

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

WEDNESDAY  
JULY 1, 2020

+ + + + +

The Regular Public Hearing convened via Video Conference, pursuant to notice at 10:00 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, ZC CHAIR  
PETER SHAPIRO, DISTRICT RESIDENT MEMBER

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ.  
JACOB RITTING, ESQ.

## OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS  
MATTHEW LeGRANT  
BRANDICE ELLIOT  
STEPHEN MORDFIN

The transcript constitutes the minutes from the  
Public Hearing held on July 1, 2020.

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

(10:09 a.m.)

1  
2  
3 BZA CHAIR HILL: The hearing will please come to  
4 order.

5 Good morning, ladies and gentlemen. We're  
6 convened and broadcasting this public hearing by video  
7 conference.

8 This is July 1, 2020 public hearing of the Board  
9 of Zoning Adjustment, District of Columbia.

10 We're now in a hearing session. My name is Fred  
11 Hill, Chairperson.

12 Joining me today is Carlton Hart, Vice Chair,  
13 Lorna John, Board Member, and representing the Zoning  
14 Commission is Anthony Hood for one hearing and Peter Shapiro  
15 for the remainder.

16 Today's hearing agenda is available to you on the  
17 Office of Zoning website.

18 Please be advised that this proceeding is being  
19 recorded by a court reporter, and is also webcast live via  
20 Webex and YouTube Live.

21 The video will be available on the Office of  
22 Zoning's website after the hearing session.

23 Accordingly, everyone who is listening on Webex  
24 or by telephone will be muted during the hearing, and only  
25 persons who have signed up to participate or testify will be

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1 unmuted at the appropriate time.

2 Please state your name and home address before  
3 providing oral testimony or your presentation.

4 Oral presentations should be limited to a summary  
5 of your most important points.

6 When you are finished speaking, please mute your  
7 audio so that your microphone is no longer picking up sound  
8 or background noise.

9 If you're experiencing difficulty accessing Webex  
10 or with your telephone call, and/or if you have forgotten to  
11 sign up 24 hours prior to this hearing, then please call the  
12 OZ hotline number.

13 I'll repeat it. 202-727-5471.

14 Once again, 202-727-5401, to sign up to testify  
15 and receive Webex login or call-in instructions.

16 All persons planning to testify either in favor  
17 or in opposition must have signed up in advance, and they  
18 will be called by name at the time of sign up.

19 All participants complete the oath or affirmation,  
20 as required by Subtitle Y 408.7.

21 If you wish to file written testimony or  
22 additional supporting documents at the time of your hearing,  
23 then please be prepared to describe and discuss it at the  
24 time of your testimony.

25 The order of procedures for special exceptions and

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1 variances is in Y 409, the order of appeals is in Y 507.

2           And then, at the conclusion of each case, an  
3 individual who is unable to testify because of technical  
4 issues may file a request for leave to file a written version  
5 of the planned testimony to the record within 24 hours.

6           If additional written testimony is accepted, then  
7 parties will be allowed a reasonable time to respond.

8           The Board will then make its decision at its next  
9 meeting, but no earlier than 48 hours after the hearing.

10           Moreover, the Board may request additional  
11 specific information to complete the record.

12           The Board and the staff will specify at the end  
13 of the hearing exactly what is expected and the date when  
14 persons must submit the evidence to the Office of Zoning.  
15 No other information shall be accepted by the Board.

16           The Board's agenda may include previous cases set  
17 for decision.

18           After the Board adjourns the hearing, the Office  
19 of Zoning, in consultation with myself, will determine  
20 whether a full or summary order may be issued.

21           A full order is required when the decision it  
22 contains is adverse to a party, including an affected ANC.

23           A full order may also be needed if the Board's  
24 decision differs from the Office of Planning's  
25 recommendation.

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1           Although the Board favors the use of summary  
2 orders whenever possible, an applicant may not request the  
3 Board to issue such an order.

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

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

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

22           Mr. Secretary, do we have any preliminary matters?

23           MR. MOY: For this application, sir, no.

24           I don't recall if last week you had touched base  
25 on the notice requirements for this application, but other

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1 than that, you'll be able to move forward.

2 BZA CHAIR HILL: Okay. All right. Could you  
3 please read the case?

4 And, you know, read us in for our first hearing --  
5 our first -- yeah, hearing case.

6 MR. MOY: Yes, thank you, Mr. Chairman.

7 So, this is Case Application Number 20184 of Fort  
8 Lincoln-Eastern Avenue, LLC, as amended for special  
9 exceptions under the theoretical lot subdivision  
10 requirements, Subtitle C Section 305.1, and under the new  
11 residential development requirements, Subtitle U Section 421,  
12 to allow a new residential development project of 51  
13 townhouses in the RA-1 and RA-4 zones, at premises founded  
14 between Eastern Avenue, Northeast, Bladensburg Road,  
15 Northeast, and Fort Lincoln Drive, Northeast, Square 4325,  
16 Lots 802 and 44, and Parcel 0174/15.

17 Participating on this hearing -- the hearing of  
18 this case is Chairman Hill, Vice Chair Hart, Ms. John, and  
19 the Zoning Commission Chair, Anthony Hood.

20 BZA CHAIR HILL: Okay, great. Let's see. Let's  
21 wait for everybody to join us by video.

22 Can you all hear me?

23 (No audible response.)

24 BZA CHAIR HILL: Okay, great, thank you. Mr.  
25 Tummonds -- oh, there you go. Okay. We'll just wait for

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1 everybody to click in.

2 MR. TUMMONDS: Commissioner Hill, I would note  
3 that I do not believe in our -- when this case was opened up  
4 last week, we -- you formally approved the request because  
5 we had for the affirmation of posting, rather than the  
6 affidavit of posting, due to the inability to have a notary  
7 sign the posting.

8 BZA CHAIR HILL: Okay, thank you. We'll go ahead  
9 as well, Mr. Tummonds.

10 Mr. Pearson, are you there?

11 MR. PEARSON: Yes, I am.

12 BZA CHAIR HILL: Are you joining us by video, or  
13 not?

14 MR. PEARSON: Yes, I am, by video.

15 BZA CHAIR HILL: Okay, your video is not on.

16 MR. PEARSON: All right. Can you see me now?

17 BZA CHAIR HILL: Yes, thank you. And let's see.  
18 Is the Commissioner Montague in there, Paul, or no?

19 MR. MONTAGUE: I'm -- can you hear me?

20 BZA CHAIR HILL: I can hear you, yes,  
21 commissioner. Are you joining by phone?

22 MR. MONTAGUE: I'm -- no, I'm actually trying to  
23 get in by video. I'm sitting in an attendees room, but --

24 MR. YOUNG: It's not allowing me to bring him in.  
25 So it looks like he's -- I can only mute or unmute him.

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1 BZA CHAIR HILL: Is there a reason why, Paul, or  
2 you don't know?

3 MR. YOUNG: I am not sure.

4 BZA CHAIR HILL: Commissioner, we can hear you.  
5 I'll make sure that we get around to you.

6 I guess, I mean, you could try and log out and log  
7 back in. I don't know if that would be helpful or not? Paul

8 --

9 MR. MONTAGUE: I jumped through hoops just to get  
10 on to this.

11 BZA CHAIR HILL: Okay, then just -- then  
12 Commissioner, just stay on the line, then, okay?

13 MR. MONTAGUE: I will. Thank you.

14 BZA CHAIR HILL: All right. Ms. John, are you  
15 choosing not to have video?

16 (No audible response.)

17 BZA CHAIR HILL: Your microphone is not on, Ms.  
18 John.

19 (No audible response.)

20 BZA CHAIR HILL: Okay. I'll check back in with  
21 Ms. John there in a second. I just want to see who else we  
22 have here with us.

23 Well, let me start with you, Mr. Tummonds, and  
24 maybe you can tell us again who's with you.

25 MR. TUMMONDS: Sure.

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1 BZA CHAIR HILL: Could you please introduce  
2 yourself for the record?

3 MR. TUMMONDS: Yes. Good morning. My name is  
4 Paul Tummonds.

5 I am legal counsel for the applicant of Goulston  
6 & Storrs, office address of 1999 K Street, Northwest,  
7 Washington, D.C.

8 We will have two witnesses this morning, Cell  
9 Bernardino and Kyle Oliver. We could have both of those  
10 people admitted.

11 BZA CHAIR HILL: Okay. Mr. Bernardino, could you  
12 please introduce yourself for the record?

13 MR. BERNARDINO: Yes. I am vice president of  
14 development and construction at Fort Lincoln New Town  
15 Corporation, which is the managing partner in Fort Lincoln  
16 and Eastern Avenue, LLC.

17 And my address is 3027 Oregon Knolls Drive,  
18 Northwest, Washington, D.C.

19 BZA CHAIR HILL: All right, thank you, Mr.  
20 Bernardino. Mr. Oliver, could you introduce yourself,  
21 please?

22 (No audible response.)

23 BZA CHAIR HILL: You have to unmute your line, Mr.  
24 Oliver.

25 MR. OLIVER: Is that working now?

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1 BZA CHAIR HILL: Yes.

2 MR. OLIVER: Okay. Sorry about that.

3 My name is Kyle Oliver, and I'm a civil engineer  
4 with VIKA Capitol, and we're at 4910 Massachusetts Avenue,  
5 Northwest, Suite 16, in Washington, D.C.

6 BZA CHAIR HILL: Okay. And is it Ms. Nguyen? I'm  
7 pronouncing -- how do you pronounce your name again?

8 MS. NGUYEN: Twee Nguyen.

9 BZA CHAIR HILL: Twee Nguyen? The --

10 MS. NGUYEN: Yeah.

11 BZA CHAIR HILL: How do you say your last name?

12 MS. NGUYEN: Win.

13 BZA CHAIR HILL: Win?

14 MS. NGUYEN: Yes.

15 BZA CHAIR HILL: And it's spelled N-G-U-Y-E-N?

16 MS. NGUYEN: Yes.

17 BZA CHAIR HILL: Okay. I learned something new.  
18 All right. You're here to speak in support. Is that  
19 correct?

20 MS. NGUYEN: Correct.

21 BZA CHAIR HILL: So you're just a member of the  
22 public speaking in support, correct?

23 MS. NGUYEN: I'm actually the president of the  
24 Pineview Court -- or Fort Lincoln 5 HOA. We are directly  
25 across from this development.

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1 BZA CHAIR HILL: Got you. Okay, Ms. Nguyen, I'm  
2 sorry. They had -- I got a little confused on my witness  
3 sheet here.

4 MR. MOY: So, Pineview is a party in support.

5 BZA CHAIR HILL: Okay, did -- I can't even  
6 remember. We went through party status for Pineview?

7 MR. MOY: Yeah.

8 MS. NGUYEN: Yes.

9 (Simultaneous speaking.)

10 BZA CHAIR HILL: Okay. That was pre-COVID, for  
11 sure. All right, Ms. Nguyen.

12 Then, okay, let's go ahead, and then who am I  
13 missing? Ms. Logan?

14 MR. TUMMONDS: Ms. Logan is with Goulston &  
15 Storrs. BZA CHAIR HILL: Okay, so we'll just wait on

16 that. And then Mr. Collins, is that also with Goulston &  
17 Storrs?

18 MR. TUMMONDS: Mr. Collins is also with the  
19 applicant, but we don't need him up yet.

20 BZA CHAIR HILL: Okay. So I'll just -- Mr.  
21 Tummonds, I'll just let you call out people, and if I  
22 neglected to have them introduced for the record, if they  
23 could please do so at that time?

24 MR. TUMMONDS: Perfect.

25 BZA CHAIR HILL: So, Mr. Tummonds, if you could

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1 go ahead and walk us through what your client is trying to  
2 do, and why you believe that we should grant the application,  
3 like if they're meeting the standard.

4 Mr. Young, could you put 15 minutes on a clock for  
5 me? Mr. Hart, I -- I'll give you one second, Mr. Hart. If  
6 you could put 15 minutes up there?

7 I don't know, Mr. Tummonds, how much you think you  
8 need.

9 MR. TUMMONDS: Yeah, I don't think we'll need the  
10 whole 15, but that's a good start.

11 And we also had submitted a PowerPoint  
12 presentation. Mr. Young could pull that up, as well.

13 BZA CHAIR HILL: Okay. Mr. Hart, you had a  
14 question?

15 VICE CHAIRPERSON HART: Yeah, just the whole  
16 notice issue, we probably should deal with that first.

17 BZA CHAIR HILL: Thank you. I thought we kind of  
18 talked about it a little bit, but I didn't have any issues  
19 with any of the notices.

20 I mean, the affidavit of posting and the affidavit  
21 of maintenance are in.

22 The waivers for the notarization requirements --  
23 and that again is primarily due to the epidemic that we're  
24 in right now -- I believe that everyone's been notified,  
25 everyone's here.

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1           And the 200 footers were given a letter -- I'm  
2 sorry -- the Office of Zoning letter to the 200 footers in  
3 Exhibit 58, and then also the letters to the parties are in  
4 Exhibit 61.

5           So I don't have any issue with waiving the request  
6 of notarization requirements.

7           Does the Board have any -- you can just nod in  
8 support if you have -- if you're fine with that.

9           Okay, Ms. John, you're okay with that? Mr. Hood?  
10 All right.

11           All right, Mr. Tummonds, so that has been  
12 addressed.

13           And again, you have 15 minutes, and I guess Mr.  
14 Young -- so, just so everybody knows, I can't -- once the  
15 presentation gets put up on the screen, I can't see everyone.

16           So, I'll just try to go through this as best I  
17 can.

18           So Mr. Young, if you want to put up their  
19 presentation, and then Mr. Tummonds, you can go ahead and  
walk us through when that starts.

20           MR. TUMMONDS: Perfect. Great. Thank you. Good  
21 morning, members of the Board. As I noted, I am Paul  
22 Tummonds of Goulston & Storrs.

23           Jennifer Logan of Goulston is also here with us  
24 this morning to present the special exception application of  
25 Fort Lincoln-Eastern Avenue, LLC.

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1           As I noted, we have two witnesses that will be  
2 presenting testimony, Cell Bernardino, on behalf of the  
3 applicant, and Kyle Oliver, our civil engineer.

4           In their testimony, they will address the  
5 pertinent issues raised in the statement of the Fort Lincoln  
6 Civic Association in opposition to this project.

7           The applicant is proposing to develop 51  
8 townhouses on the property that is split-zoned RA-1 and RA-4.

9           Both of these are zones in which apartment  
10 buildings are permitted.

11           Our pre-hearing materials submitted into the  
12 record clearly shows how the townhouse project satisfies all  
13 of the relevant special exception requirements for a new  
14 residential development in the RA-1 zone and the individual  
15 theoretical lots.

16           We are pleased to note that this application has  
17 the support of the Office of Planning, the Department of  
18 Transportation, ANC 5C, and the adjacent Pineview  
19 Association.

20           In particular, I would like to highlight the  
21 following statements from the Office of Planning's report.

22           The Office of Planning noted the proposed  
23 development should not significantly impact neighboring  
24 properties.

25           The proposal would infill a vacant property long

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1 anticipated for development.

2           The property zoned RA-1 and RA-4, which would  
3 accommodate apartments at a much higher density than  
4 proposed.

5           There would be no direct vehicular access to areas  
6 of existing houses, and most of the units are oriented  
7 towards the streets on which the property fronts.

8           The western portion of the site would be separated  
9 from the single family homes by a line of evergreen trees to  
10 form a buffer between the properties, and thereby minimizing  
11 any privacy impact.

12           OP also notes that the siting and scale of the  
13 proposed buildings provides a substantial amount of  
14 defensible open space and ensures sufficient light and air  
15 to and through the development.

16           With that, I'd like to now ask Mr. Bernardino to  
17 present his testimony.

18           BZA CHAIR HILL: Mr. Bernardino, your mic is still  
19 on -- or unmuted, I should say.

20           MR. BERNARDINO: Can you hear me now?

21           BZA CHAIR HILL: Yes, thank you.

22           MR. BERNARDINO: Good. As you're probably aware,  
23 Fort Lincoln New Town Corporation was selected by the Federal  
24 Government back in the seventies to develop the Fort Lincoln  
25 Urban Renewal Area, and as you can see from this slide, we've

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1 done a lot.

2 At the very top of the slide in pink you see the  
3 site in question.

4 You know, note several other developments  
5 highlighted, and also note the proximity to Fort Lincoln  
6 Park. It is an easy walk from the site to the park.

7 This little site has had more -- has taken longer  
8 and more approval and review than any other project we have  
9 done.

10 One of the key issues is that the RA-1 portion of  
11 the site, which was known as Lot 802, was actually owned by  
12 the National Park Service.

13 And you will recall that in 2008, the BZA approved  
14 a plan for this site that consisted of 56 two-over-two  
15 stacked townhomes.

16 Subsequent to that approval, we discovered that  
17 the transfer of the land from the Park Service was much more  
18 problematic than we thought.

19 Is there a slide here for the transfer plat?

20 (No audible response.)

21 MR. BERNARDINO: Can we have that, please? That's  
22 not showing the full --

23 PARTICIPANT: It's in the next slide.

24 MR. BERNARDINO: Okay. All right.

25 So, what this shows is that back in 1994, the

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1 National Park Service signed a transfer of this to the  
2 Redevelopment Land Administration.

3 And in 1996, the National Capital Planning  
4 Commission approved it.

5 And so, when we were before you in 2008, everyone  
6 assumed that it would be a relatively routine matter to  
7 transfer the land and assemble the parcel.

8 But when we got around to the actual process of  
9 transfer, it was discovered that it would be much more  
10 difficult.

11 In a nutshell, Lot 802 had to be transferred from  
12 the National Park Service to HUD, and HUD had to transfer the  
13 combined parcel to the District.

14 But in order for the Park Service to make that  
15 transfer, a NEPA environmental assessment was required. And  
16 that was not completed until July of 2013.

17 So, as a result, this project got more  
18 environmental review and more opportunities for public input  
19 than any other Fort Lincoln project.

20 We got a finding of no significant impact to the  
21 environmental assessment.

22 There were additional opportunities for public  
23 input as a result of the NEPA EA, and there were no  
24 objections raised by any Fort Lincoln resident as part of the  
25 EA process.

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1 All of the transfers required were executed, and  
2 to date, we have received all of the necessary federal and  
3 local approvals in order to bring this application before  
4 you.

5 We can go back to the main slide now.

6 Since the 2008 approval, of course we had nearly  
7 five years to learn from our other residential developments,  
8 talk to residents, monitor the market, and so, the 51  
9 townhomes currently proposed is a result of our learning, our  
10 rethinking of the housing type for this site, which we think  
11 makes a better overall product for the residents.

12 I should note that we deliberately scaled this to  
13 be consistent with the scale of the abutting Pineview  
14 Development and the other housing developments in Fort  
15 Lincoln.

16 On the RA-4 portion of the site, for instance, we  
17 could build up to a 90 foot structure, but we deliberately  
18 chose to keep the scale and the character consistent with the  
19 rest of the residential development at Fort Lincoln.

20 I want to talk a little bit about the community  
21 outreach. As I mentioned, the EA provided an additional  
22 opportunity for public input.

23 When we went to the ANC, there was the unusual  
24 circumstance of a vacant commissioner position in 5C03.

25 And so, we were asked as a courtesy to brief the

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1 Fort Lincoln Civic Association on the project, which we did.

2 We are not required to brief the Fort Lincoln  
3 Civic Association, and have not done so for previous  
4 projects, as I recall, but because of the inability for 5C03  
5 to have a meeting, we agreed to brief.

6 We also worked closely with the residents of the  
7 Pineview Court condos, which are directly abutting this  
8 development site.

9 We walked the site with them, we listened to their  
10 issues, we modified the plan to eliminate a driveway cut  
11 through that would've sent traffic through their development.

12 And in the end, we received a letter of support  
13 from Pineview.

14 So, I think this development is sensitive to the  
15 needs of its neighbors, it is well placed in regards to the  
16 other amenities and facilities in Fort Lincoln, and the  
17 character and scale was deliberately developed to be  
18 consistent with the overall community.

19 And with that, I'll stop.

20 MR. TUMMONDS: Thank you, Mr. Bernardino.

21 Mr. Young, if you could go forward a couple  
22 slides? Perfect. Mr. Oliver, would you like to -- please  
23 present your testimony.

24 MR. OLIVER: Sure. Good morning. Can everyone  
25 hear me?

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1 BZA CHAIR HILL: Yes.

2 MR. OLIVER: Okay, thank you. Good morning,  
3 members of the Board. Again, my name is Kyle Oliver with  
4 VIKA Capitol.

5 I would like to start with the site design and  
6 overall layout.

7 The existing site topography starts at elevation  
8 128 along Fort Lincoln Drive, Northeast, on the right-hand  
9 side of the screen, and slopes down to elevation 96, near  
10 Eastern Avenue.

11 The proposed site design and layout has been  
12 sensitive to the existing grades and maximizes the green  
13 space.

14 Pedestrian circulation was a vital concern. It  
15 has been provided along Eastern Avenue and throughout the  
16 site.

17 The site will meet the District's Department of  
18 Energy and Environment, stormwater management requirements,  
19 through a series of bioretention facilities.

20 Vehicular access into and out of the site will be  
21 off of Eastern Avenue.

22 The standard DDOT requirement for vehicular  
23 entrance spacing is 60 feet, which we exceed.

24 Please see Exhibit 9. Do we have that, Paul?

25 MR. TUMMONDS: Yes, if you go to the next slide,

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1 please? One more. I'm sorry. And another one. And another  
2 one. And another one.

3 MR. OLIVER: Hey, we found it. Thank you. This  
4 exhibit is where we provide a 250 foot site distance profile  
5 in both directions for the new entrance.

6 Additionally, there is adequate vehicular access  
7 throughout the site.

8 When laying out the property lines for the new  
9 lots, we took into account --

10 MR. TUMMONDS: Now, Kyle. I'm sorry, Kyle.

11 Mr. Young, if you could go back? And again. Go  
12 back another. Here you go.

13 MR. OLIVER: Okay, thank you. When laying out the  
14 property lines for the new lots, we took into account the  
15 need to have adequate rear yards, lot area, and lot  
16 occupancy.

17 Please note that the end units, Lots 1, 8, 9, 17,  
18 et cetera, utilize the area of the lot adjacent to the side  
19 of the building, as well as the area to the rear of the unit.

20 We wanted to make sure the lots met the rear yard  
21 setbacks, lot area, and lot occupancy requirements, among the  
22 other requirements.

23 There is an exhibit in the package for 1.0 for  
24 additional dimensions and information, should you require it.

25 I'm going to talk about trees and landscaping

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1 next.

2 MR. TUMMONDS: Yeah. Next slide, please.

3 MR. OLIVER: There we go. The existing site  
4 consists of a few trees, many of which are in poor condition.

5 There are no heritage trees on-site. There are  
6 a few special trees in poor condition, and a special tree  
7 removal permit will be obtained to remove these trees.

8 Brian Ruhl, a landscape architect with VIKA  
9 Capitol, and one of the applicant's team members, Will  
10 Collins, met with the Urban Forestry of the ward, Jabbari  
11 Brew, on December 3, 2019.

12 During the meeting, Mr. Brew agreed that the trees  
13 were in poor condition.

14 The proposed planting plan was also shared with  
15 Mr. Brew, and we will work with Urban Forestry to plant the  
16 type of species they prefer, especially in public space.

17 Overall, native and drought-tolerant trees and  
18 shrubs will be planted.

19 In addition to our meeting with Urban Forestry,  
20 we corresponded with Spenser Balog of Casey Trees in January  
21 2020.

22 We agreed to a replacement tree planting at a two  
23 to one ratio, so two trees will be planted for every tree  
24 removed for the entire site.

25 Thank you very much.

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1 MR. TUMMONDS: Got you. Thank you very much, Mr.  
2 Oliver. That concludes our presentation this morning, and  
3 we're available to answer any questions that you may have.

4 BZA CHAIR HILL: All right, thank you, Mr.  
5 Tummonds. Mr. -- thank you, Mr. Young. Does the Board have  
6 any questions for Mr. Tummonds? Mr. Hart?

7 VICE CHAIRPERSON HART: Yeah. Thank you, Mr.  
8 Chairman. Mr. Tummonds, I appreciate the stepping through  
9 the -- your presentation.

10 So, there are -- could you show me where the  
11 Pineview neighborhood -- you said they were adjacent. Are  
12 they just to the south?

13 MR. TUMMONDS: South. Yeah.

14 VICE CHAIRPERSON HART: Okay.

15 MR. TUMMONDS: Oh maybe, Mr. Young, if you could  
16 put the --

17 VICE CHAIRPERSON HART: You don't need to. I have  
18 the PowerPoint up on my screen.

19 MR. TUMMONDS: Got you.

20 VICE CHAIRPERSON HART: And --

21 MR. TUMMONDS: Yeah, so you may -- so they were --  
22 they're -- previously in the initial application, there was  
23 shown a vehicular connection from, if you will, the bottom  
24 of our site to the adjacent site.

25 That adjacent site is Pineview.

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1 VICE CHAIRPERSON HART: Okay.

2 MR. TUMMONDS: And in response to questions they  
3 had, we removed that connection through our site through  
4 Pineview Court, so then now there is only one way in and one  
5 way out.

6 VICE CHAIRPERSON HART: Okay. Thank you. With  
7 regard to the land transfer, thank you very much, Mr.  
8 Bernardino, for your kind of stepping through that. That was  
9 very helpful to hear that.

10 You said there was an EA environmental assessment  
11 that was done for the transfer, and that transfer was from  
12 NPS to HUD.

13 There was a FONSI, there was a finding of no  
14 significant impact that was -- that concluded the NEPA  
15 process.

16 And is a FONSI in the -- I wasn't -- I don't  
17 remember seeing it in the record. Did you have all of that  
18 in there?

19 MR. TUMMONDS: Yes. Exhibit 47 at B, as in boy.

20 VICE CHAIRPERSON HART: Thank you. And the -- one  
21 last question. Thank you very much, Mr. Tummonds, for that.

22 The last question I had was for Mr. Oliver. You  
23 said that there were no heritage trees on the site?

24 MR. OLIVER: Correct.

25 VICE CHAIRPERSON HART: And that when you met with

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1 the Urban Forestry Department or Division, they confirmed  
2 that they were just basically some poor trees on the site,  
3 and after meeting with Casey Trees, there is now -- there's  
4 now a two to one tree replacement that's being proposed for  
5 the site?

6 MR. OLIVER: Yes, sir.

7 VICE CHAIRPERSON HART: What's the size of the  
8 trees that are being replaced? What caliper are we talking  
9 about?

10 MR. OLIVER: Of the existing trees?

11 VICE CHAIRPERSON HART: Of the -- well, of the  
12 existing, and then the replacement.

13 How large are the replacements that you're putting  
14 in?

15 MR. OLIVER: I'm going to defer to my landscape  
16 architect, Brian Ruhl.

17 VICE CHAIRPERSON HART: That's fine.

18 MR. RUHL: Hi, my name is Brian Ruhl, I'm with  
19 VIKI Capitol. Can you hear me?

20 VICE CHAIRPERSON HART: Yes, good morning.

21 MR. RUHL: Good morning. They will be two and a  
22 half to three inch caliper trees -- are usually the standard  
23 that we plant in meeting the soil requirements.

24 VICE CHAIRPERSON HART: And the size of the trees  
25 that are being removed?

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1 MR. RUHL: They range from two to three inches up  
2 to about 14, 17. I think there is like a 20 inch one in  
3 there.

4 VICE CHAIRPERSON HART: Yeah.

5 MR. RUHL: In poor condition, though.

6 VICE CHAIRPERSON HART: Not huge trees, but.

7 MR. RUHL: Not huge, no.

8 VICE CHAIRPERSON HART: Yeah. Okay, I think  
9 that's it. I appreciate all of that.

10 I know those were kind of like, all over the  
11 place, but it was just -- it was -- I just needed to  
12 understand that a little bit further.

13 BZA CHAIR HILL: Ms. John, do you have any  
14 questions for the applicant?

15 (No audible response.)

16 BZA CHAIR HILL: Your microphone is not on, Ms.  
17 John. You're still on mute. You're still on mute.

18 MEMBER JOHN: So, I had a question for Mr.  
19 Tummonds.

20 Can you point to the slide that describes how the  
21 application meets the theoretical lot requirements?

22 You said there was a chart that shows how each lot  
23 meets the development standards. I just need you to point  
24 me to that.

25 MR. TUMMONDS: Okay, if we would go to -- and I --

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1 so this is -- it is not in the presentation we made today,  
2 but it is in Exhibit 47 of the record.

3 And let me figure out what pages that would be.

4 MEMBER JOHN: Well, if you need time to find it,  
5 we can come back to that.

6 MR. TUMMONDS: Yeah, if you could do that, yeah.

7 MEMBER JOHN: Okay, sure.

8 MR. TUMMONDS: I'm just -- I'm not sure which, if  
9 it's 47A2, 47A3.

10 MEMBER JOHN: That's fine. Just, you know, if you  
11 could highlight that as part of your presentation since it's  
12 legal criteria for.

13 (Simultaneous speaking.)

14 MR. TUMMONDS: Sure.

15 MEMBER JOHN: Thank you.

16 BZA CHAIR HILL: As you're looking for that, Mr.  
17 Tummonds, I guess I -- do you have more questions, Ms. John?

18 MEMBER JOHN: No, that's it for me.

19 BZA CHAIR HILL: All right, well Mr. Tummonds, I'm  
20 going to have to wait for you because I don't think you can  
21 handle multiple questions while you're --

22 MR. TUMMONDS: 47A3, page 2 of 26 includes the  
23 charts showing how each of these individual theoretical lots  
24 meet all of the theoretical lot standards.

25 MEMBER JOHN: Okay, thank you.

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1 VICE CHAIRPERSON HART: Mr. Chairman?

2 BZA CHAIR HILL: Yeah?

3 VICE CHAIRPERSON HART: Just one additional  
4 question. I guess this is for Mr. Tummonds -- or actually,  
5 Mr. Bernardino, maybe.

6 With regards to the finding of no significant  
7 impact, there were several mitigation measures.

8 Could you just talk about how you're addressing  
9 that?

10 And one of them has to do with cultural resources,  
11 in terms of maintaining a portion of the project area close  
12 to Bladensburg Road.

13 And it looks like some signage, or some -- I don't  
14 know, historical signage that's been requested -- or been  
15 required is part of the FONSI.

16 (No audible response.)

17 VICE CHAIRPERSON HART: We can't hear you, sir.

18 MR. BERNARDINO: So, if you look at the site  
19 slide, there is a small piece, which is Lot 17415, I believe,  
20 which is about 10,000 square feet, 12,000 square feet.

21 And that will remain in open space use. And we  
22 have an agreement in terms of the cultural resources to put  
23 some sort of plaque or commemoration of -- I believe it was  
24 the War of 1812 Battle that took place nearby.

25 VICE CHAIRPERSON HART: Yeah.

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1 MR. BERNARDINO: So that hasn't been designed yet,  
2 but that will be done, and that park will be maintained as  
3 open space.

4 VICE CHAIRPERSON HART: Yeah, I would encourage  
5 you all to kind of try to focus on that, and I understand  
6 that the BZA has -- you know, that's somewhat out of the  
7 purview of the BZA, but I also represent the National Capital  
8 Planning Commission on the BZA, and, you know -- but we  
9 reviewed this transfer a number of years ago.

10 And I know that that's -- you know, one of the  
11 things that we want to ensure that happens is -- are things  
12 like mitigation for projects, and the mitigation is to try  
13 to offset some of the actual development and abstain from  
14 what is the development that's being proposed for the site --  
15 I should say the impact from the development that's being  
16 proposed for the site.

17 And it looks like there's a number of -- I don't  
18 know if it's one sign, or several, but it does talk about the  
19 War of 1812 Battle of Bladensburg, the Civil War at Fort  
20 Lincoln, the Postbellum National Training School for Boys,  
21 and the evolution of the FLNT.

22 I'm not sure what the FLNT is. Fort Lincoln N-T.  
23 I don't know.

24 So, anyhow, it just looked like there were some  
25 things that needed to be discussed.

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1 MR. BERNARDINO: Yeah, we will absolutely do that  
2 because it will be an asset to the development and for the  
3 public if that is an attractive area that has some historical  
4 significance.

5 VICE CHAIRPERSON HART: Much appreciated, thank  
6 you.

7 BZA CHAIR HILL: Okay. Chairman Hood?

8 ZC CHAIR HOOD: Okay. Let me ask -- Mr. Tummonds,  
9 you can direct this question -- if I'm going westbound on  
10 Eastern Avenue.

11 Explain that whole operation to me from a traffic  
12 path.

13 I looked through the traffic report, DDOT report,  
14 and to me, I'm just wondering the impacts right in that area.

15 Could somebody explain that to me? I didn't hear  
16 anybody talk about traffic, so -- I know the report's in the  
17 record.

18 MR. TUMMONDS: Sure.

19 ZC CHAIR HOOD: So, explain the east -- eastbound  
20 and westbound.

21 How is all that going to work for moving in the  
22 site and out of the site?

23 Because I know right now how it works and how it  
24 exists now, so I want to see what -- how it's going to work  
25 with all this development right here in that corner.

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1 MR. TUMMONDS: Sure. Great, thank you. Mr.  
2 Young, if you could put up the slide which is the last slide  
3 of our PowerPoint, which shows the distances?

4 MR. YOUNG: Yeah.

5 MR. TUMMONDS: One more. Perfect. So, we have  
6 one curb cut along Eastern Avenue, which you see here, for  
7 both inbound and outbound traffic.

8 So, if you are heading eastbound on Eastern  
9 Avenue, you will take a left into the site, and if you're  
10 heading -- I'm sorry, westbound on Eastern Avenue, you're  
11 taking a left into the site, and if you're heading eastbound  
12 on Eastern Avenue, you take a right into the site.

13 What we wanted to show here too was that this  
14 slide shows that there is adequate site distance to the  
15 intersection of Eastern Avenue and Fort Lincoln Drive, per  
16 DDOT requirements.

17 And similarly, to the left on this slide, there's  
18 adequate site distance for the Bladensburg Road intersection  
19 --

20 (Simultaneous speaking.)

21 ZC CHAIR HOOD: So Mr. Tummonds?

22 MR. TUMMONDS: Yes?

23 ZC CHAIR HOOD: If -- let's walk through this  
24 slowly. If I'm going westbound and I'm making a left into  
25 the site.

