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

PUBLIC HEARING OF THE BOARD OF ZONING ADJUSTMENT

9:36 a.m. to 11:43 a.m.
Wednesday, March 29, 2017

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

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1 Board Members:

- 2 FREDERICK HILL, Chairperson
- 3 CARLTON HART, Vice Chairperson
- 4 PETER SHAPIRO, Zoning Commission
- 5 PETER MAY, Zoning Commission
- 6 MICHAEL TURNBULL, Zoning Commission
- 7 CLIFFORD MOY, BZA Secretary

8

9 Office of Attorney General

- 10 MARY NAGELHOUT, Esq.

11

12 Office of Planning

- 13 BRYAN GOLDEN
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C O N T E N T S

PAGE

Introductory Remarks

4

A.M. Session

19374

8

11212A

24

19461

38

19462

44

19463

54

19413

64

Conclusion of Meeting

83

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

2 CHAIRPERSON HILL: Good morning. Hearing will
3 please come to order. We are located in the Jerrily
4 R. Kress Memorial Hearing Room at 441 4th Street
5 Northwest. This is the March 29th, 2017 public
6 hearing of the Board of Zoning Adjustment of the
7 District of Columbia.

8 My name is Fred Hill Chairperson. Joining me
9 are is Carlton Hart, Vice Chairperson, and
10 representing the Zoning Administrator -- Zoning
11 Commission, sorry, is Michael Turnbull. And then
12 joining us later, actually, for another case, will be
13 Peter May. And then finally Peter Shapiro will be
14 joining us.

15 Copies of today's hearing agenda are available
16 to you and located on the wall bin next to the door.
17 Please be advised that this proceeding is being
18 recorded by a court reporter and is also webcast live.

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

1 noise.

2 All persons planning to testify, either in
3 favor or in opposition must have raised their hand and
4 been sworn in by the secretary. Also, each witness
5 must have filled out two witness cards. These cards
6 are located on the table near the door and on the
7 witness table. Upon coming forward to speak to the
8 Board, please give both cards to the reporter sitting
9 to the table at my right.

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

17 The order of procedures for special exceptions
18 and variances, as well as appeals, are also in the bin
19 as you come in on the right.

20 The record will be closed at the conclusion of
21 each case, except for any materials specifically
22 requested by the Board. The Board and the staff will
23 specify at the end of the hearing exactly what is
24 expected, and the date when the persons must submit
25 the evidence to the Office of Zoning. After the

1 record is closed no other information shall be
2 accepted by the Board.

3 The District of Columbia Administrative
4 Procedures Act requires that the public hearing on
5 each case be held in the open, before the public,
6 pursuant to Section 405(b) and 406 of that act. The
7 Board may, consistent with its rules of procedures of
8 the act, enter into closed meeting on a case for
9 purposes of seeking legal counsel on a case, pursuant
10 to D.C. Official Code, Section 2-575(b) (4) and/or
11 deliberating on a case pursuant to D.C. Official Code
12 2-575(b) (13), but only after providing the necessary
13 public notice. And in the case of an emergency closed
14 meeting, after taking a roll call vote.

15 The decision of the Board in cases must be
16 based exclusively on the public record. To avoid any
17 appearance to the contrary, the Board requests that
18 persons present not engage the members of the Board in
19 conversation. Please turn off all beepers and cell
20 phones at this time so as not to disrupt these
21 proceedings.

22 Preliminary matters are those which relate to
23 whether a case will or should be heard today, such as
24 request for a postponement, continuance, or
25 withdrawal, or whether proper and adequate notice of

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

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

7 MR. MOY: We do, very briefly. Good morning,
8 Mr. Chairman, members of the Board.

9 As to today's docket, there are two
10 applications that have been postponed and rescheduled,
11 which I think has been previously announced, but I'll
12 do so again.

13 Application No. 19424 of Young Su Kim has been
14 rescheduled to April 19th, 2017, as well as
15 Application 19460 of Thomas and Whitney Paxton.
16 However, this case has been rescheduled to May the
17 10th. And that's it for me, Mr. Chairman.

18 CHAIRPERSON HILL: Okay. Great. Thank you,
19 Mr. Moy.

20 If anyone here is wishing to speak before the
21 Board, if you could please stand and take the oath as
22 administered by the secretary.

23 [Oath administered to the participants.]

24 CHAIRPERSON HILL: Thank you, Mr. Moy. Just
25 for people here in the audience again, we are actually

1 going to follow the agenda. We're going to start with
2 the meeting case. We only have one meeting case
3 today. And then we're just going to follow through
4 the agenda as it was listed on the agenda that you
5 picked up from the door. Except for, it is possible
6 that we might be moving around the application of
7 19413, application of Chungtai Family Properties,
8 because we are waiting for a member of the Zoning
9 Commission to arrive. So, we'll see how that goes.

10 Other than that, I guess, Mr. Moy, if you
11 could call our hearing -- meeting case, that is.

12 MR. MOY: Yes, sir. Thank you, Mr. Chairman.
13 That would be Appeal No. 19374 of the Dupont Circle
14 Citizen's Association. As the Board will recall, the
15 hearing dates were, there were two, January 18th and
16 February 22nd, 2017. The first decision case
17 scheduled for March 15 was postponed to today, March
18 29th, 2017.

19 In your case folders, Mr. Chairman, there are,
20 as requested by the Board, draft findings of fact and
21 conclusions of law from the parties. However, the
22 filing from the appellee, DCRA, under Exhibit 88, was
23 submitted late, which was Monday, March 27th. That's
24 it.

25 CHAIRPERSON HILL: Okay. If it's all right

1 with the Board, I'm going to go ahead and waive the
2 time limits for the filing that came in from DCRA. I
3 would appreciate it if DCRA can get it in a little bit
4 earlier for us the next time. But, I don't think that
5 it prejudiced the other people in the case. And, does
6 the Board have any problems with that?

7 [No audible response.]

8 CHAIRPERSON HILL: Okay. Then, this was a
9 very full -- is the Board ready to deliberate?

10 This was a very full record, and there are a
11 bunch of -- or a few things we need to kind of talk
12 about and go through.

13 The first, I guess, was DCRA made a motion for
14 lack of standing for the DCCA, and I would deny that
15 motion, unless the Board has any thoughts or other
16 thoughts. I mean, I think that the DCCA is a
17 citizen's organization and we normally allow them
18 standing. And so, does the Board have any issue with
19 that? All right.

20 So, then after that again, it was the
21 exhibits, there was a lot of filings. I just kind of
22 mentioning some things. The length at which this has
23 been kind of going on, I mean, was on the docket for
24 12/21/16, then 1/18/17, then 2/22/17, then 3/15/17,
25 then the decision was supposed to be 3/15/17, and now

1 finally today at 3/29 I'm just kind of mentioning,
2 it's a long time that this has gone on.

3 The ANC 1 filed a resolution containing its
4 proposal to clarify or revise the basement cellar
5 regulations. There was two letters in support of the
6 appeal and petition and support. There were 13
7 letters in opposition to the appeal, including an
8 article from Greater Greater Washington, and eight
9 letters in support of the owner. I'm not mentioning
10 this because it's kind of like a popularity contest,
11 but just that there was a tremendous amount of public
12 interest in this case.

13 There was the motion for timeliness, and I
14 guess the threshold issue for me was when does the 60-
15 day clock start. And I'm going to kind of just read
16 from 302.2, and it says, "A zoning appeal shall be
17 filed within 60 days from the date of the person
18 appealing the administrative decision had notice or
19 knowledge of the decision complained of, or reasonably
20 should have had notice of knowledge of the decision
21 complained of, whichever is earlier."

22 And then 302.4 says, "Notwithstanding Subtitle
23 Y, Section 302.2 and 302.3, for purposes of
24 establishing the timeliness of zoning appeals under
25 this subsection, an appeal shall have a minimum of 60

1 days from the date of the administrative decision
2 complained of in which to file an appeal."

3 So, and then the last one again, I just kind
4 of wanted to mention was 302.5. "A zoning appeal may
5 only be taken from the first writing which reflects
6 the administrative decision complained of, to which
7 the appellant had notice. No subsequent document,
8 including a building permit or a certificate of
9 occupancy may be appealed unless the document modifies
10 or reverses the original decision, or reflects a new
11 decision."

12 So again, to me it was kind of when did that
13 60-day clock start, and when was the first writing,
14 and what is the first writing. And so, the
15 determination letter came from the Zoning
16 Administrator on March 21st. And then I think either
17 on that same day or on March 22nd, the ZA also sent an
18 e-mail to a number of people, including Brian Gelfand,
19 who presented in front of us, as well as ANC
20 Commissioner Abigail Nichols. And then Mr. Gelfand,
21 again, had been a member of DCCA since 2015 and lives
22 next door to the project. So, it should have been
23 clear, I guess, as to what was going on with the
24 project to me, as far as, you know, Mr. Gelfand should
25 have known.

1 Commissioner Nichols, Hawkins, and then also
2 Gambrell were also copied on a follow-up e-mail March
3 22nd from the ZA to Mr. Gelfand, further explaining
4 the ZA's decision concerning habitable rooms and
5 cellars. I guess, as I continued to think of when the
6 clock starts and when DCCA should have reasonably
7 known about the administrative decision, DCCA meets
8 every month and it kind of did surprise me that Mr.
9 Gelfand would not have raised this immediately to DCCA
10 at his first opportunity.

11 Mr. Gelfand brought this issue to Ms. Diener,
12 who is the president of the association, in September,
13 presumably not at one of the previous DCCA meetings
14 that they had after the March 21st time. It was,
15 there was further testimony that Mr. Gelfand and
16 President Diener live a few blocks from each other and
17 they see, you know, they run into each other on
18 occasion. But again, to me, I struggled with -- or, I
19 didn't struggle with. It was when did -- when should
20 have DCCA known? When was it reasonable that it
21 should have known?

22 And, I think the 60-day clock starts as in
23 302.5 at the first writing, which in this case would
24 have been the ZA determination letter. So, taking in
25 consideration, 302.2, or reasonably should have had

1 notice or knowledge of the decision complained of. I
2 think Mr. Gelfand is a member of DCCA and seems active
3 enough in the community to participate in this appeal,
4 and that there was so much in the record in this case,
5 so I think the DCCA should have reasonably known about
6 the ZA's decision with enough time to file within the
7 60 days from the ZA determination letter.

8 I further think that there was not an
9 exceptional circumstance that DCCA provided in terms
10 of why they should not have known of the project. And
11 then also that I do think that this does prejudice the
12 owner due to all the amount of money that he has spent
13 after the ZA determination letter.

14 So, finally, I suppose that the last thing
15 that I thought in terms of the timeliness issue was
16 that the appellant filed either two days, or on the
17 last day from the 60 days of the issuing of the
18 building permit. And so, it just seemed like that the
19 -- you know, it just seemed like they should have
20 known. You know, they should have known and applied
21 for the appeal earlier. I don't quite understand why
22 this didn't come within 60 days after the
23 determination letter because so many people within the
24 community were interested in the project.

