

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

FEBRUARY 10, 2021

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

ELISE VITALE  
MAXINE BROWN-ROBERTS  
STEVE COCHRAN  
MATTHEW JESICK  
CRYSTAL MYERS  
KAREN THOMAS  
STEPHEN MORDFIN

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JOHN K. RICE, Esquire  
ALEXANDRA CAIN, Esquire

The transcript constitutes the minutes from the  
Regular Public Hearing held on February 10, 2021

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

(9:48 a.m.)

CHAIRPERSON HILL: The hearing will please come to order. Good morning, ladies and gentleman. We are convened and broadcasting this public hearing by video conference. This is the February 10, 2021, public hearing of the Board of Zoning Adjustment, District of Columbia. My name is Fred Hill, Chairperson. Joining me today is Lorna John, Vice Chairperson, Chrishaun Smith, Board Member. Representing the Zoning Commission is Peter Shapiro.

Today's hearing agenda is available here on the Office of Zoning website. Please be advised that this proceeding is being recorded by a court reporter. It is also webcast live via Webex and YouTube Live.

The webcast video will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who is listening on Webex or telephone will be muted during the hearing. The only persons who have signed up to testify will be unmuted at the appropriate time.

Please state your name and home address before providing oral testimony or your presentation. Oral presentations should be limited to a summary of your most important points. When you're finished speaking please mute your audio so that your microphone is no longer picking up the sound of background noise.

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1 call difficulty, of if you forgot to sign up 24 hours prior to  
2 this hearing, then please call our OZ Hotline at 202-727-5471.  
3 Once again, 202-727-5471 to sign up to testify or to receive Webex  
4 log in or call-in instructions.

5 All persons planning to testify either in favor or in  
6 opposition should have signed up in advance. You'll be called by  
7 name to testify. If this is an appeal, only parties are allowed  
8 to testify. By signing to testify all participants will be given  
9 the oath and affirmation as required by Subtitle Y 408.7.

10 Requests to enter evidence at the time of an online  
11 virtual hearing, such as written testimony or additional  
12 supporting documents other than live video, which may not be  
13 presented as part of the testimony, may be allowed pursuant to  
14 Subtitle Y 103.13, provided that the persons making the request to  
15 enter an exhibit explain how the proposed exhibit is relevant, the  
16 good cause that justifies allowing the exhibit into the record,  
17 including an explanation of why the requester did not file the  
18 exhibit prior to the hearing, pursuant to Subtitle Y 206, and how  
19 the proposed exhibit would not necessarily prejudice any parties.

20 The order of procedures for special exceptions and  
21 variances are pursuant to Subtitle Y 409. If this is an appeal,  
22 it's pursuant to Y 507.

23 At the conclusion of each case an individual who is  
24 unable to testify because of technical issues may file a request  
25 for leave to file a written version of the planned testimony into

1 the record within 24 hours prior to conclusion of the public  
2 testimony and the hearing.

3 If additional written testimony is accepted, then  
4 parties will be allowed a reasonable time to respond, as  
5 determined by the Board. The Board will then make its decision at  
6 its next meeting, but no earlier than 48 hours after the hearing.

7 Moreover, the Board may request additional specific  
8 information to complete the record. The Board and the staff will  
9 specify at the end of the hearing exactly what is expected and the  
10 date when persons must submit the evidence to the Office of  
11 Zoning. No other information shall be accepted by the Board.

12 The Board's agenda may include previous cases set for  
13 decision after the Board adjourns the hearing. The Office of  
14 Zoning, in consultation with myself, will determine whether a  
15 full or summary order may be issued. A full order is required when  
16 the decision it contains is adverse to a party, including an ANC.

17 A full order may also be needed if the Board's decision differs  
18 from the Office of Planning.

19 Although the Board favors the use of summary orders  
20 whenever possible, an applicant may not request the Board to issue  
21 such an order. The District of Columbia Administrative  
22 Procedures Act requires that the hearing on each case be held in  
23 the open, before the public. However, pursuant to 405(b) and 406  
24 of the Act, the Board may, consistent with its rules of procedures  
25 and the Act, then turn to a closed meeting on a case for purposes

1 of seeking legal counsel on a case, pursuant to DC Official Code  
2 Section 2-575(b)(4), and/or deliberating on a case pursuant to DC  
3 Official Code Section 2-575(b)(13), but only after providing the  
4 necessary public notice and in the case of an emergency closed  
5 meeting, after taking a roll call vote.

6 Preliminary matters are those which relate to whether a  
7 case will or should be heard today, such as a request for a  
8 postponement, continuance, or withdrawal, or that proper and  
9 adequate notice of the hearing has been given.

10 Mr. Secretary, do we have any preliminary matters today?

11 MR. MOY: Mr. Chairman, in fact we do. But for the  
12 efficiency of the Board, I would suggest I bring that before you  
13 when I call the case. Other than that, the only other  
14 announcement I have is for the record for today's docket. We have  
15 four cases that have been rescheduled and postponed.

16 The first two cases have been rescheduled to March 10,  
17 2021. These two cases are Application Numbers 20342 of Peggy  
18 Kennedy, and Application Number 20313 of FHD, LLC.

19 The third case is Number 18238A of Eighth Street, LLC.  
20 And that's been rescheduled to March 31, 2021.

21 And finally, Case Application Number 20380 of Polygon  
22 Holdings, LLC. That has been postponed and rescheduled to April  
23 28, 2021. And that's it, Mr. Chairman.

24 CHAIRPERSON HILL: Okay. Thank you. I neglected to  
25 mention in that previous meeting, I don't know if the party status

1 person is still listening or not, but they would have an  
2 opportunity to testify during the hearing itself. So that is  
3 something that I just wanted to make note of.

4 Mr. Moy, you can go ahead and call our first case.

5 MR. MOY: All right. This would be Case Application  
6 Number 20385 of Matthew and Jacqueline Robertson, and Bernadette  
7 Eichelberger. For special exceptions under the accessory  
8 apartment requirements of Subtitle U, Section 253.4, and under  
9 Subtitle D, Section 5201, from the rear yard requirements of  
10 Subtitle D, Section 1206.2. This would construct a basement  
11 accessory apartment and a rear deck, an existing attached  
12 principal dwelling unit in the R-20 Zone, at premises 1934 37th  
13 Street, Northwest, Square 1309, Lot 44.

14 There are, in this case, Mr. Chairman, as you are aware,  
15 four requests for party status, two in support of the application  
16 and two that are opposed to the application. And the Applicant  
17 has responded, opposed to the request for party status of those  
18 that were opposed to the application. So those are your primary  
19 preliminary matters.

20 CHAIRPERSON HILL: Okay. Great. Thank you. Let me  
21 see, is Mr. Burke here?

22 MR. ROBERTSON: I would defer to our project architect  
23 from Studio 27, if she could respond to this matter.

24 CHAIRPERSON HILL: Okay. Mr. Robertson, you're the  
25 Applicant, correct?

1 MR. ROBERTSON: Yes, Chairman Hill.

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

4 MR. ROBERTSON: Yes. I am Matthew Robertson. My wife  
5 Jackie and I live at 1934 37th Street, Northwest, Washington, DC.

6 CHAIRPERSON HILL: Okay. And I'm sorry, you said the  
7 architect is here?

8 MR. ROBERTSON: Yes. Our project architect, Allyson  
9 Klinner, is here.

10 CHAIRPERSON HILL: Okay. Ms. Klinner, could you  
11 introduce yourself for the record?

12 MS. KLINNER: Yes. I am Allyson Klinner, project  
13 architect with Studio 27 Architecture.

14 CHAIRPERSON HILL: Okay. And I think -- so there's four  
15 people. So we're here -- well, we're here for a variety of  
16 reasons. But one is the party status. And I'm looking for Mr.  
17 Kim or Ms. Kim. I can't see you or hear you.

18 MS. KIM: It's Ms. Kim. Good morning.

19 CHAIRPERSON HILL: Good morning. Can you turn on your  
20 camera?

21 MS. KIM: Sure. Let me see here, how do I start this  
22 video?

23 CHAIRPERSON HILL: There you go. Perfect.

24 MS. KIM: Good morning. How are you, Mr. Young.

25 CHAIRPERSON HILL: Good morning. Thank you. Let's see,

1 and then there's Mr. Reed, are you there?

2 MR. REED: Yes, I am.

3 CHAIRPERSON HILL: Okay. Can you introduce yourself  
4 for the record?

5 MR. REED: I'm Richard Reed. I live on 38th Street,  
6 1933 38th Street, which kind of adjoins the property in question  
7 from the rear.

8 CHAIRPERSON HILL: Okay. Could you turn on your camera  
9 as well?

10 MR. REED: Oh, I'll try. I thought this controlled by -  
11 -

12 CHAIRPERSON HILL: There's a little icon at the bottom  
13 of your screen.

14 MR. REED: Introduce the next people and I'll keep  
15 fumbling with this.

16 CHAIRPERSON HILL: Okay. No problem. Let's see, is it  
17 Mr. Hillabrant, are you there?

18 MR. HILLABRANT: I'm here. Walter Hillabrant, 1927 38th  
19 Street, Northwest, Washington, DC 20007.

20 CHAIRPERSON HILL: Okay. Thank you. Thank you, Mr.  
21 Hillabrant. And then is it Ms. Bhatia?

22 MR. BHATIA: Mr. Bhatia here, 1936 37th Street,  
23 immediately adjacent.

24 CHAIRPERSON HILL: Okay. I'm a little confused. Mr.  
25 Reed, I thought you were adjacent to the property, are you?

1 MR. REED: Not adjacent, but the rear of my property  
2 abuts the rear of the property of the Applicant. MS.

3 KIM: I'm adjacent to the property. I'm at 1932 37th Street,  
4 directly adjacent to 1934.

5 CHAIRPERSON HILL: Got it. Ms. Kim and Mr. Bhatia,  
6 you're both adjacent to the property. And Mr. Reed and Mr.  
7 Hillabrant, you guys are not adjacent to the property, and both of  
8 you are in support, correct?

9 MR. REED: Correct.

10 CHAIRPERSON HILL: Okay. And Mr. Hillabrant, you're in  
11 support, correct?

12 MR. HILLABRANT: Yes.

13 CHAIRPERSON HILL: All right. So Ms. Klinner, do you  
14 have any comments about the party status or the people asking for  
15 party status?

16 MS. KLINNER: Do I have any comments? Yes. Are we  
17 going to jump straight into that? Or I think my client wanted to  
18 give a brief introduction to the project.

19 CHAIRPERSON HILL: Yeah, I think we're going to try to  
20 do a party status first. And so Mr. Robertson, I guess, Mr.  
21 Robertson, do you have a comment about the party status?

22 MR. ROBERTSON: Yes, sir. As you'll see in exhibit 47A,  
23 in response to Mrs. Kim's request, we request that the Board deny  
24 her party status request because she has failed on Form 140 to  
25 demonstrate that the relief we are requesting, namely recreating

1 our existing rear deck and designating our basement as an  
2 accessory apartment will cause her harm. Additionally, you know,  
3 we try to demonstrate in exhibit 47A that she and her attorney  
4 have not acted in good faith and are seeking to obstruct and delay  
5 the work at the BZA, as well as our proposed work. And then  
6 thirdly, the granting her party status will have a  
7 disproportionate negative impact on us as the Applicants.

8 We have similar grounds to deny Mr. Bhatia's party  
9 status request. Additional note that Mr. Bhatia's party status  
10 request was improperly submitted. As I understand party status  
11 requests need to be submitted 14 days in advance of hearings, his  
12 was submitted seven yours and 33 minutes after that time.

13 CHAIRPERSON HILL: Okay. Let me do this first thing.  
14 So you guys just put in a site plan; is that correct, underneath  
15 the 21-day rule. And so you're asking for a waiver for that,  
16 correct, Ms. Klinner?

17 MS. KLINNER: That's correct.

18 CHAIRPERSON HILL: Okay. So as far as the Board is  
19 concerned, as far as the waiver, I'd like to see the site plan.  
20 And so I'd like to include that into the record, unless the Board  
21 has any issues with that. Please raise your hand, and I'm  
22 watching my Board members. I don't see anybody raising their  
23 hand. So we'll go ahead and waive that rule and allow the site  
24 plan into the record.

25 In terms of the opposition, I know that -- and I'll go

1 to my fellow -- well, I guess, Ms. Kim, I'll start with everyone  
2 giving an opportunity as to why they believe they should be  
3 granted party status. Ms. Kim, I'll start with you.

4 MS. KIM: Yes. The first thing I need to ask you for,  
5 Mr. Young, is would you mind unmuting my attorney, Mr. Ed Pugh,  
6 who is with us? He's unable to raise his hand at the moment. So  
7 we are going to need a little bit of time to make sure that he's  
8 present at this meeting.

9 CHAIRPERSON HILL: Okay. Ms. Kim, my name is Mr. Hill,  
10 just to let you know. You keep calling me Mr. Young. But that's  
11 okay.

12 MS. KIM: I'm sorry. I apologize.

13 CHAIRPERSON HILL: That's all right. It's not a  
14 problem. Mr. Young, is the attorney on the line?

15 MR. PUGH: Yes. Mr. Hill, this is Ed Pugh, counsel for  
16 Ms. Kim.

17 CHAIRPERSON HILL: Okay. All right. All right, Mr.  
18 Pugh, welcome. So Mr. Pugh, are you going to argue why you should  
19 be given, why Ms. Kim should be given party status?

20 MR. PUGH: Yes, sir. But I use Webex every day from the  
21 DC Superior Court, but I'm having a terrible time with hearing  
22 you. I've got you on my cell phone so that I can hear you. I do  
23 not have a camera icon on here, which I use every day.

24 CHAIRPERSON HILL: That's all right.

25 MR. PUGH: Okay. I just didn't want you to think that

1 I was trying to hide.

2 CHAIRPERSON HILL: Do you want to go ahead and tell us  
3 why you think Ms. Kim should be granted party status?

4 MR. PUGH: Yeah. I would say she should be granted  
5 party status because she is the immediate neighbor. She has  
6 significant concerns about the water runoff. We have significant  
7 concerns about an additional basement unit, which does require the  
8 exception, significant concerns about parking should the unit be  
9 rented by another two to three people. And I believe that since  
10 she's directly beside the petitioners, that she should have party  
11 status.

12 CHAIRPERSON HILL: Okay. All right, Mr. Pugh. All  
13 right. Mr. Bhatia -- oh, Mr. Moy, go ahead and comment.

14 MR. MOY: Yes. Very quickly, Mr. Chairman. Mr. Pugh,  
15 since he called in, he wasn't able to be administered the oath.

16 CHAIRPERSON HILL: All right. Mr. Pugh, can you hear  
17 me, Mr. Pugh?

18 MR. PUGH: Yes, sir.

19 CHAIRPERSON HILL: Mr. Moy is going to administer the  
20 oath to you right now. If you can listen, please.

21 MR. PUGH: Yes, sir.

22 Whereupon,

23 ED PUGH,

24 was duly sworn, and was examined and testified as follows:

25 MR. MOY: Also, Mr. Chairman, the ANC is on the line

1 if you wish to add them into the hearing.

2 CHAIRPERSON HILL: Okay. Great. Commissioner Putta,  
3 are you there?

4 (No response.)

5 CHAIRPERSON HILL: Commissioner, can you hear me?

6 (No response.)

7 CHAIRPERSON HILL: You might have to unmute your line,  
8 Commissioner. If you go down to the bottom of the screen it will  
9 say mute or unmute.

10 MR. MOY: Well, in the meantime I'll have the staff  
11 work on this, Mr. Chairman.

12 CHAIRPERSON HILL: Okay. All right. Mr. Bhatia, could  
13 you please let us know why you think you should have party status?

14 MR. BHATIA: Yes, sir. In a nutshell, because my home is  
15 immediately adjacent to the Applicant's party, shares a party  
16 wall, and I believe by simple virtue of proximity be potentially  
17 disproportionately affected in terms of light, air, water,  
18 enjoyment of my home. And I have various concerns that I'd like  
19 to air during this meeting.

20 I'd also add, if you permit, that on the day that I  
21 filed for party status I did check in with the BZA office. We  
22 confirmed that I wasn't late, that I had until midnight that day,  
23 DC time, and my application was filed at 4:59, and reach  
24 recipients at 5:03, so hours in advance. I would suggest I not be  
25 rejected on a technicality.

1           CHAIRPERSON HILL:     Okay.     Unless the Board has an  
2 issue, I mean, we've allowed people party status where much less,  
3 were later than a few hours. And so I would allow Mr. Bhatia to  
4 have his party status discussion take place. And if the Board has  
5 any issues, please raise your hand. I don't see that. So, Mr.  
6 Bhatia, we're going to go ahead and allow this discussion to  
7 continue.

8           Mr. Reed, do you have -- could you tell us why you think  
9 you should be granted party status in support?  
10 You're on mute, Mr. Reed.

11          MR. REED:   Hello.   Can everyone hear?

12          CHAIRPERSON HILL:   Yes.

13          MR. REED:   Great.   Anyway, because I look back directly  
14 at his property, I'm well within the 200-foot line. I can  
15 appreciate improvements in the neighborhood. There was a  
16 controversy a few years ago about trying to get historical  
17 designation for Burleith. I was in opposition then. And this is  
18 like a continuance of that, where I approve of people doing things  
19 to their property. And in terms of basement apartments, I think,  
20 you know, all of a herd of horses is knocking out of that barn in  
21 this neighborhood. One more doesn't make a great deal, especially  
22 when it's trampling on someone's property rights by denial.

23          CHAIRPERSON HILL:   Okay.   Mr. Hillabrant, could you  
24 please give your testimony as to why you believe you should be  
25 given party status in support? And Mr. Reed, if you could mute

1 your line for me. Mr. Hillabrant, you're on mute.

2 MR. HILLABRANT: My name is Walter Hillabrant. I've  
3 lived in Burleith for 47 years. My wife and I have raised our  
4 daughter here. I've been active in supporting our community,  
5 serving as vice president, secretary and at large for a number of  
6 the Burleith Citizen's Association for a period. I think it's  
7 fair to say I've been around for a long time. I believe this  
8 application should be granted.

9 A renovated home and the tenant's request for special  
10 exception would have a positive impact on relief. I urge the  
11 commissioners to support the Applicant's request for relief in  
12 order to recreate their current deck and have a basement  
13 apartment.

14 About 25 years ago Burleith cited in favor of pop-ups,  
15 and against historical designation, as Mr. Reed has already  
16 pointed out. The property in question, 1934 37th Street is about  
17 57 feet from our property. I see 1934 out of my windows every  
18 day. I really like the proposed design, even without the deck.  
19 But with the deck it improves the view from our house even more.

20 Precedent has already been set with regard to decks.  
21 The proposed small deck extends about the same difference as  
22 others on the west side of the block, 1930 block. Any  
23 presentation at the ANC or BZA might set against a non-conforming  
24 deck in Burleith will have broad implications to decrease or  
25 property value and property rights.

1           Basement apartments are common in this neighborhood.  
2 They add diversity to the Burleith community by allowing lower  
3 income by (audio interference) live in the city. Basement  
4 rentals help middle class homeowners pay mortgages that would  
5 otherwise be beyond their means. And sure, basement apartments  
6 serve the public good. The decision against the basement rentals  
7 by the BZA or ANC would set a precedent that would potentially  
8 depress the property values by making our property less active to  
9 buyers.

10           The Applicants are good neighbors. In contrast to the  
11 non-resident property owners at 1932 and 1936, the Applicants  
12 maintain a nice yard and help many of their neighbors with yard  
13 maintenance. They are familiar, and open and honest.

14           In brief, the Applicant shows a commitment to the values  
15 of our community. Any decision against the current application  
16 will set precedents that may impact the ability of owners for  
17 property enhancement and changes in the future. I request that  
18 the commissioners support the application. Thank you.

19           CHAIRPERSON HILL: Okay. Thank you, Mr. Hillabrant.  
20 All right. Does the Board have any questions -- one second Mr.  
21 Bhatia. Mr. -- one second. Mr. Bhatia, you had a question?

22           MR. BHATIA: If I may. I reject the characterization of  
23 myself as a non-resident property owner. I am a resident property  
24 owner.

25           CHAIRPERSON HILL: Okay. That's all right, Mr. Bhatia.

1           So does the Board -- no, no. You guys, we're just  
2 talking now. So does the Board have any questions for -- oh,  
3 Commissioner Putta, can you hear me?

4           MR. PUTTA: Yes. Hello.

5           CHAIRPERSON HILL: How are you?

6           MR. PUTTA: I'm fine. Thank you, Mr. Hill.

7           CHAIRPERSON HILL: Good. Could you please introduce  
8 yourself for the record?

9           MR. PUTTA: Absolutely. I'm Kishan Putta, the ANC  
10 Commissioner for single member District 2E01. And I do know these  
11 neighbors. I've visited the site of this home. I do know Ashok,  
12 Jee Jee, Richard, Walter, and Matthew all pursuing our ANC  
13 considered input from both sides and issued a resolution. Are you  
14 interested in hearing it right now?

15           CHAIRPERSON HILL: Commissioner, we're just kind of  
16 going through party status at this point. I just wanted to give  
17 you an opportunity to introduce yourself for the record.

18           MR. PUTTA: Absolutely. Thanks. I'm happy to answer  
19 any questions.

20           CHAIRPERSON HILL: Ms. Kim, just give me one second.  
21 All right. I'm looking at my Board members. Do any of my Board  
22 members have any questions for any of the parties that are asking  
23 for party status?

24           (No response.)

25           CHAIRPERSON HILL: I don't see anyone raising their

1 hand. Oh, Mr. Shapiro?

2 COMMISSIONER SHAPIRO: Mr. Chairman, I wonder if this --  
3 I'm trying to make sense of whether there are like issues. If  
4 there is some opportunity for folks who are requesting party  
5 status to combine with each other.

6 CHAIRPERSON HILL: I guess, Mr. Shapiro, so we can -- so  
7 we can talk about this now. I mean, I know where I kind of am in  
8 general. And so maybe let's kind of see where we get. I'm not  
9 really sure who is going to be granted party status at this point.  
10 You know, in terms of the regulation, I would think that Ms. Kim  
11 and Mr. Bhatia, being adjacent neighbors in opposition, actually  
12 meet the regulation in terms of how they would be given party  
13 status. And Mr. Reed and Mr. Hillabrant would be able to give  
14 testimony in support, as well as Commissioner Putta in terms of  
15 what the ANC had said and how, you know, the hearing would go. So  
16 at this point, and I'll try to go around the Board to see what  
17 your thoughts are. I would go ahead and grant party status to Ms.  
18 Kim and Mr. Bhatia. And I would actually be in favor of moving  
19 forward with the hearing because it seems as though we have  
20 everyone here, and it seems as though we have a full record for  
21 which to kind of go through this process. But I will see what my  
22 fellow Board members have to say. And I'll start with you, Mr.  
23 Shapiro.

24 COMMISSIONER SHAPIRO: Thank you, Mr. Chairman. I  
25 agree with you related to the parties in opposition. In terms of

1 the parties in support, as I look at the map, I see that the Reed  
2 property effectively abuts. It's a little bit, but it's certainly  
3 within 200 feet and it connects by corner. Mr. Hillabrant, the  
4 Hillabrant property is a little bit different from that. That's  
5 where I was wondering, where I was leaning was to grant Mr. Reed  
6 party status as well, and to ask Mr. Hillabrant to join in with  
7 Mr. Reed. Or if not, we would just hear testimony by  
8 (unintelligible). So I think I'm inclined to grant Mr. Reed as  
9 well.

10 CHAIRPERSON HILL: Okay. Mr. Smith?

11 BOARD MEMBER SMITH: I agree with granting party status  
12 to Mr. Hillabrant and Mr. Reed. They are both abutting property  
13 members. Mr. Hillabrant is slightly away. But I do believe that  
14 he does back up to the property. So I would be inclined to give  
15 party status to both Mr. Hillabrant and Mr. Reed.

16 CHAIRPERSON HILL: And then also to Ms. Kim and Mr.  
17 Bhatia?

18 BOARD MEMBER SMITH: Correct. Because they directly  
19 abut.

20 CHAIRPERSON HILL: Okay. Ms. John?

21 VICE CHAIR JOHN: Thank you, Mr. Chairman. I agree  
22 that the adjacent neighbors meet the party status under the  
23 regulations. Can you hear me?

24 CHAIRPERSON HILL: Yeah. I was waiving to Mr.  
25 Robertson. He was trying to say something. Go ahead, Ms. John.

1                   VICE CHAIR JOHN:   And as to Mr. Hillabrant and  
2 Mr. Reed, I sort of agree with Mr. Smith. I do believe that Mr.  
3 Reed, as an abutting neighbor, also has an interest that's  
4 supported by the regulations. And I don't think that Mr.  
5 Hillabrant does not qualify. Because his property is to the rear,  
6 a little distance away. So I would allow party status to both Mr.  
7 Hillabrant and Mr. Reed, and would also suggest that they join  
8 together in presenting their case, to make the process more  
9 smoothly. So, yeah, I would -- the long and short of it is, I  
10 would grant party status to everyone.                   CHAIRPERSON HILL:  
11 Okay. Well, I seem to have a split vote here a little bit on the  
12 party status in support. The -- Mr. Reed, do you know Mr.  
13 Hillabrant?

14                   MR. REED: Oh, yes.

15                   CHAIRPERSON HILL: Okay. Do you guys have each other's  
16 phone numbers?

17                   MR. REED: We text and call. Yes.

18                   CHAIRPERSON HILL: Okay. All right. Well, then what  
19 we're just trying to do is be efficient about this, Mr. Reed and  
20 Mr. Hillabrant, and make sure everyone has an opportunity to be  
21 heard. So if you Mr. Reed, and Mr. Hillabrant would agree that we  
22 grant you party status together, and you could present together.  
23 And so what that means is that, I mean, because it's video it's  
24 very difficult. If you were in the hearing room it would be  
25 easier for me to allow you guys to kind of talk together. And so

1 I guess it really doesn't matter, I suppose, at this point because  
2 you're probably each going to have your own testimony. And so I  
3 guess we can grant party status to everybody. Because I don't see  
4 how I'm going to be able to combine this in an easy way. And I'm  
5 just seeing if my Board members are at least nodding with me, so I  
6 don't have to go around the table again. Ms. John, you see -- Mr.  
7 Shapiro?

8 COMMISSIONER SHAPIRO: Thank you, Mr. Chairman. I  
9 mean, I agree. I'm more concerned (phone ringing) I don't see Mr.  
10 Hillabrant abutting the property.

11 CHAIRPERSON HILL: Okay. All right. That's fine. So  
12 then we're back to Mr. Reed, we're going to grant -- so I'm  
13 looking at my Board members as I kind of try to figure this out.  
14 So, Mr. Reed, we're going to grant you party status, I guess. And  
15 Mr. Hillabrant, we're going to deny your party status, but you can  
16 testify with Mr. Reed. If you can like, you know, I'll give you -  
17 - you both can testify together. But Mr. Reed would be the person  
18 who would be officially getting party status. Do you understand,  
19 Mr. Hillabrant?

20 MR. HILLABRANT: Yes. I understand. And it's an honor  
21 to work with Richard Reed.

22 CHAIRPERSON HILL: All right, Mr. Hillabrant. Okay.  
23 That's great.

24 All right. Let's see now, Mr. Robertson, do you have  
25 something you wanted to say?

1 MR. ROBERTSON: Yes. Thank you so much. A few times  
2 the commissioners have referred to the property owners at 32 and  
3 36 as neighbors. I would just like to say for the record that  
4 neither live at the properties in question.

5 CHAIRPERSON HILL: That's okay, Mr. Robertson. We'll  
6 get to all that during the testimony. And also, it doesn't matter  
7 whether they live there or not, they own the properties. So okay.  
8 So what about us having this hearing now. Mr. Shapiro?

9 COMMISSIONER SHAPIRO: I have no concerns with having  
10 the hearing now. We have all the parties here.

11 CHAIRPERSON HILL: Okay. Vice Chair John?

12 VICE CHAIR JOHN: I'm fine with having the hearing now.

13 CHAIRPERSON HILL: Mr. Smith?

14 BOARD MEMBER SMITH: I'm fine with having the hearing.

15 CHAIRPERSON HILL: Okay. All right. Then, let's see,  
16 okay. I guess we'll go ahead and have the hearing. So what that  
17 means now is, Mr. Pugh, can you hear us?

18 MR. PUGH: Yes, sir.

19 CHAIRPERSON HILL: Okay. So --

20 MR. PUGH: (Unintelligible audio.)

21 CHAIRPERSON HILL: I'm sorry, Mr. Pugh. You kind of go  
22 in and out there on the phone. But we'll figure it out. Okay.  
23 So Ms. Klinner, you're going to be presenting for the Applicant,  
24 correct?

25 MS. KLINNER: Yes.

1 CHAIRPERSON HILL: Okay. So Ms. Klinner, what you're  
2 going to do now is go ahead and give your testimony. And then  
3 everyone will have an opportunity to ask questions of you. And  
4 then the party status people will have an opportunity to give  
5 their testimony. And then you will have an opportunity to ask  
6 questions of the party status people. And then we're going to go  
7 to the Office of Planning, we're going to hear from the  
8 commissioner, we're going to hear from everybody. And everybody  
9 will have a chance to ask questions of everybody. At the end you  
10 will have an opportunity to rebut anything that has been said.  
11 And then there will be a conclusion that you'll get. Okay?

12 MS. KLINNER: Okay.

13 CHAIRPERSON HILL: So if everyone could just mute their  
14 line. And we're going to go ahead and get started. And Ms.  
15 Klinner, you can begin whenever you'd like.

16 MS. KLINNER: Okay. Can I first -- I think my client,  
17 the Applicant, Mr. Robertson wanted to give a few brief  
18 introductory remarks. Is that okay before I start with testimony?

19 CHAIRPERSON HILL: Are you -- Ms. Klinner, are you  
20 actually going to testify to why the Applicant meets the standard  
21 for us to grant the application?

22 MS. KLINNER: Yes.

23 CHAIRPERSON HILL: Okay. All right. Okay, Mr.  
24 Robertson.

25 Mr. Young, can you start the clock going forward for me.

1 Okay. Thanks. And Mr. Robertson, you can begin whenever you'd  
2 like.

3 MR. ROBERTSON: Thank you, Chairman Hill, Vice Chair  
4 John, and the rest of the Board for your time today. Jackie and I  
5 have lived at our house at 1934 37th Street for eight years now.  
6 In fact, prior to going to college I lived the first 18 years of  
7 my life in DC, first at 3812 T Street, Northwest, and then at our  
8 current house on 37th Street. Of my 34 years of life I have lived  
9 26 of them in DC. Jackie and I both love this city, and we plan  
10 spend the majority of our lives in this house.