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1 MR. TUMMONDS: Yes.

2 ZC CHAIR HOOD: We still have eastbound traffic  
3 coming up. So, I'm just -- what measures are being put in  
4 place?

5 And I didn't see it. If it's there, forgive me.  
6 What? Because that -- to me, that's -- that could become a  
7 very potential problem.

8 MR. TUMMONDS: So, in our discussions with DDOT,  
9 you're -- and due to the nature of 51 townhouses on this  
10 site, we did not believe that there would be any traffic  
11 impediments to having vehicles making that left-hand turn  
12 into the site, and we think there'd be adequate capability  
13 to do that without causing traffic impacts.

14 DDOT concurred.

15 DDOT, when they analyzed the site trips that are  
16 generated by a 51 unit townhouse project, they felt that it  
17 was not necessary to move forward with a -- our analysis for  
18 this site.

19 ZC CHAIR HOOD: So, what I'm going to ask is that  
20 we relook at it because I know on the right, there are two  
21 lanes, and the right lane now the way it exists, it queues  
22 already in the right lane.

23 There's one left turn lane only, and you all are  
24 talking about the same lane. I think there needs to be some  
25 more analyzation.

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1           We need to analyze that a little bit more, and I'd  
2 like to see something come back that gives -- give me a  
3 comfort level and some assurances as we're adding this  
4 development, as opposed to what's already existing and how  
5 it's working now.

6           MR. TUMMONDS:   Okay.

7           ZC CHAIR HOOD:   I don't think we can just brush  
8 past that because that's an issue that I think we need to  
9 look at and make sure we're not causing any more -- anything  
10 -- we're not adding onto what's already there.

11           Now, I do know that the record says that there may  
12 be some impacts.

13           Right now, we're already having issues there, and  
14 I just want to make sure that we're not putting people in  
15 danger, so.

16           So if you can do that, I think that's really all  
17 the questions I have.  Thank you, Mr. Chairman.

18           BZA CHAIR HILL:   Thank you, Mr. Hood.  Mr.  
19 Tummonds, do you understand what Chairman Hood is looking  
20 for?

21           MR. TUMMONDS:   Yes, absolutely.

22           BZA CHAIR HILL:   Okay.  All right, let's see, you  
23 got that.  Okay.  I don't have any immediate questions right  
24 now.

25           I did want to mention one thing for the record.

1 There was last time -- and I see that the Commissioner  
2 Montague has joined us.

3 They, the ANC, did submit in -- something into the  
4 record, which is at Exhibit 73, which is their report, which  
5 is at Form 129.

6 And so, I just wanted to note that that's now in  
7 the record, and unless the Board has any issues, I'm going  
8 to waive any requirements in terms of timing to let -- allow  
9 that into the record because I want to hear what the ANC has  
10 to say.

11 Although we did kind of hear something from them  
12 previously, and now they're actually here and able to  
13 testify, so I'm just kind of clearing that up.

14 Mr. Pearson, you are now -- well, actually, hold  
15 on. Mr. Pearson, do you have any questions for Mr. Tummonds?

16 MR. PEARSON: No, I don't.

17 BZA CHAIR HILL: Okay. Ms. Nguyen, do you have  
18 any questions for Mr. Tummonds?

19 (No audible response.)

20 BZA CHAIR HILL: Ms. Nguyen, I can't hear or see  
21 you.

22 (No audible response.)

23 BZA CHAIR HILL: Okay, we'll come back to Ms.  
24 Nguyen, I guess.

25 Commissioner Montague, could you introduce

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1 yourself for the record?

2 MR. MONTAGUE: My name is Jeremiah Montague, Jr.,  
3 Commissioner ANC 507, Vice Chair and Treasurer ANC 5C. I  
4 live at 3914 25th Street, Northeast, Washington, D.C.

5 BZA CHAIR HILL: Thank you, Commissioner. Do you  
6 have any questions for Mr. Tummonds?

7 MR. MONTAGUE: No.

8 I -- to queue in on Commissioner Hart's question  
9 about the -- although he said it may be outside the purview  
10 of BZA, there is a what -- being a historian myself, there's  
11 a concern of -- to make sure that we memorialize the part of  
12 the grievance form, which is at Bladensburg and Eastern  
13 Avenue, the Battle of 1812, 1814, which happened in that  
14 vicinity, the Civil War at Fort Lincoln, because those are  
15 important cultural occasions and occurrences of which part  
16 of this land is now going to sit on, and it has long been  
17 lost to history, but we're trying to revive it as the 61  
18 points of interest in Greater Woodridge.

19 So, beyond his design, he seems to have taken care  
20 of the concerns as noted by Commissioner Hood.

21 The traffic issue may need further examination and  
22 discussion, but as a commission, our focus was specifically  
23 on the special exception relief that was being sought, and  
24 that's where our focus remained.

25 BZA CHAIR HILL: Okay, thank you, Commissioner.

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1 Well, you actually gave a little bit of testimony there, so  
2 we'll see if you have any more a little bit later.

3 But let's see, Ms. Nguyen, do you have any  
4 questions for Mr. Tummonds?

5 MS. NGUYEN: Nope, no questions here.

6 BZA CHAIR HILL: Okay, great, thank you. All  
7 right, Mr. Pearson, so you're going to have the same amount  
8 of time that the applicant had to provide their testimony --  
9 or provide your testimony.

10 Mr. Young, if you could put 15 minutes on the  
11 clock? Okay, that's great. And Mr. Pearson, you can begin  
12 whenever you like.

13 MR. PEARSON: I'm sorry, are we going to do OP and  
14 the DDOT, and procedures for the parties in support of the  
15 application, and the ANC to make their presentation before  
16 the parties in opposition to the application are heard?

17 BZA CHAIR HILL: Okay. I mean, I can do it any  
18 way I want to do it, in terms of like, I'm making sure that  
19 everybody gets a fair share to being heard, but that's fine.

20 So, I can go ahead --

21 MR. PEARSON: And in that regard, may I note that  
22 we had previously, at our last hearing -- but I did want to  
23 note our objection to the participation of the ANC 5C, and  
24 the untimely submission of their report.

25 Just for the record, I note you've already ruled

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1 regarding that, but even if there's one that -- the written  
2 report they submitted today still does not comply with the  
3 requirements of 40C.1E.

4 I would also note that they -- their report and  
5 vote took place in November of 2019, and the application was  
6 --

7 ZC CHAIR HOOD: Excuse me, Mr. Chairman. I'm  
8 having a problem hearing him.

9 Is it just my stuff that I need to reboot or  
10 something? Because I'm having a problem hearing Mr. Pearson,  
11 and I'd like to hear what he has to say. I am seriously  
12 having a problem.

13 (Simultaneous speaking.)

14 MR. PEARSON: And see if that improves it. Let me  
15 try that.

16 ZC CHAIR HOOD: Or maybe if you push it a little  
17 closer?

18 BZA CHAIR HILL: I can -- I could hear him okay,  
19 but you just have to kind of --

20 ZC CHAIR HOOD: Am I the only one having the  
21 problem, or --

22 (Simultaneous speaking.)

23 VICE CHAIRPERSON HART: No, I am too. It was very  
24 hard to hear.

25 MR. PEARSON: Now, is this better?

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1 (No audible response.)

2 MR. PEARSON: Can you hear me better now?

3 ZC CHAIR HOOD: A little better, but if you could  
4 just talk maybe a little louder?

5 MR. PEARSON: Okay, I'll also talk louder.

6 I just wanted to note for the record our objection  
7 on a couple grounds to the ANC's participation and  
8 readmission of their report.

9 And the basic underlying objection is that they  
10 took their vote back in November of 2019, however, the report  
11 -- the applicant substantially amended and modified their  
12 report on February 5, 2020. They made a 75 page  
13 modification.

14 And so, the vote taken back in November has no  
15 relevance to the issues that are presented by the 75 page  
16 modification.

17 The original application that they voted on had  
18 to do with variances, special exceptions.

19 It was an entirely different configuration for the  
20 path in and out of the proposed housing development.

21 And so, for those reasons, in addition to their  
22 failure to provide the -- this Commission gave them until  
23 last Friday to submit a -- their report.

24 They missed that deadline, they'd already missed  
25 the deadline already set --

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1 (Simultaneous speaking.)

2 BZA CHAIR HILL: Mr. Pearson, I hear your  
3 objection.

4 And so, the ANC is here. That is the ANC  
5 Commissioner I am looking at right now, okay? So I hear your  
6 objection.

7 So, now, there are 15 minutes on the clock, and  
8 if you could please go ahead and give your presentation?

9 MR. PEARSON: I'm sorry, I thought you said you  
10 would have the ANC and the party in opposition --

11 (Simultaneous speaking.)

12 BZA CHAIR HILL: Yes, Mr. Pearson, you're correct.  
13 All right, so --

14 MR. PEARSON: We then wanted to rebut. We can't  
15 rebut what we haven't even heard.

16 BZA CHAIR HILL: Mr. Pearson, you were -- you have  
17 party status, so you don't rebut, you go ahead and have an  
18 opportunity to ask questions of what's going to happen in  
19 terms of the presentation.

20 The only person that gets an opportunity to rebut  
21 is the applicant.

22 And then you would have question -- you would have  
23 an opportunity to ask questions of any rebuttal. And so,  
24 that -- just to be clear how that works.

25 MR. PEARSON: We are in opposition.

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1           We have four witnesses that we're going to present  
2 in opposition, after the ANC presents its report, after the  
3 party in support, Ms. Nguyen, after she presents her  
4 application, then we will present four witnesses in  
5 opposition.

6           BZA CHAIR HILL: Yeah. So Mr. Pearson, as -- you  
7 know, the way I've done this in the past, and that's why, you  
8 know, the order as I've been told -- I understand it's in the  
9 regulations -- is that we have the ability as a board to kind  
10 of go through the order in the way that we think works out  
11 best in terms of everyone having an opportunity to be heard,  
12 and have an opportunity to ask questions.

13           So that basically, you, you're here to try to give  
14 us information to see how in fact they're not living up to  
15 the regulations within the zoning code, because we're just  
16 here looking at those regulations, right, in terms of whether  
17 or not they fit the zoning requirements.

18           So, what I'm going to do is I'm going to go  
19 through the other parties in terms of again, the ANC, and  
20 then the association, they can give their presentation.

21           You, as the -- as a party status in opposition  
22 will have an opportunity to ask questions, as I just asked  
23 whether or not you had any questions of Mr. Tummonds.

24           And then I guess I'll go ahead and go through OP,  
25 and you can go ahead and ask your questions there.

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1 I have to go back again and look at the order  
2 because sometimes, as I said, the order gets kind of in  
3 different circles --

4 MEMBER JOHN: Mr. Chairman? Mr. Chairman, if I  
5 could interject?

6 BZA CHAIR HILL: Yes.

7 MEMBER JOHN: Is Mr. Pearson saying that he's  
8 waiving his right to make a presentation to the Board as to  
9 what his objections are?

10 BZA CHAIR HILL: No, Mr. Pearson is trying to --  
11 and he I believe is having an issue with the order in which  
12 we're going in.

13 And so, and now, it looks like OAG has now popped  
14 in. OAG -- like, as I understood the order, right, and now  
15 I might as well learn it again one way or the other.

16 But we've done it before where -- and again, the  
17 point is is everyone is supposed to be heard.

18 And what I understand, now we'll go through this  
19 order, is Mr. Pearson appears as though he believes he gets  
20 to go last, after everyone in terms of support.

21 So, I guess then if that were the case, I would  
22 go ahead and go through the ANC -- actually, I didn't think  
23 the ANC was necessarily here in support or in opposition,  
24 meaning I guess they'll go next, right?

25 Sometimes they're in opposition, right?

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1           So the ANC could go, then if there's anybody who  
2 is support could go, and then we'll go ahead and go through  
3 the Office of Planning, and then I guess the party status in  
4 opposition would then have had an opportunity to hear all of  
5 the information presented, and then ask their questions.

6           Although, I would think that shouldn't necessarily  
7 change the way they do their presentation because they're  
8 coming to do their presentation based on what they believe  
9 the errors are in the standard.

10           But nonetheless, what is the order -- Ms. Cain?

11           MS. CAIN: Yeah, so Alexandra Cain Office of the  
12 Attorney General.

13           So, the order is after the applicant presents  
14 their case, we then move on to the Office of Planning and any  
15 other government agencies that are in attendance.

16           We would then hear from the affected ANC, then  
17 parties in support of the application, then individuals or  
18 organizations who are here in support of the applicant who  
19 do not have party status, and then you would do the parties  
20 in opposition, and then individuals in other organizations  
21 in opposition to the application.

22           (Simultaneous speaking.)

23           BZA CHAIR HILL: Okay, so one second. Give me one  
24 second here.

25           So, right, the individuals in support, right, from

1 the public?

2 MS. CAIN: Yes.

3 BZA CHAIR HILL: And then after that again?

4 MS. CAIN: And then after that, that's when you  
5 go to the parties in opposition.

6 BZA CHAIR HILL: So I hear the party in  
7 opposition, and then do I hear members of the public in  
8 opposition?

9 (No audible response.)

10 BZA CHAIR HILL: After the party in opposition?

11 MS. CAIN: Yes.

12 BZA CHAIR HILL: Okay, I see you nodding. Okay.

13 And then, as I understand it again, what happens  
14 is the party status in opposition has an opportunity -- as  
15 everybody does, everybody who has party status has an  
16 opportunity to ask questions of anyone who has presented?

17 MS. CAIN: That is correct.

18 BZA CHAIR HILL: All right.

19 And then at the end, the applicant has an  
20 opportunity for rebuttal from any of the information that was  
21 presented, and then any of the party status people have an  
22 opportunity to ask questions of rebuttal?

23 MS. CAIN: So, allowing party status to have  
24 questions on rebuttal is sort of at your discretion. It's  
25 not specifically spelled out in the reg conditions.

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1           But if you felt that it was necessary to, you  
2 know, give the Board a further understanding of the issues,  
3 then you would be advised to do that.

4           BZA CHAIR HILL: Okay, all right. So, Mr. --

5           MR. PEARSON: May I note this as well for the  
6 record?

7           My understanding is that the reason that the  
8 government agencies and the ANC and the parties in support  
9 go before the opposition is because their cumulative time is  
10 the amount of time that I have.

11           In other words, if they take a total of 35 minutes  
12 in testimony, then I get 35 minutes in opposition. If they  
13 take 45 minutes in testimony, I get 45 minutes of opposition.

14           That's why they go before me.

15           (Simultaneous speaking.)

16           BZA CHAIR HILL: That's not what I understood, Mr.  
17 Pearson.

18           What I understood is that you get the same amount  
19 of time the applicant had in his presentation.

20           And that's what I've always understood it to be,  
21 because basically, like if we have questions, and, you know,  
22 who knows what's going to happen with the questions, and  
23 things like that, that doesn't count towards the time of the  
24 presentation.

25           MR. PEARSON: Right.

1 BZA CHAIR HILL: So.

2 MR. PEARSON: Their questions don't count, but  
3 their testimony does count.

4 BZA CHAIR HILL: That's not what I understand.  
5 Ms. Cain, that's the way we've always done it.

6 MS. CAIN: No, you're correct, Mr. Chairman. The  
7 party in opposition is given the same amount of time as the  
8 applicants. Let me double check.

9 BZA CHAIR HILL: Okay, well, while you're  
10 checking, let me start to move through this. Okay?

11 So, Mr. Commissioner, you're here representing the  
12 ANC, and if you could please go ahead and give your  
13 testimony?

14 I do have a question for you.

15 The -- Mr. -- the party in opposition has brought  
16 up I guess something that confuses me a little bit, in that  
17 they're -- they seem to be claiming that what you voted on  
18 before is not what is before us now.

19 Can you clarify? Do you know and understand that  
20 what is before us now is what you all voted on and approved?

21 MR. MONTAGUE: That there were substantial changes  
22 to what was presented to us at the time?

23 BZA CHAIR HILL: I'm sorry, Mr. Commissioner, you  
24 cut out at the very beginning. Go ahead and start again.

25 MR. MONTAGUE: I'm not sure that what was

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1 presented to -- what's before us today is substantially  
2 different to what was presented to us back then.

3 The special exception was what was our focus, and  
4 that's what we acted upon.

5 We did give full hearing and full consideration  
6 of the plan and what was to be taken -- to be addressed  
7 before the ANC and the community, and we also made the  
8 applicant aware that even during this process, they would  
9 have to continue to go back to the community to get -- to  
10 have ongoing community support, as well as that from the ANC.

11 So, I understand, before he says it, Mr. Pearson's  
12 objection to most everything, but in the narrow focus of  
13 this, we still would not have changed our opinion of what's  
14 presented because our concern was related to traffic, to the  
15 history, and to the special exception that was being sought  
16 there.

17 BZA CHAIR HILL: Okay, but --

18 (Simultaneous speaking.)

19 MR. TUMMONDS: Chairman, perhaps I can answer your  
20 question.

21 The initial application filed by the applicant  
22 sought variance relief from the requirement that all of the  
23 internal driveways had to be 24 feet wide, which is pretty  
24 wide.

25 We said we want to do those at 20 feet wide.

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1           We then -- based on comments we heard, we removed  
2 the variance. So in fact, the application that is presented  
3 is less -- requires less relief.

4           Similarly, the application that was initially  
5 presented had rooftop decks in the RA-1 portions. We removed  
6 that request for special exception.

7           So again, the project that the ANC reviewed in  
8 November of 2019 requested more relief than what we're  
9 actually requesting now.

10           All of the relief -- and it was a 51 unit  
11 townhouse project.

12           In keeping with what Commissioner Montague said,  
13 the changes that were made to the project that is before you  
14 were all done in response to comments that we heard.

15           So again, one of the issues I mentioned earlier  
16 was the Pineview Association, who was originally a party in  
17 opposition to this application, didn't like the idea that  
18 there was access behind some of their units.

19           In response to that request, we removed that  
20 access.

21           So I agree with Commissioner Montague.

22           In all respects, this project is virtually the  
23 same as what was presented in November, but in fact, the  
24 areas of relief that we have sought have gotten less.

25           BZA CHAIR HILL:       Okay.       All right, Mr.

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1 Commissioner, do you have any testimony that you'd like to  
2 give?

3 MR. MONTAGUE: We've already added into the  
4 record, and we appreciate the Board's waiver of the posting  
5 requirement, which was the objection by Mr. Pearson.

6 So that -- as far as we know, based on the  
7 original letter that was submitted to the record by  
8 Commissioner Manning, who was -- acted on behalf of the --  
9 with -- and with authority of the Board -- of the Commission  
10 ANC 5C, we've now brought the filings in compliance.

11 As far as our testimony, it would be very short.

12 Again, we implore the applicant to adhere to the  
13 reliefs -- as they said now have been reduced -- that  
14 requested, as well as the memorialization of the historical  
15 occurrences that occurred around these properties, so that  
16 it adds value historically, and currently to the project  
17 that's put in place so it doesn't look like this is just  
18 something that was plopped down willy-nilly in that area.

19 Again, as part of our testimony, we do take  
20 advisement from and agree with Commissioner Hood that the  
21 traffic, the egress, the in and out of the property may  
22 require an additional study.

23 We do acknowledge that the DDOT did review and  
24 agree that they didn't find a substantial impact.

25 BZA CHAIR HILL: Okay.

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1 MR. MONTAGUE: However --

2 BZA CHAIR HILL: Mr. -- I'm sorry. I didn't mean  
3 to interrupt you, I'm sorry.

4 MR. MONTAGUE: Yes? Oh.

5 (Simultaneous speaking.)

6 BZA CHAIR HILL: I couldn't hear.

7 MR. MONTAGUE: No problem. So, the issue -- the  
8 traffic issue and DDOT's acquiesce to it is always subject  
9 to review at any point in time.

10 And as Commissioner Hood had asked, we would  
11 suggest an additional review to make sure that that queueing  
12 effect that occurs on Eastern Avenue is not exacerbated.

13 That was one of the questions that was raised by  
14 the community at the hearing because they were fearful that  
15 the addition of the 51 units would indeed create a traffic  
16 chaos beyond the chaos that already exists.

17 So, we find that the designs, the changes that  
18 were made as requested by the applicant are consistent with  
19 what the project needs to move forward.

20 BZA CHAIR HILL: Okay. Thank you, Mr.  
21 Commissioner.

22 Mr. Tummonds, do you have any questions for the  
23 commissioner on his testimony?

24 MR. TUMMONDS: No questions.

25 BZA CHAIR HILL: Mr. Pearson, do you have any

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1 questions for the commissioner on his testimony?

2 MR. PEARSON: None.

3 BZA CHAIR HILL: Pardon me?

4 MR. PEARSON: No. No, I do not.

5 BZA CHAIR HILL: Okay, thank you. Ms. Nguyen, do  
6 you have any questions for the commissioner?

7 MS. NGUYEN: No, sir.

8 BZA CHAIR HILL: Okay. All right, let's see. So,  
9 I went a little bit out of order there. I apologize. I was  
10 supposed to go to Office of Planning first.

11 Oh, Mr. Hood -- Chairman Hood?

12 ZC CHAIR HOOD: Yeah. Mr. Chairman, I just wanted  
13 to ask Commissioner Montague.

14 First of all, thank you, Commissioner Montague for  
15 always being in support of ANC 5C and representing -- and you  
16 are the historian for this area, and we appreciate all the  
17 knowledge that you give us, not just for our area, but for  
18 D.C.

19 Let me ask you a question. Is it -- I understand  
20 -- and I see it in your submission that 5C or 3 at the time  
21 of the vote did not have a commissioner at that time?

22 MR. MONTAGUE: The commissioner was in absence and  
23 was making a decision on whether or not he was going -- his  
24 work had taken him away from the area, and the law required  
25 that he at some point vacate the position.

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1 He did that --

2 ZC CHAIR HOOD: So, let me ask you this question  
3 because I'm going somewhere and I want to make sure this is  
4 for the record.

5 Is it still true that anytime an SMD is vacant,  
6 the chair can step in, or the chair or vice chair, whoever --  
7 whichever one decides -- can step in and basically represent  
8 that area?

9 MR. MONTAGUE: The chair and the vice chair are  
10 allowed and accorded the -- to act in that absence.

11 ZC CHAIR HOOD: Okay.

12 MR. MONTAGUE: So that the community concerns are  
13 heard, and not left without representation.

14 ZC CHAIR HOOD: Thank you, Commissioner. I just  
15 wanted to make sure nothing has changed. Thank you. Thank  
16 you, Mr. Chairman.

17 BZA CHAIR HILL: Sure. Ms. John, do you have any  
18 questions for the commissioner?

19 MEMBER JOHN: No questions.

20 BZA CHAIR HILL: Mr. Hart?

21 (No audible response.)

22 BZA CHAIR HILL: All right. I'm going to turn to  
23 the Office of Planning.

24 MS. BROWN-ROBERTS: Good morning, Mr. Chairman and  
25 members of the BZA. I'm Maxine Brown-Roberts from the Office

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1 of Planning on BZA Case 20184.

2           The Office of Planning recommends approval as  
3 outlined in our report, as we believe that the applicant has  
4 met the requirements for the new residential development, and  
5 also for multiple buildings on a single lot of record using  
6 theoretical lots.

7           And therefore, we're going to stand on the record,  
8 and I am available for questions. Thank you.

9           BZA CHAIR HILL: Thank you, Ms. Brown-Roberts.  
10 Mr. -- Commissioner Hood, do you have any questions for the  
11 Office of Planning?

12           ZC CHAIR HOOD: Real quick. Ms. Brown-Roberts,  
13 are you going to speak for DDOT, as well?

14           (No audible response.)

15           ZC CHAIR HOOD: That's all right. You know what?  
16 I --

17           (Simultaneous speaking.)

18           ZC CHAIR HOOD: I've already asked Mr. Tummonds,  
19 and I've asked the applicant to relook at that.

20           While I don't always agree with DDOT, and I  
21 understand it may not be -- they don't think it's an impact,  
22 but I'm a realist, so I'll just continue with my first  
23 statement, and I ask the applicant to continue to do further  
24 investigations, and as already mentioned by the ANC as well.

25           Thank you.

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1 MS. BROWN-ROBERTS: Okay. Yes.

2 (Simultaneous speaking.)

3 BZA CHAIR HILL: Mr. Hart, do you have any  
4 questions for the Office of Planning?

5 VICE CHAIRPERSON HART: I do in that if Ms. Brown-  
6 Roberts -- welcome -- if you could, just talk a little bit  
7 about the RA-1 zone and the split-zone that we have here.

8 Did you have any particular concern about, you  
9 know, the development happening in the split-zone?

10 MS. BROWN-ROBERTS: No, because I think they --  
11 they are meeting the requirements of each of the zones on  
12 each portion of the zone.

13 As you can see in the development, you know, they  
14 do have one portion, which is the RA-1, and they've outlined  
15 how those meet the RA-1 requirements, and then the other  
16 portion meets the RA-4 zone portion.

17 So, I didn't have anything. I think my major  
18 concern was sort of the impact on the development to the  
19 south.

20 And what the applicant has done is sort of pull  
21 the buildings closer to Eastern Avenue, and then they have  
22 a long backyard.

23 That backyard is -- or a rear yard -- that rear  
24 yard also accommodates an easement that accommodates their  
25 roadway.

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1           But more significant is that there is -- they --  
2 along the boundary line, there is a lot of landscaping in  
3 order to give the existing residents some privacy from the  
4 new development.

5           So that was sort of our main concern here, and I  
6 think that was addressed.

7           VICE CHAIRPERSON HART: Thank you. And just a  
8 follow-up question.

9           Do you see the -- and this is really bad, but I  
10 actually forgot the question because I was listening to you.  
11 Wow. It's like, ugh.

12           MS. BROWN-ROBERTS: You can come back.

13           VICE CHAIRPERSON HART: It's just horrible. So,  
14 no, I appreciate that.

15           I guess I was just trying to understand the -- and  
16 I think you talked about it -- any impacts to the neighbors,  
17 and you discussed how you think that there's -- the buildings  
18 are a little farther away from the neighbors to the south,  
19 and there's this landscaping that's between the two neighbors  
20 -- the two -- the neighbors to the south.

21           MS. BROWN-ROBERTS: South.

22           VICE CHAIRPERSON HART: And that provides the --  
23 kind of a buffer. Oh, actually, I do remember my question.  
24 If I talk long enough, it'll come back.

25           MS. BROWN-ROBERTS: Come back.

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1           VICE CHAIRPERSON HART: So, Mr. Tummonds described  
2 some of the changes that had occurred to the development over  
3 a period of time.

4           I guess from -- I guess sometime last year to  
5 earlier this year.

6           And in that, there were some variances that were  
7 being -- a variance I guess that was being requested, but  
8 your understanding is that this is less impact -- requiring  
9 less zoning relief than what was previously proposed?

10          MS. BROWN-ROBERTS: Yes, that's exactly it. They  
11 -- the variance was associated with the street, with  
12 something that DDOT would have reviewed.

13          At the time, we spoke to them about -- we spoke  
14 to DDOT about that, and it was their recommendation that the  
15 variance be approved because they thought that the 22 feet  
16 that was being proposed was adequate.

17          We were having a hard time, you know, coming up  
18 with the exceptional situation and all that sort of thing to  
19 make the case for the variance.

20          And so, when the applicant decided to take it --  
21 to increase the size of the right of way, we were okay with  
22 that because, you know, getting rid of a relief is the best  
23 thing, as close as you can to a matter-of-right development  
24 is always best.

25          So, we have no concern about that.

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1           The second one was the rooftop terraces that they  
2 were going to have.

3           We didn't have much of a concern about those,  
4 either, because again, the houses were set back. There was  
5 some distance from the residents to the south.

6           So, we were in support of that, but you know, the  
7 applicant spoke to the residents and they were -- you know,  
8 they had preferred that that wasn't there, and so, we agreed  
9 with that.

10           That -- it was not a problem.

11           So overall, the property is coming pretty close  
12 to what is sort of required as matter-of-right because in any  
13 case, they had to come in for the special exception.

14           Any new development would have had to come in for  
15 that.

16           And then on the RA portion, well they could have  
17 done that as a matter of -- they could have done a  
18 development as a matter-of-right there, which would be more  
19 dense than what they're proposing right now.

20           So, yes, overall, we think that this is a better  
21 project.

22           VICE CHAIRPERSON HART: Okay. I appreciate your  
23 response, and I do not have any further questions. Thank  
24 you. Now that I've remembered my question. Thank you.

25           MS. BROWN-ROBERTS: Great.

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1 BZA CHAIR HILL: Ms. John, do you have any  
2 questions for the Office of Planning?

3 MEMBER JOHN: No questions.

4 I appreciate the comments and how the applicant  
5 has changed the design to bring it closer to a matter-of-  
6 right project. I thought that was very helpful.

7 BZA CHAIR HILL: Okay. Chairman Hood, I can't  
8 remember if I asked you. Did you have any questions?

9 ZC CHAIR HOOD: I went already. I don't have any  
10 questions -- any more questions. Thank you.

11 BZA CHAIR HILL: Okay. Commissioner Montague, do  
12 you have any questions for the Office of Planning?

13 MR. MONTAGUE: The ANC 5C is in agreement with the  
14 support of the filing.

15 BZA CHAIR HILL: Okay. Just for the record, I  
16 didn't hear you very well. It seems as though you don't have  
17 any questions, correct?

18 MR. MONTAGUE: (Audio interference) support the  
19 record of (audio interference) report of (audio  
20 interference).

21 BZA CHAIR HILL: Okay, thank you. Just to  
22 clarify, you said that you support the report from the Office  
23 of Planning.

24 Ms. Nguyen, do you have anything to -- actually,  
25 you know what, can I just get everybody to mute themselves?

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1 I'm going to mute myself as well, and -- I can't mute myself  
2 when I'm talking.

3 Ms. Nguyen, if you -- do you have any questions?

4 MS. NGUYEN: No sir.

5 BZA CHAIR HILL: Okay, great. Ms. John, your  
6 microphone's still on, as is Ms. Nguyen.

7 Mr. -- did I -- Mr. Tummonds, did I ask you if you  
8 had any questions for the Office of Planning?

9 MR. TUMMONDS: No questions.

10 BZA CHAIR HILL: Okay. Mr. Pearson, do you have  
11 any questions for the Office of Planning?

12 MR. PEARSON: No questions.

13 BZA CHAIR HILL: Okay, thank you. All right.  
14 Let's see. So I did ANC, I did that.

15 Ms. Nguyen, would you like to go ahead and give  
16 your testimony in support?

17 MS. NGUYEN: Sure. Good morning everyone. It's  
18 still morning, I believe. My name is Twee Nguyen.

19 I'm the president of the Fort Lincoln Condo 5 Unit  
20 Owners Association, otherwise known as Pineview Association,  
21 which is composed of the owners of 40 condos that are next  
22 to the site where the applicant has proposed to build 51  
23 townhouses.

24 I'm here to express the HOA's support of the  
25 revised application filed by Fort Lincoln-Eastern Avenue,

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1 LLC.

2 The applicant has come out, or been discussing  
3 with us at least on three occasions.

4 In November 2019, the Board met with the  
5 applicant to discuss the plans, and we had a public meeting  
6 on it, and we shared with them our concerns.

7 In December, they came out and did a walk-through  
8 with us -- actually, it was January.

9 And then after that, they came back to us and gave  
10 us a revised plan based on our concerns with traffic, parking  
11 issues that will -- maybe have concerns about congestion in  
12 terms of the driveway, and they took care of that in the  
13 revised application.

14 The applicant has been very forthcoming in terms  
15 of working with the homeowners.

16 We've been collaborating with them, and they've  
17 been listening to us very carefully. We appreciate that.

18 Otherwise, we the homeowners of Pineview HOA look  
19 forward to the improvements, and we support this development.  
20 That concludes my testimony.

21 BZA CHAIR HILL: Okay, thank you. Does the Board  
22 have any questions for the witness? If you do, just raise  
23 your hand.

24 All right. Commissioner, do you have any  
25 questions for the witness?

1 MR. MONTAGUE: No, we're in support of what the --  
2 of her testimony.

3 BZA CHAIR HILL: Okay. Mr. Tummonds, do you have  
4 any questions for the witness?

5 MR. TUMMONDS: No questions.

6 BZA CHAIR HILL: Mr. Pearson, do you have any  
7 questions for the witness?

8 MR. PEARSON: No questions.

9 BZA CHAIR HILL: Mr. Pearson, I just want to make  
10 sure you didn't -- I did ask you if you had any questions for  
11 the Office of Planning, correct, and you said no, correct?

12 MR. PEARSON: That's correct.

13 BZA CHAIR HILL: Okay, thank you. All right, Mr.  
14 Young, is there anybody here wishing to speak in support?  
15 Do you know?

16 MR. YOUNG: I don't have anyone.

17 BZA CHAIR HILL: Okay, all right. Then, Mr.  
18 Pearson, that'll bring us to you.

19 And if you could go ahead and -- as I said, I put  
20 15 minutes on the clock there, and you can begin whenever you  
21 like.

22 MR. PEARSON: May I request a one minute break for  
23 the bathroom?

24 BZA CHAIR HILL: Sure, of course.

25 MR. PEARSON: And also, I would note that -- and

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1 ask the Office of Attorney General to look at Section 408.2,  
2 which says that the amount of time that an opposition party  
3 has is the time of the applicant and all parties in support.

4 When I count the applicant and all the parties in  
5 support, it utilized a total of 20 minutes. And so, I'd ask  
6 OAG to look at 408.2 while I take this bathroom break. Thank  
7 you.

8 ZC CHAIR HOOD: Mr. Chairman, I think -- let me  
9 just say, I don't believe -- I don't think we're disputing  
10 that.

11 He's right, so I don't understand what the issue  
12 is.

13 BZA CHAIR HILL: All right, well now Mr. Pearson's  
14 gone, so let's talk when Mr. Pearson gets back, okay?

15 Let's all take a couple minutes, and I'm going to  
16 get a coffee.

17 (Whereupon, the above-entitled matter went off the  
18 record at 11:23 a.m. and resumed at 11:33 a.m.)

19 BZA CHAIR HILL: Okay. Sorry about that -- I mean,  
20 sorry it took so long. Let's see. I don't know if Ms. John  
21 or --

22 MEMBER JOHN: I'm here.

23 BZA CHAIR HILL: Okay. Great.

24 Ms. John, I don't know. Your audio seems a little  
25 wonky, but we'll just see how it goes. Your video is gone.

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1 I don't know if you intended for that or not. Ms. John, are  
2 you joining us by video?

