ask further
15 questions as we kind of go forward, is there anyone
16 else that would like to add some clarification before
17 the presentation?

18 [No audible response.]

19 CHAIRPERSON HILL: No? Okay. Do you know how
20 much time you might like?

21 MS. MOLDENHAUER: About 20 minutes I would
22 assume.

23 CHAIRPERSON HILL: Okay. All right. Okay.
24 Mr. Moy, if you could put 20 minutes on the clock?

1 Thank you.

2 MS. MOLDENHAUER: To summarize, the single-
3 member district representative is present today. We
4 also filed, we were at the ANC last night, late last
5 night, and received support for the case. We'll go
6 into more detail about that and we will also walk
7 through just to summarize. We believe that the
8 property is unique based on a confluence of factors
9 that while maybe some of the factors in themselves may
10 not, in Office of Planning's perspective, be unique.
11 We believe that the confluence of factors do create a
12 practical difficulty here for this site.

13 That being said, I'll turn it over to Mossadaq
14 Chughtai to walk through the initial slides.

15 MR. CHUGHTAI: This property is located, you
16 can see, Anacostia, it's like western edge of historic
17 district. It consists of two lots in Square No. 5803,
18 two lots combined area is 11,677 square feet. It's
19 Lot 976, 6,110 square feet, Lot 977, 5,500, 5,700
20 square feet.

21 Both lots have been vacant over 25 years. And
22 it is very important to us to understand why those
23 lots have been vacant for so, so long, so that also it
24 presents a unique situation for the lot.

1 Initially when I purchased the lots, when I
2 went to see the lot, it's a rowhouses right across
3 from these lots, and there's a rowhouses behind these
4 lots. And my initial thought was that we will be able
5 to build five rowhouses there. And when we start back
6 to community, a community did not support that concept
7 initially.

8 So, then we went back to drawing board and we
9 change our drawings to four single-family --

10 CHAIRPERSON HILL: I'm sorry, Mr. Chughtai,
11 the community didn't support what?

12 MR. CHUGHTAI: Five rowhouses.

13 CHAIRPERSON HILL: Okay.

14 MR. CHUGHTAI: Five. Initially our thought
15 was, we can build five rowhouses there.

16 CHAIRPERSON HILL: Okay.

17 MR. CHUGHTAI: Because there are rowhouses
18 right across the street from there, across from the
19 slot, and there are rowhouses, the street behind,
20 behind, behind these lots, on the other side of the
21 street.

22 So, we thought, initially we thought we would
23 be able to build five rowhouses, but when we start
24 talking to community, community didn't want to support

1 that. So, we revised our design and we went to four
2 single-family homes.

3 Our community outreach program, our efforts
4 included we actually presented the concept to ANC 8A
5 Executive Committee, and the full ANC in December
6 2016. Again, we presented to Historic Anacostia
7 Society on January 4, 2017. Then we presented to
8 Historic Anacostia Black Association on January 12th
9 of this year. We basically knocked everybody's door
10 there and everybody supported this project because
11 they really want that empty lot to be built.

12 When we acquire the lot, at that time lot has
13 a lot of trash, a lot of litter, a lot of other things
14 were there. It cost us a good sum of money to make
15 sure that lot is kept clean.

16 Ms. Fuller, a Single-member District 8A-06
17 Commissioner is here today. She is long time resident
18 of Maple View Place, which is up the street from here.
19 And she is also, she perhaps expresses her full
20 support for concept. She actually mentioned in one of
21 the conversation, the project offers compatibility and
22 respect to the historic district; something that we
23 usually don't see in our community.

24 And, with that I would like to turn this over

1 to Stephen to talk a little bit about the lots.

2 MR. DuPONT: Good afternoon. Thank you for
3 receiving us.

4 This slide is a base map from 1965, the area
5 of the project is marked in red. You'll see it's kind
6 of an odd-ball collision of two different lot
7 orientations. One on the downhill side to the left
8 and one on the uphill side to the right. And it has
9 somehow resulted in this large lot, 104 feet wide.

10 Directly behind the property you'll see four
11 closely spaced properties. We'll have photographs of
12 that later. Across the street, and up the hill a
13 little bit, are four more that are closely spaced,
14 less than six feet apart. And further up on Morris
15 Road, which is on the lower part of the slide, there
16 are more that are closely spaced like this. And then
17 we have photos of them later on also.

18 So, this particular arrangement that we're
19 working on is actually quite common in this part of
20 Anacostia.

21 The next slide is the zoning map, and this
22 zone is a higher density zone R-3, that allows
23 detached, semi-detached, and attached row homes. As
24 Mr. Chughtai commented, he original bought the

1 property with the expectation of building five row
2 homes. I've pointed out that half of the property was
3 in the historic district and we spent some time with
4 Mr. Dene, and he said that row homes were not going to
5 fly, so we immediately looked at half a dozen other
6 options and the one that seems to work best is the one
7 that we're presenting to you today.

8 The next slide shows the unique composition of
9 the lots. Unique in the sense that there are three
10 nonhistoric lots on Maple View that are sort of dog-
11 toothed in. Half of our property is one of those.
12 And our property, I believe, is the only vacant.
13 There's one vacant further up the street, also, which
14 makes it unique. So, it's half historic, half not
15 historic, and vacant, and vacant for a long time.

16 The next shot is an aerial view. Again, the
17 property is marked in red. You'll see directly to the
18 southwest, the rowhouses, one of the sets of rowhouses
19 that I was mentioning before. And to the right of the
20 red area, on the other side of Chester Street, a
21 little bit further up the hill, are four more. And
22 below, at the bottom of the slide, just out of the
23 view, are the other group of four or five that I was
24 mentioning. We have pictures of all of them.

1 The next slide shows the subject property.
2 It's a street view looking down the hill toward the
3 Anacostia River. The grade change from one end of the
4 property to the other is more than a tall story. And,
5 in fact if you look at -- as you stand on the property
6 and look to the west, what you see is row houses that
7 are two streets over. The grade off the back is so
8 steep that you don't even see the roofs of the houses
9 directly behind.

10 The next slide, number 9, shows the cluster
11 along Morris Road that you cannot see in the slides.
12 It's further to the right in those earlier slides.

13 The next page, number 10, shows the cluster of
14 homes that are directly behind our property, the ones
15 that you see over the roof of.

16 And then finally on number 11, are the four
17 that are up the hill from us on Maple View. The third
18 one from the left, actually, belongs to the ANC
19 Commissioner.

20 The spacing between those houses is less than
21 six feet in all cases. The aerial shot on the next
22 sheet, sheet number 12, shows our subject property at
23 the top, not outlined in red, and then the four houses
24 directly behind us that are close together.

1 The applicant proposes to subdivide the
2 existing property into four adjacent lots. Lots 976,
3 will be subdivided into two lots of approximate 3,087,
4 and 3,023 square feet each, while 977 will be
5 subdivided into two equal lots of approximate 2,783
6 square feet each.

7 One single-family dwelling house is planned
8 for each lot. Each house will have two stories, plus
9 an attic, and an optional accessory dwelling in the
10 cellar. In the basement, actually, I think.

11 The next slide is a site plan showing all four
12 properties. We will adjust the front yard according
13 to the range of property on the block to suit zoning's
14 requirements. The site work is extensive because of
15 the slope, and because of the degree of rubble and
16 trees at the back of the site where it slopes down
17 steeply.

18 We also have to do full water, sewer,
19 electrical, communications, everything else.
20 Obviously if the lots were flat it would be less
21 costly. There will be some retaining walls required
22 in this as well as the normal utilities.

23 In interest of time you can skip past 15, 16,
24 and 17 if you wish, go quickly through their interior

1 floorplans and some features that the neighborhood --
2 on 17, some features that the neighborhood has
3 referred to occasionally, and that I am providing in
4 order to reflect back to them, their interests;
5 confirm to them their interest.

6 Number 18 is a front elevation. It shows the
7 slopes across the site, and it shows where we are at
8 this point in working with the neighborhood in terms
9 of the house appearances. They're quite interested in
10 not having traditional or typical developer bottle
11 siding homes, and they have pretty specific interests
12 in what they want. So, window spacings, porches, all
13 of that come directly from neighborhood communication.

14 The next slide is the rear view. Slide number
15 20 is a more colorful perspective view of the front
16 elevations. Among other things, we've made the
17 porches deeper to suit the neighborhood request.

18 Slide 21 is a rear view, again just showing
19 terracing requirements.

20 And on slide 22, we come back to the street
21 rendering.

22 And in this case, we're working to accommodate
23 the neighborhood interests in materials and decorative
24 trims and things of that nature.

1 It's always difficult to literally try to copy
2 older styles because materials and scale are hard to
3 match. So, we're working on something that will be
4 compatible with the historic district interests.

5 MS. MOLDENHAUER: Mr. DuPont, can I ask you a
6 quick question? If looking at the site plan that's up
7 on the board again now, if the property line did not
8 jog back and was not a unique property shape, the
9 lower two lots, would they then be compliant with the
10 lot area requirements?

11 MR. DuPONT: I think the third one would be.
12 The fourth one would be marginal. I'd have to do the
13 calculation.

14 MS. MOLDENHAUER: But the top, the top two
15 meet --

16 MR. DuPONT: The top two are over 3,000.

17 MS. MOLDENHAUER: Are over 3,000. And the
18 need for that relief for the bottom two lots stems
19 from that unique shaping and the unique, you know,
20 smaller nature of those two bottom ones, correct?

21 MR. DuPONT: Right. The way Morris and Maple
22 View sort of are not quite parallel together, and the
23 lots behind created that problem.

24 These lots have been replatted numerous times

1 in the last 50 years, it seems.

2 MS. MOLDENHAUER: Thank you, Mr. DuPont.

3 Our argument is that there is a confluence of
4 multiple factors that lead to supporting the relief
5 that we're requesting. We are requesting variances
6 from lot width, side yard, lot area, only for two of
7 the sites, and lot width for all of the sites.

8 We have -- under the new zoning regs, if this
9 was an addition to an existing structure, these would
10 be special exception reliefs. But because these are
11 new construction, these are all under the variance
12 standard. We believe that we have a confluence of
13 factors as had been articulated both by Mr. Chughtai
14 and also by Mr. DuPont.

15 The fact that the properties are unimproved
16 and currently vacant, they're not just vacant for the
17 last, you know, five years, but they've been vacant
18 for the last 20 years, indicating the inability for
19 these lots to be developed as a matter of right.

20 The lot size in and of itself is unique, in
21 conjunction with the fact that they are vacant there.

22 As Mr. DuPont indicated, there are only three lots on
23 Maple View Street on this side of the street. So,
24 three out of 18 that are vacant.

1 Out of those vacancies, the lot widths are
2 about, you know, 50 and 37. This is 103 feet. That
3 uniquely large shape and size create the practical
4 difficulty here. And in addition to that, the fact
5 that as we showed, there is a patchwork as OP
6 indicates of historic properties. But of those
7 historic properties, this is the only one that is
8 vacant and in the historic district. The other
9 property has a current house on it. Mr. Robert Dia,
10 Diar, and you know, he has indicated support. The
11 other property is actually fronting on Morris.

12 So, again, that confluence of factors creates
13 the practical difficulty for being able to bring this
14 property back from a current idle condition into
15 compliance and into providing housing, which is much
16 needed and much supported by the Comprehensive Plan.

17 The applicant seeks to restore the properties
18 to productive use. Without relief that would not be
19 viable or feasible. Unique conditions of the property
20 attempt are that, as I indicated, this is -- prior
21 owners have attempted to develop the site, but were
22 not able to do so and the property has remained vacant
23 for over the past 26 years.

24 The factors that Mr. DuPont indicated in

1 regards to the heightened quality and design standards
2 that the community and that HPRB provides, obviously
3 we are aware that historic properties in and of
4 themselves are not unique, but this Board has found
5 that they do require certain constraints on a site
6 that can be considered by the Board in conjunction
7 with other factors. The applicant cannot create semi-
8 detached homes, as indicated in our submission and by
9 Mr. Chughtai.

10 If this was not in a historic district, the
11 lot width and lot area would support -- rowhomes are
12 permitted in this zone. It's not a question of not
13 having them, not permitted. And rowhomes are 20 feet
14 wide. And so, that would have been permitted but for
15 this unique confluence of factors.

16 In addition to that, we've heard testimony
17 from Mr. DuPont in regards to the challenges of the
18 topography site work that is required given the fact
19 that these properties are vacant and that all of that
20 is necessary to be able to bring these properties back
21 into a habitable and single-family homes for the
22 neighborhood.

23 Court of Appeals cases have stated that a
24 variance is designed to provide relief from the strict

1 letter of the regulations and to protect the zoning
2 legislation from the constitutional attack, and to
3 prevent unusable land from remaining idle. We believe
4 that the record is clear that these properties have
5 been vacant for 26 years and that should be a factor.

6 There's also information in the White House Housing
7 Development Tool Kit that encourages, and also in the
8 Comprehensive Plan, that OP has acknowledged as well
9 in their report, the support for in-fill development.

10

11 And we respect and we appreciate all the work
12 that we've done with OP, and the fact that they are
13 indicating in their report that they are supportive of
14 different elements of the request. And we want to
15 just simply indicate that obviously the need for the
16 relief is, in our opinion, very limited. When you're
17 looking at the lot area relief we're talking about 217
18 square feet. Again, only for the south two lots,
19 which is a 7.2 percent relief.

20 While we have not argued that it is de
21 minimis, it is still a very minor area of relief, and
22 the Board is aware that the degree of relief should
23 then be related to the standards in which they apply.

24 And so here we believe that given the fact that we're

1 talking about a 7.2 percent lot area, and that is as
2 Mr. DuPont testified to, directly related to the
3 unique shape of the property if the bottom two
4 properties actually did extend farther into the rear
5 as the top two lots, that the lot area on those would
6 be compliant, and then we would be looking at just
7 seeking relief.

8 So, that is actually a direct nexus between
9 the unique condition and the relief being sought, and
10 that here we are seeking the relief for then the lot
11 width. The lot width is 26 feet versus a 30-foot
12 requirement, and OP in their report, while they
13 indicate that while they are not supportive of the lot
14 area and lot width relief, that they would find it to
15 be, I believe, recommend approval for the side yard
16 and then the side yard requirements. So, I will not
17 touch on those unless the Board wants to ask specific
18 questions.

19 We believe that the relief being sought here
20 does not have a -- actually has benefited, it improves
21 the properties, provides a benefit to the public good.
22 The architectural designs that have been strongly
23 discussed and communicated amongst the community and
24 the neighborhood is a benefit and is not going to

1 impact the public good or the zone plan, and that it
2 actually is in conjunction with promoting development
3 in Anacostia, and promoting home ownership for homes
4 that would be able to be in concert with the character
5 and the community of that neighborhood.

6 We have proposed conditions, but I will leave
7 my 15 seconds or a few minutes, hopefully, for
8 rebuttal or additional questions following OP.

9 CHAIRPERSON HILL: Okay. Great. Thank you.
10 I do have some questions, but I guess also I can start
11 with -- just, we can kind of rotate around if you'd
12 like. People that have questions here on the Board.
13 But you mentioned a couple of times that the prior
14 owners have tried to develop the site. Can you
15 specifically say how they tried to develop the site?

16 MS. MOLDENHAUER: We know from looking at the
17 property that the land records have indicated that a
18 neighborhood development community, so it was a
19 development owner had owned it and then had
20 transferred it, and that property has changed hands on
21 multiple occasions over the last 20 years. So, that's
22 obviously our understanding, that it was owned by a
23 development company, based on the name in the land
24 records, and that then it has changed hands over time.

1 CHAIRPERSON HILL: But you don't specifically
2 know what they were trying to do?

3 MS. MOLDENHAUER: We do not have specific, but
4 nothing has obviously ever come up fully out of the
5 ground on this land.

6 CHAIRPERSON HILL: Okay. And Mr., is it
7 Chughtai?

8 MR. CHUGHTAI: Yes.

9 CHAIRPERSON HILL: Chughtai. So, how long
10 have you had the property?

11 MR. CHUGHTAI: We purchase this, I purchase
12 property last year, May of last year.

13 CHAIRPERSON HILL: May of last year. Okay.

14 MR. HART: You said these were not developed
15 now but -- I mean, they're undeveloped now, but
16 they've never been developed? You were saying 25
17 years, so I don't know were there houses on there to
18 begin with, and they were removed? Or has it always
19 been undeveloped?

20 MS. MOLDENHAUER: I think if you -- sorry. If
21 you look at the base map, I can go back to the base
22 map which is one of the first docket items. And even,
23 I think Mr. DuPont kind of referenced this. This
24 property has been subdivided and changed. If you look

1 at the base map here you can see that there was a
2 triangular sliver, there were two, three homes it
3 looks like. The one sliver never actually had -- two
4 of the slivers, if you look at this, it looks like
5 maybe a trapezoidal shape lot that's kind of in
6 between two homes, as of 1965, did not have a home on
7 it.

8 We have not gone back to prior base maps, but
9 this indicates that this lot has been one of multiple
10 subdivisions. And the trapezoidal portion of this lot
11 did not have a home on it.

12 CHAIRPERSON HILL: So again, part of the
13 confluence of factors is again, it's slides 24 and 25,
14 basically? Is that correct?

15 And then one of the arguments that you're
16 making, if you could clarify with me, as far as like
17 historic, I mean, one of the lots -- part of it is in
18 historic and part of it is not, right? So, that's
19 part of what is making this a unique situation?

20 MS. MOLDENHAUER: One of the factors is that
21 given the fact that one of the lots is in historic,
22 the applicant has worked with HPO and the community
23 who have requested that the other lot actually be
24 brought into the historic district, because as you can

1 see, it's very oddly you know, pulled two of those
2 sites out of the historic and they want -- the
3 community wants to see not just an initial
4 construction of a project to meet the historic
5 requirements, but then the maintenance and all of the
6 other requirements that historic communities, as this
7 Board is I'm sure aware, you know, a lot of the R-4
8 issues were stemming from issues where properties were
9 not in historic districts and did not get the benefit
10 of that down the road and into the future.

11 And so, the community has asked that the
12 applicant proffer to put the property into the
13 historic district and at least treat the property as
14 historic, which has to go to materials and quality of
15 materials and go back to the one condition that we had
16 on the plans. We have agreed, based on responses and
17 back and forth of the community, that all of the
18 fronts of the property will be wood and not siding,
19 that the decks will be wood. So, there are multiple
20 factors that go into the construction of a project
21 that have been elevated to the qualities of a high
22 quality historic product that would not have otherwise
23 been the case, but for the fact that this was uniquely
24 one of two lots that are somehow etched out of the

1 historic district. And it's actually the only lot
2 that is etched out of the historic district that is
3 vacant.

4 CHAIRPERSON HILL: So that if this were the
5 case you would then pull that into the historic
6 district?

7 MS. MOLDENHAUER: Mr. Chughtai is actually
8 offering that he will go through the process as long
9 as it doesn't provide any additional expense, which I
10 don't believe it would. It would simply be talking to
11 HPO and indicating that he's willing to bring the
12 property into the historic district.

13 CHAIRPERSON HILL: And that could be -- sorry.

14 MR. HART: Yeah, that's just a little odd
15 because normally historic districts have historic
16 issues for rationale for them to be included in it.
17 It's not because it's you built something that is, you
18 know -- and so that's a little less odd.

19 MS. MOLDENHAUER: You --

20 MR. HART: But, just one second. I actually
21 have a question about this.

22 MS. MOLDENHAUER: Sure.

23 MR. HART: So, you said the historic district.
24 Do you have a map of the historic district?

1 MS. MOLDENHAUER: Yes. I have one. It's not
2 the full historic -- sorry, it's going the other
3 direction. Hold on. Give me a moment, I'll pull it
4 up. Here it is.

5 So, this is, you can see, the dotted section
6 is the historic district.

7 MR. HART: So, the one that's to the I guess
8 north?

9 MS. MOLDENHAUER: North.

10 MR. HART: Is within.

11 MS. MOLDENHAUER: Is within.

12 MR. HART: But the other ones are without,
13 because it's just interesting that one of the lots
14 that is undeveloped is in a historic district.

15 MS. MOLDENHAUER: I don't, now the SMD --

16 MR. HART: I mean, it's almost like it -- I'm
17 sorry. What's interesting about this is that it isn't
18 a -- it's a you know, kind of you know, missing a
19 couple of sites and then hitting a couple of sites and
20 then missing a couple of sites.

21 MS. MOLDENHAUER: And I believe it has to --
22 and I don't know why. So, the one, you can see our
23 red lot, or the red line that surrounds our lot. The
24 site to the south of ours has a home in it.

1 MR. HART: Yeah.

2 MS. MOLDENHAUER: And the single-member
3 district member is here and she'll probably have more
4 information than I do because she's lived it. And
5 we'll be able to probably provide more information.
6 That actually has a home on it.

7 The other site down to the south, which is
8 very large and has the blue slashes, that lot is one
9 single lot. You can see how large that is, and that
10 actually has an apartment building that fronts on
11 Morris.

12 So, that might -- the logic on that site might
13 be the fact that it actually fronts on Morris and
14 doesn't front on Maple View. I don't know what the
15 logic was as to why one of these vacant lots and one
16 of these vacant lots was or was not included, and
17 again, potentially Commissioner Fulton might be able
18 to enlighten us.

19 MR. HART: Yeah, I would just -- again, the
20 caution about, you know, adding to I a historic
21 district has to have some -- there has to be some
22 rationale for it, and I'm not sure if you'll be able
23 to kind of say a -- because a building is -- you may
24 meet some of the requirements of it, but I doubt that

1 you'll be able to get into a historic district if it
2 already wasn't in, and you're putting a brand new
3 building on it. That's all.

4 MS. MOLDENHAUER: And again, you can ask
5 Commissioner Fulton, because this was more at their
6 bequest. We said we would be willing to work with
7 them. And again, I think from my understanding it has
8 to do with what the community would want to see the
9 benefits of a historic overlay, or a historic
10 district, not just now but into the future, which
11 limits, you know, all types of you know, window work
12 and different factors for the future down the road
13 that I know a lot of people in the community and the
14 city have seen the benefit of all throughout the city.

15 CHAIRPERSON HILL: Okay. Mr. May?

16 MR. MAY: So, explain again why rowhomes were
17 not an option, given that they're allowed in the R-3
18 Zone.

19 MS. MOLDENHAUER: Historic Preservation and
20 Mr. DuPont can elaborate on this, indicated that it
21 was not -- that Historic Preservation would not
22 support rowhomes; that Historic Preservation wanted to
23 see semidetached structures.

24 MR. MAY: Historic Preservation being the

1 office, the HBO?

2 MR. DuPONT: One of the first things we did
3 was meet with Mr. Dene of the Historic Preservation
4 Office.

5 MR. MAY: Uh-huh.

6 MR. DuPONT: And he clarified very strongly
7 that rowhomes would not be acceptable on that half of
8 the property. And in addition, any subdivision that
9 created a lot that crossed the line would -- he would
10 treat it as if it was part of the historic district.

11 MR. MAY: Sometimes I wish we got to see these
12 projects before they went to Historic Preservation.

13 MR. DuPONT: Well, it would have looked like -
14 -

15 MR. MAY: Well, that's okay. We don't need to
16 speculate. I mean, you know, the -- I appreciate
17 what's been designed here. It's been done pretty
18 sensitively and it seems to, you know, align with many
19 buildings that are in the vicinity. But you also do
20 have rowhouses in close proximity that are within the
21 historic district. And I do not have the automatic --
22 and would not share Mr. Dene's automatic rejection of
23 rowhouses simply because they think -- he thinks that
24 they would not fit within the context when they are

1 but it's a very, very difficult relief to be granted
2 in this circumstance. Again, you know, I appreciate
3 what you've done with it. I think you've done a good
4 job trying to design something that fits with the
5 neighborhood. The problem is that it doesn't really
6 fit with the zoning.

7 MS. MOLDENHAUER: Can I respond to that just
8 in two ways?

9 One, no matter what we -- no matter however
10 this property is developed, there are practical
11 difficulties, and no matter what this property would
12 need relief. One of the new factors in the zoning --

13 MR. MAY: How can you say that? You have two
14 large properties. You could put two single-family
15 homes on them. Correct?

16 MS. MOLDENHAUER: You cannot put two single-
17 family homes on them, given the fact that they are
18 vacant and that you need to bring (simultaneous
19 speech) --

20 MR. MAY: I'm sorry, the fact that it's vacant
21 makes it harder to develop? I would think that would
22 make it easier to build a new home.

23 MS. MOLDENHAUER: It would require a certain
24 amount of efficiencies of scale, and it would be more

1 challenging given the topography, the need to remove
2 trees. This property has been vacant for over 20
3 years.

4 MR. MAY: So, you're making an economic
5 argument that it's not developable. But you've not
6 made that in your filings. You're trying to make that
7 right here and now.

8 MS. MOLDENHAUER: And, we can always
9 supplement --

10 MR. MAY: I mean, you know, the fact that
11 they're vacant, you cite that as one of the
12 confluences of circumstances. The fact that it's
13 vacant makes it easier to develop, not harder.

14 MS. MOLDENHAUER: If we can supplement the
15 record on additional information on the finances, the
16 reality is that the property has not been developed
17 for a long period of time because of the inability to
18 develop it as a matter of right. In addition --

19 MR. MAY: But you have not, you've not
20 submitted anything to the record that indicates that
21 other developers actually failed. All you've said is
22 that it's changed hands. That doesn't really mean
23 anything. It means that it happened to fall in the
24 hands of somebody who didn't have the wherewithal to

1 develop it.

2 MS. MOLDENHAUER: We believe that the evidence
3 shows that there is an inability to develop the lots.
4 We can --

5 MR. MAY: But that's not what you submitted.
6 That's all I'm saying, is if you can submit something
7 that says that, yeah, this is a really hard property
8 to develop and you know, such and such company tried
9 to and failed, and you can, you know, show why that --
10 I mean, maybe that contributes to an economic
11 argument. But all you're saying is that it's a vacant
12 lot, which on its face is not a good argument.