11 When my family first purchased our home on 37th Street  
12 in 1996, there was a medium size silver maple tree growing through  
13 the deck. And if you fast forward to the present, that tree is  
14 now mammoth and has caused substantial damage to our deck and  
15 several structural components of our house. In fact, arborists  
16 from DDOT recommended for removal of the tree and we regretfully  
17 have a permit to do just that.

18 We found that the cost of removing this tree and then  
19 fixing all of the damage it's caused was enormous and, just  
20 frankly, cost prohibitive unless we made some long-awaited  
21 improvements and by right expansions to the house at the same  
22 time. And so we then began to complete mostly by right renovation  
23 of our home. And after consultations with many architects and  
24 design build firms, we arrived with Studio 27 as the ideal  
25 architectural partner in this undertaking.

1           And so I'd now like to turn the floor over to our  
2 architect from Studio 27, Allyson Klinner.

3           MS. KLINNER:   Thank you.  As Matthew said, I am Allyson  
4 Klinner, Studio 27 Architecture.  We're a local Washington, DC  
5 based firm here.  We have been working with the Robertson's to  
6 develop and realize a vision for their property.  And after  
7 extensive discussion and review possible plans, our clients, with  
8 our guidance, have arrived at a design for their property as  
9 exhibited in the submitted exhibits for this case.

10           And as you can see from the exhibits and the design, the  
11 majority of the client's proposed project is by right.  However,  
12 we do have two special exceptions that my client is seeking today.  
13 Each special exception, their request has ample precedent not only  
14 in the Burleith neighborhood where they reside, but also just  
15 throughout DC in general.  Specifically, they're requesting relief  
16 in order to, as we've discussed previously, designate their  
17 basement as an accessory apartment and to recreate their current  
18 deck.

19           I am happy now to briefly take you through the proposed  
20 design, if that would be helpful.  I don't know if I have screen  
21 share permissions or if I should just kind of verbally walk  
22 through the plans that have already been entered into the  
23 exhibits.

24           CHAIRPERSON HILL:   Mr. Young, is there a way that Mr.  
25 Klinner can share, screen share?

1 MR. YOUNG: Yeah, there is. I can give her the ability  
2 to do that. You should be able to share your screen now.

3 MS. KLINNER: Okay.

4 COMMISSIONER SHAPIRO: Mr. Chair, a question.

5 CHAIRPERSON HILL: Sure, Commissioner Shapiro.

6 COMMISSIONER SHAPIRO: Ms. Klinner, are you working  
7 through the updated architectural plans on exhibit 16 and 17 that  
8 we have before us? I just want to go along.

9 MS. KLINNER: I'm sorry, I barely could understand you.  
10 Could you repeat that?

11 COMMISSIONER SHAPIRO: Yeah. Are you -- do you have a  
12 separate presentation in looking at the record? I just want to go  
13 along with this as well. So are giving updated architectural  
14 plans on exhibits 16 and 17; is that what you're showing us?

15 MS. KLINNER: No. These are all of the -- I'm just  
16 referencing the currently entered exhibits. So starting with  
17 exhibit 17, the updated architectural plan. Nothing new that  
18 wasn't already in the database.

19 COMMISSIONER SHAPIRO: Okay. Thank you. I appreciate  
20 that.

21 MS. KLINNER: Sure. Can you see my screen now?

22 CHAIRPERSON HILL: Yes.

23 MS. KLINNER: Okay. So this is starting with the  
24 architectural plans here. Just, I'm going to give a brief  
25 overview of what we're proposing here. This is the existing site

1 plan with the existing footprint of the house. As you can see,  
2 extending currently four feet beyond the adjacent properties on  
3 either side, with a 12-foot-deep existing non-conforming deck that  
4 sits 14 feet back from the rear property line.

5 This would be the proposed new site plan here. As we  
6 mentioned, part of the design is pushing out the rear of the house  
7 with a six-foot addition, thereby extending the full mastings of  
8 the house ten feet beyond those adjacent properties, and then  
9 recreating the rear deck off the first floor, not to extend it  
10 beyond its current footprint. So still maintaining the 14-foot  
11 setback from the rear property line, but essentially being half  
12 the size of the existing deck.

13 Starting at the basement. As you can see, here's both  
14 the existing and the proposed design. Again, the major change  
15 here would be extending the footprint of the basement out six feet  
16 from its current footprint. There would be no excavation to the  
17 floors beyond the lowest level that already exists.

18 Moving up. Here again, you can see the first floor, the  
19 six-foot addition. And again, at 10 feet beyond the neighboring  
20 properties. And as I've already mentioned, reconstructing a deck  
21 in the current footprint of the existing deck, thereby sitting 14  
22 feet back instead of 20 feet back from the rear property line as  
23 required by the zoning regulation, hence the reason for seeking  
24 the special exception today for the deck.

25 Moving up again. We're just continuing by right with

1 addition, all the way up to the second floor, again pushing out 10  
2 feet to the west, beyond the adjacent neighboring properties. And  
3 then adding a third floor which follows the same massing by right  
4 would complete the proposed renovations to the property.

5           So that's a quick overview of the intended plan. Here's  
6 a visual of the elevations, the existing versus the proposed.  
7 Nothing here is anything by receiving special exception for, it  
8 would be the rear elevation that we're looking at, that's the  
9 existing and then proposed with a deck at the first level, aligned  
10 to the neighboring adjacent property.

11           So as you can tell, this design has taken some  
12 substantial time to develop with our clients. And after our  
13 clients came to this kind of codified vision of the design, they  
14 then worked with us and the Office of Zoning as they began their  
15 public outreach, as we've previously discussed, to all property  
16 owners within the 200-foot radius of their home. This outreach  
17 began in August of 2020, continued through early October of 2020,  
18 when both Studio 27, who I work for, and my client contacted every  
19 single property owner within the 200-foot radius via phone, email,  
20 postal mail at all legal addresses listed or accommodation of  
21 what these mean. Subsequently, my clients have knocked on all the  
22 doors of resident property owners within the radius, and have  
23 talked with others via phone, text, email and so forth.

24           The BZA sent neighbor notification of these proposed  
25 renovation plans to all residents via U. S. Mail on December 7, of

1 2020. And all of this outreach is exhibited in, or is evidence in  
2 the exhibits for this case that have already been entered into the  
3 database.

4 And as we've previously discussed before the hearing,  
5 our clients have received broad and deep support within the  
6 neighborhood. Some of their neighbors within this 200-foot radius  
7 have written letters in support. Six of these are, have been  
8 uploaded to the interactive zoning information system. The  
9 seventh was just received and will be uploaded shortly. And two  
10 of those households, as we are aware, have requested party status  
11 as proponents.

12 And as we've already discussed, two property owners near  
13 our clients object to any by right construction that our clients  
14 are proposing. But we think, as you can see from the exhibits  
15 that have been uploaded, that there's really no substantive  
16 objection to the relief here that we're requesting in this hearing  
17 today for the accessory apartment designation as well as the  
18 recreation of the deck in its current footprint.

19 Despite the parties in opposition, our clients believe  
20 that the depth and breadth of the support they have received  
21 demonstrates the community consensus. And as we've mentioned, not  
22 only do they have seven letters of support, and two parties who  
23 have requested party status as proponents, they also have the  
24 support of the ANC. So despite the opposition, the ANC decided to  
25 affirmatively support our client's request for both of these

1 special exceptions.

2           So we think that our client is not demonstrating any  
3 harm to their neighboring properties , or in relation to any of  
4 the requested special exceptions that we are seeking here today.  
5 And so I know that there are parties who have now received status  
6 to speak as proponents that I would like to turn the floor over  
7 to. And I thank you for your time and welcome any questions.

8           CHAIRPERSON HILL:    Okay.    Mr. Young, you could drop  
9 that.

10          CHAIRPERSON HILL:    Okay.    So just so everybody knows,  
11 so they took about 12 minutes here. So the -- all parties get the  
12 same amount of time. And so you'll have roughly the same amount  
13 of time to give your presentations in opposition or support. And  
14 so first I'm going to start with any kind of questions that the  
15 Board might have at this point. I know we will probably have  
16 questions as we kind of continue on. However, does the Board have  
17 any questions at this point for the Applicant? And if so, please  
18 raise your hand. Commissioner Shapiro?

19          COMMISSIONER SHAPIRO:   Thank you, Mr. Chair. This is a  
20 question for Ms. Klinner. Can you go over again just specifically  
21 the relief that you're requesting again. I just want to pull out  
22 of my head all the other pieces of this and just focus on the  
23 relief requested.

24          MS. KLINNER:    Sure.    The relief requested is for two  
25 items. The first being the basement being designated an accessory

1 apartment. And the second relief is for the recreation, or  
2 reconstruction of the nonconforming deck at the rear of the  
3 property, as it would be extending beyond the 20-foot rear setback  
4 line.

5 COMMISSIONER SHAPIRO: And why do you feel like you  
6 meet the standards for us to grant relief?

7 MS. KLINNER: Regarding the deck, currently there is a  
8 nonconforming deck, and there is ample precedent with all the  
9 adjacent, many of the adjacent neighbors with these decks. We  
10 don't feel like this deck would be creating any harm to either of  
11 the neighboring properties. It's actually a smaller deck, which  
12 means that the use for it would be reduced and primarily a means  
13 of accessing the client's home.

14 MR. ROBERTSON: I'd also just jump in. I'm sorry. If  
15 you look at our updated burden of proof, which is exhibit 59A, we  
16 address how we have met the criteria pursuant to 5201.4.  
17 Regarding the deck, we will not, "A," unduly affect the light or  
18 air available to the neighboring properties; "B," we will not  
19 unduly compromise the privacy of use and enjoyment of neighboring  
20 properties; "C," the proposed recreation of the existing deck will  
21 not substantially and visually intrude upon the character, scale  
22 and pattern of houses along the alley frontage. And this is  
23 demonstrated by provided plans, exhibit 5; photographs, exhibit  
24 41; elevations, exhibit 43; or light diagrams.

25 With the question of the accessory apartment, pursuant

1 to U 253, the principal unit and/or the accessory apartment will  
2 be owner occupied. Point six, at no point will the total number  
3 of persons living in principal dwelling in the AA, when combined  
4 with C6. Pursuant to point 7A, the existing and new structure  
5 both exceed 1200 square feet minimums for the floor area; 7B, the  
6 basement accessory apartment will be approximately 814 square  
7 feet, approximately 24.73 percent of the newly constructed home  
8 3292 square feet, which is less than the maximum 35 percent that  
9 is allowed. Pursuant to point 7C, additional entrances already  
10 exist on the elevations. And finally, pursuant to 7D, the  
11 existing additional entrance on the wall of the house that faces  
12 the street is below the main level of the house.

13 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

14 CHAIRPERSON HILL: Okay. Thank you, Commissioner  
15 Shapiro. Does anyone else have any questions? Okay.

16 MR. PUGH: Are you asking for comments from the people  
17 in opposition or just from your Board?

18 CHAIRPERSON HILL: Not yet, Mr. Pugh. You're next. So  
19 let me see if I've got anybody -- so nobody has any more  
20 questions. Mr. Pugh, do you -- So, Mr. Pugh, so you know, and I  
21 guess you're an attorney who presents often. We're asking for  
22 questions on any of the testimony that was given. You, yourself,  
23 will have an opportunity to give your testimony. So we're just  
24 looking for questions -- and this is also for Mr. Bhatia. We're  
25 just looking for questions on the testimony that was given. Mr.

1 Pugh, do you have any questions on any of the testimony that was  
2 given?

3 MR. PUGH: Yes, Your Honor, or Mr. Commission, I do.

4 CHAIRPERSON HILL: Sure. Go ahead.

5 MR. PUGH: Ms. Klinner, it looks like this is going to  
6 be a total tear down from those drawings.

7 CHAIRPERSON HILL: What is your question, Mr. Pugh?

8 MR. PUGH: Is this going to be a total tear down of this  
9 property?

10 MS. KLINNER: Can I speak to that to clarify?

11 CHAIRPERSON HILL: Yes. Go ahead.

12 MS. KLINNER: It will not be a total demolishing of the  
13 current property. While it is extensive, we will be retaining the  
14 front facade and the party walls and the existing basement. So it  
15 is not, it's not like we're tearing everything down to the ground  
16 level and rebuilding.

17 MR. PUGH: The only thing you're not tearing down is the  
18 front facade and the party wall?

19 MS. KLINNER: That's correct.

20 MR. PUGH: And how much deeper are you digging the  
21 basement out?

22 MS. KLINNER: We are not digging it any deeper than the  
23 current lowest elevation.

24 MR. PUGH: And do you have in your plans anything about  
25 drainage that's more than what is existing sewer lines, and things

1 of that nature?

2 MS. KLINNER: Do we have in the plans -- I'm sorry, can  
3 you clarify the question?

4 MR. PUGH: yes. I'm sorry. Do you have any plans for  
5 the (unintelligible audio) and existing water runoff from the,  
6 especially from the pop up, that will give my client some comfort  
7 that she won't have issues with water in her basement?

8 MS. KLINNER: Sure. Those drawings are in development  
9 now. That is information that would be shown in construction  
10 documents that would then have to be permitted. So we would be  
11 working -- we will -- we do have engineers engaged who will be  
12 showing all of this. And also, we will, obviously, be working  
13 with DCRA as we go into permit with the project.

14 MR. PUGH: Understood. Thank you. Thank you, Ms.  
15 Klinner and Mr. Commissioner.

16 CHAIRPERSON HILL: Thank you, Mr. Pugh. Mr. Bhatia, do  
17 you have any questions for the Applicant concerning the  
18 presentation?

19 MR. BHATIA: Conscious of your time, Chairman, I'll just  
20 restrict myself to when my time comes. Thank you.

21 CHAIRPERSON HILL: Okay. Mr. Reed, do you have any  
22 questions about the presentation?

23 MR. REED: No.

24 CHAIRPERSON HILL: Mr. Hillabrant, do you have any  
25 questions about the presentation?

1 MR. HILLABRANT: No, thank you.

2 CHAIRPERSON HILL: Okay. So again, for the record,  
3 we've granted party status to Mr. Reed. And we're allowing Mr.  
4 Hillabrant to kind of testify with Mr. Reed. We've also granted  
5 party status to the two adjacent property owners in opposition,  
6 which is Ms. Kim and Mr. Bhatia. So just clarifying that for the  
7 record. All right. Mr. Pugh, are you going to be  
8 testifying on behalf of Ms. Kim?

9 MR. PUGH: Commission, I would like to ask for Ms. Kim  
10 to testify if that's okay.

11 CHAIRPERSON HILL: Okay. All right. Mr. Young, if you  
12 could start the clock again for me. Ms. Kim, you can go ahead  
13 whenever you'd like.

14 MS. KIM: Thank you, Mr. Hill. Thank you everyone.  
15 I'd like to make a few comments on what was said here before with  
16 regard to the request for the special exception for the  
17 nonconforming deck. There is an undue burden on me in terms of my  
18 property with my loss of the view of the beautiful park that's  
19 next door that we've enjoyed for 25, 26 years. We've lived in  
20 this house since 1995. It's the house that I grew up in. The  
21 loss of privacy that's going to be a burden on my property and  
22 myself, who I plan to move back in that house again. I moved out  
23 a few years ago for my PhD program. But I am a long-term  
24 resident. It is the house that has my family's memories in it.

25 And when I say loss of property, what I mean is that

1 this deck is going to be extended such that it will now hold a  
2 large crowd of people. With the addition to the floors of the  
3 house I can expect maybe more people next door. And I do not want  
4 to have to never open my back windows in the summertime, for  
5 example, because of the crowd that's going to be on this deck that  
6 I expect will be there.

7           Based on history and precedent with barbeques, smoking  
8 cigarettes, there is also the question of structural issues with  
9 the space and construction. And while Ms. Klinner, the architect,  
10 falsely stated that all residents of interest were contacted, I  
11 have not been contacted. And in fact, I was not contacted by Mr.  
12 Robertson until for the first time in my life, January 4, when he  
13 gave me a call after Mr. Kishan Putta, the ANC Commissioner,  
14 informed Mr. Robertson that I did have an interest in what was  
15 happening.

16           Exhibit 63, appendix "A," importantly, shows a  
17 photograph from the back view of these properties which gives a  
18 better idea than Ms. Klinner's two dimensional drawings of how  
19 this deck extension is going to be an impediment on my property.  
20 Besides the view of the park, besides the loss of privacy, besides  
21 the structural concerns with the basement and the water runoff, I  
22 do not want flooding in my basement. In spite of the fact that I  
23 am back in the local area, you know, to make sure that my property  
24 is being well maintained, and I have hired a property manager as  
25 well, I have concerns about parking. The parking situation in the

1 back is always of a nature that is difficult in the Burleith  
2 community. We have a loss of parking as it is. We have a strong  
3 competition for parking. And so with all the construction that's  
4 going to be going on, I can expect this alley to be very  
5 congested. It's a one-way alley. We live at the end of it. We're  
6 the last three homes. Mr. Bhatia's property is the very last  
7 adjacent to the park. And Mr. Robertson's property is sandwiched  
8 by my property and Mr. Bhatia's.

9           The architect, Ms. Klinner, also stated that the  
10 immediate neighbors were in support. That is untrue. None of the  
11 immediate neighbors are in support. The people at 1930, the  
12 people at 1932, and in 1936 are all in opposition to this project,  
13 to this extension, both of these special exemptions. The letters  
14 of support that were read earlier today, in spite of the fact  
15 that we were only supposed to be introducing ourselves, Mr.  
16 Hillabrant and Mr. Reed began testifying out of turn. Those  
17 letters of support were written by Mr. Robertson. And the content  
18 of those letters misrepresent through their vagueness the details  
19 of these plans.

20           So we would like to see formal plans. I would like the  
21 permit to be reviewed. There are no start or end dates for this  
22 special exemption project, and I think that all of these need to  
23 be reviewed prior to a decision. Thank you.

24           CHAIRPERSON HILL:    Okay.    Thank you, Ms. Kim.    Does  
25 the Board have any questions for Ms. Kim?   Commissioner Shapiro?

1           COMMISSIONER SHAPIRO:    Thank you, Mr. Chair.  Ms. Kim,  
2 I'm looking at exhibit 63.  I just want to make sure I understand  
3 the photograph I'm looking at.  The building, the residence in the  
4 center is yours?

5           MS. KIM:    That's correct.  Yes, sir.

6           COMMISSIONER SHAPIRO:    As I'm looking at it, the one to  
7 the left is the Applicant's property, right?

8           MS. KIM:    That is correct.  The one to the left is  
9 1934.  And as you can see, his deck is already quite far extended.  
10 You know, one of the things that is so frustrating about this  
11 whole situation is that Mr. Putta, the commissioner who has joined  
12 us today, framed that ANC meeting which, you know, was a bit of a  
13 travesty if you ask me.  I've been a long, long term resident of  
14 Burleith.  I've joined many ANC meetings.  I was denied the vote.  
15 I was denied the right to speak at that meeting.  I was denied a  
16 voice at that meeting, as was my neighbor, Mr. Bhatia, who spoke  
17 when he was quickly interrupted and cut off rudely by Mr. Rick,  
18 who was there.  And we all found ourselves voiceless at that  
19 meeting.  We were appalled that the vote was predetermined, which  
20 Mr. Putta read.  And so the ANC vote I really think should not  
21 bear any measure on this.

22           COMMISSIONER SHAPIRO:    Thank you.  That's all I have,  
23 Mr. Chairman.

24           CHAIRPERSON HILL:    Okay.  Does anyone else have any  
25 questions?

1 (No response.)

2 CHAIRPERSON HILL: Okay. Give me a second, Mr.  
3 Robertson. Ms. Klinner, do you have any questions for the party  
4 status?

5 MS. KLINNER: I don't have any questions at this  
6 minute.

7 MR. ROBERTSON: (Raises hand.)

8 CHAIRPERSON HILL: Okay. Mr. Robertson, by the way, you  
9 guys will have a chance for rebuttal. If you're going to just  
10 comment on things, you know, we're just in questions. Do you have  
11 any questions for Ms. Kim?

12 MR. ROBERTSON: Yes. Yes, I do. I'm sorry. You stated  
13 that you were not contacted by either me or our architects. And I  
14 just want to make sure that that is really something that you want  
15 to put on the record, that you did not receive a letter from them  
16 that they sent on September 18, and that you and I did not speak  
17 on the phone on January 4th?

18 MS. KIM: To be clear, Mr. Robertson, I received a  
19 letter September 18, not from you, but from Ms. Klinner's  
20 architectural company that did not in full give me any kind of  
21 detail that would help me to make decision about how this affects  
22 my property. I did not include -- they did not include in that  
23 letter any start or end dates or any of the information about how  
24 you would be liable for damages to my property since we share a  
25 party well. As well, you did not contact me on January 4 out of

1 good faith. You contacted me quickly because Mr. Putta had  
2 informed you that I was in opposition and you wanted to cover your  
3 bases. In fact, you made sure that none of my mailing addresses  
4 would be used for any of the good neighbor in faith legal  
5 documents that were due to me, to keep me informed about the --

6 CHAIRPERSON HILL: Hey, hey, hey. Hello. Hello.  
7 We're not going to go back and forth and back and forth on all  
8 this stuff. Ma'am, I'm trying to get through a hearing. We have  
9 a very long day today, and this is going to take a long time.  
10 Right. So these are just questions. Okay? Mr. Robertson, do you  
11 have any more questions about the testimony that was given?

12 MR. ROBERTSON: Yes. Ms. Kim, did your attorney speak at  
13 the ANC meeting?

14 MS. KIM: My attorney was present at the ANC meeting.  
15 He did not speak. He was present, but he did not.

16 MR. ROBERTSON: Okay.

17 MS. KIM: He was not given the opportunity to speak.  
18 That's how I should be clear.

19 MR. ROBERTSON: Okay. All right. That's it.

20 CHAIRPERSON HILL: Okay. All right. Let's see now,  
21 all right. I'm going to move onto Mr. Bhatia. Mr. Bhatia, would  
22 you like to go ahead and give your testimony. Mr. Young, could  
23 you start the clock again?

24 MR. BHATIA: Thank you, Mr. Chairman, members of the  
25 Board. Out of respect for your long day, I will try to be

1 concise. I'd like to preface my remarks by saying I speak only  
2 for myself, and no one else speaks for me. Many harsh words have  
3 been exchanged in this case. I hope none from me. And I intend  
4 to keep it that way. I don't think that tit for tat mudslinging  
5 would be a good use of this Board's time.

6 Fundamentally, as one of two immediate neighbors, I feel  
7 that there are some core issues around this project and the relief  
8 requested that remain to be worked out. My concerns center on  
9 what I perceive as absence of paucity of provisions made regarding  
10 my home's access to air, light and potentially implications on  
11 water, and even privacy. Two weeks ago, on the day that I filed  
12 for party status, I also submitted a letter to the Applicants in  
13 which -- I don't know if I could presume that the Board has had  
14 the time to read every exhibit in this case. But in any case, it  
15 was a respectful letter where I tried to be specific, laying out  
16 my concerns, my worries and my questions. Eleven questions framed  
17 to facilitate further communication between the Applicant and  
18 myself.

19 I was a little disconcerted to see that the immediate  
20 reaction to my letter, which was well meaning and entirely  
21 genuine, was to "A," declare my friendship with the Applicants  
22 over; "B," to seek to deny my application for party status be  
23 accepted. And "C," after it was accepted procedurally, to deny  
24 the motion. That to me was sort of the opposite reaction I had  
25 been hoping for. I had been looking for more specificity,

1 reassurance, a sense that we were going to work as the good  
2 neighbors that the Applicants and I have traditionally been. But  
3 instead, I sensed that I was worried to see that anything short  
4 of, you know, unconditional full agreement would be inviting. So  
5 if anything, my worry is now greater than it was two weeks ago.

6           The very next day after -- and this letter, by the way,  
7 was intended as a bilateral letter to the Applicants. It was they  
8 who posted it on the record, which I suppose is for the best.  
9 Everyone now gets to see my concerns as laid out.

10           One concern I have, and this is -- I'd also like to add  
11 that, you know, I understand that there are special reliefs sought  
12 here. There is a by right portion of this project. But my  
13 position is that the exceptions, the relief sought cannot be  
14 viewed entirely in a vacuum, that the whole is the sum of the  
15 parts. And in any case, some of my concerns are specific to the  
16 relief sought.

17           I mentioned light, air and water. SO on the issue of  
18 light. The very next day, after I issued my letter, a light study  
19 was posted. That's helpful and constructive. I think it  
20 represents a response to my concerns. However, I also think that  
21 the content of the light study underscores my concern on that  
22 front. It shows quite clearly that, you know, especially in the  
23 winter months when sunshine is most wanted, my house will be  
24 almost entirely in shadow at various times of day. I believe the  
25 impact on my light is quite massive.

1           On the issue of air, similarly. Where currently there  
2 is a cross flow of air from the park to the other side and vice-  
3 versa, there will now be a very substantial set of blocking wall.

4    You may chuckle at what I'm about to mention, but I actually, it  
5 so happens have spent five years of my life studying aeronautical  
6 engineering, and aerodynamic, and I'm very clear on the difference  
7 between laminar flow in an alley, in a corner. So I would look  
8 forward to more feedback on what if anything can be done to  
9 protect my access to airflow.

10           And finally, on the issue of water. This special  
11 exhibit 1, the special exception sought for an accessory  
12 apartment, the accessory apartment, as I understand it, involves  
13 an expansion of the footprint of the home. Unless I misunderstand  
14 something, there has to be some digging. I think it would behoove  
15 the Applicants to provide some more granularity on the depths of  
16 the aquifer, on what the construction may be due to water flow. I  
17 do have knowledge of a house just on our street, just one block  
18 away, where because of construction an abutting property there was  
19 a flooding of the neighborhood, the neighbor's home, the  
20 immediately adjoining home. So, again, I think more detail, more  
21 assurance, more safeguards.

22           And finally, to wrap. One sort of more procedural  
23 point, which is that exhibit 3 is of course the plat. And as I  
24 understand it, the plat is a foundation document of the  
25 application because it is meant to accurately depict both the

1 current situation on the ground and clearly demarcate the changes  
2 that are proposed. I just noticed that the plat is unsigned and  
3 does not fully and accurately show the situation as it exists  
4 today. This is not something I feel I need to prove to this Board  
5 because it is easily verified by someone visiting. Specifically,  
6 our party wall does not extend from the front to the rear of my  
7 home. It extends only the length of the original structure of our  
8 homes. Then there is a gap. And this is a gap of about one-and-  
9 a-half feet total between the Applicant's home and mine. This is  
10 not a trivial that's on my plat. I have appliances that vent into  
11 that gap. And I would like to understand is that gap going to be  
12 preserved, as I hope it will, or not. And presumably the Board  
13 would like to understand whether that gap qualifies as a side yard  
14 or not. But in any case, I'm a little worried that the plat does  
15 not seem to show the facts on the ground.

16 In summary, you know, as much as I'd like to sort of  
17 accept "trust me" as a promising way forward, I do think there is  
18 a need for more specificity and reassurance, and not an approach  
19 that is, you know, sequential where first reliefs are granted and  
20 then we'll come to the serious concerns later.

21 I am speaking from London, England, where I'm stuck  
22 because of the pandemic. I raised several pandemic related points  
23 in my letter. I know they are not necessarily legally germane  
24 today, but the irony is not lost on me that the greatest calamity  
25 of our collective lifetime is somehow not statutorily relevant

1 here. It does worry me greatly that if there was to be a flood or  
2 some problem, I would be unable to return home as current. Thank  
3 you so much.

4 CHAIRPERSON HILL: Okay. Thank you, Mr. Bhatia. Let's  
5 see, Mr. -- does the Board have any questions for Mr. Bhatia?

6 (No response.)

7 CHAIRPERSON HILL: Okay. Ms. Klinner, do you have any  
8 questions for Mr. Bhatia?

9 MS. KLINNER: Not at the moment.

10 CHAIRPERSON HILL: Okay. Ms. Kim, do you have any  
11 questions for Mr. Bhatia?

12 MS. KIM: No, I do not. I just want to thank you for  
13 your honesty.

14 CHAIRPERSON HILL: Mr. Reed, do you have any questions  
15 for Mr. Bhatia?

16 MR. REED: No.

17 CHAIRPERSON HILL: Mr. Hillabrant, do you have any  
18 questions for Mr. Bhatia?

19 MR. HILLABRANT: (Shakes head no.)

20 CHAIRPERSON HILL: Okay. All right. So Mr. Reed, you  
21 can go ahead and give your presentation as well. And  
22 commissioner, I neglected -- can you hear me, Commissioner Putta?

23 MR. PUTTA: Yes, I can.

24 CHAIRPERSON HILL: So you're going to have an  
25 opportunity -- you're also a party, the ANC is also a party. And

1 so you'll have an opportunity to present as well. And then you'll  
2 have an opportunity to ask any questions. I'll just -- since I've  
3 already kind of started the questions, I'll come at the end with  
4 you with any questions you might have for anyone.

5 MR. PUTTA: Okay.

6 CHAIRPERSON HILL: And so, Mr. Reed, if you want to go  
7 ahead and give your presentation.

8 MR. REED: I don't have a prepared presentation. I was  
9 very impressed by the earlier ones, even with contrary views.  
10 Generally speaking, as I alluded earlier, I approve of by right  
11 improvements. And it seems like a good amount of the previous  
12 testimony is directed kind of connection about by right  
13 improvements that seems like that ship has sailed. I don't  
14 understand how a deck that does not extend beyond the existing  
15 deck suddenly becomes the face of more of an encroachment to party  
16 bantering and face abuse of an adjoining house, if it's in fact  
17 going to be a smaller deck.

18 I don't know how here, the property to the south about  
19 10 years ago was extended similarly. I mean, you just, you get  
20 used to things. And I'm a strong, or I feel I'm a strong  
21 proponent of owners doing what they wish that does not create bad  
22 sounds, or sights, or smells. I welcome improvements of these  
23 houses, as I have ever since, as Mr. Hillabrant alluded to, the  
24 pop ups that have appeared. To me they give delightful variety.  
25 And with the neighbors south, you know, they got -- it was owned

1 by a contractor. So I'm sure it was all permitted, and we've had  
2 no flooding issues or any such thing like that. And I would expect  
3 there will be none in this case. And that's all I could fully  
4 testify to. Mr. Hillabrant looks like he's ready to jump in.

