

GOVERNMENT OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

OCTOBER 21, 2020

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 9:48 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. Hill, Chairperson  
LORNA JOHN, Vice-Chairperson  
CHRISHAUN SMITH, Board Member

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD, Chairman

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
PAUL YOUNG, Zoning Data Specialist  
SARA A. BARDIN, Director, Office of Zoning

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

DANIEL BASSETT, Esquire

The transcript constitutes the minutes from the Regular Public Hearing held on October 21, 2020

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(9:48 a.m.)

CHAIRPERSON HILL: I think, Mr. Young, there's another Commissioner we need, correct?

MR. HOOD: All right. Good morning, everyone.

CHAIRPERSON HILL: Good morning, Chairman Hood.

All right. I'm going to go read the hearing session.

The hearing will please come to order. Good morning, ladies and gentlemen. We are convened and broadcasting this public hearing by video conference. This is the October 21st, 2020 public hearing of the Board of Zoning Adjustment, District of Columbia. My name is Fred Hill, Chairperson. Joining me today is Lorna John, Vice Chair; Chrishaun Smith, Board member; and representing the Zoning Commission is Chairman Anthony Hood.

Today's hearing agenda is available to you on the Office of Zoning website. Please be advised this proceeding is being reported by a court reporter and is also webcast live via WebEx and YouTube Live. The webcast video will be available on the Office of Zoning's website after today's hearing.

Accordingly, everyone who is listening on WebEx or by telephone will be muted during the hearing, and only persons who have signed up to participate or testify will be unmuted at the appropriate time. Please state your name and home address before providing oral testimony or your presentation. Oral presentations should be limited to a summary of your most important points.

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1 When you're finished speaking, please mute your audio so that your  
2 microphone is no longer picking up sound or background noise.

3 If you're experiencing difficulty accessing WebEx or  
4 with your telephone call or if you have forgotten to sign up 24  
5 hours prior to this hearing, then please call our OZ Hotline  
6 number. I'll repeat the number at 202-727-5471. Once again, 202-  
7 727-5471 to sign up to testify and to receive WebEx login or call-  
8 in instructions.

9 All persons planning to testify either in favor or in  
10 opposition should have signed up in advance. They will be called  
11 by name to testify. If this is an appeal, only parties are  
12 allowed to testify by signing up -- if this is an appeal, only  
13 parties are allowed to testify. By signing up to testify, all  
14 participants complete the oath or affirmations required by  
15 Subtitle Y 408.7.

16 Requests to enter evidence at the time of an online  
17 virtual hearing such as written testimony or additional supporting  
18 documents other than live video, which may not be presented as  
19 part of the testimony, may be allowed pursuant to Subtitle Y  
20 103.13 provided that the persons making the request to enter an  
21 exhibit explain how the proposed exhibit is relevant, the good  
22 cause that justifies allowing the exhibit into the record  
23 including an explanation of why the requester did not file their  
24 exhibit prior to the hearing pursuant to Y-206 and how the  
25 proposed exhibit would not unreasonably prejudice any party. The

1 order of procedures for special exceptions and Variances pursuant  
2 -- are in Y-409, the order for appeals are in Y-507.

3           At the conclusion of each case, an individual who is  
4 unable to testify because of technical issues may file or request  
5 to -- may file or file request for leave to file a written version  
6 of the planned testimony to the record within 24 hours following  
7 the conclusion of public testimony in the hearing. If additional  
8 written testimony is accepted, then parties will be allowed a  
9 reasonable time to respond as determined by the Board. The Board  
10 will then make its decision at its next meeting, but no earlier  
11 than 48 hours after the hearing. Moreover, the Board may request  
12 additional specific information to complete the record. The Board  
13 and staff will specify at the end of the hearing exactly what's  
14 expected and the date when persons must submit the evidence to the  
15 Office of Zoning. No other information shall be accepted by the  
16 Board.

17           The Board's agenda may include previous cases set for  
18 decision. After the Board agenda (audio interference), the Office  
19 of Zoning and Consultation with myself will determine whether a  
20 full or summary order may be issued. A full order is required  
21 when the decision it contains is adverse to a party including an  
22 affected ANC. A full order may also be needed if the Board  
23 decision differs from the Office of Planning's recommendation.  
24 Although the Board favors the use of summary orders whenever  
25 possible, an applicant may not request the Board to issue such an

1 order.

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

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

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

19           MR. MOY: Good morning, Mr. Chairman, and members of the  
20 Board. We do, but first -- but to announce for the record that  
21 two case applications that were originally on today's docket have  
22 been postponed. And they are Case Application No. 20288 of  
23 Shannon Perry, postponed to November 4th, 2020, and the other is  
24 Case Application No. 20261 of Ramon Argueta, A-R-G-U-E-T-A,  
25 rescheduled to December 9th, 2020.

1           There are a few other preliminary matters, but I would  
2 suggest for efficiency the Board address those when I call the  
3 case.

4           CHAIRPERSON HILL: Okay. Great. Mr. Moy, if you would  
5 please call our first case.

6           MR. MOY: Okay. This would be Case Application No.  
7 20287 of Alozie, A-L-O-Z-I-E, Uneze, U-N-E-Z-E, captioned and  
8 advertised for special exception under the home occupation use  
9 requirement, Subtitle U, Section 251.1(e)3 and 251.6 to expand an  
10 existing child development home from 9 to 12 children, R-3 Zone.  
11 This is 4501 4th Street Northwest, Square 3308, Lot 39.

12           CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.

13           Let's see if -- Mr. Young, if you want to -- is  
14 everybody in?

15           MR. YOUNG: Yeah.

16           CHAIRPERSON HILL: Okay.

17           Is it Ms. Kamara?

18           MS. KAMARA: Yes, sir.

19           CHAIRPERSON HILL: Could you please introduce yourself  
20 for the record?

21           MS. KAMARA: My name is Marina Kamara. I reside at 4501  
22 4th Street Northwest, Washington D.C. 20011. And I am the owner  
23 of the child development home that -- my husband is the owner of  
24 the house, and I have his permission to speak on his behalf.

25           CHAIRPERSON HILL: Okay.

1           Let me see. Is there something, Mr. Rice, in the record  
2 to that effect?

3           MR. RICE: Yes, sir.

4           CHAIRPERSON HILL: Okay. Great. Thank you.

5           All right. Ms. Kamara -- let's see.

6           Before I get started, there -- and this is for the  
7 Board. I guess there was, again, due to a tactical issue, the  
8 notice within the D.C. Register was 19 days prior to the hearing  
9 instead of the 40 days that were required by Y 402.1(a). All of  
10 the other requirements concerning notice were satisfied, meaning  
11 the ANC was notified, the Office of Planning, all the District  
12 agencies, and property owners within 200 feet. I believe that  
13 also the posting was done. And so I believe that notice has been  
14 -- is sufficient. And so I would go ahead and make a motion that  
15 the Board waive that one requirement concerning the D.C. Register  
16 per Section Y 402.11. And I'm just going to do that on my own  
17 motion unless anyone has any objection, and if so, then one of my  
18 fellow Board members can raise their hand. I don't see anyone  
19 raising their hand, so we'll go ahead and waive that requirement.

20 All right.

21           So Ms. Kamara, if you want to -- and how do you say your  
22 name again? I'm sorry.

23           MS. KAMARA: Marina is fine. Ms. Kamara.

24           CHAIRPERSON HILL: Kamara. Kamara.

25           MS. KAMARA: Yes.

1           CHAIRPERSON HILL: Okay. So, Ms. Kamara, if you could  
2 go ahead and kind of walk us through your application and tell us  
3 why you believe you're meeting the requirements for us to grant  
4 the relief. And I'm going to put 15 minutes there on the clock,  
5 and you can begin whenever you like.

6           MS. KAMARA: Okay. Good morning, everybody. Thanks for  
7 having me. I am a registered nurse, a stay-at-home mom. And I  
8 decided to open up a home day care three years ago. I have run a  
9 quality home day care since then. I don't know if you guys are  
10 familiar with the Bynum Project. It's research done on the  
11 shortage of quality day cares in Washington, D.C.

12           I am currently licensed for 9 children, and I would like  
13 to request for a special exception to increase my capacity to 12  
14 children which is the maximum for an expanded home childcare  
15 because I have always had a wait list. There's a huge shortage of  
16 day cares in D.C. All of the parents that currently attend my day  
17 care are -- they live in the neighborhood. They all walk to the  
18 neighborhood. I have a couple of families that are actually on  
19 the wait list right now that also reside on the block or a block  
20 away from here.

21           So I'm trying to cater to the community and help out.  
22 Especially with COVID, there's been an increase of shortage for  
23 day care. So I spoke with my licensing inspector. She did agree  
24 that I do have the space for the 12 children, and I am -- I don't  
25 have any opposition to her. I did speak to some of the residents

1 around here. I actually also have a fourth letter of support that  
2 I didn't have time to upload until yesterday, but it was deleted  
3 because it was less than 24 hours. But I couldn't get the letter  
4 due to the COVID restriction, so she said no. If I can ask you to  
5 include it. So that's what it is.

6 CHAIRPERSON HILL: Okay. Thank you, Ms. Kamara.

7 Does the Board have any questions for the Applicant?  
8 Okay.

9 I'm going to turn to the Office of Planning.

10 MR. JESICK: Good morning, Mr. Chairman and members of  
11 the Board. My name is Matt Jesick. I believe my camera is  
12 starting up shortly. There we go. We reviewed the application  
13 against the criteria of Subtitle U Section 251 for an expanded  
14 child development home. And the application meets the criteria,  
15 and, therefore, we are recommending approval. For the rest of my  
16 testimony, I'll rest on the record but would be happy to answer  
17 any questions. Thank you.

18 CHAIRPERSON HILL: Okay. Great. Thank you.

19 Does the Board have any questions for the Office of  
20 Planning?

21 Ms. Kamara, do you have any questions for the Office of  
22 Planning?

23 MS. KAMARA: I don't, sir.

24 CHAIRPERSON HILL: Okay.

25 Mr. Young, there's no one here wishing to testify,

1 correct?

2 MR. YOUNG: That's correct.

3 CHAIRPERSON HILL: Okay.

4 Ms. Kamara, I don't think we need that letter that you  
5 have. I'm just going to -- I just don't think it's something we  
6 need, and so I'm not going to -- I'm not going to leave the record  
7 open for it. Okay. Do you have anything you'd like to add at the  
8 end, Ms. Kamara?

9 MS. KAMARA: I do not, sir. This is my first time doing  
10 this. I hope I'm doing it the right way. No, I don't.

11 CHAIRPERSON HILL: Okay.

12 MS. KAMARA: Thank you.

13 CHAIRPERSON HILL: No, you've done it the right way, Ms.  
14 Kamara. Okay.

15 So -- all right. I'm going to close the hearing.

16 Ms. Kamara, I'm going to excuse you and Mr. Jesick.

17 And is the Board ready to deliberate? I can go ahead  
18 and begin. I didn't have any issues with the application. I  
19 thought it was relatively straightforward. I would agree with the  
20 Office of Planning's analysis. Also, DDOT had no objection.  
21 Also, the ANC 4C was in support as well as OC (ph) as well as  
22 there were some other letters in support. But I do think that the  
23 Applicant has met the standard prep to grant the application.  
24 I'll be voting in favor.

