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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

9:30 a.m. to 11:42 a.m.
Wednesday, April 12, 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 LESYLLEE WHITE, Board Member

5 PETER MAY, Zoning Commission

6 CLIFFORD MOY, BZA Secretary

7

8 Office of Attorney General

9 MARY NAGELHOUT, Esq.

10 CHRISTOPHER COHEN, Esq.

11

12 Office of Planning

13 MAXINE BROWN-ROBERTS

14 CRYSTAL MYERS

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

2 CHAIRPERSON HILL: Good morning, ladies and
3 gentlemen. We're located in the Jerrily R. Kress
4 Memorial Hearing Room at 441 4th Street Northwest.
5 This is the April 12th, 2017 public hearing of the
6 Board of Zoning Adjustment of the District of
7 Columbia.

8 My name is Fred Hill, Chairperson. Joining me
9 today is Carlton Hart, Vice Chairperson, Lesyllee
10 White, board member, and representing the Zoning
11 Commission is Peter May.

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

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

16 Accordingly, we must ask you to refrain from any
17 disruptive noises or actions in the hearing room.

18 When presenting information to the Board
19 please turn on and speak into the microphone, first
20 stating your name and home address. When you're
21 finished speaking please turn off your microphone so
22 that your microphone is no longer picking up sound or
23 background noise. All persons planning to testify
24 either in favor or in opposition must have raised
25 their hand and been sworn by the secretary. Also,

1 each witness must have filled out two witness cards.
2 These cards are located on the table near the door and
3 at the witness table. Upon coming forward to speak
4 to the board speak to the Board, please give both
5 cards to the reporter sitting to the table my right.
6 If you wish to file written testimony or additional
7 supporting documents today, please submit one original
8 and 12 copies to the secretary for distribution. If
9 you do not have the requisite number of copies you can
10 reproduce copies on an office printer in the Office of
11 Zoning located across the hall.

12 The order of procedures for special
13 exceptions, variances, and appeals are also listed on
14 the documents on the bin to your right as you walk in
15 through into the hearing room.

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

24 The District of Columbia Administrative
25 Procedures Act requires that the public hearing on

1 each case be held in the open before the public
2 pursuant to section 405(b) and 406 of that act. The
3 Board may, consistent with its rules of procedures and
4 the act, enter into a closed meeting on a case for
5 purposes of seeking legal counsel on a case, pursuant
6 to D.C. Official Code 2-575(b)(4), and/or deliberating
7 on a case pursuant to D.C. Official Code 2-575(b)(13),
8 but only after providing the necessary public notice.

9 And in the case of an emergency closed meeting, after
10 taking a roll call vote.

11 The decision of the Board in cases must be
12 based exclusively on the public record. To avoid any
13 appearance to the contrary, the Board requests that
14 persons present not engage the members of the Board in
15 conversation.

16 Please turn off all beepers and cell phones at
17 this time so as not to disrupt the proceeding.

18 Preliminary matters are those which relate to whether
19 a case will or should be heard today, such as request
20 for a postponement, continuance, or withdrawal, or
21 whether proper and adequate notice of the hearing has
22 been given.

23 If you're not prepared to go forward with the
24 case today, or if you believe that the Board should
25 not proceed, now is the time to raise such a matter.

1 Mr. Secretary, do we have any preliminary
2 matters?

3 MR. MOY: Good morning, Mr. Chairman, members
4 of the Board. I would like to take a moment to go
5 over the -- for today's docket, although this is in
6 the hearing session, and to have it transcribed for
7 the record.

8 There were five cases that have been
9 rescheduled, which I may have announced in previous
10 hearings. I want to go over them once more, Mr.
11 Chairman, since they were scheduled for today. There
12 were two applications that have been rescheduled to
13 May 31st, 2017. They are the appeal of the Friends of
14 Lowell Street, Appeal No. 19407 and of Andrew
15 Phillips, Application No. 19459. Two cases
16 rescheduled to April 19th, 2017, the two cases are
17 19469 of Wana Bishop Revocable Trust, and 19472 of
18 Behnam Farahpour. And finally, Application No. 19455
19 of Wacap, LLC has been rescheduled to May 17th, 2017.

20 And that's it for me, Mr. Chairman.

21 CHAIRPERSON HILL: Okay, great. If there's
22 anyone here wishing to testify, if you could please
23 stand up and take the oath administered by the
24 secretary?

25 MR. MOY: I'm sorry, which application number?

1 CHAIRPERSON HILL: Excuse me, sir, actually,
2 I'm sorry. If you go to the bin there is an agenda of
3 everything that is here and if you don't see the case
4 there, then that means you're not going to be heard
5 today, or it's not here today. Thank you.

6 Mr. Moy, if you could administer the oath?

7 MR. MOY: Yes, thank you.

8 [Oath administered to the participants.]

9 CHAIRPERSON HILL: Okay, great. Just for
10 everyone here in attendance. We are going to go
11 through our meeting cases first in the order in which
12 they appear on the agenda, as well as the hearing
13 cases. So, we're following everything. We have a
14 relatively short day today. At least I hope so.

15 And with that, Mr. Moy, if you want to call
16 our first meeting case?

17 MR. MOY: Thank you, Mr. Chairman. That would
18 be application No. 18852 and 18853A of SB-Urban, LLC.

19 This is a request from the applicant for a
20 modification of consequence. The caption reads as
21 follows: originally approved for variances from the
22 side yard requirements, 775.1; court width
23 requirements, 776.3; parking requirements, 2101.1; and
24 lot occupancy requirements, 2604.2 of the Zoning
25 Regulations; special exceptions for parking for

1 historic resource under 2120.6; and for the roof
2 structure standards under 411.11 of the Zoning
3 Regulations, to allow construction of two apartment --
4 two apartment buildings that will function as one
5 building in the C-2-A District at premises 90 and 91
6 Blagden Alley Northwest, Square 368, Lots 164 and 165.

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

9 So, as I understand this again, we need to
10 establish a timeline for the modification of
11 consequence. And what I would propose to the Board is
12 that we have -- we leave the record open to hear from
13 the ANC as well as the two people who were originally
14 part of the first case, the testimony. That would be
15 again, Mr. -- I believe it's Ait Ghezala, and Ms.
16 Schauer. I'm butchering those names for sure. I
17 apologize.

18 And then you would have a chance to review
19 those documents, as well as I would be interested in
20 the applicant had in this modification of consequence
21 again, asked to remove some of the conditions that
22 pertained to the parking relief. And I would also
23 like to hear, I guess, from the ANC concerning those
24 issues in terms of removing the conditions. And then
25 again from the people who were originally in the

1 original case.

2 Does the Board have any thoughts or additional
3 comments?

4 [No audible response.]

5 CHAIRPERSON HILL: Okay. So, Mr. Moy, then we
6 would set a time for written testimony.

7 MR. MOY: Yes. All right. Today is April
8 12th. Would it be desirable, Mr. Chair, to allow --
9 if we're allowing the ANC to respond, it seems to me
10 since they only meet once a month, to at least give
11 another month.

12 CHAIRPERSON HILL: Uh-huh. I agree.

13 MR. MOY: Before this is back before the
14 Board. So, 12 -- I'm looking at possibly the end of
15 May or early June. So, that would give us --

16 CHAIRPERSON HILL: I guess maybe if
17 Commissioner May were here again, that would be
18 convenient.

19 MR. MOY: Yes, that would be perfect. Okay.
20 Working backwards, then let's bring this back to the
21 Board May 31st. All right. And let's say filings
22 from all the parties, including the ANC, let's say two
23 weeks prior to that which would be May 17th.

24 Applicant's response, a week following. The
25 applicant to respond, which would be, let's say, May

1 24th.

2 So, once again, back to the Board. May 31st.
3 Public meeting. Okay, public meeting. Filings from
4 the parties, May 17th deadline. Response from the
5 applicant, May 24th.

6 CHAIRPERSON HILL: Okay.

7 MR. MOY: That's good.

8 CHAIRPERSON HILL: All right. Great. And
9 it's great because Commissioner May was on the
10 original case.

11 MR. MOY: Exactly.

12 MR. MAY: Mr. Moy, just to clarify, you said
13 response from parties. You mean response from the
14 ANC.

15 MR. MOY: From the ANC and --

16 MR. MAY: The two individuals.

17 MR. MOY: Two individuals. Would we --

18 MR. MAY: Who are not parties in the case, but
19 we've decided to seek their input on this.

20 MR. MOY: Okay.

21 MR. MAY: Okay. Yeah, that's all good with
22 me. I'm in favor of that too.

23 CHAIRPERSON HILL: Okay, great. Yeah, it was
24 the two names that I somewhat probably butchered, but
25 thank you for clarifying that. So, if they're

1 listening, they know.

2 MR. MOY: Well, staff will follow up with them
3 as well.

4 CHAIRPERSON HILL: Okay.

5 MR. MOY: In separate contacts.

6 CHAIRPERSON HILL: Okay. I'm going to bet
7 they're listening. Okay. All right. Thank you, Mr.
8 Moy.

9 It's a meeting, correct, Mr. Moy? That's what
10 you said.

11 MR. MOY: Yes, sir.

12 CHAIRPERSON HILL: Okay. Yeah.

13 MR. MOY: Okay. The second case application
14 for decision is Application No. 19458 of 3G 1G, 1352
15 Randolph Street Northwest, LLC, as captioned for a
16 special exception relief under the RF-Use
17 requirements, Subtitle U, Section 320.2. This would
18 expand an existing one-family dwelling into an
19 apartment house in the RF-1 Zone at premises 1352
20 Randolph Street Northwest, Square 2825, Lot 112.

21 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.
22 Is the Board ready to deliberate?

23 [No audible response.]

24 CHAIRPERSON HILL: All right. Well, as the
25 Board might recall, we had gone through a full hearing

1 and had particularly a question with one of the
2 conditions that was a five-foot setback, it said. I
3 think it said no less than, but this setback is
4 actually 10 feet. There's a 10-foot setback, so we
5 asked for some clarity from the ANC. We did get that
6 clarity. And also, the applicant and the ANC had
7 agreed to committing to the conditions shown on
8 Exhibit 44, with again the clarification from the
9 recent exhibit, which was No. 46.

10 I don't have any further comments about this.
11 There was, again, after going through a full hearing
12 and OP, listening to OP's analysis of the reasons why
13 the criteria had been met for approval, they
14 recommended approval. DDOT was not in any -- had any
15 objection. There was a letter in opposition from a
16 nearby neighbor, and then the ANC now has provided
17 some feedback to us.

18 So, does the Board have any other comments?
19 Otherwise, I'm going to make a motion. Okay.

20 Then I'm going to go ahead and make a motion
21 to approve Application No. 19458 as announced by the
22 secretary.

23 MS. WHITE: Second.

24 CHAIRPERSON HILL: The motion has been made
25 and seconded.

1 [Vote taken.]

2 CHAIRPERSON HILL: I think the motion passed,
3 Mr. Moy, but I think you also have a absentee ballot.
4 Is that correct? Or absentee, yeah, ballot.

5 MR. MOY: Yes, I do, Mr. Chairman. I do have
6 an absentee ballot from Anthony Hood who participated
7 on this application. And his absentee vote is to
8 approve with any conditions that the Board may impose.

9 So, that would give a final result of four, to
10 zero, to one. This is on your motion to approve, Mr.
11 Chairman, seconded by Ms. White. Also in support,
12 Vice Chair Hart, and of course Mr. Hood. So, the vote
13 is four, zero, one, motion carries.

14 CHAIRPERSON HILL: Great, thank you. Can we
15 do a summary order?

16 MR. MOY: Yes, you can.

17 CHAIRPERSON HILL: Thank you.

18 MR. MOY: All right. Moving right along, the
19 next case application for decision is 19413 of
20 Chughtai Family Properties, LLC, and I believe this is
21 an application that was amended and is not for
22 variances from the lot width requirements, Subtitle D,
23 Section 302.1, side yard requirements, Subtitle D,
24 307.2, and 307.4, which would permit the subdivision
25 of two lots and construct four new one-family

1 dwellings, R-3 Zone, Maple View Place Southeast,
2 Square 5803, Lots 976 and 977.

3 CHAIRPERSON HILL: Thank you. Is the Board
4 ready to deliberate?

5 [No audible response.]