25 So, I would be on the side of granting the

1 motion for dismissing this on timeliness, and I'll
2 look to other members of the Board to provide their
3 comments.

4 MR. HART: Mr. Chairman, thank you very much.
5 I also appreciate your stepping through that process
6 and the reasoning behind that. I would also like to
7 address one of the issues that was raised by the
8 appellant, and that was whether or not the zoning
9 determination letters were actually able to be used as
10 a basis for the appeal, and they actually provided, in
11 their -- in actually several places, but in their,
12 what is it, the --

13 MR. TURNBULL: The prehearing statement?

14 MR. HART: The prehearing statement, but also
15 in the statements of fact, statements of --

16 CHAIRPERSON HILL: Findings of fact.

17 MR. HART: Finding -- thank you. Finding of
18 fact and conclusions of law. Thank you very much.
19 I'm having a hard time with that.

20 And in that, they provided these four cases.
21 And those four cases that they cited were 18793,
22 18522, 18568, and 166 -- oh, I'm sorry. 16998. And
23 they said that those cases were supportive of their
24 contention that the zoning determination letters could
25 not be used as a basis for appeal because those cases,

1 the orders in those cases, noted that those were not -
2 - that zoning determination letters would not be able
3 to be used as a basis for an appeal.

4 And upon reading the full orders for each of
5 those cases, I understand now that despite the
6 appellant's contention that zoning determination
7 letters cannot be used, in none of these cases did
8 they actually prohibit the use of all zoning
9 determination letters. Rather, they describe the
10 special circumstances why those specific zoning
11 determination letters were not able to be used as the
12 administrative decision in those cases.

13 So, it wasn't a blanket rejection of all
14 zoning determination letters, but very specifically
15 focused on those particular pieces. And generally
16 speaking, the reason for these, that these -- the
17 zoning, the orders, the BZA orders described or
18 discussed why these couldn't be used, was because
19 those cases did not rely on detailed enough
20 information. It was either a concept drawing or there
21 were kind of preliminary drawings too early in the
22 process.

23 And those were provided by the developer or
24 land owner, and the BZA just said, well, these were --
25 the zoning determination letters were not sufficient

1 for the basis for that, as a decision, as an
2 administrative decision.

3 And so, in this case -- so, those four cases
4 had -- didn't have very specific drawings or
5 information that was provided. And so, those zoning
6 determination letters were not able to be used.

7 In the case that's before us now, they
8 actually have drawings that were the ZA and DCRA gave
9 testimony that these were essentially the same
10 drawings from the March zoning determination letter to
11 the building permit, which was in July of last year.

12 And so, really, there was sufficient
13 information for the ZA to be able to make this
14 determination, and it was consistent between March and
15 July time frame.

16 And so, I think that those -- the cases that
17 they support and that help to bolster their -- they
18 thought helped to bolster their case actually were
19 very specifically tied to those particular cases and
20 cannot be seen as a blanket. So, I think that that's
21 also does not -- that helps us be able to be able to
22 use the -- and informs us to be able to use the zoning
23 determination letter in this case because of the
24 specificity in which -- that was included in the March
25 letter that the Zoning Administrator provided.

1 So, I wanted to make sure that that was also
2 part of that because that was part of their argument
3 about timeliness. Actually, that was the only piece
4 of the timeliness aspect that was included in this --
5 in the information. And it needed to make sure we
6 were kind of understanding that as well. So, I think
7 that the zoning determination letter can be used as an
8 administrative decision, and first -- the first
9 decision point. And so, I would be in support of
10 denying the appeal as well.

11 MR. TURNBULL: Now, I would concur with both
12 of my colleagues. I think you've gone through it
13 fairly thoroughly. And I'll just add a couple of my
14 own points on this. You know, normally when we look
15 at a project or a property, anybody uniquely affected
16 is usually within 200-foot radius, or -- and obviously
17 -- and I guess what was troubling about this project,
18 I think you touched upon it, Mr. Chair, is that -- is
19 the timing and when does the clock start.

20 I think if somebody in this 200-foot radius,
21 or who is a member of a Dupont Circle Citizen's
22 Association had come after, who had no knowledge of
23 anything, didn't get copied with anything, I think you
24 might make a case to say that the clock starts at the
25 building permit because nobody knew anything. If that

1 was the case.

2 I think what's unusual here, or what's unique
3 here, is that Mr. Gelfand, who is a member of the
4 Dupont Circle Citizen's Association, lives next door,
5 is as you recited earlier, was copied by all these
6 different e-mails and responded to some, and he was
7 there at meetings.

8 And so, I think that puts a unique character
9 on the -- a unique spin on this as to what's being
10 represented. And I go back to Department of
11 Regulatory Affairs comments. They said, if Mr.
12 Gelfand's standing can adhere to the Dupont Citizen
13 Circle Association, then Mr. Gelfand's knowledge of
14 the ZA's final decision must also be imputed to the
15 Dupont Circle Citizen's Association. Otherwise an
16 appellant who fails to file timely can circumvent the
17 60-day filing by finding or founding a non-profit,
18 blah, blah, blah, to go on.

19 And I think that's a turning point for me,
20 that you have an individual here, uniquely affected by
21 -- or he has intimate knowledge of what's going on
22 with the case. He's been definitely in contact with
23 the ZA. And to suddenly find the Dupont Circle
24 Citizen's Association here, and is -- in our hearing,
25 he was -- the president deferred to him as the

1 designate to represent us as the expert in this case,
2 representing the Dupont Circle Citizen's Association.

3 I think by that designation, and with his -- I
4 think that raises the bar. I think that raises the
5 bar significantly because you have someone whose
6 unique knowledge and dealings with the Zoning
7 Administrator place him in a unique situation. And I
8 think as you've both said that it's hard to place it
9 in the fact that nobody else -- that they didn't know.

10 And so, to say that he, himself, personally
11 missed the date, which he should have filed earlier,
12 and they waited until the issuance of the permit, I
13 think does not relieve him of the due diligence that
14 he should have done this earlier. And so, I would
15 agree with both of you that I think we are not to
16 allow this based on timeliness.

17 CHAIRPERSON HILL: Okay. Thank you. Again,
18 Commissioner Turnbull, I guess again for me, it was
19 the reasonableness. Like when, you know, reasonably
20 should DCCA should have known. And that is --

21 MR. TURNBULL: I would agree.

22 CHAIRPERSON HILL: And that is what got me to
23 the timeliness issue. And to Mr. Hart's point, the
24 determination letter again was what was -- what you
25 cited is how I came to also the conclusion that that

1 was the administrative decision.

2 Now, this will probably be argued in different
3 cases, and I appreciate the clarity that you provided
4 in terms of, that's why this is so clearly the point
5 that it's the administrative decision.

6 So, with that I'd go ahead and make a motion
7 to dismiss; go ahead and make a motion to approve the
8 motion to dismiss Case 19374 as untimely.

9 MR. HART: Second.

10 CHAIRPERSON HILL: Motion 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 your motion,
16 Chairman Hill, to grant the motion to dismiss on the
17 basis of untimeliness. Seconded the motion, Vice
18 Chair Hart. Also in support, Mr. Turnbull. We have a
19 board member not participating, and a seat vacant.
20 The motion carries. It's a full order, sir.

21 CHAIRPERSON HILL: All right. Thank you. And
22 so, I would like to just stay on this point for a
23 moment if I could, because this -- since this comes up
24 a lot in terms -- or has come up a few times since
25 I've been here concerning the cellar basement, I

1 wanted to kind of mention a couple of things. I mean,
2 from the testimony that the Zoning Administrator gave
3 all those cellars and attics are included -- or, I'm
4 sorry. "Are excluded from the definition of habitable
5 room, the regulations do not prohibit these spaces
6 from being used for sleeping, cooking, and living.
7 This has been DCRA's longstanding interpretation of
8 the regulations and it is consistent with the many
9 provisions of the District of Columbia Construction
10 Codes, including the Building Code, Property
11 Maintenance Code, and Fire Prevention Code that
12 specifically allows for the occupancy of partially
13 below-grade dwellings. Here, as in other projects,
14 the cellar units must be provided light, ventilation,
15 and emergency egress required by those codes."

16 Then, you know, "A cellar is defined as a room
17 where the ceiling of the space is less than four feet
18 above the finish grade."

19 I thought it was well said in terms of the --
20 it was the owner's findings of fact and conclusion of
21 law where they stated that, you know, "A basement and
22 cellar in Section 199 of ZR-58 are clear. A basement
23 is defined as that portion of a story partially below
24 grade, the ceiling of which is four feet or more above
25 adjacent finish grade. Conversely, a cellar is

1 defined as that portion of a story party below grade,
2 the ceiling of which is less than four feet above
3 adjacent finish grade. A lower level of a dwelling is
4 classified as either a basement or a cellar based
5 solely on these definitions. There's no objective or
6 logical reading of these definitions that would turn a
7 cellar into a basement if it contains a habitable
8 room."

9 So, I -- and then again, "A basement is
10 included in gross floor area and therefore is included
11 in FAR. A cellar is not."

12 So, I mention that again in this context
13 because I wanted to make clear my thoughts in terms of
14 this issue that I don't think the appellant has made a
15 case for the finish grade is above four feet. The
16 measurements and photographs submitted into the record
17 do not accurately reflect the ceiling height that they
18 submitted. The building owners provided sworn
19 affidavits and photos taken during a cite visit on
20 February 12th with the DCRA Code Administrator
21 demonstrating the proposed finished -- sorry,
22 demonstrating the proposed ceiling height of the
23 cellar would be less than four feet above finished
24 grade.

25 So, I would have voted against the appeal, is

1 what I'm also just kind of pointing out. But again, I
2 just wanted to clarify, in my mind, the definition of
3 cellar versus basement, and the four feet. So, for
4 future cases or situations that might come forward,
5 does anyone have anything to add?

6 MR. TURNBULL: I would just add that it's not
7 the purview of the Board to question the ZA's ruling
8 on the measurements. If the ZA or his representative
9 has gone out, measured it, and the ZA has looked at
10 those measurements and says, I agree that this is a
11 cellar, then I think it has to stand that it is a
12 cellar. I don't think it's the purview of the Board
13 to say, well, you have to go out and remeasure it
14 again. I think that's -- I think the ZA has made that
15 determination, and from his standpoint, that's his
16 job.

17 So, I think you're right. I think the
18 appellant's claim that they didn't do this, I mean,
19 from the documents that we have received, I think the
20 ZA made the appropriate choice to this matter.

21 CHAIRPERSON HILL: Okay, great. Thank you.
22 All right. Mr. Moy, that's the end of our hearing
23 cases for today. I'm sorry, our meeting cases for
24 today. We're all done. We can all go home. I think,
25 right? That's the end of the meeting cases?