13 MS. MOLDENHAUER: I believe that as I
14 indicated earlier, Commissioner Fuller, who lives on
15 the street and is single-member district
16 representative is present, and she will elaborate on
17 some of those factors. I do know that we've had
18 discussions with her about that, but I do not have
19 personal knowledge of it so I will let her speak to
20 that.

21 Second --

22 MR. MAY: Okay. And her personal knowledge of
23 it may not be entirely based on all of the facts that
24 has to do with the actual economics of the previous

1 owners.

2 MS. MOLDENHAUER: But at the same time, we
3 have to provide information that we are available to
4 get, and at the same time the question is degree of
5 relief. We're talking about seven percent relief,
6 we're not talking --

7 MR. MAY: No, seven percent is beyond the
8 minimal discretionary amount that the Zoning
9 Administrator will do, so it might as well be 50
10 percent from my perspective. You still have to pass
11 the prongs of the test.

12 MS. MOLDENHAUER: And so, let me go to the
13 other -- my other point that I wanted to make. If you
14 were to develop this as OP is recommending as three
15 lots, relief would still be required. They are not
16 saying that we don't -- if we were to look at this
17 from a three-lot perspective as I believe OP is
18 indicating in their report that they would be
19 supportive of, zoning and variance relief would still
20 be necessary. So, that would mean that the variance
21 test would still need to be proven.

22 MR. MAY: But really, for me, necessary in
23 that circumstance.

24 MS. MOLDENHAUER: In that circumstance there's

1 a new section of the regulations that requires that if
2 a building has a free-standing side that is not
3 connected to another structure, which would be a party
4 line condition, side yard relief, or side yard must be
5 provided. So, you could not then create a -- you
6 cannot create a semi-detached home without actually
7 physically attaching it to another structure.

8 MR. MAY: Right. Which is what really the
9 definition of free-standing -- that goes back to a
10 case 12 years ago which I think was incorrectly
11 reversed later.

12 But, the point being, I mean, a free-standing
13 wall is a free-standing wall. All we did was clarify
14 the rules.

15 MS. MOLDENHAUER: You clarified the rules, and
16 I think that there is a lot of times when projects
17 were being approved based on a free-standing wall --

18 MR. MAY: Incorrectly, yes.

19 MS. MOLDENHAUER: Well, that's --

20 MR. MAY: In my view.

21 MS. MOLDENHAUER: -- in Matt LeGrant's view,
22 he would disagree with that. So --

23 MR. MAY: I disagree with Matt LeGrant on a
24 number of things.

1 MS. MOLDENHAUER: I know you do. So, I am
2 aware of that.

3 And so, the reality is, though, that this
4 project would need that type of relief. Again, Mr.
5 DuPont can testify that in order to attach to create
6 semi-detached, attached structures, HPO and the
7 Historic Preservation communities were not supportive
8 of that. We can show a picture of one of the images
9 of properties that are actually physically attached,
10 and that that was not something that was supported.

11 MR. MAY: So, a larger -- I mean, instead of
12 having the tall narrow homes on narrow lots, which
13 again, I see their examples in the neighborhood, the
14 idea of having a traditional duplex with two side
15 yards that is actually two homes is inconsistent with
16 the neighborhood?

17 MS. MOLDENHAUER: Is inconsistent with what
18 HPO and I don't know if you want to testify, that HPO
19 and Tim Dene did indicate that those would be
20 inconsistent. And so, if you want to just confirm
21 that that was stated?

22 MR. DuPONT: If you provide the two side
23 yards, the houses then are only 18 feet wide.

24 MS. MOLDENHAUER: But, I'm asking you to

1 testify about the issue that they indicate that
2 attached, semi-detached --

3 MR. DuPONT: Yes. He did say that he would
4 not support rowhomes.

5 MS. MOLDENHAUER: Not rowhomes, but attached.

6 MR. DuPONT: Or even semi-detached abutting
7 homes, so we could have --

8 MR. MAY: Somebody has got to talk to Tim
9 Dene.

10 MR. DuPONT: Well, that was if they were on
11 the historic property. He also said --

12 MR. MAY: No, I understand what you're talking
13 about. On the historic property. But I mean you
14 know, you can look around the neighborhood and you can
15 see that there are a number of large homes. And one
16 of the things that happens with semi-detached homes is
17 that they just look like a single large home, right?

18 MR. DuPONT: I don't think there are any semi-
19 detached homes in the area.

20 MR. MAY: I'm not saying that there are semi-
21 detached homes. I'm saying that the look of a large
22 semi-detached home can be very similar to the look of
23 a large single-family home, and there are a number of
24 large single-family homes in the area. I mean, this

1 is, you know, this is I'm talking about 200 years'
2 worth of housing development. We're not talking about
3 a new concept here that a semi-detached, they put them
4 together in part to make the look the house -- the
5 house look bigger, and the owners, you know, wealthier
6 or something like that.

7 And this is, it's a well-established concept,
8 and the notion that he would just dismiss it out of
9 hand, I've got to talk to Tim Dene myself.

10 MS. MOLDENHAUER: So, we are basing it on what
11 we are aware of and what we've had conversations with.

12 And so, that being said, relief would still be
13 required, then, for that freestanding side yard. And
14 so, if the Board were to find that we satisfied that
15 variance based on the conditions of the property, we
16 believe that the Board would then be able to find that
17 we satisfy the conditions as they are here in this
18 layout, in this proposed design.

19 In addition to that, there was a comment made
20 by Commissioner May about, well, these are rectangular
21 lots. There have been cases where the Board has found
22 that a rectangular lot, when compared to other lots,
23 there is the Planned Parenthood project on 16th
24 Street, where it was a square, square lot, and you

1 know, this Board said that, you know, given the fact
2 that it was comparing it to other properties that it
3 was narrow. You have to compare it to the lots that
4 are on the square and the lots that are on this
5 project, and we are --

6 MR. MAY: Okay. I'm aware that we've approved
7 variances for rectangular lots. But you know, the
8 fact that it's a large rectangular lot does not argue
9 in favor of a variance.

10 MS. MOLDENHAUER: It does not, but when given
11 the confluence factors and the fact that it has a
12 large topo, that it is vacant, that the size, but for
13 that size, you know, the lower two lots would comply,
14 and but for the fact that you know, it has all these
15 factors, we can, as Commissioner May as you've
16 indicated, supplement the record in regards to some of
17 the economic factors that do lead to the practical
18 difficulty here.

19 At this point I will pause and let the Board
20 ask any other questions, then maybe provide a closing
21 at the end.

22 MR. MAY: As I understand -- well, we'll let
23 the -- I guess I'm interested in understanding what
24 the Office of Planning would actually recommend in

1 terms of a three-home development, and what their
2 attitude would be toward any relief that might be
3 required as a result of that.

4 But, you know, it's easier to make a case that
5 for the parcel that is within the historic district,
6 that if you split that in two, that it makes sense to
7 grant -- I mean, the fact of being in the historic
8 district and the only relief that would be required
9 would be the side yard relief to make it consistent
10 with other houses in the neighborhood, that's an
11 easier argument to make. It's when you bring in that
12 other property that's not in the historic district
13 that it -- you know, where you have the lot size issue
14 in addition to the side yard relief. I think that's
15 where it starts to fall down.

16 But again, I'm interested in hearing what the
17 Office of Planning has to say about that.

18 MR. HART: And actually, before we jump, did
19 you -- would you not consider or not consider having a
20 -- may not be something that looks great next to each
21 other, but a semi-detached next to, on the lot that's
22 outside of the historic district, and having two
23 single-family?

24 MS. MOLDENHAUER: Are you asking two semi-

1 detached and then two rowhomes?

2 MR. HART: I mean, I don't --

3 MS. MOLDENHAUER: Is that what you're -- I
4 mean, is that --

5 MR. HART: I'm just saying that that's --

6 MS. MOLDENHAUER: I'm asking what -- I'm
7 sorry.

8 MR. HART: Yes.

9 MS. MOLDENHAUER: I didn't mean to -- is
10 that --

11 MR. HART: Yeah. I'm just asking if you --
12 have you looked at other options that are outside of
13 just four or two?

14 MS. MOLDENHAUER: Absolutely. I mean, I know
15 that the architect, Mr. DuPont has. I have a
16 whiteboard in my office. We have sketched out every
17 possible different option, and because of the free-
18 standing requirement, which has been clearly stated
19 now in the regulations, neither of the homes, again in
20 our opinion a unique factor, on either end of these
21 properties have a party wall condition. They actually
22 have side yards.

23 So, at the end of the lots you end up having
24 relief that is necessary. And in addition to that it

1 is our understanding from multiple community meetings
2 knocking on doors, talking to individuals on the
3 street, the community would be very much opposed to
4 that appearance of a structure rather than the
5 appearance of a structure that we've proposed.

6 MR. HART: I just wanted to hear what you --
7 that you had actually looked at it.

8 MS. MOLDENHAUER: Yes.

9 MR. HART: I don't think that it would be a
10 good idea, it's just --

11 MS. MOLDENHAUER: These are going for
12 diagrams.

13 MR. HART: It's helpful for us to understand
14 some of this as well.

15 MS. MOLDENHAUER: Absolutely. Thank you.

16 MR. HART: Thank you.

17 CHAIRPERSON HILL: When the ANC does come
18 forward I would be interested to hear again, if you
19 could just bring up again what they're opposed to, or
20 what you don't think they would be in agreement to in
21 that particular situation, when the ANC comes forward.

22 We have any more questions right now? Okay.
23 We're going to turn to the Office of Planning and just
24 turn to you and let you go ahead. Thank you.

1 MS. MYERS: Hello again. Crystal Myers, for
2 the record, for the Office of Planning.

3 We feel that the applicant has not provided
4 sufficient argument to pass the variance test. The
5 four-lot subdivision would be out of character for the
6 area, and as we mentioned in our report there are
7 other options that are still possible.

8 I'm going to leave it for the further
9 discussion with my supervisor here, Joel Lawson.

10 MR. LAWSON: Co-worker. Joel Lawson with the
11 Office of Planning.

12 I'd just like --

13 CHAIRPERSON HILL: No, supervisor means you
14 get to have more of the questions.

15 MR. LAWSON: I just want to kind of start to
16 address board member May's specific question about
17 what relief would be needed. It is a bit of a
18 complicated case in that the zoning itself is of
19 course, it's very flexible and permissive and it
20 allows a row house semi-detached or detached dwelling,
21 it establishes different lot sizes for all three.

22 So, when this application came in we had
23 extensive discussions with DCRA about what these
24 specific buildings would be called. There was some

1 discussion about maybe they should be called detached
2 dwellings that happened to provide zero setback on one
3 lot line. There was some discussion that they were
4 more appropriately called semi-detached because
5 they're built on a property line. Although, the issue
6 that the applicant pointed out, the regulations do
7 require that if it's considered semi-detached then it
8 needs to be attached on one wall to another building.

9 In the end, the Zoning Administrator
10 determined and we agreed, certainly with that
11 determination, that this was appropriately called a
12 semi-detached building. That actually assisted the
13 applicant in this case because the lot size and lot
14 width requirements for a semi-detached building are
15 smaller than they are for a detached building. So, a
16 fully detached building is required to provide a lot
17 of 4,000 square feet and 40 feet of width. Semi-
18 detached building is 30 feet width and 3,000 square
19 feet, and as the applicant pointed out for a rowhouse,
20 it's 20 feet and 2,000 square feet.

21 And that's to reflect, obviously that the
22 different forms of housing have different amounts of
23 kind of green space around them.

24 Anyways, I just wanted to kind of touch on

1 this directly. So, the applicant noted that even with
2 a three-lot subdivision, which we had discussed with
3 the applicant to some extent, that some relief would
4 still be needed. The lots, as the applicant pointed
5 out, would if they provided the -- even at a 30-foot
6 lot width, if they met the -- which would be
7 nonconforming for a detached house, if they provided
8 the lot width on both sides, the house would still be
9 narrower than is typical for the area. And so, some
10 relief from side yard would be possible.

11 Instead, with a three-lot subdivision the
12 applicant can continue to go forward with a building
13 that's located on one property line, providing a side
14 yard on one side. And that side yard would probably
15 be even larger than the eight-foot requirement, in
16 which case they would still require relief to have
17 that semi-detached building not attached to another
18 building.

19 We agree with Commissioner May that that is a
20 much easier test to make. The applicant seemed to
21 imply that if the test can be made for one aspect of
22 relief, then they've met the burden of proof for all
23 forms of relief. And OP categorically disagrees with
24 that. We feel that a unique circumstance resulting in

1 a practical difficulty for one aspect of variance
2 relief may be perfectly sound, but may have no
3 relevance at all to another form of relief.

4 So, for example, if lots of 30-feet wide were
5 -- or 34-feet wide, which is what these ones were
6 created through a three-lot subdivision, and the some
7 relief from side yard was not provided, then the house
8 itself would be relatively narrow and some relief from
9 that side yard would be justified, whereas as my co-
10 worker has already stated, we feel that the applicant
11 has not made a sufficient case based on a practical --
12 based on a unique circumstance resulting in a
13 practical difficulty related to the creation of four
14 non-conforming lots.

15 We take that aspect of the regulations
16 obviously very seriously as it gets to the density
17 itself of the area. And so, barring the submission of
18 additional information which we would question, OP
19 believes that they've not made the case for the
20 subdivision to four lots, particularly when there is
21 the option for doing three lots that would conform to
22 both lot area and lot width. We think that that case
23 is not being made, and although we appreciate the
24 efforts of this applicant, we agree with the ANC in

1 their support of developing nonconforming lots -- or
2 sorry, developing vacant lots and developing them in a
3 way which is consistent with the neighborhood. We
4 feel a three-lot subdivision would actually be more
5 consistent with the neighborhood, and significantly,
6 significantly more consistent with the intent of the
7 Zoning Regulations. Thank you.

8 MR. MAY: Mr. Lawson, if I can clarify what
9 you're suggesting as a three-lot solution would be to
10 resubdivide the two lots into three.

11 MR. LAWSON: Correct.

12 MR. MAY: As opposed to taking one, splitting
13 it in half, getting relief, it's in a historic
14 district, blah, blah, blah, and then you can do a
15 single-family home on the other one.

16 MR. LAWSON: We feel it would make much more
17 sense to do three -- do the subdivision to three lots,
18 which would conform to the semi-detached lot area and
19 width requirements.

20 MR. MAY: Okay. Did you -- I didn't even
21 think about this, but did you look at any other site
22 configurations, you know, treating the historic
23 differently versus the nonhistoric lot?

24 MR. LAWSON: We actually did not. We did have

1 discussions with Historic Preservation. They
2 indicated that their principle concern which we feel
3 is also reflected by the ANC and the neighborhood, is
4 that on this side of the street that a detached form
5 of house is more characteristic of the nature of that
6 aspect of the historic district. So, we, for the most
7 part, we based our analysis on that form of
8 development.

9 And by detached, I mean, a detached looking
10 house. It might actually technically be called semi-
11 detached.

12 MR. MAY: Well, right. I mean, that's one of
13 the things I thought about too, is whether you could
14 actually have a row that presented itself on the
15 street as if it were these -- this kind of semi-
16 detached home.

17 MR. LAWSON: Well, again, that's not something
18 we really looked at.

19 MR. MAY: No.

20 MR. LAWSON: And again, that was really based
21 on the discussion that we heard from Historic
22 Preservation Office, as well as through the applicant
23 and HP from the neighborhood.

24 MR. MAY: Right. Okay. Thank you.

1 MR. HART: And is there a need for -- you said
2 some relief would be required, side yard?

3 MR. LAWSON: Even with a three-lot
4 subdivision, we feel the applicant would be able to
5 make a case, a sufficient case for some relief from
6 side yard, and that could be relief from the eight-
7 foot minimum requirement. We feel more likely it
8 would be relief from the interpretation of the Zoning
9 Administrator. And again, we think correct
10 interpretation, that to do a -- how can I put this?
11 To do a house on a property line that's not connected
12 to another house, a technical kind of form of a relief
13 from the regulations would be required to do that.

14 So, the form of development would look very
15 similar to what they've proposed. A house on the
16 property line on one side with a side yard on one
17 side, but on lots that conform to the regulations.
18 And actually, we indicated that in our report, of
19 course, that we -- that our concern was with the
20 relief for the subdivision itself, not the relief to
21 allow this form of development that the applicant is
22 proposing.

23 CHAIRPERSON HILL: All right. Does the Board
24 have any more questions of Office of Planning?

1 [No audible response.]

2 CHAIRPERSON HILL: Okay. Does the applicant
3 have any questions for the Office of Planning?

4 MS. MOLDENHAUER: Just a few.

5 CHAIRPERSON HILL: Sure.

6 MS. MOLDENHAUER: Either Ms. Myers or Mr.
7 Lawson. We sent you a package of seven alternative
8 designs and schemes. Is that correct?

9 MS. MYERS: Yes, that's correct.

10 MS. MOLDENHAUER: Showing that we had
11 considered multiple varied alternatives and that all
12 of those alternatives required relief in some which
13 way or were not then -- or were either required relief
14 or were not consistent with what HPO was informing us?

15 MR. LAWSON: Yes, but none of those were the
16 option that we suggested.

17 MS. MOLDENHAUER: So, and then on page 6 of
18 your report you say, "The size of the proposed four-
19 lot subdivision would be somewhat out of character,
20 but OP agrees that the applicant -- that the proposal
21 would not likely cause a substantial detriment to the
22 public good."

23 So, you are confirming that it would not --
24 the four lots would not create a substantial detriment

1 to the public good.

2 MR. LAWSON: We did not see one.

3 MS. MOLDENHAUER: And then is it your
4 understanding -- so, the property is located in the R-
5 3.

6 MS. MYERS: Yes, that's correct, R-3 Zone.

7 MS. MOLDENHAUER: And the lower density to
8 that is the R-2?

9 MS. MYERS: Yes.

10 MS. MOLDENHAUER: The R-2 provides for opt-in
11 options under IZ for semi-detached. Is that correct?

12 MR. LAWSON: I fail to see the relevance to
13 this case. The property is zoned R-3, so we deal with
14 the R-3 regulations, unless the applicant is proposing
15 a rezoning of the property. The provisions of R-2 are
16 not relevant.

17 MS. MOLDENHAUER: If Office of Planning does
18 not, I'll walk through that for the Board then,
19 myself, thank you.

20 CHAIRPERSON HILL: Okay. All right. You're
21 done with the Office of Planning? Okay.

22 So, I'm going to turn now, because obviously,
23 the ANC is here. Is there anyone from the ANC who
24 would like to come forward?

1 If you could please, when you get settled in,
2 just introduce yourself?

3 MS. FULLER: Yes. My name is Greta Fuller. I
4 am the ANC for ANC 8-06, where the vacant lot is.

5 CHAIRPERSON HILL: Okay. Ms. Fuller, are you
6 the SMD?

7 MS. FULLER: Yes, I am.

8 CHAIRPERSON HILL: Okay, great.

9 MS. FULLER: I am the single-member district
10 representative.

11 CHAIRPERSON HILL: Okay. Thanks for coming
12 down. It's been a long day for you, I'm sure.

13 MS. FULLER: Yeah.

14 CHAIRPERSON HILL: And, did you get sworn in
15 earlier?

16 MS. FULLER: No.

17 CHAIRPERSON HILL: Okay.

18 MS. FULLER: But I'm always sworn in. I'm an
19 ANC.

20 CHAIRPERSON HILL: I know. Well, apparently
21 unless you're an attorney you have to get sworn in.
22 Let me see if I can find Mr. Moy. Just hold on one
23 second.

24 [Pause.]

1 CHAIRPERSON HILL: All right, Commissioner
2 Fuller. Sorry. We're going to swear you in anyway
3 over here, Mr. Moy. Just stand, please, and raise
4 your right hand.

5 MS. FULLER: Okay.

6 MR. MOY: My apologies, Mr. Chair.

7 [Oath administered to the participant.]

8 CHAIRPERSON HILL: Thank you, Ms. Fuller. I
9 mean, Commissioner Fuller.

10 So, again we're going to -- the ANC gets five
11 minutes. We're going to go ahead and put five minutes
12 on the clock. I know you've heard a lot about
13 everything that's going on, and so please, you know,
14 just if you would, just give us your impression on the
15 project and what, you know, has gone on with the ANC
16 and then we might have some questions for you.

17 MS. FULLER: Okay. I could read my testimony
18 verbatim, but I think I've heard a lot of things today
19 that seem to be unanswered. The ANC last night at our
20 meeting where we had a quorum, we voted in favor of
21 this project. No one voted against it. Two
22 commissioners did abstain because they didn't
23 understand development. They're new to being an ANC,
24 so they felt like they didn't really understand how to

1 vote on development. But the commissioners who were
2 very aware development in the community, we all voted
3 in favor.

4 I've spoken to all of my -- I've had several
5 different meetings with the developer and with the
6 community to understand if anybody was opposed. And
7 my first thing was to talk to the people across the
8 street and next door who would be immediately impacted
9 by new houses, residents, or apartment building or
10 anything, and no one was opposed to the development at
11 hand.

12 We've shown four houses as they proposed at
13 that site. We did not like how they looked in the
14 beginning and what they felt like, but as they worked
15 with the community and worked with HPO and went to
16 HPRB where HPRB supported them as well with more
17 comments provided by HPO for a future, for the final
18 design review.

19 So, I do know that there were houses on the
20 property before. They were historic houses, and
21 because a lot of times what happens in Historic
22 Anacostia, people have bought houses, including the
23 District Government, and they've let them be blighted
24 and they've basically fallen down or has been

1 we have the lowest of in the District of Columbia in
2 Ward 8 and in our neighborhood, so we are welcoming
3 any type of homeownership and people who really want
4 to be a part of a community and live in a community.

5 He offered to put those -- that property, even
6 though the structure itself would not be historic, if
7 he puts that vacant lot that's not in the historic
8 district back into the district, we don't stand a
9 chance of getting a pop-up. And we know that pop-ups
10 are happening all over the District of Columbia.

11 We're trying to weave back the fabric of what we've
12 lost through the years. We're trying to build our
13 community back up and build it with structures and
14 with people who want to be in our neighborhood and
15 have it look and feel where it has a continuous flow.

16 Nothing like, we're tired of all this jagged. Like
17 he said, the apartment building or the rowhouses that
18 are across the street would have never been built in
19 the historic district today. And they belong in the
20 historic district, but when they were built they were
21 built at a time that the historic district did not
22 exist.

23 So today, if that building was to be built, it
24 would not be built there. And we're not saying we're

1 opposed to apartment buildings because we have a big
2 one coming on Martin Luther King that's actually five
3 stories high, that doesn't even fit into our
4 neighborhood, but it's being built anyway. And we're
5 moving historic properties and changing the look and
6 the feel of our community.

7 So, if we can get a developer who is willing
8 to work with our community, bring property back in,
9 build structures that are conducive and bring
10 homeownership, we are on board with it. They have
11 been very open to the community suggestions. But it's
12 not only our suggestions. It's the suggestions of
13 HPRB, HPO, and many different organizations in the
14 community. And there have already been people who
15 live in the community looking, you know, at those
16 houses are hoping that they can probably purchase one
17 of those structures. They may be living in an
18 apartment now and looking around in Anacostia.

19 I mean, I've said a lot. If you have any more
20 questions for me -- oh, it was something said about
21 did someone try to build on it? Yes, there was. Arch
22 Development tried to build on it and it was Duane
23 Gautier. That's why two of the properties, they built
24 one house but they had a difficult time building a

1 second house. I'm not sure if it was finances or what
2 the problem was, why they didn't finish. But not long
3 ago, maybe three years ago, another person came in
4 front of HPRB. And they had a design that did not fit
5 into the community, and they walked away.

6 So, what we keep seeing is people walking away
7 from this vacant lot that myself and several neighbors
8 have been cleaning for years. Mr. Chughtai, after he
9 bought it, I was actually very surprised that within a
10 year he was ready to start building. We've had people
11 that come and buy and they just sit on the property,
12 and they're waiting for this great thing to happen
13 before they actually build, clean up their properties,
14 fix the blight, and instead of like actually coming in
15 and doing something. So, for that, I commend him.

16 I'm not quite sure about all of the laws with
17 zoning, but I do know that the houses that they are
18 willing to construct will fit into the historic
19 district. And most of the -- no, all of the houses on
20 that side of the street at detached single-family
21 homes. They are detached, from the bottom of the
22 hill, all the way up.

23 And then on the opposite side of the street
24 you have that rowhouse that doesn't belong in the

1 neighborhood and it would never be built today.

2 So, I'd like you guys to take in consideration
3 that this is a neighborhood I live in, this is the
4 street I live on. So, what goes on that street, what
5 it looks like every day, I have to drive past that
6 property when I come home. Sometimes I don't even get
7 to my house because I'm picking up trash. But not
8 since he purchased the property, but I'm speaking
9 before.

10 So, what is built there today means a lot to
11 us. And we are very concerned if we don't get someone
12 who is willing to work with the community, that we can
13 have any kind of structure. Or maybe not any kind,
14 but we could have a structure maybe taller. Maybe
15 somebody else says, hey, I got a matter of right. I
16 can build a three-story structure. I'm not quite
17 sure. You know? Or I can have a structure look like
18 this, it doesn't have to conform because it's not in
19 the historic district.

20 So, this means a lot to us that he's willing
21 to work with us and build something that's conducive
22 and fits in and brings more homeownership. Thank you.

23 CHAIRPERSON HILL: Okay. Thank you. Yeah,
24 Commissioner Fuller. I mean, I guess we're all

1 struggling up here in a lot of ways with, I mean,
2 you're the Office of Planning, they're again, they're
3 not behind the -- you know, they're not on board with
4 the argument current. And, you know, they are again,
5 trying to suggest, I guess, a different alternative in
6 terms of there being three lots and I don't know what
7 the project might look like.

8 I mean, I do just want to clearly, I guess,
9 emphasize again the way that you know, I feel, and I
10 know the other board members have felt in the past in
11 terms of like the community and what you're trying to
12 get done, and it's very commendable of Mr. Chunghtai
13 that, you know, he's taking care of the lot and it's
14 something that I'm sure you want to see get developed
15 after now, 25 years and being on that street. And
16 also, the fact that he's worked with the community to
17 get the buy-in. It's really kind of just us getting
18 to whether or not they pass the variance test in order
19 for us to approve it.