25 Chairman Hood, may I ask for your opinion?

1 MR. HOOD: I would agree with your assessment, Mr.  
2 Chairman. I think the intensity level is very modest and I think  
3 due to the previous track record, it has overwhelming support.  
4 And I will be voting in support of this application.

5 CHAIRPERSON HILL: Great. Thank you.

6 Mr. Smith?

7 MR. SMITH: I do second both you and Chairman Hood in  
8 your analysis of the special exception. I do believe this modest  
9 increase would not have an exceptional impact in the neighborhood.  
10 And I do give great weight to the ANC who is in support of this  
11 application of this request and to the OP report. So I will be  
12 voting in support of the special exception.

13 CHAIRPERSON HILL: Ms. John? You're on mute, Ms. John.

14 VICE CHAIRPERSON JOHN: I don't have anything to add to  
15 what's been said so far. And I support the application.

16 CHAIRPERSON HILL: Okay.

17 I'm going to make a motion to approve Application No.  
18 20287 as captioned and read by the secretary.

19 And ask for a second, Ms. John?

20 VICE CHAIRPERSON JOHN: Second.

21 CHAIRPERSON HILL: Mr. Moy, the motion has been made and  
22 seconded. Can you please take a roll call vote?

23 MR. MOY: Yes. Thank you, Mr. Chairman. So when I call  
24 your name, if you would please reply with a yes, no, or abstain to  
25 the motion made by Chair Hill to approve the application for the

1 relief requested, seconded by Vice Chair John. Zoning Commission  
2 Chairman Anthony Hood?

3 MR. HOOD: Yes to the motion.

4 MR. MOY: Mr. Smith?

5 MR. SMITH: Yes to approve.

6 MR. MOY: Vice Chair John?

7 VICE CHAIR JOHN: Yes to approve.

8 MR. MOY: Chairman Hill?

9 CHAIRPERSON HILL: Yes to approve.

10 MR. MOY: The staff would record the vote as 4-0-1. And  
11 this is on the motion of Chairman Hill to approve the application  
12 seconded by Vice Chair John, also in support Mr. Smith and Zoning  
13 Commission Chair Anthony Hood. We have a Board seat vacant. I  
14 would record the vote as 4 to 0 to 1. Motion carries, sir.

15 CHAIRPERSON HILL: All right. Great. Thank you, Mr.  
16 Moy.

17 I think we should all, like, do calisthenics. We should  
18 just, like, do some jumping jacks or something. Like, I need --  
19 you know, I need to wake up. I don't know. I'm sorry. Okay.  
20 Let's see now.

21 All right. Mr. Moy, you can go ahead and call our next  
22 case.

23 MR. MOY: Mr. Chairman, so this would be Case  
24 Application No. 20293 of Andre Jean, J-E-A-N, captioned and  
25 advertised for a special exception under the requirements of

1 Subtitle U, Section 320.2 to construct a third story addition and  
2 a three-story rear addition to convert an existing attached  
3 principal dwelling unit into a three-unit apartment house, in the  
4 RF-1 Zone at premises 2116 4th Street Northeast, Square 3562.  
5 Once again, Square 3562, Lot 53.

6 (Pause.)

7 CHAIRPERSON HILL: I'm on mute. I've been on mute the  
8 whole time.

9 Mr. Jean, can you hear me?

10 MR. JEAN: Yes. Yes, I can.

11 CHAIRPERSON HILL: Okay. Great. Could you introduce  
12 yourself for the record, please?

13 MR. JEAN: Yes. My name is Andre Jean. I'm the owner  
14 of 2116 4th Street. I've been a D.C. resident since 2012. And I  
15 thank the Board for this opportunity to present the case.

16 CHAIRPERSON HILL: All right. Great. Thank you, Mr.  
17 Jean.

18 Is it Ms. Morris? Is that -- there as well? Are you  
19 there? She is -- I think, Ms. Morris, you're muted. Can you hear  
20 me, Ms. Morris? There you go.

21 Hold on.

22 Ms. Morris? Just give me a second.

23 Mr. Jean, can you hear me?

24 MR. JEAN: Yes, I can hear you. Can you hear me?

25 CHAIRPERSON HILL: Yeah. Do you want to use your

1 camera? Or you don't? It's okay if you don't. I just want to  
2 know.

3 MR. JEAN: Yeah, sure. All right. I don't mind. I was  
4 trying to turn it on. Is it there?

5 CHAIRPERSON HILL: No. There's a button at the bottom  
6 of your screen. It says start video, I think, or stop video, or  
7 something like that. And you just --

8 MR. JEAN: Got it.

9 CHAIRPERSON HILL: Okay. Perfect.

10 Ms. Morris? Okay. Perfect. Ms. Morris, can you hear  
11 me? Can you hear me? I can't hear you, Ms. Morris. I don't know  
12 why I can't hear you. You look like you're not muted. I can see  
13 you. Are you trying to say something? Yeah. Okay. So it's not  
14 -- all right. I don't know

15 MR. YOUNG: If you go to the top of your screen where  
16 it says audio and video, and you click on that and go to speaker  
17 and microphone settings, you should be able to check and make sure  
18 that your microphone is connected.

19 CHAIRPERSON HILL: Mr. Jean, is Ms. Morris -- is she  
20 your architect? Is she presenting in some capacity?

21 MR. JEAN: We're co-presenting. She's my -- she's my  
22 attorney. She's my legal representative.

23 CHAIRPERSON HILL: Okay.

24 MR. JEAN: We can certainly move forward while she's  
25 getting --

1 CHAIRPERSON HILL: All right. Let's give her a second.

2 MR. JEAN: Okay.

3 CHAIRPERSON HILL: Well, maybe let's see what happens.  
4 All right.

5 Mr. Jean, let's go ahead and -- well, let me do a couple  
6 of things.

7 So, first of all, again, there seems to be -- there was  
8 a technical issue on our side in terms of the notice. This was in  
9 the D.C. Register 19 days prior to the hearing instead of 40 days  
10 required by Y 402.1(a). All of the other notice requirements --  
11 I'm speaking to my fellow Board members at this point. All of the  
12 other notice requirements were properly done in terms of the --  
13 the property was posted. The notice was sent to the ANC and the  
14 Office of Planning, all of the other District agencies, and the  
15 property owners within the 200-foot radius. So I believe that the  
16 notice is satisfactory in terms of the public being notified of  
17 this particular hearing.

18 So I'm going to make a motion that we waive that one  
19 issue of the notice in terms of the 40 days required under Y  
20 402.1(a). And I'm making this motion as per Y 402.11. And I'm  
21 just going to go ahead and make that as consensus, meaning on my  
22 own motion, unless I see one of my Board members raise their hand.  
23 I do not. So I guess we're okay.

24 Ms. John, you might want to mute your microphone. Just  
25 to let you know, it's not muted.

1           And then -- let's see.

2           So Mr. Jean, I'm going to go ahead and let you kind of  
3 present your case in terms of what you're trying to do and why you  
4 believe you're satisfying the criteria for us to approve the  
5 application. I'm going to --

6           MR. MOY: Mr. Chairman?

7           CHAIRPERSON HILL: Yes, Mr. Moy?

8           MR. MOY: Sorry to interrupt you. Before you move  
9 forward, there was another matter, the -- if you recall, the  
10 Applicant had made the request to waive the 21-day filing deadline  
11 to submit his updated plans.

12          CHAIRPERSON HILL: Oh, yeah. Thank you. Thank you. I  
13 forgot about that.

14          Yeah. I went to see the updated plans. So I'm  
15 comfortable with the filing deadline being waived. Unless my  
16 fellow Board members have any issue with that, I'm going to go  
17 ahead and make that on my own motion. I do not see you all  
18 raising your hand.

19          So we'll go ahead and allow that into the record, Mr.  
20 Jean. And so, Mr. Jean, you can go ahead and begin whenever you  
21 like.

22          MR. JEAN: Thank you. Thank you again, ladies and  
23 gentlemen. So this situation started with my home catching on  
24 fire last year and last summer. And so it wasn't -- we didn't  
25 come to this like others. It was a lemon situation which we are

1 trying to change for the better to a certain extent. And  
2 considering the lot size of over 2,700 square feet and the  
3 precedent as well as the way we've gone about doing it -- and I  
4 think the -- from what I understand, our approach is within the  
5 initial load structures, just adding the third level and going  
6 back to the -- in accordance with the plans -- and we have a  
7 presentation that I don't know if it made it in time that could  
8 help us sort of talk through this. But --

9 CHAIRPERSON HILL: Yeah, I pulled it up. I mean, Mr.  
10 Young, I think, is going to pull it up. And so you can go ahead  
11 and --

12 MR. JEAN: Great.

13 CHAIRPERSON HILL: -- walk through it.

14 MR. JEAN: Thank you. So yeah. I think the first few  
15 slides are just pictures to help orient. So this is the property,  
16 the front. If you could go to the next slide, please? And that  
17 shows you just the reference to where we are in between 2114 and  
18 2118. And, by the way, 2114 4th, there on the left, was one of  
19 our letters of support that came in as my direct neighbor. Next  
20 slide, please.

21 This is a view from the porch facing across the street.  
22 Next slide. This is a bird's-eye view, if you will. Next slide.  
23 Some of the lot details where the (audio interference) in relation  
24 to the alleys and what-not. Next slide. And this is off of the B  
25 Street alley if you were to sort of drive into the back of the

1 property. Next slide. It's the current backyard and the current  
2 (audio interference). Next slide.

3           And this is an existing single-car garage that I have  
4 there as well as a two-car parking pad. And I think there might  
5 be some confusion of how some of my neighbors may understand this.  
6 This building already exists. And the two parking pads that are  
7 there, we're not proposing any changes to this. Next slide.

8           And this is the continuation of just the back. Next  
9 slide, please. We can go to the next one. It's from the alley.  
10 So this is the -- this is the back property here which we also  
11 own, technically. 315 Rear W, but that's not a part of this  
12 hearing. So next slide, please. And that's just another view. I  
13 think we can skip past the photos. Okay. Perfect.

14           And so I think the next slide here, I think I --  
15 ultimately, what we're asking for is just a special exception  
16 relief from this particular Subtitle E 302.2 basically to go from  
17 one more unit. And considering, again, the lot size and the way  
18 we've designed it to stay within the rules, we would like that  
19 consideration. Next slide. Here's a few of the -- it is and to  
20 be designed. You can go to the next slide.