5 MR. HILLABRANT: No. You covered it well.

6 CHAIRPERSON HILL: Okay. All right. Thank you, Mr.  
7 Reed. Does the Board have any questions for Mr. Reed?

8 (No response.)

9 CHAIRPERSON HILL: I don't see any. Ms. Klinner, do  
10 you have any questions for Mr. Reed?

11 MS. KLINNER: No.

12 CHAIRPERSON HILL: Ms. Kim, do you have any questions  
13 for Mr. Reed?

14 MS. KIM: Yes, I do. I have two quick questions for  
15 Mr. Reed. My first questions is, Mr. Reed, about how far is your  
16 home from the house in concern here at 1934? I know that you're  
17 across the alley at 1930 -- or at 38th Street. But how far would  
18 you say is your house from 1934?

19 MR. REED: You mean building to building?

20 MS. KIM: Yes, sir.

21 MR. REED: Probably about 150 feet.

22 MS. KIM: Okay. And --

23 MR. REED: That's just my guesstimate.

24 MS. KIM: Sure. And would you say that you can see the  
25 house at 1934 from where your house is?

1 MR. REED: Oh, yeah.

2 MS. KIM: Okay. Can you hear --

3 MR. REED: I'm at a higher elevation.

4 MS. KIM: Okay. Okay. Well, in fact, that counts as  
5 two questions, and I'll stop there.

6 CHAIRPERSON HILL: Okay. Mr. Bhatia, do you have any  
7 questions for Mr. Reed?

8 MR. BHATIA: Perhaps just one very quickly. Whether he  
9 would agree that this is not a referendum on home improvement in  
10 Burleith, but rather about the specifics of this case?

11 MR. REED: Sounds like there's been a bit of both.  
12 And, again, you know, I'm someone, we put up with a house that was  
13 gutted. So the pebble in a shoe shifts on your toe so you don't  
14 feel it anymore, and then it becomes part of the neighborhood. It  
15 doesn't mean you have to embrace it. I just believe that  
16 homeowners should get to do what they want as long as they're not  
17 putting up a brewery or a cannery or a hog plant or something like  
18 that.

19 CHAIRPERSON HILL: Okay, Mr. Reed. All right. Okay.  
20 Let's see, okay. Where am I? All right. Mr. Hillabrant, you  
21 might want to mute your microphone.

22 MR. HILLABRANT: I can't.

23 CHAIRPERSON HILL: Mr. Hillabrant? Mr. Hillabrant?

24 MR. HILLABRANT: Pardon me?

25 CHAIRPERSON HILL: If you would mute your microphone, if

1 you wouldn't mind. There you go. Thank you.

2 All right. Commissioner Putta, you can go ahead and  
3 give your testimony whenever you'd like.

4 MR. PUTTA: Can you see and hear me?

5 CHAIRPERSON HILL: Yes.

6 MR. PUTTA: Hi, Mr. Chairman. Well, thanks for calling  
7 everyone together. This is actually, in my over four years  
8 serving as an ANC commissioner, two in Burleith and two in Dupont  
9 Circle, the first time I've ever testified before BZA. And it is  
10 great to see that you give the residents, my constituents so much  
11 time to make their case. I'll just briefly respond about our ANC  
12 meeting where we met on voted on a resolution which I will read.

13 Number one, I of course as a mentioned do know these  
14 neighbors and have spoken with all of them and have visited the  
15 site. So I personally have done many, many hours of due diligence  
16 in working with them on the issues, as my neighbors will know. At  
17 our meeting we did not have as much time on this agenda item as  
18 you do. We had a long meeting with a lot of coronavirus-related  
19 issues and other type of issues with the vaccines, et cetera. So  
20 we, just for the record, since it was referenced, we did hear from  
21 both immediate neighbors, meaning to say Mr. Bhatia and Ms. Jee  
22 Jee Kim's lawyer. If she was wishing to speak at that ANC meeting  
23 and wasn't able to, I apologize. I think we would have heard from  
24 her if she had asked the chair to do so. It is true the chair did  
25 not allow any supporters to speak, except for Mr. Robertson, in

1 the interest of time. Because we have both read and our  
2 colleagues have been since the letters of support and opposition,  
3 and we had discussed it as well in executive session.

4 We did vote on a resolution. And before I read it, I  
5 want to mention that, you know, our commission, ANC is largely  
6 Georgetown or Old Georgetown, governed by the old Georgetown Board  
7 except, as you may understand, but a small neighborhood of mine,  
8 Burleith, between 35th Street and 39th Street, between Reservoir  
9 Road and basically T Street, or U Street if you will at Whitehaven  
10 Park. And so what our commission has traditionally typically done  
11 in the recent past is to not comment on these cases. I wanted to  
12 let you know, Chairman Hill and your colleagues on the Board, I'm  
13 coming to appreciate even more listening to you today for the  
14 first time, is that in the past we would not comment. But I want  
15 to let you know for these cases in the future I, the single member  
16 of District Commissioner, I'm deciding that when there is  
17 significant community input you will be heard from our commission.  
18 I will be making sure that we don't just no comment, that we give  
19 you something to go on. And we've heard from the neighbors and  
20 what we think if we think anything at all. Okay.

21 Here is our resolution today. ANC 2E has heard from  
22 immediate neighbors who have raised concerns about this project  
23 and from various neighbors who support granting these special  
24 exceptions. While the ANC understands the immediate neighbors  
25 concerns about the impact of the construction involved and have

1 encouraged the Applicant to work with them to address their  
2 concerns about the construction, the bulk of the project is by  
3 right. The ANC supports granting these two special exceptions. I  
4 would want to -- I don't want to take up too much more of your  
5 time, but I would be happy to answer any questions about the  
6 conversation we've had with all of these neighbors, Walter,  
7 Richard, Ashok, Jee Jee, Matthew, Jacqueline. We appreciate them  
8 all. They're all wonderful neighbors. And I really do hope that  
9 we can talk about the impact of this project and how to minimize  
10 it. As Ashok mentioned and Jee Jee mentioned, especially during  
11 this pandemic when everyone is stuck at home, and especially  
12 considering the long- time neighbors involved. And I thank  
13 everyone for being here.

14 CHAIRPERSON HILL: Okay Commissioner. Thanks so much  
15 for your testimony and also, you know, you ran a nice election,  
16 commissioner. You didn't win, but you at least got a chance.

17 MR. PUTTA: Thank you.

18 CHAIRPERSON HILL: Let's see, does the Board have any  
19 questions for the commissioner?

20 (No response.)

21 CHAIRPERSON HILL: Okay. Does -- Ms. Klinner, do you  
22 have any questions for the commissioner?

23 MS. KLINNER: No, I do not.

24 CHAIRPERSON HILL: Okay. Ms. Kim, do you have any  
25 questions for the commissioner?

1 MS. KIM: Yes, I do. Mr. Putta, I noticed that you  
2 mentioned that you have been in regular contact with all of us. I  
3 wanted to ask you if you had a chance to respond to my January 4th  
4 email to you?

5 MR. PUTTA: I don't know the answer. I can go back and --  
6 did I not?

7 MS. KIM: Yes. In fact, you did not. And I should also  
8 correct for the record that I misremembered that attorney Ed Pugh  
9 did have a chance to briefly speak at the ANC meeting. However,  
10 his mic was then muted. And as we know from today's meeting, he  
11 is not a long-winded person. So my attorney's mic having been  
12 muted, and then my hand being raised and not called on was a very  
13 disappointing outcome to that meeting. Mr. Putta, we welcome you  
14 to the neighborhood, but I should state for the record that if you  
15 hope to talk about this project earnestly, then being responsive  
16 to all parties --

17 CHAIRPERSON HILL: Ms. Kim, Ms. Kim, this is not  
18 statement time. I'm asking you for a question. Do you have any  
19 questions for the commissioner?

20 MS. KIM: Yes. My question was whether he had a chance  
21 to respond to my letter from January 4th?

22 CHAIRPERSON HILL: Okay. He answered that one. Do you  
23 have another question?

24 MS. KIM: Yes. And my other question for him is  
25 whether he believes that he has responded equally to all parties

1 of interest to this case?

2 MR. PUTTA: I do believe so.

3 CHAIRPERSON HILL: Okay. All right. Okay. Let's see  
4 now, well, I lost Mr. Reed. Oh, Mr. Bhatia, do you have any  
5 questions for the commissioner?

6 MR. PUTTA: I'll just add to that. Jee Jee, you're a  
7 wonderful neighbor, a long-time resident. Please call me, text  
8 me, you have my cell phone number, we've texted before, please  
9 call or text anytime. If I did not respond to an email from you,  
10 maybe I didn't realize that it required a response. I apologize  
11 if I didn't. But you will definitely be able to reach me anytime  
12 you'd like to text me or call me. Okay?

13 MS. KIM: Thank you very much.

14 CHAIRPERSON HILL: Mr. Bhatia, do you have any  
15 questions for the commissioner?

16 MR. BHATIA: No, sir.

17 CHAIRPERSON HILL: Okay. All right. Mr. Reed, do you  
18 have any questions for the commissioner?

19 MR. REED: (Shakes head negatively.)

20 CHAIRPERSON HILL: No. All right. So Mr. Hillabrant,  
21 do you have any questions for the commissioner?

22 MR. HILLABRANT: No.

23 CHAIRPERSON HILL: All right. Commissioner, if you  
24 unmute. So commissioner, do you have any questions for anybody?

25 MR. PUTTA: I actually did, if you don't mind. I know

1 we're talking a lot of time. It's a short simple one. Guys, my  
2 neighbors, can we sometime soon, it's almost March, it's mid  
3 February, later this month or early March can we do a Zoom call  
4 between us or even a socially distanced meeting outdoors in my  
5 back yard or front yard to just chat about how to move forward. I  
6 know you're, I know you have to wait for the BZA to rule on this  
7 and all, but we are all neighbors. We all know each other very  
8 well. We have the best intentions. I just wanted to ask. It's  
9 something I've asked you individually. I'm now asking since I've  
10 been granted the opportunity.

11 CHAIRPERSON HILL: Okay. Well, I'm going to go around,  
12 commissioner and get an answer. Mr. Robertson, are you open for  
13 this?

14 MR. ROBERTSON: Yeah, of course. We've tried to reach  
15 out to our neighbors. We've had a number of phone calls already  
16 with Mr. Bhatia in the fall --

17 CHAIRPERSON HILL: I got you. I just need a yes or a  
18 no?

19 MR. ROBERTSON: Yeah. Of course.

20 CHAIRPERSON HILL: Ms. Kim, are you interested in this?

21 MS. KIM: I would prefer all communications to be in  
22 writing myself.

23 CHAIRPERSON HILL: Okay. So you're not interested.

24 Mr. Bhatia, are you interested in this?

25 MR. BHATIA: If the question is about Mr. Putta's

1 backyard, I'm afraid the answer is no. I can't get there. But  
2 otherwise, yes, of course. I'm happy to go.

3 CHAIRPERSON HILL: Okay. Mr. Reed?

4 MR. REED: Yes.

5 CHAIRPERSON HILL: Okay. Commissioner, thank you very  
6 much. I think we're going to be working through some stuff.  
7 Anyway, Mr. Hillabrant, you're also open to a conversation?

8 MR. HILLABRANT: Yes, sir.

9 CHAIRPERSON HILL: Okay. You can mute your mic again,  
10 Mr. Hillabrant, if you wouldn't mind.

11 MS. KIM: Oh, Mr. Hill I need to state for the record  
12 that yes, I am open to communication, but that it should be in  
13 writing.

14 CHAIRPERSON HILL: Okay. All right. Okay. Let's see,  
15 all right. I'm going to turn to the Office of Planning.

16 MS. VITALE: Sorry. This has taken me a second to pull  
17 up my camera. Hopefully you can see me now.

18 CHAIRPERSON HILL: Yes.

19 MS. VITALE: Great. Good morning, Mr. Chair and members  
20 of the Board. Elisa Vitale with the Office of Planning. This is  
21 for case 20385. The Office of Planning is recommending approval  
22 of the requested rear yard relief. This would be to allow the  
23 existing nonconforming 14-foot rear yard to remain. This is where  
24 a 20-foot rear yard would be required. The Office of Planning is  
25 also recommending approval of the requested special exception to

1 the proposed accessory apartment. I would note that the proposed  
2 accessory apartment meets the special exception criteria that are  
3 outlined in Subtitle U, Section 253. I've gone through that  
4 analysis in detail in my report. It's in the record. I can  
5 certainly walk through that verbally, I mean, if that would be  
6 helpful. I'll keep my report brief. That concludes my testimony.  
7 However, I'm available and happy to answer any questions. Thank  
8 you.

9 CHAIRPERSON HILL: Ms. Vitale, for the Board, could you  
10 just verbally go through your report in terms of how it's meeting  
11 the criteria again?

12 MS. VITALE: Certainly. I'd be happy to. Just a second.  
13 I will go ahead and start with the rear yard special exception  
14 relief. That would be evaluated against the general special  
15 exception criteria under 5201.4 with respect to light and air  
16 available to neighboring properties not being unduly affected.  
17 The Applicant is proposing to replace an existing 12-foot deck  
18 that is encroaching on the required rear yard setback with a  
19 smaller six-foot deep deck that would also encroach the same  
20 amount on the rear yard setback. So we noted that the  
21 nonconforming rear yard would remain unchanged. The proposed  
22 addition, you know, we note that here we don't believe a deck, the  
23 deck design would be, you know, open. Honestly, it would be  
24 uncovered, open to the sky above. It should not cause an undue  
25 impact on the light and air available to the neighboring

1 properties.

2           With respect or privacy of use and enjoyment. Again,  
3 this is relief that would be required for a smaller deck at the  
4 rear of the property. Again, a deck at the rear is not uncommon  
5 throughout the District, provides a space for residents to enjoy  
6 the outdoors, to entertain. I think we can all agree that having  
7 access to outdoor space is certainly important, especially given  
8 COVID and the desire to have safe outdoor spaces to convene. The  
9 Applicant is not proposing any, you know, at risk windows on the  
10 side of the matter of right addition. So again, we really don't  
11 believe that privacy of use and enjoyment of neighboring  
12 properties would be unduly compromised with the smaller rear deck.

13           The last item really has to do with, you know, whether  
14 the appearance of the addition or accessory structure, you know,  
15 as viewed from the street, or alley, or other public ways would  
16 visually intrude on the character, scale and pattern of houses.  
17 Again, a small deck at the rear of the property should not  
18 visually intrude on the character, scale and pattern of the  
19 houses. It would be visible from the alley at the rear of the  
20 property and also, you know, may be visible. I'm not positive  
21 that you could even see it from, you know, the Whitehead Haven  
22 Parkway right-of-way, the open space to the north, but it would  
23 certainly be visible from the alley. But I don't believe it would  
24 be impactful on the character or scale and pattern of houses.  
25 There are other properties in the square certainly have rear

1 desks. And this would be consistent with that. As noted, the  
2 Applicants provided plans, photos and elevations.

3 Let's see, with respect to the accessory apartment. The  
4 specific special exception criteria, 253.6 states that the -- or,  
5 I'm sorry, starting at 253.5, either the principal dwelling or  
6 accessory apartment must be owner occupied. The Applicants have  
7 asserted on the record that the two, either the principal or the  
8 accessory unit would be owner occupied. There is a limit on the  
9 total number of persons. The accessory apartment can't exceed  
10 three. The aggregate number of persons that occupy the house  
11 shall not exceed six. Again, the Applicant has asserted that they  
12 would comply with that criteria.

13 There are a number of conditions. The first relates to  
14 the minimum GFA for the house. You must have 1200 square feet in  
15 an R-20 Zone. This property meets that. The accessory apartment  
16 is limited to 35 percent of the total GFA of the house. Again,  
17 this proposed accessory apartment at 1814 square feet would be  
18 approximately 25 percent. So it meets that criteria. There are  
19 criteria with respect to entrances. Letter "C" is if you're  
20 adding a new entrance. The subject property already has existing  
21 entrances. And so that is not relevant here. If you do have  
22 entrances, they must be below the main level. The subject  
23 property complies with that. The proposed entrances would remain  
24 below grade.

25 And then really the next criteria in 253.8 are not

1 applicable. And that's noted in the report. The criteria in  
2 253.9 also are not applicable. With respect to the general  
3 conformance with the purpose and intent of the zoning regulations,  
4 the accessory apartment is permitted in the R-20 Zone, provided  
5 that the criteria are met. And they just outlined that the  
6 criteria in this instance have been met. So we believe the  
7 inclusion of an accessory apartment at the subject property would  
8 be in harmony with the general purpose and intent of the zoning  
9 regulations.

10 Hopefully, that provides enough of a summary of my  
11 report with respect to how the subject application meets the  
12 specific criteria for evaluation.

13 CHAIRPERSON HILL: Okay. Great. Thank you, Ms.  
14 Vitale. Just for my fellow Board members, also, what my plan is  
15 to go ahead and get through the hearing as best as we can and then  
16 take a break, and then we'll come back and kind of talk about  
17 stuff perhaps with people. But I'm just saying, in case anybody  
18 needs a break. And if anybody needs a break sooner, just raise  
19 your hand.

20 Ms. Vitale, the question I had was kind of -- I'm  
21 looking at the exhibit with the shadow study. But there's been a  
22 lot of discussion about matter of rights. I mean, the massing  
23 itself is matter of right for the building, right? We're just  
24 talking about the nonconforming deck and keeping the distance of  
25 the nonconforming deck the way it is, correct?

1 MS. VITALE: That's correct.

2 CHAIRPERSON HILL: Okay. And I'm kind of noticing that  
3 it seems as though -- and I don't know if you've looked it,  
4 further down the block it seems as though other properties have  
5 built out the by right portion of their property; is that correct?

6 MS. VITALE: I did a site visit, and I know certainly the  
7 Board has heard a number of other cases in Burleith. This  
8 neighborhood is experiencing a lot of renovation, and there are  
9 certainly other expansions and additions in this general vicinity  
10 where properties have added a third floor or have, you know,  
11 extended towards the rear of the property, either within the  
12 matter of right building envelope or they may have come to the  
13 Board for relief.

14 CHAIRPERSON HILL: This one is within the matter of  
15 right building envelope?

16 MS. VITALE: Correct.

17 CHAIRPERSON HILL: Okay. All right. Does the Board  
18 have any questions for the Office of Planning? Commissioner  
19 Shapiro?

20 COMMISSIONER SHAPIRO: Thank you, Mr. Chairman. This is  
21 actually isn't quite pertinent to relief, but I'm curious because  
22 Mr. Bhatia brought it up. There's a party wall. The back section  
23 is detached. He mentioned something about there was no adverse  
24 windows. He has adverse vents for appliances. I am assuming that  
25 -- I just hadn't thought about it before, so I'm curious about

1 that. Practically speaking, if it's a party wall, his vents would  
2 be at risk. But it sounds like this property isn't referred to on  
3 the --

4 MS. VITALE: I'm sorry. You dropped out the very last  
5 thing that you said. I can say a side yard runs the length of the  
6 property. So a side yard would have to go from the front property  
7 line to the rear property line. So there is not -- you know, this  
8 is a lot line to lot line building. So it's a row building in  
9 this instance that is not providing any side yard.

10 COMMISSIONER SHAPIRO: Right. So the Applicant, by  
11 right, could build up to the party wall if it's lot line to lot  
12 line?

13 MS. VITALE: Correct.

14 COMMISSIONER SHAPIRO: Right. So what I'm getting at  
15 is, if you know this, and maybe it will come up in further  
16 conversation, do you see that these plans actually take this, the  
17 back part of where there actually is a separation, even if by  
18 right they can go up against the party wall, are they doing that?

19 My read on it is that they're not. And so Mr. Bhatia's vents,  
20 even though they're at risk, are not being --

21 MS. VITALE: I would have to pull up the plans. I think  
22 everything that I reviewed it looked like it was going lot line to  
23 lot line. So I'm not -- that doesn't mean there's not an offset  
24 from the property line on adjoining properties. I would defer to  
25 the project architect for the Applicant to speak to that, I

1 believe.

2 COMMISSIONER SHAPIRO: I appreciate that. And I'm  
3 clear in my head that it isn't related to the relief being  
4 requested. I'm just curious about it. So that's all I have, Mr.  
5 Chairman.

6 CHAIRPERSON HILL: We'll get to everybody, Mr. Bhatia.  
7 Mr. Smith, do you have a question for the Office of Planning?

8 BOARD MEMBER SMITH: No questions.

9 CHAIRPERSON HILL: Vice Chair John?

10 VICE CHAIR JOHN: No.

11 CHAIRPERSON HILL: Ms. Klinner, do you have any  
12 questions for the Office of Planning?

13 MS. KLINNER: No.

14 CHAIRPERSON HILL: Ms. Kim, do you have any questions  
15 for the Office of Planning?

16 MS. KIM: Yes. I just have two short questions for the  
17 Office of Planning. The first is that my shower and my HVAC are  
18 on the side wall that abuts, that adjoins with Matthew's home in  
19 the basement. So the basement shower and the HVAC for the entire  
20 house is on that side. Would that be either encroached on or at  
21 risk? Because I don't know. Because the second question is,  
22 what's the difference between at risk and encroached on?

23 MS. VITALE: I can't speak to improvements within your  
24 home, such as a shower in your basement. Certainly when the  
25 Applicant does construction drawings and goes to permit, when this

1 is reviewed by DCRA, they would look at -- there's a neighbor  
2 notification process for if you do have improvements that would  
3 impact a party wall. So that would be something that would come  
4 up during the building permit process. We're not there yet, here,  
5 at the Board of Zoning Adjustment. So I can't speak in more  
6 detail to that.

7           Something that's at risk is an impairment, such as a  
8 window opening, that is located on a party wall where the  
9 adjoining property owner can, as a matter of right, build to the  
10 party wall. So if there are two adjoining row houses, and someone  
11 puts a window on the wall that's on the property line, that window  
12 is at risk because the adjoining neighbor could, as a matter of  
13 right, improve their property along the property line and then  
14 block that window. So that would be an at-risk window. So that's  
15 what the term "at risk" is referring to.

16           An encroachment, we use the term encroachment talking  
17 about yards or setbacks. In this case the existing deck of the  
18 subject property is encroaching on the rear yard. In this zone  
19 there is a 20-foot rear yard required. That rear yard is measured  
20 from the back of the house, the deck or the back of any structure.  
21 In this case the deck counts as a structure because it's more than  
22 four feet in height. So you would measure from the rear of that  
23 structure to the rear property line. So you would need 20 feet in  
24 this zone. Currently this property doesn't have 20 feet. If you  
25 measure from the existing deck to the rear property line, it's

1 only 14 feet. The Applicant is proposing to maintain that  
2 nonconforming 14-foot rear yard. So they're encroaching into the  
3 required rear yard. So that's what the term "encroachment" is  
4 referring to.

5 MS. KIM: Thank you very much. And then could you  
6 please unmute my attorney, Ed Pugh, who has a question for Ms.  
7 Vitale?

8 CHAIRPERSON HILL: Mr. Young, can you unmute Mr. Pugh?

9 MR. PUGH: Ms. Vitale?

10 MS. VITALE: Yes.

11 MR. PUGH: I just have a question. So the -- is this --  
12 - so we are alleging that the party wall is going to encroach on  
13 Ms. Kim's property if it's extended. And you're saying that the -  
14 -

15 MS. VITALE: No. I'm not stating that at all.

16 MR. PUGH: Okay. Go through it one more time with me,  
17 please.

18 CHAIRPERSON HILL: What's your question Mr. Pugh?

19 MR. PUGH: The plans, the way they're written, appear  
20 to show that she is going to be, Ms. Kim is going to be affected  
21 by the additional not by right apartment, and it's going to affect  
22 her HVAC unit that's outside of the house. Are you --

23 CHAIRPERSON HILL: Go on. I'm sorry, Mr. Pugh.

24 MR. PUGH: Are you say that's just at risk, and if it  
25 happens it happens is my question?

1 MS. VITALE: I'm not -- as I said, I can't speak to what  
2 is going on inside your client's home. These are row buildings.  
3 They are built lot line to lot line. The Applicant should not be  
4 making any improvements on the adjoining property. The Applicant  
5 is proposing improvements on their own property. The improvements  
6 would go lot line to lot line. But I am not in any way saying  
7 that what the Applicant is proposing would encroach on your  
8 client's property.

9 MR. PUGH: Okay. And thank you for that. But isn't  
10 the Applicant proposing to extend that party wall, which is called  
11 a party wall because it's both of their walls?

12 CHAIRPERSON HILL: The Applicant, Mr. Pugh, is pushing  
13 out the building to where they're able to do it matter of right.  
14 And I don't know if what your client is -- because I don't know  
15 exactly what your client is speaking of, that there is a vent that  
16 is somehow on the party wall that is on the Applicant's side. And  
17 if that's the case, then that will have to be addressed during  
18 permitting, and it is at risk. Meaning, it shouldn't be there  
19 now. Right. And so that's something that will have to get  
20 addressed during the permitting. Do you have another question,  
21 Mr. Pugh?

22 MR. PUGH: No, Chairman. Thank you.

23 CHAIRPERSON HILL: Okay. All right. Okay. Mr. Bhatia,  
24 do you have any questions for the Office of Planning?

25 MR. BHATIA: With your permission, Chairman, I have a

1 few. I wonder if I should make a valiant attempt to throw them  
2 all out at once or if we may have a slight back and forth. Up to  
3 you.

4 CHAIRPERSON HILL: Let's try the back and forth.

5 MR. BHATIA: Okay. Thank you. So question one, Ms.  
6 Vitale. My understanding of party walls indeed is that these are  
7 walls that are shared, i.e., they straddle a property line and are  
8 structural to both homes; is that correct? Because I'm hearing  
9 you describe these homes as sharing a party wall their entire  
10 length. And my point is, my home and the Applicants don't. There  
11 is a gap. There is a portion where there is no party wall. In  
12 fact, there are at risk windows that have must have been built a  
13 very long time ago and subsequently proved to be at risk. But  
14 just -- so first, first question is: What exactly is a party  
15 wall? So that we're on the same page.

16 MS. VITALE: A party wall is a wall that is straddling  
17 the property line that is shared in a row building situation by  
18 both properties.

19 MR. BHATIA: Okay. So that would suggest that if  
20 there is a portion of our homes longitudinally where there is no  
21 party wall, and if a party wall were then to be built as part of  
22 this home improvement, that some of that construction would  
23 straddle the property line; have I understood that correctly?

24 MS. VITALE: No. The Applicant -- if the Applicant is  
25 proposing an addition that extends their property, that would be

1 built along the lot line. That would no longer be a party wall.  
2 If you're indicating that your house is set back from your  
3 property line, in an area that would be adjacent to where the  
4 Applicant is proposing to expand their building, they would be  
5 building on their property line. That would not be shared with  
6 you because your building is set back there. That would not be a  
7 party wall. A party wall would be along the portion of the  
8 property where your house and the adjoining property are both  
9 constructed to the property line. If you're set back --

10 CHAIRPERSON HILL: Ms. Vitale, I'm going to intervene.  
11 Mr. Bhatia, I'm sorry. I'm just trying, I'm trying to also get  
12 through some of this stuff. If you wanted to have a discussion  
13 with the Office of Planning about more specifics, I guess you can  
14 do that another time. But do you have any specific -- can you  
15 continue to ask your specific questions?

16 MR. BHATIA: Yes. So one is, there is no proposal to  
17 build anything whatsoever on my side of the property line; is that  
18 correct?

19 CHAIRPERSON HILL: Yes. That's correct.

20 MR. BHATIA: Okay. Thank you. Secondly, I noticed  
21 the mentioning of a site visit. Did the Office of Planning notice  
22 inaccuracies in the plat? I am staring at the plat here, which is  
23 unsigned. But it says, I hereby certify, you know, that this will  
24 show all existing buildings and improvements, all proposed  
25 demolition. And three, any existing chimney or vent. None of

1 this is on the plat, nor has anyone signed the plat. So is that  
2 not where the Office of Planning would begin?

3 MS. VITALE: We review the applications with respect to  
4 the zoning regulations. I am not an architect. I am not an  
5 engineer. The Office of Zoning does all of the intake for the  
6 applications and all of the information that is submitted into the  
7 record in cases. We review the information that is available in  
8 the record, and we review the applications as they relate to the  
9 zoning regulations and the compliance with the review criteria for  
10 either a special exception or variance, whatever is being  
11 requested by the Applicant and how those meet the criteria within  
12 the zoning regulations.

13 MR. BHATIA: Last question if you permit, Mr. Chairman.  
14 Is it a concern for the Office of Planning that the plat does not  
15 show that the Applicant's property, not mine, the Applicant's  
16 property has a side setback from the property line, does not show  
17 that there currently exists an accessory structure and indeed does  
18 not show the famous Heritage tree around which this entire  
19 proposal is constructed? Or is that not a concern for the Office  
20 of Planning, with respect?

21 MS. VITALE: I'm not sure if you have a specific  
22 question for me. As I mentioned, we do not -- it is not the  
23 Office of Planning's role to verify and fact check the materials  
24 submitted in the record. Those are submitted and the Applicant is  
25 asserting that that information is true and correct. This is not

1 the role of the Office of Planning to fact --

2 CHAIRPERSON HILL: Mr. Bhatia, -- Ms. Vitale, one  
3 second. Mr. Bhatia, I don't know about the plat like that.  
4 That's another think that we can ask about. Right. The Office of  
5 Planning reviews the plans, the way they're put forth. And so  
6 they're reviewing the plans. And so I don't even know who to ask  
7 about this plat issue. And so, you know, I guess, let me think  
8 about it. I mean, don't know. Mr. OAG, do you know about the  
9 plat, or Mr. Bhatia is saying that the plat is inaccurate. I  
10 mean, do you know anything about that?

11 MR. RICE: I can't speak to the accuracy. I cannot  
12 speak to the accuracy of the plat. That would be an evidentiary  
13 issue for the Board. But the zoning regulations do require the  
14 submission of a certified plat with the application. And the plat  
15 that has been submitted alongside the application, the  
16 certification portion of it, is unsigned.

17 CHAIRPERSON HILL: Ms. Klinner, do you know anything  
18 about the plat?

19 MS. KLINNER: Yes. A little bit. The plat that was  
20 submitted is showing the proposed conditions, not the existing  
21 conditions. So this is something that you would submit when we go  
22 into building permit and have certified at that time. This is all  
23 the proposed work that has not been submitted yet. So that's why,  
24 to Mr. Bhatia's comment, it's not showing the existing conditions.

