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

PUBLIC HEARING AND MEETING
OF THE BOARD OF ZONING ADJUSTMENT

9:49 a.m. to 6:51 p.m.
Wednesday, July 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 SHAPIRO, Zoning Commission

6 CLIFFORD MOY, BZA Secretary

7

8 Office of Attorney General

9 MARY NAGELHOUT, Esq.

10

11 Office of Planning

12 BRANDICE ELLIOTT

13 STEPHEN MORDFIN

14 MAXINE BROWN-ROBERTS

15 STEVE COCHRAN

16 ELISA VITALE

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

2 CHAIRPERSON HILL: We're located in the
3 Jerrily R. Kress Memorial Hearing Room at 441 4th
4 Street Northwest. This is the July 12th public
5 hearing of the Board of Zoning Adjustment for the
6 District of Columbia.

7 My name is Fred Hill, Chairperson. Joining me
8 today is Carlton Hart, Vice Chairperson, Lesyllee
9 White, Board Member, and representing the Zoning
10 Commission is Peter Shapiro.

11 Copies of today's hearing's agenda are
12 available to you and are located in the wall bin near
13 the door. Please be advised that this proceeding is
14 being recorded by a court reporter and is also webcast
15 live. Accordingly, we must ask you to refrain from
16 any disruptive noises or actions in the hearing room.
17 When presenting information to the Board, please turn
18 on and speak into the microphone, first stating your
19 name and home address.

20 When you're finished speaking, please turn off
21 the microphone so that your microphone is no longer
22 picking up sound or background noise.

23 All persons planning to testify, either in
24 favor or in opposition must have raised their hand and
25 been sworn in by the secretary. Also, each witness

1 must fill out two witness cards. These cards are
2 located on the table near the door and on the witness
3 table. Upon coming forward to the Board, please give
4 both cards to the reporter sitting to the table at my
5 right.

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

13 The order of procedures for special exceptions
14 and variances, as well as the order for appeals is
15 also located in the bin there as you walk in. The
16 record shall be closed at the conclusion of each case,
17 except for any materials specifically requested by the
18 Board. The Board and the staff will specify at the
19 end of the hearing exactly what is expected, and the
20 date when the persons must submit the evidence to the
21 Office of Zoning.

22 After the record is closed, no other
23 information shall be accepted by the Board. The
24 District of Columbia Administrative Procedures Act
25 requires that the public hearing on each case be held

1 in the open before the public, pursuant to Section
2 405B and 406 of that act. The Board may, consistent
3 with its rules and procedures, and the act, enter into
4 a closed meeting on a case for purposes of seeking
5 legal counsel on a case, pursuant to D.C. Official
6 Code Section 2-575(b)(4), and/or deliberating on a
7 case pursuant to D.C. Official Code Section 2-
8 575(b)(13), but only after providing the necessary
9 public notice. And in the case of an emergency closed
10 meeting, after 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 request that
14 persons present not engage the members of the Board in
15 conversation. Please turn off all beepers and cell
16 phones at this time, not to disrupt the proceedings.

17 Preliminary matters are those which relate to
18 whether a case will or should be heard today, such as
19 request for a postponement, continuance, or
20 withdrawal, or whether proper and adequate notice of
21 the hearing has been given. If you're not prepared to
22 go forward with the case today, or if you believe that
23 the Board should not proceed, now is the time to raise
24 such a matter.

25 Mr. Secretary, do we have any preliminary

1 matters?

2 MR. MOY: Good morning, Mr. Chairman and
3 members of the Board. I do very quickly, as to
4 today's docket.

5 In the decision meeting, Appeal No. 19356 of
6 the Argonne, LLC has been postponed and rescheduled to
7 September 27th, 2017. And that's it. That's it for
8 me, Mr. Chairman.

9 CHAIRPERSON HILL: Okay, great. Good morning,
10 everyone. If you're here to testify, if you wouldn't
11 mind please standing and the secretary is going to
12 swear you guys in.

13 MR. MOY: Good morning.

14 [Oath administered to the participants.]

15 CHAIRPERSON HILL: Thank you, Mr. Moy. Just
16 wanted to apologize for starting a little late today.
17 We had some traffic issues with one of our members
18 and so I'm sorry we're starting a little bit late.

19 The other is that as far as the agenda, we're
20 going to be basically following the agenda that you
21 saw there in the door with one exception. On the
22 hearing cases, the first case that we're going to hear
23 is Number 19510, and after that we're just going to be
24 following the order that you see on the agenda.

25 So, with that, Mr. Moy, you can go ahead and

1 call our one and only meeting case.

2 MR. MOY: Yes, sir. That would be a request
3 from the applicant for a minor modification. This is
4 to Application No. 19074A of Alexander Hastings, and
5 as captioned and advertised for minor modification to
6 plans approved in BZA order No. 19074 to construct a
7 one-story rear garage addition and a covered walkway
8 to an existing one-family dwelling, R-4 Zone at
9 premises 1329 Holbrook Street, Square 4073, Lot 82.

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

12 MS. WHITE: Yes.

13 CHAIRPERSON HILL: Okay. So, after reading
14 through the record, and as far as like deciding or
15 viewing this either as a minor modification or not,
16 the applicant was requesting again, a minor
17 modification of approved plans in 19074 to reduce the
18 footprint of the accessory structure to comply with
19 the building restriction line, as well as removing the
20 second floor of the accessory structure, eliminate the
21 covered walkway that would have connected the
22 accessory structure to the principle structure.

23 After reading through the Office of Planning's
24 report, as well as the proposed exhibits -- I'm sorry,
25 Exhibit 4, with the proposed revised plans, I also

1 would agree with the Office of Planning and would
2 think that this is a minor modification and I would be
3 in favor of approval.

4 Does anyone have anything to add?

5 MS. WHITE: Mr. Chairman, after reviewing the
6 record, I would agree with your comments. I find that
7 it did meet the criteria for a minor modification.
8 There appears to be no objections from OP. It
9 basically removes second floor to reduce costs. It
10 also reduces the footprint of the accessory structure
11 to comply with the building restriction line. And it
12 also eliminates the covered walking between the
13 accessory structure to the principle structure.

14 The modification is also based on DDOT's
15 issues that they communicated to the applicant.
16 Reviewing Exhibit 8, looking at OP's report, there's
17 no ANC report but I find that I don't have any
18 objection with their request.

19 MR. HART: Mr. Chairman, I would concur with
20 both of your assessments, and would also be supportive
21 of this application.

22 MR. SHAPIRO: I concur, Mr. Chair.

23 CHAIRPERSON HILL: Okay. Then, I'll go ahead
24 and make a motion to approve Application No. 19074A as
25 read by the secretary.

1 MS. WHITE: Second.

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

4 [Vote taken.]

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

6 MR. MOY: Staff would record the vote as four,
7 to zero, to one. This is on the motion of Chairman
8 Hill to approve the request for a minor modification.
9 Seconding the motion, Ms. White. Also in support,
10 Mr. Peter Shapiro and Vice -- and Ms. White. Rather,
11 Vice Chair Hart. We have a board seat vacant. Motion
12 carries, sir.

13 CHAIRPERSON HILL: Thank you. Can we do a
14 summary order?

15 MR. MOY: Yes, sir. Thank you.

16 CHAIRPERSON HILL: Okay, great.

17 MR. MOY: Okay. So, that leads me to the
18 hearing session, Mr. Chair. And as you said, the
19 first item before the Board is Appeal No. 19510 of
20 Nefretiti Makenta as captioned and advertised for --
21 this is an appeal of the decision made on February
22 9th, 2017 by the Zoning Administrator, Department of
23 Consumer and Regulatory Affairs, to issue Building
24 Permit No. B, B as in Bravo, 1603868, to permit
25 construction of a third-floor addition, roof deck, and

1 rear deck to an existing flat, RF-1 Zone. This is at
2 premises 3616 11th Street Northwest, Square 2829, Lot
3 167. And Mr. Chair, there are filings in the record
4 from the appellant. Most recently, Exhibit 30 from
5 the property owner under Exhibits 31-A1 and A2, as
6 well as a filing from the appellee, DCRA, which was
7 filed late last night. And that's in your case
8 folders.

9 CHAIRPERSON HILL: Okay, great. Could the
10 parties please come to the table?

11 Okay. If you could please introduce
12 yourselves for the record here, from my right to left?

13 MR. TONDRO: Maximilian Tondro on behalf of
14 DCRA.

15 MR. LeGRANT: Matthew LeGrant. I'm the Zoning
16 Administrator at DCRA.

17 MS. MAKENTA: Nefretiti Makenta.

18 MS. MOLDENHAUER: Meredith Moldenhauer from
19 the law firm of Cozen O'Connor, here on behalf of the
20 interveners.

21 MS. DIAO: Alexis Diao, property owner of 3616
22 11th Street.

23 MR. SMITH: I'm Graham Smith. We own it
24 together. She's my -- we're married.

25 CHAIRPERSON HILL: Okay, great. Thank you.

1 All right. So, there are a variety of preliminary
2 motions and things going on here, and so we're going
3 to kind of work through them together.

4 Ms. Makenta, it is your appeal, and so there
5 are some things that I'm trying to -- we as the Board
6 are trying to understand is how we're going to move
7 forward with some of them. There is a -- well,
8 there's a motion to dismiss. There's a motion to
9 combine the cases. There's a motion to file the fee
10 from the second appeal. There is another appeal that
11 apparently I'm unclear as to how we're supposed to
12 proceed in that the fee hasn't been paid yet. So,
13 they're telling me, meaning the Office of the Attorney
14 General, is letting me know as to how, until the fee
15 is paid, it isn't really an appeal yet.

16 And so, that's another little hoop that I'm
17 trying to work through here with the Board.

18 I suppose the first place I'd like to start
19 with you, Ms. Makenta, is in terms of the second
20 appeal, what is it that your appeal -- what is it
21 you're trying to appeal with the second appeal?

22 MS. MAKENTA: Well, the second appeal is
23 related to the second decision of the Zoning
24 Administrator, which was, I guess, May the 2nd,
25 related to a rooftop side roof deck. So, it's a part

1 of the third-floor addition. So, you walk out these
2 balcony doors on the north side with the chimney cut-
3 in. They've put -- are trying to put a roof deck
4 there, and so you walk out these balcony doors and my
5 roof is kind of right there. So, it's the side roof
6 deck that was not a part of the original permit, or
7 the original BZA order. It's a completely new element
8 and I don't believe that it is allowable as designed.

9 CHAIRPERSON HILL: Okay. So, then I have a --
10 sorry?

11 MS. MAKENTA: And I believe it does impose an
12 adverse impact to my property.

13 CHAIRPERSON HILL: Okay.

14 MS. MAKENTA: Sorry.

15 CHAIRPERSON HILL: That's all right. My
16 computer just failed.

17 I'm going to ask a question of DCRA. So, does
18 the second permit supersede the first permit?

19 MR. TONDRO: Good morning. No, the second
20 permit is a revision to the first permit. So, it -- I
21 mean, probably in effect, it supersedes. But it's
22 basically laid on top, and if there's any discrepancy
23 it's the second, the revision, the second permit which
24 replaces the first permit.

25 So really, the fundamentals -- and I included

1 in my filing last night, I apologize again for the
2 delay in filing it, but you can see there that the
3 changes that were made by the revised permit are based
4 on the original plans and they have bubbles around the
5 changes. I think most of the changes are -- really
6 relate to what Ms. Makenta, the appellant, was just
7 stating, which is the fact that the area -- the
8 creation of a roof deck, a semi-circle which was
9 created by removing a portion of the new third-story
10 in order to accommodate the building code requirement
11 that the chimney on Ms. Makenta's property have at
12 least a 10-foot clear radius around it.

13 So basically, the revised permit carves out a
14 portion where there used to be a rectangular addition
15 on a third floor. There's now a carveout of one
16 portion that is now dropped down to -- so, it's only
17 the second-floor roof. That becomes a roof deck.
18 That issue.

19 That's the only real major change. Therefore,
20 the -- in getting back to your question, I apologize.
21 The plans that were shown that are approved in the
22 revised permit are the original plans with revisions.
23 That is all that the permit holder is now able to
24 build. So, it effectively supersedes that prior
25 permit, although it's based upon that prior permit.

1 CHAIRPERSON HILL: Okay. So, there could be a
2 second appeal to that permit.

3 MR. TONDRO: There could be a second appeal to
4 that permit. It would be limited to only the changes
5 that were introduced in that second permit.

6 CHAIRPERSON HILL: Okay. All right. So, Ms.
7 Makenta, you agree with everything that was just said?

8 MS. MAKENTA: Pretty much.

9 CHAIRPERSON HILL: Okay. All right. So, now
10 we would be here. So, okay. So, we would be here --
11 okay. So, we would be here now, today, for the appeal
12 on the first permit. And then there is a second
13 appeal that you have outstanding, which I thought
14 after discussion with the Office of the Attorney
15 General, they weren't clear as to whether or not that
16 would come before us or not. I thought there was like
17 conversation that was like a construction issue. But
18 I'm not -- before I even get into that, it doesn't
19 really matter, actually, with the way I'm going to
20 think this through. And please, the Board, step in at
21 any time you'd like.

22 So, there's a second appeal out there for --
23 so today we'd only be hearing the first appeal for the
24 first permit. And then later we would be hearing a
25 second appeal for the other revised permit. If we

1 combined the -- if we amended the appeal to include
2 the revised permit, then we could hear it together.
3 Okay?

4 You would have to amend the appeal in order
5 for us to do that. If we amended the appeal, and I'll
6 get to the building owner in a moment, if we amended
7 the appeal, then you wouldn't need to pay the filing
8 fee on the second appeal because we'd be combining the
9 appeal.

10 So, I would need you to first think that
11 through and see if that's what you wanted to do. And
12 then, and this is the part that the building owners
13 are going to get involved in here, we would then hear
14 this later again in probably early, mid-September,
15 because we're off for recess, about everything. So,
16 that would be, you know, the revised permit as well as
17 this permit. We'd hear the appeal, and that would
18 include the issues from the revised permit. Okay?

19 So, that's kind of the direction I'm going in
20 here. There is a motion to dismiss. There's a motion
21 to combine them and then dismiss. But, this is where
22 I am currently, and you know, I'd like to hear
23 whatever the Board has to say. And I'm going to first
24 -- I'll let you think about what I just said, okay?
25 And then I'm going to turn to the property owner here,

1 and hear your thoughts.

2 MS. MOLDENHAUER: As submitted in our filing,
3 we would be supportive of consolidating the appeal.
4 We would not, however, be supportive of postponing
5 this until September. You know, we would be
6 supportive of maybe postponing this a few weeks until
7 the end of July, the July 26th hearing date.

8 The reason being is that as I think the Board
9 is aware, there has been a long extensive history here
10 on this case. Our clients have already -- they are
11 about 80 percent, you know -- I don't know --

12 MR. SMITH: I mean, it doesn't have drywall,
13 but it's got, you know, the building is there. The
14 roof is there.

15 MS. MOLDENHAUER: They are continuing through
16 construction. And so, to be able to resolve this,
17 this is a you know, husband and wife, so to be able to
18 resolve these issues sooner rather than later, rather
19 than allowing them to go another month and a half down
20 the road in construction, if there were to be any
21 issues, which we don't believe that there are any
22 substantive issues, but we would obviously like to
23 move forward and resolve this as quickly as possible,
24 and we think that a delay of then another month and a
25 half would be prejudicial.

1 So, we would be supportive of a consolidation
2 and we would then, if the Board feels as though there
3 needs to be a few additional weeks between now and
4 when the case is handled on a consolidated basis, we
5 would then respectfully request the Board would hear
6 this, maybe on July 26th, before the recess.

7 CHAIRPERSON HILL: Okay. Now, there is --

8 MR. TONDRO: Chairman.

9 CHAIRPERSON HILL: Sure.

10 MR. TONDRO: I'm sorry. Chairman Hill, I
11 think this may be relevant. I apologize for
12 interrupting. I will actually be out of the country
13 on July the 26th, so that I don't believe it would be
14 possible, just to the extent that that impacts --

15 CHAIRPERSON HILL: Okay. Well, I mean, what I
16 am -- we are trying to be as judicious as possible, as
17 expedient as possible, and do the best for the
18 applicant, the building owner, DCRA, and the Board.
19 And what I was thinking about, as you had mentioned,
20 Ms. Moldenhauer, that there has been a lot to this
21 case over time and there is, I believe, an outstanding
22 appeal, correct?

23 So, the appeal itself is still out there. And
24 so, the building owners -- and I am very cognizant of
25 the time that's been going on here, and what I'm

1 trying to do also, and this is all open and public,
2 we're all having -- and please again, feel free to
3 join in, anybody who wants to join in -- is that if
4 there were a second appeal, the second appeal wouldn't
5 happen until October. So, now we're getting the
6 second appeal faster, which is happening in September.
7 You still have the outstanding appeal with the Court
8 of Appeals, so that's not going to get resolved
9 anyway, and you've already decided to move forward
10 with the building.

11 So, I don't see the difference in whether this
12 happens middle of September, and even if it happened
13 in the last week of September, we probably wouldn't be
14 able to give you a decision the last week of September
15 because we need to have time to think about it,
16 probably. Okay?

17 So, I'm just sharing my thoughts, okay, and
18 trying to do this in a way that is expeditious and is
19 cognizant of everyone and everyone's time.

20 MR. HART: Mr. Chair.

21 CHAIRPERSON HILL: Yes.

22 MR. HART: In thinking about the case, there
23 is a significant amount of information that's been
24 supplied for the case. I do think that we should
25 actually hear the actual appeal, the information that

1 -- there's information that is in the record with the
2 exhibits. But there's also testimony that we need to
3 have from everyone, and I think that we need to kind
4 of start having conversations from, or testimony from
5 the various parties so that we can kind of get the
6 ball rolling. And I understand what you're saying in
7 terms of the procedural issues. In some ways, it's
8 almost -- all of these -- a lot of these things are
9 intertwined and that we would -- I would be -- I would
10 like to move forward with the actual testimony to
11 understand the positions from each of the parties so
12 that we can get to some finality with all of this.

13 I mean, it -- and I would, if we could, like
14 to hear that testimony today, and then from the
15 variety of different appeals and second appeals, and
16 it just seems like we just need to start with some of
17 this. And again, procedurally, I know that that's
18 somewhat of an issue, but it just seems like a lot of
19 this is kind of the background kind of information, or
20 background discussions. But I would support actually
21 hearing from the appellants, the DCRA, and the
22 applicants today, just so that again, we can get the
23 ball rolling.

24 CHAIRPERSON HILL: And that's fine. I think
25 Commissioner Shapiro has something to say, as well as

1 possibly Ms. White.

2 My issue with doing this now is that we're
3 going to do it again. And so, if we're going to do it
4 again, might as well just do it all again later.
5 Otherwise if -- because if there's a second appeal,
6 then we're back here with the second appeal, hearing
7 about -- or we're combining them and if we -- so,
8 anyway, you hear what I'm saying.

9 And so, but I can easily hear the first appeal
10 right now and then we're back again possibly later,
11 hearing the second appeal.

12 MR. SHAPIRO: Thank you, Mr. Chair. I was
13 actually working from a similar place as you were,
14 which is I you know, partly I do see everybody here
15 and there's a part of me that wants to hear it. But I
16 feel like -- I'm making an assumption, but I feel like
17 this is going to be back before us. We're going to
18 hear it, and I'd like to hear it in its entirety. I
19 feel like it's difficult for me to hear a piece of it
20 and then hear the second piece of it down the road.

21 So, I'm more inclined to agree with the Chair
22 on this one.

23 CHAIRPERSON HILL: I don't care, go on.

24 MS. WHITE: Yeah. Yeah, obviously this is a
25 really interesting case and I don't have a lot of

1 experience with it, but I've been reading the record.

2 But from my position, I mean, there seems to be a lot
3 of issues that are kind of intertwined, and I think it
4 could potentially be a little messy if we begin to
5 break it up in pieces, as opposed to just kind of
6 consolidating everything.

7 Obviously, it's going to be up to the parties
8 as to, you know, how they want to move forward with it
9 because of the sensitivities surrounding the date,
10 because we are on recess for everybody's knowledge,
11 for the entire month of August.

12 So, I am sensitive to that. But from my
13 position I would be perfectly happy to hear it after
14 the recess. If that works for all the parties.

15 CHAIRPERSON HILL: Okay. We're going to keep
16 talking, so you'll have a chance to talk again.

17 So, as the building owner and Ms. Makenta, I'd
18 like to hear from both of you as well, and also DCRA,
19 your thoughts. I suppose -- I'm again, trying to be
20 expeditious. You know, and so, we can hear the first
21 appeal here today, and then we might be back here
22 again for the second appeal. So, what are your
23 thoughts?

24 MR. TONDRO: Thank you, Chairman Hill. I
25 think first of all, just to clarify my response

1 earlier, there's I think may have colored some of the
2 conversation here. I just want to point out again
3 that under Subtitle Y, 302.5 of the Zoning
4 Regulations, a zoning appeal, and I quote, "May only
5 be taken from the first writing that reflects the
6 administrative decision." Okay?

7 "No subsequent document, including a building
8 permit or certificate of occupancy may be appealed
9 unless the document modifies or reverses the original
10 decision, or reflects a new decision." Unquote.

11 The reason I'm quoting that is to make it very
12 clear that yes, on the one hand this may seem to be
13 sort of one overall large appeal. It is one project.
14 But these are actually two separate decisions.

15 And so, I think there's a lot of merit in
16 hearing the first appeal and deciding that one now.
17 If it was to be a situation that the second appeal was
18 to come back to you, it would be limited only to those
19 changes, and that would be only to that side deck
20 issue. So, we would not be discussing the same issues
21 over and over again. They're really -- in some ways,
22 I think it might be helpful to separate those two
23 issues out, and I will point out again, this has gone
24 on for a long time. DCRA, apart from the building
25 owner, has invested a lot of time in trying to work

1 with the appellant and in trying to deal with this
2 issue, and at some point, we would prefer to move on,
3 at least to one part.

4 And so, I just --

5 CHAIRPERSON HILL: Okay. That's fine. That's
6 fine. Thanks, Mr. Tondro.

7 So, Ms. Makenta, we're going to deliberate
8 here and see what we're going to do, I suppose. But
9 you understand everything that has been said in terms
10 of combining the appeal or hearing the first appeal
11 now, and then you would have an opportunity to hear
12 the second appeal, possibly later. What is your
13 position?

14 MS. MAKENTA: Well, do you mind if they go
15 before me because they're probably going to say
16 similar things to DCRA, to (simultaneous speech).

17 CHAIRPERSON HILL: No, no, no, I'm just asking
18 you what do you think about combining the two appeals,
19 or hearing the first appeal today.

20 MS. MAKENTA: As I've -- in the record I've
21 requested a postponement.

22 CHAIRPERSON HILL: Uh-huh.

23 MS. MAKENTA: And so, I definitely would
24 prefer even the beginning of September. So, you know,
25 I'm dealing with -- it's DCRA and a former BZA

1 chairperson. You know, and so, part of my request for
2 additional time was a little more time to prepare.

3 CHAIRPERSON HILL: Uh-huh.

4 MS. MAKENTA: And DCRA, I have been in
5 communication with DCRA, and the ANC, and the Office
6 of Planning, and since January in dealing with this
7 D.C. Court of Appeals case, and all these things. And
8 so, while it may seem like there has been some time,
9 it's been a lot of work. And now, there's still this
10 OAH case that is not yet resolved. And then the D.C.
11 Court of Appeals deadline for the brief is August, is
12 the beginning of August, which is in a few weeks.

13 And so, I am certainly -- I would certainly
14 appreciate it if because the second appeal would be in
15 October, as you said, I would certainly appreciate it
16 if it was possible to do both together the beginning
17 of September.

18 CHAIRPERSON HILL: Okay, that's fine. So,
19 that's your opinion. Just to also be clear, so this
20 has gone on a long time, right? And we've read a lot
21 of things in the record, and we did postpone it once
22 already for a month. Okay? And so, it has been
23 postponed several times. Or, I'm sorry, it has been
24 postponed once. You requested it for a postponement
25 again and we did accommodate that.

1 I guess what I'm trying to get at is, you
2 know, also when you submit an appeal, the appellant is
3 supposed to be ready with the case when the appeal is
4 submitted. So, it's not like, you know, you have had
5 plenty of time to prepare, but at the same time I'm
6 trying to kind of work through this so that both your
7 time is not wasted, both you know, DCRA's time is not
8 wasted, as well as the building owner, can get to some
9 kind of resolution.

10 I'm back on the fence here, okay, again in
11 terms of like whether we're hearing the appeal today
12 or not. So, you know, we might hear the appeal today
13 and then we can deal with again, the second issue --
14 sorry, the second possible appeal later, because as of
15 right now, according to OAG, there's not a second
16 appeal.

17 Yes, please, Mr. Commissioner.

18 MR. SHAPIRO: Thank you, Mr. Chair. I just,
19 I'm confused now by what you said because I thought it
20 made sense to combine, effectively combine them and
21 push it out to later based on what you said. And now
22 I'm hearing something different.

23 So, it's not clear to me what it means to
24 combine them. And I understand they're two separate
25 issues, but there's also our process. So, combining

1 them doesn't mean absorbing one into the other,
2 necessarily, in my head. It means taking them up
3 together.

4 But, I am I hearing that that's something that
5 is inappropriate for us to do, based upon what you
6 said?

7 MR. TONDRO: No, not necessarily. And again,
8 I think OAG is there to provide you with the legal
9 advice to that.

10 I think our position is, they are two separate
11 appeals and I would be -- I'm worried for several
12 reasons. When we submitted our motion to consolidate,
13 we were willing to do so under the understanding that
14 it would be heard today.

15 I think once it -- and I understand the
16 reasons for why that second appeal would require,
17 instead, additional time before it would be scheduled.

18 And I guess I should have, in my motion, made it
19 clear that our acceptance to consolidating the appeals
20 would be based -- would be conditioned on the fact
21 that that second appeal would be heard today.

22 If it was not, I think we need to bring
23 closure to that first appeal right now. I certainly
24 trust that all of the members of the board have the
25 capacity to separate out the first appeal from the

1 second appeal, but I worry that it's a situation where
2 by introducing the second appeal, we now end up in a
3 situation where the first appeal, which was ready to
4 be dealt with, which had already been -- which has
5 already been continued at least once, is now prolonged
6 even further. It's a way of sort of getting around
7 the issue of the postponement, which is already
8 denied, I think for justifiable grounds.

9 And so, I think for everybody's sake, I mean,
10 there was reference earlier to the OAH case, it's my
11 understanding, I'm not the attorney for DCRA handling
12 that OAH case, but I understand that the judge has
13 issued a final order in that case and made its
14 decision.

15 Now, there may be a possibility of a motion
16 for reconsideration, but I believe that one is largely
17 terminated. There may be ongoing issues afterwards.
18 But I'm a little bit worried that with all of this,
19 all these pieces, we end up in a situation, keep
20 kicking the can down the road until we can deal with
21 all of them at once. And I think it's actually better
22 for us to be dealing with one at a time that we have
23 right here.

24 I'll also point out, quite frankly, that we're
25 in a situation where when the appellant filed the

1 appeal, as I indicated in my motion to dismiss, it was
2 a list simply of code citations. No explanation, no
3 narrative. DCRA's --

4 CHAIRPERSON HILL: Okay, Mr. Tondro, I'm just
5 going to cut you off. I don't want to talk about all
6 of that right now, but I think you answered his
7 question.

8 MR. TONDRO: Okay.

9 CHAIRPERSON HILL: And so, I'm still trying to
10 move forward, and now it's really kind of, in my
11 opinion, again what the Board wants to do, what the
12 appellant whose case it is wants to do, and then also
13 I am sensitive to what the property owners are
14 involved in and where they are.

15 So, you know, I have now heard from the
16 appellant as to what they would like to do, or what
17 she would like to do. And again, I kind of come back
18 to -- I suppose it's really, I think, you know, in
19 terms of the property owner, there is the possibility
20 of a second appeal, or we can hear the first appeal
21 today. And so, if there's a second appeal, it's going
22 to be October. Okay?

23 So, there is an incentive, is what I'm trying
24 to figure out. And so, I'm asking the property owner,
25 and I don't know if you have an answer or not, you

1 know, the appellant is interesting in combining it,
2 taking it to the beginning of September, which would
3 buy another 30 days from the second appeal, if there
4 were a second appeal. Or, you can hear the first
5 appeal now.

6 And I know everybody is here. Mr. Tondro and
7 Mr. LeGrant are getting paid, so you know, they have
8 to be here. Oh, so are you, Ms. Moldenhauer. And so,
9 what are your thoughts?

10 MS. MOLDENHAUER: So, I've had a moment to
11 kind of talk with my clients and I think that we were,
12 as DCRA was, supportive of a consolidation under the
13 understanding that the case would be heard today. Or
14 potentially, in July.

15 Given the fact that -- and I understand
16 scheduling and timing that this would then not be able
17 to be continued until September, even though the
18 property is the same, we agree with DCRA that the
19 ZA's, the Zoning Administrator's decision, which is
20 the decision upon which this Board is then weighted to
21 evaluate, are different and distinct. And we believe
22 that if you can then resolve the issue of the initial
23 appeal today, one of our filings was a motion in
24 limine to try to narrow the understanding what
25 actually are the facts that are being discussed. I

1 think it may also help in then narrowing what may be
2 discussed in October if that is necessary.

3 CHAIRPERSON HILL: Okay. Okay. Okay. So, I
4 don't know where the Board -- so, I'm back to now, you
5 know, I want to take a break, if we do this, and let's
6 take a quick little break. I'll let you speak in one
7 second.

8 But we'll take a quick little break and then
9 we can hear the first appeal. And then we'll do the
10 second appeal whenever the second appeal happens.

11 Ms. Makenta, you want to say something?

12 MS. MAKENTA: Yeah, I wanted to say, you said
13 something was filed last night from DCRA. I haven't
14 seen that. What was that, that was filed?

15 CHAIRPERSON HILL: It was in response to what
16 you had filed, I think.

17 MS. MAKENTA: Okay. So, I haven't even seen
18 that. Is that a motion or is that --

19 CHAIRPERSON HILL: We can get you a copy of
20 that, I suppose, because your filing was also late, by
21 the way.

22 MS. MAKENTA: Right. I'm not --

23 CHAIRPERSON HILL: Yeah, okay. Okay.

24 MS. MAKENTA: I don't have a problem.

25 CHAIRPERSON HILL: Okay.

1 MS. MAKENTA: I'm just saying, I haven't seen
2 it.

3 CHAIRPERSON HILL: Okay. Okay. All right.

4 MS. MAKENTA: If it impacts anything going
5 forward I would need to --

6 CHAIRPERSON HILL: Mr. Tondro, do you have a
7 copy that you can provide the appellant?

8 MS. MAKENTA: And then, another thing as well,
9 is the fee. The fee.

10 CHAIRPERSON HILL: Uh-huh.

11 MS. MAKENTA: The \$1,040 fee.

12 CHAIRPERSON HILL: Uh-huh. Uh-huh.

13 MS. MAKENTA: That was included in the record
14 as well. I made a request --

15 CHAIRPERSON HILL: Uh-huh.

16 MS. MAKENTA: -- if they were going to be
17 considered separate, that that fee be waived.

18 CHAIRPERSON HILL: Uh-huh.

19 MS. MAKENTA: To the director, and I don't
20 know if you saw the e-mails back and forth. And that
21 was part of one of the reasons as well, to consolidate
22 the cases.

23 Oh, and one of the comments was, if there is a
24 second appeal. Well, when I filed my first appeal I
25 brought the check and the appeal to the Office of

1 Zoning, and they said, well, we don't need the check
2 because, you know, first it has to be approved, and
3 then you can bring the check.

4 I said, well, I'll just leave the check here.
5 You know, and so, so then it got approved and the
6 check -- so, in terms of the comment earlier that the
7 fee hasn't yet been paid, it's based on kind of how
8 the process happens in the Office of Zoning. I think
9 they approve it, and then you pay the fee.

10 And so, I guess for my -- if they're going to
11 be two separate appeals, I would have that request to
12 you all that I not be required, because this is a
13 second decision on the same property, that I -- and I
14 do think it would be best for them to be combined
15 together. But if there's going to be a second one I
16 would request that that second fee be waived.

17 CHAIRPERSON HILL: Okay.

18 MS. MAKENTA: And that's one incentive for
19 amending, as well, them to be one appeal, which is
20 what I would prefer.

21 And then lastly -- so, I was just wondering if
22 you guys could consider that as a part of your
23 deliberations.

24 CHAIRPERSON HILL: What I understood about
25 them, and now I am going to turn to the Office of

1 Attorney General over there. What I understood was
2 that we can't consider waiving the fee until after the
3 fee has been paid.

4 MS. NAGELHOUT: That's my understanding.

5 CHAIRPERSON HILL: Okay. So, that's what I
6 was told. And so, that -- maybe you can speak to the
7 director and the office of the director, but I was
8 told that until the fee -- I'm just letting you know
9 what I was told. Until the fee has been paid, there
10 actually isn't an appeal.

11 MS. MAKENTA: There's lots of information in
12 the record on the one that -- the last thing I filed,
13 with my conversation with the director regarding that.
14 And actually, when you go and you do your IZIS
15 submission for an appeal, it says, you know, the fee -
16 - you have five days if any additional information is
17 requested, then you have 24 hours to bring the fee.

18 CHAIRPERSON HILL: Okay.

19 MS. MAKENTA: So, that's --

20 CHAIRPERSON HILL: Okay. Well, let me do --
21 I'll just have to go back and, this is again what I
22 was told, and so I'll go back and we can get some more
23 information from the Office of Attorney General in
24 terms of the request to waive the fee. As of now, as
25 I understand it, you have to pay the fee first, and

1 then we can request to pay the fee.

2 But I think where we are right now with the
3 Board is, we're going to hear this first appeal. Is
4 that what I understand the Board's preference is?

5 Okay. So, then we're going to take a break,
6 okay? And then we're going to hear the appeal, okay?

7 And I'm going to take a three-minute break. Okay?

8 And then, there you go. Okay. Thanks.

9 [Off the record from 10:30 a.m. to 10:35 a.m.]

10 CHAIRPERSON HILL: All right. Let's go ahead
11 and get started.

12 Ms. Makenta, I did have one question for you.

13 So, there was -- and I'd just like clarity as to what
14 you think you might like to do. There was like
15 there's the two appeals currently, right? So, I just
16 wanted to be clear whether or not you wanted to
17 combine those appeals now and hear them now, which
18 means you would then have an opportunity to talk about
19 the issues for the second appeal. But they would be
20 one appeal now, right?

21 Or, you want to keep them separate, and in
22 which case you would only be talking about the issues
23 from the first permit now, and it would be the second
24 appeal later, where we would be talking about the
25 issues for the second permit. And also, then, you

1 would still at this point, need to pay the fee so that
2 we can, you know, deliberate about -- at least what I
3 understand at this point, pay the fee so that we could
4 then deliberate as to whether or not to waive that.

5 So, the question to you really right now, is
6 do you want to keep them separate or combine them?

7 MS. MAKENTA: Well, I guess I --

8 CHAIRPERSON HILL: You need to push the
9 button. Sorry.

10 MS. MAKENTA: I guess I feel that the instinct
11 even to go to the 26th and combine, was more fair than
12 you know, you know, hearing both today and combining
13 them today and hearing both today. And I just think
14 that -- so, that is kind of a little prohibitive to
15 present both today as opposed to --

16 CHAIRPERSON HILL: Okay, that's all right.

17 MS. MAKENTA: -- even just having the
18 additional --

19 CHAIRPERSON HILL: I'm just trying to --

20 MS. MAKENTA: -- two weeks.

21 CHAIRPERSON HILL: That's okay.

22 MS. MAKENTA: I mean, I mean, if you guys --
23 if you all were, for example, if there wasn't a recess
24 in August, for example, I imagine we could all, since
25 they were willing to agree to go to July 26th --

1 CHAIRPERSON HILL: Right.

2 MS. MAKENTA: -- I imagine we could all agree
3 to go to the beginning of August.

4 CHAIRPERSON HILL: All right. And I'm sorry,
5 I'm also really trying to do my best also for you.
6 Like the DCRA isn't here on the 26th.

7 MS. MAKENTA: Right.

8 CHAIRPERSON HILL: So that was the other
9 thing. It just, I mean, and we're all here now. So,
10 do you want to keep the -- I do need to know. Do you
11 want to keep them separate, or do you want to combine
12 them right now?

13 MS. MAKENTA: Well, if they're -- for fee
14 purposes, I do want to combine them. That fee is very
15 prohibitive, and it does seem not fair considering
16 this is one property. And, so, and then also I think
17 that like you all were saying earlier, it would
18 probably be more efficient to do everything together.

19 And so, if they're not combined I just -- I
20 don't -- I think the fee should be waived.

21 CHAIRPERSON HILL: No, I understand. And I
22 can't decide that right now.

23 MS. MAKENTA: I'm sorry.

24 CHAIRPERSON HILL: That's all right.

25 I can't decide that right now and I just want

1 you to let me know, clearly, or let the Board know
2 clearly what you want because if you are combining
3 them, that means that you won't be able to file a
4 second appeal. Like, we're now combining it for this
5 one appeal. So, you will lose that right for a second
6 appeal on the second permit, if you combined them now.

7 MS. MAKENTA: Yeah. I can't. I don't want to
8 lose that right.

9 CHAIRPERSON HILL: Okay. All right.

10 MS. MAKENTA: Because there are some more
11 documents --

12 CHAIRPERSON HILL: Okay. Okay.

13 MS. MAKENTA: -- that I want to be able to
14 submit.

15 CHAIRPERSON HILL: That's fine. So then, this
16 is the -- so, today we're going to be talking about
17 the first appeal to the first permit. Now, I saw Ms.
18 Moldenhauer lean forward. You had a comment?

19 MS. MOLDENHAUER: I just, I think it's one of
20 the questions that DCRA and the intervener have. We
21 really don't know what substantive matters there are
22 on the first appeal. So, I mean, maybe it's a
23 question of Ms. Makenta, if there are subsequent -- if
24 there are no substantive matters left on the initial
25 appeal, and all that exists, potentially are maybe a

1 question of the second appeal, it may be another way
2 to try to resolve this. But I just, we still do not
3 understand what substantive or merit issues are raised
4 on the first appeal.

5 CHAIRPERSON HILL: That's okay. So, that
6 didn't help me at all. Okay? All right.

7 So, all right. Does the Board have any
8 comments?

9 [No audible response.]

10 CHAIRPERSON HILL: Okay. All right. So,
11 we're going to hear the first appeal. Okay? So, your
12 second appeal is staying separate, okay, and you'll
13 have to pay the fee and then we'll figure out what's
14 happening and you can talk to the director and figure
15 that out.

16 So, the way this is going to work is you'll
17 have a chance now to present your case. Okay? Then,
18 for the first appeal, for the first permit, DCRA will
19 have an opportunity to cross-examine, and the building
20 owner will have the same opportunity.

21 Then DCRA will have an opportunity to present.
22 You'll have an opportunity to cross to DCRA. The
23 building owner will also have an opportunity to cross
24 to DCRA, and we'll go all around the table. We'll go
25 back over to Ms. Moldenhauer, who will present. And

1 then DCRA will have a chance to cross, you'll have a
2 chance to cross.

3 Then, there will be an opportunity for you to
4 present any kind of rebuttal testimony to whatever
5 they had said. They will have an opportunity to cross
6 your rebuttal testimony, and then we will have some
7 conclusions from everyone. Okay?

8 So, that is the order. Do you have a
9 question?

10 MS. MAKENTA: Yeah. Since they were open to
11 the -- well, just, that's okay. That's okay. I will
12 just --

13 CHAIRPERSON HILL: That's okay. I can't take
14 them to the 26th because he's not here on the 26th.

15 MS. MAKENTA: Yeah. Right. Yeah.

16 CHAIRPERSON HILL: Okay. So, how much time
17 would you like me to put on the clock for you?

18 MR. TONDRO: Chairman Hill.

19 MS. MAKENTA: Well --

20 CHAIRPERSON HILL: Yes, sir? Who's talking?
21 Okay, sure.

22 MR. TONDRO: I apologize. I just want to put
23 out that I did put in a preliminary motion to dismiss
24 for failure to state a claim, which I believe should
25 be considered before we go to the appellant's case.

1 CHAIRPERSON HILL: Okay.

2 MR. TONDRO: As a preliminary motion.

3 CHAIRPERSON HILL: Thanks so much. I forgot
4 about that preliminary motion.

5 So, what I would like to do with the
6 preliminary motion, unless the Board has any issues, I
7 want to hold the preliminary motion in abeyance. So,
8 what that means is we're going to go ahead and hear
9 the case again, and then decide after the case whether
10 or not we're going to take up the motion for
11 dismissal. Okay?

12 All right. But thanks for pointing that out.

13 MS. MOLDENHAUER: Chairman Hill?

14 CHAIRPERSON HILL: Sure.

15 MS. MOLDENHAUER: There's also another
16 preliminary motion. Sorry. A preliminary motion in
17 limine to make sure that we have a limited scope.
18 Given the fact that we believe that maybe some of the
19 issues that were brought up were procedural that have
20 to do with the original BZA case that are under the
21 current jurisdiction of the Court of Appeals, those
22 issues are obviously not addressed today, but rather
23 only decisions by the ZA in issuance of the permit.

24 CHAIRPERSON HILL: Okay. So, as we're going
25 through the testimony, it was my thought that we would

1 just be hearing about the issues for the permitting
2 and how obviously the Zoning Administrator erred. We
3 wouldn't be talking about, you know, the original BZA
4 case. We wouldn't be talking about those kind of
5 things.

6 I mean, really, what your appeal is, is that
7 the Zoning Administrator made an error in terms of him
8 approving the permit. And so, that's -- and so as far
9 as approving the motion, I've got to say like, Office
10 of Attorney General, I'm not -- a limine was a new one
11 on me, okay? I've got to let you know.

12 So, do we have to approve or deny that motion
13 now?

14 MS. NAGELHOUT: I think you sort of just did,
15 by clarifying that the scope of this appeal is only
16 the issues arising from that permit, the initial
17 permit. We're not talking about the underlying
18 approval of the BZA case.

19 CHAIRPERSON HILL: Okay. Okay. I'm not
20 officially approving a motion. I'm just letting you
21 know, please keep your testimony to the property -- to
22 the permit; to the issue at hand. Okay? Which is the
23 permit being approved by the Zoning Administrator.

24 Okay, does the Board have any thoughts on
25 anything that I just said?

1 MR. SHAPIRO: Mr. Chair, I just want to make
2 sure that we are clear with -- that we're taking up
3 this motion appropriately. In other words, if it's
4 before us, do we need to act on it one way or another?
5 Maybe it's a question for OAG, but what -- you know,
6 we are addressing the other motion. It's going to be
7 in abeyance. What are we doing with this motion, is
8 the question for me.

9 MS. NAGELHOUT: Which motion?

10 CHAIRPERSON HILL: Motion in limine.

11 MS. NAGELHOUT: Oh, well, you can specify
12 later, but I think you've made it clear that all you
13 want to hear about is issues arising from the permit,
14 and not the underlying BZA case that was already
15 decided.

16 MR. SHAPIRO: But is there some kind of action
17 that we need to take in relation to it?

18 MS. NAGELHOUT: No.

19 MR. SHAPIRO: No. Okay. Thank you.

20 CHAIRPERSON HILL: Okay. You can push the
21 microphone there, the button.

22 MS. MAKENTA: Actually, the motion that I
23 submitted on July 5th, 5th or 6th, basically also
24 stated that if I was unable to amend the cases to like
25 early September or what have you, join them and amend

1 them, that I would submit -- just keep that one
2 separate and then submit this case on the papers and
3 rest. And so, I would just do that then.

4 CHAIRPERSON HILL: So, you don't want to make
5 a presentation?

6 MS. MAKENTA: I do, but because of the time
7 factors, the timing factor, I do want to but as I
8 said, you know, it's really important that I have a
9 little extra time to prepare. So, but so since I'm
10 unable to get that, then I'm going to have to -- since
11 the chimney was corrected, there are some other
12 issues. But I'm going to stick to the second appeal.

13 CHAIRPERSON HILL: So, your -- and this, I
14 don't know, the OAG, you've got to let me know. So,
15 you're resting on your record that you submitted for
16 the first appeal. So, you're not making a
17 presentation now.

18 MS. MAKENTA: Correct.

19 CHAIRPERSON HILL: And so, do the -- does DCRA
20 now have, and I'm asking OAG, right. So, does DCRA
21 now --

22 MS. MAKENTA: I guess I would like to do --

23 CHAIRPERSON HILL: Oh yeah, cross. Cross-
24 examine the written record?

25 MS. MAKENTA: I guess I would like to say one

1 other thing as well.

2 CHAIRPERSON HILL: Okay. One second.

3 MR. TONDRO: I'm sorry. I was only going to
4 say that it would seem to me that if the appellant was
5 going to rest on the record, that we might go
6 immediately to my motion to dismiss, the preliminary
7 motion, which addresses what was in the record. And I
8 don't believe it's changed with her filing on July the
9 6th.

10 If she has something to say then --

11 CHAIRPERSON HILL: Okay. Ms. Makenta, what
12 were you going to say?

13 MS. MAKENTA: Well, I do -- I do believe it's
14 changed. It's not true that the case has no merit.
15 There are several issues that are brought up in the
16 statement of appeal that I submitted. And several of
17 them relate to zoning administrator matters.

18 CHAIRPERSON HILL: Okay. Ms. Makenta, I've
19 got to say, we're all here today, and you've submitted
20 a lot of stuff in -- no, I'm just saying, I'd like to
21 hear from you. Like, I'd like you to go ahead and
22 make your case. Like, please go ahead and make a case
23 as to what the Zoning Administrator did wrong, so that
24 we can then evaluate that, because what the motion is
25 from DCRA is to dismiss this because you actually

1 haven't made a case.

2 So, you see what I'm saying? Like, I need to
3 hear some kind of testimony from you in order to -- we
4 need to hear some kind of testimony from you in order
5 to then be able to decide. Otherwise, you know, as
6 you say, we're just going to decide right on the
7 record. Which then again, DCRA has submitted
8 something saying that, you know, to dismiss it just
9 based off of the record.

10 So, I'm back to you again. Would you like 10
11 minutes just to tell us about your case?

12 MS. MAKENTA: Well --

13 CHAIRPERSON HILL: What did the zoning --

14 MS. MAKENTA: I just didn't want to partially
15 do it, but, so basically my issues with regard to the
16 Zoning Administrator decisions are -- you know,
17 there's so many subtitles and, anyway, are related to
18 light, privacy, air, and the heritage tree in my back
19 yard, the parking pad, and it's not true that the case
20 has no merit as Ms. Moldenhauer said.

21 But, I don't feel prepared to present today
22 and so I don't think that it should be dismissed
23 because I think that there are dozens of pages in the
24 record with regard to -- I think it could -- the
25 decision can be made whether you know, it could be

1 maybe denied or what have you, if you don't agree.
2 But I'd certainly think that there's enough
3 information in the record to decide; for the Board to
4 decide the case.

5 CHAIRPERSON HILL: Okay. All right. So, do
6 you have anything else to add?

7 MS. MAKENTA: Not right now.

8 CHAIRPERSON HILL: Okay. Does the Board have
9 some questions for the witness?

10 MR. HART: I guess, the reason that we're kind
11 of somewhat -- I'll speak for myself. The reason I'm
12 somewhat quiet in this is that typically we want to
13 understand the points that you have that are saying
14 why you think that the Zoning Administrator made an
15 error. You've brought up privacy and air, a heritage
16 tree, and a parking pad as being the issues that are -
17 - that the Zoning Administrator would have not
18 addressed or not -- they made the wrong decision on.

19 But I'm not exactly sure where that kind of
20 fits within the -- you cited a lot of the zoning
21 regulations, but not specifically that they made an
22 error in this particular piece. You're kind of giving
23 us a general idea of some of the things that you are
24 not necessarily liking. But not liking them and
25 actually being in the zoning regulations are very

1 different things, and we need to kind of understand
2 that information and this case was actually brought
3 before us for some preliminary matters a month ago to
4 be able to give you the opportunity to create a
5 narrative that would be able to give us information
6 that is pertinent to your case, and helps to flesh out
7 the issues that you're having.

8 I understand that you've been having some back
9 and forth with the owners, and DCRA for about a year.
10 You've provided information in your Exhibit 30, which
11 was about your second appeal. But that information
12 talks about e-mails that happened in June of 2016.
13 So, this is something that's actually been going on
14 for a year and there are issues that are there.

15 But again, I don't know, you are specifically
16 looking at a particular zoning administrator
17 apartment, and there are things that are in there that
18 you have issues with, we think, but we would like to
19 understand what those are. And this is your
20 opportunity to do this --

21 MS. MAKENTA: Okay. I'll make an effort.
22 I'll make an effort.

23 MR. HART: And so, so that's what we're trying
24 to get to. I understand that you have, you know,
25 lawyers that are kind of on the other side, on each

1 side of you, that have information and have some deep
2 knowledge about the zoning regulations. You've
3 provided information. You've evidently read through
4 the zoning regulations and provided information in a
5 number of your exhibits as to why your case is --
6 things that you procedurally would like to see happen.

7 MS. MAKENTA: Okay.

8 MR. HART: So, my understanding is -- my read
9 through this, through some of the things that you've
10 provided, is that you do understand some of what's
11 going -- well, you do understand aspects of the zoning
12 regulations that pertain to this particular case, and
13 that's what we're trying to understand. What is it
14 that you are having problems with.

15 And again, I don't want to speak for the rest
16 of the Board here, but --

17 MS. MAKENTA: Okay.

18 MR. HART: -- that's what we're trying to
19 gauge. And then have the owners be able to ask
20 questions with you -- from you, and then have the DCRA
21 to be able to ask questions. If you just provide the
22 information that you have here, it doesn't bode well
23 for you because again, we don't have sufficient
24 information to be able to -- we don't have information
25 that I think is -- that you may have that you haven't

1 provided to us to date, in a way that is clearly
2 stating what the issues are that you have with the
3 permit.

4 MS. MAKENTA: Okay.

5 MR. HART: So, that's what we're looking for.

6 MS. MAKENTA: Okay. So, I will make an
7 effort.

8 CHAIRPERSON HILL: Okay. Just, before you
9 start again --

10 MS. MAKENTA: I'm sorry.

11 CHAIRPERSON HILL: That's okay. Did, Mr.
12 Shapiro, did you have thoughts, or Ms. White? I
13 thought you both were nodding your heads while Mr.
14 Hart was speaking, so.

15 MS. WHITE: Only because I agree with Mr.
16 Hart.

17 CHAIRPERSON HILL: Okay.

18 MS. WHITE: You know, obviously you are a pro
19 se appellant, but I've seen materials filed by
20 attorneys that are not as detailed as your filings
21 were. So, I know you have the capability to at least
22 tell us why you should be granted the relief that
23 you're seeking. So, help us out a little bit in terms
24 of just, you know, just communicating exactly what
25 you're asking us to do. Obviously, we're going to

1 look at it on a very fair basis, and look at it based
2 upon the rules and regulations. So, I'm just
3 concurring with my colleague there, that I'd like to
4 hear something because we've spent a lot of time this
5 morning going through a lot of the procedural issues.

6 MS. MAKENTA: Okay.

7 MR. SHAPIRO: And the only thing I would add
8 is, I concur with my colleagues. The only thing I
9 would add is, you know, what we're really looking to
10 hear, again, as the Chair pointed out is, you know, as
11 specific as you can what you feel the ZA error or
12 errors were.

13 MS. MAKENTA: Okay.

14 CHAIRPERSON HILL: Okay. So, I'm just going
15 to put a time on the clock here again. Okay? So, the
16 clock is up here on the right and the left, and I'm
17 just going to put 10 minutes up there for now.

18 MS. MAKENTA: Okay.

19 CHAIRPERSON HILL: Okay, great. And then
20 we're going to go through the same process that I said
21 before. Okay?

22 Go ahead, whenever you want to start.

23 MS. MAKENTA: Okay. So, part of my challenge
24 is, you know, it's 2,000 pages of code. I really
25 don't know, technically, which part relates to the

1 special exception versus the Zoning Administrator.
2 And a lot of them say similar things. But I'll just
3 try to make it plain and not get too caught up in the
4 technical.

5 So, in terms of what I believe that the Zoning
6 Administrator erred on, one is the parking pad, in
7 light of the tree, the heritage tree. And I'm going
8 to just look for some of the codes. Okay.

9 304.10. First of all, I'm trying to
10 understand how it is that -- well, that's the side
11 deck. I'm sorry.

12 The parking pad is supposed to be two spaces,
13 but there is a heritage tree in the back, and I'm not
14 clear how that parking pad could have been improved
15 when their -- I have a letter from a arborist stating
16 that -- the letter from the arborist and DDOT. And
17 DDOT actually wrote a letter to the owners stating
18 that excavation shouldn't be occurring, and the two-
19 space parking pad shouldn't be occurring.

20 But yet, for example, on the latest motion
21 submitted by -- is that a motion submitted by in
22 limine, or limine, by the owner's counsel, it said
23 that they're entitled to this parking pad, and I don't
24 understand how is that possible if the zoning
25 regulations don't allow any loss to be -- and I can

1 find the specific regulation in just a moment. To be
2 violated. Let's see. I'll find the regulation. But
3 one of the regulations relates to the tree not being -
4 - here's the letter. I'm sorry. I'm sorry. Like I
5 said, I'm not totally prepared here. Let me find the
6 regulation.

7 I'll find it. But --

8 CHAIRPERSON HILL: It's okay. It's okay.
9 Just, we're following you in terms of the tree and the
10 parking pad.

11 MS. MAKENTA: But it says, for example, that
12 301.2, that they're supposed to include certain
13 information on the plans so that the BZA can come to a
14 decision. Well, that's probably, I guess getting back
15 into the special exception. I'm not sure. But, "No
16 trees which would otherwise be protected by this
17 subtitle shall be damaged or removed."

