

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

DECEMBER 23, 2020

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 10:16 a.m. EST, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LORNA JOHN, Vice Chair
CHRISHAUN SMITH, Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY HOOD, Chairperson
PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

ANNE FOTHERGILL
BRANDICE ELLIOT
JONATHAN KIRSCHENBAUM
KAREN THOMAS
MATT JESICK
MAXINE BROWN-ROBERTS
STEPHEN COCHRAN
STEPHEN J. MORDFIN

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALEXANDRA CAIN, ESQ.
JACK RICE, ESQ.

DISTRICT DEPARTMENT OF TRANSPORTATION STAFF PRESENT:

KIMBERLY VACCA

The transcript constitutes the minutes from the
Regular Public Hearing held on December 23, 2020.

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

2 10:16 a.m.

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
7 videoconference. This is the December 23rd, 2020 public
8 hearing of the Board of Zoning Adjustment of the District of
9 Columbia.

10 My name is Fred Hill, Chairperson. Joining me
11 today is Lorna John, Vice Chair; Chrishaun Smith, Board
12 Member. And representing the Zoning Commission is Anthony
13 Hood as well as Peter Shapiro.

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

16 Please be advised that this proceeding is being
17 recorded by a court reporter.

18 It is also webcast live via Webex and YouTube
19 Live. The webcast video will be available on the Office of
20 Zoning's website after today's hearing.

21 Accordingly, everyone who is listening on Webex
22 or a telephone will remain muted until your time to speak.
23 Please state your name and home address before providing oral
24 testimony or your presentation. Oral presentations should
25 be limited to a summary of your most important points. When

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

4 If you're experiencing difficulty accessing Webex
5 or your telephone call, or if you have forgotten to sign up
6 24 hours prior to this hearing, then please call our OZ
7 hotline number at 202-727-5471 -- once again, 202-727-5471
8 -- to sign up to testify or to receive Webex call-in
9 information.

10 All persons planning to testify, either in favor
11 or opposition, should have signed up in advance. They'll be
12 called by name to testify. If this is an appeal, only
13 parties are allowed to testify. By signing up to testify,
14 all participants will take the oath or affirmation, as
15 required by Y408.7.

16 Requests to enter evidence at the time of an
17 online virtual hearing, such written testimony or additional
18 supporting documents, other than live video, may not be
19 presented as part of the testimony, but may be allowed
20 pursuant to Section Y103.13, provided that the persons making
21 the request to enter an exhibit explain how the proposed
22 exhibit is relevant and give good cause that justifies
23 allowing the exhibit into the record, including an
24 explanation of why the request (telephonic interference)
25 filings prior to the hearing, pursuant to Y206, and how the

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1 proposed exhibit would not unreasonably prejudice any
2 parties.

3 The order of procedures in special exceptions and
4 variances is in Y409. The order of appeals is in Y507.

5 At the conclusion of each case, an individual who
6 is unable to testify because of technical issues may file a
7 request for leave to file a written version of the planned
8 testimony to the record within 24 hours following the
9 conclusion of public testimony in the hearing. If additional
10 written testimony is accepted, then parties will be allowed
11 a reasonable time to respond, as determined by the Board.
12 The Board will, then, make its decision at its next meeting,
13 but no earlier than 48 hours after the hearing.

14 Moreover, the Board may request additional
15 specific information to complete the record. The Board or
16 the staff will specify at the end of the hearing exactly what
17 is expected and the date when persons must submit the
18 evidence to the Office of Zoning. No other information shall
19 be accepted by the Board.

20 The Board's agenda may include previous cases set
21 for decision.

22 After the Board adjourns the hearing, the Office
23 of Zoning, in consultation with myself, will determine
24 whether a full or summary order may be issued. A full order
25 is required when the decision it contains is adverse to a

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1 party, including the affected ANC. A full order may also be
2 needed if the Board's decision differs from the Office of
3 Planning's recommendation. Although the Board favors the use
4 of summary orders whenever possible, an Applicant may not
5 request such an order.

6 The District of Columbia Administrative Procedures
7 Act requests that a public hearing on each case be held in
8 the open before the public. However, pursuant to Section
9 405(b) and 406 of that Act, the Board may, consistent with
10 its rules and procedures and the Act, enter into closed
11 meetings on a case for purposes of seeking counsel on a case,
12 pursuant to D.C. Official Code 2-575(b)(4), and/or
13 deliberating on a case, pursuant to D.C. Official Code
14 2-575(b)(13), but only after providing the necessary public
15 notice, and in the case of an emergency closed meeting, after
16 taking a roll call vote.

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

18 SECRETARY MOY: Yes, we do, very briefly, Mr.
19 Chairman.

20 For the transcript for today's docket, there were
21 two applications that were originally scheduled, but they've
22 been postponed and rescheduled. Those Case Applications are
23 20352 of 527 Manor Place LLC, rescheduled to January 27,
24 2021, and Application No. 20342 of Peggy Kennedy, rescheduled
25 to February 10th, 2021.

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1 BZA CHAIR HILL: Okay. Great.

2 Mr. Moy, if you could call that case, please?

3 SECRETARY MOY: Yes. So, once again, and for
4 clarity for the transcript, for ease of read in the
5 transcript, I'll recall the case.

6 And this is Case Application 20328 of Madison
7 Heights LLC, as amended, for special exceptions under the new
8 residential development requirements of Subtitle U, Section
9 421.1, and under the Voluntary Inclusion Zoning requirements,
10 pursuant to Subtitle F, Section 5206.1, which would add eight
11 additional units to an existing principal dwelling unit in
12 the RA-1 Zone at premises 1214 Madison Street, Northwest,
13 Square 2934, Lot 35.

14 And I believe all the parties are available and
15 accessed into the videoconferencing, sir.

16 BZA CHAIR HILL: Okay. Great. All right. Okay.
17 Let's see.

18 Can everybody turn on their cameras for me, if you
19 can? Okay. Great.

20 Mr. Sullivan, could you introduce yourself for the
21 record, please?

22 MR. SULLIVAN: Yes. Thank you, Mr. Chairman and
23 Members of the Board. My name is Marty Sullivan with
24 Sullivan & Barros, on behalf of the Applicant.

25 BZA CHAIR HILL: Okay. Mr. Brown, could you

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1 introduce yourself for the record, please?

2 MR. BROWN: Yes. David Brown, Knopf & Brown,
3 counsel for Michael Yates.

4 BZA CHAIR HILL: Okay. Commissioner Goodman,
5 could you introduce yourself for the record, please?

6 MR. GOODMAN: Yes. Commissioner Jonah Goodman.
7 I'm appointed by 4C to represent this case.

8 BZA CHAIR HILL: Commissioner, were you with us
9 on the last case? No, I'm sorry, were you here at the last
10 hearing? I don't know why I'm blanking on that.

11 MR. GOODMAN: For this case, I was not. The
12 marathon hearing, no. I was here last week with you.

13 BZA CHAIR HILL: Okay. Right. You weren't here
14 for the appeal, is what you're saying?

15 MR. GOODMAN: I was not here for the appeal and
16 I wasn't here for the first hearing of this.

17 BZA CHAIR HILL: Okay. Got it. Got it.

18 All right. Well, let me start with you, Mr.
19 Sullivan.

20 So, the reason why we're back here again is I was
21 interested in looking a little bit more. So, what had
22 happened was -- and everybody else can introduce themselves
23 as we kind of go through this -- but what had happened was
24 there was an appeal. We heard four or five hours of
25 testimony on the merits of the appeal, right? And then, the

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1 appeal, what ended up happening was that an error was made
2 by the Zoning Commissioner, that we should have heard this
3 as a special exception. So, then, you all came and we heard
4 it as a special exception. And I, for me, didn't have enough
5 discussion in terms of some of the adverse impacts concerning
6 the project, and that's kind of what I wanted to discuss.

7 I mean, I'm going to cut right to the chase on
8 some of the things that I have. And then, maybe what I can
9 do is see if anybody else from the Board had particular
10 things they kind of wanted to talk about. And before I do
11 that, I also want to check in with the Commissioner because
12 the Commissioner had not been here before.

13 So, Mr. Sullivan, you kind of understand why
14 you're back before us, correct?

15 MR. SULLIVAN: Yes.

16 BZA CHAIR HILL: Okay. So, Chairman Hood, I'll
17 come right to you. Just give me one second because I just
18 want to not forget what I wanted to talk about.

19 Again, there was a window that I saw during the
20 last presentation, that the window looked right into the
21 property of the adjacent neighbor, and I was interested in
22 talking about that window getting some glazing, or where that
23 window kind of is.

24 And then, there was a discussion about a walkway,
25 I remember, that like the Applicant -- or I'm sorry -- the

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1 adjacent property owner had some issue with the walkway,
2 right?

3 And so, I'm just kind of throwing out some things
4 that I wanted to talk about, and those are the two things
5 that I wanted to talk about. I'm going to go around the
6 table to hear from my other Board members, to hear what
7 things they might want to bring up.

8 Before I do that, Commissioner Goodman, you're
9 here for what reason?

10 MR. GOODMAN: I'm just here to help, if you need
11 it with this case. I'm here for several other cases today,
12 and I'm going to be listening to the calls. So, I'm
13 available.

14 BZA CHAIR HILL: Okay. Great. Could you give us
15 a little more testimony, then, on your report?

16 MR. GOODMAN: Sure. I believe BZA, last week we
17 talked about this. ANC 4C has housing policy guidelines that
18 recommend that all new housing comes with voluntary
19 inclusionary zoning or support for affordable housing in our
20 community. The Applicant has agreed to add a voluntary IZ
21 unit. So, ANC 4C, along with some other requirements that
22 are conditional, like pipe removal and other things like
23 (telephonic interference) surfaces, has worked with the
24 Applicant to meet all of this.

25 This property, for us, is several hundred feet off

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1 of Georgia Ave, a major thoroughfare, transitway, where we
2 see and are requested by some neighbors to have housing
3 massed on these areas and not spread out. So, we looked to
4 this case and thought that, although the direct neighbors are
5 opposed to it, this didn't meet most of the conditions, if
6 not all, that the ANC 4C foresees in how housing should be
7 built. This is directly across an alley from a 67-unit
8 apartment building, across the street from another like 37-
9 unit apartment building. I know that the (telephonic
10 interference) family housing in this area, but this is
11 predominantly surrounded by large, mid-density housing.

12 And we don't necessarily think this is the most
13 amazing thing, but on the conditions here, given what RA-1
14 allows with this, we feel that we have met some sort of
15 mutual ground and compromise with the Voluntary Inclusionary
16 Zoning that will be sustained for several decades.

17 BZA CHAIR HILL: Okay. All right. So, I'm going
18 to go around the table.

19 Chairman Hood, you had had your hand up?

20 ZC CHAIR HOOD: Yes. I just wanted to correct
21 something, Mr. Chairman. I know sometimes when I'm chairing,
22 I'll say something and I may have misspoke, but it sounded
23 like you said the Zoning Commission or Commissioner did
24 something. I forgot how you worded it, but I just want to
25 make sure for the record that we clean that up because people

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1 will take that and run with it. The Zoning Commissioner did
2 not have anything to do with how this proceeding was going
3 as far as doing it correct or incorrect. And I don't think
4 you were referring necessarily to the Zoning Commissioner,
5 even though that's what was said. I think you were referring
6 to something else. So, I just want make sure that's on the
7 record.

8 I'm actually taken back by the Board -- and I
9 mentioned this before -- and I see and I appreciate the good
10 work that the ANC does. Everybody knows I'm a community
11 person as well. But we don't want to keep putting people on
12 promised land with what I see here in this ANC letter because
13 it's totally not within the jurisdiction of the BZA. It's
14 out of the scope. And they can put it in there, but there's
15 nothing in our process in the BZA that we can consider this.

16 Now I know people may be upset; you know, why is
17 he saying that? Neighborhoods, we have it rough as possible.
18 But what's going to happen is we're going to get an applicant
19 that's going to challenge this kind of stuff in court and
20 we're going to lose. We're going to lose. I've had enough
21 remands come back to me to know that writing this kind of
22 letter of what ANC 4C is starting, the path they're going
23 down is incorrect.

24 But, if they leave it outside of this
25 jurisdiction, if they point to it, if they say, "This is what

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1 we're working on," I applaud them for that. But I don't want
2 to put any ANC Commission on any (telephonic interference)
3 of frontline folks in this city who work hard, who I know
4 work hard, on promised land, and think that because they send
5 something like this to the BZA, that it can be honored,
6 because it can't. And that's in the regulations.

7 I applaud you, Commissioner Goodman, you and your
8 ANC, but we can't hold applicants to stuff that you have in
9 here. IZ, that's the only Commission stuff. That's where
10 that kind of stuff starts at. And the courts have come back
11 -- believe me, I've heard enough from the Court of Appeals.
12 So, I just think that we don't want to send anybody on
13 promised land about this money and stuff, because you cannot
14 buy zoning. And that's basically what's happening here.

15 And, Mr. Goodman, if your ANC wants to talk to the
16 Office, they can, but I just don't want you all to go on
17 promised land. If the Applicant agrees to it, that's fine.
18 But one of these applicants is not going to agree to it, and
19 that's going to put the Board -- and it depends upon how we
20 handle it -- that's going to put us in a bad situation.

21 The other thing is, also, for me in this case, I
22 would like to see all the adverse impacts mitigated. And,
23 Mr. Sullivan, you can point me -- I asked for a prospective.
24 I think this is the case I asked for a prospective, but I
25 didn't see it. You shook your head. So, was it this case

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1 or the other case?

2 MR. SULLIVAN: 421C.

3 ZC CHAIR HOOD: I asked to see, I asked to see --

4 MR. SULLIVAN: I'm sorry.

5 ZC CHAIR HOOD: I did ask for something in this
6 case, but I didn't see it. So, if you could tell me what
7 exhibit it's in, then I'll be fine.

8 But, through this whole process, Mr. Chairman, I
9 just want to see what the mitigations are for the adverse
10 impacts, because I do see the adverse impacts in this special
11 exception and there's no way of getting around them.

12 So, thank you. Thank you, Mr. Chairman.

13 BZA CHAIR HILL: Okay. I'm going to keep going
14 around the horn and end with Ms. John.

15 Mr. Smith, do you have anything specific you want
16 to bring up?

17 MEMBER SMITH: Nothing specific more than what has
18 already been stated on the record by our Chairman. But I
19 would like to see some discussion about how adverse impacts
20 will be mitigated for this one.

21 BZA CHAIR HILL: Okay. Ms. John?

22 VICE CHAIRPERSON JOHN: I had a question about
23 that window that's looking across from the kitchen to the
24 structure. And I wasn't sure which kitchen. I think this
25 was submitted in Mr. Yates' package. And I wasn't sure

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1 whether this was across the alley, the walkway, or across the
2 12-foot side yard. I mean, where are we looking at through
3 this window? And I'd like Mr. Sullivan to address it in
4 terms of the adverse impacts.

5 And if Mr. Sullivan could also respond to the
6 issue of the walkway and why it would be appropriate, the
7 addition along the walkway? So, I'm interested in those two
8 questions.

9 BZA CHAIR HILL: Okay. And I'll come back around.

10 So, Mr. Sullivan, again, the whole thing about
11 that window and kind of the discussion about the walkway,
12 that's something that if you can kind of point to -- I guess
13 we'll give you a chance to do a presentation.

14 I'm just again trying to figure out -- because I
15 don't want us to go over again everything. I want to kind
16 of establish kind of where we are, I suppose, right, before
17 we start going into -- I've got a long day again today and
18 staying for Christmas Eve, or whatever. So, I'm trying to
19 do this as efficiently as possible, so that you all know
20 where we are.

21 And before I even do that now, I'm going to go to
22 the Office of Planning real quick. So, Office of Planning,
23 can you again just kind of go over your -- what I would
24 understand from the Office of Planning is your analysis as
25 to how they're meeting the criteria, right, concerning light

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1 and air and adverse impacts.

2 Because as I understand it, again, the massing is
3 matter of right, right? That is something that the building
4 could be built the way it is. And what we're really kind of
5 talking about -- and this is where it gets a little bit
6 sticky sometimes -- is that we're really talking about the
7 adverse impact for the additional units, right, not even
8 necessarily the massing? But, because this is before us, the
9 massing does get brought into the discussions.

10 So, Mr. Kirschenbaum, again, if you could go over
11 your analysis as to how you believe this should be approved?

12 MR. KIRSCHENBAUM: So, BZA Chair Hill and Members
13 of the BZA, yes, again, as we stated at the December 9th
14 public hearing, the proposed building (telephonic
15 interference) is fully a matter of right. The only thing
16 that is before you is the special exception to permit the
17 building and a special exception for them to opt into IZ to
18 use some bonus FAR.

19 But, in terms of heights and setbacks of the
20 building, that is all matter of right. If this was a
21 completely new building, and they were proposing two dwelling
22 units per floor, they could provide one side yard and have
23 the building fully built along the side property line with
24 the property that is in opposition to this case. So, the
25 building could be built even closer if this was, you know,

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1 if we were starting from scratch.

2 So, again, with regards to light and air, the
3 building, again, is providing all of the required setbacks.
4 It conforms to height. When we first reviewed these plans,
5 we identified that the proposed penthouse was not meeting the
6 required setbacks from the side of the property that now
7 abuts the neighborhoods in opposition. And we informed the
8 Applicant about this, and they reduced the size of the
9 penthouse to make it comply. (Telephonic interference)
10 through our review, when it finally got to you at the Board
11 of Zoning Adjustment. And, also, this building is located
12 on the southern side of the street, which should also help
13 negate some of the -- you know, any adverse impacts to light.

14 Other than that, I don't really have much
15 additional testimony to provide.

16 BZA CHAIR HILL: Okay. All right.

17 Okay. Does the Board have any questions for the
18 Office of Planning?

19 VICE CHAIRPERSON JOHN: No. I think Mr.
20 Kirschenbaum helped me with the question of the walkway
21 because I was curious as to why the walkway was extended on
22 the addition, you know, why they maintained the 3-foot
23 distance rather than pushing the addition further to create
24 a larger side yard. But the explanation -- and I had
25 forgotten about this as I was reviewing the case last night

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1 because I believe we heard testimony on this before -- that
2 the building, if it were new, the building could have been
3 placed on the property line.

4 MR. KIRSCHENBAUM: That's correct.

5 VICE CHAIRPERSON JOHN: Right. So, that was very
6 helpful to hear. Thank you.

7 MR. KIRSCHENBAUM: And I should maybe just also
8 add that, if this building was just like a row building, if
9 this was a row building with just one or two dwelling units,
10 the building could actually go from side lot line to side lot
11 line and provide no side yards at all. So, actually, even
12 a larger structure could be built here if it was not an
13 apartment house and just a single family rowhouse or a flat.
14 So, (telephonic interference) one side yard (telephonic
15 interference) also be built here with no side yards at all.

16 VICE CHAIRPERSON JOHN: Yes. Thank you.

17 BZA CHAIR HILL: Chairman Hood?

18 ZC CHAIR HOOD: Mr. Kirschenbaum, again, thank you
19 for your report.

20 And when I read -- let's see if it's the right
21 -- okay, when I read your report, and let's walk down this
22 lane and help me understand from a planning perspective how
23 we get to where we are. The proposed conversion would not
24 appear to adversely affect the use of (telephonic
25 interference) property. Can I have you explain that? I

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1 don't follow that because you tie that in with what's
2 allowable. And I think from the Board's and the Commission's
3 perspective, we should be looking at what adversely
4 affects -- if it's allowable, it doesn't mean that it doesn't
5 adversely affect. So, are you putting those together? Help
6 me out in seeing how you got to your rationale.

7 MR. KIRSCHENBAUM: Well, again, part of the
8 rationale is this building is in compliance with its
9 setbacks. It's also compliant with height. Part of the
10 reason why, you know, parts -- so, there's two different
11 things I think I'll elaborate on.

12 The first is that this building is close to the
13 house on the neighboring property that's in opposition. Part
14 of the reason is because -- and if someone wants to correct
15 me -- but part of the reason why that house is so close to
16 this proposed property is because they're not providing a
17 full 8-foot side yard. So, that's one of the reasons why
18 these two buildings are so close to each other.

19 Now what was also discussed at the hearing on
20 December 9th was the fact that the neighbor in opposition,
21 his kitchen window, well, now it directly faced windows of
22 the staircase on the proposed property. And I would say to
23 the Board that it would certainly be prudent for the Board,
24 if they feel (telephonic interference), you will require that
25 window to either be removed or I believe the Chair suggested

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1 that it be glazed or something. So, there's certainly a way
2 that (telephonic interference) impose conditions on this
3 proposal to further mitigate adverse impacts.

4 ZC CHAIR HOOD: The last part of what you said is
5 exactly what I'm looking for (telephonic interference)
6 adverse impacts on the neighbor.

7 I do have some problems with the side yard for
8 sure. Even though it's allowable, it does not mean that it
9 does not have adverse effects. So, to me, that's the way I'm
10 looking at this. You know, even though it's allowable and,
11 oh, they can do this and they can do that, but I think the
12 Board's job, I think our job, at least the way I look at it,
13 is to make sure (telephonic interference) adverse impacts.
14 And I just don't see any. I think the Chair is right on
15 target when he talks about the glazed windows. And there's
16 some other adverse impacts like the air that's affecting the
17 neighbor's property as well.

18 So, I will wait to hear what others have to say,
19 but that's kind of where I'm coming from. I'm looking for
20 the mitigation methods. Just because it says you can do it
21 does not mean there's no adverse impacts, and we're duty-
22 bound to look at all adverse impacts which affect neighboring
23 property and (telephonic interference).

24 So, thank you, Mr. Chairman.

25 BZA CHAIR HILL: Okay. Mr. Brown, can you hear

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1 me?

2 MR. BROWN: I can. Thanks.

3 BZA CHAIR HILL: So, do you know -- and I can ask
4 your client also -- but I was unclear during the last hearing
5 what the issue was with that walkway. Are you able to tell
6 me what that issue was?

7 MR. BROWN: The issue is that it creates the --
8 by having this building as close to the property line as it
9 is, it creates a very narrow gap between the two buildings
10 which is uncharacteristic of the neighborhood. The other
11 buildings, although they're, you know, many decades old, they
12 have a history of preserving side yards on both sides, such
13 that most of the buildings in the area have much more light
14 and air between them than will be the case between Mr. Yates
15 and this building.

16 BZA CHAIR HILL: I got it, Mr. Brown. I'm not,
17 anyway, I'm not trying to argue the side yard issue
18 necessarily. I'm just trying to understand how one could go
19 about mitigating that side yard. And I thought that your
20 client had some suggestion. He mentioned something about a
21 gate. And I can turn to your client in a second. But I
22 don't know what there is right now, whether there's a gate,
23 whether there's a fence. I don't know what there is to
24 mitigate that side yard.

25 MR. BROWN: Well, my understanding -- and I'd like

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1 Mr. Yates to follow up on this -- is that the original house
2 that was there did not extend anywhere near as far back on
3 the property as the proposed apartment building does. And
4 the apartment building is basically going to extend the
5 existing setback. And one way to mitigate that would be for
6 the extension, any extension of the apartment building beyond
7 the original rear of the house to be set back further from
8 the lot line.

9 BZA CHAIR HILL: Yes. Okay. All right.

10 So, I guess I can ask Mr. Yates. Mr. Yates, you
11 had mentioned something about a gate or something, I thought,
12 concerning that little walkway. Was that correct or no?

13 MR. YATES: I think what I mentioned is that that
14 side yard becomes a security concern because neighbors use
15 that -- come up my stairs, use that side wall thinking it's
16 a path to the alley in the rear. And so, it's a security
17 concern for me.

18 BZA CHAIR HILL: Okay. I was just trying to
19 figure out, Mr. Yates, some way -- and this is what I'm
20 trying to understand -- a way to mitigate that risk.
21 Meaning, if there's a gate or a fence -- and I can't
22 visualize it right now; I'm trying to pull up an exhibit.
23 Do you have a suggestion for how to mitigate that concern of
24 yours?

25 MR. YATES: Well, I think it is definitely the

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1 concern No. 1. And I think it needs to be blocked. And the
2 second problem that I have is the rear yard is 4 to 5 feet
3 beyond the existing property. So, this is something that I
4 think the depth of that building is a big concern to me.

5 BZA CHAIR HILL: Say it again? The what of the
6 building?

7 MR. YATES: How deep the building goes into the
8 yard.

9 BZA CHAIR HILL: Right. Okay.

10 MR. YATES: It's 4 to 5 feet beyond the original
11 structure.

12 BZA CHAIR HILL: You had mentioned something
13 about, you just said something about a lock on something?

14 MR. YATES: No. No, I'm saying that the side, the
15 non-conforming side yard of this new building extends another
16 4 to 5 feet beyond the original structure.

17 BZA CHAIR HILL: I understand that.

18 MR. YATES: As a result of that, it creates a
19 security concern for me because people come on my property
20 believing that virtual sidewall leads to the alley in the
21 rear, and, in fact, it does not.

22 BZA CHAIR HILL: Okay. So, Mr. Sullivan, maybe
23 at some point, you can point out what Mr. Yates is talking
24 about on a diagram, so I can understand it just a little bit,
25 and how we might be able to mitigate whatever concern that

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1 is. So, that's one question.

2 Then, the other, Mr. Yates, there was a window.
3 Is that window going -- it's straight (telephonic
4 interference) from your kitchen into somewhere else, correct?

5 MR. YATES: So, that window was taken in my
6 kitchen and it looks right into the stairwell and the front
7 door of the new apartment building.

8 BZA CHAIR HILL: Okay, okay. Got it. All right.

9 Mr. Brown, did you have any questions for the
10 Office of Planning?

11 MR. BROWN: Yes, I do.

12 The Office of Planning, Mr. Kirschenbaum used the
13 phrase "matter of right". I don't understand your use of
14 that term. Matter of right has to do with a permitted use.
15 How can matter of right be characterized as relevant to a
16 special exception use? A special exception use, for a
17 special exception to be allowed, meeting the development
18 standards is a necessary condition, but not necessarily a
19 sufficient condition, isn't that correct?

20 MR. KIRSCHENBAUM: That was the response to that
21 the proposed height and setbacks of the building would comply
22 with the development standards. This special exception in
23 the site plan was reviewed. And again, like I said, we feel
24 like this meets the criteria of the site plan review, and the
25 proposed building complies with the development standards of

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1 the R-1-A Zone for setbacks and for height.

2 MR. BROWN: My question is, do you agree that that
3 is a necessary condition, but not necessarily sufficient when
4 we're talking about a use that's not a permitted use?

5 MR. KIRSCHENBAUM: So, it is a permitted use that
6 requires special exception. If this wasn't a permitted use,
7 then this would require a variance.

8 MR. BROWN: No, a permitted use is something that
9 does not require a special exception. A special exception
10 is a use that is allowed, subject to conditions that ensure
11 compatibility. Don't you agree with that?

12 MR. KIRSCHENBAUM: I don't have anything
13 additional to add to that.

14 BZA CHAIR HILL: All right, Mr. Brown. Mr. Brown,
15 what he's saying is that this is a permitted use under
16 special exception. What he was talking about before was in
17 response to some of our questions in terms of, if this were
18 a single family home, is the massing matter of right? And
19 that's what the Office of Planning was commenting to.

20 MR. BROWN: Yes, and I'm trying to help Mr. Hood
21 understand that that's not necessarily the end of the story
22 when we're dealing with special exceptions.

23 BZA CHAIR HILL: Okay. Do you have a question,
24 Mr. Hood?

25 ZC CHAIR HOOD: Thank you, Mr. Brown, for helping

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1 me understand that, but I actually think I got it. But thank
2 you.

3 (Laughter.)

4 MR. BROWN: Thank you.

5 BZA CHAIR HILL: Do you have any questions? Do
6 you have any questions for the Office of Planning, Mr. Brown?

7 MR. BROWN: No.

8 BZA CHAIR HILL: Give me a second.

9 Mr. Brown, thanks.

10 Mr. Sullivan, do you have any questions for the
11 Office of Planning?

12 MR. SULLIVAN: No. Thank you.

13 BZA CHAIR HILL: Okay. Ms. John, do you have
14 something?

15 VICE CHAIRPERSON JOHN: Actually, no. I was just
16 going to comment that this is really, this is an RA-1 Zone.
17 So, an apartment building is permitted, subject to special
18 exception approval. So, I would just like to say that's how
19 I'm looking at the application and to see if there are any
20 adverse impacts, even though the apartment building is
21 permitted. And I believe that's why we are having this
22 hearing, because some of us had questions about the adverse
23 impacts.

24 BZA CHAIR HILL: Okay. I just realized that it
25 is the day before Christmas Eve and I was supposed to do some

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1 Santa Claus shopping, and this is not going to happen, it
2 looks like, because it's already 11:00.

3 Yes, Chairman Hood, please go ahead.

4 ZC CHAIR HOOD: Well, you maybe should have done
5 your shopping a little early, like the rest of us because you
6 may be in trouble. But I have a few things I can loan you.

7 (Laughter.)

8 I would agree with going and doing my job.

9 But, in the line of questioning -- somebody always
10 calls me when I'm unmuted -- in the line of questioning that
11 you were going, Mr. Chairman, and the Vice Chair was going,
12 could I ask Mr. Yates and Mr. Brown a question?

13 Because, again, it goes back to my same question
14 I was asking Mr. Kirschenbaum about mitigations. I mean, we
15 talked about -- I'm hearing about the window being glazed.
16 What else, Mr. Yates, from your perspective, do you consider
17 -- I know what I consider from reading the record -- what
18 else do you consider? And I think you've mentioned this
19 previously, but help me refresh my memory, other adverse
20 impacts that need mitigation, because, to me, that's where
21 we get to.

22 You've done it by a matter of right, but special
23 exception, as Mr. Brown was trying to enlighten me, is not
24 -- I mean, a matter of right or it's allowable is not the end
25 of the story, and I agree. Special exception brings that

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1 other caveat where we need to look at mitigation methods and
2 adverse impacts, light and air. That's where I am. And I
3 have not heard anything yet, except for a glazed window, that
4 mitigates adverse impacts. What other outstanding, Mr.
5 Yates, issue to you is adversely affecting your property?

6 MR. YATES: Well, the building was extended 4 to
7 5 feet from the original structure. As a result of this
8 extension, I literally walk out my back yard and am looking
9 at the big, green wall. And that impacted the use of my back
10 yard. It has impacted the use of my deck, not only on the
11 level, first floor, but also the upper deck also. It's
12 impacted the use of my greenspace in the back. It's impacted
13 the use of my privacy. I can no longer go outside without
14 having people listening on my conversation, seeing everything
15 I'm doing. So, that extended side yard of 4 to 5 feet is
16 definitely, you know, to me, the coup de grace in this case.
17 It has an adverse impact on me.

18 ZC CHAIR HOOD: Okay. Mr. Yates, let me ask you,
19 is there anything -- and I don't know; we might have asked
20 this during the hearing. Forgive me. We've got a lot of
21 stuff going on. Is there anything that can be done by this
22 Applicant, or have you talked to this Applicant about
23 anything that could help mitigate some of the impacts that
24 you are now having to deal with?

25 MR. YATES: I have not had conversations with the

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1 Applicant. One thing I think can be mitigated is the depth
2 of the rear yard. Right now, as I said, it's 4 to 5 feet.
3 I think it needs to be reduced to mitigate that impact.

4 ZC CHAIR HOOD: So, Mr. Kirschenbaum mentioned the
5 site plan review, and I understand that. But I can tell you,
6 right now, other than the glazed window, I have not heard
7 anything that lessens the impacts on the neighboring
8 property. So, I'll be looking forward to hearing that, Mr.
9 Chairman, as we go through this process.

10 Thank you.

11 Oh, another thing, Mr. Sullivan, just a note. I
12 do not see the prospectives, or whatever I asked for for this
13 case, I didn't see it. I think it was how it looked to the
14 surrounding neighbors. I know the opposing party supplied
15 it, but I didn't see it from the Applicant, which was Mr.
16 Mlakar -- forgive me if I mispronounced your name -- for what
17 he said, and I asked for evidence, but I did not get to see
18 it.

19 So, thank you, Mr. Chairman.

20 BZA CHAIR HILL: Okay. Mr. Sullivan -- Mr.
21 Mlakar, just give me a second -- Mr. Sullivan, do you know
22 what Chairman Hood was talking about before?

23 MR. SULLIVAN: Yes. It's Exhibit 53A, and the
24 architect is here, too, and can explain that. They prepared
25 that. It was a submission -- it was a context map,

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1 essentially, showing more of the surrounding uses around the
2 property.

3 ZC CHAIR HOOD: Thank you, Mr. Sullivan. I
4 actually saw that, but I thought the opposing party supplied
5 it. Okay.

6 BZA CHAIR HILL: Okay. I am going to kind of cut
7 to the chase a little bit with this with everybody. Like I'm
8 trying to understand, again, how to somehow mitigate some
9 adverse impact. I mean I think that, again -- and, Mr.
10 Brown, Mr. Yates, you know, where I am right now is, again,
11 I think that this thing, unfortunately, is the massing is
12 what the massing is, right? And so, within the regulations
13 -- and my colleagues will be able to disagree with me -- but
14 within the regulations the way they are written, I believe
15 this property could be approved under special exception.

16 So, what I'm just trying to do is see if there's
17 any way to mitigate some of those adverse impacts which are
18 already going to exist because I think the building is the
19 correct -- just within the regulations, I understand why the
20 Applicant -- I'm sorry -- I understand why the neighbor
21 wouldn't want this next door to them. But, again, in the
22 context of the RA-1 Zone, and the other apartment buildings
23 that are kind of around there, and also the massing of the
24 building, I'm going to be voting in favor of the application.

25 And so, I'm trying to understand what we can do

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1 to somehow mitigate some of the effects of that development
2 that's at least reasonable. So, I'm just telling you where
3 I am, right? And I don't know if necessarily we have to go
4 back or if there's anything -- I mean, Mr. Yates, I don't
5 think they're going to pull the building back or change the
6 shape of the building. I'm just trying to figure out if
7 there's something that might be able to make this more
8 palatable.

9 And why I didn't want to keep this on the decision
10 calendar is that we didn't even talk about that window, which
11 is a simple fix, right? And so, that's why I'm a little
12 confused about this gate and your concerns, Mr. Yates, about
13 security, because that also seems like a simple fix to me,
14 or at least something that could be worked on.

15 So, I'm just trying to figure out how we get to
16 the end of this hearing. And so, I'm going to throw out to
17 my colleagues, also, if they have anything else they would
18 like to hear from or about.

19 And at this point, I'm going to turn to Mr.
20 Sullivan. Just if you can point me to an exhibit perhaps
21 that shows this side yard and what Mr. Yates was speaking to
22 for his concern about security? Do you know an exhibit that
23 you can point me to?

24 MR. SULLIVAN: I think I'll turn it over to the
25 architect. He may know of an exhibit. But I think the

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1 walkway and the entrance there is on his property. I'm not
2 sure.

3 But, Michael, if you could address that, please?

4 MR. CROSS: Yes. I think if we look at Exhibit
5 5, page 2, that's a street view of the proposed property, as
6 well as that of the adjacent neighbors. I think in that
7 photograph we will be able to see that the walkway that I
8 understand that's creating a security concern actually exists
9 completely on Mr. Yates' side and is created by a series of
10 stairs that he has up that side of his property. We would
11 not be changing -- we're not proposing to change any of that
12 condition. I'm not sure if I understand the walkway issue
13 fully myself, though, right now.

14 MR. SULLIVAN: I think Mr. Yates mentioned that
15 our entrance faced his building, and I'm not sure if that's
16 the case or not, Michael. Is that --

17 MR. CROSS: So, I don't know. So, that image was
18 Image No. 2 on Exhibit 5.

19 To understand the relationship of the windows with
20 Mr. Yates' property, a good place to turn to is page 15.
21 That's the last page of the most recent drawings, which I
22 think are Exhibit 46B. Sorry, it's kind of an odd number
23 here. I think it's actually -- sorry -- 38B, if that makes
24 sense. Yes, the last page of 38B is an elevation of the side
25 of the building that faces Mr. Yates. And as you can see,

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1 actually, there's been a concession made already, in that
2 there are virtually no windows on that building face. The
3 only windows that face Mr. Yates' property are three windows
4 that are recessed in a small courtyard that go up and down
5 at the stair.

6 BZA CHAIR HILL: Mr. Cross, that's helpful.
7 That's helpful to me. So, that bottom window, that's the one
8 that looks directly at Mr. Yates' kitchen, correct?

9 MR. CROSS: I would assume that's the one that's
10 in his photograph, yes, sir.

11 BZA CHAIR HILL: And then, Mr. Yates, those other
12 windows that are above that window that faces your kitchen,
13 they don't face any other window in your house, correct?

14 MR. YATES: That is correct.

15 BZA CHAIR HILL: Okay. All right. So, Mr.
16 Sullivan, I don't think you have to have --

17 MR. YATES: Well, let me change that statement.
18 It faces the bedroom window on the second floor.

19 BZA CHAIR HILL: So, Mr. Sullivan, I don't know,
20 you or Mr. Cross, are all those just stairwell windows? Like
21 if you glazed all those windows, does that do anything? You
22 guys are okay with that?

23 MR. MLAKAR: Yes, we're fine with that.

24 BZA CHAIR HILL: Fine. So, you could glaze all
25 those windows?

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1 MR. MLAKAR: Yes. Yes, it's not a problem. You
2 know, we're definitely willing to work and make concessions.
3 And as for security, my property will be fully secure.
4 Nobody is going to be going through the side yard. There's
5 going to be a fence around the entire perimeter. Those
6 windows are not a problem.

7 BZA CHAIR HILL: Okay, okay. So, this is my
8 proposal then, I suppose, and then, you guys can kind of tell
9 me what you think. The only thing that I'd like to see,
10 then, I guess, is, Mr. Sullivan, if you would meet with Mr.
11 Brown or if you could get your clients together and just see
12 if there's anything that could be done in terms of mitigating
13 adverse impact that might be something that your client might
14 be able to do in a way that would help, again, some of the
15 issues that Mr. Yates has. And I'm not talking about tearing
16 down anything. I mean, I'm just saying whatever it is that
17 you think that you guys can kind of do in terms of security
18 or adverse impacts concerning any of the things that Mr.
19 Yates is discussing, I'd like to hear your final discussion
20 with him, as well as I'd like to see something in the record
21 that shows that these windows are going to be glazed.
22 Outside of that, I don't need anything.

23 So, I'm going to ask if the rest of the Commission
24 -- I'm sorry -- the rest of the Board members have anything
25 they need before we would come back and put this on a

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1 decision.

2 Nobody's raising their hand? Okay. So, nobody
3 needs anything? Okay.

4 So, then, Mr. Brown, I'm going to go ahead, and
5 do you understand what I'm asking?

6 MR. BROWN: Yes, I do.

7 BZA CHAIR HILL: Okay. Mr. Sullivan, do you
8 understand what I'm asking?

9 MR. SULLIVAN: Yes.

10 BZA CHAIR HILL: Okay. Chairman Hood?

11 ZC CHAIR HOOD: Mr. Chairman, the reason I'm not
12 saying anything, because what you said is exactly what I
13 would like to see as well.

14 BZA CHAIR HILL: Okay. All right. Then, when do
15 you think you can get something back to us, Mr. Sullivan?

16 MR. MLAKAR: Well, I can commit to everything that
17 we talked about right now. I don't have a problem with it.

18 BZA CHAIR HILL: No, no, I understand, Mr. Mlakar.
19 I guess you guys just do one more round, right, or the
20 attorneys can just talk then, okay, and just see if there's
21 anything that might mitigate any kind of adverse impact that
22 -- I'm a little confused by the security thing. Like that's
23 something that I guess maybe the attorneys can talk about.
24 I don't know. Or you all can talk about it together, to make
25 it so that Mr. Yates is not concerned about security with

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1 this walkway, because I'm also just a little bit unclear on
2 it.

3 The glazing's easy. That I understand, right?
4 So, you all talk one more time. You submit whatever you're
5 going to submit to us, and then, we'll decide.

6 So, Mr. Sullivan, I'm trying to ask when you think
7 you might be able to coordinate all this to get us back to
8 a decision.

9 MR. SULLIVAN: A week or so at the most. I mean,
10 provided I have access to Mr. Brown and we can talk. But
11 there's virtually no limit on how fast we can talk about
12 something or get those plans in.

13 BZA CHAIR HILL: Mr. Brown, will you be able to
14 talk to Mr. Sullivan in the next couple of weeks?

15 MR. BROWN: I'm not going anywhere. So, I'll be
16 available.

17 BZA CHAIR HILL: Okay. Nobody's going anywhere.

18 (Laughter.)

19 All right. Okay. Then, let's try to get
20 something in the record.

21 Mr. Moy, if we were to come back -- because
22 Chairman Hood's going to be on decision for us on the 13th
23 as well. And so, if you can come back, if we were to have
24 a decision on the 13th for this, when would you need stuff
25 back, Mr. Moy?

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1 SECRETARY MOY: All right. Before I get to that,
2 Mr. Chairman, after the Applicant makes their filing, would
3 you want any of the parties to respond to what is filed?
4 Because that would add another layer to the timeline.

5 BZA CHAIR HILL: It would be nice if we could --

6 SECRETARY MOY: Okay. So, working backwards then,
7 if the Board wants to set this for decision again on January
8 the 13th, then the responses -- and it's tough because of the
9 holiday season now, but everyone's saying that everyone's at
10 home in place. So, let's give it a week. So, responses
11 could be due into the record, let's say, for discussion
12 January the 6th. And the Applicant would have to make their
13 filing by, let's say, the week -- or let's say December
14 the --

15 BZA CHAIR HILL: Why don't you go ahead, Mr. Moy?
16 Why don't you say that let's get everything from everybody
17 by January 4th?