20 And I don't mean to be selfish in that in that
21 if you did find something that was developed that was
22 just three properties, you know, something that the
23 Office of Planning could possibly get behind, your
24 community and the ANC is really hopeful that something

1 is developed, correct?

2 MS. FULLER: We're hopeful that something
3 meaningful is developed, is what I meant.

4 CHAIRPERSON HILL: Thank you. Sorry.
5 Something meaningful is developed in a way that Mr.
6 Chungtai obviously has gone far and ahead to make
7 sure that, you know, it works in well with the
8 community. And again, I appreciate you trying to do
9 that. I'm sure the Office of Planning wishes that
10 they didn't have the opinion that they had. And so,
11 or maybe not, but I think that that's probably the
12 case. At least, that's my benefit of the doubt there,
13 Mr. Lawson.

14 So, does anyone else have any questions for
15 the ANC? Sure. Great.

16 MR. MAY: Just a couple. So, you said that
17 there was a prior owner of the property who developed
18 one house. Is that the one that's just further up the
19 hill?

20 MS. FULLER: Yes.

21 MR. MAY: Okay.

22 MS. FULLER: They own both of -- I think they
23 own two lots and someone else on the other lot.

24 MR. MAY: Got it.

1 MS. FULLER: And they built one house that,
2 they built a house.

3 MR. MAY: And they sold the house and I mean,
4 it looks like, just in some of the other photos it
5 looks like it's a newer house --

6 MS. FULLER: Yes.

7 MR. MAY: -- but it's still a traditional
8 design, and it looks like that was not in the historic
9 district either.

10 MS. FULLER: No, it wasn't. And one of the
11 things about that house is that it sits back farther
12 than any houses on the street.

13 MR. MAY: Uh-huh.

14 MS. FULLER: So, when you're not in the
15 historic district some things happen that usually --
16 and so it's not -- so, that house itself isn't, you
17 know, in line and in total features with the historic
18 district. And we're trying to maintain and keep that
19 flow going with this new in-fill.

20 And, if we got a new -- and because the house
21 isn't -- that lot isn't there, we don't know what we
22 might get.

23 MR. MAY: Right. So, the -- and then
24 subsequent to that house being built there was another

1 proposal that actually went to HPRB and died, and was
2 that for both lots, or was it for --

3 MS. FULLER: Both lots. It died for both lots
4 because the person who brought it -- they just
5 couldn't figure out a way to build on it and what to
6 properly build.

7 MR. MAY: Right. So, what was the timing of
8 that?

9 MS. FULLER: How long ago, are you asking?

10 MR. MAY: Yeah.

11 MS. FULLER: Probably, it feels like it was
12 about two or three years ago, that they came.

13 MR. MAY: Relatively recently.

14 MS. FULLER: Uh-huh.

15 MR. MAY: Yeah. Okay.

16 MS. FULLER: It could be more. I know it
17 wasn't more than five. Maybe three.

18 MR. MAY: Right.

19 MS. FULLER: Or four.

20 MR. MAY: Well, I was wondering if -- I mean,
21 there were always external circumstances that could
22 affect the ability of development to happen and if it
23 were, you know, say eight years ago, one could easily
24 assume that it had to do with the difficulty of

1 financing at that time.

2 But if it was more recent than that, you know,
3 then it's -- it had to do with other factors, I
4 assume. All right. Thank you.

5 MR. HART: And, just thank you very much for
6 coming, Commissioner Fuller.

7 The only question I had was you said that
8 there were -- there were houses. There were two
9 houses on this site? Or, was there just the one?

10 MS. FULLER: No, there were more houses on the
11 entire lot. Well, on the entire lot, even --

12 MR. HART: I mean, I'm just talking about the
13 vacant, that vacant lot.

14 MS. FULLER: Even -- but even with the house,
15 the newly house that was built, there were actually
16 historic houses on that lot. And at the time the
17 historic district, we have many unorthodox lots in the
18 area. Like she was saying earlier is, we might have a
19 triangle zone, where we might have a rectangle. The,
20 what do you call it, your boundaries for your
21 property, they weren't well defined.

22 So, I don't know exactly how many houses, but
23 I know it was at least three, but I'm also including
24 the other lot where the new house is built that's not

1 in the historic district. So, it could have been more
2 before then, but we just don't know.

3 MR. HART: Thank you.

4 CHAIRPERSON HILL: Okay. Let's see. I'm
5 going to see if there's anyone else here.

6 Would the applicant have any questions for the
7 ANC Commissioner?

8 MS. MOLDENHAUER: Just two.

9 CHAIRPERSON HILL: Sure.

10 MS. MOLDENHAUER: Is it important to you as
11 the ANC Commissioner and the community, or did you
12 hear comments from the community during any of our
13 multiple meetings, about ensuring the -- whatever is
14 developed is at a market that can be afforded by
15 individuals in the community?

16 MS. FULLER: One more time? Did I hear --

17 MS. MOLDENHAUER: What are their comments, or
18 are you aware of comments made by individuals in the
19 neighborhood that if a project is developed, whether
20 three or four homes that the community was concerned
21 to make sure that the pricing of those homes were
22 marketable to the community.

23 MS. FULLER: Yes, I did.

24 MS. MOLDENHAUER: Thank you.

1 CHAIRPERSON HILL: Okay. Is there anyone else
2 here wishing to speak in support of the application?

3 [No audible response.]

4 CHAIRPERSON HILL: Is there anyone here
5 wishing to speak in opposition to the application?

6 [No audible response.]

7 CHAIRPERSON HILL: Okay. With that I'm going
8 to -- before I have some comments I'm going to turn
9 back to the applicant. Does the applicant have
10 anything further they'd like to add?

11 MS. MOLDENHAUER: Yes. We have some
12 preliminary numbers. If the Board would like, we can
13 kind of walk through some of those factors which
14 create an economic challenge for three lots versus
15 four lots. We can do that verbally now, or we can
16 supplement the record. It looks like we can
17 supplement the record from the verbal signals I'm
18 receiving. And --

19 CHAIRPERSON HILL: The nonverbal signals that
20 you're --

21 MS. MOLDENHAUER: Nonverbal. Sorry, the
22 nonverbal that I'm receiving because they're not on
23 the record.

24 In addition to that we just want to point out

1 that semi-detached -- there are opt-in program that
2 are allowed under the new zoning regulations, in the
3 R-2, which a lower density, there is opportunity to
4 opt in at IZ at 25 feet for a semi-detached, and 2,500
5 for the area. That is just not provided as an opt-in
6 option under R-3. There's only IZ for an attached
7 structure.

8 If we were able to opt in under that program,
9 we would be more than satisfying that requirement. In
10 addition to that we would just like to note for the
11 record that a single-family home under the IZ program
12 that would meet the bedrooms here would be \$402,000,
13 which is in market with sales in the neighborhood, but
14 we can supplement that information as well to the
15 Board at a later date, or as we supplement the record
16 based on my statement earlier.

17 CHAIRPERSON HILL: Okay. I'm going to kind of
18 ask the Board, I suppose, what they're interested in
19 doing. I mean, I'm kind of at a little bit of an
20 impasse and I'm going to need a little bit more
21 information.

22 I would like to see, I guess -- well, I
23 suppose I'm interested in hearing what the Board would
24 like to see. I don't know if I'm exactly there with

1 the four lots. I know that you obviously have heard
2 from the Office of Planning and their analysis. I
3 mean, I'm very much sympathetic and would love to be
4 able to -- that's the wrong word. I mean, I'm just
5 not there in terms of the confluence of factors that
6 are getting me to the four lots.

7 I am understanding of the Office of Planning
8 and their three lots, and that you also would still
9 need a variance in order to get that done. So,
10 whether or not the applicant wants to continue to
11 pursue bringing some possible, some economic factors
12 into it, bringing some factors into what has been
13 developed before, and what -- why those things failed
14 and why you have to have this configuration in order
15 to make the project feasible so that an idle lot does
16 not remain idle, that is also an avenue of possibility
17 for you.

18 I don't know if it's necessarily worth
19 pursuing. I'm just letting you know that that's
20 something you could do. If, working with the Office
21 of Planning, you got to another point where you --
22 because you still need the variances for the three
23 lots. I'm trying to just cut to the chase also, as
24 best you can. And you can make the three lots work,

1 and you can get the Office of Planning, which seems to
2 be very sympathetic, and they did say very nice things
3 about the project, I thought. You know, so they are
4 also -- you've done a nice job, I guess is what I
5 think is truthful. I mean, particularly there,
6 working with the community and doing your best to make
7 what I think is a nice project.

8 However, again, getting the Board to get to
9 the point where they can approve the variance, I'm not
10 sure whether or not you're going to be able to get
11 there. I'm going to let the other members chime in as
12 to what they might want to see in order to come to a
13 meeting. I'd like to have the applicant have the
14 opportunity to supplement the record in any form that
15 they would like to do so. But those are my thoughts.

16 MR. HART: Yeah, I think I'd also would concur
17 with Chair -- I forget your name.

18 CHAIRPERSON HILL: Hill. Go with Hood.

19 MR. HART: Hood. Chair, Chairman Hood. In
20 terms of -- see, you got me saying it now. Chairman
21 Hill. Excuse me.

22 [Laughter.]

23 CHAIRPERSON HILL: Chairman Hood, are you
24 watching?

1 MR. HART: He might call in.

2 With regard to just understanding a little bit
3 more about the three units, the three structures, I
4 think that that might be helpful for us to kind of
5 compare that to understand it a little further.

6 I know that you said that the Shipo (phonetic)
7 did not want to see rowhouses, but you know,
8 Commissioner May asked, well, what if they were not
9 kind of traditional row houses, or if they had some
10 connectivity that was farther away so that they may
11 look like what you see here on the street frontage,
12 but they may be connected, you know, farther back.
13 And that might be a possibility that would allow you
14 to be able to get to some of this that you're looking
15 for.

16 So, I don't know. I mean, I think that
17 they're just -- I would like to see a few more of
18 those alternatives to then be able to kind of compare
19 that.

20 MR. MAY: I would agree with everything that
21 my colleagues have said here. I think that there
22 isn't enough in the argument at this point to justify
23 the relief that's been requested, and I think I don't
24 need to belabor the points on why. And I do think the

1 case is a bit easier to make for a three-lot solution,
2 and I appreciate any information that, you know, you
3 could present about alternative scenarios because I
4 don't like -- I'm not very happy about the prospect
5 that all of this is being driven by some particular
6 opinions about the Historic Preservation approach,
7 because I think there are probably more solutions that
8 could work.

9 Certainly, the applicant is welcome to try to
10 bolster the case. And try to make the economic
11 argument that it really has to be four houses or it's
12 not feasible. But, you know, we see a number of those
13 sorts of cases being made, and sometimes they're made
14 fairly well, and sometimes they are internally
15 inconsistent, or it's relatively easy to see where
16 some of the numbers are not well grounded in fact.
17 And that is the most polite way of my saying it,
18 right? So, we don't want -- we want things that are
19 well grounded in fact.

20 And I, you know, it's certainly -- I'm willing
21 to be convinced. Again, you know, there's a lot of
22 good to be said about what we see right here in terms
23 of the design. I mean, I think it's a thoughtful
24 approach, a sensitive approach. All these sort of

1 things. The problem is that it just doesn't work with
2 the current zoning.

3 So, you know, I could also argue that, you
4 know, this might have been something that could have
5 been approved as a PUD, but I don't know that you want
6 to like back up and go that direction. Because we
7 just love doing zoning so much, you know, it's like I
8 want to see it wherever we can.

9 But seriously, though, the sort of tradeoffs
10 that are involved in something like this are more
11 readily addressed in a PUD case than they are in a
12 straight up relief case. So --

13 CHAIRPERSON HILL: Did I just waste two hours
14 of my life?

15 MR. MAY: I may have just wasted another four
16 hours of mine. No, I don't know.

17 CHAIRPERSON HILL: Yeah.

18 MR. MAY: But anyway, so, that's it. That's
19 what I have to say at this point, and I look forward
20 to seeing more information.

21 CHAIRPERSON HILL: Okay. So again, I'm going
22 to again summarize that again, I think that what
23 you've heard is going to be difficult to get us to the
24 four. If you want to try you can go ahead and try.

1 But I'm looking at the developer because I have been
2 on that side before and just letting you know that,
3 you know, the different options that have been
4 presented thus far, one that it was suggested by Mr.
5 Hood -- Hart, Mr. Hart. The Hs are killing me. Mr.
6 Hart. And even Mr. Lawson there from the Office of
7 Planning. I mean, that would be something that I
8 think would be probably quickly -- more quickly
9 resolved for you because you still have to come back
10 for a variance. You still have to -- and you've done
11 all the time and everything. And then you can come
12 back here for that. But when we come back with Mr.
13 May. But that is just gain, up to you guys.

14 So, but, so okay. So, then whatever you all
15 would like to supplement the record with would be more
16 than welcome. I would like to see Mr. May here again,
17 which will be, fortunately for you guys, sooner rather
18 than later. I think it's in four weeks.

19 MS. MOLDENHAUER: So, I believe it's March
20 8th.

21 CHAIRPERSON HILL: March 8th.

22 MS. MOLDENHAUER: And so --

23 CHAIRPERSON HILL: Oh, we're all here with --
24 that's right. You --

1 MS. MOLDENHAUER: I've been here since --

2 CHAIRPERSON HILL: You're here March 8th.

3 That's right.

4 MS. MOLDENHAUER: -- 9:30 this morning.

5 CHAIRPERSON HILL: No, you broke out for a
6 little while. You were gone for a little bit.

7 MS. MOLDENHAUER: So --

8 CHAIRPERSON HILL: You got to go outside.
9 It's nice out there, I hear. So, but March 8th.

10 MS. MOLDENHAUER: I'm sorry.

11 CHAIRPERSON HILL: That's all right.

12 MS. MOLDENHAUER: You're not going to get to
13 see it for a while.

14 CHAIRPERSON HILL: That's all right. So,
15 March 8th. Yeah.

16 MS. MOLDENHAUER: So, yeah. So, we would then
17 request, maybe we can provide a supplemental by the
18 22nd, which would be in two weeks. Or would the Board
19 -- I mean, would the Board want to provide us --

20 CHAIRPERSON HILL: I mean, really what I'd
21 love to see, you guys can kind of figure out what you
22 want to do with the timeline. I'd love for you to get
23 together with the Office of Planning again, you know.
24 And so, if that's, you know, regardless of which way

1 you choose to go, you know, so that's in two weeks
2 that you want to submit the supplemental. And then
3 the Office of Planning will give us another report.

4 MS. MOLDENHAUER: I mean, obviously if we
5 don't change the relief then I don't know if OP needs
6 to opine on that. Depends on what we supplement the
7 application with. And so, we will provide enough time
8 for OP to supplement if they so choose.

9 CHAIRPERSON HILL: Okay. So, what again, Mr.
10 Moy? The 22nd? Was that what I heard?

11 MR. MOY: What I heard was February 22nd, from
12 the applicant. And then I suspect something from OP.
13 Let's say March the 1st. Or would you prefer that
14 Friday, which would be March the 3rd?

15 CHAIRPERSON HILL: I mean, I'd like to see
16 something from you guys. Hopefully there's something
17 that you'll have to say something about.

18 MR. LAWSON: We'd be happy to submit something
19 if some aspect of the application changes. We'd be
20 happy to do so.

21 CHAIRPERSON HILL: Okay.

22 MR. LAWSON: And I assume that the record
23 would also be left open, excuse me, for the ANC if
24 they wish to provide additional comments.

1 CHAIRPERSON HILL: Yes, of course. Of course.

2 MS. MOLDENHAUER: All right. Thank you very
3 much.

4 CHAIRPERSON HILL: Okay. That's fair. But
5 the record is closed for everyone else. Okay? Just
6 the ANC, the applicant, and the Office of Planning.

7 MR. MOY: Oh, so the ANC can respond also by
8 March 1st.

9 CHAIRPERSON HILL: The ANC could respond by
10 March 1st. Is that fair? Okay. Great. All right.

11 So, we're going to take a five-minute break,
12 okay? And then we're going to come back for our last
13 case. Thank you.

14 MS. MOLDENHAUER: I just think the time frame
15 for the ANC might be difficult based on their meeting.
16 I just want to make sure that the record is open for
17 them.

18 CHAIRPERSON HILL: Okay.

19 MS. MOLDENHAUER: I apologize. I know you're
20 trying to --

21 CHAIRPERSON HILL: That's all right. Hold on.

22 MS. MOLDENHAUER: Their meeting is the 7th, so
23 could we -- is it the 7th? So, could we have the
24 record open up until the hearing. And then if they

1 need to file it --

2 MR. MAY: No, I think that the truth of the
3 matter is that the ANC can submit later anyway.

4 CHAIRPERSON HILL: Sure, that's fine. That's
5 fine.

6 MR. MAY: I mean, we, you know, we got your
7 report today.

8 CHAIRPERSON HILL: That's fine.

9 MR. MAY: From last time.

10 MS. FULLER: And if I -- if it's something
11 from me I can definitely have it --

12 CHAIRPERSON HILL: No, that's fine.

13 MS. FULLER: Okay.

14 CHAIRPERSON HILL: That would be great. Like,
15 I mean, if there is something that you, the applicant
16 would have an opportunity to present before the ANC
17 again, is that what you're speaking of?

18 MS. FULLER: Uh-huh.

19 CHAIRPERSON HILL: Yeah.

20 MS. FULLER: Okay.

21 CHAIRPERSON HILL: Then that's great. I'd
22 like to hear what you'll have to say about what else
23 comes down the -- from the applicant. Okay? Thank
24 you.

1 [Off the record from 3:54 p.m. to 4:00 p.m.]

2 CHAIRPERSON HILL: All right, Mr. Moy, are you
3 ready to get started again? Or, are we ready to get
4 started again?

5 MR. MOY: Yes, sir. Oh, okay. Here we go.
6 The anchor case for the day.

7 This is Application No. 19415 of Verizon
8 Wireless as captioned and advertised for special
9 exception relief under the antenna towers and monopole
10 requirements of Subtitle C, Section 1313.9, which
11 would located a temporary Cell on Wheels, or COW, in
12 the RF-1 Zone at premises, it's on a Square 643E, E as
13 in Echo, Lot 800.

14 And I believe, Mr. Chairman, in your case
15 records there is a request for party status in
16 opposition under Exhibit 39 and there is a response
17 from the applicant under Exhibit 41.

18 CHAIRPERSON HILL: Okay. Are the people here
19 requesting party status here? Is the person
20 requesting party status here?

21 If you could please come forward and just sit
22 over there to the right? I think they -- yeah, jus
23 there is fine. And have both of you been sworn in?
24 Has everybody been sworn in?

1 UNIDENTIFIED SPEAKER: [Speaking off
2 microphone.]

3 CHAIRPERSON HILL: Okay, wow. You've been
4 here a long time, then. If you were here for that
5 joke that was way early on. And you've been sworn in?

6 [No audible response.]

7 CHAIRPERSON HILL: Okay. All right. Great.
8 Let's see. So, let's just go left to right. If you
9 could just introduce yourself?

10 You have to push the button. Sorry.

11 MR. GEIST: Ruddy Geist on counsel.

12 MR. FRIEDMAN: Brian Friedman.

13 MR. DUGAN: Paul Dugan. I'm with Millennium
14 Engineering PC, a radio frequency consulting engineer
15 on behalf of Verizon Wireless.

16 CHAIRPERSON HILL: It's Dugan? Is that --

17 MR. DUGAN: Dugan.

18 CHAIRPERSON HILL: Dugan.

19 MR. DUGAN: D-U-G-A-N.

20 CHAIRPERSON HILL: Thank you.

21 MR. EPTING: And I'm John Eptin with Goulston
22 and Storrs.

23 MS. HOTTEL-COX: Megan Hottel-Cox, also with
24 Goulston and Storrs.

1 MS. BULL: Hi. I'm Alexandra Bull. I'm with
2 Network Building and Consulting on behalf of Verizon
3 Wireless.

4 MR. SCHAPIRO: And Jay Schapiro with Network
5 Building and Consulting, also in contract to Verizon
6 Wireless.

7 CHAIRPERSON HILL: Okay. All right. So, Mr.
8 Friedman, I think you're the one who applied for party
9 status. Is that correct?

10 MR. FRIEDMAN: Correct.

11 CHAIRPERSON HILL: Okay. And I've read, you
12 know, your request for party status. The second one,
13 I think, was probably a better, if I'm thinking
14 correctly, had more detail in it in terms of why you
15 think you meet the criteria for party status. And I
16 know that I guess the applicant has opposed the party
17 status. Is that correct, Mr. Eptstein?

18 MS. HOTTEL-COX: That's correct.

19 CHAIRPERSON HILL: Oh, Hottel-Cox, is that --

20 MS. HOTTEL-COX: Yes.

21 CHAIRPERSON HILL: Okay. And so, Mr.
22 Friedman, if you could just clarify again for me what
23 kind of like makes your party status request unique in
24 terms of the criteria and how you meet the criteria

1 for a party status?

2 MR. FRIEDMAN: Sure. Well, two of the
3 properties, the closest properties, I'm here
4 representing as business partners with. So, I think
5 that gives me status, number one.

6 CHAIRPERSON HILL: When you say two of the
7 properties, you mean they border the --

8 MR. FRIEDMAN: Yes, two of the properties that
9 border it.

10 CHAIRPERSON HILL: Okay. And where are they
11 located?

12 MR. FRIEDMAN: Well, one is the Blind Whino.
13 It's the church which is basically right on the park.
14 And then the hotel that's essentially across the
15 street.

16 CHAIRPERSON HILL: Okay. Okay. And --

17 MR. FRIEDMAN: I'm also a Washington, D.C.
18 resident. I'm a Washington DCBE. So, I've been in
19 front of you guys many times. And so, I'm also a
20 professor at Georgetown, and this is one of the focal
21 points that we teach them on. So, we're taking this
22 very seriously.

23 CHAIRPERSON HILL: Okay. That's fine. I'm
24 just trying to figure out exactly where you were in

1 relationship to the application. So, but thank you.

2 And, Ms. Hottel-Cox? Is it Hottel-Cox?

3 MS. HOTTEL-COX: Yes, Hottel-Cox.

4 CHAIRPERSON HILL: Okay. So, now you're
5 opposed why, to the applicant? I mean, for a party
6 status?

7 MS. HOTTEL-COX: Our opposition to the party
8 status application was mainly rooted in the fact that
9 we didn't feel that the application particularized the
10 unique hardship based on the application. I know that
11 Mr. Friedman has said that he is a business partner.
12 In the application it just said that he had a business
13 partner who owned the Blind Whino site, but that it
14 didn't say that he had any kind of ownership interest
15 or any kind of interest in the site at all. And so,
16 based on that, we didn't believe that met the criteria
17 for party status under the regulations.

18 CHAIRPERSON HILL: Okay. But, Mr. Friedman,
19 you are saying you are a partner in that, the Blind
20 Rhino (sic) there that's --

21 MR. FRIEDMAN: Yeah. I mean, there's no --
22 yes, I am saying that.

23 CHAIRPERSON HILL: That's okay.

24 MR. FRIEDMAN: And there's more detail to it

1 because it's also a nonprofit.

2 CHAIRPERSON HILL: That's okay. Does anyone
3 have any objection to -- or any thoughts on the party
4 status? I mean, since they're right next door to the
5 applicant I would be more, and have again, reading
6 their letter and how it applies to the regulations
7 more on also -- and out of an abundance of caution as
8 well, to allow them in. Any thoughts?

9 MR. MAY: I do have a question, Mr. Friedman.
10 I'm sorry, I know you just testified to this but I
11 got momentarily confused. But, you are the -- one of
12 the owners or in a partnership that owns 700 Delaware,
13 which is the church --

14 MR. FRIEDMAN: Correct.

15 MR. MAY: -- which is operated by Blind Whino.

16 MR. FRIEDMAN: Correct.

17 MR. MAY: Okay. And then you made reference
18 to a hotel. Is that right?

19 MR. FRIEDMAN: Yes, there's a hotel that's
20 across the street that I advise on as a consultant.

21 MR. MAY: Okay. Across which street?

22 MR. FRIEDMAN: I Street, where the current
23 Verizon tower is now.

24 MR. MAY: Oh, so the Best Western Hotel?

1 MR. FRIEDMAN: It used to be the Best Western
2 Hotel.

3 MR. MAY: Okay. It used to be the Best
4 Western.

5 MR. FRIEDMAN: Yes. Now it's the Capitol
6 Skyline.

7 MR. MAY: Capitol Skyline. Yes, yes, yes. It
8 used to be the Best Western. Okay. I didn't know
9 because lots of buildings popping up. I didn't know
10 which one you were talking about or which street you
11 were saying it was across from.

12 MR. FRIEDMAN: No, they're -- we're the most
13 adjacent to it. So.

14 MR. MAY: I understand. But it's the 700
15 Delaware that's probably the key thing. Just out of
16 curiosity there was a PUD that had been approved for
17 that property at one point. Did that go away now?

18 MR. FRIEDMAN: For, you're talking about for
19 the Randall School?

20 MR. MAY: No, I thought for the church.

21 MR. FRIEDMAN: Mr. Canino (phonetic). Oh,
22 Callender would probably be.

23 MR. MAY: Yeah, I'm curious about just the
24 status of that. Yeah.

1 CHAIRPERSON HILL: You can come forward there
2 and sit there. That's fine. You can just take the
3 end.

4 MR. CALLENDER: Hello. My name I Ian
5 Callender, co-founder of Blind Whino Southwest Arts
6 Club.

7 Yes, there was a PUD in 2005 that was approved
8 and it was since expired.

9 MR. MAY: Okay. I just, I couldn't recall. I
10 mean, it was a case that I did not originally hear,
11 but I heard an extension on like in 2007 or eight or
12 something like that and even then we were wondering
13 whether it was ever going to happen. And I guess the
14 answer is, it didn't. So.

15 MR. CALLENDER: It will eventually.

16 MR. MAY: Well, there will have to be a new
17 application I assume, right?

18 MR. CALLENDER: Yes. Yes, yes.

19 MR. MAY: Right. Okay. Thank you.

20 CHAIRPERSON HILL: Mr. May, do you have any --
21 sorry, Mr. Hart, do you have any thoughts? It's been
22 a long day. Yeah. No, thoughts?