6 CHAIRPERSON HILL: Okay. So, I -- my position
7 didn't change from my thoughts at the conclusion of
8 the hearing the last time. The Zoning Administrator
9 granted, I guess, two percent flexibility on this
10 project so that lot width was no longer required. The
11 Office of Planning, I thought did a good job in their
12 analysis in terms of why this meets the criteria, and
13 they did not object to the side yard relief.

14 The ANC 8A was in favor of this application as
15 well as the testimony that was taken from a
16 commissioner who came down. It sounded as though, you
17 know, not so much from just kind of a zoning relief
18 question. I was just thinking again how the lot had
19 been -- it's an in-fill lot, it hadn't been completed
20 for a while. Or hasn't been -- a project hasn't been
21 worked on there for some time. And I was, not that
22 the applicant gave a lot of testimony to the economic
23 feasibility between if there were three homes there,
24 or four. I was again swayed by I guess any kind of
25 concern that if there were three homes there, rather

1 than four, it would remain possibly an empty lot. I
2 don't necessarily think that that would have been the
3 case. But I again was leaning towards approval from
4 this based upon the analysis provided by the Office of
5 Planning and that the Zoning Administrator now has
6 granted the flexibility for the lot relief as well as
7 again, as I said, the ANC as well as the 20 letters in
8 support and the historic Anacostia Block Association
9 was in support.

10 So, that's where I stand. I don't know if
11 anyone else would like to add anything.

12 MR. HART: Yes, Mr. Chairman. Yeah, I think
13 that the applicant has -- they've provided the
14 information. The information that you've cited with
15 the Office of Planning report, they -- you know, in
16 support of the certain aspects of the project. I
17 think that I could support it as well. I find that
18 the four units are -- help to complete this kind of
19 this portion of the street in terms of the street wall
20 where the rest of the residential buildings, the
21 houses are located. It seems as though it is really
22 compatible with that.

23 And I also agree with your assessment or
24 reading of the Zoning Administrator's letter. And
25 their description of the project and analysis is

1 helpful. I would think that we would probably need to
2 get a little bit more clarity in the future on how the
3 Zoning Administrator sees the whole semi-detached,
4 attached buildings. But in this case I think that the
5 design is something that is in keeping with the
6 neighborhood. And I would be supportive of it.

7 MS. WHITE: I was not there for the original
8 hearing but I did read the record thoroughly, and I
9 concur with your assessment, Chairman Hill and Board
10 Member Hart. I think the project as we know, is in a
11 historic district and the applicant made good efforts
12 to kind of redesign the project to seek the reduced
13 degree of relief that he was seeking on the variance
14 side.

15 DCRA agreed to reevaluate, based on these
16 changes. I mean, we have two semi-detached dwellings
17 and two row dwellings, and both are residential. I
18 think they've met the criteria. I believe the DCRA,
19 as well as you know, the Zoning Administrator, has
20 authorized -- provided proper authorization to make
21 some slight deviations with respect to their
22 determination. And I too feel as though I can support
23 this project.

24 CHAIRPERSON HILL: Commissioner May.

25 MR. MAY: Thank you. I'm going to decent from

1 I think what the consensus is here. In my view this
2 solution doesn't really work. The so-called semi-
3 detached buildings do not meet the definition of semi-
4 detached. Now, just for the sake of clarity, semi-
5 detached building is a building that abuts or shares
6 one wall on a side lot line with another building.
7 There is no other building that these quote, semi-
8 detached buildings actually abut or share a wall with.

9 Now, I understand how it would not be
10 considered detached because the definition of detached
11 is a free-standing building that does not abut any
12 other building and where all sides of the building are
13 surrounded by yards or open areas within the lot. So,
14 when you place the building face online, there is no
15 yard or open area within the lot on that side of the
16 building.

17 So, it doesn't really fit detached either.
18 However, I know what the intention of the regulations
19 were. These were definitions that were revised in the
20 ZR-16 effort. So, I frankly disagree with the Zoning
21 Administrator.

22 I mean, this is not a bad design solution. I
23 think that they've been very careful to thread the
24 needle between the Historic Preservation Office and
25 the Zoning Regulations, and the reliance of the

1 applicant on the Zoning Administrator's determination
2 and then now the Board's reliance on that. You know,
3 I understand that and I don't have strong objections
4 to it. But again, because I understand what the
5 intention of the regulations are, even if there's not
6 clarity in the wording, will prompt me to vote against
7 the project, although I don't think that it's a big
8 concern for precedent, and I will suggest to the
9 Zoning Commission and to the Office of Planning that
10 we need to actually update the definitions in the
11 Zoning Regulations so that we don't have this
12 situation where a property, or a project such as the
13 one proposed before us, doesn't really fit the
14 definition of semi-detached or detached building. I
15 think that absolutely should be clear.

16 Also, I think I need to state that in this
17 case, as in many other cases, frankly throughout my
18 many years serving on the Commission and on the Board,
19 in this case there's undue deference given to Historic
20 Preservation Office Staff. When the HPO staff says
21 that it will not support a given design solution that
22 is zoning compliant or requires substantially less
23 zoning relief, the Historic Preservation Office needs
24 to be reminded that due deference should be given to
25 the Zoning Regulations. If they have any doubt about

1 that they should consult recent court cases that throw
2 some of these issues into question.

3 I am absolutely a preservationist and I
4 support the work of the Historic Preservation Office.

5 I think they do great work. However, the BZA has a
6 regulatory role that the Historic Preservation Office
7 does not have. And I would urge any architects who
8 are working on projects affecting historic properties,
9 to find solutions that are both zoning compliant and
10 satisfactory to the Historic Preservation Office.
11 That should be the mode that they should be working.
12 They simply should not say, well the Historic
13 Preservation Office told us to do this, and so
14 therefore we need zoning relief. I don't think that's
15 acceptable.

16 So, hopefully we will have greater attention
17 paid to this in the future. So, that's it for me.

18 CHAIRPERSON HILL: Thank you, Commissioner
19 May. I appreciate the points that you make,
20 particularly the one with concerning HPRB. But, it
21 doesn't change my particular opinion. Does anyone
22 have anything to add before I make a motion?

23 Okay. I'm going to go ahead and make a motion
24 to approve Application No. 19413 of Chughtai Family
25 Properties, LLC.

1 MR. HART: Second.

2 CHAIRPERSON HILL: The motion has been made
3 and seconded.

4 [Vote taken.]

5 CHAIRPERSON HILL: Motion passes, Mr. Moy.

6 MR. MOY: Staff would record the vote as
7 three, to one, to one. This is on your motion, Mr.
8 Chairman, Chairman Hill, to approve the application
9 for the relief requested. Seconding the motion, Vice
10 Chair Hart. Also in support, Ms. White. Mr. Peter
11 May is opposed to the motion. We have a seat vacant.
12 The result is three, to one, to one.

13 CHAIRPERSON HILL: Okay, great. Can we get a
14 summary order?

15 MR. MOY: Yes, sir.

16 [Pause.]

17 MR. MAY: I just noticed Ms. Moldenhauer came
18 in. Did you catch my whole speech?

19 MS. MOLDENHAUER: I didn't.

20 MR. MAY: Well, then you should go back and
21 listen to it. Thanks. Because I was --

22 MS. MOLDENHAUER: [Speaking off microphone.]

23 MR. MAY: I appreciate your attempts to get
24 here on time and all of the folks who accompanied you
25 on your visit. I assume that the gentleman sitting

1 next to you is somehow related.

2 CHAIRPERSON HILL: All right. We're going to
3 get started here again. We're going to get started
4 here again, unless we're going to bring people up to
5 the table and have them speak into the microphone.
6 All right.

7 So, Mr. Moy, let's go ahead and move on to our
8 hearing cases.

9 MR. MOY: Thank you, Mr. Chairman. So, the
10 first of the two for this morning -- I almost said
11 this afternoon. First is Application No. 19427 of The
12 Bird, as amended. This is captioned and advertised
13 for a special exception relief under the rear yard
14 requirements, Subtitle G, Section 405.2; variances
15 from the nonconforming structure requirements,
16 Subtitle C, Section 202.2; FAR requirements, Subtitle
17 G, Section 402.1. This would construct a retractable
18 awning over a terraced dining area for a restaurant,
19 MU-4 Zone at premises 1337 11th Street Northwest,
20 Square 339, Lot 33.

21 CHAIRPERSON HILL: Okay. Could the parties
22 come to the table?

23 Could you please introduce yourself?

24 MR. WINER: David Winer, 1601 5th Street
25 Northwest, Washington, D.C. And the Principal of the

1 business that is seeking relief, The Bird, Shaw
2 Dining, LLC at 1337 11th Street Northwest.

3 CHAIRPERSON HILL: Okay. So, Mr. Winer, I
4 know you're back here from, you know, we asked you to
5 go back to the Office of Planning, and also I remember
6 that there was several people that were here with you.
7 You had your chairman of the ANC came, and then I
8 think your constituent services person also came. Can
9 you tell us kind of what happened since then, or where
10 you are with your application?

11 MR. WINER: I think you asked OP to try to
12 work with us to resolve the issue as best we could.
13 And I think OP looked at it and came up with little or
14 nothing and I don't think their look-see was fair or
15 correct. I think it was actually the exact opposite.
16 So, I have a short patient couple minutes, I just
17 would like to talk about the timeline. And very short
18 and sweet if I'm allowed to do that.

19 CHAIRPERSON HILL: Sure, of course. I'll give
20 you five minutes.

21 MR. WINER: I won't even need that.

22 CHAIRPERSON HILL: Okay. Mr. Moy, I'll put
23 five minutes on the clock just so I know where we are.

24 MR. WINER: So, this odyssey began nine months
25 ago in July when we put in an application for an

1 awning. And this was the third building application
2 we put in to construct this restaurant and the awning
3 was the last part of it. We had approval from the
4 ANC, we had approval from Historic before we did this,
5 and we had some -- an understanding that this would be
6 an approved or approved plan.

7 Nonetheless, about a month later, Zoning had
8 indicated that they would not approve the plan, and
9 that we needed to make some changes. We agreed to
10 those changes and that was towards the end of August.

11 On September 5th, whatever we had decided to do
12 regarding the zoning became hard and fast because
13 there was no changes in the awning.

14 So, last week in August, they had asked us to
15 make changes, and they said, and I'm going to quote,
16 bear with me. "If applicant elected to connect the
17 proposed retractable awning to the trellis and rail
18 system, and represented the awning would not be
19 extended greater than 180 days, we would consider it
20 to be temporary in nature and not permanent, and
21 therefore consider it as -- therefore consider it as
22 chargeable floor area, we could approve the proposed
23 retractable awning. We could approve the proposed
24 retractable awning."

25 That was August 30th. We agreed to the

1 changes they requested. Agreed. No question, no
2 compromise. Agreed to the exact change that they
3 requested. This is all in writing; all in e-mails.

4 And on September 5th, five days later, that
5 awning became hard and fast. There was no refund,
6 there was no changing it.

7 Then on September 8th it came back three days
8 later, after it was hard and fast, and asked to change
9 it again, the design. We agreed to it because we had
10 no choice. We agreed, without compromise.

11 And then once again, on the 13th, they asked
12 us to change the design one more time. Now, perhaps I
13 was foolish in ordering an awning way back in July.
14 But there was a lot of underlying factors that I could
15 go on and on with and bore you with the details and
16 I'm not going to. It was a decision that was made for
17 what I thought was good and valid reasons, and I
18 thought our awning was acceptable. I had the chance
19 to back out of that awning deal. I had a chance to
20 totally change the design of the awning up until the
21 time that I couldn't any longer.

22 Zoning told us they would give us a permit,
23 period. Zoning then did not give us the permit. I'm
24 seeking relief. It's that simple. OP says that
25 Zoning attempted to provide applicant with guidance on

1 how the structure should be designed in order to
2 conform to the zoning requirements. However, the
3 applicant decided to purchase the awning structure,
4 quote/unquote, "anyway." And that's simply not true.

5 It's simply not true. And we relied on the good word
6 of zoning, detrimental reliance. I laid out a lot of
7 money. I'm on the hook for a lot of money, and that's
8 why I'm sitting here before you, seeking relief.

