

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

DECEMBER 18TH, 2019

+ + + + +

The Regular Public Hearing convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:30 a.m., Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LORNA JOHN, Board Member
CARLTON HART, Board Member

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Commissioner
ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ
MARY NAGELHOUT, ESQ
DANIEL BASSETT, ESQ

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
BRANDICE ELLIOTT
MATT JESICK
JONATHAN KIRSHENBAUM
STEPHEN MORDFIN
CRYSTAL MYERS
ELISA VITALE

The transcript constitutes the minutes from the
Public Hearing held on December 18th 2019.

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10:20 a.m.

CHAIR HILL: All right, Mr. Moy. Whenever you're ready, you can call our first meeting case, or hearing case.

MR. MOY: Okay. I believe we are at the top of the order for the hearing cases, and so the first, if I can have parties to Case Application No. 20143 of Grand Realty LLC.

This is a special exceptions under the residential conversion requirements of Subtitle U, Section 320.2, pursuant to Subtitle U, Section 301.1(e), from the use requirements Subtitle E, Section 301.1(c)(1) and pursuant to Subtitle E, Section 5201 from lot occupancy requirements, Subtitle E, Section 5003.1 to convert existing attached principal dwelling into two principal dwelling units and to construct a two-story accessory structure to be used as a third principal dwelling unit, RF-1 zone at 1117 Morse Street, N.E., Square 4070, Lot 136.

CHAIR HILL: Okay. If you could please introduce yourselves for the record from my right to left?

MR. LEE: Good morning. Clarence Lee, Chairman, 5D07.

CHAIR HILL: Hi Commissioner, how are you doing?

MR. LEE: Well.

CHAIR HILL: Good.

1 MR. SCHAFER: Good morning. Rob Schafer, working
2 with the Zoning Committee of the ANC 5D.

3 MR. HAILES: David Hailes. I live at 1119 Morse
4 Street, N.E. and I'm meeting in regards to my opposition.

5 MR. SULLIVAN: Marty Sullivan on behalf of the
6 applicant.

7 MR. KEARLEY: Gregory Kearley, architect for the
8 applicant.

9 CHAIR HILL: Mr. Hailes, if you just turn off that
10 microphone for me?

11 MR. HAILES: I'm sorry.

12 CHAIR HILL: That's all right. Could you spell
13 your last name for me sir again?

14 MR. KEARLEY: Gregory Kearley. Last name is K-E-
15 A-R-L-E-Y.

16 MR. MATTA: Hi. Ritesh Matta, owner, 1117 Morse
17 Street, N.E.

18 CHAIR HILL: Can you spell your last name for me?

19 MR. MATTA: M-A-T-T-A.

20 CHAIR HILL: Were you here the last name Mr.
21 Matta?

22 MR. MATTA: Actually no.

23 CHAIR HILL: Okay, all right. So all right. Mr.
24 Sullivan, I'll go ahead and start with you I guess. So there
25 was a bunch of stuff that we asked you to do in terms of this

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1 is a continued hearing, and we wanted to -- if anybody's
2 here, we're just trying to work through what has happened
3 since the last hearing. If maybe you'd kind of tell us
4 what's happened since the last hearing, we'll start from
5 there.

6 MR. SULLIVAN: Sure. Thank you, Mr. Chair. The
7 purpose of our continuance was to investigate further the
8 possibility of a more traditional approach. As you know,
9 we're putting a unit in the accessory building, which the
10 typical three unit conversion involves often a larger
11 addition to the principal building on three or four levels,
12 and no accessory building or an accessory building that's
13 only for incidental use.

14 Our proposal decided to make a smaller addition
15 to the principal building and essentially transfer that space
16 to a slightly larger accessory building in the back. This
17 allowed us to have larger three bedroom units, more family
18 oriented units in a principal building, two units in the
19 front, and then a full two bedroom unit in the back in the
20 accessory building.

21 We also provided access from the principal
22 building back to the alley on the other side of the accessory
23 building for trash purposes, trash collection and for
24 parking, and I also provided recreation space for each of the
25 three units within the property, one on the roof of the unit

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1 and then sharing the backyard essentially.

2 We still have a 30 foot backyard, rear yard
3 setback between the house, principal building and the
4 accessory building. So we took an alternative plan, which
5 would be a more traditional approach, of an addition of is
6 it 12 or 13?

7 MR. KEARLEY: 13-1/2.

8 MR. SULLIVAN: 13-1/2 feet to the principal
9 building, and then have a matter of right accessory building
10 that would only be used for incidental purposes. It couldn't
11 be used as a separate unit. That proposal actually would
12 have required less areas of relief. However, we don't think
13 the feedback that we got, and I think that's evident from the
14 ANC's latest submission, was favorable.

15 And so we decided, after meeting with the ANC and
16 after Mr. Matta spoke to the immediate neighbor, further to
17 stick with the original proposal. We think this proposal,
18 in addition to safely meeting the criteria under U320 and the
19 other special exception criteria before the Board in this
20 application, also addresses what are the typical concerns,
21 which is a large addition to the principal building and not
22 having family oriented units.

23 So we think it's a strong proposal and essentially
24 we want to stick with the original proposal in the absence
25 of any positive information that an alternative would be

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1 acceptable.

2 CHAIR HILL: Okay. Just for the record, I'm
3 looking over through your plans for the second proposal. So
4 you didn't extend, you didn't change the design of the
5 principal dwelling; correct? Or not correct?

6 MR. SULLIVAN: Oh I'm sorry. Just to be clear,
7 we're not submitting -- we submitted the alternative for
8 information purposes. We weren't officially submitting an
9 alternative request.

10 CHAIR HILL: I got it. I understand. So I'm just
11 asking questions. Right, that's no longer on the table in
12 terms of what you're putting forward before us; correct?

13 MR. SULLIVAN: That's correct.

14 CHAIR HILL: Okay. So I'm just kind of curious.
15 So you did not extend -- what changes did you make to the
16 principal dwelling?

17 MR. KEARLEY: The principal building, I'll call
18 it the front building, we had originally had a 6 foot 9 inch
19 addition. With the alternate plan, it became 13 feet 6
20 inches. So we did change the principal units and we have a
21 unit in the cellar, a unit on the first floor and then a
22 third unit on the second and third floor. So it changed
23 substantially in terms of what, how the layout of the units
24 worked.

25 And then the carriage house, which we're doing as

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1 a matter of right, had incidental use on one floor for the
2 cellar and on the second floor of the carriage house
3 accessory building was for use for the first floor.

4 CHAIR HILL: In the alternative plan?

5 MR. KEARLEY: This is the alternative. I'm
6 strictly talking about the alternate plan that we presented
7 to ANC last week.

8 CHAIR HILL: Right, and what was again the
9 carriage house again? Can you repeat what you did there?

10 MR. KEARLEY: That became matter of right at 450
11 square feet. It was -- it was smaller, so it sets back
12 farther from the existing neighboring structures and from the
13 addition. So we have incidental use on one floor for the
14 cellar and on the second floor for the first floor. So we're
15 assigning incidental use of the carriage house for two of the
16 units.

17 CHAIR HILL: Okay. What does incidental use mean?

18 MR. KEARLEY: It's like a den. It's not a primary
19 -- it's not a primary thing. It's a den or whatever they
20 want. It could be an arts studio. It could be whatever
21 incidental use the owner decides to use it for.

22 CHAIR HILL: I see, okay. Does the Board have any
23 questions of the applicant?

24 VICE CHAIR HART: So the -- just so I also
25 understand this, this I guess it's Exhibit 50A, which is that

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1 alternative design. You are -- is there -- I'm trying to
2 figure what is the connection? How do you get from the first
3 floor to the second floor? Is it an outside -- is it -- one
4 unit looks like it doesn't connect internally to the set of
5 stairs that goes to the second floor of it?

6 MR. KEARLEY: You're talking about the carriage
7 house, right?

8 VICE CHAIR HART: Yes, the carriage house.

9 MR. KEARLEY: That's correct.

10 VICE CHAIR HART: Okay.

11 MR. KEARLEY: You get -- because they're assigned
12 to different units, there's no internal connection.

13 VICE CHAIR HART: That's okay. I understand that
14 now, thank you. And how far back does the alternative design
15 go? It goes 13 feet 6 inches?

16 MR. KEARLEY: Out from the main house, the
17 addition becomes 13 feet 6 inches.

18 VICE CHAIR HART: Okay.

19 MR. KEARLEY: Only for two floors, only for the
20 cellar and the first floor. The upper two floors stay where
21 they were at.

22 VICE CHAIR HART: Okay, and I'm sorry we're asking
23 a lot of questions on this, because I'm just trying to
24 understand this. So what is the image that page five I guess
25 of that alternative design? It is a -- oh maybe that's not

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1 yours. Oh, it's not your property. I think it's showing
2 other -- I was just trying to figure out what the other
3 buildings are that are being shown in this.

4 These are, I think they're other buildings that
5 are either in the block or that are close by that are -- they
6 show the expansions to the back, to the rear.

7 MR. KEARLEY: Yeah. There's an alley view and the
8 property that was built before the 2016 zoning changes was
9 able to go 60 percent and not worry about being --

10 VICE CHAIR HART: The distance.

11 MR. KEARLEY: Yeah. So that -- you see that in
12 an image where that -- it's not adjacent. It's two or three
13 properties to the east extends back significantly.

14 VICE CHAIR HART: And then the other image on it,
15 that's not the same. No, that's not the same design. I
16 don't know what that is. It looks like 1167 Morse Street?
17 I don't know what that one is. The green, the rear of the
18 building?

19 MR. KEARLEY: 1167?

20 VICE CHAIR HART: Yeah.

21 MR. KEARLEY: That is that property.

22 VICE CHAIR HART: That is which property?

23 (Off mic comments.)

24 VICE CHAIR HART: You have to put your mic on.
25 If you want to speak, you have to put your mic on. It's hard

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1 --

2 MR. SCHAFER: So I just wanted to clarify. I
3 can't see the presentation, but when I looked at it earlier,
4 I think there's a typo. I think that's 1123 potentially.
5 1167 is further down --

6 VICE CHAIR HART: They have 1123 there, but
7 there's another image that shows another site.

8 MR. SCHAFER: I think they were mismatched, but
9 I can't see.

10 VICE CHAIR HART: And one of them shows a really
11 long expansion, which I think Mr. Kearley was talking about,
12 which is 1123. There was another image, and I think that
13 they are just kind of existing context, and this shows a
14 property that is kind of like got green house wrap on it and
15 it's a little taller. So I was just trying to understand --

16 MR. KEARLEY: Yeah. They're two different
17 buildings.

18 VICE CHAIR HART: Yeah yeah, and I understood
19 that.

20 MR. KEARLEY: Yeah. All it was was context, to
21 show what was in the alley really and what views you'd see
22 from the alley.

23 VICE CHAIR HART: I was -- I was thinking that
24 they were actually showing -- I wasn't sure what they were
25 showing, so I wanted to make sure I fully understood it.

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1 MR. KEARLEY: Solely context.

2 VICE CHAIR HART: Yeah, I understand. I
3 understand that now. I think that's it. Thank you.

4 ZONING COMMISSIONER MILLER: Thank you Mr.
5 Chairman. Mr. Sullivan, was there any -- I appreciate that
6 the applicant came, submitted an alternative which was --
7 which you referenced as something you would consider at the
8 last hearing, but the ANC has found it to be worse I guess,
9 than the original for reasons it stated in this letter.

10 Was there any consideration of the alternative
11 that the ANC mentioned, not mentioned, testified to, of --
12 concerning consideration of an alternative that moved that
13 additional dwelling unit to the rear of the lot adjacent to
14 the alley, recognizing that that would require different kind
15 of relief, parking relief and alley lot line relief probably?
16 But the ANC, Mr. Schafer testified I believe that they would
17 be amenable to considering going along with that kind of
18 relief for that kind of a location, so that more of the rear
19 yard would be open, instead of having the dwelling unit in
20 the middle of the rear yard and that would have less of an
21 adverse impact on the adjacent neighbor and the pattern of
22 development in that block and neighborhood.

23 So was there any consideration of that other
24 alternative or discussion with the ANC, and I'll ask the ANC
25 since they're here about that as well?

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1 MR. KEARLEY: We went through a lot of iterations.
2 It was considered, but there was no graphic representation
3 or design for that. Because of the lack of parking, we would
4 be then reduced to one parking. We didn't get really -- ANC
5 can speak for themselves. The only person who really I guess
6 championed that in terms of discussions that I had was their
7 zoning -- who's the --

8 MR. SULLIVAN: Mr. Hogans spoke for the Zoning
9 Committee.

10 MR. KEARLEY: Yeah, but there was no other input
11 that that would be an acceptable alternative except from Mr.
12 Hogan. They couldn't say -- again, I don't want to speak
13 from them, but there was -- anything that was a carriage
14 house, it seemed that they were opposed to. So we tried to
15 come up with a solution that would keep the parking and that
16 would reduce the scale and size of the carriage house, and
17 that was the alternative that was proposed.

18 ZONING COMMISSIONER MILLER: Okay, thank you.
19 I'll ask the ANC to comment on that --

20 MR. MATTA: Just one thing if I could add. Our
21 alternative plan did extend the setback by around ten feet.
22 So between the neighborhood adjoining wall to where the
23 structure started. So that did address to a great extent our
24 alternative plan.

25 ZONING COMMISSIONER MILLER: Okay, thanks.

1 CHAIR HILL: Okay, no one else? No, all right.
2 Does the -- Commissioner, you're going to have a chance to
3 give us your testimony in terms of what's happened since the
4 last time we were here, and then Mr. Hailes as well as you
5 will have an opportunity to give your testimony as to what's
6 happened since the last time you were here. However, do you
7 have any questions for the applicant as on to the testimony
8 that they provided here today, in terms of the continuing
9 scope?

10 MR. LEE: No, we do not.

11 CHAIR HILL: Okay. Mr. Hailes.

12 MR. HAILES: No sir, I do not.

13 CHAIR HILL: Okay. So Commissioner, why don't you
14 go ahead and I guess tell us what happened since the last
15 time you were here, and then Mr. Hailes you can do the same
16 thing.

17 MR. LEE: Well, okay. We haven't seen -- we
18 didn't have the opportunity to see the plans in time to vote
19 on at our Tuesday meeting. So that was one of the reasons
20 why we sustained our opposition, because there just wasn't
21 time for the Zoning Committee to go over the plans they
22 submitted. We received them I think approximately 24 hours
23 before the meeting, our ANC meeting for a vote. So that's
24 why.

25 So at this point, I have Mr. Schafer here from my

1 Zoning Committee, and he's going to give the testimony on
2 behalf of the Zoning Committee and the ANC.

3 MR. SCHAFER: Thank you, yeah. I'm not sure if
4 it was even 24 hours, but just first on the last point about
5 the carriage house. I don't think the, and Clarence you can
6 correct me, but I don't think the ANC is opposed to carriage
7 houses as a general principal, as Mr. Horgan stated the last
8 time we met.

9 My understanding from the last hearing was that
10 you had given us a continuance in order for the applicant to
11 come in good faith and try to meet us halfway or at least
12 discuss with the ANC, present something that would be
13 acceptable. In the end, what happened, I mean this -- I
14 think all those questions earlier from Mr. Hart in particular
15 are dead on.

16 It's a pretty crazy design to have -- I've never
17 heard of anything where you have a carriage house with two,
18 that's separated, owned by two of the three units in the main
19 house. It's hard to imagine how that would make sense, and
20 that will bring us to the letter that we submitted most
21 recently, the ANC.

22 I think all this comes down to whether or not
23 three units is granted in this case. So the only way that
24 the carriage house can be justified is if there is the
25 special exception for the three units. I can't speak for the

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1 applicant, but I would assume that neither they nor any other
2 developer would find it in their economic interest to build
3 a carriage house like that and use that much of the lot if
4 it were only two units.

5 So at the last hearing, Chairman Hill you stated
6 maybe five times if you said it once, that the ANC does not
7 have unlimited discretion. Sorry, the BZA, and that you're
8 here to enforce the rules that you're given. That is music
9 to our ears, I think, in the ANC 5D. What we really hope for
10 is simply that you will uphold the regulations. This is not
11 the Zoning Commission as you've stated many times, and the
12 regulations are fairly straightforward.

13 The applicant has the burden of proof under both
14 the Zoning Act and Section 901.2 of the regulations for --
15 that lays out the standard for a special exception. 901.2(a)
16 states very simply it must be in harmony with the purpose and
17 intent of the regulations, in this case the RF-1 zone. I
18 know I'm preaching to the choir here, forgive me, you all
19 know this. But I think it bears repeating that the purpose
20 and intent, as just confirmed in as recently as 2016 with the
21 rule change is predominantly for single family homes, row
22 houses and flats which are up to two units.

23 And you know, I think the ANC has tried to be as
24 reasonable as possible, and we absolutely reject the
25 characterization that we are against all carriage houses and

1 potentially against all three units. But in this case, the
2 ANC does not see how the applicant has met their burden, and
3 we would ask that in any opinion or decision that there is
4 some explanation of what the BZA thinks the standard -- how
5 you view the standard and in what case, if this is permitted,
6 in what case a third unit would not be permitted.

7 Because this seems to fly in the face of the very
8 simple purpose and intent of the RF-1 zone, and we don't
9 think that the applicant has carried its burden. You can go
10 back to the 2016 rule change. There's a lot of legislative
11 intent there behind the regs. There are --

12 CHAIR HILL: Okay, Mr. Schafer. I'm sorry. I'm
13 just trying to follow along here. In terms of like the
14 902.1(a).

15 MR. SCHAFFER: 901.2(a).

16 CHAIR HILL: And the RF-1 zone, I'm going to let
17 the Office of Planning help me kind of articulate that a
18 little bit, as to how this is meeting the criteria for that.
19 In terms of some of the information that you give me, what
20 I was stating earlier is that if we the Board believe that
21 this meets the criteria for a special exception, because it's
22 not a variance; it's actually within the zoning regulation,
23 that we basically have to grant it.

24 That's what I meant by all of the things that went
25 up. The Zoning Commission, we can't change what is already

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1 there. So it's just kind of, you know. And then honestly,
2 a lot of it just comes in interpretation, right, and what we
3 have done in the past. And Commissioner has been here, your
4 Commissioner has been here quite a few times, and the problem
5 that I've been having and I should say I hate saying your
6 Commissioner, but you know.

7 You have very -- this particular row also has been
8 with us several times because of the depth of the lots,
9 right. And then we've had a lot of this back and forth
10 discussion as to what a family is, right, or what a family
11 unit is, right? I'm of the mind set that, you know, I think
12 that a family -- whether or not it is accurate, you know,
13 like a family unit being a three bedroom unit, I mean that
14 seems to indicate as to though there's an ability for, you
15 know, a child or something like that, right?

16 And then when you get into whether or not, you
17 know, this -- it gets into a weird discussion as to what is
18 a family, right? And then you get into kind of a weird area
19 of, you know, defining what a family is that I don't feel
20 comfortable with, okay. So --

21 MR. SCHAFER: That's why you stay away from it.

22 CHAIR HILL: Right. No, but I'm just saying
23 that's how we've had this discussion for like, you know, your
24 concept of what you think a family is is somebody who owns
25 the house outright, that has four bedrooms, five bedrooms,

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1 maybe three children. I have no idea, right.

2 MR. SCHAFER: That's why the regulations don't
3 reference the word family in it. It's two units.

4 (Simultaneous speaking.)

5 CHAIR HILL: Mr. Schafer, I'm sorry. What I'm
6 having, and I didn't mean to have such a back and forth
7 discussion with you, is that there has been arguments here
8 before with us made, and I believe by your own zoning
9 commission, I'm sorry, your ANC, that unless it's a single
10 unit house it's not a family house, right?

11 So that's what I was speaking to in terms of the
12 family discussion, in terms of the argument that's been had.
13 So but does anybody have any questions for the ANC?

14 MR. LEE: Well you know, as what a family is --

15 CHAIR HILL: Mr. Schafer, you can go ahead and
16 turn the microphone off.

17 MR. LEE: --if you want to qualify, we can look
18 at the tax regs. What a family is is usually when someone
19 has. You have a breadwinner and maybe two breadwinners and
20 dependents. So that would be a family, which could be your
21 father, your mother, your uncle, your aunt, your stepchild.
22 But somebody's the breadwinner providing --

23 CHAIR HILL: Oh Commissioner, I appreciate this.
24 We are not going down the line today at this Board as to what
25 a family is, all right.

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1 MR. LEE: All right.