23 MR. HART: No, I don't. I don't have any
24 question at this time.

1 CHAIRPERSON HILL: Okay. Again, based upon
2 the second letter I'm moving for a party status so I'm
3 going to let you guys join as party status. And so,
4 what that means is the applicant will go ahead and
5 present. You'll have an opportunity to cross-examine,
6 and then the applicant will get to finish up, you
7 know.

8 So, we're going to start with Ms. Hottel-Cox.
9 I guess you're going to go ahead and go through this
10 now. Before you begin, I guess, I mean, you know
11 obviously about the different issues with the case, I
12 mean in terms of the ANC and the letter that they
13 submitted. And then I guess, you know, I've learned
14 about cows now more than I had known before. But you
15 can go ahead and explain some of that to us as well as
16 you go through the application.

17 How much time do you want me to put on the
18 clock for you?

19 MS. HOTTEL-COX: I think we can do it in 15
20 minutes.

21 CHAIRPERSON HILL: Okay. Great. All right,
22 Mr. Moy.

23 All right, great. Thank you. Start whenever
24 you like.

1 MS. HOTTEL-COX: Thank you. Good afternoon
2 again. My name is Megan Hottel-Cox with Goulston and
3 Storrs. With me is my colleague, John Epting. We are
4 joined by Jay Schapiro and Alexander Bull from NB&C,
5 as well as Paul Dugan, who is an engineer who has
6 reviewed the project.

7 We're here this afternoon requesting special
8 exception relief for the temporary Cell on Wheels, or
9 the COW located at the Randall Recreation Center on
10 South Capitol.

11 So, the COW is needed in this location to
12 replace a previous antenna site that's been
13 decommissioned. And without the COW Verizon
14 Wireless's coverage and service to the growing South
15 Capitol area would be severely impacted.

16 The property COW is part of a fenced compound,
17 which consists of approximate 1,250 square feet, with
18 a temporary monopole 84 feet in height. The antennas
19 are mounted approximate 80 feet above grade on the
20 monopole.

21 The COW is located outside of the playing
22 field fence on the Randall Recreation Center.

23 Verizon Wireless intends to use the COW as a
24 means of temporary service to the area, and is working

1 to design a permanent monopole installation at the
2 same site. The applicant has already entered into a
3 lease with DC through the Department of General
4 Services for use of the property for the antennas, so
5 therefore we're seeking this special exception relief
6 to have the COW at the property, and then the
7 applicant would return to the Board at a later date
8 for approval of the permanent monopole installation.

9 The property is in the RF-1 Zone district
10 which is what necessitates the special exception
11 approval from the Board. And as demonstrated in our
12 initial and supplemental filings, we believe that the
13 applicant meets all of the requirements of the Zoning
14 Regulations for installation of a monopole in the RF-1
15 Zone district.

16 Before I turn this over to our witnesses, I am
17 happy to report that we are here today with the
18 support of the Office of Planning and the District
19 Department of Transportation. Further, while the ANC
20 did submit a letter into the record raising some
21 questions about the COW, the applicant has revised the
22 application to address a lot of their concerns, and
23 has continued to dialog with the ANC.

24 And submitted in the record as Exhibit 36A was

1 our response letter that was sent to the ANC. And we
2 will continue to work with the ANC regarding the
3 permanent installation at the property.

4 So, with that I will turn it over to Mr.
5 Schapiro and Ms. Bull to give an overview of how this
6 site was selected and some information about the COW.

7 MR. SCHAPIRO: Thank you very much. Again, my
8 name is Jay Schapiro. I am supervising real estate
9 management and site development for this project on
10 behalf of Verizon Wireless.

11 We had a whole promotion and so forth set up
12 for you, but I think we're going to expedite that and
13 go through a couple of these slides. Just to explain
14 why we are where we are and how we got here.

15 The area, as you know in Southwest D.C. is
16 experiencing tremendous growth. We've had a site
17 there for approximate 27 years. The topography, the
18 development has changed drastically. Our site there
19 had been a vital link along South Capitol Street. It
20 also was servicing many of the first responders, First
21 District Police, DMV. There's also water rescue down
22 that way.

23 Again, there's a myriad of first responders.
24 Verizon also is a party to the wireless priority

1 services, which is an emergency priority call system
2 for Government employees; those that are engaged with
3 it to address natural and man-made disasters.

4 So, with that I'll kind of go through the
5 overview. Let's see. The target area is our area of
6 concern. The lower left-hand side is the existing
7 location.

8 Actually, if you don't mind, I'd like to go up
9 to there and I may maybe able to point it out a little
10 better. Would that be easier?

11 MR. MAY: You need to be on a microphone the
12 whole time.

13 MR. SCHAPIRO: Okay. I'm sorry.

14 MR. MAY: You want to give him the microphone?

15 MR. SCHAPIRO: Yeah. How can I do that?

16 Maybe [Speaking off microphone]. Hello?

17 CHAIRPERSON HILL: Thank you, Mr. Hood.

18 MR. SCHAPIRO: Our decommissioned site is
19 right over here. This is the Capitol Skyline. The
20 intended spot where we have our COW installation, or
21 Cell on Wheels, again it backs up to the beltway, to
22 the railroad tracks, the coal facilities. Want to
23 take the next spot?

24 This is a view of our decommissioned site.

1 The development that's been going on. We've looked at
2 a couple of these sites. What's happening is that our
3 site is becoming more and more cavernous as
4 development goes on in the area. The first site we
5 looked at was the CSX property, since it was a vacant
6 parcel, it was a heavy industrial type of use. We
7 approached them for it. They have other plans for it.
8 They did not want to impair the property at all with
9 any type of leasing, so we moved on from there.

10 MR. MAY: I'm sorry. The --

11 MR. SCHAPIRO: CSX. Go back.

12 MR. MAY: Okay.

13 MR. SCHAPIRO: This is CSX property.

14 MR. MAY: No, I -- okay. On the map, though.
15 On the map.

16 MR. SCHAPIRO: Oh, the map. I'm sorry. The
17 red -- we'll go around the honor, but it will be the
18 red here. That's the CSX property.

19 MR. MAY: I thought part of that was AOC,
20 Architecture of the Capitol.

21 MR. SCHAPIRO: That is right over here and
22 here.

23 MR. MAY: Okay. Oh, okay.

24 MR. SCHAPIRO: There's a little sliver that --

1 MR. MAY: Yeah, yeah. Got it.

2 MR. SCHAPIRO: -- goes on -- okay. Let me
3 have the next one.

4 The McDonalds has since been demolished. That
5 is -- there's various plans for it. Right now, the
6 most recent one is for a 13-story apartment building.
7 Again, it has been demolished since these pictures
8 were taken.

9 I wanted to get a picture of this one is from
10 our existing location, showing the development that's
11 going -- as you can see, there's at least five or six
12 cranes in there. The whole area is very dynamic in
13 nature. The topography again, is changing on almost a
14 monthly basis because of the demand in the area.

15 What's happening with our current site is that
16 we're losing coverage as the greater demand -- not
17 only do we lose coverage, but we also have a capacity
18 issue where at one time these sites were nothing but
19 you know, single tenant type of locations. All of a
20 sudden, you're getting two, three, 400 tenants in a
21 building, putting additional stress and demand on the
22 system.

23 So, as we go around the horn, again that was
24 McDonalds. This is the One Hill South. This is

1 currently under development, and then their phase two
2 which they're planning to roll out, I believe in the
3 next 18 months.

4 MR. HART: Can you go again why -- you have a
5 yellow circle that's here.

6 MR. SCHAPIRO: That is our -- that was
7 original objective area. That is the coverage area
8 that, it's not an exact science, but it's the general
9 focal area that we need for coverage to be --

10 MR. HART: So, what you're saying is that you
11 need to have a --

12 MR. SCHAPIRO: We need --

13 MR. HART: -- some sort of antenna within that
14 circle --

15 MR. SCHAPIRO: Give or take a little, that's
16 correct.

17 Now, within that circle there's other
18 parameters. Again, because of existing structures
19 that may be in the way or impeding. So, it's sort of
20 a reference point, but it's not an exact science to it
21 because again, when you look down you may have
22 something here that gives you something along the
23 highway. But here it may be different because you
24 have to take in consideration the other buildings that

1 are nearby.

2 MR. HART: And you were on the hotel that
3 was --

4 MR. SCHAPIRO: We are right here. This is the
5 one was decommissioned.

6 MR. HART: Okay. So --

7 MR. SCHAPIRO: And we are currently here.

8 MR. HART: So, why would you not look at that
9 as your kind of, the center of your --

10 MR. SCHAPIRO: As this way?

11 MR. HART: Yeah. I mean, if you already had
12 something that was there.

13 MR. SCHAPIRO: Because this site was built
14 almost 27 years ago.

15 MR. HART: I'm not saying that you have to use
16 it. I'm saying, why was that circle not centered on
17 that?

18 MR. SCHAPIRO: Oh, no, but I'm getting to
19 that. What's happening is that this was built 27
20 years ago. Since that time, we've had multitude of
21 sites around there. The way the cells work, it's like
22 a puzzle. There's a piece here, a piece there, and
23 they all kind of come together. Demand changes, the
24 design changes, as we may find that we may want a

1 place here, but we can't get it so we may have to
2 shift down here. Every little piece, when it shifts,
3 affects another piece of the puzzle.

4 So, again, it may have been 27 years ago.
5 That may have been smack dab. There's also a
6 difference in technology. At the time that was built,
7 it was built with 850. We probably want to go through
8 the technical, but it's a different frequency. It
9 propagates different than what they're using now.
10 Eight fifty is still there, but there's a 1,700, there
11 is a 1,900. And but for all intent and purposes, it's
12 constantly morphing because of technology and because
13 the topography of the area.

14 So again, as we looked at other parcels in the
15 area, these are also owned by developers in
16 anticipation of developing it. This is the learner
17 lot, which again, it wouldn't work from a temporary
18 space because there's no temporary power there, first
19 off. Number two, the additional buildings that are
20 going up immediately around it and the speed at which
21 they're progressing would just be an impediment to our
22 COW site at that time.

23 MR. MAY: What --

24 MR. SCHAPIRO: Go ahead.

1 MR. MAY: What was that view of, on the right?

2 MR. SCHAPIRO: This is standing --

3 MR. MAY: Point to that location on the map.

4 MR. SCHAPIRO: Yeah, sure. I am standing on
5 this corner looking up over right in that angle.

6 MR. MAY: Got it. Okay.

7 MR. SCHAPIRO: So, this is the Learner lot,
8 and this phase 2 of One Square. This one is just
9 about topped off, by the way. But now, again, these
10 were taken barely five months ago, four months ago.
11 And since then they're just about ready for occupancy.

12 We had looked at a couple of the roof tops.
13 The problem with a couple of these rooftops is that
14 the newer developments are all having public access
15 areas. They have hot tubs, they have bars, lounges.
16 A couple of them we looked at for a partial coverage,
17 again as a temporary or as a permanent site, we're
18 kind of mixing the two out now because really, out
19 focus has been to just get something temporary for the
20 next 12 months while we finetune what we need to do in
21 this area because the dynamics of the real estate in
22 the area.

23 MR. MAY: So, I'm sorry.

24 MR. SCHAPIRO: Sure.

1 MR. MAY: What about the rooftop use prevents
2 your use?

3 MR. SCHAPIRO: Well, give an example. Because
4 of safety, you're not going to put -- if we were to
5 use an antenna here, you're not going to have public
6 standing in front of your antennas.

7 MR. MAY: How far away do they have to be?

8 MR. SCHAPIRO: I would defer to safety and
9 they can address those for you.

10 MR. MAY: Okay.

11 MR. SCHAPIRO: We do it -- we can certainly
12 address all those issues. Typically, owners don't
13 want them up there, also, when there's public access.
14 We put them in areas that there are mechanical
15 devices where it's not typical public access because
16 the requirements for OSHA are different from the
17 general public versus the knowledgeable engineer who
18 knows about antennas.

19 MR. MAY: All right. Well, we're going to
20 want to know more about that.

21 MR. SCHAPIRO: Absolutely. Again, these are
22 low lying areas. Really not conducive to a permanent
23 fixture from temporary fixture. We run into the same
24 problem because we're not going to be able to cover

1 along South Capitol, along with the existing site as
2 an impediment heading north towards the beltway.
3 Again, we've become a -- go into a cavern situation
4 here. This is down --

5 MR. MAY: I'm sorry. North to the beltway.
6 You said beltway twice. Beltway is 10 miles away from
7 here.

8 MR. SCHAPIRO: 695 is right here.

9 MR. MAY: Got it.

10 MR. SCHAPIRO: Okay. And then you get down
11 that way. These pictures are probably a little
12 cockeyed because in this case it's up here as beltway,
13 and then of course the stadium down to the south.

14 These will just kind of give you a better idea
15 of the topography of the buildings in that area.
16 They're all low lying so we couldn't utilize the
17 existing rooftops for them.

18 This was the area, this is a portion of the
19 Corcoran. It fits and stops as far as what they're
20 going to do with it. My understanding, it is -- I
21 don't know if it's occupied --

22 MR. MAY: No, that's the Southwest Health
23 Center.

24 MR. SCHAPIRO: Oh, I'm sorry. The

1 Southwest --

2 MR. MAY: Right? And that's going to be
3 redevelopment into the homeless shelter, right?

4 MR. SCHAPIRO: Okay. Is that -- because I
5 know there's going to be a homeless shelter.
6 Originally, they talked about it behind the church
7 too.

8 MR. MAY: No, that's --

9 MR. SCHAPIRO: No?

10 MR. MAY: You're behind the times, man.

11 MR. SCHAPIRO: Okay. I saw --

12 MR. MAY: Read the newspaper.

13 MR. SCHAPIRO: Well, I saw the last one from
14 the sky.

15 MR. MAY: No, no, I think the latest plan -- I
16 don't know. Is somebody here from the ANC? No. All
17 right.

18 MR. SCHAPIRO: No. Well, the reason --

19 MR. MAY: Well, whatever it is now, but I
20 think actually that's the Southwest Health -- because
21 that's between Delaware and the Randall School site.

22 MR. SCHAPIRO: Correct. Correct.

23 MR. MAY: Right.

24 MR. SCHAPIRO: So, in Corcoran it would be

1 down in this area here.

2 Again, there's a couple reasons for it.
3 Number one, the height limitations there. Number two,
4 we are looking for a temporary fix for right now. Not
5 a permanent fix on this one.

6 MR. MAY: But you haven't looked at the
7 proposed building there, obviously, because you didn't
8 know that there was going to be a new building there.

9 MR. SCHAPIRO: No, actually I saw -- I thought
10 that this was affixed to the Corcoran, because
11 Corcoran I know has been --

12 MR. MAY: Okay. So, Corcoran is no longer
13 involved in the Randall School deal, right?

14 MR. SCHAPIRO: I don't know actually. That
15 would be a question of his, because he was --

16 MR. MAY: Am I correct that they're no longer
17 involved?

18 MR. GEIST: The same owner that owns the
19 Capitol Skyline Hotel where the site is right now,
20 Mera Rubell and her partner, Marilyn Melkonian, co-own
21 the Randall School property, and Verizon never asked
22 them if they wanted --

23 MR. MAY: And, that's not what I'm asking.

24 MR. SCHAPIRO: I'm sorry. I'm sorry.

1 MR. MAY: Is the Corcoran still involved in
2 that property?

3 MR. SCHAPIRO: No.

4 MR. MAY: No. Okay. Just for the sake that
5 the record is clear --

6 MR. SCHAPIRO: Fine.

7 MR. MAY: -- it's not the Corcoran property.
8 Just call it the Randall School redevelopment.

9 MR. SCHAPIRO: Randall School.

10 MR. MAY: Okay.

11 MR. SCHAPIRO: All right.

12 MR. MAY: Just because, you know, we're
13 throwing so much inaccurate terminology here it's --

14 MR. SCHAPIRO: My last --

15 MR. MAY: We want to be clear.

16 MR. SCHAPIRO: Okay.

17 CHAIRPERSON HILL: But it's still outside of
18 that circle, correct?

19 MR. SCHAPIRO: Correct. And again, there's
20 the mechanics of the building itself don't lend itself
21 to it. And then I guess the last one is the
22 residential neighborhood over here, which we were
23 trying to stay as far away from as we could.

24 The benefits in what we're trying to

1 accomplish here. We wanted to maintain the continuity
2 of service to the community. We need to develop a
3 long-term location here. We need a temporary, but
4 we're revisiting the entire area for various coverage
5 issues that we have in the area, not just for the COW.

6 Our site makes no noise, no traffic, no odors.
7 It doesn't diminish or impair the visual skyline.
8 And we stay as far away from residential as we could.
9 We've utilized the -- a lease that we have with the
10 DGS, D.C. Government.

11 MR. HART: You stay away from residential
12 because of aesthetic reasons, or for safety?

13 MR. SCHAPIRO: For both. Well, for both.
14 Most of it's aesthetics. Inherently, regardless of
15 what the safety issues are with antennas, people hear
16 antennas and they say, I don't want it. So, we
17 thought that the best idea would be stay far away.
18 When you see a picture of it you'll see a backdrop.
19 The backdrop is the beltway. The backdrop is the
20 smoke stacks to the incinerator.

21 MS. BULL: Again, my name is Alexandra. I'm
22 with Network Building and Consulting on behalf of
23 Verizon Wireless. The next couple slides we have for
24 you are pictures of the COW as it exists. You'll see

1 that it's kind of hidden in the background there.
2 Amongst the other light standards that are on that
3 property, and amongst the trees as well.

4 The next slide shows you --

5 CHAIRPERSON HILL: I'm sorry. Since we're
6 jumping in and out here, apparently.

7 MS. BULL: Sure.

8 CHAIRPERSON HILL: Where is it on that slide?
9 Okay. And if it were a permanent antenna it
10 would be higher, correct?

11 MS. BULL: It would be about the same height.

12 CHAIRPERSON HILL: Okay. Okay.

13 MS. BULL: The next image will show where that
14 photograph was taken. You can see the COW is the star
15 and the yellow marker is where the photograph was
16 taken. So, that will be the format of the next couple
17 slides. We'll show you the picture and then the
18 location where it was taken just for clarity purposes.

19 CHAIRPERSON HILL: Okay.

20 MS. BULL: Again, in the backdrop you can see
21 the smoke stacks, you can see other tall structures.
22 It's kind of contiguous with the other lights
23 standards that are in the region, and that picture is
24 taken, again, from the south.

1 This photograph is taken from the ball fields.
2 It allows you to see a little bit of a closer
3 perspective of what the COW looks like. You can see
4 the compound there. All of that is temporary.
5 Nothing is technically disturbing the ground. It's
6 ballast mounted, and it's not penetrating.

7 So, once that temporary site is removed,
8 everything that you see there in relation to the COW
9 will be removed.

10 CHAIRPERSON HILL: But there will be a
11 permanent antenna there at that height. Thereabouts.
12 That's what you're hoping to get to?

13 MS. BULL: Thereabouts, yup.

14 CHAIRPERSON HILL: Okay. Okay.

15 MS. BULL: Again, from the ball field, showing
16 that it is continuous in aesthetic nature to the
17 existing light standards.

18 This one is taken from northwest of the COW.
19 You can see it there in the center of the screen,
20 across the baseball field. And then one from the
21 walkway to the north of the COW.

22 This photograph is really telling because you
23 can see that, you know, it's not interrupting the use
24 of this park. People still have safe access to that

1 sidewalk, which a lot of folks do travel on. The
2 fields aren't in any way impeded by the location of
3 the COW.

4 And then if you guys have additional questions
5 in terms of safety, we can take it over to Paul Dugan.
6 He's a certified RF specialist.

7 MR. HART: Yes. So, can you talk about the RF
8 safety analysis that you've done for this?

9 MS. BULL: Well one -- I'm sorry, Paul. One
10 thing to jump in, we do want to make sure that Mr.
11 Dugan is qualified as an expert. We submitted his
12 resume into the record. So, we just wanted the Board
13 to qualify him as an expert before he testifies.

14 CHAIRPERSON HILL: I appreciate that. I've
15 read through the record and your resume, and I'm
16 comfortable with you being submitted as an expert,
17 unless the Board has any other objection.

18 Okay. Thank you.

19 MS. BULL: Thank you.

20 MR. DUGAN: Okay. Sure, I can comment on RF
21 safety. I've performed literally thousands of RF
22 safety certifications over the past 20 years. And I
23 haven't specifically performed a certification for
24 this site, but what I can tell you from my experience,

1 is because of the elevated antennas and the low power
2 that they operate, the ground level electromagnetic
3 fields anywhere near the base of the facility will be
4 hundreds of times below what is established as a
5 safety standards adopted by the Federal Communications
6 Commission.

7 MR. HART: And about the same issue, RF safety
8 analysis for when they are on a penthouse, when you
9 have occupied -- people using the top-level roof deck
10 for a house. For a building, excuse me.

11 MR. DUGAN: Yes. More analysis is done when
12 folks need to -- whether it be occupational workers or
13 the general public that may visit a roof for whatever
14 reason, we perform measurements and modeling, upper
15 limit modeling to determine what's the upper level
16 electromagnetic fields in relations to the standards
17 in those areas?

18 And generally, as Mr. Schapiro had explained,
19 Verizon Wireless doesn't design rooftop facilities so
20 the antennas are, you know, projecting right into the
21 general public. They're only 10, 20 feet away. They
22 generally put them elevated on a penthouse or on sleds
23 near the periphery of the building, or on the outside
24 walls in order to minimize exposure to, whether it be

1 the general public or occupational workers that need
2 to perform work near these antennas.

3 MR. HART: Okay. So, you wouldn't preclude it
4 being on -- I mean, the testimony earlier was that
5 there were certain places that you couldn't put it on
6 because of the penthouse being occupied. And I just
7 was trying to understand, because we have a plethora
8 of buildings that are being built here, it seems a
9 little bit strange to put in a monopole when you have
10 these buildings that are kind of high enough to be
11 able to allow some of those uses, or this particular
12 use on top of that. And I just don't know what it is
13 that you all have looked at to kind of determine that.
14 So, I'm trying to kind of find out what the statement
15 was earlier, and how that, you know, how you've looked
16 at this and I'm trying to get information from you.

17 MR. DUGAN: Sure. Those are some good points.
18 Verizon Wireless has evaluated all the existing
19 buildings in the area to determine whether any of them
20 are suitable for a replacement site for the
21 decommission site. And for many reasons, other tall
22 buildings are either too tall or too far from the
23 target area.

24 In metropolitan areas of extremely high

1 traffic you need more low -- shorter structures. If
2 you build -- if you put antennas too high, like if it
3 was a 20-story building, it would be too high. It
4 would be penetrating too far. It would be more
5 detrimental to their network, more detrimental to the
6 network than good, than positive for the network.

7 Verizon Wireless strives to just provide -- as
8 Mr. Schapiro explained, each site is a building block,
9 like a piece of the puzzle. It has to fit right in
10 with existing sites that are serving the area with the
11 development that's going on in the immediate area and
12 so on.

13 So, what I'm getting at is, existing
14 structures -- existing buildings were evaluated and
15 considered and I believe it's a slide, I'm not sure.
16 Megan is this a -- is one of our slides why the other
17 buildings were discounted?

18 MS. HOTTEL-COX: So, I think that's one of the
19 things that Mr. Schapiro went over, and it's also
20 included in the record at Exhibit 36B. There is a
21 slide or an illustration showing the buildings that
22 were considered right around the proposed COW site and
23 why they did not work. We also have someone from
24 Verizon Wireless here who can kind of speak to the

1 evaluation that they did on the site and why they
2 specifically chose the recreation center as opposed to
3 some of the potentially developed sites, if the Board
4 would like to hear that.

5 MR. MAY: I mean, I'm more focused on the
6 question that I asked originally, and Mr. Hart was
7 continuing on, which just has to do with, you know,
8 whether it's possible to have a safe application of
9 antennas on an occupied rooftop. And I mean, I'm sure
10 it's not a yes or no, but what we heard from you and
11 didn't give us any clarity at that at all. I mean,
12 I'm kind of stepping on the first question, but --

13 MR. DUGAN: Let me just expand on that, if I
14 may?

15 MR. STOVER: What if I take a shot at it,
16 Paul?

17 MR. DUGAN: Okay. Okay.

18 MR. STOVER: Hi. I'm Brian Stover with
19 Verizon Wireless, Real Estate Manager for
20 Washington/Baltimore.

21 And to specifically answer your question, like
22 you said, it's on a case-by-case analysis. But in
23 general, the rule of thumb is the antennas have to be
24 at least 15 feet in the air above an occupied space.

1 But you also would not want to have anybody within
2 that space in front of the antennas for about 20 feet.

3 And again, it depends on if it's one carrier, two
4 carriers. When I say carriers, if it's Verizon, AT&T,
5 and then Sprint. There would be a compounding factor
6 there, so that would also impact that situation.

7 But what we found is, again, rule of thumb is
8 15 feet in the air and then 20 feet in front of the
9 antennas.

10 Now, what we're running into is, the FCC and
11 OSHA has requirements in terms of how you identify
12 these areas for occupation or nonoccupational
13 employees. And so, you're required to put barriers
14 and chains in front of the antennas to prohibit
15 anybody from accessing it.

16 So, in addition to the health and safety
17 effects, you know, these landlords with these brand-
18 new buildings and these rooftop spaces don't want the
19 signage that's required by OSHA. They don't want the
20 barriers with the safety warnings and so forth.

21 So, on an older building, where it's, you
22 know, the rooftops used to be just mechanical space
23 wasn't a problem. The HVAC guy is up there, sees the
24 sign. There's certain procedures and so forth that

1 take place. You know, not a problem.

2 But on newer buildings where there are green
3 roofs that require more maintenance, or it's an
4 amenity to the tenants of the building, it's
5 presenting a problem just from an aesthetic standpoint
6 in addition.

7 MR. HART: So, as a general rule of thumb,
8 you're probably not looking at residential buildings
9 to put these antennas on. That's what I'm hearing.