21           This is ultimately how it looks. And I know that I had  
22 a few of my neighbors who had some concerns in terms of the  
23 property on the right, 2108. A lot of folks are concerned that it  
24 would look like that, and that is not our intent. Being the  
25 person who had to live next to that during construction, I can

1 assure you all that I -- you know, that's not our intent. We are  
2 asking for the height relief and unit relief, but we are staying  
3 within the norms of -- and we are applying the setback required as  
4 you can see in the pictures there. For those that are familiar  
5 with the neighborhood, we are using the exact same architect and  
6 construction team of 2108 4th Street at the end of the block, and  
7 it will look 99 percent like that one. Next slide, please.

8           This is how we break up the units in terms of three.  
9 It's -- I think if you think of it as a one and a half, and then  
10 for the two at the bottom are one and a half each, and then the  
11 peak one at the top is the single unit. Altogether, that's the  
12 relief view, if you will. Next slide. And this is a rendering  
13 that puts it there where you can clearly see the setback as  
14 required by the regulations. And it's also in the detailed plans  
15 that are filed. Next slide, please. And this is a view from the  
16 back. And that may be it from the slide's perspective. And I  
17 don't know if -- Emily, if you are on, if I missed anything if you  
18 can jump in. I know that Emily may have joined via audio at this  
19 time.

20           CHAIRPERSON HILL: Mr. Young, I don't know if Ms. Morris  
21 -- is she calling in?

22           MR. YOUNG: (Audio interference).

23           CHAIRPERSON HILL: Ms. Morris, I see you're kind of  
24 calling in. I see you're calling that 202 number. There you go.  
25 Why don't I do this? I'll come back to you, Ms. Morris, when Mr.

1 Young gets you.

2 Can I turn to the Office of Planning?

3 MS. MORRIS: Can you hear me now?

4 CHAIRPERSON HILL: I can. Ms. Morris, just hang on --

5 MS. MORRIS: Okay.

6 CHAIRPERSON HILL: -- one second, okay?

7 MS. MORRIS: Okay. Sorry.

8 MR. COCHRAN: Thank you, Mr. Chair. This is Steve  
9 Cochran representing the Office of Planning on this case. OP  
10 recommends approval of it. There's just one thing we wanted to  
11 note. We had not evaluated the impact on the buildings to the  
12 west. There are letters in the file from neighbors to the west.  
13 Those -- the beginning of the rear yard of those properties that  
14 have some concerns about privacy are at least 100 feet from the  
15 windows that the Applicant is proposing in the rear addition. So  
16 OP also has no concern about the impact of the proposed addition  
17 on the privacy of the buildings to the west -- to the west which  
18 are on 3rd Street. Other than that, OP stands on the record.

19 CHAIRPERSON HILL: Okay.

20 Does the Board have any questions for the Office of  
21 Planning?

22 Mr. Hood?

23 MR. HOOD: Mr. Cochran, I'm just curious -- and I know  
24 it's not up for the topic. But 2118, I think, which is next door  
25 to this, was that a BZA case as well?

1 MR. COCHRAN: I could not find it in the record. I have  
2 no idea how that got built.

3 MR. HOOD: So that was probably before regulations were  
4 put in place. And Mr. -- oh, I'm asking you -- I'll come back for  
5 your question. So I'm just curious -- you know what? I'll leave  
6 it at that. Thank you, Mr. Cochran. Thank you.

7 CHAIRPERSON HILL: Okay.

8 Anyone else for the Office of Planning?

9 MR. SMITH: I have a question. Just curious, I didn't  
10 see any light studies completed. Was there any concern on the  
11 part of OP that that wasn't completed? Or was it -- was there any  
12 analysis completed on whether there would be impact to the  
13 properties to the south?

14 MR. COCHRAN: I believe that we addressed that in our  
15 report. I did say in the report that the property to the south  
16 may experience minor backyard shadowing in the summer. But it --  
17 the building does not extend more than ten feet past, so we did  
18 not request a shadow study. There certainly wouldn't be any  
19 problem for most of the year. It's only for about three weeks  
20 when the sun rises far enough to the north. And that time of  
21 year, somebody might actually appreciate some shadowing in their  
22 backyard.

23 MR. SMITH: Okay. Thank you. That was the only  
24 question I had.

25 MR. COCHRAN: Thanks.

1 CHAIRPERSON HILL: Okay. Thank you.

2 Mr. Jean, do you have any questions for the Office of  
3 Planning?

4 MR. JEAN: No.

5 CHAIRPERSON HILL: Okay.

6 Ms. Morris, can you hear me now?

7 MS. MORRIS: Yeah, I can hear you. I'm so sorry. I  
8 have a Mac, and I always have problems with this kind of thing.  
9 The first time, at least. So if I could just address the concern  
10 about the shadow. We actually got a letter of support from 2114,  
11 so they're not concerned about the impact on light. That was --  
12 it shouldn't be a problem. And I'd like to address the other  
13 letters of opposition that were just filed the last few days if I  
14 could.

15 CHAIRPERSON HILL: Sure.

16 MS. MORRIS: So the letters -- I actually just saw the  
17 letters from the neighbors on the 3rd Street side. They actually  
18 are talking about the alley lot, not the row house because the  
19 pictures are all of the -- of the alley lot that is actually owned  
20 by Mr. Jean as well, but he's not -- that's not a part of this  
21 case. So it doesn't seem that they're objecting to what the  
22 relief that is requested which is just the three units rather than  
23 two units built within matter of rights -- within the matter of  
24 rights building restrictions in height and width and everything  
25 else.

1           And then there was a filing of the neighbor to the other  
2 side on 4th Street. He was asking about setbacks, if it would  
3 look more like what is down the street which is 2108 which is  
4 exactly how it's designed. So Andre did actually reach out to  
5 that neighbor. And could you tell them what -- you didn't have a  
6 chance to connect with him.

7           MR. JEAN: I did. Yeah. I gave him a call. After  
8 reading his comment, I -- I shared his concern of 2118 in terms of  
9 the way it did look very different from everything. And I lived  
10 right (audio interference) throughout the construction as well as  
11 currently. And I wanted to assure that neighbor, I think it was  
12 Mr. LaSalle (phonetic) that the property that he mentions in his  
13 opposition which is 2108, that's exactly how ours would look. The  
14 only difference is 2108 only has one neighbor since they're at the  
15 end of the block. And we -- so our design looks slightly  
16 different because of the fact that we have one on each side. But  
17 it's the same architect, same construction team.

18           And rest assured, we want the same things. I don't  
19 think we're in opposition to each other. And I just wanted to  
20 communicate that.

21           CHAIRPERSON HILL: Okay.

22           Mr. Cochran?

23           MR. COCHRAN: This is for you, Mr. Chair, just in case.

24           CHAIRPERSON HILL: Thanks. (Audio interference).

25           MR. COCHRAN: Channeling the coffee for you.

1 CHAIRPERSON HILL: You have to get it here somehow.  
2 That's the problem.

3 Let's see. I just want to be clear. This -- the  
4 envelope is matter of right, correct? They're not --

5 MS. MORRIS: Yes, it is.

6 MR. JEAN: That's correct.

7 MR. COCHRAN: They're not looking for any relief. They  
8 have the setback in the front. They've actually worked very  
9 closely with us when we noticed things like there were some  
10 problems with the front porch. They have corrected that so that  
11 they meet all of the regulations. Everything applies.

12 CHAIRPERSON HILL: Okay. All right. Okay. Thank you,  
13 Mr. Cochran. All right.

14 Mr. Young, there is someone here wishing to testify in  
15 opposition; is that correct?

16 MR. YOUNG: Yes. And they are calling in. So I will  
17 unmute them now. And that is Edna Frazier.

18 CHAIRPERSON HILL: Okay.

19 Ms. Frazier, can you hear me?

20 MS. FRAZIER: Yes, I can hear you.

21 CHAIRPERSON HILL: Okay. Great. All right. Ms.  
22 Frazier --

23 I don't know whether it's me or --

24 MS. FRAZIER: (Audio interference).

25 CHAIRPERSON HILL: Can you hear me?

1 MS. FRAZIER: Yes, I can hear you.

2 CHAIRPERSON HILL: Okay. Ms. Frazier, you'll have three  
3 minutes to testify. You can begin whenever you'd like.

4 MS. FRAZIER: Yes. I was concerned about the building  
5 in the center and how far he's going to build the (audio  
6 interference) that's already existing there out into the mid  
7 alley. If it was going to be extended out into the alley or not,  
8 the three-story building that he has there, 2116 4th Street is  
9 what's going to be extended out into the alley, the three-story.  
10 And another question was he is building in the center of the  
11 alley, if he was going to build a three-story building there.  
12 That was my concern.

13 CHAIRPERSON HILL: Okay. Yeah. I can hear you. Yeah.  
14 Ms. Frazier, I mean, I don't think Mr. Jean --

15 Just to answer her question, there's nothing about that  
16 alley property, correct? This is --

17 The design, Ms. Frazier, is just -- is what is in the  
18 record and a variety of the exhibits. I don't know if you had a  
19 chance to look at it. They're going back and up on that one  
20 house.

21 MS. FRAZIER: Right.

22 CHAIRPERSON HILL: So there's not -- they're not doing  
23 anything with the alley property.

24 MS. FRAZIER: Okay. So how far are they extending the  
25 house that's there? How far out to the alley are they extending

1 it?

2 CHAIRPERSON HILL: Give me one second. Give me one  
3 second, Ms. Frazier.

4 Mr. Cochran, you had something to add? You're on mute,  
5 Mr. Cochran.

6 MR. COCHRAN: I suppose I need that coffee myself.  
7 There is another BZA case. It's a separate case for the alley.  
8 That's being handled by a different staff person by (audio  
9 interference). And you'll be seeing that later on. Not today,  
10 but later on this month, I believe.

11 CHAIRPERSON HILL: But that's a different case number.

12 MR. COCHRAN: It is a different case. Yes.

13 CHAIRPERSON HILL: Do you know that case number?

14 MR. COCHRAN: I do not right off the top of my head. I  
15 have asked my colleagues if they can --

16 CHAIRPERSON HILL: Mr. Jean, do you know that case  
17 number?

18 MR. JEAN: I can find it. Emily may have it more  
19 readily available. It's -- hold on one second.

20 CHAIRPERSON HILL: Okay.

21 Ms. Frazier? Ms. Frazier --

22 MR. JEAN: It's 20 -- it's 20307.

23 CHAIRPERSON HILL: Ms. Frazier, can you hear me?

24 MS. FRAZIER: (Audio interference).

25 CHAIRPERSON HILL: Can you hear me?

1 MS. FRAZIER: Yes, I can hear you.

2 CHAIRPERSON HILL: Do you have a pen? Do you want to  
3 write down this case number?

4 MS. FRAZIER: Okay.

5 CHAIRPERSON HILL: Are you ready?

6 MS. FRAZIER: Yes.

7 CHAIRPERSON HILL: It's 20307.

8 MS. FRAZIER: Okay.

9 CHAIRPERSON HILL: So if you go -- if you go to the BZA  
10 website, you can look up that case, and you can see all of the  
11 filings for that case.