25 CHAIRPERSON HILL: Right. It's showing the proposed?

1 MS. KLINNER: It's showing proposed work.

2 CHAIRPERSON HILL: And Mr. Rice, I don't want to get  
3 hung up on this too much. But, Mr. Rice, you are saying that  
4 we're supposed to get a plat of the existing conditions?

5 MR. RICE: We're supposed to get a certified plat of the  
6 existing proposed conditions with the application.

7 CHAIRPERSON HILL: Okay. So we might need that, Ms.  
8 Klinner.

9 MS. KLINNER: Okay.

10 CHAIRPERSON HILL: All right. So Mr. Bhatia, I  
11 understand what you're asking about, the plat. And we're going to  
12 kind of get a little bit of clarification. However, the plans  
13 still are the plans. So, you know, you still have the plans  
14 before you. That is what is being proposed. So do you have any  
15 further questions of the Office of Planning?

16 MR. BHATIA: No. Thank you, sir.

17 CHAIRPERSON HILL: Thank you, Mr. Bhatia.

18 Mr. Reed, do you have any questions of the Office of  
19 Planning?

20 MR. REED: No.

21 CHAIRPERSON HILL: Mr. Hillabrant, do you have any  
22 questions of the Office of Planning? You can just shake your head  
23 yes or no, Mr. Hillabrant.

24 MR. HILLABRANT: No.

25 CHAIRPERSON HILL: Okay. Great.

1 All right. Okay. This is -- Mr. Young, is there anyone  
2 here who wishes to testify?

3 MR. YOUNG: We do not.

4 CHAIRPERSON HILL: Okay. All right. Ms. Klinner, you  
5 have an opportunity for rebuttal. Okay. Do you have any  
6 rebuttal?

7 MS. KLINNER: I think I would like to defer to my client  
8 for any rebuttal right now.

9 CHAIRPERSON HILL: Okay. Mr. Robertson, do you have  
10 any rebuttal of the testimony?

11 MR. ROBERTSON: No, that hasn't already been covered.  
12 Thank you.

13 CHAIRPERSON HILL: Okay. All right. I suggest that we  
14 take a break, the Board, because -- well, I need to take a break.  
15 And then I want to come back and talk about kind of some of the  
16 communication that's gone on with the neighbors and the  
17 Applicants, and how we can kind of go through some of the concerns  
18 that the adjacent neighbors have, and kind of talk through that a  
19 little bit. That's at least my thought at this point. I think  
20 we're going to need something for the record that's going to be,  
21 you know, a signed plat for the current and proposed conditions as  
22 per what OAG has indicated. So that's something that we're going  
23 to need. And I'll just look at my Board members. Is that a good  
24 place to start? Nod your head yes or no, raise your hand.

25 BOARD MEMBERS: (Nods head affirmatively.)

1 CHAIRPERSON HILL: Okay. Let's go ahead and take a, you  
2 know, like a 10-minute break. Okay. We'll come back. Thank you.  
3 Fifteen minutes. Fifteen minutes.

4 (Whereupon, there was a 15-minute break.)

5 CHAIRPERSON HILL: Do you have anything to add in  
6 conclusion?

7 MS. KLINNER: I don't think. I just wanted to, I guess  
8 clarify a couple of comments about the property plat. I can --  
9 first of all, I apologize if there's any misunderstanding about  
10 the plat that is needed in the application, whether it was  
11 existing versus proposed. But what is presented here in this  
12 exhibit cannot be certified, seeing how it is not construction  
13 that has happened. So think my clients are to get a certified  
14 existing plat (audio interference).

15 CHAIRPERSON HILL: So, Mr. Rice, you can help me with  
16 what's within the regulations in a minute. Mr. Robertson, do you  
17 have something you'd like to add in conclusion?

18 MR. ROBERTSON: Yes. Mr. Hill, on this plat it shows  
19 (audio interference) during the break shared a plat of existing,  
20 a signed plat of existing conditions with all current party  
21 status, parties as well as Mr. and Mrs. Hillabrant, and also  
22 submitted it to the BZA, and would request that that can be  
23 germane to today's discussion.

24 CHAIRPERSON HILL: Okay. All right. Well, we'll see  
25 when we get to that. Anyway, so this is what I'm going to propose

1 to my fellow Board members. I guess, you know, what I'd like to  
2 see, and I'm looking to my fellow Board members, I'm just talking  
3 to my fellow Board members. Is like, I mean, Mr. Robertson, Mr.  
4 and Mrs. Robertson, I mean, it seems as though, you know, you have  
5 done a lot of community outreach, but obviously there seems to be  
6 a little bit of disconnect in terms of your adjacent neighbors in  
7 terms of some of the things they're looking for.

8 MR. ROBERTSON: (Shakes head negatively.)

9 CHAIRPERSON HILL: You're shaking your head. I'm  
10 telling you, there is some disconnect. And so if you could go  
11 ahead and what I'd like to see is -- this is what I'm proposing to  
12 my fellow Board members. Like, some -- we usually have done in  
13 the past, and this is where I don't necessarily know whether it  
14 needs to be a condition or not, kind of like, you know, how you  
15 plan on keeping your neighbors abreast of the situation. Okay.  
16 Like, I'm looking at Mr. Bhatia's letter. And there's like seven  
17 specific questions that don't seem that difficult to answer. And  
18 so I'd be kind of interested in seeing an exhibit -- because we're  
19 going to have to -- I think what's going to probably happen, at  
20 least this is my -- and I'm looking at my fellow Board members, my  
21 proposal is to go ahead and ask for the Applicant to put together  
22 like a list of how they're going to keep the adjacent properties  
23 informed of what's going on. Like, you know, I think the plans  
24 are in the record, whatever. You know, in the past people have  
25 had like the phone number of the GC, the general contractor, or

1 even the architect, just somebody so that if there's an issue they  
2 have somebody they can call. Right. So that would be something  
3 you could propose in your list. Like how do you think you are  
4 going to keep, you know, are you going to let them know the  
5 construction schedule, when the construction schedule is, just  
6 kind of like let us know how you're going to keep your neighbors  
7 informed of the project. Right. And so, you know, just think if  
8 it's -- now I am looking at you, Mr. and Mrs. Robertson. Just  
9 think if it's you guys, right, you know, how would you want to be  
10 kept informed? Right. And propose a list for us. Okay. And  
11 that's something that you can submit into the record. And then we  
12 can determine whether or not that would then at least satisfy any  
13 questions I have. I mean, I'm not even talking about the standards  
14 for which we tend to approve or deny this. Like, that's a whole  
15 nother discussion. I'm literally just looking for something that  
16 will keep the neighbors informed. Right. And so that would be  
17 something that I'd like to see in the record.

18           And then we can go ahead and get the plat. Right. And  
19 I am going to go to OAG, because this is a question I have for  
20 something that's coming up later also. Like, what is required in  
21 terms of the application? If it's a plat that's -- I mean, you  
22 say that it's existing. So it has to be an existing certified  
23 plat. And then we also have to have the proposed. But it can't  
24 be certified, I would assume, because it's not existing. So  
25 that's a question for OAG. So I'm going to go around the table to

1 my fellow Board members and see if you have anything else to add  
2 that you'd like to see from anybody. And I'm going to start with  
3 you, Commissioner Shapiro.

4 COMMISSIONER SHAPIRO: I do not have anything else that  
5 I'm looking for, Mr. Chair.

6 CHAIRPERSON HILL: Okay. Mr. Smith?

7 BOARD MEMBER SMITH: I don't have anything else, Mr.  
8 Chairman.

9 CHAIRPERSON HILL: Okay. Vice Chair John?

10 VICE CHAIR JOHN: I don't have anything else, Mr.  
11 Chair.

12 CHAIRPERSON HILL: Okay. All right. So Mr. and Mrs.  
13 Robertson, do you understand what I'm asking of you?

14 MR. ROBERTSON: Yes, Chair. I think that the -- I hope  
15 that the case record shows that we have already tried to reach out  
16 to them on numerous occasions. But we will be happy to develop a  
17 document that shows our plans of future outreach to our neighbors.

18 CHAIRPERSON HILL: Okay. Just, you know, again, there  
19 was -- and maybe OAG you can help me remember other things that  
20 we've seen in the past, or even Mr. Moy. It's not necessarily  
21 construction management plan or anything like that, it's just a  
22 list of how you're keeping the parties involved apprised of what's  
23 going on during construction. And then -- so that's one question  
24 if you have an answer for it or not, OAG. And the other is that  
25 we need a plat that is existing and certified, but we also need

1 one that's proposed. So that's my second question.

2 MR. ROBERTSON: Yes. I think that we have --

3 CHAIRPERSON HILL: Mr. Robertson, I'm asking the  
4 attorney, Office of the Attorney General.

5 MR. RICE: In regard to your first question, the  
6 Applicant can provide you with a list of methods they're going to  
7 utilize to communicate with the community and keep them apprised  
8 during development.

9 As to your second question, under the District rights,  
10 it does need to be a plat that is drawn to scale, certified,  
11 showing the existing and proposed. A surveyor can certify a  
12 proposed structure on a plat because it is certifying that what  
13 appears on the plat is what is appearing in the Applicant's  
14 submission. Typically the way this is done is the surveyor will  
15 place the existing structure with one form of hatching, and the  
16 proposed structure with another form of hatching so you can look  
17 at it and you can see the amount of expansion or change in the  
18 proposed structure as it relates to the underlying plat of land.

19 CHAIRPERSON HILL: Okay. Ms. Klinner, do you  
20 understand?

21 MS. KLINNER: I believe so. So it essentially is one  
22 certified plat that's showing an overlay of the proposed condition  
23 on top of the existing condition if I'm understanding correctly.

24 MR. RICE: Yes, ma'am.

25 MS. KLINNER: And that would need to be certified by

1 the DC Office of the Surveyor or --

2 MR. RICE: The initial -- the existing comes from the  
3 Office of the DC Surveyor, and then the overlay is certified by  
4 your surveyor.

5 MS. KLINNER: Okay.

6 MR. RICE: I can send you a copy of one that's been  
7 submitted in another application if you wish?

8 MS. KLINNER: That would be great if you could do that.

9 CHAIRPERSON HILL: Okay. So Ms. Klinner, do you think  
10 you can get this to us by next week?

11 MS. KLINNER: I guess it will depend on how long it  
12 takes to get certified. But we will do our best.

13 CHAIRPERSON HILL: All right. And then Mr. Robertson,  
14 you can come up with your list. So Mr. Moy, if that would be --  
15 when would we get that, and then when could we put this up for  
16 decision? Well, next week are we returning?

17 MR. MOY: (Thumbs up.)

18 CHAIRPERSON HILL: Okay. So actually, so this will be  
19 better even for the timing. So we're not back again until the  
20 24th. So we can do a decision on the 24th. And then if you can  
21 go ahead and give us, I guess, if you can get it to us by the  
22 16th. Okay. Then we could go ahead and make a decision by the  
23 24th.

24 MR. MOY: That will work. The only other layer I would  
25 add, Mr. Chairman, it's your choice, is whether or not you wish to

1 give the parties an opportunity to respond to what the Applicant  
2 is filing in the record.

3 CHAIRPERSON HILL: Right. So if we did -- if they got  
4 it to us by the 16th, then we could give all the parties an  
5 opportunity to respond by the 19th.

6 MR. MOY: Okay. That's a Friday. So the 16th is a  
7 Tuesday for the Applicant to file, February 16, Tuesday.  
8 Responses from the parties February 19th. And the Board to make  
9 its decision on February 24th decision meeting. They also, you  
10 should know that when you submit your filing into the record,  
11 you're obligated to serve the parties as well.

12 CHAIRPERSON HILL: Okay. They understand So does  
13 everybody understand?

14 (Heads nod affirmatively.)

15 CHAIRPERSON HILL: Okay. Does anybody have any final  
16 questions?

17 MR. BHATIA: (Raises hand.)

18 CHAIRPERSON HILL: Okay. Oh, Mr. Bhatia?

19 MR. BHATIA: A question of procedure. Is there an  
20 opportunity to say two sentences in closing or if not, that's fine  
21 too?

22 CHAIRPERSON HILL: No. You guys, the conclusion is  
23 only for the Applicant. But again, you're going to get -- they're  
24 going to submit what they submit on the 16th. And, I mean, Mr.  
25 Robertson, if you can, I would submit all the stuff to, you know,

1 Ms. Kim and Mr. Bhatia ahead of time to let them know this is the  
2 plan, and see if they have any comments. Because then you're  
3 going to go ahead and, you know, get -- you won't be surprised by  
4 Friday. But it's the Board that's going to decide. I'm just  
5 letting everybody know, we decide. And so, you know, they're  
6 going to submit whatever they submit. You don't have to go back  
7 and forth, back and forth. They're going to submit whatever  
8 they're going to submit. And then we're going to decide what we  
9 think of it. And really, it's not even about the regulations.  
10 This is just kind of a good neighbor policy, if you will. Like  
11 how, you know, you're going to know what's going on. The  
12 regulations are -- what we're discussing upon is already in the  
13 record.

14 Okay. Anything final from the Board?

15 (No response.)

16 CHAIRPERSON HILL: Okay. All right. Well, then thank  
17 you all very much, and have a nice day. Thank you, commissioner.

18 MR. PUTTA: Thank you, sir.

19 MS. KIM: Thank you, Mr. Hill.

20 CHAIRPERSON HILL: Thank you.

21 MR. ROBERTSON: Thank you all.

22 CHAIRPERSON HILL: Thank you. I need one minute.

23 CHAIRPERSON HILL: Do you all want to try to do one  
24 more and then let's see what happens before lunch?

25 (Heads nod affirmatively.)

1 CHAIRPERSON HILL: So this is a decision on the 24th.  
2 Okay. All right. Mr. Moy, you can go ahead and call our next  
3 one.

4 MR. MOY: Okay. Thank you, Mr. Chairman. Moving  
5 right along. The next case before the Board is number 20323 of  
6 the District of Columbia Department of General Services. This  
7 application is as amended for special exception under Subtitle C,  
8 Section 703.2 from the minimum parking requirements of Subtitle C,  
9 Section 701.5. This would enlarge the outdoor play area at Maury,  
10 M-A-U-R-Y, Elementary School, RF-1 Zone at premises 1250  
11 Constitution Avenue, Northeast, Square 1010, Lot 147. The  
12 preliminary matter here, Mr. Chairman. I believe there's a motion  
13 to waive the 21-day filing deadline. The Applicant was submitting  
14 an updated burden of proof statement.

15 CHAIRPERSON HILL: Okay. Thank you. Ms. Woodhead,  
16 are you there?

17 MS. WOODHEAD: I'm here.

18 CHAIRPERSON HILL: Can you hear us?

19 MS. WOODHEAD: Yes, I can. Can you hear me?

20 CHAIRPERSON HILL: Yeah. Are you choosing not to use  
21 your -- oh, I can see you. Okay. Great. Could you introduce  
22 yourself for the record, please?

23 MS. WOODHEAD: Yes. I am Sarah Woodhead, principal in  
24 charge of the modernization of Maury Elementary School with DLR  
25 Group, a DC architecture firm.

1 CHAIRPERSON HILL: and who is here with you today, Ms.  
2 Woodhead?

3 MS. WOODHEAD: We have representatives from the  
4 District of Columbia Public Schools. We have Nicholas Williams  
5 and Amanda (indiscernible). From the Department of General  
6 Services we have Dan Nebhut. And from NCN Build, our build  
7 leader, is Krystine Opinion.

8 CHAIRPERSON HILL: Okay. All right. Ms. Woodhead,  
9 you're going to be presenting to us, correct?

10 MS. WOODHEAD: Yes.

11 CHAIRPERSON HILL: Okay. We'll see if we have any  
12 questions for you from anybody else, but why don't you go ahead  
13 and begin when you like.

14 MS. WOODHEAD: Okay. Can someone let me share  
15 content?

16 CHAIRPERSON HILL: Mr. Young? Is this something that's  
17 in the record, Ms. Woodhead?

18 MS. WOODHEAD: It is. I'm looking at exhibit 5A2,  
19 specifically on line four.

20 CHAIRPERSON HILL: Okay. Maybe Mr. Young, do you just  
21 want to pull it up.

22 MS. WOODHEAD: That's fine. That would be fine. I  
23 want to look at slide four and seven. That would be great.

24 MR. YOUNG: What exhibit is it again?

25 MS. WOODHEAD: It's exhibit 5A2.

1           MR. YOUNG:    Okay.    I just need a minute to pull them  
2 up.

3           MS. WOODHEAD:   Okay.    So while he's doing that, and  
4 thank you for that.   We're pleased to be with you this afternoon.  
5    Thank you for your time today.   What we're requesting is, as was  
6 stated in the opening, request for relief through special  
7 exception on the number of parking spaces for Maury Elementary  
8 School.   And under Subtitle 701.5, we're required to have 21  
9 spaces.   And that is the number that exists onsite now.   However,  
10 as part of a project to expand outdoor play areas at the north end  
11 of the property, we'd like to reduce the number of onsite parking  
12 spaces from 21 to 13 so we can get permission of the zoning code  
13 to request a special exception.   This is applicable because of an  
14 agreement between DC Public Schools and the District Department of  
15 Transportation, where DDOT has agreed to locate any parking spaces  
16 adjacent to the school on 12th Place, Northeast, which we can see  
17 the existing conditions, and then the adjacent space that  
18 accommodates the number of cars.   And we're going to push DCPS a  
19 little bit about how their pilot program will work to accommodate  
20 teacher parking spaces along the street.

21           We do have a letter of support from ANC 6A from DDOT  
22 from Capitol Hill Restoration Society.   And with some conditions  
23 about the terms that DDOT would be applying to 12th Place,  
24 Northeast residents.   In general, we have full agreement about  
25 this.   And this is about achieving the amount of play space for

1 students that the city is trying to work towards on all of its  
2 sites. But we don't have that exhibit up yet. I'll ask if  
3 Nicholas, Amanda or Dan wants to add anything about the  
4 operational issues related or the policy issues related to the  
5 DDOT and DCPS agreement?

6 MR. WILLIAMS: I can go ahead and jump in. This is Nick  
7 Williams, DC Facilities. I just wanted to add that this is kind  
8 of a long, it's been a long process we've been working on with  
9 DLR, Department of General Services, actually, ANC 6A, to pilot  
10 this on the Maury site to try to be able to come up with a  
11 solution that we can deploy a little bit more widely across some  
12 of our tighter urban sites. We have, you know, whether it's  
13 community support for rebranding some street parking or teacher  
14 parking, and a very, very limited play space onsite.

15 MS. WOODHEAD: Can we look at slide four, sorry to  
16 interrupt, to give you kind of the lay of the land. There we go.  
17 And feel free to zoom in on that a little bit if you can. This  
18 plan at the north arrow, going to the right on the slide. So,  
19 sorry about that. So on the top of the site plan you can see  
20 there are 21 parking spaces, there are two curb cuts. And what we  
21 would propose is actually on slide seven. So just jumping down a  
22 couple. If we could go to slide seven.

23 So we're adding about 3,000 square feet of play space,  
24 parkscape, bike loop for the bicycle riding education program,  
25 which is really I think important on this very tight site. We do

1 lose the eight spaces, then those are readily accommodated in the  
2 existing parking along the west side of the site, shown at the top  
3 with the yellow highlighting. I'm sorry, Nick, for that  
4 interruption. Please continue.

5 MR. WILLIAMS: I think the other thing I just want to  
6 point out to you about the parking spaces is that these were  
7 actually previously assigned as no parking during school hours.  
8 So it's not even like we're necessarily, this process even takes  
9 away parking spaces that were previously used by neighborhood  
10 residents. It was simply kind of activating unused curbside to  
11 allow us to expand the play space. And with that, Sarah, I think  
12 I can pass it back to you.

13 MS. WOODHEAD: Okay. Well, I think that's it in a  
14 nutshell. Any questions, or comments or areas that you would like  
15 us to go into in more detail?

16 CHAIRPERSON HILL: Mr. Young, can you drop the slide  
17 deck, please. Thank you.

18 So I just had a quick question. I guess the TDM plan is  
19 rolled into the project plan, is that correct?

20 MR. WILLIAMS: So the TDM is actually the larger -- it  
21 should have been maybe a little bit more simply stated. It's the  
22 larger District-wide TDM, it's through the goDCgo Website that  
23 DDOT put together, and it's for all our DC -- it's to assist, you  
24 know, teachers and students with options throughout all DCPS  
25 facilities. So it's actually a District-wide TDM.

1 CHAIRPERSON HILL: So I'm just -- the DDOT 1 and the  
2 TDM plan, there is -- I'm just trying to understand if the TDM  
3 plan is there now. And Ms. Cain, I don't know if you can provide  
4 clarification.

5 MS. CAIN: Yes. So as Ms. Woodhead has indicated, it's  
6 part of a larger District-wide TDM plan that DDOT has put in place  
7 for public schools. So we think that if the Board wants to  
8 include this on the order, that would be fine. And we would just  
9 have the flexibility to sort of wordsmith the language to make  
10 sure that it reflects the program that DDOT has in place.

11 CHAIRPERSON HILL: Okay. So you understand on how to  
12 write the order?

13 MS. CAIN: Uh-huh.

14 CHAIRPERSON HILL: Okay. All right. And then the only  
15 other thing I have for the Board, I guess the ANC, they were  
16 talking about -- also, I'm looking at their letter of conditions  
17 for RPP. And like we can't really talk about RPP, so there's not  
18 really anything we can do about that. So it's unclear to me  
19 whether that means they're not in support if we did it. But  
20 that's just kind of something to kind of think about while I turn  
21 to the Office of Planning.

22 Office of Planning?

23 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman and  
24 members of the Commission. And I mentioned, I'm here on behalf of  
25 the Office of Planning on BZA Case 20323. The Applicant has

1 requested a special exception to reduce the parking requirements  
2 of Subtitle C, 701.5, where 21 spaces are required, and 13 spaces  
3 is proposed. And that is pursuant to Subtitle C, 703, which  
4 allows for a reduction in the parking spaces.

5 Section 703, and in particular .2, states that the  
6 Applicant has to demonstrate that at least one of a number of  
7 conditions should be met. In this case the Applicant has  
8 demonstrated that reduction is necessary due to the size of the  
9 property, and requirement to provide at least I think 16 extra  
10 square footage of play area per pupil. And, therefore, they have  
11 chosen to reduce the parking space so that they can meet this  
12 requirement. In addition, there are no parking lots within 600  
13 feet of this site that would accommodate the eight spaces that are  
14 being lost.

15 The parking demand for the 21 spaces, the property can  
16 accommodate 13 spaces due to the need for the play area. And the  
17 additional spaces can be (audio interference) outside. As the  
18 Applicant has said, that there's an arrangement to have eight  
19 spaces provided along the street frontage, right adjacent to the  
20 school. So that meets the requirement.

21 Under the general special exception criteria of Subtitle  
22 X, Title 1, the general purpose and intent of the zoning  
23 regulations and the zoning map, the intent of the regulation is  
24 that parking spaces should be provided onsite and have no impact  
25 on the movement of the traffic on the adjacent streets or in the

1 area. In this case the proposal would meet the intent of the  
2 parking, that most of the parking spaces are provided onsite, and  
3 the remainder of the spaces would be provided off site, right  
4 adjacent to the property. The proposal would not seem to  
5 adversely affect use of neighboring properties. I think that  
6 having the parking spaces onsite, on the street, adjacent to the  
7 school, would not affect the neighboring properties. And then  
8 when the spaces are not being used for school, then they would be  
9 open to the general public.

10 The Office of Planning recommends approval of the  
11 requested special exception. Thank you, Mr. Chairman. And I'm  
12 available for questions.

13 CHAIRPERSON HILL: Okay. Does the Board have any  
14 questions of the Office of Planning?

15 (No response.)

16 CHAIRPERSON HILL: Does the Applicant have any  
17 questions of the Office of Planning?

18 (No response.)

19 CHAIRPERSON HILL: Okay. Ms. Cain, I mean, the way I'm  
20 reading this ANC letter, it says our support is conditional upon  
21 DDOT's consideration of the ANC's request. So I don't necessarily  
22 read it as they're not in support, it's just that they want DDOT  
23 to consider the request; wouldn't you agree?

24 MS. CAIN: Yeah, I would agree with that. I would also  
25 point out that in the DDOT letter, exhibit 34, they do note that

1 some of the spaces could operate as RTP parking during non work  
2 hours. So it does seem like DDOT has considered, you know, were  
3 probably considered to continue to work with the ANC.

4 CHAIRPERSON HILL: Okay. All right. Mr. Young, is  
5 there anyone here wishing to testify?

6 MR. YOUNG: We do not.

7 CHAIRPERSON HILL: All right. Ms. Woodhead, do you have  
8 anything to add at the end?

9 MS. WOODHEAD: No, I don't. Thank you.

10 CHAIRPERSON HILL: Okay. Does the Board have anything?

11 (No response.)

12 CHAIRPERSON HILL: All right. I'm going to close the  
13 record and the hearing. Thank you, guys. Goodbye.

14 Okay. I didn't have any issues with the application. I  
15 thought that the OAG said -- also, there's a letter in support  
16 from CHRS. But I would agree with the Office of Planning's  
17 recommendation and analysis of the report. Also, 6A was a  
18 support. However, they were asking DDOT about RPP. I think that  
19 they're going to get at least that discussion started. And then  
20 also OAG is going to see how to create a condition that includes  
21 DDOT's TDM plan. So I'm going to vote in support.

22 Mr. Shapiro, is there anything you'd like to add?

23 COMMISSIONER SHAPIRO: No.

24 CHAIRPERSON HILL: Mr. Smith?

25 BOARD MEMBER SMITH: I don't have anything.

1 CHAIRPERSON HILL: Vice Chair John?

2 VICE CHAIR JOHN: I have nothing to add.

3 CHAIRPERSON HILL: Okay. I'm going to make a motion to  
4 approve Application Number 20323 as captioned and read by the  
5 secretary and ask for a second, Ms. John?

6 VICE CHAIR JOHN: Second.

7 CHAIRPERSON HILL: Motion made and seconded. Mr. Moy,  
8 can you take a roll call?

9 MR. MOY: Yes. Thank you, Mr. Chairman. When I call  
10 your name if you would please respond with a yes, no or abstain to  
11 the motion made by Chairman Hill to approve the application for  
12 the relief requested, seconded by Vice Chair John. Zoning  
13 Commissioner Peter Shapiro?

14 COMMISSIONER SHAPIRO: Yes.

15 MR. MOY: Mr. Smith?

16 BOARD MEMBER SMITH: Yes.

17 MR. MOY: Vice Chair John?

18 VICE CHAIR JOHN: Yes.

19 MR. MOY: Chairman Hill?

20 CHAIRPERSON HILL: Yes.

21 MR. MOY: We have a Board seat vacant. Staff will  
22 record the vote as 4 to 0 to 1. And this is on the motion of  
23 Chairman Hill to approve the application for the relief requested,  
24 seconded by Vice Chair John, also in support of the motion Mr.  
25 Smith and Zoning Commissioner Peter Shapiro. Motion carries 4 to

1 0 to 1.

2 CHAIRPERSON HILL: All right. Thank you, Mr. Moy.  
3 Okay. Actually, fellow Board members, it looks like there's kind  
4 of a timing issue with the next case. So if we can real quickly  
5 kind of try to do that. In my end, I guess it's a request for  
6 postponement. We'll see where we get with that if you wouldn't  
7 mind, and then we'll take lunch. Mr. Moy, if you could call our  
8 next case.

9 MR. MOY: Thank you, Mr. Chairman and thank you for  
10 accommodating. This is case number 20333 of Matthew Pickner.  
11 Advertised for special exception under special exception under  
12 Subtitle E, Section 5201 from the lot occupancy requirements of  
13 Subtitle E, Section 304.1, and from the rear yard requirements of  
14 Subtitle E, Section 306.1. This will construct a three-story rear  
15 addition to an existing attached dwelling unit in the RF-1 Zone.  
16 This is at premises 1165 3rd Street, Northeast, Square 773, Lot  
17 270. And as you said, Mr. Chairman, the Applicant filed a request  
18 to postpone in late afternoon of last Monday, which would have  
19 been February the 8th.

20 CHAIRPERSON HILL: Okay. Could the Applicant identify  
21 themselves, please? Can you hear us, Mr. Pickner?

22 MR. PICKNER: I can. Can you hear me?

23 CHAIRPERSON HILL: Yes. Could you please state your  
24 name for the record?

25 MR. PICKNER: Matthew Pickner, homeowner at 1165 3rd

1 Street, Northeast.

2 CHAIRPERSON HILL: Okay. And who is with you, Mr.  
3 Pickner?

4 MR. PICKNER: No one.

5 CHAIRPERSON HILL: Okay. I see a Ms. -- if you can  
6 mute yourself, Mr. Pickner, for a moment. I see a, is it a Mr.  
7 Courtney?

8 MR. COURTNEY: Yes, I'm here.

9 CHAIRPERSON HILL: All right. Mr. Courtney, who are  
10 you?

11 MR. COURTNEY: I represent ANC 6C-06. I'm the  
12 designated rep for the ANC on this.

13 CHAIRPERSON HILL: Okay. And you're a commissioner?

14 MR. COURTNEY: I am.

15 CHAIRPERSON HILL: Okay. Commissioner Eckenwiler, is  
16 that you there?

17 MR. ECKENWILER: It is, Mr. Chairman. Good morning.

18 CHAIRPERSON HILL: Good morning. Could you introduce  
19 yourself for the record as well?

20 MR. ECKENWILER: Actually, good afternoon. Mark  
21 Eckenwiler, vice chair ANC 6C. I don't expect to say much this  
22 afternoon, Mr. Chairman.

23 CHAIRPERSON HILL: Okay. Mr. Pickner, can you hear me?

24 (No response.)

25 CHAIRPERSON HILL: Mr. Pickner, you might still be on

1 mute. No, maybe you're not on mute. Now you're still on mute.

2 MR. PICKNER: Yes, I can hear you.

3 CHAIRPERSON HILL: Why do you need the postponement, Mr.  
4 Pickner?

5 MR. PICKNER: My material had been submitted a while  
6 ago, and it was just brought to my attention from the Office of  
7 Planning this week that certain documents needed revision, which  
8 was a surprise to me. So that's why I'm postponing.

9 CHAIRPERSON HILL: Okay. And Commissioner Courtney --  
10 Commissioner Eckenwiler, you don't care about the postponement or  
11 have issues on the postponement?