18 SECRETARY MOY: January 4th?

19 BZA CHAIR HILL: And then, responses by the 6th?

20 SECRETARY MOY: All right.

21 BZA CHAIR HILL: Okay. Mr. Sullivan, if you guys
22 can get us what we're asking for by the 4th of January, and
23 we'll have anybody's responses by the 6th of January, and
24 then, we can decide on January 13th. Okay?

25 All right. Does anybody have any questions for

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1 me?

2 (No response.)

3 All right. Good. All right. Then, Chairman
4 Hood, it's -- well, first of all, I'm going to excuse
5 everyone. Everyone have a lovely holiday and a happy new
6 year.

7 MR. SULLIVAN: Thank you, Mr. Chairman. The same
8 for you.

9 BZA CHAIR HILL: Thank you. Thank you.

10 And Chairman Hood, we're done with you, correct?

11 ZC CHAIR HOOD: That's correct, Mr. Chairman.

12 And I hope everyone has a happy and safe holiday.

13 Mr. Chairman, since I have the rest of the day,
14 I could go and do your shopping for you, if you text it to
15 me. If you want to, just text it to me and I'll do it.

16 BZA CHAIR HILL: I'll text it to you. I'll text
17 it to you.

18 ZC CHAIR HOOD: All right. You have a good
19 holiday.

20 BZA CHAIR HILL: All right.

21 All right, you all, let's take just a 10-minute
22 break, if we can. Try to come back as quickly as possible,
23 and then, we'll get started with Mr. Shapiro. Okay?

24 (Whereupon, the foregoing matter went off the
25 record at 11:06 a.m. and went back on the record at 11:16

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1 a.m.)

2 SECRETARY MOY: The Board is back in session after
3 a quick break, and the time is at or about 11:15 a.m. I
4 almost said "p.m."

5 So, the next Case Application in this hearing
6 session is Application No. 20368 of KD's Klubhouse. And this
7 application is captured and advertised for a special
8 exception under the R-use requirements of Subtitle U, Section
9 203.1(h), to permit the operation of a child development
10 center for 160 children in the RF-1 Zone, at premises 4025
11 9th Street, Southeast, Square 6159, Lot 124.

12 Mr. Chairman, for the record, there are three
13 documents that were filed within the 24-hour window prior to
14 a hearing. So, they are not in the record. They are
15 supplemental reports from Office of Planning, DDOT, and
16 ANC 8E-07, Commissioner Steven Slaughter.

17 So, unless the Board is clairvoyant, I'm assuming
18 you have not read these. And I'll leave it at that.

19 BZA CHAIR HILL: Okay. Great. Thank you.

20 Ms. Douglass, are you there?

21 MS. DOUGLASS: Yes, I am.

22 BZA CHAIR HILL: Could you introduce yourself for
23 the record, please?

24 MS. DOUGLASS: I'm Kat Douglass of KD's Klubhouse.

25 BZA CHAIR HILL: Okay. Ms. Douglass, are you here

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1 with an attorney or are you representing yourself?

2 MS. DOUGLASS: Representing myself.

3 BZA CHAIR HILL: Okay. Great. Who is with you
4 today?

5 MS. DOUGLASS: Tracy (telephonic interference),
6 and I also have Erwin Andres.

7 BZA CHAIR HILL: I know Mr. Andres. That's fine.

8 MR. ANDRES: Good morning, Chairman Hill.

9 BZA CHAIR HILL: Good morning, Mr. Andres.

10 Okay. So, we have a little bit a problem, not a
11 problem. I didn't think you guys had any of your stuff in,
12 that we were going to be able to hear this today. And then,
13 you guys got it all in, I guess, yesterday. So, I'm not
14 ready to hear this. And so, I don't know whether my Board
15 members are, but I haven't had a chance to read the OP
16 record. I mean, I'm sorry, I haven't had a chance to read
17 any of the stuff that came into the record within the 24
18 hours. So, I don't have anything to -- I can't move forward.
19 Unless my fellow Board members think they can, I'd say we go
20 ahead and postpone this, and then, have a chance to actually
21 review the record. We'll allow everything into the record,
22 and then, go ahead and set this up for another time.

23 I'm going to go around the table.

24 Mr. Shapiro, what do you think of that? Or
25 Commissioner Shapiro?

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1 COMMISSIONER SHAPIRO: I concur with your
2 recommendation, Mr. Chair.

3 BZA CHAIR HILL: Mr. Smith?

4 MEMBER SMITH: Second.

5 BZA CHAIR HILL: Ms. John?

6 VICE CHAIRPERSON JOHN: I concur.

7 BZA CHAIR HILL: Okay. So, we'll go ahead and let
8 everything into the record. I don't think -- Mr. Rice, there
9 won't be an issue with the waiver now, right, because we're
10 not going to -- I don't need to waive anything, but we can
11 just allow everything into the record.

12 Mr. Moy, when can we do this again?

13 MS. DOUGLASS: Can I say --

14 BZA CHAIR HILL: Yes, Ms. Douglass, you can go
15 ahead.

16 MS. DOUGLASS: (Telephonic interference) --

17 BZA CHAIR HILL: I can't hear you. Ms. Douglass,
18 you're kind of breaking up.

19 MS. DOUGLASS: Can you hear me now?

20 BZA CHAIR HILL: Yes.

21 MS. DOUGLASS: Okay. I've been in this property
22 since February of this year, and due to COVID, we were
23 missing the Certificate of Occupancy, which the hearing was
24 scheduled for today. So, if I'm unable to go forward with
25 this hearing, I have to vacate the premises of this property.

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1 Because of COVID, I have not been able to have kids in this
2 space. They gave me prorated rents. And due to the timely
3 manner of the COVID, we can't -- I'm unable to move forward.

4 So, pushing the date back really isn't an option
5 for me because we have waited for this date, and I have, due
6 to this hearing, to say if I can move forward to stay in this
7 building or if I have to turn in the keys and vacate the
8 premises.

9 BZA CHAIR HILL: All right, Ms. Douglass, I guess
10 we can try. I mean, Ms. Douglass, do you understand I'm
11 getting reports yesterday?

12 MS. DOUGLASS: No, I was not aware of that.

13 BZA CHAIR HILL: Right. I mean, the things that
14 I need to look at I only got yesterday.

15 MS. DOUGLASS: Is it possible that once you take
16 your next break because a majority of what they needed was
17 submitted and turned in?

18 BZA CHAIR HILL: Do you have an ANC report?

19 MS. DOUGLASS: Yes.

20 BZA CHAIR HILL: Where is the ANC report?

21 MR. SLAUGHTER: Chairman Hill, this is
22 Commissioner Slaughter. I'm the Chairman of 8E. I'm also
23 representing the single-member District 8E-07, where this
24 property is located.

25 I turned that report in yesterday to you guys.

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1 I can also email it to you directly, if you guys want. I
2 apologize, it was late. It was waiting for some
3 documentation. I was waiting on some input from the
4 community. I actually had to reach out to the community
5 directly and get input from them. And after I received that
6 input, I was able to make a determination on if I would
7 support this going forward or not.

8 BZA CHAIR HILL: So, did you all take a vote,
9 Commissioner?

10 MR. SLAUGHTER: So, we didn't take a vote because
11 at the time I didn't have all the information when we last
12 met. And unfortunately, my commission expires on the 2nd of
13 January. So, you get a whole new group of Commissioners in,
14 and that may push you guys back even further. But I am the
15 Commissioner in the single-member District where this area,
16 where this property is, and I've talked to several members
17 of the community and got their input as well. I haven't had
18 any opposition. I've only had strong support of this project
19 moving forward.

20 BZA CHAIR HILL: But you guys haven't taken a
21 vote?

22 MR. SLAUGHTER: That is correct.

23 BZA CHAIR HILL: So, the vote you're going to take
24 is going to be in January and you're going to have a new
25 Commission?

1 MR. SLAUGHTER: You're going to have a whole new
2 Commission. It's only two Commissioners that are returning
3 from the current Commission.

4 BZA CHAIR HILL: Commissioner Slaughter, but in
5 order for us to get a vote, they're still going to have to
6 vote.

7 MR. SLAUGHTER: You can't have just the
8 recommendation from the Commissioner of the single-member
9 District where this property lies?

10 BZA CHAIR HILL: We don't give it great weight.

11 MR. SLAUGHTER: I understand.

12 BZA CHAIR HILL: I mean, it's great you're telling
13 us. But, anyway, let's see what happens.

14 Ms. Douglass, can you make your camera work or
15 you're choosing not to make your camera work? You're on a
16 phone?

17 MS. DOUGLASS: Yes.

18 BZA CHAIR HILL: Okay. That's all right.

19 So now, explain to me again, this is December
20 23rd. What's happening? Why do you have to have this happen
21 today?

22 MS. DOUGLASS: Because I have been in the property
23 since February. That's when the lease started. So, due to
24 COVID happening March the 14th, I was unable to proceed with
25 getting (telephonic interference) --

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1 BZA CHAIR HILL: Ms. Douglass? Ms. Douglass?

2 MS. DOUGLASS: Yes?

3 BZA CHAIR HILL: Can you hear me? I'm sorry, go
4 back to just the audio. Maybe your bandwidth is buffering
5 if you have a camera. That's okay. Just go to the audio.

6 Can you hear me? You're still on mute. Can you
7 hear me?

8 MS. DOUGLASS: I'm off of mute. Yes.

9 BZA CHAIR HILL: I can hear you.

10 So now, tell me again -- so, I understand you're
11 saying because COVID started in March. Now what happened
12 because of that?

13 MS. DOUGLASS: I was unable to receive my license
14 at that location. So, because I don't have a license, I
15 cannot have children at the location because I'm not able to
16 have the license. I'm already a whole operating -- I already
17 have a license located two blocks from that location, which
18 is at the Temple of Praise, 700 Southern Avenue.

19 However, due to the COVID, the numbers are
20 downsized, but we need that location to accommodate the
21 essential workers. So, I have a lot of essential workers,
22 but, due to their shifts, I'm unable to accommodate them in
23 the facility that I'm currently in, which is the Temple of
24 Praise. The numbers are half due to the COVID.

25 So, we were looking forward for this space and we

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1 knew we had this hearing since June of this year. And
2 unfortunately, I'm unaware of why you're just now receiving
3 the documents 24 hours ago. But, again, I have until this
4 hearing, so they can let me know if I have to vacate the
5 premises or not because they are --

6 BZA CHAIR HILL: Who's "they"? Who's "they"?

7 MS. DOUGLASS: The tenant. Because I've already
8 been in this property for nine months.

9 BZA CHAIR HILL: I understand, but, Ms. Douglass,
10 this is taking on more time and we can see what happens here
11 with my fellow Board members. I don't know anything about
12 whether or not you're going to get this passed today.

13 MS. DOUGLASS: Okay.

14 BZA CHAIR HILL: And even if you got it passed
15 today, you would not get anything that gets you a permit
16 until you get a final order or until you get a summary order
17 from us. So, that would happen anywhere from 30 days to
18 eight months.

19 MS. DOUGLASS: Wow.

20 BZA CHAIR HILL: So, I'm just trying to understand
21 how you -- I don't know whether you're going to get a
22 decision today, even if we have the hearing. Do you
23 understand?

24 MS. DOUGLASS: Yes.

25 BZA CHAIR HILL: And so, I'm just trying to

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1 understand -- I'm trying to help, which is to say, what is
2 happening by the end of this month that is going to change
3 whether or not you have this hearing today?

4 MS. DOUGLASS: Yes, because I was uninformed. I
5 assumed that, if I had the hearing, sir, that the Certificate
6 of Occupancy would be issued. So, you're just now giving me
7 the information that you're giving me.

8 However, this was a day -- this was previously a
9 daycare center, and it's just a special exception due to the
10 hours that I'm asking for.

11 BZA CHAIR HILL: Right. I understand. Ms.
12 Douglass, I'm just trying --

13 Mr. Rice, I'm pretty sure I'm right, right? They
14 don't get a Certificate of Occupancy or anything like that
15 until after the order is written, correct?

16 MR. RICE: Yes, sir, that's my understanding, too.

17 BZA CHAIR HILL: Right. And we can't issue even
18 a summary order if we don't have anything from the ANC, or
19 we still could?

20 MR. RICE: You could issue an order without
21 receiving anything from the ANC.

22 BZA CHAIR HILL: We could issue a summary order?

23 MR. RICE: Yes, sir.

24 BZA CHAIR HILL: Okay.

25 MR. RICE: But, at this point, I will note that

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1 the Applicant's latest submissions, basically, disagree with
2 some of the requests of DDOT. I don't know what DDOT's
3 updated submissions look like any more than you do. But it
4 looks like there would probably be some debate if you guys
5 proceeded to consider the case on the merits today.

6 BZA CHAIR HILL: Okay. Well, then, I don't know;
7 that just even gums it up more, then, in terms of like, you
8 know, we need to kind of like -- and I'll let my
9 Commissioners help, I'm sorry, my fellow Board members help
10 me out with this.

11 So, Ms. John, you raised your hand?

12 VICE CHAIRPERSON JOHN: I wanted to hear from the
13 Office of Planning. I see that Ms. Maxine Roberts, Brown-
14 Roberts, is available.

15 BZA CHAIR HILL: Ms. Roberts, could you tell us
16 what you have to say?

17 MS. BROWN-ROBERTS: Good morning, Mr. Chairman.
18 Maxine Brown-Roberts from the Office of Planning.

19 And I'm not sure what your question is. What's
20 the question you want me to answer?

21 VICE CHAIRPERSON JOHN: What to put in -- I mean,
22 I don't remember if I saw one.

23 MS. BROWN-ROBERTS: Okay. We submitted a report
24 timely on the 30th, I think. No, I think Exhibit 30, we
25 submitted a report. At that time in that report, we

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1 explained that there were some issues that we had regarding
2 efforts to get to DDOT about the TDM plan that was supposed
3 to be submitted.

4 The Applicant submitted to OP, and I think also
5 to DDOT, their plan, their traffic, their TDM plan, last
6 Friday. And then, we tried to turn around the submission or
7 report, a supplemental report, which we did yesterday.

8 VICE CHAIRPERSON JOHN: Okay. Thank you.

9 BZA CHAIR HILL: What's your supplemental report
10 say, Ms. Brown-Roberts?

11 MS. BROWN-ROBERTS: Basically, we are in support
12 of the application with conditions. Also, DDOT had made some
13 requests for, I think, some landscaping for the parking lot.
14 That was not submitted in the submission. And so, I am not
15 sure of what DDOT's recommendation is. Because we sort of
16 prefaced our recommendation in DDOT getting the information
17 that they needed.

18 MS. VACCA: Mr. Chair, I just want to let you that
19 a representative from DDOT is here.

20 BZA CHAIR HILL: Oh, great. My goodness. All
21 right. Okay. All right.

22 Okay. So, Ms. Brown-Roberts, you submitted that
23 application.

24 Mr. Andres, do you know what it is that, the
25 condition that DDOT had, and had the Applicant agreed to

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1 those?

2 MR. ANDRES: So, unfortunately, Chairman, I wasn't
3 retained until 10 days ago. So, we were trying to get
4 something in as quickly as possible. So, we did. And Ms.
5 Kimberly Vacca from DDOT, who I believe is on right now, had
6 sent us some questions. We answered them. And so, her
7 latest report, which I believe she filed overnight, I haven't
8 seen yet. So, unfortunately, I don't know what those
9 conditions are.

10 BZA CHAIR HILL: Okay. All right.

11 Commissioner Slaughter, did you guys put anything
12 in the record yet?

13 MR. SLAUGHTER: Yes, I submitted that late last
14 night, early this morning, maybe midnight-ish.

15 BZA CHAIR HILL: Okay. Ms. Douglass?

16 MS. DOUGLASS: Yes?

17 BZA CHAIR HILL: So, this is what I propose.
18 There's a lot of stuff in here that we haven't looked at yet.
19 And it seems as though, although you are almost there, you're
20 not completely there yet. Like we need something in the
21 record from the ANC -- well, we need something in the record
22 that shows that you're agreeing to the DDOT conditions. And
23 Mr. Andres can help you with those DDOT conditions and
24 putting something into the record about those, about whether
25 you are or not in agreement with their conditions, right?

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1 So, that's something you need to kind of put into the record.

2 Then, I guess we'll go ahead and allow everything
3 into the record, meaning everything I had said: the Office
4 of Planning's report, the letter from Commissioner Slaughter.

5 And then, I guess, Commissioner, the part that I'm
6 unclear on is you're saying that you guys aren't even -- you
7 weren't going to put this up for a vote with the new ANC.

8 MR. SLAUGHTER: So, I can't determine what they
9 will or will not do. I will make a suggestion to them to
10 vote and approve the recommendation of the Applicant and I
11 will give them my input. But, again, they're a new
12 Commission; they don't have to take my recommendation. I'm
13 hoping they will.

14 BZA CHAIR HILL: And when is that ANC? When is
15 your next January ANC meeting?

16 MR. SLAUGHTER: It's going to be January 4th,
17 seven o'clock.

18 BZA CHAIR HILL: Okay. So, do you know whether
19 they can get on the agenda for the 4th?

20 MR. SLAUGHTER: I can recommend that they are on
21 the agenda for the 4th, yes.

22 BZA CHAIR HILL: Okay. So, if you take a vote on
23 the 4th, can we get something back -- oh, you don't know,
24 right, because you will no longer be a Commissioner, is that
25 correct, Commissioner Slaughter?

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1 MR. SLAUGHTER: That is correct.

2 BZA CHAIR HILL: Okay. Because we could come back
3 here on the 13th. If you could, Mr. Slaughter, get us,
4 Commissioner -- I mean, you can't, I know you can't tell me
5 anything, but if you can get them on the agenda for the 4th
6 and ask your ANC to submit something back to us by the 8th,
7 that would be helpful, January 8th.

8 MR. SLAUGHTER: Okay. I will do all of the above.

9 BZA CHAIR HILL: Mr. Moy, does that sound good?
10 Commissioner Shapiro, give me one second.

11 Mr. Moy, are those dates okay?

12 SECRETARY MOY: I think those dates are fine, Mr.
13 Chairman. I'm assuming that, if the ANC can submit their
14 report by, you said January 8th, would you want, also, the
15 same deadline for the Applicant?

16 BZA CHAIR HILL: For what? Any responses to the
17 ANC?

18 SECRETARY MOY: Yes, responses to the ANC, and I
19 think you mentioned that the Applicant's position on the
20 conditions, recommended conditions. It sounds like it's
21 being offered by DDOT, maybe even OP; I don't know.

22 BZA CHAIR HILL: Okay. So, Ms. Douglass, I guess
23 if you can submit everything that is needed by the 8th, and
24 I guess that's if you can get whatever -- you know, Mr.
25 Andres might be able to help you. We need something in the

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1 record that speaks to your agreeance -- or your agreeance? --
2 that speaks to the conditions that DDOT has put forward. And
3 if they need a landscaping plan, we need something that shows
4 us what we're approving. You have to have that in the
5 record.

6 MS. DOUGLASS: We submitted --

7 BZA CHAIR HILL: Pardon me?

8 MS. DOUGLASS: We submitted (telephonic
9 interference) --

10 BZA CHAIR HILL: I can't hear you, Ms. Douglass.

11 MS. DOUGLASS: Mr. Andres submitted that.

12 BZA CHAIR HILL: Mr. Andres submitted something?

13 MS. DOUGLASS: Yes.

14 BZA CHAIR HILL: Mr. Andres said that he has not
15 submitted anything concerning the DDOT report.

16 MS. DOUGLASS: Oh, okay. The DDOT report?

17 BZA CHAIR HILL: Okay. Anyway, so if you give us
18 everything by January 8th, we'll come back here on January
19 13th and see what happens next.

20 MS. DOUGLASS: Okay.

21 BZA CHAIR HILL: Okay?

22 MS. DOUGLASS: Thank you.

23 BZA CHAIR HILL: Commissioner Shapiro?

24 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

25 We heard for a brief minute from Ms. Brown-

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1 Roberts. I wouldn't mind hearing a brief minute from Ms.
2 Vacca, just to make sure that what we're talking about is as
3 big as we think it is.

4 BZA CHAIR HILL: And when you say, "what we're
5 talking about," what do you mean?

6 COMMISSIONER SHAPIRO: The conditions that --

7 BZA CHAIR HILL: Got it. Got it.

8 COMMISSIONER SHAPIRO: -- DDOT, that we're
9 assuming DDOT is going to be requesting.

10 BZA CHAIR HILL: Ms. Vacca, can you hear us?

11 MS. VACCA: Hi, Mr. Chair. How's it going?

12 BZA CHAIR HILL: Good. How's it going with you?

13 MS. VACCA: Good. Would you like me to elaborate
14 further?

15 BZA CHAIR HILL: That would be great.

16 MS. VACCA: Okay. So, essentially, in a quick
17 summary, we initially submitted a report December 7th, which
18 is Exhibit 29, stating that we couldn't provide a
19 comprehensive review of the proposal because it did not
20 include the required transportation statement and pickup and
21 dropoff plan, as we require of all child development centers.
22 So, at that point, we couldn't make a recommendation.

23 The Applicant, since then, hired Gorove/Slade, who
24 then produced the transportation statement and pickup and
25 dropoff plan last week, on Friday. We, as fast as we could,

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1 reviewed the documents back and forth about a variety of
2 different things, which is why our supplemental memo was
3 submitted yesterday.

4 I had submitted it to IZIS. So, I was prepared
5 to make a statement, per Subtitle Y, Section 1, 313(g), to
6 make the case for submitting that memo to the BZA today.
7 But, in sum, essentially, we agree with their transportation
8 statement that a Comprehensive Transportation Review, or CTR,
9 is not needed. The threshold for that review was not met.

10 We agree with their TDM plan, although we have
11 three amendments to language that they had suggested, which
12 I outlined in the memo that was submitted yesterday.

13 Another outstanding item is that, while the
14 Applicant states that they would meet the long- and short-
15 term bicycle parking spaces, they did not show on a site plan
16 where they would be located. So, it was unclear to us as to
17 how that requirement would be met.

18 And finally, we had added a condition for
19 landscape screening to be consistent with the zoning
20 requirements of Subtitle C, Section 714, which asks that
21 parking lots are screened from the sidewalk, which was not
22 shown on the site plan as well.

23 So, our outstanding items, essentially, for this
24 are: the TDM plan, modifications to that, and then, the two
25 items in terms of (telephonic interference) to meet the

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1 requirements of bicycle parking, and then, landscape
2 screening.

3 BZA CHAIR HILL: Okay. Mr. Andres, did you get
4 all that?

5 MR. ANDRES: Yes, I did. And I believe this is
6 something that can be submitted by the 8th. I'll coordinate
7 with Ms. Douglass to submit something by then.

8 BZA CHAIR HILL: Okay.

9 MR. ANDRES: But it does seem achievable, all
10 those things that she had asked for.

11 BZA CHAIR HILL: Right. And I guess, Mr. Andres,
12 because I know that Ms. Douglass, you know, she's trying to
13 get this kind of moving along, or whatever, at least get a
14 decision. You know, and you can share with Ms. Douglass, if
15 we don't see everything, it's just going to get kicked down
16 the road again, right? So, we need to see a site plan that
17 shows the landscaping, that shows the bicycle parking. That
18 has to be in the record.

19 MR. ANDRES: Understood. We're going to try and
20 get, make sure we get all that, and I'll do my best to help
21 Ms. Douglass to get her through this process.

22 BZA CHAIR HILL: Okay. Great. Perfect.

23 All right. Yes, Commissioner Slaughter?

24 MR. SLAUGHTER: I just want to make sure I heard
25 Ms. Vacca correct. It's going to be mandated that there's

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1 bicycle parking at that location?

2 MS. VACCA: Yes, per that child development
3 centers are required to provide both short-term and long-term
4 parking, although for this specific use, due to the size,
5 only two short-term spaces and two long-term spaces.

6 MR. SLAUGHTER: Wow. Okay. And so, the community
7 has no input in that, obviously, because you guys have
8 already made that decision?

9 BZA CHAIR HILL: It's part of zoning, Mr.
10 Slaughter. You're talking about two short-term bike parkings
11 and two long-term bike parkings.

12 MR. SLAUGHTER: Okay.

13 MS. VACCA: Yes, just to clarify, this is not a
14 discretionary request. This is a requirement, per the zoning
15 ordinance.

16 MR. SLAUGHTER: I absolutely understand. I just
17 wanted to be clear on it because that was the first time I've
18 heard of that in this area. But that's fine. Thank you.
19 I'm clear now.

20 BZA CHAIR HILL: And the long-term is indoors,
21 correct, Ms. Vacca?

22 MS. VACCA: Yes. Or in the outdoors, but there's
23 some sheltering requirements that are required.

24 BZA CHAIR HILL: So, Mr. Andres, that has to be
25 shown. You understand that, correct?

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1 MR. ANDRES: Yes.

2 BZA CHAIR HILL: And you can help Ms. Douglass
3 out?

4 MR. ANDRES: Yes. Yes, we'll make sure that gets
5 submitted.

6 BZA CHAIR HILL: Okay. All right. Okay. That's
7 it, then.

8 All right. Ms. Douglass, do you have any
9 questions?

10 MS. DOUGLASS: No.

11 BZA CHAIR HILL: No? Okay. All right.

12 Okay, everybody, you all have a nice holiday.

13 So, we're just having a continued hearing, and I
14 guess, Mr. Shapiro, you're going to stay on it? You don't
15 even know?

16 COMMISSIONER SHAPIRO: Yes, Mr. Chair, I would say
17 that we really haven't heard this narrative --

18 BZA CHAIR HILL: Okay. You're going to task it
19 off to whoever is on the 13th. Okay.

20 COMMISSIONER SHAPIRO: If it fits my day, it fits
21 my day. Otherwise, whoever picked it up.

22 BZA CHAIR HILL: Okay. All right. Okay. So,
23 we're postponing until then. We've got everything in the
24 record by the 8th, and then, we'll be back here on the 13th.
25 Okay. And let everything in the record, Mr. Moy.

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1 Ms. Douglass, you were trying to say something?

2 (No audible response.)

3 Okay. Okay. Good luck. Okay. Thank you.

4 MS. DOUGLASS: Thank you.

5 MR. ANDRES: Happy holidays and have a great year.

6 BZA CHAIR HILL: Thank you, too, Mr. Andres.

7 I don't know about my fellow Board members, but
8 I didn't get to see the DDOT person, but the DDOT person
9 sounded so fresh and alive and awake, and I am so not that.

10 So, okay. All right, Mr. Moy.

11 I can just see my Christmas gift-giving going to
12 the wayside with every passing moment of time.

13 You can go ahead and do the next one.

14 SECRETARY MOY: All right. Can I read this
15 quickly?

16 BZA CHAIR HILL: Yes.

17 SECRETARY MOY: This is Application No. 20313 of
18 FHD LLC, as amended, for special exceptions under the RA-use
19 requirements, Subtitle U, Section 421.1, and pursuant to
20 Subtitle F, Section 5201, from the side yard requirements of
21 Subtitle F, Section 306.2. This would construct a three-
22 story rear addition and convert the semi-detached principal
23 dwelling unit into a five-unit apartment building in the RA-1
24 Zone, at premises 4310 2nd Street, Northwest, Square 3318,
25 Lot 811.

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1 And I think that's all I have to say. Thank you.

2 BZA CHAIR HILL: Mr. Sullivan, can you hear me?

3 MR. SULLIVAN: Yes, I can, Mr. Chair.

4 BZA CHAIR HILL: Could you introduce yourself for
5 the record, Mr. Sullivan?

6 MR. SULLIVAN: Yes. Thank you, Mr. Chairman and
7 Members of the Board. My name is Marty Sullivan with
8 Sullivan & Barros, on behalf of the Applicant.

9 BZA CHAIR HILL: Okay. Upon discussing with OAG
10 and, also, kind of looking through the record, it seems as
11 though you might be needing to be before us for an area
12 variance? Have you had any kind of discussions with the
13 Office of Zoning about this? And do you have thoughts?

14 MR. SULLIVAN: We have had discussions about this
15 with the Zoning Administrator. This is the first I'm hearing
16 of anything from OAG.

17 BZA CHAIR HILL: Okay.

18 MR. SULLIVAN: This is news to me.

19 BZA CHAIR HILL: That's fine. I thought the
20 Office of Zoning had reached out to you. And so, that's too
21 bad that they haven't, or that you haven't had a chance to
22 kind of like talk about this. But I understand, and I'm
23 going to actually turn it over to the Office of the OAG.

24 What I understand is that this is a tax lot, and
25 in order for us to be even considering this under a special

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1 exception, it would have to be a record lot. And, OAG, could
2 you specify a little bit your thoughts?

3 MR. RICE: Yes, sir, that's correct. This did
4 come up very last last week, which is why we weren't able to
5 touch base with the Applicant previously. But the concern
6 is that the Applicant is seeking a waiver for yard relief,
7 and that waiver can be granted, pursuant to S-5201.1, so long
8 as it's an alley record lot that's described in C-301.
9 However, in this instance, it's not a tax lot. I'm sorry,
10 it's a tax lot and not a record lot.

11 So, therefore, it's difficult for you guys to
12 proceed, you guys to grant anything under that authority,
13 but, also, to grant the overall special exception for the new
14 residential development. It's difficult for you guys to
15 consider that when you can't actually see how the arrangement
16 and layout of that use may be.

17 And so, those were kind of our thoughts. There
18 in F-5200.2, it basically states that, if the relief doesn't
19 comply with the special exception requirements permitted
20 under the Chapter, that an area variance would be necessary,
21 which is why we are proposing an area variance.

22 BZA CHAIR HILL: Okay. So, Mr. Sullivan, do you
23 have any questions?

24 MR. SULLIVAN: Yes. First of all, it's self-
25 certified. I would request that we not get last-minute

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1 issues thrown at us from OAG that I think are not within
2 their jurisdiction, and this is a record lot. That's all I
3 have. And I'm willing to self-certify to that. It's Record
4 Lot 92. If OAG looked it up on PropertyQuest, the first
5 thing that would come up is the tax lot, but tax lots and
6 record lots often coexist in the same space.

7 BZA CHAIR HILL: Okay. I don't know -- Mr.
8 Sullivan, it's going to be a long day for -- well, anyway,
9 never mind. I can only do -- well, I shouldn't say that.
10 I'll turn it over to my fellow Board members.

11 What do my fellow Board members think?

12 VICE CHAIRPERSON JOHN: Well, if it's a record
13 lot, that simplifies everything. Can you submit something
14 to the record, Mr. Sullivan?

15 MR. SULLIVAN: Sure.

16 VICE CHAIRPERSON JOHN: Thank you.

17 BZA CHAIR HILL: Okay. Then, I don't know now
18 what to do.

19 Mr. Shapiro?

20 COMMISSIONER SHAPIRO: Well, I'm curious if Mr.
21 Rice -- he's a "fast looker-upper". Perhaps we can just
22 postpone this even for a matter of minutes, just to make sure
23 that we're working with the right information.

24 I guess the question is, are we prepared? Because
25 we were prepared to not take this up today. I think it's a

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1 little bit more (telephonic interference) if we are going to
2 take this up today.

3 BZA CHAIR HILL: If this is, in fact, before us
4 the way that the Applicant thinks it should be before us, we
5 can push it off for later perhaps. Like we can kind of move
6 this -- there's going to be a lunch break. And OAG can take
7 a look at what's going on, and we can come back after lunch
8 and just see whether or not we're going to be able to hear
9 this today. That would be my suggestion.

10 MR. RICE: As another option, sir, you could also
11 consider the case and make any relief, in the event you
12 determine to grant it, contingent upon the Applicant
13 submitting evidence that it's a record lot within "X" days.

14 BZA CHAIR HILL: Right. So, Mr. Sullivan, you're
15 with us for a little while?

16 MR. SULLIVAN: Yes.

17 BZA CHAIR HILL: Okay. I mean, regardless, you
18 guys, I want to take a look at this again at lunchtime. And
19 so, I say go ahead, and that's fine. I mean, OAG is giving
20 us another suggestion. And so, that might be something that
21 we would be able to do as well, but I still want to postpone
22 this thing until at least -- we can take this first thing
23 right after lunch, so I can at least go back and take a look
24 at it.

25 So, does that sound good with you guys, my Board

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1 Members? And if so, just nod.

2 Okay. All right, Mr. Moy, we're going to take
3 this up right after lunch, wherever you guys are.

4 Mr. Sullivan, we'll see you after lunch.

5 MR. SULLIVAN: Okay. Thank you.

6 BZA CHAIR HILL: Okay.

7 COMMISSIONER SHAPIRO: Mr. Chair, a procedural
8 issue for us?

9 BZA CHAIR HILL: Sure, Mr. Shapiro.

10 COMMISSIONER SHAPIRO: Is it possible to take our
11 lunch from 1:00 to 2:00, or is that too late?

12 BZA CHAIR HILL: No, I don't mind. Yes. You got
13 a date?

14 COMMISSIONER SHAPIRO: Like kind of.

15 (Laughter.)

16 BZA CHAIR HILL: Yes. Okay.

17 COMMISSIONER SHAPIRO: As opposed to a Zoom call.

18 BZA CHAIR HILL: Got it. Okay. All right. So,
19 we're going to take lunch from 1:00 to 2:00. We will see you
20 all, then, after lunch. Thank you very much. You may leave
21 the hearing room.

22 And then, okay, Mr. Moy, you can call our next
23 case.

24 SECRETARY MOY: Okay. So, this would be Case
25 Application No. 20341 of 4527 Georgia Avenue LLC. This

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1 application is captioned and advertised for special exception
2 under Subtitle C, Section 703.2, from the minimum parking
3 requirements of Subtitle C, Section 701.5. This would raze
4 the existing building and to construct a new 49-unit
5 residential apartment building in the MU-4 Zone, at 1544
6 Rhode Island Avenue, Northeast, Square 4021, Lot 15.

7 BZA CHAIR HILL: All right. I'm just looking for
8 the attorney. Is the Applicant here or is the attorney here?
9 Is the Applicant here?

10 MR. HAAS: Good morning. This is Harrison Haas
11 of Cozen O'Connor.

12 BZA CHAIR HILL: Oh, okay. Could you introduce
13 yourself for the record, please?

14 MR. HAAS: Yes. My name is Harrison Haas of Cozen
15 O'Connor. I'll be joined by my colleague Meredith
16 Moldenhauer. We're also joined by the Applicant, Sanjay
17 Bajaj.

18 BZA CHAIR HILL: Okay. If you all could mute your
19 microphones once you speak, that would be great.

20 MR. HAAS: I'm getting notice from my colleague,
21 Meredith Moldenhauer, that she is in, but cannot --

22 BZA CHAIR HILL: She's in now, Mr. Haas.

23 Okay. Mr. Haas, if you can mute your microphone?

24 MR. HAAS: Of course.

25 BZA CHAIR HILL: Ms. Moldenhauer, could you

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1 introduce yourself for the record?

2 MS. MOLDENHAUER: Yes. Thank you. Meredith
3 Moldenhauer from the Law Firm of Cozen O'Connor, here today
4 with Harrison Haas, also from Cozen O'Connor, and Sanjay
5 Bajaj, on behalf of the Applicant.

6 BZA CHAIR HILL: Okay. All right. Ms.
7 Moldenhauer, if you could walk us through your presentation?
8 I don't really have a lot of questions about your
9 presentation, but if you could walk us through it and tell
10 us about how you believe you're meeting the standard? And
11 go ahead and begin whenever you would like.

12 MS. MOLDENHAUER: Thank you.

13 I've got a PowerPoint that Mr. Young could bring
14 up. And I'll just start as that is getting pulled up.

15 The property is located in an MU Zone. We are
16 proposing -- it's an existing building that we are proposing
17 to raze and construct a new 49-unit building. The proposal
18 here is for 49 units, and we are asking for special exception
19 relief under 703.2. The parking spaces would have -- under
20 the 15-unit requirement, we are proposing to provide seven
21 parking spaces. That is made up of two car shares. Those
22 two car shares count for three spaces each and one accessible
23 space. We believe that we satisfy the special exception
24 requirement, given the proximity of public transit, as well
25 as the ability to service the property via other non-

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1 vehicular means.

2 We have presented to the ANC and have an ANC
3 letter in the resolution, in the record, from ANC 5B, which
4 is Exhibit No. 34 -- it was a 5-to-0 to vote in support --
5 as well as a letter from DDOT at Exhibit 36 recommending no
6 objection, and the letter from Office of Planning supporting
7 the application as well at Exhibit 37.

8 DDOT had recommendations for conditions in regards
9 to the Transportation Management Plan as well as a Loading
10 Management Plan, and the Applicant has agreed to those.

11 I see that Mr. Young is pulling up the PowerPoint.

12 BZA CHAIR HILL: I'm sorry, Ms. Moldenhauer, I've
13 got your exhibit in front of us. And so, you've kind of gone
14 through it.

15 MS. MOLDENHAUER: I have --

16 BZA CHAIR HILL: Yes.

17 MS. MOLDENHAUER: There's nothing else that we
18 need to add, unless any of the Board members have any
19 questions.

20 BZA CHAIR HILL: Mr. Young, you can drop that
21 PowerPoint, if you want. Thanks.

22 Does the Board have any questions for Ms.
23 Moldenhauer?

24 (No response.)

25 No? All right. We're going to turn to the Office

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1 of Planning.

2 And I love the lights. It's making me actually
3 happy.

4 (Laughter.)

5 Okay.

6 MR. JESICK: I'm glad I could do that for you, Mr.
7 Chairman.

8 Thank you. My name is Matt Jesick, presenting
9 Office of Planning testimony for Case 20341. And the Office
10 of Planning is happy to rest on the record in support of the
11 application, but I can take any questions that the Board
12 might have.

13 Thank you.

14 BZA CHAIR HILL: Okay. I am just so disappointed
15 I didn't put lights up here. I can't believe nobody did
16 that. Like that's just -- if you had done that earlier, Mr.
17 Jesick, I would totally have done it.

18 MS. MOLDENHAUER: Should I like stand before my
19 Christmas tree?

20 (Laughter.)

21 BZA CHAIR HILL: Does anybody have any questions
22 for the Office of Planning?

23 (No response.)

24 No?

25 Does the Applicant have any questions for the

1 Office of Planning?

2 MS. MOLDENHAUER: No. Thank you.

3 BZA CHAIR HILL: No?

4 All right. Mr. Young, is there anybody here
5 wishing to testify?

6 MR. YOUNG: We do not.

7 BZA CHAIR HILL: Okay. All right. Ms.
8 Moldenhauer, anything at the end?

9 MS. MOLDENHAUER: No, thank you. And I hope
10 everyone has a happy holiday.

11 BZA CHAIR HILL: Thank you. You as well.

12 All right. I'm going to go ahead and close the
13 record, close the hearing. See you all later.

14 All right. Is the Board ready to testify (sic)?
15 I thought it was straightforward. I didn't have a lot of
16 issues with it. They agreed to all of DDOT's conditions.
17 I agree with the analysis of the Office of Planning and that
18 of ANC 5B. I believe they have met the criteria to grant
19 this requested relief. I'm going to be voting in support.

20 Is there anything anyone else would like to add?
21 If so, please raise your hand.

22 (No response.)

23 All right. I'm going to make a motion to approve
24 Application No. 20341, as captioned and read by the
25 Secretary, and ask for a second.

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1 Ms. John?

2 VICE CHAIRPERSON JOHN: Second.

3 BZA CHAIR HILL: The motion is made and seconded.

4 Mr. Moy, if you could please take a roll call?

5 SECRETARY MOY: Yes. Thank you.

6 When I call your name, if you would please respond
7 with a yes, no, or abstain to the motion made by Chairman
8 Hill to approve the application for the relief requested.
9 The motion was seconded by Vice Chair John.

10 Zoning Commissioner Peter Shapiro?

11 COMMISSIONER SHAPIRO: Yes.

12 SECRETARY MOY: Mr. Smith?

13 MEMBER SMITH: Yes.

14 SECRETARY MOY: Vice Chair John?

15 VICE CHAIRPERSON JOHN: Yes.

16 SECRETARY MOY: Chairman Hill?

17 BZA CHAIR HILL: Yes.

18 SECRETARY MOY: We have a Board seat vacant.
19 Staff would record the vote as 4-to-0-to-1, and this is on
20 the motion made by Chairman Hill to approve, seconded by Vice
21 Chair John. Also in support, Mr. Smith and Zoning
22 Commissioner Peter Shapiro. The motion carries 4-to-0-to-1.

23 BZA CHAIR HILL: Okay. Great.

24 Mr. Moy, you can call our next case.

25 SECRETARY MOY: Okay. That would be Case

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1 Application No. 20346 of John B. Gogos, as amended, for
2 special exceptions under the alley lot use provisions,
3 Subtitle U, Section 601.1(f), and under Subtitle C, Section
4 1504.1, from the penthouse setback requirements of Subtitle
5 C, Section 1502.1, to construct a new, detached principal
6 dwelling unit in the RF-1 Zone, at premises 782 Fairmont
7 Street, Northwest, Square 2884, Lot 81.

8 BZA CHAIR HILL: Okay. Great.

9 You guys have got to give me one second. I'm
10 sorry. I'll be right back.

11 (Pause.)

12 Sorry, guys.

13 SECRETARY MOY: Mr. Chairman, there's also a
14 comment letter submitted within that 24-hour window from DPW
15 Director. And I think he asked to allow it into the record,
16 and I think it's under Exhibit 50.

17 BZA CHAIR HILL: Okay. Did we allow it in the
18 record yet? Or, no, you don't know?

19 SECRETARY MOY: Not yet.

20 BZA CHAIR HILL: Okay. I would like to see it.
21 So, if you can go ahead, unless the Board has any issue.
22 They can go ahead and vocally speak up.

23 (No response.)