1 MR. MOY: Yes, sir.

2 CHAIRPERSON HILL: Okay. I think if we have -
3 - I don't know if we have who we need. Okay, so we're
4 going to push back that first case and wait until we
5 have the zoning commissioner that we need, and say
6 goodbye to Mr. Turnbull.

7 [Pause.]

8 MR. MOY: All right. The next case
9 application, I believe, will be Application No. 11212A
10 of Robert M. Holland as captioned and advertised for
11 special exception under the R Use requirements,
12 Subtitle U, Section 203.1(j). This would permit the
13 operation of a parking lot in the R-2 Zone, premises
14 3831, McKinley Street Northwest, Square 1860, Lots 5,
15 6, 7, 17, and 18.

16 CHAIRPERSON HILL: Thank you, Mr. Moy. So,
17 before we get started, also I'd just, I would like to
18 welcome Commissioner Peter Shapiro here for the first
19 time with us today. Or for the first time with us,
20 for however long you're with us, you know. But
21 welcome.

22 MR. SHAPIRO: Thank you very much.

23 CHAIRPERSON HILL: All right. If you could
24 please introduce yourselves from my right to left?
25 You need to push the button there and it will be a

1 green glowing -- okay.

2 MR. MOSKOWITZ: [Speaking off microphone.]

3 CHAIRPERSON HILL: Okay, there you go.

4 MR. MOSKOWITZ: I'm Nelson Moskowitz. I'm
5 the attorney representing the applicant in this case.

6 MR. YOON: And my name is Ki Yoon. I'm the
7 tenant occupying the space.

8 CHAIRPERSON HILL: All right, great. All
9 right, Mr., Somoskowitz (sic)?

10 MR. MOSKOWITZ: Yes.

11 CHAIRPERSON HILL: Somoskowitz (sic). I guess
12 if you could just go ahead and give us, you know, your
13 presentation. I did have a couple of questions, I
14 suppose, with -- or you could also maybe address the
15 issue, something about complying with Chapter 7 with
16 the Office of Planning and then DDOT had some
17 questions about the landscaping. There was a motion
18 from you to waive time requirements concerning I guess
19 I can't -- a document that had some photographs for
20 that clarified the parking lines and I don't have an
21 issue with that. I thought it was -- it didn't do
22 anything other than provide further clarity to the
23 Board. So, unless the Board has any problems with
24 that, I'll go ahead and waive those time requirements
25 and include that in the record.

1 So, Mr. Somoskowitz(sic)?

2 MR. MOSKOWITZ: Yes. Or, just Nelson will do.

3 CHAIRPERSON HILL: Mr. Nelson. So, if you
4 would like to go ahead and I'll go ahead and just put
5 10 minutes up on the clock for you, just so we know
6 where we are.

7 MR. MOSKOWITZ: Sure. I don't think this will
8 be a long case. This is a property that provides the
9 parking for Magruder's Store over on Connecticut
10 Avenue. It's been in use since 1959. It's had its
11 waiver renewed pretty much every five years since
12 then, so it's been 11 times before the Board here.
13 The applicant has kept up the lot.

14 The ANC had a meeting on it and agreed to
15 support the continuation of using that parking lot.
16 They also agreed to the 10-year term on this
17 application.

18 And I don't believe DDOT or Planning had any
19 real problems with it. They did ask me to provide
20 pictures and give more accurate picture of the
21 surrounding fauna that goes around the parking area.
22 And as the pictures show, there's extensive rows of
23 trees and bushes on the long side of the lot, and
24 there are bushes all along the other section of the
25 lot that's exposed to the street.

1 The applicant here has complied with all the
2 requirements that the Board had set at the previous
3 hearing in 2012.

4 The one item that was brought up at the end
5 there was that, they wanted a picture, better picture,
6 showing where the parking spaces that are obstructed
7 by the trees actually are. So, we did submit a
8 picture of that where you can see the lines are hand-
9 drawn in, or actually graphically drawn in so you can
10 see all of them. And, we also did measurements
11 showing that over 10 percent of the lot is covered by
12 greenery, as required.

13 Those were the only two issues that were
14 raised by the other agencies.

15 CHAIRPERSON HILL: All right, Mr. Moskowitz.
16 The conditions that the Office of Planning had had
17 before, there's six conditions and you're agreeing to
18 all six conditions?

19 MR. MOSKOWITZ: That's correct.

20 CHAIRPERSON HILL: Okay.

21 MR. MOSKOWITZ: The only one we're asking to
22 be changed is to make it a 10-year term rather than a
23 5-year term, and the ANC has agreed to that.

24 CHAIRPERSON HILL: Okay. Does the Board have
25 any questions of the applicant?

1 MR. HART: Can you just say where you've --
2 where the measurements, what page is that on? At what
3 --

4 MR. MOSKOWITZ: The pictures or the actual --

5 MR. HART: You just said that you provided the
6 measurement that there was a 10 percent, you know,
7 that you've met the regulations.

8 MR. MOSKOWITZ: I said we met -- the (garbled
9 speech) was a statement that we met the regulations,
10 but --

11 MR. YOON: Sure.

12 MR. MOSKOWITZ: -- Mr. Yoon?

13 MR. YOON: I did the measurement myself. The
14 total parking lot paved area, when we did the
15 calculations was right around 25,000 feet, square
16 feet. And the measurement, this shows that the green
17 area total square footage is 6,977 square feet.

18 MR. HART: And all that's within your property
19 line. That's what --

20 MR. YOON: Correct, sir.

21 MR. HART: And where did you say that
22 information was? It's one of the exhibits that's --

23 MR. MOSKOWITZ: No, that actual last
24 measurement is something that came in by a phone call
25 at the end. Just asked for clarification, are you

1 complying or not. So we --

2 MR. HART: What I was just -- what all I was
3 trying to figure out is, you have a drawing.

4 MR. MOSKOWITZ: Yes.

5 MR. HART: Is that drawing in the --

6 MR. MOSKOWITZ: No, it's not.

7 MR. HART: You haven't submitted that to us?
8 Can you submit that to us, because I think what we --

9 MR. MOSKOWITZ: I certainly can.

10 MR. HART: We should have that in our --

11 CHAIRPERSON HILL: Okay.

12 MR. HART: As an exhibit. And you can talk to
13 the secretary.

14 CHAIRPERSON HILL: Just, you can work with the
15 secretary afterwards.

16 MR. MOSKOWITZ: Okay.

17 CHAIRPERSON HILL: You can just stay right
18 there, Mr. Moskowitz.

19 MR. MOSKOWITZ: Okay. This is actually the
20 picture. You may be able to see it from there, with
21 the outskirts with the greenery in green, with the ANC
22 side.

23 CHAIRPERSON HILL: Okay. Okay.

24 MR. MOSKOWITZ: And see that it's very
25 substantial.

1 CHAIRPERSON HILL: Okay. That's fine. Yeah,
2 Mr. Hart, I'm sorry. I thought there was one -- there
3 was a similar one that they had submitted, and that's
4 what I thought that they were referring to. I think
5 you -- the one that you had asked for, to waive the
6 time limits, it was, yeah. And that was the one that
7 -- I can't remember which exhibit what was. Do you,
8 Mr. Moskowitz?

9 MR. HART: It's Exhibit 39.

10 MR. MOSKOWITZ: This is Exhibit 3.

11 CHAIRPERSON HILL: Thirty-nine.

12 MR. HART: Thirty-seven, excuse me.

13 CHAIRPERSON HILL: Okay. Great.

14 MR. MOSKOWITZ: And it was a very recent
15 request, just to show, because of the --

16 CHAIRPERSON HILL: Okay. All right, Mr.
17 Moskowitz, you can just have -- make sure that gets
18 into the record, all right?

19 MR. MOSKOWITZ: Sure.

20 CHAIRPERSON HILL: Commissioner Shapiro, you
21 have some questions?

22 MR. SHAPIRO: I do. And first I'm -- this is
23 not a request to recuse myself, but I live almost
24 across the street from the property. So, I'm fairly
25 familiar with it. So, just a couple questions about

1 some of the conditions. One is that condition four
2 says the lot shall be secured with a gate chain or
3 cable during all hours that it is not in operation. I
4 may be missing this. I actually don't think that's a
5 needed condition, but I'm not even sure it's being
6 adhered to at this point.

7 MR. YOON: We do have a chain in place, there
8 to entrance and exit to the lot, that we do lock up.

9 MR. SHAPIRO: So, and when typically do you
10 chain it up?

11 MR. YOON: That would be after hours, so
12 during weekdays around 8:30 or so, and then weekends
13 around 9:30.

14 MR. SHAPIRO: Okay. And do you feel that's
15 important for your operations to chain that up, or do
16 you mind if that condition goes away?

17 MR. YOON: I actually don't mind. There are
18 certain late patrons that may utilize that space.

19 MR. SHAPIRO: Right. Yeah, from my
20 perspective I think it would make sense to strike
21 that.

22 And then also in number 6, there may be some
23 question about what crosswalk markings mean, but
24 there's effectively a crosswalk across the alley from
25 the parking lot into Magruder's space that is not

1 marked, and that I believe for safety reasons should
2 be marked. I think that would fit in under the rubric
3 of condition 6 here. But I would consider that an
4 important sidewalk marking.

5 MR. YOON: You're referring to the crosswalk
6 for the entrance to the store.

7 MR. SHAPIRO: The back entrance to the store
8 where the alley is.

9 MR. YOON: Unfortunately, I don't own that
10 alley, so I'm not sure if I'm allowed to mark anything
11 on there. It's really the city's property.

12 MR. SHAPIRO: I would consider that the same
13 as the sidewalk that -- the entryway into the parking
14 lot that I believe is public right of way as well. I
15 could be wrong about that, though.

16 MR. YOON: I'm not sure.

17 MR. SHAPIRO: Maybe that's another question
18 for --

19 MR. MOSKOWITZ: I haven't looked into that
20 either.

21 MR. SHAPIRO: Okay, for OP.

22 MR. YOON: Yeah.

23 MR. SHAPIRO: But no objection if it's
24 appropriate for you to do it?

25 MR. YOON: Sure. I mean, I had a chance to

1 stripe that alongside when I was restriping the
2 parking lot last year, but that was not my property so
3 I wasn't sure if I'm allowed to do that.

4 MR. SHAPIRO: Okay. Thank you. And no other
5 questions, Mr. Chair.

6 CHAIRPERSON HILL: Okay. Very first case and
7 Commissioner Shapiro knows exactly where the parking
8 lot is.

9 MR. SHAPIRO: Don't get your expectations high
10 on this.

11 CHAIRPERSON HILL: There's a rose -- there's a
12 rose bush to the left that is not being treated
13 properly, and some pruning that needs to be done.
14 But, thank you, Commissioner.