10 MR. STOVER: These newer buildings are proving
11 more difficult. And then the other part of it is, so
12 the antennas, again, you raise them 15 feet. All
13 antennas, all the cellular antennas are pointed down,
14 slightly down, six degrees. So, the problem that we
15 have is we'd like them up close to the edge of the
16 building, pointed down towards the street.

17 However, most zoning regulations require the
18 antennas be back from the edge of the building a
19 certain amount. And so, then the distance that you
20 raise them has to be higher to clear the edge of the
21 building, otherwise you have a shadowing effect that
22 takes place as well.

23 So, as I think you heard a little bit, it's a
24 little more of an art than a science in terms of you

1 know, each individual circumstance, and depending on
2 the adjacent facility. So, I think what Mr. Dugan was
3 indicating was at this point in time it's a very
4 mature network. Verizon Wireless's cellular network
5 is very mature, meaning we have a lot of cell sites.
6 And in Washington, D.C. it's a very dense population
7 of cell sites.

8 So, in order to prevent interference from
9 going from one cell site to the next, we have to lower
10 these cell sites as the network matures more and more,
11 they're coming down so that the RF signal doesn't
12 travel as far as it used to travel because we can't
13 support the capacity demands.

14 It used to be you could be 80 feet in the air.
15 Let's just say you covered two square miles, you had
16 -- and I'm just using just funny math. But you had
17 100 people operating and it was fine. Well, today,
18 you have that same 80-story building covering two
19 square miles, and you have 5,000 people trying to
20 access the wireless network, and the site can't
21 support the capacity demand.

22 So, the sites are shrinking. In order to
23 shrink them you lower them, and in order to balance
24 that coverage and capacity.

1 MR. HART: And so, there was also an issue
2 about -- and just for your information we don't have
3 20-story buildings in D.C. It's just --

4 MR. STOVER: Correct.

5 MR. HART: But there are, there are, you know,
6 building heights that you kind of deal with. What is
7 that building height that you're looking at that is
8 optimal to be able to use? I mean, are you looking at
9 -- is it eight stories, or seven stories?

10 MR. STOVER: I'd say right now we're probably
11 looking at five and six stories. It's coming down
12 dramatically.

13 MR. HART: And so, with that cavernous effect,
14 or the cavernous, you know, idea that you've been --
15 that you were talking about earlier, that you're
16 looking at these kind of lower buildings to be able to
17 kind of cover a smaller area.

18 MR. STOVER: Correct.

19 MR. HART: So, in essence you'd be looking at
20 more sites to be able to cover that, a smaller area
21 because you have -- it's a denser number of people.
22 You need more antennas to be able to cover that
23 smaller area.

24 MR. STOVER: That's exactly right. And if you

1 are seeing any -- what's the right word? You know,
2 industry papers or anything, they talk about you know,
3 5Gs on the cusp. I mean, we just got the 4G and LTE,
4 right? And now we're talking about 5G. And what's
5 really going to happen with 5G is I mean, we're
6 speaking with D.C. right now about antennas on light
7 poles, you know? We're talking about 25 feet in the
8 air versus --

9 CHAIRPERSON HILL: Okay.

10 MR. STOVER: -- 40 feet.

11 MR. HART: Thank you.

12 CHAIRPERSON HILL: Okay. I just wanted to
13 clarify something real quick because we've now -- you
14 started off with 15 minutes. We're now at 30 minutes.
15 And so, just the way that this is going to work is
16 that, you know, you're going to get to go ahead and do
17 your presentation. The Board has been asking
18 questions. We will continue to ask questions. And
19 then the party status people will get to cross-
20 examine.

21 Afterwards, then we'll ask you questions in
22 terms of, you know, the questions you've asked. And
23 then you'll have a chance to present, and then the
24 thing just runs around again. You know, we'll ask you

1 questions. They will have an opportunity to cross-
2 examine you, and then we'll ask their questions, and
3 then hopefully we'll get out of here before dinner.

4 So, you can go ahead and finish there, and
5 however much time you get is how much time they get.
6 So, keep going. Just, please, keep going.

7 MS. HOTTEL-COX: I think with that, we've
8 concluded our presentation and we're happy to answer
9 any questions.

10 CHAIRPERSON HILL: Okay. Okay. There are a
11 lot of questions, actually.

12 So, we'll go ahead and let the Board just have
13 at it. Okay?

14 I've got a couple. All right. So, I was just
15 curious of a couple things. So, where -- so this --
16 it was a temporary antenna, just again so I'm clear,
17 temporary antenna that was put up before the
18 inauguration.

19 MS. HOTTEL-COX: That's correct. It was
20 approved by Melinda Bolling from DCRA as a temporary
21 approval for 90 days in anticipation of the
22 inauguration.

23 CHAIRPERSON HILL: Okay.

24 MS. HOTTEL-COX: With the understanding that

1 we would be coming to the Board to extend that further
2 until we were able to design a permanent site.

3 CHAIRPERSON HILL: Okay. Now, again though,
4 I'm just saying, it was three weeks ago or something.
5 You put the COW there?

6 MR. STOVER: Yeah. It was December 15th, more
7 or less.

8 CHAIRPERSON HILL: December 15th.

9 MR. STOVER: And I would just say, just to be
10 clear, so what necessitated the need for the COW was
11 the fact that our lease agreement at Capitol Skyline
12 Hotel was terminated.

13 CHAIRPERSON HILL: Okay. Okay.

14 MR. STOVER: And Verizon was scrambling with
15 inauguration coming, and everything else.

16 CHAIRPERSON HILL: All right. So, that leads
17 to my second question. Before that, the way you were
18 servicing your customers was an antenna on top of the
19 Capitol Skyline Hilton.

20 MR. STOVER: Yes, sir.

21 CHAIRPERSON HILL: Which is who is owned by
22 the party here, correct? So, we'll get to your
23 partially. We'll get to how that came about.

24 Okay. Mr. May?

1 MR. MAY: All right. So, why was the Capitol
2 Skyline lease terminated?

3 MR. STOVER: We were -- we've been there for
4 25 years and the lease term was coming up on
5 expiration, and we engaged in negotiations with the
6 property owner and we were not able to reach an
7 agreement, and they sent us a letter of termination
8 and terminated our lease.

9 MR. MAY: So, you couldn't come to terms. In
10 other words, they wanted more money than you were
11 willing to pay?

12 MR. STOVER: There were a number of factors,
13 but that's one of them.

14 MR. MAY: So, what were the other factors?

15 MR. STOVER: The other factor was that, like I
16 said, we've been there for 25, 27 years now. I've
17 been with Verizon Wireless for 22 years and in this
18 market. You know, our cell sites are integral to our
19 network. I mean, it's like a utility. You can't
20 easily -- if a landlord wants to terminate your lease
21 you can't easily just move your office to another
22 office and get new letterhead and be operating.
23 Right? It's, I mean, we have to find a new site, and
24 moving a site impacts our customers. You're taking --

1 you know, if you move it 100 feet to the west, you
2 know, people 100 feet to the east are now going to --
3 their service is going to be, you know, negatively
4 impacted.

5 Capitol Skyline Hotel, for over 10 years has
6 refused to enter into a long-term lease agreement.
7 They've only agreed to very short-term lease
8 agreements.

9 So, in addition to some of the financial
10 considerations, they again would not agree to a long-
11 term lease agreement.

12 CHAIRPERSON HILL: What is considered short-
13 term lease agreements in the industry?

14 MR. STOVER: Five years would be a very short
15 term. Twenty years is our typical term.

16 MR. MAY: They were willing to go five but not
17 20?

18 MR. STOVER: That's correct. Well, just to be
19 clear, so, we never reached final discussion but there
20 was an offer that they would do five years. But,
21 there was also always a caveat that if the owner
22 elected to redevelop the property then they could
23 terminate. And I forget the amount of notice, but it
24 was you know, not a substantial amount of notice.

1 And, you know, given all the development
2 taking place in that area and honestly the condition
3 of the hotel, we think it's likely it will be sooner
4 than later that that site is going to be redeveloped.

5 So, you know, we felt like we'd essentially just be
6 kicking the can down the road and have to deal with it
7 in the future, and now is a better time to deal with
8 it.

9 MR. MAY: Okay. So --

10 MR. STOVER: Not that we had a choice, though,
11 either. I mean, we were terminated. As of November
12 15th --

13 MR. MAY: But if you had negotiated
14 successfully you wouldn't have been terminated, right?

15 MR. STOVER: That's correct.

16 MR. MAY: Earlier on in the process, right?

17 MR. STOVER: If either party would have
18 reached agreement --

19 MR. MAY: Right.

20 MR. STOVER: -- we would not have been
21 terminated. I guess.

22 CHAIRPERSON HILL: So, and just because we're
23 jumping back and forth and you presented in front of
24 the ANC and you've seen their letter of opposition and

1 it's pretty, for the ANC, it's detailed letter in
2 opposition and to the case that they're making. And,
3 what I would be confused by, I suppose, if I'm an ANC
4 commissioner is that your argument is that if they --
5 if you don't get what you need, then the people within
6 that ANC, within that SMD are going to suffer from
7 lack of service. So, you were unable to make that
8 case to them, I assume, correct?

9 MS. HOTTEL-COX: We, when we presented to the
10 ANC we, you know, talked through some of their
11 concerns, but they didn't raise a lot of the concerns
12 that came up in the letter until after the fact. We
13 received the letter when they sent it to us after the
14 ANC meeting, and at that point we went through and,
15 you know, detailed a response to all of their
16 concerns. And Alexandra Bull spoke with the chair of
17 the ANC after we sent that letter, and she might be
18 able to add, kind of what his comments were in
19 response to our letter. But we did, and as the Office
20 of Planning notes in their report, we did respond to
21 all of the ANC concerns. We went through and noted
22 and changed some pieces of the application. We added
23 in the ability for co-location, and we provided a --

24 CHAIRPERSON HILL: I'm sorry, what's co-

1 location?

2 MS. HOTTEL-COX: That would be allowing
3 another carrier to locate on the mono -- on the COW.
4 It's unlikely that someone would want to do that in a
5 temporary situation, which is why in the initial
6 application we noted that it wasn't going to be set
7 for co-location because someone probably wouldn't need
8 to locate there for just the temporary period of time,
9 but the ANC objected to that and so we revised the
10 plan to accommodate that. We also submitted a more
11 detailed construction plan per one of their comments.

12 CHAIRPERSON HILL: But they still have the
13 same -- they still have the same position that they
14 had before.

15 MS. BULL: So, when we spoke with the ANC on
16 their meeting on December 12th, they raised a few
17 concerns. But when they sent the letter after that
18 meeting their concerns were much more detailed as you
19 mentioned. We did address those, and after addressing
20 those I attended a second ANC meeting. We were not on
21 the agenda but I pulled Chairman Litsky aside prior to
22 the meeting to ask if he had any further questions
23 after receiving our response.

24 He said that he did read through our response

1 and he spoke to the other ANC commissioners about the
2 things that we spoke about in the response letter and
3 he said that they chose not to speak about it further
4 on their agenda, and he said that he had no further
5 comments, which in my understanding he felt that our
6 response letter had responded adequately to his and
7 the other commissioners' concerns.

8 He also said that, you know, he looked forward
9 to speaking with us on the future site, and I told him
10 that, you know, there would be a lot of conversation
11 to be had about that permanent site. And he expressed
12 that he thought we would get approved today, which I'm
13 sure is not his to say, but --

14 CHAIRPERSON HILL: No, no, no. I guess what
15 I'm saying is, I mean, they're in opposition now, and
16 they're in opposition to a temporary site, so I don't
17 see why they would be in support of the permanent
18 site.

19 MS. BULL: What he -- what they -- I'm sorry.
20 Let me --

21 CHAIRPERSON HILL: And that's okay. And just
22 to clarify, what confuses me about this discussion is
23 that if again you had made your point that the people
24 within the community are going to suffer from the lack

1 of service, that is what I think is what would be
2 important to the ANC.

3 MS. BULL: Sure. Sure. At the ANC meeting
4 that we were on the agenda they had said to us that
5 they were neither in support or opposition. And then
6 the tone of their letter was a little bit ambiguous.
7 So, when I spoke to him in person at that second ANC
8 meeting, he said that they had no further comments and
9 that he felt that the COW application would get
10 approved.

11 MS. HOTTEL-COX: So, just to clarify a couple
12 of things on that point. As Ms. Bull mentioned, they,
13 at the ANC meeting, they did not vote to be in support
14 or in opposition to the application. They simply
15 voted to submit the letter into the record. So, the
16 letter does, you know, express concerns about the
17 location of the COW and some issues with the
18 application. But they did not vote officially to take
19 a position on the application.

20 As well, we in our letter that's in Exhibit
21 36A of the record, we requested to go back before the
22 ANC at their next meeting, and that's the meeting that
23 Ms. Bull indicated she attended. The ANC did not put
24 us on the agenda for that meeting. We were there in

1 case they wanted to discuss it. But as Ms. Bull said,
2 the chair indicated they didn't wish to go into
3 further discussions until we were before the Board for
4 the permanent installation.

5 CHAIRPERSON HILL: Okay. Well, just the ANC
6 letter that I'll stop this one. I mean, the last
7 paragraph, "Given that the application does not meet
8 two of the four requirements of 11 DCMR, Subtitle C,"
9 and I can't read them, "the BZA would then consider
10 whether a special exception should be granted. The
11 application is insufficient." I'm just saying, that's
12 what the letter says.

13 So, it appears to me as if they're not in
14 support of the application, so that's why I'm
15 confused.

16 MS. HOTTEL-COX: I understand. And we were a
17 bit confused by the letter as well, especially given
18 that at the ANC meeting we were not aware of what was
19 going to be in the letter. However, I do note that
20 they said that the application was insufficient due to
21 those issues, and we supplemented the record and
22 changed the application based on their letter. And
23 so, based on that, that portion of the letter would
24 not necessarily apply anymore.

1 CHAIRPERSON HILL: Okay.

2 MR. HART: Well, the letter actually is the
3 only thing that we have. We have another --

4 CHAIRPERSON HILL: Hang on a second.

5 MR. HART: If we don't have another letter
6 form them it's hard for us to --

7 MS. HOTTEL-COX: No, and they declined to
8 submit anything else.

9 MR. HART: Yeah, yeah. I'm just saying that
10 you've just said that you -- what you have submitted
11 in response to their letter is -- covers them. And
12 I'm just saying that we don't have anything from the
13 ANC to be able to say that. So, what we have is what
14 we have.

15 MS. HOTTEL-COX: We have the OP report that
16 notes that we responded to all of the ANC concerns, as
17 well as our letter. But the ANC did not submit
18 anything else, despite our request for them to address
19 it again.

20 MR. HART: Responding and having the ANC
21 approval are different things. And again, I'm just
22 making sure that we are clear on that.

23 MR. GEIST: And this ANC is not shy, so if
24 they had wanted us to come back, they would have asked

1 us to come back. So, I think we did the best we
2 could.

3 MR. MAY: They're not shy, but they're also
4 extremely busy.

5 MR. GEIST: Yes, they are.

6 MR. MAY: And they've got more stuff going on
7 there than just about any other ANC, and they're here,
8 you know, before the Zoning Commission, I don't know,
9 three or four times a month it seems. So, I mean,
10 they just have a lot going on. They can't necessarily
11 focus on everything. So, I wouldn't read too much
12 into the fact that they didn't say anything further.

13 MR. GEIST: Right. Right. I think the point
14 though is that we did respond back to them, we asked
15 to be back on there, and we weren't asked to come
16 back. So, I think we did as good as we could with
17 them.

18 MR. MAY: Can I -- all right. So, I
19 understand that the complications for the fact that
20 you were terminated at either location, and you were
21 in a tight spot. I'm a little vague on this concept
22 of an emergency 90-day approval, or whatever it was
23 that was granted by DCRA so that DCRA gets to ignore
24 zoning for 90 days. Is that what it is?

1 MS. HOTTEL-COX: No, this is pursuant to
2 Subtitle B, Section 204, for temporary uses that
3 temporary uses can be granted.

4 MR. MAY: Got it.

5 MS. HOTTEL-COX: And DCRA has previously, on a
6 regular basis, granted temporary uses for COWs like
7 this around the city.

8 MR. MAY: Okay. But that's only 90 days.

9 MS. HOTTEL-COX: Under the regulations they
10 have the ability to do so for up to a year.

11 MR. MAY: Which he granted was 90 days.

12 MS. HOTTEL-COX: Which he granted 90 days,
13 yes.

14 MR. MAY: And that 90 days is up when?

15 MS. HOTTEL-COX: March 8th. Mid-March.

16 MR. MAY: In March. So, it was December 15th
17 or so that was --

18 MR. GEIST: Yes. More or less.

19 MR. MAY: Okay, it was -- all right. I happen
20 to know a fair amount about this installation. You
21 know, one of the anomalous things about this is that,
22 you know, that star, if you look at it on the survey,
23 it shows it being quite a distance away from the
24 property line. But, the property line is South

1 Capitol Proper, not the freeway ramp. And so, the
2 actual -- I mean, if you were, you know, a normal
3 human being walking down the sidewalk and you want to
4 know where the property line was, it would be about, I
5 don't know, six inches from where the fence is now.
6 That fence and the enclosure, because it's right up
7 against the sidewalk.

8 And I don't think that's really consistent
9 with the intent of the zoning regulations, that it be
10 set back at least 20 feet from any property line. I
11 mean, yes, technically you meet that. Technically
12 that gives OP the reason to say yes, it complies. But
13 the notion that it actually complies is ridiculous. I
14 mean, it is right on top of the sidewalk. In fact,
15 it's nowhere close to what you've drawn it, in terms
16 of how the enclosure is.

17 And, I watched the whole thing being
18 installed. Unfortunately for you, that is my
19 commuting route, so I ride my bike down that trail
20 every day. So, I saw it going in every day as it was
21 being put in.

22 I also saw the damage that was done in the
23 process. Now, it's not horrendous, but it's clearly
24 careless. And so, it makes me question whether you're

1 going to follow the maintenance plan that was proposed
2 for this. You took great care to protect the field
3 when the tower itself was installed. It looks like
4 the field was not damaged in that process. However,
5 there were several vehicles that were driving down the
6 sidewalk next to the tennis courts, turning the corner
7 to get on to the rest of the sidewalk to access that
8 site.

9 In the process of doing so, there are many
10 tire tracks. There is a shrub that's been broken off.
11 I mean, it's you know, it's not the most beautiful
12 shrub in the world, but clearly somebody didn't care
13 very much about it. And plus, the lines that went
14 underground to feed to it were done, presumably with a
15 ditch witch or something like that. I didn't see it
16 actually happen. But it was done along the sidewalk,
17 in the group zone of these trees, and nobody -- which
18 was, you know, not a good thing to start with. And
19 then it doesn't look like there was any attempt to
20 reseed or repair the ground that was damaged.

21 So, I mean, have you guys seen all this? You
22 all aware of this?

23 MR. SCHAPIRO: I've been to the site.
24 Actually, we're obligated by the lease to repair

1 anything that has been done to it and we certainly
2 will address that. Our lease obligates it to --

3 MR. MAY: Why didn't you do it already? And
4 why does it rely on me to call it out?

5 MR. SCHAPIRO: I think that the part about the
6 grass was a point that we did talk with construction
7 about, and they were going to come back in the season
8 to seed or sod if necessary. It was done in the
9 weather climate that was not conducive to seeding at
10 that time, because it occurred right in the beginning
11 of December, in the frost season.

12 MR. MAY: Right.

13 MR. SCHAPIRO: If I could just add to that?
14 Honestly, I haven't been to the site since it's been
15 installed and I'll have to go by there. But, I mean,
16 for inauguration we put COWs on Smithsonian property,
17 on the Capitol --

18 MR. MAY: I know, you put them on National
19 Park Service property too and we watched these things
20 very carefully. We make you fix it whenever you do
21 something like this.

22 MR. SCHAPIRO: And so, I'm just a little
23 embarrassed to be honest, because you know, Verizon
24 Wireless, we talk about being the leader in the

1 wireless industry, we talk about being reliable and
2 dependable and --

3 MR. MAY: Yeah.

4 MR. SCHAPIRO: -- everything else. And
5 there's a certain, you know, reputation that goes with
6 that. And so, you know, I sit before you and say that
7 I'm embarrassed that you had to bring that to my
8 attention, and we'll take care of it. That's just
9 unacceptable and --

10 MR. MAY: I do appreciate that, and I don't
11 want to -- you know, it's not the worst thing I've
12 ever done. I mean, certainly, you know, the Park
13 Service we see much worse things in permitted
14 activities that go on, so I've seen things that were a
15 lot more careless than this. But it is sort of a pet
16 peeve for me. I mean, this is, again, this is where I
17 go by every day and I you know, I've tried to chase
18 the police off the ground there. I try to, I you
19 know, I've harassed, you know, soccer moms who park on
20 the grass because they're, you know, too cold to stand
21 out next to the field. And I've, you know, I've been
22 on the phone with DPR and their people and gotten
23 their park rangers out to do enforcement, because, you
24 know, people don't treat that field with much respect.

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1 And they don't treat many fields with respect,
2 frankly, because you know, they're often sort of
3 forgotten assets.

4 And this -- you know, I have just watched for
5 the last 10 years, what's happened with that whole
6 stretch of the Randall Field. And this is just
7 another episode in how it's been abused over the
8 years.

9 There have been some good things that happen
10 there. There, you know, theoretically the big, you
11 know, field that they put up there is an improvement.
12 It wasn't, you know, the execution of that left some
13 things to be desired. And certainly, the improvements
14 to the pool and the tennis courts in recent years have
15 been good things. But there are a lot of other things
16 that are, you know, it's still kind of a bit
17 downtrodden and you know, with the National Park
18 Service it's not our park land anymore. But I do care
19 about all the parks and we're all part of the same
20 system, and this is just, you know, it's just another
21 one of those episodes.

22 I will also note that there is a wildlife
23 component here. I sat there for 15 minutes one day
24 and watched a hawk stalk a squirrel, right on the ball

1 field there. So, I mean it's -- these green places
2 have value beyond their ability to support
3 telecommunications infrastructure. All right?

4 So, I am particularly interested in what's
5 going to happen with the future permanent installation
6 if this winds up being the site. Can you tell us
7 anything about what that might be and how it might be
8 integrated into the site? I assume you're not going
9 to try to put in, you know, New Jersey Redwoods.

10 MS. BULL: So, this image shows existing
11 conditions. This image was taken probably in late
12 November, or thereabouts. And here is a second image
13 showing the new installation.

14 So, essentially it would be a light standard
15 with a small extension on the top that would house our
16 equipment. But it would look similar to the light
17 standards that are existing. There are some
18 additional design things that are still being worked
19 on, so this is extremely preliminary. It would be
20 about the same height as the COW, total.

21 MR. MAY: And how is that compared to the
22 existing light standards?

23 MS. BULL: If I could go back to the first
24 image, and I'll toggle between the two?

1 MR. MAY: No. No, those are perspective
2 views. You can't understand the height. What's the
3 height? You said the COW is 80 feet, right?

4 MR. SCHAPIRO: I believe the existing one is
5 about 60 -- existing is 63, 64, thereabout. So, we're
6 talking about probably about 15-foot extension on it.

7 MR. MAY: And does it have to be at that
8 location, which is the one that's closest to the
9 freeway? Or could --

10 MR. SCHAPIRO: That's the one that we did. We
11 figured it was the best one for coverage, but it also
12 kept it away from the residential areas, and it was
13 least impacting to the activities of the field.

14 MR. MAY: Yeah. I mean, it's also a highly
15 visible location. I mean, this field and -- is highly
16 visible from the freeway, and that's where, I mean,
17 there are probably a lot more people who see it from
18 there, who see it from the sidewalk where I see it.

19 MR. SCHAPIRO: We're kind of between a rock
20 and a hard place because we went further in where we'd
21 be closer to the residential and then --

22 MR. MAY: Yeah, but I mean, it's very safe to
23 be close to the residential, right? I mean --

24 MR. SCHAPIRO: Yeah. It's really just

1 appealing the ANC, though.

2 MR. STOVER: Another big component of the
3 coverage area is South Capitol, underneath the
4 expressway. It's more like a tunnel, so it -- you
5 know, if we get up beside it then we can't get under
6 it.

7 MR. MAY: Right. Well, and I would think that
8 if you moved, if you moved like one light tower over,
9 you'd actually get better reception under South
10 Capitol. You can't -- if you're going to talk you've
11 got to be talking on the microphone, so. I see which
12 one you're -- yes. That's the one I was talking
13 about. I'm not saying that that's the right solution,
14 I'm just, I'm curious about it.

15 When you deploy these antennas and you can't
16 be up so high anymore, especially where it's sort of
17 cavernous, I mean, you have good cell coverage
18 downtown. How do you achieve that, where you've got -
19 - where you don't have any 50, 60 story building -- or
20 50, 60-foot buildings?

21 MR. STOVER: So, like I said, we have a very
22 densely populated series of macro cell sites. We
23 refer to them as macro-cell. A full array, 12
24 antennas, 360-degree coverage, providing macro

1 service. We have been infilling for the last two
2 years with small cells. So, for example, like the
3 site that we put on the building in China Town, right
4 there at the arch, we put those two lanterns up there.
5 Those are small cells to cover that area and so, so
6 we've been augmenting the macro network with these
7 smaller cells.

8 MR. MAY: So, and they're closer to street
9 level?

10 MR. STOVER: They're closer to street level.

11 MR. MAY: So, I mean, looking a little bit
12 further into the future, given the number of buildings
13 that are going to be built in proximity, you know, the
14 Randall School redevelopment, the McDonalds site,
15 things like that, I mean, isn't there the potential
16 for you to do something that's on building and still
17 achieve this?

18 MR. STOVER: There is a potential. Those
19 buildings aren't existing yet, and you know, in terms
20 of getting lease agreements and so forth, and we're in
21 a situation where we don't have --

22 MR. MAY: Well, I'm thinking in terms of the
23 temporary because, you know, it might be better -- you
24 might be better off having this as a temporary for two

1 years and then getting a site on a building than for
2 us to wind up with that there for the next 20 years.
3 I mean, especially since those higher up elevations
4 aren't necessarily going to give you the best coverage
5 in the long run.