24 Okay. Go ahead and add it into the record, so we
25 can see it.

1 Okay. All right. So, that's that one.

2 Mr. Sullivan, are you there?

3 MR. SULLIVAN: Yes, I'm here.

4 BZA CHAIR HILL: Okay. Gosh, Mr. Sullivan, you
5 are here a lot.

6 MR. SULLIVAN: Yes.

7 BZA CHAIR HILL: I mean, like, you know. Okay.
8 Great. Okay.

9 So, this one and the next one are similar. So,
10 why don't you go ahead and tell us about this one? And since
11 they're both separate cases, we're probably going to have to
12 call them both and you're going to have to tell us about both
13 of them. But we might refer back to this one in terms of if
14 there's more questions that we've had or haven't had.

15 So, please go ahead and tell us about why you
16 believe you're meeting the criteria for us to approve this
17 project.

18 MR. SULLIVAN: Okay. Thank you, Mr. Chairman and
19 Members of the Board. My name is Marty Sullivan with
20 Sullivan & Barros, on behalf of the Applicant.

21 These are two properties -- if you could bring up
22 the PowerPoint presentation, please? Next, if you can go to
23 page --

24 BZA CHAIR HILL: Is that in the record, Mr.
25 Sullivan?

1 MR. SULLIVAN: Yes. That was filed on Friday.

2 BZA CHAIR HILL: Okay.

3 MR. SULLIVAN: I'm going to turn it over to the
4 architect pretty quickly.

5 But I think if you could go to slide 6, please,
6 it's a good overview of the two cases. And the next slide,
7 please.

8 So, you see the subject property there in the
9 orange hatched square. And then, the other case is across
10 the alley to the south.

11 And the two areas of relief that are being
12 requested are:

13 One is to have a residential dwelling unit within
14 an alley system that is not entirely 15 feet all the way out
15 to a public street that's within 300 feet. The alley is 15
16 feet or more around -- I think it's 15 or 16 -- right around
17 the house or proposed house, but it's only 10 feet at the
18 point where you enter the alley there. And so, because of
19 that, we needed to seek special exception relief for that.

20 And the other area of relief is for a penthouse
21 setback for rooftop railings.

22 And if you go to slide 3, please.

23 And then, I'll turn it over to the architect, Mr.
24 Gonzalez, to take you through the project.

25 Harold?

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1 BZA CHAIR HILL: Mr. Gonzalez, can you hear us?
2 Maybe you're on mute? I don't see you on mute.

3 (No response.)

4 I don't know, Mr. Sullivan, if Mr. Gonzalez can
5 hear us. I hear something.

6 MR. SULLIVAN: You may need to turn up the volume
7 because it says that he's speaking, but I don't hear him,
8 either.

9 MR. GONZALEZ: Can you hear me now?

10 BZA CHAIR HILL: We can.

11 MR. GONZALEZ: Oh, I'm so sorry.

12 Good morning, Mr. Chairman and Members of the
13 Board, and thank you for the opportunity to present to you.

14 Can you please go to the next two slides? The
15 next one.

16 So, as Mr. Sullivan was mentioning, the house is
17 being placed on a lot that is 15-feet wide, but we are
18 setting the house even farther just because an alley lot
19 house is at the lot line. We are getting 4 feet in one
20 direction and 3.5 additional feet in the other direction, to
21 create a more nice environment right there. So, there is no
22 issue with the house placement. The issue for which we are
23 seeking relief is when the alley enters the street.

24 The next slide, please.

25 COMMISSIONER SHAPIRO: Mr. Chair, could I jump in

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1 for a sec?

2 BZA CHAIR HILL: Sure. Go ahead, Mr. Shapiro.

3 COMMISSIONER SHAPIRO: Thanks.

4 Unless I'm misunderstanding, I think Mr. Gonzalez
5 and Mr. Sullivan, too, are kind of referring to both cases
6 at the same time with little bits of information around both.
7 It's what I'm picking up. And if that's the case, I'm just
8 trying to get my head around, are we really hearing one case
9 or are we effectively hearing both cases at the same time?
10 I'm just trying to figure out whether I need to go back and
11 forth, or what.

12 MR. SULLIVAN: Our PowerPoint is just for this
13 case.

14 And, Harold, if you could just focus on this
15 building and this case for the discussion just on the north
16 lot?

17 MR. GONZALEZ: Absolutely. Absolutely. Thank
18 you.

19 COMMISSIONER SHAPIRO: Sure.

20 MR. GONZALEZ: So, the next slide, please.

21 The house is a basic house, two-car garage with
22 a (telephonic interference) in between. There is a parking
23 space on the outside, also to create even a farther setback
24 from the adjacent property; in-law suite at the bottom.
25 There is an office. Now that we are all working from home,

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1 that's pretty handy.

2 Would you go to the next slide, please?

3 The second floor features a master bedroom on the
4 left. There are two additional bedrooms on the right. There
5 is a kitchen, living and dining room, and balcony facing the
6 alley.

7 Next slide.

8 And there is a rooftop deck that will have a
9 hatched access to that roof. And because of the roof, the
10 walls will be taller than the level of the house. We thought
11 that it would be better architecturally and a better sense
12 of sight created to provide some railings for that stairway.
13 And that is the reason, because that is the reason for we to
14 ask for a relief on the setback of the railings. And we're
15 going to see it next in the next slide.

16 So, basically, as you can tell, the house is
17 completely a brick house. On the rooftop deck, there is a
18 portion of the house that has some railings. If we continue
19 the brick house all the way to the parapet, probably it will
20 be more intrusive, not less intrusive. And we thought and
21 the owner of the plan thought that it would be nice just to
22 have this part of the alley be more air, more space to break.

23 Next slide.

24 We thought of this house -- and we are talking
25 specifically to the house that you see on the left. This is

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1 782 Fairmont Street. That house, basically, creates a
2 gateway for when you enter the alley from Fairmont Street.
3 And we will talk about the other one later.

4 We talk about those, we think about this wall
5 structure as if somebody has found some abandoned walls from
6 the old abandoned base of the city and have repurposed those
7 walls for a new life inside the alley, inside the system.
8 So, we believe that, by setting back the house additionally
9 4 feet in one direction and 3.5 in another direction, we
10 create more sense of life. Some potential gates around here.
11 Family eyes on the alley. More security.

12 Next slide.

13 And here is what we are asking for. We definitely
14 are meeting all the requirements like a single family house,
15 definitely; the density requirement for an RF-1 Zone,
16 definitely. According to the Office of Planning, the
17 proposed wall, it should not have an impact on the nearby
18 residents, including on the parking supply, and would, in
19 relation to providing a new housing opportunity, add eyes on
20 the alley. We think that is important for this project.
21 This alley has been an eyesore for quite some time. And we
22 believe that by bringing these two houses here, we should be
23 able to start covering this (telephonic interference) of the
24 city.

25 Next slide, please.

1 Definitely the alley is not partially or wholly
2 into the R-1-A, R-1-B, or the additions. The alley is not
3 wholly or partially within the R-A-1, R-1-B, or other zones,
4 definitely. A building must never to be converted for a
5 dwelling unit unless the lot is at least 450 square feet.
6 The lot is actually more than five times the requirements,
7 it's 2,469, and the use shall be limited to one unit. The
8 proposed house is only one unit.

9 Next slide.

10 The alley connects well-defined alley systems
11 which, obviously, as we mentioned before, connects into
12 Fairmont Street to the north and Euclid Street to the south,
13 and the whole system of Georgia Avenue and Sherman Avenue.

14 Next.

15 We have received letters of support from the ANC.
16 We have, indeed, a statement which says that they have no
17 objection to the project; they recognize that the project
18 will provide onsite parking, as required, and even more than
19 required. Up until yesterday, we did not receive comments
20 from DPW, but MPD will have no objection to the project.

21 Next.

22 And here is the --

23 MR. SULLIVAN: I'm sorry, go ahead, Harold.

24 MR. GONZALEZ: Go ahead.

25 MR. SULLIVAN: Okay. Yes, go ahead. I want to

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1 talk about the penthouse, though.

2 MR. GONZALEZ: Sure.

3 Here is pretty much the core of the issue that we
4 are going to review today. The question is, the one-to-one
5 setback would be unduly restricted or unreasonable in this
6 instance because it would be creating a loss of approximately
7 200 square feet. And particularly, it's important for us to
8 express that, on B and C, the posts, to include the railings,
9 is continuous with the parapet. It creates a better design.
10 We believe that it breaks all this solid parapet all around,
11 to be more visible, to be less intrusive, and more visually
12 attractive.

13 Next.

14 Operating difficulties such as meeting DC
15 Construction Code Title 12 requirements for the roof access
16 and the stairwell separation or elevator stack location to
17 achieve reasonable efficiencies in lower floors. That is not
18 applicable for us. So, we are not claiming anything.

19 Every effort has to be made, of course, for
20 housing the mechanical equipment. As we saw on the other
21 perspective, the condenser unit for the mechanical equipment
22 has been placed and screened entirely from the eyes.

23 Also, F, the intent and purpose of this chapter
24 and this title shall not be materially impaired by the
25 structure. We believe the intent of the setback requirement

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1 is to mitigate the visual intrusion of structures on the
2 roof, particularly, as seen from the public space. There are
3 no adjacent buildings that would be negatively affected by
4 this situation.

5 Next.

6 We received very good advice from the agency.
7 They unanimously supported the application. The advice that
8 we heard was build it quick. The Office of Planning is
9 recommending the approval. We have a letter of support for
10 Mr. Thomas Solari who lives in the alley at 915 Euclid
11 Street. There were no objections from DDOT or DC Water.

12 We understand that we have received today an
13 objection from one of the owners of one of the houses
14 entering the alley, but I believe the objections are
15 regarding the trucks entering the alley for trash pickup, or
16 something like that. Maybe Mr. Sullivan can speak about
17 that.

18 And I believe that's the end of the presentation.
19 I would be happy to answer any questions you may have.

20 MR. SULLIVAN: Thank you, Harold.

21 And, of course, I would just mention, as we heard,
22 that DPW has also weighed in with no objection.

23 And regarding the letter, I think the property
24 owner is here with us by phone perhaps. And he may be able
25 to respond to the comments from the neighbor, which I think

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1 a lot relate to potential impacts of construction and trucks
2 going and in for construction.

3 BZA CHAIR HILL: Is the owner here by phone?

4 MR. YOUNG: Yes, I just unmuted him.

5 BZA CHAIR HILL: Can you hear me? Hello? Hello?
6 Hello? Can the property owner hear me?

7 (No response.)

8 All right, Mr. Sullivan, that's all right. We'll
9 try to figure out what's going on with the property owner.

10 All right. Is the Office of Planning here? Is
11 the Office of Planning here? Oh, there's Ms. Thomas.

12 MS. THOMAS: Yes, I'm here. I'm sorry, I couldn't
13 unmute myself. Sorry.

14 BZA CHAIR HILL: Okay.

15 MS. THOMAS: Yes.

16 BZA CHAIR HILL: Could you introduce yourself for
17 the record, please?

18 MS. THOMAS: Yes, sure. Are you ready? And
19 you're hearing me, right?

20 BZA CHAIR HILL: Yes.

21 MS. THOMAS: Yes. Good.

22 Good afternoon, Mr. Chairman, Members of the
23 Board. Karen Thomas with the Office of Planning.

24 The Office of Planning continues to recommend
25 approval of this application. And I say "continues" because

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1 we had to submit a supplemental report, including the relief
2 from the railing, one-to-one setback required for the railing
3 on the top of the roof at Exhibit 45.

4 We recommend approval, based on the comments
5 provided by the different agencies, with no comments noted.
6 There should be no impact on the fact that the alley is not
7 15-feet clear to the street. It is a 10-foot width at the
8 entrance to the alley via Fairmont Street and, in front, all
9 the way around the property it is 15 feet. So, it satisfies
10 that requirement.

11 So, we are recommending approval based on the
12 comments we have received and, also, for the one-to-one
13 setback for the railing.

14 I would be happy to take any questions. Thank
15 you.

16 BZA CHAIR HILL: Okay. Does anybody have any
17 questions of the Office of Planning?

18 (No response.)

19 Mr. Sullivan, do you have any questions for the
20 Office of Planning?

21 MR. SULLIVAN: No. Thank you.

22 COMMISSIONER SHAPIRO: Are you having fun there,
23 Mr. Chair?

24 BZA CHAIR HILL: Oh, am I back on?

25 COMMISSIONER SHAPIRO: Yes, you're on.

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1 BZA CHAIR HILL: I don't see you guys. Do you see
2 me?

3 COMMISSIONER SHAPIRO: Yes.

4 BZA CHAIR HILL: Okay. Well, that's good. Yes,
5 I completely disappeared. Okay.

6 Mr. Young, is there anybody here wishing to
7 testify?

8 MR. YOUNG: Yes, we have two witnesses.

9 BZA CHAIR HILL: Could you bring them in, please?

10 MR. YOUNG: Yes.

11 BZA CHAIR HILL: Ms. Livingston, can you hear me?
12 Ms. Livingston?

13 MS. LIVINGSTON: Yes. Can you hear me?

14 BZA CHAIR HILL: Yes. Can you hear me?

15 MS. LIVINGSTON: Yes, I can. How are you today?

16 BZA CHAIR HILL: Good. Thank you. How are you?

17 MS. LIVINGSTON: I'm fine.

18 Good morning, everybody.

19 BZA CHAIR HILL: Ms. Livingston --

20 MS. LIVINGSTON: Yes?

21 BZA CHAIR HILL: Could you please introduce
22 yourself for the record?

23 MS. LIVINGSTON: Yes. My name is Phyllis
24 Livingston. I live at 780 Fairmont Street, Northwest, in
25 D.C. 20001.

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1 And I'm opposing this because of the alleyway.
2 I sent my documentation yesterday.

3 BZA CHAIR HILL: Right. Ms. Livingston, just real
4 quick, first of all, you'll have three minutes to testify,
5 and the clock is on the screen, if you can see it.

6 And then, secondly, maybe if you mute your
7 computer? There's feedback going on, I think. I don't know
8 whether you're talking on the phone.

9 MS. LIVINGSTON: Oh, okay.

10 MR. YOUNG: So, I think that there's an echo
11 because I think she's calling in on the phone also.

12 MS. LIVINGSTON: Okay. Can you hear me?

13 BZA CHAIR HILL: Yes. Do I have your testimony?

14 MS. LIVINGSTON: Yes. Can you hear me still?
15 Okay.

16 Yes. The damage to my home has been extensive.
17 And I know I have three minutes, so I'm going to make this
18 quick. I'm concerned with the trucks, the dump trucks coming
19 through the alley damaging the side of my home. The D.C.
20 trash trucks and recycle trucks and privately-owned companies
21 have come through the alley and also damaged my home.

22 Tenleytown Trucks has damaged my home twice.
23 Pella Windows truck has damaged my home once. I did police
24 reports because they would hit and run. And as far as the
25 police told me, they said I should do a report. But I

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1 stopped doing the report because the police officers have
2 better things to deal with.

3 I can't even get the front of my house painted on
4 the outside. And I have repaired the damage to the side of
5 my home out of pocket. Hopefully, the Office of
6 Mismanagement will reimburse me. But what I was told by
7 several people, they said, "Good luck," because they are
8 difficult to deal with. So, that is my concern.

9 I went to the ANC Commission on October the 1st.
10 They didn't address my issue. And I sent them an email and
11 they apologized, but that didn't help me.

12 Also, I'm in contact with Mr. (telephonic
13 interference) at the Mayor's office. I'm also in contact
14 with my Ward 1 person, Councilperson. And they're going to
15 put a "narrow alley" sign up, but that does not stop the
16 privately-owned trucks that come through there.

17 And plus, two Thursdays ago -- this can get
18 physical -- because I almost got into a physical
19 confrontation with a crew of four, but only two guys
20 approached me. And I approached them. They stepped to me
21 and I stepped to them. So, this can get physical because I
22 take video when they damage my home. Now this might not be
23 important, but it's important to me.

24 And then, we're talking about the foundation of
25 our homes because these homes are a little older. So, I'm

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1 concerned about the foundation, and then, we have new pipes
2 versus the old pipes that's in the ground. And I believe the
3 old pipes in the ground are probably older than me.

4 So, this is my concern because it's costing me
5 money and it's costing me my safety when I have to videotape
6 these guys and dealing with this issue.

7 So, I think that's, yes, that's all I have to say
8 on this. I really don't want this to happen, but I don't
9 know what's going to happen.

10 And also, my Ward persons, they're going to put
11 up a "narrow," a sign that's going to say, "Narrow Alley,"
12 but that's not going to stop the private trucks that come
13 through. And these trucks are huge. I even had a Seedling
14 Truck that was aside of my house coming through the alley.

15 The alley is so narrow, and I think I've saved
16 some video, maybe one or two, just to see how narrow this
17 alley is with these trucks, because I have over 50 to 100
18 videos and pictures of these trucks coming through the alley
19 doing damage. And you can hear the confrontation.

20 So, it's a safety issue. It's a safety issue for
21 me. It's safety issue for me. And then, it's a safety issue
22 for my home with, you know, building back there.

23 And I appreciate you all listening to me. I don't
24 know if anybody lives in D.C., but the damage to my home --
25 I haven't even sent you the most damaging pictures because

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1 I was in a hurry to do that. But thank you so much. I see
2 my time is up.

3 MR. YOUNG: You're on mute, Mr. Chair.

4 BZA CHAIR HILL: Thank you.

5 I said, Ms. Livingston, we all live in D.C. At
6 least three of us do.

7 And so, I'm sorry that you've had this type of
8 experience, and I would, again, just caution you about being
9 careful about confronting people and, also, continuing to
10 follow up with your Council member on what you're doing.

11 I'm going to end up talking with the property
12 owner. I mean, the damage that you're speaking of sounds
13 like they're not cars or trucks that have come from the
14 property owner at this point, correct?

15 MS. LIVINGSTON: Correct. But, see, yeah, it's
16 just even the D.C. trucks and the D.C. Recycle have been
17 careful of coming through this alley because some of their
18 trucks used to speed through it, but there's still privately-
19 owned companies that be doing work, you know, out back of
20 these houses that come through.

21 BZA CHAIR HILL: I understand. I understand. Ms.
22 Livingston, are you --

23 Mr. Sullivan, do you know where Ms. Livingston
24 lives in relationship to the property?

25 MS. LIVINGSTON: I'm -- behind it. It's right

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1 behind me.

2 MR. SULLIVAN: And it's to the north of the one
3 before you. It's --

4 BZA CHAIR HILL: Okay.

5 MR. SULLIVAN: It's separated by a couple of --

6 BZA CHAIR HILL: I've got you. I've got you.

7 Okay.

8 Ms. Livingston, just hang on a second. Okay? Let
9 me finish taking everybody else's testimony, and we'll circle
10 back around to you. Okay?

11 MS. LIVINGSTON: Thank you. Yes.

12 BZA CHAIR HILL: You're welcome.

13 Mr. Kevit, or Ms. Kevit, can you hear me?

14 MR. KEVIT: Yes. Hello. Can you hear me?

15 BZA CHAIR HILL: Yes. You want to go ahead and
16 introduce yourself for the record first? And then, you'll
17 have three minutes.

18 MR. KEVIT: Hi. Sure. Yes. Hello, everyone.

19 I'm Conor Kevit. I live at 2625 Sherman Avenue,
20 which is across from the subject property. I can actually
21 look out the window right here and see the orange sign for
22 this meeting. So, you can imagine it's going potentially
23 change a lot of our day-to-day back there.

24 BZA CHAIR HILL: Okay. They've started your
25 clock, Mr. Kevit. Do you want to go ahead and give your

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1 testimony?

2 MR. KEVIT: Sure. Yes. Yes.

3 So, Ms. Livingston's point is a good one. The
4 construction itself is obviously going to cause a lot of
5 disruption, but I guess I won't focus on that because she
6 covered it pretty well.

7 And also, the earlier point about developing the
8 property could be a good thing. You know, we've watched some
9 people park illegally in the existing parking lot and many
10 of the buildings have drug use or drug dealing, or otherwise.
11 And we'd prefer not to have that in the neighborhood. A
12 single family home could be a good addition.

13 I guess what I'm going to try to hit in my three
14 minutes is the potential impact of introducing more people
15 back there, and then, what comes along with people. I know
16 the Office of Planning said there should be minimal impact
17 on street parking. But one question I had for the Board was,
18 how many parking permits can be issued to that property? How
19 many can they obtain for street parking?

20 And the reason I say that is because, at face
21 value, it's a single family home, but when you look at the
22 architectural programming, what I see there is the in-law
23 suite on the ground floor can be easily looked at as almost
24 a standalone unit. So, like I said, at face value, it's a
25 single family dwelling, but, in practical terms, if someone

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1 owns that home, they'll put the bottom level on Airbnb.

2 And because we've got a building now with
3 potentially a high number of drivers, they're producing trash
4 that goes in the alleyway. And so, it could be quite a few
5 people going back there. And I know this meeting is about
6 this property, but the other one is right across the way.
7 So, you know, take it by times two, basically.

8 So, there are some concerns about the alley
9 getting more narrow. We actually have a parking space in our
10 back yard and it's going to be more difficult to get in
11 there, but that's just something we'll have to deal with on
12 our own.

13 I appreciate the architects creating a 4-foot
14 setback. I think that's helpful and I'm glad that they gave
15 consideration to that. But I guess my main focus would just
16 be that there's going to be potentially a lot more people
17 back there. The in-law suite I think could effectively turn
18 into another unit. You could have two families living in
19 that building very easily, and then, with it, potentially a
20 higher number of drivers who are trying to park their
21 vehicles on the street. Street parking can be had right now,
22 but, you know, it's going to get tighter. So, that's one
23 thing that I would just like to put before the Board to think
24 about.

25 Thank you.

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1 BZA CHAIR HILL: All right. So, Mr. Kevit, you're
2 objecting to the proposal, is that correct?

3 MR. KEVIT: I was not declared when I signed up
4 for this. So, I just wanted to have a venue to share
5 concerns.

6 BZA CHAIR HILL: Okay. So, that's okay. That's
7 cool. So, you're worried about the parking?

8 MR. KEVIT: That's probably the big one, yes. I
9 mean --

10 BZA CHAIR HILL: Okay.

11 MR. KEVIT: -- it's going to be more cramped, but
12 that's just sort of something that we'll have to deal with.
13 But, yes, the parking is something that Zoning and Planning
14 can think about.

15 BZA CHAIR HILL: Okay. Got it.

16 All right. Does the Board have any questions for
17 either witness?

18 (No response.)

19 Okay. Mr. Sullivan, do you have any questions for
20 either witness?

21 MR. SULLIVAN: No, thank you.

22 BZA CHAIR HILL: Okay. I have one question for
23 you, Mr. Sullivan. Do you know how to get in touch with Ms.
24 Livingston?

25 MR. SULLIVAN: If Mr. Gogos is available to get

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1 in -- I know he's trying; he's trying to get on, I think
2 -- he would tell you that he has been in touch with her. And
3 so, I assume he does know. I don't know if he's just done
4 it by knocking on her door or --

5 BZA CHAIR HILL: Ms. Livingston, do you know how
6 to get in touch with the owner? You're on mute, Ms.
7 Livingston.

8 MS. LIVINGSTON: I'm sorry, my apologies.

9 He did come to my house and gave me a letter with
10 his information, but I would like to, basically, see him
11 again, so we can talk more about it.

12 And I have a question before I quit. I'm opposing
13 20346 and 20347. Do I have to testify again or this is just
14 for both of them?

15 BZA CHAIR HILL: You can -- it's okay. It's okay.
16 You're in the record, I think, on both cases testifying in
17 opposite.

18 MS. LIVINGSTON: Okay.

19 BZA CHAIR HILL: You don't have to come back to
20 testify for the next one, if that's what your question is.

21 MS. LIVINGSTON: Okay.

22 BZA CHAIR HILL: But I'm going to try to figure
23 this out real quick, which is that, do you have -- you don't
24 know if you have Mr. Gogos' email address or contact
25 information?

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1 MS. LIVINGSTON: He gave it to me, but I have been
2 packing up. So, I still probably have it, but if he can come
3 and knock on my door, so I can get some information from him,
4 that would be fine.

5 BZA CHAIR HILL: Okay. Mr. Sullivan, can you make
6 sure that Mr. Gogos gets his information to Ms. Livingston?

7 MR. SULLIVAN: Absolutely.

8 BZA CHAIR HILL: Okay. And, Ms. Livingston --
9 and, Mr. Sullivan, if you can pass this on to -- I mean, I
10 guess I'm going to be quoting Chairman Hood for the rest of
11 my life. The good neighborhood policy, right, is again --
12 Ms. Livingston, they haven't done any work yet there.

13 Correct, Mr. Sullivan?

14 MR. SULLIVAN: Yes, that's correct.

15 BZA CHAIR HILL: All right.

16 MR. SULLIVAN: There may have been some cleanup
17 and tree removal, but no construction work, no.

18 BZA CHAIR HILL: Okay. So, Ms. Livingston, when
19 you talk to Mr. Gogos, I'm sure that Mr. Gogos would want to
20 make sure he is a good neighbor to you. If this does pass
21 and the construction happens, all of the issues that you're
22 speaking to are not anything that the Applicant has done at
23 this point. But, if you have good communication with the
24 property owner and developer, then you guys can kind of talk
25 through when construction is happening.

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1 I mean, they are going to do it within their
2 right, within the rightful hours, but they can at least --
3 I'm sure they definitely would have -- they want to make sure
4 it's a smooth construction period, so that you know that, you
5 know, the trucks aren't damaging your home. They would not
6 want to damage your home. So, I'm going to make sure that
7 you guys both are in touch with each other. Okay?

8 MS. LIVINGSTON: Thank you. I appreciate that.

9 BZA CHAIR HILL: Okay. All right, Mr. Sullivan,
10 you understand, correct?

11 MR. SULLIVAN: Yes. Thank you.

12 BZA CHAIR HILL: Okay.

13 MR. SULLIVAN: And Mr. Gogos is here with us, he's
14 told me. So, I don't know if you want to hear from him
15 either in this case or the next case.

16 BZA CHAIR HILL: Mr. Gogos, can you hear me?

17 MR. GOGOS: I can hear you. Can you hear me?

18 BZA CHAIR HILL: Yes. Is it Gogos?

19 MR. GOGOS: It's Gogos, G-O-G-O-S, Gogos.

20 BZA CHAIR HILL: Oh. I have a cousin Gogo. So,
21 I thought maybe that was it. All right.

22 Let's see. Okay. You understand, Mr. Gogos, that
23 we need you to reach out to Ms. Livingston and be a good
24 neighbor to them during, if this passed, construction?

25 MR. GOGOS: Absolutely. What I told Ms.

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1 Livingston initially, when I dropped off common notice, just
2 letting them know that I was planning on doing a project back
3 there, I wanted to -- there is just so many trucks there, as
4 you mentioned, that are not ours right now going through
5 there. But I told her, I was like, "Let's take a picture of
6 what the existing state is," because, unfortunately, due to
7 the location of her home, it opens itself up, unfortunately,
8 to larger trucks hitting it. So, I said, "Let's take a
9 picture of what it is, and if any truck of mine, that's
10 related to the construction does any damage, let me know."
11 I mean, I want to 100 percent take responsibility for that.

12 BZA CHAIR HILL: Oh, that's great. That's great,
13 Mr. Gogos. That's great, Mr. Gogos.

14 Ms. Livingston, do you hear all that? You guys
15 are going to be in touch. Okay?

16 MS. LIVINGSTON: Yes.

17 MR. GOGOS: All right.

18 Do I have an opportunity to respond to the other
19 person who kind of wanted to share their thoughts?

20 BZA CHAIR HILL: I mean, Mr. Gogos, if we have any
21 questions for you, I guess we'll ask.

22 MR. GOGOS: Okay.

23 BZA CHAIR HILL: So, I don't know; are you talking
24 about the traffic issue?

25 MR. GOGOS: Yes. I just want to say, you know,

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1 both of the single family homes are going to have two parking
2 spaces that are going to come with it. So, that should
3 mitigate any kind of additional parking permits needed by
4 those homes.

5 BZA CHAIR HILL: Okay. All right.

6 MR. GOGOS: And -- okay. All right.

7 BZA CHAIR HILL: Mr. Kevit, you were trying to say
8 something?

9 MR. KEVIT: Yes. I was wondering, does anyone
10 know offhand how many street parking permits would be due to
11 that property?

12 BZA CHAIR HILL: Mr. Sullivan, do you know if
13 that's up for RPP?

14 MR. SULLIVAN: I don't know how that would work,
15 actually, in an alley lot.

16 BZA CHAIR HILL: I mean, Mr. Kevit, whatever
17 they're allowed to get is what they're going to get. But the
18 fact that there's two off-street parking spaces, that's
19 pretty good, right?

20 MR. KEVIT: Yeah.

21 BZA CHAIR HILL: But whatever they're allowed to
22 get, they're going to get. So, in other words, I don't know
23 what the answer is. I don't know.

24 Ms. Thomas, do you know off the top of your head?

25 MS. THOMAS: Mr. Chair, they have been required

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1 in excess (telephonic interference) for the development.

2 BZA CHAIR HILL: No, I'm just curious whether, do
3 you know if they can get RPP or not?

4 MS. THOMAS: You know what? I'm really not sure.

5 BZA CHAIR HILL: Got it.

6 MS. THOMAS: That would be something they might
7 have to ask for. I'm not sure.

8 BZA CHAIR HILL: Got it. Okay.

9 So, Mr. Kevit, yes, just to get back to you,
10 they're providing the parking that they're supposed to
11 provide. And if they're allowed to get RPP, they can get
12 RPP, you know, permit parking. Permit parking.

13 MR. KEVIT: Yes, I was just trying to understand
14 the potential impact. So, it sounds like it won't have that
15 effect here.

16 BZA CHAIR HILL: Okay. All right. Does anybody
17 have any more questions from anyone?

18 (No response.)

19 All right. I'm going to excuse the witnesses.
20 Thank you very much.

21 Mr. Gogos, if you can mute your line? I think
22 you're doing something.

23 All right. Mr. Sullivan, do you have anything
24 you'd like to add in conclusion?

25 MR. SULLIVAN: No. Thank you.

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1 BZA CHAIR HILL: Okay. I'm going to close the
2 hearing and excuse all the parties from the hearing room.

3 Okay. I can begin the deliberation. I actually
4 didn't have any issues with the application. I thought there
5 was actually a pretty interesting application. I thought
6 that what the Zoning Commission and what all this was trying
7 to do is get more alley properties and alley housing, and
8 they're providing parking. I think it's a good design.

9 I think that the ANC is in support. I agree with
10 what their analysis has been, as well as that of the Office
11 of Planning, as well as DDOT.

12 And I'm going to vote in favor.

13 And I'm going to go around the horn.

14 Mr. Shapiro, do you have anything that you would
15 like to add?

16 COMMISSIONER SHAPIRO: I have nothing to add. I
17 agree, it looks like a nice project.

18 BZA CHAIR HILL: Ms. John?

19 VICE CHAIRPERSON JOHN: I have nothing to add, Mr.
20 Chairman.

21 BZA CHAIR HILL: Mr. Smith?

22 MEMBER SMITH: I completely agree, Mr. Chairman.

23 And I would also like to state -- Mr. Kevit had
24 some concerns about the potential of its becoming an
25 Airbnb -- I think if you take a look at that first floor of

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1 the property, both of them, it looks like the entrances on
2 the first floor, for you to access the second floor and the
3 first floor, you're sharing the same entrances. Both floors
4 you get into a shared space. So, I think it's fairly
5 difficult for the Applicant to convert that first floor to
6 an Airbnb. So, I just wanted to put that out and relook at
7 that.

8 I am in support of it, yes.

9 BZA CHAIR HILL: Mr. Smith, when you Airbnb, you
10 don't just get to sleep on a couch somewhere in somebody's
11 house?

12 MEMBER SMITH: Well, I think his concern was it
13 being rented out to a tenant. But, yes, you're right, you
14 can do that.

15 BZA CHAIR HILL: All right. I'm going to go ahead
16 and make a motion to approve Application No. 20346, as
17 captioned and announced by the Secretary, and ask for a
18 second.

19 Ms. John?

20 VICE CHAIRPERSON JOHN: Second.

21 BZA CHAIR HILL: The motion made and seconded.

22 And, Mr. Moy, could you take a roll call, please?

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

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1 the relief requested. The motion was seconded by Vice Chair
2 John.

3 Zoning Commissioner Peter Shapiro?

4 COMMISSIONER SHAPIRO: Yes.

5 SECRETARY MOY: Mr. Smith?

6 MEMBER SMITH: Yes.

7 SECRETARY MOY: Vice Chair John?

8 VICE CHAIRPERSON JOHN: Yes.

9 SECRETARY MOY: Chairman Hill?

10 BZA CHAIR HILL: Yes.

11 SECRETARY MOY: We have a Board seat vacant.

12 Staff would record the vote as 4-to-0-to-1, and this is on
13 the motion made by Chairman Hill to approve, seconded by Vice
14 Chair John. Also in support of the motion, Mr. Smith and
15 Zoning Commissioner Peter Shapiro. The motion carries
16 4-to-0-to-1.

17 BZA CHAIR HILL: Thank you, Mr. Moy.

18 Can we do the next case, Mr. Moy?

19 SECRETARY MOY: Yes. Again, this is Application
20 No. 20347 of John B. Gogos, as amended, for special
21 exceptions under the alley lot use provisions of Subtitle U,
22 Section 601.1(f), and under Subtitle C, Section 1504.1, from
23 the penthouse setback requirements of Subtitle C, Section
24 1502.1, to construct a new, detached principal dwelling unit
25 in the RF-1 Zone, at premises 921 Euclid Street, Northwest,

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1 Square 2884, Lot 82.

2 And again, as in the previous case, there is a
3 filing, a letter of comment, from the DPW Director that was
4 filed within the 24-hour period.

5 BZA CHAIR HILL: Okay. Thanks.

6 So, that's what kind of threw me a little bit.

7 So, I would add the DPW Director letter in the
8 record, unless the Board has any issues with me. If you do,
9 please raise your hand.

10 (No response.)

11 Okay. So, we're going to do that.

12 Then, the thing I neglected in the other one
13 -- I'm going to try to figure out how to clean this up --
14 there was the 21-day filing deadline for the updated self-
15 cert. Can you explain that, Mr. Sullivan, a little bit?

16 Well, first of all, if you can introduce yourself
17 for the record, Mr. Sullivan?

18 MR. SULLIVAN: Thank you, Mr. Chairman, Members
19 of the Board. My name is Marty Sullivan with Sullivan &
20 Barros, on behalf of the Applicant.

21 BZA CHAIR HILL: And what about the 21-day waiver?

22 MR. SULLIVAN: The submission was in response to
23 another issue that OAG had raised about our self-
24 certification. They wanted us to withdraw some of the relief
25 that we were requesting, and we needed to get clarification

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1 from the Zoning Administrator, which we got about 10 days ago
2 or so, that we did, in fact, need to request the relief and
3 that we should not be withdrawing it. And that's why OP had
4 to write a supplemental as well.

5 So, we were submitting, but we withdrew half of
6 that relief, essentially. There were two. There was an area
7 of relief for height relief regarding that parapet.

8 BZA CHAIR HILL: I got it. And that's the same
9 thing as the previous case in 20346?

10 MR. SULLIVAN: Correct. They had identical issues
11 with that.

12 BZA CHAIR HILL: Okay. So, unless the Board has
13 an issue -- and I will let OAG kind of clean this up for me
14 later -- I want to approve the waiver for the 21-day filing
15 deadline for the updated self-cert and confirmation from the
16 Zoning Administrator for both 20346 and 20347, unless anybody
17 has an issue. And if so, please raise your hand.

18 (No response.)

19 No? You don't? Okay. Great. Then, we've gone
20 ahead and done that.

21 Mr. Sullivan, I think, actually, if you could just
22 summarize a little bit of your arguments? I don't think we
23 have to do -- I don't want to hear everything again. And so,
24 I'm going to refer those that are watching this record to go
25 back and look at Case No. 20346, if there is more specificity

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1 that you might be interested in looking at. Mr. Sullivan,
2 could you please summarize your arguments?

3 MR. SULLIVAN: Sure. And I think it would be
4 helpful to have the PowerPoint up, so that you can see that
5 this proposal effectively mirrors the last proposal. It's
6 just across the alley to the south. And it's got the same
7 issues. It's got the same requests. And I believe it's the
8 same design.

9 Mr. Gonzalez, if there's anything different at all
10 that you think the Board would be interested that's different
11 about this design other than that design --

12 MR. GONZALEZ: Absolutely no.

13 MR. SULLIVAN: Okay. Thank you.

14 So, you have that. Everything is exactly the
15 same, and the location is, like I said, it's mirrored and
16 shouldn't make any difference as it applies to the special
17 exception criteria.

18 BZA CHAIR HILL: Okay. That is in the record at
19 which exhibit again, your PowerPoint presentation, Mr.
20 Sullivan?

21 MR. SULLIVAN: Exhibit 47.

22 BZA CHAIR HILL: Okay. Great. Thank you.

23 Does the Board have any questions of the
24 Applicant?

25 (No response.)

1 All right. Good.

2 Turning to the Office of Planning.

3 MR. MORDFIN: Hi. Good afternoon. I'm Stephen
4 Mordfin with the Office of Planning.

5 And similar to the other case, the Office of
6 Planning recommends approval of this application, including
7 the additional relief that was requested as a result of the
8 letter from the Zoning Administrator. We also recommended
9 approval of the additional relief.

10 And I'm available for questions.

11 BZA CHAIR HILL: Does the Board have any questions
12 for the Office of Planning?

13 (No response.)

14 Mr. Sullivan, do you have any questions for Office
15 of Planning?

16 MR. SULLIVAN: No. Thank you.

17 BZA CHAIR HILL: Mr. Young, is there anyone here
18 wishing to testify?

19 MR. YOUNG: We do. Do you want me to bring the
20 others from the last case as well?

21 BZA CHAIR HILL: Sure, if they're still there.

22 BZA CHAIR HILL: Ms. McCormack, can you hear me?

23 MS. MCCORMACK: Yes, I can hear you. Can you hear
24 me?

25 BZA CHAIR HILL: Yes. Could you please introduce

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1 yourself for the record?

2 MS. McCORMACK: Yes. Hi. My name is Tiffany
3 McCormack, and I am one of the homeowners at 915 Euclid
4 Street, which abuts the property at 921 Euclid, the proposed
5 property.

6 BZA CHAIR HILL: Okay. You can go ahead and give
7 your testimony. You'll have three minutes, and you can begin
8 whenever you like.

9 MS. McCORMACK: Perfect.

10 I think my comments probably overlap a lot with
11 those that have been mentioned by Ms. Livingston and Mr.
12 Kevit. My husband and I did sign a letter of support of the
13 property when Mr. Gogos came around. We met with him
14 multiple times, and we are, I think, overall in support of
15 the property.

16 We had outlined for him some areas of concern that
17 we had, which had included the privacy of windows that would
18 be facing our property, which is, again, on the south side
19 of the 921 Euclid property. It's my understanding that there
20 wouldn't be any windows from the home. And so, we feel
21 comfortable with that, and there is a reasonable setback from
22 our fence. So, we're supportive of that.

23 I think the things that Ms. Livingston flagged are
24 some things that Mr. Gogos and the developer, I hope they
25 consider, which is basically it is a challenge in the alley,

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1 that it's difficult for not just the garbage trucks, but also
2 cars themselves to get through the alley. And that's, in
3 part, because of where people place their trash cans, too.
4 You know, people just set out their trash cans outside of
5 their fences. It makes it really difficult for people to
6 drive through. So, I would just encourage Mr. Gogos and the
7 developer to think about sort of the impact that they'll
8 have, the residents would have, on the alley and any access,
9 just to make it easier for traffic to flow through, because
10 it's a high-traffic alley. So, I think that's like the main
11 concern.

12 I guess I am curious -- and I don't know if anyone
13 has an answer for this -- the exception for the entryway into
14 the alley, so it's currently 10 feet. I know that Mr. Gogos
15 is seeking an exception for 15 feet. So, I would just
16 encourage the city to think about sort of how will emergency
17 vehicles have access to the alley if they can't get through.
18 Because, obviously, if like a fire occurs or something, we
19 want to make sure that emergency vehicles will be able to
20 access the property. So, I don't know if anyone has a
21 response for that. I'm also happy to follow up with Mr.
22 Gogos offline. As we were into the case, I was just curious
23 how they would handle that.

24 BZA CHAIR HILL: Sure.

25 MS. McCORMACK: Can I have just one last issue,

1 since I realized I have 15 more seconds?

2 You know, I recognize that there are probably city
3 sort of codes and regulations around like noise. I will just
4 say we've done some work in our back yard recently, and there
5 are a lot of property owners abutting against, facing this
6 property. So, I would just ask the developer just to keep
7 that in consideration when they're doing their construction,
8 that they're doing it within reasonable hours, particularly
9 given I suspect a lot of this work will begin while most
10 people are still working at home. So, I'd just like you to
11 be mindful that my office is facing the property. I know a
12 lot of people are still at home right now. And just be
13 considerate of the noise.

14 BZA CHAIR HILL: Yes, I've got it.

15 Ms. McCormack, do you have Mr. Gogos' phone number
16 or contact information?

17 MS. McCORMACK: Yes, yes, we do. And I'm happy
18 to follow up with him offline. Again, we're still in support
19 of the property. We think it will be a nice improvement to
20 the alley.