18 Code 304.3, "The Zoning Administrator shall
19 consider the following issues as applicable. E."

20 And so, that wasn't considered. DDOT wasn't
21 aware of the tree. They issued --

22 MR. SHAPIRO: Where are you -- can you go
23 ahead and cite that again, please?

24 MS. MAKENTA: Oh, I'm sorry. This is 30 --
25 Subtitle A, 304.3(e). "No trees which would otherwise

1 be protected by this title, or other D.C.
2 regulations." And that's a DDOT regulation, protects
3 the tree.

4 And in a letter from DDOT to the owners, she -
5 - excavation is required for this two-space parking
6 pad. They wrote that after visiting their site, that
7 as there will not be an excavation, the only concern
8 within the critical root zone will be any compaction
9 related to construction methods.

10 And she says -- where does this clear that --
11 okay. "It is clear that no excavation is occurring
12 for installation of a parking pad, and there will be
13 no excavation beyond the existing footprint of the
14 structure."

15 So, if the Zoning Administrator regulation
16 doesn't allow damage to the tree, and DDOT submitted a
17 letter related to the special exception, but they
18 weren't aware of the tree, the Zoning Administrator
19 somehow was supposed to be aware of the tree, and that
20 -- and before the original permit was issued, the
21 parking pad should not have been allowed, is all I'm
22 trying to get to. And that's the regulation I'm
23 citing with regard to how that -- and I have the
24 letter from DDOT which is also in the record in the
25 last filing from July 6th.

1 So, that's the tree and the parking pad. And
2 then I can bring up another issue after they go. Oh,
3 do I have more time. Oh, okay.

4 CHAIRPERSON HILL: Yeah, sure. Go ahead.

5 MS. MAKENTA: Okay.

6 CHAIRPERSON HILL: Go ahead and present all
7 your issues, and so we can hear them out through the
8 other participants as well.

9 MS. MAKENTA: Okay. So, that's the tree and
10 the parking pad. I do not understand how those were
11 approved, and so I would like to be able to -- I mean,
12 how the parking pad was approved when an arborist is
13 stating that it would cause damage to the tree. DDOT
14 has been to the site and they are saying the same
15 thing. So, that's that situation.

16 The light, air, and I'm trying not to include
17 things from the second appeal, but the Office of
18 Planning, when they submitted their report, they
19 weren't aware of the windows in the window well. I
20 have 11 windows, which are on the north side of my
21 property on the south side of theirs, in this window
22 well. And there are images of the windows in the
23 record.

24 And, they -- basically, the rooftop deck, even
25 though it's set back four feet, I believe you can --

1 it's still affecting, unduly impacting my privacy with
2 these windows.

3 CHAIRPERSON HILL: Okay. I'm just checking.
4 I just want to check again. So, the rooftop deck
5 though, that's for the second permit, correct?

6 MS. MAKENTA: No. No, that's -- there's two
7 rooftop decks. There's a second-floor rooftop deck,
8 and a third-floor roof deck.

9 CHAIRPERSON HILL: Okay. Which is part of --

10 MS. MAKENTA: So, this is the third-floor
11 rooftop deck.

12 CHAIRPERSON HILL: That was part of the first
13 permit.

14 MS. MAKENTA: Which would have been a part of
15 the first --

16 CHAIRPERSON HILL: Okay. Okay.

17 MS. MAKENTA: Yes. And so, the rooftop deck
18 is another one. Let's see. I had a list. I'm sorry.
19 Can you like come back to me? Is that possible? Or,
20 do I have to use my whole 10 minutes?

21 CHAIRPERSON HILL: You have to use your whole
22 10 minutes. Sorry.

23 MS. MAKENTA: Gosh. Okay.

24 [Pause.]

25 CHAIRPERSON HILL: Yeah, we got light, air,

1 and was privacy also --

2 MS. MAKENTA: Right. Right.

3 CHAIRPERSON HILL: Privacy was your -- so,
4 light, air, privacy.

5 MS. MAKENTA: Right. So, that's --

6 CHAIRPERSON HILL: The parking pad and the
7 tree.

8 MS. MAKENTA: And I'm trying to make the
9 distinction between the special exception as I'm
10 going, and the Zoning Administrator. And so, that's
11 probably part of my challenge.

12 The light -- and I guess one of my question
13 is, to what extent, which -- I don't get to ask them
14 questions now, do I?

15 CHAIRPERSON HILL: You'll get to -- you'll get
16 to read -- you'll get to ask questions from the
17 witness's testimony. So, if the witness brings up
18 something that you brought up, you can ask them
19 questions about that.

20 MS. MAKENTA: Okay. So, basically, the light,
21 air and privacy is related to the 40-foot development,
22 and it's related to the rooftop deck.

23 And so, I guess I'm supposed to cite codes,
24 but --

25 CHAIRPERSON HILL: That's okay. You're all

1 right.

2 MS. MAKENTA: But, that is -- I don't know if
3 you've seen the pictures in the record where there is
4 lots of light that comes through that window well.
5 And like I said, the Office of Planning didn't even
6 know about those windows when it approved the -- when
7 it said that, you know, it wouldn't unduly impact,
8 which is something I recently learned.

9 MS. MOLDENHAUER: Just note an objection.
10 When she's referencing the Office of Planning, she's
11 referencing the BZA case.

12 MS. MAKENTA: Oh, okay.

13 CHAIRPERSON HILL: Ms. Makenta, you're all
14 right. Just go ahead. And we want to hear what you
15 have to say, and then we'll parse through, also, what
16 is of the BZA issue or, you know, I'll point out what
17 is also of the permit.

18 MS. MAKENTA: And so basically, I can't start
19 talking about the side roof deck now either, I guess.
20 I have to wait for that.

21 CHAIRPERSON HILL: Right.

22 MS. MAKENTA: Okay. And there's a lot there,
23 actually.

24 So, the first permit was -- or the first
25 zoning decision was sort of based on the summary

1 order. Right? And so, the summary order said that
2 the zoning administrator would undertake a thorough
3 and independent review of the building permit. And
4 so, I guess it's my contention that because of the
5 rooftop deck, and because of the parking pad, that
6 that, for the first permit, and the chimney, which has
7 been resolved, that didn't occur.

8 And, the 10-foot decks as well. They are
9 decks on the plan, that were approved by the Zoning
10 Administrator with the first plan.

11 CHAIRPERSON HILL: Right. That's the third-
12 floor one you're speaking of, correct?

13 MS. MAKENTA: No, this is the decks on the
14 ground. They're 10-foot decks on the ground. And
15 also, those would impact the tree. And so, the DDOT
16 actually said that they should, in their letter they
17 said that they should keep -- the footings being
18 installed for the porch should use the previous
19 footings, footing print -- footings footprint,
20 minimizing any impact to the critical root zone.

21 But all of these things have been approved on
22 the plan. And so, yeah, I don't -- yeah, so that's --
23 and also, I'm not really clear how they're being
24 allowed to not have to submit an application for a
25 modification. A minor -- I don't think it's a minor

1 modification for a modification of consequence or
2 modification of -- because, because there has been a
3 redesign. And so, I guess I would want an answer to
4 that.

5 CHAIRPERSON HILL: Right. I understand.

6 MS. MAKENTA: I would want to understand how
7 that's --

8 CHAIRPERSON HILL: I understand.

9 MS. MAKENTA: How the --

10 CHAIRPERSON HILL: That again, is part of the
11 second appeal.

12 MS. MAKENTA: Oh. Okay. Okay. Okay. Yes.

13 CHAIRPERSON HILL: I mean, again, and I mean,
14 you're going through a list and we will hear from DCRA
15 in terms of your points of contention.

16 MS. MAKENTA: Okay.

17 CHAIRPERSON HILL: And then again, it's only
18 based upon this current permit.

19 MS. MAKENTA: Okay.

20 CHAIRPERSON HILL: And so --

21 MS. MAKENTA: Okay. Okay. I'm going to kind
22 of have to kind of make points as I go a little bit
23 because I'm trying to --

24 CHAIRPERSON HILL: That's okay. I mean,
25 whenever you're -- whenever you think you've made your

1 presentation, just let us know.

2 MS. MAKENTA: Oh, okay. So, but I get to kind
3 of come back. I mean, there will -- no? Oh. Oh,
4 okay. Okay. Great. This is why I didn't want to --

5 So, I guess then, I'll just say that the roof
6 deck, the 10-foot decks in the back, and the parking
7 pad, none of those should have been approved. They
8 do, I believe, impact my light, air, and privacy, and
9 are not in line with the zoning administrator
10 regulations, I guess, is what I would say for now.

11 CHAIRPERSON HILL: Okay. Okay.

12 MS. MAKENTA: Oh. Oh, I'm sorry. Go ahead.

13 CHAIRPERSON HILL: That's all right. Is there
14 something else?

15 MS. MAKENTA: That's related to the second
16 appeal. I'm sorry. Yeah.

17 CHAIRPERSON HILL: Okay. Well, it looks like
18 we're going to be back here. Okay. So, all right.

19 Does anyone have any questions for the
20 applicant? I mean, the appellant? Okay. All right.

21 So, DCRA, you can cross now if you'd like, if
22 you have any kind of cross that you'd like to ask of
23 Ms. Makenta.

24 MR. TONDRO: Yes. Thank you very much.

25 Ms. Makenta, if I can turn to that e-mail from

1 DDOT that you cited? I believe that's the one you're
2 referring to, which is the last page in your July
3 5th --

4 MS. MAKENTA: Uh-huh.

5 MR. TONDRO: Actually, I think it was July 6th
6 submission.

7 CHAIRPERSON HILL: Do you know which exhibit
8 that is?

9 MR. HART: Thirty.

10 CHAIRPERSON HILL: Thirty?

11 MR. HART: I think it's 30.

12 MR. TONDRO: I think it's 30. Yes, it should
13 be 30. And it's from Janet Miller at DC.gov, dated
14 June 6th, 2017, at 11:18:54 a.m.

15 MR. SHAPIRO: Mr. Chair, do we know where that
16 is in our Exhibit 30?

17 CHAIRPERSON HILL: It's apparently Exhibit 30.

18 MR. HART: Yeah, the very last page.

19 MR. SHAPIRO: The very last page of Exhibit
20 30?

21 MR. HART: So, you have to scroll all the way
22 down.

23 MR. SHAPIRO: Thank you.

24 CHAIRPERSON HILL: Give me one second, Mr.
25 Tondro.

1 MR. TONDRO: Absolutely.

2 CHAIRPERSON HILL: What was the date of that
3 again?

4 MR. TONDRO: It was dated June 6th.

5 CHAIRPERSON HILL: Okay, okay, I got it. All
6 right. Uh-huh.

7 MR. TONDRO: To Alexis Diao.

8 CHAIRPERSON HILL: Okay.

9 MR. TONDRO: The owner. Okay?

10 CHAIRPERSON HILL: Yeah.

11 MR. TONDRO: Thank you. Ms. Makenta, if I can
12 just refer you to the second paragraph, the start of
13 the second paragraph? Can you just read that first
14 sentence of the second paragraph, starting with, "As
15 there will not be."

16 MS. MAKENTA: "As there will not be
17 excavation, the only concern within the critical root
18 zone will be any compaction related to construction
19 methods."

20 MR. TONDRO: So, I guess I just wanted to
21 point that out to you because you seem -- you asserted
22 -- I believe if I heard you correctly, that this
23 letter indicated that DDOT felt that there was a
24 problem with the construction as approved. Can you
25 make sure you look at that sentence and see if that

1 actually corresponds to what you stated?

2 MS. MAKENTA: Well, there will be excavation,
3 and there has been excavation.

4 MR. TONDRO: Then I would refer, I guess, to
5 our -- if I can refer you then to the second sentence
6 of the first paragraph from our conversation? Can you
7 just read the rest of that sentence? "It is clear
8 that --"

9 MS. MAKENTA: "There will be no excavation
10 beyond the existing footprint of the structure."

11 MR. TONDRO: And just before that, "It is
12 clear that no excavation occurring for installation of
13 a parking pad."

14 So again, I guess I renew my question. I'm
15 not sure. Can you please confirm that despite what
16 this says, that you believe this is DDOT saying that
17 they're not allowed to do -- that somehow, they're not
18 allowed to do construction?

19 MS. MAKENTA: What DDOT is saying that -- let
20 me just, there's also another letter from DDOT in the
21 record.

22 MR. HART: Which exhibit is that?

23 MS. MAKENTA: It was attached to the motion of
24 -- it's an attachment for an extension, but it's part
25 of the motion of adjoining motion to stay the BZA

1 order pending appeal, corrected.

2 MR. HART: And there's no --

3 MR. TONDRO: If I can just say, I believe
4 that's actually not in this case. That's the motion
5 to stay the application, I believe.

6 MS. MAKENTA: No, it was included as an
7 exhibit in this case.

8 MR. HART: If you just let me know which
9 number that is.

10 MS. MAKENTA: Oh.

11 MR. HART: It should be on the bottom, the
12 first page, the bottom righthand corner.

13 MS. MAKENTA: It's mine, so I didn't print out
14 the -- it's like the first motion that I wrote,
15 attached this to it. It was an attachment. It's
16 because it's -- I didn't print it out from the --

17 MR. HART: Is it the motion to postpone from
18 May 23rd?

19 MS. MAKENTA: Probably.

20 MR. HART: I just asked you to look at the
21 front.

22 MS. MAKENTA: Yes, I believe so.

23 MR. HART: If you'd look on the front of the
24 page then it will --

25 MS. MOLDENHAUER: Sorry. What is this?

1 MS. MAKENTA: I'm just looking for the exhibit
2 from DDOT. It's in the motion of adjoining owner to
3 stay BZA order, and it's in that exhibit.

4 CHAIRPERSON HILL: And what is your -- what
5 does it say there? What does it say there?

6 MS. MAKENTA: It's one page. But basically,
7 it says that DCRA permits clearly state that all work
8 must be conducted in accordance with all applicable
9 laws and regulations of the District of Columbia,
10 which would include the tree canopy protection
11 amendment.

12 And it says that permit reviewers cannot
13 review what is not detailed on the site plans.
14 Because the tree wasn't put on the site plans, the
15 Zoning Administrator didn't know about it. But it
16 should have been.

17 And a developer has an obligation to detail
18 all features on the site when providing site plans for
19 permit consideration. She suggested to have the plans
20 amended to include the heritage tree on the adjoining
21 property for a comprehensive tree protection plan to
22 be drafted by the tree's owner, their arborist, and
23 DDOT. And she said lastly, she said if development
24 proceeds as planned without consideration for the
25 heritage tree, this tree will likely be fatally

1 damaged.

2 MR. TONDRO: I'm sorry. I'm still struggling
3 to find the exhibit, so --

4 MS. MAKENTA: Oh, I can --

5 CHAIRPERSON HILL: That's okay. Let's find it
6 first.

7 MS. MAKENTA: Okay. I can --

8 MR. HART: Can you just read what's on the
9 very first page of like the -- what's the date that
10 we're talking about for this document? What is --

11 MS. MAKENTA: Because it was an attachment to
12 one of my motions, I just have my printout. That's --
13 I didn't print the --

14 MR. HART: No, I mean, what date did you
15 actually create this document? That's what I'm trying
16 to figure out.

17 MS. MAKENTA: It's like the first thing I
18 filed. I'm sorry.

19 CHAIRPERSON HILL: That's okay. We'll come
20 back to this. We'll come back to this.

21 So, there is a discrepancy, Mr. Tondro. She's
22 still saying that DDOT is saying that the tree
23 shouldn't be harmed, and from the other exhibit we got
24 here, that there isn't going to be an excavation that
25 is taking place. And so --

1 MR. TONDRO: Yeah, if I can --

2 CHAIRPERSON HILL: Yeah.

3 MR. TONDRO: If I can follow up? Thank you.

4 CHAIRPERSON HILL: Sure.

5 MR. TONDRO: In light of that, while we're
6 trying to figure out what the exhibit is.

7 Assuming that it is in the record and that we
8 can find it, Ms. Makenta, can you tell me what the
9 date of that DDOT statement was? The letter that you
10 just cited?

11 MS. MAKENTA: The second letter is -- I mean,
12 the first letter was May 4th.

13 MR. TONDRO: And who is it from?

14 MS. MAKENTA: That, it's from Janet Miller at
15 DDOT.

16 MR. TONDRO: Okay. And so --

17 MS. MAKENTA: They're both from the same
18 person.

19 MR. TONDRO: So, if I can just -- can you
20 confirm again the date of the letter that I first
21 asked you to read from, which is your last page?

22 MS. MAKENTA: June 6th.

23 MR. TONDRO: Which is after the first letter.
24 Is that correct? Which is after the letter that you
25 cited that we're still trying to find in the record?

1 MS. MAKENTA: Correct. And so, then the
2 question becomes --

3 MR. TONDRO: But and I --

4 MS. MAKENTA: Oh, I'm sorry.

5 MR. TONDRO: I'm sorry. And it's from the
6 same person?

7 MS. MAKENTA: Yes. One is to me and one is to
8 the owners.

9 MR. TONDRO: Okay.

10 CHAIRPERSON HILL: Okay. All right. So,
11 we'll take a look at the second letter. I hear what
12 you're saying in terms of the timeline, Mr. Tondro.

13 So, what's your next question?

14 MR. TONDRO: You had mentioned, in terms of
15 the issue of the rooftop deck and the light and air,
16 you referred to the OP report, which I think we now
17 realize is irrelevant or not applicable in this case.

18 But you didn't, I don't think, cited what citation, a
19 code citation, that you believe was violated when the
20 Zoning Administrator approved that.

21 As I understand it, we're talking about the --
22 as I understand, you were talking about the overall
23 rooftop deck. And so, I'm looking, just if you can
24 tell us what code citation you believe that violated.

25 MS. MAKENTA: Okay. I will -- can I make a

1 note of that and get back to you on that?

2 CHAIRPERSON HILL: Yeah, okay. So, go -- do
3 you have any more questions, Mr. Tondro?

4 MR. TONDRO: No, at that point I'll rest.
5 Thank you.

6 CHAIRPERSON HILL: Okay. Thank you.

7 So, Ms. Makenta, if you can just kind of take
8 a look for that code citation. And so, I know what
9 the Board is going to be interested now is that code
10 citation, as well as we're going to find that exhibit.

11 And I don't know if you could please pass that
12 exhibit to Mr. Moy up there, perhaps. And, Mr. Moy,
13 you can make copies for us and have -- I don't know
14 where it is in the record. We'll have to find it.
15 We'll have to find it.

16 MS. MOLDENHAUER: I have not -- I have looked
17 in the record. I don't know where it is either.

18 CHAIRPERSON HILL: We'll have to find it.
19 So --

20 MS. MAKENTA: Well, I can find it if there is
21 a --

22 CHAIRPERSON HILL: That's okay. That's okay.
23 So, go ahead and just give a copy there to Mr. Moy,
24 and he can make copies for us. Thank you.

25 MR. TONDRO: Just, if I can? I'm sorry. I

1 would just -- in the event that it is not part of the
2 record, I would object to it being included in the
3 record because we haven't been provided notice to be
4 able to respond to that. But, thank you.

5 CHAIRPERSON HILL: Okay. I would be surprised
6 if it's not in the record. But that's okay. That's
7 fine.

8 MR. TONDRO: And if it's in the record already
9 (simultaneous speech).

10 CHAIRPERSON HILL: Right. That's okay. I
11 appreciate that. All right.

12 So, let's see. Okay. So, Ms. Moldenhauer, do
13 you have any cross for the testimony?

14 MS. MOLDENHAUER: Yes. Thank you. So, Ms.
15 Makenta.

16 CHAIRPERSON HILL: Let's do this slowly, by
17 the way. Okay? Okay. All right. Yeah, no, I'm just
18 saying. I'm just trying to move. Now, I'm getting a
19 little -- we're going a little too fast even for me,
20 even though I'm sure everybody in the back there is
21 like going, let's, you know, they're going just as
22 slow. Okay.

23 MS. MOLDENHAUER: So, let's start off with the
24 tree and your assertion that somehow the DDOT heritage
25 tree has a jurisdiction under this board, which this

1 board reviews BZA zoning or zoning aspects.

2 First of all, the tree is located on your
3 property. Is that correct?

4 MS. MAKENTA: Yes. Yes.

5 MS. MOLDENHAUER: So, the tree is not located
6 on the intervener's property, nor on the site for
7 which the permits were filed.

8 MS. MAKENTA: Correct. It's five feet away
9 from --

10 MS. MOLDENHAUER: I just, that's just --

11 MS. MAKENTA: -- the property line.

12 MS. MOLDENHAUER: I'm asking if it's located
13 on the site.

14 MS. MAKENTA: No. And the letters say it's
15 not located on the site.

16 MS. MOLDENHAUER: And the code section that
17 you referenced indicated that plans have to provide
18 information that is on the site. Is that correct?

19 MS. MAKENTA: Which reference was that?

20 MS. MOLDENHAUER: You referenced a section in
21 the Code Section A, about the fact that the Zoning
22 Administrator has to fully review permit plans.
23 Permit plans have to then show information that is
24 correctly on the site.

25 MS. MAKENTA: Also, 301.24 says that to

1 determine compliance with the provisions of this
2 title, each application of the building permit shall
3 be accompanied by, quote, "Other information necessary
4 to determine compliance with this title."

5 And so, other information, I think, is broad
6 for reasons like this, where a heritage tree, as it's
7 protected in D.C. would be other information that
8 would be necessary to determine compliance. If it
9 wasn't included on the plans, I think that -- well,
10 I'm sorry. I'm sorry, but --

11 MS. MOLDENHAUER: And so, you e-mailed DDOT.
12 What was the rationale for you e-mailing another
13 agency, such as DDOT?

14 MS. MAKENTA: The rationale for me? DDOT e-
15 mailed me.

16 MS. MOLDENHAUER: But you also were
17 communicating with DDOT about this issue.

18 MS. MAKENTA: Yeah, I spoke to DDOT about the
19 tree issue.

20 MS. MOLDENHAUER: Is that because DDOT has
21 jurisdiction over trees?

22 MS. MAKENTA: Well, I believe DDOT and the BZA
23 has jurisdiction over trees, because the BZA -- the
24 zoning regulations mention trees numerous times.

25 MS. MOLDENHAUER: And you're referencing --

1 MS. MAKENTA: And 304.3(e).

2 MS. MOLDENHAUER: And so 304 is actually
3 language that refers to deviations and modifications
4 permitted by a zoning administrator's ruling. How do
5 you believe that that section, how do you believe that
6 there was any deviations or modifications in
7 relationship to this permit?

8 MS. MAKENTA: Well, I'm not really exactly
9 sure about that. All I'm saying is that the trees are
10 supposed to be protected under zoning regulations.
11 And 304.3(e) and 301.2(a)(4), both suggest that that
12 tree, under -- that's under the building permit
13 section. Both suggest that the heritage tree, which
14 is protected by law, should be considered. And these
15 are zoning regulations.

16 MS. MOLDENHAUER: But you understand that the
17 zoning regulations, while voluminous, have to be read
18 in context with each section. So, if you're
19 referencing a section under 304, you would have to
20 identify to the Board of Zoning Adjustment why you
21 believe that there was a deviation or modification to
22 the permit by the ZA. Or that section would then not
23 apply. The top bold section that says 304.

24 MS. MAKENTA: Uh-huh.

25 MS. MOLDENHAUER: So, can you explain, do you

1 have a rationale for why you believe that section
2 applies?

3 MS. MAKENTA: All I know is that -- all I know
4 is that the tree, trees are part of zoning regulations
5 and that in terms of them not being damaged, and
6 specifically a heritage tree. And so, I'm sure I
7 could, if I looked deeper I could probably find other
8 codes in the 2,000 pages of code. But it says no
9 trees which would otherwise be protected by this
10 title, or other District of Columbia regulations. It
11 says, "or." It says, "This title or generally other
12 District of Columbia regulations --"

13 MS. MOLDENHAUER: I'll move on.

14 MS. MAKENTA: "-- shall be damaged."

15 MS. MOLDENHAUER: I'll move on.

16 So, in regards to the letter on June 6th,
17 Janet references construction methods. Is it your
18 understanding, is there anything other than
19 construction issues that were raised, or were there
20 other issues in regards to zoning sections?

21 MS. MAKENTA: Well, I mean, she's talking
22 about excavation. So, excavation --

23 MS. MOLDENHAUER: But she -- hold on.

24 MS. MAKENTA: -- excavation in this letter
25 includes, includes the parking pad, the 10-foot decks,

1 the spiral stair, the retaining wall. All of these
2 things are a part of, a part of excavation in the back
3 yard of this property.

4 And so, she's talking about all of these
5 things.

6 MS. MOLDENHAUER: I'm very confused, because
7 you're referencing excavation, but the sentence that
8 Mr. Tondro asked you to read says, "As there will
9 be -- as there will not be excavation."

10 MS. MAKENTA: Right. But actually, there has
11 been excavation and the plans call for excavation. We
12 all know that, right?

13 MS. MOLDENHAUER: I don't. I don't understand
14 how -- are you entering this evidence into the record,
15 then, as not being --

16 MS. MAKENTA: There is no parking pad
17 currently there. Right? There is no spiral stair
18 currently there. I do have photos of --

19 MS. MOLDENHAUER: But does --

20 MS. MAKENTA: -- excavation that has occurred.

21 MS. MOLDENHAUER: But this letter that you
22 entered into the record says, as there will not be
23 excavation. Is that correct? Is that what that
24 second --

25 MS. MAKENTA: Oh, oh, oh, by the way, I --

1 this letter is quite interesting because --

2 MS. MOLDENHAUER: I'm asking a question.

3 MS. MAKENTA: Uh-huh.

4 MS. MOLDENHAUER: And if you could answer the
5 question. The letter that you entered into the record
6 indicates that there will not be excavation. Is that
7 correct?

8 MS. MAKENTA: Right. This letter --

9 MS. MOLDENHAUER: Okay. So that --

10 MS. MAKENTA: -- was the owner's --

11 MS. MOLDENHAUER: My question has been
12 answered.

13 MS. MAKENTA: -- misleading DDOT.

14 CHAIRPERSON HILL: Okay. That's okay. That's
15 okay.

16 MS. MAKENTA: And so this letter --

17 CHAIRPERSON HILL: This letter, this letter
18 (simultaneous speech).

19 MS. MAKENTA: -- was actually submitted.

20 MR. HART: It's -- yeah.

21 CHAIRPERSON HILL: Sorry. Go ahead, Mr. Hart.

22 MR. HART: It's just very hard for us to, when
23 we start talking about, this letter, we don't see what
24 is in front of you.

25 MS. MAKENTA: Oh, I'm sorry.

1 MR. HART: So, it is helpful for us to do
2 this. But I will say that right now we're talking
3 about the cross-examination. We're not introducing
4 new information. So, the time that you had to provide
5 information, and I'm not trying to say that you can't
6 do this because you have a closing statement that you
7 can make, and if you wanted to add something in there,
8 I guess that would be the -- well, regardless. We're
9 trying to get through the cross-examination of the
10 testimony that you gave, and currently Ms. Moldenhauer
11 is asking some questions about that. And if we could
12 kind of keep it to that, that helps us to kind of get
13 through this process.

14 Right now, we're working through this process
15 of you providing testimony, and then being cross-
16 examined. The DCRA doing the same, and you giving
17 cross-examination, and then the owners, through Ms.
18 Moldenhauer, would be doing the same. And then you'd
19 be --

20 CHAIRPERSON HILL: Okay. So, I'm going to --
21 thanks, Mr. Hart.

22 MS. MOLDENHAUER: I just have one more
23 question.

24 CHAIRPERSON HILL: Okay.

25 MS. MOLDENHAUER: You reference -- you

1 identified a couple of issues and then you said the
2 10-foot decks. Were the decks shown, to your
3 understanding, on the BZA plans that were submitted as
4 part of the --

5 MS. MAKENTA: Yes.

6 MS. MOLDENHAUER: Yeah.

7 MS. MAKENTA: Yes.

8 MS. MOLDENHAUER: Thank you. No other
9 questions.

10 CHAIRPERSON HILL: Okay, great. Thank you.
11 So, Mr. Tondro, you have 10 minutes to give a
12 presentation.

13 MR. TONDRO: Yes. Thank you.

14 CHAIRPERSON HILL: Thank you.

15 MR. TONDRO: Good morning, Mr. Chair and
16 members of the Board. Just going to try and keep this
17 as simple as possible.

18 First of all, I'd just like to point out that
19 again that the appellant has the burden of proof under
20 Section X-1101.2, and I just want to keep that in mind
21 here.

22 In many ways, DCRA has been -- we did not
23 submit the motion to dismiss for failure to state a
24 claim lightly, but it was an expression of a
25 frustration, I think, at trying to figure out what was

1 actually stated so that we could respond. And I think
2 that that's indicated as well in terms of this issue
3 of the DDOT e-mail from May 4th. I've looked
4 extensively. I could be wrong, but I've looked during
5 the cross-examination in the OZ record for this case,
6 and I can't find that listed here.

7 So again, I just want to point out that we're
8 trying to respond. If we are given a list, not only
9 of code citations, but also then how those code
10 citations were allegedly violated, then we can respond
11 to it. And it may be that we determined that there
12 was an error made, and we would correct that, maybe by
13 revoking the permit that has happened before.

14 But in this case, we are left with just only a
15 list of code citations. I'm not even sure, because
16 there's no narrative that goes along with them,
17 whether many of the issues that she's now raising were
18 actually raised in the original appeal, which they're
19 required to be under Subtitle Y-302.13, that allows
20 for no amendment of the original claims of the appeal,
21 subsequent, unless there is information that is --
22 unless the appellee, in other words us, don't play
23 hide the ball and don't give them the investigation.
24 Which is not the case in this particular circumstance.

25 So, it's very hard for us to be able to

1 respond when we just have a list. And as I stated in
2 my motion to dismiss, that you know, we can go through
3 those various different provisions that were cited in
4 the original appeal, and then that were subsequently
5 repeated in the July 6th filing. But those again,
6 there's nothing landing them. We don't know what
7 they're based on. We don't have any evidence that
8 supports them.

9 So, I'd like to just briefly go through right
10 now what she raised in her oral presentation, one by
11 one, and then ask the Zoning Administrator also, to
12 deal -- to address that issue.

13 First of all, in terms of the parking pad,
14 again, I'm not sure that was ever raised in the
15 original appeal. I'm just going to put that out
16 there, specifically.

17 In terms of the issues of the plat and plans,
18 which is Subtitle A-301.2, I will point out that that
19 is at the discretion of the Zoning Administrator, what
20 is required, and it's whatever he believes is required
21 that's necessary, as deemed necessary. And I can
22 refer you to, I think it is Exhibit 30, where the July
23 6th, submission by appellant, where she puts -- she
24 actually provides the text of the citation she's
25 citing, but she doesn't explain how they should be

1 applied or any other evidence to support it. So, if
2 you look at A-301.2, I'm sorry, this is 1, 2, 3, 4, 5,
3 6, 7, 8. It's the first attachment, so page 8 of
4 that. And you can see that it says, to determine
5 compliance to the division of this title each
6 application for building permit shall be accompanied
7 by any of the following that is deemed necessary.
8 That is a discretion made by the professional judgment
9 of the ZA.

10 Second of all, as appellants -- sorry, as the
11 owners, counsel has already indicated Subtitle A-
12 304.3, which is the next provision down on page 8,
13 that is applicable to minor flexibility that's granted
14 to minor -- that's granted to matter of right
15 projects. That is not applicable in this case. In
16 this case it's instead, 304.10, which you can see is
17 on page 9, because this case is governed by, this
18 building permit is governed by a BZA plan. And so
19 therefore, it's subject to that.

20 And you'll notice that if you look down at
21 304.10 and 304.11, .12, .13, there is no requirement
22 regarding trees in that area.

23 Light and air, it's the third issue that the
24 appellant raised about the rooftop deck. I still
25 don't have a citation to indicate what was allegedly

1 violated. In terms of the summary order requiring the
2 fourth, what I have in terms of my list of questions
3 that the -- or issues that the appellant raised, in
4 terms of the summary judgment orders charged to the
5 Zoning Administrator to review extensively, the
6 permit, I believe that that is what the Zoning
7 Administrator does every day and there's, you know, I
8 don't believe there's again, there's any citation
9 about how specifically he violated anything.

10 Finally, the last one, the last issue that I
11 see are the rear decks. Again, I believe that the
12 rear decks, first of all as it relates to the tree, I
13 don't believe that was raised in the original appeal,
14 and therefore shouldn't be allowed to be amended at
15 this time to bring it in. But I also believe that if
16 by looking at that letter from DDOT of June 6th, which
17 is the later letter from the same person, they clearly
18 indicate that there's no excavation outside of the
19 existing footprint of the building. And to the extent
20 there's going to be construction for the decks and so
21 forth, they have to rely on the preexisting footings.

22 So, but again, even in terms of the roof
23 decks, I'm struggling to understand what provision of
24 the zoning regulation was alleged to be violated, let
25 alone any evidence thereof.

1 But let me turn briefly to the Zoning
2 Administrator, if I can, just to have him follow up on
3 some of these issues. I may -- going to introduce Mr.
4 LeGrant, who is probably well known to you. Mr.
5 LeGrant, if you can please indicate your title?

6 MR. LeGRANT: Yeah. So, I'm the Zoning
7 Administrator at DCRA.

8 MR. TONDRO: And can you please indicate to me
9 how long you've served in that capacity?

10 MR. LeGRANT: I've served in that capacity for
11 10 years.

12 MR. TONDRO: Thank you.

13 I have a couple questions. In terms of, I'm
14 just going to go through appellant's questions that
15 she raised. The issues, the plat and plans, how
16 that's applicable, Subtitle A-301.2. Can you indicate
17 how you interpret that in light of what appellant was
18 saying that there were -- I guess she's saying that
19 there were questions about what was not included in
20 the application. Did you feel that the application
21 was complete?

22 MR. LeGRANT: Yes. I felt the application for
23 the building permit following the original BZA
24 approval was complete and consistent with staff
25 practice. We look at the building permit application

1 submission as well as the accompanied plans, and to
2 compare them with the approved BZA order, and BZA
3 exhibit plans.

4 MR. TONDRO: And just to point out then, to
5 call your attention to two aspects. The final, sort
6 of, four words of the first sentence that is deemed
7 necessary, the information is deemed necessary, as
8 well as also Subtitle 4 -- or, I'm sorry, Subsection
9 4, other information necessary to determine
10 compliance. How do you apply that?

11 MR. LeGRANT: Well, the -- so, as needed, if
12 we have -- if we need information for a particular
13 application, if the submission is not clear, then
14 myself or my staff will ask for additional
15 information.

16 MR. TONDRO: So, for example, just looking at
17 Subsection 3, there, it refers to loading plans. Is
18 it true that all applications for a building permit
19 require a loading plan?

20 MR. LeGRANT: No.

21 MR. TONDRO: So, therefore, you wouldn't
22 require them if it's not necessary for your review?

23 MR. LeGRANT: That's correct.

24 MR. TONDRO: Thank you. And finally, turning
25 to the next section, Subtitle A-304.3, can you just

1 explain how you understand that provision to be
2 governed, how that -- what that authorizes you to do?

3 MR. LeGRANT: Sure. As you already noted, and
4 I think the intervener's attorney noted, 30A --
5 Subtitle A-304.3, deals with areas of deviation from
6 matter of right applications. For example, if someone
7 is applying for a deviation on lot occupancy, I'm --
8 the zoning regulations permit my office up to two
9 percent, which generally determined minor flexibility.

10 With this provision, if my office entertains
11 an application for minor flexibility, the criteria set
12 forth in this section of how -- what information, what
13 I'm supposed to take into consideration for such
14 applications.

15 I'll distinguish it from the case at hand
16 because this is not a case of minor flexibility.
17 Instead, what governs -- there is this subsequent
18 appeal. Modification if A-304.10.

19 MR. TONDRO: And what does 304.10 address?

20 MR. LeGRANT: It lays out specific criteria
21 that basically limits my office's authority of the
22 extent of deviations that we can approve from BZA
23 approved plans, and as was already noted, it does not
24 of course mention anything about trees.

25 MR. TONDRO: And, it's 304.10(a), 304.10, that

1 you believe would apply to this particular building
2 permit? Not A-304.3?

3 MR. LeGRANT: If -- correct.

4 MR. TONDRO: Thank you. Finally, can I just -
5 - just a confirmation that in terms of the summary
6 orders, the language and the summary orders, all
7 orders requiring you to do an extensive review of all
8 building permit -- of the building permit application,
9 is that the case that happened here?

10 MR. LeGRANT: Yes.

11 MR. TONDRO: Thank you. I rest.

12 CHAIRPERSON HILL: Okay, great. Thank you.
13 Does the Board have any questions of DCRA?

14 MR. HART: Yeah, actually one question. When
15 you have -- when you've seen a case -- have you seen a
16 case where there is an element? In this case it is
17 this heritage tree that's on another property, how do
18 you -- that's on an adjacent property. How do you
19 typically see that or deal with that? Or do you
20 require that an applicant provide kind of the
21 information about adjacent properties like that?

22 MR. LeGRANT: There's no regulation, no zoning
23 regulation that I'm aware of that if there is a
24 heritage tree, or other protected tree on an adjacent
25 property, that requires an applicant to provide

1 information about the adjacent properties.

2 If my office became aware of such a situation,
3 then we would refer it to the appropriate regulating
4 authority, of course, which is the Urban Forestry
5 Administration of DDOT.

6 MR. HART: Thank you.

7 CHAIRPERSON HILL: I just had a quick
8 question, just from me. Again, the two-percent minor
9 flexibility, what was the two-percent minor
10 flexibility in this case? I mean, it's not -- I know
11 you said it wasn't the actual two -- can you explain
12 again what it was?

13 MR. TONDRO: Yes. Just so this is -- these
14 rules, there are two sets of rules. Actually, three
15 sets of rules for flexibility. The Zoning
16 Administrator is authorized to do three different
17 categories. So, one bucket are applications, or
18 building permit applications that are authorized by an
19 order of the Zoning Commission. Okay? So, if you get
20 a PUD or something, then there is certain limitations
21 on what the Zoning Administrator can grant for
22 flexibility. One bucket, not relevant here.

23 There's another bucket that's for projects or
24 building permit applications that are authorized by an
25 order of the Board of Zoning Adjustment. By the

1 Board. That's what we're dealing with right here, and
2 that's at 304.10. Finally, there's a third bucket in
3 terms of flexibility that the Zoning Administrator can
4 grant, and that's what's often called minor
5 flexibility. That's for matter of right projects
6 which are not subject to -- they're not authorized by
7 an order of the Zoning Commission, or by an order of
8 the Board. That's A-304.3, which is raised by
9 appellant, which refers to trees as one of the issues
10 that the Zoning Administrator should consider. But
11 that's not applicable in this case because this case,
12 all that applies is the second bucket, which is that
13 it's authorized by an order of the BZA.

14 CHAIRPERSON HILL: So, but there was nothing
15 that the Zoning Administrator -- there was no
16 flexibility that the Zoning Administrator took under
17 in this case. I'm just, I'm trying to figure out what
18 it is that the plans changed or -- what was the --
19 there was no flexibility that the Zoning Administrator
20 did use in this case.

21 MR. TONDRO: I think if there is anything that
22 the appellant will raise that will be part of the
23 second appeal. I believe that's what she's asserting.
24 So, it's not really relevant here.

25 CHAIRPERSON HILL: I see. I see.

1 MR. TONDRO: I raise it just to point out that
2 in this particular case --

3 CHAIRPERSON HILL: Okay. So, it's part of the
4 second appeal --

5 MR. TONDRO: -- A-304 isn't applicable --

6 CHAIRPERSON HILL: -- if it does -- okay. All
7 right.

8 MR. TONDRO: Right. But more importantly --

9 CHAIRPERSON HILL: Okay.

10 MR. TONDRO: -- 304.3, and the issue, the
11 trees are inapplicable --

12 CHAIRPERSON HILL: Okay. Okay. Great.

13 MR. TONDRO: -- to this particular project.

14 CHAIRPERSON HILL: Okay.

15 MR. HART: And just --

16 CHAIRPERSON HILL: Any more questions?

17 MR. HART: Yeah, and just to be clear, you've
18 raised these three buckets because all development in
19 D.C. falls within one of those three buckets. You're
20 either at the Zoning Commission, you're at the BZA, or
21 you are able to do that as a matter of just your being
22 able to develop your property. And those fall under
23 the matter of right category. So, those three buckets
24 kind of deal with all of the development happening in
25 this city.

1 MR. TONDRO: Yes. Much better said than I
2 did. Yes, they're zero sum. You're in one bucket or
3 another one. You cannot be in both.

4 CHAIRPERSON HILL: Okay. All right. Anybody
5 else? Okay.

6 Ms. Makenta, do you have some question? So,
7 you'll now have an opportunity to cross-examine,
8 basically, the Zoning Administrator. So, anything
9 that he said, or any testimony that he gave, and you
10 can ask questions about that testimony.

11 MS. MAKENTA: So, basically it sounds like the
12 second appeal is in the 304.3 bucket. Is that
13 correct?

14 MR. LeGRANT: The second appeal, if it were to
15 proceed, would be in the A-304.10 classification, set
16 of regulations.

17 MS. MAKENTA: Now, the first -- but that would
18 be a deviation, for example. I can only cross-
19 examine. Gosh.

20 I guess what I'm trying to understand is the
21 Zoning Administrator, the DCRA received on February
22 26th, information regarding the heritage tree, for
23 example. And even though the original permit was
24 released February 10th, a second permit was released
25 April -- I'm sorry, May 26th. And so, what I'm trying

1 to understand is, you're talking about 304.3 is
2 related to matter of right issues, and they're saying
3 that the parking pad is a matter of right thing.

4 And so, what I'm trying to understand is how
5 304 -- at the second permit, the second permit does
6 include an error on the Zoning Administrator part,
7 having known about the heritage tree at that point;
8 having known about, having learned about the heritage
9 tree, for example, February, the end of February.
10 Then releasing another permit that didn't make a
11 change.

12 CHAIRPERSON HILL: I'm following what you're
13 saying, and I'm just trying to understand. So, is
14 your question that the Zoning Administrator found out
15 about the heritage tree and still applied the second
16 permit? And so, what I'm trying to get at, that now
17 sounds like again, a second permit issue. It's not
18 the first permit.

19 MS. MAKENTA: And which -- so I guess --

20 CHAIRPERSON HILL: The timing, again, was what
21 you had that --

22 MS. MAKENTA: So, I guess what I'm trying to
23 understand then, is basically it's like technically,
24 these things need to be joined because how do I deal
25 with the heritage tree when -- what I'm saying is that

1 the second permit shouldn't have been released without
2 the reevaluation based on all the information they had
3 at their disposal, regarding the heritage tree, the
4 parking pad, and all these things. So, these cases do
5 need to be joined.

6 CHAIRPERSON HILL: Okay.

7 MS. MAKENTA: That's just --

8 CHAIRPERSON HILL: That's okay. So --

9 MS. MAKENTA: I just --

10 CHAIRPERSON HILL: -- we've already crossed
11 that bridge, meaning we're now down hearing this
12 appeal now, on the first permit.

13 So, is there a question for the Zoning
14 Administrator, because I mean, the whole thing -- is
15 there a question for the Zoning Administrator right
16 now that you have on -- and I'm still trying to even
17 figure it out, with the first permit about the
18 heritage tree?

19 MS. MAKENTA: I guess I just don't understand
20 how the second permit was released, considering
21 knowledge of all this information, and regarding the
22 DDOT letter and such. And so, it's --

23 CHAIRPERSON HILL: But, Ms. Makenta, I think
24 you're doing a good job. I mean, I'm trying to --
25 we're trying to help you out. But again, at the very

1 beginning when we spoke about this we talked about
2 merging them together. And so, there is now your
3 opportunity, and you still have that opportunity to
4 appeal the second permit.

5 So, just keep your questions to the issue on
6 the first permit.

7 MS. MAKENTA: But I guess what I'm saying is
8 that, what I don't understand is how did they -- can
9 they -- can the Zoning Administrator say, okay, it's
10 like I guess I'm proceeding with the first permit
11 under the assumption that they should have known. But
12 with the second permit I can say, they definitely knew
13 and didn't make any adjustments regarding the plan.

14 So, I guess the question is, can the Zoning
15 Administrator -- what -- I don't want to -- what
16 requirement is there for the Zoning Administrator to,
17 like the tree for example, or the parking pad, and the
18 decks, or what have you? Is there a requirement that
19 based on information they should have known that they
20 act, even on the first permit, if it can't be -- if
21 the second permit now has to be separate?

22 CHAIRPERSON HILL: It sounds like the same
23 question that Mr. Hart just asked, correct? Like, how
24 would you know? Could you answer the question again?

25 MR. LeGRANT: If we were made aware of

1 information that -- in this case we're not talking
2 about a zoning regulation. A heritage tree issue is a
3 DDOT regulatory issue. If my office becomes aware of
4 a heritage tree situation, we refer it to the
5 appropriate agency. Was I aware in the first permit
6 of the heritage tree from DDOT? The answer is no.

7 CHAIRPERSON HILL: Okay. All right. Ms.
8 Makenta?

9 MS. MAKENTA: What, beyond referral to the
10 agency, do you do? Like, when you refer it to the
11 agency, they respond and say this needs to be on the
12 plans. For example, I think that's one of the things
13 they said in their letters. Then, when they say that
14 this needs to be on the plans, and actually they said
15 that -- I'll get back to that.

16 But what does -- what does DCRA do once DDOT
17 says this needs to be on the plans? What does DDOT
18 do, because nothing was done in the second permit.
19 So, what could have been done on the first permit?

20 MR. LeGRANT: We refer, in a case like this,
21 we refer the matter to DDOT, and then it depends on
22 what DDOT information comes back from that. If they,
23 for example, say, this is -- there is evidence that
24 there is going to be damage to a tree regulated by
25 that entity, we immediately send the applicant to DDOT

1 to resolve the issue.

2 CHAIRPERSON HILL: Okay. Okay. I understand.
3 Okay. Ms. Makenta, do you have another question?

4 MS. MAKENTA: So, do the plans -- at what
5 point does the zoning -- if you send them to DDOT, but
6 for example, in DDOT's letter, a couple -- in a little
7 bit in their letter, they said something about, this
8 should be noted on your plans. This is just, we're
9 talking about the construction.

10 CHAIRPERSON HILL: No. Now which letter are
11 you talking about again?

12 MS. MAKENTA: This is the June 6th letter.
13 They, for example, told the applicants that how they
14 were going to --

15 CHAIRPERSON HILL: The June 6th letter?

16 MS. MAKENTA: Yes.

17 MR. HART: That's Exhibit 30.

18 MS. MAKENTA: Yes. They told the applicants,
19 just in terms of storage of construction materials,
20 that it needed to be included on their plans, how they
21 were planning to do that.

22 And in the previous letter, on May 4th, DDOT
23 also said something about needing to -- with regard to
24 the plans they said -- they said, "The developer
25 elected not to include this tree on the plans

1 submitted for review. Permit reviewers cannot review
2 what is not detailed on site plans. A developer has
3 an obligation to detail all features of the site when
4 providing site plans for permit consideration."

5 My suggestion would be to have plans amended
6 to include the heritage tree on the adjoining
7 property. And so, why didn't the Zoning
8 Administrator, or why couldn't the Zoning
9 Administrator do that, because you all had that letter
10 dated May 4th. You had that letter, DCRA had that
11 letter in their possession before the release of the
12 second permit.

13 MR. LeGRANT: I'll just note, those e-mails
14 were not addressed to me, and I do not enforce the
15 DDOT heritage tree regulations.

16 CHAIRPERSON HILL: Okay. All right. So, I'm
17 going to move on to another subject. Do you have
18 anything else?

19 MS. MAKENTA: I just lastly, do you ever
20 change plans based on what DDOT suggests?

21 MR. LeGRANT: We would work collaboratively
22 with DDOT if DDOT came to me.

23 CHAIRPERSON HILL: Okay. All right, great.
24 All right. Ms. Moldenhauer, you all have 10 minutes.

25 MS. MOLDENHAUER: Mr. LeGrant, you just made a

1 comment that --

2 CHAIRPERSON HILL: Oh, sorry. I forgot. I
3 thought you were going on to your presentation. So,
4 you have cross questions. That's fine. Please, go
5 ahead.

6 MS. MOLDENHAUER: Just for clarification. You
7 just stated that you do not enforce DDOT regulations.
8 Is that correct?

9 MR. LeGRANT: That's correct.

10 MS. MOLDENHAUER: And in the June 6th letter
11 by Janet Miller from DDOT, which is part of Exhibit
12 30, it references compliance related to construction
13 methods. Do you regulate construction methods?

14 MR. LeGRANT: I do not.

15 MS. MOLDENHAUER: When you are reviewing a BZA
16 order, do you reference or review that -- I'm sorry.
17 If you are reviewing permit plans, subject to a BZA
18 order, do you review or go through any sections in
19 Subtitle X which has to do with a special exception
20 standard during your review?

21 MR. LeGRANT: No.

22 MS. MOLDENHAUER: There were questions about
23 Section 304, and I think this was a little confusing
24 so I just want to kind of go back through this. That
25 section has to do with deviations and modifications.

1 As it relates to the first permit, did your office
2 review any deviations or modifications?

3 MR. LeGRANT: No.

4 MS. MOLDENHAUER: As it relates to the first
5 permit, is it your opinion that Section 304 would not
6 apply?

7 MR. LeGRANT: That's correct.

8 MS. MOLDENHAUER: And Ms. Makenta brought up
9 questions regarding the 10-foot decks, and the top
10 rooftop deck on top of the third floor. Is there any
11 inconsistencies that you are aware of between the BZA
12 order and the plans and what was approved by you in
13 regards to the first permit?

14 MR. LeGRANT: No.

15 MS. MOLDENHAUER: And then lastly, Ms. Makenta
16 references in one of her initial filings, Section 303,
17 which is titled -- Section, sorry, A-303, compliance
18 with conditions in the order. Are you aware of any
19 specific conditions that were part of this BZA order
20 that were not complied to in regards to your review or
21 your issuance of the first permit?

22 MR. LeGRANT: There were no conditions in the
23 order.

24 MS. MOLDENHAUER: Thank you. No other
25 questions.

1 CHAIRPERSON HILL: Okay, great. Thank you.

2 So, now you'll have 10 minutes. Okay?

3 MR. TONDRO: Chairman Hill.

4 CHAIRPERSON HILL: Sure.

5 MR. TONDRO: If I can just have --

6 CHAIRPERSON HILL: Oh, sure.

7 MR. TONDRO: -- a quick redirect, just quick?

8 CHAIRPERSON HILL: Yes.

9 MR. TONDRO: Two questions only. Mr. LeGrant,
10 I just want to confirm, can you just state again in
11 terms -- did you have any communication with DDOT with
12 regards to this heritage tree impacting this project?

13 MR. LeGRANT: No.

14 MR. TONDRO: And can you -- when DDOT has an
15 issue with the heritage tree, have they, in the past,
16 reached out to you, or do they go and deal with the
17 owner by themselves? How is it that they enforce it?

18 MR. LeGRANT: It could be both. Because their
19 basic regulatory practice is interaction with the
20 owner, then the owner, if it's required to do
21 something, the owner may communicate with my office,
22 or DDOT may reach out to me if they want to raise --
23 make me aware of an issue.

24 MR. TONDRO: And in this case, that did not
25 happen?

1 MR. LeGRANT: Correct.

2 MR. TONDRO: Thank you.

3 CHAIRPERSON HILL: Okay. Ms. Moldenhauer,
4 you'll have 10 minutes.

5 MS. MOLDENHAUER: Thank you. We believe that
6 this is a situation where there is no merit to the
7 underlying appeal or challenge. The situation here is
8 a case where a BZA order was issued, plans were then
9 filed pursuant to that order. The ZA's review of that
10 was then limited.

11 All of the majority of the issues raised by
12 the appellant, Ms. Makenta, were issues that were
13 addressed under the original BZA decision, and which
14 is now at the Court of Appeals.

15 The ZA reviewed the plans. The plans were
16 generally consistent with the underlying BZA order,
17 and then the permit was issued. The permit went
18 through the proper process, the ZA did all of the
19 required reviews. The sections that Ms. Makenta
20 references are just simply not relevant here, and are
21 not either germane to either the ZA's review, or the
22 Board's review.

23 Ms. Makenta, in her initial, one of her
24 initial filings, Exhibit 19, goes through and
25 references a majority of sections in regards to the

1 BZA standards. As indicated in our motion in limine,
2 those are just not relevant.

3 And then, she then also indicates and talks
4 her first point that she made verbally here today, was
5 issues of privacy, light, and air, and enjoyment. All
6 of those sections found on page 10 of her filing in
7 Exhibit 19, are under Subtitle X-901, having to do
8 again, with the special exception standard, not having
9 to do with then possibly an error that the ZA made in
10 simply issuing a permit pursuant to a BZA order.

11 We then move on to the questions that were
12 raised in regards to the heritage tree, and I think
13 that we have, based on evidence in the record stated
14 by Mr. LeGrant today, and also the filings, that there
15 would be no obligation for the ZA to review a heritage
16 tree. One, heritage tree language is typically
17 covered under DDOT standards, not under the ZA.

18 There was no modification at the issuance of
19 the initial permit that would fall under Section 304.
20 And if there were, obviously, later on down the road,
21 any modifications that they would be under 304.10,
22 which as has been indicated, does not include any
23 reference to trees in that regard.

24 In addition to that, the evidence that has
25 been addressed, even by Ms. Makenta, which is part of

1 Exhibit 30, the last page, the e-mail that we've
2 referenced multiple times from DDOT, indicates that
3 there may be issues regarding construction
4 methodology. This Board has had a long-standing
5 understanding that obviously construction methodology
6 is not something that the ZA reviews. There are
7 multiple facets of the permitting process that would
8 obviously possibly take that into account. But that
9 would not be, even if it was possibly an issue, which
10 we don't believe it is, an error by the ZA here.

11 Then, we go on to questions that were raised
12 regarding the rooftop deck on the third floor, and
13 possible decks. We've heard testimony today, and I
14 believe it's visually in the record, that those were
15 all, and even Ms. Makenta admitted, that those were
16 all part of the initial BZA plan. So, there was no
17 error by the ZA when he then issued the permit that
18 was pursuant to an order.