2 CHAIR HILL: Okay, it's way about -- way beyond
3 this Board, okay.

4 MR. SCHAFER: Could I just add, family is not in
5 the regulations. You're here to enforce the regulation.
6 Family is not in the regulation.

7 CHAIR HILL: We're here to enforce the
8 regulations. You don't have any problem, doubt whatsoever
9 in my mind, okay. So all right. Does anybody have any
10 questions for the ANC?

11 ZONING COMMISSIONER MILLER: Thank you, Mr.
12 Chairman. So I wanted you to comment on the alternative that
13 you commented on at the hearing of putting the third unit
14 towards the rear of the lot adjacent to the alley, and you
15 testified that that would be less of an adverse impact than
16 the location in the original design, or the alternative,
17 which is the middle of the rear lot, rear yard.

18 So and you said you might be amenable to
19 supporting what would be required to do that, which was
20 parking relief and I think maybe alley, some alley lot line
21 relief in the regulations. Was there any discussion or
22 consideration of that alternative which you mentioned in your
23 original testimony?

24 MR. SCHAFER: Thank you, Mr. Miller. Just to be
25 clear, Kevin Horgan, who's part of the Zoning Committee, was

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1 here at the last hearing and made that statement, not myself.
2 I work with him. But and so, you know, at the risk of
3 speaking for him, I think the simple answer is no, that was
4 not discussed. Ultimately I only learned of the new proposal
5 an hour before the ANC meeting on Tuesday, and when Mr.
6 Kearley came to discuss it, there was no discussion of that
7 solution.

8 It seemed that the -- so the owner was not
9 available then, but Mr. Kearley was only able to speak to
10 what the owner had sent him forward, so we were not able to
11 discuss it. I think what Kevin had said in testimony too at
12 the last hearing was simply that we do want to meet them, you
13 know, halfway if we can and that we would consider it.

14 I think the ANC still would have significant
15 concerns about issues like parking and how it would affect
16 the purpose and intent of the regulations to go beyond two
17 units. But no, we were not able to discuss that.

18 ZONING COMMISSIONER MILLER: Okay, thanks.

19 VICE CHAIR HART: So I'm not sure who's best to
20 answer this, if it's Commissioner Lee or is it Commissioner
21 Schafer or Mr. Schafer. Okay, Mister. So I'm not sure.
22 Under the zoning, we are -- the special exception of course
23 allows more than one, more than two units, or at least it
24 gives some these, you know, meet these things and you can
25 kind of do that. Are you -- you're not, you're not liking

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1 this particular configuration, but you're not saying that
2 there are other configurations that you might be amenable to?

3 Because currently what were the -- I'm sorry.
4 Currently what they have, what we have is, you know, an
5 accessory unit is -- that there is allowance for that. They
6 could also have all the units in the building and have a
7 special exception for, you know, I think it's for going past
8 the ten foot rule.

9 So currently we have these two things that we're
10 trying to kind of grapple with, and each of the ANCs kind of
11 has their own view of it. I think Chairman Hill said the
12 issue about having long lots then gives the opportunity --
13 if you have a shorter lot you can't put an accessory unit on
14 there because it's just not physically possible to do that.
15 This, there is a possibility to do that.

16 So I'm trying to kind of understand where it's not
17 necessarily that you have three units; it's that it's maybe
18 that it's three units in this location or in this layout, and
19 having a unit that is kind of separated from the other two
20 units, and I'm not exactly sure where you all stand on that.
21 I don't want you to necessarily -- I don't know. It's just
22 something I'm just trying to figure out.

23 MR. SCHAFFER: Thank you. I really -- the ANC
24 appreciates the question because it's very thoughtful. If
25 you look at the ANC's testimony that we submitted, the

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1 report, second report, I forget if it's Section 2 or 3, but
2 I think the answer is within that. The fundamentally what
3 it comes down to for our neighborhood is the impact that
4 three units in general has on the incentives, right?

5 So if three units is granted, case after case in
6 these deep lots, then that's going to be the norm and as we
7 laid out with the maximum allowable offer calculation, that
8 will be the way it goes. Ultimately, case by case in sort
9 of an *ultra vires* fashion, we here will be doing the work of
10 the Zoning Commission. If that was the intent, then we could
11 have changed the zone, if that seemed to be in the interest
12 of the community.

13 But I think the community feels that the two units
14 is -- that is the goal. With that said again we're not, you
15 know, if the lot is twice the size and three units made
16 sense, perhaps -- I'm not -- I think the ANC is not
17 categorically against anything, if that's -- does that answer
18 the question?

19 VICE CHAIR HART: Well, I was trying to think --
20 I'm thinking of the -- is the ANC more amenable to having an
21 addition onto one building, or as the applicant is now
22 proposing, having the two buildings? Is it that two
23 buildings is the problem? And Mr. Hailes, if you'd like to
24 -- no, no. I wasn't necessarily. I just was -- I'm just
25 trying to figure out from you all that what your, you know,

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1 where you are on this.

2 MR. SCHAFER: That's fine.

3 MR. LEE: Well, I just wanted Mr. Hailes to speak
4 to that, because you know it is on his block and it's close
5 to him.

6 VICE CHAIR HART: I agree, I agree.

7 MR. LEE: So I would just let you hear his
8 opinion.

9 VICE CHAIR HART: Thank you very much.

10 MR. HAILES: Thank you for the opportunity to
11 speak. It think it would be too dense for the area. The
12 popup and the carriage house, and I was just saying earlier
13 because we have deep lots, we've been approached over and
14 over again about additional buildings. I mean if this is
15 allowed to go forward, it'd be just too dense for the
16 neighborhood. My wife and I are definitely opposed to this.

17 VICE CHAIR HART: Are you -- the applicant, sorry.
18 Any project could add ten feet to the back of their house.
19 Is that what you're arguing for and not having the -- I mean
20 the accessory building is already, you can already do that.
21 So there's a possibility that somebody in your block or next
22 to you, and I'm just trying to understand if the opposition
23 is more to having a building back there or adding onto the
24 back of the existing, of the existing houses?

25 MR. HAILES: The carriage house would be what my

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1 wife and I definitely don't want.

2 VICE CHAIR HART: All right, thank you.

3 MR. SCHAFER: And if I could just add to Mr.
4 Hailes, just to clarify the issue for everybody, because I
5 think that's a bit unintentionally, a bit misleading. So the
6 carriage house is a matter of right, but as I said earlier,
7 I can't see a world in which a carriage house gets built by
8 someone other than the resident that's going to live there,
9 unless it's somehow a third unit, right?

10 So the -- if we stayed within the matter of right
11 as contemplated by the Commission under the regs, I think
12 they thought through all of this. So as a matter of right,
13 your next door neighbor can build a carriage house and use
14 it to store their bicycles and I don't know what, put a TV
15 in it. But it can't be a separate unit, and the reason for
16 that ties into everything that we said in our --

17 VICE CHAIR HART: But what I'm also saying is they
18 could make a carriage house that's 20 feet tall.

19 MR. SCHAFER: Correct, yeah.

20 VICE CHAIR HART: So they could make a carriage
21 house --

22 MR. SCHAFER: As a matter of right, that's right.
23 I guess my point is but they won't, right. So --

24 VICE CHAIR HART: I don't know that. I'm just
25 saying that -- and I'm not trying to argue. I'm trying to

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1 parse out what --

2 MR. SCHAFER: Okay. I understand your argument.
3 I apologize. I'm just trying to clarify, particularly for
4 Mr. Hailes, to make sure that he understands that well yes,
5 he could build a carriage house as a matter of right. Unless
6 there's a special exception for the three units, the
7 applicant is -- well, I won't speak for the applicant. Mr.
8 Hill, you look confused.

9 CHAIR HILL: I was just looking at like, because
10 we you know, you said why would somebody do it? And so it's
11 just like there's a lot of reasons why someone would do
12 something. You're again looking at this just through your
13 narrative, which is that one person owns that building and
14 one person would only do something which is like that
15 carriage house for the service of that one building. Why
16 would they make a 20 foot carriage house?

17 I'm saying I don't know why somebody would do it,
18 but they're able to do it if they want to do it. I continue
19 to be here because I'm trying to figure out again what we
20 think, whether or not this meets the burden within the
21 special exception, and what the Commissioner has been here
22 before is that before, there used to be the people are going
23 back like 20 feet, you know, 25 feet, whatever it was. I
24 mean before the regulation change, you had 60 percent lot
25 occupancy, so you went all the way back.

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1 That's what happened to those units that you have
2 now, right? And so I continue to constantly struggle with
3 it. People are here because they don't want it, you know.
4 They don't want it, right. So that's what I'm just trying
5 to understand as to -- and that's what Mr. Hart was trying
6 to figure out. What exactly is it that you don't like about
7 it, you know?

8 So then that's what I think he was trying to parse
9 out. So does anybody have any questions of the ANC?

10 Okay. Mr. Hailes -- sorry, Commissioner?

11 MR. LEE: It's just that we never saw a matter of
12 right plan even as a comparison. If we saw a matter of right
13 plan, like you said if it's 20 -- well, as a matter of right
14 we wouldn't see a plan.

15 We wouldn't be here if they were doing matter of
16 right. But that's never been an alternative and that's, you
17 know, we cannot oppose matter of right and we wouldn't oppose
18 matter of right, and we wouldn't oppose multiple -- and even
19 a condominium unit but just in the configuration that they
20 have.

21 So that's one of the things, because we have the
22 same thing on that same block, this condominium, that's been
23 split into condominium units, but they all stay within the
24 guidelines of the single building. Even though those
25 buildings have the 60 foot or 60 foot occupancy extensions,

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1 but they're condominiums but we're not opposed to that kind
2 of configuration as opposed to just this carriage house with
3 the way this unit is just being as planned.

4 CHAIR HILL: Okay, that's fine. So this is going
5 to go on for a while. Mr. Sullivan has a comment, and you'll
6 get a chance to ask your question or whatever it was. But
7 I'll just make one comment, that plenty of people object to
8 the matter of right stuff. They can't because it is matter
9 of right, right?

10 And so, you know, there's plenty of people that
11 are -- there's plenty of people that are opposed to just
12 going back to the ten feet, right. So you know, but so does
13 anybody have any more questions for the ANC? Okay. And so
14 then that's fine. So Mr. Sullivan, you had a question for
15 the ANC?

16 MR. SULLIVAN: No, no. I can wait and I'll
17 address my concerns in a closing or rebuttal, unless you --
18 I just wanted to --

19 CHAIR HILL: What is it? You can rebut --
20 (Simultaneous speaking.)

21 MR. SULLIVAN: I wanted to reset the conversation
22 a bit, and understand where we're coming from, because when
23 we left here before, the ANC was on record as saying we
24 categorically do oppose every three unit conversion,
25 including this one, and nothing we do would change that. I

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1 mean and so -- so we're kind of negotiating with ourselves
2 in a sense. There's a lot of different configurations that
3 would work for the owner, and in the absence --

4 With the ANC saying well we oppose anything and
5 now they're sticking to that, they oppose three units. Well,
6 we're going to request three units and we want to do whatever
7 the Board likes. That's why we submitted the alternative
8 without formally submitting it, because if the Board said we
9 really like this or the ANC said we really like this, then
10 we would go that way.

11 So in the absence of that, what we have is what
12 we think is the best proposal, and we have shown them what
13 a matter of right massing is. So we're really only asking
14 for -- we're less than matter of right on the addition, and
15 we're 108 feet over the matter of right on the accessory
16 building but still ten feet more than the required rear yard.

17 So we think this is our best foot forward to meet
18 as much of --

19 CHAIR HILL: That's fine, and we had the
20 conversation also earlier where that they actually are coming
21 forward with a well thought-out design, and I think that that
22 was something that the ANC also -- I mean everyone seemed to
23 at least agree that this was a well thought out design, well
24 nice materials. They're not trying to like, you know, put
25 something ugly there.

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1 It's just getting, understanding, that this might,
2 and again I love how I get quoted in your little report here.
3 This is also, right. I'm trying to figure out whether this
4 is now something that the Office of Planning is going to get
5 behind, something that's going to fit within the regulations
6 that maybe you'll start to see again, right, which is also
7 why you guys are trying to figure it out, right?

8 And so Mr. Hailes, you finally get an opportunity.
9 So would you want to go ahead and tell us what has happened
10 since the last time you were here?

11 MR. HAILES: Yes sir. We spoke briefly to the
12 gentleman, I think Martin, correct. Mr. Martin, my wife and
13 I, we sat and we had a discussion a couple of weeks ago, and
14 we were unable to come to a configuration that would be
15 acceptable to my wife and myself.

16 CHAIR HILL: Okay. So you did, they did -- did
17 they show you that the alternative plan that they're showing
18 you actually goes out farther than what they were originally
19 proposing, and did you have an opinion in terms of the
20 alternative plan?

21 MR. HAILES: Yes sir. My wife and I thought that
22 the configuration as laid out would be too invasive to our
23 privacy.

24 CHAIR HILL: Okay. Did you have an opinion on
25 however what I'm saying is that they're going out farther

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1 with their principal building in the alternative plan. Did
2 you have an opinion about that, or you just didn't like the
3 alternative plan the same way that you didn't like the
4 original plan?

5 MR. HAILES: Well subsequently in my opinion, they
6 weren't that much different. So I didn't make an analysis
7 in terms of those two configurations as far as I'm concerned.

8 CHAIR HILL: Okay, all right. Okay, great. Does
9 the Board have any questions for the witness? Okay. Mr.
10 Matta, you seemed you had something to say?

11 MR. MATTA: No. I just wanted to make sure that
12 Mr. David understands that the alternative plan was being set
13 back by another ten feet in comparison to the original plan,
14 and I kind of made clear to him that from his adjacent
15 building the alternative plan made the carriage house
16 significantly further away. So just --

17 CHAIR HILL: Right, but it brought out the
18 principal building farther; correct? Yes, the architect's
19 nodding.

20 MR. KEARLEY: The principal building goes out
21 farther. The carriage house goes back.

22 CHAIR HILL: Right, okay.

23 MR. KEARLEY: So you're pushing and pulling,
24 right.

25 CHAIR HILL: Yeah yeah, okay, all right. Okay.

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1 So I'm going to turn to the Office of Planning because what
2 I'd like if you could, there's been a lot of discussion,
3 particularly from the Zoning Commission and the ANC, and if
4 you wouldn't mind walking us through your analysis for how
5 you believe they're meeting the standard for this particular
6 application, and also if you can even, you know, as we've
7 heard before, kind of clarify the general criteria in terms
8 of 902.1(a) would be helpful.

9 MS. ELLIOTT: Thank you Mr. Chairman and members
10 of the Board. I'm Brandice Elliott representing the Office
11 of Planning. Just to clarify, we did see the additional
12 submission in the record by the applicant with the
13 alternative. We did not provide an analysis regarding that
14 alternative because they decided to stick with the original
15 proposal, so there are no OP supplementals in the record.

16 So we continue to stand on the record of our
17 report that was submitted November 8th, where we are
18 recommending approval of the relief that's been requested.
19 I heard some discussion regarding the intent of the RF-1
20 zone. That is actually on the front -- the first page of our
21 report, where we have provided that the RF-1 zone provides
22 for areas that are predominantly developed with two
23 structures on small lots within which two dwelling units are
24 permitted by right, and additional units may be permitted
25 upon the approval of a special exception.

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1 So the general intent is for one and two dwelling
2 units, but there are conditions under which additional units
3 are permitted, and that's what the special exception process
4 is for. This is something that actually goes back to the
5 1958 regulations. There was always a provision that allowed
6 conversions. The standards have been modified over time.

7 Obviously we have a lot more requirements now than
8 we used to, and that all actually predated the 2016
9 regulations I believe. But the 2016 regulations are what we
10 have, and when the Zoning Commission reviewed those
11 regulations and approved them, excuse me approved them, they
12 decided to maintain that policy, to allow additional housing
13 where there was enough property to allow for those additional
14 units.

15 So I've been instructed to go through our analysis
16 in a little bit more detail, and so I'm going to focus on the
17 actual criteria for the conversion, because that seems to be
18 where the biggest issues lie. First of all, there's a
19 maximum height limit of 35 feet, and the third story will be
20 less than 35 feet. The detached structure will actually be
21 less than 20 feet, which is the maximum for detached
22 structures. It will be 18, roughly 18-1/2 feet.

23 If there's a fourth dwelling, it has to be an IZ
24 unit. There is not a fourth dwelling unit proposed for this
25 project. There is required to be 900 square feet of land

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1 area per dwelling unit. The lot size is 2,795 square feet,
2 so that averages out to 931 square feet per dwelling unit on
3 the property. So that standard is met.

4 The addition shall not extend further than ten
5 feet past the furthest rear wall of adjacent principal
6 residential dwellings. We've established that the rear
7 addition would be 6.75 feet, so less than the ten feet and
8 it complies with that standard as well.

9 If there is a third story addition, it shall not
10 block or impede the functioning of a chimney or other
11 external vent, and I think the applicant has provided that
12 that's the case. They will also have to continue to
13 demonstrate that when they apply for their building permits.

14 The third story shall not significantly interfere
15 with the operation of an existing solar energy system. We
16 did do some research regarding building permits. We did not
17 see that there were any that have been issued for adjacent
18 properties, so OP did not find -- we found that the standard
19 had been met.

20 CHAIR HILL: Ms. Elliott, I'm sorry. I didn't
21 mean for you to go through each and every one of them. The
22 ones that, and I apologize. I was kind of more -- you want
23 to kind of like addition shown have a substantially adverse
24 effect on the use or enjoyment of any abutting or adjacent
25 dwelling or property. In particular, the light and air

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1 available to neighboring properties shall not be unduly
2 affected.

3 MS. ELLIOTT: Sure. I'll just jump ahead then.

4 CHAIR HILL: Yep.

5 MS. ELLIOTT: So we found that because the height
6 of the third story is actually less than 35 feet and the
7 height of the detached structure is less than 20 feet, which
8 are the maximum for both, that we did not think that they
9 would significant or unduly affect light and air to adjacent
10 properties.

11 The applicant has also provided a shadow study,
12 which according to the report is at Exhibit 35-B, which shows
13 that the additions would not impact light and air to adjacent
14 properties beyond the existing condition, and should not
15 result in an impact greater than a by right addition. So we
16 relied upon the shadow study that had been provided by the
17 applicant demonstrating the impact to light and air.

18 And then also simply because the detached
19 structure was pushed back, it actually results in less impact
20 to neighbors as well because it's located at the rear of the
21 lot.

22 CHAIR HILL: Okay. That's okay. I don't --
23 again, I'm going to interrupt you, because now I just
24 realized that we actually have a very long day ahead of us.
25 Did you speak to again -- so just in terms of the special

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1 exception criteria will be harmony with the general purpose
2 and intent of the zoning regulations and zoning map? When
3 you spoke about the RF-1 zone, I guess that was kind of what
4 that was; correct?

5 MS. ELLIOTT: Yeah. I think, you know, that's
6 certainly part of the intent of the RF-1 zone is to provide
7 for residential uses. This would continue to provide
8 residential uses in conformance with the zone. I'm not sure
9 that I have much more to add to that.

10 CHAIR HILL: Okay, that's fine. All right. So
11 does the ANC have any questions of the Office of Planning?
12 Again, just we went through a lot of this the last time. But
13 I just wanted to clarify again some of the things that Mr.
14 Schafer had brought up. Do you all have any questions?

15 (Pause.)

16 MR. SCHAFER: I would just say that I appreciate
17 it. I don't know that that fully answered our concern about
18 the purpose and intent of the reg, but I appreciate it.

19 CHAIR HILL: So you disagree. So Mr. Hailes, do
20 you have any questions for the Office of Planning?

21 MR. HAILES: No, other than what I brought up at
22 first in terms of how this kind of works between the Planning
23 and you guys. So at this point no.

24 CHAIR HILL: Okay. Mr. Sullivan, have you got any
25 questions for the Office of Planning?

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1 MR. SULLIVAN: No thanks.

2 CHAIR HILL: Okay. Do you have any rebuttal Mr.
3 Sullivan?

4 MR. SULLIVAN: No.

5 CHAIR HILL: Okay. Let's see. Is there anybody
6 here wishes to speak in support? Is there anyone here who
7 wishes to speak in opposition? All right. Do we have any
8 other questions for anybody?

9 VICE CHAIR HART: Actually one question for Ms.
10 Elliot. For the general, the general special exception
11 criteria, one of them was -- goes to with "the proposal
12 appears to tend to affect adversely the use of neighboring
13 property," and could you just go over that aspect of it.
14 This is page eight of your report from November.