12 MR. COURTNEY: I don't have any objection, no.

13 CHAIRPERSON HILL: Commissioner Eckenwiler?

14 MR. ECKENWILER: Nothing to add.

15 CHAIRPERSON HILL: Okay. All right. Mr. Moy, when can  
16 we have this back before us?

17 MR. MOY: Okay. I'm unclear how long it would take for  
18 the Applicant to file. I guess there's additional work that needs  
19 to be done to meet questions that's being proposed by the Office  
20 of Planning. But I can tell you though that, today is the 10 of  
21 February, and dates in March, Mr. Chairman, are in double digits  
22 except for March 10. So we have eight cases on March 10. So  
23 that's a possibility. If not March 10, then we have nine cases in  
24 the succeeding three hearings. So those are the possibilities,  
25 depending on when the Applicant can make their filing.

1           MR. COCHRAN: Excuse me, Mr. Chairman. The Applicant --  
2 this is Steve Cochran from the Office of Planning. The Applicant  
3 may wish to go back to the ANC. So you may want to ask the ANC  
4 when their meeting would be in March.

5           CHAIRPERSON HILL: Commissioners, do you know?

6           MR. COURTNEY: It looks like it will be on the 10th,  
7 March 10th.

8           CHAIRPERSON HILL: Okay. So then you could go back,  
9 you can let him come, Mr. Pickner back before you on March 10th?

10          MR. COURTNEY: Mark, that's you on the PZE side.

11          MR. ECKENWILER: Mr. Chairman, we reserved whether or  
12 not we would look at this again. This project has already been  
13 through our committee twice, to the ANC once on substance. And  
14 while we have not entirely foreclosed for the review, as the  
15 chairman of the zoning committee I can tell you that we've  
16 invested a lot more time and effort in looking at this than we  
17 typically would for a project of this scope.

18          CHAIRPERSON HILL: Okay. So that means you don't know  
19 if he'll come back before you on the 10th?

20          MR. ECKENWILER: My honest view is it really does depend  
21 on the quality and extent of the revisions. And what I can say is  
22 based on what we've seen since our last meeting in January,  
23 because there have been a number of, you know, subsequent filings,  
24 we wouldn't have called it back for those.

25          CHAIRPERSON HILL: Okay. So Mr. Pickner, it sounds as

1    though, again, there might be a disconnect, whether or not what  
2    you're trying to do at the ANC and getting back before them. So  
3    regardless of that, I'm going to leave the tent open as a chance  
4    for you to go ahead and if the ANC wants to hear from you again,  
5    then that's fine. If not, then that will be your last chance I  
6    guess in getting something from them. Because currently we don't  
7    have any kind of a report from the ANC. And so if you -- and, Mr.  
8    Moy, I'll let you kind of figure this out with Mr. Pickner then,  
9    because that means that March 10th, you're saying we have double  
10   digit cases through the 31<sup>st</sup>?

11           MR. ECKENWILER: Mr. Chairman?

12           CHAIRPERSON HILL: Yes.

13           MR. ECKENWILER: I apologize for interrupting. But I  
14   thought I heard you say that you have no report from the ANC, and  
15   there is in fact a letter of opposition in the record from us.  
16   It was filed yesterday.

17           CHAIRPERSON HILL: Okay. Then that just came in.  
18   Give me one second. (Pause) Okay. All right. So Mr. Pickner,  
19   there is a letter in here in opposition from the ANC. So I don't  
20   know what's going to happen with your revised plans. But I'm  
21   going to let Mr. Moy kind of figure this out so you can get back  
22   before us on April 7th. Mr. Moy?

23           MR. MOY: Yes. I was going to suggest that, Mr.  
24   Chairman. Because I'm going to -- I would rest on the scenario  
25   that something may occur at the ANC on March the 10th. So I was

1 going to propose for the Board as early as March 17th or my second  
2 date, which the date that you just picked, which would be April  
3 the 7th. April 7th would be good for the Board since this will be  
4 the eighth case on April the 7th.

5 CHAIRPERSON HILL: Right. How many cases do you have  
6 on the 17th?

7 MR. MOY: Nine. So in other words, if we put this case  
8 on March 17, it would be the 10th case.

9 CHAIRPERSON HILL: Mr. Pickner, can you hear me?

10 MR. PICKNER: Yes. Can you hear me?

11 CHAIRPERSON HILL: I can hear you. Do you hear -- did  
12 you hear our discussion about the dates and your need to try to  
13 clarify information with ANC? I don't know if it's going to  
14 change their opinion, but the 17th we're going to set the date, is  
15 that going to change your finances or anything that's going on  
16 with the project?

17 MR. PICKNER: No. Those dates are -- you know, on  
18 either date this is going to work for me.

19 CHAIRPERSON HILL: Okay. Then we'll go ahead and  
20 postpone you to April 7th.

21 MR. MOY: All right. Mr. Chairman, on that note, do  
22 you want to give a deadline for filing from the Applicant to file  
23 into the record? If you do, then I would suggest that the  
24 Applicant make its filing by, let's say March the, let's say March  
25 the 29th, which is a Monday.

1 CHAIRPERSON HILL: Okay. And then will I give time  
2 for the ANC to respond to anything?

3 MR. MOY: You could if you'd like. I mean, this is  
4 still an open hearing. If you do, then the ANC can respond by,  
5 let's say April 2nd, which is a Friday.

6 CHAIRPERSON HILL: Will that work for you,  
7 Commissioners?

8 MR. ECKENWILER: Mr. Chairman, Mark Eckenwiler. If I'm  
9 understanding the schedule correctly, that doesn't give the full  
10 ANC any -- if we're talking March 29th, that's a Monday. The ANC,  
11 full ANC always meets on the second Wednesday of the month. So  
12 we're not meeting in April until April 14th. We have a meeting  
13 March 10th, and then we have a meeting on April 14th.

14 CHAIRPERSON HILL: Right. I mean, what I was trying to  
15 do, Commissioner, is whatever Mr. Pickner does with his  
16 application, I would assume he has before your March 10th meeting  
17 and tries to get on it or not. I mean, if he's not met, you know,  
18 whatever criteria you need him to meet to get on the meeting, then  
19 I guess he won't get on the meeting. And your opinion I guess  
20 will not change. So that means, Mr. Pickner, you have to get  
21 whatever you need for the ANC before -- you have to deal with the  
22 ANC and their timeline in order to figure out whether or not  
23 they're going to hear your case on the 10th of March. Do you  
24 understand?

25 MR. MOY: So then, if I can intervene, Mr. Chairman,

1 with ANC's way, and then if ANC's meeting March 10th, the  
2 Applicant should make their filing by March the 8th, which is a  
3 Monday. I don't know if that's too late for the ANC to review or  
4 not. Otherwise, I would have to change that.

5 CHAIRPERSON HILL: Mr. Pickner, how quickly can you  
6 make your filings; can you make them by the first of March?

7 MR. PICKNER: I need to talk to the architect who is  
8 preparing these drawings. What date was that again?

9 CHAIRPERSON HILL: What I'm trying to figure out, Mr.  
10 Pickner, is if you're not under a time constraint, then you can  
11 try to get everything taken care of with enough time for the ANC  
12 to determine whether or not they're going to hear your case again  
13 by maybe April 5th. And that means that the ANC would be able to,  
14 you know, hear your case on the 14th, and we could come back  
15 before us on the 21st of April.

16 MR. PICKNER: That is -- I think that's -- that's a  
17 good target.

18 CHAIRPERSON HILL: Okay.

19 MR. PICKNER: An excellent target.

20 CHAIRPERSON HILL: So then, Mr. Moy, if we go back, then  
21 that means that the Applicant could submit their filings by when  
22 before the ANC meeting?

23 MR. MOY: It would be before the ANC meeting the 10th.

24 CHAIRPERSON HILL: So the 14th of April.

25 MR. MOY: Oh, the 14th of April. Okay. We moved it.

1     Okay.  So let's see, April 14th ANC.  So then Mr. Pickner should  
2     make his filing into the record, I would say at least by April  
3     5th.  Yes?

4                 CHAIRPERSON HILL:  Let me take a step back Mr. Moy.  
5     Because we might need to allow OP any time to look at if there's  
6     any changes.

7                 MR. MOY:  Yeah.  I was just going to add to the  
8     timeline.  So to give OP another week, which would be April the  
9     12th.

10                CHAIRPERSON HILL:  Okay.  So you're saying that they  
11     would submit by April 5th, Mr. Pickner.  Office of Planning, if  
12     you want to submit an additional report by April 12th.  And the  
13     hearing would take place, whether or not you get before them, on  
14     April 14th.  And then we'll be back here on April 21st; is that  
15     right, Mr. Moy?

16                MR. MOY:  Continued hearing on April 21st?

17                CHAIRPERSON HILL:  So if I understand correctly, I --

18                MR. MOY:  April 14th would be better because you have  
19     an appeal on 21st.

20                CHAIRPERSON HILL:  How many cases do we have for April  
21     21st with the appeal?

22                MR. MOY:  Four.  Four.  This will be the fifth case.

23                CHAIRPERSON HILL:  Let's add him to the -- Mr. Pickner,  
24     I'm just trying to figure out what your time constraints are.  So,  
25     again, if you're not back in until the 28th of April, what does

1 that do to you?

2 MR. PICKNER: Just so we're clear, if the -- if April  
3 28th is the hearing date, and when would I see the ANC?

4 CHAIRPERSON HILL: Let me ask you the first question.  
5 I'm sorry, just so I understand. Is April 28th okay for your  
6 timeline?

7 MR. PICKNER: April 28th is fine.

8 CHAIRPERSON HILL: Okay. So now I'm going to go  
9 backwards, Mr. Moy. So then it still means that you, Mr. Pickner,  
10 have to submit everything by April 5th. Okay?

11 MR. PICKNER: Yes.

12 CHAIRPERSON HILL: And then the Office of Planning will  
13 have until April 12th to give us any updated report. All right,  
14 Mr. Moy?

15 MR. MOY: Yes.

16 CHAIRPERSON HILL: And then that means that if you get  
17 before the ANC, and that I don't know Mr. Picker, it would happen  
18 on April 14th. And then we could get some submission from the ANC  
19 by April 21st. That gives the ANC a week, if that's all right  
20 with the commissioners. And I'm just going to look at one nod,  
21 because I can't see from Mr. Eckenwiler.

22 MR. COURTNEY: Yeah.

23 CHAIRPERSON HILL: And that means we'll have our  
24 hearing on the 28th of April. You got that, Mr. Moy?

25 MR. MOY: Yes, sir. Let me read it once more if I may.

1 So the Applicant would make his filing by April 5th. All right.  
2 And responses from OP and ANC, if any, by April the 12th. And  
3 then the continued hearing would be scheduled for April 28?

4 CHAIRPERSON HILL: No, no, no. I'm sorry. Oh, my  
5 gosh. We all need lunch. Okay. So I'm going to do it again. So  
6 April 5th is when the Applicant is going to submit the filings.

7 MR. MOY: Yes. Yes.

8 CHAIRPERSON HILL: Okay. Office of Planning will give  
9 us our report by April 12th, if they have anything.

10 MR. MOY: Yes.

11 CHAIRPERSON HILL: Okay. The ANC will have until April  
12 21st to submit anything.

13 MR. MOY: Okay.

14 CHAIRPERSON HILL: Okay. And then we're going to have  
15 the hearing on April 28th.

16 MR. MOY: Yes.

17 CHAIRPERSON HILL: Okay.

18 MR. MOY: Sorry.

19 CHAIRPERSON HILL: Did everybody get those dates?

20 (No response.)

21 CHAIRPERSON HILL: Okay. All right. Mr. Pickner, do  
22 you understand?

23 MR. PICKNER: Yes.

24 CHAIRPERSON HILL: Okay. All right. Good luck,  
25 everybody.

1 MR. PICKNER: Thank you.

2 CHAIRPERSON HILL: Thank you.

3 CHAIRPERSON HILL: Okay. It's 12:50. Do you want to  
4 say 1:30 to come back; is that good. Okay. See everybody at  
5 1:30. Have a nice lunch.

6 (Whereupon, the above-entitled hearing went off the  
7 record at 12:50 p.m., and resumed at 1:42 p.m.)

8 CHAIRPERSON HILL: We can go ahead and call our next  
9 case.

10 MR. MOY: Thank you, Mr. Chairman. The Board is back  
11 in session after a quick lunch recess. The time is at or about  
12 1:42.

13 The next case before the Board is Application Number  
14 20372 of Aulona Alia. And this caption advertised for an area  
15 variance. This is as amend a area variance from the alley lot  
16 building height restrictions of Subtitle E, Section 5102, pursuant  
17 to Subtitle X, Section 1001.1, to construct a new two-story  
18 principal dwelling unit, with a cellar and retaining walls, in an  
19 alley lot in the RF-1 Zone at premises 2017 Rear, R-E-A-R, 2nd  
20 Street, Northeast, Square 3564, Lot 810.

21 And I would ask the Applicant to confirm the caption  
22 that I've just read, Mr. Chairman. Other than that, the  
23 preliminary matter is that the Applicant is asking to waive the  
24 21-day filing for burden of proof. And, of course, within this  
25 24-hour period prior to the hearing, the Applicant wants to be

1 able to file and use a PowerPoint presentation.

2 MS. ALIA: Yes. Confirming. Thank you.

3 CHAIRPERSON HILL: Alia, can you hear me?

4 MS. ALIA: I can hear you very well.

5 CHAIRPERSON HILL: Okay. Could you introduce yourself  
6 for the record, please?

7 MS. ALIA: Yes. My name is Aulona Alia, and I'm here  
8 together with my husband George.

9 CHAIRPERSON HILL: Okay. Great. So Ms. Alia, -- Mr.  
10 Moy, you said that there was some filing waivers, is that what you  
11 said?

12 MR. MOY: Yeah, there's a 21-day waiver, as you know,  
13 for supplemental information. They have a revised burden of  
14 proof.

15 CHAIRPERSON HILL: Is that already in exhibit 30?

16 MR. MOY: I believe so.

17 CHAIRPERSON HILL: And then also there is a PowerPoint;  
18 is that what you said?

19 MR. MOY: Yes. As you know, the records close 24 hours  
20 prior to the hearing.

21 CHAIRPERSON HILL: Okay.

22 MS. ALIA: Yes.

23 CHAIRPERSON HILL: I guess I don't have any issue with  
24 allowing the burden of proof and/or the PowerPoint, because I'd  
25 like to see it. Unless the Board has any issues, raise your hand.

1 (No response.)

2 CHAIRPERSON HILL: Okay. So we're going to go ahead  
3 and allow that into the record.

4 Ms. Alia, I guess we -- it will take us a while to get  
5 the PowerPoint here into the record. So you can go ahead and pull  
6 it up and walk us through it. I guess -- I don't know how -- you  
7 know, you're not a zoning expert; is that correct?

8 MS. ALIA: Myself? No.

9 CHAIRPERSON HILL: The reason why I'm asking is I know  
10 you have gone through this process. And I guess you have  
11 presented to the ANC, and I guess you have spoken with the Office  
12 of Planning, and you know that they're in denial of your  
13 application; they don't agree with your argument?

14 MS. ALIA: Yes. Because I didn't make myself clear in  
15 the burden of proof in terms of what were our exceptional, I  
16 guess, yes, conditions.

17 CHAIRPERSON HILL: So you understand you need to make  
18 that argument here now?

19 MS. ALIA: Yes, I do.

20 CHAIRPERSON HILL: Okay. All right. So you can go  
21 ahead and begin whenever you'd like.

22 MS. ALIA: Yes. Thank you so much. How can I share my  
23 screen, or is that --

24 CHAIRPERSON HILL: Okay. I guess Mr. Young has that  
25 up. Can you see it?

1 MS. ALIA: Yes, I can see it.

2 CHAIRPERSON HILL: Okay. And you can just ask Mr. Young  
3 to advance the slides when you're ready.

4 MS. ALIA: Okay. Perfect. Yes. First of all, thank  
5 you so much guys. You have a very hard job here hearing all these  
6 cases all day, and one after the other. So we really appreciate  
7 being here in front of you. And we will make this really fast.

8 Our case, and the reason that we are here, is basically,  
9 you know, our land is like this, so on a very steep hill. The  
10 building height measuring point is being measured here, which is  
11 the alley. And I'll show you in the slide below. But if our land  
12 was flat, like this, we would not be here in front of you, and we  
13 would have no problems. But because it is like this, and one part  
14 is 122 feet and the other part is 99 feet, there is 22 feet  
15 difference, and that's why, you know, we are here. So if we can  
16 go to the next slide, please, I would appreciate it.

17 So we purchased in 2019. We came before you in 2020 to  
18 request that it become a buildable lot. So now it is. And thank  
19 you. When we went to the architect to do the plans it comes out  
20 that the home is looking like a bunker because of this slanted  
21 hill that we're on. If you go to the next one, please, Paul.

22 So the illustration, as you will see here, this is the  
23 area that's in yellow is our land. We are in the back of 2nd  
24 Street as well as the back of 3rd Street, so in the alley there.  
25 As I said, it's an exceptional challenging topography. The

1 elevation is 99.64 on the alley side, and the 122 on the back  
2 side. The difference -- and as I said, the building height  
3 measuring point is measured from the lowest elevation,  
4 unfortunately. That's why we are at a disadvantage. Paul, if you  
5 can go to the next one.

6 So you can see here, it's an illustration of what we  
7 want to build our home. You can see that the back is pretty much  
8 flush with the ground, especially the back half. It feels like  
9 you are in a bunker, exposed windows in the back limiting light  
10 and air circulation, not so desirable to live. Paul, if you can  
11 go to the next one, please.

12 So a variance can be granted when three conditions  
13 exist. The first one is extraordinary or exceptional situation.  
14 As I mentioned, if our land was flat, we would have no exceptional  
15 situation. However, our land is on a steep hill, where at one end  
16 it is 99 feet and the other is 122 feet. So 23 almost feet  
17 difference. This makes it, one, the ground floor of the house  
18 only have egress windows with deep window wells in the back half.  
19 So light can only come in through a very restricted area. Two, it  
20 puts the back of the house literally in the ground, making it like  
21 a bunker. To me it is not suitable to live if there are no  
22 exposed windows where the air can circulate, nor is it desirable  
23 for the value of the property and the neighborhood. Paul, if you  
24 can go to the next one, please.

25 Number two, exceptional practical difficulties. My

1 husband is 6'2" and 20 feet allowable height and two stories.  
2 After one takes away the separation, that's 1.5 feet from cellar  
3 to ground floor, and then another 1.5 feet separation from ground  
4 floor to the first floor, and allowing another 1.5 feet for the  
5 separation from the first floor to the roof, that leaves us with  
6 about 15.5 feet. However, four feet of that will be taken by the  
7 cellar, which comes a little bit above ground, and only 11.5 feet  
8 are left for both floors, making it impossible for my husband to  
9 be standing in his home where one of the floors is going to be now  
10 5.75 feet in height. And the minimal allowable legal height per  
11 floor is seven feet. And Paul, one more slide, please.

12           Number 3.1, no substantial detriment to the public good.  
13 The extra 10 feet will make it so that the roof of our house is at  
14 the same height as the top of the fence of our back yard  
15 neighbors. This was approved by both Eckington Association, and  
16 ANC 5E, and our bordering neighbors. There is no substantial  
17 detriment to the public good as it does not affect anyone around  
18 us.

19           Three point two, no substantial impairment to the  
20 intent, purpose and integrity of the zoning regulations. Twenty  
21 feet height, as well as 30 feet height, it will be much lower in  
22 height than the homes of our neighbors bordering the land. The  
23 top of the roof will be at the same height as the top of our  
24 neighbor's fence. Their homes are another 30 feet above our roof.  
25 One more, and I think that's the last one.

1           So this is the updated drawing with 30 feet. So it  
2 brings it up a bit more. You know, the roof of the house will be  
3 the same height as our neighbors' fence, with a, you know, an  
4 additional 10 feet. And as I mentioned before, it was approved by  
5 both Eckington Association and ANC 5E, and our bordering  
6 neighbors. I thank you.

7           CHAIRPERSON HILL: Okay. All right. Thank you. Does  
8 the Board have any questions for the Applicant?

9           (No response.)

10          CHAIRPERSON HILL: No?

11          COMMISSIONER SHAPIRO: No questions.

12          CHAIRPERSON HILL: Okay. Anyone from the Office of  
13 Planning?

14          MR. JESICK: Thank you, Mr. Chairman and members of the  
15 Board. Can everyone hear me?

16          CHAIRPERSON HILL: Yes.

17          MR. JESICK: Thank you again. My name is Matt Jesick,  
18 and I'm presenting no peace testimony for case 20372.

19                 The Office of Planning is very appreciative that this  
20 Applicant is seeking to develop and reutilize a parcel of land in  
21 a neighborhood in the District. And we have evaluated their  
22 variance request against the three-part variance test contained in  
23 Subtitle X of the zoning regulations. And OP found that the  
24 subject property does exhibit an exception condition in that it  
25 has a substantial grade change rising from east to west, a height

1 of over 20 feet. However, it was unclear how the grade change  
2 would result in a practical difficulty and the Applicant meeting  
3 the strict implementation of the regulations, which state the  
4 alley building shall be no taller than 20 feet. In fact, the  
5 Applicant showed, and this is taken from exhibit 4, that they do  
6 have plans for a house that could be built and would conform to  
7 the maximum height allowance. And while OP agrees with the  
8 Applicant that granting the variance would not result in  
9 substantial harm to the public good, the variance could result in  
10 harm to the intent of the zoning regulations.

11 The historic development pattern in the District's  
12 residential neighborhoods typically have larger building space in  
13 this case, and smaller building space in the alleys. That  
14 historic pattern has been very purposefully written into the  
15 zoning regulations that 50 percent deviation from the height limit  
16 would go against that purpose. So because the application does  
17 not meet the first and third prongs of the variance test, OP  
18 website forced to recommend denial of the relief. That summarizes  
19 the Office of Planning's written report. But I'd be happy to take  
20 any questions. Thank you.

21 CHAIRPERSON HILL: All right. Thank you. Does the  
22 Board have questions for the Office of Planning? Commissioner  
23 Shapiro?

24 COMMISSIONER SHAPIRO: Thank you, Mr. Chairman. Mr.  
25 Jesick, does your report, did you take into consideration that the

1 burden of proof that the Applicant has presented or was it prior  
2 to the Applicant -- it looks like it was prior to.

3 MR. JESICK: The filing came after our report was  
4 written. But we did discuss those topics with the Applicant, but  
5 the revised burden of proof would not change our report.

6 COMMISSIONER SHAPIRO: That was my question. Thank you  
7 very much. Thank you, Mr. Chairman.

8 CHAIRPERSON HILL: Mr. Smith?

9 BOARD MEMBER SMITH: No questions.

10 CHAIRPERSON HILL: Ms. John?

11 VICE CHAIR JOHN: No questions.

12 CHAIRPERSON HILL: Okay. Ms. Alia, do you have any  
13 questions for the Office of Planning?

14 MS. ALIA: No. I mean, we're very appreciative to  
15 Matthew. I mean, he's been, you know, very helpful. And I think  
16 that just because of the unusual situation, this makes sense. And  
17 I don't know if you guys have given this to other alley lots, but  
18 if you have, then we would appreciate that you also are able to do  
19 something in this case.

20 CHAIRPERSON HILL: Right. Mr. Jesick, can you clarify,  
21 the height again is limited to what again?

22 MS. ALIA: Twenty.

23 MR. JESICK: Yes. The height is limited to 20 feet.

24 CHAIRPERSON HILL: All right. Okay. All right. Mr.  
25 Smith?

1           BOARD MEMBER SMITH: I have a question. Prior to Mr.  
2 Jesick's testimony it did appear that you submitted under exhibit  
3 4 a construction that met the height requirements. Could you  
4 explain the reason for revision, like why you submitted or why you  
5 requested this additional height relief when you submitted a  
6 previous exhibit showing you were able to construct the home of a  
7 sufficient size in keeping with the height.

8           MS. ALIA: Yes. When we went to DCRA and applied for the  
9 permit, because the house came out to be like a bunker, and that's  
10 the first submission that I put in there, which has with the 20  
11 feet height, it was very limiting for us. DCRA suggested that we  
12 go to the Board of Zoning to ask for the 10 additional feet. And  
13 they put that in their memorandum. So we basically requested this  
14 back in September. It's been almost six months now that we  
15 finally are able to come in front of the Board of Zoning. And  
16 it's delayed our plans considerably. You know, both of us live  
17 with my parents at the moment. And we'd really like to start  
18 building our home. And we just wanted to see if it was possible  
19 at all to have a more livable place than what was, you know,  
20 initially came out from the architect, with all the limitations an  
21 alley lot has. And, you know, please keep in mind that the alley  
22 laws are -- and we found this out later -- are very limiting, you  
23 know, the 20 feet height, the area less that you can use. So  
24 we're using less than 50 percent of the land, the retaining walls  
25 can only be of certain height. And that's not because of the

1 windows, you're not able to level the land either because of you  
2 can't have a high retaining wall. So if we were allowed to do any  
3 of those things, it would make this much easier and we would not  
4 have to be in front of you. However, it is the limitations of the  
5 alley law that we have been confronted with. And that's why we're  
6 here. And on top of that we have to also bring water and sewer to  
7 our land, which is, you know, very expensive. And now we're  
8 dealing with this now. Yes.

9 BOARD MEMBER SMITH: Okay. Thank you. No further  
10 questions, Mr. Chair.

11 CHAIRPERSON HILL: Okay. Mr. Jesick, I mean, I've, you  
12 know, taken a look at everything. What do you think of the fact  
13 that it's kind of like dug into kind of the ground and it's kind  
14 of like a little bunker?

15 MR. JESICK: You know, the house, the back of the house  
16 certainly, and I think in either scenario would be somewhat below  
17 grade at the rear of the site. When I compared exhibit 4 and  
18 exhibit 27, which are the updated plans, certainly exhibit 27  
19 showed a house that was raised out of the ground somewhat more.  
20 But I didn't see a significant difference, or it was unclear to me  
21 how there would be a significant difference in the amount of  
22 light and air getting into the windows of the home.

23 CHAIRPERSON HILL: Okay. All right. Mr. Young, is  
24 there anyone here wishing to testify in favor or opposition?

25 MR. YOUNG: We do not.

1 CHAIRPERSON HILL: Okay. Mr. Alia, is there anything  
2 you'd like to add at the end?

3 MS. ALIA: No. Thank you so much. It's been a long  
4 journey. So whatever you guys decide, you know, will be -- yeah.

5 CHAIRPERSON HILL: Okay. Great. Well, I thought your  
6 presentation was done very well.

7 MS. ALIA: Thank you.

8 CHAIRPERSON HILL: Your slide deck was a very nice slide  
9 deck.

10 MS. ALIA: Thank you.

11 CHAIRPERSON HILL: All right. I'm going to go ahead and  
12 close the hearing, close the record and excuse everyone. Thank  
13 you.

14 CHAIRPERSON HILL: Okay. I'm going to go around the  
15 table. And I'll start with you, Commissioner Shapiro.

16 COMMISSIONER SHAPIRO: Thank you, Mr. Chair. I am a  
17 bit torn. I mean, I understand where this is coming from. And it  
18 seems if you're looking at this application it seems pretty clear  
19 that this is, as you said it's 50 percent higher than what's  
20 allowed in an alley lot. You know, it's hard for me to agree with  
21 the Applicant that the topography is a pretty unique  
22 aspect/condition of the property. Then the question becomes, is  
23 that smaller house good enough? I mean, you know, not to be flip,  
24 but it's hard to see the husband's height as a practical  
25 difficulty or unique condition. I've never, in terms of (audio

1 interference) but I mean, I guess (audio interference). You know,  
2 the thing that stands out the most for me is the topography is  
3 quite unique. And does that justify the extra 10 feet. I don't  
4 have any doubt that there's no substantial detriment to the  
5 public. I also agree. I understand where Mr. Jesick's point, you  
6 know, the idea of the height limit really is about that primary  
7 heightened residence on the street and that, you know, analyze.  
8 But again, this is set to a unique topography. It kind of, you  
9 know, lends itself to accepting. So I guess, you know, I'm  
10 rambling a bit because I'm a bit mixed about this. I see the  
11 uniqueness of the site. And granted, it's not doing a whole lot  
12 of damage. It seems like a good thing for the neighborhood. I'll  
13 stop there. I'm curious what the other Board members think.

14 CHAIRPERSON HILL: Mr. Smith?

15 BOARD MEMBER SMITH: I'm with Mr. Shapiro from the  
16 standpoint that I see the practical difficulty that construction  
17 of a dwelling or any building on this particular site. But where  
18 I differ is, I have not seen that they have an undue hardship. I  
19 understand the issue of his size. The purpose of the regulations  
20 in the District is to protect against larger buildings of size  
21 within alleys. From a technical standpoint, we don't want to see  
22 larger plans in the alleys because of public safety concerns for  
23 the size and structure. Also, visual impact of large structures  
24 within alleys behinds larger dwelling units (unintelligible).

25 So I understand the purpose of the regulations, but I do

1 not believe that the Applicants have demonstrated any kind of  
2 undue hardship to construct a dwelling unit because you can use  
3 the property in some way, shape or form. You can construct a  
4 single-family home. Maybe not a single-family home of this size,  
5 the floors. They're seeking this size of relief so that they can  
6 have a higher ceiling. I believe that you can construct a single-  
7 family home, just not of this particular size. So again, saying  
8 that, I do not believe there is an undue hardship to construct a  
9 single-family (audio interference). So I wouldn't be in support  
10 for that particular (audio interference) --

11 CHAIRPERSON HILL: Vice Chair John?

12 VICE CHAIR JOHN: Thank you, Mr. Chairman. So I am  
13 torn because I think it would be a good idea if they were able to  
14 use the lot fully. However, while there is a significant grade  
15 change, I think the Applicant has not shown that there is a  
16 practical difficulty. Because as Mr. Smith said, a good size  
17 house could be built on the alley side of the lot within the  
18 limitations, which would avoid the bunker feeling which appears to  
19 me to affect the rear of the lot. And this is a very long lot.  
20 So they're using a substantial portion of it. I think if the  
21 building were pushed back to the front it wouldn't have that  
22 bunker like quality. So I think the Applicant was making a choice  
23 to have a very large building with a lot of rooms "in the bunker."  
24 So I would agree with OP's analysis, and I would not approve the  
25 Applicant.