6 I'm just, I'm you know --

7 MR. STOVER: I mean, obviously ideally a
8 temporary site for us is not a long-term solution.

9 MR. MAY: Right.

10 MR. STOVER: And in this case for a temporary,
11 you know, two years is a long-term, or a long time to
12 have a temporary site. So, I mean, we look to secure
13 our network, you know, as much as we can whenever we
14 can.

15 MR. MAY: Okay. I think I'm done with my
16 comments and questions for now.

17 CHAIRPERSON HILL: Okay. So, we're going to
18 allow you time to cross-examine. If you would like to
19 ask some questions of the applicant. I would like to
20 say that as best we can, let's try to keep it all very
21 cordial and professional and just --

22 MR. FRIEDMAN: No problem.

23 CHAIRPERSON HILL: Okay. Thank you.

24 MR. FRIEDMAN: So, I want to read my

1 statement, just to get it on the -- I'm going to read
2 my statement to get it on the record. No?

3 CHAIRPERSON HILL: Yeah, no. Actually, the
4 way I guess we're going to go through is if you go
5 ahead and just ask your questions, then you're going
6 to come back and have an opportunity to present. And
7 then you can read your statement at that point.

8 MR. FRIEDMAN: I also have my -- since they
9 had their attorney, I'll have my attorney ask the
10 questions.

11 CHAIRPERSON HILL: Sure. That's great.

12 MR. GEIST: Thank you. Good evening. Does
13 Verizon have cell antennas on other roof tops in DC?

14 MR. STOVER: Yes.

15 MR. GEIST: How many? Approximately?

16 MR. STOVER: I have no idea. I would assume
17 hundreds. I'll say hundreds if you include small
18 cells and macro cell sites.

19 MR. GEIST: Percentage residential
20 approximately? Like, half?

21 MR. STOVER: Residential meaning like
22 apartment buildings?

23 MR. GEIST: Like the residential apartment
24 buildings.

1 MR. STOVER: Because I mean, typically we're
2 not on residential properties.

3 MR. GEIST: You have cell sites on residential
4 apartment buildings, correct?

5 MR. STOVER: Yes.

6 MR. GEIST: Where are the wheels on the Cell
7 on Wheels, the 84-foot monopole?

8 MR. STOVER: Excuse me?

9 MR. GEIST: The 84-foot monopole, this is what
10 you're calling the Cell on Wheels, the COW, where are
11 the wheels on that?

12 MR. STOVER: So, COW, I think, is just an
13 industry term or generic term for a temporary or
14 mobile cell site.

15 MR. GEIST: Would you agree that that is a
16 monopole?

17 MR. STOVER: The monopole itself is a
18 monopole.

19 MR. GEIST: It's a monopole.

20 MR. STOVER: Yes. It's a ballasted monopole.

21 MR. GEIST: How long did it take you to
22 construct the 84-foot monopole?

23 MR. STOVER: I think it was three days.

24 MR. GEIST: How long would it take you to turn

1 back on the existing site that you had for 25 years on
2 the Capitol Skyline Hotel, if you had to turn it back
3 on?

4 MR. STOVER: It would take a couple days.

5 MR. GEIST: Is your equipment and antenna
6 still on the Capitol Skyline 100 percent intact?

7 MR. STOVER: Mr. Geist, you know it is.
8 You've refused to let us remove it from the property.

9 MR. GEIST: So, you're saying -- so, what
10 you're saying, yes.

11 MR. STOVER: Yes.

12 MR. GEIST: The answer is yes. Why did you --
13 you said you had to leave the roof of the Capitol
14 Skyline Hotel.

15 MR. STOVER: Correct.

16 MR. GEIST: You said you had to.

17 MR. STOVER: Our lease has been terminated,
18 yes.

19 MR. GEIST: Were you ever offered a month to
20 month opportunity to stay as long as you needed to, so
21 that you didn't have to shut off service to the
22 community?

23 MR. STOVER: There were some discussions about
24 continuing to stay at what we would consider to be

1 unreasonable terms.

2 MR. GEIST: Were you offered an opportunity to
3 stay as long as you needed to so that you didn't have
4 to turn service off to the community at the same
5 rental that you were paying before?

6 MR. STOVER: No, we were not offered that.

7 MR. GEIST: You weren't offered that?

8 MR. STOVER: That's correct.

9 MR. GEIST: If I know something that he's --
10 that's not --

11 MR. MAY: This is just cross-examination.

12 MR. GEIST: Okay.

13 MR. MAY: You can make your statements when
14 your time comes.

15 MR. GEIST: Okay. So, you, basically you
16 refuse to extend your lease at the Capitol Skyline
17 Hotel?

18 MR. STOVER: So, Mr. Geist, our lease was
19 terminated. You sent us a termination notice. We
20 continued to pay rent, which I'm not an attorney but
21 my understanding is that provided us some legal rights
22 to remain on a month to month basis.

23 CHAIRPERSON HILL: I'm sorry, just real quick.
24 What was the question?

1 MR. GEIST: Just asking him if he was -- if he
2 had the ability to extend the lease at the Capitol
3 Skyline Hotel.

4 CHAIRPERSON HILL: Right. So you had the --

5 MR. GEIST: It's a yes or no answer.

6 CHAIRPERSON HILL: You had the ability to
7 extend the lease under terms you didn't want to extend
8 the lease for.

9 MR. STOVER: That's correct.

10 CHAIRPERSON HILL: Okay.

11 MR. GEIST: How long were you in negotiations?

12 MR. STOVER: I would say almost a year.

13 MR. GEIST: How long was the lease on the
14 Capitol Skyline?

15 MR. STOVER: In totality?

16 MR. GEIST: Yes.

17 MR. STOVER: I think it had been about a 26-
18 year lease, 27-year lease.

19 MR. GEIST: Wasn't there an -- was there an
20 issue that there was nonpayment of past due
21 electricity that was part of the lease extension
22 discussions?

23 MR. STOVER: There was a disagreement about
24 reimbursement for utilities, yes.

1 MR. GEIST: How much was the owner asking you
2 to reimburse for the electricity that was being --
3 that was not being reimbursed for many, many years?

4 MR. STOVER: Are you asking about the initial
5 request?

6 MR. GEIST: How much was the request? The
7 last request.

8 MR. STOVER: I believe the last request is
9 \$260,000, if I'm not mistaken, which is down from the
10 original request, yes.

11 MR. GEIST: Did Verizon pay some of the past
12 due electricity without an agreement with the owner of
13 the hotel?

14 MR. STOVER: Could I interject for one second,
15 because I do have the letter from Mr. Geist where it
16 did say that for 25 years' failure to reimburse. But
17 yet, my understanding is that she only owned the
18 building, or your clients only owned it --

19 MR. GEIST: Stop. This is our cross-
20 examination.

21 CHAIRPERSON HILL: It's okay. I just got to
22 let you know, we're going to go on this for a little
23 while. We're going to find out what happened with the
24 Skyline Hotel, and why you guys aren't there anymore.

1 So, just go ahead and answer the questions --

2 MR. GEIST: (Simultaneous speech.)

3 CHAIRPERSON HILL: -- as quickly as you can.
4 I understand. That's all right. So, can you answer
5 the question?

6 MR. STOVER: Yes. I guess I'll provide a
7 little bit more detail, I guess. So, for the Board,
8 just a little more color, I guess.

9 There's a sub meter at the hotel. Landlord
10 didn't read the meter and billed Verizon for a period
11 of time. Recently the landlord notified Verizon --

12 CHAIRPERSON HILL: Okay. That's fine. That's
13 all I need to know. Okay, please, your next question.

14 MR. GEIST: So, how much did Verizon pay the
15 owner of the Capitol Skyline Hotel without any
16 agreement of the owner to receive that amount?

17 MR. STOVER: So, Verizon did internal
18 calculations and estimated the amount to be \$85,000
19 that was owed, and Verizon paid \$100,000 in good
20 faith.

21 CHAIRPERSON HILL: Okay, Mr. Geist, I just
22 want to -- I'm going to let you ask a couple more
23 questions because we're -- I want to hear your
24 presentation. And again, these questions aren't

1 really about the zoning and the issue that it's at
2 hand. Okay. It's more about why they are no longer
3 on your building. Okay?

4 MR. GEIST: Okay. Well, let me --

5 CHAIRPERSON HILL: And so --

6 MR. GEIST: I thought you wanted color on the
7 why --

8 CHAIRPERSON HILL: I did. But I mean --

9 MR. GEIST: Okay.

10 CHAIRPERSON HILL: -- you know, now we're --

11 MR. GEIST: Let me move on from that.

12 CHAIRPERSON HILL: How long are we going to go
13 on about why they're not on your building anymore?

14 MR. GEIST: I'm going to move on from that.

15 Did you ever ask the Blind Whino property
16 owners if you could put the site on their property?

17 MR. STOVER: No, I did not.

18 MR. GEIST: Did you ever ask the Randall --
19 the front Randall School site owners if you could put
20 the monopole on the Randall School property?

21 MR. STOVER: No, that property is slighted for
22 development. It's like I stated before, we're looking
23 for a long-term solution here, not a temporary
24 solution.

1 MR. GEIST: Do you agree that the zoning
2 requirements require -- the special exception
3 requirements require that there be both a gap in
4 service and that the site that you're proposing is the
5 only available site?

6 MR. STOVER: We have a gap in service, we have
7 a gap in coverage, and we have evaluated the adjacent
8 properties and in order to meet our RF needs, our
9 customer's demand, the location we picked is the only
10 location that we could find that meets that
11 requirement.

12 CHAIRPERSON HILL: Mr. Geist, I'm going to let
13 you ask two more questions and then I want to hear you
14 all's presentation. Okay?

15 MR. GEIST: Okay.

16 Do you think you can still negotiate to go
17 back on this Capitol Skyline roof?

18 MR. STOVER: No, we do not.

19 MR. GEIST: Can you explain why?

20 MR. STOVER: For the reasons previously
21 stated, that we haven't been able to reach reasonable
22 financial terms. Our estimate is that, that property
23 is in need of maintenance and is prime for
24 redevelopment, and it's not a long-term solution. And

1 the landlord has emphatically stated that they're not
2 going to agree to a long-term agreement.

3 CHAIRPERSON HILL: Okay. By the way, I've
4 just got to let you know, we're not here to negotiate
5 whether or not the thing should be on the Capitol
6 Hilton or anything like that, right? So, I'm a little
7 -- I'd like you to answer or ask a -- no, no, he gets
8 one more question, then I'd like to hear the
9 presentation.

10 MR. GEIST: I'm sorry. I was just trying to
11 get to the two points that there was no gap in
12 service, number one. And number two, they had other
13 alternatives, including going back to the Capitol
14 Skyline instead of putting (simultaneous speech).

15 CHAIRPERSON HILL: Okay. So, we'll ask some
16 more questions about that.

17 MR. GEIST: Well, one of my questions.

18 CHAIRPERSON HILL: That's fine. So, and also
19 the Office of Planning still has to go, and you've
20 read their report, correct?

21 MR. GEIST: Yes.

22 CHAIRPERSON HILL: Okay. All right.

23 MR. GEIST: Yes.

24 CHAIRPERSON HILL: So, they're the ones that

1 are determining whether or not the criteria has been
2 met to approve the application, and they are on board
3 with approving the application.

4 MR. GEIST: Understood.

5 CHAIRPERSON HILL: Okay. So, and the only
6 reason why I'm cutting you off, because I am curious
7 myself. I'd like to get to the Capitol Hilton
8 questions. There's other questions I'd like to get
9 to, but first we need to hear your presentation in
10 order to understand why again you are here in
11 opposition. You've been granted, you know, party
12 status, okay? And you've been granted party status
13 because you had a property right next to the property.
14 The diagram that I saw again, had your location. I
15 guess the Blind Whino location, then again there is
16 the Capitol Skyline Hilton, which also I'm familiar
17 with. So, I mean, we're all familiar with the
18 property except for Mr. May, apparently, who still
19 thinks that's the Great West -- whatever, Best
20 Western, and he hasn't obviously been to the pool
21 before.

22 MR. MAY: I've just --

23 CHAIRPERSON HILL: Or a baseball game.

24 MR. MAY: -- old. That's it. Old.

1 CHAIRPERSON HILL: Okay. Right. There's a --

2 MR. MAY: That's all.

3 CHAIRPERSON HILL: There's a huge pool party
4 that goes on and you like --

5 MR. MAY: I know. I know. Yeah.

6 CHAIRPERSON HILL: -- you know, all right the
7 pool is still in good shape, you know? So, but now so
8 please go -- I'm just letting you know that we are
9 listening and we'll try to figure this out together.
10 Okay? And so, please go ahead and make your
11 presentation now.

12 MR. GEIST: Okay. Well, can I have one final
13 question?

14 CHAIRPERSON HILL: Sure.

15 MR. GEIST: Is the site that you constructed
16 at Randall Recreation Center really a temporary site,
17 or as you asked for in the application, or is the
18 intent really just for this to be a permanent site?

19 MR. STOVER: Site is completely temporary.
20 It's a ballasted monopole. Equipment is temporarily
21 installed. We are going to seek a permanent site in
22 the future.

23 CHAIRPERSON HILL: It's okay. That's all
24 right. It's temporary installed and your hope is to

1 make it a permanent site.

2 MR. STOVER: Yes, but what I guess what I'm
3 saying is --

4 CHAIRPERSON HILL: And you're going to have to
5 come back here again to make it a permanent site.
6 Okay. So, I'm just saying if it's on the same place,
7 I'd like to know now.

8 MR. STOVER: Well, it's the same location but
9 I mean, that equipment will physically be removed and
10 new equipment will physically be removed and new
11 equipment installed.

12 CHAIRPERSON HILL: I understand. But there
13 will still be a pole there.

14 MR. STOVER: Replacing an existing light pole.
15 Yes, sir.

16 CHAIRPERSON HILL: Yes. Yes. Okay, great.
17 Thank you. Okay.

18 MR. STOVER: Thank you.

19 CHAIRPERSON HILL: Great.

20 MR. CALLENDER: All right. Good evening.
21 Really, this presentation is for the Blind Whino
22 purposes. We occupied that site in 2011 with the
23 property owner, Steve Tanner, the co-founder of Blind
24 Whino Southwest Arts Club. We have a long-term lease

1 with the property owner.

2 I actually have a question that I didn't get a
3 chance to say with Ruddy. I'm hearing you guys speak
4 on the public accessibility if it's on a rooftop on a
5 residential property. But Randall is actually one of
6 the most used fields in Southwest D.C. It's one of
7 the largest. And you guys are saying that no one
8 would have access to this particular utility, but it
9 actually sits right alongside the home bench on that
10 baseball field. So, how could this site, which you
11 can access from the sidewalk and the field, be
12 inaccessible to people that use the field?

13 Can I not ask a question? I can go right
14 through.

15 CHAIRPERSON HILL: That's okay. Just do your
16 presentation first and we'll come back and let you ask
17 that question again. I'm just trying to, again,
18 understand what you're in opposition to. I mean, I
19 understand you're in opposition to the pole.

20 MR. CALLENDER: Well, I'm Southwest -- no, I
21 mean, I'm very, I'm very frank with what this is. I'm
22 a Southwest resident and the fact that this is a
23 public access park, and we work very closely with
24 Director, Keith Anderson and the DPR folk. We do not

1 see this as a viable solution for any type of calm on
2 a public space. Private, more likely yes, that makes
3 sense for us. But on a DPR field that is not
4 suitable, one thing that we also tried to look at is
5 the aesthetic. It doesn't really fit within the
6 aesthetic of Southwest. Especially coming from where
7 it is.

8 And also, with the DPR programming. I don't
9 know what the lease arrangements were. I don't know
10 what the lease arrangements were with Verizon and DPR,
11 but just like the Under-Armor component with this new
12 redeveloped field, there was some issues with Sasha
13 Bruce not getting any funding.

14 So now, the DPR at the Randall -- Sasha Bruce
15 is a nonprofit organization that occupied Randall
16 Recreation, and there was a big issue with Under Armor
17 redeveloping the field. \$2 million went into the
18 field and no money went to the programming at Randall.
19 That's a huge issue for us, so without understanding
20 what those lease agreement was with DGS and what DPR
21 and Randall was actually getting from this, that's
22 again our biggest issue. We're a nonprofit
23 organization.

24 MR. MAY: Can I --

1 MR. CALLENDER: Sure.

2 MR. MAY: -- interrupt for just a second?

3 MR. CALLENDER: Sure.

4 MR. MAY: I think one of the things that I
5 struggle with, with what you've been saying so far is
6 that they relate to general issues having to do with
7 the operation of the Randall Rec Center or these other
8 programs, or the Under -- I mean, those are all very
9 interesting. The key question is --

10 CHAIRPERSON HILL: Okay. Great. Yes.

11 MR. MAY: -- you know, your objections being
12 part of this party in opposition, and being an
13 abutting neighbor, right? I mean what are the
14 particular concerns that you have? I mean, you did
15 mention the aesthetics of it. That's something that I
16 understand and appreciate. But, you know, focus on
17 the things that are relevant here because you know,
18 we're not going to try to --

19 MR. CALLENDER: Sure.

20 MR. MAY: -- unearth whatever happened with --

21 MR. CALLENDER: Sure.

22 MR. MAY: -- the Under-Armor Field and the \$2
23 million and --

24 MR. CALLENDER: Yeah, sure. No, I understand.

1 MR. MAY: -- the big advertising in the middle
2 of it that we all see from the freeway, and all these
3 other, you know, questionable --

4 MR. CALLENDER: Yeah, I mean, the --

5 MR. MAY: -- aspects of that action.

6 MR. CALLENDER: -- aesthetic is probably one
7 of the more focal points of that. You know, and when
8 we speak about telecom, we don't have any telecom at
9 our site. Something that we've been trying to get for
10 quite some time. So, to see this mobile device being
11 rolled into our neighborhood, I also echo you saying
12 that, you know, I was at that site when those tractor
13 trailers accessed Randall Park and I saw the mess that
14 it left. I actually took pictures.

15 It was done carelessly and it's something as a
16 Southwest resident and business owner, that we just
17 can't tolerate. Again, without getting into the
18 emotional logistics of what or how they got there,
19 this site, to me, cannot be at this public park.
20 Anyone can access that gated base of this monopole.
21 There is no OSHA warnings or anything of that nature
22 that was mentioned earlier.

23 So, how can this site still be -- I mean, and
24 the ANC opposed it. I was at that meeting as a

1 Southwest resident. I had no intention of, you know,
2 moving into this direction, but as a Southwest
3 resident at the ANC meeting, they all opposed and it
4 really was something that the community needs to be
5 abreast of up front. So, those are practically my
6 comments.

7 CHAIRPERSON HILL: Okay. Great. Thank you.
8 And together you guys, by the way, you're all going to
9 get the same amount of time, so just to let you know,
10 there's the clock. So --

11 MR. CALLENDER: Thank you. We wouldn't need
12 all that time.

13 CHAIRPERSON HILL: No, that's all right. I'm
14 just --

15 MR. CALLENDER: I'm hungry too.

16 CHAIRPERSON HILL: No, no, no, we're not
17 hungry. We had tons of food at lunch, so we can go
18 all night long.

19 Mr. Friedman, please, go ahead.

20 MR. FRIEDMAN: Good evening. My name is Brian
21 Friedman and I'm a local D.C. resident. I'm a D.C.
22 small business owner, a certified business enterprise.
23 I'm also a professor under real estate studies at
24 Georgetown University that specialize in spectrum, and

1 I consider myself a wireless site specialist.

2 In my career I have developed over 20 million
3 square feet of real estate across the country. And
4 for my projects I'm known as an urban renewalist. My
5 angle is historic properties.

6 In the wireless space, I have trademarked the
7 concept, air wave rights. I write white papers on
8 this. I study problems in search of solutions for the
9 good of all.

10 I'm a deep -- yes, I am a D.C. based real
11 estate developer and investor. Yes, I am a partner
12 with Steve Tanner who owns the property directly
13 adjacent to the Randall Recreational Center. Yes,
14 Steve and I are partners on several other D.C.
15 development projects.

16 MR. MAY: Can you do me a favor and just back
17 a little bit away from the microphone, because we get
18 a lot of distortion here.

19 MR. FRIEDMAN: Oh, okay. Is this good?

20 We are directly affected by the construction
21 of the site. The construction at the RRC. I'm also a
22 developer of wireless sites, and a founder and
23 chairman of the Airwave Developers, that have been
24 developing wireless sites in partnership with

1 commercial real estate owners throughout the United
2 States, and especially Washington, D.C.

3 I am here to object to this Board starting a
4 precedent of allowing wireless carriers to place
5 unsightly wireless sites in public spaces, such as in
6 this case. Even the poles he was talking about.

7 There are numerous rooftops around the RRC,
8 and other private commercial land in which carriers
9 can place sites. Verizon indicates they have a gap in
10 coverage due to termination of a lease at the Capitol
11 Skyline Hotel, and they have no other options except
12 to put a tower site in the public park. This is not
13 the full truth.

14 I personally know the owner, Mera Rubell, of
15 the Capitol Skyline Hotel. She has tried to negotiate
16 with Verizon to stay on the Capitol Skyline after 27
17 year -- and after a 27-year lease expired. But
18 Verizon decide not to extend, and instead put the site
19 in a public park across the street that is now in the
20 foreground of the U.S. Capitol Dome view, and is a
21 complete eyesore.

22 Verizon antennas and equipment are still on
23 the roof of the Capitol Skyline Hotel, and they did
24 not and do not have to vacate. The site is still

1 fully available to Verizon as are the other sites that
2 are not in the public park. Also, I want to add that
3 the hotel has already been redone and is not going to
4 be redeveloped, and it has a fabulous pool.

5 I know other sites are available to Verizon
6 because my company has a database of all the D.C.
7 rooftop sites, and there are many other around the RRC
8 location, directly around this location, that Verizon
9 can easily use. Verizon can even locate on private
10 land to place this monopole, such as the old Randall
11 School, also owned by Mera Rubell, or at the Blind
12 Whino property.

13 Verizon created this perforated gap in
14 coverage problem requiring a special exception by
15 voluntarily turning off the site at the Capitol
16 Skyline Hotel, after they failed this -- after they
17 filed this application and before they built the site
18 at the RRC without this Board's approval.

19 Verizon, so hardly wants you to believe the
20 gap in coverage occurred by action of some other
21 party. But it was solely their decision for purposes
22 of putting the tower in this beautiful and tranquil
23 public space, versus just leaving it on the roof of
24 the Capitol Skyline Hotel, completely out of sight.

1 In sum, Verizon doesn't have many other
2 options for this site, including to remain on the
3 Capitol Skyline Hotel as long as they want, or to put
4 the site on the adjacent private lands. The site is
5 in the park, harms the beauty of the Randall
6 Recreation Center to all park patrons. The site
7 creates a complete eyesore for adjacent property
8 development that has to look at this pole in the park
9 instead of the beautiful urban public space.

10 There is no gap in coverage here because
11 Verizon could just turn their site at the Capitol
12 Skyline Hotel, back on in a couple days. And even if
13 they will not, they have many other options for the
14 location of the site.

15 I respectfully urge you to reject the
16 application and not allow a precedent of ugly wireless
17 sites in our beautiful urban public spaces in D.C.
18 Thank you.

19 CHAIRPERSON HILL: Okay. Thank you, Mr.
20 Friedman.

21 So, we can either, as a board, start asking
22 questions, or I can turn to the Office of Planning and
23 then we can ask some questions. What would you like
24 to do?

1 MR. MAY: How about just --

2 CHAIRPERSON HILL: Okay. All right. So, Mr.
3 May.

4 MR. MAY: I'll try to keep it brief.

5 CHAIRPERSON HILL: That's quite all right, Mr.
6 May.

7 MR. MAY: So, Mr. Friedman, you are advocating
8 that instead of this monopole being erected on Randall
9 Field, that it be erected at the Blind Whino?

10 MR. FRIEDMAN: I think they should just stay
11 where they are. Okay?

12 MR. MAY: Okay. But you said in testimony --

13 MR. FRIEDMAN: But -- yeah.

14 MR. MAY: -- that they didn't look at private
15 places like the Randall School or the Blind Whino.

16 MR. FRIEDMAN: No. Correct.

17 MR. MAY: So, I mean, if they were to go to
18 Blind Whino are you talking about having them put that
19 same monopole on the Blind Whino property?

20 MR. FRIEDMAN: Versus putting it on a public
21 park? Yes.

22 MR. MAY: Okay. So, an 80-foot monopole
23 adjacent to the residential -- immediately adjacent to
24 the residential neighborhood and just like across the

1 fence from the Randall Field, you think would be a
2 better location than where it is right now?

3 MR. FRIEDMAN: Respectfully, Mr. May, if I
4 might say? What I said was, they should stay at the
5 Skyline Hotel where they would be out of site. Then
6 when you took the -- let me finish my thought because
7 -- so I can answer your question.

8 Assuming they won't stay at Skyline, which
9 they have the right to stay, they should go to another
10 private building. All I'm saying is that the most
11 adjacent, the closest private building, they didn't
12 even talk to about going to. They could have built a
13 -- let me just finish, please. They could build on
14 top of the church. They could put a pole in the
15 parking lot. There's lots of things that they could
16 do.

17 MR. MAY: Okay, well I think you've been
18 watching me too much during the day, and you're
19 stopping me from cutting you off when I'm trying to
20 cut you off and help you.

21 MR. FRIEDMAN: I have nothing -- rather, I
22 know you're trying to help me because I know you agree
23 with this and I have nothing but respect for you. I'm
24 just a little nervous right now, while I'm speaking

1 and the guy got up, that got me a little, you know,
2 flustered.

3 MR. MAY: I appreciate it. I you know,
4 putting people at ease when they're in front of me
5 here is not my specialty.

6 So, anyway, I was just trying to get clarity
7 about what you were advocating, because it does seem
8 like the impacts associated with putting that monopole
9 up in private property immediately adjacent to the
10 park wouldn't be substantially different. I think the
11 major difference there is that instead of the district
12 Government getting the benefit of a lease, the
13 payments from a lease, is that it would go to a
14 private entity. You know, whoever that happens to be.