3 MEMBER JOHN: Okay. Is this --

4 BZA CHAIR HILL: Oh, great. Yeah. Okay.

5 Can you hear me?

6 MEMBER JOHN: I am doing my best.

7 How is the volume now? I think -- yes, I can hear  
8 you, but I think my --

9 BZA CHAIR HILL: I can see you. I can see you, Ms.  
10 John.

11 MEMBER JOHN: Okay. Okay.

12 BZA CHAIR HILL: Yes.

13 MEMBER JOHN: Can you hear me?

14 BZA CHAIR HILL: Yes. If there's an issue --

15 MEMBER JOHN: Okay.

16 BZA CHAIR HILL: -- go ahead and mute your  
17 microphone and I'll come back to you again. But if there's  
18 an issue and you need something, just go ahead and raise your  
19 hand.

20 So, Mr. Pearson, I guess now -- I mean, I don't  
21 know -- you know, you had a question for OAG and I guess, you  
22 know, I still am unclear as to what, you know -- to me, what  
23 I always thought is, again, we're trying to give -- we need  
24 to do this as efficiently as possible, in general.

25 And the way the regulations read is that, you

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1 know, they have the same amount of time as the applicant.  
2 And what Mr. Pearson -- and, Mr. Pearson, if it's another  
3 five minutes that you believe, as you were watching people  
4 talk, you guys have, you know, I'm comfortable giving the go-  
5 ahead and you can have 20 minutes as opposed to 15 to give  
6 you the amount of time that you think you are due as opposed  
7 to the 15 minutes.

8 Ms. Cain, can you speak to the issue?

9 MS. CAIN: Yes. So, Mr. Pearson is correct for why  
10 408.2 parties do have the same amount of time as the  
11 applicant and any other party in support.

12 So, if the total amount of time that the applicant  
13 and the time the association took together was 20 minutes,  
14 then that's what Mr. Pearson is entitled to.

15 BZA CHAIR HILL: Okay. So, this is where again --  
16 and I don't know who gets to change these regulations, Mr.  
17 Hood, or what have you.

18 Like, I mean, it's -- I'm trying to do this as  
19 efficiently as possible and we're volunteers, right? And so,  
20 after this case, there's another ten cases, right?

21 And so, this isn't a soccer game, right, that  
22 everybody has -- you know, that people are watching the  
23 stopwatch and how much time -- and, Mr. Pearson, this isn't  
24 about you at all. I'm just talking about, in general, how  
25 this thing -- how I'm trying to -- how I'm supposed to be

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1 monitoring this stuff.

2           Like, the idea is -- and I'm talking to you,  
3 Chairman Hood. The idea I thought, again, is that everyone  
4 has the amount of time necessary to fairly give their case  
5 before the board.

6           And they're supposed to be giving us their case  
7 as to why they believe the applicant hasn't met the standard  
8 in other -- for us to decide, right?

9           They're not just supposed to talk about whatever  
10 they want to talk about for 20 minutes, an hour or two. I  
11 mean, it just seems like there's no limit to the time then.

12           Is that something that the Zoning Commission deals  
13 with?

14           ZC CHAIR HOOD: We deal with quite a bit, Mr.  
15 Chairman. And I will tell you if somebody wants to talk  
16 about -- with me, if somebody wants to talk about something  
17 that's so far off the subject that's not in our purview, I  
18 allow them that time; but I always try to reign people back  
19 in and explain to them they need to be talking about the case  
20 to help us to make an informed decision.

21           Now, Mr. Pearson, as I stated, is exactly correct.  
22 The regulations are what they are. The party in support and  
23 the applicant, as Ms. Cain said, they take 20 minutes. The  
24 party in opposition gets 20 minutes.

25           Now, if there were two parties in opposition, Mr.

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1 Pearson would have to split that time, 20 minutes, with the  
2 other party in opposition.

3 So, I mean, the regulations have been around and  
4 they've been like that for my 22 years and they've worked.  
5 So, you know, it is what it is.

6 So, Mr. Chairman, continue to do the good job that  
7 you're doing. I'll leave it at that.

8 BZA CHAIR HILL: Okay. But that's interesting  
9 because I didn't -- then I will remember that for the next  
10 time, which is that the parties in opposition, they then  
11 split whatever time there is which is going on if there's  
12 more than one party in opposition.

13 ZC CHAIR HOOD: Correct. Whatever the applicant  
14 and the party in support do, like in this case 20 minutes,  
15 now, Mr. Pearson is the only person -- his group is the only  
16 one in opposition, I believe.

17 And if there was another group in -- or if there  
18 were three, they would all have to split that 20 minutes and  
19 then you leave it up to them to divide the time.

20 BZA CHAIR HILL: Okay. Alright. Well Ms. Cain,  
21 if you can remind me to go over all this again at a later  
22 time because it would be helpful for me.

23 Mr. Pearson, are you in agreement to your 20  
24 minutes then?

25 MR. PEARSON: Actually, I'll make two requests.

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1 BZA CHAIR HILL: Sure.

2 MR. PEARSON: One, I would request that because the  
3 applicant -- I think the rules -- I just want to note this  
4 for the record that I think the rule on apportioning time is  
5 -- denies the opposing party due process because the  
6 applicant in this case, for example, submitted a 95-page  
7 application.

8 So, they didn't have to do very much talking.  
9 They just incorporated that. So did the Office of Planning.  
10 They simply rested on the voluminous documents that they have  
11 in the record.

12 Now, the opposing parties are at a distinct  
13 disadvantage because we don't have counsel to prepare, you  
14 know, rebuttal to all 95 pages. And so, I just note that  
15 objection.

16 We would take the 20 minutes, but we request leave  
17 to submit our testimony in writing because we anticipated it  
18 would take us about 40 minutes.

19 We have three witnesses, each one about three  
20 minutes, and then my overall -- since I had to deal with  
21 affirmative issue, for example, we're saying that it's  
22 illegal that they don't -- they violate DC Code 10-801.  
23 That's entirely an issue they don't address at all.

24 So, if I don't have an opportunity to develop a  
25 factual, legal basis for that, I'm at a disadvantage in doing

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1 that in 20 minutes because it goes beyond what they did in  
2 their case.

3 So, I request leave to submit my statement in  
4 writing -- my testimony in writing. I'll just summarize it  
5 today.

6 The three people that I'll be calling, they'll  
7 just summarize their testimony and submit their written --  
8 I had them write it up. Within 24 hours we can submit -- or  
9 48 hours we can submit our written testimony.

10 What we'll do in order to follow the 20-minute  
11 requirement is that we will just summarize the testimony that  
12 we request leave to submit in writing to the board.

13 BZA CHAIR HILL: So before we get there, Mr.  
14 Pearson, so how does that work, OAG?

15 MS. CAIN: I mean, I will just note for the record  
16 that the party opponent did submit a supplemental file into  
17 the record, that's Exhibits 68 and 69, which was, I believe,  
18 like a 30-page -- 38-page document explaining their positions  
19 on various issues.

20 I think any other sort of supplemental filing that  
21 would re-cover those same issues would be sort of redundant  
22 for the board.

23 So, anything that the board would let in would  
24 need to be, you know, new testimony.

25 BZA CHAIR HILL: Mr. Pearson -- let me do this, Mr.

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1 Pearson. Mr. Pearson, how much time do you think you need?

2 MR. PEARSON: I would like -- because they waited  
3 -- my witnesses waited six hours on Wednesday, I'd like them  
4 to have an opportunity to at least summarize their testimony.  
5 Each of them were going to take three minutes each.

6 I was going to take 30 minutes. I could reduce  
7 mine down to 20 minutes so we --

8 BZA CHAIR HILL: I guess, Mr. Pearson, what I'm  
9 trying to get at -- and honestly, Mr. Pearson, I haven't even  
10 heard your testimony yet.

11 When people are asking these questions, it always  
12 makes me just wonder whether they're just trying to set up  
13 an appeal, right?

14 And so, I just want to make sure that you have  
15 your -- you have the opportunity because I don't want you to  
16 come back and say that I didn't give you the opportunity to  
17 present your case, right?

18 So, how much time do you need to present your case  
19 so that you can't tell me that I didn't give you enough time  
20 to present your case?

21 MR. PEARSON: Well, 40 minutes then.

22 BZA CHAIR HILL: Okay. 40 minutes it is.

23 ZC CHAIR HOOD: Mr. Chairman.

24 BZA CHAIR HILL: Yes.

25 ZC CHAIR HOOD: I actually disagree with Mr.

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1 Pearson. I think our regulations are explicit. He can  
2 provide something to the record. But if you want to do that,  
3 I think either way you set up an issue, but I don't run --  
4 for me, and I don't want to take over, trust me.

5 I don't run my hearings where other people are  
6 going to go to court. That's their right. They can go to  
7 court any time they're ready, which they do, but my thing is  
8 our regulations are explicit.

9 I don't think we need to accommodate one more than  
10 the other. I think what it is, Mr. Pearson is exactly  
11 correct. He can supplement if he feels like something was  
12 done.

13 That stuff has been in the record. So, I just  
14 think that we're getting way off course trying to prevent  
15 something.

16 He has a right to file, go see the Court of  
17 Appeals or whomever, but I think this proceeding needs to  
18 stay germane to the regulations we have in place.

19 BZA CHAIR HILL: Okay, Chairman Hood.

20 I'm not -- what I'm trying to follow up -- and now  
21 we're having kind of a side bar even a little bit, which is  
22 that OAG had just -- unless I got this wrong, if the opposing  
23 party presents something additional to the record, then I  
24 need to give the applicant the opportunity to respond to that  
25 information that's being put in the record, correct, OAG?

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1 MS. CAIN: Yes.

2 BZA CHAIR HILL: Right. So, I'm trying to avoid  
3 that part of it by doing this now and giving the opposition  
4 the amount of time that they think they need, or they're  
5 somehow being cheated from, that they need to supplement the  
6 record.

7 And so, by the time we're done talking about this,  
8 it will be another 40 minutes.

9 ZC CHAIR HOOD: I will withdraw my comments and let  
10 you proceed. I'm sorry.

11 BZA CHAIR HILL: Okay. That's alright.

12 So Mr. Young, can you put up 40 minutes on the  
13 clock, please.

14 MS. CAIN: Chairman Hill.

15 BZA CHAIR HILL: Yes.

16 MS. CAIN: Just very quickly, and this is more for  
17 the Office of Zoning, I just wanted to confirm -- I know it's  
18 been a little bit wonky with the virtual hearing setup, but  
19 I just wanted to confirm that all the witnesses who are  
20 testifying have been sworn in.

21 BZA CHAIR HILL: Sure.

22 MR. PEARSON: We all signed an attestation that our  
23 testimony would be under oath. In order to be added to the  
24 witnesses, we had to sign an attestation that our testimony  
25 would be under oath.

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1 MS. CAIN: I just want the Office of Zoning to  
2 confirm that everyone who has testified so far today has been  
3 sworn in in some way, shape or form and so we can just sort  
4 of address that.

5 BZA CHAIR HILL: Okay. So, if anybody didn't --  
6 as I understood it to be here, you would have had to, as Mr.  
7 Pearson is mentioning, they have to check off something that  
8 they've taken the oath.

9 And if there's anything that's not to that affect,  
10 just somebody raise your hand or speak up; but otherwise  
11 that's what I understood.

12 So, Mr. Pearson, I'm going to turn back to you  
13 again. Is there a presentation or anything you need Mr.  
14 Young to pull up?

15 MR. PEARSON: Yes.

16 BZA CHAIR HILL: Okay.

17 MR. PEARSON: I have communicated with Mr. Young  
18 about a video that I've provided a link to all the opposing  
19 parties so they have an opportunity -- it's posted on YouTube  
20 -- for them to have an opportunity to review it, make any  
21 objections they have to it. There's been ample time to do  
22 that.

23 So, that's the only exhibit I'm asking Mr. Young  
24 to prep for -- and I'll cue him when I need it. I'd like my  
25 three witnesses to be added. One of them is on the

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1 telephone. The other two, I believe, are joining by video.  
2 I'd like them to be added, please.

3 BZA CHAIR HILL: Okay. Let me get that first.  
4 Who are your two witnesses?

5 MR. PEARSON: The two by video are Ms. James --  
6 Emma James and Mr. Sylvanus Bickersteth.

7 BZA CHAIR HILL: Okay. I see Mr. Bickersteth. Ms.  
8 James I don't see yet.

9 Mr. Bickersteth, can you hear me?

10 MR. BICKERSTETH: Yes, sir.

11 Can you hear me, Mr. Chairman?

12 BZA CHAIR HILL: I can. Thank you.

13 Could you please introduce yourself for the  
14 record?

15 MR. BICKERSTETH: My name is Sylvanus Bickersteth,  
16 Jr. My address is 3107 35th Street, N.E.

17 BZA CHAIR HILL: Okay. And Ms. James I don't see  
18 yet, Mr. Young, if you've found her or not in the waiting  
19 area.

20 MS. JAMES: I'm under Attendees.

21 BZA CHAIR HILL: Oh, okay.

22 Can you hear us, Ms. James?

23 MS. JAMES: Yes. Perfectly.

24 BZA CHAIR HILL: Okay. So, Ms. James --

25 MR. PEARSON: Mr. Burroughs is the final person.

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1 He's calling in by telephone.

2 BZA CHAIR HILL: Okay. Mr. Burroughs, are you  
3 there?

4 MR. BURROUGHS: This is Mr. Burroughs.

5 BZA CHAIR HILL: Okay. Alright. So then, Mr.  
6 Pearson, you can go ahead and begin whenever you like and --  
7 yeah, there you go.

8 Mr. Young, if you would set the clock?

9 MR. PEARSON: For the record, I am Roy Pearson,  
10 counsel for the Fort Lincoln Civic Association, Inc., which  
11 I will refer to as the FLCA.

12 The FLCA was granted party status in this case on  
13 February 12th, 2020. We oppose the zoning application that  
14 is before you.

15 I'd like to give a brief opening statement that  
16 will explain what our evidence will show, and then will  
17 identify the persons who will present that evidence.

18 Our first witness will be Mr. Michael Burroughs.  
19 Mr. Burroughs lives in a home that is right off Commodore  
20 Joshua Barney Drive in the Fort Lincoln planned community.

21 He's familiar with the impact that the proposed  
22 housing development would have on the more than 850 families  
23 that now live along Commodore Joshua Barney Drive.

24 The only direct exit from the Fort Lincoln  
25 community that they have is down Commodore Joshua Barney

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1 Drive to Fort Lincoln Drive, which in turn merges into  
2 Eastern Avenue.

3 He will describe how the current traffic  
4 congestion will be exacerbated and he will begin to describe  
5 the dangers that will result if the proposed housing  
6 development is approved by the BZA.

7 A second witness will be Ms. Emma James. She  
8 lives in a home along Fort Lincoln Drive in the Fort Lincoln  
9 community.

10 She'll testify to the impact the proposed housing  
11 development will have on residents like herself that live  
12 along Fort Lincoln Drive.

13 Our third witness will be Mr. Sylvanus  
14 Bickersteth. Mr. Bickersteth will specifically be speaking  
15 to the concerns of his neighbors in the 3100 block of 35th  
16 Street, N.E.

17 They all live within 200 feet of the proposed  
18 development. Mr. Bickersteth will address how the proposed  
19 development will radically change, for the worse, the lives  
20 of his neighbors and himself.

21 I will be the final witness. I live in the  
22 Pineview Court condominiums, which is immediately next to the  
23 open parkland where the applicant proposes to build 51 luxury  
24 townhomes.

25 I've been here for more than 20 years and

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1 throughout that time period I've been active in the Fort  
2 Lincoln Civic Association, so I've had extensive contact with  
3 the wide cross-section of the 6,000 members of the Fort  
4 Lincoln Civic Association.

5 Most of my testimony is contained in the 37-page  
6 written opposition we filed on June 22, 2020. I hope you've  
7 had an opportunity to review it.

8 It has a table of contents that outlines its  
9 contents. And so, during my testimony I will only highlight  
10 the context in which this controversy has arisen and the five  
11 major reasons why the application in this case for two  
12 special exceptions should not be considered on its merits.  
13 And why if the merits of the two requested special exceptions  
14 are reached, they must be denied.

15 And I will now call my first witness, Mr. Michael  
16 Burroughs.

17 MR. BURROUGHS: Hello, members of the zoning --  
18 Board of Zoning Adjustment. My name is Michael Burroughs and  
19 I live at 2634 Coleman Lane, N.E., Washington, D.C. 20018.

20 I'm submitting this testimony on behalf of the  
21 6,000 members of Fort Lincoln Civic Association, but I will  
22 be focusing on the impact that the proposed housing  
23 development will have on the Fort Lincoln residents such as  
24 myself who live along Commodore Joshua Barney Drive, N.E.,  
25 in the Fort Lincoln community.

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1 CJB Drive is one of two main streets that lead to  
2 Bladensburg Road and Eastern Avenue, N.E., which is the sole  
3 western exit from the Fort Lincoln planned community.

4 That route, which I regularly drive, takes me  
5 directly past the proposed housing project that runs from CJB  
6 Drive to Bladensburg Road.

7 I was assisted in preparing this testimony by  
8 Sheila Clark, who resides at 3623 Jamison Street, N.E.,  
9 20018.

10 We are both residents of The Reserves at Dakota  
11 Crossing, one of the five Fort Lincoln communities located  
12 along CJB Drive. CJB Drive runs directly down to the  
13 proposed development.

14 In preparation for our testimony, Ms. Clark and  
15 I, on several occasions before the coronavirus made this  
16 impractical to do so, conversed with large numbers of  
17 residents at various housing communities located along  
18 Commodore Joshua Barney Drive.

19 We particularly focused on residents of two  
20 apartment buildings; 3500 and 3502 of CJB Drive, N.E., that  
21 are within 200 feet of the proposed development.

22 Many of these families -- many of them have  
23 families, and so they would be particularly impacted by the  
24 destruction of the park and recreation space that the  
25 proposed development site now provides for them.

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1           In talking with the residents, they were highly  
2 concerned about the placement of 51 new townhomes in this  
3 relatively small geographic space and the potential impact  
4 on traffic and vehicle congestion on Fort Lincoln Drive and  
5 Eastern Avenue.

6           We live along the northern border of Washington,  
7 D.C. For those of us who live along CJB Drive, the logical  
8 way to leave Fort Lincoln for work downtown or Maryland is  
9 to drive down CJB Drive to Fort Lincoln Drive, which emerges  
10 into Eastern Avenue.

11           Currently, over 850 residents that live along CJB  
12 Drive use these streets as the primary exit and entrance to  
13 our homes.

14           In addition, the 51 townhomes with only a single  
15 combined exit -- entrance and exit on Eastern Avenue will  
16 exacerbate an already slow, congested traffic pattern.

17           Even during non-rush hour, weekday hours, we have  
18 to wait a minimum of three to five minutes to reach  
19 Bladensburg Road or an exit to Fort Lincoln.

20           Additional homes and their vehicles will only  
21 increase the chronic bottleneck that we experience daily.  
22 As well, increasing the amount of time that the cars will  
23 have to wait for the -- to exit the community will motivate  
24 drivers to look for ways to avoid the wait.

25           This increases the chances that they will speed

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1 and weave in and out of lanes to avoid the wait, putting  
2 pedestrians and motorists alike in danger.

3 The proposed development does not come with any  
4 new traffic lanes or enhancements to Bladensburg Road or  
5 Eastern Avenue intersection.

6 No one that we spoke with -- spoke to could think  
7 of a way that a single entrance/exit from the proposed  
8 development on Eastern Avenue could possibly work, and we  
9 agree that it presents a clear and present danger for those  
10 of us coming off the downhill curve of Fort Lincoln Drive  
11 where it merges with Eastern Avenue.

12 If a stop sign was installed along Eastern Avenue  
13 to allow residents of the proposed housing development to  
14 turn left in front of us and onto Eastern Avenue, that  
15 already long lines of traffic from Fort Lincoln Drive and  
16 Commodore Joshua Barney Drive would snake back for blocks and  
17 blocks.

18 And I'm not talking about during rush hour and on  
19 weekends with shopping from Dakota Crossing Shopping Center  
20 at Fort Lincoln that already cause that to happen.

21 I'm talking about any time during daylight and  
22 weekday hours. I understand that Mr. Pearson is going to  
23 show a video that illustrates this point.

24 We're also concerned about the destruction of the  
25 only uninterrupted green spaces on the western portion of the

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1 Fort Lincoln community down at the bottom of Fort Lincoln,  
2 which is built on a series of hills.

3 The Fort Lincoln residents at the bottom of the  
4 hill, such as the residents of Washington Overlook, Pineview  
5 Court, those along 35th Street and Summit Village, that green  
6 space is the only recreation area available to them as a  
7 practical manner.

8 They are not going to hike uphill for three to  
9 four blocks to reach Fort Lincoln Park. I know I would not  
10 do so myself if I were them.

11 That parkland needs to be improved upon with  
12 creative design ideas, not destroyed, and that we think  
13 should be one of the lessons of the coronavirus pandemic.

14 We need urban designs that enable us to spread out  
15 outside and not be compacted inside staring across at each  
16 other.

17 In conclusion, there is no support for this  
18 proposed development by the residents that live along CJB  
19 Drive, communities that will be directly affected by the  
20 traffic congestion, traffic dangers and lack of recreational  
21 space that approval of this application will result in.

22 We are asking the BZA to dismiss or deny the  
23 application. Thank you for hearing my testimony on this  
24 matter.

25 MR. PEARSON: Ms. James will be next.

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1 MS. JAMES: Hello. Do you hear me?

2 MR. PEARSON: Yes.

3 MS. JAMES: Hello. My name is Emma Pearl James and  
4 I live at 3434 Summit Court, N.E., Washington, D.C., 20018.

5 BZA CHAIR HILL: Ms. James.

6 MS. JAMES: Yes.

7 BZA CHAIR HILL: I'm sorry. I was on mute. I  
8 wasn't done yet with Mr. Bickersteth.

9 Does the board have any questions for -- actually,  
10 you know what? Never mind. I'll go ahead and -- why don't  
11 you just go ahead and continue, Ms. James, and I'll circle  
12 back around with questions for everybody at the end.

13 Please go ahead, Ms. James.

14 MS. JAMES: Okay. Again, my name is Emma Pearl  
15 James and I live at 3434 Summit Court, N.E., Washington, D.C.  
16 I am the secretary of the Fort Lincoln Civic Association and  
17 I live along Fort Lincoln Drive, which is one of the two  
18 major streets leading out in the western portion of the Fort  
19 Lincoln planned community.

20 There are five residential communities along Fort  
21 Lincoln Drive. They are, starting with the furthest and  
22 finishing with the closest to the planned development, the  
23 Petersons apartments, Dakota Crossings, Hillside Village,  
24 Banneker Ridge and finally my own housing cluster Summit  
25 Village.

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1 I live directly next to Pineview Court and the  
2 proposed development site. The proposed development would  
3 be detrimental to Fort Lincoln community in several ways.

4 First, the increased traffic that 51 townhomes  
5 would create would increase congestion in an already  
6 problematic area.

7 Traffic before COVID-19 was regularly backed up  
8 on Fort Lincoln Drive to Commodore Barney Drive during rush  
9 hours in the morning and evenings.

10 The already reckless driving behavior in DC added  
11 to more congested traffic conditions is asking for collision  
12 and danger.

13 The refusal of DDOT to investigate this potential  
14 problem shows its dysfunction in being able to prevent  
15 problems.

16 Secondly, parking has always been a problem in  
17 this area especially when the Fort Lincoln Park is in use,  
18 and the additional townhomes will make the parking a problem  
19 24/7.

20 The developer had planned inadequately for all the  
21 likelihood of each household's numbers of cars. The excess  
22 will inevitably spill over into the neighboring parking lots  
23 and street parking.

24 Residents of Fort Lincoln will complain in the  
25 future, but it will be too late unless you reject the

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1 developer's proposal now.

2           Thirdly, the developer has planned four-story-high  
3 luxury housing units on one half of the planned development.  
4 This is at least two stories higher than the neighboring  
5 units and would create a sharp incline over the horizon.

6           Added to the obvious contrasting socioeconomic  
7 status of the people in the new housing cluster, it will be  
8 insensitive and awkward-looking to have such contrast in the  
9 cramped space adjacent to Pineview Court.

10           The developer did the same thing building Banneker  
11 Ridge, which is next to Summit Village. At the time of that  
12 development, no one knew but the developer that the  
13 unreasonably high townhomes would block any view from the  
14 park and neighboring communities.

15           Of course the developer did not disclose this  
16 information to the public and now all the community has a  
17 park without views of the city, which is what its main  
18 attraction was, and neighboring communities that contrast  
19 sharply with Banneker Ridge.

20           Additionally, the developer has ensured there is  
21 no green space available for breathing space. The developer  
22 has created a blueprint for using every bit of space for  
23 development, permitting no sizeable expanse for neighbors to  
24 meet and communicate with each other outside their immediate  
25 homes.

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1           This is inconsistent with neighboring communities'  
2 designs and goes against the aesthetic appeal for the Fort  
3 Lincoln area. I have an example of Summit Village's green  
4 space in my written testimony if you ever receive that  
5 information.

6           We have asked you to consider the  
7 inappropriateness of the design of the housing cluster and  
8 reject the developer's proposal.

9           Alternatively, the developer could revert to a  
10 2008 housing proposal which is much more size-appropriate and  
11 provides for the desired green space.

12           Fourthly, the current blueprint has only one  
13 combined entrance and exit from and into the proposed  
14 development less than 100 feet from the curb where Fort  
15 Lincoln Drive divides into a two-lane Eastern Avenue.

16           This is a dangerous place for an entrance and as  
17 the traffic conditions, plus reckless driving practices in  
18 D.C. added, combined with environmental hazards such as rain  
19 and ice, will make this a catastrophe.

20           The area is simply not appropriate for such a  
21 large number of new housing units, 51. It shows that the  
22 developer has only one priority in mind and that is  
23 maximizing its profits.

24           Since the COVID-19 pandemic, it is possible that  
25 there will be an increased number of people who will be

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1 traveling by car to avoid risk of infection from public  
2 transportation, and so congestion will only get worse.

3 My hope is this board will be a factor of  
4 accountability to the single-mindedness of profit-seeking and  
5 foresee the problems that will arise when allowing the  
6 developer to forego all other considerations.

7 In conclusion, I have spent considerable time  
8 talking with my neighbors about this proposed development.  
9 The clear consensus is that the land should stay as it is and  
10 be improved to become a designated park for children and  
11 adults to enjoy.

12 Please prioritize the laws that were designed to  
13 prevent just this type of proposal as well as the needs of  
14 the impacted community over the developer's financial  
15 interests and reject the developer's application to construct  
16 51 luxury townhomes on parkland.

17 Thank you and thank you for the extra time.

18 BZA CHAIR HILL: Thank you, Ms. James.

19 Mr. Pearson.

20 MR. PEARSON: Mr. Bickersteth is next.

21 BZA CHAIR HILL: I thought Mr. Bickersteth went --  
22 oh, no. I'm sorry.

23 Mr. Bickersteth.

24 MR. BICKERSTETH: You want me to speak?

25 BZA CHAIR HILL: We can hear you.

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1 MR. BICKERSTETH: Okay. I just want to say thank  
2 you for allowing me to provide my testimony. My name is  
3 Sylvanus Bickersteth, Jr. I live at 3107 35th Street, N.E.,  
4 with four children.

5 My family has lived on -- at this address --

6 MR. PEARSON: You have to speak up. I can barely  
7 hear you.

8 MR. BICKERSTETH: Can you hear me? You can't hear  
9 me? Is that better?

10 BZA CHAIR HILL: I can hear you, but you can go  
11 ahead and speak up, I guess, so maybe it's more clear for Mr.  
12 Pearson.

13 MR. BICKERSTETH: Mr. Pearson, can you hear me?

14 MR. PEARSON: Yes.

15 MR. BICKERSTETH: Is that better?

16 MR. PEARSON: Yes.

17 MR. BICKERSTETH: Okay. As I was saying, I've  
18 lived at my address since 2005. We've owned the property  
19 since 2002.

20 I've spoken with my -- I live on the 3100 block  
21 of 35th Street. This is the street that runs directly behind  
22 the proposed development.

23 We will be, I think, adversely affected more than  
24 anyone in the sense that we are right behind it. We will  
25 feel the effects of the construction. We will feel the

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1 effects of the presence of people, which has to do with  
2 trash, which has to do with the construction, noise.

3           That's a lot of -- that's a -- quite a few more  
4 people to put in a smaller space and add to the already very  
5 large number of people that are -- that currently live in the  
6 immediate area.

7           I've spoken with my neighbors on my block. We  
8 have a very small block. We will inevitably be -- feel the  
9 result of any extra parking, which we already kind of do from  
10 anything that's going on -- or things that are going on  
11 Bladensburg Road, but those typically tend to be temporary.

12           But Bladensburg Road is already, I mean, insane.  
13 Many times we are -- we have a lot of difficulty coming in  
14 and out of our -- just our block alone.

15           So, it's a no-outlet street. It's very small.  
16 So, to add more people to that, that would affect us very  
17 adversely.

18           Many of -- another thing that was also a concern  
19 is -- we had a meeting several years ago, I guess, about the  
20 -- concerning the original plan and we somewhat thought it  
21 was a fait accompli, but now it seems, okay, time has gone  
22 passed and one of the things that is kind of concerning is  
23 that out of all the people that have voiced their support,  
24 we have -- we were never notified of all these things that  
25 were going on, ever.

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1           We didn't get any notifications. We didn't get  
2 any notice of meetings. There were no signs posted,  
3 anything.

4           So, all this kind of comes after the fact. So,  
5 we were never even given any notification of what was to  
6 come.

7           But on top of that, we were aware of the original  
8 plan years and years ago. Several years ago. So, now to  
9 find out currently that now they're adding more houses,  
10 proposing more houses, it's very concerning.

11           Also, my backyard will be adjacent to this  
12 property. So, I have major privacy concerns concerning the  
13 height of those buildings.

14           I'm sure they will be -- they will be a couple --  
15 a few stories, I'm sure. So, I have concerns about them  
16 being able to look into my yard.

17           For the most part, my children play in my backyard  
18 -- in the backyard. That's the way to kind of give them  
19 privacy and me be able to monitor them.

20           So, those are major, major concerns along with the  
21 fact that there will be elimination of green space, sight  
22 lines and just -- it's very disconcerting that it spoils the  
23 quality of life.

24           So -- and that's one of the main reasons I and my  
25 neighbors on the 3100 block are opposed to this. Thank you

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1 for allowing me to speak.

2 BZA CHAIR HILL: Thank you, Mr. Bickersteth.

3 MR. PEARSON: Again, my name is Roy Pearson and I  
4 live at 3012 Pineview Court, N.E., in the Pineview Court  
5 condominiums in Fort Lincoln. And I have lived here since  
6 October of 1999.

7 I'm a renter, and over the 20 years that I have  
8 lived here, many of the original owners of the other  
9 condominium properties have moved out.

10 At least one-third of the 40 apartments that  
11 comprise the Pineview Court condominiums are now also  
12 occupied by renters like myself.

13 Despite our numbers, the renters are not permitted  
14 to participate in decision-making about the management and  
15 planning for the condominiums. And so, the Pineview Court  
16 Association does not speak for the renters here.

17 It's important to keep in mind, though, that  
18 Pineview Court is only one of four housing clusters that are  
19 within 200 feet of the proposed housing development.

20 The Pineview Court condominiums are only 1 of 17  
21 housing clusters in the Fort Lincoln planned community. Only  
22 the Fort Lincoln Civic Association speaks for the renters who  
23 live in Pineview Court and for the other 16 Fort Lincoln  
24 housing clusters, including three that are within 200 feet  
25 of the proposed housing development.

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1           And it speaks for the 3100 block of 35th Street,  
2 which is also within 200 feet of the proposed housing  
3 development.

4           Because I've acted as legal counsel on and off for  
5 the Fort Lincoln Civic Association since shortly after I  
6 moved here in 1999, I have become acquainted with each of the  
7 housing clusters and particularly those within 200 feet of  
8 the proposed development.

9           I've also been personally involved in researching  
10 the planning by the federal government that gave rise to Fort  
11 Lincoln as a planned community in 1975.

12           And so, I have summarized the evolution of the  
13 Fort Lincoln planned community in the first three pages of  
14 our written opposition with special emphasis on the 3100  
15 block of 35th Street.

16           That block of 35th Street predated the creation  
17 of the Fort Lincoln urban renewal area. Today, however, its  
18 residents are part of the 6,000-member Fort Lincoln Civic  
19 Association.

20           Fort Lincoln where the proposed development is,  
21 as I told -- well, one thing the application in this case  
22 does have in common with the application the same applicant  
23 filed in 2008, the developer is still making false or at  
24 least confusing claims about who owns the land that is the  
25 subject of the zoning application.

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1           They now admit that their claim in 2008 at Square  
2 4325, Lot 802, was then owned by the DC government was not  
3 true. They now admit that it was owned, at that time, by the  
4 National Park Service.

5           And as for who owns Square 4325, Lot 802 now,  
6 they're all over the place contradicting themselves, but it  
7 really does not matter who claims to own it now.

8           All that matters is whether, at any point, the  
9 title to Lot 802 and the adjoining lot, 44, were held by the  
10 DC government.

11           Because once the DC government took title to the  
12 land, it could not be transferred to anyone or anything else  
13 for all practical purposes, and their own evidence shows the  
14 DC government has held title to that land.

15           Tab C of their revised application filed on  
16 February 5, 2020, states that in July of 2013 the National  
17 Park Service began the process of transferring jurisdiction  
18 over Square 4325, Lot 802, to HUD so that the land could then  
19 be transferred via the DC government to an unnamed private  
20 developer.

21           Once Lot 802 was bid to the DC government, it  
22 became subject as a matter of law, DC Code Title 10-801.  
23 That means it could not be transferred or sold via the DC  
24 government to anyone thereafter, including unnamed  
25 developers, without following certain legal procedures.

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1           That title, Title 10-801, took effect on March 15,  
2 1990, and it states that once the DC government acquires  
3 title to real estate, that real estate cannot be transferred  
4 unless the government takes a series of public actions.

5           First, it must hold at least two public hearings  
6 to persuade our 6,000 residents that Square 4325, Lot 802,  
7 is surplus, meaning it serves no public purpose.