1           CHAIRPERSON HILL:    Okay.    Yeah, I mean, I guess I feel  
2 for the Applicant, and understand why they would want to try to  
3 have the additional height.   I don't think that, you know, the  
4 original design that they were kind of going to DCRA with, I kind  
5 of am disappointed that DCRA was encouraging them to go down a  
6 road until he kind of knew what was going on.   Right.   I mean,  
7 this is costly, and it takes time.   And a variance is not  
8 something that we're able to approve lightly.   Definitely from the  
9 ANC's perspective, I mean, it's a nice design.   It doesn't really  
10 harm the area, to Commissioner Shapiro's point, in terms of the  
11 substantial detriment to the public good.   However, I just don't  
12 think that it is something that -- it is -- it can be utilized.  
13 The lot   can be used and can be used in a way that zoning allows.  
14   And so although I would like to approve it, then I think it's  
15 going to have a slippery slope for us in terms of other similar  
16 alley lots that would want like a little bit of additional height  
17 in order to, you know, have more height than originally the Zoning  
18 Commission as already put forward, the height limit at 20 feet,  
19 for the reasons that Mr. Smith has put forth.   So I would also not  
20 be in favor of this.   Mr. Shapiro, do you have any additional  
21 thoughts?

22           COMMISSIONER SHAPIRO:       I repeat the comments, and  
23 certainly understand where it's coming from.   And I am inclined to  
24 follow the direction (audio interference).

25           CHAIRPERSON HILL:    I mean, I'm disappointed to do so,

1 but make a motion to deny application number 20372 as captioned  
2 and ready the secretary and ask for a second, Ms. John?

3 VICE CHAIR JOHN: Second.

4 CHAIRPERSON HILL: The motion has been made and  
5 seconded. Mr. Moy, could you please take a roll call vote?

6 MR. MOY: Thank you, Mr. Chairman. When I call your  
7 name if you would please respond with a yes, no or abstain to the  
8 motion made by Chairman Hill to deny the application for the  
9 relief that is being requested. The motion was seconded by Vice  
10 Chair John. Commissioner Peter Shapiro?

11 COMMISSIONER SHAPIRO: I'll vote yes.

12 MR. MOY: Yes, to deny?

13 COMMISSIONER SHAPIRO: Yes. I vote yes to deny.

14 MR. MOY: Mr. Smith?

15 BOARD MEMBER SMITH: Yes, to deny.

16 MR. MOY: Vice Chair John?

17 VICE CHAIR JOHN: Yes, to deny.

18 MR. MOY: Chairman Hill?

19 CHAIRPERSON HILL: Yes, to deny.

20 MR. MOY: We have a Board seat vacant. Staff would  
21 record the vote as 4 to 0 to 1. And this is on the motion made by  
22 Chairman Hill to deny the application, seconded by Vice Chair  
23 John, also in support of the motion Mr. Smith and Zoning  
24 Commissioner Peter Shapiro. The motion carries 4 to 0 to 1.

25 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy. And I do

1 hope that the Applicant is able to move forward with the project  
2 and at least, you know, move forward in some capacity. Thank you  
3 so much for your deliberations, fellow colleagues.

4 Mr. Moy, you can go to our next case.

5 MR. MOY: Okay. Mr. Chairman, I do have a note that  
6 Zoning Commissioner Peter May is here. He's on deck. So we can  
7 either go to that decision case or move onto the next hearing  
8 case.

9 CHAIRPERSON HILL: Okay. Let's go ahead and do  
10 Commissioner May so that we can take care of the decision.

11 COMMISSIONER MAY: Good afternoon.

12 CHAIRPERSON HILL: Good afternoon, Commissioner. We may  
13 be here late, Commissioner.

14 COMMISSIONER MAY: I'm sorry. I'll talk fast.

15 CHAIRPERSON HILL: Yeah. So I don't have to read that  
16 into the meeting, correct, Mr. Moy?

17 MR. MOY: No, no, no, no. We're fine.

18 CHAIRPERSON HILL: So do you want to go ahead and call  
19 it?

20 MR. MOY: Yes, sir. So we're coming back to one case  
21 that would have been in the meeting section, and that is Appeal  
22 Number 20356 of the Advisory Neighborhood Commission 1C. This is  
23 the appeal from the decision made on July 29, 2020, by the Zoning  
24 Administrator, Department of Consumer and Regulatory Affairs, to  
25 issue building permit number B20051559, to permit construction of

1 a rear addition and the conversion of an existing principal  
2 dwelling unit to a flat in the RF-1 Zone at premises 1801 Ontario  
3 Place, Northwest, Square 2583, Lot 416. And as the Board is  
4 aware, this was last heard at the Board's public hearing on  
5 February 3.

6 CHAIRPERSON HILL: Okay. Great. Since Commissioner May  
7 has just joined us, and he's probably fresher than we are, if it's  
8 okay, Commissioner May, I'll let you go ahead and start the  
9 deliberation.

10 COMMISSIONER MAY: Very happy to do so. So I've put a  
11 lot of thought into this, and I've written some notes out. So I'm  
12 going to read through this fairly briskly.

13 So, first of all, the zoning regulations cannot  
14 conceivably cover every possible circumstance. You know, as much  
15 as we try, there are always going to be these sorts of gaps that  
16 come back to the Zoning Administrator's judgment. So regarding  
17 the Zoning Administrator's decision, I agree with the Zoning  
18 Administrator that the space below the porch can't be considered  
19 an areaway without permission of areaway. So then does it become  
20 a cellar? I mean, that seems odd kind of space. But cellars do  
21 not need to be conditioned space. In fact, they are commonly not.  
22 Cellars are often ventilated and are open to the elements.  
23 Although, this is an extreme version of that, that it is so open.  
24 I think the Zoning Administrator is right to consider this space  
25 that is part of the building and arguably a cellar. We don't

1 really have I think a perfect term for it, but I think it really  
2 is part of the building.

3           So how does this property compare to other front porch  
4 houses? Porches come in many different configurations, and many  
5 do have occupiable space below. But in some cases occupiable, but  
6 not habitable. In other words, not conditioned, but still space  
7 where you can store things and so on, and maybe fully enclosed or  
8 maybe partially ventilated, or may have windows. Again, any  
9 number of circumstances.

10           If the under-porch space were completely enclosed there  
11 would be no other way except the building entry point than to do  
12 it in the front of the porch. And I think I said during the  
13 hearing, I look out on four townhouses that have brick facades at  
14 the front of their porches. And that's in public space. Those  
15 are all in public space. And it's very clear to me that the only  
16 place you can measure building height would be where the ground  
17 hits those walls that are at the facade, or at the front edge of  
18 the porch.

19           If there were no house entry under the porch in this  
20 case, and the grade simply continued to the front porch, then the  
21 building height measuring point would essentially be the same or  
22 very close to the front of the porch. And that's, I think, closer  
23 to the circumstance that we, you know, that's in that one case  
24 that was referenced during the hearing. In this circumstance the  
25 regulations don't apply exactly, so it has to be a judgment call.

1 In part, it boils down to what is the closest fit to the  
2 circumstance in question. Mr. (indiscernible) I believe has made  
3 a reasonable determination that the building height measuring  
4 point should be set at the front of the porch. In part, it is  
5 also a question of how do we treat properties that are generally  
6 similar and subject to the same rules? A property next door or  
7 down the block may look virtually identical but have a fully  
8 enclosed under porch space. In that circumstance, again, there  
9 would be no doubt that the building height measuring point would  
10 be at the front of the porch. Another similar property may be  
11 alike in every way but not have the under-porch space at all. In  
12 that circumstance the building height measuring point would be set  
13 at the main facade. It would be virtually the same as if it were  
14 in the front of the porch, within an inch or two. It's not  
15 logical or reasonable for the zoning regulations or the Zoning  
16 Administrator to dictate an outcome that is dramatically  
17 different where these, in which case these other properties could  
18 have where the subject property could not.

19 The Zoning Commission has taken up many cases to define  
20 the rules of setting building height measuring point or they add  
21 regulations to prevent artificial manipulations of grade and  
22 building floors and ceilings to gain an advantage. And of course,  
23 we have taken action to protect the character of row house  
24 neighborhoods and protect this neighborhood in particular.

25 The Board of Zoning Commission's actions were not just

1 about what cannot be allowed, but what can and should be allowed.  
2 And in making these decisions we understood that allowing a third  
3 floor and rear additions in certain circumstances would have some  
4 affect on neighboring properties. I believe the Zoning  
5 Administrator's determination in this case is completely  
6 consistent with what the Zoning Commission decided on these  
7 several cases and should be allowed. So I would vote to deny the  
8 appeal.

9 CHAIRPERSON HILL: Okay. Thank you, Mr. May, for your  
10 thoughtful comments.

11 Mr. Smith?

12 BOARD MEMBER SMITH: You essentially took the words  
13 completely out of my mouth. I completely agree with you. I  
14 believe that zoning cannot, zoning regulations cannot apply for  
15 every single situation. And I think that's the reason why we have  
16 a Zoning Administrator is in order to interpret the nuances of  
17 the form with some loopholes in the zoning regulations. I do  
18 believe that -- I mean, that's a part of the question. So the  
19 main question that I had after the hearing was, could we consider  
20 this portion of the building itself? And I do agree that the  
21 zoning was (audio interference) that because this particular area  
22 had walls before they began construction, or (audio interference)  
23 as you're walking on the porch. And based on the retaining walls  
24 and based on, to me, the gap between the retaining wall and the  
25 "roof" of the porch. I do believe it could be considered a

1 (audio interference) of the (audio interference). So I do not  
2 believe that the Zoning Administrator (indiscernible) I believe  
3 that it can be considered part of the front where you walk, part  
4 of the front of the building facade. (audio interference) the  
5 building height measuring point at that particular location. So  
6 I agree with everything you said, Mr. May. I would be in support  
7 of opposing the Zoning Administrator's decision.

8 CHAIRPERSON HILL: Vice Chair John?

9 VICE CHAIR JOHN: So I don't have a lot to add to that.  
10 I had a few notes that I think Commissioner Smith and -- Board  
11 member Smith and Commissioner May pretty much covered everything I  
12 was going to say. I agree that the ZA did not err in placing the  
13 building height measuring point at the natural grade, adjacent to  
14 the front of the porch since it was reasonable for the ZA to  
15 (indiscernible) that the cellar underneath was part of the  
16 building, as the term building is defined in the regulations. So  
17 I also agree that there are times when the regulations are not as  
18 clear as we actually would like them to be. But the Zoning  
19 Administrator's decision was reasonable under the circumstances.  
20 I would also add that the previous cases are different from this  
21 code. It was decided under different regulations, the previous  
22 case cited by the appellant. And in that case, there was no  
23 finished area under the porch. And so the facts are different.  
24 And I, in this case, would go ahead and deny the appeal.

25 CHAIRPERSON HILL: Okay. I don't have anything to

1 add. I thought that you guys all summed it up very well. And I  
2 do appreciate all of your comments. I would agree with them.

3 I'm going to make a motion to deny appeal number 20356  
4 as captioned and ready the secretary and ask for a second, Ms.  
5 John.

6 VICE CHAIR JOHN: Second.

7 CHAIRPERSON HILL: Mr. Moy, the motion has been made and  
8 seconded. Could you please take a roll call?

9 MR. MOY: Thank you, Mr. Chairman. When I call your  
10 name if you would please respond with a yes, no, or abstain to the  
11 motion made by Chairman Hill to deny the appeal. The motion was  
12 seconded by Vice Chair John. Zoning Commissioner, Peter May?

13 COMMISSIONER MAY: Yes, to deny to the appeal.

14 MR. MOY: Mr. Smith?

15 BOARD MEMBER SMITH: Yes, to deny.

16 MR. MOY: Vice Chair John?

17 VICE CHAIR JOHN: Yes, to deny

18 MR. MOY: Chairman Hill?

19 CHAIRPERSON HILL: Yes, to deny.

20 MR. MOY: We have a Board seat vacant. Staff will  
21 record the vote as 4 to 0 to 1. And this on a motion made by  
22 Chairman Hill to deny the appeal, seconded by Vice Chair John,  
23 also in support of the motion is Mr. Smith and Zoning Commissioner  
24 Peter May. Again, the motion carries on a vote of 4 to 0 to 1.

25 CHAIRPERSON HILL: Thank you, Mr. Moy. Thank you,

1 Commissioner May.

2 COMMISSIONER MAY: Thank you. It's been a pleasure.

3 CHAIRPERSON HILL: Okay. We're back for our hearing  
4 cases, Mr. Moy?

5 MR. MOY: Yes. The next case application before the  
6 Board for a hearing is Application Number 20373 of 3321 13th  
7 Street, LLC. And this is caption advertised for special exception  
8 under the residential conversion requirements of Subtitle U,  
9 Section 421, pursuant to Chapter -- yeah, Section 901.2 to convert  
10 -- yeah, this will be Chapter 90 -- Chapter -- rather, Chapter  
11 901.2 to convert an existing detached community residence facility  
12 to a 12-unit apartment building in the RA-1 Zone at premises 3321  
13 13th Street, Southeast, Square 5937, Lot 59.

14 CHAIRPERSON HILL: Okay. Thank you. Mr. Sullivan,  
15 could you please introduce yourself for the record?

16 MR. SULLIVAN: Yes. Thank you, Mr. Chair. Marty  
17 Sullivan with Sullivan & Barros, on behalf of the Applicant.

18 CHAIRPERSON HILL: Okay. And who is here with you, Mr.  
19 Sullivan?

20 MR. SULLIVAN: So with the owner is Frank Nicol.

21 MR. NICOL: Yes. I'm present.

22 CHAIRPERSON HILL: Okay. Could you introduce yourself  
23 for the record, Mr. Nicol?

24 MR. NICOL: Yeah. My name is Frank Nicol. I'm the  
25 owner of 3321 13th Street, Southeast.

1 CHAIRPERSON HILL: Okay. All right. So, Mr. Sullivan,  
2 I'm going to go ahead and let you walk us through your  
3 presentation. I thought there were some things that we still  
4 needed from you. And I'm going to ask OAG about them later, as we  
5 kind of go through this. But if you want to go ahead and give us  
6 your presentation, and we can see where we get.

7 MR. SULLIVAN: Thank you, Mr. Chairman and members of  
8 the Board. Marty Sullivan with Sullivan & Barros on behalf of the  
9 Applicant. Mr. Young, if you could put the PowerPoint up, please.  
10 Thank you. Next slide, please.

11 So the property is 3321 13th Street, Southeast. This is  
12 an unusual case in that it was -- it came about shortly after the  
13 BZA appeal regarding RA-1 properties. And there was some  
14 confusion about what should or shouldn't go to BZA when dealing  
15 with RA-1 properties. And this actually got a building permit. So  
16 it was originally built as a 12-unit apartment building. And  
17 eight of those 12 units were being used as community residence  
18 facility. And a community residence facility is defined as a  
19 facility that provides a sheltered living environment for  
20 individuals who desire or need such an environment because of  
21 their physical, mental, familial social or other circumstances and  
22 who are not in the custody of the Department of Corrections.  
23 That's the definition from the DC Code, separate from the zoning  
24 regulations. But in the zoning regulations, in Subtitle B use  
25 categories, community residence facility is considered as an

1 example of a residential use. So eight of the 12 units as they  
2 existed were used for a community residence facility use.

3 Now, this owner is renovating those units and turning  
4 them back into apartment use, like the other four units in the  
5 building. So it's really, it's a conversion from one residential  
6 use to another. There's no addition whatsoever. There's not even  
7 a change in the interior walls. Just dealing with the units as  
8 they are. And I'll show you some floor plans. It's changing the  
9 floors, painting the walls, putting in new appliances, that kind  
10 of stuff. So he got a building permit for that. But then after I  
11 sent out a notice about the RA-1 appeal he asked, should we follow  
12 up with the Zoning Administrator and make sure we're still okay?  
13 And I thought, I'm sure we're okay. And I asked the Zoning  
14 Administrator, and it took quite a while to get a response. And  
15 he said that we needed to go to BZA. So here we are.

16 And the reason why I'm going into an explanation about  
17 it is because it relates to some of the documents that the Board  
18 might want to have. I'd ask that the Board waive those  
19 requirements or in the case of the plat and the improvements,  
20 recognize that it's not applicable in this case. Because there  
21 was no real work done. There's no addition to the footprint, no  
22 exterior work. The building is as it was. So thank you for  
23 letting me explain that. Next slide, please.

24 Here's some more context photos for the building. It's  
25 part of a complex of other apartment buildings that exist. Next

1 slide, please.

2 So here's the plans, the floor plans that were used for  
3 the renovation permits. And you'll see the kind of work that was  
4 done. Next slide, please.

5 This is the same thing. Next slide, please.  
6 And next slide, please. Next slide, please.

7 So the general special exception requirements. This is  
8 within -- in harmony with the general purpose and intent of the  
9 RA-1 Zone. Sorry, not the ME Zone. And will not tend to affect  
10 adversely the use of neighboring properties. Next slide, please.

11 So this goes more to my explanation. I mean,  
12 obviously, this is an appeal, so I'm not asking the Board to make  
13 a decision that is not new residential development and shouldn't  
14 be subject to BZA. It's more of an explanation of how we got here  
15 and why some of those -- why the plat, and grading plan, and  
16 landscaping plan are not needed in this case. This is what I was  
17 referring to before. This is in use category, Subtitle B,  
18 residential includes community resident's facilities and multiple  
19 dwelling units. So -- and you'll notice in the Office of Planning  
20 report they state as well, this proposal does not involve new  
21 residential development. Next slide, please.

22 So the specific requirements of 421, that you're very  
23 familiar with, existing and planned area schools to accommodate  
24 the number of students can be expected to reside in the project.  
25 Since this is just a renovation of existing units and no increased

1 floor area or number of units, it will have no impact on these  
2 services. And I would also refer you to the Office of Planning  
3 report on these two points as well. Next slide, please.

4 So regarding site plan arrangement of buildings. It's  
5 an existing building. It's been here for a long time with issues.  
6 So there's no changes to that. There are five parking spaces,  
7 more than what is required for 12 units. And regarding -- so  
8 Section 421.4 requirement. We've submitted these plans, but we do  
9 ask if the Board would waive the requirement for a grading plan  
10 and a landscaping plan, due to the fact that there's been no  
11 change whatsoever to this space. It is as it has existed. Next  
12 slide, please.

13 Regarding the plat. There was no plat with improvements  
14 required for the interior renovations as part of the building  
15 permit application. To do so would be additional significant  
16 expense for the Applicant. And I don't think that it's useful, or  
17 helpful, or relevant for the Board's decision in this case. It's  
18 essentially a change of use from the community residence facility  
19 to multiple dwelling units. And in use related type cases,  
20 typically just use variance cases, which this isn't of course, the  
21 Board has not required that the plat show the improvements because  
22 it's not something that's required for the permit application.  
23 And it's just an extra expense that doesn't really add to the  
24 usefulness of the, or the information provided in the application.  
25 So we do ask that the Board find this requirement not applicable.

1 The section that it does require, it says if applicable. So we  
2 think the Board could approve that without the plat. We submitted  
3 a plat; it just doesn't have the improvements drawn on it because  
4 that would require hiring a surveyor. Next slide, please.

5 I've talked about these points already. Regarding the  
6 ANC, we went to two ANC meetings. At the first ANC meeting in  
7 January everybody seemed to be onboard and okay with this, and we  
8 actually had a resident speak in support of this. And then at the  
9 February meeting the ANC acted as if they had never seen it  
10 before, and just voted down a motion to support, and then didn't  
11 take any further action. So that's why there's nothing in the  
12 record from the ANC, unless they filed something on the last day.  
13 And that's it. If the Board has any questions. Thank you.

14 CHAIRPERSON HILL: Okay. Does the Board have any  
15 questions of the Applicant at this point?

16 VICE CHAIR JOHN: I had a question about 421.3. So  
17 what's in the record, Mr. Sullivan, that would show the Board that  
18 there is no change in the exterior, and the parking as well.  
19 Because I think what you're saying is that for interior  
20 renovations like this one the Board should adopt a policy across  
21 the Board that the documents under 421.31 and two do not apply. I  
22 understand the landscaping and the grading, and that we can waive  
23 that. But I'm not sure why you would not (audio interference)  
24 that shows that the parking remains unchanged and that the  
25 building remains unchanged. And I accept the requirement of the

1 additional expense. But I think what you're really saying is that  
2 across the board, the Board should adopt a policy like that. And  
3 if we're going to have a policy like that, then it's something we  
4 make available to ever Applicant. But I'm just wondering about  
5 the ad hoc nature of this.

6 MR. SULLIVAN: Yeah. Thank you. No. I certainly  
7 wouldn't -- I'm not advocating for anything across the board. And  
8 as you know, every case is decided, and every decision is decided  
9 on its own merits and is independent. And I think -- and it would  
10 be a hypothetical. I think there could be a lot of situations  
11 where -- there can be other situations where there's changes to  
12 the building which could affect things that might, you might need  
13 to be shown. For instance, the parking spaces. There's no change  
14 in the parking requirement as a result of this. Sutton Place --  
15 and the -- because -- I'm not sure how to prove the negative that  
16 there are no changes to the exterior of the building. The  
17 approval I think, if any, from the BZA would notice that. So he  
18 wouldn't be able to have any changes made to the building. But  
19 I'm not sure if I'm answering your question, other than to say,  
20 no, I don't think it would apply in every situation. I think this  
21 one is really unique. I don't -- this was the first case, RA-1  
22 case that I had after the appeal. And I fully expected that it  
23 wouldn't require coming to the Board because it's just interior.  
24 It was eight individual renovation permits. So it wasn't even  
25 done as a permit with the building as a whole. So I'm not sure --

1 I'm trying -- I'm not sure if I'm answering your question, but I  
2 hope the information is helpful.

3 VICE CHAIR JOHN: Well, you know, I hear you. I just  
4 don't know what to do. And I don't know what the rationale for  
5 the Board waiving. Because that's what you're saying, the Board  
6 should waive the requirement. And I'm not sure what there is in  
7 the record that would allow us to waive the requirement beyond  
8 your statement that you're not making changes. And I suppose the  
9 order could specify that approval was given with a change in use  
10 only, and that the Board took no position on the site plan, or  
11 parking, and recreation, landscaping and grading. Whatever we did  
12 not waive.

13 MR. SULLIVAN: Well, I think in this case, because of  
14 the plat requirement does use, it says the requirement is only  
15 required as applicable. So I think that gives the Board some more  
16 leeway to determine that's it's not applicable. I think the  
17 Office of Planning perhaps could give the assurance of no proposal  
18 to make any changes to the exterior of the building and would  
19 certainly to agree to any conditions that say that this doesn't  
20 involve any exterior additions. But I understand the comment.  
21 But the plat would just show the existing building. It would show  
22 a rectangle of the existing building and no changes.

23 VICE CHAIR JOHN: What would be the cost of doing that?  
24 Why is the cost so burdensome?

25 MR. SULLIVAN: Well, in addition to the delay, we've

1 been trying to get these housing units available and open to be  
2 used for almost a year now. And so it would cause additional  
3 delay. And I could ask Mr. Nicol to weigh in on the cost of the  
4 survey.

5 MR. NICOL: Yeah. We do have a hard money loan at 12  
6 percent. We're paying about 18,000 a month for the last year. So  
7 any delay, obviously, impacts me quite a bit. Marty, I'm not sure  
8 if you mentioned that the building had C of O for 12 units before,  
9 issued in 9/5/2001.

10 MR. SULLIVAN: Yeah. It was a twelve-unit apartment  
11 building before the change was made around 2002. Well, Frank, if  
12 you could explain what would be involved with hiring a surveyor,  
13 what that would entail?

14 MR. NICOL: I would estimate the cost to be around  
15 \$2,500 and that the issue would be time, trying to get under  
16 schedule. And then once it gets to their office how long does it  
17 take them to turn something around. There was a survey of the  
18 entire site. Was that presented from the past?

19 MR. SULLIVAN: Well, that wouldn't be applicable  
20 anyway. It's just the survey from the District that they're  
21 looking for. I would say that it has been -- this has been done  
22 in the past. I have cases that don't have improvements drawn on a  
23 survey when it's -- when there aren't changes to the building.  
24 It's not across the board. It's mostly a use change is when that  
25 is acceptable to the Board, in my experience. And that's what I

1 think this could be seen as, as a use change.

2 VICE CHAIR JOHN: That's all

3 CHAIRPERSON HILL: Okay. All right. So I'm going to --  
4 we're going to -- I can't believe we're spending so much time on  
5 this. Okay. So I'm kind of getting a little -- okay. Mr.  
6 Smith, Mr. Shapiro, do you have any questions?

7 COMMISSIONER SHAPIRO: I don't have any questions, Mr.  
8 Chairman. I have thoughts about this, but we can --

9 CHAIRPERSON HILL: We're going to have to discuss this.  
10 I mean it's not part of what we're going to end up talking about,  
11 but we're going to end up talking about it. And I guess we're  
12 going to (audio interference) right, which you said again.  
13 Because we just sent -- and I don't know, Mr. Sullivan, if you  
14 watched the first case. We sent a young couple back to get a plat  
15 done and a, you know, the proposed thing done, and it cost \$2500.  
16 And I just sent them. Okay. So I'm not looking for comments.  
17 I'm just saying, I did send them. Right. I understand. I'm just  
18 saying, like the regulations tell me I need something. I've got  
19 an attorney on my Board, and she's telling me I need something.  
20 And I'm talking about my colleague, right. And now you're talking  
21 that the Office of Planning is going to have to weigh in to tell  
22 me about whether I need it. Okay. And so, you know, this is all  
23 just crazy. So, all right.

24 MR. SULLIVAN: We have to do it if the Board insists.  
25 We're not objecting to doing it. I just -- it's just --

1           CHAIRPERSON HILL:    Mr. Sullivan, I get you're doing  
2 your job. And I've got -- you know, I'm not going to, you know,  
3 I'm going to be here for dinner. Right. And so we're spending so  
4 much time on this. Right. So let me go to the Office of  
5 Planning, please.

6           MS. BROWN-ROBERTS:   Good afternoon, Mr. Chairman and  
7 members of the BZA. This is Maxine Brown-Roberts, the Office of  
8 Planning, on BZA case 20373. Maybe I should address the topic at  
9 hand before I got into my report.

10           In this case -- I mean, I've been here long enough to  
11 see cases that have come in and have not provided that when  
12 there's just a use change. So some Applicants have done it, and  
13 some haven't. And so I'll just leave that there as I go into the  
14 case.

15           So the Applicant is requesting a special exception for  
16 an apartment building under Subtitle U, Section 421, that's  
17 pursuant to Subtitle X, section 900. The Applicant has explained  
18 that this building was principally used as an apartment building.  
19 The proposal meets the requirement of section 41 in that the  
20 property is within the RA-1 Zone and would be within walking  
21 distance of a number of schools. And the number of additional  
22 student's that would be generated from the 12 units would not have  
23 a negative impact on the schools.                   In our report we  
24 outline the schools that are within boundary for this location.

25           There are adequate streets that can provide access to

1 Congress Heights and the Anacostia commercial areas which has  
2 neighborhoods certain uses. And the property is just south of the  
3 Congress Heights Metro Station, which is served by a number of bus  
4 lines and the Capitol South Station.

5 As also outlined in our report, the property would have  
6 access to several parks and recreation facilities which are within  
7 walking distance of the property. And again, the 12 units should  
8 not overwhelm the services that are provided at these recreational  
9 facilities.

10 The Applicant states that there is no additional  
11 changes to the exterior of the building. And it's been seen from  
12 some of the pictures provided, there would be adequate  
13 landscaping. Since there is no outside work, there would be no  
14 need for grading, and you can see the landscape that is there.  
15 The proposed internal changes would not impact the current  
16 relationship with any public plans.

17 Regarding the special exception for Subtitle X 900, the  
18 Applicant -- the apartment use is permitted in the zone and is  
19 subject to the criteria of Subtitle U 421 which, as stated before,  
20 that the proposal satisfies. And, therefore, the proposal would  
21 not impair the intent and purpose of the zoning regulations and  
22 the map. The use of neighboring properties would not be adversely  
23 impacted, as apartment has existed for some time. The change  
24 would be internal, and no changes to the facade of the building or  
25 its original use, as stated by the Applicant. And light and air

1 to adjacent units would not be impacted. Therefore, the Office of  
2 Planning recommends approval of the requested special exception.  
3 I'm available for questions. Thank you.

4 CHAIRPERSON HILL: Okay. Ms. Brown-Roberts, I mean I  
5 read your report, and I read through the record. And so I am going  
6 to ask you this one thing about the site plan put in by a  
7 landscaping plan. That's not something that you thought was  
8 necessary?

9 MS. BROWN-ROBERTS: No. Because it's all internal. In  
10 a number of occasions, I can't remember a specific case off the  
11 top of my head right now, but I know that there have been  
12 applications where it's just internal changes that are being made  
13 that we have supported the Applicant not providing a landscape and  
14 grading plan. If the Applicant were to make those changes, then -  
15 - I think of the building permit, then the question could be  
16 asked, what you presented to BZA was that there would be no  
17 external changes. Therefore, they have to come back. So that's I  
18 think something that is, you know, incumbent on the Applicant to  
19 make sure that what they're stating here is presented for the  
20 building permit.

21 CHAIRPERSON HILL: Okay. We're going to talk this  
22 through. Okay. And I just see that OAG is also here. So I'll  
23 let OAG give us their opinion as well. But I'm going to be -- I'm  
24 just letting my Board members -- I'm going to let you guys do  
25 something. Ms. Brown-Roberts was here before I was here. Right.

1 And so, you know, not that that changes the regulations, but I  
2 mean, you know, if there is, you know, this use change might make  
3 it a different situation. I don't know. And Ms. John, since, you  
4 know, -- I'm sorry, you are an attorney even though you know that  
5 that's not necessary. You're at (indiscernible) and Mr. Sullivan  
6 is laughing because we keep going around the table. I'm sorry you  
7 guys are here for this also. Right. The appeal happened. The  
8 appeal happened. It's done. Fifty years, I know 50 years of  
9 blah, blah, blah. Okay. Right. Okay. Right. So you're here.  
10 Okay. And you're going to be here again from now on for all of  
11 these. So there you go. Okay. So now I'm going to let OAG weigh  
12 in, because they have an opinion. And then we, the Board, can  
13 discuss. Right. So OAG, as I understand, you believe -- and I'm  
14 going to just help you clarify it -- that under Y 300.8B we should  
15 get a plat that identifies existing and proposed boundaries of the  
16 structure on the property. And you can go ahead and clarify. And  
17 then you also believe under U 21.4, we should get a site  
18 plan/grading plan, both of which I guess we can waive if we wanted  
19 to, but please go ahead and give us your opinion.