19 And so, in that regard, you know, we believe
20 that there has been no error by the ZA and that this
21 case should be dismissed. I'll turn to my clients.
22 They would like just a few minutes to provide a brief
23 testimony.

24 MS. DIAO: Good morning. My name is Alexis
25 Diao. Thank you so much for turning your attention

1 once again to this matter.

2 My husband and I have been in the neighborhood
3 for -- since 2003, I believe. I came along a little
4 bit later. It was a group house, if you guys are
5 familiar with those, filled with -- oh, don't have to
6 go into that.

7 We have done everything that was required of
8 us. We have been here before you testifying last
9 December, before the Christmas break, explaining why
10 our house needed the renovations that it did. And
11 everything that we were required to do, we have done.

12 We spoke with DDOT, which again, as counsel
13 has indicated, is not necessarily under the ZA's
14 jurisdiction, if that is the proper word. And worked
15 with them. We are more than willing, you know, to
16 accommodate all of the -- we are more than -- we have
17 bent over backwards to make sure that all of our Ts
18 are crossed, and all of our Is are dotted. And we
19 have done everything proper in that way.

20 MR. SMITH: And if I could just -- yeah. I
21 mean, we're very frustrated because, look, we're not
22 lawyers either and it's incredibly expensive to try
23 and have lawyers here to try and push back against
24 very frivolous challenges in like five different
25 jurisdictions, and it's you know, eating up all of our

1 kids' college savings, and it's a great difficulty for
2 us. And it seems very vindictive.

3 I mean, there was an opportunity at the ANC
4 and the BZA for the person who owns the adjacent
5 property, who doesn't live there, to raise all these
6 things, and never availed herself of these things, and
7 then is coming after the fact to raise all these
8 things and basically try to, you know, put us over a
9 barrel.

10 And so, all I'll say is we have done our best.
11 We're not developers. We're just a family who lives
12 in a house and we're trying to renovate this beat up
13 old house that's been a rental for 70 years. And so,
14 we've relied on, you know, the guidance from the DCRA.
15 You know, and they said, go to the ANC, and they said
16 go to the BZA. We got over 20 letters from our
17 neighbors all around us who supported the project and
18 who really like what we're trying to do to restore
19 this house.

20 And you know, we're trying to do our best to
21 do right by the house and by the neighborhood, and
22 this has turned into a real nightmare for us, and we
23 hope that if the deal is today that what you guys are
24 looking at is what the Zoning Administrator did and
25 that you take a look at whether he did his job

1 appropriately, which to me it sounds like he does,
2 then you know, we hope we can move forward with this,
3 you know, and live in our house again at some point
4 soon.

5 CHAIRPERSON HILL: Okay. Okay. Does anyone
6 have any questions for the property owner?

7 So, Ms. Makenta, you have any questions for
8 the property owner? And if you do -- okay. No, all I
9 was going to say is like -- and this is where, you
10 know, now it just gets where people are living next to
11 each other and they're close to each other and
12 everybody has different views as to what they want to
13 do. So, I'd just like to -- if there are questions,
14 I'd like to make them really, you know, precise, and
15 not let any kind of emotion get into them or anything
16 like that.

17 So, do you have any particular questions of
18 the property owner based upon what they said today?

19 You need to turn on your microphone.

20 MS. MAKENTA: I'm not going to make
21 characterizations of them, and in turn. I would just
22 say that I think that it sounds like justice can be
23 served.

24 CHAIRPERSON HILL: No, no, I'm sorry. I just
25 -- you'll get a summary. You'll get to summarize. I

1 just wondered if you had any particular questions of
2 them.

3 MS. MAKENTA: No.

4 CHAIRPERSON HILL: Okay.

5 MS. MAKENTA: Well, yeah. Sure. Sure.

6 CHAIRPERSON HILL: Okay.

7 MS. MAKENTA: I will ask some questions.

8 The letter, Alexis, the letter dated June 6th,
9 regarding your meeting with DDOT, it says on this
10 letter that it is clear that there is no excavation
11 occurring for the installation of a parking pad. How
12 is that possible that that letter says that when your
13 plans are showing --

14 CHAIRPERSON HILL: Ms. Makenta, I just, I just
15 wanted again focus you on whatever they just talked
16 about, just for their -- you're not opening up kind of
17 like -- it's not a big question and answer thing.
18 Like, what they just spoke about, what they just
19 testified to, whatever they just said is what --

20 MS. MAKENTA: So, I can't ask a question about
21 the matters on the table in general?

22 CHAIRPERSON HILL: No. Just exactly what they
23 talked about.

24 MS. MAKENTA: About information that's already
25 in the record?

1 CHAIRPERSON HILL: Yeah. No, no, they just
2 provided testimony about a group house, about trying
3 to be good neighbors, about things like that. I mean,
4 that's kind of what is on the table to ask them
5 questions of that they just presented.

6 MS. MAKENTA: So, I don't get to ask questions
7 based on the evidence in the record.

8 CHAIRPERSON HILL: You're giving -- you're
9 just providing cross-examination questions on the
10 testimony that was given, so whatever they just talked
11 about is what you need to ask questions about. If you
12 don't have any questions about anything else that they
13 said, then you don't have any question for them.

14 MS. MOLDENHAUER: Chairman Hill, I do believe
15 that my client made a comment about DDOT. So, if that
16 does open the door, I just, I don't want to have any
17 potential issue of -- just so you know.

18 CHAIRPERSON HILL: Okay. So, the counsel has
19 just pointed out again that DDOT, I guess, is on the
20 table. So, if you'd like to ask your question about
21 DDOT, please go ahead.

22 MS. MAKENTA: Yes, this letter from June 6th
23 says that it's clear that no excavation is occurring
24 for the installation of a parking pad. And there will
25 be no excavation beyond the existing footprint of the

1 structure.

2 How is that possible when your plans call for
3 the installation of a parking pad, which would require
4 excavation?

5 MS. DIAO: Ms. Makenta, I am not a developer.
6 I don't know own multiple properties, like you do.
7 So --

8 CHAIRPERSON HILL: No.

9 MS. DIAO: I --

10 CHAIRPERSON HILL: We're not going to do any -
11 - just answer the question. That's okay. I'm trying
12 to -- there's a whole audience full of people here --

13 MS. MAKENTA: Thank you.

14 CHAIRPERSON HILL: -- that have been here
15 since 9:30. No, no, it's okay. We're all -- that's
16 why I said at the beginning, you know, let's just ask
17 the question, answer the question. That's it.

18 MS. DIAO: Yes. Thank you. Apologies.

19 CHAIRPERSON HILL: It's all right.

20 MS. DIAO: I am not a developer. I do not
21 know much about construction. I believe that the
22 letter speaks for itself.

23 CHAIRPERSON HILL: Okay.

24 MS. MAKENTA: Well, she met you at the
25 property and you all are planning to install a parking

1 pad, which will require excavation, correct?

2 CHAIRPERSON HILL: She just stated that she's
3 not a developer and she doesn't know about excavation.

4 MS. MOLDENHAUER: Yeah, I think the question
5 that --

6 MR. SMITH: I don't know what the definition
7 of excavation is.

8 CHAIRPERSON HILL: Wait. Wait a second.

9 MS. MOLDENHAUER: Mr. -- Graham.

10 CHAIRPERSON HILL: Wait a second. Wait a
11 second.

12 MS. MOLDENHAUER: And I -- yeah.

13 CHAIRPERSON HILL: So, you're asking the
14 question again, about whether or not she knows about
15 excavation. She just said she doesn't know about
16 excavation.

17 MS. MAKENTA: I think that that's disingenuous
18 and I don't know how to --

19 CHAIRPERSON HILL: Well, you can just -- she
20 just answered the question.

21 MS. MAKENTA: Okay.

22 CHAIRPERSON HILL: We get to decide whether we
23 believe her or not.

24 MS. MAKENTA: Oh, okay.

25 CHAIRPERSON HILL: So, you can ask the next

1 question.

2 MS. MAKENTA: Okay. Okay. She said that, in
3 this letter, that you met them at the site to discuss
4 the scope of work, correct?

5 MS. DIAO: She did say that in the letter.

6 MS. MAKENTA: Did you meet them at the site
7 and discuss the scope of work?

8 MS. DIAO: We did meet at the site and
9 discussed the scope of work.

10 MS. MAKENTA: Okay. It also says that there
11 will be no excavation beyond the existing footprint of
12 the structure. We know that excavation is digging.
13 We can't -- I think we can all agree on that. So, the
14 question is, has there been excavation beyond the
15 existing footprint of the structure?

16 MS. DIAO: Once again, Ms. Makenta, I am not
17 an expert on excavation. I believe her letter speaks
18 for itself.

19 MS. MAKENTA: Okay. There has been excavation
20 beyond the existing footprint of the structure.

21 CHAIRPERSON HILL: Okay, that's --

22 MS. MAKENTA: I don't know, do I have to
23 provide pictures or --

24 CHAIRPERSON HILL: I don't know where that is
25 in the record, or if you're now --

1 MS. MOLDENHAUER: And I believe that that's
2 irrelevant. I would just --

3 CHAIRPERSON HILL: -- giving testimony. But
4 so, I heard your question. Do you have another
5 question?

6 MS. MAKENTA: I guess the question in general
7 is, why does this letter not comport with your plans?

8 CHAIRPERSON HILL: Which letter? You keep
9 repeating. Is it the same letter again? Are we --

10 MS. MAKENTA: The June 6th letter.

11 CHAIRPERSON HILL: We're back to the June 6th
12 letter.

13 MS. MAKENTA: Yeah.

14 CHAIRPERSON HILL: Okay.

15 MS. MAKENTA: It's related to the parking
16 pad --

17 MR. TONDRO: Chairman Hill.

18 CHAIRPERSON HILL: Yes. Uh-huh.

19 MS. MAKENTA: -- and the --

20 MR. TONDRO: Can I just make an objection?

21 CHAIRPERSON HILL: All right.

22 MR. TONDRO: At least, I'm not sure, this is
23 an appeal of the Zoning Administrator's decision to
24 grant the --

25 CHAIRPERSON HILL: Right. I agree. I agree.

1 MR. TONDRO: -- permit. I don't think this is
2 relevant to the --

3 CHAIRPERSON HILL: So, again, so it's again
4 the -- so, do you have any more questions about -- not
5 about this letter, and not about how you disagree with
6 what has already taken place. I'm at a loss a little
7 bit here. So --

8 MS. MAKENTA: I guess I just -- I just think
9 that my first instinct was probably right. I mean, I
10 think that if you're saying that the bus has left in
11 terms of joining the appeals, it sounds like, like
12 that is impossible at this point. Yeah. So, justice
13 just can't be --

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

15 MS. MAKENTA: -- served here today.

16 CHAIRPERSON HILL: That's not true. You don't
17 have to say things like --

18 MS. MAKENTA: Because all of the same
19 (simultaneous speech) --

20 CHAIRPERSON HILL: Do you have any more
21 questions for her? You don't. You'll have an
22 opportunity --

23 MS. MAKENTA: -- that aren't being --

24 CHAIRPERSON HILL: -- to make a closing
25 statement. Okay? So, it appears like you don't have

1 any more questions.

2 MS. MAKENTA: I'm not going to ask any more
3 questions.

4 CHAIRPERSON HILL: Okay. All right.

5 MS. MAKENTA: Thank you.

6 [Pause.]

7 MS. MAKENTA: I mean, is it possible to get --

8 CHAIRPERSON HILL: Okay. So --

9 MS. MAKENTA: -- a reading from the attorney
10 general in terms of whether or not a motion, I could
11 do a motion to amend the complaint to amend the appeal
12 now, and join them both?

13 CHAIRPERSON HILL: You can't amend the appeal
14 now. It's just not possible. So, I mean, I don't
15 think any of the board members here are going to agree
16 to amending the appeal right now because then we'd
17 have to hear it again.

18 And so --

19 MS. MAKENTA: But --

20 CHAIRPERSON HILL: So, if you want to go ahead
21 and make a closing statement again, on this particular
22 permit, then we'll go ahead -- oh, no, I'm sorry. I'm
23 sorry. You have rebuttal. You have rebuttal. I got
24 a little lost.

25 So, you have an opportunity now and I'm going

1 to give you three minutes for rebuttal to rebut any of
2 the stuff that was just said, from either DCRA or the
3 applicant, pertaining to this one permit as to how
4 this -- and I understand that you're not an attorney,
5 but pertaining to this, because this is your appeal.
6 And your appeal is that the Zoning Administrator erred
7 for this permit. So, you're here to present to us how
8 he erred. And so, that's what we're -- because then
9 there's other different places where you have
10 arguments going on right now at the Court of Appeals.

11 There is the second appeal that might be going on.
12 This particular appeal right now, is for the first
13 permit and how the Zoning Administrator erred with
14 that permit.

15 And I'm not, I'm really just trying to focus
16 you so that we -- and it's not -- the bus hasn't left
17 the station or anything like that. It's so that we
18 can kind of listen to your argument so that we can
19 decide whether or not the Zoning Administrator erred
20 for that first permit.

21 And so, that being said, I'm going to go again
22 back, which is that the rebuttal -- and it always
23 happens when -- and I'm sorry, it always happens when
24 the neighbors, when people are personal, they get more
25 excited, and then I get a little excited. But, as far

1 as the Zoning Administrator and how he erred, you have
2 an opportunity now for rebuttal testimony. Like, you
3 can provide any kind of rebuttal. I'm going to go
4 ahead and give you three minutes on the clock on what
5 the zoning -- because this is your appeal.

6 MS. MAKENTA: I guess what I don't understand
7 is why can't I amend it at this point.

8 CHAIRPERSON HILL: Okay.

9 MS. MAKENTA: Because your original question
10 was that -- your original statement was --

11 CHAIRPERSON HILL: Ms. Makenta, we talked
12 about this at the very beginning. And I'm not really
13 sure what you're trying to do now, actually, because
14 if I tried to -- I'm not even sure what you're trying
15 to ask, actually. You're saying that you want to
16 combine them now, right, which I don't think any of
17 the board members would let you do. But you're trying
18 to combine them now.

19 MS. MAKENTA: But we don't know.

20 CHAIRPERSON HILL: We're trying to combine
21 them now, okay? And then you still want to, again,
22 postpone this until September, to again redo this
23 again.

24 MS. MAKENTA: Could we postpone it to next
25 week?

1 CHAIRPERSON HILL: We've heard all the
2 testimony. All of the testimony --

3 MS. MAKENTA: So, if with the --

4 CHAIRPERSON HILL: All the testimony has been
5 taken on this one appeal. So, we've now heard all the
6 testimony for the first permit.

7 And so now, you have an opportunity. And if
8 any board members want to chime in, they can. And so
9 -- but just, I'm going to finish my one statement, Mr.
10 Hart.

11 And then, so I'm still putting three minutes
12 on the clock now here, so you can rebut any of the
13 testimony for this first permit.

14 Mr. Hart.

15 MR. HART: Yeah. No, it's -- what the
16 chairman had asked you at the very beginning was
17 whether or not you wanted to have one or two. You
18 decided that you wanted to have one. And so, we are
19 moving forward with the one.

20 We've heard now, everyone's, as the chairman
21 just said, everyone's testimony regarding this. You
22 can shake your head at it, but I'm just telling you,
23 that's what we have just done.

24 What we are trying to do is to understand the
25 points that you have, in a manner so that we can

1 understand and be able to then have a deliberation
2 amongst ourselves, in front of all of you, to make
3 that determination, using the information that we have
4 been given. And all of this information, testimony
5 that we have been given, has been given under oath.

6 So, everyone that's speaking right now has
7 said that I am giving the testimony to the best of my
8 knowledge, what this is. And so, we are trying to
9 move through this process. Our process is written in
10 the zoning regulations. And it talks about who goes
11 first.

12 First, we've had you give testimony about --
13 in your presentation. Then we had rebuttal -- excuse
14 me, cross-examination from the other parties. Then we
15 heard from DCRA, again with the cross. And then we
16 heard from the applicant, or excuse me, the owner or
17 intervener, I guess they call them. And then we had
18 cross-examination with that.

19 Now, what we get to is rebuttal from you, from
20 the other parties, and then a closing argument. And
21 so, excuse me, a closing statement.

22 And so, this process is for us to understand
23 what are the pieces that you have? What is the
24 information that you have that you would like to
25 provide to us so that we can then make a decision on

1 that.

2 Now going back and then saying, oh well wait,
3 I want to restart this, then we're going to have to
4 restart this entire process to then hear what pieces
5 of information to do that, and I think that we have
6 gone -- I think that we have the information that we -
7 - I think we are getting information as part of this
8 process to understand how to rule, or how to decide on
9 this appeal.

10 And so, right now we'd like to hear from you,
11 your rebuttal, to the statements that you've already
12 heard, if there are things that you've heard that you
13 didn't like or disagreed with, let us know. And so,
14 then we can make our determination based on that.

15 So again, this is the process that we have to
16 go through, and we are listening and writing down
17 information. You've provided us with a letter that
18 I'm still not sure where it -- I'm assuming that this
19 letter that you provided to us, I didn't see it in the
20 -- and I've looked in the information that we have --
21 the exhibits that we have already received, but we
22 have it now so we are looking at that.

23 So, again --

24 CHAIRPERSON HILL: Okay. Okay. So, I'm going
25 to cut Mr. Hart off. So, that's all right.

1 So, you have three minutes to go ahead and
2 provide rebuttal to any of the testimony that was
3 given today. And then you'll have a chance to -- a
4 closing statement. Again, as Mr. Hart said, to help
5 us understand how the Zoning Administrator erred.

6 MS. MAKENTA: I think that if this is only
7 allowed to go under 304.10 and not 304.3, taking into
8 account the second decision by the Zoning
9 Administrator where DCRA would have certainly known
10 about the parking pad, certainly known about the tree,
11 certainly known about the DDOT information, it
12 severely compromises the ability for fair closure.
13 And you know, that one permit is released in February
14 and then --

15 CHAIRPERSON HILL: Ms. Makenta, I do have to
16 interrupt you. I really do, because I've got to tell
17 you, I think we've been really fair with you. Okay?
18 And we've had a lot of information, and we've taken a
19 lot of information, and you keep coming back to the
20 point that -- you keep making the same argument.

21 The second permit is -- you will have an
22 opportunity to argue that second permit. We're just
23 here to hear about the first permit. And so, we took
24 a lot of testimony. And by the way, I'm letting you
25 know, this has gone way longer than we've provided for

1 many, many other people. We've been very generous
2 with plenty of time to go through it, and that's
3 because we want to do our job well, right?

4 And so, really now all you need to do is -- I
5 mean, we're just going to follow through this process.

6 Like, you'll have an opportunity to end. Then we'll
7 have an opportunity to deliberate, whether or not we
8 deliberate today or not, I'm not sure. But right now
9 is your chance to rebut any of the testimony that --
10 and you keep going back to the second permit thing.

11 Do you have any rebuttal for any of the
12 testimony that was provided concerning the first
13 permit?

14 MS. MAKENTA: I'm going to actually pass on
15 the rebuttal.

16 CHAIRPERSON HILL: Okay. Okay. Do you have
17 any rebuttal, Mr. Tondro? And then, you know --

18 MR. TONDRO: I'm going to be extremely --

19 CHAIRPERSON HILL: Okay. Sure.

20 MR. TONDRO: -- limited. If I can just, I
21 just want to clarify. I think this is in response to
22 a question that Board Member Hart asked. And I think
23 it was just raised by the appellant.

24 I just want to turn to Mr. LeGrant and ask him
25 the question in terms of A-304.3, this question of

1 matter of right flexibility, because the provision
2 that's given in Exhibit 30, the appellant's July 6th,
3 filing, only has 304.3, but it's missing the section
4 before that, which is 304.2, which sets it up, and I
5 think that's relevant. So, I'm just going to ask Mr.
6 LeGrant if he can explain -- read the first sentence
7 of A-304.2, and explain how that applies to A-304.3,
8 in the context of this case. Thank you.

9 MR. LeGRANT: Thank you, Mr. Tondro. Yes, so
10 A-304.2, to quote, the Zoning Administrator is
11 authorized to permit the following deviations from the
12 zoning regulations for building permits that are not
13 otherwise authorized by an approved order on the
14 Zoning Commission or the Board of Zoning Adjustment.
15 If the Zoning Administrator, pursuant -- okay, I'll
16 stop there.

17 And so, and it lists the deviations, the 2
18 percent of area requirements, such as lot occupancy
19 and court standards. Deviations of 2 percent -- of 2
20 percent, or 12 inches of linear requirements and
21 minimum lot width. Deviations of 10 percent of linear
22 requirements, rear yards, side yards, court widths.
23 Deviations 2 percent, linear frontage, limitation for
24 eating and drinking establishments.

25 So, that's the frame of the -- whether a

1 matter of right project, those deviations. If and
2 when my office entertains such deviations, I'm guided
3 by the criteria listed in A-304.3, which talks about
4 light and air to properties, and privacy, and level of
5 noise, and trees. So, that is the set-up for matter
6 of right deviations, also known as minor flexibility
7 in the zoning regulations.

8 MR. TONDRO: And, Mr. LeGrant, and final
9 question, Chairman Hill. So, just to clarify, when we
10 talk about matter of right, in this particular case
11 that's defined by A-304.2 as being, and I quote,
12 building permits that are not otherwise authorized by
13 an approved order of the Zoning Commission or the
14 Board of Zoning Adjustment. Is that correct?

15 MR. LeGRANT: That's correct.

16 MR. TONDRO: Thank you.

17 CHAIRPERSON HILL: Thank you. Does the
18 intervener have any rebuttal?

19 MS. MOLDENHAUER: No.

20 CHAIRPERSON HILL: Okay. Ms. Makenta, I'm
21 going to give you three minutes for a conclusion also,
22 in terms of just kind of wrapping up your case now.

23 MS. MAKENTA: I'm going to pass. Thank you.

24 CHAIRPERSON HILL: Okay. All right. Then in
25 that case, I'm going to -- well, actually, does the

1 Board have any questions of anyone?

2 MR. HART: Just to kind of put a finality on
3 this, or at least just to understand it further, the
4 Zoning Administrator just gave a little testimony on -
5 - or, I guess rebuttal on the heritage trees being
6 listed in the matter of right deviation part of the
7 zoning -- I'll just call it that. I know it's not
8 actually titled that, but the Subtitle A-304.2
9 section.

10 Is there another location where they talk
11 about the heritage trees' protection, because that's
12 kind of -- well, I'll just leave it at that. Is
13 there, that you're aware of, is there another place in
14 the zoning regulations where they talk about the
15 heritage tree protection, and as it pertains to a
16 special exception approval or a variance approval?

17 MR. LeGRANT: I'll say generally, no. There
18 are other provisions of the zoning regulations, for
19 example, in the I believe, the Wesley Heights Overlay
20 District, which is not applicable here. They have
21 tree protections that I have to -- I'd have to double-
22 check if it explicitly references heritage trees. I
23 know it lays out a whole table of trees, of tree
24 protections. But that's not applicable here.

25 MR. TONDRO: And if I might respond, I just

1 did a word search of the entire zoning regulations,
2 which one can do. Heritage tree does not appear at
3 all, and heritage only appears twice with regards to
4 the Heritage Islands. So, the Kingsman and Heritage
5 Island. So, therefore, it's got nothing to do with
6 trees. Thank you.

7 MR. HART: And but --

8 MS. MAKENTA: But trees appears numerous
9 times.

10 MR. HART: I just, one question.

11 MR. TONDRO: To be clear, heritage, as part of
12 heritage trees.

13 MR. HART: Yes.

14 MR. TONDRO: Thank you.

15 MR. HART: Yes. But, the protection of trees
16 themselves, that would be in the zoning regulations --

17 MR. TONDRO: Yes, as the Zoning Administrator
18 just indicated and may want to elaborate on, yes. In
19 certain circumstances, particular zones where there's
20 additional protection that's allowed, but generally in
21 terms of the issue of heritage trees, that is
22 something that is enforced by, and administered by
23 DDOT, not by the zoning regulations.

24 MR. HART: And I'm assuming it would be pulled
25 into, or maybe there would be a general reference to

1 other D.C. laws as applicable, you know, that the
2 owner or developer would have to adhere to. But that
3 would not be under the purview of DCRA.

4 MR. TONDRO: Right. As I think the Zoning
5 Administrator already testified, you know, those
6 issues are dealt with by the other agencies, and sort
7 of are bifurcated on the one hand. They will, to the
8 extent they have enforcement capacity, they will do
9 that directly with the owners or the applicants.
10 Otherwise, if it's something that's working through
11 the Zoning Administrator then they will reach out to
12 the Zoning Administrator, and then at that point there
13 will be a determination based on who has the authority
14 to act, because I think in this case the Zoning
15 Administrator said he was not contacted by DDOT. But
16 even if he was contacted by DDOT, his authority to
17 limit a permit or to impose requirements is limited to
18 what's in the zoning regulations.

19 So, there would be, at that point, a
20 discussion with DDOT as to whether DDOT had the
21 ability to enforce certain restrictions that then the
22 Zoning Administrator would respect. But if DDOT just
23 had a wish without any authority to impose a
24 condition, I don't believe that the Zoning
25 Administrator has the free willing authority to impose

1 a new condition based on the zoning regulations.

2 MR. HART: Thank you.

3 MS. MOLDENHAUER: Can I just --

4 CHAIRPERSON HILL: Ms. Moldenhauer, you had a
5 comment?

6 MS. MOLDENHAUER: I just was looking under --
7 there is Section Subtitle C, Chapter 4, Tree
8 Protection. But this section indicates that the tree
9 protection regulations of this title shall apply only
10 in designated zones, and are intended to, and then it
11 goes through. And then Section 400.3 says, "The tree
12 protection regulations of this chapter are applicable
13 when required by a specific zone as indicated in this
14 title."

15 Again, I think though from the testimony that
16 that section is not applicable. However, here I want
17 to be fairly --

18 CHAIRPERSON HILL: Okay. Okay.

19 MS. MOLDENHAUER: -- comprehensive. Thank
20 you.

21 CHAIRPERSON HILL: I only have one question.
22 And actually, I did have a question. Ms. Makenta, so
23 you didn't come to the BZA hearing when they were
24 having this -- when we were going through this special
25 exception. How come you didn't come to the hearing?

1 MS. MAKENTA: How come I didn't come to the
2 hearing in December.

3 CHAIRPERSON HILL: Because you did watch it,
4 so you knew about the hearing.

5 MS. MAKENTA: Yeah, I did watch it. I don't
6 remember. I guess it's like you said in the hearing,
7 it's very hard for a neighbor to come forward. And
8 that ultimately, I saw the posting on the door and I
9 just didn't -- I pretty much thought that DCRA could
10 handle my concerns. I didn't -- I wasn't very aware
11 of how the BZA works, and as is in the record, I had
12 been communication with DCRA --

13 CHAIRPERSON HILL: Okay.

14 MS. MAKENTA: -- for several months.

15 CHAIRPERSON HILL: And then --

16 MS. MAKENTA: And it was my understanding that
17 DCRA could resolve my concerns and that I didn't --

18 CHAIRPERSON HILL: And then the other
19 question. And you didn't go to the ANC meeting when
20 they were talking about the ANC meeting?

21 MS. MAKENTA: I got one flyer for an ANC
22 meeting.

23 CHAIRPERSON HILL: Okay.

24 MS. MAKENTA: But I think that -- I think it
25 was not clear to me how this whole development thing

1 worked, to be honest with you.

2 CHAIRPERSON HILL: Okay.

3 MS. MAKENTA: Like I said in one of my
4 filings, DCRA is a household name. You know, people
5 know in general, know of BZA as -- rather, ANC is more
6 so as community --

7 CHAIRPERSON HILL: No, the reason why I ask is
8 again --

9 MS. MAKENTA: -- (simultaneous speech) have
10 you and so I just --

11 CHAIRPERSON HILL: I was just curious again
12 because that was like where a lot of the key issues
13 would have come up, and where the discussion would
14 have come up, and that the ANC did in fact have a
15 meeting about this and they did approve the work.

16 MS. MAKENTA: Right. But as is --

17 CHAIRPERSON HILL: So, I was just curious --

18 MS. MAKENTA: -- in the record that the ANC
19 wasn't told the truth as well about the --

20 CHAIRPERSON HILL: Well, that's now --

21 MS. MAKENTA: -- balcony and all the --

22 CHAIRPERSON HILL: Now, hold on, hold on, hold
23 on. That's not --

24 MS. MAKENTA: (Simultaneous speech.)

25 CHAIRPERSON HILL: Excuse me. Excuse me. You

1 can't start accusing things. Like at the end, I asked
2 a question and you're saying now that -- anyway. So,
3 okay.

4 I was just trying to figure out why you didn't
5 come to the ANC meeting and why you didn't come to the
6 BZA meeting. So, now I understand.

7 Okay. Is there anything else?

8 [No audible response.]

9 CHAIRPERSON HILL: Okay. All right. I'm
10 going to close the hearing, and then -- I mean, I
11 don't know about you guys, there's a lot of
12 information so I'm not going to be able to deliberate
13 right now. I am going to need a little time to take a
14 look at everything, and take a look at the testimony,
15 take a look at all of the information that's been
16 given, not even to be able to address the issue of the
17 motion for dismissal. I just need a little time
18 because I'm curious, I'm trying to find this one
19 exhibit as to whether or not it came into this one
20 letter, as to whether or not it came into the exhibit.
21 And if it is in the exhibit, and if it's not in the
22 exhibit then we have to -- you know, there's an
23 objection to the motion to including it into the
24 record.

25 MS. MAKENTA: It's there.

1 CHAIRPERSON HILL: So, I need to -- I just
2 have to find. And so, that's one reason why I can't
3 deliberate right now.

4 Do you guys have any thoughts?

5 MS. WHITE: My thought is that, you know, I'd
6 like at least overnight. You know, to have an
7 opportunity to kind of go through the information
8 again.

9 Obviously, just limiting it to the issue of
10 the first permit, because that's the scope of what
11 we're making the decision on at this point.

12 CHAIRPERSON HILL: Yeah. And I don't need any
13 new information. Like this is -- I have plenty of
14 information to --

15 MS. WHITE: No.

16 CHAIRPERSON HILL: -- to work with.

17 MS. WHITE: No, just to, you know, just kind
18 of take it all in.

19 CHAIRPERSON HILL: Okay.

20 MS. WHITE: But obviously, there are rules and
21 regulations and tests that have to be met. But again,
22 I'm just going to limit it to the question of whether
23 or not the Zoning Administrator erred with the
24 issuance of the first permit.

25 CHAIRPERSON HILL: Okay, Mr. Shapiro.

1 MR. SHAPIRO: Thank you, Mr. Chair. I'm in a
2 slightly different place on this. Well, not a
3 slightly different place. You know, as we're
4 deliberating, as we're having a conversation about
5 this, you know, if we're looking at a very simple
6 issue of whether there was an error by the Zoning
7 Administration issuing this first permit, if that's
8 what we're limiting this deliberation to, then I'm
9 ready to take action on that question.

10 I'm not sure what other information we're
11 looking for. I mean, this is a -- there's all sorts
12 of complexities to this issue. There may be an
13 appeal. There's the, you know, there's issues with
14 the circuit court which aren't relevant to us here.
15 But the very basic issue of whether there was --
16 whether the ZA erred in approving this first permit is
17 the only issue before us. I'm ready to discuss that
18 and take action on it.

19 MR. HART: I think that I would like to have a
20 week. So, actually have a deliberation, have a
21 meeting, have a -- schedule this for -- excuse me.
22 Schedule this for a meeting next week, and then be
23 able to decide on it, and given that a week period --
24 excuse me, the seven-day period -- I just think that I
25 need a -- yeah. I think I just need the week to get

1 there.

2 CHAIRPERSON HILL: Okay. All right. Mr.
3 Shapiro, you're outvoted. So, we're going to go ahead
4 and put this off for a meeting for next week. Mr.
5 Moy.

6 MR. MOY: Yes. So, this would be scheduled
7 for a decision meeting next Wednesday, which would be
8 July the 19th.

9 CHAIRPERSON HILL: Okay.

10 MR. HART: And this would be the appeal as
11 well as the preliminary matters would be --

12 CHAIRPERSON HILL: The motion to dismiss.

13 MR. HART: Yes.

14 CHAIRPERSON HILL: And then, or also if we
15 cannot find this letter in the record, the motion to
16 deny, the motion to open the record for the letter.
17 Should have gone to law school. It would have been so
18 much easier.

19 MR. HART: Well, I just wanted to make sure
20 that we were all clear on the aspects of --

21 MS. MAKENTA: No, I can e-mail the reference
22 for that letter.

23 CHAIRPERSON HILL: I have to -- we can find
24 it. We'll find it. We'll find it. We'll find it.
25 And if we can't find it, we'll ask the secretary to

1 contact you to find out where it is. Okay. So, there
2 you go, right? Okay.

3 So, thank you all very much and we're going to
4 take a little break, wherein we're going to decide
5 what we're going to do next. I'm kidding, we're not
6 going anywhere.

7 But we're going to take a little break. Just
8 a little break. Just a little break.

9 I thought maybe everybody wanted to go to
10 lunch and like, you know, you know, so like, we could
11 take a vote. All right. We'll do a three-minute
12 break.

13 [Off the record from 12:35 p.m. to 12:41 p.m.]

14 CHAIRPERSON HILL: Whenever you're ready.

15 MR. MOY: Thank you, Mr. Chairman. The next
16 case application before the Board is Application No.
17 19385 of Shaid Q. Qureshi as captioned and advertised
18 for a special exception relief under the R Use
19 requirements of Subtitle U, Section 203.1(j), which
20 would operate a parking lot in the R-1-B Zone at
21 premises 2200 Channing Street Northeast, Square 4255,
22 Lot 28. This was last before the Board on April the
23 5th, 2017. So, this application has been continued
24 from that date most recent, but there have been
25 multiple continuations, as the Board is aware.

1 CHAIRPERSON HILL: All right. All right, if
2 you could -- actually, before you even take all that
3 stuff down, just have a seat let's go through the
4 introductions first.

5 If you could just introduce yourselves from my
6 right to left.

7 MR. MALONE: Hello, my name is Kevin Malone.
8 I am the ANC Commissioner for SMD 5C-02, where the
9 applicant is seeking a variance.

10 CHAIRPERSON HILL: Okay. You need to push the
11 button there.

12 MR. RACHAL: Good afternoon, Chairman Hill,
13 and members of the board. My name is Anthony Rachal,
14 I'm the attorney for the applicant.

15 MR. QURESHI: Good afternoon.

16 CHAIRPERSON HILL: You need to push the button
17 again. Sorry.

18 MR. QURESHI: Good afternoon. My name is
19 Shahid Qureshi, owner of All Star Towing.

20 CHAIRPERSON HILL: Okay. So --

21 MR. MILLER: Mr. Chairman.

22 CHAIRPERSON HILL: Yeah, sure.

23 MR. MILLER: As long as we're doing
24 introductions --

25 CHAIRPERSON HILL: Oh, sure of course. Sorry.

1 Mr. --

2 MR. MILLER: I'll introduce myself.

3 CHAIRPERSON HILL: Thank you. Thank you.

4 MR. MILLER: Robert Miller sitting in for the
5 Zoning Commission on this particular case.

6 CHAIRPERSON HILL: Thank you. Thank you,
7 Commissioner Miller. And by the way, congratulations
8 on being confirmed the other day. Welcome to however
9 many years that -- I hope you survive.

10 So, let's see. So, gentlemen, Mr. Rachal, are
11 you going to be presenting?

12 MR. RACHAL: Yes, and --

13 CHAIRPERSON HILL: You need to push the button
14 again.

15 MR. RACHAL: Yes, and giving -- and having
16 testimony through the applicant.

17 CHAIRPERSON HILL: Okay. Because, well first
18 of all, have you all been sworn in?

19 MR. MALONE: I have not.

20 CHAIRPERSON HILL: Okay. No? Okay, great.

21 Mr. Moy, would you mind swearing them in?
22 Yeah, and anybody else who hasn't stood, if anybody
23 missed -- you need to stand. You need to stand, sir,
24 and raise your right hand.

25 [Oath administered to the participants.]

1 CHAIRPERSON HILL: So, Mr. Rachal, I mean,
2 we're back here again. You were here with us back in
3 April, right? And then we asked for a bunch of stuff
4 from you and the Office of Planning needed some stuff
5 as well, and we didn't get anything.

6 And so, now I'm really kind of confused as to,
7 you know, did new things come in that I missed?

8 MR. RACHAL: Yes, Mr. Chairman, I believe that
9 many new things have come in that you've missed. One,
10 there was a request for the records with regard to the
11 addresses of within 200 feet. That was supplied.

12 CHAIRPERSON HILL: When?

13 MR. RACHAL: That was supplied early on in
14 April or May.

15 CHAIRPERSON HILL: Okay. But I mean, there
16 was a lot of other information that we had asked for.
17 I'm just saying, have you submitted any of the other
18 information that we ask for?

19 MR. RACHAL: The other information that we
20 requested was -- you requested, was the plan for the
21 screening and landscaping. And the applicant has been
22 wrestling with the cost associated to have estimates
23 for that. He's prepared to testify as to that issue.

24 We did present to the ANC, the intent of the
25 applicant to comply with all the requirements for

1 screening and landscaping, which would involve the
2 planting of trees and shrubbery.

3 CHAIRPERSON HILL: Okay. And what I
4 understood, also, was that you know, we didn't get --
5 and this is from you in the Office of the Attorney
6 General, like a self-certification that the relief you
7 were asking for.

8 MR. RACHAL: That was supplied initially as a
9 part of the appeal when the Zoning Administrator
10 indicated that we had two options. One, to appeal or
11 to seek a special exception. So, the self-
12 certification came from the Zoning Administrator's
13 office, DCRA.

14 CHAIRPERSON HILL: Okay. And so, at least as
15 far as I can see, and you didn't submit anything, and
16 maybe I'm getting confused with the appeal, did you
17 submit some things last night into the record?

18 MR. RACHAL: I --

19 CHAIRPERSON HILL: Or the day before?

20 MR. RACHAL: I have not -- the day before, no.
21 I have a statement of the applicant that I'm
22 submitting this afternoon, now.

23 CHAIRPERSON HILL: On the appeal, you mean?

24 MR. RACHAL: Yeah. No, on the application.

25 CHAIRPERSON HILL: Okay.

1 MR. RACHAL: At the last hearing, I presented
2 a statement on the appeal.

3 CHAIRPERSON HILL: Okay. Can you bring that
4 forward to the secretary?

5 [Pause.]

6 CHAIRPERSON HILL: Right. Part of what was
7 requested for a self-certification or a ZA memorandum
8 burden of proof statement, which I guess you've now
9 given us, right? Information on compliance with the
10 screening and landscaping requirement, which you're
11 saying you're not submitting to us. Letters of
12 authorization -- or you haven't submitted yet.
13 Address of the property within 200 feet. So, that's
14 what you have said that you've submitted.

15 MR. RACHAL: Yes.

16 CHAIRPERSON HILL: Plans, we don't have any
17 plans. Photographs of the property. Those are the
18 things that were requested the last time you were
19 here.

20 MR. RACHAL: I've just received photographs,
21 so I will be submitting them and we were going to
22 provide testimony with regard to the conditions of the
23 property.

24 CHAIRPERSON HILL: Yeah, and I guess I'm just
25 trying to cut right to the chase here. Like, you

1 know, we can't get all this information and then
2 process it right here on the dais and 30 seconds and
3 then be expected to kind of work through this. You
4 know?

5 And so, I'm a little confused as to how -- I
6 mean, I guess we can go ahead and move forward. I
7 mean, I don't know if the Office of Planning is still
8 in denial, whether the ANC is still in denial. You
9 know, and so I just don't think this is ready to be
10 heard. But, if you want to go ahead and present, you
11 can go ahead and present.

12 And so, let's see, do you want to go?

13 MR. HART: Yeah. No, actually, I think that,
14 Mr. Chairman, we should hear the presentation. We did
15 get this information. I agree that we probably won't
16 be giving a decision today, but at least we have this
17 part of the information kind of through.

18 CHAIRPERSON HILL: Okay. All right.

19 MR. HART: So, it seems as though we should
20 actually hear what it is that you have to say. But I
21 will echo the Chairman's, you know, comment, which is,
22 it is -- there are deadlines for us to receive this
23 information so that we are able to kind of go through
24 this and hear your testimony in a fairly timely
25 manner. It's really hard to read a -- I don't know

1 how long this -- eight-page document while you're
2 going through testimony without missing your
3 testimony. I don't know if the ANC has heard it.
4 Again, the Chairman raised all those issues.

5 CHAIRPERSON HILL: Okay. Thank you, Mr. Hart.
6 And so, we'll go ahead, and also the ANC Commissioner
7 is here, actually, and has been through whatever
8 lesson that was that we just went through.

9 So, sir, please go ahead and give your
10 presentation. I'm going to go ahead and put 10
11 minutes on the clock just so we know where we are, and
12 you can begin whenever you'd like.

13 MR. RACHAL: Mr. Chairman, with regard to the
14 presentation, we are here on two different matters.
15 One, an appeal, and one, an application. I think it
16 would be inappropriate to compress the time for one
17 into both. You know, we have --

18 CHAIRPERSON HILL: We're not hearing the
19 appeal just yet. We're just hearing the application.

20 MR. RACHAL: Okay. That's --

21 CHAIRPERSON HILL: Yeah.

22 MR. RACHAL: That's fine.

23 CHAIRPERSON HILL: No, no, great.

24 MR. RACHAL: Thank you very much.

25 CHAIRPERSON HILL: Sure.

1 MR. RACHAL: I would like to call my first
2 witness, Mr. Qureshi, the owner of the property.

3 CHAIRPERSON HILL: Okay.

4 MR. RACHAL: All right. Mr. Qureshi, when did
5 you buy the property at 2200 Channing Street?

6 MR. QURESHI: I believe, 2006.

7 CHAIRPERSON HILL: Could you just lean a
8 little bit forward? I'm sorry.

9 MR. QURESHI: 2006.

10 MR. RACHAL: And at the time that you
11 purchased the property, what condition was it in?

12 MR. QURESHI: It was pretty much not usable.
13 It was a laundromat and also attached was a house.

14 MR. RACHAL: Okay. And when you say it was a
15 laundromat, was it being used for commercial purposes?

16 MR. QURESHI: Yes, but at that time it was not
17 being used.

18 MR. RACHAL: But it had been used for
19 commercial purposes?

20 MR. QURESHI: Yes. Yes.

21 MR. RACHAL: Now, to turn the property into
22 the use that you intended to use it for, what did you
23 have to do?

24 MR. QURESHI: My intention was to purchase the
25 property and to demolish the laundromat and the house

1 so I can use it for my truck business, my tow truck
2 business.

3 MR. RACHAL: Did you apply for a permit from
4 DCRA?

5 MR. QURESHI: Yes, I did.

6 MR. RACHAL: And did you go -- what steps did
7 you take in order to receive that permit?

8 MR. QURESHI: Well, the steps are, you file
9 the application and DCRA comes out, everybody comes
10 out to see the property, and they give you steps to
11 follow, to pave the property, put the fencing, all
12 those things to get approved, which they did do the
13 inspection. I did everything they asked me to do.
14 They came back and approved my application and I was
15 issued a license to operate, since 2006.

16 MR. RACHAL: Now --

17 MR. QURESHI: Since 2007.

18 MR. RACHAL: -- as part of Exhibit A to your
19 application, is this the application that you
20 submitted to DCRA?

21 MR. QURESHI: Yes.

22 MR. RACHAL: And where there check offs by the
23 Office of Zoning relative to their reviews and
24 inspections?

25 MR. QURESHI: Yes.

1 MR. HART: What document are you looking at?
2 I'm sorry.

3 MR. RACHAL: It was Exhibit A.

4 MR. HART: Thank you. Exhibit --

5 MR. RACHAL: Exhibit A, which was the
6 application for a certificate of occupancy.

7 CHAIRPERSON HILL: You don't know the exhibit
8 number, do you?

9 MR. RACHAL: It was A2. I mean, A1 and A2.
10 It's two pages.

11 CHAIRPERSON HILL: I meant within the file
12 here. Just give a second. Mr. Moy, do you find that?

13 MR. MOY: I'm still searching for, Mr.
14 Chairman. I don't see it. This is the filing in the
15 application, correct?

16 MR. RACHAL: Yes. It was also submitted as a
17 part of the appeal.

18 MR. MOY: Well, sir, my understanding is
19 that's the appeal -- applicant should file separate
20 documents to the application directly. It goes also
21 for the self-cert or ZA memorandum. Actually, file
22 that separately in the application, please.

23 CHAIRPERSON HILL: So, it's not in 19385.

24 MR. RACHAL: It's in 19334.

25 CHAIRPERSON HILL: Okay. Do you have a copy

1 of that?

2 MR. RACHAL: Yes, I do.

3 CHAIRPERSON HILL: I'll tell you what --

4 MR. MALONE: Chairman.

5 CHAIRPERSON HILL: Yeah. Sorry.

6 MR. MALONE: Chairman Hill, the I make a
7 comment?

8 CHAIRPERSON HILL: Sure.

9 MR. MALONE: Counsel for the witness expressed
10 that the Board separate the two cases between the
11 application and the appeal. And if counsel did not
12 submit the form under the application, then it's my
13 view that it's inadmissible and therefore he should
14 present this document under the appeal and not the
15 application.

16 MR. RACHAL: I'm not moving it for evidence at
17 this time. I moving it for discussion relative to
18 what processes --

19 CHAIRPERSON HILL: Okay, I'll tell you what,
20 let's --

21 MR. MALONE: The processes, that's not in the
22 record.

23 CHAIRPERSON HILL: That's okay. I appreciate
24 it's not in the record. Let's continue to take the
25 testimony, Mr. Hart, and then we can come back to that

1 issue.

2 So, the certificate of occupancy you were
3 speaking off, Mr. Rachal.

4 MR. RACHAL: Yes. On page 1, is there a
5 section for the Office of Zoning to sign off on?

6 MR. QURESHI: Yes.

7 MR. RACHAL: On page 2, is there another
8 section at the bottom with regard to the approval of
9 the certificate of occupancy where Zoning also signs
10 off on?

11 MR. QURESHI: Yes.

12 MR. RACHAL: And what dates were those?

13 MR. QURESHI: Looks like a 2007, 8/16/07. I
14 can't read the handwriting. '07.

15 MR. RACHAL: Okay.

16 MR. QURESHI: '07. Looks like it, yeah.

17 MR. RACHAL: What was the entire date?

18 MR. QURESHI: 8/08/07.

19 MR. RACHAL: Okay. Were there any other
20 conditions imposed on you at the time that this
21 application was made?

22 MR. QURESHI: What was the question? I'm
23 sorry.

24 MR. RACHAL: Was there any other conditions
25 imposed upon you at the time that this application was

1 made?

2 MR. QURESHI: No. No.

3 MR. RACHAL: Did the Office of DCRA require
4 you to do any paving?

5 MR. QURESHI: Yes.

6 MR. RACHAL: Was that an additional condition?

7 MR. QURESHI: Yes.

8 MR. RACHAL: Was that initially in the
9 application?

10 MR. QURESHI: When you apply for a license,
11 those are the requirements. You have to pave, you
12 have to have fence, you have to have lighting, you
13 have to have restrooms, all those things. Those are
14 requirements to apply for a towing license. And I met
15 all the requirements at the time.

16 MR. RACHAL: And did you incur costs in order
17 to pave the site?

18 MR. QURESHI: Yes.

19 MR. RACHAL: Did you incur costs associated
20 with the fencing?

21 MR. QURESHI: Yes, it was done by Long Fence.

22 MR. RACHAL: Okay. With regard to where the
23 property sits, how would you describe its location in
24 regard to the other properties around you?

25 MR. QURESHI: I mean, the whole block is

1 pretty much commercial, all towing companies,
2 construction companies, repair shop, body shops.
3 That's the whole block of Channing Street. That's
4 where I'm located.

5 MR. RACHAL: And have you taken photographs of
6 those businesses that are around you?

7 MR. QURESHI: Yes, I have.

8 MR. RACHAL: And are those depicted in the
9 photographs that you provided?

10 MR. QURESHI: Yes.

11 MR. RACHAL: For this hearing today?

12 MR. QURESHI: Yes, sir.

13 MR. RACHAL: Could you describe the nature of
14 those businesses up and down Channing Street?

15 MR. HART: Should we -- I mean, one, I can't
16 see those.

17 MR. QURESHI: I can put them up if you'd like.

18 MR. HART: Well we -- I think that we have the
19 -- Mr. Secretary, we do have some easels that we can
20 put them on so that they can be --

21 MR. MOY: Yes, sir.

22 MR. HART: -- seen by the --

23 MR. MOY: The easels are leaning against the
24 wall, and if you could set it up right here that would
25 be terrific.

1 MR. HART: And maybe want to hold the time.

2 CHAIRPERSON HILL: No, he meant he was pausing
3 the time so you could get set up. There's easels over
4 there, sir, and the back corner. Right next to the
5 door.

6 [Pause.]

7 MR. RACHAL: Mr. Chairman, I have a set of the
8 same photographs for the record, that I would submit.

9 CHAIRPERSON HILL: Okay, do you have enough
10 copies for everybody?

11 MR. RACHAL: No, I don't.

12 CHAIRPERSON HILL: Okay. Just go ahead and
13 give them to the secretary, and we can see the board,
14 and also the Commissioner can see the board as can the
15 Office of Planning.

16 So, the testimony for those -- well, I'll wait
17 until you do it.

18 Mr. Qureshi, I'm sorry. There's a camera
19 there. That's why they go there.

20 MR. QURESHI: So --

21 CHAIRPERSON HILL: I'm sorry, you need to talk
22 into this microphone here so that it's on the record,
23 as you point.

24 MR. QURESHI: So, starting from --

25 CHAIRPERSON HILL: You need to turn it on.

1 Sorry.

2 MR. QURESHI: I'm sorry.

3 CHAIRPERSON HILL: Oh, is it on?

4 UNIDENTIFIED SPEAKER: Hold it closer to your
5 mouth.

6 MR. QURESHI: Starting from Channing Street,
7 22nd Channing Street, this is the body shop (speaking
8 off mic.) You can see next to Channing Street is --

9 CHAIRPERSON HILL: So, Mr. Moy, it wasn't on.

10 MR. QURESHI: Okay. All right. 22nd Street,
11 Channing Street, here's the body shop that operates.
12 Next to Channing Street is abandoned house. Been like
13 that for the past four years. And right next to that
14 is a towing company, A&T Towing Company, right across
15 from me. This is my lot right across from it, All
16 Star Towing. Right next to it is the Orange Shop next
17 to A&T towing.

18 Pretty much it goes along, this is the art and
19 graph company right next door. Then there's a
20 construction company right next to it. And it pretty
21 much goes. And this is the ice, ice company, pretty
22 much. And then there's ABC Towing right next to it,
23 and there's a tire shop that sell used tires for the
24 dump trucks. That's pretty much it. The whole block
25 is pretty much commercial. And that's it.

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1 And these, all these vehicles took pictures.
2 That's the body shop, the parks, all along the streets
3 on Channing Street, 22nd Street, all have no tags.
4 They park all over the street with no tags. You can
5 see all the cars issued tickets by DPW. Every morning
6 they issue tickets. They don't have the space to park
7 vehicles on their premises, so they park pretty much
8 all over Channing Street and 22nd Street. And that's
9 most of the complaint is coming from when we were at
10 the ANC Commission meeting. An older lady complained
11 about, she can't get through because there's so many
12 cars parked everywhere. And it's all coming from this
13 particular body shop, they're parking cars everywhere
14 with no tags. They repair these cars. You can see
15 damaged cars bought at the auction, repairing the cars
16 with no tags.

17 And that's every day it's like this. Every
18 day. And that's where most of the complaint is coming
19 from, not because of All Star. I have my own facility
20 with the fence, gated, I drop my cars off my trucks, I
21 close the gate and move on. I don't need to park my
22 cars on the street.

23 So, all this is coming from this particular
24 body shop, they're doing all this, and I think there
25 was mention, ABC Towing also is doing it. At the ANC

1 Commission meeting they mentioned ABC Towing. They
2 never mentioned my company named All Star. And ABC is
3 also leaving cars on the street because they don't
4 have the space to leave cars when they impound cars or
5 bring cars for DPW or MPD, and that's what we do all
6 day long. And you're supposed to leave it in your
7 facility. What they do is leave them on the street.

8 And that's what's happening right now. And
9 I'm the one -- we pointed out that I'm the one doing
10 it. I think they got the wrong person, and I'm here.
11 This body shop should be here, and ABC towing should
12 be here. Not me.

13 And to revoke my license, I think, is totally
14 unfair. Thank you.

15 MR. RACHAL: Mr. Qureshi, does All Star Towing
16 have anything to do with ABC Towing?

17 MR. QURESHI: No, separate companies.

18 MR. RACHAL: Are you a member or partner or an
19 investor in the other towing company?

20 MR. QURESHI: No, sir.

21 MR. RACHAL: Have you ever been cited by any
22 District agency since you've been open and in
23 operation until the present time?

24 MR. QURESHI: No. I've been in business 25
25 years. I have a clean record with DPW and with DCRA.

1 No complaints from no customers.

2 MR. RACHAL: Okay. With regard to the
3 requirements, now that you have been asked to apply
4 for a special exception, are you prepared to meet the
5 new requirements under the zoning regulations?

6 MR. QURESHI: Pretty much whatever they ask
7 I'll do to stay where I am.

8 MR. RACHAL: And --

9 MR. QURESHI: If they want me to plant trees,
10 they want to put new fencing, I'd be glad to do it.

11 MR. RACHAL: So, specifically, with regard to
12 the fence requirements, you now understand that
13 although previously you were able to put a chain link
14 fence on your property, now you're required to put a
15 wooden fence?

16 MR. QURESHI: Yes.

17 MR. RACHAL: And have you taken the estimates
18 to obtain a wooden fence?

19 MR. QURESHI: Yes, sir.

20 MR. RACHAL: And what have you received in the
21 way of estimates for a wooden fence?

22 MR. QURESHI: Long Fence, I believe, was
23 16,000.

24 MR. RACHAL: Okay.

25 MR. QURESHI: For a new fence.

1 MR. RACHAL: Are you prepared to undertake the
2 requirements for screening and landscaping?

3 MR. QURESHI: Yes.

4 MR. RACHAL: Have you undertaken to receive an
5 estimate for the cost associated with screening?

6 MR. QURESHI: Yes, I spoke to a landscaping
7 company. They came out, looked at facility. I'm
8 supposed to get an estimate but I haven't gotten one
9 yet, but I'm working on it.