12 MS. FRAZIER: Thank you.

13 CHAIRPERSON HILL: Okay?

14 MS. FRAZIER: Okay.

15 CHAIRPERSON HILL: All right. Well, you have a good  
16 day.

17 Does the Board have any questions for the witness?  
18 Okay.

19 MR. HOOD: Mr. Chairman, can I just add? Even if --

20 CHAIRPERSON HILL: Sure.

21 MR. HOOD: -- sorry. She can call the Office of Zoning,  
22 and they will also assist her and give her that information if she  
23 needs it. I just wanted to make sure. The website was not the  
24 only option. She can also call.

25 CHAIRPERSON HILL: Ms. Frazier, did you hear that?

1 MS. FRAZIER: What was the number?

2 CHAIRPERSON HILL: The -- actually, the number of the  
3 Office of Zoning --

4 MR. HOOD: 727 --

5 MS. FRAZIER: 727?

6 MR. HOOD: 727-6 --

7 MS. FRAZIER: 5471?

8 MR. HOOD: No. Ms. Frazier, the telephone number is  
9 202-727-6311.

10 MS. FRAZIER: 6311. Okay.

11 MR. HOOD: That's correct.

12 MS. FRAZIER: All right.

13 MR. HOOD: Thank you.

14 CHAIRPERSON HILL: All right. Everybody's got their  
15 hand up. Give me one second.

16 Ms. Frazier, don't go anywhere.

17 Ms. Morris had her hand up first. Ms. Morris, you had  
18 something to say? I can't hear you, Ms. Morris.

19 Mr. Young, I don't know if you --

20 Still can't hear you, Ms. Morris.

21 MS. MORRIS: I'm on the -- oh, there. I think I'm  
22 there. Can you hear me now?

23 CHAIRPERSON HILL: Yeah.

24 MS. FRAZIER: Yeah.

25 MS. MORRIS: I just wanted to ask Ms. Frazier what her

1 address is so that we can contact her to discuss her concerns  
2 about the other case, the alley.

3 MS. FRAZIER: Yes. That's near my house, back of my  
4 house.

5 CHAIRPERSON HILL: What's your --

6 MS. MORRIS: What is -- what is your address?

7 MS. FRAZIER: 2117 3rd Street, Northeast.

8 MS. MORRIS: Okay. So we will contact you -- yeah.

9 MS. FRAZIER: Okay.

10 MS. MORRIS: To discuss your concerns and make sure that  
11 you --

12 CHAIRPERSON HILL: Okay. Okay. All right. Okay.

13 MS. MORRIS: Yes. Yes.

14 CHAIRPERSON HILL: Mr. Cochran, you had something?

15 MR. COCHRAN: Yes. I just wanted to let Ms. Frazier  
16 know that the hearing for that other case is January 27th of 2021.

17 MS. FRAZIER: 27th, '21.

18 CHAIRPERSON HILL: January 27th, Ms. Frazier.

19 MS. FRAZIER: Okay.

20 CHAIRPERSON HILL: Of 2021. But it seems as though Ms.  
21 Morris, who is the representative for Mr. Jean, is going to reach  
22 out to you.

23 MS. FRAZIER: Thank you.

24 CHAIRPERSON HILL: Okay?

25 MS. FRAZIER: Thank you. Yes. Thank you.

1 CHAIRPERSON HILL: All right. Have a good day.

2 MS. FRAZIER: Thank you. You, too.

3 CHAIRPERSON HILL: Bye, bye. You're welcome.

4 All right. Okay. So Mr. Jean, do you have anything  
5 you'd like to add at the end?

6 MR. JEAN: No. I just want to thank the Board and thank  
7 everyone for their participation and for their consideration.  
8 Thank you.

9 CHAIRPERSON HILL: Okay.

10 Does the Board have any final questions of anybody? All  
11 right. Then I'm going to close the hearing.

12 Mr. Jean, Ms. Morris, Mr. Cochran, bye, bye.

13 Is the Board ready to deliberate? Okay. Let me let our  
14 participants leave. Okay. Great. So I can start. I didn't  
15 really have a lot of issues with the project. I mean, again, it's  
16 within the envelope that they are allowed to build matter of  
17 rights, really just a conversion to the one more dwelling unit. I  
18 would agree with the analysis provided by the Office of Planning.  
19 Also, I will note that ANC 5E was in approval. There are letters  
20 in support from one abutting neighbor.

21 I need to -- Mr. Hood, to your comment, yeah. Before  
22 those regulations changed, I mean, you know, you could fill out  
23 your -- you could fill out the property all the way up to whatever  
24 you were allowed to do before. And I mean -- I mean, I came on  
25 board when all those things were actually going up, and it's just

1 crazy how -- well, not crazy. You just couldn't make such a  
2 larger structure. But I'm kind of throwing that out for  
3 discussion for when you do get around to getting an opportunity to  
4 speak.

5 But in terms of this case, I'm comfortable with -- they  
6 have met the standard for me to vote in favor. And I'll be voting  
7 in favor.

8 Chairman Hood?

9 MR. HOOD: I would agree. I just noted next door is  
10 just totally -- I was just wondering if it was a BZA case. I'm  
11 just glad that we put things in place to kind of guide some of  
12 that development because pop-ups, pop-backs, or whatever you want  
13 to call them were a big issue in the city, and I think we took  
14 care of that. But like I said, they meet all of the zoning  
15 envelope. And I appreciate Mr. Cochran's report. That was very  
16 helpful. But the regulations are the regulations, what they are  
17 whether I agree with them or not. They're the regulations. So I  
18 will be voting in support of it.

19 And I think, unfortunately, the gentleman, Mr. Jean,  
20 said he had a fire. I'm sorry to hear that. But I will say I  
21 don't know whose trash all that is in the back of the alley or if  
22 it's behind his property, but I think if we clean up that area --  
23 Mr. Jean, if you could help get that clean, that may help some of  
24 Ms. Frazier's issues and concerns even before you get this case  
25 20307. I just threw that out there.

1           But I will be voting in support of this case. Thank  
2 you, Mr. Chairman.

3           CHAIRPERSON HILL: Thank you, Chairman Hood.  
4           Mr. Smith?

5           MR. SMITH: I do support this case for all the reasons  
6 that you and Chairman Hood stated. The -- you know, one of the  
7 main concerns that I had, and I brought it up, was how it would  
8 impact the property to the south. But matter of fact, the  
9 property to the south is in support of this application. So this  
10 particular property does meet all of the zoning criteria. And I  
11 do give OP's report great weight, and I will be voting in support  
12 of the application.

13           CHAIRPERSON HILL: Okay.  
14           Ms. John?

15           VICE CHAIRPERSON JOHN: I support the application for  
16 all of the reasons that you all have said. And, in particular, it  
17 meets all of the development standards as well as the standards  
18 for a conversion. And so I would vote to support.

19           CHAIRPERSON HILL: Okay. Great.

20           I'm going to make a motion to approve. I'm going to  
21 make a motion to approve Application No. 20293 as captioned and  
22 read by the secretary.

23           And ask for a second, Ms. John?

24           VICE CHAIRPERSON JOHN: Second.

25           CHAIRPERSON HILL: Mr. Moy, the motion been made and

1 seconded. If you could please take a roll call vote.

2 MR. MOY: Thank you, Mr. Chairman. When I call your  
3 name, if you would please respond with a yes, no, or abstain to  
4 the motion made by Chairman Hill to approve the application for  
5 the relief requested. The motion was seconded by Vice Chair John.  
6 Zoning Commission Chair Anthony Hood?

7 MR. HOOD: Yes to the motion.

8 MR. MOY: Mr. Smith?

9 MR. SMITH: Yes to the motion.

10 MR. MOY: Vice Chair John?

11 VICE CHAIR JOHN: Yes to support.

12 MR. MOY: Chairman Hill?

13 CHAIRPERSON HILL: Yes to support.

14 MR. MOY: The staff would record the vote as 4 to 0 to  
15 1. And this is on the motion to approve the application made by  
16 Chairman Hill and seconded by Vice Chair John. Also in support of  
17 the motion, Zoning Commission Chair Anthony Hood, and Mr. Smith.  
18 We have one Board seat vacant. We would record the vote as 4 to  
19 0 to 1. The motion carries, sir.

20 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Moy.

21 If it's okay with you guys, I think this next one might  
22 go kind of quickly, and then we'll take a break after that if  
23 that's all right? Okay.

24 Mr. Moy, do you want to call our next case?

25 MR. MOY: Yes. Thank you, Mr. Chairman. So this would

1 be Case Application No. 20289 or 400 Seward, S-E-W-A-R-D, Square,  
2 LLC, captioned and advertised for area variance from the lot area  
3 requirements of Subtitle E, Section 201.7 to permit an addition of  
4 three units to the existing 14-unit apartment building in the RF-3  
5 Zone at premises 400 Seward Square, Southeast, Square 819, Lot 28.

6 CHAIRPERSON HILL: Okay. Great.

7 Mr. Sullivan, you want to introduce yourself? You're on  
8 mute, Mr. Sullivan.

9 MR. SULLIVAN: Thanks. Mr. Chair, members of the Board,  
10 good to see you all. This is Marty Sullivan with Sullivan &  
11 Barros.

12 CHAIRPERSON HILL: Great.

13 Ms. Wilson, you want to introduce yourself?

14 MS. WILSON: Good morning. Alex Wilson from Sullivan &  
15 Barros on behalf of the Applicant.

16 CHAIRPERSON HILL: Great.

17 Mr. Lee?

18 MR. LEE: Good morning. This is Matt Lee. I'm the  
19 architect for this project.

20 CHAIRPERSON HILL: Okay.

21 Is it Mr. Barley (phonetic)? Can you hear me, Mr.  
22 Barley?

23 Mr. Sullivan, is Mr. Barley your client?

24 MR. SULLIVAN: He is. And I assume he wanted --

25 CHAIRPERSON HILL: That's okay.

1 MR. SULLIVAN: -- he wanted to testify. I'll check with  
2 him and see --

3 CHAIRPERSON HILL: That's okay. That's okay.

4 MR. SULLIVAN: I'm not sure if we need his testimony or  
5 not.

6 CHAIRPERSON HILL: Yeah. Mr. Sullivan, did you put on a  
7 tie for us?

8 MR. SULLIVAN: Just for a change of pace because I --

9 CHAIRPERSON HILL: Right. It's so funny. I'm going to  
10 put on a tie next week because I'm not sure I'll know how to tie  
11 it again.

12 MR. SULLIVAN: That's what I -- that's why I'm doing it.  
13 I don't want to forget how.

14 CHAIRPERSON HILL: I'm serious. I'm going to put one  
15 on. I'm going to put one on.

16 Mr. Smith, what do you say? We'll try it. We'll see if  
17 we can, like, actually tie them anymore, you know? I don't know.  
18 Because I really don't know if I can.