20 MR. RICE: Yes, sir. One of those is an application  
21 requirement, and that's just an application for -- that's a  
22 requirement for all applications that are before you. And that is  
23 a plat drawn to scale and certified by an engineer licensed in the  
24 District that shows the boundary and dimensions of the existing  
25 and proposed structures, and accessory business and structures on

1 the specific piece of property if necessary. And that is the bare  
2 minimum. And for you guys to approve an application of the bare  
3 minimum requirements, we would caution you, you may establish  
4 precedent that you don't want to start.

5 The architectural plans in this case generally, the  
6 application requirements are very clear. The architectural plans  
7 and elevations sufficient to illustrate the proposed structure to  
8 be altered, landscaping, building materials, et cetera. But  
9 that's pretty broad. With regard to this particular use, for  
10 whatever reason, this Zoning Commission has determined that in  
11 addition to the other filing requirements under U 421.4, that's  
12 when the floor plans, elevations, grading plans, landscaping  
13 plans, and plans for all the right of ways and easements are  
14 required.

15 There's been a lot of discussion this afternoon about  
16 whether the new residential development is a permitted use or a  
17 special exception use. I'm reading U 421.1, and it says in the  
18 RA-1 and RA-6 Zones all new residential developments, except those  
19 (audio interference) all one family detached, and semi-detached  
20 dwellings are reviewed by the BZA as a special exception. I  
21 understand that we are hearing things that, you know, this  
22 property was originally an apartment house, and that a new  
23 apartment house in this zone would require special exception  
24 approval. X 900.3 goes on to say, in the case of a use that was  
25 originally permitted and lawfully established as a matter of

1 right, which is what we're hearing today, and for which the zoning  
2 regulations now require special exception approval BZA, any  
3 extension or enlargement of that use will require special  
4 exception approval from the BZA. But interestingly, and so here  
5 we're expanding, you know, we're going back to the apartments. So  
6 here, the next section says, you know, in determining whether to  
7 approve any extension or an enlargement, so a change back to the  
8 permitted use with multiple units, the BZA shall apply the  
9 standards and criteria of the zoning regulation to the entire use  
10 rather than just the proposed extension or enlargement. And I  
11 would offer that it's difficult for the Board to apply these  
12 standards and criteria to the entire use without seeing the  
13 structure what the entire use has been.

14 CHAIRPERSON HILL: Okay. All right. I appreciate your  
15 opinion. And then before we go, I don't -- before we go around.  
16 So we, however, can waive both of these requirements, correct?  
17 And the reason why I'm asking is that they -- Mr. Sullivan, I'll  
18 get you. Is that we have done -- as you hear from the Office of  
19 Planning, we've done things without the plat before. I can't hear  
20 you, Mr. Rice.

21 MR. RICE: I understand that's what the Office of  
22 Planning has offered. I have seen this Board waive requirements  
23 for rights of way and easements when the Applicant has offered  
24 affirmatively that there are no changes to rights of way or  
25 easements. I have never seen this Board waive the, you know, the

1 bare application requirement to require a plat that shows the  
2 existing structure.

3 CHAIRPERSON HILL: Okay. All right. Just give me a  
4 second. Just give me a second. So, all right. So that's fine.  
5 So we're going to -- I mean, I can't -- never mind. We are where  
6 we are. So -- one second, Mr. Sullivan. So, all right. So have  
7 my Board members taken in all of this? Because, basically, I  
8 mean, we're not even discussing the application. Right. And so  
9 that's why I just want to get this done. Because I just want to  
10 know what we're going to ask of the Applicant. And I want my  
11 Board members to tell me what they think. Right. So again, the  
12 plat and the site grading plan and landscaping plan, and we  
13 understand the unique situation that this building is in, and  
14 we've taken the testimony from the Office of Planning, we've taken  
15 an opinion from OAG, and we've also taken some testimony from the  
16 Applicant. Do you all have an opinion, and I'm going to start with  
17 Commissioner Shapiro.

18 COMMISSIONER SHAPIRO: Thank you. I just have another  
19 point of clarification, maybe explanation wise. This is not --  
20 this last thing you asked, it's not clear to me -- can you hear me  
21 by the way?

22 CHAIRPERSON HILL: I can hear you.

23 COMMISSIONER SHAPIRO: Okay. It's not clear to me  
24 whether we have the authority -- so I believe that OAG is working  
25 with us to tighten up our processes. I think that's, you know,

1 clear. It's helpful. It's helpful. So in a situation like this,  
2 it's not clear to me whether we have the authority to waive this  
3 or not. And I'm not saying whether we shouldn't or shouldn't.  
4 I'm asking you whether we need authority to do it. The fact that  
5 in the past, and this was Ms. Brown-Roberts' point that she  
6 experienced, and I trust her experience. But where we haven't had  
7 the information because we didn't need it. But do the regs give  
8 us that flexibility? So maybe it's a question for Mr. Rice. Mr.  
9 Sullivan, I know it itching to weigh in on that. But that helps  
10 me to make this decision. If we have the authority to waive it in  
11 this space, I'm fine waiving it.

12 CHAIRPERSON HILL: Mr. Sullivan seems to be hanging his  
13 hat on -- and I'll get back to him. And I'll get back to both of  
14 you. I'll get back to both of you -- is that, again, that -- and  
15 I forget the word that Mr. Sullivan kept using, he's hanging his  
16 hat on a word in the regulation --

17 MR. SULLIVAN: If necessary. It's under point 8B.

18 CHAIRPERSON HILL: Is it applicable or if necessary?

19 MR. SULLIVAN: If necessary. A plat drawn to scale  
20 and certified by -- I don't know if Mr. Rice left this out or not.  
21 But at the end of it it says, if necessary.

22 CHAIRPERSON HILL: All right. So this --

23 MR. SULLIVAN: And this isn't an expansion or an  
24 extension. So I'm not even sure why that provision came up.

25 CHAIRPERSON HILL: So, Mr. Rice, can you answer Mr.

1 Shapiro's question?

2 MR. RICE: Yes. In response to Commissioner Shapiro's  
3 question, the Board does have authority to waive any provision of  
4 Subtitle Y, which includes -- with limited exceptions. And none  
5 of those exceptions encompass the application requirement. So  
6 here you could waive it. You do have that authority.

7 CHAIRPERSON HILL: Okay. So I'll let -- just keep  
8 going round and round. We might take a break and come back.  
9 We'll just stay here forever. Right. I don't even know --  
10 because I don't want to be back here again, doing this again, and  
11 again, and again. Right. You know, and so I don't know what I  
12 think. Right. And so I'm going to go with Mr. Smith.

13 BOARD MEMBER SMITH: I am -- I understand OAG's (audio  
14 interference) entitlement. I do share the entire OAG other  
15 concerns. But we're getting an application that the minimum  
16 (audio interference). To be honest with you, but I do recognize  
17 that we do have the ability to waive. But my question to Mr.  
18 Sullivan is, was all this information, being that this property  
19 was converted from apartments to a community residence facility  
20 like 12 years, what, a decade ago (audio interference) was that -  
21 - was a plat and all this missing information filed with DCRA?  
22 And if that's the case, then the information can easily be found  
23 and located and added onto the record.

24 MR. SULLIVAN: No. There was no plat because it's just  
25 interior. They were -- it was eight separate permits. One a

1 renovation for each unit, each of the eight units. So there was  
2 no plat showing improvements because it wasn't required. And  
3 that's why I say it's not necessary in this case. This isn't even  
4 a waiver. It says if necessary. That does mean the Board is  
5 waiving it. It means the Board found that it met the  
6 requirements. It wasn't necessary. In hindsight, we would have  
7 hired a surveyor three months ago, but they take a long time.  
8 They're all very busy. I relied on past custom for this. And I  
9 didn't realize it would be such a big deal. And I apologize for  
10 that.

11 BOARD MEMBER SMITH: Thank you, Mr. Sullivan. So Mr.  
12 Rice, I turn to you. Could you confirm that it says, if  
13 necessary? You're on mute.

14 MR. RICE: Can you hear me now?

15 BOARD MEMBER SMITH: I can hear you now.

16 MR. RICE: that is correct. It does say if necessary.  
17 I'll read the entire thing. It says, a plat drawn to scale and  
18 certified by a surveyor/engineer, licensed in the District of  
19 Columbia or by the DC Office of the Surveyor, showing the  
20 boundaries and dimensions of the existing and proposed structures,  
21 and accessory buildings and structures on the specific piece of  
22 property, if necessary.

23 CHAIRPERSON HILL: Okay. So before I turn to Ms.  
24 John. And now I feel bad about the first case that we had.  
25 Because I, again, just was not aware. And now I'm just going to -

1 - we're having -- we're going to have a very long discussion about  
2 this. If it indicates three months or a month even to get a  
3 surveyor out there, that is time. Right. And I know that, I  
4 guess in the future now, you know, for applications that Mr.  
5 Sullivan brings before us, these will be done. Meaning, the  
6 plats will be taken care of. I would imagine I don't think we'll  
7 get put in this situation again, because this would now be  
8 something that we're going to be tightening up, as Mr. Shapiro has  
9 said, and wanting to see in the application. So I'm back on the  
10 fence. And we're just going to keep going round and round until  
11 somebody, until we get three votes. So Ms. John, where are you?

12 VICE CHAIR JOHN: So after this lengthy discussion,  
13 okay with waiving the requirement because of the additional if "if  
14 necessary." Now, the whole issue of -- my understanding is that  
15 the Applicant goes to the surveyor's office and gets the plat.  
16 And then the architect or somebody draws on the plat what the  
17 dimensions are; am I correct about this?

18 MR. SULLIVAN: Yes. And we do have, we have a plat.  
19 But there was no, there wasn't even an architect involved because  
20 it was just an interior renovation.

21 VICE CHAIR JOHN: Right. But the architect could draw  
22 the outlines of the building so we can see how the building sits  
23 on the plat. And that's basically all we need.

24 MR. SULLIVAN: Well, they usually base it on -- I'm  
25 sorry. Yeah, they base it on a survey because --

1 VICE CHAIR JOHN: Right.

2 MR. SULLIVAN: -- they need to certify that they're  
3 doing it exactly where the building is.

4 VICE CHAIR JOHN: Right. It has to be drawn to scale  
5 on the plat. I think somebody is buffering. Anyway, let me  
6 relieve us of our pain. I will waive the requirement in this  
7 case, because of all the representations that have been made,  
8 including OP's recommendation. And I think this is something that  
9 we should look at in the future so that we can have a clear  
10 understanding of when it's appropriate to waive the requirement.  
11 I guess the argument is that there is no external renovations.  
12 It's just that we don't have anything in the record that shows  
13 that. And the plat would normally show that. So those are my two  
14 thoughts.

15 CHAIRPERSON HILL: Commissioner Shapiro?

16 COMMISSIONER SHAPIRO: I do concur. I would agree with  
17 Vice Chair John. But I'm requesting again from Mr. Rice and  
18 appreciating your diligence around this. If I were to state what  
19 I believe is your position, it sounds like you would effectively  
20 encourage us to strike if necessary.

21 MR. RICE: I couldn't hear your last statement, sir.  
22 Could you repeat yourself?

23 COMMISSIONER SHAPIRO: Yes. It sounds like you're -- it  
24 sounds like in effect you're saying we should strike if necessary.

25 MR. RICE: Strike if necessary?

1 COMMISSIONER SHAPIRO: Yes. If necessary doesn't help  
2 us, that we should always have this?

3 MR. RICE: If a bare plat would -- is always required. And  
4 I think if necessary, would apply to the accessory buildings and  
5 structures, if necessary.

6 COMMISSIONER SHAPIRO: So, again, I'm with where Vice  
7 Chair John is, but I think we should take this opportunity to look  
8 at our language. It should have advice from OAG that, here's an  
9 area where something could be tightened up. I'm not worried about  
10 it in this case, I'm just not. But I do think, and I appreciate  
11 the input of counsel to encourage us to look at this.  
12 (Indiscernible audio) it's not clear to me.

13 CHAIRPERSON HILL: Okay. All right. Okay. All  
14 right. So we're not asking for a plat or the site plan/grading  
15 plan; is that correct?

16 VICE CHAIR JOHN: (Nods head affirmatively.)

17 CHAIRPERSON HILL: Everybody is nodding.

18 VICE CHAIR JOHN: Yes.

19 BOARD MEMBER SMITH: Mr. Chairman, just so I can go on  
20 the record. I -- I -- me personally, I personally would not vote  
21 to waive it. I do believe that the plat should be a bare minimum  
22 in the application that is seen before the Board. These governing  
23 Boards need the description of what they're submitting. So I  
24 wouldn't be in favor of striking it. But I would say to Mr.  
25 Shapiro's point, if there was some type of certification in hand

1 within the record saying that there will not be any exterior  
2 changes, then maybe I could get onboard. That's something that is  
3 a minor tweaking or tightening of this process. But I just wanted  
4 to go on record that I would support this.

5 CHAIRPERSON HILL: Okay. All right. Let's see, the -  
6 - so I guess, Mr. Rice and Mr. Moy, maybe next time we're together  
7 at some point we can talk about this. Because what I'd like  
8 clarification on is exactly what we actually asked of the  
9 Applicant in the previous case. Because I'm a little confused as  
10 to, you know, how, what the mechanics are involved with getting a  
11 plat with the way that they -- a plat the way the building is and  
12 a plat with the proposed conditions, and how one gets that thing  
13 certified. I'm just making a comment. But I'd like to talk  
14 through that the next time we're together. Because we did ask  
15 this of the previous Applicant. Right. And I know -- so we did  
16 ask the previous Applicant. I just want to understand what we  
17 ended up asking. Okay. Right. So maybe if we can clarify that.  
18 Okay.

19 In this case, Mr. Sullivan, you do come before us a lot.  
20 So in the future, you already have one person here that says we  
21 want to, you know, we want to see these things, right. So I would  
22 just go ahead and get these things taken care of, so we don't get  
23 in this situation again. Okay.

24 MR. SULLIVAN: (Nods head affirmatively.)

25 CHAIRPERSON HILL: So -- and I think you're nodding

1 yes. Because I don't want to do this again. Okay. All right.

2 Does anybody have any questions for Mr. Sullivan about  
3 the content of the application?

4 (No response.)

5 CHAIRPERSON HILL: Okay. Fine. All right. Okay. All  
6 right, Mr. Sullivan, do you have anything to add at the end?

7 MR. SULLIVAN: No. Thank you.

8 CHAIRPERSON HILL: Okay. All right. I'm closing the  
9 hearing and the record. Bye-bye.

10 CHAIRPERSON HILL: Somebody else start it. Mr.  
11 Shapiro?

12 VICE CHAIR JOHN: Mr. Chairman, did you ask for  
13 witnesses?

14 CHAIRPERSON HILL: Oh, thanks. Is there anyone here  
15 wishing to testify?

16 MR. NICOL: We do not.

17 CHAIRPERSON HILL: Okay. All right. So I'm closing  
18 the hearing and the record. Please let everybody go. Mr.  
19 Shapiro, would you please start.

20 COMMISSIONER SHAPIRO: Maybe it's just the late hour,  
21 but I actually don't have any questions. It's pretty straight  
22 forward. And I'll be supporting this.

23 CHAIRPERSON HILL: Mr. Smith?

24 BOARD MEMBER SMITH: I don't have anything to add. My  
25 issue is more so the process, submitting the application in a

1 timely manner. But from the standpoint of a special exception, to  
2 me this is a different use of a use. It's a residential apartment  
3 building, it's just being used in a different way. So I'm in  
4 support.

5 CHAIRPERSON HILL: Okay. Ms. John?

6 VICE CHAIR JOHN: So this is fairly straight forward  
7 for me. And I agree with the Office of Planning's analysis, and I  
8 would be in support of the Applicant.

9 CHAIRPERSON HILL: Okay. Thank you. I would also  
10 agree with the Office of Planning's analysis. I also understand  
11 the testimony, the documents reaching out to the ANC, although we  
12 haven't heard from them. I assume if they did have any issues  
13 with it, they would. Seeing as you really can't see anything  
14 different with the building itself, I'm going to make a motion to  
15 approve Application Number 20373, as captioned and read by the  
16 secretary and ask for a second Ms. John.

17 VICE CHAIR JOHN: Second.

18 CHAIRPERSON HILL: Motion made and seconded. Mr. Moy,  
19 could you take a roll call?

20 MR. MOY: Yes. Thank you, Mr. Chairman. When I call  
21 your name if you would please respond with a yes, no, or abstain  
22 to the motion made by Chairman Hill to approve the application for  
23 the relief requested. The motion was seconded by Vice Chair John.  
24 Zoning Commissioner Peter Shapiro?

25 COMMISSIONER SHAPIRO: Vote yes.

1 MR. MOY: Mr. Smith?

2 MR. MOY: Yes.

3 MR. MOY: Vice Chair John?

4 VICE CHAIR JOHN: Yes.

5 MR. MOY: Chairman Hill?

6 CHAIRPERSON HILL: Yes.

7 MR. MOY: We have a Board seat vacant. Staff would  
8 record the vote as 4 to 0 to 1. And this is on the motion made by  
9 Chairman Hill to approve the application for the relief, seconded  
10 by Vice Chair John. So the motion carries on a vote of 4 to 0 to  
11 1.

12 CHAIRPERSON HILL: Okay. Do we want to do one more or  
13 do you want to take a break?

14 COMMISSIONER SHAPIRO: I'm fine to keep going.

15 BOARD MEMBER SMITH: I'm fine to keep going.

16 CHAIRPERSON HILL: Ms. John?

17 VICE CHAIR JOHN: I'm fine.

18 CHAIRPERSON HILL: Okay. All right. Go ahead, Mr. Moy,  
19 and call our next one.

20 MR. MOY: Okay. This would be case Application Number  
21 20375 of Quincy Street Condominium Association. And this is  
22 captioned and advertised for special exception from the surface  
23 parking screening requirements of Subtitle C, Section 714.2,  
24 pursuant to requirements of Subtitle C, Section 714.3 and Subtitle  
25 X, Chapter 9. The address, property address is 908 Quincy Street,

1 Northeast, Square 3815, Lot 3. And, let's see, this would comply  
2 with three approved off-street parking spaces in the RA-1 Zone.

3 Preliminary matter -- ah, yes, again, we have another  
4 waiver of the 21-day rule because there was a submission of a  
5 revised plan under exhibit 32B and 32A?

6 CHAIRPERSON HILL: Okay. Ms. Wilson, could you  
7 introduce yourself for the record, please?

8 MS. WILSON: Hi. I'm Alex Wilson from Sullivan &  
9 Barros, on behalf of the Applicant. So we didn't upload a new  
10 plat or plans. We uploaded the, our approved permit set. And  
11 that was a request that was made about a week before the hearing.  
12 So that's why it was uploaded late. I'm not sure where the  
13 request originated, but we were happy to do that.

14 CHAIRPERSON HILL: All right. So who made the request?

15 MS. WILSON: We received it from the Office of Zoning.  
16 Oh, okay. So OAG made the request.

17 CHAIRPERSON HILL: Okay. Okay. All right. I don't  
18 mind waiving the requirement, unless the Board has any issues, and  
19 if so, please raise your hand.

20 COMMISSIONER SHAPIRO: (Shakes head negatively.)

21 CHAIRPERSON HILL: Okay. We're going to go ahead and  
22 let that stuff into the record.

23 Ms. Wilson, you can go ahead and begin whenever you'd  
24 like.

25 MS. WILSON: Great. Thank you. I'll add that Mr.

1 Abdella, who is a representative of the owner, is here with us  
2 today. Could you please pull up the PowerPoint whenever you have  
3 a chance.

4           So Mr. Abdella finished the interior renovation this  
5 summer. Everything was done as a matter of right. The renovation  
6 is complete. As part of the permit issuance we had to comply with  
7 the screening requirement. C 714.2 requires that parking areas  
8 for more than three residential units provide screening in the  
9 form of a fence or evergreen hedges. We can have some gaps in  
10 screening, but it's only up to 20 feet. So in this case, the  
11 location of an existing utility pole impacted the arrangement of  
12 parking and the screening onsite. If you could go to the next  
13 slide, it shows a little better.

14           So the screening elements are circled. And that's the  
15 existing and approved conditions from DCRA. There is also a  
16 utility pole sort of in the middle of the property. And then we  
17 have a 20-foot limit on gaps allowed in the screening. So the  
18 Applicant had to place the screening in the middle of the parking  
19 area, which left only seven feet of space between the utility pole  
20 and the screening. And it eliminated a potential parking space.  
21 We don't have a parking requirement, but there is four units  
22 onsite. We wanted to give each unit a parking space. And because  
23 we safely met the special exception requirements, we are moving on  
24 this application. It doesn't impact our parking requirement. So  
25 now we are seeking special exception relief pursuant to C 714.3

1 around the screening requirement so we can get rid of those wood  
2 fences. So the picture on the right shows what we're proposing.  
3 Quite literally, just removing those wood pieces. The new  
4 residents are already in the building. This is just the last  
5 piece of the puzzle to legally remove that fencing and create a  
6 fourth parking space. Next slide, please.

7 OP is recommending approval. DDOT has no objection.  
8 There is a letter in support from the adjacent neighbor. And ANC  
9 5B is unanimously supporting the application. Next slide, please.

10 The front of the property is facing closest towards us.  
11 The rear of the property abuts the intersection of two alleys.  
12 Next slide, please.

13 This is, again, a photo of the screening we're proposing  
14 to remove. That shows the utility pole as well. And the rear  
15 opens directly onto the alley and allows for easy pull in parking.  
16 Next slide, please.

17 We identified a couple other properties in the area that  
18 don't have screening. This one clearly has a gap of larger than  
19 20 feet. This isn't an uncommon situation to have a more open  
20 parking area directly abutting an alley. Next slide, please.

21 Again, another property with a similar situation. Not  
22 sure why this is not subject to the rules, but we would -- oh,  
23 next slide, please.

24 Regarding the general special exception criteria, the  
25 criteria for relief of the screening requirement implies that the

1 purpose is to reduce impact on the pedestrian environment and  
2 block the parking areas from adjacent buildings or roadways. So  
3 the type of parking area proposed is in the rear of the subject  
4 property. It's not near any sidewalks or areas where pedestrians  
5 would be walking. And the zoning regulations do provide a  
6 specific special exception from these requirements. And we are  
7 just proposing to remove screening which appears out of place.  
8 And there are other parking areas in the neighborhood without  
9 screening. Next slide, please.

10 This is a summary of the requested relief. The Board  
11 can consider impacts on the pedestrian environment and walkways,  
12 existing vegetation, buildings or other walls on adjacent  
13 properties, existing topographic conditions, and traffic  
14 conditions when granting relief. Parking areas located at the  
15 rear of the property and does not intersect with any pedestrian  
16 environment as it is adjacent to two public alleys -- I mean  
17 intersection to public alleys. There is an existing fence between  
18 the property to the east and the subject property which serves as  
19 a barrier between the two parking areas. Vegetation separates the  
20 parking area from the rear of the building to the west.

21 As described, the location of the utility pole, coupled  
22 with the required screening creates a situation that eliminates a  
23 parking space. And removing the required fencing would not have  
24 any impact on traffic conditions in the alley, and it would allow  
25 for the Applicant to provide four parking spaces and reduce the

1 parking, the street parking load. That is a summary of our  
2 relief. And we are happy to answer any questions.

3 COMMISSIONER SHAPIRO: You're on mute, Mr. Chair.

4 CHAIRPERSON HILL: I asked if anybody had any questions  
5 for the Applicant?

6 COMMISSIONER SHAPIRO: No questions.

7 CHAIRPERSON HILL: Ms. John, it looks like you're about  
8 to ask a question.

9 VICE CHAIR JOHN: I'm not sure if this is a question or  
10 a comment. Are those regulation --

11 COMMISSIONER SHAPIRO: Ms. John, I'm sorry. I'm having  
12 trouble hearing you.

13 VICE CHAIR JOHN: Oh, okay. How about this?

14 COMMISSIONER SHAPIRO: Better. Thank you.

15 VICE CHAIR JOHN: Okay. Thank you. So, Ms. Wilson, are  
16 those parking spaces regular size parking spaces?

17 MS. WILSON: So they're compact spaces and we are  
18 allowed to provide for compact spaces because we do not have a  
19 minimum parking requirement.

20 VICE CHAIR JOHN: Okay. Thank you.

21 CHAIRPERSON HILL: I'm going to turn to the Office of  
22 Planning.

23 MR. MORDFIN: Good afternoon, Mr. Chair and members of  
24 the Board. I'm Stephen Mordfin. And the Office of Planning finds  
25 this application to be in conformance (audio interference)

1 application and is available for questions. Thank you.

2 CHAIRPERSON HILL: Okay. Does anybody have any  
3 questions for the Office of Planning? Commissioner Shapiro?

4 COMMISSIONER SHAPIRO: Thank you, Mr. Chairman. Just a  
5 brief one. Mr. Mordfin, is the purpose of that screening that we  
6 saw for safety or for aesthetics, or why is it even there?

7 MR. MORDFIN: It's for aesthetics. It's for -- well,  
8 it's for the environment.

9 COMMISSIONER SHAPIRO: Enough said.

10 MR. MORDFIN: Okay.

11 COMMISSIONER SHAPIRO: That's all I have.

12 CHAIRPERSON HILL: All right. Mr. Smith?

13 BOARD MEMBER SMITH: Mr. Mordfin, quick question. Ms.  
14 Wilson said that they do not have a minimum parking requirement.  
15 The staff report says that the minimum parking requirement is 10  
16 spaces, and they're proposed to have four. So my question is  
17 based on the (audio interference) is there a maximum percentage  
18 of the parking spaces that can be compact or can all of them be  
19 compact?

20 MR. MORDFIN: The building is a pre-1958 building. So  
21 it doesn't have any parking requirements. The Applicant has  
22 chosen to provide these four compact spaces. But none of them  
23 are standard size spaces. So that property has never had any  
24 standard size parking spaces.

25 COMMISSIONER SHAPIRO: Okay. Thank you for the

1 clarification.

2 CHAIRPERSON HILL: Ms. John, did you have any questions?  
3 I can't see whether you are there or not.

4 VICE CHAIR JOHN: (Shakes head negatively.)

5 CHAIRPERSON HILL: No questions. Okay. Mr. Young, is  
6 there anyone here wishing to testify?

7 MR. YOUNG: We do not.

8 CHAIRPERSON HILL: Okay. Ms. Wilson, is there anything  
9 you would like to add at the end?

10 MS. WILSON: No.

11 CHAIRPERSON HILL: Ms. Wilson, are you and Mr. Shapiro  
12 in the same room?

13 MS. WILSON: No. I'm in Bethesda and he's in Delaware.

14 CHAIRPERSON HILL: Okay. Just curious. All right.  
15 Okay. All right. That's it then. I'm going to close the  
16 hearing, close the record and say thank you.

17 CHAIRPERSON HILL: I'm sorry. I'm getting tired. I'm  
18 going to let other people, again, deliberate then. Mr. Shapiro?

19 COMMISSIONER SHAPIRO: I'm in support of this. The only  
20 thing I think should be clear is that we are, that all we're doing  
21 is addressing the (audio interference) parking lot. Outside of  
22 that I'd say I'd like (audio interference) unpleasant for (audio  
23 interference).

24 CHAIRPERSON HILL: Mr. Smith?

25 BOARD MEMBER SMITH: I agree with Mr. Shapiro. This is

1 this (indiscernible audio) built at the rear of this property.  
2 It's an existing concrete jungle back there, that parking pad, and  
3 will continue. Just a small section. So I would be in support of  
4 this.

5 CHAIRPERSON HILL: Vice Chair John?

6 VICE CHAIR JOHN: I agree with everything so far. The  
7 Office of Planning's analysis showed how the application meets the  
8 requirements. I think getting rid of the fencing allows for an  
9 additional parking space, especially because of the location of  
10 that pole in the middle of the lot. So I can support the  
11 application.

12 CHAIRPERSON HILL: Okay. Thank you. I will agree with  
13 everything that was said in terms of my colleagues as well as the  
14 analysis of the Office of Planning, as well as ANC 5B. I will  
15 also echo that we were just talking about the relief from  
16 screening. And we're not talking about any of the parking issued.  
17 And so I'm going to go ahead and make a motion to approve  
18 Application of 20375 as captioned and read by the secretary and  
19 ask for a second, Ms. John?

20 VICE CHAIR JOHN: Second.

21 CHAIRPERSON HILL: The motion is made and seconded. Mr.  
22 Moy, could you please take a roll call vote?

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

1 the relief being requested. The motion was seconded by Vice Chair  
2 John. Zoning Commissioner Peter Shapiro?

3 COMMISSIONER SHAPIRO: Yes.

4 MR. MOY: Mr. Smith?

5 BOARD MEMBER SMITH: Yes.

6 MR. MOY: Vice Chair John?

7 VICE CHAIR JOHN: Yes.

8 MR. MOY: Chairman Hill?

9 CHAIRPERSON HILL: Yes. Yes.

10 MR. MOY: Staff would record the vote as 4 to 0 to 1.  
11 We do have a seat vacant. This is on the motion made by Chairman  
12 Hill to approve, seconded by Vice Chair John, also in support of  
13 the motion Mr. Smith and Zoning Commissioner Peter Shapiro.  
14 Again, the motion carries 4 to 0 to 1.

15 CHAIRPERSON HILL: Okay. You guys want to take a 10-  
16 minute break. Okay. All right. So we'll come back in like 10  
17 minutes.

18 (Whereupon, the above-entitled matter went off the  
19 record at 3:25 p.m., and resumed at 3:36 p.m.)

20 CHAIRPERSON HILL: You can call the next case whenever  
21 you'd like.

22 MR. MOY: Thank you, sir. The Board is back in session  
23 after a very quick break. And the time is now about 3:37.

24 So this would be Case Application Number 20378 of 1419  
25 Trinidad, LLC. And this is a request caption advertised as

1 amended for special exception from the rooftop architectural  
2 element requirements, Subtitle E, Section 206.1, pursuant to  
3 Subtitles E, Sections 206.4, 5207 and Subtitle X, Chapter 901.2.  
4 This is to construct a porch with a roof addition, and to expand  
5 the existing attached principal dwelling unit to a three-story  
6 flat, RF-1 Zone. And this is at premises 1419 Trinidad Avenue,  
7 Northeast, Square 4061, Lot 123.

8 And once again, Mr. Chairman, there is a waiver of the  
9 21-day filing for supplemental information. The Applicant is  
10 submitting a revised burden of proof. I believe it's under  
11 exhibit 35.