15 MS. ELLIOTT: Sure. So you know the impacts that
16 we're generally talking about are impacts to light and air
17 and to privacy. And so, you know, there probably is a little
18 bit of repetition between the various special exceptions that
19 have been requested. But generally we found that the
20 applicant did provide a shadow study showing the impact of
21 light and air to neighboring properties.

22 We did not find that they -- that the additions,
23 you know, unduly affected light and air into those
24 properties, simply because the shadow study showed that the
25 -- the shadowing by the proposed addition and the new

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1 detached structure were not significantly beyond what would
2 be permitted by right on that lot. And then also in terms
3 of privacy, you know, the applicant is not proposing any
4 windows on the site elevations, and so sort of preserves the
5 privacy of adjacent neighbors.

6 VICE CHAIR HART: Thank you.

7 CHAIR HILL: Okay. Just my question again for the
8 Office of Planning I suppose, now that I think about. You
9 know, we had been seeing a lot of -- well, I'm trying to
10 think what my question was. I mean -- oh never mind, never
11 mind. I don't have any questions for the Office of Planning.
12 Does anybody have any more questions for the Office of
13 Planning?

14 (No response.)

15 CHAIR HILL: Mr. Sullivan do you have -- Mr.
16 Commissioner, ANC, is there anything you'd like to add at the
17 end?

18 MR. LEE: No thank you.

19 CHAIR HILL: Okay. Mr. Hailes, is there anything
20 you'd like to add at the end?

21 MR. HAILES: The privacy I think is not being
22 fully addressed, but that's my only comment.

23 CHAIR HILL: Okay. Mr. Sullivan, is there
24 anything you'd like to add at the end?

25 MR. SULLIVAN: No thank you.

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1 CHAIR HILL: Okay. Does the Board -- I'm going
2 to close the hearing. I'm going to close the hearing. Is
3 the Board ready to deliberate? Okay. I mean, okay. Does
4 anybody want to start? Okay. I can start. I mean I find
5 this again to just be disappointing that -- well, I mean it
6 is what it is. I mean people just have disagreements and
7 then the ANC does not want to see these kind of things
8 happening. I think the ANC did come in here last time and
9 they were just against the fact that there was going to be
10 three units to begin with, whether or not they met the
11 criteria for the special exception or not.

12 I mean I thought and I completely understand why
13 that's the opinion of the ANC and that's why that's the
14 opinion of this particular struggle again, is that you know,
15 whether or not this is going to be something that is going
16 to continue within this particular row of homes. It's not
17 something that's within the Board's purview to determine,
18 because we're just here with each application is before us,
19 right.

20 I was struggling what I was going to ask the
21 Office of Planning, was whether or not this is things that
22 they might actually start to see, and I knew the answer was
23 going to be we look at each one of these on its own, and so
24 I was going to get nowhere with that. So but to the ANC's
25 part I don't know, right, and so you know, I don't know

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1 whether or not this is something that is going to be
2 different or more than norm in that particular row because
3 there might be more now light and air terms of the fact that
4 there is a separation between the principal dwelling and the
5 third unit.

6 I mean I thought that in terms of what the
7 applicant has brought forward is actually a good design in
8 terms of what they were offering for the neighborhood and the
9 community. It's just that this is within the zoning
10 regulations if they meet the special exception criteria. So
11 we've seen many times over how to analyze that particular,
12 those particular special exceptions, and I do believe that
13 they meet them.

14 I think that, you know, I agree with the analysis
15 that the Office of Planning has provided. I think that this
16 is not going back even as far as the ten feet, which we've
17 seen again these things go back 20 feet farther, and really
18 I think where there's even been kind of like further
19 discussion of kind of like the wedding cake model, where like
20 they kind of tier it back, and so that kind of came forward.

21 Now it seems like this is now another opportunity
22 for this type of development project design within the
23 regulations. I think that as it being, you know, three
24 bedroom units, I mean I think that the city needs as many
25 three bedroom units as it could get. I mean I think that,

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1 you know, we have a housing shortage. We're trying to get
2 as many -- an opportunity for people to have affordable
3 housing and whether or not, you know, the discussion about
4 what is affordable. The more units there are, the more that
5 the market will be driven down as opposed to there being
6 higher values.

7 So but that's again, regardless of what your
8 opinion is on that. So within the criteria that we look for
9 within U320.2, as well as the general criteria, X901.2 and
10 I do think that they're meeting, and then the E502 -- I'm
11 sorry, E5201 and U301, I believe they're meeting the standard
12 for us to grant the application, and I'm just disappointed
13 that it's not something that the community wants to see.
14 Does anyone have any other things they would like to add?

15 VICE CHAIR HART: Yeah, only that I think that --
16 I know we've seen a couple of these cases now, where there's
17 been another building that is -- or at least another
18 structure that's behind the existing house or the
19 residential, you know, building.

20 And it is interesting in this case in that, you
21 know, as an RF-1 zone that you have the two units that are
22 of course by right, and they're looking for the special
23 exception to get to the third unit, that the most -- yeah.
24 Actually most of the -- I was looking at the Office of
25 Planning's report in terms of the size of the building and

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1 what they're proposing.

2 It is the only relief that they're requesting is
3 really on the size of the square footage of the accessory
4 building, because the height is matter of right. The height
5 of the actual residential building that is existing, that's
6 matter of right even with the proposed. There is meets the
7 900 square foot rule for the number of units that's under,
8 you know, under zoning, that the rear yard, they meet that.

9 I mean it just -- if there were something else
10 that we were kind of talking about, I think I may have a
11 different opinion of it. But I just have a hard time seeing
12 how this is -- how the BZA can oppose this only because of
13 it meeting all of these aspects for what the relief is. Not
14 seeking any relief additionally then, for various parts of
15 the dimensionally for the site.

16 One exception to that is really the accessory
17 building lot occupancy, which is 400 square feet, and they're
18 looking at 558 square feet. But the rest of it seems like
19 they are actually meeting it. So going through the zoning
20 and going through the Office of Planning's report, I can
21 understand where they're coming from and I support their
22 report.

23 I understand that the ANC has provided their
24 analysis as well, and there is a description -- there is a
25 discrepancy within the -- how the applicant is meeting the

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1 general special exception criteria regarding the proposal
2 being in harmony with the zoning regs. But they're proposing
3 a residential use in a residential area.

4 The third unit is contemplated in the zoning regs,
5 and that is allowed at least that we are able to allow it
6 under a special exception criteria. Whether or not it would
7 appear to affect adversely the use of neighboring property,
8 I understand that Mr. Hailes has a -- you know, they're not
9 wanting to have an additional building that is in the back.
10 But that building is allowed under zoning and to the --
11 again, to the scale of what it is being proposed, that is
12 allowed under zoning.

13 So it just gets to -- I think that the Board would
14 have to, in my opinion, have to support it because of the
15 applicant actually meeting the regulations and I think that
16 we should be -- and I will be supporting the application.
17 I understand that there's a lot of concern that the ANC has,
18 and I don't know if that means that maybe this is a need for
19 a zoning change.

20 So maybe that's the way in which this is met, and
21 that's -- maybe they would like to have this be a, just a
22 residential zone and not an RF zone. I'm not sure. But
23 maybe that discussion, that discussion I think may be for a
24 future date for the ANC and maybe the Zoning Commission. But
25 that's where I am.

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1 MEMBER JOHN: So I can support the application for
2 the reasons that my colleagues have expressed, and I
3 appreciate the Office of Planning's detailed analysis, both
4 written and orally presented. I'm looking now at the zoning
5 requirements and relief requested, and again this application
6 stands out in that most of the -- all of the development
7 standards are met for the three units, except that the
8 accessory building, which is allowed in this zone, is a
9 little larger than the regulation typically allows its 558
10 or 559 square feet, you know roughly, and instead of 450
11 square feet.

12 The bulk of the accessory building compensates for
13 the fact that the addition is way below the ten feet allowed.
14 So it's sort of a compromise, and that's how I looked at it.
15 The accessory structure itself is not as high as it could be.
16 So I understand how the neighbors feel, that the addition of
17 this additional dwelling in the rear does create density that
18 was not there before.

19 But this is a long lot, and even with the
20 accessory structure it's below lot occupancy and there's a
21 decent rear yard left. So in terms of the substantial impact
22 on the neighbors, I think that the burden on the neighbors
23 would not be undue. I appreciate the neighbor's testimony
24 and I can understand how it would feel to have a new building
25 where there was none before. So I think on balance and based

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1 on the record, I can support the application.

2 Oh, one more thing. I think having the parking,
3 two car parking at the back is also a benefit in this case.

4 ZONING COMMISSIONER MILLER: I have nothing to
5 add, Mr. Chairman.

6 CHAIR HILL: Okay. Well, I appreciate my
7 colleagues and how they have articulated, I think even better
8 than I, how they got through kind of some of the argument.
9 I thought that, and this is more even for the benefit of the
10 community, again as you had said, the only -- all of the
11 other things are basically matter of right except for the
12 special exception for the conversion, and I believe they meet
13 the criteria for that, and then the increase in the lot
14 occupancy for the accessory dwelling unit.

15 I say that, I clarify that again because, you
16 know, we might now see different things, where developers are
17 trying to do more than this, right. They might come here and
18 they might try to get, you know, beyond past the ten foot
19 rule. They might try to do, you know, different types of
20 things with the accessory dwelling unit.

21 I think whether or not, you know, I don't -- I
22 know that we look at each application on its own. This does
23 while we're all here set at least our own precedent, I think,
24 in terms of the three of us and Commissioner Miller you
25 rotate through but the Zoning Commission. So you know they

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1 -- I thought that it was a well thought out design for what
2 the developer was trying to do.

3 And so but I state all that because I think that
4 as the particularly the zoning person from the ANC is here,
5 they now have a little bit more outline as to what might be
6 coming forward and how, you know, things are going to be
7 analyzed from both the Office of Planning's perspective as
8 well as the BZA, because now there's a bit of a template.
9 Whether or not that is true or not, we'll have to see in
10 terms of, as I said, each case is done on its own individual
11 basis.

12 So I will go ahead and make a motion to approve
13 Application No. -- oh, hold on. Then there's the waiver.
14 There was the five year waiver, right. So I didn't have an
15 issue with the five year waiver or the porch element, I
16 think, is not original. So I don't even actually think that
17 is necessary. Did the Board have any thoughts on those
18 waivers?

19 MEMBER JOHN: I'm not quite sure what the basis
20 is for granting these waivers frankly, and so what I've been
21 doing is sort of allowing the waiver if the application
22 otherwise meets the requirements. I should have asked OP
23 this question, if there's any guidance on how to evaluate the
24 five year waiver.

25 I see Mr. Miller looking at me. I don't know if

1 the Commission has any further thoughts, but typically if the
2 application meets the other standards, of basically going
3 along with allowing use of the accessory structure within
4 five years, rather than waiting for five years before it can
5 be occupied. I didn't mean to put you on the spot.

6 CHAIR HILL: Yeah. I don't know whether --
7 Commissioner, do you have some comment, that's fine.
8 Otherwise, I would be in agreement with the way that Ms. John
9 has kind of gotten us to this point, and that might be
10 something we could also discuss in training.

11 ZONING COMMISSIONER MILLER: I think that's
12 something that we should look at going forward in terms of
13 the five years, because I wasn't going to bring it up until
14 Ms. John brought it up. If we're going -- if there aren't
15 any standards for that special exception essentially, special
16 exception from the five year requirement, I can see that
17 there is some argument that -- that is one place where the
18 ANC's argument about incentivizing the third unit may have
19 some weight.

20 But I think we have -- I think this Board has,
21 even though each case is different, when it does meet the
22 development standard it has generally allowed for that waiver
23 to occur. But that may be a provision that needs to be
24 revisited and maybe reaffirmed, but or add standards to it
25 or make it a variance or get rid of it altogether, if we're

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1 permitting third units if they meet the development standards
2 and doesn't have the undue impact.

3 Anyway, it's something -- it's something to look
4 at since you brought it up. But I don't know. I don't want
5 to say anything more about that at this point.

6 CHAIR HILL: Okay. Well it sounds like we're
7 going to continue to move forward in this way. So I'm going
8 to make a motion to grant Application No. 20143 as captioned
9 and read by the Secretary, including the waiver from the five
10 years and the porch as not being original to -- removal of
11 the porch element and ask for a second.

12 MEMBER JOHN: Second.

13 CHAIR HILL: Motion has been made and seconded.
14 All those in favor say aye.

15 (Chorus of ayes.)

16 CHAIR HILL: All those opposed?

17 (No response.)

18 CHAIR HILL: The motion passes. Mr. Moy.

19 MR. MOY: Staff would record the vote as 4 to 0
20 to 1, and this is on the motion of Chairman Hill to approve
21 the application for the relief requested, and I believe
22 includes the waiver. Seconding the motion is Ms. John. Also
23 in support, Vice Chair Hart and Zoning Commissioner Robert
24 Miller. No other members present.

25 CHAIR HILL: Thank you. Thank you very much

1 gentlemen. So we're going to take a break. We're going to
2 switch out commissioners and then we might move a couple of
3 applications around. Is everyone here -- before everybody
4 gets up, is everybody here for -- or at least I don't know
5 if everybody's here. Is Application 20166 here? Okay, okay.
6 And then is Application 20168 here? Okay.

7 So we'll see what happens, because there was ANC
8 Commissioners here for both of those cases, and so we're
9 trying to get the Commissioners in and out as quickly as
10 possible. So but just we'll see what happens. Definitely
11 we are going to call them probably next, 20166, because I do
12 see the ANC Commissioner here for that after the break, and
13 we'll see whether or not we move another one up. So we're
14 going to take a quick ten minute break. Thank you.

15 (Whereupon, the above-entitled matter went off the
16 record at 11:29 a.m. and resumed at 11:45 a.m.)

17 MR. HILL: Okay, Mr. Moy, let's all get back
18 together and sit please. And then we're going to reorder
19 some of this here.

20 And I hope, I don't know whether we'll be able to
21 do this all before lunch, but let's go ahead and do Mr. Moy,
22 20172 next, then after that we're going to do 20168, then
23 after that we're going to do 20166. And we might not even
24 get to 20166 yet before lunch, we'll see how it goes. And
25 then so, I hope that was helpful.

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1 MR. MOY: Thank you, Mr. Chair. The Board is back
2 in session and the time is at or about 11:45 a.m. Okay.

3 Okay. Mr. Chairman, I believe then we're
4 beginning with Sunvest. So that's Case Application Number
5 20172 of Sunvest, LLC.

6 Caption and advertised for special exception under
7 Subtitle U, Section 320.2, to construct a third-story
8 addition and a two-story rear addition to an existing
9 semi-detached principal dwelling unit, and to convert it into
10 a three-unit apartment house, RF-1 Zone. This is at 4315 New
11 Hampshire Avenue Northwest, Square 3244, Lot 34.

12 And, Mr. Chairman, as you're aware, there is a
13 request for a postponement.

14 MR. HILL: Thank you, Mr. Moy. If you could
15 please introduce yourself from my left to right?

16 MS. JEROME: Crystal Jerome. I live at 4317 New
17 Hampshire Northwest.

18 MR. HILL: Can you spell your last name for me?

19 MS. JEROME: It's, J-E --

20 MR. HILL: Oh, you need to just press it once.

21 MS. JEROME: J-E-R-O-M-E, Jerome.

22 MR. HILL: Oh, great. I'm sorry, I didn't hear
23 you, Ms. Jerome. Next.

24 MS. COATES: Tearson Coates, ANC Commissioner, SMD
25 4C09.

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1 MR. HILL: All right, Commission, welcome.

2 MR. SULLIVAN: Martin Sullivan on behalf of the
3 Applicant.

4 MR. HILL: Okay. And so, Mr. Sullivan, you guys
5 are asking for a postponement, is that correct?

6 MR. SULLIVAN: Yes.

7 MR. HILL: Can you explain your request please?

8 MR. SULLIVAN: Yes. We think there's an
9 opportunity to work further with Ms. Jerome. We met with her
10 representative yesterday and agreed to ask for postponement
11 so that we can work on their concerns, maybe come to an
12 agreement. Or at least come closer to an agreement.

13 And then possible also go back to the ANC, if
14 they'll have us, and ask them to reconsider if we come to an
15 agreement with the neighbor.

16 MR. HILL: Okay.

17 MR. SULLIVAN: So we're asking for the --

18 MR. HILL: Okay.

19 MR. SULLIVAN: -- 15th or the earliest after that.

20 MR. HILL: Great. Commissioner, did you submit
21 a report on this already?

22 MS. COATES: Yes, we did.

23 MR. HILL: Okay. And you're in agreement with the
24 postponement?

25 MS. COATES: Yes.

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1 MR. HILL: Okay. All right. So, Mr. Moy, what's
2 the dates looking like for us?

3 And I guess maybe, yes, what does the 15th look
4 like, or then after that it's the, whatever the date is after
5 that.

6 MR. MOY: The docket sizes for January are not
7 very accommodating, Mr. Chairman. We do have an appeal on
8 the 29th of January, but with that appeal we have six cases,
9 seven cases --

10 MR. HILL: Okay. What does February look like?

11 MR. MOY: Okay. So, February 5 we have eight
12 cases, maybe potentially seven. So this could potentially
13 be the eight case for February 5th.

14 MR. HILL: All right, let's put it on February
15 5th.

16 MS. COATES: Our ANC meeting will be the week
17 afterwards, so we could potentially, I'm trying to think of
18 when we can --

19 MR. HILL: Right. So you'd have to do it in
20 January.

21 MS. COATES: Exactly.

22 MR. HILL: So you guys would have to come to some
23 agreement now.

24 MS. COATES: Correct.

25 MR. HILL: Or do you want to come a week

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1 afterwards, after the potential next ANC meeting? Mr.
2 Sullivan?

3 (Off microphone comments.)

4 MR. HILL: When's the next ANC meeting,
5 Commissioner, in February?

6 MS. COATES: It would be February 12th.

7 MR. HILL: February 12th. So then --

8 MR. SULLIVAN: So I think, which would be, and
9 we'd have to go a couple weeks. Couple more weeks.

10 So I think we're optimistic that we could come to
11 some kind of agreement by their January meeting. They have
12 a January 8th meeting. So we're okay with the 5th, all
13 right.

14 MR. HILL: All right, let's see what happens.

15 MR. SULLIVAN: January --

16 MR. HILL: Let's see what happens. If we don't,
17 I mean, if you don't get there then there's no point and then
18 you have to ask for another postponement. Just make it so
19 we don't have to come back here and do this again.

20 And so, you know, because then we want to see what
21 the ANC has to say. And so, Mr. Moy, we'll go ahead and put
22 on February 5th for now and then see whether or not Mr.
23 Sullivan needs to request for a postponement till after the
24 February ANC meeting, okay?

25 MS. COATES: Okay.

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1 MR. HILL: Okay, we'll see you guys on February
2 5th.

3 MS. COATES: Thank you.

4 MR. HILL: Thank you. All right, Mr. Moy, you can
5 call our next case when you get an opportunity.

6 MR. MOY: Thank you, Mr. Chairman. So that would
7 be Case Application Number 20168 of 50 F Street, LCC.
8 Captioned and advertised for a special exception under the
9 Capitol Security Sub-Area requirements of Subtitle I, Section
10 605.6, to construct a penthouse and a rooftop terrace
11 addition to an existing mixed-use building, D-3 Zone at 50
12 F Street Northwest, Square 628, Lots 896 and 898.

13 MR. HILL: Okay, great, thank you, Mr. Moy. Could
14 you please introduce yourselves from my right to left?

15 MR. ECKENWILER: Mark Eckenwiler, Vice Chair ANC
16 6E on behalf of the ANC.

17 MR. FERRIS: Lawrence Ferris with the law firm of
18 Goulston & Storrs, land use counsel for the Applicant.

19 MR. DIZ: Joaquin Diz from MGMA Architects.

20 MS. KOWALL: Lauren Kowall from Penzance, owner.

21 MR. HILL: Okay, who's going to be presenting to
22 us?

23 MR. ECKENWILER: The three of us will.

24 MR. HILL: Okay, all right. So why don't you give
25 me one --

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1 Okay. Well, Commissioner, welcome. This is
2 commissioner day. Like, we're getting through all the
3 commissioners that we can. And we get all the commissioners,
4 and I made the joke before, if you need an application, bring
5 your commissioner, you'll get at the head of the line.
6 Unless you're in opposition, then don't bring your
7 commissioner.