19 MR. SMITH: I'm rusty now.

20 CHAIRPERSON HILL: I'm definitely rusty.

21 Let's see. Mr. Sullivan, so you know there's a variety  
22 of things going on right now like we have had some discussion, and  
23 it seems like you might need to get not only an area variance but  
24 a use variance. Are you aware of this?

25 MR. SULLIVAN: I've had some hint of that. Yeah. And

1 that's why I'm on because Ms. Wilson was going to do the  
2 presentation for the hearing. But I don't really know the  
3 details. So I --

4 CHAIRPERSON HILL: Okay.

5 Mr. Rice, do you want to give us your opinion here on  
6 this real quick?

7 MR. RICE: Sure, I can speak to it. So both the  
8 Applicant's application as well as OAG's analysis of the  
9 application and OP's analysis of the application classify it as a  
10 non-conforming use. And because the regulations under X-1001.4  
11 Subsection C provide that a use variance includes any request to  
12 expand a non-conforming use, including any expansions of gross  
13 floor area or expanding the use and proportions of the structure  
14 that were not previously devoted to that non-conforming use  
15 require a use variance. We are asking the Applicant to consider  
16 postponing to amend their application and submit a use variance  
17 application.

18 MR. SULLIVAN: Okay. I guess how I would address that  
19 first of all is the central relief that we're asking for is relief  
20 from the 900 foot rule because we have -- in the RF-1, you know,  
21 we're limited by the 900-foot rule under the section that we're  
22 asking for relief. Relief from the 900-foot rule has always been  
23 considered to be an area variance. That's actually in Court of  
24 Appeals case law. The case is *Wolf v. BZA*, 397 A2d 936. If I can  
25 read from that opinion, variance --

1 CHAIRPERSON HILL: Mr. Sullivan? Mr. Sullivan? Mr.  
2 Sullivan? Give me one second really quick, okay, sir? I'm just  
3 looking at something real quick.

4 Office of Planning, are you there?

5 MR. RICE: And to be clear, we're still asking for a  
6 area variance for the portion of C -- for the 900-foot rule. It's  
7 just the actual expansion of the non-conforming use that's making  
8 this a little bit distinct from past cases.

9 CHAIRPERSON HILL: Ms. Elliott?

10 MS. ELLIOTT: Hello.

11 CHAIRPERSON HILL: Are you on the same page with OP -- I  
12 mean on OAG in this?

13 MS. ELLIOTT: You know, I think that we would leave it  
14 up to OAG to make that interpretation. We have handled similar  
15 cases to this that I think have -- that have asked for the same  
16 relief. So I think that we would just leave this up to OAG and  
17 the Zoning Administrator and their determination.

18 CHAIRPERSON HILL: Okay. So I don't know what that  
19 tells me.

20 Mr. Sullivan --

21 MR. SULLIVAN: Mr. Chair, I think there's two issues.

22 CHAIRPERSON HILL: Sure.

23 MR. SULLIVAN: The first issue is the self-  
24 certification. We've self-certified. The jurisprudence on what  
25 self-certification means is really clear, and I can cite some --

1 CHAIRPERSON HILL: That's okay.

2 MR. SULLIVAN: -- stuff in that.

3 CHAIRPERSON HILL: You've self-certified --

4 MR. SULLIVAN: It essentially means I'm taking the risk.

5 CHAIRPERSON HILL: I know.

6 MR. SULLIVAN: There are cases where the Board could go  
7 beyond that and have some commentary on the use. And there's a  
8 standard for that, and it came from the BZA. And that standard  
9 was when there's no plausible basis to conclude that the relief  
10 requested is sufficient. So no plausible basis is the standard.

11 The other thing that I think makes it easier -- so then  
12 there's the substantive part of it. There's self-certification,  
13 we bear the risk. The Zoning Administrator upending us when we  
14 file a building permit application and saying -- in the end, it's  
15 the Zoning Administrator's decision. And that's clear from the  
16 case law. But in the last five years or so, there's been at least  
17 seven BZA cases --

18 CHAIRPERSON HILL: That's fine.

19 MR. SULLIVAN: -- for this exact same relief --

20 CHAIRPERSON HILL: That's fine.

21 MR. SULLIVAN: We can --

22 CHAIRPERSON HILL: All right. So --

23 MR. SULLIVAN: We've handled a few and other attorneys.

24 And so I'm not sure what --

25 CHAIRPERSON HILL: It's self-certified.

1           So I don't know what you guys want to do, Board members.  
2 We can hear the case. I mean, it's a self-certified application.  
3 They can go ahead and, you know, apply with what they got going on  
4 here, and then we can just hear the case.

5           Mr. Hood?

6           MR. HOOD: Yeah. I want to go back to Mr. Sullivan.  
7 Mr. Sullivan, you just mentioned that there were five cases that,  
8 I guess, the BZA has gave relief out on the 900-square foot rule.  
9 Is that what you mean? Make sure I --

10          MR. SULLIVAN: Yeah. I have seven that I know of just  
11 from the last --

12          MR. HOOD: Seven?

13          MR. SULLIVAN: -- few years. Yeah. We've done about  
14 three or four of them, and other attorneys have handled the other.  
15 I have specifics on them. They were all -- they all had these  
16 same characteristics, the characteristics of -- in their current  
17 configuration, they had -- they did not comply with the 900-foot  
18 rule. So for instance, one went from four units to five units on  
19 a lot that was already less than 3,600 square feet. So they were  
20 non-conforming. They added a unit. And that was an area  
21 variance. There was one that went from --

22          MR. HOOD: Let me cut you off. Let me cut you off, Mr.  
23 Sullivan. So how far does that go back? Because that rule hadn't  
24 been -- if I remember, unless my memory's failing me, that rule --  
25 we put that in place like two or three years ago.

1 MR. SULLIVAN: Well, you know, there was always a 900-  
2 foot rule, and it was matter of right. It wasn't part of the  
3 special exception. And so there were many cases where people  
4 asked for relief from the 900-foot rule in order to expand further  
5 than you otherwise could.

6 MR. HOOD: So you're going back -- you're going back  
7 even past before we did the 900-square foot rule? Because I  
8 thought that -- and my memory -- Ms. Elliott may be able to help  
9 me. But I thought that was not -- we could not grant relief on  
10 that. But I may be incorrect. And I would (audio interference)  
11 to help me with that.

12 MR. SULLIVAN: There were some rare situations where we  
13 did get relief from the 900-foot rule when sometimes it was an  
14 estoppel-type decision if the building had already been multiple  
15 units. Other times, it was the building needed a whole bunch of  
16 repair work, and the Board saw that as an exceptional condition.  
17 But of the seven cases I have, one of those predates the 2016  
18 regs. And maybe -- now remember, the R4 changes came along a year  
19 before the 2016 regs. So -- but all seven of these cases are in  
20 the last five years.

21 MR. HOOD: Okay. So Mr. Chairman, the reason I went  
22 down that road was because I thought we could not waive the 900-  
23 square foot rule. And I'm -- at least I think that was the Zoning  
24 Commission's intent, but I'll follow up on that. Not your main  
25 right now, but at least be followed up on. Thank you.

1 CHAIRPERSON HILL: Yeah. We've -- I know the cases that  
2 Mr. Sullivan is talking about, and he's correct in terms of the  
3 900-square foot rule. But yes. So --

4 MR. HOOD: He may be correct. But the interpretation  
5 that BZA may be doing may not be. And I'll just leave it at that,  
6 because that was a big thing for the Zoning Commission for the  
7 900-square foot rule. And I'll check with my colleagues. If  
8 that's the case, we will be coming back to it. So I'll leave it  
9 at that. Thank you.

10 MR. SULLIVAN: Well, and one thing that's a little  
11 different in these seven cases, they were existing -- they were  
12 already apartment buildings. So they were just adding units to  
13 existing. They weren't conversions. They weren't going from  
14 single -- there were cases where we asked to go from single family  
15 to more than three when we had -- when we only had -- that's I  
16 think a different character. Those are -- I agree. Those are  
17 impossible to get. I --

18 MR. HOOD: Okay.

19 MR. SULLIVAN: I don't take those cases.

20 MR. HOOD: So that's what I'm --

21 MR. SULLIVAN: It's a different character.

22 MR. HOOD: Okay. So Mr. Chairman and Mr. Sullivan,  
23 that's where I am. So if those are the cases, then I'll just  
24 withdraw my comments. But I am going to follow up on it. Thank  
25 you.

1 CHAIRPERSON HILL: So what do you guys want to do? I  
2 thought it was going to be different. I mean, I'm fine with going  
3 forward.

4 Ms. John?

5 VICE CHAIRPERSON JOHN: I was going to say that my  
6 recollection is also that they've had these cases where there are  
7 existing, you know, non-conformatives, where they don't meet the  
8 900-square foot rule. So that's my memory as well.

9 CHAIRPERSON HILL: So Ms. John, do you want to go  
10 forward with this now?

11 VICE CHAIRPERSON JOHN: Well, I think we should clarify  
12 the interpretation before moving forward because we've handled  
13 them, as far as I recall, as area variances. So, you know, if  
14 this is a new interpretation, I think we could benefit from  
15 additional consideration just to be sure that we're doing the  
16 right thing moving forward.

17 CHAIRPERSON HILL: Yeah. I mean, we can have this -- my  
18 vote is to hear it because it's self-certified, and it's on them.  
19 And so, you know -- and I don't want to -- I don't know what to do  
20 now except for now turn OAG and the Applicant can talk to each  
21 other, and we'll see whether we're back here again next week or  
22 not. I mean, the Applicant is filing. It's on them. They want  
23 to put forward their application. I say we hear their  
24 application, and then we decide whether or not they're meeting the  
25 criteria within what they're asking for which is an area variance.

1 If it comes back us because the Zoning Administrator disagrees,  
2 then they'll be back before us again. But I -- I mean, so anyway,  
3 that's my vote. I'm in a weird spot here. I don't even know what  
4 OAG thinks. I mean, it's in a weird -- it's their application,  
5 right?

6 So, you know, what, Mr. Smith and Mr. Hood, do you say?

7 MR. SMITH: From my own education of the regulations, I  
8 second Ms. John. I do believe that we need to put this off until  
9 we get some more clarification on whether the property will need a  
10 use variance. That's where I stand on it, because it's hard to  
11 say whether the merits of the application after getting  
12 clarification from OAG or the Zoning Administrator on whether a  
13 use variance is -- you know, whether it would need a use variance  
14 with the application as it changed. So I would prefer to get that  
15 clarification.

16 MR. SULLIVAN: If I could ask a question, Mr. Chair?  
17 Because we haven't heard much from OAG. And I don't really  
18 understand the genesis of the -- but since we have seven cases  
19 identical to this where this wasn't brought up, I'd like -- if  
20 we're going to end up responding to it, I'd like to understand the  
21 rationale for it and how *Wolf* is now -- the *Wolf* case isn't  
22 controlling on this for some reason.