9 CHAIRPERSON HILL: Okay. So, the
10 recommendations that we have most recently from the
11 Office of Planning that you could possibly do this by
12 right, have you seen those?

13 MR. WINER: Yes.

14 CHAIRPERSON HILL: And do you have any comment
15 on those?

16 MR. WINER: No.

17 CHAIRPERSON HILL: You don't have any comment
18 on those, meaning you can't do those?

19 MR. WINER: We've gone back to Matt LeGrant
20 several times and he's intractable in his position.
21 So, I'm not sure where we're going to gain any ground.

22 CHAIRPERSON HILL: Okay. All right. Does
23 anybody have any questions for the witnesses?

24 MR. MAY: Yeah. So, the three conditions that
25 the Zoning Administrator has required most recently,

1 and this is what would make it a matter-of-right
2 project, was that the awning structure must not have
3 side panels and that's a -- you're not willing to do
4 that condition.

5 MR. WINER: Absolutely agree to that.

6 MR. MAY: So, you agreed to have no side
7 panels?

8 MR. WINER: Correct.

9 MR. MAY: Awning structure must only contain
10 fabric material and posts that extend to the ground.
11 And that condition?

12 MR. WINER: The awning is, you know, it's a
13 vinyl fabric. I can't say exactly what the material
14 is. It's, you know, it's plastic coated vinyl. I
15 don't know if that's considered fabric.

16 MR. MAY: Is it, I mean, is it really a
17 fabric, or is it a rigid panel; panelized system?

18 MR. WINER: It's not a rigid panel. It's a
19 retractable awning that slides back and forth. It's
20 some kind of vinyly (sic) fabric.

21 MR. MAY: And posts that extend to the ground.
22 I mean, maybe I need clarity from the Office of
23 Planning, but I mean, this is on top of the structure.
24 So, the posts wouldn't extend actually to the ground,
25 they would go to the structure. Is that right?

1 MR. WINER: Correct.

2 MR. MAY: Okay. Maybe I need clarity from the
3 Office of Planning. Are you suggesting that they go
4 all the way to ground or to the roof structure? Side
5 wall structure.

6 MS. MYERS: Office of Planning was just
7 reiterating what the Zoning Administrator staff has
8 conveyed.

9 MR. MAY: Yeah.

10 MS. MYERS: My understanding was, I guess,
11 they said to the ground but perhaps to the structure
12 would have been more appropriate.

13 MR. MAY: Right.

14 MS. MYERS: But we are just supporting the
15 conditions for the by-right.

16 MR. MAY: So, I'm a little confused, then,
17 because it sounds like you've agreed that it would not
18 have side panels. You've agreed that it's a fabric
19 material and that the posts, I mean, and that -- and
20 there would be side -- and there would posts, I guess.
21 And --

22 MR. WINER: May I?

23 MR. MAY: I mean, is it because there's a --
24 there are horizontal elements to it in addition to the
25 posts?

1 MR. WINER: I think some of what they have is
2 confusing, so let me just back up and give you --

3 MR. MAY: Yeah.

4 MR. WINER: -- the real quick version. They
5 asked us to agree to use the awning only 180 days.
6 This was the first go-around.

7 MR. MAY: Right. And you agreed to that.

8 MR. WINER: And to -- sorry, my mind just gone
9 blank. And to something or other. To, and to attach
10 it to the existing railing trellis that's there. And
11 we agreed to that. That's when they said, we'll give
12 you the permit.

13 Then after the 5th they asked us to remove the
14 roll down sides, which we agreed to.

15 MR. MAY: Right.

16 MR. WINER: Then, on the 13th they wanted us
17 to remove the legs, the columns that hold up the
18 structure, and that they would approve an awning if it
19 was simply a retractable awning that was mounted to
20 the side of the building and it had no leg structure.
21 So, there's a little confusion here. That was the
22 point where we couldn't change it any longer.

23 MR. MAY: Right.

24 MR. WINER: The thing was too long to be able
25 to support without the legs. The legs are in fact

1 going down to the top of the roof.

2 MR. MAY: Right.

3 MR. WINER: So, that was the fourth thing they
4 asked us to do and we couldn't, we simply couldn't do
5 it.

6 MR. MAY: Okay, yeah. Just, it's a little
7 unclear from what was in the Office of Planning's
8 report which I understand came directly from the
9 Zoning Administrator. And I can understand why the
10 structure as fabricated, requires those side posts.
11 Not that it helps me make up my mind, but I understand
12 now. Thank you.

13 CHAIRPERSON HILL: Okay. Does anyone have any
14 other questions for the witness?

15 MR. HART: Just one question. Regarding the
16 Office of Planning report, the second piece, which is
17 that the legs extend down, so what you're saying is
18 that the support -- the legs are -- would be attached
19 to the awning and they would be kind of -- they would
20 actually support the awning, but they would not be a
21 permanent feature so that when the awning was not --
22 was retracted, the supports, the vertical supports
23 would not be there.

24 MR. WINER: I think we call it a frame, and
25 the frame would stay in place, but the awning would

1 then retract.

2 MR. HART: And that's what you're proposing.
3 But I think what they were saying is that the legs
4 would actually be attached to the awning so that would
5 be able to kind of be totally -- I'm just trying to
6 get the difference between what it is that they're
7 saying and what it is that you're --

8 MR. WINER: I think there's a little
9 disconnect between OP and Zoning. I think just some
10 confusion. I'm not trying to offend anyone, I just
11 think there's a little confusion. Zoning asked on the
12 fourth go-around, for us to remove the legs entirely.

13 MR. HART: Yeah. Yeah.

14 MR. WINER: Which supports the structure. And
15 you can't do that. We cannot do that.

16 MR. HART: I understand.

17 MR. WINER: There's no awning that's made that
18 will run the length of it.

19 MR. HART: Yeah.

20 MR. WINER: And we own the awning, and we
21 bought the awning, or closed the deal on the awning
22 based on the three previous request and somewhat
23 guarantees that they would allow this to go forward.

24 MR. HART: Okay. Thank you.

25 MS. WHITE: When they're asking you, you know,

1 that the legs have to go to the ground, that that --
2 could that be interpreted as saying the legs from the
3 awning could just simply be on the roof? Do they
4 literally have to be on the street level?

5 MR. WINER: No, I think this word ground is
6 confusing everyone. This is a second story terrace.

7 MS. WHITE: Right. I saw the pictures. Yeah.

8 MR. WINER: And the legs simply go to the roof
9 of the existent terrace.

10 MS. WHITE: Right.

11 MR. WINER: Yeah. Not to the ground. The
12 ground on the terrace, or the floor of the terrace I
13 think is more appropriate.

14 CHAIRPERSON HILL: Okay. I'm going to turn to
15 the Office of Planning.

16 MS. MYERS: Crystal Myers for the Office of
17 Planning.

18 The Office of Planning continues to be unable
19 to support this as a variance case. In the original
20 hearing, we even noted that this was probably more
21 appropriate as an appeals case, but the time has
22 passed for that. After reviewing the applicant's
23 additional information, the timeline, also talking
24 with the Zoning Administrator, and the Zoning
25 Administrator's staff, our conclusion is that we

1 cannot support it as a variance because there was a
2 process of back and forth between the Zoning
3 Administrator's staff and the applicant. They have
4 expressed to us that they were -- which the applicant
5 has even noted, there were different variations of the
6 plans that they reviewed. So, there was different,
7 perhaps different guidance along the way. But there
8 was no final approval.

9 And for us, our feeling is that because the
10 applicant did not get a final approval from the Zoning
11 Administrator, this makes it difficult to be seen as
12 an exceptionally unique situation. That is a
13 difficult circumstance that resulted in a practical
14 difficulty, which is the first two prongs of the
15 variance test.

16 I kind of pretty much looks like the applicant
17 should have waited to the final review and approval,
18 and then made the step. I understand that there might
19 have been situations on the applicant's side that
20 motivated him to purchase, to make the final purchase,
21 but it seems on the Zoning Administrator's side and
22 his staff, they were not fully finished with reviewing
23 the project.

24 So, it's a situation where at the end they did
25 provide him with conditions for meeting the matter or

1 right level of approval, but I believe at that point
2 the applicant had already made the investment and had
3 decided that was better to go with the variance route.
4 But as a variance case, it's a difficult test. And
5 at this point we're still not able to get to the point
6 of supporting it.

7 CHAIRPERSON HILL: Okay, thank you. Does the
8 Board have any questions for the Office of Planning?

9 MR. HART: Just one quick question. I mean, I
10 asked the applicant about it, and I just want to be
11 heard from you all. Is it that you were thinking that
12 the column, that the supports, the vertical supports,
13 columns or whatever, would be retractable as well, or
14 would be attached to the awning itself, and so
15 therefore wouldn't be a permanent feature. And is
16 that what they were looking at, because it says extend
17 from the awning down to the ground, so to me that
18 means that it's not there all the time.

19 So, if you could just clarify that?

20 MS. MYERS: Correct. My understanding from
21 the Zoning Administrator's staff is that those poles
22 would stabilize it. But it would be retracted when it
23 is not -- when the weather is better. I think their
24 goal was to not make this like a permanent addition.

25 I understand that there's railing and --

1 that's currently on the property now on the second
2 story. That was approved. But they did not want
3 there to be a full structure, the poles to, I guess,
4 act as if they were a wall even.

5 But, you know, the applicant is right. I
6 think the Zoning Administrator staff is obviously
7 clearer on what they were thinking at the time.
8 Office of Planning is working on of, you know,
9 understanding it after the fact. And so, there's
10 probably some things in the e-mails that they could
11 explain a little bit better than I can. But my
12 understanding is that they did want the poles to be
13 complete retracted when the weather was better, and
14 then you know, when the weather was not so great, it
15 to be a way of stabilizing the awning when it was out.
16 But only for 182 days, tops.

17 MS. WHITE: I had one question for the
18 applicant. I mean, you talk a little bit about the
19 whole detrimental reliance, and so I'm looking very
20 closely at the record to see what kind of evidence you
21 have of that, and I found that portion of it to be,
22 you know, a little weak. But is there anything
23 formalized in writing that led you to believe that
24 this was something that was already approved?

25 MR. WINER: Yes. On August 30th, the e-mail

1 from the deputy Zoning Administrator said, we could
2 approve the proposed retractable awning. And that's
3 simply referring to if we agree to 180 days, and if we
4 agree to attach it to the trellis. We could approve
5 the proposed retractable awning. It's as clear as can
6 be. At that point, I agreed. That's all in writing.
7 It's all in e-mails. My architect sent a letter, the
8 plans were changed, resubmitted, and five days later
9 there was no coming back from the awning.

10 So, then on the 8th, once again in writing,
11 they asked us to change the design, which we agreed
12 to, and indicated that they would be able to issue a
13 permit. And then on the -- which we agreed to. And
14 then on the 13th, they asked us to change the design
15 one more time. This is as clear a case of detrimental
16 reliance as I could possibly lay out. And the e-mail
17 alone says, "We could approve the proposed retractable
18 awning."

19 And so, there I relied on it.

20 MS. WHITE: Uh-huh. I guess the only thing is
21 that they're saying they could, but they didn't
22 actually make a formal decision. That's the difficult
23 part of it. But yeah, I'm looking at the record and,
24 yeah, I see what you're saying.

25 MR. WINER: But if they had said, we might, or

1 we're thinking about it, but could for me says about
2 as emphatically as you're going to get.

3 MS. WHITE: Yeah, they said they could, yeah.

4 CHAIRPERSON HILL: Okay. Mr. May. Oh,
5 please, you got any questions for the Office of
6 Planning? We're still with the Office of Planning,
7 also. And then I'll turn back to the applicant.

8 MR. MAY: So, the thing that strikes me about
9 this is that the prohibition against any sort of
10 vertical post on the second floor, as if that's how a
11 post itself triggers a need for relief, is confusing
12 to me because there are numerous circumstances where
13 we've seen trellises, things like that, that have
14 vertical posts and then they have horizontal boards.
15 And so long as the horizontal boards are more than two
16 feet apart or something like that, or at least two
17 feet apart, it's not considered a roof, not considered
18 in a FAR calculation.

19 But this is contrary to that, so I'm really
20 puzzled. I mean, can you -- am I misunderstanding
21 that, or maybe the Zoning Regulations changed and I've
22 forgotten how they changed.