21 BZA CHAIR HILL: Okay.

22 MS. McCORMACK: Yes, those are just some things
23 for them to keep in mind.

24 BZA CHAIR HILL: It sounds, as from the last
25 hearing that we talked about, Mr. Gogos is going to make sure

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1 that the trucks and everything during construction, he is
2 conscious of what's going on with the alley, and then, also,
3 is in contact with the other people that live around the
4 proposed development; and that he is going to now do his best
5 to keep everyone informed and as happy as possible. I'm just
6 letting you know that's what I understand --

7 MS. McCORMACK: Yes, (telephonic interference).
8 I gathered that, yeah. And we're in touch with John. So,
9 he's been really nice in keeping us abreast of the
10 developments.

11 BZA CHAIR HILL: Okay, okay. Great.

12 All right. Ms. Livingston, are you still there?

13 MS. LIVINGSTON: Yes, I'm here.

14 BZA CHAIR HILL: Do you have anything different
15 to add from your previous testimony?

16 MS. LIVINGSTON: No, I'm just still concerned
17 about my personal property and the dump trucks that are going
18 to be coming through. It's too wide for the entrance, and
19 I think -- and this is for me personally -- this isn't going
20 to go smoothly with me because of that. I really believe
21 it's going to be some damage to my home. I really do believe
22 that.

23 BZA CHAIR HILL: Okay. Well, Ms. Livingston, all
24 I can go on right now is that Mr. Gogos has reached out to
25 you, and I guess he's going to take pictures before they

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1 start, and any damage he does, he's going to resolve and fix.
2 Unfortunately, any city damage, you still have to kind of
3 follow up with your Council member and the member who's
4 connected with you. Okay?

5 MS. LIVINGSTON: Well, yeah, I've been doing that.
6 I've been definitely doing that.

7 BZA CHAIR HILL: Okay. Mr. Kevit, I have a hard
8 stop at one o'clock. So, I'm trying to move through here a
9 little bit. Mr. Kevit, do you have anything additional to
10 add from your previous testimony?

11 MR. KEVIT: No. I think Ms. McCormack brought
12 some good points that I agree with also, but nothing really
13 different right now.

14 BZA CHAIR HILL: Okay. Mr. Mr. Gogos, can you
15 hear me? Mr. Gogos?

16 MR. GOGOS: I can hear you, yes.

17 BZA CHAIR HILL: So, you're aware of Ms. McCormack
18 and the whole window thing she's talking about, and you guys
19 are trying to work together to resolve that?

20 MR. GOGOS: Yes, we already resolved that there
21 will not be a window --

22 BZA CHAIR HILL: Okay. That's fine. So, you've
23 talked about it and you're in contact with these individuals?

24 MR. GOGOS: Yes, sir.

25 BZA CHAIR HILL: Okay. Great. Perfect. All

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1 right. And you might want to reach out to Mr. Kevit, also,
2 and just let him know. He had a question about parking. If
3 you know the answer to it, that could be helpful. All right?

4 MR. GOGOS: Okay.

5 BZA CHAIR HILL: Okay. All right. And so, Mr.
6 Sullivan, get Mr. Kevit's information and at least get that
7 question resolved for him.

8 Okay. Does the Board have any questions for the
9 witnesses?

10 (No response.)

11 No? I don't see any hand being raised.

12 Mr. Sullivan, do you have any questions for the
13 witnesses?

14 MR. SULLIVAN: No.

15 BZA CHAIR HILL: No? He's shaking no.

16 Okay. Mr. Young, if you could please excuse the
17 witnesses?

18 All right. I'm going to go ahead. Does the Board
19 have any final questions for anybody?

20 (No response.)

21 Mr. Sullivan, do you have anything you'd like at
22 the end?

23 MR. SULLIVAN: No. Thank you.

24 BZA CHAIR HILL: Okay. Then, I'm going to go
25 ahead and close the hearing and the record.

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1 Mr. Young, if you could excuse everyone?

2 All right. I'm ready to deliberate. Again, it's
3 very similar in my concerns about the last case. I think
4 it's an interesting property design. I think what the Zoning
5 Commission had intended in terms of getting more alley
6 properties or allowing more, this thing is a good example of
7 what a good project looks like, I believe. And so, I think
8 that we have done what we can in terms of contacting, keeping
9 the developer connected with the community there.

10 And also, I would agree with the analysis the
11 Office of Planning has provided, as well as that of ANC 1B,
12 as well as DDOT and, also, the testimony that the Applicant
13 has given, both in 20347 as well as 20346. And I'm going to
14 vote to approve.

15 Commissioner Shapiro, do you have anything you'd
16 like to add?

17 COMMISSIONER SHAPIRO: Nothing further to add, Mr.
18 Chair.

19 BZA CHAIR HILL: Mr. Smith, do you have anything
20 you'd like to add?

21 MEMBER SMITH: Nothing further.

22 BZA CHAIR HILL: Ms. John, anything you'd like to
23 add?

24 VICE CHAIRPERSON JOHN: No, nothing further.

25 BZA CHAIR HILL: I'm going to go ahead and make

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1 a motion to approve Application No. 20347, as captioned and
2 read by the Secretary, and ask for a second.

3 Ms. John?

4 VICE CHAIRPERSON JOHN: Second.

5 BZA CHAIR HILL: The motion has been made and
6 seconded.

7 Mr. Moy, if you could please take a roll call?

8 SECRETARY MOY: Thank you, Mr. Chairman.

9 So, when I call your name, if you would please
10 respond with a yes, no, or abstain to the motion made by
11 Chairman Hill to approve the application for the relief
12 requested. The motion is seconded by Vice Chair John.

13 Zoning Commissioner Peter Shapiro?

14 COMMISSIONER SHAPIRO: I vote yes.

15 SECRETARY MOY: Mr. Smith?

16 MEMBER SMITH: Yes.

17 SECRETARY MOY: Vice Chair John?

18 VICE CHAIRPERSON JOHN: Yes.

19 SECRETARY MOY: Chairman Hill?

20 BZA CHAIR HILL: Yes, to approve.

21 SECRETARY MOY: We have a Board seat vacant.
22 Staff would record the vote as 4-to-0-to-1, and this is on
23 the motion made by Chairman Hill to approve, seconded by Vice
24 Chair John. Also in support is Mr. Smith and Zoning
25 Commissioner Peter Shapiro. The motion carries 4-to-0-to-1.

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1 BZA CHAIR HILL: Okay. Great. Thank you.

2 I know one of our Board members has a hard stop
3 at one o'clock. So, we'll go from 1:00 to 2:00.

4 Mr. Shapiro, is that enough time for you or do you
5 need only 45 minutes?

6 COMMISSIONER SHAPIRO: I mean, I think I need 1:00
7 to 2:00.

8 BZA CHAIR HILL: I don't mind. That's fine. I'm
9 just trying to clarify.

10 Yes, Mr. Moy?

11 SECRETARY MOY: Before you take off for break, do
12 you want to speak to the lineup for the rest of the day,
13 particularly in the one case --

14 BZA CHAIR HILL: Yes.

15 SECRETARY MOY: All right.

16 BZA CHAIR HILL: So, you guys, we were going to
17 take a look at 20313 at lunch. However, something has come
18 up, and we're going to bump up another case. So, the next
19 case, if anybody is listening, we're going to go to 20370,
20 and then, we're going to go to 20313. Then, we're going to
21 go to 20364. And finally, we'll do 20340.

22 Mr. Moy, do you understand?

23 SECRETARY MOY: Yes.

24 BZA CHAIR HILL: Okay. Great.

25 All right. Well, I hope everybody has a nice

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1 lunch, and see you at two o'clock.

2 (Whereupon, the foregoing matter went off the
3 record for lunch at 12:56 p.m. and went back on the record
4 at 2:04 p.m.)

5 SECRETARY MOY: All right. I guess let's do it,
6 Mr. Moy.

7 SECRETARY MOY: All right. Thank you, Mr.
8 Chairman.

9 The Board is back in session after a lunch recess,
10 and the time is at or about two o'clock p.m.

11 So, I believe the next case, assuming the parties
12 are available, is Case Application No. 20370 of 1337 Taylor
13 Street LLC, captioned and advertised for a special exception
14 under the residential conversion requirements of Subtitle U,
15 Section 320.2, to convert the existing principal dwelling
16 unit into a three-unit apartment house in the RF-1 Zone.
17 This is at premises 1337 Taylor Street, Northwest, Square
18 2822, Lot 18.

19 BZA CHAIR HILL: Okay. I'll just pull up the
20 record.

21 All right. I guess, is Mr. Jordan, is that you?
22 Are you there?

23 MR. JORDAN: I'm here. There I am. I think I'm
24 finally unmuted.

25 BZA CHAIR HILL: Okay.

1 MR. JORDAN: Can you hear me?

2 BZA CHAIR HILL: Yes. Are you going to use your
3 camera, Mr. Jordan?

4 MR. JORDAN: Yes. I'm trying to make sure Net
5 TOPS on also. We're having to control this --

6 BZA CHAIR HILL: I think if you just scroll, if
7 you put your cursor over the screen, it should have a little
8 video button at the bottom.

9 MR. JORDAN: Yes, yes. That's what I'm trying --
10 yes, it's there, but it's just not being cooperative here.
11 My video is just not starting here. I'm not understanding
12 that.

13 BZA CHAIR HILL: Maybe do you click on it and it
14 says, "Start video"?

15 MR. JORDAN: Yes, I've been doing this for a
16 minute here. If you can hear me, I can go into this and
17 click again, because I know how time is important to you.

18 BZA CHAIR HILL: Yes. No, that's great.

19 Mr. Jordan, who's here with you?

20 MR. JORDAN: We have Msekerem Solomon, who is the
21 owner of the property. We have KC Price, the architect, and
22 Rose Waller from my office.

23 BZA CHAIR HILL: Okay. I don't see Mr. Price.

24 MR. JORDAN: All right. We might be okay without
25 him right at this point.

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1 BZA CHAIR HILL: Okay. All right. Well, first
2 of all, Chairman Jordan, welcome back.

3 MR. JORDAN: Yes, good seeing you. Good seeing
4 you.

5 BZA CHAIR HILL: That's why I want the video. I
6 just want to be able to see you, but I guess we're not going
7 to be able to do that.

8 MR. JORDAN: Yes. I'm trying to find out what the
9 heck is going on.

10 BZA CHAIR HILL: We don't have to spend much time
11 on this. But maybe sometimes there's a camera button that
12 is weird, but I don't even know how to -- I don't know if Mr.
13 Young has a suggestion, but that's okay.

14 MR. YOUNG: If you go to the top tabs where it has
15 like the File, Edit, and there should be one that says,
16 "Audio and Video". And if you click the "Audio and Video,"
17 it will drop down, and make the selection that says,
18 "Camera".

19 BZA CHAIR HILL: Or "Connect to a video system"?

20 It doesn't matter. All right. Well, since we've
21 got a bunch of asks -- so, anyway, Chairman Jordan, again,
22 thank you for your service on the BZA. We all know that it
23 actually is a working Board here. And so, nice to, again,
24 at least hear you.

25 Let's see. I was a newbie, Chairman Jordan, when

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1 you started. I still feel like a newbie. Actually, that's
2 not true; I don't feel like a newbie at all.

3 (Laughter.)

4 All right. Let's see. So, you can hear us,
5 correct?

6 (No response.)

7 Yes, I might have lost you.

8 Chairman Jordan, do you hear us?

9 (No response.)

10 No, now I lost you. Maybe trying to do too much
11 was a problem.

12 Commissioner Goodman, can you hear me?

13 MR. GOODMAN: Yes, I can.

14 BZA CHAIR HILL: Okay. All right. Well, at least
15 I see Mr. Jordan's mic come on. Or at least to me, it looks
16 to me maybe -- there we go.

17 Mr. Jordan?

18 (No response.)

19 Mr. Jordan, do you hear us?

20 (No response.)

21 Well, I don't know if you want to log back on and
22 log back in. I don't know.

23 Let me go ahead. I'll come back to you, Mr.
24 Jordan.

25 Ms. Waller, can you hear me?

1 COMMISSIONER SHAPIRO: She's on mute, Mr. Chair.

2 BZA CHAIR HILL: Okay. I don't see it. All
3 right.

4 Ms. Waller, are you -- can you hear me?

5 MS. WALLER: Rose Waller for the Applicant.

6 BZA CHAIR HILL: Okay. Great. Could you
7 introduce yourself for the record, please?

8 MS. WALLER: Yes. Rose Waller, for the Applicant.

9 And I think Lloyd is trying to log back in.

10 BZA CHAIR HILL: Okay. Great. Okay. There we
11 go.

12 And is it Mr. Solomon?

13 MS. SOLOMON: Ms. Solomon.

14 BZA CHAIR HILL: Oh, Ms.

15 MS. SOLOMON: I'm the owner of the property.

16 BZA CHAIR HILL: Okay. Ms. Solomon, could you
17 introduce yourself for the record, please?

18 MS. SOLOMON: This is Ms. Solomon, Msekerem
19 Solomon. I own the property at 1337 Taylor Street,
20 Northwest.

21 BZA CHAIR HILL: Okay. All right. While Mr.
22 Jordan is logging back in, just for the Board here, there was
23 an issue with The Register, in that it was 26 days instead
24 of the 40 days. I believe that everybody has been notified
25 in terms of notice for this application. We've got the ANC

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1 with us. We have the Office of Planning, DDOT, and also, I
2 know that all of the different other notices have gone out
3 and are properly taken care of. So, unless anyone from the
4 Board has any issue, I'm going to go ahead and waive that
5 notice requirement, as per Y402.11. And if anybody has an
6 issue from the Board, please raise your hand.

7 (No response.)

8 No? Great. Okay. There we go. So, we're going
9 to go ahead and waive that, Ms. Cain.

10 And we're still waiting for Mr. Jordan. I should
11 have quit while I was ahead.

12 (Pause.)

13 Ms. Elliot, can you hear me?

14 MS. ELLIOT: Yes, I think so.

15 BZA CHAIR HILL: Okay. All right. So now, we're
16 just waiting for Mr. Jordan.

17 Oh, Ms. Elliot has some festive stuff. All right.
18 Great. Why do we have to wait until this day? Wasn't
19 festive things happening last week? Next year we should all
20 wear Santa hats.

21 (Pause.)

22 I guess, Mr. Jordan, you might call in. You could
23 maybe call in that OZ hotline number, and they might be able
24 to just let you in on the audio.

25 And now, I've lost Ms. Waller, it looks like.

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1 (Pause.)

2 Have you guys ever seen "Money Ball"? There's a
3 line in "Money Ball" where, once you get what you want, you
4 hang up the phone. It's a lesson that I've learned, and I've
5 made a mistake now because I had Mr. Jordan at least on
6 audio, and I tried to get too much.

7 SECRETARY MOY: Yes, Mr. Chairman, I've just sent
8 a message to Paul Young to help Mr. Jordan out.

9 BZA CHAIR HILL: Okay.

10 (Pause.)

11 MR. YOUNG: Yes, I just tried calling him and I
12 got no answer.

13 BZA CHAIR HILL: Okay.

14 (Pause.)

15 All right, there's Ms. Waller.

16 (Pause.)

17 All right. I see Mr. Jordan maybe. Hello.

18 MR. JORDAN: Hello?

19 BZA CHAIR HILL: Hello. Can you hear us?

20 MR. JORDAN: I can hear you. Can you hear me?

21 BZA CHAIR HILL: Yes. Okay. Perfect.

22 All right. Well, Mr. Jordan, I'm going to refer
23 to you as "Mr. Jordan," even though the last one was
24 "Chairman," but there's too many Chairmen at the table right
25 now.

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1 So, Mr. Jordan, if you could go ahead and walk us
2 through your application and how you believe you're meeting
3 the standard for us to grant the relief requested. You have
4 15 minutes on the clock there, and you can begin when you
5 would like.

6 COMMISSIONER SHAPIRO: He is now on mute, Mr.
7 Chair.

8 BZA CHAIR HILL: Mr. Jordan, I guess you're on
9 mute.

10 MR. JORDAN: Can you hear me now?

11 BZA CHAIR HILL: Yes.

12 MR. JORDAN: All right. Great.

13 So, this is a request for a special exception for
14 property 1337 Taylor. It's simply for one additional unit,
15 going from two units to a three-unit apartment house in an
16 RF-1. The beauty of all this is that the property itself,
17 the construction itself, is all a matter of right. In fact,
18 any addition is all under 35 feet. It's all a matter of
19 right, and it actually has been permitted already for any
20 construction that needs to go on on this particular property.
21 So, what we're here requesting is simply meeting the criteria
22 under 30.2 in regards to providing for the special exception.

23 We have the Office of Planning's support. Thank
24 you very much.

25 We have a letter of support from a nearby neighbor

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1 who actually has a solar panel, and that's been worked out
2 regarding the solar panel.

3 To my knowledge, there's no neighbor in
4 opposition.

5 The DDOT, of course, gave their usual no
6 opposition.

7 And regarding the ANC, Commissioner Goodman is
8 here and could speak in regards to that.

9 But, Mr. Chairman, we have a full PowerPoint
10 presentation that we can give or put on. However, respecting
11 the Board's time, I was just thinking that it might be better
12 to answer questions, especially since there's no need to go
13 through -- I would suggest there is no need to go through
14 construction, since that's all a matter of right. And in
15 this particular property, as I said, in regards to any
16 addition, it's completely a matter of right. No more than
17 35 feet, and it matches at least two other homes on the
18 block.

19 So, Mr. Chairman, whichever way you want to
20 proceed, I would be glad to handle that, to do that.

21 BZA CHAIR HILL: Mr. Chairman, where is your
22 PowerPoint?

23 MR. JORDAN: Mr. Young has it.

24 BZA CHAIR HILL: And so, it's not in the record
25 now?

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1 MR. JORDAN: No. There was some type of fluke
2 when we tried to put it in and it did not populate. But, as
3 I said, Mr. Young has it.

4 BZA CHAIR HILL: Okay. I guess, Mr. Jordan, if
5 you wouldn't mind just kind of whipping through the
6 PowerPoint just a little bit, since you have it?

7 MR. JORDAN: Okay.

8 BZA CHAIR HILL: Mr. Young, have you got that?
9 And then, Mr. Young, if you could put that into the record
10 for us?

11 MR. JORDAN: Thank you.

12 So, the first point is simply discussing the
13 request that's necessary. And that is the property that you
14 see on slide 1.

15 If we come over to slide 3, it gives the front and
16 rear view of the property.

17 Slide 4, if you would, please, provides the zoning
18 -- it shows how the property meets all the zoning
19 requirements and that no particular relief is needed for
20 height or width, for area, the floor area ratio, the lot,
21 because the only relief that's necessary is under 324(t)(4),
22 one additional unit. It's presently, as a matter of right,
23 two units, and it also has two parking spaces.

24 If we come over now to slide No. 5, if we come
25 over to slide No. 5, you will see, you're beginning to see

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1 the schematic of the plans that are drawn for this property.

2 And the next four of five slides are the same in
3 regards to the property, a typical floor layout, full site
4 plan.

5 If you come over to slide No. 7, you will see kind
6 of the typical floor layout for this property.

7 As I said, it's already permitted for this
8 particular configuration as a matter of right for
9 redevelopment.

10 I'm going to ask, maybe in order to help expedite
11 this, if we could skip over to slide No. 12. Yes, No. 12.
12 Slide No. 12 shows you the other two units, the other two
13 properties on that street which have the same kind of
14 extended roofline. And if you look to the left, 1331
15 actually will be a mirror of the project that we're speaking
16 now of, 1337.

17 And if you come over to slide No. 13, please,
18 Paul, then we talk about how we generally comply with the
19 requirements of 320.2. The building does not exceed 35 feet.
20 There's less than four units. So, therefore, IZ is not
21 required. It's an existing single family unit, and the
22 requirement for lot size is 2,700, actually 2,700, but the
23 lot size is actually 2,770 square feet. It allows for the
24 three units.

25 The proposed rear addition doesn't exceed 10 feet

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1 beyond the furthest rear wall. There's no blocking of any
2 chimneys for either of the properties on either side of this
3 building.

4 And the Applicant and the adjacent property owner,
5 who does have a recent construction of the cell system, a
6 solar system on top of the roof, have reached an agreement.
7 And we actually have that letter of agreement -- I mean,
8 excuse me -- letter of support from that particular neighbor,
9 the Elders.

10 And there's no change of any sort to the original
11 architectural elements of the building.

12 If we go over now to Slide 14, there's no adverse
13 effect, whether it's substantial or not, there's no adverse
14 effect for this development. As I said, the development
15 itself is all matter of right. The rear extension doesn't
16 exceed, as we've already talked about, the 10 feet. The
17 privacy, use, and enjoyment is not impeding any of the
18 neighbors. There's no substantial intrusion. The character
19 of this particular property matches everything that's already
20 there. And the roof addition is set back 9 feet from the
21 roofline. And the building material is as you've seen in the
22 other properties on the block, exactly the same.

23 If we go over now to slide No. 15, please, as I
24 said at the initial point, the Office of Planning supports
25 this application.

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1 The adjacent property owner at 1335 has submitted
2 a letter of support, and that's the building, as I said,
3 where there was a solar panel there, but that's been
4 resolved.

5 And DDOT has taken a position of no opposition.

6 Exhibit 35 in the record shows our intent to reach
7 out to the community.

8 And then, ANC 4C, Commissioner Goodman is here.
9 However, we've had substantial discussion with them, and I
10 believe they made a favorable response.

11 So, Mr. Chairman, if there's any questions, I'd
12 be glad to take them.

13 BZA CHAIR HILL: Okay. Great. Thank you.

14 All right. Mr. Chair, if you could pull that
15 PowerPoint down?

16 All right. Does the Board have any questions of
17 the Applicant at this time?

18 MS. CAIN: Mr. Chairman?

19 BZA CHAIR HILL: Yes?

20 MS. CAIN: I just wanted to note for the record
21 that the reason that the Applicant's PowerPoint presentation
22 and the letter from the adjacent neighbor are not in the
23 record was because they were submitted after the 24-hour
24 deadline. Those can be let in as late filings, pursuant to
25 Y103.13(g). The Applicant just has to demonstrate that there

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1 is good cause and how it is relevant and how it will not
2 reasonably prejudice any party. I think that it may be that
3 the Board does need to formally decide to admit those
4 exhibits to the record at this point.

5 BZA CHAIR HILL: Okay. I got it.

6 So, the PowerPoint presentation, I don't have any
7 issues with.

8 And the letter, Mr. Jordan, it's a letter of
9 support, is that correct?

10 MR. JORDAN: That's correct.

11 BZA CHAIR HILL: Okay.

12 MR. JORDAN: Uh-hum. They're all late-developing
13 regarding the letter of support. The neighbor worked out all
14 the situations. So, yes, that's why the --

15 BZA CHAIR HILL: Okay. So, unless the Board has
16 any objection, I would like to -- I don't think it's going
17 to prejudice any parties to allow that into the record. And
18 so, unless the Board has any issues -- and you can raise your
19 hand -- I'd like to allow the PowerPoint in, as well as the
20 letter of support, because I'd like to be able to take a look
21 at it.

22 I don't see anyone raising their hand in
23 objection. So, Mr. Young, if you could please allow those
24 into the record?

25 And now, Commissioner Goodman, if you could go

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1 ahead and give your testimony, please?

2 MR. GOODMAN: Yes. Thank you.

3 So, I am not Commissioner for this SMD, but I'm
4 serving as one of the appointed officers in the absence of
5 the SMD Commissioner for this case.

6 And in the letter that you have that we've
7 uploaded, we've initially opposed this case, based on some
8 conditions, as you're already aware with 4C, how we consider
9 development guidelines. That letter of opposition was based
10 on not meeting the criteria at the time, with the intent
11 that, if we could come to an agreement between our meeting
12 and now, that we would remove our opposition. Because the
13 ANC is not going to be meeting again this term, we can't
14 submit any kind of change to this or fully support this
15 project. I'm just here to testify that we no longer are in
16 opposition to this project.

17 There are two conditions that we said had not been
18 met. One was solar adjustment for a neighbor that has been
19 met -- I believe that might be one of the letters being
20 submitted -- and a second one on affordable house that has
21 also been met with new conditions. So, the ANC kind of
22 withdraws our opposition and just stands on that.

23 BZA CHAIR HILL: Okay. So, two things. Ms. Cain,
24 I don't know how that works now. Like are they still
25 technically opposed?

1 MS. CAIN: I believe it would be, unless we can
2 get written confirmation from the ANC within seven days
3 confirming the Commissioner's testimony that he's given
4 today. If we have that, then I think that would be
5 sufficient for the ANC to no longer be considered in
6 opposition.

7 BZA CHAIR HILL: So, Mr. Commissioner Goodman, can
8 you get us something within seven days?

9 MR. GOODMAN: Not from the full Commission, no,
10 not with no disrequirements in a meeting. Being the end of
11 this term, and the fact that the new term is going to be
12 sworn in I think the 2nd, it's just not feasible.

13 I'll share that the language of our motion states
14 that at the time of our meeting the Applicant had not fully
15 agreed to our requests and the request that the ANC plans to
16 oppose this application if we cannot work out an agreement
17 in the meantime. We did put the conditional clause in there
18 with that intent, and we did vote on that.

19 BZA CHAIR HILL: Ms. Cain? The reason why I'm
20 just trying to understand is whether or not, again,
21 technically, you guys are still in opposition and/or if we
22 have to wait on something before we can make a vote. And I
23 don't know.

24 And Commission Shapiro has his hand up.

25 COMMISSIONER SHAPIRO: Mr. Chair, I mean, I'm

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1 hearing what Commissioner Goodman has said. And obviously,
2 we need to give credit weight to the letter from the ANC, but
3 at the end of the day we're going to make our decision. So,
4 you know, I'm fine with proceeding with the information I
5 have in the letter and the information I hear from
6 Commissioner Goodman. Does it make sense? It makes perfect
7 sense to me, right, that happened happened.

8 BZA CHAIR HILL: I agree, and I guess where a lot
9 of this tends to come from is whether or not we're doing a
10 full or summary order. So, that's what I'm trying to figure
11 out. And I'm going to look to Ms. Cain to let me know.

12 MS. CAIN: I'm just looking at the letter from the
13 ANC right now. So, let me do that and I will circle right
14 back.

15 BZA CHAIR HILL: Okay. I'll keep moving through
16 this hearing then, and we'll see what happens.

17 MR. JORDAN: If I can offer a couple of things?
18 One, as Commissioner Goodman said, the last point of the
19 resolution indicated unless we made some type of arrangement.
20 And so, I think that falls within the ANC's resolution, that
21 we've made that arrangement, as Commissioner Goodman has
22 represented. The opposition was contingent upon not having
23 an arrangement, which there is one, as Commissioner Goodman
24 spoke about. They are not going to formally meet until late
25 for them to be able to send a letter. However, as

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1 Commissioner Goodman has expressed, there has been -- that
2 bottom-line requirement on that resolution has been
3 fulfilled. So, therefore, any opposition that's contained
4 in that resolution wouldn't be effective by the bottom-line
5 clause that says unless there's been something worked out.

6 BZA CHAIR HILL: Yes. Mr. Jordan, I don't
7 necessarily disagree with you. I just want to make sure that
8 what we all think is going to happen is something that I'd
9 be able to do within the regulations.

10 MR. JORDAN: Definitely.

11 BZA CHAIR HILL: Because, otherwise, all the work
12 that you all have done is not going to help you. So, that's
13 what I just want to make sure, because I still have to write
14 a full order, regardless. And it doesn't help you.

15 So, I'll just let Ms. Cain take a look and/or I
16 guess, Ms. Cain, we can leave the record open for -- but the
17 only problem that I'm just not clear on is how that may or
18 may not change our deliberations; if we were to deliberate
19 on this and get to a yes, how keeping that open for the
20 record, if we would, then, for some reason, get a no, have
21 to go back and take a look at this again. So, I'm just
22 throwing that out there while we work through this hearing.

23 Can I go to the Office of Planning?

24 MS. ELLIOT: Good afternoon, Mr. Chairman, Members
25 of the Board. I'm Brandice Elliot, representing the Office

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1 of Planning. And this is for BZA Case -- I'll pull up my
2 number -- 20370.

3 The Office of Planning is recommending approval
4 of the special exception relief that's been requested for the
5 conversion. The Applicant has really discussed at length how
6 the additions and the massing in general complies with the
7 development standards for the RF-1 Zone.

8 I do want to add a little bit of information about
9 the neighbor's adjacent solar. The Applicant did not
10 actually request any relief from the solar regulations. But
11 the regulations do allow for a maximum of 5 percent shading
12 by any addition. So, there could be an additional 5 percent
13 shading on the solar panels. There was never a solar shading
14 study performed for us to know whether or not that's the case
15 with this. But they did, ultimately, end up working with
16 that neighbor and resolving issues separately.

17 So, the regulations do allow for the Applicant to
18 pull a building permit with either a shading study that
19 verifies that there's no more than 5 percent shading
20 additional on the solar energy system or they can provide an
21 agreement from the owner of the impacted solar energy system.
22 So, in this case they have the agreements. They're okay and
23 they can pull their building permit.

24 So, I just wanted to verify that that's the case.
25 We don't know that relief is needed or if it needs a whole

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1 lot of discussion here. I just wanted to clarify.

2 BZA CHAIR HILL: I understand. I appreciate that.
3 And the agreement is that most recent exhibit that we just
4 allowed into the record?

5 MR. JORDAN: No, the agreement is not just the
6 letter of support. We can submit the agreement, but the
7 agreement is executed.

8 BZA CHAIR HILL: Okay. So, the agreement is not
9 in the record now?

10 MR. JORDAN: That's correct. But I believe the
11 letter of support states that we have reached the agreement.
12 And I don't think there's a full requirement that the
13 agreement has to be in the record. It is just that we worked
14 it out, and I think that it's acknowledged in the letter of
15 support.

16 BZA CHAIR HILL: Right. So, Ms. Elliot, tell me
17 again about the agreement being in the record.

18 MS. ELLIOT: So, it's not required for OP's review
19 because the Applicant did not request that relief. So, it
20 doesn't need to be in the record. But what does need to
21 happen is the Applicant has to have an affidavit or some sort
22 of written agreement before they apply for their building
23 permits because they have to provide that evidence for their
24 building permits. That's all I was trying to clarify.

25 MR. JORDAN: Correct.

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1 BZA CHAIR HILL: So, we would maybe put that as
2 a condition? Or it doesn't matter, Ms. Elliot?

3 MS. ELLIOT: It doesn't matter. It's in the
4 regulations. It will be required.

5 BZA CHAIR HILL: Okay. Okay. All right. Does
6 anybody have any questions for the Office of Planning?

7 (No response.)

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

10 MR. JORDAN: No. Thank you.

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

13 MR. GOODMAN: I do not.

14 BZA CHAIR HILL: Paul, Mr. Young, is there anybody
15 here wishing to testify?

16 MR. YOUNG: We do not have anyone.

17 BZA CHAIR HILL: Okay. All right. So, I'm back
18 to Ms. Cain then. Where am I?

19 MS. CAIN: I guess the problem I'm running into
20 here is the language of the ANC letter. While it does say
21 that they're in opposition unless they can work out an
22 agreement, the confirmation -- I think you just need
23 confirmation that everything has been agreed to. And I guess
24 sort of what I'm getting hung up on is, if the ANC is not
25 going to be able to adopt the Commissioner's testimony, if

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1 that's going to be an issue. If you can hold on another
2 minute, I'm trying to get some confirmation on that. It's
3 purely for the purposes of determining, as you said, whether
4 it's a full order or not. It's just sort of just procedural
5 pickups, and that's what I'm trying to iron out in the
6 interim.

7 MR. JORDAN: So, if I may -- I'm sorry -- if I
8 may, Mr. Chairman?

9 BZA CHAIR HILL: Sure.

10 MR. JORDAN: Can I suggest this? It might be
11 easier and I know in respect to everyone's time. So, we
12 could close the record, except keep the record open for a
13 letter of supplement from the ANC, an additional document
14 from the ANC. And you could probably schedule this for a
15 decision meeting sometime in January. And then, that way,
16 everybody's -- I think we've had all the "i's" dotted and
17 "t's" crossed.

18 BZA CHAIR HILL: Chairman Jordan, that's where I
19 was going next. And if you want to hang out and run the rest
20 of them, so I can go shopping --

21 MR. JORDAN: I'm sorry.

22 BZA CHAIR HILL: No, no, you don't have to. I'm
23 saying you're welcome to stay.

24 So, let's see. Right. What I was going to ask
25 you, Mr. Jordan, was, again, how much the timing matters for

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1 your project. And what you're saying is that you think you
2 can wait until after the next ANC meeting in January, and
3 then, we can put this up for a decision. Is that what you're
4 saying, that your client, the timing would work out?

5 MR. JORDAN: Of course, the client wants this
6 yesterday and any delay -- however, we don't want to wait for
7 a full order.

8 BZA CHAIR HILL: Right. That's the whole point.
9 I understand.

10 MR. JORDAN: Yes.

11 BZA CHAIR HILL: So, I got you. So, then, what
12 I would suggest is what the Applicant had just put forward.
13 It is that let's go ahead and close the record. Allow the
14 ANC --

15 Commissioner, when are you meeting again in
16 January?

17 MR. GOODMAN: We are meeting the evening of the
18 13th. So, January 20th would probably be your first hearing
19 that you could consider this.

20 BZA CHAIR HILL: So, the 20th is, apparently, the
21 Inauguration, which, apparently, we're off because we're all
22 going to wait and see what happens.

23 Let's go ahead then. Then, you could, then, have
24 your meeting on, you said, the 13th?

25 MR. GOODMAN: Yes, the evening of the 13th. We

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1 can have it uploaded by the 14th.

2 BZA CHAIR HILL: Okay. Okay. And then, we could
3 let Mr. Moy -- then, people could have a week to make any
4 responses by the 21st? And then, we can go ahead and make
5 a decision for the 27th?

6 SECRETARY MOY: Yes, that timeline works.

7 BZA CHAIR HILL: Okay. All right. Okay. So,
8 once again, I'm closing the record. Colleagues, I'm closing
9 the record for everything except for the response after the
10 ANC meeting on the 13th of January. We're going to get
11 everything by the 14th of January. People will have a week
12 to respond by the 21st of January. Then, we'll have a
13 decision on the 27th of January. Okay?

14 MR. JORDAN: Thank you very much, Mr. Chairman.

15 BZA CHAIR HILL: Okay. So, before I let everybody
16 go, Commissioner Goodman, is this your last meeting with us.

17 MR. GOODMAN: Say that again?

18 BZA CHAIR HILL: Can everybody mute their line
19 except for Commissioner Goodman?

20 Commissioner Goodman, is this your last meeting
21 with us today?

22 MR. GOODMAN: No, it's not. I'm serving next term
23 as well, but I also will be with the next case with you right
24 after this one.

25 BZA CHAIR HILL: Okay. Commissioner Goodman, I'm

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1 seeing you more often. And so, this is going to be, again,
2 I guess, a little bit of a continuing dialog that we're going
3 to continue to have. And I guess what I wanted to clarify
4 for the record, for you guys in terms of the solar panel
5 stuff, like that is something that we're supposed to take a
6 look at. I mean, you all are starting to use some creative
7 things behind the scene, right, which, again, I don't know
8 where I stand on your creativity. Okay? I'm just opening
9 up little discussions for later, right?

10 The solar panel stuff, what's supposed to have
11 happened, as you said, is we were supposed to get a solar
12 study to determine whether or not the 5 percent is in
13 violation. I know that that's not what you guys even
14 bothered to deal with. Okay? Right? So, you all came up
15 with your own solution. But I guess what I'm trying to share
16 is everything seems to be a little bit outside of the normal
17 process. And the more and more that things happen that are
18 outside of the normal process, the more and more I have to
19 kind of figure it out again.

20 So, I don't know what I'm saying, Commissioner,
21 other than you guys are creative and you're causing a
22 creative discussion to be happening with the Board. I will
23 continue to kind of voice this as we kind of move through
24 your process. Okay?

25 And again, nobody's having any issues with what

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1 you're trying to accomplish. It's just kind of I don't know
2 how that works out with the regulations.

3 MR. GOODMAN: Sure. And we didn't, yes, we didn't
4 oppose the shadow study. I think we asked for it. And I
5 think there was a request to not to do it between the
6 parties. And so, the agreement was we could do this instead,
7 if you're not going to ask for relief. So, the shadow study
8 was not a request on our end to avoid it. We would like to
9 have it for more information when we have cases.

10 BZA CHAIR HILL: Right. But you all still have
11 kind of gone around the -- you've become creative. I'm going
12 to stick with that term.

13 MR. GOODMAN: Sure, sure. Yes, we prepared a
14 solution for you, so you could avoid this. So, we could have
15 all parties in agreement.

16 BZA CHAIR HILL: Yes, I appreciate it. I'm just
17 saying I'm not necessarily sure whether that's your issue or
18 the Board's issue. And so, that's the part that I'm just
19 continuing to clarify.

20 All right. Okay. Anybody else got anything?

21 (No response.)

22 All right. So, thank you all very much. We'll
23 see you on the 27th of January for a decision.

24 MR. JORDAN: Thank you so much, Mr. Chairman and
25 Board. Thank you. Thank you all. Mr. Moy. Thanks,

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1 everyone.

2 BZA CHAIR HILL: You all have a happy holiday.

3 MR. JORDAN: You, too. Thank you.

4 BZA CHAIR HILL: All right. Let's see, what's our
5 next case, Mr. Moy?

6 SECRETARY MOY: Okay. I was going to ask you, did you
7 want to recall the FHD case, which is 20313?

8 Or do you want to go to the next one that's in line,
9 which would be 20340?

10 BZA CHAIR HILL: Well, you all, I mean, I had a chance
11 to at least kind of look at it. Are you guys all ready to look
12 at 20313? Or talk about it?

13 All right. Bring them all in then, Mr. Young. And
14 Mr. Moy, could you call it?

15 SECRETARY MOY: Yes, thank you. So, and I'll just
16 restate the caption for the transcript.

17 So, this is a return from earlier this morning, Case
18 Application Number 20313 of FHD LLC, as amended for special
19 exception under RA-Use Requirement, Subtitle U, Section 421.1, and
20 pursuant to Subtitle F, Section 5201 from the side yard
21 requirements of Subtitle F, Section 306.2, to construct a three-
22 story rear addition, and convert the semi-detached principal
23 dwelling unit into a five-unit apartment building in the RA-1 Zone
24 at premises 4310 2nd Street, N.W., Square 3318, Lot 811.

25 BZA CHAIR HILL: All right, great. Mr. Sullivan, can

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1 you introduce yourself, please, for the record?

2 MR. SULLIVAN: Thank you. Thank you, Mr. Chair and
3 Members of the Board. Marty Sullivan with Sullivan and Barros on
4 behalf of the Applicant.

5 BZA CHAIR HILL: Great. Did you just, did you just
6 bring us your little holiday tree in the background there, Mr.
7 Sullivan?

8 MR. SULLIVAN: Yeah. It's down there. I had to move
9 the Rudolph.

10 BZA CHAIR HILL: Great. Everybody's got some sad
11 decorations in their house.

12 All right. Okay, let's see, so we introduced there.
13 Commissioner, can you introduce yourself as well?

14 MR. GOODMAN: I'm Commissioner Goodman. I'm
15 representing 4C Tenant List, Single Member District represented
16 for this project.

17 BZA CHAIR HILL: Okay. Who else is with you, Mr.
18 Sullivan?

19 MR. SULLIVAN: So, the Applicant owner and the
20 architect are here with me, Mr. Crain, the architect, and the
21 owner, Mr. Lam.

22 BZA CHAIR HILL: Okay. So, Mr. Sullivan, you're going
23 to argue your original application, correct?

24 MR. SULLIVAN: Yes.

25 BZA CHAIR HILL: Okay. All right. I'm going to put

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1 15 minutes on the clock. Mr. Sullivan, you can walk us through
2 your argument.

3 MR. SULLIVAN: Thank you. I believe we have a
4 PowerPoint if Mr. Young could put that up, please.

5 BZA CHAIR HILL: And before we go on, Mr. Sullivan,
6 so you're going to submit something, and this is where we might
7 get hung up for a second on a decision.

8 You're going to submit something into the record that
9 shows us that this is a record lot?

10 MR. SULLIVAN: Yeah. Yes, and I believe it was
11 submitted. So, but I'm not sure what my assistant meant by
12 whether it was submitted or who it was submitted to.

13 If Mr. Moy doesn't have it, I can email it to him
14 directly.

15 MR. RICE: Mr. Chairman, the document was sent to OZ.
16 And OZ forwarded it to OAG, and we said to hold off on entering
17 it into the record until you determined whether you wanted it.

18 Whether you guys wanted to see it, or what. But, we
19 do have it. The OAG's concern remains that the lot is multiple
20 record lots.

21 During the break, I looked at the Office of Recorder
22 of Deeds, and pulled out Document 2018122543, which is a
23 publically acceptable document recorded on November 30 by FHD LLC,
24 which I believe is Mr. Sullivan's client.

25 The document states in the legal description that the

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1 tax Lot number 811 was composed of record lot, or Lot Numbered
2 107, record Lot 92, as well as quote, part of square 3318 via an
3 alley closed and shown, end quote.

4 So, it's OAG's position that this property, Tax Lot
5 811, is composed of multiple record lots. And a portion of which
6 is not in any record lot.

7 BZA CHAIR HILL: So, a portion of which, you're
8 saying, is a tax lot.

9 MR. RICE: Tax Lot 811 is composed of two record lots
10 and a closed alley, which is a part of neither of those two record
11 lots.

12 BZA CHAIR HILL: Say that again.

13 MR. RICE: So tax Lot 811 composed the entire strip.
14 And underneath tax Lot 811, are two record Lots. One record Lot
15 is record Lot 107. And the other record Lot is record Lot 92.

16 In between those two record lots, so in your head, if
17 you can picture it as two different sides of a rectangle, there's
18 a portion that is a closed public alley.