23 CHAIRPERSON HILL: Okay.

24 Mr. Rice, do you have a quick answer? Otherwise, you  
25 know, you're going to have to have a discussion.

1           MR. RICE: Sure, I can speak briefly. I will say that  
2 even if the Board took our advice today, we would be asking the  
3 Applicant to come back with both an area variance, and the area  
4 variance would be the existing area variance that they're seeking,  
5 as well as a use variance. So when we looked at the regulations,  
6 and our understanding of this application was -- that what makes  
7 this application unique is that this is a purpose-built apartment  
8 building. And in that regard, it's a non-conforming use. It's  
9 not a use that's been converted from residential to an apartment  
10 building as a special exception or under some other, you know,  
11 entitlement, and then that that non-conforming use status of it  
12 because under the regulations, if you're going to be expanding a  
13 non-conforming use, including expanding the use and to portions of  
14 the structure that were not previously dedicated to that use at  
15 the time of the regulations enactment, the zoning regulations  
16 state that a use variance is required.

17           So we -- we're asking and stressing that the Applicant  
18 also seek a use variance so that they can get, you know,  
19 permission to both expand the use as well as to get around the  
20 900-foot rule which is where we're suggesting the area variance.  
21 And that's our response. If the Applicant wants to proceed under  
22 just the area variance today, and the Board wants to permit them  
23 to do that, they are more than welcome to. Or we're willing to  
24 have that conversation with the Applicant regarding the use  
25 variance offline as well.

1 CHAIRPERSON HILL: All right.

2 Hold on, Mr. Sullivan. Hold on, Mr. Sullivan.

3 Mr. Hood, where are you on whether or not we do this  
4 today?

5 MR. HOOD: I think, Mr. Chairman, I'm with Vice Chair  
6 John and Board member Smith. I think we need to move -- know  
7 where we're moving forward on. So that's kind of where I am.

8 CHAIRPERSON HILL: Okay.

9 Mr. Sullivan, it doesn't matter then, okay? So why  
10 don't you talk to -- I'm going to go ahead and let you ask your  
11 question. Go ahead.

12 MR. SULLIVAN: I mean the cleanest way to handle it is  
13 the self-certification thing. It's -- I don't understand the role  
14 of OAG to come in and say that we can't request this relief. And  
15 that we have to add relief. I mean, the Board's really -- order  
16 18-263(b) is super clear on that. It has a whole bunch of  
17 information on self-certification and says, "It is for this reason  
18 the Board has" --

19 CHAIRPERSON HILL: Okay.

20 MR. SULLIVAN: -- "consistently held" --

21 CHAIRPERSON HILL: Okay. I got you. I got you.

22 MR. SULLIVAN: -- "that assertions of an erroneous  
23 certification are irrelevant to its review of applications." I'll  
24 also add on a substantive side, of those seven cases, most of  
25 those were purpose-built apartment buildings as well. So this

1 really isn't any different than the precedent. So I don't -- this  
2 would be changing the precedent. And based on --

3 CHAIRPERSON HILL: All right.

4 MR. SULLIVAN: Just based on an analysis, not really  
5 based on anything the Board or the Court of Appeals has said, in  
6 my opinion. And I don't want to unnecessarily delay it. If it  
7 was only a week, I guess my question is what do we do in that  
8 week? Because we're not going to change the relief. I'm pretty  
9 comfortable in that. I mean, the worst-case scenario, we'd have  
10 to come back for a modification if the Zoning Administrator  
11 decided to change his opinion. I know these seven projects got  
12 completed. They got permitted. So I know where the Zoning  
13 Administrator stands on this, and he makes the call. That can be  
14 appealed, but it's his call.

15 CHAIRPERSON HILL: Okay. So two things. Two things.  
16 Yeah, two things. I guess where we are, Mr. Sullivan, as far as  
17 my colleagues, they just wanted further clarity. I know the other  
18 projects you're talking about, and so I'm kind of -- you already  
19 know my opinion, right, was to go ahead, and it's on you, okay?  
20 And I know the other ones that you're speaking of, and so I don't  
21 want to go back and try to figure this out also. My colleagues  
22 seem to want to wait. So I don't know what it means either, okay?  
23 In other words, I think why don't you -- and I'm going to talk  
24 offline. And I'm going to talk to Mr. Moy, and we're going to  
25 figure out just exactly right. What is the role of OAG in this?

1 Okay? Right?

2           Because now I'm just -- you know, I'm in the situation  
3 that I am in right now which is it seems as though you're going to  
4 talk to OAG. If you all agree, and we're going -- and then I  
5 guess I'm going to have to talk to my colleagues to figure out  
6 where we are with OAG. If you don't change your application, then  
7 maybe we're back here again next week. I don't know. Right? If  
8 you do change your application, then it seems as though -- and  
9 I've got to remember to do that deficiency notice thing again for  
10 my fellow Board members. If we do get -- if you do revise your  
11 application, then we need a response from the Office of Planning  
12 which would take a week. And I don't know whether we would need  
13 to go back before the ANC again, right, because now you're going  
14 to add a variance to the application.

15           So I'm basically, again, talking with my Board members  
16 here again because I'm still back with, you know, it's the  
17 Applicant's application. And I can -- I thought this was going to  
18 go faster and we were going to take a break. I thought Mr.  
19 Sullivan was on the same page, we was just going to roll along.  
20 And so, but you know --

21           Ms. Elliott, you're the Office of Planning. Do you have  
22 any comments on this?

23           MS. ELLIOTT: I don't have anything to add. I mean,  
24 we've -- the Office of Planning has reviewed several of these  
25 types of applications. And in all those cases, as had been

1 pointed out, you know, it's just been an area variance. You know,  
2 certainly, if there's a different interpretation, we would like  
3 some clarity on that as well.

4 CHAIRPERSON HILL: Okay. So who is giving that clarity  
5 and that interpretation? It's the Office of the Attorney General?

6 MS. ELLIOTT: Well, it's --

7 CHAIRPERSON HILL: Is it the Zoning Administrator then?

8 MS. ELLIOTT: It's the Zoning Administrator who  
9 interprets the regulation. So it would be his decision  
10 ultimately. But OAG does advise and --

11 CHAIRPERSON HILL: I got you. I'm trying to understand  
12 -- I'm just trying to understand who's going to tell me what to do  
13 next, right? And so you're saying that the Zoning Administrator  
14 is the one that I need to hear from as to whether or not they need  
15 a use variance?

16 MS. ELLIOTT: We would rely on an interpretation from  
17 the Zoning Administrator. However, that does not mean -- I mean,  
18 we do consult with OAG regularly, but I think for the --

19 CHAIRPERSON HILL: Okay.

20 MS. ELLIOTT: -- case, the interpretation, it's up to  
21 the Zoning Administrator.

22 CHAIRPERSON HILL: Okay.

23 So I'm going back to my fellow Board members. This is I  
24 guess what we're going to do, okay? We're going to ask Mr.  
25 Sullivan to talk to OAG and the Office of Planning. And the

1 Office of Planning and OAG can talk to each other. And somebody's  
2 going to let me know what's going to happen next week. Okay? Is  
3 that where the Board is? Because you know where I am. And so you  
4 all want to wait a week to figure out what's going on. And so --  
5 which is fine. But I'm saying that's all I know right now. I  
6 just want to make sure we all got our marching orders.

7 And that Mr. Sullivan, Mr. Rice, and Ms. Elliott, you  
8 all are going to talk, and somebody's going to let me know by next  
9 week whether we're back here again; is that correct?

10 MR. RICE: Yes, sir.

11 CHAIRPERSON HILL: Okay.

12 I'm looking at my Board members. I guess that's what  
13 we're going to do, right? Ms. John.

14 VICE CHAIRPERSON JOHN: I just don't know what the law  
15 is at this point. So I understand what Mr. Sullivan is saying,  
16 and I also recall cases that were as-built apartment buildings  
17 that did not conform to the 900-square foot requirement. And we  
18 did hear those cases since I have been on the Board. So I would  
19 just like some clarity on what the law is. I'm uncomfortable. I  
20 hear what Mr. Sullivan is saying, and he's absolutely right that  
21 it's a self-certified application. But I don't know what the law  
22 is at this point.

23 CHAIRPERSON HILL: Okay. All right.

24 So then you all talk amongst yourselves. And then let's  
25 see what happens next week.

1 All right, Mr. Sullivan?

2 MR. SULLIVAN: Okay. Yeah. A week is great. That's  
3 fair.

4 CHAIRPERSON HILL: Before you go -- you might be later,  
5 I don't know. Like, that's where -- if it turns out that this has  
6 changed as to what you think it is --

7 MR. SULLIVAN: Right.

8 CHAIRPERSON HILL: -- then you'll have to figure out  
9 what that --

10 MR. SULLIVAN: As long as we're -- yeah. As long as  
11 we're still on the schedule, that's great. Thank you.

12 CHAIRPERSON HILL: So let's see. Oh. So in terms of  
13 the deficiency of the notice, once again for my fellow colleagues,  
14 I mean this -- due to a technicality, this was only in the D.C.  
15 Register 19 days prior instead of 40 days. But all the other  
16 notice requirements were satisfied in terms of the ANC being  
17 notified and the Office of Planning, the other District agencies  
18 as well as the property owners within the 200-foot. So unless my  
19 fellow colleagues have any issues, I'm going to go ahead and waive  
20 that one notice requirement on my own motion pursuant to Y 402.11.  
21 So unless you have any problems with that, please raise your hand.  
22 Okay. So we did that. All right.

23 Then Mr. Moy, are you there?

24 MR. MOY: Yes, sir.

25 CHAIRPERSON HILL: So you'll figure out what's going on,

1 Mr. Moy, and we'll see whether or not we're back to this next  
2 week, right? Which now means we got 11 cases next week.

3 MR. MOY: Something like that.

4 CHAIRPERSON HILL: Okay. All right.

5 MR. MOY: Unless you tell me otherwise, considering the  
6 circumstances of this application, I'll set this as the first case  
7 in the hearing session.

8 CHAIRPERSON HILL: Okay. That would be great. Okay.

9 Does anybody have anything else before I excuse you?  
10 Excuse us, I should say, and take a break.

11 Mr. Sullivan, can you hear me? There is only one case  
12 in my five years that had the ANC and the Office of Planning  
13 opposed, and we voted, and it was your case. And it was based on  
14 something like this, and I'll never forget. Okay.

15 MR. SULLIVAN: That was actually a conversion, I think.

16 CHAIRPERSON HILL: Yeah, I know what it was. I know  
17 what it was. Yeah. I know what it was. Okay. All right. I  
18 just mentioned it because it's only one case.

19 MR. SULLIVAN: It's good to know it's just one still.

20 CHAIRPERSON HILL: Yeah. All right. Okay. All right.

21 We'll see you all later.

22 Let's take a -- what do you want to take, like a ten-  
23 minute break? Okay. 15 minutes. We're back at 11:15. Okay?  
24 All right. Thank you all. Bye, bye.