12 CHAIRPERSON HILL: Okay. Mr. Alade, can you hear me?

13 MR. ALADE: Yes, I can.

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

16 MR. ALADE: My name is Babajide Alade. I'm principal of  
17 1419 Trinidad, LLC. Address 5305 Village Center Drive, Columbia,  
18 Maryland.

19 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Alade.  
20 I guess you put in a revised burden of proof; is that correct?

21 MR. ALADE: Yes, that is correct.

22 CHAIRPERSON HILL: Okay. I don't have any issues with  
23 allowing the revised burden of proof in. Does my fellow Board  
24 members? And if so, raise your hand.

25 (No response.)

1 CHAIRPERSON HILL: Okay. So we're going to go ahead  
2 and allow that into the record.

3 Mr. Alade, --

4 MR. ALADE: Alade.

5 CHAIRPERSON HILL: Alade, if you go ahead and walk us  
6 through your presentation and why you believe you're meeting the  
7 criteria for us to grant the relief requested. And you can begin  
8 whenever you'd like.

9 MR. ALADE: Okay. Thank you, Commissioners, Mr. Chair,  
10 I appreciate the time. I would like to ask Mr. Young to please  
11 put up my burden of proof, the revised burden of proof. I don't  
12 have a PowerPoint presentation.

13 CHAIRPERSON HILL: Is that exhibit 5A?

14 MR. ALADE: Exhibit 5A, yes.

15 CHAIRPERSON HILL: Thirty-five "A."

16 MR. YOUNG: Okay. I'll need a minute to pull it up  
17 because I didn't get it sent to me.

18 MR. ALADE: I can just go ahead and describe what --

19 CHAIRPERSON HILL: Why don't you go ahead and describe,  
20 Mr. Alade. And I don't think that Mr. Young needs to pull it up.  
21 We all have it in front of us.

22 MR. YOUNG: Okay. All right.

23 MR. ALADE: So basically, I put in application to  
24 develop a single-family house in the RF-1 Zone, and to convert it  
25 into a two-flat building within the requirements of the zoning

1 regulations, which was approved, and the project has actually been  
2 constructed. However, the Office of Planning had said that  
3 because the entry porch, the cover of the entry porch, I was  
4 proposing to expand it. And the building approval they approved  
5 two entrance doors and an expanded front porch entry. However,  
6 the cover of the front porch has been deemed to be an  
7 architectural element, which I have been advised that I need to  
8 get a special exception for. That's the sole reason for coming  
9 before your Board today. And the sections of the code are the  
10 206, Subtitle E, 206.1 regarding the relief on the rooftop  
11 element. And that's what I'm requesting relief for. Also on  
12 206.4, E 206.4, 5207, and 901.2. I believe that the proposal is  
13 in harmony with the zoning regulations that the adjacent  
14 properties would not be adversely affected by any means, by light,  
15 air or use, privacy. I have as well as, you know, the proposed  
16 front porch roof, the new front porch roof does not alter the view  
17 or the character along the street of frontage is not shade.  
18 Either property on adjacent side abutting properties wouldn't be  
19 affected. And that's why I'm requesting for the special exception  
20 today.

21           And you can see in the pictures which show, on exhibit  
22 4, you can see the existing -- I'm sorry, the original front porch  
23 roof, which was damaged during the construction process. And you  
24 see pictures of what is being proposed. The main reason for  
25 having requested a larger porch roof is so that it can cover the

1 two entrance doors as approved by DCRA. And that concludes my  
2 presentation.

3 CHAIRPERSON HILL: All right. Did you present in front  
4 of the ANC?

5 MR. ALADE: Yes, I did present in front of the ANC.  
6 And pardon me, I forgot to mention that the ANC recommends  
7 approval. OP recommend approval. DDOT has no objection. And I  
8 met and discussed with both property units on adjacent side, 1417  
9 and 1421 Trinidad. They also have no objection. However, they  
10 did not enter anything into the record.

11 CHAIRPERSON HILL: Yeah, we do have something from the  
12 ANC. Okay. Does anybody have any questions for the Applicant?

13 (No response.)

14 CHAIRPERSON HILL: All right. I'll turn to the Office  
15 of Planning.

16 MS. THOMAS: Good afternoon, Mr. Chair, members of the  
17 Board. Karen Thomas with the Office of Planning. We will send a  
18 record of report in support of this request to expand the roof to  
19 accommodate the two doors, entrances to the flat. Those have  
20 already been built. And we don't see any issues with it. It has  
21 met the criteria of the regulations. So with that, I'll be happy  
22 to take any questions. Thank you.

23 CHAIRPERSON HILL: Okay. Thank you, Ms. Thomas. Does  
24 the Board have any questions for the Office of Planning?

25 (No response.)

1 CHAIRPERSON HILL: Does the Applicant have any  
2 questions for the Office of Planning?

3 MR. ALADE: No.

4 CHAIRPERSON HILL: Mr. Young, is there anyone here  
5 wishing to testify?

6 MR. YOUNG: We do not.

7 CHAIRPERSON HILL: Okay. Mr. Alade, do you have  
8 anything to add at the end?

9 MR. ALADE: No. I just want to thank you for your  
10 time. It's been a long day so far.

11 CHAIRPERSON HILL: Thank you. All right. I'm going to  
12 go ahead and close the hearing and close the record, close the  
13 hearing and excuse everyone.

14 CHAIRPERSON HILL: I didn't have any issues with this.  
15 I thought it was pretty straight forward, and I can understand why  
16 it would meet the criteria. I would agree with the analysis that  
17 the Office of Planning has provided. I also agree with the burden  
18 of proof that the Applicant has provided, as well as the support  
19 from ANC 5D. DDOT had no objections. And I'm going to be voting  
20 in favor. Mr. Shapiro, is there anything you'd like to add?

21 COMMISSIONER SHAPIRO: Nothing to add, Mr. Chairman.

22 CHAIRPERSON HILL: Mr. Smith?

23 BOARD MEMBER SMITH: Nothing.

24 CHAIRPERSON HILL: Vice Chair John?

25 VICE CHAIR JOHN: Nothing to add.

1 CHAIRPERSON HILL: Okay. I'm going to go ahead and make  
2 a motion then to approve the Application Number 20378 as captioned  
3 and read by the secretary and ask for a second, Ms. John.

4 VICE CHAIR JOHN: Second.

5 CHAIRPERSON HILL: Motion made and seconded. Mr. Moy,  
6 would you take a roll call vote?

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

11 Zoning Commissioner Peter Shapiro?

12 COMMISSIONER SHAPIRO: Vote yes.

13 MR. MOY: Mr. Smith?

14 BOARD MEMBER SMITH: Yes.

15 MR. MOY: Vice Chair John?

16 VICE CHAIR JOHN: Yes.

17 MR. MOY: Chairman Hill?

18 CHAIRPERSON HILL: Yes.

19 MR. MOY: And we have a Board -- and we have a Board  
20 seat vacant. Staff would record the vote as 4 to 0 to 1. And  
21 this is on the motion made by Chairman Hill to approve, seconded  
22 by Vice Chair John, also in support of the motion Mr. Smith and  
23 Zoning Commissioner Peter Shapiro. Board seat vacant. Motion  
24 carries 4 to 0 to 1.

25 CHAIRPERSON HILL: All right, Mr. Moy. Thank you. You

1 can call our next one when you get a chance.

2 MR. MOY: This is Case Application Number 20379 of  
3 Andrew Hanko and Carol Connelly. This is captioned and advertised  
4 for special exception from the rear addition requirements of  
5 Subtitle E, Section 205.4, pursuant to Subtitle E, Sections 205.5,  
6 5201 and Subtitle X, Chapters 901.2. This would construct a  
7 second story addition to an existing one-story principal dwelling  
8 unit in the RF-1 Zone. This is at premises 514 9th Street,  
9 Southeast, Square 949, Lot 36. And once again, as you may guess,  
10 there is a waiver of the 21-day. The Applicant submitted an  
11 updated burden of proof. And, yeah. So that's it for me, sir.

12 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy. Ms.  
13 Shepard, could you introduce yourself for the record?

14 MS. SHEPARD: Certainly. I'm Elizabeth Shepard with Case  
15 Design Remodeling. I'm the architect representing Andrew Hanko  
16 and Carol Connelly.

17 CHAIRPERSON HILL: Okay. Unless the Board has any  
18 issues, I'd like to have the updated burden of proof in the  
19 record. So I'm going to go ahead and waive the deadline. Unless  
20 the Board has an issue, raise your hand, please.

21 (No response.)

22 CHAIRPERSON HILL: No. Okay. We're going to go ahead  
23 and waive that deadline and allow that into the record.

24 And Ms. Shepard, if you want to walk us through why you  
25 believe we should approve your application. And you can begin

1 whenever you'd like.

2 MS. SHEPARD: Certainly. Can I share pdf with you?

3 CHAIRPERSON HILL: Is it in the record already?

4 MS. SHEPARD: It's in the record. Mr. Young is sharing  
5 it.

6 CHAIRPERSON HILL: Great. Which exhibit, do you know,  
7 Ms. Shepard, by any chance?

8 MS. SHEPARD: This one.

9 CHAIRPERSON HILL: No. Do you know where it is in the  
10 record?

11 MS. SHEPARD: It's the photos and the drawings were  
12 combined into one pdf. I'm not seeing them right now on the  
13 screen.

14 CHAIRPERSON HILL: Okay. I've got it.

15 MS. SHEPARD: Okay. So these are photos of the front.  
16 Our house is -- or the client's house is the unpainted brick. The  
17 second photo is the rear, is the same one-story addition to the  
18 back that we would like to add onto. Can we go to the next  
19 slide.

20 These are two views from the alley, just pointing out  
21 the existing conditions. The neighbor to the north is the  
22 unpainted brick one. And that's a twin of the original house that  
23 my clients are in without the one-story addition. The neighbor to  
24 the south is this wood clad structure. And it comes out just over  
25 four feet less than our existing one-story addition. Next slide.

1           So this is the site plan with the neighbors on either  
2 side. As you can see, 512 is a twin of 514 except for the  
3 addition. The existing first floor addition is 12 feet deep by  
4 14.4 feet wide. And we wanted to build a second story addition on  
5 top of that. We are here for an exception to the 10-foot limit to  
6 that rule. We want to add an additional two feet. Next slide.

7           This is just the existing first floor. Next slide.

8           This is the existing second floor with the proposed  
9 addition in the dark red walls. It's a single room en suite to  
10 the existing study/library. Next slide.

11           These are the elevations, the rear elevations showing  
12 the three nice windows facing their beautiful alley, which is  
13 actually a really nice alley. Two windows facing their neighbor  
14 to the south. And those windows are far enough away that there's  
15 no requirement for fire blocking or anything. And then one more  
16 slide.

17           And this is simply the elevation to the north. This is  
18 on the property line. No windows on that property. We have been  
19 to the ANC and got their approval. We have contacted the  
20 neighbors to the south, and they gave their no objection. We  
21 have made every attempt to contact the neighbor to the north, and  
22 have been unable to reach them. The house is rented out. The  
23 only address I have for that neighbor is the 512. I've sent  
24 certified letters. My client has continued to try to reach them  
25 via an email address that used to be accurate, which is no longer

1 being responded to.

2           So our request is simply for the additional two feet so  
3 that -- can you go back one slide. It's probably easier to talk  
4 about there. So that we can build directly over the existing  
5 addition and not having to set back the wall two feet and create  
6 an awkward situation for both structure and enclosing the  
7 building, as well as giving the extra two feet to the addition the  
8 clients are trying to create. And that's all I have.

9           CHAIRPERSON HILL:     Okay.     Great.     Thank you, Ms.  
10 Shepard. Does the Board have any questions for the Applicant?

11           (No response.)

12           CHAIRPERSON HILL:     All right. I'm going to turn to the  
13 Office of Planning.

14           MR. COCHRAN:     Thank you, Mr. Chairman. My name is Steve  
15 Cochran, representing the Office of Planning on this case. OP is  
16 happy to stand on the record and answer any questions you may  
17 have.

18           CHAIRPERSON HILL:     Okay.     Does anybody have any  
19 questions for Office of Planning?

20           BOARD MEMBER SMITH:   I have one, please.

21           CHAIRPERSON HILL:     Mr. Smith?

22           BOARD MEMBER SMITH:   It's on the special exception  
23 criteria (audio interference). In 5201.3A light, air (audio  
24 interference)

25           CHAIRPERSON HILL:     Mr. Smith, you might want to lean in

1 a little bit.

2 BOARD MEMBER SMITH: Okay. Can you hear me better now?

3 CHAIRPERSON HILL: Yes.

4 BOARD MEMBER SMITH: Okay. Sorry about that. In what  
5 Mr. Cochran, under special exception criteria 5201.3A, discussing  
6 light and air available to neighboring properties. In the staff  
7 report you stated that these two feet is not likely to have an  
8 undue affect. Could you expand on how you arrived at that  
9 conclusion?

10 MR. COCHRAN: Sure. I based it on shadow studies that  
11 have been done on other cases that are on similar, with similar  
12 orientations for houses. And we noticed repeatedly that an  
13 additional two feet with these orientations makes a very minimal  
14 difference and would not affect, would not be likely to affect the  
15 house itself. It would in the, I believe, summer affect some of  
16 the back yard of one adjacent house. That would be it.

17 BOARD MEMBER SMITH: Okay.

18 MR. COCHRAN: And we are all talking about the  
19 additional two feet, not the full 12 feet.

20 BOARD MEMBER SMITH: Right. Right. And just as a  
21 clarification for me, when does OP typically request these types  
22 of sun studies? I appreciate the analysis (indiscernible) of  
23 situations of a similar nature, but when do you typically request  
24 those studies?

25 MR. COCHRAN: We do not have a hard and fast rule, but

1 if it's a relatively small additional distance, we may not request  
2 it. Often times we will request one that would be potentially  
3 shadowing a building to the north. It would be less likely that  
4 we would do, ask for one for a building that is oriented towards  
5 south for obvious reasons.

6 BOARD MEMBER SMITH: Okay. Thank you.

7 CHAIRPERSON HILL: Anybody else?

8 (No response.)

9 CHAIRPERSON HILL: Mr. Cochran, I've got to ask. Is it  
10 the view that's your background, it's a picture out of where?

11 MR. COCHRAN: This is my apartment.

12 CHAIRPERSON HILL: Yeah. Yeah. Is it the museum?

13 MR. COCHRAN: Yes. It's the hallway at the Bible  
14 Museum. The one that cantilevers out over 4th Street.

15 CHAIRPERSON HILL: Okay. Okay. All right. Thank you.  
16 Let's see, -- I wish it was your apartment, Mr. Cochran.

17 MR. COCHRAN: So do I. But the content would be very  
18 different.

19 (Laughter.)

20 CHAIRPERSON HILL: All right. Okay. Mr. Young, is  
21 there anybody here wishing to testify?

22 MR. YOUNG: We do not.

23 CHAIRPERSON HILL: Okay. Ms. Shepard, is there anything  
24 you'd like to add at the end?

25 MS. SHEPARD: No. Thank you so much.

1 CHAIRPERSON HILL: Okay. All right. I'm going to go  
2 ahead and close the record and the hearing. Thank you, everyone.

3 There was also a letter in the record in support from  
4 CHRS. I can go -- I didn't have any issues with the application.  
5 I appreciate the Office of Planning's analysis, and I would agree  
6 with their analysis. I would also appreciate the support that ANC  
7 6B has put forward, as well as no objection from DDOT. And as I  
8 had mentioned, CHRS had voiced their support. I would agree with  
9 the burden of proof that the Applicant has put forward in terms of  
10 how they're meeting the criteria for us to grant the relief being  
11 requested, and I'm going to vote in favor. Mr. Shapiro, is there  
12 something you'd like to add?

13 COMMISSIONER SHAPIRO: I have nothing to add, Mr. Chair.  
14 May I ask a favor? It's kind of an odd favor. If we can ask the  
15 Applicant to stay on for a second after we vote. I just want to  
16 make a comment.

17 CHAIRPERSON HILL: Sure. Mr. Young, can you just hang  
18 onto the Applicant there a second.

19 MR. YOUNG: The Applicant is Mr. Hanko.

20 CHAIRPERSON HILL: oh, Mr. Hanko.

21 COMMISSIONER SHAPIRO: Once we've done our process.

22 CHAIRPERSON HILL: I got you. I got you. Mr. Smith, do  
23 you have anything to add?

24 BOARD MEMBER SMITH: No, Mr. Chair.

25 CHAIRPERSON HILL: Okay. Vice Chair John?

1 VICE CHAIR JOHN: No, Mr. Chair.

2 CHAIRPERSON HILL: Okay. I'm going to go ahead and make  
3 a motion to approve Application Number 20379 as captioned and read  
4 by the secretary and ask for a second, Ms. John?

5 VICE CHAIR JOHN: Second.

6 CHAIRPERSON HILL: Mr. Moy, the motion has been made and  
7 seconded. Could you take a roll call vote for us?

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

12 Zoning Commissioner Peter Shapiro?

13 COMMISSIONER SHAPIRO: Vote yes.

14 MR. MOY: Mr. Smith?

15 BOARD MEMBER SMITH: Yes.

16 MR. MOY: Vice Chair John?

17 VICE CHAIR JOHN: Yes.

18 MR. MOY: Chairman Hill?

19 CHAIRPERSON HILL: Yes.

20 MR. MOY: We have a seat vacant. Sorry. I had to  
21 momentarily pause. We have a seat vacant. Staff would record the  
22 vote as 4 to 0 to 1. And this is on the motion made by Chairman  
23 Hill to approve the application, seconded by Vice Chair John, also  
24 in support of the motion Mr. Smith and Zoning Commissioner Peter  
25 Shapiro. Motion carries 4 to 0 to 1.

1 CHAIRPERSON HILL: Okay. Mr. Young, could you allow  
2 Mr. Hanko back into the room, please. Mr. Hanko, are you there?

3 (No response.)

4 CHAIRPERSON HILL: Mr. Hanko? Mr. Hanko, can you hear  
5 us?

6 MS. HANKO: All right. Thank you.

7 CHAIRPERSON HILL: Oh, Ms. Hanko.

8 MR. HANKO: Well, my wife and I --

9 MS. HANKO: It's all right.

10 COMMISSIONER SHAPIRO: Ms. Hanko, was your father Andy  
11 Hanko from New Carrollton?

12 MS. HANKO: He was.

13 COMMISSIONER SHAPIRO: I just wanted to pay my respects.  
14 I know he passed a few years ago. I knew him quite well. He was  
15 the mayor of New Carrollton for, I don't know, 30, 35 years. He  
16 was a great leader in Prince George's County. And I just wanted  
17 to pay my respects.

18 MR. HANKO: Thank you very much. That's very kind of  
19 you.

20 COMMISSIONER SHAPIRO: That's all I have, Mr. Chair.

21 MS. HANKO: Thank you.

22 CHAIRPERSON HILL: Thank you. Thank you all very much.  
23 Okay. Mr. Young, you can clear the room again. All  
24 right. We have one left. Okay, Mr. Moy, you can call our last  
25 case.

1           MR. MOY:     Thank you, sir.    So this would be Case  
2 Application Number 20381 of Thomas Sullivan and Heather  
3 Greenfield. This is caption advertised for special exception from  
4 the lot occupancy requirements of Subtitle E, Section 304.1. And  
5 this would construct a two-story addition, with cellar, to an  
6 existing two-story principal dwelling unit in the RF-1 Zone at  
7 premises 314 10th Street, Southeast, Square 970, Lot 805.

8           Once again, the preliminary matter is a waiver of the  
9 21-day filing. Apparently, this Applicant again -- well, I won't  
10 say again, but submitted a revised burden of proof. And I believe  
11 it's under exhibit 36.

12           CHAIRPERSON HILL:   Okay. Great. Ms. Brittingham, could  
13 you please introduce yourself for the record?

14           MS. BRITTINGHAM:   Hi. My name is Lacy Brittingham, and  
15 I am the architect for the project.

16           CHAIRPERSON HILL:   And who is here with you, Ms.  
17 Brittingham?

18           MS. BRITTINGHAM:   The homeowner, Heather Greenfield.

19           CHAIRPERSON HILL:   Okay. So we'll see if we need to  
20 hear from her or not. In terms of the waiver, I don't have any  
21 issue with the revised burden of proof being allowed in because  
22 I'd like to see it, unless the Board has an issue, please raise  
23 your hand.

24           (No response.)

25           CHAIRPERSON HILL:   So I'll go ahead and waive that 21-

1 day requirement and allow the revised burden of proof in the  
2 record.

3 Ms. Brittingham, if you want to go ahead and walk us  
4 through the application, why you believe you're meeting the  
5 criteria for us to grant the relief requested. And you can begin  
6 whenever you'd like.

7 MS. BRITTINGHAM: Okay. Thank you, Chairman Hill and  
8 good afternoon, evening almost. Mr. Young, can you bring up the  
9 presentation, please.

10 I'm actually going to start on the last slide, slide 13.  
11 Can you go to the last slide, please. I have to start putting my  
12 pictures at the front of the package. Okay. So this property,  
13 you can see the front elevation on the left. It's a two-story  
14 house in Southeast, on Capitol Hill. We also have a two-story  
15 carriage at the back of the property, which is shown in the  
16 photograph on the right. That is the view of the carriage house  
17 from the rear yard of the house. And as noted by the arrow, the  
18 stair is currently under a building permit review at DCRA to move  
19 the stair to the interior of the carriage house. And so as a  
20 larger view of this project, we are freeing up lot coverage to use  
21 by the house by removing the stair and moving it to the interior  
22 of the carriage house. So we made a little bit of lot coverage  
23 available there in order to propose the house the homeowner wanted  
24 for the expansion and maxing out the 70 percent lot coverage of  
25 the special exception. So I guess we can go, unfortunately, back

1 to the first slide, which is the site plan. And I can just sort  
2 of speak to -- actually, before you go there. Go back one second.  
3 Is it frozen? Actually, on that slide.

4           So you can see the house in the left photograph, the  
5 yellow house on the left, that is the house to the south of us,  
6 they did an addition a number of years ago and extended their  
7 house about 11 feet beyond the house at the subject property. And  
8 it was a rear two-story addition with, and extended the basement  
9 out as well. And then you can see in the other photograph, on the  
10 right-hand side, our neighbor to the north, at 312 10th Street,  
11 that is the peach house. And we sort of -- right now the rear of  
12 the houses align. And our proposal is, of course, to demolish the  
13 two-story porch that was enclosed at the back of this property.  
14 That's what you're looking at right now. It was a rear porch,  
15 two-story porch that was enclosed, to demolish that and then in-  
16 fill the dog leg at the first level, retain the dog leg at the  
17 second level, and reconstruct the two-story addition on the back.  
18 And that would -- we are actually shortening the length of our, of  
19 the house at 314, the subject property, by a foot. Again, in  
20 order to free up lot coverage in order to fill in the dog leg and  
21 maintain a flat wall for the back of the new rear of the house, if  
22 that makes sense. So to the south the structure is much larger  
23 than ours. So, you know, as relates to the criteria 5201, they  
24 cast a shadow and affect the light and air on our property. And  
25 then by reducing the length of our house, we're actually, you

1 know, casting less shadow I guess on the property to the north of  
2 us. So we feel that, you know, the changes here definitely do not  
3 unduly affect the neighbor's light and air.

4 As far as the use, we're not changing the residential  
5 use of this property. The neighbor to the south has their back  
6 yard, you know, 10 feet beyond the rear yard, the rear -- their  
7 yard is 10 feet beyond, further beyond because of the length of  
8 their house. And so us in-filling the dog leg, it's up against a  
9 two-story wall. It does not change the use, privacy of use to the  
10 neighbor, of the neighbor to the south. Then to the north, again,  
11 since we're shortening it, it's really not any different than the  
12 current condition.

13 The structure itself is designed, and you can go up two  
14 slides, I think is the rear elevation in drawing form. It is the  
15 language of a typical rear addition in a neighborhood. We are  
16 retaining the dog leg, which is a common form in neighborhoods.  
17 And the carriage house, the two-story carriage house, of course,  
18 will remain. So it will hardly be visible at all from the alley.  
19 It's not visible from the public street. The fences that exist  
20 between the neighboring properties will remain. And so we feel  
21 that we have, you know, not unduly affect the neighbors and, of  
22 course, the character and scale of the neighborhood.

23 So we have reached out to our neighbors, and we have  
24 five letters of support. We have a signed letter of support from  
25 the adjacent neighbor in the house to the south, the yellow house.

1 She's in full support of the project. The house to the north is  
2 non owner occupied. And we have reached out to them. We had  
3 communications with them, explaining the project and what was  
4 going to be happening. And we shared these communications with  
5 the ANC, and the ANC was satisfied that she was well-notified and  
6 had opportunity to engage in the process. And the ANC voted to  
7 support the project based on our efforts with all the neighbors  
8 and the design of the project.

9 This house does have an easement from the L'Enfant Trust  
10 on all facades of all buildings, all structures on the property.  
11 And we reached out to them and got their schematic support as  
12 well, before proceeding down this path with the BZA.

13 So I think that concludes my presentation. I'm happy to  
14 answer any questions.

15 CHAIRPERSON HILL: Okay. Thank you, Ms. Brittingham,  
16 for your presentation. Does the Board have any questions for the  
17 Applicant?

18 (No response.)

19 CHAIRPERSON HILL: Okay. I'll turn to the Office of  
20 Planning.

21 MS. MYERS: I'm Crystal Myers with the Office of  
22 Planning. The Office of Planning is recommending approval of this  
23 case (indiscernible audio)

24 CHAIRPERSON HILL: Okay. Thank you, Ms. Myers. Does  
25 the Board have any questions for the Office of Planning?

1 (No response.)

2 CHAIRPERSON HILL: Mr. Young, is there anyone here  
3 wishing to testify?

4 MR. YOUNG: We do not.

5 CHAIRPERSON HILL: Okay. Ms. Brittingham, is there  
6 anything you'd like to add at the end?

7 MS. BRITTINGHAM: No.

8 CHAIRPERSON HILL: Okay. Great. All right. Okay.  
9 I'm going to go ahead and close the hearing, close the record.  
10 Thank you, everyone, for participating.

11 CHAIRPERSON HILL: May I go around the table if you all  
12 wouldn't mind. Commissioner Shapiro?

13 COMMISSIONER SHAPIRO: Thank you, Mr. Chairman. I  
14 vote (audio interference) the special exception requirements. I'd  
15 be in support of the project.

16 CHAIRPERSON HILL: Mr. Smith?

17 BOARD MEMBER SMITH: (Indiscernible audio) I give great  
18 weight to the opening -- I give great weight to the OP, report. I  
19 do not believe that the project unduly affects light, air or have  
20 any adverse impact on the neighborhood or surrounding properties.  
21 So with that, I would support (audio interference).

22 CHAIRPERSON HILL: Ms. John?

23 VICE CHAIR JOHN: Thank you, Mr. Chairman. This  
24 application is fairly straight forward. And I believe both, the  
25 Applicant and the Office of Planning described how the application

1 meets the criteria for approval. And the Office of Planning's  
2 analysis is in the record. And so I would support the  
3 application.

4 CHAIRPERSON HILL: Okay. Great. Thank you. I don't  
5 want to forget, there's apparently a training thing that we might  
6 have to vote on at the conclusion. So don't leave me yet.

7 All right. I don't have anything additional to add. I  
8 would agree with my colleagues. I'm going to make a motion to  
9 approve Application Number 20381 as captioned and read by the  
10 secretary and ask for a second, Ms. John?

11 VICE CHAIR JOHN: Second.

12 CHAIRPERSON HILL: Motion made and seconded. Mr. Moy,  
13 could you please take a roll call?

14 MR. MOY: Yes. When I call your name if you would  
15 please respond with a yes, no or abstain. This is to the motion  
16 made by Chairman Hill to approve the application for the relief  
17 requested. The motion was seconded by Vice Chair John.

18 Zoning Commissioner Peter Shapiro?

19 COMMISSIONER SHAPIRO: I vote yes.

20 MR. MOY: Mr. Chrishaun Smith?

21 BOARD MEMBER SMITH: I vote yes.

22 MR. MOY: Vice Chair Lorna John?

23 VICE CHAIR JOHN: Yes.

24 MR. MOY: Chairman Fred Hill?

25 CHAIRPERSON HILL: I vote yes.

1 MR. MOY: We have a Board seat vacant. Staff would  
2 record the vote as 4 to 0 to 1. And this is on the motion made by  
3 Chairman Hill to approve, seconded by Vice Chair John, also in  
4 support of the motion Mr. Smith and Zoning Commissioner Shapiro.  
5 Again, the motion carries on the vote of 4 to 0 to 1.

6 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy. All  
7 right, Mr. Moy, I'm going to read this motion about the training  
8 meeting.

9 MR. MOY: Yes, sir.

10 CHAIRPERSON HILL: Okay. So in accordance with Section  
11 405 C of the Opening Meetings Act, DC Official Code Section 2-  
12 575C, I move that the Board of Zoning Adjustment convene a closed  
13 meeting on Wednesday, February 17, 2021, at 1:30 p.m., for the  
14 purpose of conducting internal training as permitted by Section  
15 405B12 of the Act. Can I get a second, Ms. John?

16 VICE CHAIR JOHN: Second.

17 CHAIRPERSON HILL: Mr. Secretary, the motion has been  
18 made and seconded. Could you please take a roll call?

19 MR. MOY: Yes, sir. So when I call your name if you  
20 would please respond with a yes or no to the motion made by the  
21 chairman for a closed meeting for training for next Wednesday,  
22 February the 17th.

23 Zoning Commissioner Shapiro?

24 COMMISSIONER SHAPIRO: Vote yes.

25 MR. MOY: Mr. Smith?

1 BOARD MEMBER SMITH: Yes.

2 MR. MOY: Vice Chair John?

3 VICE CHAIR JOHN: Yes.

4 MR. MOY: Chairman Hill?

5 CHAIRPERSON HILL: Yes.

6 MR. MOY: We have a Board seat vacant. Staff would  
7 record the vote as 4 to 0 to 1. And this is on the motion made by  
8 Chairman Hill, seconded by Vice Chair John, also in support of the  
9 motion Mr. Smith and Zoning Commissioner Shapiro. Motion carries,  
10 sir.

11 CHAIRPERSON HILL: Okay. Great. All right, Thank you  
12 everyone. It's been a long day, but I appreciate all of the help,  
13 support and effort. And I hope you all have a nice week. Okay.  
14 We stand adjourned. Bye-bye.

15 (Whereupon, at 4:17 p.m., the above-caption hearing  
16 was adjourned.)

C E R T I F I C A T E

This to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 02-10-21

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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KATHLEEN A. COYLE