8 Are you here Commissioner Eckenwiler, and why are
9 you here, because I'm not terribly sure yet. I'm looking for
10 you, I didn't see your ANC report before, and so I'm not
11 clear as to what the position of the ANC. Can you quickly
12 tell me that?

13 MR. ECKENWILER: Sure. Just for the record, Mr.
14 Chairman, we did submit a letter, it was via email, after COB
15 on Monday. But it is in the record.

16 And in sum, our position is conditional support.
17 We have voted to support this on, strictly on one condition,
18 and that is there be no amplified music on or in the outdoor
19 terrace.

20 Absent such condition, we are in opposition, but
21 the Applicant has indicated to us in writing, and that's an
22 attachment to the letter, that they would accept such a
23 condition. So you can put us in qualified support in sum.
24 Happy to answer any questions.

25 MR. HILL: Great. No, that's fine, I live by

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1 something that has amplified music in the terrace.

2 So the Applicant was in favor of that particular
3 condition?

4 MR. ECKENWILER: I will let them speak.

5 MR. HILL: Yes, sure.

6 MR. FERRIS: We have no objection to that.

7 MR. HILL: Okay. All right. So, Mr. Ferris, why
8 don't you go ahead begin, walk us through whatever you want
9 to do in terms of your proposal.

10 We have had, I didn't know whether, did the
11 Architect of the Capitol chime in? Okay. So everybody is
12 up to speed but me.

13 So, I'll go ahead and kind of review that
14 information from the Architect of the Capitol. Mr. Ferris,
15 if you want to kind of walk us through your proposal and what
16 you're trying to achieve and how you believe you're meeting
17 the standard for us to grant the application.

18 I'm going to put, Mr. Moy, just put ten minutes
19 on the clock there so I know where we are. And you can begin
20 whenever you like.

21 MR. FERRIS: All right, thank you Chairman Hill
22 and Members of the Board. We are here today for the property
23 located at 50 F Street Northwest, just West of Union Station.

24 The application requests special exception of
25 approval pursuant to Subtitle I, Section 605.6 and 605.7, to

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1 renovate and expand an existing penthouse and construct a
2 rooftop terrace within the Capitol Security subarea.

3 The property is located in the D3 zone as a an
4 improved with a 12-story office building. The project will
5 construct a small, roughly 256 square habitat, additional to
6 the penthouse, in addition to the new outdoor terrace that
7 will serve as an amenity space for the office tenants.

8 The special exception review is focused primarily
9 on the project's relationship to the Capitol Grounds and the
10 properties located approximately .4 miles as the crow flies
11 from the Capitol Dome.

12 The Capitol is visible from the rooftop, as shown
13 in the photos included in the plans we submitted. Although
14 there are several intervening buildings in the near half mile
15 between the Capitol and the property.

16 With me today are Lauren Kowall from Penzance, who
17 will provide a little background on the project. And Joaquin
18 Diz from MGMA design, who will walk us through the plans.

19 Before we dive into our presentation, I would note
20 that we have reports in support from the Office of Planning
21 and from DDOT. The application was forwarded to the
22 Architects to the Capitol when we filed in October.

23 And we reached out directly to the Architect to
24 the Capitol twice. Once about mid-November and then again
25 last week.

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1 The Architect to the Capitol submitted a letter
2 yesterday stating that the application would be considered
3 by the U.S. Capitol Police Board today after a meeting. We
4 haven't heard any comments at this point.

5 We also presented the project to ANC 6C, as stated
6 previously. Once at its planning, zoning and economic
7 development committee meeting on December 4th and again at
8 the fully ANC on December 11th.

9 And the ANC submitted a report in support of the
10 application, subject to a condition mentioned just a minute
11 ago restricting amplified music on the rooftop terrace. And
12 we have no objection to the stated condition as written in
13 the ANC's report.

14 With that, I'll hand things over to Lauren Kowall
15 to give you a little background on the project.

16 MS. KOWALL: So, Penzance purchased 50 F in March
17 of this year and since then we've kicked off plans to
18 modernize the interior of the building for our tenants. It's
19 a 1980's vintage building.

20 In addition to interior renovations we would just
21 like to add this small expansion to the existing penthouse
22 and add a roof terrace, as an amenity, for our tenants. We
23 expect them to eat lunch out there, look at the nice views.

24 And I'll turn it over to Joaquin to walk you
25 through the details.

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1 MR. DIZ: Thank you. So as stated before, we are
2 2,300 feet from the Capitol. The images that show up on the
3 screen are, show where the property is.

4 MR. HILL: Mr. Diz, I'm just going to interrupt
5 you a second --

6 MR. DIZ: Sure.

7 MR. HILL: -- because I've kind of walked through
8 this whole record today. I mean, I'm sorry, we've walked
9 through the record.

10 I don't particularly have a lot of questions. I
11 did have a quick question, actually, for the Commissioner,
12 since he's here.

13 When I was first looking through this, like, what
14 is kind of near you guys?

15 Like, is there any residential like kind of, I
16 didn't think there was any residential around you guys, so.

17 MR. ECKENWILER: Is that a question, Mr. Chairman?

18 MR. HILL: Yes, for you. I just curious where the
19 residential was.

20 MR. ECKENWILER: Yes, it is. So if you look at,
21 it's case file Exhibit 6, Sheet TA1.3. On the lower left of
22 that sheet there is what appears to be a Google aerial view.

23 And if you look south and slightly west of this
24 property, the Capitol Plaza Apartments sit at 35 E Street.

25 MR. HILL: Oh, got it. I see it.

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1 MR. ECKENWILER: So it's on the same the same
2 square.

3 MR. HILL: Okay.

4 MR. ECKENWILER: Not quite due south. And several
5 of the residents from that building attended our zoning
6 committee meeting and expressed the concern.

7 They're already buffeted by a lot of noise from
8 roof top terraces from other buildings nearby. Even those
9 are basically office use, but nighttime still gets a lot of
10 use apparently and they were concerned about further
11 disruption.

12 MR. HILL: Okay. Commissioner Eckenwiler, is this
13 your SMD?

14 MR. ECKENWILER: This is Chairman Wirt's SMD and
15 she stands four-square behind her constituents. That's why
16 the ANC vote was unanimous.

17 MR. HILL: I was just curious who the SMD was for
18 the double or the average times, so --

19 MR. ECKENWILER: Ah, that's all Chairman Wirt.

20 MR. HILL: Okay, there you go. All right, does
21 anybody have any questions for the Applicant?

22 Does anybody have any questions for the ANC?

23 All right, going to turn to the Office of
24 Planning.

25 MR. KIRSHENBAUM: Good morning, Chair Hill and

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1 Members of the Board. Jonathan Kirshenbaum from the Office
2 of Planning.

3 We recommend approval of the special exception and
4 rest on the record. Please let me know if you have any
5 further questions. Thank you.

6 MR. HILL: Does the ANC Commissioner have any
7 questions for the Office of Planning?

8 MR. ECKENWILER: No, Mr. Chairman.

9 MR. HILL: Okay. Does the Applicant have any
10 questions for the Office of planning?

11 MR. ECKENWILER: No.

12 MR. HILL: Does the Board have any questions for
13 the Office of Planning?

14 Is there anyone here who wishes to speak in
15 support?

16 Is there anyone here who wishes to speak in
17 opposition?

18 Is there anything else you'd like to add at the
19 end, Commissioner?

20 MR. ECKENWILER: No.

21 MR. HILL: Is there anything else you'd like to
22 add at the end as the Applicant?

23 MR. FERRIS: No, thank you.

24 MR. HILL: Okay, I'll go ahead and close the
25 hearing. Is the Board ready to deliberate?

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1 MR. MAY: Yes.

2 MR. HILL: Okay. I can start. I agree with the
3 one condition that the ANC had put forth, and we'll add that
4 the ANC Commissioner was here to be able to testify on the
5 behalf of the ANC. As well to make sure that that condition
6 was put forward.

7 I was actually, again, just a little bit confused
8 as to where the residential was. Just kind of knowing that
9 that is a pretty big commercial block, but now I do see where
10 it is.

11 And I do think that the Applicant has met its
12 burden of proof as well as the analysis provided by the
13 Office of Planning, DDOT and then now the testimony by the
14 ANC. So I will be voting in favor.

15 Does anybody have anything else they would like
16 to add?

17 MR. HART: The only thing I will add is that I
18 know that we have not received anything from the Architect
19 to the Capitol, however, this is not really that close to
20 there. I mean, this is quite a distance from there.

21 Well, I understand that they are looking to, well,
22 we received something but they said that their meeting is
23 today so they are not able to provide any real comments to
24 us. So, I just didn't think that we needed to necessarily
25 hear from them.

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1 Now, if this was a different location, I might be
2 able to say yes, we should probably wait for something, but
3 I think we can move forward. So anyhow.

4 MR. MAY: Yes, I'm not sure I completely agree
5 with that. I know that when the AOC considers these cases,
6 they're, you know, they would consider it on their own, the
7 fact that they referred it to the Capitol Police Board, to
8 me, means that they wanted to get that confirmation. They
9 don't do that with every single case.

10 So, at the very least, the second that its being
11 taken up today, I'm curious whether there's any possibility
12 we might get some word from, further word from the AOC, even
13 if informally whether there might be an issue.

14 Can we, I mean, I would suggest that we could
15 contact Zoning Commissioner Turnbull, who is usually the
16 liaison on these issues and get word and then maybe make a
17 decision later in the day.

18 MR. HILL: That's fine. I guess, what I'm trying
19 to think how we're going to do this.

20 So, we close the hearing, now I'm turning to OAG,
21 close the hearing, leave the record open for something from
22 the Architect of Capitol and then come back and deliberate
23 this as a meeting at the end of the day?

24 MS. NAGELHOUT: You could do that. You could go
25 ahead with your deliberations now and take it up again. You

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1 know, revisit it if you did get something adverse from the
2 Architect to the Capitol. You know, hold off on putting it
3 under an order.

4 MR. MAY: So we could defer, we could make a
5 decision now but if we find something adverse in the AOC's
6 report then --

7 MS. NAGELHOUT: Yes.

8 MR. MAY: -- rescind that decision and deliberate
9 again?

10 MS. NAGELHOUT: Yes.

11 MR. HILL: Okay. If nobody cares, oh, I said
12 nobody cares --

13 (Laughter.)

14 MR. HILL: -- go ahead and let's just leave the,
15 let's go ahead and just wait. Let's go ahead and just close
16 the hearing, leave the record open from the architect, we're
17 going to be here a long day, today is not going to be long.

18 And so, we'll see whether we get something now
19 from Commissioner Turnbull at the end of the day. And then
20 at the end of the day we can hear this as a meeting and
21 deliberate.

22 And then I guess if we still don't hear anything
23 from the Architect to the Capitol, at that point we can
24 determine whether or not we want to keep the record open,
25 have a continued hearing or what have you. Does that sound

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1 acceptable?

2 MR. MAY: Yes, I think that makes sense.

3 MR. HILL: Okay. Okay, great. All right. So
4 then we are going to, I mean, we're deliberating now. I
5 mean, I basically, I have made my analysis already, or my
6 argument in favor of this application, including the
7 condition. That's not going to change by the end of the day
8 as long as the Architect to the Capitol has does not have any
9 issues, or the Capitol Police, with this application.

10 So, I'm going to go ahead and continue, as I said,
11 close the hearing. And then at the end, I don't know how
12 long we're going to be here, we're going to be here pretty
13 long.

14 And so then, you guys are going to be the end.
15 You're welcome to watch at the end. And then we're going to
16 come back again as a meeting, as a meeting, to deliberate.
17 And we don't have, we don't take testimony during meetings
18 anyway, so, and we're leaving the record open just for
19 something from the Architect to the Capitol.

20 So, that's what I suggest, okay? Okay. All
21 right. Did the Applicant have something to say even though
22 --

23 MR. FERRIS: Just doing my due diligence. If
24 under the rare chance we don't expect there to be any
25 comments or issues from the Architect to the Capitol, the

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1 U.S. Capitol Police, but if there are, we would appreciate
2 if the Board, rather than simply deliberating and denying the
3 application, but provide the Applicant the opportunity to
4 work with the U.S. Capitol Police to address any of their
5 issues.

6 I assume the Board would do that anyways --

7 MR. HILL: Surely. I mean, I would imagine that
8 if the end of the day we get something from the Architect to
9 the Capitol that says that they're in denial of this, then
10 we'll probably re-open the record and have a discussion with
11 you. Okay, is --

12 MR. FERRIS: Just making sure that was --

13 MR. HILL: Okay, great. Perfect. Okay, Mr. Moy,
14 can you remind me that we come back to this at the end of the
15 day?

16 MR. MOY: Absolutely, sir.

17 MR. HILL: Okay. All right, that you gentlemen
18 very much. Ma'am.

19 MR. FERRIS: Thank you.

20 MR. HILL: All right, Mr. Moy, I think we are
21 going to get through this next one and then we're probably
22 going to take lunch. So, there you go.

23 MR. MOY: So, thank you Mr. Chairman. So I
24 believe it's Application Number 20166 of Destination Pet,
25 LLC. Captioned and advertised for a special exception under

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1 the use requirements of Subtitle U, Section 513.1(1), to
2 permit a veterinary office and veterinary boarding hospital
3 in the MU-4 Zone at premises 2218-2220 18th Street,
4 Northwest, Square 2553, Lot 78.

5 MR. HILL: All right, good afternoon. If you go
6 ahead and introduce yourself from my right to left please?

7 MR. GUTHRIE: Ted Guthrie, ANC 1C.

8 MR. DEBEAR: Eric DeBear from Cozen O'Connor on
9 behalf of the Applicant, Destination Pet.

10 MR. BORDER: Rob Border, Destination Pet,
11 construction manager.

12 MR. NG: Franklin NG, with Architectural Werks,
13 the architect for the Proponent.

14 MR. HILL: Okay. So, let's see. So, okay, Mr.
15 DeBear, I guess you're going to be presenting to us. And
16 Commissioner Guthrie, unless things have changed, I think the
17 ANC is in opposition, is that correct?

18 MR. GUTHRIE: Things have changed.

19 MR. HILL: Okay. Pardon me?

20 MR. GUTHRIE: Things have changed.

21 MR. HILL: Oh, okay. This is interesting. All
22 right. Then Mr. DeBear, well, I'm going to start with the
23 Commissioner, if you don't mind.

24 As I pull the record up, Commissioner, can you
25 tell us what's happened since the last time you all were

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1 together?

2 MR. GUTHRIE: We met two weeks ago and issued
3 resolution in opposition because there was not yet in place
4 an MOU with the neighbors. And there was substantial
5 concerns about construction being able to limit the noise
6 impact on the neighbors. As well as some other ancillary
7 things about waste.

8 And unexpectedly, from my perspective, they
9 actually managed to meet and get an MOU signed in that two
10 week period. The ANC has not taken the position since then
11 because our next meeting isn't until January 8th. But I'm
12 quite confident it will be a full, in fulsome support for the
13 proposal, given the MOU.

14 MR. HILL: All right, thanks Commissioner. Mr.
15 DeBear, so, I mean, really what I was going to start to ask
16 in terms of your application, because I thought that, again,
17 we were going to have a variety of community opposition,
18 which we still might have, I don't know, but it was really
19 kind of more along the lines of, as I always ask, how you've
20 met the standard for us to approve the application.

21 And really was more focused on the veterinary use
22 as opposed to whole issue with the connection to the Life of
23 Riley. But it seems as though some of that has been
24 resolved.

25 So, if you could please kind of speak to that in

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1 terms of the MOU during your presentation. However, again,
2 just sticking to the use of the veterinary criteria. And you
3 can begin whenever you like.

4 MR. DEBEAR: Thank you, Chair Hill. I'll turn it
5 over to my client, Destination Pet, to begin the
6 presentation.

7 MR. BORDER: Thank you. The veterinary section
8 of the new addition is going to be on the first level. We're
9 looking, at this point, I mean, let me rephrase here.

10 We're looking into the veterinary hospital up
11 here, but at this point it takes -- all right. The property
12 itself is just adjacent, right next to the building of the
13 existing Life of Riley. There is three floors.

14 The first floor is street level. And there's not
15 going to be any, the way to get into this section here is
16 going through the existing Life of Riley through the
17 reception area. Employees only. The waiting room and stuff
18 would be in the main reception area also.

19 Some of the stuff we have going on with the vet
20 hospital is that it takes time to find a very good vet. And
21 we're very picky on our vets. We want to make sure that they
22 fit our purpose, our culture and stuff like this.

23 So at this time, the first floor we are going to
24 be using, turning it into a daycare until we find the correct
25 people, the correct doctors, to go forward with this. It

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1 takes some time to get a good doctor.

2 So, again, it will be a future for the vet
3 hospital side of things. And once that happens, we would
4 turn that into, we would have the exam rooms, we would have
5 operating rooms, x-ray rooms, treatment rooms, stuff like
6 that. You know, regular hospital.

7 A vet hospital is the same as a human hospital.
8 So that will be on the first floor. And the rest of it will
9 be boarding in that building, at that time.

10 Moving on a little bit here, I first went to the
11 ANC. We submitted stuff for the ANC.

12 The first meeting I was at was on October 16th and
13 we went and did our due diligence. They asked us to come
14 back with some information on, what do we do with our waste,
15 how do we take care of noise, stuff like this.

16 So, after that meeting we ended up coming back,
17 showing them, they were interested in like a bear proof trash
18 containers, because they have some issues over there. They
19 want to make sure we don't have no big problems.

20 So I came back with some bear proof containers to
21 keep animals out of. We changed things to twice a week pick
22 up for trash, instead of once a week.

23 And from there on we kept going from, the next ANC
24 they came up with something else and we came back, did our
25 due diligence and showed them stuff like so.

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1 We did meet up with the neighbors. Had some
2 meetings with the neighbors, came in and just talked to them
3 about their concerns, their issues. They had a few requests,
4 which I took care of immediately.

5 They asked for an acoustical engineer. A licensed
6 acoustical engineer to come in about noise. Had that brought
7 in, got the report, gave it to the neighbors. They looked
8 at it.

9 They had some more questions so we came back
10 again, met the neighbors again. This took a matter of three
11 months in going back and forth with them.

12 So, the last one is that we got the acoustical
13 engineer out. He met the neighbors and us at the facilities.
14 We walked through the facilities.

15 We explained what we're doing, what his
16 recommendation was. Which we then walked through the Life
17 of Riley, the existing. We're going to make some corrections
18 on the Life of Riley to help them out a little bit.

19 So, yes, we've done some due diligence. And this
20 is stuff in the MOU that they asked about.

21 MR. HILL: Okay, I'm going to interrupt you just
22 one second because I'm just working through the Office of
23 Planning's report here as well as all the different issues
24 in terms of the standard of relief requested.

25 Your part of the construction team, is that

1 correct?

2 MR. BORDER: I'm on the construction team for
3 Destination Pet, yes.

4 MR. HILL: Okay. Does the Board have any
5 questions of the Applicant?

6 MS. JOHN: Just one question. I'm a little
7 confused about the status of Life of Riley and Destination
8 Pet. Is this an expansion of Life of Riley or is it a
9 separate operation?

10 MR. BORDER: Back in August Destination Pet
11 purchased of Life of Riley. So we're actually, Life of Riley
12 is actually owned by Destination Pet.

13 MR. DEBEAR: But just to be clear --

14 MS. JOHN: Thank you.

15 MR. DEBEAR: Just to be clear, Board Member John,
16 this is a separate application. Actually, Life of Riley, in
17 its current form, was approved by the Board back in 2016 for
18 an animal boarding use.

19 And so, yes, this is physically connected in part
20 of the same business, but it is a different property and it
21 is a different application. We are just requesting the
22 veterinary boarding use for this neighboring property that
23 has to be connected to.

24 Obviously it works out for a business perspective,
25 but from a zoning perspective it is separate.

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1 MS. JOHN: I get that, I just needed to know what
2 the business was. Thank you.

3 MR. HILL: Okay, does anybody else have any
4 questions for the Applicant?

5 All right, I'm going to turn to the Office of
6 Planning.

7 MR. MORDFIN: Good afternoon. I'm Stephen
8 Mordfin. And the Office of Planning supports this
9 application with one condition, and that has to do with the
10 interior layout, which right now it's not laid out as a
11 veterinary clinic.

12 So, to ensure that it's in conformance with the
13 zoning regulations, at the time that they actually hire a
14 vet, we've added the one condition that the interior layout
15 not increase the gross floor of boarding of animals by not
16 more than 50 percent. And that's just to ensure compliance
17 with the zoning regulations.

18 MR. HILL: And that's fine. I guess the question
19 that I had about that was that if that's already within the
20 standard is it necessary for it to be a condition?