15 So, I think from an aesthetic point of view,
16 or in terms of the operation of the Blind Whino, I
17 don't know how that would be helpful.

18 I mean, do you actually have reasonable
19 coverage at that site? Is that part of the problem?

20 MR. CALLENDER: If you're referring to Blind
21 Whino --

22 MR. MAY: Yeah.

23 MR. CALLENDER: -- we don't have any -- we
24 have reasonable cellular site. The issue for our

1 property is that we have no hard wire to our building.

2

3 MR. MAY: Why not?

4 MR. CALLENDER: Our building is 130 years old.

5 We actually contacted Verizon --

6 MR. MAY: My house is 150 years old. I've got
7 a phone.

8 MR. CALLENDER: Yeah. No, we have a phone.
9 This issue is fiber. We don't have any internet
10 service. We have 5meg of internet service, which is
11 slower than DSL, or it's your regular standard DSL
12 high-speed --

13 MR. MAY: Until recently I had DSL too. So, I
14 mean.

15 MR. CALLENDER: No, but --

16 MR. MAY: I would -- as a matter of fact,
17 speaking of Verizon -- no, I'm sorry. I'm not going
18 to start talking, go into my FIOS route -- rant.

19 MR. CALLENDER: No, but you know, Capitol Park
20 4, which is, you know, our adjacent neighbors to the
21 north, you know, that's fiber on G Street but it can't
22 come across to --

23 MR. MAY: All right. I mean, there's a lot of
24 the city that doesn't have ready access to fiber.

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1 MR. CALLENDER: Right. And so, it would be, I
2 believe it was like a \$20,000 cost to run the wire
3 from my street to our facility for high-speed
4 internet. We've done a lot of things with Office of
5 Planning --

6 MR. MAY: Right.

7 MR. CALLENDER: -- and the other agencies --

8 MR. MAY: Right. And you can't get it out of
9 Comcast or somebody else?

10 MR. CALLENDER: No, because they have to run
11 through a Verizon conduit in Southwest. Comcast has
12 to lease through Verizon. But in addition to that I
13 just wanted to add to Brian's point, I did speak with
14 Steve Tanner, the property owner, and he is willing if
15 it were to be at the Blind Whino site, to donate all
16 the proceeds to charity.

17 MR. MAY: Okay.

18 UNIDENTIFIED SPEAKER: Mr. Chair.

19 MR. MAY: It still seems like a very strange
20 solution to be advocating for the monopole to be on
21 that property.

22 MR. CALLENDER: No, again, the objective is
23 not to, again, utilize it.

24 MR. MAY: I understand. I mean, I think for

1 many of us the ideal solution would have been if there
2 was something allowed to remain at Capitol Skyline.

3 MR. CALLENDER: Sure.

4 MR. MAY: Formerly known as the Best Western.

5 MR. FRIEDMAN: And my avocation and my thesis,
6 to be clear, is that these antennas aren't supposed to
7 be in public parks. And again, if there are --

8 MR. MAY: You know, we've have wrestled with
9 that issue before, here. And certainly, within the
10 National Park Service we've wrestled with that issue.
11 We force Verizon and other providers to look at every
12 other possibility before they put anything on to our
13 property. So, I understand, it's one of the least
14 desirable situations.

15 But, that doesn't necessarily mean that they
16 can't make a case in this, you know, in a circumstance
17 like this. You know, there's only so far we can get
18 into the issue of the negotiation between you or your
19 friends and Verizon. The question is whether there's
20 been a reasonable attempt to do so or whether, you
21 know, Verizon is just turning their back and walking
22 away because they're trying to save a few bucks.

23 MR. GEIST: Can I comment on that, because I
24 have first-hand knowledge?

1 CHAIRPERSON HILL: Wait a minute. Wait a
2 minute. Wait a minute. Hold on. I'm going to --

3 MR. MAY: No, this is not the place to try to
4 renegotiate the location. I think that, you know, if
5 you want to say something that's relevant to your
6 objections to this from a zoning perspective, from the
7 tests that they have to meet, and given your unique
8 perspective being an abutting property owner, that's
9 what's relevant here. It's less about, you know,
10 should they have negotiated harder or come to a deal
11 with Capitol Skyline.

12 MR. GEIST: I was just going to say that Ms.
13 Rubell, who owns the Capitol Skyline Hotel where the
14 site is right now, well, it's been turned off I guess,
15 but it could be turned back on, she's 100 percent
16 willing to negotiate in good faith. A simple market-
17 based lease with Verizon. But they have absolutely
18 refused to negotiate for at least six months. They
19 haven't even put a counter proposal on the table.
20 They decided on the Randall Recreation Center and
21 that's what they were doing.

22 CHAIRPERSON HILL: No, I --

23 MR. GEIST: So, they haven't really tried to
24 get an alternative site than this.

1 CHAIRPERSON HILL: Okay. One second. I mean,
2 again, that's not something that's before our purview.
3 I mean, we're here for an application for the COW,
4 which I think will eventually turn into an application
5 for a permanent pole. Okay? And so, I'm on board
6 with you guys with that. Right? Okay.

7 And then again, again like, kind of like the
8 view and being a property owner nearby, I mean, those
9 are aspects that are something that we can listen to
10 and talk about.

11 Again, as far as like, negotiations for a
12 private property thing with Verizon and how that all
13 was supposed to happen, I mean, it doesn't have
14 anything to do with us. Right?

15 MR. GEIST: It goes to the issue, with all due
16 respect, it goes to the issue of one of the
17 requirements that they have to meet, which is that
18 this is the only site.

19 CHAIRPERSON HILL: Right. Mr. Geist, I'm
20 going to -- I mean, is it Mr. Geist again? Right?
21 Okay. Because I'm now going to turn to the Office of
22 Planning and the Office of Planning will tell me what
23 is the issue. And as I said, they've already filled
24 out their report, which you've read.

1 MR. GEIST: Understood.

2 CHAIRPERSON HILL: So, you're probably at a
3 loss on that one, I must say.

4 Now, is the transcriber all right over there?
5 Okay. Have you ran out of tape? Is that what
6 happened? You need a new recorder because we've been
7 here that long?

8 [Discussion off the record.]

9 CHAIRPERSON HILL: I'm going to turn to the
10 Office of Planning. So, Office of Planning, please
11 tell us all you know.

12 MS. THOMAS: I'll be brief.

13 CHAIRPERSON HILL: Oh, please, don't be brief.
14 Please explain --

15 MS. THOMAS: This is --

16 CHAIRPERSON HILL: Please explain in great
17 detail how you got to where you got. And I'm not
18 being -- I'm not kidding.

19 MS. THOMAS: No. No, kidding.

20 CHAIRPERSON HILL: Thank you.

21 MS. THOMAS: Good evening, Mr. Chair. I had
22 the same concerns that Mr. May expressed regarding
23 this location. I visited the site on my own. And --

24 CHAIRPERSON HILL: I want to clarify. You've

1 visited the site.

2 MS. THOMAS: Yes, I visited the site.

3 CHAIRPERSON HILL: Okay. All right. Because
4 that's not something you always do.

5 MS. THOMAS: Not always.

6 CHAIRPERSON HILL: Oh, no. Maybe you do. I
7 don't know.

8 MS. THOMAS: I always do.

9 CHAIRPERSON HILL: I'm not -- you know.

10 MS. THOMAS: I mean, you know --

11 CHAIRPERSON HILL: You went there.

12 MS. THOMAS: Yes, I went.

13 CHAIRPERSON HILL: Okay.

14 MS. THOMAS: And I looked around. And because
15 this site has been the subject of a past, not
16 application, but past interest by another carrier, and
17 they wanted to go up on a light pole, and so I'm
18 fairly familiar with the site and the location. And
19 not trying to divert anything, but I wanted to see
20 where this COW was going to be located because in the
21 past instance it was supposed to be on a light pole
22 which was closest to the residence. And so, I was a
23 little bit concerned about this location.

24 So, when I saw where it was I thought that

1 this might have been the best location being far away
2 from the residences. It wasn't close to the -- I was
3 a little bit heartened that it was not on the ball
4 field where some carriers in the past have opted to
5 want to put a site in this area. And I expressed a
6 little bit concern to myself regarding the fact that
7 it was near the sidewalk or the bike trail outside.
8 But then I saw the equipment shelter being a little
9 way off from that, and I felt a little bit
10 comfortable.

11 I would also say I will express concern here
12 on the record that I wouldn't like to see co-location
13 on this pole. I wouldn't like to see other carriers
14 going because it would mean an increase in height well
15 beyond what I think would be appropriate for a ball
16 field area.

17 We have other -- there are other locations at
18 schools, ball fields where we have installations on
19 light poles themselves. And so, this gave me a little
20 bit of comfort that it looks similar to what, for
21 instance, is on Dunbar. I mean, I think Dunbar is
22 even a little bit more visible and a little bit more
23 intimidating than this, because this being set back to
24 closest to the highway which that gave me some

1 comfort.

2 So, with that, based on that I reviewed the
3 application and I thought that it had satisfied the
4 criteria as far as the zoning regulations went, and as
5 far as the comfort level it gave OP being away from
6 residences that were within the RS Zone and in the
7 Southwest neighborhood. Closest to the freeway was
8 where I would think that it would be best.

9 CHAIRPERSON HILL: So, could you just clarify
10 for me again, the criteria? I mean, it is a special
11 exception. It's not a variance. The criteria with
12 which you went through to approve the special
13 exception?

14 MS. THOMAS: Sure. So, I particularly looked
15 at the setback from the -- I was concerned, like Mr.
16 May, with respect to the setback he discussed, from
17 the property line. And I realized that, oh wow, the
18 property line did in fact go -- because at first I
19 thought, well, this would not meet the test because it
20 seemed close to the edge. But then if the property
21 line by legal means is where it is, then it does meet
22 that criteria. So, that was my main concern, that it
23 wouldn't have met that test as with respect to the
24 setback.

1 And with every other thing else which was
2 including the maintenance, I was concerned about the
3 maintenance, and they did answer that question and the
4 fact that it would be enclosed. Particularly as it
5 was located, like you said, where it is, on the edge
6 of the ball field, but near to a path where people
7 could, you know, be mischievous and interfere with
8 this site; that it would be fenced off and enclosed.

9 And the other areas which were pretty much
10 meeting the technical requirements, I felt that they
11 had provided the information that we had asked for.

12 CHAIRPERSON HILL: And can you clarify, the
13 opposition keeps speaking about a gap in coverage. Do
14 you know what that's about?

15 MS. THOMAS: Yes, I understand what the gap in
16 coverage means. It means that if they had moved
17 beyond their sphere that they had shown, that they
18 would have significant gaps in coverage.

19 CHAIRPERSON HILL: Okay.

20 MS. THOMAS: Like again, we've seen this in
21 several places, in several schools. St. John's
22 College has it, Dunbar High School has it, and some of
23 the schools in Southeast, they do have it as well.

24 CHAIRPERSON HILL: Okay.

1 MS. THOMAS: So, it's something we're familiar
2 with.

3 MR. MAY: On light poles, in all these
4 circumstances?

5 MS. THOMAS: On light poles. And I think in
6 one situation it's on a monopole.

7 MR. MAY: Right. Can you provide photographs
8 of those other settings? Or maybe the applicant can,
9 but it would be interesting to me to see those in
10 those other settings at fields.

11 MS. THOMAS: Okay.

12 MR. MAY: Because I've seen some other
13 examples from, I mean, my history with monopoles goes
14 back probably 15 years, and 15 years ago saw a lot of
15 stuff about them and they weren't always very good
16 looking in those settings. It was, you know, light
17 pole, light pole, light pole, monopole. Right?

18 MS. THOMAS: Yeah.

19 MR. MAY: So.

20 MS. THOMAS: Sure. Be happy to supplement the
21 record.

22 CHAIRPERSON HILL: Mr. Hart?

23 MR. HART: Yeah. I don't know. Have you --
24 did you think about the view, I guess, looking up

1 South Capitol Street since it is such a -- you know,
2 one of the quintessential views. Well, there are a
3 lot of quintessential views, I guess, in D.C. But you
4 know, the South Capitol Street, North Capitol Street,
5 those are supposed to be, you know, kind of views that
6 we're trying to kind of protect.

7 I don't know what -- I mean, I don't have an
8 idea of, you know, can you see this at all? Is it in
9 that view shed?

10 MS. THOMAS: Well, I did do some of the site
11 photos at the back of my report. There are some site
12 photos which I personally took because that was my
13 concern, how would this look against the Capitol or in
14 and around the Capitol because you can see the Capitol
15 dome and I focused on the view from I Street and the
16 view looking east from H Street Southwest. There are
17 those stacks there.

18 MR. HART: Yeah.

19 MS. THOMAS: As well as the other light poles,
20 which I felt -- and with the freeway, 695 freeway, I
21 thought that, you know, that helped a little bit.

22 But there are a lot of poles that you see
23 within view of the Capitol dome from this area; a lot
24 of structures.

1 I would be concerned if it went higher. I
2 would be much more concerned.

3 MR. HART: And you said that you would be
4 concerned about co-location because they would have to
5 go up higher. I mean, how much higher are we talking
6 about? Do you know?

7 MS. THOMAS: Well, for each -- the lowest --
8 for each carrier beyond this it would have to go 20
9 feet. So, if for co-location let's say for three
10 carriers at least, it will have to be a separation
11 between carriers and they can respond to that, 20 feet
12 above this, the one that's there now. And then
13 another 20 feet. And I can have the applicant,
14 Verizon, confirm that or deny.

15 MR. HART: Just one more question before we
16 get to the -- is there a necessity for putting some
17 sort of indicator light on -- if you get above a
18 certain height?

19 MS. THOMAS: No. No, we don't. We don't
20 encourage lighting on --

21 MR. HART: No, I mean, it's not a -- I mean,
22 like a warning light, like a red blinking light that
23 kind of says, you know, this is --

24 MS. THOMAS: No, I'm not familiar with that.

1 MR. HART: I don't know what the height is.
2 That's what I'm trying to --

3 MR. STOVER: Yeah, all of our sites require an
4 FAA analysis and if a light was required we would know
5 that. But in this case a light is not required.

6 MR. HART: Do you know the height that
7 we're --

8 MR. STOVER: I think it's 200 feet.

9 MR. HART: It is?

10 MR. STOVER: Typically anything over 199 feet
11 in rural areas, but I don't know what it would be
12 here, but we're well below it.

13 MS. THOMAS: Yeah, we have Height Act issues.
14 The Height Act would kick in, even with these
15 structures, and they would have to get relief from
16 them on the Height Act. So, we don't typically see
17 poles that high that would warrant having a light on
18 it.

19 CHAIRPERSON HILL: Okay. Does the Board have
20 any more questions for the Office of Planning?

21 [No audible response.]

22 CHAIRPERSON HILL: Okay. So now, what's going
23 to happen is the party status individuals will have
24 some opportunity to ask questions of the Office of

1 Planning, as will the applicant. So, let's all calmly
2 ask questions of the Office of Planning because they
3 work with us. So, would you all like to ask some
4 questions of the Office of Planning?

5 Please, go ahead.

6 MR. GEIST: Hi, Karen.

7 MS. THOMAS: Hi.

8 MR. GEIST: So, I was just -- I'm inquiring
9 about how you looked at, you know, there are two key
10 requirements as far as I read the zoning rules.

11 MS. THOMAS: Okay.

12 MR. GEIST: Of how you get a special exception
13 for one of these kinds of monopolies. The one is
14 obviously the gap in coverage and I heard what you
15 said about, you know, how you think about a gap in
16 coverage. Would you agree that you know, a gap in
17 coverage is something that, where there's really a
18 hole in coverage where people can get service, and
19 that's really a gap in coverage?

20 MS. THOMAS: I would -- that's what I
21 understand a gap in coverage.

22 MR. GEIST: And so --

23 MS. THOMAS: Where no service is available.

24 MR. GEIST: So, this gap in coverage wouldn't

1 exist but for either there never being service in this
2 hole, or service being shut down in this hole for some
3 reason?

4 MS. THOMAS: I presume, yeah.

5 MR. GEIST: Correct. So, Verizon shutting
6 down their site at the Capitol Skyline Hotel created
7 the gap in coverage.

8 MS. THOMAS: Well, I can't speak to that but I
9 have to go with what was presented. There's a gap in
10 coverage and I have to review that from a zoning
11 standpoint. For whatever reason, there is that gap in
12 coverage, we have no question.

13 MR. GEIST: Okay. And did you look -- and do
14 you agree that another one of the major requirements
15 for this type of special exception is that they have
16 to kind of exhaustively look at other sites and not
17 just pick one site and say, oh, this is the only site
18 we can be on?

19 MS. THOMAS: Yes. We ask that they look at
20 other sites; they prove other sites as part of the --
21 and that's what something they typically do.

22 MR. GEIST: So, how did you, when you analyzed
23 what other sites they evaluated, to kind of conclude
24 that this was the only site they could put this pole

1 on to meet that requirement, how did you do that
2 analysis?

3 MS. THOMAS: I am going on their truthfulness
4 with respect to that. There are structures around the
5 recreation center, and given where they say their
6 coverage is, recreation center might be too low. The
7 other buildings, I know, is going to be under the
8 Corcoran. I thought it's under a PUD. They might be
9 sufficient because they don't have the structural, the
10 roof capacity, or structure capacity on the roof to do
11 that. You know, I look at those things myself.

12 MR. GEIST: Understood. Thank you.

13 MR. CALLENDER: I have a question. Could this
14 COW be positioned on a street, technically? Or as
15 a -- that might be a question for --

16 MS. THOMAS: Technically, yeah. And that will
17 be a public space issue. When you say a street, what
18 do you mean?

19 MR. CALLENDER: Like an unused street or like
20 a dead-end street.

21 MS. THOMAS: That would be a public space
22 issue and it will be up to public space. We won't --

23 MR. CALLENDER: Is that DDOT or --

24 MS. THOMAS: That will be DDOT's public space,

1 yes.

2 MR. CALLENDER: DDOT. Okay.

3 MS. THOMAS: Uh-huh.

4 MR. CALLENDER: Okay. I'm only asking that
5 because I know that around the Capitol Skyline Hotel
6 there is endless streets that have no accessibility,
7 no use or whatever, and a COW could fit there,
8 technically, and it wouldn't be in anybody's way.

9 MS. THOMAS: Yeah.

10 MR. CALLENDER: More specifically, on the
11 other side of half street, in between the U.S. Capitol
12 Police and the Emissions, there's a street there that
13 only is there for nothing, actually.

14 CHAIRPERSON HILL: Okay. Can I turn to the
15 applicant? Okay.

16 Do you have any questions for the Office of
17 Planning?

18 MS. HOTTEL-COX: No.

19 CHAIRPERSON HILL: Okay. All right. So, I've
20 got some more questions, I guess. Or, we're going to
21 have a couple more questions now.

22 So, the -- let me see if there's anybody else
23 here. I don't think there is anybody else here. Is
24 anyone here from the ANC? There's somebody here, I

1 don't know what they're here for. Is somebody else --
2 is anyone here wishing to speak in support of the
3 application?

4 [No audible response.]

5 CHAIRPERSON HILL: Is anyone here wishing to
6 speak in opposition to the application?

7 [No audible response.]

8 CHAIRPERSON HILL: Okay. I've done that. So,
9 let's see, the questions I still have are, so you've
10 heard -- to the applicant here, you've heard from Ms.
11 Thomas that the co-location would raise the monopole,
12 okay. And I'm learning now about wireless signal.
13 So, I assume again, 20 feet for each added carrier.

14 So, as a condition you would agree to no co-
15 location?

16 MS. HOTTEL-COX: Yes, we would be happy to
17 agree to that condition.

18 CHAIRPERSON HILL: Okay. And --

19 MR. MAY: Can you verify, though, the
20 additional height that it would trigger? Sorry to
21 interrupt.

22 CHAIRPERSON HILL: It's all right.

23 MR. STOVER: Ten to 20 feet, depending on the
24 other carrier and what their antenna height

1 requirement were and so forth.

2 MR. MAY: And that's for one other carrier?

3 MR. STOVER: One additional carrier.

4 MR. MAY: And if it were two it's another 10
5 or 20?

6 MR. STOVER: Yeah.

7 MR. HART: And do you also have on the ground
8 facilities that would be associated with those?

9 MR. STOVER: That's correct. They would have
10 additional ground equipment.

11 MR. HART: And that would mean that they would
12 be in the same -- could you use the same structure, or
13 are you talking about a new, you know, building or
14 whatever that is that's on the ground?

15 MR. STOVER: They could use the same -- not on
16 the ground. They could use the same support
17 structure, the same light pole, but not the same
18 equipment space on the ground, no.

19 MR. HART: So, there would be -- right now you
20 would have like a trailer or something that's there?

21 MR. STOVER: I think we're proposing a small
22 shelter or a shed that would blend in with the
23 existing --

24 MR. SCHAPIRO: The permanent design is about a

1 third of what it is right now as far as from the
2 ground space usage. Each carrier would have their own
3 footprint. Practically 12 by 20 is probably an
4 average. But we're proposing would just be a -- the
5 final design was, you know, probably around the 12 by
6 20 equipment shed, give or take.

7 CHAIRPERSON HILL: Okay. And then I'd be
8 interested in seeing some photos as Mr. May just
9 mentioned about other similar poles, monopoles. I
10 guess, is it on the light pole? Is that what you're
11 speaking of? Are they actually installing the light
12 poles?

13 MR. MAY: Yeah, I think at some of those
14 athletic fields they've installed them on top of other
15 light poles. And that's the kind of installation I'm
16 curious about.

17 See, from my perspective, this is a half-step
18 toward the final, the permanent installation, if we
19 were to say yeah, this is okay. We're, in theory,
20 endorsing the concept of there being a pole there.
21 So, I'm thinking, I'm looking into the future to
22 understand what that might look like.

23 So, I mean, that's what's driving my questions
24 about it.

1 CHAIRPERSON HILL: Okay. So, then Ms. Hottel-
2 Cox? Hottel-Cox? Hottel-Cox?

3 MS. HOTTEL-COX: Yes.

4 CHAIRPERSON HILL: So, also I would then be
5 interested in seeing whatever would be the permanent
6 application, what that would actually be. And so,
7 that's one thing.

8 Mr. Friedman, you took this photograph from
9 where? Do you know?

10 MR. FRIEDMAN: The hotel.

11 CHAIRPERSON HILL: From the hotel. Okay.

12 MR. FRIEDMAN: From the hotel, yeah.

13 CHAIRPERSON HILL: So, was it from the roof of
14 the hotel, or was it from one of the rooms in the
15 hotel?

16 MR. FRIEDMAN: From the roof of the hotel.

17 CHAIRPERSON HILL: Okay. All right. And
18 then, Mr. Callender. Callender. So, you went to the
19 ANC meeting, correct? And so, there's been a little
20 bit of confusion for me and this is another thing that
21 I would like clarification on, whether or not you can
22 get -- I need something from the ANC because the
23 letter, as I read it, is very clearly against you.
24 Okay? And so, you know, I don't feel as though the

1 ANC is on board with this.

2 I, again, am confused and my question to you,
3 Mr. Callender is going to be how was the ANC meeting.

4 But before I get to there, is again, what I find
5 confusing again is that if I live in this community
6 and I am no longer going to have cell service and I'm
7 voting for the fact that I'm no longer going to have
8 cell service, I'm not going to be a commissioner very
9 long at the ANC.

10 So, the fact that there's a little bit of a
11 disconnect, either that or there's like a game of
12 chicken going on. They just think you can put it
13 somewhere else, and then maybe that's what's going to
14 happen. I don't know.

15 Okay. So, I would need something from the ANC
16 that clearly indicates that they're, you know,
17 whatever their position is on this, either a vote one
18 way or another is what I'm looking for. Okay?

19 And then, okay. So then, Mr. Callender, so
20 you went to the ANC meeting and it sounds as though,
21 was everyone in opposition? Was it again, a
22 concerning -- was it concerning it being on the field?
23 Was it concerning the views? Could you clarify that
24 a little bit for me?

1 MR. CALLENDER: It was kind of a combination
2 of everything you just described. But I also want to
3 note that a lot of the commissioners that were on the
4 board at that time are no longer on the board. They
5 were outgoing commissioners, which might have been
6 part of the reason why things were a little held up on
7 their end. But they weren't necessarily in support.
8 Our ANC is the most, in my opinion, difficult ANC.
9 I've been there for multiple things, and as you guys
10 have seen three, four times out of the month, they are
11 very detailed. But you have residents and
12 constituents that really want the wellbeing of the
13 residents in that southwest community.

14 So, no, I honestly didn't even think it was
15 the last thing at that ANC meeting, and there was
16 actually a mini board meeting there where, you know,
17 Ruddy went up there and then the Verizon folks went up
18 there. And they were going back and forth and some
19 personal members that I know on the ANC just, they
20 weren't for it, you know? So, I can't really comment
21 as far as how, you know, different the commentary was.
22 But I know that it was in opposition of this erected,
23 you know, solution.

24 CHAIRPERSON HILL: Okay. Okay. And yeah, and

1 I mean, your ANC I mean, you know, I guess you are
2 fortunate in that a lot of activity is going on there.

3 You know what I mean?

4 MR. CALLENDER: Yeah.

5 CHAIRPERSON HILL: And so, you know, you have
6 to suffer some of the stuff that goes on there, I
7 supposed.

8 MR. CALLENDER: Sure. Sure.

9 CHAIRPERSON HILL: But it is -- and just for
10 the record, is it Blind Whino?

11 MR. CALLENDER: It's Whino, yeah.

12 CHAIRPERSON HILL: Whino. Right. I thought
13 it was Rhino. I was saying Rhino.

14 MR. CALLENDER: We've actually, we've actually
15 changed the name just to Southwest Arts Club.

16 CHAIRPERSON HILL: Okay.

17 MR. CALLENDER: Because, yeah, it makes it a
18 lot easier.

19 CHAIRPERSON HILL: I thought Blind Whino makes
20 it easy.

21 MR. CALLENDER: It's cool.

22 CHAIRPERSON HILL: Right. Right.

23 MR. CALLENDER: That's the street name.

24 CHAIRPERSON HILL: Oh, really?

1 MR. CALLENDER: Yeah. That's the street name,
2 so you're cool.

3 CHAIRPERSON HILL: I mean, I remember Tracks.
4 Like, you know, it's going way back.

5 MR. CALLENDER: Tracks is cool too.

6 CHAIRPERSON HILL: Right. So, okay. Let's
7 see. So, does the Board have any other things that
8 they'd like to ask from the applicant?