19 And tax Lot 811 goes over that. However, that portion
20 is not encompassed in either one of those record lots. So, tax
21 Lot 811, and the property, the proposal that's before you, that
22 includes portions of property that are not encompassed in any
23 record lot.

24 BZA CHAIR HILL: So, Mr. Sullivan, we're going to go
25 through this hearing, I'm just letting you know. And I don't know

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1 how we're going to address this issue later.

2 So, you know, because if I'm misunderstanding, Mr.
3 Rice, you're again back to where we were at the beginning. Which
4 is some of this is under a tax lot, and therefore, we might not
5 be able to actually legally be able to make this relief request.

6 That's my question to you, Mr. Rice. It's okay.
7 We're going to go through this hearing. And I'm just asking a
8 quick question.

9 MR. RICE: Yes, sir. Our position is basically in
10 order to provide the relief under E-52.01, or I'm sorry, F-52.01,
11 it needs to be, the property needs to be under a single record
12 lot.

13 And that there's other provisions in the code that I
14 think C-303.4, as well as C-201.1, and .2, which speak to that.

15 BZA CHAIR HILL: Okay. Mr. Sullivan, I know you're
16 trying to move through this. And I'm just trying to make sure
17 that it doesn't come into a problem later anyway for your client.

18 And so, I'm going to look to my board members, and I
19 guess I'm not clear as to whether this has been cleaned up to the
20 point where, I mean, I'd say, you know, we've already put this off
21 now for a few hours.

22 We have everybody here with us. I say we go ahead and
23 hear it as if it were the way the Applicant is claiming. And
24 then, we can try to see where we want to get at the end of this
25 hearing.

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1 Does that sound like a fair way to go about it, my
2 fellow Board Members?

3 (No response)

4 BZA CHAIR HILL: I've got two nods and a hand from
5 Commissioner Shapiro. Commissioner Shapiro?

6 COMMISSIONER SHAPIRO: Yeah. I would just agree. I
7 think if the Counsel's opinion is that this should be considered
8 a variance, I don't know why we would in this here.

9 BZA CHAIR HILL: Okay. All right, hold on. We're
10 going to get through this. So, --

11 COMMISSIONER SHAPIRO: Is it a clear deed? Right?
12 It will be a different hearing.

13 BZA CHAIR HILL: Ms. John?

14 VICE CHAIRPERSON JOHN: So, I was going to agree with
15 you. And then I do think now that I've listened to Commissioner
16 Shapiro that it would be a different hearing, because we would
17 have to consider the variance.

18 And we don't have any analysis on the variance. But,
19 I guess we could decide contingent on it being a recommendation.
20 That's another option, I would think.

21 I'd like to get some advice on that.

22 BZA CHAIR HILL: Before I go to Mr. Rice on that, you
23 can think about it, Mr. Rice. Mr. Smith, do you have an opinion?
24 And then I'm going to go to the Office of Planning.

25 MEMBER SMITH: I do have an opinion. I agree with Mr.

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1 Shapiro. I think if our Counsel is saying that we can't make a
2 decision on this, I don't think we're achieving anything on this
3 proceeding at this particular point.

4 Because what we're deliberating on at all, may not be
5 the case at hand. So, I don't want to deliberate on the
6 assumption that Mr. Sullivan is correct.

7 I don't want to deliberate -- I would prefer to wait
8 until we have come to the conclusion that would matter. And I
9 would prefer to deliberate at a future date on this matter.

10 BZA CHAIR HILL: Mr. Cochran, do you have, you've been
11 following all with all this, I would imagine. Now, introduce
12 yourself for the record, if you would.

13 MR. COCHRAN: Thank you. For the record, my name is
14 Steve Cochran, representing the Office of Planning in BZA Case
15 20313.

16 BZA CHAIR HILL: Do you have any opinion of how the
17 record (audio interference) --

18 COMMISSIONER SHAPIRO: I think Mr. Cochran couldn't
19 hear you.

20 MR. COCHRAN: I'm sorry, Mr. Shapiro?

21 COMMISSIONER SHAPIRO: I'm guessing that you, Mr.
22 Cochran -- I'm hearing an echo.

23 MR. COCHRAN: Let me move the speaker further away.

24 BZA CHAIR HILL: Now you're on mute, Mr. Cochran.

25 MR. COCHRAN: I guess that would make it better. But

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1 anyway, is the echo better, Mr. Shapiro?

2 (No response)

3 MR. COCHRAN: Great. This is a new issue for OP. It,
4 actually I just discovered it this morning when the OAG first
5 brought it up.

6 So, we have not given it what I would consider to be
7 ample consideration. However, I believe that that there have been
8 similar situations in the past where the Zoning Administrator has
9 allowed the establishment of a record lot for the purposes of
10 getting a building permit after a BZA case, and when the tax Lot
11 was removed.

12 But, I don't know that that addresses the issue as far
13 as your actually hearing it today.

14 BZA CHAIR HILL: I --

15 (Simultaneous speaking)

16 MR. SULLIVAN: I think this --

17 BZA CHAIR HILL: Hold on Mr. Sullivan. And I'll let,
18 I'll let you get a comment in. And Mr. Cochran, there are obvious
19 declarations embedded in all that.

20 So, okay. All right, I'll give you my opinion again
21 real quick. I can go both ways. All right.

22 And so, you know, I got two nos. and I got one, Mr.
23 Sullivan, I know you're being -- I know you're going to give it
24 to me in a second. But like Ms. -- all right, so Mr. Sullivan,
25 what's your opinion?

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1 MR. SULLIVAN: Well, certainly I would like to get to
2 the bottom of this. I don't know why they're bring it up.

3 I have four documents that confirm for me we're
4 talking about record Lot 92, including Recorder of Deeds, which
5 I just went to.

6 I would like to be privy to the information that OAG
7 is sharing last minute. And it would have been, it would have
8 been fun to know about this like a week or two ago, rather than
9 getting it right now.

10 But, all the information I have, and I have my client
11 checking into the title report, says that this is record Lot 92.
12 It makes no mention of the alley, so I'm not sure which property
13 they're looking at.

14 I have the most recent deed. I'm staring at it right
15 now. It says Lot Number 92. It's a deed from this year, or from
16 2019, I believe.

17 But, at any rate, I'm wondering where -- what's the
18 role of self certification anymore? Because if I can't self
19 certify because the Board is telling me they won't hear a case,
20 even though I'm self certifying it.

21 Because it's the Zoning Administrator, of course, who
22 has the job of interpreting the Zoning Regulations. The Board had
23 the ultimate authority to say whether the Zoning Administrator is
24 right or wrong on appeal.

25 And I think the lines have become blurred. And it

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1 seems like all of our BZA applications now are being reviewed in
2 a different way. Including the case I had earlier today where we
3 were being told to drop relief that I know that in fact we needed.

4 So, I mean, my answer is easy. It's self certified.
5 I bear that risk.

6 If I then go to the Zoning Administrator with a
7 building permit application and he says, you don't have a record
8 lot, and you need relief to get the record lot, then, you know,
9 at one --

10 BZA CHAIR HILL: But, Mr. Sullivan, I mean, this --
11 this is all -- this is all new stuff. Let me clarify a few
12 things, all right?

13 We get information always at the last minute also.
14 We try to do our best. But sometimes we get information at the
15 last minute from you guys.

16 Right? Okay. So, like it's not like -- I mean, you
17 guys are actually pretty good. You know, you try to do your best.

18 But, we get last minute information all the time. I'm
19 just trying to figure this out. All right? Okay?

20 And my Board Members are trying to make sure that we
21 don't waste, well, first of all waste our time. But secondly,
22 whether or not we're even allowed to do what we're trying to do
23 now.

24 And the self cert thing, that's another discussion
25 that we can, you know, I don't know what forum that might be

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1 discussed. Right, like you might want to call the Office of
2 Zoning.

3 So, I'm back to, and this assault that you're making
4 is going on right now.

5 MR. SULLIVAN: But the self certification, excuse me,
6 is a Board issue. And, if -- I mean, I have the case law on that
7 --

8 BZA CHAIR HILL: Let me --

9 MR. SULLIVAN: That says, the Board doesn't need to
10 go into these sorts of inquiries.

11 And if the Board is not supposed to go into these
12 inquiries, their lawyer's not supposed to go into these inquiries.
13 That might be a bigger issue all together.

14 But, I know --

15 BZA CHAIR HILL: But, I think --

16 MR. SULLIVAN: I'm comfortable that it's Record Lot
17 92. I'd like -- I'd like to be privy to the information Mr. Rice
18 has on a deed that I -- because I'm looking at, I went to the
19 Recorder of Deeds, and I'm looking at the deed.

20 So, I don't have that deed. So, if I could see that,
21 that might help clear it up.

22 MR. RICE: Since we've been sitting here, I've emailed
23 the document to Mr. Sullivan. I apologize for interrupting.

24 BZA CHAIR HILL: Okay. So again, -- what was I going
25 to say? Okay.

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1 So, yeah, Ms. John, I know you're going to do, you're
2 going to tell me the wise thing, I can tell. So, before you
3 speak, before Ms. John -- okay, go ahead, Mr. John.

4 MR. YOUNG: You're mute, Ms. John.

5 VICE CHAIRPERSON JOHN: Sorry, thank you. I agree
6 with you that everybody's here, and we may as well go ahead and
7 hear the case.

8 I also agree with Mr. Sullivan that it's self certify.
9 And I also note that the Regulation does say that it has to be a
10 record lot.

11 And that's a determination that we wrestle with all
12 the time. And I was thinking we could hear the case, make it
13 conditional, whatever we decide.

14 Let's say we decide to approve the application. Make
15 it conditional on having a record lot. And that would be my
16 option.

17 Now, if it turns out that there is no record lot, then
18 the Applicant would have to come in and seek a variance. Or, go
19 get a record lot.

20 So, that's really where I am.

21 BZA CHAIR HILL: Okay. Comm -- I mean, Mr. Smith, or
22 Mr. Shapiro, does that change your mind?

23 MEMBER SMITH: No, it does not.

24 BZA CHAIR HILL: Mr. Smith, doesn't make a difference
25 then. Mr. Shapiro, did it change your mind?

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1 COMMISSIONER SHAPIRO: Well, I'm still ground up
2 really. I'm still in the same place, because I understand that
3 we're here, so maybe we can hear it anyhow, but.

4 BZA CHAIR HILL: All right. This is my -- this is my
5 proposal. This is my proposal. We'll postpone this again for
6 today. All right?

7 Mr. Sullivan, I assume now you got the email from Mr.
8 Rice. Okay? Mr. Rice, did you send the email to Mr. Sullivan?

9 (No response)

10 BZA CHAIR HILL: Okay. And I couldn't hear you, Mr.
11 Rice. I'm sorry.

12 MR. RICE: I said, I did send it. It does not look
13 like it's in my outgoing box that it was sent. But, I will go
14 ahead and refresh my Outlook right now just to confirm that.

15 BZA CHAIR HILL: Okay. Mr. Sullivan, I know you have
16 contact with the Secretary. So, why don't you take a look at the
17 Exhibit that Mr. Rice sent, and talk with the Secretary.

18 And if you want to come back at the end of the day
19 today, or later on, to speak to what you've seen, and see what we
20 do next, we can try that. Okay?

21 MR. SULLIVAN: Fair enough.

22 BZA CHAIR HILL: Okay. Mr. Shapiro?

23 COMMISSIONER SHAPIRO: Yeah, one more, Mr. Chair.
24 This self cert issue, I think it's worth a longer conversation.
25 Not here, not now.

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1 But, I would direct that. I would ask him to prepare
2 to direct that to the Office of the Attorney General to get some
3 clarification about this, you know, to Mr. Sullivan's point.

4 Are we stepping beyond our grounds? And therefore,
5 is OAG stepping beyond their bounds on our behalf?

6 I'd like the answer to that.

7 BZA CHAIR HILL: And I don't disagree. We can go --
8 that is a discussion for another time. We have had, we have
9 started to have this self cert discussion before.

10 And what is different in my mind with this, is that
11 what seems to be before us, is not whether or not it is a risk to
12 the applicant. It's whether or not we're even actually
13 technically able to decide this.

14 So, that's kind of the difference that I'm having with
15 this particular issue. There are other self cert issues that
16 we've had before, which have actually involved this attorney and
17 his group, and we've gone forward with the self cert.

18 And the only reason why I'm pausing it, is because I'm
19 just unclear as to whether or not we can even, even decide it.
20 And so that's why I'm confused. Right. In this case.

21 So, so I go back to that. I'll go ahead, Mr.
22 Sullivan. I know you can reach out to the Secretary.

23 Commissioner Goodman, I guess, do you have contact
24 with the Secretary?

25 MR. GOODMAN: I mean, I have his email.

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1 BZA CHAIR HILL: Okay.

2 MR. GOODMAN: I'm not sure what else.

3 BZA CHAIR HILL: So, the Secretary can let you know.
4 Give me one second, Mr. Sullivan. The Secretary could let you
5 know what's going on. Right?

6 And/or we might take your testimony right now. We'll
7 see what happens. Mr. Sullivan?

8 MR. SULLIVAN: I think what we have is an issue of how
9 to read a deed. And I think that's way beyond mine, or the
10 Board's, or even OAG's authority.

11 I think it's a question for the surveyor and the
12 Zoning Administrator. And in that sense, it will come up when we
13 seek a building plat for a permit application.

14 Because that's -- that's what we need. That's -- once
15 we get a building plat with a record lot on it, then everybody
16 knows that the surveyor and the Zoning Administrator agree that
17 we have a build-able record lot at that point.

18 But, as I look at this language, and I'm not a
19 transactional lawyer, or I'm not a title lawyer, it's just a
20 description of an old subdivision that mentions other lots within
21 it.

22 But, it's Lot Number 92. And the other three
23 documents I sent, are the outlines of Lot 92. So, I'm happy to
24 wait until the end of the day to see if I can provide any more
25 articulate assurance that the Board can go forward.

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1 But, -- and I'll attempt to do that. But, -- but, I
2 have a --

3 BZA CHAIR HILL: That's all -- no, that's --

4 MR. SULLIVAN: A feeling that it's going to be an
5 issue for the surveyor and not the Board to decide.

6 BZA CHAIR HILL: Okay. So again, and we -- we're
7 going to figure out this process a little bit differently.
8 Particularly since Mr. Sullivan, you do so much work before the
9 Board.

10 Like, I want to figure out this stuff at some point,
11 and we will. But, in terms of today, the only thing that you've
12 just told me, is that I need something from the Zoning
13 Administrator or the surveyor, that I do not have in the record,
14 that would indicate that this is a record lot.

15 MR. SULLIVAN: I'm sorry. I have -- I've given
16 multiple documents that indicate it's a record lot. OAG has
17 raised -- is pointing out confusing language within the deed that
18 I think is just a description of, of the history of this Record
19 Lot 92, and how it came to be.

20 BZA CHAIR HILL: I got it. I'm just stopping at this
21 point. So, you guys -- okay, so Mr. Smith and Mr. Shapiro, I'm
22 back kind of with Ms. John, right?

23 You all can think about it for the rest of the day.
24 We'll see what happens with Mr. Sullivan. We're all here, right?

25 And so, I just kind of want to hear the case. And

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1 then, I guess, we don't have to necessarily decide. We can wait
2 maybe for further clarification from whoever we need.

3 Because this is where, this is where, you know, Mr.
4 Sullivan and the Applicant here, you know, I'm not able to make
5 this decision on my own. I'm just getting a bunch of information
6 from different people, right?

7 And so, I would still need to wait to get
8 clarification before making a decision. So, either way, you're
9 not going to get a decision today. Right?

10 MR. SULLIVAN: Well, that's all --

11 BZA CHAIR HILL: So, we could have the hearing. And
12 I'll let my Board Members think about it. And we can come back
13 to this at the end of the day.

14 COMMISSIONER SHAPIRO: I'm a -- I apologize Board
15 Members. But, I'm about to abandon you. And -- and yes, that's
16 fine, Mr. Chair.

17 I'm with you to go ahead and see today.

18 BZA CHAIR HILL: Ms. John? You're on mute, Ms. John.

19 VICE CHAIRPERSON JOHN: The second time today. I have
20 a question about Exhibit 2, which is the Surveyor's plat.

21 And so, are we saying that that's not accurate? Just
22 checking.

23 MR. SULLIVAN: If it's a tax plat -- if it's a tax lot
24 plat, that just means that that's the plat that they got. When
25 there's a tax lot on top of a record lot, the default is for the

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1 Surveyor's Office to issue the tax lot plat.

2 VICE CHAIRPERSON JOHN: I see.

3 MR. SULLIVAN: But, the record lot exists behind it.

4 VICE CHAIRPERSON JOHN: I see.

5 MR. SULLIVAN: And when we -- when we do a case from
6 the start, I wasn't on the case from the start, we do our best to
7 try to get that record lot plat.

8 But, we can't always get it from the Surveyor's
9 Office. And that's a whole other, different story. But, the
10 bottom line is, that record lot exists.

11 VICE CHAIRPERSON JOHN: Okay. Thank you.

12 BZA CHAIR HILL: Okay. So, I'm back to, we either
13 pause and come back. And I'm looking at my fellow Board Members,
14 we either pause, come back at the end of the day.

15 Mr. Sullivan can reach out to the Secretary and see
16 what happens. Or, we do this now. And Mr. Shapiro seems to be
17 voting to do it now.

18 Ms. John, your vote is to do it now.

19 VICE CHAIRPERSON JOHN: It's a long case. If I am --
20 if I remember my cases correctly. So, I would say we just go
21 ahead with this, and get it done.

22 BZA CHAIR HILL: And Mr. Smith, you're still on the
23 wait and see?

24 MEMBER SMITH: No. I think what you were saying, I
25 think -- I'm fine with hearing the case. I don't think that we'll

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1 probably decide this case, despite all of the things that Mr.
2 Sullivan was saying.

3 So, I did move from my position with Mr. Shapiro. I
4 -- so, I'm fine with hearing the case today as well.

5 BZA CHAIR HILL: Okay. I apologize. I need three
6 minutes, and I'll be right back.

7 (Whereupon, the above-entitled matter went off the
8 record at 3:11 p.m. and resumed at 3:13 p.m.)

9 BZA CHAIR HILL: Commissioner Goodman, there's a slot
10 open on the Board.

11 (Laughter)

12 MR. GOODMAN: Yeah. I'm serving four terms as an ANC
13 Commissioner. I believe that my public service is done.

14 BZA CHAIR HILL: Oh yeah. You haven't done this one.
15 (Laughter)

16 MR. GOODMAN: Nowhere. I have been on the call with
17 you since 9:30 though, with multiple cases, so.

18 BZA CHAIR HILL: This is true. And one Wednesday.

19 MR. GOODMAN: I will say, if I can, when we go
20 forward, after emergency legislation ends, whatever virtual
21 remoteness is, the idea of OP calling us and letting us know our
22 testimony is coming up, is one of the greatest improvements we've
23 made to these hearings. And I hope they continue.

24 BZA CHAIR HILL: Oh, wow. You get a phone call before
25 your testimony?

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1 MR. GOODMAN: If we've signed up to testify.
2 Otherwise, you know, in the previous system where we had to be in
3 person, you know, I had to take a full day off of work. I had to
4 sit there and just wait for my hearing to come up. And I couldn't
5 do anything else.

6 So, if we can move in, wherever in the future, it
7 would be great to keep virtual meetings, or virtual participation.
8 Plus, these phone calls are just tremendous improvements.

9 You know, for those of us at home with families,
10 neighbors looking to testify, jobs, all these things, it's just
11 so challenging to kind of just be on the hook and just waiting
12 around.

13 BZA CHAIR HILL: Yeah. No, I don't disagree. I mean,
14 we've had people that are always telling us, like, how do you, you
15 know, I mean, as you've noticed, I'm sure, I don't really know
16 what's going to happen.

17 MR. GOODMAN: Sure.

18 BZA CHAIR HILL: You know. And so we do our best.
19 But right, we have a giant -- we should get like a giant, like,
20 Jumbotron in the hearing room.

21 And then like, you know, Mr. Moy, that might be not
22 such a bad idea.

23 SECRETARY MOY: Yeah. I'm -- I would -- I'm
24 listening. I'm hearing everything.

25 BZA CHAIR HILL: Very good. We're back. Mr. Sullivan

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1 is out there with a surveyor line right now. You know, he's out
2 there at the -- he's out there at the property right now.

3 Yuck, cold Starbucks coffee. Yuck. Damn, my tree is
4 sad looking.

5 All right, Mr. Sullivan, are you there?

6 MR. SULLIVAN: I'm here.

7 BZA CHAIR HILL: Okay. So, go ahead, Mr. Sullivan.
8 Present your case, please.

9 MR. SULLIVAN: Okay. Thank you, Mr. Chairman, Members
10 of the Board. Marty Sullivan with Sullivan and Barros on behalf
11 of the Applicant.

12 The property is 4310 2nd Street, N.W. I believe we
13 have a PowerPoint. Thank you. So, page two, please. Next slide,
14 Paul, thank you.

15 Brief introduction and I'll turn it over to Mr. Crain,
16 the architect, to describe the project. RA-1, we're asking for
17 relief under Section 421, which is required of all new multi-
18 family residential development.

19 And also seeking special exception relief for the side
20 yard. It's a rather narrow lot. And if we were -- I think,
21 before I turn it over to Mr. Crain, the take away here is that
22 again, if it was a matter of right structure, if it was a single
23 (audio interference) family home.

24 It could be lots in multi-family. We do need relief
25 for at least one of the side yards, because we need to have at

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1 least one side yard.

2 And also, that the Applicant has designed the project
3 in a way (audio interference) most of the neighbors have solar
4 panels. See that the addition is loaded to the rear essentially.
5 And that the (audio interference) any other solar panels.

6 The applicant has done a solar study to show that the
7 impact on the neighbor's solar panels is less than 2 percent. Of
8 course, there are no protections for the zoning, for solar panels
9 in RA Regs. But, he has designed it in order to avoid those, and
10 to avoid the impact on the neighbor for that.

11 And then he's also worked with them on their tree, and
12 protecting the tree. And has hired an arborist. And he can talk
13 about that, you know, instead of us.

14 But, I'll turn it over to Mr. Crain now to go through
15 the project. Thank you. Adam?

16 I don't see Mr. Crain.

17 COMMISSIONER SHAPIRO: I don't see him up on here.

18 BZA CHAIR HILL: Mr. Crain, can you hear us?

19 (No response)

20 BZA CHAIR HILL: Mr. Crain, can you hear us?

21 COMMISSIONER SHAPIRO: Did you see my new situation,
22 Mr. Chair?

23 BZA CHAIR HILL: No, I have to wait until the -- it
24 looks like a chicken. Oh, it's a cat.

25 MR. CRAIN: Can everyone hear me now?

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1 BZA CHAIR HILL: Yes. Mr. Crain, can you hear us?

2 MR. CRAIN: Yeah. I think I was just talking to
3 myself. I'm sorry. I'm on audio only. I'm in a car.

4 I'm not driving the car, but I'm riding. And I can
5 go ahead.

6 BZA CHAIR HILL: That's all right. Maybe Mr. Sullivan
7 can tell you where you are in his slide deck. And you can go
8 ahead.

9 MR. CRAIN: Sure. I'm on a separate laptop. I've got
10 -- I've got his presentation pulled up that I can reference.

11 It's a single family end unit.

12 MR. SULLIVAN: Page three, please.

13 MR. CRAIN: Oh, page three. Okay. We're -- I guess
14 is page three the elevations? Or is that -- let me see. Oh, page
15 three, I guess that's the zoning data, right?

16 BZA CHAIR HILL: No. There's a photograph on page
17 three, of the property.

18 MR. SULLIVAN: So, I'll just go --

19 BZA CHAIR HILL: Page five is the zoning data.

20 MR. SULLIVAN: I'll go through the presentation. And
21 then Mr. Crain can weigh in so he can understand what I'm talking
22 about. Next slide, please.

23 This is an overhead view photo showing, we're the
24 building on the left. Next slide, please.

25 This is zoning data. Of course, as you know, this is

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1 a low density zone, PRA zone. Forty percent lot occupancy is what
2 we're proposing. Just 0.9 FAR.

3 Because it's a -- and you've got an alley on two
4 sides, they were able to put four parking spaces on the property.

5 And the height is just 34 and a half feet. So, it's
6 a good bit below maximum permitted height. Next slide, please.

7 Here's the site plan showing the addition. Next
8 slide, please. These are floor plans. We can go through those
9 quickly. Next slide, please.

10 Next slide. Next slide. Here's the elevation. This
11 is where, Adam, I don't know if you have any thing to say about
12 that. I'm looking at the south elevation.

13 MR. CRAIN: Yeah. Sure. I can go ahead and chime in.
14 Yeah, Marty just briefly mentioned earlier, you know, we -- when
15 this project was brought to me, it was designed completely
16 differently.

17 In our redesign, we really pushed the entire third
18 floor level towards the back. That was really a sympathetic
19 gesture to provide and maintain the direct sun access to the solar
20 panels on the adjacent property.

21 So, and that's going to, why you've kind of got that
22 tower towards the back. Most of the rear addition, as you can
23 see, which I guess you'd call the white portion right there in the
24 middle, on the side elevation, that's still maintains at two
25 levels.

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1 We are proposing roof decks on there. And I think
2 we'd be able to remove the parapet on the wall that separates our
3 roof deck from the adjacent one.

4 And even further effort to maintain the sun that's
5 accessing those solar panels. Next slide. This is just the
6 opposite view.

7 So, this would be, -- this would kind of be the view
8 from the house that has the solar panels. And you can see the
9 outline in white of that house there.

10 And how the massing avoids that. I guess we're
11 looking to the west, so you can see how the sun, as it passes from
12 the front and to the west, we would have sun more or less the
13 majority of the day.

14 I believe our calculations have it under 4 percent,
15 or under 5 percent imposed. But either way, it was compliant as
16 if it were an RF-1 zone. Next slide.

17 This color coded kind of shows the separate parts of
18 the units. It's a little tetris-y. It's an effort to create
19 bedrooms on different levels and some living areas.

20 You see that one unit, it kind of occupies the
21 majority of that rear tower. You'll see even at the front in this
22 section, a portion of the mansard roof that's being retained.

23 One of the, I guess the added benefit of putting the
24 majority of the building massing toward the back, is that we're
25 able to retain the street scape in front.

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1 So, you know, we're not tearing these down and
2 proposing a new modern facade. The facade more or less will stay
3 as is. So, the street, the street front of these will remain
4 intact. Next slide.

5 This is another view. This section again, this is
6 looking from, from the perspective of the adjacent house. The
7 alley will be on the opposite side. Next slide.

8 It's a shadow study. Showing the subject property
9 with relation to the, to the adjacent house that has the solar
10 panels.

11 I believe this was requested as part of the ANC. So,
12 we put this together to show them. And you know, different times
13 of day, and different times of year, how the shadows will be, and
14 shade the rear.

15 COMMISSIONER SHAPIRO: Mr. Chair?

16 BZA CHAIR HILL: Yes?

17 COMMISSIONER SHAPIRO: I'm having trouble -- I'm
18 having trouble making sense of this. If Mr. Sullivan would make
19 it possible to spend a little more on this than what we've just
20 heard.

21 BZA CHAIR HILL: Okay. Mr. Cain, could you kind of
22 go over a little bit more at length, the shadow study here?

23 MR. CRAIN: Sure. So, this -- we've got them on the
24 right-hand side, the summer solstice, when the sun is going to be
25 the highest.

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1 On the left-hand side, the winter solstice when the
2 sun will be the lowest. All right, so we've got two columns. The
3 one on the left when the sun is lowest, and the right when the sun
4 is highest.

5 In those two columns, we have three rows, morning,
6 noon, afternoon, 9:00 a.m., noon, 3:00 p.m. So, the data that has
7 the most shadow, is in the morning, is on the top left.

8 So, that's kind of just after sunrise on the shortest
9 day of the year when the sun is going to be the lowest.

10 COMMISSIONER SHAPIRO: And what I'm lost with, is the
11 UV rays at the upper right-hand corner. Can you clarify that of
12 what we're looking at?

13 MR. CRAIN: Oh, sorry. Yeah. Okay, yeah. Let me
14 clarify that. I guess, if you look at the top right one, it says
15 9:00 a.m. sol -- summer solstice. This has the least shadows.
16 A little clearest for us to kind of understand.

17 So, we've got two boxes, right? A long one, on the
18 bottom, that's going to be our subject property. The shorter box
19 on top, that's kind of the safe line of the adjacent property that
20 has the solar panels.

21 And we've got this called out.

22 COMMISSIONER SHAPIRO: That's what I was looking for.
23 Thank you.

24 MR. CRAIN: Yeah, yeah, yeah. Okay. I'm sorry. So
25 you know, I guess this also serves to show shading towards, in the

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1 backyard, and not just the solar panels. It would be also, you
2 know, in the backyard and how well the property is shaded.

3 And the next is slides with drawings.

4 MR. SULLIVAN: No. If there's no more questions about
5 this, you could go to the next slide, please. And I'll go through
6 the special exception requirements.

7 The general requirements of course, that it be in
8 harmony with the general purpose and intent of the zoning regs and
9 maps. And will not tend to affect adversely the use of
10 neighboring property.

11 The RA-1 zone, of course, is -- provides for areas
12 predominantly developed with low to moderate density development.
13 This is an apartment zone.

14 The proposal is for just five units, which is on the
15 lower end of the typical RA-1 case that the Board has seen lately.
16 Again, providing four parking spaces, which is three more than
17 required.

18 And the existing building itself, while we did provide
19 the shadow study, of course the massing itself is a matter of
20 right. And was done in a way, while there would be some
21 additional shadow toward the backyard, it would essentially take
22 that shadow away from where it would be impacting the solar
23 panels.

24 And I don't know what Exhibit it is, but the Applicant
25 did a solar study. And it was showing an impact of 1.35 percent

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1 on the solar panels. Next slide, please.

2 So, the specific special exception requirements are
3 for three referrals. And so I would defer to the Office of
4 Planning report, because they're the ones that make the, those
5 referrals, or the Office of Zoning does.

6 One, to discuss schools, and the other one to discuss
7 public streets, recreation, and other services. And the Office
8 of Planning report has laid out how the favorable feedback on
9 those two referrals.

10 And then of course the third referral is to the Office
11 of Planning itself for discussion on site plan, arrangement of
12 buildings, and some other conditions. Next slide, please.

13 And this is what the Applicant has submitted regarding
14 the second referral. Regarding services in the area for
15 transportation, the fact that it's only five units. Next slide,
16 please.

17 And then the referral made to the Office of Planning
18 for discussion of site plan, arrangement of buildings. You see
19 in the Office of Planning report, their analysis of that, and our
20 analysis of this here.

21 And explain again how the buildings, at the time it's
22 more than five feet lower than the maximum permitted height. And
23 the masking was moved away from the solar panels to protect the
24 neighbors solar panels.

25 So, it's still two stories for the majority of the

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1 building where it's adjacent to that building. Next slide,
2 please.

3 Regarding, we talked about this already. Next slide,
4 please. Next slide, please. So, we're also asking for special
5 exception relief for the side yard.

6 And that is the, these are the specific special
7 requirements for that. And while we could by matter of right
8 massing with a different use, namely a single family or a flat
9 could be, with no side yards.

10 It could be built, and then it could be converted.
11 Because it's a multi-family, we are seeking relief for the one
12 side yard. Next slide, please.

13 ANC 4C did vote to support the Application subject to
14 conditions. But I do not believe the Applicant has agreed to
15 those conditions, all of them.

16 And so, I assume we're going to have one of those
17 discussions that Mr. Hill alluded to about that. The Office of
18 Planning, of course, is recommending approval, as is DDOT.

19 That's all we have, I believe. Thank you. Any
20 questions?

21 BZA CHAIR HILL: Okay. Does the Board have any
22 questions for the Applicant?

23 VICE CHAIRPERSON JOHN: No. Not at this time.

24 BZA CHAIR HILL: Okay. Commissioner, may I ask for
25 your testimony, please?

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1 MR. GOODMAN: Sure thing. Commissioner Goodman on
2 behalf of ANC 4C. I'll just kind of maybe address up front some
3 of that stuff that we've talked about before. See if it adds any
4 clarity.

5 ANC 4C has adopted development guidelines to address
6 the lack of affordable housing in our community. We understand
7 that the BZA maybe uncertain how you want to, or can utilize the
8 information we used to make our decisions.

9 The ANC is an independent body from the BZA. And we
10 can determine how and when we want to weigh in on requests of
11 applicants to help them.

12 This is standard and public requirements we make of
13 all cases. And it's germane to ANC decisions. And ANC 4C
14 currently only has about 9 percent of its housing stock as
15 affordable, compared to 62 percent in our colleague's district in
16 8E.

17 This is well under our equitable share, and puts a
18 burden on other communities immediately surrounding us and across
19 the District, to make up for our lower stock.

20 In the neighborhood we have zero, in the neighborhood
21 directly in this S&D, where this project is, we have zero units
22 of affordable home ownership built or currently being maintained.

23 These guidelines do not prevent the Applicant from
24 building here. We have case precedent where Applicants have been
25 successful in but supporting our guidelines and being granted BZA

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1 approval.

2 ANC 4C notes that ensuring maximum profit is not part
3 of the District's zoning regulations for housing plans. We
4 further note that our guidelines are in alignment with the Mayor's
5 initiative to build new housing which is most inclusive of
6 affordable housing to meet our needs by 2025.

7 You know, as discussed in past RA Area 1 cases, one
8 we heard just this morning, and one last week within this
9 Commission, these projects potentially have adverse impacts. And
10 one for the ANC is on the lack of affordable or ability, and
11 pressures on our community.

12 A second adverse impact that the ANC will note is in
13 regards to the neighbor's only tree, and concerns from
14 professional arborists that the risk, that risk is being
15 mitigated.

16 The last bullet point in our letter on our conditional
17 support, does ensure -- does request that the Applicant and the
18 neighbor come to an agreement with arborist plans on how to
19 address this. I believe that neighbor is on the phone and going
20 to testify later. So, I won't go further into that.

21 And finally, we're just looking for a decision on when
22 and how the BZA will require regulation for side yard relief, as
23 we've had now two cases within ANC 4C, where one has been waived
24 in RA one zones, and one earlier this morning, where we looked to
25 increase what was minimally required.

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1 So, we're just looking for some decision from you so
2 we have guidance on how to apply this evenly going forward. Thank
3 you.

4 BZA CHAIR HILL: Okay. Great. I'll let you ask your
5 questions, Commissioner Goodman, of the Office of Planning
6 concerning the side yard.

7 Where -- let's see, does the Com -- does the Board or
8 Members have any questions for the Commissioner? If so, please
9 raise your hand.

10 (No response)

11 BZA CHAIR HILL: Mr. Sullivan, do you have any
12 questions of the Commissioner?

13 MR. SULLIVAN: No. Thank you.

14 BZA CHAIR HILL: Mr. Cochran, could you please give
15 your report?

16 MR. COCHRAN: Thank you, Mr. Chair. Again, Steve
17 Cochran for the Office of Planning on BZA Case 20313. OP is
18 pleased to stand on the record.

19 But of course, would be happy to answer any questions.

20 BZA CHAIR HILL: Does the Board have any questions of
21 the Planning Office?

22 (Simultaneous speaking)

23 BZA CHAIR HILL: Chairman Goodman, could you repeat
24 your question to the Office of Planning?

25 MR. GOODMAN: Sure. And I -- and I don't know if, I

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1 think this is actually more of the BZA in terms of relief. The
2 question is on side yard relief.

3 We've had two cases, one earlier this morning, 20328,
4 where side yard relief was met. But, the BZA was asking for
5 further additional side yard relief.

6 And we had a case last week, at 210, and I'm blanking
7 on the number, where we waived the side yard relief. So, the ANC
8 is just looking for guidance on how this is going to be determined
9 by the BZA so that we can apply this to cases going forward.

10 Is that clear?

11 BZA CHAIR HILL: Mr. Cochran, can you --

12 (Simultaneous speaking)

13 MR. COCHRAN: Did you want me to address -- did you
14 want me to address that, Mr. Chair?

15 BZA CHAIR HILL: Yeah. I'm a little cal -- but I
16 don't know how to provide clarity to the Commissioner. So, I'm
17 kind of looking to see if you know how to provide clarity to the
18 Commissioner?

19 MR. COCHRAN: I can provide, I hope, clarity about
20 this case. I'm not sure that I can provide clarity on -- that the
21 Commissioner may seek on other cases.

22 We relied on the Applicant's consultations with the
23 Zoning Administrator, who determined that indeed, they were
24 eligible to ask for side yard relief as a special exception,
25 because it is an apartment building on a lot that does not meet

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1 lot standards for an apartment building.

2 Thirty-feet of frontage is required. And therefore,
3 under C, or let me look back here, -- sorry. I think it was C-30
4 -- C-303.4, right.

5 Then, they were permitted to ask for that relief as
6 a special exception. And then we supported that.

7 It's basically a continuation of the existing pattern
8 of row houses that have additions in the rear. Where they're on
9 alley lots, they tend to go from lot line to lot line.

10 So, that's what we were looking at. I'm not sure if
11 that provides any clarity for the Commissioner's question.

12 BZA CHAIR HILL: Commissioner, if I could, I could
13 refer you to the Office of Zoning. And they might be able to
14 provide a little bit more specificity.

15 I mean, we look at each case differently. And so, I'd
16 have to go back and look at all the other ones that you just
17 referenced, as to how they were different, and how we got to
18 whatever decision we got to.

19 But, however perhaps, if you could reach out to the
20 Office of Zoning, they might be able to provide some further
21 clarity.

22 MR. GOODMAN: Okay. Yeah, this is less a zoning
23 regulation question, as much as it is a precedent question for us.

24 So, this is more of a BZA question. We're just trying
25 to understand how one case in our Commission area could be ruled

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1 differently then another, so that we can explain those situations
2 to the community or to the developer when they come up.

3 If it's from a prior past case review, and you can't
4 do that, then that's the answer.

5 BZA CHAIR HILL: Honestly Commissioner, I just, I
6 don't feel comfortable speaking to three other cases that you just
7 brought up, because I can't pull them in my head right away.

8 But, if you go ahead and reach out to the Office of
9 Zoning, they might be able to help you a little bit more. Okay.

10 Let's see. So, is there anybody here wishing to pl --
11 oh, I'm sorry, does anybody have any questions for the Office of
12 Zoning?

13 I mean, sorry, yeah -- for the Office of Planning?

14 (No response)

15 BZA CHAIR HILL: Mr. Sullivan, any Office of Planning
16 questions?

17 MR. SULLIVAN: No. Thank you.

18 BZA CHAIR HILL: Is there anyone here wishing to
19 speak, Mr. Young?

20 MR. YOUNG: Yes, we do. I think we have four people.

21 BZA CHAIR HILL: Okay. Could you bring them in,
22 please? Mr. Cochran, if I don't forget, I am curious about this
23 design in terms of everything getting pushed in the back.

24 That's kind of the first that I've seen of that
25 particular design. And I just want to -- I have a question for

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1 you, if you remember later.

2 Okay. I got a --

3 MR. COCHRAN: I will remember.

4 BZA CHAIR HILL: Okay. Thanks.

5 MR. COCHRAN: That you intend to ask me a question.

6 BZA CHAIR HILL: Yes, very good. There you go. We'll

7 go with that.

8 Mr. Faler, are you there?

9 (No response)

10 BZA CHAIR HILL: Mr. Faler, I think you're on mute.

11 MR. FALER: Oh, can you hear me now?

12 BZA CHAIR HILL: Yes.

13 MR. FALER: Ah, sorry about that. Hi, my name is
14 Brian -- I'm sorry?

15 BZA CHAIR HILL: Please go ahead.

16 MR. FALER: My name is Brian Faler. And I live two
17 doors down from the project. I live at 431 -- what is my number?
18 4314 2nd Street, N.W.

19 And I presume you'll give me a few minutes to talk in
20 opposition to this project. Which, I think is fair to say is
21 universally opposed by the neighbors.

22 This is a, this project would be completely out of
23 proportion. For a lot of us, I think it would feel a bit like a
24 cruise ship is parked in your backyard.

25 The project will essentially be almost the length of

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1 a city st -- a city block. And for us, it's going to affect our
2 privacy. It affects our solar panels. It affects our greenery.

3 There's a very large, probably a 100 year old magnolia
4 tree that provides shade to a number of houses. It's sort of in
5 the center of the backyards on the block, that this would
6 endanger.

7 And I guess I would say, I mean, these houses have
8 been here for 100 years. And no one has ever proposed anything
9 like this. And so this would be a radical departure from what the
10 housing stock is currently like on this block.

11 And I guess I would also say that this developer is,
12 how do I say this, probably the last person to give the benefit
13 of the doubt. They've been nothing but trouble since they bought
14 the property, for the neighbors.

15 And so, we are concerned that this will only be the
16 beginning of our problems if this is allowed to go through.
17 That's all I have.

18 BZA CHAIR HILL: Okay. Does anybody have any
19 questions for Mr. Faler?

20 (No response)

21 BZA CHAIR HILL: All right, Mr. Faler, stick around
22 and we'll see if we have any more questions. Or have as we kind
23 of go.

24 MR. FALER: Sure.

25 BZA CHAIR HILL: If you wouldn't mind muting your

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1 microphone, thank you for your testimony. Is it Ms. Crain? Or
2 a Mr. Crain?

3 COMMISSIONER SHAPIRO: I think that's their developer,
4 Mr. Chair.

5 MR. CRAIN: I'm the architect if you're asking for me.

6 BZA CHAIR HILL: Oh, sorry. No, I'm trying to see who
7 else we have here. Ms. El-Amin?

8 MS. EL-AMIN: Hello. How's everyone doing today? My
9 name is Taheerah El-Amin. I am the adjoining property owner. I
10 submitted my letter of opposition and just my supporting
11 documentation. It's very detailed.