15 I'm going to turn to the Office of Planning

16 MR. GOLDEN: Good morning, Mr. Chair, members
17 of the Board. Bryan Golden with the Office of
18 Planning.

19 Based on DDOT's review, the recommendation of
20 approval and the additional materials that were
21 submitted, we are continuing to recommend approval of
22 the 10-year extension. And then in regards to number
23 4 of the proposed conditions, I don't think we would
24 have an issue with removing that condition, so I think
25 that would be fine.

1 And then for condition number 6, were you
2 referring to the alley? So, I think we can remove
3 that condition, but I don't think it would be a
4 problem. I think it's just something that they would
5 need to clear with DDOT.

6 MR. SHAPIRO: If I can, Mr. Chair. I'm not
7 suggesting we remove the condition. What I'm
8 suggesting is that we actually include in that
9 condition that the section of the alley between the
10 parking lot and the back entrance to Magruder's should
11 be striped as well, for pedestrian safety. So, I
12 think that condition needs to stay, but just be
13 enhanced a little bit.

14 MR. GOLDEN: I don't think we would have a
15 problem with that.

16 MR. HART: Just out of curiosity, Mr. Golden,
17 do you have any idea why number 4 condition was there?
18 I mean, just, was it to keep people from actually
19 parking there from the neighborhood or -- I just don't
20 know.

21 MR. GOLDEN: So, I can only speculate because
22 it was based on the previous BZA order. That may have
23 been the case.

24 CHAIRPERSON HILL: Okay. Does anyone else
25 have any more questions of Office of Planning?

1 MR. MOSKOWITZ: If I may just ask the Board?

2 CHAIRPERSON HILL: Of course, Mr. Moskowitz.
3 Do you have any questions for the Office of Planning?

4 MR. MOSKOWITZ: No, I don't.

5 CHAIRPERSON HILL: No. Okay. So, go ahead.

6 MR. MOSKOWITZ: Just a statement that we'd ask
7 the Board for a summary order and a bench decision
8 since as of the 17th it's out of compliance and we
9 don't want to have any issues with that.

10 CHAIRPERSON HILL: Okay. All right. We'll
11 see what happens when we get there, but if it's
12 possible, certainly try to accommodate you.

13 As far as the conditions though, just to be
14 clear now, you're comfortable, we're going to take off
15 condition 4.

16 MR. MOSKOWITZ: Yes.

17 CHAIRPERSON HILL: Okay. And then condition
18 6, I understand that you're saying, Mr. Yoon, you
19 don't own the alley, right? So, it's if possible, you
20 can stripe the alley for pedestrian crossing?

21 MR. YOON: I would love to do so.

22 CHAIRPERSON HILL: Okay. So, I'm putting in,
23 "if possible," because you don't know the alley.
24 You'll work that out with DDOT and see if, you know --
25 I don't know how that works to be quite honest,

1 whether they'll let you paint it anyway. But, okay.
2 All right.

3 Is there anyone here from the ANC?

4 [No audible response.]

5 CHAIRPERSON HILL: Is there anyone here
6 wishing to speak in support of the application?

7 [No audible response.]

8 CHAIRPERSON HILL: Is there anyone here
9 wishing to speak in opposition to the application?

10 [No audible response.]

11 CHAIRPERSON HILL: All right. Mr. Moskowitz,
12 you have anything else to add?

13 MR. MOSKOWITZ: Thank you. No.

14 CHAIRPERSON HILL: Okay. All right. Does
15 anyone have any other questions for the applicant?

16 No? Okay. All right. Then, I'm going to go
17 ahead and close the hearing. Is the Board ready to
18 deliberate?

19 Okay. Well, I'm comfortable again with the
20 recommendations and the report provided by the Office
21 of Planning, and including the conditions 1, 2, 3, 5,
22 and 6, striking number 4, which is, the lot shall be
23 secured and the gate chained or cabled during all
24 hours that it is not in operation, we'll strike that
25 one. And then adding to condition 6, if possible,

1 stripe the alley for pedestrian crossing.

2 And then also, this is obviously now been gone
3 through the ANC process, and the ANC approved the
4 application six, to zero, to zero, your ANC I suppose,
5 Mr. Shapiro.

6 MR. SHAPIRO: Yes, sir. But I was not on it
7 at that point.

8 CHAIRPERSON HILL: Oh, well I'm -- yes. Thank
9 you for clarifying that.

10 And then I would go ahead and make a motion to
11 approve Application No. 11212A as read by the
12 secretary.

13 MR. HART: Seconded.

14 CHAIRPERSON HILL: Motion has been made and
15 seconded.

16 [Vote taken.]

17 CHAIRPERSON HILL: Motion passes, Mr. Moy.

18 MR. MOSKOWITZ: Thank the Board for your time
19 and effort.

20 CHAIRPERSON HILL: Thank you.

21 MR. MOY: Staff would record the vote as
22 three, to zero, to two. This is on the motion of
23 Chairman Hill to approve the application for the
24 relief requested, along with the now modified total of
25 five conditions, and of course modifying number 6 as

1 the Chairman stated. Seconding the motion Vice
2 Chairperson Hart. Also in support, Mr. Shapiro.
3 Board member not participating, board seat vacant.
4 Motion carries.

5 CHAIRPERSON HILL: Thank you, Mr. Moy. Can we
6 get a summary order?

7 MR. MOY: Yes, sir.

8 CHAIRPERSON HILL: Thank you, sir.

9 Mr. Moy, when you get a chance, if you could
10 just call our next case?

11 MR. MOY: Yes, sir. If the Board would call
12 parties to Application No. 19461 of James and Angela
13 Catella, captioned and advertised as amended, special
14 exception relief under Subtitle E, Section 5201. This
15 is from the lot occupancy requirements of Subtitle E,
16 Section 304.1; rear yard requirements, Subtitle E,
17 Section 504.1.

18 This would permit the construction of a two-
19 story garage, RF-1 Zone at 1126 Constitution Avenue
20 Northeast, Square 987, Lot 783.

21 CHAIRPERSON HILL: Thank you, Mr. Moy. Just
22 give me one second here. I'm having an issue with my
23 computer.

24 [Pause.]

25 CHAIRPERSON HILL: Okay, great. If you could

1 please introduce yourself?

2 MS. FOWLER: Hi. My name is Jennifer Fowler.
3 I'm the architect.

4 CHAIRPERSON HILL: All right, Ms. Fowler. If
5 you could go ahead and just tell us a little bit about
6 the project? I don't have a lot of specific questions
7 other than I suppose there was some discussion amongst
8 us whether this is an addition or an accessory
9 structure, and maybe you can help clarify that for us
10 when we go through the application, or your
11 presentation.

12 Other than that, I don't have any specific
13 things. Does the Board have any specific things
14 they'd like to hear about?

15 [No audible response.]

16 CHAIRPERSON HILL: So, I'll go ahead and give
17 you -- I'll put 10 minutes on there just so I know,
18 Mr. Moy.

19 MS. FOWLER: Sure. So, this is a two-story
20 garage at the rear of the property. We initially
21 filed for relief under 5003.1 for rear yard
22 requirements. And as I was working with Ms. Vitale,
23 kind of through the review process, we came to the
24 conclusion that really it's a lot occupancy ask, which
25 is the 304.1, and the rear setback relief because we

1 don't have the 12-foot setback from the alley. So,
2 that's what we concluded was the relief that we needed
3 on this property.

4 So, it's basically a straight forward, two-
5 story garage, no living space. Really just looking at
6 a second-floor kind of storage area. It's below the
7 matter-of-right height, so we're not asking for height
8 relief on that.

9 We do have an extension that's below four feet
10 above grade where the -- basically to get the length
11 for the car to fit. There's a substantial drop
12 between the yard and the alley, so we were able to
13 create like a small bump out on the front. And you
14 can see that on the site plan. There's a six-foot
15 extension at 3-foot-10 above grade.

16 And the best place to see that is, you can see
17 on A6, the section. You can see the relative height
18 of the grade, at the patio to the alley, and then we
19 have steps going down and we have a little bump out
20 with a patio on top. So, it's a little -- but that
21 portion is not counting towards coverage, so it's
22 really just the 18-foot footprint that's triggering
23 the relief.

24 CHAIRPERSON HILL: Okay. Does the Board have
25 any questions for the applicant?

1 All right, I'm going to turn to the Office of
2 Planning.

3 MS. VITALE: Good morning, Mr. Chair, members
4 of the Board, Elisa Vitale with the Office of
5 Planning, and we will rest on the record in support of
6 the revised request for relief and I can answer any
7 questions at this time. Thank you.

8 CHAIRPERSON HILL: Okay. Does the Board have
9 any questions for the Office of Planning? Does the
10 applicant have any questions for the Office of
11 Planning?

12 MS. FOWLER: No, I just wanted to thank Ms.
13 Vitale for her assistance with this project.

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

17 [No audible response.]

18 CHAIRPERSON HILL: Is there anyone here
19 wishing to speak in support of the application? Oh,
20 please, come forward. Wow, this is great. This is a
21 day. Somebody is coming to speak in support of an
22 application.

23 Mr. Shapiro, you're having a day. This is
24 great. I'm just saying, this is good.

25 MR. PETERSON: If I'd known it was that easy

1 to make your day, I'll come every Wednesday and help
2 out.

3 CHAIRPERSON HILL: You can come support any
4 application you want to. Okay?

5 MR. PETERSON: My name is Gary Peterson. I'm
6 Chair of the Capitol Hill Restoration Society Zoning
7 Committee.

8 At our last meeting, on March 9, we considered
9 this case and found it really a very nice addition to
10 Capitol Hill, and we voted to support the project, and
11 we encourage you to do a bench order on this case.

12 CHAIRPERSON HILL: Great. Well, Mr. Peterson,
13 really, I mean, thank you for coming down. I know
14 that it takes you time to come down here and I'm sure
15 Ms. Fowler and her client also appreciate your
16 efforts.

17 Does the Board have any questions for Mr.
18 Fowler? Mr. Fowler. No, I mean, Mr. Peterson. Okay.
19 No? Okay. All right. Is there anyone here wishing
20 to speak -- thank you, Mr. Peterson. Is there anyone
21 here wishing to speak in opposition to the
22 application? No? Okay.

23 Then I'm going to turn back to the applicant.
24 Do you have anything else you'd like to add?

25 MS. FOWLER: No, thank you.

1 CHAIRPERSON HILL: Okay. Do you do a lot, is
2 it just in Capitol Hill?

3 MS. FOWLER: Mostly, yeah.

4 CHAIRPERSON HILL: Mostly in Capitol Hill?

5 MS. FOWLER: Uh-huh.

6 CHAIRPERSON HILL: Do you have a lot more
7 applications coming through us soon?

8 MS. FOWLER: I have a -- I have one next week
9 and a couple in May.

10 CHAIRPERSON HILL: Okay.

11 MS. FOWLER: Yeah.

12 CHAIRPERSON HILL: Just curious. Thank you.

13 All right. Does the Board have any further
14 questions for the applicant? All right. I'm going to
15 go ahead and then, is the Board ready to deliberate?