10 MR. RACHAL: Okay. Did they want to charge
11 you initially to give you that estimate?

12 MR. QURESHI: \$100.

13 MR. RACHAL: Did they make any conditions on
14 buying the plants and shrubs from their facilities?

15 MR. QURESHI: Yes.

16 MR. RACHAL: And do you have a ballpark in
17 terms of what that cost might be?

18 MR. QURESHI: I don't have the slightest idea
19 so I'm --

20 MR. RACHAL: Do you think it will be in the
21 hundreds or thousands of dollars?

22 MR. QURESHI: It should be in thousands of
23 dollars.

24 MR. RACHAL: Have you spoken with your
25 neighbors with regard to your application?

1 MR. QURESHI: Yeah, I spoke to my next-door
2 neighbor. Yes.

3 MR. RACHAL: Okay. And who is your next-door
4 neighbor?

5 MR. QURESHI: First name is Coffey. Since
6 I've been there, he has no problem with me being
7 there. So, and other businesses, neighbors, they have
8 no complaints against me.

9 MR. RACHAL: And is Mr. Coffey directly
10 adjacent to your property?

11 MR. QURESHI: Yes, sir.

12 MR. RACHAL: Where is he exactly located?

13 MR. QURESHI: Right next door.

14 MR. RACHAL: Is that the rear of your
15 property?

16 MR. QURESHI: Rear of my property. Yes, sir.

17 MR. RACHAL: Okay. And how long has he lived
18 there while you've been in operation?

19 MR. QURESHI: Well, when I bought the property
20 he was there, back in 07, 06.

21 MR. RACHAL: And he's remained your neighbor
22 all that time?

23 MR. QURESHI: All this time, yes.

24 MR. RACHAL: Have you spoken to him about
25 additional screening for the fence near his property?

1 MR. QURESHI: Yes, but he's not complaining.
2 He said it will help if you put a new fence up. It
3 would look new. It would bring the value to the
4 neighborhood, putting the trees up. That's why he's
5 happy about it. But he has no complaint against me.

6 MR. RACHAL: Now, the requirements that are
7 required for screening and landscaping, would these be
8 the requirements imposed by DC DOT?

9 MR. QURESHI: Yes.

10 CHAIRPERSON HILL: Mr. Rachal.

11 MR. RACHAL: Yes.

12 CHAIRPERSON HILL: I just want to let you
13 know, you're over by four minutes now, so just kind of
14 keep going along here but if you could also wrap it
15 up.

16 MR. RACHAL: Yes, Mr. Chairman.

17 CHAIRPERSON HILL: And again, it's the burden
18 of proof as to why this special exception should be
19 granted.

20 MR. RACHAL: Yes. Mr. Qureshi, the present
21 gate to your property open onto any residential
22 streets?

23 MR. QURESHI: No, sir.

24 MR. RACHAL: It's open only on to Channing
25 Street?

1 MR. QURESHI: Correct.

2 MR. RACHAL: Which you identified as
3 predominantly -- well, entirely commercial but for
4 your lot?

5 MR. QURESHI: Yes.

6 MR. RACHAL: Do you have a gate or entrance on
7 22nd Street?

8 MR. QURESHI: No, sir.

9 MR. RACHAL: Is there an entrance on the rear
10 of your property?

11 MR. QURESHI: No, sir.

12 MR. RACHAL: Have you had any complaints
13 regarding any noise or lighting coming from your
14 property?

15 MR. QURESHI: No, sir.

16 MR. RACHAL: And if required to put in trees
17 in the property that would be on a five trees for -- I
18 mean, one tree for five parking spaces, are you
19 prepared to reduce the requested number of parking
20 spaces --

21 MR. QURESHI: Yes.

22 MR. RACHAL: -- in order to accommodate the
23 trees?

24 MR. QURESHI: Yes.

25 MR. RACHAL: And the parking associated with

1 your property is for your principal use of your
2 business only?

3 MR. QURESHI: Yes, sir.

4 MR. RACHAL: Do you have any daily parking
5 allowed?

6 MR. QURESHI: No, sir.

7 MR. RACHAL: Now, the nature of your parking,
8 is it associated with the District of Columbia
9 government?

10 MR. QURESHI: Yes, DBW.

11 MR. RACHAL: And how does that work? How are
12 you engaged with the District of Columbia government?

13 MR. QURESHI: Every morning, every day, we get
14 calls, early in the morning, emergency parking, people
15 parked illegally and we get calls from DPW. If
16 there's construction going on by PEPCO, anything is
17 going on on that particular road, we have to remove
18 all those cars and bring them to our facility. And we
19 notify DPW the cars are at our location, and they are
20 -- the owners are notified where the cars are and they
21 retrieve their vehicles from our facility.

22 So, this is an everyday thing. Abandoned
23 vehicle, illegal parking, snow emergency, that we are
24 right along with DPW employees in our trucks to pick
25 up all the vehicles before the snowplow can clean the

1 roads. And that's what we do pretty much, for the
2 city.

3 MR. RACHAL: Right. And does the city notify
4 the owner of the cars that they are on your lot?

5 MR. QURESHI: Correct.

6 MR. RACHAL: And what is the owner obligated
7 to do?

8 MR. QURESHI: Retrieve the vehicle and pay the
9 fees for the vehicle being towed.

10 CHAIRPERSON HILL: All right, Mr. Rachal, I'm
11 going to ask you to kind of wrap it up just a little
12 bit here. You're seven minutes over and I want to go
13 over to the Office of Planning. And again, I'm
14 continuing to hear about -- trying to listen for what
15 it is that -- you know, the standard within that
16 you're meeting the special exception. I understand
17 you're now talking about different complaints or
18 things such as that that we might get to, but how are
19 you meeting the standards for the special exception?

20 MR. RACHAL: With regard to any adverse public
21 impacts, is it your opinion that there are any adverse
22 impacts associated with your use of the property under
23 a special exception going forward?

24 MR. QURESHI: No.

25 CHAIRPERSON HILL: Okay. Okay. Well, I mean,

1 we are hearing from the -- like, the Office of
2 Planning, I'm kind of interested as to what they have
3 to say, I suppose. And again, where we are in terms
4 of some of the information that we had originally
5 requested.

6 But I'm going to go turn to the Office of
7 Planning and hear about your report. You can sit
8 down, sir. Thank you.

9 MR. THOMAS: Good afternoon, Mr. Chair and
10 members of the Board. Karen Thomas for the Office of
11 Planning.

12 Mr. chair, we still have our report dated
13 November 23 on the record. We do not have a new
14 report submitted to the record.

15 MR. HART: There was a report from February.

16 MR. THOMAS: Well, yeah.

17 MR. HART: A supplemental, but it's --

18 MR. THOMAS: Yeah, which essentially is the
19 same thing.

20 MR. HART: Yeah, I'm just making sure that the
21 record --

22 MR. THOMAS: Sorry. Sorry about that.

23 MR. HART: -- is clear.

24 MR. THOMAS: But you requested that we meet
25 with the applicant after the last hearing, and we did.

1 And we provided the applicant the regulations and the
2 information that we would've liked back to receive to
3 make an analysis. And, to date we do not have that
4 information.

5 CHAIRPERSON HILL: Right. You didn't receive
6 the information back to make the analysis.

7 MR. THOMAS: Exactly.

8 CHAIRPERSON HILL: Okay.

9 MR. THOMAS: So, at this point, we would still
10 say we cannot make a recommendation.

11 CHAIRPERSON HILL: Okay.

12 MR. HART: And is that based on the fact that
13 we actually don't have a plan to actually go by?

14 MR. THOMAS: Yes. We did ask for a plan. We
15 don't have a plan. We don't have a landscaping plan,
16 we don't have the lot screened and striped. We would
17 have liked to see that. These are some of the
18 criteria for the Subtitle X, Section U-203(j). We
19 would like to see it.

20 CHAIRPERSON HILL: Right. And we spoke about
21 all this on April 5th.

22 MR. THOMAS: Yes.

23 CHAIRPERSON HILL: Okay. So, Mr. Rachal, why
24 didn't you supply any of this stuff?

25 MR. RACHAL: Your Honor, we met with the

1 Office of Planning and received that. Mr. Qureshi met
2 with a landscape architect to try to get a plan
3 prepared. He was on the horns of a dilemma having to
4 spend money for a plan that, not knowing whether he
5 would be given the approval to continue the use. So,
6 he is a small business. He doesn't have the resources
7 to put forward.

8 When he was first applying for the application
9 at the inception of his purchase, he was told what
10 conditions he had to meet and he went out and did
11 those, knowing he would receive the license.

12 In this case he has been unable to expend --
13 to put the money out to complete that, not knowing
14 whether --

15 CHAIRPERSON HILL: I guess, and I'm sorry. I
16 mean, I'm a small business owner too. Right. And so,
17 I understand. But if you have to supply things in
18 order to get the analysis done so that we can even
19 make a decision, and you don't supply the things to
20 get the analysis done, there is nowhere for us to go.

21 And so, that's why I'm really confused, and at
22 the very beginning was a little surprised, to be quite
23 honest, that you came here, because April 5th we asked
24 for all these things. The Office of Planning needed
25 to have those things to provide a recommendation. The

1 recommendation before was denial, and now they're not
2 even going to be able -- now they're just like, we
3 still didn't get the same information, so the
4 recommendation is a denial.

5 So, my question -- you've answered my
6 question. You didn't want to present the information
7 to the Office of Planning because you didn't know if
8 you were going to get approval or not. So therefore,
9 you are where you are.

10 MR. RACHAL: There was the requirement for Mr.
11 Qureshi to spend monies he did not know he could be
12 able to recoup.

13 CHAIRPERSON HILL: I understand. I
14 understand. Okay. So, do you have any questions for
15 the Office of Planning?

16 MR. RACHAL: Yes.

17 CHAIRPERSON HILL: Okay.

18 MR. RACHAL: Yes, I do. With regard to your
19 November 23rd report, is it not your conclusion at
20 page 8 that if the requirement is noted in your report
21 with regard to screening landscaping, and fencing were
22 done, that the proposal to continue the use would not
23 unduly affect adversely, the use of the neighborhood
24 property? Is that not correct?

25 MR. THOMAS: Yes, and that's in the condition

1 of additional information. We'll have to see how that
2 was done. I can't, you know, make a decision here
3 about that based on -- what is what we were saying at
4 that time, we wanted additional information. And to
5 have that to make a proper review.

6 MR. RACHAL: But is it not a standard
7 requirement that in order to receive the special
8 exception one would have to comply with the
9 requirements for screening, landscaping, and fencing?

10 MR. THOMAS: That is a requirement, yes.

11 MR. RACHAL: And is that not what the
12 applicant is proposing to do? And is that not what
13 the applicant is requesting the Board to condition as
14 a grant of the special exception?

15 MR. THOMAS: Well, we would have to see that.
16 We can't just say -- anybody can say they're going to
17 do anything. We just don't make a determination based
18 on that. We have to have the plans, the Board has to
19 look at it, and make that determination as well. Is
20 it sufficient. There are other questions. Did the
21 community agree with those plans? Has the community
22 seen those plans? We just can't make a decision.

23 These are the requirements. You have to
24 produce them, put it in a plan, have us look at it.
25 It may be deficient in some ways, or not, as the case

1 might be. We might have you go back and adjust or
2 amend those plans if we don't find it sufficient.

3 CHAIRPERSON HILL: Okay. I'm going to --

4 MR. THOMAS: As part of the review. Just not
5 saying that you're going to do it is not sufficient.

6 CHAIRPERSON HILL: All right. Mr. Hart, you
7 had a question?

8 MR. HART: Yes. Just, Ms. Thomas, generally
9 when you get applications for -- from applicants about
10 particular projects, you usually get some plans that
11 actually give you some information about what it is
12 that the applicant wants to do, so that you can then
13 base your decision on something that you can see, and
14 the public can see, and the ANC can see, so that they
15 have -- they don't just have an understanding of what
16 it is, they know what actually is being put forward.

17 MR. THOMAS: That's correct.

18 MR. HART: And so, in this case, we have not
19 received the plans so I could assume that the
20 applicant is putting in 10 trees. And you could
21 assume that the applicant is putting in three trees.
22 And the applicant could assume that they're putting in
23 one tree that is sufficient. We just don't know what
24 that is, and so it --

25 MR. THOMAS: Yes.

1 MR. HART: -- very difficult to have a
2 conversation, or to approve something if we don't have
3 the sufficient information.

4 MR. THOMAS: Yes. And it was also very
5 important to do that that way because he also -- the
6 applicant didn't know that the community is not in
7 support of it. And twice now, the ANC has written an
8 opposition. We should give that some consideration
9 because they are claiming an adverse impact on the
10 lot. So, we would also have to take that into
11 consideration.

12 MR. HART: Thank you.

13 CHAIRPERSON HILL: Commissioner Miller, you
14 had a question for the Office of Planning?

15 MR. MILLER: Yes, thank you, Mr. Chairman. I
16 was just conferring with the Office of Attorney
17 General, Ms. Nagelhout, because I'm somewhat confused.

18 This use in this zone, this R-1-B Zone, this
19 parking, this lot use for this -- the current use
20 that's been there for several years, is it permitted
21 with a special exception if it meets all the -- if it
22 meets all of the conditions? Or is a use variance
23 required? That's my basic question, and maybe I'll
24 turn to the Office of Attorney General as well, if
25 they have any comments on that. I just, that

1 threshold question is, I mean, has the -- has the
2 applicant submitted a self-certification that the
3 special exception is the appropriate relief, or do you
4 have a letter from the ZA, the Zoning Administrator,
5 saying that special exception is the relief you can
6 get if you met all the conditions?

7 MR. RACHAL: We have a letter from the ZA
8 indicating that we could file an appeal and/or seek a
9 special exception.

10 MR. MILLER: And that letter is in this -- is
11 in this file? In this case?

12 MR. RACHAL: It was in the appeal.

13 MR. MILLER: It's in the appeal file.

14 MR. RACHAL: In the appeal file.

15 MR. MILLER: Well, I have to look at that.

16 But --

17 CHAIRPERSON HILL: Just let me answer the
18 Office of Planning's question real quick.

19 MR. THOMAS: To be clear, the Office of
20 Planning did have a series of discussions with OAG,
21 specifically, Mr. Bergstein, on this issue of whether
22 it was a use variance, and we went back and forth
23 whether it was use or special exception. And it was
24 determined that it was special exception.

25 So, we continued the review under that; under

1 the special exception criteria. So, we were advised
2 on that account.

3 MR. MILLER: And can I turn to Ms. Nagelhout
4 and just confirm that -- or, could you give us your
5 perspective on this, and the question?

6 MS. NAGELHOUT: Well, I don't know about what
7 conversations she had with Mr. Bergstein, so I can't
8 comment on that. I did not see a self-cert form, or a
9 letter from a ZA referral memo in the special
10 exception application. I'm looking at the appeal now.

11 MR. MILLER: So, I'll have to look at the
12 appeal file too, because we're now in the application
13 case. I remain confused.

14 CHAIRPERSON HILL: Okay. Does anyone have any
15 other questions for the Office of Planning? Okay.
16 You have a comment?

17 MR. RACHAL: I just had one other question
18 with regard to the Office of Planning's report of
19 November 23rd. In it, at page 5 through 8, it sets
20 forth all of the requirements to meet the special
21 exception for the screening and landscaping. And in
22 it, it states that the count of determining the number
23 of trees that the Chair asked about, relates to the
24 number of parking spaces that one is seeking the
25 special exception for.

1 So, by formula, the Office of Planning can
2 determine, based on the request, what our requirement
3 is for the number of trees. We cannot get around
4 that.

5 CHAIRPERSON HILL: The number of trees the
6 Chair asked for?

7 MR. RACHAL: No, I'm sorry. There was a
8 question from Board relative to knowing how many trees
9 would be required as part of the review.

10 MR. HART: What I was saying, the Vice Chair,
11 I'm the Vice Chair. What I was saying was, we don't
12 know. We need to have a plan, period. The reason
13 that I was talking about the number of trees was that
14 it could be a number of -- we could all have a
15 different idea about where those trees are located,
16 how many trees are located, how many trees are
17 included in this.

18 I understand what you're saying, it's one for
19 -- one tree for every five spaces. I get that. How
20 many spaces are being proposed here, because that can
21 change with the number of trees that you're putting in
22 because they would be replacing the spaces.

23 So, my problem is that, because we don't have
24 a plan, that makes it very difficult for us to then
25 decide on this -- decide that this case has enough

1 information to be able to say that we can approve or
2 disapprove it. But right now, we don't have that.
3 And typically, we get those plans. So, that's what
4 I'm trying to get. Not to have a discussion about, we
5 need to have 15, or 20, or 30. That's not the issue
6 that I'm raising. The issue that I'm raising is
7 around having a site plan, which we do not have.

8 CHAIRPERSON HILL: Okay. I'm going to turn to
9 the ANC commissioner. So, Mr. Commissioner, what's
10 your last name again?

11 MR. MALONE: Malone.

12 CHAIRPERSON HILL: Malone. Mr. Malone.
13 Commissioner Malone, which ANC are you with?

14 MR. MALONE: 5C-02.

15 CHAIRPERSON HILL: Did you think you'd be here
16 for four hours?

17 MR. MALONE: I did not.

18 CHAIRPERSON HILL: Okay. Could you go ahead?
19 I'm going to go ahead and put three minutes up, which
20 is what you're allotted, and please, give us whatever
21 kind of testimony you'd like.

22 MR. MALONE: Okay. So, I'm here to represent
23 residents on behalf of Langdon Park, and I think that
24 there is some misunderstanding about how we got to
25 this place.

1 Mr. Qureshi, by far and large, the residents
2 are concerned about the number of junk vehicles being
3 stored on public space, in the streets in the
4 neighborhood. But that's not the concern that they
5 have toward your business.

6 The concern is, is that he's using a
7 residentially zoned lot for storage use.

8 If you look at the application, Mr. Qureshi
9 describes that he has contracts with the District of
10 Columbia government. And I simply dispute that.
11 Folks that I've talked to, and I know it might be
12 considered hearsay, but folks that I've spoken to at
13 DPW or DGS are denying that claim.

14 Mr. Qureshi also claims that he often stores
15 government vehicles on that lot, and that lot probably
16 has 90 percent junk taxi cabs which are on that lot.

17 And as you have seen the pictures, the
18 screening is awful. That lot contributes to the
19 blighted and ugliness of the neighborhood. And where
20 Mr. Qureshi operates his actual towing business, which
21 is probably a couple feet from the lot, his tow trucks
22 are often blocking street traffic, and we do have
23 documents of that. And we also have -- and I
24 submitted written testimony because I'm also the
25 president of the Langdon Park Community Association.

1 And in my testimony, I included pictures of his tow
2 trucks parking on another lot that is zoned R-1-B.

3 So, and just to kind of describe in details --

4 MR. RACHAL: Objection, Mr. Chairman, there's
5 nothing presented in the record from the ANC relative
6 to the statements that he says that he has photographs
7 of.

8 CHAIRPERSON HILL: Mr. Rachal, we'll ask
9 questions of the Commissioner. The Commissioner is
10 here who is representing the ANC, and we want to hear
11 from him. And so, he had three minutes, and so he's
12 going to get his three minutes.

13 MR. MALONE: So, I reached out to Mr. Rachal,
14 I think back in February, when this case came before
15 me because he was required to come before the ANC.
16 But again, this has been ongoing since 2016, and they
17 have sought several continuances. Never the less, Mr.
18 Rachal and his client came to the ANC meeting, where
19 they presented an estimate from Long Fence, and a
20 picture of what the fence might look like, but nothing
21 else.

22 There was no conversation about landscaping.
23 There were no plans presented to the community. Mr.
24 Rachal and Mr. Qureshi recently came to our June ANC
25 Commission meeting before the entire Commission, where

1 they again attempted to show us an estimate of a
2 fence. There was no conversation about landscaping,
3 et cetera. And they tried to appease to the community
4 to that Mr. Qureshi has been operating that lot since,
5 I think, 2009, as he described here.

6 And in that Commission meeting, the entire
7 commission voted no against the use of this lot.

8 CHAIRPERSON HILL: Okay, great. Thank you.
9 Does the Board have questions for the Commissioner?

10 MS. WHITE: During Mr. Qureshi's presentation,
11 he mentioned that there was a dispute between I guess
12 some of the trucks and vehicles that folks thought
13 that were associated with his business, versus this
14 other towing company. I think it's called ABC. So,
15 my question to you is that do you have confirmation
16 that they're associated with his?

17 MR. MALONE: Mr. Qureshi's business, his main
18 business, which is on 22nd Street, abuts Right Hour
19 Auto Sales, which is at 2201 Channing Street. The
20 Right Hour Auto Sales is directly across from his
21 parking -- his storage lot. I don't want to say
22 parking lot. But his storage lot.

23 We know where those junk vehicles are coming
24 from. The chief complaint about Mr. Qureshi's
25 business, is where his tow trucks are parking. His

1 tow trucks are often parking either on Queens Chapel,
2 or 22nd, and they are often parking in another lot
3 across from him on 22nd, and a lot that is zoned R-1-
4 B.

5 So, that's the chief complaint about his
6 actual business, other than the fact that that lot is
7 zoned residential, being used as a storage lot.

8 MS. WHITE: Uh-huh.

9 CHAIRPERSON HILL: Okay. All right. Anybody
10 else?

11 Okay. Yeah, sure. Go ahead, Mr. Miller.

12 MR. MILLER: Thank you, Mr. Chairman.
13 Commissioner Malone, thank you for coming down today.

14 MR. MALONE: Thanks.

15 MR. MILLER: And appearing before us. So,
16 just to clarify, I might have been looking for a file
17 when you were talking part of the time, so if I missed
18 this, I apologize.

19 Are there any conditions that if the applicant
20 met in terms of landscaping or screening, or if they
21 were able to meet those, would you withdraw your
22 objection, or you just object -- you think the use
23 itself is objectionable to the neighborhood?

24 MR. MALONE: On speaking on behalf of the
25 residents, they object. It's not about me as the ANC

1 alone.

2 MR. MILLER: No, yeah.

3 MR. MALONE: I'm representing the community,
4 and the community objects.

5 MR. MILLER: To the use.

6 MR. MALONE: To the use.

7 MR. MILLER: And the objection is based on --
8 what are the adverse effects of --

9 MR. MALONE: The adverse effects is the
10 blightedness, that it contributes to the residential
11 aspect of the neighborhood. Our neighborhood is sort
12 of unique, where there is no buffer between the
13 commercial use and the residential use. This is sort
14 of what happens as a consequence when there is
15 encroachment and planning, right?

16 So, the concern also then is, once neighbors
17 realize that there's this thing called the Langdon
18 Overlay to protect the residential area, to create a
19 buffer in between the industrial activities and the
20 residential activities, we then start to investigate
21 what's happening with the lot.

22 As Mr. Qureshi also described on the board,
23 there is a green house. That second picture from the
24 left on the top board. That house is being used
25 illegally for industrial activities. The same

1 activities that Mr. Qureshi is currently performing.
2 But that lot is zoned R-1-B, and there has not been a
3 special exception for that lot.

4 So, I don't want Mr. Qureshi to think that the
5 community is targeting him. We are looking at the
6 entire area of unpermitted uses for lots that have
7 been zoned R-1-B, taking into account that the Langdon
8 Park Community has the Langdon Overlay, which has
9 specific requirements to safeguard us by creating
10 buffers between the industrial area and the
11 residential area.

12 CHAIRPERSON HILL: Okay. Oh, sorry.

13 MR. MILLER: Just this one last question. So,
14 how close are some of the homes to this -- to this
15 block?

16 MR. MALONE: Well, if we look at the current
17 lot where Mr. Qureshi is storing vehicles -- am I
18 permitted to show this? Am I permitted to show this?

19 CHAIRPERSON HILL: Yeah, you can show it. I
20 don't know how you -- you've got to get it on that
21 camera there.

22 MR. MALONE: Okay. Where is the camera?

23 CHAIRPERSON HILL: The camera, Mr. Moy, is
24 pointing at it down below there, I guess. Oops, be
25 careful.

1 MR. MOY: Yeah, sure.

2 CHAIRPERSON HILL: Okay, that's fine.

3 MR. RACHAL: Can that be identified, Mr.
4 Chairman, because --

5 CHAIRPERSON HILL: Hold on one second.

6 MR. MALONE: Mr. Qureshi actually described
7 this in his testimony, where he mentioned that he is
8 fine with the neighbor. And I think you said that
9 neighbor is Mr. Coffey, correct? Is this Mr. Coffey's
10 house?

11 MR. QURESHI: Yes, sir.

12 MR. MALONE: So, his house is literally
13 abutting the lot.

14 CHAIRPERSON HILL: Okay. All right.

15 MR. MILLER: Thank you.

16 CHAIRPERSON HILL: Okay. Sorry.

17 MR. MOY: If you could send a copy of that --

18 CHAIRPERSON HILL: If you can send a copy of
19 that to the secretary, so he can put it into the
20 record? All right.

21 MR. MALONE: And --

22 CHAIRPERSON HILL: Yes, sir.

23 MR. MALONE: -- one more comment. I submitted
24 previous testimony, and I think it is Exhibit No. 30
25 in the application. And I submitted testimony,

1 written testimony, as the president of the
2 neighborhood association.

3 CHAIRPERSON HILL: Yeah, thank you. We all
4 did see that testimony.

5 MR. MALONE: And in that exhibit, under No.
6 30, you can see that I've taken pictures of where Mr.
7 Qureshi's tow trucks are parked on what appears to be
8 a dirt field, but that lot is zoned R-1-B.

9 CHAIRPERSON HILL: Okay. Does the Board have
10 any further questions for the Commissioner?

11 All right. Does the applicant have any
12 questions for the Commissioner?

13 MR. RACHAL: Yes, we do.

14 CHAIRPERSON HILL: Okay.

15 MR. RACHAL: Mr. Muller (sic), if Mr. Coffey
16 did not object to Mr. Qureshi staying, would you have
17 no more objection to this application?

18 MR. MALONE: Again, I'm here representing the
19 residents, and so I have to make decisions based on
20 what the residents want. And Mr. Coffey isn't the
21 only resident that is impacted, whether he thinks it's
22 negative or positive. There is an apartment complex
23 at 2000 Channing Street, there is a condo building
24 that abuts the apartment complex, and then there is a
25 single-family home that sort of sits on an island by

1 itself.

2 CHAIRPERSON HILL: So, you can speak right now
3 for the ANC based upon that comment anyway. Right?

4 MR. MALONE: Yeah.

5 MR. RACHAL: But is not Mr. Coffey the one
6 most directly affected being --

7 MR. MALONE: No. As I described to you, there
8 are other residences within a couple feet from this
9 parking lot. He is not the only person that is --
10 whether he says he is not adversely impacted, there
11 are other residents who feel they are adversely
12 impacted.

13 MR. RACHAL: But they do not live right next
14 to the site, do they?

15 MR. MALONE: They are within 200 feet of the
16 site.

17 MR. RACHAL: And who are those residents?

18 MR. MALONE: I don't know their last name.

19 CHAIRPERSON HILL: It doesn't matter. It
20 doesn't matter.

21 MR. MALONE: Okay. They are within 200 feet.

22 CHAIRPERSON HILL: I believe that the
23 Commission is saying it's within 200 feet. And again,
24 the Commission voted seven to zero to oppose the
25 application.

1 MR. RACHAL: But is there a commissioner
2 living within close proximity to the site, i.e.,
3 directly adjacent to it?

4 MR. MALONE: I don't think that's an
5 appropriate question. The question should be about
6 the --

7 CHAIRPERSON HILL: I know, but why doesn't --
8 I mean, is there, I mean, is there is --

9 MR. MALONE: That's not -- it's irrelevant.
10 It's irrelevant. It's about the residents who are
11 within 200 feet of the site where he's seeking a
12 special exception.

13 CHAIRPERSON HILL: That's okay. Mr. Rachal,
14 you're inferring something about like the Commissioner
15 or something?

16 MR. RACHAL: Well, no. Isn't the Commission
17 made up of various districts throughout Ward 5?

18 MR. MALONE: We're made up of different
19 single-member districts. I am the SMD for this lot.
20 I live on Evarts, and I am one of seven votes on the
21 dais.

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

24 MR. MALONE: And the dais voted against your
25 application.

1 MR. RACHAL: But does not a majority of the
2 dais live outside the district in which this property
3 is located?

4 MR. MALONE: I don't know what he's getting
5 at.

6 CHAIRPERSON HILL: You're saying that -- I
7 don't understand the question. The members of the ANC
8 live within the ANC.

9 MR. RACHAL: But they do not live all within
10 this particular district, within 200 feet.

11 CHAIRPERSON HILL: They live within where this
12 property is located. It doesn't matter. It doesn't
13 matter. I understand your question. They live within
14 the ANC. Okay, that much is for certain. All right?

15 MR. RACHAL: Okay. But they do not live
16 within the 200 feet that is being spoken of, because
17 the ANC --

18 CHAIRPERSON HILL: Okay. It doesn't matter.

19 MR. RACHAL: ANC representatives represent the
20 entire ward.

21 CHAIRPERSON HILL: They represent the ANC.

22 MR. RACHAL: The entire ward is not contained
23 within the 200 square feet --

24 CHAIRPERSON HILL: They don't represent the
25 entire ward. They represent the ANC. They represent

1 the ANC that the property is in.

2 MR. RACHAL: Right.

3 CHAIRPERSON HILL: Okay? Do you have another
4 question?

5 MR. RACHAL: Yes, I do.

6 CHAIRPERSON HILL: And I'm going to make this
7 your last question here, because I've got to kind of
8 roll this up. We've got to hear, you know, get to
9 your appeal.

10 MR. RACHAL: With regard to the other property
11 you sited that was being used for commercial purposes
12 illegally on the site, what have you done with regard
13 to that property?

14 MR. MALONE: I've actually been working with
15 DCRA's, particularly the Office of the Zoning
16 Administrator to again take a look at all of the
17 properties. And, what we --

18 CHAIRPERSON HILL: Okay, that's fine.

19 MR. MALONE: What this Board may not know is
20 that we actually had a city, a walkthrough with the
21 mayor's office, with DCRA, with DPW, et cetera. And
22 upon that walk, and we actually had two, we discovered
23 several violations.

24 CHAIRPERSON HILL: Okay. Okay. It's a
25 different property, so he answered your question.

1 Okay.

2 So, is there anybody here would like to speak
3 in -- well, the ANC, obviously, there we go. So,
4 anybody else from the ANC? No.

5 Is there anyone here who wants to speak in
6 support of the application? Is there anyone here who
7 wants to speak in opposition to the application?

8 [No audible response.]

9 CHAIRPERSON HILL: All right. So, I'm going
10 to go ahead and let you give your conclusion, your
11 summary.

12 MR. RACHAL: With regard to that issue, Mr.
13 Chairman, Mr. Coffey had been asked to testify. He is
14 out of the country at this moment on vacation, and is
15 prepared to put a letter of support in the record, and
16 I would like that to be accommodated in terms of the
17 record being kept open for that to be submitted.

18 CHAIRPERSON HILL: I'll bring that up with the
19 Board in a second.

20 So, go ahead and -- okay. If I leave it open
21 -- then, if I leave it open then -- yeah. I mean, I
22 think that he had an opportunity to submit his letter.
23 He didn't submit his letter. Whether he's in support
24 or not doesn't seem like it's going to change anything
25 in terms of the ANC. Your application is so not

1 complete, I can't even -- I mean, I don't even -- even
2 from the very beginning. So, I would go ahead and now
3 ask you to make your conclusory statement in terms of
4 again how you're meeting the standard for this special
5 exception for the Board to approve.

6 And I'm going to give you three minutes.

7 MR. RACHAL: Yes, Mr. Chairman. The
8 application is based on the Board's authority to be
9 able to grant a special exception under DCMR Section
10 Subtitle X, Chapter 9.

11 This requires that the applicant indicate that
12 it would comply with conditions associated with the
13 grant of the special exception. Those conditions are
14 related to fencing, are related to screening, and
15 landscaping.

16 Under Sections 714 through 715, the zoning
17 regulations sets forth all the requirements in detail
18 with regard to those conditions that the applicant
19 must meet. It spells out the formula in terms of the
20 number of trees that are required based on the
21 application for the parking spaces that are required
22 at 17 -- I mean, at 715.7. And that particular
23 provision, one tree canopy per five parking spaces,
24 shall be required.

25 They have to meet the requirements set forth

1 in the regulations as required by the D.C. Department
2 of Transportation green infrastructure standards.

3 The applicant has indicated that as
4 previously, when he was first granted the use of the
5 property for his towing operations, he met all of the
6 then imposed conditions by the DCRA, which required
7 paving of impervious surface, which has been done
8 already, and that requirement, although a continuing
9 requirement has already been met, as pointed out in
10 the Office of Planning's report.

11 He does not need to meet that. He needs to
12 change the fencing requirements because the standards
13 have changed from a chain link fence that was
14 previously authorized, to a wooden fence. Standards
15 have changed with regard to tree canopies, which he is
16 prepared to meet with the specific requirements that
17 would be imposed upon a grant of a specific number of
18 spaces.

19 Those spaces requested in the application were
20 40. If he cannot meet the tree requirement, he will
21 reduce the number of spaces in order to accommodate
22 the condition set forth under 715.7.

23 The Office of Planning report indicates that
24 if all the conditions are met for the granting of the
25 special exception, that it would not create an adverse

1 impact upon the neighborhood, and it would be in
2 harmony with the plan for that particular section
3 under the zoning code. We would indicate that the
4 applicant would live with the parameters set forth by
5 any conditions that the Board would seek to impose as
6 previously were imposed by DCRA at the initial
7 inception of his use of the property.

8 Also, the entire street from where the
9 applicant sits at 2200 Channing Street, to the
10 railroad right of way, is entirely commercial with
11 other activities similar to those of the applicant.
12 One property in particular has been misidentified as
13 being the applicant, when it is ABC Towing and not the
14 applicant. There are other users within that street
15 that have been identified by the ANC as creating the
16 problem, but they are not the applicant.

17 Also, in regard to the entire area not far
18 from this particular site, the ANC has failed to note
19 that there is a transfer station, there is a strip
20 club, there are other commercial uses not very far
21 from this particular location.

22 We would --

23 CHAIRPERSON HILL: All right. Sorry.

24 MR. RACHAL: We would conclude that the
25 application meets the requirements under the zoning

1 regulations in terms of the proposal to adopt the
2 appropriate screening, landscaping, and fencing
3 requirements.

4 CHAIRPERSON HILL: Okay. All right. Does the
5 Board have any final questions?

6 [No audible response.]

7 CHAIRPERSON HILL: All right. I'm going to go
8 ahead and close the hearing. Is the Board ready to
9 deliberate? Would someone like to deliberate?

10 MR. HART: Yes, Mr. Chair. I will say this is
11 somewhat of an unusual case, only in that I don't
12 think that we've ever had a case where the applicant
13 has not provided a site plan. And honestly, I find
14 the lack of submitting a site plan is really the --
15 actually, that's the one thing that you probably
16 should have had, regardless of the photographs.
17 Regardless of even some of the writing. But the site
18 plan is something that we have to be able to then cite
19 as saying, this is what we have actually approved.

20 What your argument is, is that the zoning
21 regulations in Subtitle C, Section 714 and 715 are so
22 prescriptive that you'll do -- your applicant will do
23 -- the owner will do them to the law. And I just find
24 that to be just jaw-droppingly like, no. We cannot
25 approve, in my estimation, we cannot approve an

1 application without having a site plan. As simple as
2 that.

3 A site plan is something that describes --
4 this is what I was talking to with the Office of
5 Planning. It describes what -- an understanding of
6 what it is that you are going to do. And for that
7 reason alone, as well as the fact that you haven't
8 addressed the individual pieces and how you meet the
9 requirements and the criteria, I am not able to
10 support this application.

11 MS. WHITE: Thank you, Mr. Vice Chairman, and
12 Mr. Chairman.

13 Yeah, I'd have to concur with my colleagues
14 here. I think when you were here the last time, the
15 Chairman gave you a pretty clear road map in terms of
16 what you needed to provide in order to try to move the
17 case forward. One of the big gaps is that you didn't
18 provide the information to the Office of Planning.
19 And I think if you've done that, you would have been
20 able to piece together something that may have given
21 us a little bit more weight. But, you still have to
22 overcome some of the other issues, and one being the
23 ANC. And the District member that's here actually
24 represents that area where the business is located.
25 And the other members on that ANC unanimously voted

1 against the relief that you seek.

2 And the other issue is the fact that this
3 business is operating in a kind of a residential type
4 of zone. But we didn't even get to that point because
5 I think the burden of proof wasn't met as outlined in
6 the regulations.

7 So, not to go on and on and belabor the point,
8 but I don't -- I definitely would not be able to
9 support this particular application at this point in
10 time.

11 MR. MILLER: Thank you, Mr. Chairman, and I
12 concur with Ms. White and Mr. Hart's comments
13 entirely. This application has been continued for --
14 has been going on for a while. And I think you really
15 had to produce a landscaping and screening plan to
16 show that you were serious about meeting the
17 requirements, which are very prescriptive in the --
18 for a special exception in an R-1-B Zone.

19 They're very prescriptive because this is a
20 commercial use in a residential zone. And which is
21 probably in appropriate anyway, and I need to go back
22 to the Zoning Commission and revisit that permission.

23 The Langdon Overly was designed to try to
24 protect the residential areas, and this is a
25 residentially zoned area. So, I can't support this

1 application.

2 CHAIRPERSON HILL: Okay.

3 MR. MILLER: The ANC and the OP both recommend
4 -- I just want to make the one point, recommend denial
5 and we are statutorily required to give them great
6 weight, and I think I'm prepared to do that.

7 CHAIRPERSON HILL: Okay. And also, even, I
8 mean, for the application again, had you gone through
9 all the motions, you know, you still don't know, I
10 suppose, whether the Office of Planning would have
11 actually agreed that you met the criteria for the
12 special exception. I mean, now you know they don't,
13 but you know, you didn't spend the money so you don't
14 know for sure, I suppose. It sounds like the ANC
15 wasn't going to be in favor anyway. So, if that gives
16 you any pause or makes you feel better in some
17 capacity. I don't know.

18 Other than that, then I'll go ahead and make a
19 motion to deny Application No. 19385 as read by the
20 secretary.

21 MR. HART: Seconded.

22 CHAIRPERSON HILL: Motion been made and
23 seconded.

24 [Vote taken.]

25 CHAIRPERSON HILL: Motion passes, Mr. Moy.

1 MR. MOY: Staff would record the vote as four,
2 to zero, to one. This is on the motion of Chairman
3 Hill to deny the application for the requested relief.
4 Seconded the motion, Vice Chair Hart. Also in
5 support, Ms. Miller and -- rather, Mr. Miller and Ms.
6 White. We have a board seat vacant. Motion carries,
7 sir.

8 CHAIRPERSON HILL: Thank you, Mr. Moy.
9 Summary order. Oh no, not summary order. Full order.

10 MR. MOY: Full order, sir.

11 CHAIRPERSON HILL: Sorry. Trying to get to
12 the summary order.

13 Okay. So, we're going to take -- I think we
14 have an appeal next with the same participants here.
15 So, we're going to take like maybe like two hours for
16 lunch. We'll be back in like three minutes. Okay?

17 MR. MALONE: Mr. Chairman.

18 CHAIRPERSON HILL: Yes, sure.

19 MR. MALONE: I have another obligation so I
20 will not be able to sit through the appeal.

21 CHAIRPERSON HILL: Okay.

22 MR. MALONE: But --

23 CHAIRPERSON HILL: Did you submit into the
24 record?

25 MR. MALONE: Yes.

1 CHAIRPERSON HILL: Okay.

2 MR. MALONE: We submitted a --

3 CHAIRPERSON HILL: That's fine.

4 MR. MALONE: We submitted a second resolution
5 affirming our initial opposition to the application.

6 CHAIRPERSON HILL: Okay. We're going to start
7 in three minutes. We're going to start again in three
8 minutes. But you're on the record, so you're okay.

9 MR. MALONE: Okay.

10 CHAIRPERSON HILL: Okay? All right. Thank
11 you. Thank you, gentlemen.

12 [Off the record from 1:57 p.m. to 2:03 p.m.]

13 CHAIRPERSON HILL: All right, Mr. Moy, if you
14 could get us back. If we can all get back together
15 here?

16 MR. MOY: Okay, I'm sorry. I'm noticing, I
17 think I'm overdressed.

18 But anyways, before the Board now is Appeal
19 No. 19334 of Shahid Q. Qureshi, as advertised and
20 captioned for, let's see, this is the appeal of the
21 April 19th, 2016 decision by the Zoning Administrator,
22 DCRA, to revoke Certificate of Occupancy No. CO-
23 0901692, granted to permit a parking lot in the R-1-B
24 District. This is at premises 2200 Channing Street
25 Northeast, Square 4255, Lot 28.

1 CHAIRPERSON HILL: All right. Thank you, Mr.
2 Moy.

3 All right, gentlemen, if you could please
4 introduce yourselves from my right to left?

5 MR. TONDRO: Yes. Maximilian Tondro on behalf
6 of the Zoning Administrator and DCRA.

7 MR. LeGRANT: Matthew LeGrant, Zoning
8 Administrator, DCRA.

9 MR. MALONE: Kevin Malone --

10 CHAIRPERSON HILL: Oh, you need to push the
11 button there.

12 MR. MALONE: Kevin Malone, ANC commissioner,
13 representing 5C-02.

14 MR. RACHAL: Anthony Rachal on behalf of the
15 application, Shahid Qureshi, trading as All State
16 Towing, Inc.

17 MR. QURESHI: All Star.

18 MR. RACHAL: All Star.

19 MR. QURESHI: I'm sorry.

20 CHAIRPERSON HILL: That's okay.

21 MR. QURESHI: Shahid Qureshi --

22 CHAIRPERSON HILL: Oh, you just push the
23 button there, sir.

24 MR. QURESHI: Okay. Shahid Qureshi, owner of
25 All Star Towing.

1 CHAIRPERSON HILL: Okay, great. So, Mr.
2 Rachal, I guess you're going to be presenting to us
3 now, in terms of the appeal. And I believe you saw
4 probably how it proceeded earlier in terms of the
5 process.

6 So, I'm going to go ahead and give you 10
7 minutes to present your argument in terms of how the
8 ZA erred in the revoking of the permit, and then we'll
9 go through the process.

10 Mr. Commissioner, did you have something to
11 say?

12 MR. MALONE: Just really quickly, because I
13 really do have to go, and I know that we went over on
14 the previous case.

15 CHAIRPERSON HILL: Certainly.

16 MR. MALONE: But I just want to -- I would
17 just want to say that for -- I want to enter into the
18 record that again, the Commission submitted an
19 opposition, which is Exhibit No. 34.

20 CHAIRPERSON HILL: Okay.

21 MR. MALONE: And if you could leave the record
22 open for maybe additional testimony?

23 CHAIRPERSON HILL: We'll think about it.

24 MR. RACHAL: Mr. Chairman.

25 CHAIRPERSON HILL: We'll think about it.

1 Yeah.

2 MR. RACHAL: Mr. Chairman.

3 CHAIRPERSON HILL: Uh-huh.

4 MR. RACHAL: I have a concern raised with
5 regard to the appearance of the ANC commissioner who
6 then leaves without the ability to cross-examine him
7 with regard to the testimony entered into the record.

8 CHAIRPERSON HILL: Okay. That's okay. I
9 appreciate that and I understand that. I don't think
10 he's giving any testimony right now. He is stating
11 the testimony that he has entered into the record
12 already on behalf of the ANC.

13 MR. RACHAL: And I would move, Mr. Chairman,
14 with all due respect, to strike that testimony without
15 the ability to cross-examine the witness with respect
16 to that testimony.

17 CHAIRPERSON HILL: But there was no testimony
18 that he just made. He was just pointing out that
19 there was something that was in the record.

20 MR. RACHAL: And I have no ability to cross-
21 examine what's in the record if he is going to leave.

22 MS. NAGELHOUT: The ANC is allowed to submit a
23 written report giving -- stating their issues and
24 concerns to the Board. So, you can leave it at that.

25 CHAIRPERSON HILL: Okay. She's my attorney.

1 So --

2 MR. RACHAL: That's fine.

3 CHAIRPERSON HILL: Okay.

4 MR. RACHAL: That's fine, Chairman. I'd just
5 like to state for the record, in terms of my
6 objection, that if there are any inaccuracies in that
7 statement submitted by the ANC, the appellant is
8 prejudice with regard to an inability to correct,
9 and/or to dispute those statements.

10 CHAIRPERSON HILL: You can dispute whatever is
11 in the record by the ANC. The ANC has the right to
12 submit what they want to submit into the record, and
13 they have done so.

14 Now, this commissioner probably should have
15 gone home. But, he has now resubmitted -- he has just
16 made a statement that the ANC has made a submittal
17 into the record in opposition, which we already have.
18 And if you want to speak to that, you are most
19 certainly welcome to.

20 And the only reason why I again look to the
21 attorney -- the Office of Attorney General is, they
22 told me just now what was supposed to happen. So,
23 that is correct, Office of Attorney General. Yes.
24 Okay. So, you've made your comment. It's on the
25 record. And now, Commissioner, I assume you're going

1 to leave.

2 Okay. Thank you very much, Commissioner.

3 MR. MALONE: Thank you.

4 CHAIRPERSON HILL: And so, there is something
5 in the record now that you have had an opportunity to
6 look at in terms of what was from the ANC. It was
7 there before.

8 MR. RACHAL: But I asked for an opportunity to
9 cross-examine --

10 CHAIRPERSON HILL: No, no, no, no, no, no.

11 MR. RACHAL: The Commissioner --

12 CHAIRPERSON HILL: How it works is that the
13 ANC can submit anything into the record. They have
14 submitted something into the record, you have had an
15 opportunity to read the record, and now if you would
16 like to talk about whatever the ANC submitted, you're
17 welcome to, during your testimony.

18 Are you ready to make your presentation?

19 MR. RACHAL: I'm ready to make my
20 presentation.

21 CHAIRPERSON HILL: Okay. I'm going to put 10
22 minutes on the clock.

23 MR. RACHAL: Mr. Qureshi, would you please
24 identify yourself for the record?

25 MR. QURESHI: Shahid Qureshi, owner of All

1 Star Towing.

2 MR. RACHAL: And how long have you owned All
3 Star Towing?

4 MR. QURESHI: Twenty-five years.

5 MR. RACHAL: And when did you --

6 MR. MOY: Excuse me, sir, I think his light on
7 the mic -- there you go.

8 MR. QURESHI: I'm sorry. Twenty-five years.

9 MR. RACHAL: And when did you open the
10 location at 22 Channing Street Northeast?

11 MR. QURESHI: '07.

12 MR. RACHAL: And how did you go about doing
13 that?

14 MR. QURESHI: I applied for -- I applied
15 application for permission for use for the storage lot
16 and I was granted.

17 MR. RACHAL: Did you submit the application
18 that was previously identified as Exhibit A-1 and 2?

19 MR. QURESHI: Yes, sir.

20 MR. RACHAL: And in that application, was
21 there a review by the --

22 CHAIRPERSON HILL: Excuse me, Mr. Rachal, I'm
23 sorry. When you said Exhibit A-1 and 2, I just want
24 to make sure we're all -- where it is in the case
25 file.

1 MR. RACHAL: It's in the case file with regard
2 to the appeal.

3 CHAIRPERSON HILL: No, that one I got. I just
4 didn't know the exhibit number. You don't happen to
5 know the exhibit number do you?

6 MR. RACHAL: Exhibit A-1 and A-2.

7 MR. HART: Are you looking at the bottom
8 righthand of the page?

9 MR. RACHAL: Yes.

10 MR. HART: And it says -- there's a little, it
11 should be in red or some color that actually says this
12 is a BZA exhibit for this particular case. There
13 should be something stamped on the page that is not a
14 DCRA -- it is not part of the actual form, it is
15 something that was submitted to us.

16 MR. RACHAL: Yes, it's not a part of the BZA
17 form. The notation is not part of the BZA form. It's
18 just identification of the exhibit that was submitted.

19 MR. TONDRO: I believe, sorry, that this -- if
20 I'm correct, Mr. Rachal, I believe you're referring to
21 Exhibit A-1 to your prehearing statement, which should
22 be Exhibit 32 in the record. I believe that's the
23 case. Please correct me if I'm wrong. Which is the
24 April 5th --

25 CHAIRPERSON HILL: Okay, just -- yeah.

1 MR. TONDRO: -- filing.

2 CHAIRPERSON HILL: Just give us one second.

3 MR. HART: I see now.

4 CHAIRPERSON HILL: Okay. Now, I'm sorry, it
5 was A-1, is that correct, Mr. Rachal?

6 MR. RACHAL: Yes, A-1, A-2.

7 MR. HART: It's page 7.

8 CHAIRPERSON HILL: Okay. All right. Great.
9 Okay. Thank you so much.

10 MR. RACHAL: Did you indicate how many parking
11 spaces you were going to be using at the site?

12 MR. QURESHI: At that time, no.

13 CHAIRPERSON HILL: Could you just speak into
14 the microphone a little clearly. That's all right.

15 MR. RACHAL: How many spaces?

16 MR. QURESHI: Forty spaces.

17 MR. RACHAL: Okay. And was that the number of
18 spaces that you were granted?

19 MR. QURESHI: Yes, sir.

20 MR. RACHAL: Okay. When the application was
21 reviewed, did the Office of Zoning look at your
22 application?

23 MR. QURESHI: Yes.

24 MR. RACHAL: Did they sign off on your
25 application twice?

1 MR. QURESHI: Yes.

2 MR. RACHAL: Do you know the dates when they
3 signed off on your application?

4 MR. QURESHI: August 18, '07.

5 MR. RACHAL: And they were part of the
6 Department of Consumer and Regulatory Affairs?

7 MR. QURESHI: Yes.

8 MR. RACHAL: And were there any other
9 conditions imposed on you prior to the issuance of the
10 certificate of occupancy?

11 MR. QURESHI: The fencing and paving of the
12 property.

13 MR. RACHAL: And did you expend any funds to
14 erect those changes to the property?

15 MR. QURESHI: Yes.

16 MR. RACHAL: How much did you spend?

17 MR. QURESHI: It's been a while, so I don't
18 want to take a guess, but it was some -- it was a
19 cost, paving and fencing.

20 MR. RACHAL: You --

21 MR. QURESHI: I can't put a number on it right
22 now because I would be guessing.

23 MR. RACHAL: Was it close to the estimate that
24 you received to update the fencing at the site? Would
25 it have been in the nature of thousands of dollars?

1 MR. QURESHI: Yes.

2 MR. RACHAL: Would the paving -- was that with
3 asphalt or was it pebbles?

4 MR. QURESHI: Asphalt. Asphalt.

5 MR. RACHAL: And was that also in the nature
6 of thousands of dollars?

7 MR. QURESHI: Yes.

8 MR. RACHAL: When you made these investments,
9 did you do so with the understanding that you would be
10 granted the permit?

11 MR. QURESHI: Yes.

12 MR. RACHAL: There was no equivocation on the
13 part of the department?

14 MR. QURESHI: No.

15 MR. RACHAL: And, with regard to your
16 application, when you were asked to spend monies for
17 plans, were you guaranteed that you were going to be
18 able to receive the use of the property?

19 MR. QURESHI: Yes. Yes.

20 MR. RACHAL: You were?

21 MR. QURESHI: Pretty much. Those are the
22 conditions to --

23 MR. RACHAL: Maybe you just misunderstood the
24 question I asked. When you made the application to
25 receive a special exception, were you given the

1 understanding that if you made the expenditures for a
2 site plan that you would be guaranteed the --

3 MR. QURESHI: No, there was no -- I'm sorry.
4 There was no guarantees.

5 MR. RACHAL: So, you were making those
6 expenditures at risk this time, with regard to a
7 special exception?

8 MR. QURESHI: Now we're comparing apple and
9 oranges. At that time, when you apply for something
10 with DCRA, they required you to do the fencing to get
11 your license and approve. So, you're not -- what
12 we're doing today is totally different what I did back
13 in '07.

14 CHAIRPERSON HILL: I just want to clarify the
15 timeline in my head. So, you had a C of O. You're
16 saying you got that in 5/15/07, right? And then now
17 you're talking about improvements. I don't understand
18 the improvements (garbled speech).

19 MR. QURESHI: At the time, when I applied for
20 my storage license --

21 CHAIRPERSON HILL: That you got in 5/15/07.

22 MR. QURESHI: Right.

23 CHAIRPERSON HILL: Okay.

24 MR. QURESHI: So, they came out, inspect the
25 property. They asked me to go ahead and do the

1 fencing and do the paving to get a license. Those are
2 standards any towing company right now applying for a
3 license and for a storage license.

4 CHAIRPERSON HILL: That's fine. So, I'm
5 sorry. So, you did that and then you got the license.

6 MR. QURESHI: Yes, sir.

7 CHAIRPERSON HILL: Okay. All right. Just
8 understanding. Okay.

9 MR. RACHAL: But it was understood that if you
10 did that, the license would be issued to you, was it
11 not?

12 MR. QURESHI: Yes. Pretty much, yes.

13 MR. RACHAL: After having received the
14 license, did you go into business?

15 MR. QURESHI: Yes.

16 MR. RACHAL: How long have you been in
17 business?

18 MR. QURESHI: I started back in 1990s, pretty
19 much until now. I started with my dad when I was
20 young, back about when I was 20. So --

21 MR. RACHAL: So, since 2007, to the present,
22 you've been there at 2200 Channing Street without
23 interruption?

24 MR. QURESHI: Right.

25 MR. RACHAL: And have you had to reapply each

1 year to receive a certificate of occupancy?