8           And if they're able to convince us, the government  
9 would then have to hold another public hearing, again right  
10 here, to persuade us that the best use for the surplus land  
11 is to transfer it to private developers so that they could  
12 make \$30 million building luxury homes on it.

13           Let's suppose the government was able to pull that  
14 off, too. Well, then they would have to persuade the DC  
15 Council to pass two different resolutions.

16  
17           The first one agreeing that the land is,  
18 quote/unquote, surplus and not needed for public purpose.  
19 And a second resolution agreeing that the land should not be  
20 sold to the highest bidder, but instead transferred on  
21 undisclosed terms to a politically-connected company called  
22 Fort Lincoln-Eastern Avenue LLC.

23           All we have to show is that title to the land was  
24 transferred to the DC government at some point recently. And  
25 according to the developer's own filings, title to Square

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1 4325, Lot 802, was held by the DC government either on  
2 October 22, 2019, when the original application in this case  
3 was filed, or certainly by February 5, 2020, when the revised  
4 application was filed.

5 That's evidence they submitted themselves with  
6 their applications on those dates and our research confirms  
7 that fact.

8 In fact, our research shows that title to Lot 44,  
9 which is right next to Lot 802, was also transferred to the  
10 DC government at the same time.

11 So, DC Title 10-801 applies to all of the land  
12 that is included in this application, and here's what our  
13 research shows. On page 16 of our opposition we cite to DC  
14 Council Resolution 20-502, which was passed on June 3rd,  
15 2014.

16 In the legislative history of that resolution, you  
17 will find the May 2, 2014 testimony of Matthew Troy, who was  
18 then the deputy director of real estate for the Office of the  
19 Deputy Mayor for Planning and Economic Development.

20 At page 2 of his testimony, Mr. Troy explained  
21 that the purpose of DC Council Resolution 20-502 was to  
22 facilitate the transfer of the fee simple title to Square  
23 4325, Lot 802, from one entity to another to another,  
24 including the District of Columbia government.

25 He laid out the entire plan. First, there will

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1 be a transfer of jurisdiction over Lot 802 for the DC  
2 government back to the National Park Service. That's  
3 necessary because the DC government never had title to Lot  
4 802. It only had jurisdiction over it.

5 Second, there will be a transfer of title to Lot  
6 802 from the National Park Service to HUD.

7 Third, there will be a transfer of title to Lot  
8 802 and the adjoining lot, 44, from HUD to the DC government.  
9 And that's what triggers DC Code Title 10-801.

10 And that was a huge problem with their plan  
11 thereafter to transfer title to Fort Lincoln-Eastern Avenue  
12 LLC.

13 Effective March 15, 1990, the Disposal of District  
14 Owned Surplus Real Property Amendment Act of 1989 took effect  
15 and it states that once the DC government obtains fee simple  
16 title to real estate by quote/unquote any means, it becomes  
17 subject to strict legal restrictions on the transfer or sale  
18 by the DC government of that real estate.

19 In other words, the DC Council said that beginning  
20 on March 15, 1990, when it comes to public land, everything  
21 has to be done out in the open in the community and before  
22 the DC Council.

23 I'm here to testify the DC government did not hold  
24 public hearings in Fort Lincoln to explore whether Lot 802  
25 or Lot 44 no longer served a public purpose.

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1           And I can personally testify that the DC  
2 government has not held public hearings in the Fort Lincoln  
3 community to explore what private purposes Lot 802 and 44  
4 should be used for.

5           Likewise, I have personally confirmed that the  
6 mayor has not sent separate resolution after each of those  
7 public hearings to the DC Council; one to confirm the mayor's  
8 determination that Lot 802 and 44 are not needed for a public  
9 purpose; and two, to confirm that that same land should be  
10 leased or sold to Fort Lincoln-Eastern Avenue LLC for the  
11 construction of 51 luxury townhomes. That has not happened.

12           The only other way to transfer the land would be  
13 to persuade the DC Council -- for these private purposes that  
14 they're seeking special exceptions for, is to persuade the  
15 DC Council to amend Title 10-801 to exempt Square 4325, Lots  
16 801 and 44, from its requirements.

17           And, believe it or not, that has happened with  
18 respect to other real estate many, many times. If you check  
19 the DC Code annotated, it lists many amendments to that Title  
20 10-801 that were passed to exempt the transfer of real  
21 property by the DC government to avoid the requirements of  
22 that law.

23           So, the Council knows how to bypass title 10-801  
24 by amending it, but it has never done that with respect to  
25 Square 4325, Lot 802 and Lot 44, which are the properties

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1 involved in this case.

2           And that's why you don't need to get into the  
3 merits of the two special exceptions in these reports. A  
4 special exception will serve no purpose because the land  
5 cannot be used for the private purposes for which the two  
6 special exceptions are being sought. Once it was deeded to  
7 the DC government it became public land.

8           But if you decide to make a complete record,  
9 nonetheless, you must deny both special exceptions for a  
10 number of reasons.

11           First, the plan submitted for proposed buildings  
12 1 and 2 shows the rear yards are only 15.33 feet long. We  
13 show that on pages 18 and 19 of our opposition.

14           And yet, the applicant is not requesting a  
15 variance on the minimum 20-foot requirement required by 11-F  
16 DCMR Section 305.1.

17           Second, the plan submitted for proposed buildings  
18 1 and 2 also show those buildings take up more than 40  
19 percent of Square 4325, Lot 802.

20           And yet, the applicant has not requested a  
21 variance for the maximum 40 percent lot occupancy requirement  
22 imposed by 11-D DCMR Sections 312.1 and 312.2.

23           Third, when it comes to the proposed special  
24 exception for a new residential development, the facts about  
25 the disastrous impact of this proposal on the public streets

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1 is undisputable.

2 We explain in pages 22 and 23 of our opposition  
3 that it's undisputable that a traffic impact study is  
4 required and Mr. Hood recognized that when he spoke.

5 In its 2008 report, DDOT itself acknowledged that  
6 modifications were needed to the closest intersection and  
7 DDOT proposed that the applicant be required to pay \$25,000  
8 for those improvements.

9 And it is indisputable, as you have heard today,  
10 that the traffic around the proposed development has  
11 increased exponentially since 2008.

12 80-second traffic light wait time that DDOT stated  
13 in its 2008 report was unacceptable then, is now anywhere  
14 from 300 seconds during a weekday to 800 seconds during rush  
15 hour and on weekends with all the impact of the shopping  
16 center and Costco.

17 Adding yet more traffic to that already disastrous  
18 situation would be unconscionable, and yet the developer  
19 proposed to dump all the traffic coming both into and out of  
20 the proposed development onto an already congested Eastern  
21 Avenue.

22 As our written opposition demonstrates, the  
23 proposed single entrance/exit on Eastern Avenue is also  
24 totally unsafe and DDOT itself concedes that a likely change  
25 to the entire site plan will be required. And so, it made

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1 no sense for DDOT to not uphold the present plan as a result.

2 At this point, I'd like to request Mr. Taylor to  
3 run the video, Exhibit No. 1 -- sorry, Mr. Young.

4 BZA CHAIR HILL: Okay. Thank you.

5 MR. PEARSON: And I'll ask him to pause it for one  
6 minute at the one-second mark. This is traffic coming down  
7 Commodore Joshua Barney Drive.

8 You can see it's straight downhill because the  
9 street is a steep hill leading into Pineview Court. All  
10 traffic will then make a right onto Fort Lincoln Drive.

11 This seems to be going at a very rapid pace. It's  
12 five times the normal speed. Can you slow it down to a  
13 regular pace, please.

14 All these cars -- you can see the car we'll be  
15 following, it tends to queue up for the light at Bladensburg  
16 Road at about the 34-second mark as it comes westbound on --  
17 that's the car we'll be following as it comes westbound on  
18 Fort Lincoln Drive and hits the curve where it turns into  
19 Eastern Avenue.

20 When the cars come out of this curve -- this is  
21 going extremely fast. Like, five times the normal speed.  
22 When it comes out of this curve, it will queue up with other  
23 cars.

24 This was taken on June -- this video was taken on  
25 June 22nd at 1:15 p.m. in the afternoon. So, it is not

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1 during morning rush hour or evening rush hour or the weekends  
2 when Costco traffic impacts this at least double this  
3 capacity.

4           You will see, though, that on a normal, excellent  
5 weather, middle of the week, 1:15 p.m., traffic has to pull  
6 up beginning more than a block and a half away from the  
7 intersection of Bladensburg Road and Eastern Avenue.

8           Continue. This is the car we are following. You  
9 will see that all these cars are going down a slope because  
10 Fort Lincoln is built on a hill, a steep incline and they hit  
11 that -- they hit that curve in the road where it changes from  
12 Fort Lincoln Drive into Eastern Avenue.

13           Traffic that's closest to me as I videotaped this  
14 is eastbound. And you will -- so, when we get to the  
15 proposed entrance/exit for this development, you will see  
16 they first have to cross over two lanes of eastbound traffic  
17 before they attempt to merge with the westbound traffic.

18           There are two lanes of westbound traffic as well  
19 closest to the guardrail in a two lane and they will be  
20 driving through Bladensburg Road at the light and making a  
21 right at Bladensburg Road and going into Maryland.

22           Eastern Avenue, of course, is the western border  
23 for the District of Columbia. And so, on the other side of  
24 Eastern Avenue is Fort Lincoln Cemetery. You have funeral  
25 processions there going down this road throughout the week,

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1 as well as the weekend.

2           And you'll see I have no trouble keeping up with  
3 this car. Even though I am on foot and wearing sandals, I  
4 still can keep up with this car which has been patiently  
5 waiting all this time to reach the light on a beautiful,  
6 sunny day during a weekday.

7           When we get to the -- looking back at the cars  
8 queued behind, and yet it's sped up to about three times the  
9 normal speed now. That green light pole is where the  
10 proposed entrance will be parallel to that green light pole  
11 and the car is still queued up.

12           When you look back, you will see that the foliage  
13 will obscure that curve that we just talked about. That's  
14 what makes this extremely dangerous.

15           Even if a car inched out to get past the sidewalk,  
16 attempted to merge, its view of cars coming off that curve,  
17 which is less than a second and a half away because,  
18 remember, they are all on a steep downslope, it will result  
19 in numerous accidents as they try to merge across just like  
20 all of these cars.

21           They all want to go in the same direction. They  
22 want to go toward downtown. They don't want to go back into  
23 Fort Lincoln. There's no reason.

24           If you're going to work, do you want to go back  
25 into Fort Lincoln and -- you're going to want to make a left

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1 to merge with those cars that are in the far right lane  
2 seeking to go through the light at Bladensburg Road.

3           Again, I'm on foot and I have no problem keeping  
4 that blue car up ahead because it will have to wait again.  
5 It takes it a total of five minutes to finally get to the  
6 intersection of Eastern Avenue and Bladensburg Road.

7           It sounds like Mr. Hood, who lives in Woodbridge,  
8 is familiar with how cars have to queue up like this just on  
9 normal days.

10           We are not talking about rush hour in the morning,  
11 rush hour in the evening. We are not taking about weekends  
12 when Costco dominates the traffic here. We are just talking  
13 about a normal, sunshiny, beautiful weather day. This is how  
14 stacked up cars get.

15           It will take five minutes for this car that we've  
16 been following -- the blue one we've been following to  
17 finally get through that intersection.

18           And moving the exit down, the combined  
19 exit/entrance down further is a problem as well because the  
20 cars that will be coming through the intersection in the  
21 opposite direction going eastbound will just start to  
22 accelerate like this car you see coming now.

23           He is not going to be prepared to slam on his  
24 brakes for a car coming out of an exit that's further down  
25 on that block.

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1           So, whether you put the entrance for that --  
2 entrance/exit down here or you put it close to the curve,  
3 either way it's a dangerous situation.

4           And the reason is that it was never planned. This  
5 is parkland. Before Fort Lincoln was built, Fort Circle Park  
6 was there and this has been National Park Service land for  
7 hundreds of years.

8           They never anticipated there would be a  
9 residential development on this lot. And so, they didn't  
10 worry -- when they were planning the street, they didn't  
11 worry about the curve being less than 60 feet away from a  
12 combined entrance/exit.

13           And, if I may, I'd like to use one of the  
14 applicant's exhibits to illustrate the danger -- illustrate  
15 with the video the congestion.

16           I'd like to just take a minute or two to  
17 illustrate the danger by leaving the chair and utilizing  
18 their own site plan rendering exhibit that I previously  
19 showed you. I have it pasted on my wall here and I need to  
20 walk up to it and show you the danger.

21           BZA CHAIR HILL: Okay, Mr. Pearson. What are you  
22 trying to show? I'm sorry.

23           MR. PEARSON: I'd like to show you the site plan  
24 rendering that we previously already talked about and the  
25 danger that results from having a combined entrance/exit on

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1 Eastern Avenue.

2 BZA CHAIR HILL: Okay.

3 MR. PEARSON: Can you see the site plan rendering?

4 BZA CHAIR HILL: Yes.

5 MR. PEARSON: And this is the sole entrance and  
6 exit that they propose for this. Instead of an exit going  
7 down this way where traffic can also go down Pineview Court  
8 or go down 35th Street to reach Bladensburg Road where most  
9 people are going to want to go, it's going to be blocked off  
10 here because of the deal they reached with the Pineview Court  
11 condominium.

12 And now, all of these 51 townhomes, including four  
13 -- these are four-bedroom townhomes here, three-bedroom  
14 townhomes here. Most of them are going to have SUVs and  
15 minivans as a consequence of these large families.

16 All will be attempting, say, during the morning  
17 rush hour to exit here and 90 percent are going to be wanting  
18 to go downtown.

19 And their view as they stop right here is going  
20 to be blocked by no more than five trees. So, they're not  
21 going to be able to see the exit if they sit behind the  
22 sidewalk where they should.

23 Most of them are going to try to cheat and go move  
24 up to the curve here where the street is and their view is  
25 going to be blocked.

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1           Just like I showed you on the video, the view is  
2 going to be blocked by these DC-owned trees that are right  
3 next to the street of that curve because, remember, the curve  
4 is a critical part.

5           If you can't see cars coming off those curves,  
6 those cars will be on you within less than two seconds  
7 because this is all downhill. This is a steep downhill  
8 Eastern Avenue all the way to Bladensburg Road.

9           So, these cars will be coming from a dead stop  
10 trying to merge in the second lane because they don't want  
11 to turn left. Like 90 percent of the traffic, they want to  
12 go downtown.

13           And so, they want to cross a total of four lanes  
14 and -- from a dead stop and merge in here. And they're going  
15 to have to just guess whether there's any traffic coming  
16 because their view when they're back here is going to be  
17 obscured by all of this foliage.

18           And so, that is what's going to result in because  
19 it was never planned that there would be any kind of  
20 residential community here.

21           And so, they never planned to put a combined  
22 entrance/exit where, if you exit, your view is also going to  
23 be blocked by cars pulling in here. So, that illustrates the  
24 danger involved here.

25           Now, on their --

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1 BZA CHAIR HILL: Mr. Pearson.

2 MR. PEARSON: Yes.

3 BZA CHAIR HILL: I appreciate you showing us that,  
4 but I just wanted to let you know you're out of time, you  
5 know, if you can kind of just start to sum up a little bit.

6 MR. PEARSON: Alright. Now, specifically regarding  
7 their sight distance analysis, the major problem with their  
8 sight distance analysis is that they assume that people will  
9 be driving minivans -- sorry, smaller cars.

10 But instead of three foot five inches, which is  
11 what their Eastern Avenue sight distance assumes people will  
12 be that distance from the ground, instead people will be five  
13 feet four inches. I measured it myself.

14 A minivan or SUV is going to at least put you at  
15 five feet four inches, which means you're going to be looking  
16 directly into the leaves and branches and the people of the  
17 curve is going to be obscured.

18 So, in summary, both the DC government and Fort  
19 Lincoln-Eastern Avenue LLC are barred by a statute by DC Code  
20 N-81 for using land owned by the DC government for any  
21 purpose other than its present use as a park.

22 And served that without the two public hearings  
23 and two resolutions approved by the DC Council that Title 10-  
24 801 requires, I believe, concentrating on Square 4325, Lot  
25 802, that includes Square 4325 at Lot 44.

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1           Once the DC government acquired title in 2019,  
2 they could not use it for a nonpublic purpose without having  
3 at least two public hearings and without the DC Council  
4 approving two different resolutions.

5           They refer to hearings that were held by the  
6 National Park Service before they transferred the land to  
7 HUD, but there have been no hearings by the DC government  
8 before transferring it to the applicant in this case, Fort  
9 Lincoln-Eastern Avenue LLC. Thank you very much.

10           BZA CHAIR HILL: Thank you, Mr. Pearson. Let's  
11 see. I'll go ahead and start with the board.

12           Does the board have any questions for anyone?

13           Mr. Hart, you just unmuted your microphone.

14           VICE CHAIRPERSON HART: Yeah. Only that I  
15 appreciate the presentation and the video, Mr. Pearson. Very  
16 helpful.

17           And just so you're aware, NCPC actually did a  
18 transfer of jurisdiction back in 2014 from the DC government  
19 to -- I guess to NPS, and then NPS to HUD for the project.

20           We are required to do that as part of our  
21 responsibility, but I was just making sure that you were  
22 aware of it. Okay.

23           And your position also is that you would not want  
24 to see any development on this parcel at all?

25           MR. PEARSON: I'd like to see them negotiate with

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1 the community, not just the 40 households there. They may  
2 be able to work something out that would involve having two  
3 entrances and exits as opposed to just a single combined  
4 entrance/exit.

5 VICE CHAIRPERSON HART: So, you're not --

6 MR. PEARSON: They haven't been willing to  
7 negotiate.

8 VICE CHAIRPERSON HART: So, you're not in  
9 opposition to -- you're not saying that it should be no  
10 development, you're just saying that there should be some --  
11 maybe less development that's happening there.

12 That's what you're looking at?

13 MR. PEARSON: Right. We didn't know about the 2008  
14 proposal. The 2008 proposal was much less congested and had  
15 two separate exits and didn't pose safety risks as a  
16 consequence of the people exiting from the proposed  
17 development.

18 So, it's conceivable, I think, if all the parties  
19 sat down -- maybe they would sit down with us on behalf of  
20 the 6,000 residents in Fort Lincoln. They just haven't been  
21 willing to do that.

22 So, we're going with what the law requires. The  
23 law requires -- says that that is public -- that is public  
24 land that can't be used for private purposes.

25 VICE CHAIRPERSON HART: And my final -- I guess

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1 it's more of a comment, is that the -- Fort Circle Parks were  
2 set up, of course, after the -- they were really to connect  
3 the forts that were in defense of the District of Columbia  
4 of Washington.

5 And the kind of linear aspect of it, in many  
6 cases, was so that they could actually have a parkway, which  
7 is a roadway, to connect the parks together.

8 A lot of that roadway was not actually  
9 constructed, but it was the Park Service that was the -- had  
10 jurisdiction over that property, but there is kind of like  
11 a roadway component of it of the Fort Circle Parks.

12 Actually, some of the parks themselves are called  
13 "parkways" that are -- that make the connection like  
14 Shepherds Parkway, which is down in -- near St. Elizabeth's.

15 And then there's Glover-Archbold Parkway, which  
16 is also part of it, which is over in the northwest, but  
17 that's just a comment. So, thank you.

18 BZA CHAIR HILL: Okay. Ms. John, do you have any  
19 questions?

20 MEMBER JOHN: I have no questions at this time.

21 BZA CHAIR HILL: Okay. Chairman Hood, do you have  
22 any questions?

23 ZC CHAIR HOOD: Yes. I was not able to hear  
24 everything. I did the best I could trying to hear. Maybe  
25 I need to turn up my -- I don't know if others had problems,

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1 but I think I heard most of it.

2 The first gentleman who spoke, was that Mr.  
3 Burroughs or --

4 MR. PEARSON: Burroughs.

5 ZC CHAIR HOOD: Mr. Burroughs, okay. Thank you,  
6 Mr. Pearson.

7 Can he still hear me, Mr. Burroughs?

8 MR. BURROUGHS: Yeah. Mr. Burroughs is here.

9 ZC CHAIR HOOD: Oh, okay. Okay, Mr. Burroughs.  
10 Thank you.

11 Mr. Burroughs, when you purchased and you moved  
12 over there, you knew Fort Lincoln was going to be developed,  
13 right? So, you anticipated some further development.

14 Is that statement correct?

15 MR. BURROUGHS: Actually, I didn't really realize  
16 what was going on until actually I got over here. I knew  
17 that the Costco was a big concern.

18 And now that I'm here, it is a major concern,  
19 along with the Chick-fil-A, that, you know, that particular  
20 getting in and out is -- you have to be strategic as to when  
21 you leave and what you do.

22 And so -- and then hearing about the other exit  
23 that was already problematic because it -- now, once I'm  
24 here, I realize that there was no real plan in terms of  
25 having a lot of Maryland drivers come over here and then only

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1 two real exits to get out.

2 And it should have been something about that so  
3 they could get back on New York Avenue and either hit the  
4 parkway or New York Avenue getting back in town, but coming  
5 off of South Dakota Avenue, that exit just getting out of the  
6 shopping center.

7 And now even going down to Eastern Avenue to  
8 Bladensburg Road has been challenging just to go in that end  
9 of town.

10 And so, that's why I have -- when I heard about  
11 this, I voiced my opinion.

12 ZC CHAIR HOOD: Okay. I appreciate that, Mr.  
13 Burroughs. I just -- I think you answered my question very  
14 early in your comment. So, I really appreciate that. Thank  
15 you.

16 MR. BURROUGHS: Okay.

17 ZC CHAIR HOOD: Let me go to the young lady, Mr.  
18 Pearson.

19 Is it Ms. James?

20 MR. PEARSON: Yes.

21 ZC CHAIR HOOD: I don't necessarily have a question  
22 for her. I just want to make a statement. As we all know,  
23 and I've learned in my years of being -- we don't buy a view.  
24 The supreme court has made a ruling on that.

25 So -- and I understand how views go away. I've

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1 been doing this long enough to see views go away across the  
2 city.

3           The supreme court has already made a ruling, and  
4 one of the lawyers can correct me if they want, but we don't  
5 buy a view, but let me go to Mr. Pearson.

6           Mr. Pearson, I really appreciate the video. And  
7 this goes in line with Vice Chair Hart's question to you.  
8 It's not that you are against a development.

9           Would it be fair to say that maybe you would  
10 anticipate there be some additional -- maybe some additional  
11 affects to the design? Is that a fair statement to give you?

12           MR. PEARSON: Well, for the record, I am opposed  
13 to the development on behalf of the Fort Lincoln Civic  
14 Association. The proposed development, as it's proposed, we  
15 are unarguably opposed to.

16           Now, every controversy people discuss, this is the  
17 first time I've been involved with something -- has been  
18 totally unwilling to discuss addressing our concerns.

19           And so, all we -- so, officially we are opposed  
20 to it and we have no fallback position because they are  
21 unwilling to even talk with us about --

22           ZC CHAIR HOOD: So, is it your testimony that you  
23 are -- okay. Let me just ask this and I know that you --  
24 it's your testimony you're representing the Fort Lincoln  
25 Civic Association?

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1 MR. PEARSON: right.

2 ZC CHAIR HOOD: And how many members are you-all --  
3 so, basically the way it's sounding to me is that when you  
4 are presenting, you are presenting for everybody in Fort  
5 Lincoln.

6 Is that the -- that's really not the case.

7 MR. PEARSON: That is the case.

8 ZC CHAIR HOOD: Okay.

9 MR. PEARSON: Fort Lincoln Civic Association  
10 represents every person in Fort Lincoln.

11 ZC CHAIR HOOD: Okay.

12 MR. PEARSON: In this case, we're taking a position  
13 in opposition to owners of the Pineview Court condominiums,  
14 but two-thirds of Pineview Court residents are owners. Some  
15 are investors like Ms. Nguyen, who lives in Cabin John,  
16 Maryland.

17 And so, we're speaking for the renters in Pineview  
18 Court and everyone else, particularly those within 200 feet.

19 ZC CHAIR HOOD: Okay. So, you're basically  
20 speaking for everybody in Fort Lincoln?

21 MR. PEARSON: Yes.

22 ZC CHAIR HOOD: Okay. In opposition, for the most  
23 part.

24 MR. PEARSON: Yes.

25 ZC CHAIR HOOD: Okay. I think that's all the --

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1 that other stuff about who owns this and who owns that, every  
2 time there's a development in Fort Lincoln over the years  
3 I've been around, there's always been that discussion.

4 So, that's an ongoing discussion which I think is  
5 within another purview. I don't know if -- it's not within  
6 the board's purview. I just wanted to put that on the  
7 record.

8 Okay. Thank you, Mr. Pearson. Thank you, Mr.  
9 Chair.

10 BZA CHAIR HILL: Alright. Thank you, Chairman  
11 Hood.

12 Let's see. Mr. Hart, I went to you. Ms. John, I  
13 went to you. Let's see. Ms. Nguyen, do you have any  
14 questions for the party in opposition?

15 MS. NGUYEN: No, sir.

16 BZA CHAIR HILL: Commissioner Montague, do you have  
17 any questions for the party in opposition?

18 (Pause.)

19 MR. MONTAGUE: Did you hear me?

20 BZA CHAIR HILL: I did not.

21 MR. MONTAGUE: No, sir.

22 BZA CHAIR HILL: Alright. Let's see. Before I  
23 turn to Mr. Tummonds, Mr. Pearson, I just had a couple of  
24 quick questions.

25 So, did you guys -- you all went to the ANC

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1 meeting, right, when this was all being discussed and you had  
2 an opportunity to speak then and voice your opposition?  
3 You're shaking your head no.

4 MR. PEARSON: We knew nothing and we had no  
5 representative at that time. He had just resigned. We knew  
6 nothing about this coming up.

7 We've introduced a -- the Fort Lincoln Civic  
8 Association Exhibit No. 2, the emails that we sent to the ANC  
9 requesting an opportunity to be heard, and you'll see they  
10 refused us an opportunity to even --

11 BZA CHAIR HILL: Mr. Pearson --

12 MR. PEARSON: -- be heard about it.

13 BZA CHAIR HILL: Mr. Pearson, I'm just kind of  
14 curios. Like, I mean, it's a public meeting. So, why did  
15 you guys not make the meeting when they talked about it? You  
16 didn't know about it?

17 MR. PEARSON: We didn't know about it. We had no  
18 notice. We didn't have a representative.

19 BZA CHAIR HILL: No, I understand. I'm just trying  
20 to say but of the 6,000 people that you say is in your group,  
21 none of them knew about the meeting?

22 MR. PEARSON: I know of no one who knew about it.  
23 I found out about it when the person who ran to replace the  
24 person who resigned knocked on my door and told me about it.

25 And that's my first notice of it and that was

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1 after the meeting had already taken place.

2 BZA CHAIR HILL: Because I guess -- and I'm just --  
3 I'm making a comment again in that, you know, the ANC is a  
4 public meeting. Everybody gets an opportunity to see what  
5 they're discussing at that particular meeting.

6 And even our notification lets people -- well, you  
7 knew about this hearing obviously, but so you're -- anyway,  
8 you're just saying that you-all didn't know about the ANC  
9 meeting and nobody went, is what you now told me.

10 Okay. Let's see. Alright. Mr. Tummonds, do you  
11 have any questions for Mr. Pearson?

12 MR. TUMMONDS: No questions.

13 BZA CHAIR HILL: Okay. Alright.

14 MEMBER JOHN: Mr. Chairman, one question for Mr.  
15 Pearson.

16 BZA CHAIR HILL: Sure.

17 MEMBER JOHN: Mr. Pearson, are you within the 200-  
18 foot radius? I'm looking to see if you were noticed by the  
19 Office of Zoning.

20 MR. PEARSON: If I owned this condominium, I would  
21 have received notice because I'm right next to it. I'm less  
22 than 20 feet from it.

23 But because I am a renter, I did not get notice,  
24 nor did any of the other renters who are one-third of the  
25 condos. They didn't get notice.

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1 MEMBER JOHN: Okay.

2 MR. PEARSON: And the owners, even if they're just  
3 investors like Ms. Nguyen, they get notice. But the people  
4 who actually live here and are not listed as a titleholder,  
5 they don't get notice.

6 BZA CHAIR HILL: Well, no, I mean, what -- just to  
7 be clear, Ms. John, I mean, I wasn't speaking to the notice  
8 of this hearing.

9 I was speaking to the ability of the public to  
10 understand what's going on at the ANC meetings. And so,  
11 whether you're a renter or a owner, you do know about the ANC  
12 meetings.

13 Now, whether or not you-all missed the fact that  
14 this is being talked about, you know, I'm a little surprised  
15 that 6,000 of you missed it, but it doesn't matter.

16 You didn't go, is all I'm trying to understand.

17 MR. PEARSON: And I --

18 BZA CHAIR HILL: I'm -- I was listening to Ms.  
19 John, Mr. Pearson.

20 MR. PEARSON: Sorry.

21 MEMBER JOHN: No, I asked the question because Mr.  
22 Pearson said he was testifying on behalf of himself. And so,  
23 I wanted to see if he was within the 200-foot radius, that's  
24 all, but his answer was responsive.

25 BZA CHAIR HILL: I see.

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1 MR. PEARSON: I am testifying on behalf of the Fort  
2 Lincoln Civic Association of which I am a member. There are  
3 6,000 members.

4 I'm one of them and I'm also their counsel, the  
5 attorney for the Fort Lincoln Civic Association.

6 MEMBER JOHN: Okay. I must have misunderstood  
7 your statement. Thank you for the clarification.

8 ZC CHAIR HOOD: Mr. Chairman, which, in turn, goes  
9 back to my point. He's representing those 6,000. That's his  
10 testimony. That's the way I see it unless --

11 BZA CHAIR HILL: I understand. I understand.

12 ZC CHAIR HOOD: Okay. I just want to make sure I'm  
13 clear. Okay. Thank you.

14 BZA CHAIR HILL: Sure. Sure. Alright, Mr.  
15 Tummonds, you'll have an opportunity for rebuttal.

16 Do you have any rebuttal?

17 MR. TUMMONDS: Well, thank you very much.

18 I think I heard, Chairman Hill, you noted that you  
19 have a long agenda for the rest of the day. And we know that  
20 we already have one posthearing submission, which is the  
21 submission of a traffic report.

22 I think it makes sense for us to submit our  
23 rebuttal in writing at the same time that we submit our  
24 traffic report.

25 The party in opposition would also then have --

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1 since they will have an opportunity to respond to the traffic  
2 report, they can respond to our rebuttal and that will then  
3 create a, I think, complete record for this case and you will  
4 be able to have the opportunity for the rest of the day to  
5 address your other case.

6 BZA CHAIR HILL: Okay. So, Ms. Cain, I guess, at  
7 OAG, the only question I have about that -- and I know we've  
8 done this in the past and so that is -- that works for me.  
9 But, again, the -- what I'm never clear on -- or I shouldn't  
10 say "what I'm never clear on."

11 The -- we're going to get rebuttal from the  
12 applicant and also the information that was requested by  
13 Chairman Hood concerning the traffic.

14 Then the party in opposition, or all parties,  
15 would have an opportunity to respond to not only the traffic  
16 information that Chairman Hood requested, but also the  
17 rebuttal.

18 The thing that confuses me, and this is the  
19 question to OAG, is that I thought that you're really  
20 supposed to only ask questions of the rebuttal.

21 But if it's just -- if it's a written response,  
22 then we don't really have an opportunity to kind of clarify,  
23 but I guess then the board would know -- you now, the board  
24 is reading it.

25 And so, they would be able to figure out whether

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1 or not it's questions that are being responded to rebuttal  
2 or if it's new testimony; is that correct?

3 MS. CAIN: That's correct. And, I mean, if the  
4 board had further questions based on the written submissions,  
5 you could always reopen the record to either allow more  
6 written submissions or to have more oral testimony given.

7 BZA CHAIR HILL: Okay. Alright. Okay. Then that  
8 sounds good to me.

9 ZC CHAIR HOOD: Mr. Chairman, can I just say one  
10 quick thing?

11 Mr. Tummonds, I know you-all are going to look at  
12 it. I would not like to see you just come in and say, oh,  
13 well, we looked at this and we're going to save this plan.

14 I think there are some impacts especially when you  
15 make a left. I'd like to see some thought put into it and  
16 I'm sure that's what you'll do.

17 I just don't want to waste everybody's time and  
18 then still -- I'm still in the same place when everybody come  
19 back.

20 So, I think there needs to be thought put into it  
21 and I'm sure you will. Thank you.

22 MR. PEARSON: And I would note that we would -- if  
23 this is going to be rebuttal testimony, it has to be an --  
24 you have an opportunity to cross-examine.

25 To the extent they're going to make legal

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1 arguments, we don't have an objection. To the extent they're  
2 going to argue the facts, I don't think that's permitted or  
3 anticipated by the rule if they would be able to make unsworn  
4 factual --

5 MR. TUMMONDS: Okay. You know, I'll do rebuttal  
6 now.

7 BZA CHAIR HILL: Okay. Well, actually, it's okay,  
8 Mr. Tummonds, because I'm kind of curious.

9 Mr. Pearson, we get to -- I'm trying to just  
10 figure out how to do this, right? So, I don't see how --  
11 now, I'm going to go to OAG.

12 Is -- I mean, we've done that before, right? And  
13 I'm sorry, Mr. Tummonds. Thanks for trying to move this  
14 along, but we can still get -- I mean, why is that not  
15 appropriate that we would have rebuttal, the parties would  
16 have an opportunity to respond to the rebuttal and what  
17 they're supposed to do again is just to be asking questions  
18 -- oh, I'm sorry, just responding to the rebuttal, not giving  
19 new information.

20 So, I would think that that would be fair for all  
21 the parties.

22 MS. CAIN: I mean, as we went through earlier, the  
23 applicant is, as the moving party, has the last word. As you  
24 discussed earlier, board practice has been to, if there is  
25 an issue, to allow the other party to question that or rebut

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1 if necessary, but really the applicant has the last word.

2 Whether they do that through oral testimony now  
3 or whether they submit something in the record, Mr. Pearson  
4 and the opposition will have a chance to respond to that.

5 So, I don't think you're running into any issues  
6 by allowing it.

7 BZA CHAIR HILL: Okay. And also, then, Mr.  
8 Pearson, you know, it's been just kind of my prerogative, I  
9 guess, to let people ask questions of rebuttal.