23 MS. MYERS: It is my understanding it's a
24 combination of issues. I think the Zoning
25 Administrator's staff was also uncomfortable with the

1 material of the structure as well. They really need
2 this to be temporary and to be constructed to be a
3 temporary structure.

4 MR. MAY: Right.

5 MS. MYERS: And so, they mention posts, but I
6 think as long as it's stabilized I think post is the
7 way that it was proposed in this project. But their
8 thing was something that would stabilize the structure
9 when it is out, material that would be seen as
10 temporary, and then an agreement from the applicant.
11 And you know, I think all parties agree that the
12 applicant has always been okay with this, that it only
13 be out 182 days is what they told us was the maximum.
14 I understand that in some of the e-mail exchanges it
15 said 180 days. But that's the idea. So, just roughly
16 half the year.

17 But the post itself, I mean, I would say it
18 was more just whatever the applicant proposes, what
19 they consider to be temporary is really what their
20 efforts are, what their goal is. But again, the
21 Zoning Administrator staff, you know, they're not here
22 today so I can only kind of represent what they've
23 explained to me. But the material, and I believe the
24 side panels, they were not comfortable with in the
25 last time they had seen it.

1 MR. MAY: Right. Well, the side panels, Mr.
2 Winer is willing to do without. And I understand -- I
3 mean, that's why, I did have a question about the
4 material. Mr. Winer, you're saying that it's fabric.

5 But it slides out like, you know, like an accordion
6 desk kind of thing, right? Is it panelized?

7 MR. WINER: No, it's not panelized.

8 MR. MAY: It's just --

9 MR. WINER: It is vinyl, vinyl fabric.

10 MR. MAY: And fabric -- and there's no --
11 between the rail on the one side and the rail on the
12 other, I mean, basically there's a rail with a track
13 in it, and then there is fabric, panelized -- not
14 panelized. Just fabric that rides between that.

15 MR. WINER: Correct.

16 MR. MAY: And there's no other support that
17 spans between those tracks. It's just fabric?

18 MR. WINER: They're -- I don't have a design
19 in front of me and it's a long time ago. There may be
20 a center support that runs it to support the fabric.

21 MR. MAY: Like a metal member that spans that
22 distance?

23 MR. WINER: Yeah. I literally can't remember.

24 MR. MAY: Sure.

25 MR. WINER: And I don't think I have the

1 design in front of me.

2 MR. MAY: Yeah, I mean, we don't have detail.

3 I mean, the thing about this is that --

4 MR. WINER: I'm sorry, there is no support in
5 the middle. It's just fabric all the way across. I
6 do have a sketch here.

7 MR. MAY: Is that in the record?

8 MR. WINER: I can't say for sure, but I think
9 it is.

10 MR. HART: Commissioner May.

11 MR. MAY: Yes.

12 MR. HART: Exhibit 7. Architectural plans.

13 MR. MAY: Yeah.

14 MR. HART: Looks like the 6, page 6 of it.

15 MR. MAY: Page 6.

16 MR. HART: Six of 8.

17 MR. MAY: Yeah.

18 MR. HART: It actually has that, that 3D
19 rendering.

20 MR. MAY: Yeah.

21 MR. HART: That actually, it looks like what
22 it is, is that there are the cross -- there are cross-
23 members.

24 MR. MAY: Right.

25 MR. HART: And then there are, you know, some

1 of them are --

2 MR. MAY: There's fabric in between the cross-
3 members.

4 MR. HART: Yes. Yeah. And some of them, as
5 you can see, it looks like some of them are expanded
6 and --

7 MR. MAY: They sort of stack up at the end.

8 MR. HART: Yes. Yes.

9 MR. WINER: Can I -- may I just --

10 MR. MAY: Yeah.

11 MR. WINER: May I?

12 MR. MAY: Yeah, give it to Mr. Moy. I mean,
13 that may be something we already have in the record.

14 MR. WINER: [Speaking off microphone.]

15 MR. MAY: Sure. So, we'll need to have copies
16 of this into the record because there are notes on it
17 and stuff. So, fabric trellis.

18 Yeah, I mean, I'm not sure what is so magic
19 about having even those, the horizontal pieces between
20 the two tracks that pushes it into the realm of a
21 structure. I think that's what I'm trying to
22 understand. So, share that, but again I think that
23 has to go into the record.

24 MR. WINER: May I add something?

25 MR. MAY: Certainly.

1 CHAIRPERSON HILL: Go ahead.

2 MR. WINER: Sorry. Just to comment on
3 Crystal's mention of the fabric. This is not a
4 conversation I've ever had with them. They understood
5 what it was from the beginning and there was never,
6 never in any e-mail or any conversation I've had with
7 them, a conversation about the fabric itself. I'm
8 just telling you, this is -- they're going to be hard
9 pressed for anyone to show an e-mail, or any other
10 communication that says that. It never ever came up
11 in any conversation I've had with them.

12 CHAIRPERSON HILL: Mr. Winer. Is that how you
13 say it?

14 MR. WINER: Yes.

15 CHAIRPERSON HILL: Winer. So, do you have any
16 questions for the Office of Planning? I'm going to
17 let Mr. May, Commissioner May think about if he has
18 anything else to add. Do you have any questions for
19 the Office of Planning?

20 MR. WINER: No, sir.

21 CHAIRPERSON HILL: Okay. All right. Okay.
22 Do you have any more questions, Commissioner? No?
23 All right. Does anyone have any questions for the
24 applicant?

25 [No audible response.]

1 CHAIRPERSON HILL: Okay. Do you have anything
2 you'd like to add?

3 MR. WINER: No, sir.

4 CHAIRPERSON HILL: Okay. All right. All
5 right. So, I'm going to turn, is there anyone here
6 from the ANC? I know we did this already once. We'll
7 do it again. Is there anyone here wishing to speak in
8 support of the application? Anyone here wishing to
9 speak in opposition to the application?

10 [No audible response.]

11 CHAIRPERSON HILL: All right. Okay. So, the
12 Board doesn't have anything else to ask of the
13 applicant?

14 [No audible response.]

15 CHAIRPERSON HILL: Okay. All right. Do you
16 have anything you'd like to add at the end, we're all
17 here done?

18 MR. WINER: I think I've expressed myself and
19 I appreciate it.

20 CHAIRPERSON HILL: Okay. All right. Then,
21 I'm going to go ahead and close the hearing. Is the
22 Board ready to deliberate?

23 [No audible response.]

24 CHAIRPERSON HILL: Okay. I mean, I completely
25 empathize with the owner and I'm in your ward. You

1 know, and so like, you know, I also understand where
2 you are. I mean, for me the problem that I'm really
3 just having, I can't get to is the variance test. I
4 mean, it is such a high burden for us to get to and
5 the reliance argument that was brought up wasn't
6 strong enough to get me to go over and above beyond
7 what the Office of Planning and the Zoning
8 Administrator has determined. I would be welcome to
9 hear discussions from the Board and have more of a
10 robust discussion on it, but that's where I am right
11 now.

12 MR. MAY: Mr. Chairman, I'm happy to add to
13 the discussion.

14 CHAIRPERSON HILL: Please.

15 MR. MAY: So, the thing about the argument, I
16 mean, it really boils down to the fact that there was
17 communications with DCRA that indicated that what was
18 being proposed here was approvable. Yet, there was
19 not anything that said that it was approved. And I
20 believe that in the past, even when we've had cases
21 where there was such conversation between an applicant
22 and the Zoning Administrator, you know, even when the
23 Zoning Administrator actually issued an approval, that
24 was not sufficient in some cases to create that
25 exceptional circumstances.

1 So, the fact that there were e-mails back and
2 forth but not an approval I think really doesn't meet
3 the test. And that's why I'm probing on why the
4 Zoning Administrator has made this determination. And
5 frankly, I would -- I mean, you know, I'm not ready to
6 vote for the relief here because I don't think it's
7 appropriate to do so, given you know, all of the
8 evidence that we've heard and what we have in the
9 record. But, I also think that there is a way that
10 this is approvable. I mean, I feel like it's you
11 know, the applicant should make another -- have
12 further discussions with the Zoning Administrator
13 about it.

14 I mean, I'm sorry, Mr. Winer, I thought I was
15 done with you but let me ask. Did you -- I mean, I
16 know you had further conversations with the Office of
17 Planning. Did you have further conversation with the
18 Zoning Administrator?

19 MR. WINER: I've gone back to them on three
20 separate occasions.

21 MR. MAY: Since we met, though. Since we
22 heard your case the last time?

23 MR. WINER: No.

24 MR. MAY: Okay. I mean, I feel like there
25 should be just one more conversation with the Zoning

1 Administrator so that it's very clear that you're not
2 proposing the side panels, and that what you have is
3 posts, and horizontal track, and then an awning that
4 slides back and forth. To me that in itself, if
5 that's all that it is, it is less of an impact than if
6 you had gone up there with a bunch of pressure treated
7 lumber and built a big trellis, which would be
8 permissible from my understanding.

9 So, I think it's worth one more shot with the
10 Zoning Administrator. I mean, the Office of Planning
11 can you know -- helps advise us, but they can't
12 necessarily you know, convince the Zoning
13 Administrator otherwise. I mean, maybe they could be
14 part of the conversation, I don't know. But I think
15 it's worth another conversation there before we decide
16 because frankly, I mean, my sense of things is that
17 we're not going to be able to decide in your favor.

18 So, I mean, those are my thoughts about it.

19 CHAIRPERSON HILL: Okay. Before we move on,
20 and I guess hear from everyone else, I mean, so Mr.
21 Winer, are you interested in continuing this in order
22 to further have a conversation with the Zoning
23 Administrator and see if that could possibly, after
24 this hearing, help your discussions with him, and
25 further clarity that you've just received from

1 Commissioner May? Or do you just want us to move
2 forward?

3 MR. WINER: Well, if we move forward and you
4 decide against me do I have any options still
5 available to me?

6 CHAIRPERSON HILL: Then I don't legally know
7 what happens. I think you have to appeal our
8 decision.

9 MR. WINER: That sounds like fun.

10 CHAIRPERSON HILL: Yeah, it -- I mean, I can
11 tell you what I would do is I would take up
12 Commissioner May's suggestion here and see if given
13 the clarity that he has provided in terms of an
14 argument that you can have, or a discussion I should
15 say, that you can have with the Zoning Administrator,
16 you know again, the regulations are very difficult to
17 get this thing approved in this manner. It's not like
18 you know, we wouldn't want this for you, or the
19 community, or you know, what have you. I mean, it's
20 not -- the Board can't just approve things because we
21 like them.

22 And so that's where, you know, the argument
23 that -- well, the argument that you're kind of making
24 I guess is the detrimental reliance argument. And so,
25 you know, what Commissioner May is suggesting, that

1 just go ahead and see, working with the Zoning
2 Administrator and further clarifying what it is that
3 you have, that might be enough. And so, I would
4 suggest you do that. But if you're -- I don't see why
5 you wouldn't do that at this point because I see you
6 think -- I would think you know where we're headed.

7 So, if you want to do that I'll give you an
8 opportunity to do that. Otherwise we can go ahead and
9 continue to deliberate and have a vote.

10 MR. WINER: Well, I think Mr. LeGrant is very
11 clear on what it is that we need, want, and desire. I
12 think there's been some disconnect here. But, you
13 know, we have gone back on three separate occasions
14 since the 13th of September, and you know, the fourth
15 design requirement which is to remove the legs, is
16 eminently clear to Kathleen Beaton and to Matt
17 LeGrant, and this is where they've -- you know,
18 they're intractable as I've stated.

19 I mean, certainly if it's -- if you all think
20 there is some hope in me going this route, I'll take
21 it as opposed to simply being shut down. But, I --

22 MR. MAY: Yeah. I mean, I think the only
23 advantage to you for us making a decision would be to
24 expedite an order that you could appeal. But, you
25 know, otherwise, I mean, if you're not anxious to like

1 take this whole thing to Court then -- or to you know,
2 appeal the decision and go that process, you know,
3 there's really nothing to be lost by just us staying
4 any sort of decision making for the moment and making
5 one more try.