2 MR. QURESHI: Yes.

3 MR. RACHAL: Did each year, did you make a
4 payment to the District?

5 MR. QURESHI: For license, yes, that's
6 requirement.

7 MR. RACHAL: And how much did you spend with
8 regard to each annual renewal?

9 MR. QURESHI: Off my head, I don't know how
10 much it is because my dad pretty much handled all the
11 financial, so I don't know how much a year it is.

12 MR. RACHAL: Was it a couple hundred dollars a
13 year?

14 MR. QURESHI: Yes.

15 MR. RACHAL: When the inspectors came out to
16 the site did they observe the conditions at the site
17 at that time?

18 MR. QURESHI: I'm sorry, what was that again?

19 MR. RACHAL: When the inspectors came out to
20 review your application, did they notice the condition
21 of the site at that time?

22 MR. QURESHI: Yes.

23 MR. RACHAL: And --

24 CHAIRPERSON HILL: When they came out to
25 inspect it which time?

1 MR. RACHAL: In 2007.

2 CHAIRPERSON HILL: Right. So, in 2007 you
3 applied for a permit. You got -- you had to do some
4 upgrades, whatever, and you got the license. So,
5 we're at that point.

6 MR. RACHAL: Okay.

7 CHAIRPERSON HILL: And so now we're done. I
8 don't understand. You have the license, you're doing
9 business.

10 MR. RACHAL: But when the inspectors came out
11 in 2007, did they observe what the existing condition
12 of the property was at that time?

13 MR. QURESHI: Yes, and they required for
14 paving and fencing.

15 MR. RACHAL: Okay. What was the existing
16 condition of the property at that time? What was on
17 the property at that time?

18 MR. QURESHI: It was not asphalt because I
19 just demolished the laundromat and the house. So,
20 they wanted it to be paved.

21 MR. RACHAL: So, they knew that there was a
22 laundromat there previously on the site?

23 MR. QURESHI: Yes.

24 MR. RACHAL: They knew that the laundromat was
25 a commercial use?

1 MR. QURESHI: My understanding, that was the
2 main reason I bought the property, because I thought
3 it was commercial, and it was -- they said it was
4 commercial.

5 MR. RACHAL: Each year would the DCRA
6 inspectors had an opportunity to come out and inspect
7 the premises before issuing the new certificate of
8 occupancy?

9 MR. QURESHI: They won't come out. They just
10 supply your application and they will approve it and
11 give you a license and move on. Every year for the
12 past --

13 MR. RACHAL: But, could they not come out and
14 inspect the property each year?

15 MR. QURESHI: Yes, DCRA, they can come any
16 time they want.

17 MR. RACHAL: And if they had come out at any
18 time during those subsequent years, would they have
19 observed an entire commercial operation along the 2200
20 block of Channing Street Northeast?

21 MR. QURESHI: Yes.

22 MR. RACHAL: And what other commercial
23 properties would they have observed?

24 MR. QURESHI: The whole block is pretty much
25 commercial. Whole Channing Street is commercial, my

1 understanding is. So --

2 MR. RACHAL: And are there other tow companies
3 in operation on Channing Street?

4 MR. QURESHI: Three. Yes.

5 MR. RACHAL: And what are the names of those
6 other tow companies?

7 MR. QURESHI: ANC Towing, ABC Towing, and D.C.
8 Arlington.

9 MR. RACHAL: In addition to All Star?

10 MR. QURESHI: Yes, addition to All Star.

11 MR. RACHAL: And are there other automotive
12 facilities on 2200 Channing Street? The block?

13 MR. QURESHI: Yes. You've got your body shop
14 right across, and then you've got your used auto --
15 used tire repair.

16 MR. RACHAL: Okay. Is there a used car sales
17 is what you're saying, also?

18 MR. QURESHI: Also, yes.

19 MR. RACHAL: Okay. Now, if one were using
20 your property for residential purposes, what would
21 they see from the front door of that property?

22 MR. QURESHI: They will see nothing but
23 commercial and automotive.

24 MR. RACHAL: And if they looked directly out,
25 what would they be looking on to?

1 MR. QURESHI: Repair shops and towing
2 companies, and --

3 MR. RACHAL: Would they see a used car lot
4 with cars that had been bought at auction?

5 MR. QURESHI: Yes.

6 MR. RACHAL: Would the site have been an
7 attractive residential property?

8 MR. QURESHI: From my property, I can't see
9 anybody putting a house or townhouse in that property
10 when you are surrounded by nothing but commercials.

11 MR. RACHAL: And how far away from your
12 property is there an active transfer station for trash
13 and garbage?

14 MR. QURESHI: Couple blocks. It's not too
15 far.

16 MR. RACHAL: And is there a railroad line in
17 operation to your property?

18 MR. QURESHI: Yes.

19 MR. RACHAL: Where is that located?

20 MR. QURESHI: Ending of Channing Street.

21 MR. RACHAL: At the very end of Channing
22 Street?

23 MR. QURESHI: Yes, where ABC Towing is.

24 MR. RACHAL: Okay. And, would that be
25 compatible with a residential use at your site?

1 MR. QURESHI: No.

2 MR. RACHAL: I didn't year you.

3 MR. QURESHI: No.

4 MR. RACHAL: Are there any other commercial
5 activities that are in operation in your neighborhood
6 that are say, within walking distance of that premise?

7 MR. QURESHI: Yes, just whole Channing Street
8 and 22nd Street is pretty much commercial.

9 MR. RACHAL: Are there any adult entertainment
10 facilities within a short walking distance of your
11 block?

12 MR. QURESHI: Yes, you have a strip club, and
13 we have another night club that operates.

14 CHAIRPERSON HILL: Mr. Rachal, I don't mind, I
15 just want to point out to you -- well, I shouldn't say
16 I don't mind. I just want to point out, I stopped you
17 a little bit earlier and so you've run over here.
18 Again, in terms of the focus as to why the Zoning
19 Administrator erred, I understand where you're getting
20 and we'll have an opportunity to hear from the Zoning
21 Administrator in terms of, you know why they revoked
22 the permit. And I do hear you saying in terms of
23 like, the commercial area and how -- I think you've
24 satisfied, you know, that argument in terms of you're
25 saying it's a commercial area.

1 And so, I just want to let you know, I'm going
2 to give you another two minutes to go ahead and make
3 your case before going over and letting DCRA cross
4 your comments, as well as them letting DCRA explain or
5 defend why they didn't make an error in revoking your
6 permit.

7 MR. RACHAL: Just on the other side of the
8 railroad right of way, is there a large Metro bus
9 garage?

10 MR. QURESHI: Just across the railroad track,
11 yes.

12 MR. RACHAL: And that faces on Bladensburg
13 Road, near your property?

14 MR. QURESHI: Yes.

15 MR. RACHAL: As an owner of the property,
16 would you find that property conducive to residential
17 use?

18 MR. QURESHI: Not for residential use, no. I
19 can't see it.

20 MR. RACHAL: And a residential use, would your
21 property suffer a loss in value?

22 MR. QURESHI: When I bought it, it was
23 commercial. Now it's R-1-B. The value have dropped.

24 MR. RACHAL: But as a residential property
25 located in the location surrounded by all of the

1 enumerated commercial activities, would it be a
2 valuable residential property?

3 MR. QURESHI: No.

4 MR. RACHAL: When you were given a notice to
5 revoke, in your opinion what precipitated the receipt
6 of that notice?

7 MR. QURESHI: I don't understand the question.

8 MR. RACHAL: When you received the notice from
9 DCRA that they were seeking to revoke your certificate
10 of occupancy, what was the basis of that notice being
11 given to you?

12 MR. QURESHI: Pretty much putting me out of
13 business.

14 MR. RACHAL: Have you received any complaints
15 regarding your operation as a tow truck store -- a
16 parking facility? Have you received any citations for
17 any violations from any D.C. agencies?

18 MR. QURESHI: No.

19 MR. RACHAL: Have you received any violations
20 from DCRA?

21 MR. QURESHI: No.

22 MR. RACHAL: How come you received a notice to
23 have your license revoked by DCRA?

24 MR. QURESHI: I have no idea what was
25 happening, why they're doing this. I'm just pretty

1 much singled out at all the companies.

2 MR. RACHAL: And why were you singled out?

3 MR. QURESHI: I'd like to know what they're
4 doing this for. I mean, I have all these employees.
5 Now, to find a commercial property in D.C., the prices
6 are ridiculous right now, the way D.C. is moving.
7 There is no commercial property for me to rent.

8 MR. RACHAL: Was there a change in your ANC
9 representative?

10 MR. QURESHI: Recently this gentleman, Mr.
11 Malone just came from, I believe, New Orleans, pretty
12 much trying to make some points.

13 CHAIRPERSON HILL: We don't have to bring in
14 other names and accusing people of making points and
15 things. He was a representative from the ANC. The
16 ANC voted seven to zero against --

17 MR. RACHAL: Mr. Chairman, if I may? I just
18 wanted to go few more questions on this.

19 Had you been working with the former ANC
20 commissioner for the area?

21 MR. QURESHI: Yes. She always come. There's
22 bottles all over the grass and she will attempt to
23 clean it up and cut the grass. And I would do all
24 that. And the bottles and all this trash was coming
25 from the night clubs, drinking, overnight, and the

1 bottles would be all over. And she understood that,
2 that all the beer bottles coming from the night club,
3 the crowd going to the clubs. And that was not.

4 But she worked with me. She would come to me.
5 She said, cut your grass. Sometime I will get a
6 ticket, but she said, cut your grass, and she always
7 worked with me. She would come to me.

8 But this gentleman never came to me, never
9 introduced himself that he was a new ANC commissioner,
10 and this is the first time I see him.

11 CHAIRPERSON HILL: Okay. Okay.

12 MR. RACHAL: And --

13 CHAIRPERSON HILL: The question, I mean -- I'm
14 going to give you another minute and I've already gone
15 now, you know, farther than I thought. It's how the
16 zoning administrator erred, not how the ANC
17 Commissioner erred.

18 And so, you know, I mean, I'm just -- you're
19 wasting your time in terms of your presentation. But
20 go ahead. I'm going to give you another minute and
21 then I'm going to turn and see how the DCRA is going
22 to defend the fact that they said they didn't err.

23 MR. RACHAL: Did the present zoning -- I mean,
24 did the present ANC Commissioner make any statements
25 in the testimony he supplied to the BZA in this appeal

1 that you challenge?

2 MR. QURESHI: Just he's making a mistake with
3 my lot.

4 MR. RACHAL: Did he indicate that you had
5 violations at the lot?

6 MR. QURESHI: He says, but I have no
7 violations.

8 MR. RACHAL: Right. So, his statement was an
9 error with regard to the violations at this site?

10 MR. QURESHI: I believe he just making all
11 this up, that the community, I've been there for so
12 many years, I am so well-known with the community,
13 with the kids I help, and the whole community. I'm
14 well-known. So, he can't say that the community is
15 against me.

16 The applicant complex right across the street,
17 the neighbors, I do things for all my neighbors so I
18 will be, you know, in good terms. Now he's telling me
19 the community is the one saying they don't want me
20 there. I think this -- they got the wrong person.
21 It's the body shop that's doing all the mess. They
22 just got me.

23 MR. RACHAL: Now, with regard to those
24 violations, did not the Office of Planning report
25 indicate that you had no violations from any D.C.

1 agencies?

2 MR. QURESHI: No violations.

3 CHAIRPERSON HILL: Okay, Mr. Rachal, I'm going
4 to ask you to wrap it up.

5 MR. RACHAL: When you undertook all the
6 conditions to receive the permit, are you prepared to
7 undertake any conditions that are now the standard
8 with regard to the requirements for a continued use?

9 MR. QURESHI: Whatever it takes. They want me
10 to put trees, trees, I put trees. Whatever they will
11 like.

12 MR. RACHAL: If they wanted you to change the
13 fencing that they previously required in the nature of
14 the chain link, would you change it to wood fencing?

15 MR. QURESHI: Not a problem. I would change
16 it.

17 MR. RACHAL: You did so before and you would
18 fully comply with any requirements now?

19 MR. QURESHI: There's no guarantees, but if
20 they allow me to stay I would do anything they want me
21 to do.

22 MR. RACHAL: Okay.

23 CHAIRPERSON HILL: Okay. All right. Okay.
24 Thank you. All right. And, Mr. Qureshi, I know this
25 is something that affects you personally, affects your

1 business, affects your employees, and so, you know, we
2 as a board here, we're not here to try to put any
3 businesses out of business. And again, as a small
4 business owner I am aware of the responsibilities that
5 you have.

6 And so, we are here just to try to figure out
7 whether your appeal is something that has merit. And
8 so, it's pretty simple in that regard. But I
9 understand it's a difficult place to be.

10 That being my little monologue, Mr. Tondro, do
11 you have any cross for the -- although there's no real
12 -- well, I guess, I don't know, do you have any cross
13 for the applicant?

14 MR. TONDRO: Yes, if I may do. Thank you.

15 CHAIRPERSON HILL: Sure.

16 MR. TONDRO: Mr. Qureshi, I just, if I can
17 clarify something, I think a bit of confusion. There
18 have been a couple different terms tossed around, I
19 think, that have been deemed, or have been used as if
20 they mean the same thing. And I just want to clarify
21 your understanding.

22 First of all, there's one term is license,
23 another term is permit, and a third term is
24 certificate of occupancy. Do you understand that
25 there are the differences, and if so, can you indicate

1 what those are or whether -- I mean, I could go
2 further into detail in terms of explaining it. I just
3 want to make sure that you understand that there is --
4 if you do understand there is a difference between
5 particularly a license and a certificate of occupancy.

6 MR. QURESHI: No.

7 MR. TONDRO: You believe that --

8 MR. QURESHI: License is to operate.

9 MR. TONDRO: Right.

10 MR. QURESHI: And storage is to allow you to
11 store cars and --

12 MR. TONDRO: Right. Okay. So, the
13 certificate of occupancy is what allows you to -- if
14 I'm understanding you, the certificate of occupancy is
15 what allows you to perform that use on the property as
16 opposed to the license, which allows you to operate
17 it.

18 MR. QURESHI: Sure. Yes.

19 MR. TONDRO: And who is it who issues the
20 certificate of occupancy? Are you --

21 MR. QURESHI: DCRA.

22 MR. TONDRO: And do you know which portion
23 part of DCRA?

24 MR. QURESHI: No.

25 MR. TONDRO: I just wanted to question. In

1 terms of the licensing, do you know who issues that,
2 the license?

3 MR. QURESHI: Come from the DCRA office.

4 MR. TONDRO: Okay. And, but are they
5 different offices within?

6 MR. QURESHI: Yes.

7 MR. TONDRO: And what are the differences as
8 you understand them, in terms of which offices does
9 which?

10 MR. QURESHI: Well, I have a runner that goes
11 to different offices to get whatever we require to get
12 to apply for, for the storage license to operate. You
13 have a separate storage license, you have separate --
14 each truck have its own business license. So,
15 everything is separate, separate, to operate.

16 MR. TONDRO: Right. And so, in those licenses
17 then, those are what we're talking about, the one for
18 the storage, for each truck, for the ability to store
19 the --

20 MR. QURESHI: Yes.

21 MR. TONDRO: For each property to be able to
22 store the vehicles and so forth. Each of those have
23 to be renewed, what was it, on a yearly basis or by
24 every two years?

25 MR. QURESHI: Two years.

1 MR. TONDRO: Every two years. But the
2 certificate of occupancy is not obtained every year or
3 every other year.

4 MR. QURESHI: No. No.

5 MR. TONDRO: So, there's only one we're
6 talking about. Is that right?

7 MR. QURESHI: Yes.

8 MR. TONDRO: Okay. Thank you. I just want to
9 clarify so we're all talking about the same issue.

10 Second of all, in terms of the certificate of
11 occupancy, if you can turn to Exhibit -- it's the
12 April 5th filing by your counsel. Exhibit 34. Thank
13 you. No, is it 34? No. Exhibit 32. Sorry. Exhibit
14 32 on the record, but it's the April 5th submission by
15 your counsel. And I just want to go back. What I'm
16 looking at is Exhibit -- the exhibit to the A-1, A-2,
17 and A-3, which are the application for the C of O.

18 And for the C of O in particular, I want to
19 return to page A-3. And I know it's hard to read in
20 the upper right. I don't know if you have that. If
21 you don't have a copy, I can --

22 MR. RACHAL: Yeah, we have it.

23 MR. TONDRO: If you can look in the -- first
24 of all, I just -- can you just identify on the upper
25 left-hand side, what that says? Under C of O, and

1 then the number?

2 MR. QURESHI: The number and address of the
3 property?

4 MR. TONDRO: And so that -- right. I'm sorry.
5 And then the permit number, where it see C0 -- CO-
6 0901.

7 MR. QURESHI: Sure.

8 MR. TONDRO: That's the permit that we're -- I
9 mean, not the permit. Pardon me for incorrectly using
10 the language. That's a certificate of occupancy
11 that's at issue here, right?

12 MR. QURESHI: Correct.

13 MR. TONDRO: Can you look on the upper right-
14 hand side, where it says the date? Can you read what
15 that says?

16 MR. QURESHI: I'm trying to look for the date.
17 Oh, date.

18 MR. TONDRO: All the way in the upper -- where
19 is the --

20 MR. QURESHI: August 19, 2008.

21 MR. TONDRO: I think it says 2009.

22 CHAIRPERSON HILL: It has a nine, maybe?

23 MR. TONDRO: Yeah. I just want to -- because
24 you testified that you have been operating since 2007.
25 I think if you go back to the application on A-1,

1 that it was submitted, right, on the first page. That
2 it was submitted on May of '07, but it wasn't issued
3 then, until 2009. Is that right? I just want to make
4 sure we're correct on that one.

5 MR. QURESHI: Yes.

6 MR. TONDRO: Okay.

7 MR. QURESHI: That's correct.

8 MR. TONDRO: Thank you.

9 CHAIRPERSON HILL: That's the C of O that was
10 revoked, correct?

11 MR. TONDRO: Yes. That's the --

12 CHAIRPERSON HILL: Okay.

13 MR. TONDRO: That's our understanding. I
14 believe that's Mr. Qureshi's understanding too.

15 CHAIRPERSON HILL: Mr. Qureshi, that's the C
16 of O that was revoked, correct? Okay, thank you.

17 MR. TONDRO: Just to be clear about that.

18 Do you have -- you indicated that you've been
19 operating a tow truck business from, you said, I
20 think, the 1990s.

21 MR. QURESHI: Yeah, we started from the gas
22 station. Uh-huh.

23 MR. TONDRO: Okay. And so that was well
24 before, what some almost 20 years before you purchased
25 the property.

1 MR. QURESHI: Correct.

2 MR. TONDRO: And you therefore, I presume but
3 I don't know, you have other properties then that you
4 use?

5 MR. QURESHI: Yes.

6 MR. TONDRO: Okay. So, while this may be a
7 part, this particular lot is a part of your
8 operation --

9 MR. QURESHI: Correct.

10 MR. TONDRO: -- if you were no longer able to
11 use it, your operation would still continue on those
12 other properties.

13 MR. QURESHI: I won't have the space to
14 storage vehicles.

15 MR. TONDRO: But you still have other
16 properties.

17 MR. QURESHI: To commercial property? No. I
18 have one commercial property that I use for my other
19 business. I won't have enough space to storage
20 vehicles. That's why I bought that properties to have
21 overflow.

22 MR. TONDRO: And what did you do before you
23 bought the property, because you were operating back
24 in the 1990s?

25 MR. QURESHI: My business, I got more

1 contracts, my business expanded, so I need space. So
2 now you're taking this away from me with all these
3 trucks I have. I have nowhere to put cars on -- where
4 I store the vehicles.

5 MR. TONDRO: Okay. Can you tell me if it's
6 possible, what roughly a monthly income that's made?
7 I mean, I believe there was reference in the
8 applicant --

9 CHAIRPERSON HILL: Why is this important, Mr.
10 Tondro?

11 MR. RACHAL: I have no objection to it, Mr.
12 Chairman.

13 CHAIRPERSON HILL: Okay.

14 MR. TONDRO: But, I can respond.

15 CHAIRPERSON HILL: I'm just curious.

16 MR. TONDRO: It raises an issue -- I'm trying
17 to be delicate. These are delicate financial that
18 should be proprietary, so I'm not trying to -- but
19 what I'm looking for is an issue of balancing out the
20 costs. I believe that that's what was raised by the
21 appellant in their brief.

22 CHAIRPERSON HILL: In their brief.

23 MR. TONDRO: And so, there's an issue of the
24 relative cost. So, what I'm looking for is -- and I'm
25 trying to figure out how to phrase it delicately to

1 protect your privacy, Mr. Qureshi, as much as
2 possible. But can you give us a sense of you know,
3 when we're talking about the net income, after your
4 expenses and so forth, for operating that property,
5 just that lot, in a yearly basis, are we talking about
6 \$1,000 of income, re we talking about \$10,000 of
7 income, or are we talking about \$100,000 of income?
8 Some kind of approximation, if possible. I don't --

9 MR. QURESHI: I mean, I get work from MPD and
10 DPW. Beside that, I have other contracts that my
11 trucks runs. So, you asking me specifically just for
12 the work I get from DPW, are you saying what is my
13 income combined with all the contracts? I'm not going
14 to put my numbers out right now here, openly to
15 everybody. I don't see what's that -- I don't --

16 CHAIRPERSON HILL: That's okay. Mr. Tondro,
17 just move on --

18 MR. TONDRO: Okay. Yeah. That's fine.

19 CHAIRPERSON HILL: -- from that question.
20 Okay? Thank you.

21 MR. TONDRO: I withdraw that. Thank you.

22 Just one final question, which is can you --
23 if it's possible for you to look at my prehearing
24 statement, which is Exhibit pardon me, 22 on the
25 record. And just looking for Attachment C, which is

1 just an e-mail that was sent from myself to you, and
2 also to Mr. Rachal back in August of 2016. I don't
3 know, do you have that? I can bring it over.

4 I just wanted to just ask if you can just
5 familiarize, take a second to look at it. But --

6 MR. RACHAL: What date are you referring to,
7 counsel?

8 MR. TONDRO: I'm sorry. I'm looking at both
9 at the extended, both the one on August the 30th and
10 then the prior one on July the 20th.

11 MR. QURESHI: Which one are you asking me to
12 look at?

13 MR. TONDRO: Well, I'm just asking you to look
14 at both of them and ask you if there was, in that
15 conversation of both of them, a willingness by DCRA to
16 support your application for special exception, if
17 that was raised in those conversations.

18 CHAIRPERSON HILL: Mr. Tondro, I just had a
19 quick question. Was the C of O revoked by that point?

20 MR. RACHAL: Yes.

21 MR. TONDRO: The C of O had already been
22 revoked.

23 CHAIRPERSON HILL: All right.

24 MR. TONDRO: This is in -- subsequent to that
25 revocation.

1 MR. RACHAL: Mr. Chairman, on that basis, I
2 would object to the relevancy at this point, after the
3 C of O has been revoked, when the basis here is
4 whether they erred, not after the fact.

5 MR. TONDRO: This actually goes -- the reason
6 for this is it goes to the assertion by Mr. Qureshi
7 and testimony, but that fact that he was willing to
8 comply with any kind of landscaping or other
9 requirements that would be imposed to come into
10 compliance. And what I wanted to -- the reason I'm
11 asking is to indicate that the issue, the need to get
12 a special exception and the process to do that, and
13 even if you look on page 2 of that e-mail, there's
14 actually the specific code section that the Zoning
15 Administrator believe would apply for the special
16 exceptions.

17 I just -- which is Subtitle U, Section
18 203.1(j).

19 CHAIRPERSON HILL: So, Mr. Qureshi, I mean,
20 the question -- were you aware of that e-mail?

21 MR. QURESHI: Yes.

22 CHAIRPERSON HILL: Okay.

23 MR. TONDRO: Thank you, I --

24 CHAIRPERSON HILL: Okay, great.

25 MR. TONDRO: And just one question.

1 CHAIRPERSON HILL: All right. Sorry, sure.

2 MR. TONDRO: The only question I had as a
3 follow up to that, Mr. Qureshi, is just trying to
4 understand for DCRA's purpose, but also for the zoning
5 -- for the Board, which is, that was back in, then,
6 August, July and August of 2016, almost a year ago.
7 Why has it been so difficult to pursue this special
8 exception application which would bring you into
9 compliance?

10 MR. QURESHI: The landscaping it just, I just
11 dragged my feet. I was just -- spent this money that
12 my understanding was to have to spend all this money
13 on trees and all this fencing, and is coming here,
14 what is my chances having to stay? That's the only
15 reason I'll say.

16 If you grant me to stay, I'll start tomorrow,
17 planting all the trees you want.

18 MR. TONDRO: Thank you.

19 CHAIRPERSON HILL: Okay, all right. So, Mr.
20 Tondro -- you need something?

21 So, I'll go ahead and give you 10 minutes for
22 your presentation. And again, you know, I'm just
23 again wanting to hear about why the permit was
24 revoked.

25 MR. TONDRO: Sure. Thank you. Good

1 afternoon, Chairman Hill, members of the Board.

2 Yes, it's a -- I think as I stated in the
3 brief, and I'll repeat, it's a very simple reason for
4 why we revoked it. We realized it had been issued in
5 error.

6 And I believe if you look at Plaintiff Exhibit
7 A-1, again I think it was 32, the April 5th, the
8 application, you'll see on page 2, A-2, up in the
9 upper left-hand side, that the district that was
10 identified, the zone district, is the CM-1, when in
11 fact it should have been the R-1-B, I believe. And
12 so, there may have been a mistake made at that time.

13 Whatever reason, I don't think there's a --
14 DCRA is not asserting that we issued it -- that that --
15 - we just made a mistake. We understand we made a
16 mistake. There's no question about that.

17 The issue however is we're trying -- is that
18 it was called to our attention as part of an overview
19 of the overall Langdon Overlay, that this is a
20 property that we had made a mistake on. And for that
21 reason, then, we issued the revocation.

22 Recognizing the fact, obviously, that the
23 appellant had been there for a long time, and that
24 this was an important -- you know, his livelihood.
25 And we also wanted to make, you know, clear that a lot

1 of the issues -- that it was possible to get a special
2 exception, this is not a variance request which would
3 have been a higher threshold. I will point out that
4 the original revocation notice did indicate variance
5 that was an error on our part, and that was corrected
6 partially by that e-mail that I just referred to in
7 July and August, indicating that it was possible under
8 a special exception.

9 So, that therefore, what would be required
10 would be the landscaping. DCRA wanted to work with
11 the appellant. Appellant indicated precisely as you
12 just heard him say, that he wanted to come into
13 compliance. He would do whatever is required in terms
14 of landscaping, in terms of trees.

15 And for that reason, then DCRA encouraged him
16 to seek -- to come into compliance by taking the
17 special exception route.

18 As a result of that, DCRA also consented to a
19 number of continuances, which is why we're here right
20 now. And that was always in order to encourage the
21 applicant to be able to provide that additional
22 information that was required for the special
23 exception.

24 Unfortunately, as you saw earlier in the
25 application, and now, I think the applicant -- I

1 guess, I think, wants to have assurances before
2 expending the money to show what the process -- what
3 is proposed, that it would be approved. That might be
4 understandable from the point of view of a business
5 person, but I think from the point of view from the
6 government, we can't be in a position where we give an
7 approval ahead of time on a blank sheet, which is one
8 of the concerns.

9 Turning to the specifics, at least it was just
10 referenced in the testimony, I'll just again, point
11 out that there is a distinction here. I can
12 understand where appellant is coming from. Again, as
13 a small business owner it can be confusing. DCRA is a
14 massive agency, and I understand that, and it's easy
15 to confuse the various different divisions. But
16 licensing is its own division. It's run separately.
17 It has, most importantly, it's run under different
18 regulations and statutory authority than the Zoning
19 Administrator, which has its own. And what we're
20 dealing here and what the Board has jurisdiction over,
21 is only the certificate of occupancy.

22 The issue that again I would point out, is
23 that we have -- the appellant in this case, as in all
24 the appeals, has the burden of proof, as I stated
25 before, and per Subtitle X, 1101.2, that -- and so

1 therefore I hate to repeat it all the time, but I do
2 want us to keep that in mind in this particular case.

3 But I want to emphasize that DCRA really tried
4 extensively, to the extent that we could. And when I
5 said DCRA in this case, I mean the Zoning
6 Administrator's office, to try to encourage and
7 support the appellant in getting the special exception
8 relief, to the extent that we could.

9 So, I think that the, as it were, the only
10 issue remaining, although it hasn't been cited in
11 testimony, but it was brought up in the brief, is the
12 issue of estoppel and detrimental reliance. And we
13 would respond, I think, in a couple of cases -- in a
14 couple situations.

15 First of all, as I cited in my brief, in terms
16 of the overall issue of a constitutional taking, I
17 don't believe this rises to a level of constitutional
18 taking. There isn't a situation here where there's no
19 remaining value to the property. The property still
20 has value. There are plenty of uses it can do if the
21 appellant, for example, wants to go through, fully
22 through the special exception process, I believe he
23 can redo so. Or there are other uses. So, this is
24 not something that would rise to the level of a
25 constitutional taking.

1 In terms of the issue of an estoppel claim,
2 however, I would refer, just I'm going to quote a
3 couple cases here if you'll allow me. First of all, I
4 just want to emphasize the fact that the Court of
5 Appeals itself has held that, and I'm going to quote
6 here, that estopping a municipality from enforcing the
7 law must be, at best, the rare exception, not the
8 rule, and is judiciously disfavored. Okay? And that
9 is the case. There is *Rafferty v. The District of*
10 *Columbia Zoning Commission*, and the citation to that
11 is 662 A.2d 191. It was decided in 1995.

12 So, the general rule here is that an estoppel
13 is not something that can be -- not to be used lightly
14 against a municipality. So, there is an additional
15 burden of proof. There is their general burden of
16 proof, and then there is an additional burden of proof
17 here because it is raising the estoppel claim. And
18 the estoppel claim, estoppel in general, goes back to
19 the middle ages, the idea that what the law requires
20 isn't necessarily the limitation. There may be times
21 when there is an equitable right, a right of relief
22 that the law shouldn't be enforced the way that it is
23 because it would be unfair. So, it's the idea that
24 there is something beyond the law that would come in.

25 That again means, however, that there's a much

1 higher burden to show that you're going to be able to
2 obtain estoppel.

3 I then turn to the six, what the Court of
4 Appeals has repeatedly held are the six elements that
5 is necessary for a party to show estoppel. And, I'm
6 going to quote from another zoning case, a BZA case in
7 this case. I'm sorry, a Court of Appeals involving
8 the BZA, *Economides v. The D.C. Board of Zoning*
9 *Adjustment* (phonetic). Again, the citation is 954
10 A.2d 427, and it was decided in 2008.

11 Referring there to page 444, and in particular
12 they invoke, then, those six elements which are; one,
13 you must show an expensive and permanent improvements;
14 two, that were made in good faith; three, in
15 justifiable and reasonable reliance upon; four,
16 affirmative acts in the District government; five,
17 without notice that the improvements might violate the
18 zoning regulations; and six, that the equities
19 strongly favor the petitioners. Or in this case, it
20 would be the appellant. Whoever is the party making
21 the case.

22 DCRA strongly asserts that they have not met
23 their test, certainly with number one and number six,
24 number one being the expensive and permanent
25 improvements, and number six, in terms of the

1 equities.

2 And I turn, then, to the case that was
3 actually cited by appellant in their brief, which is
4 *Saah v. The District of Columbia Board of Zoning*
5 *Adjustment*. The citation there is 433 A.2d 1114,
6 decided in 1981. And that involved a situation where
7 DCRA had issued a building permit, and after they had
8 started construction DCRA realized they had made a
9 mistake. And the Board of Zoning Adjustment initially
10 upheld the DCRA's revocation of the permit, and the
11 Court of Appeals subsequently overruled it.

12 But I want to -- the appellant raised it and I
13 want to, again, distinguish here, the differences. In
14 that particular case, there was a situation of a
15 considerable amount of money. We're talking about
16 1981. They had already spent \$220,000 constructing
17 the building. They would have to -- to come into
18 compliance, they'd have to spend another \$110,000.
19 We're talking about an extraordinary amount of money.
20 And that's the expensive and permanent improvements
21 aspect that number one, of those six elements.

22 The Court also held on the other hand, in
23 terms of evaluating the equities, the number six, item
24 number six, that that wasn't -- that the violation
25 that had occurred was relatively minimal. And that

1 was -- it was a five percent increase in lot
2 occupancy. Instead of a lot occupancy of 60 percent,
3 it would now be a little bit less than 65 percent.
4 And the Court of Appeals held in that case that that
5 was not significant enough that it outweighed the
6 tremendous costs to the property owner that had
7 already been incurred and reliance on the District.

8 And I would point out here, to differentiate,
9 here we're dealing with a situation, we're not talking
10 about a big building that's been built. It is money
11 to put in a fence. There is money to go and pave the
12 property, but the money to pave the property and
13 install the fence, those are also necessary for him to
14 operate the business. They weren't just conditions
15 for getting the C of O. They may have been a
16 condition for getting the license, but that again is
17 distinctive.

18 On the other hand, unlike in *Saah*, where
19 you're dealing with only the immediate neighbors
20 really being affected by this relatively small
21 increase in lot occupancy, which as I recall, was in
22 the rear of the building. Either way, lot occupancy
23 is really something that's limited to affecting the
24 immediate neighbors, because it's dealing with a bulk.

25 Here, we're talking about a very visible

1 property that has an impact on the entire
2 neighborhood, and I think if you can turn again to
3 Exhibit 22, my prehearing statement, and you turn to
4 attachment B, which is a zoning map detail --

5 CHAIRPERSON HILL: Mr. Tondro, I'm just
6 pointing out the clock to you. If you could just kind
7 of wrap it up?

8 MR. TONDRO: And I'll wrap up right now.
9 Absolutely.

10 CHAIRPERSON HILL: Okay. Thank you.

11 MR. TONDRO: And if I can, I'd just like to
12 introduce just an expansion of that, a detail. I have
13 copies of this, which is just from -- this is from the
14 DCOZ map for the particular property. So, it's a
15 publicly available document, I believe. Therefore,
16 it's possible -- there's no surprises that are going
17 to come into place.

18 So, the only difference from what was already
19 introduced as attachment B to my prehearing statement
20 is just --

21 MR. RACHAL: Mr. Chairman, I would object to
22 this rendering in that it does not include in it, a
23 showing that directly in front of the property in
24 question, it's all commercial. That street that is in
25 pink goes all the way down. It goes all the way up to

1 where this property is. And our point was that we are
2 right next, on top of the commercial area. We are the
3 first corner next to this entire commercial district
4 and the impacts of that upon this particular property
5 makes it almost spot zoning that you have a
6 differentiation between what is predominantly a
7 commercial, a prior commercial use at this site, not
8 being depicted here in terms of the coloration all the
9 way in front of the property to the end of the street.

10 MR. TONDRO: If I can just respond? This
11 comes directly from the public map. I didn't choose
12 the coloring. I didn't do anything. The colors are
13 there and they again reflect what is already in the
14 record. It's just the panning out, the pink being the
15 PDR-1 Zone, which is the industrial use zone, the
16 yellowing being instead the R-1-B, with the green just
17 indicating the particular property involved in this
18 case.

19 CHAIRPERSON HILL: Ms. Nagelhout, I'm sorry to
20 -- I don't know if -- is there any issue with DCRA
21 entering this into the record?

22 MS. NAGELHOUT: No, I don't think so. It is
23 the -- an Office of Zoning --

24 CHAIRPERSON HILL: Okay. All right. Okay.
25 We're going to allow it into the record. Okay.

1 MR. RACHAL: Just note my objection for the
2 record, Your Honor.

3 CHAIRPERSON HILL: Okay.

4 MR. TONDRO: And again, the only reason to
5 show that it's just to provide the context for what
6 we're dealing with. It is a zone -- this is a
7 situation where you're dealing with a property that's
8 on the border between two zones, but it was -- the
9 Zoning Commission, when it mapped it, decided to
10 include it with the residential properties, as opposed
11 to the industrial properties next to it.

12 CHAIRPERSON HILL: Okay.

13 MR. TONDRO: So, I just want to call that out
14 into attention. I'll wrap up.

15 MR. RACHAL: Mr. Chairman, I also, my
16 objection --

17 CHAIRPERSON HILL: Can I just let him -- okay,
18 sorry. Your objection covers what?

19 MR. RACHAL: There is no indication as to what
20 the date of this issuance of this particular submittal
21 is in terms of when the District so identified or
22 created. And that, our situation dates back to 2007.

23 MR. TONDRO: 2009 was the date of the C of O.

24 MR. RACHAL: It was the date of the
25 application.

1 MR. TONDRO: The date of application does not
2 vest. It's the date of issuance of the certificate of
3 occupancy, which vests under the general rules
4 (simultaneous speech).

5 CHAIRPERSON HILL: So, when was this image?
6 Or, when was this image from? This is just --

7 MR. TONDRO: This image reflects the current,
8 at this particular time. PDR-1 --

9 CHAIRPERSON HILL: Okay.

10 MR. TONDRO: -- shows the current situation.

11 CHAIRPERSON HILL: All right. Your objection
12 is noted. Okay.

13 MR. TONDRO: Yeah. Sir, thank you.

14 CHAIRPERSON HILL: So, just to wrap up. In
15 terms of the issue of the estoppel, that we believe in
16 this particular case that it does not apply. It's a
17 situation where they made some expenditures of money
18 in terms of the fencing, in terms of the paving, but
19 it wasn't that significant. They still retained a use
20 there. But my point in showing this photograph was
21 just simply to show that there are a number of other
22 residential -- there are a number of other properties,
23 immediate properties around there which are zoned
24 residential, and therefore which will be impacted.
25 This is a high-profile lot. The use of it for this

1 purpose does have an impact on multiple properties,
2 unlike what happened in the *Saah* case, where you're
3 dealing with the potential violation being limited
4 only to the two next door neighbors.

5 CHAIRPERSON HILL: Okay. Okay. Okay.

6 MR. TONDRO: Thank you.

7 CHAIRPERSON HILL: Does the Board have any
8 questions for DCRA?

9 MR. HART: Just more of a curiosity than not,
10 but this C of O was granted in 2009. This revocation
11 happened in 2016?

12 MR. TONDRO: Yes.

13 MR. HART: So, could you give me a, kind of a
14 short explanation as to the time delay?

15 MR. TONDRO: I'm well known for my short
16 responses.

17 MR. HART: That's why I said that.

18 MR. TONDRO: I know. Yeah, it was made in
19 error. It was brought to our attention as part of the
20 review of the overall Langdon Overlay that was brought
21 up by the community. We looked at the entire Langdon
22 Overlay, and as a result of that we identified a
23 number of different properties for which there were
24 issues, and this was one of them that we identified.
25 We realized we had issued it in error at that

1 particular time.

2 MR. HART: Thank you.

3 CHAIRPERSON HILL: Okay. I'm going to allow
4 the appellant here now to go ahead and ask any cross-
5 exam, cross questions. I just find it a little
6 interesting that --

7 MR. RACHAL: I just have a question.

8 CHAIRPERSON HILL: Sure. Just before you do,
9 the cross, and again, and this is where the
10 clarification for me always comes into play with the
11 Office of Attorney General, the cross is directed to
12 the witness, correct? And the witness in this case is
13 Mr. LeGrant.

14 MR. TONDRO: Yes. So, if they have a question
15 for Mr. LeGrant, I believe that most of our
16 presentation here was on legal issues, and therefore
17 I'm not sure that he was necessarily --

18 CHAIRPERSON HILL: Okay.

19 MR. TONDRO: -- capable of responding to that,
20 but.

21 CHAIRPERSON HILL: Okay. So, the cross-
22 examination is again for your witnesses. So, Mr.
23 LeGrant is the witness of DCRA, so the cross will be
24 to Mr. LeGrant, and any questions you might have for
25 him.

1 MR. RACHAL: Mr. Chairman, I thought the
2 attorney was representing the agency as staff counsel
3 to the agency.

4 MR. TONDRO: I'm happy -- having said that,
5 I'm more than happy to answer it. We did not put Mr.
6 LeGrant on the stand for the simple reason that this
7 was really an issue that's as I said, was a legal
8 issue.

9 CHAIRPERSON HILL: Okay. All right. All
10 right, Mr. Tondro. All right. So, you can go ahead
11 and then ask your questions of Mr. Tondro.

12 MR. RACHAL: Does that mean I have an ability
13 to answer it -- I mean, ask questions of two
14 witnesses?

15 CHAIRPERSON HILL: You can ask whoever you
16 want to ask. I guess that's on the table now. And
17 I'm going to go ahead and put three minutes on the
18 clock just so I know, because we have about another --
19 apparently there's some people here that have to leave
20 at 5:00. And so, I'm going to try to get to some of
21 the other cases as well. But so, try to be as concise
22 as possible. Thank you.

23 MR. RACHAL: Was the error by the District of
24 Columbia in issuing the C of O due to anything, or any
25 fault by Mr. Qureshi?

1 MR. TONDRO: It is unclear who it was who
2 filled that on the application, what was the wrong
3 zone, CM-1. It might have been the District -- it
4 might have been DCRA. It might have been -- we don't
5 know. We don't know on what basis it was made. So,
6 that would be the only reason I would say. Otherwise,
7 I'm not sure.

8 MR. RACHAL: Right. But were not there
9 inspectors from DCRA that would go out to look at the
10 premise before they would sign off on the certificate
11 of occupancy application?

12 MR. TONDRO: I don't believe so in this case,
13 and the inspectors that were properly cited earlier,
14 would be inspectors that would be going out publicly
15 for licensing. But I believe Mr. Qureshi himself
16 indicated that generally that the inspectors didn't
17 come out.

18 MR. RACHAL: Well, wouldn't the zoning
19 officials, before they sign off, wouldn't they have
20 observed what was on the application?

21 MR. TONDRO: That's why I brought up the
22 issue, as you see, on the top of Exhibit A-2, on the
23 upper left-hand side, it identifies the zone as
24 Langdon Overlay, LO/CM-1, which was not the correct
25 zone, which should be the R-1-B. It had already been

1 R-1-B, effective in 1991.

2 MR. RACHAL: Right. But they did not catch
3 that when they made their inspection of the site.

4 MR. TONDRO: Absolutely.

5 MR. RACHAL: Okay, and are not all the other
6 inspectors that are listed on the application, agents
7 of the department? Or are they not employees of the
8 department?

9 MR. TONDRO: I'm not sure where you're talking
10 about.

11 MR. RACHAL: I'm talking about the inspectors
12 that did go out to look at the premises.

13 MR. TONDRO: Which inspectors?

14 MR. RACHAL: The soil erosion, the public
15 space, the plumber --

16 MR. TONDRO: Soil erosion is --

17 MR. RACHAL: -- the electrician, the zoning.

18 MR. TONDRO: Well, the soil erosion is, now is
19 the Department of the Environment. That's a different
20 agency. Public space is a different --

21 MR. RACHAL: Well, we're talking about then,
22 not now. We're talking about then.

23 MR. TONDRO: Yeah, I'm just --

24 MR. RACHAL: The time of the application.

25 MR. TONDRO: Do you want to let me finish?

1 MR. RACHAL: If you would just correspond to
2 the time frame, that's all.

3 MR. TONDRO: Okay. So, the reason I indicated
4 that as far as I know it's DOEE is precisely to
5 indicate that I don't know at that time frame, who it
6 was. I know that what is now known as DOEE was then -
7 - was prior, previously known as DDOE. I believe that
8 that would have been under the purview of DDOE back
9 then, but I -- to be totally frank, I'm not sure.

10 And with public space, I believe that's always
11 been under DDOT and the Office of Planning.

12 MR. RACHAL: And electricians, are they under
13 DDOT?

14 MR. TONDRO: The electricians are under DCRA,
15 but that's under the construction codes, the building
16 code compliance, which is not part of zoning.

17 MR. RACHAL: Okay. Are the plumbing under --

18 MR. TONDRO: Plumbing is the same thing.

19 MR. RACHAL: -- under DCRA? Okay.

20 MR. TONDRO: But it's not under --

21 MR. RACHAL: Would they not have --

22 MR. TONDRO: It may be under DCRA, but it is
23 not under the purview of the Zoning Administrator, it
24 is under the purview of the chief building official
25 who regulates and administers the construction codes

1 (simultaneous speech).

2 MR. RACHAL: Is there not a director over DCRA
3 to which all of these agencies report?

4 MR. TONDRO: No. DDOE --

5 MR. RACHAL: There's not a director of DCRA?

6 MR. TONDRO: Can I finish completely?

7 MR. RACHAL: The answer was no, and I'm --

8 MR. TONDRO: Your answer may be no, but it --

9 MR. RACHAL: And so, I'm just questioning your
10 answer is no. That's all.

11 MR. TONDRO: If I can give a complete
12 sentence. Thank you.

13 The director of DCRA has a number of divisions
14 that report to her. In this case, it's a her.
15 However, DOEE, or DDOE, and DDOT, and OP, are separate
16 agencies that report separately. However, also the
17 Zoning Administrator is the one who is charged with
18 reviewing the zoning regulations. And I believe back
19 in the Home Rule Act it was made clear that the Zoning
20 Administrator --

21 CHAIRPERSON HILL: Okay.

22 MR. TONDRO: -- actually has some independence
23 from the director as well.

24 CHAIRPERSON HILL: Okay. I'm being conscious
25 of time. I'm going to go ahead, Mr. Rachal, and give

1 you three minutes again for rebuttal. And then DCRA
2 will have an opportunity to cross the rebuttal. And
3 then you'll have an opportunity to provide a summary
4 for us.

5 MR. RACHAL: Right.

6 CHAIRPERSON HILL: So, I'm going to go ahead
7 and put three minutes on the clock for rebuttal.

8 MR. RACHAL: Okay. With respect to the
9 current issuance of the certificate of occupancy to
10 All State Towing -- All Star Towing, I'm sorry, this
11 was not done through any error on the part of the
12 applicant. It was done by the District of Columbia
13 solely. They had many and multiple opportunities
14 within which to correct this error. They did not,
15 over a period of more than 10 years. They have forced
16 the business to incur expenses at the beginning. And
17 the law is not just for the rich. It's not a matter
18 of an expense being 200 or 100,000. It's all relative
19 to where an individual stands with regard to what the
20 property he's asked to make compliant. And he did
21 whatever was required at that time. It was thousands
22 of dollars. To him, it was the equivalent of
23 \$100,000, as was cited in *Saah*.

24 He did so in good faith. There is no
25 indication that he did so with any attempt to deceive

1 the District government, or to commit a fraud against
2 the District of Columbia with regard to conditions of
3 this permit, and it existed for an extended period of
4 10 years. There was no time during that period that
5 any violations were ever issued by the District of
6 Columbia relative to his operation. So, there was no
7 indication that he should not continue to operate
8 there.

9 The notice that he received came out of the
10 blue. It came out of a change in administrations with
11 regard to an ANC that attempted to be overzealous with
12 regard to what had happened, perhaps, in the past.
13 But that was not Mr. Qureshi's doing. He has been
14 abiding by what had been given him in terms of a
15 legal, a legally issued at the time, certificate of
16 occupancy. He conformed and he's prepared to conform
17 to any requirement that would make this property
18 compliant.

19 He did so with regard to the then existing
20 standards for fencing. He is prepared to upgrade
21 those standards to the current requirements, which is
22 the wooden fence. He is also prepared to maintain the
23 compliance by doing whatever is required in the way of
24 screening and landscaping. The equities here need to
25 be balanced in terms of what has befallen him, through

1 no fault of his own, and what has impacted regard to
2 the public. He is providing a service that assists
3 the District of Columbia government, with regard to
4 traffic enforcement, traffic safety, that benefits the
5 general public. This is what he's been doing. The
6 city has been recouping revenues from him for those
7 towing operations. He has made his fees regulated by
8 the District of Columbia with regard to his operation
9 at that site.

10 The public interest weighs in favor of the
11 applicant in that he has indicated that his
12 surrounding neighborhood that are adjacent,
13 immediately adjacent to the property, have not
14 complained. He is in an area that on the map appears
15 more to be spot zoning than a regulation with regard
16 to any overlay, because he's predominantly surrounded
17 by commercial activity all along the same block that
18 he's in on the 2200 block of Channing Street
19 Northeast.

20 There are other commercial activities in the
21 area that are far worse with regard to adverse impacts
22 on the public, but they are allowed to exist, and he
23 is forced, with no fault of his own to be terminated.

24 We think that as a matter of estoppel, as a matter of
25 constitutional taking, if they want to deprive him of

1 his property, they need to fully compensate him, which
2 they have not refused -- were not prepared to do.

3 On the other hand, he is prepared to comply
4 with any current standard that would make this
5 property compliant with the existing regulations that
6 would allow it to exist as a special exception or
7 otherwise --

8 CHAIRPERSON HILL: Okay, Mr. Rachal, I'm just
9 going to interrupt you real quick.

10 I was looking for the rebuttal. You kind of
11 have gone into kind of conclusions a little bit. It's
12 okay, you're going to get a chance to do it again in a
13 second.

14 MR. RACHAL: Well, I'm saying that he, in his
15 testimony, indicated under the six tests, that there
16 was an issue of expense.

17 CHAIRPERSON HILL: That's okay. I would --

18 MR. RACHAL: I was just trying to counter that
19 with respect to the fact that Mr. Qureshi has spent
20 several thousands of dollars to pave the lot. He did
21 so in advance of the current regulation which requires
22 paving. He was forced to do that in 2009. The new
23 regulation only came about recently with regard to
24 paving.

25 CHAIRPERSON HILL: Okay. All right, Mr.

1 Rachal.

2 Do you have any cross? I'm going to give you
3 a minute. Okay?

4 MR. TONDRO: Yeah. Thank you. Mr. Rachal,
5 can you please tell me the C of O was issued in what
6 year?

7 MR. RACHAL: The application --

8 MR. TONDRO: No, I did not ask for that.

9 MR. RACHAL: I know, but --

10 MR. TONDRO: The certificate of occupancy was
11 issued --

12 MR. RACHAL: The C of O was issued in 2009 on
13 the application submitted --

14 MR. TONDRO: Thank you. And what was the date
15 when the present --

16 MR. RACHAL: -- in 2007.

17 MR. TONDRO: When was the date of the
18 revocation?

19 MR. RACHAL: The revocation notice came out, I
20 think you've already cited that.

21 MR. TONDRO: What year?

22 CHAIRPERSON HILL: Can you tell us again, Mr.
23 Tondro?

24 MR. TONDRO: Yeah, I believe it was 2016,
25 since that's when this whole thing started.

1 MR. RACHAL: Yes.

2 MR. TONDRO: Okay. Thank you. Just to be
3 clear, is it your understanding that by merely
4 submitting an application for a C of O, that that
5 authorizes one to use whatever you put on that
6 application, Mr. Rachal?

7 MR. RACHAL: No, I indicate --

8 MR. TONDRO: Thank you.

9 MR. RACHAL: No, I indicated earlier that --

10 MR. TONDRO: So, therefore is it --

11 MR. RACHAL: -- the application itself --

12 MR. TONDRO: Is it only the --

13 MR. RACHAL: -- says under number 10, the
14 proposed uses of the premises, is vehicle storage. So
15 the DCRA was on notice at the time of the application.

16 MR. TONDRO: But that wasn't the question that
17 I asked.

18 MR. RACHAL: That it would be used for that
19 purpose.

20 MR. TONDRO: The question I asked was the
21 following. It was a very simple one which is, what
22 authorizes the use, the C of O or the C of O
23 application?

24 MR. RACHAL: Both.

25 MR. TONDRO: No.

1 CHAIRPERSON HILL: The C of O. Okay. All
2 right. So, now we're going to go ahead and give you
3 an opportunity for conclusion. And we're going to do
4 two minutes with you.

5 I do want to mention something that you said
6 many times. You said that you -- the owner was
7 willing to do whatever they needed to do to come into
8 compliance. And we, on April 5th, asked you guys to
9 go ahead and submit plans, drawings, whatever. You
10 didn't do any of that, okay?

11 So, to now come here and tell us you're
12 willing to do anything you needed to do to come into
13 compliance, but you didn't do any of the first steps
14 to come into compliance. I find it a little
15 interesting in terms of your conclusion and
16 discussion.

17 MR. RACHAL: No.

18 CHAIRPERSON HILL: That's what you said.

19 MR. RACHAL: I did, and it was in the context
20 of when he first applied for the certificate of
21 occupancy, he had the clear understanding and the
22 right that once he undertook the expenditures that
23 were required of him --

24 CHAIRPERSON HILL: There's no right. You then
25 go ahead -- you go ahead and do the process, and then

1 at that point in time the Office of Planning can take
2 a look at your plans, we can take a look at your
3 plans, and then it's -- and then you have an
4 opportunity to present your case. It's okay. I'm
5 just going to --

6 MR. RACHAL: Well, when --

7 CHAIRPERSON HILL: We can agree to disagree if
8 you'd like.

9 MR. RACHAL: When he made the first
10 application, there was no review by the Office of
11 Planning with regard to the paving requirements or the
12 fencing requirements.

13 CHAIRPERSON HILL: Okay.

14 MR. RACHAL: He did that based on what DCRA
15 told him he needed to do in order to get the C of O.

16 CHAIRPERSON HILL: Okay.

17 MR. RACHAL: When he did that --

18 CHAIRPERSON HILL: Which he did get. Which he
19 did get.

20 MR. RACHAL: After the fact. He did it after
21 the fact. He paid the money knowing he would get the
22 certificate of occupancy issued. He had no assurance
23 in this process through the --

24 CHAIRPERSON HILL: Okay, Mr. Rachal, I'm just
25 going to stop you for a second. I'm going to go ahead

1 and give you two minutes to summarize, and I shouldn't
2 have pointed out what I thought already.

3 MR. TONDRO: And I just want to make an
4 objection on the record to make it very clear. I
5 don't think that it's possible for any government
6 official to go and bind the government to something
7 ahead of time in the way that Mr. Rachal is saying.
8 An application has to be made, and then it's reviewed,
9 and then it's issued. But I don't think that you have
10 a situation where you can bargain ahead of time before
11 you submit the application.