10 What OAG is telling me is that the opposition  
11 doesn't actually technically get an opportunity after the  
12 rebuttal.

13 And so, I was just trying to provide -- in my  
14 past, I've just done that just to kind of make sure that  
15 everyone has an opportunity, but you will have a chance now  
16 to submit into the record anything that, you know, responding  
17 to Mr. Tummonds.

18 So, I think that's the -- I still think that's the  
19 cleanest way. If the board wants to nod with me one way or  
20 the other, let's go ahead and do that.

21 So, let's go ahead and I'm going to close the  
22 hearing unless anybody has any questions. And what we're  
23 going to need from you, Mr. Tummonds, is the information that  
24 Chairman Hood asked for.

25 And you know what that is, correct?

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1 MR. TUMMONDS: Correct.

2 BZA CHAIR HILL: Okay. And then you can go ahead  
3 and submit a rebuttal, alright?

4 And then, Mr. Pearson, you can go ahead and submit  
5 comments, I guess, to that rebuttal, you know. And that's  
6 where, Ms. Cain, I don't know exactly now how that works, but  
7 I guess we can go ahead and see if there's any issues with  
8 the response to the rebuttal that the party in opposition  
9 gives us and whether or not the board has any further  
10 questions and wants to reopen the record, correct?

11 MS. CAIN: Correct.

12 BZA CHAIR HILL: Okay. Alright. So, then --

13 MR. TUMMONDS: And what I would note, too, is that  
14 Mr. Pearson 100 percent even without the rebuttal issue has  
15 the opportunity to respond to the traffic.

16 So, you know, there is already the -- he has that  
17 opportunity to respond to the traffic report we do. So, my  
18 sense was since he has the opportunity to respond to that,  
19 he can just respond to the rebuttal statement we provide as  
20 well.

21 The record is complete and you would have all the  
22 information you need to make your decision in this case.

23 BZA CHAIR HILL: Okay. That sounds good to me.

24 MR. PEARSON: Mr. Moy will set the dates?

25 BZA CHAIR HILL: Yeah, Mr. Pearson. I'm asking Mr.

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1 Moy right now.

2 Mr. Moy?

3 (Pause.)

4 MR. MOY: Hello, Mr. Chairman. Sorry about that.  
5 I just have to re-click on these things.

6 So, from what I'm hearing, I think if the  
7 applicant can submit into the record his written rebuttal as  
8 supplemental information regarding the traffic impacts, as  
9 requested by Zoning Commissioner Chair Hood, in a week's  
10 time, what I --

11 MR. TUMMONDS: We're going to need -- I'm sorry,  
12 Mr. Moy. Just to be responsive to what Commissioner Hood  
13 said --

14 MR. MOY: Yes.

15 MR. TUMMONDS: -- this is something that we're  
16 going to need more than a week --

17 MR. MOY: Two weeks?

18 MR. TUMMONDS: -- to make it. I think that this  
19 would be -- I think we'd be looking to have a decision on  
20 this in, say, September so there is adequate time for  
21 everyone to -- so, I think we'd be looking at more -- our  
22 traffic reports in early August and then -- I don't know --  
23 looking back from when your first decision meeting is in  
24 September.

25 MR. MOY: Okay. Well, that's helpful to know.

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1 Okay. Okay. Well, I think, then, Mr. Chairman, I think it  
2 would be ideal to come back to this to the board because I'm  
3 looking at when Zoning Commissioner Chairman Hood is going  
4 to be available, which is September 23rd.

5 ZC CHAIR HOOD: I'll make myself -- if we're doing  
6 everything virtually, I will make myself available. The  
7 sooner you can do it, I'll make myself available.

8 MR. PEARSON: Let me just mention one thing, and  
9 that is that I have to withdraw my appearance. I will not  
10 be available again to the civic association until October 7.

11 BZA CHAIR HILL: Mr. Pearson, we're just going to  
12 be doing a decision. We're not going to be taking testimony.

13 MR. PEARSON: I mean, in terms of any filings that  
14 he makes, I will not be able to assist them in preparing a  
15 rebuttal to any filing that's filed in August or September.  
16 I won't be available again until October 7th to assist the  
17 civic association.

18 BZA CHAIR HILL: Mr. Pearson, you're going to have  
19 to work with your own schedule and make it work. I mean, as  
20 I said before, it's at a courtesy that I'm kind of letting  
21 you guys ask questions about the rebuttal.

22 In terms of your responding to the traffic report,  
23 that's something that you have an opportunity to do so. I  
24 mean, we're pushing this out all the way out to September  
25 anyway.

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1           So, you know, I guess you can put a filing in  
2 there if you think you need more time, but, you know, I think  
3 that's enough time for you guys to go ahead and do this.

4           MR. PEARSON: But the problem is that he has the  
5 opportunity to make an objection to that.

6           MR. TUMMONDS: Yeah, I do. You do not need to be  
7 a licensed attorney to represent an entity at the BZA. So,  
8 Mr. Pearson can still help out FLCA as one of its members.  
9 He doesn't need to be a licensed attorney to do that.

10          MR. PEARSON: Very well. Just wanted to see  
11 whether he had an objection to that.

12          BZA CHAIR HILL: Alright.

13          Mr. Moy, can I get some dates?

14          MR. MOY: Yes. Okay. Let's go based on what Mr.  
15 Tummonds has just said, let's try to -- and I believe I heard  
16 you say that you want to come back to make a decision. Let's  
17 make that for September 16th for decision-making.

18          And let's say the applicant, to afford him time  
19 to prepare his materials, which is the written rebuttal and  
20 the traffic report, let's say by -- I think he said a date  
21 in August. How about August 14th?

22          Is that doable, Mr. Tummonds?

23          MR. TUMMONDS: That is doable. Thank you very  
24 much.

25          MR. MOY: Okay. So, August 14th, which is a

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1 Friday, for submission. Then all the parties to respond to  
2 the applicant's filings, let's say, give them another -- I'll  
3 give the parties more than two weeks.

4 Let's say for the parties to respond by September  
5 the 4th, which is a Friday. That's at least three weeks.  
6 So, that's September 4th, a Friday.

7 So, once again, applicant will file by August the  
8 14th, responses by all the parties by September the 4th, and  
9 the board will decide on September 16th.

10 Other than that, the record is closed, correct?

11 BZA CHAIR HILL: Yes, Mr. Moy.

12 We just need to hear -- we just need the two  
13 pieces of information. One, the traffic information that  
14 Chairman Hood has requested, as well as any rebuttal from the  
15 applicant, and any responses, then, from the parties.

16 MR. MOY: Yeah. Responses to what's being filed  
17 by the applicant.

18 BZA CHAIR HILL: Yes. Just responses to what's  
19 being filed by the applicant.

20 MR. MOY: Okay. Other than the supplemental  
21 information, the record is closed.

22 BZA CHAIR HILL: Okay. Alright. So, I'm going to  
23 have him close the hearing. I want to thank everyone for  
24 participating. I think we should probably take lunch and  
25 then we'll come back and continue on with our day.

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1 So, thank you all very much.

2 (Whereupon, the above-entitled matter went off the  
3 record at 12:55 p.m. and resumed at 1:39 p.m.)

4 MR. MOY: Okay. Let me start with the  
5 introduction, Mr. Chairman. The Board is back in session  
6 after its brief lunch break. And the time is at or about  
7 1:40 p.m.

8 And the next case application is in the hearing  
9 session. It is Appeal No. 20232. Again, it's 20232 out of  
10 ANC 6C.

11 And this is the appeal from the decision made on  
12 November 13, 2019 by the Zoning Administrator, Department of  
13 Consumer and Regulatory Affairs, to issue Certificate of  
14 Occupancy No. CO2000481, permitting a non-residential FAR  
15 exceeding the maximum in the NC-10 Zone. This is at premises  
16 337 H Street, N.E., Square 777, Lot 52.

17 BZA CHAIR HILL: Okay. Great. Thank you, Mr.  
18 Moy. Commissioner Eckenwiler, can you hear me?

19 MR. ECKENWILER: Chairman Hill, I can hear you  
20 fine. Am I coming through okay?

21 BZA CHAIR HILL: Yeah. Could you introduce  
22 yourself for the record, please?

23 MR. ECKENWILER: Sure. Mark Eckenwiler, Vice  
24 Chair ANC 6C, on behalf of the ANC.

25 And I just wanted to pass along some information

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1 to Mr. Young. My Wi-Fi has been a little debatable today.  
2 I'm also dialed in on a phone line that ends in 5829. So,  
3 if I disappear from your screen, you can just promote me from  
4 the phone call.

5 MR. YOUNG: I actually need the first three of the  
6 phone number, or the first two. I can't see the last four.

7 MR. ECKENWILER: Then I'll email that out to you.

8 BZA CHAIR HILL: Do you have Mr. Young's email  
9 address, Commissioner?

10 MR. ECKENWILER: I do, Mr. Chairman.

11 MR. YOUNG: He does.

12 BZA CHAIR HILL: Okay. Well, Commissioner, it's  
13 great to see you. Nice to see you, though. We didn't see  
14 you the last time on the video. I'm talking to you,  
15 Commissioner Eckenwiler.

16 MR. ECKENWILER: I know. I'm trying to do two  
17 things at once here, Mr. Chairman. It's lovely to be back.  
18 It's been quite a ride today, hasn't it?

19 BZA CHAIR HILL: Yeah. Do you have a Bailiwick  
20 t-shirt on yourself?

21 MR. ECKENWILER: No, I think this is from some  
22 other purveyor of fine D.C. flag t-shirts.

23 BZA CHAIR HILL: Another stars and bars kind of  
24 thing. All right. So, all right. Well, there you go. I'm  
25 still plugging Bailiwick.

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1 All right. Let's see. Mr. LeGrant, could you  
2 introduce yourself, please?

3 MR. LeGRANT: Good afternoon, Chairman Hill and  
4 members of the Board. Matt LeGrant with Zoning  
5 Administrator, DCRA.

6 BZA CHAIR HILL: Mr. LeGrant, good to see you.  
7 You got a loss today, Mr. LeGrant. You don't usually get a  
8 loss.

9 MR. LeGRANT: Well, I have to take them as they  
10 come.

11 (Laughter.)

12 BZA CHAIR HILL: All right. Mr. Green, would you  
13 go next and introduce yourself, please?

14 MR. GREEN: Good afternoon, Chairman and members  
15 of the Board. My name is Hugh Green. I'm an attorney with  
16 the D.C. Department of Consumer and Regulatory Affairs.

17 BZA CHAIR HILL: All right. Mr. Sullivan, do you  
18 want to introduce yourself, please?

19 MR. SULLIVAN: Good afternoon, Mr. Chairman and  
20 members of the Board. My name is Marty Sullivan here on  
21 behalf of the property owner.

22 BZA CHAIR HILL: Okay. Great. And for the  
23 record, we have Commissioner Shapiro joining us for this  
24 appeal.

25 So, you guys, what I was going to try and do or,

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1 Commissioner Eckenwiler, since it's your appeal, I kind of  
2 wanted to focus on a couple of things. And maybe my initial  
3 thought was hopefully I was going to kind of point out a  
4 couple of things and then take a break, not take a break, but  
5 like go to a case. And we might actually do that because --  
6 I don't know. Whoever is not muted, if you can, mute  
7 yourself.

8 Maybe what I will do is I will go ahead and  
9 mention a couple of things. And this is for I guess Mr.  
10 Sullivan, Mr. Green, and Commissioner Eckenwiler.

11 I mean, again, as you know, Commissioner  
12 Eckenwiler, you know, the burden of proof is with the  
13 Appellant in terms of how the Zoning Administrator erred.  
14 But I know that the Board has read through all of the  
15 filings, and I've read through all of the filings.

16 And I guess my question for the Zoning  
17 Administrator, and this could -- or this is what I would like  
18 to try to focus on is, again, the FAR in terms of the use,  
19 right. So, you know, my -- kind of the focus would be, you  
20 know, what regulation or exception did the Zoning  
21 Administrator rely on in issuing the certificate of  
22 occupancy.

23 And then, upon some of the record, it seems as  
24 though the FAR is over the .5, and I guess kind of can the  
25 Zoning Administrator kind of explain all of that, because it

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1 seems as though it's at .91.

2           And that, I mean, whether or not this would have  
3 come before us, I don't know whether it would have come  
4 before us as a variance or a special exception is, again,  
5 kind of what I'd be kind of curious from the Zoning  
6 Administrator in terms of -- because the Appellant didn't I  
7 think have enough information with which to know what we were  
8 going to focus on. So now I think this is kind of what I'd  
9 like to try and focus on.

10           And so, if that's -- I hope that's helpful. And  
11 before I ask if that's helpful from the parties, does the  
12 Board have anything else that they think might be helpful to  
13 focus the Appellant on and the parties on before we go --  
14 because we'll maybe go do one case and then come back and  
15 just kind of give them a little bit to kind of like get their  
16 heads around that.

17           Is there anything that you, Vice Chair Hart, Ms.  
18 John, or Commissioner Shapiro, would like to add to those  
19 marching orders?

20           VICE CHAIRPERSON HART: No. But we may want to  
21 ask the Appellant if they need to have any more time or if  
22 they are ready to go now. It's up to them to, you know --  
23 they, Mr. Eckenwiler may not, or Commissioner Eckenwiler may  
24 not need time to kind of orient. It would be helpful to find  
25 out.

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1           BZA CHAIR HILL: I got you. I mean, I can ask  
2 him. Like it's not going to take long, this next case, I  
3 don't think. And so it would just be like, I just don't want  
4 to -- I mean, I'd like everybody to have an opportunity to  
5 just kind of like think about what I said. But before I do  
6 go to the Commissioner, Ms. John or Commissioner Shapiro?

7           MEMBER JOHN: I don't know if this would be the  
8 time to get this question in. But I am interested in knowing  
9 what is the effect of the application or the permit, if the  
10 permit, for example, mentions only the first floor and the  
11 application has a square footage applied without reference  
12 and that's not reflected in the permit. How does the  
13 application itself (telephonic interference)?

14           BZA CHAIR HILL: Yeah, Ms. John, you've  
15 unfortunately cut out on us. Ms. John, you've cut out on us.

16           MEMBER JOHN: -- to permit that (telephonic  
17 interference).

18           BZA CHAIR HILL: Ms. John, you've cut out on us.  
19 Ms. John, are you there? Hello, Ms. John?

20           VICE CHAIRPERSON HART: Yeah, I don't hear her  
21 either.

22           BZA CHAIR HILL: Yeah. Maybe you can call in, Ms.  
23 John, or I don't know if -- well, now that we've lost Ms.  
24 John -- and I've also lost Mr. Moy, I think. Commissioner  
25 Eckenwiler, do you kind of understand what I'm talking about?

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1 MR. ECKENWILER: Mr. Chairman, just sort of in  
2 gross, I think I would say the ANC is ready to proceed now.  
3 I think the issues are fairly framed. I don't feel like I  
4 need any additional time to respond --

5 BZA CHAIR HILL: Okay.

6 MR. ECKENWILER: -- to any questions. I would  
7 disagree a little bit with your characterization about the  
8 burden of proof, which I think has shifted. But we can come  
9 to that in due course.

10 BZA CHAIR HILL: Okay. All right. Yeah. All  
11 right. So let's see. Yeah, Mr. Shapiro, Commissioner?

12 MEMBER SHAPIRO: Thank you, Mr. Chair. Hold on  
13 a second. You can hear me okay?

14 BZA CHAIR HILL: I can.

15 MEMBER SHAPIRO: Good, good. Can you hear me now?  
16 I'm sorry.

17 BZA CHAIR HILL: A little bit.

18 MEMBER SHAPIRO: Old TV joke. So there were some  
19 questions that we have, that we were, with some guidance from  
20 counsel related to the ZA and the certificates of occupancy  
21 and which ones set the precedents and all that. Is now the  
22 time to bring that in, or is that going to come in later?

23 BZA CHAIR HILL: I guess we -- let's just go ahead  
24 and we'll work through this process now, because it doesn't  
25 seem like anybody needs any extra time. So we'll go ahead.

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1           And I think -- oh, there's Mr. Moy then. Or,  
2 Kyra, are you there? Well, thank goodness my internet  
3 connection seems to be working. Kyra, are you there? Mr.  
4 Moy?

5           All right. Mr. Eckenwiler --

6           MR. MOY: I'm back. I'm back.

7           BZA CHAIR HILL: Okay, okay. Commissioner, can  
8 you hear me?

9           MR. ECKENWILER: Yes, Mr. Chairman.

10          BZA CHAIR HILL: Okay. Great. Commissioner  
11 Eckenwiler, can I put 15 minutes on the clock for now?

12          MR. ECKENWILER: Mr. Chairman, just as a process  
13 point, I believe there's a pending motion to dismiss from the  
14 property owner. You know, I'm not here to tell you your  
15 business. But I wanted to flag that for your attention.

16          BZA CHAIR HILL: Okay. Thanks. Oh, Commissioner,  
17 you're going to make me laugh today.

18          (Laughter.)

19          BZA CHAIR HILL: Well, Mr. Sullivan, could you  
20 explain your motion, please?

21          MR. SULLIVAN: Yeah. It's just, simply put, there  
22 was a building permit application for some renovation. And  
23 it noticed the proposed use for the first floor.

24          So we're just positing for the Board that it could  
25 be seen that the proposed use was contemplated as part of

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1 that building permit application, and the ANC would have had  
2 notice at that point.

3 BZA CHAIR HILL: Okay. I mean, I saw it. And  
4 thank you, Commissioner Eckenwiler, for pointing it out. I  
5 did see the motion. But I don't think that that's really  
6 kind of where the Appellant would have known.

7 The ZA had approved the nonconforming FAR because  
8 the building permit did not refer to the FAR or the building  
9 square footage. So the reference -- I'm sorry. I'm reading  
10 kind of some notes.

11 The building permit scope of work only involves  
12 repairs to the parapet wall and doesn't include any changes  
13 to the interior that would have indicated the size of the FAR  
14 of the use.

15 So I would be in approval of the motion to  
16 dismiss. Does my fellow Board members have anything they'd  
17 like to add? Okay. I see them shaking their heads no. All  
18 right. So we're going to deny on consensus the motion to  
19 dismiss.

20 So, that being the case, Mister, or Commissioner  
21 Eckenwiler, is 15 minutes good enough to start?

22 MR. ECKENWILER: Chairman Hill, as much as I'd  
23 like to demand 35 minutes, I think I can probably do this in  
24 five.

25 BZA CHAIR HILL: Oh, great. Is it -- everybody's

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1 telling (telephonic interference) watch the last one.  
2 Everybody's telling me how much time they're supposed to get,  
3 and I'm going to -- anyway, so, right. So, okay. Excuse me.  
4 Please, Chairman, I mean, Commissioner, please go ahead  
5 whenever you like.

6 MR. ECKENWILER: If Mr. Young can put my slides  
7 up, please. You can skip the title slide and go right to the  
8 second slide, please. Next slide, please.

9 So just as an overview, Chairman Hill and members  
10 of the Board, this is a property that sits at the southwest  
11 corner of 4th and H Street, N.E. It happens to be in my  
12 single-member district.

13 As noted in our appeal, the lot area is 1,640  
14 square feet. As indicated in the extensive photographs that  
15 were included at Case Exhibit 2D with our initial filing, the  
16 first floor, which was at some point in the distant past  
17 occupied by a corner store, is not only vacant and has been  
18 so for a substantial number of years, it is currently an  
19 empty shell. The walls are not even finished at this point.  
20 And there are two illustrative photographs there. Next  
21 slide, please.

22 In November of last year, the Zoning Administrator  
23 issued a certificate of occupancy. That's the one that was  
24 noticed in the appeal. As indicated in the extract there at  
25 the bottom of the slide, that C of O purports to authorize

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1 occupancy by a convenience store of 1500 square feet on the  
2 ground floor. Next slide, please.

3 This property lies in the NC-10 Zone. That's in  
4 the housing sub-district or the H Street overlay. And under  
5 the description of that zone, this is supposed to have an  
6 emphasis on the provision of residential uses, as the term  
7 housing sub-district obviously implies. And, therefore, it  
8 has a fairly stringent restriction on the FAR for non-  
9 residential uses, that is 0.5 set forth in Section 902.1.  
10 Next slide, please.

11 So, if you take 1500 -- the square footage that  
12 is listed on the 2019 C of O -- and divide that into 1640,  
13 you get an FAR for this non-residential use of 0.91. And  
14 under the definitions in the definitions provision in Title  
15 B, a nonconformity of structure includes nonconformity with  
16 respect to FAR. And therefore, it is clear on its face that  
17 the FAR here is exceeded. It well exceeds the 0.5 FAR.

18 And just in closing the case in chief, I want to  
19 make a couple points. One, there are a number of things that  
20 are not in dispute in this appeal. There is no dispute about  
21 the ability of this owner to have as a tenant a retail  
22 operation, frankly, or other commercial operations. Rather,  
23 it is the (telephonic interference) --

24 BZA CHAIR HILL: Commissioner Eckenwiler?  
25 Commissioner Eckenwiler?

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1 MR. ECKENWILER: Yes, Mr. Chairman.

2 BZA CHAIR HILL: You're buffeting.

3 MR. ECKENWILER: Okay. Am I okay now? Are we  
4 back?

5 BZA CHAIR HILL: You seem good now, yes.

6 MR. ECKENWILER: Okay. So what I was saying  
7 (telephonic interference) is the ability of this property  
8 owner to have a commercial tenant. That's fairly  
9 contemplated under the NC-10 rules. The issue that is  
10 presented in this appeal and the sole issue is what amount  
11 of floor space that use may occupy.

12 And just to preface a little bit, I think what may  
13 come up later, you know, during the appeal, there was some  
14 discussion in the opposition papers about, you know, use  
15 versus structure and so on. That's obviously a little  
16 difficult to untangle because FAR is inherently tied to a  
17 particular category of use.

18 But because 11 B 100.2 has this definition for  
19 nonconformity, it means that, if you exceed the allowable  
20 FAR, that was a nonconformity (telephonic interference)  
21 structure.

22 So I hope that crystalizes a little bit what I see  
23 is the legal issue here. There's more to say. But I think  
24 it's best to reserve that for rebuttal. I'm happy to answer  
25 your questions.

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1 BZA CHAIR HILL: Commissioner Eckenwiler, can you  
2 repeat the legal thing? It kind of broke up again.

3 MR. ECKENWILER: My apologies, Mr. Chairman. Let  
4 me attempt. I'd like to dispel any confusion that there may  
5 be about whether this appeal is about (telephonic  
6 interference). It is about nonconforming structure  
7 (telephonic interference) --

8 BZA CHAIR HILL: Yeah, Commissioner, let's go --  
9 let's try your phone line. Let's try your phone line.

10 MR. ECKENWILER: Okay, Mr. Chairman.

11 MR. ECKENWILER: Mr. Chairman, can you hear me?

12 BZA CHAIR HILL: Yeah. That's great. Can you  
13 hear me?

14 MR. ECKENWILER: Yes --

15 BZA CHAIR HILL: Can you still see your slide  
16 deck?

17 MR. ECKENWILER: Yes, I can. Thank you.

18 BZA CHAIR HILL: Okay. Could you please repeat  
19 your last statement?

20 MR. ECKENWILER: So, again, apologies for the --

21 BZA CHAIR HILL: Yes.

22 MR. ECKENWILER: -- technical difficulties here.  
23 Just to dispel any confusion over the scope and nature of  
24 this appeal, it is about the C of O authorizing a  
25 nonconforming structure, and that is because, as set forth

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1 in 11 B DCMR 100.2, a nonconforming structure includes a  
2 condition that exceeds FAR, allowable FAR.

3 Where I think there may be some confusion is, of  
4 course, FAR is inherently tied to a particular use. And in  
5 the NC-10 Zone, there is a cap on the amount of non-  
6 residential use.

7 So, when we talk about use versus structure here,  
8 those two are sort of, you know, intimately related. And I  
9 just wanted to set the stage a little bit because I think  
10 that may dispel some potential confusion about exactly what  
11 it is that we're appealing.

12 And also to be very clear, we are not claiming  
13 that there cannot be a commercial use on this property.  
14 There can be up to 0.5 FAR under the NC-10 regulations.

15 And that concludes my case in chief. I have more  
16 to say. But as I said earlier, I'm happy to save it for  
17 rebuttal and happy to answer your questions.

18 BZA CHAIR HILL: Okay. Great. Thank you. Would  
19 you mind pulling that down, Paul, the slide deck? Thank you.  
20 Does any of my fellow Board members have any questions for  
21 the Appellant? Mr. Hart.

22 VICE CHAIRPERSON HART: Thank you, Mr. Chairman.  
23 Thank you, Commissioner Eckenwiler. Just so that I  
24 understand -- and I do appreciate the brevity. That was very  
25 helpful and the focusing on that particular concern.

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1           You're talking about nonconformity of FAR. And  
2 the nonconformity itself is that there is 1600 square feet  
3 that is the floor plate, which is more -- well, actually,  
4 could you talk about what you're saying is the actual  
5 nonconformity, because there are different C of Os that have  
6 been, you know, given over time. There's one for 250.  
7 There's another one for 2,000. There's another for another  
8 number. There's one now for 1500.

9           So, if you could talk a little bit about what  
10 you're saying is the existing nonconformity that needs to be  
11 addressed, and I'd like for you to expound on that if you  
12 could. Thank you.

13           MR. ECKENWILER: Sure, Vice Chair Hart. So the  
14 existing structure is what it is. And it is our contention  
15 that it is not, in this regard with respect to non-  
16 residential FAR, nonconforming. What is nonconforming is  
17 what the C of O issued last year by the Zoning Administrator,  
18 what that authorizes, because that authorizes an FAR in  
19 excess of 0.5. And that's why the C of O was improperly  
20 issued.

21           If you like, I can talk -- since you mentioned  
22 some of those earlier certificates of occupancy, yes, there  
23 was a whole series of C of Os issued over time.

24           The only one that is relevant in our view for the  
25 Board's consideration is the last one. The last one is the

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1 one that controls. That was issued in 1994. We included a  
2 copy of that, as well as the applications for it, at -- it's  
3 Case Exhibit 2B like Bravo. And it is very clear on the face  
4 of that, that the Applicant requested and received  
5 authorization to occupy 250 square feet for a delicatessen.

6 And, you know, one might, as DCRA has, you know,  
7 speculate about whether or not that's accurate. But we  
8 submit that that's entirely beside the point.

9 You get what you ask for. And if the Applicant  
10 wanted legal authorization to occupy more space, then it was  
11 incumbent on the Applicant either to ask for more in the  
12 beginning, or if this was a mistake, to cure it later.

13 There is no evidence that that was ever cured.  
14 And, therefore, the last legal commercial occupancy in this  
15 building was only for 250 square feet. And that, therefore,  
16 is not a nonconforming condition that can somehow authorize  
17 here 26 years later a 1500-square-foot non-residential  
18 occupancy.

19 I hope that answers your question. If not, I'm  
20 happy to try and elaborate.

21 VICE CHAIRPERSON HART: No, that's fine. I was,  
22 I think I was thinking that you were saying that there was  
23 an existing nonconformity. And that's the part that I was  
24 trying to make sure that I understood. But you're not saying  
25 that. You're just saying that it is, what was most recently

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1 in 2019 permitted is a nonconformity. And so I think I  
2 understand that now.

3 MR. ECKENWILER: Yes, the C of O would authorize  
4 a nonconformity that is not allowable.

5 VICE CHAIRPERSON HART: Okay. Thank you.

6 BZA CHAIR HILL: Ms. John.

7 MEMBER JOHN: I could follow up. So it is not the  
8 structure. Following that argument, it is not the structure  
9 that's nonconforming. It's the use, allowing 1500 square  
10 feet in a 1650-square-foot building.

11 MR. ECKENWILER: This in some ways goes back to  
12 what I was trying to tease out before. The new C of O issued  
13 in 2019 authorizes 1500 square feet of non-residential  
14 occupancy. That occupancy would create a new nonconforming  
15 structure as that term is defined in the zoning regulations.  
16 Exceeding the maximum allowable FAR is a nonconforming  
17 structure.

18 There is no nonconforming structure that exists  
19 today. The Zoning Administrator authorized one. And in our  
20 contention, that was in error. So, again, happy to attempt  
21 clarification if you need it.

22 MEMBER JOHN: Thank you.

23 BZA CHAIR HILL: Commissioner Shapiro.

24 MEMBER SHAPIRO: I was clear, Commissioner  
25 Eckenwiler, up to that last point you made, because why are

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1 you moving away from use and moving towards structure.

2 MR. ECKENWILER: It's hard for me to find  
3 different ways to say this. It's because FAR is inherently  
4 tied to use. And so, when we talk about the use, that goes  
5 to the amount of square footage occupied. And square footage  
6 occupied and FAR, if it exceeds the legal maximum, creates  
7 a nonconforming structure.

8 And I'm sorry. You know, I didn't write those  
9 regulations. That's just, that's the definition that we have  
10 to work with.

11 MEMBER SHAPIRO: Okay. I have no further  
12 questions, Mr. Chair. I'm looking forward to hear from Mr.  
13 LeGrant and Mr. Green about this.

14 BZA CHAIR HILL: So, Commissioner, do you know  
15 what they were going to put there or what they're trying to  
16 put there?

17 MR. ECKENWILER: You mean currently?

18 BZA CHAIR HILL: Yeah, the use.

19 MR. ECKENWILER: There is currently a building  
20 permit application. I haven't seen any of the particulars  
21 of that.

22 BZA CHAIR HILL: That's okay. I guess what I'm  
23 trying to figure out is, again, like how did this come up to  
24 your eye. And I guess you guys, your community there is  
25 against this use or you just -- meaning, it's against the

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1 regulations. And so that's kind of -- you believe that  
2 they're not meeting the regulations. So that's why you're  
3 here. It's not that you oppose whatever they were trying to  
4 put in there. I'm just curious.

5 MR. ECKENWILER: Mr. Chairman, we just want to see  
6 the zoning regulations enforced fairly and consistently. And  
7 in the ANC's view, that was not done in this case.

8 BZA CHAIR HILL: Got it. Okay. Mr. Hart.

9 VICE CHAIRPERSON HART: Yeah. I'm sorry. There  
10 was a, I realized that there was another question that I had.

11 Commissioner Eckenwiler, so do you think that  
12 there should be residential on the first floor in addition  
13 to this retail use, because if it is half of the, .5 FAR,  
14 then that means that about 800 square feet would be non-  
15 commercial. It would be, I guess residential would be, or  
16 some other use were you thinking? And this is just trying  
17 to understand.

18 From what I understand, it's not a very large  
19 building. So, you know, it's kind of limited as to what they  
20 could actually have there. But just curious as to your, what  
21 you think that they might be able to do, or if it's just that  
22 you think that they need to go to the BZA for a special  
23 exception relief or a variance relief.

24 MR. ECKENWILER: Thank you, Vice Chair Hart. The  
25 short answer is the regulations require what they require.

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1 And in our view, if this property owner or prospective tenant  
2 wants to occupy more than 820 square feet with a non-  
3 residential use, then they need to come to the Board for  
4 relief. It's really, it's as straightforward as that.

5 VICE CHAIRPERSON HART: Thank you very much.

6 BZA CHAIR HILL: Commissioner, I'm going to ask  
7 a follow-up, which I know is -- I'm laughing, making myself  
8 to even think about asking the question.

9 So did, if they -- do you know, if they came  
10 before you guys for a variance, whether this would be  
11 something that you think your ANC would entertain?

12 MR. ECKENWILER: I think it would depend on the  
13 particulars of their proposal, how much space they're looking  
14 to use, what the specific use would be. There are -- you  
15 know, every property has its own peculiarities. There are  
16 some interesting conditions around this property. It's  
17 basically at 100 percent lot occupancy. There's a very  
18 narrow alley.

19 There are a lot of sort of moving parts around  
20 this. And I wouldn't want to hazard to guess how the ANC  
21 would come out without knowing a lot more specifics about  
22 what would be proposed.

23 I personally, as the single-member district rep,  
24 I'm not opposed to there being a commercial use in excess of  
25 820 square feet in theory. I'm not -- and, of course, here

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1 I'm speaking in my individual capacity. I'm not taking the  
2 position that you could never have something there that's  
3 more than 820 square feet.

4 But you need to observe the rules. And the rules  
5 here require a relief from that FAR cap. And so we go  
6 through the public hearing process. You know, you'd hear  
7 testimony from the ANC. You'd hear testimony from the, you  
8 know, potential impact to the neighbors. And, you know, then  
9 the Board would have a full record, you know, on which you  
10 decide it. So could be.

11 BZA CHAIR HILL: Okay.

12 MR. ECKENWILER: It's entirely possible that we  
13 would support such an application.

14 BZA CHAIR HILL: Okay. No, I appreciate it. You  
15 answered it. You answered my question. Thank you.

16 All right. Mr. Green, do you have any questions  
17 for the Commissioner?

18 MR. GREEN: Just one. Commissioner, if I may, if  
19 the application somehow said, I don't know, 100 square feet,  
20 you wouldn't have had an objection at that point.

21 MR. ECKENWILER: Just so I understand, what  
22 application are you thinking of when you --

23 MR. GREEN: We're talking about -- so you've made  
24 references to the C of O application listing the square  
25 footage. If, however, the square footage on the C of O only

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1 listed an amount which would equal to .5 on the FAR, you  
2 would not have objected to this C of O application. Is that  
3 your position as well?

4 MR. ECKENWILER: We wouldn't have had an  
5 opportunity to object because that would have just been  
6 approved as a matter-of-right presumably.

7 MR. GREEN: No, I meant the C of O application.  
8 You're appealing the C of O. So my question --

9 MR. ECKENWILER: Right.

10 MR. GREEN: -- is you've taken a look at the  
11 application. And you've said this, the data on, the  
12 information that's been put on the application exceeds the  
13 FAR, correct?

14 MR. ECKENWILER: It exceeds 820 square feet, which  
15 is 0.5 of the lot area, correct.

16 MR. GREEN: So, if the square footage that was on  
17 the application was 820 feet or less, you wouldn't be  
18 appealing it.

19 MR. ECKENWILER: Sure. I mean, that's --

20 MR. GREEN: Okay. All right.

21 MR. ECKENWILER: That's an interesting alternate  
22 universe. But --

23 MR. GREEN: It's just a basic question. That's  
24 really the issue is what is on the application and what it  
25 authorizes. That seems to be the line where you're going.