25 (Whereupon, the above-entitled matter went off the

1 record and then resumed at 11:25 a.m.)

2 CHAIRPERSON HILL: Okay. Mr. Moy, can you hear me?

3 MR. MOY: Okay. I'm back.

4 CHAIRPERSON HILL: Okay. Do you want to call us back  
5 and call our next case?

6 MR. MOY: Yes, thank you, Mr. Chairman. The Board of  
7 Zoning Adjustment is back in hearing session after a quick break.  
8 And the time is at or about 11:25. The next case application is  
9 20290, Vitis, V-I-T-I-S, Investments, LLC as amended for special  
10 exception under the residential conversion requirements Subtitle  
11 U, Section 320.2 to convert an existing detached principal  
12 dwelling unit to a seven-unit apartment house RF-1 Zone at  
13 premises 421 T Street, Northwest, Square 3090, Lots 804, 805, and  
14 807.

15 And this application, Mr. Chairman, has a preliminary  
16 matter. One is there is a request for party status under, I  
17 believe, Exhibit 34, the Applicant's response to the party status  
18 under Exhibit 37, and what else? What else? And I think there  
19 was a PowerPoint submission after the -- within the 24-hour  
20 deadline prior to the hearing.

21 CHAIRPERSON HILL: Okay. All right.

22 MR. MOY: And a request to postpone, if I didn't already  
23 say that.

24 CHAIRPERSON HILL: Yeah. Got it. Okay.

25 Mr. Sullivan, can you hear me?

1 MR. SULLIVAN: Yes.

2 CHAIRPERSON HILL: Okay. Could you introduce yourself  
3 for the record, please?

4 MR. SULLIVAN: Yes. Mr. Chair and members of the Board,  
5 my name is Marty Sullivan with the law firm of Sullivan & Barros  
6 on behalf of the Applicant.

7 CHAIRPERSON HILL: Who is here with you, Mr. Sullivan?

8 MR. SULLIVAN: I have a representative of the Applicant,  
9 I have the architect, and Andi Adams, a architectural historian.

10 CHAIRPERSON HILL: Okay. I'm just trying to see who's  
11 who. Okay. So that didn't help me, but that's all right.

12 Ms. Rottman, can you hear me?

13 MS. ROTTMAN: Yes, I can.

14 CHAIRPERSON HILL: Could you please introduce yourself  
15 for the record?

16 MS. ROTTMAN: Emilie Rottman, architect, Square 134  
17 Architects.

18 CHAIRPERSON HILL: Got it. Let's see.

19 And is it Mr. Adams? Can you hear me? Mr. Adams, can  
20 you hear me?

21 MS. ADAMS: Hi. It's Andi --

22 CHAIRPERSON HILL: Oh, Ms. Adams.

23 MS. ADAMS: Yeah. That's all right. Can you see me or  
24 hear me?

25 CHAIRPERSON HILL: I can. I can. Could you introduce

1 yourself for the record, please?

2 MS. ADAMS: Andi Adams. I'm an architectural historian  
3 with A. Adams & Company.

4 CHAIRPERSON HILL: Okay.

5 MS. ADAMS: On behalf of the Applicant.

6 CHAIRPERSON HILL: Mr. Chandra, can you hear me?

7 MR. CHANDRA: Yes.

8 CHAIRPERSON HILL: Could you introduce yourself for the  
9 record?

10 MR. CHANDRA: Yes. My name is Chetan Chandra. I'm the  
11 property owner at 417 T Street. And my wife and I have applied  
12 for a party status.

13 CHAIRPERSON HILL: Okay. Great. Thank you. And let's  
14 see. Mr. Chandra, can you mute yourself? Thank you.

15 Mr. Agorsor -- Agorsor. Is that correct?

16 MR. AGORSOR: Agorsor. Yes. Chris Agorsor.

17 CHAIRPERSON HILL: Agorsor.

18 MR. AGORSOR: New World Developers on behalf of the  
19 Applicant.

20 CHAIRPERSON HILL: I'm sorry. Could you introduce  
21 yourself again?

22 MR. AGORSOR: Yes. Chris Agorsor with New World  
23 Developers on behalf of the Applicant, Property Owner.

24 CHAIRPERSON HILL: Okay. Okay. Great.

25 Let me do a couple of things first. So there was,

1 again, a notice requirement that was deficient in terms of -- it  
2 was a technicality on our end. It was posted 19 days in the D.C.  
3 Register rather than 40 as per Y 402.1(a). All of the other  
4 notice requirements were satisfied meaning the ANC was notified,  
5 the Office of Planning, other District agencies, and property  
6 owners within 200 feet. The property was also posted. So I  
7 believe that notice has been adequately been done. And so I'm  
8 going to make a motion, unless my colleagues have any difference  
9 of opinion, to waive the notice requirements, that one notice  
10 requirement of the 40 days prior for the D.C. Register as per my  
11 own motion under Y 402.11 unless any Board member has an  
12 objection. Please raise your hand if you do. Okay. Then I  
13 believe notice has been satisfied. Okay. So that's that one.

14 The other is that there was a PowerPoint presentation  
15 put into the record or is trying to get into the record. And that  
16 was by who?

17 Was that you, Mr. Sullivan?

18 MR. SULLIVAN: It was us. We got that in late, and  
19 hopefully, it's not -- it doesn't matter. It's immaterial,  
20 hopefully, if we get postponed.

21 CHAIRPERSON HILL: Right. I don't think it'll matter  
22 because we're going to postpone it. But let's go ahead and get  
23 into the record. Mr. Sullivan, I don't know. I'm trying to get  
24 other people in terms of the attorneys.

25 If you guys can get it in before the 24 hours, it would

1 help because I'd like to see it in the record. And what ends up  
2 happening is that everybody asks whether it can be in the record,  
3 but then it's not really actually in the record. And so I can't  
4 see it. And so if you can try --

5 MR. SULLIVAN: Totally understand.

6 CHAIRPERSON HILL: -- before the 24 hours, that would be  
7 --

8 MR. SULLIVAN: It was a first-time --

9 CHAIRPERSON HILL: -- so much more --

10 MR. SULLIVAN: -- error. And we tried to --

11 CHAIRPERSON HILL: No, I -- I'm just letting you know.  
12 That's great. Let's see. Well, since I got you off mute, you'd  
13 like to postpone. Can you explain why?

14 MR. SULLIVAN: Sure. There's two main reasons. One is  
15 regarding the relief that we were asking. We were asking for area  
16 variance relief from the 900-foot rule to go three units beyond  
17 what the 900-foot rule would have permitted. And we just  
18 reconsidered that and figured that that was a difficult relief to  
19 get especially in -- considering what the Office of Planning --  
20 the feedback they had given us and the feedback that we've gotten  
21 from the community. So we are withdrawing that relief. And that  
22 was recent because of OP coming, you know, to us with their  
23 position finally on that.

24 And probably the bigger item is HPRB had some concerns  
25 about the massing at a recent meeting. And so the Applicant has

1 in a sense had to go back to the drawing board on that aspect of  
2 it. So there are significant changes as a result of that meeting.

3 CHAIRPERSON HILL: Okay. And how long -- how much time  
4 do you need?

5 MR. SULLIVAN: We have asked for December 2nd or the  
6 nearest date thereafter. And we may have asked for the 9th. So  
7 that's --

8 CHAIRPERSON HILL: Okay.

9 MR. SULLIVAN: -- plenty of time. We expect to go back  
10 to HPRB in November.

11 CHAIRPERSON HILL: Mr. Moy, where are we with dates?

12 MR. MOY: Okay, Mr. Chairman. As you may have gathered  
13 from now through the end of the year, it's gotten tight. So we're  
14 making additions. So on that last two minutes, what was -- what  
15 did Mr. Sullivan say with regards to when he could be ready?

16 MR. SULLIVAN: We're good with December 2nd or 9th.

17 MR. MOY: Okay. So we are -- give me a second.

18 CHAIRPERSON HILL: All right. Mr. Moy, why don't you  
19 look -- just think about it for a little while.

20 I want to go to Mr. Chandra. Mr. Chandra, can you  
21 explain why you think you're uniquely affected in terms of  
22 requesting (audio interference).

23 MR. CHANDRA: Sure. We are the only property within, I  
24 mean, 50 feet almost, or at least 20 feet of the property. The  
25 way it's situated, there's a lot of green space on the lot itself.

1 And so we're within five feet of the actual structure and the  
2 additions. All the other houses either have their backyards to  
3 the property, or they're, like, on the other side of our house.  
4 So as compared to everybody else on the block or in the city, we  
5 are the most affected because we are by far in proximity the  
6 closest to --

7 CHAIRPERSON HILL: You share a property (audio  
8 interference)?

9 MR. CHANDRA: That's correct. Yes.

10 CHAIRPERSON HILL: Okay. All right. Okay.

11 I don't have any issues with Mr. Chandra being granted  
12 party status, and I don't believe the Applicant did either. So  
13 does -- unless the Board members wanted to raise their hand, I'm  
14 going to go ahead and give them party status. Okay.

15 Mr. Chandra, you now have party status. And so what  
16 that means is you'll be able to have the same amount of time to  
17 present as the Applicant. You'll also have the ability to ask  
18 questions of the Applicant of their presentation. And then -- and  
19 also ask questions of the Office of Planning and any other things  
20 there within the hearing or as a party status person.

21 And so let's see. So Mr. Moy, what day you said might  
22 work?

23 MR. MOY: Okay. The -- December 9th worked well -- or  
24 the Board can accommodate December the 9th, sir.

25 CHAIRPERSON HILL: Okay. All right.

1           So Mr. Chandra, what -- have you spoken to the Applicant  
2 at all?

3           MR. CHANDRA: Not one on one, no. We've participated in  
4 all the LPCA and ANC hearings. We have been talking, sorry, to  
5 Mr. Sullivan to try to set up discussions. We haven't -- they  
6 haven't been scheduled yet.

7           CHAIRPERSON HILL: Okay. Yeah. I mean, if you guys can  
8 try to -- you know, if there's some way that you all could work  
9 out whatever you need to work out, that's the best thing, right?  
10 So now you have a little bit of extra time to do that.

11           So we're going to go ahead and put you on December 9th,  
12 Mr. Sullivan; is that good?

13           MR. SULLIVAN: Thank you.

14           CHAIRPERSON HILL: Mr. Chandra, does that work for you?

15           MR. CHANDRA: Yes, that works.

16           CHAIRPERSON HILL: All right.

17           Then we'll see everybody on December 9th. Thank you.

18           MR. CHANDRA: Thank you.

19           CHAIRPERSON HILL: Bye, bye.

20           Okay. All right. Mr. Moy, we have one more, correct?

21           MR. MOY: That's correct.

22           CHAIRPERSON HILL: And you can call it whenever you  
23 want.

24           MR. MOY: All right. This will be Case Application No.  
25 20295 of John Fisher. Captioned and advertised with special

1 exceptions under Subtitle E, Section 5201; lot occupancy  
2 requirements Subtitle E, Section 304.1; rear yard requirements  
3 Subtitle E, Section 306.1. This would construct a second story  
4 rear deck addition to an existing semi-detached principal dwelling  
5 unit RF-1 Zone. This is at 722 19th Street, Northeast, Square  
6 4513, Lot 39.