12 I'm referring --

13 CHAIRPERSON HILL: Okay. Okay.

14 MR. TONDRO: -- not to this. I'm referring
15 to, instead, the 2009 C of O.

16 CHAIRPERSON HILL: Okay. All right.

17 MR. TONDRO: Thank you.

18 CHAIRPERSON HILL: Mr. Rachal.

19 MR. RACHAL: We contend that based on the
20 record in this particular case, where an error was
21 made by the District of Columbia with no fault on the
22 part of the property owner, at the time that the
23 application was submitted, that the application
24 specified the proposed use, put the government on
25 notice directly as to what that use would be, and it

1 was the storage of vehicles. It also identified that
2 a house would be demolished, that it would no longer
3 be residential use with the demolition of that house,
4 and that 40 vehicles would be authorized as a part of
5 that application. That was clear on the record.
6 There was no doubt about what he was going to do.

7 They in fact came out and said, you have to
8 pave it because the property is not paved. He did the
9 paving at substantial expense. He did the fencing
10 because he knew, and they knew that he was going to
11 use it for parking of 40 vehicles.

12 He continued in that relationship with the
13 government because in point of fact, his use of the
14 property for parking vehicles was to assist the
15 District of Columbia in traffic enforcement and
16 parking enforcement that benefits the entire community
17 in terms of alleviating traffic congestion, promoting
18 traffic safety, promoting the health and well-being of
19 the entire city, not just the one block or the one
20 street, or the one ward even.

21 He has raised substantial funds for the
22 District, having been able to create this lot to be a
23 functioning licensed tow truck operator with the
24 ability to store 40 vehicles, and has done so for the
25 past continuous 10 years without any interruption or

1 any questioning of the use at this particular
2 situation. I would contend that if this was such a
3 hotspot, that the government would have been out to
4 him a lot sooner than 10 years later to raise this
5 problem.

6 And in point of fact, it was not a hot spot,
7 and is not a hot spot because it is predominantly a
8 commercial thriving area with other tow truck
9 operations, three in fact in addition to this one,
10 automotive repair operations, a transfer station for
11 garbage and trash, an area that provides for adult
12 entertainment, that this entire commercial area
13 allowed this particular entity to exist without any
14 adverse or inconvenience to the community or the
15 public at this location, and has continued operation
16 as previously licensed, would not do so otherwise.

17 CHAIRPERSON HILL: Okay. Thank you. Does
18 anyone have any questions, finally, for the applicant
19 or anyone? No? Okay.

20 MR. TONDRO: I think I get to make my closing
21 statement. I'll be really quick. I promise.

22 CHAIRPERSON HILL: Okay. Okay, sure. We'll
23 give you 30 seconds.

24 MR. TONDRO: Okay. The Zoning Administrator
25 was not the one who zoned this property. That was

1 done by the Zoning Commission back in 1991, well
2 before this happened. The Zoning Administrator is
3 charged with enforcing the rules on a case, and the
4 Zoning Administrator makes mistakes. He's a good
5 Zoning Administrator, he doesn't make them very often,
6 we would assert, but sometimes he does. And in this
7 case, that's what happened.

8 I will point out, just to correct a couple
9 things, that the demolition was not necessarily a
10 requirement. That was a statement as to what the
11 prior use was of the particular property.

12 Again, as we have said repeatedly, we've tried
13 to encourage the applicant to go and meet -- come into
14 compliance by going to the special exception route.
15 That, despite all the continuances, all the support
16 we've tried to, and I think the other agencies, Office
17 of Planning as well, there's just been a lack of
18 effort signally on the part of the applicant.

19 And you know, this is an issue where just
20 because the -- you know, ignorance of the law is no
21 defense. You cannot just keep on doing it just
22 because no one else knows about it. When we realized
23 we made a mistake, we informed him. We worked with
24 him. Again, we believe this does not rise to the
25 level of the defense of estoppel, because we do not

1 believe that there was significant enough expenses
2 that outweigh the serious deleterious effect on the
3 neighborhood. And I'll stop it there. Thank you.

4 CHAIRPERSON HILL: Okay, thank you.

5 All right. Does the Board have any questions
6 for anybody?

7 Okay. I'm going to close the hearing. Is the
8 Board ready to deliberate? No, I'm asking. I guess,
9 I mean, I -- is the Board ready to deliberate?

10 [No audible response.]

11 CHAIRPERSON HILL: Okay. Then, I can start.
12 So, I thought that the -- I thought that the arguments
13 that the applicant provided were not enough for me to
14 get to the point where the Zoning Administrator erred
15 in revoking the permit. I understand how the error
16 took place, and the fact that the applicant made
17 improvements that they were speaking of in order to
18 get the certificate of occupancy, I didn't see -- they
19 were able to use the property for a number of years
20 while that certificate of occupancy was there.

21 The argument, and I don't -- so, the bottom
22 line, I didn't think that the applicant made the case
23 as to why the Zoning Administrator erred in revoking
24 the certificate of occupancy.

25 The case in terms of, as I mentioned before,

1 where -- and I guess DCRA is also continuing to point
2 out that they tried to work with the applicant in
3 terms of them coming into compliance. I don't
4 necessarily know whether they would have been able to
5 come into compliance or not. As I had mentioned, even
6 with my thoughts in the application, when we were
7 speaking of that, you just don't know. I mean, we
8 can't -- and to the applicant again, you don't know
9 whether or not anybody is going to approve you until
10 you try.

11 So, I didn't think that that argument held
12 much sway for me. So, I would not be in support of
13 this appeal.

14 MR. HART: Thank you, Mr. Chair. In reviewing
15 the information and listening to the testimony, it
16 seems as though there -- I actually would agree with
17 you in terms of the applicant not providing enough
18 support, or support for their argument that the -- or
19 them asserting that the Zoning Administrator had made
20 an error in revoking the permit.

21 And I would not be able to support the appeal
22 as well.

23 MS. WHITE: Yes, I'd concur, Mr. Chairman. I
24 think you know, the Zoning Administrator was correct
25 to revoke the C of O on the basis that a vehicle

1 storage use is not permittable, not permitted as a
2 matter of right in an R-1-B Zone. My hope was that
3 they were going to be able to work through some of
4 these issues by working directly with the Office of
5 Planning. But as you stated, there's no guarantees
6 until you actually go through the process.

7 So, and I also had some concerns about some of
8 the issues raised by the ANC. But I do understand
9 that that area is kind of -- has almost two
10 personalities. It's got a lot of heavy commercial
11 activity there. But I also know that through their
12 investigative process, the result may end up being a
13 situation where you may find other properties that
14 should not be operating in a commercial manner as
15 well.

16 So, I know we went through a lot of long
17 litanies of discussion this afternoon. But I just
18 look basically at, you know, what the law provides and
19 what the regulations provide, and I don't think I can
20 support the appeal at this point either.

21 MR. MILLER: Thank you, Mr. Chairman. I would
22 concur with my colleagues. As Mrs. White just said,
23 the bottom line is that it was erroneous to have
24 issued the C of O for vehicle storage use as a matter
25 of right use in an R-1-B Zone. It was erroneously

1 labeled on the original C of O application, that it
2 was CM-1, Langdon Overlay, and that was clearly wrong
3 since it had been rezoned to R-1-B over 15 years, 16
4 years earlier.

5 So, it's unfortunate that it took so long to
6 catch that error, but it is an error nonetheless, and
7 so I would concur with my colleagues.

8 MR. HART: And, I think with that, I'd like to
9 make a motion to deny Appeal 19334, Qureshi, as read
10 by the secretary.

11 MS. WHITE: Second.

12 CHAIRPERSON HILL: Motion has been made and
13 seconded.

14 [Vote taken.]

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

16 MR. MOY: Staff would record the vote as four,
17 to zero, to one. This is on the motion of Vice Chair
18 Hart to deny the appeal. Seconding the motion, Ms.
19 White. Also in support of the motion, Chairman Hill,
20 Mr. Miller. We have a board seat vacant. The motion
21 carries, sir.

22 CHAIRPERSON HILL: Thank you, Mr. Moy. And
23 it's a full order.

24 MR. MOY: Yes, sir.

25 CHAIRPERSON HILL: Thank you. Thank you,

1 gentlemen.

2 You guys, we're taking a three-minute break.
3 Everybody just stretch, do a little calisthenics.

4 [Off the record from 3:26 p.m. to 3:34 p.m.]

5 CHAIRPERSON HILL: Okay. All right. We're
6 going to start back up here again. And again,
7 sometimes things move faster than they do. Sometimes
8 they move slower than they do. But I hope, if nothing
9 else, we look as though we're trying really hard.

10 So, that being said, there are winners and
11 losers in the line-up. Okay?

12 So, Application of 19522 is going to go next.
13 Then we're going to go Application 19520. Then we're
14 going to go Application 19519. Then 19527, 195 -- oh,
15 wait a minute. 19527. It was 19519, then it was
16 19527, then it was 19529, and then it was 19523.
17 Okay?

18 So, Mr. Moy, you may call the first one.

19 MR. MOY: Thank you, Mr. Chairman, for making
20 those decisions.

21 If we can have parties to the table to
22 Application No. 19522 of Laduree Washington, LLC,
23 captioned and advertised for --

24 CHAIRPERSON HILL: 19522.

25 MR. MOY: Yes.

1 CHAIRPERSON HILL: Yeah.

2 MR. MOY: 19522. Captioned and advertised for
3 a special exception relief from the rooftop mechanical
4 equipment screening requirements, Subtitle C, Section
5 15, 1500.6, which would install rooftop mechanical
6 equipment without screening in the MU-4 Zone. This is
7 at 3060 M Street Northwest, Square 1198, Lot 808.

8 CHAIRPERSON HILL: Okay. If you could please
9 introduce yourselves from my right to left, please?

10 MR. GIBBONS: Joe Gibbons, Chair ANC 2E.

11 MR. POZEN: Thorn Pozen with the law firm of
12 Goldblatt Martin Pozen, representing Laduree.

13 MR. ROOKE: Guillaune Chamot-Rooke. I work
14 for Laduree.

15 CHAIRPERSON HILL: Okay. Well, thank you all
16 for sticking around. Nice attire. It looks really
17 good. You look like you've been comfortable all day.

18 So, Mr. Pozen, I supposed you're going to go
19 ahead and present to us?

20 MR. POZEN: Yes. And I can be, in the
21 interest of time, I will be as brief as necessary.

22 CHAIRPERSON HILL: Okay. Yeah, just real
23 quick. I mean I don't have a lot of questions. I am
24 curious as to the ANC being here, but I don't have a
25 lot of questions I don't think. If the Board has

1 anything specifically, I'd just kind of like an
2 overview as to, again the relief being requested. I
3 think the record is pretty full. And then we'll turn
4 to the Office of Planning and kind of go through the
5 audience here and see where we are.

6 So, whenever you'd like to start. I'm going
7 to go ahead and throw five minutes upon the clock just
8 so I know.

9 MR. POZEN: Probably more than I need.

10 CHAIRPERSON HILL: Thank you.

11 MR. POZEN: And I'm happy to accommodate that
12 schedule.

13 Again, my name is Thorn Pozen, here
14 representing Laduree Georgetown at 3060 M Street.
15 We're seeking a special exception from the zoning
16 requirements mandate of screening around rooftop
17 mechanical equipment. With me is the operations
18 director for Laduree. And I'm prepared simply to very
19 briefly summarize what's actually already on the
20 record, and basically leave it at that along with the
21 Advisory Neighborhood Commission Chairman for 2E here,
22 to speak from their perspective.

23 Basically, when Laduree took possession of the
24 property in question recently, it had needed some
25 fairly extensive buildout for their retail purposes.

1 It's a French tea room and pastry shop on M Street in
2 Georgetown. It required a new -- in the course of
3 doing that, it required a new HVAC unit, part of which
4 needed to be located on the roof.

5 The equipment is not visible from the street,
6 and there's an exhibit to our application, Exhibit C
7 in the application that we submitted demonstrates
8 that. They nonetheless went forward with the
9 screening, trying to find out about how to put the
10 screening in place.

11 Due to the pitch of the roof, the height
12 requirement of the screening, it would be a fairly
13 major operation to get the screening up there. At the
14 age of the building it would be, according to the
15 project manager on site, who has provided an
16 affordable, John High Claycamp. His affidavit is on
17 the file there. Very expensive major structural
18 project, and therefore we went to DCRA to look at how
19 we could -- there would be any possibility of waiver.

20 They were quite sympathetic, but I think very
21 rightfully so, pointed us to the regulations and said
22 we needed to go to you here, to the BZAs, which is
23 what brought us here for seeking the special
24 exception.

25 We've met with the ANC, and as you will hear,

1 I don't want to speak for them, but they have
2 nonetheless approved, that's on the record. We've had
3 discussions with OP. You'll hear from them as well.
4 We've reached out to the community, specifically, and
5 talked to the business improvement district. They
6 aren't in a position to formally weigh in on the
7 project, but we are not aware of objections in the
8 community. DDOT has been supportive.

9 Bottom line is, we meet the elements of the
10 special exception, you know, in harmony with the
11 general purposes and intents of the zoning
12 regulations. We don't tend to adversely affect any
13 neighborhood. It's not visible from the street. It
14 is a great hardship for the company in order to
15 comply, and basically comply for no real reason
16 because you can't see it from the street.

17 The only thing that I would add on this is a
18 request that if you are able to take action and you
19 were to act favorably on this, they are operating on a
20 temporary certificate of occupancy. Our work with
21 DCRA allowed them to have a temporary certificate of
22 occupancy since we've opened the operation, the store.
23 But only through August the 8th. And they've given
24 us that time to come to you and to -- for you to take
25 action on this.

1 So, if you are favorably inclined in this
2 regard, if we could keep in mind the August 8th
3 deadline for a certificate of occupancy revocation.
4 So, we could get the permanent one, permanent
5 certificate of occupancy if you were to approve this
6 application for a special exception.

7 CHAIRPERSON HILL: Okay, great. Thank you.

8 MR. POZEN: And that's all I have.

9 CHAIRPERSON HILL: Does anybody have any
10 questions for Mr. Pozen? Okay.

11 I'm going to turn to the Office of Planning.

12 MS. ELLIOTT: Good afternoon, Mr. Chair and
13 members of the Board. I'm Brandice Elliott
14 representing the Office of Planning

15 I will keep this short and sweet. We will
16 stand on the record of our report, recommending
17 approval of the special exception that has been
18 requested. But, I'm happy to answer any questions you
19 have.

20 CHAIRPERSON HILL: Okay. Does anybody have
21 any questions for the Office of Planning?

22 Does the applicant have any questions of
23 Office of Planning?

24 MR. POZEN: I do not.

25 CHAIRPERSON HILL: All right. Thank you very

1 much. The chairman of the ANC, I mean, you get kudos
2 for hanging out here for this long, just to say yes,
3 you know? So, please, go ahead. I'm going to throw
4 three minutes up there because you're allowed to have
5 it, but do whatever you want with it.

6 MR. GIBBONS: Thank you, Mr. Chair, and thank
7 you Board.

8 I'm just here to show our strong support
9 because we do realize they have an August 8th
10 deadline, and we want to reiterate or show our support
11 for this business, and their wonderful building that
12 they -- buildout that they did. And also, to show the
13 BZA and the Zoning Commission our strong stance on
14 historic preservation, and maintaining the fabric, the
15 historic fabric of the commercial district of
16 Georgetown, which they keep specifically, but in
17 general, that's why I'm here. We have a strong,
18 strong commitment to that historic preservation of the
19 commercial district, as well as the residential.
20 Thank you.

21 CHAIRPERSON HILL: Okay. Great. Well, again,
22 thanks for coming down. Does anyone have any
23 questions for the chairman? No? Okay.

24 So, you're here in favor this time, right?
25 So, you're pointing out the historic nature of it all

1 once down, maybe you'd be coming here in a different
2 capacity the next time. You know.

3 MR. GIBBONS: Yes.

4 CHAIRPERSON HILL: Yes, I see. All right. Is
5 there anyone else here from the ANC? Is there anyone
6 else here wishing to speak in support? Support?

7 Is there anyone here wishing to speak in
8 opposition?

9 Okay. All right. Thanks. Does anyone have
10 any other questions? Mr. Pozen, do you have anything
11 you'd like to add for the applicant?

12 MR. POZEN: No, sir. Thank you.

13 CHAIRPERSON HILL: Okay. And, Mr. Gibbons, I
14 sincerely mean it. Thanks for coming down and
15 speaking to us because really, without the people
16 coming from the ANC, it's very difficult for us to
17 really understand what's going on, as you've seen from
18 the previous hearings.

19 Okay. Then I'm going to close the hearing.
20 Is the Board ready to deliberate? I was -- you know,
21 this was pretty straight-forward, I thought. I
22 thought that the Office of Planning has a good record.
23 I'm sorry, has a good report there. And I also do
24 think that it's something that, you know, you can't
25 see it from the street. The screening would be

1 costly. And so, I'm going to go ahead and make a
2 motion, unless anyone has anything else they'd like to
3 add right now?

4 [No audible response.]

5 CHAIRPERSON HILL: Okay. I'm going to make a
6 motion to approve Application No. 19522 as announced
7 by the secretary.

8 MR. HART: Second that.

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

11 [Vote taken.]

12 CHAIRPERSON HILL: All right. Motion passes,
13 Mr. Moy.

14 MR. MOY: Staff would record the vote as four,
15 to zero, to one. This is on the motion of Chairman
16 Hill to approve the application for the special
17 exception relief. Seconded the motion, Vice Chair
18 Hart. Also in support, Mr. Shapiro and Ms. White. We
19 have a board seat vacant. Motion carries.

20 CHAIRPERSON HILL: Thank you. Can we do a
21 summary order, Mr. Moy?

22 MR. MOY: Yes, sir.

23 CHAIRPERSON HILL: Excuse me, sir, where are
24 you from? Where are you from?

25 MR. ROOKE: France.

1 CHAIRPERSON HILL: Oh, from France. Oh, so
2 this is very educational. Thank you.

3 MR. ROOKE: It's been quite an educational
4 process all the way around.

5 CHAIRPERSON HILL: Thank you. Thank you,
6 gentlemen. Thank you.

7 MR. MOY: If I may have parties to the table
8 to Application No. 19520 of Ethel Taylor, captioned
9 and advertised for special exception relief from the
10 home occupation requirements, Subtitle U, Section
11 251.6, or pursuant to Subtitle X, Chapter 10, for a
12 variance from the home occupation requirements,
13 Subtitle U, Section 251.5, which would permit the use
14 of a portion of a one-family dwelling as a dog
15 grooming business, R-1-A Zone at premises 2130 Sudbury
16 Place Northwest, Square 2754, Lot 802.

17 CHAIRPERSON HILL: Great. Thank you, Mr. Moy.
18 Good afternoon. If you could please introduce
19 yourself from right to left?

20 MS. TAYLOR: My name is Ethel Taylor. I live
21 at 2130 Sudbury Place Northwest, Washington, D.C.

22 MR. TAYLOR: My name is Joseph Taylor. I'm an
23 architect and neighbor to Ethel Taylor, and I'm
24 assisting her in this BZA application process.

25 CHAIRPERSON HILL: Okay. Great. And I'm

1 sorry, did you say Mr. Taylor?

2 MR. TAYLOR: I'm Joseph Taylor.

3 CHAIRPERSON HILL: Joseph Taylor. Okay.

4 MR. TAYLOR: It happens to be the same name as
5 her husband, but --

6 CHAIRPERSON HILL: Right. I was just curious.
7 Okay.

8 MS. TAYLOR: Not my husband.

9 CHAIRPERSON HILL: Thanks for clarifying,
10 though. That will -- it helps me out.

11 MR. TAYLOR: I'm outside consultant to her.

12 CHAIRPERSON HILL: Right.

13 MR. TAYLOR: And a neighbor.

14 CHAIRPERSON HILL: Right. Thanks for pointing
15 that out, really. Okay.

16 So, Mr. Taylor, or Ms. Taylor, whoever is
17 going to present, you know that there are some issues
18 that the Office of Planning has with the application.
19 And there are a variety of conditions that they also
20 speak about. And so, if I could, I'm going to go
21 ahead and put 10 minutes on the clock for you to go
22 through your presentation. I am pretty interested in
23 the Office of Planning and kind of, you know, I mean,
24 we have gone through the record, we've read the
25 record. We understand that, you know, the ANC and the

1 work that you've done with the community, as well as
2 the history to the property, and the business that is,
3 so getting kind of from the Office of Planning later
4 on is what I want to get to sooner rather than later,
5 I supposed.

6 So, if you could go ahead and present to us,
7 in particular, I suppose, you know, how or why we
8 should grant the standard.

9 MR. TAYLOR: Sure.

10 CHAIRPERSON HILL: I'm sorry. Grant the
11 relief.

12 MR. TAYLOR: Uh-huh.

13 CHAIRPERSON HILL: That would be great. So,
14 I'm going to put 10 minutes on the clock for you.

15 MR. TAYLOR: Okay, thank you. And earlier I
16 said good morning, but it's good afternoon, Chairman
17 Hill and members of the Board.

18 CHAIRPERSON HILL: Hopefully it won't be, good
19 evening. That's what I'm trying to avoid.

20 MR. TAYLOR: Yeah. Yeah, I think I can make
21 this brief.

22 So, we're here making our presentation. Hope
23 to get a favorable ruling to grant -- for you to grant
24 a use variance for Ethel Taylor to relocate her
25 existing business on Georgia Avenue to her home. And

1 we are familiar with the report from OP. And if you
2 grant us a favorable ruling, and we would be in
3 compliance with the four main points and the denial
4 from OP. We can assure you that this business, if
5 allowed, would not be a nuisance and would be
6 compatible within the bucolic streetscape setting of
7 Sudbury Place.

8 And largely, it's based on what we're not
9 doing. We're not adding to the footprint. There will
10 be no activities outside of the residence to maintain
11 her dog grooming business.

12 In terms of parking and traffic, her business
13 is a low-scale business with a maximum of maybe eight
14 clients a day, but an average of six. And some of her
15 clients will walk to her business. But if they drive,
16 she has two driveways because her site is almost three
17 times the size of the minimum site in the R-1-A. So,
18 she can park four or five cars on the property, so we
19 won't take up any curb parking spaces or block any
20 driveways with the small amount of traffic to her
21 business, that drive.

22 And there's one improvement that will be --
23 and there will be no signs on the property. The
24 advertising will be done by Facebook and the current
25 web page. So, there's no change to the house with one

1 exception. The business will be housed, converting
2 her garage to the place of business, so we're changing
3 the garage door from a garage door to a window wall
4 with a passage door. But that garage door is not seen
5 from the street. It backs up to Rock Creek Park. So,
6 the only visibility of that change, which would be
7 analogous to someone converting a garage to a rec room
8 and changing the door out. You can't see it from the
9 street. It backs up to Rock Creek Park and only one
10 neighbor can view that garage door change from their
11 side yard, and it is a neighbor that -- she has a
12 property line, but they're in favor of the business
13 being there. So, both of the neighbors are.

14 So, if you -- they've been in the neighborhood
15 23 years, and they're good stewards of maintaining the
16 calm feeling of the neighborhood. If you grant this
17 proposal, this request, if you walk down the street
18 today and in the future, there would be no change
19 visible to the residence.

20 And so, that's -- and the one change to the
21 property, not unlike the five-year term and the
22 recommendation in the OP report, both of those are
23 reversible. So, she has a history of a successful
24 business on Georgia Avenue without complaint, and we
25 expect the same operation protocol to convey to 2130

1 Sudbury Place.

2 And that's our presentation.

3 CHAIRPERSON HILL: Okay, great. Thank you.
4 So, just to be clear for the Board's clarification,
5 the conditions again, no boarding facility and no
6 external yards or other external facilities for the
7 keeping of animals are provided.

8 MS. TAYLOR: Exactly.

9 CHAIRPERSON HILL: The HVAC system is upgraded
10 to provide an effective odor control system for the
11 use.

12 MS. TAYLOR: Yes.

13 CHAIRPERSON HILL: Hours of operation are 8:00
14 to 4:00 p.m., Tuesday through Friday, and by
15 appointment only, and approval shall be for a period
16 of five years.

17 MS. TAYLOR: I can comply.

18 CHAIRPERSON HILL: And so you're all good with
19 all -- okay. Does anybody have any questions for the
20 applicant?

21 MR. SHAPIRO: I do, Mr. Chair.

22 CHAIRPERSON HILL: Okay, sure. Go on.

23 MR. SHAPIRO: Thank you. You said that this
24 was not listed as one of the conditions, but it feels
25 like it should be, which is that you would only have

1 one animal on the premises at a time.

2 MS. TAYLOR: Yes. The last year, this has
3 been my history anyway. So, to be in compliance,
4 already have a history, appointment books you can see,
5 that's kind of how we've been operating already. One
6 employee and downsized. It's not an assembly line
7 business, and it never has been. I do more of a
8 focused on hair and skin therapy, so it's not just get
9 them in and get them out. And so, it's more of a
10 relationship. I have a grooming esthetician license,
11 which is more focused on problem skin and hair and
12 coat, and focused more on that as well.

13 MR. SHAPIRO: Thank you. All right. I
14 appreciate that.

15 MS. TAYLOR: Yes.

16 MR. SHAPIRO: And specifically, I just want
17 to, as I'm considering this, I just want to make sure
18 that, because that feels like an important part of our
19 consideration, and I guess I just want to make sure
20 whether that would rise to the level of a condition or
21 not, if we were to take this on.

22 The other thing is, it may be picking at a
23 small point, but if you were literally saying that
24 there will not be more than one animal on the premises
25 at a time, then does that mean you space out the

1 appointments, or is there the equivalent of a waiting
2 room or --

3 MS. TAYLOR: Exactly. No, we space them out.
4 I only have one employee.

5 MR. SHAPIRO: I see.

6 MS. TAYLOR: I've only had one employee for a
7 year. So, I pretty much run the office. She does the
8 grooming. If there's a big dog we might work on him
9 together. You know, and things like that.

10 So, we've kind of been in this kind of
11 routine, whatever, is you're asking us to do, we've
12 been pretty much doing that the whole time. That's
13 why I know for a fact, we can be in compliance,
14 because we've been doing it the whole time.

15 MR. SHAPIRO: Thank you. Mr. Taylor is pretty
16 tall. He could help you with the big dogs too, I
17 think.

18 Thank you, Mr. Chair.

19 CHAIRPERSON HILL: Sure. Go on. Go on, Ms.
20 White.

21 MS. WHITE: Can you talk a little bit more
22 about your experience with this type of business and
23 the success you've had?

24 MS. TAYLOR: Yes.

25 MS. WHITE: And also the comments and feedback

1 that you've been getting from ANC?

2 MS. TAYLOR: Yes. Well, even the ANC chair, I
3 groomed his dog for a while. But the business was a
4 vision that kind of continued to evolve over time.
5 Just like life, you know, things change. So, as a
6 business owner I just continued to conform to whatever
7 the present situation presented.

8 I started off a self-serve business, and then
9 Petco Unleashed entered the neighborhood and pulled
10 from me, and as well as some of the high-rise
11 apartments, where a lot of my customers are coming
12 from, began to put dog tubs in their basement for free
13 for their tenants. So, I just continued to evolve.
14 Then I went into full grooming and a self-serve. And
15 then I went into just full grooming only.

16 And then, like I said, with this focus now on
17 grooming, as a grooming esthetician, there's only 25
18 of us in the country. I took a certification, flew
19 out to Phoenix, did case studies and the whole nine
20 yards. So, that's really the focus, and I'm honing in
21 on.

22 And even the moving itself is personal. It's
23 not about getting more money, having less overhead. A
24 year ago, my husband was diagnosed with cancer and I
25 downsized because I didn't know where that situation

1 was going to go and I don't want to have all these
2 employees and these peoples' lives and livelihoods
3 based on my uncertainty.

4 So, that's how I ended up with one groomer,
5 and as time continued to move, I realized, I really
6 had to wear two hats. I just couldn't be in two
7 places at the same time. So, to be on Georgia Avenue
8 and to be home at the same time to care for my husband
9 was stressful, to say the least.

10 So, since we had the property, we had the
11 parking, we had the garage space, all the kids are
12 grown and gone, I just put in the application.

13 My customers have really been supportive. My
14 neighbors, my next-door neighbor, Mr. Neverson was
15 here, who's been very supportive and continues to be
16 supportive, has no problem. Every neighbor on my
17 block has either written a letter or signed off on the
18 petition. Every single house on my block.

19 And most of the houses in that 200-radius
20 handout, most of those people have signed off. I
21 think about four haven't, but that's not necessarily
22 because they didn't want to, it's because I could
23 never catch them at home.

24 So, the ANC, I did a presentation before that
25 board, which was unanimous. My local Shepherd Park

1 Community Citizen's Association, I did a presentation
2 before them. And even everyone on that 200-foot
3 radius before the letters even went out, I went to
4 them because I didn't want them to get just some
5 random letter about what somebody is trying to do in
6 their community, so they would know personally what
7 was going on and solicit any feedback or concerns that
8 they had right there on the spot.

9 So, I did that a while back and so just to let
10 people know, this isn't just somebody trying to do
11 something off the wall. I really have a need. I
12 really have a situation, and I'm just trying to do my
13 best.

14 CHAIRPERSON HILL: Okay. Great.

15 MS. TAYLOR: Okay. Thank you.

16 CHAIRPERSON HILL: Thank you. So, to just
17 clarify again what Commissioner Shapiro was
18 mentioning, that the one pet at a time on the premises
19 is something that you're able to work with?

20 MS. TAYLOR: Because on average --

21 CHAIRPERSON HILL: Right.

22 MS. TAYLOR: -- are five -- are two hours.

23 CHAIRPERSON HILL: Right.

24 MS. TAYLOR: I usually can only do five in a
25 day.

1 CHAIRPERSON HILL: Okay.

2 MS. TAYLOR: And so that's what I'm saying.

3 The one groomer --

4 CHAIRPERSON HILL: Okay.

5 MS. TAYLOR: -- you know, will do those --

6 CHAIRPERSON HILL: No, I believe you. I'm
7 just saying if it was part of the condition, you're
8 fine with the one dog at a time on the premises?

9 MS. TAYLOR: Oh, yeah. Because we've been
10 kind of --

11 CHAIRPERSON HILL: That's the way you've been
12 doing it anyway.

13 MS. TAYLOR: -- practicing that anyway, is
14 what I'm saying.

15 CHAIRPERSON HILL: Okay. All right. Could I
16 turn to the Office of Planning?

17 MR. MORDFIN: Good afternoon. I'm Stephen
18 Mordfin with the Office of Planning, and this is an
19 interesting case. So, the way I wrote it up was the
20 two different parts. There's the home occupation
21 part, which the applicant conforms to every one of
22 them. And then when you get to the part with the use
23 variance there is the three-part test. The second
24 one, the no substantial detriment to the public good,
25 and the no substantial harm to the zoning regulations,

1 I find that the application is in compliance with
2 those.

3 The issue that OP has is under the first one
4 it says, exceptional situation of a specific piece of
5 property. And there is no specific situation to this
6 piece of property in that it's a residential property
7 on a residential street, backing up to public park
8 land.

9 Now, the zoning regulations do divide uses
10 into three different categories, uses permitted as a
11 matter of right, which are those that are deemed to be
12 acceptable within the zone. Special exceptions, those
13 that could potentially could have negative effects,
14 and that's why you have a list of conditions, to make
15 sure that they do comply. And then the third one are
16 ones that are prohibited, which this one is, because
17 they're deemed a nuisance.

18 Now, in this case, what has also happened is
19 that the applicant's neighbors, I think every single
20 one of them has submitted letters saying, we're fine
21 with this. So, whether or not this is a use in --
22 excuse me, a nuisance in this case, maybe not so. But
23 still, trying to get past that with the wording of the
24 first prong of the use variance test is where we've
25 been unable to recommend approval.

1 However, should the Board determine that this
2 should be approved, that's why I created the list of
3 four conditions of approval, that those things would
4 be meant to protect the neighborhood from any
5 potential adverse effects of that because more like a
6 special exception in that case.

7 CHAIRPERSON HILL: Okay, great. Thank you.
8 Does anybody have any questions for Mr. Mordfin.

9 MR. SHAPIRO: I do, Mr. Chair.

10 CHAIRPERSON HILL: Sure, go ahead.

11 MR. SHAPIRO: Thank you. Your recommendation,
12 I just want to make sure I understand, if we were to
13 approve this one of the conditions that you're
14 suggesting is approval shall be for a period of five
15 years only. Are you suggesting that that would be a
16 maximum limit to the amount of time the business could
17 operate there? Or you're saying it would be a five-
18 year approval, which would then need to be renewed?

19 MR. MORDFIN: I was thinking of it as a five-
20 year approval, which then would need to be renewed
21 should the applicant desire to continue operating out.

22 MR. SHAPIRO: Okay. I just want to be clear.
23 Thank you. Thank you, Mr. Chair.

24 CHAIRPERSON HILL: Anybody have any more --
25 oh, sorry. Go ahead, Ms. White.

1 MS. WHITE: No.

2 CHAIRPERSON HILL: No?

3 MS. WHITE: I'm comfortable.

4 CHAIRPERSON HILL: No?

5 MR. SHAPIRO: Yeah. Just the one question
6 about, in talking to the Office of Attorney General,
7 we've understood that there is the Subtitle U 251.6,
8 which actually talks about a home occupation that's
9 not permitted or that is prohibited, may be permitted
10 as a special exception. Could you -- I'm not trying
11 to drop something on you, I'm just trying to
12 understand that a little further, whether or not that
13 -- how you see that as well.

14 MR. MORDFIN: Well, the reason we went for it
15 the way we did is because within the zoning regs --
16 it's not a -- dog grooming and animal uses, or animal
17 care uses are not -- the zoning regs are not silent on
18 it. They actually say within the R Districts, you
19 can't do them, which is why we didn't take the route
20 that you are suggesting. It's because it is addressed
21 in the zoning regulations, because you could have uses
22 where it would say, you know, uses that are neither
23 prohibited nor permitted, which this is not because it
24 is prohibited within the zoning regs under Section
25 251.5.

1 MR. HART: But I guess I was, in looking at
2 it, it was, if it is not permitted or is prohibited,
3 then you can -- that use could be permitted as a
4 special exception subject to a number of criteria or
5 conditions, and I just wanted to understand that a
6 little better.

7 MR. MORDFIN: Well, what I was going with is,
8 the word, "is," when the zoning regulations were
9 rewritten for ZR-16, a second "is" got inserted into
10 that sentence that wasn't in the original language,
11 and I was basing it on the original language. I don't
12 know why that second "is" was inserted, and we weren't
13 able to determine how that got in there. So, that was
14 the reason. We were just assuming that that second
15 "is" was an error. But in your reading of it, you are
16 correct.

17 MR. SHAPIRO: But we have to go by what the
18 zoning regulations say, not what we think they say.

19 MR. MORDFIN: Yeah, and what you --

20 MR. SHAPIRO: Okay.

21 MR. MORDFIN: -- mentioned is accurately what
22 they do say.

23 MR. SHAPIRO: Okay. Thank you.

24 CHAIRPERSON HILL: So, now I'm turning to the
25 Office of Attorney General, just because I want to

1 understand. If we were to get to the point where we
2 thought we could approve this, this could be approved
3 as a special exception under U 251.6 with conditions.

4 MS. NAGELHOUT: So long -- yes, so long as the
5 applicant can show compliance with subparts of 251.6,
6 which is A through E.

7 CHAIRPERSON HILL: Right. Okay. All right.
8 Okay. Okay. Let's see. Mr. Mordfin, do you have
9 dogs?

10 MR. MORDFIN: I do have a dog.

11 CHAIRPERSON HILL: Okay. Let's see. Is there
12 anyone here from the ANC? Oh, I'm sorry. Anybody
13 have any more questions for Mr. Mordfin?

14 Is there anybody here from the ANC?

15 Is there anyone here wishing to speak in
16 opposition?

17 Is there anyone here wishing to speak in
18 support? Okay. Oh, please, come forward.

19 If you could just please introduce yourself.

20 MR. SHAPIRO: And describe your K-9, please.

21 MS. SMITH: I'm Dr. Sharon Smith. I'm a
22 practicing veterinarian in Washington, D.C. working
23 with Banfield, and I do home care for pets where I'm
24 working with extremely ill animals, going into the
25 homes and doing home euthanasias.

1 I'm also a groomer, and --

2 CHAIRPERSON HILL: Dr. Smith, can I interrupt
3 you for one second? Did you fill out your witness
4 cards?

5 MS. SMITH: Yes, sir.

6 CHAIRPERSON HILL: Okay. All right. And did
7 you get sworn in earlier?

8 MS. SMITH: Yes, sir.

9 CHAIRPERSON HILL: Okay. Wow, so you've been
10 here a long time. Okay, please. I'm going to put two
11 minutes up on the clock for you. Or actually, no, I'm
12 sorry, three minutes. I don't know if you need all
13 three or not, but I'm going to go ahead and put three
14 minutes up on the clock for you. And please, I didn't
15 mean to interrupt you, I just want to make sure you
16 had filled out the cards and been sworn in. So,
17 please, go ahead.

18 MS. SMITH: Okay. And so, what I want to say
19 about Ms. Taylor is the fact -- I mean, about this
20 type of operation, so that you were not compare it
21 with the practice of veterinary medicine where we are
22 dealing with death and dying. We're dealing with more
23 animals at one time. We're dealing with a lot of
24 animal waste.

25 Okay. So, in this, we're just washing hair.

1 And I'm also a groomer. So, we're getting the dirt
2 off of them, and she is an esthetician, working very
3 deeply into the skin and healing it, and calling me
4 all the time because we have to also put them on
5 drugs.

6 But, I just don't want you to confuse the two
7 operations. This is a very clean operation, and two
8 animals at a time, in a two-hour -- in a three-hour
9 period of time, is way more. So, that's why it's
10 usually down to one. And someone has to be clean most
11 of the time to answer phones, make appointments, all
12 of the business type things.

13 So, five in a day is a lot, and if you have to
14 see the location and the area where she can provide.
15 It is so isolated and so easy to keep it almost
16 sterile. So, I just want to add those kinds of things
17 to make sure that you're not comparing this to a
18 veterinary hospital. This is -- where we have to
19 follow a lot of public health guidelines.

20 CHAIRPERSON HILL: Okay. Thank you. Does
21 anyone have any questions for the witness?

22 Okay. Okay, that's it. Is there anything
23 else you all would like to say in conclusion?

24 MR. TAYLOR: No.

25 CHAIRPERSON HILL: Okay. All right. Then,

1 we're going to go ahead and close the record. Is the
2 Board ready to deliberate?

3 MR. HART: Yes, sir.

4 MS. WHITE: Yes.

5 CHAIRPERSON HILL: Okay. I can start. I know
6 that the Office of Planning would have liked to have
7 clearly been on board with this. Or at least, I don't
8 know whether they -- actually, I shouldn't say that.
9 I'm not sure. But I understand their concerns. I,
10 however, am comfortable with the special exception
11 under U 251.6 and the A through D that would be some
12 of the conditions, as well as the fact that the
13 applicant has agreed to the particular conditions of,
14 again, I'm just going to repeat them, no boarding
15 facilities and no external yards or other external
16 facilities for the keeping of animals are provided.

17 The HVAC system is upgraded to provide an
18 effective odor control system for the use. Hours of
19 operation are 8:00 to 4:00, Tuesday through Friday,
20 and by appointment only, with only one pet at a time
21 on the premises, and then the approval shall be for a
22 period of five years only, so you'll have to come back
23 to us again in five years, and then we'd have an
24 opportunity to see if there was any kind of an issue.

25 So, I mean, I'm comfortable with the

1 tremendous community outreach. But again, where I was
2 more just struggling was, again, the same place that
3 the Office of Planning was struggling. But I'm
4 capable of being in support of this application.

5 MR. HART: Mr. Chair, I would also concur with
6 you, and think that Subtitle U, 251.6 A through E have
7 been met, and just wanted to make sure that -- I just
8 wanted to thank you all for coming and hearing this is
9 actually something eye-opening to me because I didn't
10 realize that this existed. But now I do.

11 And I think that's it. I would be in support
12 and also in support of the conditions as read by the
13 Chair.

14 MS. WHITE: I would concur, Mr. Chairman. I
15 think the business is a fabulous idea. It's a very
16 high-end specialized type of operation, not like, you
17 know, the type of entity where you have lots of
18 animals coming in and out at one time, but I think
19 it's a service that will be highly appreciated by the
20 community and you've obviously got strong community
21 support, and hopefully look forward to seeing your
22 operation in the community.

23 But I think just on a more strict basis, I
24 think you did meet the criteria strictly under U-251-6
25 to obtain a special exception. So, I can support this

1 application, Mr. Chairman.

2 MR. SHAPIRO: I have nothing further, Mr.
3 Chair. I concur.

4 CHAIRPERSON HILL: Okay. I'm going to make a
5 motion to approve Application No. 19520 of Ethel
6 Taylor, pursuant to 11-DCMR Subtitle S, Chapter 9, for
7 a special exception from the home occupation
8 requirements under U-251.6, to permit the use of a
9 portion of a one-family dwelling as a dog grooming
10 business in the R-1-A premises at 2130 Sudbury Place
11 Northwest, Square 2754, Lot 802, with the conditions
12 that we had implemented.

13 MS. WHITE: Second.

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

16 [Vote taken.]

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

18 MR. TAYLOR: Thank you very much.

19 MS. TAYLOR: Thank you so much.

20 MR. MOY: Staff would record the vote as four,
21 to zero, to one. This is on the motion of Chairman
22 Hill to approve the application for the request for a
23 special exception under Subtitle U-251.6, with the
24 four conditions. Seconded the motion, Ms. White.
25 Also in support, Mr. Peter Shapiro, Vice Chair Hart.

1 Board seat vacant. Motion carries.

2 CHAIRPERSON HILL: Thank you, Mr. Moy.

3 Summary order.

4 MR. MOY: Yes, thank you.

5 CHAIRPERSON HILL: Thank you.

6 [Discussion off the record.]

7 MR. MOY: The next case application before the
8 Board is, if I can have parties to the table to
9 Application No. 19519 of Events D.C., captioned and
10 advertised for variance relief from the maximum lot
11 occupancy requirements, Subtitle K, Section 604.1
12 which would construct a sports arena and practice
13 facility. This is in the STE-9 and STE-12 zones at
14 1100 Alabama Avenue, Southeast, Square 5868, Lots 815
15 and 819.

16 CHAIRPERSON HILL: Great. Thank you. Good
17 afternoon. Could you please introduce yourselves from
18 my right to left?

19 MR. FISHER: Ed Fisher, St. Elizabeth East
20 project, Director, and DMPED.

21 MS. CUTHBERT: Mary Cuthbert, Chair for
22 Advisory Neighborhood Commission 8C.

23 CHAIRPERSON HILL: Could you say that again
24 for me?

25 MS. CUTHBERT: Cuthbert.

1 CHAIRPERSON HILL: Cuthbert. Thank you.

2 MS. PRINCE: Allison Prince at Goulston and
3 Storrs, here for Events D.C.

4 MR. MARSHALL: Michael Marshall, Marshall-Moya
5 Design, architects for the project.

6 CHAIRPERSON HILL: Okay. Ms. Prince, are you
7 going to be presenting to us?

8 MS. PRINCE: I can start.

9 CHAIRPERSON HILL: Okay. You guys are here
10 for a deck, right?

11 MS. PRINCE: It's not a deck.

12 MR. MARSHALL: I forgot what we were here for.

13 MS. PRINCE: But I have a dog.

14 CHAIRPERSON HILL: I don't think you're here
15 for a deck. Okay.

16 So, we've obviously read through the record
17 and all of the different reports from the Office of
18 Planning and the work that you've done with the ANC.
19 I suppose, you know, you can just go ahead and give
20 your presentation. I'm going to put 10 minutes on the
21 clock. There's nothing in particular I was interested
22 in hearing about, and I don't know if the Board has
23 anything in particular they'd like to hear from during
24 the presentation.

25 Okay. So, I'm going to go put 10 minutes on

1 there and just, you can begin whenever you'd like.

2 MS. PRINCE: Great. I'll be very brief. I'm
3 with Goulston and Storrs. As I said, I'm here on
4 behalf of Events D.C. We're here to seek approval of
5 an entertainment and sports arena, St. Elizabeth's
6 East Campus, the first project to be constructed on
7 the campus, so very, very exciting.

8 The project will be jointly developed by
9 Events D.C., DMPED, and Monumental Sports and
10 Entertainment.

11 It is a 4,200-seat arena for concerts and the
12 Women's National Basketball League, and training
13 facility for both the Mystics and the Wizards.

14 The only relief that we're seeking is lot
15 occupancy for some reasons that the architect will
16 describe. And with no further delay, I'll turn it
17 over to Michael.

18 MR. MARSHALL: Thank you very much.
19 Basically, to build the state of the art arena,
20 which --

21 CHAIRPERSON HILL: Can I ask a quick question?
22 You guys all filled out your witness cards, and you
23 guys were all sworn in?

24 UNIDENTIFIED SPEAKER: Yes.

25 CHAIRPERSON HILL: Okay. Wow. All right.

1 Okay. Thanks. Sorry.

2 MR. MARSHALL: And we were here --

3 CHAIRPERSON HILL: Yes, long day then. I was
4 just checking. I didn't know. All right. Appreciate
5 it. Thank you. Sorry to interrupt.

6 MR. MARSHALL: Sure, no problem. So
7 basically, to fit a state of the art facility here for
8 that number of people, we really had to shoehorn it in
9 to the site. Right now, the site is broken up into, I
10 think it's two lots. We're looking to consolidating
11 that into one overall lot, one recorded lot.

12 So, we have really short dimension in the
13 north/south direction of roughly 209 feet for our
14 structure. We probably could have used another 50
15 feet, but we were able to sort of massage and fit
16 everything in. There are compromises to the layout,
17 but there are -- those are things that we've worked
18 out with sight lines and using the topo and upper deck
19 levels for viewing.

20 So, what we're after is to go to 85 percent
21 lot coverage, versus the 75 percent. And further west
22 on the site, once they're combined, we're actually
23 under the 60 percent lot coverage in that section of
24 the site. And quite simply, that's what we're after
25 for this project.

1 We've been before CFA, we've been before
2 Historic Preservation, and the ANC, which Mary is here
3 to attest to that. We've worked with all the
4 different groups to get this through for the city.

5 CHAIRPERSON HILL: Okay. Ms. Prince.

6 MS. PRINCE: We have no further testimony.

7 CHAIRPERSON HILL: Okay. Okay. Does anyone
8 have any questions for the applicant?

9 Okay. I'm going to turn to the Office of
10 Planning.

11 MS. BROWN-ROBERTS: Good afternoon, Mr.
12 Chairman and --

13 CHAIRPERSON HILL: Good afternoon.

14 MS. BROWN-ROBERTS: -- members of the BZA.
15 Maxine Brown-Roberts for the Office of Planning. We
16 are, as outlined in our report, we are in support of
17 the requested area variance to have a lot occupancy
18 increase from 60 percent to 85 percent.

19 As explained in our report, we think that the
20 applicant has met the exceptional situation resulting
21 in a practical difficulty requirement, and also that
22 there will not be any substantial detriment to the
23 public good, or to the zoning regulations. And
24 therefore, we recommend approval.

25 Thank you, Mr. Chairman, and I'm available for

1 questions.

2 MS. WHITE: I had one question. Can you
3 comment on the conditions that I believe DDOT -- are
4 there any conditions at all?

5 MS. BROWN-ROBERTS: I know DDOT had some
6 questions, or had some -- had talked with the
7 applicant regarding the loading, the loading dock,
8 entrances to the loading dock. I don't think I have
9 much authority on talking about that so I would
10 suggest that you -- the applicant may be able to give
11 you more information on that.

12 MR. MARSHALL: Sure. Basically, 13th Street
13 will not be completed by the time we're completed with
14 our building, and that's to the north. So, DDOT is
15 proposing that we would have an entry from 13th --
16 sorry, from 13th Street to the service area. Right
17 now, we're going to enter from Cyprus, which is
18 further west, because that's as far as this phase of
19 construction on the east campus, the infrastructure
20 will be done. So, that was one the conditions from
21 DDOT.

22 MS. PRINCE: I might add, there were a total
23 of three conditions, all of which were acceptable to
24 the applicant.

25 MS. WHITE: Great. What's the estimated

1 period when construction will be completed?

2 MR. MARSHALL: Tricky question. Construction
3 has started --

4 MS. WHITE: Has -- that's just --

5 MR. MARSHALL: -- with the --

6 MS. WHITE: -- purely my just interest. It
7 has nothing to do with the case.

8 MR. FISHER: Fall of 2018.

9 MS. WHITE: Got you.

10 MR. MARSHALL: September 2018.

11 MS. WHITE: Got you.

12 CHAIRPERSON HILL: Okay. Does anyone have any
13 more questions for the Office of Planning?

14 All right. And again, right, and thank you,
15 Ms. White, the applicant does agree with the three
16 conditions that DDOT had put forward. Okay. We're
17 going to ask to speak from the Commissioner here, with
18 the ANC.

19 MS. CUTHBERT: Good afternoon, Mr. Hill and
20 members of the Board.

21 There's a little error in my testimony that
22 was written, but the vote to support the -- I thought
23 we were confused thinking of parking. It's really for
24 a variance for extra land to expand the space, and
25 that's what I put in my testimony.

1 But the vote for to support the variance was
2 five to two. I have two obstructionists on my
3 commission, unfortunately, and that's tough, you know.
4 But --

5 CHAIRPERSON HILL: You've got five.

6 MS. CUTHBERT: But I got five. We really
7 support this development in Ward 8. It will
8 definitely bring it -- give us a showcase. Every
9 other ward has improved somewhat, Ward 5, Ward 1, with
10 the business area and everything.

11 Now with St. Elizabeth East Campus, I would
12 like to sit on my porch and watch you all go to a show
13 or a game. And I'm waiting for it for 2018, so I can
14 retire.

15 CHAIRPERSON HILL: Oh, great. Well, thank
16 you. And Commissioner, thank you for coming down. As
17 I mentioned to all the other commissioners, it's a
18 long time to wait just to -- it's a long time to wait
19 to say yes, which is something that's nice. People
20 wait all the time to say no.

21 So, does anyone have any questions for the
22 Commissioner? Okay. Not that there's anything wrong
23 with saying no, because people come down here saying
24 no all the time, and there might be people around here
25 about to say no.

1 Is there anyone here wishing to speak in
2 support?

3 Is there anyone wishing to speak in
4 opposition?

5 All right. With that, I'll turn back to you,
6 Ms. Price, sorry. And Prince? Price? Prince?

7 MS. PRINCE: Prince.

8 CHAIRPERSON HILL: Prince, sorry. And do you
9 have anything else you'd like to add?

10 MS. PRINCE: No, but in the event that you
11 choose to approve the application we would appreciate
12 a summary order that simply sites the three DDOT
13 conditions.

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

16 All right. Then I'm going to close the
17 hearing. Is the Board ready to deliberate?

18 Okay, I can start. Again, I thought that the
19 Office of Planning's report was very thorough. I do
20 very much appreciate the Commissioner coming down from
21 the ANC, and then also the report from the ANC
22 concerning how that meeting went. I was a little
23 curious as to the two abstention votes there. But I
24 thought that again, as I said, the record was pretty
25 full and I don't have any issues with the approval of

1 the variance.

2 Does anyone have any other thoughts? Okay.

3 Okay. All right.

4 Then I'm going to go and make a motion to
5 approve -- oh, no, sorry. And then again, the
6 application is with three conditions from DDOT, but
7 approve Application No. 19519 of Events D.C. as
8 announced by the secretary, and with the three
9 conditions from DDOT.

10 MR. HART: Second.

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

13 [Vote taken.]

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

15 MR. MOY: Staff would record the vote as four,
16 to zero, to one. This is on your motion, Mr.
17 Chairman, to approve the application for the relief
18 requested along with the three conditions. Seconded
19 the motion, Vice Chair Hart. Also in support, Ms.
20 White and Mr. Peter Shapiro. We have a board seat
21 vacant. Motion carries.

22 CHAIRPERSON HILL: Great. Can we do a summary
23 order, Mr. Moy?

24 MR. MOY: Yes, sir.

25 CHAIRPERSON HILL: Thank you. Thank you all

1 very much.

2 [Pause.]

3 MR. MOY: Okay. Moving right along, then, if
4 I can have parties to the table. This is to Case
5 Application No. 19527 of Eric Goetz. This application
6 has been amended for special exceptions under Subtitle
7 E, Section 206.2, from the rooftop architectural
8 element requirements of Subtitle E, Section 206.1,
9 under Subtitle E, Section 5203, from the height
10 limitations of Subtitle E, Section 303.1.

11 This would construct a rear and third-story
12 addition to an existing two-story, one-family
13 dwelling, in the RF-1 Zone, 119 7th Street Southeast,
14 Square 870, Lot 858.

15 CHAIRPERSON HILL: Okay. We'll call up people
16 later for testimony. If you could please introduce
17 yourselves from my right to left?

18 MS. FOWLER: Hi. I'm Jennifer Fowler, I'm the
19 architect.

20 MS. GOETZ: Crystal Goetz, homeowner.

21 CHAIRPERSON HILL: Could you say your last
22 name? Can you pronounce it for me?

23 MS. GOETZ: Goetz.

24 CHAIRPERSON HILL: Goetz.

25 MS. GOETZ: The O is silent.

1 CHAIRPERSON HILL: Okay. Ms. Fowler, I guess
2 you're going to present to us? Okay.

3 So, I guess there is some issues in terms of
4 just kind of some letters in support, you have letters
5 in opposition, I've read through the record. We have
6 a lot of information from the Office of Planning. I
7 thought that the ANC was kind of an interesting little
8 vote and how that went down.

9 But really, all I'm -- I'm going to put 10
10 minutes upon the clock for you, and if you could just
11 again, kind of go through the project, go through what
12 it is you're asking for in terms of relief and how
13 you're meeting that standard. And then, for me, I was
14 just kind of -- you know, I think we will hear from
15 others in terms of issues there might be. But maybe
16 you could touch upon some of how the meeting went at
17 the ANC. That's basically what I'd be interested in.