6 And again, you know, you can communicate to
7 Matt LeGrant and Ms. Beaton that we're kind of
8 puzzling over why with the changes that you've agreed
9 to, they think it cannot be approved. So, and maybe,
10 I mean, maybe they need to explain that further to us
11 as well. And, you know, if in fact they you know, are
12 drawing a hard and fast line, then I would ask the --
13 before we meet again, ask the Office of Planning to
14 get some direct feedback from the Zoning Administrator
15 on exactly why they believe that even with the changes
16 that you've agreed to, it still crosses the line into
17 needing zoning relief.

18 CHAIRPERSON HILL: Okay. So, then if you're
19 open to this, we'll go ahead and continue this for --
20 I guess we could just do a meeting. And then get
21 feedback from -- that Commissioner May has asked from
22 the Office of Planning and the Zoning Administrator in
23 terms of just further clarity, I guess.

24 And then, Mr. Winer, you have a chance to go
25 ahead and talk with the Zoning Administrator and see

1 if this might not even be necessary. Or we can vote
2 now. What would you like to do?

3 MR. WINER: I'm going to take door number 1.

4 CHAIRPERSON HILL: Okay. All right. So,
5 we're going to go ahead, and I know that this is not
6 what you do, and this is not where you show up every
7 Wednesday. I show up here a lot of Wednesdays, and
8 Mr. May is being very generous. And so, I just want
9 you to try to go ahead and move forward and see if you
10 can get what you might be able to do with the Zoning
11 Administrator.

12 So, that being the case, Mr. Moy, can we set a
13 date for a meeting?

14 MR. MOY: Yes, Mr. Chairman. I would propose
15 May 3rd for a decision meeting. That would be the
16 earliest. We don't have a hearing on the 26th, as you
17 know, of April.

18 CHAIRPERSON HILL: Okay. So, Mr. Winer, you
19 get to try to get to the Zoning Administrator as
20 quickly as possible, and then he will file some
21 testimony, I suppose, as well as the Office of
22 Planning, to his response.

23 So, I'm going to leave the --

24 MR. HART: One other --

25 CHAIRPERSON HILL: Sorry.

1 MR. HART: Yeah, Mr. Chairman.

2 CHAIRPERSON HILL: Sure.

3 MR. HART: Mr. Winer, the drawings that we
4 have, which are, I'm looking at the date, excuse me.
5 I don't know why it's taking so long. Yeah, it looks
6 like they were from May of last year. I'm trying to
7 find the most recent drawings that you've submitted to
8 us that show the elements, because the drawings that
9 we have actually show the roll down side panels. So,
10 I think you're not doing that. It would be helpful to
11 make sure that we -- so that we're all on the kind of
12 same page.

13 MR. WINER: I understand.

14 MR. HART: Just something so that we can kind
15 of say, this is what we are actually deciding on,
16 because it seems like we've been through -- there's
17 been a lot of back and forth and you know, you're
18 saying that there's a little bit of confusion. I
19 think the confusion partly is, as we look at drawings
20 we're kind of like, well, I think that that's what
21 that's telling me, but when were these drawings with
22 relationship to the discussions that we're having.

23 So, if we have those drawings, we have the
24 DCRA, the Zoning Administrator, give us their,
25 whatever they are going to give us about these,

1 whatever the updated drawings are, then we're kind of
2 on the same page with all of it. And so, there's no
3 kind of guessing about, well, are we talking about
4 this? Yeah, I'm okay with doing that. So, be
5 helpful. Thank you.

6 CHAIRPERSON HILL: Okay. Ms. White, do you
7 have anything you'd like to add?

8 MS. WHITE: Just reiterating that when we come
9 back on May 3rd, by then we'll have feedback and
10 writing from both the Zoning Administrator and OP that
11 will reflect their most recent interaction with Mr.
12 Winer. So, that will give us a full picture of --
13 full record before making a decision.

14 CHAIRPERSON HILL: Okay. Great. Mr. Moy, can
15 you tell me those dates again, like when we're going
16 to get information or what information you think we're
17 getting, when?

18 MR. MOY: Okay. I was just looking at the
19 timeline too in terms of like --

20 CHAIRPERSON HILL: Because that may be a
21 little tight.

22 MR. MOY: I had the same thoughts because I
23 know that this is for decision making. And you know
24 Peter will be back on the 31st, but I don't know if
25 the applicant is on a time sensitive timeline. But --

1 MR. WINER: We'll buy that one.

2 CHAIRPERSON HILL: I would do the 31st,
3 because Mr. May is going to be back here the 31st.

4 MR. MOY: Well, Mr. May is just telling me
5 now, he could do the 10th or the 17th.

6 CHAIRPERSON HILL: Okay. It would -- just a
7 meeting. But then again, it would be that Mr. Winer
8 would have an opportunity to go speak with the Zoning
9 Administrator.

10 MR. MOY: Right.

11 CHAIRPERSON HILL: The Zoning Administrator
12 would then have to submit some -- the Office of
13 Planning and the Zoning Administrator would have to --
14 hopefully, actually, this doesn't come back. But
15 like, you know, the Zoning Administrator would get
16 together with the Office of Planning, then submit
17 something to us. Mr. Winer would have to have an
18 opportunity to respond to that.

19 MR. MOY: Yeah, since I would suggest maybe
20 the 17th, to give him the time to meet.

21 CHAIRPERSON HILL: Okay.

22 MR. MOY: The 17th.

23 MR. WINER: The sooner the better.

24 CHAIRPERSON HILL: Okay.

25 MR. MOY: I understand that. I understand

1 that. And then maybe have the information submitted
2 by the 10th of May.

3 CHAIRPERSON HILL: Okay. Okay. Information
4 from whom on the 10th of May?

5 MR. MAY: I mean, could we aim for the -- I
6 mean, you want to aim for the 3rd?

7 MR. WINER: The 3rd or the 31st. I will call
8 Matt LeGrant's office when I walk out the door. I
9 will make this happen. I want to make this happen.

10 MR. MAY: Well, I mean, I can't be here on the
11 3rd, but I could do an absentee ballot if needed.

12 CHAIRPERSON HILL: No, I'd like you to be here
13 if you could.

14 MR. MAY: So then, why don't we go with the
15 10th and if there's a problem --

16 CHAIRPERSON HILL: Okay. All right. Let's do
17 the 10th.

18 MR. MAY: You know, we can postpone to the
19 31st or something.

20 MR. WINER: So, that's the 10th of May, right?

21 CHAIRPERSON HILL: Yes.

22 MR. MOY: The 10th of May and you make your
23 submission let's say a week prior, which then would be
24 May 3rd. Okay?

25 CHAIRPERSON HILL: Okay. May 3rd.

1 MR. MOY: For submissions.

2 CHAIRPERSON HILL: That would be from
3 everyone.

4 MR. MOY: Uh-huh.

5 CHAIRPERSON HILL: The Office of Planning,
6 Zoning. So, Mr. Winer, you have to shoot for
7 everybody getting everything in by that time.

8 MR. WINER: Understood.

9 CHAIRPERSON HILL: Okay? All right, great.
10 Okay. Thank you so much.

11 MR. WINER: Thank you.

12 CHAIRPERSON HILL: We're going to take a quick
13 five-minute break.

14 [Off the record from 10:38 a.m. to 10:45 a.m.]

15 CHAIRPERSON HILL: Mr. Moy, let's go ahead and
16 call our last case.

17 MR. MOY: Thank you, Mr. Chairman. That would
18 be Application No. 19454 of Kathleen Kern. This
19 application has been amended and is now advertised for
20 a special exception relief under Subtitle F, Section
21 5201 from the nonconforming structure requirements at
22 Subtitle C, Section 202.2; lot occupancy requirements,
23 Subtitle F, Section 304.1; to renovate and expand an
24 existing two-story one-family dwelling into a three-
25 story one-family dwelling in an RA-2 Zone, 2212 12th

1 Place Northwest, Square 271, Lot 127.

2 CHAIRPERSON HILL: Okay, great. Thank you.
3 Good morning. If you could please introduce yourself
4 from my right to left?

5 MR. LOOSLE: Richard Loosle, Kube
6 Architecture.

7 MS. KERN: Kathleen Kern, owner of 2212 12th
8 Place.

9 MR. DOUGHERTY: Matthew Dougherty, Kube
10 Architecture.

11 CHAIRPERSON HILL: How do you say your last
12 name, sir?

13 MR. DOUGHERTY: Dougherty. Looks like
14 Dougherty.

15 CHAIRPERSON HILL: Okay. So, Ms. Kern, I
16 guess if -- you're going to do the presentation to us
17 today?

18 MS. KERN: It will be myself as well as --

19 CHAIRPERSON HILL: However it goes. Okay.

20 MS. KERN: Yes.

21 CHAIRPERSON HILL: Great.

22 MS. KERN: Just to explain as much as you need
23 to know to proceed.

24 CHAIRPERSON HILL: Okay, great. So, whether
25 it's Mr. Loosle or yourself who answers the questions

1 or would like to try to present to us, again, the last
2 time that you were here, there was a lot of questions
3 that the Office of Planning still had and needed
4 further clarification on. And, you know, it still
5 seems to me that the Office of Planning is in
6 opposition, and so I just wanted to see if that were
7 the case as we get there. But I'm not sure now.

8 And so, if you can go ahead and just tell me
9 what happened since the last time you were here?

10 MS. KERN: Okay. Immediately leaving the last
11 meeting, I attempted to contact the neighbor at 2214
12 12th Place. It's Mr. Scott E. Bates. He is the
13 gentleman who is in opposition to my renovation. I
14 contacted him by text, by calling on two telephone
15 numbers, and I got no response.

16 Ms. Brown-Roberts had recommended that maybe
17 we postpone the BZA meeting and attempt to have
18 discussions between the parties. She had spoken to
19 Mr. Bates, and he seemed amenable to it. Again, I
20 contacted him, I told him on both calls and both
21 texts, that I was available the whole weekend 24/7,
22 whenever he needed to get in touch. And come Monday I
23 received nothing from him.

24 So, in consultation with the architects, I
25 decided to proceed with the meeting. And I spoke to

1 Ms. Brown Roberts on Monday, and she recommended that
2 what I do was put together a memorandum or a letter
3 outlining exactly what I've done since the beginning
4 in my attempts to contact this neighbor to discuss my
5 plans in the project and answer any questions or
6 concerns that he might have.

7 I can read the letter if you don't mind. It's
8 not part of the record just yet. I will make it a
9 part.

10 Okay. And basically, it's just attempts to
11 contact Mr. Scott E. Bates, owner of 2214 12th Place
12 Northwest, Washington, D.C. to discuss plans for
13 renovation of 2212 12th Place Northwest.

14 I began my initial attempts to contact Mr.
15 Bates in October 2016 through a neighbor on 12th
16 Place, who stated that she knew him well. As Mr.
17 Bates does not live at the property I asked if she
18 could provide me with his telephone number or provide
19 him with mine.

20 I received the number in late November, early
21 December, and began calling and texting on a bi-weekly
22 basis and increased this to once per week when the
23 permitting process was progressing to scheduled
24 meetings with the ANC, and notifications to board
25 members concerning my plans.

1 Once the BZA meeting was scheduled for March
2 22nd, 2017, I placed letters in the mailboxes of my
3 adjacent neighbors in early February, asking them to
4 agree to the renovation plans. I included a copy of
5 the package -- I included in the package, a copy of
6 the plans.

7 The owner at 2212, Mark Giddleman (phonetic),
8 called me and we talked about his ideas and concern.
9 I provided him with the contact details of the
10 architect and general contractor that I am using for
11 the project. Mr. Giddleman sent his letter to me and
12 I forwarded it to the BZA to be made part of the
13 record.

14 In addition, the tenants at 2212 were also
15 made aware of the project and I provided them with
16 details and answered questions. We conversed about
17 the project on a regular basis.

18 The owner at 2214, Mr. Bates, did not respond
19 to the package left in the mailbox at 2214. On
20 February 21st, 2017, I sent another complete package
21 to Mr. Bates at his Lamont Street address, which I
22 obtained through a Google search. I sent this package
23 certified, return receipt requested.

24 I have never received the return receipt, but
25 Mr. Bates called me on February 24th, 2017 at 6:30

1 a.m. to discuss the plans. I have -- I also have a
2 record from the UPS -- sorry, USPS, that the letter
3 was delivered to a person.