12 I am here today to make a -- and at Exhibit 54, I
13 updated my previous objection to include the side yard relief
14 objection.

15 So, Exhibit 54 and then there are exhibits,
16 attachments A through I. I am here to give some additional
17 information that are not without.

18 First of all, the shadow study that was included, and
19 submitted by the developer, I think that that does not suffice.
20 It shows -- it is not, well, it is not accurate in that it takes,
21 does not take into account other shadows in my backyard, including
22 almost 50 foot magnolia tree to the west.

23 So, while it maybe accurate for the roof line and the
24 solar panels, it is not accurate to show how adverse the new
25 construction with the 40 foot extension in the back will have on

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1 my use and enjoyment of the backyard, the light and air of the
2 backyard, and the light and air of my magnolia tree, which is
3 protected by D.C. regulations, including the zoning regulations,
4 as it is, exceeds 75 inches in circumference. It is considered
5 a special tree.

6 I now, initially when Mr. Lam proposed this building,
7 and this is unrelated to zoning, this is DCRA, we have been
8 working, he has been working with me and my technical objections
9 with the DCRA.

10 There was supposed to be, there was going to be a pop
11 up in the cornice. And that would have shaded my solar panels by
12 60 percent.

13 My solar panels are not by bright protected under the
14 current zoning law. However, and are converging, I believe that
15 by zoning puts it -- by zoning, my solar panels would be
16 protected, because of the whole access to light and air for the
17 special use exception.

18 So, I would, I would argue that regardless. But, Mr.
19 Crain made the argument that they did this for me, because even
20 though they weren't protected.

21 But, I would argue that light and air on my property
22 is protected under evaluation of special use exceptions. Anyway,
23 a shadow study has not, an accurate shadow study has not been
24 provided that shows my backyard and the shadowing, including the
25 new building and the house.

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1 The second note, side yards are required by multi-
2 family. They are trying to get an exception because of the size
3 of this yard.

4 However, in this case, my -- under Subtitle C, Section
5 401.3 of the zoning regulation, you cannot do something to fatally
6 damage a tree. My tree and the picture that is shown, I think,
7 on page 11 of their, of their -- of their PowerPoint, does not
8 accurately portray the size of my tree.

9 My tree extends, the crown of my tree extends ten feet
10 into the adjoining properties to the north and the south. Under
11 this proposal, they're going to cut to the property line, ten feet
12 of the crown to the south.

13 Dig up the roots, my arborist has provided an opinion
14 that I've attached, including the structural root zone, two and
15 a half feet of the structural roots, plus a good portion of the
16 critical root zone.

17 The arborist that Mr. Lam has hired, did not, did not
18 discuss or talk about the critical root zone or the structural
19 root zone. Never -- he came, he did not measure anything on my
20 tree.

21 I don't know what type of survey he did. And so, it
22 is just the proposal that his arborist did not provide to you, he
23 provided to me at the DCRA, is lacking.

24 That's why I keep having an arborist come back and
25 look at it. I think that the special exception should be denied

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1 for the side yard, because as my arborist has recommended, five
2 to ten feet side yard to the north of the property, would minimize
3 the potential staff of my tree by 30 percent.

4 If Mr. Lam does not do these things, there's a high
5 potent -- there's a high -- it's highly likely that my tree will
6 die.

7 And it's not something that's going to happen today
8 or tomorrow, or next year or two years from now. This is a slow
9 death that can happen over 10 or 15 years.

10 And then after he has already developed the property
11 and moved on, I'm going to be the one responsible for having the
12 tree removed.

13 And losing a tree that is both 10s of thousands of
14 dollars if we were trying to put a value on it, that has been here
15 for well over 70 years, likely longer, because I know this,
16 because a homeowner, or the resident who lived in the 50s, told
17 me the tree was there when he was a kid. And he was amazed about
18 its growth.

19 It was a specimen tree. It is healthy. And while I
20 understand they've pushed it back to minimize the, the damage to
21 my solar panels, you also have to make sure that you don't damage
22 the living tree.

23 The city of D.C. has urban forestry plans. Urban
24 Forestry told me to hire an arborist to make sure my tree was
25 protected.

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1 Mr. Lam has not done any of the tree protection
2 measures that D.C. Urban Forestry requires. And I think that it
3 needs to be redesigned.

4 And I will also say that the solar, the solar shade,
5 the Epsom solar shade study. I noted this in my letter, submitted
6 to you all, is inaccurate.

7 The plans have changed since then. And my shade
8 study, my shade study that I included has -- the people who
9 installed my solar panel did a shade study and noted the
10 inaccuracies in the Epsom shade study.

11 And that's over 1.9 percent that they cite too as the
12 decrease, or my access to sun, is incorrect. It is below 5
13 percent so long as certain measures are taken. But, the 1.9
14 percent is wholly inaccurate.

15 I'm here to answer any questions you may have for me.

16 BZA CHAIR HILL: Okay. Thank you, Ms. El-Amin. Thank
17 you for your testimony.

18 Does the Board have any questions for Ms. El-Amin at
19 this point? Ms. John?

20 VICE CHAIRPERSON JOHN: Just a clarification. So, the
21 magnolia tree extends ten feet into both neighbors yards? So,
22 it's -- the canopy is about 23 feet?

23 MS. EL-AMIN: Forty feet. It's about 40 feet. Yes.

24 VICE CHAIRPERSON JOHN: Forty feet. And what were the
25 protections that the arborist recommended?

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1 MS. EL-AMIN: A five to ten feet push back from the
2 tree to protect the critical root zone and the structural root
3 zone.

4 He said too actually, -- it's, I mean, I don't have
5 it on my right. It's attached at Tabs E, F, the most recent one,
6 Tabs 54, E, F, and G.

7 He also recom -- he also suggest -- recommended that
8 they, let me look at my notes, do an air spla -- an air spade, use
9 an air spade to blow out the dirt on the developer's property to
10 determine just how much of a st -- because he's guesstimating the
11 structure is alre -- it could be even further out, to determine
12 how far out the structural root zones are, to make sure that they
13 are not touched.

14 And obviously, you also, this critical root zone,
15 there's some types of mulching and layering that the arborist and
16 D.C. Urban Forestry has on their website.

17 I included those links in my letter, to D.C. Urban
18 Forestry on what you're supposed to do in the critical root zone
19 area.

20 There's some addi -- there's feedings going three
21 years into the future. Mulching requirements that the developer
22 should pay for, inclu -- and irrigation requirements, because root
23 pathogens can get into the tree and kill it.

24 When you do these types of clippings, roots are going
25 to get cut regardless. Even you -- and even with the side yard

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1 at ten feet, or eight feet, roots of the tree are going to get
2 cut.

3 The tree roots extend throughout everyone's yards,
4 far, far away from the base. So, they're going to get cut. But
5 to minimize damage to the tree structural roots, the structural
6 integrity, there are a number of steps that must be taken to
7 further assess the tree.

8 And then that may help you to determine whether or not
9 side yard relief is appropriate. But, he said that five to ten
10 feet side yard, a five to ten setback is required to -- to
11 decrease the tree's potential, I guess death, to only 30 percent.

12 Because if you don't, the number is higher.

13 VICE CHAIRPERSON JOHN: So, this is follow up. The
14 property is about 20 feet wide, if I understand what his report
15 said. I believe it's 20, almost 21 feet wide?

16 MS. EL-AMIN: It's 20 feet.

17 VICE CHAIRPERSON JOHN: Right. So, basically the
18 setback would have to be 10 or 11 feet wide. So, in effect, there
19 could be no addition with that in place.

20 MS. EL-AMIN: There could be an addition of you have
21 -- because right now the addition goes back 40 feet. The tree
22 is not -- it -- and the issue with the tree is the tree sits
23 around 30 to 35 feet from the house.

24 It's not close to the structure. But, because the
25 development is going so far back, it is actually built adjacent

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1 to the tree and will cut off all of the tree's crown that extends
2 over the yard.

3 Plus, you will actually, the development will dig up
4 the tree's structural root zone, critical root zone, and compact
5 all of the other areas of the tree that where there's not a
6 building.

7 But, it's in this critical ro -- structural root zone
8 to do the development of the properties for the parking lot and
9 all this other stuff.

10 It's very -- it's a lot. It's very stressful for the
11 -- it's going to be very stressful for the three.

12 VICE CHAIRPERSON JOHN: Okay. Thank you.

13 BZA CHAIR HILL: Okay. Does anyone have any more
14 questions for the witness?

15 (No response)

16 BZA CHAIR HILL: All right. Stay -- just bear with
17 us if you would. Mr. Stinson, is that you?

18 MR. STINSON: Yes. Can you hear me?

19 BZA CHAIR HILL: Yes.

20 MR. STINSON: Possibly. Well, I appreciate the time.
21 I will be brief, as I think a lot of my opinions were reflected
22 at both Mr. Faler and Ms. El-Amin's testimony.

23 But my name is Matt Stinson. I live at 207 Varnum
24 Street, which is directly south of the existing structure. So,
25 my rear alley abuts the existing structure today at 4310 2nd

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1 Street.

2 My wife and I are in strong opposition to the
3 development. I think for a number of reasons already captured by
4 Mr. Faler and Ms. El-Amin.

5 Were primarily around the negative impact that the
6 proposed development will have on that almost 80 year old magnolia
7 tree that lives in the backyard of Ms. El-Amin's home. But
8 because of the existing canopy and shade that it provides
9 neighboring properties, as well as all the wild life that inhabit
10 it.

11 And as Ms. El-Amin has accurately pointed out, this
12 could be a liability for the neighbors as the root system gets
13 upended. And this is a massive tree that could become an
14 expensive issue if needed to be removed. And an even more
15 expensive issue if it, God forbid, fell on one of the existing
16 homes around the alleys.

17 And finally, opposition around -- the alley is already
18 very tight. Right, and that's a primary area for folks to pull
19 in for their cars to park in the backyard.

20 And while the developer has been gracious in creating
21 four additional spots, it is not, it is not an alley that is kind
22 of well suited for that additional volume.

23 And not having any setback on the side where the
24 property is being proposed, will create further friction in terms
25 of getting in and out of parking spots for the houses that are on

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1 Varnum Street.

2 And so, I -- I very much move strongly in opposition
3 to supporting of this. And appreciate you hearing my testimony
4 today.

5 BZA CHAIR HILL: Okay. Did I miss anyone?

6 MR. YOUNG: Yeah. We have Ms. Kauffman who is calling
7 in. So, I will unmute her now.

8 BZA CHAIR HILL: Ms. Kauffman, can you hear me?

9 MS. KAUFFMAN: Yes. Can you hear me?

10 BZA CHAIR HILL: Yes. Could you introduce yourself
11 for the record, please?

12 MS. KAUFFMAN: Yes. My name is Rebecca Kauffman. I
13 live on 3rd Street in the property directly behind the -- the
14 property that we're talking about.

15 So, yeah, all just show what some of my neighbors have
16 said. And I think there's a few more on the line who want to
17 speak after me.

18 I think the neighborhood is in strong universal
19 opposition of this project. I know that our ANC representative,
20 Jonah, has, you know, really emphasized the affordable housing
21 angle.

22 But, I think the neighbors are more upset about the
23 impact it will have on the tree. Which is really the heart of our
24 neighborhood.

25 I mean, if you just go into that alleyway, it's an

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1 enormous tree that really just serves as like the main artery of
2 like our block. We don't want anything to happen to that tree.

3 And that's a huge concern for us. I think beyond
4 that, the -- as others have said, the size of the condo building
5 being proposed is just totally out of place with the neighborhood.

6 I mean, I just moved into our property over the
7 summer. And part of the reason why we moved there, was because
8 it's just a quiet family neighborhood of single family homes.

9 I think this, this development would just be a
10 monstrosity. And I think there are some issues with how it would
11 be positioned on the alleyway, right up against the alley.

12 No side yard. I mean, that's an alleyway that many
13 people use to, you know, like walk their pets and play with their
14 kids.

15 I'm not sure about the solar impact. But, I do know
16 that again, being the property directly behind this development,
17 all of our light comes through there during certain seasons.

18 And so, I don't know how that would impact my ability
19 too in the future install solar panels. I haven't really looked
20 into it, but I'm assuming there would be an adverse effect,
21 because like it's just going to block all of our light.

22 I think there are some privacy issues. Like this new
23 condo will reduce our family's privacy. They'll be able to stare
24 right into our house.

25 So yeah, I mean, just in short, I think there's some

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1 strong universal opposition. And I'm happy to answer any
2 questions you have.

3 BZA CHAIR HILL: Okay. Great. Thank you. Does the
4 Board have any questions of the witness?

5 (No response)

6 BZA CHAIR HILL: Okay. Ms. El-Amin, you had your hand
7 up?

8 MS. EL-AMIN: I just wanted to say, I had my letter
9 states all of my other oppositions. It's more than just what I
10 said.

11 I just don't want to be repetitive. So, I ask that
12 the Board, you know, read my letter and all of my exhibits for my
13 full opposition. Thank you.

14 BZA CHAIR HILL: Thank you. No, we did, Ms. El-Amin.
15 Does the Applicant have any questions for any of the witnesses?

16 MR. SULLIVAN: No. Thank you.

17 BZA CHAIR HILL: Commissioner Goodman, do you have any
18 questions for any of the witnesses?

19 MR. GOODMAN: I do not. Thank you.

20 BZA CHAIR HILL: Okay. All right. Okay. All right.
21 All right, you all, thank you very much for your testimony. And
22 have a nice holiday. All right, Mr. Young, if you can excuse all
23 the witnesses.

24 Mr. Sullivan, do you know what is the responsibility
25 and what your client has done concerning that tree? And then I'm

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1 also going to ask OAG, because I always kind of forget how the
2 tree thing works.

3 MR. SULLIVAN: So, I have, the owner can talk about
4 the tree and testify as to what he's done in the way of protecting
5 the tree. We didn't submit, he has a report from an arborist as
6 well.

7 I just want to point out one big inaccuracy there.
8 Ms. El-Amin stated that the, her arborist told her the tree was
9 highly likely to die. When the report actually says it's not
10 likely to be enough to kill it.

11 But then he goes on to say that here are things that
12 can be done to protect it. And so, I think that's where we're at
13 in coming to some agreement if possible.

14 But, at least doing what we need to do to protect it.
15 And so, I can have Mr. Lam talk about that if you want him to talk
16 about that, and regarding the tree itself.

17 BZA CHAIR HILL: Yeah. Mr. Lam, can you speak to the
18 tree?

19 MR. LAM: Yes, thank you, Mr. Chairman and Members of
20 the Board. My name is Nhan Lam. I am the, speaking on behalf of
21 FHD LLC.

22 We've owned the property for a couple of years now.
23 Gotten to know the neighborhood and taken deep consideration to
24 the feedback we received, including the items you have heard
25 today.

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1 Believe it or not, initially we had designed this to
2 be a six unit apartment building with a full third level, and a
3 fourth level penthouse. However, our initial satellite pictures
4 from Google Earth did not show any solar panels to the direct
5 neighbor, the neighbor.

6 We found out that there were solar panels, which where
7 we invested more money to redesign everything to reduce it to five
8 units. Removing the third level completely from the direct path
9 of the sunlight into the neighbor, and also removing the penthouse
10 all together.

11 And even further in this commitment, although it's not
12 required, we hired to get a solar analysis done, showing a less
13 than 5 percent loss throughout the year, as shown on Exhibit 48
14 of our files.

15 With regards to the magnolia tree in the rear, we've
16 had some deep discussions about that as well. We hired our own
17 arborist to give us a tree protection plan.

18 That preservation plan is very detailed on how we can
19 excavate safely, prune the roots safely. Also, provide root chips
20 and fertilizer to feed the tree during the excavation process.
21 And also ensure that there's enough water to make sure that
22 there's minimal impact to the actual tree.

23 You know, with the canopy coming into our property
24 line, and then also with it underground, you know, it is our
25 property as well. So, we would kind of, you know, defer that.

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1 We have some rights to what goes on our side of the property as
2 well.

3 We acknowledge that the street parking that we've gone
4 there often, and it's always full on the street. That's why we
5 invested in building four off street parking spaces, even though
6 the minimum is only one.

7 And lastly, all the row houses have a very historical
8 look, very similar look. Which is why we decided not to build a
9 condo building that looks like an apartment.

10 But instead, keep the front facade. So that way, as
11 you walk down the street, it looks like every other house in the
12 neighborhood. And you know, keeps the historical value and
13 architecture of that entire street.

14 All these items being considered, honestly for me, I
15 -- we've put in a lot of effort to help mitigate any significant
16 adverse impact to the neighborhood.

17 But, obviously, you know, this is a big change to the
18 neighborhood. And we obviously don't expect things to be accepted
19 overnight.

20 BZA CHAIR HILL: Okay. Mr. Lam, in terms of the tree
21 specifics, is there anything in the record in terms of what you're
22 agreeing to do with regards to the tree?

23 MR. LAM: Yes. So, we've reviewed the third-party
24 reviewer from our direct neighbor, Ms. El-Amin. And --

25 BZA CHAIR HILL: Can you -- can you point out in the

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1 record what you're saying you guys are going to do to protect the
2 tree?

3 MR. LAM: Yes. So, within our arbor -- I'm not an
4 arborist, so I mainly speak on the technical terms. However, this
5 is my understanding.

6 While we prune the roots, where we --

7 BZA CHAIR HILL: You can ask -- which Exhibit are you
8 in?

9 MR. SULLIVAN: Mr. Chair, I don't think we have
10 anything in the record on this point specifically yet.

11 BZA CHAIR HILL: Okay. All right. I might -- I ask,
12 I might be interested in hearing a little bit more about something
13 in the record about the tree protection.

14 MR. LAM: Okay. Okay.

15 BZA CHAIR HILL: Okay. Does the Board have any
16 questions further of the Applicant?

17 (No response)

18 BZA CHAIR HILL: My quick question to OAG, because
19 I sometimes can't remember how, what is the BZA's responsibilities
20 about the trees?

21 MR. RICE: Mr. Chair, our -- the tree responsibilities
22 kind of come up on those certain districts that actually have tree
23 protection regulations in place under C-400.

24 But, in this instance, I don't see those at play here.
25 There's also some additional DDOT regulations that are covered

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1 when projects go through permitting.

2 But, I don't see any that are applicable off the top
3 of my head at present in this case.

4 BZA CHAIR HILL: All right. Just the little heritage
5 tree stuff that I know comes up quite a bit with us.

6 MR. RICE: And I believe that's the DDOT reg.

7 BZA CHAIR HILL: Okay. All right. I guess Mr. Lam,
8 have you -- have you in terms of your outreach to the
9 neighborhood, have you been in contact with those neighbors that
10 are trying to, that are going to be most affected by your
11 construction and everything that's going on in terms of trying to
12 ally some of their fears or concerns about how the construction
13 might go on?

14 I mean, are you in communication with your neighbors?

15 MR. LAM: Yes. So, the direct neighbor, Ms. El-Amin,
16 we have -- I have her phone number, I have her email address.
17 And also, my contractor has been doing maintenance and lawn
18 mowing, has been in touch with her as well.

19 Because we are aware that she has a gas meter that
20 services her property on our property as well. We're taking that
21 into consideration when we do construction, so that way she
22 doesn't have a disruption in service from Washington Gas.

23 And a number of other things that we share, such as
24 the party wall, the backyard, the tree, and a number of other
25 things as well.

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1 So, yes, we are in communication with the direct
2 neighbor who is the most impacted by our construction project.

3 BZA CHAIR HILL: And you're going to be a good
4 neighbor and let them know what's going on, if this were to move
5 forward?

6 Your plans with the construction, and the dates that
7 you're doing things, and everything that's going on?

8 MR. LAM: Absolutely. That's why they have my phone
9 number, and also, my contractor's cell phone number. So, that
10 way, if there's things -- you know, I may not be there every day,
11 but if there's things that's out of the ordinary, they can reach
12 either to myself or my GC, general contractor, and we can make
13 sure things are taken care of.

14 BZA CHAIR HILL: Okay. All right. Does anybody have
15 any more questions of anyone?

16 (No response)

17 BZA CHAIR HILL: Okay.

18 MS. EL-AMIN: This is Ms. El-Amin. I'm still on the
19 line. I don't have the genera con -- I have Mr. Lam's contact
20 information. I don't have any information for his general
21 contractor.

22 BZA CHAIR HILL: Who is that? Was that -- who was
23 that that just spoke?

24 MS. EL-AMIN: El-Amin. Ms. El-Amin.

25 BZA CHAIR HILL: Oh, Ms. El-Amin. Okay.

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1 MS. EL-AMIN: I just -- I need that information. I
2 have Mr. Lam's information only.

3 BZA CHAIR HILL: Okay. If you could email -- Mr. Lam,
4 if you could again correspond with Ms. El-Amin, and provide the
5 information for the general contractor and any work, if this were
6 to move forward, how she can contact someone in terms of the work
7 that's going on.

8 MR. LAM: Yes. Absolutely.

9 BZA CHAIR HILL: Okay. All right. So, what it seems
10 like now, is I'd like to see something in the record about the
11 tree production -- the tree protection, Mr. Sullivan.

12 And then also actually just a little bit more
13 specificity about how Mr. Lam intends to communicate with the
14 neighbors. Like, you know, just, you know, is there -- is the
15 GC's information going to get shared?

16 You know, who -- how are they going to communicate
17 with the neighbors to keep them advised as to what's going on with
18 the construction?

19 I'd like to see something in the record that speaks
20 to that. Okay?

21 Okay. So, I got two items. And then the last item
22 is, we're going to get something from, I guess, the Zoning
23 Administrator?

24 I mean this is where I'm not sure what we need to know
25 that whether in fact this is something that we can make a decision

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1 upon.

2 And so, before Mr. Sullivan, I will -- all right, go
3 -- all right, Mr. Sullivan, what do you think we need?

4 MR. SULLIVAN: A self certification signed by me. And
5 I'm not -- I'm not aware of any case that the Board's not allowed
6 to hear.

7 That's kind of a new concept for me. Because what if,
8 if OAG said, you know what, no, we're not satisfied, this isn't
9 good enough, then I can't even ask for relief. Even though I know
10 I can get a building permit.

11 That's -- so, I'm a little confused by the process.
12 This is new. I think this is new from OAG in the last two months
13 of questioning our self certification.

14 BZA CHAIR HILL: That's fine. But, I'm going to try
15 to figure this out too. Okay, Mr. Sullivan? I was asking for,
16 and I'll turn to my Board Members then, right, Okay?

17 You know, I don't know then Mr., you know, Rice? You
18 all, I'm not interested in trying to figure this out right here,
19 right now, okay?

20 But, I'm letting you know that I need somebody to tell
21 me, and I've got to feel good about it, that this is a record lot.
22 And/or, I need to feel good about the fact that this is just
23 completely on the self cert thing that keeps getting talked about.

24 And that we have the ability to at least make a
25 decision based on the fact that they supposedly are a record lot.

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1 And so this is where it's all kind of like, you know, unclear to
2 me right now.

3 So, before I turn back to the two people that I'm
4 talking to, I'm going to turn to my Board Members. What do you
5 all want?

6 And I'm going to start with the Commissioner.

7 COMMISSIONER SHAPIRO: I think you're surprised, Mr.
8 Chair. The broader self cert asserted to is in play here. And
9 the tree protection, you know, those are the two things that stand
10 out the most for me.

11 I agree with you about the communication between the
12 developer and the neighbors. Yeah. I have nothing further to
13 add.

14 BZA CHAIR HILL: Okay. And then now I'm back to --
15 now I got confused again. Commissioner Goodman, are you still
16 there? Or did you drop off? Oh, you're right there.

17 MR. GOODMAN: Yeah.

18 BZA CHAIR HILL: I forget, what did you -- are you
19 guys in opposition? Or I can't --

20 MR. GOODMAN: Yes.

21 BZA CHAIR HILL: Right. You're in opposition. And
22 you're in opposition again because of the donation?

23 MR. GOODMAN: Yeah. There's certain -- for the
24 housing either in voluntary IZ inclusion or contribution as well
25 as the tree protection plan.

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1 So, we currently were under the assumption that they
2 were working together on the plan. It sounds like there's less
3 of that.

4 So, we had listed that as a condition of our support.
5 Which currently is lacking. So, therefore, it's opposition.

6 BZA CHAIR HILL: Okay. I don't even know if, if you
7 get the tree protection plan, it still seems like you guys are
8 going to be in opposition.

9 MR. GOODMAN: Correct.

10 BZA CHAIR HILL: So -- so, I'm just trying to
11 understand where we are with that. So, Mr. Shapiro?

12 COMMISSIONER SHAPIRO: Mr. Chair, I just want to go
13 back to something you said before. And make sure that I
14 understand.

15 I mean, I admire and respect that, that the
16 commitments, the ANC 4C's commitment around affordable housing.
17 But, that's not, on a case like this, that's not in our purview.

18 That's -- that's what I'm hearing you say as well, Mr.
19 Chair, right?

20 BZA CHAIR HILL: Yeah. I mean, it doesn't -- it
21 doesn't, it doesn't prevent the ANC from having the discussion
22 that the ANC is discussing. Or have --

23 COMMISSIONER SHAPIRO: Why isn't it?

24 BZA CHAIR HILL: I'm just trying to clarify their
25 position. And what I understand their position is, understanding

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1 what the Applicant has said thus far, is that even if the tree
2 study does come forward, they will most likely still be in
3 opposition.

4 And the Commissioner said yes. So, that's all I need
5 to know at this point.

6 So, -- so, Mr. Sullivan, what I need again, is the
7 tree protection information. Right? How your client is going to
8 -- maybe I can come up with something better than the good
9 neighbor policy.

10 How the client is going to adhere to the good neighbor
11 policy, right? And make sure that they're aware of everything
12 that's going on during construction and everything.

13 And then -- and I guess I'm still kind of up in the
14 air as to whether or not we need something from somebody, right?
15 That says that we're -- and if we don't get it, I guess that we
16 the Board can have a separate discussion about whether we can
17 decide on this. Right?

18 And I guess, and I know, Mr. Sullivan, I know your
19 position. OAG, I know your position. I mean, is there something
20 I can get, and I'm going to ask OAG, is there something that you
21 think, OAG, I can get from either the Zoning Administrator or the
22 Surveyor?

23 What is it that we need?

24 MR. RICE: I think I -- a good response to that would
25 be that Mr. -- the Applicant would provide you with some sort of

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1 one page brief memorandum that provides authority for you to grant
2 what it is requesting.

3 And identifying you to that portion of the code, since
4 there are certain portions within the code that even if the
5 Applicant were to request of you, such as an application for a
6 PUD, that the Board of Zoning Adjustments is not authorized to
7 grant.

8 So, the shortest way of saying that, is a brief or
9 memorandum pointing to, you the BZA, to where in the regs you're
10 authorized to grant the relief its seeking.

11 BZA CHAIR HILL: Yeah. I don't know. I mean, I don't
12 even -- that to me also sounds a little bit like -- I don't -- I
13 don't know, like the applicant now is deciding.

14 Telling me, you know, whether they think they're --
15 I mean, they're already telling me they already have a self cert.
16 They're, you know.

17 Ms. John?

18 VICE CHAIRPERSON JOHN: Mr. Chairman, the hour is
19 late. If I may make a suggestion? Are we going to decide this
20 case today?

21 BZA CHAIR HILL: No.

22 VICE CHAIRPERSON JOHN: So, we can iron out all of
23 these issues before we hear the case, I would think. And we still
24 have the option of putting a condition, assuming they're approved,
25 that the Applicant, that this decision is not, is not approved

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1 whether or not this is a record lot.

2 Or the Applicant must have proof of a record lot prior
3 to permitting. Something like that, which I'm sure Mr. Rice can
4 come up with.

5 BZA CHAIR HILL: Okay.

6 VICE CHAIRPERSON JOHN: Because I agree that there has
7 to be a record lot. So, what Mr. Sullivan is saying, is that
8 there is a record lot.

9 And so, I mean, I mean, the clie -- his client is
10 taking that risk. So, I am not opposed to putting a condition in
11 the order if that's the way we decide.

12 BZA CHAIR HILL: Yeah. No, Ms. John. Thank you.
13 It's been so long, I forgot that we actually had a solution at the
14 beginning of this.

15 And so, you know, Mr. Rice, if you can remember that
16 when we're getting to a discussion point. Mr. Sullivan, if you
17 have anything you'd like to add that you think is going to, you
18 know, bolster your argument concerning the record lot?

19 Otherwise, I guess what's going to happen is, there
20 will be a condition as to whether or not it's a record lot or not.
21 And then, we'll move on from there.

22 And that, Mr. Rice, you can help us craft. Okay? So,
23 does everybody know what we're talking about?

24 MR. COCHRAN: Mr. Chair, I am supposed to remind you
25 that you have a question. For me.

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1 BZA CHAIR HILL: I know. I'm just --

2 MR. COCHRAN: Didn't write it down, huh?

3 BZA CHAIR HILL: No. No. Oh yeah. Oh yeah. So,
4 that's -- I'm getting feedback on this. Let me see these things.

5 Mr. Cochran, this is -- I don't recall, have you seen
6 a lot of these things where they're pushing back the third floor
7 to that back portion of the building?

8 MR. COCHRAN: No. That doesn't mean there aren't a
9 lot.

10 BZA CHAIR HILL: I just haven't -- I mean, it -- it
11 seems like a creative way to dealing with the solar panels.
12 That's why I was just curious.

13 I just was curious whether your guys had seen it more
14 often. And you are saying you haven't.

15 MR. COCHRAN: I'm speaking only for myself. There
16 might have been other cases where this has been done.

17 BZA CHAIR HILL: Okay. All right. Well, thank you,
18 Mr. Cochran for reminding me of that.

19 All right, anybody else raise their hand? Ms. John?

20 VICE CHAIRPERSON JOHN: So, there's a disagreement in
21 the record about how much of an impact there will be on the solar
22 panel. Whether it's less than 2 percent or more than 5 percent.

23 And I believe the regulations require some sort of
24 determination from BZA. And I think that's another condition that
25 we could impose if we decide to approve the application.

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1 And, I guess that determination could also be made
2 before we decide. So, I'm just throwing that out there, that
3 there is some disagreement about what, what the impact is on the
4 solar.

5 BZA CHAIR HILL: I thought -- and this is -- and I'll
6 get, I'll get everybody's fingers in it. I thought that even the
7 opposition said that it was less than 5 percent.

8 Was that not correct?

9 VICE CHAIRPERSON JOHN: I did not hear that. Maybe
10 the opposition said that.

11 BZA CHAIR HILL: Okay. Mr. Shapiro?

12 COMMISSIONER SHAPIRO: Yeah. What I heard Vice Chair
13 John, is that the neighbor in opposition, that her expert said
14 that the, that it was going to be under part, so it was like 4.1
15 or 4.2.

16 So, we may want to get clarification on that. But,
17 both sides had it under power, so.

18 VICE CHAIRPERSON JOHN: I believe the testimony was
19 if certain precautions were taken, it could be less. But the
20 report, as I recollect, said 6.9 percent or something close to
21 that.

22 In any event, that's something they both need to look
23 at.

24 COMMISSIONER SHAPIRO: Right. Yeah.

25 BZA CHAIR HILL: And wouldn't we get clarification of

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1 that from the Zoning Administrator?

2 VICE CHAIRPERSON JOHN: That's what the regulations
3 say. That there will be a determination by the Zoning
4 Administration with this higher than 5 percent.

5 BZA CHAIR HILL: I see Mr. Sullivan shaking his head.
6 I don't know if it's exactly that way. But, thank you, Ms. John.
7 Let's get some clarification on it.

8 Mr. Sullivan, what were you going to say?

9 MR. SULLIVAN: That regulation only applies in an RF
10 Zone. So, there's no regulation in the RA Zone regarding the 5
11 percent.

12 So, it's more of a, of a -- there's not a requirement
13 by number. There's no requirement actually in the RA Zone.

14 COMMISSIONER SHAPIRO: It's more of a good neighbor
15 policy?

16 MR. SULLIVAN: Exactly. Well, I mean, in this case
17 it's in the context of the general criterion, a special exception,
18 of course.

19 You know, when I say we could do, if we did a row
20 house for a single family, we could build the structure 40 feet
21 high and three stories. And completely block them without any
22 reference at all to the 5 percent or to the solar panels.

23 So, we're -- Mr. Lam is doing what he can to
24 acknowledge the neighbor's concerns about the solar panels.
25 Regardless of the fact that they're not protected under -- not

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1 specifically protected under RA.

2 VICE CHAIRPERSON JOHN: I'm not disagreeing with that,
3 Mr. Sullivan.

4 BZA CHAIR HILL: Okay. So, I just want to know if
5 anybody else needs anything? I'm going to go this over again.

6 Something in the record about the tree protection and
7 how they actually are going to go about doing it. Something in
8 the record about how they're going to communicate with everyone
9 concerning construction and how they're going to, you know, let
10 everyone stay informed, particularly the next door neighbor.

11 And, was there anything else? That anybody needed in
12 order to get to a decision?

13 (No response)

14 BZA CHAIR HILL: Because it sounds like, you know,
15 then Mr. Rice, I guess we might have a side bar conversation.
16 But, you're going to help us craft a condition concerning the tax
17 lot versus record lot.

18 Okay. I see a nod on Mr. Rice. And I see a finger
19 by Mr. Shapiro. Mr. Shapiro?

20 COMMISSIONER SHAPIRO: So, is there anything on Mr.
21 Sullivan to, to make his case around this as well? Because I --
22 part of the concern I have is that I hear where OAG is, so I think
23 Mr. Sullivan just flat out disagrees.

24 And says that you know, it's a self cert is adequate.
25 I, you know, I'd like to hear more detail from Mr. Sullivan about

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1 why he thinks he's right.

2 BZA CHAIR HILL: All right, Mr. Sullivan. You can put
3 something in there saying why you think we're wrong. Okay?

4 MR. SULLIVAN: So, for the record, I'm happy with
5 either. You know, however the Board wants to handle it.
6 Condition or whatever.

7 But, I'm happy to address that. Because I think it,
8 I think we talked about it a month or two ago on another case.
9 And there's some case law out there that talks about it.

10 So, it's not a problem for me to go there.

11 BZA CHAIR HILL: Okay. It was different the last
12 time. It was different the last time. So, you know, but -- but
13 go ahead and -- so, write a paragraph or whatever, about the
14 argument.

15 So, list four things. A paragraph about why you think
16 you're right. The tree, how you're protecting the tree. How
17 you're going to stay in contact with the people.

18 And then OAG on a separate thing, not for the record,
19 is going to help us come up with a condition. Okay? About the
20 record lot versus tax lot.

21 Am I missing anything?

22 COMMISSIONER SHAPIRO: I mean, I don't mean to muck
23 it up. But that last one is, is the same as the first one. It's
24 just the two arguments around the self cert.

25 BZA CHAIR HILL: Well, now I love it Commissioner

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1 Shapiro. So, the first one is for the record. Which is Mr.
2 Sullivan is going to give his interpretation as to why he is
3 right.

4 And OAG, not in the record, is going to help us come
5 up with a condition concerning tax lot versus record lot. That's
6 why I'm specifying. It's not going into the record.

7 COMMISSIONER SHAPIRO: Okay.

8 BZA CHAIR HILL: Okay? Okay. Commissioner, since
9 you've been there the whole time, and since you guys are -- do you
10 have anything to add, Mr. Commissioner? Yeah, you.

11 MR. GOODMAN: Sorry, me again. You have multiple
12 commissioners. I -- no, I have nothing.

13 BZA CHAIR HILL: Okay. All right. Then I guess
14 that's it. The case is closed except -- the case is closed, and
15 the hearing is closed, and the record is closed except for the
16 things that we asked for.

17 Yes, Mr. Sullivan?

18 MR. SULLIVAN: Sorry, Mr. Chair. I know you want to
19 move it along. Just, I would like to leave the Board with just
20 a thought about -- I know solar is very important, trees are very
21 important, but housing is just as critical.

22 And, I think the Applicant has put together a proposal
23 that he said preserves the front character of the building,
24 provides needed housing units, protects the solar, and also aims
25 to protect the tree as well.

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1 So, I think as far as RA 1 cases go, it's a very
2 modest one. Although, you know, it's the density as the rest of
3 them in number.

4 But, I think it's strong for that reason. That's all
5 I have. Thank you.

6 BZA CHAIR HILL: Okay. When can you get us all this
7 stuff you think, Mr. Sullivan, for a decision?

8 MR. SULLIVAN: By the end of next week, I'm sure.

9 BZA CHAIR HILL: You're a busy guy. All right. Let's
10 see. So then, the end of next week is, I mean, Mr. Shapiro, were
11 you already coming back for a decision on the 3rd? Or you were
12 coming back on the 27th, right? Right?

13 Wasn't there that Mr. Sullivan had something on the
14 27th for a decision with you? Something was happening, I thought,
15 on the 27th. No?

16 COMMISSIONER SHAPIRO: I apologize. I'm not available
17 on the 27th.

18 SECRETARY MOY: Mr. Chairman, I was going to suggest
19 that this is going to be set for a decision, I would recommend the
20 Board taking that up on February 10.

21 BZA CHAIR HILL: February 10?

22 SECRETARY MOY: No?

23 BZA CHAIR HILL: Why?

24 SECRETARY MOY: Oh, never mind. Forget -- forget I
25 said that. Just, in January you have -- you only have two

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1 hearings in January. You have the 13th or the 27th.

2 And you have a lot of cases. But, if you want to add
3 one more, that's fine.

4 BZA CHAIR HILL: Well, February 10, what's happening
5 February 3rd? We're off again?

6 SECRETARY MOY: No, you're -- you're on. I didn't
7 know whether or not -- Mr. Shapiro wanted to deliberate in person.

8 COMMISSIONER SHAPIRO: I'm avail -- so, my next
9 scheduled day is February 10. But, I'm avail -- I can be
10 available February 3 if need be.

11 BZA CHAIR HILL: I act -- I'm just saying like we're
12 -- I don't know now we're going to go into it. Oh, my goodness.

13 So, what's our schedule on the 27th?

14 SECRETARY MOY: You have 13 cases and one decision.

15 BZA CHAIR HILL: Oh, you're kidding me?

16 SECRETARY MOY: No, I wouldn't kid about that.

17 BZA CHAIR HILL: And what do we have on the 3rd?

18 SECRETARY MOY: You have five cases and one appeal.

19 BZA CHAIR HILL: And what do we have on the 10th?

20 SECRETARY MOY: About 12 cases.

21 BZA CHAIR HILL: All right. Well, Mr. Sullivan, if
22 we do those on the 3rd, is that going to work out for you guys?
23 Or I don't know what to say.

24 MR. SULLIVAN: On February 3rd?

25 BZA CHAIR HILL: Yeah.

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1 MR. SULLIVAN: Well, I mean, we'll take what we can
2 get. But the sooner the better.

3 BZA CHAIR HILL: What's -- what's the 13th look like,
4 Mr. Moy?

5 SECRETARY MOY: Of January?

6 BZA CHAIR HILL: Yeah.

7 SECRETARY MOY: You have 11 cases and two decisions.
8 This would be the third decision.

9 BZA CHAIR HILL: Do you guys want to do it --

10 SECRETARY MOY: If you do it on the 13th.

11 BZA CHAIR HILL: Do you guys want to do it on the
12 13th? All right. So, you know -- yeah -- huh?

13 COMMISSIONER SHAPIRO: Well, so, I think Commissioner,
14 Board Member Smith may not be available.

15 BZA CHAIR HILL: No. He was nodding yes.

16 MEMBER SMITH: Yes, I was nodding yes. I'm okay with
17 that.

18 COMMISSIONER SHAPIRO: So, I know that Chair Hood is
19 going to come in to, I think he said it's to be the first case on
20 the 13th?

21 BZA CHAIR HILL: Yeah. And you want to be, you want
22 to be on the second case?

23 COMMISSIONER SHAPIRO: So, if I could be at, right,
24 worst case, the second case on the 13th.

25 BZA CHAIR HILL: Okay.

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1 COMMISSIONER SHAPIRO: I wouldn't even mind rolling
2 the dice for Chair Hood to be the first case. But no more than
3 the second case.

4 BZA CHAIR HILL: Well, I mean, you can submit absentee
5 if you think you know, off of the record.

6 COMMISSIONER SHAPIRO: Okay. But the 13th is fine for
7 me. I'm not going to hold us up.

8 BZA CHAIR HILL: All right. So, Mr. Moy, if we do
9 decision on the 13th, what do we need by when?

10 SECRETARY MOY: Okay. I think I heard the Applicant
11 say that he could make his filing by -- by Friday of next week.
12 Which takes us to January 1.

13 Which, yeah, which is -- yeah, you know, because
14 what's today? Today is the 23rd, right? Yeah.

15 Yeah. Today's the -- today's the 23rd. So, one week
16 from this Friday is January the -- January 1.

17 BZA CHAIR HILL: I was just making a face because this
18 has taken us two and a half hours.

19 SECRETARY MOY: I understand.

20 BZA CHAIR HILL: So, if you give -- please go ahead
21 and give them the dates. When do you need the stuff?

22 SECRETARY MOY: Okay. Well, if I -- then I would say
23 Friday, January 1, that's New Year's Day. Or we can make it
24 actually Monday, January 4.

25 BZA CHAIR HILL: Let's do Monday, January 4.

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1 SECRETARY MOY: Yeah. That's what I figured.