21 MR. MORDFIN: Well, the reason I added it as a
22 condition is because the floor plans that were submitted into
23 the file don't show it that way. So, just to make sure that
24 they actually comply with that, when the time comes that they
25 actual hire the vet and actually begin the operations with

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1 the veterinary clinic, that they are in conformance.

2 But you are correct, it is one of the criteria
3 that's necessary for the operation of this use. So --

4 MR. HILL: That's all right, that was my only
5 question. I mean, I don't really, I mean, I think that --
6 so, does the Board have any questions for the Office of
7 Planning and also about the condition?

8 Okay. Does the Applicant have any questions for
9 the Office of Planning?

10 MR. DEBEAR: No.

11 MR. HILL: Does the ANC have any questions for the
12 Office of Planning?

13 MR. GUTHRIE: No.

14 MR. HILL: And the Applicant understand the
15 conditions? Or the condition, I should say, of the Office
16 of Planning?

17 MR. DEBEAR: The one condition that I --

18 MR. HILL: Yes, the one condition.

19 MR. DEBEAR: -- mean, we have put forth to the
20 Board that we meet that under the current plans. So, I mean,
21 we're fine to agree to that.

22 Certainly, as Mr. Border alluded to, they will
23 need to, once they get a vet onboard, they would need to make
24 certain internal changes, but they would agree to that.

25 MR. HILL: Okay.

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1 MR. DEBEAR: As it's part of the standard.

2 MR. HILL: Okay. All right. I mean, for me, Mr.
3 DeBear, and I was just kind of understanding it, like I went
4 through the MOU that you guys have, I mean, the MOU seems
5 fairly detailed.

6 And I guess then, there was in your pre-hearing
7 statement the condition that you had to include a bear/rat
8 proof waste container at the project, commit to twice a week
9 trash pick up and provide staff members with additional
10 training on issues related to dog waste. You're still good
11 with those as conditions?

12 MR. DEBEAR: Yes, absolutely.

13 MR. HILL: Okay.

14 MR. DEBEAR: I'll just add that in terms of the
15 MOU, and we did get it finalized last night and submitted to
16 the Board, we did, as part of the MOU, agree to request that
17 the Board incorporate the material terms of the MOU as
18 conditions of approval.

19 Now, those, as you said, Chair Hill, are detailed
20 and extensive. And I do have them on a slide here. And I
21 submitted them as a separate request as part of the MOU Tab
22 B.

23 And so, we are requesting that in addition to what
24 was part of the pre-hearing statement that these be
25 incorporated as part of the Board's approval. And

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1 essentially this is going through all the different sound
2 proofing materials and features that Life of Riley and
3 Destination Pet --

4 MR. HILL: Is there another slide, Mr. DeBear, or
5 is this it?

6 MR. DEBEAR: It's on this slide and this slide and
7 --

8 MR. HILL: Right.

9 MR. DEBEAR: -- this slide.

10 MR. HILL: So, from what we've done in the past,
11 and I'm now kind of now turning to the Board, we haven't
12 accepted necessarily MOUs as conditions, right?

13 And so, the reason being is that like, I'm now
14 going to assume that you guys have agreed to the MOU, it's
15 something that will be, you've all agreed to it, right. And
16 so --

17 MR. DEBEAR: It's a contract, yes.

18 MR. HILL: It is a contract, exactly. And so now
19 for us to go through this or add this, we'd have to go
20 through each one of these and determine whether or not we
21 think it meets the standard for us to include, as a condition
22 that's then also enforceable.

23 And so, I don't know about your Board Members, but
24 I think, about your Board Members, but the items that did get
25 specifically mentioned there, as well as number two from the

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1 Office of Planning for the 50 percent gross floor area, is
2 where I would be. And then, again, the MOU is now a contract
3 between the community and the applicant.

4 Does the Board have any thoughts on that?

5 MS. JOHN: I think that ordinarily I agree with
6 you, but it seems as if these are sound mitigations, well,
7 not it seems, these are sound mitigation actions, which go
8 to the impact of the project on the neighbors.

9 So, I might be inclined to have a general
10 condition, and perhaps reference the MOU. But we, the Board
11 would not enforce the MOU, it's purely informational.

12 So, perhaps a general statement of sound
13 mitigation. You know, take sound mitigation measures or
14 something.

15 MR. HILL: Yes, we can talk a few. I'm just
16 trying to figure out, so.

17 MS. JOHN: But not each one. Not each one.

18 MR. HILL: Does, I mean, does, Commissioner, you
19 seem like you have an opinion?

20 MR. MAY: Just looking at the way they're on this
21 page, as they relate specifically to this property, and they
22 all seem to relate specifically to the acoustic treatment of
23 the property and --

24 MR. DEBEAR: Yes.

25 MR. MAY: -- that is the key consideration that

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1 I think we have to be thinking about.

2 So, I wouldn't have any problem with taking all
3 of these. I don't think we even need to go through them all
4 one-by-one.

5 I believe there are also, within the MOU, there
6 were requirements with regard to the existing operation as
7 well, correct?

8 MR. DEBEAR: Yes.

9 MR. MAY: Right. Which I think is vitally
10 important because I think the problem that we have here, the
11 reason why we're even discussing this, is that whatever was
12 permitted there before has not been effective in mitigating
13 this sound, right? We heard complaints about that.

14 MR. DEBEAR: Yes.

15 MR. MAY: And this, you know, correcting that and
16 then making the effort on this one I think makes up for that.
17 The shortfall on the part of the Applicant, with regard to
18 the existing operation.

19 MR. DEBEAR: Exactly, Commissioner May, yes.

20 MR. MAY: Yes.

21 MR. HILL: So those are all in 45B? All the
22 proposed conditions? Exhibit 45B.

23 MR. DEBEAR: Yes.

24 MR. HILL: And those includes the conditions for
25 Life of Riley?

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1 MR. DEBEAR: Yes.

2 MR. MAY: Yes, I'm not sure how we could include
3 the conditions on an adjacent property that's not subject to
4 this, but it's still part of your contract with the
5 neighbors.

6 MR. HILL: But then we can make it, so I'm just
7 trying to understand, OAG, you can help me out here also,
8 like, how to --

9 MR. DEBEAR: Conditions 2 and 3 concern the
10 existing Life of Riley. I believe everything else is
11 concerning this current application. So there are nine total
12 conditions as set forth in Exhibit 45B and referenced in this
13 PowerPoint. And only 2 and 3, Numbers 2 and 3 concern the
14 existing property, a.k.a., Life of Riley.

15 MR. HART: I think it's actually 3 and 4, but yes,
16 that's right?

17 MR. MAY: No 2, 2 refers to the existing property.

18 MR. HART: I'm sorry, I'm looking at, oh maybe
19 it's the wrong --

20 MR. MAY: Yes.

21 MR. DEBEAR: Are you looking at the actual MOU
22 itself?

23 MR. HART: Yes.

24 MR. DEBEAR: Yes. I removed the first one because
25 it concerned the sound engineer report --

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1 MR. HART: Okay.

2 MR. DEBEAR: -- which is already completed. And
3 part of the MOU.

4 MR. HART: Okay.

5 MR. MAY: Can you bring up the next page. So, on
6 Number 6 there is reference to the existing property in
7 cleaning up the junk on the roof. Which again, I don't think
8 that should be included in the conditions in this.

9 MR. DEBEAR: 5 and 6 do reference the existing
10 property but apply to the new property as well, so --

11 MR. MAY: Yes.

12 MR. DEBEAR: -- we can remove --

13 MR. MAY: So just delete the reference --

14 MR. DEBEAR: -- the reference --

15 MR. MAY: -- to the existing property.

16 MR. DEBEAR: Yes.

17 MR. MAY: I mean, I think with those, 8 is the
18 same way. Let's see. I don't, some of this is detailed and
19 I don't think is critical to the order nor is it enforceable
20 by the zoning administrator.

21 I mean, where there photos of the products being
22 installed as provided to the Katherine Madigan. I mean,
23 again, subject to your contract, but not something that we
24 would get into in the BZA order.

25 So, yes. I mean, I think --

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1 (Off microphone comment.)

2 MR. MAY: Okay, go ahead.

3 MR. HILL: All right. So, I don't know where
4 this, the slide presentation, the slide deck that you have,
5 it's not listed anywhere that I can cite within the record
6 right?

7 But you don't have, the thing that you have within
8 the record is the condition to the MOU, which is in Exhibit
9 45B, right?

10 MR. DEBEAR: If you look at Tab B, that's the
11 conditions that we're requesting.

12 MR. HILL: Right.

13 MR. DEBEAR: That's everything on these three
14 slides that --

15 MR. HILL: Right.

16 MR. DEBEAR: -- I'm showing you.

17 MR. HILL: 45B. 45B, correct?

18 MR. DEBEAR: Yes.

19 MR. HILL: Okay, that's fine. So, I'm just
20 talking to the, we're having a discussion here basically
21 about the conditions. I guess we've already, we're going to
22 have to deliberation again in terms of the standard.

23 And by the way everybody, we are going to take
24 lunch after this. So just to let you know that lunch will
25 go probably 45 minutes. So, just to let everybody know

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1 that's here.

2 In terms of OAG, or I'm asking OAG I guess, like,
3 how could I, if we, the Board, determined that these were
4 conditions that we think we want to include, right, how would
5 we best go about doing that?

6 MS. NAGELHOUT: I'm not sure I understand the
7 question. We've heard that you want to eliminate the other
8 property from these conditions, and I think you want to
9 eliminate Number 8, which is about the photographs?

10 MR. HILL: Well, the part that I'm confused, are
11 you guys looking at the same one? Okay, so every --

12 MS. NAGELHOUT: I'm looking at Exhibit B.

13 MR. HILL: Okay, fine. So Number 8, if we're
14 going to now, so we can do it this way. So the other
15 property then, so Number 8.

16 And then the --

17 MR. HART: I didn't know if it just made sense to,
18 anything to incorporate these conditions, but anything that
19 pertained to the existing property not incorporate that, that
20 aspect of it.

21 MR. DEBEAR: I can submit something, if that's the
22 Board's decision not to incorporate anything concerning the
23 existing property, I can submit a proposed language for the
24 conditions to the Board.

25 MR. HILL: That's okay, I'm just -- that's okay,

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1 but thanks.

2 MR. MAY: I think I can walk through everything
3 very specifically on these.

4 MR. HILL: If you --

5 MR. MAY: If you'd like?

6 MR. HILL: Okay, so let's do this first. So, did
7 I do this, is there anybody here wishing to speak in support?

8 Is there anyone here wishing to speak in
9 opposition?

10 Commissioner, do you have anything you'd like to
11 add at the end?

12 MR. GUTHRIE: Just that we're more than willing
13 to submit something at the January 8th meeting that would
14 indicate the change of circumstances leading to the changed
15 position of the ANC, if you need that. I don't know whether
16 you need --

17 MR. HILL: Right. Actually, that is helpful. So
18 then, we'd leave the record open for a submittal from the
19 ANC. When's the ANC meeting again?

20 MR. GUTHRIE: January 8th.

21 MS. JOHN: Mr. Chairman, if I could just add
22 clarification on whether the approval was conditioned on all
23 of these conditions. Because we're changing the conditions.

24 So, would the full ANC then support the
25 application if we changed the conditions, to delete those

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1 that refer to the Life of Riley?

2 MR. HILL: And I'm going to interrupt, then let
3 the Commissioner answer. I guess more accurately, the MOU
4 would still be in place, it's just that the conditions that
5 we would be submitting would only be conditions for this
6 property and this application, and not for another
7 application.

8 So the question then I guess, to the Commissioner
9 is that, does the Commissioner think that that would still,
10 which I think you were saying earlier, that the MOU was good
11 enough for you guys, but that, that that would change the
12 discussion or the deliberation of the ANC?

13 MR. GUTHRIE: Short answer is, no, I don't think
14 so. The other approach that you could take is that the ANC's
15 position was very clearly that we, our basis for opposition
16 was concerns about noise and failure to have an executed MOU.

17 Since the executed MOU exists, it seems to me that
18 our factual basis for opposing is no longer there, which
19 leaves us with no substantial, no reason for you to hold our
20 initial opposition --

21 MR. HILL: Right.

22 MR. GUTHRIE: -- subject to the substantial --

23 MR. HILL: So, let me interrupt you, Commissioner.
24 So, you guys are meeting again January 8th, correct?

25 MR. GUTHRIE: Yes.

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1 MR. HILL: And you think you can get this on the
2 agenda January 8th?

3 MR. GUTHRIE: Certainly.

4 MR. HILL: Okay. So then, Mr. Guthrie, what I
5 would suggest for you and the Applicant, because it would be
6 better, currently the ANC is in objection, and so, you know,
7 on the record it is.

8 And so go ahead and get something from the ANC,
9 we'll leave the record open for the ANC's comments from their
10 meeting, and then also we'll leave the record open for the
11 proposed conditions that have removed the other property from
12 the conditions. It would still remain in your MOU, however,
13 it would just be no longer conditions that we would put
14 particularly in place and we can take a look at that.

15 And if you could also just include in there the
16 items that were, that are in your original application about
17 the bear/rat proof waste container, the twice a week trash
18 pick up and staff members with additional training, as well
19 as the condition that the Office of Planning had put forward.
20 Okay?

21 I mean, I can search for it here in the record but
22 I think you know where it is, right?

23 MR. DEBEAR: Yes, I do.

24 MR. HILL: Okay. And go ahead and give that to
25 us in terms of listing conditions, and then we'll go ahead

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1 and set this as a meeting decision on the 15th. Yes, the
2 15th of January, which is the next time we're back here.

3 And so, other than that, we'll go ahead and close
4 the, other than that I'm about to close the hearing, unless
5 the Board has anything else they'd like to hear? Okay, so
6 that's my plan.

7 So, before I close the hearing, what I was going
8 to say again, just review, go ahead and get something from
9 the ANC on their January 8th meeting, so that would get
10 submitted into the record prior to our January 15th
11 deliberation about your stay, you know, current position of
12 the application.

13 And then including the conditions that are coming
14 forward that we've all talked about, that are pulled from
15 your MOU, including the bear trap twice a week and the
16 training on people as well as the 50 percent with the Office
17 of Planning condition. And we'll hold the record open for
18 those two items, other than that we're going to close the
19 hearing.

20 Is there anything else you guys want to add at the
21 end? You understand everything?

22 MR. DEBEAR: Yes, thank you.

23 MR. HILL: Okay. And then we'll deliberate this
24 on a meeting on January 15th. So closing the hearing. And,
25 Mr. Moy, is that good? Do you need to set dates?

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1 MR. MOY: That's good for me. I mean, if you want
2 to set dates. Obviously we're not going to be able to get
3 a letter or resolution from the ANC until the 8th, but we can
4 give the ANC at least to say, I'd say until Friday, January
5 10th to submit something.

6 MR. GUTHRIE: Yes, that shouldn't be a problem.

7 MR. MOY: And then from the Applicant, the
8 Applicant doesn't have to wait to January 10th to submit.

9 MR. DEBEAR: Yes, I'm going to do it immediately.

10 MR. MOY: Immediately, like this Friday?

11 MR. DEBEAR: Yes.

12 MR. MOY: Okay. Very good. So that would be this
13 Friday, December the 20th.

14 MR. HILL: Okay, great. All right, well, I have
15 neglected to say it all until now, but I've just remembered,
16 happy holidays and a Happy New Year and I'll see you in 2020.

17 MR. DEBEAR: Thank you, you too.

18 MR. HILL: Yes. All right, with that, we're going
19 to take lunch. At least, I would say, 45 minutes. 1:15
20 hopefully, thereabouts. Thank you.

21 (Whereupon, the above-entitled matter went off the
22 record at 12:32 p.m. and resumed at 1:30 p.m.)

23 MR. HILL: All right, Mr. Moy, let's go ahead and
24 start please.

25 MR. MOY: Thank you, Mr. Chairman. The Board is

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1 back in session and the time is at or about 1:30 p.m. And
2 I believe, Mr. Chairman, we're at Case Application Number
3 20159 of JJ Brothers, LLC.

4 And this application is capturing for special
5 exception under the use requirements, Subtitle I, Section
6 303.1(b) to permit an eating and drinking establishment on
7 the ground floor of an existing two-story building in the
8 D-1-R Zone at premises 1133 11th Street Northwest, Square
9 341, Lot 821.

10 MR. HILL: Okay. If the Applicant can please
11 introduce themselves.

12 MR. SULLIVAN: Thank you, Mr. Chair, Members of
13 the Board. My name is Marty Sullivan, on behalf of the
14 Applicant.

15 MR. SOLIS: Jose Solis, I'm the business owner.

16 MR. HILL: Could you spell your last name for me?

17 MR. SOLIS: S-O-L-I-S.

18 MR. HILL: Okay, great. All right, Mr. Sullivan,
19 I guess if you could walk us through the application. I was
20 interested in finding out what the ANC had to say, but we did
21 see the letter here from Commissioner Fanning.

22 And then also, I guess there was some talk about
23 how trash was going to be dealt with. I don't really have
24 a particular specific questions with this.

25 Actually, I live around the corner from this

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1 store, but if you want to go ahead and walk us through the
2 application, and I'm going to throw ten minutes on the clock
3 just so I know where we are and you begin whenever you like.

4 MR. SULLIVAN: Thank you. I'll go through the
5 presentation. And we do address in our PowerPoint the trash
6 situation. And then if you have any questions afterwards,
7 for the business owner, he's available for that.

8 This is the existing property. We're at 1133 11th
9 Street Northwest. It's an existing, it's currently a two-
10 story building.

11 The most recency of the first story was grocery
12 and deli with no seating. The Applicant is proposing to
13 renovate the interior of the first floor and use it as a
14 restaurant with seating for 36 patrons.

15 And he'll use the basement space for storage. And
16 the second floor is vacant. So, this is an eating and
17 drinking establishment, which requires special exception
18 approval in the D-1-R zone.

19 The proposed restaurant is called Annafair.
20 Applicant expects to have eight employees. And expects that
21 most employees, based on his experience with two other
22 restaurants that he operates and owns, live in the area, the
23 Applicant anticipates that the employees will use nearby
24 transportation, public transportation.

25 Proposed hours are 8:00 a.m. to 2:00 a.m. Sunday

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1 through Thursday and 8:00 and 3:00 a.m. Friday and Saturday.

2 There were no specific special exception
3 requirements so we just rely on the general requirements that
4 the use is in harmony with the general purpose and intent of
5 the zoning regulations and zoning maps. We believe this
6 application satisfies that requirement by the nature of the
7 use and its location. And by the fact that it's specifically
8 permitted as a special exception, provided it's not
9 objectionable to neighboring property owners.

10 It will not tend to affect adversely the use of
11 neighboring property. Only using the first floor, it's a
12 rather small restaurant.

13 The operator has experience with a couple of
14 popular restaurants in the area.

15 The trash plan. There is going to be three
16 dumpsters behind the building. The trash is collected three
17 times a week. Mondays, Wednesdays Saturdays. And the
18 Applicant will implement a monthly pest control program.

19 When I prepared the PowerPoint, ANC 2F had not yet
20 filed their letter, I believe they filed it late last night.
21 They unanimously support this.

22 And that's it. If the Board has any questions.

23 MR. HILL: Okay, does the Board have any questions
24 for the Applicant?

25 All right, I'm going to turn to the Office of

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1 Planning.

2 MR. KIRSHENBAUM: Good afternoon, Chair Hill and
3 Members of the Board. Jonathon Kirshenbaum on behalf of my
4 colleague, Steve Cochran, recommended approval of the special
5 exception requests and rests on the staff report. Please let
6 me know if you have any further questions.

7 MR. HILL: All right, does anybody have any
8 questions for the Office of Planning?

9 Does the Applicant have any questions for the
10 Office of Planning?

11 MR. SULLIVAN: No.

12 MR. HILL: Is there anyone here who wishes to
13 speak in support?

14 Is there anyone here who wishes to speak in
15 opposition?

16 Mr. Sullivan, is there anything you'd like to add
17 at the end?

18 MR. SULLIVAN: No, thank you.

19 MR. HILL: All right, I'm going to close the
20 hearing. Is the Board ready to deliberate? Okay, I can
21 begin.

22 I didn't really have any issues. I thought it was
23 a relatively straightforward application. I did have a
24 question about the trash and also the ANC, but now we have
25 submitted from, the submittal from the ANC. And I do believe

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1 the Applicant has answered the questions concerning the
2 trash.