4 The discussion between Mr. Bates and me is
5 detailed in the letter that I sent to Mr. Bates in
6 March 2017, and was made part of the 19454 record.
7 This conversation on February 24th, 2017 did not give
8 me the impression that Mr. Bates was in opposition to
9 the project. He had questions, which I answered, and
10 I offered to provide him, as I did with Mr. Giddleman,
11 the contact details of the firms being used to
12 facilitate and perform the project. He stated that he
13 would send the letter back the following Tuesday.

14 I never received directly, a copy of this
15 letter, but it was part of the record.

16 On March 20th, 2017, I posted at the 12th
17 Place Northwest Google Group, the date of the BZA and
18 the HPRB meetings, inviting all to attend, as well as
19 inviting my ANC representatives, who they're also a
20 part of the Google Group.

21 I offered, and have also provided copies of
22 the plans as requested to these members, which
23 includes residents from 12th Street, 12th Place, 13th
24 Street, W Street, and Florida Ave. We have block
25 party and clean-ups every year. At these events I've

1 discussed my plans. Anyone who was interested in
2 listening. No one has objected except for, of course,
3 Mr. Bates.

4 A day prior to the BZA meeting my architect
5 was contacted by the Office of Planning alerting us of
6 the issues Mr. Bates had with the project, and that he
7 was in complete opposition due to the possible
8 sunlight and ventilation restrictions the project
9 might cause. Had I known about the concerns through
10 being notified of the concerns by Mr. Bates, I would
11 have addressed the issues much sooner than what had
12 occurred. By not letting me know that he was in
13 opposition of the project, I was not in search of such
14 opposition.

15 After the BZA meeting, which was rescheduled
16 to today, due to the opposition letter, I began
17 calling -- I'm sorry. I began the calling and texting
18 Mr. Bates campaign of the early part of my project
19 planning, in order to engage him in dialog concerning
20 his objectives -- objections.

21 I gave Mr. Bates a few days to respond and
22 then proceeded to send yet another certified letter to
23 his Lamont address on March 31st, 2017. And this is
24 Exhibit 50 of the record. And I also have a record of
25 receipt by the USPS, which is attached to the file.

1 I believe I have done above and beyond the
2 necessary to engage Mr. Bates in open and meaningful
3 communications with regard to the renovations of my
4 property and his concerns surrounding such
5 renovations. I have offered services of my architect
6 and my GC in good faith to answer those questions that
7 I cannot. Sunlight and ventilation studies have been
8 performed.

9 This week, in preparation for the BZA meeting,
10 I yet once again texted Mr. Bates concerning the newer
11 issues covered in a second letter he sent to the BZA,
12 but not me, concerning a wood burning chimney and a
13 number of skylights on his roof. The responses
14 received, and I did receive some responses from him,
15 are on my iPhone, and will be made a part of the
16 record once downloaded.

17 I can read those exchanges if you wanted to
18 hear them. I don't know if you're interested. That's
19 -- okay. They're very interesting. I think you'll
20 find them a little amusing as well.

21 I attempted to engage Mr. Bates again on April
22 11th, with no satisfaction or reply. Basically, I was
23 texting him about the physical nature of the roof
24 where the skylights were positioned, where the chimney
25 was located, so that some studies could be performed

1 as well to show that the restriction of light is not
2 as severe as he believes it will be.

3 Matt Dougherty and Richard Loosle from Kube
4 Architects have performed the sunlight and ventilation
5 studies with regard to the dog-leg fill and third-
6 floor addition, as well as having a solution for the
7 chimney adjacent to my property. They will outline
8 these solutions for you.

9 CHAIRPERSON HILL: Okay. If you can make sure
10 you get that into the record for us?

11 MS. KERN: Absolutely.

12 CHAIRPERSON HILL: And then, does the Board
13 have any questions of the applicant's testimony?

14 MR. MAY: Well, I mean, are we going to get
15 the architectural presentation too?

16 CHAIRPERSON HILL: I believe so, yes.

17 MR. MAY: Eventually? Yeah. Okay.

18 CHAIRPERSON HILL: Okay. So, you can go
19 ahead, Mr. Loosle. Oh, okay. Well, hold on. I guess
20 Ms. White had some questions for the testimony.

21 MS. WHITE: Just a quick question. I just
22 wanted to make sure that you had access to the letters
23 that were submitted in the record by Mr. Bates on
24 March 23rd, and March 31st.

25 MS. KERN: Right. I have seen those letters.

1 In fact, I have a copy of them right in my file here.

2 MS. WHITE: Okay. I just wanted to make sure.

3 MS. KERN: I received them a lot later than I
4 probably should have.

5 MS. WHITE: Thank you.

6 MR. MAY: Mr. Chair, I did have one question.

7 CHAIRPERSON HILL: Sure. Go ahead.

8 MR. MAY: Maybe I just got confused during
9 your testimony, but I heard you refer to tenants at
10 the property of the project.

11 MS. KERN: No, there are tenants in 2210.
12 Mark Giddleman's property.

13 MR. MAY: Right. Okay.

14 MS. KERN: He had asked --

15 MR. MAY: But you live at 2212.

16 MS. KERN: Yes, I do.

17 MR. MAY: Okay, because I thought I had heard
18 you say something about the tenants at 2212.

19 MS. KERN: No.

20 MR. MAY: Got confused.

21 MS. KERN: Tenants at 2210.

22 MR. MAY: 2210. Okay.

23 MS. KERN: Yeah.

24 MR. MAY: Thank you.

25 CHAIRPERSON HILL: All right. Mr. Loosle, you

1 want to go ahead and give your presentation?

2 MR. LOOSLE: Right. One of the concerns that
3 the neighbor raised was sunlight -- or the addition
4 would be blocking sunlight into his dog-leg window.
5 So, we went ahead and Matt did a sunlight study, which
6 he can show you, both winter and summer. So, Matt, if
7 you want to walk them through that?

8 MR. DOUGHERTY: So, we did two separate
9 studies. The first one is showing the impact on our
10 proposed addition, on the dog-leg. The windows that
11 are in the back of the dog-leg of Mr. Bates' property.

12 MR. LOOSLE: There's a pointer.

13 MR. DOUGHERTY: Oh, yeah. All right. So,
14 looking -- okay, so this is --

15 CHAIRPERSON HILL: If you'd just make sure
16 you'd speak into the microphone?

17 MR. DOUGHERTY: So, okay. So, the first --
18 this study is showing the impact on the dog-leg
19 windows, and we have the -- all of these images here
20 are showing summer sun on the left column is the
21 existing condition, and on the right column after the
22 proposed addition. So, what we see is with our
23 proposed addition -- hold on, let me just take a
24 closer look. During certain times of the day in the
25 summer you would have partial blocking of the dog-leg

1 windows of Mr. Bates' property here. But we believe
2 that that would only occur for a few hours and not
3 during the entire year, because due to the western
4 orientation of these windows, during the winter you
5 don't receive much sun from that side anyway, and I'll
6 show you on the next page.

7 You can see in the existing conditions, most
8 of the day, I mean, this is the first day of winter so
9 it's when the sun is the lowest. But neither of the
10 dog-leg windows are receiving much light during the
11 entire day. And so our -- the impact of our addition
12 does not affect it very much. Going back to the
13 summer you can see that here at 2:00 p.m., you get
14 partial coverage of Mr. Bates's windows, but already
15 by 3:00 p.m. on the first day of summer, the shadow is
16 already off of those windows. So, we're just trying -
17 - so, our conclusion is the addition doesn't really
18 impede the sun from reaching those windows very much.
19 The only additional blockage is for a few hours and
20 during part of the year.

21 Then the other sun study that we did was, and
22 this was just uploaded to the case record a little bit
23 -- a few days ago. This one is showing the impact on
24 Mr. Bates' skylight. So, he has two skylights.
25 They're represented as black, the black squares on the

1 top of his building here. There's one at the front of
2 the house that's like, I believe three feet by five
3 feet, about five feet from the front of the house,
4 centered on his roof. And then there's one about 20
5 feet from the front of the house along the north --
6 his north wall that's about two by four feet.

7 So, in this study I'm showing the start of
8 each season and how the sun is going to impact -- or
9 how our addition is going to impact sun from reaching
10 his skylights.

11 So, we see in the summer, there is no
12 additional -- there is no blockage of his sunlights,
13 or of his skylights, by our addition. In the fall,
14 first day of fall, I don't believe there is either.
15 And then on the winter is when you would have some
16 blockage, and only towards the end of the day when the
17 sun is beginning to set when it's at a low angle. And
18 then the spring, as with the fall, the shadow doesn't
19 quite reach either of his sunlights. So, our
20 conclusion here as well was that yes, there is a
21 slight blockage of his skylights, as there is with his
22 windows in the dog-leg. But it's very temporary and
23 it's only during certain times of the year. In this
24 case, only a few hours during the winter.

25 CHAIRPERSON HILL: Okay. Does anyone have any

1 questions concerning the sun study? Otherwise, I was
2 going to actually turn to the Office of Planning.

3 Sure, go ahead, Mr. May.

4 MR. MAY: So, the thing that seems to be
5 missing in the sun studies is if we look at the non-
6 skylight version of it, if we could? So, can you zoom
7 in on that at all? I'm concerned -- I'm thinking
8 about the -- yeah, there we go. So, the top slide
9 there. There we go, top image.

10 So, we're comparing at noon, basically,
11 versus, you know, noon, existing noon, under the new
12 circumstance. And because theoretically at noon or
13 thereabouts, the sun is directly to the south. So,
14 you're not going to start to see light hitting that
15 western wall within the dog-leg. But you know, 12:30,
16 1:00, you start to see it.

17 And, I can see how you know, by 2:00 it's
18 maybe obscuring half of the glass.

19 MR. DOUGHERTY: Correct.

20 MR. MAY: But I think that there's actually a
21 period in between -- I mean, that's, you know, it's
22 going from no sunlight on it because the sun is
23 directly south. Soon as the sun starts to move a
24 little bit it is going to start to block it. So, I
25 think that for a while there will be sort of full

1 blockage, and then by the time you get to probably
2 3:00, it's -- or certainly 4:00, the sun has moved
3 enough that you're never going to see it, right?

4 MR. DOUGHERTY: Yeah. Well, I tried to set it
5 up so I'm going from 12:00 to 2:00. I guess that's
6 the period when you would see blockage.

7 MR. MAY: Yeah.

8 MR. DOUGHERTY: And then, already by 3:00 --

9 MR. MAY: Right.

10 MR. DOUGHERTY: -- it's off his windows.

11 MR. MAY: It's off.

12 MR. DOUGHERTY: Yeah.

13 MR. MAY: So, it's between 12:00 and 3:00
14 roughly, there's going to be --

15 MR. DOUGHERTY: Right.

16 MR. MAY: -- some or mostly blockage.

17 So, the other thing about this is that, you
18 know, you have winter and you have summer. I mean,
19 winter obviously there's going to be a lot of shade.
20 But if we can go to the other solar study? And if we
21 zoom in on the spring in particular. We don't have a,
22 you know, existing versus proposed. But we can see
23 here that in the spring at noon, you can see the -- at
24 the very top image there.

25 MR. DOUGHERTY: Yeah.

1 MR. MAY: Oh, that's the 9:00 a.m. Sorry.

2 MR. DOUGHERTY: This one is 9:00 a.m., yeah.

3 MR. MAY: So, 9:00 a.m. 9:00 a.m., right,
4 everything is going to be in shadow.

5 MR. DOUGHERTY: Uh-huh.

6 MR. MAY: Even then at noon we start to see
7 that there is a bigger shadow that's cast by the
8 addition and it's going to be -- I mean, sun is sort
9 of the optimal condition for getting light onto those
10 windows. But then in the spring and fall, at the
11 solstice, it shows a fairly thorough blockage. What's
12 the timing on the last one?

13 MR. DOUGHERTY: 3:00 p.m.

14 MR. MAY: It's 3:00 p.m. So, at 3:00 p.m. in
15 spring, it's total darkness, but we don't see what
16 3:00 p.m. was in the spring, because you didn't
17 provide that. Did you actually look at that?