9 MR. MAY: Yes. You know, I think we have
10 substantial information in the record having to do
11 with the viability of other sites. However, I don't
12 think it's as clear as it probably should be, or
13 necessarily as exhaustive.

14 So, and you know, the diagrams of like the
15 cell coverage and things like that, you know, it's
16 hard for us to interpret some of those things.

17 I think that a little bit of consolidation and
18 a little bit sort of site by site, you know, you
19 looked at this site, the building was this tall, it's
20 residential use, it's incompatible, it's too tall, you
21 know, what the specific problems are within that, you
22 know, the area where you think that you could provide
23 the coverage. Again, you know, one of the things that
24 I mean, I think I've made it pretty clear, I'm

1 reluctant to say okay to citing anything like this on
2 public land such as this.

3 I mean, it would be different if this was, you
4 know, a DPW bone yard or something, you know, in a
5 distant location. But this is a prime location and
6 it's a big patch of green. It's very, very visible.
7 It is highly visible from the freeway, which is, you
8 know, is a concern from my perspective. But it's also
9 highly visible up South Capitol. It's highly visible
10 to the people in the neighborhood.

11 So, you know, siting it there is something
12 that is, really should be a last resort, and I think
13 that understanding that there aren't really reasonable
14 alternatives makes sense. You know, is what we would
15 need.

16 Now, I think we've had a lot of information
17 about why -- well, let me put it this way. In the
18 discussion today it became pretty apparent why Capitol
19 Skyline was no longer an option from your perspective.
20 You know, we also heard testimony that it still
21 should be one, and if you want to supplement the
22 record on that, I think that's fine. But again, we
23 have substantial information on that.

24 So, just a, you know, a relatively concise

1 reiteration of why there are no reasonable
2 alternatives to this. I do think that, you know, it
3 would be in your best interest to take some steps to
4 kind of clean up the site as it is right now. But
5 that isn't really going to affect the decision making.
6 That's just something that you should be doing
7 anyway.

8 And I think that looking into the future, I
9 would appreciate having some better understanding of
10 what's involved. I also understand that the ground-
11 based equipment for towers like this do not need to be
12 at the base of the tower; that they can be remotely
13 located, and in some cases, quite distant. And so, I
14 hope that you're taking that into consideration as you
15 develop the long-term proposal because, you know, even
16 though there are some other shed-like structures in
17 the area of that field, you know, there aren't any
18 along that stretch of the sidewalk and you know,
19 something like that blends in much better against the
20 freeway ramp than it does, you know, against the
21 bleachers. So, such as they are. They're not really
22 bleachers. They're just a couple of benches.

23 But, you know. Anyway. I know that you're
24 not going to have a fully developed permanent proposal

1 by the time you come back to us, but I think that
2 understanding something more about what that's going
3 to be like, would be helpful. I think that's it for
4 the things that I wanted to see.

5 The photographs that I asked Ms. Thomas for,
6 about the other locations, I mean, that could just as
7 easily come from you and save her some trouble if you
8 were out there doing it anyway, or if you already have
9 those. It doesn't matter to me where they come from.

10 And I do agree that having something more
11 definitive from the ANC would be helpful. I think one
12 of the reasons why they voted to send the letter as
13 opposed to voting in opposition is because of the
14 concerns that you raised. They don't want to be
15 voting against their own interests and doing something
16 that's going to damage the cell -- I mean, I'm trying
17 to, you know -- I'm trying to be you know, an ANC
18 whisperer or something. You know? Understand what
19 they're trying to say, because I can see why they
20 would be on both sides of this, right? They want to
21 have the improved cell coverage, but they also don't
22 want to have something that's unsightly in their park.

23 So, getting to some greater clarity with them
24 and getting something further from the ANC, I think

1 would be helpful before we make a decision.

2 MR. HART: Yeah. I am struggling with this.
3 And I think part of it is we have looked at actually a
4 recent case where there was a monopole in Northeast, I
5 think it was, and that was on an industrial site. Or
6 at least a site that was more, you know, fitting, I
7 guess. This is -- the struggle is that this is as, I
8 said it right, Commissioner May, noted earlier, noted
9 a minute ago, that this is a highly visible site. And
10 I think that there needs to be the due diligence that
11 describes -- that tells us that this is the only site,
12 and right now I don't have that.

13 I think the information that Commissioner May
14 just stated is definitely on point and is something
15 that we definitely need to be able to understand this
16 and to be able to come to a decision on this.

17 And I'll note that the decision on the
18 temporary facility is not a -- I wouldn't construe
19 that as being a vote on the permanent facility. So,
20 it is just for this temporary facility. I understand
21 that you all are looking for you know, for a site.
22 But as you have noted in the last six months,
23 buildings have come up. In the next year you may have
24 more buildings come up. I would -- I understand that

1 comes to --

2 MR. HART: Yes, you are.

3 MR. MAY: -- reviewing rooftop antenna
4 applications.

5 MR. HART: I did not bring up your name in
6 that.

7 MR. MAY: No, I will admit it.

8 MR. HART: I just was saying --

9 MR. MAY: I am the real pain in the neck on
10 those things.

11 MR. HART: So, I just bring that because I
12 think that it is something that having antennas on
13 buildings is something that we see quite frequently,
14 and I understand that there is a residential component
15 to this. I just would encourage you to look at other
16 alternatives for that, and also provide, if you could,
17 the -- an image that shows, you know, RF analysis,
18 kind of a diagram. RF analysis on a rooftop means --
19 a rooftop that has a residential building, means this.
20 And so, that means that it's very difficult for us to
21 put this on, you know, on those.

22 RF analysis on a recreation field, or when
23 it's a monopole means that there may be some -- an
24 effective area that is, I don't know, 30 feet down

1 from the pole. But once you get lower than that there
2 is less of an it's within the safety guidelines that
3 the FCC you know, create.

4 So, I mean, I think that all of this
5 information is helpful to kind of, this is why we were
6 looking to do this, and it helps to justify all of
7 that, you know, all of the decisions. Or the decision
8 to put this at this location. I just don't think that
9 we're there yet. I think that there's a lot of
10 information, at least that I need to see, to be able
11 to kind of say, okay, I can kind of understand this.
12 Right now I just don't think that there is enough
13 information. Or maybe it's just not clear enough to
14 be able to say, it may be clear in your heads because
15 you kind of do this day in and day out. But we come
16 at this trying to kind of parse together all of this
17 stuff and then say, okay, what's that. You know, does
18 that make sense and does that fit within the zoning.
19 And that's it. Thank you.

20 MR. MAY: Mr. Hart reminded me that there is
21 one other issue that it has less to do with the
22 immediate submissions, but it has to do with sort of
23 the future of these kinds of installations on
24 rooftops. Hence why I was particularly interested in

1 the residential use.

2 The Zoning Commission took action last --
3 well, year and a half ago, or whatever, to modify the
4 rules for penthouses. And so, the kind of use that
5 you see on these residential rooftops with more, you
6 know, activity space and things like that, it's not
7 only the permission is not only easier, in many ways
8 that use has been strongly incentivized. So, there's
9 going to be a lot more of that. And not just on
10 residential rooftops, but also certain incentives, or
11 even commercial use. Right? Because there are other
12 benefits that can flow to that to the city in terms of
13 contributions to the Housing Production Trust Fund if
14 their uses is on commercial buildings and things like
15 that.

16 So, that space is going to dry up on new
17 buildings. And I don't know, you know, the extent to
18 which Verizon or other carriers are thinking in those
19 terms, but I would just strongly suggest that you
20 start thinking in those terms. I mean, maybe in the
21 long run how these -- you know, the way things are
22 moving down and smaller because of the, you know, the
23 cavern effect of you know, these taller buildings.
24 Maybe that ultimately is how the issue gets resolved.

1 But I think it's going to be harder and harder to get
2 rooftop space, and I'd hate to see, you know, the
3 balance of that all wind up being, you know, in parks.
4 Right, as a result.

5 So, I just, I think everybody needs to be
6 thinking about that. And, Mr. Epting, if you have
7 other clients who were in this realm, you know, you
8 might want to advise them of that too.

9 MR. EPTING: Right. And it was March 4th,
10 last year. So, it's only been a year.

11 MR. MAY: Time flies. You know? I thought it
12 was still the Best Western.

13 CHAIRPERSON HILL: So just to further confuse
14 you in reading the tea leaves here, I also was kind of
15 on the fence, and if -- and it sounds as though there
16 is a lot of animosity between some parties in terms of
17 like, you know, the hotel and what might be happening.
18 You know, I don't know how -- you know, Mr. Stover,
19 you have a much longer term plan of this and so I
20 don't know if even if there is a 10-year patch or
21 something if there was a way to keep it there, that
22 obviously might be something that would be an easier
23 solution for you. I don't know if it can even be
24 possible or not.

1 Again, the issue that I stated is you guys
2 have -- you may have an issue with the ANC. I'm not
3 sure again, whether or not they understand that they
4 might lose service and if they do lose service then
5 they will be asking you to put the monopole there.

6 And so, then where I kind of sit is I then
7 have to decide, and there's three of us now, there
8 might be an additional member. So, but you still need
9 three votes. That it really would then come down to
10 again whether we think that there aren't any
11 alternatives. And if there aren't any alternatives,
12 then again, even if you get voted down that means that
13 in three months you're going to be back with me with a
14 letter from the ANC saying that we want a monopole
15 because no one has cell coverage.

16 So, that's kind of my thought process in terms
17 of if this were not to happen; that Verizon is a big
18 company and everybody is just assuming you'll figure
19 it out, you know? And so, I'm just kind of giving you
20 my last words because I get the microphone at the end.

21 And so, does anyone else have anything else to
22 say? Okay.

23 Then, I'd like to put this on, Mr. Moy, if we
24 can, back again with Mr. May, which I think is

1 currently on March 8th.

2 MR. MOY: That's correct.

3 CHAIRPERSON HILL: Right? Everything is going
4 back on March 8th. March 8th is starting to --

5 MR. MAY: Is there room on March 8th?

6 MR. MOY: Staff will always find room for you.

7 CHAIRPERSON HILL: March 8th is turning into
8 another really long day.

9 So, what that means is that the applicant will
10 get to submit whatever the applicant is going to
11 submit. The party status people will get to respond
12 to whatever the applicant submits. I'd like to see if
13 the Office of Planning has any further comments from
14 what the applicant has to submit. So, we're back on
15 that tight timeframe again, I think. Correct?

16 Or, if you guys don't think you -- if you
17 think you need more time, then you're back here again
18 on the 12th. Is that what -- April 12th. March 8th
19 or April 12th.

20 MR. STOVER: Yeah, I'm not sure we have more
21 time, right? We had the 90 days so I think we're --

22 CHAIRPERSON HILL: Oh, that looks like March
23 8th.

24 MR. STOVER: Looks like March 8th.

1 CHAIRPERSON HILL: So then if you don't get
2 your approval we'll know pretty quickly whether or not
3 there's any cell service there in that ANC. March
4 8th?

5 MR. MOY: March 8th.

6 CHAIRPERSON HILL: So when can -- I'm sorry,
7 Mr. Moy, I don't know when we asked for -- it's been a
8 long day -- when we previously had asked for
9 supplementals from the applicant so Mr. May and that
10 the party status people can have time to respond as
11 well as the Office of Planning.

12 MR. MOY: Okay. Filing from the applicant, in
13 this case, Goulston and Storrs. I'm not sure I'm
14 pronouncing it right. My mouth keeps getting a little
15 bit tongue tied now. Would be February the 17th,
16 which is a Friday. That's right, February 17th. Any
17 responses to the filing from other parties would be
18 due the following Friday.

19 CHAIRPERSON HILL: Mr. Moy, I got -- Mr.
20 Stover, you have something to say?

21 MR. STOVER: Yeah, I'm sorry. I don't know if
22 I should speak up or not.

23 I know that we spent very little time on the
24 need for this site on the RF, you know, engineering

1 need for the site. We spoke more about the safety and
2 the health aspects. And I know the hour is late and
3 I'm not sure it's even the appropriate time in this
4 stage in the process. But while we're all here and I
5 have my RF engineer here, we did provide coverage
6 plots that I'm just wondering if it would be better to
7 spend a few minutes to walk you through those on the,
8 you know, the chart of those while we're all here,
9 rather than try to supplement the record and explain
10 it in writing. It's up to --

11 CHAIRPERSON HILL: Okay.

12 MR. STOVER: Just throwing it out there.

13 CHAIRPERSON HILL: That's all right. I mean,
14 so, now assuming -- your name again, was, for the RF
15 expert?

16 MR. DUGAN: Dugan.

17 CHAIRPERSON HILL: Mr. Dugan? Okay. Mr.
18 Dugan, you don't want to come back and get paid
19 another day?

20 [No audible response.]

21 CHAIRPERSON HILL: Okay. So, we'll go ahead
22 and do that if that's all right, real quick. Just
23 walk through the RF --

24 UNIDENTIFIED SPEAKER: [Speaking off

1 microphone.]

2 CHAIRPERSON HILL: No, that's okay. Go ahead
3 and walk through the RF portion and also, you're going
4 to need to speak into the microphone, and then the
5 party status people can also have an opportunity to
6 hear from you while you are here. You need to speak
7 into the microphone. You need to turn it on.

8 MR. DUGAN: Sure.

9 CHAIRPERSON HILL: Sure.

10 MR. DUGAN: Okay. All right. The radio
11 frequency engineers at Verizon utilized propagation
12 modeling tools to evaluate existing and proposed
13 coverage. It's not the only engineering tool they
14 used to determine where facilities need to go.
15 Extensive analysis goes in, and planning goes in to
16 determine where facilities need to be, the proper
17 height to serve a target area, and so on.

18 Verizon Wireless, the main objectives, before
19 I explain the propagation of plots is the proposed
20 site provides coverage and capacity relief to an area
21 of South Capitol, that's centered around the Randall
22 Recreation Center, and serves approximate a half to
23 three quarters of a mile radius in all directions from
24 the proposed structure location.

1 That area includes South Capitol Street, IKL
2 Street Southwest, I-395, and 695, 1st through 4th
3 Street North/South, the residential community that
4 exists in South Capitol.

5 It's no surprise that the area has extreme
6 volume of traffic, both from people that live and work
7 in the area, commuters to the Capitol District. So,
8 there is an overwhelming volume of traffic that is a
9 result of the need for this facility. You can't just
10 shut a site off that those folks have come to use, and
11 use reliably. And that's not only for the public
12 sector, that's also for law enforcement, public
13 safety.

14 MR. MAY: So, I think we understand the
15 purpose of coverage. Can you like --

16 MR. DUGAN: Yeah. Okay.

17 MR. MAY: -- tell us what we're seeing.

18 MR. DUGAN: Okay. Certainly. The Verizon
19 operates now, their LTE network operates in two bands,
20 700 megahertz and 2100 megahertz. The first, there's
21 three plots here that's first depict the coverage from
22 700 megahertz. Propagation at the lower band goes
23 farther than propagation at the higher band. But, if
24 you look here, the actual symbol in the center is

1 actually the location of the Capitol Skyline Hotel.

2 The colors represent the signal level
3 thresholds necessary to serve the area reliably. And
4 if this were a rural area, you know, the area -- the
5 signal levels would be adequate to provide service to
6 the area. But because this is such a high traffic
7 area, the signal levels needed to be stronger in order
8 to provide in-building coverage to the residential
9 community in some of the larger apartment buildings,
10 so to speak.

11 MR. HART: So, in this case you're saying that
12 the blue is the better, and the gray or whatever, red,
13 is poor coverage?

14 MR. DUGAN: Correct. And just because it's
15 not blue anymore doesn't indicate a total lack of
16 service, but where service starts to degrade, slower
17 through-put speeds for data applications, and so on.

18 If you're moving on to the next slide --

19 MR. HART: And what --

20 MR. DUGAN: Oh, sure. I'm sorry. I'm sorry.

21 The other sites that exist around the periphery are
22 what's called the first adjacent sites that surround
23 the proposed -- the temp site location. Those are
24 existing facilities that currently have Verizon

1 antennas today, serving subscribers in the immediate
2 adjacent areas.

3 MR. HART: And these are the only sites that
4 are Verizon?

5 MR. DUGAN: That fall on this --

6 MR. HART: I'm saying, that fall in this area.

7 MR. DUGAN: These are just the first, the
8 first tier adjacent sites. These are not the only
9 sites for the immediate area.

10 MR. HART: Okay. Go ahead.

11 MR. STOVER: So, yes, they're the only sites
12 in that area. What you're seeing, those are the only
13 sites. There's more sites in Washington, D.C. But
14 those are the only sites.

15 CHAIRPERSON HILL: And that little one there
16 is the one that was on the Capitol Hilton?

17 MR. STOVER: Yes, but --

18 CHAIRPERSON HILL: And that's gone now. Or
19 the COW is currently there, serving that area.

20 MR. STOVER: Right. So, we're going to show
21 you what it looks like without it.

22 CHAIRPERSON HILL: Okay.

23 MR. DUGAN: Correct. And might I just point
24 out that for that plot, or that Capitol Skyline Hotel

1 is not propagating. So, it's off. Okay? All right.

2 Moving along to this propagation exhibit shows
3 the additional coverage afforded by the proposed site
4 that's in service today. As you can see, the increase
5 in blue shading represents the improved signal
6 coverage from the introduction of that site.

7 Now, the next plot shows the coverage that was
8 obtained from the Capitol Skyline Hotel. If you do
9 toggle between the best -- well, what's labeled as
10 Best Western, it's actually the Capitol Skyline Hotel,
11 and the temp location, it provides comparable coverage
12 for the target area. Okay?

13 So, those are the three plots that represent
14 700 megahertz, without a site, with the temp site and
15 the Capitol Skyline site.

16 Now, moving along to AWS. AWS is the acronym
17 for the 2100 megahertz frequencies that Verizon
18 Wireless has obtained. The propagation from that is
19 less uniform. It's more sporadic. It doesn't travel
20 as far at the higher frequency bands. But that is
21 also a key to Verizon obtaining the higher -- offering
22 higher capacity for subscribers that are close in to
23 their sites.

24 As you can see there's much more green,

1 yellow, and red close to the Capitol Skyline site
2 symbol. Again, it's not propagating for the purpose
3 of this plot. It's just showing you the adjacent
4 sites that are propagating and where the Capitol
5 Skyline location is.

6 The next one is the location -- okay, this is
7 the temp site propagating. As you can see, the hart
8 of that area, it picks up a lot of blue in that --
9 they concentrated the freeways to the north, the
10 Capitol Skyline -- or, I'm sorry, the South Capitol
11 Street to the south, which is a key objective for
12 Verizon Wireless.

13 CHAIRPERSON HILL: Just to interrupt you real
14 quick. Ms. Hottel-Cox, when you put this back
15 together again, can you just pull what he's showing us
16 again, when you supplement? Just throw these other
17 ones back up again. Thank you.

18 MS. HOTTEL-COX: Sure.

19 CHAIRPERSON HILL: You can continue, please.
20 Yeah, sorry.

21 MR. DUGAN: So, again, this is the proposed --
22 the temp site at the AWS frequencies, 2100 megahertz,
23 and that's moving along to the final plot, it shows
24 the coverage afforded by the Capitol Skyline Hotel at

1 AWS frequencies, again providing strong and
2 building --

3 CHAIRPERSON HILL: Okay. I'm going to ask you
4 to just kind of wrap it up just a little bit because
5 we have to deal with something in a minute.

6 MR. DUGAN: Okay. Here's the final slide.

7 CHAIRPERSON HILL: Okay. Okay.

8 MR. DUGAN: This is the final slide.

9 CHAIRPERSON HILL: Okay, great.

10 MR. DUGAN: This is all I wanted to cover.

11 CHAIRPERSON HILL: Okay. No, I appreciate it.
12 That's great. And really, just for the members in
13 opposition here, Mr. Campbell also -- Campbell? I'm
14 sorry, was it Campbell?

15 MR. CALLENDER: Callender.

16 CHAIRPERSON HILL: Callender. Callender.
17 Sorry. I guess what I -- this is what you should show
18 the ANC, right, to convince them that this is
19 necessary. And this is where I get a little torrid in
20 terms of, you know, myself if I were living in that
21 community again. If I believed this, then I would
22 think twice, perhaps, about having an antenna there on
23 the field. The issue is whether or not you believe
24 it, right?

1 MR. CALLENDER: Well, I think additionally
2 when you have hard wired, you have wi-fi. So, that's
3 the difference between cellular and wi-fi. So, most
4 of the people in this area are residents and they have
5 hard wired communication. So, they -- like, when I'm
6 at home I don't use my cellular on my --

7 CHAIRPERSON HILL: Yeah, but you still want
8 cell phone outside, you know, when you're walking
9 around.

10 MR. CALLENDER: Not necessarily. You have wi-
11 fi calling. That's --

12 CHAIRPERSON HILL: Okay. Well, all right.
13 So, okay. All right. So, okay, thank you so much.

14 MR. MAY: You don't want to get into wi-fi.
15 I've seen wi-fi maps. It's much, much smaller
16 distribution on wi-fi. It's a completely different
17 technology.

18 CHAIRPERSON HILL: I think you all have an
19 interesting conversation ahead with the ANC. Okay?
20 And so, you know, please go ahead and do that. But
21 that I would like to see those again, those slides
22 that you showed us again that clarifies the lack of
23 coverage that will happen if this is not approved.
24 Again, and I am going to qualify this, which is to say

1 that we're not necessarily going to approve the
2 permanent thing anyway. So, but, but so, everybody
3 has their marching orders. Correct?

4 And, Mr. Moy, you know when the filings are
5 going to be?

6 MR. MOY: Let me go over that again, Mr.
7 Chair.

8 CHAIRPERSON HILL: Okay.

9 MR. MOY: So, filings from the applicant
10 should be in by February the 17th, which is a Friday.
11 And any responses from the parties to the applicant's
12 filing would be the following Friday, on the 24th.
13 And then we're back with a continued hearing on March
14 the 1st.

15 CHAIRPERSON HILL: Eighth.

16 MR. MOY: Eighth.

17 CHAIRPERSON HILL: Okay. Does everyone
18 understand?

19 [No audible response.]

20 CHAIRPERSON HILL: Okay. All right. And then
21 the Office of Planning has a time to respond? Okay.
22 All right.

23 Well, thank you all very much for hanging --
24 oh, sure. Go ahead.

1 MR. MAY: I just had a -- I'm sorry. We're
2 going to continue the hearing or are we going to
3 actually just set for a meeting, decision making?

4 MR. MOY: Whatever direction you want to give
5 me.

6 MR. MAY: I mean, I don't know that we
7 necessarily need to have more discussion. Or there
8 was somebody going to be ready to make --

9 CHAIRPERSON HILL: No, that's fine.

10 MR. MAY: Decide.

11 CHAIRPERSON HILL: So, we can have -- we'll
12 make it a meeting. No, I want to have a continued
13 hearing.

14 MR. MAY: Okay.

15 CHAIRPERSON HILL: Yeah, continued hearing.
16 Okay? Because if I have some questions, I want you to
17 be here. Okay? And so, yeah. So, there you go.
18 Okay? Okay. All right. Thanks, you guys, for
19 hanging in there. It's been a late night, I know.

20 Okay. So, we just have one more thing to do.
21 And

22 CHAIRPERSON HILL: All right. So, what I'd
23 like to do before we conclude today is, we need to
24 have elections as per the regulations, and also we do

1 not have a Vice Chair at this point. And we have not
2 had nominations even for a chairmanship position, I
3 guess, as we need to.

4 So, I'm going to go ahead and make a
5 nomination to ask Mr. Hart if he would be the Vice
6 Chair and ask for a second.

7 MR. MAY: Second.

8 CHAIRPERSON HILL: The motion has been made --
9 I don't know if you can vote. The motion has been
10 made and seconded.

11 [Vote taken.]

12 CHAIRPERSON HILL: You have to vote, right?
13 Because there's three of us. And then the motion
14 passes, Mr. Moy.

15 MR. MOY: Yes, recording the vote as three, to
16 zero, to two, for Mr. Carlton as the Vice Chair of
17 the --

18 CHAIRPERSON HILL: Mr. Hart. Mr. Hart.

19 MR. MOY: Oh, what did I say?

20 CHAIRPERSON HILL: Carlton Hart. You said Mr.
21 Carlton.

22 MR. MOY: Oh, I said -- oh, my goodness. This
23 is infectious. I'm sorry.

24 Mr. Carlton Hart, is Vice President. Vice

1 Chair.

2 CHAIRPERSON HILL: Chair. Congratulations,
3 Mr. Vice President.

4 MR. MOY: This is terrible. This is --

5 CHAIRPERSON HILL: Yeah, congratulations.
6 Congratulations. You're due on the senate to break a
7 vote right now.

8 All right. So, congratulations --

9 MR. HART: Thank you.

10 CHAIRPERSON HILL: -- Mr. Hart, and pleasure
11 to have you with us.

12 MR. MAY: So, if it's an order I would make a
13 motion that we -- or rather I would nominate Chairman
14 Fred Hill for another term as Chairman of the Board of
15 Zoning Adjustment, and note his tremendous capability
16 in this position as so demonstrated on this marathon
17 day.

18 MR. HART: Seconded.

19 CHAIRPERSON HILL: The motion has been made
20 and seconded.

21 [Vote taken.]

22 CHAIRPERSON HILL: The motion passes, Mr. Moy.

23 MR. MOY: Yes. The staff would record the
24 vote as three, to zero, to two. This is for Chairman

1 Hill, I said that correctly, to continue as chair of
2 the BZA.

3 CHAIRPERSON HILL: Thank you. And, Mr. May,
4 thank you for your kind words.

5 Okay. Do we have anything else?

6 MR. MOY: Not from the staff.

7 CHAIRPERSON HILL: All right. We are
8 adjourned. Thank you.

9 [Whereupon, at 6:32 p.m., the Public Meeting
10 was adjourned.]

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