3 I'm going to be in favor of this application. Is
4 there anything else anyone would like to add?

5 Going to go ahead and make a motion to approve
6 Application Number 20159, as captioned and read by the
7 Secretary, and ask for a second.

8 MR. MAY: Second.

9 MR. HILL: Motion has been made and seconded. All
10 those in favor say aye?

11 (Chorus of ayes.)

12 MR. HILL: All those opposed? The motion passes.
13 Mr. Moy?

14 MR. MOY: Staff would record the vote as 4-0-1.
15 And this is on the motion of Chairman Hill to approve the
16 application for the relief requested.

17 Seconding the motion is Zoning Commission Peter
18 May. Also in support, Ms. John and Vice Chair Hart. No
19 other member is present.

20 MR. HILL: Thank you. Thank you. Good luck, Mr.
21 Solis. I live around the corner --

22 MR. SOLIS: Okay.

23 MR. HILL: -- okay? All right. All right, Mr.
24 Moy, whenever you like.

25 MR. MOY: Thank you, Mr. Chairman. So the next

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1 case application is 20162 of Sandip Mehta, hope I pronounce
2 that correctly, and Angela Mizeur, M-I-Z-E-U-R.

3 Captioned and advertised for a special exception
4 under the accessory building use requirements of Subtitle U,
5 Section 301.1(e), Subtitle E, Section 5201 from the lot
6 occupancy requirements of Subtitle E, Section 504.1 to
7 construct a two-story accessory structure to be used as a
8 garage with a second-story dwelling unit in the RF-3 Zone at
9 premises 400 3rd Street Southeast Square 793, Lot 33.

10 MR. HILL: Okay, great. If you could please
11 introduce yourself for the record?

12 MR. FOWLER: Michael Fowler from Fowler
13 Architects. The clients are unable to attend so I'll be
14 representing them.

15 MR. HILL: Okay, great. All right, Mr. Fowler,
16 nice to see you again. You're catching me after lunch so I'm
17 not really as alert as I, well, I shouldn't say that. I
18 teased you the last time you were here, so it's very nice to
19 see you again.

20 If you could please kind of go ahead and walk us
21 through your application and what your client is trying to
22 achieve, as well as how you're meeting the standard for us
23 to grant the application. I'm going to throw ten minutes on
24 the clock actually.

25 And I don't have any particular specific questions

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1 about the criteria, so you can begin whenever you like.

2 MR. FOWLER: This is currently a single-family
3 residence in the Capitol Hill Historic District. We're
4 proposing a carriage house parking on the first level, a
5 rental apartment on the second.

6 We are in need of a special exception for lot
7 occupancy and use. It's pretty straightforward. It meets
8 the other requirements.

9 There is, I get questions about that six-inch
10 inset on the first floor that's noted on the site plan in
11 elevations. This was an area that an adjacent neighbor
12 wanted a little extra space to open up their car door. So
13 our client agreed to inset a little bit on that side of the
14 property.

15 The way that we approached it architecturally was
16 I tried to make it look like an additional opening in the
17 garage that had been closed off. And then the theory would
18 be that eventually it could be, the space could be captured
19 back by the garage. But this was to appease the neighbor who
20 felt that their car door would swing and hit the brick.

21 Besides that inset it's a pretty straightforward
22 carriage house. So, if you have any questions, I'll answer
23 them now.

24 MR. HILL: Okay, thank you, Mr. Fowler. Does
25 anybody have any questions for the Applicant?

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

3 MS. MYERS: For the record, Crystal Myers with the
4 Office of Planning. The Office of Planning is recommending
5 approval of this case and stands on the record of the staff
6 report.

7 MR. HILL: Does anybody have any questions for the
8 Office of Planning?

9 MR. HART: Just one. Trying to get some clarity
10 around this. There is a part of the zoning regs that talks
11 about this kind of five years issue.

12 And the question really is, we've heard a couple
13 of these cases, just in general. And I'm not aware of a case
14 where we've kind of said no to this, but I'm just trying to
15 understand, and maybe I just, I had to ask this before, but
16 why was the five year, is this something that is just a
17 deterrent to keep you from doing it or is there some, I don't
18 know, I'm just trying to understand a little further, if you
19 could give us a little bit more clarity around it.

20 MS. MYERS: I don't know the history on it. With
21 the RF zones it does say that it applies, and so that's why
22 we go through this. But we are aware that is a bit of a
23 question mark with that.

24 MR. HART: Thank you.

25 MR. MAY: So the five year role was something that

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1 was designed to get around the notion that somebody would
2 come out and build a garage and then come back six months
3 later and then build the second floor, right? So it's a
4 matter of imposing the conditions.

5 There are a lot of one-story garages that could
6 be converted. And so, I think the idea was to try and
7 encourage that, but not necessarily encourage kind of a work
8 around.

9 And when you do it, you still have to meet other
10 conditions. And so, I mean, it may not be the perfect way
11 to do it but it was one of those things where there's a time
12 of delay to discourage kind of gaming the system.

13 MR. HART: Do you think it's, oh, never mind.
14 Okay, thank you.

15 MR. FOWLER: Can I add one thing?

16 MR. HILL: Sure, Mr. Fowler.

17 MR. FOWLER: Sorry, it almost slipped my mind.
18 This is in this Historic District. We had to make a couple
19 minor changes to one of the exterior elevations in order to
20 appease the staff Historic.

21 If you look at A3, the bay or aural projection.
22 We flattened the roof so that the roof lines did not
23 intersect with the roof flashing of the main roof. It's a
24 very minor change. And then we added a little bit of trim
25 around the door. The entry door on that side.

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1 So those were --

2 MR. HILL: I'm sorry, Mr. Fowler, say that again.
3 I was listening to Mr. Hart, and so, can you say that one
4 more time, I apologize?

5 MR. FOWLER: In order to, in coordination with
6 Historic, we flattened the roof of the bay, the aural
7 projection, the window on the north elevation. And we also
8 added a little bit of trim around that exterior door, also
9 on that elevation.

10 These were very minor changes. CHRS, Historic and
11 Office of Planning Historic staff both kind of requested it
12 so we made those changes. And we are on the consent calendar
13 for Historic for tomorrow.

14 MR. HILL: Okay.

15 MR. FOWLER: I wanted to bring that up in case we
16 needed some minor flexibility for when we go to permit. The
17 roof line, it's a minor change, and the trim as well, but it
18 might be something that they flag.

19 MR. HILL: Okay, thank you for pointing that out.
20 Does the Board have any issues with the minor flexibility
21 that is being requested for?

22 Okay, so you're fine on the trim? Door trim.
23 Okay. All right.

24 All right. So, is there anyone here wishing to
25 speak in support?

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1 Is there anyone here wishing to speak in
2 opposition?

3 Mr. Fowler, is there anything that you would to
4 add at the end?

5 MR. FOWLER: No.

6 MR. HILL: Okay. So, I'm going to go ahead and
7 close the hearing. Is the Board ready to deliberate? Would
8 someone else like to talk?

9 MR. MAY: Mr. Chairman, I think it's a very
10 straightforward case and I wouldn't have no problem with
11 making a motion to approve Zoning Commission Case Number, I'm
12 sorry, BZA Case, I don't do this often enough, BZA Case 20162
13 of Sandip Mehta and Angela Mizeur, for requested relief with
14 minor flexibility, or with flexibility needed to satisfy
15 Historic Preservation review.

16 MR. HILL: Second. The motion has been made and
17 seconded. All those in favor say aye?

18 (Chorus of ayes.)

19 MR. HILL: All those opposed? The motion passes.
20 Mr. Moy?

21 MR. MOY: Staff would record the vote as 4-0-1.
22 And this is on the motion of, starting Commissioner Peter May
23 to approve the application with the language for minor
24 flexibility. Seconding the motion is Chairman Hill. Also
25 in support Ms. John and Vice Chair Hart. No other member is

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1 present, sir.

2 MR. HILL: All right, thank you. All right, thank
3 you, Mr. Fowler. Happy New Year.

4 All right, Mr. Moy, whenever you like.

5 MR. MOY: Okay, can we have the applicant and
6 parties to the table to Application Number 20167. And this
7 is Neil King.

8 Captioned and advertised for a special exception
9 from the use provisions of Subtitle U, Section 301.1(c)(2),
10 and pursuant to Subtitle X, Chapter 10, for variances from
11 the nonconforming structure requirements of Subtitle C,
12 Section 202.2, lot occupancy requirements of Subtitle E,
13 Section 304.1. This would construct a second floor addition
14 to an existing accessory building that would accommodate an
15 apartment in the RF-1 Zone at premises 233 1/2 9th Street
16 Southeast Square 923, Lot 51.

17 MR. HILL: Okay. All right, and can you please
18 introduce yourself for the record? You need to push the
19 button once.

20 MS. MARTIN: Good afternoon, Meredith Martin,
21 architects on behalf of the applicant.

22 MR. KING: Neil King, I'm the home owner.

23 CHAIR HILL: Okay, Ms. Martin, are you going to
24 be presenting to us?

25 MS. MARTIN: Yes, sir.

1 CHAIR HILL: Okay, great, so if you could just
2 walk us through what your client is trying to achieve and how
3 you believe that you are meeting the standards for us to
4 grant the relief requested?

5 I don't have a lot of specific questions other
6 than, I guess, I saw that there were letters from neighbors.
7 It wasn't clear to me if the two adjacent neighbors had been
8 notified or not, so you can at least let me know about that.

9 I'm going to put 10 minutes on the clock, Mr. Moy,
10 just so I know where we are, and you can begin whenever you
11 like.

12 MS. MARTIN: Okay, so the existing property is a
13 single-family home with a detached single-car garage and an
14 assortment of accessory wooden structures. There's a roof
15 deck on the existing garage, stairs leading up to the garage,
16 a walkway over to the house, as well as a couple of sheds.

17 So the applicant's, the homeowner's desire is to
18 add a second dwelling to the property. They'd like to do
19 that on top of the existing garage, and in order to
20 facilitate a useful space, they'd like to extend the garage
21 five feet to the south to the property line.

22 So their existing lot occupancy as it stands is
23 88.9 percent, and it was that way when they moved in in 1999.
24 Ostensibly, it was at around 80 percent when the original
25 property was built.

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1 So obviously the wooden structures weren't there,
2 but just with the main house and the single-car garage, the
3 lot occupancy in the early 1900s would have been around 80
4 percent.

5 So the practical difficulty, you know, the
6 variance standards are, really are -- the basis of our case
7 is just that there's really no practical way to add a second
8 dwelling to the property outside of building the garage up.

9 I think you can see on the two site plans, A7 and
10 A8, by removing all of the wood structures, even though we're
11 adding onto the garage, the size of the wood structures, once
12 they're gone, the net result is a slightly smaller lot
13 occupancy. I believe we end up with 85.5.

14 And then the existing single-family home is a
15 little bit different than most of the houses on the block in
16 that the first floor is at grade. It's not raised for an
17 English basement style house, so, you know, any changes to
18 get an accessory or, excuse me, an extra dwelling unit in the
19 basement or to go up on the main house would be
20 extraordinarily difficult. I think we'd be back here for a
21 variance if that were the case because of, you know, having
22 to construct an additional entryway to get into a unit in the
23 house.

24 So we believe this is the most practical way to
25 achieve the homeowner's goals, as well as sort of clean up

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1 the property. There is -- the wooden structures that are
2 there are in pretty poor condition and they're visually not
3 attractive, so we think it's a win on both sides.

4 MR. KING: Could I --

5 CHAIR HILL: Sure.

6 MR. KING: I'll just speak to the --

7 CHAIR HILL: Sure, please, go ahead.

8 MR. KING: -- the neighbors' issue. So we've
9 lived there for 21 years. Our neighbors on either side,
10 actually going a couple of houses deep on either side north
11 and south have also been there well before we arrived.

12 We've received letters of support from both the
13 north and south neighbors, and actually even the neighbors
14 even to the north and south of them, and then there were
15 other neighbors, when they got the notice that we were
16 required to send out for the 200-foot radius, a number of
17 people wrote in just spontaneously supporting it mainly for
18 adding additional dwelling units to, you know, to the Capitol
19 Hill area from that point of view, but that's anywhere where
20 the most immediate neighbors who would be affected have not
21 opposed, but have actually supported this.

22 CHAIR HILL: Okay, you've been there for 21 years?

23 MR. KING: I find that hard to believe.

24 CHAIR HILL: Yeah, it is. It is. You look so
25 young. Let's see, does anybody have any questions for the

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

3 MS. VITALE: Good afternoon, Mr. Chair and members
4 of the board, Elisa Vitale with the Office of Planning. The
5 Office of Planning is recommending approval of the requested
6 variance relief for lot occupancy and for the addition or
7 enlargement to an existing nonconforming structure, as well
8 as approval of the special exception relief under U
9 301.1(c)(2) to expand or add to an accessory building to
10 accommodate a principal dwelling unit.

11 I'll rest on the record of the staff report
12 otherwise, and I'm happy to answer any questions. Thank you.

13 CHAIR HILL: Does anybody have any questions for
14 the Office of Planning? I do real quick. Can you walk me
15 through the first prong again, like how you get through the
16 first prong again?

17 MS. VITALE: Certainly, for this relief, the
18 standard is an exceptional situation resulting in a practical
19 difficulty. In this instance, I think there were a few
20 factors in play, the first being that the property is
21 existing. It predates zoning. The condition of the 88.9
22 percent lot occupancy that's there on this site dates back
23 to before 1999, before the current homeowner and the
24 applicant in this case.

25 It is, in fact, in the RF-1 zone, a zone which

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1 permits two dwelling units as a matter of right, and in the
2 2016 zoning regulations, one of the changes was to permit
3 those two units to be either located both in the principal
4 dwelling or split between the principal dwelling and the
5 accessory building, again to kind of facilitate additional
6 housing units and to allow that second unit to go in an
7 accessory building if that made sense.

8 In this case, as you heard from the applicant,
9 this property is in the Capitol Hill Historic District. It
10 is not typical of, you know, all Capitol Hill rowhouses with
11 the English basement where the first floor and the entry to
12 the first floor is elevated above grade, which is what you
13 would typically see in which it can accommodate that front
14 basement entry that is typical of that Capitol Hill rowhouse
15 flat form.

16 So in this instance, it would be difficult for the
17 applicant to construct that second principal dwelling unit
18 in the principal building. So they would have to, you know,
19 excavate the existing cellar. They would need to create an
20 areaway at the front of the building. That had implication
21 for historic preservation review and public space.

22 So we believed that condition, the fact that the
23 existing house is three stories, again, it would be difficult
24 to add that second unit in the principal dwelling because
25 they couldn't go up another full story on the principal

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1 structure, that it was a number of factors that contributed
2 to the exceptional situation with respect to this property.

3 CHAIR HILL: Okay, thank you. Does the applicant
4 have any questions for the Office of Planning?

5 MS. MARTIN: No.

6 CHAIR HILL: Is there anyone here who wishes to
7 speak in support? Is there anyone here who wishes to speak
8 in opposition? Is there anything else you'd like to add at
9 the end?

10 MS. MARTIN: No, sir.

11 CHAIR HILL: All right, I'll go ahead and close
12 the record. Is the board ready to deliberate? Okay, I can
13 begin. I thought that -- I just wanted to hear kind of how
14 the Office of Planning was working through their thought
15 process, but I would also agree with their analysis.

16 I am also glad to see that the ANC 6B was in
17 support, as well as DDOT having no objection. I do think
18 that the applicant has met the standard for us to grant the
19 requested relief and I'll be voting in favor. Is there
20 anything else anyone would like to add?

21 I'll go ahead and make a motion to approve
22 application number 20167 as captioned and read by the
23 Secretary and ask for a second.

24 MEMBER JOHN: Second.

25 CHAIR HILL: Motion made and seconded. All those

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1 in favor, say, Aye.

2 (Chorus of aye.)

3 CHAIR HILL: All those opposed? The motion
4 passes, Mr. Moy.

5 MR. MOY: Staff would record the vote as four to
6 zero to one, and this is on the motion of Chairman Hill to
7 approve the application for the relief requested, seconding
8 the motion is Ms. John, also in support, Vice Chair Hart and
9 Zoning Commissioner Peter May. No other members present.

10 CHAIR HILL: Thank you, Mr. Moy. Thank you very
11 much.

12 MS. MARTIN: Thank you.

13 MR. KING: Thank you.

14 MR. MOY: The next application is case application
15 20169 of Washington Ethical Society. Yeah, come to the
16 table. This is a request for a special exception under the
17 R-Use group requirements of Subtitle U Section 203.1(g).
18 This would permit the continued use of the building as a
19 child development center for 40 children in the R-1-A zone.
20 This is at 7750 16th Street, NW, Square 2745F, Lot 81.

21 CHAIR HILL: Hi, could you please introduce
22 yourself for the record?

23 MS. POPPEI: Amanda Poppei, I serve as the pastor
24 at the Washington Ethical Society.

25 MR. HUTTON: Tom Hutton, I serve as the business

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1 administrator at Washington Ethical Society.

2 CHAIR HILL: Great, thank you. Okay, who is going
3 to be presenting to us?

4 MS. POPPEI: I will.

5 CHAIR HILL: Okay, great. All right, so if you
6 want to go ahead and walk us through your application and
7 what you're trying to achieve, and also if you could tell us
8 how you believe you're meeting the standard for us to grant
9 the application or, I'm sorry, grant the relief requested?

10 There was a couple of questions I think that we'll
11 have on some of the conditions as we kind of, like, go
12 through, but you can -- I'm going to put 10 minutes on the
13 clock and you can begin whenever you like.

14 MS. POPPEI: Great, thank you so much. So really
15 we're just asking for sort of more of the same of what we've
16 had for the past 10-plus years, which has included at least
17 one renewal, which is the capacity to use our building not
18 just for its designated purpose as a church, but also to hold
19 a child development center. We do have actually two child
20 development centers currently splitting the space.

21 We are requesting this time around that, if the
22 board would consider making it a special exception in
23 perpetuity just so that we don't have to keep coming back for
24 the renewals. This is our second renewal since I started 12
25 years ago serving the congregation.

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1 I think we sort of have responded to any of the
2 concerns that the Office of Planning had, making sure that
3 they're aware that there isn't another center within 1,000
4 feet, and there's no offsite play area, et cetera.

5 And we are asking that the age of the children
6 allowable in the center that it's zoned for be lowered
7 slightly from a year-and-a-half to starting earlier in
8 infancy at six weeks, but nothing would change about the
9 current use really of the center.

10 We have a neighborhood agreement which was created
11 about 11 years ago when we first came before you, during my
12 time at least, and we haven't had any concerns from neighbors
13 in recent years at all. They all were notified, of course,
14 within 200 feet, and we didn't receive any concerns. We went
15 before the ANC and have their approval for it as well.

16 CHAIR HILL: Is it Reverend Poppei?

17 MS. POPPEI: Yes.

18 CHAIR HILL: Reverend Poppei, where is the ANC
19 report, do you know, in the application?

20 MS. POPPEI: I'm going to defer to Tom.

21 CHAIR HILL: Or do my board members find it
22 because I --

23 MR. HUTTON: We never received a report from them.
24 We went to their meeting on the first Wednesday in November
25 and it was approved at the meeting, but that's the last I've

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1 heard until now.

2 CHAIR HILL: I see, right. They didn't actually
3 submit anything to the record, so you're testifying that you
4 went before the ANC and they voted to approve?

5 MR. HUTTON: Yes.

6 CHAIR HILL: Okay, were you guys sworn in earlier?

7 MS. POPPEI: We were.

8 CHAIR HILL: Okay, not that you have a higher
9 calling than I do in terms of what you're swearing towards,
10 but -- okay, does anybody have any questions for the
11 applicant?

12 MEMBER JOHN: Mr. Chairman, I'm not sure if this
13 is a question or a comment, but the applicant did have
14 permission to enroll students aged infant to five years old
15 in the previous BZA approval. That would be the modification
16 18835A which was issued in 2013.

17 MS. POPPEI: In the renewal, I think that's right.

18 MEMBER JOHN: Right.

19 MS. POPPEI: Yes, I think that's right, Board
20 Member John. Thank you so much.

21 MEMBER JOHN: So you would be --

22 MS. POPPEI: So that just continues, in other
23 words. Great, thank you so much.

24 MEMBER JOHN: All right, you're welcome.

25 CHAIR HILL: Okay, so infancy to five years old,

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1 is that what you're speaking to Board Member John? Okay, I'm
2 going to turn to the Office of Planning.

3 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman
4 and members of the BZA, Maxine Brown-Roberts for the record.
5 The Office of Planning is recommending approval of the
6 special request for the child development center.