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1 That's all. I have no further questions.

2 BZA CHAIR HILL: Okay. Mr. Sullivan, do you have  
3 any questions for the Commissioner?

4 MR. SULLIVAN: No, thank you.

5 BZA CHAIR HILL: Okay. Mr. Green, do you want to  
6 go ahead and present on behalf of the DCRA?

7 MR. GREEN: Sure. Thanks. Thank you very much,  
8 Chairman. And I ask Mr. Young just to pull up my PowerPoint  
9 presentation. Before we get to Mr. LeGrant's testimony, just  
10 a brief summary of some issues.

11 I think in Chairman Eckenwiler's opening statement  
12 and his case in chief he certainly mentioned that there is  
13 a great deal of confusion with respect to this issue. And  
14 I think it's a confusion that's really been manufactured by  
15 the Appellant.

16 In other words, I think there's a collapse,  
17 there's really a collapse in the distinction between use and  
18 development, between the use category and FAR, which leads  
19 to certainly this appeal. But I think it can be actually  
20 fairly clear.

21 So I'll try to go over just some of the salient  
22 points. And I wanted to say --

23 BZA CHAIR HILL: Mr. Green, let me --

24 MR. GREEN: Yes.

25 BZA CHAIR HILL: Is everybody hearing Mr. Green

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1 okay? Maybe if you speak a little bit, just make sure you  
2 speak a little bit slowly and try to enunciate. It seems  
3 like there's a warble. I don't know if you guys are getting  
4 that as well. Yeah, they seem to be nodding.

5 MR. GREEN: Do you want me -- should I -- how is  
6 this? If not, I can call.

7 BZA CHAIR HILL: If you can call in, that would  
8 be probably better it seems like.

9 MR. GREEN: I will do that.

10 Can you hear me?

11 BZA CHAIR HILL: No, that's worse.

12 MR. GREEN: Okay. Let me --

13 BZA CHAIR HILL: Mute, yeah, mute your computer.  
14 You still have to mute your computer.

15 MR. GREEN: It is.

16 MEMBER SHAPIRO: You have to mute the mic and also  
17 the audio.

18 BZA CHAIR HILL: Try talking into your phone. No.  
19 Can you hear me, Mr. Green? Just nod yes if you can hear me.  
20 Okay. I can't hear you on the phone at all.

21 MR. GREEN: How about that?

22 BZA CHAIR HILL: Yes. Thanks.

23 MR. GREEN: I'll get off the WebEx.

24 BZA CHAIR HILL: Wait a second. Before you get  
25 off -- all right. Go ahead and get off the WebEx. Can you

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1 see the -- you won't be able to see the presentation, though.

2 MR. GREEN: I think I can. I think for the  
3 benefit of the -- I've got a list of the -- I've got the  
4 slide deck in front of me. So I'll try to go from here. Can  
5 you hear me now?

6 BZA CHAIR HILL: Yes.

7 MR. GREEN: Okay. So I'll work through it this  
8 way for the benefit of the Board. I think we can work  
9 through this testimony and the presentation for DCRA fairly  
10 efficiently. So, you know, I appreciate as I work through  
11 the technical difficulties.

12 So, just to begin again, I'd like to say good  
13 afternoon to Chairman Hill and members of the Board. You  
14 know, certainly we're here today because the Appellant, ANC  
15 6, is appealing the issuance of the Certificate of Occupancy  
16 C02000481 issued to Lois Jones.

17 So, as I see in slide deck 1, hopefully, Mr. Young  
18 has that up. As pointed out, the ANC is appealing the C of  
19 O that it authorizes a retail use which exceeds the existing  
20 floor area ratio, FAR, for non-residential uses. And the C  
21 of O authorizes a new nonconforming structure, or in the  
22 alternative, the C of O authorizes a new nonconforming use  
23 under Subtitle B 100.2.

24 So, very briefly, with respect to the property,  
25 as has been said and it's certainly understood, it's in an

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1 NC-10 Zone. As far as we know, the building was constructed  
2 in 1939. It has three floors, a basement, a first floor, and  
3 a second floor. And the first floor has been used  
4 continuously as a commercial space since the 1950s, first as  
5 a restaurant, then as a deli retail establishment.

6 And we'll give Mister, the review of the C of Os  
7 and Mr. LeGrant's understanding and how his office views  
8 them. But the historical look at the C of O demonstrates  
9 that the first floor has been used as a commercial space for  
10 decades.

11 And so one of the important, salient features is  
12 the DCRA doesn't have any records that the actual building  
13 footprint has neither been expanded or contracted.  
14 Certainly, it's been -- as we can see, that there's been some  
15 building permits for interior work, but the actual footprint  
16 hasn't changed.

17 If Mr. Young could go to slide number 2. In terms  
18 of DCRA's position, very bullet pointed, very quickly, just  
19 to go over that as an introduction before we get to Mr.  
20 LeGrant, you know, Commissioner Eckenwiler concedes that the  
21 C of O for retail use is a matter-of-right use in that zone  
22 under H, Subtitle H 1103.1(p).

23 Much has been made about the building's vacancy  
24 or alleged vacancy. However, it doesn't have any -- the  
25 problem there is the alleged nonconforming use, if there,

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1 which there isn't any nonconforming use because it is a by-  
2 right, the discontinuance restrictions under Subtitle C 204.4  
3 are only applicable to nonconforming use. So it's undisputed  
4 that a retail use is not a nonconforming use. So the fact  
5 that it's been vacant is, does not mean that the restrictions  
6 apply.

7           Assuming, giving the, Commissioner Eckenwiler's  
8 position and to the benefit, that the use is nonconforming,  
9 that alleged nonconforming use hasn't been abandoned and it  
10 hasn't failed the test, because from DCRA's understanding the  
11 Applicant had always intended to develop that as a retail  
12 space.

13           And lastly, even if we assume that the property  
14 is somehow a nonconforming structure as to FAR, the Appellant  
15 really hasn't, has failed to provide sufficient evidence that  
16 the structure itself has been altered or changed as required  
17 under Subtitle C 202.2. And it's really the Appellant's  
18 burden to demonstrate this fact to support the appeal.

19           Mr. Young, I'm going to skip over slide number 3.  
20 And then I would like to go to page number 4, which is the  
21 chart.

22           And at this point, what seems to be of great  
23 interest to the Board, I'd like to begin here with Mr.  
24 LeGrant and introduce him and then start to walk through some  
25 of the questions about C of Os and his understanding and

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1 interpretation of how this relates to the appeal. So I'd  
2 like to ask Mr. LeGrant if he could state his name and, for  
3 the record.

4 MR. LeGRANT: Okay. Good afternoon, Chairman Hill  
5 and members of the Board. Matt LeGrant, DCRA (telephonic  
6 interference) you had some questions.

7 MR. GREEN: So, Mr. LeGrant, what should be shared  
8 on the screen is a table, a table of, it's called table of  
9 certificate, certificates of occupancy or certificate of  
10 occupancy applications for the property address. Just I want  
11 to ask you some questions about the chart. Can you just tell  
12 me what this chart shows?

13 MR. LeGRANT: Yes. The chart is a summary. It's  
14 a -- we researched and did a history of the certificate of  
15 occupancys for this address, 337 H Street, N.E.

16 MR. GREEN: And is this a fair and accurate  
17 summary of the applications that are in the DCRA records?

18 MR. LeGRANT: Yes.

19 MR. GREEN: I'd like to draw your attention, Mr.  
20 LeGrant, to the square footage in the final column. Do you  
21 see that?

22 MR. LeGRANT: I do.

23 MR. GREEN: You know, they seem to change. Can  
24 you explain to the Board the variance in these square  
25 footages and help us understand that?

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1 MR. LeGRANT: Yes. My office reviews many C of  
2 O applications. When a C of O application, a certificate of  
3 occupancy application comes in, we review the application.

4 And as you can see, the commercial use of the  
5 space in the first floor, what those encompass. During the  
6 application process, the Applicant fills in the square  
7 footage figure. Our office does not confirm the square  
8 footage for the Applicant's form. You know, it's a -- when  
9 it's a change of ownership, for example, going from one  
10 operator to another, the Applicant puts in the numbers.

11 I will say that, you know, unlike what maybe  
12 occurred in the '90s and the 2000s, I would like to say that  
13 my office and my staff currently under my veteran  
14 administratorship is a little more diligent on these. But  
15 in terms of what happened in the '90s, of course, I wasn't  
16 there.

17 But I think that the main point here is the, why  
18 the numbers vary is the, because this was the numbers that  
19 the Applicant put in at each point in time.

20 MR. GREEN: So, as a follow-up to that and has  
21 been mentioned in the accounts filing, if you take a look at,  
22 from 1994, which is last two columns, and 2019, when you had  
23 approved the C of O to the current owner, there's a change  
24 again between 250 square feet and 1500 square feet. And if  
25 you could explain -- can you explain that in terms of --

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1 MR. LeGRANT: Yes.

2 MR. GREEN: -- those two different numbers?

3 MR. LeGRANT: Yes. I believe that the current  
4 property owner may now have more accurate information or may  
5 have had wrong information. But we do not see that as  
6 pragmatic when reviewing the C of O application.

7 MR. GREEN: So, and to get to the heart of the  
8 matter, one of the main questions that was touched on is that  
9 the ANC is claiming that the C of O authorizes a  
10 nonconforming structure. Is the ANC correct?

11 MR. LeGRANT: No, it is not.

12 MR. GREEN: And can you explain why that isn't  
13 correct?

14 MR. LeGRANT: Sure. So the ANC in my view is  
15 confusing two separate regulations. One is for the use,  
16 which I've stated, which we established. I believe the Board  
17 believes is by-right, whether the commercial retail use is  
18 by-right in the subject NC Zone.

19 The other regulation has to do with the  
20 development, in this case, floor area ratio or FAR. That's  
21 based on the plats and the plans. And I think the ANC is  
22 blurring those distinctions. The ANC has not shown whether  
23 the property owner's plans have been changed at this point  
24 besides the building.

25 So it's, the FAR, as defined in zoning

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1 regulations, it's a ratio of gross floor area of the building  
2 to the area that's left. It's a very simple metric. But  
3 it's, if the floor area had changed or the building had  
4 changed in size, then it might be relevant. But I don't  
5 think it's relevant here.

6 MR. GREEN: So, and then it looks then certainly  
7 touched on, but I wanted to draw a further distinction, if  
8 Mr. Young could turn to the final slide, our final slide.  
9 And it's up there.

10 I wanted to bring your attention, Subtitle C 202.1  
11 regarding, you know, nonconforming use of a structure or use  
12 of a structure or any nonconforming structure. So can you --  
13 my question is this. Can you explain how this relates to the  
14 building, if at all?

15 MR. LeGRANT: Sure. And so let me just read the  
16 provision, which is Subtitle C 202.1. Any nonconforming use  
17 of a structure or of land, or any nonconforming structure  
18 lawfully existing on the effective date of this title remains  
19 nonconforming, and any use or structure lawfully existing  
20 that became nonconforming on the effective date of this  
21 title, may be continued, operated, occupied, or maintained,  
22 subject to the provisions of this chapter.

23 And here, the point here is that nonconforming use  
24 may be continued or maintained. As it has been indicated,  
25 there have been, the use is conforming first of all and is

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1 allowed by the regulation. If, however the structure is  
2 nonconforming, then the nonconformity may continue, whether,  
3 didn't have any permits or plans where the property has  
4 changed. And the ANC has not produced any plan change that  
5 the current property owner has amended to add to the building  
6 or the nonconforming aspect of that building.

7 MR. GREEN: And so does -- and so the other part,  
8 which has been brought to, you know, the Board's attention,  
9 has to do with the vacancy or the fact that it hasn't been  
10 occupied in a number of years. Do you have any opinion with  
11 respect to that as it relates to nonconformity?

12 MR. LeGRANT: No. It's not relevant here.

13 MR. GREEN: And why is that?

14 MR. LeGRANT: Okay. Because the retail use is  
15 conforming. The fact that it may be vacant is not an issue  
16 in respect to conforming uses.

17 MR. GREEN: I'm coming to the end of the  
18 questions, Mr. LeGrant, and --

19 MR. LeGRANT: Okay.

20 MR. GREEN: -- because I'm confident there are  
21 many that want to ask you. The Board I'm confident would  
22 like to ask further questions.

23 But I guess, in summary, Mr. LeGrant, given your  
24 review of the application and the associated materials and  
25 your experience, was the Certificate of Occupancy CO2000481,

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1 did that comply with the zoning regulations?

2 MR. LeGRANT: Yes. And just to reemphasize, I  
3 know the other section shown up there is C 204.4. It has to  
4 do with nonconforming uses. And that's not applicable here.  
5 There is no nonconforming uses.

6 So, and I guess in summary, the fact that the  
7 building's been vacant doesn't impact the current use, which  
8 is conforming. The discontinuance is not a factor in this  
9 situation.

10 MR. GREEN: Okay. I'm struggling without, not  
11 being on WebEx. But I wanted to pause there. And I don't  
12 think right now I have any further questions for Mr. LeGrant.  
13 But I certainly welcome questions from the Board at this  
14 time. And we can go from there. So thank you very much for  
15 the Board's time.

16 BZA CHAIR HILL: All right, Mr. Green. So you  
17 can't see anything. Is that correct, Mr. Green?

18 MR. GREEN: No, I can't.

19 BZA CHAIR HILL: Right.

20 MR. GREEN: But I have as, I have all the  
21 materials. I can probably log back on. But I think if it's  
22 going to cause a warble --

23 BZA CHAIR HILL: Well, what I was going to suggest  
24 is you could -- why don't you try to log back on as an  
25 attendee?

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1 MR. GREEN: Okay.

2 BZA CHAIR HILL: And, therefore, Paul can keep you  
3 out.

4 MR. GREEN: Okay.

5 BZA CHAIR HILL: And then at least you can watch  
6 everything and talk on the phone.

7 MR. GREEN: All right. Thank you. I will do  
8 that.

9 BZA CHAIR HILL: Okay. Mr. Hart.

10 VICE CHAIRPERSON HART: Yes. Thank you, Mr.  
11 Chairman. So, and I guess this is for Mr. LeGrant. Good to  
12 see you again. So I just had a couple of questions that I'm  
13 still kind of, that are still out there for me.

14 One of them is with regard to this .5 FAR  
15 requirement in the NC-10 Zone. If you could kind of talk  
16 about that and why you don't believe, because you didn't talk  
17 about it at all, so I'm assuming that you don't believe that  
18 it applies here. And I just would like to understand why  
19 (telephonic interference). I didn't do anything.

20 And also, why does DCRA have the square footage  
21 number on the C of O if you said that you all do not confirm  
22 those numbers? So it just seems like it's not something that  
23 you would necessarily need if that's, you know, if it's --  
24 it doesn't need to be filled out if it's not anything that's  
25 helpful for your review.

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1           And I'll leave it at that. And then I'll, if I  
2 have any other questions, I'll ask.

3           BZA CHAIR HILL: Mr. LeGrant, we can't hear you.  
4 Your microphone is muted.

5           MR. LeGRANT: I apologize. Okay. I'll start  
6 over. Can you hear me now, Chairman Hill? Very good.

7           So, as the opinion points out, there is a .5 FAR  
8 limitation on non-residential uses. That is like any zoning  
9 regulation I treat as prospective. If this was a vacant lot  
10 today and we were building a new building and the plans came  
11 in for a building permit, we would look at that. We would  
12 analyze it. We would look to see what area of the structure,  
13 if any, was proposed for a non-residential use. The .5 FAR  
14 would govern and limit that.

15           But the distinction here is this is an existing  
16 building. It was built we think actually 80 years ago. Our  
17 records indicate, at least the last 30 or 40 years, that the  
18 ground floor was retail use. The regulation, which was put  
19 in place I believe approximately, my guess is about ten years  
20 ago, would limit that FAR.

21           Again, I have to apply those prospectively. If  
22 that retail space was existing, which I believe it was, at  
23 the time of the enactment of the .5 FAR and limitation, it's  
24 grandfathered. It's a nonconformity. It's a nonconformity  
25 in terms of FAR.

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1           And as Mr. Green pointed out, we can't confuse  
2 nonconforming use with nonconforming structure. If it was  
3 a nonconforming use, then there might be an issue here with  
4 the time period of vacancy. But it's a conforming use.

5           So then, for me, I have to look at, oh, okay, if  
6 the retail area, which all the evidence, notwithstanding some  
7 of those bad numbers from the '90s, were, is that it's retail  
8 and that ground floor I do believe is grandfathered. And the  
9 property has a right to continue that ground floor for retail  
10 use.

11           Now, your other question had to be about the  
12 square footage. Why would we ask the square footage on a C  
13 of O form? Well, the answer is the C of O application form  
14 is a form that we use universally for all uses. There are  
15 some uses, when they come in, the square footage is very  
16 relevant.

17           For example, as the Board knows, some parking  
18 regulations are based on the square footage. So we have to  
19 have, oh, okay, what is the square footage, or if there's a  
20 parking issue, we do a parking analysis. Then that number  
21 becomes important. We would look back and drill down into  
22 what the building permit or whatever plans would demonstrate  
23 for that so we can do the proper application of a parking  
24 standard.

25           That's why the number -- your question. Here it

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1 was -- you know, there's a space on the form. It was filled  
2 out I believe incorrectly historically. But, and maybe the  
3 property owner can speak to what the square footage or the  
4 property owner's counsel can speak to the square footage that  
5 it is now. It's not germane to the processing of the C of  
6 O application --

7 VICE CHAIRPERSON HART: I appreciate that, Mr.  
8 LeGrant.

9 MR. LeGRANT: Okay.

10 VICE CHAIRPERSON HART: And just as a follow-up,  
11 so that I understand, you have stated that, you just stated  
12 that it is a nonconformity for it as a structure because of  
13 the, because if it weren't nonconforming as a structure that  
14 it would have to meet the .5 FAR.

15 MR. LeGRANT: Because it's nonconforming in terms  
16 of the FAR, which is, has to do with the structure, it's a  
17 ratio of building gross floor area to a lot area. It has to  
18 do with the structure. Then it's relevant if the numbers,  
19 if that structure change, if that building footprint, they  
20 say, well, we want to add square footage, we want to expand  
21 the footprint, which they can't because the lot is filled,  
22 that lot.

23 They want to build up. We're going to add another  
24 floor to put more non-residential use there. Stop. You  
25 can't do that. You're already, you're beyond your limit.

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1 Your limit that is now the .91 is grandfathered, but any  
2 additional non-residential floor area would require Board  
3 relief.

4 VICE CHAIRPERSON HART: Okay. I understand that.  
5 And just so that we're clear, I wasn't asking why you have  
6 square footage. I understand that.

7 My question was really towards, at one point I  
8 think you said that you don't typically confirm that the  
9 square footage is what they say that it is. And that's the  
10 part that I was, more of a question on, because I'm like if  
11 you don't, if you are not confirming it, then it's in some  
12 ways not that relevant for you.

13 But I understand your point about in some parts  
14 of the zoning regulations it is necessary so that you can do  
15 calculations for other types of provisions. So thank you  
16 very much.

17 MR. LeGRANT: Yeah, if I can elaborate on that  
18 last point, I was probably a little too broad with my first  
19 statement. Case by case, in some cases, it is relevant.  
20 It's very relevant.

21 Here, when we look at it, well, is this going to  
22 be an issue? No, it's a grandfathered retail space. Okay.  
23 And there's no associated building permit at that point that  
24 -- or the square footage bottom line was not relevant to the  
25 analysis.

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1 BZA CHAIR HILL: Okay. Ms. John.

2 MEMBER JOHN: So I think you may have answered my  
3 question, because I was confused. This might be a comment  
4 and not a question.

5 I was confused about why the permits, none of  
6 them, list the square footage on the face of the permit and  
7 just state that the certificate of occupancy is for the first  
8 floor. So there's no designation about how much, you know,  
9 how much square footage would be used on the first floor.

10 And I think I hear you saying that at that time  
11 it was not relevant because there's a space for, for example,  
12 stating if it's a suite on the first floor or something. But  
13 here the C of O just has a blanket approval for the first  
14 floor. And I didn't understand why there was no inclusion  
15 of the square footage from the application.

16 MR. LeGRANT: Right. I'm not sure if I hear a  
17 question there, more a statement.

18 MEMBER JOHN: Well, I think there's a question in  
19 there somewhere. It was not your practice to include the  
20 square footage on the permit itself. The application --

21 MR. LeGRANT: Okay.

22 MEMBER JOHN: -- exists independently of the  
23 permit. I'm trying to find out what the relationship is --

24 MR. LeGRANT: Sure. Okay.

25 MEMBER JOHN: -- between the two things, because

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1 these permits --

2 MR. LeGRANT: Sure.

3 MEMBER JOHN: -- only state that the first floor  
4 is authorized.

5 MR. LeGRANT: Right. I believe that since the  
6 building, the necessary building permit talked about there  
7 was no addition of gross floor area, therefore, the, what was  
8 relevant was for building code purposes, you know, the  
9 relevant building code aspects, the plumbing, electrical, and  
10 so forth.

11 So, yes, I'm going to go out on a limb and say  
12 from the DCRA's permit operations division's analysis of the  
13 building or construction code aspects of this, the square  
14 footage was not relevant to their analysis either. But as  
15 I've stated, for zoning, because it's a continuation of the  
16 retail use on the ground floor, that square footage is not  
17 relevant to a zoning analysis.

18 MEMBER JOHN: I think I understand. But I'm  
19 still, I'm not sure why it would not be relevant to the  
20 analysis. But if it's, if the information is in the  
21 application, where I'm confused is why that information is  
22 not carried forward to the C of O itself.

23 MR. LeGRANT: Okay.

24 MEMBER JOHN: And the C of O says this applies to  
25 the first floor, not a portion of the first floor, not a

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1 suite on the first floor, but just to the first floor.

2 MR. LeGRANT: Right. All I can say is because  
3 this was a continuation of a ground floor retail use, at that  
4 point, our office's analysis was, oh, okay, they're not  
5 adding any square footage. What is, what's the history of  
6 the use here? Well, it's a retail use. We very quickly came  
7 to the conclusion it's, given the history, that it's a retail  
8 use. It's been established historically, very clear. It's  
9 a continuation of that use. There's no really other zoning  
10 issues that need to be vetted out.

11 MEMBER JOHN: Okay. Thank you.

12 MR. LeGRANT: Okay.

13 BZA CHAIR HILL: Commissioner Shapiro.

14 MEMBER SHAPIRO: Thank you, Mr. Chair. Mr.  
15 LeGrant, I just want to make sure. I have a similar question  
16 as to Ms. John, Board Member John.

17 Effectively, since this is a continuation of a  
18 use, nonconforming or not, the table of certificate of  
19 occupancy applications that I'm looking at is it, just is it  
20 even relevant to you for this case?

21 MR. LeGRANT: That's correct. The reason we  
22 wanted to show the Board overall is the history, the history  
23 of the retail use of the first floor extends back decades.  
24 It also reveals that applicants in the past have been pretty  
25 sloppy about what they represented.

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1           But at each threshold after the initial retail use  
2 was established, I believe it was also prepared for a shop  
3 piece in there, the building. And, oh, okay, the zoning  
4 analysis would look at that use, not -- the square footage  
5 was not critical. Was there, I mean, parking triggered? No.  
6 Was there any loading triggered? No, because of the category  
7 of use that it fell into.

8           MEMBER SHAPIRO: So, for this application, for  
9 this C of O, it is your view that there was no error. The  
10 square footage isn't relevant for this C of O, for this  
11 application.

12           MR. LeGRANT: That's right. That's correct.

13           MEMBER SHAPIRO: Okay. Thank you. That's all I  
14 have, Mr. Chair.

15           BZA CHAIR HILL: Mr. LeGrant, can you go over  
16 again why is that then? Now, I'm a little -- why does the --  
17 because like, I mean, I understand the -- you were like if  
18 it's a brand new building, you'd --

19           MR. LeGRANT: Yes.

20           BZA CHAIR HILL: -- .5 FAR of retail. And then  
21 if it's not a brand new building, you know, you don't, you're  
22 not looking at the FAR. You just look as to whether or not  
23 there was retail there or not. And if there was retail, then  
24 it didn't matter if it was .5 or .91 because it was  
25 grandfathered in for that retail. And if that's the case,

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1 where in the zoning regulations does it say that?

2 MR. LeGRANT: Okay. Just to reiterate, in review  
3 of this application, we looked at the application's proposed  
4 use. And we look at the building. We have to look at what  
5 existing building is there.

6 It became apparent to my staff very quickly that  
7 the ground floor, which is the case, this is not unique.  
8 There's many, many buildings, not only on H Street but  
9 throughout the District, that have a history of a ground  
10 floor commercial use.

11 The question before my office is, oh, is that use,  
12 first, permitted. Fine. Oh, what building does this sit in?  
13 Oh, it's almost apparent, at least to my staff, that the  
14 ground floor is historically a retail use. There were no  
15 changes to that ground floor.

16 Then there's no need to do an FAR analysis. It's  
17 grandfathered. It's grandfathered. It's existing,  
18 nonconforming in terms of the FAR. There's no need to do  
19 another analysis on whether the FAR is exceeded because it's  
20 already recognized as a retail use on that ground floor.

21 Let me stop there because you had another  
22 question.

23 BZA CHAIR HILL: Yeah. It's grandfathered at the  
24 full square footage of that first floor?

25 MR. LeGRANT: Yes.

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1 BZA CHAIR HILL: And where does, where do I look  
2 to see that?

3 MR. LeGRANT: Well, I think, as we noted earlier  
4 in the slides, and Mr. Young, pull it back up, I believe it's  
5 C 202.1 that talks about nonconforming use and continuation  
6 of nonconforming use.

7 BZA CHAIR HILL: Okay. So this is where the  
8 nonconformity is coming in again. Right.

9 MR. LeGRANT: Yes --

10 BZA CHAIR HILL: And I'm --

11 MR. LeGRANT: Now, maybe I'll paraphrase.  
12 Subtitle C 202.1 --

13 BZA CHAIR HILL: I got you. That's where it is.  
14 That's okay. That's where it is.

15 MR. LeGRANT: Okay.

16 BZA CHAIR HILL: I understand that's where you got  
17 it. Okay. All right. Thanks, Mr. Young. Let me see if I  
18 can see anybody. Okay. Mr. Green, are you back? And, Ms.  
19 John, you had your hand up. Okay. Let me see if Mr. Green  
20 is there first. Mr. Green, are you there?

21 MR. GREEN: Yes, Chairman.

22 BZA CHAIR HILL: Oh, great. Okay. Ms. John, you  
23 had a question. You're on mute, Ms. John.

24 MEMBER JOHN: I think I got a little more confused  
25 with the last answer. So when did the new regulations take

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1 effect? And what was the requirement before? So the  
2 requirement before did not allow, allowed more than a .5 FAR  
3 for non-residential use?

4 MR. LeGRANT: Board Member John, I am not sure of  
5 the exact date of the .5 FAR limitation. The Appellant, who  
6 I believe had a hand in bringing that perhaps to the  
7 Commission, may be knowledgeable of that date. My guess is  
8 approximately ten years ago. I believe it was in ZR 58 and  
9 then brought forward in 016. That went into effect, of  
10 course, in September 2016.

11 MEMBER JOHN: So, to follow up, based on the  
12 history, this would have been a conforming use that would  
13 have been carried forward after ZR 58 and ZR 016.

14 MR. LeGRANT: I want to emphasize the use itself  
15 is conforming. There's no question about the use.

16 MEMBER JOHN: Right. Correct.

17 MR. LeGRANT: It's the standard, the FAR standard,  
18 or the FAR standard would apply to any new building or  
19 changes to the gross floor area of the building.

20 MEMBER JOHN: Okay. Thank you.

21 MR. LeGRANT: Okay.

22 BZA CHAIR HILL: I just, I almost want to turn to  
23 the Office of Planning, be like can the Office of Planning  
24 come.

25 (Laughter.)

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1           BZA CHAIR HILL: I'm going to argue that point,  
2 I'm telling you. All right. Let's see. Where are we? Oh,  
3 yeah. So, Commissioner Eckenwiler, do you have any questions  
4 for Mr. LeGrant?

5           MR. ECKENWILER: I do, Chairman Hill. All right.  
6 Mr. --

7           BZA CHAIR HILL: You're good. You're good.

8           MR. ECKENWILER: Thank you. So, Mr. LeGrant, let  
9 me just start by asking, what in your view currently is the  
10 maximum square footage? And you can express that in gross  
11 square footage. You can express that in terms of an FAR.  
12 What is the maximum non-residential for this property for  
13 which you think you are authorized to issue a certificate of  
14 occupancy?

15           MR. LeGRANT: Except in cases of grandfathered  
16 buildings, any new building or an addition to existing  
17 building, is a .5 FAR limitation on gross floor area.

18           MR. ECKENWILER: So I don't think that answers my  
19 question. I'm saying for this building, which you have  
20 specific use about and you've obviously researched a  
21 particular history. So, again, let me ask. What is the  
22 maximum non-residential use, expressed either in gross square  
23 footage or in FAR, that you think you could lawfully issue  
24 a C of O for for this property?

25           MR. LeGRANT: Okay. Commissioner --

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1 MR. ECKENWILER: Okay. And let me be clear.

2 MR. LeGRANT: Okay.

3 MR. ECKENWILER: Let's just take it, you know,  
4 retail convenience store for this exact same use.

5 MR. LeGRANT: Okay. I would be remiss just to say  
6 .5 is the answer, period, because the zoning regulations  
7 include limitations on what's a nonconforming aspect of this.  
8 And that's what's relevant here.

9 MR. ECKENWILER: I don't -- maybe I'm just not  
10 being clear. And if so, I apologize. But, obviously, either  
11 there's no limit, in which case you could issue a C of O for  
12 the entire structure. So let me ask that. Do you think you  
13 could issue a C of O for this entire structure, basement,  
14 first floor, and second floor, for a retail convenience store  
15 use?

16 MR. LeGRANT: No.

17 MR. ECKENWILER: Can you tell me why not?

18 MR. LeGRANT: I believe there's a history of  
19 residential use on the second floor. So that would be a  
20 conversion. That would be a change of use from residential  
21 to non-residential, which would be limited by the .5 FAR  
22 limitation.

23 MR. ECKENWILER: Okay. So what is the actual  
24 limit then? You've just, you know, I think, you know,  
25 acknowledged that there is a limit as to this property,

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1 putting aside, you know, the 0.5 cap for a, you know, brand  
2 new construction. But what are you saying the actual cap is  
3 for this property, if it's not the entire building?

4 MR. LeGRANT: I'll repeat myself. Except in case  
5 of a grandfathered, non-residential use aspect of the, in  
6 this case the ground floor, it's a .5 FAR, period.

7 MR. ECKENWILER: So, if the maximum is a .5 FAR,  
8 then how was it lawful for you to issue this C of O for 0.91?

9 MR. LeGRANT: Well, I believe my testimony spoke  
10 to the reasoning behind the, I believe the proper approval  
11 of the C of O.

12 MR. ECKENWILER: Well, with respect, sir, I don't  
13 think you are answering the question because you've averted  
14 at various points in your testimony to some previous  
15 nonconformity that you are in effect grandfathering and which  
16 supported the issuance of the C of O.

17 I'm trying to figure out what the contours of that  
18 are, because that really goes to how you're interpreting the  
19 regulation and what it means for something to be  
20 grandfathered and whether that imposes any meaningful limit.  
21 I think you've already indicated. You said you wouldn't  
22 authorize a C of O that included the top story. And I'm just  
23 trying to work towards where is that boundary.

24 Let me put it a different way. What is it that  
25 you measured 1500 square feet against to determine that 1500

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1 square feet was under whatever that allowable cap is?

2 MR. LeGRANT: Well, the 1500 square feet was  
3 relevant in regards to whether its new square footage, new  
4 gross floor area, a change of use from some other previous  
5 use of gross floor area, so it would be changing from a  
6 residential to a non-residential, or is the 1500 square feet  
7 a existing condition. And then my point is it's an existing  
8 condition in this scenario, in this situation.

9 BZA CHAIR HILL: So Commissioner --

10 MR. ECKENWILER: So what --

11 BZA CHAIR HILL: -- Commissioner Eckenwiler, I  
12 just want to clarify, because I just want to make sure I  
13 understand it also.

14 So, Mr. LeGrant, what I think, just so I'm  
15 following along, Commissioner Eckenwiler was trying to get  
16 to, I mean, that first floor, if I'm understanding this  
17 correctly, was retail, historically retail. And it could  
18 have been the whole first floor that you would have approved  
19 for retail.

20 The reason why you're not approving the second  
21 floor for retail, because the second floor was residential.  
22 And so it would, therefore, been a conversion to go from  
23 residential to retail.

24 So the answer, I guess, is that whatever  
25 historically was on the first floor for retail is how much

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1 square footage would have been approved, correct?

2 MR. LeGRANT: That's correct.

3 BZA CHAIR HILL: Okay. And so now then, I'm just  
4 curious, Mr. Sullivan, how much is on the first floor? Is  
5 that the 1640 or is that the whole --

6 MR. SULLIVAN: No, well, that would be -- it's the  
7 whole building. The whole first floor is what is being  
8 requested and approved for this C of O.

9 BZA CHAIR HILL: 1500.

10 MR. SULLIVAN: Yes.

11 BZA CHAIR HILL: That's the first floor.

12 MR. SULLIVAN: Yes.

13 BZA CHAIR HILL: Got you. Okay. So the whole  
14 first floor, Commissioner, at least as far as this logic or  
15 this conversation and how we're getting to C 202.1, I believe  
16 I at least understand what I think you've been asking.  
17 Whether or not you're getting the answer you want, I don't  
18 know. But that's kind of what I understand the question.

19 What's the next question? And if I'm not  
20 clarifying it, then you can ask it again. But I just wanted  
21 to make sure I understood.

22 MR. ECKENWILER: I do have some -- I'm not going  
23 to keep asking the same question, Mr. Chairman. So, I do  
24 want to ask a slightly different question.

25 So, Mr. LeGrant, again, you've researched this

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1 property. You've obviously had extensive, you know,  
2 consultations with Mr. Green about it.

3 Do you think you could issue a C of O for the  
4 basement that includes a nonresidential use?

5 MR. LEGRANT: It depends on the history of the use  
6 of that basement.

7 MR. ECKENWILER: Right. Well, you've researched  
8 this building. We actually have your table of all the  
9 previous certificates of occupancy.