16 So, I've you know, after reviewing the record
17 and reading the record, and also do -- I hope that Ms.
18 Fowler doesn't have to have a problem where it's
19 really a contentious case. You seem to have avoided
20 that for while I've been here. But, I do agree with
21 the analysis the Office of Planning has provided in
22 their report, and ANC 6A is in approval, eight to zero
23 as well as the support that Mr. Peterson has pointed
24 out with his organization. And as well as seven
25 letters in support. I would go ahead and make a

1 motion to approve Application No. 19461 as read by the
2 secretary.

3 MR. SHAPIRO: Second.

4 CHAIRPERSON HILL: Application has been -- I'm
5 sorry. Motion has been made and seconded.

6 [Vote taken.]

7 CHAIRPERSON HILL: Motion passes, Mr. Moy.

8 MR. MOY: Staff would record the vote as
9 three, to zero, to two. This is on the motion of
10 Chairman Hill to approve the application for the
11 relief, the amended relief requested. Seconding the
12 motion, Mr. Shapiro. Also in support, Vice Chair
13 Hart. Member not participating today, one seat
14 vacant. Motion carries.

15 CHAIRPERSON HILL: Thank you, Mr. Moy.
16 Summary order.

17 MR. MOY: Yes, sir.

18 CHAIRPERSON HILL: Thank you.

19 [Pause.]

20 MR. MOY: The next case application is 19462
21 of Ed and Lauren Hild, I believe it's pronounced, H-I-
22 L-D. Again, this application is amended for a special
23 exception relief under Subtitle E, Section 5201; lot
24 occupancy requirements of Subtitle E, Section 304.1,
25 which would construct a rear three-story addition and

1 partial third-floor addition to an existing one-family
2 dwelling, RF-1 Zone, premises 30 -- or rather 316 G
3 Street Southeast, Square 777, Lot 64.

4 CHAIRPERSON HILL: All right, good morning.
5 If you could please introduce yourself?

6 MS. FOWLER: Jennifer Fowler. I'm the
7 architect.

8 CHAIRPERSON HILL: All right. Okay. Great.
9 Ms. Fowler, again, I don't have anything specific for
10 this application. I mean, we've read the entire
11 record and I don't have any specific questions.
12 However, if you'd like to just give us kind of a brief
13 overview of the project, that would be helpful, unless
14 the Board has anything specific they'd like to hear.
15 All right. Please, go ahead.

16 MS. FOWLER: All right. So, what we're
17 looking at here is a rear and dogleg expansion. So,
18 we're proposing to cover up to the 70 percent cutoff
19 with a 3-foot-9 and three-quarters foot addition at
20 the rear. And the rear portion is going to line up
21 with the adjacent properties. So, both properties on
22 either side have either an open porch or a covered
23 porch, or an enclosed porch that extend to that same
24 depth. We are proposing to fill in the dogleg and
25 then extend with a third-floor addition.

1 This is in the historic district, so you know,
2 we've been working with historic. And in fact, we
3 have our hearing tomorrow, so we have a setback from
4 the rear, of 16 feet, and we have done sun study -- or
5 3-D modeling just to make sure that that's not going
6 to be visible from the street. So, that's kind of
7 limited our expansion towards the front, which is kind
8 of driving the need the fill in the court to get the
9 extra space that the family needed for their family.

10 This is a purely lot coverage case that we had
11 a couple extra items of relief that were not needed.
12 I'm not sure how we got our wires crossed, I guess.
13 But, it's just a lot occupancy request, which has been
14 edited in the file.

15 CHAIRPERSON HILL: Okay, great. Thank you.
16 Does the Board have any questions for the applicant?

17 [No audible response.]

18 CHAIRPERSON HILL: I'm going to turn to the
19 Office of Planning.

20 MR. JESICK: Thank you, Mr. Chairman and
21 Members of the Board. My name is Matt Jesick. The
22 Office of Planning can rest on the record in support
23 of the application. Thank you.

24 CHAIRPERSON HILL: Thank you, Mr. Jesick.
25 Does the applicant have any questions for the Office

1 of Planning?

2 MS. FOWLER: No, thank you.

3 CHAIRPERSON HILL: All right. Going to go
4 ahead and see if there's anyone here from the ANC.

5 [No audible response.]

6 Is there anyone here wishing to speak in
7 support of the application?

8 [No audible response.]

9 Is there anyone here wishing to speak in
10 opposition to the application? Oh, please come
11 forward.

12 Well, Mr. Fowler, now you've completely
13 confused me, I've got to tell you. So, please,
14 introduce yourself for the record. You need to push
15 the button.

16 MR. PETERSON: Sorry, yes. My name --

17 CHAIRPERSON HILL: No, Peterson. Gosh, I keep
18 doing that.

19 MR. PETERSON: My name is Gary Peterson. I'm
20 Chair of the Capitol Hill Restoration Society's Zoning
21 Committee, and I'm here to speak in opposition to a
22 portion of the application. We certainly support -- I
23 want to say we certainly support the setback from the
24 front of the third story, so that part of the project,
25 we're not in favor of.

1 However, we have a problem with infilling the
2 dogleg. And if you'll look at the drawing C3 in the -
3 - of the applicant's plans, you'll see that this is a
4 row of -- there's a row of 14 dwellings, all of which
5 have a dogleg. And this particular property is in
6 roughly the center of that row, and this will be, as
7 far as I can tell, the first dogleg to be infilled in
8 that property.

9 We oppose this for two reasons. One is,
10 Section 5201.3(c) provides that, among other things,
11 I'm not going to read it to you because I'm sure you
12 know it, that the -- shall not substantially visually
13 intrude upon the character, scale, and pattern of
14 houses.

15 And what this infill is doing is it's changing
16 the pattern in the back. And we're not unilaterally
17 opposed to infilling, but in a case like this, where
18 none of the properties have infilled their doglegs, we
19 believe that this is in violation of the section I
20 just mentioned.

21 Also, it violates the spirit of the zoning
22 regulations. And I was involved, to some extent, in
23 drafting the new regulations. And one of the big
24 changes to the regulations was previously substandard
25 dogleg counted against your lot occupancy. Under the

1 new regulations, the substandard dogleg does not count
2 against your lot occupancy. We proposed that change
3 and supported that change for the very reason that we
4 didn't want these doglegs to be filled in. People
5 would say, well, it already counts against my lot
6 occupancy so I'm going to fill it in. And we wanted
7 to change that in order to preserve, wherever possible
8 and appropriate, the dogleg.

9 So, those are the two reasons that -- and we
10 believe this violates the spirit of the zoning
11 regulations themselves.

12 CHAIRPERSON HILL: Okay. So, Mr. Peterson,
13 did you go to the ANC meeting when this was discussed?

14 MR. PETERSON: No, we have our own hearing and
15 we make our own decisions, but I would say as to the
16 ANC's report, it gives you nothing for -- to give
17 great weight to. There is no argument, no reasoning.
18 All they say is they support it. So, I don't think
19 you have anything to give great weight to insofar as
20 the BZA is concerned. They didn't consider it. They
21 didn't mention it.

22 MR. SHAPIRO: Can I ask a question of Mr.
23 Peterson?

24 CHAIRPERSON HILL: Sure. Of course.

25 MR. SHAPIRO: I'm looking at the map on C3 and

1 it looks like the end units on that row are not
2 doglegged.

3 MR. PETERSON: That is correct. But I think
4 you have a long row there where they are. Believe me,
5 I may not be here if this was a single property with a
6 single dogleg. What we're looking at is the pattern,
7 the rhythm that goes along there, and that's why we're
8 objecting to it. If it was just a single dogleg we
9 would ask the landowner not to fill it in, but I think
10 the big argument here is the part C applies directly
11 to this situation.

12 If it doesn't apply to this situation then I
13 can't imagine why that part is in the zoning
14 regulations. As far as I'm concerned, this is the
15 classic case that that part was in there for.

16 MR. SHAPIRO: Thank you. Thank you.

17 MR. HART: Mr. Peterson.

18 MR. PETERSON: Yes, sir.

19 MR. HART: Thank you for coming and giving us
20 your testimony or your -- the information about this
21 project and the viewpoint.

22 I do have a question about if they were not to
23 do this infill, would you -- are you saying that you
24 would be, your organization would be in support of
25 having the building go back farther and actually

1 keeping the dogleg? I mean, could they -- are you
2 against the actual project, the expansion? Or are you
3 against the portion of this?

4 MR. PETERSON: Thank you. I understand your
5 question. That's a good question. No, we would
6 probably -- I mean, I have to say, I can't vote for
7 the Board but I can give you what my experience is. I
8 doubt that we would oppose this. We would probably
9 support this if they kept the dogleg.

10 The other thing is that, in other words, going
11 to 70 percent by going back further as you suggested.

12 The other thing that we have suggested is that maybe
13 they only infill half the dogleg. In other words,
14 that would still keep the rhythm of the dogleg, the
15 perception. So, we're not -- we're amenable to other
16 solutions.

17 MR. HART: Thank you.

18 CHAIRPERSON HILL: Mr. Jesick, do you have any
19 thoughts or comments about what Mr. Peterson has
20 mentioned?

21 MR. JESICK: Well, I think he's right to site
22 subparagraph C as the applicable regulation for what
23 he's talking about. Reviewing that section is a
24 judgement call, I guess. OP came to the conclusion
25 that this would not substantially visually intrude

1 upon the character of the alley face of the building.

2 Apparently, Mr. Peterson's organization came to a
3 different conclusion.

4 CHAIRPERSON HILL: Okay. Thank you. Does the
5 Board have any further questions of Mr. Peterson?

6 [No audible response.]

7 Okay. Thank you, Mr. Peterson.

8 MR. PETERSON: Uh-huh. Thank you.

9 CHAIRPERSON HILL: Is anyone here else wishing
10 to speak in opposition?

11 [No audible response.]

12 All right. Okay. I'm going to go ahead and
13 close the hearing. I'm sorry. Does the applicant
14 have anything they'd like to add?

15 MS. FOWLER: No, thank you.

16 CHAIRPERSON HILL: Okay. I'm going to go
17 ahead and close the hearing.

18 Is the Board ready to deliberate?

19 [No audible response.]

20 Okay. All right. I, you know, I was -- after
21 reviewing the record and the reports from the Office
22 of Planning, as well as the letter that was submitted
23 from the ANC 6C, I was in -- as well as the letters of
24 support from the adjacent neighbors, I was in support
25 of this. I do appreciate the input from Mr. Peterson

1 and his organization. I disagree and would agree with
2 the Office of Planning in terms of the issue that was
3 brought up by Mr. Peterson. I'm going to go ahead and
4 make a motion unless someone has anything else they'd
5 like to add.

6 All right. Then, I'm going to make a motion
7 to approve Application No. 19462 as read by the
8 secretary, ask for a second.

9 MR. HART: Second.

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

12 [Vote taken.]