7 We are also in support of the deletion of the time
8 period, and also supporting the change to condition number
9 two to six-and-a-half weeks to five years old.

10 We also recommend that all of the conditions that
11 were approved under BZA 18335 be retained, and also as
12 outlined in our report, they meet all of the conditions of
13 Subtitle U, Section 203.1, and therefore, we would recommend
14 approval. Thank you, Mr. Chairman.

15 CHAIR HILL: Okay, and I was a little confused.
16 There was a discrepancy that Ms. John brought up with one of
17 the conditions on the previous order that listed infancy to
18 six-and-a-half rather than 6.5 weeks to -- I'm sorry, infancy
19 to five years old versus six-and-a-half weeks to five years
20 old? Is there --

21 MS. BROWN-ROBERTS: In this application, the
22 applicant asked for six-and-a-half.

23 CHAIR HILL: Okay, no, I'm saying in the previous
24 18335 --

25 MS. BROWN-ROBERTS: Right.

1 CHAIR HILL: -- did it state infancy to five years
2 old?

3 MS. BROWN-ROBERTS: I think what I had, it says
4 ages one-and-a-half to five years.

5 COMMISSIONER MAY: We have -- we've gotten
6 feedback from OIG that the previous order changed it --

7 MS. BROWN-ROBERTS: Was amended.

8 COMMISSIONER MAY: -- amended it to be infancy to
9 whatever the upper limit was.

10 MS. BROWN-ROBERTS: I have no problem with
11 changing it to infancy.

12 CHAIR HILL: With infancy?

13 MS. BROWN-ROBERTS: I mean, yeah.

14 CHAIR HILL: Okay.

15 MS. BROWN-ROBERTS: I just thought that the --

16 CHAIR HILL: I don't know what six-and-a-half
17 weeks is. I mean, that seems pretty infancy to me.

18 MS. BROWN-ROBERTS: It's infancy.

19 CHAIR HILL: But, like, you know, I don't know how
20 you're getting somebody in there sooner than that, but --

21 MS. BROWN-ROBERTS: Yeah, yeah.

22 CHAIR HILL: Okay.

23 MS. BROWN-ROBERTS: No problem.

24 CHAIR HILL: So, I like infancy better than six,
25 I mean, six-and-a-half weeks, so I don't know. The applicant

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1 does not mind infancy, correct, or have any issue?

2 MS. POPPEI: Infancy is -- no, that's fine with
3 us.

4 CHAIR HILL: Okay, all right, does -- is there
5 anybody here -- well, does anybody have any questions for the
6 Office of Planning? Does the applicant have any questions
7 for the Office of Planning? Is there anybody here who wishes
8 to speak in support? Is there anybody here who wishes to
9 speak in opposition? Is there anything else you'd like to
10 add at the end?

11 All right, okay, then I'm going to go ahead and
12 close the hearing. Is the board ready to deliberate? Okay,
13 I think that I would be in agreement with the burden of proof
14 that was put forward by the applicant, as well as the
15 analysis that was put forward by the Office of Planning.

16 You know, ANC 4A did not submit a report, but I
17 will believe the applicant in terms of the vote, even though
18 it's not something that we can give great weight to since we
19 don't actually have the agreement, I'm sorry, an application,
20 but I'm thankful to hear that the ANC is in support. Also
21 there is the neighborhood cooperative agreement which was in
22 exhibit 10, and OSSE recommends approval based on the growing
23 demand for licensed child care spots.

24 I'm going to go ahead and be voting in approval.
25 Is there anything else anyone would like to add? Okay, I'm

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1 going to make a motion to approve application number 20169
2 as captioned and read by the Secretary, including the changes
3 of conditions put forward by the applicant, however leaving
4 the conditions in place from 18335, but changing one of the
5 conditions to infancy to six-and-a-half years, I'm sorry,
6 infancy to five years old, and deletion of the first
7 condition which had a time limit on the application, and ask
8 for a second.

9 MEMBER JOHN: Second.

10 CHAIR HILL: Motion made and seconded. All those
11 in favor, say, Aye.

12 (Chorus of aye.)

13 CHAIR HILL: All those opposed? The motion
14 passes, Mr. Moy.

15 MS. POPPEI: Thank you so much.

16 MR. MOY: Staff would record the vote as four to
17 zero to one, and this is on the motion of Chairman Hill to
18 approve the application for the relief requested, as well as
19 the conditions that he had cited in his motion, seconding the
20 motion is Ms. John, also in support, Vice Chair Hart and
21 Zoning Commissioner Peter May. No other members present.

22 CHAIR HILL: Thank you, Mr. Moy. Thank you all
23 very much. Good luck.

24 MR. MOY: The next application is case number
25 20170 of the District of Columbia. The captioned and

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1 advertised for a special exception under Subtitle C, Section
2 1504 from the penthouse screening requirements, Subtitle C,
3 Section 1500.6 to permit renovations to the existing public
4 elementary school building in the R-2 zone. This is at 1120
5 50th Place, NE, Square 5174, Lot, 105. And I believe, Mr.
6 Chair, there is a request for expert status.

7 CHAIR HILL: Okay, let's go ahead and walk through
8 this first. Let's have you all introduce yourselves, please?

9 MR. GREGORY: Good afternoon, my name is Don
10 Gregory. I'm a principal with Cox Graae Spack Architects.

11 MR. MACKENZIE: Good afternoon, I'm Jerdone
12 Mackenzie with DGS Capital Construction Services. I'm the
13 project manager for the project.

14 MS. MOLDENHAUER: Good afternoon, Meredith
15 Moldenhauer with the law firm of Cozen O'Connor on behalf of
16 the applicant.

17 MR. WILLIAMS: Good afternoon, Nicholas Williams
18 with the District of Columbia Public Schools, facility
19 planning and design.

20 CHAIR HILL: Okay, great. Ms. Moldenhauer, are
21 you going to be presenting to us today?

22 MS. MOLDENHAUER: Yes.

23 CHAIR HILL: Okay, all right, I guess there's a
24 couple of preliminary matters. One is that -- well, I mean,
25 I guess there's the expert status. So you're trying to get

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1 somebody to be an expert. Who is it that's the expert status
2 again?

3 MS. MOLDENHAUER: I believe that we don't have any
4 other -- anybody that would need to be in expert status. Don
5 has been here before, but we're going to be walking through
6 some basic architectural aspects, so.

7 CHAIR HILL: Okay, well, it was just brought up
8 by the Secretary, so you don't have any expert status that
9 you need clarification on right now?

10 MS. MOLDENHAUER: No.

11 CHAIR HILL: Okay, and then the other was that
12 there was a late posting?

13 MS. MOLDENHAUER: Yes.

14 CHAIR HILL: Is that correct?

15 MS. MOLDENHAUER: Exhibit 33, we requested a
16 waiver.

17 CHAIR HILL: Why was it late?

18 MS. MOLDENHAUER: An individual in my office ended
19 up having to have surgery, her wisdom teeth out. It was just
20 delayed by a few days.

21 CHAIR HILL: Okay, but the ANC, you went before
22 the ANC?

23 MS. MOLDENHAUER: Yeah, this has been part of a
24 very public process that has been going on and everyone has
25 been aware of it, and it did get posted. It was just posted

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1 a few days late.

2 CHAIR HILL: Okay, I don't have any problem with
3 the waiver for the posting. Does the board? Okay, everyone
4 is nodding in consensus, so we're going to go ahead and
5 approve that late posting waiver.

6 Then, let's see, okay, if you want to go ahead and
7 walk us through your presentation and how you believe that
8 your applicant, your client, I'm sorry, is meeting the
9 standard for us to grant the relief requested? I'm going to
10 put 10 minutes on the clock and you can begin whenever you
11 like.

12 MS. MOLDENHAUER: I'll turn it over to the
13 representative from DCPS.

14 MR. WILLIAMS: So I'm just going to briefly walk
15 us through what the project is. Houston Elementary School
16 is a part of the District's citywide public school
17 modernization efforts. It's undergoing a two-phased
18 modernization.

19 So phase one turned over this August and it was
20 renovating the existing building for classroom space, and
21 phase two is currently under construction and it's adding a
22 gym, admin space, and multiuse space, and the steel
23 superstructure for phase two is under construction, and the
24 final permits are contingent on this board's approval for the
25 relief requested for a second mechanical penthouse.

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1 MS. MOLDENHAUER: So now I'll turn it over to Don
2 with Cox Graae Speck who has been part of the project team
3 and part of the outreach program to both talk about outreach
4 as well as then walk through the design elements.

5 MR. GREGORY: Yes, I've met multiple times with
6 the ANC chair, Antawan Holmes, on this project since the
7 beginning. I've been on the project, principal on the
8 project since its outset. I did present it to the ANC in
9 October of this year and got their full support. So as I
10 understand it, the Office of Planning and the Department of
11 Transportation have approved the project.

12 The zoning map in front of you is Lot 5174, I'm
13 sorry, Square 5175, Lot 105. It's in the R-2 zone. It's
14 bounded by Meade Street to the north, Lee Street to the
15 south, 50th Place, which is the address, to the east, which
16 is right on your page, and 49th Street on the west side. It
17 is predominantly schools. There are four residents in the
18 upper, or northwest corner of the site.

19 These are some images of the existing building
20 prior to the development of phase one. The upper left-hand
21 corner is the main entrance of the school presently and in
22 the past. It will shift to the corner of Lee and 50th Place
23 upon the completion of phase two.

24 The upper right-hand corner is a view from Lee
25 Street looking north. Where that truck is is the approximate

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1 location of the addition. The lower left-hand corner is a
2 view from 49th Street looking east. In the distance, you can
3 just make out the existing building. The chimney to the left
4 is part of the project.

5 This is the existing, or the, at the time, the
6 modular structures where the students were on site are in the
7 foreground. The view in the lower right is from Meade
8 looking at the single story existing building. Go ahead and
9 advance that.

10 So, as mentioned, this is a two-phased project.
11 Phase one was a modernization of the existing building
12 originally constructed in the early 1960s. It's a single
13 story wing to the north and a two-story wing on the east side
14 connected at a node where the original gym/cafeteria space
15 was.

16 Portions of phase one and phase two will
17 ultimately share a single roof. Phase one was reviewed and
18 approved with two penthouses, one on the single story level
19 and one on the second story level. Because this building was
20 constructed in the 1960s, it had no modern air conditioning
21 systems, no ventilation, and the heat was at the perimeter,
22 so the ceilings were very low.

23 The structure is about 10 feet, which is probably
24 about the height of the ceiling here, so our design team has
25 been very challenged to get modern mechanical systems into

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1 a very tight space, and along with our protection systems,
2 and maintain an acceptable ceiling height for the school.

3 This is the plan phase development. The wings in
4 purple are the phase one development constructed over the
5 past 18 months and opened for the school year. Phase two is
6 the lower portion as you can see there. So this stretches
7 about two city blocks in its perimeter. So, go ahead.

8 This is a bit more detail, our site plan. It's
9 the same plan. The area in white, the inverted L, is the
10 phase one. Down to the lower portion where you see the
11 green, that's phase two. That's because we have green roofs.

12 So we have four mechanical enclosures upper, if
13 you can go ahead and note that, so that's the one -- that was
14 part of phase one, the area that was part of phase one too.
15 That's on the lower roof, and then this is the question mark
16 that is on a roof that is approximately the same elevation
17 as the one that was just noted, and then there's another one
18 to the far left that supports the gymnasium and student
19 dining indicated there.

20 These are some elevations, and because the
21 building is so long, we would be looking at a very long,
22 skinny building, so this is, the upper image is a view from
23 50th Place. In the oval there is the mechanical penthouse
24 on the phase two addition. To the right of that where we
25 have the page break is the mechanical penthouse that was

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1 installed as part of phase one.

2 The lower drawing is a view from Lee Street, just
3 a little bit shorter dimension. The structure on the left-
4 hand side of the page is the gymnasium and student dining
5 with the number 13 indicating the mechanical penthouse
6 rooftop structure for support of the student dining and
7 gymnasium.

8 The far right is, again, that's number 15. That's
9 the mechanical penthouse in question with an oval around it,
10 and that's a two-story volume that has classrooms on the
11 second floor and administration offices and the like on the
12 first floor.

13 This is a section cut looking south towards Lee
14 Street. The new building entrance is on the left-hand side
15 as you look at it. You can see where the gymnasium is on the
16 right. You can see the basketball backboard there and the
17 two mechanical penthouses. The one on the right serves the
18 gymnasium and student dining and a portion of the new
19 addition, and then there's the one in the oval that supports
20 a portion of the new addition.

21 This is a view from the new main entrance. They
22 have a two-story volume. Where the entrance is, there's a
23 stair up to the second floor. To the right is just going to
24 be common space, and this is the almost current condition of
25 the construction development for phase two.

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1 MS. MOLDENHAUER: Okay, thank you so much. We're
2 here seeking a special exception for the mechanical penthouse
3 screening. I will walk through the special exception
4 standards.

5 This special exception allows for a second
6 mechanical penthouse on a single roof. Just for note, we did
7 meet with the zoning administrator on this and he advised
8 that, obviously, that the relief was necessary.

9 The roofs are slightly of different elevations,
10 but they are not of great enough elevation to be deemed to
11 be separate roofs, and so, just so that the board is aware
12 that we had actually kind of chased down that option, but it
13 was determined that we needed to be here today.

14 Under the special exception conditions for this
15 specific section under C1500.6, it allows for all penthouses
16 obviously must be in one enclosure. Because we have two
17 enclosures on this roof, we obviously are seeking the relief.

18 We believe that the project is in harmony with the
19 purpose and the intent of the zoning regulations to allow for
20 an improved and modernized school facility, and relief
21 complies with all of the other penthouse setback and height
22 requirements, and that there would be no adverse effect on
23 the property, neighboring properties.

24 The school obviously services the local community
25 and the second mechanical penthouse would not have any

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1 adverse impact in regards to, you know, visual or negative
2 impact for the property and neighbors.

3 Specifically under this section 1504.1, the
4 subsection standards indicate that relief can be approved if
5 the strict application of the requirements of this chapter
6 would result in construction that would unduly restrict,
7 prohibitively costly, or unreasonable, or is inconsistent
8 with the building code, and that relief requested would
9 result in a better design of the roof structure without
10 appearing to be an extended building wall, and the relief
11 would result in a roof structure that is visually less
12 intrusive.

13 We believe we satisfy all of the standards based
14 on review and work with both the contractor, and the project
15 manager, and the architect.

16 You know, we believe that, you know, requiring and
17 having to comply with the strict application here, given how
18 long the building is and given some of the constraints that
19 our architect discussed already here today, that it would be
20 unreasonable and would be challenging to comply with those
21 regulations, and that the design is actually a better design
22 as proposed, and that there would be no visual adverse
23 impact.

24 And so this just sort of satisfies -- continues
25 to satisfy -- and so we believe that we satisfy the special

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1 exception criteria and would be available for any questions,
2 and would ask the board to review the case. Thank you.

3 CHAIR HILL: Does the board have any questions for
4 the applicant?

5 COMMISSIONER MAY: I have one.

6 CHAIR HILL: Sure.

7 COMMISSIONER MAY: So, you're under construction
8 already?

9 MR. GREGORY: Yes, we have a foundation as to
10 grade and superstructure permits in place, so the contractor
11 has started.

12 COMMISSIONER MAY: And you can do that without
13 having to go through a zoning review?

14 MR. GREGORY: That's my understanding. Oh, you
15 have to --

16 COMMISSIONER MAY: I mean, how did you get a
17 permit to do that without knowing that you needed the zoning
18 relief?

19 MR. MACKENZIE: Well, actually the superstructure
20 permit that we require that we obtained from DCRA included
21 all of the necessary reviews for that particular scope of
22 work, and in that scope of work was essentially just the
23 foundations and just the steel structure itself. Separate
24 from that --

25 COMMISSIONER MAY: I understand what the nature

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1 of the permit is. I didn't realize they were giving out
2 superstructure permits without testing the design for zoning,
3 so.

4 MS. MOLDENHAUER: Well, because there was no
5 penthouse shown on the superstructure permit, it complied as
6 to height and --

7 COMMISSIONER MAY: Well, that seems like a real
8 mismatch in the review process, doesn't it?

9 MS. MOLDENHAUER: You can evaluate that at the
10 zoning commission, but it complies, and obviously --

11 COMMISSIONER MAY: Yeah.

12 MS. MOLDENHAUER: -- even if we were to file a
13 permit for a box and the box meets zoning, that only what is
14 shown on the plans can be built and that doesn't show a
15 noncompliant penthouse, plus --

16 COMMISSIONER MAY: Right.

17 MS. MOLDENHAUER: -- a permit can be obtained.

18 COMMISSIONER MAY: Well, it's --

19 MS. MOLDENHAUER: And we're working on a very
20 tight timeline --

21 COMMISSIONER MAY: All right.

22 MS. MOLDENHAUER: -- given that the students are
23 --

24 COMMISSIONER MAY: I understand that. I'm just
25 -- you know, the only organization that comes here on a

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1 regular basis to get zoning relief for buildings under
2 construction is DGS for school buildings.

3 Now, I can understand how you got into this
4 because apparently DCRA is issuing permits for things that
5 are not -- that they don't fully understand. I don't know
6 exactly why that happens, but this is, you know -- I don't
7 know why this happens. I don't know why it gets done this
8 way.

9 I mean, was it not apparent earlier on when you
10 went for the superstructure permit that you thought you would
11 have to have zoning relief? I mean, were you still trying
12 to figure out how to do the HVAC systems at that point?

13 MR. GREGORY: Correct, because we were doing first
14 on phase one. Phase two was following on.

15 COMMISSIONER MAY: All right, well, I think
16 there's something wrong with the system and I'm -- you know,
17 every time I've seen DGS here on a school project like this
18 and they're asking for penthouse-related relief for
19 mechanical equipment, which has happened, you know, maybe,
20 I don't know, not a dozen times, but it's at least a half a
21 dozen that I have been here, so it's probably a lot more than
22 that, and it just --

23 I mean, it's this recurring action and I just wish
24 that it was not happening. It was -- you know, I don't know
25 what to do to fix it, but I'm not going to stop complaining

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1 about it.

2 CHAIR HILL: Mr. Mackenzie, there is no comment
3 that's necessary. I'm just letting you know, like, you know,
4 what Mister, the Commissioner is mentioning -- and I guess,
5 Ms. Moldenhauer, you can say something to it if you want.
6 He's actually been here for most of them. I don't know why,
7 but he has actually --

8 (Laughter.)

9 CHAIR HILL: He actually has been here for most
10 of them, and basically it's a well-founded complaint, is that
11 you all come here for relief, and if you don't get the
12 relief, what are you going to end up doing, right? And
13 that's what has been the discussion. So, Ms. Moldenhauer,
14 do you have a comment?

15 MS. MOLDENHAUER: I do actually, but I would just
16 say to Commissioner May that I know that we worked with DCPS
17 and OP to put forward some recommended text amendments. I
18 know that the Zoning Commission heard those. Some of those
19 were about penthouses, and I think that that was an attempt
20 by the agency to try and --

21 COMMISSIONER MAY: It would not have fixed this
22 problem.

23 MS. MOLDENHAUER: It would not have fixed this
24 problem. I'm not saying it would solve everything, but I do
25 think that they are trying --

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1 COMMISSIONER MAY: No, I know. I'm aware, and I
2 realized that that was going to have an effect on some of the
3 other ones that were coming before us, and it didn't make a
4 whole lot of sense that they had to come before us.

5 MS. MOLDENHAUER: They are becoming more aware and
6 are trying to work on --

7 (Simultaneous speaking.)

8 COMMISSIONER MAY: Yeah, I mean, school buildings
9 are different from most other buildings when it comes to the,
10 you know, the nature of the structure and the, you know,
11 because they are pancakes in many ways, they, you know,
12 spreading out the system is a logical thing to do. I mean,
13 maybe this is something that should have been incorporated
14 into that, but we've already voted on it once, so it isn't
15 going to happen this time around, so.

16 Anyway, it's not going to stop me from complaining
17 because I do believe that you have to think a building all
18 the way through before you start getting permits and starting
19 construction, but apparently that's not the way we build
20 school buildings here.

21 MS. MOLDENHAUER: We'd love to be hired at the
22 beginning and be able to assist.

23 COMMISSIONER MAY: Yeah, I -- part of this goes
24 back to my own personal history with the facilities' master
25 planning for the District and how the whole thing has sort

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1 of gone onto a different track which seems to value speed
2 over, you know, thoughtful planning, and that's unfortunate
3 as a taxpayer, so.