2 BZA CHAIR HILL: Okay. And then the --

3 SECRETARY MOY: More --

4 BZA CHAIR HILL: That means the parties can submit
5 anything by the 11th?

6 SECRETARY MOY: Yes.

7 BZA CHAIR HILL: And then we're back here on the 13th
8 for the decision.

9 SECRETARY MOY: Yes.

10 BZA CHAIR HILL: Okay. All right. Anybody else?

11 (No response)

12 BZA CHAIR HILL: Okay. Is that it, Mr. Sullivan? You
13 got everything?

14 MR. SULLIVAN: Yes. Thank you.

15 BZA CHAIR HILL: Mr. Goodman, or Commissioner, are you
16 done with us today?

17 MR. GOODMAN: Yes, we are. Let me just share that we
18 will not have met in time for this next hearing. So, we will not
19 have anything new on the record in response to any of these
20 documents that you've asked for.

21 BZA CHAIR HILL: Okay. I mean, you'll get a chance
22 to respond. You'll get a chance to respond by January 11.
23 Meaning if you do want to respond.

24 MR. GOODMAN: The Commission will not be meeting until
25 the 13th. So I, you can not give me great weight to my response

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1 in that regard.

2 BZA CHAIR HILL: Oh, gotcha.

3 MR. GOODMAN: I think I'm okay with this, because I
4 believe that we will not be in support of this case, based on what
5 we've talked about today.

6 BZA CHAIR HILL: Yeah, I don't think --

7 MR. GOODMAN: So, I don't think there will be a single
8 change.

9 BZA CHAIR HILL: I figure nothing will change. But
10 if I think you thought that your opinion was going to change, you
11 could submit something into the record probably by the 13th saying
12 that you think it might be worthwhile to postpone.

13 MR. GOODMAN: As in individual, correct.

14 BZA CHAIR HILL: Yeah. But then we would say okay,
15 wow, it looks like they might post -- I don't think you're going
16 to. But, if you wanted to, there's an opportunity for you to say
17 hey, you know, it's worth -- it's worth having the meeting of the
18 ANC.

19 MR. GOODMAN: Okay.

20 BZA CHAIR HILL: Okay? All right. Okay. Then that's
21 it. You all have a nice holiday. Happy New Year. Mr. Sullivan,
22 are you done with us?

23 MR. SULLIVAN: Happy holiday. I'm done.

24 BZA CHAIR HILL: Okay. Happy holiday.

25 MR. SULLIVAN: Happy holiday, everybody.

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1 BZA CHAIR HILL: Bye, bye. Okay. All right, do we
2 want to keep chugging? We can do one more. And then I think the
3 last one might take a little bit of time as well.

4 So, Mr. Moy, you can call the next one. This is my
5 dog.

6 SECRETARY MOY: That was my first --

7 VICE CHAIRPERSON JOHN: I like his Christmas outfit.

8 BZA CHAIR HILL: That's right. Got a little
9 Christmas.

10 SECRETARY MOY: Yeah, thanks for sharing. I was --
11 that was nice for me. Okay.

12 So, the next case application is 20364 of Jonathan
13 Fellows, as amended for special exception under Subtitle C,
14 Section 1402.1 from the retaining wall height requirements of
15 Subtitle C, Section 1401.3(c). This would replace an existing
16 retaining wall, R-15 Zone. This is at 3036 New Mexico Avenue,
17 N.W., Square 1622, Lot 819.

18 BZA CHAIR HILL: Oh, that's nice. That's great. All
19 right, yeah. Mr. Fellows, are you there?

20 MR. FELLOWS: Hello. Here now hopefully you all can
21 hear me.

22 BZA CHAIR HILL: Yep. We hear you. Mr. Fellows, is
23 there any, is there -- is anyone here with you?

24 MR. FELLOWS: Negative. I'm solo here.

25 BZA CHAIR HILL: Okay. So, Mr. Fellows, if you can

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1 tell us a little bit about your project, and why you believe you
2 are meeting the criteria for us to grant the relief requested.

3 And I'm going to put 15 minutes on the clock. And you
4 can begin whenever you like.

5 MR. FELLOWS: Okay. I appreciate the opportunity to
6 appear before you all. I'm seeking approval to build a five foot
7 retaining wall in my backyard.

8 And as it is, my house has in the backyard a very
9 narrow patio which separates us from a very tall, very steep hill.
10 Unfortunately, every time there's a major thunderstorm, we have
11 rain that comes off of the hill, winds up and pools up on the
12 patio and ends up entering our basement through the walls and
13 floor.

14 What the contractor is hoping to achieve here is going
15 not allow us to actually push the edge of that very steep hill
16 back a few feet, build a five foot retaining wall to actually
17 support the grade of the hill, which would allow us a few feet
18 extra space on our patio in which we can install French drains to
19 divert water way from the house.

20 So, this ends up being a water management issue that
21 will help mitigating flooding in our basement. And hopefully the
22 same thing for our neighbor as well.

23 BZA CHAIR HILL: Okay. Does the Board have any
24 questions for the Applicant?

25 (No response)

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

3 MR. KIRSCHENBAUM: Good afternoon, Chair Hill and
4 Members of the Board of Zoning and Adjustment. Jonathan
5 Kirschenbaum with the Office of Planning.

6 We recommend approval of the special exception
7 request. And we rest on the record. Thank you.

8 BZA CHAIR HILL: Okay. Mr. Kirschenbaum, can you
9 speak a little bit to X-901.2? And how you think it's going to
10 be in harmony with the general purpose intended in the zoning
11 regs?

12 MR. KIRSCHENBAUM: Retaining -- it's a retaining wall
13 that's permitted in the R Zones to help permit the displacement
14 of soil and other materials on steep slopes.

15 The height limitations are intended to minimize visual
16 appearance of a retaining wall, especially along street frontages
17 and along property lines. In this case, notice of the wall's
18 visibility would be internal to the property, because it would be
19 located in the rear.

20 And the request for relief to increase height would
21 be one foot more than allowed. And would keep storm water from
22 entering the basement of the house.

23 BZA CHAIR HILL: Mr. Fellows, can you hear me?

24 MR. FELLOWS: Yes, I can.

25 BZA CHAIR HILL: Oh, do you know about DDOT and they

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1 want you to remove the existing curb cut in the driveway?

2 MR. FELLOWS: Nope. Not familiar with that, sir.

3 BZA CHAIR HILL: Okay. Well, in the DDOT report, it
4 says that they are in approval. However, they want you to close
5 the existing curb cut and restore driveway to green space.

6 Do you know what they're talking about?

7 MR. FELLOWS: Unfortunately, I don't. And this
8 project wouldn't be anywhere near the driveway, which is in the
9 front of the house.

10 BZA CHAIR HILL: Mr. Kirschenbaum, are you -- do you
11 understand what's going on with DDOT? Can you explain it a little
12 bit more?

13 MR. KIRSCHENBAUM: The issues that they raised are
14 outside the realm of zoning. I believe those are just public
15 space issues.

16 And you know, that -- any public space issues would
17 be dealt with at permitting at DCRA.

18 BZA CHAIR HILL: So, I'm a little confused then. In
19 terms of it seems to be a condition with DDOT. I don't know if
20 we lost OAG there and/or is it completely a public space issue
21 that's outside our purview.

22 And I don't know if we lost OAG.

23 (No response)

24 BZA CHAIR HILL: We seem to have lost OAG. Do you
25 think Mr. Kirschenbaum, it's a public space issue?

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1 MR. KIRSCHENBAUM: Correct. It's not -- the zoning
2 code is not at play here.

3 BZA CHAIR HILL: Ms. Cain, did you just join us?

4 MS. CAIN: I believe this is actually Mr. Rice's case.

5 BZA CHAIR HILL: Oh, gotcha. We lost Mr. Rice?

6 MR. YOUNG: Yeah. I don't see him on. He might have
7 dropped off.

8 COMMISSIONER SHAPIRO: Mr. Chair?

9 BZA CHAIR HILL: Yes?

10 COMMISSIONER SHAPIRO: The only bit of data I'm
11 looking at is, I'm looking at Mr. Fellows architectural drawing
12 that he provided.

13 And I'm looking at a driveway that is on the other
14 side of the house from where the retaining wall is.

15 BZA CHAIR HILL: Which Exhibit, Mr. Shapiro?

16 COMMISSIONER SHAPIRO: Exhibit 4.

17 VICE CHAIRPERSON JOHN: So, Mr. Chairman, if I can
18 chime in? I think we've seen this before, where, you know, even
19 if the relief is not related to the curb cut.

20 And DDOT has an opportunity to look at the application
21 and notice that there is, you know, a curb cut that shouldn't be
22 there, then I've seen this kind of, I don't want to call it a
23 requirement, but condition.

24 BZA CHAIR HILL: Yeah. As have I, or that's what I
25 remember also, Ms. John. And that's why I'm confused as to

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1 whether or not this is a condition to the order or not.

2 Or, if it's a public space issue that is outside of
3 our purview, then it wouldn't be part of our order. So, that's
4 what I'm unclear on.

5 And Ms. Cain, do you have a comment just based on that
6 thing that I said?

7 MS. CAIN: First of all, I think Mr. Rice is trying
8 to get back into the meeting. And generally, public space issues
9 are beyond the scope of the Board's review.

10 But the fact that I have not briefed this case, so I
11 don't really want to say anything beyond that.

12 BZA CHAIR HILL: Okay. Can we wait for Mr. Rice to
13 get back in then? I just want to know for sure.

14 Mr. Rice, can you hear me?

15 MR. RICE: Now I can. I dropped off, sorry.

16 BZA CHAIR HILL: No problem. So, the question is,
17 like DDOT's asking for the curb cut. And the Applicant is saying
18 they don't know about the curb cut.

19 And OAG is saying that it's in public space and it's
20 a public space issue. Is it something that is within the Board's
21 purview that we include as a condition?

22 MR. RICE: Hold on a second.

23 BZA CHAIR HILL: Yep.

24 MR. RICE: This is 2364, correct?

25 BZA CHAIR HILL: 20364.

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1 MR. RICE: In certain instances you're required to
2 take up DDOT's conditions as your conditions of approval. In this
3 case, you wouldn't be.

4 And so, you could conclude that it was outside your
5 purview.

6 BZA CHAIR HILL: Okay. All right. All right, Mr.
7 Fellows. Then I guess it's not something that will pertain to
8 this application.

9 Is there anyone here wishing to speak, Mr. Young?

10 MR. YOUNG: We do not.

11 BZA CHAIR HILL: Okay. Mr. Fellows, is there anything
12 you'd like to add at the end?

13 MR. FELLOWS: I don't think there's anything that is
14 beyond what's covered in the, in this portfolio. But, I think
15 it's worth mentioning also that we have written letters of support
16 from both neighbors.

17 Our ANC Commissioner has endorsed the project. And
18 it was approved unanimously at the ANC meeting.

19 BZA CHAIR HILL: And they did not submit a report
20 though, correct?

21 MR. FELLOWS: I don't know if Chuck Elkins has or not.
22 But he was the Commissioner that approved the project. Or at
23 least verbally. And then brought it up as part of the ANC
24 meeting.

25 BZA CHAIR HILL: Okay. I don't necessarily think they

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1 have something in the record. But, I will accept your testimony.
2 We just can't give it great weight unless it's in there. No, it's
3 not in the record.

4 Okay. All right. Mr. Fellows, anything else?

5 MR. FELLOWS: Nothing else on my side, thank you.

6 BZA CHAIR HILL: All right. All right, I'm going to
7 go ahead and close the hearing, close the record. Mr. Young, if
8 you could excuse the people from the hearing room.

9 I didn't have an issue with this application. I
10 thought that it was pretty straightforward. I was confused about
11 the DDOT condition.

12 But, I guess that now has been clarified. I would
13 agree with the analysis that was provided by the Office of
14 Planning, and also the testimony that the Applicant has given.
15 And I will be voting in favor of this application.

16 Is there anything you would like to add, Commissioner
17 Shapiro? You're shaking your head no.

18 Mr. Smith, is there anything you'd like to add?
19 Shaking your head no.

20 Ms. John, anything you'd like to add? You're shaking
21 your head no.

22 I'm going to make it a motion to approve Application
23 Number 20364 as captioned and read by the Secretary. And ask for
24 a second, Ms. John?

25 VICE CHAIRPERSON JOHN: Second.

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1 BZA CHAIR HILL: Motion has been made and seconded.
2 Mr. Moy, could you please take a roll call vote?

3 SECRETARY MOY: Thank you, Mr. Chairman. When I call
4 your name, if you would please reply with a yes or no, or an
5 abstain to the motion made by Chairman Hill to approve the
6 Application for the relief requested.

7 The motion was seconded by Vice Chair John. Also in
8 support of the motion, or rather, when I call your name to vote.

9 Zoning Commissioner Peter Shapiro?

10 COMMISSIONER SHAPIRO: Yes.

11 SECRETARY MOY: Mr. Smith?

12 MEMBER SMITH: Yes.

13 SECRETARY MOY: Vice Chair John?

14 VICE CHAIRPERSON JOHN: Yes.

15 SECRETARY MOY: Chairman Hill?

16 BZA CHAIR HILL: Yes to approve.

17 SECRETARY MOY: And we have a Board seat vacant.
18 Staff would record the vote as four to zero to one. And this is
19 on the Motion made by Chairman Hill to approve, seconded by Vice
20 Chair John.

21 Also in support of the motion, Mr. Smith and Zoning
22 Commissioner Peter Shapiro. Motion carries, sir.

23 BZA CHAIR HILL: Okay. Great. All right everybody,
24 we have one more case left. And there's a party status case.

25 So, I suggest we take a break. And then we'll come

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1 back like ten minutes. Sounds good. Okay?

2 All right. I'll see you back in ten minutes.

3 (Whereupon, the above-entitled matter went off the
4 record at 4:44 p.m. and resumed at 4:54 p.m.)

5 BZA CHAIR HILL: All right. Mr. Moy, you can call our
6 last case of 2020.

7 SECRETARY MOY: Thank you, with pleasure, Mr.
8 Chairman. This would be Case Application Number 20340 of Arthur
9 Melzer and Shikha, I'm not pronouncing that correctly, but I'm
10 going to spell it, S-H-I-K-H-A Dalmia, as amended for special
11 exception under Subtitle E, Section 5201 from the lot occupancy
12 requirement of Subtitle E, Section 304.1 to construct a second-
13 story addition to an existing accessory structure in the rear yard
14 of an existing flat. RF-1 Zone at premises 114 12th Street, N.E.,
15 Square 988, Lot 65.

16 And the record, Mr. Chairman, there is well, three
17 things. First, the Applicant, I believe submitted sun study
18 videos within the 24-hour window. So, that's not in the record
19 yet, that you should address.

20 There is a party status request under Exhibit 37. And
21 I just reviewed the case record again. There's still no report
22 from the ANC 6A.

23 BZA CHAIR HILL: Okay. Thanks. Thank you, Mr. Moy.
24 Okay. Let me start this first. Mr. Melzer, could you introduce
25 yourself for the record, please?

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1 You're on mute, Mr. Melzer.

2 MR. MELZER: How about now? Does that work? Okay.
3 It's an honor to be the last case of the year.

4 We've been here since 9:30, so we feel that we know
5 you all very well. But, you don't know us. So, I'm Arthur Melzer
6 and Shikha Dalmia.

7 MS. DALMIA: Hello.

8 MR. MELZER: We are husband and wife and live at 114
9 12th Street, N.E. We want to thank the Chair and the Members for
10 hearing our petition, especially at a time when I believe all of
11 us would rather be somewhere else.

12 Now before turning the show over to our architect,
13 Tenika Felder, I thought I would try and just very quickly and
14 clearly state the purpose of our project.

15 We have a detached garage in the back of our house.

16 MS. DALMIA: He didn't answer. Can you hear?

17 BZA CHAIR HILL: Yeah. I can hear you. Give me, give
18 me one second, Mr. Melzer. Let me just go around the table and
19 deal with some of the preliminary matters. And then we'll come
20 back and grab you.

21 MR. MELZER: Okay.

22 BZA CHAIR HILL: Is it Ms. Felder, are you here also?

23 MS. FELDER: I am.

24 BZA CHAIR HILL: Do you want to introduce yourself for
25 the record?

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1 MS. FELDER: Yes. I am Tenika Felder. I am the
2 architect on behalf of the Applicant.

3 BZA CHAIR HILL: Okay. Is it Mr. Araya?

4 MR. ARAYA: Yes. Rafael Araya.

5 BZA CHAIR HILL: Could you introduce yourself for the
6 record also, sir?

7 MR. ARAYA: Hi, Rafael Araya, I'm the owner of the
8 adjacent property at 116 12th Street, N.E.

9 BZA CHAIR HILL: Okay. So, Mr. Araya, you have
10 submitted a request for party status. And after reviewing the
11 file, you're the adjacent neighbor, correct?

12 MR. ARAYA: Correct.

13 BZA CHAIR HILL: Okay. So, unless the Board has any
14 issues, I believe they do qualify to be granted party status under
15 the regulations as to why they are more uniquely affected.

16 And so, I am going to grant Mr. Araya's party status,
17 unless the Board has any issues. And if you do so, raise --
18 please do raise your hand.

19 (No response)

20 BZA CHAIR HILL: All right.

21 MR. ARAYA: Thank you.

22 BZA CHAIR HILL: Let's see, you are welcome. And I
23 can explain to you what that has to -- what signif -- or what that
24 entitles you to, in a moment.

25 There's also a waiver for the 21-day filing deadline

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1 for Exhibit 44. And I guess also, and this is OAG, there was
2 also, the party status in opposition. That was also filed
3 untimely.

4 Is that correct, or no?

5 MS. CAIN: OZ would have to speak to that. It looks
6 like it came in yesterday. But it is in the record. So, I'm not
7 sure if it came in very early yesterday morning.

8 At this point, it's in the record. I don't think
9 there's any --

10 BZA CHAIR HILL: No, no. Party status in opposition
11 came in yesterday?

12 MS. CAIN: No, it was -- their PowerPoint presentation
13 did.

14 BZA CHAIR HILL: Oh, okay.

15 MR. ARAYA: Just the PowerPoint. No, my party status
16 was, I think, within the deadlines. I had that confirmed by the
17 office when I put it in.

18 BZA CHAIR HILL: Okay. Then there was another waiver
19 here. I'm just trying to understand, OAG, there was another 21-
20 day filing waiver.

21 Is that for Exhibit 44 that you're speaking of?

22 MS. CAIN: Yes. So, the 21-day filing waiver was from
23 the Applicant. And that was for revised statements, revised to
24 various plats.

25 So, everything under Exhibit 44.

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1 BZA CHAIR HILL: Okay. So those are revised so that
2 -- okay, so those are the revised. Okay.

3 Ms. -- I guess there's Ms. Felder, then? So you
4 submitted the waiver? Why is it that the waiver is needed?

5 MS. FELDER: Because we actually revised the size of
6 the addition so that we could fall -- first of all, it's set out,
7 we could set back four feet as opposed to three feet.

8 And then also, so that we could fall within the
9 special exception and not a variance.

10 BZA CHAIR HILL: Got it. And did you present before
11 the ANC?

12 MS. FELDER: Yes, we did. And we received the support
13 from the ANC.

14 BZA CHAIR HILL: And what you presented from the AN --
15 what you presented to the ANC, was it the four foot or the three
16 foot?

17 MS. FELDER: The four foot.

18 BZA CHAIR HILL: Okay. All right. So, unless the
19 Board has any issues, I'm going to go ahead and grant that waiver.
20 Because I want to make sure we have a complete and full record.

21 And if you have any issues, please raise your hand.

22 (No response)

23 BZA CHAIR HILL: Okay. We'll go ahead and grant those
24 waivers. All right. Okay. So, let's see now. Mr. Melzer and
25 Mr. Araya, and again and I -- (audio interference) I apologize,

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1 is it Ms. Melzer also? No?

2 I can't hear you. You're on mute.

3 MS. DALMIA: Hi, yeah. I'm Ms. Dalmia. But Mrs.
4 Melzer is good too.

5 BZA CHAIR HILL: No, that's okay. Ms. Dalmia. Okay.

6 So, Mr. Melzer and Ms. Dalmia, you will be presenting,
7 and then, Mr. Araya, you will have the same amount of time as the
8 Applicant, okay? In terms of making your presentation.

9 And what happens, is basically, you'll have an
10 opportunity to ask questions of each other. And then you'll have
11 an opportunity to ask questions of the Office of Planning.

12 And then at the end, you'll have an opportunity, Mr.
13 Melzer and Ms. Dalmia, to refute or rebut anything that has been
14 said. Right?

15 And then, Mr. Araya, you'll have an opportunity to
16 refute or rebut anything new that might have been said during the
17 rebuttal. Okay?

18 And then you'll get a little bit of a conclusion, Mr.
19 Araya. And the Applicant will get a conclusion. And the
20 conclusion from the party status, you have to get into the
21 regulations, but that's how I like to do it.

22 And so, just kind of letting you know how the format
23 goes. So there you go.

24 Mr. Melzer, you were starting to begin. And I
25 appreciate that was great, that you guys have been here since

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1 9:30. I'm sure you've gotten a lesson in how we do things.

2 And also Mr. Araya and Ms. Felder have also been here
3 since that time. You're the last case of the year. So,
4 congratulations.

5 And Mr. Melzer, you can begin with what you were
6 saying. And then I guess, is Ms. Felder also going to be
7 presenting? Or no?

8 MS. FELDER: Yes.

9 BZA CHAIR HILL: Okay. So, I'm just going to keep a
10 clock running. And you'll see 15 minutes on there, Mr. Melzer and
11 Ms. Felder. And just so you know again, the amount of time that
12 you take is the amount of time that Mr. Araya will also have.

13 So, please begin.

14 SECRETARY MOY: Excuse me, Mr. Chairman, do you want
15 Paul Young to use the timer so the numbers of the time goes
16 forward?

17 BZA CHAIR HILL: If Mr. Young can do it. I think he
18 kind of figured that out at one point. If you can, great.

19 SECRETARY MOY: Yeah. Because this might be helpful
20 for you for this particular case.

21 BZA CHAIR HILL: I agree. Thank you. So, it looks
22 like we're all set up. And Mr. Melzer, please, go ahead.

23 MR. MELZER: Oh, okay. So, as I was saying, I'm just
24 going to quickly state what our purpose is in all this. And then
25 I'll turn things over to Tenika for the more technical details.

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1 Basically we want to, we have a detached garage in the
2 back of our house and we seek to construct a room on top of it.
3 And we do so in response to a pressing need.

4 I'm an academic. Shikha is a journalist. And we both
5 have always worked primarily from home. And this arrangement has
6 been more or less manageable because our house contains a den and
7 two bedrooms. And I use the second bedroom as an office.

8 Recently however, we've prevailed upon Shikha's
9 mother, now 81, who was living alone in New Deli, to come live
10 with us. So, I can no longer work from the guest room.

11 My mother-in-law has kicked me out. And nor can I
12 share Shikha's office since it's small. And also, as a good
13 journalist, she spends a lot of time on the phone.

14 So, the only good solution to this problem is to
15 construct a small office over the garage. Now, we've recently
16 moved here from Michigan.

17 And this is going to be our primary and our only home
18 for the rest of our lives. We are committed to this home and to
19 this neighborhood.

20 The house to the north of us will face some impact
21 from our project. Although it is fairly minimal as our architect
22 will attempt to show.

23 And furthermore, the neighboring house is a rental
24 property. Its owner residing in Seattle. So, its occupants
25 change every few years.

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1 Thus, the impact of our project on the occupants will
2 be not only minimal, but temporary. But the consequences for us
3 of not being able to build this office, will be significant and
4 permanent.

5 So, we're just hoping that you will weigh these
6 considerations in evaluating our proposal. So, now I turn things
7 over to Tenika Felder.

8 MS. FELDER: Good afternoon Mr. Chairman and Board
9 Members. My name is Tenika Felder. And I am the architect on
10 behalf of the Applicant, Mr. Arthur Melzer and Ms. Shikha Dalmia,
11 the owners of 114 12th Street, N.E.

12 This application is to request approval for a special
13 exception for relief from the lot occupancy requirements of
14 Subtitle E 304.1 in order to construct a new second story addition
15 to an existing detached rear garage.

16 The property is in an RF 1 Zone. And is located off
17 of 12th Street, N.E., between Constitution Avenue, and East
18 Capital Streets, N.E.

19 The subject property is currently a two family flat,
20 with the Applicants occupying the first and second floors, and a
21 tenant occupying the basement.

22 The Applicants wish to construct a second story
23 addition on an existing detached rear garage. The proposed
24 addition is 13 feet wide by 20 feet. And will be used as a
25 studio, slash office space, for the Applicants.

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1 The subject site poses a few challenges. First, the
2 lot occupancy of the site as it currently exists, is well over the
3 60 percent requirement, partly because the lot itself is a
4 smaller, non-conforming lot.

5 The second challenge is the neighboring property to
6 the north has a building that occupies 100 percent of their site,
7 resulting in two windows along the party wall where the subject
8 property's garage currently exists.

9 These two windows overlook the alley, the rear of
10 neighboring row homes, and the roof of the detached garage of the
11 subject property.

12 Taking into consideration the two windows, and so as
13 too not adversely affect the light and air available to those
14 windows, the proposed new addition will be set back four feet off
15 of the party wall, creating a dogleg effect.

16 This will allow access to air, for sunlight to filter
17 into the existing windows, and will also allow for ample egress
18 in case there's ever a need for a person to exit through those
19 windows.

20 The addition will also be set back approximately nine
21 foot, three inches from the alley, and which is approximately 19
22 feet away from the building and property to the west of the
23 subject property. So, light and air available to that property
24 would not be adversely affected as well.

25 Going back to the neighboring property to the north,

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1 I wanted to address concerns about the effect that the proposed
2 addition will have on the two windows located along the party wall
3 that will be in line with the new addition.

4 As previously mentioned the proposed addition will be
5 set back four feet from the party wall to allow these windows to
6 continue to have access to light and air. The four foot set back
7 also allows sufficient space for egress should the need arise.

8 The wall of the new addition will be approximately
9 three and a half feet higher than the existing neighboring
10 windows. So, if anyone is standing at the window of the
11 neighboring property, they will still have a view of the sky.

12 Privacy for the neighboring property to the north will
13 be maintained because there will be no windows along the wall of
14 the proposed new addition facing those neighboring windows.

15 Although the wall of the proposed new addition creates
16 a partial barrier for direct sunlight, filtered light will still
17 be avail -- will still be able to penetrate the interior of the
18 neighboring property.

19 In fact, the room where the larger window is located,
20 also has a second window off of the alley. So, sunlight will be
21 able to sufficiently penetrate the space.

22 We have completed digital sun studies to support these
23 statements. And these are actually four 20 second videos that
24 show the sun path and the shadows created with and without the
25 proposed new addition.

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1 And these are like an MP4 file. I would like to show
2 these if I may?

3 So, could you tell me -- okay, so this is a sun study
4 with the alley view to the addition, with the addition. Just
5 before you start it, the white building on the left-hand side is
6 the neighboring prop -- is the property that's located across the
7 alleyway that's to the west.

8 The red brick building that you see is actually the
9 neighboring property that is to the north. You can kind of see
10 the window a little bit that's peeking through.

11 And then the, on the right side where you see the
12 garage door and kind of like a wood structure above, that is the
13 proposed new addition above the existing garage.

14 So, if you press the play, it will show the shadowing
15 effect that the addition will have.

16 (Video played)

17 MS. FELDER: So, as you can see, they get pretty much
18 all of the sun, the actual sun.

19 BZA CHAIR HILL: Ms. Felder, what time -- what time
20 of the year are you doing this?

21 MS. FELDER: This is actually the summertime. And so
22 this is showing between 9:00 and 4:00 p.m.

23 BZA CHAIR HILL: When you say summertime, is there a
24 specific day?

25 MS. FELDER: June 21.

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1 BZA CHAIR HILL: Okay.

2 MS. FELDER: If you could show, Mr. Young, the sun
3 study I had with no addition. It's the same time.

4 And as you can see, the neighboring property to the
5 north, because it is a taller building, it casts pretty much most
6 of the shadow that you see on the building to the west.

7 (Video played)

8 MS. FELDER: And again, this is from 9:00 a.m. to 4:00
9 p.m.

10 BZA CHAIR: And that red building, is that Mr. Araya's
11 property?

12 MS. FELDER: That's correct. That's correct.

13 BZA CHAIR: Okay. Okay.

14 MS. FELDER: And Mr. Young, if you could show the next
15 one? Okay. So this is the party wall, before you play, this is
16 showing the party wall.

17 So, in between where you see the white portion and the
18 wood structure, the wood structure represents the addition. That
19 space in between represents that dog leg, that four feet that
20 we're setting off.

21 And then the interior portion represents the interior
22 of the living room where the window is located. If you could
23 play, please.

24 (Video played)

25 MS. FELDER: So, as you can see, sun still penetrates

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1 the dog leg area. That's what I'm calling it. And then you're
2 going to see the shadowing coming up in between on the neighboring
3 property, inside of the living area.

4 And again, you can see how this is all of the
5 afternoon sun. All right.

6 And if you can play the last one with no addition.

7 (Video played)

8 MS. FELDER: As you can see, it has a very, very
9 similar effect.

10 BZA CHAIR HILL: And this is all again, June 21?

11 MS. FELDER: Yes, it is. Okay. Thank you so much.
12 I appreciate that.

13 So again, as you can see from these studies, the
14 proposed new addition would not be detrimental to the light and
15 air available for the neighboring property.

16 Specifically, for the neighboring property to the
17 north, by setting back the proposed addition four feet, we in
18 effect will have a dog leg, which is a very common scenario for
19 row homes within the Zone, in order to create opportunity to
20 install windows for light and air.

21 We have a unique situation here where the neighboring
22 property to the north occupies 100 percent of the lot. And had
23 at risk windows along the party wall.

24 With that being said, we believe that we are proposing
25 a sound solution for all parties involved. As we had mentioned

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1 previously, we have received letters of support from the neighbor
2 to the south, the ANC, DDOT, DC FEMS, and the Office of Planning.

3 So, for these reasons, as well as the owners'
4 statement as to why the proposed new addition is of high
5 importance, the Applicants respectfully request that the Board
6 grant approval for this Application.

7 And of course, we're happy to answer any questions.
8 Thank you.

9 BZA CHAIR HILL: Okay. Okay, thanks. Does the Board
10 have any questions of the Applicant?

11 (No response)

12 BZA CHAIR HILL: Okay. Mr. Soderman, did you just
13 join us? Could you introduce yourself, please?

14 I can't hear you, Mr. Soderman. Sorry.

15 MR. SODERMAN: One more mute button. I apologize.
16 Mike Soderman, 6A-03. I'm Commissioner as well as Secretary for
17 6A-03, representing 6A ANC in this matter.

18 BZA CHAIR HILL: Okay. Great. Well, welcome
19 Commissioner. As you know, you are also a party. And so you have
20 the same rights as everyone else.

21 So, we'll kind of work through this together. Let's
22 see, once again, does the Board -- Ms. Cain?

23 MS. CAIN: Sorry, just a legal issue. The shadow
24 studies that were just shown, came in late to the record. Or
25 actually they came in, and have not yet been uploaded to the

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1 record.

2 I don't believe that the Board addressed that when you
3 were going through the preliminary matters. So, to have them
4 added officially to the record, you would need to approve them
5 under Y-103.13(g).

6 BZA CHAIR HILL: Okay. I actually want to see the
7 shadow studies. So, unless the Board has any issues, I'm going
8 to go ahead and allow them into the record.

9 And if you do have any issues, please raise your hand.

10 (No response)

11 BZA CHAIR HILL: Okay. All right, Ms. Cain, if you
12 could please allow those into the record. And then, let's see.
13 Once again, does the Board have any questions of the Applicant at
14 this time?

15 (No response)

16 BZA CHAIR HILL: We might have questions as we kind
17 of go through this. Mr. Araya, do you have any questions of the
18 Applicant?

19 I can't hear you, Mr. Araya. I'm sorry.

20 MR. ARAYA: I do. I'm sorry. I do have one just
21 procedural on the sun study itself.

22 So, that was reviewed at the 6A meeting. It has not
23 been posted. I just went by notes. And this has been a new
24 updated study as well for today. That's the first time I've seen
25 it.

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1 Is that regular for a procedure like this? I thought
2 I had, like I submitted my things 24 hours in advance for the
3 hearing today.

4 And I've been told that the sun study and the shade
5 study were important. So, I'm just wondering about the timing of
6 that. And the posting of that.

7 MS. FELDER: May I comment on that, as to why it was
8 --

9 BZA CHAIR HILL: Just give me a second Ms. Felder.
10 Give me a second. That's it. The -- Mr. Araya, I guess, you
11 know, we -- we allow things into the record if we think that it's
12 not going to --

13 MS. CAIN: It's all regulation.

14 BZA CHAIR HILL: Yeah, I'm looking for the regulation
15 again, Ms. Cain. It was Y- --

16 MS. CAIN: It's Y-103.13(g). So, one of the things
17 that does have to be a (audio interference) --

18 COMMISSIONER SHAPIRO: Ms. Cain? Ms. Cain, we're
19 having trouble hearing you.

20 MS. CAIN: So, it's Subtitle Y.

21 BZA CHAIR HILL: Right. I got it. I got it. That's
22 okay. You don't have to read through it.

23 So again, it's if we feel that it's valid, this is
24 going to harm anyone by allowing it into the record also.

25 And I suppose Mr. Araya, you're saying you haven't had

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1 a chance to look at these sun studies. Correct?

2 MR. ARAYA: Right. The -- well, there's one component
3 of the sun study that was presented at the 6A meeting previously.
4 But the second part, I have not seen yet until right now.

5 And from what I've been advised, the sun study and the
6 shade study are pretty important factors for the impact of this.
7 So, if the Applicants can have this presented, I see myself at a
8 disadvantage for not even being able to review it.

9 BZA CHAIR HILL: Okay. That's all right. Give me a
10 second, Mr. Commissioner. I don't know why I don't see that Ms.
11 Cain. I'm just looking -- it's not in your report, the Y, then
12 right?

13 MS. CAIN: It's not because this came in prior to, or
14 after the time.

15 BZA CHAIR HILL: I'm just looking at another one. Let
16 me pull it up. Mr. Commissioner, do you want -- while I'm pulling
17 this up, you were going to say something?

18 MR. SODERMAN: I would just say one thing. As far as
19 the view, the first view that was presented today, was in addition
20 to, as far as what was presented, that was presented in front of
21 the full ANC. As well as the view without the addition.

22 So, those are the two views that weren't presented to
23 the ANC. But, I believe that they are beneficial as far as for
24 your consideration.

25 BZA CHAIR HILL: Right. Ms. Cain, can you tell me

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1 again, Y what?

2 MS. CAIN: It's Y-103.13(g). I would also note that
3 per Y-103.13(I), if the Board does decide to admit this into the
4 record, you can provide additional time for the parties.

5 So, Mr. Araya and the ANC to respond to them, prior
6 to coming to a decision on this case.

7 BZA CHAIR HILL: I'm just still having a hard time
8 finding it. Okay. Okay. All right.

9 So, this is what I propose. Let's go ahead in terms
10 of this Exhibit. I mean, I don't even know for sure how much this
11 is going to play into the testimony that we're taking. I'm
12 speaking to my Board Members.

13 But, I would suggest we go ahead and allow it into the
14 record. And then as we kind of play through this, we'll see
15 whether or not we think we want to allow Mr. Araya some kind of
16 time. And/or if we think that to respond to the sun study, and/or
17 if we think it's relevant, I suppose.

18 And now Ms. Cain, I'm actually going to look at this.
19 Because I guess what we could do is, we could -- now that I think
20 about it, we could maybe not allow it into the record right now.
21 Hear the case.

22 Then at the end of the day, determine whether or not
23 we want to allow it into the record. And then see whether or not
24 we would -- whether it's going to pertain, to whether it's going
25 to prejudice Mr. Araya. And if so, we give him more time.

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1 MS. CAIN: I mean, at this point, it's already been
2 presented. So, I think our recommendation would be to err on the
3 side of caution and allow the parties to have an opportunity to
4 respond to it.

5 BZA CHAIR HILL: Okay. I mean, it's -- don't --
6 haven't you seen like the TV show, the guy, the Judge says, please
7 disregard what you just heard. Right?

8 They seem to say that all the time. Right? I will
9 mentally erase. But, okay. Fine. So now, we're back to being
10 in the record. We'll go ahead and go through this.

11 We'll see what we're going to do with Mr. Araya and
12 the fact that he didn't have a chance to look at this ahead of
13 time. Okay?

14 Mr. Araya, did you follow along with that?

15 MR. ARAYA: Yes, pretty much. Thank you for your
16 support.

17 BZA CHAIR HILL: Okay. So, all right. So, Mr. Araya,
18 outside of that, did you have questions on the presentation?

19 MR. ARAYA: I did. More of a -- well, I guess two
20 questions and a comment. So, one is, in terms of standing at the
21 side of the window and looking up, right?

22 So you have a wall now four feet away from you, and
23 they're presenting the case of somebody standing at the window
24 looking up as their vantage point to get some light in their unit.
25 That's not a very, in my opinion, strong scenario of what you need

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1 for that property.

2 So, I -- I would object to, you know, that deeming of,
3 I don't know of a solution, or something that is beneficial to the
4 people living in this unit.

5 I also have the comment of all the afternoon sun. I
6 believe, Ms. Felder, that's directed from the north windows when
7 you're mentioning that, not the south windows.

8 Or are you saying the afternoon sun coming in from the
9 south facing windows?

10 MS. FELDER: The so -- from the south facing. It's
11 from the south. So, the sun rises in the east and sets in the
12 west.

13 So, as the sun travels around the property, you're
14 going to get sun that's going to penetrate between the wall, your
15 party wall, and the wall of the garage.

16 And then you're also going to get light that's going
17 to go in through that window that's off of the alley as well.
18 That's in the same space.

19 MR. ARAYA: Okay. So, --

20 MS. FELDER: It's in the empty space.

21 MR. ARAYA: Are you -- you're saying direct afternoon
22 sun from the south facing exposure?

23 MS. FELDER: From the south traveling to the west.

24 MR. ARAYA: Okay. Okay.

25 BZA CHAIR HILL: And Mr. Araya, you'll have a chance

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1 now to present. But do you have any questions about the
2 testimony?

3 MR. ARAYA: No. I think, I mean, for me I'm probably
4 better off presenting first. And then I can deal with questions
5 after.

6 BZA CHAIR HILL: Okay. Okay, great.

7 MR. ARAYA: If that's okay.

8 BZA CHAIR HILL: Yeah, yeah. Sure. Of course. So,
9 Mr. Araya you can go ahead and give your presentation.

10 MR. ARAYA: Thank you. Thank you, Mr. Chairman and
11 Members of the Board for the opportunity to present our side.

12 I am the owner of 116 12th Street N.E. I've been the
13 owner for 21 years. Although I do not live there now, we have had
14 a longstanding relationship with the Capitol Hill Neighborhood.

15 My mother was a vendor at the Capitol Hill Eastern
16 Market for about 20 years. She's been involved in the
17 preservation of the Eastern Market, including recovery after the
18 fire.

19 And it's a place, although I am a landlord, I'm not
20 living there now, it's a place I hold quite dear to me. So, it's
21 important to me.

22 And we have had a long history of having this house,
23 and living in it. I've lived in several of the units myself,
24 including this one in question.

25 And also supporting households living, our tenants,

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1 who are, you know, sometimes stay for one year, or sometimes stay
2 for eight years. And want to have the best quality of life for
3 them.

4 So, I just really want to address two things. The
5 impact on light and air. The statement is not to be unduly
6 affected. Right?

7 So, the light and air over our southern neighbor,
8 which is the property noticed going for this proposal, the 114,
9 is facing south. It gets a really strong amount of light.

10 And it is very important for this two rooms, because
11 these are the kitchen and the living room area of the unit. This
12 is a three bedroom unit.

13 The bedrooms are upstairs in the second floor. This
14 is kind of like the main living floor if you can consider it that.
15 The upstairs is really a hallway with two bedrooms.

16 The downstairs has the fireplace, this living room,
17 and the kitchen, and like a breakfast eating area. So, this is
18 where people spend their time.

19 And I think the impact on building this addition on
20 the neighboring garage would be quite significant in terms of the
21 quality of the unit and the quality of life of the unit.

22 I know there's been references to COVID and hardship.
23 But, it's also become more relevant to us as landlords, what
24 people are looking for in their home.

25 Now, spaces and air are even more important. And

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1 COVID is temporary and things are going to change. But, for now,
2 this is a big priority.

3 And I think having something like this impacted
4 adversely by this build, would make this unit a lot less
5 attractive, a lot harder to rent, and damage the value of the
6 property that's been there since 1879.

7 I know there's been some arguments about 100 percent
8 build. That's the way we bought it. And when it was built, it
9 was within code, within zo -- you know, within all the rules that
10 were legal.

11 So yes, we do have 100 percent build on the lot. But
12 that should not be detrimental to us protecting our property, and
13 protecting certain aspects of our property per the code.

14 In the application, there are some references to the
15 light and air will not be unduly affected. And I think even the
16 architect in the hearings with 6A, have said that it will be an
17 impact.

18 And I think it will be a significant impact on all of
19 these, on this unit, especially in the living area. So, I -- I
20 would like to implore on the council to consider the impact on the
21 people living in this unit. And what this build would do for
22 them.

23 That's all I have really. I mean, I have a PowerPoint
24 that I had set up with you. So, if you could open that up, and
25 I'll show.

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1 I was advised late in the game of this. This has been
2 the -- the oldest date you'll see on this plan of February. And
3 I became aware of this earlier this month.

4 And I was -- I had notices in November. But, I've
5 been trying to get sun studies for the last couple of weeks. And
6 I've gone to about 12 different architects or solar panel firms,
7 and nobody's available.

8 Because I do see the sun study as a little bit one
9 sided from the proposal. But, what I want to do is just show what
10 we have with some really simple pictures.

11 So, the face of -- the two windows look over the
12 property at 114 12th, 112 12th, a service lane, back into the
13 greens, and the backyards of the houses on East Capitol Street.

