

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+++ +

BOARD OF ZONING ADJUSTMENT

+++ +

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

T-A-B-L-E O-F C-O-N-T-E-N-T-S

Case No. 20385 - Application of Matthew and Jacqueline Robertson, and Bernadette Eichelberger.	8
Case No. 20323 - Application of The District of Columbia Department of General Services.	82
Case No. 20333 - Application of Matthew Pickner	92
Case No. 20372 - Application of Aulona Alia	103
Appeal No. 20356 - Appeal of Advisory Neighborhood Commission 1C	119
Case No. 20373 - 3321 13th Street, LLC	126
Case No. 20375 - Quincy Street Condominium Association . .	152
Case No. 20378 - 1419 Trinidad, LLC	161
Case No. 20379 - Andrew Hanko and Carol Connally	168
Case No. 20381 - Thomas Sullivan and Heather Greenfield .	177

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

2 (9:48 a.m.)

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

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

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

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

25 If you are experiencing accessing Webex or telephone

1 call difficulty, or 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 masting 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 question 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. Gee Gee, 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 seeking, 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 Eckenviler, 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 Eckenviler?

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 31st?

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.

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 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.

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?

16 CHAIRPERSON HILL: Mr. Smith?

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.



KATHLEEN A. COYLE