18 Does the Board have any other particulars
19 they'd like to hear about?

20 Okay. So, you can go ahead and begin whenever
21 you'd like.

22 MS. FOWLER: Sure. So, I wanted to give you a
23 little background on the case.

24 We filed for historic preservation last
25 September and we went through the ANC process, and we

1 received HPRB approval for this project back in
2 November of 2016. This is a 1960s noncontributing
3 building, so it was a -- we still had to go through
4 the process, but we were approved and it was
5 considered an appropriate addition for this house.

6 We proceeded to file for a permit in December,
7 and after we filed for permit they changed the rules
8 regarding 10-foot setback. So, 205.4 text amendment
9 was passed, so we went ahead and filed for relief for
10 the 10-foot setback.

11 In the meantime, they passed emergency
12 legislation, so we are grandfathered in. So, that's
13 why we initially filed for the 205.4, and then we
14 removed that from our application. So, that's no
15 longer an issue.

16 However, we did receive a comment from DCRA
17 during our permit review, that they needed us to get
18 relief to remove a brick cornice on the front of the
19 house. The idea is to remove the cornice and extend
20 the brick up for a third floor. We're also proposing
21 a front bay at the front of the house.

22 So, in order to move forward with the design
23 that we have gotten approved by Historic, we are
24 requesting relief to remove the cornice.

25 Initially we didn't anticipate that it would

1 be a problem, being that it is a 1960's era house.
2 It's a very small brick cornice. It's not -- it's
3 cement, brick and cement. And so, I guess we didn't
4 anticipate that the DCRA was going to be so strict on
5 those types of elements.

6 The other item of relief is the, there's a
7 clear story structure. It's a skylight structure at
8 the roof, and really the idea here is to bring some
9 additional light into the house over the stairwell.
10 It's a design feature. DCRA requested that we get
11 relief for the building height. So, the main part of
12 the roof is 35 feet in height. This additional
13 structure takes up to 37, 37-foot-nine. Yeah, that's
14 right. I'm sorry, it's been a long day. Above the --
15 so, it's two-feet-nine-inches above the allowed
16 building height. And it's not an occupied space.
17 It's more of a raised ceiling with windows facing the
18 sides, just to get some additional light in.

19 So, we did -- that's why we've filed for
20 zoning relief, to get these very two small -- these
21 two small items cleared. Our permit is basically
22 approved in the system at DCRA, we're just waiting on
23 the zoning approval to finalize.

24 We did have ANC support for the BZA portion
25 and the historic portion. They looked at it both

1 times. As well as the CHRS. They've looked at it and
2 the zoning committee submitted a letter of support for
3 the cornice removal, no position on the rooftop
4 structure.

5 We provided a visibility sun -- sorry. A
6 visibility study into the record that shows that the
7 roof structure is not visible from the sidewalks, up
8 and down the street, from across the street. In fact,
9 we even lowered it by three inches because it was just
10 a sliver visible, so we reduced the height, once we
11 did the visibility study.

12 I think that's really it for my presentation.
13 Again, we're really just looking at the small cornice
14 at the front of the house, as well as the rooftop
15 skylight structure, for relief. Thank you.

16 CHAIRPERSON HILL: Okay. Thank you. Does
17 anyone have any questions for the applicant at this
18 time? Okay.

19 Turn to the Office of Planning, please?

20 MR. COCHRAN: Thank you, Mr. Chair. Steve
21 Cochran, Office of Planning.

22 The applicant's filing for a special exception
23 under Subtitle E, Sections 206 and 303.1. The first
24 one is to remove, as you know, the front cornice and
25 put a new cornice at the top of a new third floor.

1 The second one is to enable a small portion, a seven-
2 foot by 12-foot, almost 13-foot, portion of the third
3 floor to exceed the 35-foot by-right height limit.
4 But it would still remain within the 40 feet that's
5 permitted by special exception.

6 It seems to meet the criteria in 206.1 and
7 303.3. With respect to the rooftop, HP basically, we
8 took HP's opinion on this that the cornice was not
9 that important. It could be removed and that the new
10 cornice is acceptable within the context of the
11 historic district.

12 With respect to height, I would note that the
13 building -- what looks to be the building itself, and
14 the all but seven by 13-foot portion of the roof,
15 actually measures 35 feet.

16 Ms. Fowler referred to a roof structure. It's
17 not really a roof structure. DCRA has determined that
18 this skylight that they have, which they've built in
19 the form of a clear story, which means it pops up a
20 little bit, and then it has windows on three sides,
21 that that's actually a part of the floor below because
22 it's open directly to the floor below, providing light
23 to a staircase and some rooms on the top floor. So,
24 that's why they've included it as part of the
25 measurement for the building.

1 If it had been a mechanical thing, it wouldn't
2 have counted. But they consider it part of the
3 occupiable space below. So, I hope that explains what
4 that's all about.

5 As Ms. Fowler noted, we had a little bit of
6 concern with the height on it, so we asked them to
7 look at some view diagrams. Accordingly, they reduced
8 the height by about three inches. That structure
9 starts about 13 feet, almost 14 feet back from the
10 front of the building. So, it's, as the illustrations
11 that the applicant provided, demonstrated, it won't be
12 visible from the north or from the south on the
13 street.

14 And finally, you know from looking at the
15 record that the ANC voted three, to one, to four to
16 support the application, and there are four letters of
17 support. And as of this morning, when two other
18 letters were filed, there are now four letters in
19 opposition.

20 So, that completes our report. OP is
21 recommending that you approve the requested special
22 exception.

23 CHAIRPERSON HILL: Okay. Does anyone have any
24 questions for the Office of Planning?

25 Okay. Does the applicant have any questions

1 for the Office of Planning?

2 MS. FOWLER: No, we don't. Thank you.

3 CHAIRPERSON HILL: Okay. Is there anyone here
4 from the ANC wishing to speak?

5 Is there anyone here wishing to speak in
6 support?

7 Is there anyone here wishing to speak in
8 opposition?

9 If you could all come forward, please? Maybe
10 you guys can sit over on -- there you go.

11 Did you all fill out witness cards?

12 UNIDENTIFIED SPEAKER: Yes.

13 CHAIRPERSON HILL: Okay.

14 UNIDENTIFIED SPEAKER: [Speaking off
15 microphone.]

16 CHAIRPERSON HILL: Okay. And whether you've
17 been -- okay. Great. Perfect. Okay, let me do that
18 first then. If you could just go ahead and stand, and
19 Mr. Moy, if you could administer the oath, please?

20 [Oath administered to the participants.]

21 CHAIRPERSON HILL: Okay, great. Thank you.
22 So, you just push the little green dot there, light.
23 And if you could just introduce yourselves please,
24 first from my right to left, and then we'll go ahead
25 and go through in hearing your testimony.

1 MS. WIGTIL: My name is Wendy Wigtil. I live
2 on 7th Street, two houses away from the proposed
3 project.

4 CHAIRPERSON HILL: Okay. Witchil?

5 MS. WIGTIL: Wigtil.

6 CHAIRPERSON HILL: Wigtil.

7 MS. WIGTIL: W-I-G-T-I-L.

8 CHAIRPERSON HILL: Okay. Thank you.

9 MR. GALLO: My name is Tony Gallo. I live at
10 125 7th Street. I have lived on the street for 50
11 years, and in that house for 48 years.

12 CHAIRPERSON HILL: Okay.

13 MR. DIERLAM: My name is Brian Dierlam. I
14 live at 122 7th Street, immediately across the street
15 from the project.

16 CHAIRPERSON HILL: Okay, great. Thanks. So,
17 well, thanks for bearing with us here as well for the
18 whole day, and, Ms. Wigtil, I'm going to start with
19 you. Okay?

20 MS. WIGTIL: I would ask that you would start
21 (speaking off mic).

22 CHAIRPERSON HILL: Okay. Sure. Sure. Sure.
23 Well, sir, you're up first then.

24 So, I'm going to go ahead and put three
25 minutes on the clock, and you can start whenever you'd

1 like.

2 MR. DIERLAM: I think the bottom line is, in
3 the interest of time, is you know, there's been a
4 focus on the particular variance that the applicants
5 are asking for, which is the gentleman Mr. Cochran
6 spoke about, is the variance on the very top of the
7 roof.

8 But I think what's important to recognize, is
9 that this is an entire third-floor structure on top of
10 the existing structure. And this particular project
11 has received much opposition from those on the block.

12 Now, we recognize that that's a by-right
13 project. They've gone through the ANC process. And
14 throughout that process we voiced our opposition and
15 concern. So, what I'm here today is to say that it's
16 my view and our point of view that there is a
17 tremendous amount of space available to them above the
18 existing structure. They're adding 13 feet of new
19 structure above the existing structure, because the
20 current zoning rules allow them to do that.

21 Now, we don't like that. I'll be the first to
22 tell you. We don't like it. But they're able to do
23 it because it's the by-right in a historic district on
24 a nonhistoric home. If we could stop that, we would
25 because this will be the largest house on the block

1 with the widest façade, out of keeping with a 19th
2 Century block. But you guys and the historic district
3 makes the rules, and that's the way that goes.

4 But my argument is, and our view, is that
5 given their expertise in doing such projects, there
6 ought to be a way to get enough light into the
7 interior of the house without having to have another
8 two or three feet of structure, that while it may not
9 be visible from the street, it will be visible by
10 houses across the street, like mine. And so, there
11 are ways to do the design that won't require this
12 extra additional variance.

13 So, yes, there are certain things that they
14 can do by right, but do they need the variance on top
15 of what will be a significant benefit to them by what
16 the current zoning rules allow them to do.

17 Now, we have numerous folks that are -- I
18 submitted my comments this morning. I've got
19 additional comments here. I've got comments from
20 another neighbor, Andy Cameron. I've got his comments
21 that I'll submit. And my neighbor Wendy, here, will
22 submit comments from Joanne Glissen (phonetic).
23 Joanne previously supported the project and as of this
24 morning, no longer does.

25 CHAIRPERSON HILL: I'm sorry, Mr. Dierlam, a

1 couple of things. First of all, I think they're just
2 trying to get a special exception, not a variance.

3 MR. DIERLAM: You know the words and the
4 language better than I do.

5 CHAIRPERSON HILL: Okay. No, believe me,
6 sometimes I don't.

7 MR. DIERLAM: Yes.

8 CHAIRPERSON HILL: And so, just clarifying
9 that one. And then the other -- so, you're submitting
10 testimony right now from other people? I'm just
11 trying to ask -- I'm just understanding what you were
12 saying.

13 MR. DIERLAM: Yes, sir. I've submitted my
14 comments this morning --

15 CHAIRPERSON HILL: Right.

16 MR. DIERLAM: -- and I had some other
17 neighbors ask me to bring in some of their testimony
18 as well.

19 CHAIRPERSON HILL: Okay, that you have here
20 now, with you.

21 MR. DIERLAM: Yes, I've got it right here.
22 Because as of this morning, it was too late to submit.

23 CHAIRPERSON HILL: Okay.

24 MR. DIERLAM: Electronically.

25 CHAIRPERSON HILL: And is that, Mr. Moy and

1 Ms. Nagelhout, is that permissible? Is that how that
2 works?

3 MR. MOY: The cutoff for filing with IZIS or
4 through e-mail is 9:00 this morning. But of course,
5 if anyone appeared like they have today, they could
6 submit it, a physical document.

7 CHAIRPERSON HILL: Okay. Do you have copies
8 for us?

9 MR. DIERLAM: It's right here.

10 CHAIRPERSON HILL: Okay. Could you bring them
11 on up to the secretary, please?

12 MR. HART: And, Mr. Dierlam, the reason that
13 we were making sure that we were speaking the same
14 language in terms of variance and special exception, a
15 variance actually means something very different. And
16 so, we just wanted to make sure that you were aware of
17 that.

18 MR. DIERLAM: Absolutely.

19 MR. HART: A variance has a -- in the zoning
20 regulations, is a much higher, we call it a higher bar
21 to get past. A special exception is something that is
22 actually contemplated in the zoning regulations, and
23 you've given some parameters around what you need to
24 do to be able to get that special exception, and
25 that's what the applicant has submitted, and the

1 architects have submitted to us. So --

2 MR. DIERLAM: Well, I'll --

3 MR. HART: So, I'm just letting you know that
4 that's why we were making sure that we were talking
5 about the same thing.

6 MR. DIERLAM: Oh, and in my comments and let
7 you know that I am here adamantly opposed to their
8 request for a special exception.

9 MR. HART: I understood that. Thank you. I
10 just wanted to make sure that it was clear. That's
11 all.

12 CHAIRPERSON HILL: Okay, and I just want to
13 read this if you can just give me -- just give us a
14 minute.

15 [Pause.]

16 CHAIRPERSON HILL: Okay. Mr. Gallo, so I'm
17 going to go ahead and put three minutes on the clock
18 for you there. Oh.

19 MR. GALLO: [Speaking off microphone.]

20 CHAIRPERSON HILL: Okay. Sure. Whatever
21 direction you guys want to go. So, Ms. Wigtil, you
22 can go ahead and go next, and then I'll put three
23 minutes on the clock for you. Okay? Thank you.

24 MS. WIGTIL: I live, I said at 111 7th Street,
25 which is one house away from the project. My

1 neighbor, Joanne Glissen, lives in the house between
2 the two, which is right next to the project. She
3 attempted to file her objection yesterday. She was
4 not at home, not with her computer. She managed to
5 get on the site, but she didn't believe that her
6 opposition letter went through, and she sent me a copy
7 and asked if I could read it at the hearing here.

8 My opposition is on file for you, that I had
9 posted.

10 CHAIRPERSON HILL: Okay. So, you're providing
11 testimony for yourself that's on file, right?

12 MS. WIGTIL: No, not for myself.

13 CHAIRPERSON HILL: Okay.

14 MS. WIGTIL: I'm reading for Joanne, who is
15 not here, who sent me this and asked me if I would
16 present it.

17 CHAIRPERSON HILL: Okay. But I'm saying, in
18 addition to that you --

19 MS. WIGTIL: I have my own on file with you.

20 CHAIRPERSON HILL: -- have your own on file.

21 MS. WIGTIL: Yes.

22 CHAIRPERSON HILL: So, I am going to, again,
23 go to the Office of Attorney General because I'm just
24 kind of curious how this works. Like, so that again
25 is appropriate.

1 MS. NAGELHOUT: No, not really. If typically,
2 if the person is not here, the written testimony can
3 be accepted into the record. But nobody needs to read
4 it because they're not available -- the person who
5 wrote it is not available for cross-examination.

6 CHAIRPERSON HILL: Okay. So, Ms. Wigtil, just
7 like the gentleman, Mr. Dierlam just give copies of
8 that, if you can go ahead and give that to Mr. Moy and
9 we can take a look as well.

10 MR. SHAPIRO: Mr. Chair.

11 CHAIRPERSON HILL: Yes. Yes?

12 MR. SHAPIRO: Is this the thing that we
13 already have?

14 MR. HART: Yeah. I think it is. This is from
15 Ms. Glissen.

16 MS. WIGTIL: Glissen.

17 MR. HART: Yes, we have that information
18 already. She --

19 MS. WIGTIL: You didn't get it on your --

20 CHAIRPERSON HILL: You have to go over to the
21 secretary there and just, he can show -- he can see
22 which one it is.

23 MR. SHAPIRO: And, Mr. Chair, we also, we have
24 a letter in the record from a Mark Wigtil.

25 CHAIRPERSON HILL: Commissioner Shapiro, what

1 did you say? There's a letter in the record from a
2 Mark Wigtil?

3 MS. WIGTIL: That's my husband.

4 CHAIRPERSON HILL: I see. Okay. So, that's
5 your testimony. Okay. All right. All right. So, we
6 did have this one. This is the one that Mr. Dierlam
7 just gave us, and so I did read that.

8 So, Ms. Wigtil, I'm going to put three minutes
9 on the clock again for you, and you can go ahead and
10 give your testimony.

11 MS. WIGTIL: Oh, I thought that since you have
12 it, you can read it. I'm not -- you know, I would
13 answer any questions you might have about my feelings,
14 but I thought just giving the letter was enough.

15 CHAIRPERSON HILL: Okay. All right. So,
16 then, Mr. Gallo, that leaves you. And I'll put three
17 minutes on the clock for you. Okay?

18 MR. GALLO: Thank you, sir. Mine was the very
19 first letter that was submitted to BZA. I have been
20 in the restoration business myself, and renovated
21 homes in Historic Capitol Hill between 1969 and 1992.
22 I do not think -- and I did apply for a variance, and
23 thank you so much for correcting me. I thought
24 variance and special exception were the same thing. I
25 never encountered any opposition.

1 The street means much to us emotionally, and
2 two people who wanted to submit letters, one is in
3 France in the military in France, and my next-door
4 neighbor is in the hospital, and his family has lived
5 there as long as I have. We are all in ardent
6 opposition to this whole project, and what it will do
7 to the ambiance of the street and to Capitol Hill. We
8 believe it will be something extremely detrimental.

9 The rest of my feelings have so well been
10 expressed by Mr. Dierlam and Wendy. And I will use
11 less than three minutes. Thank you.

12 CHAIRPERSON HILL: Okay. Thank you. So, Mr.
13 Gallo, I mean, Mr. Dierlam had kind of specified again
14 kind of the issue that he had was the additional
15 height above the 35 feet, which was the by-right
16 height. So, you're also in the same line with that.
17 That's the --

18 MR. GALLO: Also in the same line.

19 CHAIRPERSON HILL: Okay.

20 MR. GALLO: I mean, and of course to tell you
21 how much we object to -- we're getting pop-ups on this
22 very historic street. There are two other houses that
23 were built after 1945. They too will want to build
24 the pop-ups, but from what we're told, this is a
25 right. This is all new to me, remember.

1 CHAIRPERSON HILL: Right.

2 MR. GALLO: The last time I appeared before
3 the zoning board was in 1979.

4 CHAIRPERSON HILL: Sure. But you said you got
5 approved.

6 MR. GALLO: Smile.

7 CHAIRPERSON HILL: So, okay. I was just
8 trying to clarify. I just wanted to understand the
9 particular opposition to the project.

10 Does anyone have any questions for the
11 witnesses?

12 [No audible response.]

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

15 So, let's see. You can stay there if you'd
16 like. We're going to keep going here.

17 So, does anybody have any further questions
18 for the applicant?

19 [No audible response.]

20 CHAIRPERSON HILL: Okay. So, we did
21 opposition, support, ANC. All right. Does the
22 applicant have anything further they'd like to add?

23 MS. GOETZ: The one thing I would add, I
24 guess, I think Jennifer covered everything very
25 succinctly. I know that there were a couple of

1 comments about the ANC vote, and it was four approved,
2 three abstained, and one I think was against.

3 One of those abstaining, abstained because
4 he's actually a client of my husband and I's general
5 contracting company. So, he's one of the abstaining,
6 just since it was a point of reference.

7 CHAIRPERSON HILL: Okay. Okay. That's fine.
8 All right.

9 So, all right, there's nothing else you'd like
10 to add, Ms. Fowler?

11 MS. FOWLER: Just one other thing I wanted to
12 mention was, when we got the comment at DCRA, we
13 worked for a couple of days with Historic, trying to
14 work out another solution that would not require the
15 removal of the cornice. And I just wanted to mention,
16 I don't know if I said it earlier, that this was the
17 preferred design that Historic -- they preferred that
18 we stick to this design that they had approved, rather
19 than redesign because it makes it look less like a
20 pop-up, rather than having a kind of a new structure
21 up on top of the original. It kind of integrates the
22 design.

23 So, just wanted to make sure that was clear
24 that that was what the historic staff was preferring
25 that we do at that time, rather than just redesign.

1 CHAIRPERSON HILL: Okay. Okay. And I just
2 have a question for the applicant. Okay? So, the
3 additional, you know, two feet whatever, right, again,
4 the reasoning behind that was what?

5 MS. GOETZ: So, basically, it's a skylight
6 that we have simply added a curb, a curb to, to add
7 additional light from the sides. So, if you think
8 about it in the sense of a box.

9 CHAIRPERSON HILL: Okay, it's the skylight.
10 It's a skylight.

11 MS. GOETZ: It's a skylight.

12 CHAIRPERSON HILL: I just wanted to clarify.

13 MS. GOETZ: That's -- yeah.

14 CHAIRPERSON HILL: I just wanted to clarify.

15 MS. GOETZ: It's just the skylight --

16 CHAIRPERSON HILL: Okay.

17 MS. GOETZ: -- with some additional curbing to
18 it.

19 CHAIRPERSON HILL: Okay. All right. Okay.
20 All right. Does the Board have anything else?

21 MR. HART: Just, actually one question.
22 Skylights can be made a number of ways. Skylights
23 could be a flush thing that you could have. I'm just
24 curious as to why that's not an option.

25 MS. GOETZ: Sure. I mean, it is an option

1 frankly, but the reason that we chose to go with this
2 look of the little bit more raised with the additional
3 windows, is A., the additional light it would let in.

4 But also in our numerous meetings with the HPO staff
5 and looking at the design of the house, and working
6 with Jennifer and the HPO staff on making sure that
7 this house fit with the historical nature of the
8 neighbor, and gave nod to other elements throughout
9 the neighborhood, we noticed, in going through blocks,
10 that there are many houses that actually have a cupola
11 on top of their house that is their skylight feature.

12 And so, even though people can't see it from
13 the front of the house, we thought that was an
14 interesting design element, pulling from the
15 neighborhood, and integrating it into the overall
16 design. So, that's the reason why we chose to add
17 that feature to the house.

18 But certainly, to your point, we can remove it
19 and simply have a flush or one of those fairly, what I
20 consider, terrible bubble-like skylights. Again, no
21 one would see it, but it can be done, yes.

22 CHAIRPERSON HILL: Okay. Okay. Do you have a
23 question, Ms. White?

24 MS. WHITE: I was just curious whether or not
25 that was an issue that was raised during the ANC

1 presentations, or was that a question that you only
2 heard through Vice Chair Hart?

3 MS. GOETZ: Oh, no, no, no. It wasn't
4 necessarily raised by the ANC, but we did talk with
5 Capitol Hill Restoration Society about it and it was
6 raised within the ANC meetings because of feedback
7 from neighbors. So, it was addressed within those
8 meetings bed of concern and feedback from neighbors.
9 But it was not considered a question from the HPO
10 staff, and certainly when we reviewed it and got
11 positive support from Capitol Hill Restoration
12 Society, as well as HPO staff, we obviously talked
13 through the design with them as well. Yeah.

14 MS. WHITE: Okay. Thanks.

15 CHAIRPERSON HILL: Okay. All right. So,
16 anything --

17 MS. WIGTIL: Is it possible for me to get a
18 couple of minutes?

19 CHAIRPERSON HILL: No, you had your chance
20 already to talk and so -- I'll tell you what, see,
21 this is where I get in trouble now again. We had --
22 you had your time and I let you guys continue to sit
23 there. I mean, you made your testimony, you have
24 testimony. But if you want to go ahead and I'll give
25 you another 30 seconds for your comment, and then you

1 can come back and make a comment again from the
2 applicant. Please, go ahead.

3 MS. WIGTIL: Okay. One of the things, it's
4 sort of like the elephant in the room here, is that we
5 on the block have had troubling reports about
6 construction by Bluestar, who are doing other
7 properties on Capitol Hill. And one of -- they have
8 had stop orders --

9 CHAIRPERSON HILL: Ms. Wigtil --

10 MS. WIGTIL: Okay.

11 CHAIRPERSON HILL: I'm sorry. I'm sorry.
12 It's just not appropriate to this case. And so, you
13 know, now you're bringing in different kinds of
14 information in terms of, I'm just listening to you, I
15 don't have any evidence as to any of the things you're
16 saying. And so -- and regardless, it doesn't matter.
17 So, but it wasn't pertaining to this, but I did
18 listen to what you just said right there. It doesn't
19 pertain to this case. So, but okay. Thank you.

20 All right. Okay, yeah, sure. Commissioner.

21 MR. SHAPIRO: Just a brief question, Mr.
22 Chair.

23 Ms. Goetz, I just want to make sure I
24 understand, because I'm looking at the -- you said
25 that the rooftop structure, you were suggesting that

1 the Capitol Hill Restoration Society was supportive of
2 the rooftop structure. The letter says that they took
3 no position on the roof structure.

4 MS. GOETZ: I apologize if I misspoke. It was
5 my understanding from the meeting that we had a
6 positive meeting with them, and they overall voted in
7 support of us moving forward. So, I misspoke in the -
8 - if it wasn't specific in the line item, I just
9 assumed when they offered their support for us to move
10 forward on both the specific conversation we had with
11 them on the cornice, and on the roof structure, that
12 that meant they were supporting. So, perhaps I'm
13 mistaken. I apologize.

14 MR. SHAPIRO: Yeah, the letter says that this
15 support was for moving the cornice line, but on
16 position on the roof structure.

17 MS. GOETZ: I see. Okay, thank you for
18 clarification. I wasn't clear on that. Thank you.

19 MR. SHAPIRO: Thank you. Thank you, Mr.
20 Chair.

21 MR. DIERLAM: Mr. Shapiro, I have an answer on
22 that question if --

23 CHAIRPERSON HILL: Okay. What's the answer?

24 MR. DIERLAM: The Capitol Hill Historic
25 Society approved an early June meeting. Me and the

1 neighbors appealed that ruling and in their second
2 meeting they chose not to take a position on the
3 rooftop structure after we and the neighbors appealed
4 their decision, their early decision to approve it.
5 They took no position on it the second time around.

6 CHAIRPERSON HILL: Okay. And you're nodding
7 and that that's agreement. Okay. Great. Thank you.
8 Okay. Does the Board have any other questions?
9 Okay. All right. All right. So, I'm going to close
10 the hearing.

11 I don't know -- like is the Board ready to
12 deliberate? Okay. Then I'll let somebody start the
13 deliberation.

14 MR. HART: Yeah, I think that the -- I mean, I
15 appreciate you all coming down today. I know that
16 this is -- that when you're talking about your house
17 and your neighborhood, you know, people get -- they're
18 very concerned about it and I can understand that.
19 The reason that I had the question about the
20 extension, it seemed as though that, the rooftop
21 extension, it seemed as though it sounded like the
22 applicant was saying that this was kind of necessary,
23 and I'm not exactly sure if it's necessary. It is
24 something that you would like to do. There are other
25 ways to go about actually doing that, that may

1 actually keep the height underneath 35, or at 35 feet,
2 which actually would keep this issue, the Subtitle E-
3 303.1, may not be an issue; something that you
4 necessarily need.

5 So, it seems as though that may be something
6 that I would be in support of, which is not actually
7 having this, whatever you want to call that thing, the
8 skylight, the way that you have constructed or drawn
9 it, but actually just having a flat piece that is --
10 would keep it within that 45-foot mark. But again,
11 that's kind of how I'm seeing it.

12 I understand that you may be looking at other
13 neighborhoods, other neighbors, or other buildings
14 that may have similar things. I just, I don't know,
15 it seems as though that is a point of contention with
16 this and I'm not necessarily sure that I am supportive
17 of that aspect of it.

18 The rooftop architectural element piece, I
19 think I could be in support of. I understand that --
20 I just, I could be in support of it. I think that
21 they are meeting the criteria that is established in
22 Subtitle E-206.1. So, I don't know, I'd like to hear
23 from the other board members to see how they are
24 seeing this aspect of it, but that's kind of where I
25 am right now.

1 MS. WHITE: I'll add some comments. I mean, I
2 think I'm pretty much in line with what you just said,
3 Vice Chair Hart. I think they did meet the special
4 exception criteria with respect to height. If you
5 look at the test there, I think under E-5303.1, it
6 appears that they did meet those criteria.

7 The rooftop architectural element alteration,
8 it seems as though that Office of Planning was in
9 approval of that aspect of the project, so even though
10 I know there are some sensitivities, you know, with
11 the neighborhood, with both the height, and also with
12 the rooftop element in terms of it somewhat changing
13 the look and the feel of the house, compared to some
14 of the other houses on that block.

15 And then finally, some of the general tests
16 under special exception, it's you know, the houses and
17 the look and the feel of those houses, I mean, slowly
18 there are changes that are taking place and I know
19 that there are sensitivities in terms of it changing
20 the look of houses. It's happening in everybody's
21 neighborhood.

22 But I think with the drawings, the proposed
23 drawings that I see that were submitted, I feel as
24 though that they did meet the test. I'm not as
25 supportive of the additional sun light feature, but

1 perhaps that they could make some modifications with
2 that and be willing to work with the neighbors with
3 respect to that aspect of the project.

4 But with OP's comments, as well as some of the
5 support received from ANC 6B, and also especially with
6 the support from the Capitol Hill Restoration Society,
7 which seemed to not be in strong opposition, but
8 they've sort of tabled any kind of negative feedback
9 that they could potentially communicate with respect
10 to the case. I think right now I'm still relatively
11 in support under the special exception test.

12 MR. SHAPIRO: Thank you, Mr. Chair. I would
13 concur with the comments of my colleagues, with one --
14 I too think that they have met the requirements of the
15 special exception. But I like the architectural
16 element. It feels like a nice addition, rather than a
17 flat piece of glass or a flat piece of plastic, or the
18 dreaded bubble. So, you know, with OP in support and
19 the ANC in support, you know, I would be in support of
20 keeping that element as well.

21 CHAIRPERSON HILL: Okay. Well, thanks for the
22 deliberations. I also am -- it wasn't until we
23 started to go through this a little bit where I kind
24 of knew where I was. I think that from the -- all the
25 work that the applicant has done in terms of the

1 Capitol Hill Restoration Society, in terms of also
2 HPRB, and then also the design of the project, I mean,
3 you know, the issue that has been kind of raised in
4 terms of whether or not we all seem to be kind of just
5 discussing the additional height, I was a little bit
6 torn, I suppose, in that I didn't know what I thought
7 to a certain extent. But now after thinking about it
8 more and listening to everyone more, I'm still more in
9 agreement with the Office of Planning, as well as the
10 ANC, and also Commissioner Shapiro's thoughts that it
11 is a nicer element as opposed to a different solution.

12 Now, whether or not -- and again, now we're
13 talking about the two feet, whatever it was that is
14 allowed under a special exception, which now the
15 Office of Planning has done an analysis for, whether
16 or not now there's other things that the Board would
17 like to see in terms of, you know, what it looks like
18 without it, whether there is -- you know, I mean,
19 there is records in there in terms of the sightline as
20 to whether or not that does anything of that. You
21 know, if that helps clarify things for Board Members
22 White and, what's your name? Hart. It's been a long
23 day. You know, maybe that's the case.

24 But I'm now with Commissioner Shapiro in terms
25 of I agree with the analysis that's been supplied from

1 the Office of Planning that the ANC 6B is in support,
2 and then I am sensitive to the witnesses that have
3 come down and on the amount of time that you've also
4 been here. But as far as the special exception
5 criteria for the additional two feet, I can get behind
6 that.

7 So, I don't know where you, Mr. Hart and Ms.
8 White, are on that. And if you need further
9 clarification or information on that aspect of the
10 project or what your condition -- or what your
11 thoughts are now after we've deliberated.

12 MS. WHITE: There is an exhibit, I think that
13 provides a sightline study in terms of what it looks
14 like with the new structure. We might need to take
15 another look at that.

16 MR. COCHRAN: It's Exhibit 40.

17 MS. WHITE: Forty? Okay. So, I'm looking at
18 Exhibit 40, sightline study for roof structure. So, I
19 had concerns that that bubble could be a potential
20 eyesore. But I'm looking at the proposed drawings and
21 it's not visible, from what I can tell, from the front
22 of the house. So, I'm inclined to be supportive with
23 it, given the comments from my colleagues and OP.

24 CHAIRPERSON HILL: Okay. All right. So, that
25 being the case, then I'm going to make a motion to

1 approve Application No. 19527 as read by the
2 secretary.

3 MR. SHAPIRO: Second.

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

6 [Vote taken.]

7 CHAIRPERSON HILL: One in opposition. I lost
8 the secretary.

9 [Pause.]

10 MR. MOY: Sorry, Mr. Chairman. I had to take
11 a critical break.

12 CHAIRPERSON HILL: Do I need to remake the
13 motion? Okay, so I'm going to make a motion again to
14 approve Application No. 19527 as read by the
15 secretary.

16 MR. SHAPIRO: Second.

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

19 [Vote taken.]

20 CHAIRPERSON HILL: Motion passes, Mr. Moy.

21 MR. MOY: Okay. From what I can tell, staff
22 would record the vote as three, to one, to one. This
23 is on your motion to approve, Mr. Chairman. Seconded
24 the motion, Mr. Shapiro. Also in support of the
25 motion, Ms. White. Opposed is Vice Chair Hart. A

1 board seat vacant.

2 CHAIRPERSON HILL: Great. Thank you. Summary
3 order.

4 MR. MOY: Yes, sir.

5 CHAIRPERSON HILL: Thank you. Thank you all
6 very much.

7 All right. Now we are going to take a three-
8 minute break. Maybe a little longer. We're going to
9 take a five-minute break.

10 [Off the record from 5:10 p.m. to 5:20 p.m.]

11 CHAIRPERSON HILL: Let's get back together
12 here again, okay?

13 Mr. Moy, at this point I think I can call my
14 own cases.

15 MR. MOY: Okay. I'm good with that.

16 CHAIRPERSON HILL: No. That's okay. That's
17 all right.

18 MR. MOY: Okay, I've just -- here we go. I
19 was looking for my page.

20 Oh okay, well, she beat me to the table. All
21 right. This is Case Application No. 19529 of William
22 Flens, Flens, as amended, request for a special
23 exception from the alteration of a rooftop
24 architectural element. Boy, it sounds like the other
25 one. Subtitle E, Section 206.1, and Subtitle E,

1 Section 5201 from the nonconforming structure
2 requirements of Subtitle C, Section 202.2, and the lot
3 occupancy requirements, Subtitle E, Section 304.1, to
4 construct a two-story rear inside addition to an
5 existing one-family dwelling, RF-1 Zone, 1108 South
6 Carolina Avenue Southeast, Square 990S, Lot 8.

7 CHAIRPERSON HILL: Great. Thank you. If you
8 could please introduce yourself for the record?

9 MS. FOWLER: I am Jennifer Fowler. I'm the
10 architect.

11 CHAIRPERSON HILL: Okay. All right, Ms.
12 Fowler, I'm going to just ask you to kind of go
13 through again the request that you're making in terms
14 of the relief and how you're meeting the standard.
15 And then telling us a little bit about -- I'm actually
16 again, it's the same ANC in terms of -- or one that I
17 think was with an earlier ANC, and again I was just
18 kind of curious as to how that meeting went also,
19 because you had the abstentions.

20 And other than that, does the Board have any
21 questions in specific?

22 [No audible response.]

23 CHAIRPERSON HILL: Okay. I'm going to put 10
24 minutes on the clock, and then you can begin whenever
25 you'd like.

1 MS. FOWLER: Okay, thank you. I'll try to be
2 quick.

3 So, we originally filed for 304.1, lot
4 occupancy, and 202.2 for the nonconforming structures.

5 We have presented to the ANC last month at the
6 Planning and Zoning Committee, and they had some
7 concerns about the project.

8 We have a side addition that's basically
9 replacing a covered porch that's there now, that has a
10 deck on top of it. We were going to rebuild that into
11 a two-story structure, and then we also have a rear
12 addition.

13 They had concerns about mostly the two-story
14 side addition, really just the change from the street
15 frontage, you know, going from an open porch to an
16 enclosed structure. We had been working with Historic
17 Preservation and they were comfortable with the
18 proposal, but we were still kind of working out the
19 details and the design.

20 So, based on their feedback, we also heard
21 neighbors' concerns at the ANC meeting. We revised
22 the plans and presented revised plans at the full ANC
23 meeting. And those changes that we made were -- we
24 basically created a -- instead of enclosing the entire
25 two-story side porch addition, we pushed the

1 conditioned space back by about three feet to create a
2 balcony on the front. So, it still reads as a porch,
3 so it's a little more similar to what's there now.

4 We also dropped the height of the rear
5 addition from 25-foot one-and-a-half-inches, to 22-
6 foot-nine-inches. And part of that was just, there's
7 an existing gable roof on the house, the main roof of
8 the house. We were originally going to kind of take
9 the addition off the peak of the gable, and so we
10 changed it so we're extending the lower part of the
11 gable.

12 So, just a couple of design changes based on
13 their feedback. So, that's what we submitted in June.

14 We also were encouraged by the ANC to add the 206.1
15 relief for the removal of the porch. It's a side
16 porch, not really a front porch, but they were -- they
17 had seen some other cases where that had come up, so
18 they thought we should add that relief. Or they
19 suggested it. So, that's why that was changed in the
20 record as well, because we are demolishing that porch
21 that's visible from the front of the house.

22 So, overall, the meeting was good. They were
23 very happy with the revisions. Especially from the
24 historic preservation side. We also provided them sun
25 study, which they requested and we did between the

1 first ANC meeting, and the second ANC meeting. And
2 that's in the record as well.

3 It does show that there is very minimal impact
4 on the neighbors. Particularly with a lower addition
5 height. So, we did get the ANC support. I believe
6 the abstentions -- it's kind of been a long day so I
7 don't remember exactly what it was. There was no
8 opposition, and I think maybe part of it was because
9 there was a neighbor with concerns that some of the
10 Commissioners didn't feel like they were comfortable
11 supporting it because of that.

12 CHAIRPERSON HILL: Okay.

13 MS. FOWLER: That's my recollection.

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

16 All right. I'm going to turn to the Office of
17 Planning.

18 MS. VITALE: Good evening, Mr. Chair and
19 members of the Board. Elisa Vitale with the Office of
20 Planning. It's after 5:00. It's appropriate.

21 CHAIRPERSON HILL: Is 5:00 is good evening?

22 MS. VITALE: I don't know.

23 CHAIRPERSON HILL: Good evening? That's all
24 right, we'll --

25 MS. VITALE: I'm not sure what the cutoff is.

1 CHAIRPERSON HILL: We'll go with 5:00.

2 MS. VITALE: All right.

3 CHAIRPERSON HILL: Five sounds good to me.

4 MS. VITALE: The Office of Planning recommends
5 approval of the revised request for an addition to a
6 nonconforming structure for this special exception to
7 exceed the permitted lot occupancy, and the special
8 exception to permit removal of the existing porch
9 roof.

10 OP does note that two letters in opposition
11 citing concerns about light and air were entered into
12 the record after OP filed its report. I did conduct a
13 site visit. The property is adjacent to what's termed
14 on the plat, an alley. It really is just a narrow
15 walkway that provides passage between the subject
16 property and then the rear yards of the adjoining
17 properties that front on 11th Street.

18 That alley or passageway is boarded by very
19 tall fencing, as well as significant amounts of you
20 know, tree cover and mature landscaping. So, based on
21 this information, OP continues to believe that the
22 proposed addition should not unduly affect the light
23 and air available to the adjoining properties.

24 The applicant mentioned HPRB review. I
25 believe that they are going to be going to HPRB later

1 this month. So, those final comments aren't reflected
2 in our report.

3 But this concludes my testimony. I am
4 certainly happy to answer any questions that you might
5 have. Thank you.

6 CHAIRPERSON HILL: Does anyone have any
7 questions for the Office of Planning? Does the
8 applicant have any questions for the Office of
9 Planning?

10 MS. FOWLER: No. I just wanted to thank Ms.
11 Vitale for her time on this case, and for taking the
12 time to take a site visit. It was very helpful.

13 CHAIRPERSON HILL: No, that is nice. And
14 we'll see whether or not we need more information
15 about that.

16 Is there anyone here wishing to speak in
17 support? Is there anyone here wishing to speak in
18 opposition? Please, come forward, sir.

19 Did you happen to fill out witness cards and
20 get sworn in? Okay, great.

21 MR. SANDOR: Well, my testimony is --

22 CHAIRPERSON HILL: Oh, I'm sorry. That's
23 okay. You have to speak into the microphone, but give
24 that there to the secretary and then you can go ahead
25 and say what you need to say there in the microphone.

1 If you could please just introduce yourself,
2 first.

3 MR. SANDOR: I am John Sander, I live at 322
4 11th Street Southeast in the home that I own. And
5 though my testimony is in the record, I was not able
6 to figure out how to upload images, so that's why I
7 just gave the secretary copies that have images
8 attached to them.

9 CHAIRPERSON HILL: Okay, great. Thank you.
10 All right. Just give us one second.

11 [Pause.]

12 CHAIRPERSON HILL: Okay. Sander. Sanders, is
13 that correct?

14 MR. SANDOR: Sandor.

15 CHAIRPERSON HILL: Sandor. So, Mr. Sandor,
16 thanks for making it this late. I mean, obviously,
17 you know, it's your -- it's important to you. It's
18 your house.

19 So, I'm going to give you three minutes, and
20 please go ahead and present your testimony to the
21 Board.

22 MR. SANDOR: All right. Thank you, Mr.
23 Chairman and board members.

24 I live at 322 11th Street, and my yard, my
25 rear yard, abuts this alley sidewalk that Ms. Fowler

1 mentioned. And I'd like to express my opposition to
2 the request for special exception to permit the
3 proposed expansion of the house at South Carolina.

4 While some modification to the structure could
5 be accommodated with minimal impact on the neighbors,
6 the proposal submitted will have a negative effect on
7 the light in the back yards of several properties
8 facing 11th Street.

9 In my yard, at 322, there will be a reduction
10 in the area that received early morning sun in the
11 summer, due to the addition of a room atop the front
12 porch. Those further down the block will be more
13 impacted by the addition at the rear.

14 The solar studies presented by Ms. Fowler,
15 would on the surface, seem to make the case that the
16 impact on the back yards of the immediate 11th Street
17 properties would be minimal. The quantification of
18 the shadows cast by the new construction, however, is
19 inaccurate.

20 It depicts the reach of the shadows in some
21 yards at 11:00 a.m. in June to be actually less with
22 the new construction that it is now, similarly
23 comparing the sheets of existing and proposed
24 conditions at 11:00 a.m. on the March and September
25 sheets, shows the existing shadows in the yards of 316

1 and 318 to be reduced by the new construction. This
2 obviously cannot be correct, which to me calls into
3 question just the relative amount of sun that these
4 studies are representing.

5 Realtime observations however yield the reach
6 of the shadows on the yards of 11th Street properties
7 to be greater than represented. Specifically, a
8 photograph taken at 9:00 a.m. by myself in late June,
9 which would match the solstice shown in the solar
10 studies submitted, and it's attached to the material I
11 gave to your secretary, shows where the shadow of the
12 existing roofline falls in my own backyard, and it's
13 nearly twice the distance as presented in the study.

14 And then the second illustration, which has a
15 line on it, represents the line of the new
16 construction. And when that construction replaces the
17 porch, the second story, that will advance the shadow
18 line into my yard, commensurately. So, empirical
19 evidence is more reliable, I would say, than computer
20 generated studies which are dependent upon the
21 information you put into them.

22 It's worth noting that although the effects
23 are limited to the mornings from spring to fall, any
24 reduction in sunlight in the tight urban setting where
25 sun is already at a premium, is consequential. Even

1 where existing plants, and we are talking about some
2 trees in this neighborhood, are filtering the sun, the
3 sun is still making an important contribution to the
4 yards and the plants' abilities to survive is
5 dependent upon what light they receive.

6 Also, while the studies began with 9:00 a.m.,
7 the sun is making a contribution to the light that
8 allows things to grow in our yards, even before that
9 hour, and the proposed addition will begin to have an
10 impact as early as 8:00 in the morning. If not
11 earlier.

12 Regulations require that light and air to
13 neighboring properties not be unduly affected, and I
14 do not know how you guys define unduly. But I believe
15 that the evidence suggests that the effect will be
16 consequential and encourage you to consider limiting
17 the height of the additions to the house at 1108 South
18 Carolina Avenue. Thank you.

19 CHAIRPERSON HILL: Thank you, Mr. Sander.
20 Sandor. Sandor. Mr. Sandor.

21 Does the applicant have -- I'm sorry, does the
22 Board have any questions for the witness?

23 [No audible response.]

24 CHAIRPERSON HILL: No? Okay. All right.
25 I've got a question for the Office of Planning. As

1 happens a lot, and it's a difficult conversation, or
2 unduly affected is always what comes up. Right. And
3 can you kind of clarify for the Board in terms of how
4 the Office of Planning goes about considering unduly
5 affected?

6 MS. VITALE: I can certainly speak to this
7 case specifically that's before you now, and because
8 of, you know, the orientation of the proposed property
9 and the impact, we looked at the fact that it would be
10 primarily an early morning impact, just for a portion
11 of the year, and then also, you know, factoring in the
12 site visit and the presence of you know, fairly
13 extensive tall fencing along the rear property line
14 that would also cast shadow into the rear yards, as
15 well as the existing tree canopy and vegetation that
16 would further filter the light. It was our belief
17 that the light and air available to the adjoining
18 properties would not be unduly affected.

19 CHAIRPERSON HILL: Okay. All right. Any
20 other comments from the Board with Office of Planning?
21 No? Okay.

22 Is there anyone else -- oh, I did -- is anyone
23 here wishing to speak in support? I did do that.

24 Anyone here wishing to speak in opposition? I
25 did that.

1 Is there anyone here from the ANC? I'm going
2 to do it all again because I'm just kind of at a loss.

3 Does the applicant have anything they'd like
4 to add at the end here, in conclusion?

5 MS. FOWLER: Sure. He mentioned something
6 about limiting the height of the addition to the
7 building at 1108. They are lower than the existing
8 roofline. So, we're not proposing to go any higher
9 than what's existing. In fact, there's a gable roof
10 that pops up higher than the proposed additions at the
11 front and the rear.

12 I also wanted to mention that the house at
13 1110 is about five feet taller than 1108. So, a lot
14 of the shadows that you see in the sun study, there's
15 a lot of deep shadows that are already cast by the
16 structures that are there in the morning. Especially
17 in the winter time.

18 Additionally, there is a photo, like a Google
19 Earth image at very back of the sun study, where you
20 can see the tree canopy that Ms. Vitale has mentioned
21 a couple of times. It is very dense back there.

22 And you know, I would say, you know, you all
23 have seen a lot of my sun studies. We do them all the
24 time. It is based on real-time measurements. We put
25 in dates and times. We pick kind of, you know,

1 solstice, equinox, and then we pick kind of
2 characteristic times during the day. So, 9:00, you
3 know, obviously it would be -- we would kill too many
4 trees to try to show you every time during the day.
5 But we just try to pick times that kind of are showing
6 the impact the most.

7 That's it. Thank you.

8 CHAIRPERSON HILL: Okay. Does the Board have
9 any questions for the applicant?

10 MR. SHAPIRO: No, sir.

11 CHAIRPERSON HILL: Okay. All right. Is the
12 Board ready to -- I'm going to close the hearing. Is
13 the Board ready to deliberate? Okay.

14 Would someone like to start deliberation?

15 MR. HART: Sure, Mr. Chairman.

16 CHAIRPERSON HILL: You were in the minority on
17 the last one, just let you know.

18 MR. HART: Okay, Mr. Chairman. So, I, after
19 reading through the record and hearing the testimony
20 today, thanking Mr. Sandor for coming in today, I know
21 it's -- it is a difficulty coming in times and I know
22 this was a very long day so I appreciate you staying
23 with us.

24 I would -- I think that the applicant has made
25 their case. And I would actually agree with the

1 Office of Planning's report for the case, talking
2 about how this application would actually meet the
3 criteria set forward for the case, and I think that
4 the -- that I could support the application as
5 submitted.

6 Again, I understand that there are -- that Mr.
7 Sandor has raised some issues about the sunlight
8 coming in, and the possible shadow that would be on
9 their property, on your property. I do understand
10 that and I empathize with that. I think in this case,
11 however, that the applicant has provided information
12 for us that would show how they are -- you know, what
13 it is that they are proposing and that it is within
14 the criteria that is set forward in the zoning
15 regulations.

16 And again, I would be in support of the
17 application.

18 CHAIRPERSON HILL: Thank you, Mr. Hart, for
19 starting the conversation. I do also think that the -
20 - from the record and the report of the Office of
21 Planning, and that the Office of Planning has gone out
22 to the site to see the site, I am further confident in
23 terms of the analysis that they're providing.

24 The part that I always kind of am disappointed
25 by for a lack of another word is just the term,

1 opposition, but I would be in support of this
2 application.

3 MS. WHITE: I concur with you, Mr. Chairman.
4 I thought Mr. Sandor's information was very
5 fascinating because it actually shows factual data,
6 and comparing that to the sun study you can obviously
7 see that there are some variations between the
8 scientific sun study and what actually happens.

9 There are some disparities between what you
10 see in the photo, the first photo, and what you see in
11 the mock sun study. But, I find that it's -- and I
12 guess one person's definition of unduly is another
13 person's definition of, hey, I've got some sun in the
14 back yard. But, you know, it does impact him. But
15 again, that whole legal jargon of unduly affected, I
16 don't think it, you know, it's substantially adverse
17 impact to your back yard. But obviously it's going to
18 impact some of the greenery over time.

19 And you know, there is going to be a second
20 story addition. It won't be higher than the house
21 itself, but that's also probably going to cast some
22 additional shadow.

23 But I did think that the applicant did meet
24 the standards with the support of the testimony from
25 the Office of Planning. I could support the special

1 exception request that's been submitted by the
2 applicant.

3 MR. SHAPIRO: Thank you, Mr. Chair. I have
4 nothing further to add. I concur.

5 CHAIRPERSON HILL: Okay. I'm going to go
6 ahead and make a motion, then, to approve Application
7 19529 as read by the secretary.

8 MR. SHAPIRO: Second.

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

11 [Vote taken.]

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

13 MR. MOY: Staff would record the vote as four,
14 to zero, to one. This is on the motion of Chairman
15 Hill to approve the application for the relief
16 requested. Seconded the motion, Mr. Peter Shapiro.
17 Also in support is Ms. White, Vice Chair Hart. We
18 have a board seat vacant. Motion carries.

19 CHAIRPERSON HILL: Thank you, Mr. Moy. And I
20 did want to mention that I guess if there is anything
21 the applicant can do to help alleviate some concerns
22 of the neighborhood, that would obviously be something
23 that the Board would like to see.

24 So, but with that, a summary order, Mr. Moy.

25 MR. MOY: Thank you.

1 CHAIRPERSON HILL: Thank you. Thank you.

2 [Pause.]

3 CHAIRPERSON HILL: All right, Mr. Moy,
4 whenever you'd like.

5 MR. MOY: All right. Thank you, sir. Next up
6 is Case Application No. 19523 of Villa Park, LLC.
7 This -- well, let me read what's been captioned and
8 advertised for variance from the maximum floor area
9 ratio requirements of Subtitle F, Section 602.1 to
10 convert an existing four-story building into a four-
11 unit apartment house in a RA-8 Zone, at premises 1902
12 R Street Northwest, Square 111, Lot 81.

13 I believe the applicant amended to include
14 area variance, Subtitle C, Section 202, to expand a
15 nonconforming structure. But I'd like a confirmation
16 from the applicant on that. And, that's it for me,
17 Mr. Chair.

18 CHAIRPERSON HILL: Okay, great. Well, we'll
19 go through this in a little while.

20 So, first of all, welcome. Thanks for staying
21 here to the very end. If you could introduce
22 yourselves from my right to left?

23 MR. WARWICK: Daniel Warwick with the ANC 2B.
24 I have an ANC meeting in an hour that I need to get
25 to.

1 CHAIRPERSON HILL: Okay. What's your last
2 name again, I'm sorry?

3 MR. WARWICK: Warwick. W-A-R-W-I-C-K.

4 CHAIRPERSON HILL: Okay. Your ANC meeting
5 starts at 7:00?

6 MR. WARWICK: Yes, it does.

7 CHAIRPERSON HILL: Okay. All right. Thanks
8 for -- did you get sworn in earlier?

9 MR. WARWICK: I did, at 9:30.

10 CHAIRPERSON HILL: Okay.

11 MR. WARWICK: Yeah. Actually, sorry, 9:43, I
12 think.

13 CHAIRPERSON HILL: Okay. That's all right.
14 That's great. All right.

15 Can I get your name, please?

16 MS. ROTTMAN: Emilie Rottman, architect at
17 Square 134.

18 MR. SCHNECK: Ron Schneck, Square 134
19 Architects.

20 MR. BRAWNOHLER: Peter Brawnöhler representing
21 Villa Park 1.

22 MS. MOLDENHAUER: Meredith Moldenhauer from
23 the law firm of Cozen & O'Connor on behalf of the
24 applicant.

25 CHAIRPERSON HILL: Okay. So, I'm sensitive to

1 the commissioner's time, in terms of when you need to
2 leave. Do you know when you think you might need to
3 leave?

4 MR. WARWICK: I also have a conference call in
5 13 minutes that I was hoping to make.

6 CHAIRPERSON HILL: Okay. Okay. Okay. Okay.

7 MR. WARWICK: If it would be okay if -- they
8 can start, and if I could speak earlier than normal,
9 I'd --

10 CHAIRPERSON HILL: Sure, sure, sure. Sure.

11 I'm trying to just figure it out real quick.
12 So, the Commissioner is here in support. Okay. All
13 right. So, why don't you go ahead and start, okay?

14 MS. MOLDENHAUER: I just want to -- an update
15 maybe, that might help the Board.

16 CHAIRPERSON HILL: Well, first of all, if you
17 want to answer Mr. Moy's question in terms of the
18 application.

19 MS. MOLDENHAUER: So, as indicated on our
20 PowerPoint slide, we have modified the relief based on
21 OP's suggestion to include Subsection C-202, for
22 expanding an existing nonconforming structure. We
23 have also just from a clarification perspective, we
24 have reduced the relief. The application initially
25 was requesting 0.23 degree relief from FAR, and based

1 on the revised calculation we are actually only asking
2 now for 0.09 relief from FAR.

3 That being said, given the fact that it is
4 late in the day, or early evening as OP indicated
5 earlier, I've had actually a lot of time to be able to
6 have conversations with OP about our supplemental
7 filing that we filed earlier this week. And not to
8 put words in OP's mouth, but we have had positive
9 conversations. OP I believe, based on our
10 supplemental filing and the additional evidence from
11 EHT Traceries, believes that we are a unique property
12 and that we have a practical difficulty.

13 They still have a concern about the third
14 prong, but that being said I would be willing to turn
15 it over to the ANC, allow them to testify in support.

16 I believe they're also going to identify some of the
17 issues on that third prong, and then we can jump in
18 and go through our presentation.