18 MR. DOUGHERTY: 3:00 p.m. in the --

19 MR. MAY: 3:00 p.m. in the --

20 MR. DOUGHERTY: -- existing spring?

21 MR. MAY: Yeah.

22 MR. DOUGHERTY: No, I mean, I wasn't sure what
23 exactly to include. I was trying to --

24 MR. MAY: Understand. Understand.

25 MR. DOUGHERTY: -- hit all --

1 MR. MAY: I mean, typically what we -- I mean,
2 you know, everything is always a little bit different.

3 But it's --

4 MR. DOUGHERTY: Right.

5 MR. MAY: You know, we would see winter,
6 summer, and then the, you know, the equinox.

7 MR. DOUGHERTY: Right.

8 MR. MAY: So, we would get all conditions that
9 way.

10 MR. DOUGHERTY: If I could? The buildings,
11 the two houses that have the same existing condition
12 to the right --

13 MR. MAY: Got it.

14 MR. DOUGHERTY: -- or to the south --

15 MR. MAY: Yeah. That's a good example.

16 MR. DOUGHERTY: -- with the mirror dog-leg.

17 MR. MAY: Right.

18 MR. DOUGHERTY: That kind of shows you.

19 MR. MAY: Yeah.

20 MR. DOUGHERTY: So, there would be -- it looks
21 like based on the shadow -- based on this shadow here.

22 MR. MAY: Yeah.

23 MR. DOUGHERTY: His windows would be partially
24 blocked in the existing conditions.

25 MR. MAY: Right.

1 MR. DOUGHERTY: Kathy's would be probably
2 fully blocked in this.

3 MR. MAY: Yeah.

4 MR. DOUGHERTY: And since, I mean, that's the
5 existing conditions.

6 MR. MAY: Right.

7 MR. DOUGHERTY: So, if you want to go off
8 that, it would be the same.

9 MR. MAY: Right. Okay. So, that's helpful.
10 I appreciate that because that does give me some sense
11 of it.

12 And then did you look at actually pushing the
13 entire addition closer to the front of the building?

14 MR. DOUGHERTY: No, because we -- the setback
15 from the front of the building was determined based on
16 Historic Preservation Board requirements from --

17 MR. MAY: Okay. So --

18 MR. DOUGHERTY: -- not being able to be
19 visible from the street.

20 MR. MAY: So, this is in a historic district.

21 MR. DOUGHERTY: Yes.

22 MR. MAY: Okay. The -- yeah, I saw the
23 reference to that but I wasn't totally clear what the
24 HPRB had to say on it. I mean, it actually went
25 before HPRB and they reviewed it and approved it. All

1 right.

2 And they set a sort of a minimum setback, or
3 did you study a range of them and figure out where it
4 would best go?

5 MR. DOUGHERTY: They approved it with some
6 conditions. Their conditions were, it had to be --
7 they approved the setback we had from the front of the
8 house.

9 MR. MAY: Right.

10 MR. DOUGHERTY: Which was based on a flag test
11 we did. And I think they want us to do another, an
12 additional flag test where they have an HPRB
13 representative there. But we determined, I believe,
14 15 feet from the front of the house you can't see it
15 anywhere from --

16 MR. MAY: Right.

17 MR. DOUGHERTY: -- 12th Place, or down at the
18 intersection of 12th Place and W Street.

19 MR. MAY: Great.

20 MR. DOUGHERTY: And then they also wanted us
21 to set it back five feet from the rear.

22 MR. MAY: Uh-huh.

23 MR. DOUGHERTY: Because they're trying to
24 maintain --

25 MR. MAY: Right. The look of the --

1 MR. DOUGHERTY: The look of the alley as well.

2 MR. MAY: -- rears. Yeah.

3 MR. DOUGHERTY: So, in our initial plans we
4 only had it set back three feet from the rear.

5 MR. MAY: Right.

6 MR. DOUGHERTY: And we haven't updated
7 architectural drawings to show five feet back. But in
8 these sun studies it is showing five feet back from
9 the rear of the house.

10 MR. MAY: Okay. So, then the last thing I
11 would say is, you know, I am familiar with narrow
12 houses. I lived in a 13-foot wide townhouse at one
13 point, and I know some of the challenges of trying to
14 lay out all the stuff that you need in a house. Can
15 you talk to the difficulty of trying to even get a
16 reasonable two-bedroom house out of buildings with
17 this footprint? Or maybe Mr. Loosle, you want to talk
18 about that. I'm sure you've had prior experience of
19 dealing with this and --

20 MR. LOOSLE: One of the reasons our clients
21 hired us is because we're very good at space planning.
22 And both for storage and for usable space.

23 So, whereas it is difficult, we have managed
24 to do that in multiple townhouses and rowhouse we have
25 actually located in the city.

1 From 10 feet narrow to 16 feet wide. So, and
2 I believe Kathy's is as wide as 12 feet wide, which is
3 -- compared to some we're doing now, eight feet wide
4 is luxurious.

5 MR. MAY: But even at 12 feet with that, and
6 then you have the dog-leg, which gives you an interior
7 space of six-eight, something like that.

8 MR. LOOSLE: One of our proposals is we're
9 filling in our dog-leg.

10 MR. MAY: I understand that. I mean, that's
11 what you're proposing here. What I'm trying to do is,
12 you know, one of the objections from the neighbor has
13 to do with filling in the dog-leg. And of course, in
14 the zoning regulation rewrite, we changed the
15 regulations to reduce the incentive to fill in dog-
16 legs because we value dog-legs. Right? Being able to
17 get that much more light, deeper in, into the house is
18 an important thing. But it's also a really difficult
19 planning exercise when you're starting with 12 feet to
20 begin with.

21 And then, you know, you put in the dog-leg and
22 you know, you can't get -- it doesn't look like you
23 could even get a code compliant bedroom width of seven
24 feet with that, if you kept that.

25 MR. LOOSLE: Right. Seven feet is our minimum

1 for a compliant --

2 MR. MAY: Right.

3 MR. LOOSLE: -- occupiable space. So, it does
4 create a rather odd space when you have to have egress
5 windows, a bed that is you know, comfortable, and then
6 closet space.

7 MR. MAY: Right.

8 MR. LOOSLE: So, it becomes a long narrow
9 space when you do that.

10 MR. MAY: Uh-huh. Right. Okay. And as far
11 as I recall, the -- I mean, did you try to enumerate
12 those arguments in your filings about the sort of the
13 planning need to fill in the dog-leg? I don't recall
14 that. I mean, maybe you know, we hear a lot of cases.

15 MS. KERN: Actually --

16 MR. MAY: So --

17 MS. KERN: Yeah. I have a statement on file.

18 MR. MAY: Okay.

19 MS. KERN: And I believe it's --

20 MR. MAY: That was in the record, then?

21 MS. KERN: Right. It's part of the record.

22 It's one of the initial documents --

23 MR. MAY: Okay.

24 MS. KERN: -- that I submitted.

25 MR. MAY: I'll go back and look for it. I did

1 read everything, but like I said, I read a lot of
2 cases. It's hard to remember all of them.

3 MS. KERN: No, I understand that. Right now
4 the living space back there is L-shaped, and it is
5 very odd space. And in addition, it also makes the
6 kitchen extremely small and tight location.

7 MR. MAY: Right. I understand that.

8 MS. KERN: So, recouping that, that space,
9 would just definitely make the design and the
10 renovation of the property more efficient.

11 MR. MAY: Right. Okay.

12 MS. KERN: The other thing is, and I'm not
13 really certain, because I've thought about this.
14 We're really just blocking sunlight. We're not
15 blocking light. Light would still be able to go
16 through that window of my neighbor. It would just
17 basically cut down on the intense sunlight during the
18 day, which could actually benefit the neighbor. Like,
19 well, air conditioning wise.

20 I'm not sure exactly how his house is set up.
21 If it's set up like mine, if that's a bedroom area.
22 But you have to remember that there's another window
23 also in that extension.

24 MR. MAY: Uh-huh.

25 MS. KERN: Another full window that brings in

1 light.

2 MR. MAY: Right. Yeah, thanks. You know, one
3 of the things we do look at when we're considering
4 light and air impacts, is the sun study because there
5 is value in actually having direct sunlight. That's
6 not to say that there isn't value in having indirect
7 sunlight. You know, there certainly are for certain
8 uses. But generally speaking, the thing that's most
9 measurable is how much direct sunlight, you know, hits
10 the window.

11 So, that's why we want to look at it. And I
12 mean, you know, my questions have been answered about
13 that. I think that's about it for my questions.
14 Thank you.

15 CHAIRPERSON HILL: Okay. Does anyone else
16 have some questions for the applicant before I turn to
17 the Office of Planning?

18 MR. HART: Just one question. Did you -- you
19 said you went to HPRB for -- and they approved this.
20 Did they have any conversation about the dog -- the
21 loss of the dog-leg?

22 MS. KERN: I mean, there was discussion of it.
23 I think they talked about if it's been done on the
24 block, and it has been done on the block before.

25 CHAIRPERSON HILL: Where has it been done on

1 the block before? That's the block right there,
2 right?

3 MS. KERN: Right. The first house.

4 MR. DOUGHERTY: I think it's actually shown
5 incorrectly here but --

6 MS. KERN: Yeah.

7 MR. DOUGHERTY: -- this house right here --

8 MS. KERN: That does not -- that does not --
9 that has it filled in.

10 MR. DOUGHERTY: (Simultaneous speech) not
11 showing is actually not there.

12 CHAIRPERSON HILL: That dog-leg has been
13 filled in?

14 MR. DOUGHERTY: Yeah.

15 MS. KERN: Yes. And I can get you the exact
16 number, but there are a number of them on my side, as
17 well as on the other side, that have been filled in.

18 CHAIRPERSON HILL: So, there's even more than
19 that one dog-leg that's been filled in.

20 MS. KERN: Oh, yes. Yes, absolutely.

21 CHAIRPERSON HILL: Okay.

22 MR. HART: Yeah, I was just trying to
23 understand that. We've had the -- in past cases we've
24 had historic preservation groups come in to, you know,
25 kind of have issues with filling in dog-legs. And I

1 was just wondering where HPRB was with that. Thank
2 you for the clarification.

3 MS. KERN: You're welcome.

4 MS. WHITE: Mr. Chairman.

5 CHAIRPERSON HILL: Sure. Please, go ahead.

6 MS. WHITE: Do they submit a written copy of
7 their decisions to us, or is that something we'd have
8 to get directly from the applicant?

9 CHAIRPERSON HILL: HPRB, you mean?

10 MS. WHITE: Uh-huh.

11 MR. MAY: The applicant will -- if it's
12 relevant to our decision making often the applicant
13 will submit the report from the HPRB.

14 MS. WHITE: Okay.

15 MR. MAY: I didn't see that in this case.

16 MS. WHITE: I don't think it's --

17 MS. KERN: I haven't received a report from
18 HPRB, but I can request it.

19 MR. MAY: Did you actually appear before the
20 Board?

21 MS. KERN: Yes, I did. Absolutely. And they
22 did approve it.

23 MR. MAY: And how long ago was that?

24 MS. KERN: That was the day after our meeting,
25 so it was the 23rd of March. Right here in this room.

1 MR. MAY: I'm aware they meet here, yes.

2 MS. WHITE: Might have some relevant
3 information in it.

4 MR. MAY: I would have thought they'd have a
5 report by now. Was there a staff recommendation that
6 preceded the hearing for that? Usually the staff
7 writes a report that the Board considers. Did you see
8 that?

9 MS. KERN: They told me that they had
10 forwarded something to you. I did not see it myself.

11 MR. MAY: No, they wouldn't -- they would
12 never forward it to us.

13 MS. KERN: They wouldn't forward it to you?

14 MR. MAY: No, they wouldn't forward it to the
15 Board of Zoning Adjustment. Now, they might, you
16 know, sometimes it might come in from what the Office
17 of Planning provided. You know, occasionally they'll
18 make reference to the report from the staff report or
19 because they're, you know, the historic preservation
20 office is part of the Office of Planning. So
21 sometimes there's some coordination and communication
22 there. We might get it that way, but we -- the HPRB
23 does not regularly forward us stuff.

24 MR. DOUGHERTY: I believe the staff report was
25 recommending that we set back the addition further

1 from the rear of the house, and they would accept it.

2 MR. MAY: From three to five?

3 MR. DOUGHERTY: From three to five feet.

4 MR. MAY: Yeah.

5 MR. DOUGHERTY: And they were also concerned
6 about, I think it was the -- if we were putting a
7 guardrail -- if there was a deck --

8 MR. MAY: Yeah.

9 MR. DOUGHERTY: -- on a roof deck, and we said
10 we don't -- I think we had shown a roof deck coming
11 out of the rear.