13 CHAIRPERSON HILL: 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 amended application -- to
17 approve the application with the amended relief
18 requested. Seconding the motion, Vice Chair Hart.
19 Also in support, Mr. Shapiro. We have a board member
20 not participating, not present, and a board seat
21 vacant. Motion carries.

22 CHAIRPERSON HILL: Thank you. If we could
23 have a summary order?

24 MR. MOY: Yes, sir.

25 CHAIRPERSON HILL: Thank you. And, Mr.

1 Peterson, still thank you for coming down.

2 MR. MOY: The next case application before the
3 Board for a hearing is Application No. 19463 of the
4 D.C. Department of General Services, captioned and
5 advertised for a special exception under the penthouse
6 requirements of Subtitle C, Section 1500.9, which
7 would permit the location of rooftop mechanical
8 equipment on an existing public school, RF-1 Zone, at
9 420 12th Street Southeast, Square 1018, Lots 830 and
10 831.

11 CHAIRPERSON HILL: Good morning.

12 Good morning.

13 CHAIRPERSON HILL: If you could please
14 introduce yourself?

15 MS. RANKIN: My name is Mary Rankin. I'm with
16 Perkins Eastman DC. We're the architects for the
17 Watkins Elementary School modernization. I'm the
18 authorized agent for the Department of General
19 services for this application.

20 CHAIRPERSON HILL: Okay. So, Ms. Mankin?

21 MS. RANKIN: Rankin.

22 CHAIRPERSON HILL: Rankin.

23 MS. RANKIN: R-A-N-K-I-N.

24 CHAIRPERSON HILL: Thank you, Ms. Rankin. I'm
25 having a hard time with names today.

1 Again, this particular case, I don't have a
2 lot of specific questions. I'd like just kind of a
3 brief overview on what you're proposing. And, does
4 the Board have any specific questions they'd like to
5 hear from the architect?

6 MR. HART: No, sir.

7 CHAIRPERSON HILL: Okay. All right. So, Ms.
8 Rankin, you can just go ahead and give us a brief
9 overview of the project. That would be great.

10 MS. RANKIN: Sure. This is, as I mentioned,
11 part of the Watkins Elementary School modernization.
12 It's a renovation and addition project. We're keeping
13 the existing four-story classroom wing, and adding on
14 an addition which includes a new gymnasium, media
15 center, cafeteria.

16 The area in question is a mechanical yard that
17 is on part of the addition. It is settled between two
18 masses of the building, the two-story -- well, two and
19 a half story library mass, and the two and a half
20 story gymnasium/cafeteria mass.

21 The walls of the library, the gymnasium, and a
22 subsequent mechanical room to the north of the yard,
23 for three sides. And then the south wall of the
24 cafeteria below, forms the south side of the
25 enclosure.

1 And the request is for -- since the three
2 sides of the building are forming three sides of the
3 yard, the request is that not all four sides of the
4 enclosure be of the equal same height.

5 CHAIRPERSON HILL: Okay, thank you. Does the
6 Board have any questions of the applicant?

7 MR. HART: No, sir.

8 CHAIRPERSON HILL: All right. I'm going to
9 turn to the Office of Planning.

10 MR. COCHRAN: Thanks, Mr. Chair. OP
11 recommends that the Board approve the special
12 exception from section -- Subtitle C, Section 1500.9.

13 But we have to note that the project also
14 seems to require a special exception from Subtitle C,
15 Section 1502.1(c)(2)(B), which has a requirement that
16 the screening be set back at a one-to-one ratio from a
17 public street which is E Street. If the project is in
18 an RF zone and the screening faces that public street.

19 The applicant hasn't requested this special
20 exception. We had spoken to the applicant about this.

21 CHAIRPERSON HILL: And if the applicant did
22 add this, the Office of Planning would be in support?

23 MR. COCHRAN: Well, we'd need to see something
24 to justify being in support, or to make any opinion.

25 CHAIRPERSON HILL: Ms. Rankin, do you

1 understand what's being asked? Do you have an
2 opinion?

3 MS. RANKIN: The location of the south
4 screening, we didn't include it in the application
5 because it was not a point brought to us by the Zoning
6 Administrator during our permit review. His comment
7 and his concern was only with the height. I have
8 copies here of a section that Mr. Cochran included in
9 his report, slightly larger if that would help, and I
10 can walk through our -- why we view that the setback
11 here would not be required or why it could possibly be
12 accepted as waived.

13 CHAIRPERSON HILL: Okay.

14 MS. RANKIN: Basically, so that south wall
15 sits -- we've been referring to it as screen wall
16 because it does screen the mechanical yard on the
17 south side. But in our detailing of that wall we've
18 been picturing it and detailing it to read as an
19 extension of the building wall that is directly below
20 it, so that it would read as a tall parapet, and not
21 as a separate screening material.

22 The exterior building wall at the second-floor
23 level, is aluminum metal panel in a corrugated design.
24 So, it's six-inch, roughly six-inch horizontal bands
25 that run up. The louver that extends from the third-

1 floor roof up to hide the equipment is also an
2 aluminum louver, matching same color, with approximate
3 six-inch louver bands that run horizontally. So, the
4 detailing that we've been doing is so that it reads as
5 one wall running up from second-floor all the way up
6 to third-floor. And then the equipment is hidden
7 behind it.

8 So, we never thought of it as a separate wall
9 per se, therefore requiring the setback. And as I
10 stated, it was never brought up during permit reviews
11 as an issue, the location wasn't brought up. It was
12 just the fact that the two sides and then the fourth
13 side of the yard was a differing height.

14 CHAIRPERSON HILL: Okay. I want to ask a
15 question of the attorney, Ms. Nagelhout. So, then we
16 could move forward with this without the
17 1502.1(c)(2)(B), and then it would just be on the
18 applicant?

19 MS. NAGELHOUT: Yes. You have a self-
20 certified application for relief under 1500.9, and you
21 can just consider that request.

22 CHAIRPERSON HILL: Okay. And the Office of
23 Planning is in approval of that portion.

24 MR. COCHRAN: Sure. And yes, we are.

25 CHAIRPERSON HILL: Okay.

1 MR. COCHRAN: We were simply trying to protect
2 the application when they go for building permit
3 review by pointing out that --

4 CHAIRPERSON HILL: Sure.

5 MR. COCHRAN: -- they might have this problem.

6 CHAIRPERSON HILL: Sure. Do you want to -- I
7 have another case. I mean, there's a possible -- do
8 you want to -- I can put this aside while I get to
9 another case, and then if you want to talk to Mr.
10 Cochran perhaps, now, and see if that might be
11 helpful?

12 MR. COCHRAN: Given what the applicant has
13 said, now if the applicant were to request the relief,
14 I think that the Office of Planning would recommend
15 approval.

16 CHAIRPERSON HILL: Okay. Based off of that
17 testimony?

18 MR. COCHRAN: Yes.

19 CHAIRPERSON HILL: All right. So, are you now
20 requesting the relief?

21 MS. RANKIN: Yes.

22 CHAIRPERSON HILL: All right. Okay. There we
23 go. So, Mr. Moy, you can adjust the relief requested?

24 MR. MOY: Yes, sir, it's in my order.

25 CHAIRPERSON HILL: All right. Thank you.

1 Okay.

2 All right, I'm going to see if there's anyone
3 here from the ANC? Anyone here from the ANC?

4 [No audible response.]

5 Anyone here wishing to speak in support of the
6 application? Please, come up.

7 MR. PETERSON: I thought I'd perform a hat
8 trick today.

9 CHAIRPERSON HILL: Mr. Peterson, if you could
10 please just state your name for the record?

11 MR. PETERSON: My name is Gary M. Peterson.
12 I'm chair of the Capital Hill Restoration Society
13 Zoning Committee. We considered this case at our
14 March 9 hearing meeting. We voted to support the
15 application, and we support the amendment that appears
16 to be necessary. I don't think it is, but we would
17 support it.

18 I want to congratulate the applicant on doing
19 a very fine job of screening everything, all the
20 mechanical on this building. And one of the reasons
21 why I'm here to testify is in the past we've had
22 problems with GSA not complying with these
23 regulations, and so I want to, by being here in
24 support, to encourage them to continue to apply the
25 zoning regulations to their construction projects.

1 CHAIRPERSON HILL: Okay, great. Does anyone
2 have any questions for Mr. Peterson?

3 MR. HART: I just wanted to say that that's
4 been a very -- I don't think I've ever seen somebody
5 coming with three different projects and testifying on
6 all three of them, so I think that that's fantastic
7 and I appreciate you coming down for -- in sequence,
8 that is. I appreciate you coming down for this
9 project as well.

10 MR. PETERSON: Thank you.

11 CHAIRPERSON HILL: Yeah, and, Mr. Peterson,
12 and we've had the past three or four hearings have
13 been very long. They've gone for a long time so this
14 one doesn't seem to be as going as lengthy. So, it's
15 amusing to see somebody come up three times in a row,
16 so you'll forgive us for being amused, I suppose. But
17 I do want to commend you. I'm sure then, you're very
18 active in your neighborhood there and it's very
19 helpful to us to have people come down from the
20 neighborhood, either in support or opposition, and
21 most times it is in opposition but we do appreciate
22 you coming down.

23 Okay. So, was there anyone wishing to speak
24 in opposition of the application?

25 [No audible response.]

1 All right. With that, then, I'll turn to the
2 applicant. Does the applicant have anything further
3 to add?

4 MS. RANKIN: No, thank you.

5 CHAIRPERSON HILL: All right. Does the Board
6 have any further questions of the applicant?

7 MR. HART: No, sir.

8 CHAIRPERSON HILL: All right. Then, I'll go
9 ahead and close the hearing. Is the Board ready to
10 deliberate?

11 MR. MOY: Mr. Chairman, if I may?

12 CHAIRPERSON HILL: Yes, of course.

13 MR. MOY: If I may? I'm just reviewing the
14 record. There's no letter submitted from Mr.
15 Peterson, unless I'm missing it from the record.

16 Okay, just wanted to double-check.

17 CHAIRPERSON HILL: Okay, great. So, with
18 that, then again, based upon the discussions that
19 we've had with the Office of Planning and thankfully
20 the clarification that the applicant was able to
21 provide to the Office of Planning, I would move -- and
22 does the Board have any -- well, and that the ANC is
23 in support as well as the testimony that was provided
24 from Mr. Peterson in support by the Capital Hill
25 Historic Preservation Committee. I would be

1 comfortable with the report that was provided by the
2 Office of Planning. Does the Board have anything else
3 to add before I make a motion?

4 MR. HART: Just one, one clarification. It's
5 the Capital Hill Restoration Society. Just wanted to
6 make sure we got that name correct, so, thank you, Mr.
7 Peterson.

8 CHAIRPERSON HILL: Oh, sorry. Thank you.
9 Thank you.

10 So, I'll go ahead and make a motion to approve
11 Application No. 19463 as read by the secretary and
12 amended by the applicant.