19 CHAIRPERSON HILL: Okay.

20 MS. MOLDENHAUER: If that is okay with the
21 Board.

22 CHAIRPERSON HILL: Okay. I'm just going to
23 jump around, then, do this a little backwards, even
24 though I think we're okay.

25 So, is there anyone here wishing to speak in

1 support? Is there anyone here -- well, other than the
2 ANC.

3 Is there anyone here wishing to speak in
4 opposition? Okay.

5 I just wanted to get that out of the way just
6 in case. And so, if you would go ahead, Commissioner
7 and give -- I'm going to put five minutes on the clock
8 for you, even though you don't have to take them all,
9 and feel free to give your testimony so that you have
10 an opportunity to go and continue to serve our fine
11 city.

12 MR. WARWICK: Great. Thank you so much,
13 Chairman Hill and members of the Board.

14 My name is Daniel Warwick. I live at 2146
15 Florida Avenue Northwest. I'm Vice Chair of ANC 2B
16 and Chair of our Zoning, Preservation, and Development
17 Committee. And I'm going to say something you don't
18 normally hear much from ANCs, although you have today,
19 that I urge you to approve this variance.

20 You received our resolution, but the reason
21 I'm here and stayed throughout the day, is to provide
22 some more context to our unanimous resolution and
23 support of the project.

24 You know, ANC 2B has a two-step process as we
25 review BZA cases. They come to our Zoning,

1 Preservation, and Development Committee first, and
2 where we take a deep dive on the project, make sure
3 we're reaching out to neighbors. And then they come
4 to our full ANC meeting, and I chair that first
5 committee.

6 On this project, we were initially concerned
7 with impacts on neighbors in our historic district.
8 But you know, we received more letters of support from
9 neighbors about this application than most of the
10 applicants that we see. We were concerned with some
11 of the shadows that would be cast by the addition.
12 But we saw the shadow study and I visited the site. I
13 made a second stop last night and you know, those
14 windows are shadowed anyway, just because of how the
15 building was built.

16 You know, our resolution of support was brief
17 because this variance seemed like a pro forma no-
18 brainer. That's why you didn't see much of the
19 additional context in there. Of course, when we saw
20 the Office of Planning staff report, I wanted to come
21 here and make sure that you got to hear from us why we
22 care about this project.

23 You know, I personally see this project as a
24 case study of the housing affordable crisis in our
25 neighborhood and city. You know, all this project is

1 doing is filling in decks that already exists, and
2 there is a minimal addition. And it's all on the
3 back. You know, the building already reads at a floor
4 area ratio of 2.37, and it has read that way for 100
5 years. By approving an additional variance of the
6 floor area ratio, it's a variance of under four
7 percent that was revised. You'll be allowing the
8 creation of four additional dens, which will be able
9 to function as bedrooms and provide family housing.

10 And, you know, I'm not sure how many board
11 members watch Dr. Who, but this project is like a
12 TARDIS. The building reads the same, but it's bigger
13 on the inside so more people can live in our historic
14 district and our neighborhood. Apparently, none of
15 you are nerds like me.

16 You know, it's really hard to add more
17 bedrooms in housing in DuPont Circle and in historic
18 districts, and especially family sized units. You
19 know, the reason we have a BZA is that sometimes
20 common sense needs to roll over some of the
21 technicalities of the zoning rules and regulations.

22 This project is a completely noninvasive way
23 of adding housing, and it's really small decisions
24 like this that can help out with our housing
25 affordable crisis. You know, I understand there's a

1 three-part test, exceptional situation, creating a
2 practical difficulty, no substantial detriment to the
3 public good, and no substantial harm to the zoning
4 regulations.

5 And I'm going to let the lawyers speak about
6 the three-part test. But just talking from the
7 neighborhood perspective, DuPont Circle was developed
8 before we had zoning in D.C., and especially before
9 the zoning regulations of 1958. You know, this
10 building and the proposed renovations were made
11 illegal in 1958, when it was already a historic
12 building. You know, the part of the test, the third
13 part about no substantial harm to the zoning
14 regulations, you know, when applied to DuPont Circle,
15 you know I view as somewhat interesting in this regard
16 because arguably the 1958 zoning regulations is what's
17 doing the substantial harm. It's not this building
18 and filling in kind of the rear porches.

19 And I, on behalf of ANC 2B, would like to urge
20 you to support the variance as proposed. And I'm able
21 to answer any questions as well.

22 CHAIRPERSON HILL: Okay, great. Well,
23 Commissioner Warwick, thank you very much for your
24 well thought out thoughts. I'm sure we're all nerds
25 in different ways, although I'm going to look up now

1 whatever that item is from the television show. At
2 least I know what the television show is.

3 MR. HART: Mr. Chairman, I will say, I know
4 what a TARDIS is. So, I -- and actually, I thought
5 about it. If this was a TARDIS you probably wouldn't
6 need a variance because you could fit everything in
7 because it's, you know --

8 MR. WARWICK: That is correct, and I would
9 like to say that that comment was actually brought to
10 the ANC by someone who was talking about the
11 difference between cellars and basements, and saying
12 that when there's a cellar there that it's like a
13 TARDIS. It's adding more space where there really
14 wasn't. So, I'm reappropriating his statement.

15 MR. HART: As long as there are no dialects in
16 the basement.

17 MR. WARWICK: Oh, I hope not.

18 MR. HART: Okay.

19 CHAIRPERSON HILL: Oh, is that late? Is it
20 that late? It's that late?

21 MS. WHITE: It is.

22 CHAIRPERSON HILL: Wow.

23 MR. HART: You went there, and I had to go
24 there. Okay. I'm sorry.

25 CHAIRPERSON HILL: It's that late.

1 MR. HART: Yes.

2 CHAIRPERSON HILL: Wow, I love it. Okay.
3 Office of Planning is going to have something to say
4 about that. All right.

5 Okay. Thanks so much. Hold on before you go,
6 does anybody have any questions other than Dr. Who?

7 [No audible response.]

8 CHAIRPERSON HILL: Okay. All right. Really,
9 thanks for coming down. I mean, I mean, you know, I
10 think that it is a huge sacrifice to be here for this
11 long, and now you're going to go to the ANC meeting.
12 And you obviously care a tremendous amount about your
13 neighborhood, and so, that's great. And so really,
14 you know, I appreciate your service. So.

15 MR. WARWICK: I appreciate it too, and you
16 know, it's good for me. Last year I stayed almost
17 this long and ran into someone who is now my
18 girlfriend because of the BZA, so --

19 CHAIRPERSON HILL: Oh, wow.

20 MR. WARWICK: -- I congratulate you for that
21 as well.

22 CHAIRPERSON HILL: There you go. All right.

23 MR. WARWICK: Hopefully that's not happening
24 now, I already have one.

25 CHAIRPERSON HILL: All right. I don't know.

1 Okay. All right. It is that late. Okay.

2 All right. So, we're back to you, Ms.
3 Moldenhauer in terms of any kind of presentation you
4 would like to make. I think you've started and we've
5 gotten pretty far with it in general, however there
6 are all of the issues that the Office of Planning is
7 going to want to talk about, and we're going to have
8 to -- or, we're going to want to discuss that with
9 them.

10 So, that being the case, I'm just going to put
11 five minutes on the clock just for now. Is that
12 enough time to kind of hit the highlights? Or do you
13 need a little bit more time.

14 MS. MOLDENHAUER: No, I think we can kind of
15 focus, probably maybe on the third prong, and address
16 that.

17 CHAIRPERSON HILL: Okay. Because obviously
18 we're going to -- it's going to be the issue with the
19 Office of Planning at this point that we're going to
20 kind of struggle with a little bit in terms of the
21 FAR.

22 MS. MOLDENHAUER: As I said, I think we had a
23 conversation about the first prong being unique,
24 satisfying that, the practical difficulty. Now the
25 question is more on the question of the third prong.

1 CHAIRPERSON HILL: Okay. All right.

2 MS. MOLDENHAUER: So, we will address that.

3 CHAIRPERSON HILL: So, I'm going to put five
4 minutes on the clock just for now. If you need more
5 time you can take it. It's just really so I can get
6 home at some point.

7 MS. MOLDENHAUER: Thank you. So, I will --
8 we've already identified and clarified the relief
9 requested. I will go into some legal arguments at the
10 end, but I'll first turn it over to the representative
11 from the property owner to summarize some of the
12 outreach and some of the overall character of the
13 surrounding area.

14 MR. BRAWNOHLER: Sure. Thank you. And thanks
15 for you guy's attention and energy throughout the day.
16 It's pretty impressive.

17 My name is Peter Brawnöhler. I work for
18 Commonwealth Residential and represent the owner of
19 the property, Villa Park.

20 We purchased 1902 in July 2016, almost a year
21 ago. We're excited at the opportunity to renovate and
22 own a property that's located only half a block from
23 the commercial corridor of Connecticut Avenue, less
24 than two blocks from DuPont Circle, and within the
25 DuPont Circle Historic District.

1 This property has a history of being a single-
2 family dwelling, an apartment building, and of having
3 an accessory medical office. It also has a history of
4 bedrooms being subleased from time to time. Our plan
5 is to renovate the structure and four units, as you've
6 heard, and maintain the property in the future.

7 Can we look at Slide 5? There we go. You
8 guys can see from this slide, we are in the RA-8 Zone.

9 But there are very large apartment buildings kind of
10 on all sides of the property. You can see to the
11 west, towards Connecticut Avenue is an eight, eight-
12 floor structure, as well as across the street. And
13 just out of frame to the east, on the corner of 19th
14 and R, is another eight-story apartment building in
15 the RA-8 Zone.

16 The properties directly adjacent, 1904 R
17 Street, is, let's see, 34 feet wide. It's a
18 condominium building. The apartment at 1906 R Street
19 is 26 feet wide. And the apartment at 1912 is 25 feet
20 wide. And for some reason, the addresses skip from
21 1906 to 1912, there.

22 In February this year, shortly after we
23 decided to submit the concept for HPRB review, I began
24 communicating with the neighbors about the details of
25 the plan, and to date we've received seven letters of

1 support, including the directly adjacent neighbors at
2 1900 and 1904 R Street, the neighbors at 1906 and
3 1912, and also gained support from a neighbor at 1628
4 19th Street, around the corner, and the business owner
5 at 1627 Rear Connecticut Avenue, whose building is
6 located almost directly behind our structure.

7 I also sent out letters to the owners of the
8 bordering properties in 19th Street and distributed to
9 their mailboxes, numerous flyers describing our plan.

10 And because of multiple mailboxes at each of these
11 buildings, it looks like these bordering properties on
12 19th are all apartments.

13 And, as Commissioner Warwick pointed out, you
14 can see from the letters of support, a common theme
15 that the neighborhood would like to see more family
16 sized units.

17 And to go into March of this year, we
18 submitted our plans to HPRB, DuPont Circle
19 Conservancy, and the ANC of course. We received
20 support, and were on the consent calendar for HPRB;
21 received support from the DuPont Circle Conservancy,
22 and twice supported by the ANC, once for the design
23 aspect and the second time for the zoning aspects.
24 And for both ANC resolutions we received the unanimous
25 vote of the board members.

1 Thank you guys, for your time today. I'll
2 turn it over now to our architect, if necessary.

3 MR. SCHNECK: Hi, again, Ron Schneck, Square
4 134 Architects. We're going to try to do a quick one
5 here.

6 Just wanted to sort of talk a little bit about
7 the sort of, you know, uniqueness of this property.
8 So, what this slide shows is sort of an image at the
9 front façade and an image of the rear façade. Again,
10 sort of the overall design goal for this project is to
11 provide you know, a sort of historic reworking of the
12 existing building.

13 At the front, we're basically just will be
14 providing, you know, new windows and any required
15 repairs. Everything else we're going to, you know,
16 just leave as is. It's important to note this is a
17 sort of a unique building with the center entry, and
18 that as I'll discuss later, creates sort of real
19 challenges for the interior layout.

20 Going to the image of the rear façade, you can
21 see that there are large balconies to the left. Those
22 are existing and they are currently contributing to
23 FAR. Also, and it's a little hard to see, but you can
24 see faintly the first and second floor. Those are
25 actually existing windows that have been covered up.

1 And to keep with sort of the overall design goal, what
2 we're doing is to you know, go a little bit back in
3 history and open those up and provide those existing
4 openings for the first and second floor, as well as
5 providing a sort of better proportioned addition than
6 what is currently there.

7 This next slide, basically shows the split
8 zone between the MU-4 and the RA-8. What's important
9 to note here is you know, just the very close
10 proximity that we are to the commercial core. As you
11 can see highlighted, you know, we're a lot and a half
12 away from the back of the MU-4 Zone.

13 Sort of just to summarize, what we're seeking
14 for is to in-fill the existing balconies on the rear
15 in order to develop the property by providing four
16 larger sized units. And as Peter has mentioned, this
17 is sort of consistent with what the neighbor is
18 looking for.

19 In addition, the addition itself, everything
20 is completely contained in the existing footprint. We
21 believe it does not have a significant impact on the
22 surrounding properties. Again, historic elements of
23 the property both inside and out are being retained as
24 much as possible. And also, as mentioned, we have
25 HPRB and the ANC support.

1 What I'd like to sort of address here is sort
2 of the challenges that we are creating in order to
3 sort of keep a lot of the existing historic elements.
4 So, we have the first floor and the second floor.
5 What's important. You know, so we're trying to
6 maintain as many historic elements as possible. The
7 stair, the core circulation, the front façade, entry,
8 and the openings. And all of these things make for
9 sort of a-typical unit layouts.

10 So, for example on the first floor, the lower
11 image on the page, you can see how the existing entry
12 and stair really forces sort of most of the usable
13 square footage to the middle and the rear of the
14 property, you know.

15 Similarly, on the second floor, the existing
16 stairs, size, location, and configuration, really sort
17 of justifies a lot of the usable square footage, sort
18 of immediately to the front more space than we need
19 for a bedroom. And then also forces, again, the
20 usable square footage to the rear.

21 Next slide, I won't go into detail. Similar
22 at floors three and four.

23 MR. SHAPIRO: Mr. Chair, can I interrupt for a
24 sec?

25 CHAIRPERSON HILL: Sure, of course.

1 MR. SHAPIRO: Thank you. I just want to be
2 clear because there's the -- my understanding is the
3 conversations that you've had with OP, do the
4 conversations that you've had with OP and what you
5 might be coming to us with in a matter of minutes,
6 does that change anything that you're talking about
7 here? Are you proposing something that won't be --
8 that will be changed at all based upon these
9 conversations?

10 MR. BRAWNOHLER: No, sir.

11 MS. MOLDENHAUER: No, I mean, the relief is
12 obviously reduced and OP understands that reduced
13 degree of relief. I think in the original OP report
14 they did not find that the property was unique. But
15 with the supplemental tracers expert testimony about
16 the stair and the historic element of that, and I
17 don't mean to speak on behalf of OP, but based on our
18 conversations they now find that the first prong is
19 met and the second prong was met. But it's mostly
20 then the question of the impact, potentially, to the
21 zone plan.

22 But I think that it's important to understand,
23 then, what the -- the challenges of the property, and
24 how those create the uniqueness and the practical
25 difficulty, in order to understand the reduced level

1 of impact to the zone plan.

2 CHAIRPERSON HILL: Okay.

3 MS. MOLDENHAUER: But if we want, we can jump
4 through a little bit of this and then get to --

5 CHAIRPERSON HILL: Yeah, we can -- that's all
6 right. I'm just going to interrupt the interruption.

7 As quickly -- we've reviewed the record and we
8 know actually what's going on. And so, what I'm
9 trying to get at is that I would like to hear -- if
10 we're going to continue to talk about Office of
11 Planning like they're not in the room, like, you know,
12 we'll go ahead and turn to the Office of Planning
13 pretty soon, right. And then because as far as I can
14 see, you've still got 0.09.

15 So, the fact that you can't find 0.09, if you
16 want to just focus on that, that might be a way before
17 we get to the Office of Planning, because you know, I
18 know the argument concerning the core factor and the
19 historical staircase and things like that. So, you
20 can go with that one or -- so, I'd like to hear about
21 the 0.09 and how you as an architect can't find me
22 0.09 so that your client can go home and I can go
23 home.

24 MS. MOLDENHAUER: Okay. So, why don't you
25 just jump to the specific illustration of how the

1 stair impacts the 0.09, or rather, the 203 square feet
2 as compared to the 250 square feet that the stair
3 takes up.

4 MR. SCHNECK: So, the 0.09 is just what is
5 after many, many tries at trying to get it to fit
6 properly. It's just, we're not able to get anything
7 to fit. And so, what these diagrams show, both on
8 slide 17, and then also slide 18, is just the sort of
9 magnitude of what we have when we start keeping the
10 existing stair, the existing entry, the you know,
11 elements to the façade, to the existing fireplaces.
12 And if you can sort of, I'll go sort of one by one.

13 So, for example, on the second -- from the
14 first floor you can see the red is basically the
15 existing sort of circulation, and the blue is, you
16 know, what would be sort of a more typical
17 circulation. And as you can see, there's just a lot
18 of square footage that we're having trouble finding.

19 MR. SHAPIRO: Okay, Mr. Chair, so the blue
20 there, that blue is just to give us an idea of what
21 normal would be.

22 MR. SCHNECK: What a typical sort of
23 circulation would provide, correct.

24 MR. SHAPIRO: Thank you.

25 MS. MOLDENHAUER: And, Ron, just to kind of

1 jump to the chase.

2 MR. SCHNECK: Yeah.

3 MS. MOLDENHAUER: If you were to have a
4 standard stair, in comparison to the lost square
5 footage of the existing stair, what is the difference
6 between those two numbers?

7 MR. SCHNECK: The difference is 250 square
8 feet.

9 MS. MOLDENHAUER: And the relief, the 0.09 FAR
10 equates to what square footage?

11 MR. SCHNECK: In terms of numbers, or where
12 it's located?

13 MS. MOLDENHAUER: In terms of square footage.
14 So, the --

15 MR. SCHNECK: 203 square feet.

16 MS. MOLDENHAUER: And part of the challenge
17 also is, can you just elaborate on some of the areas
18 of FAR that are counted towards FAR here in this
19 building, which are then obviously not usable at all
20 given, based on the unique condition of the lot?
21 Mostly the northern property line and party wall.

22 MR. SCHNECK: So, one unique condition here is
23 the property line actually to the east, the east party
24 wall --

25 MS. MOLDENHAUER: This property. I'm

1 highlighting it right now.

2 MR. SCHNECK: Correct. Yes. So, the east
3 property wall, that technically counts towards all of
4 our FAR because there is no adjacent structure to it.
5 So, between the additional sort of square footage
6 with the stair, and with the party wall, and with the
7 balconies, these are all areas that we just -- it
8 creates very difficult challenges with getting a
9 proper layout.

10 MR. HART: Can you --

11 MS. MOLDENHAUER: And so I'm --

12 MR. HART: I'm sorry. Can you just repeat
13 what you just said?

14 MS. MOLDENHAUER: So, I'll just, I'll
15 summarize that.

16 MR. SCHNECK: Okay.

17 MS. MOLDENHAUER: So, the wall that I'm
18 highlighting right now --

19 MR. HART: Which slide?

20 MS. MOLDENHAUER: Side 17.

21 MR. HART: Slide 17?

22 MS. MOLDENHAUER: Yes. The east wall.

23 MR. HART: Okay.

24 MS. MOLDENHAUER: When you look at the
25 definitions for far, because it's not a party wall,

1 and it does not connect to another abutting structure,
2 there's actually a gap between our building and the
3 other building that then fronts on 19th Street, we
4 actually have to count the thickness of that wall all
5 the way through and actually beyond our property line
6 in to FAR.

7 And so, it is just another factor as to the
8 fact that -- and given the history of this building,
9 you can see that the depth of that wall is much larger
10 or deeper than would typically be the case. And so,
11 that is just another factor in regards to loss of FAR
12 that you're seeing on the page, in regards to what
13 you're seeing in the relief, and actually is that
14 usable or practical FAR. And we believe that a lot of
15 that is not.

16 So, in regards to a third prong, we do not
17 believe that then the relief that we're requesting
18 from the .09, would have an adverse impact to the zone
19 plan of the zoning regulations.

20 And that being said, I'm just, I'm going to
21 jump now to some of our legal arguments and --

22 MS. ROTTMAN: If I may?

23 MS. MOLDENHAUER: Sure, please. Jump in.

24 MS. ROTTMAN: Just to clarify, the thickness
25 of the wall that exceeds the property line adds up to

1 33 square feet per floor.

2 MR. HART: It adds up to how much?

3 MS. ROTTMAN: Thirty-three square feet per
4 floor.

5 MR. HART: Okay. So, you're looking at four
6 times that or like 100 and --

7 MS. ROTTMAN: Yeah.

8 MR. HART: I don't know how many. I might --
9 do it 140, something like that?

10 MS. ROTTMAN: Yeah.

11 MS. MOLDENHAUER: So, 140 is about a little
12 over half of what we're asking, then, from an FAR
13 perspective.

14 So, that being said, I'm just going to jump
15 through then to kind of finalize our legal argument.
16 We are asking for a variance from FAR and a variance
17 from an expansion of a nonconforming structure. We
18 believe that the relief is de minimis, and as the
19 Court of Appeals has indicated, de minimis relief is
20 then permitted to have a reduced standard of relief.
21 And let me just jump to a case citation, in that
22 regard.

23 On remand in the *Stuart V. Zoning* hearing
24 case, and also in the case of *Gilmartin*, the Court of
25 Appeals found that the BZA may consider whether a

1 variance sought is de minimis in nature and whether
2 for that reason a corresponding lesser burden of proof
3 rests on the intervener, or rests on the applicant.

4 And so here, we believe that the 0.09 is de
5 minimis. We also believe that based on that, when
6 you're looking at the variance standard, we have
7 satisfied the uniqueness. The uniqueness is the
8 narrowness of the property as presented in our
9 supplemental and our prehearing statement, as well as
10 the additional expert testimony or expert report by
11 EHT Traceries, which identified the historic nature of
12 the existing structure of the stair, and of the
13 overall floor joists, and the fact that the inability
14 to demolish that percentage of the floor joists or the
15 stair would rise to a level where it would no longer
16 be permitted under the Preservation Act.

17 We understand that historic districts in and
18 of themselves do not give rise to unique conditions.
19 However, there are cases in which it is said that
20 those factors can create a challenging situation, as
21 we believe it does here, creating a practical
22 difficulty for a configuration.

23 We also believe that the practical difficulty
24 is in regards to the configuration of usable space in
25 the building, on the building's floorplate, dividing

1 the entire floorplate by the stair, bifurcating the
2 space that could then be usable, and creating a
3 significant amount of unusable or wasted space for
4 which the FAR relief is being requested.

5 In addition, the additional FAR we don't
6 believe creates an impact on the zone plan because the
7 FAR is not expanding beyond the building envelope. I
8 think that that's a very important point. When we're
9 talking about the zone plan, we actually, we typically
10 think about it in kind of three buckets, height, lot
11 occupancy, and FAR.

12 Here, the building is compliant with height.
13 We are not increasing the FAR beyond what it was
14 originally. We are not increasing the envelope, but
15 we are asking, we believe, for a de minimis amount of
16 FAR, not above what is directly proportionate or
17 approximate to our practical difficulty.

18 I already went through the unique conditions
19 in the Traceries report. The reduced standard, we
20 have a slide here that the Board has already reviewed.

21 And so, in that regard, and we also obviously, as the
22 Board is aware, we had ANC support and many letters of
23 support from abutting property owners.

24 With that, I will rest and if there's any
25 rebuttal or additional questions.

1 CHAIRPERSON HILL: Okay. Before I turn to the
2 Office of Planning, does anybody have any questions
3 for the applicant now?

4 MR. HART: Yeah, just one.

5 CHAIRPERSON HILL: All right.

6 MR. HART: And I understand that you want to -
7 - and I'm not sure who I'm -- any of you can answer
8 the question. I understand that you want to expand
9 the fourth floor, and I understand that it is as a
10 unit, you wouldn't be able to do a two-bedroom unit if
11 you didn't expand the -- it would just be a one-
12 bedroom unit on the fourth floor. But that actually
13 could, if you did not do that expansion, you would be
14 within the FAR?

15 If you did -- if you had all of the renovation
16 on the first, second, and third floor, and did not
17 have the expansion into the -- back on the fourth
18 floor, that you could do the -- you could be within
19 the FAR for the building.

20 MS. MOLDENHAUER: The third floor also, part
21 of the third floor also contributes to the additional
22 requested relief.

23 MR. HART: So, it is more than --

24 MS. MOLDENHAUER: It is the third and the
25 fourth floor additions that contribute to the FAR

1 relief.

2 MR. HART: Okay. All right.

3 MS. MOLDENHAUER: I think we -- the third and
4 the fourth floor that contribute to the FAR relief
5 requested.

6 MR. HART: Okay.

7 CHAIRPERSON HILL: Okay. So, I'm going to
8 turn to the Office of Planning. And yeah.

9 MR. MORDFIN: Okay. I think I can say good
10 evening this time.

11 CHAIRPERSON HILL: You most certainly can.

12 MR. MORDFIN: I'm Stephen Mordfin with the
13 Office of Planning. And since this report was written
14 and filed, the applicant has filed some additional
15 items into the file. And the first one I find has
16 something to do with the first prong of the test,
17 exceptional situation resulting in a practical
18 difficulty.

19 Initially, I had discussed this with historic
20 preservation, and they didn't see anything
21 significant. They didn't see that you needed to
22 preserve the staircase.

23 However, since then the applicant has filed
24 the traceries report, which indicates what would
25 happen if you remove that staircase, and what effect

1 that would have on the building, and I don't think
2 that was how it was initially perceived. I've not
3 discussed this again with Historic Preservation. So,
4 going on with what the Tracerics report said, and that
5 was result in a substantial demolition of the building
6 if you were to take that out just because of the way
7 it's constructed.

8 So, based on that, I find that there is an
9 exceptional situation, because they cannot design a
10 new staircase and put it in there that would be more
11 efficient in terms of the core factor of the building.

12 So, in that case, I do find that there is an
13 exceptional situation, results in a practical
14 difficulty that they cannot better use the space that
15 they have.

16 As for the second criteria, or the prong, no
17 substantial detriment to the public good. The
18 applicant's property -- not the applicants. The
19 adjoining property owners on either side have
20 submitted letters in support, and in addition the ANC
21 is in support of this. And I don't find -- and then
22 there's also the shadow study that the applicant
23 submitted, indicating that this is not going to result
24 in undue hardship, or unduly affect light and air.

25 So, for those two I find that the applicant

1 could meet those criteria. The third one is one where
2 I still am not in agreement with the applicant in that
3 there is no substantial harm to the zoning
4 regulations. The RA-8 Zone, which is what this is
5 located in, has a maximum FAR of 1.8. Granted, this
6 building exceeds that at, I think, 2.28, and I that's
7 how it was built. It was built that way legally. So,
8 therefore, it can continue that way.

9 However, as is stated in the report, the RA-9
10 permits you to exceed that up -- not to exceed that.
11 Go up to 3. -- I'm sorry, I forget the number.
12 Something like 3.5.

13 So, if you were to, today, build that
14 building, you would not be able to build it as it is
15 today, because it would exceed the FAR. You would
16 have to be zoned RA-9 to build it by-right that way,
17 or request a variance as they have in this case.

18 So, right now, the way I see it, I don't have
19 issues with the first two prongs. It's the third
20 prong that I don't see that the applicant is in
21 conformance with.

22 CHAIRPERSON HILL: Okay. Does anybody have
23 any question of the Office of Planning?

24 MR. SHAPIRO: I do have a question. I'm
25 sorry.

1 How do you respond to the de minimis argument?

2 MR. MORDFIN: I don't know what de minimis
3 means, unfortunately. I know that there's two percent
4 that the Zoning Administrator is allowed to take, but
5 if that were the case then they wouldn't be here.
6 They would just apply for their permits.

7 I don't know the definition of de minimis. I
8 don't know what to -- how to use that term.

9 MS. WHITE: What year was that case decided,
10 that --

11 MS. MOLDENHAUER: The *Gilmartin* case?

12 MS. WHITE: Yeah, that talked about the whole
13 de minimis issue. Was that recent?

14 MS. MOLDENHAUER: So, the *Gilmartin* case was
15 actually decided in 1990. However, this Board has
16 reviewed the de minimis standard and has identified de
17 minimis in other cases as well. There was a case,
18 19255, at Frazer Court, which was actually another
19 case that we cite that was an FAR case. It was an
20 existing nonconforming FAR in the -- where a 1.8 FAR
21 was permitted. And 2.38 was existing. And 2.46 was
22 proposed. In that case OP also recommended denial,
23 and the Board ended up granting it, basing it off of a
24 de minimis argument for the 0.08, and then the 0.01
25 degree of FAR relief that was argued.

1 And that case was just in 2016. June 8th of
2 2016. It was the -- it was an alley structure where
3 there was an argument in regards to the La Enfant plan
4 and inabilities to -- there was also challenging
5 stairs in that case as well.

6 But then there is another case. A case,
7 19119, Warder, LLC, where there was a de minimis
8 argument where the Board also disagreed then with OP's
9 position and applied a reduced standard. And that was
10 actually on the RF-900 square foot requirement, where
11 there was a nine-foot delta, which equates for a, I
12 believe that was a two percent -- was that two
13 percent degree of relief?

14 And to just reference the comment about the
15 ZA, the ZA no longer has authority to grant two
16 percent deviation from FAR.

17 CHAIRPERSON HILL: The ZA used to have
18 authority to present -- to do two percent deviation
19 from FAR?

20 MS. MOLDENHAUER: Yes. The ZA used to have
21 two percent --

22 CHAIRPERSON HILL: When did that change? When
23 did that change?

24 MS. MOLDENHAUER: ZR-16.

25 CHAIRPERSON HILL: Okay.

1 MS. MOLDENHAUER: The ZA would have authority
2 to grant two percent deviation from any of the area
3 requirements. Under ZR-16 it changed to very, very
4 specific lot area, rear yard. I don't even think he
5 can give deviations from court requirements. It's
6 been much --

7 CHAIRPERSON HILL: Okay. Okay.

8 MS. MOLDENHAUER: -- it's been narrowed.

9 CHAIRPERSON HILL: Okay. And, Mr. Mordfin, I
10 see you nodding. So, is that correct?

11 MR. MORDFIN: Yes, that is correct.

12 CHAIRPERSON HILL: Okay. Thank you. Mr.
13 Mordfin, I have a question. So, again, and this is
14 just to be clear that I'm on the same page, we're
15 talking about 0.09 increase of FAR. Are you in
16 agreement with that analysis?

17 MR. MORDFIN: Yes. 0.09 increase from the
18 existing to the proposed.

19 CHAIRPERSON HILL: Okay, right. From the
20 existing to the proposed. Okay. Just making sure
21 we're on the same page.

22 All right. Yeah, does anybody have any more
23 questions?

24 MR. HART: Just one little piece of
25 clarification. Mr. Mordfin, are you also saying that

1 if this were 0.05 or 0.02 increase that the Office of
2 Planning would be against that as well. Or is there -
3 - I'm not trying to put you on the spot, I'm just
4 trying to understand if there's no, you know, number
5 that you're looking at if it is, you know, whatever
6 that hard line is for that zone, or if there is some -
7 - any sort of leeway.

8 MR. MORDFIN: Well, FAR is very difficult
9 because it does relate to the size of the building and
10 to the zone in which the property is located in. And
11 so, we usually take a very hard line at FAR
12 applications to see whether or not they are justified
13 or not. If it were a 0.2 or a 0.5, I don't have that
14 case before me, I can't speak to that. But we do look
15 very hard on FAR variance.

16 MR. HART: Thank you.

17 CHAIRPERSON HILL: I'm going to follow this
18 question just for a little bit more. So, the -- and I
19 know that the Office of Planning is, it is a very
20 difficult thing for the Office of Planning to agree
21 with the analysis in order to increase the far. Have
22 you -- I mean, does it ever happen?

23 MR. MORDFIN: I'm sure it does. I --

24 CHAIRPERSON HILL: Right. Okay, that's fine.

25 MR. MORDFIN: I can't think of any off the top

1 of my head --

2 CHAIRPERSON HILL: Okay. I was just --

3 MR. MORDFIN: -- at the moment. I think it
4 does happen, but --

5 CHAIRPERSON HILL: I mean, I know it's late at
6 night. But so, so to -- I'm answering my own
7 question, which is that yes, it's very unlikely that
8 the Office of Planning would consider that in terms of
9 also the third prong.

10 So, back to -- anybody have any other
11 questions for the Office of Planning? Okay. Does the
12 applicant have any questions of the Office of
13 Planning?

14 MS. MOLDENHAUER: The Office of Planning is
15 aware that the property is on a split zone and half a
16 block from Connecticut Avenue.

17 MR. MORDFIN: Yes. Well, that square is split
18 zoned, yes.

19 MS. MOLDENHAUER: Sorry, I keep on saying
20 that. I'm sorry. The square is split zone.

21 There is BZA case 17446 where the Board and
22 the applicant kind of looked at the surrounding
23 neighborhood and whether the increase would impact the
24 neighborhood in that regard or be visible in any way
25 in regard to density. Is it your understanding that

1 from an exterior perspective there would be no way to
2 be able to see or read any of the far relief here?

3 MR. MORDFIN: From the street, you wouldn't
4 see anything. You might be able to see something from
5 the alley in the rear. But from the front, I don't
6 think there would be any changes to the façade.

7 MS. MOLDENHAUER: And, the four units, it's
8 OP's understanding that the building had previously
9 been six units, and had previously been other
10 apartment buildings, and this is four units, which is
11 actually a reduction in the number of units that would
12 be proposed.

13 MR. MORDFIN: It would be, yeah, it would be a
14 reduction from I think the number of units that were
15 there. Pre-1985, I believe.

16 MS. MOLDENHAUER: And OP agrees that given the
17 neighborhood and the historical aspect in DuPont, that
18 a lot of the surrounding buildings are already over
19 FAR in the surrounding, in you know, community. So,
20 I'll pull up an image. I'm going the wrong -- oh, I'm
21 going the wrong way.

22 So, yeah. Even like the right-hand side, that
23 large apartment building is in the same RA-8 Zone.
24 You can see the footprint of that building in the
25 aerial view here. Is that your understanding,

1 obviously of then the surrounding neighborhood in
2 regards to how this property would be in comparison to
3 that from an impact on the zone plan?

4 MR. MORDFIN: Well, there are other
5 nonconforming structures in the neighborhood for the
6 bulk regulations.

7 MS. MOLDENHAUER: No other questions.

8 CHAIRPERSON HILL: Okay. Just finally for the
9 Office of Planning I guess. Again, if they weren't
10 going above the -- if they were keeping the FAR at the
11 nonconforming rate that it is now, Office of Planning
12 wouldn't have any issue.

13 MR. MORDFIN: That is correct.

14 CHAIRPERSON HILL: Right. Okay. All right.
15 Back to the applicant here. So, yeah. So, I'm still
16 a little -- I mean, I think it's a very interesting
17 case. I think the design is very interesting. I
18 guess, I'm still kind of struggling with how you can't
19 find the 0.09. In terms of, if you want to show me
20 again or you know, what Vice Chair Hart here was
21 talking about in that the fourth floor -- I mean, I
22 don't know what the design looks -- you know, if you
23 don't get approved, right, you would have to lower the
24 FAR, right? So, what would you end up doing is
25 basically what I'm curious of.

1 MS. MOLDENHAUER: So, I mean, Ron can walk
2 through that, but I mean, the issue is, you know, the
3 practical difficulty as it relates then directly to
4 the uniqueness of the property, and not what we could
5 or could not do it. It's a question of, you know,
6 does the uniqueness create a practical difficulty.

7 I think, you know, and Ron can walk through,
8 yes, you know, it could be built without the relief,
9 but the question here is, is there a practical
10 difficulty and then, would that practical difficulty
11 create an impact on the zone plan and the zoning
12 regulations.

13 So, I'll let Ron kind of walk through some of
14 the challenges, and maybe we can also go through the
15 unit layout and what happened if the property did not
16 have these conditions. So, where was that?

17 MR. SCHNECK: So, just to sort of follow up on
18 your original question, the square footage does not
19 quite equate just to what is on the fourth floor. We
20 would then have to take additional square footage out
21 of the lower floors, which would make it that much
22 more --

23 CHAIRPERSON HILL: Can you show those plans?

24 MR. SCHNECK: Yeah, sorry.

25 MS. MOLDENHAUER: I'm trying to find it.

1 Okay.

2 CHAIRPERSON HILL: And again, as far as the
3 variance test, I understand the variance test. And
4 just kind of getting to the -- the third prong is now
5 what the issue is, that the building is already
6 nonconforming. You're already getting more FAR than
7 you would have gotten anyway, and the Office of
8 Planning is now saying that you know, 0.09 more -- and
9 again, I appreciate the Commissioner coming down, the
10 project itself. It seems like such a small amount
11 that also if you could stop -- if you could, you know,
12 take that small amount of FAR away, then you would do
13 it because it would -- well, I shouldn't necessarily
14 say that.

15 I'm just trying to understand that small
16 amount of FAR again.

17 MR. SCHNECK: Okay. Okay. We'll start
18 with --

19 CHAIRPERSON HILL: Which slide are you on?

20 MR. SCHNECK: Let's go to slide -- let's go to
21 slide 9. Well, actually I'm sorry, let's go to slide
22 10 first.

23 So, slide 10 first. The upper image is the
24 fourth floor. And basically, yes, you are seeing at
25 the fourth floor sort of what is the, you know,

1 addition. But in addition to just that --

2 CHAIRPERSON HILL: And just to clarify, I'm
3 sorry.

4 MR. SCHNECK: Yes.

5 CHAIRPERSON HILL: The 0.09 was like 223
6 square feet or something. Was that what it was?

7 MR. SCHNECK: Right. So, 209? Two hundred
8 and three. Two hundred and three.

9 CHAIRPERSON HILL: Two hundred, three. Okay.

10 MR. SCHNECK: So, it's a portion of -- it's a
11 large portion of the fourth floor, but it's not the
12 entire portion. So, then if you would go down to say,
13 the third floor, we are also the existing -- we are
14 retaining a portion of the existing balconies, but we
15 are claiming some of that additional balcony as well,
16 as you can see in the third floor for the kitchen.

17 And so, you know, as you can see, these are
18 not incredibly spacious units, and again, it's
19 critical for sort of a typical -- to get that second
20 bedroom, essentially, that you know, is a den but sort
21 of the ability to have a second bedroom. And I think
22 you can also see on the third floor, as well as the
23 fourth floor, that you know, because of the location
24 of that stair, it you know, that front bedroom is
25 obviously larger than it needs to be, but there's

1 nothing we can do about that because of the stair.

2 So, it's not just the fourth floor. It's also
3 sort of being able to get the two-bedroom units also
4 on floors one to three. If that helps.

5 CHAIRPERSON HILL: No, that helps. So again,
6 right, back to the discussion. You'd have like a den
7 or an office or something. You couldn't do a two-
8 bedroom.

9 MR. SCHNECK: Correct.

10 MR. HART: And on the third floor, if you were
11 to move the living area to the front, then you would
12 kind of cut off -- you wouldn't be able to do -- the
13 kitchen would then be not close to the, you know --
14 you can't move both of those things.

15 MR. SCHNECK: That's exactly right.

16 MR. HART: You can only move one or the other.

17 MR. SCHNECK: Right.

18 MR. HART: And if you do that, then you kind
19 of have this weird split.

20 MR. SCHNECK: Yeah. And we had looked at
21 putting the living -- and that's, you know, the front
22 portion of the building is too big for a bedroom, but
23 not big enough for living, dining, kitchen, so.

24 MR. HART: Uh-huh. So really, the stair is
25 bifurcating the --

1 MR. SCHNECK: Yes.

2 MR. HART: -- the floorplate, and that makes
3 it -- and I know you've said this, it makes it
4 extremely difficult to then kind of plan for a normal
5 floor.

6 MR. SCHNECK: Correct.

7 MR. HART: And you were showing us in the
8 other slides, I think it was 17 or 18, what a typical
9 -- what a standard stairway, stairwell would look
10 like, and if you were able to do that then you would
11 also be able to reorient -- you'd have a better
12 ability to reorient the floorplate so that -- or I
13 guess the layout, so that you would -- it would be
14 more of a typical type of apartment.

15 MR. SCHNECK: Absolutely. I mean, for
16 example, on slide 17, you know, the blue would be sort
17 of a more standard sized stair, and therefore you
18 would have ultimate flexibility, and you'd have more
19 square footage than you -- than we would really need
20 frankly, because we could get two bedrooms, we could
21 get all of that. But with the, you know, the size of
22 the stair as well as its location, sort of right in
23 the center there, makes it difficult.

24 CHAIRPERSON HILL: Okay. And then, just for
25 the Office of Planning again, and I'm not trying to

1 put you on the spot, Mr. Mordfin. So, if -- does the
2 Office of Planning have an idea as to how they could
3 lose the 0.09?

4 MR. MORDFIN: I think that would be up to the
5 applicant. I mean, in our earlier discussions that we
6 had in OP, you know, we were talking about what you
7 were talking about with the fourth floor, with the
8 elimination of that second bedroom. That would bring
9 them much closer. Obviously, it wouldn't get them
10 there, but --

11 CHAIRPERSON HILL: It would bring them much
12 closer, but wouldn't get them there.

13 MR. MORDFIN: Right. Because the applicant
14 indicated that even if you didn't build that room,
15 they would still need an FAR variance of something
16 less.

17 CHAIRPERSON HILL: Right. .02 or something,
18 right? Okay. All right. Okay. Thank you. Thank
19 you for your answers.

20 Okay. So, yeah. So, back to here because now
21 I'm -- and this is the last question I think I'm going
22 to have. If you got the -- if you could do the blue
23 stair thing, right, so I'm just curious. So, and I
24 might not even be asking a good question. If you
25 could lose the -- if you could do the blue square

1 stair thing, would you still be here for the 0.09?

2 MR. SCHNECK: No.

3 CHAIRPERSON HILL: No. You would just make it
4 smaller somehow? Or, I mean, I don't know --

5 MR. SCHNECK: Well, we'd be able to make it
6 work because we would have the square footage and
7 being able to allocate it properly. If we had the
8 blue stair, it would be easy to get all of the
9 functions in there.

10 CHAIRPERSON HILL: Okay. Okay. All right.
11 Does the Board have any more questions?

12 Okay. Does the applicant have anything they'd
13 like to say in conclusion?

14 MS. MOLDENHAUER: We would just like to
15 identify the fact that we believe that the applicant
16 has satisfied the variance test in regards to the
17 first prong, the uniqueness of the narrowness of the
18 property, some of the contributing elements of both
19 the location of the stair, and the size of the stair,
20 and the fact that those, if they had to be removed in
21 order to get the blue stair, would then push this case
22 into a level of substantial demolition, where then
23 HPRB would not have put this on the consent agenda,
24 and not have support of the application.

25 In addition to that, we on that third prong,

1 we really want to focus on the fact that, you know,
2 the property is in a unique condition or a unique
3 neighborhood where the surrounding properties were all
4 constructed prior to 1958. And so, when you're
5 looking at the requested relief, and you're looking at
6 how that possibly addresses or impacts the zoning
7 regulations or the zone plan from the other
8 surrounding communities, we do not believe that it
9 impacts or changes the character of the neighborhood.
10 And as indicated by the ANC letter of support, their
11 physical presence today, as well as the other letters
12 of support in the record.

13 In addition to that, you know, there is the
14 challenges of the fact that the property had
15 previously been used as apartments, but that the code
16 and the building code has changed. In order to kind
17 of put all of that back into the existing envelope,
18 that 203 square feet is critical in order to provide
19 all four units in a layout that obviously would create
20 family-sized units and account for the challenges of
21 the existing condition, both the FAR from the
22 thickness of the walls, the loss on the first floor,
23 given the location of the front door.

24 And we go back to then, the de minimis
25 standard and believe that even though OP is not

1 supportive on that last prong, that the level of
2 evidence that we have to present is slightly reduced.
3 There's still a very high standard. And we obviously
4 acknowledge that, but it is slightly reduced and we
5 believe with all the support that we have, that we
6 overcome that and we would ask the Board to support
7 the application.

8 CHAIRPERSON HILL: Yes, sure, go ahead. Any
9 more questions?

10 MS. WHITE: Just one more question. How does
11 this -- can you just talk to me a little bit about how
12 the project potentially helps the community in DuPont
13 Circle and the city. I mean, are there any
14 affordability aspects of allowing families to live in
15 the city and not necessarily have to pay \$1 million
16 for each unit, because I don't know if these are
17 rental or --

18 MS. MOLDENHAUER: They will be rental units,
19 and I think that, you know, given the unit layouts,
20 you know, if these were -- since they are going to be,
21 you know, where is the image? You know, the second
22 bedroom is going to be an internal bedroom. So, you
23 know, if you have that ability they may not be the
24 same as if you have these two huge window-filled
25 bedrooms. And so, you're providing a variance. And,

1 you know, it's really hard sometimes I think from you
2 know, when you're talking about maybe a building where
3 you're going to gut the entire thing and maybe it's
4 not in a historic district, or you have other
5 challenges where you have to gut the building, where
6 the floor joists are compromised and HPRB would be
7 supportive of that, you know, a property owner is then
8 going to build, you know, two-bedroom units where
9 you're going to have a much higher price point.

10 Here, you're talking about two bedrooms where,
11 you know, you do have an opportunity for family sized
12 units, but given the kind of unique level of it, I
13 think that you're going to have a much -- it will
14 provide a variation in the different products that are
15 available in DuPont Circle. You know, a lot of other
16 rentals are either, you know, larger apartment
17 buildings that you've seen, or they may be the more,
18 you know, kind of brand new construction.

19 I mean, there is the project on DuPont Circle
20 with the old mansion. You know, those are all
21 microunits. You have a lot of variation, and
22 obviously I think, you know, the import of this shows
23 the variance of units that would be provided.

24 MR. SCHNECK: I can also add, a lot of times
25 when you do two-bedroom units what happens is a lot of

1 people rent them and then rent out a bedroom. So, you
2 don't get family units like this that would make that
3 difficult in that you necessarily wouldn't want to
4 rent out your den to someone else.

5 And so, we find that these units are generally
6 then, lived in by families and not by sort of two
7 people with one person renting.

8 MS. MOLDENHAUER: And also, given the number
9 of parking on the site, I think that that also
10 contributes to the ability for these to be more family
11 friendly.

12 CHAIRPERSON HILL: Okay. Does anyone have any
13 more questions for the applicant? Okay. Are you
14 done?

15 MS. MOLDENHAUER: Yes, thank you.

16 CHAIRPERSON HILL: Okay. All right. Then,
17 I'm going to close the hearing. Is the Board ready to
18 deliberate? Okay. I'll start the deliberations.

19 I have -- I'm basically just kind of -- I
20 mean, obviously, I'm just struggling with the FAR and
21 the 0.09. And, I am very cognizant of the argument
22 that the applicant has made, and the different
23 thoughts that have gone into getting to this point.
24 In terms of also the staircase, the historic nature of
25 the staircase, the going through HPRB, the -- if, you

1 know, in order to remove the staircase there would
2 become issues there. And so, I can understand how the
3 applicant is making the argument for the variance
4 test.

5 Again, as far as the zone plan, I am just so
6 hesitant about the increase in FAR in the same way
7 that the Office of Planning is. However, I think that
8 the applicant has made a good argument in terms of the
9 -- my hesitation with somewhat of the de minimis is
10 the next person that comes in here and there is kind
11 of a de minimis issue and such. I mean, I think that
12 this case, and they're all on -- they are all
13 different individual cases, and with this individual
14 case, I could and am able to understand the argument,
15 again, in terms of the staircase, the historic nature,
16 and that the loss of the 0.09 would result in units
17 that are units that the ANC has not -- the ANC would
18 like to see. You know, those two-bedroom units.

19 I do -- I am taking great weight by the ANC's
20 report. And in addition to that, I'm taking great
21 weight in the fact that the ANC commissioner stayed
22 here for 12 hours to tell us that, you know, he wanted
23 to -- and I thought, and even this was a long time ago
24 when he first spoke, that the arguments that he was
25 making again, as to why the third prong of the test

1 was being met, was something that I could also
2 understand.

3 I don't like going against the analysis of the
4 Office of Planning, although we do do it because
5 that's what we are charged to do in terms of looking
6 at the information and coming up with a decision based
7 upon the regulations.

8 So, that being the case, I'm able to be
9 convinced that they are meeting the test; the
10 applicant is meeting the test. And I love how you can
11 just talk your way all the way through it and it's in
12 public. So, you can just see how the brain is
13 working. And I can get behind the argument for this
14 application, although I still don't like going against
15 the Office of Planning.

16 MS. WHITE: I'll just add a few comments. I
17 kept asking you about those cases because I mean, I
18 always like to look and see if there is, you know,
19 some precedent for thinking a certain way and coming
20 to a certain conclusion with respect to a de minimis
21 standard, especially when it relates to a variance
22 test. And I'm also very hesitant to make judgements
23 or make decisions that don't take into consideration
24 the fact that all three of those prongs have been
25 firmly met. But just looking at the facts of this

1 particular case, and I'm going to go back and read
2 those cases again too, but looking at the facts of the
3 building and the structure and the configuration of
4 it, I do think you've met that de minimis test. I do
5 think that the presence of the ANC commissioner here
6 add some additional credibility to that third prong
7 for you, and I don't think that the modification of
8 that structure is going to cause harm to the
9 community. In fact, I think it could bring more
10 families together within the city. Not knowing the
11 price points, but still, it will allow more families
12 to live together.

13 So, the way my brain is thinking right now is
14 that in spite of some of the reservations of Office of
15 Planning, that this is probably one of the few
16 variance type cases that I would probably support,
17 knowing that traditionally -- you didn't traditionally
18 meet that three-prong test within that regulation.

19 MR. SHAPIRO: Thank you, Mr. Chair. I would
20 concur again. I think that the one thing I would --
21 so, I would be inclined to support this. And the one
22 thing I would say, I think, Mr. Chair, this is what
23 you were saying as well, is that I wouldn't want this
24 to be any kind of a precedent for us defining what de
25 minimis means.

1 So, instead, I would say, you know, the case
2 is strong. I think that it sounds like a great
3 project and I think that they've met the three-prong
4 test. And for me, this is not defining de minimis.

5 MR. HART: Pulling up the rear, I think that -
6 - I would agree with my colleagues on the Board here.
7 I can also support this particular application. I
8 believe that you have met the three-prong test. I
9 think that we should not be looking at this as being
10 something that -- I'm trying to get at the de minimis
11 aspect of this. I don't think that we should be
12 looking at this as being a, you know, a precedent
13 either for that part of this case. I think that the
14 case itself speaks for itself. There are some unique
15 circumstances for this case that I could -- that I
16 would be able to support, those being the existing
17 stairwell, which is a nonstandard larger size, which
18 then has impacts on the floorplate, and the
19 configuration of the -- what happens in the inside of
20 that.

21 Also added in with this, I don't know, the
22 east wall thickness, which was somewhat surprising to
23 me, but which adds in some more FAR when that was not
24 really -- I don't know, it just, that seems like it's
25 adding another piece on that as well.

1 So, I think that I would be able to support it
2 as well, Mr. Chairman.

3 CHAIRPERSON HILL: Okay. Then, I go ahead and
4 make a motion to approve Application No. 19523 as
5 announced by the secretary.

6 MS. WHITE: Second.

7 CHAIRPERSON HILL: Motion has been made and
8 seconded.

9 [Vote taken.]

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

11 MR. MOY: Staff would record the vote as four,
12 to zero, to one. This is on the motion of Chairman
13 Hill to approve the amended application for the relief
14 being requested. Seconded the motion, Ms. White.
15 Also in support, Vice Chair Hart. Mr. Peter Shapiro.
16 We have a board seat vacant. The motion carries.

17 CHAIRPERSON HILL: Great. Could we get a
18 summary order, Mr. Moy? Oh, can you get a summary
19 order?

20 MR. MOY: We could. I was going to suggest
21 perhaps, given the fact that this is a variance type
22 application --

23 CHAIRPERSON HILL: Uh-huh.

24 MR. MOY: -- and that the Office of Planning
25 was opposed --

1 CHAIRPERSON HILL: Right. A full order?

2 MR. MOY: It's somewhere --

3 MS. MOLDENHAUER: The Board did it in a prior
4 case.

5 MR. MOY: -- in between. It's going to
6 require some additional explanation to record the
7 deliberation of the burden of proof, which is a little
8 bit more than a summary order. We could try that, but
9 you know, I'm --

10 CHAIRPERSON HILL: I mean, I don't want to get
11 in a situation where there is -- whatever is -- and
12 I've lost the OAG here. So, you know, there is no --
13 there's only summary and full.

14 MR. MOY: That's right.

15 CHAIRPERSON HILL: Okay. So --

16 MS. MOLDENHAUER: There's no party in
17 opposition here, so there's no appeal. There's no
18 appealable right by anybody.

19 CHAIRPERSON HILL: The --

20 MR. MOY: Let me play with it on the staff
21 side, because it's more than a summary order. It's
22 a --

23 CHAIRPERSON HILL: Okay.

24 MR. MOY: We'll go with that for now.

25 CHAIRPERSON HILL: Okay. Let's go with the

1 summary order. Okay.

2 All right. Do we have anything else before
3 us?

4 MR. MOY: Oh, sorry. No, nothing for the
5 staff.

6 CHAIRPERSON HILL: Okay. All right. Then, we
7 stand adjourned. Thank you all very much.

8 [Whereupon, at 6:51 p.m., the public hearing
9 and meeting were adjourned.]

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CERTIFICATE OF TRANSCRIPTIONIST

I, Kimberly Lawrie, do hereby certify that the foregoing proceeding was transcribed from a digital audio recording provided to me by Olender Reporting and thereafter was reduced to typewriting by me or under my direction.

I am not related to any of the parties in this matter, and this transcript is a true and accurate record of said audio recording to the best of my ability. The above information has been transcribed by me with a pledge of confidence, and I do hereby certify that I will not discuss or release the content or any information contained herein.



Kimberly Lawrie,
Legal Transcriptionist