14 So, it's a fairly reasonable amount of light. And a
15 reasonable air that is given to this space from this.

16 So, I would like to just show what very simply, I know
17 it's not a high tech study like an architect would do. And I hope
18 to get one to be able to show the impacts of this.

19 But, just to show our side, very simply, I just took
20 some pictures from the windows of the living room and the kitchen.
21 So, if you can go to the next slide, please?

22 So, these are the windows, the first window in
23 question facing in the living room. And you can see the amount
24 of light. Unfortunately, the clarity is not great.

25 But, you can see two lots, street, greenery. It's --

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1 it's fairly nice. It helps. If you can go to the next slide,
2 you'll see the same window in the kitchen.

3 And on the right-hand side, you'll see the perspective
4 of where the kitchen is in terms of the living room. So, that's
5 the first window in question on the right picture, on the right-
6 hand side.

7 So, I -- again, these are very simple. But, I can
8 have more reports done if that is needed. But, I think if you
9 imagine this is what you're looking at every day. And four feet
10 away, you see a wooden wall.

11 And I do not see how that could not be unduly
12 affecting the quality of life of the people in this unit. If we
13 can go to the next slide, please?

14 I also have the comments from the Capitol Hill
15 Restoration Society, Zoning Committee. Just, I wanted to put
16 these in for the record, because I think they are helpful.

17 And I do appreciate also the Board giving us party
18 status. And you know, that's all really I have prepared.

19 I also would put into effect, put into question, if
20 the property next door has an additional unit in their basement,
21 why that hasn't been brought up as a possible solution?

22 Right? There is space in the house that could be used
23 right now. And while although we have occupants that change every
24 few years, I don't believe that denies them any different rights
25 or treatment as a citizen of D.C.

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1 Right? Just because they're a renter, doesn't mean
2 they're any lower than a landowner. And I think that's part of
3 my role to protect.

4 So, thank you very much. Thank you for your time and
5 your consideration.

6 BZA CHAIR HILL: Okay. Thank you, Mr. Araya. Does
7 the Board have any questions of Mr. Araya?

8 (No response)

9 BZA CHAIR HILL: I'm going to have questions of the
10 Office of Planning. So, that's why I'm just kind of, and then
11 we've got to go into loops here.

12 But, anybody got anything right now?

13 (No response)

14 BZA CHAIR HILL: No? All right. Mr. -- oh, and I
15 apologize, Commissioner. I forgot to jump right. Commissioner,
16 do you have any questions for Mr. Melzer and/or Mr. Araya at this
17 point?

18 MR. SODERMAN: I don't have any questions. I do have
19 one, can I make a comment?

20 BZA CHAIR HILL: Yeah. Give me one second. You get
21 to provide testimony also. I just forgot to ask the same
22 questions.

23 Do you have any questions?

24 MR. SODERMAN: I have no questions at this time, thank
25 you.

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1 BZA CHAIR HILL: Okay. All right. Mr. Melzer, do you
2 have any questions of Mr. Araya?

3 MR. MELZER: Yeah. Well, I mean, I'd like, -- he
4 actually asked a question of me. If I could respond to it? As
5 to why I don't use the basement apartment for the office.

6 So, if I could reply to that at this point.

7 (Simultaneous speaking)

8 BZA CHAIR HILL: It's not really a question. If you
9 want to talk about that in rebuttal, then you can. All right?

10 MR. MELZER: Okay.

11 BZA CHAIR HILL: So, but do you have any questions?

12 MR. MELZER: No. I don't think so.

13 BZA CHAIR HILL: Okay. So, Commissioner, do you want
14 to go ahead and give your testimony?

15 MR. SODERMAN: Yes, thank you. I would like too just
16 thank you for your time today. I have been on and off again all
17 day as well.

18 And recognize that this has been long, a long day for
19 you all. So, I will be brief.

20 At our December 9 ANC meeting, we did bring this up
21 in front of the full ANC for review. And both the Melzers and Mr.
22 Araya did present to us as far as their cases.

23 We voted seven to zero in support of this addition and
24 this project. And so, I just wanted -- I know that the letter
25 hasn't come through yet.

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1 We are an ANC. We are duly elected volunteers of the
2 city. And I know that it is working its way through its process
3 to you.

4 But, that is all.

5 BZA CHAIR HILL: Okay. We don't have the report yet.
6 Is that cor -- I'm confirming that, Commissioner, right?

7 And you guys did do --

8 MR. SODERMAN: I don't believe you do.

9 BZA CHAIR HILL: We don't. And so you did take a vote
10 and you did vote to approve.

11 MR. SODERMAN: We did take a vote. We approved it
12 seven to zero, zero commissioners abstaining.

13 BZA CHAIR HILL: Okay. And Mr. Araya was there at
14 that meeting?

15 MR. SODERMAN: Yes, sir.

16 BZA CHAIR HILL: Okay. All right. Does the Board
17 have any questions of the Commissioner?

18 (No response)

19 BZA CHAIR HILL: Mr. Araya, do you have any questions
20 of the Commissioner?

21 MR. ARAYA: No.

22 BZA CHAIR HILL: Mr. Melzer, do you have any questions
23 of the Commissioner?

24 MR. MELZER: No.

25 BZA CHAIR HILL: Okay. I'm going to turn to the

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1 Office of Planning.

2 MS. FOTHERGILL: Good evening, Chairman Hill and
3 Members of the Board. I'm Anne Fothergill from the Office of
4 Planning for BZA Case 20340.

5 And the Office of Planning has recommended approval
6 of the special exception for lot occupancy for the proposed
7 addition.

8 As again, the Applicant removed the request for relief
9 from out of the set out line. So, we clarified that on the record
10 with a supplemental letter.

11 We did find that it meets the specific criteria of
12 Subtitle E, Section 52.01. And I can go through those if you'd
13 like.

14 BZA CHAIR HILL: Yeah, sure Ms. Fothergill. Just kind
15 of walk us through a little bit of your analysis.

16 MS. FOTHERGILL: So, the -- the proposed addition is
17 approximately 250 square feet on the second floor of the garage.
18 And it meets the height, the max -- the maximum height for the
19 garage of 20 feet.

20 And it -- it is about a 250 square foot footprint.
21 They have -- the Applicant has set it in four feet from the
22 property to the north, and two feet from the alley, providing
23 additional light and air through those spaces.

24 There are no windows on the sides, so there shouldn't
25 be privacy issues. And it shouldn't intrude upon the alley the

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1 way it is designed and its sides shouldn't have a public impact.

2 And we did not find that it had an undue impact at all
3 in light and air or privacy or anything.

4 BZA CHAIR HILL: Okay. Ms. Fothergill, you might want
5 to hit your mute. I don't know who's muting or who's unmuting.
6 You may, Ms. Fothergill you can come in and out of mute. Mr.
7 Araya, if you wouldn't mind muting your line.

8 Ms. Fothergill, my first question is those windows,
9 are they at risk windows?

10 MS. FOTHERGILL: My understanding, based on the
11 Applicant's submission and what, what I've seen in the property
12 request and GIS is that they, they are on the property line.

13 They're all on the party walls. And they are what we
14 refer to as at risk for this.

15 BZA CHAIR HILL: Right. So, those windows are at
16 risk. And then the -- the dogleg that Applicant is creating,
17 they're doing that so that, or at least they seem to be doing it
18 so that light can actually get into those at risk windows,
19 correct?

20 They could have built to the property line.

21 MS. FOTHERGILL: That is correct.

22 BZA CHAIR HILL: Right. You're pulling back -- you're
23 pulling back, I'm sorry. So, they went from the centerline alley
24 setback. They pulled back to nine feet. Was that what it was?

25 MS. FOTHERGILL: Well, they pulled back from the alley

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1 centerline. So, they don't need -- they don't need alley
2 centerline relief.

3 I mean, they pulled back from that adjoining property
4 to the north, four feet.

5 BZA CHAIR HILL: Right. But that had nothing to do
6 with the alley centerline. Pulling back, they don't --

7 MS. FOTHERGILL: Yeah. They pulled two feet off the
8 alley, I think.

9 BZA CHAIR HILL: I'm just trying -- now maybe I'm
10 mixing it up. They're creating the dogleg in order to allow for
11 more light and air.

12 MS. FOTHERGILL: Yes. And that's the four foot inset
13 on the side.

14 BZA CHAIR HILL: Right. It's not because they're
15 trying to get out of being in variance.

16 MS. FOTHERGILL: No. I mean, the -- they reduced the
17 footprint so that they were at 70 percent. And it's a special
18 exception.

19 BZA CHAIR HILL: Got it. Okay. All right. Okay.
20 The -- and this is what I'm trying to look, I'm looking at the
21 diagrams. Like, those -- the two -- oh, never mind.

22 I'll ask my colleagues. So, do my colleagues have any
23 questions for the Office of Planning?

24 COMMISSIONER SHAPIRO: I just want to clarify, Mr.
25 Chair, if I may? I just want to clarify a very specific question

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1 you asked them. And that the area is where I was as well.

2 So, the only -- the relief was around lot occupancy.
3 So they could -- they could cover the windows.

4 MS. FOTHERGILL: This is a rogue filing. You can go
5 property line to property line.

6 COMMISSIONER SHAPIRO: Okay. So, if they had relief.
7 Okay. That's it. I just wanted to clarify that question. That's
8 all I have, Mr. Chair.

9 BZA CHAIR HILL: Okay. Mr. -- well, I'll start with
10 the Commissioner. Commissioner Soderman, do you have any
11 questions for the Office of Planning?

12 I think you're saying no. I --

13 COMMISSIONER SHAPIRO: He's on mute.

14 MR. SODERMAN: Too many buttons. I apologize. You'd
15 think after this long in COVID, I'd have that nailed down. But,
16 I don't.

17 I don't have any other questions. I would say that
18 part of our review through our EDC subcommittee and the ANC, did
19 recognize that these two windows in question were at risk.

20 And that we believed that the Applicant was taking
21 every caution for being able to do a three foot to a four foot
22 setback in order to be able to not enclose them.

23 I think that they've been doing a phenomenal job as
24 far as to get this done. I mean, because they could just board
25 them up.

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1 I mean, they could -- it's on the property line,
2 right? They could file for an option that they would go away,
3 correct?

4 BZA CHAIR HILL: So, that was a question of the Office
5 of Planning. I believe Ms. Fothergill is saying yes. But, please
6 go ahead, Ms. Fothergill.

7 MS. FOTHERGILL: Oh, sorry. I -- I, yes. The -- they
8 could go to the party wall is my understanding.

9 MR. SODERMAN: Okay. Thank you.

10 BZA CHAIR HILL: Okay. Mr. Melzer, do you have any
11 questions for the Office -- well, I'm sorry. I got to make the
12 other.

13 Mr. Araya, do you have any questions for the Office
14 of Planning?

15 MR. ARAYA: I just have a question of what at risk is
16 defined as?

17 MS. FOTHERGILL: I -- I hope I stated that it's a term
18 that's used. I don't think it's a defined term in the Zoning
19 Regulations.

20 But, something constructed along the party wall of the
21 adjoining property would be at risk of being obscured by something
22 constructed to that property line.

23 MR. ARAYA: Okay. Thank you. I do have one more
24 question if I could ask? It's been mentioned by Councilman
25 Soderman and other people that they can build to this party wall

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1 and block off these windows.

2 That would entail getting space from somewhere else
3 if I'm not mistaken. Is that correct?

4 MS. FOTHERGILL: The Applicant has set back four feet.
5 And they have the footprint that calls for a special exception at
6 7 percent lot occupancy.

7 So, if they filled in that four feet, they would
8 either go over the 7 percent, and need to apply for a variance.
9 Or they would take the four feet from somewhere else.

10 MR. ARAYA: Right. So, either they would go for a
11 variance, which was initially what this proposal was at before the
12 four foot change.

13 Or, they would have to get that square footage from
14 somewhere else. If I'm -- if I'm understanding this correct.

15 MS. FOTHERGILL: That is correct.

16 MR. ARAYA: Okay. Thanks. Thank you.

17 BZA CHAIR HILL: Okay. Let's see. Mr. Melzer or Ms.
18 Dalmia, do you have any questions for the Office of Planning?

19 MS. DALMIA: Well, we have a comment. But, we can
20 save that. But, no.

21 BZA CHAIR HILL: Okay. All right. Okay. All right,
22 let's see then. So, I'm going to go with now, does anybody --
23 does the Board have anything they want to ask before I go to
24 rebuttal for Mr. Melzer and Ms. Dalmia?

25 (No response)

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1 BZA CHAIR HILL: Okay. So, Mr. Melzer and Ms. Dalmia,
2 as well as Ms. Felder, so now what you have, this is rebuttal.
3 Right?

4 I'm not an attorney. And so, you know, but what I
5 understand again, is you can refute any of the testimony that
6 might have been given.

7 And then what happens is, whatever you say, if it's
8 something new, then Mr. Araya has a chance to refute anything you
9 say.

10 I say all that, which is then be careful what you say.
11 Because now somebody else is going to have an opportunity to
12 refute whatever you say. Okay?

13 So, do you have any rebuttal, Mr. Melzer and Ms.
14 Dalmia?

15 MS. DALMIA: I mean, I'm not sure rebuttal is the
16 correct terminology. But, you know, Mr. Araya raised some issues
17 we'd like to respond to that.

18 If that fits the definition of rebuttal, then we would
19 like to do that now. Or we can wait.

20 BZA CHAIR HILL: Well you can go ahead. Go ahead and
21 do it. I don't know what's going to happen. So, go ahead.

22 MR. MELZER: You want to go?

23 MS. DALMIA: You go.

24 MR. MELZER: Okay. So, just to reply to a number of
25 the points that Mr. Araya made. So, he asked, why don't we,

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1 instead of building on the garage, we have that nice basement
2 apartment beneath us.

3 Why don't we just use that? And that's a perfectly
4 reasonable question. But, the answer is, of course, that the only
5 reason we could afford this house, is that it has a rental unit.

6 If we lose the rent from that basement apartment,
7 we're going to have a very hard time, you know, making our
8 mortgage payments.

9 So, it's just not an option for us. I mean, I wish
10 it were. That would be much simpler. But, it's -- it's not
11 possible.

12 We need that income. It was part of the package when
13 we -- that was part of the assumptions on which we, we bought this
14 house.

15 So, that would be one point. Then a number of
16 organizations or committees have been mentioned as having endorsed
17 our proposal. But, Mr. Araya mentions one organization, the CHRS
18 Zoning Board.

19 And they under the chairmanship of Gary Peterman, I
20 think?

21 MS. DALMIA: Peterson.

22 MR. MELZER: Peterson. And he opposed our proposal.
23 But, I'd like to -- I'd like to just respond to that fact.

24 You know, I read the letter that is in the record,
25 placed there by Mr. Araya. And that is --

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1 MS. DALMIA: Yes -- yesterday for certain.

2 MR. MELZER: Yesterday. Yeah.

3 MS. DALMIA: Yeah. So we didn't have a lot of time
4 to go over it. But, it was just yesterday we saw this.

5 MR. MELZER: Yeah. And so I just wanted to point out
6 that this letter is clearly based on incomplete information.

7 Because as Mr. Peterman -- Peterson states, his
8 decision to oppose hinges on the fact that there are no sun
9 studies to un, you know, to indicate that there might not be a
10 problem with the blocking of the windows.

11 Now, the truth as we all know, is that there are sun
12 studies. And there have been sun studies, you know, for I don't
13 know, a month and a half or so. I forget when they were first
14 completed.

15 And the only reason why Mr. Peterson doesn't know that
16 in his committee, is because they never told me they were holding
17 this meeting. I feel like I've been tried in absentia.

18 I don't know, I'm not accusing him of bad faith.
19 There must be some kind of wire crossed, or mistake, or something.
20 But, I --

21 MS. DALMIA: Because we had been in touch with Mr.
22 Peterson about a month and a half ago. And we had asked to go on
23 his docket.

24 And --

25 MR. MELZER: And I have sent it --

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1 MS. DALMIA: And we never heard back from him. And
2 the next, the next time we heard of Mr. Peterson, was from his
3 letter yesterday, --

4 MR. MELZER: Right.

5 MS. DALMIA: When we, you know, saw it.

6 MR. MELZER: So, here's -- the bad info, the poor
7 information upon which he's basing it is there are no sun studies,
8 when there were.

9 And also, he's assuming that the set back is three
10 feet. He's not acquainted with the new plan to set back four
11 feet.

12 And then there's also one more thing that he's unaware
13 of. And that I haven't yet had a chance to mention in this
14 meeting. It seems to me in some ways the most important thing.

15 Which is, that from the beginning, not only did we
16 start with a set back of three feet, and then voluntarily change
17 it to four feet.

18 But from the beginning, I've been trying to reach out
19 to Mr. Araya and to, see if we could not reach some kind of
20 accommodation. I feel very uneasy about building something and
21 having an impact on someone, even if it's a minimal impact, as I
22 think in this case it is.

23 And so I've tried again and again, to reach out to
24 him. I believe the first letter I wrote, effort was on November
25 8 in an email. And that was followed the very next day with

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1 another email correcting a mistake I had made in the first one.

2 Then there were, I believe, two phone calls. And then
3 finally, just -- just before the ANC meeting, I believe --

4 MS. DALMIA: Yeah. Two, three hours before the ANC
5 meeting.

6 MR. MELZER: I did -- I did hear from Mr. Araya. And
7 we arranged to have a phone call. And I explained that I was
8 eager for the phone call, because I wanted to reach some kind of
9 compromise and accommodation.

10 But, he, I mean, he was perfectly polite. And he was
11 willing to have the phone call. But, I asked him, what could I
12 do to, you know, accommodate him? And to -- to, you know, right
13 what he feels are these wrongs?

14 And he -- he really said that, I don't want to put --
15 I don't want to put words in his mouth, but he has the impression
16 that there was basically nothing.

17 I mean, I -- he came up with nothing. I was
18 suggesting, you know, pulling the set back, back further. He made
19 clear that that wasn't going to move him and so on.

20 BZA CHAIR HILL: Okay. Okay, that's hearsay. That's
21 okay. I'm just trying to figure out what's rebuttal and what's
22 new testimony. And what's testimony and all that.

23 It's okay. So, Mr. Araya, I'm going to -- I think you
24 guys are kind of done, right?

25 So, Mr. Araya, do you have anything you'd like to

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1 comment concerning what you've just heard?

2 MR. ARAYA: Two things. One with respect to timing
3 on the permits and applications that I've gone through since I've
4 become aware of this.

5 I see dates of February. So, I would ask what
6 happened between February and November on the first attempt to
7 contact me?

8 I did not receive the first attempt to contact in
9 November. I use this email for managing the property. And I get
10 a lot of junk mail, and it went too there.

11 In December, as soon as I got it, and I was aware of
12 it. Fortunately it was at the beginning of the month. Which is
13 when I go into this and do all the monthly bills and all the
14 activity on it.

15 I did jump on it. And I looked at the proposal. And
16 we had a conversation about it. So I, you know, saying that I was
17 late to the game, or that I'd been informed, is, I think, a little
18 unfair.

19 And while we're on the question of timing, the posting
20 of the letter by Mr. Peterson, that's somewhat out of my control.
21 Mr. Peterson put it up.

22 I put it up on my presentation ahead of time, which
23 I complied with what I thought was the, you know, the rules of
24 this hearing.

25 And I would venture to say that there is no sun study

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1 posted to this, to this point yet. Right? We had a sun study at
2 the ANC council meeting a couple of weeks ago. But, we did not
3 have a shade study.

4 The point in Mr. Peterson's letter was that he
5 recommended a shadow study. Which might have been the impetus for
6 the one we saw today.

7 So, I do think that Mr. Peterson's points are being
8 heard. They probably are being reacted to. And you know, if they
9 weren't that pertinent, why are we seeing a shadow study all of
10 a sudden?

11 So, I -- I, you know, I appreciate the points that are
12 being brought up. But, I think in terms of timing, there's
13 something to look at for that.

14 And you know, I -- that's my major real point is that
15 this would really impact the quality of life in the unit. So,
16 that's all I need to say.

17 BZA CHAIR HILL: Okay. I gotcha. So, I'm going to
18 let us get to a couple of conclusions here. See if there's any
19 more questions.

20 And then see if we have anything else to add before
21 we get to a little bit of a deliberation on a couple of things.
22 One also being the shadow study and such.

23 I see your fingers Mr. Melzer and Ms. Dalmia. Give
24 me one second. And then Ms. Felder also.

25 So how this works, is you guys just gave rebuttal.

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1 Mr. Araya just commented to whatever supposedly you just
2 commented.

3 Okay. Now what happens is there's a conclusion.
4 Okay, right? And you don't have to now go back, because it just
5 goes back and forth, back and forth. Okay?

6 So, you know, Mr. Araya supposedly just made comments
7 on what you just made comments on. Okay? And there wasn't
8 supposed to be new testimony. Whatever.

9 We're all listening to everything. Right? So now,
10 I -- Okay. So, Mr. Melzer and Ms. Dalmia, you had your fingers
11 up. What did you want to add?

12 You're on mute. You're on mute.

13 MR. MELZER: Okay. What I wanted to say was, that
14 maybe I'm just going about this too clumsily. But, the main point
15 is not, I haven't had the opportunity to make the main point.

16 The main point is that as I said, I was seeking
17 compromise. And I haven't yet told you that there's -- that after
18 that unsuccessful phone call, we caucused with Tenika.

19 She came up with what I think is a wonderful idea for
20 a compromise. And I'd like to put that on the table. And --

21 BZA CHAIR HILL: Okay, hold up. Hold up. Hold up.
22 Hold up. Hold up. This is the last case of the hearing. We'll
23 -- let's just -- it's my last case of the year, okay?

24 Let me just see what happens. Okay? Right? So, you
25 all didn't have a chance to talk yet. If you all want to talk,

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1 that's fine.

2 But, I know where I am right now. Okay. So, so Mr.
3 Araya, do you have anything you'd like to add as a conclusion?

4 All right, hold on. Hold on. Ms. Felder you have
5 something to say?

6 MS. FELDER: Yes. All I wanted to say was that of
7 course we presented our evidence. The reason why the sun studies
8 were not posted to the record was that the IZIS system only takes
9 pdf files. This was an MP4 file. There was no way for me to
10 upload it.

11 So, the only way that I could present these was at the
12 ANC meeting. And then Mr. Melzer and Ms. Dalmia tried to contact
13 Mr. Araya after the ANC meeting so that he could see these sun
14 studies. And he never responded to them.

15 So, that's the reason why the sun studies were not
16 posted. But the efforts were made for him to be able to try to
17 view all the important studies.

18 BZA CHAIR HILL: Okay. So then, it doesn't matter
19 whether they were or weren't posted. Okay. They weren't posted
20 until right now.

21 And so, that's all I know. Right? And we can talk
22 about whether or not this got presented at the ANC. And that will
23 be a question, I guess.

24 Mr. Soderman, Commissioner Soderman? Are these the
25 same sun studies that were presented at the ANC? Yes or no?

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1 You're still on mute. Sorry.

2 MR. SODERMAN: Double mute. Partially. These are not
3 the same sun studies that were presented in front of the ANC not
4 completely.

5 BZA CHAIR HILL: Partially. Okay. That's all right.
6 Fine. So, Mr. Araya, do you have anything you'd like to add in
7 conclusion?

8 MR. ARAYA: I would like to add also one comment on
9 the losing rent. Right? So that is a concern for the proposal
10 from Mr. Melzer.

11 We are also losing rent right now. So, we have this
12 unit vacant. And this unit is going to be less attractive. So,
13 we're in the exact same position.

14 BZA CHAIR HILL: Okay. Mr. Melzer and Ms. Dalmia, do
15 you have any conclusion that you'd like to add at the end?

16 You're on mute.

17 MS. DALMIA: Well, you know, there are other -- we
18 have talked to other neighbors in the area who have very similar
19 structural situations as -- as this property would be.

20 One of them is, I think, even on the call right now.
21 And, you know, so they can speak to the whole situation.

22 BZA CHAIR HILL: Okay. Give me a second. I forgot.
23 I forgot whether there was anybody. Mr. Young, is there anybody
24 here wishing to testify?

25 MR. YOUNG: Yeah. We have one on now.

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1 BZA CHAIR HILL: Okay. All right. So, give me a
2 second. This is all gumming me up a little bit.

3 So, I've got to take testimony here. So, let's see
4 who we got. Is it Mr. Weinberger?

5 MS. DALMIA: We can't hear.

6 MR. WEINBERGER: Can you hear me?

7 BZA CHAIR HILL: Yes. Can you hear me?

8 MR. WEINBERGER: Yes, I can.

9 BZA CHAIR HILL: Could you please introduce yourself
10 for the record?

11 MR. WEINBERGER: My name is Jerry Weinberger. And I
12 and my wife, Diane, live at 125 11th Street, N.E., which is within
13 the radius of 114 12th Street.

14 BZA CHAIR HILL: When you say the radius, you mean,
15 what? The 200 foot radius?

16 MR. WEINBERGER: Well, yeah. No, the area of people
17 who could be impacted by the -- by the project.

18 BZA CHAIR HILL: Okay. And I'm just cur -- are you
19 within 200? It doesn't matter to take testimony. I'm just
20 curious.

21 Are you within 200 feet?

22 MS. WEINBERGER: Yes.

23 MR. WEINBERGER: Yes.

24 BZA CHAIR HILL: Okay. So, you guys will have three
25 minutes to give your testimony. And you can begin whenever you

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1 like.

2 MR. WEINBERGER: All right. We support this proposal.
3 And we think that it will increase the value of the property, and
4 therefore, the value of the properties in the neighborhood as a
5 whole.

6 And we also think that the plan accommodates any air
7 and light issues involved. And we understand that the property
8 affected is a rental property.

9 Our property is a four story townhouse with an English
10 basement flat rental, a ground floor flat rental, and we live on
11 the top two stories.

12 But of the rental flats below us have side windows
13 that look out to a light well between our property and the
14 adjacent and partially attached property to the south.

15 In other words, they both look out to a wall. And the
16 basement flat has a door that also opens out to that same wall
17 that's about three feet away.

18 In the 14 years we've owned and lived in our property,
19 it has never taken us more than one day to rent either of the
20 flats after a prior tenant has departed. And tenants have stayed
21 between four and eight years.

22 The bay window in our dining room faces the same light
23 well. And we find the same oppose, opposing modeled wall to be
24 quite charming.

25 Arrangements like this are just very common on Capitol

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1 Hill where all of, or almost all of the houses are row houses with
2 party walls.

3 The three townhouses to the north of us, all have this
4 similar arrangements with light wells that provide light and air.
5 But, when you look at of these into the walls, you see nothing but
6 another wall.

7 MS. WEINBERGER: And nobody has any difficulty renting
8 these units.

9 MR. WEINBERGER: Yeah. So, in this case we think that
10 the project is perfectly reasonable. And moreover, the comment
11 that it would produce a result that is actually quite common in
12 the neighborhood in general.

13 Thank you.

14 BZA CHAIR HILL: Okay. Thank you. Does the Board
15 have any questions of the witnesses?

16 (No response)

17 BZA CHAIR HILL: Does the Applicant have any questions
18 of the witness? You're shaking your head no.

19 Does -- Mr. Araya, do you have any questions of the
20 witness?

21 MR. ARAYA: I would like to point out that Mr.
22 Weinberger and Mr. Melzer are colleagues.

23 BZA CHAIR HILL: Okay. All right. So that's -- and
24 I appreciate it. But it's not a question. So, do you have any
25 questions of them?

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1 MR. ARAYA: No.

2 BZA CHAIR HILL: No? Okay. Mr. -- Commissioner
3 Soderman, do you have any questions of the witness?

4 (No response)

5 BZA CHAIR HILL: Okay. All right. You guys, thank
6 you so much for your testimony. Thanks for hanging around. And
7 you can enjoy the rest of your evening.

8 MR. WEINBERGER: All right.

9 BZA CHAIR HILL: Okay. Let's see, so Mr. Young, if
10 you could excuse the witnesses, please? Thank you.

11 All right. So, back to the conclusion. Right, Mr.
12 Araya, did you finish with your conclusion? I can't remember.

13 MR. ARAYA: Yes, I did. Basically I just followed up
14 on the losing rents and, you know, we're in the exact same
15 situation.

16 So, that's the last point I had in my conclusion.

17 BZA CHAIR HILL: Got it.

18 MR. ARAYA: Timeliness, you know, I've been trying to
19 be timely in terms of posting and being forward with my
20 information. And I'm not seeing the same thing on the other side.

21 So, that's my end.

22 BZA CHAIR HILL: Mr. Melzer, Ms. Dalmia, I forget
23 whether you were finishing up?

24 MS. DALMIA: Finishing up, meaning what?

25 BZA CHAIR HILL: This is -- this is, we're at the end.

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1 MS. DALMIA: Yeah. Yeah.

2 BZA CHAIR HILL: And so, we're going to have a
3 conclusion. You're just wrapping it up. Do you have any wrap,
4 further wrap up to give?

5 MR. MELZER: One last point. And that is, that as it
6 turns out, in our kitchen, we have a window that is blocked by Mr.
7 Araya's house.

8 And the block is not at four feet away, but it's --
9 it's --

10 MS. DALMIA: It's like two feet.

11 MR. MELZER: No, no, no. It's three and a half.
12 Three and a half feet. And, so we -- we have context.

13 BZA CHAIR HILL: Okay. Wait. Mr. Melzer and Ms.
14 Dalmia, I got it. Like I'm just saying like that's kind of new
15 testimony again.

16 I'm just trying to figure if you have any kind of
17 conclusion --

18 (Simultaneous speaking)

19 MR. MELZER: I keep stumbling with new testimony. I
20 just want to say that it's not as bad as it sounds.

21 BZA CHAIR HILL: Okay. So, you're wrapping -- so you
22 wrapped up?

23 MR. MELZER: I'm done.

24 BZA CHAIR HILL: Okay. So I'm now looking at my
25 fellow Board Members, because I'm back to -- and if you all would

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1 mute your lines, please. And then I'm going to go around.

2 Now, normally -- well, I'll kind of tell you where I
3 am. Right? And this is -- this is unfortunate. I guess I'm
4 going to just lay my hand out here a little bit.

5 Mr. Araya, the light and air that you're most
6 concerned with, are from at risk windows. So, again, they are
7 providing four foot set back where they don't have to provide any
8 set back.

9 I understand your point, which was that they are here
10 for lot occupancy. So, if they wanted to come up against your
11 windows to block them, they'd have to find the space from
12 somewhere else.

13 But, what I'm saying is, they could do that. Right?
14 So, they have already pulled it back from three feet to four feet.
15 And therefore, you're getting more light.

16 We've seen a lot of these before, by the way. Right?
17 And the windows get blocked. So, that's why I'm kind of cutting
18 to the chase on this one, which is that there is a dogleg that has
19 been provided for you.

20 And I'm not necessarily speaking to you, even though
21 it looks like I am. I'm kind of talking to my Board Members.
22 Because what we now have to decide, is whether or not we think
23 that per the regulations, there is -- the proposed exhibit, how
24 it would not unreasonably prejudice any party.

25 So, I'm speaking to my Board Members, which is to say,

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1 I don't think that sun study is unreasonably prejudicing any party
2 by bringing it in. Right?

3 Had I thought about this more fully, I would have
4 maybe not let it in at all. So, the only other -- so -- so,
5 that's kind of why I'm saying that I don't think it's unreasonably
6 prejudicing a party in a particular sense.

7 And I'm speaking to my Board Members. And I'm leaving
8 everybody in the hearing session right now, because I just want
9 to see how this plays out, because I'm going to see what my Board
10 Members have to say.

11 Is that I don't know what else necessarily we would
12 do or get from Mr. Araya that he needs in order to change any of,
13 I think, the discussion that is currently at hand.

14 That's why I'm saying it doesn't prejudice him for
15 being in the record. And I would leave it in the record and have
16 it in the record.

17 And that there was a similar sun study that was done
18 at the ANC. Whether or not it was exactly the same, it was at
19 least somewhat similar so that there was something that was being
20 seen.

21 So, I'm looking to my Board Members for help in terms
22 of do we need to do something now that -- do you all think we need
23 to do something now for Mr. Araya to respond to this sun study
24 that has now been put in the record?

25 And Mr. Shapiro is nodding his head yes.

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1 COMMISSIONER SHAPIRO: No, no. I'm signaling that I
2 want to speak.

3 BZA CHAIR HILL: Oh, go ahead then.

4 COMMISSIONER SHAPIRO: Because I mean, I would go even
5 one step further than you, Mr. Chair. The sun study, I thought
6 it was kind of cool technology actually.

7 But, setting that aside, the sun study has no bearing
8 on my decision at all.

9 BZA CHAIR HILL: Okay. All right. So then Mr. Smith?

10 MEMBER SMITH: Mr. Shapiro took the words right out
11 of my mouth. It has no bearing really on me. Because especially
12 considering those windows are already at risk.

13 BZA CHAIR HILL: Okay. So, I got the votes already.
14 But, Ms. John?

15 VICE CHAIRPERSON JOHN: I would echo everything that's
16 been said. That these are at risk windows. And the Applicant has
17 provided a light well, which is more than they're required to do.

18 So the sun studies won't affect my decision at all.

19 BZA CHAIR HILL: Okay. All right.

20 VICE CHAIRPERSON JOHN: They were kind of cool. I
21 mean, I thought they were -- it was nice technology. But, in
22 terms of, you know, helping me to decide, it would not affect my
23 decision one way or the other.

24 BZA CHAIR HILL: Okay. So as to Y-303.13(g), I'm good
25 with allowing it into the record. Okay? And so now before we say

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1 goodbye to everybody, I also want to say on the record, the rental
2 has nothing to do with anything.

3 Like whether or not it's a rental property or it's not
4 a rental property, they have the same rights that anybody else.
5 Meaning that Mr. Araya's property has the same rights whether it's
6 a rental property or whether he owns it.

7 So, just to let you all know that. Okay. So, that
8 being the case, the hearing is closed. The record is closed.
9 It's been, you know, a pleasure to share the end of my year with
10 you all.

11 I hope it was somewhat entertaining. And
12 unfortunately, not everybody's going to get what they want. But,
13 we're going to say goodbye.

14 So, that is it. Thank you. Have a nice holiday.

15 MR. SODERMAN: Have a Happy New Year.

16 BZA CHAIR HILL: Thank you very much.

17 MR. MELZER: Thank you.

18 BZA CHAIR HILL: Thank you. All right. We've excused
19 everyone from the room. I'm ab -- I'm able to deliberate on this
20 now.

21 And so, you know, it seems like you all are as well.
22 Since I've talked for the past 12 hours, or there close to, Mr.
23 Shapiro, would you like to start?

24 COMMISSIONER SHAPIRO: Sure, Mr. Chair. I think it's
25 actually despite the hour and the length of the conversation, it

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1 feels like it's a very straightforward case.

2 They, you know, they've -- the lot occupancy is the
3 primary issue. And they're fine. I can't -- I'm too tired to
4 remember what the other relief they're asking for was.

5 But, the relief they're asking for has nothing to do
6 with the set back of the party wall, even though that was the
7 majority of our conversation.

8 So, I don't have concerns with this case. And I'll
9 be voting to support the application.

10 BZA CHAIR HILL: All right. Mr. Smith?

11 MEMBER SMITH: Again, Mr. Shapiro, I'll give you that.
12 I feel like this is a very straightforward case that was overly
13 posed and made more complicated by this discussion of the shadow
14 study.

15 So, these are at risk windows. The only reason why
16 the applicant was before us, is the occupancy. I won't belabor
17 the point. But, I'll just be saying what Mr. Shapiro was saying.

18 I am in support of the special exception. And I give
19 great weight to the planning report.

20 BZA CHAIR HILL: Board Member John?

21 VICE CHAIRPERSON JOHN: So, the application meets the
22 requirement for lot occupancy relief. I think looking at the
23 photograph of the garage, I think the light well will mitigate any
24 loss of light.

25 And so, I think the application meets the requirement

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1 for relief and it meets the special exception requir -- the
2 general special exception requirement of not causing any undue,
3 or any adverse impact to -- to the neighbor.

4 There will be some impact. But, whatever impact is
5 not adverse. There is still area to have light and air because
6 of the light well.

7 And so I'm -- I'll be voting in support of the
8 Applicant.

9 BZA CHAIR HILL: Okay. Thank you. And yeah, I mean,
10 we're here for the lot occupancy relief. Right? So, they got rid
11 of the whole, you know, alley line center, you know, alley
12 centerline relief.

13 And we're just here for the lot occupancy. We ended
14 up speaking a lot about light and air, because it was affecting
15 the way the property was to be constructed. Right?

16 And I think that, you know, I gave my hand away right
17 at the beginning. Which is that they were propos -- you know, in
18 terms of that dogleg, we've seen people, you know, people build
19 up against the at risk windows all the time and they get nothing.

20 And usually it happens enough, and we've seen it where
21 it's just way worse. Where like, you know, it's somebody's only
22 window. And so, you know, and that gets taken away.

23 And so, the fact that there was an additional foot to
24 four feet from three feet for that dogleg, I think that would
25 further mitigate any adverse impact for that light and air to

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1 those windows.

2 And so I am still also in support of the analysis that
3 the Office of Planning has provided concerning how they're meeting
4 the criteria for us to grant this special exception.

5 And then also, the fact that the ANC was also in
6 support, is helpful. Is helpful. So, it is unfortunate that, you
7 know, I mean, I thought -- I thought by the way that everybody was
8 very respectful, you know, in talking with one another.

9 I hope that they continue to be able to have a good
10 relationship. Because, you know, it sounds as though the
11 Applicant was doing their best to accommodate the neighbor. And
12 the neighbor was also at least understanding of what was going on.

13 So, I didn't -- I thought they were both very cordial.
14 And I would hope that together they can remain neighbors and good
15 neighbors.

16 So, with that, unless anybody has anything else they'd
17 like to add, I'm going to go ahead and make a motion to approve
18 Application Number 20340 as captioned and read by the Secretary.
19 And ask for a second, Ms. John?

20 VICE CHAIRPERSON JOHN: Second.

21 BZA CHAIR HILL: The motion has been made and
22 seconded. Mr. Moy, could you please take a roll call?

23 SECRETARY MOY: When I call your name, if you would
24 please respond with a yes, no, or abstain. The motion made by
25 Chairman Hill to approve the Application for the relief requested.

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1 The motion is seconded by Vice Chair John.

2 Zoning Commissioner Peter Shapiro?

3 COMMISSIONER SHAPIRO: Yes.

4 SECRETARY MOY: Mr. Smith?

5 MEMBER SMITH: Yes.

6 SECRETARY MOY: Vice Chair John?

7 VICE CHAIRPERSON JOHN: Yes.

8 SECRETARY MOY: Chairman Hill?

9 BZA CHAIR HILL: Yes.

10 SECRETARY MOY: We have a Board seat vacant. Staff
11 would record the vote as four to zero to one. And this is on the
12 motion of Chairman Hill to approve. Seconded by Vice Chair John.
13 Also in support of the motion, Mr. Smith and Zoning Commissioner
14 Peter Shapiro. Board seat vacant.

15 Motion passes four to zero to one.

16 BZA CHAIR HILL: Okay. Great. So, if I might take
17 this opportunity. And then please, anyone who has anything they'd
18 like to add.

19 I would like to really say sincerely it's a pleasure
20 to work with all of you. The Zoning Commissioner Members, we only
21 rotate in every week. But they've all been wonderful.

22 Commissioner Shapiro, thank you so much. Mr. Smith,
23 it's been a pleasure to add you to our team. Ms. John, glad to
24 see you with us as always.

25 Mr. Moy, all your staff and all at of the team,

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1 without -- as I've said before, without it, I wouldn't be able to
2 kind of maintain my sanity.

3 And as a final, I would also like to thank again,
4 Mayor Bowser for her help and support, allowing me to continue
5 with this. So, I thank all the people working.

6 Is there anything any of you would like to add on well
7 wishes at the end here?

8 COMMISSIONER SHAPIRO: I concur.

9 MEMBER SMITH: I second it.

10 VICE CHAIRPERSON JOHN: Happy Holidays. I would sing
11 a Christmas song for you all. But, you know, I'll defer.

12 SECRETARY MOY: Well, just on behalf of the BZA and
13 the Office of Zoning, and Mr. Chairman, we appreciate all that the
14 Board does.

15 My only regret for this year is that we have not done
16 what we traditionally do around this time. Is when we hold a nice
17 holiday reception for you guys. So, I'm sorry about that.

18 BZA CHAIR HILL: That's true. That's true. I want
19 to get my fried chicken again next year.

20 VICE CHAIRPERSON JOHN: Me too.

21 BZA CHAIR HILL: Okay.

22 VICE CHAIRPERSON JOHN: I miss the cake.

23 BZA CHAIR HILL: What's that Ms. John?

24 VICE CHAIRPERSON JOHN: I miss the cake from
25 downstairs.

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1 MEMBER SMITH: Yeah.

2 BZA CHAIR HILL: Yeah. There's a lot of cakes. Mr.
3 Smith doesn't even know.

4 MEMBER SMITH: No. It's just -- I'm just taking it all
5 in.

6 COMMISSIONER SHAPIRO: So no one's ever had a reuben
7 from Jack's Deli?

8 MEMBER SMITH: From where? Jack's Deli? No.

9 COMMISSIONER SHAPIRO: That's a shame.

10 (Laughing)

11 BZA CHAIR HILL: Okay you guys. Well you all have a
12 nice happy holiday. And a Happy New Year. We'll see you next
13 year.

14 VICE CHAIRPERSON JOHN: Happy Holiday. Be safe
15 everyone.

16 MR. SMITH: Happy Holiday Mr. Chairman.

17 BZA CHAIR HILL: Thank you. We are adjourned.

18 (Whereupon, the above-entitled matter went off the
19 record at 6:17 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 12-23-20

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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