13 MR. SHAPIRO: Second.

14 CHAIRPERSON HILL: Motion has been made and
15 seconded.

16 [Vote taken.]

17 CHAIRPERSON HILL: Motion passes, Mr. Moy.

18 MR. MOY: Staff would record the vote as
19 three, to zero, to two. This is on the motion of
20 Chairman Hill. This is for the application amended to
21 include relief under Subtitle C, Section
22 1502.1(C)(2)(B). Seconding the motion, Mr. Shapiro.
23 Also in support Vice Chairperson Hart. We have a
24 board member not present, board seat vacant, motion
25 carries.

1 CHAIRPERSON HILL: Thank you, Mr. Moy. We're
2 going to take a 10-minute break because I'm still
3 waiting for someone to arrive in order to hear the
4 last case. So, we're going to take a 10-minute break.
5 We'll come back at 11:05.

6 MR. MOY: Mr. Chair.

7 CHAIRPERSON HILL: Yes.

8 MR. MOY: Did the Board waive the requirements
9 for --

10 CHAIRPERSON HILL: Oh, sorry. Sorry, Mr. Moy.
11 Thank you. Summary order.

12 MR. MOY: Thank you.

13 [Off the record from 10:51 a.m. to 11:15 a.m.]

14 CHAIRPERSON HILL: All right, Mr. Moy, let's
15 get back here for our last case of the day.

16 MR. MOY: Yes, sir. It's, let's see, about
17 11:15 in the morning. This is case application No.
18 19413 of Chughtai Family Properties, LLC, as amended,
19 variances from the lot width requirements, Subtitle D,
20 Section 302.1; side yard requirements, Subtitle D,
21 Section 307.2 and 307.4, permitting the subdivision of
22 two lots and constructing four new one-family
23 dwellings, R-3 Zone, Maple View Place Southeast,
24 Square 5803, Lots 976 and 977.

25 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.

1 If you could please introduce yourself from my right
2 to left?

3 MS. MOLDENHAUER: Good morning, Meredith
4 Moldenhauer with the law firm of Griffin, Murphy,
5 Moldenhauer, and Wiggins on behalf of the applicant.

6 MR. CHUGHTAI: My name is Mossad Chughtai.

7 CHAIRPERSON HILL: Okay, great. Well, welcome
8 back, Moldenhauer and Mr. Chughtai. I guess, you
9 know, from the last time that you were here there was
10 some work that we had asked you to kind of go back and
11 take a look at and then speak with the Office of
12 Planning, and also the Zoning Administrator. So,
13 basically all -- unless the Board has any other
14 specific questions, I'd really like to just hear what
15 has happened since the last time you were here and
16 where you stand with everything.

17 MS. MOLDENHAUER: We will be very brief. We
18 rest on the record. We have supplemented the record,
19 revised the plans, and we have now only are seeking
20 one area of relief, which is D307.4. We have received
21 and asked for a request for late filing. We received
22 yesterday at 4:47, a copy from the Zoning
23 Administrator granting the minor flexibility from the
24 lot width for the two historic lots. We have hard
25 copies of that if the Board would like. It was

1 entered into the record yesterday afternoon.

2 And so, now we are only seeking one area of
3 relief, and under that relief OP, in the record in
4 their Exhibit 30 -- sorry, 68, recommends support for
5 this one area of relief, and we have ANC support, and
6 we have 31 letters of support in the record.

7 CHAIRPERSON HILL: Okay, great. Thank you.
8 Unless the Board has any objection, I'm going to allow
9 the letter from the Zoning Administrator into the
10 record. Okay. All right.

11 And I think that's at 69. We do have it,
12 Exhibit 69.

13 Okay. I mean, I thought the project was very
14 interesting and we did have a pretty lengthy hearing
15 the last time you were here. Before I turn to the
16 Office of Planning, does the Board have any questions
17 for the applicant? Okay.

18 [No audible response.]

19 Okay, I'm going to turn to the Office of
20 Planning then.

21 MS. MYERS: Hello. Crystal Myers for the
22 Office of Planning. The Office of Planning
23 recommended approval of the side yard relief in the
24 original case, and continues to recommend approval of
25 the side yard relief, and stands on the record of the

1 staff report.

2 CHAIRPERSON HILL: Okay. Okay, great. Thank
3 you. Does the Board have any questions for the Office
4 of Planning?

5 MR. MAY: Yes. So, the first thing I want to
6 clarify from the Office of Planning is that in reading
7 the report, and the recommendation from the March 24th
8 report, it's the first bulleted point where it says,
9 "Lot width, 30-foot minimum required for the creation
10 of a lot for a semi-detached house, lots of 22-feet,
11 seven-and-a-quarter inches proposed."

12 Was that a mistake? Was it supposed to be 29?
13 I'm confused by what we're --

14 MS. MYERS: I believe it was 22, but let me --

15 MR. MAY: Oh, no. Yeah, because it's -- or
16 maybe -- I'm sorry. That's the -- because I thought
17 that the ones that were 22 set point at 22-feet,
18 seven-and-a-quarter, were actually the attached lots,
19 which only need to be 20 feet.

20 MS. MYERS: Oh, good -- I apologize. You are
21 correct on this. It is 22, seven-and-a-quarter for
22 the attached ones. The semi-detached were the 29 --

23 MR. MAY: Four and --

24 MS. MYERS: -- 4.75. You're correct.

25 MR. MAY: Yeah, right.

1 MS. MYERS: So, that's a staff report error.

2 MR. MAY: Okay. All right. I just wanted to
3 make sure of that because it just seemed a little odd.

4 The second question I have is that the side
5 yard relief in this circumstance is a variance as
6 well.

7 MS. MYERS: Yes, it is. They were requesting
8 a variance relief for the side yard.

9 MR. MAY: Okay. So, I'm a little concerned or
10 I have questions about granting the -- that side yard
11 relief. I mean, I guess my question is, is it -- the
12 two that are now fully compliant are because they're
13 considered attached, because they go the full width of
14 the property and they're attached to each other.

15 MS. MYERS: correct.

16 MR. MAY: Which is still an interpretation I
17 don't like, and I'm trying to remember what we decided
18 when we went to ZRR, when we went through ZRR on that
19 one. But I'll put that aside for the moment.

20 And we couldn't do the same thing on the other
21 property because there -- because the width of those
22 would be too much. We couldn't make a row of four
23 that presented themselves as if they were, you know,
24 kind of pretending to be individual buildings. Is
25 that -- in other words, a solution that worked for the

1 two lots that made them complaint doesn't work for the
2 other two.

3 MS. MYERS: We did not review it as for the
4 other two, the ones that are historic.

5 MR. MAY: Yeah.

6 MS. MYERS: We did not review it for attached
7 housing.

8 MR. MAY: Right. I mean, reviewed as --

9 MS. MYERS: I believe the applicant was trying
10 to --

11 MR. MAY: -- semi.

12 MS. MYERS: Yeah. And I believe the applicant
13 was trying to follow direction from the historic
14 preservation and the community and --

15 MR. MAY: Yeah.

16 MS. MYERS: -- try to keep them as unattached
17 as possible. But so, semi-detached was what was
18 originally submitted.

19 MR. MAY: Uh-huh. Right. You know, I
20 appreciate the fact that I've got to come up with a
21 new solution but I'm still kind of mulling it over.
22 All right. Thank you. I think that's it for my
23 questions.

24 CHAIRPERSON HILL: Okay. I think I did this
25 the last time but I'm going to do it now. Is there

1 anyone here from the ANC?

2 [No audible response.]

3 Is there anyone here wishing to speak in
4 support of the application?

5 [No audible response.]

6 Is there anyone here wishing to speak in
7 opposition to the application?

8 [No audible response.]

9 All right. Does the Board have any questions
10 for the applicant because if there's any questions,
11 particularly, Commissioner May, that you might want to
12 clarify, because I need three.

13 MR. MAY: I understand that. So, we didn't
14 get revised elevations. And the elevations clearly
15 have been revised because you have different
16 buildings. Do you have actually new drawings for the
17 whole thing, or just new, a new plat?

18 MS. MOLDENHAUER: The drawings would be
19 substantially similar to the ones previously, but we
20 did not have revised elevations.

21 MR. MAY: Okay. Are you going to have to go
22 back to HPRB now that you've changed the buildings?

23 MS. MOLDENHAUER: The two buildings that are
24 in the historic district have not been changed other
25 than increasing the width of the property by a minor

1 amount.

2 MR. MAY: Right.

3 MS. MOLDENHAUER: So, those will -- and that's
4 one of the reasons why we did not update the
5 elevations, because the elevations will stay the same.

6 MR. MAY: For those two.

7 MS. MOLDENHAUER: For those two. And so, we
8 don't believe that we'd have to go back to HPRB. We
9 just simply believe that we'd have to go back and just
10 show the --

11 MR. MAY: So the staff could sign off on it.

12 MS. MOLDENHAUER: -- one-foot wider, yeah,
13 building, or two-foot wider building.

14 MR. MAY: The staff could sign off on it?

15 MS. MOLDENHAUER: Yes, that is our
16 understanding.

17 MR. MAY: So, before they were face online,
18 semi-detached buildings? In the original plan, those
19 two.

20 MS. MOLDENHAUER: They've -- I don't know
21 about face online. They're all set back because they
22 have to meet the --

23 MR. MAY: Face on the sideline, side --

24 MS. MOLDENHAUER: Yes. Yes.

25 MR. MAY: One -- yeah.

1 MS. MOLDENHAUER: Yes. So, they all have to -
2 -

3 MR. MAY: Which is, you know, again, the thing
4 that I still have a problem with, but that's a Zoning
5 Commission thing I guess.

6 MS. MOLDENHAUER: And I mean, obviously, we
7 are just applying the wording of the regulation, and I
8 believe that's what OP is doing as well. And so, it's
9 any freestanding wall would require a side yard. And
10 so, we are seeking relief from all freestanding walls.

11 MR. MAY: Right. And just don't get me
12 started on the freestanding wall part. That's the
13 problem. Right? Freestanding is a dictionary
14 definition, right? So it means that -- so, what we're
15 saying is that these are not semi-detached; that they
16 are fully detached with side yard relief. Is that
17 what you're saying?

18 MS. MOLDENHAUER: Matt has interpreted them,
19 and I believe OP has agreed, that they are semi-
20 detached.

21 MR. MAY: Because they don't, for some reason
22 they've reinterpreted the dictionary. Again, my pet
23 peeve. You said the word freestanding. That's one of
24 my things.

25 So, the side yard relief associated -- or,

1 explain to me again, where is the side yard relief now
2 required?