10 And so, I'm just trying to get an answer from you  
11 about --

12 MR. GREEN: Actually, the question is the first  
13 floor. It wasn't -- I think that's -- this is ultimately the  
14 appeal -- this is Hugh Green, I'm sorry.

15 Just to be clear in terms of twisting possible  
16 testimony --

17 MR. ECKENWILER: I want to -- I do have to object  
18 because I'd like to --

19 MR. GREEN: Well, I would like to --

20 MR. ECKENWILER: I'm asking the --

21 MR. GREEN: -- object, too, Mr. Eckenwiler.

22 MR. ECKENWILER: -- witness a question.

23 BZA CHAIR HILL: So, listen. Commissioner, I guess  
24 also just -- I mean, I'm a little -- if I were to answer the  
25 zoning administrator, I'm not exactly sure -- I guess the

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1 zoning administrator was saying that if the basement were  
2 commercial, that would -- and historically had been  
3 commercial, that also would have been approved, correct, Mr.  
4 LeGrant?

5 MR. LEGRANT: Yes.

6 BZA CHAIR HILL: Okay. So, Commissioner Eckenwiler  
7 --

8 MR. ECKENWILER: So, let me just ask the actual  
9 question.

10 Mr. LeGrant, do you have any evidence that the  
11 basement was used for a commercial or, more broadly, a  
12 nonresidential use?

13 MR. LEGRANT: Because, I didn't research the  
14 basement use. The property owner's counsel may be able to  
15 speak to that.

16 MR. ECKENWILER: So, the answer is you actually  
17 don't have any information to that fact right now?

18 MR. LEGRANT: I do not.

19 MR. ECKENWILER: Okay. And then one last question.  
20 Let me spin a hypothetical to you here. Suppose the owner  
21 decided to build out the ground floor of this building as  
22 residential.

23 So, they turned that entire first floor into a  
24 dwelling and it was actually used -- actually occupied as a  
25 dwelling for, let's say, three years, five years, you know,

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1 some short period of time.

2           Afterwards, if the property owner came to you and  
3 asked for a C of O for a retail establishment on that ground  
4 floor, would you authorize that in excess of 0.5 FAR?

5           Would you say that that retail use is still  
6 grandfathered?

7           MR. LEGRANT: No.

8           MR. ECKENWILER: Okay. And I'm curious why not.

9           MR. LEGRANT: Okay. So, once a use changes and  
10 becomes approved and the property owner exercises that use,  
11 then that becomes the new benchmark.

12           Subsequently if another application comes in one,  
13 two, three, five years later and says, oh, we'd like to  
14 change it back, we want to go back to, you know, it was  
15 retail and grandfathered as retail, but changed lawfully to  
16 residential, after a few years you want to go back to retail,  
17 the zone regulations, which are prospective, look at all.

18           Is it a change of use? Yes. What is -- now the  
19 0.5 limitation comes into play. How much do you want? If  
20 it goes over 0.5, stop. Let the Board of Zoning address it.

21           BZA CHAIR HILL: Okay. Mr. Eckenwiler --  
22 Commissioner, you got any more questions?

23           MR. ECKENWILER: I have no further questions, Mr.  
24 Chairman.

25           BZA CHAIR HILL: Okay. Thank you.

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1 Mr. Sullivan, do you have any questions for Mr.  
2 LeGrant?

3 MR. SULLIVAN: No. Thank you.

4 BZA CHAIR HILL: Okay. Mr. Sullivan, do you have  
5 a presentation?

6 MR. SULLIVAN: Yes, I do. Two or three minutes,  
7 I think.

8 BZA CHAIR HILL: Sure.

9 MR. SULLIVAN: Just I don't have a presentation to  
10 put up, but I just have something --

11 BZA CHAIR HILL: By the way, you guys, our  
12 Wednesdays are completely shot now. Okay? Like, there's no  
13 hope whatsoever that we survive these things until, like,  
14 eight o'clock. Now, it's just a -- it's over. COVID's  
15 killed Wednesday, okay? In fact, I'm going to get a T-shirt  
16 COVID killed Wednesday.

17 Okay. Alright, Mr. Sullivan. Take all the time  
18 you like.

19 MR. SULLIVAN: So, I just -- I want to give my  
20 take on -- and try to put some context and structure to this  
21 and to everything I've heard.

22 If this were all just a residential zone, this  
23 would be easy. It would be a nonconforming use and the  
24 three-year safe harbor would apply, and the question we would  
25 be talking about is, did the owner intend to maintain the

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1 use?

2           If it were just a commercial zone and you couldn't  
3 have residential, which of course we don't really have, that  
4 would be easy as well.

5           So, the zoning administrator, in a sense, has to  
6 thread the needle here. You've got a hybrid. You've got a  
7 mixed use zone, and so you're talking about an FAR number  
8 that applies to the use.

9           I think that the appellant and the zoning  
10 administrator agree that this is a nonconforming structure.  
11 The reason it's a nonconforming structure is mainly because  
12 it's not in a nonconforming use.

13           The reason it's not a nonconforming use is because  
14 this use is permitted in this zone. And by the definition  
15 of nonconforming use, this could not be a nonconforming use.  
16 It's restricted, however, by the area. The area being the  
17 FAR. So, area meaning building.

18           So, if it's restricted by an area element of the  
19 regulations, that makes it a nonconforming structure. It  
20 became a nonconforming structure upon the adoption of the 0.5  
21 FAR limit with this HSA overlay.

22           At that point, it's a nonconforming structure.  
23 There is plenty of evidence -- in fact, there's a C of O that  
24 we put in the record showing use of a nonresidential use on  
25 the basement, first and second floors. The C of O says first

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1 and second floors, but if we're going to use applications,  
2 too, it includes basement.

3 So, there's plenty of evidence of the  
4 nonresidential use. There's zero evidence of any residential  
5 use and that's a critical factor, I think. The critical  
6 factor is when this happened, what was in existence, what's  
7 the evidence of that.

8 The other thing, I think, that's being omitted by  
9 Mr. Eckenwiler is he's focusing on the application that says  
10 250 square feet. That would be a 16 by 16 room.

11 And the other applications that we've submitted  
12 show areas of 100 feet, which would be 10 by 10, meaning that  
13 number was meaningless.

14 I don't know why they put in 250 or 100 square  
15 feet, but clearly the -- this C of O itself would rule over  
16 any information that conflicts with that C of O that's in the  
17 application.

18 This C of O -- the 1994 C of O authorizes use of  
19 the first floor. It doesn't say part of the first floor, it  
20 doesn't say a suite on the first floor, and it doesn't have  
21 a square footage number, which it normally wouldn't.

22 C of Os typically say part of the first floor, or  
23 they say first and second floor, or they say the entire  
24 building.

25 So, what the zoning administrator had in front of

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1 him was the last C of O authorizing use of the entire first  
2 floor for a nonresidential use. No evidence of there being  
3 any underlying residential use.

4 And because it's not a nonconforming use, the  
5 three-year safe harbor doesn't apply. So, there was no need  
6 to go to that analysis.

7 If he did have to go to that analysis, I would  
8 argue that because the structure is gutted, there is evidence  
9 that there was no intent to abandon that use. There was no  
10 residential use inserted at that time.

11 So -- but if we're on the structure, I think  
12 that's it. So, that's all I have to add. Thank you.

13 BZA CHAIR HILL: Commissioner Shapiro?

14 MEMBER SHAPIRO: Thank you, Mr. Chair.

15 So, Mr. Sullivan, now you got me confused again.  
16 In listening to Mr. LeGrant, what I was hearing him say over  
17 and over again is the square footage just isn't relevant  
18 because the uses were grandfathered in.

19 Now, you're going back and arguing around -- or  
20 making the case around evaluating the square footage, how  
21 much of the square footage is being used.

22 MR. SULLIVAN: What I understood him to mean is  
23 that the square footage wasn't relevant because there was  
24 evidence that the entire first floor was approved as  
25 nonresidential and used as nonresidential, and there was no

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1 evidence that that area was ever expanded structurally.

2           So, he didn't have to go into an analysis of a  
3 specific gross square number because the entire first floor  
4 was included. That's how I understood it.

5           MEMBER SHAPIRO: And do you agree with that? Do  
6 you disagree with that? Do you agree with some of that?  
7 Where are you in relation to --

8           MR. SULLIVAN: No, I agree with that entirely. The  
9 -- you're required to have a C of O -- every owner is  
10 required to have a C of O for that use in that space.

11           And that space is the first floor with no  
12 limitations, according to the 1994 C of O.

13           MEMBER SHAPIRO: Alright. Thank you.

14           Thank you, Mr. Chair.

15           MEMBER JOHN: Mr. Chair, Mr. Sullivan, you're  
16 divorcing the application from the face of the C of O and all  
17 of the C of Os just say first floor.

18           MR. SULLIVAN: I'm saying that the application does  
19 not overrule the face of the C of O. And C of Os say -- they  
20 say different things.

21           Sometimes they say, part of first floor.  
22 Sometimes they might put a square footage number. I haven't  
23 seen that too often.

24           They'll list basement, they'll list floors mainly,  
25 but I have seen C of Os that have partial floors listed or

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1 suite numbers.

2 MEMBER JOHN: Thank you.

3 BZA CHAIR HILL: Okay. That was Ms. John.

4 Mr. Hart, do you have any questions for Mr.  
5 Sullivan?

6 VICE CHAIRPERSON HART: Not at this time.

7 BZA CHAIR HILL: Mr. LeGrant, do you have any  
8 questions of Mr. Sullivan?

9 MR. LEGRANT: I do not.

10 BZA CHAIR HILL: Mr. Green, do you have any  
11 questions for Mr. Sullivan?

12 MR. GREEN: No, I do not.

13 BZA CHAIR HILL: Commissioner Eckenwiler, do you  
14 have any questions for Mr. Sullivan?

15 MR. ECKENWILER: No questions, Chairman Hill.

16 BZA CHAIR HILL: Okay. Mr. Sullivan, what's going  
17 on in the basement?

18 MR. SULLIVAN: To my knowledge, that's not included  
19 in this C of O.

20 BZA CHAIR HILL: So, then it's -- oh, my gosh. I  
21 know I'm opening up a can here. I'm just trying to get at --  
22 so, then what happens in the basement now?

23 MR. SULLIVAN: I don't have any knowledge on that.

24 BZA CHAIR HILL: Okay. So, then, Mr. LeGrant --  
25 I mean, to kind of go with this thing again, if there's no

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1 knowledge about what has been going on in the basement, so,  
2 therefore, it would be, what, residential?

3 MR. LEGRANT: Well, in this scenario in which an  
4 application was presented to me about the use of the  
5 basement, you would go into an analysis of what was -- what  
6 was there in terms of the records that -- first of all, what  
7 the property owner would say what was that used for.

8 And then we would look at any historical records  
9 of the use of that to help determine what are zoning -- which  
10 applicable zoning regulations would come in to play.

11 BZA CHAIR HILL: Got it. So, right now you don't  
12 -- so, right now, Mr. Sullivan, there's no C of O for the  
13 basement?

14 MR. SULLIVAN: Not that I know of. All I have is  
15 the C of O for the first floor --

16 BZA CHAIR HILL: Okay.

17 MR. SULLIVAN: -- that's right before the board  
18 now.

19 BZA CHAIR HILL: Mr. LeGrant, if something said  
20 basement through third floor and there was a mezzanine, but  
21 the mezzanine wasn't mentioned in the Certificate of  
22 Occupancy, would the mezzanine still be covered?

23 VICE CHAIRPERSON HART: Mr. Chairman, really?

24 BZA CHAIR HILL: That's alright. Never mind.  
25 Never mind.

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1 MR. LEGRANT: Do you want me to answer that,  
2 Chairman Hill?

3 BZA CHAIR HILL: No. Never mind. Never mind.  
4 Never mind. Okay. Alright. Let's see. Okay.

5 Mr. Green, do you have anything you'd like to add  
6 in conclusion?

7 MR. GREEN: Just very briefly, Chairman.

8 I think it's fairly clear through the testimony  
9 of Mr. LeGrant that one is that this retail use is certainly  
10 by right.

11 And secondly, given the historical look of both  
12 C of Os and what the zoning administrator had reviewed and  
13 staff reviewed in issuing the C of O in this case, it was  
14 proper and correct and the C of O conforms to the  
15 regulations.

16 There has been some class distinction in an effort  
17 to demonstrate an error by the zoning administrator. It's  
18 fairly clear the zoning administrator's decision in issuing  
19 the C of O was proper and I want to thank the Board for its  
20 time.

21 BZA CHAIR HILL: Okay. Alexandra -- I mean, Ms.  
22 Cain, what I remember, again, is that the property owner gets  
23 the last word, right?

24 So, the appellant goes next?

25 MS. CAIN: I believe the appellant has the last

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1 word as the moving party.

2 BZA CHAIR HILL: That's what I thought, too; but,  
3 for some reason, I thought that the property owner went last  
4 because it was their property, but okay.

5 So, Mr. Sullivan -- and, Commissioner Eckenwiler,  
6 I see you shaking your head, but I've been in something --  
7 I can't remember what it was -- where the property owner --  
8 I was told that the property owner went last.

9 And so, that's why I'm now somewhat confused, but  
10 -- I don't know. I've been taught many things today that  
11 I'll probably forget.

12 So, Mr. Sullivan, do you have anything you'd like  
13 to add in conclusion?

14 MR. SULLIVAN: I know the board had questions about  
15 how does the 0.5 ever come in to play, and I think there's  
16 several situations where it would.

17 Obviously, new construction. Obviously, if you  
18 had a floor plan on the first floor that was, say, 40 percent  
19 lot occupancy, you were just at 0.4, you could expand to 0.5.

20 Or if at the time that the overlay was adopted,  
21 it was residential or it was not over the 0.5, let's say that  
22 -- let's say it was 50 percent residential and 50 percent  
23 nonresidential upon the adoption of the overlay. Then you  
24 could not expand beyond the 0.5 at that point, too.

25 So, the 0.5 is applicable in several situations.

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1 Just not in the situation where the use of the entire first  
2 floor was nonresidential entirely upon the adoption of the  
3 overlay and was never changed to residential or anything --  
4 never changed to anything but nonresidential, might be more  
5 exact. That's all. Thanks.

6 BZA CHAIR HILL: Alright. Commissioner Eckenwiler,  
7 would you like to give us a conclusion?

8 MR. ECKENWILER: So, Mr. Chairman, if I can just  
9 get a clarification here, I think I'm entitled to do a  
10 rebuttal and then each side does closing arguments; or am I  
11 incorrect in that?

12 BZA CHAIR HILL: That's right. Commissioner, I  
13 think you're right. I'm just getting tired. So, I just got  
14 confused, is what I meant to say by that.

15 MR. ECKENWILER: Okay. No, I just -- it really is  
16 a question.

17 BZA CHAIR HILL: Sure. No. No. No. You're  
18 right. It is rebuttal. So, you get rebuttal.

19 MR. ECKENWILER: Okay.

20 BZA CHAIR HILL: And then they've done their  
21 conclusions, I guess. So, that's good enough for me unless  
22 they want to do more conclusions.

23 So, go ahead and please give us your rebuttal,  
24 Commissioner.

25 MR. ECKENWILER: Okay. And, again, I understand

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1 it's been a long day. I've actually been on the phone with  
2 you since 9:30 this morning. So, I feel exactly how long  
3 it's been.

4 I think I can probably do the rebuttal in five  
5 minutes and then maybe a little additional time for sort of  
6 summing up.

7 If Mr. Young can put up the slide that's labeled  
8 Slide No. 6? Yes. Thank you. So, just to respond to  
9 various arguments that have been made by the property owner  
10 and DCRA, it's true there is a grandfather rule here. I  
11 actually believe that the burden is on them to establish the  
12 grandfathering.

13 I've already shown you what the maximum allowable  
14 FAR is. The burden is then on the property to claim, oh, but  
15 there's an exception that, you know, triggers some different  
16 and greater allowable FAR in this case.

17 Be that as it may, if we look to 11-C Section 201,  
18 that does allow for the continuation of a nonconforming  
19 structure -- and, again, nonconforming structure is how  
20 excess FAR is characterized in the definitions in the zoning  
21 regs, but that's only if it's lawful and existing. And if  
22 there were a lawful, existing nonconformity, it cannot be  
23 enlarged or expanded.

24 Now, let's do these in slightly different order.  
25 Mr. Young, if you can skip ahead to Slide No. 9, please.

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1 Thank you.

2           So, just starting with the lawfulness or not, as  
3 we've already discussed, the last C of O prior to last year  
4 that was issued for this, the applicant very clearly asked  
5 for 250 square feet.

6           The applicant did not say, I want 1500 square  
7 feet, or, I want the entire first floor. It is explicit, and  
8 I've highlighted it there in that extract with yellow  
9 highlighter, 250 square feet and no more is what that  
10 applicant requested.

11           And you may say, well, you know, applicants were  
12 sloppy back then, but you're held to what you write down.  
13 This is an official record and DCRA and the property owner  
14 are not at liberty to simply sort of wish away, oh, well, you  
15 know, it doesn't really mean that.

16           That's what the applicant wrote and that's what  
17 the applicant is bound to. And, therefore, any commercial  
18 occupancy since 1994 that exceeded 250 square feet, like it  
19 or not, was unlawful.

20           And once it's an unlawful occupancy, a  
21 nonresidential occupancy, that would be unlawful and not  
22 subject to the grandfathering rule.

23           So, just to begin with, this 1994 C of O doesn't  
24 help them at all even if the C of O, on its face, just says  
25 first floor, because it is absolutely clear in context what

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1 the applicant expressly requested, whether it was flat cash,  
2 whether it -- you know, whatever the intent was, that was the  
3 number that was written down, but let's -- we don't even  
4 really -- we don't need to resolve that. The Board need not  
5 resolve it.

6           And, Mr. Young, if you can skip back now to -- I  
7 believe it's Slide No. 7. So, the truth is even if the Board  
8 were to find notwithstanding that explicit number, 250 square  
9 feet, on that C of O application in 1994, even if you find,  
10 well, the face of the C of O says you can occupy the first  
11 floor, what is there today, what was there last year when the  
12 C of O was issued, and what has been there if you look at  
13 Case Exhibit 2D for at least five years, and very likely much  
14 longer than that, is an empty shell.

15           And what that means is there is no -- remember,  
16 nonconforming structure goes to the occupancy by a particular  
17 use.

18           So, what the board should look for here is are  
19 there still customer seats? Are there still display cases?  
20 Is there still a place for a cash register? Are there  
21 cabinets? You know, is there anything that physically  
22 embodies that commercial use? And the answer is no.

23           This space has been stripped down to the studs.  
24 The walls are not even finished. There is nothing left here  
25 that physically embodies that commercial use.

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1           So, to whatever extent it existed, whether it  
2 really was only 250 square feet in size or whether it  
3 occupied that entire floor, it's not there anymore.

4           So, the point is not just the store stopped  
5 operating. And, frankly, I would be willing to concede that  
6 if a store stops operating, somebody goes out of business,  
7 but, you know, they leave the booths and the counters and  
8 everything else in there, that's still a store and that's  
9 still grandfathered because the floor area ratio, remember,  
10 the occupancy of that space still exists.

11           You've still got all those physical things, all  
12 those fixtures and furnishings that embody that commercial  
13 use, but that's not the case here.

14           It doesn't exist today. It didn't exist last  
15 year. It didn't exist five years ago. And, again, there's  
16 photographic proof in the records that, that is so.

17           And, Mr. Young, if you can just slide forward to  
18 Slide 8, please, and it's not just my photographs. It's the  
19 plans that have been included online by sales agents who are  
20 offering this property -- this specific property for sale on  
21 behalf of the property owner.

22           So, the property owner's own plan, which you see  
23 here, shows it as a vacant shell. There are no -- you know,  
24 there's, you know, a couple interior walls here at the back  
25 near where some of the mechanicals are -- and that's on the

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1 left-hand side of this rotated drawing -- but there's nothing  
2 else.

3 And so, there's no structure here in this first  
4 floor. It's just a big, empty space and there is nothing  
5 about it that is commercial.

6 There's nothing that remains of whatever the  
7 extent of that prior commercial use was and; therefore, there  
8 is absolutely nothing that's subject to grandfathering  
9 regardless of what went before.

10 So, DCRA cannot tolerably claim that, well, this  
11 is just a continuation, you know, of the nonconforming  
12 structure that's there, because it ain't there.

13 And Mr. LeGrant has already conceded that it's not  
14 the whole building. Remember, you know, he said, you know,  
15 second floor not included. So, this is what you have to look  
16 for.

17 What is the physical build-out? What does the  
18 layout look like inside? And not only has it not been used  
19 as a store in all these many years, there's nothing left of  
20 a store or any other nonresidential use. There's no evidence  
21 of any use whatsoever.

22 And so, I'll pause there. That's the end of my  
23 rebuttal. I do want to do a concluding statement, but  
24 obviously the other parties are entitled to ask me questions.  
25 So, let me just pause.

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1           BZA CHAIR HILL: Mr. Green, do you have any  
2 questions for Mr. Eckenwiler's rebuttal?

3           MR. GREEN: No. No, Mr. Chairman. I do not.

4           BZA CHAIR HILL: Mr. Sullivan, do you have any  
5 questions for Mr. Eckenwiler's rebuttal?

6           MR. SULLIVAN: One quick question.

7           Mr. Eckenwiler, if the tables were turned, if the  
8 application for the C of O identified it as first floor, but  
9 the C of O, on its face, said just 250 square feet, what  
10 would your argument be in that case?

11           What would rule in that case?

12           MR. ECKENWILER: So, just to understand -- and,  
13 again, I'm not trying to be difficult, Mr. Sullivan. You're  
14 talking about the 1994 paperwork?

15           MR. SULLIVAN: Right. Or just generally, but, yes,  
16 in 1994 if it was switched, the 250 and the first floor were  
17 switched, which would rule?

18           MR. ECKENWILER: Sure. So, if the applicant came  
19 in and asked for the entire first floor and the issued C of  
20 O said only 250 square feet, then I think the answer is,  
21 well, you got turned down and, you know, that's all you were  
22 allowed.

23           MR. SULLIVAN: Okay. But in the opposite  
24 situation, they just get whatever they put down, it's not --  
25 it's not what's on the face of the C of O, it's just what you

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1 ask for, as long as what you ask for is less than what's on  
2 the C of O?

3 MR. ECKENWILER: I'm not aware the DCRA has ever  
4 been in the business of just giving away lots of extra  
5 permitted square footage beyond what someone specifically  
6 asks for on the application form.

7 MR. SULLIVAN: So, your position, though, is that  
8 the C of O does not authorize -- the 1994 C of O does not  
9 authorize use of the entire first floor even though it says  
10 that?

11 MR. ECKENWILER: That's correct.

12 As I explained, even if that were true, there  
13 still would be no grandfathering in this case.

14 MR. SULLIVAN: No further questions. Thank you.

15 BZA CHAIR HILL: Okay. I guess I'm a little -- and  
16 I'm going to look to my fellow board members when we get to  
17 talk about this a little bit, but, Mr. LeGrant, I'm going to  
18 walk through a couple of hoops here with me just to make sure  
19 I kind of understand it a little bit as to what I think is  
20 going on.

21 So, again, to go back to that -- and you don't  
22 need to pull up the slide, but about the grandfathering rule  
23 where 11-C DCMR 201 allows for continuation of a  
24 nonconforming structure if it is lawful and existing, the  
25 line I'm looking at, Commissioner Eckenwiler's thoughts, a

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1 lawful, existing nonconformity may not be enlarged or  
2 expanded.

3           So, this isn't enlarged or expanded because the  
4 certificate of occupancies usually just say, like, you get  
5 first floor certificate of occupancy for retail.

6           Whether there's a number there or not, that's not  
7 what really matters. It's just that, that is -- in terms of  
8 your discussion for grandfathering, the first floor said --  
9 the first floor said retail. Therefore, the first floor is  
10 retail.

11           I just need a yes or no answer. Yes?

12           MR. LEGRANT: Well, if I understood your question,  
13 Chairman Hill, is the square footage relevant, I don't want  
14 to say yes or no because we have to look at the constellation  
15 of information.

16           You represented to us the first floor was going  
17 to be used for retail. Our best analysis of the records was  
18 historically the first floor was used for retail.

19           BZA CHAIR HILL: And you're looking -- when you say  
20 the historical analysis, again, there's all these different  
21 -- and this is where I'm getting confused, I guess, there's  
22 all these different C of Os that have square footage  
23 associated with them.

24           So, what got you to the point where it was just  
25 the first floor historically?

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1 MR. LEGRANT: Because when you look at those  
2 applications and the issued certificates of occupancy which  
3 authorized retail for the ground -- for the first floor,  
4 ground floor, and you look at the building, pictures of the  
5 building, that information together, I concluded, was that  
6 the first floor had been continuously used for retail use.

7 BZA CHAIR HILL: Okay. Alright.

8 Mr. Shapiro?

9 MEMBER SHAPIRO: Thank you.

10 Mr. LeGrant, do you factor in -- or how do you  
11 factor in -- I'm building off what Mr. Eckenwiler said -- the  
12 conditions of the first floor, the furniture, fixtures and  
13 equipment, how much and how little?

14 How do you respond to that?

15 MR. LEGRANT: Absolutely. Look, I think what's  
16 critical to understand here is, what aspect of the  
17 nonconforming structure are we talking about.

18 The question at hand or the question before us has  
19 to do with floor area ratio. Floor area ratio is in  
20 relationship to flat area to gross floor area.

21 Gross floor area is defined in the general  
22 regulations as enclosed space. Regardless of that, gross  
23 floor area in this case is being stripped down to the bare  
24 studs, as noted in testimony, the floor area itself remains.

25 The floor area is the key aspect of this. My

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1 experience as zoning administrator is that almost every  
2 retail and food service use that comes in redoes the space  
3 and removes those items.

4 I wouldn't -- I have not taken the stance of  
5 removal of the interior elements of a space that's changed  
6 what is relevant here, which is the gross floor area aspect.

7 BZA CHAIR HILL: Okay. Anybody got any more  
8 questions for anybody?

9 MEMBER JOHN: I have one question, Mr. LeGrant.

10 So, the use would not be extinguished just because  
11 the property is vacant or being renovated?

12 MR. LEGRANT: That's correct.

13 MEMBER JOHN: Is that what I hear you saying?

14 MR. LEGRANT: That's correct.

15 BZA CHAIR HILL: And just to go back to this  
16 earlier one, Mr. LeGrant, if that had been turned into  
17 residential and then they stripped it and gutted it, it would  
18 then be residential, you would have had to come in and -- the  
19 way you would look at it is they have to come in now to  
20 change it back over to retail because it's been residential.

21 MR. LEGRANT: That's correct. The last approved  
22 use is what governs.

23 BZA CHAIR HILL: Got it. Okay. Anybody else got  
24 anything else for anybody else? And, Commissioner, I'll give  
25 you the last word, but Mr. Shapiro?

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1 MEMBER SHAPIRO: Yeah. Just, Mr. LeGrant, the last  
2 approved use is what governs regardless of what percentage  
3 of the floor was the last approved use?

4 MR. LEGRANT: If the use was lawfully approved and  
5 then established, then that becomes the basis of what we look  
6 at as a subsequent use or a change of use, how to regulate  
7 it.

8 MEMBER SHAPIRO: Regardless of how much of the  
9 floor was the last approved use, because now I'm getting  
10 confused about whether that chart matters or doesn't matter.

11 MR. LEGRANT: The floor area that was devoted to  
12 the use is important. It's -- given the evidence before us,  
13 what was the floor area used for?

14 And then that will help us regulate what the  
15 change of use -- what the change of use was -- the scenario  
16 that was posed to us.

17 MEMBER SHAPIRO: And you're saying it's -- from  
18 your perspective, based on the evidence, it is undisputed  
19 that the entire first floor was used for retail, and that's  
20 why you're okay with this?

21 MR. LEGRANT: I have no evidence that other uses  
22 of that first floor have been presented to me. No evidence  
23 of that.

24 MEMBER SHAPIRO: Okay. Thank you.

25 Thank you, Mr. Chair.

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1           BZA CHAIR HILL: Okay. Anybody else want to ask --  
2 anybody else want to punch -- I mean, ask Mr. LeGrant a  
3 question? No?

4           Alright. Commissioner Eckenwiler, do you want to  
5 go ahead and give us a conclusion?

6           MR. ECKENWILER: Alright. Thank you, Chairman  
7 Hill.

8           This case notwithstanding, I think, some of the,  
9 you know, confusion that's been expressed at various points,  
10 really is, I think, extraordinarily simple and  
11 straightforward.

12           So, let's clear away some of the underbrush, okay,  
13 to restate; one, nobody disagrees that the regulations for  
14 this zone is set at 0.5 maximum FAR for nonresidential.

15           And the C of O, on its face, the one that was  
16 issued last year, the 2019 C of O that's being appealed,  
17 exceeds that maximum.

18           What's also not in dispute, and I really want to  
19 emphasize this so the board understands kind of the  
20 consequences of granting the appeal, this is not about  
21 whether or not there can be a retail store at this site.

22           There can. There absolutely can, as a matter of  
23 right use, and the only thing that is in dispute is how much  
24 square footage that nonresidential use may occupy.

25           And so, that brings us to this question about

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1 grandfathering and whether the grandfathering rules exempt  
2 this property from that 0.5 cap on nonresidential uses and  
3 ANC 6C contends that they do not.

4           As I indicated earlier, there has to have been,  
5 you know, a lawful prior use that exceeded these current --  
6 the current cap on FAR.

7           That is something that has to exist today. The  
8 regulation that we were just looking at talks about the right  
9 to continue, but you cannot continue a thing that no longer  
10 exists.

11           And the third, if there was a lawful and existent,  
12 still continuing nonresidential occupancy, you can't expand  
13 or enlarge it. That much is very clear under 201.

14           So, as I've said before, the first argument is  
15 that the 1994 C of O, which is the last one issued before  
16 last year, puts a 250-square-foot cap on the commercial  
17 occupancy. So, that's Argument No. 1.

18           Even if you don't buy that, even if you believe  
19 that the C of O issued in '94, it just said first floor,  
20 doesn't say on its face, 250 square feet, that doesn't matter  
21 because that was valid at the time that that first floor  
22 occupancy, that structure, a nonconformity of structure --  
23 remember, FAR is about physical things.

24           It's not just about how much space there is inside  
25 the four walls, contrary to what Mr. LeGrant said earlier.

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1 It's about what use that space is being put to. And the best  
2 evidence of what the use is is the physical things inside  
3 that space.

4 So, counters, tables, display cases, you know, all  
5 those kinds of things that make a retail store a retail  
6 store. And, as we've established, those physical elements  
7 of the commercial use were demolished.

8 They were demolished voluntarily. There's nothing  
9 in the record that there was even a demo permit. So, they  
10 were removed a minimum of five years ago and, I believe, much  
11 longer than that although I don't have available to me  
12 photographs to show it.

13 So, at the moment that the C of O was issued in  
14 November of last year, the existing first floor commercial  
15 FAR was zero. It was zero.

16 There was nothing left of that commercial use.  
17 No physical embodiment, as I said before, gutted down to the  
18 wall studs.

19 And, therefore, there's no nonconforming FAR, no  
20 nonconforming structure that could be grandfathered and  
21 continued by the new C of O issued in error by the zoning  
22 administrator.

23 And just to wrap up because I think there's some  
24 nice distinctions to be made here; one, I'm not simply saying  
25 because the store was vacant that that terminates that right

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1 to continue the retail use.

2           As I've said before, the store shuts down. You  
3 know, it's not in business for three months, six months,  
4 frankly, even five years, I think.

5           If it still has the tables, the chairs, the  
6 booths, you know, all those physical embodiments that make  
7 that space a commercial space and create that commercially  
8 used FAR, then, sure, that's grandfathered. But we're not  
9 talking about somebody went out of business and the thing  
10 stayed here. This got stripped down.

11           And just to pick up on a point that Mr. LeGrant  
12 tried to make earlier, he said, well, you know, people come  
13 in and they renovate commercial spaces all the time. And  
14 that's true. And how do they do that?

15           They get a permit to build out, you know. They're  
16 going to replace the tables. They're going to put the  
17 counters in a different place and that will be fine.

18           That's not what happened here. This was all taken  
19 out years and years ago. And there was no application for,  
20 you know, a new tenant layout. There's nothing whatsoever.  
21 So, there as a clean break.

22           This is a clear case where there just is no longer  
23 any commercial occupancy. Therefore, no commercial FAR.  
24 Therefore, no nonconforming FAR to continue.

25           And that is why the C of O was issued in error.

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1 And that is why ANC 6C asked the board to grant the appeal.  
2 Thank you.

3 BZA CHAIR HILL: Okay. Thank you, Commissioner.  
4 Alright. Is everyone good in terms of us needing  
5 anything? Okay. Alright.

6 Then I'm going to close the hearing in a minute,  
7 but I just want to see for sure, and then -- well, actually  
8 never mind.

9 I'm going to close the hearing. Okay. Well,  
10 thank you, everyone. I'm closing the hearing. You can stay  
11 here for a minute, Paul. You don't have to pull them yet.

12 So, when are we going to decide this? How much  
13 time do you-all need or what? I'm looking at my board  
14 members.

15 MEMBER JOHN: Next week is fine.

16 BZA CHAIR HILL: Okay. There we go. Okay. Mr.  
17 Moy, we'll put this on for decision next week.

18 MR. MOY: Alright. That would be next Wednesday  
19 decision meeting session on July 8th.

20 MEMBER JOHN: Mr. Chairman?

21 BZA CHAIR HILL: Yes. Do you have a question?

22 MEMBER SHAPIRO: I'm sorry, Board Member John, do  
23 you --

24 MEMBER JOHN: No, I thought you had a question.

25 MEMBER SHAPIRO: I did.

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1 I have a conflict on the 8th, but it's only for  
2 a short period of time. So, the issue for me will be when  
3 we talk about this when we pick this up again on the 8th.

4 So, I'm fine for the 8th, but I need some  
5 flexibility for --

6 BZA CHAIR HILL: I actually might end up having  
7 kind of a conflict on the 8th as well. And so, I'm going to  
8 try do this first, probably, Mr. Shapiro.

9 MEMBER SHAPIRO: So, first is -- well -- so, I have  
10 something at ten o'clock. So, the question is, is a half  
11 hour going to do it?