12 MR. MAY: Right.

13 MR. DOUGHERTY: And we said we would be okay
14 not doing that. So, that was one of the conditions
15 that they approved.

16 MR. MAY: Okay.

17 CHAIRPERSON HILL: And, Ms. White, if we get
18 to -- maybe the applicant can submit the report, the
19 staff report from HPRB if we get to that point. And
20 so, let's see, maybe, if that would be helpful for
21 you.

22 So, I'm going to go ahead and turn to the
23 Office of Planning.

24 MS. BROWN-ROBERTS: Good morning, Mr. Chairman
25 and Members of the BZA. Maxine Brown-Roberts, for the

1 record.

2 And I'll just talk a little bit first about my
3 conversation with Mr. Bates. I've spoken to him on
4 several occasions and he has expressed to me his
5 concerns about the light and air in his chimney. And
6 I also -- I impressed on him that it was very
7 important that he get with the applicant so they could
8 have a conversation. And you know, at least try to
9 remedy his concerns or address his concerns in any
10 way.

11 I also spoke to him yesterday and impressed on
12 him that, you know, it's important that he be here
13 today. He had said he would be so I don't know what
14 happened.

15 But, in any case, I agree with the applicant
16 that you know, we have been trying to have a
17 conversation with him and the applicant together, and
18 that just hasn't happened.

19 And then, okay, going back to the report, the
20 applicant is asking for a special exception to
21 increase the lot occupancy to 69.8 percent, which is
22 mainly a result of filling in the dog-leg.

23 In our report that we submitted on March 10th,
24 we had advised and which you also took up at the
25 hearing, that the applicant address the light and air

1 impacts on the adjacent property. And, they provided
2 the shadow studies.

3 From reviewing the shadow studies, yes, there
4 are sometimes of the days when there will be some
5 light and air issues with the adjacent property
6 owners. But I don't think that it has reached where
7 it's going to be a substantial impact.

8 And based on that I think we would therefore
9 be supportive of the requested special exception for
10 lot occupancy and recommends approval of the
11 application. Thank you, Mr. Chairman.

12 CHAIRPERSON HILL: Thank you, Ms. Brown-
13 Roberts.

14 Does the Board have any questions for the
15 Office of Planning?

16 MR. HART: Just one question, Ms. Brown-
17 Roberts. Thank you for your information and
18 clarification. And, you're saying that the shadow
19 study does not show that there is significant impacts.
20 And this is really because there isn't -- there
21 aren't impacts on all of the -- on all the seasons.
22 There are impacts during certain seasons. Is that
23 correct? Is that how you're getting to that?

24 MS. BROWN-ROBERTS: Yes. I think that there -
25 - there are some -- more shadows during some seasons.

1 But it's a situation where I don't think that it is
2 much more than he's getting right now. So, yes, there
3 is some impacts, but I don't think it's really
4 significant. I think if we were looking at something
5 that was occurring throughout the year, I'd have more
6 concerns about that. But based on what we have in
7 front of me, that's my evaluation.

8 MR. HART: Thank you.

9 CHAIRPERSON HILL: There was a question, Ms.
10 Brown-Roberts, about the in-fill. I mean, I didn't
11 realize that there were other houses that had in-
12 filled that dog-leg. And so, the Office of Planning
13 again, I thought that was something that you had
14 brought up at some point, or the Office of Planning
15 was concerned about that now being something that the
16 rest of the properties will be doing, I suppose. Is
17 that --

18 MS. BROWN-ROBERTS: No.

19 CHAIRPERSON HILL: No?

20 MS. BROWN-ROBERTS: No.

21 CHAIRPERSON HILL: Okay.

22 MS. BROWN-ROBERTS: No, we -- no, our concern
23 at first was that, as Mr. May talked about, that you
24 know, the Zoning Commission, when we had looked at
25 this, had said you know, we're trying to discourage

1 this type of filling in.

2 But as you know, you know, each project is
3 evaluated on its own merits and I think with the
4 shadow studies coming in, we think that the impact of
5 that is not really substantial or significant.

6 CHAIRPERSON HILL: Okay. Thank you. Does the
7 Board have any questions for the Office of Planning?
8 Commissioner May?

9 MR. MAY: I do. So, I appreciate, Ms. Brown-
10 Roberts, that you have looked at the new information
11 and have provided a further recommendation to us. I
12 did see a note in somewhere that you were going to do
13 an additional report. Did you actually prepare a new
14 written report, or is it just the verbal
15 recommendation you're giving us now?

16 MS. BROWN-ROBERTS: It's just the verbal
17 recommendation.

18 MR. MAY: Okay.

19 MS. BROWN-ROBERTS: I think what I was hoping
20 was that the neighbor --

21 MR. MAY: Right.

22 MS. BROWN-ROBERTS: -- would have, you know,
23 sort of come in and given us some more information as
24 to, you know --

25 MR. MAY: Right.

1 MS. BROWN-ROBERTS: -- more what his concerns
2 are, or let's try to work it out, or something like
3 that. And then I would have provide -- but I waited
4 and nothing was provided.

5 MR. MAY: Sure. So, the thing that still
6 leaves me with a little bit of a question is that your
7 report of March 10th you recommended denial of the
8 special exception relief, and noted that the applicant
9 should provide additional information on the impact of
10 the proposed addition on light and air at the property
11 of 2214 12th. I mean, normally I would expect in that
12 sort of circumstance, where you are not prepared to
13 recommend approval, that you would do a, you know, one
14 of those, we cannot make a recommendation at this time
15 because we're seeking further information.

16 So, to go from denial to recommendation to
17 approve is a bigger swing than normal. I'm hoping you
18 can perhaps shed a little bit of light on that.

19 MS. BROWN-ROBERTS: Yes. We have been, oh how
20 do I say? We have been told --

21 MR. MAY: You've been criticized by --

22 MS. BROWN-ROBERTS: -- or criticized for that
23 sort of --

24 MR. MAY: Yeah.

25 MS. BROWN-ROBERTS: -- wishy-washy sort of

1 things.

2 MR. MAY: Okay.

3 MS. BROWN-ROBERTS: So, that's why --

4 MR. MAY: I thought there might be that to it.

5 MS. BROWN-ROBERTS: -- there's nothing to it.

6 Yes.

7 MR. MAY: So, yeah. I think maybe the
8 pendulum has swung too far the other way.

9 MS. BROWN-ROBERTS: Yes.

10 MR. MAY: And I think when you recommend
11 denial maybe you need to recommend denial and then
12 say, however, you know, the applicant -- you know, if
13 the applicant submits further information the Office
14 of Planning will reconsider the recommendation.
15 Something like that. So, it leaves people like me
16 less confused.

17 MS. BROWN-ROBERTS: Okay. And I think what I
18 can do, you know, if the Board wants is to just submit
19 a really short thing just to say that, you know, we
20 are recommending approval.

21 MR. MAY: You know, I think having it from you
22 verbally is probably sufficient for my purposes.

23 MS. BROWN-ROBERTS: Yes.

24 MR. MAY: I don't know if the chairman feels
25 differently.

1 CHAIRPERSON HILL: I don't particularly feel
2 differently, but now that Ms. Brown-Roberts has
3 offered, if you would just submit something small to
4 the record. That would be fine.

5 MS. BROWN-ROBERTS: Okay.

6 CHAIRPERSON HILL: Thank you. Okay. Does
7 anyone have any further questions for the Office of
8 Planning?

9 [No audible response.]

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

12 MS. KERN: One more statement that I didn't
13 include in my testimony.

14 CHAIRPERSON HILL: Okay. Is it a question to
15 the Office of Planning?

16 MS. KERN: It's not a question, it's just a
17 statement. You'll get me at the end?

18 CHAIRPERSON HILL: Okay. Then I'll come back
19 at the end. Right. Okay.

20 So, I don't see anybody, but is there anyone
21 here from the ANC? Is there anyone here wishing to
22 speak in support of the application? Is there anyone
23 here wishing to speak in opposition to the
24 application?

25 [No audible response.]

1 CHAIRPERSON HILL: All right. I'll go ahead
2 and turn to you, Ms. Kern. You had something you'd
3 like to say?

4 MS. KERN: Yes. It probably goes without
5 saying but I am going to make it for the record. At
6 this point the delays are now starting to become a
7 hardship. I would really like to get started with
8 this project and the next step would be the building
9 permitting and so you do understand that --

10 CHAIRPERSON HILL: Oh, no. I'm just motioning
11 to you like, the longer this goes on, the more
12 somebody might just pop in here and, you know. I'd
13 move this along if I were you.

14 MS. KERN: Okay. Got it. Thank you.

15 CHAIRPERSON HILL: Right. Okay. Great. All
16 right. I'm going to go ahead and close the hearing.

17 Is the Board ready to deliberate? Would
18 someone like to start the deliberation?

19 MR. MAY: Sure, I'll talk about it. So, you
20 know, we've been all -- it's an interesting assortment
21 of cases because I get to be on both sides of lots of
22 issues here. You know, in this circumstance I don't
23 feel compelled to grant relief because of what HPRB
24 had to say. I mean, I do appreciate what they've
25 done. You know, the recommendations they've made.

1 I do think that even from a zoning perspective
2 a worse solution would be to push the addition all the
3 way to the front of the building which would, you
4 know, deal with the light and air issue. I don't
5 think that's a good solution.

6 I think that this is a -- you know, the
7 property as it is built, is so small and very, very
8 difficult to plan out properly. And, you know, I
9 value the dog-leg, but the dog-leg on a 12-foot wide
10 house is a really difficult thing to work into a
11 reasonable plan. So, you know, I'm comfortable with
12 the notion of filling in.

13 Certainly, it would be better if this was not
14 back to back double -- back to back dog-legs, as we
15 see in some of the other properties on that row. You
16 know, then it's a really easy decision to make because
17 then there's no effect on light and air on the
18 neighbors. And I think that you know, the way the --
19 you know, the building has been planned, I think makes
20 a lot of sense. I'm glad that the Office of Planning
21 has now, based on the information that's been
22 received, is prepared to recommend an approval. So, I
23 would be inclined to do the same. Again, not on the
24 strength of the HPO, or the HPRB's recommendation, but
25 just on the rest of the facts of the case. I think

1 it's -- this is a reasonable solution.

2 MS. WHITE: I'm inclined to support it as
3 well. I did have some concerns after reading your
4 neighbor's letters, so I would hope eventually you
5 guys will have an opportunity to have some dialog.
6 But I think with the Office of Planning's change in
7 the recommendation based upon the additional
8 information that was submitted on the record,
9 including the sun study, I'm definitely more
10 supportive of supporting your request. So, I'll
11 concur with Commissioner May's recommendations as
12 well.

13 MR. HART: I'm not going to belabor. So, I
14 would like to -- I am also in support for the reasons
15 that -- of this application for the reasons that the
16 other board members have given, and would like to make
17 a motion to approve Application 19454.

18 MS. WHITE: Second.

19 CHAIRPERSON HILL: Seconded. The motion has
20 been made and seconded.

21 [Vote taken.]

22 CHAIRPERSON HILL: The motion passes, Mr. Moy,
23 and I guess also if the Office of Planning would just
24 supplement the record.

25 MR. MOY: Oh, very good. So, staff would

1 record the vote as four, to zero, to one. This is on
2 the motion of Vice Chair Hart for the relief
3 requested. Seconded the motion, Ms. White. Also in
4 support, Mr. Peter May, Chairman Hill, and we have a
5 board seat vacant. The motion carries, sir.

6 CHAIRPERSON HILL: Thank you, Mr. Moy.
7 Summary order.

8 MR. MOY: Yes, sir.

9 CHAIRPERSON HILL: Okay. Thank you. All
10 right. Thank you all very much.

11 MS. KERN: Thank you.

12 CHAIRPERSON HILL: Mr. Moy, do we have
13 anything else before us today?

14 MR. MOY: Not from the staff, sir.

15 CHAIRPERSON HILL: Okay, great. Then we stand
16 adjourned.

17 [Whereupon, at 11:42 a.m., the public hearing
18 was adjourned.]

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