3 MS. MOLDENHAUER: It's --

4 MR. MAY: Sorry. I mean, I hate to have you
5 walk through all this stuff but I --

6 MS. MOLDENHAUER: I'd rather walk through it
7 actually.

8 MR. MAY: The new information I didn't really
9 fully absorb.

10 MS. MOLDENHAUER: The side yard relief is
11 required for all four lots. It is required, if you're
12 looking at Exhibit A, which I'm kind of holding up to
13 make sure that we're all looking at the same thing.
14 It is the upper, I'm just going to call it the north.
15 I believe that's -- yeah, that's the north. Upper
16 north, so 6 -- oh, sorry, 68.

17 CHAIRPERSON HILL: Exhibit 68? What?

18 MS. MOLDENHAUER: Sixty-seven. This is 67,
19 Tab --

20 MR. MAY: Yeah. No, I've got it. I'm looking
21 at the same drawing.

22 MS. MOLDENHAUER: So the north wall here would
23 require relief from 307.4. The wall along this
24 property line would require relief, the wall here
25 would require relief, and the wall here would require

1 the relief. All four lots would require relief from
2 that one area under 307.4.

3 MR. MAY: So, that's the thing that really
4 puzzles me about this because in essence, the Zoning
5 Administrator is saying that because this wall is on
6 the property line it makes it a, quote, semi-detached
7 building, but in order for it to be there it requires
8 variance relief from the side yard requirement. And,
9 if you had the side yard it would be a fully detached
10 building.

11 MS. MOLDENHAUER: I would respectfully ask the
12 Zoning Commission to clarify this for everybody.

13 MR. MAY: I thought we had, and I guess I'm
14 going to have to go revisit that.

15 MS. MOLDENHAUER: We are seeking relief based
16 on conversations with OP, and other various
17 interpretations.

18 MR. MAY: Uh-huh. See, the whole thing could
19 have been designed, similar to what you did with the
20 other two properties, where it was essentially just a
21 row of houses that presented themselves on the street
22 as if they were individual buildings, and you could
23 have had a side yard at one end and you could have had
24 a side yard at the other end, because the two end
25 houses would have been semi-detached.

1 MS. MOLDENHAUER: I understand what you're
2 saying and as we stated at the prior testimony, the
3 architects, even Dupont, had had conversations with
4 Mr. Denay, and that was not supported as --

5 MR. MAY: So, when did Mr. Denay become the
6 Zoning Administrator or a zoning expert?

7 MS. MOLDENHAUER: I'm not saying that, but I'm
8 saying that those are factors that are impacting this
9 property in regards to the historic district. We've
10 also had extensive communications with the ANC, the
11 Anacostia Historic Association, and the Anacostia
12 Preservation Board, all which have weighed in
13 extensively on the design and the appearance of these
14 structures.

15 MR. MAY: Okay. I don't know what else to
16 say.

17 CHAIRPERSON HILL: Okay. All right. Okay.
18 Let's see. All right. Does the applicant have
19 anything to add?

20 MS. MOLDENHAUER: No. I mean, we believe that
21 we have satisfied the variance standard. We believe
22 that based on the confluence of factors that we've
23 outlined, the fact that we have OP support on the
24 relief that is being requested, as well as great
25 weight from the ANC at the full hearing, the single-

1 member district representative spoke on behalf of the
2 ANC and their support. She also lives on the street
3 and indicated the extensive amount of community
4 outreach and discussion that we went through. And so,
5 based on that and based on our revised application,
6 that reduces the degree of relief that we had
7 originally asked substantially.

8 We would request that the Board support the
9 relief requested under Sections D307.4.

10 CHAIRPERSON HILL: Okay. Mr. Hart, do you
11 have anything?

12 All right. Then, I'm going to go ahead and
13 close the hearing. Is the Board ready to deliberate?
14 Okay.

15 MR. MAY: To start. Maybe not to finish.

16 CHAIRPERSON HILL: So, all right, I'll start
17 deliberations, then. So, the -- well, I would
18 obviously be very interested in hearing what
19 Commissioner May has to say. But the fact that the
20 Office of Planning has now -- well, I would be relying
21 mostly on the report from the Office of Planning as
22 well as the fact that the applicant has worked with
23 the Zoning Administrator, and all of the previous
24 testimony that we had had, not that this is speaking
25 directly to the requirements of the relief, but the

1 Office of Planning's report was, and the Zoning
2 Administrator was speaking to that. Now, I'm mostly
3 speaking to the testimony that we took from the ANC
4 just in terms of the community and what their hope was
5 for the lot, that was an in-fill lot, and that had
6 been vacant for some time.

7 I mean, I was not going to be able to be in
8 support of this, had the Office of Planning continued
9 to be in denial of what they had stated in the
10 previous testimony. So, due to again, the testimony
11 that we received in the previous hearing from the
12 community and the outreach, and the work that I do
13 believe the applicant has done with the design for the
14 community, I would be behind the project and would be
15 able to support the application. And that is my
16 thoughts.

17 MR. MAY: All right. So, I mean, I think the
18 thing that I have been trying to understand better is
19 the logic of the Zoning Administrator in considering
20 these, or even the Office of Planning, in considering
21 these to be semi-detached when in fact the -- it seems
22 like, I mean, the two that are in the historic
23 district are apparently fully detached.

24 And so, the question arises, does that trigger
25 additional relief, because if it's semi-detached

1 there's certain requirements. If it's fully detached,
2 other requirements in terms of lot size or lot width.

3 You know, the fact that you're in the historic
4 district does not automatically mean that there is --
5 that it warrants relief. And I don't know that there
6 are any other factors associated with these properties
7 that warrant relief.

8 I mean, I think -- I'm not sure what to say at
9 this point. I don't think that I'm ready to vote in
10 favor of it. I feel like I need to study this more a
11 little bit, and think about what it means, because I
12 just, it opens questions for me. I mean, this is --
13 you know, the property is very clearly, it is possible
14 to use the existing lots the way they were with two
15 individual houses. It is -- that would fit well with
16 the context. It is also possible to subdivide the two
17 lots into three and get three conforming fully
18 detached houses.

19 So, this is where you know, it raises
20 significant questions for me about what the
21 appropriate thing to do is. The fact that it is
22 driven in part by historic preservation concerns that
23 relate to the district, the historic district, is a
24 factor. It's not necessarily a fully compelling in
25 this circumstance.

1 And the fact that there's ANC or neighborhood
2 support, I mean, those are all good things, but we're
3 supposed to give great weight to concerns of the ANC.
4 And as far as I know, they have no concerns. So,
5 it's not really even a great weight issue.

6 So, I mean, this is -- these are -- I just
7 feel like I need to study the facts of the case a
8 little bit further and we can schedule it for a future
9 decision making from my perspective.

10 CHAIRPERSON HILL: Yeah. I mean, well, I'll
11 let Mr. Hart speak. I mean, Commissioner May, I mean,
12 you bring up, you know, good points in terms of your
13 discussion. But, Mr. May, do you have any thoughts?
14 Mr. Hart?

15 MR. HART: I don't have any additional
16 thoughts. I mean, I understand that there is --
17 Commissioner May's concerns. Or at least trying to
18 say that there are -- trying to understand that this
19 is kind of the only design; that there are other
20 options out there. And I'm not saying that the
21 applicant should be going through other options. I
22 think it's more just maybe having a little bit more
23 time to kind of think about it; may get some more
24 clarity around this.

25 I don't know. Commissioner May, are you

1 thinking that we need to have more -- some --

2 MR. MAY: No, I'm not looking for further
3 submissions and extenuation, continuation of the
4 hearing or anything like that. I just think I need to
5 take some time --

6 CHAIRPERSON HILL: Okay. That's fair.

7 MR. MAY: -- to think about this. I may need
8 to consult with the Office of Attorney General about
9 it, but --

10 CHAIRPERSON HILL: All right.

11 MR. MAY: -- that's where I am.

12 CHAIRPERSON HILL: So, then well what -- I'm
13 going to ask, I suppose, Mr. Moy, to reschedule this
14 for a meeting so that Commissioner May can have an
15 opportunity to review the information that has been
16 submitted even -- and most importantly, the
17 information that was submitted from the Zoning
18 Administrator, which we just got.

19 So, when is a good time for Mr. May?

20 MR. MOY: Okay. I think a good time, Mr. --

21 CHAIRPERSON HILL: When is he back, I should
22 say?

23 MR. MOY: Well, Mr. Chair, I think it would be
24 April the 12th.

25 CHAIRPERSON HILL: Okay.

1 MR. MOY: That would probably supply
2 sufficient time.

3 CHAIRPERSON HILL: Okay.

4 MR. MOY: For the full board to reconsider.

5 CHAIRPERSON HILL: Okay. Okay. All right.
6 So, then we'll go ahead and do April 12th for a
7 continued meeting. Or I'm sorry, not a continued
8 meeting, for a meeting date. Right. Meeting date.
9 You guys, I just realized that we haven't had a
10 meeting yet, so. All right, so the 12th?

11 MR. MOY: Yes.

12 CHAIRPERSON HILL: All right. Okay. And,
13 yeah, Commissioner May or Mr. Hart, there's nothing --
14 I don't need anything else. There's nothing else you
15 guys want?

16 Okay. All right. So, that's it. So, thank
17 you, guys. We'll see you on the 12th.

18 [Pause.]

19 CHAIRPERSON HILL: All right, Mr. Moy, there
20 was one more order of business here.

21 So, in accordance with Section 405(C) of the
22 Open Meetings Act, D.C. Official Code 2-575(C), I move
23 that the Board of Zoning Adjustment hold closed
24 meetings on Monday of April 3rd, April 10th, and April
25 18th, which is a Tuesday.

1 These meetings start at 3:00 p.m. and are held
2 for the purpose of obtaining legal advice from our
3 counsel and deliberating upon but not voting on the
4 cases scheduled to be publicly heard or decided by the
5 Board on the day after each such closed meeting.

6 Those cases are identified on the Board's
7 public meeting and hearing agendas for April 5th,
8 12th, and 19th. A closed meeting for these purposes
9 permitted by Section 405(b)(4) and 405(b)(13) of the
10 act. Is there a second?

11 MR. HART: Seconded.

12 CHAIRPERSON HILL: Would the secretary please
13 take roll call vote on the motion?

14 MR. MOY: When I call a member's name, if you
15 would please reply or respond with a yes or no?

16 [Roll call vote.]

17 MR. MOY: Mr. Peter May?

18 MR. MAY: Yes.

19 MR. MOY: Chairman Hill.

20 CHAIRPERSON HILL: Yes.

21 MR. MOY: Vice Chair Hart.

22 MR. HART: Yes.

23 MR. MOY: No other members present today.

24 Motion carries, Mr. Chair.

25 CHAIRPERSON HILL: Thank you, Mr. Moy. I

1 request that the Office of Zoning provide notice of
2 these closed meetings in accordance with the act.

3 Mr. Moy, do we have any further business today
4 before the Board?

5 MR. MOY: Not from the staff, Mr. Chairman.

6 CHAIRPERSON HILL: All right. Thank you.
7 Then, we stand adjourned.

8 [Whereupon, at 11:43 a.m., the Public Hearing
9 was adjourned.]

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