7 CHAIRPERSON HILL: Okay.

8 Mr. Fisher, can you hear me?

9 MR. FISHER: Yeah, I can hear you okay. Can you hear  
10 me?

11 CHAIRPERSON HILL: Yeah, I do. Can you introduce  
12 yourself for the record please?

13 MR. FISHER: Sure. My name is John Fisher. I'm the  
14 owner at 722 19th Street, Northeast.

15 CHAIRPERSON HILL: Okay.

16 Let's see. I'm going to first address this notice  
17 issue. As the Board I'm sure is aware, due to a technical issue,  
18 this was only posted in the D.C. Register 19 days rather than the  
19 40 days that are required under Y 402.1(a). All of the other  
20 notice requirements were satisfied, meaning it was properly sent  
21 to the ANC, the Office of Planning, other District agencies, and  
22 property owners within 200 feet as well as posting on the  
23 property. I believe that the posting is sufficient. And so on my  
24 own motion, I would like to waive that one requirement of the 40-  
25 day D.C. Register as per Y 402.11. Unless I see an objection by

1 any of my fellow colleagues by raising their hand, I'm going to go  
2 ahead and waive that. All right. So we have that.

3 And so Mr. Fisher, I guess if you could explain to us  
4 why you believe that you're meeting the criteria with which we  
5 should grant this application and tell us a little bit more about  
6 the application. I must say -- and I know I haven't read all of  
7 this, that the ANC, you're presenting them tonight; is that  
8 correct?

9 MR. FISHER: Yes. They -- I gave them notice back in, I  
10 believe, it was June, mid-June. And they, unfortunately, did not  
11 add me to the September meeting. It was just an accident on their  
12 part. I followed up with them since, and they said they would  
13 hear me tonight. Their October meeting is tonight at 7 o'clock.

14 CHAIRPERSON HILL: Okay. So I mean I appreciate and  
15 understand that you've been having difficulty getting to the ANC.  
16 But since you are going to be with them tonight, I think what's  
17 going to end up happening is we're going to go ahead and hear the  
18 case and then see if the Board has any questions, see what we need  
19 to hear from the Office of Planning and everything, and we're  
20 probably going to wait to deliberate until after we've heard from  
21 the ANC. And so just to let you know. But go ahead and tell us  
22 about your case and why you believe it should be approved.

23 MR. FISHER: Sure. Yeah. It's a small five-foot by  
24 ten-foot deck. The -- like you said, all the notices were given.  
25 The only issue that was raised was by the neighbor to the north.

1 He, I think was -- he raised four different issues. I can go  
2 through them. But I think he is essentially just trying to  
3 extract money out of me. The first issue he raised was that it  
4 would raise the value of my house while diminishing --

5 CHAIRPERSON HILL: Mr. Fisher, that's okay. We'll -- if  
6 we have some questions about that, we can go ahead and ask you  
7 questions about that. Why don't you just go ahead and speak to  
8 the project?

9 MR. FISHER: Yeah, sure. Yeah. So it's a five-foot by  
10 ten-foot deck. It's elevated off of the ground, so it's not going  
11 to be reducing the walkable land coverage. I think it's a pretty  
12 straightforward project. It's not visible from the street. There  
13 are several other very similar elevated decks on the backsides of  
14 houses along that street in that area. So I think it's a pretty  
15 small, pretty simple construction. And I will add that the --  
16 again, I'm not sure how all of the different organizations relate  
17 to each other, but the Office of Planning report did recommend  
18 their approval to the BZA.

19 CHAIRPERSON HILL: Okay.

20 Does the Board have any questions for the Applicant?

21 Mr. Hood?

22 MR. HOOD: Mr. Fisher, just a quick question not  
23 necessarily pertaining to how you started --

24 CHAIRPERSON HILL: Chairman Hood, you froze. I don't  
25 know if you can see us or not.

1 MR. HOOD: (Audio interference) things as they go along.  
2 Do you -- I know I cut off. Do you know of anything that may  
3 hinder your approval from the ANC?

4 MR. FISHER: No.

5 MR. HOOD: Okay. Thank you, Mr. Chairman.

6 CHAIRPERSON HILL: All right. Thank you, Chairman Hood.  
7 All right. I'm going to turn to the Office of Planning.

8 MS. BROWN-ROBERTS: Good morning, Mr. Chairman, and  
9 members of the BZA. I'm Maxine Brown-Roberts from the Office of  
10 Planning. OP recommends approval of this special exception to  
11 increase the lot occupancy and to decrease the rear yard. As  
12 outlined in our report that was submitted, the proposed deck would  
13 meet the standards outlined in Section 5201 and should not  
14 adversely affect the light or air or the use of the adjacent  
15 property. And based on that, we stand on the record and recommend  
16 approval. Thank you, Mr. Chairman.

17 CHAIRPERSON HILL: All right. Ms. Brown-Roberts, this  
18 is also based upon the privacy screening that was installed,  
19 correct?

20 MS. BROWN-ROBERTS: Yes. The Applicant (audio  
21 interference) there was a letter from the adjacent neighbor that  
22 they had some concerns about privacy. And so I suggested that  
23 they -- one thing that they could do was to, you know, expand the  
24 privacy screen along one of the sections. So he did that. And  
25 based on that, I think that the adjacent property owner shouldn't

1 be significantly impacted by the deck.

2 CHAIRPERSON HILL: Got it. And those are the updated  
3 plans on Exhibit 36, I believe.

4 MS. BROWN-ROBERTS: That's correct.

5 CHAIRPERSON HILL: Okay. Okay.

6 Does the Board have any questions for the Office of  
7 Planning?

8 Mr. Fisher, do you have any questions for the Office of  
9 Planning?

10 MR. FISHER: No.

11 CHAIRPERSON HILL: Mr. Young, is there anyone here  
12 wishing to testify?

13 MR. YOUNG: We do not have anyone.

14 CHAIRPERSON HILL: Okay. All right.

15 So Mr. Fisher, do you have anything to add at the end?

16 MR. FISHER: No. Thank you.

17 CHAIRPERSON HILL: Okay.

18 All right. So as I mentioned at the start of this, like  
19 I'm not -- they are going to the ANC tonight.

20 Mr. Fisher, I'd like to hear -- I'd like to get  
21 something from the ANC. If you could ask, you know -- whatever  
22 ends up happening, right. If they, you know, deny it, if they  
23 approve it, you know, if you could ask them to submit something to  
24 us so we can vote on this next week, okay? That would be helpful.

25 And I guess, Mr. Moy, you can also reach out to the ANC?

1 MR. MOY: Yes. I will do that, sir.

2 CHAIRPERSON HILL: Okay.

3 And so Mr. Fisher, you're going to be on video call with  
4 them I guess tonight. And so, again, if you can go ahead and let  
5 them know that we're waiting to hear what they have to say. Okay.

6 And so unless the Board has any questions, I'm going to  
7 close the record for everything except the information that we're  
8 waiting on from the ANC and then set this for decision next week.  
9 Is that good with the Board?

10 VICE CHAIRPERSON JOHN: Yes.

11 CHAIRPERSON HILL: Okay.

12 All right, Mr. Fisher. Well, good luck. And we'll see  
13 you later. Oh, hold on, Mr. Fisher.

14 Mr. Moy, did you need me?

15 MR. MOY: Yes. I just want to ask whether or not the  
16 Board wanted to set a deadline for the ANC to submit their letter?

17 CHAIRPERSON HILL: I mean, you know, I guess, you know,  
18 Tuesday night or Monday, you know.

19 MR. MOY: All right. Your choice.

20 CHAIRPERSON HILL: Tuesday at 5:00.

21 MR. MOY: Yeah. I -- can I make it Monday if that's  
22 fine with the Board?

23 CHAIRPERSON HILL: Sure. Sure. Monday at 5:00.

24 MR. FISHER: And two follow-up questions on my side.  
25 Will -- should I be attending next week's meeting as well then?

1           CHAIRPERSON HILL: No. It's just going to be a decision  
2 meeting, so you can watch, obviously. But you won't be allowed to  
3 participate because it's just a decision meeting. We don't take  
4 any testimony.

5           MR. FISHER: Yeah. Understood.

6           CHAIRPERSON HILL: Okay. And if you can just share with  
7 the ANC that we're waiting until, you know, Monday at 5 o'clock to  
8 hear from them.

9           MR. FISHER: Okay. And if -- I mean, if they fail to  
10 meet that delivery date, is the default to -- is the default  
11 approval or rejection, I guess?

12          CHAIRPERSON HILL: No, it's not going to be either  
13 approval or rejection. Like, we're just trying to hear from the  
14 ANC. And if we don't get something by Monday, you'll -- I guess  
15 you can call Mr. Moy and explain why, if you know why the ANC  
16 hasn't given us anything. I mean, you're going to be there,  
17 right?

18          MR. FISHER: Yeah.

19          CHAIRPERSON HILL: So you'll find out tonight. And so,  
20 you know, hopefully they'll give you something by Monday -- give  
21 us something by Monday at 5:00. But if not, then call up, you  
22 know, the Office of Zoning and Mr. Moy and let him know why  
23 they're not giving it to us. Okay?

24          MR. FISHER: Sounds good.

25          CHAIRPERSON HILL: Okay. All right, Mr. Fisher. Thank

1 you.

2 MR. FISHER: Thank you.

3 CHAIRPERSON HILL: All right. Give me one second, Board  
4 members. Okay. Do you guys need anything? Or is there anything  
5 you want to talk about? No? Okay.

6 Well, Chairman Hood, you got an easy one today. I'm  
7 glad that, you know --

8 MR. HOOD: Thank you very much.

9 CHAIRPERSON HILL: You probably -- you normally are  
10 surprised when you get to leave early, but this is before lunch.

11 MR. HOOD: Yeah. This is very surprising. But thank  
12 you all.

13 CHAIRPERSON HILL: Okay.

14 All right. You guys, thank you --

15 Mr. Moy, is there anything else you need from us?

16 MR. MOY: No, there's nothing from the staff, sir. You  
17 broke the record today.

18 CHAIRPERSON HILL: Yeah. All right. Okay.

19 All right. You guys have a good day. We're adjourned.

20 Bye, bye.

21 MR. HOOD: Have a good day everyone.

22 (Whereupon, the above-entitled matter went off the  
23 record at 11:47 a.m.)

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 10-21-20

Place: Teleconference

was duly recorded and accurately transcribed under my  
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