4 CHAIR HILL: Okay, does the board have any other
5 comments? All right, well, Ms. Moldenhauer, since you've
6 been doing more of these or seem to be doing more of those,
7 I am in agreement with Mr. May, and also since every single
8 time, he seems to be here when you're here, it would be great
9 if you could figure it out. Okay, I'm going to turn to the
10 Office of Planning.

11 MS. MYERS: Hello, Crystal Myers with the Office
12 of Planning. The Office of Planning is recommending approval
13 of this case and stands on the record of the staff report.

14 CHAIR HILL: Okay, does anybody have any questions
15 for the Office of Planning? Mr. Mackenzie, you know what
16 we're talking about, right?

17 MR. MACKENZIE: Yes, I do.

18 CHAIR HILL: Okay, all right. Okay, is there
19 anybody here who wishes to speak in support? Is there
20 anybody here who wishes to speak in opposition? Ms.
21 Moldenhauer, is there anything you'd like to add at the end?

22 MS. MOLDENHAUER: No, thank you for your time.

23 CHAIR HILL: Okay, all right, so I'm going to go
24 ahead and close the hearing. Is the board ready to
25 deliberate? Commissioner, would you like to go first?

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1 COMMISSIONER MAY: Not withstanding our previous
2 conversation, I don't really see a problem with this. I
3 understand the difficulties of trying to figure out how to
4 root mechanical systems in a building like this.

5 So the relief makes sense in the way it's been
6 done. It's modest enough, and so I don't see any real
7 problem with it. I just wish that it was figured out before
8 construction started. So I'm in favor of going forward and
9 approving this.

10 CHAIR HILL: All right, anyone else? I'm going
11 to make a motion to approve application number 20170 as
12 captioned and read by the Secretary and ask for a second.

13 VICE CHAIR HART: Second.

14 CHAIR HILL: The motion has been made and
15 seconded. All those in favor, say, "Aye."

16 (Chorus of aye.)

17 CHAIR HILL: The motion passes. Mr. Moy?

18 MR. MOY: Staff would record the vote as four to
19 zero to one, and this is on the motion of Chairman Hill to
20 approve the application for the relief requested, seconding
21 the motion was Vice Chair Hart, also in support, Ms. John and
22 Zoning Commissioner Peter May. No other members present.

23 CHAIR HILL: Great, thank you. Thank you very
24 much. Happy new year to you all.

25 MR. MOY: The next case is application number

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1 20171 of Oliver Jacob. The caption advertised for special
2 exceptions under Subtitle G, Section 409 and 1200 for the lot
3 occupancy requirements of Subtitle G, Section 404.1, and
4 under Subtitle G, Section 1201 from the rear yard
5 requirements of Subtitle G, Section 405.2 to construct a
6 second floor addition to an existing accessory building to
7 accommodate an apartment in the MU-4 zone. This is at 803
8 Maryland Avenue, NE, Square 915S, Lot 805.

9 CHAIR HILL: Okay, if you could please introduce
10 yourself for the record?

11 MR. ROUSE: Good afternoon, I'm Michael Rouse,
12 principal architect at MPR Architecture.

13 CHAIR HILL: Okay, could you spell your last name
14 for me, sir?

15 MR. ROUSE: Certainly, R-O-U-S-E.

16 CHAIR HILL: Okay, Mr. Rouse, all right, let's
17 see, so you've been the discussion for a while, Mr. Rouse.
18 You'll find out why in a minute. So, let's see, so if you
19 could go ahead and kind of walk us through your application
20 and why you believe you're meeting the criteria, or the
21 standard, I should say, for us to be able to grant the
22 application? And I'll just start from there, so you can go
23 ahead and begin whenever you'd like.

24 MR. ROUSE: All right, thank you. So this
25 application is to place a second floor structure on top of

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1 an existing garage. This is the block plan to show you the
2 location of 803 Maryland Avenue. We are in MU-4 mixed use
3 zone, so that allows us to come before you for a special
4 exception for lot coverage and rear setback.

5 The existing site plan there, the existing lot
6 coverage is over the 60 percent, so we're already at 74.25,
7 and the idea is to take the existing one story brick garage
8 at the back and simply build a second story on that entire
9 footprint and add a circular stair for access.

10 Some photos of the alley. The center photo there
11 does show you the one story garage existing, and to its east
12 is a two-story carriage house. Also across the alley are
13 some homes that are built along the rear property line that
14 face D Street as well, so those are not alley structures, but
15 actual single families.

16 There are some more photos there, and then some
17 photos of the interior courtyard between the garage and the
18 single family house, and then of course the front of the
19 house.

20 So the floor plan is here. The idea is to create
21 a studio dwelling unit, the roof plan, and then the proposed
22 elevations. The exterior would be in brick. We did go
23 before the Historic Board and this was approved, I believe,
24 in September, the courtyard elevation there and some side
25 elevations, and then kind of a 3D rendering to give you a

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1 sense of that.

2 In the burden of proof statement, we outline how
3 we meet all of the requirements, Subtitle G 1200, and that
4 you guys can grant the special exception as long as we are
5 in harmony with the general intent of the mixed use zone.
6 The mixed use zone does allow for multifamily use, and so we
7 feel that that would be in harmony with that.

8 We believe we're not adversely affecting the
9 neighboring property. We did reach out to all of the
10 surrounding neighbors and received letters through both the
11 HPRB process and the BZA process, and those letters are
12 attached to the record.

13 Then there are some specific cases in regards to
14 the rear yard setback that no apartment windows shall be
15 located within 40 feet directly in front of another building.
16 Since this is a garage to a single family structure, there
17 are no apartment buildings surrounding, so we feel that we
18 meet that. Office windows, same case, there are no offices
19 around us.

20 Buildings that are not parallel to adjacent
21 buildings, the closest case for that is a building located
22 90 feet away to the east, so we feel that that's enough
23 distance, and then service functions including parking and
24 loading doesn't apply in this case, so that's how we feel it
25 meets that requirement. I'm happy to answer any questions.

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1 CHAIR HILL: All right, does anybody have any
2 questions for the applicant or do we want to go to the Office
3 of Planning? Okay, we'll go to the Office of Planning.
4 Office of Planning?

5 MS. ELLIOTT: Thank you, Mr. Chairman and members
6 of the board. I'm Brandice Elliott representing the Office
7 of Planning. OP will stand on the record of its report. We
8 are recommending approval of the relief that's been requested
9 for both lot occupancy and rear yard, and I'm happy to answer
10 any questions you have.

11 CHAIR HILL: Does anybody have any questions for
12 the Office of Planning?

13 VICE CHAIR HART: So, yeah, the question, I guess,
14 is around the no apartment windows shall be located within
15 the 40 feet in front of another building, and I know that
16 you're saying that you don't think that it's in conflict with
17 this, but could you kind of step through that with a little
18 bit more detail so that I can kind of understand that?

19 MS. ELLIOTT: Sure, the zoning regulations
20 actually define apartment as a building consisting of three
21 or more units, and the structures that are located along the
22 alley or adjacent to the proposed addition only consist of
23 one unit, so we don't think that they would be considered
24 apartments and wouldn't be in conflict with those
25 requirements.

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1 VICE CHAIR HART: And so this would be a dwelling
2 unit as opposed to, like an apartment, as part of an
3 apartment building?

4 MS. ELLIOTT: Correct.

5 VICE CHAIR HART: Even though someone may call it
6 an apartment or it may be used as a -- you know, it still,
7 under zoning, it would be considered a dwelling unit?

8 MS. ELLIOTT: Correct, I mean, it's fairly common
9 nomenclature to just refer to everything above a garage as
10 an apartment, but technically that's not how it's defined in
11 the regulations.

12 VICE CHAIR HART: I think that that's very
13 helpful. Thank you.

14 CHAIR HILL: I got a little distracted. Could you
15 say that again?

16 MS. ELLIOTT: It is not uncommon for people to
17 just refer to those units above garages as apartments just
18 in, you know, general terminology, but the zoning regulations
19 do specifically define an apartment as a building consisting
20 of three or more units.

21 So unless any of these structures in the alley
22 have three or more units, they are not apartments, and
23 therefore we don't see them as being in conflict with the
24 regulations requiring the minimum distances between apartment
25 building windows.

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1 MEMBER JOHN: So just to clarify, you were
2 defining an apartment building as a building containing three
3 or more, and so every time we use the term "apartment," it's
4 in connection with an apartment building. Did I get that
5 right?

6 MS. ELLIOTT: I -- yes.

7 MEMBER JOHN: Okay.

8 MS. ELLIOTT: I believe so.

9 MEMBER JOHN: Okay, thank you.

10 CHAIR HILL: So then just out of curiosity, so
11 then it doesn't matter that these windows are looking into
12 other windows? It's just that if it was an apartment
13 building, it would matter if these windows were looking into
14 other windows?

15 MS. ELLIOTT: I really think these regulations
16 were written with the intent of being applied to larger
17 buildings, and so, yes, as it pertains to this particular
18 review, we don't see that there's a conflict.

19 I think if there were larger buildings, larger
20 apartment buildings or commercial buildings, it might be more
21 of an issue. These regulations were really intended to
22 address larger buildings, and these smaller alley structures
23 are just sort of getting mixed in. I'm not --

24 CHAIR HILL: Okay, that's good.

25 MS. ELLIOTT: Yeah.

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1 CHAIR HILL: I was just curious. All right.

2 MS. ELLIOTT: Yeah.

3 CHAIR HILL: Okay, just for the applicant, so what
4 are those windows going to be looking into?

5 MR. ROUSE: The rear windows that you're seeing
6 right now on the screen, that's basically the kind of main
7 room of the dwelling unit. I'll use my correct terms. Those
8 will look across the alley at the other single family houses.

9 CHAIR HILL: Right, the other windows of the other
10 single family houses?

11 MR. ROUSE: They would be -- so if you're looking
12 at the view of D Street rear properties --

13 CHAIR HILL: Right.

14 MR. ROUSE: -- there's two upper unit windows
15 there that that would be looking sort of towards, separated
16 15 feet away. The other issue, I think, that we haven't
17 discussed is that this is a single family house that's in a
18 zone for mixed use.

19 So going back to the Office of Planning report
20 about larger apartment buildings, that's kind of the way that
21 I read the, in consultation with Ms. Elliott, so that's why
22 the burden of proof says that there aren't any apartment
23 buildings within 30 feet.

24 COMMISSIONER MAY: So you have letters of support
25 from 804 D and 806 D, right?

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1 MR. ROUSE: We do. That is owned by the same
2 owner, Mr. McGlitch, I believe. He did submit a letter for
3 the HPRB review process, which is in the record. We also
4 submitted emails to him asking for a BZA letter, which we did
5 not receive, so we did reach out to him again.

6 CHAIR HILL: Okay, do you have any questions for
7 the Office of Planning?

8 MR. ROUSE: No, sir.

9 CHAIR HILL: Is there anyone here wishing to speak
10 in support? Is there anyone here wishing to speak in
11 opposition? Is there anything else you'd like to add at the
12 end, Mr. Rouse?

13 MR. ROUSE: No, sir.

14 CHAIR HILL: Okay, I'm going ahead and closing the
15 hearing. I've been sirred a lot today. If -- is the board
16 ready to deliberate? Would someone else like to deliberate?
17 Yes, somebody else deliberate.

18 VICE CHAIR HART: Sure, okay, so after listening
19 to the applicant and actually reviewing the OP report, and
20 also getting additional information from OP about this kind
21 of 40-foot issue that we were discussing, I think I'd be able
22 to support the application.

23 I think that they've shown how they are meeting
24 the standard for what they're seeking, the relief that
25 they're seeking. You know, it's a fairly modest building

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1 that they're talking about.

2 Yes, it's a fairly narrow alley that is here, but
3 they did receive the letters, which we have in the record,
4 that they are letters of support for the application. I
5 didn't have much more that I wanted to say, but I thought
6 that I could support the application and would be voting to
7 do such.

8 We did receive the ANC report. That's 38, exhibit
9 number 38, and the ANC is in support -- I'm looking for their
10 -- five to zero to zero on December 12, so I would be in
11 support of the application given all of that. That's it.

12 CHAIR HILL: All right, does anyone have anything
13 else they'd like to add? I will agree with my colleague in
14 terms of how he is going through this analysis, and I will
15 make a motion to approve application number 20171 as
16 captioned and read by the Secretary and ask for a second.

17 VICE CHAIR HART: Second.

18 CHAIR HILL: The motion has been made and
19 seconded. All those in favor, say, "Aye."

20 (Chorus of aye.)

21 CHAIR HILL: All those opposed? The motion
22 passes. Mr. Moy?

23 MR. MOY: Staff would record the vote as four to
24 zero to one, and this is on the motion of Chairman Hill to
25 approve the application for the relief requested, seconding

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1 the motion is Vice Chair Hart, also in support, Ms. John and
2 Zoning Commissioner Peter May, no other members present.

3 CHAIR HILL: All right, thank you, Mr. Moy. Thank
4 you very much.

5 MR. ROUSE: Thank you.

6 CHAIR HILL: All right, we've got to take a quick
7 break and then we'll be back for our final two cases. Thank
8 you very much.

9 (Whereupon, the above-entitled matter went off the
10 record at 2:39 p.m. and resumed at 2:54 p.m.)

11 CHAIR HILL: All right, Mr. Moy, do you want to
12 go ahead and start?

13 MR. MOY: Thank you, Mr. Chairman. The board is
14 back in session and the time is about 2:54. So the
15 application before the board is number 20174 of HJB
16 Properties, LLC.

17 This application, Mr. Chairman, has been amended
18 for an area variance from the minimum lot area requirements
19 of Subtitle E, Section 201.1, to permit the creation of a
20 single record lot in the RF-1 zone at 1416 3rd Street, NW,
21 Square 553W, Lots 829 and 830.

22 CHAIR HILL: Okay, great. Could you please
23 introduce yourself for the record?

24 MR. SULLIVAN: Good afternoon, Mr. Chair and
25 members of the board. My name is Marty Sullivan on behalf

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1 of the applicant.

2 MR. JACKSON: My name is Brandon Jackson. I'm
3 from HJB.

4 CHAIR HILL: Okay, and Mr. Sullivan, I assume
5 you're going to be presenting to us?

6 MR. SULLIVAN: Yes.

7 CHAIR HILL: Okay, there was some questions that
8 I think have been somewhat resolved, so we'll just kind of
9 walk through this, I suppose, but if you could go ahead and
10 tell us what your client is trying to do and how you believe
11 that they're meeting the standard for us to grant the relief
12 requested? I'm going to put 10 minutes on the clock and you
13 can begin whenever you'd like.

14 MR. SULLIVAN: Thank you, Mr. Chair and members
15 of the board. This is 1416 3rd Street, NW. It's currently
16 a two-unit building, one on top of the other, with just one
17 entrance in the front, and the request is to, or the
18 intention is to do an addition to the building. This is the
19 rear of the building currently.

20 The intent is to reconfigure the existing units
21 to make them side by side, and so they'll effectively be
22 single family dwellings, two of them on one record lot. This
23 also includes a third story addition and a small rear
24 addition, neither of which require their own relief.

25 So we're prevented from doing these additions,

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1 however, because there is no record lot. There is no
2 underlying record lot. It has been a tax lot. It's
3 currently two tax lots and it will continue to be two tax
4 lots, and but we need the one record lot.

5 We originally applied for lot area relief and lot
6 width relief to have two record lots. I just, I thought that
7 would be simpler. That would also give him the ability to
8 do a flat on each one of those record lots, which he's not
9 intending to do.

10 The Office of Planning reached out to us and said
11 that they were more comfortable with doing one record lot and
12 just having it remain as a flat, which is perfectly fine with
13 the applicant. They can do two tax lots. They can sell the
14 houses in fee simple. So they're effectively single family
15 homes, but they operate as a flat on one record lot, and
16 therefore the amount of relief needed is much less.

17 This is the latest plat that we filed. On this,
18 it shows the addition. It's just a five-foot addition and
19 a three-and-a-half foot addition in the back.

20 The reason why we're showing that no parking area,
21 this relates to the letters in opposition that were received
22 into the file last week. When we saw those letters, we
23 reached out to those neighbors, and Mr. Jackson met with them
24 over the weekend.

25 And their concerns are related to the fact that

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1 this alley is about eight feet, and in fact, it's finished
2 on the rear of several properties here, and if you used your
3 entire lot to park, you would most likely restrict access
4 through the alley somewhat, and so their concern was that Mr.
5 Jackson understood that and wasn't intending to park cars
6 beyond this line here, and based on that, they've withdrawn
7 their opposition.

8 At least two of the letters in the file have been
9 withdrawn based on their discussions with Mr. Jackson over
10 the weekend. I don't think it's related to the relief being
11 requested.

12 So the area variance requirement, the subject
13 property has been used as a flat without an underlying record
14 lot since before 1958. We wouldn't be able to do any
15 addition at all to the building without the variance relief
16 because it has to be on a record lot.

17 And in fact, based on the appeal decision a couple
18 of months ago, it's not clear that we could even renovate the
19 interior of the building without having a record lot, so
20 prohibiting an addition to the building that would otherwise
21 be permitted creates the practical difficulty for the
22 applicant.

23 The relief can be granted without substantial
24 detriment to the public good. We meet all of the other
25 applicable requirements, and this actually brings the

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1 building more in character with the other lots and other
2 buildings on the block which operate as single family
3 dwellings as well. We do have the unanimous support of the
4 ANC. And if you have any questions?

5 CHAIR HILL: Okay, does the board have any
6 questions for the applicant? Okay, I'm going to turn to the
7 Office of Planning.

8 MR. JESICK: Thank you, Mr. Chairman and members
9 of the board. My name is Matt Jesick. The Office of
10 Planning recommends approval of the applicant's revised
11 proposal for a single record lot. Other than that, I'll rest
12 on the written report, but I'd be happy to take any
13 questions. Thank you.

14 CHAIR HILL: Does the board have any questions for
15 the Office of Planning? Does the applicant have any
16 questions for the Office of Planning?

17 MR. SULLIVAN: No, thank you.

18 CHAIR HILL: Is there anyone here who wishes to
19 speak in support? Is there anyone here who wishes to speak
20 in opposition? Mr. Sullivan, is there anything else you'd
21 like to add at the end?

22 MR. SULLIVAN: No, thank you.

23 CHAIR HILL: I'm going to go ahead and close the
24 hearing. Is the board ready to deliberate? I would be in
25 agreement with the analysis that was provided by the Office

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1 of Planning, as well as the applicant and their burden of
2 proof, and their testimony as to how they're meeting the
3 standard for us to grant the relief requested.

4 I'm also acknowledging that the ANC was in support
5 nine to zero to zero, as well as the support of the Bates
6 Area Civic Association. The letters that were in opposition,
7 as the applicant has just reported, have been withdrawn due
8 to the issues being resolved, and I am going to be voting in
9 favor of this application. Is there anything anyone else
10 would like to add?

11 COMMISSIONER MAY: Yeah, I would just want to say
12 I don't think all of the letters have been withdrawn, but I
13 think also the concerns don't really go to the relief that's
14 being requested here.

15 And I'm glad that it's resolved and that we don't
16 have that resistance, but I think that the concerns there
17 were misplaced and I think the applicant has done a good job
18 of, a good faith effort to try to address the concerns that
19 they have, so, thanks.

20 CHAIR HILL: Okay, anyone else? All right, I'm
21 going to make a motion to approve application number 20174
22 pursuant to 11 DCMR Subtitle X, Chapter 10, for an area
23 variance from the minimum lot area requirements of Subtitle
24 E, 201.1, to convert the two existing tax lots into one
25 record lot in the RF-1 zone at premises 1416 3rd Street, NW,

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1 Square 553W, Lots 829 and 830, and ask for a second.

2 VICE CHAIR HART: Second.

3 CHAIR HILL: The motion has been made and
4 seconded. All those in favor, say, "Aye."

5 (Chorus of aye.)

6 CHAIR HILL: All those opposed? The motion
7 passes. Mr. Moy?

8 MR. MOY: Staff would record the vote as four to
9 zero to one, and this is on the motion of Chairman Hill to
10 approve the application for the relief requested, seconding
11 the motion is Vice Chair Hart, also in support, Ms. John and
12 Zoning Commissioner Peter May, no other members present.

13 CHAIR HILL: Okay, great, thank you, Mr. Moy.
14 Thank you, gentlemen. Happy new year to you.

15 (Whereupon, the above-entitled matter went off the
16 record at 3:11 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 12-18-19

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



Court Reporter

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