12 BZA CHAIR HILL: A half hour will do it.

13 MEMBER SHAPIRO: Okay. Then we're fine for the  
14 8th.

15 BZA CHAIR HILL: Okay. Alright. Then we'll see  
16 everybody on the 8th. Commissioner Eckenwiler I just need  
17 to stay. Mr. Sullivan, Mr. LeGrant, Mr. Green -- is that a  
18 parrot in the background?

19 MEMBER SHAPIRO: Oh, sorry. I have to mute my  
20 birds, yes. There are two of them, if that's any help.

21 BZA CHAIR HILL: You have birds?

22 MEMBER SHAPIRO: I don't want to talk about it.  
23 It's upsetting to me.

24 BZA CHAIR HILL: Oh, my God. I have never -- I  
25 didn't know anybody had birds anymore. Wow. Alright. Okay.

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1 Then let's take a break.

2 Commissioner Shapiro, we're going to let you go  
3 because you had a four o'clock hard stop, right? Bye,  
4 Commissioner Eckenwiler. Bye, Mr. Sullivan.

5 (Discussion off the record.)

6 MEMBER SHAPIRO: So, you're going to pull Mr. Hood  
7 back in?

8 BZA CHAIR HILL: We're going to pull Mr. Hood back  
9 in.

10 MEMBER SHAPIRO: Okay. Thank you.

11 BZA CHAIR HILL: And then we'll see you for the  
12 decision at 9:30 next week.

13 MEMBER SHAPIRO: Thank you. Good evening, all.

14 BZA CHAIR HILL: Thank you. And then let's take  
15 a break. You guys want to take a break for, like, ten  
16 minutes?

17 ZC CHAIR HOOD: I'm fine. I'm ready to go.

18 (Laughter.)

19 BZA CHAIR HILL: Alright. I'll see you guys in ten  
20 minutes.

21 (Whereupon, the above entitled matter went off the  
22 record at 3:38 p.m. and resumed at 3:54 p.m.)

23 BZA CHAIR HILL: Okay. Alright. Mr. Moy, you want  
24 to call our next case?

25 (Pause.)

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1 VICE CHAIRPERSON HART: We cannot hear him -- there  
2 you go.

3 MR. MOY: Okay. The board is back in session and  
4 the time is -- after a quick break and the time is at or  
5 about 3:54.

6 And I believe, Mr. Chair, we're going to continue  
7 with the two hearing cases because we have guests in the  
8 hearing -- virtual hearing.

9 BZA CHAIR HILL: Okay.

10 MR. MOY: So, okay. With that, then, parties to  
11 the virtual table to Application No. 20255 of Mid City  
12 Builders, LLC, as amended, for special exceptions under  
13 Subtitle E Section 5201 from the rear addition requirements,  
14 Subtitle E Section 205.4, and under the Voluntary  
15 Inclusionary Zoning modifications, Subtitle E Section 5206.2,  
16 from the minimum lot width requirements, Subtitle E Section  
17 201.4, to subdivide the lot into two record lots with one  
18 flat on each lot in the RF-1 Zone. This is at 3534 13th  
19 Street, N.W., Square 2834, Lot 167.

20 And, again, Mr. Chairman, a reminder to address  
21 the Notice requirements.

22 BZA CHAIR HILL: Thank you, Mr. Moy.

23 Mr. Sullivan, could you introduce yourself,  
24 please, for the record?

25 MR. SULLIVAN: Yes. Thank you, Mr. Chairman and

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1 members of the board. My name is Marty Sullivan here on  
2 behalf of the applicant.

3 BZA CHAIR HILL: Okay. Commissioner Wray, is that  
4 you?

5 MR. WRAY: Yes, I'm here.

6 BZA CHAIR HILL: Okay. Great. Could you please  
7 introduce yourself for the record?

8 MR. WRAY: Sure. Michael Wray, ANC 1A.

9 BZA CHAIR HILL: Okay. Great. Commissioner Wray,  
10 have you been before us before?

11 MR. WRAY: Not virtually, but I've been down to  
12 your --

13 BZA CHAIR HILL: Yeah, you look familiar. Welcome  
14 back.

15 MR. WRAY: Thank you.

16 BZA CHAIR HILL: Mr. Rich, could you please  
17 introduce yourself?

18 MR. RICH: Jordan Rich, vice president, Mid City  
19 Builders, LLC.

20 BZA CHAIR HILL: Okay. Great. Alright, Mr.  
21 Sullivan, if you want to go ahead and walk us through your  
22 application and your client and what you -- how you believe  
23 they're meeting the criteria?

24 I'm going to try to make it a little abbreviated,  
25 if you could, because I don't really have a lot of specific

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1 questions, but we can see -- I see Mr. Hart's hand, but we  
2 can see what other people have as we're kind of going through  
3 this application.

4 Mr. Hart, you had something to say?

5 VICE CHAIRPERSON HART: Notice --

6 BZA CHAIR HILL: Oh, yeah. Right. Sure. Thank  
7 you. And so, that being my comment to Mr. Sullivan.

8 In terms of the notices, again the -- okay. Okay.  
9 So, I see that the affidavit of posting -- there's a waiver  
10 for the posting and the maintenance and then, I guess, also  
11 for the virtual hearing.

12 Mr. Sullivan, can you explain the notice  
13 requirements and why you think that we should be able to move  
14 forward?

15 MR. SULLIVAN: If I could have one second to look  
16 at this?

17 BZA CHAIR HILL: Sure.

18 MR. SULLIVAN: I wasn't aware that we were  
19 requesting any exceptions --

20 BZA CHAIR HILL: Go ahead.

21 MR. SULLIVAN: -- for that.

22 MS. CAIN: Mr. Chairman?

23 BZA CHAIR HILL: Yes.

24 MS. CAIN: I believe the Affidavit of Posting and  
25 Maintenance did come in. I believe they're at Exhibits 37

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1 and 38.

2 BZA CHAIR HILL: Okay. I'm sorry. Then my report  
3 is a little late. Alright. And then -- okay. And then the  
4 letters went out to the 200 footers and the -- I don't have  
5 any issues moving forward.

6 Does the board have any issues with notice?

7 VICE CHAIRPERSON HART: No, sir.

8 BZA CHAIR HILL: Okay. Alright. Alright. So, Mr.  
9 Sullivan, again, why don't you go ahead and walk us through  
10 your presentation, please.

11 MR. SULLIVAN: Okay. Thank you. If Mr. Young  
12 could put up the PowerPoint that we submitted?

13 (Pause.)

14 MR. SULLIVAN: So, this is showing -- the cover  
15 sheet shows the proposed of what is proposed to be built.

16 Next slide, please. Overview of what we're asking  
17 for, we have -- we want to subdivide into two 16-foot-wide  
18 lots and we can -- we're seeking special exception relief.

19 With that, comes an obligation to do one IZ unit  
20 in that development. Originally we were short of the 16  
21 feet. And because we were -- we were about three inches  
22 short, so we were going to ask for a variance.

23 We removed the variance because the applicant,  
24 after submission of the original application, actually  
25 purchased the lot next door and was able to take the -- take

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1 a few inches of width away from that lot. So, now we have  
2 the two 16s and so it's just a special exception.

3 The other relief that we're asking for is relief  
4 from the 10-foot rule. These are two small buildings.

5 The next slide, please. I'll show you the  
6 existing condition. So, the subject property is just a left  
7 half of this semi-detached building and the open lot in  
8 between it and the building to the left.

9 And the applicant managed to purchase 3536 13th  
10 Street, take a few inches away from that, and they're  
11 developing that as a matter of right. 3536, that's an 18-  
12 foot-wide lot.

13 Next slide, please. So, you can see that the two  
14 buildings here, the two of the semi-detached structure. So,  
15 we're asking for relief to go 25 feet past what's the left  
16 side, or the north side, of the structure here, the semi-  
17 detached, but that's going to be demolished and rebuilt as  
18 a matter of right to about the same length.

19 So, we're asking for the 10-foot rule relief, but  
20 there's not going to be a building there -- or there's going  
21 to be a building, but it's the same length. We did include  
22 the shadow study anyway just because that's the existing  
23 condition as of today.

24 Next slide, please. So, those are the two areas  
25 of relief. I think the architect was going to join. If --

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1 Jonathan, are you on? Can you take it over from here? If  
2 not, I will.

3 MR. YOUNG: I do have the architect as she called  
4 in. So, she won't be on the screen, but I can unmute her.

5 BZA CHAIR HILL: Hello?

6 MR. COON: Hello? Are you able to hear me? This  
7 is Jonathan Coon, the architect.

8 BZA CHAIR HILL: Okay. Alright, Mr. Coon. Go  
9 ahead.

10 MR. COON: You're able to hear me?

11 BZA CHAIR HILL: Yes.

12 Mr. Sullivan, what did you want the architect to  
13 testify about?

14 MR. SULLIVAN: Well, if you can't see the  
15 presentation, it would be easier if I do it.

16 BZA CHAIR HILL: Okay.

17 MR. SULLIVAN: So, he was just going to testify as  
18 to the plans. This is the rear of the property. You can see  
19 the subject property on the right.

20 So, our building is going to be coming out not as  
21 far as either one of these two buildings. So, either one of  
22 the two buildings on the side will still be further than all  
23 three buildings, both of the two that are part of this  
24 application and the matter of right building at 3536.

25 Next slide, please. And that's showing just our

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1 subject property and the building to the south.

2           Next slide, please. So, this shows the -- the  
3 darkened area is the existing building. The half of the  
4 semi-detached.

5           And the lined area to the north of that shows the  
6 line of the other building. And you see a line of the  
7 building to the south here, too, on this plat. See that it's  
8 going past ours.

9           And then the -- it's showing the -- underlying  
10 that is showing the proposed footprints of these two  
11 buildings.

12           Next slide, please.

13           Next slide. These are just the floors plans.

14           Next slide.

15           Next slide. And you'll see there's actually a  
16 roof deck. The building to the north, the top story has a  
17 roof deck instead of extending all the way back as well.

18           Next slide, please.

19           Next slide. This is the front elevation.

20           Next slide. And the rear elevation.

21           Next slide, please. And this section.

22           Next slide, please. So, I'll go through the  
23 requirements quickly. We meet the general special exception  
24 requirements.

25           Of course we're just doing flats. This is

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1 permitted. The 16-foot lot width is permitted by special  
2 exception.

3 Next slide, please. So, for the 25-foot rule, the  
4 test is the light and air, of course. And as mentioned, the  
5 building is eventually going to meet it at the same depth.

6 It's owned by the same owner as the applicant, but  
7 we have provided shadow studies which just show some impact  
8 on the backyard to that building.

9 Next slide, please. I'll just go through -- I'll  
10 skip past the shadow studies unless you have any questions  
11 about those.

12 If we could get past the shadow studies, the next  
13 requirement, privacy, use, enjoyment is not impacted, of  
14 course.

15 Those are going to be windows on the side and that  
16 building is going to be gone. Also, both buildings go beyond  
17 it on the north and the south.

18 Next slide, please. So, the view from the street  
19 doesn't substantially visually intrude upon the character,  
20 scale and pattern. Of course we think it's a great  
21 improvement on the existing situation.

22 And the same from the rear. It doesn't extend  
23 beyond the other two buildings. So, it doesn't visually  
24 intrude as viewed from the alley either.

25 Next slide, please. The provisions -- the

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1 requirements for granting relief on the minimum lot area.

2           Next slide, please. We can have the 16-foot lot  
3 if we meet those requirements. Again, there's the general  
4 requirement, which we talked about already.

5           Next slide, please. And would the proposal appear  
6 to tend to affect adversely the use of neighboring property,  
7 we don't think it does.

8           Next slide, please. And, in conclusion, the  
9 Office of Planning is in support as is the ANC. So, if you  
10 have any questions, thank you.

11           BZA CHAIR HILL: Okay. Does the board have any  
12 questions for the applicant?

13           (No audible response.)

14           BZA CHAIR HILL: Commissioner, do you have anything  
15 you'd like to add?

16           MR. WRAY: No. We voted in support and we didn't  
17 have any particular concerns. I'm just here to answer  
18 questions, if necessary.

19           BZA CHAIR HILL: It's Wray, correct, Commissioner?

20           MR. WRAY: Yeah. Right. Ray of sunshine.

21           BZA CHAIR HILL: Oh, God. I love it.

22           Commissioner Wray, have you been around since 9:30  
23 here?

24           MR. WRAY: I have, but I would have been sitting  
25 here no matter what. You've been in my background.

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1 BZA CHAIR HILL: Okay. Has it been somewhat  
2 entertaining, Commissioner?

3 MR. WRAY: Absolutely. Commissioner Eckenwiler is  
4 always interesting to watch.

5 BZA CHAIR HILL: Alright. Well, there you go.  
6 Okay. Alright.

7 Does anybody have any questions for the  
8 Commissioner?

9 (No audible response.)

10 BZA CHAIR HILL: Alright. Let's see. Turning to  
11 the Office of Planning, please.

12 MS. ELLIOT: Good afternoon, Mr. Chairman and  
13 members of the board. I'm Brandice Elliot representing the  
14 Office of Planning. I had to think of it. It's been a  
15 little while.

16 So, the Office of Planning is recommending  
17 approval of the special exception relief that's been  
18 requested. In particular, the relief of the rear wall  
19 extension as well as for the lot dimensions.

20 I'll stand on the record of our report, but I'm  
21 happy to answer any questions you have.

22 BZA CHAIR HILL: Does anybody have any questions  
23 for the Office of Planning?

24 (No audible response.)

25 BZA CHAIR HILL: Ms. Elliot, is there a child in

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1 the background there?

2 MS. ELLIOT: Yeah. A grumpy one that just woke up  
3 from a nap.

4 BZA CHAIR HILL: Bring on the children. I want to  
5 see a child.

6 MS. ELLIOT: He's basically just, you know,  
7 expressing how we all feel at this point, I think.

8 BZA CHAIR HILL: Wouldn't that be great to just  
9 start to cry, just whine -- just start to whine. Oh, okay.  
10 Let's see.

11 Does anyone have any -- did I ask that already?  
12 Does anybody have any questions for the Office of Planning?  
13 No. Okay.

14 Commissioner, you have any questions for the  
15 Office of Planning? You can just nod your head no.

16 Mr. Sullivan, do you have any questions for the  
17 Office of Planning?

18 MR. SULLIVAN: No. Thank you.

19 BZA CHAIR HILL: Alright. Mr. Young, is there  
20 anyone here wishing to testify; do you know? I haven't even  
21 looked at a testify sheet in a while.

22 MR. YOUNG: I don't have anyone on the list.

23 BZA CHAIR HILL: Okay. Alright. Mr. Sullivan, is  
24 there anything you'd like to add in conclusion?

25 MR. SULLIVAN: No. Thank you.

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1 BZA CHAIR HILL: Okay. Then I'm going to go ahead  
2 and close the hearing and we can put this on for decision  
3 next week.

4 Is that good with you, Mr. Moy?

5 (No audible response.)

6 BZA CHAIR HILL: Your microphone is not on.

7 MR. MOY: Yeah. I just clicked on it now, Mr.  
8 Chairman. So, whatever is fine with the board is fine with  
9 me, sir.

10 BZA CHAIR HILL: Okay. Alright. Thank you-all  
11 very much. And, Mr. Moy, you can call our next one when you  
12 get a chance.

13 MR. MOY: That would be Case Application No. 20262  
14 of 741 Morton LLC --

15 BZA CHAIR HILL: Mr. Moy, hold on one second.

16 Mr. Young, I guess you can excuse everyone who is  
17 not -- are you guys here for the next one? Mr. Sullivan and  
18 Commissioner? Oh, okay. Never mind. I'm sorry.

19 Alright, Mr. Moy. Go ahead.

20 MR. MOY: Application No. 20262 of 741 Morton LLC.  
21 This is a request for zoning relief for special exceptions  
22 under Subtitle U Section 320.2 and under Subtitle E Section  
23 5201, from the side yard requirements, Subtitle E Section  
24 207.3, to construct a third-story addition and a three-story  
25 rear and side addition to an existing semi-detached principal

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1 dwelling unit, and to convert it into a three-unit apartment  
2 house, RF-1 Zone at 741 Morton Street, N.W., Square 2894, Lot  
3 870.

4 BZA CHAIR HILL: Okay. Mr. Sullivan, if you could  
5 introduce yourself for the record, please.

6 MR. SULLIVAN: Thank you. Marty Sullivan on behalf  
7 of the applicant.

8 BZA CHAIR HILL: Commissioner Wray, could you  
9 introduce yourself for the record, please.

10 MR. WRAY: Michael Wray representing 1A -- ANC 1A.

11 BZA CHAIR HILL: Mr. Sullivan, are there some  
12 people here with you? I see, I guess, Mr. Cunningham and  
13 maybe Ms. Stokoe?

14 MR. SULLIVAN: Yes, the architects.

15 BZA CHAIR HILL: Okay. They're both architects?

16 MR. SULLIVAN: Yes.

17 BZA CHAIR HILL: Mr. Cunningham, could you  
18 introduce yourself for the record, please.

19 MR. CUNNINGHAM: Sure. I'm Ralph Cunningham from  
20 Cunningham|Quill Architects in Washington, D.C.

21 BZA CHAIR HILL: Ms. Stokoe or Stoke?

22 MS. STOKOE: Stokoe is correct. I'm Madeline  
23 Stokoe from Cunningham|Quill Architects.

24 BZA CHAIR HILL: Okay. If you wouldn't mind just  
25 muting your lines for now unless we need you?

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1           Mr. Sullivan, if you want to go ahead and walk us  
2 through your application and how you believe you're meeting  
3 the standard for which we should grant the application?

4           I'm going to put 15 minutes on the clock just so  
5 I know where we are and you can begin whenever you like.

6           MR. SULLIVAN: Thank you, Mr. Chair.

7           MEMBER JOHN: Mr. Chairman.

8           BZA CHAIR HILL: Oh, I'm sorry, Ms. John.

9           MEMBER JOHN: Can you discuss the notice  
10 requirement?

11          BZA CHAIR HILL: Thank you, Ms. John.

12          Let's see. So, motion to waive 21-day filing  
13 deadline. OAG says moot because -- okay. So, that's moot  
14 because we're more than 21 days before the rescheduled  
15 hearing.

16          Mr. Sullivan, did you post and give us the posting  
17 and the maintenance?

18          MR. SULLIVAN: Yes. You should have all that.

19          BZA CHAIR HILL: Okay. How was the actual notice  
20 of the virtual hearing provided, Mr. Sullivan?

21          MR. SULLIVAN: However it's required. I don't --  
22 I'm actually not familiar with --

23          BZA CHAIR HILL: That's fine.

24          MR. SULLIVAN: -- the actual mechanics of it.

25          BZA CHAIR HILL: It was probably, I guess, in the

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1 posting, I would assume -- oh, Commissioner Wray?

2 MR. WRAY: It's mailed to the people within 200  
3 feet.

4 BZA CHAIR HILL: Okay. So, we got the 200 footers.  
5 I guess -- anyway, okay. So, I don't have any issues with  
6 the posting.

7 Does anybody have any issues with the posting?  
8 The board, I'm looking at your faces. Nobody is raising  
9 their hand. Alright. So, the posting is fine.

10 So, Mr. Sullivan, you can begin whenever you like.

11 MR. SULLIVAN: Thank you, Mr. Chair.

12 If Mr. Young could put up the PowerPoint, please,  
13 and go -- so, here you see the front elevation.

14 If you could go to slide 2, please, I'll give a  
15 brief overview. Then I'll turn it over to Mr. Cunningham to  
16 explain the project.

17 We're asking for two special exceptions -- two  
18 areas of special exception relief and two waivers within one  
19 of --

20 BZA CHAIR HILL: Mr. Sullivan, I'm going to  
21 interrupt you. You've got 41 slides in your deck.

22 MR. SULLIVAN: We'll go through them quick.

23 BZA CHAIR HILL: Okay.

24 MR. SULLIVAN: I promise.

25 BZA CHAIR HILL: I think COVID is getting you guys,

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1 like, more busy on your slide decks. I just want to let you  
2 know.

3 MR. SULLIVAN: Well, some -- you know, I want to  
4 include everything in case questions come up and you have it  
5 all in front of you, but of course I don't intend to --

6 BZA CHAIR HILL: That's alright.

7 MR. SULLIVAN: -- walk through every piece.

8 BZA CHAIR HILL: I was kind of just making a joke.  
9 I shouldn't try.

10 Alright, Mr. Sullivan. Go ahead.

11 MR. SULLIVAN: So, the special exception, we're  
12 asking for a special exception under U 320 to convert to a  
13 three-unit building.

14 And within that we're asking for a waiver of the  
15 10-foot rule -- we're going 18 feet past the adjacent  
16 property to the left, 743 Morton -- and a waiver from the  
17 prohibition against modifying architectural elements.

18 Now, we have kept -- after discussion with the  
19 ANC, we decided to keep the turret and the porch roof. And  
20 so, it didn't actually change any of the architectural  
21 elements, but the zoning administrator interprets a change  
22 to architectural elements as any addition that's closer than  
23 three feet to that architectural element.

24 And because we have that and I had some discussion  
25 with the Office of Planning, they didn't think we needed to

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1 ask for a waiver, but I wanted to make sure we did because  
2 I think the zoning administrator could see it differently and  
3 ask for that three-foot setback. So, we're asking for that.

4 And then we're asking for special exception relief  
5 to eliminate an existing, conforming side yard. And I could  
6 turn it over to the architect now and if you could proceed  
7 to the next slide, please.

8 MR. CUNNINGHAM: Sure. Thank you, Mr. Sullivan.  
9 Again, I'm Ralph Cunningham from Cunningham Quill here in  
10 Washington. The subject property is shown in the aerial  
11 photo in front of you.

12 One thing that I want to point out about this  
13 block is that it is quite deep and you can see that there is  
14 a significant amount of light and air on the interior of the  
15 block.

16 And, also, the block is improved with a variety  
17 of different kinds of buildings, different heights of  
18 buildings. So, we think that this will fit in well with  
19 that.

20 Next slide. The existing building, you see the  
21 aforementioned turret that Mr. Sullivan mentioned. And, you  
22 know, the block has a variety of architectural  
23 embellishments. This being one of them.

24 So, what you see in that photograph will remain  
25 and the addition is behind it extending up from the upper

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1 roof that you see on the upper left on the right slide.

2           Next. These are context photos of the block.  
3 And, again, you can see what I was talking about earlier.  
4 This is, you know, a block with a lot of variety of  
5 architecture, styles, heights, et cetera.

6           Next. And also in the rear you have a kind of  
7 similar condition. And you get a sense of the state of  
8 disrepair of the existing building. You also see the side  
9 yard on the left which opens onto Morton Street.

10           Next. Again, these are neighboring houses and,  
11 again, you can see the variety here.

12           Next. More variety.

13           Next. Okay. And then this is what I was talking  
14 about earlier where this block is really quite deep and  
15 there's a lot of room on the interior of the block.

16           Next. So, when we -- this is the existing site  
17 plan. You see the turret on the left, or the bay in the  
18 turret, the two-story brick building, the very large backyard  
19 and the two existing parking spaces, as well as the side yard  
20 which would be on the bottom of the slide.

21           Next. So, what we are doing is we are in-filling  
22 the side yard, which is, again, on the bottom of the slide.  
23 Toned is the existing bay and with the turret above.

24           And then on the right you can see the 18-foot  
25 extension in the rear. The rest of the yard remains. I want

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1 to point out that we are significantly under the allowable  
2 lot occupancy here.

3           Next. I'm not going to go through all of these  
4 plans.

5           Next. But, what I will say is that it's a very  
6 simple building. Mr. Sullivan mentioned earlier that there  
7 are three units. It's just one per floor. There is no  
8 basement.

9           Next. And, again, so this would be the top floor  
10 and you see that the turret remains at the bottom of the  
11 slide.

12           Also, you see on the left at the upper part of the  
13 slide there is a porch on the rear of the building. And that  
14 will be screened from the neighbor by a privacy screen.

15           Next. Roof plan, there is no roof deck. So, any  
16 exterior space associated with the units are contiguous with  
17 them on that floor.

18           Next. So, here you have the existing and  
19 proposed. You see the existing building. The foreign stone  
20 will be removed and replaced by siding, which we think is  
21 under that. It's probably something like German siding. And  
22 then the addition or the -- yeah, the addition sort of  
23 extends up and around the building.

24           The existing front door is used as an entrance to  
25 Unit 1 on the ground floor, and the other two unit entrances

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1 are on the right.

2           Next. The rear elevation will also be siding and  
3 there are a variety of decks or -- that I mentioned earlier  
4 on the right.

5           Next. And the section looking at the adjacent  
6 structure and those privacy panels that I mentioned earlier.

7           Next. Again, this section is very simple. Just  
8 one unit per floor.

9           Next. And then Mr. Sullivan.

10          MR. SULLIVAN: Thank you, Mr. Cunningham.

11          So, the requirements -- we meet the special  
12 exception general requirements. The two requirements that  
13 I'll focus on -- and if you have any other questions, we can  
14 answer those -- is the typical ones, the light and air and  
15 privacy.

16          So, we're asking to go eight feet past the ten-  
17 foot rule limit and we have a shadow study provided. We can  
18 go through the shadow study in detail or -- that starts at  
19 slide 26.

20          BZA CHAIR HILL: That's alright, Mr. Sullivan.  
21 I've been flipping through your slide deck the whole time  
22 here. I don't think we need to go through the shadow study.

23          MR. SULLIVAN: Okay. Yeah, basically, I mean,  
24 there's minimal impact from that. The key thing about the  
25 privacy is that we have that deck on the northeast corner

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1 that's overlooking the yard of the neighbor at 743.

2 And so, we've worked with them and the ANC to put  
3 privacy screening up on that. And I think you saw the slide  
4 on that.

5 And the light and air and privacy test relayed as  
6 well to the side yard relief. And clearly there's no impact  
7 on that because it's not -- that building there doesn't have  
8 windows facing us.

9 And so, there's no windows on our side either.  
10 So, no privacy issue and no impact on the light and air --  
11 or no substantial negative impact on light and air in the  
12 other direction.

13 I think that's -- if the board has any other  
14 questions, I'll leave it at that.

15 MR. CUNNINGHAM: Can we just go to the last slide,  
16 please.

17 MR. SULLIVAN: Yeah, one more.

18 MR. CUNNINGHAM: One more.

19 MR. SULLIVAN: I think the last slide we just want  
20 to point out that we have support of the ANC. Thank you.

21 BZA CHAIR HILL: Okay. Thank you, Mr. Sullivan.  
22 Does the board have any questions for Mr.  
23 Sullivan?

24 VICE CHAIRPERSON HART: Yeah, Mr. Chairman.

25 So, the question, I guess, is for Mr. Cunningham

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1 regarding this -- the turret. And if you could talk a little  
2 bit about the decision to -- I don't know. How you've  
3 designed it, it seems as though it is reducing the prevalence  
4 or prominence of the turret.

5           And it's really kind of -- it's almost making it  
6 somewhat disappear because the facade that is attached to it  
7 is very close.

8           If you have the separation of even three feet or  
9 two feet, you at least have a -- and I know this is not a  
10 full turret. So, it's kind of a faux turret. But if you  
11 could just talk a little bit about that, I'd appreciate it.

12           MR. CUNNINGHAM: Sure. So, if you look at that  
13 turret as a bit of history, it is quite odd because it's not  
14 a complete shape, you know. If you think about it like an  
15 octagon, it's really like a half an octagon.

16           So, we thought that it was best to allow its  
17 historical profile to remain exactly the way it is and just  
18 attach directly to the back of it. So, that was our  
19 reasoning for that.

20           You know, that whole porch and turret assembly is  
21 actually about four feet deep to the sidewalk. So, there is  
22 more depth there than it kind of looks.

23           So, this is why we're a little confused about the  
24 sort of zoning interpretation of that, but we just thought  
25 we'd bring it up anyway.

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1           VICE CHAIRPERSON HART: Yeah, no, I appreciate it.  
2 I guess if you look at slide 16 -- you don't have to change  
3 to it.

4           I'm just saying the slide that I looked at was the  
5 -- not just what was existing and proposed, but the next-door  
6 house actually has a turret that's -- you know, the roofline  
7 is -- or the roof is just, you know, just below it and it  
8 actually gives a kind of prominence that you kind of  
9 understand.

10           But because the point of the turret that you-all  
11 are -- you know, the height of it and because your building  
12 is lower, you don't have that same proportionality and it  
13 kind of throws it off a bit, to me.

14           And so, I don't want to have a whole conversation  
15 about it. It was more just I'm -- I understand that it can  
16 be somewhat difficult and I just -- I'm just not sure how  
17 successful it is.

18           MR. CUNNINGHAM: It's an interesting question  
19 because if I had my druthers I'd rebuild that sort of to look  
20 like the one on the right, you know, which is a much more  
21 substantial and sort of, you know, realistic, you know,  
22 architectural embellishment.

23           This one is almost like it sort of came out of a  
24 catalog and got cut in half.

25           VICE CHAIRPERSON HART: Yeah. And it's somewhat

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1 truncated.

2 MR. CUNNINGHAM: Yeah.

3 VICE CHAIRPERSON HART: I mean, it -- but then it  
4 actually -- so, the proportions are off.

5 MR. CUNNINGHAM: Right.

6 VICE CHAIRPERSON HART: What actually kind of threw  
7 me was when I was trying to figure out what is right behind  
8 it.

9 And I -- there are kind of -- it looks like window  
10 panels or maybe they're just -- in the facade I can't quite  
11 figure them out.

12 MR. CUNNINGHAM: In the large facade?

13 VICE CHAIRPERSON HART: Yeah.

14 MR. CUNNINGHAM: Yeah, so those -- they're not  
15 windows. The gray panels are just panels that -- so, the  
16 glass is on the left and the right there.

17 So, we thought that it's best to have sort of a  
18 little bit of a brown for that turret to be against.

19 VICE CHAIRPERSON HART: And you kind of have a  
20 little bit of a transoms, you know, that's kind of helping  
21 to tie that --

22 MR. CUNNINGHAM: Right. We're trying to tie to all  
23 horizontal across.

24 VICE CHAIRPERSON HART: Yeah. Okay. Thank you.

25 MR. CUNNINGHAM: Okay. Thank you.

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1 BZA CHAIR HILL: Okay. Anyone else?

2 Commissioner Wray, did you have anything to add?

3 MR. WRAY: Again, we voted in support and I am the  
4 immediate neighbor. So, when he says he's got the ANC  
5 support and the neighbor's support, it's the same person.

6 And I appreciate the retention of the turret.  
7 This was actually something that we talked quite a lot about  
8 at the ANC.

9 So, it was important not only to me, but to other  
10 commissioners that we try to maintain some look and feel of  
11 the existing.

12 And as I mentioned in our report, they've added  
13 that privacy screening. That was something that I wanted to  
14 see given that unlike some of the other balconies, this faces  
15 to the side instead of to the back.

16 And I thought that the screening would help that,  
17 but we're in support of all the other relief and I'm here to  
18 answer your questions if you have them.

19 BZA CHAIR HILL: Okay. Thank you, Commissioner.

20 Actually, I mean, I'm not going to add them in as  
21 conditions because they are things that are in the plans now.  
22 And so, that's the plans that we're approving and you seem  
23 to be not meeting them. So, that's okay.

24 MR. WRAY: It is. And that's again why I'm here.  
25 Sometimes these things change between when we see them and

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1 when you get them, and I just wanted to make sure that  
2 nothing got changed.

3 BZA CHAIR HILL: Okay.

4 VICE CHAIRPERSON HART: Mr. Chairman.

5 BZA CHAIR HILL: Yes, please. Go ahead.

6 VICE CHAIRPERSON HART: So, back at the turret, Mr.  
7 Wray -- Commissioner Wray, thank you for, you know, letting  
8 us know where you were with regard to -- where your house is  
9 with regard to this property.

10 Do you have -- is this -- the turret that's on  
11 this particular building, do you see something similar in the  
12 street or a similar way in which the applicant has addressed  
13 that, you know, with something that's directly behind it like  
14 that or do you have some -- I don't know.

15 MR. WRAY: No, there is no other context. There  
16 are only two turrets on the block. The one immediately next  
17 to them and then this one. And there is no other half turret  
18 like this at all.

19 Most of the other homes are just, you know, square  
20 with a very simple, you know, architectural feature at the  
21 top.

22 VICE CHAIRPERSON HART: Thank you very much.

23 BZA CHAIR HILL: Okay. Could I turn to the Office  
24 of Planning, please.

25 MR. MORDFIN: Hi. Good afternoon. I'm Stephen

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1 Mordfin with the Office of Planning. And the Office of  
2 Planning supports this application and find that it's in  
3 conformance with the requirements for the special exceptions  
4 for the three items that the applicant has brought forward  
5 and is available to answer any questions. Thank you. Did  
6 you hear me?

7 BZA CHAIR HILL: Does any -- Yes, I did. Thank you.

8 MR. MORDFIN: Oh, okay. Good.

9 BZA CHAIR HILL: I was having trouble with my  
10 microphone. Does anybody have any questions for the Office  
11 of Planning?

12 Mr. Sullivan, do you have any questions for the  
13 Office of Planning?

14 MR. SULLIVAN: Thank you.

15 BZA CHAIR HILL: Okay. Mr. Young, is there anyone  
16 here wishing to testify either in favor or in opposition?

17 MR. YOUNG: I don't have anyone.

18 BZA CHAIR HILL: Okay. Alright. Mr. Sullivan, is  
19 there anything you'd like to add at the end?

20 MR. SULLIVAN: No thank you.

21 BZA CHAIR HILL: Okay. Alright. Then I'm going  
22 to go ahead and close the hearing unless a board member  
23 raises their hand.

24 BZA CHAIR HILL: Alright. I'm going to go ahead  
25 and close the hearing and then set this for decision next

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1 week.

2 So, July 8th, Mr. Moy?

3 MR. MOY: Yes. That's correct, sir.

4 BZA CHAIR HILL: Okay. All right. Thank you all  
5 very much.

6 Commissioner Wray, I hope it was entertaining.

7 MR. WRAY: It was.

8 BZA CHAIR HILL: All right. Thank you.

9 (Whereupon, the above-entitled matter went off the  
10 record at 4:29 p.m.)

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C E R T I F I C A T E

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In the matter of: Public Hearing

Before: DCBZA

Date: 07-01-20

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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